IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2015-404-001923
[2021] NZHC 30

UNDER	the Defamation Act 1992
BETWEEN	COLIN GRAEME CRAIG Plaintiff
AND	CAMERON JOHN SLATER First Defendant
	SOCIAL MEDIA CONSULTANTS LIMITED Second Defendant

Hearing:	9 November 2020
Appearances:	C G Craig (Self-represented Plaintiff) in Person No Appearance of, or for Defendants
Judgment:	27 January 2021

JUDGMENT OF EDWARDS J

This judgment was delivered by me on 27 January 2021 at 4.00 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

To: C G Craig, Auckland

[1] Mr Slater and his company, Social Media Consultants Ltd (in liq) (SMC), were found by the High Court and the Court of Appeal to have defamed Mr Craig through ten publications.[1] Other claims of defamation were dismissed. The Court of Appeal directed damages and costs to be assessed in this Court.[2]

[2] Mr Craig seeks compensatory, aggravated and punitive damages in the sum of at least $500,000. He seeks costs, being disbursements he incurred as a self-represented litigant, of approximately $158,000. The awards are unlikely to be satisfied as Mr Slater is now bankrupt and his company is in liquidation.[3] Neither defendant appeared at the hearing.

[3] As the High Court Judge (Toogood J) who heard the substantive claim has since retired, it falls to me to determine the quantum of the damages and costs awards.

A brief background

[4] The background is set out in detail in the High Court judgment and summarised in the Court of Appeal judgment.[4] That means I may be brief.

[5] Mr Craig is a businessman. He is also the founder of the Conservative Party, which contested the 2011, 2014 and 2017 general elections. He was the party's leader until 2015.

[6] Ms MacGregor was employed as the party's Press Secretary shortly after it was founded in 2011. She resigned in September 2014, just days before the general election. Following her resignation, Ms MacGregor accused Mr Craig of sexual harassment. Those claims and others were subsequently settled at a mediation.

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1 *Craig v Slater* [2018] NZHC 2712 [High Court judgment]; and *Craig v Slater* [2020] NZCA 305 [Court of Appeal judgment].

2 Court of Appeal judgment, above n 1, at [134]–[135].

3 The Official Assignee consents to the continuation of this proceeding. The liquidator abides the decision of the Court and does not oppose the proceeding continuing. For the avoidance of doubt, and pursuant to s 248(1)(c) Companies Act 1993, I order that legal proceedings may continue against SMC.

4 High Court judgment, above n 1, at [1]–[16]; and Court of Appeal judgment, above n 1, at [1]–[8].

[7] The allegations of sexual harassment were leaked to Mr Slater. From 19 June 2015 until 29 July 2015, Mr Slater made various statements about Mr Craig which were published on the *Whaleoil* blog site, *NewsTalk ZB* and the *One News Now* website.

[8] The Court of Appeal summarised the nature of the statements made as follows:[5]

> The essence of Mr Slater's statements was that Mr Craig had sexually harassed Ms MacGregor (including by sending her sexually explicit text messages or "sexts"), put her under financial pressure to sleep with him, paid her a six-figure sum in settlement, sexually harassed at least one other woman, lied to the party board about his conduct and how much he had paid Ms MacGregor, and lied to the media about why two board members had left the party.

[9] Mr Craig commenced proceedings for defamation against Mr Slater and SMC, the publisher of *Whaleoil*. Mr Slater counterclaimed against Mr Craig for defamation relating to statements made in a pamphlet published and distributed by Mr Craig.

[10] The High Court delivered judgment in October 2018.[6] Mr Slater was found liable in defamation for four publications, but the other claims were dismissed on the grounds that they were either not defamatory or were protected by defences of truth, honest opinion, or responsible public interest communication. The Judge declined to award Mr Craig damages. Mr Slater's counterclaim was dismissed on the basis that Mr Craig's pamphlet was a justifiable response to an attack made by Mr Slater and thus protected by qualified privilege.

[11] The award of costs was dealt with in a separate judgment.[7] Costs (albeit reduced) were awarded to Mr Slater on the basis that Mr Craig's claim had largely failed. The costs of the counterclaim were ordered to lie where they fell.

[12] Mr Craig appealed both judgments. The substantive appeal was successful in in relation to eight statements, making a total of 10 defamatory publications.[8] Each of the defamatory publications are set out later in this judgment. The Court of Appeal

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5 Court of Appeal judgment, above n 1, at [6].
6 High Court judgment, above n 1.
7 *Craig v Slater* [2019] NZHC 1269.
8 Court of Appeal judgment, above n 1, at [131].

also found that the Judge had erred by failing to award damages.[9] Mr Craig was found to be the successful party on the substantive claim and in his defence of the counterclaim, and accordingly entitled to costs. The determination of damages and costs were remitted back to the High Court in accordance with the Court of Appeal's judgment.

The defamatory statements

Publication 1 – 19 June 2015

[13] Publication 1 was a *Newstalk ZB* radio interview with Mr Slater on 19 June 2015. Mr Slater said in this radio interview that he had "copies of sext messages, you know, dirty text messages" that Mr Craig had sent Ms MacGregor.

[14] The High Court found the essential sting of the statement was that Mr Craig had sexually harassed Ms MacGregor by sending her, in writing, sexually orientated messages that were unsolicited.[10] The statement was found by Toogood J to be substantially true in material respects.[11] That finding was upheld on appeal.[12]

[15] In the same radio interview, Mr Slater said the harassment had been of a sexual nature and Mr Craig had settled for a large sum of money, believed to run into six figures.

[16] The High Court found that the statement that Mr Craig had paid Ms MacGregor a six-figure sum was not true but that the material element of the allegation, being that Mr Craig had provided Ms Gregor with a substantial financial benefit in exchange for her not pursuing a justifiable claim that he had been guilty of sexual harassment, was true.[13]

[17] The Court of Appeal disagreed, saying:[14]

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9 Court of Appeal judgment, above n 1, at [111]–[122].
10 High Court judgment, above n 1, at [447].
11 At [446]–[447].
12 Court of Appeal judgment, above n 1, at [67].
13 High Court judgment, above n 1, at [459].
14 Court of Appeal judgment, above n 1.

> [73] In our view, the difference between publication and fact here was material. Mr Slater repeated the "six figures" reference three times in the course of the interview, to emphasise the self-acknowledged seriousness of Mr Craig's behaviour. An ordinary listener or reader would measure the seriousness of the sexual harassment by the sum paid to settle, and that it must have been very serious indeed to warrant a six-figure settlement. In fact, all that could be established was that a sum of [$19,000] may have been exchanged because, or in part because, of Mr Craig's misconduct. This is not a distinction without a material difference. This challenge succeeds with respect to the "six-figure" allegations in publication 1, and publications 7 and 9.

Publication 4 – 20 June 2015

[18] Publication 4 was a post on *Whaleoil* headed "Will the Conservative Party survive Colin Craig?". The relevant part of the post provided:[15]

> There is simply so much more to come. There are financial issues, contractual issues, sleight-of-hand with loans, GST rebates and other strategic trickery. And that's all before the nasty stuff, like letters written by a married man to beg another woman for an affair. And then no longer begging, but putting pressure on this woman financially. TXT messages. Unsolicited and unwanted. Some so lewd they are SXT messages.

[19] Toogood J found that the passage carried the inference that Mr Craig had placed Ms MacGregor under financial pressure to sleep with him.[16] As there was no evidence of this, the Judge found that the imputation was neither true nor materially true.[17] Despite finding that publication 4 contained some matters of public interest, the Judge nevertheless rejected the defence of responsible communication in relation to the statement.[18]

Publication 6 – 20 June 2015

[20] Publication 6 arose out of a post by Mr Slater on *Whaleoil* on 20 June 2015. The relevant passage in the post is as follows:[19]

> Worse than untrue, a deliberate lie. Craig has also misled the board over the amount of the settlement and the nature of the settlement. He has told the board one amount that is many tens of thousands of dollars away from the real settlement amount … Having a chaperone, which I am told was at the request

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15 High Court judgment, above n 1, at [495].
16 At [498].
17 At [511].
18 At [512]–[514].
19 At [516].

> of Rachel MacGregor, just provides even more evidence of the creepy behaviour of Colin Craig.
>
> …
>
> If this carries on much more I predict death by a thousand cuts as TXT, SXTS and more musings from "Creative Colin" make their way into the public view.

[21] Toogood J found that the pleaded imputations arising from this statement were proved and the statement was therefore defamatory.[20] As they were not expressions of opinion, the defence of honest opinion was not available.[21] However, the defence of truth applied in relation to some of the imputations with the exception of the suggestion that Mr Craig had engaged in behaviour with Ms MacGregor which was so morally reprehensible that the Board of the Conservative Party had to put chaperones in place to protect her.[22]

[22] The Court of Appeal agreed that the statements were defamatory but reversed the finding that the public interest communication defence had been established.[23]

Publication 7 – 21 June 2015

[23] Publication 7 was a post on *Whaleoil* headed "Exclusive: Emails reveal Conservative Party meltdown". The post included statements in one of Mr Stringer's emails as follows:[24]

> I am disappointed half of us were missing tonight from the special meeting called to discuss these matters "(that are of some years standing)". We had documentary evidence in the form of hand written notes, letters signed by Colin, his SXTs and emails for you to see, and I wanted to hear Colin's side of the story.
>
> ..
>
> I have … spoken to the media tonight to protect my own reputation and that of the Party from a man who is morally bankrupt and has lied to us as a Board for months and months.
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> The explicit and salacious details of Colin's indiscretions with women other than his wife will be leaked out every day over the next several days by several

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20 High Court judgment, above n 1, at [518].
21 At [518].
22 At [519] and [522].
23 Court of Appeal judgment, above n 1, at [104] and [110].
24 High Court judgment, above n 1, at [525].

> media outlets and from numerous sources. His large payout to one victim is already being discussed.
>
> … Let the cards fall where they may. But Colin's tenure as a leader of anything political is over as his victims begin to speak out.

[24] The Judge found the imputation Mr Craig had committed indiscretions with women other than his wife and that there was more than one victim of sexual harassment was neither true nor substantially true.[25] The Court of Appeal overturned the Judge's finding that the public interest defence succeeded in relation to this publication.[26]

Publication 9 – 23 June 2015

[25] Publication 9 was a further blog post on *Whaleoil* on 23 June 2015. This followed a media conference in which Mr and Mrs Craig had read from prepared statements and then answered certain questions. Mr Slater published statements reportedly made by Mr Stringer, including a statement that there remained confusion over the sums paid, namely, "$16,000; or $36,000; or approx, $50,000; or a six-figure payment paid as one lump sum".[27]

[26] This substantially repeated the statement made in publication 1.[28] The Court of Appeal overturned the Judge's dismissal of Mr Craig's claim in relation to this publication for the same reasons set out in relation to publication 1.[29]

Publication 10 – 26 June 2015

[27] Publication 10 was a further post on *Whaleoil* on 26 June 2015 headed "The delusions of small parties and the stupidity of the media". Mr Slater described Mr Craig as "a weirdo and political spastic" and said:[30]

> The thing is he admitted to "inappropriate behaviour" and most people now know what that is … and he won't survive it when it finally comes out.

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25 High Court judgment, above n 1, at [529].
26 Court of Appeal judgment, above n 1, at [104] and [110].
27 High Court judgment, above n 1, at [536].
28 At [537]-[538].
29 Court of Appeal judgment, above n 1, at [73].
30 High Court judgment, above n 1, at [549].

> I also happen to know that there is at least one other victim out there with similar circumstances … so Colin Craig is just a ticking timebomb.
>
> Guys like this never have just one victim no matter how hard they try to keep everyone silent.
>
> … The bottom line is no one brought down Colin Craig other than himself through his extremely poor and disgusting behaviour towards women.

[28] Toogood J found the assertion of a second victim was not true.[31]

[29] Mr Slater put forward a defence of responsible communication. He argued that he was entitled to rely on his conversations with a barrister acting for Mr Craig, and from what he knew from other sources, including Mr Stringer, about allegations that there were other victims of Mr Craig's sexual harassment.

[30] The Judge found that Mr Slater had been warned the conversation between the barrister and Mr Slater was not in relation to another victim of sexual harassment.[32] The Judge also said:[33]

> … Moreover, I accept that when Ms Flannagan reminded Mr Slater during their conversations in 2016 that she had never said that there was a second victim and tried to impress that on him, he responded that that did not matter because he was able to rely on having had a reasonable belief in the second victim because of what he inferred from her initial approach to him.

[31] Mr Slater was found to have had a suspicion about a second victim, but it was not a genuine belief.[34]

[32] Toogood J rejected the public interest defence, finding it proved the defendant defamed Mr Craig in this publication by asserting publicly that he seriously sexually harassed women other than Ms MacGregor.[35]

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31 High Court judgment, above n 1, at [551].
32 At [556].
33 At [556].
34 At [558].
35 At [560].

Publication 12 – 28 June 2015

[33] Publication 12 was made on *Whaleoil* on 28 June 2015. The post was entitled "Sex scandal without the sex". After quoting former member of Parliament, Mr Rodney Hide, Mr Slater commented:[36]

> There are rumours swirling around that because Craig won't take "no" for an answer, and he is essentially re-victimising MacGregor, a second wave of revelations are heading our way … We are only just getting to know the one who misuses his power over subordinates to try and sleep with them.

[34] Toogood J referred to his finding that there was no foundation for Mr Slater's assertion that Mr Craig had sexually harassed anyone other than Ms MacGregor, and accordingly Mr Craig's claim was allowed in relation to this statement.[37] However, the Judge noted that he was not persuaded that:[38]

> … the re-publication only two days after the original statement would have added anything to such damage as Mr Craig's reputation may have suffered from the earlier allegation of there being a second victim. …

Publication 14 – 1 July 2015

[35] Publication 14 was a *Whaleoil* post on 1 July 2015. It was headed "20 Fair Questions for Colin Craig". Questions three, four and five were the following:[39]

> 3. … Are you confident you have been honest in your filing of all Electoral Returns in accordance with the Act, and have you been totally honest about amounts and invoicing to keep Electorate campaigns under cap?
>
> 4. Do you categorically deny the new rumours emerging about a second sexual harassment case against you by another of your female employees?
>
> 5. Why did you not tell the truth to the media in late 2014 about Larry Baldock and Leighton Bakers' departures from the board and Party?

(a) Question three – electoral honesty

[36] Mr Craig pleaded that the natural and ordinary meaning of the words used in question three were that there were reasonable grounds to suspect that he had been

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36 High Court judgment, above n 1, at [563].
37 At [565].
38 At [565].
39 At [568].

dishonest in filing his electoral returns and lying about the amounts spent on his electoral campaign, and that in fact Mr Craig's spending had exceeded the legal limits. Toogood J rejected those meanings, finding that the published question imputed a statement of fact that there were grounds to investigate Mr Craig's conduct regarding electoral returns.[40]

[37] The Court of Appeal disagreed. It said the question complained of needed to be viewed in context. It was the third question within a set of 20 and the tenor of the entire article was that in numerous respects Mr Craig had acted dishonestly.[41] The Court of Appeal said:[42]

> [33] On its own, question three might have conveyed a tier three (grounds to investigate) meaning. In context, however, an ordinary reader would infer that the questioner had a factual basis for asking the question going beyond mere enquiry. And, that reasonable grounds existed to suspect Mr Craig of being dishonest in filing his electoral returns, declaring his expenditure, and exceeding lawful expenditure limits. This ground of challenge succeeds.

(b) Question four – second sexual harassment case

[38] Question four was found to be defamatory in the High Court. Toogood J found that, taken in conjunction with Mr Slater's assertion that he happened to know that there was a second victim, the question would be interpreted by an informed reader as an allegation that Mr Craig was guilty of that type of misconduct.[43] The Judge said that the question amounted to a statement of fact which was untrue and defamatory of Mr Craig, but it added little, if anything, to such damage as Mr Craig's reputation may have already suffered from the earlier statements.[44]

(c) Question five – lying to the media

[39] The fifth question was also alleged by Mr Craig to be defamatory. Toogood J said that he was not persuaded that Mr Craig had lied to the media about the departures of Mr Baldock and Mr Baker.[45] Nevertheless, he was not persuaded that an allegation

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40 High Court judgment, above n 1, at [575].
41 Court of Appeal judgment, above n 1, at [32].
42 Court of Appeal judgment, above n 1.
43 High Court judgment, above n 1, at [576].
44 At [576].
45 At [577].

that Mr Craig had misled the news media on an internal disciplinary issue would be regarded by right thinking members of society as lowering Mr Craig's reputation.[46]

[40] The Court of Appeal reversed this finding. It found the passage bore the meaning that Mr Craig lied to the media about the resignations of Messrs Baldock and Baker.[47] In relation to the defamatory character of the statement, the Court of Appeal said:[48]

> [52] Secondly, and in disagreement with the Judge, we take the view that the statement is defamatory. This is not that rare case where the subject has such a want of veracity that the statement could not affect his credit. We do not accept Mr Akel's suggested exception based on the subject matter being a matter of internal party discipline. We do not think ordinary New Zealanders would accept that limitation. Nor is the state of political practice, or the weariness of the electorate, such that ordinary New Zealanders either expect political leaders to lie to them or would not think worse of them if they did so. This challenge succeeds.

Publication 15 – 8 July 2015

[41] Publication 15 was a post on *Whaleoil* on 8 July 2015. The post referred to Mr Craig's statements that the allegations of sexual harassment were false with Mr Slater saying that he had not withdrawn any of his allegations, and that he stood by everything he had said.[49] The claim in relation to this publication was that it repeated each and every meaning of the previous defamatory statements.

[42] Toogood J rejected the claim of repetition. He considered that a "compendious knowledge" of the controversy between Mr Craig and Mr Slater would be required to draw any meaning from the statement.[50] Accordingly, he considered that publication 15 could not found a separate cause of action, and instead was relevant only to an assessment of damages.[51]

[43] The Court of Appeal disagreed. It considered that publication 15 was not so disconnected in content and time that a reader would fail to draw an adverse inference

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46 High Court judgement, above n 1, at [577].
47 Court of Appeal judgment, above n 1, at [51].
48 Court of Appeal judgment, above n 1.
49 High Court judgment, above n 1, at [584].
50 At [586].
51 At [585]–[586].

regarding the previous allegations of sexual harassment.[52] Accordingly, the claim of defamation by repetition in relation to this publication was successful.[53]

Publication 16 – 18 July 2015

[44] Publication 16 was another post on the *Whaleoil* website on 18 July 2015. It was headed "Behind the scenes of the Colin Craig catastrophe". The post included a passage of public statements made by Mr Stringer as follows:[54]

> It was well known around the Board for some time, that "Larry is gone ... you will be next, John, followed by RM and then Brian." Of course, that is exactly what happened. Colin witch-hunted ex-MP Larry Baldock out of the Party ...
>
> I was also undermined with a whispering campaign for months as a "leak." At first this was directed at Larry, who was sacked as a candidate, sacked from the Board, and then suspended from the Party. A relentless and driven witch-hunt.

[45] Mr Craig pleaded that this statement suggested he had abused his power and manipulated the resources of the party to pursue a relentless and driven witch-hunt against Mr Baldock without any reasonable cause.

[46] Toogood J found, looking at the publication as a whole, that Mr Slater was "directing the piece to an argument that the Conservative Party was so riven by internal strife between prominent members that it had no political future".[55] Accordingly, the piece was found to be merely a political commentary of a kind protected, by the law, from a defamation claim.[56]

[47] The Court of Appeal reversed this finding. It accepted that the offending passage painted Mr Craig to be vindictive and liable to misuse and abuse his position out of spite.[57] The Court of Appeal said:[58]

> [58] We think Mr Miles' complaint is well made. The gravamen of the passage is the expression "witch-hunt". In context, that conveys to an ordinary reader that Mr Craig used his position as leader of the party, unfairly and

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52 Court of Appeal judgment, above n 1, at [43].
53 At [43].
54 High Court judgment, above n 1, at [587].
55 At [589].
56 At [590].
57 At [56].
58 Court of Appeal judgment, above n 1.

> vindictively, to target and remove Mr Baldock from his positions as parliamentary candidate, board member and, then, party member. That imputation attacks Mr Craig's credit for good judgment and fairness, qualities expected of a political leader. It would tend therefore to affect his reputation adversely, and in more than a merely minor way. This challenge succeeds.

[48] The Court of Appeal also rejected Mr Slater's attempted honest opinion defence in relation to this statement finding that Mr Stringer's opinion could not serve as a foundation for that defence.[59] The defence of responsible public interest communication in relation to this passage was also rejected by the Court of Appeal.[60]

What sum of compensatory damages should be awarded?

[49] Mr Craig seeks general, aggravated and punitive damages for the defamatory statements made against him. The first two categories are compensatory in nature and are addressed together.

[50] General damages are "an estimate, however rough, of the probable extent of actual loss a person has suffered and will likely suffer in the future".[61] Their purpose is to compensate for damage caused to a plaintiff's reputation, to vindicate the plaintiff's good name, and to take account of the distress, hurt and humiliation which the defamatory statements have caused.[62] Because general damages compensate for injury to reputation, it is accepted that they are very difficult to measure in monetary terms.[63]

[51] Aggravated damages are awarded to compensate for injury to the plaintiff's feelings or dignity "where that sense of injury has been exacerbated by the manner in which, or the motive with which, the defendant committed the defamatory act, or by how the defamation defendant behaved towards the injured plaintiff, particularly after

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59 Court of Appeal judgment, above n 1, at [96].
60 At [110].
61 *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361 at [48].
62 High Court judgment, above n 1, at [645], referring to *Siemer v Stiassny*, above n 61, at [48]–[49].
63 *Siemer v Stiassny*, above n 61, at [48] and [49].

the tort had been committed".[64] Aggravated damages are treated as enlarging the quantum of general damages rather than as justifying a separate head of damages.[65]

[52] The High Court declined to make an award in Mr Craig's favour, finding the damage to Mr Craig's reputation was caused almost entirely by his own actions and a declaration was adequate vindication.[66] The Court of Appeal disagreed, stating that a nil award where defamation has been established is a defective verdict.[67] The effect of its judgment on liability for damages was described by the Court as follows:[68]

> [111] As we have noted, the Judge held Mr Slater liable in defamation for two statements: that Mr Craig had placed Ms MacGregor under financial pressure to sleep with him, and that he had sexually harassed at least one other victim. But he declined to award Mr Craig damages, reasoning that Mr Craig's reputational loss was caused almost entirely by his own actions, and a declaration would be adequate vindication.
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> [112] It should be observed that the effect of this judgment is to enlarge Mr Slater's liability to Mr Craig for the following additional defamatory publications: the "six-figure" settlement sum (publications 1, 7 and 9), the imposition of "chaperones" (publication 6) the "ticking timebomb" description, meaning Mr Craig was a danger to women (publication 10), the allegation Mr Craig has engaged in electoral dishonesty and lied to the media (publication 14) and the statement about the "witch hunt" (publication 16). Publications 7 ("other women") and 15 (repetition of allegation of sexually harassing women) are additional to, but encompassed by, the second finding note above at [111].

[53] This passage highlights the various aspects of Mr Craig's character targeted by the defamatory statements. Mr Craig categorised them as those which targeted: (a) his personal sexual morality; (b) his professional character; and (c) his personal integrity. I adopt that categorisation.

[54] Mr Craig placed emphasis on the second and third categories and, in particular, the damaging effect of statements suggesting he had committed electoral fraud. I accept that allegation is particularly serious for the leader of a political party. Further, the Court of Appeal's observation that publication 16 (the "witch-hunt" claim)

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64 *Siemer v Stiassny*, above n 61, at [51].

65 *Karam v Parker* [2014] NZHC 737 at [226], referring to *Midlands Metals Overseas Pte Ltd v The Christchurch Press Co Ltd* [2002] 2 NZLR 289 (CA) at [61] and *Manga v The Attorney-General* [2000] 2 NZLR 65 (HC).

66 High Court judgment, above n 1, at [651]–[653].

67 Court of Appeal judgment, above n 1, at [117].

68 Court of Appeal judgment, above n 1 (footnotes omitted).

adversely affected Mr Craig's reputation for integrity and fairness, and in more than a minor way, also deserves separate recognition.[69]

[55] The defamatory statements relating to personal sexual morality fall into a different category. The damage caused by these statements must take into account that Mr Craig was found to have sexually harassed Ms MacGregor and that other statements directed at this aspect of Mr Craig's character were found to be true. That does not mean Mr Craig did not suffer further reputational damage which must be compensated.[70] But it does mean, as Mr Craig properly acknowledges, that the true statements moderate the impact of the defamatory statements relating to personal sexual morality.

[56] The assessment of damage requires the state of Mr Craig's reputation prior to the first defamatory statement being made to be taken into account. The Court of Appeal confirmed that evidence of Mr Craig's conduct regarding Ms MacGregor prior to the publications complained of was "admissible to show bad character and to diminish the damage to reputation for which compensation might be claimed".[71]

[57] It is fair to say that Ms MacGregor's resignation two days before the election, and her public description of Mr Craig as "manipulative" and "un-Christian", had already dented Mr Craig's reputation.[72] The controversy following Ms MacGregor's resignation was widely seen as the reason for the Conservative Party's failure to win a seat at the 2014 election.[73] That failure led to further fractures within the Conservative Party and information being leaked to the media. That information included an internal report which was highly critical of Mr Craig. [74]

[58] In addition, prior to any defamatory publications being made, Mr Craig was the subject of other non-defamatory publications regarding his relationship with Ms MacGregor, the state of the Conservative Party finances, and the efficacy of his

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69 Court of Appeal judgment, above n 1, at [58].
70 At [118].
71 At [120], referring to *Plato Films Ltd v Speidel* [1961] AC 1090 (HL) at 1131 and 1140–1142.
72 High Court judgment, above n 1, at [193].
73 At [193]–[194].
74 At [224].

leadership of the Conservative Party.[75] These other statements undoubtedly had an impact on Mr Craig's reputation and his otherwise good name. This was not a case of the defamatory statements triggering a fall from grace in the public eye – that descent had already begun by the time of the *Newstalk ZB* interview.

[59] The scope of the publication also needs to be taken into account. Nine of the 10 statements were contained in posts on *Whaleoil*. As Mr Craig submits, the fact that the defamatory statements were made on social media does not mean a lower sum should be awarded. It is not the medium of the defamation that counts, but the reach of the publication. The evidence at trial was that *Whaleoil* had over 285,000 users and nearly five million-page views.[76] Mr Slater's claim at trial was that *Whaleoil* was the most popular blog in New Zealand.

[60] The other defamatory statement was made by Mr Slater on *Newstalk ZB*. That radio station broadcasts throughout New Zealand.[77] Toogood J found that Mr Slater knew when he made statements on *Newstalk ZB* that it was likely that interest would extend beyond the listenership at the time.[78] That factual finding is pertinent to the assessment of damages.

[61] Mr Craig identifies several features justifying aggravated damages. They are the refusal of Mr Slater to apologise and the pleading of truth to all matters. He also says that the defendants' conduct in relation to the claims that there was a second victim was particularly reprehensible. Mr Slater had been warned he had misinterpreted a communication from Mr Craig's barrister as meaning there was more than one victim. Despite this, he went ahead with the publication, without a genuine belief in the existence of a second victim. I accept these factors aggravate the harm in this case and should be reflected in the award of damages.

[62] Comparison may be made to other cases where awards of compensatory damages have been made. In *Williams v Craig,* Katz J listed the five highest damages

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75 See for example the statements referred to in the High Court judgment, above n 1, at [226], [230], [259] and [263].
76 Court of Appeal judgment, above n 1, at n 3.
77 High Court judgment, above n 1, at [634].
78 At [321].

awards in New Zealand at that time (with the then inflation adjusted price in brackets) as follows:[79]

(a) *Korda Mentha v Siemer* (2008) – $825,000 ($930,434) (includes aggravated and punitive damages);

(b) *Television New Zealand Ltd v Quinn* (1996) – $650,000 ($955,034) (includes aggravated and punitive damages);

(c) *Columbus v Independent News Auckland Ltd* (2000) – $500,000 ($702,719) (includes aggravated and punitive damages);

(d) *Karam v Parker* (2014) – $350,500 against Mr Parker ($353,423) and $184,500 against Mr Purkuss ($186,038) for a total damages sum of $535,000 ($539,462) (includes aggravated and punitive damages); and

(e) *Truth (NZ) Ltd v Holloway* (1960) – £11,000 ($478,381).

[63] I consider the defamation in *Korda Mentha v Siemer* to be significantly more serious than the present case.[80] It was described by the Court of Appeal as the worst case of defamation it could find in the British Commonwealth and by Cooper J in the High Court as unprecedented in terms of the length and severity of the campaign waged against Mr Stiassny and his firm.[81]

[64] The *Truth (NZ) Ltd v Holloway* case involved a defamatory statement made against the Minister of Industries and Commerce in which it was implied that he was willing to act dishonestly in respect of the issuing of import licences.[82] This case has some parallels in terms of those statements targeting Mr Craig's professional integrity. However, the different context in which the defamation occurred, and the fact the statements were made about a Minister of the Crown, distinguish *Holloway* from the present case.

[65] Mr Craig relied on *Columbus v Independent News Auckland Ltd* and *Karam v Parker* in his submission as to the appropriate level of damages in this case.[83] In *Columbus*, Mr Columbus was awarded $675,000, including $175,000 for economic

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79 *Williams v Craig* [2017] NZHC 724, [2017] 3 NZLR 215 at [42] (footnotes omitted).
80 *Korda Mentha v Siemer* HC Auckland CIV-2005-404-1808, 23 December 2008.
81 *Siemer v Stiassny*, above n 61 at [85]; and *Korda Mentha v Siemer*, above n 80, at [31].
82 *Truth (NZ) Ltd v Holloway* [1960] NZLR 69 (CA).
83 *Columbus v Independent News Auckland Ltd* HC Auckland CP 600/98, 7 April 2000; and *Karam v Parker*, above n 65.

loss, for defamatory statements suggesting that Mr Columbus had overcharged the Auckland Rugby Football Union for a short performance at an All Blacks test match. The defamatory statements were published on a billboard as well as in a headline and article in the defendant's weekly newspaper. Anderson J considered it was plain from the evidence that the defendant knew precisely what the true position was and that there was a mercenary motive for the manipulation of the truth.[84]

[66] The defamation in *Karam v Parker* involved 38 Facebook posts, and 50 defamatory statements, over a period of four years. The sting of each defamatory statement was that Mr Karam was only interested in fame, lacked integrity, was motivated by money and had defrauded the Legal Services Agency. Compensatory damages in the sum of $535,000 was awarded.

[67] I consider both cases to be more serious than the present. Mr Columbus and Mr Karam enjoyed very good reputations prior to the publication of the defamatory statements. Mr Columbus was described as having an exemplary reputation for decades, New Zealand wide.[85] Mr Karam was said to have enjoyed a significant and positive reputation and was highly regarded for his integrity, generosity and altruism.[86] In contrast, and as already noted, Mr Craig's reputation was already somewhat tarnished by the time the first defamatory publication was made.

[68] The extent of the damage was also more severe in the *Columbus* and *Karam* cases. In addition to actual economic loss, Mr Columbus had suffered severe distress and humiliation.[87] Courtney J described the impact of the defamatory statements on Mr Karam as significant and as a full-scale assault.[88] Her Honour considered that few aspects of Mr Karam's reputation were left untouched and she accepted Mr Karam's description of the period during which the statements were posted as the worst four years of his life.[89]

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84 *Columbus v Independent News Auckland Ltd*, above n 83, at [64].
85 At [1].
86 *Karam v Parker*, above n 65, at [227].
87 *Columbus v Independent News Auckland Ltd*, above n 83, at [19].
88 *Karam v Parker*, above n 65, at [229].
89 At [228]–[229].

[69] The impact of the defamatory statements in this case are not described by either the High Court or Court of Appeal in comparable terms, and there is no evidence of actual financial loss. Furthermore, and as already observed, the sting of each of the defamatory statements targeting Mr Craig's sexual morality was moderated by the factual findings of sexual harassment.

[70] Overall, I consider awards considerably less than those made in *Columbus* and *Karam* are justified. The calculation of damages for defamation is not a precise science. Standing back, and weighing all relevant factors in their totality, I consider a sum of $325,000, encompassing both general and aggravated damages, adequately compensates Mr Craig for injury to his reputation caused by the defamatory statements.

[71] In terms of apportionment between the defendants, I consider Mr Slater should be solely liable for the statements he made in the *Newstalk ZB* interview (publication 1). The second defendant had no involvement with that publication at all. Liability for the remaining publications should be joint and several, however, as each of the defamatory statements were posts by Mr Slater on the *Whaleoil* website which SMC published.

Should punitive damages be awarded in addition?

[72] Exemplary damages are awarded where the defendant has acted in flagrant disregard of the rights of the plaintiff.[90] Their purpose is to punish rather than compensate. The factual findings made in the High Court do not reflect flagrant conduct, and the Court of Appeal's observations do not use the language associated with exemplary damages. This is not one of those relatively rare cases in New Zealand where the conduct at issue needs to be punished and I decline to award punitive damages.

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90 *Siemer v Stiassny*, above n 61, at [57]–[65].

What costs should be awarded?

[73] In the High Court, the Judge awarded costs to Mr Slater on the basis that Mr Craig's claim had failed, except to a minor extent.[91] They were reduced to reflect the fact that Mr Slater had failed in relation to an issue which significantly increased Mr Craig's costs.[92] As to Mr Slater's counterclaim, the Judge ordered costs to lie where they fell.[93]

[74] The Court of Appeal set the costs award on the main claim aside. It said:[94]

> The effect of the present appeal being allowed is that Mr Craig has enjoyed rather greater success on the principal claim than he did in the High Court, and that the costs award must be set aside. The High Court will need, therefore, to reconsider costs on that claim ab initio. In doing so it will need to consider whether a more appropriate award in the circumstances would have been substantially reduced costs awarded to Mr Craig, bearing in mind that Mr Craig has achieved some success, but failed on the primary planks regarding his alleged conduct towards Ms MacGregor and towards the board.

[75] The award on the counterclaim was also set aside, the Court of Appeal finding that Mr Craig had succeeded entirely in defending the counterclaim and there was no basis to displace the ordinary rule that costs should follow the result.[95]

[76] Mr Craig was largely self-represented at trial but sought legal assistance in the preparation of his claim and during trial. He therefore seeks disbursements in the amount of $158,774.06. That figure comprises reasonable legal fees incurred by the plaintiff in pursuing his claim and defending the counterclaim, and disbursements.

[77] There is no doubt that Mr Craig is entitled to claim his disbursements as a lay litigant.[96] I am also satisfied that the quantum claimed is reasonable in all the circumstances.[97] However, the sum claimed does not reflect the fact that Mr Craig failed on the primary planks regarding his alleged conduct towards Mrs MacGregor

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91 *Craig v Slater*, above n 7, at [45].
92 At [47]–[49].
93 At [53].
94 Court of Appeal judgment, above n 1, at [128] (footnotes omitted).
95 At [129].
96 *Stringer v Craig* [2020] NZHC 1021.
97 If represented at trial, Mr Craig would have been entitled to costs on at least a schedule 2B basis. Mr Craig has calculated those cost to amount to $119,528. It is noted that the High Court ruled that, due to the complexity of the trial, costs calculated according to schedule 3B were appropriate.

and towards the Board. As noted at [75], the Court of Appeal directed this Court to consider whether a substantially reduced costs award to Mr Craig would have been more appropriate to reflect that fact.

[78] I consider a substantial reduction is appropriate. It is consistent with the findings made by Toogood J at trial, most of which were substantially sustained.[98] I do not underestimate the impact of the statements regarding Mr Craig's professional integrity, but the crux of the claim concerned statements regarding Mr Craig's relationship with Ms MacGregor. It is evident from the judgment that this was a hotly contested issue, and one upon which Mr Craig ultimately failed. I consider costs should be reduced by approximately 40 per cent to reflect this factor.

[79] Mr Craig is awarded disbursements in the sum of $95,000 against the defendants jointly and severally.

Result

[80] Mr Craig is awarded damages of $325,000 (comprising general and aggravated damages). Mr Slater shall be solely liable for $80,000 of this sum, with the defendants being jointly and severally liable for the balance.

[81] Mr Craig is also awarded disbursements in the sum of $95,000 against the defendants jointly and severally.

Edwards J

[98] Court of Appeal judgment, above n 1, at [132].