IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA290/2020
[2022] NZCA 168

BETWEEN	JOHN CHARLES STRINGER Appellant
AND	COLIN GRAEME CRAIG First Respondent
	HELEN RUTH CRAIG Second Respondent
	ANGELA MARIA STORR Third Respondent
	KEVIN ERIC STITT Fourth Respondent
	STEPHEN DYLAN TAYLOR Fifth Respondent

Hearing:	5 October 2021
Court:	Courtney, Woolford and Mander JJ
Counsel:	Appellant in Person First to Fifth Respondents all in Person
Judgment:	9 May 2022 at 10 am

JUDGMENT OF THE COURT

A The appeal against the substantive judgment is dismissed.

B The application to adduce further evidence is declined.

C **The appeal against the costs judgment is allowed. The issue of costs is remitted to the High Court for determination in accordance with this judgment.**

D **We make no order as to costs or disbursements.**

REASONS OF THE COURT

(Given by Courtney J)

Table of Contents

Introduction

[1] This appeal is a further chapter in the saga of litigation that followed the 2014 resignation of the Conservative Party's press secretary, Rachel MacGregor, and the 2015 resignation of its leader, Colin Craig. Mr Craig perceived that he had been the victim of "dirty politics".[1] He produced a booklet entitled "Dirty Politics and Hidden Agendas: Colin Craig vs The Dirty Politics Brigade … and Their Campaign of Lies" (Booklet) in which he identified those he considered had participated in the dirty politics against him. They included a member of the Conservative Party's Board, John Stringer.

[2] Mr Stringer brought defamation proceedings against Mr Craig, his wife Helen Craig, Conservative Party officials Angela Storr, Kevin Stitt and Stephen Taylor, who had moderated the Booklet. Palmer J dismissed the claims.[2] The Judge found most of the statements complained about were defamatory. However, he upheld the following defences: truth, in respect of all but one of the statements; qualified privilege, in respect of all the statements; and honest opinion, in respect of the statements that he found to be expressions of opinion.

[3] Mr Stringer appeals.[3] The grounds may be summarised broadly as being:[4]

(a) the Judge erred in relying on a consent judgment in separate proceedings to preclude Mr Stringer from raising the issue of sexual harassment by Mr Craig of Ms MacGregor, while permitting Mr and Mrs Craig to raise it in the context of qualified privilege;

(b) in relation to the defence of qualified privilege raised by Mr and Mrs Craig and Mr Taylor, the Judge erred in finding that:

---

1 The phrase was drawn from a book of that name published by Nicky Hager in 2014.

2 *Stringer v Craig* [2020] NZHC 644 [Substantive judgment].

3 Leave to appeal out of time was granted in *Stringer v Craig* [2020] NZCA 294 and an extension of time to file the case on appeal was granted in *Stringer v Craig* [2021] NZCA 19.

4 Mr Stringer was self-represented in the High Court and on appeal. His submissions did not reflect exactly the grounds raised in the notice of appeal and we have approached the appeal on the basis of the case as we understood it from his submissions. The issues are dealt with in a different order to the way they were presented. In addition, Mr Stringer's challenge to a number of factual findings are addressed in the context of the issues they relate to.

(i) the statements made by and on behalf of Mr Craig were a proportionate response to the statements Mr Stringer had made about Mr Craig;

(ii) the defendants were not predominantly motivated by ill-will;

(c) in relation to the defences of qualified privilege raised by Ms Storr and Mr Stitt the Judge erred in finding that they were under a duty to publish the statements they had made; and

(d) the Judge erred in finding that the respondents' expressions of opinion were honestly held.

[4] Mr Stringer does not challenge the Judge's finding on the defence of truth. As a result, even if the grounds of appeal were made out, the outcome would not change in respect of all but the one statement that was held not to have been true.

[5] In a separate judgment Mr Stringer was ordered to pay, as reasonable disbursements, the defendants' filing, printing and courier fees and travel costs. He was also ordered to pay as disbursements a contribution towards the respondents' legal fees prior to 29 July 2019 and the full amount of their legal fees after that date.[5] Mr Stringer appeals all aspects of the costs decision, on the grounds that:

(a) the printing and courier costs related to common bundles prepared by the respondents which were unnecessary because he had already prepared the bundles;

(b) the Judge erred in allowing the recovery of legal fees as disbursements on an indemnity basis because he misinterpreted comments made by Mr Stringer as a concession that the respondents' case was strong, and therefore wrongly proceeded on the basis that by the end of July 2019 Mr Stringer had accepted the strength of the respondents' defences;

---

5 *Stringer v Craig* [2020] NZHC 1021 [Costs judgment].

(c) the cause of Mr Craig's reputational damage was his own conduct, not Mr Stringer's attack on him;

(d) some of the legal fees related to a different proceeding; and

(e) the award was inconsistent with the outcome in the *Williams*[6] and *Slater*[7] cases.

Application to adduce further evidence

[6] Mr Stringer seeks to rely on two affidavits for the purposes of his appeal. The respondents opposed the further evidence being adduced.

[7] Generally, litigants are obliged to adduce all the evidence that is reasonably available to them at trial. It is only in limited circumstances that further evidence will be adduced on appeal. Such evidence should be fresh, cogent and credible.[8]

[8] The first affidavit was by Simon Lusk dated 19 March 2021. Mr Lusk was referred to in evidence in relation to the part of the Booklet that purported to be an "Exclusive interview with Mr X". It emerged at trial that Mr X was not in fact a real person. The Judge recorded Mr and Mrs Craig's evidence that Mr Craig had written the text "but the views attributed to Mr X were primarily those he thought were held by Mr Simon Lusk, though also of some other people".[9] The sole purpose of the affidavit was to show that Mr Lusk had no input into the Booklet.

[9] Based on Mr Craig's brief of evidence, it seems that the use of Mr Lusk as a basis for Mr X was not obvious prior to trial. Mr Craig's admission that Mr X was based on Mr Lusk emerged in cross-examination. As a result, we treat that evidence as fresh. However, we see no relevance in it. The Mr X interview accounted for two of the 12 pages of the Booklet but did not feature explicitly in the Judge's findings

---

6 *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457.
7 *Craig v Slater* [2019] NZHC 1269.
8 *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA) at 192, affirmed in *Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 1)* [2006] NZSC 59; [2007] 2 NZLR 1 at [6].
9 Substantive judgment, above n 2, at [81(e)].

regarding the statements that were specifically the subject of the defamation claim.[10] In any event, whether Mr Lusk actually knew about the Booklet was not, and is not, an issue in the case. We decline to accept Mr Lusk's affidavit.

[10] The second affidavit is by Mr Peter Belt, the then Deputy Editor of the Whale Oil website. Mr Stringer provided Mr Belt with information about the Conservative Party and Mr Craig. Mr Belt passed that on to Mr Slater who ran the Whale Oil website. A number of emails sent by Mr Belt were put in evidence. Mr Stringer opposed the admission of the emails. Mr Stringer also says that emails from Mr Belt ought not to have been admitted in evidence because they were not known to the respondents at the time the Booklet was published in 2015 but instead were obtained as part of discovery in the proceedings against Mr Slater in 2018.

[11] The admissibility of the emails was the subject of a specific ruling by Palmer J on the first day of the trial in response to Mr Stringer's objection to the documents being included in the defendant's bundle of documents.[11] The objection was that some of the emails had not been properly redacted by Mr Belt or Mr Belt's counsel in the *Craig v Slater* proceeding. The Judge declined to exclude the emails without hearing from Mr Belt or his counsel. He directed that Mr Stringer would need to have Mr Belt swear an affidavit if he wished to pursue the matter.[12] This was never done.

[12] The evidence is not fresh and there was no adequate explanation for it not being adduced at trial. The evidence is not cogent. For the most part it comprises Mr Belt's commentary on the judgment and makes assertions regarding Mr Craig. It contains little by way of admissible evidence and none that could justify allowing the affidavit to be adduced for the purposes of the appeal. We decline to receive it.

---

10 Substantive judgment, above n 2, at [110].
11 Bench Note 1 of Palmer J, 20 August 2019 (CIV 2015-404-2524).
12 Substantive judgment, above n 2, at [57], citing Bench Note 1, above n 11, at [6].

Background

Mr Stringer's conduct

[13] Ms MacGregor resigned as the Conservative Party's press secretary two days before the General Election of September 2014. On the same day, she filed a claim with the Human Rights Commission, complaining that Mr Craig had sexually harassed her.[13] However, Ms MacGregor kept this to herself. The reason for her resignation was the subject of intense speculation in political circles and the media.

[14] In January 2015 Ms MacGregor told Mr Craig about the sexual harassment claim. In addition, there was an outstanding issue regarding the amount that Ms MacGregor was owed for her work as press secretary. In May 2015 Ms MacGregor and Mr Craig reached a mediated settlement agreement.

[15] Throughout this period Ms MacGregor confided in a friend, Jordan Williams. She also entrusted Mr Williams with documents evidencing Mr Craig's feelings towards her. Mr Williams promised Ms MacGregor that he would keep her confidences but did not keep that promise. Instead, in May 2015 Mr Williams used the information to make allegations about Mr Craig to members of the Conservative Party and to Whale Oil. The matter was raised at a Conservative Party Board meeting. Mr Craig advised that he had resolved all his differences with Ms MacGregor and the matter was the subject of a settlement agreement.[14]

[16] Throughout this period Mr Stringer was leaking information to Mr Belt.[15] He made statements about Mr Craig to Mr Belt about alleged sexual harassment by Mr Craig of Ms MacGregor, and also impugned Mr Craig's honesty in relation to electoral returns. Mr Stringer continued to feed Mr Belt information even after Conservative Party Board members had been required to re-sign the Party's code of conduct agreeing that all media correspondence regarding the Conservative Party would be issued through the party leader, president or press secretary and to sign a confidentiality agreement.[16]

---

13 *MacGregor v Craig* [2016] NZHRRT 6.
14 Substantive judgment, above n 2, at [9].
15 At [10].
16 At [11]–[12].

[17] On 19 June 2015 Mr Craig stepped down as party leader to enable the Board to undertake an investigation. That same day Mr Stringer emailed Mr Belt, making allegations about Mr Craig having sent sexts, behaved inappropriately with women and made a large pay out. Whale Oil published the email in full. It also published a poem said to have been written by Mr Craig to Ms MacGregor. Cameron Slater, who owned the Whale Oil blog, asserted in mainstream media that he had copies of sexts and that Mr Craig had settled the sexual harassment claim for a six-figure amount.

[18] Mr Stringer and Mr Williams had not been in direct contact up to that point but after the media conference at which Mr Craig had announced he was stepping down the two spoke to compare notes.

[19] On 20 June 2015 Mr Stringer took a number of steps intended to publicise his concerns about Mr Craig. These included:

(a) An interview to The Nation on TV3 where he spoke about his concern over "abhorrent behaviour" being covered up by use of confidentiality processes and asserted that Mr Craig had lied to the Board about the nature of his relationship with Ms MacGregor. He also said that Mr Craig's statement that concerns about the relationship had not been raised with him by any Board member was untrue;

(b) Texting to Mr Williams expressing his intention to "carpet bomb the Colin Craig cult compound" and expressing the wish to see the documents Mr Williams was holding because he was "only responding to hearsay and accusations so far";

(c) Emailing journalists Tim Watkin and Patrick Gower of TV3 the chain of emails between him and Mr Craig and other Board members on 19 and 20 June 2015 entitled "Sexual Allegations vs Colin";

(d) Informing Mr Belt by email that he would soon release a document detailing the conditions under which Mr Craig stood down; and

(e) Providing Mr Belt, by email, with internal emails between Mr Stringer and other Board members.

[20] The next day, 21 June 2015, Mr Stringer emailed Mr Watkin at TV3 to say that Whale Oil had a "nuclear bomb" regarding Colin Craig. He also emailed other media outlets asserting that Mr Craig had been challenged on untruths and referred to threatened legal action.

[21] On 22 June 2015 Mr Stringer emailed the New Zealand Herald referring to sext messages. He emailed Ms du Plessis-Allan at TVNZ, referring to the "nuclear bomb" about to be dropped by Whale Oil. He sent other emails to various media outlets suggesting that there had been months of lies, deceit and coverups by Mr Craig, that Mr Craig had lied repeatedly and that the payment to Ms MacGregor could have been a six-figure sum.

[22] Also on 22 June 2015 Mr and Mrs Craig held a press conference that was live streamed on TV and radio. Mr Craig admitted some inappropriate conduct towards Ms MacGregor but denied having sexually harassed her or anyone else.

[23] On 23 June 2015 the chair of the Board, Mr Dobbs, told Mr Stringer of the Board's concern that he had released confidential information about the Conservative Party to the media and was considering suspending his membership of the Party and the Board. That same day Mr Stringer provided a further update on Board matters to Mr Belt. Mr Dobbs said in cross-examination that he sent Mr Stringer a letter suspending him on or about 25 or 26 June 2015. Mr Stringer did not accept that he had been suspended. This issue became relevant later in respect of the claim against Ms Storr in relation to her letter of 27 June 2015 to Party members advising that Mr Stringer had been suspended.[17]

[24] On 25 June 2015 Mr Stringer began a series of blog posts on his CoNZervative blog. There were 39 blog posts between 25 June 2015 and 29 July 2015. In addition,

[17] This update from Ms Storr was the subject of Mr Stringer's seventh cause of action against Ms Storr.

throughout June and July 2015 Mr Stringer maintained a steady pattern of publicising his concerns about Mr Craig:[18]

(a) 25 June 2015: Mr Stringer's blog post said that Mr Craig constantly lied to the Board and misled it about the settlement with Ms MacGregor;

(b) 26 June 2015: Mr Stringer responded to a query by Mr Williams about whether he was aware a second woman had complained about Mr Craig to the Human Rights Commission by saying "Yes. I've been rung and told by four separate media";

(c) 27 June 2015: Mr Stringer emailed another Board member, Mr Day, saying there were new allegations and that media had called him about a second woman;

(d) 28 June 2015: Mr Stringer said further allegations about Mr Craig were coming and provided Mr Watkin at TV3 with an excerpt from Board minutes about Mr Craig and Ms MacGregor;

(e) 30 June 2015: Mr Stringer said that Mr Craig had sent sext messages to Ms MacGregor that were read to Mr Stringer and shown to Board members;

(f) 30 June 2015: Mr Stringer emailed senior Party members, saying there was another woman who was also sexually harassed;

(g) 1 July 2015: Mr Stringer released an email to the media with "20 fair questions". These questions included whether Mr Craig denied new rumours about a second sexual harassment case, why Mr Craig had made a large pay out to the claimant and why, if he was innocent of the

[18] The summary of these is taken from [30] of the Substantive judgment, above n 2. In submissions Mr Stringer challenged the way the Judge had recorded these statements on the basis that they were either true or were his honest opinion. But we do not engage with this complaint because such assertions are not relevant; issues of truth and honest opinion in this case arise only as defences available to the respondents.

claims, had Mr Craig covered up and misdirected the Board about the payment;

(h) 7 July 2015: Mr Stringer released to the media a letter that Mr and Mrs Craig had sent to Party members which included an apology from Mr Craig for mistakes he had made as leader. Mr Stringer accused Mr Craig of inappropriate use of the Party's confidential membership database;

(i) 7 July 2015: Mr Stringer emailed members of his new "alternative Board" stating that: Mr Craig had had an affair with Ms MacGregor, had paid her $107,500 to settle the sexual harassment claim and concealed that from the Board; that Mr Craig was involved with another woman, thereby "two-timing not only Helen but Rachel simultaneously"; that Mr Craig had consciously falsified electoral returns and was guilty of a criminal offence under the Electoral Act; and the media held explicit sexts by Mr Craig to women other than his wife;

(j) 9 July 2015: in a blog post Mr Stringer drew a parallel between Mr Craig and Mr Graham Capill (a former leader of the Christian Heritage Party jailed for sex offences against children) saying both had "destroyed their parties with acute personal hubris";

(k) 12 July 2015: Mr Stringer said in a blog post that Mr Craig had faked a meeting in Christchurch;

(l) 21 July 2015: Mr Stringer questioned in a blog post whether Mr Craig had delayed his payment to Ms MacGregor;

(m) 29 July 2015: Mr Stringer said in a blog post there were emerging "problems" with female staff members similar to Ms MacGregor's situation; and

(n) 29 July 2015: Mr Stringer agreed under cross-examination that he may have provided Mr Belt with a copy of an email Mr Stringer had sent to Mr Dobbs with allegations about Mr Craig sexually harassing another woman and that it was likely he had sent Mr Belt another email containing similar allegations and suspicions that the email was also sent to other members of the Conservative Party.

[25] Throughout this period Mr Stringer continued his contact with Mr Williams and provided information and made allegations about Mr Craig to other members of the media.

Mr Craig responds

[26] Mr Craig decided to take action to combat the leaked information and the allegations. From about late June or early July 2015 Mr and Mrs Craig worked on the 12-page Booklet. Mr Craig wrote the text and Mrs Craig edited it.[19] Mr Taylor, who knew Ms MacGregor and had been involved in the Conservative Party, undertook an independent moderation of the document.[20]

[27] The Booklet as finally published contained allegations that Mr Williams, Mr Slater and Mr Stringer (described as "The Schemers In [the] Plot Against Craig") had conducted a campaign of "dirty politics" against Mr Craig. A short profile of each followed, with details of what they were alleged to have done. Mr Stringer was described as the "Judas" within the Conservative Party, who "coordinated with Whale Oil", "used his coNZervative blog site to attack Craig" and "provided tip offs" and information to other media to broaden the attack.

[28] On 29 July 2015 Mr and Mrs Craig held a press conference at which they each made statements.[21]

---

19 The Booklet was the basis of Mr Stringer's first and second causes of action against Mr and Mrs Craig respectively.

20 Mr Taylor's involvement was the basis for Mr Stringer's ninth cause of action.

21 The press conference was the basis for Mr Stringer's 11th and 12th causes of action.

[29] Also on 29 July 2015 Mr Stitt, the national administrator of the Conservative Party, emailed Party members an update advising them about the Booklet.[22]

[30] The Booklet was distributed to 1.63 million homes in New Zealand and made available on the internet. In addition, Mr Craig participated in media interviews and other publicity for his Booklet and his position:[23]

(a) on 10 August 2015 Mr Craig published a guest blog post on the site of left-wing commentator Martyn Bradbury;[24]

(b) on 10 August 2015, Mr Stringer held a press conference in which he stated that Mr Craig was guilty of serious election fraud and offences under the Electoral Act, and subsequently Mr Craig responded to questions from TV3 about Mr Stringer's assertions;[25]

(c) on 11 September 2015 Mr Craig was interviewed on Radio New Zealand (RNZ) and the story was published on the RNZ website;[26]

(d) On 16 September 2015 Mr Craig emailed former Board members about the legal proceedings he was bringing against Mr Stringer;[27]

(e) on 6 October 2015 Ms Storr emailed Party members an update about Mr Craig's proceedings against Mr Stringer;[28] and

(f) on 14 October 2015 Mr Craig responded to Mr Stringer's allegations in an email to Party members.[29]

[31] On 16 November 2015 Mr Stringer posted a blog post entitled "Mission Accomplished. Craig Out (at last)".

---

22 The update was the basis of Mr Stringer's eighth cause of action against Mr Stitt.
23 We draw this summary from [37] of the substantive judgment, above n 2.
24 The subject of the third cause of action against Mr Craig.
25 The subject of the fourth cause of action against Mr Craig.
26 The subject of the fifth cause of action against Mr Craig.
27 The subject of the sixth cause of action against Mr Craig.
28 The subject of the 10th cause of action against Ms Storr.
29 The subject of the 13th cause of action against Mr Craig.

The aftermath

[32] The events just described produced a series of defamation proceedings by and against Mr Craig.

[33] Mr Williams sued Mr Craig alleging that Mr Craig had defamed him by claiming that Mr Williams had lied about the sexual harassment allegations. Although initially successful, the judgment in favour of Mr Williams was ultimately set aside.[30] A retrial was ordered but the parties settled, with Mr Williams retracting his statements, apologising and making a payment to Mr Craig.

[34] Mr Craig sued Mr Slater, and Mr Slater counterclaimed in respect of the statements about him contained in the Booklet. Mr Craig succeeded on liability, but Toogood J declined to make an award of damages.[31] Mr Slater's counterclaim was dismissed on the ground that the Booklet was a justifiable response to his attack on Mr Craig and therefore protected by qualified privilege. Toogood J's decision was the subject of a partially successful appeal by Mr Craig on the issue of damages and the matter was remitted to the High Court for determination of damages.[32]

[35] Mr Craig sued Mr Stringer. This proceeding was settled at a judicial settlement conference and judgment entered against Mr Stringer by consent.[33] That consent judgment was subsequently varied by Associate Judge Osborne to exclude reference to statements made by Mr Stringer that Mr Craig had sexually harassed Ms MacGregor.[34] To the extent that Mr Craig's claim related to those statements, it remained live. The claim was subsequently stayed[35] but the stay was set aside on appeal.[36] The claim went to trial earlier this year. The decision is currently reserved.

[36] The present proceeding is brought by Mr Stringer against Mr and Mrs Craig, Ms Storr, Mr Stitt and Mr Taylor. When Palmer J stayed Mr Craig's claim he also

---

30 *Williams v Craig* [2017] NZHC 724, [2017] 3 NZLR 215; *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1; *Craig v Williams*, above n 6.
31 *Craig v Slater* [2018] NZHC 2712.
32 *Craig v Slater* [2020] NZCA 305.
33 *Craig v Stringer* [2017] NZHC 50 (Consent judgment).
34 *Craig v Stringer* [2017] NZHC 3221 (Variation to consent judgment).
35 *Craig v Stringer* [2019] NZHC 1363, [2019] 3 NZLR 743 at [35] (Stay judgment).
36 *Craig v Stringer* [2020] NZCA 260.

stayed Mr Stringer's claim insofar as it related to the statements regarding sexual harassment of Ms MacGregor.[37]

The Judge's findings

[37] The Judge distilled the statements complained of into the following propositions:[38]

(a) Mr Stringer lied or is a liar;

(b) Mr Stringer engaged in attack politics targeting Mr Craig and the Conservative Party;

(c) Mr Stringer coordinated with others to target Mr Craig;

(d) Mr Stringer seriously breached Conservative Party rules;

(e) Mr Stringer broke the law; and

(f) Mr Stringer betrayed others.

[38] The Judge addressed these meanings by reference to the statements made by:[39]

(a) Mr and Mrs Craig in the Booklet and at the press conference;

(b) Mr Taylor in moderating the Booklet;

(c) Mr Craig in other statements; and

(d) Ms Storr and Mr Stitt in updating Conservative Party members.

[39] The Judge recorded that in general, the defendants did not dispute that most of the statements were defamatory or that they identified Mr Stringer, though some of

---

37 Stay judgment, above n 35, at [36].
38 Substantive judgment, above n 2, at [76].
39 At [79].

the meanings were disputed. Except for Mr Taylor, the defendants did not dispute that they had published the statements.

[40] As noted, the respondents had pleaded defences of truth, honest opinion and qualified privilege. Mr Stringer served notices under ss 39 and 41 of the Defamation Act 1992 signalling that he would assert, in respect of the defence of honest opinion, that the opinions were not genuinely held and, in respect of the defences of qualified privilege, that the respondents were motivated by ill-will.

[41] The Judge held that most of the statements in the Booklet that were sued on were defamatory and had the meanings complained of, including that Mr Stringer is corrupt, guilty of harassment, acted unethically, told lies and used the media to make his statements appear true. The Judge also found that Mr Craig had made other statements which were also defamatory including that Mr Stringer had attacked Mr Craig, was guilty of recent defamatory attacks, engaged in "attack politics", acted unfairly and in an unsporting manner, was corrupt, made false allegations and was guilty of an ongoing campaign of defamation against Mr Craig.

[42] The Judge found that Ms Storr's first update, advising Party members that Mr Stringer had been suspended from the Conservative Party for attacks and lies was defamatory. He also found that the second update of 6 October 2015 was defamatory, conveying that Mr Stringer acted illegally.

[43] The Judge found that Mr Stitt's email update on 29 July 2015 was defamatory of Mr Stringer, conveying that he attacks and lies.

[44] The Judge held that Mr and Mrs Craig's defences of truth and honest opinion succeeded in relation to almost all the defamatory statements of fact or opinion including the claim that Mr Stringer had lied or was a liar. He accepted that the defences of truth or honest opinion also applied to Ms Storr and Mr Stitt's statements.

[45] The Judge also held that all of the parties were protected by the defence of qualified privilege. Mr and Mrs Craig were protected because they were responding to an attack by Mr Stringer. Mr Taylor was protected because he was assisting the

Craigs' lawful responses to Mr Stringer's attacks. Ms Storr was protected because, as the membership manager of the Conservative Party, she had an obligation to communicate with Party members about matters in the public domain affecting the Party. Mr Stitt was protected because he was the national administrator of the Conservative Party and had obligations to communicate with Party members regarding Mr Stringer's status as a Board member.

First ground of appeal: the effect of the consent judgment

[46] This ground of appeal relates to the effect of Palmer J's order staying Mr Stringer's claim insofar as it related to Mr Craig's statements that he had not sexually harassed Ms MacGregor.

[47] It will be recalled that Mr Craig's claim against Mr Stringer was settled on the basis of judgment being entered against Mr Stringer by consent, with Mr Stringer retracting his statements, apologising and making a payment to Mr Craig. The consent judgment related to Mr Stringer alleging that Mr Craig had:

(a) sexually harassed Ms MacGregor;

(b) sexually harassed another woman or other women;

(c) been fraudulent in his business dealings; and

(d) committed electoral fraud.

[48] The variation of the consent judgment removed reference to the statements alleging that Mr Craig had sexually harassed Ms MacGregor.[40] That issue therefore remained live in the proceedings by Mr Craig against Mr Stringer. However, on 17 June 2019 Palmer J made an order staying indefinitely Mr Craig's claim against Mr Stringer and the causes of action in Mr Stringer's claim based on Mr Craig's denial of having sexually harassed Ms MacGregor. The stay order was made on the basis that permitting the allegations of sexual harassment to be tried again (the issues already

[40] Variation to consent judgment, above n 34.

having been aired in the previous proceedings involving Mr Williams and Mr Slater) would be an abuse of process because Ms MacGregor would have to give evidence for a fourth time.[41]

[49] Mr Craig appealed the stay judgment, which delayed the progress of his proceeding.

[50] Mr Stringer did not appeal the stay judgment and his claim reached trial in August 2019. Mr Craig's appeal was still pending, and he and the other respondents sought an adjournment of the trial, which Mr Stringer opposed. Palmer J directed the trial to proceed. Prior to trial the Judge clarified the extent to which the stay judgment affected the scope of the trial. Relevantly:[42]

(a) the defendants were not precluded from pleading the defence of qualified privilege and in doing so referring to Mr Stringer's allegations about Mr Craig and Ms MacGregor; and

(b) the issue of whether Mr Craig had sexually harassed Ms MacGregor or sent her sexually explicit text messages could not be raised.

[51] On appeal Mr Stringer submits that the Booklet was principally centred on rebutting the allegations of sexual harassment so that allowing Mr and Mrs Craig to raise this issue but not allowing him to do so put him at an unfair disadvantage. He characterised the consent judgment as unsafe because of the basis on which it was recalled.

[52] We do not accept that any issue of unfairness arises. The way the issues were constrained at trial reflected the terms of the consent judgment and the stay judgment which continued to bind Mr Stringer. The scope of the consent judgment was fully ventilated and the terms of Associate Judge Osborne's variation of it was not appealed. Likewise, Mr Stringer elected not to appeal the stay judgment. There is no basis now on which he can seek to raise the issues that were put out of bounds by those decisions.

---

41 Stay judgment, above n 35 at [33]–[34].

42 Substantive judgment, above n 2, at [51], referring to *Stringer v Craig* HC Auckland CIV-2015-404-2524, 24 June 2019 (Minute No 10).

But in any event, the Craigs had amended their pleadings so that the truth of the sexual harassment allegations was not live at trial and were not used in support of the defence of qualified privilege.

Second ground of appeal: upholding the defence of qualified privilege by Mr and Mrs Craig and Mr Taylor

Relevant principles

[53] A person who is the subject of a verbal attack is entitled to respond and the response will attract the defence of qualified privilege in a form commonly known as reply to attack privilege. In *Craig v Williams* the Supreme Court summarised the relevant principles by reference to the following statement in *Duncan and Neill on Defamation*:[43]

> 17.25 A defamatory attack made publicly gives its victim a right to reply publicly. In doing so, the victim is entitled to make statements defamatory of his attacker, including statements impugning the attacker's credibility and motives. Provided that such statements are fairly relevant to a rebuttal of the attack and that the ambit of their dissemination does not significantly exceed that of the original attack, their publication will be the subject of qualified privilege. …
>
> 17.26 The reason for the privilege in such cases is that a person who has been the victim of a defamatory attack has a legitimate right or interest in defending himself against it and those to whom it was published a corresponding interest in knowing his response to it. …

[54] Mr Stringer complains that the statements made about him were a disproportionate response to the statements he had made about Mr Craig. It is useful at this stage to recall comments made by this Court in *Alexander v Clegg*:[44]

> [58] The terms of the defensive response are not judged to a nicety …
>
> [59] … whether excessive retaliation to circumstances invoking qualified privilege should be rejected as falling outside the privilege or as constituting evidence of malice, the question of excess should not be examined narrowly and without keeping in mind the policy justification for recognising the privilege at all.

---

[43] *Craig v Williams*, above n 6, at [116], citing Brian Neill and others *Duncan and Neill on Defamation* (4th ed, LexisNexis, London, 2015) at [17.25]–[17.26] (footnotes omitted).

[44] *Alexander v Clegg* [2004] 3 NZLR 586 (CA).

[55] Under s 19 of the Defamation Act a defence of qualified privilege, including the reply to attack privilege, will fail if the plaintiff proves that the defendant was "predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication." The Supreme Court summarised the general principle as being that a person taking advantage of a privileged occasion must act in good faith for the purpose for which the privilege is accorded:[45]

> Making a defamatory statement with the predominant motive of ill will towards the plaintiff is but one way in which improper advantage can be taken of an occasion of privilege. And, in any event, ill will, in the ordinary sense, on the part of the defendant towards the plaintiff will usually be of no moment.

Issue (a): the proportionality of Mr and Mrs Craig's response

[56] The Judge regarded Mr Craig's response to Mr Stringer's conduct as proportionate:[46]

> [107] … But Mr Stringer's attacks on Mr Craig were delivered by way of interviews to national mainstream media, information fed to what was at the time one of the best-read blogs in New Zealand, and numerous blogposts by Mr Stringer's own blog which was accessible by anyone with access to a smartphone or a computer. I do not accept Mr Stringer's submission that his attacks were "not directed to the public". Given the nationwide nature of Mr Stringer's attacks I do not consider it was disproportionate for the Craigs to make a nationwide response. …
>
> [108] Neither was the tone, language or force and vigour of the Craigs' response beyond the scope of Mr Stringer's attacks. The Craigs' response, in the booklet and at the press conference, was directly aimed at the nature of Mr Stringer's attacks, or to his credibility which was relevant to his attacks. I do not consider it went beyond their scope. …

[57] Mr Stringer complains that the Judge erred in characterising his conduct as an attack on Mr Craig and a conspiracy involving Mr Stringer, Mr Williams and Mr Slater, and that Mr and Mrs Craig's actions in sending the Booklet to 1.63 million homes was a grossly disproportionate overreaction to what he said were "a few blog posts and a handful or TV appearances focused on party process".[47]

---

45 *Craig v Williams*, above n 6, at [124]. See also *Horrocks v Lowe* [1975] AC 135 (HL) at 149–151.
46 Substantive judgment, above n 2, at [107]–[109] (footnotes omitted).
47 Mr Stringer's closing submission as recorded in the substantive judgment, above n 2, at [107].

[58] In support of these complaints, Mr Stringer submits that the Judge had erred in his findings regarding his association with Mr Belt and the nature of his interactions with the media. We address those issues first.

Issue (a)(i): Association with Mr Belt

[59] At trial, Mr Stringer maintained that his comments to Mr Belt were sent to Mr Belt's private email which Mr Belt sometimes forwarded on to Mr Slater but that he, Mr Stringer, could not be taken to have known that. Mr Stringer challenged the Judge's finding that, by leaking information and stories to Mr Belt, he was (and knew that he was) feeding stories to Whale Oil.

[60] Mr Stringer complains that the Judge's findings at [100(b)] and [102] were inconsistent. However, this is not correct. In [100(b)] the Judge records Mr Stringer's submission that he did not know that Mr Belt was forwarding his material to Mr Slater. At [102] the Judge makes his own assessment of that submission, finding that it was "simply not credible that Mr Stringer did not understand the effect of feeding information to Mr Belt". There is no inconsistency.

[61] Mr Stringer also sought to have Mr Belt's emails treated as protected under s 68 of the Evidence Act 2006 (protection of a journalist's source). However, given that Mr Stringer had accepted in cross-examination that he had sent many of the emails and therefore was under an obligation himself to discover them, no privilege could arise. To the contrary, the Judge found that Mr Stringer had deliberately attempted to conceal evidence that was particularly unfavourable to him.[48] There is no merit in this argument.

[62] Finally, Mr Stringer complains that the Judge gave too much weight to the emails between Mr Belt and Mr Stringer in determining whether Mr Craig's response to Mr Stringer's conduct was disproportionate. We agree that the emails were given considerable weight but consider that the Judge was right to give them this weight. They evidenced Mr Stringer's calculated and secret leaking of material to the Deputy Editor of Whale Oil. Mr Craig could not, at the time, have known the exact nature

---

[48] Substantive judgment, above n 2, at [58].

and extent of Mr Stringer's communications with Mr Belt. But he did not have to know that. He rightly concluded from what he did know that Mr Stringer was involved in the on-going commentary emanating from Whale Oil.

Issue (a)(ii): Contact with the media

[63] At [18]–[20] of the judgment Palmer J recorded Mr Stringer's interactions with TV3, Mr Williams, Mr Belt, The New Zealand Herald and TVNZ. Mr Stringer submits that:

> The [C]ourt erred at [18](a)–(e) to [20] by inferring as evidential, media contact as a conspiracy to undermine Mr Craig. My comments are more reasonably understood as ordinary political discourse (particularly with Board colleagues including Mr Craig himself) amidst a significant political crisis in which I had Board responsibilities I took seriously, including allegations our employee had been sexually harassed by our party leader.
>
> My quite limited contact with the media, showing them emails from me, after the [p]arty had imploded, was to correct facts; demonstrate Mr Craig was disingenuous; attempting to restore and salvage the party; separate it from Mr Craig's private life. It was a "catastrophe," to which I was reacting as sole elected official, not a coordinated conspiracy to undermine a leader's reputation already in absolutely public free fall and taking the party down with that. …

[64] These paragraphs did no more than set out the bare facts on which the respondents relied for the defence of qualified privilege. The Judge was obliged to fully set out the narrative. Mr Stringer does not challenge the accuracy of the narrative as the Judge recorded it. His complaint is that the Judge treated it as evidence of a conspiracy. However, the Judge made no finding of conspiracy**.** Rather, his findings were directed very specifically towards the parameters of the defence of qualified privilege, that is that Mr Stringer's conduct and Mr and Mrs Craig's response were both direct and forceful and not disproportionate.

Issue (a)(iii): The "20 fair questions"

[65] At [30] of the judgment Palmer J continued his record of Mr Stringer's actions in June and July 2015.[49] These included an email that Mr Stringer released to the media on 1 July 2015 entitled "20 fair questions". This email posed questions to

[49] Substantive judgment, above n 2.

Mr Craig which related to rumours of a second sexual harassment case, a large pay out to the sexual harassment victim and misdirection of the Board of the Conservative Party about these matters. Mr Stringer submits that:

> "*20 Fair Questions*" was a challenge to Mr Craig to clarify issues and respond to specific accusations ("fair questions") which he attempted to do via the three press conferences but the [C]ourt wrongly interpreted this as an "attack" on Mr Craig.
>
> The question must be asked. If a special board meeting is arbitrarily cancelled by Mr Craig where important questions were scheduled (by me and others) to be discussed behind closed doors; and I was actively blocked from all party channels of communication; and Mr Craig refused to clarify any questions directly asked of his colleagues; and the courts agree Mr Craig lied to his board; how then was a party official such as myself to hold its contradictory party leader to account? Questioning was not an "attack" nor a conspiracy.

[66] We reiterate that the Judge did not make a finding of conspiracy. The fact that Mr Stringer posed questions rather than made statements did not preclude a finding that the conduct amounted to an attack for the purposes of the defence of qualified privilege. There can be no doubt that the question format was capable of amounting to an attack. Given the context in which the article was published — an admitted breach of Mr Stringer's confidentiality agreement — the Judge was entitled to find that this article formed part of the attack by Mr Stringer on Mr Craig.

Issue (a)(iv): Conclusion on proportionality of the response

[67] Mr Stringer seeks to minimise the nature and effect of his conduct by reducing it to the exact number of blogs he posted, the number of people who viewed his website, the exact length of the TV3 interview (11 minutes) and the TV3 newsclip (15 seconds). He pointed out that there were 33 blog posts which, based on statistical information put in evidence at trial, was likely viewed by a few hundred people. He argues that the Judge had "over-weighted" his conduct and failed to view it in the context of the widespread media criticism of Mr Craig at the time. He described himself as "by-catch" caught up in the litigation generated over Mr Williams' and Mr Slater's conduct.

[68] We see no substance in the complaint that the Judge wrongly treated Mr Stringer's conduct as an attack. Mr Stringer actively promoted his views about Mr Craig to mainstream national media (both print and television) and social media

(via Whale Oil and his own blogsite). Those views included serious allegations about dishonesty and sexual impropriety. The reach was significant and, in the case of Whale Oil, ongoing, because the website was so frequently visited at the time. Attempting to play down the effect by reference to the precise time spent in a television interview or the exact number of blogs posted is unsupportable.

[69] The Judge was entitled to make the finding he did about the nature and effect of Mr Stringer's conduct, which was to be viewed against the admittedly defamatory and untrue statements that Mr Stringer had made against Mr Craig, which he retracted, apologised and paid for. Nor is there merit in the argument that the Judge failed to have adequate regard to the overall context in which the conduct occurred. The Judge fully recorded the circumstances in which the statements made by Mr Stringer against Mr Craig and Mr Craig against Mr Stringer arose. Mr Stringer's description of himself as by-catch, conveying that he was haplessly caught up in the net with bigger fish is disingenuous, given that Mr Stringer himself instigated the flow of information to the Whale Oil website, including in the face of an explicit reminder of his confidentiality obligation as part of the Conservative Party Board.

[70] Mr Stringer also argues that Mr Craig's response was disproportionate and exceeded the ambit of his own statements as a result of the "personalisation" of the attacks. Mr Stringer submits that Mr Craig's response was more personal due to the use of the description "Judas", given Mr Stringer's faith, and the assertions that Mr Stringer is a liar, corrupt and unethical. He likened Mr Craig's response to the conduct of the defendant in *Stiassney v Siemer*[50] where a public billboard showing a photograph was defamatory, stating that the Booklet was akin to an "online highway billboard". We do not accept this submission. The *Siemer* case is not comparable. The conduct in that case was of the most serious kind. It was deliberate and vindictive, made allegations of professional dishonesty and criminal conduct, and included racist abuse. The conduct extended beyond the billboard to include a website devoted to the topic, complaints to professional bodies, letters to the media, and was sustained over a long period and in the face of a settlement agreement between the parties and injunctive relief. Most relevantly for present purposes, it was not a response to attack.

---

50 *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 361.

[71] In summary we see no error in the Judge's characterisation of Mr Stringer's conduct as a direct and forceful attack on Mr Craig. Recognising the latitude allowed in considering the proportionality of the response to an attack, Mr and Mrs Craig were entitled to respond similarly. The Judge did not err in his assessment of the proportionality of their response.

Issue (b): the finding as to ill-will

[72] Mr Stringer asserted that the respondents could not rely on the defence of qualified privilege because they were motivated by ill-will. The Judge rejected this assertion:[51]

> [109] I also consider the Craigs did not take improper advantage of the occasion of publication, outside the occasion of privilege, so their privilege is not lost. There is no evidence they wanted only to harm Mr Stringer. Rather the evidence is their concern was to vindicate Mr Craig's reputation. There is also no evidence Mr or Mrs Craig knew the allegations against Mr Craig were true or knew that what they were saying was false. There may not have been the proof there is now that Mr Stringer was acting in the way the Craigs believed he was. But they had assembled the material that was the basis of their conclusions, which they provided to Mr Taylor to review independently. Mr Taylor agreed. Mr Stringer has not proved the Craigs were not honest in their beliefs. Rather, I consider they were.

[73] Nor did the Judge accept that Mr Taylor had been predominantly motivated by an improper purpose. The Judge held that Mr Taylor had moderated the Booklet professionally and in doing so acted in good faith for the purpose for which the privilege was accorded.[52]

[74] Although Mr Stringer's notice under s 41 of the Defamation Act was directed to each of the five respondents, in submissions he limited his challenge to Mrs Craig's evidence. He submits that in cross-examination Mrs Craig had been unable to point to specific statements by Mr Stringer (such as the television interview).

---

51 Substantive judgment, above n 2. As noted earlier the allegation of sexual harassment by Mr Craig of Ms MacGregor was made out in Ms MacGregor's claim but the issue of sexual harassment was outside the scope of the present proceeding. Therefore, references by the Judge to Mr and Mrs Craig's belief in the falsity of the allegations against Mr Craig necessarily exclude allegations of sexual harassment.

52 Substantive judgment, above n 2, at [136].

[75] This small snapshot of the evidence falls far short of any basis on which to impugn the Judge's finding that the Craigs acted out of a wish to vindicate Mr Craig's reputation and were honest in their beliefs.

Third ground of appeal: the defence of qualified privilege raised by Ms Storr and Mr Stitt

[76] As noted earlier, the causes of action against Ms Storr were based on two statements, the first being Ms Storr's email to Conservative Party members on 27 June 2015 stating that Mr Stringer had been suspended from the Party for several serious breaches of his obligations; and the second being a letter to Conservative Party members on 6 October 2015 updating them on Mr Craig's proceeding against Mr Stringer. The Judge found that Ms Storr's email of 27 June conveyed that Mr Stringer had been suspended from the Conservative Party for serious breaches of his confidentiality obligations and was defamatory.[53] The Judge found that the letter of 6 October had all the defamatory meanings complained of except that Mr Stringer acted illegally.[54]

[77] The claims against Mr Stitt were based on his update of 29 July 2015, which he accepted was defamatory for conveying that Mr Stringer attacks and lies, and his email of the same date which he accepted was defamatory for conveying that Mr Stringer had tried to destroy the Conservative Party and caused it to suffer.[55]

[78] The Judge found that the statements Ms Storr and Mr Stitt made were made in discharge of their duty to communicate with Party members. As a result, they were protected by qualified privilege of a duty to publish:[56]

---

53 Substantive judgment, above n 2 at [150]. The Judge had found that Mr Dobbs had written to Mr Stringer on or about 26 June 2015 suspending him from the Party and the Board. In his submissions Mr Stringer challenged this finding and also made submissions about the procedural validity of the suspension itself. We do not engage with these submissions because whether Mr Dobbs had in fact suspended Mr Stringer and whether the process followed in relation to Mr Stringer's suspension was valid are not issues that arise in this appeal. The question for the Judge in respect of Ms Storr's position was whether she honestly believed that Mr Stringer had been suspended. The evidential foundation was sufficient that it was open for the Judge to reach that view.

54 At [153].

55 At [152].

56 At [155], and also at [2(c)].

> … Mrs Storr was the membership manager of the Conservative Party which still existed as an entity. Mr Stitt was the National Administrator. I do not accept Mr Stringer's submission that, if anyone had qualified privilege, it was him, as the only remaining elected official of the party. I consider that Mrs Storr and Mr Stitt had a duty, by virtue of their offices and roles, to communicate with party members about matters in the public domain affecting the party. …

[79] Mr Stringer argues that at the time Ms Storr and Mr Stitt wrote the letters he was the only properly elected and official party officer and that Ms Storr and Mr Stitt did not enjoy qualified privilege.[57] Therefore the Judge had erred in finding that Ms Storr's and Mr Stitt's statements were made pursuant to a duty to communicate.

[80] Ms Storr gave evidence that she was the party membership manager at the relevant time. It was open to the Judge to accept Ms Storr's evidence, and in doing so, to find that she had a duty to communicate with the party members. Mr Stitt gave evidence that following the 2014 election, when paid members of the party staff were laid off, he assumed the role of party secretary on a voluntary basis. This was also evidence that the Judge was entitled to accept. The fact that neither Ms Storr nor Mr Stitt were elected officials did not preclude them having a duty to publish for the purposes of raising the defence of qualified privilege.

Fourth ground of appeal: the defence of honest opinion raised by all defendants

[81] A defamatory statement will not attract liability if it is an expression of an honestly held opinion.[58] The maker of the statement must indicate the factual basis on which the opinion is expressed, and those facts must be established. The comment must also be recognisable as an opinion.

[82] The defence of honest opinion is commonly (as it was here) advanced along with the defence of truth. The defence of honest opinion received less extensive

---

[57] Mr Stringer also raised the question as to why his posts were not treated in the same way by the Court "as the sole voice on the other side … [pursuant to] my duty to publish as acting Chairman of the Board". We do not engage with this argument because whether Mr Stringer was entitled to claim qualified privilege in respect of statements he had made does not arise as an issue in this proceeding. In addition, Mr Stringer asserted in his submissions that it was Mr Craig, not Ms Storr and Mr Stitt, who was the true author of the letters but this was not advanced in oral submissions and we were not taken us to any evidence to support that assertion. We therefore do not engage with this issue.

[58] Defamation Act 1992, s 38.

analysis in the judgment because the Judge dealt with both together and held that all but one of the statements Mr Craig made about Mr Stringer were true, or not materially different from the truth. As noted, that finding is not challenged on appeal.

[83] The Judge found that some of the statements in the Booklet were opinion rather than fact but found that they were genuinely held opinions by Mr and Mrs Craig and based on facts not materially different from the truth. They included the statements that Mr Stringer was a "traitor" to or "Judas" in the Conservative Party and that he behaved unethically. These statements related to Mr Stringer's actions in leaking information about Mr Craig, in including after the issue of leaks from the Board had been raised and Board members had committed again to their signed agreements on confidentiality.[59]

[84] Mr Stringer's submission on this issue was:

> The [C]ourt said that the defendants' "defamatory statements of opinion were their genuine opinion" but they provided no matrix of facts at trial to substantiate this, other than a few scattered emails showing I had contact with a person whom Mr Craig and other board members had contact with. That did not constitute "attacks" justifying the pile-driver of the Booklet against me.

[85] The last sentence of the submission raises the issue of proportionality of Mr Craig's response, which we have already dealt with. There is no merit in the rest of the submission either. In his evidence Mr Craig set out the events that preceded his decision to publish the Booklet. Although Mr Craig did not know from the outset that it was Mr Stringer who was feeding information to Mr Belt and, consequently to Whale Oil, by the time Mr Stringer gave his TV3 interview on 20 June 2015 and his RNZ interview on 23 June 2015 and publication of his own blogs throughout June and early July 2015, there was sufficient information on which Mr and Mrs Craig could reasonably have formed the view that Mr Stringer had embarked on a campaign against Mr Craig. In his brief of evidence Mr Craig said:

> After talking with my lawyers I had expected that telling Mr Stringer I was considering legal action would have curtailed the nasty publications by Mr Stringer but it did not. It seemed to me he ignored the advice about lawyers entirely and continued on to publish allegations about me.

---

[59] Substantive judgment, above n 2, at [122].

> As Mr Stringer continued to publish his blogs attacking me I talked with my lawyers about how to respond. The allegations about me had gone widely to the public of the country and I understood having taken legal advice that I was able to also publish to the public of the country a response to those allegations.
>
> By the start of July 2015, I decided I needed to respond somehow, to defend myself and my reputation. My reputation had already been dragged through the mud and I had been ridiculed and vilified extremely publicly. But what was worse my wife and family had come under attack and I could not stand for that. I had to somehow respond to the allegations.
>
> …
>
> As I have set out earlier in my evidence Mr Stringer and the [Whale Oil] blog were co-operating and sharing information. While I did not know everything that I do now about the extent of this co-operation, I knew that Mr Stringer and the [Whale Oil] blog were sharing information with each other. …

[86] Mr Taylor gave evidence about the circumstances in which he had come to moderate the Booklet. He described being provided with documents, including various publications and some emails by Mr Slater and Mr Stringer and that at the end of his review of the material provided to him, he "was convinced that all four key allegations were untrue. Additionally, there had clearly been co-operation between Mr Slater [sic] Stringer and Williams in making these allegations public."

[87] This statement provided a strong evidential basis for the finding of honest opinion and the Judge was entitled to accept it.

[88] Mr Stringer also argues that Ms Storr and Mr Stitt had acted for an improper purpose. The Judge did not accept that their motivation was improper. The Judge made the same findings of good faith and honesty in respect of Mr Taylor[60] and Ms Storr and Mr Stitt. He considered them to be "utterly genuine in their beliefs in what they were saying".[61] Having reviewed the evidence, we consider that the Judge was entitled to make these findings.

[89] This is a convenient point to address the points that Mr Stringer raises regarding the validity of his suspension from the Conservative Party. This factual issue had some relevance to Mr Stringer's case against Ms Storr and Mr Stitt. According to the then Chair of the Conservative Party, Mr Dobbs, he had sent

---

60 Substantive judgment, above n 2, at [136].
61 At [158].

Mr Stringer a letter suspending him from the Board of the Conservative Party on about 25 or 26 June 2015. The timing was significant because on 27 June 2015 Ms Storr, in her capacity as the party membership manager, advised party members that Mr Stringer had been suspended, but on 1 July 2015 Ms Storr sent a formal letter to Mr Stringer advising of his suspension, and on 5 July 2015 Mr Stringer emailed media outlets to say that he was resigning from the Board and the earlier suspension was "bogus". Ms Storr's letter of 27 June 2015 was the basis for one of Mr Stringer's causes of action against her. The timing was important to the issue of Mr Stitt's and Ms Storr's genuine belief that Mr Stringer had been suspended at the time party membership were advised of that fact.

[90] The Judge recorded the fact that, although no letter from Mr Dobbs advising of Mr Stringer's suspension was put in evidence Mr Dobbs was "adamant under cross-examination" that he had written to Mr Stringer suspending him on or about 25 or 26 June 2016.[62] Despite Mr Stringer's position to the contrary, the Judge found:[63]

> [25] I consider Mr Dobbs is genuine in his belief that he sent a letter to Mr Stringer suspending him and, on balance, that he probably did so. I consider Mr Stringer's disputing of that is unreliable. And, in any case, I consider the evidence supports the proposition that Mr Stringer's membership of the Conservative Party, and of its Board, was suspended on 25 June by Mr Dobbs and Mr Heslop using Mr Day's proxy vote. …

[91] Later, in considering Ms Storr's and Mr Stitt's defences of truth and honest opinion, the Judge noted:[64]

> [157] Mr Stringer is exercised about whether, technically, he was validly suspended by the Party. I have found that he was suspended. But I do not need to consider whether the suspension was valid. Mrs Storr was following the instructions of Mr Dobbs and the Party Secretary, Mr Heslop. I accept she genuinely believed Mr Stringer had been suspended.

[92] Mr Stringer submits that the Judge was in error in his finding that Mr Dobbs had sent him a letter on or about 25 or 26 June 2016 suspending him from the Conservative Party Board. He submits that the evidence contradicted that finding.

---

62 Substantive judgment, above n 2, at [23].
63 At [25].
64 Footnotes omitted.

But the evidence that Mr Stringer points to is, in truth, a lack of evidence. In his submissions he says:

> I testified I had never seen a letter. My correspondence with Mr Dobbs and Mrs Storr at the time, shows there was no suspension letter. Mr Dobbs was unsure he had sent a suspension letter. He could not present one, neither could anyone else: not Mr Craig, Mrs Storr, the Party Secretary or Mr Stitt who all would have had copies of such a momentous event to Mr Craig, if it had existed. It is not credible one existed yet no one has a copy. Mr Craig was pestering Mr Dobbs for confirmation that he has suspended me from the board. If there was a letter, Mr Craig would have kept it.
>
> Conclusively Mrs Storr's formal correspondence with me several days later confirms there was no letter on which His Honour relied … No one had contacted me, therefore she was stepping in to do this, to complete a process that had not followed any due process. If Mr Dobbs had sent a letter, she would not have taken the action herself.

[93] The Judge's finding that Mr Stringer's disputing of the issue was unreliable was one of a number of adverse credibility findings the Judge made. In weighing up the likelihood of Mr Dobbs having written the letter, which he was certain he had, against Mr Stringer's disputing of that assertion, the Judge was entitled to stand back and make a finding as to where the balance of probabilities lay. But in any event, this issue could not affect the outcome of the case. Whether Mr Dobbs sent the suspension letter or not did not affect the issue of Ms Storr's and Mr Stitt's honest belief that he had.

Appeal against costs award

[94] For the purposes of costs and disbursements, the Judge held that the respondents had succeeded entirely. As self-represented lay litigants, they were not entitled to costs under the High Court Rules 2016. They were, however, entitled to reasonable disbursements. The Judge allowed the costs of the filing fees, couriers, printing and compilation of bundles and travel costs totalling $7,509.43.[65] He also allowed, as disbursements, the legal fees paid for assistance in relation to the case, totalling $69,303.50. Mr Stringer challenges all the allowances.

---

[65] Costs judgment, above n 5, at [21].

The printing and other costs relating to the common bundle

[95] Mr Stringer says that some of the disbursements allowed related to the preparation of common bundles, which he had already undertaken at his own cost. Mr Craig responded that the additional bundles were prepared by the respondents because Mr Stringer's bundle had omitted many of the documents nominated by the respondents for trial and that the respondents' bundles became the ones used through the trial as they were complete. Mr Stringer did not challenge this response.

[96] The Judge was the person best placed to determine the reasonableness of these relating to the common bundle disbursements. There is no basis on which we could interfere with that decision.

The legal fees as disbursements on an indemnity basis

[97] In the case of self-represented lay litigants, disbursements can include legal fees paid for assistance in preparing the case for trial. On this basis, the Judge allowed as disbursements:[66]

(a) a proportion of the legal fees incurred by the respondents in relation to Mr Stringer's proceedings up to and including 29 July 2019 (as set out in schedule 2 of the respondents' memorandum dated 14 April 2020); and

(b) all the legal fees incurred by the respondents for legal advice and assistance relating to Mr Stringer's proceedings after 29 July 2019 (as set out in schedule 3 to their memorandum of 14 April 2020).

[98] The entitlement of self-represented lay litigants to legal fees paid for professional assistance in advancing the case is not conferred by the High Court Rules. It is a rule of practice, as explained by this Court in *Collier v Registrar of the High Court at Christchurch*:[67]

---

66 Costs judgment, above n 5, at [26].

67 *Collier v Registrar of the High Court at Christchurch* [1996] 2 NZLR 438 at 439–440 (citations omitted); see also *McGuire v Secretary of Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [55].

> For more than a hundred years it has been the practice not to award costs to a litigant in person. The leading case in England is *London Scottish Benefit Society v Chorley, Crawford and Chester* ... in which Brett MR said …:
>
> > … When an ordinary party to a suit appears for himself, he is not indemnified for loss of time; but when he appears by solicitor, he is entitled to recover for the time expended by the solicitor in the conduct of the suit. … He cannot himself take every step, and very often employs a solicitor to assist him: the remuneration to the solicitor is money paid out of pocket. He has to pay the fees of the court, that is money paid out of pocket; but for loss of time the law will not indemnify him.
>
> In New Zealand nearly 50 years later the Court of Appeal refused costs to a litigant in person in the case of *Lysnar v National Bank of NZ Ltd* … After citing the passage above from the judgment of Brett M R the Court said …:
>
> > The most that can be said of the English cases as applied to our scale is that they can be looked at as indicating that the Court will provide to a successful layman litigant: (a) An indemnity for his Court disbursements; (b) a possible partial indemnity for any fees he pays by way of professional assistance; and (c) nothing for his own time and trouble.

[99] In *Jagwar Holdings Ltd v Julian* Thorp J rejected the possibility of departing from the rule in relation to the expenditure of time and effort by defendants in person given the recent recognition of it by this Court and the fact that in England, where the rule has been reformed, that has been only achieved through legislation. The Judge concluded that:[68]

> The most, it seems to me, that the Court can do is to take a reasonably liberal approach to the classification and assessment of "reasonable disbursements" of litigants in person, and to have regard to the practice approved by the House of Lords in *Malloch v Aberdeen Corp (No 2)*.. In that case a petitioner to the House of Lords engaged a solicitor to help him prepare documents for his appeal and give him advice about the manner of presentation of his case. The taxing officer disallowed a claim for refund of payments to the solicitor and for her travelling expenses. The House (per Lord Reid) allowed those claims, on the principle that:
>
> > … the petitioner should be allowed such sums as were reasonably necessary for him to spend in order to prepare his written case and acquit himself to appear and argue his case in person.

---

[68] *Jagwar Holdings Ltd v Julian* (1992) 6 PRNZ 496 at 499 (citations omitted).

[100] The "primary rule" is recognised as still applicable.[69] The High Court Rules do not provide for unrepresented litigants and any change to the primary rule would require legislative action.[70]

[101] Mr Stringer had argued that the award of disbursements should be reduced to reflect what Mr Stringer perceived to be his level of success in the case, the level of public interest and Mr Craig's contribution to unnecessary time or expense in the proceeding. The Judge rejected this argument. Instead, he regarded the primary issue as being whether Mr Stringer should fully indemnify the respondents for their disbursements relating to legal advice and assistance or only make a contribution towards them.[71] He applied, by analogy, the provisions in 14.6(4) of the High Court Rules relating to the payment of indemnity costs.

[102] The Judge considered that for the period prior to 29 July 2019 Mr Stringer should be given the benefit of the doubt as to his understanding of the merits of his case and therefore only be required to make a reasonable contribution to the respondent's legal advice and assistance during that period. On 19 June 2019 there had been a case management conference at which Mr Akel (counsel assisting the Court) had indicated that he saw difficulties for Mr Stringer in the proceeding, and on 17 July 2019 at a hearing about the respondents' adjournment application, the Judge understood Mr Stringer to have acknowledged that the respondents had a strong defence to qualified privilege. The Judge issued a minute on 29 July 2019 in which he noted the strength of the respondents' defences, and said:[72]

> [25] Given all this, and the availability of an award of disbursements to the victor, it would not have been surprising had Mr Stringer abandoned his proceeding.

[103] The Judge therefore saw the date of 29 July 2019 as significant:[73]

> [25] So from 29 July 2019, at the latest, Mr Stringer could fairly be regarded as having been on notice of the strength of the defendants' case and the likelihood that the defendants would seek payment of their disbursements. He elected to continue nevertheless. Accordingly, from 29 July 2019, I

---

69 *McGuire*, above n 67, at [55].
70 At [56] and [90].
71 Costs judgment, above n 5, at [23].
72 *Stringer v Craig* HC Auckland CIV-2015-404-2524, 29 July 2019 (Minute No 13).
73 Costs judgment, above n 5.

> consider Mr Stringer acted unnecessarily, perhaps even recklessly, in continuing the proceeding, by analogy with r 14.6(4) of the Rules. He must pay … a reasonable proportion of the defendants' disbursements for legal advice and assistance until 29 July 2019 and indemnity disbursements after that.

[104] Before we consider Mr Stringer's submissions in relation to this aspect of the award, we first consider whether the Judge was right in his approach to the application of r 14.6(4). It is implicit in the Judge's reference to Mr Stringer having acted "unnecessarily, perhaps even recklessly" that the Judge was relying on r 14.6(4)(a) which permits the Court to order indemnity costs if: "the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding".[74]

[105] The threshold for allowing costs on an indemnity basis is high and indemnity costs are typically only awarded where a party has behaved either exceptionally badly or very unreasonably[75] or where the case is hopeless.[76] In *Bradbury v Westpac Banking Corporation* this Court said:[77]

> Indemnity costs, which depart from the predictability of the Rules Committee's regime, are exceptional and require exceptionally bad behaviour. That is why to justify an order for such costs the misconduct must be "flagrant".

[106] The Court in *Bradbury* went on to note the circumstances in which indemnity costs have been ordered: where false allegations of fraud are made knowingly; particular misconduct causing loss of time to the Court and other parties; commencing or continuing proceedings for some ulterior motive; doing so in wilful disregard of known facts or clearly established law; making allegations which ought never to have been made or unduly prolonging a case by groundless contentions.[78]

[107] In *McGuire* the Supreme Court made it clear that the practice regarding the recovery of legal fees as disbursements by self-represented lay litigants is unrelated to the costs regime in the High Court Rules.[79] Relevantly in this case, the rule of practice

---

74 High Court Rules 2016.
75 *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [27]–[28].
76 *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2014] NZCA 348 at [27].
77 *Bradbury*, above n 75, at [28] (citations omitted).
78 At [29].
79 *McGuire*, above n 67, at [62]–[63].

permitting self-represented lay litigants to recover reasonable disbursements has been explicitly recognised as being a partial indemnity of disbursements, not full indemnity related to the unsuccessful party's own conduct.[80] Importing the principles relating indemnity costs under r 14.6(4) would cut across that practice. We consider approaching the recovery of disbursements on this basis was an error.

[108] This conclusion means that Mr Stringer's complaint regarding the basis on which the indemnity award was made succeeds. For completeness, we briefly address the argument he raised regarding the Judge's view of his conduct.

[109] Mr Stringer says that the Judge wrongly treated his comments at the case management conference as concessions that the respondents' defences were strong when all he meant was that, of the defences available to the respondents, he viewed qualified privilege as the strongest. He did not, and still does not, accept that the respondents' defences were, in fact, strong.

[110] In our view the Judge made no error in his assessment that, from 29 July 2019 Mr Stringer was on notice as to the strength of the defendants' case. We accept that Mr Stringer, subjectively, may not have accepted that to be so. But it behoves all litigants to make the effort to assess the strength of their case and the defences being raised against them as objectively as possible. In this case, Mr Stringer had the benefit of Mr Akel's views. He was aware that, if the respondents succeeded at trial, they would seek disbursements that, by June 2019, had exceeded $25,000. Mr Stringer was seeking to vindicate his reputation and it is understandable that he may have been reluctant to critically assess the strength of his case. Nevertheless, a reasonable person in Mr Stringer's position would have realised the significant risk being run in proceeding to trial.

[111] However, for the reasons we have discussed, whether Mr Stringer was on notice or not as to the weakness in his case ought not have been the basis on which the award against him was made.

---

[80] *Collier*, above n 67, at 439.

The cause of Mr Craig's reputational damage

[112] Mr Stringer complains that this aspect of the award was wrongly based on the Judge's finding of his "attack" on Mr Craig whereas, in fact, the reputational damage Mr Craig suffered was largely of his own making. This submission relied significantly on Toogood J's findings in *Craig v Slater*.[81] We do not see any relevance in those findings, which were made in the context of different proceedings (which were the subject of a partially successful appeal).

The quantum of the fees allowed

[113] Our conclusion as to the basis on which the indemnity fees were allowed means that the issue of disbursements will need to be remitted to the High Court because the trial Judge is best placed to make an assessment of what is a reasonable contribution in this case. However, there is a further aspect that also needs to be considered when the matter is raised again in the High Court.

[114] The disbursements allowed for legal advice and assistance totalling $69,303.50. Mr Stringer says, however, that the legal advice did not, or did not entirely, relate to the present case but rather to the *Craig v Stringer* proceedings. The Judge explicitly acknowledged this issue:[82]

> [20] I proceed on the understanding that the disbursements claimed are related to Mr Stringer's proceeding, not Mr Craig's proceeding. The defendants will need to check that is so.

[115] However, there is no indication that such checking was done. Instead, the Judge proceeded to allow the claimed disbursements for legal advice and assistance as set out in the schedules to the defendant's memoranda filed in support of the costs and disbursements claim. In that memoranda the defendants submitted that they should be entitled to:

> … all of their reasonable legal costs in assisting with:
>
> > … giving the defendants advice about the legal process and the law of defamation;

---

81 *Craig v Slater*, above n 7.
82 Costs judgment, above n 5.

> … court documents, including the revised statements of defence;
>
> … reviewing briefs of evidence and preparing witnesses for Court;
>
> … researching and writing submissions; and
>
> … dealing with legal issues during the trial and attending trial assisting as a McKenzie friend (such attendances only being when necessary and therefore brief).

[116] No memorandum or affidavit was provided by the firm assisting the respondents. In their memorandum on costs filed in the High Court the respondents simply asserted that they had been charged $69,303.50 for legal services relating to Mr Stringer's claim and that, given the pleadings, multiple defendants, various admissibility issues and extensive submissions required the fees were reasonable and well below scale costs that would have been recoverable had the defendants been represented.

[117] A review of the invoices attached to the memorandum of costs filed on behalf of the respondents in the High Court contain a number of entries that, on their face, appear unrelated to the present proceeding. The invoices are all said to relate to the "claim against John Stringer", which suggests that they relate to the separate proceedings brought by Mr Craig against Mr Stringer rather than the present proceedings which are brought by Mr Stringer against Mr Craig. In one of the schedules of "Invoice details" in November 2015 there is a reference to "Discussion with High Court of Christchurch", which can only be a reference to Mr Craig's separate proceedings, since Mr Stringer's proceedings were brought in the Auckland High Court. In the circumstances, a thorough assessment of what legal fees were genuinely paid in relation to the present proceedings is needed before an assessment could be made as to what a reasonable contribution to them would be for the purposes of setting the disbursements award.

Inconsistency with the decisions in Craig v Slater and Craig v Williams

[118] Finally, Mr Stringer objected to the Judge's award of disbursements against him on the basis that it was inconsistent with the outcome of the earlier decisions in *Craig v Slater* and *Craig v Williams*. Mr Stringer reviewed the outcome in those cases, which both concerned, among other things, allegations that the Booklet was

defamatory. Mr Stringer submitted that in *Williams* the Booklet was found to be defamatory and Mr Williams was awarded costs,[83] and that in *Slater* the Booklet was found to be defamatory, but Mr Slater successfully ran the defence of qualified privilege and obtained costs.[84] In the present case the Booklet was found to be defamatory, and the defence of qualified privilege succeeded with Mr Stringer having costs awarded against him. Mr Stringer says that these comparisons show that the Judge was wrong to award disbursements against him.

[119] We think any comparisons are misconceived insofar as the disbursements award is concerned. Both parties were represented at the trial in *Williams v Craig* so the issue of costs fell to be determined under the High Court Rules. Further, the outcome in the High Court has no relevance because the award was ultimately set aside by the Supreme Court.[85] Costs for the Supreme Court hearing were awarded in favour of Mr Craig, who had prevailed in the appeal. As we noted earlier, although a retrial was ordered the matter was ultimately settled without a further trial.

[120] Nor is the High Court costs award in the *Slater* case helpful because it, too, was set aside on appeal. This Court considered that in respect of the principal claim by Mr Craig, an appropriate award was likely to be a substantially reduced costs award to Mr Craig, given that he had some success but also failed on the main planks of his case relating to his alleged conduct towards Ms MacGregor and the Board.[86] In relation to Mr Slater's counterclaim, there was no basis for an award of costs in favour of Mr Slater because Mr Craig had succeeded entirely. The Court observed that the fact Mr Craig succeeded by means of the defence of qualified privilege did not matter.[87]

[121] In the present proceeding the Court was only concerned with Mr Stringer's allegations of defamation against the respondents. That claim failed entirely as a result of the defences raised by the respondents of truth, qualified privilege and honest opinion.

---

83 *Williams v Craig* [2017] NZHC 724, [2017] 3 NZLR 215, above n 30.
84 *Craig v Slater*, above n 7.
85 *Craig v Williams*, above n 6.
86 *Craig v Slater*, above n 32, at [128].
87 At [129].

Result

[122] The appeal against the substantive judgment is dismissed.

[123] The application to adduce further evidence is declined.

[124] The appeal against the costs judgment is allowed. The issue of costs is remitted to the High Court for determination in accordance with this judgment.

[125] All parties were self-represented. As a result, the issue of costs does not arise. The parties would normally be entitled to reasonable disbursements associated with the appeal in respect of which they succeeded. However, given that both the appellant and the respondents had a measure of success, we make no order for disbursements.