

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CIV 2015-409-575
[2023] NZHC 666**

BETWEEN

COLIN GRAEME CRAIG
Plaintiff

AND

JOHN STRINGER
Defendant

Hearing: 14-25 March 2022

Further submissions: 8 and 22 April 2022, 18 and 19 May 2022, 7 June 2022 and 13 June 2022

Appearances: Plaintiff in person
Defendant in person (with J Simpson as McKenzie friend)
W Akel, counsel assisting the Court

Judgment: 29 March 2023

JUDGMENT OF CAMPBELL J

*This judgment was delivered by me on 29 March 2023 at 4.30 pm pursuant to Rule 11.5
of the High Court Rules*

Registrar/Deputy Registrar

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Introduction

[1] The plaintiff, Colin Craig, was the leader of the Conservative Party from 2011 until 2015. Two days before the general election in September 2014, Mr Craig's press secretary, Rachel MacGregor, resigned.

[2] The defendant, John Stringer, was a member of the Board of the Conservative Party. In a series of publications from June 2015 to February 2016, Mr Stringer said that Mr Craig had sexually harassed Ms MacGregor.

[3] Mr Craig sues Mr Stringer, claiming that Mr Stringer's statements were defamatory.

[4] Mr Stringer's primary defence is truth. He says Mr Craig did sexually harass Ms MacGregor. Alternatively, Mr Stringer relies on defences of honest opinion, qualified privilege and responsible communication on a matter of public interest.

[5] The primary issue is whether Mr Craig sexually harassed Ms MacGregor. I find that he did. His defamation claim against Mr Stringer therefore fails.

Factual outline

Mr Craig enters politics

[6] Mr Craig and his wife, Helen Craig, have been married for over 30 years. For many years they have owned and operated two successful businesses: an accounting practice, Craig and Craig, and a property management business, Centurion Management Services Ltd (**Centurion**).

[7] In 2010, Mr Craig entered political life. He ran for the Auckland mayoralty. He came third.

[8] That result encouraged Mr Craig to broaden his political aspirations. In August 2011, Mr Craig formed the Conservative Party to contest that year's general election. He was the Party's leader. He gave up much of his other work and focussed on the Party. Mr and Mrs Craig applied significant money towards the Party.

Ms MacGregor is engaged as press secretary for Mr Craig

[9] On 24 August 2011, Centurion engaged Ms MacGregor to be press secretary for and executive assistant to Mr Craig, in his capacity as Conservative Party leader. Ms MacGregor had previously worked as a journalist. She had a good understanding of the media. Initially, Centurion engaged her as a contractor rather than an employee.

[10] Ms MacGregor was engaged as Mr Craig's press secretary just three months before the general election. The Party had to develop policies, put them out to the public, and engage with constituents. As a new political party, it had a relatively small team to do this. This meant that Mr Craig and Ms MacGregor worked long hours together in the lead up to the general election. They found they shared some interests. They enjoyed each other's company. They began expressing affection for each other.

Initial expressions of affection

[11] On 3 November 2011, Mr Craig sent a handwritten letter to Ms MacGregor. He headed it "Private and Confidential". In it, Mr Craig said he had been asked some questions by others, including whether he was having an affair with Ms MacGregor and whether he had kissed her. Mr Craig commented: "well obviously the answer to the first is no, unless I missed something ☺". He said that the answer to the second question was also "no", but he added: "Not that I wouldn't want to, a lot, but that is a boundary." Mr Craig signed the letter off: "Thanks for being such a wonderful friend and more. Love, Colin."

[12] Ms MacGregor sent Mr Craig a text message the next day, 4 November 2011, beginning: "Thankyou so much for your letter :) ...". Further text messages were exchanged on 5 November 2011, including Ms MacGregor texting "I really care about you" and Mr Craig replying "I really care about you too".

[13] Mr Craig and Ms MacGregor frequently texted each other. Most of the text messages concerned work matters, but the displays of affection continued. Some evenings multiple text messages would be exchanged into the early hours of the next morning. On 21 November 2011, one such exchange concluded at 12.17 am with Ms MacGregor sending a text message that included:

I know im not meant to say this, but I really enjoyed spending time with you today.. And I think its very unique that we connect and communicate so instinctively. Wish I could say goodnight the way I really want to...

[14] During this time, Mr Craig would sometimes go to Ms MacGregor's flat to work on the election campaign. On one such occasion Mr Craig fell asleep as he was lying on Ms MacGregor's lap.

[15] The country voted in the general election on 26 November 2011. The Conservative Party received 2.65 per cent of the party vote and did not win any electorate seats. This meant they failed to obtain any seats in Parliament.

[16] After an election party that night, Mr Craig and Ms MacGregor went to an apartment above the Centurion offices. They kissed. Ms MacGregor's top and bra were removed. Mr Craig remained clothed. Matters progressed little further. This was referred to in this proceeding as the "election night incident".

Boundaries are put in place, but tested

[17] Mr Craig and Ms MacGregor agreed to put some boundaries in place to prevent a recurrence of what they both regarded as inappropriate behaviour on election night. The boundaries included text messaging only for work.

[18] Mr Craig and Ms MacGregor struggled (at least initially) with the boundaries. On 6 December 2011, Mr Craig sent Ms MacGregor a text message that included:

IAHAMYM (I am having a miss you moment). WYWH. YAWAB.

[19] Mr Craig and Ms MacGregor had a fondness for acronyms. "WYWH" was short for "wish you were here" and "YAWAB" short for "you are wonderful and beautiful". Ten minutes later, Ms MacGregor responded with a text message that included:

Ive been having a very missing colin day..not fun! Thanku 4 the text, feel better now! Will try not to text you again with non work things..

[20] Two days later, on 8 December 2011, Mr Craig and Ms MacGregor had a late-night text message exchange. Mr Craig's text message included "I wish I could hug

you forever and never have to stop. IAHAMYM. WYWH.” Ms MacGregor’s response included “I wish the same thing. (Huuuuge huuuuug) ... Wiwtwy (wish i was there with you).”

[21] Over the next few weeks, Ms MacGregor and Mr Craig did manage to reduce and tone down expressions of affection and desire in their text messages.

[22] In late 2011, Ms MacGregor and Mr Craig agreed that Ms MacGregor would become an employee, rather than contractor. Centurion and Ms MacGregor entered into an employment agreement on 23 December 2011.

[23] On 7 February 2012, Mr Craig sent another letter to Ms MacGregor, this time typed rather than handwritten. It was headed “ABSOLUTELY PRIVATE AND CONFIDENTIAL”. Consistent with their agreement to put boundaries in place, Mr Craig noted some things that he was doing “to ensure our relationship is constructive and appropriate”. At the same time, however, the letter crossed the very boundaries Mr Craig was purporting to put in place. For example, Mr Craig wrote:

Physically I do desire you, there are sometimes I just so want to kiss you and ... well ... go further .. I am just being honest this is how it is. I have resisted going down the kissing track and shall continue to do so. I have left the door open for you to say if you need that (and I want you to be brave and honest enough to ask if necessary), but I expect it would be infrequent and of course there are still boundaries.

[ellipses in original]

[24] Mr Craig’s letter included several portions in blue type that were questions for Ms MacGregor. Mr Craig described the questions as “voluntary of course”.

[25] Ms MacGregor did not receive Mr Craig’s letter for some days. When she did, she responded with an email on 13 February 2012 to Mr Craig that included:

I just wanted to say thank-you So so so sooo much for your letter. Some of the words in it are powerful. It means so much to me that you have taken the time to write it. Thank-you.

I’m re-reading and re-reading it ☺

[26] After that letter, text messages between the two were largely confined to work, save for an awkward exchange on the evening of 25 March 2012. Mr Craig sent a text message that included “wow I just had a major IMYAWUWH moment”. Ms MacGregor responded two hours later. Her response did not engage with Mr Craig’s lengthy acronym. Mr Craig then asked whether Ms MacGregor had received his text message. Ms MacGregor responded with a further text message that included:

Yes got your text just before Thankyou didn’t know what all the letters stand for. Try to discipline your mind to not think about anything except Jesus so that you can be at peace.

[27] Mr Craig responded: “LOL, sorry for being so cryptic. It was a IAHAMYM and WYWH rolled into one.” He then explained he was winding down, would have no problem sleeping, and was wondering what sermon to listen to. Ms MacGregor responded: “Lovely :) bless you lots!”.

Employment review and reversion to being a contractor in 2012

[28] On about 21 May 2012, Ms MacGregor had an employment review with Mr Craig. Arising out of this, a letter was sent to Ms MacGregor from Mr and Mrs Craig. Mr Craig says this letter was part of the “boundary setting” between him and Ms MacGregor. The letter included:

We trust you to work closely with Colin and to look after him and help and protect him. Sometimes when the 3 of us are together, there will be a strange overlap situation where Helen is helping Colin in her role as his wife and you are helping Colin in your role as his assistant.

...

Also as part of your duties you will be spending time just with Colin and it is important that the 2 of you work intuitively as a team being able to support each other and to be productive. At the same time there are obvious limits (e.g. different motels or ensuring staying at person’s home if travelling). Ideally you will be like brother and sister.

[29] In about September 2012, it was agreed that Ms MacGregor would revert to being a contractor. There is a dispute as to whether, at this time or afterwards, the parties concluded any agreement as to Ms MacGregor’s hourly rate as a contractor. As will become apparent, this is a dispute that it is not necessary for me to resolve.

Letters and cards late 2012 and early 2013

[30] On 22 October 2012, Mr Craig sent another typed letter to Ms MacGregor. Again, it was headed “ABSOLUTELY PRIVATE AND CONFIDENTIAL”. Mr Craig began by noting that they had never discussed the questions that he had put (in blue type) in his earlier letter of 7 February 2012. The letter, although it strayed from work into personal topics, did not contain the expressions of desire and affection found in Mr Craig’s earlier letters, though Mr Craig signed it off (in type):

Love you Rach.

OooOx

[31] There was then a handwritten “redeemable sometime ☺” with an arrow pointing to the Os and the X.

[32] At Christmas 2012, Ms MacGregor gave Mr Craig a Christmas card, including a short handwritten message. Her message included:

It has been a pleasure, and a real honour working with you over the past year. You have become much more than a boss — You are a dear friend, a mentor, and a man I have great respect for.

...

I have great respect for your wisdom, your determination, your strength, your intellect, your can do attitude, your gentleness, kindness and self control.

As I ponder your qualities I can clearly see so many spiritual fruits — of the Holy Spirit — in your life. This is testament to your decision to follow Christ fully, with everything you are.

You have won my deep respect

I’m with you, and I have faith in your ability to make a valuable difference in New Zealand.

With love, Rachel

[33] In January 2013, Ms MacGregor and another Centurion employee, Mrs Angela Storr, gave Mr Craig a birthday card. They wrote that Mr Craig was “so much more than just a manager to both of us, and we both hold you in such high regard”. Ms MacGregor signed the card off “Love from Rach” with a love heart drawn next to it. Mrs Storr signed off in the same way.

Christmas 2013

[34] Ms MacGregor continued to work as Mr Craig's press secretary and executive assistant through 2013. They exchanged many text messages, all focussed on work.

[35] On 24 December 2013, Mr Craig sent another letter to Ms MacGregor. Once more, it was headed "ABSOLUTELY PRIVATE AND CONFIDENTIAL". In it, Mr Craig referred to his earlier letters to Ms MacGregor. The letter included the following declarations:

I still feel and think the same as that which I have previously written. Nothing has changed.

...

Nothing has changed in how I think of you or feel towards you, you are precious beyond words and I am always here for you.

[36] These declarations were reinforced by other content in the letter. This included:

So what I really want [in 2014] is OK no I can't really say what I want so I will say what I can reasonably hope for.

...

[W]orking with you on your health would bring us closer together. On the one hand I would love that – I can never get enough of you ☺. On the other hand the closer we get the harder it gets to avoid intimacy. Like always this is a very honest letter!!

[ellipses in first paragraph in original]

[37] Consistent with this theme, Mr Craig included some lines that he termed poems. One was this:

Two of Me

There is only one of me it's true
But I wish this were not the case
Because I wish that I could have you

If instead one man, I was two
That would be one for all the others
And one of me, for you

[38] There was a longer poem entitled “YAWAB”, which it may be recalled was shorthand for “you are wonderful and beautiful”. This included:

Beautiful: (please skip this section if inappropriate)
You are beautiful because your eyes are lovely
You are beautiful because you look unbelievably good in your new dress
You are beautiful because you are fearfully and wonderfully made
You are beautiful because your lips are so amazing to kiss
You are beautiful because your skin is so soft
You are beautiful because you have the most perfect
(LOL .. Ok I deleted a couple of lines and stopped this section.)
Please know that you are beautiful.

[ellipses in original]

[39] On the same day, Mr Craig sent Ms MacGregor a text message, saying “A modest Christmas present and one of my famous letters is on your desk at work, waiting for you :)” Ms MacGregor responded within a few minutes: “I’ve just got it!!!! Thank you soo so much!!!!”.

[40] The next day, Christmas Day, Ms MacGregor sent Mr Craig a text message thanking him for his Christmas present:

Thank you so so so much for the latest kinfolk magazine!!! How you managed to find one of those is very impressive!!!!!! I’m so happy you remembered I love those too!!! Thank you very very much :) Rach.

[41] Ms MacGregor also gave Mr Craig a Christmas card. In the card, she said:

Dear Colin

You are truly wonderful.

I am deeply grateful to have you in my life, and to call you not only a boss but a friend. You consistently go above and beyond for me, and for others.

You are kind, thoughtful, precious and truly loving.

Nothing you do seems to be solely for yourself. Even the careful way you choose your words makes such a difference to my life, and to others.

I admire you, and respect you. Thank-you for nuturing [sic] me this year, for your time, your friendship, and love. You’ve renewed my faith in humanity!
With love, Rach.

Mr Craig helps Ms MacGregor with her finances

[42] In February 2014, Ms MacGregor was in financial difficulties. Mr Craig offered to help her. Mr and Mrs Craig became Ms MacGregor's accountants. Mr Craig prepared a budget for Ms MacGregor.

[43] Mr and Mrs Craig, through one of their companies, Centurion Utilities Ltd, lent Ms MacGregor \$18,990.59 so that she could repay credit card debt. The parties entered into a loan agreement dated 8 February 2014. Its terms included:

- (a) The loan was repayable on demand. If demand was made, Ms MacGregor had three weeks to arrange repayment.
- (b) The interest rate was zero per cent for the first six months, four per cent for the next six months, and the lender's unsecured overdraft rate plus two per cent thereafter. If Ms MacGregor defaulted, the interest rate would be the lender's unsecured overdraft rate plus ten per cent.

Lead up to the 2014 general election

[44] A general election was scheduled for 20 September 2014. From June 2014, Ms MacGregor and Mr Craig worked long hours in the lead up to the election.

[45] Ms MacGregor did not submit any invoices for her work from 2 June 2014 until after she resigned on 18 September 2014. Over that period Mr Craig made two advances of \$10,000 each to Ms MacGregor.

[46] Mr Craig says that over this period he became concerned with the standard of Ms MacGregor's work. He had a meeting with Ms MacGregor on 17 June 2014 to discuss her job performance.

[47] In June 2014, Christine Rankin was appointed CEO of the Conservative Party. The Board of the Party and Ms Rankin agreed that all the staff were to transfer from Mr Craig's oversight to Ms Rankin's. Mr Craig says that Ms MacGregor refused to accept this and would only work directly under his oversight.

[48] Mr Craig contends that on 14 September 2014, on a flight from Napier to Auckland, Ms MacGregor told Mr Craig that she wanted to be “more than just your press secretary”. Mr Craig says he stopped Ms MacGregor from saying more. Ms MacGregor disputes that she said any such thing to Mr Craig.

Ms MacGregor resigns on 18 September 2014

[49] On the morning of 18 September 2014, two days before the election, Ms MacGregor met Mr Craig. They drove into central Auckland for a media interview.

[50] There is a dispute as to what each said to the other that morning, but it is common ground that Ms MacGregor asked that Mr Craig pay her more, and that he declined to discuss her pay until after the media interview. Ms MacGregor then told Mr Craig that she would not be attending the media interview and left.

[51] Later that day, Ms MacGregor sent Mr Craig an email telling him that she resigned. Mr Craig replied that her resignation was accepted. Mr Craig said they would “ensure all amounts due are fully paid.”

[52] A week later, Mr Craig sent a further email to Ms MacGregor. He said he needed her invoices and timesheets. He also said that he now required repayment of the loan that had been advanced to Ms MacGregor.

Ms MacGregor claims that Mr Craig sexually harassed her

[53] About two months later, in November 2014, Ms MacGregor told an acquaintance, Jordan Williams, that Mr Craig had sexually harassed her. Mr Williams was a lawyer and a supporter of the Conservative Party. Ms MacGregor disclosed to him, in confidence, some of the letters Mr Craig had sent to her.

[54] In December 2014 and January 2015, Mr Craig sent emails to Ms MacGregor repeating his request for her invoices and timesheets. Ms MacGregor responded substantively in an email on 29 January 2015. She attached an invoice for the election

campaign and her timesheets. She said she was happy for Mr Craig to deduct from the invoice the money that the Craigs had lent to her.

[55] In that email, Ms MacGregor also told Mr Craig that she had taken so long to respond because she had been thinking carefully “about the way in which you acted towards me when I worked for you”. She advised Mr Craig that she had made a sexual harassment claim with the Human Rights Commission and had decided to take that claim forward. She said she regarded her invoice as an entirely separate matter to the sexual harassment claim. Mr Craig responded, saying he was deeply shocked by the allegations of sexual harassment.

[56] A few weeks later, on 18 February 2015, Ms MacGregor’s solicitor, Geoff Bevan of Gallaway Cook Allan, sent a letter to Mr Craig’s solicitors detailing Ms MacGregor’s sexual harassment claim. Mr Craig’s solicitors responded in detail on 13 March 2015, denying the allegations.

Ms MacGregor and Mr Craig settle at mediation

[57] On 4 May 2015, Ms MacGregor and Mr Craig and their respective lawyers attended a mediation. They resolved Ms MacGregor’s sexual harassment claim. They signed a brief agreement that stated that, other than making a statement that they had met and resolved their differences, the terms of their agreement would be confidential. At the same time, they resolved their disagreement over how much Ms MacGregor was owed on her invoices, and the Craigs forgave the debt that Ms MacGregor owed them.

Ms MacGregor’s allegations are made public

[58] The settlement of Ms MacGregor’s sexual harassment claim was intended by Mr Craig and Ms MacGregor to be the end of the matter and to be private.

[59] Those intentions were undone by Mr Williams. He decided to try to remove Mr Craig as leader of the Conservative Party. In breach of his duty of confidence to Ms MacGregor, Mr Williams told various leading figures associated with the Party that Mr Craig had sexually harassed Ms MacGregor. He showed them some of Mr

Craig's letters to her. He also said that Mr Craig had sent sexually explicit text messages to Ms MacGregor and claimed that he had copies of these.

[60] One of the persons to whom Mr Williams conveyed these things, directly or indirectly, was the defendant, Mr Stringer. Mr Stringer was at that time a member of the Board of the Conservative Party.

[61] Following these disclosures, Mr Craig agreed, on 19 June 2015, to stand down as Party leader to enable the Board to undertake an investigation. The same day, Mr Williams sent a draft blog post to Cameron Slater for publication on Mr Slater's *WhaleOil* website. This draft contained allegations of sexual harassment by Mr Craig (including inappropriate touching) and stated a pay-out had been made to a former staff member. Without Ms MacGregor's knowledge or consent, Mr Williams sent Mr Slater copies of some of Mr Craig's communications with Ms MacGregor. This blog was then published on the *WhaleOil* website.

[62] On 22 June 2015, Mr and Mrs Craig gave a press conference in which Mr Craig denied he had sexually harassed Ms MacGregor.

[63] Mr Slater subsequently published a number of further statements about Mr Craig, some of which were instigated or drafted by Mr Williams. Mr Slater published these statements on the *WhaleOil* website and various other media platforms. The statements included that Mr Craig had sexually harassed Ms MacGregor, sent her numerous "dirty" sexually explicit text messages, paid her a large sum of money into six figures to settle her claims and seriously sexually harassed a woman other than Ms MacGregor.

[64] Mr Stringer published similar allegations as well as allegations of financial misconduct and electoral fraud. Mr Stringer's allegations were published on his own blog site *CoNZervative*, through various media and in emails. Mr Stringer was also one of Mr Slater's sources of information for his *WhaleOil* website.

[65] On 29 July 2015, Mr Craig held a press conference and announced he intended to "fight back" against what he described as "the Dirty Politics Brigade" who had been

“running a defamatory strategy” against him. He provided media representatives with copies of a 12-page booklet entitled “*Dirty Politics Hidden Agendas*”. He said he was preparing separate defamation claims against Mr Williams, Mr Stringer and Mr Slater. He said they had mounted a “campaign of defamatory lies” against him including that he had sexually harassed one or more persons, made pay-outs to silence supposed victims and sent sexually explicit text messages. Mr Craig subsequently arranged for copies of this booklet to be delivered to some 1.6 million homes throughout New Zealand.

Mr Craig sues Mr Stringer for defamation

[66] Mr Craig commenced this proceeding in September 2015. He claimed that Mr Stringer had defamed him by publishing statements that alleged, among other things, 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.

[67] Mr Craig’s claim included a claim for aggravated damages, alleging that Mr Stringer had published the statements with flagrant disregard for Mr Craig’s rights.

[68] Mr Stringer admitted he had published most of the statements. He denied that the statements bore some (but not all) of the defamatory meanings alleged by Mr Craig. His primary defences were affirmative, including that the statements were true and that they were his honest opinion.

[69] I deal with the details of Mr Craig’s claim and Mr Stringer’s defence, and the issues that arise from them, later. Before doing so, it is necessary to recount aspects of the course of this proceeding and of some related proceedings.

A settlement, a recall, and a strike out

[70] This proceeding was settled (or so it was thought at the time) at a judicial settlement conference held on 30 January 2017. The settlement was reflected in a judgment delivered by Associate Judge Osborne on 31 January 2017.¹ The operative terms of the judgment were in consent orders:

[2] I order by consent:

- (a) There is judgment for [Mr Craig] against [Mr Stringer] in relation to the following publications alleging:
 - (i) that [Mr Craig] sexually harassed Rachel McGregor [sic];
 - (ii) that [Mr Craig] sexually harassed another woman or other women;
 - (iii) that [Mr Craig] has been fraudulent in his business dealings; and
 - (iv) that [Mr Craig] committed electoral fraud.
- (b) [Mr Craig's] claims are otherwise dismissed.

[71] Subsequently, Mr Stringer found that Mr Craig had failed, in a list of documents that he had verified in advance of the judicial settlement conference, to discover a relevant document. The document was the 7 February 2012 letter from Mr Craig to Ms MacGregor.² Having become aware of this letter, Mr Stringer applied to recall the consent judgment.

[72] Mr Stringer's recall application was determined by Associate Judge Osborne in a judgment dated 19 December 2017.³ The Judge found that the letter contained material from which conclusions could be drawn as to the nature of Mr Craig and Ms MacGregor's relationship and on which Mr Craig might be cross-examined.⁴ The Judge was satisfied that Mr Stringer ought not to be held to account through the consent judgment to the extent the judgment contained concessions on the part of Mr Stringer "on matters of which he was not fully informed by reason of a failure of

¹ *Craig v Stringer* [2017] NZHC 50.

² See [23] of this judgment above.

³ *Craig v Stringer* [2017] NZHC 3221.

⁴ At [47].

discovery”.⁵ The Judge ruled that there would no longer be judgment for Mr Craig “in relation to the publication alleging that Mr Craig sexually harassed Ms MacGregor”.⁶ This meant the terms of the judgment dismissing Mr Craig’s claims needed to be altered so that there was “no longer a conclusion in relation to that particular allegation”.⁷ The Judge said it would be “for Mr Craig to decide whether to discontinue that single, remaining aspect of his claims”.⁸

[73] The Judge therefore recalled the judgment. He amended the operative terms of the judgment to read:⁹

I order:

- (a) There is judgment for [Mr Craig] against [Mr Stringer] in relation to the following publications alleging:
 - (i) [Mr Craig] sexually harassed one or more women other than Rachel MacGregor;
 - (ii) that [Mr Craig] has been fraudulent in his business dealings; and
 - (iii) that [Mr Craig] committed electoral fraud.
- (b) [Mr Craig’s] claims, save his claims in relation to publications alleging that [Mr Craig] sexually harassed Rachel MacGregor, are otherwise dismissed.

[74] Later, a dispute arose between the parties as to the effect of the Judge’s recall judgment. Mr Stringer contended that the judgment prevented Mr Craig from suing for defamatory meanings other than the meaning that Mr Craig sexually harassed Ms MacGregor. Mr Craig contended that the judgment also allowed the pleading of other defamatory meanings, so long as those meanings were based on or related to the allegation that Mr Craig sexually harassed Ms MacGregor.

[75] This dispute manifested itself in an application that Mr Stringer made to strike out parts of Mr Craig’s fourth amended statement of claim, on the ground that those parts had already been determined by the recall judgment. I determined that

⁵ At [49].

⁶ At [50].

⁷ At [50].

⁸ At [50].

⁹ At [60].

application, largely in Mr Stringer’s favour, in a judgment dated 29 October 2021.¹⁰ I held that the effect of the recall judgment was that Mr Craig could only pursue claims:¹¹

- (a) in relation to publications by Mr Stringer that (according to Mr Craig’s pleading) meant that Mr Craig sexually harassed Ms MacGregor; and
- (b) only to the extent of that pleaded meaning.

[76] This was subject to the gloss that the pleaded meaning did not have to be precisely “Mr Craig sexually harassed Ms MacGregor”. It could include a pleaded meaning to the same effect. I noted, for example, that some of the pleaded meanings were that “Mr Craig molested Ms MacGregor”, that “Mr Craig harassed Ms MacGregor by sending her love poems, cards, and SXT messages that were unwanted”, and that “Mr Craig lied when denying he had sexually harassed Ms MacGregor”.¹² I said these were all to the same effect as “Mr Craig sexually harassed Ms MacGregor”.¹³

[77] I struck out from Mr Craig’s then statement of claim a number of allegations Mr Stringer had objected to that I found went beyond what Mr Craig was allowed to plead against Mr Stringer. I noted that my judgment dealt only with the objections raised by Mr Stringer and that there were other pleaded meanings in Mr Craig’s statement of claim that were outside the scope permitted by the recall judgment.¹⁴

Other defamation proceedings, and a (temporary) stay of this proceeding

[78] Five other defamation proceedings arose out of the events described in the factual background. Mr Craig brought three other proceedings: one each against Mr Williams, Mr Slater and Ms MacGregor (who responded with a counterclaim alleging that Mr Craig had defamed her). Two proceedings were brought against Mr Craig: one by Mr Williams and one by Mr Stringer.

¹⁰ *Craig v Stringer* [2021] NZHC 2906.

¹¹ At [43].

¹² At [44].

¹³ At [44].

¹⁴ At [105].

[79] It is necessary to say something about how the other proceedings were determined or resolved. I begin with an outline of how those proceedings stood in May 2019:

- (a) *Williams v Craig*. Mr Williams filed this in August 2015. There was a jury trial in September 2016. The jury returned verdicts in Mr Williams' favour, awarding damages of \$1.27 million. On 12 April 2017, the trial Judge, Katz J, made a conditional order setting aside the jury's verdicts and ordering a retrial on liability and damages.¹⁵ Mr Williams appealed. In 2018, the Court of Appeal allowed his appeal in part, restoring the verdict on liability and confining any retrial to damages.¹⁶ In April 2019, the Supreme Court allowed Mr Craig's appeal and ordered a retrial on both liability and damages.¹⁷ The parties subsequently settled the proceeding.
- (b) *Craig v Slater*. Mr Craig filed this in August 2015. Mr Craig claimed, among other things, that Mr Slater had defamed him by publishing statements that he had sexually harassed Ms MacGregor. Mr Slater counterclaimed. There was a Judge-alone trial in May and June 2017. In October 2018, Toogood J found that Mr Slater was liable to Mr Craig for the untrue statements that Mr Craig had financially pressured Ms MacGregor to sleep with him and had sexually harassed at least one other victim.¹⁸ Mr Craig's other claims were dismissed, Toogood J finding that Mr Craig had engaged in moderately serious sexual harassment of Ms MacGregor.¹⁹
- (c) *Craig v MacGregor*. Mr Craig filed this in November 2016 but did not serve it until Ms MacGregor found out about the claim and filed a defence and counterclaim in August 2017. There was a Judge-alone trial before Hinton J in September and October 2018. A key issue was

¹⁵ *Williams v Craig* [2017] NZHC 724, [2017] 3 NZLR 215 at [112].

¹⁶ *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1.

¹⁷ *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457.

¹⁸ *Craig v Slater* [2018] NZHC 2712.

¹⁹ At [443] and [457].

whether Mr Craig had sexually harassed Ms MacGregor. In May 2019, Hinton J's judgment was reserved.

- (d) *Craig v Williams*. Mr Craig filed this in May 2017 (after revelations in the *Williams v Craig* trial). It was settled along with the *Williams v Craig* proceeding.

[80] By May 2019, then, there had been three defamation trials: *Williams v Craig*, *Craig v Slater*, and *Craig v MacGregor*. Ms MacGregor gave evidence at each trial. She was called by Mr Williams as a witness at the first trial, by Mr Slater in the second, and chose to give evidence in the third. Her evidence at each trial was directed primarily at whether Mr Craig had sexually harassed her.

[81] As at May 2019, this proceeding and Mr Stringer's proceeding against Mr Craig (*Stringer v Craig*) were scheduled to be heard together, at a trial commencing in August 2019. At trial, a central issue would be whether Mr Craig had sexually harassed Ms MacGregor. Palmer J was to be the trial Judge. His Honour was concerned that aspects of the two proceedings might be the subject of an estoppel or be an abuse of process. He invited and heard submissions on that possibility.

[82] In a judgment delivered in June 2019, Palmer J found that, although the other defamation proceedings could not give rise to cause of action estoppel or issue estoppel, it would be an abuse of process for Mr Craig to litigate the issue of whether he had sexually harassed Ms MacGregor a further time by pursuing his defamation proceeding against Mr Stringer.²⁰ His Honour reasoned:

[33] The nature of defamation law means that, on each occasion, to defend themselves, the defendants must call evidence of whether Mr Craig sexually harassed Ms MacGregor. The best evidence is that of Ms MacGregor herself. Mr Craig would have the opportunity to cross-examine her. Mr Stringer has indicated he does not wish to call Ms MacGregor as a witness in these proceedings, for the understandable reason of not wanting to put her through a trial for a fourth time. But, by doing so, Mr Stringer puts himself at a significant disadvantage in defending the claim that he lied when he said Ms MacGregor was sexually harassed, on the basis that was true or not materially different from the truth. It cannot be right that a litigant can sue any number of defendants in defamation, in separate proceedings over a period of years, for publishing substantially the same allegations concerning sexual

²⁰ *Craig v Stringer* [2019] NZHC 1363, [2019] 3 NZLR 743.

harassment of a person, requiring each of those defendants to call evidence about that alleged harassment in order to defend themselves.

[34] Enough is enough. Allowing Mr Craig to pursue the defamation proceeding he initiated against Mr Stringer would either require Ms MacGregor to give evidence and be cross-examined for a fourth time about whether Mr Craig sexually harassed her or would put Mr Stringer at a significant disadvantage in his defence. It would be oppressive to either Ms MacGregor or Mr Stringer. Mr Craig has had, and continues to have, plenty of access to justice on this subject, in other proceedings. I consider it would be an abuse of the High Court's processes for Mr Craig to be able to pursue his defamation proceeding against Mr Stringer.

[83] Accordingly, Palmer J made an order staying this proceeding indefinitely. He also stayed that part of Mr Stringer's proceeding against Mr Craig that raised whether Mr Craig had sexually harassed Ms MacGregor.²¹

[84] Mr Craig appealed Palmer J's decision staying this proceeding. On 26 June 2020, the Court of Appeal allowed Mr Craig's appeal.²² The Court said Palmer J was plainly right to accept that there was no cause of action estoppel or issue estoppel.²³ As to abuse of process, the prospect of Ms MacGregor being oppressed by the proceeding was minimal (given that neither Mr Craig nor Mr Stringer intended to call her as a witness), and could not justify the proceeding being halted.²⁴ As to oppression of Mr Stringer:²⁵

However, to address the Judge's concern that Mr Stringer would be disadvantaged unless he called Ms MacGregor, Mr Craig formally advised following the hearing of the appeal that he would agree to her evidence in the *Williams, Slater and MacGregor* proceedings being admitted into evidence in the *Stringer* proceeding. This concession removes any potential for prejudice to Ms MacGregor, or unfairness to Mr Stringer.

[85] As I explain below, Ms MacGregor's evidence in the three earlier trials was admitted into evidence in this proceeding.

[86] Developments in the other proceedings after Palmer J's June 2019 judgment were as follows:

²¹ At [67].

²² *Craig v Stringer* [2020] NZCA 260.

²³ At [23].

²⁴ At [32].

²⁵ At [32].

- (a) In *Craig v Slater*, Mr Craig appealed against Toogood J’s judgment. The Court of Appeal delivered judgment in July 2020. The Court allowed Mr Craig’s appeal in part, but upheld Toogood J’s finding that Mr Craig had engaged in moderately serious sexual harassment of Ms MacGregor.²⁶
- (b) In *Craig v MacGregor*, Hinton J delivered judgment in September 2019. Her Honour found that Mr Craig had sexually harassed Ms MacGregor.²⁷ Mr Craig appealed, challenging that finding. In May 2021, the Court of Appeal dismissed Mr Craig’s appeal.²⁸ The Court declined to revisit its finding in *Craig v Slater* that Mr Craig had sexually harassed Ms MacGregor. The Court acknowledged that no issue estoppel arose from that judgment. However, in play was the principle that the Court of Appeal follows its own decisions (save in four exceptional circumstances, none of which applied). This meant that Mr Craig would need to point to “substantially different evidence, on which the prior decision might be distinguished, to be entitled to a different conclusion”.²⁹ Mr Craig had failed to do so.³⁰
- (c) In *Stringer v Craig*, Mr Stringer did not appeal against Palmer J’s June 2019 judgment that stayed the part of his proceeding that raised the issue of whether Mr Craig had sexually harassed Ms MacGregor. Accordingly, the trial did not address that issue. Palmer J delivered judgment in April 2020, finding that all of Mr Stringer’s claims failed.³¹ Mr Stringer appealed. In May 2022, the Court of Appeal dismissed Mr Stringer’s appeal.³² The Court of Appeal’s judgment was delivered after the trial of this proceeding. I received supplementary submissions from the parties (and counsel assisting, Mr Akel) on the effect of the Court’s judgment on this proceeding.

²⁶ *Craig v Slater* [2020] NZCA 305 at [89].

²⁷ *Craig v MacGregor* [2019] NZHC 2247 at [176].

²⁸ *Craig v MacGregor* [2021] NZCA 156.

²⁹ At [24].

³⁰ At [25].

³¹ *Stringer v Craig* [2020] NZHC 644.

³² *Stringer v Craig* [2022] NZCA 168.

Implications for the trial of this proceeding

[87] The events recounted in the last two sections of this judgment had four implications for the trial of this proceeding.

[88] First, as a result of Associate Judge Osborne’s recall judgment and my judgment on Mr Stringer’s strike-out application, by the time this proceeding came to trial only one aspect of Mr Craig’s claim remained: the claim that Mr Stringer had defamed Mr Craig by alleging that Mr Craig had sexually harassed Ms MacGregor. This was subject to the gloss that the pleaded meaning did not have to be precisely “Mr Craig sexually harassed Ms MacGregor”; it could include a pleaded meaning to the same effect.

[89] Secondly, in accordance with what the parties told Palmer J when his Honour was considering whether to stay this proceeding, neither Mr Craig nor Mr Stringer called Ms MacGregor as a witness. Instead, Mr Craig (in keeping with his concession to the Court of Appeal) and Mr Stringer agreed that Ms MacGregor’s evidence in the three earlier trials could be admitted into evidence in this proceeding, despite her not being a witness. This evidence consisted of her briefs together with very lengthy oral examination in each trial.³³ Under s 9 of the Evidence Act 2006, the Judge “may”, with the agreement of all parties, admit evidence that is otherwise inadmissible. A trial Judge can, therefore, decide not to admit evidence despite the parties’ agreement. It was unsatisfactory to receive Ms MacGregor’s evidence in this way, given its relevance to the primary issue before me. However, the parties had reached their agreement after giving the matter serious consideration, and the Court of Appeal had found that having Ms MacGregor’s earlier evidence admitted into evidence would remove any potential for unfairness to Mr Stringer. In those circumstances, I considered that admitting this evidence would not cause any unfairness to either party and therefore that the evidence should be admitted.

³³ The common bundle of documents prepared for this trial included a brief of evidence of Ms MacGregor in *Craig v Slater* dated April 2017. However, it is evident from the notes of evidence in that trial that all of Ms MacGregor’s evidence was led and that she did not read that brief of evidence. I therefore ignored that brief.

[90] Thirdly, it was common ground, given the Court of Appeal’s decision in *Craig v MacGregor*, that Mr Craig would need to point to “substantially different evidence, on which the prior decision[s] might be distinguished, to be entitled to a different conclusion” on whether he sexually harassed Ms MacGregor.³⁴

[91] Fourthly, Mr Craig submitted that Associate Judge Osborne’s recall judgment and Palmer J’s judgment in *Stringer v Craig* gave rise to some issue estoppels against Mr Stringer. Mr Craig said that the findings of Palmer J from which some of the estoppels arose were not disturbed by the Court of Appeal. The alleged estoppels related to Mr Craig’s claim for aggravated damages and to some of Mr Stringer’s affirmative defences.

The pleadings at trial

[92] Mr Craig’s claim, as pursued at trial, is in a fifth amended statement of claim dated 14 November 2021. Mr Craig prepared that amended claim after (and in an attempt to reflect) my judgment that struck out parts of his fourth amended statement of claim.³⁵ Mr Stringer responded with a seventh amended statement of defence dated 20 February 2022. Mr Craig filed a reply to that defence dated 7 March 2022. Mr Craig also filed, on 14 February 2022, amended notices under ss 39 and 41 of the Defamation Act 1992.

[93] Mr Craig alleges that Mr Stringer published 17 separate defamatory statements. Mr Craig pursues separate causes of action for each publication.

[94] I set out below the publications on which Mr Craig sues, in the (non-chronological) order in which they appear in his claim. Except where noted below, Mr Stringer accepts he published the statements. I also outline the extent to which Mr Stringer disputes that the statements bore meanings that were defamatory of Mr Craig. I then identify some matters that are common to more than one of Mr Craig’s causes of action (such as his claim for aggravated and punitive damages, and Mr Stringer’s affirmative defences).

³⁴ *Craig v MacGregor* [2021] NZCA 156 at [24].

³⁵ *Craig v Stringer* [2021] NZHC 2906, discussed above in this judgment at [75]–[77].

Publication 1: The Nation interview on 20 June 2015

[95] On Saturday 20 June 2015, Mr Stringer was interviewed by Lisa Owen on TV3's programme *The Nation*. Mr Craig says the context in which *The Nation* interview was published included an interview, the previous day, of Mr Slater (publisher of the *WhaleOil* website) by Larry Williams on Newstalk ZB. In that interview, Mr Slater made statements about Mr Craig, including that:

- (a) Mr Craig had settled with a former staff member for a large sum of money, which Mr Slater had been told ran into six figures.
- (b) Mr Slater had copies of sext messages that Mr Craig had sent.
- (c) "You don't do six figure sums for settlement of employment matters ...".
- (d) "The staff member concerned rebuffed the approaches, but it was harassment of a sexual nature."
- (e) "[T]he documents and the evidence is clear. There's no way he can deny it".

[96] Mr Stringer does not dispute that Mr Slater made these statements, but he disputes that they form part of the context of his interview on *The Nation*.

[97] Mr Craig sues on the following statements in *The Nation* interview:³⁶

- (1) Lisa Owen: "Yeah, you want to get some facts on the table..."
John Stringer: "I am sick of the confidentiality being used to cover up abhorrent behaviour..."
- (2) John Stringer: Yes, I actually wrote to the Party about a year ago concerned about this. This has come up a number of different times and it's time that this got spoken about openly because the Board has confronted Colin about this matter which has been a Damocles sword hanging over us for quite some time and he has lied to us about the

³⁶ For each publication, the alleged statements are as set out in Mr Craig's fifth amended statement of claim, which included statements from the interviewers to provide context to Mr Stringer's statements.

nature of this matter. And we now find subsequently with the revelations coming out which is why this Board meeting was called. We wanted to hear what he had to say. It should have been discussed behind closed doors and now we find these allegations out and what we were told continually by him is not in fact true.

- (3) Lisa Owen: Ok, so not a relationship as such. So are you saying sexual harassment?

John Stringer: “Well that’s one of the accusations that I’d like to hear Colin explain because that’s what a number of people are saying. I don’t have any evidence of that myself but there is a lot of documentary evidence now out there...”

- (4) Lisa Owen: Ok, well let’s put the media reporters to one side. You’re saying though, you yourself were uncomfortable with that relationship. There were issues so you wrote about it.

John Stringer: “I did. I wrote formally to Colin through the CEO of the Party.”

Lisa Owen: “And you raised it?”

John Stringer: “Yes.”

- (5) “We’ve got documentation of moral infractions by the Leader of our party...”

- (6) Lisa Owen: “But just to be clear, you were so concerned about this relationship and what might be going on that the Party instituted some kind of chaperone, didn’t you?”

“Yes, we put a chaperone system in place”.

- (7) “... and again we come back to that problem of untruths.”

[98] Mr Craig alleges Mr Stringer’s statements bore defamatory meanings, namely:

- (a) Mr Craig sexually harassed Ms MacGregor.
- (b) There is a lot of documentary evidence that Mr Craig sexually harassed Ms MacGregor.

[99] Mr Stringer denies the statements had these meanings. He also denies that the meanings were defamatory of Mr Craig.

Publication 2: CTV interview on 6 July 2015

[100] On 6 July 2015, Mr Stringer was interviewed by Chris Lynch on Canterbury Television (**the CTV interview**). Mr Craig pleads that Mr Stringer's Newstalk ZB interview and *The Nation* interview formed part of the context in which the CTV interview was published. Mr Stringer denies this.

[101] The CTV interview included these statements:

- (1) "Well Colin Craig's not being truthful. There are a number of falsehoods being perpetrated. One of the really significant things is that Colin Craig has been suspended from the party yet is using the confidential party database to write letters to members defaming me and others. He's done that three times now and that will be subject to a complaint to the privacy commission."
- (3) "...I mean there are some other king hits to come yet and I wanna send a challenge out to the people still supporting him, after all the allegations there is more to come. Colin Craig has got more to hide, it's coming out and it will come out ...11 of Colin's governing officials have resigned because of his behaviour and because we've seen the documented allegations about him that are still to come out. That should send warning bells and red flags to the party membership."
- (4) [Chris Lynch] "You're saying tonight there are more allegations [John Stringer] "there are" [Chris Lynch] serious allegations against Colin Craig to come out?"

[John Stringer] "Yeah several Board members have seen those documented, that's why they resigned."

[102] Mr Craig alleges Mr Stringer's statements bore defamatory meanings, namely:

- (a) Mr Craig sexually harassed Ms MacGregor.
- (b) Mr Craig lied about sexually harassing Ms MacGregor.

[103] Mr Stringer denies the statements had these meanings. He also denies that the meanings were defamatory of Mr Craig (pleading that Mr Craig "did sexually harass Rachel MacGregor").

Publication 3: Morning Report interview on 23 June 2015

[104] On 23 June 2015, Mr Stringer was interviewed by Susie Ferguson on Radio New Zealand's programme *Morning Report*. Mr Craig pleads that the interview included:

- (1) Susie Ferguson: "Now to the Conservative Party and the Board Member John Stringer says Colin Craig could have paid out as much as \$100,000 to his former media advisor."

John Stringer: "Colin Craig needs to (I think) withdraw and stop making statements because we can't trust anything he says".

- (2) "Colin seems to be manipulating us and everybody around him with half-truths and misdirections...And then we had the afternoon press conference, the second one, and he admitted everything".

- (3) Susie Ferguson: "...do you think he's acting in a respectful way?"

John Stringer: "I don't, she is the victim in all this she hasn't done anything wrong and he is implicating her in some sort of untoward way by association by using words like "we" and not explaining what he means and that's very unfair on her and I think he owes her an apology and I've also asked for him to write to the Board and apologise".

- (4) "Well from the Board's perspective it's as clear as mud we've heard about \$16,000 from Colin, then we've heard about \$36,000 then we were aware through another Board member who sighted the settlement agreement and was shown it by Colin before all this blew up of approximately \$50,000 and we also have a documentation that apparently it is a six figure pay out and was paid as a lump sum. So we've got four or five different amounts here, we're not sure what was paid out and for what, and really the more he explains the more confused it becomes."

- (5) Susie Ferguson: "The six figure sum, do you think that's credible?"

John Stringer: "Well I've been told by another media outlet that they can prove that and that it was paid as one lump sum".

[105] Mr Stringer denies that these statements were made in the *Morning Report* interview. He says there are some inaccuracies in Mr Craig's pleading. Mr Stringer relies on the interview in its entirety.

[106] Mr Craig alleges Mr Stringer's statements were defamatory, as they meant:

- (a) There is a substantial body of evidence that Mr Craig sexually harassed Ms MacGregor.
- (b) There is a settlement agreement which shows that Mr Craig paid Ms MacGregor at least \$50,000 to settle her sexual harassment claim.
- (c) There are other reliable documents which show that Ms MacGregor received “a six figure pay out” from Mr Craig to settle her sexual harassment claim.

[107] Mr Stringer admits the first meaning but denies the others. He denies that any of the meanings were defamatory of Mr Craig.

Publication 4: Mr Stringer’s email of 19 June 2015

[108] On 19 June 2015, Mr Stringer sent an email to present or former members of the Board of the Conservative Party with the subject-line “Sexual Allegations vs Colin”. Mr Craig alleges that Mr Stringer later sent, authorised or instigated sending that email to the *WhaleOil* website. Mr Stringer accepts that he sent the email to members of the Board but denies sending it to the *WhaleOil* website.

[109] The email included these statements:

- (1) “Colin is facing further serious sexual allegations which have already begun to appear in the media today. There are more.”
- (2) “...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.”
- (3) “a man who is morally bankrupt and has lied to us as a Board for months and months.”
- (4) “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 media outlets and from numerous sources. His large payout to one victim is already being discussed.”
- (5) “as his victims begin to speak out.”

[110] Mr Craig alleges these statements were defamatory, as they meant:

- (a) Mr Craig sexually harassed Ms MacGregor, in a very serious manner, for well over a year.
- (b) Mr Craig sent Ms MacGregor sexually explicit text messages which were unsolicited and unwanted.

[111] Mr Stringer admits the meanings but denies they were defamatory of Mr Craig.

Publication 5: Stuff interview on 27 June 2015

[112] On 27 June 2015, Mr Stringer was interviewed by the media organisation Stuff. Mr Craig alleges that during the interview Mr Stringer made these statements:

- (1) "...the lies, the deceit, the false information...the guy's lying through his teeth and it's just shocking".
- (2) "There is no question he perhaps used his position of influence and authority over her to pester her. My understanding is that she rebuffed that on the basis that he was married because she is a good Christian girl."
- (3) [Back to the allegations of sleaze]: "There were poems being written, there were letters being written, there were sexts being sent. There are folders full of this stuff. We were told it was unsolicited and unwanted and he kept persisting".
- (4) That the "romantic traffic was entirely one-way".
- (5) [The poem seemed silly but relatively innocent. It spoke of naïve infatuation rather than filth and tawdriness]. "That's just an opening shot from Whale Oil. They've told me they've got nuclear bombs to drop this week." A "direct source" apparently handed this material to Whale Oil blogger Cameron Slater.
- (6) That "[Rachel MacGregor] is the victim in all this".

[113] Mr Stringer admits making some of these statements but denies making others.

[114] Mr Craig alleges these statements were defamatory, as they meant:

- (a) Mr Craig sexually harassed Ms MacGregor.
- (b) There were folders full of evidence which proved this sexual harassment.

- (c) Mr Craig persistently sent Ms MacGregor sexually explicit text messages (that were unsolicited and unwanted).
- (d) Mr Craig victimised Ms MacGregor.

[115] Mr Stringer admits the last meaning but denies the others. He denies that any of the meanings were defamatory.

Publication 6: Mr Stringer's blog post on 25 June 2015

[116] On 25 June 2015, Mr Stringer published a blog post entitled "3. Untruths. Behind the Scenes of the Colin Craig Catastrophe". He also republished *The Nation* interview in this blog post by linking both a video and a transcript of that interview.

[117] In that blog post, Mr Stringer made these statements:

- (1) "Colin Craig does not always tell the truth. This is proveable [sic], and so I stand by it."
- (2) "He has now admitted to the behavioural allegations I cited."
- (3) "Most significantly his repeated lies over many months when we asked him about the press secretary matter. He lied to us, over and over. We said are you sure? He said 'absolutely'."
- (4) "Some of us were shown a settlement (with figures missing). Misdirection. It was a half-truth; only part of the settlement. This was the breaking point for many of us: his litany of lies."
- (5) "I have watched Colin Craig on TV, on radio and in the press tell lie after bald-faced lie. Not nuanced differences or possible interpretations, things that he knows are absolutely untrue and says them anyway."
- (6) "He appears to have no shame or contrition over the scurrilous accusations to which he's now admitted."
- (7) "We all tell white lies, that's human. But I know for a fact that Colin has led a double life and this nonsense has been going on for years."
- (8) The statements in *The Nation* interview.

[118] Mr Craig alleges these statements were defamatory, as they meant:

- (a) Mr Craig admitted he had engaged in scurrilous behaviour with Ms MacGregor which was so abhorrent that the Conservative Party had to put chaperones in place.
- (b) Mr Craig admitted he had sent Ms MacGregor “dirty” sexually explicit text messages, which were unsolicited and a form of sexual harassment.
- (c) Mr Craig paid a large sum to Ms MacGregor to settle her sexual harassment claim.

[119] Mr Craig also alleges that, by republishing the transcript of *The Nation* interview, Mr Stringer conveyed the meanings pleaded in the first cause of action.

[120] Mr Stringer denies all these meanings and denies that they were defamatory.

Publication 7: Mr Stringer’s blog post on 30 June 2015

[121] On 30 June 2015, Mr Stringer published a blog post entitled “11. Christine Rankin. Behind the Scenes of the Colin Craig Catastrophe”. In that blog post, Mr Stringer made these statements:

- (1) “... But we had no hard evidence, although Colin was talked to. Then the several media got hold of it all (“folders full of the stuff”) from multiple sources ...”
- (2) “I’ve had some of Colin’s SXTs (sexual texts) read to me directly by the source over the phone.”

[122] Mr Craig alleges Mr Stringer’s statements bore defamatory meanings, namely:

- (a) Mr Craig sexually harassed Ms MacGregor which is evidenced by folders full of material from multiple sources.
- (b) Mr Craig sent Ms MacGregor sexually explicit text messages, which were unsolicited and a form of sexual harassment.

[123] Mr Stringer denies these meanings and denies that they were defamatory.

Publication 8: Mr Stringer's blog post on 1 July 2015

[124] On 1 July 2015, Mr Stringer published a blog post entitled "15. 20 Questions for Colin Craig. Behind the Scenes of the Colin Craig Catastrophe". In that blog post, Mr Stringer made these statements:

- (5) "15. If there was no veracity to the Sexual Harassment Claim filed against you by a female employee, why did you make a large payout to the claimant and why was it necessary for all details to be hidden by a strict confidentiality agreement?"
- (6) "16. Why did you cover up and misdirect the Board as to the nature of this payout, when it took place, what it was for, and how much was involved, if you are innocent of all claims?"

[125] Mr Craig alleges these statements were defamatory as they meant that he paid a large sum to Ms MacGregor to settle her sexual harassment claim. Mr Stringer denies this meaning and denies the meaning was defamatory.

Publication 9: Mr Stringer's blog post on 3 July 2015

[126] On 3 July 2015, Mr Stringer published a blog post entitled "16. Colin's strange defaming letter. Behind the Scenes of the Colin Craig Catastrophe". In that blog post, Mr Stringer made these statements:

- (1) "... or there was no "inappropriate behaviour," or it wasn't "sexual harassment," and there are no more sexual harassment claims coming, then I guess that's correct, isn't it?"
- (2) "... Even now, after all the admissions and documented accusations ..."

[127] Mr Craig alleges these statements were defamatory as they meant that he sexually harassed Ms MacGregor. Mr Stringer denies this meaning and denies the meaning was defamatory.

Publication 10: Mr Stringer's blog post on 9 July 2015

[128] On 9 July 2015, Mr Stringer published a blog post entitled "30. Hooton & the Conservative's Future. Behind the Scenes of the Colin Craig Catastrophe". In that blog post, Mr Stringer made these statements:

- (1) “to correct Colin Craig’s blatant public untruths following his extraordinary “resignation”.”
- (2) “... even above all the workplace sexual harassment issues ...”
- (3) “... in the wake of documented allegations of impropriety by CC caused me no end of mayhem.”

[129] Mr Craig alleges these statements were defamatory as they meant:

- (a) He sexually harassed Ms MacGregor.
- (b) There is ample documentary evidence proving that he sexually harassed Ms MacGregor.

[130] Mr Stringer denies these meanings and denies the meanings were defamatory.

Publication 11: Mr Stringer’s blog post on 21 July 2015

[131] On 21 July 2015, Mr Stringer published a blog post entitled “37. Craig at Loggerheads over Confidentiality. Behind the Scenes of the Colin Craig Catastrophe”. In that blog post, Mr Stringer made these statements:

- (2) “He’s also victimising her over his claim, that “accusations of sexual harassment have been withdrawn” which suggests Rachel made it all up, or backed down, or the “inappropriate [sic] behaviour” was consensual [sic]. Either way, it’s all being spun Colin’s way, and Rachel just keeps on being victimised ...”
- (3) “Craig denies sexual harassment. He does this because I think in his own mind, he doesn’t believe he harassed her, when the evidence suggest otherwise. Perpetrators of such things (if that is what he is) rarely do.”
- (4) “... why did you make a large payout to the claimant ...”
- (5) “Disclosure, if it ever comes – and probably only after Colin pays a second healthy cheque to Rachel – will shine some light on the smoke and mirrors play over was it/was it not, “sexual harassment.” That is where the Bill Clinton semantics start to kick in. Colin, who sees himself like a JFK, is rather more like a disgraced Bill Clinton.”

[132] In the blog post, Mr Stringer also provided a link to his 1 July 2015 blog post.

[133] Mr Craig alleges these statements were defamatory as they meant:

- (a) He sexually harassed Ms MacGregor.
- (b) He sexually harassed Ms MacGregor so seriously that he settled her sexual harassment claim by paying her a “large payout”.
- (c) Mr Craig constantly victimises Ms MacGregor.

[134] Mr Stringer denies these meanings and denies they were defamatory.

Publication 12: Mr Stringer’s blog post on 2 August 2015

[135] On 2 August 2015, Mr Stringer published a blog post entitled “53. CC to Run For AKL Mayor? Behind the Scenes of the Colin Craig Catastrophe”. In that blog post, Mr Stringer made these statements:

- (1) “You keep saying they are “allegations.” People are simply reacting to WHAT YOU HAVE DONE and how you’re covering it up.”
- (2) “You’ve then lied continually about the details, so people like me, in positions of official Party responsibility, were forced to speak out.”

[136] Mr Craig alleges these statements were defamatory as they meant:

- (a) The meanings pleaded for Publications 1 to 11 are all true.
- (b) He had covered up abhorrent and morally bankrupt behaviour (including sexual harassment and victimisation of Ms MacGregor).

[137] Mr Stringer denies these meanings and denies they were defamatory.

Publication 13: Mr Stringer’s blog post on 13 August 2015

[138] On 13 August 2015, Mr Stringer published a blog post entitled “62. Was it “Sexual Harassment”? Behind the Scenes of the Colin Craig Catastrophe”. Mr Craig alleges that in that blog post Mr Stringer made these statements:

- (1) “Last year when we were becoming concerned about relations between the party leader and the press secretary, we learned of an explicit card (that is very sexual, I won’t say here what it said). It is

one of several documents written by Colin and now locked in a safe at a law firm in Auckland.”

- (2) “The Party CEO Christine Rankin confronted Colin directly about this. She said, “Did you write a card to [woman] that said [sexually explicit]?” He paused, thought, and then said “Card...? No, I did not.” Aware he was side-stepping, Christine asked him again directly, “Well, did you write that to [woman] in an email?” Again he paused, thinking... “Email...No, I did not.” Satisfied, Christine (who already had concerns, as did we all) let it go trusting Colin’s honesty. What she realises now, to her horror, is that it was a TXT, one of the alleged “SXTs” Colin wrote to a woman. He denied it twice, because technically it was a txt, not a card or an email [original emphasis].”
- (3) [Republishing a Tweet by Rachel MacGregor] “There was never a sexual relationship, nor was there consent for his inappropriate actions”
- (4) [Mr Stringer quoting himself]: “Well, its a bit like being half pregnant isn’t it...we’re getting in to a quagmire here of Bill Clinton-esque semantics ...a wider tragedy for the Craig family and the CP. CC needs to, I think, withdraw and stop making statements because we can’t trust anything he says.”
- (5) “There is lots more, about the alleged payout and the differing amounts from \$16,000, \$20,000, \$36,000 or a six-figure lump sum paid as one amount allegedly paid from Centurion. There’s testimony from various people about unwanted sxts; the unofficial chaperone system we put in place; that many of us felt Colin had abused his position as leader in an unbalanced power relationship with an employee involving financial dependency. Etc.”

[139] Mr Craig also alleges that in the blog post Mr Stringer republished in full the statements from *The Nation* interview and republished by hyperlink the statements made in the *Morning Report* interview.

[140] Mr Stringer admits making some of these statements in the blog post but denies making others.

[141] Mr Craig alleges these statements were defamatory as they meant:

- (a) He wrote a sexually explicit card to Ms MacGregor which was “very sexual” and which was locked in a safe at a law firm in Auckland.
- (b) He sent Ms MacGregor sexually explicit text messages, which were unsolicited and a form of sexual harassment.

- (c) He was the subject of a chaperoning arrangement put in place by the Conservative Party between him and Ms MacGregor.
- (d) He was guilty of sexually harassing Ms MacGregor and there is a lot of documentary evidence that proves this.
- (e) He paid a “six figure sum” to Ms MacGregor to settle a sexual harassment complaint and there is documentary evidence that proves this.
- (f) The meanings pleaded in relation to Publications 1 and 3.

[142] Mr Stringer denies most of these meanings. He denies that any of the pleaded meanings were defamatory.

Publication 14: Mr Stringer’s email of 11 October 2015

[143] On 11 October 2015, Mr Stringer sent an email to present or former members of the Board of the Conservative Party and to senior members of the Party with the subject-line “Fwd: A personal Letter from John (Kevin, Angela, Nathaniel)”. In the email, Mr Stringer made these statements:

- (1) “Colin has molested more than one woman”
- (2) “Colin did deliberately falsify his electoral returns, and others knew this and will testify to that.”
- (3) “Colin is embroiled in seven court cases, and has threatened more litigation to “shut down” accountability.”
- (4) “I have seen the evidence and there are now court papers and documents – I cannot share – that prove everything I’ve said above.”
- (5) “He oppresses, bullies and intimidates with his money.”

[144] Mr Craig alleges these statements were defamatory as they meant the allegations Mr Stringer made about Mr Craig in Publications 1 to 13 were provable facts and everything Mr Stringer said was true. Mr Stringer denies this meaning and denies it was defamatory.

Publication 15: Mr Stringer's email of 11 February 2016

[145] Mr Craig alleges that, on 11 February 2016, Mr Stringer sent an email to Thomas O'Rourke with the subject-line "Re: 2nd Question (Board)" which included these statements:

- (1) "1 There is documented Justice Dept Sexual Harassment Hearing (I know the hearing number and have the documents)"
- (2) "It has been going on for years" (Quote: member of the Craig family)"
- (3) "Colin has tried to portray one of his victims as "his mistress""
- (4) "11 there are the love letters; the poems; the cards; the SXTs which are locked in a safe at Kensington Swan;"
- (5) "One of them met with Brian and Laurence in June last year at their request (Brians's source) and showed them the dossier of love letters poems SXTs etc between CC and one of his victims"

[146] Mr Stringer denies that he sent that email. He says that, on 11 February 2016, Mr O'Rourke forwarded an email that Mr Stringer had sent to Mr O'Rourke on 8 February 2016. Mr Stringer denies that Mr O'Rourke's email included the alleged statements.

[147] Mr Craig alleges these statements were defamatory as they meant:

- (a) He sexually harassed Ms MacGregor for many years.
- (b) He victimised Ms MacGregor by trying to portray her as his mistress.
- (c) He harassed Ms MacGregor by sending her love poems, cards, and sext messages that were unwanted.

[148] Mr Stringer denies those meanings and denies they were defamatory.

Publication 16: Mr Stringer's email of 22 February 2016

[149] On 22 February 2016, Mr Stringer sent an email thread to present or former members of the Board of the Conservative Party and to senior members of the Party

with the subject-line “Christians Bulldogs”. In the email, Mr Stringer made this statement:

- (1) “CC who is a sexual harasser of female staff (and lies about it to us for years)”

[150] Mr Craig alleges the statement was defamatory as it meant he had sexually harassed Ms MacGregor for many years. Mr Stringer denies that meaning and denies the meaning was defamatory.

Publication 17: Mr Stringer’s email of 12 December 2015

[151] Mr Craig alleges that, on 12 December 2015, Mr Stringer sent an email to the *WhaleOil* website which included these statements:

- (1) “My ‘allegations are statement of fact’ that are supported by evidence and the testimony of many people that concur. I stand by this”
- (2) I have nothing to retract or apologise for. I stand by my statements of truth and fact.
- (3) I have not since then made ‘defamatory allegations’ against you, but have reiterated factual accounts and the concerns of many people. This is supported by documentary evidence and the testimony of many people. They cross-references and are unified.”
- (4) I look forward to a proceeding where all of these matters can be tabled openly, argued in detail, Helen heard from and questioned, many others heard from, and reported; so that the public and the media can determine the truth which is easily established.”

[152] Mr Stringer denies he sent the email and denies making the statements.

[153] Mr Craig alleges these statements were defamatory as they meant:

- (a) Mr Stringer’s allegations about Mr Craig made prior to December 2015 were all true and provable by the testimony of witnesses and documentary evidence.
- (b) Mr Craig had in fact sexually harassed Ms MacGregor for many years.

[154] Mr Stringer denies those meanings and denies they were defamatory.

Mr Craig's claim of loss or damage to his reputation

[155] Mr Craig claims that, as a result of each publication, he suffered reputational damage, was exposed to public hatred, ridicule and contempt, was brought into public disrepute and discredited generally, and is likely to continue to suffer loss and damage to his reputation. Mr Stringer denies all of this.

Mr Craig's claim for aggravated and punitive damages

[156] Mr Craig pleads that Mr Stringer published the various statements with flagrant disregard for Mr Craig's rights, warranting an award of aggravated and punitive damages. In particular, he says that Mr Stringer failed to apologise after being asked to, and that the publications were part of a long-running and determined campaign against Mr Craig. Mr Stringer denies all of this.

Mr Stringer's affirmative defences

[157] Mr Stringer pleads truth, honest opinion, qualified privilege and responsible communication on a matter of public interest.

[158] In his reply, Mr Craig:

- (a) Denies that the publications were true.
- (b) Denies that any publications were opinion. If they were opinion, he says that they were not honestly held opinions supported by true facts. Mr Craig's s 39 notice provides particulars.
- (c) Denies that the publications were published on an occasion of qualified privilege.
- (d) Denies that the publications were responsible (as defined in *Durie v Gardiner*).³⁷

³⁷ *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

Mr Craig raises an issue estoppel

[159] In his written opening, Mr Craig submitted that Associate Judge Osborne’s recall judgment in this proceeding and Palmer J’s judgment in *Stringer v Craig* had finally determined some issues between him and Mr Stringer. He submitted that the judgments therefore gave rise to some issue estoppels against Mr Stringer. The alleged estoppels related to Mr Craig’s claim for aggravated damages and to some of Mr Stringer’s affirmative defences.

[160] Mr Craig did not plead these estoppels. I saw no prejudice to Mr Stringer from the lack of pleading. Mr Stringer did not take any issue with the lack of pleading.

Mr Craig narrows the pleaded meanings

[161] In opening, Mr Craig noted that across the 17 publications he had pleaded 40 defamatory meanings (many of which were the same). He said it was possible to aggregate the 40 meanings broadly into six meanings. In closing, Mr Craig narrowed his pleaded meanings even further. He said his pleaded meanings could be “aggregated” into two meanings:

- (a) That he sexually harassed Ms MacGregor.
- (b) That he seriously sexually harassed Ms MacGregor (either because it was egregious behaviour or prolonged) warranting a large or six-figure sum payout.

[162] Mr Craig closed only on those two meanings and focused almost entirely on the first (which was a meaning that Mr Craig had pleaded).

[163] The second meaning was not pleaded by Mr Craig. It is, rather, an “aggregation”, to use his term, of various pleaded meanings. Further, it is a meaning that appears to be one that, in my earlier strike-out judgment, I held Mr Craig could not pursue. There is therefore an issue as to whether Mr Craig can advance his case on the second of those two meanings. I return to this below.³⁸

³⁸ In this judgment at [190]–[198].

The governing legal principles

[164] An outline of the legal principles governing defamation claims will assist in identifying what is in issue between the parties.

[165] To succeed in a claim in defamation, the plaintiff must prove four matters:

- (a) The defendant published a statement.
- (b) The statement was about the plaintiff.
- (c) The statement conveyed meanings pleaded by the plaintiff.
- (d) Those meanings were defamatory of the plaintiff.

[166] As to the third matter, the plaintiff must plead the meanings that are alleged to be contained in the allegedly defamatory statement.³⁹ The plaintiff must establish that the natural and ordinary meaning of the statement's words (taken in their context and in light of generally known facts) accords in substance with those pleaded meanings.⁴⁰

[167] As to the fourth matter, a meaning is defamatory if it may tend to lower the plaintiff in the estimation of right-thinking members of society.⁴¹

[168] If the plaintiff establishes the above four matters, the defendant is liable unless the defendant can establish a defence. The defences raised by Mr Stringer are truth, honest opinion, qualified privilege and responsible public interest communication.

[169] The defence of truth is set out in s 8(3) of the Defamation Act 1992. The defence succeeds if the defendant proves that the defamatory meanings were "true,

³⁹ *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [62]; *Craig v Slater* [2020] NZCA 305 at [15]; and *Fourth Estate Holdings (2012) Ltd v Joyce* [2020] NZCA 479, [2021] 2 NZLR 758 at [62] and [77].

⁴⁰ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

⁴¹ *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240 per Lord Atkin. There are other formulations, but this one will suffice here. See Stephen Todd and others *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at 847.

or not materially different from the truth”.⁴² The words “not materially different from the truth” mean that the defendant does not need to prove each and every word within the publication is true. It is sufficient for the defendant to prove “the truth of the sting of the defamation”.⁴³

[170] To succeed in a defence of honest opinion, the defendant must first show that the words complained of, or the parts of them said to be an opinion, were an expression of an opinion, not a statement of fact. The words must be read in context in determining whether they were an expression of opinion or a statement of fact.⁴⁴ Secondly, the defendant must be able to point to the existence of facts upon which the opinion is based. Those facts must either be facts referred to in the publication which are shown to be true or not materially different from the truth, or other facts that were generally known at the time of the publication and which are proved to be true.⁴⁵ Thirdly, the defendant must show that the opinion was genuinely held,⁴⁶ though the defendant does not have to show that the opinion was a reasonable one.⁴⁷

[171] Qualified privilege is available as a defence on occasions where a need for frank communication outweighs the need to protect reputation.⁴⁸ Two forms of qualified privilege are relevant here.

[172] First, a statement attracts qualified privilege on occasions where the defendant proves an interest or a duty, legal, social or moral, to publish the statement to the recipient, and proves the recipient has a corresponding interest or duty to receive it.⁴⁹ This is often termed “reciprocal duty and interest” privilege.

⁴² Defamation Act 1992, s 8(3)(a). Section 8(3)(b) sets out an alternative means of establishing the defence: proving that the publication as a whole was in substance true or was in substance not materially different from the truth. These alternatives have to be separately pleaded: *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [46]. Mr Stringer did not plead (or otherwise advance) a truth defence under s 8(3)(b).

⁴³ Stephen Todd and others *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at 916, cited with approval by the Court of Appeal in *Craig v Slater* [2020] NZCA 305 at [65].

⁴⁴ *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) at [17].

⁴⁵ Defamation Act 1992, s 11.

⁴⁶ Defamation Act 1992, s 10(1).

⁴⁷ *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) at [24].

⁴⁸ *Lu v Mo Po* [2018] HKCFA 11, (2018) 21 HKCFAR 94 at [13] per Lord Reed NPJ; and *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457 at [21].

⁴⁹ *Adam v Ward* [1917] AC 309 (HL) at 334.

[173] Secondly, qualified privilege also arises where the defendant proves that they published a statement in reply to an attack on their reputation. The statement must be fairly relevant to a rebuttal of the attack and must not be published to a significantly wider audience than received the attack.⁵⁰ The privilege is available even where the initial attack was true and therefore not itself defamatory.⁵¹

[174] These privileges are qualified because the defence will fail if the plaintiff proves that, in publishing the statement, the defendant was predominantly motivated by ill will or otherwise took improper advantage of the occasion of publication.⁵²

[175] The final defence raised by Mr Stringer is that his allegedly defamatory statements were responsible communications on a matter of public interest. There are two elements to this defence, both of which must be proved by the defendant. The subject matter must be of public interest, and the communication must be responsible.⁵³ The defence is not limited to journalists. It is available to all published material of public interest in any medium.⁵⁴ Further, this defence is not a form of qualified privilege and so is not defeated by improper purpose (though the propriety of the defendant's conduct is built into the requirement that the communication be responsible, on which the defendant bears the onus of proof).⁵⁵

The issues

[176] Several broad issues arise.

- (a) Did Mr Stringer publish each of the statements on which Mr Craig sues?
- (b) On which meanings may Mr Craig rely to advance his case?

⁵⁰ *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457 at [116]. That was a passage in the minority judgment of William Young J, but the principle was approved by the majority at [24].

⁵¹ *Craig v MacGregor* [2021] NZCA 156 at [33].

⁵² Defamation Act 1992, s 19.

⁵³ *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [58].

⁵⁴ At [59].

⁵⁵ At [83].

- (c) Do the statements published by Mr Stringer convey the pleaded meanings?
- (d) Are any of those meanings defamatory?
- (e) If Mr Craig's claim *prima facies* succeeds, the following issues arise from Mr Stringer's pleaded defences:
 - (i) Were the defamatory meanings true, or not materially different from the truth?
 - (ii) Were the statements Mr Stringer's opinions?
 - (iii) If the statements were Mr Stringer's opinions, did Mr Stringer honestly hold those opinions supported by true facts (and was this issue finally determined in *Stringer v Craig*)?
 - (iv) Were Mr Stringer's statements published on occasions of qualified privilege (and were any aspects of this issue finally determined in *Stringer v Craig*)?
 - (v) Did Mr Stringer lose any qualified privilege because he was predominantly motivated by ill will or otherwise took improper advantage of the occasion of publication?
 - (vi) Were the statements Mr Stringer's responsible communications on subject matters of public interest?
- (f) If no defences are established, issues arise as to the damages to be awarded to Mr Craig:
 - (i) Did Mr Stringer publish the statements with flagrant disregard for Mr Craig's rights, warranting an award of aggravated and punitive damages?

- (ii) Were any aspects of this issue finally determined in *Stringer v Craig*?

Did Mr Stringer publish each of the statements on which Mr Craig sues?

[177] For the most part, Mr Stringer admits that he published the statements on which Mr Craig sues. However, he denies that he published the statements in Publications 3, 4 (in part), 5 (in part), 13 (in part), 15 and 17.

[178] That, at least, was Mr Stringer's pleaded position. Mr Craig gave evidence that Mr Stringer published each of the alleged statements. Mr Stringer's evidence did not touch on this matter. Nor did Mr Stringer address it in his submissions. I can therefore deal with the issue briefly.

[179] In respect of Publication 3 (the *Morning Report* interview), I understood Mr Stringer merely to be taking issue with several differences between the statements as set out in Mr Craig's pleading and a transcript of that interview that was in evidence. The differences are immaterial and mostly reflect different ways in which an audio interview might be transcribed.

[180] As for Publication 4 (Mr Stringer's email of 19 June 2015), Mr Stringer admits that he sent the email to Conservative Party Board members but denies that he later sent it to the *WhaleOil* website. I am satisfied from Mr Craig's evidence and from his cross-examination of Mr Stringer that Mr Stringer forwarded this email to Pete Belt, who was then the Deputy Editor of the *WhaleOil* website and that this constituted sending it to that website.⁵⁶

[181] For Publication 5, Mr Craig alleged that Mr Stringer had made statements in an interview with Stuff. Mr Stringer's pleaded position was that the statements came from other than an interview with him. However, under cross-examination Mr Stringer accepted it was likely the statements were from an interview he had given to Stuff.

⁵⁶ In any event, Mr Stringer is estopped from arguing otherwise, given that Palmer J reached the same conclusion on the same issue in *Stringer v Craig* [2020] NZHC 644 at [17] and [101]–[102].

[182] Publication 13 is Mr Stringer's blog post 13 August 2015. Two issues arise in relation to it. First, Mr Stringer admits the blog post but denies that three of the statements (identified by Mr Craig as passages 1, 4 and 5) were in the blog post. I have read the blog post. It includes those three passages.

[183] Secondly, in the blog post Mr Stringer included hyperlinks to *The Nation* interview and the *Morning Report* interview. Mr Craig claimed that by doing so Mr Stringer republished the statements in those interviews. Mr Stringer denied that this amounted to republication.

[184] Mr Craig referred me to several authorities from New Zealand, Canada, Australia and England on whether, and if so in what circumstances, a hyperlink might constitute (re)publication of the material to which the hyperlink leads. Mr Stringer did not make any submissions on this point.

[185] The hyperlinks in issue were to publications on which Mr Craig is in any event suing Mr Stringer in this proceeding. Accordingly, this adds nothing to Mr Craig's claim. Given my other conclusions in this judgment, it is unnecessary for me to decide the point. Further, it would not be helpful for me to express a view on the matter without the benefit of argument from both sides.

[186] Publication 15 is an email sent by Mr Stringer to Mr O'Rourke on 8 February 2016. In his statement of claim, Mr Craig incorrectly says the email is dated 11 February 2016, which was the date on which Mr O'Rourke forwarded the email to third persons. Mr Stringer's denial is based only on Mr Craig having pleaded the incorrect date. There is nothing in this. The email of 8 February 2016 contains the statements of which Mr Craig complains. Those statements were published by Mr Stringer to Mr O'Rourke. Mr Craig does not sue Mr Stringer for Mr O'Rourke's publication in forwarding the email to third persons.

[187] Publication 17 is an email from Mr Stringer dated 12 December 2015. Mr Craig pleads Mr Stringer sent the email to the *WhaleOil* website. Mr Stringer denies this. But under cross-examination Mr Stringer readily accepted that he sent the email to Mr Belt, the then Deputy Editor of that website.

[188] In summary, I find that Mr Stringer published each of the statements on which Mr Craig sues, except in respect of the hyperlinks in Publication 13 (on which it is unnecessary to make a finding).

[189] There is no question that each of these statements were about Mr Craig. There is an issue as to what some of the statements mean – and, before that, an issue as to which meanings Mr Craig can rely on to advance his case.

On which meanings may Mr Craig rely to advance his case?

[190] As noted earlier, Mr Craig closed on the basis that his pleaded meanings could be “aggregated” into two meanings:

- (a) That he sexually harassed Ms MacGregor.
- (b) That he seriously sexually harassed Ms MacGregor (either because it was egregious behaviour or prolonged) warranting a large or six-figure sum payout.

[191] I consider, for two reasons, Mr Craig is not able to advance his case on the second of these two meanings.

[192] First, a plaintiff is confined to their pleaded meanings, or to meanings that are not materially different from the pleaded meanings.⁵⁷ Mr Craig does not plead the second meaning. Mr Craig does plead that some of Mr Stringer’s statements convey the meaning that Mr Craig paid a large sum of money to Ms MacGregor to settle a sexual harassment claim (or that there are documents that show this).⁵⁸ He also pleads that some statements convey the meaning that he sexually harassed Ms MacGregor seriously and/or for a long period.⁵⁹ The second meaning (on which he closed) combines elements of these pleaded meanings. Mr Craig is not entitled to “aggregate” his pleaded meanings in this way. If such aggregation were allowed,

⁵⁷ *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [62]; and *Fourth Estate Holdings (2012) Ltd v Joyce* [2020] NZCA 479, [2021] 2 NZLR 758 at [62] and [77].

⁵⁸ Mr Craig pleads this meaning for statements in Publications 3, 6, 8, and 13.

⁵⁹ Mr Craig pleads this meaning for statements in Publications 4, 15, 16 and 17. He does not plead a meaning that his behaviour was egregious.

Mr Stringer would be required to answer a different case. For example, Mr Stringer might have been able to prove that one pleaded meaning was true and that another was his honest opinion. This would not avail Mr Stringer if Mr Craig were allowed to aggregate his pleaded meanings.

[193] There is one pleaded meaning that approaches the second meaning on which Mr Craig closed. Mr Craig pleads that the statements in Publication 11 conveyed the meaning that:

Mr Craig sexually harassed Rachel MacGregor so seriously that he settled her sexual harassment claim by paying her a “large payout”.

[194] I consider there is a material difference between this pleaded meaning and the second meaning on which Mr Craig closed. The pleaded meaning does not assert that Mr Craig’s harassment was either egregious (a higher threshold than “serious”) or prolonged. This difference is material. If Mr Craig were allowed to advance the second meaning, and Mr Stringer wished to answer it by proving its truth, Mr Stringer would have to prove something (egregious or prolonged behaviour) that he would not have to prove on the pleaded meaning.

[195] The other reason Mr Craig is not able to advance the second of the meanings on which he closed is that it would be contrary to my strike-out judgment dated 29 October 2021.⁶⁰ There I held that Mr Craig could only pursue claims in relation to publications by Mr Stringer that (according to Mr Craig’s pleading) meant that Mr Craig sexually harassed Ms MacGregor.⁶¹ One consequence was that Mr Craig could not pursue meanings such as “Mr Craig paid a large sum of money to Ms MacGregor to settle a sexual harassment claim”.⁶² The second meaning on which Mr Craig closed is such a meaning.

[196] For these reasons, I consider that the only meaning on which Mr Craig may advance his case is the first meaning on which he closed, namely that he sexually harassed Ms MacGregor. That meaning was pleaded. Mr Craig acknowledged that it was the meaning on which he primarily relied.

⁶⁰ *Craig v Stringer* [2021] NZHC 2906. I discuss this in the judgment above at [75]–[77].

⁶¹ At [43].

⁶² At [46].

[197] For completeness, there are several other pleaded meanings that (although not advanced by Mr Craig in closing) were contrary to my strike-out judgment:

- (a) Publication 3: second and third meanings (Mr Craig paid money to Ms MacGregor to settle a sexual harassment claim).
- (b) Publication 5: fourth meaning (Mr Craig victimised Ms MacGregor – a broader concept than sexual harassment).
- (c) Publication 6: first meaning (scurrilous behaviour – a broader concept than sexual harassment) and third meaning (Mr Craig paid a large sum to Ms MacGregor to settle a sexual harassment claim).
- (d) Publication 8: sole meaning (Mr Craig paid a large sum to Ms MacGregor to settle her sexual harassment claim).
- (e) Publication 11: third meaning (Mr Craig constantly victimises Ms MacGregor).
- (f) Publication 12: first meaning (that the meanings pleaded for Publications 1 to 11 are all true) except for the meaning that Mr Craig sexually harassed Ms MacGregor and second meaning (Mr Craig had covered up abhorrent and morally bankrupt behaviour – a broader concept than sexual harassment).
- (g) Publication 13: first meaning (Mr Craig wrote a sexually explicit card to Ms MacGregor – not sexual harassment unless unwanted); third meaning (Mr Craig was the subject of a chaperoning arrangement – not necessarily indicative of sexual harassment); fifth meaning (Mr Craig paid a six-figure sum to Ms MacGregor to settle her sexual harassment claim) and sixth meaning (the meanings pleaded in relation to Publications 1 and 3) to the extent that Mr Craig cannot pursue those pleaded meanings for those publications.

- (h) Publication 14: sole meaning (the allegations Mr Stringer made about Mr Craig in Publications 1 to 13 were provable facts and everything Mr Stringer has said is true) except for the meaning that Mr Craig sexually harassed Ms MacGregor.
- (i) Publication 15: second meaning (Mr Craig victimised Ms MacGregor by trying to portray her as his mistress).
- (j) Publication 17: first meaning (Mr Stringer's allegations about Mr Craig made prior to December 2015 were all true and provable by the testimony of witnesses and documentary evidence) except for the meaning that Mr Craig sexually harassed Ms MacGregor.

[198] I did not strike out those meanings in my earlier judgment, but that was merely because Mr Stringer had not applied to strike them out. I said there were other pleaded meanings in Mr Craig's claim that were outside the scope permitted by Associate Judge Osborne's recall judgment and that my strike-out judgment did not deal with them.⁶³ They remain outside the scope of the recall judgment.

Do the statements published by Mr Stringer convey the pleaded meanings?

[199] Given my finding on the previous issue, the next issue is whether the statements published by Mr Stringer convey the meaning that Mr Craig sexually harassed Ms MacGregor.

[200] Mr Craig pleads that this meaning (or a meaning not materially dissimilar to it) was conveyed by Mr Stringer's statements in all of the publications except Publication 8.⁶⁴ Mr Stringer admits that his statements in Publications 3, 4 and 13 conveyed that meaning. He otherwise denies that that meaning was conveyed. Therefore, the statements in issue are from Publications 1, 2, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16 and 17.

⁶³ At [105].

⁶⁴ The only meaning Mr Craig pleads was conveyed by the statements in Publication 8 was that Mr Craig had paid a large sum to Ms MacGregor to settle her sexual harassment claim. Mr Craig is not entitled to advance that meaning.

[201] Mr Craig addressed relevant legal principles in his closing submissions but said very little on why each impugned statement conveyed the pleaded meanings. Mr Stringer did not address meaning at all. During his closing, I asked him whether he accepted that the statements, or some of them, conveyed the pleaded meaning. Mr Stringer did not give a clear answer. I therefore have to decide the issue.

[202] The principles for determining whether a statement conveys an alleged meaning were stated by the Court of Appeal in *New Zealand Magazines Ltd v Hadlee (No 2)*:⁶⁵

- (a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?
 - (b) The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.
 - (c) The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.
 - (d) The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.
 - (e) But the Court will reject those meanings which can only emerge as the product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.
 - (f) The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared.
- ...

[203] In addition, the question is what meaning the ordinary reader would draw in context and “from the publication taken as a whole”.⁶⁶

⁶⁵ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

⁶⁶ *Craig v Slater* [2020] NZCA 305 at [31].

Publication 1: The Nation interview on 20 June 2015

[204] In *The Nation* interview, the interviewer, Ms Owen, commenced by observing that “in recent days [Mr Craig]’s been dogged by ... questions about his relationship with former press secretary Rachel MacGregor”. Ms Owen asked if Mr Stringer wanted to get some facts on the table. Mr Stringer said he was “sick of the confidentiality being used to cover up abhorrent behaviour”. He did not say that the abhorrent behaviour was sexual harassment.

[205] Ms Owen then asked Mr Stringer whether he had been aware for more than a year of allegations “swirling around” about Mr Craig’s relationship with Ms MacGregor. Mr Stringer said he had been. He said that the Board had confronted Mr Craig about it and that the Board “wanted to hear what he had to say”.

[206] Mr Stringer made clear that he had no evidence of a sexual relationship, saying “No, absolutely not”. Ms Owen then put to Mr Stringer “So are you saying sexual harassment?” Mr Stringer answered:

Well that’s one of the accusations that I’d like to hear Colin explain because that’s what a number of people are saying. I don’t have any evidence of that myself but there is a lot of documentary evidence now out there *that the Board needs to discuss because things are being released in the media – this is now a public story – and the Board has not met to discuss these matters and talk together as colleagues.*

(Emphasis added)

[207] In his pleading, Mr Craig relies on the first part of that passage but omits the italicised part. The italicised part provides context to the passage on which Mr Craig relies.

[208] Ms Owen then asked Mr Stringer to confirm that the Party had been so concerned about “this relationship and what might be going on” that the Party instituted “some kind of chaperone”. Mr Stringer replied:

Yes, we put a chaperone system in place just to help avert some of the perceptions that people had that this was untoward and was unwise.

[209] The italicised part (not pleaded by Mr Craig) again provides important context. A chaperone is usually instituted to control inappropriate consensual behaviour. It does not usually imply that harassment is occurring.

[210] Finally, Mr Stringer said near the end of the interview that “again we come back to that problem of untruths”. It is clear from other passages that he was referring to Mr Craig’s claim that no Board member had ever raised concerns about his relationship with Ms MacGregor. It was this claim that Mr Stringer was saying was untrue.

[211] Reading the impugned statements in the context of the interview as a whole, I consider that they do not mean that Mr Craig sexually harassed Ms MacGregor. Mr Stringer was at pains to refer to that merely as an “accusation” on which he wanted to hear what Mr Craig had to say. He said he had no evidence of sexual harassment himself. He referred to a lot of documentary evidence being “out there” – a reference to documents that had already been released to other media – that the Board needed to discuss.

[212] Mr Craig argued that *The Nation* interview had to be read in the context of Mr Slater’s interview, the previous day, on Newstalk ZB. There was no evidence as to the likelihood that someone watching *The Nation* would have been aware of the interview with Mr Slater. Even if that interview provides context, I do not consider it assists Mr Craig. There is a clear contrast between the two interviews. Mr Slater said Mr Craig had sexually harassed a Conservative Party staff member, though he did not name the staff member. Mr Slater was unequivocal:

It’s sexual harassment. Let’s just be clear on this. ... [T]he harassment was of a sexual nature. ... [I]t’s been committed to writing as well so there’s plenty of evidence.

[213] If Mr Slater’s interview forms part of the context for *The Nation* interview, this contrast reinforces that Mr Stringer’s statements did not mean that Mr Craig sexually harassed Ms MacGregor.

[214] Mr Craig also pleaded an alternative meaning: that there was a lot of documentary evidence that Mr Craig sexually harassed Ms MacGregor. I do not

accept that Mr Stringer's statements conveyed that meaning. I have quoted the passage where Mr Stringer talks about there being a lot of documentary evidence. Mr Stringer said it was evidence that the Board needed to discuss. He emphasised he had no evidence of sexual harassment. He repeatedly said he wanted to hear what Mr Craig had to say. At most, his statements meant there were accusations and documentary evidence of sexual harassment worthy of investigation. They did not mean there was documentary evidence that Mr Craig *had* sexually harassed Ms MacGregor.

Publication 2: CTV interview on 6 July 2015

[215] By the time of Mr Stringer's CTV interview, Mr Craig had given his 22 June 2015 press conference in which he denied he had sexually harassed Ms MacGregor. I accept Mr Craig's submission that the press conference provides context to the publications that followed it.

[216] The CTV interview began with the interviewer, Chris Lynch, referring to the battle line between Mr Craig and Mr Stringer. Mr Stringer said Mr Craig was not being truthful and had perpetrated a number of falsehoods. It is plain that Mr Stringer was referring to Mr Craig's denial of having sexually harassed Ms MacGregor.

[217] I therefore accept that Mr Stringer's statements in Publication 2 conveyed the meaning that Mr Craig had sexually harassed Ms MacGregor.

Publication 5: Stuff interview on 27 June 2015

[218] The Stuff interview was just five days after Mr Craig's very public denial of having sexually harassed Ms MacGregor. In the interview, Mr Stringer said, among other things:

The guy's lying through his teeth and it's just shocking. ...

There is no question he perhaps used his position of influence and authority over her to pester her. My understanding is that she rebuffed that on the basis that he was married because she is a good Christian girl.

[219] I accept that, read in context, these statements conveyed the meaning that Mr Craig had sexually harassed Ms MacGregor.

Publication 6: Mr Stringer's blog post on 25 June 2015

[220] Mr Stringer's blog post on 25 June 2015 was made three days after Mr Craig's press conference. In the blog post, Mr Stringer said, among other things, that Mr Craig had now admitted to the allegations referred to in *The Nation* interview (which, clearly, were the allegations that Mr Craig had sexually harassed Ms MacGregor). Mr Stringer said Mr Craig had told repeated lies when the Board had asked him about "the press secretary matter".

[221] Read in context, these statements plainly conveyed the meaning that Mr Craig had sexually harassed Ms MacGregor.

Publication 7: Mr Stringer's blog post on 30 June 2015

[222] In his blog post on 30 June 2015, Mr Stringer referred to public revelations of Mr Craig's admitted "inappropriate behaviour" with a female staff member. Mr Stringer said the Party had had no "hard evidence" but then the media got hold of "folders full of the stuff" from multiple sources. He said he had had some of "Colin's SXTs (sexual texts) read to me directly by the source over the phone".

[223] This blog post is markedly different from Mr Stringer's post on 30 June 2015. Mr Stringer uses Mr Craig's term of "inappropriate behaviour" and makes no suggestion of harassment (sexts not necessarily being unwelcome). Read in that context, and even in the context of Mr Craig's earlier denial of sexual harassment, the statements in this publication do not convey the meaning that Mr Craig had sexually harassed Ms MacGregor.

Publication 9: Mr Stringer's blog post on 3 July 2015

[224] Mr Stringer's blog post on 3 July 2015 was a response to a letter that was sent to Conservative Party members on 27 June 2015. The letter was signed off by Angela Storr, the Members Manager for the Party. In the post, Mr Stringer said the letter was actually written by Mr Craig and was sent by Mr Craig after he had been suspended from the Party. Mr Stringer criticised Mr Craig for using the Party database to write to every Party member in those circumstances.

[225] Mr Stringer made the following statement, part of which forms the basis of Mr Craig's claim about this post (the italicised part is not pleaded):

But of course if Colin Craig says he's not "suspended," or there was no "inappropriate behaviour," or it wasn't "sexual harassment," and there are no more sexual harassment claims coming, then I guess that's correct, isn't it?

[226] Later in the post, Mr Stringer said the Board of the Party fractured because of Mr Craig, who he said never took "responsibility or ownership". Mr Stringer then said the following, which also forms the basis of Mr Craig's claim:

Even now, after all the admissions and documented accusations ...

[227] This post, when printed, is four pages long. In it, Mr Stringer focussed on responding to various assertions made in the letter that was sent to all Party members (such as the assertion that Mr Stringer had been suspended from membership of the Party). Mr Stringer made only brief reference to Mr Craig's denial of sexual harassment.

[228] Despite the post focusing on matters other than sexual harassment, I consider the sarcastic comment on Mr Craig's denial of sexual harassment clearly conveys the meaning that Mr Craig did sexually harass someone. Mr Stringer did not name the victim of the harassment. However, the ordinary reader of Mr Stringer's blog (which focussed on politics) would have been aware that Mr Craig had been accused of sexually harassing Ms MacGregor. In that context, the statements of which Mr Craig complains conveyed the meaning that Mr Craig had sexually harassed Ms MacGregor.

Publication 10: Mr Stringer's blog post on 9 July 2015

[229] In his blog post on 9 July 2015, Mr Stringer commented on an article written by a political commentator, Matthew Hooton, on the future of the Conservative Party.

[230] Mr Craig pleads that three statements in the blog post convey the meaning that he had sexually harassed Ms MacGregor. The first statement is (with surrounding but unpleaded words, italicised, for context):

In my TV3 The Nation interview, provoked to correct Colin Craig's blatant public untruths following his extraordinary "resignation", I discussed potential changes to how the Conservative Party might be governed

[231] This statement appears near the start of the post. It sets the scene for it. The statement refers to Mr Stringer's interview on *The Nation*. I addressed that earlier.⁶⁷ I found it did not convey the meaning that Mr Craig had sexually harassed Ms MacGregor. For example, Mr Stringer was at pains to refer to that merely as an "accusation" on which he wanted to hear what Mr Craig had to say. Further, I found that Mr Stringer's assertion in the interview that Mr Craig had told "untruths" was a reference to Mr Craig's claim that no Board member had ever raised concerns about his relationship with Ms MacGregor. I consider that the first statement in the blog post, by referring to *The Nation* interview, goes no further.

[232] Later in the blog post, Mr Stringer said that Mr Craig did not have the political judgment or acumen for politics and this, "even above all the workplace sexual harassment issues", remained a primary concern for the Board. Read in the context of the publication as a whole, including the reference to *The Nation* interview, this merely conveyed that there were "issues" (or as put in *The Nation* interview, "accusations") for Mr Craig about workplace sexual harassment. It did not convey the meaning that Mr Craig had sexually harassed Ms MacGregor.

[233] In the post, Mr Stringer also said that his most acute regret was losing his fellow Board members "in the wake of documented allegations of impropriety by CC caused me no end of mayhem [sic]". Read in context, I consider this did not mean that Mr Craig had sexually harassed Ms MacGregor. Nor did it even mean (to address a secondary meaning proposed by Mr Craig) that there was ample documentary evidence *proving* that Mr Craig sexually harassed Ms MacGregor.

[234] Reading the impugned statements in the context of the entire interview, I consider that they do not mean that Mr Craig sexually harassed Ms MacGregor. Mr Stringer emphasised that the statements were merely an "accusation" on which he wanted to hear what Mr Craig had to say. He said he had no evidence of sexual

⁶⁷ Above at [204]–[214].

harassment himself. His reference to documentary evidence “out there” referred to documents released to other media that the Board needed to discuss.

Publication 11: Mr Stringer’s blog post on 21 July 2015

[235] In his blog post on 21 July 2015, Mr Stringer responded to a Stuff article reporting that Mr Craig and Ms MacGregor were at “loggerheads” over whether to lift a confidentiality agreement apparently entered into when those parties resolved Ms MacGregor’s sexual harassment claim.

[236] Mr Stringer noted that Mr Craig denied sexually harassing Ms MacGregor but that the evidence “suggests” he did harass her. Mr Stringer then said that perpetrators of sexual harassment “if that is what he [Mr Craig] is” rarely do believe they have sexually harassed someone. Mr Stringer concluded by saying that disclosure would shine some light over “was it/was it not” sexual harassment. These statements are equivocal. They did not convey the meaning that Mr Craig sexually harassed Ms MacGregor.

Publication 12: Mr Stringer’s blog post on 2 August 2015

[237] In his blog post on 2 August 2015, Mr Stringer responded to an interview in which Mr Craig apparently intimated he might run for Mayor of Auckland. Mr Stringer quoted Mr Craig as having said that there had been “widespread allegations”. Mr Stringer said:

You keep saying they are “allegations.” People are simply reacting to WHAT YOU HAVE DONE and how you’re covering it up ...

[238] This post is quite different to Mr Stringer’s blog post on 21 July 2015. There is no equivocation. The meaning conveyed by the statement was that the allegations against Mr Craig were true. The ordinary reader would have been well aware that the key allegation was that Mr Craig had sexually harassed Ms MacGregor.

[239] The meaning conveyed by this statement, therefore, was that Mr Craig sexually harassed Ms MacGregor.

Publication 14: Mr Stringer's email of 11 October 2015

[240] Mr Stringer's email of 11 October 2015 was to then present or former members of the Board of the Conservative Party and senior members of the Party. Mr Craig's claim rests on five statements in the email.

[241] In the first three statements, Mr Stringer said Mr Craig had molested more than one woman, had falsified his electoral returns, was embroiled in seven court cases and had threatened more litigation to "shut down" accountability. These statements did not convey the meaning that Mr Craig sexually harassed Ms MacGregor.

[242] Mr Stringer said he had seen the evidence and there were court papers and documents "that prove everything I've said above". Mr Craig pleaded that this meant that Mr Stringer's allegations in Publications 1 to 13 were provable facts and everything Mr Stringer had said was true. I do not accept that. Mr Stringer's statement was simply referring to everything he had said above in the email. Nowhere in the email did Mr Stringer say or imply that Mr Craig had sexually harassed Ms MacGregor.

[243] Mr Craig also relied on Mr Stringer's statement that Mr Craig "oppresses, bullies and intimidates with his money". Plainly, this did not convey the meaning that Mr Craig sexually harassed Ms MacGregor.

Publication 15: Mr Stringer's email of 11 February 2016

[244] Mr Stringer's email of 11 February 2016 was to Mr O'Rourke. In the email, Mr Stringer responded to statements or questions it appears Mr O'Rourke had put to him in an earlier email.

[245] Mr Craig's claim rests on five statements in the email. These included three statements that appeared close together:

1 There is a documented Justice Dept Sexual Harassment Hearing (I know the hearing number and have the documents)

...

"It has been going on for years" (Quote: member of the Craig family)

...

Colin has tried to portray one of his victims as “his mistress”

[246] The first statement is neutral, since a sexual harassment hearing does not necessarily mean that sexual harassment occurred. But the statement that “it has been going on for years” can only be a reference to sexual harassment occurring. Mr Stringer then refers to Mr Craig having a “victim”. This means that sexual harassment did occur, not merely that it was claimed to have occurred. Finally, Mr Stringer’s statements clearly referred to Ms MacGregor, since the statements were prefaced by Mr Stringer saying that he did not consider there was an affair between Mr Craig and Ms MacGregor but rather “something different to that”.

[247] For these reasons, I consider that these statements, read together and in the context of the whole email, conveyed the meaning that Mr Craig sexually harassed Ms MacGregor.

Publication 16: Mr Stringer’s email of 22 February 2016

[248] Mr Stringer’s email thread of 22 February 2016 was sent to present or former members of the Board of the Conservative Party and to senior members of the Party. In it, Mr Stringer referred to “CC who is a sexual harasser of female staff (and lies about it to us for years) [sic]”. Contextually, “CC” is a clear reference to Mr Craig. The ordinary reader of the email would have known that by “female staff” Mr Stringer was referring to (at least) Ms MacGregor. The statement conveyed the meaning that Mr Craig sexually harassed Ms MacGregor.

Publication 17: Mr Stringer’s email of 12 December 2015

[249] Mr Stringer’s email dated 12 December 2015 was sent to Mr Belt, the Deputy Editor of the *WhaleOil* website, and to Mr Craig. The email was addressed “Dear Colin”. The statements on which Mr Craig sues are therefore statements addressed to him but also sent to Mr Belt.

[250] Mr Stringer began the email by saying that his “allegations” (he used quote marks) were “statements of fact”. Further on he said: “I stand by my statements of

truth and fact”. Mr Stringer denied making “defamatory allegations” against Mr Craig and said that he had “reiterated factual accounts”.

[251] The plain meaning of these statements was that the “allegations” that Mr Stringer had made about Mr Craig were true. Mr Craig and Mr Belt would both have known that one of the primary allegations was that Mr Craig had sexually harassed Ms MacGregor. Therefore, the statements in the email conveyed the meaning that Mr Craig sexually harassed Ms MacGregor.

Summary

[252] I have found, or Mr Stringer admitted, that statements in Publications 2, 3, 4, 5, 6, 9, 12, 13, 15, 16 and 17 conveyed the meaning that Mr Craig sexually harassed Ms MacGregor.

Is the meaning defamatory?

[253] Mr Stringer’s position was that the meaning I have found was conveyed in some of the publications, that Mr Craig sexually harassed Ms MacGregor, was not defamatory of Mr Craig. Mr Stringer pleaded it was not defamatory because it was true Mr Craig had sexually harassed Ms MacGregor. He did not elaborate on this in his closing submissions.

[254] Mr Stringer’s pleading confuses his defence of truth (which I deal with below) with whether the meaning is defamatory. As noted earlier, a meaning is defamatory if it may tend to lower the plaintiff in the estimation of right-thinking members of society. That test is plainly met for this meaning.

Was the defamatory meaning true: did Mr Craig sexually harass Ms MacGregor?

[255] Mr Stringer asserts that his defamatory statements were true: that Mr Craig did sexually harass Ms MacGregor. The onus lies on Mr Stringer to establish this, on the balance of probabilities.

[256] It is first necessary to understand what “sexual harassment” meant at the time Mr Stringer’s statements were published.

The meaning of “sexual harassment”

[257] In Mr Craig’s earlier defamation claim against Mr Slater, which was concerned with statements published by Mr Slater at much the same time as Mr Stringer’s statements were published, Toogood J undertook a detailed analysis of the meaning of sexual harassment.⁶⁸ His Honour concluded his analysis with several principles. Those relevant to this case are:⁶⁹

- (a) The ordinary and natural meaning of the term “sexual harassment” is intentional conduct or language of a sexual nature, in a workplace, professional or social setting, that is unwelcome, unwanted or offensive to the person who is subjected to it at the time it occurs.
- (b) Conduct or language of a “sexual” nature is that which relates to, or tends towards, or involves sexual intercourse or other forms of intimate physical contact.
- (c) ...
- (d) Where a sexual harassment complaint involves an allegation of intentional sexual conduct or language and there is a power imbalance favouring the perpetrator over the complainant, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not.
- (e) ...
- (f) For a defendant in this case to succeed in the defence that the assertions that Mr Craig was guilty of sexual harassment were true, the defendant must prove each of the elements on a balance of probabilities.

[258] On Mr Craig’s appeal, the Court of Appeal said that Toogood J’s analysis could not be faulted and that the test he applied was appropriate to publication in mid-2015.⁷⁰ In particular, the Court said Toogood J was “right to hold that where a complaint of sexual harassment involves an allegation of intentional sexualised conduct

⁶⁸ *Craig v Slater* [2018] NZHC 2712 at [392]–[411].

⁶⁹ At [411].

⁷⁰ *Craig v Slater* [2020] NZCA 305 at [89]. In the present case, neither party suggested that the meaning of sexual harassment had changed over the time of Mr Stringer’s publications (mid-2015 to early 2016).

or language, and there is a power imbalance favouring the perpetrator over the recipient, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not”.⁷¹

[259] I gratefully adopt and apply Toogood J’s analysis and principles.

What does Mr Stringer have to prove?

[260] It follows from the above that Mr Stringer has to prove that:

- (a) Mr Craig engaged in intentional conduct or language towards Ms MacGregor.
- (b) The conduct or language was of a sexual nature.
- (c) The conduct or language was in a workplace, professional or social setting.
- (d) The conduct or language was unwelcome, unwanted or offensive to Ms MacGregor at the time it occurred.

The alleged sexual harassment

[261] Mr Stringer submitted that Mr Craig sexually harassed Ms MacGregor in several ways. He focussed on two, and it will suffice to deal with them:

- (a) His conduct during the election night incident.
- (b) His language in his letters to Ms MacGregor dated 2 November 2011, 7 February 2012 and 24 December 2013.

[262] It is clear, and was not disputed by Mr Craig, that:

⁷¹ At [89].

- (a) He engaged in his conduct during the election night incident and wrote his letters to Ms MacGregor. All this was intentional.
- (b) His conduct during that incident and some of his language in each of those letters was of a sexual nature.
- (c) His conduct and language was in a workplace, professional or social setting.

[263] This means that the only issue is whether Mr Stringer has proved that Mr Craig's conduct on election night or his sexual language in those letters was unwelcome, unwanted or offensive to Ms MacGregor at the time it occurred.

Prior determinations of the issue whether Mr Craig's sexual conduct and language were unwelcome

[264] This issue has already been determined in two prior decisions. Toogood J in *Craig v Slater* and Hinton J in *Craig v MacGregor* held:

- (a) It was not proved that Mr Craig's sexual language in his letter of 2 November 2011 and his sexual conduct on election night were unwelcome, unwanted or offensive to Ms MacGregor at the time.⁷²
- (b) It was proved that Mr Craig's sexual language in his letters of 7 February 2012 and 24 December 2013 was unwelcome, unwanted or offensive to Ms MacGregor at the time (and therefore that Mr Craig had sexually harassed Ms MacGregor).⁷³

[265] As noted earlier, Toogood J's findings that Mr Craig had sexually harassed Ms MacGregor were upheld by the Court of Appeal in *Craig v Slater*.⁷⁴ Further, on Mr Craig's appeal in *Craig v MacGregor* the Court declined to revisit its finding

⁷² *Craig v Slater* [2018] NZHC 2712 at [419] and [424]; and *Craig v MacGregor* [2019] NZHC 2247 at [24] (recording Ms MacGregor accepted that the election night incident was consensual) and [178]–[179] (finding that sexual language in letters from 2012 (not before) were unwelcome).

⁷³ *Craig v Slater* [2018] NZHC 2712 at [425] and [442]–[443]; and *Craig v MacGregor* [2019] NZHC 2247 at [178]–[179].

⁷⁴ *Craig v Slater* [2020] NZCA 305 at [89].

in *Craig v Slater* that Mr Craig had sexually harassed Ms MacGregor. This was because the principle that the Court of Appeal follows its own decisions meant that Mr Craig would need to point to “substantially different evidence, on which the prior decision might be distinguished, to be entitled to a different conclusion”.⁷⁵ Mr Craig had not done so.

[266] The High Court is bound by the Court of Appeal’s decisions. This means I am bound to reach the same decision as the Court of Appeal on the issue whether Mr Craig’s sexual language in his letters of 7 February 2012 and 24 December 2013 was unwelcome, unless there is substantially different evidence on which the Court’s prior decisions might be distinguished.

[267] At the start of the trial, I raised with the parties the Court of Appeal’s decision in *Craig v MacGregor*. I said it appeared I would need to hear or see substantially different evidence if I was to differ from the prior decisions on the issue whether Mr Craig had sexually harassed Ms MacGregor. Mr Craig had to some extent anticipated this in his written opening, in which he said there would be significant and compelling new oral evidence that had not been adduced in the earlier trials. In closing, both parties addressed me on whether there was substantially different evidence.

[268] With that in mind, I now address the conduct and language of Mr Craig that Mr Stringer asserts amounted to sexual harassment.

Mr Craig’s letter dated 2 November 2011

[269] Mr Stringer submitted that the first of Mr Craig’s letters, dated 2 November 2011, was unwelcome to Ms MacGregor at the time.

[270] Toogood and Hinton JJ each found that it had not been proved that this letter was unwelcome to Ms MacGregor at the time. Those findings were not challenged on the subsequent appeals. There is, therefore, no binding Court of Appeal decision on this issue. Nonetheless, I would be reluctant to differ from two decisions of the

⁷⁵ *Craig v MacGregor* [2021] NZCA 156 at [24].

High Court on the same issue, in the absence of substantially different evidence (such that I could distinguish the decisions) or some material error in those decisions.

[271] Mr Stringer did not identify any relevant evidence before me on this issue that was not before Toogood J or Hinton J. I read the same text messages (of which there were a vast number) and other communications that were before the other Judges. There was some additional oral (or read) evidence from witnesses at this trial that was not before the other Judges but none of it bore on events in late 2011. There is no basis on which I could distinguish the earlier decisions.

[272] Mr Stringer also did not identify any error in the relevant parts of the judgments of Toogood J or Hinton J. I have read the relevant parts.⁷⁶ I see no error. Indeed, and with respect, I agree with each Judge's decision on the issue. In the circumstances, I can give brief reasons.

[273] There was a power imbalance favouring Mr Craig over Ms MacGregor. He was her boss. There was, therefore, a rebuttable inference that the sexual language in Mr Craig's letter was unwelcome to Ms MacGregor.

[274] I consider this inference rebutted. There is contemporaneous evidence, in the form of Ms MacGregor's text messages to Mr Craig, of her reaction to the letter. Her initial text message response began "Thankyou so much for your letter :) ...". Text messages soon followed that reciprocated some of the deep affection in Mr Craig's letter. On 5 November 2011, Ms MacGregor wrote "I really care about you". Before long, Ms MacGregor's text messages were reciprocating Mr Craig's expressions of sexual desire. On 21 November 2011, Ms MacGregor sent a text message at 12.17 am that included:

I know im not meant to say this, but I really enjoyed spending time with you today.. And I think its very unique that we connect and communicate so instinctivly. Wish I could say goodnight the way I really want to...

[275] It is highly unlikely Ms MacGregor would have sent such text messages had she found the sexual language in Mr Craig's letter unwelcome.

⁷⁶ As I said to the parties at the start of the trial, I had not at that point read the judgments. I subsequently have read relevant parts.

[276] Similarly, I consider that the election night incident on 26 November 2011, which I deal with next, was consensual. This also suggests that Ms MacGregor did not find Mr Craig's sexual language in his 2 November 2011 letter unwelcome.

[277] Further, there is Ms MacGregor's examination-in-chief on this topic in *Craig v MacGregor*. Ms MacGregor was referred to Mr Craig's statement in his letter that he had not kissed her, where he added: "Not that I wouldn't want to, a lot, but that is a boundary." She said:

Like, and you know, him writing that in the letter wasn't as much of a shock... so him saying, and him saying that it was a boundary, and I was like, yeah that's fine, sort of thing.

[278] For these reasons, Mr Stringer has not proved that Mr Craig sexually harassed Ms MacGregor by sending his letter dated 2 November 2011.

Election night incident

[279] Mr Stringer submitted that Mr Craig's sexual conduct during the election night incident was unwelcome to Ms MacGregor at the time.

[280] Toogood and Hinton JJ each found that it had not been proved that Mr Craig's conduct on election night was unwelcome to Ms MacGregor at the time. Those findings were not in issue on the subsequent appeals, so there is no binding Court of Appeal decision. However, as with Mr Craig's 2 November 2011 letter, I would be reluctant to differ from two decisions of the High Court on the same issue in the absence of substantially different evidence or some material error.

[281] Mr Stringer did not point to any relevant evidence on this issue that was not before Toogood and Hinton JJ. He did not identify any error in their decisions.

[282] I respectfully agree with the decisions of Toogood and Hinton JJ on this issue. Once again, my reasons can be brief.

[283] I acknowledge the power imbalance favouring Mr Craig and the rebuttable inference that therefore arose that Mr Craig's conduct was unwelcome to

Ms MacGregor. There is sufficient evidence to rebut that inference, both in Ms MacGregor's contemporaneous text messages and in her evidence in the earlier trials.

[284] Ms MacGregor's text messages in the weeks before and after the election night incident firmly indicate that Mr Craig's conduct was not unwelcome. Four days prior to the incident, Ms MacGregor sent a text message at 12.17 am that included "Wish I could say goodnight the way I really want to". Ten days after election night, Mr Craig sent Ms MacGregor a text message that included:

IAHAMYM (I am having a miss you moment). WYWH. YAWAB.

[285] It may be recalled that "WYWH" was short for "wish you were here" and "YAWAB" short for "you are wonderful and beautiful". Ten minutes later, Ms MacGregor responded with a text message that included:

Ive been having a very missing colin day..not fun! Thanku 4 the text, feel better now! Will try not to text you again with non work things..

[286] Two days later, on 8 December 2011, Mr Craig and Ms MacGregor had a late-night text message exchange. Mr Craig's text message included "I wish I could hug you forever and never have to stop. IAHAMYM. WYWH." Ms MacGregor's response included "I wish the same thing. (Huuuuge huuuuug) [...] Wiwtwy (wish i was there with you)."

[287] Ms MacGregor's text messages reciprocated Mr Craig's expressions of longing. It is unlikely that she would have responded in this way had she found his election night conduct unwelcome.

[288] This is confirmed by Ms MacGregor's evidence in the earlier trials. During cross-examination in *Williams v Craig*, Ms MacGregor said the election night incident was non-consensual but later accepted that from what she told Mr Williams in 2014, it would be hard for him to think the incident was non-consensual. In *Craig v Slater*, Ms MacGregor referred to the election night incident in her examination-in-chief. She said she was disappointed in herself and had lost trust in Mr Craig but did not say the

incident was non-consensual.⁷⁷ In cross-examination, Ms MacGregor was asked whether she accepted it was consensual. She answered: “I didn’t object, yes.” In *Craig v MacGregor*, Ms MacGregor said during examination-in-chief that Mr Craig tried to kiss her “and I didn’t stop him actually, I just, you know, I kissed him back”. In cross-examination, she accepted the incident was consensual and added “I’ve never said it wasn’t”.

[289] For these reasons, Mr Stringer has not proved that Mr Craig sexually harassed Ms MacGregor by his conduct on election night 2011.

Mr Craig’s letters dated 7 February 2012 and 24 December 2013

[290] It is convenient to deal with these letters together.

[291] As noted, in *Craig v Slater* and *Craig v MacGregor* it was held that Mr Craig’s sexual language in these letters was unwelcome, unwanted or offensive to Ms MacGregor. Those findings were upheld by the Court of Appeal. I am bound to reach the same decision as the Court of Appeal unless there is substantially different evidence, on which the Court’s prior decisions might be distinguished.

[292] Assessing whether there is substantially different evidence involves three steps. First, I must identify the reasons of the Judges and the Court of Appeal in the prior decisions. Secondly, I must identify the different evidence that was adduced before me. Thirdly, I must decide whether that different evidence is such that, given the reasons in the prior decisions, those decisions might be distinguished.

Reasons in Craig v Slater

[293] I will begin with findings that Toogood J made in *Craig v Slater* related to Ms MacGregor’s evidence, and then turn to his Honour’s reasons for finding that Mr Craig’s February 2012 and December 2013 letters were unwelcome to Ms MacGregor.

⁷⁷ I was provided with a brief of evidence from Ms MacGregor for the *Craig v Slater* trial. However, it is apparent from the notes of evidence that Ms MacGregor did not read that brief. I have ignored the brief and have relied on the notes of evidence of her oral examination-in-chief.

[294] Toogood J expressed serious doubts about the reliability of parts of Ms MacGregor’s evidence. He said her antipathy towards Mr Craig led her to a faulty recollection of past events. He found that by the time of the trial Ms MacGregor saw aspects of Mr Craig’s conduct in a different light, because of her post-resignation experiences and the influence of discussing the events with other people. He said Ms MacGregor had acknowledged she had gone through a process of unravelling what she called Mr Craig’s manipulation of her and “figuring out what had actually been going on”.⁷⁸

[295] This was reflected in Toogood J’s findings. For example, his Honour:

- (a) Rejected Ms MacGregor’s evidence that in late 2011 she felt anxious about her future and took until early 2012 to decide about her future.⁷⁹
- (b) Did not find Ms MacGregor (or Mr Craig) wholly credible in their evidence of what happened on the election night incident and what they did afterward.⁸⁰
- (c) Was unable to accept Ms MacGregor’s evidence that she felt “scared and awful” immediately after the election night incident and that it marked the point at which she lost faith and trust in Mr Craig. While Ms MacGregor may have been confused by what had occurred, her text messages to Mr Craig shortly after the incident and the exchanges between them in the early part of the following month suggested that she had exaggerated her response to what had occurred.⁸¹ Ms MacGregor’s denial that there was any romantic element to one of those text messages was evasive.⁸²
- (d) Though accepting Ms MacGregor’s evidence that there were good practical reasons, after the election night incident, for her to choose

⁷⁸ *Craig v Slater* [2018] NZHC 2712 at [171].

⁷⁹ At [70].

⁸⁰ At [74].

⁸¹ At [76] and [422].

⁸² At [422].

to remain in her position as Mr Craig's personal assistant and press secretary, his Honour was not persuaded that she was trapped in the role by her financial circumstances at that time. His Honour said that if Ms MacGregor had been seriously disturbed by what had happened on election night, as she claimed, she was well able to begin looking for another position in December or after the holiday period.⁸³

[296] Despite his Honour's doubts about the reliability of parts of Ms MacGregor's evidence, he said it would be unrealistic to expect Ms MacGregor to be a wholly objective witness in the proceeding. For that reason, he did not draw any adverse inference against her from her refusal to acknowledge in evidence the romantic elements to some of her communications with Mr Craig in 2011.⁸⁴

[297] Toogood J found that the sexual language in Mr Craig's 7 February 2012 and 24 December 2013 letters was not welcomed by Ms MacGregor. His Honour's reasons were:

- (a) Between the election and Christmas 2011, Mr Craig and Ms MacGregor agreed to put boundaries in place around their relationship to leave out any form of romantic or sexual elements. It took some time for Ms MacGregor to come to terms with these boundaries. This was reflected by text messages in December 2011 in which Mr Craig and Ms MacGregor both referred to missing each other's company.⁸⁵
- (b) Over the course of their working relationship, the only expressions of interest by Ms MacGregor in intimate contact with Mr Craig were those made within a few days after the 2011 election. There was no evidence that Ms MacGregor expressed herself in those terms in 2012, 2013 or 2014, and no evidence that she initiated any form of sexual communication with Mr Craig at any time.⁸⁶

⁸³ At [78].

⁸⁴ At [171].

⁸⁵ At [426].

⁸⁶ At [427].

- (c) Despite purporting to agree boundaries, Mr Craig overstepped any boundary which might have been appropriate for an employer to observe when he wrote the February 2012 letter, in which he declared his continuing sexual interest in Ms MacGregor.⁸⁷
- (d) His Honour noted that Ms MacGregor had not remonstrated with Mr Craig about his sexual language in the letters. In determining whether that was evidence that she welcomed that language, it was necessary to recognise and give due weight to the workplace setting and the imbalance in the relationship. Their workplace relationship afforded the only basis for their spending time together. They had no independent personal relationship in which they might be considered to have interacted on equal terms.⁸⁸
- (e) Ms MacGregor’s brief response to Mr Craig’s February 2012 letter contained no indication that she found the sexual references to be unwelcome. Despite this, Toogood J accepted as credible Ms MacGregor’s evidence that she chose (then and later) to ignore what she described as the “dodgy bits” of Mr Craig’s letters and thank him or otherwise respond with gratitude to his positive comments about her character, her work performance and her value to him as his assistant and a friend. His Honour accepted Ms MacGregor’s evidence that, despite misgivings over Mr Craig’s expressions of sexual interest in her, she felt she had to remain in her position to enhance her career prospects or, at least, not to damage them.⁸⁹
- (f) Mr Craig’s references to “God”, Christian values and beliefs and other spiritual matters in his December 2013 letter were intended, at least in part, to normalise his sexual references as a legitimate element of what he claimed was their “special” relationship.⁹⁰

⁸⁷ At [428].

⁸⁸ At [430].

⁸⁹ At [436].

⁹⁰ At [441].

- (g) In making his sexually oriented statements in the two letters, Mr Craig exploited his dominant position in the workplace relationship, justifying a presumption that his behaviour was unwelcome. Mr Craig's evidence did not persuade his Honour that the presumption was rebutted. In any case, his Honour accepted Ms MacGregor's evidence that Mr Craig's expressions of affection and sexual interest were unwelcome to or unwanted by her at the times of the letters.⁹¹
- (h) Ms MacGregor chose not to complain about the harassment because of concern about the effect of a complaint on her employment.⁹²

[298] Toogood J reached these conclusions despite the evidence of Angela Storr and Beverly Adair-Beets, who were Conservative Party employees. Mrs Storr was the Membership Manager for the Party from 2012. She worked closely with Ms MacGregor and Christine Rankin (the Party's chief executive) in the lead-up to the 2014 general election. Mrs Storr said that Ms MacGregor was very possessive of Mr Craig's time.⁹³ She said that in late July or early August 2014 she and Ms Rankin had told Mr Craig that Ms MacGregor was infatuated with him.⁹⁴

[299] Mrs Adair-Beets was with the Party from mid-2014. She worked closely with Ms MacGregor from June to September 2014. She said it was clear that Ms MacGregor cared about Mr Craig and was personally interested in him. She said she never saw any inappropriate behaviour by Mr Craig to Ms MacGregor. Both Mrs Storr and Mrs Adair-Beets said they never received any complaint from Ms MacGregor about any inappropriate sexual behaviour towards her by Mr Craig.⁹⁵

[300] Toogood J accepted that Mrs Storr and Mrs Adair-Beets were objective witnesses. His Honour also accepted that their shared opinion that Ms MacGregor was infatuated with Mr Craig as late in the relationship as mid-2014 was genuine.

⁹¹ At [442]. As to Toogood J's conclusion that Mr Craig exploited his dominant position, see also [419].

⁹² At [443].

⁹³ At [152].

⁹⁴ At [165].

⁹⁵ At [164].

However, he considered they were mistaken.⁹⁶ They did not have the benefit of hearing days of oral evidence and sifting through hundreds of pages of letters and text messages, and other documentary exhibits. They were unaware of the many expressions of Mr Craig’s romantic and sexual interest in Ms MacGregor. They were also unaware of the absence of any evidence in emails or text messages that Ms MacGregor had any reciprocal interest of that kind in Mr Craig, apart from a few text messages around the 2011 election. They mistook Ms MacGregor’s enthusiasm for her position of influence over Mr Craig on matters of his appearance and in his dealings with the news media for inappropriate affection for him.⁹⁷

[301] His Honour reached his conclusions also despite the evidence of Mrs Craig about a telephone call she received from Ms MacGregor on the day of her resignation. Mrs Craig said that Ms MacGregor had admitted that she had been having “emotional affairs” with Mr Craig. Ms MacGregor said that what she told Mrs Craig was that her husband had been having an emotional affair with her. Toogood J considered that Ms MacGregor’s version of events was probably correct but concluded that the point was not significant. Even if he had accepted Mrs Craig’s version of events, it did not alter his view that Ms MacGregor had no romantic or sexual interest in Mr Craig after 2011.⁹⁸

[302] The Court of Appeal upheld Toogood J’s finding that Mr Craig had sexually harassed Ms MacGregor, stating that his analysis could not be faulted.⁹⁹

Reasons in Craig v MacGregor

[303] In *Craig v MacGregor*, Hinton J found aspects of Ms MacGregor’s evidence unsatisfactory. Her Honour said that, while reluctant to acknowledge it, Ms MacGregor conceded in evidence that the election night incident was consensual.¹⁰⁰ Her Honour found that Mr Craig generally had a clearer memory of what happened

⁹⁶ At [166].

⁹⁷ At [173].

⁹⁸ At [190]–[191].

⁹⁹ *Craig v Slater* [2020] NZCA 305 at [89].

¹⁰⁰ *Craig v MacGregor* [2019] NZHC 2247 at [24].

than Ms MacGregor, who had a limited or confused memory.¹⁰¹ Ms MacGregor's memory as to what happened, particularly in September 2014, was poor.¹⁰²

[304] Hinton J's view of Ms MacGregor's evidence was reflected in some of her Honour's findings. Her Honour:

- (a) Accepted Mr Craig's evidence, and rejected Ms MacGregor's, about whether Ms MacGregor's pay rate had been agreed as from 26 October 2012.¹⁰³
- (b) Rejected Ms MacGregor's account of what her 24 December 2013 text message response to Mr Craig's letter of the same date was referring to.¹⁰⁴
- (c) Preferred Mr Craig's evidence that, having been told of Ms MacGregor's resignation, he proposed a meeting with her.¹⁰⁵

[305] Hinton J recorded that Ms MacGregor readily accepted a number of times that the way she viewed Mr Craig's actions and words had changed materially. Her Honour nonetheless accepted Ms MacGregor's evidence that she did not welcome the sexual elements of Mr Craig's communications from 2012 onwards. The language of Ms MacGregor's text messages from early 2012, while appreciative and affectionate, responded to Mr Craig's flattery of her, both personally and in terms of her work. Ms MacGregor's text messages did not encourage or reciprocate Mr Craig's sexual comments or overtones. Her text messages were very restrained compared to Mr Craig's letters. It did not matter that Ms MacGregor did not specifically object to Mr Craig's language. An employee, particularly in her position, often would not.¹⁰⁶

[306] In reaching that conclusion, Hinton J said she did not ignore the evidence of the Conservative Party employees, Mrs Storr and Mrs Adair-Beets, who both said they

¹⁰¹ At [40] and [164].

¹⁰² At [68].

¹⁰³ At [43].

¹⁰⁴ At [56].

¹⁰⁵ At [76].

¹⁰⁶ At [179].

considered Ms MacGregor was infatuated with Mr Craig as late as mid-2014. Hinton J had no doubt they were honest witnesses, but neither of them had any idea of the letters and text messages Mr Craig sent to Ms MacGregor. They would therefore have had no idea whether they were welcome or not.¹⁰⁷

[307] The Court of Appeal dismissed Mr Craig's appeal against Hinton J's finding that Mr Craig had sexually harassed Ms MacGregor. The Court said the essential findings of Toogood J in *Craig v Slater* and Hinton J in *Craig v MacGregor* were identical. The documentary evidence, oral evidence and primary factual findings in both proceedings were similar. Hinton J adopted broadly the same view of the same evidence that was adopted by Toogood J and that had been upheld on appeal.¹⁰⁸ In these circumstances, Mr Craig was not entitled to a different result unless he could distinguish *Craig v Slater* by pointing to materially different facts established in evidence at the *Craig v MacGregor* trial. This he had not done.¹⁰⁹

The different evidence adduced in this trial

[308] Mr Craig has to point to substantially different evidence, on which the prior decisions might be distinguished, to be entitled to a different conclusion from those reached in the prior decisions.¹¹⁰

[309] Mr Craig confirmed I had the same set of documentary communications (letters, cards, emails and text messages) between him and Ms MacGregor that were before Toogood and Hinton JJ. But he said there was substantially different oral evidence. He said this was in three categories.

[310] First, Mr Craig said in evidence that he had provided a more detailed brief of evidence than in the previous cases. However, at no point did Mr Craig identify which details in his brief were different from his briefs in *Craig v Slater* and *Craig v MacGregor*. Further, his briefs from those earlier trials were not in evidence before

¹⁰⁷ At [181].

¹⁰⁸ *Craig v MacGregor* [2021] NZCA 156 at [20].

¹⁰⁹ At [25].

¹¹⁰ At [24]–[25].

me, so it was not possible for me to compare those briefs with his brief in this trial.¹¹¹ Finally, a comparison of Mr Craig’s brief with the detailed descriptions of his evidence in the respective judgments of Toogood and Hinton JJ does not reveal any obvious differences.

[311] This means there is no evidential foundation on which I can find that Mr Craig’s oral evidence before me was different from his evidence before Toogood and Hinton JJ.

[312] I nonetheless asked Mr Craig, during his closing submissions,¹¹² which part of his brief was new or expanded. He replied that he thought his brief expanded by “something like 40 or 50 paragraphs” and “I gave a lot more detail about my relationship with Ms MacGregor”. He gave only one example, saying he had never previously given evidence about what happened on 10 September 2014, when he said he had a “very personal discussion” with Ms MacGregor about her not being able to find a husband.

[313] I do not accept that Mr Craig’s evidence on this “discussion” on 10 September 2014 is new. He addressed this in one paragraph of his brief. That paragraph merely recounted an exchange of text messages with Ms MacGregor on the evening of 10 September 2014. Those text messages were in evidence before Toogood and Hinton JJ. Hinton J referred to them in her judgment.¹¹³

[314] Mr Craig said the second category of new evidence was provided by Mrs Storr. In her brief of evidence, Mrs Storr said she had given evidence in prior trials, but that for this trial Mr Craig had asked her to include more details where possible. She said she had done that. However, she did not identify which details in her brief were new, except to say she had included the detail around Ms MacGregor refusing to be parted from Mr Craig as her boss in June 2014. Mrs Storr’s briefs from the *Craig v Slater*

¹¹¹ Mr Craig’s brief of evidence from the *Stringer v Craig* trial was in the common bundle. However, that trial did not address whether Mr Craig had sexually harassed Ms MacGregor.

¹¹² Mr Craig’s written closing submissions said his brief “provided new and expanded evidence”. But his written submissions did not identify which parts of his brief were new or expanded.

¹¹³ *Craig v MacGregor* [2019] NZHC 2247 at [67].

and *Craig v MacGregor* trials were not in evidence before me, so I could not compare her brief in this trial with her previous briefs.¹¹⁴

[315] In cross-examination, Mrs Storr confirmed that there was more detail in her brief, but again she did not identify what parts of her brief were new. I then asked her if she could identify what was new. She told me that one paragraph was new and that “the rest are just minor sentences randomly throughout” which she was unable to pinpoint for me. Mr Craig did not ask Mrs Storr any questions arising out of my exchange with her.

[316] The new paragraph that Mrs Storr identified as new dealt with Ms MacGregor’s reaction to a June 2014 decision that all staff responsibilities in the Conservative Party should pass to the new chief executive, Ms Rankin. Mrs Storr said that Ms MacGregor refused to work under anyone other than Mr Craig “and made a big issue of it refusing to accept [Ms Rankin] as her boss”. Mrs Storr described this as Ms MacGregor’s “absolute requirement”.¹¹⁵ I accept that this evidence was not given in the *Craig v Slater* and *Craig v MacGregor* trials.

[317] The third category of different oral evidence came from Ms Rankin and from Stephen Taylor, neither of whom had given evidence in *Craig v Slater* or *Craig v MacGregor*. I accept that this evidence is new. I now turn to it.

Mr Taylor’s and Ms Rankin’s evidence

[318] I will deal first with Mr Taylor’s evidence. Mr Taylor is a counsellor. He said he was a friend and Conservative Party colleague of Ms MacGregor between 2013 and 2015. He gave evidence of what he observed about Ms MacGregor and what she told him between 2013 and 2015, specifically about her interactions with and relationship to Mr Craig.

¹¹⁴ In his written closing submissions, Mr Craig said that Mrs Storr provided “new and expanded evidence”. He did not, however, identify which parts of Mrs Storr’s evidence were new or expanded.

¹¹⁵ Mrs Storr added that this “absolute requirement” only “reaffirmed how intensely close she had become to [Mr Craig]. In hindsight, if Rachel was being sexually harassed by Colin as she now purports, this would have been the perfect opportunity for her to be ‘saved’.” That was submission, not evidence.

[319] At the outset of his evidence, Mr Taylor noted two things. First, he said he understood that Ms MacGregor had claimed that he had been her counsellor and that any conversations with him were therefore confidential. Mr Taylor said he had consistently denied being her counsellor. He said his relationship with Ms MacGregor was that of a friend and Conservative Party colleague, not counsellor. Secondly, Mr Taylor said that in 2016 Ms MacGregor sought and obtained a “protection order” against him.

[320] After explaining that he got to know Ms MacGregor through the Conservative Party, Mr Taylor said that one of the themes of his conversations with Ms MacGregor was her effusive and fierce admiration, devotion and loyalty to Mr Craig. Ms MacGregor told him that she was spending several hours a day with Mr Craig and that she was responsible for managing his wardrobe and personal presentation. She told Mr Taylor that she would occasionally make Mr Craig meals and massage his neck and back when he was in pain. She told him she and Mr Craig would discuss her personal life and dreams for the future as Mr Craig was someone she trusted.

[321] Mr Taylor said some of these activities struck him as crossing the boundaries of Ms MacGregor’s role as press secretary. He said he raised this with Ms MacGregor in mid-2014 and she was defensive, including using the words “I’m like his second wife”. Mr Taylor said this only affirmed his concern there was a “boundary blur”. He said he was concerned that Ms MacGregor and Mr Craig were at risk of becoming too close and embarking on affair. However, he said that when he raised these concerns with Ms MacGregor, she ignored or denied them.

[322] Mr Taylor said that about three weeks out from the 2014 general election he had lunch with Ms MacGregor. He said that Ms MacGregor seemed incensed at a correction and instruction that Mr Craig had given her to keep her car and clothes free of dog smell. Mr Taylor said he was struck by her reaction. His view was that she had taken Mr Craig’s correction deeply personally, in a manner inconsistent with how someone would respond to a correction from someone “who was just a boss”.

[323] Mr Taylor said that on 18 September 2014 Ms MacGregor called him in a distressed state. She said she had resigned as press secretary and had been caught out saying negative comments about Mr Craig in an interview with a journalist, Barry Soper. Mr Taylor said that Ms MacGregor told him, by way of explanation, that she had been having an “emotional affair” with Mr Craig. Mr Taylor agreed to meet Ms MacGregor. He said that when he arrived for the meeting he overheard Ms MacGregor phoning Mrs Craig. Mr Taylor said he heard Ms MacGregor tell Mrs Craig she had been having an “emotional affair” with Mr Craig.

[324] Mr Taylor said he was taken aback when Ms MacGregor later told him she was making a sexual harassment claim against Mr Craig. He said that Ms MacGregor had never mentioned to him anything about Mr Craig sexually harassing her or that his actions were unwelcome. To the contrary, Mr Taylor’s perception was that Ms MacGregor had strong affectionate feelings towards Mr Craig. He said it had been clear to him that Ms MacGregor had adored, admired, was loyal to and had become deeply infatuated with Mr Craig.

[325] Mr Taylor then returned, in his evidence, to Ms MacGregor’s claim he had been her counsellor. Mr Taylor said that Ms MacGregor made this claim in an email to him not long after July 2015. Mr Taylor said at no point had he been Ms MacGregor’s counsellor.

[326] Mr Taylor also said more about the “protection order” that Ms MacGregor had obtained against him. He said that in late 2015 someone created a website designed to attack Ms MacGregor’s reputation. Ms MacGregor obtained the “protection order” on the basis of her belief that Mr Taylor was the person behind the website. Mr Taylor said that he was not behind the website. He said he was sorry Ms MacGregor had apparently felt the need to “go to such lengths to attempt to discredit me, and to prevent me from speaking what I know to be true”.

[327] Several matters give me serious concern about the reliability of Mr Taylor’s recollection of events.

[328] First, Mr Taylor was asked whether he had applied to court to challenge the “protection order” Ms MacGregor had obtained. Mr Taylor said he had applied and that his application was granted by Judge L Hinton. After Mr Taylor’s evidence was concluded, Mr Akel provided me with a copy of a decision of Judge Hinton dated 2 May 2017.¹¹⁶ This shows that Mr Taylor applied to discharge a restraining order Ms MacGregor had obtained under the Harassment Act 1997. However, contrary to Mr Taylor’s evidence, Judge Hinton declined Mr Taylor’s application. The Judge was satisfied on the balance of probabilities that Mr Taylor was responsible for the website that attacked Ms MacGregor. In reaching that conclusion, the Judge observed that Mr Taylor appeared “artful and not straightforward in much of his evidence”.¹¹⁷ Mr Craig did not recall Mr Taylor to explain the discrepancy between his evidence and Judge Hinton’s decision.

[329] Secondly, Mr Taylor was asked whether he had discovered any of his correspondence with Ms MacGregor in this proceeding or in other related proceedings (Mr Taylor having been a defendant in the *Stringer v Craig* proceeding). Mr Taylor’s answer was that he had deleted all those records after the 2014 general election and so there was nothing to discover. He later clarified that he had, after the 2014 election, deleted the entire history of his correspondence with the Conservative Party, and that his email correspondence with Ms MacGregor had been from and to her Conservative Party email address. Yet, in his brief, Mr Taylor referred to and produced two emails from 2013 between him and Ms MacGregor and Mr Craig in their capacity as Conservative Party officials. The common bundle index recorded that those two documents had come from Mr Taylor’s custody.

[330] Thirdly, it was pointed out to Mr Taylor that any email from Ms MacGregor following her resignation (in which she claimed he had been her counsellor) would have come from a private email address (and, therefore, not have been deleted by Mr Taylor). Mr Taylor’s response was that “this correspondence after the resignation was texting and talking”. Yet when Mr Taylor gave evidence about Ms MacGregor’s post-

¹¹⁶ *Taylor v MacGregor* [2017] NZDC 9130.

¹¹⁷ At [26]. Judge Hinton’s finding that Mr Taylor was responsible for the website is not admissible to prove that fact: Evidence Act 2006, s 50. However, the Judge’s decision is admissible to prove the Judge declined Mr Taylor’s application.

resignation correspondence to him, he repeatedly described the correspondence as an email.

[331] Fourthly, there were several differences between Mr Taylor's evidence in the *Stringer v Craig* trial and his evidence in this trial.¹¹⁸

- (a) In the earlier trial, Mr Taylor said that Ms MacGregor had on one occasion paid for a "counselling session" but that he had returned that payment on his understanding that she was "a friend not a client". His acknowledgement that there had been a counselling session was at odds with his insistence, in his evidence in this trial, that at no point had he been Ms MacGregor's counsellor.¹¹⁹
- (b) In this trial, Mr Taylor said he was "struck" by Ms MacGregor's reaction, shortly before the 2014 election, to Mr Craig's instruction that she keep her car and clothes free of dog smell. By contrast, in his evidence in *Stringer v Craig*, Mr Taylor noted only two complaints that Ms MacGregor had made to him about her job in the two months leading up to the election. These were simply about long hours and her pay rate.
- (c) Mr Taylor's account in this trial of what happened on the day that Ms MacGregor resigned differed from his account at the earlier trial. In this trial, Mr Taylor said that when Ms MacGregor rang him, she told him she had been having an emotional affair with Mr Craig. He did not give that evidence at the earlier trial. In this trial, Mr Taylor said that when he arrived for his meeting with Ms MacGregor, he overheard her phoning Mrs Craig and telling her she had been having an emotional affair with Mr Craig. At the earlier trial, Mr Taylor said that shortly after he arrived for the meeting, Ms MacGregor "disclosed to me that she had just rung Helen Craig" and confessed to having an emotional affair with Mr Craig. Under cross-examination, Mr Taylor insisted

¹¹⁸ Mr Taylor's brief in *Stringer v Craig* was in evidence in this trial.

¹¹⁹ Whether Mr Taylor retained payment for the counselling session is of no moment.

those two accounts were consistent. I do not accept that. Mr Taylor would not have said that Ms MacGregor “disclosed” the phone call if Mr Taylor had overheard it.

- (d) In this trial, Mr Taylor said that Ms MacGregor called him in late November or early December 2014 and said she had been advised to pursue a claim against Mr Craig for sexual harassment. Mr Taylor said he was shocked by this. In *Stringer v Craig*, Mr Taylor gave no evidence of such a call. He gave evidence that Ms MacGregor mentioned to him in early January 2015 that she was taking legal action against Mr Craig. Mr Taylor said: “The impression I got was this was about finances”. These accounts are inconsistent. Mr Taylor could not have received that impression if, as he said in this trial, he had recently been told by Ms MacGregor that she had been advised to pursue a sexual harassment claim against Mr Craig.

- (e) In *Stringer v Craig*, Mr Taylor said Ms MacGregor was obviously “very close” to Mr Craig and on one occasion referred to herself as “Colin’s second wife”. Mr Taylor’s view, based on what Ms MacGregor said, was that she was “very compassionate” towards Mr Craig and “really, really cared about him”. He said that at no time did Ms MacGregor say or intimate that she was being sexually harassed by Mr Craig. To the contrary, Ms MacGregor constantly described Mr Craig in a positive way and “at the very least” thought very highly of him. Mr Taylor said he used the phrase “at the very least” because he “suspected” that the relationship was “emotionally quite close”. Mr Taylor expressed significantly more forceful views in his evidence before me. He said that it had been “clear” to him that Ms MacGregor had “adored, admired, was loyal to, and had become deeply infatuated with Mr Craig”.

[332] I acknowledge that in *Stringer v Craig* the question whether Mr Craig had sexually harassed Ms MacGregor was not in issue. Mr Taylor explained that this was why there was more detail in his brief in this trial than in his brief in *Stringer v Craig*.

But that only explains the additional detail that Mr Taylor provided in his brief, for example as to the basis for the view he formed of Ms MacGregor's feelings towards Mr Craig. It does not explain inconsistencies in the details that he did provide in both briefs. Nor does it explain why, having expressed a view in *Stringer v Craig* as to Ms MacGregor's feelings towards Mr Craig, he expressed a significantly different view on the same matter in this trial.

[333] These matters, in isolation, might be of little moment. Taken together, they leave me with serious concerns about the reliability of Mr Taylor's evidence. I give it little weight.

[334] I now address Ms Rankin's evidence. Ms Rankin gave evidence in *Williams v Craig* and *Stringer v Craig*, but not on the issue whether Mr Craig had sexually harassed Ms MacGregor. Ms Rankin did not give evidence in either *Craig v Slater* or *Craig v MacGregor*.

[335] Ms Rankin worked full-time as chief executive of the Conservative Party from June to late September 2014. She worked with Mr Craig on a daily basis. She said Ms MacGregor was almost always a part of that.

[336] Ms Rankin said that from the first day she observed that Mr Craig and Ms MacGregor were "very, very close". She said she was concerned by this. She asked Mr Craig whether he was having an affair with Ms MacGregor. Mr Craig said he was not. Ms Rankin then told Mr Craig "well she is in love with you".

[337] Ms Rankin said her view that Ms MacGregor was in love with Mr Craig was based on her observations that Ms MacGregor was obsessed with Mr Craig, did not want to be away from Mr Craig, and wanted to control everything he did. As an example of this, Ms Rankin said Ms MacGregor reacted angrily to a decision to transfer oversight of all Party staff from Mr Craig to herself. Ms MacGregor refused to report to Ms Rankin, insisting she would remain reporting to Mr Craig.

[338] Ms Rankin said it was "absolutely obvious to me, I've seen people have affairs before, everyone thinks that nobody knows about it when everybody knows about it,

and that was the behaviour, constantly together, very emotionally connected”. She said she had doubts about Mr Craig’s denial of an affair. But, in any case, Ms Rankin was of the view that Ms MacGregor was in love with Mr Craig.

[339] I found Ms Rankin to be a credible and reliable witness. In cross-examination, she was not seriously challenged on her view that Ms MacGregor was in love with Mr Craig. Some things, however, emerged from cross-examination. Ms Rankin said she had asked Mr Craig at least three times whether he was having an affair with Ms MacGregor. Each time, Mr Craig had responded that he was not. In her evidence-in-chief, Ms Rankin nonetheless doubted Mr Craig’s denials.

Is the different evidence such that the prior decisions might be distinguished?

[340] In summary, the different evidence is:

- (a) Mrs Storr’s evidence as to Ms MacGregor’s reaction to the decision made in June 2014 that all staff responsibilities in the Conservative Party should pass to Ms Rankin.
- (b) Mr Taylor’s evidence (though I give it little weight) of his observations of the relationship between Mr Craig and Ms MacGregor and on Ms MacGregor’s phone call to Mrs Craig shortly after Ms MacGregor resigned.
- (c) Ms Rankin’s evidence of her observations of the relationship between Mr Craig and Ms MacGregor (including her corroborating Mrs Storr’s evidence of Ms MacGregor’s reaction to the June 2014 staffing decision).

[341] Mr Craig submitted that this new evidence “shifted the dial” markedly, so that a different decision was justified. He said that over the course of the prior trials Ms MacGregor had been evasive, selective, confrontational and highly revisionist. He said Ms MacGregor’s evidence was a re-remembering of events in light of her “arrived-at” view that she had been sexually harassed. Her evidence contrasted with that of the witnesses who had “front-seat exposure” to the relationship between Mr

Craig and Ms MacGregor. In this trial, those witnesses included not only Mrs Storr, Mrs Adair-Beets and Mrs Craig, but the new witnesses Mr Taylor and Ms Rankin. All these witnesses gave evidence that in their view Ms MacGregor continued to have strong affection towards Mr Craig through to 2014.

[342] I accept that there are difficulties with some of the evidence that Ms MacGregor gave in prior trials. There were some inconsistencies in her evidence. She refused to accept that some of her 2011 text messages to Mr Craig had romantic elements, when they plainly did. She acknowledged that, by the time she was giving evidence, she saw her relationship with Mr Craig in a very different light. At times she was evasive. At other times it was evident (even from a mere reading of the transcript) that she was hostile to the cross-examiner.

[343] These difficulties were acknowledged by both Toogood and Hinton JJ in the prior decisions. As I have noted, Toogood J expressed serious doubts about the reliability of parts of Ms MacGregor's evidence. He said her antipathy towards Mr Craig led her to a faulty recollection of past events. He found that by the time of the trial Ms MacGregor saw aspects of Mr Craig's conduct in a different light. Despite his Honour's doubts about the reliability of parts of Ms MacGregor's evidence, he did not draw any adverse inference against her. His Honour ultimately accepted Ms MacGregor's evidence that Mr Craig's expressions of affection and sexual interest were unwelcome to or unwanted by her at the times of the February 2012 and December 2013 letters.¹²⁰

[344] Similarly, Hinton J found aspects of Ms MacGregor's evidence unsatisfactory. On several occasions, her Honour preferred Mr Craig's version of events over Ms MacGregor's. Hinton J recorded that Ms MacGregor readily accepted that the way she viewed Mr Craig's actions and words had changed materially. Her Honour nonetheless accepted Ms MacGregor's evidence that she did not welcome the sexual elements of Mr Craig's communications from 2012 onwards.¹²¹

¹²⁰ As discussed in this judgment at [294]–[297].

¹²¹ As discussed in this judgment at [303]–[305] above.

[345] Further, to the extent that Mr Craig relied on differences between Ms MacGregor's oral evidence in *Craig v Slater* and *Craig v MacGregor*, the Court of Appeal in *Craig v MacGregor* acknowledged that there were some differences. The Court nonetheless described the oral evidence as "very similar" and said the differences did not call into question the finding of Toogood J that Mr Craig had sexually harassed Ms MacGregor.¹²²

[346] Toogood and Hinton JJ (and the Court of Appeal) found that Ms MacGregor did not welcome Mr Craig's sexual language, despite the evidence of Mrs Storr and Mrs Adair-Beets that they considered Ms MacGregor was infatuated with Mr Craig as late as mid-2014. Both Judges considered those witnesses were honest in their views. However, neither was aware of the many expressions of Mr Craig's romantic and sexual interest in Ms MacGregor or of the absence, after 2011, of any emails or text messages from Ms MacGregor reciprocating that interest.

[347] I do not consider that the new evidence from Ms Rankin and Mr Taylor provides a basis for distinguishing the prior decisions. Ms Rankin might have appeared to have had front-seat exposure to the relationship between Mr Craig and Ms MacGregor but, like Mrs Storr and Mrs Adair-Beets, she was not seeing the full picture. She did not know of the reciprocal expressions of romance and affection leading up to the election night incident. She did not know that Mr Craig and Ms MacGregor had thereafter agreed on boundaries to their relationship. She did not know that Mr Craig had crossed those boundaries by continuing to express sexual interest in his letters to Ms MacGregor. She did not know that Ms MacGregor had not, since late 2011, reciprocated that interest. Ms Rankin's suspicion that Mr Craig was, despite his repeated denials, having an affair with Ms MacGregor (which he was not) shows that Ms Rankin was, like anyone in a similar position, capable of being mistaken in her observations.

[348] The same can be said of Mr Taylor. Even if I had found his evidence of his view of Mr Craig's and Ms MacGregor's relationship to be reliable (which I have not), Mr Taylor was not seeing the full picture.

¹²² *Craig v MacGregor* [2021] NZCA 156 at [20].

[349] Mr Taylor also gave evidence that on the day of her resignation Ms MacGregor said to Mrs Craig that she had been having an “emotional affair” with Mr Craig (whereas Ms MacGregor’s evidence was that she referred only to Mr Craig having an emotional affair with her). This does not provide a basis for distinguishing the prior decisions. As I have said, Mr Taylor gave inconsistent accounts of this conversation in the *Stringer v Craig* trial and in this trial. Further, Toogood J said the dispute over what Ms MacGregor said to Mrs Craig was not significant. Even if he had accepted Mrs Craig’s version of events, it did not alter his view that Ms MacGregor had no romantic or sexual interest in Mr Craig after 2011.¹²³ Hinton J said that the two versions of what Ms MacGregor said were very similar.¹²⁴

[350] Finally, the new evidence from Mrs Storr and Ms Rankin as to Ms MacGregor’s reaction to being told she should report to Ms Rankin rather than Mr Craig is not a basis for distinguishing the prior decisions. This does not alter the fact that they did not see the full picture of the relationship between Mr Craig and Ms MacGregor.

[351] For these reasons, I find that Mr Craig has not pointed to different evidence on which the prior decisions can be distinguished. I am bound to conclude that Mr Craig’s sexual language in his letters of February 2012 and December 2013 was not welcomed by Ms MacGregor.

Conclusion on the defence of truth

[352] In light of my findings above, I am bound to conclude that Mr Craig did sexually harass Ms MacGregor. Mr Stringer’s defence of truth therefore succeeds.

[353] This is a decision I would have come to in any event on the evidence that was before me. In the circumstances, I can explain my reasons briefly.

[354] There was a power imbalance in the relationship in favour of Mr Craig. He therefore faced a rebuttable inference that his sexual language in his letters of February

¹²³ *Craig v Slater* [2018] NZHC 2712 at [191].

¹²⁴ *Craig v MacGregor* [2019] NZHC 2247 at [73].

2012 and December 2013 was unwelcome, despite Ms MacGregor not objecting at the time to the language.

[355] The communications between Mr Craig and Ms MacGregor tell a clear story. There was mutual affection, including sexual desire, expressed between them up to a period shortly after the election night incident. Soon thereafter, they agreed there should be boundaries to their relationship. Mr Craig trespassed across those boundaries in his two letters.

[356] There is nothing in the documentary evidence to rebut the inference that Ms MacGregor did not welcome Mr Craig's sexual language in the letters. To the contrary, the documentary evidence reinforces the inference:

- (a) Ms MacGregor's response to Mr Craig's February 2012 letter, though positive, was remarkably short. Further, it did not engage with, let alone reciprocate, any of Mr Craig's sexual language.
- (b) Not long after the February 2012 letter, on the evening of 25 March 2012, Mr Craig sent a text message to Ms MacGregor that included "wow I just had a major IMYAWUWH moment". When Ms MacGregor's response did not engage with Mr Craig's lengthy acronym, Mr Craig asked whether she had received his text message. Ms MacGregor responded with a further text message that included telling Mr Craig to "Try to discipline your mind to not think about anything except Jesus".
- (c) In the February 2012 letter, Mr Craig asked Ms MacGregor a series of questions, mostly to do with their relationship. For example, after saying that spending time apart from Ms MacGregor had not changed the way he felt or thought about her, Mr Craig asked whether those things had changed for Ms MacGregor. Ms MacGregor never answered those questions or discussed them with Mr Craig.

- (d) Ms MacGregor's response to Mr Craig's December 2013 letter, although positive, did not reciprocate the sexual desire expressed by Mr Craig in his letter.
- (e) There is a stark contrast between the communications between Ms MacGregor and Mr Craig up to the end of 2011 (in which expressions of romantic affection and sexual desire are reciprocated) and the communications thereafter (in which such expressions are found in Mr Craig's communications, but are absent from Ms MacGregor's).

[357] I accept that in some of her communications Ms MacGregor expressed admiration, respect, and love for Mr Craig. I do not consider these rebut the inference that Mr Craig's sexual language was unwelcome. Ms MacGregor's expressions need to be read in context. Ms MacGregor and Mr Craig shared a Christian faith and many of their communications referenced that. Ms MacGregor was not declaring a romantic love for Mr Craig, let alone sexual interest in him. For example, Ms MacGregor signed off a January 2013 birthday card to Mr Craig with "Love from Rach" and a drawn love heart. But Mrs Storr signed off the same card in the same way.

[358] The evidence of witnesses such as Ms Rankin, Mrs Adair-Beets and Mrs Storr did not persuade me that Ms MacGregor welcomed Mr Craig's sexual language. I accept they were genuine in their observations that Ms MacGregor was infatuated with or loved Mr Craig. I consider they were mistaken, as they did not know the full picture. Even if I had thought their observations were accurate, I would still have found that Mr Craig had not rebutted the inference that his language was not welcomed by Ms MacGregor. Infatuation and love do not necessarily equate to welcoming sexual language. Ms MacGregor wished to live according to her Christian values. That meant not pursuing a romantic or sexual relationship with a married man. To that end, she had agreed boundaries with Mr Craig. There is no evidence to suggest that, even if she remained infatuated or in love with Mr Craig through to 2014, she welcomed a transgression of her values or those boundaries.

[359] Though I did not have the benefit of seeing Ms MacGregor give her evidence, I read the 650 or so pages of it. That covered about six days of oral examination-in-

chief and cross-examination. There are unsatisfactory aspects to some of her evidence, as noted by both Toogood and Hinton JJ. But I accept her evidence that she did not welcome Mr Craig's sexual language in his two letters. That evidence is consistent with the documentary evidence.

Conclusion and costs

[360] Mr Stringer's defence of truth succeeds. It is therefore unnecessary to address his other affirmative defences or quantum.

[361] Mr Stringer represented himself. He is therefore not entitled to an award of costs. He is, however, entitled to be paid his reasonable disbursements by Mr Craig.

[362] Mr Akel appeared as counsel to assist the Court. His assistance was valuable, and I am grateful to him for it. Section 178 of the Senior Courts Act 2016 provides that where a person appears as counsel to assist the Court in any civil proceeding, the Court may make any order it thinks just for the payment, by any party to the proceeding or out of public funds, of the costs incurred by the person assisting. I direct the parties and Mr Akel to file and serve submissions as to how I should exercise the discretion under s 178 in this case, as follows:

- (a) Mr Akel by 19 April 2023.
- (b) Mr Craig by 3 May 2023.
- (c) Mr Stringer by 17 May 2023.

[363] Each set of submissions should not exceed six pages, excluding relevant annexures or schedules.

Result

[364] I dismiss Mr Craig's claim for defamation against Mr Stringer.

[365] I order Mr Craig to pay Mr Stringer his reasonable disbursements incurred in defending Mr Craig's claim. If agreement on those disbursements cannot be reached, the dispute is to be referred to the Registrar.

[366] I direct the parties and Mr Akel to file and serve submissions on the Court's exercise of its discretion under s 178 of the Senior Courts Act, as set out in [362] above.

Campbell J