

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

**I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE**

**CIV-2018-404-530
[2023] NZHC 1676**

BETWEEN	ZAINULABIDIN SYED Plaintiff
AND	AMIR FAZAL MALIK First Defendant
AND	TRINITY JOAN WILSON Second Defendant

Hearing: 20–22 March 2023

Counsel: D A Jaques for Plaintiff
G A Paine for Defendants

Judgment: 30 June 2023

JUDGMENT OF ISAC J

Introduction and procedural background

[1] Mr Zainulabidin Syed and Mr Amir Malik are former business associates. By early 2016 their relationship had broken down. Mr Syed brought an application, successfully, for possession of a residential property Mr Malik, his wife (the second defendant, Ms Wilson) and their two children had been living in.¹ In response, Mr Malik began what he described as a “public awareness campaign” involving the publication of defamatory statements which damaged Mr Syed’s reputation and caused harm to his business interests.

[2] In 2018 Mr Syed commenced proceedings in defamation against the defendants. On 30 August 2018, Churchman J entered judgment against Mr Malik and

¹ *Syed Family Ltd v Malik* [2017] NZHC 1022 at [56].

Ms Wilson for liability on 20 causes of action, each of which related to the publication of a separate defamatory statement.² However, he declined to award damages of \$10.9 million as sought by Mr Syed and directed the plaintiff to replead his case providing full particulars of the claims against each of the defendants.³ He also made an order restraining the defendants from publishing further defamatory statements about the plaintiff.⁴ Churchman J also noted that:⁵

...any repetition of the defamatory statements or any failure to delete or remove them (to the extent that it is within the control of the defendants), is likely to aggravate the amount of damages that might be awarded to the plaintiff.

[3] With judgment as to liability entered, the remaining issue for determination is the extent to which Mr Syed is entitled to recover damages. In a second amended statement of claim, Mr Syed did not pursue his previous claim for losses said to have arisen from the collapse of two business ventures as a result of the defendants' conduct. He instead limited his claim to general damages which at trial he argued should be in the range of \$150,000 to \$300,000.

[4] This judgment determines the extent of the defendants' liability to Mr Syed.

The trial and my factual findings

[5] The trial took place over three days without a jury.⁶ Mr Syed was the only witness for the plaintiff. Mr Malik and Ms Wilson gave evidence in their own defence. A number of contemporaneous documents—mostly comprised of the relevant publications—were also produced in evidence.

Mr Syed and his business association with the defendants

[6] Mr Syed was born in Pakistan but immigrated to Australia at a relatively young age. He is now in his early 50s and described having spent 30 years in Australia first in education and then in business, primarily as a property developer.

² *Syed v Malik* [2018] NZHC 2278 at [72].

³ At [47]–[52] and [72]–[73].

⁴ At [58]–[63] and [74].

⁵ At [63].

⁶ In *Syed v Malik* [2023] NZHC 496, I granted Mr Syed's application to have the quantum trial determined by a judge without a jury.

[7] It seems his business enjoyed a measure of success. He gave evidence that before the events in issue in this trial he also enjoyed standing and respect within the Muslim community in Victoria, Australia. He had been the elected president of the Islamic Forum for Australian Muslims of Victoria, and was involved in the administration of his mosque. One of his business ventures, a property development undertaken in the name of Halal Homes, was marketed specifically to the Muslim community and relied on Mr Syed's reputation for integrity. He was also involved in the Australian education sector as a consultant.

[8] Mr Syed first met Mr Malik in 2005, when he began investing in property in New Zealand.⁷ In 2009, they entered into an agreement whereby Mr Malik, Ms Wilson and their children could live rent free in a property Mr Syed's interests owned in Auckland while it was being renovated. Mr Malik in return appears to have provided project management work in relation to various property developments.

[9] In 2012, Mr Syed purchased three further properties in Auckland, including one on Park Avenue. Mr Malik was given a small shareholding in, and was appointed a director of, the company that then began a motel development on the site. It seems the relationship remained on good terms but became strained in 2015, when Mr Syed became aware that without his knowledge Mr Malik had incorporated a company—Building Future Enterprises Ltd—and had been contracting with it to carry out work on the Park Avenue development. As a result, Mr Syed lost confidence and trust in Mr Malik, and ended his involvement in the building project. In response, Mr Malik claimed he had been in a partnership and that he was entitled to an equity interest in the Park Avenue motel development and other properties. Soon after, their relationship appears to have come to an unhappy end.

[10] While Mr Syed initially permitted Mr Malik and his family to remain in the property they had been living in rent free for a period, by November 2015 he advised Mr Malik and Ms Wilson they would have to leave. In response, Mr Malik offered to begin paying rent of \$400 per week, but did not do so. In January 2016, Mr Syed renewed his request for the defendants to vacate the property and served them with a

⁷ A history of the parties' relationships and relevant background events is set out in the judgment of Woodhouse J, above n 1, at [5]–[28].

trespass notice. The defendants and their children did not vacate the property. Instead, on 22 April 2016 the defendants lodged a caveat claiming an ownership interest in the house they were occupying as well as the motel development and another property. In a judgment of 18 May 2017, Woodhouse J dismissed Mr Malik’s application for an order that his caveats not lapse, and made an order requiring Mr Malik and Ms Wilson to provide vacant possession of Mr Syed’s property.⁸

The defamatory statements – a summary

[11] Between 21 October 2016 and 28 December 2017, the defendants published 20 defamatory statements. It is unnecessary to address each one. The following is a summary.

[12] The majority of the publications were in the form of emails, most commonly to a group of recipients. Separately, either or both Ms Wilson or Mr Malik also published defamatory posts and comments on Facebook. Commonly their group emails would provide links to the social media posts. Mr Malik also produced five YouTube video clips which attacked Mr Syed’s character. Links to these clips were also commonly embedded in subsequent group emails or in social media posts. The evidence also indicates that the social media comments would generate a further number of critical and defamatory responses that can only be described as a “pile on”.

[13] The defamatory imputations contained in the posts, videos and emails could not have been more serious. They included claims that Mr Syed:

- (a) had misused funds provided for the construction of a mosque;
- (b) was guilty of fraud, perjury, forging documents and signatures, money-laundering, trespass and tax evasion;
- (c) funded and supported terrorist organisations;
- (d) is a criminal who would end up in jail;

⁸ *Syed Family Ltd v Malik*, above n 1.

- (e) was born out of wedlock;
- (f) keeps two wives in Australia against the law;
- (g) is outwardly Muslim but secretly unsympathetic to Muslims and actively sought to undermine their community;
- (h) had made tens of millions of dollars through a combination of various forms of dishonesty or illegal activity; and
- (i) uses fear, intimidation and threats of harm to ensure victims of his unlawful activities remain silent.

[14] To provide an illustration of the defamatory statements I refer to only a few. On 27 May 2017, Mr Malik posted the following on his Facebook page:

PUBLIC NOTICE!

Awareness about Fraudster and his little gang based in Melbourne.

Name: Zainulabidin Syed.

DOB: 1July1968.

Bom: Bahawalpur (PAK).

Citizen: Australian.

Source of income: Fraud, Money Laundering, Tax evasion, Concealment of Assets and Using&abusing Australian govt educational Funding....

Also using Mosque project funds (cash donations) and spreading terrorism through mind-set ideology...acting holy shit!

Please share as much you can, only purpose to stop him flying to Overseas from NZ with 10s of millions of TAX PAYERS money.

Support Justice

Support Accountability

Support Victims of Fraud

[15] The post included a photograph of Mr Syed, as well as seven other pictures.⁹ It also tagged Ms Wilson and 85 others. The names of the people tagged suggests that they are likely members of the Muslim community. This post was shared at least 11 times by others and generated nine comments from those who had seen it, some it would seem did not even know Mr Syed.

[16] On 5 December 2016, Mr Malik posted directly on the Facebook page of Halal Homes:

These bastards r fraudster. Halal home from haram¹⁰ wealth. Zain Shah [the plaintiff] will end up in jail soon.

[17] The publication was made on a website available and viewed by the public at large, and in particular the prospective customers of Mr Syed's business.

[18] On 4 September 2017, Mr Malik published to YouTube a video clip with images of the plaintiff and, it seems, either members of his family or business associates. The accompanying voiceover is in Urdu but, translated, was in these terms:

Insect from a dirty sewer

Assalamualaikum

If this insect from a dirty sewer doesn't stop talking about other people's mothers and daughters, then he also has daughters, sisters, wives and he also had a mother.

You don't want someone to reveal from your own house to reveal your personal secrets.

If he is claiming to be innocent and that he has been robbed then why doesn't he show the receipts?

Someone tell this insect from a dirty sewer that he is being defamed day and night.

But shameless person doesn't go to the police or court

⁹ One picture stated "Zainulabidin syed feeding his Family Haram, but building mosque WTF". Another shows photographs of Mr Syed taped to the outside of a building accompanied by the following text: "FRAUDSTER, MONEY LAUNDERING, TAX EVASION, CONCEALMENT OF ASSETS", "SEEKING JUSTICE" and "VICTIM OF FRAUD WERE LIVING HERE". It appears the defendants attached these pieces of paper to the outside of the property from which they had been evicted.

¹⁰ Haram means forbidden.

He is just accepting it like a shameless person because there is something fishy and this bitch is a Haramkhor.¹¹

[19] This was not the only post that was self-consciously defamatory. A group email of 31 May 2017 contained a link to the Facebook post described above at [14]. In addition to an image of the plaintiff, the post included an image which read:

OPEN defamation!

Shaitan¹² in human form

I bet won't take me to court

[20] Another relevant aggravating feature of the publications is that they commonly followed after a judgment had been delivered that was adverse to Mr Malik's interests. On 18 May 2017, Woodhouse J's decision dismissing Mr Malik's claim to an interest in Mr Syed's properties was issued. Nine days later, Mr Malik made the Facebook post noted at [14] above. After these proceedings had been issued, Palmer J issued a minute on 12 April 2018 which made a consent order that:

...until the trial, the defendants will not say anything defamatory...unless it is true...

[21] A month later, on 17 May 2018, Mr Malik sent a group email which was again highly defamatory and untrue. Of greater concern is that on 30 August 2018, Churchman J issued his judgment entering liability against the defendants and made an order that the defendants were not to publish any further defamatory material. He then said:¹³

If the defendants ignore that order, then they will be in contempt of Court. Being found to be in contempt of Court is a potentially very serious matter, with outcomes up to and including imprisonment.

[22] In breach of the Court's order, Mr Malik proceeded to issue two further defamatory publications in the form of group emails, on 11 and 13 October 2018, both containing links to YouTube videos which further defamed Mr Syed.

¹¹ Haramkhor means a person involved in activity that is unjust, deceptive, or fraudulent.

¹² A shaitan is a devil or evil spirit.

¹³ *Syed v Malik*, above n 2, at [60].

[23] The defendants' explanation for their conduct was that they had embarked on a public awareness campaign to ensure others were not taken in or deceived by Mr Syed. They were not inclined to accept that they had acted so vociferously out of a sense of revenge—having been thrown out of the home they had been living in—or in response to Mr Syed's rejection of their claim that they had an interest in his properties arising from some form of partnership.¹⁴

Consequences of publication for Mr Syed and his businesses

[24] Although it is unnecessary to make any positive finding given that aggravated and special damages were not sought, Mr Syed's evidence, which I have no reason to question, leaves me in no doubt that the consequences of the defendants' actions have caused his business and reputation very serious harm.

[25] Mr Syed found that senior and respected members of the Muslim community in Victoria where he lived started to avoid him. He had previously been welcomed by a prominent Muslim member of the Liberal Party, but after the defendants began their campaign he was no longer invited to important events. As time wore on, he was forced to resign his leadership positions within his mosque and the Islamic Forum for Australian Muslims. He could no longer undertake fundraising for religious and community objects. Two significant but related developments then in train by Halal Homes collapsed after significant planning and development costs had been incurred. He had to liquidate his businesses on both sides of the Tasman. In essence, Mr Syed lost everything. As he said in evidence:

[Mr Malik] ran a very... extensive campaign on [Halal Homes] and against me and my family. He did not leave a single person alone. He included my wife, my children, my father, my mother, you name it. And I'm really surprised... I really feel that... why did I ever met him, you know? It's such... I've wasted my five years of life, and I could not carry on afterwards. Australia was my home. I ended up leaving Australia. I went to Pakistan. Where I have no roots, because I was young boy when I came to Australia... And I know the culture, I know the system, and I studied there. I know how it works. I had connections. I'm sorry... which I build up... in 30 years. I lost everything. I used to be member of [Liberal] Party. They want me as a candidate for the area. After that I resigned from the party as well. I used to be very active member of Islamic Forum for Australian Muslims. I was a president for Victoria. I was [a] member of the Society.

¹⁴ Although that is the view largely endorsed by the High Court in the caveat and liability decisions.

Overall conclusion and findings

[26] I have no hesitation rejecting the defendants' claims in evidence that the purpose of their "public awareness campaign" was honourable or stemmed from a concern for others. The evidence establishes a relentless smear campaign which was designed to cause harm to Mr Syed's reputation and business interests. It also establishes that the defendants were successful in that aim.

[27] The allegations—including fraud, money laundering, tax evasion, financing terrorism, uttering false documents and perjury—were only made after the business relationship came to an end. When asked to clarify when the defendants first gained knowledge of this serious criminal offending, they both said they had none while they were in business with Mr Syed, up until January 2016. However, neither defendant was then able to give a clear or persuasive account of when and how they subsequently came into the information that supported their allegations. Mr Malik claimed that he became aware of the criminality he alleged when he received an affidavit filed by Mr Syed in the caveat proceedings. Ms Wilson said much the same thing, claiming that Mr Syed had filed "what I believe were fabricated documents" with the Court. One was a service agreement and the other a loan document. The defendants failed to produce any independent evidence to support their claims, and I reject them as false. These assertions are a fabrication invented to serve the defendants' desire to cause Mr Syed harm and justify their own actions. Furthermore, the documents identified—a loan document and a service agreement—have no connection whatsoever to some of the most serious defamatory imputations such as funding terrorism, stealing money from a mosque or that Mr Syed had two wives and was born out of wedlock.

[28] Even during the hearing Mr Malik continued to claim that he held other evidence that would support his allegations, but none of it was produced in evidence as part of the common bundle or at any time in the preceding five years that these proceedings have been on foot.¹⁵ His failure to produce any evidence of wrongdoing is certainly consistent with the conclusions of the law enforcement agencies both in New Zealand and Australia (including the Department of Inland Revenue, Australian

¹⁵ In response to a question from the bench, Mr Malik claimed that he had proof of his claims at home but had failed to bring it with him to Court. This is despite the parties having completed discovery in the usual way.

Federal Police, New Zealand Police and the Serious Fraud Office), all of which received complaints from Mr Malik but declined to open any investigation.

[29] Added to these aspects of the defendants' conduct is their refusal to accept judicial determinations and a high disregard for orders of the Court. Palmer J ordered the defendants not to make defamatory statements concerning Mr Syed that were not true. They ignored that order and continued to do so. Of greater seriousness is that after Churchman J entered judgment against them, and made an unequivocal order preventing them from continuing their conduct, they did so clearly in breach of the order.

[30] Allied to the persistent repetition of the defamatory statements is the extent of the attack on Mr Syed's character. Virtually every aspect of his life was subject to attack: his religious piety, his family, his moral integrity, his business. It is difficult to imagine a level of character assassination more pervasive or serious.

[31] In terms of the extent of each defendants' culpability and responsibility, Mr Paine sought to draw a distinction between Ms Wilson and Mr Malik. He contended that Ms Wilson's involvement was peripheral only and that any award of damages should be directed to Mr Malik principally or entirely. However, the statement of claim on which Churchman J entered judgment against Ms Wilson identified her as a joint defendant on 11 of the 20 causes of action. They are husband and wife, and the evidence demonstrates that the defamatory statements were published with her approval or assistance regardless of whether she was directly involved in publication.¹⁶ For instance, in the comment section on Mr Malik's Facebook post of 31 May 2017, Ms Wilson posted the following:

PIG alright !!! greedy, criminal minded, acting pious on outside but inside he got blind heart. he can forge people's signatures and arrange to HARM People and VULNERABLE families...when hes in the shit. He thinks he something...when he don't really sleep at night, must be unsettling when your an enemy of the state and you also personally have a lot of enemies ! i would rather fail with Honour then succeed with FRAUD in front of Allah...

¹⁶ On 3 July 2017, Ms Wilson sent a long email to Mr Malik entitled "true story about MUSLIM SHYSTER & FRAUDSTER" which Mr Malik then forwarded on to another person and an unknown number of others.

[32] The defendants acted jointly, and to a certain extent it would be artificial to endeavour to apportion damages between them. That being said, most of the defamatory statements were published on Facebook, YouTube and Gmail accounts in Mr Malik's name, and I accept that he was likely the driving force behind the publication of most of the material. I return to this point when I fix the quantum of damages.

[33] Finally, at trial the defendants endeavoured to establish, under s 30 of the Defamation Act 1992, Mr Syed's poor reputation in mitigation of damages. In doing so they essentially sought to continue allegations that are contrary to the judgment entered against them and that I have found are not supported by any credible evidence. They produced newspaper articles about the profitability of the Park Avenue motel development as an emergency housing provider, despite its poor, unsanitary conditions and failure to obtain a code compliance certificate,¹⁷ and that Mr Syed was responsible for claiming public funds for emergency housing that he was not entitled to¹⁸.

[34] However, the evidence indicates that it was Mr Malik who was responsible for the Park Avenue development as its project manager for the majority of its construction and, it seems, for management of the development's tax obligations.¹⁹ The evidence left me with significant unease that some of Mr Malik's claims about Mr Syed were an effort to deflect from his own responsibility for the state of affairs noted in the reports. And while Mr Syed may have claimed for emergency housing costs that he was not entitled to claim, it also appears that the newspaper article and Tenancy Tribunal decision produced in evidence post-date most of the defamatory statements in issue in this proceeding. So the extent to which this could be relevant as evidence of his reputation at the relevant time is very limited.

¹⁷ Katarina Williams and Nick Truebridge "A rat hole not worth a dollar: The Auckland motel 'profiting' off the housing crisis" (Stuff, 16 February 2019); and RNZ "Motels make millions providing emergency housing" (8 November 2019).

¹⁸ Brittany Keogh "Landlord to keep \$50,000 tenant made by allegedly misleading Government agency" (Stuff, 6 June 2019); and *Barfoot & Thompson Limited v Syed* [2019] NZTT Manukau 4177264. The defendants also produced two other Tenancy Tribunal involving the plaintiff. In *South Auckland Muslim Association Incorporated v Syed*, the Tribunal terminated possession of a tenancy for unpaid rent and ordered Mr Syed to pay the filing fee of \$20.44 (the outstanding rent was covered by the bond). In *Barfoot & Thompson Ltd v Syed* [2018] Manukau 4154804, the Tribunal entered judgment for rent arrears against Mr Syed of \$1,403.30.

¹⁹ In evidence is a creditor claim form in the liquidation of the development company completed by Mr Malik in which records that he was "sole director of the company" and "manage[d] the business and property development solely" from June 2012 to December 2015.

Relevant principles

[35] Mr Syed seeks general (compensatory) damages. The purpose of such an award is to restore the claimant, as far as money can do, to the position they would have been in if the defamation had not been committed. In *Craig v Slater*, Edwards J explained this concept in the following terms:²⁰

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

[36] Her Honour went on to explain that an award of compensatory damages may be increased (aggravated) where the defendant’s conduct toward the plaintiff has compounded or increased the effect of the defamation:²¹

Aggravated damages are awarded to compensate for injury to the plaintiff’s feelings or dignity “where that sense of injury has been exacerbated by the manner in which, or the motive with which, the defendant committed the defamatory act, or by how the defamation defendant behaved towards the injured plaintiff, particularly after the tort had been committed”. Aggravated damages are treated as enlarging the quantum of general damages rather than as justifying a separate head of damages.

[37] While a favourable verdict on liability is the successful plaintiff’s primary vindication,²² an award of damages will usually be necessary to adequately compensate for the harm caused.²³ One reason for this, as the English Court of Appeal observed in *Cairns v Modi*, is that most interested bystanders who need to be convinced are unlikely to read the judgment. Rather, most people simply want to know the “headline” result: how much did the plaintiff get?²⁴

²⁰ *Craig v Slater* [2021] NZHC 30 at [50] (footnotes omitted), citing *Siemer v Stiassny* [2011] NZCA 106, [2011] 2 NZLR 631 at [48]. See also Ursula Cheer *Burrows and Cheer Media Law in New Zealand* (8th ed, LexisNexis, Wellington, 2021) at [2.3.1(a)].

²¹ At [51]. See also *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [33].

²² *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [32].

²³ *Craig v Slater* [2020] NZCA 305 at [117], citing *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 (EWCA) at 159, and *Cairns v Modi* [2012] EWCA Civ 1382, [2013] 1 WLR 1015 at [32]. The Court said “a nil damages award where defamation has been established is a defective verdict”.

²⁴ *Cairns v Modi*, above n 23, at [43].

[38] The calculation of compensatory damages is by its nature a subjective and impressionistic exercise, and awards have differed greatly in size. Unsurprisingly, it has proven notoriously difficult to attach a monetary sum to damage to a person's reputation, or feelings of pain and humiliation.²⁵ However, the case law suggests that the following broad factors will often be relevant in the assessment of quantum:²⁶

- (a) Damage or material loss caused by the defamatory statement. This could be a decline in a company's business,²⁷ although the loss must be particularised and supported by evidence.²⁸ Where the alleged loss is reputational, the state of the defamed person's reputation prior to the first defamatory statement will be relevant.²⁹
- (b) The nature or gravity of the defamatory statement. The more closely it touches the plaintiff's person or personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.³⁰
- (c) The extent of publication and influence of the publisher. A publication to one or two people causes less damage than a publication by a national broadcaster or on social media to a large audience.

²⁵ No doubt this difficulty led Windeyer J to say in *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at 150: "It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways: as vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money."

²⁶ Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at [16.6.01(2)]; Richard Rampton and others *Duncan and Neill on defamation and other media and communications claims* (5th ed, LexisNexis, London, 2020) at [25.7]–[25.30]; and David Price, Korih Duodu and Nicola Cain *Defamation Law, Practice and Procedure* (4th ed, Thomson Reuters, London, 2009) at [20-04]–[20-28A].

²⁷ *Parachutes & Para-Equipment Ltd v Broadcasting Corp of New Zealand* HC Wellington A205/83, 6 August 1985; and *Columbus v Independent News Auckland Ltd* HC Auckland CP600/98, 7 April 2000.

²⁸ High Court Rules 2016, r 5.33; *Todd on Torts*, above n 26, at [16.6.01(2)(a)], citing *Niven v Poverty Bay Farmers Meat Co* [1917] GLR 119 (SC); and *Lewis v Daily Telegraph Ltd* [1963] 1 QB 340 (CA) at 376 per Pearce LJ.

²⁹ *Craig v Slater*, above n 20, at [56].

³⁰ *John v MGM Ltd* [1997] QB 586 (CA) at 607–608, endorsed in *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [31].

- (d) The defendant's conduct. Behaviour that increases the hurt caused by the defamation—such as continuing to publish defamatory allegations, refusing to apologise, or conducting the litigation in an insulting way—can aggravate damages.³¹

[39] While each case will turn on its own particular facts, the courts have found it useful to draw analogies between awards made in comparable cases. The Supreme Court's judgment in *Craig v Williams* helpfully contains a schedule of all the defamation awards in New Zealand, following the Court of Appeal's decision in *Television New Zealand Ltd v Quinn*, between 1996 and 2019.³²

Consideration

[40] I consider that the following factors are relevant in assessing the appropriate level of damages in this case.

[41] First, Mr Syed enjoyed a good reputation prior to the defamatory statements, a reputation which he had cultivated over some 30 years living in Australia. As the president of the Islamic Forum for Australian Muslims, an active member of his mosque, and a successful businessman, he appears to have been a prominent and well-regarded figure in the Australian Muslim community.

[42] The defamatory statements attacked every facet of Mr Syed's life, including his family, faith and business. The accusations, which went straight to the heart of his character, could not have been more serious.

[43] Unsurprisingly the defendants' campaign had a significant adverse effect on his reputation and livelihood. Mr Syed's former standing within the Australian Muslim community was destroyed, along with his political aspirations. I accept Mr Syed's evidence that the defendants' conduct has caused him profound distress, embarrassment and shame.

³¹ At 607.

³² *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457; and *Television New Zealand Ltd v Quinn* [1996] 3 NZLR 24 (CA).

[44] The scale and repetitive nature of the defamatory conduct have also exacerbated the harm to Mr Syed's reputation. There were 20 defamatory statements spanning the period October 2016 to December 2017, and further defamatory statements before and after Churchman J's judgment issued in August 2018.

[45] Next, while there is little evidence about how many people viewed the publications, it seems likely that they reached a wide audience given their number, their dissemination using group emails and social media, the use of links to other defamatory statements, and the repeated encouragement to others to share the posts in the context of a public awareness campaign. And while the reach of the publications may not have been as extensive in some cases, the publications were targeted at Mr Syed's community—the people whose esteem he cared most about and on whom his business in Australia relied.

[46] There is also seriously aggravating conduct by the defendants. They continued to publish untrue and defamatory material in the face of requests by the plaintiff's lawyers and orders of the Court to desist. This included publishing statements in breach of an order of this Court not to do so. They rejected an open offer by Mr Syed to settle this proceeding in November 2020 for \$50,000 (which would have essentially covered the legal fees the plaintiff had incurred). At trial the defendants used the opportunity to repeat their allegations, despite the previous judgment against them and a complete failure to provide any credible evidence to support their claims.

[47] Finally, two previous defamation cases bear similarities to the present. In *Lee v The New Korea Herald Ltd*, the defendants published eight articles that suggested that the plaintiff was engaging in corrupt, dishonest and immoral practices.³³ The articles were published in a free Korean language newspaper, available to members of the Korean community in New Zealand, which had a circulation of about 3,000 people. The plaintiffs were awarded \$250,000 in compensatory damages. In *Karam v Parker*, the defendants published about 50 defamatory statements across Facebook and a website called Counterspin which suggested Mr Karam was only interested in fame, lacked integrity, was motivated by money and had defrauded the Legal Services

³³ *Lee v The New Korea Herald Ltd* HC Auckland CIV-2008-404-5072.

Agency.³⁴ Compensatory damages of \$340,500 were awarded against the first defendant, who was responsible for the bulk of the defamatory publications, and \$184,500 was ordered against the second.³⁵

[48] As in *Lee*, the publications here were directed to the plaintiff's community and tarnished a reputation built up over a lifetime. And while the reach and number of the publications here was likely significantly less than that in *Karam*, the nature and effect of the allegations are on par with what Courtney J described as a "full scale assault on Mr Karam's reputation" that left few aspects of his reputation untouched.³⁶ I consider this case falls somewhere between these two cases.

[49] The calculation of damages for defamation is not a precise science. In this case, taking all of the relevant factors into account, I consider that an award of \$225,000, encompassing both general and aggravated damages, is appropriate to compensate Mr Syed for the injury to his reputation caused by the defamatory statements. In arriving at this award I recognise that the sum could well have been higher, having regard to the case law, but have considered it appropriate to adopt a conservative approach in my assessment.

[50] In terms of apportionment, Mr Malik is responsible for the full award. Ms Wilson is to be liable, jointly and severally with Mr Malik, in the amount of \$150,000. This reflects her responsibility for the defamatory statements and her aggravating conduct, but also her lesser role in publication and decreased culpability as a result.

Conclusion and Result

[51] Judgment is entered in favour of the plaintiff against the first defendant in the sum of \$225,000.

³⁴ *Karam v Parker* [2014] NZHC 737.

³⁵ At [242]–[243].

³⁶ At [229].

[52] Judgment is entered in favour of the plaintiff against the second defendant in the sum of \$150,000. The second defendant's liability is joint and several with the first defendant.

[53] Costs should ordinarily follow the event, although I understand the defendants are legally aided.

[54] Should any party wish to be heard in relation to costs, they should file memoranda within 20 working days. I will then endeavour to deal with the issue on the papers.

Isac J

Solicitors:
Value Legal, Auckland for Plaintiff
Guest Carter Limited, Dunedin for Defendants