

**IN THE DISTRICT COURT
AT WESTPORT**

**I TE KŌTI-Ā-ROHE
KI KAWATIRI**

**CIV 2022-086-000007
[2024] NZDC 26559**

UNDER THE DEFAMATION ACT 1992
BETWEEN FRANCIS THOMAS DOOLEY
Plaintiff
AND JAMIE WILLIAM CLEINE
Defendant

Hearing: 8 – 11, 14-15 October 2024

Appearances: RKP Stewart KC & E Everingham for Plaintiff
DH McLellan KC & JT Kohu-Morris for Defendant

Judgment: 13 November 2024

RESERVED JUDGMENT OF JUDGE K D KELLY

Introduction

[1] Mr Dooley is a retired chartered accountant and business consultant residing in Westport. He is well known in Westport, the Buller District and the West Coast region as he is an elected councillor of the West Coast Regional Council (WCRC), the Chief Executive Officer of Buller Electricity, a director of Pioneer Energy Renewables, and the voluntary chair of the O’Conor Home Trust management committee.

[2] Mr Cleine also resides in Westport and is the mayor of the Buller District Council (BDC).

[3] Mr Dooley seeks a declaration that Mr Cleine defamed him following a public meeting hosted by the WCRC to discuss the Te Tai o Poutini Plan (TTPP).¹ First, Mr Dooley says that Mr Cleine made statements about him that were published as an article in the *Westport News* to the effect that he was involved in a physical altercation at the meeting (the Article).

[4] Secondly, Mr Dooley says that Mr Cleine copied a letter addressed to him to the Chief Executives of the BDC and the WCRC, and to the Chair of the TTPP committee, in which Mr Cleine said that Mr Dooley was “physically threatening to Deputy Mayor Roche, WCRC staff and members of the public” (the Letter). This Letter was subsequently released to the *Greymouth Star* by Mr Cleine pursuant to a request made under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

Summary of result

[5] For the reasons which follow, the application is dismissed. I am not persuaded that Mr Cleine defamed Mr Dooley and I decline to make a declaration to that effect.

Background

The WCRC meeting

[6] On 21 February 2022 the WCRC hosted a public drop-in session on the TTPP at the Westport Municipal Chambers (known as the Clocktower Council Chambers). Due to the number of attendees, Mr Cleine asked the WCRC planners if they could change the format of the session and deliver a presentation on the TTPP instead, with questions to follow.

[7] As the first planner Ms Lois Easton started the presentation Mr Dooley interrupted and asked a question. Ms Easton answered Mr Dooley’s question and continued with the presentation.

¹ the one district plan intended to replace the three district plans of the Buller, Grey, and Westland District Councils

[8] Mr Dooley then interrupted again to ask another question. This time Ms Roche, the then Deputy Mayor, asked Mr Dooley to keep his questions until the end.

[9] At this request Mr Dooley “flipped” and ‘verbally abused’ Ms Roche. The extent of this ‘abuse’ and whether it became physical or physically threatening, is the issue in dispute.

The Article

[10] The next morning, 22 February 2022, a reporter from the *Westport News* contacted Mr Cleine for comment.

[11] The Article titled ‘Alleged assault at TTPP meeting’² was published the same day quoting Mr Cleine. The Article reads in full:

A drop-in session on the Te Tai o Poutini Plan (TTPP) turned chaotic in Westport yesterday when a member of the public allegedly verbally assaulted and physically threatened Deputy Mayor Sharon Roche.

Buller Mayor Jamie Cleine said about 25 members of the public witnessed the event.

“There was an altercation in which the deputy mayor was assaulted, and we’ll be seeking what we do about that today... It was extremely serious and outrageous to the point where a fist was raised at the deputy mayor whilst being sworn at and breasted up to.”

Mr Cleine said formal statements had been taken from people who attended the meeting. He planned to ask chief executive Sharon Mason to “look into avenues for formal censure”, which could include trespassing the member of the public. It was also “likely to become a police matter”, he said.

Mr Cleine was concerned about the health and safety of both elected officials and West Coast Regional Council staff.

“No one should have to put up with that when they’re just trying to do their job and everyone’s trying to do their best for the district.”

Mr Cleine said yesterday’s session was supposed to be a drop-in where individuals could ask TTPP planners questions.

“But there were a number of people who turned up and demanded a public meeting style. So that was fine. We just converted it to a public meeting and

² written by Ellen Curnow

the TTPP planners have a presentation that they can do, that's on their laptops."

Mr Cleine said he asked the audience to listen to the presentation and hold any questions until the end.

"A member of the public decided that they wanted to interject, and they were asked to respect the team's presentation and let them get through it. The expletives started and a physical altercation ensued. He was asked to leave by a number of members of the public and chose not to."

Mr Cleine said the meeting went well once it settled down.

"Everyone's tense but it was a relatively productive meeting I thought. Everyone got something out of it and feedback will go back to the plan as to what can be changed and altered, and things based on that."

After the meeting, several people stayed to ask planners technical questions.

Mr Cleine said people's biggest concerns were around the TTPP's flood hazard overlays and proposed rules for building in the flood hazard severe and susceptible zones.

"There's no doubt this whole TTPP is a huge issue for our district."

People had the chance to give feedback on the draft plan and changes would be made before it was notified for formal consultation in July.

Most of the draft rules were statutory requirements, Mr Cleine said.

"What we've landed on is not the final and it's not being driven to be vindictive by Buller District Council or any council. We're actually trying to make the best of what's in the new national policy statements."

Those statements required detailed maps around tsunami, flood and other risks while the current Buller District Plan made barely a mention of these risks.

Mr Cleine said the meeting complied with Covid-19 red level traffic light rules. Vaccine passes were required, attendees were masked, and seating was spread around the room.

Mr Dooley's apology

[12] At 12.48 pm on 22 February 2022, just prior to the Article being published, Mr Dooley emailed Ms Roche an apology which he also copied to Mr Cleine, Rex Williams (the chair of the TTPP Committee), and Laura Coll McLaughlin of the WCRC. The apology reads:

Sharon,

I write to apologies (sic) for my outburst at last evenings TTPP drop-in session. I'm not sure what your role was at the meeting but when you interrupted my questioning of the planner I flipped and behaved inappropriately and unprofessionally.

I'm attempting to keep personalities out of the debate and at times struggling to contain my emotions. I regret you were the target of my outburst, sorry.

Rex, can you please my apology on to the planners as I don't have their contact details.

Regards

Frank Dooley
Business Consultant

The Letter

[13] About an hour later at 1.39 pm, Mr Cleine sent a letter to Mr Dooley about his behaviour. This letter was copied to the chief executives of the BDC (Sharon Mason) and the WCRC (Heather Mabin), and to Rex Williams. The Letter reads in full:

Dear Mr Dooley

I am writing to formally record the atrocious behaviour you exhibited during a public meeting held by West Coast Regional Council on account of the Te Tai Poutini Plan Committee.

As Mayor I introduced the meeting and clearly set out the way the meeting would run as a brief technical presentation by staff followed by question time at the end.

You displayed totally unacceptable behaviour in your interjections during the presentation and when politely reminded of the need to hold questions you used a disruptive and forceful tone, expletive laden language and were physically threatening to Deputy Mayor Roche, WCRC staff and members of the public.

It is unacceptable that elected members and the general public be subjected to that kind of behaviour while attending public meetings. I have included West Coast Regional Council Chief Executive Heather Mabin and Buller District Council Chief Executive Sharon Mason in this email as I believe your behaviour was totally unacceptable to employees of WCRC and elected members of both WCRC and BDC.

Yours sincerely

Jamie Cleine
Buller District Mayor

Mr Dooley identifies himself

[14] After reading the Article in the *Westport News*, at 1.52 am on 23 February 2022, Mr Dooley himself sent an email to the *Westport News* which was published that day as a letter to the editor under the headline ‘Apology’. This letter reads:

With respect to the article published 22 February (Alleged assault at TTPP meeting) I am the member of the public Mayor Cleine is referring to. Although I could dispute the Mayor’s recollection of the incident, I acknowledge I verbally abused Cr Roche and my outburst was out of order and unacceptable and I have formally apologised.

The LGOIMA release

[15] The same morning, Ms Mason called Mr Cleine and advised him that the *Greymouth Star* had contacted her asking for a copy of the Letter that Mr Cleine had sent to Mr Dooley. Mr Cleine was advised that there was no reason to withhold the Letter under the LGOIMA.

[16] Accordingly, at 8.48am Mr Cleine emailed the Letter to the *Greymouth Star*, copied to Ms Mason and Ms Mason’s EA and LGOIMA officer. Parts of the Letter were then published in the *Greymouth Star* the same day.

[17] In an article that followed titled ‘Apology follows TTPP stoush’, Mr Dooley is quoted as saying, amongst other things, that he “flipped [his] lid” and that he verbally abused Ms Roche. The Article continues saying that Mr Dooley acknowledged that his response was ‘unacceptable’ but that he had since apologised to Ms Roche, and that he was “totally wound up” and “got angry” at the natural hazard rules contained in the exposure draft of the TTPP.

Mr Dooley trespassed

[18] The same day, Ms Sharon Mason, and Sean Judd (BDC’s Regulatory Services Manager) made a complaint to the Westport Police about Mr Dooley’s conduct. As a result, on 23 February 2022 Mr Dooley was trespassed from three BDC premises in Westport: the Clocktower Council Chambers, the library, and the BDC offices at Brougham House.

The pleadings

[19] Mr Dooley pleads that the natural and ordinary meaning of the words in the Article is that he assaulted Ms Roche at the TTPP meeting and was involved in a physical altercation at the meeting.³

[20] In relation to the Letter, Mr Dooley pleads that the natural and ordinary meaning of the words used would be understood to mean that he was physically threatening to Ms Roche, the presenters and members of the public.

[21] Mr Dooley says that there was no physical violence or physical altercation such that both the Article and Letter are false and defamatory.

[22] Mr Dooley says that he has been gravely damaged in his personal and professional reputation by the Article and Letter, and that he has suffered considerable distress and embarrassment.

[23] Mr Dooley also considers that Mr Cleine was motivated by ill will towards him, or otherwise took improper advantage of the occasion of publication.⁴

[24] For his part, Mr Cleine pleads that he did not name Mr Dooley in the Article or include in his comments any identifying particulars about 'the member of the public' to whom he was referring.

[25] Mr Cleine says further that he did not say in the Article that Mr Dooley 'physically assaulted' Ms Roche and that a reasonable person, in the context of the Article as a whole, would not have understood him to have said that.

[26] Otherwise, Mr Cleine submits that the 'sting' of the words is materially true.

[27] In relation to the Letter, Mr Cleine again says that taken as a whole, the Letter was true or not material different from the truth and that it was copied to the chief executives of the BDC and WCRC and to the chair of the TTPP committee out of

³ Amended statement of claim dated 26 June 2024

⁴ Defamation Act 1992, s 41

concern for the health and safety of elected officials and staff in relation to future meetings about the TTPP. In this regard, Mr Cleine says it is subject to qualified privilege.

[28] Insofar as the Letter was then later released to the *Greymouth Star*, Mr Cleine says that no claim can lie in defamation by virtue of a statutory protection in the LGOIMA.⁵

Defamation: applicable principles

[29] Recently, in *Chiv v Dai*, Moore J summarised the principles applicable to an action for defamation:⁶

[38] The ingredients of the tort of defamation are threefold. A plaintiff must establish:

- (a) that a defamatory statement was made;
- (b) that the statement was about them; and
- (c) that the statement was published by the defendant.

[39] A defamatory statement is one that tends to adversely affect a plaintiff's reputation in a more than minor way. It is one that tends to lower someone in the estimation of right-thinking members of society; that is calculated to injure the reputation of another by exposing them – without justification – to hatred, contempt or ridicule; or which tends to make others shun or avoid them. But while damage to reputation is presumed to occur on publication, such a presumption is rebuttable. A defendant can thus defeat a claim in defamation where they can show that a reasonable person would not think worse of the plaintiff in a more than minor way.

[40] In deciding whether a defamatory statement has been made, the Court must first decide what an allegedly defamatory statement means, assessing what meaning ordinary readers and listeners would attribute to it. In *New Zealand Magazines Ltd v Hadlee (No 2)*, Blanchard J explained the Court's task as follows:

- (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.*

⁵ LGOIMA, s 41

⁶ *Chiv v Dai* [2024] NZHC 2825 at [38] – [41] [30 September 2024] (citations omitted)

- (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...*

[41] There are, however, various defences to a claim in defamation. So, for example, a defendant has a complete defence if they can satisfy the Court that the defamatory meanings contained in a statement are true or not materially different from the truth. Or, where the statement is an honest opinion or one protected by qualified privilege.

[30] The notional ordinary reasonable person is someone who is “not avid for scandal” and who is “fair minded.” He or she is not “unduly suspicious” and “not prone to fasten on one derogatory meaning when other innocent or at least less suspicious meanings could apply.”⁷

[31] The meaning of the words complained of must be read and understood in their full and proper context, with what is often referred to as the ‘bane and antidote’ taken together.⁸ That is, it is often necessary to resolve whether the ‘antidote’ neutralises the ‘bane’ and in considering this question regard must be had to such things as the mode of publication and the relative prominence given to different parts of it, as well as such

⁷ In *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625 citing *Lewis v Daily Telegraph Ltd* [1964] AC 234 (HL) at pp 260 and 268, *Morgan v Odhams Press Ltd* [1971] 2 All ER 1156 (HL) at p 1177, and *Mitchell v Faber & Faber* [1998] EMLR 807 (CA) at p 808.

⁸ *Koutosgiannis v The Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25 at [12(viii)]

things as headlines and photographs (if any).⁹ Conversely, a prominent headline plus photographs will not found a claim for defamation in isolation from the related text.¹⁰

Did the Article contain defamatory statements about Mr Dooley?

[32] To determine whether the words in the Article and the Letter are false and therefore defamatory, it is first necessary to determine what happened at the TTPP meeting.

Evidence for the plaintiff

Mr Dooley

[33] Mr Dooley's evidence is that he arrived at the meeting and took a seat at the first table in the front row, near the door.¹¹ Mr Dooley considered the TTPP to be flawed and says he: "... was not going to let the draft be adopted in that form and was committed to raising the issue with the TTPP Committee."¹²

[34] Mr Dooley says that Ms Roche was sitting on a chair to the left of him and does not recall anyone sitting between them.¹³

[35] Mr Dooley acknowledges that Mr Cleine introduced the WCRC presenters and asked that all questions be held over until their presentation was over,¹⁴ and that he interrupted by asking a question.¹⁵ Mr Dooley says he then interrupted a second time. Ms Roche then interrupted him in an assertive tone asking him to keep his questions to the end.¹⁶

[36] At this stage Mr Dooley acknowledges that he "flipped,"¹⁷ and the "switch had been triggered."¹⁸

⁹ *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 HL(E) at 71

¹⁰ *Charleston v News Group Newspapers Ltd*, above n 9 at 73

¹¹ Dooley BoE dated 15 July 2024 at [87]

¹² Dooley BoE dated 15 July 2024 at [90]

¹³ Dooley BoE dated 15 July 2024 at [94]

¹⁴ Dooley BoE dated 15 July 2024 at [99]

¹⁵ Dooley BoE dated 15 July 2024 at [101]

¹⁶ Dooley BoE dated 15 July 2024 at [101]–[102]

¹⁷ Dooley BoE dated 15 July 2024 at [103] and NoE at page 64

¹⁸ NoE at page 72 and Evidential Interview with Sgt Sarah Cook

[37] Mr Dooley says that he stood up from his chair angry at Ms Roche's request and 'let go' in a verbal outburst at Ms Roche¹⁹ saying something like: "Keep your fucking mouth shut, I've come here to ask fucking questions I'm going to ask my fucking questions and you and no-one else is going to fucking well stop me."

[38] Mr Dooley accepts that he may have been pointing his right finger at Ms Roche while he said this.²⁰

[39] Mr Dooley says that Ms Roche advanced on him and said something like: "Don't speak to me like that" while she was navigating arounds her chair.²¹

[40] At this, Mr Dooley says he then put his hand up twice. The first time he did so he told Ms Roche to "fuck off". The second time he says he told Ms Roche to "piss off". Mr Dooley says he gestured with a wave of his hand, both times with an open palm.²² Under cross examination, Mr Dooley described this slightly differently, saying that he held his hand up to stop Ms Roche from coming towards him.²³

[41] In his evidential interview with the Sergeant Sarah Cook, Mr Dooley acknowledged that he inappropriately and verbally abused Ms Roche by telling her to "shut up." Mr Dooley said that the language he used was inappropriate and unprofessional. In this evidential interview Mr Dooley demonstrated how he held his right hand, as he did before the court.

[42] Mr Dooley accepts that he was emotional and angry about some of the issues going on at the time and that his rage got the better of him.²⁴

[43] When he sat down, Mr Dooley says that no one came near him at that stage but that he heard Larry Eade saying to him; "you were going to hit her" but that he did not react to that.²⁵

¹⁹ NoE at page 64

²⁰ Dooley BoE dated 15 July 2024 at [103], NoE at pages 64 and 72, and Evidential Interview with Sgt Sarah Cook

²¹ Dooley BoE dated 15 July 2024 at [104]

²² Dooley BoE dated 15 July 2024 at [105]

²³ NoE at page 79

²⁴ NoE at page 68

²⁵ Dooley BoE dated 15 July 2024 at [109]

[44] Mr Dooley says that Di Rossiter then approached him telling him he had to leave but that he asked her to go away saying: “I’ve come here to ask my questions and I’m going to ask my questions. Please go away, leave me alone.”²⁶ In his evidential interview Mr Dooley gestured with his hands in a forward motion with his open hand as if pushing Ms Rossiter away.

[45] Mr Dooley says that was the end of it and that he apologised to everyone for his language and the conduct, and the meeting resumed. Mr Dooley says he stayed and asked his remaining questions at the end of the presentation.²⁷

[46] Following the meeting, Mr Dooley says that he then reflected on events and he decided to own up because his behaviour was inappropriate and his language was inappropriate. Mr Dooley, however, denies puffing up his chest and raising a fist at Ms Roche.²⁸ Mr Dooley also denies ‘being in Ms Roche’s face’.²⁹

Brett Avery

[47] Ten days after the meeting, on 3 March 2022 Mr Brett Avery prepared a statement to record his recollections of the meeting.³⁰ In this statement Brett Avery says that he was seated at the back of the room approximately 10-12m behind Mr Dooley’s seat, with Ms Roche standing near the door.

[48] When Mr Dooley asked his second question, Brett Avery says that Ms Roche approached Mr Dooley to ask him to keep his questions to the end. At this point Mr Dooley stood but did not take any steps forward and said for Ms Roche to keep her “fucking mouth shut” and that “he came to asking fucking questions” and he was going to do so whether Ms Roche liked it or not. When Ms Roche responded saying “don’t speak to me like that,” Brett Avery says that Mr Dooley put his hand up and said “piss off” waving Ms Roche away before regaining his seat.

²⁶ Dooley BoE dated 15 July 2024 at [110]

²⁷ Dooley BoE dated 15 July 2024 at [111]

²⁸ NoE at page 73

²⁹ NoE at page 73

³⁰ Brett Avery BoE dated 12 July 2024

[49] Brett Avery's statement records that Mr Dooley raised his hand vertically and waved Ms Roche off with an open hand, making that gesture a couple of times but not touching Ms Roche. Brett Avery says that Mr Dooley did not make any gesture that was physically threatening. Brett Avery also says that he only saw Mr Dooley raise his arm at the very end of the interaction and that it was very clearly a wave indicating that he wanted the argument over.

[50] After the meeting Brett Avery says that Di Rossiter gave Mr Dooley a telling off, pointing her finger at the door and telling Mr Dooley that his behaviour was not appropriate, demanding that he leave the meeting. When Mr Dooley sat down, Brett Avery says that he apologised for his outburst and the presentation resumed.

[51] In cross-examination Brett Avery says that Ms Roche spoke to Mr Dooley "reasonably purposefully and aggressively" and was "fairly short tempered" in her approach³¹ and that it was then that Mr Dooley jumped out of his seat "like a jack in the box" and swore and yelled at Ms Roche, and that he was forceful and aggressive.³²

Kyle Avery, Paul Avery, Michael Bade and Glenn Duncan

[52] Kyle Avery, Paul Avery, Michael Bade and Glenn Duncan adopted Brett Avery's statement. They did not file a statement of their own.

[53] Mr Kyle Avery agreed that Mr Dooley was yelling and that his "switch was triggered".³³

[54] Michale Bade also said that a switch was triggered and that Mr Dooley was furious at being interrupted by Ms Roche and that he was yelling.³⁴

[55] Mr Duncan said that Mr Dooley suddenly stood up and lost it, launching a tirade of verbal abuse at Ms Roche and that he was yelling aggressively.³⁵

³¹ NoE at page 116

³² NoE at pages 124-125

³³ NoE at page 147-148

³⁴ NoE at page 155

³⁵ NoE at page 161

[56] Like Brett Avery, Paul Avery says that it is incorrect that a fist was raised and that someone was assaulted.³⁶ Paul Avery said that he could see both of Mr Dooley's arms perfectly.³⁷

[57] Kyle Avery did not see either a fist or finger pointing.³⁸ Nor did Mr Bade see a fist.³⁹ Mr Duncan did not see a fist but did see Mr Dooley pointing a finger at Ms Roche.⁴⁰

[58] Mr Paul Avery agreed that Mr Dooley was forceful in his asking of questions of the planners and that within 5-10 seconds of Ms Roche approaching Mr Dooley they were both yelling.⁴¹ Paul Avery says that Ms Roche was aggressive when she asked Mr Dooley to leave his questions to the end.⁴² Otherwise, Paul Avery could not remember the order in which things were said.

Evidence for defendant

Sharon Roche

[59] Ms Roche's evidence is that she was seated to the right of the door with Mr Cleine behind her and Mr Dooley seated about 1 m to her right.⁴³

[60] Ms Roche says notwithstanding that Mr Cleine asked everyone to hold their questions until the end, shortly after the presentations started Mr Dooley interjecting with questions.⁴⁴

[61] Ms Roche says that Mr Dooley was quite aggressive towards Ms Easton, the presenter, both in tone and volume, and she recalls that Mr Dooley was quite worked up about aspects of the TTPP and that he was clearly trying to make a point.⁴⁵

³⁶ NoE at page 122

³⁷ NoE at pages 140-41

³⁸ NoE at page 148

³⁹ NoE at page 155

⁴⁰ NoE at page 161

⁴¹ NoE at page 139

⁴² NOE at page 139

⁴³ Roche BoE dated 13 August 2024 at [14]

⁴⁴ Roche BoE dated 13 August 2024 at [15]

⁴⁵ Roche BoE dated 13 August 2024 at [17]

[62] Ms Roche says that she leaned over to Mr Dooley politely asking him to hold his questions to the end as agreed. At this point Ms Roche says that Mr Dooley stood and flared with a tirade of verbal abuse, shouting and swearing, telling her to “fuck off”, and repeatedly pointing his right finger at her.⁴⁶ Ms Roche says that she felt intimidated and that she instinctively stood up and told him his behaviour was not acceptable and that she did not deserve to be spoken to like that.⁴⁷

[63] Ms Roche denies that she was advancing towards Mr Dolley or manoeuvring around a chair as there was nothing in front of her. Ms Roche accepts that she might have moved slightly forward but that she did not move far, if at all, from her chair.⁴⁸ Ms Roche says that there was no step after she stood up.⁴⁹

[64] Ms Roche said that she was surprised at the intensity of Mr Dooley’s reaction to her.⁵⁰ Ms Roche says that Mr Dooley took a step towards her until he was about a foot away and puffed up his chest as if to make himself look bigger.⁵¹

[65] Before the court Ms Roche demonstrated how she says Mr Dooley raised his fist. Ms Roche says that as Mr Dooley was pointing at her and with rage filled eyes that was “absolute next level” and that while pointing, his hand turned into a fist.⁵² Ms Roche denies that Mr Dooley just waved his hand.⁵³

[66] Ms Roche says her immediate reaction was shock and that she thought that she was in trouble and that she genuinely believed Mr Dooley was going to hit her.⁵⁴ It was at this point that Di Rossiter came over and told Mr Dooley his behaviour was not acceptable and that he should get out. Ms Roche says she was relieved someone was coming to help her.⁵⁵

⁴⁶ Roche BoE dated 13 August 2024 at [19]

⁴⁷ Roche BoE dated 13 August 2024 at [21]

⁴⁸ Roche BoE dated 13 August 2024 at [21]

⁴⁹ NoE at page 279

⁵⁰ Roche BoE dated 13 August 2024 at [22] and NoE at page 277

⁵¹ Roche BoE dated 13 August 2024 at [22]

⁵² NoE at page 280

⁵³ Roche BoE dated 13 August 2024 at [23]

⁵⁴ Roche BoE dated 13 August 2024 at [24]

⁵⁵ Roche BoE dated 13 August 2024 at [26]

[67] At this, Ms Roche says that Mr Dooley realised he had gone too far and lowered his fist. Ms Roche heard someone saying: “You were going to hit her. You raised your fist”.⁵⁶

[68] Ms Roche said Mr Dooley refused to leave and apologised before slumping into his chair. Ms Roche says the apology did not feel genuine or sincere given how he had threatened her. Ms Roche said she then returned to her seat feeling terrible and shaking in disbelief.⁵⁷

[69] Ms Roche then made eye contact with Di Rossiter which she took as a signal to follow her and left, breaking down in tears once outside the room.⁵⁸

[70] While outside the Council Chambers Ms Roche says she saw the local librarian [Misato Nomura] who mentioned to her that Mr Dooley was the same man who had caused a fuss at the library on an earlier occasion.⁵⁹

[71] Ms Roche also exchanged texts with Jan Duncan in the days following the meeting. In these texts Ms Duncan says she did not see Mr Dooley raise a fist because she was cringing and looked away : “...But don’t doubt that he was probably flailing his fists/ hands around as that’s what he does”.⁶⁰

[72] That Mr Dooley speaks with his hands is also borne out in his evidential interview.

[73] When Ms Roche went home, she says that Ms Mason called her for a ‘welfare check’ as Mr Cleine had contacted her immediately following the meeting to inform her of what had happened. Being unsettled and unable to sleep Ms Roche drew a picture of where people were positioned in the Council Chambers which picture she later provided to the Police.⁶¹

⁵⁶ Roche BoE dated 13 August 2024 at [27]-[28]

⁵⁷ Roche BoE dated 13 August 2024 at [30]-[31]

⁵⁸ Roche BoE dated 13 August 2024 at [35]-[36]

⁵⁹ Roche BoE dated 13 August 2024 at [37]

⁶⁰ NoE at page 278

⁶¹ Roche BoE dated 13 August 2024 at [43]-[46]

[74] Ms Roche recalled getting Mr Dooley’s email titled “Apology” but did not consider it a genuine apology or to be heartfelt and she wondered why it was copied to Mr Cleine, Ms Coll McLaughlin, and Mr Williams. Ms Roche says that it would have been more appropriate if Mr Dooley had apologised to her one-on-one.⁶²

[75] Ms Roche said that when she saw Mr Dooley’s letter to the editor the following day identifying himself as the ‘member of the public’ in question, she again did not think Mr Dooley was genuine or sincere. Accordingly, Ms Roche felt compelled to write a letter to the *Westport News* herself. In this letter headed “Intimidation”, Ms Roche said:

It is disappointing to read that Frank Dooley has a conveniently selective view of his actions at Monday nights’ TTP meeting...

Intimidating and threatening, verbal abuse and physical aggression towards an individual at any time is inexcusable. I believe his apology is insincere and to imply that his actions were borne out of frustration as justification for his behaviour is unacceptable.

Jamie Cleine

[76] Mr Cleine confirmed that he introduced the planners and asked people to hold their questions to the end.⁶³ Mr Cleine said that he was standing in the door with Ms Roche a little in front of him with Councillor Robyn Nahr to his left. Mr Dooley was at a table along the wall about 1.5 metres from Ms Roche, with his table turned slightly towards the planners.⁶⁴

[77] About five minutes into the presentation Mr Cleine says that Mr Dooley started interacting in a forceful and demanding tone challenging the planners by reference to page numbers of the plan and pointing to papers that he had brought with him.⁶⁵

[78] Mr Cleine says that Ms Roche sort of half stood and leaned towards Mr Dooley asking him to “let them get through”. Mr Dooley stopped and the presentation continued but then Mr Dooley soon started interjecting again. Mr Cleine says that

⁶² Roche BoE dated 13 August 2024 at [48]–[49]

⁶³ Cleine BoE dated 13 August 2024 at [30]–[31]

⁶⁴ Cleine BoE dated 13 August 2024 at [32]

⁶⁵ Cleine BoE dated 13 August 2024 at [33]

Ms Roche then politely asked him to moderate his tone and to hold his questions to the end.⁶⁶

[79] At this point Mr Cleine says that Mr Dooley stood up and started swearing and shouting at Ms Roche. Mr Cleine says that Mr Dooley breasted up to Ms Roche, taking a step towards her and swinging his arm back with a clenched fist as if to strike her. Mr Cleine says he was in the throes of doing it and that he noticed Mr Dooley's eyes, saying that he was enraged and completely out of control.⁶⁷

[80] Before the Court Mr Cleine said that Mr Dooley rose to his feet and stepped toward Ms Roche to be within 30 mm while shouting and swearing that she should not interrupt him, raising a fist as if to strike Ms Roche. Mr Cleine demonstrated Mr Dooley's movement by putting his foot forward, puffing out his chest and holding his fist at shoulder level pointing forwards.⁶⁸

[81] At that moment Mr Cleine says he heard Larry Eade say something like: "You were going to hit her; you raised a fist to her" at which Mr Dooley had a moment of realisation that he had nearly hit Ms Roche and that others had seen this.⁶⁹

[82] Mr Cleine said Di Rossiter then came over and shouted that Mr Dooley's behaviour was disgusting and that she told him to leave the room. When Mr Dooley refused to do so, he sat down again and said to the room "If I offended anybody, then I'm sorry".⁷⁰

[83] After that, the meeting resumed and Mr Cleine says that while Mr Dooley's tone remained heated, the meeting continued without further incident.

[84] Mr Cleine also gave evidence of an incident in November 2021 at a meeting of the O'Connor Home Trust management committee which Mr Dooley chairs. The committee operates an aged care facility under delegation from the trustees, being

⁶⁶ Cleine BoE dated 13 August 2024 at [34]

⁶⁷ Cleine BoE dated 13 August 2024 at [36]

⁶⁸ NoE at page 195

⁶⁹ Cleine BoE dated 13 August 2024 at [37]

⁷⁰ Cleine BoE dated 13 August 2024 at [39]

Mr Cleine as Mayor, the local MP, and the Archbishop of the Roman Catholic Church in Wellington.

[85] At this meeting the discussion turned to architectural advice for a rest home that was being designed, and for which consent was being sought. At this meeting, Mr Cleine says Mr Dooley told Sean Casey, the project manager, to direct the architect to forget about a 100yr flood floor height recommendation saying it's not affordable and "we're not fucking doing it".

[86] Mr Cleine says that when he said that the new rest home could not get consent without the requirement, Mr Dooley "absolutely flipped" saying something like "I've had a gutsful of you and your fucking Council" and that he was "at war" with Mr Cleine. Mr Cleine says he asked for the minutes of the meeting to record what was being said because he wanted his concerns noted to which Mr Dooley said: "I decide what goes in the fucking minutes." The next day Mr Cleine says he wrote to the management committee to call out Mr Dooley's unprofessional behaviour.⁷¹

Lois Easton

[87] The presenter, Ms Easton, said in evidence that Mr Dooley was seated about 1m away from her and that he was extremely aggressive. Ms Easton says that she met Mr Dooley earlier at Buller Electricity to discuss the TTPP where she also found him quite aggressive at that meeting.⁷²

[88] When Mr Dooley interjected at the TTPP meeting, Ms Easton said that he was clearly unhappy with the answers she was giving and that she found him quite threatening in manner.⁷³

[89] Ms Easton says that when Ms Roche intervened, Mr Dooley lifted his hand in Ms Roche's direction and was only about a foot away from her. Ms Easton says that Mr Dooley was extremely aggressive and physically threatening to Ms Roche.

⁷¹ Cleine BoE dated 13 August 2024 at [18]-[25]

⁷² Easton BoE dated 16 August 2024 at [6]

⁷³ Easton BoE dated 16 August 2024 at [8]

Ms Easton also recalls Larry Eade yelling out.⁷⁴ Ms Easton says that she feels that if Mr Dooley's aggression was not aimed at Ms Roche it would have been aimed at her and her co-presenter, Edith Bretherton.⁷⁵

[90] Before the Court Ms Easton demonstrated what she said she saw by way of a raised hand or fist. Ms Easton lifted her right hand with a clenched fist.⁷⁶ Ms Easton said that because Mr Dooley and Ms Roche were so close that if Mr Dooley was waving Ms Roche away, he would probably have hit her.⁷⁷

[91] Following this meeting, Ms Easton says that the procedures for TTPP meetings were changed to improve safety aspects for all participants including more council staff being in attendance and there being clear escape paths.⁷⁸

Robyn Nahr

[92] Ms Nahr is the office manager for Westreef Services Limited and was at the time, a BDC councillor. Ms Nahr says that she was seated at the front of the room and that Mr Dooley was angry and aggressive from the start of his questioning, and that he was swearing. As Mr Dooley went on with his questions, Ms Nahr says that he got angrier and more aggressive and she felt like he was 'shooting the messenger' (i.e. Ms Easton).⁷⁹

[93] Ms Nahr says that Mr Dooley took offence to Ms Roche asking him to keep his questions to the end, and jumped up, raised his fist and started shouting "piss off" and "fuck you." Ms Nahr says Mr Dooley's hand was definitely in a closed fist as if he was going to hit Ms Roche. Ms Nahr says Mr Dooley's face was angry and his demeanour was physically intimidating.⁸⁰

⁷⁴ Easton BoE dated 16 August 2024 at [10]

⁷⁵ Easton BoE dated 16 August 2024 at [12]

⁷⁶ NoE at page 305

⁷⁷ NoE at page 305

⁷⁸ Easton BoE dated 16 August 2024 at [15]

⁷⁹ Nahr BoE dated 14 August 2024 at [6]

⁸⁰ Nahr BoE dated 14 August 2024 at [8]

[94] Ms Nahr did not hear an apology but heard Larry Eade call out; “you raised your hand to her” as well as Di Rossiter yelling something.⁸¹

[95] Ms Nahr demonstrated Mr Dooley’s actions raising her hand about equal to her shoulder and moving it forward with a pointing motion and bringing it back into a closed fist that he dropped when he said, “piss off”.⁸²

[96] In a letter to the editor of the *Westport News* which Ms Nahr wrote on 24 February 2022, Ms Nahr said that Mr Dooley’s demeanour was aggressive and he “raised his hand” to Ms Roche while screaming in her face “f*** you.” In cross-examination Ms Nahr acknowledged that she did not use the word ‘fist’ in this letter but said that she should have.⁸³

Joanne Howard

[97] Ms Howard is also a BDC councillor who was in attendance at the TTPP meeting.

[98] Ms Howard says that Mr Dooley’s response to Ms Roche was a: “tirade of abuse directed at Sharon Roche whilst raising from his seat at the table, spinning around to face her and taking a swing at her.” Ms Howard says that: “It was a full swing from a lowered arm, stopping short above Sharon’s shoulder and about 6 inches from her left side of face shoulder to face height”.⁸⁴ Ms Howards says that Mr Dooley continued to hold his arm in that position.⁸⁵

[99] Ms Howard said that she found the incident very upsetting and that her heart was pounding and that she felt the ‘flight mode’ coming on.⁸⁶

[100] In cross-examination when asked to demonstrate what she saw, Ms Howard said that she was able to see both Mr Dooley’s and Ms Roche’s eyes and facial

⁸¹ Nahr BoE dated 14 August 2024 at [10]–[11]

⁸² NoE at page 334

⁸³ NoE at page 335

⁸⁴ NoE at page 348

⁸⁵ Howard BoE dated 16 August 2024 at [8] referring to her Police Statement dated 22 March 2022; see also NoE at page 339

⁸⁶ NoE at pages 340 and 349

expressions and that she had assumed that Mr Dooley's fist was closed or partially closed as otherwise she would not have been able to see Mr Dooley's and Ms Roche's expressions.⁸⁷ Ms Howard denied that Mr Dooley was pulling his hand back and then pointing.⁸⁸

[101] In cross-examination, Ms Howard said that the Averys were at the other end of the Council Chamber and that the swing of Mr Dooley's hand and the "physical part of it" probably would have been obscured from other people, and by Mr Dooley's own body, and that they were in the immediate area.⁸⁹

[102] Ms Howard said that she had a full view of Mr Dooley as she was at the front of the room and about two metres in front of Mr Dooley. Ms Howard drew a diagram of the placement of some people in the room when she heard the Mr Dooley was trespassed from BDC buildings, being two or three days after the TTPP meeting.⁹⁰ In cross-examination Ms Howard said that this was later redrawn and annexed to her statement to the Police dated 22 March 2022. Ms Howard said that she drew the pictures after the meeting because: "I'm well aware of memory and memory recall, so I wanted to do it before I was influenced from anyone else and thus, I made it at that stage."⁹¹

Diana (Di) Rossiter

[103] Di Rossiter's evidence is that when she walked into the room, she saw a man seated in the front engaged in an exchange with the planners. Di Rossiter describes the atmosphere as "tense" and says that she felt uncomfortable walking into it.⁹² When she and her husband Phil took their seats, Di Rossiter says that Phil Rossiter identified the man to be Mr Dooley. Di Rossiter had heard of Mr Dooley before but she did not know what he looked like.⁹³

⁸⁷ NoE at pages 346-347

⁸⁸ NoE at page 349

⁸⁹ NOE at pages 350-351

⁹⁰ Howard BoE dated 16 August 2024 at [6]

⁹¹ NOE at page 342

⁹² Di Rossiter BoE dated 13 August 2024 at [4]

⁹³ Di Rossiter BoE dated 13 August 2024 at [5]

[104] Di Rossiter says that Mr Dooley demanded answers to his questions, which were of a technical nature, process-related and focused on that the TTPP meant for the community. Di Rossiter says Mr Dooley came across as aggressive and that he had a forceful tone.⁹⁴

[105] When Ms Roche stated that Mr Dooley should let the presentation continue, Di Rossiter says that Mr Dooley exploded, forcefully slamming his hands loudly on the desk and pushed himself rapidly and aggressively towards Ms Roche, seemingly enraged and out of control.⁹⁵ Di Rossiter says that Ms Roche stepped or stumbled back and that Mr Dooley was leaning towards Ms Roche with his fist clenched and raised.⁹⁶

[106] Ms Rossiter says that Ms Roche would have come closer to Mr Dooley when she spoke to him but that she was not deliberately walking towards Mr Dooley. Ms Rossiter says that it was Mr Dooley who stood from where he was seated at his desk and advanced towards Ms Roche.⁹⁷

[107] Ms Rossiter says that she too heard someone say something like: “Oh my god he’s going to hit her.”⁹⁸

[108] According to Ms Rossiter, when Ms Roche said to the room: “Are you going to let him speak to me like that? Does everyone here think this is an acceptable way for someone to speak to me?”, Mr Dooley verbally attacked her and lunged towards her yelling “fuck off” with his fists clenched. It was then that she said she intervened.

[109] At this point Di Rossiter says that Mr Dooley slumped down into his chair and looked stunned. Ms Rossiter says it looked like he was coming into his own awareness and seemed shocked by his own behaviour.⁹⁹

[110] Ms Rossiter demonstrated Mr Dooley’s actions moving forward with both her hands raised in fists, shaking them, and with her fists then becoming pointed fingers.

⁹⁴ Di Rossiter BoE dated 13 August 2024 at [6]

⁹⁵ Di Rossiter BoE dated 13 August 2024 at [8]

⁹⁶ Di Rossiter BoE dated 13 August 2024 at [9]

⁹⁷ NoE at pages 370-371

⁹⁸ Di Rossiter BoE dated 13 August 2024 at [9]

⁹⁹ Di Rossiter BoE dated 13 August 2024 at [11]–[12]

They were above shoulder height.¹⁰⁰ In cross examination Ms Rossiter said that she presumed anyone in the room could have seen his fists raised above his shoulders.¹⁰¹

[111] Ms Rossiter says that Mr Dooley was very aggressive and physically threatening.¹⁰²

Phil Rossiter

[112] Phil Rossiter says that Mr Dooley was sitting at a desk and that everyone in the room would have had a clear view of him, albeit from different perspectives.¹⁰³ Mr Rossiter's evidence is that when Ms Roche spoke to Mr Dooley, he remembers the noise of Mr Dooley standing up quickly and slamming his hands on the desk¹⁰⁴ or banging his clenched fists on the table.¹⁰⁵

[113] Mr Rossiter's evidence is that Mr Dooley moved quickly over about 1-2m to close the gap between himself and Ms Roche and began yelling angrily at her. Mr Rossiter says Mr Dooley's chest/torso was pushed forward, he was on his toes, and yelling with his fists clenched by his sides. Ms Rossiter says Mr Dooley was right in Ms Roche's personal space (i.e. within 1 m) and that he remembers Ms Roche reeling back.¹⁰⁶

[114] Mr Rossiter says that Mr Dooley was gesticulating and telling Ms Roche to go away and that he was pointing. Mr Rossiter said Mr Dooley's hand was hidden by his body so he could not say "what was on the end of Frank's hand". Beyond that, Mr Rossiter says that there was some arm movement and that Mr Dooley was waving.¹⁰⁷

¹⁰⁰ NoE at page 381

¹⁰¹ NoE at page 382

¹⁰² Di Rossiter BoE dated 13 August 2024 at [9] and NoE at page 382

¹⁰³ NoE at pages 367 and 368

¹⁰⁴ Phil Rossiter BoE dated 13 August 2024 at [9]

¹⁰⁵ NoE at pages 370

¹⁰⁶ Phil Rossiter BoE dated 13 August 2024 at [10]

¹⁰⁷ NoE at pages 370-371

Larry Eade

[115] Mr Eade appeared by AVL. Mr Eade says that he was seated in the back corner of the room when Mr Dooley came into the room. Mr Eade says Ms Roche was sitting to Mr Dooley's side.¹⁰⁸

[116] Mr Eade says that Mr Dooley interrupted several times and he was a "bit aggro" suggesting the meeting be adjourned to a more public venue and asking, "Who's jurisdiction is this?" given it was a WCRC event in the BDC offices.¹⁰⁹

[117] Mr Eade said the nature of Mr Dooley's interjections of Ms Easton were cantankerous and unhelpful, and that he was quite aggressive, although not swearing, banging a piece of paper with his fingers.

[118] When Ms Roche asked Mr Dooley to leave questions to the end, Mr Eade says that Mr Dooley "instantly and abruptly" rose to his feet, swinging his body to his left to face Ms Roche and that he raised his right arm towards her with his hand clenched in a fist. Mr Eade says he could clearly see it and that Mr Dooley's legs were braced, with his weight on his back leg, within arm's reach.¹¹⁰

[119] Mr Eade says Mr Dooley could have hit Ms Roche and that he was swearing loudly and directly at Ms Roche for several seconds saying "Fuck off" many times and "Piss off, what would you know". Mr Eade did not notice Ms Roche's reaction other than he saw her step back a bit.¹¹¹

[120] Mr Eade said that rather than Ms Roche moving towards Mr Dooley, there were a couple of steps taken but that it was more of a crouch as Mr Dooley was sitting at a table, and that Ms Roche did not stand over him.¹¹²

¹⁰⁸ Larry Eade BoE dated 13 August 2024 at [3]

¹⁰⁹ Larry Eade BoE dated 13 August 2024 at [5]

¹¹⁰ Larry Eade BoE dated 13 August 2024 at [8]

¹¹¹ Larry Eade BoE dated 13 August 2024 at [8]

¹¹² NoE at page 382

[121] Mr Eade demonstrated what he saw, pointing with his left hand pointing and raising his right hand in a fist above his shoulder.¹¹³ Mr Eade considered Mr Dooley's evidence to the effect that he was waving Ms Roche away with an open hand, to be self-serving.¹¹⁴

[122] At this stage Mr Eade says he got up and shouted: "Oi stop that" and "Hey, you are going to hit her" or similar. When he said this, Ms Eade said Mr Dolley swung his body around to look at him and looked stunned.¹¹⁵ Someone else, Mr Eade says, yelled "Show some respect" and "You're acting like a 16-year-old" to which Mr Dooley looked around the rest of the room, and recalcitrantly sat back in his chair.¹¹⁶

[123] Mr Eade says that Ms Easton looked shocked and others went quiet and that Mr Dooley's behaviour had been verbally abusive and was aggressively honed in on Ms Roche. Mr Eade said the behaviour was upsetting.¹¹⁷

Misato Nomura

[124] Ms Nomura's evidence is that prior to the meeting, on 9 February 2022 while she was working at the library, a man she now knows to be Mr Dooley came in. He was speaking to another library employee who was new to her job and for whom English was her second language. Ms Nomura says that she could hear this other employee's hesitance, and that she could not answer Mr Dooley's questions.¹¹⁸

[125] When Ms Nomura went over to assist, she says that Mr Dooley wanted to take the whole folder of the draft TTPP off site and was rude and demanding about this. His voice was slightly raised and angry sounding and Ms Nomura got the feeling that he had come in quite agitated.¹¹⁹

[126] Ms Nomura explained that the draft TTPP was the only copy they had but that it was available online to which Mr Dooley said he was a ratepayer and was entitled

¹¹³ NoE at page 398

¹¹⁴ NoE at page 399

¹¹⁵ Larry Eade BoE dated 13 August 2024 at [8]

¹¹⁶ Larry Eade BoE dated 13 August 2024 at [10]

¹¹⁷ Larry Eade BoE dated 13 August 2024 at [11]

¹¹⁸ Misato Nomura BoE dated 13 August 2024 at [4]-[6]

¹¹⁹ Misato Nomura BoE dated 13 August 2024 at [7]

to the whole copy. When Ms Nomura said he could contact the Council or the TTPP team for a copy, Mr Dooley stormed out of the library.¹²⁰

[127] While Ms Nomura said this was not the worst behaviour she had seen in the library, it was confronting and it seemed like Mr Dooley had come in with an agenda.¹²¹

[128] When Ms Nomura was working as a ‘sign-in’ person on the evening of the TTPP meeting, she said she heard a commotion inside and looked into the room. Ms Nomura said that she saw Mr Dooley standing and people were trying to calm him down with someone saying something like “You owe her an apology.” When she asked someone what had happened someone replied “Oh, he just raised his hand and tried to hit her” and that he was “Sharon’s old boss”.¹²²

[129] After discussing the incident with her manager, Ms Nomura decided to file a report about the incident at the library, which she did on 10 March 2022 as she considered both incidents to be TTPP related.¹²³

My assessment of what happened

[130] Having heard the evidence, I am satisfied that when Ms Roche asked Mr Dooley to leave his questions to the end, she leaned over from where she was seated likely taking a step towards Mr Dooley. This is because Ms Roche and Mr Dooley were separated by social distancing requirements. I am not persuaded, however, that it can be said that Ms Roche was “advancing on” Mr Dooley in the sense that language suggests a degree of aggression on her part.

[131] I am, however, persuaded that Mr Dooley advanced on Ms Roche when he stood up closing the gap between them, in what he acknowledges was a state of anger and that “his rage got the better of him”.

¹²⁰ Misato Nomura BoE dated 13 August 2024 at [10] – [11]

¹²¹ Misato Nomura BoE dated 13 August 2024 at [12]

¹²² Misato Nomura BoE dated 13 August 2024 at [16]- [17]

¹²³ Misato Nomura BoE dated 13 August 2024 at [22]

[132] I am also persuaded that Mr Dooley was agitated before the meeting started due to his concerns about the provisions of the TTPP and that he was determined to ask his questions with little regard for the others at the meeting. In his words, there was "...no friggin way that [he was] going to sit back and let this plan be adopted in its current form".

[133] Viewed objectively, Mr Dooley acted in a way that can be described colloquially as self-entitled. He was rude and aggressive in his manner to the presenters.

[134] Mr Dooley accepts that he "flipped," at Ms Roche and the "switch had been triggered." He accepts that he verbally abused Ms Roche, swearing at her in an angry tone. Mr Dooley told Ms Roche to "shut up" in a public forum and he accepts that the language he used was inappropriate and unprofessional.

[135] I do not accept that Mr Dooley simply put his hand up twice when he told Ms Roche to "fuck off" or "piss off" or that he was simply waving Ms Roche off.

[136] While Brett Avery, Paul Avery, Kyle Avery, Michael Bade and Glen Duncan say that they did not see a fist raised, Mr Duncan did see Mr Dooley pointing a finger at Ms Roche. This is more than just waving Ms Roche off.

[137] The evidence is that the Averys and Mr Bade were behind Mr Dooley when his table was angled from the wall towards the presenters. The diagram that Ms Rossiter drew of the room places each of Brett Avery, Paul Avery, Kyle Avery, Michael Bade and Glen Duncan behind Mr Dooley and they each acknowledge that they were some distance away. I accept that their line of sight would likely have been obscured whereas Ms Roche was directly in front of Mr Dooley. Each of Brett Avery, Paul Avery, Kyle Avery, Michael Bade and Glen Duncan also agreed that Ms Roche was in the best position to see whether a fist was raised at Ms Roche.¹²⁴

¹²⁴ NoE at pages 140,155, and 161

[138] That Mr Dooley raised a fist is corroborated by Mr Cleine, Ms Easton, Ms Nahr and Ms Howard who would all have been closer and in front of both Mr Dooley and Ms Roche.

[139] Ms Eade's evidence confirms that Mr Dooley's table was at an oblique angle to the wall and that people along the right wall (as one entered the room) would have been able to see Mr Dooley but that they would not have been able to see his face as they were behind him and would not have had a clear view of a raised fist. On the other hand, Mr Eade said that anyone with a clear line of sight of Mr Dooley would have seen his fist raised above his shoulder.¹²⁵

[140] Di and Phil Rossiter were located across the room from Mr Dooley and Ms Roche and having visited the room at the commencement of the trial, I am persuaded that they would also have been in a better position to see what happened compared to Brett Avery, Paul Avery, Kyle Avery, Michael Bade and Glen Duncan situated at the back.

[141] Ms Howard's diagram which was drawn two or three days after the TTPP meeting, while roughly drawn, confirms the proximate positions of Mr Dooley, Ms Roche, Ms Howard, the presenters and Ms Rossiter.

[142] That Brett Avery, Paul Avery, Kyle Avery, Michael Bade and Glen Duncan say that Mr Dooley gestured with a wave of his hand does not accord with what Mr Dooley himself demonstrated in his evidential interview or in court when he held his hand up, as he said, to stop Ms Roche from coming towards him (although in his evidential interview Mr Dooley gestured with his hands in forward motion when he says he told Ms Rossiter to go away). Their evidence of Mr Dooley waving at Ms Roche lacks credibility when Mr Dooley himself demonstrated a different action.

[143] Mr Dooley also accepts that it was not only his language but that his behaviour was inappropriate and he accepts that he may have been pointing his right finger at Ms Roche.

¹²⁵ NOE at pages 399

[144] I am satisfied on the balance of probabilities that Mr Dooley did raise a fist to Ms Roche, in combination with him pointing his finger at Ms Roche while in close proximity. Even if I am wrong and it was just a pointed finger, in close proximity the action was aggressive and threatening.

[145] There is no evidence, however, that Mr Dooley touched Ms Roche in any way.

[146] I do not accept Mr Dooley's submission that his witnesses have all been materially consistent in their recollection of his interaction with Ms Roche such that they ought to be preferred over the witnesses for Mr Cleine who have each differed to some degree in their demonstrations, elaborations, or recollections about what happened. Where parties claim not to have seen something, they will by definition be more consistent with each other compared to where people see something and describe it slightly differently. Given the time that has elapsed and the nature of the incident I do not find it surprising that each of the witnesses for Mr Cleine have variations in their recall. I am satisfied, however, that the underlying events are recalled in a broadly consistent way.

What is the natural and ordinary meaning of the words in the Article?

[147] While a number of witnesses have stated what they understand the Article to mean, no evidence beyond the publication complained of is admissible in determining the natural and ordinary meaning of the words.¹²⁶ That is, the natural and ordinary meaning of the words is a question of law for me alone as judge to determine.¹²⁷

[148] In this case the article suggests that an unnamed member of the public allegedly assaulted Ms Roche. The headline immediately suggests caution referring to it as an 'allegation'.

[149] The opening paragraph summarises the allegation as being that Ms Roche was "verbally assaulted" and "physically threatened".

¹²⁶ *Koutosgiannis v The Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25 at [12(x)]; see also *Slim v Daily Telegraph* [1968] 2 QB 157 (CA) at 173

¹²⁷ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 626

[150] What this verbal assault and physical threat entailed is expanded on in subsequent paragraphs, namely that Ms Roche was “sworn at” and “a fist was raised at Ms Roche and that she was “breasted up to”.

[151] That trespassing the member of the public was to be explored, and the matter was “likely to become a police matter” emphasise that the incident was “extremely serious and outrageous” such that it warranted investigation by the police as to any criminality.

[152] In the Article, Mr Cleine does not venture to say that the incident amounted to a criminal act. Nor do I consider that the ordinary reasonable reader would expect that to be a matter for Mr Cleine to determine without reference to the Police.

[153] The Article reports that Mr Cleine was concerned about the health and safety of elected officials and staff. This again reinforces the seriousness of the incident.

[154] The article makes it clear that when a person interjected during the presentation by the planners and was asked to let the presenters finish, the incident occurred at which point the “expletives started” and a “physical altercation ensued”. When the letter is read as a whole, within the first three paragraphs the Article makes it clear that what happened was that Ms Roche was breasted up to and a fist raised, while she was being sworn at. No mention is made that Ms Roche was hit or otherwise touched. It is clear to the reader that the breasting up and raising of a fist is what is meant by the words “physical altercation”.

[155] A reader of the whole Article would also understand that the member of the public to have been the aggressor.

[156] The article says that eventually the meeting settled down and proceeded in a tense but productive way, recognising that the TTPP “is a huge issue” for the district. In my view this statement speaks to Mr Cleine recognising that the TTPP is controversial for the community. I do not consider that the reference to ‘tension’ in the Article is solely directed to the incident. It appears that Mr Cleine was seeking to downplay the incident to some extent, shifting the emphasis to the issue that is

important for the community, namely the TTPP. This is hardly surprising given that Mr Cleine is the Mayor.

[157] Neither the ‘member of the public’ nor any of the other reported attendees of the meeting are quoted. A reader would be left with the impression that no one else had yet been approached or spoken to by the writer of the article. This, along with the use of the word “alleged” both in the headline and in the body of the Article, makes it clear that the Article only speaks to one side of the story (as well as concern on the part of the newspaper to protect itself from liability).

[158] I am satisfied that the meaning the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the Article is that someone aggressively swore and yelled at Ms Roche and threatened her with a fist and by breasting up to her.

[159] To the ordinary reasonable person, the references to Ms Roche being physically threatened and to there being a physical altercation, undoubtedly connotes a physicality to the interaction but again this is bounded, at the highest point, by a fist being raised.

[160] I am not satisfied that the ordinary reasonable person reading the Article in full, would understand that Ms Roche had been hit or touched. Had this been the allegation then it is expected that Mr Cleine would have been expressly quoted as saying so in the Article.

[161] That the member of the public did not leave when asked, but the meeting settled down and was productive albeit tense, indicates that the incident was relatively short-lived and fell short of the need for anyone to immediately seek the intervention of the Police. This is more consistent with an incident involving swearing and gestures rather than Ms Roche having been hit.

[162] I do not accept the submission for Mr Dooley that the traditional definition of the word ‘altercation’ involves a noisy brawl or dispute rising to the seriousness of physical violence and that this is illustrated by the way criminal cases have viewed the

phrase. This is because, as already noted, 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.

Did the Article identify Mr Dooley, or would the reader otherwise have known that they were about Mr Dooley?

[163] Mr Dooley is not named in the Article. The test then is whether the words are such that they reasonably, in the circumstances, would lead persons acquainted with Mr Dooley to believe that he was the person referred to?¹²⁸

[164] This test does not assume that those persons who read the words know all the circumstances or all the relevant facts. Rather, although Mr Dooley is not named, he may nevertheless be described so as to be recognised. That description may take the form of a ‘word-picture’ of an individual, or the form of a reference to a class of persons of which Mr Dooley is, or is believed to be, a member. It may also take any other form if in the circumstances the description is such that a person hearing or reading the alleged defamatory statement would reasonably believe that Mr Dooley was being referred to. In such a case that will be a sufficient reference to him.¹²⁹

[165] The identification of Mr Dooley is a factual matter about which the burden of proof is on Mr Dooley.¹³⁰

[166] The evidence of Jan Coll is that at around 9.00pm on the day of the meeting, she was able to conclude from her daughter Laura Coll McLaughlin who attended the meeting, that Mr Dooley had been involved in an event at the TTPP (namely a verbal exchange), although Ms McLaughlin did not give her a detailed account of the events that took place.¹³¹

¹²⁸ *David Syme & Co v Canavan* [1918] VLR 540, (1918) 25 CLR 234, (1918) 24 ALR 50, BC1800026 per Isaacs J

¹²⁹ *David Syme & Co v Canavan*, above n 128

¹³⁰ *David Syme & Co v Canavan*, above n 128 citing *Le Fanu v Malcomson*, 1 H.L.C 637; and *Hulton and Co v Jones*, (1910) AC 20.

¹³¹ Coll BoE dated 11 July 2024 at [3]

[167] The evidence of Matthew McManus is that he understood the Article to be speaking about Mr Dooley from what he had been told by people on the night of 21 February 2022, saying that Westport is a small town where people talk quickly about incidents.¹³² The evidence of Lisa Slee is that she knew of Mr Dooley's outburst from Mr McManus (her brother) on 22 February 2022 before reading the Article.¹³³

[168] Tori Spittal says that she too knew that the Article was referring to Mr Dooley but she could not recall who had spoken to her about it.¹³⁴

[169] Alan Hawes's evidence is that on the morning of 22 February 2022 before the Article was published, he was advised by a Ms Kathi Adams that the TTPP got heated and that Mr Dooley was involved.¹³⁵ Ms Adams did not give evidence as to how she heard about the incident.

[170] Similarly, Andrew Chinn's evidence is that he believed he heard from someone in the community that Mr Dooley had been involved in an incident at the meeting and that Mr Dooley had 'lost it' and knew that Mr Dooley was the member of the public being referred to when he later read the Article.¹³⁶

[171] Sean Casey's evidence is that he overheard Robyn Nahr talking about the meeting when walking through the office of Westreef Services Limited for whom he is employed as a contracted project manager. Mr Casey says that Ms Nahr was talking about Mr Dooley in "not very nice terms" and about how badly he behaved and that what he took from that is that it was terrible. It was later when he read the Article that he knew that Mr Dooley was the member of the public referred to because of what he had overheard.¹³⁷

[172] Josephine Dooley's evidence is that upon reading the Westport News, she had a feeling that the person referred to might be her husband because she knew that he

¹³² McManus BoE dated 12 July 2024 at [3]-[4]

¹³³ Slee BoE dated 15 July 2024 at [4]

¹³⁴ Spittal BoE dated 10 July 2024 at [4]

¹³⁵ Hawes BoE dated 16 July 2024 at [4]

¹³⁶ Chinn BoE dated 15 July 2024 at [3] – [4]

¹³⁷ Casey BoE dated 15 July 2024 at [8] – [10]

had attended the meeting and because he was very vocal and passionate about flooding issues.¹³⁸

[173] The evidence of Sharon Mason is simply that the events of the meeting and the identity of the parties was widely known when the Letter was released to the *Greymouth Star* under the LGOIMA on the morning of 23 February 2022.¹³⁹

[174] In my assessment, the Article makes no hints about, or oblique references to, Mr Dooley.¹⁴⁰ Mr Dooley is not described by a ‘nickname, his initials, by photograph, drawing or caricature, his office, or by the first and last letter of his name, or even by asterisks, or blanks, or under the guise of an allegorical, historical, fictitious or fanciful name or pseudonym, or by means of a description of his status, physical peculiarities, or by a recognisable likeness or caricature or his residence’. That is, there is no ‘peg or pointer’ for his identification in the words complained of themselves.¹⁴¹

[175] The only references to the member of the public is that he was one of 25 people attending the TTPP meeting and that he was a male. This, in my view, contains no hint in and of itself.

[176] Where identification is an issue, the question is whether the hypothetical reasonable reader would understand the words to refer to the claimant, subject to the qualification that where the words are published to persons who have special knowledge, the issue will be decided by reference to what reasonable persons possessing that knowledge would understand by them.¹⁴² While the test is an objective one, evidence is admissible in relation to the question of identification, that is not determinative.

[177] The evidence of Jan Coll, Matthew McManus, Lisa Slee, Tori Spittal, Alan Hawes, Andrew Chinn, and Sean Casey is all based on what those witnesses were told by others about Mr Dooley’s involvement in the meeting. That is, the implication that

¹³⁸ J Dooley BoE dated 14 July 2024 at [2]-[3]

¹³⁹ Noes of Evidence, page 321/9

¹⁴⁰ *Morgan v Oldhams Press Ltd* [1971] 1 WLR 1239, 1270

¹⁴¹ R Parkes and others (ed) *Gatley on Libel and Slander* (13th ed, Sweet and Maxwell, London, 2022) at 8.002

¹⁴² Above n 141, at 8.001 and 8.003

can be drawn from the evidence is that they only knew the member of the public referred to in the Article was Mr Dooley from those who attended the meeting, or because they were told about Mr Dooley's behaviour, or because they overheard statements made by others who were in attendance.

[178] Undoubtedly word travels fast in in a small community like Westport, but the evidence that any witness would have known of Mr Dooley's identity had it not been from what they had been told first, is at best thin and reliance on what others said to them is inadmissible hearsay.

[179] Mrs Dooley said that she knew that Mr Dooley had attended the meeting and that he was very vocal and passionate about flooding issues. Reference to people's biggest concerns being around the TTPP's flood hazard overlays and proposed rules for building in the flood hazard severe and susceptible zones, however, would not appear to be a concern restricted to Mr Dooley alone given past flooding events in Westport.

[180] Mrs Dooley's knowledge was drawn from her 50 years of marriage and her knowledge that Mr Dooley has a combative and direct conversational style and often swears,¹⁴³ such that when she read the words about verbal abuse, she thought it might be Mr Dooley.¹⁴⁴ Other witnesses did not say something similar. In her brief of evidence too, Mrs Dooley said that when she suspected the person referred to might have been Mr Dooley her thoughts went to his actions over the previous 24 hours and in particular that he did not comment on how the meeting went, although she did not ask. In was only then that she confronted Mr Dooley.¹⁴⁵

[181] Importantly, it cannot be disregarded that Mr Dooley identified himself to the *Westport News* in the very early hours of 23 February 2022, less than 12 hours after the Article was published, which letter was then published as a letter to the editor that afternoon. From that point Mr Cleine cannot be held responsible for naming Mr Dooley as he did this himself.

¹⁴³ NOE at page 178

¹⁴⁴ NOE at page 179

¹⁴⁵ Josephne Dooley BOE dated 14 July 2024 at [6]

[182] While it is also the case that a subsequent publication may be used to establish identification, the later publication of the *Greymouth Star* article containing reference to the Letter, coincided with Mr Dooley's letter to the editor of the *Westport News* on 23 February 2022. The *Greymouth Star* article therefore cannot be said to be the basis by which Ms Dooley's identity became known through the media.

[183] On balance, I am not persuaded that Mr Dooley has proved on the balance of probabilities that the words in the Article are such that they reasonably, in the circumstances, would lead persons acquainted with Mr Dooley to believe that he was the person to whom the Article referred.

[184] For these reasons, I am not persuaded that Mr Cleine defamed Mr Dooley in the Article.

[185] In case I am wrong on this point, however, given what I have determined happened at the meeting, and what I consider to be the natural and ordinary meaning of the words in the Article, I am also not persuaded that any of the words in the Article are defamatory. The statements made, in my view, are true, or not materially different from the truth. Accordingly, Mr Cleine has a complete defence in relation to the Article.

Did the Letter contain defamatory statements about Mr Dooley?

What is the natural and ordinary meaning of the words in the Letter?

[186] In my view the meaning of the Letter is plain, namely that Mr Dooley's behaviour was "atrocious" and "totally unacceptable". Again, 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.¹⁴⁶

[187] The reader will understand that Mr Dooley was disruptive and forceful in his tone and swore at the TTPP meeting.

¹⁴⁶ *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 HL(E) at 72

[188] The reader would also understand Mr Cleine to have meant that Mr Dooley was physically threatening to Ms Roche, the presenters and members of the public. The Letter does not suggest that Mr Dooley physically touched or hit anyone but that his demeanour was frightening.

[189] The Letter also makes it clear that the behaviour was such that Mr Cleine thought it important enough to bring to the attention of the Chief Executives of the BDC and WCRC because of the presence of their employees and of other elected members. This relates to obligations of health and safety of the WCRC and the BDC to elected members, employees and the public in BDC premises.

[190] The overall tone and emphasis of the Letter is about Mr Dooley's behaviour being atrocious and unacceptable. The first, third and fourth paragraphs of what is a four-paragraph letter all make this clear.

Are the defamatory statements in the Letter true, or not materially different from the truth?

[191] Once again, given what I have determined happened at the meeting, and what I consider to be the natural and ordinary meaning of the words in the Letter, I am not persuaded that any of the word in the Letter are defamatory. The statements made, in my view, are true or not materially different from the truth.

[192] There can be no doubt that Ms Dooley used a disruptive and forceful tone and expletive laden language towards Ms Roche. Further, I have determined on the balance of probabilities that Mr Dooley did raise a fist to Ms Roche which constitutes physically threatening behaviour. As noted, even if he pointed at Ms Roche (which he acknowledges) in close proximity to Ms Roche, that is objectively aggressive and threatening behaviour. Mr Dooley accepts that Ms Roche might have felt intimidated.

[193] In terms of the presenters, Ms Easton's evidence is that Mr Dooley was very close to her given the size of the room and that he was between her and the door. Ms Easton said she was feeling very stressed at the level of aggression she was encountering and was hoping that someone would intervene until Ms Roche did.

Mr Dooley used a “lot of expletives” and Ms Easton said that she found him quite threatening given the way Mr Dooley was asking his questions.¹⁴⁷

[194] In relation to the members of the public in attendance, the evidence is also that Ms Nahr says that Mr Dooley’s face was angry and his demeanour was physically intimidating.¹⁴⁸ Ms Nahr said further that she was in shock saying: “I just got myself out of the situation.”¹⁴⁹

[195] Ms Howard said that she found the incident very upsetting and that her heart was pounding and that she felt the ‘flight mode’ coming on.¹⁵⁰

[196] Di Rossiter gave evidence that she and her husband Phil Rossiter left the meeting as they found it hard to concentrate after what had happened.¹⁵¹ In Di Rossiter’s statement to the Police¹⁵² she said that she noticed the presenter’s chin was wobbling and that she was visibly upset. Di Rossiter continued saying that she thought everyone was “just so shocked and appalled and didn’t know how to react”. Di Rossiter also told the Police that her heart was ‘leaping out of her chest’ during Mr Dooley’s “explosion” and that she was across the other side of the room from him and that she could only imagine what it felt like to be on the receiving end of Mr Dooley’s rage.

[197] Phil Rossiter gave evidence that the whole room seemed on edge and that he found it hard to concentrate on the meeting after the incident, feeling deeply unsettled about what had happened. Phil Rossiter said further that in the evening he and Di Rossiter did a lot of talking and processing what had happened as it affected them both.¹⁵³

¹⁴⁷ NoE at page 3034

¹⁴⁸ Nahr BoE dated 14 August 2024 at [8]

¹⁴⁹ NOE at page 335

¹⁵⁰ NoE at pages 340 and 349

¹⁵¹ Di Rossiter BoE dated 13 August 2024 at [17]

¹⁵² Di Rossiter BoE dated 13 August 2024 at [20]

¹⁵³ Phil Rossiter BoE dated 13 August 2024 at [16] and [19]

[198] Mr Eade also said the behaviour was upsetting.

[199] Given this, I am satisfied that the statement that Mr Dooley was physically threatening to WCRC staff and to members of the public, is true or not materially different from the truth.

[200] Accordingly, Mr Cleine also has a complete defence in relation to the Letter.

Is the Letter subject to qualified privilege?

[201] Even if I am wrong about the statements in the Letter being true, or not materially different from the truth, I consider that the Letter is subject to qualified privilege.

[202] Mr Cleine's evidence is that copied the Letter to the WCRC and BDC chief executives because he was by default the most senior person in the room and that he felt he had an obligation from a health and safety perspective to ensure the people who were in charge of the meeting but who were not present (i.e. WCRC and BDC management), were aware of his concerns about what he had witnessed so they could make decisions about managing events in the future.¹⁵⁴

[203] In saying this, I am cognizant that s 19(1) of the Defamation Act 1992 provides that in any proceedings for defamation, a defence of qualified privilege shall fail if the plaintiff proves that, in publishing the matter that is the subject of the proceedings, the defendant was predominantly motivated by ill will towards the plaintiff, or otherwise took improper advantage of the occasion of publication.

[204] The issue here is whether Mr Cleine was motivated by ill will towards the plaintiff, or whether he otherwise took improper advantage of the occasion of writing the letter to Mr Dooley to publish it to the other recipients. Mr Dooley submits that Mr Cleine published the letter because he was interested in advancing his own self-interest in being re-elected mayor and effectively used the opportunity to name and shame him, and as a result this defeats any claim to qualified privilege.

¹⁵⁴ NOE at page 199

[205] There is no doubt that Mr Cleine and Mr Dooley disagreed on issues.

[206] The evidence is that on 1 September 2021, some four months prior to the TTPP meeting, Mr Dooley wrote a letter to the *Westport News* about flood protection. In this letter, Mr Dooley was critical of Mr Cleine saying things including that he had: “had enough of the bureaucratic claptrap and weasel words coming out of this Council” and that the BDC submission on the TTPP elevated his “ever growing concern at the lack of competency within our elected members,” that Mr Cleine had been constantly undermining the WCRC with his “blame game” tactics, and that the Council needed to “demolish their ‘veil of secrecy’ and be totally transparent with ratepayers...”.¹⁵⁵

[207] In response to this letter to the editor Mr Cleine left Mr Dooley a voicemail message on his phone accusing Mr Dooley of “stabbing him in the back” and being “a most ignorant fucking man”. On receipt of this Mr Dooley called Mr Cleine and said he had a very direct discussion in which they did not mince words.¹⁵⁶

[208] In addition, Mr Dooley gave evidence of the BDC having rescinded its policy on finished floor heights following work he was doing with a group of builders and associated trade entities known as the Buller Builders & Associates (BBA) and following their obtaining of legal advice.¹⁵⁷ Mr Dooley was associated with this, being a spokesperson for the BBA.

[209] Mr Dooley has publicly challenged Mr Cleine and the BDC on flood related issues¹⁵⁸ including where, leading up to the TTPP meeting, Mr Dooley considered that one of the recommendations in the report prepared for the TTPP Committee (to the effect that certain flood overlay and zoning rules purportedly sought by the BDC and Westland District Council would have immediate legal effect), was pre-determining the outcome of consultation processes.¹⁵⁹

¹⁵⁵ Dooley BOE dated 15 July 2024 at [14]

¹⁵⁶ Dooley BOE dated 15 July 2024 at [15]

¹⁵⁷ Dooley BOE dated 15 July 2024 at [29] and following

¹⁵⁸ Dooley BOE dated 15 July 2024 at [50]

¹⁵⁹ Dooley BOE dated 15 July 2024 at [50]

[210] Mr Dooley's evidence is also that as earlier as September 2021 Mr Dooley was being approached to stand for the mayoralty at the next local body elections although in the end, he did not stand against Mr Cleine but instead stood for the position of WCRC councillor, the position to which he was elected.¹⁶⁰

[211] These matters along with Mr Cleine's letter to the O'Conor Home management committee following the meeting in November 2021, and other matters set out in Mr Dooley's evidence, Mr Dooley says, demonstrate that Mr Cleine was predominantly motivated by ill will to include the statements he did in the Letter.

[212] I do not accept this. This suggestion only makes sense if Mr Cleine had contrived to write and copy the letter to the chief executives knowing that it would be leaked so that the *Greymouth Star* knew about it and would make a request for it pursuant to the LGOIMA, and that Ms Mason would then recommend its release without redaction.

[213] Some of the matters referred to by Mr Dooley also post-date the TTPP meeting.

[214] In relation to the voicemail, the following day Mr Cleine text Mr Dooley apologising for upsetting Mr Dooley saying: "I was frustrated at the letter to the editor and that you wouldn't have spoken with me about those issues first. Especially the undermining of the WCRC...".¹⁶¹ Mr Cleine explained that he was particularly incensed that the main thrust of Mr Dooley's letter was the inference that he had been disrespectful to Laura Coll when Mr Dooley would not have been aware of the professional conversations and relationship that he had with Ms Coll and the support he was giving her as the WCRC was dealing with governance issues.¹⁶²

[215] Mr Dooley also accepted that he had known Mr Cleine "since he was a kid" and that their families knew each other and got on well,¹⁶³ that he supported Mr Cleine when he was elected mayor in 2019,¹⁶⁴ and that his letter to the editor of 1 September

¹⁶⁰ Dooley BOE dated 15 July 2024 at [76] - [84]

¹⁶¹ Dooley BOE dated 15 July 2024 at [19]

¹⁶² NOE at page 203

¹⁶³ NOE at page 14

¹⁶⁴ NOE at page 15

2021 was perhaps the first time he had publicly criticised Mr Cleine.¹⁶⁵ I do not accept that Mr Dooley could not anticipate that the letter would not be perceived as a personal attack as he suggested.¹⁶⁶

[216] At common law malice is presumed when the words published are false and defamatory, which as I have said, I do not find to be the case here. The presumption may be rebutted if the occasion was one of qualified privilege and in turn, the privilege could be defeated if actual malice was proved by the plaintiff.

[217] What constitutes malice was also restated in *Horrocks v Lowe*.¹⁶⁷ As Lord Diplock put it in that case:

Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

[218] As the Court of Appeal said *Lange v Atkinson & Australian Consolidated Press Ltd*, by Lord Diplock, this statement has since been regarded as authoritative.¹⁶⁸

[219] I am not satisfied that Mr Dooley has shown that despite disagreements on issue, there was a desire on Mr Cleine's part to injure him or that this was the dominant

¹⁶⁵ NOE at page 17

¹⁶⁶ NOE at page 17

¹⁶⁷ *Horrocks v Lowe* [1975] AC 135 at 149-150

¹⁶⁸ *Lange v Atkinson & Australian Consolidated Press Ltd* Court of Appeal CA52/97, 25 May 1998 at [44]

motive for publication of the Letter even if it might be said to have that effect (which I do not consider it does for the reasons already stated as to why I do not consider the Letter to be defamatory).

[220] The simple point remains that the incident at the TTPP was down to Mr Dooley and Mr Dooley alone. It was Mr Dooley who interrupted the presenters. Ms Roche sought to get the presentation back on track and it was Mr Dooley alone who reacted in an aggressive and threatening fashion.

[221] In that context, I do not consider that Mr Celine's motivation to alert the chief executives of what was a potential safety issue for employees, then and at possible future TTPP meetings, is defeated by what Mr Dooley now says were past issues between him and Mr Cleine.

[222] I am satisfied the Letter is protected by qualified privilege.

Is the release of the Letter to the Greymouth Star protected under LGOIMA?

[223] In terms of the release of the letter to the *Greymouth Star*, s 41 of the LGOIMA provides:

41 Protection against certain actions

- (1) Where any official information is made available in good faith pursuant to Part 2 or Part 3 or Part 4 by any local authority,—
 - (a) no proceedings, civil or criminal, shall lie against the local authority or any other person in respect of the making available of that information, or for any consequences that flow from the making available of that information; and
 - (b) no proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to a local authority.

- (2) The making available of, or the giving of access to, any official information in consequence of a request made under Part 2 or Part 3 or Part 4 shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given.

[224] Given what I have said about the circumstances of the release on the Letter and there being insufficient evidence to establish ill-will, I am satisfied that the Letter was made available pursuant to a LGOIMA request and was released in good faith.

[225] While some suggestion has been made about the speed in which the letter was released where there is a 20-day period to do so, the time frame for making a decision in s 13 of the LGOIMA, unless extended under s 14, is: “*as soon as reasonably practicable*, and in no case later than 20 working days after the day on which the request is received” (my emphasis).

[226] I am not satisfied that it has been established that the Letter was released otherwise than in good faith. Accordingly, the protections in s 41 apply.

Result

[227] For the reasons stated, Mr Dooley’s claim is dismissed. Mr Dooley has not proved on the balance of probabilities that Mr Cleine defamed him by way of either the Article or the Letter. Accordingly, I decline to make a declaration to that effect.

Costs

[228] Mr Cleine is prima facie entitled to costs. I reserve the question, however, and invite the parties to agree costs. If they are unable to do so, Mr Cleine is to file and serve a memorandum within 15 working days and Mr Dooley may file and serve any

response 15 working days after receipt of Mr Cleine's memorandum. A decision will then be made on the papers in the usual way

A handwritten signature in black ink, appearing to read 'K D Kelly', written in a cursive style.

K D Kelly
District Court Judge