

REDACTED VERSION OF JUDGMENT SUITABLE FOR PUBLICATION

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKURAU ROHE

CIV-2016-404-002915
[2019] NZHC 2247

BETWEEN

COLIN GRAEME CRAIG
Plaintiff

AND

RACHEL MARGARET JOY
MACGREGOR
Defendant

Hearing: 24-28 September 2018, 1, 2, 4 and 5 October 2018, 8 April 2019
(by telephone)

Further submissions received: Defendant: 31 October 2018;
Plaintiff: 1 November 2018; Defendant: 8 February 2019;
Plaintiff: 19 February 2019; Plaintiff: 26 February 2019; 8 April
2019; 26 April 2019; Defendant: 7 May 2019

Appearances: The Plaintiff in Person (T F Cleary as McKenzie Friend)
H Wilson and L Clark for the Defendant

Judgment: 6 September 2019

JUDGMENT OF HINTON J

*This judgment was delivered by me on 6 September 2019 at 5.00 pm
pursuant to Rule 11.5 of the High Court Rules*

.....
Registrar/Deputy Registrar

Solicitors:
Kensington Swan, Wellington

Party:
C Craig

TABLE OF CONTENTS

An overview	[1]
Effect of judgment in <i>Craig v Slater</i>	[8]
Factual background	[19]
<i>August 2011 – November 2011 and the first Craig letter</i>	[19]
<i>The November 2011 election night incident</i>	[24]
<i>December 2011 – January 2012</i>	[26]
<i>The second Craig letter – 7 February 2012</i>	[31]
<i>May 2012 – first employment review</i>	[38]
<i>August 2012 – September 2012 – second employment review and agreement regarding campaign rate</i>	[41]
<i>October 2012 – third Craig letter</i>	[45]
<i>December 2012 – gold charm present – Ms MacGregor’s card/letter</i>	[46]
<i>December 2013 – the fourth Craig letter and MacGregor card</i>	[51]
<i>January 2014 – August 2014 – employment issue</i>	[58]
<i>September 2014 and the 18 September resignation</i>	[67]
<i>September 2014 – after Ms MacGregor’s resignation</i>	[79]
<i>19 November 2014 – Ms MacGregor’s meeting with Mr Williams – Mr Craig’s first cause of action</i>	[82]
<i>December 2014 – January 2015</i>	[86]
<i>Lawyers’ correspondence regarding sexual harassment complaint</i>	[94]
<i>Human Rights Commission mediation and confidential settlement</i>	[99]
<i>Craigs’ first joint press conference 22 June 2015 – Ms MacGregor’s first cause of action</i>	[125]
<i>Ms MacGregor’s press statement 22 June 2015 – Mr Craig’s second cause of action</i>	[126]
<i>Ms MacGregor’s Twitter statement 22 June 2015 – Mr Craig’s third cause of action</i>	[127]
<i>The Craigs’ joint letter to the Conservative Party – Ms MacGregor’s second cause of action</i>	[129]
<i>The Craigs’ second joint press conference 29 July 2015 – Ms MacGregor’s third cause of action</i>	[135]
<i>The Craigs’ joint “Dirty Politics” booklet 29 July 2015 – Ms MacGregor’s fourth cause of action</i>	[136]
<i>Subsequent to 29 July 2015</i>	[137]
The legal framework	[142]
<i>Truth</i>	[145]
<i>Honest opinion</i>	[147]
<i>Qualified privilege – general</i>	[148]
<i>Professional advice</i>	[152]
<i>Reply to attack</i>	[153]
<i>Public interest</i>	[154]
Mr Craig’s first cause of action – Ms MacGregor’s statements to Mr Williams on 19 November 2014	[159]
<i>Did Ms MacGregor publish the statements?</i>	[161]
<i>Were the statements about Mr Craig?</i>	[165]
<i>Did the statements carry the pleaded imputations and are they defamatory?</i>	[166]

<i>Does the defence of truth apply – in particular, did Mr Craig sexually harass Ms MacGregor? Also was he a bad employer?</i>	[173]
<i>Does the defence of honest opinion apply?</i>	[185]
<i>Does the defence of qualified privilege apply?</i>	[188]
<i>Other defences</i>	[193]
<i>Conclusion on Mr Craig's first cause of action</i>	[194]
<i>Ms MacGregor's first cause of action - the Craigs' joint press conference at 1.30 pm on 22 June 2015</i>	[195]
<i>Does the defence of truth apply?</i>	[209]
<i>Do any other defences apply?</i>	[213]
<i>Conclusion on Ms MacGregor's first cause of action</i>	[217]
Mr Craig's second cause of action – Ms MacGregor's press statement after the Craigs' joint press conference on 22 June 2015	[221]
Mr Craig's third cause of action – Ms MacGregor's Twitter statement after the Craigs' press conference on 22 June 2015	[226]
Ms MacGregor's second cause of action - the Craigs' joint letter to Conservative Party members seeking feedback on 25 June 2015	[235]
Ms MacGregor's third cause of action – the Craigs' joint press conference on 29 July 2015	[246]
Ms MacGregor's fourth cause of action – “Dirty Politics” booklet published on 29 July 2015	[257]
Summary	[265]
<i>Mr Craig's claims</i>	[265]
<i>Ms MacGregor's claims</i>	[268]
Orders	[272]
Damages and costs	[275]

An overview

[1] This case forms another part of the defamation proceedings that are the fall-out from the collapse of the Conservative Party following the 2014 election. The collapse was coupled with allegations about a relationship between Mr Craig, the leader of the party, and Ms MacGregor, his press secretary. This proceeding is directly between those two parties.

[2] The disputes between Mr Craig and Ms MacGregor were actually resolved in a confidential settlement in May 2015, with the help of two senior lawyers. That settlement was undone in material part by the involvement of a Mr Williams and a Mr Slater, both of whom have also been engaged in defamation proceedings with Mr Craig. The May 2015 settlement included settlement of any allegations of sexual harassment, and withdrawal of Ms MacGregor's complaint to the Human Rights Commission. Ironically, whether there was sexual harassment has then become key to all of the defamation proceedings, including this one.

[3] The first of the defamation series was brought by Mr Williams against Mr Craig. The second proceeding was brought by Mr Craig against Mr Slater; and the third is this proceeding. There is yet a fourth proceeding in the series, between a Mr Stringer and Mr Craig.

[4] Although Mr Craig filed this proceeding in November 2016, he had not served it some eight or nine months afterwards, when Ms MacGregor found out about it and filed a statement of defence and counter-claim. Prior to that being filed, Mr Wilson, as counsel for Ms MacGregor, gave Mr Craig one or two days' written notice to withdraw the proceeding. Mr Craig says he was away and did not receive that email until after the statement of defence was filed. The case has wound on from there. Mr Craig says that he offered at the first case management conference for both parties to withdraw their claims. There is no record or evidence of that. During 2018 he did make a number of open offers that both parties withdraw their claims and his last offer included an offer to pay \$30,000 on account of costs. Ms MacGregor declined those offers.

[5] Mr Craig no longer seeks damages. On the first day of the hearing, he withdrew his claim for damages, on the basis that he understood from media statements Ms MacGregor is still not in a position to meet any award. The case proceeded therefore with his claim being for a declaration and Ms MacGregor's claim being still a claim for damages.

[6] The net position, certainly by the commencement of hearing, is that this is really Ms MacGregor's proceeding, as was accepted by Mr Wilson.

[7] Ms MacGregor mentioned a number of times during her evidence that she was disadvantaged in this proceeding, because Mr Craig is better off financially than she is. However, Mr Craig represented himself, while she was represented by two counsel from one of the larger national law firms. She was facing the unsatisfactory situation of being cross-examined by someone against whom she alleged sexual harassment, but she had traversed this evidence a few times previously, was well-represented and gave her evidence by turning her back towards Mr Craig. I do not consider she was disadvantaged by any imbalance in legal representation, or by the process adopted during the hearing.

Effect of judgment in *Craig v Slater*

[8] The judgment of Toogood J in *Craig v Slater* issued on 19 October 2018, just after the substantive hearing in this case concluded.¹

[9] I had raised with the parties at the outset of this hearing my concerns over potential conflicting findings, particularly since the question of whether there had been sexual harassment was at issue in both. They were in agreement that the decision in *Craig v Slater* would not affect this proceeding.

[10] On 31 October 2018, Ms MacGregor's counsel filed a memorandum raising possible issues arising out of the *Slater* judgment and also out of a judgment in another related proceeding.

¹ *Craig v Slater* [2018] NZHC 2712.

[11] I then had to timetable submissions and arrange for a further hearing over these issues.

[12] The parties' memoranda in respect of these issues were complete by 26 February 2019. In essence, Mr Wilson submitted that it was an abuse of process for Mr Craig to attempt to re-litigate a claim previously determined by another Court, even in circumstances where the principle of estoppel per rem judicatam does not apply because the parties are not the same.

[13] I issued a lengthy Minute dated 4 April 2019 setting out my preliminary views on the matter and concluding as follows:

For the reasons I have expressed, if the defendant wishes to pursue this argument, I require more thorough submissions as to the grounds on which they want me to find against Mr Craig. Further, I would require them to specify exactly which of Mr Craig's claims and defences they wish to impugn. As noted, it seems a strike-out application would be necessary.

There are also costs ramifications, bearing in mind the timing of the application.

In these unusual circumstances, rather than direct filing of memoranda, I ask the Registrar to convene a telephone conference at a time convenient to counsel on Monday, 8 April 2019. Counsel can then indicate what further directions they seek, if any.

[14] In the 8 April 2019 telephone conference, and having considered my Minute, Mr Wilson advised he did not seek to make a strike-out or any other application.

[15] There remained the possibility that I could find an abuse of process in any event. I allowed the parties the opportunity to file submissions against that possibility.

[16] I also addressed an application by Mr Craig to release documents in this proceeding to all parties in the *Stringer* proceeding.

[17] Further submissions were filed.

[18] In the circumstances of this case where the defendant has decided not to advance an application to strike out, I have determined it is not appropriate to consider

the same on my own motion, tempting as that might be. I note that Palmer J ordered a partial strike-out on his own motion in *Craig v Stringer*, but he did so on the basis of unfairness to Ms MacGregor in having to give evidence yet again.² In this case, she has already given evidence and furthermore, she does not seek a strike-out.

Factual background

August 2011 – November 2011 and the first Craig letter

[19] On 24 August 2011, not long after the Conservative Party was founded, Mr Craig engaged Ms MacGregor as an independent contractor to take on the dual roles of press secretary/media adviser and executive assistant to the Party and himself. She had been previously working for TVNZ as a reporter and producer. Mr Craig had little political or media experience. Ms MacGregor's key tasks were to ensure positive PR for the Conservative Party and Mr Craig (including advice as to Mr Craig's presentation), and to provide input into strategy.

[20] Mr Craig and Ms MacGregor quickly developed a close working relationship and were attracted to each other. Ms MacGregor, although more worldly than Mr Craig, had a vulnerable streak, and Mr Craig was very positive and encouraging. They shared a Christian belief. Ms MacGregor is the daughter of a Church minister.

[21] By 2 November 2011, Mr Craig had sent the first of a number of very personal letters to Ms MacGregor. This letter was 13 handwritten pages long. The letter is full of praise and admiration for Ms MacGregor, but it also has clear sexual content. For example:

The other day I got asked some questions. I have great people that keep tabs on me. Questions were: “Colin, are you having an affair?”
“Do you think your relationship with your PA (i.e. you) is special?”
“Have you kissed her?”
- It’s great to have people that ask the straight questions.
Well, obviously the answer to the first is ‘No’, unless I missed something. The second question was interesting; I said, “Yes” ... Anyway – not that I said all that to my friend – I just said, “Yes – I think we work amazingly well together.” And again, obviously the answer to last Qn was “no”, not that I wouldn’t want to, a lot, but that is a boundary.

² *Craig v Stringer* [2019] NZHC 1363.

The final thought on this is that I have never even given you a hug. I actually regret that. There have probably been a couple of times I would have liked to (if it was OK with you) and I do give lots of people hugs including women if they are OK with it. One to discuss?

While I am on the subject of “imperfection” I do owe you an apology. You will recall the “low cut top” incident (and let me just deviate for a moment to thank you for dressing modestly since then).

I was very clear at the time on the need for you to wear less revealing tops but of course I only knew that because I had looked at (down) the low cut top you were wearing.

I am a great believer in your character and abilities. Thanks for being such a wonderful friend and more.

Love
COLIN

[22] On 4 November 2011, Ms MacGregor texted Mr Craig thanking him “so much for your letter” and shortly after “Oh dear. Thinking of you ...”

[23] Although Mr Wilson submits otherwise, throughout November 2011 Ms MacGregor and Mr Craig appear to have exchanged messages that were more than affectionate on both sides. For example, on 21 November 2011, just after midnight, Ms MacGregor sent Mr Craig a text:

... I know im not meant to say this, but i really enjoyed spending time with you today.. And i think its very unique that we connect and communicate so instinctivly. Wish I could say goodnight the way i really want to...³

And on 22 November 2011 at around 3.00 am:

We certainly bring out the best in each other. And i love that we see the world in a similar way. God is doing wonderful things through u. Get comfy, and dream big dreams tonight:) phone on silent k! huuge hug, and so much love and gratefulness to u for who u are. OoOoOoO

The November 2011 election night incident

[24] On 26 November 2011, the night of the 2011 General Election, there occurred what is referred to as the “election night incident”. Mr Wilson says that Mr Craig’s summary of this incident is disputed, but I do not consider that correct in terms of the evidence actually given by Ms MacGregor. While reluctant to acknowledge it, Ms MacGregor conceded in evidence that the incident was consensual; that they had

³ All texts are set out as they were written.

kissed each other and that her top was removed. Ms MacGregor said they both moved towards the bed. There was a small dispute over who called it off, but nothing turns on this. It was common ground that both parties regretted the incident and were concerned it should not happen again.

[25] Ms MacGregor says she then raised the need for boundaries. Mr Craig says he raised it. I accept it is likely to have come from Ms MacGregor, especially given the ongoing sexual content in Mr Craig's letters, starting again as early as February 2012. Nonetheless, they both agreed on boundaries and Mr Craig purported to set some.

December 2011 – January 2012

[26] There were some ongoing very affectionate texts between the two in December 2011.

[27] From early on, Ms MacGregor clearly struggled with rendering invoices for her contract work. She provided invoices in September and October 2011, but then none until 23 December 2011. On 24 December 2011, Mr Craig provided a reconciliation of her invoices and payments, along with a payment for the balance due of \$16,049.

[28] On 23 December 2011, Ms MacGregor changed the basis of her engagement from an independent contractor to an employment agreement with Centurion Management Services Ltd (Mr Craig's company) at a rate of \$40 per hour. That seemed to be at her own instigation, perhaps prompted by her difficulty in invoicing.

[29] On 25 December 2011, Mr and Mrs Craig gave Ms MacGregor a silver locket as a Christmas present, purchased by them both. Mrs Craig was unaware of the 2 November 2011 letter or the election night incident. Ms MacGregor did not like the locket and she exchanged it for a gold charm, to the Craigs' knowledge.

[30] Between Christmas 2011 and early February 2012, Mr Craig and Ms MacGregor exchanged texts on a fairly regular basis, as it seems they did throughout. There were a number of texts from each of them saying that they missed each other, but Ms MacGregor's texts seem to have been in response to Mr Craig's

rather than by way of instigation, which appears to have been substantially the case from then onwards.

The second Craig letter – 7 February 2012

[31] On 7 February 2012, Mr Craig wrote a second personal letter to Ms MacGregor while he was away on a personal retreat. It was 12 pages long. It was glowing in its praise of Ms MacGregor. It also included a number of very personal statements and clear sexual overtures. There is no doubt that this letter was even more inappropriate than the first, coming from an employer to an employee.

[32] The letter begins by saying (as Mr Craig frequently did, in shorthand), “You are wonderful and beautiful” and that he hoped she would find the letter thought-provoking and inspiring. He was writing it to do something for her and said there were lots of things he would like to do, but he “wouldn’t tell her what else had crossed his mind”.

[33] After sections giving advice on God, marriage, her current boyfriend and the job, Mr Craig writes under the heading “You and Me”:

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

I know that you were counselled that I would “reject you” (or something similar – I don’t remember what the exact words were) because that is what men do in such situations. You have had a bad run with men in your life, maybe you fear a further rejection. Well I don’t always do what “normal men” do, and anyway true love does not give up – it endures all things. I will never reject you Rach ... hmm I wish I could look you in the eyes right now and say it. I want you to know I am here for you if you ever need me – you need to know that. I think I care as deeply for you as someone could ever do and I want the absolute best for you.

Do we need to talk about this further sometime? If you want/need to, let me know OK.

[34] Then he talks about things he is doing to ensure the relationship is constructive and appropriate, including texting only for work (but at the same time noting that he

finds texts from her exciting); limiting time alone at nights and weekends and giving her a massage/hug when she wants one, which he says, using her words, is “comforting”.

[35] Mr Craig concludes with a list of things that he prays for, for Ms MacGregor, including that she would know God; that the scars and pain of the past would heal; that God would guard her from evil and “I pray for lots of other things too ... Love you Rach. You are a wonderful woman, a woman of quality and of noble character. You are beautiful. May the Holy Spirit be in your life in a special way this year.”

[36] On 13 February 2012, Ms MacGregor emailed Mr Craig on her work email address, thanking him for the letter. The full email reads:

I just wanted to say thank you So so so sooo much for your letter. Some of the words in it are powerful. It means so much to me that you have taken the time to write it. Thank you.
I'm re-reading and re-reading it.
See you when you get here.

[37] While thanking him enthusiastically, the language of Ms MacGregor's brief reply was markedly more restrained than Mr Craig's letter and contained no sexual references or even innuendo. The sentence: “*Some* of the words in it are powerful”, strikes me as carefully chosen.

May 2012 – first employment review

[38] The employment agreement signed in December 2011 contained provision for review, and on 21 May 2012 Ms MacGregor's first review took place, or at least a memorandum issued saying that. That memorandum set out proposed additions to Ms MacGregor's employment agreement.

[39] Also on 21 May 2012, there was a letter, purportedly from Mr Craig and Mrs Craig to Ms MacGregor about roles, friendship, and boundaries, including about staying in different motels when travelling.

[40] On 9 July 2012, Ms MacGregor texted Mr Craig to say that she was writing him a letter. He says she did do this on 12 July 2012 and that he remembers it was

positive and affectionate. She says she did not ever write it. The letter is not in evidence. It is difficult for me to comment one way or the other about that. My observation was that generally, Mr Craig had a clearer memory of what happened than Ms MacGregor who, quite understandably in light of all that has happened since, had a limited or confused memory. Mr Craig has also “lived” this scenario for years now. In my view, it matters little whether the letter was written and was “positive and affectionate” or not. I accept, in any event, that the relationship was positive and affectionate in 2012, and for that matter much later on.

August 2012 – September 2012 – second employment review and agreement regarding campaign rate

[41] On 10 August 2012, there was a second employment review. There were discussions between Mr Craig and Ms MacGregor about a higher pay rate. In a written memorandum, Mr Craig proposed \$45 per hour (if employed) or \$60 per hour (if a contractor) for the non-campaign period, and \$70 for the campaign period.

[42] The discussions seem to have been ongoing, with at least one follow-up email.

[43] Mr Craig then recorded in a memorandum dated 28 September 2012 to a payroll staff member, an agreement that Ms MacGregor would become a contractor (again), as from 26 October 2012, and would receive holiday pay up to that point. It records that Ms MacGregor would be paid at the rate of \$65 per hour and \$70 per hour for the campaign period, plus \$75 for overnights and expenses (phone, et cetera). On the face of the memorandum, it was copied to Ms MacGregor. Ms MacGregor disputes that any such agreement was reached in terms of the campaign rate. She disputes that she ever received that memorandum. I note she does not suggest that Mr Craig has manufactured it, nor would I accept that. I have no doubt Ms MacGregor did receive the 28 September 2012 memorandum. My clear impression from the evidence overall is that Mr Craig was meticulous about matters such as this and Ms MacGregor was not. I also note that in an email to Mr Craig after her resignation, dated 29 January 2015, Ms MacGregor says, “in your 12 August 2012 memorandum you *proposed* a rate of \$70 per hour”. (The August 2012 memorandum was clearly not recording a proposal, but an agreed rate.)

[44] I therefore consider that the parties agreed that, as from 26 October 2012, Ms MacGregor would become a contractor again, with a pay rate of \$65 per hour and \$70 per hour for the campaign period, being the campaign for the 2014 election.

October 2012 – third Craig letter

[45] On 22 October 2012, Mr Craig sent a third personal letter to Ms MacGregor in which he again discusses Ms MacGregor's boyfriend and the difficulties she was apparently having with him. The letter concludes with an arrow pointing to 0000X. Mr Craig accepted in evidence that the zeros represented hugs, and the "X" a kiss. Underneath was a message "To be redeemed sometime". There was some debate as to which letter of the 0000X the arrow was pointing. I consider the precise direction of the arrow immaterial. Whatever the answer, it was again a highly inappropriate letter, with clear sexual content.

December 2012 – gold charm present – Ms MacGregor's card/letter

[46] On 24 December 2012, Mr Craig purchased a gold charm for Ms MacGregor as a Christmas present, no doubt based on Ms MacGregor having swapped the silver locket for a similar gold charm the previous Christmas.

[47] That same day, Ms MacGregor sent a card with a separate continuation page to Mr Craig. Ms MacGregor relies on the communication as a whole and I set it out below:

It has been a pleasure, and a real honour working with you over the past year.

You have become much more than a boss –

You are a dear friend, a mentor, and a man I have great respect for.

I deeply value your friendship.

Colin, you are consistently proving your strength of character. You are a man of your word. You have integrity. You have a big heart and you genuinely care for people.

I love how you see life through more than your natural eyes – you see much deeper, and you act on what you see with your spirit. Living and seeing life more fully in this way in light of eternity is rare, and wonderful.

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

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

You have won my deepest respect.

I am with you and I have faith in your ability to make a valuable difference in New Zealand.
With love, Rachel

[48] Again, Ms MacGregor's card/letter, while effusive and very affectionate, does not contain any inappropriate sexual content or even innuendo. She speaks very highly of Mr Craig, but in appropriate terms.

[49] On 8 January 2013, Ms MacGregor and Angela Storr (also an employee of the Conservative Party) sent a combined birthday card to Mr Craig. The language in this card was noticeably more restrained than Ms MacGregor's language in her Christmas card/letter to Mr Craig.

[50] On 15 June 2013, Mr Craig sent Ms MacGregor a birthday card in which he said a card can never say how much Ms MacGregor means to him, and that she brought sunshine, freedom and beauty to his life.

December 2013 – the fourth Craig letter and MacGregor card

[51] On 24 December 2013, Mr Craig sent a fourth personal letter to Ms MacGregor discussing the year in review, and what he was going to get her as a Christmas present. It contained a large amount of personal material, including sections headed-up, "You are always free"; "What I want in 2014"; "When you need me"; "Two of Me" and "Heart's Desire". Mr Craig often included in his texts to Ms MacGregor the letters "YAW", which stood for "You are wonderful". Ms MacGregor replied on a number of occasions using those same letters. In this letter, Mr Craig says, "YAWAB", as he did in February 2012.

[52] The poem under the section "Two of Me", often-quoted during the hearing and elsewhere, reads as follows:

Two of Me
There is only one of me it's true
But I wish this were not the case
Because I wish that I could have you
If instead of one man, I was two
That would be one for all the others
And one of me, for you.

[53] There is another poem under a section, YAWAB, which is quite explicit in its sexual interest and reads:

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

[54] Mr Craig refers elsewhere in the letter to Ms MacGregor's needing to tidy up the loose ends of her life, the need to work with her on her health and the fact that he will always be there for her. I accept his evidence that the first reference will have been to her financial affairs and consider she will have understood that. (Very shortly afterwards, Mr Craig took over Ms MacGregor's budgeting.)

[55] At 5.53 pm on 24 December 2013, Mr Craig sent Ms MacGregor a text saying that a Christmas present and one of his "famous letters" was on her desk at work, waiting for her.

[56] Five minutes later, Ms MacGregor texted Mr Craig saying, "I've just got it. Thank you sooo so much!" Ms MacGregor disputes that the "thank you" is a reference to Mr Craig's letter and says it is a reference to the present. I would have little doubt that it is a reference to both. It is the same sort of language that Ms MacGregor used in her thank-you text in February 2012.

[57] Mr Craig says that, the next day, 25 December 2013, Ms MacGregor dropped off a card to him. A card, which is in evidence, says that she is deeply grateful to have him in her life, that she respects him and thanks him for his friendship. It concludes by saying, "You've renewed my faith in humanity". Ms MacGregor says that is not a fair depiction of the card as a whole and she also disputes that the card was written on that date. She does not know when it was written. The date appearing on the card was added by Mr Craig, which is not in dispute. Looking at the card in the context of the 24 December 2013 letter from Mr Craig, I would think it likely that the date attributed

to the card by Mr Craig is correct. Ms MacGregor did seem to be in the habit of giving a card to Mr Craig on Christmas Day and on this occasion, there otherwise is none. (Birthday cards to Mr Craig seem, on the other hand, to have come from Ms MacGregor and Ms Storr jointly.)

January 2014 – August 2014 – employment issue

[58] On 8 January 2014, Ms MacGregor and Ms Storr again sent Mr Craig a combined birthday card.

[59] It seems that, at least during 2014, which was an election year and therefore particularly busy, Ms MacGregor was suffering from stress.

[60] Ms MacGregor acknowledged in her evidence that her financial situation was causing her a lot of stress by 2 February 2014, when Mr Craig's accounting practice took over as her accountants, and Mr Craig prepared budgets for her showing a monthly spending deficit (and how to address that) and reviewing Ms MacGregor's debt from credit cards, bank overdraft, GST and income tax.

[61] Almost immediately afterwards, on 8 February 2014, Ms MacGregor was provided with a loan from one of Mr Craig's companies (Centurion Utilities Ltd) of \$18,990.59. The purpose of this loan was to enable Ms MacGregor to repay three credit card accounts, which would have been incurring significant interest. The \$18,990.59 sum was paid directly by Centurion to the credit card companies. The whole exercise was more than somewhat paternalistic, but the saving for Ms MacGregor in interest costs would have been material. Ms MacGregor was grateful for that loan at the time. It seems that Mr Craig also spent significant time on Ms MacGregor's accounts and budgeting. The loan agreement provided for interest at 0% for the first six months, 4% for the next six months, and at "the lender's overdraft rate plus 2%" thereafter. It also had a significant default rate, which I accept it is unlikely Ms MacGregor would have taken on board.

[62] In June 2014, Ms MacGregor and Mr Craig had discussions about employment issues. On 17 June 2014, Mr Craig emailed Ms MacGregor regarding issues raised, including her health and well-being, her ability to work the hours required

by the campaign, and accommodation/travel arrangements, as well as whether Ms MacGregor wanted to remain as a contractor or return to being an employee. Mr Craig notes a serious concern about Ms MacGregor's health based on her own comments and others', as well as his own observations. In terms of hours, he says she has identified long days on the campaigns as a particular point of concern (e.g. 14 hours in sequence). It is clear from the evidence that Ms MacGregor was working very long hours. He asks her to make suggestions as to how they can manage that. Mr Craig asks Ms MacGregor to respond with any other points.

[63] Clearly the discussion that had taken place on 17 June was tense because on 18 June 2014, Mr Craig sent Ms MacGregor a further letter marked "Absolutely Private and Confidential". He begins by saying she has already referred to a possible job-share arrangement which he expects is the most likely outcome, but awaits her response. He then says he is very concerned for her and concerned she is not judging things well. He responds to criticisms by her about his integrity and selfishness and asks Ms MacGregor to take care of herself. He says she has pointed to three things she considers failings by him, being non-delivery of vitamins, non-provision of a ketone meter to help her with her diet and the fact he had said he was considering gifting her the car she is using, but had not followed up on that. He says he has ordered the vitamins and ketone meter. He had not yet decided on the car, but meanwhile she has had free use of it, with ownership costs (registration, insurance, et cetera) all covered. He concludes by saying he hopes her health is able to withstand the demands of a busy year and that 2014 is her greatest year.

[64] On 20 June 2014, Ms MacGregor sent a letter to Mr Craig clarifying that she was not saying he was selfish and giving examples of things that have put unfair pressure on her in terms of late hours, including meetings out of town and driving back late at night. She refers to the diet and the car and says they were just examples of things he had said and not done. She concludes the letter by saying that she appreciates their friendship and his warm and friendly disposition. She says she hopes they can improve their relationship.

[65] I have addressed this correspondence at length because these letters were long and detailed and made no reference to any issue regarding pay rates. I consider that

had Ms MacGregor raised such an issue, it would have appeared in this correspondence. In my view, while the pay rate may have been an issue for Ms MacGregor, she had not raised it with Mr Craig.

[66] Ms MacGregor did not invoice Mr Craig from April through to September 2014. During that period, he paid her two advances of \$10,000 each.

September 2014 and the 18 September resignation

[67] Texting continued on a frequent basis. On 10 September 2014, Ms MacGregor texted Mr Craig, in response to a text from him that she seemed a little sad saying, “I’m just sad in not finding a husband, that’s all. I’m fine apart from that”. The topic of finding a husband had been raised a number of times over the years, but it stands out somewhat at this time. Both of them are commenting frequently by this stage on being tired or unwell.

[68] On 14 September 2014, according to Mr Craig, on a flight back from Napier together, Ms MacGregor told him that she wanted to be more than his press secretary. He says that he “rejected this proposal”. Ms MacGregor denies that this happened and says there was no such conversation. She says she “would not have had such a conversation in a loud, small plane”. Again, I find it difficult to assess what happened. It is possible that Ms MacGregor did say something along these lines, not because she meant it, but because of the state she was in by this stage. She had just said she could not find a husband and Mr Craig had regularly said in his letters that he would always be there for her and would not be like other men. That would not be to say Ms MacGregor was dishonest in denying the conversation. I do not consider she was. But in my view, her memory as to what happened, particularly over this later time, was poor. There is no doubt she was really stressed by this time. If she said what is alleged it was in desperation and has no significance in my view.

[69] The next morning, 15 September 2014, Mr Craig and Ms MacGregor texted each other. She asked how he slept and he said: “My new sleep trick work amazingly well”, which was clearly intended to be a reference to earlier comments he had made about sleeping with his head on her legs or lap. After he confirmed it was the same trick as last time, she replied: “Be careful with that sleep trick. Probably not wise”.

He replied, “It’s a bit mean to offer a solution and take it away”, to which she said, “I didn’t offer the solution”.

[70] On 16 September 2014, Ms Adair-Beets, who by this stage was assisting Ms MacGregor, visited her. Ms MacGregor told Ms Adair-Beets that she would do anything she had to, to get what she deserved in relation to her pay. As noted, no issue about pay appeared to have been raised by Ms MacGregor with Mr Craig, at least not in any written form.

[71] On 18 September 2014, two days before the 2014 general election, Mr Craig and Ms MacGregor drove to an interview. She had arranged for her boyfriend to follow behind them. Ms MacGregor says Mr Craig mentioned the sleep trick again. I accept that is possible. Ms MacGregor raised the matter of increased pay. Mr Craig said they would need to discuss it later that day. She says she did not believe he would do that and she then told him she was leaving. By leaving she meant resigning, but he did not understand it in that way. Ms MacGregor then got out of the car she was in with Mr Craig, and got into her boyfriend’s car.

[72] Shortly afterwards, Ms MacGregor received a telephone call from Barry Soper, a well-known investigative radio journalist, and someone who was known to her. She told him, in response to questions, that she had resigned and that Mr Craig is a “manipulative man”. Mr Soper told Ms MacGregor that a story of the two of them having an affair was likely to come out and she should get PR advice.

[73] Still on 18 September 2014, which is a significant day in the events of this case, Ms MacGregor telephoned Mrs Craig. Mrs Craig gave evidence that Ms MacGregor told her that she and Mr Craig had been having “emotional affairs” and also told her of the 2011 election night incident, which Mrs Craig said she understood from Ms MacGregor, was consensual. Ms MacGregor agrees that she told Mrs Craig of the 2011 election night incident. She says she referred only to Mr Craig having an emotional affair with her, not vice versa. I consider, especially given the sexual harassment complaint she filed later that day, and the shock Mrs Craig would have received, which would have affected her recall, that Ms MacGregor’s version of what

she said in that conversation is likely to be correct. The two statements are very similar, so this is not a credibility issue.

[74] Mr Craig was then approached by journalists, asking why Ms MacGregor had resigned. He says that at this point he was unaware that she had resigned. He responded with very complimentary comments about Ms MacGregor.

[75] Both parties agree that as at 12.06 pm on 18 September 2014, Ms MacGregor formally notified Mr Craig that she was resigning.

[76] Mr Craig says that, having been told of the resignation, he suggested a meeting of the two of them. Ms MacGregor disputes that. I consider it likely from the later correspondence that Mr Craig's recollection is correct, but as with many of the points in dispute, I consider this of little moment.

[77] Finally, on this rather busy day, Ms MacGregor filed an online complaint of sexual harassment with the Human Rights Commission. No documentary record of this complaint is available. Filing of such a complaint seems to be a fairly simple exercise.

[78] Later that day, Ms MacGregor was admitted to hospital suffering from a [serious illness].⁴

September 2014 – after Ms MacGregor's resignation

[79] On 20 September 2014, the general election was held.

[80] On 25 September 2014, Mr Craig emailed Ms MacGregor and suggested "the meeting" be delayed. This tends to suggest that Mr Craig had proposed a meeting earlier, whereas Ms MacGregor says he did not. In that email, Mr Craig asked for Ms MacGregor's invoices and he called in the Centurion loan.

⁴ Original text redacted. Each subsequent redaction is shown in square brackets.

[81] On 30 October 2014, there was a Conservative Party board meeting, where Mr Craig explained why he thought Ms MacGregor had resigned, and the board discussed the issues.

19 November 2014 – Ms MacGregor’s meeting with Mr Williams – Mr Craig’s first cause of action

[82] On 19 November 2014, Ms MacGregor told Mr Williams about her sexual harassment claim and the details of that, including reading out and showing him some of the texts and letters that Mr Craig had sent to her.

[83] Mr Williams made notes at the meeting and sent an email dated 20 November 2014 to Ms MacGregor summarising the discussion and outlining her options as he saw them.

[84] On 26 November 2014, Mr Bevan, of Gallaway Cook Allan, solicitors, who was representing Ms MacGregor before she spoke to Mr Williams, contacted Mr Williams and obtained a confidentiality undertaking.

[85] Mr Craig’s first cause of action is based on some of the statements he claims Ms MacGregor made to Mr Williams.

December 2014 – January 2015

[86] On 24 December 2014, Ms MacGregor emailed Mr Craig saying that she was unable to meet until 2015, and would finalise matters “asap”.

[87] In late-2014/early 2015, Mr Williams spoke to Garth McVicar, a Conservative Party board member, about the sexual harassment allegations and told Ms MacGregor he had done so.

[88] Mr Williams also spoke to another board member, Laurence Day, about the sexual harassment allegations. Ms MacGregor was aware he had done so.

[89] On 23 January 2015, Mr Craig followed up with Ms MacGregor by email, to see when they could obtain her final invoices.

[90] On 29 January 2015, Ms MacGregor emailed Mr Craig advising she had delayed in responding as she needed time to think. She attached a tax invoice for \$47,085 based on \$75 per hour for the election period and suggested this was “an acceptable compromise”. She agreed to off-set the two \$10,000 advances that Mr Craig had made against what she was owed, and she asked for a copy of the loan documents. Ms MacGregor informed Mr Craig that the sexual harassment complaint had been made to the Human Rights Commission (this being the complaint that she had apparently made on-line about five months earlier) and she told him that she had decided to take the complaint forward.

[91] Ms MacGregor said in her email that she would like to see the sexual harassment complaint resolved by agreement, either through the Human Rights Commission or private negotiation. She said that she saw the financial and sexual harassment issues as separate matters.

[92] On 30 January 2015, Mr Craig replied to Ms MacGregor, saying he was “deeply shocked” by her complaint and also stating that the agreed campaign rate was \$70 per hour.

[93] It is not in evidence, but Mr Craig submits that on 31 January 2015, or thereabouts, he took screenshots of texts from Ms MacGregor to himself, and provided these to Chapman Tripp, presumably for purposes of responding to the Human Rights complaint.

Lawyers’ correspondence regarding sexual harassment complaint

[94] On 18 February 2015, Mr Bevan sent Mr Craig’s lawyer (Mr Alderslade of Chapman Tripp) a letter detailing the sexual harassment complaint.

[95] On 28 February 2015, Mr Craig updated the Conservative Party Board at its meeting, on the invoicing issue, and also told them that Ms MacGregor had filed a sexual harassment complaint. Mr Craig’s evidence was that he told the board the claim was ridiculous.

[96] On 13 March 2015, Mr Alderslade sent a letter to Mr Bevan, responding to the invoicing issue and stating that the agreed rate was \$70 per hour during the campaign period and that Ms MacGregor's timesheets were highly incorrect.

[97] Also on 13 March 2015, Mr Alderslade sent a letter to Mr Bevan responding separately to Ms MacGregor's sexual harassment claims.

[98] On 28 March 2015, at a Conservative Party board meeting, Mr Craig advised that both he and Ms MacGregor had legal representation and that matters were under dispute.

Human Rights Commission mediation and confidential settlement

[99] On 4 May 2015, Mr Craig and Ms MacGregor attended a Human Rights Commission mediation, along with their legal advisers, and they signed a "mutual resolution agreement", which provides:

1. A significant part of the working/friendship relationship between Colin and Rachel was positive, constructive and mutually beneficial.
2. In hindsight however, both parties acknowledge that on occasions some of their conduct was inappropriate.
3. Colin apologises for any inappropriate conduct on his part to Rachel.
4. Rachel withdraws her complaint to the Human Rights Commission.
5. Neither party will make comment to the media/third parties other than a statement that the parties met and have resolved their differences.
6. Except as provided in the previous paragraph the terms of this document are strictly confidential between the parties.
7. This resolution is in full and final satisfaction of all or any claims that either party has or may have arising out of the allegations in the Human Rights Commission complaint.

[100] Both parties agree that at 4 May 2015, there was also agreement in principle regarding the invoicing dispute and forgiveness of the loan to Ms MacGregor.

[101] Between 5 and 7 May 2015, letters were sent agreeing to settle the invoicing dispute for \$16,000 and agreeing to forgiveness of the loan. Mr Craig says these letters are quite separate and distinct from the mutual resolution agreement, but quite clearly,

by virtue of timing alone, the letters were in effect part of the terms of the settlement. There was an effort by Mr Craig to separate out the issues, and in his mind they were no doubt separate, but the practical and legal reality is there was one overall settlement of all issues. (To be fair, Ms MacGregor's 29 January 2015 email had stated that she saw the financial and sexual harassment issues as separate.)

[102] Only a few weeks after the mutual resolution agreement, on 26 May 2015, Mr Williams texted Christine Rankin. He made allegations against Mr Craig, including that Mr Craig had been sending sexts and writing explicit letters, and he included the poem "Two of Me".

[103] On 25 and 29 May 2015, Ms Rankin raised these allegations with Mr Craig and Mr Craig showed Christine Rankin the invoicing dispute settlement.

[104] On 30 May 2015, there was a Conservative Party board meeting. Mr Craig told the board that he and Ms MacGregor had met and resolved their differences. He told the board of the settlement of the invoicing dispute for \$16,000, but that confidentiality prevented him from showing them the settlement agreement regarding the sexual harassment claims.

[105] On 9 June 2015, Mr Craig took part in what became known as the "Sauna Interview" on a TV3 programme.

[106] Following the Sauna Interview, Whale Oil published a piece stating that rumour had it that Mr Craig had written an enormous cheque, so his "~~pre-election~~ pre-election misdeeds won't be made public".

[107] On 9 and 10 June 2015, there were emails between Mr Slater, Ms Rankin and Mr Craig.

[108] On 11 June 2015, Ms MacGregor sent a letter to Mr Craig regarding the Sauna Interview, saying that the statement, "We job-shared her position to try and relieve the stress" was inconsistent with the agreed wording of the settlement and inconsistent

with what she had told potential employers. (The Sauna Interview is not the subject of any claim in this proceeding.)

[109] On 13 June 2015, Ms MacGregor emailed Mr Craig about breaching confidentiality if he had shown the “mutual resolution agreement” to the board.

[110] On 15 June 2015, Mr Craig responded through his lawyers to Ms MacGregor’s letter of 11 June 2015, explaining about the Sauna Interview and apologising. He stated that he had not shown the mutual resolution agreement to the board. He raised an issue about a “third party” texting this information and showing parts of the letters to others.

[111] Also on 15 June 2015, Mr Williams rang Christine Rankin and recorded the call. When she said that the settlement was \$16,000, he told her he understood it was a lot more than that. He emailed Ms MacGregor a copy of the recorded call. It was played in evidence.

[112] On 16 June 2015, Mr Dobbs called an immediate board meeting for 19 June 2015.

[113] On 18 June 2015, Ms MacGregor emailed Mr Williams stating, “Please return my letters from Colin as soon as possible ... I do not want the letters used against Colin.” That same day, a journalist emailed Mr Craig asking for his response to the allegations of sexual harassment, and of a financial settlement.

[114] On 19 June 2015, Mr Craig appeared on the Paul Henry show. (There are no allegations of defamation arising out of that appearance.)

[115] That same day, Mr Williams sent an email to Whale Oil, containing a draft blog post including the poem “Two of Me”, and he sent an email to Whale Oil with “questions”. He then emailed Whale Oil about Mr Craig’s honesty and used the phrase “creative Colin”. He also emailed Whale Oil with a further comment on “Mr Craig and his loans” and with an extract from one of Mr Craig’s letters about “integrity”.

[116] At 3.15 pm on 19 June 2015, Mr Slater/Whale Oil published an exclusive: “The Poem Colin Craig doesn't want you to see” which included the poem, “Two of Me” and re-published Mr Williams' email to Mr Slater.

[117] At 3.30 pm, there was a press conference at which Mr Craig and Mr Dobbs read statements to the media announcing that Colin Craig was standing down as leader and taking no questions.

[118] At 5.30 pm, Whale Oil/Mr Slater published, “Who will take over from Colin Craig”, re-publishing Mr Williams' email. At 5.34 pm, Mr Slater appeared on Newstalk ZB and gave an interview saying the allegations were true, “the documentary proof is irrefutable” and “I also have copies of sext messages, you know, dirty text messages”.

[119] There was a further barrage of publications on 20 June 2015. Whale Oil published, “Will the Conservative Party survive?” Whale Oil further published, “Craig still toying with his board like an insignificant little play-thing?” Mr Slater went on “The Nation” programme.

[120] Following those publications, Mr Craig said he intended to issue a media statement.

[121] Whale Oil then published, “Conservative Party board member breaks his silence”. Whale Oil also emailed Conservative Party board members, in the form of allegations directed to them, and responses from Mr Craig.

[122] On 21 June 2015, Whale Oil made a number of further publications, including, “Colin Craig and the curious case of the closed curtains”.

[123] Also on 21 June 2015, Mr Bevan emailed Mr Alderslade advising that Ms MacGregor had not breached the settlement agreement, and expected Mr Craig to comply with it.

[124] On 22 June 2015, Whale Oil published again, “Magic hands Craig can be thrown out by the board under its own constitution”.

Craigs' first joint press conference 22 June 2015 – Ms MacGregor's first cause of action

[125] On 22 June 2015, Mr Craig and Mrs Craig held a joint press conference, and made statements which are the subject of Ms MacGregor's first cause of action. These statements included that he had never sexually harassed anyone and he had been falsely accused. I return to this later.

Ms MacGregor's press statement 22 June 2015 – Mr Craig's second cause of action

[126] Still on 22 June 2015, Ms MacGregor issued a press statement saying that Mr Craig's press conference contained "clear factual inaccuracies" and she had been advised she could not say any more. The reference to clear factual inaccuracies is the subject of Mr Craig's second cause of action.

Ms MacGregor's Twitter statement 22 June 2015 – Mr Craig's third cause of action

[127] Immediately following her press statement on 22 June 2015, Ms MacGregor made a Twitter statement: "Colin Craig is trying to frame me as a mistress. There was never a sexual relationship, nor was there consent for his inappropriate actions". This is the subject of his third cause of action.

[128] On 24 June 2015, Mr Williams and Mr Slater emailed each other about another "victim" (of Mr Craig) who had made a claim to the Human Rights Commission.

The Craigs' joint letter to the Conservative Party – Ms MacGregor's second cause of action

[129] On 25 June 2015, Mr and Mrs Craig wrote a letter to Conservative Party members seeking feedback. That letter is the subject of Ms MacGregor's second cause of action and I return to it.

[130] On 26 June 2015, Whale Oil published, "The delusions of small parties and the stupidity of the media" making allegations about there being a second victim (of Mr Craig).

[131] On 28 June 2015, there were a number of further Whale Oil publications: “It’s about the money dum, dum”; “Sex scandal without the sex” and “What would you do”.

[132] On 1 July 2015 and 8 July 2015, Whale Oil further published: “20 Fair Questions for Colin Craig” and “He’s not the Messiah. He is a very naughty boy”.

[133] On 9 July 2015, the Herald on Sunday emailed Mr Craig about the “second victim” allegations, which Mr Craig denied.

[134] On 18 July 2015, Whale Oil published “Behind the scenes of the Colin Craig catastrophe”.

The Craigs’ second joint press conference 29 July 2015 – Ms MacGregor’s third cause of action

[135] On 29 July 2015, Mr and Mrs Craig held a press conference where they made remarks about what they described as the “Dirty Politics” campaign. This forms the basis of Ms MacGregor’s third cause of action.

The Craigs’ joint “Dirty Politics” booklet 29 July 2015 – Ms MacGregor’s fourth cause of action

[136] Still on 29 July 2015, Mr and Mrs Craig published the booklet, “Dirty Politics and Hidden Agendas”. This is the subject of Ms MacGregor’s fourth cause of action.

Subsequent to 29 July 2015

[137] On 2 March 2016, the Human Rights Tribunal issued a decision on breach of confidence in favour of Ms MacGregor against Mr Craig, and awarded damages.

[138] On 10 November 2016, Mr Craig filed this claim with the Court, but did not serve it.

[139] On 9 June 2017, Ms MacGregor found out somehow about the unserved proceeding. It seems it may have been leaked to the media. Her lawyer wrote to Mr Craig asking for confirmation of the statement of claim and a copy.

[140] On 19 June 2017, Ms MacGregor's lawyer emailed Mr Craig requesting Mr Craig to withdraw his statement of claim by 20 June 2017. There was no response. Mr Craig says he was away and did not see it.

[141] On 20 June 2017, Ms MacGregor filed a defence and counter-claim in this proceeding.

The legal framework

[142] For a plaintiff to establish that a defendant is liable for defaming the plaintiff, the plaintiff must prove:

- (a) The defendant published statements.
- (b) Those statements were about the plaintiff, in that reasonable ordinary persons would identify the statements were about the plaintiff.
- (c) The statements carried the pleaded imputations.⁵
- (d) The pleaded imputations were defamatory, in that they tended to lower the plaintiff's reputation in the estimation of reasonable ordinary persons.

[143] If the plaintiff establishes these elements, the defendant is liable, unless the defendant can establish they have a defence, in respect of which they bear the onus of proof.

[144] The defences raised in this proceeding are:

- (a) Truth.
- (b) Honest opinion.

⁵ The test is whether the pleaded imputation flows from the natural and ordinary meaning of the statement: *Lewis v Daily Telegraph Ltd* [1964] AC 234 (HL) at 277 per Lord Devlin; and *New Zealand Magazine Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA).

- (c) Qualified privilege – professional advice
- (d) Qualified privilege – reply to attack.
- (e) Public interest.

Truth

[145] A defendant has a complete defence if a pleaded meaning is true, or not materially different from the truth.⁶ The defendant only has to prove the substance of the imputation, or its “sting” is true, not every minor detail.⁷

[146] However, a high standard of accuracy is required to prove truth. It is not sufficient to prove an imputation is true in one respect only; the author must prove all the related meanings are true.⁸ So, in *Reeves v Saxon*, the allegation was that Ms Saxon was a fraudulent psychic, and had defrauded the IRD. Mr Reeves proved only the latter, but argued the allegation as a whole was that Ms Saxon was a fraud generally, and it was sufficient to have proved only the latter allegation. The Court of Appeal held the allegations of fraud were two-fold and proving only one of the allegations was not a defence to the whole claim.

Honest opinion

[147] The defence of honest opinion requires a defendant to establish that statements are clearly an opinion, not a statement of fact; then to point to the existence of true or close to true facts upon which the opinion was based, and then to prove that the opinion was genuinely held.⁹

Qualified privilege – general

[148] While both the defences of truth and honest opinion are based on establishing facts to be true, there are some occasions where the law regards freedom of expression,

⁶ Defamation Act 1992, s 8.

⁷ *TVNZ Ltd v Haines* [2006] 2 NZLR 433(CA) at [55].

⁸ *Reeves v Saxon* CA134/89, 17 December 1992 at 19-20.

⁹ *Karam v Parker* [2014] NZHC 737 at [30]-[33].

including getting things wrong, as more important than the need to protect reputation. Publications made on those occasions are protected by qualified privilege. The protection afforded by the privilege is qualified in the sense that, if the occasion was predominantly used for a purpose other than that for which the privilege was granted (an “improper purpose”), that privilege is lost.

[149] For a qualified privilege to exist, the defendant must establish that they had a duty or interest to speak and this speech was made to an audience having a legitimate interest in receiving that speech.¹⁰ In the present case, two types of qualified privilege have been relied on: professional advice and reply to an attack.

[150] If a defendant establishes that the occasion is privileged, the onus then shifts to the plaintiff to prove that the predominant purpose in publication was an improper one.¹¹ As a starting point, the defendant is presumed to have published with a proper purpose and with an honest belief in the truth of the statements.¹²

[151] Proving a predominant improper purpose requires careful consideration of the purpose for which the privilege was granted, and the evidence has to be more consistent than not with the improper purpose. In this regard, primary evidence capable of giving rise to an inference of predominant improper purpose includes the defendant knowing that the statement was false or being reckless as to the truth or falsity of the statement. Such knowledge or recklessness is normally inconsistent with acting with a proper purpose.

Professional advice

[152] Ms MacGregor pleads a defence of “professional advice” in relation to Mr Craig’s first cause of action only, relating to her meeting with Mr Williams. Legal advice attracts absolute privilege.¹³ That is not pleaded. “Professional advice” does not seem to be a recognised category of qualified privilege. Ms MacGregor therefore must establish this was an occasion attracting qualified privilege in terms of the test I

¹⁰ *Adam v Ward* [2017] AC 309 (HL) at 334 per Lord Atkinson.

¹¹ Defamation Act 1992, s 19; and *Lange v Atkinson* [2000] 3 NZLR 385 (CA).

¹² *Roberts v Bass* (2002) 212 CLR 1 (HCA) at [96].

¹³ Defamation Act 1992, s 14.

set out above. I will address this when I come to consider her defence to Mr Craig's first cause of action.

Reply to attack

[153] Reply to an attack is a recognised category of qualified privilege arising when a person has been attacked. This qualified privilege allows the person subjected to the attack to respond to the attack to the same audience that received the attack, provided that the response is relevant to the attack, does not go too far, and is not motivated by ill will.¹⁴ Further, if the attack is justified because it is true, the privilege is unavailable.¹⁵

Public interest

[154] The final substantive defence, raised in submissions by Ms MacGregor, and claimed by both parties, is the recently-recognised public interest defence, which is not a form of qualified privilege. The defence was recognised by the Court of Appeal in *Durie v Gardiner*.¹⁶ For the defence to apply, a defendant has to prove that:

- (a) The subject matter of the publication was in the public interest.
- (b) The communication was responsible.

[155] In determining if the subject matter of the publication was in the “public interest”, the Court in *Durie* wrote:¹⁷

... to be of public interest the subject matter should be one inviting public attention, or about which the public or a segment of the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached.

[156] If the defendant establishes both elements, the defence succeeds. It is not defeated by “improper purpose” as is the case with qualified privilege.¹⁸

¹⁴ *Craig v Williams* [2019] NZSC 38, [2019] 1 NZLR 457 at [116]-[126].

¹⁵ *Fraser-Armstrong v Hadow* [1995] ELMR 140 (CA); and *Oliver v Chief Constable of Northumbria* [2003] EWHC 2417 (QB).

¹⁶ *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

¹⁷ At [65].

¹⁸ At [83].

[157] Ms MacGregor relies here on the public interest defence in relation to Mr Craig's second cause of action, which concerns her publishing a statement in response to the Craigs' joint press conference on 22 July 2015.

[158] Mr Craig pleads public interest as a defence to all four of Ms MacGregor's counterclaims.

Mr Craig's first cause of action – Ms MacGregor's statements to Mr Williams on 19 November 2014

[159] Rather than considering each person's claim in turn, I consider the various causes of action in chronological order because the findings necessarily flow in that order.

[160] Relying on notes made by Mr Williams, Mr Craig alleges that the following statements were made by Ms MacGregor to Mr Williams when she met with him two months after her resignation:

- (a) *That she had been sexually harassed by Mr Craig starting on or about election day 2011 and continuing until she resigned in 2014, and that the details of this harassment were:*
 - (i) *Mr Craig sent affectionate letters and cards to Ms MacGregor, which were unwanted and Ms MacGregor did not respond to them or encourage them.*
 - (ii) *Mr Craig sent text messages like “You are wonderful, (you know what I mean by that)”, which were unwanted and Ms MacGregor did not respond to them.*
 - (iii) *That Mr Craig gave her various inappropriate gifts, which were unwanted, including two gifts of jewellery, one of which was worth \$400 or more.*

- (iv) *That Mr Craig would not let her go home with friends after events but insisted she travel together with him for “debriefing”, which was code for emotional talks.*
 - (v) *That Mr Craig would touch Ms MacGregor in unwanted ways including making her give him shoulder massages and hugs.*
 - (vi) *On the day of her resignation (18 September 2014) Mr Craig said to her: “I slept well because I dreamt of being between your naked legs.”*
- (b) *Mr Craig had made no agreement with her about her contracting rate of pay during the campaign period and avoided talking about it and had withheld payment of her invoices.*
- (c) *Mr Craig had engaged in a nasty [-] dispute with [a young woman] causing [her] to commit suicide.*

Did Ms MacGregor publish the statements?

[161] Ms MacGregor admits that she told Mr Williams she had been sexually harassed and made a complaint. She admits parts of the detail and denies others. Her pleading is somewhat unsatisfactory. She denies telling Mr Williams that Mr Craig sent her unwanted text messages; and touched her in unwanted ways, but admits she told him Mr Craig asked her to give him massages. She also denies telling Mr Williams that Mr Craig texted or told her on the day of resignation he had dreamt of being between her naked legs. In closing, she seems to admit this, bar the word “naked”.

[162] Her pleading is not straightforward either, in respect of (b) above, but I take it to be an admission of publication.

[163] Ms MacGregor initially denied making the last of the alleged statements above to Mr Williams, namely that Mr Craig had caused [a young woman] to commit suicide. Although the point was raised in Mr Williams’ notes, the extent of what he was told

was not clear. However, during the trial Ms MacGregor acknowledged that she made statements to Mr Williams to this effect. She said she did so in response to a lot of questioning from Mr Williams about matters that had not occurred to her, or in which she was not interested, such as engineering a change in the leadership of the Conservative Party. (Ms MacGregor claimed that what she passed on to Mr Williams was what she had been told by Mr Craig. However, Mr Craig denied that and was not cross-examined on the point. Ultimately, Ms MacGregor accepted she had simply inferred that his actions caused the woman's suicide. I am quite satisfied there is no evidence to support this rather dreadful allegation and, not surprisingly, Ms MacGregor did not plead truth in respect of it.)

[164] I think it unlikely Ms MacGregor used the word "naked", and I do not consider she said the gifts were unwanted. Otherwise, I find on the balance of probabilities that Ms MacGregor did make all of the statements pleaded by Mr Craig. They can all fairly be drawn either from Ms MacGregor's admissions in pleading or evidence, or Mr Williams' contemporaneous file note, which I consider represents the best evidence where there is a difference between her evidence and the file note. Ms MacGregor accepts that Mr Williams' notes were largely accurate. He was comfortable enough with his summary to send it to her. He asked her to advise of any corrections and she did not raise any. She said this was because she was not concerned about errors, but I would expect Ms MacGregor would have wished to correct any material error. Also, Ms MacGregor's memory of events was generally not good, and I mean no criticism of her in that. My impression was that she may generally not have a good memory, but added to that, she often could not be bothered trying to recall. This no doubt arose out of her having given similar evidence a number of times. Ms MacGregor seemed to me to be completely fed up with the whole case. It is a pity the parties were not able to come to some arrangement about it.

Were the statements about Mr Craig?

[165] It is not disputed that in making the statements, Ms MacGregor was referring to Mr Craig.

Did the statements carry the pleaded imputations and are they defamatory?

[166] Mr Craig pleads that the natural and ordinary meaning of those statements was:

- (a) He sexually harassed Ms MacGregor for nearly three years by
 - (i) sending letters, cards and texts she did not want and did not respond to;
 - (ii) giving her gifts that she did not want; and
 - (iii) getting her to give him massages and/or hugging her against her wishes.
- (b) He was a bad employer who took unfair advantage of Ms MacGregor by:
 - (i) failing and refusing to negotiate and agree pay rates; and
 - (ii) failing to pay invoices when due.
- (c) He was cruel, nasty or unfair toward [a young woman].
- (d) He has harassed, abused or been nasty toward two or more women.
- (e) He caused a young woman to commit suicide.

[167] Ms MacGregor accepts that the natural and ordinary meaning of the statements she admits making to Mr Williams mean Mr Craig sexually harassed her (again without admitting or denying any of the pleading detail) and was an employer who refused to negotiate and agree fair rates of pay, and failed to pay invoices.

[168] Ms MacGregor also admits that the meanings so far as she accepts them are defamatory of Mr Craig.

[169] But Ms MacGregor says the other pleaded meanings go too far. In particular, she denies that an ordinary reasonable person would take from the words she used that Mr Craig, was cruel, nasty and unfair towards [a young woman], harassed or abused other women, or that he caused a woman to commit suicide.

[170] I do not agree. I consider that all of the disputed imputations do fairly flow from the words used. If an employer does not agree a pay rate and avoids talking about it, the ordinary meaning would clearly be that they are a bad employer. If you say that someone used the law in such a way as to cause a woman to commit suicide, the pleaded meanings naturally flow.

[171] Also, I consider the detail of the sexual harassment pleading does flow, but little turns on this. It is the sting of that pleading that matters.

[172] All of the pleaded imputations are *prima facie* defamatory.

Does the defence of truth apply – in particular, did Mr Craig sexually harass Ms MacGregor? Also was he a bad employer?

[173] Ms MacGregor pleads the defence of truth in respect of the sexual harassment and bad employer imputations. She has a complete defence if she can satisfy the Court that they were true, or not materially different from the truth. Mr Craig says these imputations are not true.

[174] The key question here is whether Mr Craig sexually harassed Ms MacGregor.

[175] Both parties suggest I approach this issue in terms of the definition in the Human Rights Act.¹⁹ First, there must be language or behaviour of a sexual nature. No physical sexual act is required. The sexual conduct can be verbal or written. Second, it must be unwelcome or offensive (whether or not conveyed to the alleged harasser); and third, the words or behaviour must have a detrimental effect on the victim. The behaviour has to occur *inter alia* in the context of employment. It is undisputed that, whether legally an employee or a contractor, the relationship constitutes employment for this purpose.

¹⁹ Human Rights Act 1993, s 62.

[176] I consider there was sexual harassment.

[177] First, there was clearly sexual conduct on the part of Mr Craig. He accepts that.

[178] I consider the sexual conduct, particularly the letters received from 2012 onwards, was unwelcome by Ms MacGregor. The same would apply to texts or comments about sleeping between her legs or any other texts with sexual overtones. I acknowledge that the number of texts falling into this category is not substantial, but also some of Mr Craig's texts are not available.

[179] All of that conduct is certainly viewed as highly "unwelcome" by Ms MacGregor now. It would be fair to say that she is now disgusted by Mr Craig's actions and words. She did, however, readily accept a number of times that the way she views the relevant period has changed materially. Nevertheless, I accept her evidence that she did not welcome the sexual elements of Mr Craig's communications from 2012 onwards. The language of her texts from early 2012, while very affectionate and appreciative of Mr Craig, was really responding to his effusive flattery of her, both personally and in terms of her work. She did not encourage or reciprocate the sexual comments or overtones. Her texts were very restrained compared to his letters, in particular. Although I cannot pinpoint the start date, I equally accept her evidence that the massages and hugs were unwelcome for quite some time. It does not matter that she did not specifically object. Clearly an employee, particularly in her position, often would not. It is interesting to note the clear pushback Mr Craig received in the text communications just before Ms MacGregor's resignation in September 2014.

[180] I am also satisfied Mr Craig's sexual conduct had a detrimental effect on Ms MacGregor. It would have contributed to the [serious illness] she suffered at the end of the employment relationship.

[181] I do not ignore the evidence from the two Conservative Party employees (Ms Adair-Beets and Ms Storr), whom I have no doubt were honest witnesses, that they considered Ms MacGregor was infatuated with Mr Craig as late as mid-2014. I

agree she may have been infatuated, but much earlier. I do not consider it was true as at June 2014. That is not consistent with the email correspondence between Ms MacGregor and Mr Craig over various issues at that stage. There is no evidence to suggest she welcomed his sexual conduct, from early 2012. Neither of these witnesses had any idea of the letters and texts Mr Craig was sending to Ms MacGregor. They would therefore have no idea whether they were welcome or not.

[182] I therefore consider in the case of the imputations pleaded at [166](a), that the defence of truth does apply, or substantially applies, which is sufficient. The real sting of these imputations turns on whether there was sexual harassment or not, not the detail of it. I do not consider it necessary to make express findings on particulars such as massages and hugs. Similarly, while the relevant period would not have been three years or more, it would have been approximately two-and-a-half years, at least in the case of the letters.²⁰

[183] In terms of the imputations pleaded at [166](b), I do not consider the defence of truth applies. Mr Craig did not fail to negotiate and agree pay rates. The pay rate was agreed. He did not fail to pay invoices. Ms MacGregor had not rendered them.

[184] Ms MacGregor does not plead that the imputations at [166](c) to (e) were true.

Does the defence of honest opinion apply?

[185] Having determined that Ms MacGregor has a defence in terms of [166](a), I need only consider, in terms of the remaining defences, the imputations at [166](b) to (e).

[186] Ms MacGregor has a complete defence if she can satisfy the Court that the imputations contained in the published statements were expressions of her honest opinion. She pleads honest opinion in respect of (b), but does not expressly plead it in respect of (c) to (e).

²⁰ This case is to be distinguished from *Reeves v Saxon* CA134/89, 17 December 1992, referred to earlier. Ms MacGregor was communicating an allegation of sexual harassment with particulars, not multiple quite distinct allegations of sexual harassment.

[187] The opinion needs to have been genuinely held and based on facts not materially different from the truth. Those facts need to be pleaded. In respect of (b) to (e), Ms MacGregor has not pleaded the facts relied on and in any event, I consider there are none on which she can rely. For the reasons stated above, Ms MacGregor cannot have had an honest opinion as to these matters.

Does the defence of qualified privilege apply?

[188] Ms MacGregor argues she consulted with Mr Williams as if he were her lawyer and that the occasion was therefore protected by qualified privilege on the basis of professional advice. She pleads that his role was as professional adviser on a sexual harassment claim. She points to Mr Williams being legally qualified, and says they both treated the matter as if he were giving her legal advice. As I have said, she does not however claim the absolute privilege available to a person seeking legal advice. I would in any event question whether Mr Williams was acting as a “legal adviser”. He was not engaged as such. She had already engaged a lawyer.

[189] To make out this defence, Ms MacGregor therefore has to establish that she had a duty or interest in making the statements and that Mr Williams had an interest in receiving them.

[190] Ms MacGregor argues that she had an interest in communicating the information to Mr Williams for the purpose of taking advice and his helping her to prepare her claim. She says he has a corresponding duty to receive that information. No case has been cited to me where, in circumstances analogous to this, qualified privilege has been found.

[191] I also do not consider that “taking advice” is the true context of their meeting. In evidence before me, Ms MacGregor said it was Mr Williams who had (repeatedly) asked to meet with her, and their “meeting” started off just as a walk. She said she thought it “weird” when he took notes and she did not think she asked him to send them to her. To the extent he gave her advice, it was as a friend or volunteered. He was not someone who was neutral or independent, as is evidenced from his questioning alone (for example, regarding a change of party leadership), not to mention his subsequent use of the information she had given him.

[192] In any event, I am considering this defence only in the context of the remaining imputations at issue here, being the “bad employer”, “nasty towards other women”, or “causing suicide” imputations. These statements were unconnected to the role Mr Williams was alleged to hold as “professional adviser on a sexual harassment claim”. For that additional reason, I do not consider these imputations are covered by the privilege asserted.

Other defences

[193] Mr Wilson does not argue that the defences of qualified privilege by way of response to attack, or public interest, apply to the “bad employer”, “nasty towards other women” or “causing suicide” allegations.

Conclusion on Mr Craig’s first cause of action

[194] I therefore find that in making the statements pleaded at [166](b)-(e) above, Ms MacGregor defamed Mr Craig. As to the statement at [166](a), the defence of truth applies.

Ms MacGregor’s first cause of action - the Craigs’ joint press conference at 1.30 pm on 22 June 2015

[195] As noted earlier, following on from all of the media allegations against Mr Craig, which started on about 26 May 2015 and ran on from there, Mr and Mrs Craig held a joint press conference on 22 June 2015.

[196] Ms MacGregor says that the following statements made at that joint press conference were defamatory of her, being as follows:

- (a) *I intend today to address the wild speculations and allegations being made about my dealings with former press secretary Miss Rachel MacGregor.*
- (b) *There has been a great deal of wild and inaccurate speculation about the allegation of sexual harassment that was made against me.*

- (c) *The widespread circulation of inaccurate information on this topic is completely inconsistent with the basis on which I sought to resolve my differences with Ms MacGregor.*
- (d) *On some occasions our conduct was inappropriate and we have acknowledged that so we can both move on.*
- (e) *I have never sexually harassed anyone and allegations to the contrary are wrong.*
- (f) *My wife (Helen) and I had been helping Miss MacGregor bring her finances into order. To assist we agreed to an interest free loan (just under \$20,000) to enable her credit card debt to be cleared. Miss MacGregor however went into default on the repayment of this loan and was unable to make payment. Subsequently she requested that the loan be forgiven on compassionate grounds. The request was granted.*

[197] Mr Craig's wife appeared alongside Mr Craig at the joint media conference. In addition to the joint statement, she read out from a further statement approved by Mr Craig:

- (a) *I choose to stand with my husband here today in full love and support of him whom I believe has been falsely accused.*
- (b) *I wanted to say how difficult the last few days have been with these wild and defamatory allegations being thrown around by the media for ourselves and our wider family. Particularly as the speculations relate to allegations already withdrawn.*

[198] It is admitted by Mr Craig that he made the statements at [196]. He disputes whether he "made" the further statement by Mrs Craig, who is not a party to this proceeding. I find that in a context where they were standing side-by-side and he had approved the second statement, Mrs Craig's statement was effectively a joint

statement, but read out by her. I find therefore that Mr Craig made all of the pleaded statements.

[199] Ms MacGregor says that the natural and ordinary meaning of those statements is as follows:

- (a) She had made false claims of sexual harassment against Mr Craig.
- (b) She had a consensual relationship with Mr Craig.
- (c) She had an affair with a married man, or was the kind of person who would have an affair with a married man.
- (d) She had previously acknowledged she had a consensual relationship with Mr Craig.
- (e) She had acted inappropriately with Mr Craig.
- (f) She was a liar.
- (g) She was unprofessional.
- (h) She had no capability to manage her finances.
- (i) She could not pay her debts.

[200] Mr Craig admits the meanings at [199](b), (d) and (e), but denies the rest of these meanings.

[201] I do not consider the meanings at (b) to (d) can fairly be taken from the joint press conference statements. That would be over-reading what was said. To say there was occasional inappropriate conduct does not convey a “consensual relationship”, which while unclear in itself suggests something ongoing. I would also exclude (g) (i.e. “she was unprofessional”), which I consider is not a natural or ordinary meaning that would flow to the ordinary person with knowledge of the context. I consider the

full meaning of the statements made is adequately covered by the rest of the pleading, in any event.

[202] While the “making false claims” and “liar” meanings might not be able to be extracted from Mr Craig’s statement alone (which could be read as relating to media allegations, not allegations by Ms MacGregor), those meanings can be extracted from the two statements in combination, especially taking account of Mrs Craig’s statement that Mr Craig had been “falsely accused”. That must be taken as referring to, or at least including, Ms MacGregor.

[203] The meanings at (h) and (i) logically follow from the statements about bringing Ms MacGregor’s finances into order.

[204] I therefore find the meanings at (a), (e), (f) and (h) to (i) are available.

[205] Mr Craig denies that the imputations at (e) and (i) are defamatory of Ms MacGregor. The other imputations he accepts, if established, are defamatory.

[206] I consider the pleaded meaning at (e) is defamatory, although only marginally so in the context.

[207] I agree with Mr Craig that (h) and (i) are not so clear cut. In particular, many people cannot manage their finances. However, I accept these imputations are defamatory. If a person could not pay their debts, it would tend to lower them in other people’s estimation. I suspect Mr Craig would say so if the boot were on the other foot.

[208] I therefore consider that the pleaded meanings that I have found established (i.e. all excluding (b) to (d) and (g)) are *prima facie* defamatory.

Does the defence of truth apply?

[209] Mr Craig pleads that all of the meanings are true.

[210] The defence of truth fails on (a) and (f) on the basis of my previous findings. However, I am satisfied that it is true that Ms MacGregor acted inappropriately (e), she had no capability to manage her finances (h), and that she could not pay her debts (i). Mr Craig therefore has a defence to those claims.

[211] In terms of (e), Ms MacGregor signed a document acknowledging that Mr Craig and she had behaved inappropriately. She said in evidence she did not consider that was in fact correct. I agree that her “inappropriate” behaviour was very limited, but there were occasions when she obviously thought she behaved inappropriately early on (including the election night incident) and in the circumstances of the signed mutual resolution agreement, it would be difficult to deny the defence of truth (or honest opinion).

[212] In terms of (h) and (i), I am sympathetic to Ms MacGregor, but I consider in substance the pleaded meanings were true. Based on the IRD GST statement, Ms MacGregor had a default assessment and a series of late payment penalties leading up to the time Mr Craig took over her accounts. She had two or three credit card debts adding up to over \$18,000, which were incurring significant interest, and she was not earning enough to meet her monthly outgoings. Similarly, when it came to repaying the Centurion loan, Ms MacGregor was unsurprisingly unable to do so, which her lawyer confirmed at the time. While her lawyer’s letter may have been drafted by Mr Craig’s lawyer, I am sure her lawyer would not have sent it if it were not true. None of that is meant to be critical in any way. I am sure many people are in a similar situation, or have been at some time. I also note that the terms of the Centurion loan were usurious had Ms MacGregor had to pay interest following default which, as I understand it, she did not in the end. But the evidence overall does satisfy me that the pleaded meanings are substantially true, at least at the time.

Do any other defences apply?

[213] As to (a) and (f), I do not consider Mr Craig has any other defence.

[214] Mr Craig argues that the press statement was a response against attacks made by Mr Slater et al, but not (at least in any direct way) by Ms MacGregor. I tend to agree with Mr Craig that someone may be faced with this defence in the case of an

attack that they have not made themselves where they have armed another person to do so. I also consider that Ms MacGregor may have so armed Mr Williams, at least to the extent of her comments about the suicide allegation and Mr Craig not paying her.

[215] However, I do not take the point further because in any event, I consider Mr Craig took improper advantage of the occasion. He did not refer to Ms MacGregor only to the extent reasonably necessary to respond to attack, even allowing for the leeway in this defence. Rather, he sought to exonerate himself by implicating and/or attacking her. He could have said: “We reached a prompt and amicable settlement of all issues between us. The terms and circumstances of that settlement have been grossly exaggerated by the media. Beyond that, I cannot say more because the terms of the settlement are confidential”, or similar. He chose to go further and that is not protected.

[216] For the same reasons, although there may have been a public interest in the statements made by Mr Craig, I do not consider the communications at the joint press conference were responsible.

Conclusion on Ms MacGregor’s first cause of action

[217] I find that Mr Craig defamed Ms MacGregor by making the statements at [196] and [197] above, in terms of the imputations at [199](a) and (f):

- (a) She had made false claims of sexual harassment against Mr Craig.
- (f) She was a liar.

[218] I find Mr Craig did not make out any defence in respect of those claims.

[219] But I find Mr Craig did not defame Ms MacGregor in terms of the imputations set out at [199](e), (h) and (i):

- (e) She had acted inappropriately with Mr Craig.

- (h) She had no capability to manage her finances.
- (i) She could not pay her debts.

[220] I find these imputations were true, so Mr Craig has a complete defence to these claims.

Mr Craig's second cause of action – Ms MacGregor's press statement after the Craigs' joint press conference on 22 June 2015

[221] On 22 June 2015, after the Craigs' combined press conference that day, Ms MacGregor issued a press statement where she said: "*Colin Craig's press conference contained clear factual inaccuracies. I have been advised I cannot say more.*"

[222] Mr Craig pleads that the natural and ordinary meaning of the statement suggests that he lied and/or he deliberately misled the media and that this is defamatory.

[223] Ms MacGregor does not dispute that she did make the statement alleged and that the meaning is as pleaded. Ms MacGregor says that the pleaded meaning is insufficiently serious for it to be defamatory, given it is a reference to a politician and they regularly face such allegations.

[224] I do not need to consider whether Ms MacGregor's press statement is defamatory or not, because in any event, I accept her pleaded defence of truth applies. The Craigs' press statements did contain factual inaccuracies. *Inter alia*, it was factually inaccurate for Mr Craig to say he had never sexually harassed anyone and that allegations he had done so were incorrect. It was also factually incorrect to say Mr Craig had been "falsely accused". While I would not say Mr Craig lied, I consider he did deliberately mislead the media with the comments he made in the 22 June 2015 joint press statement. He structured his side of the story to make it sound as if he was blameless and Ms MacGregor was blame-worthy in terms of making false accusations.

[225] I do not consider it necessary to consider the further defences. This claim by Mr Craig fails on the basis that Ms MacGregor's defence of truth applies.

Mr Craig's third cause of action – Ms MacGregor's Twitter statement after the Craigs' press conference on 22 June 2015

[226] In her Twitter statement, Ms MacGregor said: "Colin Craig is trying to frame me as a mistress. There was never a sexual relationship, nor was there consent for his inappropriate actions."

[227] Mr Craig pleads this statement means:

- (a) He was the sort of person who would publicly frame a person as a mistress.
- (b) He had sexually harassed Ms MacGregor by a number of non-consensual inappropriate actions.
- (c) He had committed one or more sexual assaults.
- (d) He lied to the public about their relationship when he said that he and Ms MacGregor had agreed that in hindsight some of their conduct was inappropriate.

[228] First, Ms MacGregor did make the alleged statement. There is no dispute about that.

[229] I agree with Ms MacGregor's counsel that Mr Craig's pleaded defamatory meanings over-reach in terms of (c). The natural and ordinary meaning of the words was not that Mr Craig had committed one or more sexual assaults. There is nothing in the words used by Ms MacGregor in her tweet (and no inference either) of sexual assault.

[230] Ms MacGregor admits the other meanings and that they are defamatory of Mr Craig.

[231] As to the pleaded defences, the defence of truth would clearly apply to (b) based on my previous findings.

[232] Also, based on my previous findings, I consider the defence of truth does not apply to (a) and (d).

[233] However, I consider that the defence of qualified privilege in terms of response against attack would apply. As noted earlier, reply to an attack is a recognised category of qualified privilege arising when a person has been attacked. This qualified privilege allows the person subjected to the attack to respond to the attack to the same audience that received the attack, provided that the response is relevant to the attack. Ms MacGregor published the tweet 10 hours after Mr Craig's media conference, which I accept was an attack on her. I consider that her Twitter statement was a responsible and proportionate response against attack in light of what it followed, which was quite irresponsible, or unfair to her. Although the Craigs' press statement did not go so far as to suggest that Ms MacGregor was a mistress, it was misleading in the overall impression conveyed.

[234] I therefore find Mr Craig's third cause of action fails.

Ms MacGregor's second cause of action - the Craigs' joint letter to Conservative Party members seeking feedback on 25 June 2015

[235] Ms MacGregor says the following statements in the Craigs' joint letter to the Conservative Party were defamatory of her:

- (a) *You may have heard media rumours in recent days claiming that Colin sexually harassed a staff worker. We assure you that this is not the case and allegations of this nature are false and have been withdrawn.*
- (b) *While there was no harassment and no sexual relationship there were some occasions where their conduct was inappropriate which has been acknowledged from both sides so that all parties can move on.*

(c) *The rumours and false allegations have not harmed our wonderful marriage of over 23 years.*

[236] Ms MacGregor says the natural and ordinary meanings of those statements are as follows:

- (a) She had made false claims of sexual harassment against Mr Craig.
- (b) She had withdrawn the false claims of sexual harassment against Mr Craig.
- (c) She had some kind of inappropriate relationship with Mr Craig.
- (d) She had some kind of inappropriate relationship with a married man.
- (e) She had previously acknowledged she had behaved inappropriately with Mr Craig.
- (f) She was a liar.
- (g) She was unprofessional.

[237] Mr Craig admits making the pleaded statements.

[238] He admits the meanings at (b)-(e), but denies the rest.

[239] He admits all of the meanings, to the extent I uphold them, are defamatory.

[240] I have already found that (g) is not an available meaning in relation to Ms MacGregor's first cause of action. This publication is different, but it is in the same vein, and I consider the same reasoning applies here.

[241] I consider (a) is available as a necessary consequence of Mr Craig's admitting (b). If he admits the imputation that she withdrew false claims, it must follow that there is an imputation that she made false claims.

[242] I therefore find all of the meanings are available, except for (g), and these meanings are *prima facie* defamatory.

[243] I have already found that the defence of truth applies to the meaning at (e).

[244] I do not consider any of the defences pleaded by Mr Craig apply to (a) to (d) and (f). In terms of (a) and (f), I have already determined that Ms MacGregor made a true allegation of sexual harassment and is not a liar. In terms of (b), while she did withdraw an allegation of sexual harassment, she did not withdraw a false one. It is also not true to suggest that Ms MacGregor had any inappropriate relationship with Mr Craig (ie an ongoing state of affairs) which Mr Craig agrees is conveyed in the context of the joint letter. This is to be distinguished from the literal “occasions of inappropriate conduct”. There is no basis for honest belief. While there may be some scope for qualified privilege, in terms of Mr Craig’s having a duty to explain allegations to members of his own party and their having an interest in receiving them, I consider this defence is untenable because he went too far in asserting the allegations were false, as I discussed above. I find the defence of public interest fails for the same reason – the communication was not responsible.

[245] I therefore find that Mr Craig’s defence of truth succeeds in relation to [236](e), but that in terms of Ms MacGregor’s second cause of action, Mr Craig did defame her in terms of (a) to (d) and (f).

Ms MacGregor’s third cause of action – the Craigs’ joint press conference on 29 July 2015

[246] On 29 July 2015, Mr and Mrs Craig held another joint press conference. Mr Craig made the following statements:

- (a) *The first false claim is that I have sexually harassed one or more persons. Let me be very clear. I have never sexually harassed anybody and claims I have done so are false.*

- (b) *While I am grateful that many of you have chosen not to run the “other women” story I do wish that the same good judgment had been exercised with earlier other false allegations.*

[247] Mrs Craig also read out a statement, again one approved by Mr Craig:

- (a) *It has not been fun to be victimised by those responsible for a series of false allegations.*

[248] Mr Craig admits the statements were made, but as above he disclaims responsibility for Mrs Craig’s statement. As above, I find he made both pleaded statements.

[249] Mr Craig admits that the pleaded statements do identify Ms MacGregor.

[250] Ms MacGregor pleads the following imputations:

- (a) She made false claims of sexual harassment against Mr Craig.
- (b) She was a liar.
- (c) She had victimised Mr and Mrs Craig.
- (d) She was the kind of person who would victimise and hurt a family.

[251] Mr Craig denies his statements carry these imputed meanings, taken in context by the ordinary person. Mr Craig says the statements do not directly suggest that Ms MacGregor made a false claim. The target of the statements was the media and the “Dirty Politics” brigade. However, I consider that all of the pleaded imputations are natural and ordinary inferences from the statements. All the talk had been of Ms MacGregor having made a sexual harassment claim and Mr Craig is saying that claims he has sexually harassed anyone are false.

[252] Mr Craig accepts that the pleaded imputations (if upheld) are defamatory.

[253] I do not consider any of the defences apply. The defence of truth does not apply. I have already found that Ms MacGregor did not make false claims of sexual harassment. It follows that the rest of the imputations are also not true. Honest opinion cannot apply for similar reasons. There were no facts that were close to true on which Mr Craig could rely. I should note that I do consider Ms MacGregor “victimised” Mr Craig in part with her statements to Mr Williams regarding Mr Craig’s failure to pay her and the suicide allegations, but that is in a different context and in any event, the imputation would still not be true in substance.

[254] While the defence of reply to attack could have applied here, I find it fails because Mr Craig went too far in asserting the allegations were false, as I discussed above. Further, in the above statements he is specifically responding to the claim he sexually harassed Ms MacGregor, and I have found that claim was true, so the defence is unavailable in any respect.²¹

[255] The defence of public interest similarly fails because it was not responsible for Mr Craig to say that the allegations were false.

[256] Ms MacGregor succeeds on this cause of action.

Ms MacGregor’s fourth cause of action – “Dirty Politics” booklet published on 29 July 2015

[257] Concurrently with making the remarks, Mr Craig published and distributed a booklet to 1.6 million households nationwide. The booklet was called – “Dirty Politics and Hidden Agendas”.

[258] In the booklet, Mr Craig made the following statements:

317.1 Lie #1 Sexual harassment

All attacks have to start somewhere and it was the Williams dossier with its claim that Craig had sexually harassed his press secretary that became the starting point. The fact the claim had been withdrawn by MacGregor was perfect for the Dirty Politics Brigade. If the claim had instead been heard,

²¹ *Fraser-Armstrong v Hadow* [1995] ELMR 140 (CA); and *Oliver v Chief Constable of Northumbria* [2003] EWHC 2417 (QB).

then there would be a result, but without a judgment Craig could now be declared guilty by them without any defence.

Even better for them, Craig had signed a confidentiality clause and was unable to respond to the false allegations now being made by Williams. MacGregor was labelled a victim and Craig ... well he was labelled many things, none of them complimentary.

[259] Mr Craig admits making the pleaded statements

[260] Ms MacGregor pleads and, in closing, Mr Craig accepts, that the natural and ordinary meaning of the above statements in the booklet is that Ms MacGregor:

- (a) had made false claims of sexual harassment against Mr Craig;
- (b) had withdrawn false claims of sexual harassment against Mr Craig;
- (c) falsely played “the victim”; and
- (d) was a liar.

[261] Mr Craig admits that the pleaded meanings are defamatory.

[262] Mr Craig is therefore *prima facie* liable for the imputations and the question is whether he can establish any of his defences.

[263] For the same reasons referred to earlier, I find that Mr Craig cannot establish any defence. The pleaded meanings are not true. Ms MacGregor had not made false claims of sexual harassment against him and therefore had not withdrawn “false claims” of sexual harassment. She was not falsely playing the victim and she was not a liar. There are no facts on which Mr Craig could rely to establish honest opinion and his communication. Mr Craig’s communication went too far, so the defences of reply to attack and public interest cannot succeed.

[264] I therefore find in terms of Ms MacGregor’s fourth cause of action that Mr Craig did defame her as pleaded.

Summary

Mr Craig's claims

[265] In terms of Mr Craig's first cause of action, relating to Ms MacGregor's statements to Mr Williams on 19 November 2014, I find Ms MacGregor did not defame Mr Craig by suggesting he sexually harassed her, because this was true. I find Ms MacGregor did defame him by suggesting he was a bad employer who took advantage of her, he was cruel, nasty or unfair toward [a young woman], he has harassed, abused or been nasty toward two or more women, and he caused a young woman to commit suicide. This cause of action succeeds in part.

[266] On Mr Craig's second cause of action, I find Ms MacGregor did not defame Mr Craig by stating Mr Craig's press conference contained clear factual inaccuracies, because it did. She makes out the defence of truth, so I dismiss this cause of action.

[267] Mr Craig's third cause of action is that Ms MacGregor defamed him on Twitter by suggesting (a) he was the sort of person who would publicly frame a person as a mistress, (b) he had sexually harassed Ms MacGregor, (c) that he had committed one or more sexual assaults, and (d) that he had lied about their relationship when he said that he and Ms MacGregor had agreed that in hindsight some of their conduct was inappropriate. I find that the publication is not capable of bearing the meaning alleged at (c), that (b) is true, and that the defence of qualified privilege applies to (a), (b) and (d). I dismiss this cause of action.

Ms MacGregor's claims

[268] On Ms MacGregor's first cause of action, I find Mr Craig did defame her by suggesting she had made false claims of sexual harassment against Mr Craig, and that she was a liar. He did not defame her by suggesting she had acted inappropriately with him, that she had no capability to manage her finances, and that she could not pay her debts. I find on the balance of probabilities that these imputations are at least substantially true. This cause of action succeeds in part.

[269] On Ms MacGregor's second cause of action, arising from the Craigs' joint letter to the Conservative Party, I find Mr Craig defamed Ms MacGregor by suggesting she had made false claims of sexual harassment against Mr Craig, that she had withdrawn the false claims of sexual harassment against Mr Craig, that she had an inappropriate relationship with Mr Craig as a married man, and that she was a liar. I also find, however, that Mr Craig's defence of truth succeeded on the imputation that she had previously acknowledged she had behaved inappropriately with Mr Craig. This cause of action succeeds in part.

[270] On Ms MacGregor's third cause of action, which arose from the Craigs' joint press conference of 29 July 2015, I find that Mr Craig defamed Ms MacGregor by suggesting she made false claims of sexual harassment against her, that she was a liar, that she had victimised the Craigs, and that she was the kind of person who would victimise and hurt a family. This cause of action succeeds.

[271] On Ms MacGregor's fourth cause of action, which arose from Mr Craig's "Dirty Politics" booklet, I find the imputations that Ms MacGregor had made false claims of sexual harassment against Mr Craig, had withdrawn false claims of sexual harassment against Mr Craig, falsely played "the victim", and was a liar were defamatory, and Mr Craig had not made out any defence. This cause of action succeeds.

Orders

[272] Mr Craig seeks declarations under s 24 of the Defamation Act 1992 that Ms MacGregor is liable in defamation where he has succeeded. He has succeeded partially on his first cause of action only. Making of declarations is not automatic, but I see no reason why it should not follow here. I make the following declaration:

- (a) In terms of Mr Craig's first cause of action, Ms MacGregor is liable in defamation for her statements suggesting:
 - (i) He was a bad employer who took unfair advantage of Ms MacGregor by failing and refusing to negotiate and agree pay rates, and failing to pay invoices when due.

- (ii) He was cruel, nasty or unfair toward [a young woman].
- (iii) He has harassed, abused or been nasty towards two or more women.
- (iv) He caused a young woman to commit suicide.

[273] In terms of s 24(2), I reserve the issue of costs for further consideration.

[274] Ms MacGregor does not seek declarations.

Damages and costs

[275] I note that Mr Craig makes no claim for damages.

[276] I have very limited submissions, from Ms MacGregor's counsel in particular, on her damages claim.

[277] I would also be assisted by submissions on costs in light of my findings that each party is liable to the other in defamation.

[278] The parties should file a joint memorandum setting out an agreed timetable.

Hinton J