

DISTRICT COURT OF QUEENSLAND

CITATION: *Wale v Hollins* [2023] QDC 116

PARTIES: **JASON WALE**
(plaintiff)
v
HUMPHREY HOLLINS
(defendant)

FILE NO: D 86 of 2022

DIVISION: Civil

PROCEEDING: Claim/Application

ORIGINATING COURT: Cairns

DELIVERED ON: 14 June 2023

DELIVERED AT: Cairns

HEARING DATE: 5 June 2023

JUDGE: Morzone KC DCJ

ORDER: **1. Judgment for the plaintiff against the defendant for damages for defamation fixed in the amount of \$120,000.00, together with interest of \$3,600.00 from 15 June 2022 to date of this judgment, inclusive.**

2. The defendant will pay the plaintiff's costs of and incidental to this action (including reserved costs, if any) to be assessed on the standard basis.

CATCHWORDS: CIVIL PROCEEDING – DEFAMATION – ASSESSMENT OF DAMAGES – Six Defamatory publications & imputations – damages for defamation – interest – costs.

LEGISLATION: *Civil Proceedings Act* 2011 (Qld), s 15.
Defamation Act 1995 (Qld), s 34.
Uniform Civil Procedure Rules 1999 (Qld), rr 693 & 698.

CASES: *Anstee v Jennings* [1935] VLR 144
Banks v Cadwalladr [2022] EWHC 1417
BHP Coal Pty Ltd v O & K Orenstein & Coppel AG (No. 2) [2009] QSC 64
Broome v Cassell & Co Ltd [1972] AC 1027, at 1125.
Carson v John Fairfax & Sons Ltd (1993) 178 CLR 44
Cerutti v Crestside Pty Ltd [2016] 1 Qd R 89
Cilli v Abbott (1981) 53 FLR 108
Karzon v Pavlovic [2022] QDC 187 not disturbed on appeal
Kilvington v Grigg & Ors (No. 2) [2011] QDC 37.

Latoudis v Casey (1990) 170 CLR 534
O'Hara v Sims [2009] QCA 186
Oshlack v Richmond River Council (1988) 193 CLR 72
Radio 2UE Sydney Pty Ltd v Chesterton (2009) 238 CLR 460
Rogers v Nationwide News Pty Ltd (2003) 216 CLR
327 Alphabetical order
Triggell v Pheeney (1951) 82 CLR 497

COUNSEL: Michael Jonsson KC for the Plaintiff.
SOLICITORS: Miller Bou Samra Lawyers for the Plaintiff.
The Defendant was self represented.

Summary

- [1] The plaintiff, the secretary and general manager of Cazalys Cairns Limited, sues the defendant for multiple defamatory emails and letters to his board directors, officials, politicians and journalists, imputing the plaintiff's personal and professional conduct. The imputations are serious and attack the plaintiff's personal integrity, professional competence, and moral character.
- [2] The plaintiff was awarded judgment on his claim on 10 March 2023, and now damages are to be assessed.
- [3] The determinative issues in the proceeding are:
 - 1. What is the assessment of damages for the plaintiff?
 - 2. What interest should apply to such damages?
 - 3. What costs order should follow the event?
- [4] The plaintiff has evidenced the impact of the defamatory publications the subject of the proceeding, as well as a consequential article in a local newspaper, on his reputation, emotional well-being, and professional standing. His evidence was neither challenged nor contradicted. The damages are compensatory of personal distress, reparation for harm to reputation, and vindication of the plaintiff's standing. The defendant's lack of bona fides, refusal to retract or apologise, and his adverse conduct during the proceedings justifies an uplift in damages, including aggravated damages.
- [5] Accordingly, I have assessed a global award of \$120,000.00, including aggravated damages, together with interest at the rate of 3% pa, and costs of the proceeding (including reserved costs) to be assessed on the standard basis.

Defamatory publications & imputations

- [6] The plaintiff was the Assistant Manager, General Manager and Secretary of Cazalys Cairns Limited and its subsidiaries. Cazalys is a renowned commercial hospitality and sporting facility in the regional city of Cairns, comprising a sporting stadium, live entertainment, gaming lounge, and family restaurant.
- [7] The plaintiff has carried out his role for over 14 years since 4 May 2009, and includes corporate governance, commercial management and managing about 200 personnel. He is obligated to collaborate with regulatory bodies, the media, law enforcement, staff members, suppliers, auditors, various government entities, and represent his employer in accordance with legal obligations or as mandated by the Board. The plaintiff is a member and a graduate of the Australian Institute of Company Directors and holds an Associate Diploma in Business Management and Hospitality Administration.
- [8] There are six offending defamatory publications subject of the proceeding.
- [9] The **first publication** is an email sent by the Defendant to an employee of Cazalys on 10 March 2022 in these terms:

*“Sent: Thursday, 10 March 2022 7.39am
 To: [recipient]”*

Subject: Problem gambling

Gday Wendy.

Please provide the email address of Jason Wale. I have just read the legislation again and under 6.10 it is unlawful to provide free money or credit for the purposes of gambling.

I met with someone from Child Services yesterday and we discussed the removal of Sokmuon's children to foster care.

Not a good thing for Cazaly's. The Shadow Minister is in Cairns today. I mailed her staffer this morning. I am also disturbed to be informed that Jason has friends/acquaintances in Cazaly's who hang around my partner. Older men, parasites. She has her 14 year old daughter on her facebook pages. I suspect she attracts pedophiles. It's a very easy slur to cast around but these men frighten me. Hanging around gambling venues and consorting with prostitutes is not acceptable behaviour in our society. You are a licenced club not a brothel.

I also believe that members of the staff giver her drinks, unknown to management.

Please supply Jason's email or I shall be talking with the Regulator in Brisbane again.

What is occurring is wrong on every level. Myself and my family are being badly affected by Cazaly's encouragement of problem gambling.

I can only surmise that she is allowed to behave this way because there are staff in sexual relationships with Sokmuon. I know it happened at the Casino and I know of at least one of your staff being involved with her.

Balls in Jason's court now.

Humphrey Hollins"

[10] This first publication carried the following imputations of and concerning the plaintiff:

- (a) The plaintiff permits his friends to associate with the Defendant's partner, Ms Maeu, for the purposes of attempting sexual relations with her.
- (b) The plaintiff facilitates Cazalys to be used as a brothel.

[11] The **second publication** is a further email sent by the Defendant jointly on 16 March 2022 to the plaintiff, Mr Calcino, a newspaper reporter and Mr Quantrill, a governmental employee or officer, in these terms:

"Sent: Monday, 16 May 2022 4.27PM

To: [addresses]

Subject: Sokmuon Maeu- alcoholic problem gambler

Thank you for your letter advising of my 12 month ban. Please furnish me with the minutes of every committee meeting since October 2021.

*I hope you are aware of ASIC regulations.
 I also require a list of members as is my right.
 I shall be appealing this suspension.
 Please supply the minutes and the membership list within 14 days or
 I shall put this matter in the hands of my solicitor.
 Just as an aside, oh the irony. My alleged offence was on the day
 after my partner's suicide attempt when she was lying in hospital.
 And this letter arriving when she is in hospital again with a severe
 liver complaint due to binge drinking.
 Her small daughters are fretting for their mum and wonder how
 Cazalys can continue to call their operation family friendly.
 And the temerity of asking me to apologise to a company that breaks
 all the rules with impunity.
 PS is that cocaine smuggler Jimmy Beel still a member. Was he one
 of your high roller buddies?*

Humphrey Hollins"

- [12] This second publication carried the imputation of and concerning the plaintiff that he tolerates and encourages membership in Cazalys of a cocaine smuggler.
- [13] The **Third publication** is a further email sent by the defendant on 27 May 2022 to a solicitor and a director of Cazalys, which was also served upon and read and comprehended by a further seven directors of Cazalys Cairns Limited in these terms:

"Dear Joanne.

*You would rarely receive a letter like this and I urge you both as a
 Director of Cazalys Cairns Ltd and the only woman on the Board to
 read it and consider the implications of what I am about to tell you.*

*It is quite remarkable and indeed regrettable that you are the only
 woman on the Board of a public company in 2022. But my recent
 experience of the blokey culture at Cazalys has exposed the lack of
 duty of care by the Company towards women and families. It is quite*

*remarkable but incredibly distressing situation for me and my family
 and is currently endangering both the Directors personally and the
 Company's reputation.*

*I have a Cambodian partner with two daughters aged ten and fifteen.
 I lived in Cambodia and was in business there from 2005. I met my
 partner fifteen years ago and the family immigrated to Australia in
 2107.*

*It was less than a year later that my partner fell in with a criminal
 gang who I believe to be involved with vice and money laundering.
 The cash can only be profits from drugs and gun running.*

*My partner is an unusually attractive woman to both men and
 women, she is like magnet to parasites and criminals. I made*

allegations of attempted grooming of her youngest daughter to the AFP and QPS over a year ago.

The AFP have a list of names from me. Many are criminals involved with money laundering and prostitution at the Reef Casino.

My partner is undiagnosed bi polar, a problem gambler and a prostitute. She is a shocking mother and QPS Child Protection have pleaded with me not to leave the children.

I have tackled both the Reef Casino and Cazalys over breaches of all the regulations. The Regulator is corrupted, there is no doubt. They have investigated both venues twice and declared that there is nothing to see here.

I suggest that for your own reputation and that of Cazalys that you follow my email trail from my first complaint on the 8th of October last year on your website. I have been very reasonable considering that my partner gambles

away the family tax benefit and rent subsidy every fortnight, has thousands of dollars to spend from customers, has lost me my property, most of my super, has caused my eldest daughter to write suicide notes, has nearly burnt the house down twice after returning from Cazalys blind drunk and has caused me to consider suicide every day.

It was only recently that learnt that one of her male friends found her passed out in the gutter on Tills St outside Spotlight in the middle the night after leaving Cazalys to walk home. If she is run over walking home drunk then you may as well shut the doors.

Your gaming Manager Wendy Baker is totally irresponsible, I pleaded with her for help. When I finally went to Cazalys she confronted me and told me my partner was free to do exactly as she liked.

Your GM Jason Wales is a shallow man, a misogynist and creepy. He upgraded my partner unlawfully in order that she could be preyed upon by his mates at high roller functions.

The suspension of myself and another chap at a kangaroo court type proceeding was instigated by Wale in order that my partner could attend the establishment with no impediment. Wale has some very dodgy social media issues, he boasts of going to Thailand three times, he told a witness that he should get to know my partner better. As Company Secretary he has breached ASIC regulations by omitting to publish his qualifications and experience on the Annual Report.

I find it difficult to understand how a man with such flimsy qualifications is either a GM or Company Secretary. Most

Companies have people with legal and business acumen in order to advise Boards on matters of probity. I doubt that Wale knows the meaning of the word.

It is somehow ironic that I was suspended over an email on the 18th of March. My partner was lying in hospital following a suicide attempt the previous night. Later I received confirmation of my suspension on the day that she was lying in hospital again after a dangerous toxic build up in her liver following a drinking binge.

These are the likely scenarios going forward:

She bleeds out in Cazalys following a varice bursting on her oesophagus.

She only has a year or two to live so as she lies dying she admits to using Cazalys and the Reef Casino for the purposes of prostitution.

She is run down on the road while walking home drunk.

I commit suicide and leave the damning note for the inquest.

I am not being over dramatic here, I am not a nutter. I am merely attempting to raise two little girls while their mother is lied with drink, encouraged to gamble and used as a sex toy by gamblers at my neighbouring gambling venue.

The email trail is all bad for Cazalys, many people around town know my story as do the AFP, QPS, Cairns Post, Channel 7, the ABC, the AFL and the ATO.

I am not the sort of person to copy injustice because of corporate greed or men's sexual appetites.

All Directors will have hand delivered letters, I have filed an appeal against my suspension as has the other chap involved. My friend Shane Cuthbert was with me at the kangaroo court. There were no minutes taken and recording was prohibited. I was in the Supreme Court yesterday with Shane as he took on the State ALP. It is amazing what can be achieved through the legal system for minimal cost.

*Humphrey Hollins
Manager Centralcondos"*

[14] This Third publication carried the following imputations of and concerning the plaintiff:

- (a) The plaintiff was instrumental in arranging for the Defendant's partner, Ms Maeu, to be available to the Plaintiff's friends at high roller functions for sexual purposes.

- (b) The plaintiff is a disgusting woman hating person.
 - (c) The plaintiff takes sex vacations in Thailand.
 - (d) The plaintiff had expressed a desire to befriend the Defendant's partner, Ms Maeu, for sexual purposes.
 - (e) The plaintiff had acted unlawfully as company secretary by breaching ASIC regulations.
 - (f) The plaintiff lacks honesty and integrity.
 - (g) The plaintiff has acted unlawfully and has breached the provisions of the Liquor Act and the Gaming Act.
- [15] The **Fourth publication** is a further email sent by the Defendant on 9 June 2022 jointly to the plaintiff, and others including liquor compliance, parliamentarian, and newspaper journalists, in these terms:

"Dear Staffer.

This is a long saga involving my partner Sokmuon Maeu. She is an alcoholic and problem gambler.

Since October last year when I lodged a complaint with Cazalys she has been banned from the Reef Casino, been issued with a DVO for assaulting me, attempted suicide and only a few weeks ago hospitalised for liver problems.

She does not have long to live due to liver problems yet is only 36 and has two young children. The Regulator in Cairns conducted an investigation that was a whitewash. After a complaint to this office David Quantrill in Brisbane organised a further investigation. Another whitewash. Myself and another chap have been banned for a year from Cazalys for making complaints about her being served alcohol until she is falling over drunk. In November last year she was found in the gutter unconscious attempting to walk home.

Last night she attended Cazalys again. She arrived drunk and was served more drinks. She did not come home. Is she in the gutter again?

I am a reasonable man but these blatant breaches of RBA legislation are outrageous. This woman is probably bi polar and certainly dying. She has an appointment at the liver clinic today.

What do I have to do to stop Cazalys and their management of Wendy Baker and Jason Wale of treating my family like this.

Today someone must view CCTV footage post the game last night and explain why my partner was being served alcohol after arriving at the venue already drunk.

I have written to every Director about this situation and have been ignored.

Humphrey Hollins”

- [16] This Fourth publication carried the following imputations of and concerning the plaintiff that he allowed the defendant’s partner, Ms Maeu, a person with two young children who has been banned from attending Reef Casino and hospitalised for liver problems from excessive drinking, to attend Cazalys and drink to excess.
- [17] The **Fifth publication** is another email sent by the defendant on 15 June 2022 jointly to the addressees which included board members, journalist, and state and local parliamentarians. in these terms:

“Thanks Kasey. More drama today. This is a really draining experience, she is probably at Cazalys right now. Her girls 15 and 10 are brave but badly affected.

She is involved with a criminal gang. Money laundering, money lending, prostitution at the Reef Casino.

She was promoted to diamond or double diamond status at Cazalys by Jason Wale so his mates could prey on her at high roller nights. Like a performing seal but with sexual favours. She has relationships with male and female bar staff and perhaps management. Jason Wale has inappropriate social media accounts. I have screen shots. He is a pathetic excuse for a man, a misogynist and opportunist. The AFL are aware but choose to do nothing.

The AFP were told last year about a man attempting to groom her 9 year old. A Thai male prostitute. All agencies are aware of her and her associates. QPS child protection pleaded with me not to leave. They interviewed the girls at their schools and they spoke of their mum’s drunken episodes when arriving home at 3 or 4 in the morning. Abusing me and them in a highly drunken state.

Money laundering rife at the Casino, security staff involved in prostitution. Andrew, yes Andrew e the gaming supervisor complicit.

It is the most sordid situation I have ever experienced in my life. Cocaine smuggler Jimmy Blee a Cazalys regular. He has two mates attending high roller nights. Cazalys used a kangaroo court to ban me and another chap concerned for my partner who was given huge amounts of booze and encouraged to gamble. She prostitutes herself to gamble. Cazalys breaches the police Act. Using premises for the purpose of prostitution. Jason Wale the GM has no problem with this. Moron misogynist. This is 2022. The Regulator can choose to ignore it. But my partner is vulnerable and if the worst happens and she dies then many people will be looking for a new job. Jason Wale and Wendy Baker at Cazalys are under qualified and are very poor choices for management positions. Their poor irresponsible behaviour will bring you all down.

I do not exaggerate. This woman has an aura that captivates men and women. She is ignorant and illiterate but is like a hand grenade that will soon explode and there will be many corporate and bureaucratic casualties.

*Humphrey Hollins
Manager centralcondos
Cairns”*

[18] This **Fifth publication** carried the following imputations of and concerning the plaintiff:

- (a) The plaintiff allows Cazalys to breach the Police Act.
- (b) The plaintiff allows Cazalys to have its premises used for the purposes of prostitution.
- (c) The plaintiff is stupid and a woman hater.
- (d) The plaintiff was instrumental in making the Defendant’s partner, Ms Maeu, available at high roller events at Cazalys to be used for sexual purposes

[19] The **Sixth publication** is a further letter sent by the defendant in or about late May or early June 2022 to the Chairman of Directors of Cazalys Cairns Limited, which was also provided to the seven directors of Cazalys in these terms:

“Dear Mr Marino.

An ASIC search reveals that you’re a re a Director of Cazalys. We have spoken before. I am a local identity who manages 42 units nearby and I am a tireless worker on behalf of the community.

You must be aware by now of the enclosed letter. I must admit to being stunned by the fact that Joanne is a risk assessment expert and a Director.

I have a huge problem with my partner who is bi polar, an alcoholic, a problem gambler and a prostitute. She has two daughters aged ten and fifteen of whom I have been the primary carer for over four years. It has cost me my property and a lot of cash to keep this family together. My partner gambled away the rent subsidy and family tax benefit at Cazalys or the Reef Casino within minutes very fortnight.

The Regulator is corrupted, my partner took part in money laundering at the Casino.

She often had thousands of dollars on her.

Your management team of Wales and Baker is appalling. Neither has any real qualifications. Does anyone at the club have WH&S Certification? Does no one understand Duty of Care?

Only last night the police intervened in an incident in the city and put my partner in a taxi. I don’t believe Cazalys have ever done this.

Ask Wale why he upgraded this woman to the status of being able to attend high roller functions so she could be a performing seal or sex toy for his mates. She has used Cazalys for the purposes of prostitution.

She is dying of liver failure at 36 due to alcohol. Should she choose to give evidence from a hospital bed your licence and the Board are gone. Ask Wale about inappropriate remarks about my partner, like should I get to know her better? This is 2022 and misogyny at management level is not acceptable.

These agencies are aware of my partner's behaviour-AFP, ATO, Mental Health, QPS Child Protection and others. The Regulator and the AFP are aware that Jimmy Lee attended Cazalys. His two mates went to high roller events. I gave the AFP a list of names a year ago and told them that large amounts of cash are being laundered in Cairns.

The treatment of myself and another chap at the kangaroo court are simply unacceptable. Why were there no minutes taken? I apparently offended Baker by emailing her the morning after my partner's attempted suicide. She spent three days in hospital. Was she at Cazalys the previous night:

The day that the letter arrived regards my suspension she was in hospital again with partial liver failure due to alcohol.

Time you took your responsibilities more seriously. Fines and jail await if something befalls this woman after getting drunk at Cazalys. She has sex with staff as well you know, both men and women. I think she gets free drinks through this. You better ask Wale and Baker to tell all. While you are at it ask Wale about his dodgy social media accounts. I have screen shots. Ask Baker why she told me that is woman is not my partner and she "can do whatever she wants".

I have known this family for 15 years and some woman with a TAFE qualification from school is not an expert or an arbiter of human relationships.

And a breach of ASIC rules with the last Annual Report. The Company Secretary must state his qualifications and experience. There is nothing, not even his maths prize from high school mentioned.

Company Secretaries are often lawyers nowadays in order that the Board can be advised as to changed in legislation and probity issues. Mr Wale is severely under qualified, don't you think?

*Humphrey Hollins
Manager central condos"*

[20] This Sixth publication carried the following imputations of and concerning the plaintiff:

- (a) The plaintiff was instrumental in permitting the Defendant's partner, Ms Maeu, to prostitute herself to friends of the Plaintiff.
- (b) The plaintiff permitted the Defendant's partner, Ms Maeu, to have sex with staff at Cazalys in exchange for free alcoholic drinks.
- (c) The plaintiff allowed the Defendant's partner, Ms Maeu, a known bi-polar, alcoholic, problem gambler and prostitute, to frequent Cazalys for the purposes of gambling and prostitution.

- (d) The plaintiff is an incompetent and corrupt manager.
- [21] The plaintiff's evidence was adduced by affidavit and was both unchallenged and uncontested. I accept his evidence as being both truthful and reliable.
- [22] Ever since the publications, the plaintiff chronicled his personal experience of distress and humiliation of having to answer to the Board of Directors of Cazalys Cairns Limited and the regulatory authority. He was "*mortified*" to discover that two of the offensive publications were personally delivered to the residential addresses of each Director of Cazalys Cairns Limited. He was required to report to the Cazalys Board about the allegations about himself, which was a "*highly stressful and painful exercise ... personally difficult*." He was also required by the regulator to remark about the claims made by the defendant, which was personally difficult, painful, and confronting.
- [23] The plaintiff's proceeding also generated publicity within days of its commencement on 20 July 2022, a front-page article in The Cairns Post newspaper headlined '**Club manager sues over emails' defamatory claims SEX TRIPS, LIES AND A BROTHEL**'. This feature article in the regional city local newspaper likely garnered considerable interest amongst the newspaper's readership in and about Cairns, greater far north Queensland and amongst the membership of Cazalys and its associated bodies. At the time the article appeared in The Cairns Post, Cazalys had approximately 26,000 members, an associated entity, South Cairns Sports Club, had approximately 8,800 members, and another associated entity, Trinity Beach Sports Club, had 5,500 members.
- [24] The plaintiff has been contacted by friends, family, suppliers, directors of Cazalys as well as Cazalys' staff and former staff regarding the article. He has overheard others remarks – "*Will he be out of jail by then? Hookers upstairs, brothel upstairs, who is the madam, check the cameras out the back.*"
- [25] Consequent upon this publication, on 27 July 2023 the plaintiff was again obliged to advise the Board about the publication of the article and make explanation to Sam Marino as the chair of the board chairman. He overheard staff talking about the article and saw club members reading the piece. He felt like people were watching him going about his work "*for a few weeks*". He arranged a crisis meeting with his assistant manager and HR managers. The Plaintiff received a phone calls from Mr Reg Lillywhite, the Deputy Chairman of Cazalys and with peak body Chief Executive Officer from Brisbane, as well as several emotional messages from friends and many staff. The Plaintiff felt "*totally overwhelmed*".
- [26] On 29 July 2022 the plaintiff was confronted when the defendant personally picketed Cazalys' premises in Cairns, in the presence of a councillor Rob Pyne, and another individual. He was asked by Channel 7 news for comment but declined.
- [27] On 23 August 2022 he was the subject of conversation between his hairdresser and the defendant, while getting a haircut.
- [28] The plaintiff has diligently maintained a series of contemporaneous journal entries from June to September 2022, which vividly reflect his emotional and physical struggle, including: muscle fatigue, soreness, and difficulty concentrating; soreness in the buttocks, groin, and hamstrings; general tensing, strange posture, and

extended arms; flushed face, chest pain, distress, and constant thoughts; early departure from work due to chest pain, stress, and anxiety; mental exhaustion, disrupted sleep, and tense neck; poor sleep, intense dreams, and waking up tense; increased emotional response, extra sleeping tablets, and persistent thoughts; stress from emails and discussions, resulting in a sore neck and tension; inability to stop thinking, feeling shaky and scattered; upset from Twitter posts, lack of sleep; inability to work, constant thoughts, and emotional distress; emotional distress from reading defamation acts and comments; intoxication, difficulty dealing with court action, and continuous thoughts; traumatic holiday trip, feeling unwell; diarrhea; difficulty concentrating and productivity issues; sleep disturbances, concerns about news; forgetfulness; distressed visit to the dentist; need for time off due to stress, weakness, and fatigue; inability to sleep, reluctance to work, and physical symptoms; moderated post, feeling sick, work incident, justification to leave work on time; deep emotional impact, awareness of public concerns, and heavy drinking.

Damages for Defamation

- [29] By virtue of s 6(2) of the *Defamation Act 2005* ('the Act') the operation of the general law in relation to the tort of defamation is not affected except to the extent, expressly or by necessary implication, it provides otherwise. Sub-section 6(3) provides that: "*Without limiting sub-section 2, the general law as it is from time to time applies for the purposes of this Act as if the Defamation Act 1889 had never been enacted.*"
- [30] In *Rogers v Nationwide News Pty Ltd*,¹ Hayne J (Gleeson CJ and Gummow J agreed) referred to *Carson v John Fairfax & Sons Ltd*,² to affirm the three main purposes of damages in defamation: firstly, they provide consolation to the plaintiff for the personal distress and hurt caused by the publication; secondly (and often considered with the first), they offer reparation for the harm inflicted on the plaintiff's personal and professional reputation; and thirdly, they aim to vindicate the plaintiff's reputation by influencing the opinions of others.
- [31] All three purposes of consolation, reparation and vindication are relevant here, and a single amount must be awarded to serve each purpose and there must be 'an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded'.³
- [32] In circumstances here where the defendant has been judged liable for the imputations, some damage to the plaintiff's reputation is presumed. Any allowance on account of consolation and reparation should reflect the subjective impact of the defamation upon the plaintiff.⁴
- [33] As Lord Diplock said in *Broome v Cassell & Co Ltd*, '*The harm caused to the plaintiff by the publication of a libel on him often lies more in his own feelings, what he thinks other people are thinking of him, than in any actual change made manifest in their attitude towards him.*'⁵ Similarly, in *Carson v John Fairfax & Sons Ltd*,

¹ *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327 at [60] with footnotes omitted

² *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44.

³ *Defamation Act 1995* (Qld), s34.

⁴ *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327, at 350, para [69].

⁵ *Broome v Cassell & Co Ltd* [1972] AC 1027, at 1125.

McHugh J said that the damage produced by a defamation ‘... affects the feelings, sense of security, sense of esteem and self-perceptions of the person defamed. As a natural consequence, a defamation excites the anger and resentment of the victim and often generates a desire for retribution’.⁶

- [34] Additional factors that are pertinent to assessing the level of harm caused by a defamatory publication include the seriousness of the accusations made in the publication, the manner and extent of its distribution, the identity and situation of the recipients, their connection with the plaintiff, and any subsequent effects experienced by the recipients as a result of the publication. Further, the failure by the defendant to retract the publication or adequately apologise can prolong the harm to a plaintiff's reputation caused by the defamatory statement, exacerbating the damage beyond emotional distress. These circumstances warrant an increase in compensatory damages and are also relevant to my determination an award for aggravated damages.
- [35] The sum awarded must be at least the minimum necessary to signal to the public the vindication of the plaintiff's reputation.⁷ Of course, the harm caused by a defamatory statement has continued even after the initial publications. Factors such as the seriousness of the publications, the social status of the parties involved, and the availability (or lack thereof) of alternative remedies should all be considered when assessing the appropriate amount necessary to fully vindicate the plaintiff.
- [36] A significant aspect of vindication in this case is the Cairns Post article on 27 July 2022 and associated events and publicity consequential to the plaintiff brining the proceeding. As noted by Boddice J in *Cerutti v Crestside Pty Ltd*, when the plaintiff sought legal redress, he brings the earlier previously limited publications sued upon into the public domain. That is, by pursuing the defamation case, the plaintiff essentially participates in a self-publication process, exposing what may ultimately be proven as an unjustifiable defamation. In these circumstances, the defendant is accountable not only for the original publication but also for the harm and the necessity for vindication resulting from the publicity inevitably generated by initiating and pursuing the legal action.
- [37] In the circumstances of this matter, the nature of the defamation renders vindication particularly important.⁸ The imputations reflect adversely upon the plaintiff's honesty and integrity as a senior professional manager in a hospitality-orientated facility, and he has suffered the ignominy of broader publicity through the newspaper article. The repeated defamatory statements targeting the plaintiff's professional reputation, specifically aimed at recipients, such as members, directors and regulators, who have the potential to significantly impact the Plaintiff's professional standing, career, and livelihood, make for a stronger case for vindication. I accept that a substantial amount of damages should be awarded to ensure long-lasting vindication for the plaintiff.
- [38] Evidence relevant to these issues could involve testimony from the Plaintiff himself, as well as inferences of the extent of harm suffered by the plaintiff that can be

⁶ *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44, at 104-105.

⁷ *Cerutti v Crestside Pty Ltd* [2016] 1 Qd R 89 at [25] also upon *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 61.

⁸ *Cerutti* para [60]; and compare *Crampton v Nugawela* (1996) 41 NSWLR, 176 at 194-195.

reasonably, logically and rationally drawn from the broader evidence about his situation, the nature and scale of the publications, and the inherent likelihoods associated with such factors.⁹

- [39] As to the gravity of the matters attributed to the plaintiff, the focus of the enquiry is upon the imputations themselves,¹⁰ as distinct from the broader publication and contextual features of the words actually published. In this case, the imputations impute serious moral fault and turpitude, coupled with express and implicit suggestions of unfitness to occupy the particular offices from which he derives his livelihood, making them relatively more serious defamatory meanings than a publication might possibly carry.¹¹
- [40] Regarding the extent of publication, obviously a defamatory publication has a greater potential to cause harm when it reaches a larger and repeated audience. However, serious harm can still occur even when a publication is directed at a smaller group of recipients, depending on their identity, circumstances, and relationship with the plaintiff.¹² In this case, the circumstances encompass both parameters since the initial publications were limited to a specific group, but the subsequent publicity reached a much wider readership through *The Cairns Post*. The plaintiff also relies upon the “percolation” or “grapevine effect” associated with modern methods of communication.¹³
- [41] I also accept that an additional allowance ought be awarded as aggravated damages. Aggravated damages, although compensatory in nature, are intended to address specific circumstances that have exacerbated the harm inflicted on the plaintiff.¹⁴ Of course, pursuant to s. 36 of the *Act*, the court must “disregard the malice or other state of mind of the defendant at the time of publication of the defamatory matter ... or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff”. It is in the latter sense that the defendant’s conduct has been improper and unjustifiable.¹⁵ It is only to the extent that a plaintiff apprehends a defendant’s malice or other state of mind and his awareness (inferred here) that aggravates the sense of hurt for him.¹⁶
- [42] It seems to me that the defendant engaged in an unjustifiable refusal to apologise or retract the defamatory publications, persistent dissemination of false allegations and slurs. He continued to disparage of the plaintiff in his communications to the plaintiff’s solicitor and officers of the Court. His pleaded defence was grossly irregular contrary to the rules of pleading, which resulted in deemed admissions and consequential interlocutory judgment. He also used his pleading as a vehicle to continue his gratuitous campaign of disparagement of the plaintiff, including:

⁹ *Banks v Cadwalladr* [2022] EWHC 1417, at [50](viii).

¹⁰ Cf. *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [36]; and *O’Hara v Sims* [2009] QCA 186 at [33].

¹¹ Cf. *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 para [10].

¹² *Banks v Cadwalladr* [2022] EWHC 1417, at [50](xii).

¹³ *Banks v Cadwalladr* [2022] EWHC 1417, at [50](xii).

¹⁴ *Cerutti v Crestside Pty Ltd*, at 110-111, para [37]; citing *Costello v Random House Pty Ltd* (1999) 137 ACTR 1, at 46.

¹⁵ *Cerutti v Crestside Pty Ltd* at para [37]; *Triggell v Pheeney* (1951) 82 CLR 497, at 514.

¹⁶ *Cerutti v Crestside Pty Ltd* at [39]; citing *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at 151.

“The defence will be based on material facts. Ms Maeu works as a prostitute at many venues in Cairns. Ms Maeu gambles large sums of money at many venues in Cairns. The contact details of many clients are available to the defendant. Ms Maeu has two bank accounts with large unexplained income. Ms Maeu had sexual relationships with Cazalys staff. Ms Maeu attended high roller functions yet appears to be a poor Centrelink client. Mr Wole facilitated Ms Maeus attendance at these functions by upgrading her points status fraudulently. Subpoenas issued to staff and her clients will confirm this.

Mr Wale has breached the Companies Act by not listing his qualifications and experience on the Annual Report. Mr Wale allowed members not of good character to frequent the club. Ms Maeu and Mr James Blee are not of good character. Mr Wale had no control over his CLO Ms Wendy Baker who perverted the complaints process and banned Humphrey Hollins, the third party under the legislation following his complaints over a long period. Breaches of RSA legislation are endemic. Mr Maeu is an alcoholic and is dying of liver failure but continued to be served while inebriated. Incident logs and security logs plus her Cazalys account will confirm this. The Liquor and gaming Regulator will be subpoenaed and will confirm that Ms Maeu is both a problem gambler and alcoholic who has been banned from the Reef Casino for life. Cazalys Directors will be subpoenaed and asked did they have sexual relations with Ms Maeu.”

- [43] The defendant’s aggravating behaviour has manifest beyond the subject matter of the proceeding to the plaintiff’s solicitor, the court staff and judge’s associate.¹⁷ These are all strong indicia of the defendant defending the proceeding in a manner which is improper or lacking in *bona fides*. It has increased the plaintiff’s injury by exacerbating the indignity, and the sense of outrage, occasioned by the defamatory publications.
- [44] Therefore, the compensatory damages ought to be uplifted by an additional award of aggravated damages.¹⁸
- [45] The comparative case of *Karzon v Pavlovic*,¹⁹ concerned the publication of two defamatory emails about that plaintiff, the owner of three lots within a commercial community title scheme. One of those lots was leased to the owners of a Thai massage business. The emails were published to a limited group of recipients including the body corporate committee. The court found that the emails carried imputations that or to the effect that the plaintiff lessor knew that an illegal brothel was being operated, or that an illegal sex trade was being conducted, from the premises. In *Karzon* damages were awarded by the trial court in the amount of \$70,000 as a global allowance inclusive of aggravated damages, which was not disturbed by any appeal.

¹⁷ Cf. *Cerutti v Crestside Pty Ltd* at [37].

¹⁸ *Cerutti v Crestside Pty Ltd* at [40].

¹⁹ *Karzon v Pavlovic* [2022] QDC 187, and on appeal [2023] QCA 37.

- [46] Some of the imputations in the present case are similar to those in *Karzon*. Like, *Karzon*, the plaintiff's publications were directed to a limited number of recipients and some of the imputations attribute to the plaintiff a knowledge and tolerance of misuse of premises for a brothel and sexual activity.
- [47] However, the imputations in this case are more serious than those in *Karzon*, especially those that attribute to the plaintiff his personal involvement and participation in alleged sexual misconduct in licensed premises. This case involves six publications, in contrast to two emails in *Karzon*, and they reached a substantially larger and more diverse group of recipients, who included directors, officials and journalists who could potentially negatively impact the plaintiff's professional reputation, career progression, and ability to earn a livelihood. Further, the nature and extent of the subsequent newspaper publication to a wider newspaper readership, implies a greater level of hurt and affront, thus increasing the need for vindication. Furthermore, this case involves the defendant's failure or refusal to apologise or retract his statements, and his ongoing exacerbating conduct during the course of the proceeding.
- [48] I think that these distinctions render this case more serious than *Karzon*.²⁰
- [49] In the result, I accept the plaintiff's submissions and assess a global award of \$120,000.00 for damages against the defendant, including aggravated damages.

Interest

- [50] I will also award interest on the judgment amount being \$3,501 calculated at the rate of 3% per annum on that amount from most recent publication on 15 June 2022.²¹

Costs

- [51] The plaintiff seeks costs on the standard basis, as they are ordinarily assessed, has not been expressly opposed by the defendant.
- [52] The court has a broad power to award costs in a proceeding.²²
- [53] The general rule pursuant to r 681 of the *Uniform Civil Procedure Rules 1999* is that costs of a proceeding are in the discretion of the court but follow the event, unless the court orders otherwise. The costs of a proceeding do not include the costs of an application in the proceeding, unless the court orders otherwise.²³ Reserved costs of an application will follow the event, unless the court orders otherwise.²⁴
- [54] This statutory conferral of jurisdiction, although wide, must be exercised judicially, that is to say, not arbitrarily, capriciously or so as to frustrate the legislative intent.²⁵ It is fundamental that costs orders serve a compensatory function, not a punitive

²⁰ Cf. *Weatherup v Nationwide News Pty Ltd* [2016] QSC 266.

²¹ Cf. *Cerutti v Crestside Pty Ltd*, at 121 at [92] per Boddice J.

²² *Civil Proceedings Act 2011* (Qld), s 15.

²³ *UCPR*, r. 693.

²⁴ *UCPR*, r. 698.

²⁵ *Oshlack v Richmond River Council* (1998) 193 CLR 72 at 81 per Gaudron and Gummow JJ

one, to indemnify the successful party against the expense to which he or she has been put by reason of the legal proceedings.²⁶ Therefore, the court should act with a degree hesitancy and in an unusual²⁷ or exceptional case²⁸ before depriving a successful party of costs, or even order a successful party to pay costs.

[55] The plaintiff has been wholly successful, and costs ought follow the event.

Conclusion

[56] For these reasons, I make the following orders:

- (a) Judgment for the plaintiff against the defendant for damages for defamation fixed in the amount of \$120,000.00, together with interest of \$3,600.00 from 15 June 2022 to date of this judgment, inclusive.
- (b) The defendant will pay the plaintiff's costs of and incidental to this action (including reserved costs, if any) to be assessed on the standard basis.

Judge DP Morzone KC

²⁶ *Latoudis v Casey* (1990) 170 CLR 534, *Cilli v Abbott* (1981) 53 FLR 108 & *Anstee v Jennings* [1935] VLR 144 at 148.

²⁷ *BHP Coal Pty Ltd v O & K Orenstein & Coppell AG* (No. 2) [2009] QSC 64 at [8] per McMurdo J (as his Honour then was), citing Einstein J in *Mobile Innovations Ltd v Vodafone Pacific Ltd* [2003] NSWSC 423 at [4]; *Kilvington v Grigg & Ors* (No. 2) [2011] QDC 37 at [34] per McGill DCJ.

²⁸ *Oshlack v Richmond River Council* (1988) 193 CLR 72 per McHugh J (with whom Brennan CJ agreed)