SUPREME COURT OF QUEENSLAND

CITATION:	*O'Hara v Sims* [2008] QSC 301
PARTIES:	**BRIAN O'HARA** (plaintiff) **v** **CLIFF SIMS** (defendant)
FILE NO:	11608 of 2007
DIVISION:	Trial Division
PROCEEDING:	Civil jury trial
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	3 November 2008
DELIVERED AT:	Brisbane
HEARING DATE:	27 October 2008 – 30 October 2008
JUDGE:	Chesterman J
ORDER:	I rule that the publication of the defendant's letter of October 2007 attracts the defence of qualified privilege pursuant to s 30 of the Defamation Act.
CATCHWORDS:	DEFAMATION – ruling on defence of qualified privilege
COUNSEL:	Mr Thomas Hughes AO QC with Mr Patrick McCafferty for the plaintiff Mr Anthony Collins for the defendant
SOLICITORS:	Nyst Lawyers from the plaintiff Gall Standfield & Smith for the defendant

Ruling on defence of qualified privilege

[1] At the conclusion of the evidence I heard submissions from the parties on the availability of the defences of justification, honest opinion and qualified privilege. I ruled that there was insufficient evidence to support the first two defences which were accordingly withdrawn from the jury's consideration. I reserved my ruling on the question of qualified privilege until after the jury had delivered its verdict with respect to the only matters left to them: whether the defendant's publication carried the imputations alleged by the plaintiff and, if so, whether they were defamatory.

[2] The jury's answers were that two of the imputations were conveyed by the letter but that neither of those was defamatory. Accordingly, I gave judgment for the defendant.

[3] At the invitation of counsel for the plaintiff I gave my ruling on qualified privilege. It was appropriate to make the ruling notwithstanding the jury's verdict because should a successful appeal be brought from the verdict the question of qualified privilege will determine the result of the trial.

[4] Accordingly I indicated my ruling which was that the defendant's publication was privileged and for that reason too, gave judgment for the defendant.

[5] I told the parties I would deliver written reasons for my ruling. These are my reasons.

[6] By paragraph 6 of his defence to the further amended statement of claim the defendant pleaded that his letter of October 2007 was published in circumstances in which the recipients, who were the members of the Gold Coast Turf Club, had an interest in receiving the information set out in the letter.

[7] Section 6(2) of the *Defamation Act* 2005 provides that the Act does not affect the operation of the general law of defamation except to the extent that the Act otherwise provides. Subsection (3) provides that when ascertaining the general law the *Defamation Act* 1889 is to be completely ignored.

[8] Under the general law it was for the judge to determine whether a defamatory imputation was published on a privileged occasion, or whether the publication was privileged – *Adam v Ward* [1917] AC 309 at 318, with the qualification that if malice were pleaded in answer to a defence of qualified privilege, the jury were to determine whether the publication was malicious.

[9] Although malice was raised by the plaintiff in his second further amended reply filed by leave on 25 September 2008, that allegation has been withdrawn and is not relied upon.

[10] Section 30 of the *Defamation Act* has altered the law relating to qualified privilege though not the rule that it is for the judge to determine whether the occasion or the publication was privileged. Section 30 provides:

> '(1) There is a defence of qualified privilege for the publication of defamatory matter to ... the recipient if the defendant proves that –
>
> (a) the recipient has an interest or apparent interest in receiving information on some subject; and
>
> (b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and
>
> (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.
>
> (2) ...
>
> (3) In determining ... whether the conduct of the defendant ... is reasonable in the circumstances, a court may take into account –

(a) the extent to which the matter published is of public interest; and

(b) the extent to which the matter published relates to the performance of the public functions or activities of the person; and

(c) the seriousness of any defamatory imputation carried by the matter published; and

(d) the extent to which the matter published distinguishes between suspicions, allegations and proven facts; and

(e) whether it was in the public interest in the circumstances for the matter published to be published expeditiously; and

(f) the nature of the business environment in which the defendant operates; and

(g) the sources of the information in the matter published and the integrity of those sources; and

(h) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person; and

(i) any other steps taken to verify the information in the matter published; and

(j) any other circumstances that the Court considers relevant.'

[11] It will be observed that when judging whether the publication of defamatory matter was reasonable the inquiry is not limited to the particular topics identified in subsection (3) nor is it necessary to have regard to any of them. The subsection provides only that the Court 'may' take the enumerated circumstances into account. In a particular case none of those factors may be relevant though one expects that in most cases some at least of them will be, while other factors relevant to the question of reasonableness of publication will be pertinent.

[12] To appreciate the arguments of the parties on the question of qualified privilege, it is necessary to set out some of the background facts which emerged at the trial.

[13] The plaintiff and defendant are both members of the Gold Coast Turf Club. The defendant is a life member and for about 40 years trained horses which raced at the Gold Coast track which was located at Bundall. The defendant was made a life member for his services to the club. The plaintiff has also been a member for a very long time. He was elected to the committee in 2003 but defeated at the election for committee members held in October 2007. Elections for committee members are held every two years. Between 2005 and 2007 the plaintiff was the deputy chairman of the club.

[14] The club is an incorporated company and the committee members are its directors and constitute its Board.

[15] There was an election for the members of the committee of the Turf Club in October 2007. It was conducted by a postal ballot of members. The plaintiff stood for re-election and anticipated succeeding the retiring chairman, Mr Millican, who was not contesting the election. The defendant wrote a letter to all members of the club urging them not to vote for the plaintiff and expressing his own opinion which was critical of Mr O'Hara. Whether for that reason or some other the plaintiff was unsuccessful in his bid to remain on the committee. He complains that the defendant's letter defamed him.

[16] It is, I think, a fair inference from the evidence that the October 2007 election for the committee had generated more than usual interest and perhaps excitement amongst the membership. The reason is that the committee had been contemplating relocating the activities of the club from its premises at Bundall to Palm Meadows. The occasion for that contemplation was an approach made by Eureka Fund Management ('Eureka'), a developer or financier, which had suggested to the committee very early in 2007 that it was interested in developing a new racetrack on land owned by an overseas investor. There was a suggestion that the new development would be large and opulent with several new tracks, larger in extent than the existing facility at Bundall; a purpose-built concourse for the conduct of the Magic Millions Annual Sale; a luxury hotel; training facilities; offices and residential development. There was a vague promise that the new structure would be equivalent in size and prestige to the racecourses in Singapore and Hong Kong and rival those of Flemington and Randwick.

[17] No detail appears to have been provided about the structural or financial feasibility of the new racecourse development. The designated land was on a flood plain and, of course, the suggested development would be very expensive. However it held out the prospect that the Gold Coast Turf Club would become of national importance to racing. Presumably it depended upon the Bundall land being transferred to the developer and sold to raise sufficient monies to enable the construction of the new racecourse and allow the developer to make a profit, either from the new construction or the sale of the old site.

[18] The idea (I hesitate to call it a proposal because that word took on particular significance in the course of the trial) never proceeded to the stage where any detail was given to the committee of the club. No valuation of the Bundall site was undertaken and no engineering evaluation of the new site was provided to the committee. The idea, in its embryonic form, enjoyed the support of Mr Bently, the chairman of Queensland Racing, the entity which controls racing and race clubs in Queensland. Mr Bentley appears to have urged the committee to give favourable consideration to the new development and relocation to boost racing in the State by the provision of a first-class facility.

[19] In February 2007 the chairman, Mr Millican, advised his committee that he had been invited to attend a meeting 'from a consortium ... interested in a proposed redevelopment and/or relocation.' The consortium 'would have a proposal prepared to present to the ... March board meeting.'

[20] On 26 February 2007 Mr Bentley wrote to the directors of the club:

> 'As you are aware, there have been a number of media reports in relation to the potential relocation of the Gold Coast Turf Club ...
>
> It is understood that the proposal has reached a point where the GCTC Board needs to become involved and consider its position ... . The proposed development of the Palm Meadows site has advanced to a position where it is viewed by many as a possible solution to improving the status of the GCTC to a significant level.'

The letter then set out a summary of 'the current position' and went on:

> 'Actions required from the Board ... are ...
>
> - Compile lists of project supports;
> - Compile lists of people who will work with the Board to inform members; and
> - Consider funding model for the planning and development works.
>
> ...
>
> ... You will be contacted in the near future by an officer of QRL with a view to establishing a suitable date so that a presentation to your full Board can be facilitated.'

[21] On 27 March 2007 the prospective developer and its architects 'presented a concept plan' to the committee members after which the committee met and resolved unanimously:

> '1. That the proposer be granted six months exclusivity to conduct their due diligence and feasibility.
>
> 2. If the results of the due diligence and feasibility conducted by the consortium were satisfactory to the ... club the Board ... would support the move to Palm Meadows. It was further agreed that after an information session to members ... the Board would ascertain the members' agreement or otherwise to the move ...'.

[22] On 29 March 2007 Mr Steven Davoren, a member of the club, wrote to its chief executive officer:

> '... I was deeply disturbed by an article in yesterday's ... Bulletin ... .
>
> I do not believe anything just because the local paper states it and for this reason wish to give the committee the opportunity to set out their side of the story.
>
> My concerns are as follows:

(1) What is the likely result with ownership of the property at (Palm Meadows) and debt level of the club?

(2) What other alternatives have been looked at and has the club called for other alternatives?

(3) Is a fully detailed proposal available to the members to inspect? ...

(4) After the members have been given the proposal, what opportunity will be given to the members to question the proposal before the vote?

(5) Will the members be given a chance to voice their views?'

There was no reply to the letter.

[23] News or rumours of the possibility of a relocation and development of a super race track reached the members. As one would expect, opinion was polarised: there were those who thought the move exciting and those who were attached to the old course and the old ways and did not want to contemplate moving. There appears to have been particular opposition to the move by a group of trainers and their adherants. A meeting of about 30 of them on 30 March 2007 expressed their concerns. It was addressed by the plaintiff who was deputy chairman of the Turf Club. Mr O'Hara spoke in favour of the relocation. He said, according to Mr Davoren, that the club would move whether the trainers and strappers liked it or not and that it was the best future for the club. He also said that the move would not occur unless it was on terms that the club would own the new premises debt free and that the club would not have to pay anything for the relocation.

[24] The two statements are hard to reconcile. I think it likely that Mr O'Hara did positively assert the advantages of the move and his firm support for it with the caveat being expressed *diminuendo*.

[25] On 3 April 2007, three days after the meeting at the stables, Mr Davoren and Mr Eggleston, another member, wrote to the chief executive officer of the Turf Club requisitioning a special general meeting to consider resolutions that:

1. The committee should immediately set up an information process for any decision relating to the relocation. The process was to include calling for information from members and other affected parties which would: identify the risks, detriments and benefits of the relocation, and risks, detriments and benefits of remaining at Bundall; identify whether there were any alternative proposal to alleviate problems caused by large race meetings; ascertain the value of the Bundall realty.

2. Would amend the constitution to restrict the power of the Board to enter into transaction to give effect to the relocation by requiring 66 per cent of the votes of members at a special general meeting.

The request for the special general meeting was supported by the signatures of 200 members.

[26] On 18 April 2007 Mr Millican wrote to all members of the club:

> 'The committee ... recently received a preliminary proposal from a consortium to relocate the turf club to a new site at Palm Meadows.
>
> The club has accepted the offer by the consortium to provide information to members over the next four to six weeks.
>
> The committee is proposing that members be contacted in early June to consider the proposal and vote upon its acceptance or otherwise.
>
> A detailed information session for all members, stakeholders and the public will be held in late May in order that everybody is fully informed regarding the proposition ... . It is anticipated that dates will be finalised in the next fortnight.'

There followed a summary of the proposed developed expressed in terms that made it attractive. Enclosed with the letter was a photograph of a large modern grandstand which was described as an artist's impression of the 'new Gold Coast racecourse Palm Meadows' and a schematic plan showing the new course and associated residential and commercial development. The letter concluded:

> 'Please be assured that your committee will review in detail all aspects of this proposal and looks forward to your input into the discussions relevant to this major decision.'

[27] It is relevant to interpolate that no detailed proposal has ever been received from the developer or Queensland Racing. No proposal has been put to the members for their approval and no 'information session' was ever convened and the members were never given notice that there would be such a meeting to inform them about what was proposed by way of redevelopment and relocation.

[28] There was a meeting in May 2007 between the chairman and deputy chairman of the Turf Club with representatives of Eureka, its architects, accountants and solicitors which was 'disappointing' as 'no further concrete information was offered by the consortium' and no exposition from Queensland Racing of the extent to which it might contribute or assist. The Turf Club chairman advised the financiers and their consultants that the club would require substantial and detailed information before it could ask the members for their support. He expressed his disappointment that the developers had not worked out a detailed plan which could be considered and discussed with the members. He described the meeting as a 'waste of time' and said there was 'no proposal to consider' because of the developer's failure to provide any sufficient information.

[29] On 4 May 2007 the Gold Coast Bulletin published an article based largely upon an interview given to Mr Mossop, a journalist, by the plaintiff Mr O'Hara.

[30] I infer that Mr O'Hara's interview with Mr Mossop was a result of the voiced opposition to the move by a number of club members and that he sought to present positive aspects on the proposal, such as it was, to persuade the wider public and the club membership to support it.

[31] The article read:

> 'Move and move on or stay and stay forever provincial
>
> Those are the options the 2,500 members of the Gold Coast Turf Club will be faced with when an ambitious racetrack relocation plan is put to them next month, according to deputy chairman Brian O'Hara.
>
> The proposal calls for the sale of the Bundall complex and construction of several tracks, a modern club grandstand and parking areas, stables and Magic Millions complex on a new site at Palm Meadows. At stake is recognition of thoroughbred racing on the Gold Coast as a metropolitan entity which would bring with it metropolitan meetings and increased prize money ... .'

[32] There followed an account of opposition to the relocation. The article continued:

> 'Another staunch champion of the move is Dr O'Hara, who a year ago was sceptical, but who now stands convinced of the merits of relocation.
>
> "In December I said we should never move," admitted Dr O'Hara, "but this proposition is far too important to be ignored. Bob Bentley (of QR) came down and blew us away.
>
> If we go with this we can have one of the best racing industries in the world."

[33] Further on in the article Mr O'Hara is quoted as explaining that the Bundall site was too small to provide a venue for larger races and could not be extended, and that the new racing complex would provide the opportunity for larger, richer, more frequent race meetings which would attract horses and owners from overseas.

[34] On 18 May 2007 the defendant sent a letter to all other members of the club. It set out his credentials as a member and expressed his opposition to any relocation. He wrote:

> 'My main reason for writing to you is to ask you to give serious thought to the matter or our club being sold off and relocated to a new site at Palm Meadows. For people like me it is difficult to contemplate, after all the years of hard work and money that has been put into making this club a successful racing venture, now a "glitzy" remote development will give the true racing fraternity the same level of servicing and the integrity and identity we enjoy here at Bundall. ...
>
> As members we are entitled to be fully informed on some alternative options for our existing turf club. I am sure that with careful vision and planning, the present racetrack and facilities ... could be restructured and designed to take us well into the future.
>
> ...

> As of today's date, Eureka Funds Management ... has not put the final proposal for the suggested move to the Board. How can any Board members propose what the financial implications are and what is best for the members when the Board is not in possession of the facts. All Board members should wait until they have all the facts before publicly stating a position either for or against the proposal.'

[35] On 12 June 2007 Mr Millican wrote to the executive director of Eureka to set out what the Board required by way of a proposal which it could consider and put to its members. The letter concluded:

> 'As you can appreciate ... there is a substantial amount of work yet to be done before GCTC can put the proposal to its members. Whilst there is some benefit in putting a concept to the members it is important that members are provided with all the information they necessarily need to consider this important decision carefully. It is, in the Boards' view, of no benefit to either the GCTC or the Eureka consortium to put a proposal ... prematurely since this would encourage a rejection on the grounds of inadequate information rather than on the merits or demerits of the proposal.
>
> ... We ... are prepared to meet with you at any time ...'.

[36] There was no reply to this letter.

[37] The Turf Club publishes a quarterly magazine which it sends to its members. In September 2007 Mr Millican wrote:

> 'The release of this issue ... is timely ... as it allows me to address and provide some clarification to one of the most important issues ever to come before our club.
>
> I am aware there has been some speculation that the Board knows more than we are letting on over the proposal ... presented ... by the Eureka consortium concerning a possible relocation ... .
>
> In every statement I have made to the press over the issue, I have said we will reserve any decision ... until such time that all the facts have been presented ... and have been put to the members and key stakeholders for their consideration.
>
> The Board considers it necessary that appropriate due diligence is undertaken on the proposal and that the risks and returns inherent to the members of the Gold Coast Turf Club are fully understood.
>
> ...
>
> As you can appreciate from the above ... we believe there is a substantial amount of work yet to be done before Gold Coast Turf Club can put the proposal to you, our members.

> We see it as essential that all members are provided with all the information needed to consider this important decision carefully, rather than ask you to consider the proposal and your personal position prematurely.'

[38] As I mentioned, the defendant wrote to all members of the club in October 2007 in the course of the election of committee members. This is the letter which the plaintiff complained defamed him. Mr Sims wrote:

> 'This year there are a number of new applicants standing for election ... and I would urge you to closely examine the credentials of each before voting. Last year I supported Brian O'Hara ... and he was duly elected. Unfortunately I now have to say that in my opinion I made a very serious mistake.
>
> As we all know there have been various stories circulating regarding selling our existing facilities and moving to Palm Meadows. Although a number of people have different views on such a move. Those in elected positions such as Mr O'Hara should take into account all available facts before promoting a particular stance. Our chairman, Bill Milligan, has stated in writing it is vitally important that before any decision is made, all the facts should be presented to the Board by the proponents and any decision is made only after those facts have been considered.
>
> What is Brian O'Hara's stance? On May 4th 2007 he is quoted in the Gold Coast Bulletin newspaper as saying 'Move and move on or stay and stay forever provincial'. Everyone is entitled to an opinion, however, Mr O'Hara should remember he was elected to represent 2,700 members of the Gold Coast Turf Club. At the date of making those statements a proposal had been put to the Board of the club and as of today's date no proposal has been put to the club. What was Mr O'Hara basing his views on or was he more interested in self-promotion? Any member of our Board is entitled to their own view but before publicly declaring one way or the other they should at least wait for a proposal to be put forward and consider all the facts, good or bad. His actions are akin to selling your home without knowing how much the purchaser is willing to pay.
>
> In my view this man is now unworthy of a position on our committee. I will not be voting for Brian O'Hara.
>
> Regards and good punting.'

[39] The plaintiff complains that three imputations are conveyed by the letter. They are:

(1) That the plaintiff had engaged in conduct making him unworthy to be a committee member of the Gold Coast Turf Club.

(2) The plaintiff subordinated the due performance of his duty as a committee member of the Gold Coast Turf Club to his interests in self-promotion.

(3) The plaintiff had acted rashly as a committee member of the Gold Coast Turf Club.

[40] Mr O'Hara also complains that each imputation is defamatory. The jury has found that imputations 2 and 3 were conveyed by the letter but that they were not defamatory.

[41] It is necessary to set out some more evidence. Mr O'Hara testified that his views with respect to the prospective relocation were not accurately reported in the Bulletin of 4 May 2007. He explained his position as being that he would support the move if, in his words, it 'stacked up', by which he meant if a detailed proposal was received which showed that the club could relocate to Palm Meadows without cost and there own the new racetrack facilities in its own right and without encumbrance.

[42] That evidence was uncontradicted. Mr Mossop, the journalist, was not called by the defendant though he was announced as a possible witness for the defence when the trial commenced. That the opinion he described was in fact held by the plaintiff is corroborated to some extent by Mr Davoren's evidence which I mentioned.

[43] Mr Davoren also gave evidence that the publication of Mr O'Hara's interview on 4 May gave rise to controversy among club members. A large number of them were critical of it because 'it was seen to be going against the way what they thought to be the proper way to handle' the prospects of relocation.

[44] There is, I think, no doubt that Mr Sims' letter was a communication of such a nature that he had an interest in making it and the members to whom he wrote had a corresponding interest in having it made to them. The communication was therefore privileged unless made maliciously or unreasonably. Malice, as I mentioned, is not asserted. I do not understand the plaintiff to contend that the communication was not privileged on any ground other than the reasonableness of the publication. No submissions were addressed to any other point and it seems to me clear that there was a reciprocal interest between Mr Sims and the other members with respect to the subject matter of his letter. That concerned who should represent them on the committee of their club and in particular the attitude of elected committee members to the proposed relocation. That had been a topic of controversy and disagreement and the attitude of those who sought office to the relocation was of particular relevance to the members when casting their votes.

[45] The plaintiff advances five reasons to show that the publication was unreasonable. They are:

(a) The admitted seriousness of the defamatory imputations.

(b) The flimsiness of the sources relied on by the defendant as a basis for the imputations.

(c) The defendant's failure to ask the plaintiff prior to publication for his 'side of the story'.

(d) The defendant's failure to ask the journalist whether the information he published was accurate.

(e) The defendant's evidence that he would have published the letter anyway even if he had known that the article was an inaccurate representation of the plaintiff's opinions about relocation.

[46] I will deal with them in turn.

[47] It is true that in cross-examination Mr Sims was induced to agree that the imputations were serious. He said:

> 'Did you intend to convey ... that the plaintiff had subordinated the due performance of his duty as a director of the club to his own interest in self-promotion? - Yes.
>
> And that ... was a very serious allegation to convey, wasn't it? - Yes.
>
> Would you agree that in this letter you intended to convey an allegation that the plaintiff had engaged in conduct making him unworthy to be a committee member of the Gold Coast Turf Club? - Yes.
>
> And such an allegation ... would be a seriously damaging allegation about the plaintiff, wouldn't it? - Well, yes, it is.
>
> You would agree, would you not, that you intended to convey in your October letter an allegation that the plaintiff ... had acted rashly as a committee member of the club? - Yes.
>
> And that's a pretty serious allegation against a company director isn't it? - Well, he did.
>
> It is a serious allegation isn't it? - Yes, I suppose it is.'

[48] I do not share that assessment of the imputations. The circumstances of the case make it completely inappropriate as the subject of an action in the Supreme Court. If the plaintiff felt obliged to sue an 88 year old man who had been made a life member of the Gold Coast Turf Club for his decades of contribution to it because he wrongly criticised him for his attitude on a point about which the defendant felt strongly, common sense and proper advice should have taken him to the Magistrates Court.

[49] The case is one of defamation to a limited audience, all of whom had an interest in receiving Mr Sims' views of the appropriateness of Mr O'Hara as their representative on the committee. Mr O'Hara's vanity may have been ruffled and his pride pricked by the criticisms but in the context of what was, I was told, a heated election campaign involving 'one of the most important issues ever to come before (the) club' the imputations are best described as anodyne.

[50] The case is concerned with an internal division of opinion amongst the members of a provincial turf club as to the proper processes for evaluating a prospect of

relocation. To say of one of the committee members seeking re-election that he was rash and self-promoting and thereby unfit for the office may have affected the outcome of the election and given the plaintiff less cause for self-satisfaction than he otherwise felt, but they do not deserve the appellation of 'serious allegations' warranting a trial in this Court.

[51] The next three grounds can be taken together because they have a common theme. It is that Mr Sims had no basis for his criticisms of Mr O'Hara other than that which he asserted in the letter and which he took from the 4 May article. That was that Mr O'Hara supported the relocation though no proposal worthy of the designation had been received and there was nothing on which to base a rational decision to move.

[52] That is the tenor of the article because it portrays Mr O'Hara as advocating the move and expressing enthusiasm for it at a time when it was known there was no such proposal. Had that been the fact then the criticisms would have been justified. It would have been rash to promote a move without knowing anything of the circumstances of the move and to promote it publicly in the local newspaper would well give rise to the inference that the plaintiff was seeking self-promotion and not performing his duty of making a decision on proper facts in the best interests of club members. Such rash conduct would give rise to questions about his fitness for office.

[53] But the facts were otherwise. Mr O'Hara's support was conditional and the condition of his support meant that he was not acting wantonly in promoting the relocation.

[54] The publication is said to be unreasonable because Mr Sims assumed without checking with either the plaintiff or Mossop whether the article correctly represented the plaintiff's opinion.

[55] This point, which is the plaintiff's main point, is met by the plaintiff's inactivity. He did nothing to correct the erroneous representation of his views to the world, or that part of it which reads the Gold Coast Bulletin. His reason for not seeking a correction was that there was 'not much point' in complaining: a complaint 'wouldn't get anywhere, would achieve nothing' so he 'wouldn't bother'.

[56] Whether one finds that convincing or not, the point is that Mr O'Hara let the representation of his opinion which appeared in the article stand uncorrected. He did not write a letter to the editor of the Bulletin for publication in which he expressed the important qualification to his support for the relocation, nor did he seek Mr Mossop's co-operation in having a correction published in a subsequent edition. Nor did he seek to communicate with the members of the club who might read the paper. This last point is important. The article did stir up controversy and some criticism of Mr O'Hara's view which, as expressed in the newspaper, was rash in his support for the relocation without a detailed proposal. Mr Sims expressed his particular objection in his letter of 18 May 2007 which the plaintiff received and read. He made a particular point of the inappropriateness of making a decision without proper material.

[57] Mr O'Hara did nothing to correct the misconception. He did not even respond to Mr Sims personally by an individual letter. Nor did he speak to him at the club which he attended every Saturday for the races. It would have been easy and

without cost to explain to Mr Sims that he had been misquoted and that his opinion on the move, though it differed from Mr Sims', was sensibly based. Nor did he take the opportunity of submitting an article in the spring issue of the club magazine circulated, without cost to him, to the members in which he could have clarified his position.

[58] In these circumstances it is not surprising that the defendant should assume the correctness of the newspaper article. On a matter of particular importance to the membership the plaintiff allowed his views to be seriously misrepresented and made not the slightest effort to have his real opinion promulgated, not even to the defendant whom he saw every week at the races. The plaintiff must have expected that people would assume his views were those reported by Mr Mossop.

[59] In a real sense he brought the defendant's criticisms on himself.

[60] It is right that much of what one reads in newspapers is not true: but much of it is. The lack of any effort at any level to correct the error in the article would lead naturally to the conclusion that it was correct.

[61] The last point is that the publication was unreasonable because Mr Sims said he would have written his letter whether or not he had known that the 4 May article did not accurately record the plaintiff's opinions. The defendant's acceptance of that proposition in cross-examination was, however, immediately qualified by his explanation that he firmly believed that the views attributed to Mr O'Hara in the article were, in truth, his views. The question put to him was hypothetical: 'if you knew that Mr O'Hara did not think the club should relocate in the absence of a detailed proposal would you still have written the letter?'. His answer was a rejection of the hypothesis. He said:

> 'If you had known it to be the fact that Dr O'Hara was not unconditionally in favour of the relocation proposal, you wouldn't have expressed the criticisms that you did express in your letter, would you? - I would have ... because Dr O'Hara spoke to many people at the track ... . I wasn't going on what I read in the paper. I was going on what other members of the club had told me.
>
> ... Would you agree that if the Mossop article did not accurately express Dr O'Hara's views on the relocation proposal you might not have written in the terms you did? - No. I don't think that would make any difference. The number of people that came to me at the club on a race day saying that he was running around, they say he was a salesman for the sale of the club'.

[62] Mr Sims made it clear he based his letter on three things. One was his assumption that the article was correct: the second was what he was told by others at the club about what the plaintiff himself had said: and the third was what Mr O'Hara had said to the plaintiff in their last conversation in April 2007. The plaintiff and defendant disagree as to the precise content of the conversation but the versions coincide in this: that the plaintiff expressed some level of support for the relocation while the defendant was adamantly opposed to it, but nothing was said by the plaintiff to explain that his support was conditional upon the proposal 'stacking up'.

[63] There is a degree of imprecision about the evidence of what the plaintiff's views as expressed to members of the club were. It is, I think, a fair inference that Mr Sims understood the plaintiff to be supportive of the move in circumstances where he knew no detailed proposal had been received. The plaintiff's failure to correct the error in the article would serve to reinforce the defendant's assessment of Mr O'Hara's position, to say that he would have published his letter regardless of his state of knowledge of the plaintiff's opinions. He published because he thought the opinions were those expressed in his letter. His error was very largely the product of the plaintiff's decision to let the error go uncorrected.

[64] I do not accept that the evidence establishes that the defendant would have published his letter if he knew the plaintiff did not advocate the relocation unconditionally.

[65] In my opinion the circumstances which make the publication of the letter the occasion of qualified privilege establish that the publication was reasonable in the circumstances. The defendant was a life member of the club with a long history of service to it. His communication was limited to other members of the club, all of whom shared a common interest in the election of committee members. The question whether the club should relocate was one of particular importance and controversy and of interest to the club's members. It was of concern to all members that any decision, whether to go or stay, should be made advisedly and after a careful review of all relevant facts. That a prospective committee member advocated acting wantonly with regard to the decision was a matter of particular importance to members and should properly be brought to their attention. The plaintiff had made himself available for an interview by the Gold Coast Bulletin which suggested that he was in favour of the move when no proper factual basis for such a decision had been provided. The plaintiff did not correct that version of his views either generally or by private communication to the defendant or any other member.

[66] Another factor of significance is that the committee did not at any time inform the members of the progress, or lack of it, of the dealings with Eureka. The promised 'information session' was not convened and the members were told nothing about the terms of any proposal for the relocation. That was because there was no proposal to put to them, but they were not told that. As late as September Mr Millican wrote in clear terms suggesting that a detailed proposal was expected. The elections were held in the following month. It was an obvious point of interest and importance to the membership that when the expected proposal arrived it be considered carefully. The article written following the interview with Mr Mossop did not suggest that Mr O'Hara would give it that careful scrutiny.

[67] This recital of the circumstances of the publication are enough to establish its reasonableness. The particular objections of the plaintiff are without substance. Accordingly I rule that the publication of the defendant's letter of October 2007 attracts the defence of qualified privilege pursuant to s 30 of the *Defamation Act*.