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One of the worst things that can be said of a person

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Grattan v Porter [2016] QDC 202

Facts

The plaintiff (**Mr Grattan**) and his wife were historically close friends with the defendant (**Ms Porter**) and her husband. That relationship ended in about January 2011, and soon afterwards the Grattans began to hear rumours to the effect that Mr Grattan was a paedophile.

Some years later, on the evening of Friday 7 March 2014, the Grattans and the Porters both attended a golf club, albeit separately. During the course of the evening, Ms Porter's daughter, at her mother's request, obtained details about one of the children at the Grattan's table (**CD**), including her name and school, and reported them to Ms Porter.

The next Monday, Ms Porter telephoned the school and asserted to the staff that:

1. She was concerned about a girl that attended the school who had now come in contact with Mr Grattan; and
2. Mr Grattan had acted inappropriately with her daughter and had been visited by child protection and the police.

Relevantly, Ms Porter was the person who had made the reports to the police and child protection in early 2012, and those reports were found to be baseless. She did not inform the school of this. There was also no relationship between Mr Grattan and the school.

A staff member at the school then telephoned CD's mother and informed her that the school had received a telephone call from someone who did not wish to be named, but that she was concerned her children were hanging around with a known paedophile in the name of Robert Gatten [sic].

Mr Grattan became aware of the above conversations. Although he suspected the Porters' involvement, he did not know for certain. Consequently, he applied to the Supreme Court for leave to deliver a list of questions to the school to ascertain the identity of the person who had telephoned the school and through the answers learned it was in fact Ms Porter. He then commenced defamation proceedings against Ms Porter, the school and two of its staff members.

Mr Grattan discontinued his case against the school and its staff members shortly after commencement.

The case against Ms Porter was that she published material in the course of her two conversations with the school which was defamatory of Mr Grattan in that it contained imputations that he was a paedophile.

Issues

The court was required to consider the following issues:

1. Whether the subject matter of the conversations between Ms Porter and staff members of the school contained the imputation that Mr Grattan was a paedophile.
2. Whether the defences of justification, statutory qualified privilege or common law qualified privilege applied.
3. Whether Ms Porter was motivated by malice and the effect that should have on the availability of the qualified privilege defence and the award of damages.

4. What the award of damages should be, factoring in the gravity of the allegations made about Mr Grattan and the extent of the publication.

Decision

Robertson DCJ found that the words spoken by Ms Porter in her conversations with the staff members of the school carried the imputation that he was a paedophile. Although Ms Porter did not actually use the word "*paedophile*" in her conversation with the school, Robertson DCJ observed at [70] of the judgment that:

...in this day and age, if you suggest inappropriate dealings with children, then unless you clarify it in some way, you are undoubtedly taken to mean sexually inappropriate. Certainly, to suggest that an older male has been inappropriate with little girls or with someone's daughter is to suggest that they have been sexually inappropriate. It is common knowledge, probably more so now than ever before, that someone who displays a sexual interest in children is a paedophile.

Mr Grattan had therefore established that the publications by Ms Porter to the school contained imputations that were defamatory of him, and it was then a matter for Ms Porter to try to establish a defence.

Ms Porter had four limbs to her defence, but was ultimately not successful on any of them:

1. Justification, under s 25 of the *Defamation Act 2005* (Qld) (**Defamation Act**);
2. Qualified privilege at common law;
3. Qualified privilege under s 30 of the *Defamation Act*; and
4. A defence said to arise under s 197A of the *Child Protection Act 1999* (Qld) (**Child Protection Act**).

Robertson DCJ found that Ms Porter:

1. Unreasonably believed, against all the objective evidence, that Mr Grattan was a paedophile;
2. Caused her daughter to make intrusive enquiries of another child with the intention of using that information to further hurt Mr Grattan; and
3. Was motivated by spite and malice in her conversations with the school.

The defence of justification is only available if a defendant is able to prove that the defamatory imputations were substantially true. In view of the finding that Mr Grattan was not a paedophile, that defence was not available.

The defences of qualified privilege at common law and under the Defamation Act each have at their core the concept that there needs to be a reciprocal duty or interest in publishing/receiving the defamatory communication, and an absence of malice.

Robertson DCJ emphasised that although the school clearly had an interest in receiving genuine information relevant to the safety of its students:

it cannot be said that they had an interest or apparent interest in receiving that kind of information when there was no substance and no reasonable basis for it.

The common law defence failed because there was no imminent risk to life or property, and Ms Porter was not otherwise under a duty to divulge the information that she did. Robertson DCJ's conclusion that Ms Porter was motivated by malice further undermined this defence.

The statutory qualified privilege defence, with its additional emphasis on the reasonableness of the defendant's conduct in making the actual publications, failed.



Ms Porter was found not to have acted reasonably, because:

1. She did not attempt to distinguish between suspicions, allegations and proven fact;
2. She did not attempt to obtain and publish a response from Mr Grattan;
3. She did not disclose the background of the relationship between the parties; and
4. She had previously reported similar allegations to the police, which were found to be baseless.

As to the Child Protection Act defence, it can potentially provide immunity to parties who report child safety concerns, subject to a requirement (among others) that the person who gives the information is 'acting honestly and reasonably'. Ms Porter failed at this first hurdle.

Damages

Robertson DCJ observed that '*the gravity of the imputations and the extent of publication are the most relevant factors when assessing the harmed reputation*', citing *John Fairfax & Sons Ltd v Kelly* (1987) 8 NSWLR 131 [141].

On the one hand, his Honour noted that to falsely call someone a paedophile is one of the worst possible things that might be said about a person.

On the other hand, his Honour observed that care needed to be taken to ensure that the damages in this case bore a rational relationship to the harm caused by Ms Porter in the course of her conversations with the school. This was against a background that there had been other allegations of a similar nature (made unjustly and unfairly) against Mr Grattan. Any harm caused by earlier material published by Ms Porter that was not the subject of this proceeding, and material published by others, needed to be excluded from consideration.

Mr Grattan was awarded \$150,000 in damages, including aggravated damages of \$30,000, plus interest and costs. To put this in context, it is worth noting that the cap on non-economic damages for a defamation case was \$376,500 at the time of the judgment.

Given that the gravity of the imputations was found to be at the top end of the spectrum, it is implicit in Robertson DCJ's findings that

the proven extent of the publication was at the lower end of the spectrum, otherwise the award of damages may have been significantly higher. Save for *Flegg v Hallett*,¹ which is somewhat of an outlier, the award of \$150,000 is still significant for a Queensland defamation case.

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¹ [2015] QSC 167: A case involving widely distributed allegations that a government Minister had seriously misled a Parliamentary Committee, resulting in an award of \$275,000 general damages and \$500,000 special damages for loss of income.

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