

SUPREME COURT OF QUEENSLAND

CITATION: *Roberts v Prendergast* [2013] QCA 47

PARTIES: **SHANE GAVIN ROBERTS**
(appellant)
v
TREVOR PAUL PRENDERGAST
(respondent)

FILE NO/S: Appeal No 5592 of 2012
SC No 7567 of 2010

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 15 March 2013

DELIVERED AT: Brisbane

HEARING DATE: 13 November 2012

JUDGES: Chief Justice, Fraser and Gotterson JJA
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Appeal dismissed.**
2. Liberty to each party to make written submissions with respect to the costs of the appeal within seven days of the date of pronouncement of these orders.

CATCHWORDS: DEFAMATION – DAMAGES – GENERAL DAMAGES – ASSESSMENT – where the jury found that the defendant made defamatory statements about the plaintiff in three conversations – where damages were assessed at \$54,375 by the trial judge – whether that sum had an appropriate and rational relationship to the harm sustained as required by s 34 of the *Defamation Act* 2005 (Qld) – where there was regard given by the trial judge to the grapevine effect of defamatory statements made – whether it must be proved that the publication of the defamatory remarks caused any actual damage to the plaintiff’s reputation – whether medical evidence is required when assessing the emotional impact of defamatory statements on the plaintiff
Defamation Act 2005 (Qld) s 22(3), s 34, s 38
Bristow v Adams [2012] NSWCA 166, cited
Carson v John Fairfax and Sons Ltd (1993) 178 CLR 44; [1993] HCA 31, cited
Cassell & Co Ltd v Broome [1972] AC 1027; [1972] UKHL 3, applied

Crampton v Nugawela (1996) 41 NSWLR 176; [1996] NSWSC 651, followed
Jameel v Dow Jones & Co Inc [2005] QB 946; [2005] EWCA Civ 75, followed
Rogers v Nationwide News Pty Ltd (2003) 216 CLR 327; [2003] HCA 52, applied
Uren v John Fairfax & Sons Pty Ltd (1966) 117 CLR 118; [1966] HCA 40, applied

COUNSEL: P A Freeburn SC for the appellant
R J Anderson for the respondent

SOLICITORS: Cooper Grace Ward for the appellant
Bennett & Philp for the respondent

- [1] **CHIEF JUSTICE:** I have had the advantage of reading the reasons for judgment of Gotterson JA. I agree with the orders proposed by His Honour, and with his reasons.
- [2] **FRASER JA:** I agree with the reasons for judgment of Gotterson JA and the orders proposed by his Honour.
- [3] **GOTTERSON JA:** Shane Gavin Roberts, the appellant, appeals against a judgment entered against him on 1 June 2012 in favour of Trevor Paul Prendergast, the respondent in proceedings BS7567 of 2010 for damages for defamation brought by the respondent against the appellant in the Supreme Court. A trial in the proceeding was held in Brisbane before a judge and jury over two days commencing on 28 May 2012. Submissions on damages were made on the third day of the trial and after the jury had delivered its verdict.
- [4] At trial, the jury found that the appellant had made certain statements about the respondent to three men at separate times and that the statements conveyed meanings which were defamatory of the respondent in particular respects. No defence to the defamations had been pleaded. In accordance with s 22(3) of the *Defamation Act 2005* (“Defamation Act”), the learned judge proceeded to determine damages.
- [5] An award of general damages of \$50,000 was made. Although aggravated damages were claimed by the respondent, no award on that account was made. Judgment was entered for the amount of \$54,375 including interest of \$4,375. The appellant was ordered to pay the respondent’s costs on an indemnity basis as if the proceeding had been brought in the District Court.

Notice of Appeal and grounds of appeal

- [6] On 25 June 2012, the appellant filed a Notice of Appeal. No issue was taken by the appellant with the jury verdict. The appeal is against the damages assessed.
- [7] In summary, the grounds of appeal are that the learned judge erred in two respects, namely:
- (i) in finding that the sum of \$54,375 comprised damages which had an appropriate and rational relationship to the harm sustained as required by s 34 of the *Defamation Act*; and

- (ii) in failing to find that the respondent had not proved any damage to his reputation by reason of the defamatory statements and that, accordingly, nominal damages were appropriate.

- [8] The appellant seeks orders which would set aside the judgment, substitute a judgment for the respondent of \$1 damages and require the respondent to pay the appellant's costs of both proceeding BS7567 and this appeal.¹
- [9] Analysis of the appellant's grounds of appeal must be undertaken with regard for the defamatory statements, the circumstances in which they were made, and their impact on the respondent.

The defamatory statements and their circumstances

- [10] The respondent has been a registered builder in a provincial city in Queensland since about 1975. He was regularly engaged by Mr Michael Shore to construct sheds for customers of Mr Shore's business of providing shed solutions.² The appellant had approached Mr Shore to invite him to quote to build new premises for the former's company. The company conducted a powder coating and sandblasting business. Mr Shore referred the appellant to the respondent.
- [11] The respondent and the appellant's company entered into a building contract for construction of the premises in 2008. Handover took place at the end of January 2009. By 20 February 2009 the appellant had written a letter to the respondent listing a number of complaints about the building. They included breaks in concrete and cracks in the workshop floor. On 18 May 2009, the appellant and the respondent held a meeting about the concrete. It became acrimonious. Both sides engaged lawyers.
- [12] The respondent's claim in the proceedings concerned statements made on separate occasions by the appellant to Mr Shore, to the respondent's apprentice, Brock Woods, and to a subcontractor who had done work on the new premises, Timothy Minchell.
- [13] The jury specifically found that the appellant had made statements to Mr Shore which carried defamatory meanings that the respondent was "an incompetent builder", that he was "a dishonest builder", and that "his reputation (was) so bad that any person doing business with him (was) ruining their own reputation". On the evidence, the learned judge found that these statements were made during a conversation of 10 minutes duration at the appellant's premises on a day in the latter part of 2009. No one else partook in the conversation. Mr Shore recollected that possibly others walked past as the conversation took place.
- [14] The jury's finding was that the respondent made statements to Mr Woods which conveyed the defamatory meaning that the respondent was "an incompetent builder". The statements were made on an occasion in July 2009 when Mr Woods was at the appellant's new premises to inspect saw-cuts and to take measurements. This conversation with the respondent lasted up to 10 minutes. Only they participated; others were within earshot, but there was no evidence that any of them heard what was said.

¹ AB301.

² According to Mr Shore, he had had "many dealings with (the respondent) over the years." Tr1-34 L30.

- [15] With regard to Mr Minchell, the jury found that the appellant made defamatory statements to him which meant that the respondent was “an incompetent builder” and “a dishonest builder”. The statements were made at a job site unrelated to the respondent in November 2009. The appellant was driving by, stopped, and then engaged Mr Minchell in a conversation of about 10 minutes duration. At the time two other subcontractors were standing about five metres away having their own conversation.
- [16] The jury’s findings were made after they had heard evidence from Messrs Shore, Woods and Minchell. The jury had also heard evidence from the appellant who, in both pleadings and sworn testimony, had denied that each of the statements attributed to him had been made.

Impact of the defamatory statements on the respondent

- [17] The learned judge regarded it as clear from the evidence that the respondent’s reputation among his work associates was of honesty and that he was held in high regard. It was also clear from the respondent’s own evidence that his standing was a matter of importance to him.³ Her Honour considered that he was given to understatement in his testimony.
- [18] Both Mr Minchell and Mr Woods gave evidence, accepted by the learned judge that, on occasions when they discussed with the respondent what the appellant had said about him, the respondent was upset. According to Mr Minchell, his body language was agitated. Both noticed that his voice altered to being choked or high pitched. A fellow tradesman and friend of the respondent, Mr Justin Simpson, who also gave evidence, spoke of the observable impact that the defamatory statements had had on the respondent’s emotional state.
- [19] The respondent underwent counselling by a medical practitioner for stress in late 2009. The learned judge readily accepted that the defamatory statements were a significant cause of the respondent’s emotional problems. Her Honour observed:
 “... This was supported by the evidence of [the respondent’s wife] who observed the plaintiff at this time becoming increasingly uncommunicative and unsociable and increasing his frequency of drinking alcohol. The plaintiff’s distress on becoming aware of the defamatory statements was compounded by his concern for those whose work had depended on him, including Mr Simpson and Mr Shore. It was apparent from the plaintiff’s embarrassment whilst giving evidence and the emotion that was still evident that he has been hurt and distressed significantly by the making of the defamatory statements.”⁴
- [20] Each of Mr Minchell and Mr Woods gave evidence that the good opinion that they had held of the respondent had not been diminished on account of the defamatory statements, nor had their respective good business and employment relationship with him been thereby impaired.
- [21] Mr Shore agreed that the positive view that he had held of the respondent’s ability was not going to be changed by the short conversation he had had with the

³ Reasons [15].

⁴ Reasons [25].

appellant. However, he gave evidence that some little time after hearing the defamatory statement made to him, he had had a conversation with the respondent in which he expressed his concern that there was a possibility that his own business could be harmed by virtue of the association between their respective businesses if word “got out” of the defamatory statements that the appellant had made about the respondent. At that point, Mr Shore told the respondent, as was the fact, that he was looking to other builders for business. Mr Shore stated that he ceased dealing with the respondent for business in 2009.

Principles applied

- [22] The learned judge noted that it was common ground between the parties that, at common law, an award of general damages serves three purposes which overlap. They are to provide reparation for the harm done to the personal and, if applicable, business reputation of the person defamed, to give consolation for the personal hurt and distress caused by the publication, and to vindicate the person’s reputation.⁵
- [23] The continued applicability of this common law principle in Queensland is assured by s 6(2) of the *Defamation Act*, subject to what the learned judge described as “the guiding principle”⁶ in s 34 of the *Defamation Act*. That principle is that in determining the amount of damages, the Court is to ensure that there is an appropriate and rational relationship between the harm sustained and the amount determined. It is, I think, quite clear that when s 34 speaks of harm sustained by the plaintiff, it comprehends the range of harms to a plaintiff for which, at common law, the three purposes seek to compensate.

The assessment of damages

- [24] The learned judge proceeded to enquire into, and make findings with respect to, whether the respondent’s reputation had been harmed, whether the respondent had suffered hurt and distress, and the need for vindication of the respondent’s reputation.
- [25] Her Honour rejected the appellant’s submission that injury to reputation had not been proved in that the three individuals to whom the defamatory statements had been made, disavowed that they thought less of him on account of the statements. She found that the respondent’s reputation had been harmed. The finding is expressed in the following terms:
- “I do accept, however that even the limited publication of such serious defamatory statements could not fail to harm the plaintiff’s reputation when account is taken of the grapevine effect, particularly in a regional centre when the defendant did not ensure that all persons were out of hearing distance other than the party to the conversation: *Crampton v Nugawela* (1996) 41 NSWLR 176, 193.”⁷
- [26] With respect to hurt and distress resulting from the defamatory statements, the learned judge found that they were “significant” in view of the evidence to which reference has already been made.⁸ Vindication, her Honour held, was “important in

⁵ *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 per Mason CJ, Deane, Dawson and Gaudron JJ at 60; *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327 per Hayne J at [60].

⁶ Reasons [27].

⁷ Reasons [31].

⁸ Reasons [33].

this case because of the business context in which the defamatory statements were made.”⁹

- [27] After noting that the appellant had not adduced evidence with respect to any of the factors in mitigation of damages listed in s 38 of the *Defamation Act*, the learned judge explained how she arrived at the amount of \$50,000 for general damages as follows:

“[37] ... I accept the submission of Mr Anderson of counsel on behalf of the plaintiff that the hurt caused by the publication and the need for vindication of the plaintiff’s reputation due to the defamatory statements being directed at the plaintiff’s character in connection with his business feature more prominently than the harm caused to the plaintiff’s reputation by the limited publication of the defamatory statements, even though they carried serious imputations.

[38] The harm sustained by the plaintiff for the purpose of s 34 of the Act must cover all the components of the award for compensatory damages and relevantly incorporates the hurt and distress caused to the plaintiff by the defamation and the need for vindication, in addition to the harm to the plaintiff’s reputation. In all the circumstances of this case, I am satisfied that an award of general damages of \$50,000 bears an appropriate and rational relationship to the harm sustained by the plaintiff.”¹⁰

- [28] The respondent sought, and was awarded, interest on this amount at the rate of 3.5 per cent for a period of two and a half years. There is no separate ground of appeal which challenges the basis upon which interest was awarded.

The appeal

- [29] Evidently, the learned judge took into account a range of factual matters in making the assessment. In this appeal, the appellant challenges the validity of her Honour’s reliance upon several of those matters. It is convenient to consider them separately.

Harm to reputation – the grapevine effect

- [30] The appellant challenges the findings set out at paragraph 25 of these reasons. The learned judge plainly regarded the grapevine effect as an inevitable cause of harm to the respondent’s reputation, notwithstanding that the publication of the statements was limited and that those to whom the statements were made did not think the less of the respondent’s reputation.

- [31] The appellant challenges her Honour’s reliance on the grapevine effect. It is not contended by the appellant that, as a matter of principle, regard may not be had to this effect. The thrust of the submission is that no evidential foundation existed in this case for having regard to that effect. A contrast is drawn with the circumstances in *Crompton*, to which her Honour referred, where copies of the defamatory letter were published at a meeting of 22 medical practitioners.

- [32] In this context, the expression “grapevine effect” is used metaphorically to describe circumstances of repetition of the defamatory statement by the person who

⁹ Reasons [34].

¹⁰ Reasons [37], [38].

published it originally or by those to whom that person has published it, to others who themselves repeat it. It is closely similar to the phenomenon of emergence of defamatory matter from its “lurking place” to which Lord Hailsham LC referred in *Cassell & Co Ltd v Broome*¹¹ in the following terms:

“In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.”¹²

- [33] In *Crampton*, Mahoney A-CJ¹³ explained how both the metaphor and the phenomenon were linked to harm and to vindication. His Honour observed:

“In this regard, “the grapevine effect” and the “lurking place” observation of Lord Hailsham are relevant. The award must be sufficient to ensure that, the defamation having spread along the “grapevine” to which Miss McColl SC referred, and being apt to emerge “from its lurking place at some future date”, it was “sufficient to convince a bystander of the baselessness of the charge.”¹⁴

- [34] I am unable to accept the appellant’s submission that there was no evidential foundation from which an inference of a grapevine effect in the present case could be drawn. There was the evidence of Mr Shore of his concern that word would “get out” detailed in the following answers he gave in examination-in-chief:

“And, as a consequence of something that occurred there, you have cause to reflect upon your relationship with Mr Prendergast?-- Definitely, yes.

Okay. In what way? What was your -----?-- I was concerned that there was a possibility that if word was getting out about Trevor, that we were going to lose business and future business because of what was being said.

Why would that impact upon your business?-- I suppose the association with the two different companies.

And how do you perceive the - other - sorry. What's the association between the two?-- Basically so I provide the - shed, and then he would - Trevor would actually supply the building - sorry - supply the construction of the building. So I didn’t have staff that could actually build at that stage.

Now, was that concern something that you expressed to Mr Prendergast?-- Yes, I had.

¹¹ [1972] AC 1027.

¹² At 1071.

¹³ Handley JA and Giles A-JA concurring.

¹⁴ At pp194-5.

And what did you say to him?-- I said that I'd - I was going to contact or be in touch with other builders to actually see whether other construction companies can support our client's needs.

Mmm hmm. That is, you're -----?-- Sorry.

-----looking elsewhere?-- Yes, basically, yeah.

Did you explain to Mr Prendergast why that might be the case?-- Because of this defamation, yeah.

Well, what did you say to him?-- I said to him, 'Look, you know, if things are getting out there about him, because of what was being said, then that's affecting our business as well as his business, and I can't afford to lose, you know, business because of it.', especially when we didn't do the shed at the end of the day.

Now, Did Mr Prendergast say anything back to you when you told him that?-- He said to me he understood that, you know, the reason why I may be looking elsewhere and that may - I can't recall exactly what he said. It was, basically, "If you look elsewhere I'm not going to be offended."¹⁵

[35] That Mr Shore held this concern is both understandable and unremarkable. It can be expected that in a provincial city, those involved in the building industry would notice that a contractor who had habitually engaged a particular subcontractor but had ceased to engage him, and that they would ask why.

[36] Moreover, Mr Shore's concern must be seen as having arisen in the context of a particular defamatory statement which the jury found the appellant had made to Mr Shore. This statement is:

"don't worry, I will be telling everyone about this arsehole Trevor Prendergast".

That statement itself provided a solid foundation for an inference that the appellant himself would repeat to others the defamatory statements that he had made to Mr Shore.

[37] In view of the evidence to which I have referred, the appellant's challenge on this account cannot succeed.

Harm to reputation – other matters

[38] In written submissions¹⁶ the appellant contends that the respondent did not prove, on the balance of probabilities, actual injury to his reputation and, accordingly, a nominal damages award was appropriate. In this context, reference is made to the evidence of the three immediate recipients that they did not think the less of the respondent on account of the defamatory statements.

[39] These contentions are flawed at two levels. At one level, in focusing upon proved actual injury to reputation, they overlook the principle affirmed by Windeyer J in *Uren v John Fairfax & Sons Pty Ltd*¹⁷ that a person who is defamed "does not get

¹⁵ AB23 Tr1-23 L55-AB24 T1-24 L38.

¹⁶ Paragraphs 6 and 7.

¹⁷ (1966) 117 CLR 118 at p 148, cited by Lord Hailsham LC in *Broome* at 1071.

compensation *for* his damaged reputation”. The person “gets damages *because* (they were) injured in their reputation, that is simply because (they were) publicly defamed.”

[40] It is with this principle in mind that courts proceed upon the premise that some damage to reputation results consequent upon the publication of a defamatory statement. The premise also has a practical foundation. As Lord Phillips of Worth Matravers MR explained in *Jameel v Dow Jones & Co Inc*,¹⁸ the premise is preferable to “opening the door to the claimant and the defendant each marshalling witnesses to say that, respectively, they did or did not consider that the article damaged the claimant’s reputation”.¹⁹

[41] At another level, the appellant’s contentions ignore that, in any event, there was some evidence given of harm to the respondent’s reputation. In describing the circumstance that led him to have his conversation with the respondent, Mr Shore said:

“... It must have been 2010. It was quite some time after because I was a little bit concerned about the reputation that was getting out there with Trevor’s name and our business association with Trevor and whether we were losing business because of that.”²⁰

Plainly, Mr Shore understood that the respondent’s reputation had been tarnished and was concerned for the adverse impact of that on his business. His concern was neither transient nor insubstantial. It had serious harmful consequences for the respondent arising from Mr Shore’s cessation of business dealings with him.

Hurt and distress

[42] The appellant challenges the learned judge’s finding²¹ that the respondent’s hurt and distress over the defamatory statements was significant. The appellant contends²² that her Honour’s acceptance that the defamatory statements were a significant cause of the respondent’s emotional problems²³ was based upon the evidence of Mr Simpson. It was wrong, the appellant argues, for her Honour to have acted on his evidence in absence of evidence from the respondent’s treating psychologist or of precise identification by Mr Simpson of features of the respondent’s behaviour on which his description of the respondent’s disposition was based.

[43] Mr Simpson gave the following evidence:

“I need to confine you to your observations. They might be physical observations; they might be things that he says to you, the things that express the way in which he feels about the defamation litigation?-- One thing I noticed sometime ago was he was drinking a lot more than he normally would.

And at what point in time did that occur?—It’s hard to say. I’d have to say it’d be three years ago. As to the time, I can’t recall.

¹⁸ [2005] QB 946.

¹⁹ At [31], cited by Basten JA in *Bristow v Adams* [2012] NSWCA 166 at [28].
²⁰ AB23 Tr1-23 LL27-31.

²¹ Reasons [33].

²² Outline of submissions para 20.

²³ Reasons [25].

If you can't recall the time, how is it that you link it to the defamation litigation?-- Because it was around that same time where Trevor confided in me that he was having some problems and issues with it.

To be clear what problems and issues did he explain he was having?-- Trevor told me plainly he wasn't coping very well and had to seek outside help.

Wasn't coping very well with what?—With his emotional status at the time.

And did he attribute that to anything?-- He attributed it to the allegations that were being made against him.

And what did he say those allegations were?-- His reputation was being put on trial.

Did he say by whom?-- By Gavin Roberts.

Did he say what Mr Robbers (sic) was saying about him?-- No.

Now, in that context did you observe anything about Mr Roberts when he spoke to you about these things?-- Not a lot. No, Trevor hides well behind his own emotions. He - at the face of it, Trevor, you can't see anything behind Trevor. It's only when he went into detail and told me that he was seeing a psychologist for counsel that I had some idea of how much it was affecting him.

And what makes you say that? What did you see Mr Prendergast that allows you to say that?-- See, he told me straight out that he wasn't coping very well and he was seeing a psychologist.

Was there anything about his reactions, about his behaviour at that time, that was noticeable to you?-- There probably was but I couldn't pinpoint it. A person's demeanour changes when they're in that situation.

In what way?

...

When you speak about demeanour, what are you talking about?-- Trevor's emotional state, he wasn't as in control of his own emotions as he normally would be.

Can you give an example?-- I suppose I've seen him near in tears over it, which is something you just don't see from Trevor. He holds so much so well."²⁴

[44] In my view, that evidence provided a sufficiently detailed foundation on which the learned judge could draw to make the finding she did. It was not necessary that evidence had been given by the treating psychologist in order for Mr Simpson's evidence to be used as a basis for findings.

[45] In this context, the appellant also contends that in so far as the learned judge relied upon certain observational evidence given by the three immediate recipients, she

misread it. That evidence concerned the immediate impact that the reporting of the defamatory statements to the respondent had on him. This criticism is without foundation.

[46] Mr Minchell gave the following evidence:

“MR ANDERSON: Mr Minchell, did you report to Mr Prendergast what Mr Roberts had said to you on that occasion?-- Yes, I did.

And when did you do that?-- It was on the same day.

And how did you do it?-- By telephone.

And what did you say to Mr Prendergast, as best as you can recall?-- I explained to Trevor that I'd just had a visit from Gavin Roberts and he had a go at me about Trevor being a shonky builder and the best place for him would be in the bush to be working, where his shonky work could not be noticed. I asked Trevor that this needs to stop because none of this has anything to do with me and I don't think it's right that he could come on to a job site of my own and have a go at me over something that's got absolutely nothing to do with me.

Did Mr Prendergast say anything back to you?-- He said he would see what he could do, but he didn't hold any promises.

Was that the extent of that conversation?-- Yes, it was.

Have you subsequently discussed with Mr Prendergast what Mr Roberts had said to you - had said to you on that occasion?-- We discussed it at twice and Trevor fully knew that I didn't wish to discuss the actual matter any more, because I'd given him an affidavit on the 30th of November for him to deal with it, so - 'cause I didn't want anything to do with any of it.

Now, in those dealings, both the telephone conversation and the subsequent occasions when you've sought to - when Mr Prendergast has sought to discuss it with you, is there anything about his demeanour, things that you can see or hear or observe in him, about his response when you start talking about what Mr Roberts had said to you?-- Agitated, stressed.

What leads you to those conclusions? They're a conclusion based on what you see. What do you see in him that led you to say those things?-- His body language is just not the same as what Trevor normally is.

And what do you mean by that?-- His language, his - the way he speaks. You can tell in his voice that it's - that it's well and truly got under his skin and he talks - I would nearly have to say choked, with a choke in his voice, so that it - yeah. It's well and truly affected him and got under his skin, that you can tell by his body language that he's agitated over this situation and the allegations that were - were made against him.”²⁵

Mr Minchell clarified that the allegations to which he was referring were those contained in the defamatory statements made to him.²⁶ This evidence clearly

²⁵ AB53 Tr1-53 L21-AB54 Tr1-54 L11.

²⁶ AB54 Tr1-54 LL47-52.

correlates the respondent's observed stressed state with each occasion, including the telephone conversation, when the defamatory statements were discussed.

- [47] In the case of Mr Shore, the appellant submits that contrary to the learned judge's finding,²⁷ the content of what the appellant had said was not discussed between the respondent and Mr Shore. This criticism is misplaced in my view. On several occasions, in both evidence-in-chief²⁸ and cross-examination,²⁹ Mr Shore gave evidence that he told the respondent of his conversation with the appellant. This evidence was consistent with that of the respondent on the topic.³⁰
- [48] It remains to note that her Honour's findings were also supported by the evidence of the respondent's wife.³¹ In its totality, the relevant evidence provided convincing justification for the findings made.

Vindication

- [49] The appellant submits³² that, contrary to the learned judge's view, vindication was not important in this case. This submission fails to have regard for the linkage of the grapevine effect with vindication to which I have referred. It also overlooks the serious consequences that the grapevine effect can have in a commercial context. The action taken by Mr Shore, notwithstanding his continued regard for the respondent, illustrates both the harmfulness of the potential consequences and the corresponding need for the award to demonstrate vindication of reputation to those to whom the grapevine might run.

Section 34

- [50] The case called for a substantial award of general damages. In my view, the sum awarded of \$50,000 bears an appropriate and rational relationship to the harm sustained by the respondent.

Disposition

- [51] For these reasons, this appeal must fail.
- [52] A consequence of a dismissal of the appeal will be that the costs order in the judgment under appeal is undisturbed, there having been no application for leave to cross-appeal that costs order.
- [53] At the conclusion of the hearing of the appeal, the parties sought the opportunity to be heard on the issue of costs upon publication of reasons. Consistently with the parties' wishes, there should be liberty to make written submissions with respect to costs of the appeal within seven days.

Order

- [54] I would propose the following orders:
1. Appeal dismissed.
 2. Liberty to each party to make written submissions with respect to the costs of the appeal within seven days of the date of pronouncement of these orders.

²⁷ Reasons [24].

²⁸ AB23 Tr1-23 LL7-9.

²⁹ AB38 Tr1-38 LL29-31.

³⁰ AB139 Tr2-46 LL35-45.

³¹ AB162 Tr2-69 L45-AB163 Tr2-70 L21.

³² Outline of submissions para 31.