TWO POLITICIANS, TWO ACTORS AND TWO BARRISTERS:

DEFAMATION DECISIONS FROM JOE HOCKEY TO GEOFFREY RUSH

Background

1. The decision in *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 set the scene for what has become an explosion in defamation damages awards in Australia. This trend is likely to result in increased premiums on insurance policies that include defamation cover, and a tightening in the market.

The precursor to the defamation explosion: *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33; (2015) 332 ALR 257; [2015] FCA 652 (30 June 2015)

2. In 2014, the *Sydney Morning Herald*, the *Age* and the *Canberra Times* published articles about the then Federal Treasurer, Joe Hockey. The articles said that he was providing "privileged access" to a "select group" in return for donations to the Liberal Party via a "secretive" fundraising body, the North Sydney Forum. The *Age* and the *Sydney Morning Herald* articles included prominent headlines, "Treasurer for Sale" or "Treasurer Hockey for Sale".
3. Each of the newspapers published articles on their online platforms. The *Age* published two tweets consisting of the same words as those headlines.
4. In addition, the *Sydney Morning Herald* promoted its articles with a poster containing the words, "Treasurer for Sale".
5. Mr Hockey sued the various Fairfax entities in the Federal Court in Sydney. I will have more to say in a moment about the use of the Federal Court by defamation claimants.
6. Mr Hockey ran into difficulties in the case, principally by reason of the meanings which he alleged were conveyed by the articles. Those meanings included that the applicant:
   (a) accepted bribes paid to influence the decisions he made as Treasurer;
   (b) corruptly solicited payments to influence his decisions as Treasurer.
7. The respondents denied that the articles conveyed any of the meanings alleged. This is commonplace in defamation actions, but it is extremely rare for a defence of this type to succeed *entirely*. *Hockey* was a case where this defence almost did succeed in

its entirety.

8. The respondents in *Hockey* also contended that the articles were protected by qualified privilege, both at common law and under section 30 of the *Uniform Defamation Laws*. Those laws came into effect in 2006. They have not kept up with online publications.

9. White J found that none of the articles were defamatory of Mr Hockey. His Honour found that the only publications which were defamatory were the *Sydney Morning Herald* poster and the two tweets published by the *Age*.

10. The judge rejected the defences of qualified privilege and went on to find that even if he was wrong about that, the defendants were actuated by malice when they published the poster and the tweets, and accordingly, the defences were defeated in any event.

11. His Honour assessed damages at $120,000 for the poster and $80,000 for the tweets, a total of $200,000.

12. The problem which Mr Hockey ran into in this case was that, having analysed the articles in detail, his Honour concluded that none of them meant to the ordinary, reasonable reader that Mr Hockey was corrupt or that he accepted bribes, or that any of the other meanings relied on were conveyed by the articles.

13. This is one of the difficulties faced by claimants who encounter judge-alone trials. Except in South Australia, the ACT and the Northern Territory, either side in a defamation proceeding may elect for the proceedings to be tried by jury (s 21 of the *Defamation Act* passed in each State (other than South Australia) in 2005).

14. In the Federal Court, s 39 of the *Federal Court of Australia Act 1976* (Cth) provides that "[i]n every suit in the Court, unless the Court or a Judge otherwise orders, the trial shall be by a Judge without a jury". By s 40 of that Act, the Court or a Judge may, in any suit in which the ends of justice appear to render it expedient to do so, direct the trial with a jury of the suit or of an issue of fact. This power is a broad one, constrained only by one criterion, being the "ends of justice appear to render it expedient to do so" (*Wing v Fairfax Media Publications Pty Ltd* (2017) 255 FCR 61; (2017) 350 ALR 476; [2017] FCAFC 191). Important considerations in that regard include the nature of the issues or allegations and the particular circumstances of the case (*Wing*, [37], [52], [60]).

15. I have little doubt that some claimants commence proceedings in the Federal Court in order to reduce the risk of the trial being before a jury.

16. In my experience, however, juries are more likely than judges to accept the meanings

contended for by defamation claimants. Judges tend to analyse publications in a manner that is more like the way a lawyer would, even though for the purposes of the law of defamation, the ordinary, reasonable reader is assumed to be a lay person, not a lawyer (*Farquhar v Bottom* [1980] NSWLR 380, 386; *Lewis v Daily Telegraph Ltd* [1964] AC 234, 258).

17. For a time, there was some uncertainty as to how the Federal Court attracted jurisdiction in "pure" defamation matters (see Rares, *Defamation and Media Law Update 2006: Uniform National Laws and the Federal Court of Australia* (2006) 28 Aust Bar Rev 1).

18. That issue was determined by the decision of the Full Court of the Federal Court in *Crosby v Kelly* (2012) 203 FCR 451; (2012) 289 ALR 531; [2012] FCAFC 96. There the court held that the Federal Court had jurisdiction in a purely defamation matter, because the jurisdiction of the ACT Supreme Court was cross-vested to the Federal Court by s 9(3) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) and s 4(1) of the *Jurisdiction of Courts (Cross-vesting) Act 1993* (ACT).

19. The consequence is that so long as a defamation claimant can show *at least one* publication in the ACT, the Federal Court has jurisdiction.

20. Mr Hockey relied on the *Canberra Times* being published in the ACT and publication of the *Sydney Morning Herald* and the *Age* there as well. In the Geoffrey Rush case, which I will come to shortly, Mr Rush relied on publication of the *Daily Telegraph* in Canberra.

21. The real crunch for Mr Hockey came when the court determined costs. Because Mr Hockey had been successful on only a small proportion of the publications relied upon, White J awarded Mr Hockey 15% of his costs (*Hockey v Fairfax Media Publications Pty Ltd (No 2)* (2015) 237 FCR 127; [2015] FCA 750).

22. The trial went for 5 days. Mr Hockey engaged both Senior and Junior Counsel. It's not difficult to imagine that despite winning the case, he was out of pocket.

The barrister who received the lower award of damages: *Sheales v Age* [2017] VSC (29 June 2017)

23. Damian Sheales is a barrister in Melbourne. He practises mainly in criminal law and sports law. I appeared for him in this case. Acting for a barrister can present

difficulties. Sheales was no exception.

24. In August 2015, the *Age* and the Fairfax company responsible for online publications published articles about Mr Sheales' appearance before a Racing Victoria stewards hearing on 2 August 2015. An issue before the steward's hearing that day concerned the alleged use of the chemical element cobalt by the plaintiff's clients, two racehorse trainers.

25. The defamation proceeding was tried in the Victorian Supreme Court before a judge and jury. The defendants did not contest publication. Verdicts were sought from the jury in relation to two alternative imputations:

    (a) That acting in his capacity as a lawyer appearing before a Racing Victoria stewards hearing, the plaintiff deliberately misled the stewards about the effects of cobalt on racehorses; or

    (b) That in making submissions to a Racing Victoria stewards hearing in his capacity as a lawyer, the plaintiff acted negligently in misstating facts about whether cobalt is performance-enhancing in horses and whether it is harmful.

26. The jury found that the second imputation was conveyed, but not the first. They rejected the defendants' plea of truth.

27. John Dixon J found that the imputation conveyed was serious and awarded Mr Sheales $175,000 in damages.

28. The crunch for Mr Sheales also came when the judge determined costs. During the trial, Mr Sheales produced a document which was published online, concerning the latest science about the effects of cobalt on racehorses, and a letter. Much to my surprise, his Honour held that Mr Sheales had delayed producing the documents for tactical reasons and therefore, had contravened his overarching obligation under s 26 of the *Civil Procedure Act 2010* (Vic) to disclose the existence of critical documents (*Sheales v Age Co Pty Ltd (Costs Ruling)* [2017] VSC 605). The judge awarded Mr Sheales indemnity costs only for the period up to the time the documents should have been discovered; for the period thereafter, he was awarded costs on the standard basis.

Rebel Wilson reaches for the stars: *Wilson v Bauer Media Pty Ltd* [2017] VSC 521 (13 September 2017)

29. Rebel Wilson is an Australian actress and comedian who now resides in the United States. The defendants were the publishers of the *Woman's Day* print magazine in Australia and of information appearing on a number of online websites including *Woman's Day*, *Woman's Weekly* and *New Weekly*. On 18, 19 and 20 May 2015 the defendants published one article in the print edition of *Woman's Day* magazine and seven further articles on the websites to the effect that Ms Wilson was a serial liar who had told lies about her real name, age, aspects of her upbringing and events in her life.

30. The proceeding was tried before a judge and jury of six. The jury were asked 35 questions. The defendants lost them all. The jury's verdict, which was taken on 15 June 2017, established that each of the defendants' publications conveyed defamatory imputations in the terms alleged by the plaintiff. The jury did not accept defences that were put to it.

31. By way of example, the jury found that the *Woman's Day* print article conveyed the following meaning, or a meaning not substantially different:

Ms Wilson is a serial liar who has invented fantastic stories in order to make it in Hollywood in that she has:

(i) lied publicly about her age by claiming to be 29 years old when, in fact, she was born in 1979 and is, therefore, 36 years old;

(ii) lied about her name by using the fake name 'Rebel Wilson' when, in fact, her real name is Melanie Elizabeth Bownds;

(iii) lied about her background by stating publicly that she was raised by parents who trained dogs when, in fact, her parents had not trained dogs;

(iv) lied about her background by stating publicly that, as a child, her family home was in a disadvantaged suburb of Sydney when, in fact, her home was in an upper-middle-class part of Sydney;

(v) lied about her background by stating publicly that she had lived in Zimbabwe for a year when, in fact, she had not done so;

(vi) lied when stating publicly that she had been inside a cage with a leopard when, in fact, she had not;

(vii) lied when stating publicly that she got caught in a shoot-out when, in fact, she

had not; and

(viii) lied when stating publicly that she had contracted malaria whilst she was in Africa when, in fact, she had not contracted the illness.

32. The defendants pleaded substantial truth, triviality under s 33 of the *Uniform Defamation Laws* and qualified privilege, both at common law and under s 30.

33. At common law, an occasion of qualified privilege requires a reciprocity of duty or interest. As the High Court explained in *Papaconstuntinos v Holmes a Court* (2012) 249 CLR 534, 541 [8]:

> *The defence of qualified privilege at common law has been held to require that both the maker and the recipient of a defamatory statement have an interest in what is conveyed. This is often referred to as a reciprocity of interest, although "community of interest" has been considered a more accurate term because it does not suggest as necessary a perfect correspondence of interest. The interest spoken of may also be founded in a duty to speak and to listen to what is conveyed.*

34. Whether a publication is made on an occasion of qualified privilege at common law is a question for the judge, not the jury (*Wilson*, [25]; *Belbin v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535, [44]).

35. John Dixon J rejected the defendants' contention that there was the necessary reciprocity of duty and interest in publishing the relevant articles.

36. There is some uncertainty as to whether the element of "reasonableness" under s 30 in relation to statutory qualified privilege is determined by the judge or the jury. Some decisions say that it is a question for the judge (eg *Belbin*; *Davis v Nationwide News* (2008) 71 NSWLR 606). In *Daniels v New South Wales (No 6)* [2015] NSWSC 1074, [28], McCallum J doubted the correctness of *Davis*. In *Wilson*, John Dixon J expressed similar doubts, but determined in any event that the defendants had not acted reasonably ([33]). Because the jury in *Wilson* found that the defendants were actuated by malice in making the publications, and the jury rejected several factual questions that formed the foundation of the qualified privilege defences, ultimately the question was unnecessary to decide.

37. The most interesting part of the judgment in *Wilson* is the judge's determination of the award of damages.

38. The first issue related to the cap on damages for non-economic loss under s 35 of the *Uniform Defamation Laws*. At the time of this case, the cap for such damages was $381,000 (eg *Victorian Government Gazette*, 22 May 2017). The cap at the present

time is $407,500 (eg *Victorian Government Gazette*, 13 June 2019).

39. Aggravated damages may be awarded in defamation proceedings if, in the publication of the matter complained of or in the defence of the proceeding, the defendant engaged in conduct that is improper, unjustifiable or lacking in bona fides and such conduct increases the plaintiff's injury (*Bauer Media Pty Ltd v Wilson (No 2)* [2018] VSCA 154, [66]; *Triggell v Pheeney* (1951) 82 CLR 497, 514; *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44, 71).

40. The judge in this case found that there were a number of matters which aggravated the plaintiff's damages, including the conduct of the defendants in pursuing amended truth defences in circumstances where, according to the trial judge, it must have been apparent to them at the time of such amendment that the plaintiff was not a serial liar. The judge also awarded aggravated damages for the defendants' pursuit of the defence of triviality.

41. The primary issue in relation to the cap is whether, in circumstances where the award of damages includes aggravated damages, does the cap continue to apply as a partial restraint in relation to that part of the award that does not relate to aggravated damages, or does the cap not apply at all?

42. It all turns on s 35 of the *Uniform Defamation Laws* which is in these terms:

> ***35 Damages for non-economic loss limited***
>
> *(1) Unless the court orders otherwise under subsection (2), the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is $250 000 or any other amount adjusted in accordance with this section from time to time (the **maximum damages amount**) that is applicable at the time damages are awarded.*
>
> *(2) A court may order a defendant in defamation proceedings to pay damages for non-economic loss that exceed the maximum damages amount applicable at the time the order is made if, and only if, the court is satisfied that the circumstances of the publication of the defamatory matter to which the proceedings relate are such as to warrant an award of aggravated damages.*

43. In *Wilson*, his Honour favoured the view that the cap does not apply at all if aggravated damages are awarded. In the Court of Appeal decision, to which I will come to in a moment, the court agreed (*Bauer Media Pty Ltd v Wilson (No 2) (2018) 56 VR 674, [243]; (2018) 361 ALR 642; [2018] VSCA 154*). One of the appeal grounds in the Geoffrey Rush case in the Full Court of the Federal Court, which I will also refer to shortly, is that the Victorian Court of Appeal decision on this point is

wrong in law.

44. The purposes of an award of damages in defamation are to provide consolation for hurt to feelings, compensation for damage to reputation, and vindication of the plaintiff's reputation (*Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44, 60; *Coyne v Citizen Finance Ltd* (1991) 172 CLR 211, 216; *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327, 347 [60]).

45. The judge awarded Ms Wilson $650,000 in general damages, having concluded that an award of aggravated damages was appropriate and accordingly, the cap did not apply. On appeal, this amount was reduced to $600,000.

46. The most controversial aspect of the damages award at first instance in *Wilson* was the award of $3,917,472 for special damages. On appeal, this amount was set aside entirely.

47. The plaintiff claimed lost opportunity to earn income in an 18 month period from mid-2015 to the end of the 2016, because, it was said, she was not, but would have been, offered lead roles in unidentified movies in that period. The plaintiff's claim was for $5.893m.

48. In calculating the plaintiff's entitlement to special damages for lost opportunity, the court must do the best it can based on the evidence, and with the degree of certainty which the circumstances require, but where precise evidence is available, the court expects to have it (*Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64, 80, 83).

49. The plaintiff's evidence was that she moved to Los Angeles in 2009. In 2010, she won a small role in the film *Bridesmaids*, for which she was paid US$3,000. That film was released in 2011.

50. For *Pitch Perfect*, which was released in 2012, Rebel Wilson received US$65,000 remuneration plus US$100,000 in royalties.

51. In May 2015, *Pitch Perfect 2* was released. She received US$2m remuneration, plus bonuses of US$2m and royalties of US$100,000.

52. In the days that followed the release of *Pitch Perfect 2*, Bauer Media first published the *Woman's Day* print article.

53. The plaintiff did not secure a lead or a co-lead role in any new feature film between mid-2015 and the end of 2016.

54. Ms Wilson called expert evidence from a Los Angeles-based talent manager, Mr Principato, to the effect that she was highly likely to have received in the year or two

following the release of *Pitch Perfect 2*, two or three offers for lead roles in the range of US$5m to US$6m plus bonuses.

55. The judge concluded (at [202]) that Mr Principato's evidence was mostly based in, and reasoned from, his expertise, and could not be dismissed as mere speculation.

56. The plaintiff also called evidence from the partner of a US-based talent agency.

57. The judge concluded that Ms Wilson's career had been on a trajectory between *Bridesmaids* and *Pitch Perfect 2* and that Ms Wilson had lost the opportunity during the loss period to win three lead or co-lead roles in feature films for which she would have earned at least US$5m per film (at [296]), ie a total of US$15m.

58. The judge discounted the value of that opportunity by 80% for contingencies, and thus assessed the value of the loss at US$3m, or AU$3,917,472.

59. So the total damages awarded to Rebel Wilson were $650,000 plus $3,917,472, ie $4,367,472. She received an additional amount for damages in the nature of interest of $182,448.61 which took the total award to $4,749,920.61.

The Court of Appeal intervenes: *Bauer Media Pty Ltd v Wilson (No 2)* (2018) 56 VR 674; (2018) 361 ALR 642; [2018] VSCA 154 (14 June 2018)

60. On 14 June 2018, the Court of Appeal handed down its decision on the appeal which concerned only the assessment of damages. The court found that the trial judge had erred in determining that a number of the circumstances relied upon had aggravated the plaintiff's damages. It reduced the plaintiff's general damages to $600,000.

61. The court agreed with the trial judge's construction of s 35 of the *Uniform Defamation Laws*. It concluded that a judge has the power to exceed the statutory cap with respect to non-economic loss, whenever an award of aggravated damages is warranted.

62. Most significantly, the court concluded in relation to special damages that the evidence adduced by Ms Wilson at the trial did not enable inferences to be drawn, on the balance of probabilities, that the valuable opportunity for which she contended had existed and had been lost, and it rejected that there was, in particular, a loss of opportunity to earn US$15m being cast in lead or co-lead roles in three feature films during the period from mid-2015 to the end of 2016.

63. In relation to aggravated damages, the court of appeal said that the trial judge was

wrong to criticise the defendants' pursuit of amended truth defences on the basis that, by the time of the amendment, it must have been apparent that the plaintiff was not a serial liar (at [106]). The court said that this was "hindsight analysis".

64. The court also concluded that the trial judge erred when he found that the defendants' pursuit of the triviality defence was unjustifiable, improper or lacking in bona fides (at [110]).

65. In relation to special damages, the court concluded that Ms Wilson had not made out her special damages claim. It made the following observations in relation to the trial judge's conclusions as to the "trajectory" of the plaintiff's career between *Bridesmaids* and *Pitch Perfect 2* (at [2018] VSCA 154, [395]):

> *[395] Finally, in relation to his Honour's analysis of the trajectory of the plaintiff's career between the release of Bridesmaids and the release of Pitch Perfect 2, for reasons which we have attempted to explain at [360]–[393], we respectfully consider that his Honour's reasons were in some respects erroneous, in other respects incomplete, and in a number of instances relied upon material which was not in evidence. The overall impact of these matters was to give a picture of the plaintiff's career trajectory which significantly overstated its success, and ignored its hiccups.*

66. On 16 November 2018, the High Court refused Ms Wilson's application for special leave with costs (*Wilson v Bauer Media Pty Ltd & Anor* [2018] HCATrans 238). She had previously been ordered to pay 80% of the defendants' costs in the Court of Appeal (*Bauer Media Pty Ltd v Wilson (No 3)* [2018] VSCA 164). Even though Ms Wilson received an order for indemnity costs of the trial (*Wilson v Bauer Media Pty Ltd (Costs)* [2018] VSC 161), the two later costs orders must have made a significant dent into the $600,000 in damages that she was ultimately awarded.

The barrister who hit the jackpot: *Rayney v Western Australia (No 9)* [2017] WASC 367 (15 December 2017)

67. Six months after the decision in *Sheales*, the Western Australian Supreme Court handed down the decision in *Rayney*.

68. The plaintiff, Lloyd Rayney, a barrister in Perth, claimed damages for defamation

arising from a series of media conferences conducted by Detective Senior Sergeant Jack Lee of the Western Australia Police during the course of an investigation into the murder of the plaintiff's wife, Mrs Corryn Rayney. The plaintiff claimed that the words used by DSS Lee in four media conferences conducted by him, or alternatively the words spoken at the last of the four conferences on 20 September 2007, bore the imputation that the plaintiff had murdered his wife. In the alternative, the plaintiff pleaded that the words meant that the plaintiff had so conducted himself as to give rise to a reasonable suspicion that he had murdered his wife.

69. The defendant, the State of Western Australia, denied that the words used bore either of the meanings pleaded by the plaintiff. It contended, however, that if the words did bear the plaintiff's alternative meaning, they were true. The defendant pleaded that the words used by DSS Lee bore a different meaning being that the police suspected the plaintiff of having murdered or unlawfully killed his wife and had reasonable cause for so suspecting, and that that imputation was true. The defendant also contended that if, contrary to its denial, the words did bear either of the meanings pleaded by the plaintiff, then they were uttered on an occasion which attracted the defence of qualified privilege, either under the *Defamation Act 2005* (WA) or at common law.

70. Chaney J in the Western Australian Supreme Court reached the following conclusions:

(a) The words used by DSS Lee on 20 September 2007, in their entirety, bore the imputation that the plaintiff murdered his wife. The defendant did not assert that that imputation was true;

(b) The defence of qualified privilege, either under the *Defamation Act* or at common law, was not available to the defendant in the circumstances of the defamatory publication by DSS Lee;

(c) The plaintiff was entitled to be awarded damages for the defamation;

(d) The publication was attended by circumstances of aggravation which make the statutory cap on damages for non-economic loss inapplicable. Damages for non-economic loss were assessed at $600,000. Including aggravated damages and interest, the total amount was $846,180.82. (Note: there was 7 years' worth of interest from 8 December 2010 (when Rayney was charged) to 15 December 2017 (the date of the judgment) at 6% pa);

(e) In relation to damages for economic loss, the defamatory statements made by

> DSS Lee caused the plaintiff to suffer economic loss by way of loss of income for the period from the date of the defamation until the date of his arrest and charge with murder on 8 December 2010. Thereafter the defamatory statements ceased to be a cause of economic loss and will not be a cause of loss in the future. Rather, the damage to the plaintiff's practice from that date onwards is attributable entirely to other causes.

71. His Honour assessed the plaintiff's damages for economic loss (including interest) at $1,777,235. Adding the damages for non-economic loss, the total award was $2,623,415.82. (Note: the arithmetic in the Court of Appeal stay application at [2]-[3] doesn't add to the total figures their Honours give of $2,649,290.61 – *Rayney v Western Australia* [2019] WASCA 23, [3]).

72. The background facts were these. On 7 August 2007, Mrs Corryn Rayney, then a registrar of the Supreme Court of Western Australia, went missing after attending a boot scooting class in Bentley, a suburb of Perth. Nine days later, on 16 August 2007, her body was found buried off a bush track in Kings Park. She had been murdered. From the time of her disappearance, the police carried out extensive investigations. DSS Lee was the officer in charge and was designated as the police media liaison officer in relation to the investigation.

73. A number of media conferences were conducted by DSS Lee in relation to the investigation.

74. At the media conference on 20 September 2007, DSS Lee said that the police believed that Mrs Rayney had been killed at her home in Monash Avenue, Como, and that Mr Rayney was a suspect in the matter. When asked whether he was the prime suspect, DSS Lee responded that 'he's our only suspect at this time' and that 'he is the primary person of interest or, or the suspect'.

75. His Honour came to the conclusion (at [89]) that the words used by DSS Lee meant and were understood to mean that Mr Rayney murdered his wife. They did not mean simply that he was suspected of murdering his wife.

76. On a closely related topic, the Full Court of the Federal Court has had a lot to say recently about a defence of truth which pleaded *Hore-Lacy* imputations (see *Setka v Abbott* (2014) 44 VR 352; [2014] VSCA 287) prefaced with the words "[t]here are reasonable grounds to believe that …" followed by the substance of the applicant's imputations (*Australian Broadcasting Corp v Chau Chak Wing* [2019] FCAFC 125 (2 August 2019)).

77. In *Rayney*, his Honour rejected the defences of qualified privilege at common law and under s 30 of the *Uniform Defamation Laws*.

78. In relation to special damages, his Honour said this in relation to the period from the press conference on 30 September 2010 to the charges being laid in December 2010:

> *[942] I accept the evidence that the effect of DSS Lee's statements on 20 September 2007 was to severely damage Mr Rayney's practice over the next three years. After he was charged in December 2010, a matter which itself would undoubtedly severely impact on his practice, the LPB (Legal Practice Board) took steps to limit Mr Rayney's practice by imposing a condition on his practising certificate. It was that limitation which resulted in Mr Rayney undertaking 'a small amount of work as a solicitor after May 2011 because his work was 'very limited'. I am satisfied that, from the time that Mr Rayney was charged with murder, the defamatory remarks by DSS Lee ceased to be a cause of economic loss. He then became a man facing a charge of, and a trial for, wilful murder and his continued practice as a barrister while that situation persisted was effectively untenable. The operative cause of his reduced work after December 2010 was the fact he was charged with murder and shortly afterwards subjected to a very restrictive condition on his practice certificate. That event broke the chain of causation between the defamatory statements and the reduction in Mr Rayney's capacity to earn income as a barrister.*

79. Rayney has appealed the quantum of special damages and the State of Western Australia has cross-appealed. The State of Western Australia successfully sought to stay the defamation appeal, until other appeals brought by Mr Rayney in relation to adverse findings in disciplinary proceedings are heard and determined (*Rayney v Western Australia* [2019] WASCA 23).

The politician who received the same award as Damian Sheales: *Mirabella v Price & Anor* [2018] VCC 650 (16 May 2018)

80. Sophie Mirabella is a former member for the Federal Seat of Indi in North Eastern Victoria. She was formerly a barrister at the Victorian Bar. At the 2013 election, Mrs Mirabella was defeated by the independent candidate, Cathy McGowan. In 2016, Mrs

Mirabella stood again and was defeated for a second time by Ms McGowan.

81. In April 2016, just prior to the election, the *Benalla Ensign* newspaper published an article concerning the opening of an extension at an aged care facility in Benalla by the then Minister for Aged Care, Mr Ken Wyatt. Those in attendance included Mrs Mirabella and Ms McGowan.
82. The newspaper published that at the opening, Mrs Mirabella had pushed Ms McGowan out of the way of a photograph being taken with the Federal Minister.
83. I had the privilege to act for the newspaper, which lost the case.
84. My instructions were to the effect that the article was wrong, but we had a defence. It was a fact, so I was told, Mrs Mirabella had pushed *Mr Wyatt* out of the way of a photograph being taken with Ms McGowan, rather than the other way around.
85. As a consequence, I had to come up with what might be described as an ambitious defence: we pleaded that what the article in fact meant was that Mrs Mirabella had pushed *a politician* out of the way of a photograph being taken, and in that meaning the article was substantially true.
86. Not surprisingly, perhaps, the Wangaratta jury rejected my client's defence. They found that the article meant that Mrs Mirabella had pushed Ms McGowan out of the way of a photograph being taken for political purposes, and in that meaning, the article was defamatory of Mrs Mirabella.
87. The judge awarded Ms Mirabella $175,000 in damages, plus indemnity costs.
88. Although the amount of the damages is relatively small, it is consistent with the general trend of rising defamation awards. To publish that a politician pushed another out of the way of a photograph being taken for political purposes is hardly at the most serious end of possible defamation imputations. But for that, a plaintiff was awarded $175,000.

Geoffrey Rush reaches the stars: *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496 (11 April 2019)

89. In this case, Wigney J in the Federal Court in Sydney began his judgment with the following passage from *King Lear*:

> *O, you are men of stones!*
>
> *Had I your tongues and eyes, I'd use them so*

That heaven's vault should crack. She's gone for ever.

I know when one is dead and when one lives;

She's dead as earth. Lend me a looking-glass;

If that her breath will mist or stain the stone,

Why then she lives.

90. His Honour said [at [1]), "So howls a distraught and apparently deranged King Lear as he carries the lifeless body of his youngest daughter, Cordelia, across the stage and then gently lays her on the ground. He then cradles her":

A plague upon you, murderers, traitors all!

I might have saved her; now she's gone for ever.

Cordelia, Cordelia, stay a little. Ha!

What is't though sayest? Her voice was ever soft,

Gentle and low, an excellent thing in woman.

I killed the slave that was a-hanging thee.

91. In the Sydney Theatre Company production of *King Lear*, performed at the Roslyn Packer Theatre in late 2015 and early 2016, King Lear was played by Geoffrey Rush. Cordelia was played by Eryn Jean Norvill. The theatre company hailed Mr Rush's return in its production as one of the highlights of its 2015 season.

92. Over a year later, during the Harvey Weinstein scandal and the emergence of the #MeToo movement, Sydney's *The Daily Telegraph* newspaper published what was said to be a "world exclusive" story concerning the behaviour of Mr Rush during the production. That story ran on 30 November 2017. It was promoted by a billboard that said "GEOFFREY RUSH IN SCANDAL CLAIMS" and "THEATRE COMPANY CONFIRMS 'INAPPROPRIATE BEHAVIOUR'".

93. The front page of the 30 November 2017 edition of the *Daily Telegraph* reproduced the promotional portrait of Mr Rush, made up as King Lear, above the headline "KING LEER". The accompanying story, under the headline, "STAR'S BARD BEHAVIOUR", stated, amongst other things, that Mr Rush had been accused of, but had denied, engaging in "inappropriate behaviour" during the theatre company's

production of King Lear.

94. The following day's edition of the Telegraph added to the story. Under the headline "WE'RE WITH YOU", the front page story claimed that two Sydney Theatre Company actors had "spoke[n] out in support of the actress who has accused Oscar winner Geoffrey Rush of touching her inappropriately during the stage production of King Lear". While the accompanying articles again noted Mr Rush's denial of the accusation, one of the other actors was quoted as saying, "I was in the show. I believe (her)" and the other was quoted as saying, "[i]t wasn't a misunderstanding. It wasn't a joke". The articles characterised Mr Rush's denials as "acts of defiance". Unnamed sources were said to have told the *Daily Telegraph* that they "believed the woman's claims" and that the STC would not work with Mr Rush again.

95. Geoffrey Rush sued the *Daily Telegraph's* publisher, Nationwide News Pty Limited, and the main author of the stories, Mr Jonathon Moran. Mr Rush alleged that the publications conveyed a number of defamatory imputations, including, in summary, that: he had engaged in scandalously inappropriate behaviour in the theatre; he had engaged in inappropriate behaviour of a sexual nature in the theatre; he had committed sexual assault in the theatre; he was a pervert; and he had behaved as a sexual predator and had inappropriately touched an actor while working on the Sydney Theatre Company's production of King Lear. He claimed damages, including aggravated damages and special damages for economic loss running into millions of dollars.

96. Nationwide News and Mr Moran alleged that the publications did not convey the imputations relied on. They also claimed that all but one of the imputations that Mr Rush said were conveyed by their publications were substantially true. In their defence, they maintained that Mr Rush had in fact engaged in scandalously inappropriate behaviour of a sexual nature in the theatre, that he had in fact committed sexual assault in the theatre, that he was in fact a pervert, that he had in fact behaved as a sexual predator and that he had inappropriately touched an actor while working on the STC's production of King Lear. Their contentions were based on claims that Mr Rush had, during the production of King Lear, among other things, made lewd gestures and acted in a sexually inappropriate and predatory manner towards Ms Norvill, that he had intentionally touched one of Ms Norvill's breasts during one of the preview performances, and that he had touched Ms Norvill's lower back as he was about to carry her on stage during the final scene in the play.

97. In relation to the imputations alleged to be conveyed by the publications, his Honour made the following findings:

> *[217] The poster conveyed the imputation that Mr Rush had engaged in scandalously inappropriate behaviour in the theatre. I am not, however, satisfied that it conveyed the imputation that Mr Rush had engaged in inappropriate behaviour of a sexual nature in the theatre, or that he had committed sexual assault in the theatre.*
>
> *[218] The 30 November 2017 articles conveyed the following imputations: first, that Mr Rush is a pervert; second, that Mr Rush behaved as a sexual predator while working on the STC's production of King Lear; third, that Mr Rush engaged in inappropriate behaviour of a sexual nature while working on the STC's production of King Lear; and fourth, that Mr Rush, a famous actor, engaged in inappropriate behaviour against another person over several months while working on the STC's production of King Lear.*
>
> *[219] The 1 December 2017 articles conveyed the following imputations: first, Mr Rush had committed sexual assault while working on the STC's production of King Lear; second, Mr Rush behaved as a sexual predator while working on the STC's production of King Lear; third, Mr Rush engaged in inappropriate behaviour of a sexual nature while working on the STC's production of King Lear; fourth, Mr Rush had inappropriately touched an actress while working on the STC's production of King Lear; fifth, Mr Rush is a pervert; sixth, Mr Rush's conduct in inappropriately touching an actress during King Lear was so serious that the STC would never work with him again; and seventh, Mr Rush had falsely denied that the STC had told him the identity of the person who had made a complaint against him.*

98. The defendants pleaded that if the imputations were conveyed, they were substantially true. His honour then spent the next 440 paragraphs (from [220] to [660]) evaluating this defence.

99. His honour concluded that the defendants' justification defence failed entirely.

100. In summary, the defendants relied on eight particulars of justification. They were set out by his Honour as follows:

> *[232] The first key allegation is that, on one occasion when Mr Rush and Ms*

Norvill were rehearsing the final scene of the play, in which Cordelia is dead and King Lear is grieving over her dead body, Ms Norvill saw Mr Rush "hovering his hands over her torso and pretending to caress or stroke her upper torso" and then make "groping gestures in the air with two cupped hands, which gestures were intended to simulate and did in fact simulate him groping and fondling [Ms Norvill's] breasts". This incident was said to have occurred in front of other members of the cast and perhaps crew.

[233] The second key allegation is that, during the rehearsal period, Mr Rush "regularly made comments or jokes about [Ms Norvill] or her body which contained sexual innuendo". That conduct was also said to have often occurred in the presence of members of the cast and crew.

[234] The third allegation again related to Mr Rush's conduct during the rehearsal period. It is alleged that Mr Rush would "regularly (every few days) make lewd gestures in [Ms Norvill's] direction" and that "[o]n a number of occasions this comprised [Mr Rush] looking at [Ms Norvill], sticking his tongue out and licking his lips and using his hands to grope the air like he was fondling [Ms Norvill's] hips or breasts".

[235] The fourth allegation is that, during an interview with a journalist, Mr Rush described having a "stage-door Johnny crush" on Ms Norvill.

[236] The fifth allegation is, on one view at least, perhaps the most serious allegation. It is alleged that, during a preview performance of the play, Mr Rush departed from the way that the last scene had previously been performed in that he "did not touch [Ms Norvill's] hand and face as had been repeatedly rehearsed but rather [he] moved his hand so that it traced down [Ms Norvill's] torso and across the side of her right breast". The following day, the director of the play, Mr Armfield, allegedly gave Mr Rush an oral "note", apparently in the presence of other cast members, in which he said that Mr Rush should make his performance in the last scene more "paternal" as it was becoming "creepy and unclear". Mr Armfield was also said to have directed Mr Rush not to stroke Ms Norvill's body but to place his hand lightly on the

side of her face and arm instead.

[237] The sixth allegation concerned an incident which was said to have occurred during a performance which occurred at some time between 14 and 26 December 2015. The final scene of the play involved Mr Rush carrying Ms Norvill onto the stage in his arms. Immediately before that occurred, Ms Norvill stood on a chair backstage in the prompt side wings so as to facilitate Mr Rush lifting her into his arms before carrying her onto the stage. It is alleged that in a performance during this period, before lifting Ms Norvill from the chair, Mr Rush placed his hand on Ms Norvill's lower back over her shirt. He then moved his hand under her shirt and along the waistline of Ms Norvill's jeans, brushing across the skin of her lower back. The movement is alleged to have been "light in pressure, slow and … deliberate", and to have lasted for about 20 to 30 seconds.

[238] The seventh allegation again concerned an incident that occurred immediately prior to Mr Rush lifting Ms Norvill from the chair before carrying her on stage for the final scene. The incident is said to have occurred during a performance in the period 4 to 9 January 2016. On this occasion, Mr Rush is alleged to have started to touch Ms Norvill's lower back on top of her shirt. He then gently rubbed his fingers over Ms Norvill's lower back from right to left.

[239] The eighth allegation is that on 10 June 2016 Mr Rush sent a text message to Ms Norvill in which he said that he thought about her "more than is socially appropriate".

101. The STC's production of King Lear employed 14 actors. Geoffrey Rush gave evidence in the trial. His wife, Jane Menelaus, gave hurt feelings evidence.
102. The role of Goneril, the eldest of King Lear's daughters, was played by Helen Buday, The "Fool" was played by Robyn Nevin. They both gave evidence in support of Mr Rush.
103. The defendants called evidence from Ms Norvill and another actor, Mr Mark Winter, who played the role of Edgar, the Earl of Gloucester's legitimate son.

104. The Director, Neil Armfield, gave evidence for Mr Rush.

105. In assessing the evidence, his Honour made the following observations (at [309]-[310]):

> *[309] Aside from demeanour, there are other factors or considerations which may assist a judge in determining the credibility of a witness and the reliability of his or her evidence. Those considerations include: whether the witness has previously given an account of the events in question and, if so, whether that previous account is consistent or inconsistent with the evidence given by the witness; the plausibility and apparent logic of the events described by the witness; and the consistency of the account of the events described as compared with other objectively established events. Such considerations often turn out to be a much surer guide to the reliability of the evidence given by a witness about disputed events. As Atkin LJ observed in Société d' Avances Commerciales (Société Anonyme Egyptienne) v Merchants' Marine Insurance Co (The "Palitana") (1924) 20 Ll L Rep 140 at 152; cited in Fox v Percy at [30]:*
>
> *... I think that an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of the comparison of evidence with known facts, is worth pounds of demeanour.*
>
> *[310] This is a case where such considerations, as opposed to witness demeanour, provide the main key to the resolution of the conflicts in the evidence.*

106. His Honour found (at [312]) that Mr Rush was "… an impressive witness. Nothing in his demeanour suggested that he was doing anything other than giving an accurate and honest account of the relevant events and circumstances. The only potential issue in relation to the reliability of his evidence was that, on occasion, he tended to give very long-winded and wordy answers. On balance, however, I do not consider that this reflected adversely on his credibility or the reliability of his evidence."

107. In relation to Ms Norvill's evidence, his Honour said this:

Ms Norvill

[327] I should make it clear at the outset that, in assessing Ms Norvill's credibility as a witness and the reliability of her evidence, I have had regard to the somewhat difficult and unusual position she was in when she gave her evidence. When she first raised her concerns about Mr Rush's behaviour with Ms Crowe (the Company Manager of the SCT) in April 2016, Ms Norvill made it clear that she did not want to make a formal complaint. It appears that she did not want to speak publicly about her experiences. Nor could she have expected that she might have to give evidence about her experiences one day. Even when the STC issued a statement in November 2017 as a result of Nationwide and Mr Moran's inquiries, Ms Norvill requested that her identity be withheld. She was not a party to this proceeding and had no vested interest in its outcome. Nor was she a particularly willing participant in it. She was essentially dragged into the spotlight because of the actions of Nationwide and Mr Moran.

[328] In assessing Ms Norvill's evidence, I am also mindful that people who make allegations relating to sexual assault or sexual harassment are often in a particularly vulnerable position and can experience unique and difficult challenges when giving evidence. Giving evidence in public about often highly personal and sensitive issues can often be difficult and stressful. The stress involved in giving evidence about such matters is often exacerbated by the process of cross-examination. Often the events the witness is required to remember are themselves distressing and painful, or occurred during a traumatic period of the witness's life. Often the witness is required to give evidence some considerable time after the events in question. That sometimes means that the witness's recollection can at times appear vague and uncertain. The absence of corroboration is also a common feature of cases involving sexual harassment. Sexual harassment is often surreptitious and does not occur in public. Many of these considerations apply to Ms Norvill's circumstances. I have taken them into account in assessing Ms Norvill's evidence.

[329] Despite the somewhat difficult nature of her circumstances, Ms Norvill

generally presented as an intelligent, articulate and confident witness who was endeavouring to give an honest recollection of the events in question. For the most part, she gave direct and responsive answers to questions, including during cross-examination. She did not appear to be either nervous, uncertain or evasive.

[330] Putting Ms Norvill's demeanour to one side, however, there are a number of aspects to the evidence which raise significant issues about her credibility as a witness and the reliability of the evidence she gave concerning the disputed events. Those issues generally relate to the consistency or inconsistency of her version or account of the relevant events over time, and the consistency or inconsistency of her evidence with more contemporaneous statements or objective indications of the nature of her relationship with Mr Rush at the relevant time. There were also some indications in Ms Norvill's evidence that she was a witness who was, at times, prone to embellishment or exaggeration.

[331] For the most part it is preferable to deal with the specific issues with Ms Norvill's evidence when dealing with her evidence concerning the specific incidents or events that provide the basis for Nationwide and Mr Moran's truth defence. It is, however, useful to provide a short summary or overview of the issues. They include the following.

[332] First, Ms Norvill's evidence concerning Mr Rush's conduct, particularly during the rehearsals, was generally inconsistent with the contemporaneous statements that Ms Norvill made to journalists about what it was like to work alongside Mr Rush in King Lear. Ms Norvill's explanation for the statements she made to the journalists is considered in detail later. It need only be observed at this stage that the explanation was not particularly persuasive.

[333] Second, Ms Norvill's evidence about Mr Rush's conduct was inconsistent in important respects with the account which she appears to have given to Ms Crowe on 5 April 2016, only a few months after the conclusion of

the performances of King Lear. This particular issue is discussed in detail later. In short, Ms Norvill disputed that she told Ms Crowe some of the things which are recorded in Ms Crowe's email dated 6 April 2016 concerning their meeting. For their part, Nationwide and Mr Moran submitted that, for various reasons which will be referred to later, Ms Crowe's email could not be said to be an accurate or reliable account of what Ms Norvill said during the meeting. As will be seen, that submission is rejected, though it is accepted that Ms Crowe's email provided only an outline or summary of what Ms Norvill had told her. The difficulty for Ms Norvill is that the version of events that she appears to have given Ms Crowe in April 2016 was different in important respects to the version she gave in her evidence.

[334] Third, on 13 August 2018, Ms Norvill signed a statement for the purpose of providing an outline of the evidence which she would give in this proceeding. Ms Norvill's evidence was that she wrote that statement, that it went through several drafts over the weeks before she signed it, that she wanted it to be accurate and complete, that she read it carefully before she signed it, and that it was true. It is also apparent that, at the time the statement was written and signed, Ms Norvill was represented by a solicitor who had assisted her in the preparation of the statement.

[335] Significantly, however, Ms Norvill's evidence included descriptions of Mr Rush's conduct which went beyond the outline which was included in her statement. There were also some inconsistencies apparent between Ms Norvill's statement and her evidence. Most of the differences and inconsistencies are discussed later in the context of the specific allegations. In summary, the differences or inconsistencies include: whether Mr Rush used the words "scrumptious" and "yummy"; whether Mr Rush's behaviour included making hourglass shapes with his hands, licking his lips, bulging his eyes, growling and sticking his tongue out during rehearsals; whether Mr Rush made lewd gestures and comments to Ms Buday and Ms Thomson; whether the entire rehearsal room was, or that she believed that it was, somehow complicit in, or enabled the behaviour of Mr Rush as described by her; whether she had a conversation with Ms Nevin in Ms Nevin's dressing

room during the production of All My Sons, in which she told Ms Nevin that she had been sexually harassed by Mr Rush during King Lear; and whether Mr Rush stood very close to her during the bows at the end of King Lear, such that another actor took it upon himself to stand between them. For the most part, these were incidents or circumstances which were not outlined in Ms Norvill's statement, but which featured, in some instances prominently, in her evidence.

…

[337] Fourth, it is difficult to reconcile Ms Norvill's evidence concerning Mr Rush's behaviour during the rehearsals and performances with three relatively contemporaneous events or incidents. The first was that one night after rehearsals Ms Norvill attended the performance of another play, Orlando, along with Mr Winter, Mr Rush and Mr Rush's daughter. She also went out to dinner with Mr Rush and Mr Winter before the play and shared an Uber with him. This occurred towards the end of the rehearsals. It is difficult to imagine why she would do that if Mr Rush had acted as reprehensibly during the rehearsals as she described in her evidence. Second, while Ms Norvill initially denied doing so, she ultimately conceded that she invited Mr Rush to a Christmas party at her parents' house in 2015. She claimed that she did so somewhat reluctantly and only because she did not want to make him uncomfortable. Nevertheless, by that time the rehearsals had concluded and the performances were well under way. Third, only two days before the very last performance, Ms Norvill addressed her reply to Mr Rush's email to "Dearest Daddy DeGush" and signed off "xoxo", denoting hugs and kisses. It is again difficult to imagine why she would have written to Mr Rush in those terms if he had behaved as she described in her evidence.

[338] In her evidence, Ms Norvill sought to explain those events or incidents and reconcile them with her descriptions of Mr Rush's behaviour and the way she said it made her feel towards him. Her explanations were not particularly persuasive.

[339] Each of those issues or features of Ms Norvill's evidence gives cause for doubting or questioning the reliability and credibility of her evidence.

> *Ultimately, however, the most telling circumstance against the acceptance of much of Ms Norvill's evidence is that it is simply not corroborated or supported by the balance of the evidence. Indeed, for the most part, Ms Norvill's evidence was specifically contradicted by evidence given by the other relevant witnesses, in particular, Ms Nevin, Ms Buday and Mr Armfield. Even Mr Winter's evidence, when closely analysed, provided little support for Ms Norvill's version of events. The absence of corroboration and the inconsistencies between Ms Norvill's evidence and the evidence given by other witnesses will become apparent during the detailed consideration of the evidence which follows. This feature of the evidence, considered as a whole, provides the most compelling reason to doubt Ms Norvill's credibility and the reliability of her evidence generally.*

108. In his assessment of all the evidence, his Honour was not satisfied that the defendants had established the substantial truth of the imputations.
109. His honour awarded Mr Rush $850,000 for general damages, including aggravated damages.
110. In relation to special damages, his Honour made some general observations and then asked for further submissions. Each side called a forensic accountant. They both agreed that Mr Rush's average net income for the 15 year period between 2003 and 2017 was $1,435,960 (at [853]).
111. The accountants agreed that in relation to future loss for the period from the first of the publications (30 November 2017) to the final date of the hearing (12 September 2018) was $1,116,417. The only disagreement between the two experts was as to the appropriate methodology.
112. His Honour asked for further submissions in relation to the period from 30 November 2017 to the date of the judgment (11 April 2019). The judge also asked for further submissions in relation to future economic loss after the judgment. He expressed the view that Mr Rush's career was likely to recover within 12 months of the judgment (at [877]).
113. Ultimately, the parties agreed on the quantum of special damages for past and future loss of earnings was $2m. Adding the general damages of $850,000, the total amount is $2.85m.
114. The defendants have appealed on liability and the quantum of the general damages.

An appeal will be heard by a Full Court of the Federal Court consisting of five judges, commencing on 4 November 2019.

Other defamation awards since 2015

115. There have been other defamation judgments since 2015, not involving politicians (with one exception), actors or barristers, which have resulted in substantial awards. I mention some of them in passing. Two of them involved specialist medical practitioners. A third concerned a former general medical practitioner who was also a politician. Time and space are not sufficient for me to deal with them in detail.

116. These cases reinforce the general trend in defamation awards.

117. In *Flegg v Hallett* [2015] QSC 167, the plaintiff was awarded $275,000 in general damages and $500,000 in special damages for comments made by the defendant at a press conference and on radio. Bruce Flegg is a former GP and was Minister for Housing and Public Works in the Newman Government in Queensland.

118. In *Douglas v McLernon (No 4)* [2016] WASC 320, the court awarded $250,000 to each of two plaintiffs and $200,000 to a third in relation to material posted on three websites. One of the plaintiff's worked in the financial services industry in Western Australia. The other two were involved in the mining industry.

119. In *Al Muderis v Duncan (No 3)* [2017] NSWSC 726, a total of $480,000 was awarded against two defendants. Dr Al Muderis is an orthopaedic surgeon who issued proceedings in relation to publication by a former patient on a personal website, on *Facebook*, *YouTube* and the *Daily Motion* and *Pinterest* websites. The defendants did not participate in the trials on liability or damages.

120. In *Wagner v Harbour Radio* [2018] QSC 201, the court ordered Harbour Radio Pty Ltd and Alan Jones to pay $750,000 to each of four plaintiffs. Alan Jones and Radio 4BC Brisbane Pty Ltd were ordered to pay a further $100,000 to each of the plaintiffs.

121. The plaintiffs are four brothers from Toowoomba who built up a concrete transport and quarry business. They sued in respect of 32 publications, which (with one exception) were radio broadcasts that aired between 28 October 2014 and 20 August 2015 on *Radio 2GB* in Sydney and *Radio 4BC* in Brisbane.

122. In *Tavakoli v Imisides (No 4)* [2019] NSWSC 717 (24 June 2019), Rothman J awarded the plaintiff $530,000 in relation to a Google review. The plaintiff, Dr Tavakoli, is a plastic surgeon. He sued the defendants in relation to imputations that

he charged the first defendant for a buccal fat procedure that he did not perform, that he acted improperly in relation to that procedure, and that he acted incompetently in relation to it.

David Gilbertson QC

Owen Dixon Chambers West

30 September 2019