

1. Kim Anne Ahmed v Harbour Radio Pty Limited [2013] NSWSC 1928 (19 December 2013)

Last Updated: 18 March 2014

This decision has been amended. Please see the end of the decision for a list of the amendments.

Supreme Court

New South Wales

Case Title: Kim Anne Ahmed v Harbour Radio Pty Limited

Medium Neutral Citation: [\[2013\] NSWSC 1928](#)

Hearing Date(s): 4-7, 11-15, 18-22, 25-29 November 2013; 2 December 2013, 12 December 2013

Decision Date: 19 December 2013

Before: Nicholas AJ

Decision: (i) Award for the plaintiff against the first defendant for the publication on 21 May 2008 in the sum of \$240,000.
(ii) Award for the plaintiff against the defendants for the publication on 1 October 2009 in the sum of \$40,000.

Catchwords: Defamation - assessment of damages - whether aggravated damages available - failure to apologise - falsity of imputations - persistence in defences of truth - defendants' conduct of the trial

Legislation Cited: [Defamation Act 2005](#) (NSW)
[Trade Practices Act 1974](#) (Cth)

Cases Cited: Ahmed v Harbour Radio Pty Ltd NSD 1368/2008
Ahmed v Harbour Radio Pty Limited [\[2009\] FCA 1113](#)
Attrill v Christie [\[2007\] NSWSC 1386](#)
Bickel v John Fairfax & Sons Ltd [\[1981\] 2 NSWLR 474](#)
Carson v John Fairfax & Sons Ltd [\[1993\] HCA 31](#); [\(1993\) 178 CLR 44](#)

Cassell & Co Ltd v Broome [\[1972\] UKHL 3;](#)
[\[1972\] AC 1027](#)
Coyne v Citizen Finance Ltd [\[1991\] HCA 10;](#)
[\(1991\) 172 CLR 211](#)
Crampton v Nugawela [\[1996\] NSWSC 651;](#)
[\(1996\) 41 NSWLR 176](#)
David Syme & Co Ltd v Mather [\[1977\] VicRp](#)
[58;](#) [\[1977\] VR 516](#)
Haertsch v Channel Nine Pty Ltd [\[2010\]](#)
[NSWSC 182](#)
Ley v Hamilton [\(1935\) 153 LT 384](#)
Palmer, Bruyn & Parker Pty Ltd v Parsons
[\[2001\] HCA 69;](#) [\(2001\) 208 CLR 388](#)
Rigby v Associated Newspapers Limited
[\[1969\] 1 NSW 729](#)
Ryan v Premachandran [\[2009\] NSWSC 1186](#)
Uren v John Fairfax & Sons Pty Ltd [\[1966\]](#)
[HCA 40;](#) [\(1966\) 117 CLR 118](#)
Waterhouse v Broadcasting Station 2GB Pty
Ltd [\(1985\) 1 NSWLR 58](#)

Category: Principal judgment

Parties: Kim Anne Ahmed (Plaintiff)
Harbour Radio Pty Ltd (First Defendant)
Ray Hadley (Second Defendant)

Representation

- Counsel: Counsel:
C Evatt/ R Rasmussen (Plaintiff)
ATS Dawson/ A Rao (Defendants)

- Solicitors: Solicitors:
Turner Freeman (Plaintiff)
Banki Haddock Fiora Solicitors (Defendants)

File Number(s): 2009/297870

JUDGMENT

1. **His Honour:** The plaintiff, Kim Anne Ahmed, sues the defendant, Harbour Radio Pty Limited (Harbour Radio) for damages for defamation arising from the publication on 21 May 2008 (the first broadcast) of a broadcast in the Ray Hadley program over radio station 2GB. The transcript of the first broadcast is Annexure A to these reasons. The plaintiff also sues Harbour Radio and Ray Hadley for damages for defamation arising from the publication on 1 October 2009 (the second broadcast) in the Ray Hadley program over radio station 2GB. The transcript of the second broadcast is Annexure B to these reasons.

2. The proceedings are under the [Defamation Act 2005](#) (NSW) (the Act). The hearing before the jury took place between 4 November and 2 December 2013. On 2

December 2013 the jury determined that the first broadcast conveyed the following imputations which it found to be defamatory of the plaintiff:

3. the plaintiff is a low, contemptible person;
4. the plaintiff has brought a false application for an AVO against a person called Glenn;
5. the plaintiff has brought a vexatious application for an AVO against a person named Glenn;
6. the plaintiff has brought a frivolous application for an AVO against a person named Glenn;
7. the person should be sent out of business;
8. the person is unfit to run the business Seafood Lovers because she condones her husband's criminal activity; and
9. the plaintiff condones and does not object to the criminal conduct of her husband.

10. The jury also determined that the second broadcast conveyed the following imputations which it found to be defamatory of the plaintiff:

11. the plaintiff is a low, contemptible person;
12. the plaintiff is a silly woman; and
13. the plaintiff should be driven out of business because of her association with a convicted sex offender.

14. With respect to the first broadcast, the defendant failed to establish defences of justification and honest opinion under [s 25](#) and [s 31](#) of the Act. With respect to the second broadcast the defendants failed to establish the defence of justification.

However, the jury, as directed, found that the defendants have established that the parts of the broadcast which conveyed imputations (a) and (d) were contained in the judgement given by the Federal Court of Australia on 1 October 2009 in *Ahmed v Harbour Radio Pty Limited* [[2009\] FCA 1113](#) under the defence of public document, under [s 28\(1\)](#) of The Act. It was agreed that imputation (c) was an expression of opinion rather than a statement of fact, but the defendants failed to establish that it was based on material which was substantially true.

15. The remaining issues, which are for me to determine, are the amount of damages that should be awarded to the plaintiff, and costs. The plaintiff claims general compensatory damages, including aggravated damages, interest, and an order for costs. There was no claim for economic loss.

Background

16. As the imputations found by the jury demonstrate, the broadcasts made very serious criticisms and allegations of the plaintiff's character and conduct for maintaining loyalty to her husband. As the jury rejected the defendants' cases that the imputations were substantially true, the court must assume that in finding for the plaintiff it made all the findings necessary to sustain its determination in her favour (*Crompton v Nugawela* [[1996\] NSWSC 651](#); ([1996](#)) [41 NSWLR 176](#), p 179). Accordingly, for the purpose of providing background facts sufficient to enable an understanding of the plaintiff's case on damages, I have accepted her account of relevant events in which she was involved.

17. The plaintiff was married to Emran Ahmed (Emran) in April 1993. They have two children, now teenagers. In 2005 the plaintiff and her husband opened a seafood business under the name Seafood Lovers. It operated at the Carlingford Court

shopping centre from premises they leased from GPT Property Management Pty Ltd (GPT).

18. On 1 February 2007 Emran was arrested and charged with the offence of aggravated indecent assault upon Ms X, a 17 year-old part time employee of the business. The incident took place at about 6pm on 27 January 2007 in the cool room of the shop when Emran forced himself upon her in an unsuccessful attempt to have sex. An account of the incident was published in the first broadcast.

19. The plaintiff was unaware of the incident until Emran's arrest. When confronted by her, Emran denied that the events with which he had been charged were true. The plaintiff accepted his denial, saying she had been married to him for a long time and had seen no such behaviour.

20. On about 1 February 2007 the plaintiff became concerned at what she perceived to be incidents of harassment at the shop, particularly attributable to Mr Y, the father of Ms X. Thereafter during 2007 and 2008, on her solicitor's advice, she and others, including her father Mr Warwick Bagshaw, kept a diary recording such incidents.

21. The plaintiff said that from 20 September 2007 Emran only attended the shop out of business hours following a program broadcast by the defendants that day.

22. On 25 July 2007 the charge was prosecuted in the Local Court, Burwood. Emran denied the allegations and gave evidence in his defence which the learned Magistrate rejected as fanciful. Ms X's version of the events was accepted, and the offence found proven. Emran was allowed bail and the proceedings were stood over for sentencing, initially to 20 September 2007 and then to 7 November 2007.

23. By letter of 28 September 2007 GPT notified the plaintiff and Emran of a breach of covenant of their lease of the shop based on Emran's conviction. By letter of 24 October 2007 GPT confirmed an arrangement with the plaintiff and Emran which restricted Emran's access to the area at the back of the shop during specified trading hours, and to the common areas of Carlingford Court shopping centre.

24. On 4 November 2007 the plaintiff was informed by Emran of an incident at the shop said to involve intimidatory conduct on the part of Mr Y. She said that later that day she observed Mr Y glaring at her and her daughter so that she feared for their safety. She reported the incident to Constable Skeels at the Blacktown Police Station and sought an apprehended violence order (AVO). Her application was declined.

25. On 6 November 2007 the plaintiff attended Blacktown Court and applied to the registrar to issue an application for an AVO in which she was named as the applicant, and Mr Y as the defendant. The grounds of the application were in the following terms:

"The applicant relies on the following grounds:

The defendant is the father of a victim in respect of a of a (*sic*) charge against the applicants husband (*sic*) for aggravated indecent assault. The applicant and her husband own a seafood shop located at Carlingford Court. Since the charge matter was last before the court (Burwood Local Court 20/9/07) the defendant has been attending the shopping centre and loitering around the applicants business (*sic*). The defendant walks past the shop and glares at the applicant and her children. The applicants daughter (*sic*) has expressed concerns for her safety to the applicant when they see the defendant loitering around the shop. On 4/11/07 the defendant approached the applicants husband (*sic*) who was working at the shop and said "fuck you" the applicants husband walked to the back of the shop and contacted security (*sic*). This incident occurred about 8am. At 9.45am the applicant then noticed the defendant again loitering near their shop. The defendant then walked past a number of times stareing (*sic*) at

the applicant and her daughter. This caused the applicant and her daughter to feel intimidated by the defendant. The applicant has also received a number of threatening and nuisance phone calls which she believes the defendant is responsible for. The applicant fears further harassment and intimidation from the defendant."

One of the orders sought was an order restraining Mr Y from loitering about the Seafood Lovers shop at Carlingford Court.

26. On 7 November 2007 Emran was convicted and sentenced to a term of imprisonment for twelve months, suspended on a good behaviour bond for a period of twelve months. At the hearing the plaintiff gave evidence in support of submissions against a custodial sentence on the ground of resultant hardship to the family.

27. By letter of 8 November 2007 GPT informed the plaintiff and Emran of its intention to terminate the lease by reason of Emran's conviction. They were locked out of the shop that night.

28. On 9 November 2007 the plaintiff and Emran commenced proceedings against GPT in the Equity Division of the court to regain possession of the shop. Shortly thereafter the matter was resolved on an interim basis by returning possession upon Emran's undertaking to the court not to come to Carlingford Court. The plaintiff said that thereafter she managed the shop, and Emran remained away.

29. On 27 February 2008 an AVO was made against Mr Y in his absence. The application had been before the court on a number of occasions at which the plaintiff and Mr Y and/or his solicitor were in attendance. These included an unsuccessful mediation. The orders included an order restraining Mr Y from loitering outside the plaintiff's residence and the Seafood Lovers shop. (On 17 March 2008 Mr Y applied for revocation of the AVO. The application was adjourned on a number of occasions and eventually dismissed when Mr Y or his solicitor failed to appear. On 20 May 2008 Mr Y lodged an appeal against the AVO in the District Court, but did not proceed with it).

30. On 20 May 2008 Emran's appeal against his conviction was heard by his Honour Judge Ellis in the District Court at Parramatta. The matter proceeded by way of the tender of the transcript of the proceedings before the Local Court, and also by way of written and oral submissions from both the prosecution and defence. The appeal was dismissed and the conviction and sentence confirmed.

The plaintiff said that she attended court with her husband at the trial and the appeal every day to support him because she believed him to be telling the truth. She said that on some days others attended, including her parents, and family friends. She said that although she maintains her belief in his innocence she accepts the findings of the courts and the conviction of her husband.

31. On 21 May 2008 the first broadcast published an account of the appeal and its outcome during an interview with Mr Y.

32. On 2 September 2008 the plaintiff commenced proceedings against Harbour Radio in the Federal Court of Australia (*Ahmed v Harbour Radio Pty Ltd NSD* 1368/2008) in which she alleged that between September 2007 and 21 May 2008 Mr Hadley had disparaged Emran on 17 separate occasions during his talk back radio programme. Her claims included claims for damages for defamation arising out of the publication of the first broadcast, and for breaches of s 60 [Trade Practices Act 1974](#) (Cth).

33. In about September 2008 the Seafood Lovers business was sold.

34. On 1 October 2009, on Harbour Radio's application, Mr Justice Foster of the Federal Court of Australia ordered that the claims under [s 60](#) be struck out and the proceedings be transferred to this court. His Honour published his reasons. The proceedings, and the outcome, were the subject of the second broadcast later that morning.

35. Some time after the sale of the business the plaintiff obtained a diploma which qualifies her for her present occupation as a community mental health rehabilitation worker.

The Principles

36. In *Ryan v Premachandran* [\[2009\] NSWSC 1186](#) I summarised the general principles as follows:

"114 By [s 34](#) of the Act, the court, in determining the amount of damages to be awarded, is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.

115 By [s 35\(1\)](#) the maximum amount for non-economic loss which may be awarded is \$294,500.

116 By [s 36](#) the court is to disregard the malice of the defendant at the time of the publication or at any other time except to the extent that the malice affects the harm sustained by the plaintiff.

117 By [s 37](#) an award of exemplary or punitive damages is precluded.

118 The relevant principles were stated in *Ali v Nationwide News Pty Ltd* [\[2008\] NSWCA 183](#) (pars 70-84) by Tobias JA and McColl JA. They referred to the following observations of Hayne J in *Rogers v Nationwide News Pty Ltd* [\[2003\] HCA 52](#); [\(2003\) 216 CLR 327](#) (par 60):

"The three purposes to be served by an award of damages for defamation are identified in the joint reasons in *Carson v John Fairfax & Sons Ltd*: (i) consolation for the personal distress and hurt caused to the appellant by the publication; (ii) reparation for harm done to the appellant's personal, and in this case, professional reputation; and (iii) the vindication of the appellant's reputation. As pointed out in *Carson*: the first two purposes are frequently considered together and constitute consolation for the wrong done to the appellant; vindication looks to the attitudes of others."

119 Hayne J, went on to point out (par 67) that assigning a money sum as sufficient to remedy personal distress, hurt and harm to reputation and to vindicate a plaintiff's reputation translates losses which have no market value into amounts of money. He said:

"... But in neither defamation nor in other cases of non-pecuniary loss can any standard of evaluation be employed except one that is described in qualitative and therefore necessarily imprecise terms. The damages that may be awarded "are such as the jury may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man".

120 In the assessment of compensatory damages for harm to reputation in a case such as this it is important to take into account the observations of Mahoney, ACJ in *Crampton v*

Nugawela [1996] NSWSC 651; (1996) 41 NSWLR 176, p 193 that "... In some cases, a person's reputation is, in a relevant sense, his whole life. The reputation of a clerk for financial honesty and of a solicitor for integrity are illustrations of this ... the trustworthiness, actual or reputed of a professional colleague is a matter of a legitimate and ongoing interest", and p 195 "In my opinion, the law should place a high value upon reputation and in particular upon the reputation of those whose work and life depend upon their honesty, integrity and judgment". In *Readers Digest Services Pty Ltd v Lamb* [1982] HCA 4; (1982) 150 CLR 500, Brennan J held (p 507) that account may be taken of an especially adverse impact of the defamatory imputation upon the plaintiff's reputation in the eyes of some group or class in the community.

121 With respect to aggravated damages it is important to keep in mind that any award of aggravated damages must be confined to what is truly compensation for the relevant harm to the plaintiff caused by the defendant's conduct and must not include any element of punitive damages. Such conduct must be in some way unjustifiable, improper, or lacking in bona fides (*Triggell v Pheneey* [1951] HCA 23; (1951) 82 CLR 497).

122 In *Ali* (pars 79-85) courts are reminded that in awarding aggravated damages, the conduct of the defendant which will increase the harm caused by the publication of the libel, a failure to apologise, and the conduct of the defendant right up to the amount of verdict are all matters which may be taken into account."

37. The plaintiff has a cause of action in defamation arising from the publication of each broadcast. The second broadcast was published about 17 months after the first. Although under s 39 of the Act it is open to the court to assess damages in a single sum for more than one cause of action, in my opinion it is in the interests of justice in these proceedings that a separate assessment be made for each broadcast.

38. In addition to the time gap, a relevant consideration is that the only compensable defamatory imputation conveyed by the second broadcast, i.e. that the plaintiff is a silly woman, has an obviously different sting from any of those conveyed by the first. An additional factor is that the thrust of the attack upon the plaintiff in the first broadcast was to drive her and Emran out of business at a time when she was managing the shop, whereas by the time of the second broadcast the business had been sold, and they had gone from Carlingford Court long before it went to air.

The first broadcast

39. The first broadcast went to air on 21 May 2008, the day after Emran's appeal was dismissed in the District Court. At the time the plaintiff was working in the seafood shop as she had been since about 2005.

40. The following is a summary of her evidence following publication of the first broadcast.

41. The plaintiff heard the broadcast by podcast on the evening of 21 May 2008. Her evidence of reaction included the following (T78 1.6 - T79 1.28):

"Q. And what was your reaction when you heard what he said?

A. Oh, a range of emotions.

Q. Well, what were they?

A. I was upset. I was so hurt. I was horrified. I was angry. I just thought to myself he's after me. When is he going to stop.

Q. And did this come as a surprise or were you expecting it or what?

A. I was expecting there to be a report on his programme. The day earlier my husband's appeal at the District Court had been dismissed, so in all fairness I expected something to be on the radio about my husband.

Q. But like that?

A. Well it was about me.

Q. Yes?

A. I was totally shocked.

Q. You expected something about your husband?

A. Yeah, I expected something to be about my husband.

Q. Did you expect anything about yourself?

A. No.

Q. Did you have any opinion as to the status of Mr Hadley, you know, as a radio presenter?

A. Well yes he is the number one am broadcaster to my knowledge.

Q. Do any of your friends or relatives listen to him?

A. Yes.

Q. And do you regard him as influential or not influential?

A. Very influential, especially where my shop was situated, very influential."

And (T82 1.28 - T83 1.11):

"Q. What was your reaction when you heard Mr Hadley refer to you as the cheer squad?

A. Well I took that he was referring to myself.

Q. And your reaction?

A. I was upset. It made me sound like a fool.

Q. Finally, your Honour, did you hear Mr Hadley say "and there is people defending this grub", did you hear him say that?

A. Yes, I did.

Q. And as one of the defenders what was your reaction?

A. I was upset by that comment.

Q. Did you hear him say "I will try and find out from Carlingford Court if this grub and his family still own the shop", did you hear him say he didn't want to turn people away if you didn't own the shop, and did you hear him say "but if this bloke" that's Emran, "still has any connection with the shop and his grub of a wife they should completely and utterly be sent out of business. Disgraceful", did you hear him say that?

A. Yes, I did.

Q. What was your reaction when he referred to you as Emran's grub of a wife?

A. Really hurt and upset.

Q. And what about when he said that you and your husband should completely and utterly be sent out of business?

A. I was scared.

Q. Why was that?

A. Because I thought here we go again, he is starting his radio campaign again. And I was scared because my husband had no connection with the business at all at that stage and it was an attack on myself."

42. With regard to the passage of the broadcast in which Mr Hadley pretended to be a registrar and rejected the AVO, her reaction was of devastation and horror because he was wrong. She also said she was insulted by his pronunciation of her name as "Akmed", and believed he did so deliberately to offend her.

43. After the broadcast the plaintiff received so many phone calls questioning her about it that, she said, she was a nervous wreck. She was questioned about the broadcast by other shopkeepers, and was told by her staff that customers had questioned them about it. She said (T85 l.38 - T86 l.9

"Q. Did they give you any examples?

A. Yes, customers would come to the counter and inform them that they weren't going to shop at our business any more. They would ask when are we closing down "why aren't you closed down?", you know, things like "why are you working for a rapist?"

Q. Now did the staff tell you that?

A. The staff told me that but I experienced it myself too."

.....

Q. The staff told you those things and what was your reaction when the staff told you that?

A. I felt like I was living in some kind of nightmare. I was really upset and I just thought this is never going to end."

44. She said that she noticed avoidance by customers, and that neighbouring shopkeepers would point at her, and whisper about her, while she was working at the shop, which hurt and devastated her. She said that since the broadcast she tried not to go out because she felt everybody recognised her wherever she went. The evidence was (T95 1.39 - T96 1.4):

"Q. What was your reaction about driving to work and the people in the shop speaking to you?

A. For the most [part I](#) held it together. At other times it just became too overwhelming.

Q. And?

A. Well, I remember a lot of occasions I would start to drive to work, I would start to become anxious. I would pull over the side of the road, I would call my Mum crying and say, "Sorry, I can't go in, I just can't do it, I'm too scared." Sometimes I would have no one who could replace me so I would have to go and face it. Other times my Mum would actually leave her work and say, "You go home. I can leave work." She would go and replace me and I would go home. If I went to work and I was still trying to hold it together at times I would just have to walk away from the counter, go out the back, sometimes there would be no one at the counter to serve anyone, and just have a good cry for about five, 10 minutes, pull myself together and go back."

The second broadcast

45. The second broadcast went to air on 1 October 2009 shortly after the judgment in the proceedings in the Federal Court of Australia was handed down.

46. The plaintiff first learnt of it from a long-time friend, Ms Rita Ghatt, who telephoned her and questioned her about it. She then listened to it by podcast. She was offended and insulted by the pronunciation of her name "Akmed".

47. With reference to the passage commencing "This woman, Kim Ann Ahmed, married to this horrible beast..." and ending "if we send you and your husband broke, I'll be absolutely delighted" her evidence was (T94 1.1 - 1.20):

"Q. Then he said, he again referred to you, "This woman, Kim Ak-med" - sorry, I will get on to something else. He ended up saying, called you a "silly, silly woman", do you remember that?

A. Yes, I do.

Q. And he said, "you have got your just desserts", right?

A. Mm.

Q. And we will be making sure that we apply for the costs in the next 24 hours. If we send you and your husband broke I will be absolutely delighted." Did you hear him say that?

A. Yes, I did.

Q. What was your reaction to that?

A. I was scared, very scared and upset.

Q. What, about sending you broke?

A. Well, that's why I was - I was totally scared, I thought when is he going to leave me alone and I was scared I would lose everything."

48. The plaintiff said she received about 10 telephone calls questioning her as to when she would be moving, and whether she would be bankrupt. These upset her.

Generally

49. In respect of both broadcasts there has been no apology. Knowledge of the falsity of the imputations has caused her worry and concern. The litigation has been a distressing process. In re-examination she said (T 602 1.7 - 1.36):

"Q. Well, Mrs Ahmed, you have been in the witness box being cross-examined by my friend, Mr Dawson, for five days?

A. Yes.

Q. In the course of that cross-examination, on quite a number of occasions, he called you a liar; do you remember that?

A. Yes.

Q. What was your reaction to Mr Dawson calling you a liar on numerous occasions?

A. Really upset. It's hard to hear someone for five days insinuating, calling you a liar when you know you are telling the truth.

Q. At times Mr Dawson raised his voice at you?

A. Yes.

Q. And what was your reaction to that?

A. I felt very intimidated.

Q. What about the length of his cross-examination, how did that affect you?

A. Probably one of the worst experiences of my life.

Q. Also, at one stage, that's yesterday afternoon, you cried on two or three times and I think we had to have a short adjournment; do you remember that?

A. Yes.

Q. What actually made you cry?

A. It was when I had to explain, it was getting up to the events of where Mr Y's behaviour towards me was getting worse and just having to think back and remember those times."

50. The plaintiff's mother, Wendy Bagshaw, heard the first broadcast. She observed the plaintiff to have been "upset and shaky about it". The plaintiff's father, Warwick Bagshaw, noticed the plaintiff was devastated by both broadcasts and "was a nervous wreck". Ms Rita Ghatt discussed each broadcast with her and observed her to be very distressed and upset. Another friend, Ms Sharon Handley, spoke of the plaintiff's good reputation. She heard people talking about the first broadcast.

51. Mr Giash Uddin and Ms Patricia Phillips testified to the plaintiff's excellent reputation. Ms Phillips noticed the plaintiff was devastated. With reference to what I infer was the first broadcast, she said she was telephoned by somebody who asked if she had heard it. Ms Karen Phillips is a long-time friend of the plaintiff who also heard the broadcast. She said the plaintiff was very upset by it. She said the plaintiff has always had a good reputation.

52. Taken overall, the evidence establishes, and I find, that the plaintiff had a high reputation in the circles in which she moved at the times of the publications.

Aggravated damages

53. For each broadcast the plaintiff claims aggravated damages for the following:

- (1) the plaintiff's knowledge of the falsity of the imputations;
- (2) the defendants' failure to apologise;
- (3) pleading by the defendants that the plaintiff was a person of bad reputation until withdrawn on 18 October 2013, shortly before commencement of the trial;
- (4) the defendants' persistence in the defence of justification;
- (5) the defendants' conduct of the trial in that:
 - (a) the plaintiff was subject to a wounding and insulting cross-examination;
 - (b) defamatory allegations were made of the plaintiff during cross-examination;
 - (c) the plaintiff was subject to an improperly lengthy cross-examination.

54. As to (1), the falsity of the imputations entitles the plaintiff to an award of aggravated compensatory damages (*Haertsch v Channel Nine Pty Ltd* [2010] NSWSC 182, par 43; *Waterhouse v Broadcasting Station 2GB Pty Ltd* (1985) 1 NSWLR 58, p 75; *Rigby v Associated Newspapers Limited* [1969] 1 NSWLR 729, p738). Awareness of their falsity distressed her and would have aggravated their sting.

55. As to (2), in my opinion the failure to apologise in the circumstances of this case is not a matter of aggravation, but a factor to be taken into account as relevant to normal compensatory damages. The failure to apologise was adequately explained by the pleading and maintenance of the defences of truth and honest opinion. Furthermore, Mr Hadley said that he intended to convey the imputations, and firmly held the opinions represented by them. He was not shaken in cross-examination on this issue, and I accept his evidence. As the plaintiff did not establish that in each case

the failure to apologise was improper or unjustifiable, her claim on this ground is rejected.

As to (3), regarding the pleading of bad reputation, it appears it was initially raised as a head of mitigation in the defence filed on 13 May 2011. Upon complaint being made at a directions hearing on 18 October 2013, by letter the same day the defendants' solicitors advised that the plea was withdrawn, and apologised for its inclusion. Although the plaintiff said she had been confused about it, it did not add to her hurt. The claim for aggravated damages on this ground is rejected.

56. As to (4), it is to be kept in mind that normal compensatory damages will include a component for continuing harm occasioned by, for example, the defendants' persistence in a plea of justification which has the effect of prolonging, or keeping alive, the effects of the injury caused by the publication. Authority establishes that a defendant's conduct in defending a claim and the conduct of its case at the trial cannot be held to aggravate the harm unless it is shown that, in the circumstances, it was not bona fide, or was unjustifiable or improper (*Haertsch*, pars 47, 48, 51, 52; *David Syme & Co Ltd v Mather* [1977] VicRp 58; [1977] VR 516, p 526; *Coyne v Citizen Finance Ltd* [1991] HCA 10; (1991) 172 CLR 211, p 237; *Bickel v John Fairfax & Sons Ltd* [1981] 2 NSWLR 474, p 497). In my opinion it has not been established that the continued persistence in the defence of truth was improper or unjustified. The litigation proceeded on the basis that the defendants had mounted an arguable case that all of the imputations found were substantially true. As I said in *Haertsch* (par 54)(i):

"... The jury's rejection of the defences in this case provides no basis for a finding that the defendants conduct in maintaining them renders the defendants liable for increased damages. It is, however, a factor relevant to normal compensatory damages."

The claim on this ground is rejected.

57. As to (5), concerning the defendants' conduct of the trial, in my opinion there was nothing about the nature or length of the cross-examination of the plaintiff which was improper or unjustifiable, notwithstanding that the conduct may have caused her distress (*Bickel*, p 497). Analysis of the transcript provides ample support for this conclusion.

I have come to the same conclusion about the particular complaint that defamatory allegations were made of the plaintiff during cross-examination. The conduct relied upon were the occasions when the defendants' counsel challenged the plaintiff on the veracity of her evidence concerning diary entries made on 1, 6, 17 February, and 15 July 2007. In short, it was claimed that the suggestions that the entry in each case was false or concocted were baseless, and should not have been put having regard to the contrasting evidence of Mr Y about the event in question. After careful analysis of the transcript of the relevant passages of the cross-examination and Mr Y's evidence, in my opinion there is no basis for a finding that counsel's conduct, although arguably forceful and vigorous, went beyond appropriate limits. With regard to the principles referred to in *Haertsch* (pars 49, 50, 53) and accepting that the plaintiff was hurt by the assertions, I am not satisfied that the conduct in making them was unjustified having regard to the issues and the context in which the cross-examination took place.

The claim for aggravated damages on this ground is rejected.

Assessment

58. The plaintiff's claim in respect of each broadcast is for compensatory damages for harm to reputation, for injury to feelings, for the purpose of vindication, and for aggravated damages.

59. The maximum damages amount under [section 35](#) of the Act has been increased to the sum of \$355,500 by declaration published in the Government Gazette on 31 May 2013. An assessment of damages by the court requires regard to the purposes of an award as explained in *Carson v John Fairfax & Sons Ltd* [[1993](#)] [HCA 31](#); ([1993](#)) [178 CLR 44](#), (p 60) namely (i) consolation for the personal distress and hurt caused by the publication; (ii) reparation for harm done to the plaintiff's reputation; and (iii) the vindication of the plaintiff's reputation. It is well recognised that the amount of the verdict is the product of inextricable considerations (*Uren v John Fairfax & Sons Pty Ltd* [[1966](#)] [HCA 40](#); ([1966](#)) [117 CLR 118](#) per Windeyer J; p 150).

60. In *Attrill v Christie* [[2007](#)] [NSWSC 1386](#) Bell J (as her Honour then was) explained the approach to be taken in terms which I respectfully adopt, as follows:

"44 I approach the matter on the basis that the maximum damages amount provided by [s 35](#) is to be understood as fixing the outer limit of damages for non-economic loss (in cases which do not warrant an award of aggravated damages) and by analogy with the approach explained by Hayne awards for non-economic loss are to find a place within a range marked out in this way. This is not to say that an award of the maximum damages amount in a case not warranting an award of aggravated damages is to be reserved for the worst defamation imaginable.

45 In determining the amount of damages to be awarded to the plaintiff I am required to ensure that there is an appropriate and rational relationship between the harm sustained by him and the amount of the award. In this case it is necessary to make that assessment in circumstances in which the plaintiff's evidence of the hurt to his feelings must be assessed in a context which includes that the allegations for which the defendant is not liable were also hurtful to him. This does not involve mitigating the damages to be awarded by any consideration that the plaintiff's reputation was damaged by the publication of the allegations for which the defendant is not responsible on the program: **Dingle v Associated Newspapers** [[1964](#)] [AC 317](#); **Chakravarti v Advertisers Newspapers Ltd** (1998) 193 CLR 519.

46 What it is necessary to do is to fix an amount that properly reflects the injury to the plaintiff's reputation and hurt to his feelings brought about by reason of the defendant's statements which were re-published during the program."

61. I have found that at the time of each publication the plaintiff had a high reputation. The imputations were baseless and damaging allegations, likely to have a serious impact upon listeners adverse to the plaintiff.

62. With respect to each broadcast the plaintiff spoke of her subjective reactions, and of the impact the conduct of the defendant had upon her. I accept her evidence relevant to the issue of damages. I was left in no doubt as to its veracity.

The first broadcast

63. Although she was not named, identification of the plaintiff was not in issue. Nevertheless, although the broadcast was to a wide audience, caution should be exercised in assessing the likely scope of listeners who would have taken it to refer to the plaintiff. Damage to reputation is presumed. The evidence, including of telephone calls received, and of the whispering and pointing by other shopkeepers, indicated publication to many listeners throughout the general area in which she lived and worked. Although witnesses gave evidence of her reputation, none said that as a result of the broadcast they thought the less of her, or that her reputation was actually diminished in the circles in which she moved. However, it is self evident that the imputations conveyed by the broadcast would cause significant injury to her reputation. I am also satisfied that, given the nature of the accusations published, it would be natural and probable that there would be discussion about them, as the evidence of Ms Sharon Handley, Ms Patricia Phillips, and the plaintiff herself demonstrated. Thus some allowance should be made for the "grapevine" effect as explained by Gummow J in *Palmer, Bruyn & Parker Pty Ltd v Parsons* [2001] HCA 69; (2001) 208 CLR 388, (pars 88-89) in assessing the award.

64. Relevant to the measure of harm done by this broadcast to the plaintiff's feelings and reputation, and to the sufficiency of an award for the purpose of vindication, are factors including the extent and circumstances of its publication, and the context in which the several defamatory imputations were made. The matter complained of was part of a morning talk-back radio programme. Mr Hadley (T1001) agreed that his was one of the largest audiences of any of the radio announcers in Australia, and that he regarded himself as an influential broadcaster. He said his broadcasts went to listeners in Sydney and rural New South Wales, and in the Australian Capital Territory and Queensland.

65. Typical of its kind, this broadcast was honed by Mr Hadley to make a forceful impact on listeners. This was achieved, not only by the choice of words, but by the tone and manner of their delivery, and the context in which the defamatory statements were uttered. Taken as a whole, the broadcast developed into an unbridled tirade concerning the plaintiff, her husband, and his supporters which reached its crescendo when the words

"... But I am telling you now, if he is connected with it ... but if this bloke has any connection with it and his grub of a wife, they should completely and utterly be sent out of business. Disgraceful."

were spat into the microphone for the consumption of the audience.

66. The final segment was presented as a charade about the AVO, the butt of which was the plaintiff. That its purpose was to mock, scorn, and ridicule the plaintiff to the audience is manifest having regard to Mr Hadley's tone of voice, manner of delivery, and the language of the final passage:

"No, look, I'm sorry, madam, I'm sorry, this is a frivolous AVO, we can't issue this AVO because you see I've got discretion here to refuse to issue the AVO because I'm satisfied your complaint is frivolous, vexatious and without substance because you're the husband - you're the wife, rather, of a convicted sexual offender who offended against this man's daughter and has been convicted. So we cant have the AVO, that's got to go.

But what happens instead? Well, the Local Court Registrar he issues the AVO. So this poor bugger whose daughter was offended against can't go to his local shopping because the wife

of the perpetrator says he looks at her funny. The place has gone absolutely stark raving made, absolutely stark raving made. That was nice being a Local Court Registrar for a short brief time."

67. The broadcast conveyed seven separate grave imputations, each with a different libellous sting. These poisoned arrows found their mark, and left the plaintiff sorely wounded. The evidence of hurt to her feelings, including the observations of her parents, is earlier referred to. I am satisfied that the broadcast caused her to suffer anxiety, alarm, distress, and anger, as did the ordeal of these proceedings to obtain an award. Factors to be taken into account include the failure to apologise, persistence in the plea of justification, and the matter of aggravation by her knowledge of the falsity of the imputations. Her claim to significant compensatory damages on this ground is entirely justified.

68. The broadcast was calculated to grab and hold the attention of many listeners, and undoubtedly it did. In my estimation it is probable that the reputational harm caused by the broadcast (particularly by imputations (a), (e), (f), and (g)) endured for many months after publication with gradually diminishing impact over time. Relevantly, in *Crompton Mahoney JA*

(p 195) said:

"But in the end, damages represent, in respect of some at least of the components of them, a normative or social assessment of what is appropriate, fair or just (the Court need not stand upon the particular terms) to compensate the plaintiff for what has been done to him. There is no market or tariff to determine this In my opinion, the law should place a high value upon reputation and in particular upon the reputation of those whose working life depend upon their honesty, integrity and judgment. This Court should record that its view is such. And it should record that, where hurt and reputation are involved, the vindication of the plaintiff should not be left to speculation: the damage to be awarded will be so large as to make what the Court has done plain and clear."

69. The publicly inflicted harm entitles her to an award which vindicates her reputation and marks the baselessness of the defamation (*Cassell & Co Ltd v Broome* [1972] UKHL 3; [1972] AC 1027; *Ley v Hamilton* (1935) 153 LT 384; *Haertsch*, par 83). An award of the Court which operates to vindicate her reputation should enable the plaintiff to lay this broadcast to rest in the gutter from which it came.

70. In assessing the amount of damages to be awarded to the plaintiff I have been guided by the relevant principles which emphasize its compensatory, not punitive, purpose and require there be an appropriate and rational relationship between the harm sustained by the plaintiff and the amount awarded.

71. There is to be a verdict for the plaintiff in respect of the publication of the first broadcast. In my assessment the appropriate award for this publication is the amount of \$240,000.

The second broadcast

72. The second broadcast was part of the defendants' morning talk-back radio programme on 1 October 2009 with the reach described in par 54 above. It was repeated at 8.51pm that evening. Although the repeat broadcast was relied upon for damages, there was no evidence that the plaintiff or anyone else had listened to it, or

of its effect upon her, or of the extent of its audience. In the circumstances I propose to give it some, but not great, weight in the assessment.

73. As earlier noted, this broadcast took place soon after judgment was delivered in the proceedings in the Federal Court of Australia which, inter alia, transferred the defamation proceedings in respect of the first broadcast to this court. Also noted was the fact that the seafood business had been sold in about September 2008.

74. The compensable imputation is that the plaintiff is a silly woman.

75. The plaintiff first learnt of the broadcast from Ms Rita Ghatt. She was questioned by a number of telephone callers. Having regard to its wide audience, I am satisfied that the broadcast and the imputation would have been a matter of discussion among the plaintiff's acquaintances, as indicated by the telephone calls. It is appropriate to make some allowance for the "grapevine" effect.

76. As to the hurt to the plaintiff's feelings, she said that she was scared and upset. Relevant factors for an assessment under this head include the failure to apologise, the persistence in the defence of justification, and aggravation by her knowledge of the falsity of the imputation. Also relevant is the strain of this litigation, but as I have made allowance for this factor in the assessment for the first broadcast I consider that, in the circumstances, there would be risk of double counting if more than nominal weight was given to this factor in relation to this broadcast. Nevertheless, a significant component of the award should be in respect to hurt to feelings.

77. Consideration of the impact of this broadcast upon the plaintiff's feelings and reputation must take into account the choice of words, the tone and manner of their delivery, and the context in which the defamatory imputation was conveyed. The statement containing this imputation was part of the final salvo launched against the plaintiff in these words:

"I'll tell you who's been defamed in this, the little girl involved with your grub of a husband and her family. That who's been defamed, you silly silly woman. You've got your just desserts. And we'll be making sure we apply for those costs in the next twenty-four hours. If we send you and your husband broke, I'll be absolutely delighted."

78. The circumstances of publication establish it is highly unlikely that the imputation would have been heard and understood as a flippant accusation. Rather, I am satisfied that by publicly branding the plaintiff as a silly woman whilst threatening to break her the defendants caused significant harm to her reputation for which she is entitled to an award by way of reparation, and for vindication.

79. In assessing the amount of damages to be awarded to the plaintiff for the publication of the second broadcast I have adopted the approach taken in respect of the award for of the first broadcast.

80. There is to be a verdict for the plaintiff in respect of the publication of the second broadcast. In my assessment the appropriate award for this publication is the amount of \$40,000.

Conclusion

81. Questions of interest on each award, and costs, remain outstanding. Failing agreement, the parties are to arrange with my associate by 4pm 6 February 2014 for the listing of these proceedings for submissions on these issues.

I certify that this page and the 25 preceding

pages are a true copy herein of the reasons for
judgment of the Honourable Acting Justice Nicholas

Ms Rosh Mohammed Date: 19 December 2013

Associate to the

Honourable Acting Justice Nicholas

Annexure A

2GB INTERVIEW BETWEEN RAY HADLEY AND GLEN, 21 MAY 2008

RAY HADLEY: Oh, dear, I've been wanting to talk about this for months but I haven't been able to. You might remember last year I covered a disturbing story about the owner of Seafood Lovers at Carlingford Court, that's a retail fish and chip type seafood shop. Emran Ahmed is this low life's name. He was convicted of the aggravated indecent assault of a beautiful 17-year old who had just been employed by him, you know, school kids do this, they work in retail in shopping centres and mums and dads, like me and others, send them off to work believing they're safe. But this wasn't the case. This low life was given a 12 month suspended sentence - he should have been gaoled. Anyway, he had the temerity and the audacity to appeal the sentence - his conviction and the sentence. This has been ongoing for quite some time but it finally came before the good Justice Ellis yesterday in the Parramatta District Court and I'm terribly pleased to tell you that Justice Ellis said to Emran Ahmed and his vile supporters, and you know who you are out there, who attend the court with him and champion his cause despite the fact that he's a deviant, anyway, they were there no doubt yesterday supporting this low life who's now got this 12 month suspended sentence confirmed.

I have spoken to the victim's father previously and I don't know whether there was cause for celebration in his household last night but at least they got some justice for their daughter, and he's on the line right now. Glen, g'day.

GLEN: How are you, Ray?

RAY HADLEY: Good thank you, mate. It's been a long slow process, hasn't it?

GLEN: It's been 18 months since the assault was made on my daughter, and yeah, it's been heartbreaking really when you consider what the family has been through um, you know, everybody involved, it's just so hard on the whole family. You know, I just want to point out he didn't, he didn't challenge his sentence, Ray, because his sentence was a slap over the wrist.

RAY HADLEY: Yeah.

GLEN: What he, what he did he just challenged the conviction. He wanted the clean slate.

RAY HADLEY: Yeah.

GLEN: 'Cause what see, he, he was basically going on about ah, or his barrister was talking about his good character. Well, you know, he handed that good character in the day that he assaulted my daughter.

RAY HADLEY: Yeah, and this is the only time he's been caught, it doesn't mean it's the only time he's done this type of thing.

GLEN: You're right there, yeah.

RAY HADLEY: Um, these other people that I saw back in November supporting this fellow, do they work with him or know him, what's their involvement with him?

GLEN: Well, I haven't been up there since the last time I spoke to you back in, I think it was November I think the last time I spoke to you, so I'm assuming that they, they still work there um, you know, there were a few other people there over the last couple of days that I didn't recognise though--

RAY HADLEY: He's prevented from going there, is that correct, did that stand in place?

GLEN: As, as far as I know it still, still stands. So, you know, again not going up there I don't know and um, you know, I couldn't care less whether I went up there again and until, you know, they're out of that shop altogether.

RAY HADLEY: Yeah. Just is it right, and I don't wish to embarrass you here, is this right - and I'm getting some information second-hand, so I've got to be a bit careful - is it right

that someone has taken an AVO against, against you, the victim's father, is this correct?

GLEN: Ah, not the victim's father um, it's actually it's his wife that's taken it out on me um, but I can't really talk about that at the moment because I'm challenging that. Um, the AVO was handed to me when I was overseas, or it was passed to me when I was overseas, I was in America, that was in February this year, 13 months after the assault.

RAY HADLEY: So, well, you're challenge--

GLEN: I don't know why it was done.

RAY HADLEY: --we're challenging, you've challenged it, we can't talk about that challenge.

GLEN: Yeah.

RAY HADLEY: But you are telling me that you're the father of the victim, but the wife of the perpetrator--

GLEN: Yep.

RAY HADLEY: --has taken an AVO against you--

GLEN: Yep.

RAY HADLEY: --alleging what?

GLEN: I don't know whether I was stalking - she's talking about stalking her and something about her daughter and all this type of stuff. It's just farcical, it's a joke.

RAY HADLEY: So in real terms this hasn't finished for you yet, you've got confirmation yesterday that his appeal against conviction was dismissed by Justice Ellis--

GLEN: Yep.

RAY HADLEY: --but now you've got to go back to court because this dirty low bastard attacked your daughter because his wife is alleging that you're stalking him and his - or her and her family.

GLEN: That's right. See, Ray, he, his sentence finished in, I think, June this year.

RAY HADLEY: Yeah.

GLEN: Well, there's the AVO on me stops me from going to Carlingford Court till February next year, I suppose, you know, I think the AVO's last for a year. I've got a sentence equivalent to him.

RAY HADLEY: As far as attending your local shopping centre is concerned.

GLEN: Yeah, yeah.

RAY HADLEY: What - you can't go in the vicinity of Carlingford Court because she's gone to the court, and you've had no right of reply, you haven't refuted these allegations because you've had no opportunity to do it?

GLEN: I wasn't even in the country when, when the um, you know, when it was passed on to me that ..(not transcribable).. this AVO.

RAY HADLEY: Well, who, who gave her that AVO, who decided that you were guilty of doing what she alleges you did?

GLEN: Blacktown Court as far I know. I don't know enough about that side of it, Ray, I

really didn't--

RAY HADLEY: God, strike me.

GLEN: --look too much, I've just gone straight to my solicitors and, you know, they're looking after that.

RAY HADLEY: Mm.

GLEN: But look, I want, I want to talk about the good that's come out of this. Um, my daughter she's going, you know, pretty good um--

RAY HADLEY: Well, she was studying for her Higher School Certificate when all this happened, wasn't she, this--

GLEN: That's right.

RAY HADLEY: Yeah.

GLEN: And another thing, Ray, was, you know, she was doing the um, the Duke of Edinburgh, she, she has, she was, she's done everything on, she's up to the Gold Level--

RAY HADLEY: Yeah.

GLEN: --she's done the, the camping out, the whole lot. The only thing she hasn't done is the community service--

RAY HADLEY: Mm.

GLEN: --and this mongrel basically stopped her from doing that, you know, she just wasn't into the community service side of it since this, this all happened.

RAY HADLEY: Mm.

GLEN: But as far as I'm concerned she's done the community a service, you know, she's, ha, she's fantastic, you know, they way--

RAY HADLEY: I know, I know, I don't know her, I don't know you but by reputation I know you and you are upstanding people as she is--

GLEN: Yeah, yeah.

RAY HADLEY: --as she is.

GLEN: Well, another thing, Ray, this Justice Ellis he was brilliant, you know, like I mean he didn't cop any crap from the barrister and all that, he was just, you know, he talked about predators and victims and um, this Emran Ahmed he's a predator, you know, and these predators they seek out victims, they don't, they don't attack every young good-looking girl that walks by, they, they look for the weak or the vulnerable and maybe, you know, there's a chance here and I'll, I'll go for, you know.

RAY HADLEY: Mm.

GLEN: And that's, that's what they do and the judge just pinpointed him, you know, that was, that's what he did. And all his supporters there, I, I can't believe--

RAY HADLEY: Were they there again, the cheer squad there again yesterday?

GLEN: There was more there on the first day, which was on Monday.

RAY HADLEY: Yeah.

GLEN: And then they filled it out a bit on the, ah, yesterday, you know, there was only, I think, I don't know who, the old guy and the, the old woman there.

RAY HADLEY: Yeah, I think they're related to him, in-laws or something like that from what I understand--

GLEN: Yeah, yeah.

RAY HADLEY: --from what someone identified them as, yeah. Well, I hope they listen to Judge Ellis yesterday, Justice Ellis.

GLEN: Oh, I don't know whether they do, I don't know, I mean, you know.

RAY HADLEY: Well, you can't put brains in statues, Glen.

GLEN: You've just got to remember that this, he's, yesterday was the second time he's been found guilty beyond all reasonable doubts.

RAY HADLEY: Mm.

GLEN: And yesterday my daughter didn't have to be there, he didn't have to be there, it

was in text, it was all black and white. His barrister was trying to discredit my daughter, everything. That's, that's his barrister's job. You know, at one stage the barrister even said why my beautiful 17-year old blonde daughter walked out there, out of his premises after work in tears was because Emran had turned her advances down. So we had to listen to this crap.

RAY HADLEY: What - this dirty filthy old bloke in the Seafood Lovers shop had knocked back the beautiful 17-year old blonde's advances, that's what the--

GLEN: Forty-four year old--

RAY HADLEY: Oh ..(not transcribable)..

GLEN: --as far as I'm concerned, ugly looking baldy man.

RAY HADLEY: Mm, he knocked back the advances of a very attractive 17year old?

GLEN: Yeah.

RAY HADLEY: That's what the - and no wonder Justice Ellis dismissed him.

GLEN: Oh, I tell you, it was a female barrister um, you know, just, just went on--

RAY HADLEY: A female barrister.

GLEN: Yeah.

RAY HADLEY: Yeah, fair dinkum. Anyway, they're guns for hire, they say, they don't say what they mean, they say what their client best, is best advantaged. Not what they believe, it's what is best advantaging their client.

GLEN: That's right, yeah.

RAY HADLEY: Anyway--

GLEN: Look, I just want to point out we, we had um, Detective Dave Parmeter there yesterday, he's a strong, strong of character and caring guy and Constable Emily Petreska--

RAY HADLEY: Yeah.

GLEN: --she was there on her day off, she's got a, I think a six-month old baby and a six-year old daughter and she came there on her day off just offer us support, you know.

RAY HADLEY: Good coppers.

GLEN: Oh, I tell you, absolutely fantastic, Eastwood Police. And, and they, look, basically last night what we did, we went out um, to a local restaurant, the family um, we made a toast to us, you know, like our family and to justice and, you know, we just enjoyed dinner and, you know, you had the usual banter and all that and um, basically, well time's a great healer and, you know, we're all progressing pretty good.

RAY HADLEY: All right, mate, you're a good father, you're a good fellow.

GLEN: Yeah.

RAY HADLEY: Let me know what happens with the other business, will you?

GLEN: Thanks, Ray, will do.

RAY HADLEY: Thanks, mate, good to talk to you.

GLEN: Bye.

RAY HADLEY: That's the father of a 17-year old indecently assaulted by this grub, Emran Ahmed. Now, let me just go through and I don't want to raise it again with Glen, because he's in the healing process, in case you missed it.

She was 17, attractive blonde girl working her fourth shift on the 27 January back in 2006, I think from memory - oh, no, on fact on the 23 December 2006 she started working. So by the 27 January 2007 she's working her fourth shift. During that shift Emran Ahmed they were alone in the shop when a third staff member was on a break. He asked that 17-year old girl - this grubby old 44-year old, and I say old with due respect because I'm older than that, but he's old compared to her - questions about her personal life. Then the third staff member came back and then went home leaving this young lady and this grub, Emran Ahmed, to count the day's takings. He turned all the lights off in the shop, he entered the cool room, the young lady entered the cool room. He attempted to

massage her shoulders, neck and rubbed her arm, she moved away. She, he then started to ask her about her sexual experiences, offered her the chance to have sex with him. He then tried to kiss her neck and shoulders, she kept saying no, she was in shock. He kept making sexual comments in the cool room, kept asking her for sex, she kept saying no. He grabbed her, he tried to fondle her shoulders, he moved his hands to her breasts, she repeatedly said, "Stop, stop". He then tried to put his hand down her pants, she struggled. He made further requests for sex. Eventually she escaped. She went to the rear exit, it was locked. She then came back trying to escape through the front, he placed his hands on her shoulders, led her to a desk and asked her to lie down, she wouldn't. He began thrusting his genitals into the lower portion of her body. She escaped and she made a complaint to police. And there's people defending this grub.

Well, I don't - I'll try and find out, can we find out from Carlingford Court if this grub and his family still own the shop, I don't want to turn people away from the shop if he's no longer connected with it. But I'm telling you now, if he's connected with it - and I was up at Carlingford Court about a month and half ago and I saw where the shop is and it's opposite the supermarket there, and I don't wish any ill of people that may own it now - but if this bloke has any connection with it and his grub of a wife, they should completely and utterly be sent out of business. Disgraceful.

96. 2GB RAY HADLEY 12:12pm 21 MAY 2008

RAY HADLEY: I spoke much earlier today about Glen, the father of the young lady sexually assaulted by that grub up at the seafood court, Seafood Lovers at Carlingford Court about AVOs and the Attorney-General has come back to say, "An AVO can be granted after an application by the police or by an application to a Local Court by a person".

And that would have happened here because he's been the subject of an AVO by the wife of the perpetrator of the crime, which means he can't go to Carlingford Court until this is determined. Now, "Discretion to refuse to issue process: An authorised justice, a Local Court Registrar, has the discretion to refuse to issue process where a complainant is made for an AVO by a private individual that does not apply to victims of domestic violence. Before exercising the discretion to refuse to issue processes the authorised justice must be satisfied the complaint is (as said) frivolous, vexatious, without substance or has no reasonable prospect of success.

In determining whether to exercise the discretion the authorised justice must take into account the nature of the allegations, whether mediation would assist and the availability and the accessibility of mediation, the parties willingness and capacity to resolve the matter in ways not involving a complaint for an AVO, the parties relevant bargaining power where the complaint is a cross application, and any other relevant matters."

Now, let's just pretend I'm the Local Court Registrar. This bloke's wife comes in and says 'I want an AVO against that bloke up there, I want it against that Glen'. 'Oh, yes, why?' 'Well, you see my husband sexually assaulted his 17-year old daughter and has been convicted, he's appealing, but he's been convicted' - and of course we know now the appeal was dismissed yesterday - 'But, oh, yeah, convicted of what?' 'A 12 month suspended sentence.' 'So you're the wife of a bloke who sexually assaulted a 17-year old girl and you want an AVO against her father. Why?' 'Well, he comes into our shopping centre and he looks at me.' 'What do you mean he looks at you?' 'Well, he looks at me. I'm intimidated by the way he looks at me.'

'But hang on, he's probably looking at the shop to see whether your husband's about because your husband is not supposed to be there.' 'No, look, I'm sorry, madam, I'm sorry, this is a frivolous AVO, we can't issue this AVO because you see I've got discretion here to refuse to issue the AVO because I'm satisfied your complaint is

frivolous, vexatious and without substance because you're the husband - you're the wife, rather, of a convicted sexual offender, who offended against this man's daughter and has been convicted. So we can't have the AVO, that's got to go.'

But what happens instead? Well, the Local Court Registrar he issues the AVO. So this poor bugger whose daughter was offended against can't go to his local shopping because the wife of the perpetrator says he looks at her funny. The place has gone absolutely stark raving mad, absolutely stark raving made. That was nice being a Local Court Registrar for a short brief time.

ANNEXURE B

1 October 2009. 11.52 am

RAY HADLEY:

Look, without wishing to bore you, but I'm sure you're interested in this, you may remember a matter I spoke about quite some time ago. This is from a judgement handed down in the Federal Court of Australia today. It says in the judgement the respondent is the owner and operator of Radio 2GB in Sydney. According to her Statement of Claim, in 2006/2007 and sometime in 2008, the applicant was the owner, operated and controlled a retail fish and chip shop located at Carlingford Court. The shop was called Seafood Lovers. The applicant's husband, Emran Ahmed, worked in the shop running the business with his wife.

On.... one of the talkback radio hosts employed by the respondent was Ray Hadley, me. In January 2007, Mr Ahmed indecently assaulted a 17-year-old female employee who worked in the Seafood Lovers business. He was subsequently convicted of aggravated indecent assault and given a twelve-month suspended sentence. An appeal by him failed. The appeal was decided on the 20th of May, 2008.

The applicant alleges in that period between September 2007 and May 2008, Mr Hadley referred to the actions of Mr Ahmed in a most disparaging fashion on seventeen separate occasions during his talkback radio program. She's right about that. These broadcasts came to a head on the 21st of May when the father of the 17-year-old victim had a conversation on air with Mr Hadley. A transcript of that conversation is attached to the Statement of Claim.

It's not necessary to refer to the conversation in detail. Mr Hadley used strong language in describing Mr Ahmed and his conduct. He began the conversation by referring to Mr Ahmed as the owner of Seafood Lovers. He then referred to Mr Ahmed's appeal against his conviction which had been dismissed. In the conversation Mr Hadley called Mr Ahmed, "A lowlife, a deviant, a dirty low bastard, this dirty filthy old bloke, this grubby 44-year-old, this grub." Mr Hadley also made mention of the application, who according to the caller, had obtained an AVO against the caller. Mr Hadley called the applicant, "His grub of a wife." I did all of that.

In this conversation with the victim's father, Mr Hadley urged his listeners to boycott the Seafood Lovers business if either the applicant or her husband retained any ongoing connection with the business. He said the applicant and her husband should be driven out of business. I said all that and I'm happy to put my name to it. I'm happy to put my name to it.

Well, today in the Federal Court, His Honour has said, "The whole of paragraphs 5 and 6 of the Statement of Claim filed on the 2nd of September, and the words, 'Breaches of Section of

the [Trade Practices Act](#)' in the heading to the particulars on page 3, be struck out. Pursuant to the [Trade Practices Act](#) of 1974, the proceedings will be transferred to the Supreme Court of New South Wales. The Notice of Motion filed by the respondent on the 9th of October be dismissed."

This woman, Kim Ann Ahmed, married to this horrible beast, tried to sue me for defamation and she may well continue, however, we note with some anticipation His Honour made a judgement. The applicant may respond, the applicant, being Kim Ann Ahmed, is ordered to pay the respondent's costs. Me and this radio station. A victory for common sense. She's married to a lowlife grub who tried to perform a sexual act on a 17-year-old employee and was convicted of indecent assault and then she tried to line me up in the Federal Court for defamation.

I'll tell you who's been defamed in this, the little girl involved with your grub of a husband and her family. That's who's been defamed, you silly silly woman. You've got your just desserts. And we'll be making sure we apply for those costs in the next twenty-four hours. If we send you and your husband broke, I'll be absolutely delighted.

Amendments

17 Mar 2014 Anonymisation of Ms X

Paragraphs:
paras [8], [10]
and [12]

17 Mar 2014 Anonymisation of Mr Y

Paragraphs:
paras [10], [14],
[15], [19], [21],
[39] and [47]
