

IN THE HIGH COURT
APPLICATION FOR LEAVE TO APPEAL
TO THE COURT OF APPEAL (CIVIL DIVISION)

Title of case: Fiona George v Linda Cannell and LCA Jobs Ltd.	Case no. QB-2019-004612
Heard before: The Honourable Mr Justice Saini	Court 11
Nature of hearing: Media and Communications List Claims for libel, slander and malicious falsehood	
Date of judgment: 9 November 2021	
Results of hearing/judgment: Claim dismissed	
Claimant's application for leave to appeal:	Granted in relation to the issue of law concerning the application and interpretation of section 3(1) of the Defamation Act 1952. Refused on all other grounds.
Reasons for decision: <p style="text-align: center;"><u>Malicious Falsehood</u></p> <p>(1) I grant permission to appeal in relation to the issue of law concerning the application and interpretation of section 3(1) of the Defamation Act 1952. Although I have found no causation of loss on the facts there is an argument of law (as set out in the Judgment at[188]-[189])) that section 3(1) of the 1952 Act requires a court to focus on the words used and the likelihood of relevant loss at the time of the publication (and not an historical inquiry as in the case of section 1(1) of the Defamation Act 2003- concerned with the different issue of proof of serious harm to reputation).</p> <p>(2) I also consider this is not an academic issue because I have clarified that were I otherwise persuaded by C's arguments on section 3(1) of the 1952 Act, I would have awarded a nominal sum for actual <u>pecuniary</u> loss but some sum for injury to feelings where C had made an evidential case (subject to resolution of entitlement in law, which D contested).</p> <p>(3) I refuse permission to appeal on the factual challenge alleging it was perverse (even if it is found that I applied the right test) to conclude that publication to Mr Lingenfelder did not satisfy that test on the evidence before the court. C herself represented the relevant email had no consequence in the view of her employer,</p>	

as I have set out. The contemporaneous documents establish this beyond argument.

Defamation

- (4) I refuse permission to appeal on all other grounds. Specifically, the arguments made about section 1(1) of the 2003 Act do not raise issues fit for appeal. In my decision on that issue. I applied now well-established principles as to the law (stated at Supreme Court level in Lachaux) to factual findings I made on evidence.
- (5) As to those findings, they were very largely based on contemporaneous documents which made clear that C had not suffered any harm to her reputation. Also important was the very limited nature of the publications (just 2 publications limited to 2 people). The draft Grounds of Appeal suggest I should have found serious harm proved largely by reason of the words alone. While the words are important, the case law requires a more intense factual inquiry under section 1(1) of the 2003 Act.
- (6) The guidance of Lord Sumption in Lachaux makes it clear that the view of the C's reputation in the eyes of the publishee is a central fact. In this case there was direct evidence on that issue. See my Judgment at [121]-[122].

Judge's signature:

Mr Justice Saini

11 November 2021

Note to the Applicant:

When completed this form should be lodged in the Civil Appeals Office on a renewed application for leave to appeal or when setting down an appeal

Do you consider the appeal should be referred to the Court of Appeal (Civil Division)?

Yes

No

If Yes, please indicate which of the following criteria apply:

There appear to be conflicting authorities

There is a point of practice and procedure of significant importance

There is a point of general principle and importance in the development of the substantive law

A number of appeals on similar points suggests that a theme, or trend, is developing which the Court of Appeal needs to consider

Additional reasons (please set out below)