

**IN THE HIGH COURT OF NEW ZEALAND  
BLLENHEIM REGISTRY**

**CIV-2012-406-000272  
[2017] NZHC 2083**

BETWEEN                      LORETTA ANNE NEWTON  
   Plaintiff

AND                              SUSAN MAREE DUNN  
   First Defendant

FAYE COLLEEN LEOV and BERNARD  
LESLIE LEOV  
Second Defendants

Hearing:                      25 July 2017-28 July 2017; 31 July 2017 to 4 August 2017

Counsel:                      R J B Fowler QC and P J Radich for Plaintiff  
   No appearance for First Defendant  
   C J Griggs and C M Kenworthy for Second Defendants

Judgment:                    29 August 2017

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**JUDGMENT OF COLLINS J**

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**PART I**

**INTRODUCTION**

[1] The genesis of this defamation proceeding was a dispute between Mrs Newton, when she was the Principal of the Rai Valley Area School (the School) and Mrs Leov, when she was the School librarian. Their dispute had a profound effect on their lives and careers. It also divided their community.

[2] Mrs Leov believed she was bullied by Mrs Newton. On the other hand, Mrs Newton believed Mrs Leov was refusing to comply with lawful directions which she gave Mrs Leov in her capacity as the School Principal.

[3] The dispute between Mrs Leov and Mrs Newton resulted in Mrs Leov taking an extended period of sick leave and being dismissed from the School in 2008. She responded with a claim for unjustified dismissal against the School Board of Trustees (the Board). The Board issued a public apology to Mrs Leov in 2010. Mrs Leov never returned to the School. In 2011 Mrs Newton resigned, primarily because of her dissatisfaction with the way the Board managed Mrs Leov's employment dispute and her own associated health issues.

[4] Approximately two years after Mrs Leov's employment dispute was resolved, she and her husband engaged Mrs Dunn to write a book about her experiences and to expose Mrs Newton as a bully. To assist in gaining information, Mrs Dunn sent a letter dated 10 September 2012 to approximately 50 people, most of whom, lived in the Rai Valley community. This letter is the primary focus of this proceeding. She also sent a letter to representatives and members of Mrs Newton's church and a further letter to people associated with the Rai Valley community.

[5] The letter of 10 September 2012 contained a number of profoundly serious allegations against Mrs Newton. Those allegations are reduced to six imputations in this judgment, the most damaging of which were that Mrs Newton bullied Mrs Leov and others in the School and "destroyed the lives of others".

[6] The term "workplace bullying" is central to this proceeding. In the context of this case, there are three elements to the ordinary meaning of that term:

- (1) It involves unreasonable and persistent conduct by one person against another.<sup>1</sup>
- (2) The conduct in question is unwarranted and harmful to the recipient.

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<sup>1</sup> Refer Duncan Black and others (eds) *Collins English Dictionary* (10th ed, HarperCollins Publishers, Glasgow, 2009) for the definition of "bully": "a person who hurts, persecutes, or intimidates weaker people"; Tony Deverson and Graeme Kennedy (eds) *New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2005): "a person who uses strength or power to coerce others by fear"; Lesley Brown *The New Shorter Oxford Dictionary* (Oxford University Press, Oxford, 1993): "a person who uses strength or influence to harm or intimidate those who are weaker".

- (3) The recipient of the conduct lacks the ability to defend him or herself, possibly because of their lower status or ranking in the workplace environment where the conduct in question takes place.<sup>2</sup>

[7] Mrs Newton commenced defamation proceedings, initially against Mrs Dunn, and subsequently also against Mrs and Mr Leov when further information came to light about their role in the 10 September 2012 letter.

[8] This judgment explains why I have concluded that Mrs and Mr Leov are liable in defamation for the letter of 10 September 2012 even though it was written by Mrs Dunn. I also explain why almost all the passages contained in the 10 September 2012 letter have the imputations pleaded by Mrs Newton and why Mrs and Mr Leov's defences of truth and genuine opinion have failed.

[9] One of the many unusual features of this case is the relief that I have resolved is appropriate, namely, a recommendation that Mrs and Mr Leov publish a letter correcting their defamatory statements and apologising to Mrs Newton pursuant to s 26 of the Defamation Act 1992. In my assessment, a correction and apology from Mrs and Mr Leov is a more effective remedy than an award of damages. If, however, Mrs and Mr Leov fail to follow this recommendation, then they will be liable for damages in the sum of \$100,000. I have ordered that Mrs and Mr Leov pay Mrs Newton's costs on a solicitor/client basis.

[10] This judgment is divided into seven parts, including this introduction. The remaining six parts are:

Part II – Background

Part III – Publication

Part IV – The meaning of the published words

Part V – Truth

Part VI – Honest opinion

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<sup>2</sup> Whilst this feature of the concept of bullying in the workplace is important in the present case, it is not necessarily the case that all those who bully others in the workplace are senior or have a senior rank or status to those who are the subject of bullying.

## **PART II**

### **BACKGROUND**

#### *Rai Valley School and Community Library*

[11] Rai Valley is a small rural community located at the top of the South Island. It lies approximately half way between Nelson and Blenheim and services a large area dominated by farming and forestry. Most people who live in the Rai Valley region know each other and many are related to each other by birth or marriage. They have, through necessity, developed a high level of independence and resilience. The residents of this community place a great deal of significance upon their integrity, trustworthiness and reputations.

[12] The School caters for students from their first day of primary school through to the end of their secondary school careers.<sup>3</sup> During most of the relevant period, the School role fluctuated between about 153 students and 18 teachers to about 89 students and 12 teachers.<sup>4</sup> The School is dependent upon the community for financial and practical assistance to ensure students receive the benefit of modern facilities and resources.

[13] The Community Library at Rai Valley can be traced back to 1936 when community books were kept in a purpose-built library and debating hall in the Rai Valley village. Over time, the Community Library struggled to meet the needs and expectations of the Rai Valley community. A community meeting took place on 28 July 1994, where it was resolved to establish a new Community Library located at the School. The construction of the new library facility (the library) was only possible because of the commitment of members of the community who devoted time, money and resources to the construction of the library.

[14] Mrs and Mr Leov were two key forces behind the library construction. Mrs Leov and her husband farm a property near Rai Valley and have lived in the area for

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<sup>3</sup> Years one to thirteen.

<sup>4</sup> Education Review Office Report 2001 and Education Review Office Report 2007.

decades. Mrs Leov spent 26 years working as a part-time French teacher at the School, she also supervised distance learning students and was the School librarian. Mrs and Mr Leov actively participated in raising money to build the library. This involved applications to the Lotteries Commission and the Community Trust for grants as well as community-based fundraising activities. Mr Leov also sourced the timber for the library building, helped to fell the trees and arranged for them to be milled at his family farm. He regularly worked on the building site. Mrs and Mr Leov even paid for the library's telephone and fax line.

[15] The Board was also involved in the development of the library building. The building was located on the School's premises, meaning the land upon which the library was built belonged to the Ministry of Education. The Board created a building sub-committee in 1997 that was involved in the construction of the library.

[16] In this same year the Rai Valley Community Library was registered as an incorporated society (the Society). The Society's constitution stated the library comprised two parts, the School Library and the Community Library. It provided for a governing committee (the Committee) comprising four persons elected from the community together with the School Principal, one representative from the Board and the School librarian. The constitution stated that the "organisation and management of the library shall be the responsibility of the Committee".<sup>5</sup> The librarian was to "be in charge of the library".<sup>6</sup> The Committee could decide on the public opening times of the library and "the library could be closed by the Committee or its delegated representative on any occasion".<sup>7</sup> Mrs Leov was a member of the Committee by virtue of her role as the School librarian. She was also elected Chairperson of the Committee. There is no record of the Board having considered the terms of the constitution. It also transpired that Mrs Newton did not become aware of the provisions of the constitution until approximately four years into her term as School Principal.

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<sup>5</sup> Constitution of the Rai Valley Area School/Community Library Incorporated, cl 5.1 (1997). In 2007 cl 5.1 of the constitution was amended to read "organisation of the library shall be the responsibility of the library committee ... The day-to-day management of the library is to be controlled by the principal and the librarian with library responsibilities, and they shall consult with each other to ensure that each works for the mutual best interests of the Rai Valley Area School and the community."

<sup>6</sup> Clause 9.1.

<sup>7</sup> Clause 13.

[17] The library building, which is an impressive, large alpine chalet style construction, was opened by the Governor-General on 4 November 1999. Mrs Payton, another driving force behind the new facility explained in her evidence that the Governor-General, in his opening remarks, praised the Rai Valley community for its success in creating the new facility.

[18] Although it was not appreciated at the time, the governance and management arrangements for the library were fraught with difficulty. Mrs Leov, who was an employee of the Board and subject to the management of the Principal, was also accountable to the Committee which she chaired. The difficulties in these arrangements were exacerbated when Mrs Newton and Mrs Leov began to clash over library matters and Mrs Leov's role in the School.

*Mrs Newton and Mrs Leov*

[19] Mrs Leov and Mrs Newton have known each other for decades. Mrs Newton first met Mrs Leov when she visited the Leov family farm as a school girl.

[20] Mrs Newton and her husband farm a property approximately 35 kms from Rai Valley, near Havelock. They have lived in the Havelock area since 1980 and in 1998 bought the farm which they currently own with Mr Newton's brother. Mrs Newton taught at Havelock School up until 1994 when she was appointed as a senior teacher at the School. Mrs Newton was promoted to Deputy Principal and then, in 2002 following the retirement of Mr Freeth, she became the School Principal. In addition to her teaching career, Mrs Newton has participated in community affairs and is an active member of the Anglican Church.<sup>8</sup> Mrs Newton and Mrs Leov started their working relationship in a positive and cordial manner. Over time, however, their personalities began to clash.

[21] Mrs Newton was widely liked and supported by many people in her community. She has also, however, been the subject of considerable criticism. It is clear that Mrs Newton brought a different leadership style to the role of School Principal than that of her predecessor and that she was a comparatively firm leader of

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<sup>8</sup> The relevance of Mrs Newton's role in the Anglican Church is made apparent in paragraphs [60] and [61].

the School who expected staff to follow her lawful directions and accept her authority.

[22] Mrs Leov was also a strong-willed person, who held firm views about how the library should be managed. Mrs Leov had a significant emotional investment in the library and was not happy to have Mrs Newton challenge her control of the library.

[23] Mrs Leov's commitment to the library blinded her ability to properly understand her duties and responsibilities to Mrs Newton and the Board. Mrs Newton on the other hand, was firm in her determination that school staff comply with her lawful instructions. Ultimately, both Mrs Newton and Mrs Leov became tragic victims as they sank deeper into the quagmire of their dispute.

*The troubles at Rai Valley*

[24] The relationship between Mrs Newton and Mrs Leov began to unravel in late 2006 when the Committee undertook a fundraising campaign to enable the library to purchase new computers and software. The focal point of this particular fundraising campaign was a fete on 24 September 2006 organised by a committee chaired by Mrs Leov. Issues arose about the hiring of portable toilets, security guards and the payment of electricity charges. The Board set its expectations which were conveyed by Mrs Newton to Mrs Leov.

[25] Approximately six weeks after the fete, Mrs Leov approached the Board seeking \$3,000 to assist with the purchase of the proposed new computers and software. The Board agreed to this request on 6 November 2006. The Board's agreement was subject to conditions designed to protect the School's interests in relation to the new computers. Mrs Newton explained:<sup>9</sup>

... The Board wanted to be involved in the choice of the computers and other arrangements in relation to them. The Board required that there be a committee to address the purchase of the computers and that two Board members be on the committee.

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<sup>9</sup> Brief of Evidence in Reply of LA Newton at [33].

Mrs Leov disputes Mrs Newton's recollection of events and says the Board was happy to support the Committee's acquisition of new computer facilities.

[26] Mrs Leov spoke to Mrs Newton on 9 November 2006. During their discussion, Mrs Leov told Mrs Newton that the Committee would no longer need the additional \$3,000 that the Board had agreed to pay because an additional \$1,000 raised at the fete had been discovered. Mrs Leov says that this meeting became acrimonious and that Mrs Newton accused her, among other things, of being "sneaky" and uncooperative. Mrs Newton, on the other hand, says Mrs Leov was obstructive and appeared intent on purchasing new computers and software without the Board's input. Mrs Leov says she was very disturbed by Mrs Newton's attitude and left the meeting in tears and shaking. Mrs Newton, however, says:<sup>10</sup>

I was certainly not aggressive towards Mrs Leov in any way. I did try to be firm in [pointing] out the position of the Board and myself as [P]rincipal. I did not accuse her of sneaky behaviour. Mrs Leov certainly did not leave the room in tears and shaking.

[27] It was at about this time Mrs Newton began investigating the basis upon which the library was managed and governed. She sought a copy of the constitution from Mrs Leov who told her that it was available "on-line". Mrs Newton's notes record she obtained a copy of the constitution and read it for the first time on about 23 November 2006.

[28] Following the meeting on 9 November 2006, Mrs Leov instructed her lawyer, Mr Fletcher, a partner in the Blenheim firm of Gascoigne Wicks to assist her. A meeting was scheduled for 24 November 2006 between Mrs Newton, Mr Hodges, the Chairman of the Board, Mrs Beattie, another member of the Board, Mrs Leov and her support person, Mr Webster, the District Library Manager for the Marlborough District Council and a member of the Committee. That meeting was adjourned however without notice, following the delivery of a letter from Mr Fletcher to Mrs Newton giving notice of a personal grievance by Mrs Leov. Mrs Newton said in her evidence that Mrs Leov's instructions to Mr Fletcher to initiate a personal grievance against the Board was a significant milestone in their deteriorating relationship.

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<sup>10</sup> Brief of Evidence in Reply of LA Newton at [38].

[29] The Board engaged Mr Yeoman from the New Zealand School Trustees Association to assist in managing the escalating problems. The dispute between Mrs Leov and Mrs Newton became more entrenched when, on 6 December 2006, the School proposed to reduce Mrs Leov's teaching time to two periods per week. Mrs Newton explained that this decision was unrelated to the dispute between herself and Mrs Leov. She said it was caused solely by annual management decisions to meet student needs and these necessitated a reduction in teaching time for some subjects, including French. A formal offer setting out Mrs Leov's position as distance learning supervisor and school librarian, and job descriptions were sent to her on 19 December 2006. Mrs Leov's distance learning supervisor hours were also reduced. Unfortunately, the letter stated Mrs Leov was required to be vetted by the New Zealand Police as a term of her employment. The letter said Mrs Leov needed to obtain a police clearance "at least every three weeks".

[30] Mrs Leov approached the local constable, Mr Barsanti, about the three week police vetting requirement. He wrote to Mrs Newton on 5 January 2007 asking for an explanation as to why the police needed to provide a clearance for Mrs Leov every three weeks. Mr Barsanti gave evidence that this requirement was unnecessary. On the same day, Mrs Leov resigned from her position as French teacher. She continued however, her roles as school librarian and distance learning supervisor.

[31] On 13 February 2007, a meeting was held at Mrs Newton's office. Those present were, Mrs Newton and Mr Hickling, the Deputy Principal, Mrs Leov and two of her support persons, Mrs Billingsley<sup>11</sup> and Mr Crabtree. Mrs Leov gave evidence that Mrs Newton was "inflexible" in regards to the job descriptions when an alternative was proposed by her. Mrs Newton says that at that meeting she pointed out the three week police vetting requirement was an error and that the correct position required Mrs Leov to obtain a police clearance every three years and that she apologised for the error. Mrs Leov says Mrs Newton did not apologise but acknowledged that there had been a typing error in the 19 December 2006 letter. On the same day, Mr Fletcher wrote to the Board setting out a number of issues concerning Mrs Leov's employment. The letter referred to the three week police

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<sup>11</sup> Previously known as Mrs Lawrence.

vetting issue and said that “[e]ven if this [was] a mistake it [was] a careless mistake which [was] deeply upsetting for Mrs Leov”.<sup>12</sup>

[32] The employment dispute continued to percolate. One feature of the dispute was the library budget, which Mrs Leov says Mrs Newton froze. Mrs Newton however contends she asked Mrs Leov to provide previous budgets, which were not produced, and to refrain from spending school funds while Mrs Newton was away overseas to enable the library curriculum team’s input into the budget. There was an unsuccessful attempt at mediation in April 2007. Around the same time, Mrs Leov realised she was being overpaid and informed the School of this fact. The School then calculated that Mrs Leov had been overpaid by \$1,597 and on 27 April 2007 Mrs Newton informed her in writing that she needed to repay this amount. Mrs Leov repaid that sum a year later on 11 April 2008, after Mrs Newton engaged the services of School Support Ltd to recover the money.

[33] On 14 June 2007, the community part of the library was closed by the Committee for half a day to enable Mrs Leov and the library volunteers to attend the funeral of Mrs Reid, their colleague and friend. Mrs Leov sent a letter explaining this to Mrs Newton on 11 June 2007, suggesting that if Mrs Newton wanted the “school element of the library to remain open” then the student librarians could issue and return books.

[34] On 25 June 2007, Mrs Newton sent a letter to Mrs Leov setting out five concerns. The letter said that Mrs Newton wanted to discuss these matters with Mrs Leov on 28 June 2007 at 2.00 pm. Mrs Newton warned Mrs Leov that she might decide to refer her concerns to the Board which, in turn, may consider if some form of disciplinary action was appropriate. These matters concerned unauthorised expenditure of \$219 when the library budget was temporarily “frozen”; inappropriate comments to students about Mrs Leov’s employment issues; not following proper procedures when closing the library to attend Mrs Reid’s funeral; not applying for leave to attend the same funeral; and, failing to send police vetting responses for library volunteers directly to the School as directed.

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<sup>12</sup> Letter from Gascoigne Wicks to Board of Trustees, 13 February 2007 at [8(e)].

[35] On the same day a letter was sent to Mr Fletcher about the terms of Mrs Leov's employment. That letter acknowledged that the requirement Mrs Leov obtain police clearance every three weeks was a typographical error and that the police vetting process would need to be undertaken every three years as "required by the Education Act".<sup>13</sup> The School sought an immediate meeting to resolve Mrs Leov's employment issues. On 28 June 2007 Mr Fletcher responded that further information was required before Mrs Leov could properly respond to the concerns that had been raised. Mrs Newton sent a further letter to Mrs Leov on 29 June 2007 saying she was "extremely disappointed and concerned at the way in which [Mrs Leov] had responded to [Mrs Newton's] note on June 28 requiring [Mrs Leov] to meet with [Mrs Newton] to discuss the closure of the library". There were further communications from Mrs Newton to Mrs Leov, and between Mr Fletcher and Mr Yeoman, including a letter dated 10 September 2007 where the issue of Mrs Leov's unauthorised expenditure was again raised.

[36] By this stage the relationship between Mrs Newton and Mrs Leov had deteriorated beyond repair. Minor points of difference between them were inflated beyond any sense of proportion. Issues that should have been able to be resolved amicably escalated to legal disputes. An example of issues being over inflated occurred when the School cancelled the library's phone and fax line and incorporated it into the School telephone system. At least one of Mrs Leov's supporters considered this to be an act of bullying by Mrs Newton.<sup>14</sup>

[37] The employment dispute was one of several fronts on which the battle between Mrs Leov and Mrs Newton unfolded. Mrs Leov instituted complaints to a number of people and agencies, including to Mr King MP, the local Member of Parliament and to the Ministry of Education. The Board enlisted Mr Yeoman's assistance to deal with Mr King's inquiries. Mr Yeoman and the Board met with Mr King on 12 October 2007. Mr King appears to have been satisfied by the Board and Mr Yeoman's assurances that Mrs Newton had not bullied Mrs Leov.

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<sup>13</sup> Letter from Rai Valley Area School to BA Fletcher, 25 June 2007.

<sup>14</sup> See [182]-[183].

[38] The Ministry of Education engaged Mr Crichton, a lawyer, to investigate the governance of the library in response to Mrs Leov's complaint. In his report dated 30 April 2008, Mr Crichton commented that "Mrs Leov, not unnaturally, [had] tended to take a proprietorial interest in the library". He also noted that "the [P]rincipal [was] entitled to see the librarian as a member of her staff who [was] able to be directed to do or not to do certain things ...".<sup>15</sup> Mr Crichton concluded the Society's constitution was "fatally flawed". He recommended "fundamental changes", including "that the librarian cease to represent either the School or the Community and instead advise the Library Committee ..." and "that the librarian not be eligible for any office on the Library Committee".<sup>16</sup>

[39] The entrenched nature of the dispute between Mrs Newton and Mrs Leov can be seen in letters exchanged between Mr Fletcher and Mr Hardy-Jones, a lawyer in Blenheim who acted for Mrs Newton and the Board. That dispute led to a meeting on 17 September 2007 at which time Mrs Leov responded to a number of Mrs Newton's concerns. From Mrs Leov's perspective, Mrs Newton then intensified her "bullying" of Mrs Leov. She says Mrs Newton "... would belittle and humiliate [Mrs Leov] at school meetings, and particularly at library curriculum team meetings". Mrs Leov says Mrs Newton:<sup>17</sup>

... alleged at these meetings that [Mrs Leov] bought unauthorised computers and software and this had been "detrimental" to the school. [Mrs Newton] instructed school staff members at a library curriculum meeting not to co-operate with [Mrs Leov] in relation to the new computers. She also said that in future staff would be issuing all library books – not librarians.

Mrs Leov says she "was shattered for [her] library staff and frightened for them as they were being targeted now". For her part, Mrs Newton firmly refutes Mrs Leov's allegations and the claims that she bullied Mrs Leov or "instructed school staff members not to co-operate with Mrs Leov in relation to new computers".<sup>18</sup>

[40] Mrs Leov says that by this stage she had been subject to Mrs Newton's bullying for about a year and her health was beginning to suffer. She explained in

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<sup>15</sup> Report for Ministry of Education on the Rai Valley Area School and Community Library, J Crichton, April 2008 at [6.7]-[6.8].

<sup>16</sup> At [7.1].

<sup>17</sup> Brief of Evidence of CF Leov at [197].

<sup>18</sup> Brief of Evidence of LA Newton in reply at [105].

her evidence that she “began to have suicidal thoughts” and “was too frightened to answer the telephone, the door or open the mail, or even go outside into the garden”.<sup>19</sup> On 16 November 2007, Mrs Leov provided the School with a medical certificate and “took sick leave to try [to] recover from the extreme stress [she] was under”.<sup>20</sup> Mrs Leov remained on sick leave up until 22 August 2008, when the Board terminated her employment.

[41] Around the same time a public meeting was held in the fire brigade hall in Rai Valley. Mr Webster gave evidence that he spoke at that meeting in support of Mrs Leov. Others supported Mrs Newton. By this stage, the dispute between Mrs Newton and Mrs Leov had broadened and caused the Rai Valley community to become deeply divided. On 6 November 2008, Mr Fletcher wrote to the Board putting it on notice that Mrs Leov was pursuing a claim of unjustified dismissal.

[42] The employment dispute between Mrs Leov and the Board culminated in a judicial settlement conference being conducted by the Employment Court in May 2010. Mrs Newton was not present at that settlement conference. An agreement was reached between the Board and Mrs Leov. As part of that settlement the Board issued a public apology to Mrs Leov and acknowledged that it did not effectively deal with her allegations of unfair treatment at the School and that her health and wellbeing had suffered significantly as a result of the events. The Board expressed its deep regret for its conduct and unreservedly apologised to Mrs Leov, her family and others for the distress they had suffered.

[43] In the meantime, Mrs Leov initiated further complaints against Mrs Newton. One of those complaints was sent to the Teachers’ Registration Board on 22 October 2008. On 22 March 2009, the Teachers Council Complaints Assessment Committee wrote to Mrs Newton saying that it had resolved to dismiss Mrs Leov’s complaints. The letter said:<sup>21</sup>

The [Complaints Assessment Committee] was not satisfied that there was any evidence to support the allegations of misconduct, especially bullying,

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<sup>19</sup> Brief of Evidence of CF Leov at [206].

<sup>20</sup> At [214].

<sup>21</sup> New Zealand Teachers Council “Complaint about [Mrs Newton]”, 22 March 2009 at 1.

by [Mrs Newton] ... [Mrs Newton] has demonstrated considerable patience and forbearance in this situation.

[44] In her evidence, Mrs Newton explained that Mrs Leov's numerous complaints to the police, the Ministry of Education, the Department of Labour, the Education Review Office and the local Member of Parliament about her alleged bullying of Mrs Leov failed to produce any findings that supported these allegations. For example, the Education Review Office reports covering the relevant period were generally positive. A report from the Education Review Office, which it compiled following a visit to the School in May 2007, described Mrs Newton as a "reflective practitioner who leads by example".<sup>22</sup> A Principal Appraisal, completed by Mrs Redshaw, the Rural Schools' Advisor employed by the Rural Education Assistance Programme in 2009, described Mrs Newton as being "a committed professional leader who [was] exceeding the criteria for the professional standards for Area School Principals".<sup>23</sup> The same report said Mrs Newton was an "excellent role model for teaching and learning", built "effective relationships with students" and set "clear expectations for teachers".<sup>24</sup> Mrs Redshaw explained in her evidence that earlier reports she had completed in relation to Mrs Newton were similar to the 2009 assessment.

[45] Nevertheless, Mrs Newton was deeply affected by the way the Board handled Mrs Leov's employment dispute. She says that the terms of the settlement led her to feel "very let down and unsupported in that there had been a settlement with allegations against [her] when [she] was not there to answer them".<sup>25</sup> Mrs Newton said she had been advised not to attend the settlement and was visiting her daughter in Australia who was unwell at the time. Mrs Newton says the public apology to Mrs Leov intensified divisions within the Rai Valley community and that she was particularly affected by newspaper articles that cast her in a "poor light" and "anonymous letters" she received.<sup>26</sup> Mrs Newton explains that the pressure on her was so heavy that she too "became unwell and depressed. [She] went on sick leave

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<sup>22</sup> Education Review Office Report 2007 at 3.

<sup>23</sup> Principal Appraisal 2009 at 12.

<sup>24</sup> At 12.

<sup>25</sup> Brief of Evidence of LA Newton at [31].

<sup>26</sup> At [32].

and into serious health decline”.<sup>27</sup> Ultimately, Mrs Newton and her husband decided she should retire from teaching. She resigned on 2 November 2011.

[46] Thus, by the end of 2011 both Mrs Leov and Mrs Newton had prematurely finished their long teaching careers. Between them they had approximately 50 years experience. This was experience which the School could not afford to lose. Both had suffered serious health issues and the Rai Valley community had become deeply polarised with one faction supporting Mrs Leov and the other supporting Mrs Newton.

[47] Unfortunately, the settlement of the employment dispute did not alleviate divisions in the Rai Valley community. Letters and articles published in the local newspapers in 2010 and 2011 reflect the entrenched feelings of grievance within the community. The election of a new Board did not lead to resolution of the difficult relationship between the Board and the Committee. A petition was sent to the Ministry of Education from some members of the Rai Valley community. This led to the Secretary of Education replacing the Board with Ms Wysocki as Commissioner, pursuant to s 78M(2) of the Education Act 1989 in March 2011.<sup>28</sup> Unfortunately, Ms Wysocki passed away before she could resolve the lingering issues that had caused immense damage to Mrs Leov, Mrs Newton, the School, the Committee, and the Rai Valley community.

[48] The governance and management structures for the library also changed following Mrs Newton and Mrs Leov’s departures from the School. These changes commenced in 2009 when a formal Licence to Occupy Agreement was executed between the Committee and the Board. In 2013, the constitution of the Society was redrafted. It appears that draft may not have been registered, but I understand the Committee now operates under the 2013 constitution. Under that version of the constitution the Committee comprises four persons appointed by the Board and four persons who represent the community. The Principal is an ex officio member of the Committee. The day-to-day management of the library is “the responsibility of the

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<sup>27</sup> Brief of Evidence of LA Newton at [33].

<sup>28</sup> “Notice of Appointment of a Commissioner for Rai Valley Area School (291)” (11 March 2011) 27 *New Zealand Gazette* 789.

[P]rincipal who [works] to ensure the library operates for [the] mutual best interests of the Rai Valley Area School and the community”.<sup>29</sup>

### *Mrs Dunn*

[49] Mrs Newton thought that her retirement would bring her dispute with Mrs Leov to an end and provide an opportunity for the community and the parties to recover from the ordeal. Unfortunately, Mrs Newton’s hopes soon evaporated.

### *The contract*

[50] In 2012, Mrs Leov attended an art course in Otago. There she met Mrs Dunn, a professional writer, who listened to Mrs Leov’s account of what had taken place and decided to use Mrs Leov’s experiences as the foundation for a book about bullying in the workplace in New Zealand. Mrs Leov, together with her husband, met with Mrs Dunn on two, or possibly three occasions in Arrowtown and Queenstown. Those discussions led to Mrs and Mr Leov agreeing to pay Mrs Dunn \$27,000 to write a book based upon Mrs Leov’s experiences. Clause 2 of the contract set the scene for what was soon to unfold. It states:<sup>30</sup>

The goal:

To create a book [the Faye Leov Story], which is to show the true nature of bullying in the workplace, and demonstrate the devastating emotional and physical cost to Faye and the others involved. Integral to this story will be the profiling and exposure of a bully, Loretta Newton, former principle (sic) of the Rai Valley Area School.

### *Interview*

[51] As part of the preliminary investigation for the book, Mrs Dunn interviewed Mrs and Mr Leov on or about 6 August 2012 in Queenstown. The interview was recorded. A transcript of the interview, comprising 55 pages, was presented in evidence. The transcript shows that Mrs and Mr Leov were still deeply affected by the dispute. For example, Mrs Leov said that as a result of her experiences she could now “sense” bullying if she entered into a place where bullying occurred. At times

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<sup>29</sup> Constitution of the Rai Valley Area School, Community Library Incorporated, cl 5(a) (2013).

<sup>30</sup> Writing Agreement between Mrs Dunn and Mrs and Mr Leov (undated) at 2.

during the interview Mrs Dunn and Mrs and Mr Leov referred to Mrs Newton in vitriolic terms.

[52] Examples of the extreme animosity that Mrs Dunn and Mrs and Mr Leov displayed towards Mrs Newton included Mrs Dunn referring to Mrs Newton as “conniving”.<sup>31</sup> She said she was determined to proceed with the book, even if she had “to cage a demon”.<sup>32</sup> Mr Leov talked about Mrs Newton “hypnotising [people] so that she could manipulate them”.<sup>33</sup> At another point in the transcript Mr Leov compared Mrs Newton to those who ran “the camps in Germany [and] Poland”.<sup>34</sup> Mrs Leov spoke about the effect Mrs Newton had on people in the School and referred to a student who “came into the school as quite an intelligent little girl and left it like a raging lunatic”.<sup>35</sup>

[53] In a particularly disturbing and graphic part of the interview Mrs Dunn and Mrs Leov envisaged Mrs Newton being placed “on the back of a cart ... tak[en] down the town and put on her knees in the middle of the street” where she could be “thrash[ed] ... with birch”.<sup>36</sup>

#### *Draft letter*

[54] On 30 August 2012, Mrs Dunn sent Mrs Leov a draft letter that she was proposing to send to people who had “been associated with the Rai Valley Area School and Community Library”. The draft letter (dated 29 August 2012) was sent under cover of an email dated 30 August 2012, in which Mrs Dunn said, amongst other things:

I woke this morning with a sense of urgency ...

I have written a letter which will probably shock you. I want to send it to everyone across the board, including the newspapers and the television. I want everyone to start addressing this now. If my instincts are right this will provide the story and I will be able to get on with its writing ...

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<sup>31</sup> Transcript of 6 August 2012 Interview at 9.

<sup>32</sup> At 2.

<sup>33</sup> At 16.

<sup>34</sup> At 38.

<sup>35</sup> At 34.

<sup>36</sup> At 42.

Take a look at this rough draft, if you can or if you feel you can't – get [Mr Leov] to. I feel this is a very important move, but I need you to trust me and give it your blessing.

[55] In her draft letter Mrs Dunn explained her aim was:

[To] author a book that looks at a topical issue that affects all New Zealanders, and in particular those harmed in the Rai Valley story. The issue is workplace bullying and in this case, serial workplace bullying. It is my intention to cover the events that led to the catastrophic community breakdown in what was formerly your idyllic, peaceful, and fun-loving, family orientated community, Rai Valley. We have the facts. Now we need the human face stories.

...

My main concern is around events that took place in the Rai Valley Area School, and Library, particularly during the years the school was under the leadership of Mrs Loretta [A] Newton ... and the then Board of Trustees, chaired by Jonathan Hodges. There are other major players whom I haven't named for now, but you will know who you are.

...

This is a very tragic story. Sitting in my office with mountains of paperwork, gathered through months of investigation, I saw a very sinister story unfold. It has been alleged, and in some cases acknowledged, that many people have suffered irrevocable harm through the actions of one school [P]rincipal, and those who sanctioned and endorsed her behaviour. This book will look at the effects of this extreme case of workplace bullying, which had an impact on the staff, community volunteers, pupils and parents that were connected to, or worked at the Rai Valley Area School and the Community Library.

...

Mrs Dunn asked recipients to assist her to “bring the story together” by inviting them to share their stories with her.

[56] The draft letter consisted of a brief introduction and a longer substantive section. There are eight passages in the draft letter that are significant to this litigation. Those passages stated:

- (1) I can assure you that all the documentation and evidence, points to a saboteur in your midst, and that saboteur sacrificed your community in order to satisfy her own appetite for bullying, controlling and finally breaking human lives.

- (2) Evidence I have, seems to suggest that [Mr] Hodges and some of his [Board] did appear to genuinely accept that [Mrs Newton] had deceived them about the real situation ...
- (3) This appears to be one of the most extreme cases of a workplace/community bully, to come to light in New Zealand ...
- (4) We must understand a bully already has serious relationship difficulties, harbours issues of inferiority and jealousy, and could be, in most respects, deemed mentally unwell and socially inept ...
- (5) A bully has the charm and charisma to get people to believe them, often resorting to a victim mentality if needed, to gather allies. More often than not, they belong to a church or similar organisation, and are seen to be doing good elsewhere. This is all part of the game.
- (6) For those of you who have aligned yourselves to this bully behaviour, I feel genuinely concerned for you. I only ask that you give this a fair hearing and you step back to take an objective look. If you find yourself rushing to pick up the phone to inform Mrs Newton, you probably are understandably feeling scared of being implicated, or it might be you have become one of the “loyal followers and believers”. The only way you can be a true colleague and ally to a person such as this is by employing honesty. Help her to face the truth.
- (7) I believe [Mrs] Newton may have recently returned to some form of teaching position and knowing what I now do, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall or will it be one of your children? Anyone who supported renewal of [Mrs] Newton’s teacher registration must surely be placing themselves and their career at risk.
- (8) At the very least no-one should have endorsed a teacher who, as indicated by [Ms] Wysocki, commissioner, if I understand her comment correctly, did not actually leave the profession of her own volition.

*The 10 September 2012 letter*

[57] During the first week of September 2012, Mrs Dunn and Mrs Leov exchanged a number of emails relating to the contents of the draft letter. In Part III of this judgment I examine those emails as part of my analysis of the role played by Mrs and Mr Leov in authorising and participating in the sending by Mrs Dunn of the 10 September letter to approximately 50 recipients. The names and addresses of most of those recipients were sent to Mrs Dunn by Mrs Leov. A copy of that letter was also sent to the Marlborough Express.

[58] The 10 September letter comprised an introduction, followed by a nine page substantive section. In some cases Mrs Dunn wrote a personal note to recipients at the end of the letter. I set out Mrs Dunn's letter in full as an appendix to this judgment. It is sufficient for present purposes to quote the following key passages of the letter:<sup>37</sup>

- (1) This is undoubtedly the worst story of workplace bullying to surface in a New Zealand community, and in particular, within a small school.
- (2) All the documentation and evidence, and the official records of the facts, point to a school and community being systematically divided and broken, by a ruthless and unwell saboteur.
- (3) That saboteur, often disguised as someone doing good, literally sacrificed the wellbeing of your children, and numerous fine teachers in order to satisfy her own appetite for, controlling, degrading and breaking, human life.
- (4) If you were good at what you did, aimed for excellence, opposed any wrongdoing, told the truth, held a position of responsibility, got a public or official pat on the back from someone, were popular, or you simply created something lovely and were noticed for it, this would be enough.
- (5) She systematically set about the insidious degradation, public humiliation and in some cases, complete destruction of human lives that saw through her, or received the "back patting" she so hungered for.
- (6) However the evidence I have, does seem to suggest that [Mr] Hodges and some of his Board of Trustees did appear to genuinely accept that [Mrs] Newton had deceived them about the real situation.
- (7) I acknowledge this was an extreme case of workplace bullying.
- (8) It started with one small man, a bully, who had a personal mandate to destroy those who challenged his feelings of inferiority.
- (9) This appears to be one of the most extreme cases of a workplace/community bully, to come to light in New Zealand.
- (10) We must try and understand the nature of a bully. They have low self-esteem, possibly have serious relationship difficulties, often harbour feelings of intense jealousy, and could be, in most respects, be (sic) deemed mentally unwell and humanly inept, but socially charming to some ...

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<sup>37</sup> Letter from Mrs Dunn, 10 September 2012.

- (11) A bully has the charm and charisma to get people to believe them, often resorting to a victim mentality if needed, to gather allies. More often than not, they belong to a church or similar organisation, and are seen to be doing good elsewhere. This is all part of the game.
- (12) For those of you who have aligned yourselves with this bully behaviour, I feel genuinely concerned for you. I only ask that you give this a fair hearing and you step back to take an objective look. If you find yourself rushing to pick up the phone to inform Mrs Newton, you probably are understandably feeling scared of being implicated, or it might be you have become one of the “loyal followers and believers”. The only way you can be a true colleague and ally to a person such as this is by employing honesty. Help her to face the truth.
- (13) I believe Loretta Newton may have recently returned to some form of teaching position and knowing what I now do, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall or will it be one of your children? Anyone who supported renewal of Loretta A. Newton’s teacher registration must surely be placing themselves and their careers at risk.
- (14) At the very least no-one should have endorsed a teacher, who, as indicated by [Ms] Wysocki, commissioner, if I understand her comment correctly, did not actually leave the profession of her own volition.

[59] It will be immediately apparent that there were a number of passages in the draft letter that were incorporated into the letter of 10 September 2012.

*Letter of 1 October 2012*

[60] On 1 October 2012, Mrs Dunn sent an email attaching her 10 September 2012 letter (the letter of 1 October 2012) to a number of people connected with the Anglican Church in the Nelson-Marlborough region, including Bishop Ellena, the Bishop of Nelson.

[61] The letter of 1 October 2012 was the basis of Mrs Newton’s second cause of action for defamation against Mrs and Mr Leov. In his closing submissions Mr Fowler QC advised that it was no longer alleged Mrs and Mr Leov published the 1 October 2012 letter and so therefore the second cause of action was no longer pursued against Mrs and Mr Leov. Suffice to say that the letter sent by Mrs Dunn to members of the Anglican Church contained a number of very damning comments about Mrs Newton.

*Letter of 8 October 2012*

[62] On 8 October 2012, Mrs Dunn sent a further email to a number of people in the Rai Valley community. That letter forms the basis of Mrs Newton's third cause of action for defamation against Mrs and Mr Leov.

[63] It is not necessary to set out all of the contents of that letter. The essential features of that letter are contained in the following paragraphs:

Unfortunately due to events of the past week in relation to writing this book, I have decided I need to plan my work with the safety of myself and my family in mind. As many of you will know, there has been many friendly reminders to tread with caution while dealing with this topic and I am now listening.

... My intentions were to meet with many of you but have decided as a precaution, I am going to limit most communications to phone, email or skype ...

I trust this story will bring to light the enormous damage perpetrated in your lives and that due redress and compensation will be available for those of you who have lost careers and income ...

A monstrous thing has happened and it is now time to defang the monster.

*The proceedings*

[64] On 10 October 2012, Mr Radich of Radich Law in Blenheim wrote to Mrs Dunn advising that he was instructed by Mrs Newton to issue defamation proceedings against her in relation to the letter of 10 September 2012. This proceeding was commenced by Mrs Newton, initially only against Mrs Dunn, on 1 November 2012.

[65] On 23 August 2013, after information was obtained from Mrs Dunn, Mrs Newton applied to join Mrs and Mr Leov as second defendants in the proceeding. On 30 October 2013, orders were made by consent granting Mrs Newton's application. Thus, from that date Mrs and Mr Leov have been the second defendants in this proceeding. By this time Mrs Dunn had elected to dispense with the services of her lawyer and represent herself.

[66] In a memorandum dated 5 March 2014, Mrs Dunn accepted that the letters she sent on 10 September and on 1 and 8 October 2012 defamed Mrs Newton. Mrs Dunn told the Court that she sent the letters in question “in collaboration with, and under the instructions of, [Mr and Mrs Leov]”. Mrs Dunn said that she had been “misled” and that she was “foolish to [have] allow[ed] [her]self to become involved in this battle”. Mrs Dunn agreed without reservation to furnish a public apology and retraction for the contents of the letters she wrote.

[67] Mrs Dunn’s admissions do not bind Mrs and Mr Leov.

*The joint tortfeasor release rule*

[68] Mrs Dunn has, in effect, played no further role in this proceeding and did not give evidence. Although Mrs Newton has not formally settled the proceeding against Mrs Dunn, she has conveyed her desire to accept Mrs Dunn’s apology and not to continue her claim against her. However, it is theoretically possible Mrs Dunn could still be proceeded against.

[69] Mr Griggs submitted that Mrs Newton had settled her claim against Mrs Dunn and that this settlement precluded her from continuing her claim against Mrs and Mr Leov. The basis of that submission relates to what is known as the “joint tortfeasor release rule”. Under that rule, a settlement with one or more joint tortfeasors is a bar to continuing a proceeding against other joint tortfeasors,<sup>38</sup> notwithstanding the provisions of s 17 of the Law Reform Act 1936 that permits a plaintiff who obtains judgment against one tortfeasor to pursue proceedings against another person who would have been liable as a joint tortfeasor.

[70] Mr Griggs’ submission relied on part of Mrs Newton’s evidence in which she had said that when Mrs Dunn apologised Mrs Newton “accepted that apology and [has] no wish to have a continuing claim against her”.<sup>39</sup> That statement was made in the context of Mrs Newton saying that all she wanted was for Mrs and Mr Leov to apologise and that if they did so she would not pursue any other claims against them.

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<sup>38</sup> Refer *Kelliher v Bridges* (1911) 31 NZLR 203 (SC); *Brooks v NZ Guardian Trust Co Ltd* [1994] 2 NZLR 134 (CA) at 138 and *Nandro Homes Ltd v Datt* HC Auckland CIV-2008-404-6676, 16 March 2009 at [62].

<sup>39</sup> Brief of Evidence of Evidence in Reply of LA Newton at [266].

[71] Mr Fowler addressed Mr Griggs’ “joint tortfeasor release” submission by explaining that he and his client were fully aware of the risks of releasing a joint tortfeasor and had deliberately kept Mrs Dunn in the proceeding as first defendant. Mr Fowler explained that although it was unlikely Mrs Newton would continue with her claim against Mrs Dunn, there was, as a matter of law, no formal settlement of the claim against Mrs Dunn. Further support for the proposition that Mrs Dunn continues to be a defendant can be seen in a minute of Associate Judge Osborne dated 28 August 2015. By that stage Mrs Dunn was not taking any active step in the proceeding. Leave was granted to Mrs and Mr Leov to bring a cross-claim against her if they wished.<sup>40</sup> They did not do so, but nevertheless Mrs Dunn remained a party.

[72] In my assessment, the joint tortfeasor release rule is only engaged where there has been a clear and unambiguous settlement of a claim by the plaintiff against one or more joint tortfeasors so as to release the remaining joint tortfeasors from any ongoing liability.<sup>41</sup> The implications of the joint tortfeasor release rule are so significant that it should only be invoked where there has been an unequivocal settlement with one or more joint tortfeasors.<sup>42</sup> That normally would be done by way of a formal settlement and the filing of a notice of discontinuance. That has not happened and although Mrs Newton currently has no wish to continue her proceeding against Mrs Dunn, she has not formally settled her claim against Mrs Dunn, who continues to be a defendant in this proceeding. For this reason, I am satisfied the joint tortfeasor release rule does not apply in the circumstances of this case.

### *The pleadings*

[73] In her third amended statement of claim Mrs Newton alleges the passages from the letters of 10 September and 8 October 2012 set out in paragraphs [58] and

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<sup>40</sup> *Newton v Dunn* HC Blenheim CIV-2012-406-272, 28 August 2015 (Minute of Associate Judge Osborne) at [4](b).

<sup>41</sup> *Duck v Mayeu* [1892] 2 QB 511 (CA); *New Zealand Trainers Association Inc v Cranson* HC Wellington AP14/98, 22 March 1999; *National Insurance Life and Health Ltd v Wayman* HC Auckland AP135/99, 7 April 2000; *Nandro Homes Ltd v Datt*, above n 38, at [63].

<sup>42</sup> In *New Zealand Trainers Association Inc v Cranson*, above n 41, the Court went even further at 7 where it stated: “Courts nowadays are reluctant to construe an agreement with one tortfeasor as a release rather than a covenant not to sue, unless it is plain that the agreement was intended by the plaintiff to operate also as a release of other joint tortfeasors from their liability”.

[63] of this judgment are defamatory. It also explains what Mrs Newton says are the natural and ordinary meaning of the statements in question. Aspects of the meaning of the alleged defamatory statements are disputed. That dispute is addressed in Part IV of this judgment, in which I analyse the meaning of the statements identified by Mrs Newton as being defamatory.

[74] In her pleading Mrs Newton initially sought \$350,000 general damages and \$50,000 punitive damages in relation to the 10 September 2012 letter and the same sums in respect of the 8 October 2012 letter. She also sought a recommendation from the Court that Mrs and Mr Leov publish an apology and correction of the matters that are the thrust of this proceeding.

[75] Mr Fowler informed me that Mrs Newton's primary objective was to obtain a recommendation that Mrs and Mr Leov apologise and correct the defamatory statements for which they were responsible. He said that if such a recommendation was made and not complied with, then Mrs Newton would seek general damages limited to \$100,000 together with solicitor and client costs. I return to consider the terms of relief in Part VII of this judgment.

[76] It is now necessary to focus upon the role Mrs and Mr Leov played in the publication of the letters of 10 September and 8 October 2012. That task is undertaken in Part III of this judgment.

### **PART III**

#### **PUBLICATION**

[77] It is a basic tenant of the law of defamation that, in order to be liable, it must be established that the defendant published the statement in question to some person, other than the plaintiff.<sup>43</sup> Each repetition of a defamatory statement is a fresh

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<sup>43</sup> *Powell v Gelston* [1916] 2 KB 615 at 619; *Pullman v Hill* 1 QB 524 (CA) at 528 and Stephen Todd (ed) *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at [16.5.01].

publication and creates a fresh cause of action.<sup>44</sup> Lord Denning explained this aspect of the law of defamation in the following way:<sup>45</sup>

Our English law does not love tale-bearers. If the report or rumour was true, let [the defendant] justify it. If it was not true, [the defendant] ought not to have repeated it or aided its circulation. He must answer for it as if he had started it himself.

[78] In the present case, the letters of 10 September and 8 October 2012 were sent by Mrs Dunn to approximately 50 recipients. Mrs and Mr Leov can only be held to have published those letters if they either authorised or participated in the sending of the letters by Mrs Dunn.

[79] The contention that Mrs and Mr Leov authorised or assisted Mrs Dunn to publish the letters of 10 September and 8 October 2012 requires an examination of two interrelated legal concepts.

[80] First, under the law of agency, a Principal, by word or conduct may confer authority to act on the Principal's behalf. This authority "may be either express or implied, and may arise by the Principal permitting the agent to act in some way in the conduct of the Principal's business with other persons."<sup>46</sup>

[81] Second, is the concept of the liability of co or joint publishers under the law of defamation. That concept provides that "where a defamation proceeding is brought against two or more defendants who participated in or authorised the same publication, ... each defendant is liable for the whole of the damage caused to the claimant".<sup>47</sup> This is sometimes referred to as "accessory liability", which was explained in the following way by the High Court of Australia in *Webb v Bloch*,<sup>48</sup> in which Isaacs J said:<sup>49</sup>

All who are in any degree accessory to publication of a libel, and by any means whatever conduce to the publication, are to be considered as [P]rincipals in the act of publication: thus if one suggest illegal matter in

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<sup>44</sup> *Truth (New Zealand) Ltd v Holloway* [1961] NZLR 22 (PC) at 25-26; *Simunovich Fisheries Ltd v Television New Zealand Ltd* [2008] NZCA 350 at [74] and [93]-[94].

<sup>45</sup> *Associated Newspapers Ltd v Dingle* [1964] AC 371 (HL) at 410-411.

<sup>46</sup> *Pascoe Properties Ltd v Attorney-General* [2014] NZCA 616, [2015] NZAR 457 (CA) at 464.

<sup>47</sup> Matthew Collins *Collins on Defamation* (Oxford University Press, Oxford, 2014) at [4.39].

<sup>48</sup> *Webb v Bloch* (1928) 41 CLR 331.

<sup>49</sup> At 364.

order that another may write or print it, and that a third may publish it, all are equally amenable to the act of publication when it has been so effected.

[82] Thus, “[a]t common law, responsibility for publication extends beyond the authors of defamatory statements to all who composed and participated in the preparation and communication of the statement ...”.<sup>50</sup>

[83] In his comprehensive submissions Mr Griggs argued that the passage from *Webb v Bloch* that I set out in paragraph [81] was modified by the Full Court of the Supreme Court of Queensland in *Thiess v TCN Channel Nine Pty Ltd (No 5)*.<sup>51</sup> Mr Griggs submitted that *Thiess* stands for the proposition that a defendant cannot be held liable as an accessory to a publication unless he is “shown to have exercised control over its final form”.<sup>52</sup> Mr Griggs relied on the observations of the Full Court of the Supreme Court of Queensland when they said that at most, the defendant in that case, “... played a subsidiary and intermediate, if important, part in the creation of the product that in its finished state ultimately went to air”.<sup>53</sup> Mr Griggs submitted that Mrs and Mr Leov did not exercise control over the final form of the letters of 10 September and 8 October 2012, and that at most they may have played “a subsidiary and intermediate ... part in the creation of the ...” letters, thereby bringing them within what Mr Griggs described as the “*Thiess* exception” to *Webb v Bloch*.

[84] Mr Griggs submitted that the approach taken in *Thiess* had been followed in *Purcell v Cruising Yacht Club of Australasia*<sup>54</sup> and endorsed by the authors of *Gatley on Libel and Slander*.<sup>55</sup>

[85] There are two reasons why I do not agree with Mr Griggs’ submission that the law articulated by the High Court of Australia in *Webb v Bloch* and which I have cited in paragraph [81] has been modified in the way he suggests.

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<sup>50</sup> Matthew Collins, above n 47, at [4.36] citing *R v Payne* (1695) 5 Mod 163 (KB) at 167; 87 ER 584 at 586-587 and *Webb v Bloch*, above n 48.

<sup>51</sup> *Thiess v TCN Channel 9 Pty Ltd (No 5)* [1994] 1 Qd R 156 (QSC) at 194.

<sup>52</sup> At 195.

<sup>53</sup> At 195.

<sup>54</sup> *Purcell v Cruising Yacht Club of Australasia* [2001] NZWSC 927.

<sup>55</sup> Alastair Mullis and Richard Parkes *Gatley on Libel and Slander* (12th ed, Sweet & Maxwell, London, 2013) at [6.11].

[86] First, an examination of *Thiess* reveals that the issue in that case was not whether the defendant “published some, but whether he published all, of the matter supporting the defamatory imputations”.<sup>56</sup> The way the “co-publisher” question was put to the jury in that case was questionable. Nevertheless, that case was confined to a question as to whether or not the defendant was a co-publisher because he published *all* of the material in question.

[87] Second, the learned authors of *Gatley on Libel and Slander* explain *Thiess* in the following way:<sup>57</sup>

A person who provides material or even participates in a television programme is *not necessarily* a co-publisher with the television company for the whole programme.

(Emphasis added)

[88] The statement in *Gatley on Libel and Slander* explaining *Thiess* accurately sets out the law governing co-publishers, namely that it is a question of fact in each case as to whether or not a defendant “procured” or “participated” in the publication of the statements in question so as to render him or her liable as a co-publisher for any defamation.<sup>58</sup> Neither *Thiess* or *Purcell* modify this explanation of the law.

*The facts concerning publication by Mrs and Mr Leov*

[89] Both the agency and co or joint publisher concepts hinge upon the facts. It is necessary therefore to ascertain exactly what role Mrs and Mr Leov played in the publication of the letters of 10 September and 8 October 2012. To do so it has been necessary to carefully examine dozens of emails sent between Mrs Leov and Mrs Dunn. Those emails are comprehensive and provide a reasonably clear window through which to see the respective roles of Mrs Dunn and Mrs and Mr Leov in the publication of the letters in question. The following analysis refers to just a small portion of the total number of emails that they exchanged.

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<sup>56</sup> *Thiess v TCN Channel 9 Pty Ltd (No 5)*, above n 51, at 195.

<sup>57</sup> Alastair Mullis and Richard Parkes, above n 55, at n 82.

<sup>58</sup> At [6.11].

### *Initial correspondence*

[90] At an early stage in their relationship Mrs Dunn wrote to Mrs Leov setting out her initial proposal to write a book. In that letter, which appears to have been written before the terms of the contract were agreed to, Mrs Dunn explained how she would need to undertake research and interviews until she had “pried open every possible door” and had enough material to make the book “one to be reckoned with”. At some stage after Mrs Dunn wrote that letter, Mrs and Mr Leov agreed to the terms of the contract which said Mrs Dunn would:<sup>59</sup>

... conduct all research and interviews necessary for the writing of this story. [Mrs Leov would] advise on suitable participants and [would] provide any resources and materials that may assist the writer ...

### *Correspondence concerning the draft letter*

[91] On 6 August 2012, Mrs Dunn interviewed Mrs and Mr Leov. As noted earlier, the transcript of that interview is laced with vitriolic comments about Mrs Newton that emanated from Mrs Dunn and Mrs and Mr Leov. In that interview, Mrs Leov discussed the need to interview people connected with the School and library. Early in the interview, Mrs Leov warned Mrs Dunn not to contact Mrs Billingsley until “the end because she was the person who was telling everybody not to speak to anybody”. Towards the end of the interview, Mrs Leov agreed to supply the names, addresses and telephone numbers of people associated with the library and the School whom Mrs Dunn should contact. Mrs Leov assisted Mrs Dunn in this task when, on 19 August 2012, she sent an email to Mrs Dunn which set out a list of people whom Mrs Dunn should contact. The email was followed by another email on 20 August 2012 from Mrs Leov to Mrs Dunn, suggesting she contact Mr and Mrs Crabtree, who were her supporters.

[92] On 30 August 2012, Mrs Dunn sent a draft letter to Mrs and Mr Leov under cover of an email in which she warned Mrs Leov that the draft letter would probably “shock” her. Mrs Dunn emphasised the letter was “to go to everyone” and that it would “stir things up” but that she was “ready”.

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<sup>59</sup> Writing Agreement between Mrs Dunn and Mrs and Mr Leov (undated) at 4(I).

[93] In a return email on 31 August 2012, Mrs Leov said that she trusted Mrs Dunn and indicated that some of Mrs Dunn's letters would need to be posted and she would provide the addresses. The following day Mrs Leov said in an email to Mrs Dunn that she needed to talk to Mrs Billingsley before the letters were sent because she would advise people not to talk to Mrs Dunn. The following day Mrs Leov sent a further email to Mrs Dunn saying that Mr Leov was going through the draft letter and that the main source of concern for him was the way Mr Hodges was portrayed. Later, on 2 September 2012 Mrs Leov emailed Mrs Dunn saying that "in the main" she and Mr Leov were happy with the letter. The only part of the letter that caused concern were comments about Mr Hodges' conduct. Mrs Leov acknowledged this letter would "stir things up" and that she needed to know "when [Mrs Dunn] started to send it" as Mrs Leov needed to talk to Mrs Billingsley beforehand to ensure she did not "scuttle it all". At the time, Mrs Leov also expressed some concern about sending the letter to everyone. A copy of Mrs Dunn's draft letter appears to have been sent back to her under cover of Mrs Leov's email with a passage relating to Mr Hodges highlighted.

[94] On 3 September 2012, Mrs Dunn sent an email to Mrs Leov saying that she would make the suggested amendments regarding Mr Hodges. Mrs Dunn explained why she considered it necessary to send the letter to everyone except for those whom Mrs Leov was particularly concerned about. Mrs Dunn said that she was "still compiling additional names to include and would like to have a comprehensive final list ready to be sent to everyone within the next week if possible" and she still required Mrs Leov's help with locating addresses. Mrs Dunn explained that everyone would receive the letter "pretty much at the same time" and the responses would give Mrs Dunn "an idea of how to plan" her proposed visit to Rai Valley, to interview those who were important to talk to. Later that day Mrs Leov responded to Mrs Dunn saying that she and Mr Leov "were happy with that" and commented how nice it was for Mrs Dunn to include a personal note in the letter to Mrs Leov's supporters.

[95] On 7 September 2012 Mrs Dunn sent an email to Mrs Leov saying she was "nearly there with the collation of addresses" but that there were "a number that [were] still being illusive" (sic) and that Mrs Dunn needed Mrs Leov's help to obtain

the “illusive” (sic) addresses. Mrs Dunn also asked for a list of the people who should receive a personal note from Mrs Dunn with the letter. Later that day Mrs Leov responded saying she was “happy to help out with addresses” and that she would highlight the names of those who should receive a personal note from Mrs Dunn. Later on the same day Mrs Leov sent another email to Mrs Dunn saying she had a “quick look through the list” of the addresses that were required, and could “complete most of it”. On 9 September 2012, Mrs Leov emailed Mrs Dunn a list of the addresses of the intended recipients of Mrs Dunn’s letter. Three minutes later she sent another list of recipients’ addresses to Mrs Dunn.

[96] On 11 September 2012, Mrs Leov responded to communications from Mrs Dunn saying that she would look at another list which Mrs Dunn appears to have sent to her. Pertinently, Mrs Leov remarked that she hoped the letter that was to be sent by Mrs Dunn “[would not] sabotage the spring fete” that she was helping to organise in Rai Valley. The following day Mrs Dunn replied, thanking Mrs Leov for the recipients addresses. Mrs Dunn said that the last thing she would want was to “sabotage the spring fete” but that it was urgent to get the letters out. She said there was “never a best time for something such as this” and that she would defer her visit to Rai Valley until after the spring fete as the “combination of the letter and the fete [would] have people reflecting”.

[97] Mrs Dunn said she wanted “to slip into the community in a quiet unobtrusive, conciliatory way, hoping to get more information and maybe unexpected confessions, from those who [were] quietly ashamed of their involvement”. Mrs Dunn said she hoped the letter would “provoke that shame”. The same day Mrs Leov responded to Mrs Dunn. In that email Mrs Leov suggested Mrs Dunn send Mrs Payton’s copy of the letter to Mrs Leov for her to hand to Mrs Payton.

*Sending the letter of 10 September 2012*

[98] On 14 September 2012 Mrs Leov emailed Mrs Dunn saying, amongst other things, she would look at the “other list” of the recipients Mrs Dunn had sent her. The following day Mrs Leov sent another email to Mrs Dunn, saying “please don’t

send the letter to Rai Valley until” she had a chance to speak to Mrs Billingsley. Mrs Dunn replied on 16 September 2012:

Oh Faye [Leov] we must have had a misunderstanding. The letters have been sent and will arrive Mon or Tues. Somehow I thought you were [all ready] to go. Might be best to get in touch with [Mrs Billingsley] today or early tomorrow. So sorry for confusion. It will be ok.

[99] Mrs Leov’s response read:

Can’t. She is away today. Oh no. It will be like putting the letters in a fire. If she says no don’t talk no-one will. I think I did ask you to let me know before you sent them ...

[100] Mrs Dunn then said:

Just a thought Faye [Leov]. Perhaps it is better for you to disassociate yourself from [the] letter. Leave me to take ownership of that.

[101] Later on 16 September 2012 Mrs Leov emailed Mrs Dunn saying she had spoken to Mrs Billingsley who confirmed that if the letter was inflammatory and appeared to be written on behalf of Mrs Leov then recipients “could close ranks” and the outcome would then “depend on how” Mrs Dunn “handled it”. Mrs Dunn’s response was:

Sometimes there is no easy way to bring justice and I know this well from past experience. All will be ok. I would not wish to sabotage anything and I think if we just take it quietly the letter will have surprising results. Hang in there. I think you might be surprised who will talk. Nothing in the letter implicates you or [Mr Leov] at all ...

[102] Mrs Leov sent two further emails to Mrs Dunn on the evening of 16 September 2012. One of those emails contained a list of people who were thought to be supporters of Mrs Newton.

[103] Hard copies of the letter dated 10 September 2012 started to be received by its intended recipients on Monday 17 September 2012. That day Mrs Theilen-Shaw, a former teacher at the school and supporter of Mrs Leov, sent an email to Mrs Dunn saying she had received the letter and provided her email contact address. A similar email was sent to Mrs Dunn on the same day by Mrs Dellabosca, another of

Mrs Leov's supporters. Mrs Dunn received other replies from people in the Rai Valley community willing to talk to her.

[104] On 18 September 2012 Mrs Leov sent two emails to Mrs Dunn, one of which said:

... The letters have reached Rai Valley. People are extremely angry. They say it is inflammatory and could be suable. Many will not talk. The school is furious. All most people are interested in, is who instigated this – and [what] they will do [to] them. They are having problems finding out who started it though because of the notes you have put on the cover letters but they realise that you have talked to people and you have a lot of information. I do wish you had waited until after the fete as I wanted ...

[105] In the second email Mrs Leov asked Mrs Dunn whether the letter had been sent to Bishop Ellena. Later that day Mrs Dunn sent Mrs Leov a reply, encouraging her to "hold fast" and that "[Mrs] Newton needs to be stopped urgently".

[106] It was at about this time Mrs Billingsley met with Mrs Leov. Mrs Billingsley said that Mrs Leov was distressed and upset by the contents of the letter and concerned the letter had not been approved by Mr Fletcher before it was sent.

[107] On 21 September 2012, Mrs Leov emailed Mrs Dunn with the contact details of a person who had not received the letter and who Mrs Leov described as being "pivotal to the story".<sup>60</sup> On 22 September 2012, Mrs Leov sent another email to Mrs Dunn asking if the letter should be sent to two of Mrs Leov's supporters, Ms Nancarrow and Mrs Freeth. Mr Dunn responded the following day saying she would send copies of the letter to "all [who Mrs Leov] suggest[ed] although some of them were already sent [copies] in the first batch". Later that day Mrs Leov asked Mrs Dunn how much she was owed under the terms of the contract.

[108] In an email dated 28 September 2012, Mrs Leov said to Mrs Dunn that she had:

... no problem with people knowing it was me who gave you the information initially. As you know I have been through much worse than this ... [We] still have our dignity and still believe this is the right thing to do.

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<sup>60</sup> Mrs Leov had also provided two more names on 18 September 2012 by email.

*Letters of 1 and 8 October 2012*

[109] On 1 October 2012, the day Mrs Dunn wrote to the Bishop of Nelson and others connected with the Anglican Church in the Nelson-Marlborough region, Mrs Dunn sent Mrs Leov an email explaining that she was deferring her trip to Rai Valley until the end of October because she had received a lot of material that required consideration. In that email Mrs Dunn referred to having made contact “with the church and others [Mrs Leov] suggested”. Mrs Leov responded later that day and provided further contact details for people who Mrs Dunn should contact. Mrs Dunn sent a copy of the 10 September 2012 letter to one of the persons referred to in Mrs Leov’s 1 October 2012 email the following day.

[110] On 8 October 2012, Mrs Dunn sent a further letter to people in the Rai Valley community the key parts of which I have set out in paragraph [63]. The recipients of that letter were many of the same people who received the 10 September 2012 letter. In her 8 October 2012 letter Mrs Dunn said she was taking precautions to protect her safety. Mrs Leov emailed Mrs Dunn the next day saying she had just read Mrs Dunn’s letter “to everyone” and that she was glad Mrs Dunn was taking precautions. Mrs Leov warned Mrs Dunn that Mrs Newton and her supporters would go on the offensive.

*Correspondence after 8 October 2012*

[111] On 10 October 2012, Mr Radich sent his letter to Mrs Dunn advising his firm was acting for Mrs Newton and that her letter of 10 September 2012 was highly defamatory.

[112] In an email Mrs Leov sent Mrs Dunn on 12 October 2012, she referred to advice she had received from Mr Fletcher. According to Mrs Leov, Mr Fletcher was concerned by the reference to Hitler and that this was “the biggest bullying case in New Zealand” in Mrs Dunn’s letter. Mrs Leov said to Mrs Dunn:

If you had said one of the biggest cases and made no mention of Hitler it would be different ... [Mr Fletcher] is going to work with you direct ...

[113] Later that day Mrs Leov told Mrs Dunn that Mr Fletcher wanted to know who got the letters. He had said if it was only those involved then that “would be a plus for us”. Mrs Dunn responded:

My reference may not have been to Hitler, but if so I was alluding to the same scenario started with bullying tactics. I did say possibly one of the worst cases to surface, “not the worst case in NZ”. I am willing to defend those comments to the hilt. The actual letter was sent to all those who had connections with the Rai Valley Story at some stage, even Educational and government officials. On advice I did send a personal letter to Bishop Ellena and two ministers in order to address the harm perpetrated in the church and safeguard the lives of others. I will also defend that action.

[114] Mrs Leov responded to Mrs Dunn saying that according to Mr Fletcher, because the letter had “not been published to every Tom, Dick and Harry Mrs Newton’s reputation [had] not been harmed”. According to Mrs Leov, Mr Fletcher was confident that the contents of the letter were not defamatory as they had “the proof for all except Hitler and biggest bullying case but that could probably be proven as well”.

[115] For completeness it is to be observed that in an email to Mrs Dunn on 7 November 2012, Mrs Leov suggested Mr Fletcher “sped read” the letter of 10 September 2012. On 15 November 2012 Mrs Leov told Mrs Dunn she would pay her a further \$7,500 pursuant to their contract. Three days later Mrs Leov told Mrs Dunn that another supporter of Mrs Leov’s wanted a copy of the 10 September letter. Mrs Leov said she would send a copy of that letter to that person.

*Role of Mrs and Mr Leov publishing the letters of 10 September and 8 October 2012*

[116] The materials that have been made available to me, and in particular, the contemporaneous emails lead me to the following conclusions.

[117] Prior to 1 September 2012, Mrs and Mr Leov knew that Mrs Dunn had prepared a draft letter. Prior to 16 September 2012, Mrs and Mr Leov knew this letter would go to approximately 50 recipients who were, in the main, connected to the Rai Valley community and the School. There were three concerns that Mrs and Mr Leov had with the draft letter. The first was that they did not like the way Mr Hodges had been portrayed. On the other hand, they had no difficulties with the

way Mrs Newton was vilified in the draft letter. Second, Mrs Leov conveyed her desire the letter not be sent until she had had an opportunity to talk to Mrs Billingsley. This was a tactical concern. Mrs Leov did not want Mrs Billingsley adopting an unsympathetic stance towards the letter and for her to dissuade others from assisting Mrs Dunn. Mrs Leov's concerns in this respect were not in the slightest bit related to the way the draft letter portrayed Mrs Newton. Third, Mrs Leov was also concerned the letter not be sent prior to the Rai Valley spring fete which was scheduled to be held around 23 September 2012. Again, this was purely a tactical concern unrelated to the actual content of the letter.

[118] The letter of 10 September 2012 was sent by Mrs Dunn to its recipients on about 12 September 2012 and received by them around 17 and 18 September 2012. The letter was not exactly the same as the draft letter. Of the 14 allegedly defamatory statements contained in the letter that was actually sent, eight can be traced to the draft letter.

[119] Thus, while she expressed some ambivalence about the timing of the sending of the 10 September letter, Mrs Leov was content for Mrs Dunn to send that letter to a number of recipients. The letter of 10 September contained eight key passages that were in the draft letter that Mrs and Mr Leov had carefully considered.

[120] After the first batch of the 10 September letters were sent, Mrs Leov encouraged and facilitated Mrs Dunn sending the same letter to a small number of people. Mrs Leov provided Mrs Dunn with the contact details for those recipients. In one case Mrs Leov said she herself sent the letter to a recipient. By this stage Mrs Leov was fully aware of the contents of the 10 September letter and was willing for it to be sent to further recipients.

[121] In their evidence, both Mrs and Mr Leov said they instructed Mrs Dunn to refer any publications to Mr Fletcher for his assessment before they were disseminated.<sup>61</sup> To some extent, Mr Fletcher confirmed this when he said in his

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<sup>61</sup> Brief of Evidence of BL Leov at [16] and Brief of Evidence of CF Leov at [28].

evidence that he understood Mrs Dunn would refer to him anything she was proposing to release to the public for his assessment before publishing.<sup>62</sup>

[122] I am sure that it was intended Mrs Dunn would refer the transcript of the book to Mr Fletcher for his evaluation before it was published. I do not think, however, the same qualification was placed on the letters of 10 September 2012 and 8 October 2012. My reasons for reaching this conclusion can be distilled to the following points.

[123] First, there is nothing in the dozens of emails that were exchanged between Mrs Dunn and Mrs and Mr Leov to suggest Mrs Dunn had been instructed to send the letters in question to Mr Fletcher before they were disseminated. If Mr Fletcher's approval was required before the letters were sent I would have expected this condition to have been clearly set out by Mrs and Mr Leov. Instead, the only qualifications to the draft letter concerned the way Mr Hodges was portrayed and the tactical timing of sending the letter.

[124] Second, the only references to Mr Fletcher in the emails occurred after Mr Radich wrote to Mrs Dunn putting her on notice that her letter was defamatory and that proceedings were going to be issued against her. This reinforces the conclusion that Mrs and Mr Leov only brought Mr Fletcher into the scene approximately one month after the 10 September letter had been sent.

[125] Third, the suggestion in a later email that Mr Fletcher had "sped read" the letter of 10 September 2012 is an error. Mr Fletcher's evidence was that he did not read the 10 September letter before it was sent. Clearly, if he had, he would have provided very firm advice to Mrs and Mr Leov that the letter was fraught with difficulty.

[126] In my assessment, Mrs and Mr Leov's claim that they instructed Mrs Dunn to refer the letters to Mr Fletcher before they were sent is an erroneous reconstruction of the evidence.

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<sup>62</sup> Notes of Evidence at 283, lines 26-31.

[127] I am satisfied that prior to approximately 16 September 2012, Mrs and Mr Leov knew that Mrs Dunn intended to send a letter to a number of recipients, most of whom were connected with the School and Rai Valley community. They knew that the draft letter they had considered contained the eight passages that are now the subject of this defamation proceeding. They did nothing to stop or dissuade Mrs Dunn from sending those eight passages to the recipients of the letter of 10 September. On the contrary, aside from their concerns about the references to Mr Hodges, Mrs and Mr Leov were satisfied with the contents of the draft letter. After approximately 20 September 2012, when Mrs Leov was aware of all the contents of the 10 September letter, she facilitated copies of that letter being sent to others and in one case sent it to a recipient herself.

*Potential liability on the basis of agency*

[128] When Mrs Dunn sent the letter of 10 September 2012 she was acting as the agent of Mrs and Mr Leov. The agency relationship can be deduced from the terms of the contract, the discussion during the 6 August 2012 interview and the email correspondence between Mrs Dunn and Mrs Leov prior to the letter of 10 September being sent to its recipients. Under the terms of the agency, Mrs and Mr Leov authorised Mrs Dunn to communicate with the recipients of the 10 September letter on their behalf for the purpose of gathering material for the book that Mrs Dunn had agreed to write for Mrs and Mr Leov.

[129] Under the terms of the agency agreement Mrs and Mr Leov at least implicitly authorised Mrs Dunn to send a letter that contained eight passages set out in the draft letter which form part of Mrs Newton's claim in defamation against Mrs and Mr Leov.

*Potential liability as a co or joint publisher*

[130] Mrs and Mr Leov are also responsible as joint or co publishers for the eight passages in the letter of 10 September that can be traced to the draft letter. Mrs and Mr Leov carefully considered those passages and authorised and participated in Mrs Dunn sending those passages. The authorisation arose when Mrs and Mr Leov raised no objection to those passages, knowing they were going to be sent to a

number of recipients. In her email correspondence Mrs Leov communicated to Mrs Dunn that she and her husband were content with the draft letter that contained the eight passages on which Mrs Newton's defamation proceeding are based. Mrs and Mr Leov's participation in the sending of the letter arose when Mrs Leov provided Mrs Dunn with the names and addresses of a number of people who received the 10 September letter.

*Potential liability for the entire 10 September letter*

[131] From approximately 20 September 2012 onwards, Mrs Leov was aware of the contents of the letter of 10 September. I infer Mr Leov was also aware of the details of that letter from about the same time as Mrs Leov. It was at about this time Mrs Leov discussed the 10 September letter with her friend Mrs Billingsley, who had received a copy of the letter.<sup>63</sup> Thereafter, Mrs Leov arranged for Mrs Dunn to send copies of the 10 September letter to a small number of other recipients. There is even evidence suggesting Mrs Leov delivered a copy of that letter to Mrs Payton herself. There can be no doubt that from approximately 20 September 2012 onwards, Mrs and Mr Leov played a material role in the ongoing publication of the 10 September letter.

*No potential liability for the 8 October letter*

[132] I am not, however, satisfied that Mrs and Mr Leov had any knowledge of the 8 October 2012 letter before it was sent by Mrs Dunn or that they played any role in its publication. I can find no evidence in the emails that Mrs Dunn alerted Mrs and Mr Leov to the 8 October 2012 letter before it was sent. There is evidence Mrs Leov subsequently approved Mrs Dunn taking precautions to ensure her safety, which was the main thrust of the letter of 8 October 2012. I do not think however those comments constitute reliable evidence that Mrs and Mr Leov provided Mrs Dunn with any form of authority to send the letter of 8 October or that they co-published it with Mrs Dunn.

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<sup>63</sup> Answers to interrogatories provided by Mrs Dunn confirm that Mrs Billingsley was one of the recipients of the 10 September letter posted by her on approximately 12 September 2012.

### *Conclusions on publication*

[133] Mrs Newton's decision not to pursue her claim that Mrs and Mr Leov were responsible for publishing the letter of 1 October 2012, combined with my finding that Mrs and Mr Leov could only be potentially liable for publishing the letter of 10 September 2012, and not the letter of 8 October 2012, means the balance of this judgment will focus only upon the letter of 10 September 2012. Mrs Newton's second and third causes of action against Mrs Leov that are based on Mrs Dunn's letters of 1 and 8 October 2012 are therefore dismissed.

## **PART IV**

### **THE MEANING OF THE PUBLISHED WORDS**

[134] In this case Mrs Newton is relying on the natural and ordinary meaning of the words in the 14 passages from the 10 September 2012 letter that I have set out in paragraph [58] above. My task is now to decide what an ordinary person would reasonably have understood the words in question to have meant "in light of generally known facts and meanings of words".<sup>64</sup> The onus is upon Mrs Newton to demonstrate that the passages alleged to be defamatory have one or more of the various imputations that she alleges.<sup>65</sup>

[135] Mrs Newton pleads the following are the natural and ordinary meaning of the passages in the 10 September 2012 letter, set out in paragraph [58]:

- (1) That the words in paragraph [58.1] and [58.2] meant that Mrs Newton was responsible for the worst known instance of workplace bullying in New Zealand.
- (2) That the words in paragraph [58.2] meant the official records of the facts established Mrs Newton systematically and ruthlessly sabotaged the School and Rai Valley community.

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<sup>64</sup> Alastair Mullis and Richard Parkes, above n 55, at [32.26].

<sup>65</sup> *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [56].

- (3) That the words in paragraph [58.2] and [58.10] meant Mrs Newton is mentally unwell.
- (4) That the words in paragraph [58.3] and [58.11] meant that the good things Mrs Newton did were in fact disguises for her to sacrifice the wellbeing of children of the Rai Valley community and numerous fine teachers.
- (5) That the words in paragraph [58.3] meant Mrs Newton had a need to satisfy an appetite for controlling, degrading and breaking others.
- (6) That the words in paragraph [58.4] meant Mrs Newton targeted and bullied people just because they were good at what they did; aimed for excellence; opposed wrongdoing; told the truth; held a position of responsibility; got a public or official pat on the back; were popular; or, had created something lovely and were noticed for it.
- (7) That the words in paragraph [58.5] meant Mrs Newton systematically set about the degradation, public humiliation and complete destruction of people just because they had received compliments.
- (8) That the words in paragraph [58.6] meant Mrs Newton had deceived the Chair of the Board and he had subsequently acknowledged Mrs Newton had deceived him.
- (9) That the words in paragraph [58.8] meant that Mrs Newton is a bully who sets out to destroy people who challenge her feelings of inferiority.
- (10) That the words in [58.10] meant Mrs Newton is a person who suffers from low self-esteem; or, has serious relationship difficulties; or, harbours feelings of intense jealousy; or is mentally unwell.

- (11) That the words in paragraph [58.11] meant Mrs Newton only belongs to her church in order to be seen to be doing good outside of her workplace and is part of a game to disguise her bullying.
- (12) That the words in paragraph [58.12] meant that anyone who offers support to Mrs Newton or her version of events can only be doing so because of her manipulation or threats of bullying.
- (13) That the words in paragraph [58.13] meant Mrs Newton's conduct was so disgraceful that there has to be a legitimate concern for the safety of staff, pupils and parents of any school where she might be teaching. The words in paragraph [58.13] also meant that anyone who supported the renewal of Mrs Newton's teacher registration would be putting their own career at risk.
- (14) That the words in [58.14] meant Mrs Newton was dismissed from her teaching position at the School.

[136] Mrs Newton did not refer in her pleadings to the meaning of passages [58.7] and [58.9] from the 10 September 2012 letter, which refer to this being an "extreme case" of workplace bullying. In my assessment, these passages when read in conjunction with passages [58.1] and [58.2] mean that Mrs Newton was responsible for the worst known instance of workplace bullying in New Zealand.

[137] Mr Griggs submitted on behalf of Mrs and Mr Leov that the natural and ordinary meaning of the passages set out for paragraph [58.8], namely that "it started with one small man, a bully, who had a personal mandate to destroy those who challenged his feelings of inferiority" does not convey the meaning contended for by Mrs Newton. In particular, Mr Griggs said the passage did not constitute a direct accusation of bullying by Mrs Newton as alleged in the third amended statement of claim.

[138] When the passage in question is considered in context<sup>66</sup> I am satisfied a reasonable person would think that the words meant and were intended to mean Mrs Newton's behaviour was comparable to Hitler and that properly understood, the passage means that like Hitler, Mrs Newton was a bully.

[139] Mr Griggs submitted that the natural and ordinary meaning of the passages in [58.10] and [58.11] did not convey the meaning pleaded by Mrs Newton in the third amended statement of claim. The passages in question read:

We must try and understand the nature of a bully. They have low self-esteem, possibly have serious relationship difficulties, often harbour feelings of intense jealousy and could be, in most respects, be deemed mentally unwell and humanly inept, but socially charming to some.

A bully has the charm and charisma to get people to believe in them, often resorting to a victim mentality if needed, to gather allies. More often than not, they belong to a church or similar organisation, and are seen to be doing good elsewhere. This is all part of the game.

[140] Mr Griggs submitted these passages referred to the general characteristics of a bully and did not specifically relate to Mrs Newton.

[141] There is, in my assessment, a flaw in this aspect of Mr Griggs' argument. When viewed in the context of having accused Mrs Newton of being a bully, the passages in question meant, and were intended to mean that Mrs Newton had the traits identified in those passages. I am therefore satisfied that a reasonable person would attribute to those passages the meanings contended by Mrs Newton.

[142] Mr Griggs was, however, on solid ground when he submitted that the passage set out in paragraph [58.12] does not bear the meaning claimed by Mrs Newton, namely that anyone who supported Mrs Newton could only do so because of her manipulation or threats of bullying.

[143] When I read the passage in question I understood it to mean that those who supported Mrs Newton may have done so because they were afraid of being implicated or because they believed in or were loyal to her. I do not think that is the

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<sup>66</sup> The preceding words in the letter were: "There was once a charismatic figure who managed to rally a whole nation to horrifically torture and gas fellow human beings on mass. Nations have been stunned for decades, asking how could this happen. I will tell you now."

same as saying that Mrs Newton's supporters were allied to her because of her "manipulation or threats of bullying". For this reason I am satisfied the words in passage [58.12] do not have the meaning attributed to them by Mrs Newton in her third amended statement of claim. As the ordinary meaning of that passage does not have the defamatory meaning pleaded by Mrs Newton, I have put this passage to one side.

[144] Finally, in relation to this segment of the case, Mr Griggs submitted that the passage set out in paragraph [58.14] did not mean Mrs Newton had been dismissed from her teaching position at the School.

[145] In my assessment, a reasonable person could understand the words "did not actually leave the profession on her own volition" mean, and were intended to mean, that Mrs Newton was dismissed from her role at the School or resigned under threat of dismissal. In any event, the meaning contended for by Mrs Newton is one that is reasonably available.

[146] Thus, save for one passage, I am satisfied that the words complained of in the letter of 10 September 2012 have the meaning contended for by Mrs Newton. Those meanings can be conveniently distilled to six imputations or "stings", namely:

- (1) That Mrs Newton bullied Mrs Leov in the School environment.
- (2) That Mrs Newton bullied others in the School environment.
- (3) That Mrs Newton destroyed the lives of others.
- (4) That Mrs Newton misled the Chairman of the Board.
- (5) That Mrs Newton was dismissed from her role at the School.
- (6) That Mrs Newton was mentally unwell.

[147] It is now necessary to consider the affirmative defences advanced by Mrs and Mr Leov namely, truth and honest opinion.

## **PART V**

### **TRUTH**

[148] The rationale for the defence of truth “... is simply that a person is entitled only to the reputation his or her behaviour deserves”.<sup>67</sup> The defence of truth is now encapsulated in s 8 of the Defamation Act. A plaintiff need not prove that the statements made about him or her were false. Mrs and Mr Leov contend that they are not liable for the passages in the letter of 10 September 2012, which I have held they share responsibility for publishing and which have the imputations set out in paragraphs [135] and [146] because either:<sup>68</sup>

- (1) the imputations contained in those passages were true, or not materially different from the truth; or
- (2) the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

[149] The evidence in relation to the defence of truth, which consumed a significant portion of the trial, can be conveniently analysed under six headings, which encapsulate the essential elements of those passages of the 10 September 2012 letter and form the basis of Mrs Newton’s claim. Those headings are:

- (1) Did Mrs Newton bully Mrs Leov in the School workplace environment?
- (2) Did Mrs Newton bully others at the School?
- (3) Did Mrs Newton destroy the lives of others?
- (4) Did Mrs Newton mislead the Board of Trustees?
- (5) Was Mrs Newton dismissed from her role at the School?

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<sup>67</sup> Stephen Todd, above n 43, at [16.9].

<sup>68</sup> Defamation Act, s 8(3).

(6) Was Mrs Newton mentally unwell?

[150] Before analysing the relevant evidence, it is necessary to address another ancillary issue that arose during the course of the trial. That issue concerned the evidence of Dr Catley.

*Dr Catley*

[151] Dr Catley is an Associate Professor at Massey University School of Management. He was called by Mrs and Mr Leov to give expert evidence on workplace bullying. Mr Catley familiarised himself with Mrs Leov's brief of evidence and provided a detailed report covering the concept, nature, characteristics and consequences of workplace bullying in New Zealand. Dr Catley also proffered an opinion in relation to this case when he said:<sup>69</sup>

If the Court accepts Mrs Leov's evidence about what was done to her, it is my opinion that the actions of Mrs Newton meet the commonly accepted definitions of bullying.

[152] Mr Fowler objected to large portions of Dr Catley's evidence being admitted into evidence, in particular the parts of his evidence in which he advanced his opinion as to the meaning of the concept "workplace bullying" and his opinion that Mrs Leov had been bullied by Mrs Newton.

[153] There were two limbs to Mr Fowler's objection. The first was the "well settled" rule that in defamation proceedings, "[w]here the claimant is relying on the natural and ordinary meaning of the words complained of, no evidence of their meaning is admissible or of the sense in which they were understood".<sup>70</sup>

[154] The second limb of Mr Fowler's argument relied upon s 25(1) of the Evidence Act 2006 which provides:

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<sup>69</sup> Brief of Evidence of BE Catley at [9].

<sup>70</sup> Alastair Mullis and Richard Parkes, above n 55, [32.26], citing *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 (HL) at 70 and *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 (CA) at 173.

**25 Admissibility of expert opinion evidence**

- (1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

...

[155] Mr Fowler submitted that I was unlikely to “obtain substantial help” from Dr Catley’s evidence about the meaning of the term “workplace bullying” or whether or not Mrs Leov had been the victim of workplace bullying.

[156] Mr Griggs submitted that the traditional rule in defamation law that no evidence can be called as to the natural and ordinary meaning of words complained of has not survived the passing of the Evidence Act and in particular, s 25(2) of that Act which provides:

**25 Admissibility of expert opinion evidence**

...

- (2) An opinion by an expert is not inadmissible simply because it is about—
- (a) an ultimate issue to be determined in a proceeding; or
  - (b) a matter of common knowledge.

[157] I will leave for another occasion the issue of whether or not the Evidence Act no longer precludes any party from calling evidence about the meaning of words that are the focus of a defamation claim. I am doing so because, although I have found Dr Catley’s evidence about the general concept of “workplace bullying” helpful to the extent it contributed to an understanding of what is meant by the imputation, his opinion that Mrs Leov had been the subject of workplace bullying was of no assistance to me. This is because Dr Catley’s opinion was based only on Mrs Leov’s evidence-in-chief. Dr Catley did not observe Mrs Leov being cross-examined or read the transcript of her cross-examination. Nor did Dr Catley have the benefit of other evidence. In particular, Dr Catley was not provided with an opportunity to, for example, read Mrs Newton’s evidence in response. I have therefore elected to put to one side Dr Catley’s opinion that Mrs Leov had been the victim of workplace

bullying by Mrs Newton. While I have referred to Dr Catley’s outline of the concept of “workplace bullying”, I have ultimately reached my own conclusions as to the ordinary meaning of “workplace bullying” and its relevance to these proceedings as outlined at the beginning of this judgment at [6].

**Did Mrs Newton bully Mrs Leov in the School workplace environment?**

[158] Mrs Leov’s evidence was that she was bullied by Mrs Newton in the School environment. The essence of Mrs Leov’s case was that through her words and conduct Mrs Newton persistently engaged in negative and unwanted conduct towards Mrs Leov, who lacked the ability to effectively respond and defend herself because of Mrs Newton’s senior position at the School. The evidence relied upon by Mrs Leov to support her allegations of this alleged bullying can be distilled to the following incidents:

- (1) Mrs Leov said that at the meeting she had with Mrs Newton on 9 November 2006 following the discovery of \$1,000 cash in the library raised for the new computers, Mrs Newton was aggressive towards Mrs Leov and accused her of, among other things, “sneaky” behaviour.<sup>71</sup> She said she left that meeting feeling “extremely traumatised”, “humiliated” and “bewildered” and that “the sole purpose of the meeting was to bully and intimidate [her]”.<sup>72</sup>
- (2) Mrs Leov took issue with the way Mrs Newton cancelled the meeting scheduled for 24 November 2012 without first communicating with her.
- (3) Mrs Leov maintains Mrs Newton’s offers in December 2006 concerning her reduced teaching time was a “further example of bullying” by Mrs Newton<sup>73</sup> and that the requirement Mrs Leov

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<sup>71</sup> Brief of Evidence of CF Leov at [53]-[79].

<sup>72</sup> At [80]-[81].

<sup>73</sup> At [115].

undergo police vetting every three weeks “was a way to further demoralise ... and frighten” her.<sup>74</sup>

- (4) The meeting on 13 February 2007 at which Mrs Newton read through Mrs Leov’s proposed job description clause by clause was described by Mrs Leov as being a stressful meeting that added further to her feelings of having been bullied.
- (5) Mrs Newton’s decision to freeze the library budget in early 2007 was described by Mrs Leov as “very distressing and upsetting”.<sup>75</sup> She said this was a further example of Mrs Newton taking over some of her key duties in the library without there being any genuine concern about her performance.
- (6) Mrs Newton’s letter to Mrs Leov of 25 June 2007 raising five matters of concern was cited by Mrs Leov as being a further example of bullying and threatening behaviour by Mrs Newton. In particular, the letter referred to not following proper procedures in closing the library to attend Mrs Reid’s funeral.
- (7) Mrs Leov took issue with the contents of a letter of 29 June 2007 in which Mrs Newton said she was “extremely disappointed” with the way in which Mrs Leov had responded to her 28 June 2007 meeting request. Mrs Leov said the contents of Mrs Newton’s letter were unfair because it raised a further possibility of “disciplinary processes”.
- (8) Mrs Leov said Mrs Newton “actively spread” misinformation about her concerning the way the money from the 2006 fete had been found in the library and had insinuated that Mrs Leov “had been less than honest”.<sup>76</sup>

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<sup>74</sup> Brief of Evidence of CF Leov at [123].

<sup>75</sup> At [139].

<sup>76</sup> At [173] and [176].

- (9) Mrs Leov said that a further letter dated 10 September 2007 unfairly raised further issues, including an allegation that Mrs Leov had spent approximately \$200 without authority when the library budget was frozen.
- (10) Mrs Leov said that following a meeting on 18 September 2007, attended by Mrs Newton, Mrs Leov, Mr Yeoman and Mr Webster, Mrs Newton's "bullying intensified".<sup>77</sup> Examples of Mrs Leov feeling further bullied included her allegation Mrs Newton would "belittle and humiliate" her at school meetings.<sup>78</sup>
- (11) Mrs Leov expressed her concern at the way she was effectively shut out of managing the library and denied access to a new software package for the library computers as further instances of Mrs Newton bullying her.
- (12) Mrs Leov pointed to the letters to School Support Ltd from Mrs Newton concerning the calculations of Mrs Leov's sick leave entitlement and the recovery of overpaid salary as a further instance of bullying.
- (13) Finally, Mrs Leov explained that the way her position was terminated was a further example of the way she had been bullied by Mrs Newton.

[159] In itemising these allegations of bullying from Mrs Leov's evidence I am conscious Mrs Leov may point to other incidents which she says constitutes further examples of bullying by Mrs Newton. The 13 examples I have extracted from Mrs Leov's evidence nevertheless encapsulate the essence of her complaint.

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<sup>77</sup> Brief of Evidence of CF Leov at [191].  
<sup>78</sup> At [197].

*Other witnesses who supported Mrs Leov's evidence in relation to bullying*

[160] Mr Webster, the Marlborough District Council Libraries manager, said he saw evidence of Mrs Newtown bullying Mrs Leov in the School environment. Mr Webster was a member of the Committee and was asked by Mrs Leov to be her support person at various meetings held between Mrs Leov and Mrs Newton. One such meeting was on 17 September 2007. Mr Yeoman was present at that meeting and Mr Webster, who knew Mr Yeoman well, said he was “most surprised when, at the meeting he came over as aggressive and confrontational”.<sup>79</sup> One of the matters discussed at that meeting concerned the acquisition of new computers in the library. Mr Webster said:<sup>80</sup>

Throughout the meeting, [Mrs Newton] was bullying and forthright in her interactions with [Mrs] Leov. However, this was particularly apparent in relation to [the computers] matter. She said things like “I told you that you were not allowed to do this and you have done it”. And “I am not happy with this”. [Mrs] Newton treated both [Mrs Leov] and me as if were naughty little children. This was completely uncalled for.

[161] Mr Webster also said he was concerned about the librarian job description which Mrs Newton had prepared for Mrs Leov. Mr Webster said “aspects of it were insulting”, particularly the requirement that Mrs Leov “provide cheerful, polite, efficient library services to students and staff”.<sup>81</sup> Mr Webster also expressed his concerns that Mrs Newton’s decision to “freeze” the library budget was part of a “vendetta” against Mrs Leov.<sup>82</sup>

[162] When cross-examined, Mr Webster accepted he had “become caught up in [Mrs Leov’s] campaign” against Mrs Newton.<sup>83</sup> Mr Webster acknowledged he was interviewed by Mrs Dunn and that this may have contributed to his becoming entangled in the dispute between Mrs Leov and Mrs Newton. He acknowledged in cross-examination that it was reasonable for Mrs Newton and the Board to have cancelled the meeting of 24 November 2016 following receipt that morning of Mrs Leov’s notice of a personal grievance. Mr Webster also seemed to soften his criticisms of the way Mr Yeoman and Mrs Newton conducted themselves at the

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<sup>79</sup> Brief of Evidence of GM Webster at [36].

<sup>80</sup> At [49].

<sup>81</sup> At [53].

<sup>82</sup> At [54].

<sup>83</sup> Notes of Evidence at 295, lines 30-32

meeting of 17 September 2007 and he acknowledged that they were entitled to ask the questions they asked of Mrs Leov at that meeting.

[163] Mrs Billingsley, who was a member of the Committee from 2003 to 2009, provided support for Mrs Leov at some of the meetings with Mrs Newton. Mrs Billingsley said that from about November 2006 Mrs Newton “focused in on the library and went on a mission to discredit [Mrs Leov]”.<sup>84</sup> Mrs Billingsley was present at the meeting on 13 February 2007, when Mrs Newton explained the terms of Mrs Leov’s job description. Mrs Billingsley recalled that Mrs Newton acknowledged the requirement Mrs Leov submit to a police vetting process every three weeks was a typographical error. Mrs Billingsley said that she attended a library curriculum meeting on 1 November 2007, at which she said Mrs Newton accused Mrs Leov of “having people in who tampered with the school computers”, and that at that meeting “it appeared as if [Mrs Newton] was trying to encourage the other staff members to pick holes in [Mrs Leov’s] performance”.<sup>85</sup>

[164] When cross-examined, Mrs Billingsley substantially reaffirmed her evidence-in-chief but acknowledged that she was merely expressing an opinion when she said Mrs Newton appeared to “micromanage” Mrs Leov.<sup>86</sup>

[165] Other witnesses, such as Mr Leov and Mr Fletcher gave evidence about the effects they saw on Mrs Leov of what they understood to be bullying by Mrs Newton. These witnesses acknowledged that they did not see for themselves Mrs Newton bullying Mrs Leov and, while I have no doubt they accurately observed a significant deterioration in Mrs Leov’s health and confidence, they were not able to assist in determining whether or not Mrs Newton bullied Mrs Leov.

*Mrs Newton’s response to the bullying allegations*

[166] Mrs Newton firmly refuted all allegations that she had bullied Mrs Leov and identified a number of inconsistencies in Mrs Leov’s evidence. The essence of her case was that her behaviour was consistent with the proper management and

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<sup>84</sup> Brief of Evidence of TL Billingsley at [6].

<sup>85</sup> At [26].

<sup>86</sup> Notes of Evidence at 337, lines 6-7.

leadership of the School, rather than workplace bullying. It is sufficient to note the following aspects of Mrs Newton's evidence in relation to the allegations she bullied Mrs Leov at the School:

- (1) Mrs Newton denied talking aggressively to Mrs Leov at their meeting on 9 November 2006 or that she called Mrs Leov "sneaky". She pointed out that Mrs Leov came to see her that day and that she had no purpose in meeting Mrs Leov let alone to "bully and intimidate" her as Mrs Leov alleged.
- (2) Mrs Newton explained that the meeting of 24 November 2006 was only cancelled after a letter from Mr Fletcher was received that morning putting the School on notice of Mrs Leov's personal grievance claim.
- (3) Mrs Newton explained that the December 2006 proposal to reduce Mrs Leov's teaching time was driven by the School's annual management decisions and student needs that necessitated a reduction in teaching time for some subjects, including French, and was "in no way an attempt to oust [Mrs Leov] from her position".<sup>87</sup> Mrs Newton volunteered during cross-examination that Mrs Leov was assessed as a good French teacher.<sup>88</sup>
- (4) Mrs Newton also explained that the letter concerning Mrs Leov's job description contained an obvious typographical error when it referred to police vetting being required every three weeks. Mrs Newton said she corrected this error at the meeting she had with Mrs Leov and her supporters on 13 February 2007.
- (5) Mrs Newton said the meeting of 13 February 2007 when she went through Mrs Leov's job description in detail was attended by a

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<sup>87</sup> Brief of Evidence in Response of LA Newton at [66].

<sup>88</sup> Notes of Evidence at 15, lines 5-7.

number of Mrs Leov's supporters and that nothing she said or did could be construed as bullying.

- (6) Mrs Newton said that the alleged "freezing" of the library budget involved her asking Mrs Leov to "refrain from spending school funds" while Mrs Newton was away on leave for several weeks and followed Mrs Leov's failure to produce library budgets for previous years.<sup>89</sup>
- (7) Mrs Newton pointed out that the letter of 25 June 2007 setting out five matters of concern about Mrs Leov was in fact drafted by Mr Yeoman and sent by Mrs Newton following his advice.
- (8) The note Mrs Newton sent to Mrs Leov on 29 June 2007 was because "Mrs Leov would not consult with and engage with the Board and the school in relation to the new computers for the library".<sup>90</sup>
- (9) Mrs Newton maintained she did not spread rumours about Mrs Leov or insinuate that "she had been less than honest".
- (10) Mrs Newton denied that the letter of 10 September 2007 constituted any form of bullying on her part. Mrs Newton was concerned Mrs Leov had incurred expenditure while she was away on leave.
- (11) Mrs Newton said in her evidence that the allegation she intensified her bullying of Mrs Leov at school meetings was "simply not true" and that Mrs Newton's position "can be verified by others present at school meetings".<sup>91</sup>
- (12) Mrs Newton rejects the allegation that she bullied Mrs Leov by shutting her out of the library management and says the computer

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<sup>89</sup> Brief of Evidence in Response of LA Newton at [78].

<sup>90</sup> At [96].

<sup>91</sup> At [105].

issues were complicated by “no proper consultation about integration at the outset”.<sup>92</sup>

(13) Mrs Newton responded to the allegations concerning the way she checked on Mrs Leov’s sick leave entitlements and initiated the recovery of the overpaid portion of Mrs Leov’s salary as being part of her duties and responsibilities as the School Principal.

(14) Mrs Newton’s response to the allegations concerning the termination of Mrs Leov’s role is that she was acting on the “advice and instructions from the solicitor to the Board and the Board itself”.<sup>93</sup>

[167] Mrs Newton refuted Mr Webster’s suggestions that she had bullied Mrs Leov in his presence. In particular, Mrs Newton said that neither she or Mr Yeoman were aggressive at the meeting of 17 September 2007 and that Mrs Newton was simply doing her job when presenting Mrs Leov with the librarian job description.

[168] Mrs Newton responded to Mrs Billingsley’s evidence by saying “there was no campaign to discredit Mrs Leov”.<sup>94</sup> She says on the contrary, she made every effort to protect Mrs Leov’s name and reputation, she never made a public comment about her and kept all details of her management confidential to the senior management team and the Board. Mrs Newton disagreed with the other suggestions in Mrs Billingsley’s evidence that she, Mrs Newton, had bullied Mrs Leov.

*Other rebuttal evidence*

[169] The evidence relied upon by Mrs and Mr Leov to support their claim that Mrs Newton bullied Mrs Leov can be contrasted with the evidence of other witnesses called by Mrs Newton to rebut the allegations that she bullied Mrs Leov.

[170] Mr Hickling, a teacher at the School from 1984 to 2014, and for a period, Deputy Principal, was aware of tensions between Mrs Leov and Mrs Newton but

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<sup>92</sup> Brief of Evidence in Response of LA Newton at [106].

<sup>93</sup> At [113].

<sup>94</sup> At [245].

said that he did not see any “evidence of bullying of [Mrs Leov] on the part of [Mrs Newton]”.<sup>95</sup>

[171] Mrs Richmond, a teacher at the School from 2001 until January 2017 witnessed the “progressive deterioration in relationships between [Mrs] Newton and [Mrs] Leov”.<sup>96</sup> She referred to a particular incident when Mrs Leov was difficult to deal with having refused to participate in a meeting unless it was recorded. Mrs Richmond described Mrs Newton as being “a very caring, astute, competent and capable Principal. She was not a weak Principal, but she was not dogmatic”.<sup>97</sup> Mrs Richmond said that in her many years of contact “in school, in the community and outside [she had] never seen any sign whatsoever of bullying behaviour” by Mrs Newton.<sup>98</sup>

[172] Mrs Gibson spent many years on the Board and had several terms as its treasurer. She observed how the difficulties developed between Mrs Newton and Mrs Leov and said that “Mrs Leov was reluctant to be accountable in any way to the school”.<sup>99</sup> Mrs Gibson said that Mrs Leov appeared to think she and the Library Committee were solely responsible for the library and “resisted any moves by the School to achieve greater accountability”.<sup>100</sup> Mrs Gibson described Mrs Newton on the other hand as being an “excellent [P]rincipal”.<sup>101</sup>

[173] Mrs Redshaw, who, as a Rural School Advisor, completed a number of assessments of Mrs Newton’s abilities as a Principal described her as “being well organised, capable and supportive of staff”.<sup>102</sup>

[174] Mrs Steer, who taught at the School for 20 years, said she found Mrs Newton to be a “kind and caring [P]rincipal”.<sup>103</sup> She recalled on one occasion Mrs Newton

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<sup>95</sup> Brief of Evidence of NF Hickling at [13].

<sup>96</sup> Brief of Evidence of B Richmond at [9].

<sup>97</sup> At [10].

<sup>98</sup> At [17].

<sup>99</sup> Brief of Evidence in Reply of SM Gibson at [11].

<sup>100</sup> At [12].

<sup>101</sup> At [13].

<sup>102</sup> Brief of Evidence of HR Redshaw at [8].

<sup>103</sup> Brief of Evidence of J Steer at [11].

taking flowers to Mrs Leov when she was unwell and that she gave Mrs Leov support.

### *Analysis*

[175] In assessing the allegation that Mrs Newton bullied Mrs Leov in the School environment I have carefully balanced all of the relevant evidence and the submissions received from counsel on this topic.

[176] I have concluded that Mrs and Mr Leov have not established on the balance of probabilities that Mrs Newton bullied Mrs Leov or that this allegation was “not materially different from the truth” or, that when taken “as a whole”, the publication which alleged Mrs Newton bullied Mrs Leov was, “in substance true or was in substance not materially different from the truth”.

[177] In reaching this conclusion, I am satisfied that Mrs Newton brought a firm style of leadership to the role of the School Principal and that when issues about the governance, management and funding of the library began to materialise in November 2006 she set about understanding the background to those issues. Mrs Newton was entitled to do this. Unfortunately, Mrs Leov’s commitment to the library prevented her from objectively understanding the legitimacy of Mrs Newton’s inquiries and her role as Principal. Mrs Leov’s attachment to the library caused her to feel threatened and under attack whenever Mrs Newton raised questions and issues about the management of the library. In part, Mrs Leov’s reaction was driven by her defensive personality. I am, however, in no doubt that overall, Mrs Newton acted fairly and responsibly in trying to manage Mrs Leov who appears to have become increasingly difficult to communicate with. Mrs Leov was very quick to escalate minor disputes into legal issues. For example, the mistake concerning the frequency of police vetting checks was clearly a typographical error but Mrs Leov clung to that error as evidence of a personal attack on her.

[178] On the other hand, it is also clear Mrs Newton’s firmness clouded the way she and the Board dealt with Mrs Leov. Of all of the allegations Mrs Leov has made, I am only satisfied the response to the closing of the public portion of the library to enable staff and volunteers to attend Mrs Reid’s funeral was unreasonable, even

when viewed in the broader context of the difficulties that existed in communicating constructively with Mrs Leov. I am however not satisfied that Mrs Leov has proven *persistently* unreasonable behaviour to satisfy her defence that the imputation Mrs Newton was a “workplace bully” was truthful.

**Did Mrs Newton bully others at the School?**

[179] The particulars of the truth defence provided by Mrs and Mr Leov’s former counsel identified 15 persons who were going to give evidence that they had been bullied by Mrs Newton at the School. It transpired however, that only five of those witnesses gave evidence, of whom four alleged that they had been victims of bullying by Mrs Newton. Two of the proposed witnesses for Mrs and Mr Leov actually gave rebuttal evidence for Mrs Newton and rejected allegations Mrs Newton had bullied people at the School. I shall explain in general terms the evidence of those who say they were bullied by Mrs Newton and examine the rebuttal evidence before explaining my conclusions.

*Mrs Nancarrow*

[180] Mrs Nancarrow has taught at the School since 1997. She says she became aware of having been bullied by Mrs Newton about a year after Mrs Newton left the School. The examples Mrs Nancarrow gave of bullying were Mrs Newton:

- (1) bringing up mistakes in an unsupportive way, which would shake Mrs Nancarrow’s confidence;
- (2) giving insufficient time to organise a school camp;
- (3) telling Mrs Nancarrow that certain unnamed persons had raised concerns about her teaching;
- (4) not giving sufficient opportunity to plan for an Education Review Office meeting;

- (5) raising a concern about allowing a computer technician into her class without first obtaining Mrs Newton's approval; and
- (6) not signing off on Mrs Nancarrow's annual review.

[181] In her reply evidence, Mrs Newton pointed out Mrs Nancarrow had never raised any of these concerns with her previously. She explained that any difficulties Mrs Nancarrow had in preparing for a school camp and an Education Review Office meeting were attributable solely to her lack of preparation. Mrs Newton explained that Mrs Nancarrow had suffered serious health issues whilst at the School and that Mrs Newton had supported her during that difficult period. Mrs Newton said that Mrs Nancarrow's suggestions that she had been bullied by Mrs Newton were "seriously out of keeping" with the relationship Mrs Newton had previously had with Mrs Nancarrow.<sup>104</sup>

*Mrs Payton*

[182] Mrs Payton was a member of the Committee for a number of years and she was actively involved in the construction of the library.

[183] Mrs Payton's complaints about Mrs Newton bullying her are not easy to define. I understand her to be saying that she was bullied in relation to four incidents, namely:

- (1) The way the library was closed at the time of Mrs Reid's funeral.
- (2) The way the library telephone and fax line was disconnected, as well as internet access being cut on 22 June 2008.
- (3) The way the locks of the library were changed without consultation with the Committee or volunteer librarians.
- (4) Being banned from the School grounds following a letter sent to her by Mrs Newton on 30 June 2008.

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<sup>104</sup> Brief of Evidence in Response of LA Newton at [190].

[184] Mrs Newton's responded that she had no difficulties with the library being closed to enable staff and volunteers to attend Mrs Reid's funeral. Mrs Newton said, however, that she expected to be consulted over closure of the library. The complaint over the disconnection of the library telephone and fax line was explained as being a part of a review of the School telephone system and that the library ended up with a telephone line through the School telephone system that worked perfectly well. Mrs Newton said "library staff were advised of the changes at the time and the reasons for them".<sup>105</sup> She says the library's internet access was never cut without consultation and the locks had been changed as a result of damage and concerns about an "attempted break-in".<sup>106</sup> The notice barring Mrs Payton from the School ground was sent by Mrs Newton on behalf of the Board after Mrs Payton refused to follow Mrs Newton's directions.

*Mrs Dyke*

[185] Mrs Dyke taught at the school from 1995 to 2005. She identified three matters which she subsequently believed constituted evidence of her having been bullied by Mrs Newton. Those incidents were:

- (1) Mrs Newton stopped talking to Mrs Dyke.
- (2) Mrs Newton did not get back to Mrs Dyke about a course.
- (3) Mrs Newton did not allocate management units to Mrs Dyke.

[186] In her evidence in response Mrs Newton refuted any suggestion that she had bullied Mrs Dyke and said no issues were raised with her at the time. In cross-examination Mrs Dyke acknowledged having suffered serious mental health issues prior to her contact with Mrs Newton. I have suppressed the details of Mrs Dyke's unfortunate health problems and need not elaborate upon them in this judgment. Suffice to say it is highly likely Mrs Dyke's perceptions and the stress she undoubtedly suffered can be attributed to those health problems.

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<sup>105</sup> Brief of Evidence in Response of LA Newton at [234].

<sup>106</sup> At [239].

*Mrs Theilen-Shaw*

[187] Mrs Theilen-Shaw was a respected German teacher at the School between 1996 and 2003. During most of that time she was also responsible for the School's Special Needs Department. Mrs Theilen-Shaw said she felt undermined by Mrs Newton. Her perception related to a reduction in her management functions and hours for the special needs area of the School, being told that the special needs programme was not up to standard and not being supported in relation to a disciplinary issue concerning a student. Mrs Theilen-Shaw also referred to a meeting which she said Mrs Newton attended with a tape recorder. Mrs Theilen-Shaw said that after this meeting "Mrs Newton's behaviour towards [Mrs Theilen-Shaw] included her continually trying to block [Mrs Theilen-Shaw's] decisions to do with the welfare of the children. She never gave [Mrs Theilen-Shaw] any support at all".<sup>107</sup>

[188] Mrs Newton explained the School's fixed term management units were changed when she became Principal and the decisions in question were, according to Mrs Newton, management decisions that had nothing to do with Mrs Theilen-Shaw on a personal level. Mrs Newton had no recollection of any disciplinary issues concerning a student of Mrs Theilen-Shaw at the School. Nor could she recall saying anything negative to Mrs Theilen-Shaw that would have caused her to believe that she was being bullied. Mrs Newton firmly denied having taken a tape recorder to a meeting or undermining Mrs Theilen-Shaw in the way that she has suggested.

*Mr Freeth*

[189] Mr Freeth was the Principal of the School from 1995 to 2002. Although he made no allegations of having been bullied by Mrs Newton in his evidence-in-chief, during the course of cross-examination he suggested Mrs Newton may have "attempted to" bully him.<sup>108</sup> He explained that this occurred in part, by Mrs Newton withholding information from him. Mr Freeth said that he realised that Mrs Newton may have been attempting to bully him about six years after the event. He also said

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<sup>107</sup> Brief of Evidence of AM Theilen-Shaw at [35].

<sup>108</sup> Notes of Evidence at 284, lines 7, 10-12.

that Mrs Newton told him some staff members were upset with him and that this was, he subsequently believed, part of an attempt by Mrs Newton to bully him.

[190] Mrs Newton firmly rejected any suggested that she had attempted to bully Mr Freeth.

*Other rebuttal evidence*

[191] This evidence can be contrasted with the evidence of witnesses called by Mrs Newton to provide rebuttal evidence. I have already summarised some of that evidence in paragraphs [169] to [174]. In addition to that evidence, Mrs Steer said:<sup>109</sup>

I never saw any bullying or improper treatment of teachers or pupils on the part of Mrs Newton. If there had been this I am sure I would have seen it.

[192] Mrs Redshaw and Mrs Gibson's evidence also supported Mrs Newton's assertion that she had not bullied any staff or persons associated with the School. Her assertion was supported by Mr Yeoman from the New Zealand School Trustees Association, who assisted with the School periodically over a number of years particularly in late 2006 in relation to the dispute between Mrs Newton and Mrs Leov. He said that in his time assisting Mrs Newton as Principal, he "never saw Mrs Newton act in a way that was unkindly to anyone".<sup>110</sup>

*Analysis*

[193] Mrs and Mr Leov have failed to prove that Mrs Newton bullied other people at the School or that allegations she did so were not materially different from the truth. I have also concluded that the passages in the letter of 10 September 2012 that allege Mrs Newton bullied other people at the School when, taken as a whole, were not in substance true, or not in substance materially different from the truth.

[194] In reaching this conclusion I am sure Mrs Newton's style of leadership may have upset some people and that at times she may not have appreciated the effects of her personality on some around her. I am satisfied, however, that her conduct was

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<sup>109</sup> Brief of Evidence of J Steer at [12].

<sup>110</sup> Brief of Evidence of G Yeoman at [38].

not that of a bully and that her conduct was not unreasonable for a Principal in a management role. Those who thought otherwise were either misconstruing Mrs Newton's actions or have become enveloped in the battle between Mrs Newton and Mrs Leov that has divided the Rai Valley community. Mr Webster is one of Mrs Leov's supporters who has now acknowledged that he was emotionally attached to her camp and accepts certain decisions in relation to the management of the library from Mrs Newton and the Board were reasonable.

### **Did Mrs Newton destroy the lives of others?**

[195] Aside from the evidence of the extreme stress and trauma suffered by some of those whom Mrs Newton is alleged to have bullied, there was no evidence of Mrs Newton destroying the lives of others. The ordinary meaning of "destroy" is to "defeat" or "ruin". Having concluded that Mrs Newton did not bully Mrs Leov or any others associated with the School, it follows, that in the absence of any other evidence, Mrs and Mr Leov have failed to prove on the balance of probabilities that Mrs Newton destroyed the lives of others. They have also failed to prove that allegation was not materially different from the truth.

### **Did Mrs Newton mislead the Board?**

[196] The evidence Mrs Newton misled the Board came from Mr Hodges, who was Chairman of the Board at the time Mrs Leov brought a claim for unjustified dismissal. The essence of Mr Hodges' evidence-in-chief was that he and other Board members were misled and manipulated by Mrs Newton over the way Mrs Leov's employment issues were handled by Mrs Newton and the Board. He suggested that Mrs Newton controlled the Board and that it was Mrs Newton and not the Board who made key decisions affecting Mrs Leov.

[197] It is clear Mr Hodges felt significantly out of his depth when he commenced his role as Chairman of the Board. Under cross-examination he acknowledged that he entered that role without any background or preparation to assist him in what was a demanding position. Mr Hodges also accepted the validity of decisions concerning Mrs Leov's employment that were made by the Board on the advice of Mr Yeoman and the Board's solicitor. The contemporaneous records confirmed that the Board

acted on advice of its advisors and that Mrs Newton was not the primary decision-maker.

[198] Any remaining doubts about Mrs Newton misleading the Board were dispelled by other Board members who firmly rejected the suggestion she had misled or controlled the Board. Mrs Gibson said she could “not emphasise enough” the untruthfulness of Mr Hodges’ claim that Mrs Newton had misled the Board.<sup>111</sup> Mr Pepper said “what Mr Hodges is saying is seriously wrong”.<sup>112</sup> Mrs Richmond, who in addition to being a Board member was also a teacher at the School, rejected Mr Hodges’ suggestion that the Board was ruled and dominated by Mrs Newton.

[199] The most objective evidence about Mrs Newton’s role regarding the Board came from Mr Yeoman, who had a background in agricultural science before entering the education sector. He impressed as being a very objective and measured witness. Mr Yeoman confirmed that at all relevant times Mrs Newton and the Board acted in accordance with the advice they received from himself and the Board’s solicitor. Mr Yeoman explained that from his perspective Mrs Newton always acted professionally and he read the allegations in the letters written by Mrs Dunn with “utter astonishment that such things could be said”.<sup>113</sup>

### *Analysis*

[200] Mrs and Mr Leov have not established on the balance of probabilities that Mrs Newton misled the Board or that the allegation she did so was either not materially different from the truth or when taken as a whole the publication was in substance true or was in substance not materially different from the truth.

[201] In my assessment, Mr Hodges’ assertions that Mrs Newton misled the Board are wrong and cannot be reconciled with contemporaneous documentation, the evidence of credible witnesses and ultimately his own acknowledgements in cross-examination. Unfortunately, Mr Hodges’ evidence-in-chief that Mrs Newton misled the Board demonstrated that he has allowed himself to become affected by the

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<sup>111</sup> Brief of Evidence of SM Gibson at [6].

<sup>112</sup> Brief of Evidence of I Pepper at [3].

<sup>113</sup> Brief of Evidence of PG Yeoman at [42].

unfortunate dispute between Mrs Leov and Mrs Newton, to the point where he lost objectivity about what really took place.

### **Was Mrs Newton dismissed from her role at the School?**

[202] There was no evidence to support this allegation. On the contrary, Mrs Newton's evidence explained that she left the School out of frustration regarding the Board's handling of Mrs Leov's unjustified dismissal claim and when her own health began to deteriorate. There is no evidence that contradicts Mrs Newton's evidence on this issue.

### **Was Mrs Newton mentally unwell?**

[203] There was also no evidence to support this allegation. Mrs Newton volunteered she became stressed and depressed in the period leading up to her resignation as Principal in November 2011. However, there was no evidence to support the claim that she was "mentally unwell" at the time she is alleged to have been bullying Mrs Leov and others at the School.

### *Alternative truth defence*

[204] In paragraph [35] of the statement of defence to the third statement of claim, Mrs and Mr Leov raise some alternative meanings to the passages I have set out in paragraph [135] and then plead those alternative meanings are true. This is referred to in the United Kingdom as the *Polly Peck* defence derived from *Polly Peck Holdings PLC v Trelford*<sup>114</sup> and *Lucas-Box v Newsgroup Newspapers Ltd.*<sup>115</sup> Alternative truth defences are not permitted in New Zealand.<sup>116</sup> It is therefore not necessary to dwell on the "alternative truth defence" raised by Mrs and Mr Leov.

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<sup>114</sup> *Polly Peck Holdings PLC v Trelford* [1986] QB 1000.

<sup>115</sup> *Lucas-Box v News Group Newspaper Ltd* [1986] 1 WLR 147 (CA).

<sup>116</sup> *Television New Zealand Ltd v Haines*, above n 65, at [56]-[67].

## PART VI

### HONEST OPINION

[205] The defence of honest opinion has been described as “the very essence of freedom of speech: the right that citizens should be able openly to air their views and exchange criticisms on matters that concern them”.<sup>117</sup>

[206] Six aspects of the defence of honest opinion are, to varying degrees, engaged in this case.

[207] First, the words complained of must be an expression of opinion and not a statement of fact. Whether the statement in issue “is one of fact or opinion depends on how the words look to an ordinary, reasonable reader”.<sup>118</sup> The rationale underpinning this aspect of the law is that “words which are clearly comment are likely to be treated with more caution by the reasonable reader and hence less damaging than assertions of fact”.<sup>119</sup>

[208] Second, the facts on which the opinion is based must be indicated in the publication or generally known at the time of the publication.<sup>120</sup> This requirement reflects the basis of the defence of honest opinion, namely that a reader of the statement in question “should be able to assess the commentator’s opinion and compare it with his or her own”.<sup>121</sup>

[209] Third, the facts upon which the opinion is based must be true or not materially different from the truth.<sup>122</sup> The defence of honest opinion is not available where the defendant comments on things that never happened or which the defendant has gotten wrong. “One cannot legitimately criticise a person for

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<sup>117</sup> Stephen Todd, above n 43, at [16.8.01].

<sup>118</sup> Ursula Cheer *Burrows and Cheer Media Law in New Zealand* (7th ed, LexisNexis NZ Ltd, Wellington, 2015) at [3.3.2]; *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) at [17].

<sup>119</sup> *Mitchell v Sprott*, above n 118, at [17] citing *Gatley on Libel and Slander* (9th ed, 1998) at [12.7].

<sup>120</sup> Defamation Act, s 11.

<sup>121</sup> Stephen Todd, above n 43, at [16.8.02].

<sup>122</sup> Defamation Act s 11.

something they never did”.<sup>123</sup> Section 38 of the Defamation Act provides that where a defence of honest opinion is raised the defendant must specify in his or her pleadings which of the statements complained of are statements of fact, and must give particulars specifying the “facts and circumstances on which the defendant relies in support” of their defence. Where the particularised facts and circumstances are true, they must also be logically connected to the opinion. In other words, the defence of honest opinion cannot succeed where the opinion cannot be drawn from the established facts and circumstances. To succeed with a defence of honest opinion, “the defendant need prove only those statements of fact which are relevant, and which provided the foundation for the opinion”.<sup>124</sup>

[210] Fourth, where the author of the opinion is the “employee or agent of the defendant” and the opinion “did not purport to be the opinion of the defendant”, the defendant must prove that they believed the opinion was the “genuine opinion of the author”.<sup>125</sup>

[211] Fifth, s 39 of the Defamation Act provides that where a plaintiff intends to allege that the defendant’s opinion is not genuine, he or she must serve a notice to that effect on the defendant within 10 working days of the service of the defendant’s statement of defence. The plaintiff must specify in this notice any facts or circumstances on which he or she intends to rely to support their allegation that the defendant’s opinion is not genuine.

[212] Sixth, under s 20(1) of the Defamation Act, a defence of honest opinion will not fail merely because the opinion expressed by a person jointly responsible with the defendant for the publication was not that person’s genuine opinion. “In other words, one defendant’s defence of honest opinion is not destroyed simply because a co-defendant did not honestly believe what was published”.<sup>126</sup> Thus, in the present case, Mrs Dunn’s acceptance that the relevant passages in the letter of 10 September 2012 were defamatory and not protected by the defence of honest opinion, does not

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<sup>123</sup> Ursula Cheer, above n 118, at [3.3.1](b).

<sup>124</sup> Stephen Todd, above n 43, at [16.8.02].

<sup>125</sup> Defamation Act, s 10(2)(a).

<sup>126</sup> Stephen Todd, above n 43, at [16.8.04](5).

deprive Mrs and Mr Leov of any defence of honest opinion that may potentially be available to them.

[213] While it is comparatively easy to state in the abstract the elements of the defence of honest opinion, applying the law in any case can be a challenging exercise. Lord Phillips, in *Joseph v Spiller* described the defence of honest opinion as “one of the most difficult areas of the law of defamation”.<sup>127</sup>

### **Were the passages in question expressions of opinion?**

[214] In analysing the passages in the letter of 10 September 2012 that continue to be the basis of Mrs Newton’s claim, I have considered the letter as a whole, and the context in which it was sent, including the evidence of the long-running dispute between Mrs Newton and Mrs Leov that consumed the Rai Valley community. I have also examined the passages in question to see if they contain any words that would be considered by a reasonable person as conveying an expression of opinion.

[215] I now return to the passages of the letter of 10 September 2012 and explain why, in each case, the passage either is or is not an expression of opinion.

*“This is undoubtedly the worst story of workplace bullying to surface in a New Zealand community, and in particular, within a small school.”*

[216] A reasonable reader of this passage would conclude it is an assertion of fact, namely, the worst workplace bullying to become known both in a New Zealand community and in a small school. There are none of the usual qualifications<sup>128</sup> in this passage that one would expect to see in an expression of an opinion. Instead, the passage is expressed as an undeniable fact and is therefore not opinion.

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<sup>127</sup> *Joseph v Spiller* [2010] UKSC 53 at [1].

<sup>128</sup> Stephen Todd, above n 43, at [16.8.03]: “The most common type of statement of opinion is the expression of a value judgment, where the commentator is stating his or her view on the merits or otherwise of something” and Ursula Cheer, above n 118, at [3.3.2]: “The use of prefatory words such as ‘however it has become apparent’, ‘it is arguable’ and ‘it is now apparent,’ may all indicate opinion.”

*“All the documentation and evidence, and the official records of the facts, point to a school and community being systematically divided and broken, by a ruthless and unwell saboteur.”*

[217] The references to “documentation”, “evidence” and “the official records of the facts” lay the foundation for the factual assertion that the School and Rai Valley community had been “systematically divided and broken, by a ruthless and unwell saboteur”. A reasonable reader would conclude that this passage is an assertion of fact and does not bear any of the hallmarks usually associated with expressions of opinion.

*“That saboteur, often disguised as someone doing good, literally sacrificed the wellbeing of your children, and numerous fine teachers in order to satisfy her own appetite for, controlling, degrading and breaking, human life.”*

[218] The assertion that Mrs Newton “literally” sacrificed the wellbeing of children and numerous fine teachers at the school in order to satisfy her own appetite for controlling, degrading and breaking, human lives would be regarded by a reasonable reader as an assertion of fact. The passage does not contain any expressions normally associated with statements of opinion.

*“If you were good at what you did, aimed for excellence, opposed any wrongdoing, told the truth, held a position of responsibility, got a public or official pat on the back from someone, were popular, or you simply created something lovely and were noticed for it, this would be enough.”*

[219] This passage identifies the types of persons whom it was alleged Mrs Newton targeted. A reasonable reader of this passage would conclude the passage is an assertion of fact, and not opinion. Like the other passages of fact in the letter of 10 September 2012, this passage contains none of the words one would normally see in an expression of opinion.

*“She systematically set about the insidious degradation, public humiliation and in some cases, complete destructions of human lives that saw through her, or received the ‘back patting’ she so hungered for.”*

[220] A reasonable reader would regard this passage as a factual assertion that Mrs Newton deliberately set out to destroy the lives of those who “saw through her”

or who received compliments. The passage is not an expression of opinion, but an assertion of unequivocal fact.

*“However the evidence I have, does seem to suggest that [Mr] Hodges and some of his Board of Trustees did appear to genuinely accept that [Mrs] Newton had deceived them about the real situation ...”*

[221] The words “seems to suggest” and “did appear to” in this passage qualify what might otherwise have been an expression of fact and conveys to a reasonable reader that the author of the passage is expressing an opinion based on evidence in their possession. This passage is therefore an expression of opinion.

*“I acknowledge this was an extreme case of workplace bullying.”*

[222] This passage, like the first, is a factual assertion that conveys to a reasonable reader that Mrs Newton was responsible for an extreme case of workplace bullying. The passage was not an expression of opinion.

*“It started with one small man, a bully, who had a personal mandate to destroy those who challenged his feelings of inferiority.”*

[223] In this passage the author draws a comparison between Mrs Newton and Hitler. When viewed in context I am satisfied the words complained of would reasonably be considered to be a subjective view and convey an opinion that Mrs Newton was a bully because her actions could be compared to those of Hitler. The fact that it is an extreme opinion may affect its genuineness, but even extreme and hurtful opinions may be permissible, provided they satisfy all other criteria to the defence of honest opinion.

*“This appears to be one of the most extreme cases of a workplace/community bully to come to light in New Zealand.”*

[224] The words “this appears to be one of the most extreme cases” convert this passage from what would otherwise be an assertion of fact to an expression of opinion. A reasonable reader would understand the author was conveying in this passage her view that what had transpired at the School and in the community was

by comparison to other situations, a case of extreme bullying rather than simply a statement of fact.

*“We must try and understand the nature of a bully. They have low self-esteem, possibly have serious relationship difficulties, often harbour feelings of intense jealousy, and could be, in most respects, be deemed mentally unwell and humanly inept, but socially charming to some.”*

[225] A reasonable reader would construe this passage as being an assertion of fact. There are no qualifications or other expressions that one would expect to see in a statement of opinion.

*“A bully has the charm and charisma to get people to believe them, and often resorts to a victim mentality if needed, to gather allies. More often than not, they belong to a church or similar organisation, and are seen to be doing good elsewhere. This is all part of the game.”*

[226] This passage would be regarded by a reasonable reader as a factual assertion that Mrs Newton has a number of the characteristics of a bully, including having “a victim mentality”, “belonging to a church” and being “seen to be doing good elsewhere”. These passages would not be considered by a reasonable reader as being consistent with an expression of opinion.

*“For those of you who have aligned yourself to this bullying behaviour ...”*

[227] I have previously concluded that this passage does not have the meaning attributed to it by Mrs Newton. It is therefore not necessary to consider the defence of honest opinion in relation to this passage.

*“I believe [Mrs] Newton may have recently returned to some form of teaching position and knowing what I do now, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall or will it be one of your children? Anyone who supported renewal of [Mrs] Newton’s teaching registration must surely be placing themselves and their career at risk.”*

[228] This passage illustrates the challenges that can arise in trying to differentiate between expressions of fact and opinion. The first sentence of the passage has the hallmarks of an expression of opinion. The words “I believe” and “I have a concern” convey to a reasonable reader that the author is, in the first sentence, setting out her

opinion. The second sentence is framed as a question and appears to be neither an assertion of fact or opinion. Viewed in isolation, the third sentence is an assertion of fact. The issue is whether the first sentence sufficiently qualifies the third sentence so as to clothe the entire passage as an expression of opinion. In my assessment it does, although this is a finely balanced assessment. Ultimately, I am satisfied that a reasonable reader, reading the passage as a whole and in context would conclude the author is expressing an opinion which suggests those who supported Mrs Newton's re-registration as a teacher would be placing themselves and their career at risk.

*“At the very least no-one should have endorsed a teacher, who, as indicated by [Ms] Wysocki, commissioner, if I understand her comments correctly, did not actually leave the profession of her own volition.”*

[229] Although the words “if I understand her comments correctly” hint at the possibility that this passage contains some form of opinion, when viewed in context, the passage means Mrs Newton was either dismissed or was forced to resign her position at the School. This is an assertion of fact and would not be regarded by a reasonable reader as an expression of opinion.

[230] The nine passages I have examined in paragraphs [216]-[220], [222], [225]-[227] and [229] are statements of fact, not expressions of opinion and therefore do not qualify for the defence of honest opinion. This leaves four passages which are expressions of opinion, namely those I have examined in paragraphs [221], [223]-[224] and [228] which I will deal with in the following order:

- (1) This appears to be one of the most extreme cases of a workplace/community bully to come to light in New Zealand.
- (2) Mrs Newton deceived Mr Hodges and some members of the Board.
- (3) I believe [Mrs] Newton may have recently returned to some form of teaching position and knowing what I do now, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall or will it be one of your children? Anyone who supported renewal of [Mrs] Newton's teaching registration must surely be placing themselves and their career at risk.
- (4) It started with one small man, a bully, who had a personal mandate to destroy those who challenged his feelings of inferiority.

[231] The legitimacy of the defence of honest opinion in relation to the four passages that are expressions of opinion requires consideration of the facts and circumstances upon which the opinions are said to be based, and the genuineness of the opinions in question.

### **Facts upon which the opinions are based**

[232] In paragraph [26] of the statement of defence to the third amended statement of claim, Mrs and Mr Leov set out the particulars upon which they rely to support their defence of honest opinion. That paragraph reads:

The second defendants rely on the following facts for the defence of honest opinion, each of which is true or not materially different from the truth, and which were alleged to have been referred in the first defendant's publications or were generally known to be true at the dates of such publications:

- (a) The plaintiff was the Principal of Rai Valley Area School from 2003;
- (b) While the plaintiff was Principal, allegations about bullying were made against the plaintiff;
- (c) Twenty-three parents signed a petition which was sent to the then Minister of Education expressing no confidence in the plaintiff;
- (d) Fifty-nine community members signed a petition seeking an independent review of the operation of the school, and which was sent to the then Minister of Education;
- (e) The second defendant [Mrs] Leov, Helen Millen and Malcolm Brears raised personal grievances related to the plaintiff's bullying conduct;
- (f) Complaints about the plaintiff's bullying were made to Ministers of the Crown, the Secretary of Education, the New Zealand Teachers Council, the Teachers Union, the Privacy Commissioner, the Department of Labour, the Education Review Office and Members of Parliament;
- (g) The Ministry of Education appointed a Commissioner who had authority to investigate the complaints raised by staff and community members;
- (h) There is a substantial body of research and literature showing that bullies often:
  - (i) have low self-esteem; and/or
  - (ii) have relationship difficulties; and/or
  - (iii) have feelings of intense jealousy; and/or

- (iv) suffer from mental illness.
- (i) There is a substantial body of research showing that bullies often belong to churches or similar organisations;
- (j) The Chair of the Board of Rai Valley Area School has said that he felt deceived by the plaintiff;
- (k) The plaintiff's actions had a devastating effect on many of the staff, volunteers, pupils and parents associated with the Rai Valley Area School, including but not limited to:
  - (i) a teacher, Sandra Dyke, was bullied by the plaintiff leading to [mental health issues];
  - (ii) a teacher, Malcolm Brears, was bullied by the plaintiff leading to ... mental health issues; and
  - (iii) a teacher, Maria Theilen-Shaw, who taught special needs and languages, was forced to resign due to the plaintiff removing most of her duties including a management unit. The plaintiff also falsely informed Ms Theilen-Shaw that parents were unhappy with her work, but when Ms Theilen-Shaw asked for details, the plaintiff would not provide them.
- (l) The plaintiff resigned from her employment at Rai Valley School during the Commissioner's investigation, knowing or believing she would otherwise be dismissed.

[233] There has been no evidence that:

- (1) "A teacher, Malcolm Brears, was bullied by [Mrs] Newton leading to ... mental health issues".
- (2) "The plaintiff resigned from her employment, ... knowing or believing that she would otherwise be dismissed".

[234] In the absence of evidence to support these pleaded "facts and circumstances" they must be put to one side.

*This appears to be one of the most extreme cases of a workplace/community bully to come to light in New Zealand*

[235] The difficulties for Mrs and Mr Leov in relation to the claim that "this appears to be one of the most extreme cases" of bullying in a school or community

are compounded by my factual findings that they have failed to prove on the balance of probabilities that Mrs Newton was a bully.

[236] There is a further difficulty with Mrs and Mr Leov’s pleaded particulars in which they specify that allegations of bullying were made against Mrs Newton while she was the Principal of the School. A defendant cannot plead as a fact the assertions or opinions of others in support of the defence of genuine opinion. As the Supreme Court explained in *APN New Zealand Ltd v Simunovich Fisheries Ltd*,<sup>129</sup> the essence of the defence is that any opinion expressed by a defendant is predicated on published facts that the defendant has proven to be true. “An opinion or assertion is not capable of being a publication fact; publication facts must be the underlying or ‘primary’ facts”.<sup>130</sup> Thus, “statements of fact may not include the fact that others made allegations or expressed opinions”.<sup>131</sup>

[237] I am satisfied that the defence of honest opinion in relation to the passage “this appears to be one of the most extreme cases of a workplace/community bully to come to light in New Zealand” must fail because the “facts and circumstances” relied upon to support the expression of opinion are either not proven or could not, as a matter of law, support the assertion because they involve the repetition of allegations made by others.

*Mrs Newton deceived Mr Hodges and some members of the Board*

[238] This assertion of opinion is based on an alleged “fact” namely “the Chair of the Board [Mr Hodges]... has said that he felt deceived by [Mrs Newton]”. On its face, this “fact and circumstance” falls foul of the principle that “statements of fact may not include the fact that others made allegations or expressed opinions”. This principle is further engaged in the present case in which I have held Mr Hodges was wrong when he claimed Mrs Newton had deceived him and other members of the Board.

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<sup>129</sup> *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315.

<sup>130</sup> At [13].

<sup>131</sup> At [14].

[239] There is a further problem for Mrs and Mr Leov in relation to their reliance on Mr Hodges' allegation that he was deceived by Mrs Newton. That difficulty lies in s 10(2)(a) of the Defamation Act.<sup>132</sup>

[240] The fundamental difficulty for Mrs and Mr Leov under s 10(2) of the Defamation Act is that beyond arguing they were not responsible for publication, which I have rejected in Part IV of this judgment, they have not endeavoured to argue in the alternative that the opinion in question did not purport to be their own opinion. On the contrary, they have embraced and adopted the opinion that Mrs Newton deceived Mr Hodges and other members of the Board as their own. Thus, regardless of whether or not the other elements to the defence of genuine opinion in s 10(2) of the Defamation Act are satisfied, Mrs and Mr Leov are precluded by s 10(2)(a)(i) from relying upon the defence of honest opinion.

*I believe [Mrs] Newton may have recently returned to some form of teaching position and knowing what I do now, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall or will it be one of your children? Anyone who supported renewal of [Mrs] Newton's teaching registration must surely be placing themselves and their career at risk.*

[241] The difficulty with this allegation is that it is not based on any pleaded fact that in returning to a teaching position Mrs Newton would be placing those who supported her at risk or their career at risk. The assertion requires a factual

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<sup>132</sup> **10 Opinion must be genuine**

- ...
- (2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,—
- (a) Where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that—
- (i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant; and
- (ii) The defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion:
- (b) Where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that—
- (i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant; and
- (ii) The defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

grounding in order to be considered genuine, which is not evident from the particulars in the pleadings. Nor is this statement in any way consistent with the findings I have made that it has not been proven Mrs Newton was a bully or that she destroyed the lives of others.

*It started with one small man, a bully who had a personal mandate to destroy those who challenged his feelings of inferiority*

[242] In her notice filed pursuant to s 39 of the Defamation Act Mrs Newton pleaded:

- (1) With regard to the honest opinion defence pleaded ... the plaintiff intends to allege, in relation to any opinion contained in the matter that is the subject of the plaintiff's second amended statement of claim, that the opinion was not the genuine opinion of the second defendants.

Particulars

- (a) The expressions of opinion were so extreme that the second defendants could not have seriously believed them to be true, or they could not have reasonable cause to believe the opinions expressed were genuine opinion or were reckless as to that ...

[243] Mr Griggs challenged Mrs Newton's ability to rely on her s 39 notice because it was filed in response to the statement of defence to the second amended statement of claim. Mr Griggs submitted that amended statement of defence was superseded when Mrs and Mr Leov filed their statement of defence in response to the third amended statement of claim.

[244] Mr Griggs placed reliance on a passage from the Court of Appeal in *ISP Consulting Engineers Ltd v Body Corporate 89408*,<sup>133</sup> in which it was said "a new pleading must render the pleading it replaces inoperative. It no longer has any legal effect".<sup>134</sup>

[245] There are two reasons why Mr Griggs' objection to Mrs Newton's s 39 notice must fail and why that notice applies to the latest version of the pleadings:

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<sup>133</sup> *ISP Consulting Engineers Ltd v Body Corporate 89408* [2017] NZCA 160.

<sup>134</sup> At [20].

- (1) First, Mr Fowler explained that he and Mrs and Mr Leov's former counsel had reached an understanding that another s 39 notice would not be necessary as it would simply replicate the earlier s 39 notice.
- (2) Second, *ISP Consulting Engineers Ltd v Body Corporate 89408* involved an attempt to plead a new cause of action. In the present case, the parties' cases in relation to the defence of honest opinion did not change in any significant way between the second and third iterations of their pleadings.<sup>135</sup>

[246] The s 39 notice is now only relevant to one aspect of this case, namely the challenge to the genuineness of the comparison between Mrs Newton and Hitler. That comparison was made to support the theory that Mrs Newton, like Hitler, was a bully.

[247] It is possible for the defence of genuine opinion to succeed even when the opinion in question is extreme. In *Mitchell v Sprott*, the Court of Appeal explained the test is the honesty or genuineness of the opinion, not its reasonableness.<sup>136</sup> Moreover, the defence will not fail because the defendant was motivated by malice.<sup>137</sup> However, "... unreasonably extravagant language may invite a court to hold that the defendant did not genuinely believe what was said. Opinion so extravagant as to amount to invective would be unlikely to be found genuine".<sup>138</sup>

[248] In my assessment, the comparison between Mrs Newton and Hitler is a paradigm example of an opinion that is so extreme that it is "invective" and not genuine. No genuine or honest comparison could be made between Mrs Newton and Hitler. Thus, the defence of honest opinion cannot succeed in relation to this opinion.

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<sup>135</sup> The only difference was a reference to more people in the earlier statement of defence under the pleading [229](k), where it was alleged the plaintiff's actions had a "devastating effect on [various people]". No one from that list gave evidence in the proceedings before me.

<sup>136</sup> *Mitchell v Sprott*, above n 118, at [24].

<sup>137</sup> Defamation Act, s 10(3).

<sup>138</sup> Stephen Todd, above n 43, at [16.8.04](2).

[249] In summary, the defence of honest opinion cannot succeed because nine of the passages that form the basis of Mrs Newton's claim were expressions of fact not opinion. The four expressions of opinion in Mrs Newton's claim do not satisfy the defence of honest opinion because the facts upon which they were based have not been proven and in one instance, which I have explained in paragraphs [247]-[248], the opinion was not genuine.

## **PART VII**

### **RELIEF**

[250] Thirteen of the passages in the letter of 10 September 2012 support the imputations that Mrs Newton:

- (1) bullied Mrs Leov in the School workplace environment;
- (2) bullied others at the School;
- (3) destroyed the lives of others;
- (4) misled the Board;
- (5) was dismissed from her role at the School; and
- (6) was mentally unwell.

[251] Mrs and Mr Leov, together with Mrs Dunn, were responsible for publishing these passages. They have failed to demonstrate that the imputations derived from the passages were true, or an expression of honest opinion.

[252] Each of the passages in the letter of 10 September 2012 from which the six imputations are derived, were defamatory of Mrs Newton because individually and collectively they satisfy the traditional tests as to what constitutes a defamatory statement. In particular:

- (1) each statement tended to lower Mrs Newton in the estimation of right thinking members of society;<sup>139</sup>
- (2) each statement was false and discredited Mrs Newton;<sup>140</sup>
- (3) each statement was calculated to injure Mrs Newton's reputation by exposing her to hatred, contempt or ridicule;<sup>141</sup> or
- (4) each statement tended to make others shun and avoid Mrs Newton.<sup>142</sup>

[253] Mrs Newton's primary objective is to obtain a recommendation under s 26 of the Defamation Act that Mrs and Mr Leov apologise and correct the defamatory statements for which they are responsible. If such an order is made and not complied with, Mrs Newton seeks damages now limited to \$100,000. Section 26 of the Defamation Act does not appear to have been successfully invoked in New Zealand prior to this case. I will accordingly explain the legislative background and purpose to s 26, before examining the reasons why I am acceding to Mrs Newton's request to make a recommendation under s 26 of the Defamation Act.

#### *Section 26 of the Defamation Act*

[254] Section 26(1) of the Defamation Act allows a plaintiff to seek a recommendation from the Court that the defendant publish, or cause to be published, a correction of the matter that is the subject of the proceeding. When a recommendation is made under s 26(1) the plaintiff receives solicitor and client costs and is not entitled to any other relief or remedy in the proceeding.<sup>143</sup>

[255] Section 27(1) of the Defamation Act provides that in recommending the publication of a correction, the Court may include recommendations relating to the content, time of publication and the prominence to be given to the correction in the medium in which it is to be published.

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<sup>139</sup> *Sim v Stretch* [1936] 2 All ER 1237 (HL).

<sup>140</sup> *Youssouf v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 (CA).

<sup>141</sup> *Parmiter v Coupland* (1840) 6 M & W 105, 151 ER 340.

<sup>142</sup> *Youssouf v Metro-Goldwyn-Mayer Pictures Ltd*, above n 140.

<sup>143</sup> Defamation Act, s 26(2)(d).

*Legislative history to s 26 of the Defamation Act*

[256] In July 1975 the Government established a Committee on Defamation (the McKay Committee) which published its report in 1977.<sup>144</sup> That report led to the Defamation Bill that was introduced into Parliament in August 1988. Notably, the government added a remedy that was not contained in the McKay Committee's report, namely the power for a Court to order a correction. This proposed reform attracted strong opposition from news media interests who argued that the principles of freedom of editorial responsibility were incompatible with a Court having the power to order publication of corrections. These concerns were addressed by changes made to the Bill<sup>145</sup> that are now reflected in s 26 of the Defamation Act.

*The purposes of s 26 of the Defamation Act*

[257] A key purpose of s 26 of the Defamation Act is to achieve what Wild J described as a "quick fix" to resolving a defamation dispute,<sup>146</sup> a view endorsed by authorities<sup>147</sup> who have said s 26 is an "attractive alternative to the fully blown damages action for a plaintiff who seeks merely a speedy vindication and costs".<sup>148</sup>

[258] While the objective of achieving a "quick fix" was undoubtedly a motivating factor for Parliament enacting s 26 of the Defamation Act, the language of the statute does not limit s 26 to being invoked only at the early stages of a defamation dispute. While ideally the s 26 procedure should be called in aid at an early stage of a defamation dispute, there is nothing in the language of the Act that prevents s 26 being invoked at a later stage in proceedings, if that is the plaintiff's wish.

[259] A second and related reason behind enacting s 26 of the Defamation Act was Parliament's desire to provide an alternative remedy to damages.<sup>149</sup>

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<sup>144</sup> New Zealand Committee on Defamation: Report of the Committee on Defamation, Recommendations on the Law of Defamation (Government Printer, 1977).

<sup>145</sup> Supplementary Order Paper 1992 (157) Defamation Bill 1988 (72-1).

<sup>146</sup> *O'Regan v Radio Network Ltd* [2001] NZLR 568 (HC) at [25].

<sup>147</sup> Ursula Cheer, above n 118 and Michael Gillooly *The Law of Defamation in Australia and New Zealand* (The Federation Press, Sydney, 1998).

<sup>148</sup> Michael Gillooly, above n 147, at 332; see also Hon. DAM Graham (10 November 1992) 531 NZPD at 12145 and Hon. D Caygill at 12150.

<sup>149</sup> *CPA Australia Ltd v New Zealand Institute of Chartered Accountants* [2015] NZHC 1854 at [119].

[260] Despite the advantages to a s 26 remedy, the section does not appear to have been successfully used prior to this case. In *Tairawhiti District Health Board v Perks t/a Goblin Productions Ltd*,<sup>150</sup> Williams J said he was not prepared to grant the plaintiff's application under s 26 at an interlocutory stage in the proceeding. Similarly, other cases have considered but declined the opportunity to take advantage s 26 of the Defamation Act.<sup>151</sup>

[261] Little assistance is gained from overseas jurisdictions because s 26 of the Defamation Act does not appear to have been adopted elsewhere. For example, the Defamation Act 2013 (UK) and Australian legislation<sup>152</sup> do not provide for a similar form of remedy. The deficiency in Australian law was noted by Callinan J in *Bashford v Information Australia*, in which he noted “[a]s many judges and law reform bodies have recognised, the path to ... reform lies in the direction of changed procedures, including enforceable rights of correction and reply”.<sup>153</sup>

[262] The nearest equivalent provision to s 26 is found in Ireland in s 30 of the Irish Defamation Act 2009 which confers jurisdiction on courts to direct a defendant to publish a correction of the defamatory statement. That provision has not yet been successfully invoked.<sup>154</sup>

#### *Issues with s 26 of the Defamation Act*

[263] Two potential drawbacks to the use of s 26 of the Defamation Act are identified by the authors of *The Law of Torts in New Zealand*.<sup>155</sup>

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<sup>150</sup> *Tairawhiti District Health Board v Perks t/a Goblin Productions Ltd* [2002] NZAR 23 (HC).

<sup>151</sup> See *Communications Trumps Ltd v Royal News Ltd* DC Auckland MP2063/99, 5 November 2001 at [22]-[30]; *PPCS Ltd v New Zealand Royal Press Ltd* HC Auckland CP412/SD99, 14 March 2000 at [13]-[14] and [23]-[25].

<sup>152</sup> In 2005 New South Wales introduced the Defamation Act 2005 (NSW) “to promote uniform laws of defamation in Australia” (long title). The Act is replicated in Defamation Act 2005 (SA), Defamation Act 2005 (Vic), Defamation Act 2005 (Qld), Defamation Act 2006 (NT), Defamation Act 2005 (WA), Defamation Act 2005 (Tas) and the Civil Law (Wrongs) Act 2002, chapter 9 (ACT).

<sup>153</sup> *Bashford v Information Australia* [2004] HCA 5 at [26].

<sup>154</sup> *Lowry v Smyth* [2012] 1 IR 400; *Lennon v The Health Service Executive* [2015] 1 IR 92 and *CSI Manufacturing Ltd v Dun and Bradstreet* [2013] IEHC 547. In *Watters v Independent Star Ltd* [2010] IECC, the Judge concluded a correction was appropriate but did not make an order under s 30 and instead “hope[d] that the parties agree on the wording of the correction and apology required”.

<sup>155</sup> Stephen Todd, above n 43, at [16.6.03].

[264] First, the authors suggest that while a recommended correction may be appropriate in cases where the defendant has made a specific statement which is demonstrably untrue, such an order may not be appropriate in less straight forward cases, particularly at an early stage in litigation where the essential matters are disputed.

[265] Second, regarding the burden of proof the authors question whether a plaintiff seeking an order recommending a correction has to satisfy the Court that the published statement was false and that the plaintiff's account was true. Alternatively, they ask if the burden of proof might lie with the defendant to establish the truth of what was published and that a correction recommendation would be issued if he or she did not discharge that burden.

[266] In the present case, neither of these difficulties are engaged. I have found that Mrs and Mr Leov are responsible for specific defamatory statements, which were not true. The alternate burden of proof approaches are also not of concern because in relation to the key "stings" in the letter of 10 September 2012, Mrs and Mr Leov have failed to establish any of the elements of the defence of "truth" in s 8 of the Defamation Act. There is nothing in s 26 to suggest Mrs Newton carries any additional burden of proving her entitlement to relief once her defamation claim is established.

[267] Of greater concern is that the order recommending a correction would, if implemented, constitute a remedy which would come into force five years after the defamatory statements were made. This concern would be more profound if the statements had been published to the community through media rather than through letters sent to known recipients as occurred in this case. Having made this observation, I am conscious that the dispute between Mrs Newton and Mrs Leov is widely known in the Rai Valley community and that any recommended correction will need to be directed to that community.

[268] I also believe the remedy prescribed in s 26 of the Defamation Act is appropriate in the circumstances of this case where considerable harm has been suffered by the parties, their families and their community. Complying with the

recommendation under s 26 of the Defamation Act may assist the rehabilitation that is desperately required in this case.

*The recommendation*

[269] The apology and correction which Mrs and Mr Leov need to make is as follows:

In 2012 letters were sent by Mrs S Dunn, whom Mrs FC Leov and Mr BL Leov had commissioned to write a book about previous events at the Rai Valley Area School with particular reference to the then [P]rincipal, Mrs LA Newton.

The letters included allegations that Mrs Newton, in her role as [P]rincipal was a serial bully and that she had threatened and destroyed the lives and wellbeing of teachers, pupils and others in the community, that she had misled the Board of the School and that she had been dismissed or forced to resign as [P]rincipal of the School.

Mrs and Mr Leov accept that they have responsibility for the publication of these letters and the defamatory statements within them.

Mrs and Mr Leov acknowledged that the statements of the kind referred to above were not true and made without any proper basis. They withdraw the statements and they apologise for the damage they have done to Mrs Newton. They accept the actions of Mrs Newton about which they had complained were the reasonable and proper actions of a school [P]rincipal with management responsibilities.

[270] That correction and apology is to be sent to each of the recipients referred to in the affidavit of Mrs Dunn dated 27 March 2013.

[271] Because the details of the dispute between Mrs Leov and Mrs Newton have been so widely disseminated within the Rai Valley community, I also recommend that the correction and apology be published, at the cost of Mrs and Mr Leov in the Public Notices section of both the *Marlborough Express* and the *Nelson Evening Mail* within one month of the date of this judgment.

[272] If Mrs and Mr Leov elect not to comply with this recommendation then, they are liable to pay Mrs Newton general damages in the sum of \$100,000. I have concluded that the sum of \$100,000, which is now the maximum sought by Mrs Newton is appropriate in the circumstances of this case, particularly when the gravity of the defamatory statements are compared with other cases in New Zealand

where awards in excess of \$100,000 have been upheld for publications which are less egregious than the defamatory statements in this case.<sup>156</sup>

[273] I have also taken into account s 26(3)(c) of the Defamation Act in settling on \$100,000 damages in the event that Mrs and Mr Leov do not follow the recommendation set out in paragraph [269]. That section provides that the Court must take into account a defendant's failure to comply with the Court's recommendation when settling on the final judgment where relief under s 26 has been recommended but not accepted by the defendant. In other words, a defendant's failure to comply with a s 26 recommendation justifies the Court awarding a higher level of damages than may otherwise have been appropriate.

[274] Mrs Newton is awarded costs on a solicitor/client basis.

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**D B Collins J**

Solicitors:  
Radich Law, Blenheim for Plaintiff  
Mahoney Burrowes & Horner, Wellington for Second Defendants

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<sup>156</sup> In *The New Korea Herald v Lee* HC Auckland CIV-2008-404-5702, 9 November 2010 the defendants published eight articles that suggested that the plaintiff was engaging in corrupt, dishonest and immoral practices and the plaintiffs were awarded \$250,000 in compensatory damages. In *Williams v Hallett* DC Auckland CIV-2008-004-2897, 18 October 2010 a prominent lawyer was awarded damages of \$125,000 compensatory damages and \$15,000 punitive damages for allegations in a book that he had been involved in criminal complicity with a drugs syndicate and another gang. In *Jones v Lee* HC Wellington CIV-2007-485-1510, 3 September 2010, prominent businessman Bob Jones was awarded \$104,000 for an article published in several newspapers and online.

## APPENDIX

The Writer

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10th September 2012

To all persons who have been associated with the Rai Valley Area School and the Community Library, in any way, during the period of distress and difficulties of the last decade:

This letter is a plea, to all of you who have enjoyed the privilege of living in one of New Zealand's most beautiful valleys, and being part of an outstanding, caring and united community.

You were a community who demonstrated your commitment and generosity toward one another, by pulling together, to build a magnificent community library. Your library now proudly stands on the grounds of the local area school, as a testament to the shared vision between the local community and their school. What an amazing accomplishment. Sadly the community dream is in tatters, and the library and school are a shadow of their former selves. What is most horrifying is this damage can be traced back to the disgraceful actions of one person. This is difficult to believe but please read on.

In the last few months I have carried out an independent investigation, and my findings are both alarming and heart-breaking. What was to be an investigation of an isolated incident, soon turned into something quite different. Case after case, began to arrive on my desk, revealing the magnitude of this mass perpetration of harm. This is undoubtedly the worst story of workplace bullying to surface in a New Zealand community, and in particular, within a small school. All the documentation and evidence, and the official records of the facts, point to a school and community being systematically divided and broken, by a ruthless and unwell saboteur. That saboteur, often disguised as someone doing good, literally sacrificed the wellbeing of your children, and numerous fine teachers, in order to satisfy her own appetite for, controlling, degrading and breaking, human life. Unfortunately, only loyal followers were deemed worthy enough to escape her attention, and along with the support of those who joined her in her crusade, she took the library and the school to its knees. What was it she wanted to achieve? What pleasure could anyone gain from leaving such a legacy of shame? More so, what did you have to do, to have yourself singled out as a target? The truth is sad and pathetic, and would almost be laughable, if it hadn't resulted in so much devastation for so many. If you were good at what you did, aimed for excellence, opposed any wrong doing, told the truth, held a position of responsibility, got a public or official pat on the back from someone, were popular, or you simply created something

lovely and were noticed for it, this would be enough. This made you an instant target. A bully will not share their glory with another, and the Rai Valley bully was no exception. She systematically set about the insidious degradation, public humiliation and in some cases, complete destruction of human lives that saw through her, or received the “back patting” that she so hungered for. Unfortunately her appetite became insatiable and it is only now, we are able to see the full extent of her harming behaviour.

I understand that there have been many attempts to point the finger elsewhere, but in the face of evidence, that is impossible. Understandably some members of the community wanted to heal the wounds that have torn their community apart, in any way they could, but hiding the truth only leaves the blame where it does not belong, and applying superficial band aids, does not heal. This only serves to cover what lies beneath. Hiding the truth has become a practised art in Rai Valley but it has only served to inflame the already, festering wound. It is not my intention to bring further harm to the community of Rai Valley, but it is my intention to explore the real story, so healing can be ministered to all those who need it. I trust you will read this with an open mind, and accept the honourable intentions of this letter, which is simply to uncover the truth, so the community and the parties involved can put things right and move on.

Hello. My name is Susan Dunn.

As a writer I find solace in knowing, that when it is needed, the pen can indeed, be mightier than the sword. I trust this gives you the same hope it affords me. When all else fails, and things go wrong, we can turn to the pen and the use of our voice to get the truth out, and put things right. When those who should listen won't, and we have frustrated every avenue of recourse open to us, then we must tell the story to a wider forum, and ask that forum for their verdict.

With that in mind, I am seeking to put a voice to something that has gone horribly wrong for many people in Rai Valley. This is a very serious matter and many lives, including yours, depend upon its outcome.

I am therefore humbly and respectfully asking for your help. My current work is to author a book that looks at a topical issue (often silenced) that affects all New Zealanders. My wish is for this book to also serve as a forum of redress for all those severely harmed in the Rai Valley story. The issue I am speaking of, is workplace bullying, and in this case, serial workplace bullying. It is my intention to cover the strange events that led to a community breakdown, in what was formally an idyllic, peaceful, caring, fun loving, and family orientated community. We have the facts. Now we need to put the human face to the story.

I have decided to send all parties the same request, and out of respect and support for the courageous people who have looked for suitable remedies to fight this harm, I have opened this up for public debate. These people have been ignored and treated shabbily, by their own community, and by the organisations who stonewalled their attempts to get justice. At every turn individuals were met with official silences, refusals and often, blatant cover-ups. The question remains. How did one person manage to evade an honest scrutiny by the organisations who were repeatedly informed of the problems that existed? Why did the RVAS Board of Trustees, The Education Review Office, The Teachers Council, The Ministry of Education, The Statutory Managers, The School Trustees Association, NZEI Te Rui Road, the local MP's, four Ministers of Education, The Privacy Commissioner and OSH turn their backs on these people, when there were so many of them reporting harm and asking for help? How could the affairs and actions and failures of Loretta M Newton (Muff Newton), reported by so many, be duly ignored. For those of you who receive this letter as a representative of these organisations, could you please respond as appropriate for your part in this matter? It is of course your choice to respond in either an official or non-official capacity, or not to respond at all. If you would prefer, please make contact with me if you wish to discuss this further. I would however, deem it in your best interests, to offer the people of Rai Valley and a very interested New Zealand public, an explanation for actions or non-actions taken at the time. Failure to do so could be constituted as a determination to maintain this sophisticated wall of silence and denial that enable this appalling harm to continue unabated in the first place. I understand this is a difficult situation, and many of you have careers to protect, but what of all the people in the Rai Valley who have lost theirs. What if this had happened to you? Your responses and understanding are also part of the human story. Many of you did not respond according to the requirements of your positions. Why? Were you afraid for your positions? Were you taken in by the Newton lie, and so dismissed the victim's requests for help? Did you feel you did a good job in the circumstances, or did you simply not take the time to care? You may have felt ill equipped to deal with such allegations, or it could have been a lack of understanding of the effects and seriousness of bullying in a workplace that lead to your decisions. In any case I would very much like to hear your thoughts. We need both sides of the human story documented for public debate. No longer will this remain in the quiet paper shuffling, side stepping, official/unofficial "closed door" forum. This is about human beings lives and this is serious. I trust those of you who originally failed to see the gravity of this situation, will now be

prepared to issue apologies and acknowledge the need to look at suitable remedies for those harmed.

I am sending this letter to those who have suffered harm, to the alleged perpetrator, L Newton, (you have a right to tell your story) to those perceived as her supporters, and those who have been caught up in this mess and found themselves taking sides, by accident or design. To all of you I would like to say. This book is going to be written, but its final verdict and how you are presented to NZ, depends on you. I need your stories, your thoughts, and your feelings. It is time to look at this objectively and come up with a solution. Let's explore what really happened, and be big enough to learn from it. I know you all wish the community to return to the way it was. That is also my wish. Help me find the truth and help the Valley heal.

Sadly we have to face what has happened. There have been grave allegations, and documented evidence of serious bullying in the Rai Valley School and Library. This was finally identified and acknowledged by a Ministry appointed school commissioner, Claudia Wysocki, but whether these events happened as a matter of omission, or deliberate commission, is still open for debate.

My main concern is around events that took place in the Rai Valley Area School and Library, particularly during the years the school was under the leadership of Mrs Loretta M. Newton. (Muff) and the then RVAS Board of Trustees. There are other major players whom I haven't named for now, but you will know who you are. I will acknowledge there was an apology issued by Jonathon Hodges, on behalf of the BOT, as directed by the employment court, for the significant harm and division caused by the dismissal of the school's librarian. This must surely have been a joke. What happened in response? The bully was once [a]gain left unscathed. This should have had the whole community acknowledging the terrible harm perpetrated, but instead, many still refused to see, and as had been the pattern, the perpetrator continued to enjoy her life while others lost theirs. This apology, although maybe well meant, did nothing to explain the damage perpetrated by what seemed to be an unholy and damaging alliance formed between The BOT under Jonathon Hodges, and Muff Newton. In fact there seemed to have been many unhealthy alliances formed with Mrs Newton from various quarters, over her period of Principalship, with catastrophic effects on the lives of the many victims. However the evidence I have, does seem to suggest that Jonathon Hodges and some of his Board of Trustees did appear to genuinely accept that Muff Newton had deceived them about the real situation, and they endeavoured to rectify their wrongdoings. This was unfortunately too little and way too late. Sadly because of their inactions much was lost and many people were hurt.

We have here, a very unusual story. This story could have been avoided, if all those involved had been equipped, both to do their job adequately, and to let human decency prevail.

As I sat in my office reading the mountains of paperwork, gathered through months of investigation, I was appalled at the sinister story emerging. These documents I had before me were detailed accounts of the official and unofficial journeys of the many people who have suffered irrevocable harm through the actions of this one school [P]rincipal.

These documents also tell a story of the many who were caught up in the lies and deceit. These people became pawns in the game and sanctioned and endorsed her behaviour. I do feel for some of you as the further you got yourselves in, the harder it was to get out.

This book will simply explore what really happened in Rai Valley, not only to get justice for the victims and restore peace, but also to show New Zealanders that work place bullying is still accepted in the fabric of the New Zealand workplace. More education is needed.

Bullying can have serious and tragic consequences. Adults as well as children need our protection. A bully is no respecter of persons. They will strike when and where they will. No one is immune. It is a fallacy to think that only the weak will be targeted. It is more often the good, the kind, the successful, and the well-liked that attract attention. The next victim could be you.

It is most certainly happening in other organisations as I am writing this. This is inexcusable and it is time for New Zealanders to show zero tolerance to the bully in their midst. It is also time for us to become involved and help those who are being victimised.

While making my way through this case and looking at those of others, it has become evident, that teachers in NZ schools and those who work in educational systems are particularly vulnerable. They are largely unprotected when it comes to redress and they have so much to contend with. I acknowledge this was an extreme case of workplace bullying, but it may not be an isolated case. What happened here had such a devastating effect on many of the staff, community volunteers, pupils and parents that were connected to, or worked at the Rai Valley Area School or the Community Library, that it must be examined and made public.

I will also closely scrutinise why so many Educational organisations and government officials failed to listen and respond appropriately, to those requesting help. As a consequence they either knowingly or unwittingly, let a serial bully dish out serious harm to those victims, without any restraint or accountability. This all happened, unbelievably, in one of our beautiful New Zealand rural communities, and of course this has had far reaching consequences for the whole population in the Rai Valley area, and beyond.

So what can be done? We need to ask questions, find answers and ensure this behaviour will never again be tolerated in our communities. One bullying incident is one too many, but this case is even more shocking, as one person spirals out of control and gets away with serial harming, and her own special brand of “in-house terrorism”. How could anyone get away with such a thing in New Zealand? Why did her friends and allies not see? Why did they rally to her side and watch others’ lives being broken by her actions. Why were some so bewitched by her wiles, they took a stand against their own close colleagues, lifelong friends and even family members in support of this one person? In short how has she been believed to such an extent that people have fallen at her feet in a show of faithful allegiance?

There was once a charismatic figure who managed to rally a whole nation to horrifically torture and gas fellow human beings on mass. Nations have been stunned for decades, asking, how could this happen. I will tell you how. It started with one small man, a bully, who had a personal mandate to destroy those who challenged his feelings of inferiority. The trouble is, as success grows, so does the power and the appetite for it. Before we know it we are dealing with the need for mass extermination. Serial bullies are no different. They may play in a smaller field but their handiwork can be just as devastating.

Some of you may wonder why I have chosen to pursue this story, and why I will do so relentlessly until the truth is told. It is because the more I uncover, the more I realise I cannot remain silent. This appears to be one of the most extreme cases of a workplace/community bully, to come to light in New Zealand, and for those of you, or your family members, who were harmed in any way, or accused of harming, this is your opportunity to tell your story. This is not about a witch hunt. It is about Justice – something New Zealanders have always believed in, but often failed to deliver. I want to uphold the right for ordinary New Zealanders to at least be given a hearing.

Will you help me bring this story together? I would like to give you this opportunity to share your understanding of what you know. I would love you to send me a summary of

your human story. What did you see happening? Were you harmed? Were you unwittingly involved in perpetrating harm? Did you see others harmed and fail to act? Has this affected your life and how? Why do you think this happened? Who do you think was responsible? Were there others involved? It is important to note that I already have many facts, and much damning evidence, but this is your chance to tell your story, in your words. I am looking for the human cost factor, the heart of the story. It is a chance for all to acknowledge what has happened. It is time to take responsibility if you have done harm, or been involved with those who have, and let others hear your side of the story.

You may contact me by email at [sue@thewriter.net.nz](mailto:sue@thewriter.net.nz), send your material to my physical address, or if you wish to speak with me personally, please email and I will arrange a time to meet with you, if appropriate. Please feel free to express anything you wish, and do say if you want to give me some information but don't want your story, or your name implicated in this publication. You may not feel you can write formally but any notes, thoughts or even scribbles would be very much appreciated. I would love to give you a voice. If you would rather not write, but would like a phone call, could you email and tell me a little bit about you, and if applicable, I will endeavour to phone you in the next few weeks.

Please tell me all you can, so I can tell the reader all I know. This devastating situation could arise in any workplace or community, and this could have happened to anyone, anywhere. This is not just about Rai Valley. It is also about New Zealanders starting to talk about the nature of bullying and its catastrophic effects in our communities. Too many productive lives are being lost in this country, and many, especially those who are in power, continue to turn a blind eye. We need to serve notice to the bullies that enough is enough. We are entitled to enjoyment of life in our communities, our workplaces, our schools and other organisations. Is it time to make bullying a criminal offence? What do you think? My hope is this publication will force a look at present legislation, and will finally get some answers as to why our systems for protection and justice are so ineffectual. We want action for change on a national level, and especially at a legislative level. This is not a story about the weak. This is a story about brave people who tried to understand what was happening, and fought back. This work hopes to address the need to bring this out in the open. Not only does a situation such as this create an unsafe place for the victims, but the silence surrounding the issue gives the bully free and continuing reign. Therefore all the organisations that failed to act created an environment that enabled this bully's behaviour to escalate out of control.

We must try and understand the nature of a bully. They have low self-esteem, possibly have serious relationship difficulties, often harbour feelings of intense jealousy, and could be, in most respects, be deemed mentally unwell and humanly inept, but socially charming to some. It is also common for a bully to gather in allies with an overuse of this charm coupled with subtle deceit. These allies subsequently become enlisted as pawns in the game to harm, that diminishes and finally destroys the lives of others. A serious bullying episode will ensure that the target is slowly humiliated, disempowered and publically diminished, until they can no longer function adequately in their place of work and or in fact anywhere. Loss of physical and emotional health is often the outcome, along with loss of career and income. It is not unknown for victims to take their own life. Alarmingly the situation in Rai Valley nearly ended in deaths. I have documented evidence to support this. This is for real. Would you like this to happen to you? It is also common for a bully to polarise and destroy former family and friend relationships, through systematic manipulation and lying. A bully has the charm and charisma to get people to believe them, often resorting to a victim mentality if needed, to gather allies. More often than not, they belong to a church or similar organisation, and are seen to be doing good elsewhere. This is all part of the game. I would like to ask all of you – DOES THIS SOUND FAMILIAR.

I know at your very heart you are all good people, so let's help each other and get this conversation out in the open. People have been hurt. Everyone knows that. Let's get to the truth, find a compensatory path for those harmed, and get the vehicle for change on the road.

Some of you will be unaware that a commissioner appointed to investigate the situation in Rai Valley Area School, uncovered 18 cases of serious harm perpetrated by one woman. This means 18 lives (that is those identified – there may be many more) in your small community that had no redress at the hands of a sociopathic bully, and suffered serious physical, mental, social, career and monetary loss. It was very sad that the commissioner passed away before the report was published, and now, full access to its contents are being denied. The question I keep asking at every turn, is: WHY? Why did this happen? Why didn't anyone do anything? Why did officials refuse to act? Why was the obvious trail of human destruction being ignored, or so carefully covered up. Who is protecting Muff Newton and why? How did she manage to get people to dance to her tune? Do you think I am being too harsh? I would like to know what you think. Any insight you may have would be most welcome. I don't wish to be inflammatory. We just want some answers.

All your information will be treated with total confidentiality unless stated otherwise. So anything goes. Please tell it like it is, or was.

Thank you so much for listening to me. Now I am ready and waiting to listen to you. I would like to gather your material by September 30<sup>th</sup>, 2012. If I do not hear from you within that time frame I will accept that you have chosen not to contribute. And that is totally fine. It is indeed a delicate community matter and you are under no obligation to respond.

For those of you who have aligned yourselves with this bully behaviour, I feel genuinely concerned for you. I only ask that you give this a fair hearing and you step back to take an objective look. If you find yourself rushing to pick up the phone to inform Mrs Newton, you probably are understandably feeling scared of being implicated, or it might be you have become one of the "loyal followers and believers"[.] The only way you can be a true colleague and ally to a person such as this is by employing honesty. Help her to face the truth. This would be a kindness. I will be sending her a copy of this also. I would like to remind all readers of this document, that this is not fantasy. I have all the documentation to back up what I am saying. I believe many of you found yourselves doing and saying things that you are not proud of, as you became aligned with this person. This is your chance to put things right. I believe Loretta Newton may have recently returned to some form of teaching position and knowing what I now do, I have a concern for the staff, pupils and parents of that school. Who will be the next teacher to fall, or will it be one of your children? Anyone who supported the renewal of Loretta A Newton's teacher registration must surely be placing themselves and their careers at risk. At the very least no-one should have endorsed a teacher, who, as indicated by Claudia Wysocki, commissioner, if I understand her comment correctly, did not actually leave the profession of her own volition. However, that is now in the hands of officials, so let's see what happens this time. Forgive my cynicism, but perhaps we will only get a verdict upon publication of the book, when public opinion finally demands it.

I look forward to hearing from you all at your earliest convenience. Remember your stories will remain with me and nothing will be divulged unless your express permission is granted.

Kind regards

Sue Dunn  
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