FEDERAL COURT OF AUSTRALIA

Bellino v Queensland Newspapers Pty Ltd [2019] FCA 1380

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| File number: |  |
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| Judge: | **FLICK J** |
|  |  |
| Date of judgment: | 30 August 2019 |
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| Catchwords: | **DEFAMATION** – imputations – defamatory – defence of substantial truth – defence made out  **DEFAMATION** –person of bad reputation – minimal damages |
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| Legislation: | *Evidence Act* *1995* (Cth) ss 128, 140  *Defamation Act* *2005* (NSW) ss 4, 25, 35 |
|  |  |
| Cases cited: | *Australian Broadcasting Corporation v O’Neill* [2006] HCA 46, (2006) 227 CLR 57  *Briginshaw v Briginshaw* (1938) 60 CLR 336  *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44  *Chakravarti v Advertiser Newspaper Ltd* [1998] HCA 37, (1998) 193 CLR 519  *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335, (2010) 278 ALR 232  *Chau v Fairfax Media Publications Pty Ltd* [2019] FCA 185  *Crampton v Nugawela* (1996) 41 NSWLR 176  *Crosby v Kelly* [2012] FCAFC 96, (2012) 203 FCR 451  *Dow Jones & Co Inc v Gutnick* [2002] HCA 56, (2002) 210 CLR 575  *Fairfax Media Publications Pty Ltd v Bateman* [2015] NSWCA 154, (2015) 90 NSWLR 79  *Jones v Dunkel* (1959)101 CLR 298  *Mirror Newspapers Limited v Harrison* (1982) 149 CLR 293  *Nassif v Nationwide News Pty Ltd* (unreported, Sup Ct, NSW, Simpson J, 5 March 1999)  *O’Brien v Australian Broadcasting Corporation* [2017] NSWCA 338, (2017) 97 NSWLR 1  *Sutherland v Stopes* [1925] AC 47  *Wing v The Australian Broadcasting Corporation* [2018] FCA 1340 |
|  |  |
| Date of hearing: | 9, 10, 11 and 12 April 2019 |
|  |  |
| Date of last submissions: | 24 April 2019 |
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| Number of paragraphs: | 113 |
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| Counsel for the Applicant: | The Applicant appeared in person |
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| Counsel for the Respondent: | Mr T D Blackburn SC with Mr P Afshar |
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| Solicitor for the Respondent: | Ashurst Australia |

ORDERS

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|  | | NSD 1629 of 2017 |
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| BETWEEN: | ANTONIO BELLINO  Applicant | |
| AND: | QUEENSLAND NEWSPAPERS PTY LTD  Respondent | |

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| JUDGE: | FLICK J |
| DATE OF ORDER: | 30 AUGUST 2019 |

THE COURT ORDERS THAT:

1. The proceeding is dismissed.
2. A certificate be given to both the Applicant and Mr Santo Rizzo pursuant to s 128 of the *Evidence Act 1995* (Cth).
3. The Applicant is to pay the costs of the Respondent, either as assessed or agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

FLICK J:

1. On 19 September 2017, Mr Antonio (Tony) Bellino filed in this Court an *Originating Application* and a *Statement of Claim*. The Respondent in the proceeding is Queensland Newspaper Pty Ltd. As a preliminary matter it should be noted that between September 2017 and January 2019 Mr Bellino was legally represented. At the hearing in April 2019, however, Mr Bellino appeared unrepresented. In summary form, Mr Bellino claims that he was defamed by a publication on 12 January 2017 in *The Courier-Mail*.
2. The Respondent accepted that this Court has jurisdiction by reason of the fact that Mr Antonio Bellino claims the matter complained of in the article was published in the Australian Capital Territory: *Crosby v Kelly* [2012] FCAFC 96 at [37], (2012) 203 FCR 451 at 459 per Robertson J (Bennett and Perram JJ agreeing).
3. In the *Statement of Claim* filed, the Applicant contended that five defamatory imputations were conveyed in the matter complained of, namely that the Applicant:

* “*was a prominent brothel owner*”;
* “*was the prominent owner of an illegal casino*”;
* “*was a criminal*”;
* had “*fled to Italy because his criminal activities had been uncovered*”; and
* “*was a member of Brisbane’s seedy underbelly*”.

1. It is concluded that:

* three of five pleaded imputations are conveyed by the matter complained of in the publication; and
* each of those three imputations were defamatory of the Applicant;

but that:

* the Respondent has discharged its onus of establishing its defence of “*substantial truth*”.

Even had the Respondent not made good its defence, it would have been further concluded that:

* the reputation of the Applicant was one which could loosely but accurately be described as a “*bad reputation*”; and
* such damages as would have been awarded, had the defence of “*substantial truth*” not been made out, would have been minimal.

Each of these conclusions should be briefly addressed.

## THE MATTER COMPLAINED OF

1. The matter complained of relates to two pages in *The Courier-Mail* published on 12 January 2017. Reliance upon publication of material on *The Courier-Mail* website was abandoned.
2. Two articles occupied those two pages in that newspaper. On the first of those two pages there were two photographs, one being a photograph of the Applicant’s brother (Mr Geraldo (Gerry) Bellino) looking to “*the rafters of a rooftop car park*” where his photograph was being surreptitiously taken; the other being a photograph of three persons emerging from a doorway each with a gun raised and pointing to the distance. The article on that page and continuing on to the second page was written by Mr Phil Dickie and was headed “*The Day a Revolution Started*”. The introduction to the article stated:

It was 30 years ago today that *The Courier-Mail* published a story that exposed Brisbane’s seedy underbelly. Today we continue our look back at the investigation that shook the state.

Thereafter the article went on to set forth an outline of allegations of corruption and the “*media work leading to the Fitzgerald Inquiry* …”. Reference was made to one brothel that “*seemed to be …operating under flashing lights on one of Brisbane’s most prominent intersections*…”. The article recounted the allegations as to massage parlours, brothels and police corruption. Included was reference to a “*story*” handed by the author of the article to the editor which “*named the principals of two organised crime groups and pointedly noted how differently the police described the extent and organisation of prostitution in Brisbane*”.

1. Next to the article on the first page was a chronological column entitled “*Fitzgerald: the Relentless Revelations*” which included key dates from 12 January 1987 to 20 May 1987. Under the date 18 May 1987 there appears the following reference to the Applicant, Mr Antonio Bellino:

Prominent casino and brothel owner Tony Bellino leaves Australia at the height of the crisis, fleeing to Italy.

That was the only reference to Mr Antonio Bellino, other than an almost unreadable image of an excerpt of a prior newspaper article entitled “*Police patrols fail to swoop as casino moves premises*”. That image follows the chronological entry for 24 April 1987 which states that “*[a]n identified illegal casino has changed address – unnoticed by police. The gaming machines were driven around brazenly by the owners in the back of a white ute in Fortitude Valley – supposedly unseen by police*”. The printing contained in that part of the article was such that great effort had to be exerted before deciphering the name of the Applicant.

1. Mr Dickie’s article continued on to the next page of the newspaper, which itself was headed “*30 Years On*”.
2. On there also appeared the second article, written by “*The Media Lawyer*”, Mr Douglas Spence. The main photograph on that page was captioned “*In the Crosshairs*” and depicted Mr Dickie with the newspaper’s managing editor (Mr Ron Richards) and Mr Spence. Inset into that photograph there was a further image of an article from *The Courier-Mail* with the circled headline “*A year after Sturges sex-for-sale businesses thrives unchallenged*” (the headline in the image is incomplete but is reproduced in full in Mr Spence’s article).
3. It is with reference to these publications that the *Statement of Claim* pleads, in part, as follows (without alteration):

3. The matter complained of in its natural and ordinary meaning conveyed or was understood to have conveyed the following defamatory imputations:-

(a) The Applicant was a prominent brothel owner (paragraphs 10, 14, 25, 62).

(b) The Applicant was the prominent owner of an illegal casino (3A, 7A, 10, 14, 36, 37, 38).

(c) The Applicant was a criminal (3A, 7A, 10, 14, 36, 25, 37, 38, 62, 63).

(d) The Applicant fled to Italy because his criminal activities had been uncovered (3A, 7A, 10, 14, 36, 25, 37, 38, 62, 63).

(e) The Applicant was a member of Brisbane’s seedy underbelly ((3A, 7A, 10, 14, 36, 25, 37, 38, 62, 63).

The paragraph numbers are references to handwritten numbers included in the copy of the relevant pages which were attached to the *Statement of Claim.*

## DEFAMATORY IMPUTATIONS – AN OVERVIEW OF BASIC PRINCIPLES

1. The tort of defamation focusses upon damage to reputation: *Dow Jones & Co Inc v Gutnick* [2002] HCA 56, (2002) 210 CLR 575 at 599 to 600 (“*Gutnick*”). Gleeson CJ, McHugh, Gummow and Hayne JJ there observed in relevant part as follows:

[23] It is necessary to begin by making the obvious point that the law of defamation seeks to strike a balance between, on the one hand, society’s interest in freedom of speech and the free exchange of information and ideas (whether or not that information and those ideas find favour with any particular part of society) and, on the other hand, an individual’s interest in maintaining his or her reputation in society free from unwarranted slur or damage. The way in which those interests are balanced differs from society to society. …

…

*Defamation*

[25] The tort of defamation, at least as understood in Australia, focuses upon publications causing damage to reputation. It is a tort of strict liability, in the sense that a defendant may be liable even though no injury to reputation was intended and the defendant acted with reasonable care…

[26] Harm to reputation is done when a defamatory publication is comprehended by the reader, the listener, or the observer. Until then, no harm is done by it. …

1. The principles to be applied in determining whether a publication conveyed defamatory imputations are well settled.
2. In the recent decision of Wigney J in *Chau v Fairfax Media Publications Pty Ltd* [2019] FCA 185 (“*Chau*”), his Honour reviewed the earlier authorities and summarised these principles as follows:

**Relevant principles – The “ordinary reasonable person” and the “natural and ordinary” meaning**

[14] The principles to be applied in determining whether a publication conveyed defamatory imputations are well-settled and were not significantly in issue in this proceeding. The lead authorities and the principles established by them were summarised by Hunt CJ at CL (with whom Mason P and Handley JA agreed) in *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 at 165, and more recently surveyed in this Court by White J in ***Hockey*** *v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at [63]-[73]. The basic principles were even more recently considered by the High Court in ***Trkulja*** *v Google LLC* (2018) 356 ALR 178 at [31]-[32] in the context of an appeal from the summary dismissal of a defamation action. It is, for the most part, unnecessary to cite all the well-known authorities. The principles relevant to this case may be summarised as follows.

[15] First, the applicant, here Dr Chau, bears the onus of proving, on the balance of probabilities, that the alleged defamatory meanings or imputations were conveyed by the publication in question.

[16] Second, the question whether the defamatory meanings were in fact conveyed is a question of fact.

[17] Third, the question is whether the relevant publication would have conveyed the alleged meanings to an ordinary reasonable person. Where, as here, the publication is in writing, the question is what the impugned words in the publication would have conveyed to the ordinary reasonable reader. The Court is required to put itself in the shoes of, or assume the role of, the ordinary reasonable reader. The question is not a question of construction of the words used in the article in the legal sense.

[18] Fourth, in this context, the authorities ascribe the ordinary reasonable reader with certain character traits, qualities or characteristics. The ordinary reasonable reader is variously said to be of fair, average intelligence, experience and education. They are also fair-minded and neither perverse, morbid nor suspicious of mind, nor avid for scandal. Of course, as the High Court pointed out in *Trkulja* at [31], ordinary men and women in fact have different temperaments, outlooks, degrees of education and life experience, so the exercise is really one of “attempting to envisage a mean or midpoint of temperaments and abilities and on that basis to decide the most damaging meaning”.

[19] Fifth, the meaning that the words would convey to the ordinary reasonable reader is often called “the natural and ordinary meaning” of the words. In some cases, the natural and ordinary meaning of the words may be obvious from the direct or literal meaning of the words themselves. More often than not, however, the question turns on what implications or inferences the ordinary reasonable reader would draw from the words.

[20] Sixth, in determining what implications or inferences the ordinary reasonable reader would draw from the words, the authorities suggest that the ordinary reasonable reader should generally be taken to approach or consider a publication in a particular way or ways. The ordinary reasonable reader is, for example, said not to be a lawyer who examines the publication overzealously, but rather someone who views the publication casually and is prone to a degree of “loose thinking”. The ordinary reasonable reader apparently does not live in an “ivory tower” but can and does read between the lines in the light of their general knowledge and experience of worldly affairs. While they do not search for hidden meanings or adopt strained or forced interpretations, they nevertheless draw implications, especially derogatory implications, more freely than a lawyer would. While they read the entire publication and consider the context as a whole, they take into account emphasis that may be given by conspicuous headlines or captions.

[21] Seventh, the mode or manner of publication can be a relevant matter in determining what was conveyed to the ordinary reasonable person. The ordinary reasonable reader of a book, for example, is likely to read it with more care than he or she would read an article in a newspaper, particularly if that article is sensational. The ordinary reasonable reader of such an article is more prone to engage in loose thinking. That is all the more so where the words which are published are imprecise, ambiguous, loose, fanciful or unusual.

[22] Eighth, as already adverted to, each alleged defamatory imputation has to be considered in the context of the entire matter complained of. It does not follow, however, that each part of the publication must be given equal significance. A headline, for example, may give the reader a predisposition about what follows and may therefore assume particular importance. Equally, contrary statements in an article will not necessarily or automatically negate the effect of other defamatory statements.

[23] Ninth, the meaning that an ordinary reasonable reader would attribute to a publication, or the impression that the reader forms, may be influenced by the overall tone or tenor of the article in question. The article may, for example, be tinged with, or even pregnant with, insinuation or suggestion. It may also implicitly invite the reader to adopt a suspicious approach. As Gleeson CJ observed in *Drummoyne Municipal Council v Australian Broadcasting Corporation* (1990) 21 NSWLR 135 at 137:

It is a feature of certain forms of defamation that one can read or hear matter published concerning a person and be left with the powerful impression that the person is a scoundrel, but find it very difficult to discern exactly what it is that the person is said or suggested to have done wrong.

[24] Tenth, the determination of what an ordinary reasonable person would read into or infer from the words complained of is often a matter of impression.

[25] Eleventh, while a publication may in some cases be reasonably capable of bearing more than one meaning, the tribunal of fact, whether it be a jury or a judge sitting alone, must ultimately determine whether the alleged defamatory meaning was in fact the single natural and ordinary meaning of the words complained of: *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at 174-175: *Ten Group Pty Ltd v Cornes* (2012) 114 SASR 46 at [34], [47]-[50]; *Hockey* at [73].

[26] Twelfth, in determining the meaning in fact conveyed by the publication, the intention of the publisher is irrelevant: *Lee v Wilson and MacKinnon* (1934) 51 CLR 276 at 288 per Dixon J; *Baturina v Times Newspapers Ltd* [2011] EWCA Civ 308; 1 WLR 1526 at [24].

[27] Thirteenth, the manner in which the publication was actually understood is also irrelevant in determining what meaning was conveyed to the ordinary reasonable person: *Hough v London Express Newspaper, Ltd* [1940] 2 KB 507 (CA) at 515; [1940] 3 All ER 31 at 35; *Toomey v John Fairfax & Sons Ltd* (1985) 1 NSWLR 291 at 301-302. The question is to be determined on the basis of the natural and ordinary meaning of the publication alone.

1. His Honour also helpfully went on to further state, in part, as follows:

**Investigation, suspicion and the imputation of guilt**

[28] A mere statement that a person is being investigated by the police or prosecution agencies, or that a person is suspected of committing a crime, does not necessarily impute guilt. It may convey no more than that there are reasonable grounds to suspect that the person is guilty, or that there are reasonable grounds for investigating whether the person is guilty: … The question, in such a case, is which of the possible meanings was in fact conveyed to the ordinary reasonable reader in all the circumstances. Much will depend on the context, the words used and the information conveyed by the matter complained of considered as a whole.

[29] In that context, in *Lewis v Daily Telegraph*, Lord Devlin said (at 285):

It is not, therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.

[30] Similarly, in *Favell v Queensland Newspapers Pty Ltd* (2005) 221 ALR 186; [2005] HCA 52 (the facts of which, unlike *Lewis v Daily Telegraph*, somewhat ironically concerned a publication about a fire), Gleeson CJ, McHugh, Gummow and Heydon JJ said (at [12]):

A *mere* statement that a person is under investigation, or that a person has been charged, may not be enough to impute guilt. If, however, it is accompanied by an account of the suspicious circumstances that have aroused the interest of the authorities, and that points towards a likelihood of guilt, then the position may be otherwise.

…

[31] It must also be borne in mind in this context that the ordinary reasonable reader is taken to be mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he is guilty: *Mirror Newspapers Limited v* *Harrison* (1982) 149 CLR 293 at 300.

1. Similar views were expressed as follows by Kirby J in *Chakravarti v Advertiser Newspaper Ltd* [1998] HCA 37, (1998) 193 CLR 519 at 573 to 574 (“*Chakravarti*”) as to the manner in which an “*ordinary reasonable reader*” would understand a statement to be conveyed by a publication:

[134] … In the nature of a defamation action, the matter complained of will be analysed most closely during the trial. It will be studied and taken apart by lawyers, line by line, in a way that the average reader or viewer would never do. This fact presents significant dangers, especially for publishers. It is therefore necessary to remember that relatively few readers will be lawyers reading the matter in question with the attention appropriate to a large, complex and expensive defamation case. The ordinary person is a layman, not a lawyer. He or she approaches perception of the matter complained of in an undisciplined way and with a greater willingness to draw inferences and to read between the lines than a lawyer might do, used to precision. Where words have been used which are imprecise, ambiguous or loose, a very wide latitude will be ascribed to the ordinary person to draw imputations adverse to the subject. That is the price which publishers must pay for the use of loose language…

1. In understanding the imputations as pleaded it is necessary to look to “*the substance, as distinct from the precise words of the pleaded imputation*”. In *Fairfax Media Publications Pty Ltd v Bateman* [2015] NSWCA 154, (2015) 90 NSWLR 79 at 115 to 116 (“*Bateman*”), Basten JA summarised the approach to be adopted, in part, as follows:

***Modern NSW practice as to pleaded imputations***

[167] Pleading imputations derived from defamatory publications is undoubtedly an art; however, it does not generally give rise to the precise use of language generally expected of the law. …

…

[169] As to how one is to understand imputations pleaded by the plaintiff, there is an inevitable tension running through the case law. On the one hand, the language of a defamatory publication may well be imprecise and the pleader may have difficulty in identifying with precision the nature of the attack on the plaintiff’s character. … On the other hand, procedural fairness requires that a defendant has notice of the thrust of the case against it, in part so that it can determine whether it can justify the imputation. The approach adopted in the very early days of the 1974 Act was reflected in the reasons of the court in *Morosi v Mirror Newspapers Ltd* [[1977] 2 NSWLR 749] …

[170] Some 25 years later, the point was repeated by Mason P (with the agreement of Wood CJ at CL) in *Greek Herald Pty Ltd v Nikolopoulos* [[2002] NSWCA 41] stating, “the plaintiff will be bound by the substance, as distinct from the precise words of the pleaded imputation“, referring to *Morosi* at 771. The President continued:

[20] The pleaded imputation is itself a statement extrapolating something from the matter complained of. The statement will seldom be found in the very words used (sometimes the matter complained of is only a picture). The imputation will often be implicit in the text …

[21] These considerations point to the broader issue of principle. Words, a fortiori words not found in the text, are necessarily to be read in context. …

1. These are the principles applied in the present case.

## THE PLEADED IMPUTATIONS

1. It is concluded that some – but not all – of the imputations pleaded have been made out and that those imputations are defamatory of Mr Antonio Bellino.
2. Little difficulty is expressed in concluding as a question of fact that the publication in *The Courier-Mail* would convey to the “*ordinary reasonable reader*” (cf. *Chau* [2019] FCA 185 at [16] to [17]) the imputations that Mr Antonio Bellino was:

* a prominent brothel owner;
* a prominent owner of an illegal casino; and
* a criminal.

The Respondent submitted that the imputations that the Applicant was the “*prominent owner of an illegal casino*” and “*a criminal*” did not arise from the matter complained of but accepted, if it was found that they were conveyed by the matter complained of, that they were defamatory of Mr Antonio Bellino. Conversely, the Respondent accepted that the imputation that the Applicant was a “*prominent brothel owner*” arose from the matter complained of but did not accept that the imputation was defamatory. In summary form, it is concluded that each of the three imputations above were conveyed by the publication and were defamatory of the Applicant.

1. It is, however, further concluded that “*the natural and ordinary meaning*” of the words used in the publication (cf. *Chau* [2019] FCA 185 at [19]) would not convey to the “*ordinary reasonable reader*” the defamatory imputations that Mr Bellino:

* “*fled to Italy because his criminal activities had been uncovered*”;

or that he

* was “*a member of Brisbane’s seedy underbelly*”.

1. As to the imputation that Mr Antonio Bellino “*fled to Italy* *because his criminal activities had been uncovered*”, the written submissions filed by the Respondent submitted that the imputation “*simply does not arise*”. The Respondent was correct in so submitting.
2. As to the imputation that Mr Antonio Bellino was a “*member of Brisbane’s seedy underbelly*”, even though the publication was directed (in part at least) to “*Brisbane’s seedy underbelly*”, the publication went well beyond a reference to the Applicant. Indeed, the only references to Mr Antonio Bellino anywhere on either of the two pages of the publication was in the chronological column. The limited number of words employed in the chronological column do not convey the “*single natural and ordinary meaning*” that Mr Bellino fled because a criminal undertaking that he was carrying out had been uncovered (cf. *Chau* [2019] FCA 185 at [25]) or that he went beyond being a prominent casino and brothel owner and was “*a member of Brisbane’s seedy underbelly*”. Although the pleaded imputation is that the Applicant was a “*member of Brisbane’s seedy underbelly*” – as opposed to (for example) a different imputation that he was a member of Brisbane “*violent*” or “*murderous*” underbelly – the imputation as pleaded is not conveyed by the matter complained of. In determining whether an imputation has been conveyed, care must be taken in too readily reading a caption in a chronological column adjacent to an article as necessarily conveying to an “*ordinary reasonable reader*” that a person referred to in that caption is associated with the activities detailed in the article itself: cf. *Nassif v Nationwide News Pty Ltd* (unreported, Sup Ct, NSW, Simpson J, 5 March 1999).
3. But a number of matters need to be mentioned in respect to the three imputations that were conveyed.

### Prominence & ownership

1. Common to both the first two imputations, with respect to brothels and illegal casinos, is the pleaded imputation that the Applicant was “*prominent*” and an “*owner*”.
2. In the present context it is considered that the word “*prominent*” should simply be understood, as defined in the *Macquarie Dictionary*, as meaning (*inter alia*) “*important*” or “*conspicuous*” or “*very noticeable*”.
3. In respect to the word “*owner*”, it is considered that the “*ordinary reasonable reader*” would not approach the meaning of that term in the same manner as a lawyer. The “*ordinary reasonable reader*” would not study the words used and take them apart in the same manner as a lawyer but rather would understand that term in a more “*undisciplined way*” and “*with a greater willingness to draw inferences and to read between the lines than a lawyer*”: *Chakravarti* [1998] HCA 37 at [134], (1998) 193 CLR at 573 to 574 per Kirby J. Questions as to whether Mr Antonio Bellino was the legal or beneficial “*owner*” of premises do not arise. Nor do questions as to whether any relationship between a person and premises is founded in contractual rights and entitlements, such as may arise in respect to a lease of premises owned by another. Rather, the word “*owner*” should simply be understood as referring to a person who has a not insignificant interest in premises or a person who presents himself as being in control of the activities being carried on at those premises. The “*ordinary reasonable reader*”, it is considered, would simply read a reference to Mr Antonio Bellino as being the “*owner*” of premises as a person who has a significant interest in the premises and perhaps even some degree of control over the activities carried on at those premises.

### An illegal casino

1. The second of the pleaded imputations was that the Applicant was the “*prominent owner of an illegal casino*”.
2. The Respondent accepts in its written closing submissions that “*the imputation that the applicant was a prominent casino owner arises*” but submits that there is “*no support for importing the word ‘illegal’ into the imputation*”.
3. The submission is rejected. Read in the context in which the words are employed, including the headline “*The Day A Revolution Started*” and the chronological column which (albeit in reference to an earlier in point of time) refers to “*illegal casinos … flourishing in Brisbane…*”, it is concluded that the imputation as pleaded is conveyed.
4. It should further be noted that the natural and ordinary meaning of the reference to a “*casino*”, when read in context and against the background to the article as a whole (cf. *Bateman* [2015] NSWCA 154 at [170], (2015) 90 NSWLR at 116 (citing *Nikolopoulos*)), would convey to the “*ordinary reasonable reader*” that the term “*casino*” refers to premises at which organised gaming takes place.
5. As a question of fact, it is concluded that it is not appropriate to draw any distinction between what the Applicant referred to in his evidence as to gaming carried out at “*the club*” as opposed to a reference to any other establishment at which gaming was carried out. The natural and ordinary meaning of the word “*casino*” embraces a place at which organised gaming takes place.
6. Albeit far from conclusive, one of the witnesses (Mr Dickie) during the course of his cross-examination by Mr Antonio Bellino said of his understanding of the phrase “*illegal casino*” the following:

… What’s a casino?––In Queensland, the only legal casinos were ones which had a licence from the government.

...?––Illegal casinos were ones that – that operated sort of extensive gambling activities in a single premises without a licence from the government.

That may be accepted as a common understanding of the phrase.

### A prominent brothel owner … defamatory?

1. A final preliminary matter which should be briefly addressed at the outset is the discrete question as to whether an imputation as to a person being the owner of a brothel was susceptible of being defamatory.
2. The Respondent quite properly accepts that the pleaded imputation that the Applicant was a “*prominent brothel owner*” is an imputation that arises from the matter complained of.
3. But the Respondent maintains that the imputation cannot be said to be defamatory. On behalf of the Respondent it is submitted that in Queensland, New South Wales and the Australian Capital Territory (and elsewhere) brothels have been legalised and regulated for a long time. Indeed, it is further submitted that prostitution was legalised in New South Wales in 1979 and brothels regulated and legalised by 1995. The Respondent further maintains that ownership of a brothel is said not to necessarily attract any taint of moral corruption, especially in circumstances where there is no imputation that the Applicant has done anything other than to own or have an ownership interest in those brothels.
4. The absence of the word “*illegal*” in the pleaded imputation does not assist the Respondent. The statement in the chronological column appearing in the publication complained of and the pleaded imputation, it will be noted, do not state that Mr Antonio Bellino was the owner of “*an illegal brothel*”. By way of contrast, the reference in the chronological column to the events on 13 April 1987 refers expressly to “*illegal casinos … flourishing in Brisbane*…”. But nothing turns on the presence or absence of the word “*illegal*” for present purposes.
5. The submissions of the Respondent are rejected.
6. It is concluded that the imputation that the Applicant is a prominent brothel owner is conveyed and is defamatory. Irrespective of whether brothels and prostitution have been legalised, it remains defamatory to impute to a person that he is the owner of premises at which sex work is carried on and that the person is the owner of a premises dealing with an industry that in some cases possibly involves the exploitation of women (or men) for money. The present imputation does not go to any question as to whether prostitution is legal or illegal; it is an imputation that, in common parlance, suggests the person is a somewhat “*grubby*” or unsavoury person. Whatever may have been the change in community attitudes, as at the time of publication it is concluded that it was defamatory to impute to a person that he was associated with an industry founded upon the sexual activities of others, both in those providing the services and in those who sought out such services.

### The Applicant as a criminal?

1. The third of the pleaded imputations was that the Applicant was a criminal. It has been concluded that this was an imputation that arose on the words used in the publication complained of.
2. In seeking to resist the conclusion that this was an imputation which would be conveyed to the “*ordinary reasonable reader*”, Senior Counsel for the Respondent submitted that none of the matters relied upon by the Applicant conveyed the imputation as pleaded. And, further, it was submitted that the pleaded imputation was “*a crude and limitless imputation*”. In reliance upon observations in *Mirror Newspapers Limited v Harrison* (1982) 149 CLR 293 at 300 to 301, it was further submitted that the “*ordinary reasonable reader*” would be taken to know that a person is presumed to be innocent until proven guilty. Mason J had there observed:

… there is now a strong current of authority supporting the view that a report which does no more than state that a person has been arrested and has been charged with a criminal offence is incapable of bearing the imputation that he is guilty or probably guilty of that offence. The decisions are, I think, soundly based, even if we put aside the emphasis that has been given to the process of inference on inference that is involved in reaching a contrary conclusion. The ordinary reasonable reader is mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he is guilty. Although he knows that many persons charged with a criminal offence are ultimately convicted, he is also aware that guilt or innocence is a question to be determined by a court, generally by a jury, and that not infrequently the person charged is acquitted.

1. Although an “*ordinary reasonable reader*” may well understand the words used in the two articles with an understanding as to a presumption of innocence, the imputation that the Applicant was a criminal arises in the rather sensational context where the Respondent is addressing “*The Day a Revolution Started*”. Read in that context, the matter complained of does convey an imputation that the Applicant was a criminal. The “*ordinary reasonable reader*” would read the words referring to the Applicant in the chronological column next to the articles and would be willing “*to draw inferences and to read between the lines*”: cf. *Chakravarti* [1998] HCA 37 at [134], (1998) 193 CLR at 573 to 574 per Kirby J; *Chau* [2019] FCA 185at [31] per Wigney J.

## THE DEFENCE OF SUBSTANTIAL TRUTH

1. In anticipation of one or other of the defamatory imputations being upheld, the Respondent’s *Defence* goes on to plead the substantial truth of the matters published.

### Substantial truth – the principles

1. Section 25 of the *Defamation Act* *2005* (NSW) (the “*Defamation Act*”) provides as follows:

**Defence of justification**

It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.

Section 4 of the *Defamation Act* provides the following definition:

***substantially true*** means true in substance or not materially different from the truth.

The defence of justification, namely whether the matters complained of are “*substantially true*”, is directed to “*establishing the truth of the imputations that the plaintiff alleges*”: *Wing v The Australian Broadcasting Corporation* [2018] FCA 1340 at [52] per Rares J.

1. In order to make out the defence, a respondent must prove that every material part of an imputation is true. Thus, in *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335, (2010) 278 ALR 232 at 263 (“*Mahommed*”). McColl JA observed, in part, as follows:

***Substantial truth/contextual truth***

[138] In order to establish imputation 12 was substantially true, the appellant had to establish that every material part of it was true: *Howden v Truth & Sportsman Ltd* (1937) 58 CLR 416; [1938] ALR 208; [1937] HCA 74 at 419 per Starke J; at 420 per Dixon J; at 424–5 per Evatt J. However this does not mean the appellant had to prove the truth of every detail of the words established as defamatory (*Li v Herald & Weekly Times Pty Ltd* (2007) Aust Torts Reports 81-887; [2007] VSC 109 at [85] per Gillard J), rather the defence of substantial truth is concerned with meeting the sting of the defamation (*Herald & Weekly Times Ltd v Popovic* (2003) 9 VR 1; [2003] VSCA 161 at [274] per Gillard AJA (Winneke ACJ generally agreeing and Warren AJA agreeing)). …

Her Honour went on to cite with approval the following observations of Lord Shaw in *Sutherland v Stopes* [1925] AC 47 at 79:

It remains to be considered what are the conditions and breadth of a plea of justification on the ground of truth. The plea must not be considered in a meticulous sense. It is that the words employed were true in substance and in fact. I view with great satisfaction the charge of the Lord Chief Justice when he made this point perfectly clear to the jury, that all that was required to affirm that plea was that the jury should be satisfied that the sting of the libel or, if there were more than one, the stings of the libel should be made out. To which I may add that there may be mistakes here and there in what has been said which would make no substantial difference to the quality of the alleged libel or in the justification pleaded for it.

Spigelman CJ, Beazley JA, McClellan CJ at CL and Bergin CJ in Eq agreed with McColl JA.

### The sting of the imputations

1. It is concluded that the respondent has discharged the onus imposed by s 25 of the *Defamation Act* of establishing that each of the imputations that Mr Bellino was:

* a prominent brothel owner;
* the prominent owner of an illegal casino; and
* a criminal

are “*substantially true*”.

1. The Respondent in the present case, it is concluded, has met “*the sting of the defamation*”: *Mahommed* [2010] NSWCA 335 at [138], (2010) 278 ALR 232 at 263 per McColl JA. In reaching these conclusions, findings have been made in accordance with s 140 of the *Evidence Act* *1995* (Cth) (the “*Evidence Ac*t”) and having regard to (in particular) the necessity to be satisfied that the Applicant engaged in illegal activities: cf. *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 to 363 per Dixon J. McColl JA, with whom Leeming JA agreed, adopted a similar course in *O’Brien v Australian Broadcasting Corporation* [2017] NSWCA 338 at [173], (2017) 97 NSWLR 1 at 36 to 37.
2. In reaching these conclusions it has been in large part possible to do so by reference to the evidence given by Mr Antonio Bellino during the course of the present proceeding. That evidence was also corroborated by the evidence given by Mr Antonio Bellino to the *Fitzgerald Inquiry* and by statements he made in his book *Time for Truth: Antonio Bellino tells it as it is* (“*Time for Truth*”). From those sources, admissions made by the Applicant as to his activities and his involvement in illegal casinos and brothels may be extracted.
3. *Time for Truth* was self-published by Mr Antonio Bellino in around 2009. Although Mr Don Cameron is named as the author of that book, Mr Cameron wrote the book by reference to interviews he conducted with the Applicant and by later transcribing what he had been told. Mr Bellino is also listed as an “*Other author/Contributors*” on the book’s title page. Mr Antonio Bellino confirmed in his evidence to this Court that he checked the statements made in the book to ensure their correctness. Subject to only one exception of no relevance to the subject matter of the present proceeding, Mr Antonio Bellino confirmed the accuracy of the book.
4. Although it is convenient to extract some of the evidence relied upon, it is unnecessary when addressing the Respondent’s defence of “*substantial truth*” to refer to each and every statement made by Mr Antonio Bellino either to the *Fitzgerald Inquiry* or in his book. A more comprehensive cross-referencing of the statements made by the Applicant and the evidence before the *Fitzgerald Inquiry* and *Time for Truth* was helpfully prepared by the Respondent in a separate schedule which was marked as an exhibit. Some of the cross-references in that schedule, it may nevertheless be noted, were more equivocal than others.
5. The conclusions reached are only bolstered or further supported if reference is had to the evidence given by Ms Katherine James to the *Fitzgerald Inquiry* (the transcript of Ms James’ evidence was tendered by the Respondent and marked as an exhibit) and by reason of the failure on the part of Mr Antonio Bellino to have evidence adduced from his brother Mr Geraldo Bellino or to have Mr Conte available for cross-examination.
6. It is unnecessary to recount all of the evidence relied upon by the Respondent to make good its defence of “*substantial truth*”. The central evidence canvassed in the proceeding in this Court extended over a period from about the 1970s to 1990s. And the activities of Mr Antonio Bellino during that period were extensive. It is sufficient for present purposes to refer to only some of the evidence. And that evidence focusses upon the involvement of the Applicant in:

* the *Taormina Spaghetti Bar*, which in 1973 became *Pinocchio’s Nightclub*; and
* the *Roxy* nightclub, which was set up in 1985.

Brief reference may also be made to the establishments known as:

* *World by Night*, a place originally acquired in 1972 by Mr Antonio Bellino and his brother Mr Geraldo Bellino in partnership for $17,000 and initially called *Willy’s Bazaar*. Upstairs from *World by Night* was a massage parlour known as *Scarlett’s*;
* *The Beat*, a nightclub jointly owned by Mr Antonio Bellino, Mr Geraldo Bellino and Mr Vic Conte, and described by Mr Antonio Bellino as “*a gay place*”; and
* *Bubbles Bath House*, a massage parlour located on Wickham Street.

### A prominent brothel owner

1. As to the imputation that Mr Bellino “*was a prominent brothel owner*”, it is concluded that the Respondent has made good its defence as to the substantial truth of that imputation.
2. The evidence more than adequately demonstrates that Mr Antonio Bellino was the owner or occupier or a person who had an interest in premises from which prostitution was carried on.
3. There is no doubting that Mr Antonio Bellino was well aware of the fact that prostitutes were operating out of his premises. To the extent that he professed a lack of knowledge of such activities, his evidence is rejected. The Applicant, it is concluded, had actual knowledge of some activities and to the extent that he would wish the Court to accept that he turned a “*blind eye*” to such activities and hence had no actual knowledge, the evidence is such that it is to be inferred that he knew of the activities. To the extent that the Applicant would wish the Court to accept that it was his brother, Mr Geraldo Bellino, who was involved in prostitution and that he confined his interests to the operation of nightclubs, it is concluded that his financial interests extended well beyond that of running nightclubs and extended into prostitution.
4. If attention is focussed for present purposes upon the evidence Mr Antonio Bellino gave to this Court, there is no doubt that he knew that prostitutes worked out of nightclubs. There was thus the following exchange with his cross-examiner (without alteration):

And at that time, Mr Bellino, there were no legal brothels in Brisbane, were there?—No, they’re not – they’re not – no illegal brothels at all.

And the prostitutes worked out of nightclubs, didn’t they?—Well, yes. Yes, I suppose they would have gone nightclub. I don’t know who they were.

The Applicant’s attention was then directed as follows to the activities at *Pinocchio’s Nightclub*:

All right. And your attitude – and the prostitutes used to come to Pinocchio’s, didn’t they, after Pinocchio’s started?—I never know who they were.

Well, you did, didn’t you?—No, I didn’t.

Because your attitude then was that they were very good for the club because they would encourage male patrons to come to the club?—No, I didn’t – I didn’t – I didn’t say that.

That was your attitude, wasn’t it?—No.

And in fact—?—I didn’t know. I didn’t know what – I never asked my patrons who they were or what they do or what they don’t do.

And, in fact, policemen from the licensing branch used to come into the nightclub and take these women out the back and have sex with them, didn’t they?—They used to take people outside, even the – not only the girls; they used to take the men outside the back, interview them.

No. Well, actually, I’m just talking about prostitutes at the moment?—I don’t know there were prostitutes.

Well, you knew perfectly well, didn’t you, that the police from the licensing branch would come in and take the girls out the back and have sex with them in your club?—No, I don’t. They never had sex. I don’t know. I never saw them. I never ask them. That’s a most terrible thing to say.

Well, you probably didn’t see them, Mr Bellino, but you knew that was what was going on?—No, I don’t know them. I never ask my patrons who they have sex or not have sex. What do you think I am, a deviant?

1. This professed lack of knowledge, albeit difficult to accept even in isolation, sits very uncomfortably with the following account given by Mr Antonio Bellino in his book *Time for Truth* (at 123):

There were no legal brothels in Brisbane, so girls worked out of the many nightclubs. Eating and drinking on the premises, they were good for the club and would encourage male patrons to frequent the establishment. This worked very well for the *Gestapo* too. And it took a while for Tony to realise exactly what was going on when the licensing officers would regularly take a girl out into the courtyard. At first he assumed they were being interviewed, but later, when he asked one of the girls how often they were raided and she told him, ‘We don’t get raided, we just have to give them what they want as often as they want it’, the penny dropped.

The “*Gestapo*”, Mr Bellino explains in his book, was the term by which the police licensing branch became known.

1. The same professed lack of knowledge was expressed by Mr Antonio Bellino with respect to the *World by Night* nightclub. Prior to “*a big fight*” with his brother (Mr Geraldo Bellino) in 1978 the Applicant and his brother operated that nightclub in partnership. At that nightclub a waiter was employed, Mr Vic Conte. And Mr Conte’s girlfriend started working upstairs at those premises as a prostitute. Again, Mr Antonio Bellino expressed a lack of knowledge as follows (without alteration):

Now, after Vic Conte began to be employed at World by Night, his girlfriend, whose name was Jan, started working upstairs as a prostitute, using a separate rear entrance?—I don’t even know a thing about that. I never met them at all at the time.

Well, you did know about that because you told Mr Cameron about it, didn’t you?—I didn’t met them. I never – I know them, but I didn’t met them.

So there was a – thank you. You did know about it then, did you?—No, I didn’t know a thing about them.

Anyway, there was a prostitute working upstairs at World by Night, whose name was Jan?—I never went up there.

Well, maybe you didn’t, but that’s …?—Actually, I never went to World by Night, only once when they open up and that was it.

All right. And there was also a massage – there was a massage parlour upstairs called Scarlett’s?—I don’t know. Never been up there.

You don’t know?—Never been up there. Not interested in prostitution or anything like that.

You’re saying, “Well, that’s” – that’s what you told Mr Cameron, wasn’t it, there was a massage parlour up there called Scarlett’s?—I don’t know. I can’t remember that at all, really.

After the “*big fight*” in 1978, *World by Night* thereafter became “*Gerry’s club*”.

1. But again Mr Antonio Bellino’s lack of knowledge sits very uncomfortably with the account given in his book *Time for Truth* (at 133) where it is recounted:

It was around this time that Gerry employed an Italian from Perth, Vic Conte, as a waiter at World by Night. Vic’s girlfriend, Jan, started working upstairs as a prostitute, using a separate entrance.

This may be construed as an acceptance on the part of the Applicant as to his knowledge of the prostitution being carried on at the premises of *World by Night*.

1. Notwithstanding the denials of Mr Antonio Bellino that he was not the owner of a brothel, it is concluded that the evidence establishes otherwise. The evidence establishes his knowledge of prostitution being carried on out of premises he either owned or had a not insignificant interest in and that he was involved in prostitution and participated in the receipt of monies earned from that source.

### A prominent owner of an illegal casino

1. Although the Respondent submitted that there was no warrant for importing the word “*illegal*” into the imputation as pleaded, it otherwise accepted that there was an imputation that the Applicant was a prominent casino owner. Although that submission has been rejected, and that the imputation as pleaded is conveyed, it is further concluded that the Respondent has established the substantial truth of this imputation.
2. During his cross-examination in the present proceeding, Mr Antonio Bellino accepted that illegal gambling took place in a room upstairs from the *Taormina Spaghetti Bar*. There was thus the following exchange:

… The proposition I’m putting to you now is that illegal gambling took place up in this room, didn’t it?—Yes.

But Mr Antonio Bellino again sought to attribute these activities to this brother Mr Geraldo Bellino. This, however, cannot be accepted in light of the fact that the Applicant participated in these activities to the extent that (on at least one occasion) he lent $10,000 from their joint monies to a person identified as “Gabe” to allow him to continue gambling. There were two loans of $5,000 taken from a safe in the floor of the *Taormina Spaghetti Bar*. Mr Antonio Bellino accepted his involvement as follows:

So let’s just be clear about it. You were financing the – helping to finance the – by lending this $10,000 to Gabe, you were helping to finance the operation of this illegal gaming activity with your own money, weren’t you?—Yes. I suppose so, yes. I wasn’t very happy about it, because I need the 10,000. I could have buy a house at the time.

Sure. I mean, no one wants to lend $10,000 with no security back in nineteen seventy …?—Yes, I know.

“Gabe” left Brisbane without repaying the $10,000 and went to Darwin. Mr Antonio Bellino later flew to Darwin to recover his money. There was also evidence of watches and jewellery being kept in the safe (once the premises had been converted to *Pinocchio’s Nightclub*) and that such items were kept as security for monies lent by Mr Antonio Bellino to persons so that they could continue gambling.

1. Separate from the illegal gaming which took place at the *Taormina Spaghetti Bar* (or later at *Pinocchio’s Nightclub*), illegal gaming was also said to have taken place above the *Roxy* nightclub. Mr Bellino sought to attribute such illegal gaming as was carried upstairs from the *Roxy* nightclub to the “*Vietnamese club*”. Although there was extensive evidence as to the floor plan of the *Roxy* and whether the “*Vietnamese club*” was upstairs from premises next door to the nightclub, there is no doubt that it formed part of the facilities being offered at the *Roxy* nightclub.
2. The Applicant was aware that illegal gaming was carried on at what he referred to as the “*Vietnamese club*”, acknowledging as much as follows:

… What I asked you was: there was an illegal gambling operation running in two rooms upstairs, wasn’t there?—I don’t know. I never seen it – never really went in – into it. It was a Vietnamese club, as far as I was concerned.

Mr Antonio Bellino was then questioned as to floor plans which depicted the area of the nightclub and the area in which the illegal gaming was carried on. On his account, however, he never went upstairs to this gaming area. He was unequivocal in his denials, thus responding to his cross-examiner as follows:

Do you say to this court now that you never went in there; is that what you’re saying?—No. Never went in there.

Well, for a start, you used to regularly go up there for a cup of coffee, didn’t you?—No.

He continued his denials as follows:

You say you never went up there when the Vietnamese were there?—Never.

And before the Vietnamese were there Mr Rizzo wasn’t there either, was he, because the …?—No. No.

No. So you didn’t go up there before the Vietnamese were there; correct?—Never been up there.

…

I just want to be clear. The gaming area that you’ve indicated on the plan, the shaded area, I suggested to you that the photographs were of that area and you told his Honour, “I never went up there”?—That’s right.

Do you remember giving that evidence?—No, in …

So let me clear about this. Are you saying that you never at any time went up to the gaming area that was carried on above and adjacent to the Roxy?—No.

You say you never went up there?—Vietnamese – when the Vietnamese were there I did not go up stairs for anything.

Well, that means that you never went up there, doesn’t it?—That’s right. Never went up there. Not interested.

1. But this evidence of Mr Antonio Bellino was contrary to the evidence of (for example) Mr Powell. Mr Powell had actually gone upstairs to what Mr Antonio Bellino referred to as the “*Vietnamese Club*”. He gave evidence of what he saw and having been invited to participate in an illegal game. His evidence as to what he had observed and a conversation he had with Mr Santo Rizzo given during the course of his cross-examination by Mr Antonio Bellino was as follows:

So then you went out from there?—Yes. We left. Well, no. Actually, what he did was he said, “I have to go and deal.” Now, that to me meant that this was going to be a house game and probably, therefore, an illegal game, but he said, “Come and play”, and I said, “I can’t afford to play ...”, and I said, “We’ll go”, and I think he might have asked Chris if he wanted to play and I think Chris didn’t want to, so we left at that point. We had enough information for what we needed.

You had information that there was no casino there; is that right?—No. That wasn’t the information we gathered.

But there was no casino there, you said. You didn’t see any black jacks, you didn’t see any roulette, you didn’t see any baccarat, you didn’t see nothing, just a few tables they were playing one game of Manila?—When Santo Rizzo tells me he’s going to deal a game, that means it’s a house game. When it’s a house game, a percentage is taken out of the pot and that makes it illegal.

In his affidavit, Mr Powell also recounted asking Mr Rizzo whether it was “*[Mr Rizzo’s] game*” and Mr Rizzo replying “*[t]his is Tony’s game*”. The evidence of Mr Powell is accepted.

1. The denials of Mr Antonio Bellino were also contrary to the evidence of Mr Dickie who in fact observed Mr Antonio Bellino in the area described as the “*Vietnamese club*” “*apparently directing people*” who were effecting the removal of gaming equipment from that area on 22 April 1987. When cross-examining Mr Dickie, there was thus the following exchange between Mr Bellino and Mr Dickie:

... So you saw me behind the Roxy but you have no evidence, at all, of me sitting upstairs playing cards, or anything – or anything at all that I was involved with – with the club that was the Roxy, did you?—I – I have said, you know, in front of the Fitzgerald Inquiry, and in my book and a few minutes ago that on the night I received information that the casino was to be moved because you were worried about its potential impact on your liquor license, that I put myself into position to see whether the casino was, in fact, being moved. And I saw you that night in that room behind the louvres, apparently directing people who were moving furniture into a small white utility and taking it to the destination where I had been told the casino was to be moved to.

…

I mean, how many loads they had? I mean, how many loads that night to grab all these tables and chairs and goodness knows what else. I don’t know much about it but anyway how many—?—Well, there were several from the back door, things like tables. But then, as I said, they reversed up Brunswick Street in front of the police to take the lounge suite and the cigarette machine and put them in the back of the utility. So they probably couldn’t get them down the back stairs.

I tell you that you didn’t see nothing at all. You were there investigating, but you didn’t see me at all because it was dark. How dark was it? The back street—?—I was looking into a lighted room. You know, I was in the dark on the fire escape, but I was looking into a lighted room where people were congregated and working, and you I saw directing them.

The evidence of Mr Antonio Bellino is rejected and the evidence of Mr Dickie accepted. This exchange shows the extent to which the Applicant was involved in the illegal gaming activities carried on out of the premises at the *Roxy*. Notwithstanding suggestions made by Mr Antonio Bellino that Mr Dickie either could not see or had an obscured view of the gaming area, it is concluded that he had a sufficiently unobscured view to observe clearly those matters in respect to which he gave evidence.

1. These findings can be made based upon the evidence given to this Court.
2. These findings, however, are only further bolstered if reference is made to the statements made by Mr Antonio Bellino in his book *Time for Truth*. In that book there is, for example, the following statement given by the Applicant and as recounted by Mr Cameron (at 179 to 180):

Gerry was back in the Valley with Vic Conte, running their gambling room above Bubbles Bath House with their new partner, Shifty Tony. Things were looking up for the boys. They’d established a strong relationship with the infamous police bagman, Jack Herbert, who arranged and guaranteed police protection to the highest level. Immune from prosecution, they now had a licence to print money.

Black jack, roulette, and baccarat were added to the manilla tables, and the money rolled in. Saturday’s successful racing punters arrived in droves to hand over their winnings, while Jack Herbert collected his share in neatly folded white envelopes.

In 1983, Tony sold Pinocchio’s for $55,000 and, with Gerry and Vic as fifty per cent partners, bought a restaurant at 633 Ann Street in the Valley, on the site of the old Torino’s Night Club. It became The Cockatoo Bar and then The Beat Night Club.

As Gerry and Vic were running the nightclub, Tony only received a third of the profits. Not wanting to have any further quarrel with his brother, this suited him. And The Beat had become gay friendly, so Tony didn’t spend much time there.

…

The acknowledgment there made by the Applicant as to his receipt of “*only … a third of the profits*…” is an acknowledgment of his participation in the receipt of monies derived from (*inter alia*) illegal gaming.

1. The finding that the Applicant had knowledge of illegal gaming being carried on from premises with respect to which he had an interest is also only further bolstered by reference to the evidence he gave to the *Fitzgerald Inquiry*. Part of his evidence to that *Inquiry* focussed on his involvement in *The Beat*. The Applicant acknowledged his status as a lessee of those premises in the following exchange in his evidence to that *Inquiry*:

You have never known from any source who may have operated it? – I don’t know.

You are still the lessee of The Beat? – Yes.

You are the licensee there also? – Yes.

That has continued from the middle of 1983 that you were both the licensee and lessee? – Yes.

Would it be correct to say in relation to the profitability of that business that it was quite a good business? – To my point of view, it wasn’t a very good business.

And the Applicant’s knowledge of the illegal gambling being carried on at the premises of 142 Wickham Street is also acknowledged in the following exchange during the course of that *Inquiry*:

Have you played in that club, say, since the commencement of The Beat in the middle of 1983? – Look, I could have gone to the place maybe five times, maybe 10 times, I could not tell you the number of times I have been there for one reason or another, maybe play 101, maybe play the Italian game. It is very seldom I went to play cards.

Were you aware that illegal gambling was going on at those premises?—Yes.

The Applicant was also aware that his brother, Mr Geraldo Bellino, referred to these premises as a “*mini casino*”, a further exchange being as follows:

This was the premises on the ground floor of 142 which your brother has earlier described in evidence as a mini-casino, is that right?—Yes, that’s right.

1. Even by reference to this limited evidence, it can be more than comfortably concluded that Mr Antonio Bellino had knowledge of the illegal gaming being carried on at premises in which he was the lessee or at least as a person who had a not insignificant interest in those premises and also was a person who received money from that illegal gaming, albeit perhaps not a financial interest from each of the premises. Notwithstanding his denials from time to time throughout his evidence in the current proceeding, Mr Antonio Bellino on other occasions made such admissions as to his involvement in illegal gaming such that the Respondent has established the substantial truth of the imputation that he was the owner of an illegal casino. And there can be no doubting his prominence.
2. It is concluded that the Respondent has made out its defence of substantial truth in respect to the imputation that the Applicant was the prominent owner of an illegal casino.

### The prominence of Antonio Bellino

1. The first and second imputations convey to an ordinary reader that the Applicant was “*prominent*” with respect to his being a “*casino”* and *“brothel owner*”.
2. There can be no doubting that the Respondent has made good the substantial truth of that element of the imputations as to Mr Antonio Bellino being “*prominent*”. So much follows from (*inter alia*) his reputation in Fortitude Valley. Indeed, it was not understood that Mr Antonio Bellino in the present proceeding sought to deny the “*prominence*” that he assumed. During the course of his oral submissions to this Court Mr Bellino in fact stated (without alteration) “*I was a very popular person in Queensland because I – they knew that I was in the valley. The valley was the place to be*”. He also sought by way of publishing his book to address the truth of the matters that had brought him into “*prominence*”.
3. In order to demonstrate (at least in part) the “*prominence*” that he had assumed in Fortitude Valley it is sufficient for present purposes to refer to the following event depicted in his book *Time for Truth* and the subject of evidence in the present proceeding:

And this is the incident where, in your book, you see that, from page 80, it says:

*The big guy went down, hurt by a flurry of punches from Tony. The others seeing their leader in trouble fled to their cars. The Bellinos pulled them out of their vehicles, the family taking turns in belting them senseless. All eight were bashed. One was lying on the footpath crying out for his mother in Italian. Tony was outraged that an Italian boy had taken sides against him*

Do you see that?—I can see that.

Yes. And this was an assault that – a very serious assault, by the look of it, that you took part in on that occasion?—Well, this is … assault, because (a) I was surrounded by this brother, and all the dancefloor – one dancefloor – and there was like … by myself with the whole of this gang, the same gang that they came out and said to me – we were in a coffee shop; I was there first; and these two cars pulled up; it was one of the brothers of the gangs. And, as we come out, my little friend was with me, I said, “Tony, please, if something happens, you just run home and try to get me help. I don’t think these people are here to help me”. So he ran, and I came outside and he said, “Do you want to fight?” I said, “With you, yes”. We go up the road and we have … and he say to me, “Up the road, you’ve got a knife”, and I said, “I don’t need a knife with you.” He said, “Go and get your friends”, because my friends were in the dancefloor, and they pushed them all out of the dancefloor and left me by myself to fight this other – all – about 15, 20 of them. I walked out unhurt and, as I got in the car, I remember who they were and they said, “You eff dago. We get you one day”, and I just drove away. And then that night, they came over; I was having a Coca-Cola and they decided to do this act. So my brother came – my brother-in-law came and we – there was eight of them – and we had a fight with them. I will defend myself any time with anybody.

Just before I leave this one, you see that at the end of this extract, it says:

*From that day on, the gang of eight were friendly to Tony, referring to him as the boss of Spring Hill. Tony was now the boss of the toughest gang in the roughest suburb in Brisbane. Although Tony denies being a gang boss, it was expected that all who walked with him walked behind him.*

Do you see that?—Yes. I do.

And you expected these people, did you, to walk behind you after this incident?—No.

That’s what you told Mr Cameron, wasn’t it?—Mr Cameron, he most probably put notes, but the people that got the – that fixed the book, Michael Collins, he’s the one that he comes here and gives evidence, and he ... all the bits that Don wrote then leave them as it is.

Such a display of violence in what was presumably a very public place and the reputation thereafter gained by Mr Antonio Bellino as a result only underscores the prominence which Mr Antonio Bellino had acquired.

### The Applicant as a criminal

1. Although the Respondent denied that the matter complained of conveyed the imputation that the Applicant was a criminal, in the event that the Court reached a different conclusion – as it has – the Respondent accepted that the imputation was defamatory.
2. Then placed in issue was whether the Respondent has made good its defence of the “*substantial truth*” of this defamatory imputation.
3. There is also little difficulty in concluding that the Respondent has made good this defence.
4. The substantial truth of the present imputation, it is respectfully considered, flows from an acceptance as to the substantial truth of the first two imputations. It also follows from such exchanges as are recounted in the book *Time for Truth*, including the above extract concerning the fight with the “*gang*” in which Mr Antonio Bellino was involved.

## QUESTIONS OF EVIDENCE

1. The findings of fact which have been made in respect to the “*substantial truth*” of the defamatory imputations which were conveyed by the matter complained of have been based upon (*inter alia*) the evidence to which express reference is made. It has proved unnecessary to refer to each and every other piece of evidence upon which the Respondent relied.
2. A number of discrete questions of evidence have, however, arisen and each should be briefly addressed.

### The denials of Mr Antonio Bellino

1. In reaching these conclusions, it is recognised that Mr Antonio Bellino in his evidence denied being the owner of either a brothel or an illegal casino. He also denied being a criminal. Such illegal activities as were being carried out were, on his account, attributable to his brother or Mr Conte (and others) but not to himself.
2. But one instance of those denials occurred during the following statement made by Mr Antonio Bellino after the conclusion of his cross-examination by Senior Counsel for the Respondent (without alteration):

… Regardless what was said, what was not said, I was never involved and I’m never charged, because if you are a criminal, you cannot get a licence, but not only that, your Honour, they destroyed my name. The Courier Mail kept going after Fitzgerald, calling me a Tony Soprano, a mafia. This all comes from The Courier Mail and The Telegraph. Soprano, mafia, a stigma, notorious, and after all this, in the next time there now, two and a half years ago, I mean, things didn’t cool down for me at all. I got a bit older. I cannot work. I had an operation in my heart. I had a lot of problems with my kidneys and so on and so on, but I’m still here, but the thing is that this is disgusting, telling me that I’m a criminal. I never hurt anybody, and if I was what they say, Fitzgerald would have said so and I would have been in jail like everybody else. I have done nothing wrong. My father was an honest man and I am an honest man. I would not lower myself to go live off gambling or prostitution, as my father’s name was Bellino and he was the best man – the Bellino family in Italy, if you see, they were composers, they were merchants, they were always doctors and God knows what, but I never, ever would have done anything to destroy my father’s name…

Although this statement of his position was not in response to any specific question asked by Senior Counsel during the course of the cross-examination, the Applicant was unrepresented and it was considered that the more prudent course was to afford him an opportunity to fully state his position.

1. This statement was by no means the only occasion upon which Mr Antonio Bellino voiced his denials of the imputations made against him.
2. But it is concluded that such denials should be rejected for either of two reasons, namely:

* those denials are inconsistent with admissions previously made by Mr Antonio Bellino, and admissions made at a point of time far earlier than the present proceeding and at a point of time when it may be assumed that his recollection of events was far clearer and more accurate than his present recollection; and
* a finding that Mr Antonio Bellino proved to be a witness whose evidence should – at the very least – be approached with a considerable degree of reservation. Indeed, it is concluded that Mr Antonio Bellino, in important respects, denied the obvious and (on occasions) failed to tell the truth.

1. The reasons for reservation arise by reason of:

* an overall assessment that the Applicant was more concerned with giving evidence that supported his case and acting whilst giving evidence as an advocate in his case by making submissions rather than listening to and answering the questions being put in cross-examination – as evidenced by his frequent proffering of answers and denials even before a question had been completed;
* the giving of evidence and an account of facts and events contrary to that previously given in respect to the very same subject matter to the *Fitzgerald Inquiry*;
* some of his evidence being implausible, such as his denials of any knowledge of prostitution or illegal gaming in circumstances where such activities were taking place and known to be taking place to those interested in such activities, including the police; and
* his denials of (for example) going upstairs to the “*Vietnamese club*”, even to have a cup of coffee, and his later acceptance of having done so.

1. In short, the evidence of the Applicant is so unreliable that little (if any) weight can be placed upon it. To the extent it is contrary to (for example) the evidence of Mr Dickie, the contrary evidence is to be preferred.
2. These conclusions are reached notwithstanding the fact that Mr Antonio Bellino also called Mr Santo Rizzo to give evidence. Mr Rizzo was cross-examined but largely corroborated the evidence of Mr Antonio Bellino, particularly in respect to the fact that Mr Antonio Bellino had no involvement in the gaming activities. But Mr Rizzo’s evidence, with respect, was also open to reservation. His evidence, was for example, contrary to the account given by Mr Masters and Mr Powell as to the occasion upon which they were together at the *Roxy* and when Mr Rizzo had to excuse himself and said “*I have to go and deal*”. Mr Rizzo also, by way of further example, denied that the Applicant was present on the night that equipment was removed from the “*Vietnamese Club*”. But it has been found that the Applicant was present on that occasion. The contrary evidence of Mr Dickie has been accepted. The reservations as to the reliability of Mr Rizzo’s evidence is such that it does not alter the adverse assessment made as to the reliability of the Applicant’s evidence.

### Jones v Dunkel

1. The Respondent has made good its defence of substantial truth with respect to each of the imputations found to have been made with respect to the matter complained of. The denials of Mr Antonio Bellino of any involvement in illegal casinos and brothels have been rejected. These conclusions have been reached irrespective of any reliance being placed upon his failure to call witnesses who could have substantiated those denials.
2. The failure to call evidence from Mr Geraldo Bellino or make Mr Conte available for cross-examination would, however, have provided only further reason to reject the evidence of the Applicant as to his lack of involvement in those activities.
3. Senior Counsel for the Respondent was correct in placing reliance upon the following observations of Kitto J in *Jones v Dunkel* (1959)101 CLR 298 at 308:

… any inference favourable to the plaintiff for which there was ground in the evidence might be more confidently drawn when a person presumably able to put a true complexion on the facts relied on as the ground for the inference, has not been called as a witness by the defendant and the evidence provides no sufficient explanation of his absence.

1. No satisfactory explanation was provided for the failure to call Mr Conte or the Applicant’s brother. Although it can readily be understood that Mr Conte may well have preferred to not give evidence on the basis he is married and has a young family, that explanation strikes a hollow chord given the Applicant’s expressed commitment to clearing his name and vindicating his reputation.
2. And the fact that the Applicant maintains that he no longer speaks to his brother, Mr Geraldo Bellino, is considered to be an unsatisfactory explanation for failing to call the very person who could have verified that it was he who was responsible for the illegal activities and not the Applicant. Nor can the failure to call Mr Geraldo Bellino be explained by the fact that the Applicant appeared before this Court unrepresented. Orders had been made for the filing of evidence well before the Applicant’s former solicitor filed a *Notice of Ceasing to Act* on 23 January 2019.

### Katherine James

1. Before the *Fitzgerald Inquiry* evidence was given by a woman given the pseudonym “Katherine James”.
2. Ms James was cross-examined before the *Fitzgerald Inquiry* by the Applicant. Some of her evidence, including the cross-examination by the Applicant, was tendered in the hearing before this Court. But she was unavailable to be again cross-examined. Attempts by the solicitors retained by the Respondent to have her subpoenaed to give evidence was met with an inability to pierce the pseudonym and identify her address.
3. Notwithstanding the inability of the Respondent to have Ms James attend to give evidence to this Court, it was nevertheless considered that the earlier transcript of her evidence to the *Inquiry* was admissible. It was relevant and no prejudice was suffered by Mr Antonio Bellino given the fact that he had previously been given the opportunity to test her evidence.
4. But such findings of fact as have been made which are relevant to the Respondent’s defence of “*substantial truth*” have been made without reliance being placed upon her evidence.
5. If recourse is had to the evidence of Ms James at the *Fitzgerald Inquiry* and tendered as evidence in this Court, the findings of fact already made as to the “*substantial truth*” of the defence with respect to the defamatory imputation that the Applicant “*was a prominent brothel owner*” would only have been further bolstered. When being questioned as to the meetings under *Bubbles Bath House* and the Applicant’s involvement in those activities, Ms James gave the following evidence:

Please tell us what happened at these meetings – All the books from all the massage parlours and escort agencies would be in there. Vic would be there for the gambling. Alan … used to take care of the strippers – that type of thing… Gerry Bellino with Vic.

That is Vic Conte? – Yes. And sometimes Tony Bellino.

Ms James then went on to state with respect to these meetings (without alteration):

Would there be meetings where both Gerry and Tony Bellino were there at the same time or would they alternate their attendants? – Usually not at the same time, no.

One of them would be there and not both of them at the same time, as a rule? – Yes.

In providing further detail on Mr Antonio Bellino’s role at these meetings, Ms James gave the following evidence:

Can you remember what part Tony Bellino played when he attended these meetings?— He took the role of what Gerry used to do, just overseeing the whole thing, mainly talking to Vic, but in the whole, he was looked upon as being in charge.

If there was a person in charge of the meeting and Tony Bellino was there, who would you point to as being president of the meeting yourself?—As being in charge of the whole meeting?

Yes?—Tony Bellino.

And there was also the following exchange:

What about Mr. Tony Bellino – not Tony the manager that we spoke of earlier? – Yes, I’ve seen Tony at the one above Bubbles, which is Wickham Street, and also at Stanley Street.

On many of these occasions that you were there, or—? – At least half of those occasions.

And when you saw him at either of these places, what was he doing? Was he taking any active part in what was going on? – Yes, he was. He was again generally just running things: money, making sure the drinks were kept up. Just general running of the place.

Which places were these again that you saw Mr. Tony Bellino?—142 Wickham Street, above Bubbles and the one at Woolloongabba as well, Stanley Street.

The evidence of Ms James, had it been relied upon, would only have provided a further basis for rejecting the denial by the Applicant of any involvement with these activities, let alone the extent to which he was “*in charge*”, at least when his brother was not in attendance. The evidence of Ms James would have been preferred.

1. The submission made by the Applicant, in the course of cross-examining Mr Powell, as to Ms James having been a prostitute and also what he referred to as a “*druggie*” only goes – at its highest – to the weight to be given to her evidence. No submission could prevail that the evidence of a prostitute should in all circumstances be rejected simply because of her then means of earning an income. The activities of a person do not necessarily translate to unreliability.
2. The only reason for separately addressing the evidence of Ms James was that her evidence was contrary to that of the Applicant and he was not given an opportunity in the present proceeding to test that evidence, albeit for the second time.

## DAMAGES

1. Given these conclusions, it is unnecessary to go on and assess the damages (if any) which would otherwise have been payable to the Applicant.
2. Some brief observations should nevertheless be made in respect of the conclusion that Mr Antonio Bellino would only have been entitled to minimum damages – even had the s 25 defence not been made out.

### Damages – the principles to be applied

1. The starting point in assessing damages would have been the three purposes sought to be achieved in awarding damages in defamation proceedings. In *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60 to 61. Mason CJ, Deane, Dawson and Gaudron JJ there observed:

… Specific economic loss and exemplary or punitive damages aside, there are three purposes to be served by damages awarded for defamation. The three purposes no doubt overlap considerably in reality and ensure that “the amount of a verdict is the product of a mixture of inextricable considerations”. The three purposes are consolation for the personal distress and hurt caused to the appellant by the publication, reparation for the harm done to the appellant's personal and (if relevant) business reputation and vindication of the appellant's reputation. The first two purposes are frequently considered together and constitute consolation for the wrong done to the appellant. Vindication looks to the attitude of others to the appellant: the sum awarded must be at least the minimum necessary to signal to the public the vindication of the appellant's reputation. “The gravity of the libel, the social standing of the parties and the availability of alternative remedies” are all relevant to assessing the quantum of damages necessary to vindicate the appellant.

(footnotes omitted)

See also: *Chau* [2019] FCA 185 at [339] per Wigney J.

1. “[T]*he law*”, it has been said, “*should place a high value upon reputation and in particular upon the reputation of those whose work and life depend upon their honesty, integrity and judgment*”: *Crampton v Nugawela* (1996) 41 NSWLR 176 and 195 per Mahoney A-CJ. But a person who has been defamed but who does not have a good reputation may not attract an award of substantial damages: cf. *Australian Broadcasting Corporation v O’Neill* [2006] HCA 46 at [33], (2006) 227 CLR 57 at 73 per Gleeson CJ and Crennan J (Gummow and Hayne JJ agreeing at [89]) (“*O’Neill*”).
2. In approaching an assessment of damages, it is to be noted that s 35 of the *Defamation Act* limits the damages that may be awarded for non-economic loss. That section provides as follows:

**Damages for non-economic loss limited**

(1) Unless the court orders otherwise under subsection (2), the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is $250,000 or any other amount adjusted in accordance with this section from time to time (the ***maximum damages amount***) that is applicable at the time damages are awarded.

(2) A court may order a defendant in defamation proceedings to pay damages for non-economic loss that exceed the maximum damages amount applicable at the time the order is made if, and only if, the court is satisfied that the circumstances of the publication of the defamatory matter to which the proceedings relate are such as to warrant an award of aggravated damages.

(3) The Minister is, on or before 1 July 2006 and on or before 1 July in each succeeding year, to declare, by order published in the Gazette, the amount that is to apply, as from the date specified in the order, for the purposes of subsection (1).

(4) The amount declared is to be the amount applicable under subsection (1) (or that amount as last adjusted under this section) adjusted by the percentage change in the amount estimated by the Australian Statistician of the average weekly total earnings of full-time adults in Australia over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available.

(5) An amount declared for the time being under this section applies to the exclusion of the amount of $250,000 or an amount previously adjusted under this section.

(6) If the Australian Statistician fails or ceases to estimate the amount referred to in subsection (4), the amount declared is to be determined in accordance with the regulations.

(7) In adjusting an amount to be declared for the purposes of subsection (1), the amount determined in accordance with subsection (4) is to be rounded to the nearest $500.

(8) A declaration made or published in the Gazette after 1 July in a year and specifying a date that is before the date it is made or published as the date from which the amount declared by the order is to apply has effect as from that specified date.

(editorial note omitted)

### The reputation of Antonio Bellino

1. Stopping short of entering into any debate as to whether damage to reputation is the subject matter of the tort of defamation, the Respondent submits that the claim for damages for any defamation that has been made out should be nominal because the Applicant has suffered no damage to reputation: cf. *Gutnick* [2002] HCA 56 at [25] to [26], (2002) 210 CLR 575 at 600 per Gleeson CJ, McHugh, Gummow and Hayne JJ; *O’Neill* [2006] HCA 46 at [33], (2006) 227 CLR at 73 per Gleeson CJ and Crennan J.
2. The absence of any damage to reputation arises, so the Respondent submits, either because:

* the Applicant’s reputation (by his own admission) was irredeemably destroyed by reason of other events, prior to the publication of the matter complained of, including other publications (such as the *Four Corners* program, *The* *Moonlight State*, aired by the Australian Broadcasting Commission on May 11, 1987) and his evidence given to the *Fitzgerald Inquiry* and the media coverage of that *Inquiry*; and/or
* such reputation as the Applicant had was a bad reputation, contributed to by the Applicant’s own conduct, and this bad reputation was such that he traded on and sought to profit from it.

Both of these submissions are accepted. A person of the prominence of Mr Antonio Bellino, and with his reputation in the activities of casinos and brothels, suffers no harm to his reputation irrespective of whether there is substantial truth in the publication of statements as to his involvement in such activities.

1. As to the former reason, the Applicant accepts that his reputation was “*destroyed*” by events other than the matter complained of by reason of the statement on the back cover of his book *Time for Truth* when he states (without alteration):

The frenzied media’s scurrulous, profit driven motive to sensationalise the story by resorting to malicious, inaccurate and unsubstantiated reporting forever destroyed Antonio’s reputation.

The body of the book also states (at 239):

After a long two and a half years, Tony reviewed what had transpired. As a result of a one hour airing of *Four Corners*, $94 million of tax payers’ money had been spent, and he had lost everything. The government and police had experienced glittering reform, and his name was mud. Corrupt police were kept out of jail, protected from prosecution by accepting indemnities, and he, who had done nothing, was sentenced to a slow death as a social pariah, the one responsible for the non-existent mafia in Brisbane. Who exactly was being punished?

The book thereafter goes on to recount (at 259):

In any event, public opinion back in the 80s achieved what the law courts couldn’t–it found Tony guilty as reported. Not as charged–as reported. And, in finding him guilty without due process of law, the public condemned him to jail without a jailer, to the life of a prisoner without a prison.

And continues on (at 260):

While life has largely moved on for Tony, he’s still deeply troubled by his tarnished reputation, and how, despite many attempts, he’s failed to get people to understand what happened. He feels that this book is his last opportunity to put things right, and to tell his unabridged version of how it all happened. And he’s doing it for just one reason–to clear his name once and for all.

1. As to the latter reason, namely the finding that such reputation as the Applicant had was such a bad reputation that the publication now complained of was not the source of any damage to that reputation. The facts of the present case, it is respectfully considered, establish that as at the time of publication Mr Bellino had a reputation as:

* a person involved in brothels and illegal gambling; and
* a person involved in criminal activities in Fortitude Valley in Brisbane.

1. Mr Bellino, it is respectfully considered, was well-aware of – and, indeed, took some pride in – his reputation as a person associated with such activities. At about the time of the *Fitzgerald Inquiry* he thus caused to be produced a record album with the front of the dust cover being as follows:



The Applicant on that dust cover was obviously content to portray himself as “*mafia don*” attracting the scorn of ostensible members of the legal profession. Notwithstanding the denial of Mr Antonio Bellino in his cross-examination that he was “*trading on his seedy reputation*”, it is concluded that that was precisely what he was doing.

1. In addition to this album, the Applicant in his book *Time for Truth* admitted his image as associated with the Mafia when he wrote (at 168):

… the local bush telegraph decided that *the man in the mafia car,* as Tony was known, was single and available…

(emphasis in original)

1. The finding as to the reputation of Mr Antonio Bellino, and that the matters now complained of occasioned no damage to his reputation, is only further bolstered if recourse is had to the *Four Corners* programme, *The Moonlight State*. That programme repeatedly referred to and identified the Applicant as a prominent person involved in the running of or associated with nightclubs, brothels and illegal gambling.

## CONCLUSIONS

1. It has been concluded that the imputations that the Applicant was:

* “*a prominent owner of a brothel*”;
* “*the prominent owner of an illegal casino*”; and
* “*a criminal*”

were defamatory imputations conveyed by the matter complained of.

1. But it has further been concluded that the Respondent has made out the defence of justification by proving that each of the defamatory imputations are “*substantially true*”: s 25 of the *Defamation Act*. Each of the imputations have been found to be “*true in substance or not materially different from the truth*”. It has not been necessary to assess the damages that would have been payable to the Applicant had the Respondent not made out the s 25 defence. Nonetheless, it has been concluded that, in any event, due to his reputation at the time of the publication of the matters complained of, Mr Antonio Bellino would only have been entitled to minimal damages.
2. It should finally be noted that the evidence given by Mr Antonio Bellino had the potential to incriminate him in the criminal activities that formed the focus of prosecutions that were brought against others involved in like activities in Fortitude Valley in Brisbane prior to the *Fitzgerald Inquiry* and the potential to incriminate him by reason of such inconsistencies as arose between the evidence given in the current proceedings and his evidence to the *Fitzgerald Inquiry*. Even though Mr Antonio “*willingly*” gave his evidence, given the fact that he was unrepresented and did not have the advice of a legal representation, it is considered prudent to issue Mr Bellino a certificate under s 128 of the *Evidence Act*. Similarly, Mr Rizzo was informed during the course of the hearing that a certificate would be issued to him pursuant to s 128 of the *Evidence Act.*

## THE ORDERS OF THE COURT ARE:

1. The proceeding is dismissed.
2. A certificate be given to both the Applicant and Mr Santo Rizzo pursuant to s 128 of the *Evidence Act 1995* (Cth).
3. The Applicant is to pay the costs of the Respondent, either as assessed or agreed.

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| --- |
| I certify that the preceding one hundred and thirteen (113) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Flick. |

Associate:

Dated: 30 August 2019