



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 128

No. 2015/647

**Peart J.
Irvine J.
Hogan J.**

BETWEEN/

DAVID CHRISTIE

PLAINTIFF /

RESPONDENT

AND

TV3 TELEVISION NETWORKS LIMITED

DEFENDANT /

APPELLANT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 4th day of May 2017

1. The plaintiff, David Christie, is a highly respected solicitor of good standing in the profession. He was, unfortunately, unintentionally defamed by an evening television news bulletin broadcast by the defendant, TV3 Television Networks Ltd. ("TV3") on the 11th November 2013. TV3 promptly broadcast an apology to Mr. Christie. When the plaintiff commenced the present proceedings for defamation, TV3 made an offer of amends pursuant to s. 22 of the Defamation Act 2009 ("the 2009 Act"). It did not seek to defend the proceedings other than to make submissions as to how the court should assess the quantum of damages.

2. In the High Court O'Malley J. assessed the starting point of the level of damages in a fully contested case of this kind as being a sum in the region of €200,000. She nevertheless thought that it was appropriate to allow a discount in the region of one third in the light of the offer of amends and an apology. She accordingly awarded Mr. Christie the sum of €140,000: see *Christie v. TV3 Television Network Ltd.* [2015] IEHC 694. TV3 has now appealed to this Court, saying that the starting point of an award of €200,000 damages in a case of this kind is just too high and that appropriate weight had not been given to the nature of the apology and the offer of amends. TV3 contends that the level of the discount should be higher and it has suggested a figure of 50%.

3. The present appeal accordingly raises the questions of how the court should assess damages in cases of unintentional defamation of this kind and, furthermore, what the appropriate level of discount in cases of this kind where an offer of amends has been made pursuant to s. 22 of the 2009 Act should be. It is understood that this is, in fact, the first case where this aspect of the offer of amends procedure has fallen for consideration at appellate level. Before assessing the difficult legal questions which arise in the course of this appeal, it is, however, necessary to detail the background facts.

The defamatory publication

4. Mr. Christie had been representing a Thomas Byrne in the course of a long running criminal trial which had run for several weeks in October and November 2013. Mr. Byrne was a former solicitor who had been charged with a multiplicity of fraud related offences and his case had received widespread media coverage. Mr. Byrne, who was on bail throughout the trial, was eventually convicted on all charges and was sentenced to a term of imprisonment.

5. As the trial neared its conclusion TV3's news bulletin broadcast the following account on the evening of 11th November 2013:

"The jury in the trial of solicitor Thomas Byrne will resume its deliberations tomorrow morning. It has already spent several hours considering its verdict. The 23-day trial ended this morning with a summing-up from Judge Patrick McCartan. Thomas Byrne has pleaded not guilty to 50 counts of theft, forgery, using forged documents and deception. The total amount involved is almost €52m."

6. These words were, however, accompanied by footage of Mr. Christie making his way, into the Criminal Courts of Justice building in Parkgate Street, Dublin 8, albeit unaccompanied by his client, Thomas Byrne. Mr. Christie was not mentioned by name in the course of the broadcast which lasted for approximately nine seconds. The members of the Court have had an opportunity of seeing the broadcast and, indeed, the subsequent apology as broadcast by TV3. It seems clear that the footage showed Mr. Christie rather than Mr. Byrne and that this was as a result of human error.

7. On the 14th November 2013, the plaintiff's solicitor wrote to the defendant. The broadcast was described as "wholly untrue, false and malicious and grossly and seriously defamatory". The writer claimed that a variety of defamatory assertions were identified as having been made by the broadcast, beginning with an assertion that the plaintiff had been struck off and ending with the assertion that he was a convicted criminal. The letter sought an "immediate, unequivocal and suitable" retraction and apology, and the furnishing of proposals for "substantial" compensation.

8. The defendant's solicitor replied immediately in the following terms:

"TV3 accept that your client was featured on the news item dealing with the trial of Mr. Thomas Byrne. This was an innocent mistake that arose due to an editing error and for which our client offers their sincere apologies to Mr. Christie. They are prepared to broadcast a clarification and apology on their news bulletins and on TV3.ie in terms to be agreed and you might please let us have your proposed wording. TV3 have taken immediate steps to ensure that the footage

cannot be rebroadcast at any time in the future and have also removed it from their online content.

In respect of your claim for substantial compensation TV3 denies that the piece was grossly and seriously defamatory of Mr. Christie or that they accused him of the matters set out in your letter. Thomas Byrne's image has featured extensively in television and print media over the last number of weeks and is readily recognisable by the general public as a result. At no point during the piece was your client identified by name. Anybody who visually recognised him would be well aware that he was David Christie and not his/your client, Thomas Byrne.

TV3 once again accept that a mistake was made and they are more than willing to apologise for that mistake but they do not accept the allegation that the matter merits substantial compensation as demanded by you."

9. Mr. Christie's solicitor responded by enclosing a draft apology which was to be broadcast on the upcoming 5.30 news bulletin and on the internet. The draft was in the following terms:

"On our 5.30 News Bulletin on Monday, 11th November 2013 and in subsequent rebroadcasts on various platforms, we published lengthy video images and footage of Mr. David Christie with voice-over wrongly identifying him as solicitor Thomas Byrne, who is on trial for fifty counts of theft, forgery and related serious offences.

TV3 acknowledges that the unintended reference to Mr. David Christie was wholly untrue, false and grossly defamatory of him. TV3 is happy to clarify this matter and apologises to Mr. Christie and to his family for the distress and embarrassment caused. An agreed sum in compensation has been paid to Mr. Christie, together with a contribution to his legal costs."

10. The defendant replied in turn and it offered to broadcast the following apology:

"On our 5.30 News Bulletin on Monday, 11th November 2013 and in subsequent rebroadcasts on various platforms, we broadcast footage of Mr. David Christie with voice-over wrongly identifying him as solicitor Thomas Byrne who is on trial for fifty counts of theft, forgery and related serious offences.

TV3 acknowledges that the unintended reference to Mr. David Christie was wholly false and untrue. TV3 are happy to acknowledge that Mr. Christie is a well respected solicitor. We apologise to Mr. Christie and to his family for the distress and embarrassment caused. TV3 has agreed to make a donation to a charity nominated by Mr. Christie."

11. The sum proposed by way of charitable donation was €1,000, which sum was to be paid as a gesture of goodwill and without any admission of liability. Mr. Christie's solicitor rejected this latter proposal, saying that it displayed "a continuing determination to belittle our client's concerns and to trivialise your client's outrageous behaviour and its consequences."

12. An apology was, however, broadcast later by TV3 on the 15th November 2013 as follows:

"On our 5.30 News Bulletin on Monday, 11th November 2013 we broadcast footage of Mr. David Christie during a news item relating to the ongoing trial of former solicitor Thomas Byrne. Mr. Byrne is on trial for a number of serious offences.

TV3 would like to clarify that there is absolutely no suggestion that Mr. Christie has been on trial for any such offences. TV3 are happy to acknowledge that Mr. Christie is a well respected solicitor and would like to apologise to Mr. Christie and his family for any distress and embarrassment that may have been caused."

13. There then followed an exchange of correspondence between the parties which ultimately gave way to litigation. TV3 adhered to its position that it had made an innocent mistake for which it had duly apologised. One letter is, however, of particular interest because it echoes the argument which counsel for TV3, Mr. McCullough S.C., was to press strongly during the course of the appeal to this court:

"It is worth repeating that Thomas Byrne is an almost uniquely identifiable individual owing to the extraordinary amount of coverage he has received on television and print media over the past six years. Mr. Christie was never named or identified by TV3 during the piece in question. We do not see how any ordinary person would have confused Mr. Christie with his client, Thomas Byrne. It is also quite clear that anybody who knows Mr. Christie and saw him on the 5.30 News broadcast in question would have known full well that he was not Thomas Byrne... ..unfortunately, in all of the circumstances our client does not believe that 'substantial compensation' is warranted."

14. A plenary summons was issued by the plaintiff on the 4th December 2013, to which the defendant entered an appearance following service. The plaintiff delivered a statement of claim on the 21st January 2014. On the 5th March 2014 TV3 made a formal offer of amends pursuant to s. 22 of the 2009 Act. The offer was in the following terms:

"Our client's offer to make amends means that it will, again, if required by your client, make a suitable correction of the statement and broadcast published and apologise to your client. As you are aware, TV3 already apologised to Mr. Christie and corrected the broadcast that is the subject matter of these proceedings on its 5.30 news programme of Friday, 15th November 2013. We believe that the correction and apology published by TV3 was reasonable and practicable in the circumstances. However, our offer now includes a proposal to re-publish this apology should your client require it to be done for a second time. Our client's offer to make amends also means that it is prepared to pay such damages and costs as may be agreed by our respective clients or as may be determined by the Court. If you accept our offer you are required to specify what damages and costs your client is seeking.

If you refuse to accept this offer of amends then our client shall rely upon your failure to accept the offer as a defence to these proceedings."

15. There then followed further correspondence whereby TV3 clarified that its offer extended to any rebroadcasts on the internet. By letter dated the 2nd May 2014 TV3 expressed the hope that:

"On that basis we trust that our client's offer to make amends has been accepted by your client.

In our letter of 5th March 2014 we confirmed that we would republish the original correction and apology and called on you to specify what damages and costs your client is seeking. We believe this constitutes a valid offer to make amends in accordance with s. 22 of the Defamation Act 2009, but we note that your client has declined to specify his demands and

instead called on our client to set out further details of their offer....

Our client now repeats their offer to re-broadcast the original correction and apology, or such other correction and apology as may reasonably be agreed between the parties, and confirms that they are prepared to make a payment of [redacted] to your client by way of compensation together with costs to be taxed in default of agreement."

16. By letter dated the 13th June 2014, Mr. Christie's solicitor confirmed that the offer to make amends had been accepted. The view was expressed that "agreement could be reached" about the apology. It was also considered that taxation would probably resolve the costs aspect. The sum which had been offered by way of compensation was, however, rejected as being "derisory".

The evidence before the High Court

17. The matter ultimately came before O'Malley J. in the High Court. The only evidence before the Court was that of the television broadcast itself and the oral evidence of Mr. Christie.

18. In his evidence Mr. Christie said that he qualified as a solicitor in 1992 and had been a partner in Christie & Gargan since 1997. In late 2007 he had agreed to represent Mr. Byrne. This originally involved dealing with the Law Society on his behalf, when moves to strike Mr. Byrne off the roll of solicitors were in train. The plaintiff subsequently agreed to defend him in the criminal proceedings.

19. On the morning of the 13th November 2013, the plaintiff was waiting to cross the street on his way into the Criminal Courts of Justice. He noticed two photographers and a cameraman pick up their equipment and run towards him. He said that he was "a little embarrassed" by this. He was quite certain that the cameraman knew that he was not Thomas Byrne, because he had previously objected to that particular individual's behaviour to Mr. Byrne. The cameraman was still filming as he went in the door of the building, and the plaintiff said to him something to the effect that he was on his own, or that he did not have his client with him.

20. Mr. Christie did not see the defendant's news bulletin that evening. When he went in to the office the next morning his partner told him that he should check it out. Another member of Mr. Byrne's legal team showed it to him online during the course of the day, and he felt shocked. Later that evening he left court with Mr. Byrne. As they walked up the street together a man spat in the plaintiff's face and called him "a thief" and used other abusive language.

21. Mr. Christie described his upset with this incident. That evening he fielded a number of telephone calls from former clients wanting to know if he had returned their deeds to the bank and similar questions. One man asked what had happened to his wife's settlement cheque in a personal injury claim, although the case was still with the Personal Injuries Assessment Board and no cheque had issued. On another occasion when the plaintiff was socialising with some colleagues, a man approached him, grabbed him by his jacket and invited him outside for a fight, addressing him as a thief.

22. Mr. Christie also recounted how on another social occasion a man said to him "I thought you were locked up". Mr. Christie told him he was mistaken, whereupon the man threw his drink over Mr. Christie's coat. Mr. Christie also stated that he and his wife had stopped going out for dinner because people stared at them. He maintained that there is still an effect on his solicitor's practice and as of the date of the High Court hearing (5th May 2015) he was still getting calls from clients asking what he has done with their documents.

23. Mr. Christie said that he thought that the proposed apology and donation to charity was insulting. Charitable donations were a personal matter for himself and his wife. The proposal belittled his position as a solicitor.

24. Counsel on behalf of the defendant, Mr. O'Callaghan SC, commenced his cross-examination by apologising to the plaintiff for what was described as "the mistaken footage". Mr. Christie accepted when it was put to him that some members of the public found it difficult to distinguish between the client and the lawyer, but he also noted that none of these unpleasant incidents had occurred before the broadcast. He did not, however, accept that the apology was either fulsome or genuine, in particular because it did not say that the broadcast had been untrue and defamatory.

25. Mr. Christie further agreed that Mr. Byrne's image had been widely portrayed both before and during the criminal trial. It was suggested to him that his own clients knew what he looked like, and that people following the trial knew what Mr. Byrne looked like. Mr. Christie responded that people did not even hear the name - they just heard the words fraud and theft. While Mr. Christie felt that his practice had been affected, he acknowledged that this might also have been because of the economic downturn.

26. In the course of a very careful and thorough judgment O'Malley J. analysed the novel provisions of the 2009 Act and considered some of the contemporary English case-law dealing with offers of amends. She concluded thus:

"In the hypothetical scenario of the case being dealt with as a fully contested defamation action heard without a jury, with no mitigating aspects, I would be inclined to award a sum in the region of €200,000. I consider it to be appropriate to allow a discount in the region of one third, to take account of the offer to make amends and the apology. It does not seem appropriate to allow further mitigation in the absence of a more comprehensive apology and a failure, in the running of the action, to take responsibility for the fact that the plaintiff was damaged in his reputation as a result of the broadcast."

27. It is next necessary to examine the relevant statutory provisions contained in the 2009 Act.

The relevant provisions of the 2009 Act

28. The 2009 Act effects the most far-reaching reform in the law of defamation in the history of the State. Section 6 of the 2009 Act provides that the torts of libel and slander have ceased to be described as such and are instead collectively described as defamation. A "defamatory statement" is defined in s.2 of the 2009 Act as a statement that tends to injure a person's reputation in the eyes of reasonable members of society. It includes "visual images, sounds, gestures and any other method of conveying meaning". Section 6(3) provides that a defamatory statement concerns a person if it could reasonably be understood as referring to him or her.

29. The offer of amends procedure introduced by s. 22 of the 2009 Act is one of the most significant changes effected by this legislation. Section 22 of the Act provides as follows:

"(1) A person who has published a statement that is alleged to be defamatory of another person may make an offer to make amends.

(2) An offer to make amends shall:

- (a) be in writing,
- (b) state that it is an offer to make amends for the purposes of this section, and
- (c) state whether the offer is in respect of the entire of the statement or an offer (in this Act referred to as a "qualified offer") in respect of:
 - (i) part only of the statement, or
 - (ii) a particular defamatory meaning only.

(3) An offer to make amends shall not be made after the delivery of the defence in the defamation action concerned.

(4) An offer to make amends may be withdrawn before it is accepted and where such an offer is withdrawn a new offer to make amends may be made.

(5) In this section "an offer to make amends" means an offer:

- (a) to make a suitable correction of the statement concerned and a sufficient apology to the person to whom the statement refers or is alleged to refer,
- (b) to publish that correction and apology in such manner as is reasonable and practicable in the circumstances, and
- (c) to pay to the person such sum in compensation or damages (if any), and such costs, as may be agreed by them or as may be determined to be payable, whether or not it is accompanied by any other offer to perform an act other than an act referred to in paragraph (a), (b) or (c)."

30. Section 23 of the 2009 Act sets out the procedure to be adopted where there is an offer to make amends. If the parties are agreed as to the measures to be taken, the court may, on the application of the person to whom the offer was made, give a direction under s. 23(1)(a) that those measures be taken. If the parties do not so agree, the party who made the offer can seek the leave of the court pursuant to s. 23(1)(b) to make a correction and an apology by way of a statement before the court. By virtue of s. 23(1)(c), where the parties do not agree as to the damages or costs payable by the person making the offer, those matters shall be determined by (in this instance) the High Court,

"...and the court shall for those purposes have all such powers as it would have if it were determining damages or costs in a defamation action, and in making a determination under this paragraph it shall take into account the adequacy of any measures already taken to ensure compliance with the terms of the offer by the person who made the offer."

31. Section 24 of the 2009 Act deals with the effects of an apology. Subsection (1) provides that a defendant may give evidence in mitigation of damage of an offer of, or publication of, an apology where, *inter alia*, the offer or publication happened as soon as practicable after a complaint is made by the plaintiff. An apology does not constitute an express or implied admission of liability and is not relevant to the determination of liability. This section is applicable to all defamation actions, and not only those heard by a jury.

32. Section 31(3) of the 2009 Act provides that in making an award of general damages, "regard shall be had to all of the circumstances of the case." Section 31(4) then enumerates a list of factors to which regard must be had in the assessment of damages:

- "(a) the nature and gravity of any allegation in the defamatory statement concerned,
- (b) the means of publication of the defamatory statement including the enduring nature of those means,
- (c) the extent to which the defamatory statement was circulated,
- (d) the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement,
- (e) the making of any offer to make amends under section 22 by the defendant, whether or not the making of that offer was pleaded as a defence,
- (f) the importance to the plaintiff of his or her reputation in the eyes of particular or all recipients of the defamatory statement,
- (g) the extent (if at all) to which the plaintiff caused or contributed to, or acquiesced in, the publication of the defamatory statement, and
- (h) evidence given concerning the reputation of the plaintiff."

The level of damages

33. As the Supreme Court has frequently stated, the law of defamation involves the striking of a balance by the Oireachtas of two potentially competing constitutional rights, namely, the protection of the right of a good name (Article 40.3.2) and right of free speech and expression (Article 40.6.1): see, *e.g.*, *Hynes-O'Sullivan v. O'Driscoll* [1988] I.R. 436; *de Rossa v. Independent Newspapers Ltd.* [1999] 4 I.R. 432.

34. This constitutional balance necessarily implies that an award of damages for defamation must be measured and proportionate. An

excessive award plainly impacts on the right of free speech and the special role which Article 40.6.1 ascribes to the organs of public opinion in the respect of "their rightful liberty of expression" and the "education of public opinion." This might be thought to be especially true in the present case, since commentary on an important criminal trial is all part and parcel of this education of public opinion which is constitutionally designated as a core function of the media generally. On the other hand, an award of damages which did not adequately compensate the party defamed for injury, personal hurt and damage would amount to a failure to give effect to the substance of the guarantee of good name contained in Article 40.3.2.

35. This point was emphasised by Henchy J. in his judgment in *Barrett v. Independent Newspapers Ltd.* [1986] I.R. 13. Here the plaintiff was a member of Dáil Éireann of whom it had been alleged that after an unsuccessful attempt to unseat his party leader, he had accosted a particular journalist, and then "leaned over and pulled at my beard and said: 'You thought you'd dance on his grave'." The jury awarded a sum of IRE65,000 or about €80,000. This was, however, was some thirty years ago, so that allowing for the conversion from Irish pounds to Euro and inflation in the meantime, this represented a sum in the region of perhaps €160,000 - €170,000. The Supreme Court held that the award was simply too high. As Henchy J. explained ([1986] I.R. 13, 23-24:

"A helpful guide for a jury in a case such as this would have been to ask them to reduce to actuality the allegation complained of, namely, that in an excess of triumphalism at his leader's success the plaintiff attempted to tweak the beard of an unfriendly journalist. The jury might then have been asked to fit that allegation into its appropriate place in the scale of defamatory remarks to which the plaintiff might have been subjected. Had they approached the matter in this way, I venture to think that having regard to the various kinds of allegations of criminal, immoral and otherwise contemptible conduct that might have been made against a politician, the allegation actually complained of would have come fairly low in the scale of damaging accusations. The sum awarded, however, is so high as to convince me that the jury erred in their approach. To put it another way, if £65,000 were to be held to be appropriate damages for an accusation of a minor unpremeditated assault in a moment of exaltation, the damages proper for an accusation of some heinous and premeditated criminal conduct would be astronomically high. Yet, a fundamental principle of the law of compensatory damages is that the award must always be reasonable and fair and bear a due correspondence with the injury suffered. In my view, the sum awarded in this case went far beyond what a reasonable jury applying the law to all the relevant considerations could reasonably have awarded. It is so disproportionately high that in my view it should not be allowed to stand."

36. The present case is admittedly more serious than the defamation at issue in *Barrett*. The casual viewer of the programme might well confuse Mr. Christie with Mr. Byrne. Those who knew Mr. Christie simply to see might think that he was actually Mr. Byrne. In the wake of the transmission of the newscast the potential for confusion, distress and embarrassment was admittedly considerable. It is also possible that some existing – and perhaps especially potential – clients would have been tempted to give him a wide berth in the light of the broadcast.

37. At the same time, there is, I think, much force to Mr. McCullough's fundamental submission, namely, that it had been (wrongly) assumed in the course of the High Court judgment that all the viewing public would confuse Mr. Christie's identity with that of Mr. Byrne. Those closest to Mr. Christie – his immediate family, his colleagues, friends and clients – would all know that this was simply not so and that the broadcast was *obviously mistaken in showing images of Mr. Christie while speaking about Mr. Byrne*.

38. It should also be recalled that Mr. Christie was not identified by name in the course of the broadcast and it is easy to see how errors of a different category would have made the defamation far worse. Had, for example, the broadcast stated in error that Mr. Christie was on trial for fraud offences and implied that he was a disgraced solicitor the defamation would have been infinitely more serious than what actually occurred.

39. None of this is to say that it was not a serious defamation, because it was. As I have already observed, the potential for confusion, distress and embarrassment was considerable and should not be minimised. It is rather to say that it was not a defamation of such a character as would merit a starting point in the region of €200,000 in terms of the assessment of damages. If that were indeed the starting point in a case of this kind, then, adapting the language of Henchy J. in *Barrett*, the damages in respect of a deliberate, calculated accusation of serious wrongdoing by the plaintiff in which he had been mentioned by name would be "astronomically high."

40. For my part, taking account all relevant factors – a once-off nine second broadcast, the fact that the plaintiff was not named, the very limited range of viewers who might think that the news item referred to Mr Christie, the absence of any animus towards the plaintiff, coupled with the fact that it was plainly a case of mistaken identity – I consider that these mitigate the otherwise very serious nature of the defamation. In the light of these factors, therefore, it is sufficient to state that this is not a defamation which would warrant a starting point in damages of €200,000 identified by the trial judge and that in these circumstances a starting point of €60,000 is appropriate and proportionate.

What reduction should be given in view of the offer of amends?

41. It is reasonable to suppose that the new offer of amends system was introduced by the Oireachtas so that fully contested defamation actions might be avoided where this was possible by means of a swift apology to the injured party, the publication of a suitable apology and correction and the payment of compensation where this was warranted. Since it is very much in the public interest that the parties engage in what amounts to a conciliation process, it is only appropriate that the level of damages be reduced appropriately in acknowledgment of the defendant's willingness to accept it's wrong-doing. This has certainly been the experience in the United Kingdom since the enactment of the Defamation Act 1996: see, e.g., *Cleese v. Clark* [2003] EWHC 137, *Nail v. Jones* [2004] EWCA Civ. 1708 and *KC v. MGN Ltd.* [2013] EWCA Civ. 3. A similar approach was adopted by McDermott J. in his comprehensive judgment in *Ward v. Donegal Times Ltd.* [2016] IEHC 711.

42. In the present case TV3 not only swiftly acknowledged its wrong, but it offered to apologise and did apologise to the plaintiff on its main evening television bulletin within a few days of the first publication. This is all greatly to its credit and it should accordingly be rewarded by a suitable discount by reason of the fact that it also offered to make amends under s. 22 of the 2009 Act. In the High Court O'Malley J. measured that discount at approximately 33%, but for my part I would go further: I consider that TV3 should receive a discount of 40% in recognition of the swiftness of the apology and the general prominence given to the apology.

43. In this regard, one cannot but be impressed by the prominence given to the apology in the present case, since all too often in the past media outlets – while publicly professing a willingness to place corrections and to apologise for defamatory comment – have nonetheless sought effectively to hide corrections and apologies by ensuring that such are not given appropriate prominence. The level of discount in s. 22 cases where the apology is grudging or not given appropriate prominence will obviously be a lot less than where the apology is fulsome, generous and given the prominence which it deserves. As McDermott J. observed in *Ward*, the level of the discount will be lower where the defendant has failed to engage "adequately with the concept of an apology within the spirit and

intention of s. 22".

44. One may indeed further observe that but for a number of aspects of the apology offered and suggested the level of discount would have been even higher again. I would itemise the following factors as reducing somewhat the level of discount which might otherwise have obtained in the present case.

45. First, the apology did not state in terms that Mr. Christie had been defamed and, indeed, as his counsel, Mr. Ó Tuathail SC noted, the first time that the term was used by TV3 was in its submissions to this Court. The failure to acknowledge this obvious fact takes from the completeness of the apology.

46. Second, Mr. Christie objected – and, in my view, quite rightly – to the level of compensation which TV3 originally offered, namely, an offer to make a payment of €1,000 to a charity of his choice. As Mr. Christie pointed out in his evidence, this was virtually to trivialise the nature of the defamation which took place. He was entitled to say that not only was his reputation worth far more than that, but also that such an offer failed to recognise the seriousness of the defamation which had occurred.

47. Third, the apology simply stated that TV3 apologised "to Mr. Christie and his family for *any* distress and embarrassment that may have been caused" (emphasis supplied). In this context, however, the use of the indefinite ("*any* distress and embarrassment") rather than the definite article ("*the* distress and embarrassment") is more than a grammatical or linguistic quibble. The use of the indefinite article rather suggests on the contrary a level of mental reservation about the nature of the defamation concerned and its seriousness. It implied that Mr. Christie might not have suffered any personal distress and embarrassment when this was obviously not so.

48. All of this is to say that while the apology published was satisfactory and that it did in its own right attract a significant discount, it might have been more complete and fulsome for the reasons I have just ventured to state. Had it been more complete and fulsome, then the level of the discount would have been even higher than the 40% indicated in this judgment.

Conclusions

49. In summary, therefore, I would summarise my conclusions thus.

50. First, while this was a serious defamation of the plaintiff, it was not at the level which would merit a starting point of €200,000. Factors such as the one-off nature of the broadcast, the relatively short duration of the broadcast, the failure to name the plaintiff, the lack of animus towards the plaintiff and the fact that it was an obvious error which those closest to Mr. Christie – his family, friends, work colleagues and clients – would surely know all take from the seriousness of the defamation. The appropriate starting point is, accordingly, a figure of €60,000.

51. Second, while the apology published was satisfactory so that TV3 are entitled to a substantial discount, that discount figure could itself have been higher had, for example, the apology acknowledged that he had been defamed and had apologised for the distress and embarrassment which the publication had caused.

52. Third, in these circumstances I would allow the appeal to the extent that I would reduce the starting figure of €200,000 to €60,000 and increase the level of discount from one-third to 40%. I would accordingly substitute a figure of €36,000 for the award of €140,000 made by the High Court as the sum to be paid to Mr. Christie by way of damages for defamation.