

## THE HIGH COURT

[2018 No. 93 CA]

BETWEEN

CHRISTIAN MORRIS

PLAINTIFF/APPELLANT

AND

**MCDONALD'S RESTAURANT OF IRELAND LIMITED AND RENAISSANCE SECURITY SERVICES LIMITED AND THE UNIDENTIFIED FEMALE PRIVATE SECURITY GUARD WORKING IN MCDONALD'S OF DONAGHMEDE DUBLIN 13 ON 21ST JUNE 2015**

DEFENDANTS/RESPONDENTS

**JUDGMENT of Mr. Justice MacGrath delivered on the 2nd day of April, 2019.**

1. This is the plaintiff's appeal from the decision of the President of the Circuit Court, His Honour Judge Groarke, made on the 26th February, 2018 dismissing his claim against the defendants for defamation, trespass and breach of duty.

2. The plaintiff represented himself in the proceedings which were instituted by way of civil bill issued on the 15th June, 2016. He claims that on the 21st June, 2015 he was defamed and that he suffered real and material loss and distress as a result of an incident which occurred at the first defendant's restaurant premises in Donaghmede, Dublin. He further alleges that he was wronged in correspondence following the making of a complaint by him and by the manner in which the defendants responded.

3. The claim is denied by the defendant and as a preliminary objection, it is pleaded that the civil bill is not in compliance with the relevant provisions of the Rules of the Circuit Rules in that it fails to set out the nature, extent and grounds of the various claims advanced. Although the pleadings might be described as vague, nevertheless the claim proceeded on the basis of the evidence of the plaintiff, the pleadings and the information supplied in the replies to particulars. Mr. Morris also obtained a copy of the Digital Audio Recording of the proceedings in the Circuit Court which has been transcribed and was referred to at the hearing of this appeal.

4. The court was also furnished with copies of correspondence exchanged between the parties in the aftermath of the incident. To the extent that certain letters may have referred to any negotiations, settlement proposals or matters in the nature of those that might properly be associated with without prejudice communications, I have ignored them in arriving at my decision save to the extent that they required to be considered in the context of the plaintiff's claim that the defendants' response in correspondence gives rise to a cause of action.

**The plaintiff's evidence**

5. Mr. Morris sought to adopt as his evidence before this court, the transcript of his evidence in the Circuit Court. Nevertheless, he gave oral evidence to this court and it is to be observed that the evidence which he gave on central matters did not differ in any material respect to the evidence which he had given in the Circuit Court.

6. Mr. Morris has been a regular customer at the defendant's premises at Donaghmede and had never experienced difficulty until the 21st June, 2015. He entered the premises sometime after 10 p.m. He bought food including chips with the intention of consuming it on the premises. He proceeded to a table and noticed that the chips were, what he described as, excessively greasy. In order to remove some of the grease from the chips, he obtained serviettes, shook the chips into the serviettes, thereafter crumpled and threw the used serviettes onto a nearby table. That particular table had been used by other customers and had not at that stage been cleaned. He stated that he intended to dispose of the rubbish on that table in due course.

7. Mr. Morris was then approached by a security guard, Ms. Suzanne Campbell. It was following this approach that the incident of which he now complains commenced. He states that Ms. Campbell ordered him to pick up the tissues in what he described as an aggressive manner. He felt that he was being ordered by her to stop throwing things around the restaurant and to pick them up and put them into the bin. His response to her was that he would do so when he was ready. His evidence is that she required him to do so immediately. He would not be spoken to in that way. While his state of mind at the time was that he was not saying to Ms. Campbell that he was not going to clear up, nevertheless he was not going to take an order to do it immediately.

8. Mr. Morris decided that he wanted to leave. He wished to speak to whoever was in charge and he then proceeded to the counter area to request a refund. He states that Ms. Campbell told him that he was not getting his money back and that she then attempted to take the food from him. He attempted to retrieve the tray from her. Mr. Morris states that members of the catering staff at the counter were quite cooperative and returned his money to him. He then placed the food in the litter bin, although he apologised for the manner in which it was done.

9. Mr. Morris states that he became quite stressed, and that this was precipitated by Ms. Campbell's aggressive and officious approach towards him.

10. A number of young persons were sitting nearby and were doing what Mr. Morris described as "*what teenagers do – they were standing back and enjoying the circus*". They began to mock him but Mr. Morris attributes blame to Ms. Campbell for permitting the situation to develop. Not alone was the incident precipitated by Ms. Campbell's approach to him, but his evidence is that she did not attempt to ensure, with sufficient urgency, that the teenagers desisted from comments which he found offensive. He also states that it was only on his insistence that Ms. Campbell reluctantly requested the children to desist and that Ms. Campbell also became involved in a disagreement with one of the teenagers who demanded his money back. According to Mr. Morris, this individual did not fare so well and his money was not returned to him. Indeed, Mr. Morris states that he advised this person to assert himself and to ensure that he was refunded.

11. It appears that it was in response to the name calling by the teenagers that Mr. Morris produced his mobile telephone and commenced video recording for the purpose of gathering evidence with a view to possibly making a statement about the teenagers or making a civil complaint against the security guard. The teenagers left and sometime later a number of them appeared at the window and made unwelcome gestures to the plaintiff. When Mr. Morris was in the vicinity of the door, one of them grabbed the mobile telephone and took it away. While it was returned sometime later it is a matter of concern to Mr. Morris that the SIM card, which contained photographs of sentimental value, had been removed. He believes that Ms. Campbell should have anticipated this person's return and should have taken greater steps to ensure that his phone was not stolen.

12. Insofar as actions and words of the young people were concerned, Mr. Morris expressed his opinion to the court that he did not believe that he would have a cause of action against them. He had been a teacher for a number of years and believes that he understands the way teenagers act. Nevertheless, he states that he was defamed in front of other customers in the shop and the behaviour of the teenagers was triggered and tolerated for too long by Ms. Campbell who he believes should have made a more immediate and significant effort to require them to desist from calling him names of a disparaging nature. He also stated in evidence to the Circuit Court that the security guard had insinuated that his videoing on the premises was somewhat improper because the video was being taken of persons under the age of 18.

13. After the incident as described, Mr. Morris stated that he did not wish to leave the premises because of concerns for his safety as the young people remained outside.

14. The Gardaí were telephoned by a number of the witnesses, but did not arrive. Ms. Campbell later accompanied him to his car.

15. Mr. Morris stated in evidence to this court that he was offended when Ms. Campbell gave evidence in the Circuit Court. Ms. Campbell had there stated that before the incident commenced Mr. Morris had been "*pacing up and down*". She also referred to noticing his attire and of observing that his fingernails were painted. He believes that he was negatively profiled by her in advance of the serviettes being disposed of by her.

16. In cross-examination, Mr. Morris disputed that the teenagers were leaving the premises when he produced his mobile phone. It was put to him that this aggravated the teenagers. It was also put to him that taking out the mobile phone resulted in Ms. Campbell feeling intimidated. In response, he stated that if that was so then she was easily intimidated. He also pointed out that there were CCTV cameras within the premises. He did not disagree with the suggestion put to him that when the young people left the premises he proceeded to the door of the premises and continued to record them.

17. Mr. Morris made a statement to An Garda Síochána on the 18th August, 2015, which reflects and records many of the complaints which he makes in these proceedings. It is evident from this statement that he took particular dislike to what he described as a security guard's manner and felt that it was not her job to reprimand a paying customer.

### **CCTV**

18. The court was informed that the events were captured on CCTV, a copy of which was provided to Mr. Morris in October 2016. This was not played in court. Mr. Morris did not wish to have it introduced on an edited basis and did not seek to otherwise introduce it, although he indicated that he had no objection to the court sitting through two hours of the CCTV footage, if the defendant wished to introduce it on that basis. Given the length of the coverage, the rather indifferent attitude of the parties to its introduction, the fact that the plaintiff chose not to view it at any stage prior to the hearing despite having been furnished with a copy a number of years previously, and in the absence of any definite application to the contrary, the court did not view the video.

### **Evidence of Ms. Campbell**

19. Ms. Campbell was the security guard on duty on the night and is also a supervisor. She stated there were very few people on the premises. She was standing in the vicinity of a bin near the front door. Prior to that she had circulated through the restaurant. She saw the plaintiff sitting at an end table towards a window directly facing her. There were up to six teenagers sitting a number of seats away from him. There was nothing untoward about their conduct at that stage. Out of the "*side of her eye*", she observed the plaintiff throwing a tissue onto another table. She stated that the teenagers had noticed this and were looking at her as if to say *what was she going to do about it*, although such sentiment was unexpressed by them. She approached Mr. Morris, and requested him to pick the paper up. She denies that she ordered him to do so. She informed him that no one was entitled to throw paper around the restaurant. She states that the plaintiff answered her in a slightly aggressive tone and stated that he would do so in his own time. She then requested him to put the paper in the bin to which he replied that he did not like her attitude and was going to leave the restaurant.

20. Ms. Campbell stated that as this time the teenagers were very aware of what was taking place. They passed what were described as smart remarks and she requested them to desist. These teenagers had been on the premises on previous occasions. Initially, she made facial expressions at them and asked them to "*shush*". At this point Mr. Morris indicated that he wished to leave the restaurant and requested the return of his money. She informed him that she could not process a refund as this was a matter for the manager. She approached the manager Mr. Gondek and requested him to deal with Mr. Morris. Mr. Gondek informed her that if Mr. Morris wished to have a refund, the food would have to be returned.

21. By this time Mr. Morris had moved to a different table in front of the counter. Mr. Gondek spoke to him and informed him that he would reimburse the money. Mr. Gondek requested Ms. Campbell to take the tray of food from Mr. Morris. Mr. Morris was on one side of the table and she was on the opposite side. She went to pick the tray up and Mr. Morris pulled strongly on it. She let go and he kept the tray. When matters had been sorted, she states that he then slammed the food into the bin with the result that some of it spilt. She asked him to refrain from doing this and in response Mr. Morris took out a camera phone and commenced videoing. At this stage, according to Ms. Campbell the teenagers became confrontational with Mr. Morris. They started "*slagging*" him and called him names. She requested them to stay quiet and she informed them that the best thing for them to do was to leave. The teenagers then left the restaurant and stood outside the front door. She beckoned them to leave or to move away from where they were but the plaintiff continued to video them through the window. Ms. Campbell states that she requested Mr. Morris to desist videoing her and the teenagers. She went in behind the counter to avoid the video recording. She states that she requested Mr. Morris on a number of occasions, as did Mr. Gondek, to desist videoing. When Mr. Morris went down the premises she came out from behind the counter. The teenagers were beckoning him to come out. She asked him not to go to them but he kept walking towards the door. She followed him as he approached the door and he kept walking towards the door despite being requested not to do so. One of the taller children reached into the porch way and grabbed his phone. She shouted at him not to take the phone.

22. Ultimately, Mr. Morris wished to leave the premises and asked to be escorted to his car. At this stage the restaurant was closed and she requested Mr. Gondek to stand at the door as it was quite dark outside. In her evidence to the Circuit Court she has stated that she did not know "*what he was capable of*". Mr. Morris found this particularly offensive, but it must be recorded that she did not repeat such concern to this court. She walked Mr. Morris, at a distance, to his car. The premises was locked up and she went home.

23. In cross-examination, Mr. Morris put it to Ms. Campbell that she had noticed him before any incident took place and the reason for this was because of the manner in which he was dressed. However, Ms. Campbell stated that it was not that Mr. Morris particularly came to her attention but as a security guard she was required to observe all people who were on the premises.

24. While Mr. Morris accepted that throwing the tissue was probably not "*the most polite*" behaviour on his part, the thrust and effect of his examination of Ms. Campbell was that before this incident occurred, she had him under observation and had negatively

profiled him. Ms. Campbell denied this. Her evidence to the Circuit Court on this point was put to her including the following extract from the transcript of the hearing in that court:-

*"He became very obvious to myself because, without prejudice, if you like, the way the gentleman was dressed, the manner that he approached the store, the teenagers were sitting there that he claims were sitting in the chairs. The teenagers became aware of him very quickly as well. He ordered stuff from the kiosk and started pacing up and down the restaurant, at which stage we just kind of – I was doing my job as normally is, just kept an eye on him"*

She also stated in response to Mr. Morris in the Circuit Court:-

*"You came into the restaurant ... I was positioned at the doorway, you paced up and down when you ordered stuff, you were wearing a pair of combats, a black leather jacket and you had your nails painted black, plus as well you were wearing a pair of black earrings".*

25. In evidence to this court Ms. Campbell stated that the fact that Mr. Morris may have been pacing up and down was not a cause for alarm or intervention as no issue had arisen as a result. It is her duty to observe. Ms. Campbell reiterated that she had no difficulty with what the plaintiff was wearing or the fact that he was pacing up and down, but that these were things which she had observed.

26. Thus, while Ms. Campbell accepts that she approached the plaintiff and asked him to stop throwing things around, she disputes that she failed to request the teenagers to refrain from making comments. She also denies that she informed Mr. Morris that he was not getting his money back, but stated that, as a security guard, she could not process refunds.

#### **Evidence of Mr. Gondek**

27. Mr. Gondek, the manager, gave evidence that he was serving a customer at the drive-through. He had to go outside with food. He observed an argument involving Mr. Morris. Ms. Campbell told him what had occurred. As Mr. Morris was seeking a refund he informed Ms. Campbell to take the tray of food to enable him to establish the correct amount of the refund. Mr. Gondek proceeded to the counter to process a refund and at that stage he saw Ms. Campbell attempting to take the tray for the purpose of showing him what Mr. Morris had bought. Mr. Morris refused to give up the tray and slapped it in the bin. Mr. Morris began cleaning the mess from the floor but Mr. Gondek requested him to desist from doing so saying that he would look after it. When he returned to Mr. Morris with the refund, Ms. Campbell had already approached the teenagers about their behaviour and a few seconds later she asked them to leave. At that stage when the teenagers were leaving the premises they turned to Mr. Morris and called him names which were offensive. Mr. Morris had produced his mobile phone and began video recording. He asked him to stop but Mr. Morris refused. Later, while attempting to call the Gardaí, he saw some of the teenagers, who at that stage were outside the premises screaming at Mr. Morris to come out with his camera. Mr. Morris pursued one of them, left the premises, and went a few paces outside but then returned. Mr. Morris' phone had been left on one of the bins outside. Mr. Gondek, retrieved it and gave it to Mr. Morris. He telephoned the guards informing them that Mr. Morris was fearful of leaving the restaurant. They informed him that they would arrive as soon as possible. As it was late, he closed the restaurant. Mr. Morris requested he be accompanied to his car and Ms. Campbell accompanied him. Under cross-examination Mr. Gondek also stated that Mr. Morris took out his telephone and commenced videoing after he had been called names by the teenagers but that he continued to film the security guard after they left. He was unsure whether it was before or after they were requested to leave that they commenced calling Mr. Morris' name.

#### **Correspondence**

28. Mr. Morris wrote to the defendants by letter of the 22nd June, 2015. He reiterated that the incident was provoked by the security guard and informed them that he had made a complaint to An Garda Síochána.

29. No reply was received to this letter. On the 18th August, 2015, Mr. Morris wrote a further letter enclosing a copy of his statement to An Garda Síochána and a copy of his letter of the 22nd June, 2015, which he said should be regarded as a formal claim.

30. Mr. Morris objects that he was not responded to directly by McDonalds, rather by claims adjusters, by letter dated the 20th August, 2015. They stressed that the allegations made by the plaintiff related to the criminal actions of third parties for which the defendants were not liable. They also stated that insofar as the complaints of actions or otherwise of the security guard were concerned, she was an employ of Renaissance Security Limited and that he should direct complaints to that company. Liability was denied. By letter of 24th August, 2015, Mr. Morris wrote to the defendants taking objection to such a response and described that he was not impressed by the attitude and response of the defendants. A considerable amount of correspondence took place between the parties and the court has considered the correspondence as outlined above.

#### **Closing submissions**

31. In his closing submissions, Mr. Morris reiterated that his desire was to have the appeal dealt with on the basis of what was contained in the transcripts of the Circuit Court hearing. He referred to the decision in *Hay v. O'Grady* in this regard. He highlighted what he described as a difference between the evidence given by Ms. Campbell to this Court and the evidence which she gave in the Circuit Court. He does not have any grievance with other staff of the defendants nor indeed does he have any dispute with Mr. Gondek, whose evidence he substantially accepted. Nevertheless, Mr. Morris maintains that he was victimised by the defendants but in particular by the security guard, Ms. Campbell and that he was defamed by being unfairly singled and unfairly profiled to the extent that this led to, or resulted in, defamation of his character. He also submits that the defendants should have carried out due diligence on their security people to ensure that they did not profile others.

32. Highlighting the communications between the parties post the incident, Mr. Morris submits that matters were greatly aggravated by the defendants' response. He submitted that had a gesture been made by McDonalds, described in modest monetary terms, he would not be in court. It is fair to say that certain correspondence opened to the court referred to matters in respect of which privilege might have been claimed and were introduced into the evidence without any significant objection. I believe it proper to say that in arriving at my determination, I have disregarded communications in relation to negotiations or proposed settlement offers, or over which privilege might properly have been claimed, save as may concern Mr. Morris' further claim that a cause of action arises from the defendant's response to his complaint.

33. Mr. Jeffers B.L. for the defendants submitted that this was a difficult case for the defendants to meet, not least because of the lack of detail in the pleadings. He described the claims as shifting. He submits, nevertheless, that no evidence has been adduced which might be properly characterised as defamatory. The plaintiff's claim before this Court was largely focussed upon what Mr. Jeffers described as unfair profiling, which he submits does not come within the pleadings and did not form part of the case until Ms. Campbell gave evidence in the Circuit Court.

34. Mr. Jeffers B.L. submits that in any event the evidence does not support the contention of Mr. Morris that he was unfairly profiled. He draws a distinction between Ms. Campbell being aware of Mr. Morris and her alleged profiling of him. What prompted her to intervene was his conduct, and not what he was wearing or how he presented. Further, in relation to the alleged unfair profiling, he submits that what a person might think could not be defamatory and that the plaintiff was subjected to comments by third parties, is not something for which the defendants can be made responsible. With regard to the claim for breach of duty, which concerning the manner in which correspondence was dealt with, Mr. Jeffers B.L. submits that no cause of action can arise from the correspondence or the manner in which it was dealt with by the defendants or on their behalf. At most, this might give rise to a customer services issue rather than amounting to breach of any legal duty.

### Decision

35. I accept that Mr. Morris came to the attention of the security guard, Ms. Campbell, before she saw him throwing the serviette onto an adjoining table. On her own evidence she observed how he was dressed and the way in which he walked before he disposed of the serviette. Mr. Morris believes that she negatively profiled him. Her evidence is that as a security guard it is part of her duty and responsibility to keep patrons under observation and that she was simply doing her job when she first observed Mr. Morris. She noted the manner of his dress and saw that his fingernails were polished black. In the light of Ms. Campbell's intervention and particularly in the context of the evidence subsequently given by her in the Circuit Court, I can understand why Mr. Morris might believe that, to use his description, he was profiled by her before he threw the serviettes. I also accept that Mr. Morris feels genuinely aggrieved by what occurred. On the other hand, Ms. Campbell's evidence is that she was merely carrying out her duties as a security guard and such duties involved observation and where necessary, intervention. She denies the suggestion that she profiled him in a negative way as suggested.

36. I have considered the evidence of the parties including their demeanour in the witness box. I have come to the conclusion that what likely occurred was contributed to significantly by a clash of personalities. I do not believe that there would have been intervention, had Mr. Morris not thrown the serviette in the manner in which he did. Therefore, to the extent that Mr. Morris believes that was negatively profiled in advance of the incident, on the evidence as presented, I cannot reasonably conclude that Ms. Campbell's intervention was precipitated by a factor other than the throwing of the serviette. In my view, following this intervention, it is clear that Mr. Morris became affronted by what he considered to be the overly officious approach of Ms. Campbell. I have considered the evidence of Ms. Campbell and her demeanour in the witness box and I accept that, perhaps unwittingly, it is likely that she presented as being overly officious in the discharge of her duties and in the manner in which she addressed the plaintiff. It is also likely that the plaintiff became oversensitive to such approach and the attitude and tone of both contributed to the escalation of matters thereafter. I have little doubt that their interaction attracted the attention of the teenagers who were sitting nearby. Indeed, Mr. Morris accepts that their attention was attracted to what he described as "the circus". I also accept that the response of the teenagers and what they said of and to Mr. Morris was offensive.

37. I do not believe, however, that anything that Ms. Campbell did, whether overly officious or not, could reasonably have given rise to the comments which were made by the teenagers and for which, in my view, they were solely responsible. I also accept that although it was perceived by Mr. Morris that there was a delay in intervention by Ms. Campbell to require them to desist from making such comments, that she did what she could in the circumstances and it would be unreasonable to conclude that her intervention was anything other than timely given the circumstances as they developed.

38. It is also clear that the interaction between Mr. Morris and certain of the teenagers became somewhat confrontational. With regard to the videoing by Mr. Morris he stated that he was more concerned to take a video of the teenagers rather than Ms. Campbell. However, this appears to be somewhat inconsistent with certain aspects of his evidence where he stated that he was not overly concerned with bringing the children to account. In my view, it is likely that the escalation of the incident was precipitated by the comments which the teenagers made to Mr. Morris and was aggravated by Mr. Morris producing his mobile phone and taking video recordings of the teenager. While I accept that this was done by him with the intent of acquiring evidence as to their behaviour, nevertheless, as a matter of probability, doing so led to an escalation of events.

39. The restaurant manager, Mr. Gondek, gave evidence which Mr. Morris largely accepted as being accurate and reflective of Mr. Gondek's involvement. Mr. Morris accepts that once he got his money back, he placed the tray into the bin in a forceful manner.

40. The issue which I must address is whether the events as they unfolded, the words as spoken, and the actions or inactions of the parties were such as to be defamatory of the plaintiff as a matter of law. Defamation, historically, was defined as consisting of words or actions of or concerning a person, published by another, which leads or tends to lead to the diminution of the former's reputation in the eyes of right-thinking members of society. It is now defined in the Defamation Act, 2009, ss 2 and 6.

41. In s. 2 "defamatory statement" is defined as meaning "a statement that tends to injure a person's reputation in the eyes of reasonable members of society, and "defamatory" shall be construed accordingly". In s 6. the following definition appears:-

"6.— (1) The tort of libel and the tort of slander—

(a) shall cease to be so described, and

(b) shall, instead, be collectively described, and are referred to in this Act, as the "tort of defamation".

(2) The tort of defamation consists of the publication, by any means, of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person), and "defamation" shall be construed accordingly.

(3) A defamatory statement concerns a person if it could reasonably be understood as referring to him or her.

(4) There shall be no publication for the purposes of the tort of defamation if the defamatory statement concerned is published to the person to whom it relates and to a person other than the person to whom it relates in circumstances where—

(a) it was not intended that the statement would be published to the second-mentioned person, and

(b) it was not reasonably foreseeable that publication of the statement to the first-mentioned person would result in its being published to the second-mentioned person.

*(5) The tort of defamation is actionable without proof of special damage."*

42. The onus of proof is on Mr. Morris to establish that the defendants, through their actions, inactions or words, have defamed him.
43. There are aspects of Ms. Campbell's evidence to this court which, on the face of it, are not entirely inconsistent with the evidence she gave to the court below as to how Mr. Morris came to her attention and as to what she observed. It is evident from the transcript of the proceedings in the Circuit Court that when Mr. Morris questioned Ms. Campbell on how he had become obvious to her, she replied that it was because of the way he dressed and presented. Ms. Campbell accepted at this hearing that, although there was nothing wrong with the way he dressed, she observed his clothes to be different; he was wearing distinctive camouflage trousers. All of this led Ms. Campbell to keep an eye on him.
44. The evidence leads to the conclusion that Mr. Morris came to Ms. Campbell's attention before the incident with the serviettes took place. Nevertheless, I do not believe that Ms. Campbell's undoubted powers of observation, recall or description, on the evidence, amount to what has been described as profiling in the sense that Mr. Morris became a target for her simply because of his presentation or appearance. I believe that even if the court concludes that an overly officious approach was adopted by Ms. Campbell, that, in and of itself, could not, in the circumstances, amount to defamation of the plaintiff's character. Further, even if the initial interaction in some way led to comments of an unwelcome and defamatory nature being made by the teenagers, they cannot be considered as other than independent third parties, in the circumstances. I do not see, therefore, how any defamatory comments which may have been made by them can be said, in the circumstances, to have been published by Ms. Campbell, the defendants, or its other servants or agents. I find on the evidence that she intervened with the teenagers as soon as she could, bearing in mind that she was also dealing with Mr. Morris, his request for a refund and was required to communicate with the manager in this regard. Even if I am incorrect in this, I do not believe that the delay, if any, was such as to amount to a failure on her part such as caused or contributed to the teenagers making the comments which they did.
45. In my view what occurred on the evening in question was unfortunate and was largely brought about by a clash of personalities. The facts and circumstances as I have found them do not constitute defamation of character or publication of defamatory material by the defendants, its servants or agents. In this regard given her role on the premises, Ms. Campbell, must be considered a servant or agent of the defendant, despite subsequent correspondence suggesting that she was employed by an independent security company; and I do not think that anything she said or did amounted to defamation.
46. As stated on the facts as I find them, as a matter of probability, I believe that Ms. Campbell acted as quickly as she could to deal with the issue as it developed. That the plaintiff's mobile phone was taken was due to the actions of the teenagers for whom, in the particular circumstances, I am not satisfied that the defendant must bear responsibility, vicariously or independently. Therefore, I do not accept that any loss suffered by the plaintiff by the taking or damaging of his mobile phone was caused or occasioned by any action or inaction on the part of the defendants, their servants or agents. Such damage was caused by the teenager who took the phone and for whose actions I cannot reasonably conclude the defendants are liable.
47. I accept that Mr. Morris was offended by what occurred in the restaurant. I also accept that he was offended by what he perceived to be the failure on the part of the defendant to adequately respond to his communications following the incident. I have considered the correspondence and in my view the characterisation of Mr. Morris' dispute with the defendant over its handling of the matter, has been correctly identified by Mr. Jeffers B.L. as that of a customer relations issue and not one which I could reasonably conclude gives rise to any cause of action known to the law. It may be that should a plaintiff prove defamation in the first instance, post-incident communications, if found to be unsatisfactory, may lead to an aggravation of the hurt occasioned and to an award of aggravated damages. I am not satisfied, therefore, that a cause of action has been established arising from the post incident communications between the parties.
48. In the circumstances, while the court has a certain degree of sympathy for Mr. Morris who at all times addressed the court in a most courteous manner, he has failed to discharge the onus of proof and I must refuse his appeal.