



## HIGH COURT OF AUSTRALIA

5 October 2012

### HARBOUR RADIO PTY LIMITED v TRAD

[2012] HCA 44

Today the High Court held, by majority, that Harbour Radio Pty Limited ("2GB") established the defence of qualified privilege at common law with respect to a number of imputations defamatory of Mr Trad. The Court granted Mr Trad special leave to cross-appeal on particular grounds but dismissed parts of the cross-appeal. The result was that each side enjoyed partial success.

Approximately one week after what have become generally known as the "Cronulla Riots", Mr Trad attended a "peace rally" in Hyde Park, Sydney. Mr Trad spoke at the rally placing at least part of the blame for the Cronulla Riots on 2GB. At about 10:15am the next day 2GB made a broadcast which lasted 11 minutes purportedly responding to the comments made by Mr Trad at the peace rally. Mr Trad commenced proceedings in the Supreme Court of New South Wales alleging that the broadcast conveyed imputations which were defamatory.

A jury found eight imputations were conveyed in the 2GB broadcast which were defamatory of Mr Trad. 2GB defended their broadcast relying on the substantial truth and contextual truth of the statements made, on the defence of fair comment on a matter of public interest and also argued that each imputation was published on occasion of qualified privilege at common law. Mr Trad was successful before the primary judge but the decision was reversed in part by the Court of Appeal.

The issues before the High Court included whether or not the defence of qualified privilege was available and if so how the defence then applied with respect to each imputation. Mr Trad argued that the defence of qualified privilege should have been rejected because of malice. As to the substantial truth and the contextual truth defences, 2GB submitted that the relevant test was that of a "right-thinking" person as reflective of a community standard. Mr Trad sought to challenge this submission as a matter of law and disputed the factual findings upon which the primary judge found four imputations to be substantially true and related to a matter of public interest.

The High Court held, by majority, that qualified privilege applied to a response to an attack where it was commensurate with the attack and when it was made *bona fide* for the purpose of vindicating one's reputation. The majority held a sufficient connection can be established upon any one of several considerations including the content of the attack, the credibility of the attack or the credibility of the attacker. The majority concluded that the defence of qualified privilege applied to six of the eight imputations relied on by Mr Trad. Mr Trad sought leave to file a notice of cross-appeal which contended that the defence of qualified privilege must fail because of the malice of 2GB. The majority refused to grant such leave. With respect to the defences of substantial truth and contextual truth, the majority preferred an audience composed of ordinary decent persons as opposed to "right-thinking" persons. The Court, by majority, remitted four imputations to the Court of Appeal for consideration of the substantial truth defence, and a further two imputations for

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consideration of the contextual truth defence. As both sides had some limited success, no order was made as to the costs of the appeal or the cross-appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*