

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
DEFAMATION LIST

Revised  
Not Restricted  
Suitable for Publication

Case No. CI-21-05224

RENEE ANNETTE SPENCER

Plaintiff

v

DAVID McKAY

Defendant

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JUDGE: HER HONOUR JUDGE CLAYTON  
WHERE HELD: Melbourne  
DATE OF HEARING: 4-8, 11 to 13 and 18 to 21 September 2023  
DATE OF JUDGMENT: 18 December 2023  
CASE MAY BE CITED AS: Spencer v McKay  
MEDIUM NEUTRAL CITATION: [2023] VCC 2238

**REASONS FOR JUDGMENT**

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Subject: DEFAMATION  
Catchwords: Defamation – where defendant is founder of religious organisation to which plaintiff's daughter belongs – publication on YouTube by religious organisation about the plaintiff – whether plaintiff is identified – whether imputation that plaintiff is a worshipper of the devil is conveyed – whether imputation is defamatory – justification – substantial truth – contextual truth – whether contextual imputations are conveyed by publication – whether contextual imputations are substantially true – contextual imputations involve allegations about Nazis, criminals and persecution of Christian group – whether contextual imputations swamp imputation of devil worship - honest opinion – whether opinion honestly held – whether ordinary reasonable reader would understand imputation as expression of opinion – damages – aggravated damages – use of sensational language – use of graphic imagery – injunction

Legislation Cited: *Defamation Act 2005; Evidence Act 2008*

Cases Cited: *Amalgamated Television Services v Marsden* (1998) 43 NSWLR 158  
*Armstrong v McIntosh (No 4)* [2020] WASC 31 (S)  
*Bazzi v Dutton* (2022) 289 FCR 1  
*Belbin & Ors v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535  
*Brose v Baluskas* (No 6) [2020] QDC 015  
*Callan v Chawk* [2023] FCA 898  
*Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44  
*Carolan v Fairfax Media Publications Pty Ltd (No 7)* [2017] NSWSC 351

*Cassell & Co Ltd v Broome* [1972] AC 1027  
*Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519  
*Channel Seven Adelaide Pty Ltd v Manock* (2007) 232 CLR 245  
*Charan v Nationwide News Pty Ltd* [2018] VSC 3  
*Chau v Australian Broadcasting Corporation (No 3)* (2021) 386 ALR 36  
*Cornes v the Ten Group Pty Ltd & Ors* [2012] SASCFC 99  
*Crompton v Nugawela* (1996) 41 NSWLR 176  
*Farquhar v Bottom* [1980] 2 NSWLR 380  
*Gatto v Australian Broadcasting Corporation & Ors* [2021] VSC 83  
*Hanks v Johnston (No 2)* [2016] VSC 149  
*Hardie v Herald and Weekly Times Pty Ltd* [2016] VSCA 103  
*Herald & Weekly Times Ltd & Anor v Popovic* (2003) 9 VR 1  
*Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33  
*John Fairfax & Sons Ltd v Hook* (1983) 72 FLR 190  
*John Fairfax Publications Pty Ltd v Rivkin* (2003) 77 ALJR 1657  
*Jones v Skelton* [1963] 1 WLR 1362  
*Lewis v Daily Telegraph Ltd* [1964] AC 234  
*Massoud v Radio 2GB Sydney Pty Ltd; Massoud v Fox Sports Australia Ltd; Massoud v Commonwealth Broadcasting Corporation Pty Ltd; Massoud v Nine Digital Pty Ltd; Massoud v Nationwide News Pty Ltd* [2021] NSWDC 336  
*Ley v Hamilton* (1935) 153 LT 384  
*Morgan v Odhams Press Ltd* [1971] 2 All ER 1156  
*Palmer Bruyn & Parker Pty Ltd v Parsons* (2001) 208 CLR 388  
*Prendergast v Roberts* [2012] QSC 144  
*Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496  
*Rush v Nationwide News Pty Limited (No 9)* [2019] FCA 1383  
*Schiff v Nine Network Australia (No 2)* [2022] FCA 1120  
*Slim v Daily Telegraph Ltd* [1968] 2 QB 157  
*Srecko and David Lorbek v Peter King* [2023] VSC 218  
*Stocker v Stocker* [2019] UKSC 17  
*Wilson v Bauer Media Pty Ltd* [2017] VSC 521  
*Webster v Brewer (No 3)* [2020] FCA 1343

Judgment: Judgment for the plaintiff.

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr A Anderson	Sanicki Lawyers
For the Defendant	The defendant appeared in person	-

## HER HONOUR:

- 1 This is a claim for defamation arising from the publication by the defendant of a video on a YouTube channel called "A Voice in the Desert". The plaintiff, Ms Spencer, says the video conveyed an imputation that she is a worshipper of the Devil. She says this has caused her reputation harm, particularly among a religious group known as the Jesus Christians, of which her daughter is a member. She seeks damages and an injunction restraining the further publication of the video.
- 2 The defendant is the founder of the Jesus Christians. He admits that he wrote the script for, and authorised the uploading of, the video onto YouTube. He denies that Ms Spencer is identified in the video, and denies the imputation is conveyed. If it is conveyed, he relies on defences of justification or substantial truth, contextual truth and honest opinion.

### **A note on titles**

- 3 The defendant informed the Court that he does not use a title such as Mr McKay, and the members of the Jesus Christians refer to each other by first name. His daughter, Christine Dunn, also informed the Court that she did not use a title. Accordingly, the defendant and the defendant's daughter will be referred to by that nomenclature in these reasons. Witnesses called by the Jesus Christians will be identified by their first name in accordance with their preference.

### **The conduct of the trial**

- 4 The defendant was unrepresented at trial. He had assistance from his daughter and his son-in-law at the Bar table.
- 5 At the outset, he requested a six-month adjournment due to the late provision of documents by the plaintiff.

- 6 As those documents amounted to only a small bundle of new material, I did not consider an adjournment was necessary or appropriate. The defendant also late served discoverable documents.
- 7 Throughout the trial the defendant raised concerns about the demands of the trial and the toll it was taking on him. In particular, he submitted that his mental capacity meant that he was sometimes unable to absorb information or to find the word he was looking for. He said his memory made it difficult for him to remember the answers to questions. He made a number of requests for adjournments. He said he was suffering from the early stages of senility.<sup>1</sup> He agreed that what he meant was that he was suffering the effects of age-related cognitive decline, that it took longer to process and he was slower in cognitive tasks than he once was.<sup>2</sup>
- 8 While I accept the defendant considered his cognitive abilities to be in decline, my own assessment of the defendant was that he was a competent and capable advocate for himself and understood what was happening in court. He asked appropriate and insightful questions. He took objections which, while not always upheld, demonstrated an understanding of the legal issues that govern the admissibility of evidence. For example, he made numerous objections on the grounds that evidence was hearsay. The fact that he could identify potential hearsay evidence gave me confidence that he was well able to defend the claim.<sup>3</sup>
- 9 He also asked, appropriately, for direction from me as to the correct time to put on evidence, make submissions and challenge submissions made by plaintiff's counsel. Where I considered it appropriate, I provided direction to him about the appropriate parameters of cross-examination.<sup>4</sup> (When he did not understand he appropriately asked for clarification).<sup>5</sup>

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<sup>1</sup> Transcript ("T") 502

<sup>2</sup> T502 – T503

<sup>3</sup> See for example T93, Lines ("L") 3-18; T129, L10-30 and T176, L5-16

<sup>4</sup> See for example T342, L12 – T343, L10

<sup>5</sup> See for example T44, L13 – T45, L8; T157, L15 – T160, L12; T181, L5 – T184, L26

- 10 At one point a witness, who had previously been a member of the Jesus Christians but had left the group, gave evidence in which he made allegations about the defendant that were not relevant to the issues in dispute. The defendant said there was “a lot of slander” and sought that evidence be “struck from the record”. I explained to the defendant that the evidence to which he objected was inadmissible and would form no part of my reasoning,<sup>6</sup> but I was not aware of an ability to “strike” something from the “record” in Australian court proceedings.
- 11 I have no doubt that the trial was stressful and tiring for the defendant, however he was well prepared for both cross-examination of Ms Spencer’s witnesses and examination-in-chief of the witnesses he called, with orderly and logical questions. He put documents to witnesses by reference to the Joint Court Book (“JCB”), and tendered documents that assisted his case. It was clear from the manner in which he conducted his defence that he understood the elements of the defences he was required to prove.
- 12 Nevertheless, throughout the trial, the defendant made frequent complaints about the difficulties he was experiencing.
- 13 As his concerns about his mental capacity were raised on numerous occasions and as those concerns were at odds with my own observations, I informed the defendant that any application to adjourn on the basis of his mental capacity would need to be accompanied by expert material.<sup>7</sup>
- 14 I was mindful of my obligations to provide appropriate assistance to a self-represented litigant. However, I was also mindful of my obligations under the *Civil Procedure Act 2010* to ensure a just, efficient and cost-effective trial. Delays in the trial inevitably increase costs and waste court resources.
- 15 The initial trial estimate was five sitting days, which was probably always overly optimistic. The matter did not finish within that time. On Sunday, 10 September

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<sup>6</sup> T659, L1-18

<sup>7</sup> T397, L1-3

2023, the day before the trial was due to resume for its sixth day, the Court received an email from the defendant as follows:

“Unfortunately due to my health I will be unable to attend court on Monday and the court dates will need to be rescheduled. Please see the attached medical certificate. Can you please acknowledge that you have received this and also let me know when the new dates are scheduled for? Thank you and I am sorry for any inconvenience caused.

I’m also attaching (by way of service) an expert witness certificate from Ruben Van Luijk.”

- 16 Attached to the email was a document from the Northern Hospital which was titled “Ordinary Medical Certificate” dated 9 September 2023, signed by Ben Sheridan, who certified that the defendant was suffering from “a medical illness” and “will be unfit to follow his daily occupation from 9/9/2023 to 17/9/2023”.
- 17 No further information or explanation was provided to the Court. Ms Spencer opposed any adjournment of the trial. Plainly, a medical certificate in these terms is entirely inadequate evidence upon which to obtain an adjournment mid trial.
- 18 The Court informed the defendant that the Medical Certificate did not provide an adequate basis for an adjournment and court would resume, as scheduled, on 11 September 2023. The Court informed the defendant that any application to adjourn on medical grounds would need to be accompanied by a medical report from a treating doctor setting out diagnosis, prognosis and why the treating doctor considered the defendant unable to attend court. The doctor would need to be available to attend court, either in person or remotely, to answer questions about the capacity of the defendant.
- 19 The defendant did not attend court on 11 September 2023. I was mindful that the defendant was unrepresented, and I had no information about his medical condition. In those circumstances I did not consider it was just to proceed in his absence when there was a prospect that he might be medically unfit to attend, notwithstanding the inadequacy of the material provided and the prejudice to Ms

Spencer. Accordingly, I adjourned the trial to the following day to allow the defendant the opportunity to put on appropriate evidence.

- 20 On 12 September 2023, the defendant provided to the Court a medical report dated 11 September 2023 from his general practitioner Dr Nicholas Nassios. Dr Nassios diagnosed the defendant with an adjustment disorder and depressed mood and said he was referring the defendant back to hospital for further assessment and that he was “unable to attend court for this reason today and likely the rest of the week”. The report attached medical records from the Northern Hospital.
- 21 The defendant refused to provide the medical report or records to Ms Spencer. The Court then received an email from Christine Dunn, the daughter of the defendant. In the email, the defendant’s daughter informed the Court that her father was “currently being admitted” to hospital and had spent the night in emergency with very little sleep. She reiterated her father’s refusal to allow the plaintiff or her lawyers access to the medical report and records.
- 22 I did not consider that Dr Nassios’ report provided sufficient evidence for me to be satisfied that the defendant could not attend court for the rest of the week. Numerous litigants with similar presentations attend this court every day in the course of running their claims. Without more, the evidence did not satisfy me that the matter should be adjourned. Further, by refusing to provide the material to Ms Spencer, the defendant was denying her the opportunity to make submissions on the adjournment sought.
- 23 The trial resumed on 12 September 2023. The defendant’s daughter appeared via video link. She informed the Court that her father was “in the process of being admitted” to hospital.<sup>8</sup>

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<sup>8</sup> T628, L6-7

- 24 I adjourned the hearing and the adjournment application to 13 September 2023 for the reasons set out in my ruling of that date.
- 25 For reasons that were not explained, after two days of resisting production of Dr Nassios' medical report to Ms Spencer, the defendant provided the medical report. By email dated 12 September 2023, the defendant's daughter informed the Court that her father had been admitted to the short-stay unit at Northern Hospital and was then transferred to Bundoora Extended Care. On 12 September 2023, the defendant's daughter appeared by video link and requested an adjournment of the trial until 18 September 2023. She informed the Court that her father was in the psychiatric unit of the aged care facility and that he had no access to a phone or computer, his glasses or his hearing aid. Because he had been exposed to COVID, he was in an isolation ward. The defendant's daughter informed the Court that it had not been possible to get reports or documentary evidence to put before the Court.
- 26 Having regard to the information before the Court, the defendant's lack of legal representation, and the ongoing costs Ms Spencer was incurring by having counsel and solicitors attend Court each day, only to have the matter adjourned, I considered the most appropriate course was to adjourn until 18 September 2023. I made orders that the defendant file affidavit material exhibiting all medical evidence upon which he relied on the question of costs, and all material upon which he relied should he seek any further adjournment.
- 27 On 15 September 2023, the defendant's daughter filed an affidavit. In that affidavit she said:
- (a) Her father was moved to Bundoora Extended Care Centre ("BECC") late on 12 September 2023;
  - (b) On 13 September 2023 at 11.15am, psychiatry registrar, Nicole Grant, certified that the defendant:



- (i) appears to have a mental illness;
  - (ii) because the person appears to have a mental illness, the person appears to need immediate treatment to prevent:
    - serious deterioration in the person’s mental or physical health
    - serious harm to the person or to another person; and
  - (iii) if the person is made subject to an assessment order, the person can be assessed; and
  - (iv) there are no less restrictive means reasonably available to enable the person to be assessed;
- (c) the duration of the Inpatient Assessment Order was the earlier of either twenty-four hours after the person is received at a designated mental health service or seventy-two hours after the Order is made, unless it was extended or revoked;
- (d) between 2.00pm and 3.00pm on 13 September 2023 she visited her father at the BECC and became aware of the Assessment Order;
- (e) at 4.55pm, the defendant’s daughter received a call from a psychiatrist at the BECC Mental Health Unit informing her that the defendant had been made a voluntary patient and was welcome to stay or leave. At 6.00pm, the defendant’s daughter received a call from a nurse to inform her that the defendant had left the unit. The defendant’s daughter said she had not heard from her father between the time of her visit to him between 2.00pm and 3.00pm on 13 September and swearing her affidavit on 15 September 2023. However, her mother had told her that the defendant “planned to get away for a few days” to catch up on sleep and to clear his head. The defendant’s daughter said she expected that “he is probably having a time of rest, prayer and reflection in relation to the trial and this will be good for him”.

- 28 On 18 September 2023, the trial resumed with the defendant in attendance. No further medical material was provided. There was no further application to adjourn. As significant court time had already been lost, the parties agreed to proceed with the evidence and deal with arguments about the costs of the adjournment at a later date.
- 29 The defendant continued to present as a competent and able litigant. He continued to take appropriate objections, and to ask for clarification.<sup>9</sup>
- 30 The manner in which he continued to cross-examine showed a fairly sophisticated understanding of the elements of defamation the plaintiff needed to prove and the elements of his defence that he needed to prove.<sup>10</sup>
- 31 Despite his brief admission to BECC, there was no indication during the remainder of the trial that the defendant was not competent to conduct his defence. After the close of the plaintiff's evidence, the defendant gave a lengthy and detailed opening, setting out the way he put his defence, the submissions he would make and the evidence he would call.
- 32 On 19 September 2023, after the defendant had made his opening arguments, he requested to give his evidence with his legs elevated and, if possible, from the Bar table. This was readily agreed to by counsel for Ms Spencer. The defendant asked whether, during cross-examination, he was able to take notes so that he could give further evidence in "re-examination". Again, this was readily agreed to by opposing counsel. The defendant then asked for another "favour". He said that, as a result of his religious beliefs, he was:

"... quite happy to say that I will try to be totally honest in everything I say today and I understand that there are penalties if I knowingly do not do that. The reason for wanting to word it that way is that I can't honestly tell you that I would say the whole truth and I don't think the court wants to hear the whole truth."<sup>11</sup>

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<sup>9</sup> See for example T661, L23 – T662, L1; T674, L19-25; T837, L30 – T388, L7; T990, L3-9; T991, L28 – T992, L3

<sup>10</sup> See for example T664 – T665 and T687 – T693

<sup>11</sup> T793, L28 – T794, L4

- 33 I explained to the defendant that his option was to give evidence under oath or by way of affirmation but that, either way, his promise to the Court was to tell the whole truth. He said he would prefer to say “honest” but he could not say “whole” truth. He said this was “part of [his] honesty” and that he would give “the relevant truths”. He said, “what I’m going to affirm is not that I will tell the whole truth but what I say will be the truth”.<sup>12</sup>
- 34 I informed him that the oath or affirmation was not a negotiation, that everyone coming to court was required to take an oath or affirmation in the same terms and not in the terms with which they felt comfortable. The defendant said that the Court made allowances if a person spoke a different language and that there “was a day when you could not affirm and many Quakers went to gaol for not swearing because of what the Bible says”.<sup>13</sup> I informed the defendant that if he did not take the oath or affirmation he would be unable to give evidence.
- 35 I stood the matter down for fifteen minutes to give the defendant an opportunity to consider the implications if he was not to give evidence. When the trial resumed, the defendant informed me that he could not “lie and say that I will tell the whole truth”.<sup>14</sup>
- 36 Pursuant to s21 of the *Evidence Act 2008*, a witness in a proceeding must either take an oath or make an affirmation before giving evidence unless they lack capacity pursuant to s13. A lack of capacity may include that the person does not have the capacity to understand a question about a fact, does not have capacity to give an answer that can be understood, or does not have the capacity to understand the obligation to give truthful evidence. None of these exceptions apply to the defendant.
- 37 The terms of the oath or affirmation are set out in Schedule 1 and each includes the words “the evidence I shall give will be the truth, the whole truth and nothing

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<sup>12</sup> T795, L8-9

<sup>13</sup> T798, L8-10

<sup>14</sup> T798, L13-14

but the truth”. There is no discretion to alter or amend the terms of the oath or affirmation according to the preference of a witness.

38 Accordingly, the defendant declined to give any evidence and denied Ms Spencer the opportunity to cross-examine him.

### **The publication**

39 On 7 June 2021, the defendant published a video on the YouTube channel “A Voice in the Desert”. The video was titled *Strange Bedfellows*.

40 The video shows animations, still images, words and symbols, and is accompanied by a spoken commentary.

41 In the video, the narrator quotes from the bible “Pilate and Herod were made friends together: for before they were at enmity between themselves”.<sup>15</sup> The narrator says Luke noted (in the bible) that Jesus:

“... also united people in ironic ways. Pilate and Herod did not get along – probably political opponents. But they were faced with a common enemy and that enemy was Jesus. Their mutual hatred for Jesus was not only able to overcome their other differences, but it led to a strange friendship as they became partners in crime of the worst kind.”<sup>16</sup>

42 The commentary then goes on:

“In some equally interesting ways, we Jesus Christians have been able, over the years, to unite many of our enemies through our commitment to the truth, as revealed in the teachings of Jesus. They hate our faith in Jesus, and they hate our lack of fear in the face of all their threats.

I want to tell you about a situation that is happening in several different places at the moment, which certainly takes the cake when it comes to strange bedfellows. Many of you would already know about Sheila and Jared Johnson in California who tried, many years ago, to kill one of our members, kicking him repeatedly in the head while he was unconscious on the ground. This member only survived when it became clear that the murder attempt was being filmed by a passer-by in the early morning attack. Nevertheless, the victim was rushed to intensive care and finished up with permanent brain damage because of the assault. To this day, the family is unrepentant, and they continue to demand an apology from their son for having joined our community.

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<sup>15</sup> Schedule “A” (a transcript of *Strange Bedfellows*) of the Writ and Statement of Claim, dated 7 December 2021 at JCB 21

<sup>16</sup> (*Ibid*) JCB 21

But the point of this video is that Sheila Johnson is believed to have been in touch with other parents in their on-going hatred for what we teach. Bear in mind that the Johnsons are Black... African American Black, and staunchly proud of it. But now it appears that they have been at least indirectly working with another family that is fighting our community through such bizarre things as a faked ransom note in order to get the FBI to pursue us internationally on suspicion of kidnapping.

These other parents have boasted of their high standing in the Aryan Nations... a white supremacist terrorist organisation in the American Northwest. The husband bragged to us in writing that he was personally decorated by Richard Butler who organised a yearly 'world congress' of Klan members, Nazis and other white supremacists in his compound in Idaho, in the 1980s and the 1990s, as head of the Aryan Nations. The Kellys sell neo-Nazi paraphernalia, which can be seen popping up in extreme right gatherings all over the US.

So here you have two families, which could hardly be more opposite, both opposing us and working together to do it – one proudly Black and the other so proudly White that they hate Blacks everywhere. They do, however, have one thing in common, beside hating us. They both claim to be followers of Jesus Christ. Sheila preaches from time to time at her Pentecostal church in California and the Kellys refer to Richard Butler as 'Pastor' Butler. How is this possible?

Like Pilate and Herod, their hatred for each other was overcome by their mutual hatred for the Jesus whom we teach. The real Jesus exposes the hatred and hypocrisy of their false Jesuses – one Jesus that justifies kicking a man to death for no good reason, and the other Jesus justifies hating and killing Jews, Blacks and anyone else who does not conform to their so-called 'historical' Nazi beliefs. Well, their hatred for ourselves has forced them into bed together. Or should I say their hatred for Jesus and what he taught? It has, however, made them very strange bedfellows indeed.

Nevertheless, Jesus said that, in the last days, many – probably many millions – would claim to be following him when he has nothing to do with them and their evil deeds.

But the story gets worse. There is another parent – a mother in Australia whose daughter married one of our members – a Black member. This mother is a Luciferian – a Satanist, if you like. She insists that her love for Lucifer does not interfere with her respect for anything that Jesus may have said. But she has linked up with the Kellys in particular to pass on threats about how they are all going to use their various evil powers to stalk and torment us around the world. They have done so in writing.

There are other parents – mostly mothers – who have also conspired with this unholy trinity. But these three appear to be the main ringleaders, along with world-renowned cult-buster, Rick Ross.<sup>17</sup>

- 43 The commentary goes on to say that this video is a celebration of spiritual victory over "all of this insane hatred and over all of the demonic spirits operating through

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<sup>17</sup> (Ibid) JCB 21-22

each of these family members”.<sup>18</sup> The narrator says “[a]ll the demons of hell are not enough for them to destroy that spotless Lamb of God whom we will follow to our death”.<sup>19</sup> He then encourages viewers to click on another video.

- 44 The graphics that accompany the video include:
- (a) crossed swords with the words “hate” on them in front of a shield with the words “faith, hope, love”;
  - (b) an embedded video showing an assault and an embedded video showing Sheila Johnson in a news interview;
  - (c) an embedded video showing a person rushed into an ambulance and through a hospital;
  - (d) an image of an unconscious injured person in a hospital bed from a news segment;
  - (e) an image of a world map and laptop with “Voice in the Desert” in a magnifying glass overlaid by a note “*I DEMAND A RANSOM. PLAY BY MY RULES OR I WILL MAKE HER PAY WITH HER LIFE*”;
  - (f) an image of a black fist commonly associated with “black power” overlaid on an image of the Johnsons;
  - (g) a photograph of the Kellys with a swastika and a Ku Klux Klan hood overlaid onto the photograph;
  - (h) images of Ku Klux Klan members;
  - (i) images of typing;
  - (j) stylised pictures of Jesus, Pilate, and Herod;

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<sup>18</sup> (Ibid) JCB 22

<sup>19</sup> (Ibid) JCB 22

- (k) large moving arrows with the words “[h]ate” inside them;
- (l) a cartoon image of Jesus holding a gun with a cartridge of bullets slung across his chest;
- (m) an image of Jews in a concentration camp, behind barbed wire, and a stylised image of Auschwitz;
- (n) an image of a bed on which both photos of the Kellys and Johnsons are superimposed, with the swastika and black-power symbol, and the words “HATE”;
- (o) a video scrolling through the Kellys’ website;
- (p) images of people praying;
- (q) an image of an eye, over which a dollar sign is superimposed;
- (r) an image of the Australian flag, over which a stylised image of a short-haired middle-aged “motherly” woman is superimposed;
- (s) a black symbol of triangles and lines;
- (t) a picture of a naked man with large wings holding a sword or weapon;
- (u) an image of a hooded figure in front of a pentagram in a circle, backlit in red;
- (v) the words “‘My understanding is [our daughter] told you about our strong historical beliefs.’ — L. Kelly”;<sup>20</sup>
- (w) the words “‘I know that Lucifer is intelligent and beautiful and we have much to learn from him; Lucifer is a catalyst for finding the true light of Christ.’ — Renee (mother)”;<sup>21</sup>

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<sup>20</sup> Ex 29 – Subject video ‘Strange Bedfellows’  
<sup>21</sup> (*Ibid*)

- (x) stylised images of “demons” with gaping screaming mouths over an image of the motherly woman, superimposed over an image of the swastika and the photo of the Kellys;
  - (y) a map of the world with Nazi flags, superimposed with a photo of the Kellys;
  - (z) images of Rick Ross;
  - (aa) video footage of a woman jumping over a fence, getting into a car, being interviewed and standing in front of a lake;
  - (bb) stylised images of three women when the words “this unholy trinity” are spoken.
- 45 The graphics also include images of people laughing to accompany the words “laughing in the faces of people who think they can win an argument with the King of Kings and the Lord or Lords”<sup>22</sup> as well as generic imagery of Jesus.
- 46 The video was also uploaded onto the Voice in the Desert Facebook page, a video sharing website known as Odysee and a video sharing website known as Vimeo.
- 47 The defendant admits he published the video and that it was downloaded and viewed by people in Victoria and elsewhere in Australia.

### **The issues**

- 48 This case involves a plaintiff whose daughter joined a religious group. Ms Spencer considers that the religious group is a coercive cult. Ms Spencer has become estranged from her daughter and believes that the estrangement has been orchestrated by the defendant in his capacity as the leader of that group.
- 49 There are a number of email exchanges that demonstrate the intensity of the negative feelings Ms Spencer has about the defendant, and her perception he is exerting coercive control over her daughter.

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<sup>22</sup> (Ibid) JCB 22



50 The defendant also has very strong feelings that he and his group have been, and continue to be, persecuted by parents such as Ms Spencer, who are unable to accept their adult children's decision to join the Jesus Christians. He submits this litigation to be a continuation of the harassment to which he feels he has been subjected. He submits that calling the Jesus Christians a cult is defamatory. He pleads that damages should not be awarded to Ms Spencer, but should be awarded to him for the stress and inconvenience caused to him by having to defend a case he believes was motivated by malice.

51 This litigation is not an inquiry into the Jesus Christians. It is not part of my role to determine whether the group is, or is not, a cult, nor to opine on the meaning of a "cult". It is not part of my role to assign blame for the deterioration of Ms Spencer's relationship with her daughter, except to the extent that it impacts on any assessment of damages.

52 It is not part of my role to determine whether Ms Spencer's views of the defendant's conduct are true. Where I refer to Ms Spencer's perceptions about the defendant to explain findings I make, it should not be seen as an endorsement of those views.

53 The only relevance of the practices of the Jesus Christians to this case is where they have a direct bearing on the issues I must determine. My role is to make findings of fact only to the extent necessary to reach my decision on the issues in dispute.

54 There is no claim before the Court by the defendant in defamation and therefore there is no capacity for the defendant to be awarded damages.

55 A great deal of evidence was given and a great number of documents were tendered that enabled me to understand the background to the publication of the video. I have carefully read the material tendered, and have reviewed the transcript of the evidence. However, I will only refer to evidence and transcript where it is necessary to explain these reasons.

56 The issues that I must determine are whether:

- (a) Ms Spencer is identified in the video; if so
- (b) the imputation that Ms Spencer is a worshipper of the Devil is conveyed; if so
- (c) if the imputation is conveyed, it is defamatory of Ms Spencer; if so
- (d) Ms Spencer is a worshipper of the Devil (“justification defence”); or, if not,
- (e) Ms Spencer is in direct communication with a neo-Nazi family and has coordinated with them to persecute a Christian group (“first contextual imputation”); or
- (f) Ms Spencer is part of a larger international group of parents, influenced by anti-“cult” campaigners, who have coordinated their efforts to persecute a Christian group in which their adult children have been involved (“second contextual imputation”); or
- (g) Ms Spencer communicates with, and is willing to associate with, those involved in a serious violent assault against a member of a Christian group; (“third contextual imputation”); and
- (h) if any of the contextual imputations are made out, they swamp the imputation that Ms Spencer is a worshipper of the Devil (“contextual truth defence”); or
- (i) the defendant honestly believed Ms Spencer does worship the Devil and it was in the public interest for him to express his honest opinion (“honest opinion defence”); and
- (j) If none of the defences have been made out, what damages Ms Spencer is entitled to.

57 For the reasons that follow, I am satisfied that:

- (a) Ms Spencer is identified in the video;
- (b) the imputation that she is a worshipper of the Devil is conveyed;
- (c) the imputation is defamatory of Ms Spencer;
- (d) Ms Spencer is not a worshipper of the Devil;
- (e) the first contextual imputation that Ms Spencer is in direct communication with a neo-Nazi family and has coordinated with them to persecute a Christian group is conveyed. It is not substantially true;
- (f) the second contextual imputation that Ms Spencer is part of larger international group of parents influenced by anti-“cult” campaigners who have coordinated their efforts to persecute a Christian group in which their adult children have been involved, is not conveyed;
- (g) the third contextual imputation that Ms Spencer communicates with, and is willing to associate, with those involved in a serious violent assault against a member of a Christian group, is not substantially true;
- (h) the imputation that Ms Spencer is a worshipper of the Devil was not an honest opinion held by the defendant;
- (i) Ms Spencer is entitled to damages in the amount of \$85,000.

**Is Ms Spencer Identified in the video?**

58 Ms Spencer says she is identified in the photograph in the following ways:

- (a) a stylised image of her face and head is shown;
- (b) her first name, Renee, is written on the screen;
- (c) the Australian flag is shown in the background when she is being referred to;
- (d) she is a “mother in Australia”, as identified in the video;

- (e) her daughter married a Black member of the Jesus Christians;
- (f) there are few Black members of the Jesus Christians and no other Black members who are married to people with Australian mothers.

59 The defendant, in his pleading, denies that the publication is of and concerning Ms Spencer. However, he goes on to say that, although he does not deny she is the “Renee” mentioned in the video, and says the quote shown on the screen was from her, it would be difficult for viewers to identify her from what was shown in the video, as the photograph was not of her.

### **Findings on identification**

60 I accept that the photograph of the “motherly” woman is not a stylised photograph of Ms Spencer. It was taken from a stock photograph of a middle-aged woman ironing. Whether the image was intended to represent Ms Spencer, or intended to represent a motherly stereotype, is not relevant. On its own, the image would be insufficient to identify Ms Spencer.

61 However, the use of her name, Renee, and her identification as an Australian mother whose daughter married a Black member of the Jesus Christians, is sufficient to identify her to people who knew her first name and that she had a daughter involved in a religious group, as well as to people within the Jesus Christians. Even without the name “Renee”, I am satisfied that Jesus Christians would know the person referred to was Ms Spencer, as she appears to be the only Australian mother with a member married to a Black man.<sup>23</sup>

62 I am satisfied, on the evidence, that Ms Spencer had met most, if not all, the Jesus Christians in Australia. She had met them at the wedding of her daughter, Ellicia to Joseph Johnson; when she visited Ellicia in Blacktown on her way to and from Brisbane in 2018; when she visited Ellicia and other Jesus Christians in Sale in 2019 and when she visited Ellicia and other Jesus Christians who were on a

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<sup>23</sup> Evidence of Joseph Johnson at T845 – 846; Evidence of Daniel Reiher at T601, L21-31; Evidence of Christian Stevens at T886, L19-25

hunger strike outside Flinders Street Station in late 2019. There were also occasions when Ellicia and other group members had come to dinner at Ms Spencer's house.

63 The Jesus Christians are a community of between eighty and one hundred members around the world.<sup>24</sup> I am satisfied that, within a small group who live communally and move frequently between communities in various countries, all Jesus Christians would be aware of Ellicia's marriage to Joseph, a Black member.<sup>25</sup> Mr Johnson gave evidence that, to his personal knowledge, there were four other Black men in the Jesus Christians, only one of whom was married. That member's wife was mixed race and she was not Australian.<sup>26</sup> It is overwhelmingly likely that the only person who is Australian, married to a Black man and whose mother is called Renee, is Ellicia. Even those Jesus Christians who had not met Ms Spencer would, after watching the video, know that the person to whom it referred was Ellicia's mother. This includes people who joined the Jesus Christians after the publication of the video in 2021.

64 Furthermore, it was the intention of the defendant to identify Ms Spencer. In an email prior to publication to the leadership group of the Jesus Christians known as "the Hub", the defendant wrote:

"... I have to admit seeing their names on the screen kind of startled me, but it does have a much better chance of confronting them where they live if their neighbours (and the Journal) know what is going on. ... ."<sup>27</sup>

### **Is the imputation conveyed?**

65 Ms Spencer pleads that the publication, in its ordinary and natural meaning, carried an imputation that she is a worshipper of the Devil. She says that the ordinary, reasonable reader would infer that describing someone as a "Luciferian, a Satanist if you like" would be understood to mean that the person worshipped the Devil.

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<sup>24</sup> Evidence of Joseph Johnson at T835

<sup>25</sup> See for example, the evidence of Christian Stevens at T886

<sup>26</sup> T845 – T848

<sup>27</sup> Ex P33 – Email chain between defendant and various recipients regarding TD&T AVID Draft: Strange Bedfellows dated June 2020 at page 2

The use of graphics, including mysterious-looking symbols, pentagrams, images of screaming demons, and so on, utilises techniques that “contribute to the overall impression”.<sup>28</sup>

66 Ms Spencer submits that the Macquarie Dictionary defines the word Satanism as “the worship of Satan”. Other references in the video include “this mother is a Luciferian”, “using evil powers”, “this video is our celebration of spiritual victory over all this insane hatred and over all the demonic spirits operating through each of these family members”, “all the demons of Hell are not enough” and “unholy trinity”, which, together, go much further than suggesting Ms Spencer is someone who has an interest in, or a regard, or respect for, Lucifer.

67 Ms Spencer says the graphics used, including the hooded figure in front of a pentagram, a common symbol associated with Satanic rituals, backlit in deep red, create an impression to the ordinary, reasonable reader that a Satanist worships the Devil.

68 The defendant says the imputation that Ms Spencer worships the Devil is not conveyed. He says the definition for Luciferians from the website Definify is “A belief system that venerates the essential characteristics identified with Lucifer”.<sup>29</sup> He points to an article on CNN titled “5 things you didn’t know about satanists”, which notes “[s]urprisingly, most card-carrying satanists do not worship Satan or any other form of the Devil – they are actually atheists”.<sup>30</sup> He says Ruben van Luijk, author of the book, *Children of Lucifer: The Origins of Modern Religious Satanism*, who has a PhD in Divinity from the University of Tilburg, Netherlands, defines “Satanist” as “someone practising intentional religious veneration for Satan or entities identified or associated with Satan in the Christian tradition”.<sup>31</sup>

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<sup>28</sup> *Schiff v Nine Network Australia (No 2)* [2022] FCA 1120 at paragraph [49]

<sup>29</sup> JCB 2336

<sup>30</sup> JCB 2250

<sup>31</sup> T1006, L14-16 and JCB 2096

- 69 The defendant says veneration and worship are not the same thing. The Church of Satan is an organisation that does not worship the Devil and the inverted pentagram is a symbol associated with the Church of Satan. The defendant says it is not “good reasoning” to use a symbol used by “non-worshippers of the [Devil] to suggest that the symbol imputes worship of the Devil”.<sup>32</sup>
- 70 The defendant says the other symbol used, a black symbol of triangles and lines, is not well known as a satanic symbol and would have little or no meaning to the ordinary, reasonable viewer.<sup>33</sup> The defendant says the word “Luciferian” is not allowed in the Scrabble dictionary, so it is not a widely-used or understood term. In Christian theology, the Devil and Lucifer are terms for something bad, but “that is as far as it goes”.<sup>34</sup>
- 71 He says the Jesus Christians have no formal doctrine on the Devil and that Jesus Christians have personal beliefs about the Devil, but those beliefs, as shown in the evidence of Joseph Johnson and Christian Stevens, are not based on Jesus Christian teaching.
- 72 The defendant says that in the video he suggests Ms Spencer also has respect for things that Jesus said and this is not the sort of thing an ordinary, reasonable person would expect of a devil worshipper. He says the picture used of Lucifer is the angelic vision of Lucifer with wings, rather than a traditional satanic picture of the Devil, which you might expect to use if someone was a devil worshipper.
- 73 He says an ordinary, reasonable reader would not understand someone who is a Satanist, and who has respect for Jesus, to be a devil worshipper.
- 74 He says use of the words “a Satanist if you like”, communicated to the viewers that others may feel different to himself, and that he is sensitive to the religious differences between himself and Ms Spencer.

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<sup>32</sup> T1007, L26-28

<sup>33</sup> T1009, L27-29

<sup>34</sup> T1010, L13

### ***Findings on imputation***

75 Ms Spencer must establish the imputation alleged was conveyed. The relevant principles are well known:

- (a) the question is whether ordinary, reasonable readers would have understood the matter complained of in the defamatory sense pleaded;<sup>35</sup>
- (b) the “natural and ordinary” or “ordinary and reasonable” meaning of a publication can be its literal meaning, its implied meaning, or what is to be inferred;<sup>36</sup>
- (c) ordinary, reasonable readers are persons of ordinary intelligence, experience and education, who are neither perverse nor morbid, nor suspicious of mind, nor avid for scandal;<sup>37</sup>

“This ordinary reasonable reader does not, we are told, live in an ivory tower. He [or she] can, and does, read between the lines, in the light of his [or her] general knowledge and experience of worldly affairs .... It is important to bear in mind that the ordinary reasonable reader is a layman, not a lawyer, and that his [or her] capacity for implication is much greater than that of a lawyer: ... .”<sup>38</sup>

- (d) the ordinary, reasonable reader does not look at the matter in isolation, but, rather, in the whole context in which it is published, including the surrounding circumstances.<sup>39</sup> If one part of the publication damages the plaintiff, but that is removed by the conclusion, the:

“...bane and antidote must be taken together.’ But this does not mean that the reasonable reader does or must give equal weight to every part of the publication. The emphasis that the publisher supplies by inserting conspicuous headlines, headings and captions is a legitimate matter that readers do and are entitled to take into account. ... .”<sup>40</sup>

(Footnotes omitted.)

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<sup>35</sup> *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 (“*Hockey*”)

<sup>36</sup> *Jones v Skelton* [1963] 1 WLR 1362; *Cornes v the Ten Group Pty Ltd & Ors* [2012] SASFC 99 at paragraph [92] (per Gray J); *Hockey (ibid)* at paragraph [63] (per White J)

<sup>37</sup> *Hockey* at paragraph [64]; *Farquhar v Bottom* [1980] 2 NSWLR 380 at paragraph [21] (“*Farquhar*”)

<sup>38</sup> *Farquhar* at paragraph [22]

<sup>39</sup> *John Fairfax & Sons Ltd v Hook* (1983) 72 FLR 190 at 195

<sup>40</sup> *John Fairfax Publications Pty Ltd v Rivkin* (2003) 77 ALJR 1657 at paragraph [26]



- (e) the meaning which the defendant intended to convey by the words published is irrelevant to determining their natural and ordinary meaning;<sup>41</sup>
- (f) the manner in which the publication was actually understood is also irrelevant in determining the natural and ordinary meaning;
- (g) a publication may convey multiple imputations, but the adjudicator at trial will arrive at a single “right” meaning as to the “natural and ordinary meaning” of the words complained of;<sup>42</sup>
- (h) the more sensational an article in a newspaper, the less likely it is that the ordinary, reasonable reader will read it with the degree of analytical care which may otherwise be expected, and the less the reader will expect a degree of accuracy;<sup>43</sup>
- (i) generally, courts will not take a narrow view of the meaning conveyed by words which are imprecise, ambiguous, loose, fanciful or unusual;
- (j) the assessment of meaning is ultimately a matter of impression, rather than of close scrutiny and analysis of the publication;<sup>44</sup>
- (k) the hypothetical reader is not taken to formulate reasons, which are very often an afterthought.<sup>45</sup> Nor is he or she taken to consider the meaning of what is published by reference to various meanings which might be found in dictionaries;<sup>46</sup>

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<sup>41</sup> *Hockey (supra)* at paragraph [72]

<sup>42</sup> *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at paragraphs [173]-[175] (per Diplock LJ)

<sup>43</sup> *Amalgamated Television Services v Marsden* (1998) 43 NSWLR 158 at 165

<sup>44</sup> *Lewis v Daily Telegraph Ltd* [1964] AC 234 at [260] (per Lord Reid); *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519 at 574, paragraph [134] (per Kirby J); *Gatto v Australian Broadcasting Corporation & Ors* [2021] VSC 83 at paragraph [26] (per Keogh J)

<sup>45</sup> *Morgan v Odhams Press Ltd* [1971] 2 All ER 1156 at 1162 (per Lord Reid)

<sup>46</sup> *Hardie v Herald and Weekly Times Pty Ltd* [2016] VSCA 103 at paragraph [52] (per Ashley, Tate and Beach JJA)

(l) the forum of publication is a relevant factor in determining meaning.<sup>47</sup>

(m) publications on social media platforms, such as Facebook or Twitter, may be read in a “fleeting” manner and should not be subjected to an elaborate analysis or parsing of content. The medium has “the nature of a conversation in which participants ordinarily correspond without using carefully chosen expressions”.<sup>48</sup>

76 In this case, though the publication was on a social media platform, that platform was YouTube and the format was a video which, in my view, provides a different experience for viewers than the fleeting interactions that might occur on Twitter or Instagram and other platforms where there is a quick succession of posts to be scrolled through.

77 YouTube videos can be quite long and each has to be selected or clicked on, although the “algorithm” will offer suggestions based on prior viewership.

78 The video was also published on a YouTube channel with its own subscribers who were likely to have a particular interest in the subject matter of the videos uploaded.

79 The publication is likely to be viewed by someone with an interest in the subject matter. The subject matter assumes a degree of knowledge, for example the publication refers to “the twenty third chapter of Luke” and “John’s Gospel” without further explanation, assuming that viewers will understand those as bible references. Members of the Jesus Christians who gave evidence acknowledged that they and other members of the group usually would watch videos published by the defendant.

80 However, it was not pleaded, and the case was not put, that the viewership of the video was exclusively Jesus Christians. The evidence discloses that, although

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<sup>47</sup> *Armstrong v McIntosh (No 4)* [2020] WASC 31 (S) at paragraph [100], *Stocker v Stocker* [2019] UKSC 17 at paragraphs [41]-[46] (“*Stocker*”); see also *Brose v Baluskas (No 6)* [2020] QDC 015 at paragraphs [60]-[77]

<sup>48</sup> *Bazzi v Dutton* (2022) 289 FCR 1 at paragraph [47] referring to *Stocker* at [606], paragraph [43].

Jesus Christians watch the defendant's videos, other people also watched them, as this was how a number of Jesus Christians were first introduced to the ideas of the group. The videos are a primary mechanism of religious ministry for the defendant and the Jesus Christians. Videos and other publications are one of the ways the Jesus Christians attracted the attention of people who ultimately joined their group. Christian Stevens,<sup>49</sup> Daniel Reiher<sup>50</sup> and Ellicia<sup>51</sup> all gave evidence that their first contact with the Jesus Christians was through emails to the address given by the Voice in the Desert YouTube channel.

81 It was not pleaded that viewers of the video have some extrinsic knowledge that would cause those viewers to define "Luciferian" or "Satanist" in a different way from the ordinary, reasonable viewer.

82 Nor was it put that there is a cohesive view or explanation about what Luciferianism or Satanism imputes within the Jesus Christians or Christian communities more generally. Although the defendant did not give evidence, he submitted that the Jesus Christians have no formal doctrine about the Devil. Joseph Johnson gave evidence that he was not an expert on Satan and he could not give a definition of what Satan epitomises with any definitiveness. However, he said his understanding was that, in the time of tribulation, the Devil will be ruler for roughly a thousand years, until he is later bound or stopped from his reign.<sup>52</sup> His understanding of the formal teaching of the Jesus Christians was that "the mark of the beast" will be "the form of currency that in the end time, people will need to buy or sell" and the Jesus Christians' belief is that people who accept the mark of the beast on the right hand and the forehead will receive the wrath of God.<sup>53</sup> He said that someone who takes the mark of the beast is essentially worshipping the Devil, and this is a prophesy that is in Revelation 13, and that this was his understanding of the Jesus Christians' teaching about the Devil. He also said he may have been

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<sup>49</sup> T860, L3-6  
<sup>50</sup> T590, L18-21  
<sup>51</sup> T906, L5-6  
<sup>52</sup> T829 – T830  
<sup>53</sup> T854, L17-23

confused about the thousand-year reign and that might have been a thousand-year reign of Jesus.<sup>54</sup>

83 Christian Stevens had a similar understanding of the mark of the beast taken from Revelation 13. He said he was not aware of any formal Jesus Christians' doctrine about demonology.<sup>55</sup>

84 The apparent lack of any formal Jesus Christian doctrine about Satan or the Devil supports my conclusion that there is no basis upon which it could be said that the particular viewers of this video would have any understanding that differs from the ordinary, reasonable viewer about the meaning of being a Luciferian or Satanist.

85 Although dictionary definitions cannot substitute for the meaning an ordinary, reasonable reader would understand from the publication, a survey of definitions from various dictionaries is illustrative. For example, in online versions, Luciferian is not defined in the Collins, Merriam-Webster or Cambridge dictionaries. As the defendant notes, Luciferian is "not allowed" by the Scrabble dictionary. In contrast, Satanist is defined in all but the Collins dictionary, which only proffers a definition for "Satanism".

86 Oxford English Dictionary ([www.oed.com](http://www.oed.com)):

"Satanist, ...

A person who worships or venerates Satan; one who practices Satanism  
... ."

87 Merriam-Webster Dictionary ([www.merriam-webster.com/dictionary](http://www.merriam-webster.com/dictionary)):

"...

... worship of Satan marked by the travesty of Christian rites

**Satanist"**

88 Definify ([www.definify.com](http://www.definify.com)):

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<sup>54</sup> T853, L25-30

<sup>55</sup> T901, L8-9

- “1. One who identifies with Anton Szandor LaVey’s philosophical teachings and the religion, Satanism, founded upon it.  
*Examples of **Satanists** include Luciferians and Laveyans.*
2. One who worships Satan; or, one who believes in service to self regardless of the consequences concerning others.  
... .”

89 Cambridge Dictionary (<https://dictionary.cambridge.org>):

“Satanist

...

a person who worships Satan”

90 Collins Dictionary ([www.collinsdictionary.com](http://www.collinsdictionary.com)):

“**Satanism** is worship of Satan.”

91 Dictionary.com ([www.dictionary.com](http://www.dictionary.com)):

“**Satanist**

...

1. a person who engages in any of a highly diverse group of religious, philosophical, or countercultural practices centered around Satan, either as a deity or a nontheistic symbol of enlightenment, individualism, or ethical egoism.
2. a person who participates in a deliberate inversion of Christian rites in which Satan is worshiped.”

92 *Satan* is variously defined as a name used for the Devil in Christian and Jewish traditions (Cambridge), the name of the Devil (OED), the rebellious angel who, in Christian belief, is the adversary of God and lord of evil (Merriam Webster), the grand adversary of man; the Devil, or prince of darkness; the chief of the fallen angels, the archfiend (Definify), the Devil in Christian religion, a powerful being who is the chief opponent of God (Collins).

93 I do not accept the defendant’s submission that using the words “a Satanist if you like” indicates that people may disagree with his allegation that Ms Spencer is a Luciferian. He presents, as fact, that she *is* a Luciferian and proffers “a Satanist if you like” as an explanation for what a Luciferian is. His own words equate a

Luciferian with a Satanist. That he intended to offer an explanation rather than a qualification is made explicit in his own email communication with other Jesus Christians' leaders prior to publication of the video.<sup>56</sup> His submission that those words meant anything else is disingenuous and I reject it.

94 Although different dictionaries proffer slightly different meanings, I reject the defendant's submission that the common theme is that a Luciferian is someone who "venerates" Satan and that this conveys a different meaning than someone who worships the Devil. The words used in the video are "Luciferian, a Satanist if you like". By using these words he is offering a more commonly-understood explanation for what a Luciferian is, appreciating that not everyone will be acquainted with the term "Luciferian".

95 It is not disputed that Satan is a term used interchangeably with the Devil, or that Lucifer is another name for Satan or the Devil.

96 On the face of the words themselves, I consider the ordinary, reasonable reader would understand a Satanist to be someone who worships the Devil.

97 The particular use of graphics showing demons, the use of symbols associated with satanic rituals, and the imagery of a hooded figure in front of an inverted pentagram, convey an imputation of something far different from respect or veneration for Lucifer. The use of the quote, taken out of context, to support the claim that Ms Spencer is a "Luciferian, a Satanist if you like", is clearly intended to persuade the audience that the allegations are founded in truth.

98 The defendant says that the line "[s]he insists that her love for Lucifer does not interfere with her respect for anything that Jesus may have said"<sup>57</sup> would identify, to the ordinary, reasonable reader, that Ms Spencer has respect for Jesus and this would be inconsistent with being a worshipper of the Devil. However, viewed in the context of the whole video, it is clear that the defendant is in fact dismissing

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<sup>56</sup> Ex P33 (*supra*)

<sup>57</sup> Schedule "A" (*supra*) at JCB 22

Ms Spencer's protestations of respect for Jesus. He follows up this line with the word "[b]ut" and goes on to describe how she has threatened to use her "various evil powers to stalk and torment us around the world".<sup>58</sup> The use of the word "[b]ut" clearly indicates that he is dismissing her professed respect for anything Jesus has said. In any event, "respect" is not the same as "love" and he alleges she loves Lucifer.

99 In the publication, the defendant refers to the "Jesus" the Kellys and the Johnsons profess to worship as a Jesus who:

"... justifies kicking a man to death for no good reason, and the other Jesus justifies hating and killing Jews, Blacks and anyone else who does not conform to their so-called 'historical' Nazi beliefs. ... ."<sup>59</sup>

100 He is identifying the Jesus they profess to worship as a false Jesus. He says, in the publication, that really they "hate" Jesus and what he taught. He links Ms Spencer with these other women, by saying they are bedfellows (the title of the video) and by calling them an unholy trinity. I do not accept that including the words "her respect for anything that Jesus may have said"<sup>60</sup> offers an antidote to the bane of being called a Luciferian and a Satanist.

101 The imputation that Ms Spencer is a worshipper of the Devil is conveyed.

### **Is the imputation defamatory?**

102 Words are defamatory when the imputation lowers the person's reputation in the eyes of reasonable members of the community or causes the person to be ridiculed, shunned or avoided by members of the general public.<sup>61</sup>

103 Ms Spencer pleads, at paragraph 7 of her statement of claim, that the publication carried the imputation "which is defamatory of the plaintiff".

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<sup>58</sup> (*Ibid*)

<sup>59</sup> Schedule "A" (*supra*) at JCB 22

<sup>60</sup> (*Ibid*) at JCB 29

<sup>61</sup> *Charan v Nationwide News Pty Ltd* [2018] VSC 3 (upheld on appeal in *Charan v Nationwide News Pty Ltd* [2019] VSCA 36)

104 In his defence, the defendant denies that this is true.

105 The defendant submitted that:

“... Lucifer and a theme of Devil worshipping appear regularly in the entertainment industry to the point where it is fashionable to use these themes to attract fans. ... .”<sup>62</sup>

106 Beyond this, the defendant made no submissions that the imputation was not defamatory of the plaintiff.

107 While it may be true that a theme of devil worship is used in the entertainment industry, this does not establish that it is not defamatory.

108 The publication was targeted at an audience of people with an interest in religion or religious ideas, particularly Christian ideas. There can be little doubt that, among religious people, in particular Christians, worshipping the Devil would cause a person to be shunned or avoided. A person who was a devil worshipper would be viewed as dangerous.

109 Even among people who do not identify as religious, an allegation that a person is a worshipper of the Devil would tend to cause reasonable members of the community to shun or avoid such a person. Worship of the Devil carries with it concepts of satanic ritual, such rituals specifically implied in the video by the use of graphics and images, and ritualistic sacrifice, reinforced by the blood-red backlighting behind the hooded figure. Even community members who do not believe in the Devil would likely condemn a person seeking to engage in such practices.

110 While the evidence of individuals has little relevance to an assessment of whether an imputation is defamatory, I note that both Joseph Johnson and Christian Stevens agreed that it would be a bad thing to be a devil worshipper,<sup>63</sup> albeit that

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<sup>62</sup> T763, L15-18

<sup>63</sup> T831 and T891



the Jesus Christian religious beliefs would still mean that such a person was still “love[d] and respect[ed]”.<sup>64</sup>

111 The imputation was defamatory of Ms Spencer.

### **Defences**

112 The defendant relies on statutory defences under the *Defamation Act* 2005 (“the Act”) of justification, contextual truth and honest opinion.

113 To understand the way the defendant pleads his defences, it is necessary to give some background to the events that led to the publication of the video.

### **Ellicia’s involvement with the Jesus Christians**

114 Ms Spencer has two children, Ellicia, born 1995 and Lachlan, born 2002.

115 In around October 2017, when Ms Spencer and her son were living in Brisbane, Ellicia joined the Jesus Christians. The Jesus Christians are an organisation of people who adhere to particular religious beliefs and live a particular lifestyle that is characterised by giving away all their material possessions, not working for money, “forsaking all”, and living communally. At that time, the group was also known as “A Ship in the Desert”.<sup>65</sup>

116 Shortly after joining the Jesus Christians, Ellicia married another member, Joseph Johnson, also known as Jay, in January 2018. Ms Spencer attended the wedding. Ms Spencer described herself as generally supportive of Ellicia’s decision to join the Jesus Christians at this point.

117 Over the next two years, Ellicia lived and travelled with the Jesus Christians and had occasional “in person” contact with Ms Spencer. In late 2018, Ellicia separated from Joseph and went to the USA and Mexico. In 2019, she moved to Kenya. She remained in contact with Ms Spencer from time to time.

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<sup>64</sup> T994

<sup>65</sup> T905, L26

- 118 In August 2019, Ellicia returned to Australia and Ms Spencer visited her in Sale, where she was living with other Jesus Christians. At this time, Ms Spencer began to have concerns about her relationship with Ellicia.
- 119 In November 2019, Ellicia and other Jesus Christians staged a hunger strike for climate change outside Flinders Street Station in Melbourne. Ms Spencer visited Ellicia at the hunger strike. Subsequently, Ellicia said to Ms Spencer that Ms Spencer had been rude and argumentative during that visit and that she, Ellicia, needed some space from Ms Spencer's negativity.<sup>66</sup>
- 120 Around this time, Ms Spencer became aware that the group Ellicia had joined was called the Jesus Christians and she undertook some online research, which caused her alarm. She came to the view that the Jesus Christians were a cult and that the defendant was the leader of the cult.
- 121 In December 2019, Ms Spencer visited Ellicia in Sale and during a private conversation told Ellicia of her concern that the Jesus Christians was a "cult". After this visit, Ellicia returned a mobile phone that Ms Spencer had previously given her. Ms Spencer has not seen Ellicia in person since December 2019.
- 122 In January 2020, Ellicia moved to Mexico and re-united with Joseph.

### **The "Lucifer" emails**

- 123 In an email exchange between Ellicia and Ms Spencer in January 2020, Ellicia wrote:<sup>67</sup>

"I felt it was very manipulative of you to lie to me before our last meet up. You said you had something private and important to tell me, but all you wanted to do was tell me I'm in a cult".<sup>68</sup>

- 124 In response, Ms Spencer wrote a lengthy email on 25 January 2020 that is important to the defendant's truth defence. The email is over five pages long. In

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<sup>66</sup> Ex P11 – Text message exchange between Ellicia and Renee Spencer from 3 October 2019 to 31 December 2019 at JCB 2437-2464

<sup>67</sup> Ex P13 – Email exchange between Ellicia and the plaintiff, dated 18 January 2020 to 26 January 2020 (including quotes used in publication) at JCB 185-191

<sup>68</sup> (*Ibid*) at JCB 185

it, Ms Spencer wrote, “[g]iven that you have belittled my spiritual beliefs in the past, I feel I need to assert myself”.<sup>69</sup> She said she had studied:

“... the occult, esoteric traditions, ancient mysteries - in particular ancient Egyptian, conspiracy theories, Christianity, Catholicism, witchcraft, aliens, astrology, Steiner, psychology, mental health, art history, religious symbolism, and a whole lot more! ... .”<sup>70</sup>

125 She said she had a thorough understanding of the principles of Christianity and that an individual’s relationship with God was a private matter which she would never want to interfere with. She said the group’s practice of fear mongering and trying to sell a particular brand of Christianity did not sit well with her. She wrote, in part:

“My beliefs are this: There is truth in the bible. Symbolic truth. It is a map of sorts. ... .

Christianity did not abolish the old pagan religions - it transformed them. Old symbols were used and mixed with new symbols. Of note, verses once known as ‘spells’ became known as ‘prayers’. Or in other words, prayers are spells. To my mind, the aim of early Christians was to keep the ‘holy grail’ a secret from those who would use its power for evil deeds. The holy grail, of course, is a metaphor. It has taken me years to get a true sense of what the holy grail is/means.

... You probably already know this, but I’ll say it anyway, ‘occult’ means ‘hidden’, my studies of occult history is the study of hidden history ... like the Tower of Babel, hold grail fragments are scattered and one will not find a complete definition anywhere ... hence one must seek. ... .

From my research, and experience I have come to understand that the spiritual world does not distinguish between ‘good’ and ‘bad’ prayers, nor does it distinguish between religions - it just responds to the intention of the person, hence, when prayers or spells are said they need to come from a moral and ethical place. ... .

Unintentionally, some ‘good’ people can say ‘bad’ prayers and God answers these all the same because he has given us free will. That is the unconditional love God gives. He gave us, his children, everything. We are made in God’s image (I almost wrote a secret of what this means, alas, I had to un-type it because such things can not be written) ... To be completely honest, I must confess, I know that God answers all our prayers because I once ‘played’ with the power of prayer and in doing so I took away someone’s free will. It is my greatest sin. I sometimes wonder if God answered my ‘evil’ prayer so as to show me just how powerful he is.

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<sup>69</sup> (Ibid) at JCB 187

<sup>70</sup> (Ibid) at JCB 187

... I am not truly worthy nor knowledgeable (despite my years of study) so I do not know it all but I can tell you some of what I have come to understand through careful research and personal investigations. For example, in addition to what I've already told you of the book of revelations, it is my belief that references to animals are indications of soul qualities. For example, the lion represents our heart, our courage. Do you remember all the paintings of lions that we saw in Venice? The Renaissance artists, (at least some of them), knew the secret language ... I cannot explain too much in writing. It is too sacred. This is the dilemma the early Christians faced too. They could not put the full truth down in writing.

I do not know it all, and while some of this is based on belief, there are scientific methods and historical records to confirm what I am saying. For me personally, it has taken years to see beyond the veil. Science, psychology, art, music, history, nature - all areas need to be studied in order to really understand spirit. There are many charlatans and spiritual bypassers who can mislead. I know because I have tried following many of them! I suspect that such false prophets don't deliberately mean to mislead others, they have simply misinterpreted the symbols or filled in the blanks incorrectly. Critical thinking skills are a must for seekers of spiritual truths. There have been times when I have followed false leads to spirit and the acknowledgement of finding a dead end has been hard to accept, nevertheless, I've known that the consequences of not turning around would be worse. I am now very secure in my stance that I will never follow any spiritual leader or religious group.

My latest points of investigations are to re-evaluate Steiner's work. However, I do not identify as an anthroposophicalist. Steiner's work was written a hundred years ago and I am amazed at how his work has been translated and re-written with such inaccuracies. By comparing different translations I can see how Steiner schools have gone astray. Word changes and sentence structures divert the original intentions of Steiner's messages profoundly. (If this can happen so easily by a few generations, it confirms for me that today's bible is very inaccurate.) I want to learn German so as I can learn what Steiner was really saying. That is not to say I believe Steiner was completely correct but I do believe there are great insights to be gained from his wisdom.

...

A point in which I believe Steiner was correct is his insight that references to Christ returning will not be a physical phenomenon. Rather, he will return in the etheric. The ether is life force (that is putting simply, I cannot explain it any better than that in writing). Jesus was the first to overcome the challenges of the ether. That is part of the mystery of Golgotha. Jesus perfected control of his life force. To be like Christ we must do the same. It is an ongoing challenge for all humans. In order to achieve this we need to face Lucifer. I'm still working out exactly what Luciferic influence is. I know that it exists in all of us - every human being - and I know that Lucifer is intelligent and beautiful and we have much to learn from him; Lucifer is a catalyst for finding the true light of Christ. Again, I'm sorry I cannot write this more clearly but hopefully you get the gist of what I am saying.

...

The spiritual world, is a fascinating realm to explore and learn about. Sincerely, I am proud of your efforts to do so and your attempts to unearth the true essence of humankind's spiritual nature. It reminds me that you are indeed my child. Whilst you have followed a different path of exploration, you are just like me in so many respects. Ellicia, you are my biological child and I am your biological mother. God is your spiritual parent. I am very glad you love God; if he is your favourite parent, then so be it, I will not berate you for that. God (and the Goddess) are also my spiritual parents and I love them too. They blessed me with your presence in my life and I am eternally grateful; I could not of asked for a more wonderful daughter.

I honour your independence and I respect that you want to keep our communication to emails. I look forward to hearing from you and having discussions about the issues between us, spiritual based or otherwise. (Silence like a cancer goes ... Simon and Garfunkel ... the 'right' timing for discussions sometimes never comes.)

I love you to the moon and back again an infinity times."<sup>71</sup>

- 126 Ellicia did not respond to that email. Ms Spencer sent further emails, including one called "Bible Talk", dated 26 May 2020, where she wrote about her research into the origins of the bible. She wrote:

"... I do believe there is truth in [the bible]; spiritual truth, not literal. Among other things, the bible warns against worshipping false idols and I have a strong sense of what that means

...

Why am I telling you all this? Ellicia, you've made some very serious life decisions based on your beliefs of the bible. I trust you to be wise, to think for yourself, and research what being an authentic Christian really means. Lucifer's influence can shine as brightly as God's. As I have said before, do not take my words for things. Pray to God and ask for the truth to be revealed to you".<sup>72</sup>

- 127 Ms Spencer continued to email Ellicia, although she did not receive a response to those emails.
- 128 On 31 July 2020, she sent an article she had written about Freud to Ellicia and said there was a job waiting for her if she came home.<sup>73</sup>

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<sup>71</sup> (*Ibid*) at JCB 188-191

<sup>72</sup> Ex P15 – Email from the plaintiff to Ellicia, dated 26 May 2020, regarding "Bible Talk" at JCB 200

<sup>73</sup> Ex P17 – Email from the plaintiff to Ellicia, dated 31 July 2020, attaching an article regarding Freud at JCB 210

129 On 2 August 2020, Ms Spencer sent a further email begging Ellicia to come home.<sup>74</sup> She wrote:

“... Like I’ve told you again and again, things are not what they seem. I’ve been studying the occult and conspiracy theories for almost as long as you have been alive, and so it is, you also know it is not on a whim when I tell I am associated with a group who is privy to inside knowledge of current world events. David’s philosophies do not match the information and updates which I regularly receive. He does not know what I know. ... .”<sup>75</sup>

130 She said, in evidence, that she:

“... temporarily had some communication with a friend who was part of a Christian group and they were working towards humanities issues and things like that and they looked really good. I, after a little bit of finding out a little bit more about this Christian organisation, which does not have a name and I’ve lost contact with the person, I decided that no, maybe I’d gone down - maybe I’d fallen for a false prophet.”<sup>76</sup>

131 She said it was this group to which she was referring to when she mentioned her “contacts” and “inside information”. This occurred at a time when much of the world, and, in particular, Melbourne, was subject to lockdown as a result of the COVID-19 pandemic.

132 On 8 August 2020, Ms Spencer received a chain of email correspondence dated 2 to 6 August 2020 between Ellicia, the defendant, and the defendant’s daughter.<sup>77</sup> Ellicia gave evidence that she had emailed this to her mother by accident.<sup>78</sup>

133 In this email chain, the defendant had written to Ellicia about the events that led to her being relegated to “visitor status”.

134 Ellicia responded to that email by writing that it would be good to clear it up. She wrote

“... Particularly because Renee really doesn’t like you; I feel the devil’s devisive-ness (sic) in the way she talks about you, and it’s an awkward

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<sup>74</sup> Ex P18 – Email from the plaintiff to Ellicia, dated 2 August 2020, regarding “Please come home” at JCB 211

<sup>75</sup> (*Ibid*)

<sup>76</sup> T234, L9-16

<sup>77</sup> Ex P19 – email from Ellicia to the plaintiff forwarding correspondence between Tina, the defendant and Ellie, dated 6 August 2020 at JCB 212-219

<sup>78</sup> T919, L18-31

position to be in. So for that reason too, it'd be good to have a discussion, to make sure the devil doesn't have a chance to get a foothold.

When I left, the situation was that I had visitor status. I recall there were a few different issues aside from the table setting issues, including forgetting Cherry's food needs. When we had the meeting where I was informed about my visitor status, you'd talked about how I probably had bad habits from my mother, which would probably take time to change. One thing that was mentioned was lack of respect for authority, and I think bossiness was another. But the general spirit was that it'd take time for me to work through the issues."<sup>79</sup>

135 The defendant responded:

"Dave here. I'm not sure how to respond to this, as it seems like you kind of left things hanging.

It comes across to me as double-mindedness on your part.

You hint, for example, that you are struggling with bitterness toward me, when you say that similar feelings from Renee could be quite dangerous unless we get this matter sorted out.

You state what I/WE saw as the problem, but you do not give your own impression of what was happening.

You say that you learned this lesson: 'I remembered the lesson I'd learned about serving people, and doing things the way people prefer them.' But that seems to be a very tiny lesson, considering how drawn out the grievance was here in Oz, where it seemed like, meal after meal, you pretty stubbornly refused to 'follow the rules' about what needed to be put on the table (including Cherry's dietary needs). We here thought it was a huge problem, with overwhelming evidence of rebellion, given that we were more or less shouting it louder and louder each time, and yet you were still refusing to change.

Thank you for reminding me that you left here as a visitor. What is your status there? Did you enter the community there as a visitor?

Btw, I have copied Tina in, so that she can help me, if my memory is wrong on any of this.

You said: 'I didn't feel like I was deliberately being disobedient in January, but I also don't have a reason for why I was behaving the way I was.' 'Zoning out' as you put it, may be just another way of saying 'deliberately being disobedient,' where you hide the truth from yourself.

That really does need to be sorted out, and the longer it is put off, the more chance that your memory and mine will become permanently irreconcilable.

It may be like that with the issue of the carpet being vacuumed too. We obviously need to re-state how each side saw it.

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<sup>79</sup> (Ibid) at JCB 217

You finished by saying that discussion would be good, but then did not discuss.

Can I get more information on how you see these issues now that you have had a very long time to cool down?"<sup>80</sup>

136 Ellicia then responded that the defendant was right about her "double mindedness" and that she had tried to overcome this. In her email, she wrote:

"What I meant was that when Renee writes about you in her emails to me, it reminds me that I left Australia with things unresolved. I find it challenging to read her emails, and I don't want to get sucked in by her. I hope by resolving our issues, it will help me in my relationship with Renee, to be clear in where she is coming from and make sure I stay firm to not give in to her (we are still not talking, but I usually feel crappy spiritual (sic) after reading her letters). Some things that she says put temporary doubt in my mind. And when she talks about 'Dave's theories', it makes me want to prove I'm not just following your theories. I shared in the first grievance that I felt Renee's attitude towards the community influenced my bad behavior, particularly things she said to me on her last visit to me, and in the communication leading up to the visit.

I don't like that Renee doesn't like you or Tina, and I would like to apologize for the fact that she's said nasty things about you both. It makes me feel awkward to forward those emails because I don't agree with what she says about you guys.

...

I was rebellious and proud, not willing to accept criticism. I understood that the situation was I left Australia that people agreed to bear with me in hope that I would change my ways, in the understanding that it might take time for me to change. As well as the main grievance issues, there were general problems like bossiness. For example, you pointed out to me after a run that it wasn't my place to tell you that there was grass on your shoes (something to that effect). At the time I felt like it was best for me to take critiques like that in faith, as I didn't quite understand the problem with it. But now I am thinking that I was not taking the criticisms in faith, but being defiantly compliant. And that that it was my pride stopping me from accepting criticisms.

Yesterday I was focused on how you said suggested that maybe you missed something, instead of what I missed. I'm sorry for having that attitude."<sup>81</sup>

(sic)

137 Ellicia went on to accept that she had been bitter with Tina and Cherry and that her bitterness had impacted her actions, that she had acted hypocritically in being

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<sup>80</sup> (Ibid) at JCB 217

<sup>81</sup> (Ibid) at JCB 215



bitter with Tina for being short with her when she, herself, was short with others, and accepted that she had been behaving rebelliously and apologised for it.

138 The defendant responded:

“First, let me explain that I really was open to the possibility that I had totally misunderstood what was happening in the tensions just before you left. However, on hearing your comments (which also helped to bring back clearer memories myself), it became clearer to me that you really did have a problem before you left.

What probably made the situation especially depressing is that you did NOT ‘comply’ (with or without defiance). Instead, it seemed to me (at least in the table-setting issue that came up night after night) that it was getting worse each night, and it was because I kept wanting to assume you were trying, but just making mistakes. I was assuming that the more I raved on and on about you missing the instructions, the more determined you would become to make a list, do all kinds of checks, maybe even ask others for counsel, so that you would be sure to get the instructions right the next night. But, instead, you would make the same mistakes all over again.

At the same time that I could not bring myself to believe that anyone could be so forgetful over and over again, I also could not really bring myself to believe that you were deliberately doing that. I know that it is what I eventually concluded, and we kicked you out over it; but I was still baffled. After all, why would someone be so stubborn over such a little thing as remembering to put a relatively short list of items on the table each night.

But, when I see it in the light of Renee’s influence, and possibly a pattern that you had grown up with, it becomes clearer that this was probably a kind of ‘strong’ ‘feminist’ trait that Renee had instilled in you, where you do not let anyone tell you what to do.

Obviously it can be good to be stubborn at times... about things that are good. But the stubbornness that was happening at that time (not just with me, but perhaps most vocally with me) was more or less stubbornness just for the sake of being stubborn.

It was a self-fulfilling prophecy in the sense that it turned me into a raging monster about what was outwardly such a trivial thing.

Because things settled back into a fairly relaxed routine for other meal providers here after you left, it further baffled me. Why had I been so angry with your ‘mistakes’, when I was not with the guys here.

Just to fill you in, I think the guys here were the ones who were most affected by my rants at you, as I think even now I have to keep reminding them that Cherry and I do not need to be pandered too (sic) beyond a few basic health restrictions. But the guys here also forget things from time to time, and I often don’t mention them at all, for fear of adding to any paranoia they built up over all the yelling I did at you.

As things are now, it doesn’t look like we will ever be on the same team again before the Tribulation; so maybe it’s not all that important to iron out all the wrinkles on this. However, I think that, if you still DO have that

stubborn streak, it is definitely going to be necessary to deal with it in your marriage. I think Jay is working harder on his tendency to be too authoritative as a leader, and hopefully you are working at your own tendency to be a rebellious follower, in the sense of secretly demanding that the leader be very polite to you before you will cooperate.

What do you think about this? Do you think that you DO kind of dig your heels in when you think a leader is being too critical of you? And do you think it is a problem (or perhaps that you have changed and it is no longer a problem) in your marriage?

I'll leave it there, as I may have said too much already!"<sup>82</sup>

139 At the same time, the defendant's daughter wrote to Ellicia:

"Tina here. It may be that Dave and I are writing at the same time, so I'm sorry if we double up.

My understanding too, is that you let Renee get to you when you were here in Australia, trying to prove to yourself that you were not being manipulated by the leaders here, when that really should have been a non-issue. Once you start worrying about being manipulated, your attitude towards leadership becomes suspicious and then it becomes a battle of wills rather than teamwork to find the best decisions etc.. It's a little like saying that a fox smells its own tail. People see in others the kind of problem that they are dealing with themselves. You were inclined to think the battle of wills came about because your leaders were being domineering, whereas it only became a battle of wills because of your stubbornness to see the truth in what your leaders were saying. That is what exposed the problem.

It was hard for us as onlookers to be sure that every time you left things off the table (or messed up Sharon's food) that you did so deliberately. Everybody does, and has done that, at times quite innocently. In your case it was more the consistency of it, which seemed to show your behaviour was more about defiance than genuine forgetfulness. Probably there were some times when it was innocent on your part, but I think it was a lot less than you made it out to be. And as dishonesty works, you probably convinced yourself it was all just accidental, which would have led to bitterness, which would have further fueled (sic) the suspicion about domineering manipulative leaders. It really was a no win situation.

I think it's good that you are saying some of the right things here, as long as you actually do feel resolved in what you are saying.

I hope you understand that it is not about the specific rules so much as it is about being able to work together and be open to correction.

My general feeling is that often when someone becomes critical of you, you dig your heels in to not do what you have been asked, but kind of act like you don't know how to do what you've been asked, when you do. In other words, you play the victim, to make your leader look bad. If you are able to see this, I think it will help you in your relationship with all your leaders, including Jay. The better thing is to actually discuss the matter if you disagree with what you have been asked to do (rather than just be rebellious) and to resolve the situation rationally. If you can talk about it,

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<sup>82</sup> (Ibid) at JCB 213-214

you may find that the other person is actually being quite reasonable or you may find the other person can be swayed by your reasoning if you give them a chance. It does challenge your pride to allow people to look at your arguments rationally, rather than reacting to things emotionally. But I think it's really important as Christians to be able to do that.

I had actually forgotten that some of the tension was with me. With regard to Renee, I have only had a little interaction with her and none of it was negative. (Dave would probably say the same). I think her real complaint is just that she senses we are leaders and she is jealous of our relationship with you. (Plus she was upset that she found out you were counselling with me about your letters to her).

I only vaguely remember the incident where you felt I was being overly critical. If you feel a need to discuss it more, I would be fine with that.

With regard to Renee, I struggle to see how she could continue to be divisive at the moment when she openly supports Lucifer and speaks against everything you believe (and not just about your leaders). From the way she wrote in her last letter, it sounds like she is heavily into the occult. I feel like her divisiveness should actually have the opposite effect, of pushing you towards us. The fact that it doesn't, is a bit of a worry. I can see how she might have succeeded in causing division before she made her position clear, but not now. I think if you could let go of your emotional attachment to her, it would help you a lot."<sup>83</sup>

140 Ellicia responded to both those emails in one email. She wrote, in part:

"Playing the victim is an accurate description, and I think that is something that I learned from Renee. With tensions between Jay and me, I usually accept his criticisms eventually, but I think that I 'dig my heels' in, as you've said. But if I were to be open to hearing criticism instead of getting defensive and to discussion, those tensions could have gone a lot more smoothly. In most of those situations, I did eventually come to see the sense in what Jay was saying. Though there are some times when I agree to doing it his way even though I disagree. In those moments, I am not open to hearing Jay's rational reasons. So in addition to giving rational reasons if I disagree, I need to also hear them. That's how I'd felt about the paperwork issue I'd had with you, Tina; you gave rational reasons for getting more copies, and I gave my reasons, but my reasons weren't rational, so we didn't go with my idea. So I became bitter, more or less just because we didn't go with my idea. But I feel resolved that I was definitely in the wrong, so I don't feel a further need to discuss it.

I had forgotten that Renee had openly said she supports Lucifer, so thanks for reminding me of that. I think there is still some emotional attachment to her, so I agree that I need to let go of that.

...

... with the rebelliousness that led to the grievance when I was in Oz, I wasn't being compliant at all, because I wasn't letting people tell me what to do. I would say it's been like that with criticisms since then (both in Oz, like with the grass example, and here with Jay) that I've been compliant. I

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<sup>83</sup> (Ibid) at JCB 212

think that developed as a reaction to the grievance, knowing I have to change *something*, but also not wanting to smash my pride by admitting I was rebellious.

Also just reflecting on my own attitude, I do have issues with being told what to do. I recall having the attitude towards Renee, too; and growing up I was called 'contrary' a lot, which is pretty similar to stubborn. It makes sense to me that my upbringing was an influence on my stubbornness. In regards to Renee's personality, I have definitely felt before that she herself likes to play the victim. But I see how these issues caused the grievance earlier this year, and how the issues are causing me problems in my marriage, and that I need to change."<sup>84</sup>

141 Ms Spencer said that, as a result of receiving this email chain, she was "very very concerned" and considered there "was just red flag, red flag, red flag".<sup>85</sup> She said, by that time she had learned about the Jesus Christian grievance process which could be triggered by small things, such as not setting the table properly, and that the consequences of a grievance process could be that a group member was kicked out from the group, sometimes in the middle of the night, in a foreign country, with no money or belongings.

142 She understood from the email correspondence that her own emails with Ellicia were being shared with the defendant and his daughter and she believed that:

"... it didn't matter what I said, no matter what I said, it was going to be twisted and unlike my previous relationship with my daughter where we would, you know, go backwards and forwards, where I might say something and she might say 'Hey Mum', you know, question what I'm saying and then I get the opportunity to explain what I meant better, I wasn't even given the opportunity to do that ... I was being absolutely blocked."<sup>86</sup>

143 In an email dated 25 October 2020,<sup>87</sup> Ellicia wrote to Ms Spencer:

"It's disappointing to me how un-open you are to hearing the truth. I recall having conversations with you about how the media twists things to suit their own purposes, yet off the bat, you believe every negative thing you've ever heard about the community (and then add a few of your own).

As for you and Lucifer, let me refresh you with a quote from an email you wrote on January 26<sup>th</sup> 2020:

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<sup>84</sup> (*Ibid*) at JCB 213-214

<sup>85</sup> T237, L22-23

<sup>86</sup> T39, L30 – T40, L10

<sup>87</sup> Ex P24 – Email from Ellicia to the plaintiff, dated 25 October 2020, citing quote regarding Lucifer at JCB 278

*'I know that Lucifer is intelligent and beautiful and we have much to learn from him; Lucifer is a catalyst for finding the true light of Christ. Again, I'm sorry I cannot write this more clearly but hopefully you get the gist of what I am saying.'*

Yes, I get the gist, and so did Tina. She wrote that you were 'openly supportive' of Lucifer, NOT that you worshiped him. This little distortion was yours."<sup>88</sup>

144 This prompted a response from Ms Spencer on 25 October 2020, in which she attempted to explain her words in relation to Lucifer as follows

"... I never said I supported Lucifer. Both you and Tina took my words out of context and read into them what YOU wanted to. ...:

...

How you got from that passage that I support Lucifer is beyond me – you really did not get the gist of what I was saying. I'll try again – Lucifer can be deceptive; he can appear beautiful and alluring. In order to overcome his influence, we need to see that not everything that looks 'beautiful' is good. I thought that this would be a point on which we would agree, i.e. that the 'devil' can tempt us, and learning from those challenges can lead a person closer to Jesus .... How is saying that acknowledging Lucifer's deceptiveness and trying to overcome it to be more Christ-like be an indication that I support Lucifer? Honestly, I am dumbfounded by how my words have been twisted in the most bizarre and hurtful manner. ... ."<sup>89</sup>

## Justification

145 The Act provides, at s25:

"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."

146 The defendant says that:

"... If the court sees no difference between veneration of Satan/Lucifer and worship of the devil, then on that basis the Defendant would say the imputation was substantially true, only to the extent that 'worship' means to venerate or highly respect ... ."<sup>90</sup>

147 The defendant says Ms Spencer expressed respect for Lucifer and compared him to God in her emails.

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<sup>88</sup> (Ibid)

<sup>89</sup> Ex P25 – Email from the plaintiff to Ellicia, dated 25 October 2020, regarding context for Lucifer quote at JCB 279

<sup>90</sup> Amended Defence dated 30 August 2023 at page 6, paragraph [7]

- 148 She described the bible as a “fictitious creation” and a tool used by the Roman Empire to control the masses.<sup>91</sup> She wrote, “I know that Lucifer is intelligent and beautiful and we have much to learn from him; Lucifer is a catalyst for finding the true light of Christ”<sup>92</sup> and that “Lucifer’s influence can shine as brightly as God’s”.<sup>93</sup>
- 149 The defendant submits this illustrates that Ms Spencer is “definitely praising Lucifer”. He submits that Ms Spencer’s evidence that she was warning Ellicia about the deceptive nature of Satan, in line with what he called “the traditional Christian approach”, ought not be accepted. He submitted that Ms Spencer “would have the court to believe that when she was talking about Lucifer in this context, she was actually talking about me ... and that she was warning her daughter not to trust me”,<sup>94</sup> but that this makes no sense, because Ms Spencer would not describe the defendant as a catalyst for finding the true light of Christ.
- 150 The defendant submitted that Ms Spencer also expresses her respect and interest in a scholar, Rudolph Steiner, who “would also qualify as a promoter of Luciferian thought”.<sup>95</sup> He submitted that she had a “long-term interest in Rudolph Steiner, a scholar who edited a magazine called *Lucifer-Gnosis* and who is listed on Wikipedia’s Luciferianism page as a “modern contributor”.<sup>96</sup>
- 151 Ellicia gave evidence that, as a child, Ms Spencer took her to a “witchy store” that had “full-on magical spells and potions and books on witchcraft and the supernatural”.<sup>97</sup> She said Ms Spencer was “into things like Tarot cards and moons, so things like divinations, telling the future or telling things about yourself”<sup>98</sup> and that Ms Spencer was very much into Egyptology. Ellicia said she later learned

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<sup>91</sup> Ex P15 (*supra*) at JCB 200

<sup>92</sup> Ex P13 (*supra*) at JCB 190

<sup>93</sup> Ex P15 (*supra*) at JCB 200

<sup>94</sup> T744, L29 – T745, L2

<sup>95</sup> Amended Defence (*supra*) at page 6, paragraph [7]

<sup>96</sup> T745, L24-L27

<sup>97</sup> T921, L6-8

<sup>98</sup> T921, L12-14

“how Satanic ancient Egypt was. I mean in the Bible you can see in Exodus the Egyptians, they kicked out God’s people, the Israelites”.<sup>99</sup>

152 Ellicia gave evidence that she “didn’t think about it when [she] was a kid but there were a lot of occults and influences that, looking back now, that were Satanic and Luciferian in nature”.<sup>100</sup>

153 Ellicia also gave evidence that she had received a job offer from Ms Spencer, which she subsequently learned was translating German transcript from Freud or Steiner, which she thought was “really weird” because her German is basic and she could not have done that job at all. She believed that Ms Spencer was trying to “lure [her] back with this weird job offer”.<sup>101</sup> Ms Spencer wrote an email to her that, among other things, said:

“I am associated with a group who is privy to inside knowledge of current world events ... You are needed in helping transform the world ... I feel the time is right for you to know everything. There are so many things I have held back from telling you.”<sup>102</sup>

154 Ellicia said this email made her feel that Ms Spencer was just “playing with [her]”.<sup>103</sup> Ellicia did not know anything about the group Ms Spencer was referring to and felt it was very mysterious.

155 Although the defendant did not make submissions specifically about Ellicia’s evidence, I assume that his submission is that the Court can infer by Ms Spencer’s actions in:

- (a) visiting a “witchy store” when Ellicia was a child;
- (b) having an interest in Egyptology and the occult;
- (c) being in contact with a group with inside knowledge of world events;

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<sup>99</sup> T921, L25-28  
<sup>100</sup> T922, L11-14  
<sup>101</sup> T922, L27-28  
<sup>102</sup> Ex P18 (*supra*) at JCB 211  
<sup>103</sup> T925, L5-L18

(d) offering Ellicia a job that will transform the world;

that Ms Spencer is in fact a Luciferian or Satanist.

156 Ms Spencer denies that she is, or ever has been, a Luciferian or Satanist.

157 Ms Spencer gave evidence that her words about Lucifer were references from the bible that evil is very alluring and very tempting. She was thinking of her past, where she had thought a philosophy or theory looks:

“... so beautiful and wonderful and it seems so intelligent ... and then you go, oh no, but there will be something underneath it. That’s where you learn from it because you go, that looked wonderful, that looked beautiful - like I’ve never taken cocaine but apparently that’s awesome and people know that’s not good once they get addicted and have other problems.”<sup>104</sup>

### **Is Ms Spencer a Luciferian or Satanist?**

158 The defendant relies on the defence of justification, but only to the extent that being a Luciferian or Satanist does not involve worship of the Devil. He does not submit it is true that Ms Spencer is a worshipper of the Devil.

159 Nothing in the evidence establishes that Ms Spencer is a worshipper of the Devil.

160 I have already found that the imputation conveyed is that Ms Spencer is a worshipper of the Devil. Therefore the defence of justification must fail.

161 Given my findings that the imputation pleaded is conveyed, there is no need to consider whether a permissible variant of the imputation is conveyed. Such a permissible variant might be that Ms Spencer “venerates” Lucifer. However, even if such a permissible variant were conveyed, I do not accept that the evidence supports a finding that Ms Spencer “venerates” Lucifer or Satan.

162 She was unequivocal in her view that Lucifer is bad and evil. As acknowledged by the defendant, traditional Christian theology holds that the Devil can be both

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<sup>104</sup> T222, L15-22



alluring and deceptive, and her remarks about Lucifer can be understood through this prism.

163 I do not accept that an interest in Egyptology, the occult, Rudolph Steiner, or other spiritual matters amounts to a veneration of Lucifer. I do not accept that taking her daughter to a “witchy” shop during her childhood, or using spells, or wearing a cape, demonstrate a veneration for Lucifer.

164 I do not accept that her comments to Ellicia about a job offer, or that her “inside information” about world events, establish a veneration of Lucifer.

### **Contextual Truth**

165 The Act provides at s26:

“(1) It is a defence to the publication of defamatory matter if the defendant proves that—

- (a) the matter carried ... one or more other imputations (***contextual imputations***) that are substantially true; and
- (b) the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.”

166 The defendant says the publication carries three contextual imputations that are substantially true. The imputation that Ms Spencer is a worshipper of the Devil does no further harm to her reputation because of the substantial truth of the contextual imputations.

167 The three contextual imputations are:

- (a) Ms Spencer is in direct communication with a neo-Nazi family and has coordinated with them to persecute a Christian group;
- (b) Ms Spencer is part of a larger international group of parents, influenced by anti-“cult” campaigners, who have coordinated their efforts to persecute a Christian group in which their adult children have been involved; and

(c) Ms Spencer communicates with, and is willing to associate with, those involved in a serious violent assault against a member of a Christian group.

168 The defendant pleads that, in an earlier version of her statement of claim, Ms Spencer had pleaded that the video conveyed a defamatory imputation that she “conspired with neo-Nazis and attempted murderers to persecute and terrorise a Christian group”.<sup>105</sup> The defendant submits that, by pleading this imputation, Ms Spencer “admits” that the contextual imputations are conveyed.

### **Background relevant to contextual imputations**

169 In approximately mid-2020, Ms Spencer made contact with Jeni Stevens,<sup>106</sup> whose son, Christian Stevens, had joined the Jesus Christians in November 2019.

170 Ms Stevens gave evidence that her son left home two days after his eighteenth birthday, leaving behind his belongings and mobile phone, and a note informing his parents that he had left to join the Jesus Christians. Ms Stevens subsequently discovered that he had been in secret communication with the Jesus Christians for about three years, and had travelled from his home in Sydney to join the group in Melbourne. Christian is autistic and Ms Stevens believed he was vulnerable and was being coerced by the defendant.

171 She and Christian’s father applied for guardianship orders in the New South Wales Civil and Administrative Tribunal and the Victorian Civil and Administrative Tribunal. They were not successful in obtaining those orders.

172 On 29 May 2020, Christian’s father, Chris Stevens, sent an email to the defendant’s daughter, informing Christian that “the gist of our Will is to leave everything of economic value to our three oldest sons”.<sup>107</sup> Ms Stevens told Ms Spencer that she and her husband had decided to take Christian out of their wills.

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<sup>105</sup> T751, L7-11

<sup>106</sup> T706, L13-14

<sup>107</sup> Ex D36 – Chris Stevens to Ros Everett and others, dated 29 May 2020 regarding ‘Wills’ at JCB 208

173 Ms Spencer gave evidence that disinheriting children in the Jesus Christians had been a topic of conversations on a chat forum on which she was engaged. She denied that disinheriting children was a way to coerce grown children to leave the Jesus Christians,<sup>108</sup> or that she was conspiring with other parents to punish their children for being Jesus Christians.<sup>109</sup> She had discussed the topic of disinheriting children with other parents, including Jeni Stevens.

174 Ms Spencer wrote to Ellicia on 25 October 2020, stating:

“You are correct, I do not want Dave or Tina having any say in how money I give to you is spent. I would like you to know that if you need money, please feel free to ask, albeit there is the caveat that you have full autonomy over its use. On the subject of money, if anything should happen to me, you are not entitled to any inheritance while you are with Jesus Christians. Lachlan will inherit my house and everything else; I will not financially support Dave. Please know that this is not an indication that I do not love you; it is simply a practicality that I believe most JCs are familiar with. The topic of inheritances has been the topic of conversation between myself and many parents of JCs members and ex-members.”<sup>110</sup>

175 In about January 2021, a new member, Heather Kelly, also known as Candis, joined the Jesus Christians. Heather Kelly was from the USA. Between February 2021 and March 2021, Ms Spencer, Ms Stevens and Linda Kelly (“Ms Kelly”), the mother of Heather Kelly, communicated via Facebook Messenger group.<sup>111</sup> Ms Spencer said the chat stopped in March 2021, around the time that Heather returned home.<sup>112</sup>

176 In the group chat, the three mothers discussed their feelings about the situation with their children, as well as Ms Kelly’s concerns about her husband’s health issues. They shared information they had found online from former Jesus Christian members and other sources. They also discussed the following:

(a) Ms Kelly talked with authorities in the USA;

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<sup>108</sup> T350, L16-18

<sup>109</sup> T350, L26-27

<sup>110</sup> Ex D42 – Email from Renee Spencer to Ellicia Klimek, dated 25 October 2020 with links to cult websites at JCB 279

<sup>111</sup> Ex D10 – Facebook messenger group chat between the plaintiff, Ms Kelly and Ms Stephens dated February to March 2021 at JCB 2385-2436

<sup>112</sup> T457, L17

- (b) whether what was happening to their children in the Jesus Christians amounted to human trafficking. Ms Spencer expressed the view that “I definitely think it fits!” and that “Dave does it all --- coercion, vulnerability, forced labour and organ donations”. She asked what they need to do to make authorities see this, to which Ms Stevens replied “I have no idea”. Ms Spencer said “I’m willing to go down whatever track is needed to take down McKay (sic)! Well, almost anything...I don’t want to be charged with manslaughter, lol”;<sup>113</sup>
- (c) the prospect that the Jesus Christians coerced marriages and whether this could be brought to the attention of the authorities;
- (d) that Ms Spencer had attempted to speak with someone at the Australian Federal Police to ask about human trafficking;
- (e) the prospect that Jesus Christians engaged in passport forgery;
- (f) Ms Spencer’s “aim” to accuse Dave of so much stuff that the government had to bring Ellicia back to Melbourne for questioning;
- (g) that Ms Spencer had prepared a letter to the Australian Federal Police and the Premier of Victoria;
- (h) that Ms Stevens had compiled media articles about the Jesus Christians;

177 On 7 February 2021, the *Herald Sun* newspaper published an article about the Jesus Christians, which featured references to Ms Kelly and the circumstances of both Ms Stevens and Ms Spencer.<sup>114</sup> Ms Spencer said she had spoken with the reporter for the article. Ms Stevens denied any involvement with the article.

178 In April 2021, Sheila Johnson, the mother of Joseph Johnson, wrote to Ms Spencer by email, introducing herself. Ms Spencer responded to say she would ordinarily

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<sup>113</sup> Ex D10 (*supra*) at JCB 2388 and 2389

<sup>114</sup> Ex D5 – *Herald Sun* article “Destitute for Jesus” dated 7 February 2021 at JCB 687-688

phone Ms Johnson, but was in the middle of moving house. Ms Spencer described the contact with Sheila Johnson as “brief”.<sup>115</sup>

179 In addition to contact with Ms Stevens, Ms Kelly and briefly with Ms Johnson, Ms Spencer said she had contact with Euphonie, an ex-member of the Jesus Christians, and a parent in each of South Korea, North America and Argentina. Ms Spencer said she had read about 300 articles from 1980 onwards and had watched a “Jeremy Kyle” interview, and she had seen parents on that show express the “anguish they felt” at having “lost” their children to the Jesus Christians.<sup>116</sup> She said she had made contact with three of those parents, one of whom was Jeni Stevens.<sup>117</sup>

**In is direct communication with a neo-Nazi family and has coordinated with them to persecute a Christian group**

180 The defendant submits that the publication conveys the imputation that Ms Spencer had direct communication with a neo-Nazi family and coordinated with them to persecute a Christian group.

181 He says this is true, because Ms Kelly and her husband were neo-Nazis, and Ms Spencer “coordinated” with them to persecute a Christian group.

182 Neither the defendant, nor Ms Kelly, gave evidence. The defendant tendered screenshots of a website run by Ms Kelly’s husband, and subsequently by Ms Kelly, where Nazi paraphernalia was sold.<sup>118</sup> He tendered documents showing Ms Kelly was an owner of the business.

183 The defendant made allegations in the video about the Kelly family and their links to Richard Butler, founder of a group called the “Aryan Nations”, a white supremacist organisation. In the video, the defendant alleged that the Kellys called Richard Butler their “pastor”.

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<sup>115</sup> T355, L26

<sup>116</sup> T355, L6-11

<sup>117</sup> T355, L15

<sup>118</sup> Ex D44 – Screenshots of PZG website at JCB 2007-2012

184 In the video, the defendant says Ms Spencer has “linked up with the Kellys in particular to pass on threats about how they are all going to use their various evil powers to stalk and torment us around the world”.<sup>119</sup>

185 The alleged threats from the Kellys include that a family member has high military security clearance which “can be used to make our lives miserable”.<sup>120</sup> The publication goes on: “Most of this is laughable, although we don’t mind acknowledging that eventually someone will succeed in bringing us down. But I don’t think it’s time for that yet”.<sup>121</sup> The defendant then says that the Bible says to “rejoice when we are persecuted” and that the video is “our celebration of spiritual victory over all of this insane hatred”.<sup>122</sup>

186 Evidence of any correspondence the Kellys had with the defendant was not before the Court as a consequence of the defendant choosing not to give evidence.

***Is the first contextual imputation conveyed?***

187 The video refers to “threats” to stalk and torment, rather than acts of actual persecution. However, by saying that the Jesus Christians laugh in the face of persecution, the idea that the “unholy trinity” who have become “Strange bedfellows” are persecuting the Jesus Christians, is conveyed.

188 The publication says Ms Spencer has “linked up with” the Kellys, in particular, which is sufficiently similar to impute “direct communication”.

189 The first contextual imputation is conveyed.

***Is the first contextual imputation substantially true?***

190 I do not know whether Ms Kelly is a neo-Nazi. The contextual imputation pleaded is that Ms Spencer was in “direct communication with a neo-Nazi family”. Ms Spencer was, for a period of less than two months, in direct contact with Ms Kelly

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<sup>119</sup> Schedule “A” (*supra*) at JCB 22

<sup>120</sup> (*Ibid*)

<sup>121</sup> (*Ibid*)

<sup>122</sup> (*Ibid*)

through the Facebook messenger chat group. In that Facebook messenger chat there is no mention of neo-Nazi or white supremacist beliefs and no mention of the website that sells Nazi paraphernalia.

191 Participation in the Facebook messenger chat would be insufficient to enable Ms Spencer to be aware of Ms Kelly's links to a neo-Nazi business, a neo-Nazi website, or to Richard Butler. The chat contains nothing that would enable Ms Spencer to be aware that Ms Kelly has white supremacist beliefs (if she does have those beliefs).

192 I am not persuaded that, by participating in the chat, Ms Spencer could or should have known that Ms Kelly held neo-Nazi views or was part of a neo-Nazi family. If Ms Kelly does hold such views, and I make no finding about that, those views are not disclosed in the group chat.

193 After the video was published, Ms Spencer wrote an email in which she said that now she knew the defendant was worried about her joining forces with these other women, that perhaps she should do so.<sup>123</sup> She said, in evidence, she did not know Ms Kelly well, and did not know whether or not she was a neo-Nazi,<sup>124</sup> but given the defendant had called her a Satanist and she was not, she was disinclined to believe what he said about Ms Kelly.

194 Ms Spencer said she had no knowledge of any connection between Ms Kelly and neo-Nazi links, and had no contact with anyone in the Kelly family, other than Ms Kelly.<sup>125</sup> Nothing that Ms Kelly said to Ms Spencer ever caused her to believe that Ms Kelly held such beliefs or had such connections. She first became aware of Ms Kelly's alleged neo-Nazi links when she saw the *Strange Bedfellows*, video which was published many months after the group chat ceased.<sup>126</sup> There is no

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<sup>123</sup> Ex D1 – Email from Renee Spencer to Ellicia, Dave and Tina regarding 'Voice in the Desert video' dated 8 November 2021 at JCB 304

<sup>124</sup> T363

<sup>125</sup> T264, L21-25

<sup>126</sup> T264, L21 – T265, L2

evidence that Ms Spencer was in contact with Ms Kelly after becoming aware of the allegations made by the defendant about Ms Kelly.

195 In order to establish the “sting” of the imputation, the defendant would need to show that Ms Spencer was in direct communication with a family which she knew was a “neo-Nazi family”. The defendant has not established this.

196 Exchanging emails with a person and subsequently finding out that person holds odious views, does not convey the sting of the contextual imputation pleaded.

197 Accordingly, the defence of contextual truth in relation to the first contextual imputation fails.

**Is part of a larger international group of parents, influenced by anti-“cult” campaigners, who have coordinated their efforts to persecute a Christian group in which their adult children have been involved**

***Is the second contextual imputation conveyed?***

198 The publication makes no mention of an international group of parents being “influenced” by anti-“cult” campaigners.

199 The publication says that:

“There are other parents – mostly mothers – who have also conspired with this unholy trinity. But these three appear to be the main ringleaders, along with world-renowned cult-buster Rick Ross.”<sup>127</sup>

200 The defendant then goes on to remind viewers about an earlier video detailing a group member’s alleged kidnapping by Rick Ross.

201 Nothing in the video conveys an imputation that Rick Ross has influenced Ms Spencer or the other group of parents.

202 Further, nothing in the video suggests that the “other parents – mostly mothers” have persecuted the Jesus Christians, or even threatened to “persecute” or “stalk and torment”. The defendant says these other mothers have “also conspired with

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<sup>127</sup> Schedule “A” (*supra*) at JCB 22



this unholy trinity”, but does not elaborate in what way. After detailing his allegations about Rick Ross and referring viewers to another video linked to the publication, the defendant says:

“... The video is chilling in revealing just how close the family came to causing the death of their own daughter at the behest of this one irresponsible cult-buster. But obviously Rick’s modus operandi is spreading.”<sup>128</sup>

203 He then goes on to detail the Kellys’ alleged threats that they have neo-Nazi support bases in every country where there are Jesus Christians. If anything, this may convey an imputation that other parents are “conspiring” to try to remove their children from the group or to deploy tactics adopted by Rick Ross.

204 The contextual imputation is not conveyed.

***Is the second contextual imputation substantially true?***

205 However, in the event that the imputation is conveyed, I turn to consider whether it is substantially true.

206 Ms Spencer said she had attended a seminar online that was put on by the Cult Information Family Support (“CIFS”) in 2020. Ms Stevens had also attended online seminars put on by CIFS, which she described as a support group for people with family members in cults and for people who are ex-members of cults. She said, when her son Christian first left to join the Jesus Christians, CIFS put her in touch with support people who had relatives in the Jesus Christians. Ms Stevens said she had been in touch with about ten or twelve people from CIFS.<sup>129</sup> There was no evidence before the Court that CIFS is an anti-“cult” group and Ms Steven’s said it was not anti-“cult”, but rather was a support group.

207 Ms Spencer said she had come across the Cult Education Institute forum run by Rick Ross. She said she had never posted on that forum or left a personal

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<sup>128</sup>

(*Ibid*)

<sup>129</sup>

T695, L28

message for anyone on that forum. She had one email from the Cult Education Institute.

208 Ms Spencer sent Ellicia a link to something called “cultnews.com”,<sup>130</sup> as well as other links.

209 In addition to contact with these parents as described, Ms Spencer gave evidence that she had contact with Pablo Salum in Argentina. The defendant pleads that:

“Pablo Salum is an anti ‘cult’ campaigner in Argentina, who led a two year campaign against the Jesus Christians there and failed to get the police to lay charges, posted on Twitter to indicate he has been kept up to date with what is happening with this defamation case.”<sup>131</sup>

210 The defendant submits that the use of the term “cult” is derogatory, and the Court can infer that any organisation with the term “cult” in the title is anti-“cult”. The defendant says Ms Spencer’s evidence establishes that she visited a number of anti-“cult” websites and researched the Jesus Christians online through these. The Court can infer that Ms Spencer was influenced by these websites.

### ***Coordinated efforts***

211 Ms Stevens compiled a list of media articles about the Jesus Christians, but there is no evidence that Ms Spencer had any particular involvement in this or made any use of this document.

212 Ms Stevens shared information from the private investigator she hired that the Jesus Christians appeared to be on the move. The private investigator had the number plates of vehicles used by the group and Ms Spencer wanted to pass on those details to the police.<sup>132</sup> Ms Spencer also made an enquiry of the private investigator to see whether it would be worthwhile engaging his services to try to locate Ellicia in Mexico, but ultimately decided not to pursue that avenue.

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<sup>130</sup> Ex D42 (*supra*) at JCB 280; T934, L21

<sup>131</sup> Amended Defence (*supra*) at page 5, paragraph [7]

<sup>132</sup> T464, L17

213 Ms Spencer shared her intention to contact the Australian Federal Police with Ms Stevens and Ms Kelly and shared a draft of her letter to the AFP with them. She proposed they would jointly draft a cover letter and pool their research, but there is no evidence that Ms Kelly or Ms Stevens had any input into the document she ultimately sent to the police.

214 Ms Spencer said there had been discussion on some of the forums about disinheriting children who had joined the Jesus Christians.

***Persecution of a Christian group***

215 The defendant submits the following matters establish that Ms Spencer persecuted a Christian group:

- (a) reporting Ellicia as missing to the Australian Consulate General in Los Angeles,<sup>133</sup> which caused Ellicia to be detained and questioned for a period while crossing the border between the USA and Mexico on at least one occasion;
- (b) threatening to, and on at least one occasion, reporting Ellicia as missing to police in Australia, which caused local police in Sale to visit the group's property to conduct a welfare check;<sup>134</sup>
- (c) informing Ellicia that she would be disinherited while she remained a member of the Jesus Christians;
- (d) participating in interviews resulting in media articles that contained unfavourable depictions of the defendant and the Jesus Christians. The defendant submits these articles gave the overall impression that the Jesus Christians were a dangerous group;

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<sup>133</sup> Ex P20 – Email chain between Ellicia and the plaintiff, dated 11 August 2020 to 20 August 2020, regarding “Welfare Concern” at JCB 226-227

<sup>134</sup> Ex D10 (*supra*) at JCB 2427

- (e) providing inaccurate information to journalists. For example, in an article in the *Herald Sun* dated 7 February 2021,<sup>135</sup> she told a journalist that Ellicia had returned her mobile phone without explanation, but, in fact, Ellicia had emailed to say she no longer needed the phone. She was quoted as saying she had not seen her daughter for three years in February 2021, when, in fact, she had last seen Ellicia in December 2019. Ms Spencer said she had not told the journalist she had not seen her daughter for three years.<sup>136</sup> Providing this inaccurate information amounted to lying to the media in order to persecute the Jesus Christians;
- (f) writing to the Australian Federal Police, alleging that Ellicia was living in “conditions of servitude that are akin to modern slavery”.<sup>137</sup> This was not true and was part of an attempt to have police investigate the Jesus Christians which, itself, amounts to persecution;
- (g) writing to her daughter and making allegations about the defendant, including that he has money hidden, which amounted to persecution of the defendant;<sup>138</sup>
- (h) writing to the defendant in abusive terms, including saying he was a malignant narcissist, that he was very seriously mentally ill, had delusions and paranoia, and had a Messiah Complex,<sup>139</sup> which the defendant submits amounted to persecution, because Ms Spencer was using “gaslighting” as a form of torment and “you can drive a person crazy through gaslighting.”<sup>140</sup> It’s where you use psychological tricks to make the person think they are crazy”.<sup>141</sup> He submitted that Ms Spencer used her psychology training

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<sup>135</sup> Ex D5 (*supra*) at JCB 687-788

<sup>136</sup> T407 – T408

<sup>137</sup> Ex D6 – First page summary statement by Renee Spencer regarding David McKay and modern slavery at page 1

<sup>138</sup> Ex D12 – Email from the plaintiff to Ellicia dated 24 February 2022 at JCB 314-315; T478

<sup>139</sup> Ex P21 – Email chain between plaintiff and defendant, Tina and others dated 16 August 2020 and 31 August 2020 at JCB 226-227; and, Ex D14 – Email from plaintiff to defendant and others dated 21 September 2020 at JCB 263

<sup>140</sup> T482, L8-11

<sup>141</sup> T482, L9-11

unethically by trying to drive him crazy.<sup>142</sup> An attempt to impact his psychological health amounts to persecution;

- (i) writing a letter to the Premier of Victoria on 16 July 2020,<sup>143</sup> which included the statements “I’m sure McKay is a narcissist, I have psychological/mental health training”.<sup>144</sup> Ms Spencer agreed that she was using her mental health training to add authority to her diagnosis,<sup>145</sup> and agreed that she did not have authority to diagnose mental illness and was not registered with the Psychology Board of Australia.<sup>146</sup> In that letter, Ms Spencer wrote “McKay has been written about on cult educational websites around the globe for decades but he’s always somehow avoided persecution”.<sup>147</sup> The defendant submits this demonstrates a desire or intention by Ms Spencer to persecute him. Ms Spencer said she meant to use the word “prosecution” not “persecution”.<sup>148</sup> The defendant says the contents of the letter are not true and form part of the persecution that Ms Spencer engaged in;
- (j) sharing with others, including Ellicia, Ms Spencer’s view that the defendant had mental health issues;
- (k) Attempting to start a “sex scandal” about the defendant, by writing to her daughter that:

“I get it, if I reciprocate Mx McKay’s so-called love for me he’ll save my soul ... .

... In a way, this whole defamation case is all about the unrequited love MX McKay has for me (yikes!).

Every time Mx McKay tells me he loves me, I tell him to ‘Fuck off’, yet he just can’t accept that rejection. I wonder what Cherry makes of this? Does she realise that her husband is lusting after me. ... .”<sup>149</sup>

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<sup>142</sup> T482, L14  
<sup>143</sup> Ex D13 – Letter from the plaintiff to Premier Daniel Andrews (as he then was) dated 16 July 2020  
<sup>144</sup> *Ibid* at page 2  
<sup>145</sup> T491, L7  
<sup>146</sup> T491, L26-27  
<sup>147</sup> Ex D13 (*supra*) at page 2  
<sup>148</sup> T491, L22-25  
<sup>149</sup> Ex D25 – email from plaintiff, dated 29 December 2022 at JCB 399-400

(sic)

Attempting to create a sex scandal amounts to persecution of the defendant, who is a Jesus Christian, and, therefore, by extrapolation, amounts to persecution of the Jesus Christians, a Christian group;

- (l) acknowledging on the group chat with Ms Stevens and Ms Kelly that her “aim is to accuse Dave of so much stuff with references that the Australian government has to bring my daughter back to Melbourne for questioning”;<sup>150</sup>
- (m) using information provided by a private investigator hired by Ms Stevens to monitor the group’s movements;
- (n) using this defamation proceeding to exert financial pressure on the Jesus Christians by asking that “a threat be passed on”<sup>151</sup> that they will have to pay compensation and legal costs and “it’s probable that from now on, all the money that Jesus Christians obtain from selling books, pamphlets, dvds, etc., will go towards McKay’s legal bills.”;<sup>152</sup>
- (o) emailing Massimo Introvigne, a person described by the defendant as an expert on new religious movements, on 27 August 2023,<sup>153</sup> informing him that she had read some of his articles and noted his support for David McKay. In that email, Ms Spencer noted that she suspects Mr Introvigne might write an article about her court case against the defendant and she wanted to provide her side of the story. She said she feels vilified by the defendant because he has accused her of worshipping the Devil and whatever she says is disrespected by her daughter and the Jesus Christians’ community. She explained her understanding of coercive control and that she considered coercive control measures put in place by the defendant’s doctrines prohibit Jesus Christians’ members from examining alternative perspectives. She

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<sup>150</sup> Ex D10 (*supra*) at JCB at 2411

<sup>151</sup> T758, L11

<sup>152</sup> Ex D22 – email from plaintiff to Ellicia, dated 14 December 2021 at JCB 311

<sup>153</sup> Ex D9 – email from plaintiff to Massimo Introvigne, dated 27 August 2023 at JCB 2326-2330

said the defendant uses fear as the primary means of preaching, which impacts his followers' nervous systems, impairing brain function, so that they do not have free will. She said that, as a mental health practitioner, she is of the opinion that the defendant is suffering some sort of mental health issue;

(p) indicating she may go to the media and connect the Jesus Christians with an unrelated Kenyan group who mass-suicided in 2023, while acknowledging that such an action could lead to vigilante violence against Jesus Christians' members in Kenya;<sup>154</sup>

(q) threatening legal action if her daughter did not return to her and threatening to call the police if any Jesus Christians came near her or her son.

216 Ms Spencer submits that, to the extent there was any coordination between parents, it was not to persecute a Christian group, but was because of concern for their children's welfare. The motivation for any action taken by the parents, including Ms Spencer, is relevant because the defendant pleads a contextual imputation that action was taken with the purpose of persecuting a Christian group. That is, that the parents have coordinated their efforts in order to persecute a Christian group.

217 Ms Spencer says that, whatever her conduct, it was not towards a Christian group, but was directed at the defendant.

***Findings on the substantial truth of the second imputation***

218 It is apparent from Ms Spencer's evidence that she had concerns about the group Ellicia had joined prior to becoming aware they were Jesus Christians. However, these concerns significantly escalated after she researched the Jesus Christians online. Whether her research was on anti-"cult" forums is not established on the evidence.

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<sup>154</sup> JCB 414-415

- 219 However, there is some force in the submission that the word “cult” is a derogatory term and any organisation with the word “cult” in its title is likely to be opposed to, rather than supportive of, such groups.
- 220 By virtue of being a parent of a child who has joined the Jesus Christians, Ms Spencer is a “part” of a larger international group of parents.
- 221 I understand the defendant’s submission to be that there is a great deal of anti-“cult” information available on the internet which is untrue and which depicts the Jesus Christians as a dangerous organisation.
- 222 In his submission, false information about his group creates anxiety in parents whose children join his group and causes the breakdown of their relationships with those children. The parents are unable to accept that their grown children are making decisions of their own free will and damage their relationship with those children by saying and doing harmful things.
- 223 Whether these parents have been influenced by anti-“cult” campaigners is of marginal relevance to the sting of the imputation, which is that they coordinated their efforts to persecute a Christian group.
- 224 Perhaps the closest thing to a “coordinated effort” is the *Herald Sun* article of 7 February 2021. Ms Kelly is quoted and Ms Spencer, while identified only as a Melbourne mother, also spoke with the journalist. Ms Stevens’ son’s circumstances are also mentioned, although Ms Stevens said it was her husband who had spoken with the reporter.
- 225 Ms Spencer, Ms Stevens and Ms Kelly otherwise talked about working collectively and appear to have hoped they could coordinate their efforts to achieve an outcome, whether that was to persuade police to investigate the defendant or persuade the defendant to “release” their children. The evidence discloses that their efforts at coordination were not very successful.



226 Ms Spencer took her own action. She wrote to the Australian Federal Police and the Premier on her own. No other signatures were attached. There is no evidence she did anything with the media archive compiled by Ms Stevens. She asked for the private investigator hired by Ms Stevens to share the licence plate numbers he had obtained, but there is no evidence that anything came of this, nor that any use was made of those licence numbers. There was no evidence that Ms Johnson and Ms Kelly were in touch with each other or had coordinated their efforts. There is no evidence that Ms Johnson and Ms Spencer coordinated their efforts, nor that they discussed doing so.

227 Other than the Facebook messenger chat, there is little evidence of any coordinated efforts by parents of Jesus Christians. It seems that the larger group of parents largely shared their stories and information about how they understood the Jesus Christians operated.

228 Turning now to whether Ms Spencer persecuted a Christian group, the evidence shows Ms Spencer has a deep dislike of the defendant and considers him to be a malign influence, particularly on her daughter. She has sent numerous emails to the defendant which can be fairly characterised as “spleen venting”, often descending into rank insult and, at times, abuse.

229 Ms Spencer professed, in those emails, to have psychological qualifications and training and “diagnosed” the defendant as a malignant narcissist. The defendant responded:

“Another week and another exchange, eh!

Perhaps it would be helpful if you could go through the nine criteria for narcissism as they relate to me, so I can at least understand you better.

I assume all of this is from stuff you have been learning through some kind of university course. Is that right?

What do the experts recommend as a way of treating malignant narcissism?

I find your letters interesting, even if they are somewhat unpleasant.”<sup>155</sup>

230 After many decades of leadership of his group, the defendant appears to be well versed in dealing with parents who are concerned about the welfare of their children after joining the Jesus Christians. His response was to string Ms Spencer along by engaging her energies and ire. I doubt he had any real interest in the nine criteria for narcissism. He maintained the correspondence with Ms Spencer for a while, providing comparatively short, apparently empathetic replies to Ms Spencer’s extremely long and increasingly irate correspondence.

231 As the defendant chose not to give evidence, I do not know of the impact of this correspondence on him, though I can assume it was unpleasant.

232 However, it is important not to conflate Ms Spencer’s negative views about the defendant with her views about the Jesus Christians more generally. It is also important not to equate the actions she took in relation to the defendant, such as reporting him to the Australian Federal Police and writing a letter to the Premier, with actions taken in relation to the Jesus Christians.

233 Persecution can include consistent hostile actions that harass or cause difficulty for, or ill-treatment of, the recipient. Certainly, Ms Spencer was hostile to the defendant and wrote abusive and intemperate messages to him.

234 She wrote ill-advised assessments of his mental health and other characteristics to her daughter and others. Whether those abusive messages, ill-advised mental-health assessments, complaints and interviews were true in substance or not, I do not accept that they amount to persecution of “a Christian group”.

235 She wrote complaints about his conduct to the police and the Premier, and gave interviews to newspapers. I do not accept that raising her concerns about her

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<sup>155</sup> Ex P22 – Email chain between the plaintiff and the defendant, dated 7 September to 13 September, with attached sketch at page 253 at JCB 253

daughter's safety with police and the Australian consulate, writing to the Premier or giving interviews to the media amount to persecution. There was evidence of:

- (a) an instance of police doing a welfare check on Ellicia in Sale;
- (b) an instance of border security detaining Ellicia for questioning at the US-Mexico border which resulted in inconvenience to Ellicia;
- (c) a letter to the Premier which, on the evidence before me, resulted in no action;
- (d) a submission to the Australian Federal Police which again resulted in no action;
- (e) participation in two interviews with the media, one which post-dated the publication.

236 None of this conduct, over a period of 4 or more years, could reasonably be considered persecution.

237 Ms Spencer was motivated by her concern about her daughter's welfare, whether or not that concern was well-founded. Rightly or not, she perceived the defendant as responsible for placing her daughter at risk.

238 She informed Ellicia that she would not inherit while she remained a member of the Jesus Christians. Ms Spencer denied that disinheriting Ellicia was designed to coerce her to leave the Jesus Christians. Given that Ellicia had joined the Jesus Christians and undertaken a "forsake all" ceremony it is difficult to see how removing the prospect of future worldly goods would "coerce" Ellicia to leave the Jesus Christians. Ms Spencer denied that disinheriting Ellicia was intended to punish her child, or to force the leaders of the Jesus Christians to stop coercing her child.

239 I do not accept that disinheritance of her child could amount to persecution of a Christian group.

240 I do not consider the conduct of Ms Spencer amounted to persecution. However, even if it did, it was “persecution”, not of a Christian group, but of the defendant.

241 By pleading that there is truth in the imputation that Ms Spencer persecutes “a Christian group”, the defendant is putting the religious identification of the group at the heart of his defence of contextual truth. However, there is no evidence that the fact the Jesus Christians identify as “Christian” was the cause of Ms Spencer’s alleged persecution, nor that the beliefs of the Jesus Christians themselves caused Ms Spencer’s actions. It was her perception of the tactics engaged in by the defendant, which she considered to be coercive control, and her perception that the defendant was deliberately causing a rift between her and her daughter, that motivated her actions.

242 It is clear her focus is on the defendant, and not on the Jesus Christians as a group. For example, she says in various documents:

“... Dave does it all ... coercion, vulnerability, forced labour, and organ donations.”<sup>156</sup>

“... I’m willing to go down whatever track is needed to take down McKay!”<sup>157</sup>

“... we need physical help in the form of police arresting Dave, not just prayers!”<sup>158</sup>

“Ellicia has been systematically isolated from her family by Mr McKay through deception, coercion and threatening behaviour”.<sup>159</sup>

243 The evidence of Ellicia and Joseph supports Ms Spencer’s evidence that, when Ellicia initially joined “a Christian group”, Ms Spencer was supportive. In her letter to the Australian Federal Police, Ms Spencer says:

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<sup>156</sup> Ex D10 (*supra*) at JCB 2388

<sup>157</sup> (*Ibid*) at JCB 2389

<sup>158</sup> (*Ibid*) at JCB 2407

<sup>159</sup> Ex D6 – First page summary statement by Renee Spencer regarding David McKay and modern slavery at page 1

“I understood Christianity was an important part of my daughter’s life and I supported her in this regard, even though I had different spiritual views”.<sup>160</sup>

244 It was only when she began to experience what she perceived as a rift in her relationship with Ellicia, which she attributed to the conduct of the defendant, that she began to express negative views about him. Nothing in the evidence supports a submission that the basis for Ms Spencer’s negative views was the group’s identification as “Christian”.

245 Even if I were satisfied that Ms Spencer’s conduct amounted to persecution of the defendant, that does not equate with persecution of a Christian group. Her conduct towards the defendant was motivated by her belief that he was exerting coercive control over her daughter and causing a rift in her relationship with her daughter, not because he was a Jesus Christian or a member of a Christian group.

246 The second contextual imputation is not substantially true.

**Communicates with and is willing to associate with those involved in a serious violent assault against a member of a Christian group.**

247 The background to this contextual imputation is the alleged assault of a member of the Jesus Christians, Reinhard Zeuner, by the father and brother of Joseph Johnson. In the video the defendant says:

“Sheila and Jared Johnson ... tried, many years ago, to kill one of our members, kicking him repeatedly in the head while he was unconscious on the ground. This member only survived when it became clear that the murder attempt was being filmed by a passer-by in the early morning attack. Nevertheless, the victim was rushed to intensive care and finished up with permanent brain damage because of the assault. To this day, the family is unrepentant, and they continue to demand an apology from their son for having joined our community.”<sup>161</sup>

248 The defendant then says the Johnsons and the Kellys are:

“two families, which could hardly be more opposite, both opposing us and working together to do it ... their hatred for ourselves has forced them into bed together. ... .”<sup>162</sup>

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<sup>160</sup> Ex D6 (*supra*) at page 10  
<sup>161</sup> Schedule “A” (*supra*) at JCB 21  
<sup>162</sup> (*Ibid*) at JCB 21-22

249 The defendant then goes on to make his allegations about Ms Spencer and says:  
“... she has linked up with the Kellys in particular to pass on threats about how they are all going to use their various evil powers... .”<sup>163</sup>

250 He then says that the other parents, mostly mothers, have also “conspired with this unholy trinity”.<sup>164</sup>

***Is the third contextual imputation conveyed?***

251 There is no specific mention in the publication of any communication or association between Ms Spencer and Ms Johnson. The allegation is that Ms Spencer “linked up” with the Kellys. She is linked to the Johnsons only by reference to “this unholy trinity”. However by first alleging that the Kellys and Johnsons are working together and then saying “the story gets worse” and using the words “in particular” when describing the link between the Kellys and Ms Spencer, there is at least a suggestion that Ms Spencer is also communicating and willing to associate with the Johnsons.

252 On balance, and having regard to the fact that the ordinary reasonable reader will not carefully parse the words but will gain an overall impression, there is a sufficient basis to find that the contextual imputation is conveyed.

***Is the third contextual imputation substantially true?***

253 Joseph gave evidence that, in 2006, he visited his family home in California with two other Jesus Christians, including Reinhard Zeuner. He said his father physically threw Reinhard and the other group member out of the house. His younger brother restrained Joseph in the house, while his father and older brother physically assaulted Reinhard on the street. His mother stood at the window of the house with a loaded gun.

254 Joseph said the police declined to prosecute his family members who committed the assault because “they said that the Jesus Christians community was a cult”

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<sup>163</sup> (Ibid) at JCB 22

<sup>164</sup> (Ibid) at JCB 22

and they were “able to persuade the courts to overlook the obvious injustice”.<sup>165</sup> However, Reinhard sued Joseph’s father, Jared Johnson, and brother John Onyejiaka for damages. Joseph gave a deposition in that proceeding, but does not think the matter went to trial. It appears Reinhard Zeuner accepted a statutory offer of compromise and settled his claim in 2009.<sup>166</sup>

255 On 6 April 2021, Ms Spencer had the following exchange with Sheila Johnson:

“Hello Renee,  
My name is Sheila Johnson, and I am the mother of Joseph Johnson.  
Please feel free to contact me at this e-mail address.

My phone number is ... and I live in California.

I look forward to hearing from you.

Sheila.

...

Hi Sheila,

Lovely to hear from you. Ordinarily I’d call you over the next few days but I’m in the midst of moving house and am behind schedule for being ready for the moving truck that’s arriving tomorrow. I’ll give you a call next week once things are more settled. If there is anything urgent you’d like to pass onto me you’re welcome to email or call on ... .

Warm regards

Renée

...

Hi Renee,  
I look forward to hearing from you soon!

Sheila”<sup>167</sup>

256 Ms Spencer said she knew about Sheila’s story from media reports.<sup>168</sup> There was no evidence about the content of those media reports. She said she understood

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<sup>165</sup> T807

<sup>166</sup> Ex D29 – Case information in the matter of *Zeuner v Johnson et al*, filed 18 April 2008 at JCB 2063-2080

<sup>167</sup> JCB 2383

<sup>168</sup> T355, L29

that the allegation in the publication was that the Johnson family had attacked a Jesus Christian, but she had not discussed that attack with them.<sup>169</sup>

257 On 26 October 2022, she sent an email to Joseph Johnson in which she said:

“Your dedication to Dave’s script of what happened to Reinhard is not admirable. Your parents were never charged with murder by police, subsequently Dave sued them for thousands of dollars (despite his claims of taking a vow of poverty), and a mock trial was conducted with real whips. Reinhard has my full empathy for the injuries he sustained through that unfortunate self-defense situation, but the spectacle Dave has made out of it is disgraceful. What about Christian love and forgiveness? Jesus forgave the people who crucified him, yet you do not seem capable of forgiving your parents regardless of how much they have paid in terms of money, anguish, and the loss of their son. Sixteen years on and it appears that neither you or Dave are capable of real relationship healing, ie., Dave is still making video sermons that condemn and demoralize your parents. In sixteen years time, assuming Dave is still alive, will he continue to make videos in which he claims I am a Satanist? From what I understand of Dave and his treatment of your parents, that is very likely. Best I put a firm end to that now.

I am not a ‘Luciferian’, or a ‘Satanist’, or a worshiper of the devil in any way, shape, or form. I am greatly offended by Dave’s (and Tina’s) remarks about me, my faith, and spirituality. It is not okay for them to spread lies about me.

Jay, I have briefly spoken with your mother twice, hardly enough to say we are ‘bedfellows’. Similarly, we are not ringleaders who are conspiring to persecute a Christian group.

For the most part, all my advocacy for awareness of coercive control in cults has been done on my own, although I’m certainly not alone (I’ve come across a few others in Australia who are lobbying politicians for the same cause). If your parents and Linda Kelly are doing similar advocacy in America, then perhaps I need to build stronger ties with them. I genuinely believe that everyone has the right to freedom, including the right to express their faith and conscience without fear of ridicule.”<sup>170</sup>

(sic)

258 Beyond this email in which Ms Spencer says she has spoken briefly with Sheila Johnson twice, and the very brief email exchange between Ms Spencer and Ms Johnson set out above, there is no evidence of contact between Ms Spencer and the Johnson family with the exception of Joseph Johnson.

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<sup>169</sup> T369, L16

<sup>170</sup> Ex D4 – email from plaintiff to Jay, dated 26 October 2022 at JCB 352-353



259 I am not persuaded that one email and two brief telephone calls comprise a “willingness to associate”.

260 Communicating and associating with a person who has committed even very serious crimes, does not convey any defamatory sting. For example, lawyers, journalists and family members may communicate with, and be willing to associate with, those who commit violent crimes.

261 The pleaded contextual imputation is defamatory only if the “sting” it conveys is that the communication and willingness to associate arises because of lack of concern with, or willingness to turn a blind eye to, the fact of the violent assault. There is no evidence that is the case. The defendant did not put to Ms Spencer that she was unconcerned by the assault on Reinhard Zeuner, nor is it apparent from Ms Spencer’s evidence what her understanding of the circumstances of the assault were.

262 The third contextual imputation is not substantially true.

263 The defence of contextual truth fails.

**The contextual imputations do no further harm to the Plaintiff’s reputation**

264 Although I have found that the contextual imputations are not substantially true, I turn now to consider whether, if they were true, they would effectively swamp the pleaded imputation, thus causing no further harm to Ms Spencer’s reputation.

265 The defendant submits that being a Nazi, a person who would attempt murder, or a person who persecutes a religious minority, are characteristics that are reviled by the community. Even associating with such people would, if any one of these contextual imputations was made out, the allegation that she worships the Devil would do no further harm to Ms Spencer’s reputation..

266 The defendant pleads that:

“‘Neo-Nazi’ would have to be the most shocking description you could give to someone, considering the millions of people from religious minorities

who were killed by the Nazi regime (along with other minorities, such as people of African descent, homosexuals and handicapped people). To associate with neo-Nazis and even to coordinate your efforts with them to persecute a modern-day religious minority, is almost as shocking. This substantially-true imputation would have significantly damaged the plaintiff's reputation. Being thought of as a devil worshipper, if indeed that is what people even think, is minor by comparison. Lucifer and the theme of devil worshipping appear regularly in the entertainment industry, to the point where it is fashionable to use these themes to attract fans.

Similarly, participating in violence against a religious minority, such as the attack shown in the matter of complaint, is an action that is severely frowned on in Australian society. To associate with someone who does such things, being willing to overlook or even defend what they did, would also be seriously frowned on in Australian society.

Similarly, to persecute the religious group that your grown child chooses to be part of, goes against the values of Australian society, which values freedom of religion, the same freedom of religion that allows someone to be a devil worshipper if they so choose. And for it to be known that someone persecutes the members of that group, including their own grown children, in a coordinated way with other parents, would have to severely affect a person's reputation.”<sup>171</sup>

267 Ms Spencer says, in the context of a predominantly Christian audience, to be a devil worshipper is a particularly awful, insidious thing. It is to be against God and Jesus and to embody evil. In the words of former Jesus Christian, Daniel Reiher, it is the “worst of the worst”.<sup>172</sup>

### ***Findings on “no further harm”***

268 Someone who is “the worst of the worst”, who is against God, who worships the antithesis of God and who is the embodiment of evil, is someone who would be capable of any category of evil. That would include committing crimes, being a Nazi, and persecuting religious groups.

269 After referring to the Kellys and the Johnsons, and their “evil deeds”, the defendant then says “[b]ut the story gets worse”, before going on to make his allegations about Ms Spencer. It is apparent that the worst part of this story is that it involves, not just a criminal, not just a Nazi, but a Satanist as well. The concept of the “evil

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<sup>171</sup> Amended Defence (*supra*) at page 5, paragraph [7]  
<sup>172</sup> T600, L24-27

powers” is directly related to the concept of being a Satanist. Nazis and criminals are not commonly considered to have demonic power.

270 The fact that themes of devil worship are used in popular entertainment establishes nothing about the seriousness of the imputation or the way those activities are viewed by the ordinary, reasonable person. Popular entertainment also frequently features Nazis and criminals.

271 The defendant’s submission that being a worshipper of the Devil is an expression of religious freedom that is endorsed by Australian society, is disingenuous. The publication makes it clear that the alleged actions of Ms Spencer are “unholy”, motivated by hatred for Jesus and have the intention of destroying “that spotless Lamb of God whom we will follow to our death”.<sup>173</sup> The ordinary, reasonable person would understand that being a worshipper of the Devil seriously damages a person’s reputation and cannot be swamped by the contextual imputations alleged.

### ***Admissions***

272 To the extent the defendant submits an earlier pleading by Ms Spencer that similar imputations were conveyed constitutes an “admission” that the imputations are conveyed, I reject that submission.

273 Parties are obligated to bring before the Court the real issues in dispute between them and are encouraged not to waste court time and resources litigating peripheral matters.

274 It is apparent Ms Spencer’s central concern was the allegation she was a devil worshipper, because of the harm she perceived this would do to her relationship with her daughter and other Jesus Christians central to her daughter’s life.

275 The fact that she amended the pleading to remove claims about other imputations establishes no more than an appropriate attempt to narrow the issues in dispute.

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<sup>173</sup> Schedule “A” (*supra*) at JCB 22

She may have removed those imputations because she did not consider they were conveyed, or did not consider they were defamatory.

276 In any event, as I have not found any of those contextual imputations to be true, if the plaintiff had relied on her original pleading, a defence of substantial truth would have failed.

277 I do not consider the earlier pleading amounted to an admission, but if it did, it made no difference to the disposition of the matter.

### **Honest opinion**

278 The Act, at s31, relevantly provides

“(1) It is a defence to the publication of defamatory matter if the defendant proves that—

- (a) the matter was an expression of opinion of the defendant rather than a statement of fact; and
- (b) the opinion related to a matter of public interest; and
- (c) the opinion is based on proper material.

....

(4) A defence established under this section is defeated if, and only if, the plaintiff proves that—

- (a) in the case of a defence under subsection (1)—the opinion was not honestly held by the defendant at the time the defamatory matter was published ...

...

(5) For the purposes of this section, an opinion is **based on proper material** if the material on which it is based is—

- (a) is substantially true; or
- (b) was published on an occasion of absolute or qualified privilege (whether under this Act or at general law); or
- (c) was published on an occasion that attracted the protection of a defence under this section or section 28 or 29.

(6) An opinion does not cease to be based on proper material only because some of the material on which it is based is not proper material if the opinion might reasonably be based on such of the material as it proper material.”

... .”

279 The defendant pleads:

“... it is his honest opinion that the Plaintiff venerates, or has a deep respect for Lucifer. He had this honest opinion at the time that he scripted the matter complained of. While ‘worship’ would not be his choice of words, if the Plaintiff is able to successfully argue to the court that veneration of Lucifer and worship of the devil are the same thing, then the Defendant’s honest opinion would have to be that the Plaintiff does, in fact, worship the devil, based on the Defendant’s honest Christian understanding of who Lucifer is. It is important to point out that the kind of veneration, or worship (if the court decides to call it that) the Defendant is talking about is describing Lucifer in the same way one might describe a deity such as Jesus or God and it is NOT about performing so-called Satanic rituals. The statement used in the video from which the worshipper of the devil imputation was derived was presented as Honest Opinion (with the use of the term ‘if you like’ allowing for others to believe otherwise) with proper material mentioned in the publication and that it was in the public interest for him to do so on the basis of freedom of religious expression protected by the Racial and Religious Tolerance Act, 2001. In particular, as a Christian teacher, in the context of his usual Christian service, scripting sermons on YouTube, the Defendant was practising his faith, based on Christian theology by comparing Lucifer to Satan, which naturally led to a comparison of Luciferianism to Satanism.”<sup>174</sup>

280 The law has long recognised the rights of individuals to express opinions on matters of public interest.<sup>175</sup>

***Expression of opinion rather than statement of fact***

281 The defence requires the defendant to prove that the matter was an expression of opinion, rather than a statement of fact. The opinion must be clearly indicated by the words of the publication, the manner of speaking, the context, tone of voice, relationship between the material relied upon, and the comment and the circumstances in which the words are published.<sup>176</sup>

282 An ordinary, reasonable person must be able to understand the comment as an expression of opinion, rather than a statement of fact.

283 There is nothing in the video that demonstrates that it was an expression of opinion. I do not accept that the words “if you like” demonstrate that the defendant

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<sup>174</sup> Amended Defence (*supra*) at pages 5-6, paragraph [7]

<sup>175</sup> *Channel Seven Adelaide Pty Ltd v Manock* (2007) 232 CLR 245 (“*Mancock*”) at paragraph [115]

<sup>176</sup> *Mancock* at paragraph [35]

was expressing his opinion that Ms Spencer was a Luciferian. Instead, the words “if you like” express his opinion that being a Luciferian is the same as being a Satanist. That Ms Spencer was a Luciferian was expressed as a statement of fact, not opinion.

284 The words, tone, context and graphics, all conveyed to the viewer that Ms Spencer was a worshipper of the Devil. An ordinary, reasonable viewer would not understand that the defendant was merely expressing his opinion on that topic.

285 The use of a quote shown on the screen and attributed to “Renee” with a stylised image of a mother, form part of the context, and all reinforced the imputation conveyed as a matter of fact, not opinion.

***Public interest***

286 The defendant submitted that it was in the public interest for religious teachers to be able to compare Luciferians to Satanists. Whether this is true or not is irrelevant to the question of whether there was a public interest in alleging that Ms Spencer is a worshipper of the Devil.

287 There was no submission made that it was in the public interest to allege Ms Spencer was a worshipper of the Devil and I am unable to understand what public interest there could be in making an untrue allegation.

288 The defendant has not established there was public interest in the imputation.

***Based on proper material***

289 The defendant must establish that the opinion was based on proper material. He submits that the proper material was the quote included in the video.

290 An opinion that bears no rational relationship to the facts particularised cannot be said to be based on that material.<sup>177</sup>

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<sup>177</sup> *Hanks v Johnston (No 2)* [2016] VSC 149 at paragraph [8]

291 The relevant test for the requirement of a rational connection is that the comment is one which could have been made by an honest person however prejudiced he might be, and however exaggerated or obstinate his views.”<sup>178</sup>

292 The allegation was not based on proper material. The defendant did not have any basis for alleging that Ms Spencer was a worshipper of the Devil, nor did he think she was a worshipper of the Devil. In his defence, he says the veneration or worship he is talking about is describing Lucifer as one might describe a deity, such as Jesus or God, and that he is not talking about performing so-called Satanic rituals. If his intention was to convey merely that Ms Spencer described Lucifer in terms associated with a deity, it is inexplicable why he used imagery in the video of Satanic rituals, as well as referring to the “demons from hell” and the “unholy trinity”.

293 I do not accept that Ms Spencer’s lengthy emails, in which she set out her understanding of Lucifer and her spiritual beliefs, including her emails in response to allegations by the defendant’s daughter that she was an “admitted Luciferian”, amount to proper material upon which the defendant could have reasonably concluded that Ms Spencer worshipped the Devil.

294 Instead, as he conceded in his submissions, her explanations indicate her views about Lucifer are largely in accordance with traditional Christian theology, although, in his submission, those explanations ought not be accepted.

295 Nevertheless, a person who had read all the material the defendant had available could not reasonably have formed an opinion that Ms Spencer worshipped the Devil.

***Not honestly held***

296 Finally, even if the defence could otherwise have been made out, the opinion was not honestly held by the defendant.

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<sup>178</sup> *Herald & Weekly Times Ltd & Anor v Popovic* (2003) 9 VR 1 at [55]

297 The defendant chose not to give evidence. In the absence of evidence from a witness one would have expected to hear from, I am not able to speculate on what that evidence might have been. I am entitled to infer that the evidence would not have assisted his case.

298 I am entitled to infer that the defendant would not give evidence that he honestly held the opinion that Ms Spencer was a worshipper of the Devil. I am comfortable in drawing this inference, as it is supported by his submissions and his pleading, in which he qualifies what he means by “worship”.

299 The inference is also supported by the email he sent prior to uploading the video onto YouTube. The video and script were sent to members of the Jesus Christians’ “leadership” group.<sup>179</sup> Various members weighed in with opinions and concerns.

300 The defendant’s daughter commented:

“... I had hoped by the time the video was released we might have more confirmation that Jay’s family are in touch with the Kellys and Ellie’s family. All we have at the moment is circumstantial evidence that Sheila started being more antagonistic in her communication with Jay around the time things became heated with the other mothers ... .

...

With regard to the Luciferian claim, I think it would be helpful in the video to show a statement from Renee on the screen. Here is a good one, ‘I know that Lucifer is intelligent and beautiful and we have much to learn from him; Lucifer is a catalyst for finding the true light of Christ,’ I would probably favour focusing less on satanist pics, since Luciferians object to being called Satanists (even though it’s hard to imagine why). In fact that was a false claim that Renee made about us (up to now) that we were referring to her as a satanist. Up to now, we have only referred to her as a Luciferian. It feels like a shame to give her that satisfaction, which is why I am suggesting toning the satanist pics down a bit.”<sup>180</sup>

301 The defendant responded:

“I think we all have similar concerns e.g. (a) how it will impact on Candis [Linda Kelly’s daughter Heather Kelly]m (b) whether Sheila & Linda really are in touch with each other, (c) whether the Kellys really are Nazis, (d) whether it will actually help our enemies to get in touch with each other, and (e) whether it’s fair to say Renee is a satanist

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<sup>179</sup> Ex P33 (*supra*)  
<sup>180</sup> (*Ibid*) at page 3-4



...

... I like Tina's suggestions about playing down the sensational pictures of the devil and overuse of the word 'satanist', although I think what I said in the script was 'luciferians... satanists, if you like.' I think that is reasonable for any who do not understand that Lucifer is the name for Satan. I also like the idea of putting Renee's quote on the screen."<sup>181</sup>

302 In that email, he said he was persuaded that Ms Kelly and the plaintiff are both working with Sheila, because Ms Kelly had written:

"... I could find other things to do with my time, particularly if two members (and her husband) were to decide to get in contact with their families, resume relationships and begin making plans to come home.'"<sup>182</sup>

303 The defendant said, in this email, that:

"... Given [Linda's] hatred for Blacks, why would Linda campaign for Jay to 'come home' if she were not in touch with Sheila. Come home has been the constant demand that Sheila has made ... ." <sup>183</sup>

304 He considered this "convincing evidence" that the three mothers were working together.

305 This is far from "convincing evidence". At best, the defendant had engaged in supposition and guess work. He did not hold an honest opinion that Ms Spencer worshipped the Devil, but rather seized an opportunity to present a range of allegations about the parents of members using sensationalist language.

306 In addition to the defendant having access to the email from which he quoted in the publication, he had access to the many emails which Ms Spencer wrote to Ellicia after she became aware that Ellicia had been told that Ms Spencer was a Luciferian. Ms Spencer disavowed the idea that she was a Luciferian on many occasions, calling the allegations "lies".<sup>184</sup> Ms Spencer had not admitted to being a Satanist. She had not "insisted her love for Lucifer" did not interfere with her respect for Jesus, because she had not said she loved Lucifer.

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<sup>181</sup> (Ibid) at page 1-2

<sup>182</sup> (Ibid) at page 1

<sup>183</sup> (Ibid) at page 1

<sup>184</sup> JCB 231; Ex D14 (*supra*) at JCB 267; Ex D42 at JCB 279

307 The choice of wording in this phrase was calculated to cause the ordinary reasonable viewer to understand that there was additional evidence known to the defendant in which such admissions had been made. This was dishonest.

308 The defence of honest opinion fails.

### **Assessment of damages**

309 Ms Spencer has made out her claim in defamation and the defendant has failed to make out any of his defences.

310 Accordingly, Ms Spencer is entitled to damages.

311 The principles for assessing damages are helpfully summarised by John Dixon J in *Wilson v Bauer Media Pty Ltd*:<sup>185</sup>

- (a) damages should provide consolation for hurt feelings, damage to reputation and vindication of the plaintiff's reputation;<sup>186</sup>
- (b) damages ought to reflect the high value which the law places upon reputation and, in particular, upon the reputation of those whose work and life depends upon their honesty, integrity and judgement;<sup>187</sup>
- (c) the gravity of the libel and the social standing of the parties are relevant to assessing the quantum of damages necessary to vindicate the plaintiff. The award must be sufficient to convince a bystander of the baselessness of the charge;
- (d) there must be an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded;
- (e) the extent of publication and the seriousness of the defamatory sting are pertinent considerations;

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<sup>185</sup> [2017] VSC 521 ("*Wilson*") at paragraph [59]

<sup>186</sup> *Belbin & Ors v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535 at paragraph [242]

<sup>187</sup> *Wilson (supra)* citing *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 ("*Carson*")

- (f) in determining the damage done to a plaintiff's reputation, the Court should also take into account the "grapevine" effect arising from the publication;<sup>188</sup>
- (g) it is well accepted that injury to feelings may constitute a significant part of the harm sustained by a plaintiff;<sup>189</sup>
- (h) aggravated damages are a form of compensatory damages and, where appropriate, form part of the general damages awarded to a successful plaintiff for non-economic loss, designed to reflect aggravation caused to a plaintiff's hurt or injury by reason of some conduct of the defendant.

312 Aggravating conduct may include a failure to publish a retraction or an apology that amounts to a continuing assertion of the defamatory imputations.<sup>190</sup> Aggravating conduct can include pleading a defence of truth with reckless indifference to its relevance.<sup>191</sup>

#### **Plaintiff's submissions on damages**

313 The plaintiff says the publication has been seen by thousands of people, based on the number of views recorded. The Court should infer it has been seen by all Jesus Christians, and the evidence shows that Ms Spencer was widely known within the Jesus Christian community.

314 The plaintiff submits that the defendant's motivation in publishing was to "put the nail" in the coffin of her relationship with her daughter. The defendant was aware that contact with Ms Spencer caused Ellicia to have doubts about the defendant's teachings. Prior to the defendant's daughter telling Ellicia that Ms Spencer was a "self-confessed" Luciferian, it is apparent from the email train between the defendant, his daughter and Ellicia, that Ellicia had not considered her mother to

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<sup>188</sup> *Ley v Hamilton* (1935) 153 LT 384 at 386 (per Lord Atkin); *Crampton v Nugawela* (1996) 41 NSWLR 176 at 193-195 (per Mahoney A-CJ) and 198 (per Handley JA); *Cassell & Co Ltd v Broome* [1972] AC 1027 at 1071 (per Lord Hailsham of St Marylebone LC); *Palmer Bruyn & Parker Pty Ltd v Parsons* (2001) 208 CLR 388 at 416, paragraph [88] (per Gummow J); *Prendergast v Roberts* [2012] QSC 144 at paragraph [31] (per Mullins J)

<sup>189</sup> *Wilson (supra)*, citing *Carson* at paragraph [71]

<sup>190</sup> (*Ibid*) at paragraph [87]

<sup>191</sup> (*Ibid*) at paragraphs [84]-[88]

be a Luciferian. “Outing” Renee as a Satanist in front of all the other Jesus Christians, and all people who might join the community was a good mechanism for ensuring that Ellicia would not “go back” to Renee. If she did so she would be seen by the Jesus Christian community as someone who left the Jesus Christians for a Satanist.

315 Although the plaintiff acknowledges that prior to publication the defendant’s daughter had already made these allegations about Ms Spencer, having those allegations made by the defendant, in public, before the entire Jesus Christian community in which Ellicia lives and in which the most important people in her life live, elevates the allegations significantly and magnifies the harm done to her reputation.

316 The plaintiff submits that the defendant knew that the “false and ridiculous” claim that Ms Spencer is a Satanist was being used to manipulate Ellicia. He knew that Ms Spencer still had some influence in her daughter’s life and wanted to ensure that influence was terminated. He was aware his daughter had advised Ellicia that it would help her if she “let go” of her emotional attachment to Ms Spencer. He knew the power and effect of the allegation he was making and he chose to share that allegation, an allegation he did not himself believe to be true, with the entire Jesus Christians’ community, as well as others.

317 The plaintiff submits that the defendant knew his words would be believed by Ellicia and by others. He has been a highly-respected leader within the Jesus Christians’ community for decades, and within the Jesus Christians’ community he is seen as someone who would tell the truth and would not make things up.<sup>192</sup>

318 The plaintiff submits that the defendant has succeeded in his goal of driving a wedge between mother and daughter, and the proof of this is that Ellicia came to Court to give evidence on behalf of the defendant and now believes that innocent,

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<sup>192</sup> T833, L2-7; T887, L5-10

enjoyable activities from her childhood, such as visiting a “magic” shop, are evidence that her mother is a Luciferian.

319 The plaintiff submits that damages in this case must reflect the particularly high degree of hurt experienced, and must “nail the lie” so that a bystander would be convinced of the baselessness of the allegations.

320 The plaintiff is a teacher and a mental health practitioner, and someone whose reputation is important to the work she does. No school or institution is going to want to employ a person who is supposedly an admitted devil worshipper.

321 The plaintiff submits that aggravating conduct includes the failure by the defendant to remove the publication and the “pinning” of the publication to the top of his YouTube page to ensure maximum exposure.

322 The plaintiff says the fact that the defendant did not believe the allegation he was presenting as true, and knew that, far from “admitting” it, the plaintiff had expressly disavowed it, aggravates the damage.

323 Further, the plaintiff says the publication itself is sensationalist and designed to attract viewers by using graphic imagery of swords, swastikas and satanic imagery to drive up viewership and interest. It is designed to create a false belief in a conspiracy by powerful people against the Jesus Christians, which make it more likely that Jesus Christians’ viewers will believe it, and this aggravates the damage suffered by the plaintiff.

#### **Defendant’s submission on damages**

324 The defendant says the publication was not widely seen, and that most people who have seen it would not know it refers to the plaintiff.

325 The defendant says the viewing data shows only raw figures, but that many people drop off viewing prior to completion of the video and the Court cannot be satisfied

that thousands of people saw those parts of the video where the plaintiff is mentioned.

326 The defendant says there is no evidence that the video has caused any actual harm to the plaintiff's reputation. Her friends and supporters would not have believed it and they only saw it because she directed their attention to it. There is no reason that other people, such as prospective employers, would identify the plaintiff as the subject of the video. There was no evidence that the plaintiff's employment prospects had been impacted.

327 To the extent that the plaintiff's relationship with her daughter has been damaged, this is a consequence of the plaintiff's own actions. The defendant says there were problems prior to the publication. The plaintiff had made missing persons' reports and was "actively fighting her daughter's choice of religion".<sup>193</sup>

328 The defendant submitted that Jesus Christians:

"... seek to outgrow any emotional dependency, that is cutting the umbilical cord or separating from mummy's apron strings as others might describe it, at the same time they seek to outgrow emotional dependency standing in the way of personal development."<sup>194</sup>

329 He said relations between the plaintiff and her daughter and the Jesus Christians' community were relatively positive until the plaintiff started reading the "hate sites" on the internet, and this deeply affected her interactions with Ellicia.

330 The defendant says the long letters the plaintiff wrote to Ellicia criticising the Jesus Christians and Ellicia's decision to be with the Jesus Christians, were "extremely harmful to the relationship".<sup>195</sup> The defendant says the plaintiff's goal in her communications with Ellicia was to slander him and to "take [him] down".<sup>196</sup> The defendant says Ellicia attempted to re-assure Ms Spencer that her concerns were not valid, but Ms Spencer was not receptive to what her daughter was telling her

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<sup>193</sup> T1012, L8-9  
<sup>194</sup> T1012, L21-26  
<sup>195</sup> T766, L17-18  
<sup>196</sup> T1016, L24

and resorted to tactics, such as reporting her missing and demanding the Jesus Christians put Ellicia back on a plane to Melbourne, “as if Ellicia did not have a choice in the matter”.<sup>197</sup>

331 The defendant submits that Ellicia’s evidence supports a finding that it was Ms Spencer’s conduct, not the defendant’s conduct, that harmed Ellicia’s relationship with her mother.

## **Findings**

### ***Extent of publication***

332 The publication was uploaded to the defendant’s YouTube channel which, as at December 2021, had 123,000 subscribers and currently has 142,000 subscribers. As at December 2021 there had been 3,724 views of the video, 223 likes and an undisclosed number of shares.<sup>198</sup> In addition to publication on YouTube, it has been published on a number of other sites.

333 On 25 February 2022, the defendant pixelated the word “Renee” on the video. Between 1 August 2022 and 26 October 2022, the defendant hid the video from view. As at August 2023, the video had 4,503 views and 240 likes.<sup>199</sup> From 9 September 2023, during the course of the trial, the video was elevated to a prominent position at the top of the YouTube channel page and “pinned” so that it always appears there. It has continued to accumulate views.<sup>200</sup>

334 In addition to publication on the YouTube channel, it was published on the “A Voice in the Desert” Facebook page between 6 July 2021 to August 2022; to Vimeo from July 2021 until sometime in the first half of 2022; and on the Odysee channel from November 2021 to August 2022.

335 The video had been watched by all the witnesses who gave evidence. The witnesses called by Ms Spencer had seen it because it was brought to their

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<sup>197</sup> T766, T11

<sup>198</sup> JCB 160

<sup>199</sup> JCB 166

<sup>200</sup> Ex P34 — screenshot of “A Voice in the Desert” YouTube channel home page, dated 9 September 2023

attention by Ms Spencer. The witnesses called by the defendant were members of the Jesus Christians. Christian Stevens gave evidence that he would probably have seen the video within the first week it was uploaded.<sup>201</sup> Joseph gave evidence that members of the community would normally watch the videos posted by the defendant.<sup>202</sup> Daniel Reiher gave evidence that he watched videos and that they were seen as teachings which everyone would watch discuss. They were also used for recruitment and were monetised.<sup>203</sup> Ellicia gave evidence that the YouTube channel was a key channel to promote Jesus Christians' beliefs.<sup>204</sup>

336 I am satisfied that most, if not all, of the Jesus Christians' community would have watched the video. Many people outside the community have also watched the video, including the parents and family members of members of the community. Parents and family members would likely know to whom the video referred.

337 Beyond the group of Jesus Christians' members, family of Jesus Christians' members and people who closely follow the activities of the community, I am not satisfied that members of the general public would know who the "Renee" referred to in the video is. Nevertheless, the video was likely seen by more than one hundred people who would have known it referred to the plaintiff.

***Hurt feelings, vindication, restoration of reputation***

338 The defendant accepts that the publication was personally upsetting to the plaintiff, and the plaintiff and her witnesses gave evidence of the impact it had on her when she saw the video.

339 I am satisfied that allegations of this nature, in this context, would be hurtful and damaging. Although similar allegations had previously been made by the defendant's daughter in an email to Ellicia, I am satisfied that making those allegations publicly in a video that would be seen by all Jesus Christians, was

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<sup>201</sup> JCB 881, L17-18

<sup>202</sup> T851, L18-29

<sup>203</sup> T599 – T600

<sup>204</sup> T984, L29-31



particularly hurtful and damaging. The defendant submitted that the videos he uploaded to YouTube formed part of his ministry as a Christian teacher. Accordingly, within the community he founded, and in which he is acknowledged as attracting great respect, allegations presented as truth are highly likely to be believed.

340 Further, although there seemed to be a reluctance on the part of Jesus Christians' witnesses to acknowledge that the defendant had a leadership role within the community, and the defendant submitted that he was no longer the leader of the Jesus Christians,<sup>205</sup> it is apparent from the documents that he did have an important leadership role.

341 Importantly "the Hub", described as "a leadership base for the community,"<sup>206</sup> discussed the video. From reading those emails, it is quite obvious that, while others weighed in with their views, the defendant's opinion carried the day and the publication went ahead on his terms.

342 As the allegation was presented as a fact and was likely to be believed by the people of greatest importance to Ms Spencer – her daughter, and her daughter's husband and friends – it is important that the damages awarded "nail the lie". Unfortunately, given the important and persuasive role the defendant plays in the community, I am not confident that a decision of this court will be able to significantly impact the views of those within the community. The publication itself tells those community members that the Jesus Christians are persecuted by "their enemies" and the cause of this persecution is their enemies' hatred of the Jesus Christians, hatred of Jesus and hatred of what Jesus taught. There is a real prospect that any finding by this court will be used by the defendant as evidence of the ongoing persecution of the Jesus Christians.

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<sup>205</sup> T394, L4-5

<sup>206</sup> See cross-examination evidence of Joseph Gerard Johnson at T849, L13-14

343 No award of damages can undo the harm done to the plaintiff's reputation within the Jesus Christians and in the eyes of the Ms Spencer's daughter.

344 I accept the defendant's submission that the publication and the allegations that the Ms Spencer is a devil worshipper was not the only factor in the deterioration of the relationship between Ms Spencer and her daughter. I accept that the relationship between Ms Spencer and her daughter had begun to deteriorate prior to the publication. The deterioration had begun by October 2019, when Ms Spencer wrote to Ellicia and said she felt frustrated with her lack of contact and ability to communicate with her daughter.<sup>207</sup>

345 Ellicia gave evidence that she believed the deterioration in her relationship with her mother started around the time of the hunger strike in late 2019. She said Ms Spencer was not supportive of the hunger strike, that she was antagonistic and that was "probably ... when things started going downhill" in their relationship.<sup>208</sup>

346 Shortly after this, Ms Spencer disclosed to Ellicia that she considered Ellicia was in a cult. This did not assist their relationship and they have not seen each other since.

347 Ellicia said she sent her phone back to Ms Spencer because she was not planning to be in Australia any longer, her relationship with her mother was deteriorating and she felt like the phone was "kind of her having some power over [her] life".<sup>209</sup>

348 At some time in late 2019, Ellicia went through a grievance process with the community. It is apparent from the email exchange between Ellicia, the defendant and the defendant's daughter, that, both prior to that email exchange and in that email exchange, Ms Spencer was identified by the defendant and his daughter as the source of some of Ellicia's difficulties, including because of Ms Spencer's purported support for Lucifer.

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<sup>207</sup> Ex P10 – Email from plaintiff to Ellicia dated 1 October 2019 at JCB 182  
<sup>208</sup> T913, L12-13  
<sup>209</sup> T916, L14

349 Ellicia’s response to the allegation by the defendant’s daughter’s that Ms Spencer “*openly supports Lucifer*” is illustrative. Ellicia said she had “forgotten” this. It is unlikely that a very religious Christian, who has decided to join a Christian community and devote her life to living as she understood Jesus intended, would “forget” that her mother openly supports Lucifer. The more likely explanation is that Ellicia had not taken the words written by her mother to disclose support for Lucifer or to establish that her mother was in fact a Luciferian. The defendant’s daughter’s rather disingenuous “reminder” likely significantly impacted the relationship between Ellicia and Ms Spencer in a negative way.

350 Regardless of the various causes of the deterioration of the relationship between Ms Spencer and Ellicia, I accept that the relationship had deteriorated prior to publication.

351 The publication further harmed that relationship, and harmed Ms Spencer’s reputation with her daughter, but was not the only cause of that harm.

352 There is no evidence that others within the community believed that Ms Spencer was a Luciferian prior to the publication and therefore I am satisfied that the publication caused harm to Ms Spencer’s reputation in the eyes of the Jesus Christians’ community, and their families, both within and outside the Jesus Christians.

### ***Aggravation***

353 I am satisfied that the defendant has aggravated the damage done to Ms Spencer by relying on a truth defence, and on an honest opinion defence, in circumstances where he did not believe in the truth of the allegation, and did not hold an honest opinion that Ms Spencer was either a Luciferian or a Satanist.

354 The failure to remove, retract or apologise for the publication, is also an aggravating factor.

- 355 I am satisfied that the defendant was motivated by malice, that is, by a foreign or ulterior purpose in making the publication.
- 356 There was no evidence upon which the defendant could have satisfied himself that the Kellys and Johnsons were working together, and no evidence emerged during that trial to support this allegation.
- 357 There was no evidence that Ms Spencer was working with the Johnsons and no evidence emerged during the trial to support this allegation.
- 358 There was scant evidence that the Kellys were working with Ms Spencer, although Ms Kelly and Ms Spencer discussed the possibility. However, at the time the defendant published the video, he was not aware of those discussions. His allegations were based purely on speculation.
- 359 He did not believe that Ms Spencer worshipped the Devil.
- 360 I am satisfied, on the evidence, that the ulterior purpose for the publication of the video was to attract viewers and to promote a belief within the Jesus Christians' community, and the broader community, that hatred of the Jesus Christians had caused Nazis, Devil worshippers and criminals to become strange bedfellows. The accuracy of the allegations made in the video was less important to the defendant than drawing a parallel between the treatment of Jesus Christians and the treatment of Jesus, to promote his message.
- 361 The video was particularly sensationalist and used graphic and eye-catching imagery to engage and maintain the viewer's attention. The videos are evidently an important means by which the Jesus Christians spread their message. Sensational allegations and graphic imagery are likely to be successful in the competition for views, shares and likes.
- 362 The allegations themselves are serious. The defendant was, at best, reckless as to the accuracy of the allegations.

363 Other cases are of limited assistance in assessing damages in this case. For example in *Callan v Chawk*, the Court found that an award of \$50,000 was appropriate where the initial hurt and emotional distress upon first reading the publication had not endured and there was no tangible evidence of damage to reputation.<sup>210</sup> The award of damages was necessary to vindicate the reputation of the plaintiff in the wake of an “ill-informed but relatively restrained review on a website from a single disappointed patient”.<sup>211</sup>

364 In *Srecko and David Lorbek v Peter King*, McDonald J held that he would have awarded \$25,000 as the publication was very limited, there was no evidence of any person having a diminished opinion of the plaintiffs and the defendant was not motivated by malice.<sup>212</sup> However he upheld the defendant’s qualified privilege defence and no award was ultimately made.

365 At the other end of the spectrum imputations of bribery and corruption made on televised broadcast attracted damages of \$590,000,<sup>213</sup> allegations of scandalously inappropriate behaviour in the theatre attracted an award of \$850,000 including aggravated damages,<sup>214</sup> and damages of \$350,000, \$225,000 and \$300,000 respectively were awarded to a member of parliament, her doctor husband and a charity they were involved in where allegations of child trafficking and sexual abuse were made.<sup>215</sup>

366 These cases all bear little relationship to the allegations in this case and the particular harm done by them to Ms Spencer.

367 In this case I consider the appropriate award of damages is \$85,000, which includes a component for aggravated damages. This reflects a rational relationship between the harm suffered and the damages awarded because:

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<sup>210</sup> [2023] FCA 898

<sup>211</sup> (*Ibid*) at paragraph [210]

<sup>212</sup> [2023] VSC 218

<sup>213</sup> *Chau v Australian Broadcasting Corporation (No 3)* (2021) 386 ALR 36

<sup>214</sup> *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496

<sup>215</sup> *Webster v Brewer (No 3)* [2020] FCA 1343

- (a) Much of the harm done to Ms Spencer is the personal hurt and emotional distress she has experienced;
- (b) The publication caused further damage, but was not the sole cause of damage, to the relationship between Ms Spencer and her daughter;
- (c) The publication was limited, in that only a hundred or so people are likely to identify Ms Spencer;
- (d) It is likely that the allegation caused harm to Ms Spencer's reputation within the Jesus Christians but it is unlikely that her reputation will be damaged more broadly, including in her professional life;
- (e) It is important that Ms Spencer can point to this verdict to vindicate her reputation notwithstanding the real prospect that members of the Jesus Christians will believe the word of the defendant over any judgment of this court.

### **Injunction**

368 The plaintiff also seeks an injunction restraining the defendant from further publication. The video has remained available since it was first published. At some point during the trial the video was "pinned" to the front page of the defendant's YouTube channel so that it always appears when the "A Voice in the Desert" channel is accessed.

369 A permanent injunction should only be granted where the Court has assessed the threat or risk of a repeat of the publication of the defamatory matter, and is satisfied that such an order is reasonably necessary to address that threat or risk.<sup>216</sup>

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<sup>216</sup> *Carolan v Fairfax Media Publications Pty Ltd (No 7)* [2017] NSWSC 351 at paragraph [15]; *Massoud v Radio 2GB Sydney Pty Ltd*; *Massoud v Fox Sports Australia Ltd*; *Massoud v Commonwealth Broadcasting Corporation Pty Ltd*; *Massoud v Nine Digital Pty Ltd*; *Massoud v Nationwide News Pty Ltd* [2021] NSWDC 336 at paragraph [643] (per Gibson DCJ)

370 As Wigney J notes in *Rush v Nationwide News Pty Limited (No 9)*,<sup>217</sup> there is no express provision in the legislation for the making of permanent injunctions as a remedy. However, this does not mean that there is no power to make such an order, and it is generally accepted that the jurisdiction to make such an order rests in the Court's auxiliary jurisdiction to restrain the threatened infringement or the repeated infringement of the plaintiff's legal rights.<sup>218</sup>

371 Where a defendant is a mainstream media organisation, the threat or risk might generally be considered low. But in this case publication has continued and will likely continue notwithstanding this decision, unless an order is made requiring the defendant to remove the publication. Accordingly, I am satisfied it is appropriate to grant the plaintiff's application for an injunction.

372 Only a portion of the publication refers to Ms Spencer. Those parts of the video that refer to the Kellys and Johnsons are not part of this proceeding nor the subject of my ruling. Accordingly, there is no basis upon which to restrain the defendant from publication of those parts of the video that do not refer, directly or indirectly to Ms Spencer.

373 However removing specific identifying references to Ms Spencer is insufficient to appropriately ameliorate the future damage that ongoing publication of the video will have on Ms Spencer.

374 The defendant:

- (a) must remove the defamatory content from all platforms; and
- (b) is restrained from any further publication of the defamatory matter on any platform; and

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<sup>217</sup> [2019] FCA 1383  
<sup>218</sup> *Ibid* at paragraph [5]

- (c) is restrained from any publication of matter that conveys the same meanings on any platform;

until further order of the Court.

375 The defamatory content of the video referred to above is:

- (a) All that portion of the video including written and spoken words, graphics and other imagery, from and including the words "But the story gets worse" to that part of the video with and including the words "But these three appear to be the main ringleaders along with world-renowned cult-buster Rick Ross";
- (b) The words "and over all of the demonic spirits operating through each of these family members"; and
- (c) The words "All the demons of hell".

376 Until these modifications are made, the defendant is to remove the entirety of video from YouTube and any other locations where it is currently available forthwith. If the video has been published on any other platform without the authority of the defendant, he is to use all reasonable endeavours to ensure that the video is taken down from that platform.

377 I will hear the parties on the question of costs.

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