

Channel Seven Adelaide Pty Ltd v Manock (2007) 232 CLR 245

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Facts

- Dr Colin Manock was a forensic pathologist who gave evidence for the prosecution in the trial and retrial of Henry Keogh for the murder of his fiancé Anna-Jane Cheney in 1994.
- Keogh was convicted and sentenced to life imprisonment, with a 25-year non-parole period. He unsuccessfully appealed to the South Australian Court of Criminal Appeal, brought two applications for special leave to appeal to the High Court (in October 1997 and November 2007), and two petitions to the SA Governor for mercy.
- On 5 March 2004, during Channel Seven's "Today Tonight" program, an advertisement ran for an upcoming episode. The advertisement said: "*The new Keogh facts. The evidence they kept to themselves. The data, dates and documents that don't add up. The evidence changed from one Court to the next.*" The advertisement also displayed a photograph of Manock.
- Manock commenced proceedings in the SA District Court for defamation. Manock alleged that the promotion imputed that he had deliberately concealed evidence.
- Channel Seven pleaded a number of defences including fair comment on a matter of public interest. The particulars of the "*fair comment*" defence alleged he had conducted an inadequate investigation and given inaccurate evidence.
- Dr Manock sought to have paragraphs [3.18] to [3.39] of the fair comment defence struck out. His application was partly successful. Dr Manock then appealed to the Supreme Court and the Full Court ordered that all of those paragraphs be struck out.
- Channel Seven appealed to the High Court seeking to have the paragraphs reinstated.

Issues

- Should the paragraphs be reinstated?

Held

- By unanimous judgment, the High Court dismissed the appeal, granted special leave to Manock to cross- appeal and allowed that cross-appeal.
- The Court held that the statements in the promotion, taken separately or together, were presented as fact and not recognisable as comment.
- The alleged comment was also not based on facts which were either expressly stated, sufficiently

referred to or notorious.

- The Court held that the "*fair comment*" defence should be struck out.

Quotes

"The question of construction or characterisation turns on whether the ordinary reasonable⁵³ 'recipient of a communication would understand that a statement of fact was being made, or that an opinion was being offered'⁵⁴ - not 'an exceptionally subtle' recipient,⁵⁵ or one bringing to the task of 'interpretation a subtlety and perspicacity well beyond that reasonably to be expected of the ordinary reader whom the defendant was obviously aiming at"

(Gummow, Hayne and Heydon JJ citing *London Artists Ltd v Littler* [1969] 2 QB 375)

Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2007/HCA/60>

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