In 1971, Dr Motyka helped found an organisation in Adelaide called the Ukrainian Studies Foundation of Australia (the USFA), a company limited by guarantee. Its charter was to promote Ukrainian studies as an academic discipline at a tertiary level. Dr Motyka was one of the original directors of the USFA and served as its chairman from 1990 to 2002. He and his wife moved to Newcastle in about 1979 when he took up an academic position in Accounting at the University of Newcastle.

The Goyans were members of USFA from 1971 and served on its board in the late eighties and early nineties.

Mr Goyan and other USFA members in Adelaide believed they had formed the South Australian “branch” of that organisation. They organised themselves accordingly, conducted annual general meetings of the “branch” and elected representatives to act as their chairman, treasurer and so forth. At the times relevant to the litigation, Mr Goyan was serving as the elected chairman of the “branch”. South Australian members of the USFA, led by Mr Goyan, sought control over the funds which those members had raised. However, Dr Motyka and the board of USFA did not consider there to be “branches” and did not recognise the South Australian office bearers other than as members without power to control funds.

After some correspondence between the USFA board and Mr Goyan, the board informed Mr Goyan that he had been expelled as a member of the USFA. In the course of the internal disputes the Goyans had written letters and also published a book which a jury found contained defamatory material. The trial judge assessed damages in favour of Dr Motyka in the sum of $60,000, dismissing any defence of qualified privilege, and found that some defamatory publications were actuated by malice. The Goyans appealed on the point that the damages were excessive and that there was a defence of qualified privilege.

The trial judge referred to the judgment of Parke B in Toogood v Spyring (1834) 1 Cr M & R 181 at 193; 149 ER 1044 at 1049-1050, where his Lordship observed:

“In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the
common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."

The Goyans’ case on appeal was that they had an interest to expose the perceived conduct of the respondents as prominent members of the Ukrainian community and there was an interest in the recipients, all of whom were members of that community, to receive information relating to that conduct whether or not they were members of USFA. As the material concerned the affairs and conduct of two leaders of the Ukrainian community in Australia, that constituted a sufficient relationship to give rise to the necessary element of reciprocity of interest.

Tobias J (with whom the others of the court agreed) wrote:

“I would not shrink from describing the attacks on the respondents as being vituperative, irrational, intemperate and splenetic. As they submitted, the language of the matters complained of was properly described as grossly excessive. This was exacerbated by the fact that, except for the letters in the book, the other letters sued upon did not purport to be a reply by the Goyans to an attack, public or otherwise, upon them by the respondents. Although the primary judge held that the two letters published in the book, had they been separately sued upon, would have attracted the privilege, their publication in the book to the general Ukrainian community was not a privileged occasion due to the lapse of time between their original and subsequent publication.”

This indicated actual malice and thus the defence of qualified privilege was not available. Further the damages awarded were not excessive.

This case may be found online at [http://www.lawlink.nsw.gov.au/scjudgments/2008nswca.nsf/32a6f466fc42eb68ca256739000a724d/97409c4ec880587aca257408001006f?OpenDocument]