

BE CAREFUL RUSHING IN: DEFAMATION PITFALLS FOR YOUNG PLAYERS

Date: 5 November 2018

Complex Commercial Litigation and Disputes Alert

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In recent times a number of high-profile defamation cases have been brought to trial in Australia: Rebel Wilson, Chris Gale and presently Geoffrey Rush chief amongst the 'celebrity' plaintiffs.

Those cases naturally receive extensive publicity and, to some extent, have increased the preparedness of 'ordinary' citizens to commence defamation proceedings of their own.

A prospective defamation plaintiff will typically feel infuriated at what has been said or written about them or their business, and they are determined to sue. But before rushing off to court, it is always useful to pause and consider the pros and cons of heading down the litigation path.

Firstly, the substantially uniform defamation legislation throughout Australia prohibits companies with more than 10 full time employees suing for defamation (with some limited exceptions). And a company that can sue will generally find it difficult to receive large damages awards unless it can prove that the offending publication caused the company **actual** financial loss.

Secondly, there are a myriad of complex defences to defamation claims, both common law and statutory, which will be open to defendants. Some of those defences enable otherwise defamatory publications to be defensible, even if what has been published is not true. It is critical that all possible defences are analysed *before* proceedings are commenced.

Thirdly, prospective plaintiffs must recognise that once defamation proceedings are commenced, they can take on a life of their own. Every facet of that person's background and reputation will be scrutinised. Private investigators will be deployed by defendants, and there will be intense cross-examination of the plaintiff, their friends and family. It will rarely be a pleasant experience!

Fourthly, there is a statutory 'cap' on general damages (i.e. non-economic loss) which could mean that a plaintiff's legal costs might exceed what a plaintiff is awarded in damages.

Fifthly, a successful plaintiff must rely on the defendant having the financial capacity to meet a judgment for damages and costs. This is not guaranteed, especially in the context of the increasing prevalence of social media publications where the defendant is a 'keyboard warrior' without deep pockets or an insurer behind them.

None of this is to say that persons aggrieved should not utilise the court processes to vindicate their hard earned reputations; that is precisely what defamation laws are designed to do. However it always pays to draw a breath and obtain considered advice before pressing the litigation button.

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