

“Treasurer for Sale” case provides example of the operation of Australia’s defamation laws

The recent case of [Hockey v Fairfax Media Publications Pty Ltd](#) provides an interesting example of the application of Australia’s defamation laws to social media publications and matters of public interest.

Treasurer, Joe Hockey brought a defamation claim against three newspaper publishers in regards to articles published on 5 May 2014 in the Sydney Morning Herald, The Age, The Canberra Times and online platforms controlled by those newspapers. The articles detailed the operations of a club, the North Sydney Forum and its connection to the Liberal Party. The articles said that through the North Sydney Forum, Mr Hockey was providing “privileged access” to a select group in return for donations to the Liberal Party without full disclosure to the election funding authorities. The words “Treasurer for Sale” or “Treasurer Hockey for Sale” were prominent in the articles. Although critical of the fundraising activities, the articles included some balancing comments and stated that the fundraising activities were legal.

The Sydney Morning Herald article was promoted by large printed posters displaying the words “Exclusive Treasurer for Sale Herald Investigation” in large font. The Age articles were promoted by three Twitter Tweets. The first Tweet displayed the headline “Treasurer Hockey for sale” without any further details. The second Tweet displayed the same headline with a summary of the article. The third Tweet displayed the headline and summary with a copy of one of the articles as it appeared on The Age website. Each Tweet contained a link to the full newspaper articles appearing in The Age.

Mr Hockey claimed that the newspaper articles, the posters and the Twitter tweets carried imputations of bribery and corruption. The newspaper publishers denied the allegations. They claimed the articles were protected by “qualified privilege”, which provides a defence where content is published to those having an interest in what is published (in this case the public) provided that the publisher conducts itself reasonably.

The Court found the printed posters and the first two tweets (showing only the headline or the headline and a summary of the article) carried defamatory imputations. The newspaper articles (both the printed and online forms) were found not to carry defamatory imputations as when read as a whole they would not have been understood as saying Mr Hockey was corrupt.

The posters and first two tweets were found to be defamatory because they displayed the words “Treasurer for Sale” or “Treasurer Hockey for Sale” without explanation of the statement (as was the case with the newspaper articles). The fact that the tweets contained hyperlinks to the full newspaper articles was found not relevant in determining whether they carried defamatory imputations. In other words, the tweets were treated as separate publications despite the hyperlinks. The hyperlinks were however considered relevant to the assessment of damages.

The newspaper publishers were unsuccessful in their defence of qualified privilege on the basis that their conduct was not reasonable in the publishing the posters and tweets. It was found there were alternative more appropriate forms in which the posters and tweets could have been published. Although not determinative of the outcome (as no defamatory imputations were found) it was also found that the newspaper publishers did not act reasonably in publishing the newspaper articles as they did not give Mr Hockey a proper opportunity to respond to the proposed publication.

Mr Hockey also alleged that the newspaper publishers acted with malice - that they were published as payback for his insistence on a correction and apology in respect of a previous article published on 21 March 2014. Following his insistence, which included a call to the CEO of Fairfax, a correction and apology were published. Resources were then dedicated to investigating the North Sydney Forum, resulting in the publications that were the subject of the proceeding.

The Court found that the North Sydney Forum articles were, in part, a result of the editor-in-Chief of The Sydney Morning Herald’s “animus towards Mr Hockey” arising from Mr Hockey’s insistence of an apology, embarrassment caused by Mr Hockey going to the CEO of Fairfax and the fact that he had to publish an apology as well as a correction. In considering the evidence, the Court examined communications between the editor and the state political editor showing the editor’s motivations. It was found that the defence of qualified privilege (if it were available) would have been defeated by reason of the Editor’s malice in publishing the articles.

Mr Hockey was awarded damages of \$120,000 for the Sydney Morning Herald posters and \$80,000 for the two Twitter tweets plus interest. As he was only partially successful in his claim, Mr Hockey was awarded only 15% of his costs.

This case provides an example of the application of Australia’s defamation laws to social media publications and insight into the defence of qualified privilege. It reminds publishers to consider their motivations when relying on a defence of qualified privilege. The defence will not be available if conduct is unreasonable or they act with malice. The case also serves as a reminder to would be plaintiffs to take into account the cost of defamation proceedings in framing the claim. In Mr Hockey’s case, despite being partially successful in his claim, it is likely that his legal costs exceeded the damages award.

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