

SOUTH AUSTRALIA'S PUBLIC PROTEST LAWS- SEMINAR FOR ENVIRONMENTAL CAMPAIGNERS

Presented by the Environmental
Defenders Office (SA) Inc.

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“Green Legal Aid”



*A Community Legal Centre specialising
in public interest environmental law.*

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INTRODUCTION

- Defamation actions can be used as a tool for stifling freedom of speech especially the voices of environmental advocates (SLAPP suits)
- Plaintiff-person whose reputation is allegedly injured
- Defendant-publisher of allegedly defamatory material

WHAT LAWS APPLY IN SA ?

- Common Law
- SA Defamation Act 2005
- There are many similarities but there are important differences e.g. the Act removes the right of certain corporations to sue

COMMON LAW

- Applies to all alleged defamatory conduct occurring prior to the 1st January 2006

SA DEFAMATION ACT 2005 - APPLICATION

- Part of Uniform Australian laws
- All defamatory conduct alleged to have occurred on or after 1st January 2006.
- Any alleged course of defamatory conduct in the period before & after the 1st January 2006.
- Publication took place in SA or most of the alleged harm to reputation occurred in SA

DEFAMATION LAWS

- Who can sue?
- What must be proved ?
- Defences
- Offers to Make Amends & Apologies
- Remedies
- Costs
- Time limits

WHO CAN SUE?

- Prior to 1.1.06 all corporations could sue
- From 1.1.06 only those with less than 10 employees can sue. Employees still have the right to sue in their own name & companies have other avenues of redress e.g. Trade Practices Act
- Governments can't sue but local councillors can if publication directed at them personally
- Class of persons can't sue but individual within class can if material directed at that person

WHAT MUST BE PROVED ?

- Defamation Act abolishes the terms libel (written) & slander (verbal)
- Defamation is defined as publication which causes or is likely to cause injury to another's reputation NB: plaintiff does not need to prove actual or likely injury to reputation
- Plaintiff must prove there was publication, that the material is defamatory & that the material published concerned the plaintiff

DEFENCE-JUSTIFICATION

- Must prove that the alleged defamatory statements are substantially true
- Substantially true means that they are true in substance or not materially different from the truth

DEFENCE- CONTEXTUAL TRUTH

- New defence
- Example: publication says (falsely) that the plaintiff, a sole trader, has been charged with letting waste spill into a waterway but implies that the trader is guilty of an offence. If the trader claims defamation only on the basis that the publication describes him as having been charged then the defendant can counter by saying that it was implied that the trader is guilty of an offence

DEFENCE- ABSOLUTE PRIVILEGE

- Certain publications cannot be the subject of defamation actions
- Examples include publications issued in the course of proceedings by a parliamentary body or an Australian court

DEFENCE - PUBLICATION OF PUBLIC DOCUMENTS

- Defence if material is contained in a public document or an extract from a public document e.g. any report or paper published to a parliamentary body, court judgment
- Defeated if plaintiff proves the defamatory material was not published honestly for the information of the public or the advancement of education

DEFENCE - FAIR REPORT OF PROCEEDINGS OF PUBLIC CONCERN

- Defence if material is contained in e.g. proceedings of a parliamentary body, court
- Also covers fair copies ,summaries & extracts from an earlier published report
- Defeated if plaintiff proves that the defamatory material was not published honestly for the information of the public or the advancement of education

DEFENCE-QUALIFIED PRIVILEGE

- Must prove the recipient had an interest in having the information
- Material is published to the recipient in the course of giving the recipient information on that subject
- Conduct of defendant reasonable in the circumstances
- Can be defeated if plaintiff proves that publication was motivated by malice

DEFENCE-HONEST OPINION

- Published material was an expression of opinion rather than a statement of fact
- Opinion related to a matter of public interest
- Opinion was based on proper material i.e. material that is substantially true & was published on an occasion e.g. where absolute or qualified privilege applies
- Defeated if proved that the opinion was not honestly held by the defendant

DEFENCE- INNOCENT DISSEMINATION

- Defendant published the material as an employee or agent of a distributor, for example an employee who is responsible for website updates
- Defendant did not know material was defamatory & their lack of knowledge wasn't due to negligence

DEFENCE- TRIVIALITY

- New Defence
- Must prove that the circumstances of the publication were such that the plaintiff is unlikely to sustain any harm
- Actual harm need not have occurred , only need to prove likelihood of harm at the time of publication
- Must disregard previous circumstances, for example the plaintiff already has a bad reputation

OFFERS TO MAKE AMENDS & APOLOGIES

- Must be in writing & readily identifiable as an offer (any limitations must be clear)
- Must include an offer to publish a reasonable correction & to advise those who received the material initially
- Must include an offer to meet plaintiff's reasonable expenses in considering the offer.
- May include any other offers to redress harm suffered by the plaintiff , for example, an offer to publish an apology or pay compensation

REMEDIES

- Main remedy is damages or compensation for harm sustained to the reputation of the plaintiff
- Defamation Act- there is a maximum limit of \$259 500 for non-economic loss, no punitive damages & the defendant's state of mind is generally irrelevant

COSTS

- Court can look at the way parties have conducted their case when deciding on the issue of costs
- Example: if a party has not reasonably engaged in settlement negotiations costs may be awarded against that party if it loses the case

TIME LIMITS

- Common law - 6 years
- Defamation Act – 1 year but extensions are possible in certain circumstances

SUMMARY

- Many corporations are now unable to sue but employees still can
- Corporations have other actions they can use e.g. action under the Trade Practices Act
- Defences are now uniform across Australia.
- Some defences have been modified & some are new
- New procedure for making pre-action apologies

WHAT CAN BE DONE TO AVOID BEING SUED?

- Try not to make sweeping statements & generalisations
- Check facts & report correctly
- State if something is an opinion-may help with later defence
- Make it clear if comments are a response to statements made by another
- Fight the issue, not the personality
- If statement about a company, don't refer to individuals within the company
- If possible obtain legal advice before publication

CRIMINAL LAW - PUBLIC PROTEST & PROPERTY OFFENCES

- Police can charge a person, but only a court can convict, impose a fine, prison or other penalty unless an “on the spot” fine applies.
- Trespass – it is an offence to remain on premises or return within 24 hrs after you have been asked to leave by either the owner, their representative or the police. Premises includes land, building, structure, vehicle, or other private property. Not applicable in a public place.
(Summary Offences Act. Maximum penalty \$2,500 or 6 months prison)

PUBLIC PROTEST & PROPERTY OFFENCES CONT.

- Damage to property; Offence to damage property of another person, does not have to be intentional but does include reckless behaviour or deliberate damage.
(Criminal Law Consolidation Act. Maximum penalty 10 years prison)
- Graffiti, posters & stickers; posting a bill, even distributing a bill to others for posting or marking with graffiti punishable.
(Summary Offences Act, max penalty \$2,500 or 6 months prison and pay owner for damages and repairs)

PUBLIC PROTEST & PROPERTY OFFENCES CONT.

- Being on premises for Unlawful Purpose; entering premises with no lawful excuse for being there.
(Summary Offences Act. Maximum penalty 2 years prison. If you refuse to leave, maximum penalty \$2,500 or 6 months prison)
- Serious Criminal trespass; entering or remaining in a place with the intention of committing an offence.
(Criminal Law Consolidation Act. Maximum penalty 3 years prison)

PUBLIC PROTEST & PROPERTY OFFENCES CONT.

- Interfering with farm Animals; Offence to open and leave gate open, unfasten a gate, or close an open gate without occupiers authority. Must not disturb any animal whilst trespassing on land or cause harm to any animal, or loss or inconvenience to owner. (Summary Offences Act. Maximum penalty \$750)

CRIMINAL LAW - OFFENCES AGAINST PUBLIC ORDER

- Public rallies often attract charges alleging offences against public order. In a rally or demonstration, if you don't want to be arrested, mind your language and behaviour. Protest chants, songs, drumming, dancing, shouting and running are generally safe forms of conduct, ***swearing and violence are not.***

OFFENCES AGAINST PUBLIC ORDER CONT.

- Disorderly or Offensive conduct or language; behaving in this manner, fighting with another, using offensive language, disturbing the public peace. Must be committed in a public place - includes ships, harbours, ports, docks and rivers.
(Summary Offences Act. Maximum penalty \$1,250 or 3 months prison)

OFFENCES AGAINST PUBLIC ORDER CONT.

- Indecent language or behaviour; may be charged with either of these if using indecent language in a public place or where you intend to offend or insult any person. Language or behaviour routinely seen on television or films may still be regarded as indecent in public.
(Summary Offences Act. Maximum penalty \$1,250 or 3 months prison)

OFFENCES AGAINST PUBLIC ORDER CONT.

- Obstruction of roads and other public places; Must not knowingly obstruct free passage in a public place e.g. public road, footpath, thoroughfare, even if on private property. Includes blockading a public road. (Summary Offences Act; maximum penalty \$750)
- Disobeying an order to Move on or Disperse; must not refuse when a police officer requests a person loitering in a public place or a group of people assembled in a public place e.g. a rally, to move on . (Summary Offences Act; Max \$1,250 or 3 months)

OFFENCES AGAINST PUBLIC ORDER CONT.

- “Critical Mass”; If you are planning to conduct a protest or demonstration during which you use bicycles or other forms of transport you must be familiar with the Road Traffic Act and the road rules.
- Public meetings; It is an offence if you are in, at or near a place where a public meeting is being held and you behave in a disorderly, indecent, offensive, threatening or insulting manner, or use threatening, abusive or insulting words.
(Summary Offences Act. Max \$1,250 or 3 months)

OFFENCES AGAINST PUBLIC ORDER CONT.

- Leaflets, Loudspeakers etc. Many demonstrations, vigils & protests carried out by activists in public places legally require permission from the local council. You need council permission to;
- Distribute anything to bystanders
- Conduct surveys
- Collect from bystanders
- Receive donations
- Amplify sound
- Sing, chant, dance, busk, play music
- Attach anything to tree, plant, fixture
(Penalty \$200)

OFFENCES AGAINST THE POLICE

- Assaulting and Hindering Police; includes assaulting, hindering, obstructing, resisting any member of the police force acting in the execution of their duty. (Summary Offences Act; Maximum \$10,000 or 2 years prison)
- Giving your name and address; Police may request you to give your full name and address at any time. Must not refuse or give a false name. (Summary Offences Act; Maximum \$1,250 or 3 months prison)
- False reports to Police; Must not make a false representation to police. (Summary Offences Act; Maximum \$10,000 or 2 years prison)

ARREST PROCEDURE & BASIC RIGHTS

- Police can arrest anyone who has committed an offence, suspected of committing an offence or about to commit an offence. No warrant is required.
- You will know that you have been arrested when a police officer says “you are under arrest” while touching or taking hold of you.
- It is not an offence to run away before they can arrest you but this may constitute “resisting arrest”.
- An officer may ask you to accompany them to the station without arresting you. You do not have to go unless you have been arrested. If you go willingly and give them information it will be regarded as being obtained voluntarily.

ARREST PROCEDURES & BASIC RIGHTS CONT.

- Police can use as much force as is reasonably necessary to arrest you. Handcuffs etc can be used if you get physical.
- If you believe that you have been wrongfully arrested you need to make a verbal objection to the officer in charge of the station.
- Always seek legal advice prior to giving voluntary information as you may incriminate yourself or close an avenue of defence you may wish to use later.
- Anything you say may be used against you - “off the record” talks with the police don’t exist.
- Right to remain silent, to have a friend or relative informed and to speak to a lawyer.

AT THE POLICE STATION

- You are legally obliged to give your name and address.
- You have the right to make one phone call to solicitor, friend or relative. You may need to ask several times to use the phone. You are entitled to ask for an interpreter if necessary.
- If Aboriginal or Torres Strait Islander you may have an officer from Aboriginal Legal Rights Movement present.
- If under 16 you should have a parent or guardian or another adult you know and trust present.

AT THE POLICE STATION CONT.

- When taken into custody you will be searched and anything you carry will be taken. Carrying an illegal substance or weapon will lead to higher penalties.
- If you are charged with an offence the police may take photographs and fingerprints. Refusing to comply is an offence; Summary Offences Act, penalty \$1250 or 3 months prison.
- If charges withdrawn or dismissed in court your samples will be destroyed.
- At the station you will be formally charged or released. If charged make sure you get copies of the charge sheets.

AT THE POLICE STATION CONT.

- Any person charged with an offence and taken into custody can apply for bail.
- Bail is an agreement where you agree to attend all court sessions, comply with bail conditions and agree to pay an agreed sum of money if you fail to comply. Another person may agree to pay for you.
- You can apply for police bail at the station.
- If you are refused bail you must be brought before a court prior to 4pm on the next working day. You can apply for court bail at that court session.