

SOUTH AUSTRALIA'S DEFAMATION LAWS- SEMINAR FOR ENVIRONMENTAL ADVOCATES

Presented by the Environmental
Defenders Office (SA) Inc.

North Adelaide Community Centre

7th November 2006



*Those are my principles,
and if you don't like them...*



well, I have others.

“Green Legal Aid”



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

**Free Legal Advice &
Assistance**

**Community Legal
Education**

Law Reform

SA'S DEFAMATION LAWS

- Melissa Ballantyne - Update on SA's defamation laws
- Mark Parnell - What can be done to improve the law in this area ?

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 eg 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 1st January 2006 all corporations could sue
- From 1st January 2006 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 eg Trade Practices Act

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

DEFENCES

- Justification
- Contextual truth
- Absolute Privilege
- Publication of Public Documents
- Fair Report of Proceedings of Public Concern
- Qualified Privilege
- Honest Opinion
- Innocent Dissemination
- Triviality

DEFENCE-JUSTIFICATION

- Must prove that the alleged defamatory imputations or inferences are substantially true
- Substantially true means that the imputations or inferences 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 infers that he 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 there was an inference 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 eg 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 eg 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 ie material that is substantially true & was published on an occasion eg 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 subordinate 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 \$250 000 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 eg 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