

# Defamation of school staff on Social Media



There is always time in the school year for a reminder about things one should or should not say on Facebook pages, or Twitter, or Instagram. Especially on any school pages, and yes ,within school parent groups.

This applies particularly when the comments you post are public, and untruthful, and reference or make it very, very clear whom the individual you are talking about is.

## **Why? Defamation.**

What you say online, when it isn't true could end up costing you a lot of money and time. It could, and has driven parents and students into bankruptcy and years of debt because of the utterances they have made about staff online.

And the charges have even more chance to stick if what you have said can be proven in court to be injurious to a person's reputation, or has affected their career or personal life.

If you doubt this read below.

## **About defamation**

What it is?

Defamation law relates to the protection of a person's reputation. When a person begins a lawsuit for defamation they believe their reputation had been wrongfully attacked, and are seeking damages for the harm that the attack has caused to them.

In matters offline, there have been a number of stoushes between schools and parents associations where the reputations of educators have been impugned upon publicly enough to cause problems.

But now there is social media, and the game is changing.

### **The big picture**

Defamation law in Australia is a difficult, expensive, lumbering beast.

Parliament in NSW is currently weighing up if media companies, in particular, are actually liable for the comments their readers post on post online newspapers and on various social media platforms.

In fact, the whole nations defamation laws are being reviewed with the advent of social media, and the current floods of complaints flowing through the court system.

### **The media**

It is the media that normally runs headlong into complex defences of public opinion and whether or not matters are published in a reasonable manner ( the standard of proof needed for a successful defence) but these legal matters have become increasingly cumbersome. And with social media, and the advent of the online warrior or troll, protections for so called innocent disseminators like Facebook or internet service providers are not as functional as they should be due to "drafting anomalies" (The Guardian 2018, Richard Ackland)

There are two types of damages that can be awarded for defamation.

Damages for non-economic loss are capped at \$389,500 but when plaintiffs start referring to aggravated damages, there is no limit to the amount of money a court can decide to fine the defendant.

So commercial publishers are on their toes right now, of the back of lawsuits such as that conducted by Rebel Wilson against Bauer Media in the Victorian courts recently that saw her awarded in excess of 5 million dollars as a result of the courts determining her career had been damaged by the manner the journalists had portrayed her. While this sum was eventually reduced on appeal to \$600,000, it suffices to say the industry got a scare at the initial size of the sum awarded. The legal fees involved would have been staggering for both parties.

For the sheer cost of pursuing such a matter in court, most cases are settled before, usually for impressive sums and public apologies.

A recent estimation of cases for defamation that have been settled out of court over the period from 2008 – 2017 see that over 70% of the time a plaintiff will settle outside court. There is a strong argument filtering through our legislature, and media circles that stories are not being reported due to the potential minefield of the defamation lawsuit.

So, the media has a problem. And there is a court case currently awaiting the verdict from a judge that combines the media and the social media platforms in a defamation suit. The outcome is being waited for with interest.

Dylan Voller vs News Corp, Fairfax Media (Nine) and The Australian News Channel (ANC).

Dylan Voller who rose to media “fame”, with his abhorrent treatment in the NT Juvenile detention centres has elected to sue the three media giants for defamation.

On various official Facebook pages belonging to these corporations during the years of 2016, and 2017 there was a multitude of articles written about Mr Voller, The Royal Commission that followed regarding the treatment of Voller, and Mr Voller’s time in jail. Mr Voller is not suing over the articles though.

He is suing over the comment’s administrators and moderators of the media giants’ pages allowed to remain on their pages underneath the articles.

Readers shared their thoughts about Mr Voller – naming him a rapist, accusing him of beating a Salvation army officer, and casting serious unconfirmed aspersions against his character. They were nasty, unfair, unfounded and unpleasant.

The case is unique in Australia. The core question is revolving around whether the media companies should have known of the existence of these comments and by inviting individuals to comment, that they should have been aware there was a

significant risk that there would be defamatory comments attached to the articles. Mr Voller claims there were avenues the companies chose not to take – such removing comments, closing comments sections, or moderating the comments.

This is being denied collectively by NewsCorp, Nine, and the Australian News Channel – they claim they were given no knowledge that such comments were posted and were blindsided when the court case manifested. Because Mr. Voller had made no request to them to take the comments down, or gave them no notice of his intended lawsuit they cannot be held liable.

It is impossible for a public business page to turn off comments completely within Facebook. But there are ways to hide them (complicated hacker ways), and even these are not 100% infallible, they don't work all the time. Comments and videos can slip past and regularly do.

But if there are one or two posts that appear on an article that tend towards the defamatory there is definitely an argument that such articles comments could merit a closer level of moderation than normally applied.

The media companies believe the right of their readers to comment is a vital ingredient to their social media operations. Only the Australian News Corporation would admit that they had thought about the facts that Mr.Voller was vulnerable, and Aboriginal, and had been badly treated in detention – yet this wasn't enough for them to heavily moderate articles in which he featured. NewsCorp and Nine admitted not to consider these matters at all.

And the judge is considering his verdict. And has been for the last 5 weeks.

There is no existent straight up case law for this kind of lawsuit. No precedent to follow. Whatever Justice Rothman decides this case has put the issue of public commentary on public business pages, and whether the administrators for such pages are liable firmly in the spotlight.

That's some the large scale of what is happening.

## **In your backyard and school community**

Lawsuits against students and parents.

There have been successful cases brought by teachers against former high school students for defaming the teacher on social media.

In Mickle vs Farley 2013

A student in Orange, NSW in 2014 received a \$105,000 bill for the devastating damage caused to a former music teachers' reputation. There was found to be a personal grudge involved with Andrew Faley's Twitter posts, and he failed to argue there was truth in what was said.

Ms Mickle requested an apology and a takedown, which Faley appeared to comply with, but he continued his campaign under a new Twitter handle convincing the plaintiff there was no sign he would stop, and that court action was required.

The judge in the case Justice Elkhaim – stated the following

*“When defamatory publications are made on social media it is common knowledge that they spread,”. “They are spread easily by the simple manipulation of mobile phones and computers. Their evil lies in the grapevine effect that stems from the use of this type of communication.”*

[www.inform.org/2014/03/07/case-law-australia-mickle-v-farley-105000-awarded-for-defamatory-tweets-and-facebook-posts-patrick-george](http://www.inform.org/2014/03/07/case-law-australia-mickle-v-farley-105000-awarded-for-defamatory-tweets-and-facebook-posts-patrick-george)

And this case was not the first.

The Adelaide Magistrates Court in 2012 saw a former principal of an outback school be awarded \$40,000 over a defamatory Facebook page created by two parents of students at the school (Burtenshaw v Knueppe 2012).

Also happening now....

In 2016, a school principal in Queensland had enough.

She had been suspended for reasons no disclosed to the public by the QLD government with pay. The school community of Mt. Tambourine did not know the reasons for her suspension. After several weeks of repeated attempts by the school community to ascertain the reasons for her suspension, a Change.org petition was begun in an attempt to force her restoration and expediate the process of the investigation.

This petition had a Facebook page title “Support Tracey Brose”.

There were many positive messages of support. But there were also a number of less welcome comments citing the Principal has been mean and nasty, has brought pain and stress to a woman’s family, had mistreated low performing children and had brought unnecessary stress on students who failed to achieve an A grade.

Several individuals, in particular, were responsible for the most odious of the comments and these are the people targeted in Ms. Brose’s laws suit. The total amount that she is seeking from the individuals exceeds \$1 million.

Not one of these people has responded, apologised or offered to make any amends to Mrs Brose. The case has been ongoing for two and half years (as of 27 January 2019) and has driven one of the parents to bankruptcy to pay for legal fees, with another being forced to put their home on the market.

Mrs Brose has returned to work, cleared from her suspension with no clarity given as per the reasons for her suspension in the first place to the school community.

## **The Outcome**

Mrs Brose must show that:

- The comments were communicated by the defendants to a third party
- The comments identified her adequately
- The comments could be considered defamatory
- The defendants have no defence – e.g they must show the comments are substantially true

The case is still ongoing.

### **What to take away from all this?**

Be really careful when commenting publicly about other people online, especially on social media. Is it honestly worth your home and your fortune to make a couple of nasty comments about a teacher you don't like?

The law is potentially changing and there is a building array of precedent becoming available that can stop you in your tracks.

Be a good digital citizen. Think. And if you can't say something nice, don't say anything at all.

If you have an issue and would like to discuss always phone the school rather than complaining social media.

**NOTE:** *For all the parent-run school year groups/P & C pages that utilise the name of the schools, and include identifiable images of children in the school uniform or other clearly identifying images associating the school with the page. Even if you are authorised by the school (and you should be if you are using the name of the school, and you should have a school staff member as one of your administrators to help moderate comment). A members-only private group is not sufficient to hide behind. Vilifying staff and/or other students can get you slapped with a defamation suit as well.*

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If you have any questions, please email [wecanhelp@safeonsocial.com](mailto:wecanhelp@safeonsocial.com)

Thanks and regards

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