

Casenote: *Cullen v White*

Kerin Forstmanis looks at a recent damages award for defamation on the internet.

A journalism lecturer at Edith Cowan University in Perth has recently been awarded AUD\$95,000 damages for defamation by the Supreme Court of Western Australia against Los Angeles resident, Bill White (the defendant). The case, *Cullen v White*,¹ concerned publication on the internet.

Dr Trevor Cullen (the plaintiff) and Bill White were former colleagues at the Divine Word University (*DWU*) in Papua New Guinea, although they had little contact. According to Dr Cullen, Mr White was dismissed from his employment at DWU in February 1997. Eighteen months later, Dr Cullen was researching HIV/AIDS in the Pacific when he came across an internet discussion forum which contained a number of derogatory postings in relation to DWU and its staff.

Dr Cullen sent the webmaster a letter complaining about Mr White's postings. That letter was published on the discussion forum web page. According to Dr Cullen, within days he started receiving emails from Mr White alleging that he was an academic fraud. Shortly after, Mr White created an internet website for his attacks on Dr Cullen. Subsequently, Mr White started 'bombarding' Dr Cullen's colleagues with false allegations about him, and publishing similar allegations on the website.

Dr Trevor Cullen commenced proceedings in the Supreme Court of Western Australia in 2002 claiming damages for defamation against Mr White in relation to the emails and articles on the website. Dr Cullen alleged that four specific publications contained imputations that he was a paedophile; had committed academic fraud; had falsified his credentials; was a dangerous felon; had committed blackmail; and that he had falsely pretended to be a priest.

Leave was granted to serve the writ outside of the jurisdiction of the State of Western Australia. Mr White was served but did not file an appearance and judgment in default was entered against him.

Master Newnes of the Supreme Court of Western Australia subsequently heard the plaintiff's application for an assessment of damages. Once again, the defendant made no appearance. Master Newnes accepted that the words complained of conveyed the alleged imputations. He commented that the fact that the publications were disseminated over the Internet 'was plainly designed to maximise their detrimental effect'.

On the question of what damages should be awarded, Master Newnes awarded \$70,000 in compensatory damages and \$25,000 by way of exemplary damages. He held that the defamatory publications were likely to have a 'very harmful effect'

upon the plaintiff's reputation and standing as an academic, and that he had suffered a great deal of personal distress and anguish. In awarding exemplary damages, Master Newnes said that the defendant's conduct 'can be attributed to a conscious desire on his part to cause the plaintiff the maximum amount of damage, hurt and embarrassment by what amounts to a campaign of deliberate offensive vilification'.

Although decisions of masters (who are not judges) of the state supreme courts carry little weight as precedents, Master Newnes' judgement suggests that the fact of publication on the Internet may increase the amount of damages which might otherwise be awarded as that avenue of publication suggests an intention to cause as much harm as possible to the subject of the defamatory material.

Dr Cullen may have difficulties trying to enforce the judgment against Mr White, however, the publicity which has surrounded the award of damages has gone a long way towards restoring his reputation.

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¹ *Cullen v White* [2003] WASC 153 (3 September 2003).

Local Advertising on Regional Television

In this edited version of her paper presented at the Communications Research Forum 2003, Helen Wilson looks at the state of regional television, and the contrast between local news content on the one hand, and local advertising content on the other.

Historically, localism has been the basis for ownership restrictions and for distinguishing between different types of service: what the Australian Broadcasting Authority (*ABA*) calls 'capital city' and 'non-capital city' licensees. The former are in Sydney, Melbourne, Brisbane, Adelaide and Perth, and jointly operate as networks negotiating program supply and national advertising. They are centred in Sydney and exercise dominance over the rest of the system, a cause of regulatory anxiety.

I refer to them as the metro networks. The non-capital city licensees are an assortment of arrangements in smaller markets, including the licensees in the 'aggregated markets' of Queensland, Northern NSW, Southern NSW and Victoria; a few markets with one or two licensees (such as Tasmania, Darwin, Mildura) and the licensees of the remote satellite services in Central Australia and Western Australia.

The metro networks take large risks in the field of program decisions and the

regional licensees pay an affiliation fee, a proportion of revenue, which entitles them to broadcast the network signal. Although now consisting almost entirely of network programming, regional television is still distinctive in its varying attempts to match news and information to the spatial location of viewers, and in its advertising's insistence on versions of that location.

The Northern Rivers and Wollongong were originally solus markets until the policy of aggregation was introduced in