

Editors' Note

Communications and media lawyers have sure been busy this last quarter. The Senate passed the Federal Government's Bill which will change media ownership laws in Australia. Rebel Wilson received the biggest award of damages in Australian defamation history. CBS is looking likely to take over the Ten Network. The Government responded to the Productivity Commission's recommendations regarding IP laws. John Ibrahim has commenced defamation proceedings against The Daily Mail. And the ACCC is investigating internet companies' advertised broadband speeds. When you get a chance to catch your breath, there is - scientifically speaking - no better way to enjoy the October sunshine than sitting down with the latest edition of Communications Law Bulletin. This edition is the second volume of our Defamation and Free Speech special. We have a case note from HWL Ebsworth's Rebecca Lindhout on the Rebel Wilson trial, followed by a comment by two leading media law academics from Sydney University, David Rolph and Michael Douglas. We also have two brilliant lengthy

pieces - one from News' Larina Mullins and the other from Banki Haddock Fiora's Phil Beattie. Larina tackles the multiple publication rule, and Phil gives us a comprehensive analysis of the contextual truth defence. Larina also gets a shout-out in this edition's interview with her colleague, News' Michael Cameron, about free speech and defamation following Michael recently being awarded the Press Freedom Medal. HWL Ebsworth's Andrew Miers provides practical advice regarding defamation insurance. CAMLA Young Lawyer representative, Tom Griffin, profiles new Allens partner, Valeska Bloch (most famous for her role as a previous editor of this illustrious publication), and we report on two recent CAMLA events, the CAMLA Young Lawyers' seminar on defamation and the CAMLA event on electronic marketing. We advertise two upcoming events - a seminar with ACCC Chairman Rod Sims, and the annual Young Lawyers speed mentoring event - further details inside. And, yes, we have the photos from the industry's night of nights, the CAMLA Cup.

Enjoy! - Victoria & Eli

the failure of all defences, the finding of malice and the multiple aggravating factors in publication and conduct of the proceedings made this a unique case - and one in which he awarded Wilson the largest defamation damages award in Australian history.

The remainder of this article highlights some of the key considerations and determinations in the case.

Qualified privilege - first Women's Weekly online article

Bauer Media pleaded qualified privilege at common law and under s30 of the *Defamation Act 2005* (Vic) (Act) to the publication of the first Women's Weekly online article. The statutory formulation of the test was put to the jury and Dixon J's judgment addressed the common law defence which is preserved by s24 of the Act.

The statutory defence is established if the defendant proves that:

- the recipient has an interest or apparent interest in having information on some subject;
- the matter is published to the recipient in the course of giving to the recipient information on that subject; and
- the conduct of the defendant in publishing that matter is reasonable in the circumstances.

It was always going to be difficult for Bauer Media to succeed on the common law defence because its publication was to the general public over the internet, whereas a statement is privileged only where there is a pressing need to protect the interest of the defendant of a third party, or where the defendant has a duty to make that statement.¹ It is only in exceptional cases that the common law has recognised an interest or duty to publish defamatory materials to the general public² and in those circumstances, the publisher's conduct must be reasonable in the circumstances.

Wilson asserted, in her claim for aggravated damages, that Bauer Media had published the articles with the purpose or intention of profiting commercially by attracting public and media attention to its publications in Australia and overseas by the timing of its articles (to coincide with the success of Pitch Perfect 2) and their sensational nature. Unanswered by senior executives, the probable inference that Bauer Media's dominant motive in publication was improper was open, and accepted, by the jury as they rejected the statutory defence. Dixon J agreed with the jury - and determined that Bauer Media ran a campaign against Wilson which was calculated by it to generate commercial benefit, it knew that the imputations were false and understood the probability of rapid and massive spread over the internet. Further, the jury's finding of malice in relation to publication of the first Women's Weekly online article was fatal to the qualified privilege defence under statute and common

¹ Papaconstuntinos v Holmes a Court (2012) 249 CLR 534

² Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 per Gummow, Hayne and Bell JJ