

CAMLA Young Lawyers Practical Defamation Law Seminar

Anika Valenti, Solicitor, Terri Janke and Company

On 28 July 2017, CAMLA Young Lawyers Committee held its inaugural continuing professional development seminar at MinterEllison in Sydney and was attended by a diverse range of over 70 legal practitioners. The seminar focused on practical insights into defamation law and pre-publication advice from panellists Clarissa Amato (Barrister, Banco Chambers), Theo Dorizac (Senior Legal Counsel, SBS) and Katherine Giles (Senior Associate, MinterEllison). The seminar was moderated by CAMLA Young Lawyers Committee Chair, Sophie Ciuffo.

Katherine commenced the session with a comprehensive summary of the basics of defamation law. The following panel discussion considered a hypothetical scenario, with the panellists providing practical tips and suggestions for the provision of effective pre-publication defamation advice.

Theo kicked off the panel discussion confirming it's not enough to just consider legal risk when providing pre-publication advice, especially

when working in-house. Rather practitioners should take a holistic view and work collaboratively with the editorial team to determine what is needed both editorially and legally to ensure a publication is defensible against claims of defamation.

The panellists emphasised the importance of ensuring defences for imputations made in a publication in advance. It cannot be assumed that a person convicted of a crime has no reputation to protect, so double and triple checking assertions and evidence collected by journalists to back up their stories is important for practitioners to do. Theo explained that right of replies plays a big part in the provision of pre-publication legal advice and Clarissa pointed out that press clippings from other news sources are not good evidence!

When responding to a defamation claim, Clarissa confirmed that it is worthwhile running through the case from start to finish to consider your client's position and acting accordingly. That means if there is no defence, settlement should be considered. Questions

to be considered include: Does the concerns notice specify the concerns claimed? What are the imputations? Do they arise or are they capable of arising? Are the imputations defamatory or reasonably capable of being defamatory? What evidence is there to support the imputations made? What can be proven?

Where a claim progresses to court, the panel also advised gathering proof of evidence from all sources (including confidential documents); if you have the bare bones of a defence, plead it rather than hiding from it; craft subpoenas carefully and don't ask for the kitchen sink because it'll be contested; follow Supreme Court practices; and remember that you are not limited to what is in the publication to prove truth or contextual truth.

As you can see, the seminar was indeed "practical" and had many of the attendees frantically jotting down these generously provided tips. The CAMLA Young Lawyers wish to thank MinterEllison for generously hosting the event and the panellists for their sage insights..

Contributions & Comments

Contributions and Comments are sought from the members and non-members of CAMLA, including features, articles, and case notes. Suggestions and comments on the content and format of the Communications Law Bulletin are also welcomed.

Contributions in electronic format and comments should be forwarded to the editors of the Communications Law Bulletin at clbeditors@gmail.com

The CAMLA Board for 2017:

President: Geoff Hoffman (Clayton Utz)

Vice President: Caroline Lovell (nbn)

Vice President: Bridget Edghill (Bird & Bird)

Treasurer/Public Officer: Martyn Taylor (Norton Rose Fulbright)

Secretary: Page Henty (RACAT Group)

Gillian Clyde (Beyond International)

Sophie Dawson (Ashurst)

Jennifer Dean (Corrs Chambers Westgarth)

Rebecca Dunn (Gilbert + Tobin)

Ryan Grant (Baker & McKenzie)

Alex Morrissey (ABC)

Larina Mullins (News Corp)

Debra Richards (Ausfilm)

Gulley Shimeld (Henry Davis York)

Victoria Wark (Communications Law Bulletin)