How to Treat an Angry Tweet –
the Dutton v Bazzi Appeal

Kevin Lynch and **Jade Tyrrell,** Johnson Winter & Slattery, consider the Full Federal Court's decision in Peter Dutton's defamation proceedings.

The Full Court's Decision

The Full Court of the Federal Court has allowed an appeal, setting aside a judgment entered in favour of the Hon. Peter Dutton MP in which it was found that a 'tweet' conveyed the defamatory imputation that "Mr Dutton excuses rape" (see *Dutton v Bazzi* [2021] FCA 1474), and ordered that the proceeding be dismissed.[1]

In dismissing the proceeding, the Full Court overturned the trial judge's finding that a defamatory imputation had arisen in the tweet published by Mr Bazzi which had included an extract and link to an article by *The Guardian*.

The content of posts in the form of tweets must be read in the context of the tweet, "as a whole"[2] to ascertain the meaning conveyed. This means that a 'bare tweet' which shares an extract from a linked article as part of that tweet should not be separated from that extract when determining whether a particular defamatory imputation is conveyed.

Background

The primary judge was required to determine whether an ordinary reasonable reader would understand that the tweet conveyed the defamatory imputation. White J found that this was the case and that Mr Dutton was entitled to damages in the sum of $35,825 (including interest) Mr Bazzi appealed that decision.

In the tweet itself, Mr Bazzi had shared the article from *The Guardian* with the text "*Peter Dutton is a rape apologist*", and it appeared on Twitter as follows:

Key Findings

- The primary judge failed to take an "impressionistic approach" and placed undue focus on dictionary definitions instead of properly considering the six-word statement in the tweet in the context of the tweet as a whole.[3]

- The primary judge erred in his reasoning process as he did not explain in his reasons how the reader would understand the whole of the tweet (or any part of it) to convey the imputation, particularly given his analysis of the meaning of the word "apologist" to mean a defender of something.[4]

Mr Dutton at first instance had pleaded and relied on four imputations which he said arose from the tweet, being that Mr Dutton:

a) condones rape;

b) excuses rape;

c) condones the rape of women; and

d) excuses the rape of women.

It was the second imputation above (that "Mr Dutton excuses rape") which White J found was conveyed by the tweet and which was before the Full Court of the Federal Court for consideration on appeal.

Outcome

The Full Court of the Federal Court, comprised of Rares and Rangiah JJ (in a joint judgment), and Wigney J (agreeing, in a separate judgment) allowed the appeal and dismissed the proceeding.

The only issue the Full Court was required to consider and determine in the appeal was whether the primary judge erred in finding that Mr Bazzi's tweet conveyed the particular imputation. There was no dispute as to correctness of the primary judge's identification of the principles to be applied to determine whether a publication conveyed a particular defamatory meaning or imputation.[5]

1   *Bazzi v Dutton* [2022] FCAFC 84.

2   [33] per Rares and Rangiah JJ; [63], [71] per Wigney J.1

3   [71] per Wigney J.

4   [40] per Rares and Rangiah JJ.

5   [4] per Rares and Rangiah JJ, citing the judgment of the judgment of Lord Kerr of Tonaghmore JSC in *Stocker v Stocker* [2020] AC 593, and [56] per Wigney J.

Rares and Rangiah JJ rejected Mr Dutton's submission that Mr Bazzi's six-word statement in the tweet conveyed the imputation independently of the content of the tweet when read as a whole.[6] Rares and Rangiah JJ endorsed[7] a recent UK social media case and stated:

"...it is the general impression created in the mind of the ordinary reasonable reader of a publication that determines whether it conveys one or more imputations of and concerning a claimant....in considering what a tweet conveys, Lord Kerr JSC cautioned against an elaborate analysis of the tweet or parsing of its content, because the medium has the nature of a conversation in which participants ordinarily correspond without using carefully chosen expressions."[8]

In addition to the Key Findings and the matters outlined above, their Honours found that:

- While it is open to a claimant to plead that an imputation arises from part of a publication if a separate meaning is conveyed, the general or broad impression of the tweet must be considered, and the natural and ordinary meaning of the tweet by Mr Bazzi would not give the impression to the reader that it conveyed two messages.[9]

- The primary judge was wrong to have downplayed the balance of the tweet (being the extract from the linked article), and dissect and segregate parts of the tweet, as Twitter users, being users of a conversational medium, would not do so. The ordinary reasonable reader would instead have read Mr Bazzi's tweet with regard to the incorporated article extract.[10]

As such, taking the tweet as a whole in its context, it was not accepted by their Honours that the tweet would have conveyed the imputation to the ordinary reasonable reader.[11] Part of that stems from the fact that Mr Bazzi's tweet was something of a *non sequitur* when read with the article extract. Wigney J described an "element of disjunct or disconnect" between the six-word statement in the tweet and the article extract, which made the tweet "confounding" and the meaning "obscure".[12]

An echo of *Hockey v Fairfax Media Publications*

Mr Dutton is not the first Australian Cabinet Minister to commence defamation proceedings in relation to tweets in which the defendant published a handful of words concerning a politician, in conjunction with an article

hyperlink. In *Hockey v Fairfax Media Publications Pty Limited* the Federal Court of Australia considered (among other matters) tweets concerning Mr Joe Hockey, the then Federal Treasurer. One of the issues to be determined was whether, for the tweets in which *The Age* (as the publisher of the tweets) had provided an accompanying hyperlink to *The Age*'s own article, the Court should take into account the articles linked in the tweets or whether the defamatory meaning was to be determined by reference only to the text of the tweets themselves (i.e. the 'bare tweet'). The first of these tweets involved a truncated hyperlink and the second contained a "view on web" hyperlink. That case also involved his Honour, White J, as trial judge, who considered that the meaning conveyed by those tweets may be determined without reference to the article to which the tweet links, as some may read the bare tweet without accessing the article.[13]

Whilst the presentation of the tweeted content with the truncated hyperlink to *The Age* article in *Hockey* appears to have differed from the way Mr Bazzi's tweet displayed an extract from *The Guardian* article, His Honour, White J was consistent in drawing a line between the words of the Twitter commentator and the linked article (in *Hockey*) and the extracted article (in *Dutton*).[14]

A parallel approach in Defamation Act Reforms

Bazzi v Dutton makes it clear that where an extract of an article is published as part of a tweet so that it is to be read with the tweet, one can reasonably expect that this requires a court to consider the tweet as a whole, including the material extracted from the linked article,[15] to determine the defamatory meaning or imputation.

This decision also highlights the role of platforms such as Twitter in public conversation and the nature of the medium, which involves users scrolling through content and reviewing tweets quickly to gain an impression.

The commencement of the Model Defamation Amendment Provisions on 1 July 2021 in a number of Australian jurisdictions has seen the statute recognise the operation of a link in the experience of an online reader, albeit in consideration of a defence rather than in assessing meaning. Section 31(5) of the *Defamation Act 2005* (NSW) now provides that material on which an opinion is based may include material which is *"accessible from a reference, link or other access point included in the matter (for example, a hyperlink on a webpage)"*[16].

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6   [45] per Rares and Rangiah JJ.

7   [47] per Rares and Rangiah JJ.

8   Citing *Stocker v Stocker* [2020] AC 593 at 606 [43].

9   [46] – [48] per Rares and Rangiah JJ.

10   [60], [63] per Wigney J.

11   [50] per Rares and Rangiah JJ and [77], [79] per Wigney J.

12   [75] per Wigney J.

13   *Hockey v Fairfax Media Publications Pty Limited* [2015] FCA 652 at [207].

14   *Hockey v Fairfax Media Publications Pty Limited* [2015] FCA 652 at [213]. The judge found that a third Twitter matter complained of tendered in the case "in conjunction with" a linked copy of the article as it appeared on The Age's website, the ordinary reasonable reader would not have understood it to mean that Mr Hockey was engaging in corrupt conduct, as he claimed. This was because the reader's initial understanding on reading the summary in the tweet itself (i.e. the imputation that Mr Hockey was engaging in corrupt conduct) would have been dispelled when the reader read the accompanying article.

15   [63] per Wigney J.

16   *Defamation Act 2005* (NSW), section 31(5)(iii).