

Damages

Since the Respondents' only defence was unsuccessful, Justice Lee awarded Mr Russell \$390,000 in general damages.

His Honour found that Mr Russell's poor conduct on the witness stand (particularly in relation to his evidence regarding a false invoice provided to the Respondents) was not so exceptional as to justify a finding that he only be entitled to nominal damages. His Honour declined to take the adverse credit findings into account in mitigation of damage, but did consider them in finding that aggravated damages should not be awarded.

Further, while Justice Lee did not find Mr Russell's evidence as to hurt to feelings persuasive, and that his actions were consistent with someone who had "not suffered significant hurt but rather embraced the public controversy", his Honour ultimately concluded that he could not disregard the evidence from seventeen witnesses that Mr Russell had in fact suffered real hurt to feelings and should therefore be compensated by an award of damages, which took into account the significant extent of publication and the seriousness of the imputations.

Takeaways

While this first consideration of the s 29A public interest defence was ultimately unsuccessful for the Respondents, Justice Lee's judgment provides some helpful guidance about the application of the defence that can be taken into account by media publishers prior to publication. In particular:

- In order to later prove the publisher's belief at the time of publication that it is in the public interest to publish, it will be useful to have contemporaneous records which document the state of mind of the journalists and editors.
- In relation to the assessment of the reasonableness of the publisher's belief that the publication of the matter complained of was in the public interest, his Honour emphasised that the list in s 29A(3) is non-exhaustive and warned against any attempt to establish a comprehensive list, considering that it would be unhelpful for the purposes of the statute, which requires having regard to "all the circumstances".
- Publishers should be mindful of changing circumstances in relation to ongoing (i.e. online) publications, which may affect their belief or the reasonableness of their belief that a matter is in the public interest.

Event Report: The 2023 CAMLA Oration

Isabella Barrett (Lawyer, Corrs Chambers Westgarth)

On Thursday 16 November, CAMLA hosted our second annual oration evening at the Ashurst Ballroom with keynote speaker Nick McKenzie, 14-time Walkley award winner, 4-time Australian Journalist of the Year, and investigative journalist for *The Age* and *Sydney Morning Herald*.

Nick has been at the forefront of our nation's most ground-breaking investigations, and most recently uncovered alleged war crimes by former SAS soldier Ben-Roberts Smith, which resulted in "the defamation trial of the century". It was a privilege to hear from Nick and there was ample opportunity for the lawyers and journalists in the room to ask him their burning questions. Plus, there was the

chance to get Nick's new book about the investigation into Ben-Roberts Smith, 'Crossing the Line', personally signed.

A key takeaway from the event was the power of both investigative journalism and the law in the pursuit of the truth.

The CAMLA Oration Evening was established in 2022 as an annual event to hear from a distinguished

guest on a timely topic in media law. This year's event was a fantastic follow-on from CAMLA's inaugural Oration Evening last year, which consisted of a keynote address from her Excellency, the Honourable Margaret Beazley AC KC, entitled "Freedom of Speech: To What End?"

CAMLA would like to extend our gratitude to Nick McKenzie for his invaluable insights, which has set a high bar for next year's oration. Thank you to Eli Fisher and Ashleigh Fehrenbach for organising this event. We look forward to seeing what next year has in store.

