



thinking reputation

A person or small company (“the aggrieved”) may be defamed when someone (“the publisher”) publicly makes or publishes untrue statements that malign the reputation of the aggrieved. An apology and retraction by the publisher of an untrue statement is usually the first step to resolving a dispute particularly where the publisher has made the statement in error. When a publisher does not properly retract an untrue or malicious statement the law of defamation may be invoked to protect the aggrieved party’s reputation.

Impact of Defamation

Stating or publishing comments without proper enquiry combined with reckless allegations about an individual may be considered as malicious and defamatory ultimately causing a negative impact on a person’s reputation and self esteem disrupting and maligning their achievements in business, social, sporting, political and cultural associations that may have been built up over several years. The emotional impact on the aggrieved person can be overwhelming causing anxiety, hurt feelings, financial loss and depression. Individuals and companies may suffer both economic and non-economic loss. If the publisher is reluctant or refuses to withdraw untrue statements or published material, an aggrieved person may proceed to take action against the publisher.

Resolving Matters Without Going to Court

In NSW the Defamation Act 2005 (“the Act”) provides the steps involved in taking action against a publisher of defamatory material or statements. The objects of the Act however, provide that law of defamation is not intended to place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance.

Such action may be at common law or may follow statutory provisions. Defamatory material does not have to be in writing and includes slander. The Act also provides for the circumstances in which a defence may be available to the publisher such as where the statement is substantially true or where a publisher may have parliamentary

or other privilege. Under provisions of the Act, not only are individuals entitled to take action in defamation but also not-for-profit organisations and companies that employ less than 10 full time equivalent staff.

The first step to resolve defamation matters in accordance with the Act is for an aggrieved person to provide a concerns notice to the publisher. The concerns notice must be in writing and inform the publisher of the false and defamatory allegations that they have attributed to the aggrieved person. This is referred to as the imputations.

The publisher then has 28 days in which it may make an offer to make amends either in relation to the matter generally or limited to part of the defamatory imputations. An offer to make amends must be in writing and include an offer to publish in writing a correction or retraction or to tell people that the published or stated material was incorrect and defamatory. The offer to make amends must include, among other things, an offer to pay the expenses reasonably incurred by the aggrieved before the offer was made (such as legal costs).

Going to Court

If an offer is not provided or does not satisfy statutory requirements, the aggrieved may take formal action to sue the publisher through either the District or Supreme Court of NSW or, in some cases, through the Federal Court system. Defamation matters cannot be filed in the Local Court. An action must be filed by way of a Statement of Claim within 12 months of the defamatory material being published. Apart from any economic loss, the aggrieved may claim compensation up to \$250,000.00. The level of compensation however, if any, is ultimately determined by the Court. In addition to compensation the losing party will be usually be liable to pay the winning parties legal costs.

Court proceedings for defamation are extremely expensive. Before taking such proceedings individuals should always obtain independent legal advice. Talk to us. You’ll be inspired.

*Christopher K.C. Serow
Principal, Solicitor Director, Notary Public,
Migration Agent MARN 0854319*

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LEGALMINDS
thinking together

www.legalminds.com.au

T 1300 642 166

E contactus@legalminds.com.au

157 Beardy Street Mall, Armidale