



Defamation of teachers by parents and others

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The fundamental concern of the law of defamation is to strike a balance between the protection of reputation and the need for reasonable freedom of communication. Debate about whether the law of defamation is too restrictive or not restrictive enough is really a debate about where the balance is struck between these two competing interests.

In a defamation action, a person seeking a remedy such as damages must prove that they have been defamed by way of spoken or written words, pictures, gestures, signs or other visible, non-verbal representations. To do this, they must prove defamation, identification and publication and the absence of a defence. That is, it must be shown that the defendant has published statements to a third person bearing defamatory imputations about an identified or identifiable plaintiff.

Defamatory matter

In Queensland, defamation is the publication of something that tends to lower a person's reputation in the estimation of others by making them think less of that person, usually by bringing the person into hatred, contempt or ridicule. It is through the eyes of "ordinary, right-thinking" members of society that the defamatory nature of the publication is to be determined. The published material must be such that reasonable people with knowledge of the circumstances would regard the publication as defamatory.

Clearly there are numerous statements made every day which are defamatory in this sense.

Most of those, however, would not result in a successful defamation action if the person referred to were to sue.

Identification

To successfully bring an action, it must be proved that reasonable people would reasonably believe

that the defamatory material refers to the plaintiff. Each plaintiff must be able to establish this in respect of themselves. It is, of course, not necessary that a person be identified by name, as they may be identified either elsewhere in the material, or through circumstances beyond the published material.

Individual members of a group to which the remarks relate cannot usually sue unless the group is sufficiently small that the statement can be taken as referring to each individual.

Publication

It is important to appreciate that all those who "spread" the defamatory statement are likely to be liable. Even "spreaders" who indicate that they do not necessarily believe it to be true may still be liable.

Defences

There are many defences to defamation actions, ranging from absolute protection for Members of Parliament speaking in Parliament to qualified protection for people communicating in circumstances where the law recognises there is a need for responsible communications, for example, reports to superiors, complaints to the police and matters of that sort.

The *Defamation Act 2005* (Qld) states the following at Section 30:

"Defence of qualified privilege for provision of certain information

- (1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the **recipient**) if the defendant proves that—
 - (a) the recipient has an interest or apparent interest in having information on some subject; and

- (b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and
 - (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.
- (2) For the purposes of subsection (1), a recipient has an apparent interest in having information on some subject if, and only if, at the time of the publication in question, the defendant believes on reasonable grounds that the recipient has that interest.
- (3) In determining for the purposes of subsection (1) whether the conduct of the defendant in publishing matter about a person is reasonable in the circumstances, a court may take into account -
- (a) the seriousness of any defamatory imputation carried by the matter published; and
 - (b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts; and
 - (c) the nature of the business environment in which the defendant operates; and
 - (d) whether it was appropriate in the circumstances for the matter to be published expeditiously; and
 - (e) any other steps taken to verify the information in the matter published.
- (4) For the avoidance of doubt, a defence of qualified privilege under subsection (1) is defeated if the plaintiff proves that the publication of the defamatory matter was actuated by malice.
- (5) However, a defence of qualified privilege under subsection (1) is not defeated merely because the defamatory matter was published for reward."

Clearly this defence will very often be available to people who write to the Department of Education making complaints about teachers. The defence will often apply to statements which are in fact untrue, but which are believed to be true. If, on the other hand, the teacher can prove that the complaint was prompted by malice, then the defence will fail and the teacher will win the defamation action. Such evidence is, of course, unusual.

Serious Harm

Recent changes to the Act mean that plaintiff's must show that the defamatory statements have caused them 'serious harm' before they can commence litigation. These changes have made it more difficult than before for teachers or school leaders to commence an action for defamation. This is because in most cases plaintiff's will need to be able to show that the defamation has caused them financial damage before a full action can be commenced.

Practical considerations

1. The only remedies available are damages and an injunction, and there is no provision in the law at present enabling a plaintiff to seek an order from a court directing that a correction be published - this has been recommended by various law reform authorities, but no changes in the law have yet resulted.
2. The apologies and retractions which one often sees published in newspapers result from negotiation, that is, an action for damages is dropped in exchange for some benefits flowing from the publisher to the person defamed, such as the publication of an apology and retraction.
3. Defamation actions are therefore often uncertain, slow and subject to considerable technicalities.
4. It is important for people contemplating defamation actions to realise that while they may well be able to prove that the statements published were untrue, the action may still fail - running the risk that people who are not familiar with the principles we have set out will hear that the defamation action has failed and may naturally assume that the action has failed because the allegations were true - this is an important practical consideration for plaintiffs to bear in mind.