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LawTalk Blog



How can the court assess the damage to my reputation when I've been defamed on social media?

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A number of recent court decisions have confirmed that defamation extends to online publications and social media.

Split second decisions to share information online have proven costly in recent years, with courts willing to award substantial damages due, in part, to the unique role the 'grapevine effect' plays in cases of [defamation through social media](#).

When a reputation is injured, the amount of damages to compensate the plaintiff (the person whose reputation has been damaged) are often incapable of precise calculation. This has become even more so since the advent of the digital world, where defamatory material can be republished, reposted and retweeted within seconds and to millions. As a result, it can be almost impossible to track the scandal created and determine just how far the 'poison' travels. And so enters, the 'grapevine effect'.

What is the grapevine effect?

The grapevine effect is an actual recognition by the law that, by the ordinary function of human nature, the dissemination of defamatory material is rarely confined to the person to whom the matter was immediately published. The grapevine effect has traditionally been applied to publications including newspapers and magazines, but is now increasingly used in cases of defamation via social media.

As such, the way that defamatory material can spread via the grapevine effect must be taken into account in assessing the amount

of damages (compensation) the plaintiff receives in any settlement.

Let's look at Australia's first social media defamation case

In Australia's first social media defamation case to proceed to full trial, [Mickle v Farley \[2013\] NSWDC 295](#), a student was ordered to pay \$105,000 in damages to his former teacher after making a number of defamatory statements about her on Twitter and Facebook. The comments had a devastating effect on the plaintiff, causing her to take leave from work immediately.

In assessing damages, District Court Judge Elkaim assessed compensatory damages at \$85,000 and aggravated damages at \$20,000.

Aggravated damages are sometimes awarded as a type of 'punishment' to the defendant for their poor conduct.

Compensatory damages are intended to vindicate the person's reputation in the eyes of the general community and compensate the individual for the distress and insult felt.

An award of monetary compensation aims to achieve as far as possible a reparation and vindication of the plaintiff's reputation. Judge Elkaim stressed the 'evil' of the grapevine effect:

“When defamatory publications are made on social media it is common knowledge that they spread. They are spread easily by the simple manipulation of mobile phones and computers. Their evil lies in the grapevine effect that stems from the use of this type of communication” (Para 21).

As the use of social media continues to grow, the growing body of [defamation by social media cases](#) acts as a caution to all internet and social media users that the greater the reach, the greater the risk.

If you believe you've been defamed on social media, or by some other means, contact the team at Andersons.

This blog post has been written by Law Clerk, Julia Arena and settled by Senior Associate, [Margaret Kaukas](#)

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