

## Defamation Law Australia: Twitter and Facebook

### To Tweet or Not to Tweet?

In what is believed to be the first Australian Court decision finding that posts on Twitter and Facebook can be defamatory, the Court ordered compensation of \$105,000 plus legal costs against the defendant.

In *Mickle v. Farley* [2013] NSWDC 295, the Court found that Mrs Mickle, a 58 year old, experienced and well regarded school teacher at Orange High School had been defamed by the Twitter and Facebook postings of Mr Farley, a former student at Orange High School.

At the time of the hearing, Mr Farley was apparently 20 years old. It also appeared that Mr Farley had never been taught by Mrs Mickle.

However, Mr Farley's father was also a teacher at the school, who had left the school in 2008 to attend to personal issues. Mrs Mickle, reluctantly assumed the role of head teacher in music. The Court found that Mr Farley bore a grudge against Mrs Mickle based on a mistaken belief that Mrs Mickle had something to do with his father's departure from the school. The Court firmly noted that "There is absolutely no evidence to substantiate that belief".

Mr Farley completed his Higher School Certificate in 2011 at Orange High School, but posted his defamatory comments in November 2012. The effect of the publication of those comments had a devastating effect on Mrs Mickle, resulting in her taking sick leave from work and only returning on a limited basis. The Court accepted that but for the publication Mrs Mickle would have continued to work until she reached 65 years of age.

The conduct of Mr Farley appeared confused, firstly by publishing the defamatory comments without any basis, secondly by responding to Mrs Mickle's lawyers stating that the comments had been removed from his social media pages and further stating "I apologise unreservedly to Mrs Mickle for any hurt or upset caused to her by statements made on my social media page". Then Mr Farley's Defence was filed and a defence of truth was put forward. This was followed by an Amended Defence asserting a "qualified" privilege. The Court noted that both defences had no substance. Mr Farley did not appear at the hearing.

The Court noted:-

*"..... that when defamatory publications are made on social media, it is common knowledge that they spread. They are spread easily by manipulation of mobile phones and computers. Their evil lies in the grapevine effect that stems from the use of this type of communication. I have taken that into account in the assessment of damages".*

The Court assessed damages (including compensatory damages) at \$105,000 plus legal costs.

It is clear that the implications for all citizens are that appropriate caution should be exercised in making comments that are likely to be defamatory on social media, Law in Australia considers that such comments constitute publication and therefore the author may be liable to legal proceedings and significant compensation and legal costs. To Tweet or Not to Tweet – that is the question.

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