

LIKE WITH CAUTION: SOCIAL MEDIA DEFAMATION

Written by Oliver Hamit and Victor Hamit*

[*Bolton v Stoltenberg \[2018\] NSWSC 1518*](#) found that the mere act of “liking” a defamatory post on social media sites, such as Facebook, was not enough to attract liability. Although, New South Wales Supreme Court Justice Payne added that liability could still be attracted if there is evidence to suggest that the “like” had drawn the attention of many users to the post.

The Supreme Court of New South Wales held that a series of Facebook posts about the former Mayor of the Narrabri Shire Council, Mr. Conrad Bolton, were defamatory, and awarded Mr. Bolton \$110,000 in damages. This included Mr. Stoltenberg being ordered to pay \$80,000 in general damages and \$20,000 in aggravated damages plus \$10,000 in interest. Ms. Loder was ordered to pay \$10,000 resulting from a defamatory post.

This case shows the powerful influence that social media sites can have over individuals. Mr. Stephen Stoltenberg, a former town clerk who had previously maintained a professional relationship with Mr. Bolton published a Facebook page called “Narri Leaks” which he used to post his defamatory opinions about Mr. Bolton.

From 2015 to 2016, Mr. Stoltenberg published six defamatory posts about Mr. Bolton, claiming that he was corrupt and dishonest in his actions as Mayor of the Council and acted unprofessionally and corruptly in his selection process for appointing a new General Manager to Council. Furthermore, Ms Ann Loder “who was at most relevant times the head of the Narrabri Ratepayer and Residents Association”[1], actively interacted with the posts, including “liking” 64 posts in the group, and uploaded a comment on a defamatory post encouraging others to “like” the post as well. Subsequently, Ms Loder was elected in September 2016 as Councillor of the Narrabri Shire Council [62].

Mr. Stoltenberg attempted to argue that despite the fact that he was the author and publisher of the defamatory posts, he could not be held liable unless there was evidence that a third party had read the posts, who was not Mr. Stoltenberg or Mr. Bolten. Justice Payne rejected this argument and found that there was a plethora of evidence that the posts had been read and downloaded by many other people who were not Mr. Bolten. The Court relied in part on material published in Mr Stoltenberg's posts and provided in his answers to interrogatories that others had read the posts.

In contrast to Mr. Stoltenberg's liability, Ms. Loder's liability was much harder to define. The question at hand was could "liking" of posts and encouraging others to do the same make her liable for defamatory posts.

Citing the cases [Google Inc v Duffy \[2017\] SASCFC 130](#) and [Visscher v Maritime Union of Australia \(No 6\) \[2014\] NSWSC 350](#), Justice Payne came to the conclusion that Ms. Loder's action of "liking" a post was not sufficient to warrant liability as a secondary publisher to the defamatory material. Despite this, however, Justice Payne added that her comment on a post encouraging others to "like" the post did make her liable, as she had attracted the attention of others to the defamatory posts. She was then ordered to pay \$10,000 in damages to Mr. Bolten for her comment.

This case illustrates the influence that social media can have. Cases like this encourage us to reflect on what we post and how we act on social media.

It is clear that the law is applying the principles of defamation to adapt to the new technology. In [Google Inc v Duffy \[2017\] SASCFC 130](#) [see our previous articles [here](#)], the provision of a hyperlink to the defamatory material lead to liability for Google.

Similarly, In the South Australian case of [Johnstone v Aldridge \[2018\] SADC 68](#) [see our previous article [here](#)] allowing defamatory posts made by others nevertheless led to liability for the host. Interestingly, in [Bolton v Stoltenberg \[2018\] NSWSC 1518](#), Mr Stoltenberg was not held liable for a defamatory post made by another because Mr Stoltenberg removed the post within 2 hours.

Advice of caution in social media is well placed.

**Oliver Hamit served as an intern at Wentworth Lawyers Pty Ltd
Victor Hamit is Principal Director at Wentworth Lawyers Pty Ltd*

Date Published: 7 January 2019

Victor Hamit
Wentworth Lawyers Pty Ltd
Level 40
140 William Street
MELBOURNE VIC 3000

Tel: +61 3 9607 8380
Mobile +61 408 590 706

Email: vhamit@wentworthlawyers.com.au
Website: www.wentworthlawyers.com.au

Disclaimer:

These materials are provided as a general guide on the subject only, not as specific advice on any particular matter or to any particular person. Please seek specific advice on your own particular circumstances as situations and facts vary.

Liability limited by a scheme approved under the Professional Standards Legislation