

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CHAMBERS

**CITATION** : CULLEN -v- WHITE [2003] WASC 153

**CORAM** : MASTER NEWNES

**HEARD** : 24 JULY 2003

**DELIVERED** : 3 SEPTEMBER 2003

**FILE NO/S** : CIV 1408 of 2002

**BETWEEN** : TREVOR CULLEN  
Plaintiff

AND

WILLIAM HOWARD WHITE  
Defendant

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*Catchwords:*

Defamation - Assessment of damages - Turns on own facts

*Legislation:*

Nil

*Result:*

Compensatory damages of \$70,000  
Exemplary damages of \$25,000

9 I accept that the respective words complained of conveyed those imputations. They are grave defamations of the plaintiff. Moreover, the statements were disseminated on the internet, which was plainly designed to maximise their detrimental effect, and they are deliberately couched in extravagant and offensive language. In the circumstances, it is obvious that the defendant intended to cause as much damage and hurt as possible.

10 I am satisfied on the evidence that the defamatory material has received substantial circulation among academic colleagues and others with whom the plaintiff comes into contact in a professional capacity and that the plaintiff has genuine concerns that the existence of the material on the internet will seriously affect his future employment prospects. The plaintiff pointed out that the publications are readily accessible by means of a search on the internet and a person, such as a prospective employer, wishing to obtain information about him is likely to make such a search.

11 The existence of this material has come to the attention of Edith Cowan University, his current employer, and there was produced in evidence a letter from the head of the School of Communications and Multi-Media addressed "To Whom It May Concern" stating that the University was aware of the campaign aimed at Dr Cullen, that there was no foundation for it and that the University regarded it as defamatory, illegal and immoral. Nevertheless, it is understandable that the plaintiff is concerned about the effect the publications may have on people who are not aware of the true position.

12 The plaintiff also referred to contact he had had about it from his sister, whose daughter had come across this material on the internet, and to friends and colleagues who had contacted him after having seen it on the internet.

13 The defendant has not attempted to justify the defamatory statements nor has he sought to raise any other defence to them.

14 The question then is, what damages should be awarded to the plaintiff?

15 In *Uren v John Fairfax & Sons* (1966) 117 CLR 118, Windeyer J, at 150, said:

"It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason,

compensation by damages operates in two ways - as a vindication of the plaintiff to the public and as a consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable by money."

16 In *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60, Mason CJ and Deane, Dawson and Gaudron JJ said:

"Specific economic loss and exemplary or punitive damages aside, there are three purposes to be served by damages awarded for defamation. The three purposes no doubt overlap considerably in reality and ensure that 'the amount of a verdict is the product of a mixture of inextricable considerations': *Uren v John Fairfax & Sons Pty Ltd* (*supra*) per Windeyer J at 150. The three purposes are consolation for the personal distress and hurt caused to the appellant by the publication, reparation for the harm done to the appellant's personal and (if relevant) business reputation and vindication of the appellant's reputation. The first two purposes are frequently considered together and constitute consolation for the wrong done to the appellant. Vindication looks to the attitude of others to the appellant: the sum awarded must be at least the minimum necessary to signal to the public the vindication of the appellant's reputation. 'The gravity of the libel, the social standing of the parties and the availability of alternative remedies' are all relevant to assessing the quantum of damages necessary to vindicate the appellant: *Fleming Law of Torts*, 8th ed (1992), page 595."

17 While in this case there are several publications, each of which is different to some degree, there is a clear and close connection between them. In *Carson v John Fairfax & Sons Ltd* (*supra*) there were two defamatory publications, published by the same author in different editions of the same newspaper. Mason CJ, Deane, Dawson and Gaudron JJ said (at 584):

"The effect of the defamatory publications was cumulative. The second compounded the harm to the appellant caused by the first: it renewed and expanded the hurt to his feelings; it exacerbated the damage to the reputation which he had hitherto enjoyed in legal, commercial and other circles."

18 In such circumstances, as their Honours remarked (at 585):

" ... it is permissible and sensible in a case where claims for closely related defamatory publications have been heard together for a jury, in determining what is the appropriate compensation to be awarded to the plaintiff in respect of each publication, to take account of the aggregate 'harm' suffered by the plaintiff by reason of both of them."

19 In the present case, I am satisfied that the defamatory publications are likely to have a very harmful effect upon the plaintiff's reputation and his standing as an academic. I also accept that the plaintiff has suffered a great deal of personal distress and anguish as a result of the publications and that they have caused him very considerable annoyance. It is likely that they will make it more difficult for him to obtain appropriate employment in the future. The damages award must compensate him in respect of those matters and be sufficient to signal to the public the vindication of his reputation.

20 I consider that the plaintiff is entitled to the sum of \$70,000 in respect of compensatory damages.

21 The plaintiff also seeks exemplary damages. Exemplary damages are awarded where the defendant has been guilty of conscious, high-handed behaviour in contumelious disregard of the plaintiff's rights: *Uren v John Fairfax & Sons* (*supra*) at 138, 154; *Todd v Swan Television and Radio Broadcasters Pty Ltd* [2001] WASC 334 at [139]. The objects of exemplary damages are to punish the defendant and deter others from similar conduct. They also achieve the appeasement of the victim's sense of grievance: *Cotogno v Lamb (No 3)* (1986) 5 NSWLR 559 at 586.

22 In my view, this is an appropriate case for an award of exemplary damages. The conduct of the defendant can be attributed only to a conscious desire on his part to cause the plaintiff the maximum amount of damage, hurt and embarrassment by what amounts to a campaign of deliberately offensive vilification.

23 I would award an amount of \$25,000 by way of exemplary damages.