

Defamation and freedom of speech



**ASSIGN
BUSTER**

Problem 3: Defamation and Freedom of Speech The committee makes the following recommendations on the proposed programs: The Followers: * An allegation made by a Western Australian MP, Greg Saunders, in Question Time, that a prominent, unmarried member of the Federal Cabinet is a homosexual. This committee sees no problem in discussing an allegation made by Greg Saunders, MP, in Question Time that a prominent, unmarried member of the Federal Cabinet is a homosexual. This conclusion has been derived from many factors.

Firstly, in order for a defamation case to come to light, the defamatory material must likely cause ordinary, reasonable persons to think less of the plaintiff, expose the plaintiff to hatred or contempt, or cause the plaintiff to be shunned. In the current social climate, simply labeling an individual as a homosexual is not sufficient for a defamation case, especially when the individual is unmarried. The same may not be the case where a married individual is involved, where such a comment could imply them cheating on their spouse which may have religious or other connotations.

Secondly, as the allegation was made in Question Time, Greg Saunders, MP, is afforded absolute privilege over his comments and is in no way liable under defamation. As long as the discussion surrounding the allegation is honest and a true representation of those comments, the radio broadcasters, although not generally regarded as having a duty to report to the public, may report on court and parliamentary proceedings. Thirdly, as the allegation does not single out an individual, it would be hard for a defamation suit to be brought against the radio broadcasters.

Even though all the unmarried members of the Federal Cabinet could potentially bring action, stating that the allegation could be directed at them, the group would be deemed too large, although this could be dependent on the number of married and unmarried members. * A rumour that the Minister for Agriculture, Stephen Fields, took a bribe from a pro-logging group. This committee sees problems with discussing this issue on-air as and suggests the following precautions are taken.

The broadcasting of such information is clearly a defamatory remark, made about an individual and published through the understanding of the listeners. As such a defence is essential. Ideally, if proof of the truth in this rumour, and the proof of the imputations implied by the rumour, could be obtained and documented, this would act as solid defence if a defamation suit was brought against the broadcasters. If the truth cannot be proven, the broadcasters would need to rely on presenting the story in the course of "government and political matters" and do everything they can to legitimize the rumour.

As this rumour has gross implications to the community and to the Australian Public as a whole, it may be justifiable to deem that the broadcasters have a social and legal obligation to publish this news, as long as it is in serious, non-sensationalised conversation and not in a comedic fashion. The broadcasters must be careful when taking phone calls on this issue that listeners do not blow exaggerate the allegations rumoured to be true and do not overstep the boundary of academic political discussion.

In 1986, Justice Michael McHugh, then of the High Court, said for the view that it is now reasonable to publish allegations concerning the official conduct of public officials if an ordinary person considering all the circumstances would think that the allegations were 'probably true' and needed to be investigated... If the conduct of public institutions and officials is to be properly scrutinized, it is only to be expected that erroneous, hurtful and defamatory statements will be made... Moreover, public officials undoubtedly have greater access to the media than other citizens.

They are usually in a position to correct untrue statements. " In this light, as long as the conversation is made with the community's interest in mind and unbiased, fair reporting is taken into consideration, the rule in *Lange* should apply. * The operations of a major Mining Company, Pillager Pty Ltd, in an advertising campaign against the proposed Mining Tax, with a particular focus on whether the company deliberately peddled untruths about the Tax to unnerve the electorate.

This committee suggests that broadcasting a discussion of such an issue would pose no threat to a possible defamation suit being brought against the radio station. Since the commencement of the Uniform Defamation Acts on 1 January 2006, only companies with fewer than ten employees or not-for-profit organizations can sue for defamation. This is a reflection of the legal system protecting its valuable time and was brought about in part due to the *McLibel* case. This case concerned two environmental activists and their pamphlet which was critical of McDonald's Corporation.

The case was the longest-running court action in English history and lasted over ten years. This drawn-out battle was often deemed a "David-vs-Goliath" endeavour and seen by many as a complete waste of time, causing embarrassment to both the McDonald's Corporation and the legal system under which it was heard. The Uniform Defamation Acts seek to outlaw this inefficient practice and dictate that a publication must identify and defame a third person, or company with less than ten persons in order for a case to be established.

If the company is larger than ten persons, an individual or small group of individuals within that organization must not be singled out. This committee suggests that as long as the radio presenters only make reference to the company, Pillagers Pty Ltd, as a whole, there should be no problem with this issue being broadcast. * The behavior of a Labor Backbencher, who appeared to have been affected by drugs in an appearance on the ABC show 'Q and A' and who has long been rumoured to have enjoyed recreational drugs.

This committee sees some problems with discussing this topic and makes the following suggestions. Reporting a rumour like this is clearly defamatory as it is likely to injure the reputation of the backbencher. It does not matter that the individual is not named, it will be easily understood who the discussion is about if any of the listeners had seen the episode of 'Q and A'. As such a defence is essential. It does not matter that the incident occurred on a television show first, as the material will be republished through the radio broadcast and therefore leave the roadcasters liable if a suit is brought. It is greatly beneficial in avoiding a defamation suit. If a case was to be brought against the broadcaster, the onus would be on them to prove the rumour

true and as such, they may need to undertake a personal investigation, at their own cost. As the discussion surrounds a Member of Parliament and someone that is important to the community, the defence in Lange could be evoked. This principle suggests that it is not defamatory to discuss things in the interest of the good of the Australian people, as long as it is not sensationalised or editorialized.

The broadcasters will need to be careful to give an honest description of the events on the episode of 'Q and A' and an unexaggerated account of the rumour surrounding his drug-taking history. Any sources available will also greatly reduce the risk of legal action. The High Court decision of *Theophanous v Herald and Weekly Times* created the defence on the grounds of political discussion and allowed for fair comment on the suitability of members for Parliament. It also, however, dictated that discussion must be restricted to concerning their professional lives and not their private life.

In this instance, as the Member is acting in their official role on 'Q and A', and the drug induced state hinders their ability to act and think concisely, affecting the good of the Australian public, the rule will apply. Sons of the Federation: This committee sees multiple problems with the broadcasting of such a group and makes the following comments. Racial vilification legislation provisions currently reside in the form of the Racial Hatred Act 1995 (Cth) which amended the Racial Discrimination Act 1975 (Cth). This introduction was on the back of the signing of the

International Convention on the Elimination of All Forms of Racial Discrimination and allows for complaints to the Human Rights and Equal

Opportunity Commission. If the Sons of the Federation portray anti-Indigenous and anti-Asian objectives they will be held liable under these laws as a public act, reasonably likely to offend, insult, humiliate or intimidate a race. The penalties involved conciliation, and will progress to a hearing in the Federal Magistrate's Court if this is unsuccessful. Some state legislation has added to these provisions to allow for fines of up to \$10, 000 and six onths imprisonment.

The Sons of the Federation must be very careful in the language they use as meanings can be implied from a broadcast even where express terms are not used. In this light, even if the broadcasters portray themselves as protectors of the heritage of Australia's founding fathers, their actions could be deemed by others as hatred towards all other cultures. Reflective Questions: * Do you think Australia needs a Constitutional protection for freedom of speech? The assumption of free speech in Australia is merely a matter of custom rather than an actual legal right.