

New south wales aboriginal land council case summary

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Counsel for the defendant suggested that the decision in *Ballina Shire Council v Ringland* (1994) 33 NSWLR 680 applied to this case and meant that the NSW Aboriginal Land Council could not sue for defamation. The decision was made by Chief Justice Gleeson and President Kirby that a council elected under the Local Government Act 1919 does not have sufficient powers or rights to make a claim for defamation. The plaintiff argued that *Ballina* should be distinguished or the decision made in *Ballina* over-ruled. There is no necessity to over-rule the decision made in *Ballina* as this case can actually be distinguished.

South Hetton Coal Co v North-Easton News Association Ltd [1894] 1 QB 133-established that body corporate may sue for defamation. *Ballina Shire Council v Ringland* (1994) 33 NSWLR 680-raised question of whether a public authority could sue for defamation, Australia's leading authority in area. *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534-Lord Keith said " It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. Reasoning- The " fundamental human right" Freedom of Speech-Democratic right-Government cannot claim for defamation-governing reputation unprotected under defamation-inconsistency between right to free speech and exercise of power by a democratically elected body exercising governmental powers. Is the New South Wales Aboriginal Land Council a democratically elected body exercising governmental powers for the purposes of the law of defamation?

" The election process only involves Aboriginals and is not democratic in the relevant sense because the only people entitled to vote are Aboriginals. "...

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the Council is not governmental in the relevant sense; it only has certain, limited, governmental powers over the Aboriginal portion of the New South Wales regions it represents. " S 65 of the Local Government Act 1919, " An Aboriginal Land Council is not, for the purposes of any law, a statutory body representing the Crown. " Counter-argument for entitlement to claim for defamation-" the Council is funded from the consolidated revenue (of an amount calculated by reference to the land tax) contributed to by all the people of New South Wales. *Consideration must be had of what kind of person made the defamatory comments. Irrelevant as Mr. Jones and the other defendants are not Aborigines. Decided that the New South Wales Aboriginal Land Council is entitled to sue for defamation. Justice of Appeal.

" The question for decision is whether the New South Wales Aboriginal Land Council (the plaintiff), a statutory corporation, can maintain an action for defamation in respect of imputations that it conspired to pursue a native title claim which it knew to be fraudulent, and supported it with bribery and corruption. Defendant's claimed that the Ballina decision could be followed in this case as it is sufficiently similar in that it concerns a local government corporation. Plaintiff argued that the New South Wales Aboriginal Land Council was not a local government body at all and this difference meant that the Ballina case could be distinguished. Must consider; Aboriginal Land Rights Act 1983. Reasoning that a corporate is separate from its members regarding harm-Lord Thurlow Lc, modified by Poynder; " it has no soul to be damned and no body to be kicked and therefore has no conscience".

Supported by Viscount Haldane in Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705: "...a corporation is an abstraction. It has no
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mind of its own any more than it has a body of its own..." Also by Lord Reid in *Lewis v Daily Telegraph Ltd* [1964] AC 234: "...A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a libel but that injury must sound in money. The injury need not be necessarily confined to loss of income. Its goodwill may be injured.

*Libel: Defamatory material expressed in print, writing or any other mode of communication capable of being comprehended in permanent form. that a corporation at common law may maintain an action for a libel by which its property is injured" Pollock Cb. This statement approved by Lopes LJ. Kay LJ said: "... the only libel of which they can jointly complain is one which may injure their joint property or their joint trade or business. The same law is applicable to a certain extent to a trading corporation.

Its property or its business may be injured by defamatory statements whether written or oral. It has a trading character, the defamation of which may ruin it...I therefore am of opinion that a trading corporation may sue for a libel calculated to injure them in respect of their business..." Supporting judgement: *South Hetton Coal Co v North Eastern News Association* [1894] 1 QB 133- The Court agreed with the observation that the company was harmed as the defamatory remarks prevented men from entering into their employment. " injure its reputation in the way of its business. High Court decision in *Barnes & Co Ltd v Sharpe* (1910) 11 CLR 462 " unless it is defamed in the way of its business. "

Du Parcq referenced in *D&L Caterers, Ltd & Jackson v D'ajou* [1945] KB 364.

Justice of Appeal MAHONEY held a trading corporation may recover damages in defamation for injury to its " reputation as such" without it being regarding <https://assignbuster.com/new-south-wales-aboriginal-land-council-case-summary/>

its trade and business. Supported by *Bognor Regis Urban District Council v Campion* [1972] 2 QB 169: a local council has a “governing reputation” which requires protection from defamation. Decision over-ruled in *Derbyshire*.

Argument that a trading corporation may recover damages for defamation for injury to its reputation without it concerning its trade and business was rejected in *Australian Broadcasting Corporation v Comalco Ltd* (1986) 12 FCR 510. Justice Pincus supports the above determination with: “...it is not always easy to keep the concept of a company’s separate legal personality in mind, when considering damages for defamation. Where...those associated with the company have been implicitly attacked, it would seem unjust to let the defamer escape if no financial loss to the company...can be shown.

But if the defamation reflects on, for example, the board, they must themselves sue. Should it hurt no natural person and cause the company no monetary loss, for what loss could damages be awarded? ” No group has been specified as to if they are able to be harmed financially. In fact, the decision made in *National Union of General and Municipal Workers v Gillian* [1945] 2 All ER 593, by Justice Birkett was that the trade union could sue for defamation as the imputations made against the union were such that: there would be neither subscriptions to nor membership of this union and to that extent the property of the union would be adversely affected. ”

A trade union was argued to have the same rights as a trading corporation by Justice Uthwatt who said: “ It is well established that in certain cases a trading corporation may bring a suit in respect of an imputation on its trading reputation, and I see no reason why a non-trading corporation should

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not have the same rights in respect of imputations on the conduct by it of its activities.

A trade union to my mind stands in the same position. It too has its reputation. " Consideration of other non-trading corporations being able to sue for defamation has been made by Lord Keith in Derbyshire regarding a charity which defamatory statements may harm by discouraging subscriptions from the public " or otherwise impair its ability to carry on its charitable objects. " Futhermore, for non-trading corporations, imputations " might make it more difficult to borrow or to attract suitable staff".

Regarding the query into whether the Aboriginal Land Rights Act 1983 provides whether the special provisions applicable to " government" corporations are applicable to the New South Wales Aboriginal Land Council, section 22 of section 104 must be considered. Subsection 2 provides: " The New South Wales Aboriginal Land Council is a body corporate and has the corporate name of the " New South Wales Aboriginal Land Council".

It is established that the New South Wales Aboriginal Land Council is not a statutory body by section 247 of the act, primarily by section 65 which states that: An Aboriginal Land Council is not, for the purposes of any law, a statutory body representing the Crown. " However, an Aboriginal Land Council is made out to be a public authority in section 65A which claims: " Each Aboriginal Land Council is taken to be a public authority for the purposes of the Ombudsman Act 1974, the Independent Commission Against Corporation Act 1988 and the Freedom of Information Act 1989. Analysis of Act:

The Purpose of the Aboriginal Land Rights Act 1983 was to create a local government for Aboriginals who resided in a Local Aboriginal Land Council Area or a Regional Aboriginal Land Council Area. Aboriginal residents make up the majority of the council's members. In areas such as the Northern Territory where Aboriginals make up the majority of the population, there may be no councils apart from the Local Aboriginal Land Council, leaving the council to be the only form of local government.

Judgement depended on decision that Ballina could be followed. Chief Justice Gleeson determined that the law of defamation is not applicable to reputations had by elected bodies as this constituted their "governing reputation" and agreed with the judgement in Derbyshire. President Kirby also agreed with Derbyshire. Justice of Appeal agreed with Justice of Appeal . Majority: Question answered in the negative.