

Rebel Wilson's Defamation Win (And Loss)

By Neil Douglas

Rebel Wilson's recent record damages award (\$4.5 million plus costs) in her successful claim against magazine publisher Bauer Media has been widely seen as a win against the publication of false or unsubstantiated material that harms an individual's reputation.

Many in the community would empathise with Rebel Wilson's sense of injustice and outrage at being the target of untrue statements and baseless allegations. Among these are those in the community - including elected members and senior employees of local governments - who, because of the positions that they hold, are more exposed to the risks of being targeted by defamatory material. With the increasing use of social media, these risks (as well as the adverse consequences) have substantially increased.

Celebrity features

There were, of course, some special features of Rebel Wilson's case, not replicated in more typical defamation actions, that resulted in her record damages award (about 4 times more than the previous Australian record). Among these were that:

- Rebel Wilson is an internationally-known actress and comedian;
- the defamatory statements made about her were published in a magazine (the Woman's Day) that has a wide circulation, as well as various online websites (including the Woman's Day website, the Woman's Weekly website, New Weekly website and OK Magazine website) that have an international circulation;
- these defamatory statements were proved (by Rebel Wilson) to have caused 'the loss of a chance of new screen roles', valued by Justice John Dixon, the Supreme Court judge hearing the case, at over \$3.9 million; and
- combined with her sense of injustice and outrage, Rebel Wilson had the determination and the financial resources to retain a team of lawyers, over a 2-year period, to pursue her case.

Allegations of lying

Despite these special features, the core of her defamation case involved the publication of statements and comments that may seem mild compared to statements and comments that are frequently directed against others, including elected members and senior employees of local governments. The print and online articles relating to Rebel Wilson which were the subject of her defamation claim included false or unsubstantiated allegations that she had -

- lied publicly about her age (by claiming to be 29 years old when she was 36 years old);
- lied about her name by using the fake name 'Rebel Wilson' when her real name is Melanie Elizabeth Bownds;
- lied about her background by stating publicly that she was raised by parents who trained dogs when, in fact, her parents had not trained dogs;
- lied about her background by stating publicly that, as a child, she travelled around Australia in a caravan with her family to attend dog shows when, in fact she had not done so; and
- lied about her background by stating publicly that, as a child, her family home was in a disadvantaged suburb of Sydney when, in fact, her home was in an upper middle class part of Sydney.

The publisher did not dispute that these allegations (and the imputations that they conveyed) were defamatory. Instead, it relied on various defences such as 'substantial truth', 'qualified privilege' and 'triviality' - including the claim that the readers (of the tabloid media) were not likely to take the allegations seriously. All these defences were rejected by the jury in this case.

Malice

The jury also determined that Bauer Media was 'motivated by malice' in publishing the relevant articles. This was important because a finding of malice is sufficient to defeat a defence of 'qualified privilege'. Among the circumstances that resulted in malice being established were that Bauer Media -

- failed to properly investigate the allegations before publishing them (particularly where the allegations were based on information by a source who required payment and anonymity and whom the editor considered had an axe to grind);
- repeated the allegations when they knew or foresaw that their defamatory slurs would be repeated in the entertainment and celebrity media; and
- continued to publish articles, motivated by the pursuit of profit

Settlement offer

The Court was told that, before the trial began, Rebel Wilson had offered to settle for \$200,000. This was rejected by Bauer Media.

Defamation by Rebel Wilson

Less well publicised is a more recent defamation case taken against Rebel Wilson.

In February 2016, Rebel Wilson tweeted (to her 2.5 million followers) a head shot of Elizabeth Wilson, the features editor of Bauer Media's House & Garden magazine, calling her 'total scum', allegedly for harassing Rebel Wilson's grandmother.

However, Rebel Wilson had the wrong Elizabeth Wilson. Apparently there are two journalists with that name who work in magazine publications.

When Rebel Wilson realised her error, she took down her offending tweets and apologised. However, the misidentified Elizabeth Wilson proceeded with legal action.

Shortly before this defamation trial was due to begin, the case was settled - reportedly by Rebel Wilson paying \$120,000 in damages to Elizabeth Wilson.

If you would like to discuss any of the matters raised in this article further, please do not hesitate to contact Neil Douglas at neil.douglas@mcleods.com.au. The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.