

BLP BRIEF

Defamation: A Guide for School Leaders

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We live and work in an age of information. The ease at which information can be gathered and disseminated provides for an invaluable resource for our professional and personal lives. Unfortunately, however, not all information published is positive. There are circumstances where individuals publish comments which are false and which are hurtful to another's reputation.

Sometimes, schools and education professionals find themselves the subject of incorrect statements which have the potential to cause damage to their reputation. In those situations, it is prudent to be aware of the legal implications of the comments, the rights the subject may have and the procedure for protecting or enforcing those rights.

What is the law?

Defamation law considers situations where a person's reputation has been harmed by reason of false information or comments being published about them. The relevant law is contained within the Defamation Act 2005 (Vic).

In order for a comment to be defamatory, it must:

1. Be published to a third party
2. Be untrue
3. Identify the subject (either expressly or impliedly)
4. Cause damage to the reputation of the subject

In order for a comment to be considered defamatory, those comments must be false, unjustified, be represented as fact (rather than opinion) and must be sufficiently serious to cause damage to reputation of the subject. The subject must establish they had a reputation capable of being damaged.

Defences to Defamation

Not all negative comments are defamatory. There are certain circumstances where comments made by a person, albeit negative or hurtful, are not considered defamatory.

There are a number of defences within the *Defamation Act 2005* (Vic), including:

- Defence of justification - the comment/publication is substantially true

- Defence of contextual truth – the comment/publication made imputations that are substantially true so the aggrieved could not have been harmed
- Defence of fair report of proceedings of public concern
- Defence of honest opinion – the comment/publication was a statement of opinion rather than fact

If any of the applicable defences apply, a comment or publication is not considered defamatory.

Case Study

Unfortunately, it is not uncommon for parents to form vendettas and to try to recruit public support for the removal of staff from a school. Consider the situation where a parent is aggrieved with a particular teacher and sends a message or email to other parents making negative comments about the teacher. Would this conduct be considered defamatory and what can the teacher or school do to protect themselves or rectify the situation?

This situation was explored in New South Wales. A parent of two students at a school took issue with the Principal and sent emails to 14 fellow parents labelling the Principal incompetent, dishonest, untrustworthy and calling for her resignation on the basis that she was causing a decline in the school's educational standards. The parent had also written letters to government ministers and the Indian High Commission conveying a similar message.

The Principal succeeded in bringing a claim against the parent for defamation and was awarded \$80,000 in damages for the stress, hurt and reputation damage the statements had caused.

In finding in favour of the Principal, the Court considered that:

1. The comments had been published – they were written and sent to 14 parents and were not just a correspondence between the parent and the Principal;
2. The comments identified the Principal and were intended to convey the meaning that was interpreted;
3. The comments were untrue and were not founded in any fact; and
4. The comments caused harm to the Principal and her reputation.

Whilst this was a positive result for the Principal, it must also be remembered that bringing a claim for defamation is not easy. The purported defamatory comments must be serious and generally persistent in order to bring a successful claim.

How Brennan Law Partners can Assist

Given the reputational harm that can come from false comments being made about a school or staff member in their professional capacity, it is prudent to ensure that you are aware of the relevant defamation laws and the options available for protecting yourself.

Of course, not all defamatory publications are litigated. Indeed, litigation is a costly exercise with very little control over the outcome. However, it is justified in some circumstances and schools and education professionals should not simply accept defamatory comments as part and parcel of the role.

If you or one of your staff has been subjected to potentially defamatory material, contact us to discuss the matter and explore options you may have to rectify the situation.

If you have any questions regarding any information in this BLP Brief, we welcome you to contact us at any time.

This is meant as a guide only.



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