

SUPREME COURT OF QUEENSLAND

Registry: Brisbane
Number: 6325/2001

Plaintiff: CHARLES SCOTT BALSON

AND

First Defendant: STATE OF QUEENSLAND

AND

Second Defendant: QUEENSLAND NEWSPAPERS PTY LTD

FURTHER AMENDED STATEMENT OF CLAIM

A. FACTS RELEVANT TO CLAIMS AGAINST BOTH DEFENDANTS

(1) The Plaintiff

1. The Plaintiff is, and was at all times material to this proceeding:

(a) An author;

(b) A publisher; and

(c) Engaged in the business of developing web sites for profit ("the Plaintiff's business").

2. Until November 1999, the Plaintiff held the position of Webmaster for One Nation political party ("One Nation").

3. At all times material to this proceeding, One Nation and the Australian Labor Party ("ALP") were in competition with one another for, amongst other things, the election of their endorsed candidates to the Legislative Assembly of the Queensland Parliament.

(2) D'Arcy

4. One William Theodore D'Arcy ("D'Arcy"):

(a) Was a member of the Legislative Assembly of the Queensland Parliament, representing:

STATEMENT OF CLAIM LONDY LAWYERS

Filed on behalf of the Plaintiff Solicitors

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127 Creek Street

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Further Amended Statement of Claim-160503.doc

(i) The electorate of Albert, between 27 May 1972 and 7 December 1974; and

(ii) The electorate of Woodridge, between 12 November 1977 and 9 January 2000;

(b) Was elected to the Legislative Assembly of the Queensland Parliament, for the said electorates, as an endorsed candidate of the ALP; and

(c)

Within the Legislative Assembly of the Queensland Parliament, held the following offices and positions:

- (i) Opposition Spokesman on Health, December 1977 to January 1981;
- (ii) Deputy Leader of the Opposition, February 1980 to October 1982;
- (iii) Opposition Spokesman on Treasury Matters, January 1981 to October 1982;
- (iv) Member, Standing Orders Committee, 1980 to 1983;
- (v) Opposition Spokesman on Administrative Services, Survey and Valuation, October 1982 to November 1983;
- (vi) Opposition Spokesman on Water Resources and Maritime Services, November 1986 to November 1987;
- (vii) Opposition Spokesman on Tourism, Sport and Racing, November 1987 to March 1988;
- (viii) Member, Public Accounts Committee, 10 November 1992 to 20 June 1995;
- (ix) Member of the Ministerial Legislative Committee for the Health, Administrative Services, Environment and Heritage, Business, Industry and Regional Development portfolios, September 1995 to February 1996;
- (x) Chairman, Public Works Committee, 15 September 1995 to 2 April 1996, and Deputy Chairman, 2 April 1996 to 19 May 1998;
- (xi) Member of the Ministerial Legislative Committee for the Premier's and Treasurer's portfolios, July 1998 to January 2000;
- (xii) Member, Standing Orders Committee, 30 July 1998 to 9 January 2000; and
- (xiii) Chairman of Committees and Deputy Speaker of the Legislative Assembly, 30 July 1998 to 9 January 2000.

5. At all times material to this proceeding since 26 June 1998:

- (a) The Premier of Queensland has been The Honourable Peter Douglas Beattie, MLA ("Mr Beattie");
- (b) Mr Beattie's Government ("the Government") has been comprised of members of the ALP holding seats in the Legislative Assembly of the Queensland Parliament; and
- (c) Until 9 January 2000, D'Arcy was a member of the Government.

6. At all times material to this proceeding, The Courier-Mail:

- (a) Was a newspaper circulating in Brisbane and elsewhere throughout Queensland;
- (b) Was published daily, other than Sundays, Christmas Day and Good Friday;
- (c) Was published by the Second Defendant;
- (d) Was the most widely circulated and read newspaper in Queensland; and
- (e) Had a reputation as an accurate and reliable source of news and information concerning, amongst other things, subjects of political interest and controversy in Queensland.

7. D'Arcy:

- (a) Prior to 29 August 1998, was the subject of wide-spread rumours that he was under police investigation for alleged offences involving the rape of or indecent dealings with children ("child-sex offences");
- (b) On 29 August 1998, was the subject of a report in The Courier-Mail which identified D'Arcy as being under police investigation for alleged child-sex offences;
- (c) On 1 September 1998, was the subject of a further report in The Courier-Mail, which stated:

"Labor MP Bill D'Arcy has refused Premier Peter Beattie's advice that he resign over child sex allegations that threaten the stability of Queensland's minority government.

"Mr Beattie, who did not publicly identify Mr D'Arcy told him during a 45-minute meeting yesterday that he should quit Parliament in the interests of himself, his family and the Government."

(d) On or about 1 September 1998, was identified by Mr Beattie, in the course of a media conference, as a person under police investigation in connection with alleged child-sex offences;

(e) On 2 September 1998, was the subject of a further report in The Courier-Mail, which stated:

"Labor MP Bill D'Arcy's heart condition partially influenced Premier Peter Beattie's call for him to resign after reports that police were expected to charge the backbencher with child-sex offences. ...

"It was the first time the Premier has identified Mr D'Arcy as the person expected to be charged by police over (child sex) allegations that the backbencher has strenuously denied. ..."

(f) At some time between 2 September 1998 and 27 July 1999, was charged with numerous child-sex offences;

(g) Resigned his seat in the Legislative Assembly of the Queensland Parliament on 9 January 2000;

(h) On 21 January 2000, was committed to stand trial on 49 child-sex offences;

(i) On 1 November 2000, was convicted in this Honourable Court at Brisbane of 18 child-sex offences, namely:

(i) 11 counts of indecently dealing with a girl under 12 years;

(ii) 4 counts of indecently dealing with a boy under 14 years; and

(iii) 3 counts of rape;

(j) On 17 November 2000, was sentenced to concurrent terms of imprisonment ranging from 3 to 14 years (subsequently reduced to 10 years on appeal); and

(k) On 14 November 2002, was convicted in the Queensland District Court in respect of a further child-sex offence, namely one count of indecent dealing with a girl under the age of 17 years.

(3) The Website Report

8. At all times material to this proceeding:

(a) An international system of interconnected computer networks popularly known as "the Internet", electronically linked together by globally unique addresses, and communicating by means of a common set of computer language protocols, existed for the exchange of information and data between computers;

(b) Within and as a feature of the Internet, a facility popularly known as "the World Wide Web" or "the Web" existed for the storage, transmission and displaying of information and data in a format designed to be viewed on a computer terminal by means of software known generically as "web browsers";

(c) Information and data comprised on the Web was stored in individual packages, each with a unique address, popularly known as "Web sites"; and

(d) Each Web site:

(i) Was stored on a specific computer known as a "host computer";

(ii) Was accessible from the host computer by means of an address protocol called a "hyper-text transfer protocol", popularly known as a "Web address"; and

(iii) Could be accessed by any computer with an Internet connection and the appropriate software, via the relevant Web address.

9. On or about 27 July 1999:

(a) A Web site existed with the name or style, "Australian National News of the Day" ("the Website");

(b) The Web address for the Website was:

<http://www.gwb.com.au/gwb/news/daily.html>

(c) A report ("the Website Report") in the following terms appeared on the Website:

"Bill D'Arcy is currently at the centre of child-sex allegations in Brisbane. He was named by the Courier Mail in September last year. Among the 47 child-sex charges he faces are one that he sexually assaulted the same

girl for 6 months when he was a teacher in the 1970s. Two of the women making charges against D'Arcy are sisters - who went to see independent MP Peter Wellington over their claims. The allegations against him have been made by 12 girls and 3 boys at a time when he was a Queensland teacher between 1961 and 1972."

(d) The Website Report could be accessed and read by any person having a computer with an Internet connection and the appropriate software, by means of the said Web address.

(4) The Act

10. At all times material to this proceeding, the Criminal Law (Sexual Offences) Act 1978 ("the Act"):

(a) By section 3, defined the expression "prescribed sexual offence" as meaning any of the following offences:

(i) rape;

(ii) attempt to commit rape;

(iii) assault with intent to commit rape; and

(iv) an offence defined in the Criminal Code, section 352.1;

(b) By section 7, provided:

Publication prematurely of defendant's identity prohibited

(1) Any report made or published concerning an examination of witnesses in relation to a prescribed sexual offence, other than a report specified in section 8, shall not reveal the name, address, school or place of employment of a defendant therein or any other particular likely to lead to identification of a defendant therein unless the justices taking the examination, for good and sufficient reason shown, order to the contrary.

(2) If justices make an order to the contrary they may therein specify-

(a) the particulars that may be revealed; and

(b) the extent to which publication of the report made is permitted.

(c) By section 10, provided:

Offences and penalty

(1) A person who makes or publishes a report to which section 6 or 7 applies that contravenes the applicable section commits an offence against this Act.

(2) Where the making or publication of a report to which section 6 or 7 applies is permitted by order of the court a person who makes or publishes such a report that does not comply in all respects with the order of the court commits an offence against this Act.

(3) A person who, by a statement or representation made or published otherwise than in a report concerning an examination of witnesses or a trial, reveals the name, address, school or place of employment of-

(a) a complainant, at any time; or

(b) a defendant charged with a prescribed sexual offence to which the statement or representation relates, before the defendant is committed for trial or sentence upon that charge;

commits an offence against this Act except where the statement or representation is made or published for an authorised purpose referred to in section 11;

(4) A person who commits an offence against this Act is liable -

(a) in the case of a body corporate - to a penalty not exceeding \$2 000; and

(b) in the case of an individual - to a penalty not exceeding \$500 or to 6 months imprisonment.

(d) By section 13, provided:

Proceedings for offences

A proceeding in respect of an offence against this Act shall be taken in a summary way under the Justices Act 1886 upon the complaint of a person authorised in writing in that behalf by the Minister whose signature shall, for this purpose, be judicially noticed.

11. At all times material to this proceeding:

(a) "the Minister" referred to in section 13 of the Act was The Honourable Matt Foley MLA ("Mr Foley"); and

(b) Mr Foley was:

(i) A member of the Government; and

(ii) A member of the ALP.

(5) Charge against the Plaintiff

12. On or about 27 July 1999, one Sue Monk, an employee of the Second Defendant on the staff of The Courier-Mail, made a complaint to the Queensland Director of Public Prosecutions ("the DPP") in respect of the Website Report.

13. On or about 30 July 1999, the following charge ("the Charge") was preferred against the Plaintiff pursuant to section 7 of the Act for an alleged offence against section 10(3) of the Act:

"That on or about the 27th day of July, 1999 at Brisbane in the Central Division of the Brisbane Magistrates Courts District in the State of Queensland one CHARLES SCOTT BALSON by a statement published otherwise than in a report concerning an examination of witnesses or a trial did reveal the name of the defendant namely WILLIAM THEODORE D'ARCY charged with a prescribed sexual offence namely rape to which the said statement related before the said defendant was committed for trial or sentence upon those charges."

14. The Charge was authorised in writing by Mr Foley.

15. On 20 March 2000, Stipendiary Magistrate McCallum:

(a) Delivered Her Worship's decision in the prosecution commenced by the Charge; and

(b) Ordered as follows:

"... a verdict of not guilty must be entered and the Defendant is thereby discharged".

(6) The Bulletin Article

16. At all times material to this proceeding, The Bulletin:

(a) Was a news magazine circulating throughout Australia, including Brisbane and elsewhere throughout Queensland;

(b) Was published weekly;

(c) Was published by Australian Consolidated Press Limited ("ACP");

(d) Was the most widely circulated and read news magazine in Queensland; and

(e) Had a reputation as an accurate and reliable source of news and information concerning, amongst other things, subjects of political interest and controversy in Queensland and elsewhere in Australia.

17. D'Arcy was the subject of a report in The Bulletin dated 18 January 2000, but in fact published on or about 11 January 2000, ("the Bulletin Article") which stated:

"The future of Queensland's Labor Government hangs in the balance with the resignation of ex-Deputy Speaker Bill D'Arcy for health reasons. D'Arcy faces sex charges and was at the centre of the net-bet scandal last year."

18. The Bulletin Article was referred for investigation, with a view to a prosecution pursuant to section 7 of the Act for an offence against section 10(3) of the Act:

(a) On 13 January 2000, by the Acting Director-General of the Department of Justice and Attorney-General to the Queensland Police Service ("QPS");

- (b) On 25 January 2000, to the Assistant Commissioner, State Crime Operations Command, of the QPS;
- (c) On 28 June 2000, to the office of the QPS Solicitor; and
- (d) On 28 March 2001, to the DPP.

19. No charge pursuant to section 7 of the Act for an alleged offence against section 10(3) of the Act, in respect of the Bulletin Article, has ever been:

- (a) Preferred against:
 - (i) ACP; or
 - (ii) The editor of The Bulletin at the relevant time; or
 - (iii) The journalist or journalists who wrote the Bulletin Article; or
 - (b) Authorised in writing by Mr Foley or any other person under section 13 of the Act.
- (7) Courier-Mail articles identifying D'Arcy

20. In July 1999:

- (a) The following matters constituted accurate descriptions of D'Arcy:
 - (i) That he was a Queensland politician;
 - (ii) That he was a State politician;
 - (iii) That he was aged 59;
 - (iv) That he had worked at schools across Queensland from 1961 to 1972;
 - (v) That he had been a teacher in the 1970s;
 - (vi) That he had worked at schools in the west and south-east of Queensland until 1972;
 - (vii) That he was a married man;
 - (viii) That he was a sitting politician;
 - (ix) That, prior to being charged, he had been identified by Mr. Beattie as a person under police investigation in connection with alleged child-sex offences; and
 - (x) That, prior to being charged, he had been identified in The Courier-Mail in connection with reports that police were expected to charge him with child-sex offences;
- (b) D'Arcy was the only sitting Queensland State politician who:
 - (i) Was aged 59;
 - (ii) Was a married man; and
 - (iii) Had been a school-teacher who had worked at schools across Queensland from 1961 to 1972, and who had worked at schools in the west and south-east of the State until 1972;
- (c) D'Arcy was the only Queensland State politician who had previously been identified by Mr. Beattie as a person under police investigation in connection with alleged child-sex offences; and
- (d) D'Arcy was the only Queensland State politician who had been identified in The Courier-Mail in connection with reports that police were expected to charge him with child-sex offences.

21. During July 1999, articles were published in The Courier-Mail in respect of committal proceedings against D'Arcy ("the D'Arcy articles") on 49 child-sex offences, namely:

- (a) An article published on 27 July 1999 under the heading "MP ON 47 CHILD-SEX CHARGES";

- (b) An article published on 29 July 1999 under the heading "POLITICIAN RUBBED GIRL'S LEG IN CLASS, COURT TOLD";
- (c) On 30 July 1999, an article under the heading "LACK OF LEGAL KNOWLEDGE IS A PROBLEM IN POLITICAL PLOY OVER SEX CHARGES"; and
- (d) On 30 July 1999, an article under the heading "CHILD-SEX CASE".

22. The D'Arcy articles collectively identified a person charged with 47 offences, including rape and indecent assault, by describing that person as:

- (a) "A Queensland politician";
- (b) A "sitting politician";
- (c) A person who worked at "schools across Queensland from 1961 to 1972";
- (d) A "man" who "worked at schools in the west and south-east of the state until 1972";
- (e) A politician aged 59;
- (f) A person who was married and "accompanied by his family";
- (g) A "State politician";
- (h) A "Queensland politician aged 59";
- (i) A person identified by Mr. Beattie, prior to his being charged, as a person under police investigation in connection with alleged child-sex offences;
- (j) A person identified in The Courier-Mail, prior to his being charged, in connection with reports that police were expected to charge him with child-sex offences; and
- (k) A "sitting politician [who] worked as a teacher at state primary schools" in "the 1960's and 1970's".

23. In the premises:

- (a) By publishing the D'Arcy articles, The Courier-Mail published particulars likely to lead to the identification of D'Arcy as the defendant in committal proceedings involving 49 child-sex offences, including rape and indecent assault; and
- (b) The Second Defendant thereby breached section 7 of the Act.

B. FACTS RELEVANT TO CLAIMS AGAINST THE FIRST DEFENDANT

(1) The First Defendant's Agents

24. At all times and for all purposes material to this proceeding, the First Defendant was responsible for the conduct of its agents, including:

- (a) Mr Foley, as a Minister of the Crown; and
- (b) Officers of the QPS, as employees of the First Defendant.

25. At all times material to this proceeding, one Leanne Dawn Myers ("Myers") was an officer of the QPS.

26. At all times and for all purposes material to this proceeding:

- (a) Myers acted for and on behalf of the First Defendant within the course of her employment as an officer of the QPS; and
- (b) Mr Foley acted for and on behalf of the First Defendant as a Minister of the Crown for Queensland.

(2) Conduct of the First Defendant

27. The First Defendant, on or about 30 July 1999:

(a) By Mr Foley, gave written authorisation for the Charge to be preferred; and

(b) By Myers, preferred the Charge.

28. On or about 30 July 1999, the First Defendant, by Myers:

(a) Arrested the Plaintiff; and

(b) Imprisoned the Plaintiff until he was released on bail later that day.

29. The First Defendant thereafter continued to prosecute the Charge against the Plaintiff and caused it to be set down for a trial before Stipendiary Magistrate McCallum on 9 March 2000.

(3) The First Defendant's Malice

30. In point of law and as a matter of the construction of section 10 of the Act, the words used in the Website Report did not amount to a "statement or representation" of the kind referred to in section 10(3)(b) of the Act.

31. Before the Charge was preferred, and the Plaintiff was arrested and imprisoned, the First Defendant failed to take any or any reasonable steps to ascertain that evidence existed which was capable of proving, beyond reasonable doubt, that the Plaintiff had breached the Act.

32. After the Charge was preferred, the First Defendant:

(a) Became aware that no evidence existed which was capable of proving, beyond reasonable doubt, that the Plaintiff had breached the Act; and

(b) Nonetheless continued to prosecute the Charge against the Plaintiff.

33. The First Defendant, through Myers, arrested the Plaintiff and caused him to be imprisoned, in circumstances where:

(a) The nature of the Charge was such that proceedings by summons, rather than arrest, were available;

(b) If the Charge were proved, the Plaintiff was unlikely to be sentenced to a term of imprisonment;

(c) The First Defendant had no reason to suppose that the Plaintiff would not appear if duly served with a summons; and

(d) The First Defendant, through Myers, chose to commence proceedings by arresting the Plaintiff and imprisoning him, rather than by summons, deliberately to maximise the embarrassment and annoyance suffered by the Plaintiff.

34. The First Defendant acted with extraordinary alacrity and haste by, within 3 days after the Website Report appeared:

(a) Through Myers, preferring the Charge, and arresting and imprisoning the Plaintiff; and

(b) Through Foley, giving written authorisation for the Charge to be preferred.

35. The Bulletin Article:

(a) Comprised words indistinguishable in any material respect from the words used in the Website Report;

(b) Was not the subject of:

(i) Any charge preferred by the First Defendant against ACP or any officer or employee of ACP for any alleged breach of the Act; or

(ii) Written authorisation by Mr Foley or any other person for any such charge; and

(c) Was the subject of an investigation which took over 14 months, with a view to the possibility of a prosecution pursuant to section 7 of the Act for an offence against section 10(3) of the Act, as compared with 3 days in respect of the Charge against the Plaintiff.

36. The D'Arcy articles, published in The Courier-Mail:

- (a) Constituted a breach of section 7 of the Act, indistinguishable in any material respect from any breach constituted by the Website Report;
- (b) Were not the subject of:
 - (i) Any charge preferred by the First Defendant against the Second Defendant, or any officer or employee of the Second Defendant, for any alleged breach of the Act; or
 - (ii) Written authorisation by Mr. Foley or any other person for any such charge; and
- (c) Were not the subject of investigation by any agency of the First Defendant, including the DPP and the QPS.

37. In giving written authorisation for the Charge, the First Defendant, through Mr Foley, was actuated by political considerations, namely that:

- (a) The Plaintiff was associated with One Nation;
- (b) Mr Foley was a member of the ALP;
- (c) The Government of Mr Beattie was comprised of members of the ALP;
- (d) D'Arcy had been elected to the Legislative Assembly of the Queensland Parliament as an endorsed candidate of the ALP;
- (e) D'Arcy was still a member of the ALP; and
- (f) The publication of the information contained in the Website Report was harmful to the political interests of the Government and the ALP, including Mr Foley and Mr Beattie.

38. Further or alternatively:

- (a) From not later than 30 August 1998, Mr Beattie attempted to persuade D'Arcy to resign his seat in the Legislative Assembly of the Queensland Parliament;
- (b) On a date unknown to the Plaintiff, but prior to 30 July 1999, it had become apparent to Mr Beattie and Mr Foley that:
 - (i) D'Arcy would have to, and would, resign his seat in the Legislative Assembly of the Queensland Parliament;
 - (ii) In the event of D'Arcy's resigning his seat in the Legislative Assembly of the Queensland Parliament, a by-election would occur in the electorate of Woodridge;
 - (iii) The ALP would endorse a candidate, other than D'Arcy, for that by-election;
 - (iv) The continuance in office of the Government, including Mr Beattie as Premier and Mr Foley as a Minister of the Crown, depended on the outcome of that by-election; and
 - (v) The publication of the information contained in the Website Report was harmful to the prospects of the ALP retaining the electorate of Woodridge, and the prospects that the Government, including Mr Beattie as Premier and Mr Foley as a Minister of the Crown, would continue in office; and
- (c) In giving written authorisation for the Charge, the First Defendant, through Mr Foley, was actuated by the political considerations set out in sub-paragraph (b) of this paragraph.

39. Further or in the further alternative:

- (a) At all times material to this proceeding, The Courier-Mail, as the most widely circulated and read newspaper in Queensland, and having a reputation as an accurate and reliable source of news and information concerning, amongst other things, subjects of political interest and controversy in Queensland:
 - (i) Was a newspaper whose support and goodwill was extremely valuable to the Government and the ALP, including Mr Foley; and
 - (ii) Therefore carried great influence with the Government and the ALP, including Mr Foley;
- (b) Prior to 27 July 1999, The Courier-Mail had regularly complained, both in the pages of The Courier-Mail, and in representations to the Government, about:
 - (i) The provisions of the Act;

- (ii) The fact that the provisions of the Act prevented The Courier-Mail from publishing matters of genuine public interest; and
- (iii) Specifically in the context of the matters set out in Part A(2) hereof, the fact that the Act prevented The Courier-Mail from publishing the fact that D'Arcy had been charged with numerous child sex offences; and

(c) In the context of the fact that The Courier-Mail had complained to the DPP in respect of the Website Report, in giving written authorisation for the Charge, the First Defendant, through Mr Foley, was actuated by the following political considerations:

- (i) To maintain and enhance The Courier-Mail's support for and goodwill with the Government; and
- (ii) To appease The Courier-Mail, and to allay its concerns, in respect of the complaints referred to in sub-paragraph (b) hereof.

40. Further or in the further alternative:

- (a) The Plaintiff repeats and relies on the matters pleaded in sub-paragraph (a) of the last preceding paragraph;
- (b) At all times material to this proceeding, The Bulletin, as the most widely circulated and read news magazine in Queensland, and having a reputation as an accurate and reliable source of news and information concerning, amongst other things, subjects of political interest and controversy in Queensland and elsewhere in Australia:
 - (i) Was a news magazine whose support and goodwill was extremely valuable to the Government and the ALP, including Mr Foley; and
 - (ii) Therefore carried great influence with the Government and the ALP, including Mr Foley;
- (c) The Second Defendant, through Mr. Foley, and through its agencies the QPS and the DPP, applied double standards, and discriminated against the Plaintiff in favour of the publishers and staff of The Courier-Mail and The Bulletin, by:

- (i) Giving written authorisation for the Charge to be preferred against the Plaintiff, and preferring the Charge against the Plaintiff;
- (ii) Taking no such steps in respect of the Bulletin Article; and
- (iii) Taking no such steps in respect of, and failing to investigate, the D'Arcy articles published in The Courier-Mail.

41. The First Defendant, through officers of the QPS, successfully delayed and frustrated the investigation by the Criminal Justice Commission of a complaint made by the Plaintiff, regarding the fact that the Charge had been preferred against him, when no charges had been preferred as a result of the Bulletin Article.

42. The First Defendant, through officers of the QPS, provided to the Second Defendant information concerning the Charge, the Plaintiff's arrest and the Plaintiff's imprisonment:

- (a) Without any lawful reason for so doing; and
- (b) With the knowledge and intention that the information so provided:
 - (i) Would be published in The Courier-Mail; and
 - (ii) Would therefore exacerbate the embarrassment and annoyance suffered by the Plaintiff.

43. In the premises set out in the preceding paragraphs in Part B(3) hereof, the First Defendant acted maliciously and without reasonable or probable cause, in committing the conduct referred to in Part B(2) hereof, namely by:

- (a) Through Myers, preferring the Charge against the Plaintiff;
- (b) Through Foley, giving written authorisation for the Charge to be preferred against the Plaintiff;
- (c) Through Myers, arresting and imprisoning the Plaintiff; and

(d) Continuing the prosecution of the Charge.

(4) Loss and damage

44. By reason and in consequence of the First Defendant's conduct referred to in Parts B(2) and B(3) hereof, the Plaintiff:

(a) Was wrongfully imprisoned and deprived of his liberty;

(b) Was greatly injured in his credit, character and reputation, both privately and in his business as a website developer;

(c) Suffered much anguish, distress and embarrassment; and

(d) Was put to considerable trouble and inconvenience.

45. Further:

(a) By reason and in consequence of the First Defendant's conduct referred to in Parts B(2) and B(3) hereof, the Plaintiff's reputation was injured to such an extent that:

(i) The Plaintiff's business lost customers, including the Department of Transport; and

(ii) The Plaintiff's business failed to attract new customers;

(b) By reason and in consequence of the First Defendant's said conduct, the Plaintiff:

(i) Was distracted from giving his full time and attention to the affairs of the Plaintiff's business, whilst dealing with and defending the Charge; and

(ii) Suffered acute stress and depression, which prevented him from attending to the affairs of the Plaintiff's business;

(c) By reason and in consequence of the First Defendant's said conduct, the Plaintiff:

(i) Was placed in circumstances of financial necessity; and

(ii) Therefore did not have the funds to employ staff, or to undertake other activities, with a view to maintaining the existing customers of the Plaintiff's business and attracting new customers;

(d) At the time when the Plaintiff was experiencing the consequences referred to in sub-paragraphs (a), (b) and (c) hereof:

(i) Many commercial enterprises were seeking to establish or improve their presence on the Web; and

(ii) Many opportunities therefore existed for the Plaintiff's business, both to consolidate its relationship with existing customers, and to attract new customers;

(e) Due to the consequences referred to in sub-paragraphs (a), (b) and (c) hereof, the Plaintiff's business was not able to exploit the opportunities which then existed for it to:

(i) Consolidate its relationship with existing customers; or

(ii) Attract new customers;

(f) The Plaintiff's business thereby missed out on the benefits of a unique period of opportunity to:

(i) Maintain the loyalty of its existing customers;

(ii) Attract new work from existing customers;

(iii) Attract new customers;

(iv) Enhance its reputation as a developer of web sites and a supplier of other Internet and Web-related services; and

(v) Grow to be a larger, more successful, and more profitable business;

(g) The amount of pecuniary loss and damage suffered by the Plaintiff in respect of the Plaintiff's business due to the matters referred to in the preceding sub-paragraphs hereof is incapable of precise quantification, but it is estimated by the Plaintiff to be:

- (i) In the 1999 calendar year, \$30,000.00;
- (ii) In the 2000 calendar year, \$55,000.00;
- (iii) In the 2001 calendar year, \$40,000.00;
- (iv) In the 2002 calendar year, \$40,000.00;
- (v) In the 2003 calendar year, to date, \$80,000.00;

(h) Such pecuniary loss and damage is continuing, and will continue to accrue.

46. Further, by reason and in consequence of the First Defendant's conduct referred to in Parts B(2) and B(3) hereof, the Plaintiff has been forced to incur and pay legal expenses in relation to the defence of the Charge, namely legal costs paid to Messrs Gilshenan & Luton totalling \$5,431.20.

47. Further, by reason and in consequence of the First Defendant's conduct referred to in Parts B(2) and B(3) hereof, the Plaintiff:

- (a) Was placed in circumstances of financial necessity as a result of the matters referred to in the last two preceding paragraphs;
- (b) Under pressure of those circumstances of financial necessity, was required urgently to sell real estate which he had purchased as an investment; and
- (c) As a result of the urgent sale of such property, suffered loss and damage which he estimates to be in the sum of \$25,000.00.

C. FACTS RELEVANT TO CLAIMS AGAINST THE SECOND DEFENDANT

(1) The Second Defendant

48. The Second Defendant is, and was at all times material to this proceeding:

- (a) A company duly incorporated at law and capable of being sued in its corporate name; and
- (b) The publisher of The Courier-Mail.

(2) The 15 March 1999 article

49. On 15 March 1999, the Second Defendant published the following ("the 15 March 1999 article") on page 11 of The Courier-Mail:

National Vice President of the Executive Council of Australian Jewry, Jeremy Jones, will soon deliver a paper in Toronto, Canada, on the use of law to combat hate on the internet.

Jones says most of the major racist groups in Australia have websites and for some this is their main method of public communication. These groups include Australian National Action, Southern Cross Hammerskins and Al-Moharer Al-Australi.

'Almost every day, I come across another offensive website and a fair proportion of these are Australian,' Jones says. He says of great concern are groups which are not as overt in their leanings and which try to establish links with main stream sites to bolster their credibility.

He is concerned about a website which bears the features of a news group and describes itself as an internet newspaper called Australian National News of the Day. It is published by One Nation's webmaster, Scott Balson, and often contains overt as well as ambiguous anti-Jewish material.

'Every so often, Balson will refer readers to a specific document and some of the documents recently have included one from the World Church of the Creator which is one of the most violent white supremacist groups in the United States' Jones says.

'Having a link to such a site or promoting such a site is only one step away from saying these things himself.'

50. The words of the 15 March 1999 article:

(a) Were published of and concerning the Plaintiff; and

(b) Were defamatory of the Plaintiff.

51. In their natural and ordinary meaning, the words of the 15 March 1999 article meant, and were understood to mean, that the Plaintiff:

(a) Is an anti-Semite and a racial bigot; and

(b) Supports or encourages:

(i) Hatreds towards Jews; and

(ii) Violence against Jews; and

(c) Supports or promotes the ideology of violent white supremacy.

(3) The 16 April 1999 article

52. On 16 April 1999, the Second Defendant published the following ("the 16 April 1999 article") on page 20 of The Courier-Mail:

The Owen case is not the first instance of a disturbing misuse of the Net to come to light in Queensland. One Nation's self-styled webmaster Scott Balson has taken to using this wondrous new medium to disseminate material which is blatantly anti-semitic [sic]. In any other forum, his unsubstantiated and outrageous charges of Zionist conspiracies would have him placed at risk of prosecution, yet to date the authorities appear to be at a loss as to how to deal with such deeply offensive material when it appears on the Internet. This is not to suggest that nutty beliefs should be policed off the Net. Freedom of speech remains one of the most fundamental and precious rights of all Australians. Yet the laws which prohibit incitement, defamation and vilification on the grounds of race or gender are not and should not be suspended the moment one logs on to the Net."

53. The words of the 16 April 1999 article:

(a) Were published of and concerning the Plaintiff; and

(b) Were defamatory of the Plaintiff.

54. In their natural and ordinary meaning, the words of the 16 April 1999 article meant, and were understood to mean, that the Plaintiff:

(a) Is an anti-Semite and a racial bigot;

(b) Has published allegations of Zionist conspiracies which are unsubstantiated and outrageous;

(c) Has published material for which:

(i) He is liable to be prosecuted; and

(ii) He deserves to be prosecuted;

(d) Holds and disseminates beliefs which are absurd and irrational; and

(e) Has committed conduct which constitutes, or is analogous to:

(i) Incitement to racial violence;

(ii) Defamation; and

(iii) Vilification on racial grounds.

(5) The 30 July 1999 article

55. On 30 July 1999, the Second Defendant published the following ("the 30 July 1999 article") on page 15 of The Courier-Mail:

Ignorance of the law is no excuse - as publisher Scott Balson may discover if prosecuting authorities decide to charge him for publishing the name of a man currently facing committal proceedings on child sex charges.

Nor should it be an excuse for politicians to try to make political capital out of so-called inconsistencies in the administration of the law banning the naming of defendants to such charges.

The law is relatively simple and it should be well known to anyone who is seriously involved in publishing and broadcasting, as well as to anyone who speaks out as the spokesman on justice issues for the Opposition.

...

What happened before the man was charged is irrelevant, however, to the present legal situation - and Springborg should have been aware of the difference.

So, too, should Balson. As a publisher he has a responsibility to obey the law. It may be the case that his publication only attracts a few hundred hits a day and that therefore he did not do too much damage.

56. The words of the 30 July 1999 article:

- (a) Were published of and concerning the Plaintiff; and
- (b) Were defamatory of the Plaintiff.

57. In their natural and ordinary meaning, the words of the 30 July 1999 article meant, and were understood to mean:

- (a) That the Plaintiff is ignorant of the law;
 - (b) That, by publishing the Website Report, the Plaintiff had:
 - (i) Broken the law; and
 - (ii) Rendered himself liable to prosecution;
 - (c) That the Plaintiff, as a publisher, had failed in his responsibility to obey the law; and
 - (d) That, by publishing the Website Report in breach of the law, the Plaintiff had caused damage of some unspecified kind.
- (6) The 29 October 1999 article

58. On 29 October 1999, the Second Defendant published the following ("the 29 October 1999 article") in The Courier-Mail under the heading "The Bottom Line":

One National web warrior Scott Balson got bounced out of Parliament's public gallery by attendants yesterday and one can't help suspecting that was what he hoped for. Balson had applied to Speaker Ray Hollis to become a member of the Press Gallery. Hollis sent him to Queensland Parliamentary Press Gallery President Mike D'Arcy, who refused on the grounds he did not meet requirements. Thus Balson arrived at the public gallery with his camera. It was confiscated as only accredited members of the media riff raff are allowed to take notes or photographs at the House. A side issue is that Balson has made allegations on his website regarding the conduct of Hollis and these are now helping keep some lawyers gainfully employed.

As one of the Nats said yesterday, you can safely bet good money on a conspiracy theory relating to the eviction appearing soon on Balson's website.

Incidentally, ABC TV's Lisa Miller will handle Balson's enquiries from now on, as yesterday she took over from D'Arcy as media pack president.

59. The words of the 29 October 1999 article:

- (a) Were published of and concerning the Plaintiff; and
- (b) Were defamatory of the Plaintiff.

60. In their natural and ordinary meaning, the words of the 29 October 1999 article meant, and were understood to mean, that:

- (a) The Plaintiff had deliberately brought about a situation in which he was ejected from the public gallery of the Legislative Assembly in the Queensland Parliament;
- (b) Having deliberately brought about such a situation, the Plaintiff could be expected to:
 - (i) Manufacture an absurd and irrational theory attributing his ejection from the public gallery to a conspiracy; and
 - (ii) Publish that theory on a Web site; and

(c) The Plaintiff is a person given to making a nuisance of himself.

(7) The 17 November 1999 article

61. On 17 November 1999, the Second Defendant published the following ("the 17 November 1999 article") on page ... of The Courier-Mail:

White ant spotted

The disintegration of One Nation continues with party identity Scott Balson's woes piling up. Apart from abandoning his job running the party's web site, being refused membership of the Queensland Parliamentary Press Gallery and getting into strife in Parliament's public gallery, Balson has now been banned from attending NSW One Nation meetings

62. The words of the 17 November 1999 article:

(a) Were published of and concerning the Plaintiff; and

(b) Were defamatory of the Plaintiff.

63. In their natural and ordinary meaning, the words of the 17 November 1999 article meant, and were understood to mean, that:

(a) The Plaintiff had committed misconduct in the Public Gallery in the Legislative Assembly of the Queensland Parliament, such as to cause him to get into trouble; and

(b) This alleged incident, along with other occurrences referred to in the 17 November 1999 article, created a situation for the Plaintiff which could properly be characterised as woeful.

(8) The 19 February 2000 article

64. On 19 February 2000, the Second Defendant published the following ("the 19 February 2000 article") on page 23 of The Courier-Mail:

Conspiracy theorists party with oddballs.

Queensland has had more than its share of oddball politicians and would-be MPs. Most people thought this nonsense had reached its height with the advent and inevitable decline of One Nation. But that organisation's brief success appears to have merely acted as the encouragement needed to bring into the open all those with strange ideas, philosophies or phobias, and give them a common umbrella. That umbrella is expected to throw its protective shade at a meeting in Mareeba next weekend to sort out the latest version of One Nation/Country Party/City Country Alliance.

...

That's where it becomes scary. The 'minor parties' include refuges for some characters with ideas that, in many cases, are abhorrent to thinking people. When Feldman announced last December that One Nation members were deserting Pauline Hanson, photographs appeared on the internet of Feldman with fellow MP Jack Paff, Scott Balson (One Nation webmaster) Max Aleckson (Australia First) and Tony Pitt. Pitt is a former One Nation officeholder and editor of right-wing publications that promote the most incredible way-out conspiracy theories e.g. that the Port Arthur Massacre was a 'set-up'.

...

On his web page, Balson refers to Jeremy Lee, the former national organiser of the League of Rights. Balson says Lee is a regular columnist and opinion writer. Also referred to is Bob Djurdjevic, who, we are told, is to deliver a lecture in Sydney on 'The New World Order and Serbia'. Djurdjevic is into conspiracies involving the Illuminati, the Rothschilds and the Rockefellers.

Also involved with Balson/One National et al is Len Clampett who leads the Reclaim Australia Party, which promotes as a policy what it calls a citizen-initiated mandate.

...

So, Feldman, Paff, Knuth and co sally forth tomorrow to embrace the splinter groups of dissidents to become the City Country Alliance. What a sad state of affairs that will be. But perhaps it will be a blessing to have all the scorpions under the one rock.

65. The words of the 19 February 2000 article:

(a) Were published of and concerning the Plaintiff; and

(b) Were defamatory of the Plaintiff.

66. In their natural and ordinary meaning, the words of the 19 February 2000 article meant, and were understood to mean:

(a) That the Plaintiff is a person with strange ideas, philosophies or phobias;

(b) That the Plaintiff has, or associates with people who have, ideas that are abhorrent to thinking people;

(c) That the Plaintiff promotes or associates himself with people who promote:

(i) Racial bigotry;

(ii) Absurd and irrational conspiracy theories; and

(iii) Other bizarre and extremist policies; and

(d) That the Plaintiff's character and conduct is such as to justify:

(i) His being likened to a scorpion; and

(ii) The view that it would be a blessing if he, along with other persons mentioned in the 19 February 2000 article, were confined under a rock.

(9) The 26 February 2000 article

67. On 26 February 2000 the Second Defendant published the following ("the 26 February 2000 article") on page 24 of The Courier-Mail:

Web publisher Scott Balson is before the Courts for illegally naming a prominent political figure on child sex charges during committal proceedings.

His site has also been criticised for anti-semitic and anti-asian comments, and several well-known people are preparing defamation actions against him.

68. The words of the 26 February 2000 article:

(a) Were published of and concerning the Plaintiff; and

(b) Were defamatory of the Plaintiff.

69. In their natural and ordinary meaning, the words of the 26 February 2000 article meant, and were understood to mean, that:

(a) By publishing the Website Report, the Plaintiff had acted illegally;

(b) A Web site for which the Plaintiff is responsible had promoted racial bigotry, including vilification of:

(i) Semitic people; and

(ii) Asian people; and

(c) The Plaintiff had published material of such a nature that several prominent individuals had causes of action against him for defamation.

(10) Loss and damage

70. By reason of the publication of the 15 March 1999 article, the 16 April 1999 article, the 30 July 1999 article, the 29 October 1999 article, the 17 November 1999 article, the 19 February 2000, and the 26 February 2000 article (collectively "the articles"), the Plaintiff:

(a) Was greatly injured in his credit, character and reputation, both privately and in his business as a website developer; and

(b) Suffered much anguish, distress and embarrassment.

71. Further:

(a) By reason and in consequence of the Second Defendant's conduct in publishing the articles, the Plaintiff's reputation was injured to such an extent that:

(i) The Plaintiff's business lost customers, including the Department of Transport; and

(ii) The Plaintiff's business failed to attract new customers;

(b) By reason and in consequence of the Second Defendant's said conduct, the Plaintiff suffered acute stress and depression, which prevented him from attending to the affairs of the Plaintiff's business;

(c) At the time when the Plaintiff was experiencing the consequences referred to in sub-paragraphs (a) and (b) hereof:

(i) Many commercial enterprises were seeking to establish or improve their presence on the Web; and

(ii) Many opportunities therefore existed for the Plaintiff's business, both to consolidate its relationship with existing customers, and to attract new customers;

(d) Due to the consequences referred to in sub-paragraphs (a) and (b) hereof, the Plaintiff's business was not able to exploit the opportunities which then existed for it to:

(i) Consolidate its relationship with existing customers; or

(ii) Attract new customers;

(e) The Plaintiff's business thereby missed out on the benefits of a unique period of opportunity to:

(i) Maintain the loyalty of its existing customers;

(ii) Attract new work from existing customers;

(iii) Attract new customers;

(iv) Enhance its reputation as a developer of web sites and a supplier of other Internet and Web-related services; and

(v) Grow to be a larger, more successful, and more profitable business;

(f) The amount of pecuniary loss and damage suffered by the Plaintiff in respect of the Plaintiff's business due to the matters referred to in the preceding sub-paragraphs hereof is incapable of precise quantification, but it is estimated by the Plaintiff to be:

(i) In the 1999 calendar year, \$30,000.00;

(ii) In the 2000 calendar year, \$55,000.00;

(iii) In the 2001 calendar year, \$40,000.00;

(iv) In the 2002 calendar year, \$40,000.00;

(v) In the 2003 calendar year, to date, \$80,000.00;

(g) Such pecuniary loss and damage is continuing, and will continue to accrue.

(11) Exemplary, aggravated and punitive damages

72. The Second Defendant published each of the articles:

(a) Without taking any steps, or any reasonable steps, to ascertain that the articles,

insofar as they conveyed the meanings pleaded herein ("the defamatory meanings"), were true;

(b) Without giving the Plaintiff any opportunity, or any reasonable opportunity, to comment on or correct the articles, insofar as they conveyed the defamatory meanings; and

(c) With reckless disregard for the truth or falsity of the defamatory meanings.

73. In publishing the 30 July 1999 article, the Second Defendant acted hypocritically and disingenuously, in that:

- (a) Three days earlier, on 27 July 1999, the Second Defendant had made the complaint to the DPP which led to the Charge;
- (b) The Second Defendant itself had breached section 7 of the Act, by publishing the D'Arcy articles in the pages of The Courier-Mail; and
- (c) The Second Defendant had, through the pages of The Courier-Mail, repeatedly criticised the Act.

74. The Second Defendant published the 29 October 1999 article and the 17 November 1999 article, well knowing that the incident alleged therein, involving the alleged ejection of the Plaintiff from the Public Gallery in the Legislative Assembly of the Queensland Parliament, had not occurred.

75. The Second Defendant deliberately framed and expressed the articles so that their tone and language conveyed a more harmful and sinister impression than the facts reported in the articles would have conveyed if expressed in a less colourful and emotive manner, by:

(a) In the 15 March 1999 article:

- (i) Quoting the National Vice President of the Executive Council of Australian Jewry, and referring to a paper soon to be delivered by him in Toronto, Canada, so as to give the defamatory meanings in the 15 March 1999 article more weight than they would otherwise carry;
- (ii) Associating the Plaintiff with "major racist groups in Australia", some of whom are named in the 15 March 1999 article;
- (iii) Associating the Plaintiff with what the 15 March 1999 article refers to as "one of the most violent white supremacist groups in the United States";
- (iv) Using emotive and inflammatory language like "hate", "offensive", "anti-Jewish material", and "violent white supremacist"; and
- (v) Referring to the Website sarcastically as "a website which bears the features of a news group and describes itself as an internet newspaper";

(b) In the 16 April 1999 article:

- (i) Referring to the Plaintiff sarcastically as a "self-styled webmaster"; and
- (ii) Using emotive and inflammatory language like "disturbing misuse of the Net", "wondrous new medium", "blatantly anti-semitic", "unsubstantiated and outrageous charges of Zionist conspiracies", "deeply offensive material", "nutty beliefs", "incitement, defamation and vilification on the grounds of race or gender";

(c) In the 30 July 1999 article:

- (i) Sarcastically implying that the Plaintiff is ignorant of the law; and
- (ii) Belittling the Plaintiff with the suggestion that "his publication only attracts a few hundred hits a day and ... therefore he did not do too much damage";

(d) In the 29 October 1999 article:

- (i) Using a glib and humorous tone to insinuate that the Plaintiff's conduct is laughable, including the description of him as a "web warrior", the assertion that he "got bounced out of Parliament's public gallery", and the suggestion (attributed to "one of the Nats") that "you can safely bet good money on a conspiracy theory relating to the eviction appearing soon on Balson's website"; and
- (ii) Using sarcastic language to imply that the conclusions stated in the article are the only rational or logical conclusions which could reasonably be drawn, including by the words "one can't help suspecting" and the words "you can safely bet good money";

(e) In the 17 November 1999 article, using sarcastic, ironic, glib and humorous language to create the impression that the Plaintiff's conduct is laughable;

(f) In the 19 February 2000 article:

(i) Using extravagant and sensational language, such as "conspiracy theorists", "oddball", "nonsense", "strange ideas, philosophies or phobias", "scary", "abhorrent to thinking people", "the most incredible way-out conspiracy theories", "a sad state of affairs", and "a blessing to have all the scorpions under the one rock"; and

(ii) Referring to the Plaintiff, along with persons alleged to espouse far-fetched and bizarre theories, including a theory "that the Port Arthur Massacre was a 'set-up'", and theories about "conspiracies involving the Illuminati, the Rothschilds and the Rockefellers", so as to imply that the Plaintiff is of a like mind;

(g) In the 26 February 2000 article, asserting as facts matters which are unsourced and unattributed, including that:

(i) The Plaintiff's website has been "criticised for anti-Semitic and anti-Asian comments" by persons who are not identified; and

(ii) "Several well-known people", who are not identified, "are preparing defamation actions against him".

76. The Second Defendant published the 17 November 1999 article, referring to "strife in the Parliament's public gallery", after:

(a) The Plaintiff had written to the Second Defendant, drawing to the Second Defendant's attention factual inaccuracies in the 29 October 1999 article; and

(b) The Plaintiff's said letter was published in The Courier-Mail on 30 October 1999.

77. Taken together, the articles comprise a deliberate and concerted attempt by the Second Defendant to:

(a) Hold the Plaintiff up to scorn, derision, ridicule, humiliation and contempt;

(b) Utterly destroy the Plaintiff's credibility and reputation; and

(c) Cause the Plaintiff extreme hurt, embarrassment, annoyance and distress.

78. Despite the contents of the 30 July 1999 article and the 26 February 2000 article, the Second Defendant:

(a) Never gave any prominence, in reporting in The Courier-Mail, the fact that the Plaintiff was found not guilty in respect of the Charge on 20 March 2000;

(b) Never reported or commented on the fact that The Bulletin had breached the Act, by the Bulletin Article, as referred to in Part A(6) hereof;

(c) Never reported or commented on the fact that The Courier-Mail had breached the Act, by publishing the D'Arcy articles, as referred to in Part A(7) hereof; and

(d) Never reported the outcome of an investigation by the Criminal Justice Commission, which:

(i) Was brought to the attention of the Second Defendant by the Plaintiff; and

(ii) Found that charges for a breach of the Act in respect of the Bulletin Article were not brought solely because of delays in the investigation thereof.

79. In the premises pleaded in the preceding paragraphs of Part C(11) hereof:

(a) The Second Defendant, in publishing the articles conveying the defamatory meaning:

(i) Acted with actual malice, spite, ill-will and vindictiveness against the Plaintiff; and

(ii) Showed contumelious disregard and contempt for the Plaintiff's feelings and reputation; and

(b) Is therefore liable to an award of aggravated, exemplary and punitive damages.

THE PLAINTIFF CLAIMS:

(1) Against the First Defendant, damages for malicious prosecution, for false arrest, for unlawful imprisonment, and for misfeasance in a public office, including aggravated, exemplary and/or punitive damages, together with interest on such damages and costs;

(2) As against the Second Defendant, damages (including aggravated, exemplary and/or punitive damages) for defamation, together with interest on such damages and costs;

(3) As against both Defendants, such further or other relief as the Court thinks fit.

The Plaintiff does not require a Jury.

Signed: _____
Londy Lawyers

Description: Solicitors for the Plaintiff

Dated: 16 May, 2003.

This pleading was settled by Mr. Morris of Queen's Counsel and Mr. Thomson of Counsel.

NOTICE AS TO DEFENCE

Your Defence must be attached to your Notice of Intention to Defend.

31

-31-