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Lawyer sues for being likened to "Dennis Denuto"

The Queensland District Court (equivalent to Victoria's County Court) recently dismissed a case brought by an Ipswich lawyer who was described in an email by his son-in-law as the "Dennis Denuto from Ipswich".

The solicitor, Brett Smith, argued that being compared to the famed suburban solicitor from the Australian film *The Castle* implied that he was unprofessional, foolish and incompetent. He sued for defamation demanding \$250,000 in damages.

In *The Castle*, the dishevelled Denuto (played by actor Tiriell Mora) is an affable but bumbling representative of the Kerrigan family in their fight to keep their family home. In his closing address before the Court, Denuto delivers his most memorable argument to the judge: "it's the Constitution, it's Mabo, it's the vibe and ... no, that's it. It's the *vibe*".

In contrast, Brett Smith & Co Solicitors describe themselves as 'a leading Ipswich firm' with a solicitor of '35 - 40 years' experience in most facets of the law'.

The solicitors for the defendant took the opportunity to serve an innovative and amusing defence which included referring to Mr Smith by his initials 'BS' (apparently as much as possible), referring to Mr Smith's legal practice as 'the BS Practice' and arguing that no one could be defamed by comparison to Mr Denuto since Mr Denuto successfully argued his client's case in the film.

Although the Court found that on its face the words were defamatory, it noted that the words were used in a private email and in two subsequent conversations between two or three people at the most and, therefore, had very limited reach. It was not until proceedings were commenced that the case attracted local and international

Words to the Wise

"I will honour Christmas in my heart, and try to keep it all the year."

Charles Dickens,
Ebenezer Scrooge,
A Christmas Carol

Christmas Message



We are reminded by the Charles Dickens' quote, that Christmas is so much more than the giving and receiving of presents. The Christmas message involves the promise of reconciliation, faith, hope and love. We trust that this is a time of peace and goodwill for you and yours, and that you choose to honour the Christmas message in your heart through the year ahead.

media attention. Therefore, Mr Smith could not argue that this had caused him further damage given that he had brought the proceedings and brought the additional attention upon himself.

The Court said that an award of \$10,000 in damages might have been appropriate, but the defendant had a statutory defence of triviality under the *Defamation Act*. On that basis Mr Smith's case was dismissed.

The moral of this story is that sometimes greater harm flows from a plaintiff's decision to sue and that a defamation proceeding may not be the best way to actually protect your reputation.

If you think your reputation has been harmed, please contact our Piquet Kruzas given his experience in this area.

Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

Step-children and Wills

Recent amendments to the Victorian *Administration and Probate Act 1958* have made it possible for step-children, who have been left out of a step-parent's Will to seek further provision under Part IV of the Act.

Procedure before Amendment

Prior to the amendments, the legislation did not define who an eligible person might be for the purposes of seeking further provision under a Will. The relevant section of the legislation contemplated but did not specify step-children as being eligible to claim. The Court had to consider previous case law and the matters set out in the legislation to determine whether a step-child should be entitled to further provision. One of the leading cases, before the amendments to the legislation were enacted, was *James v Day* [2004]. In that case, Cummins J, said that to make a decision, he must consider:

- Whether the deceased had a responsibility to make provision out of her Estate for the proper maintenance and support of either or both of her step-children; and if so,
- Whether adequate provision for the proper maintenance and support of the respective step-child had been made out of the Estate; and if not,
- The amount to be ordered for such provision.

In considering these questions, Justice Cummins had regard to a list of considerations which were set out in the earlier legislation and to the general common law.¹

¹ The test is that of the standards of a wise and just testatrix, or in other words of a fair and reasonable woman in the community (*White v Barron & Anor* (1980) 114 CLR 431 at 440 per Stephen J) and is applied as at the date of death (*Coates v National Trust Executors and Agency Co Ltd & Anor* (1956) 95 CLR 494 at 508 per Dixon CJ).

Procedure after Amendment

Since the amendment, step-children have been specifically included under the umbrella of eligible persons who can now apply for further provision from an estate, thus eliminating the need to prove they are an eligible person as per the criteria mentioned above.

If you would like to learn more about these amendments, you can read the full article on our website at <http://www.hutchinsonlegal.com.au/step-children-and-wills>

Comings & Goings

YourLawyer, which had been sharing the premises with us in Ringwood, has relocated to 41-43 Ringwood Street, Ringwood. This allows both organisations room to continue to grow.

We would like to welcome Sam Dempster, who has joined our firm and is working in property law. Sam also brings to Hutchinson Legal extensive experience in commercial, intellectual property and sports law.

Personal Note

On 21st of August 2016, Bernard John Curtin passed away. Bernie was well known and well regarded by his colleagues and many clients. He had worked with us since 2010 and we extend our condolences to his family.

2017 Calendar

This year, instead of our desk calendar, we are providing a 'bookmark calendar'. We hope you find this useful as you sit back and relax over the summer and enjoy a good book.



Those that try it, know that an early start is worthwhile.

Oh! What a Nuisance

Overgrown shrubbery, cars parked on pathways, repeated trespassing on your property, smoke and smell from burning rubbish – these are things that may be considered a nuisance in your neighbourhood.

Under common law, if your circumstances fall into the legal definition of nuisance (as opposed to something that is just annoying), then you may have a cause of action against the person causing the nuisance.

There are two main types of nuisance: private or public nuisance, both of which

involve interference with an individual's enjoyment of land.

A public nuisance can be both a civil wrong (something for which a person can take another person to court) and a crime (where there may be penalties such as fines or imprisonment for creating the nuisance).

Private nuisance is a dispute that occurs between two individuals, but is not a crime.

To read more about public or private nuisances, visit <http://www.hutchinsonlegal.com.au/oh-what-a-nuisance>



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FastFACTS

1870

The year the first definitive portrait of our present day Santa Claus was painted by newspaper artist, Thomas Nast.

\$24,000

The estimated cost of buying all the gifts given in the song: '12 Days of Christmas'.

1886

The first year on record in which fake Christmas trees were produced. They originated in London and were made out of green raffia.

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Clients should not act only on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.