

Book Review

PRACTITIONERS' GUIDE ON DAMAGES AWARDED FOR DEFAMATION CASES IN SINGAPORE¹

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1 Determining the quantum of damages in defamation actions is not an exact science. It requires a consideration of a gamut of factors such as the gravity of the defamatory allegations, the standing of the plaintiff and defendant (as the maker of the statement), the extent of publication and the defendant's conduct in the publication of the defamatory statements. These factors have to be applied against benchmarks found in case precedents taking into account the specific aims of the award namely to vindicate plaintiff's reputation, as consolation for injury to an individual's feelings or to repair the harm to reputation. The assessment of damages must be therefore based on the consistent and principled application of the relevant factors and benchmarks in achieving its aims.

2 In this regard, the *Practitioners' Guide on Damages Awarded for Defamation Cases in Singapore* ("Practitioners' Guide") – which had reviewed cases filed in the Supreme Court and State Courts from 2006 to 2017 that culminated in awards of damages (cut-off date as of 8 August 2019) – offers valuable information on damages awards and more. It contains introductory chapters covering an overview of defamation law and its legal sources as well as practical considerations as to the parties who can sue or be sued in the tort of defamation. This is supplemented by discrete chapters on the procedural aspects of commencing a defamation action (chapter 3), the more substantive elements of defamation (chapter 4), defences (chapter 5) and remedies (chapter 6). The final four chapters give an overview of the damages awarded in defamation cases (chapter 7) followed by clear and detailed descriptions of the reasons for each award in the specific case summaries. Each of the summaries contains a brief summary of facts, holding on the legal issues and the reasoning (including discussion of case precedents) underlying the

1 Academy Publishing, 2019.

assessment of damages. Significantly, the section includes updates on the appeals (if any) against the decisions at first instance.

3 The case summaries are categorised according to whether they involved (a) slander (chapter 8); (b) mixed slander and libel (chapter 9); or (c) libel (chapter 10). A quick browse of the case summaries will reveal that libel through online modes such as e-mails, social media, instant message services and postings on online forums have become more prevalent in Singapore. Further, the study showed that damages awarded in slander are generally lower than for libel. Preceding each set of case summaries are useful tables containing the case names, type of defamation, category of plaintiffs (such as political public leaders, businessmen/professionals, individuals, corporate entities and unincorporated associations), and the amount of damages awarded. Congratulations are in order for the editors and contributors (Salina Ishak, Clement Julien Tan, Peter Lo, Regina Lim and Patrick Tay) for putting together a concise, accessible and useful resource for legal practitioners as they navigate the increasingly complex labyrinth of procedural rules, substantive defamation law and deal with the demands of litigation practice and their clients.

4 The *Practitioners' Guide* also examined a number of notable decisions relating to the following:

- (a) the award of aggravated damages for additional injuries to feelings due to the defendant's conduct that are fairly common in Singapore with the recent clarification that corporations are not entitled to aggravated damages;²
- (b) the proof of special pecuniary damages based on the causal link between the defamatory statement, lowering of reputation and the alleged financial damage;³
- (c) the award of punitive damages which should be confined to exceptional cases where the defendant had acted outrageously so as to warrant condemnation, deterrence and punishment by the court;⁴

2 *ATU v ATY* [2015] 4 SLR 1159.

3 *Low Tuck Kwong v Sukanto Sia* [2014] 1 SLR 639.

4 *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918. See also the Malaysian case of *Lau Yeong Nan v Life Publisher Berhad* [2004] 7 MLJ 7 at [50] on exemplary damages in defamation.

- (d) the decision that complaints to police and statutory agencies are protected by qualified rather than absolute privilege;⁵ and
- (e) the developments in the abuse of process doctrine.⁶

In terms of civil procedure, the most significant recent development is arguably the introduction of the Pre-Action Protocol for Defamation Actions in the State Courts which came into force on Sept 2018. This is aimed at facilitating and promoting settlement, to improve pre-action communications between parties, to come up with a timetable for the expeditious disposal of cases, and to avoid protracted interlocutory applications.⁷ Practitioners may also wish to note that costs orders would depend on the parties' compliance (or non-compliance) with the Pre-Action Protocol, State Courts Practice Direction.

5 The details of the State Courts' Pre-Action Protocol are succinctly described in chapter 3 covering issues relating to the letter of claim, response to claim by the other party and the requirement of filing a Pre-Action Protocol checklist before the commencement of defamation proceedings. The chapter also provides practical pointers for the commencement of defamation actions, in particular, jurisdictional issues (including service outside jurisdiction) and a final section on pleadings which may be crucial for the ultimate success of a defamation claim.⁸

5 *Goh Lay Khim v Isabel Redrup Agency Pte Ltd* [2017] 1 SLR 546.

6 See *Chan Boon Siang v Jasmin Nisban* [2018] 3 SLR 498; *Lee Hsien Loong v Leong Sze Hian* [2019] SGHC 66; and *Leong Sze Hian v Lee Hsien Loong* [2019] 2 SLR 591.

7 See Practice Direction 143 of the State Courts Practice Directions (updated 9 January 2020); cf the UK Pre-Action Protocol for Defamation (2000).

8 See, eg, *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2015] 4 SLR 1.