

AUSTRALIA / JUDGMENT

Kelly v Perish

[2026] NSWDC 360**COURT**

District Court

DECIDED

24 September 2026

BEFORE

Wass SC DCJ

CASE / FILE NUMBER

2026/104795

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District Court**New South Wales****Medium Neutral Citation:** Kelly v Perish [2026] NSWDC 360**Hearing dates:** 4 June 2026**Decision date:** 24 September 2026**Jurisdiction:** Civil**Before:** Wass SC DCJ

Decision:

- (1) The Plaintiff's application for an adjournment to seek further evidence is refused
- (2) The Plaintiff's application to issue the subpoena against the Defendant in the terms stated is refused
- (3) The Plaintiff has failed to establish serious harm as required as an element of his cause of action by s 10A of the Act
- (4) The case is dismissed
- (5) Subject to Order (6), with both parties self-represented, there will be no order for costs
- (6) In the event the Defendant can establish the incurring of any legal expenses in the defence of his claim, he has liberty to apply in respect of Order (5)
- (7) Such liberty is to be exercised within seven (7) days

Catchwords: DEFAMATION — Separate determination — Section 10A — Serious harm not established — Identification not established

Legislation Cited: Defamation Act 2005 (NSW)

Cases Cited:	Andrews v John Fairfax & Sons Ltd (1980) 2 NSWLR 225 Atholwood v Barrett [2004] QDC 505 Bristow v Adams [2012] NSWCA 166 Cooke & Anor v MGN Ltd & Anor [2014] EWHC 2831 Daryanani v Ramnani [2017] EWHC 183 Dow Jones & Co Inc v Gutnick (2002) 210 CLR 575 Eppinga v Kalil [2023] NSWCA 287 Gallo v Dawson (1990) 93 ALR 479 Georges v Georges [2022] NSWDC 558 Grattan v Porter [2016] QDC 202 Kelly v Davis & Anor [2022] NSWDC 352 Kelly v University of New South Wales [2022] NSWDC 392 Kelly v UNSW [2025] NSWDC 24 Martin v Najem [2022] NSWDC 479 North Coast Children's Home Inc. trading as Child & Adolescent Specialist Programs & Accommodation (CASPA) v Martin [2014] NSWDC 125 Rader v Haines [2022] NSWCA 198 Rajski v Scitec Corporation Pty Ltd (Court of Appeal (NSW), 16 June 1986, unrep) Rodgers & Anor v Gooding [2023] QDC 115
Category:	Procedural rulings
Parties:	Milton James Kelly (Plaintiff) Andrew Perish (Defendant)
Representation:	
Solicitors:	Milton James Kelly (In person) Andrew Perish (In person)
File Number(s):	2026/104795
Publication restriction:	Nil

JUDGMENT

Introduction

By a statement of claim dated 2 February 2026, Milton James Kelly (the Plaintiff), commenced proceedings in defamation against Andrew Perish (the Defendant).

On the application of the Defendant, the Court has been asked to determine the element of serious harm pursuant to s 10A(5) of the Defamation Act 2005 (NSW) (“the Act”) as a preliminary issue.

Both parties appeared unrepresented in these proceedings.

Judgment in this matter has been delayed as I went on extended leave shortly after the hearing. I informed the parties of that fact during the hearing. However, I acknowledge that the parties have had to wait for this judgment.

The Matter Complained Of

The Plaintiff alleges that on or about 25 February 2025, the Defendant made a Facebook post in reply to a post made by the Plaintiff. The initial post by the Plaintiff, to which the Defendant's post responds, was deleted by the Plaintiff, together with the response the subject of the claim. The Plaintiff did not tender that initial post. Accordingly, there is no evidence of the context in which to place the subject post. The Plaintiff, in making his post, used the pseudonym "Mike Meyers" and used a black outline profile picture.

The text of the responsive post, the subject of the claim, reads as follows:

"Mike stfu honestly. I've followed your posts since 2022. You're pushing 50 and were caught chatting up 18 yo girls in the law library. Seems like you're the type of guy that can't take no for an answer based on the consistent posts from 2022 – now. Of course people are going to call you a pedo, it's fucking creepy. Yeah sure, maybe they shouldn't have, but can you really blame them. Why don't you post a link to the full court transcript instead of picking and choosing what to show people. The fact is UNSW gave you multiple opportunities to correct your behaviour, but you consistently fucked it up. Enough is enough mate."

The imputations that are said to arise from the post are that the Plaintiff:

Has flirted with "barely legal" girls at UNSW;

Is "the type of guy that can't take no [from girls] for an answer";

Is a pedophile;

Is creepy;

Has been dishonest in his statements about these types of things;

Has consistently behaved in a similar (creepy) manner at UNSW, despite UNSW giving him "multiple opportunities" not to; and

Should stop this behaviour.

The Legislative Framework

Section 10A of the Act relevantly provides that,

- (1) It is an element (the serious harm element) of a cause of action for defamation that the publication of defamatory matter about a person has caused, or is likely to cause, serious harm to the reputation of the person.
- (2) For the purposes of subsection (1), harm to the reputation of an excluded corporation is not serious harm unless it has caused, or is likely to cause, the corporation serious financial loss.
- (3) The judicial officer (and not the jury) in defamation proceedings is to determine whether the serious harm element is established.

- (4) Without limiting subsection (3), the judicial officer may (whether on the application of a party or on the judicial officer's own motion)—
 - (a) determine whether the serious harm element is established at any time before the trial for the proceedings commences or during the trial, and
 - (b) make any orders the judicial officer considers appropriate concerning the determination of the issue (including dismissing the proceedings if satisfied the element is not established).
- (5) If a party applies for the serious harm element to be determined before the trial for the proceedings commences, the judicial officer is to determine the issue as soon as practicable before the trial commences unless satisfied that there are special circumstances justifying the postponement of the determination to a later stage of the proceedings (including during the trial).
- (6) The matters a judicial officer may take into account in deciding whether there are special circumstances for the purposes of subsection (5) include (but are not limited to) the following—
 - (a) the cost implications for the parties,
 - (b) the resources available to the court at the time,
 - (c) the extent to which establishing the serious harm element is linked to other issues for determination during the trial for the proceedings.
- (7) Without limiting subsection (5), the judicial officer may determine the serious harm element is not established on the pleadings without the need for further evidence if satisfied that the pleaded particulars are insufficient to establish the element.
- (8) Nothing in this section limits the powers that a judicial officer may have apart from this section to dismiss defamation proceedings (whether before or after the trial commences).

The Plaintiff bears the onus of proof in establishing that the publication caused or is likely to cause serious harm to his reputation.

The Plaintiff's Application for an Adjournment

At the s 10A hearing on 4 June 2026, the Plaintiff sought an adjournment for the purpose of issuing a subpoena ("the Subpoena"). Initially he had sought the documents by a notice to produce ("the Notice"). The Defendant did not produce the documents, contending that they were irrelevant to the matters currently in issue.

The Notice itemised the following documents or things for inspection by the Plaintiff:

All evidence you have supportive of the allegations/implications in your post, including (as examples, but not limited to) "of course people are going to call you a pedo [...] can you really blame them" and "the fact is UNSW gave you multiple opportunities to correct your behaviour".

The names of all witnesses who can testify in support of the allegations/implications in your post.

All the online posts you referred to in your post (given in the SoC) and the identities of all the people who made those posts.

The Subpoena is relevantly in identical terms.

The Subpoena is directed to two matters; whether the Defendant has evidence going to prove the truth of the imputations, and information as to who may have been responsible for earlier online publications. The Plaintiff accepted that part of the purpose of the Notice was to see who to sue for the earlier posts.

The documents sought are irrelevant to the current issues requiring determination. They do not go to whether the Plaintiff can establish that publication of the matter complained of caused or likely will cause serious harm to his reputation. The Subpoena would serve no utility in the hearing of this issue. The purpose of s 10A of the Act is to avoid unnecessary time and expense in litigating unnecessary matters.

The function of a subpoena is to facilitate the production of evidence that is relevant to a live issue in the proceedings. It is not a mechanism for conducting collateral investigations unrelated to the determination of the present application. These proceedings cannot be utilised as a vehicle for conducting such an inquiry.

I declined to grant the adjournment to allow for the Plaintiff to issue the Subpoena.

Presumption of Harm

Damage to the reputation of the defamed person need not be proved; rather, it is presumed: “the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff’s right”: *Andrews v John Fairfax & Sons Ltd* (1980) 2 NSWLR 225, 258; *Bristow v Adams* [2012] NSWCA 166 at [20]-[31].

However, “the extent of that harm is not” presumed: *Eppinga v Kalil* [2023] NSWCA 287 at [100].

Since changes to the Act in 2021, there is a need to consider “serious harm” as an element of the cause of action and a threshold question: s 10A of the Act.

Seriousness of the Imputation

The Plaintiff made submissions regarding the harm done to him by reason of a number of “spam” posts about him being a paedophile; that he now avoids children or someone in a school uniform when shopping for fear that he would be recognised in the street because of his posts on Facebook which he used to make a lot. There is no suggestion that the Plaintiff could be recognised by the subject post, given that his name is not used and there is no identifying picture attached to it.

The Plaintiff submitted that he was not sure that I, as a woman, would perhaps understand how it feels to know that multiple people are calling him a paedophile behind his back, and completely openly like this.

On the contrary, I well understand the seriousness of the third imputation pleaded. I regard it as extremely serious.

Indeed, allegations of paedophilia are amongst the most serious allegations that can be made: *Rodgers & Anor v Gooding* [2023] QDC 115; *Grattan v Porter* [2016] QDC 202.

To be labelled a child abuser or paedophile is one of the worst possible things that could be said about someone. It is one of those statements that, despite denial, may tend to persist and leave a lingering and permanent mark on a person's reputation. It is extremely difficult, if not impossible to dispel this: *Atholwood v Barrett* [2004] QDC 505.

In a similar vein, Gibson DCJ said in *North Coast Children's Home Inc. trading as Child & Adolescent Specialist Programs & Accommodation (CASPA) v Martin* [2014] NSWDC 125 at [66]:

“While imputations of dishonesty, incompetence and neglect are serious issues, imputations of involvement in child abuse of any kind must be viewed as the most serious imputations capable of being made.”

Because paedophilia most often occurs in secret, proof of its denial is almost impossible. There is almost nothing a person can do to prove it not to be true to anyone who might hear it.

Whilst I can appreciate the Plaintiff's distress and concern at being called a paedophile, the Court is not concerned in this application with any hurt to feelings, but rather whether the Plaintiff has established that it is likely that serious harm has been caused to his reputation or will likely be caused in the future.

The Plaintiff's Particulars of Serious Harm

I received an undated 16-page document from the Plaintiff headed 'Particulars of Harm' containing submissions which I understood to relate, at least in part, to the serious harm element.

In those submissions, the Plaintiff referred to earlier proceedings relating to similarly framed Facebook posts made by people other than the Defendant, which proceedings were ultimately dismissed. The Plaintiff took issue with the Court's earlier ruling (in a Court differently constituted) and submitted that the content of the earlier posts had been perpetuated in further posts and thus has continued to cause him harm. It is against that contextual backdrop that he particularised the serious harm suffered in respect of the current proceedings as follows:

The defendant's post continues to spread these claims, and the fact that he repeated the specific claims from both of the earlier posts shows that the earlier posts harmed my reputation, and continue to. His post repeating these claims is therefore very likely to harm my reputation too.

The Evidence

The Plaintiff's Evidence

On 23 April 2026, I made orders that the Plaintiff file and serve his evidence by 7 May 2026.

The Plaintiff did not swear an affidavit. He relied on the post as his only evidence.

As to evidence of the size of the likely audience who may have read the post, the Plaintiff asserted, without evidence, that he thought that the post was in a forum that had a readership of about 30,000 people. He said that I would need to look at the forum. The Plaintiff explained that he did not submit evidence of the likely audience because he was not suing over that aspect. He said that he did not think there was any doubt about this because it was “the main student forum for the university”. He said that “it's a very large forum for a lot of people”. When I explained to him that he would need evidence of the likely readership, he said he did not consider that point.

I did not accept his assertion, given his experience gained in previous proceedings.

In *Kelly v Davis & Anor* [2022] NSWDC 352 (Abadee DCJ), the Plaintiff brought defamation claims in relation to the allegations made that he harassed students on campus at the University of New South Wales (“UNSW”) commenced against two students who made posts about the Plaintiff. The fact that the matter proceeded to finality is relevant, as it was in *Kelly v UNSW* [2025] NSWDC 24, to the issue of the Plaintiff's knowledge of defamation law as well as of the requirements for pleadings, particulars and suitable evidence in such claims. The Plaintiff was put on notice in that matter of the need to establish serious harm in any future case.

In *Kelly v University of New South Wales* [2022] NSWDC 392 (Weber SC DCJ), the Plaintiff brought a further claim for defamation for two publications brought against both UNSW and the security service it employed, arising out of the way the security staff dealt with claims of misconduct on campus by the Plaintiff.

In *Kelly v UNSW* [2025] NSWDC 24 (Gibson DCJ), the Plaintiff's claims for defamation were struck out and dismissed. The claims related to the Plaintiff's allegations that UNSW defamed him in respect of stated harassment of students on campus. The Plaintiff represented himself in those proceedings. By reason of litigating that matter, the Plaintiff was aware that he needed to turn his mind to, and provide particulars of, publication and serious harm. In that case, no identification or particulars of serious harm were pleaded or particularised, other than for the Plaintiff to assert that the defendants' “publications of false accusations and threats against me [have] destroyed my future”. That was held to be inadequate. It was clear to the Plaintiff, once Gibson DCJ (an extremely experienced defamation judge) delivered judgment, that he must identify, even if only in a general way, the defamatory publication and the injury caused; that there must be identified, a connection between the publications and serious harm including most relevantly, the extent of publication.

In *Kelly v UNSW* [2025] NSWDC 24, the Plaintiff had similarly relied on the fact that he was a layman and, in that case, that he did not understand how to draft imputations or pleadings or attach the matters complained of. His response was found by her Honour to be disingenuous. Her Honour held that “[s]ince 2020 he has conducted a series of defamation actions in this court, two of which proceeded to judgment”. Her Honour was of the view that he had no such difficulties in those two actions.

Her Honour observed then at [92], as I do now:

“This is not the plaintiff’s first encounter with the legal system. He is an experienced self-represented litigant who, in addition to preparing and presenting defamation actions in this court, has represented himself in other courts, such as the NCAT, over the past five years.”

The Plaintiff’s status as a litigant in person is not a licence to ignore the need to identify the appropriate issues and garner the available evidence: *Gallo v Dawson* (1990) 93 ALR 479 at [3].

Samuels JA similarly observed in *Rajski v Scitec Corporation Pty Ltd* (Court of Appeal (NSW), 16 June 1986, unrep):

“The absence of legal representation on one side ought not to induce a court to deprive the other side of one jot of its lawful entitlement... An unrepresented party is as much subject to the rules as any other litigant. The court must be patient in explaining them and may be lenient in the standard of compliance which it exacts. But it must see that the rules are obeyed, subject to any proper exceptions. To do otherwise, or to regard a litigant in person as enjoying a privileged status, would be quite unfair to the represented opponent.”

I do not accept the Plaintiff’s claims in this matter of being unaware and thereby disadvantaged by his lack of legal knowledge. I find that he is, by his experience in many cases, well able to garner the appropriate evidence if it exists, prepare an affidavit to that effect and, in particular, to set out details of the publication and the harm it has caused to his reputation, the sole focus of this hearing. He either could not or would not do so, to his peril.

It is incumbent on any litigant, including those who appear for themselves, to become acquainted with the matters that are necessary for their case to succeed. This litigant was particularly well placed to do so, given his past experiences.

As to publication, furthermore, it became clear that an adjournment for him to garner such evidence as there was, would be of little utility, even if I was to accept that he genuinely was unaware of how to proceed.

The Plaintiff explained that he could not obtain evidence of the likely audience as the number of people on the forum has probably changed since then. He said there were now 25,000 people, so “even if there was half that, that’s still a sizeable number of people”.

The Plaintiff accepted that there was no way to estimate the number of people, if any, likely to have read the post, or what their responses were. He deleted the post. On the evidence presented, there was only evidence that the Plaintiff read the post. The Plaintiff accepted that if a post to a

large forum was present only momentarily, it may not have been read by anyone. He said this was not the case here. The Plaintiff ultimately accepted that he could not prove how many saw the post and could not prove how long it was up as he did not remember. Somewhat inconsistently, he later said the post had been up for “more than 90 minutes”.

Returning to his earlier position, in submitting that he needed an adjournment to attempt to garner evidence of the number of people in the forum who might have seen the post, the Plaintiff said he could estimate how long the post was up but did not remember exactly. He then said that he could not go back and check the forum on a particular date, and he did not know how long the post was up. He said, “[t]hat's why I didn't want to put anything in there because I don't remember... I don't know the exact time”. He confirmed that his only evidence was the post itself.

The Plaintiff said that he knew the forum had a lot of people in it, so did not think about proving that, as all I would have to do would be to look at the forum, and it would show me how many people are there. He said he did not have any definite time that the post was up for, so there is nothing that he could produce. He said that he did not record that data on the off chance he would need it for trial. He did, however, make a copy of the post itself. He said, in that event, that it would have to be an estimate and that he did not know and did not really remember.

Having already encountered this issue in earlier defamation proceedings, the Plaintiff submitted that the principle still stands:

“Most impact from a Facebook post happens very quickly. The first day a Facebook post is up, it's seen by most of the people who are going to see it.”

...

“So, a Facebook post either has their effect very quickly, or they don't have an effect. So, in that sense, the time it's up doesn't matter so much as you might think.”

Again, he asserted that he had not thought to record this matter. Given his experience in earlier defamation proceedings, I did not accept that submission. It is obvious that any plaintiff would need to prove to whom the statement was likely published and over what period of time.

Ultimately, in his application for an adjournment, the Plaintiff undertook to provide the number of people who are in the forum as at the date of the hearing. He said that this was the best he can do and to give an estimate of how long he thought the post was up.

A mere assertion that the publication has caused, or is likely to cause, serious harm to the plaintiff is insufficient to establish serious harm (see *Daryanani v Ramnani* [2017] EWHC 183 at [6] per Eady J; *Georges v Georges* [2022] NSWDC 558 at [65] per Abadee DCJ).

The serious harm threshold is not satisfied by relying on generalised assertions or by inviting the Court to infer serious harm merely from the size of the audience or the publication's capacity to cause damage. Whilst serious harm can be established by inference, it still requires cogent, fact-specific evidence demonstrating that the harm suffered, or likely to be suffered, is serious: *Martin v Najem* [2022] NSWDC 479. In this case there is no such evidence.

Furthermore, there is no evidence that the publication in any way harmed the Plaintiff's reputation. There is no evidence that he was shunned or avoided, or that anyone thought less of him having read it.

In this case, the most that can be said is that the evidence establishes that the post was made on a UNSW forum page with an unknown audience (but which given its purpose I am prepared to infer was not always limited), in the early hours of the morning (where the audience might be very limited), and which remained on the forum for an unknown period of time (perhaps for a very short period of time further limiting the audience) and where there is no evidence that anyone read it, much less believed it.

The Submissions

The Plaintiff's Submissions

The crux of the Plaintiff's submissions concerning serious harm was that the Defendant's reference to claims contained in posts published some years earlier demonstrated that he was "so convinced and moved by them" that he repeated those claims. The Plaintiff submitted that this indicated that the claims had a substantial effect upon the Defendant's perception of the Plaintiff's reputation. The Plaintiff further submitted that, if the claims were capable of influencing the Defendant to the extent that, years after their original publication, he repeated them verbatim, it follows that the Defendant's post is likely to have a similar effect upon other readers and, accordingly, is indicative of the potential harm that the publication could cause to the Plaintiff's reputation.

The Plaintiff submitted:

"I think it's reasonable to think that this forum had a lot of people in it. The notion that it only had one person is silly... It's the main student forum for the university and I think that's such a tiny point to quibble over. Whether he proved it or not, that was still the case."

The Plaintiff further submitted that certain types of claims were assumed to cause harm, and assumed to cause future reputational harm, despite the operation of s 10A of the Act.

The Plaintiff relied on *Cooke & Anor v MGN Ltd & Anor* [2014] EWHC 2831 ("*Cooke v MGN*"). In that matter, a series of six weekly television programmes were broadcast, which focused on the lives of residents dependent on social security benefits. It attracted great attention and contributed to a widespread national debate about benefits. The Sunday Mirror published an article with a front-page headline and article which covered nearly all of pages 1, 4 and 5. The focus was a named landlord who was described as "Mr Goldfinger". His picture was also

produced. He was accused of renting out squalid properties for high rents and making money from misery. The claimants were Ms Cooke and Midland Heart ("MH"). They were mentioned as wealthy other landlords. No allegations were made similar to those made against Mr Goldfinger, only that MH owned three homes in the street and that Ms Cooke was MH's Chief Executive. The imputations were that MH, owned or run by Ms Cooke, is one of the disreputable, well-off private landlords of the rented properties who make large profits by letting out squalid and sub-standard houses making money from the misery of the residents and getting rich from taxpayers' money.

On the issue of serious harm, the evidence, apart from copies of the article and the apology, consisted of witness statements of Ms Cooke and the Governance and Contracts Director and Company Secretary of MH.

Mrs Cooke's unchallenged evidence was that following publication, three professional contacts referred to the article in communications with her; one of these indicated that it was "awful" that they were associated with disreputable landlords. Since the apology later made had not stated the allegations were false, it had raised his suspicions and made him wonder what they had done to warrant being linked in an adverse way. The claim is based not on damage to their reputations in the minds of the particular individuals, but "in the minds of many hundreds of thousands of readers of the Sunday Mirror".

MH's case on serious harm relied on the fact that any suggestion that it had failed in the delivery of services was bound to cause those who award contracts and grants to question whether they should receive public money. MH conceded that it was not aware of any contract being lost, although it was explained that often one does not know the reasons for the loss of contracts.

The claimants could not adduce evidence about specific individuals who, as a result of reading the article, thought less of them. It was submitted that the actual and likely serious harm to the claimants' reputations will be in the estimation of those who do not know them but will now know them as 'dodgy landlords'. The purpose of the action was to publicly vindicate them in the face of such an allegation.

It was accepted that likely serious harm will, generally, only be established where the court is satisfied that it is more probable than not that it will occur in the future.

The Court did not accept that in every case evidence will be required to satisfy the serious harm test. Some statements are so obviously likely to cause serious harm to a person's reputation that this likelihood can be inferred. For example, if a national newspaper with a large circulation wrongly accuses someone of being a terrorist or a paedophile, then in either case the likelihood of serious harm to reputation is plain. In such a case, the matter would be taken no further by requiring the claimant to incur the expense of commissioning an opinion poll survey, or to produce a selection of comments from the blogosphere which might in any event be unrepresentative of the population of "right thinking people" generally.

However, the Court did not consider that to be so, “or anywhere near it” in the present case, given the meanings relating to the claimants. The Court took into account the apology given, sufficient to eradicate or at least minimise any unfavourable impression created by the original article. That left a residual class of readers of the original article who did not read the apology. The apology was by then far more accessible on internet searches than the original article.

In that case, both claimants accepted that there is no specific evidence that the article has caused serious harm to their reputations so far; and the Court was of the view that such serious harm could not be inferred. The claimants had also failed to show that it is more likely than not to cause serious harm to their reputations in the future. Serious harm was not established.

The Plaintiff invited me to assess broadly the seriousness of the allegation (which I accept is most serious) and the extent of circulation (which, in my view, is unknown). Given the potentially limited publication, I am of the view that this is not one such case in which the statement made was so obviously likely to cause or have caused serious harm that the likelihood can be inferred. Given that the post was removed, there is no prospect of any likelihood of serious harm being occasioned in the future, the statement having been made on 24 February 2026, and where the Plaintiff gave no evidence of there being any harm to his reputation so far.

The Defendant’s Submissions

The Defendant made the following submissions:

In opposing the application for an adjournment, that the Plaintiff is a serial litigator, who knows what is required of him as to proof of harm.

There is no evidence of harm to his reputation where a person already told 50,000 people he was a paedophile and that the post, present for such a short period of time, would be unlikely to cause any serious harm to his reputation.

The Plaintiff’s particulars show that he had the power to mitigate the damage from the comment and chose to leave the comment up for this unknown period of time.

The Plaintiff is not identified.

The Plaintiff’s reliance on *Cooke v MGN* is misconceived and was rejected in previous litigation involving the Plaintiff.

The Defendant relied on *Rader v Haines* [2022] NSWCA 198, in which it was determined that the gravest imputation has no harm if it causes no impact. The Plaintiff has failed to show any professional or social consequence arising from the statement. He has not isolated the specific harm the Defendant’s comment caused.

Resolution of the Issues

Publication

To establish that any harm was done to his reputation, the Plaintiff must establish that the Defendant published the defamatory matter concerning him to at least one person other than himself: *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at [25]–[26]. In this case, it must be proved to have been published to at least one of the members of the relevant Facebook forum other than himself.

The statement was published by the Defendant to the forum at 2.25am on 24 February 2026 in response to something the Plaintiff had posted. It remained on the forum for an unknown period before the entire post was deleted by the Plaintiff.

There is no evidence that any comments were made about it by anyone.

There is a suggestion, without evidence, that the Facebook group on which the post was made may have some 25,000 members. However, there is no evidence of the number of people on the forum at any one time or at this time.

There is no evidence from any person that they read it, much less thought less of the Plaintiff having done so.

The speculative assertion that someone must have seen and believed the statement is rejected. There needs to be some evidence of publication. There is none.

Identification of the Plaintiff

The Defendant relies on there being no identification of the Plaintiff.

I took this issue up with the Plaintiff.

The following matters emerged from our exchange:

When asked to identify the evidence going to his identification, the Plaintiff drew my attention to his “statement of particulars, the one with the screenshots”. He said that there were a “bunch of threads on Facebook and Reddit and probably other places about me using my real name”.

When asked to point to any evidence that any of the readers that are on the Facebook page, would likely have read the statement and understood it to be referring to him, the Plaintiff submitted the following:

“These are both forums set up for University of New South Wales students and they're very active and it would be the same people active in both because a lot of the posts refer to Facebook and Facebook refers to Reddit. I'm not going to - I mean, I don't have screenshots of dozens and dozens of posts and threads, referring back years so I can't prove that. And so, if people often use different names, it's not possible really to link names. Reddit is very anonymous mostly, but since they refer to the same incidents on campus and the same issues and the same person sometimes, it's obviously that these are the same people talking about the same things... They link to the case which has my name on it and they gave my real name.”

Referring to the post in question, the Plaintiff explained that it was “a post that followed one of my posts”. The post was not tendered in evidence. The Plaintiff explained that he had cropped the document to “just the bit that I'm concentrating on suing over just to, to simplify things”.

The plaintiff agreed that he knew from previous defamation proceedings that he would need to prove that he was identified.

The Plaintiff accepted that the post said something about a person called “Mike” who had a grievance with the university and that it involved Court transcript (the three linking matters). There was no evidence of anyone having read the statement, and putting the three linking matters together, understood it to be a reference to the Plaintiff.

The Plaintiff explained that this had not occurred to him because he “didn't think to screenshot all these things” and that when he sees posts like this posted about him, he does not think about suing, at least not straight away.

The Plaintiff explained that he had used the name Mike Meyers for years on that same forum and that the reference to "Mike" follows a post called "Mike Meyers" his post. There is no evidence of the Plaintiff using the name Mike Meyers for years on that same forum, much less that anyone else understood it to be a reference to the Plaintiff.

The Plaintiff accepted that on the evidence he presented, there was no evidence that anybody who read the post would have put the three linking matters together to identify him.

The Plaintiff was disappointed in my requirement for evidence and asked me to “use more common sense” and hoped that I can do better and that despite him not knowing the “checklists” that I should “know stuff” as I had “been here before”. The Plaintiff contended that my requirement for evidence was not justice and not in the interests of natural justice.

I find that the Plaintiff was not identified in the post and provided no evidence that anyone who saw the post would have identified him.

Consideration of Serious Harm

I have taken into consideration the following matters:

The meaning of the words is clear.

The Plaintiff is not identified.

The imputation that a person is a paedophile is extremely grave.

There is no clear evidence of the extent of publication.

There is no evidence that anyone read the statement and understood it to be the Plaintiff. There is no evidence by which this could be inferred.

The post to the Facebook group page was in writing on the internet, made at 2.25am, and removed by the Plaintiff at some unknown time.

There is no evidence of any actual impact of the defamatory publication on the Plaintiff's reputation.

There is no evidence that the statement is likely to come to the attention of those who know or might come to know the Plaintiff, as the post has been removed.

Despite the seriousness of the allegation made in the statement, in the absence of any admissible evidence regarding publication; the extent of readership, the duration for which the post remained available to be read online, and any response or reaction from other persons to the post, I am not satisfied that the Plaintiff has established any serious harm to his reputation, or that he is likely to suffer such harm in the future.

I am further not satisfied that any adjournment or the sought after Subpoena could rectify the stated deficiencies in the Plaintiff's case.

Orders

I make the following orders:

The Plaintiff's application for an adjournment to seek further evidence is refused.

The Plaintiff's application to issue the subpoena against the Defendant in the terms stated is refused.

The Plaintiff has failed to establish serious harm as required as an element of his cause of action by s 10A of the Act.

The case is dismissed.

Subject to Order (6), with both parties self-represented, there will be no order for costs.

In the event the Defendant can establish the incurring of any legal expenses in the defence of his claim, he has liberty to apply in respect of Order (5).

Such liberty is to be exercised within seven (7) days.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated:

01 October 2026

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Prepared on 29 October 2026 · Esheria