



When sorry is just not enough!

Defamation and the Offer of Amends

29 May 2017

The Court of Appeal in its recent judgment in [Christie v TV3 Television Networks Limited](#) (Unreported, Court of Appeal, 29 May 2017) [2017] IECA 128 has raised a number of interesting points in the area of defamation. Of particular interest is the analysis of the level of discount applied for the use of the Offer of Amends procedure set out in the [Defamation Act 2009](#).

Mr Christie, “a highly respected solicitor of good standing”, was defamed by TV3 in the course of a television news bulletin when it showed footage of Mr Christie making his way to court while giving an account of the trial of Mr Christie’s client, Thomas Byrne, a former solicitor who had been charged with fraud related offences.

Mr Christie’s solicitor and TV3’s solicitor entered into correspondence and within three days of the original broadcast an apology was broadcast. Unhappy with the apology, proceedings commenced and in March 2014, TV3 made a formal offer of amends. That offer was accepted and it appeared that the only matter that would be in issue was the amount of compensation to be paid.

The [High Court](#) assessed damages in the sum of €200,000 and a discount of 30% was applied because of the offer of amends. The final award was therefore €140,000.

The Court of Appeal reduced the assessment of damages from €200,000 to €60,000 and set out a variety of factors which mitigated the “otherwise very serious nature of the defamation” including the

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fact that it was “a once-off nine second broadcast, the fact that the plaintiff was not named, the very limited range of viewers who might think that the news item referred to Mr Christie, the absence of any animus towards the plaintiff, coupled with the fact that it was plainly a case of mistaken identity”.

It was noted by the court that it is in the public interest that parties engage in the offer of amends process. The level of damages should be reduced appropriately in acknowledgement of a defendant’s willingness to accept its wrongdoing.

The factors that the court took into account when deciding the discount that should be applied in this case were that TV3 swiftly acknowledged its wrong, offered to apologise and did apologise prominently within a few days of first publication. Hogan J allowed a discount of 40% to TV3 on foot of these actions and commented that he was particularly impressed by the prominence of the apology. He stated that where less prominence is given to an apology the discount that will apply will be less.

He also indicated that it might be possible to achieve a discount higher than the 40% awarded in this instance and made some comments in relation to the conduct of TV3 noting that TV3 did not say that Mr Christie had been defamed at any point before its submissions to the Court of Appeal and that the offer of compensation of €1,000 initially offered by TV3 trivialised the nature of the defamation that took place.

Comment

This decision offers guidance in relation to the operation of the offer of amends procedure in this jurisdiction and the potential reduction in damages available to a defendant who fully engages with the process.

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