

# Cyberspace Blogging



Jehan Mata  
Solicitor  
Meridian Lawyers

Kellie Dell'Oro  
Principal  
Meridian Lawyers

9 August 2011

## Defamation or Freedom of Speech The Thin Black Line

There is no question that the internet and blogging are the new frontiers in free speech law.

A blog is an online web based publication or a web log, diary or newsletter posted on a website by an individual, organisation, a business or a community.

The question arises as to whether a practitioner has any legal recourse available by way of response to any negative messages that are posted on blogs.

The only legal cause of action currently available is civil action for defamation against the blogger, the author and/or the website owner who posted the defamatory comments.

It is necessary to consider whether the views or comments on the blog that have been posted, are defamatory. There must be a communication to at least one person that adversely impacts the reputation of an identifiable third person, such as you, the practitioner. You will need to establish that the publication injures your reputation by disparaging you, causing others to shun or avoid you or subjecting you to hatred, contempt or ridicule. This key element can be difficult to establish because, amongst other things, a court, when making the determination, not only looks at the literal meaning of the defamatory publication but also looks at the ordinary view and the reader's view and their understanding of what the publication is meant to mean.

The merits of every case need to be assessed on the individual facts, however very often it will be the case that a costly and expensive civil action is unwarranted and of doubtful merit. It is sometimes best to simply ignore the blog hoping that the writer will find other issues to concern themselves with and the audience, in any event, is narrow.

An alternative response is to post a comment on the blog with the accurate information, amending any inaccuracies in the comments posted earlier. Whilst it is a matter for you as the individual practitioner to determine if, in your own circumstances, this is an appropriate response, in most cases we suspect that it will be best to simply make no comment. This is because in our experience, by adding comments, a practitioner risks adding "fuel to the fire" so to speak and prompting an on-line blog war. This often results in more attention being drawn to the original comments and may get other individual bloggers who frequent the website involved in the conversation. Of course, if you are motivated to make a comment, you should ensure that any comment in response is factually based and not emotionally driven. The last thing you want to happen is the response comment resulting in an insult or derogatory comment to the original blogger who may then have a basis to contemplate a defamatory action against the practitioner.

If you take particular objection at the original blog, another option is to consider drafting a

strongly worded letter advising the blogger that the information that is posted is defamatory and that if the invasion is not removed from the website, legal action will be pursued. That may have the positive effect of having the blogger reconsider the contents and the wording of the information contained on the blog.

You need to be aware that there are situations where bloggers use personal information (which is freely available in the public sphere) in order to get back at practitioners, but that does not necessarily amount to defamation. Whilst often discourteous and mean spirited, personal opinions do not necessarily provide a basis for a claim for defamation. The logic behind this fine line distinction between personal information and defamatory comment, is that there is a lot of information available about individuals, including practitioners, that is freely available in public forums online and information which is already available in the public domain is unlikely to be found defamatory in nature.

For further information we suggest you contact Jehan Mata or Kellie Dell'Oro at Meridian Lawyers

Prepared by Kellie Dell'Oro, Principal and Jehan Mata, Solicitor, Meridian Lawyers

*Meridian Lawyers are part of the Guild Group and the principal legal provider to Guild Insurance clients*

**SYDNEY**

Level 5, 345 George Street  
Sydney NSW 2000  
T +61 2 9018 9999  
F +61 2 9018 9900

**MELBOURNE**

5 Burwood Road  
Hawthorn VIC 3122  
T +61 3 9810 6777  
F +61 3 9810 6770

**NEWCASTLE**

Level 8, 77-79 Hunter Street  
Newcastle NSW 2300  
T +61 2 4908 4200  
F +61 2 4908 4299