SUPREME COURT OF QUEENSLAND

CITATION:	*Robertson v Dogz Online Pty Ltd & Anor* [2010] QCA 295
PARTIES:	**GERALDINE FOOI-FONG ROBERTSON** (plaintiff/appellant) **v** **DOGZ ONLINE PTY LTD** (first defendant/first respondent) **TROY GERARD CUMNER** (second defendant/second respondent)
FILE NO/S:	Appeal No 4293 of 2010 SC No 13010 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	22 October 2010
DELIVERED AT:	Brisbane
HEARING DATE:	12 October 2010
JUDGES:	Chief Justice and Muir JA and Cullinane J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The statement of claim filed on 5 February 2010 be struck out.** **2. The appellant have leave to file and serve an amended statement of claim pleading a cause or causes of action in defamation only within 21 days of today's date.** **3. The appellant's application to adduce further evidence be refused.**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PLEADING – STATEMENT OF CLAIM – appellant alleged that the respondents had published materials defamatory to the appellant on their website – primary judge found that the defamatory words complained of could not bear all of the imputations pleaded by the appellant – primary judge struck out the appellant's claim and statement of claim – primary judge did not appear to take into account the one year limitation period for defamation actions – whether primary judge erred in striking out claim APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – PARTICULAR CASES

INVOLVING ERROR OF LAW – DENIAL OF NATURAL JUSTICE – appellant received grounds of respondents' strikeout application on day of hearing – primary judge struck out appellant's claim and statement of claim – whether appellant was denied natural justice

Limitation of Actions Act 1974 (Qld), s 10AA
Uniform Civil Procedure Rules 1999 (Qld), r 22, r 171, r 371, r 444, r 766

Aon Risk Services Australia Limited v Australian National University (2009) 239 CLR 175, [2009] HCA 27, cited
Bishop v State of New South Wales [2000] NSWSC 1042, cited
Bomanite Pty Ltd v Slatex Corporation Aust Pty Ltd (1991) 32 FCR 379, [1991] FCA 536, cited
Crampton v Nugawela (1996) 41 NSWLR 176, cited
Godfrey v Demon Internet Ltd [2001] QB 201, considered
Sali v SPC Ltd (1993) 116 ALR 625, [1993] HCA 47 cited
Silberberg v Builders Collective of Australia Inc (2007) 164 FCR 475, [2007] FCA 1512, considered
Urbanchich v Drummoyne Municipal Council [1991] Aust Torts Reports 81-127, cited

COUNSEL: The appellant appeared on her own behalf
R G Fryberg for the respondents

SOLICITORS: The appellant appeared on her own behalf
Quinn & Scattini for the respondents

[1] **CHIEF JUSTICE:** I have had the advantage of reading the reasons for judgment of Muir JA. I agree with the orders proposed by his Honour and with his reasons.

[2] **MUIR JA:** The appellant appeals against a decision of a judge of the trial division of this court on 7 April 2010 ordering that her claim and statement of claim filed 5 February 2010 ("the Pleading") be struck out. An earlier amended statement of claim had been struck out on 11 January 2010.

The Pleading

[3] The Pleading is 20 pages in length without annexures. It makes the following allegations. The appellant carries on business as a breeder and seller of pedigree poodles and enjoys a high reputation in that regard.

[4] The respondents managed a website used for purposes including advertising by Australian breeders of pedigree dogs. From about 13 January 2008 to after 7 September 2008, the respondents published materials defamatory of the appellant on their forums. Sub-paragraphs "a." to "aaa.", inclusive of paragraph 5 of the Pleading, contain quotes from "Forum a.".

[5] Paragraph 6 alleges that the words quoted in paragraph 5 "… in their natural and ordinary meaning and by way of innuendo meant and was (sic) understood to [have] …" the meanings set out in sub-paragraphs "a." to "ss." inclusive of paragraph 6.

[6] Paragraph 7 alleges that the words quoted in paragraph 5 were understood to refer to the appellant and her business.

[7] Paragraphs 8, 9 and 10 make allegations in respect of "Forum b." similar to those made in paragraphs 5, 6 and 7 in respect of "Forum a.". Quotations from a website are contained in each of sub-paragraphs "a." to "u." inclusive of paragraph 8. Paragraph 9 ascribes the meanings listed in sub-paragraphs "a." to "ff." inclusive to all of the words quoted in paragraph 8.

[8] Paragraph 11, which relates to "Forum c.", has only one quotation from a website and it is alleged to have the meanings listed in paragraphs 12 "a." to "j.".

[9] Paragraph 14 alleges that "the meanings … in paragraphs 6, 9, 12" were defamatory of the appellant and repeats some allegations made earlier in the pleading about the appellant's expertise, business and reputation.

[10] Paragraph 15 contains a claim for damages, "special damages", costs and interest.

[11] Paragraph 16, headed "PARTICULARS OF PUBLICATION" and paragraph 17, headed "PARTICULARS OF REPUTATION", repeat the substance of earlier allegations.

[12] Paragraph 18 alleges that identified statements in Forums "a." and "b." had a tendency to incite hatred or violence towards the appellant.

[13] Paragraph 19 alleges that all the subject publications were malicious and designed to embarrass the appellant, damage her business and reputation and "to enhance the defendant and/or his supporters' opportunity to keep the [appellant's] poodles that had been fostered to them by [the] RSPCA and to cause the [appellant] to be debilitated and unable to litigate in the Court for the return of her valuable poodles".

[14] Paragraph 20 alleges that the appellant suffered hatred and violence from the public in consequence of the subject publications.

[15] Paragraphs 21 and 22 allege that the respondents knew that the publications would or would be likely to have an adverse effect on the appellant and failed to retract them or apologise.

[16] Sub-paragraphs "a." to "w." of paragraph 23 particularise ways in which the appellant "suffered fear and terror and emotional breakdowns" and was "considerably inconvenienced".

[17] Paragraph 24 complains of the respondents' failure to provide the appellant with the names and contact details of "the people who made the comments" on the web pages.

[18] Paragraph 25 alleges that the matters pleaded caused the appellant loss and damage "by reason of the negligence of, and/or nuisance by, and/or intention to cause injury and loss, by the [respondents]":

> "(a) Failing to take any or any adequate precautions for the safety of the [appellant];
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> (b) Exposing the [appellant] to the risk of injury which could have been avoided by reasonable care on the part of the [respondents];
>
> (c) Failing to observe that the [appellant] was in a position of peril in the circumstances;

> (d) Failing to warn the [appellant] that she was in a position of peril in the circumstances;
>
> (e) Knowingly and intentionally acting and behaving in a manner, which was likely to cause injury to the [appellant] by inciting others to harm her, when a reasonably prudent person would not have done so.
>
> (f) The [respondents] has made no attempt to mitigate the [appellant's] losses."

[19] Paragraph 26 alleges that the appellant has incurred a need for gratuitous care, assistance and services from others "… compensable in damages, in the sum of $200,000 …".

[20] Paragraphs 27, 28 and 29 particularise the loss to the appellant flowing from damage to her business, loss of income from her business and diminution in the goodwill attaching to her business.

[21] Annexed to the Pleading are hard copies of the materials posted by website members containing the defamatory material set out in paragraphs 5, 8 and 11 of the Pleading.

[22] Each of the numerous items of material alleged to be defamatory listed in paragraphs 5, 8 and 11 of the Pleading was alleged to have all of the meanings set out in paragraphs 6, 9 and 12 respectively. The primary judge concluded, in respect of paragraphs 5 and 6, paragraphs 8 and 9, and paragraphs 11 and 12, that they were defective in that the words complained of could not possibly bear all of the pleaded meanings.

Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the Pleading

[23] The primary judge's findings were plainly correct with respect to paragraphs 5 and 6 and paragraphs 8 and 9 but paragraph 11 refers to only one allegedly defamatory statement:

> "a. I HAVE BEEN RIPPED OFF BY THIS PERSON, LIED TO ABUSED BY,AND DEFRAUDED BY I HAVE BEEN TOLD TO CONTACT THIS PAGE TO BECOME A [ART OF A CLASS ACTION AGAINST HER, TELL ME HOW ??????????????/'"

[24] Paragraph 12 then ascribes 10 meanings to those words. If there is a problem with paragraph 12, it is that the paragraph does not identify which of the words are said to have the various meanings. Any such error, however, would be unlikely to cause difficulties on a trial, as the allegations of being "ripped off", "lied to", "abused by" and "defrauded by" the appellant, either alone or in combination, plainly support most of the pleaded meanings and any jury would be unlikely to be confused.

[25] The allegations in respect of Forums "a." and "b.", however, do present a substantial problem. To require a jury to sort out for each collocation of alleged defamatory words which, if any, of the numerous alleged meanings applied, would be productive of untenable delay and confusion. Imputations must be pleaded specifically and with care as the jury will be required to base its verdict on and

assess damages by reference to the pleaded imputations. However, the plaintiff will not fail, where the publication complained of is before the jury, if the pleaded imputation does not state with complete accuracy the imputation in the published material as long as the pleading embodies the substance of the imputation in the published material. [1]

[26] Paragraphs 5, 6 and 7 and paragraphs 8, 9 and 10 of the Pleading suffer from a vice frequently seen in the pleadings of self represented litigants. That is, a lack of discrimination driven, it would seem, by the desire to ventilate in a pleading every conceivable complaint, irrespective of its relative merit or gravity. The normal consequence of such an approach is that the more meritorious or obvious claims tend to be obscured by the marginal or unmeritorious and the pleading is more complex and difficult to draft and thus prone to error. The unculled allegations are more time consuming and difficult to prove and costs are increased.

[27] One example of the pleading defect under consideration is provided by paragraph 5(f) which alleges that the words: "… me … the rotten woman should be fined and banned from owning dogs" were published. Instead of alleging that these words had all of the numerous meanings alleged in paragraph 6, it could have been alleged merely that the said words in their natural and ordinary meaning meant and were understood to mean that the appellant:

(a) had committed a criminal offence punishable by a fine; and

(b) was unfit to be a dog owner.

[28] In paragraphs 5 and 8 of the Pleading some of the words alleged to be defamatory seem to be no more than factual reporting.

[29] A number of the items of published matter listed in paragraph 5 also express the wish that the appellant be jailed ((g.) and (k.)), or that the appellant deserves to be jailed (o., s., t., u., and nn.). It would have been possible for the appellant to allege, compendiously, in respect of those paragraphs that the words in their natural and ordinary meaning meant and were understood to mean that the appellant had committed a criminal offence punishable by imprisonment.

The pleading of the liability of the respondents as website host or manager

[30] Counsel for the respondent argued at first instance that the Pleading was also defective in that it alleges that the respondents published or caused to be published the matter alleged to be defamatory on their website. The annexures to the Pleadings show that others (website members) placed the material on the website and counsel contended that if the respondents are liable in relation to the defamation, it can be only as managers of the website. He submitted, in reliance on *Bishop v State of New South Wales*[2] and *Urbanchich v Drummoyne Municipal Council*[3], that the elements of a claim on this basis were not pleaded. On appeal, counsel argued that, as a result of this alleged defect, no sustainable cause of action had been pleaded in respect of Forum "c." or, for that matter, Forums "a." and "b.".

[31] The primary judge remarked in his reasons that there was no direct allegation of ratification or approval by the first respondent of comments posted on the website

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1 *Crampton v Nugawela* (1996) 41 NSWLR 176 at 183.

2 [2000] NSWSC 1042 at 19.

3 [1991] Aust Torts Reports, 81-127 at 69,193.

by persons or corporations other than the first respondent. He noted though that, "… it could obviously be said as a matter of inference that the ongoing presence of the relevant comments on the first [respondent's] discussion board occurred necessarily by reason of the first [respondent's] approval or ratification". His Honour declined to decide the application by reference to this argument. He no doubt recognised that the authorities on which counsel relied did not concern the placement of defamatory material on websites, let alone placement by persons other than the website host or manager.

[32] In *Silberberg v Builders Collective of Australia Inc*,[4] Giles J, after discussing the cases relied on by counsel for the respondents, expressed the view that in defamation or copyright cases, the administrator of a website would be likely to attract liability in respect of materials posted on the website by others even without knowledge of their content if the administrator:

> "… chose to conduct an open anonymous forum available to the world without any system for scrutinising what was posted. The party controlling a website of such a nature is in no different position to publishers of other media."

[33] Morland J, in *Godfrey v Demon Internet Ltd* [5], a case in which the plaintiff claimed against an internet service provider in respect of postings by an unidentified person, on a website maintained by the defendant, in his reasons given on an application to strike out parts of the defence, said:

> "… 'It is said that as a general proposition where the act of the person alleged to have published a libel has not been any positive act, but has merely been the refraining from doing some act, he cannot be guilty of publication. I am quite unable to accept any such general proposition. It may very well be that in some circumstances a person, by refraining from removing or obliterating the defamatory matter, is not committing any publication at all. In other circumstances he may be doing so. The test it appears to me is this: having regard to all the facts of the case is the proper inference that by not removing the defamatory matter the defendant really made himself responsible for its continued presence in the place where it had been put?'[6]
>
> In my judgment the defendants, whenever they transmit and whenever there is transmitted from the storage of their news server a defamatory posting, publish that posting to any subscriber to their ISP who accesses the newsgroup containing that posting. Thus every time one of the defendants' customers accesses soc.culture.thai and sees that posting defamatory of the plaintiff there is a publication to that customer."

[34] Morland J had observed earlier:[7]

> "At common law liability for the publication of defamatory material was strict. There was still publication even if the publisher was

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4 (2007) 164 FCR 475.
5 [2001] QB 201 at 208-209.
6 *Byrne v Deane* [1937] 1 KB 818 at 837-838.
7 At 207.

> ignorant of the defamatory material within the document. Once publication was established the publisher was guilty of publishing the libel unless he could establish, and the onus was upon him, that he was an innocent disseminator."

[35] This is an area in which the law is in a state of development and it could hardly be said that it was unarguable that the principles expounded in the authorities relied on by counsel for the respondent were not applicable, at least without modification or qualification.[8]

[36] No doubt the Pleading could benefit from improvement by: a clear allegation that the defamatory material was posted by website members; an allegation, if it can be supported by evidence, of awareness by the respondents of the content of the materials posted and, in the event that such an allegation cannot be made, an allegation that the respondents were aware, or ought reasonably to have been aware, that defamatory material would be likely to be published from time to time on the website. There is already an allegation that the respondents "had failed, refused or neglected to retract their statements in the defamatory imputations and to apologise to the plaintiff". That paragraph implicitly asserts that the respondents made the subject statements and is thus in conflict with paragraph 24. Presumably the complaint about the respondents' conduct, if the evidence supports it, is that they invited the website members to post on the website, permitted the subject posts to remain on the website and despite being aware of the content of the posts, failed to remove them. However, these defects in the Pleading were not such as to merit, of themselves, or together with the other defects found to exist by the primary judge, the denial to the appellant of an opportunity to re-fashion the Pleading.

The case against the second respondent

[37] The primary judge considered also that the Pleading was deficient in that it did not establish a sustainable cause of action against the second respondent. He was alleged to be a director of the first respondent but, as the primary judge pointed out, that was insufficient, in itself, to make him liable for the conduct of the first respondent. The primary judge's criticisms were based on the understanding, which with respect was mistaken, that the allegations in the Pleading against the second respondent were limited to his conduct as an aider or abetter of the first respondent. The Pleading alleges that the respondents carried on business and managed a forum website called Dogz Online Forums,[9] that the website was the respondents',[10] and that it was the respondents who published the offending matter. No doubt the Pleading in this respect could be improved and the appellant, in her further draft statement of claim, has incorporated additional allegations concerning the second respondent's involvement with the website. In so doing, she appears to have treated the second respondent as principal, acting, at times, to the exclusion of the first respondent, thereby, one would think, unintentionally restricting the scope of the allegations against the first respondent.

Paragraphs 25 and 26 of the Pleading

[38] The final matter on which the primary judge based his decision was the conclusion that the allegations in paragraphs 25 and 26 of the Pleading were ill-founded and

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8 See also Svantesson, Professor D, "A Bulletin Board is a Bulletin Board (Even if it is Electronic) – Certain Intermediaries are Protected From Liability After All" (2004) 16(2) *Bond Law Review* 169.

9 Paragraph 2(a).

10 Paragraph 2(c).

had no place in a proceeding for damages for defamation. The primary judge said that the appellant "effectively conceded in argument … that the claims of negligence and nuisance have nothing to do with the claim for defamation". It is not clear to me whether the appellant intended to claim damages for negligence or for some other tortious wrong. It appears on the face of it that she did but, in relation to the claim based on negligence, failed to appreciate the difficulties posed by the *Personal Injuries Proceedings Act* 2002 (Qld). If she intended to claim damages for nuisance or another tort, then the Pleading insufficiently states the material facts necessary to support the cause or causes of action. The primary judge was thus correct in concluding that paragraphs 25 and 26 were deficient.

Applicable principles

[39] It is appropriate to now consider whether the primary judge erred in striking out both the claim and the Pleading. The appellant argues that it would be unjust to deny her the opportunity of pursuing her claim. But it is now appreciated that "the courts are concerned not only with justice between the parties … but also with the public interest in the proper and efficient use of public resources".[11] The public interest requires that litigation be conducted properly and efficiently and that the costs of litigation be confined insofar as is reasonably practicable. Delays in the conduct of litigation impact on the litigants themselves and on litigants in other cases. In busy courts, the taking up of judicial time with disputes arising out of inefficiency or non-performance on the part of one of the parties, and matters such as adjournment of hearings and vacation of trial dates, will affect the Court's ability to give hearing dates to other litigants. In *Sali v SPC Ltd*,[12] Toohey and Gaudron JJ explained in their joint reasons that case management reflected:[13]

> "The view that the conduct of litigation is not merely a matter for the parties but is also one for the court and the need to avoid disruptions in the court's lists with consequent inconvenience to the court and prejudice to the interests of other litigants waiting to be heard …"

[40] The previously orthodox view that an order for costs, even on an indemnity basis, against a defaulting litigant afforded adequate redress to the innocent party is no longer accepted.

[41] French CJ, when a judge of the Federal Court, referring to an overriding statement of principle to the effect that a party could be protected by a costs order, observed:[14]

> "… That may well have been so at one time, but it is no longer true today … Non-compensable inconvenience and stress on individuals are significant elements of modern litigation. Costs recoverable even on an indemnity basis will not compensate for time lost and duplication incurred where litigation is delayed or corrective orders necessary."

[42] It is not only natural person litigants who are subjected to the pressures and strains of litigation:[15]

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11 *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175 at [23].

12 (1993) 116 ALR 625.

13 *Sali v SPC Ltd* (1993) 116 ALR 625 at 636.

14 *Bomanite Pty Ltd v Slatex Corporation Australia Pty Ltd* (1991) 32 FCR 379 at 392.

15 *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175 at [101] per Gummow, Hayne, Crennan, Kiefel and Bell JJ.

> "A corporation in the position of a defendant may be required to carry a contingent liability in its books of account for some years, with consequent effects upon its ability to plan financially, depending upon the magnitude of the claim. Its resources may be diverted to deal with the litigation. And, whilst corporations have no feelings, their employees and officers who may be crucial witnesses, have to bear the strain of impending litigation and the disappointment when it is not brought to an end."

The striking out of the statement of claim

[43] The respondents have a right to have the litigation conducted in accordance with the *Uniform Civil Procedure Rules* 1999 (Qld). As the primary judge pointed out, the Pleading fails in a number of respects to comply with the Rules and a trial based on it could not be conducted fairly or efficiently. It would be unjust to the respondents to subject them to such a trial. The striking out of the Pleading was thus appropriate. Parts of it could have been salvaged but to leave parts to be built around may have tended to hinder rather than promote the drafting of an acceptable new pleading.

Should the claim have been struck out?

[44] In my respectful opinion, however, the primary judge erred in striking out the claim even though it failed to comply with the *Uniform Civil Procedure Rules* 1999 (Qld) by not complying with the requirements of r 22. There are a number of reasons for this conclusion.

[45] A consideration relevant to whether the claim should have been struck out was loss by the appellant of her ability to pursue her claim for defamation in consequence of the expiration of the one year limitation period established by s 10AA of the *Limitation of Actions Act* 1974 (Qld). That matter does not appear to have been raised or considered at first instance.

[46] Also, it appears to me that the appellant was denied natural justice. The application was for orders:

> "1. Pursuant to r 171 or the inherent jurisdiction of the Court, the Plaintiff's Claim and Amended Statement of Claim filed 5 Feb 2010 be struck out.
>
> 2. Judgment be entered in favour of the First and Second Defendants against the Plaintiff.
>
> 3. Costs."

[47] Rule 171 relates only to the striking out of pleadings. It lists five bases or grounds for the striking out of a pleading. The application was thus almost completely uninformative on the basis of the respondents' application for the striking out of the claim and not much more informative in relation to the statement of claim.

[48] The affidavits in support of the application did not provide any further illumination of the basis of the respondents' application and the appellant was not given the benefit of a letter from the respondents' solicitors drawing her attention to the deficiencies in the Pleading and claim and giving her the opportunity to remedy them in order to avoid the making of a strikeout application by the respondents. The first occasion on which the grounds of the respondents' application were provided to the appellant in detail was on the day of the hearing when she was

provided with a copy of the respondents' counsel's eight page outline of argument. In these circumstances, despite the fact that the appellant's statement of claim had been struck out on an earlier occasion, I am of the view that the appellant was denied natural justice.

[49] Counsel for the respondents argued that under *Practice Direction 14 of 1999*, outlines of submissions were to be "exchanged as early as practicable prior to the hearing". He submitted, in effect, that the litigants in person were subject to the same rules and directions as legally represented litigants who should not be disadvantaged by indulgences or concessions to self-represented litigants.

[50] There is some substance in the general thrust of these arguments. Persons choosing to litigate without the benefit of legal representation must observe the requirements of the *Uniform Civil Procedure Rules* 1999 (Qld). However, in determining what is practicable, sensible or just in relation to the time which should be afforded to a party or the party's representative to consider submissions, affidavits, pleadings or other documents, regard must be had to the likely capacity of the party or the party's representative to comprehend and deal effectively with the document in question. Here, the appellant was being required, for the first time, to understand and respond to the case made against her in a complex field of law on the morning of the hearing.

[51] Another difficulty confronting the respondents is that they gave no notice under r 444 of the *Uniform Civil Procedure Rules* 1999 (Qld) before making their strikeout application. That rule requires applications, inter alia, under r 371, to comply with the requirements of r 444(1) before the application is made. Counsel for the respondent argued that the application to strike out the claim was made in the inherent jurisdiction of the Court and not under r 371. It would seem unlikely that the Court would act under its inherent jurisdiction on a matter clearly covered by a rule of court and if r 444 is not technically applicable, it is appropriate to apply it by analogy where there are discretionary considerations of the nature of those under consideration.

[52] The appellant seeks an order that she be given leave to file an amended claim and statement of claim in the form of that exhibited to an affidavit on which she sought to rely on the hearing of the appeal. The application should be refused. It is the function of this Court to determine matters of the nature of those under consideration by reference to the evidence before the primary judge except in the limited circumstances contemplated in r 766 of the *Uniform Civil Procedure Rules* 1999 (Qld). Freshly drafted pleadings do not come within that rule and the draft remains deficient in some respects. I observe, however, that the appellant has shown distinct progress in improving her pleading and is plainly making a genuine attempt to comply with the *Uniform Civil Procedure Rules* 1999 (Qld). She may derive further assistance from a consideration of these reasons.

Conclusion

[53] I would set aside the primary judge's orders made on 7 April 2010 and in lieu thereof order that:

(a) The statement of claim filed on 5 February 2010 be struck out.

(b) The appellant have leave to file and serve an amended statement of claim pleading a cause or causes of action in defamation only within 21 days of today's date.

(c) The appellant’s application to adduce further evidence be refused.

[54] I would make no order as to costs. It would not be just to order costs against the respondents even though, as the appellant is self-represented, those costs would be minimal. The respondents have been exposed to an unduly high costs burden through the appellant's inability to plead her case properly and in a timely way.

[55] **CULLINANE J:** I have had the opportunity to read the draft reasons of Muir JA in this matter. I agree with the reasons and the orders proposed.