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PRACTICE NOTE SC CL 4

SUPREME COURT COMMON LAW DIVISION - DEFAMATION LIST

Commencement

1. This Practice Note was issued on 29 June 2021 and commences on 1 July 2021.

Purpose

2. The purpose of this Practice Note is to explain the operation of the Defamation List in the Common Law Division.

Definitions

3. In this Practice Note:

Chief Judge means the Chief Judge at Common Law or any judge nominated to perform duties on behalf of the Chief Judge.

CPA means *Civil Procedure Act 2005*.

List means the Defamation List.

List Judge means the Judge appointed by the Chief Justice to be the List Judge for the Defamation List.

UCPR means the Uniform Civil Procedure Rules 2005.

Application

4. This Practice Note applies to all new and existing proceedings for defamation.

Defamation List

5. Proceedings that include a claim for defamation are entered in the List and case managed by the List Judge.
6. The List is conducted each Friday during court term.
7. The List is conducted with the aim of achieving the just, quick and cheap resolution of the real issues in the proceedings and promoting the objects of the *Defamation Act 2005*.

8. Any urgent application for an injunction to restrain the publication of defamatory matter should be made in the first instance to the List Judge. If the List Judge is unavailable the application should be made to the Common Law Duty Judge rather than in the Equity Division.

Pleadings

9. Any pleading filed in proceedings in the List must be endorsed with the words "Defamation List" in the court details for the pleading.
10. At the filing of a Statement of Claim for defamation, the Court will fix a first listing date before the List Judge not less than 35 days from the date of filing. The Statement of Claim is expected to be served expeditiously after being filed.
11. Where leave is required to commence proceedings where a concerns notice has not been served, a motion and supporting affidavit seeking leave must be filed with the Statement of Claim.
12. It is expected that all pleading requirements and necessary particulars for a claim in defamation, including the matters addressed in Rules 14.30, 15.19, 15.20 and 15.32 of the UCPR, will be included in the Statement of Claim.
13. Before the first listing date:
 - (a) the defendant must notify the plaintiff in writing of any objection to the form of the pleading and any objection that the matter complained of is not capable of conveying any of the imputations pleaded by the plaintiff;
 - (b) the plaintiff must respond in writing to any such objections, indicating as to each objection whether it is accepted or rejected (with brief reasons where appropriate);
 - (c) the defendant must give notice in writing to the Associate to the List Judge of any objection maintained by the defendant.
14. At the first listing:
 - (a) the parties will be expected to be ready to argue any objections to the Statement of Claim maintained by the defendant;
 - (b) the defendant will be required to inform the Court whether the element of publication is admitted; if so, the admitted scope of publication and, if not, the reason publication is not admitted.
15. Upon the determination of any objections to the Statement of Claim raised at the first listing, the Court will make directions for the filing of a defence and any reply and will stand the proceedings over for a second listing in the List.
16. It is expected that all pleading requirements and necessary particulars of a defence and a reply, including the matters addressed in Division 6 of Part 14 and Division 4 of Part 15 of the UCPR, will be included in those pleadings.

Further interlocutory steps

17. At the second listing, the parties:
 - (a) will be expected to be ready to argue any objections to the defence and the reply;
 - (b) will be afforded an opportunity to demonstrate the need for any further interlocutory step before the matter is listed for hearing.
18. In determining the need for any further interlocutory step, the Court:
 - (a) may order the parties to serve their evidence;
 - (b) may order the parties to disclose limited categories of documents but will do so only if such an order is necessary for the resolution of the real issues in dispute in the proceedings;
 - (c) will not order any party to answer interrogatories except where, after considering the draft proposed interrogatories, the List Judge forms the view that they are necessary for the resolution of the real issues in dispute in the proceedings.
19. No application for any further interlocutory step (apart from the service of evidence) will be entertained unless the party seeking the order has given reasonable notice in writing to the opposing party and the Associate to the List Judge. Subject to the direction of the List Judge, any such application, whether by consent or otherwise, must be supported by an affidavit:
 - (a) succinctly stating the reason the party contends the order is necessary for the resolution of the real issues in dispute in the proceedings;
 - (b) in an application for disclosure of documents, identifying the classes of documents sought and the likely cost of such disclosure;
 - (c) in an application for an order to answer interrogatories, stating why interrogatories are considered necessary for the resolution of the real issues in dispute in the proceedings and attaching draft proposed interrogatories.
20. Any application for the determination of the serious harm element before trial is to be made by filing a motion and supporting affidavit.
21. Upon the determination of any issues raised at the second listing, the matter will be referred to the Chief Judge. If the Chief Judge is also satisfied that the matter is ready for hearing, the Chief Judge will allocate a hearing date.

Reasons

22. In determining applications in the List, the Court will ordinarily give reasons in short form.

Show cause hearings

23. A plaintiff who fails to comply with this Practice Note or a direction of the Court may be called upon to show cause why the proceedings should not be dismissed under s 61 of the CPA or rule 12.7 of the UCPR.

24. A defendant who fails to comply with this Practice Note or a direction of the Court may be called upon to show cause why any defence filed should not be struck out and judgment given accordingly under s 61 of the CPA or rule 12.7 of the UCPR.

Proportionality

25. In determining any matter in the List, including any show cause hearing under clause 21 or 22 above, the Court will have regard to the principle of proportionality reflected in s 60 of the CPA.

Costs

26. Parties are reminded that costs in proceedings under the *Defamation Act 2005* are governed by s 40 of the Act, which provides that costs are awarded with regard to the way in which parties conduct their cases and imposes costs sanctions in the event of unreasonable failure to engage with the prospects of settlement out of court.
27. In cases in which it appears to the Court that a party has made or opposed an interlocutory application unreasonably, and subject to hearing from the parties, the Court will consider making an order under rule 42.7(2) of the UCPR that the opposing party's costs of the application be payable forthwith.



T F BATHURST AC

Chief Justice of New South Wales
29 June 2021

Related information:

Practice Note SC CL 1 Supreme Court Common Law Division – General
Practice Note SC Gen 1 Supreme Court – Application of Practice Notes Practice Note SC Gen 4
Supreme Court – Affidavits
Practice Note SC Gen 11 Supreme Court – Joint conferences of expert witnesses
Uniform Civil Procedures Rules 2005
Civil Procedure Act 2005
Defamation Act 2005

Amendment history:

29 June 2021: This Practice Note replaced the previous version of SC CL 4 that was issued on 21 May 2020.

21 May 2020: This Practice Note replaced the previous version of SC CL 4 that was issued on 5 September 2014.

5 September 2014: This Practice Note replaced the previous version of SC CL 4 that was issued on 17 August 2005.

17 August 2005: This Practice Note replaced Former Practice Note Nos. 85 and 114 on 17 August 2005.