



Friday, 21 June 2024

## Weekly Defamation Law

### A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Defamation Law

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#### Executive Summary (One Minute Read)

**Peros v Nationwide News Pty Ltd & Ors (No 2)** (QSC) - defamation plaintiff ordered to provide particulars as to his reputation in specific areas before an allegedly defamatory podcast, and the harm to his reputation caused by the podcast

## HABEAS CANEM

Small dog, big surf



## Summaries With Link (Five Minute Read)

### **Peros v Nationwide News Pty Ltd & Ors (No 2) [2024] QSC 83**

Supreme Court of Queensland

Applegarth J

Defamation - the plaintiff sued the defendants in the WA Supreme Court over a podcast that allegedly imputed that he murdered a particular person - under WA law, the plaintiff was not required to issue a concerns notice before starting his proceeding - the parties consented to a determination that the applicable substantive law was that of Queensland, and an order transferring the proceedings to the Queensland Supreme Court - the defendants contended that, as a Coroner had found that the plaintiff had violently killed the victim, before the plaintiff was tried and acquitted, the plaintiff had had a bad reputation and their podcast did not cause and was not likely to cause "serious harm to the reputation" of the plaintiff - the Court had previously rejected an application that the proceedings should be dismissed because the plaintiff did not serve a concerns notice as required by the Queensland *Defamation Act*, and found no special circumstances preventing the determination of the serious harm question as soon as practicable before the trial commences, as required by s10A(5) of the *Defamation Act 2005* (Qld) (see Weekly Defamation Benchmark 14 June 2024) - the parties were unable to agree on a form of order to give effect to this judgment - held: before the enactment of s10A, it was generally unnecessary for a plaintiff to plead the nature and extent of his or her reputation - the Full Court of the Federal Court has held that any common law presumption of good reputation no longer applies - the reputation of the plaintiff is now a material fact that must be pleaded with appropriate particulars - so too is the serious harm that has been caused or likely to be caused to the pleaded reputation - the plaintiff's pleading gave no particulars of the nature and extent of his reputation - in a case in which the serious harm element was contested because of the plaintiff's alleged bad reputation prior to and at the time of the relevant publication, an unparticularised reference to "the reputation of the plaintiff" does not inform the defendants of the case they have to meet at trial - the plaintiff had been acquitted of murder but found by a Coroner to have violently killed the victim in a widely publicised finding, and so the Court being asked to determine the serious harm issue and the defendants were entitled to be informed of the plaintiff's case regarding the nature and extent of his reputation before they podcast, and the harm to his reputation by the podcast - plaintiff ordered to provide particulars of his prior reputation in a number of specific categories identified by the Court, and the harm to his reputation caused by the podcast.

[Peros](#)

[From Benchmark Friday, 21 June 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Food and Drug Administration v Alliance for Hippocratic Medicine** (SCOTUS) - Plaintiff pro-life doctors and medical associations challenged Food and Drug Administration (FDA) decision to relax prescribing restrictions on a drug used to terminate pregnancies. The Court held the plaintiffs lacked standing to challenge the FDA decision

### Summaries With Link (Five Minute Read)

**Food and Drug Administration v Alliance for Hippocratic Medicine [2024] 602 US \_\_\_\_**  
Supreme Court of the United States

In 2021, the Food and Drug Administration (FDA) relaxed regulations for prescribing mifepristone, an abortion drug, to make the drug more accessible to women. The plaintiffs, consisting of pro-life doctors and medical associations, brought suit, alleging that the FDA regulations violated the *Administrative Procedure Act*. The District Court granted plaintiffs an injunction. The Court of Appeals found that plaintiffs had standing to sue and were likely to win on the merits. Reversing the lower courts, a unanimous Supreme Court held that the doctors and medical societies lacked standing to bring suit. Article III of the US Constitution limits the jurisdiction of federal courts to actual cases and controversies. The Court said that this is a matter of separation of powers. General complaints about how the government conducts its business are matters for the legislative and executive branches, not the judiciary. To establish standing, a plaintiff must demonstrate that (1) the plaintiff will likely suffer an injury in fact; (2) that the injury would likely be caused by the defendant; and (3) that the injury can be redressed by judicial relief. The plaintiffs are pro-life and do not prescribe the abortion drug. Nothing contained in the FDA regulations requires doctors to prescribe this drug. In short, the plaintiffs are acting to restrict the availability of the drug to others. While plaintiffs argued that they have suffered injury because doctors may suffer conscience objections when forced to perform abortions or perform abortion related treatment, the argument failed because federal conscience laws explicitly protect doctors from being required to perform abortions or other treatment that violates their consciences. The Court also rejected arguments that, if plaintiffs were not allowed to sue, then no one would have standing to challenge the FDA's actions. The Court said that even if this were true, it could not create standing and that some issues must be dealt with through the political and democratic processes and not the courts.

[Food and Drug Administration](#)



## Poem for Friday

**"Hope" is the thing with feathers (314)**

**By** Emily Dickinson (10 December, 1830-15 May, 1886)

Hope is the thing with feathers -  
That perches in the soul -  
And sings the tune without the words -  
And never stops - at all -

And sweetest - in the Gale - is heard -  
And sore must be the storm -  
That could abash the little Bird  
That kept so many warm -

I've heard it in the chilliest land -  
And on the strangest Sea -  
Yet - never - in Extremity,  
It asked a crumb - of me.

Emily Dickinson [https://en.wikipedia.org/wiki/Emily\\_Dickinson](https://en.wikipedia.org/wiki/Emily_Dickinson)

Emily Dickinson Museum [https://en.wikipedia.org/wiki/Emily\\_Dickinson\\_Museum](https://en.wikipedia.org/wiki/Emily_Dickinson_Museum)

Hope is the thing with feathers, sung by Nazareth College Treble Choir, Linehan Chapel,  
Nazareth College

<https://www.youtube.com/watch?v=gDlSo4hEzmE>

Recitation by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada.

Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir

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Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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