

# Why all the fuss with the High Court's *Voller* defamation decision



The High Court's decision in the *Voller* defamation case is causing quite the buzz in the media world. To explain it, we need to start with the basic elements of a defamation claim.

Defamation happens when someone publishes defamatory matter. 'Defamatory matter' is pretty much any communication which lowers a person's reputation. The 'someone publishes' part is a bit more complex. The question of exactly *who* is responsible as a publisher in a defamation case is what the High Court considered in *Voller*.

There are a few potential publishers in the *Voller* case. The case itself was brought by Dylan Voller, who was a detainee at the Don Dale detention centre. News outlets Fairfax, Sky and News posted stories about Don Dale and Voller on their Facebook pages. Individuals then posted comments on those stories. It's those comments which are the subject of Voller's defamation claim.

- First, the authors of the comments are logically their original publishers. They chose the words and caused them to be published by typing and posting them.
- Then there is Facebook, the social media platform via which the news outlets, comment authors, and audience, all interact.
- Finally, there are the news outlets, who host the Facebook pages on which the comments were posted. Facebook offers the news outlets access to a vast audience, which can in turn translate to advertising revenue. Interaction with their stories can increase their audience by improving the stories' treatment in the Facebook algorithm.

Although he could have sued any or all of these entities, Voller chose to sue the news outlets. And he claims that they're liable from the moment that the comments are posted (and read); i.e. before the news outlets could or would ordinarily have any knowledge about the comments.

The High Court decision does not deal with the whole of Voller's claim. It only looked at one, preliminary issue; whether the news outlets are 'publishers' of those comments. The news outlets argued that they didn't author or vet the comments and they didn't have editorial control over them, so they weren't publishers.

The High Court said two things about this.

- First, that the concept of publisher is very broad, and will capture pretty much anyone involved in delivering the defamatory communication. Even if they didn't know about the defamatory material.
- Second, whether a publisher can escape liability as an 'innocent disseminator' is a question of defence. So that issue is still to be determined in the *Voller* case, and may mean that the news outlets ultimately avoid liability.

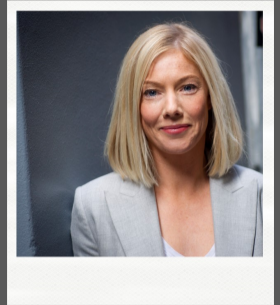
The innocent dissemination defence will be the real test point in the remainder of the case. It says that if you're not the primary publisher, have no editorial control, and neither knew nor ought to have known that the matter was defamatory, then you have a complete defence.

This defence has been used in the past by platforms like Google to avoid liability prior to being notified about defamatory material in search results. The *Voller* case will be a new testing ground for the boundaries of this defence.

Facebook has been scrambling to give news publishers additional moderation tools for comments since this case commenced. The irony is that by doing so, they may ultimately reduce the publishers' ability to rely on the innocent dissemination defence, by giving them 'editorial control'. For the publishers though, the ability to avoid being the next test case by moderating comments may be more important than preserving an uncertain defence.

The High Court hasn't changed the law of defamation in the *Voller* decision. The case, and the uncertainty which remains only serve to highlight the urgent need for legislative reform in this area. Fortunately reform is on the agenda right now; it's just a question of what protections will come and how soon.

Have a question? Give us a call.



Hannah Marshall  
Partner

+61 2 8216 3088  
[Email Hannah](#)



Michael Bradley  
Managing Partner

+61 2 8216 3006  
[Email Michael](#)

**Marque Lawyers Pty Ltd**  
Level 4, 343 George St  
Sydney NSW 2000

Ph : +61 2 8216 3000  
Fax: +61 2 8216 3001

[Visit Website](#)

