Supreme Court of Western Australia

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JACKSON & ORS -v- ACP PUBLISHING PTY LTD [2001] WASC 121 (18 May 2001)

Last Updated: 22 May 2001

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : JACKSON & ORS -v- ACP PUBLISHING PTY LTD [2001] WASC 121

CORAM : ANDERSON J

HEARD : 9 APRIL 2001

DELIVERED : 18 MAY 2001

FILE NO/S : CIV 1965 of 1998

BETWEEN : BRUCE JACKSON
TERRENCE ARTHUR JACKSON
JOHN CARRUTHERS RAY
KIMBERLEY BRIAN RAY
ARTHUR WILLIAM WALLIS
TIMOTHY DAVID WALLIS
Plaintiffs

AND

ACP PUBLISHING PTY LTD
Defendant

FILE NO/S : CIV 1966 of 1998

BETWEEN : BRUCE JACKSON

TERRENCE ARTHUR JACKSON
JOHN CURRUTHERS RAY
KIMBERLEY BRIAN RAY
ARTHUR WILLIAM WALLIS
TIMOTHY DAVID WALLIS
Plaintiffs

AND

WEST AUSTRALIAN NEWSPAPERS LTD
Defendant

Catchwords:
Defamation - Libel - Pleadings - Justification - ***Polly Peck*** defence - Statement of claim complaining of certain imputations in magazine and newspaper articles - Defendants setting up much wider meanings and justifying - Whether and to what extent entitled to do so
Legislation:
Nil
Result:
Applications allowed
Polly Peck defences struck out

Representation:

CIV 1965 of 1998
Counsel:
Plaintiffs : Mr P J Gethin
Defendant : Ms C Galati
Solicitors:
Plaintiffs : Patrick Gethin & Co
Defendant : Edwards Wallace

CIV 1966 of 1998
Counsel:
Plaintiffs : Mr P J Gethin
Defendant : Ms C Galati
Solicitors:
Plaintiffs : Patrick Gethin & Co
Defendant : Edwards Wallace

Case(s) referred to in judgment(s):

Case(s) also cited:

Bremridge v Latimer (1864) 12 WR 878
Brown v Marron [1998] WASC 364
Carrey v ACP Publishing Pty Ltd [1999] 1 VR 875
Lucas-Box v News Group Newspapers Ltd [1986] 1 All ER 177
Monte v Mirror Newspapers [1979] 2 NSWLR 663
Ray v Wallis [1999] WASC 216
Robinson v Laws [2000] QSC 82
Smith v Littlemore, unreported; SCt WA; Library No 960288; 23 May 1996
Woodger v Federal Capital Press of Australia Pty Ltd (1992) 107 ACTR 1

1 **ANDERSON J**: I have before me two applications to strike out ***Polly Peck*** defences in two defamation actions brought against the publishers of the Woman's Day magazine and The West Australian Newspaper.

2 The stories which were published in those papers concern the activities of the plaintiffs in their capacity as 'leaders" of a strict religious organisation known as the **Exclusive Brethren**. The articles were critical of the activities and behaviour and attitudes of the plaintiffs. The plaintiffs claim that the articles are defamatory of them and they sue to recover damages. The defendants deny that the articles convey the defamatory imputations pleaded by the plaintiffs, alternatively they justify those imputations and also plead ***Polly Peck*** defences.

The action against the publishers of Woman's Day (CIV 1965 of 1998)

3 This action concerns an article published in the Woman's Day on 13 July 1998 headed "Aussie Sect Has Our Kid". The words alleged to be defamatory are as follows:

> "Until her parents broke away in February, two generations of Renee's family had lived in the bizarre world of the **Exclusive Brethren**, a sect which boasts 10,000 members in Australia and New Zealand, many in isolated country towns.
>
> Members must swear allegiance to a mysterious leader called 'The Man of God' and live by a punishing set of rules.
>
> Farmer Bob Jackson and his wife Heather, who live in Dalwallinu, WA, population 800, left when ordered to lock their autistic son, Roland, 10, in a cage.
>
> 'No-one wanted to have anything to do with him ... they said he wasn't right in the head', says Heather. 'We weren't allowed to take advantage of help offered by the wider community, so we had to move away from the Church at any cost'."

4 Originally, the imputations said to be carried by these words were that:

> "(i) The Plaintiffs were cruel to children with disabilities;
>
> (ii) The Plaintiffs were insensitive to the needs of others;
>
> (iii) The Plaintiffs were unchristian;
>
> (iv) The Plaintiffs discriminated against persons with disabilities;
>
> (v) The Plaintiffs discriminated against the parents of persons with disabilities;
>
> (vi) The Plaintiffs were uncaring or indifferent towards persons with disabilities."

5 On 12 October 2000, the statement of claim was amended to delete subparagraphs (ii) and (iii) from the imputation paragraph.

6 By its defence, the defendant denied the imputations which remained and in the alternative pleaded justification. By par 6, the defendant pleaded a ***Polly Peck*** defence as follows:

> "6 Further and alternatively ... the defendant ... says that the only defamatory imputations that arise from the article [are] that:
>
> (a) the plaintiffs were insensitive to the needs of others; and
>
> (b) the plaintiffs were unchristian."

The defendant then pleaded those imputations were true.

7 So, by the ***Polly Peck*** plea, the defendant put into its defence the imputations which the plaintiffs had withdrawn from the statement of claim. They gave a welter of particulars in support of the justification of those imputations. There are 25 paragraphs of particulars of the plea that the plaintiffs "were insensitive to the needs of others" and five paragraphs of particulars of the plea that "the plaintiffs were unchristian". The first of the five paragraphs incorporates by reference the 25 paragraphs of particulars of the plea that "the plaintiffs were insensitive to the needs of others". Hence, there are 25 particulars in justification of one imputation and 29 particulars in justification of the second imputation. The plaintiffs contend that this is embarrassing. They seek to strike out the ***Polly Peck*** plea.

8 The ***Polly Peck*** defence is named after ***Polly Peck (Holdings) plc v Trelford*** [1986] QB 1000. In that case, at 1032 O'Connor LJ said:

> "In cases where the plaintiff selects words from a publication, pleads that in their natural

> and ordinary meaning the words are defamatory of him, and pleads the meanings which he asserts they bear by way of false innuendo, the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different from that alleged by the plaintiff. The defendant is entitled to plead that in that meaning the words are true and to give particulars of the facts and matters upon which he relies in support of his plea."

9 This approach has been strongly criticised in Australia. In ***Chakravarti v Advertiser Newspapers Ltd*** (1998) 193 CLR 519 at 527 - 528, Brennan CJ and McHugh J, in a joint judgment, said:

> "With great respect to his Lordship, such an approach is contrary to the basic rules of common law pleadings and in many contexts will raise issues which can only embarrass the fair trial of the action ... A defence which alleges a meaning different from that of the plaintiff is in the old pleading terminology an argumentative plea of not guilty. Under the principles of pleading at common law, it could tender no issue and would be struck out as embarrassing."

10 However, the views expressed by Sir Francis Brennan and McHugh J are not reflected in the other judgments in that case and have not really found much support in academic writings.

11 In Western Australia, this Court has held in a number of cases, most notably ***Gumina v Williams (No 2)*** (1990) 3 WAR 351, that a defendant who wishes to justify the words complained of in a meaning different from the meaning pleaded by the plaintiff must plead the meaning relied upon by the defendant and must plead justification in terms which make it clear that it is that meaning which is sought to be justified. At 354 Malcolm CJ said:

> "In my opinion ... the weight of authority justifies acceptance of the proposition that where justification is pleaded, a defendant is required to plead the meaning of the words which, if it is the true meaning, he will seek to justify."

12 At 367, Seaman J said:

> In my view ... the rule of practice should be that the plaintiff should set out in his statement of claim the meanings which he contends arise from the words complained of in their natural and ordinary meaning, and a defendant who justifies should set out at the start of his plea of justification the meanings which he contends arise from them which he seeks to justify."

Pidgeon J agreed with Seaman J.

13 That has been the practice in this State ever since. It is permissible for a defendant who pleads justification to contend that the true meaning of the words complained of is different from the meaning

contended for by the plaintiff. Where he does so, he must plead the different meaning and justify that meaning.

14 It is that which is sought to be done in this case. The problem is that in condescending to particulars of justification of the words in the meaning contended for by the defendant, it is apparent that the defendant will rely on factual matters which have simply nothing to do with the specific charge of which the plaintiffs now complain; namely, that they are cruel to, discriminatory of and uncaring or indifferent towards persons with disabilities and discriminatory of the parents of children with disabilities.

15 By contending, as they do in their ***Polly Peck*** defence, that the words truly mean that the plaintiffs are "insensitive" and "unchristian", the defendants plainly seek to shift the factual inquiry into a completely different and much wider area than is covered by the plaintiffs' claim. For example, in particularising its plea of justification of the imputation that the plaintiffs are "insensitive " the defendant pleads that the plaintiffs, or one or other of them, ordered a member of **the Brethren** to get rid of his pet dogs because it was a rule or law of **the Brethren** that they were not permitted to own animals as pets; threatened to punish the member unless he did so; required a member of **the Brethren** to break up an association between that member's daughter and a non-member; punished a family within **the Brethren** for ordering a set of encyclopaedias; threatened another member of **the Brethren** with "hell and damnation" for resisting disciplinary measures imposed by one of the plaintiffs and so on. None of these allegations has any relationship to the imputations contended for by the plaintiffs.

16 If the pleadings are allowed to stand, the result will be that the plaintiffs who complain that they have been falsely accused of conduct involving cruelty, discrimination and indifference towards persons with disabilities and their parents will be compelled to take part in a trial about other incidents in which they may have been concerned and which have no bearing whatever on their conduct towards disabled people and their parents. It is this which the plaintiffs say gives rise to serious embarrassment as regards the fair trial of the action.

17 The essence of Ms Galati's submissions on behalf of the defendant is "So what?" She contended that, if this is a difficulty, it is simply the result of a proper application of the principle stated in ***Polly Peck***.

18 The ***Polly Peck*** principle is based on considerations of fairness. Firstly, it may be unfair to a defendant to allow a plaintiff to go to trial on the basis of the imputations conveyed by selected words in a publication. This is because those words in the context of the whole publication may not carry the meaning which the particular words complained of literally carry, standing alone. In the context of the whole article, they may carry a different meaning which the defendant may be able to justify. That is, the plaintiff may be suing on words taken out of context and, in such a case, the defendant ought, in fairness, to be able to plead the true meaning of the words in their true context and to justify that meaning. Furthermore, the plaintiff may be trying to rely on a particular imputation which the defendant cannot

justify, but that imputation may be one of a number of allegations all of which have a common sting which the defendant can justify. Then he should be allowed to do so in order to avoid liability.

19 A hypothetical example will illustrate this point. The defendant might have published an article to the effect that the plaintiff kept animals so badly that many were starving and near death, and may have given some specific examples one of which was wrong. The plaintiff would be entitled to claim that the article wrongly imputed bad conduct with respect to that animal. The defendant may be unable to justify that particular imputation, but that might not matter if that particular imputation is within the "common sting" (cruelty to animals) conveyed by the article as a whole, which the defendant could justify. This is how the ***Polly Peck*** principle was applied in ***Khashoggi v IPC Magazines Ltd*** [1986] 1 WLR 1412. See also ***Jakudo Pty Ltd v South Australian Telecasters Ltd (No 2)*** (1997) 69 SASR 440 per Doyle CJ at 443.

20 It should be said that I am not concerned with a common sting defence in this case. The defendant does not seek to set up a common sting which embraces the imputations relied on by the plaintiff and which it can justify. The defendant does not plead that if the particular imputations in the statement of claim are untrue, they are no more defamatory of the plaintiffs than the article as a whole which is in substance true. The defendant pleads instead, by par 6, that the different imputations on which it relies are "the only defamatory imputations that arise from the article". That is, the article has the meaning contended for by the defendant and no other defamatory meaning.

21 So, I can take it that the defendant's case is not a common sting case and I proceed on that basis.

22 The second area of possible unfairness to the defendant arises from the principle of law or rule of practice that in a defamation action the tribunal of fact is not confined to the precise meaning contained in the imputation paragraphs of the statement of claim. The tribunal of fact is entitled to go beyond the particular imputations asserted by the plaintiff in determining the true meaning of the words of the publication. To what extent the tribunal of fact may do so is perhaps still a matter of controversy: ***Taylor v Jecks*** (1993) 10 WAR 309 at 317; ***Prichard v Krantz*** (1984) 37 SASR 379; ***National Mutual Life Association of Australasia Ltd v GTV Corporation Pty Ltd*** [1989] VR 747 at 768; ***Chakravarti v Advertiser Newspapers*** (*supra*) at 527 - 534. But the latitude that is given to the tribunal of fact to decide the true meaning of the words complained of, even if that is not the meaning pleaded by the plaintiff, places a defendant at risk. He may have been prepared to justify the plaintiff's meanings, but if confined to those meanings, he may be left without a plea of justification with respect to the (different) meanings found by the jury. So, it is considered only fair to allow the defendant's plea of justification to go to meanings other than those selected by the plaintiff. The principle is that any facts may be proved which are relevant to justify the sting of the libel according to any meaning which the jury may properly attach to it.

23 Although perhaps the boundaries are not yet firmly defined, there must be a limit as to how far a defendant can go in choosing the different meanings which he says can be justified so as to defeat the plaintiff's case. Fairness must run down both sides of the case and it is necessary to protect plaintiffs

against being forced to take part in a factual contest which, on the face of it, is quite irrelevant to the cause of action which he seeks to prosecute.

24 The question is where to draw the line. What are the limits on the defendant's entitlement to contend for (with a view to justifying) imputations different from those pleaded by the plaintiff?

25 There is a recognition in at least two recent cases, one in England and one in Australia, that it should not be open to a defendant to defend the specific claim in defamation by alleging that the words complained of have a different meaning which is so wide as to effectively frustrate the trial of the plaintiffs' cause of action. These cases are ***Bookbinder v Tebbit*** [1989] 1 All ER 1169 and ***David Syme & Co Ltd v Hore-Lacy*** [2000] VSCA 24.

26 In ***Bookbinder***, the plaintiff sued on imputations that the plaintiff, as leader of the Darbyshire County Council had "acted irresponsibly in squandering 50,000 pounds of public money on printing statements supportive of nuclear free zones on its stationery".

27 The defendant sought to maintain a defence that the words complained of meant that the plaintiff "has ... acted irresponsibly in causing large-scale squandering of public funds" and gave particulars of the facts and matters on which it relied in justification of that much wider imputation. The particulars included allegations of many incidents of expenditure by the Darbyshire County Council under the plaintiff's leadership going back a number of years, including the production of a free quarterly newspaper containing political propaganda, the employment of an advertising agency, the sending of councillors abroad, the donation of money for purposes unconnected with the objects of the local authority, the sponsorship of sporting events in Russia and the like. For the defendant, it was contended that the specific charge complained of by the plaintiff, that is squandering 50,000 pounds on a particular form of advertising, imported a general charge of the squandering of funds. Further, it was submitted that the defendant was entitled to plead that the words complained of had that wider meaning; and was entitled to justify that meaning. This approach was rejected by the Court of Appeal. It was held that the defendant was not entitled to rely on the general charge of wrongdoing in relation to the funds of the local authority unless that wider or more general charge could fairly be gathered from the words used; which it could not. At 1175, Ralph Gibson LJ said:

> "For my part, I consider that the law should not, and does not, permit such wide discretion to a jury in selecting the meaning of words used ... if in such a case as this a defamatory charge has been made on a false factual basis then, unless a wider meaning or a more general charge can fairly be gathered from the words used, or from the context, it is important to the even-handed conduct of such trials that it should not be open to a defendant, who has mistakenly charged the plaintiff with some form of alleged misconduct, be it squandering of public money or the making of damaging cuts, when there has been in fact no such squandering or no such cuts in funds, to defend the specific claim in defamation by reference to any other alleged examples of squandering or of cuts, merely on the ground that they are allegedly true examples in the past conduct of the

> plaintiff of the alleged kind of wrongdoing of which a specific charge has been made. A plaintiff ought to be able, if he can, to prove the untruth of a specific mistaken or false charge without having to face the burden of a trial directed to any number of preceding incidents of expenditure or of cutting expenditure in which he was concerned."

28 In ***David Syme & Co Ltd v Hore-Lacy***, The Age newspaper had published an article concerning the plaintiff who was then the president of the Fitzroy Football Club, which, according to the plaintiff, meant that he had told lies concerning the club's financial situation during certain radio and television interviews, had treated the members of the club as fools, lied to members of the club at a general meeting and misled and misinformed members concerning plans for the merger of the club with another club.

29 The defendant denied these imputations, but pleaded:

> "Further, in its natural and ordinary meaning the article was true in substance and in fact."

30 This plea suggested that the defendant would say at trial that the article was true in a different meaning from the meaning contended for by the plaintiff. The question was whether the defendant should be required to plead what it contended was the natural and ordinary meaning of the article which it said it would prove to be true. This, in turn, raised the question as to how far the defendant was permitted to go in putting forward a different meaning. As to the first question, by a majority (Ormiston JA and Charles JA, Callaway JA dissenting) the court held that it was incumbent upon the defendant to plead the meanings which it placed upon the publication relied on if it sought to justify the publication in a different meaning from that pleaded by the plaintiff: See particularly Ormiston JA at [21]. As to the second question, the court held that the question whether, and to what extent, a defendant may justify meanings different from those asserted by the plaintiff is bound up with the extent to which a plaintiff may be allowed to depart at trial from specific meanings pleaded in the statement of claim (Charles JA at [46]). In other words, the defendant's right to rely on a different meaning for the purposes of justification should be treated as coextensive with the plaintiffs' right to have the tribunal of fact bring in a verdict on imputations other than those pleaded. On this approach, the defendant should not be permitted to raise and justify a meaning substantially different from, or more injurious than, the meanings alleged by the plaintiff.

31 ***David Syme & Co Ltd v Hore-Lacy*** was a majority decision, but, as I understand their Honours' judgments, the only point of difference between them was that whereas Ormiston JA and Charles JA considered that the defendant was obliged to plead out his version of the meaning of the words complained of, upon which he relied in his plea of justification, Callaway JA did not consider he should be obliged to do so. I think it appears from all judgments that the defendant should not be allowed to raise a meaning substantially different from the meanings alleged by the plaintiff and seek to justify that meaning. In his dissenting judgment (which did not dissent on this point), Callaway JA put it thus:

> "The *Polly Peck* point does not arise in this case, but, as at present advised, I do not think

> that a defendant should be allowed to justify at a higher level of generality for the purpose of escaping the imputation on which the plaintiff relies."

32 I accept Ms Galati's submissions that the last word on this subject in this State is the judgment of Hasluck J in ***Reynolds v Nationwide News Pty Ltd & Ors*** [2001] WASC 90. In that case, the plaintiff, a union official, complained that the defendant had published an article about him containing imputations of specific acts of bribery, extortion and spiteful conduct against another union officer. By its ***Polly Peck*** defence, the defendant pleaded that the words complained of conveyed meanings different from those contended for by the plaintiff, those meanings essentially being that the plaintiff had engaged in or condoned unlawful conduct. The defendant then sought to justify that imputation by pleading that while holding office as secretary of the union, the plaintiff and its agents had "consistently acted unlawfully" and had "publicly supported the intimidation of persons and corporations by the Union and its officials and members". These were, of course, very wide allegations extending well beyond the charges of which the plaintiff complained and which would involve an inquiry into the plaintiff's whole period in office.

33 Hasluck J granted an application to strike out the alternative meaning pleaded under the ***Polly Peck*** principle on the ground that, *inter alia*, it may prejudice, embarrass or delay the fair trial of the action. In so deciding, his Honour said at par [50]:

> "In my view, the plaintiff in the present case has chosen to proceed against the defendants in respect of a number of specific allegations which are said to be contained in the article complained of ... I have already noted that in their lengthy and detailed analysis of the principles applicable to the *Polly Peck* defence, the majority in *David Syme & Co Ltd v Hore-Lacy* recognised that in a sense the *Polly Peck* defence can be regarded as a manifestation of the precept recognised by Hunt J in *Monte v Mirror Newspapers* and by Brennan CJ and McHugh J in *Chakravarti* that the jury is entitled to go beyond the meanings asserted by the plaintiff. The corollary of the precept seems to be that the defendant should be allowed to plead alternative imputations. It is quite clear, however, if this be the rationale, that the *Polly Peck* defence must be narrowly confined to imputations and meanings similar to the imputations contended for by the plaintiff ... "

34 I would respectfully adopt this approach. In this case, the imputations pleaded by the plaintiffs are confined to specific matters; namely, the plaintiffs alleged treatment of, and attitude towards, disabled children and their parents. I do not consider that the defendants are at liberty to plead alternative meanings which are very much wider in their scope, and to then seek to justify those meanings by reference to factual matters wholly unconnected to the kind of wrongdoing contained in the imputations relied on by the plaintiffs. I would be content to base my decision on general considerations of fairness, but if necessary on the principle that the wider meanings contained in the ***Polly Peck*** defence are not meanings which would be fairly open to the tribunal of fact on the plaintiffs' pleaded case. They would not be open to the tribunal of fact because they are substantially different from the meanings complained of by the plaintiffs.

35 Putting that another way, the sting in the words complained of is that the plaintiffs were cruel specifically in their dealing with disabled children and their parents. I do not see how the plaintiffs in pleading imputations containing that sting could succeed in obtaining a verdict from the tribunal of fact that, although the words complained of did not contain that sting, they, nevertheless, contained the more general charge that the plaintiffs were "insensitive" and/or "unchristian". The latter meanings are not sufficiently close to the meanings contended for by the plaintiffs. Therefore, those imputations cannot be set up by the defendant in a ***Polly Peck*** defence.

36 In my opinion, par 6, par 7, par 8 and par 9 should be struck out.

The action against the publishers of The West Australian newspaper (CIV 1966 of 1998)

37 This action concerns several articles published in The West Australian newspaper on 5 June 1998. The articles are grouped into three sets of publications for the purpose of pleading the innuendos and it is necessary to deal with them separately.

38 The first set of publications is pleaded in par 9(i) and (ii) and par 10 of the statement of claim as follows:

> "9. On the front page of the State edition of The West Australian for 5th June 1998, the Defendant:
>
> > (i) in an article headlined 'Death of a friend leads to breakaway', published the following words defamatory of each of the Plaintiffs:
> >
> > **When brethren** leaders told 23-year-old stockman Cameron Wallis that he was breaking the rules by keeping a sheepdog, he ignored them. "I needed the dog for work and things were hard enough - I needed a friend", he said. But one day, he found his dog dead. "When I got home I found the dog had been locked up in a cage and it had been shot to pieces", he said. "It broke my heart". Mr Wallis **said Brethren** leaders were concerned that he would begin to idolise the dog and it would take the place of God in his mind. "I begged them to let me keep that dog, but it wasn't to be", he said. Mr Wallis was the first member of his family to leave **the Brethren**. "I just had enough", he said. "I get sick and tired of them publicly running down my friends and relatives and making people cry". Since leaving the sect, Mr Wallis has bought two German shepherd puppies, which he plans to train as sheepdogs. "No one is going to take them away from me", he said'; and

(ii) in the caption to a photograph of one Cameron Wallis holding two German shepherd pups, published the following words defamatory of each of the Plaintiffs:

'NEW LIFE: Cameron Wallis plans to train his German shepherds Kyra and Rachel as sheepdogs. He left **the Brethren** when his previous dog, which he used for his work as a stockman, was shot. He was the first member of his family to break with the sect'.

10. The said words pleaded in paragraph 9(i) and 9(ii) hereof were further published on page 7 of the Metro edition of The West Australian on 5 June 1998, under the headlines 'Death of his friend led to break'."

39 Originally, the imputations said to be carried by these words were that:

"(i) the Plaintiffs were involved in the unlawful shooting and killing a dog belonging to Cameron Wallis;

(ii) the Plaintiffs used violent means to compel members of **the Brethren** to follow their directions and teachings;

(iii) the Plaintiffs were cruel to animals;

(iv) the Plaintiffs engaged in the killing of animals without justification or good reason;

(v) the Plaintiffs were inhuman;

(vi) the Plaintiffs were cruel;

(vii) the Plaintiffs were violent people;

(viii) the Plaintiffs engaged in or otherwise authorised or requested the slaughter of a pet animal in furtherance of their religious beliefs;

(ix) the Plaintiffs callously disregarded the wishes of other;

(x) the Plaintiffs were insensitive to the wishes of others."

40 On 12 October 2000, the statement of claim was amended to delete subpar (v), (vi), (ix) and (x) from the imputation paragraph.

41 By its defence, the defendant denied the imputations which remained and in the alternative pleaded justification, giving lengthy particulars of justification.

42 By par 10, the defendant pleaded a ***Polly Peck*** defence as follows:

> "10. Further and alternatively ... the defendant says that the only defamatory imputations which arise from the words contained in paragraphs 9(i) and (ii) and 10 of the amended statement of claim is that the plaintiffs were:
>
> 10.1 inhuman; or
>
> 10.2 insensitive to the needs of others."

43 So, in this action also the position is that, for the purposes of its ***Polly Peck*** defence, the defendant has picked up and put into its defence two of the imputations which the plaintiffs had withdrawn from the statement of claim.

44 In pars 11 and 12 of the defence, it is pleaded that the imputations in question are true and by way of particulars all of the particulars relied on in justification of the imputations remaining in the statement of claim are repeated and another 22 particulars are added. Included amongst the additional particulars are such particulars as that the two parents of an autistic child were refused permission by the plaintiffs to take respite from caring for the child; the plaintiffs have never offered respite care to the child; the plaintiffs placed pressure on the parents of a young woman to "divide an association" between that woman and a non-member; the plaintiffs penalised a member for buying a set of encyclopaedias; the plaintiffs sublimated "eternal salvation" to the detriment of the family unit; the plaintiffs discouraged tertiary education. And so on.

45 It can be seen immediately that these matters have nothing to do with the charge in respect to which the plaintiffs seek redress; that is, the charge that they were implicated in the shooting to death of a member's pet dog. The plaintiffs contend that in this respect the defence is embarrassing. They apply to strike out the ***Polly Peck*** plea contained in these paragraphs of the defence.

46 Once again, the defendant does not plead a common sting form of defence.

47 For all of the reasons given for striking out the ***Polly Peck*** plea in CIV 1965 of 1998, I would strike out this plea. The paragraphs to be struck out are: pars 10, 11 and 12 of the defence.

48 The second set of publications complained of in The West Australian newspaper of 5 June 1998 are pleaded in par 11 of the statement of claim. In that paragraph it is pleaded as follows:

> "11. On 5th June 1998 on the front page of the metro edition of The West Australian in an article headlined 'Nobody else would help us: mother', the Defendant published the following words defamatory of the Plaintiffs:-
>
> 'Bob and Heather Jackson have cared for their autistic son, Roland, on their own for all of

his 10 years because fellow members of the **Exclusive Brethren** refused to help. But last year, Mrs Jackson, who has nine other children decided she was tired of being treated like a second-class citizen because one of her children had been born with a disability. The couple decided to leave **the Brethren** but Mr Jackson said the move caused a big rift in the tight-knit family'.

12. On the page 7 of the State edition of The West Australian for 5th June 1998 in an article headlined 'No one would help us: mother', the defendant published the following words defamatory of the Plaintiffs:

'Bob and Heather Jackson have cared for their autistic son, Roland, alone for the whole of his 10 years because fellow members of the **Exclusive Brethren** refused to help. But last year, Mrs Jackson, who has nine other children decided she was tired of being treated like a second class citizen because one of her children had been born with a disability. No one wanted to have anything to do with him because he is not right in the head', she said. 'They didn't understand how much help he needs and they wanted us to lock him up in a cage. They would not give us any help to look after him and we weren't allowed to take advantage of help offered by the wider community'."

49 Originally, the imputations said to be carried by these words were that:

"(i) The Plaintiffs were cruel to children with disabilities;

(ii) the Plaintiffs were insensitive to the needs of others;

(iii) the Plaintiffs were unchristian;

(iv) the Plaintiffs discriminated against persons with disabilities;

(v) the Plaintiffs discriminated against the parents of persons with disabilities;

(vi) the Plaintiffs were inhuman."

50 On 12 October 2000, before the defence was filed, the plaintiffs amended their statement of claim to delete subpars (ii), (iii) and (vi) from the imputation paragraph.

51 By par 9 of its amended defence, the defendant denied the imputations which remained in the statement of claim and in the alternative pleaded justification, repeating most, if not all, of the particulars given in support of the plea of justification with respect to the first set of publications. By par 14, the defendant pleaded a ***Polly Peck*** defence as follows:

"14. Further and alternatively ... the defendant says that the only defamatory imputations which arise from the words contained in paragraphs 11 and 12 of the amended statement

of claim is that the plaintiffs were:

14.1 insensitive to the needs of others; or

14.2 unchristian."

52 So, once again by the ***Polly Peck*** plea the defendant mirrored in its defence imputations which the plaintiffs had withdrawn from the statement of claim. By way of particulars in support of the justification of those imputations, the defendant repeated all of the particulars pleaded in support of the plea of justification of the imputation that the plaintiffs were involved in the unlawful shooting and killing of a dog belonging to Cameron Wallis and all of the particulars pleaded in support of the justification of the alternative meaning ("that the plaintiffs were inhuman") pleaded in defence to the plaintiffs first cause of action; that is, its cause of action relating to the first set of publications. Again, the defendant does not attempt to plead a common sting form of defence.

53 For all of the reasons given thus far for striking out the ***Polly Peck*** pleas already dealt with, I would strike out the ***Polly Peck*** plea in respect of this cause of action. The paragraphs which are to be struck out are: pars 14, 15 and 16 of the defence.

54 I have not overlooked the fact that included in the particulars pleaded in justification of the defendant's version of the publication are the particulars earlier given in the justification plea relating to the imputation relied on by the plaintiff that the plaintiffs "were involved in the unlawful shooting and killing of a dog belonging to Cameron Wallis". The particulars which are given by the defendant in justification of that imputation really amount to the evidence upon which the defendant will rely, presumably, to prove that the plaintiffs were implicated in the shooting of the dog. They are not really particulars at all, but evidence. Be that as it may, there is no application to strike them out of that part of the defence; and the application to strike them out as part of the ***Polly Peck*** defence is not based on the proposition that they are mere evidence. However, it seems to me that the ***Polly Peck*** defence to this cause of action should be struck out in its entirety because of the width of the different meaning contended for by the defendant and because that meaning, as a whole, is justified not only by the particulars in question but by additional particulars which go well beyond any factual matter that would be relevant to the cause of action sought to be pleaded by the plaintiffs.

55 I come now to the third article published in The West Australian on 5 June 1998, upon which the plaintiffs sue. This article is pleaded in par 13 of the statement of claim as follows:

"13. On page 7 of the Metro edition of The West Australian on 5th June 1998 in an article headlined 'I fear for my son, says angry father', the Defendant published the following words defamatory of the Plaintiffs:-

'Mrs Jackson said **the Brethren** had a twisted view of their autistic son, Roland. "They didn't understand how much help he needs and they wanted us to lock him up in a

cage', she said'."

56 Originally, the imputations said to be carried by these words were that:

"(i) The Plaintiffs were inhuman;

(ii) the Plaintiffs discriminated against persons with disabilities;

(iii) the Plaintiffs were insensitive to persons with disabilities;

(iv) the Plaintiffs were uncaring or indifferent towards persons with disabilities;

(v) the Plaintiffs were uncaring or indifferent to the parents of persons with children who suffer a disability;

(vi) the Plaintiffs were cruel to children with disabilities."

57 On 12 October 2000, before the defence was filed, the statement of claim was amended to delete subpar (i) from the imputation paragraph.

58 By its defence, the defendant denied the imputations which remained and in the alternative pleaded justification. The particulars of justification already given in respect to the imputations pleaded in the first two causes of action were repeated. By par 18, the defendant pleaded a ***Polly Peck*** defence to this cause of action as follows:

"18. Alternatively ... the defendant says that the only defamatory imputation which arises from the words pleaded in paragraph 13 of the amended statement of claim complained of is that the plaintiffs were inhuman."

59 So, by the ***Polly Peck*** plea, the defendant mirrored in its defence the imputation which the plaintiff had withdrawn from the imputation paragraph relating to this publication. It repeated all of the particulars earlier pleaded in support of the justification of the same imputation pleaded in their ***Polly Peck*** defence with respect to the first two causes of action.

60 For all of the reasons given for striking out the ***Polly Peck*** defences earlier pleaded, I would strike out this ***Polly Peck*** plea. The paragraphs which are to be struck out are: pars 18 and 19.