

# The Damages Award in *Wilson v Bauer Media*

By David Rolph and Michael Douglas

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THE CONVERSATION

In September, Justice John Dixon awarded Rebel Wilson \$4,567,472 damages in respect of a series of articles published in print and online by Bauer Media magazines. This was the largest defamation damages awarded by a court in Australian history. Although record-breaking, the amount was not entirely unexpected. In her submissions, Wilson had sought a multi-million dollar payout.

The award of damages looks large and is large but it consists of a number of components. The largest component is approximately \$3.9 million for economic loss. Wilson also received \$650,000 damages for non-economic loss. The award of damages was also for eight different publications, not just one article.

Assessing damages for defamation is a difficult task. Defamation law protects reputations. Reputation is essentially what other people think of you – it is your public self. Reputation is personal and subjective – no two reputations are alike. So the size of awards of damages in other defamation cases may be of limited value to a judge determining the damage to that plaintiff's reputation and the personal distress and hurt suffered by that plaintiff.

In most defamation cases, plaintiffs only seek damages for non-economic loss. Such damages consist of damages for injury to reputation and injury to feelings. Damage to reputation and the hurt feelings that invariably follow from being publicly defamed are inextricably linked. They are also intangible, so a precise calculation is impossible. Defamation law does its best to put the plaintiff back in the position

she would have been in, had she not been defamed, through the only real means available: an award of damages.

Courts have long held that an award of damages for non-economic loss in a defamation case serves three interrelated purposes: vindication of the plaintiff's reputation to the public; consolation for the hurt and distress caused; and reparation for the harm done to reputation. Although it is difficult to put a monetary figure on this, a judge cannot simply pick a sum of money off the top of his or her head. The sum awarded must bear a rational relationship to the harm suffered.

Courts are also attuned to the 'grapevine effect': the propensity of salacious information to spread by word of mouth. This was important in this case. Wilson has a global reputation. The defamatory imputations conveyed by the articles spread 'on the grapevine' across the globe, where they were picked up by the American media. The ubiquity of the internet and the accessibility of communications technology means that the 'grapevine effect' has an increasingly important role to play in assessing the real impact of defamatory publications.

Damages for non-economic loss in Australia have been capped since the introduction of the national, uniform defamation laws were introduced in 2005. The current cap is \$389,500. The damages for non-economic loss awarded here went way beyond that figure. There were several reasons for this. First, there were eight articles, not one. More importantly, Justice Dixon found that, because of the way the

publisher behaved, aggravated damages were warranted, which meant that the statutory cap could be set aside when assessing the damages.

In relation to the finding of aggravated damages, Justice Dixon found that Bauer Media relied on an unreliable source with a seeming 'axe to grind'. The journalists involved failed to investigate allegations made by the sources; the articles were published knowing that they were false; and the allegations were repeated with that same knowledge. Justice Dixon was satisfied that Bauer Media acted in an orchestrated fashion over a period of time for its own commercial reasons.

Rebel Wilson's claim is significant because she claimed damages for economic loss. Such damages have always been available in defamation but have not been frequently sought. This was particularly the case before the capping of damages for non-economic loss under the national, uniform defamation laws. Before that occurred, damages for non-economic loss were 'at large' and damage to reputation was presumed – the plaintiff did not have to prove that he or she suffered any actual harm. By contrast, damages for economic loss have always required the plaintiff to prove the actual pecuniary losses he or she suffered. There was no incentive for plaintiffs to claim economic losses in defamation.

Now that damages for non-economic loss are capped, there is a greater incentive for plaintiffs to seek damages for economic loss. The judgment in *Wilson v Bauer Media* shows how it is more difficult for

plaintiffs to prove economic losses were a consequence of defamatory publications. The plaintiff needs to prove that the economic losses were caused by the defamatory publications – when there may have been multiple causes – and that the losses were not too remote. What is significant in Wilson’s case is that the economic losses for which damages were awarded were not particular film contracts that she claimed to have lost, but the overall loss of opportunity to exploit the success of Pitch Perfect 2, which was found to have flowed from

the publication of the defamatory articles.

High-profile people attract higher awards of damages in defamation because their reputations and the damage done to them are more widespread than private individuals. *Wilson v Bauer Media* is a salutary lesson that defaming a celebrity with an international profile can lead to a substantial payout for the economic harm done. It should also be a rejection of the view, as Justice Dixon put it, that ‘inflicting substantial damage on a celebrity’s reputation

for entertainment purposes is legitimate fun’ – a salutary lesson for mainstream media and private individuals online alike.

**David Rolph** is a Professor at the University of Sydney Law School. His monograph, *Defamation Law*, was published by Thomson Reuters in 2016.

**Michael Douglas** is a Lecturer at the University of Sydney Law School, researching cross-border media law issues. He has published on the ‘grapevine effect’: (2016) 20(4) *Media and Arts Law Review* 367.

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