



FILED

- 7 JUL 2013



Form 3A (version 1)
UCPR 6.2

STATEMENT OF CLAIM



COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Defamation
Registry	Sydney
Case number	2013 / 200128

TITLE OF PROCEEDINGS

Plaintiff	Dr FREDRICK TOBEN
Number of plaintiffs	One
First defendant	CLIVE MATHIESON
Second defendant	CHRISTIAN KERR
Third defendant	SENATOR CHRISTINE MILNE
Number of defendants (if more than two)	Three

FILING DETAILS

Filed for	Dr Fredrick Toben (Plaintiff)
Legal representative	Carters Law Firm Suite 17, Level 1, 1-5 Harrow Road, Auburn NSW 2144 P O Box 480 Auburn NSW 1835
D.X.	D.X. 28805 Auburn
Telephone	9649 0233
Fax	9649 5995
Email	tjcarter@carterslawfirm.com.au

#Legal representative reference

Contact name and telephone David Hansen 9649 0233

TYPE OF CLAIM

Tort – Defamation

VENUE

Supreme Court of New South Wales – At Sydney

This matter has been listed before the Court

on 29.7.13

at 9am

Clerk of the Court

[on separate page]

[Note: If the completed RELIEF CLAIMED will fit in the available space appearing after TYPE OF CLAIM on the first page of this form, you may delete the page break, include the RELIEF CLAIMED on the first page and start this page with PLEADINGS AND PARTICULARS.]

RELIEF CLAIMED

- 1 Damages for defamation including aggravated damages.
- 2 Interest.
- 3 Costs.
- 4 For such further or other orders as the Court shall deem necessary.

PLEADINGS AND PARTICULARS

The Plaintiff relies on the following facts and assertions:-

- 1 At all material times the First Defendant was the editor of "The Australian" which said newspaper had a large and extensive circulation and was widely read throughout the States and Territories of the Commonwealth.
- 2 The Second Defendant was a journalist and an employee, servant or agent of "The Australian".
- 3 On or about 21 June 2013 the Defendants published of and concerning the Plaintiff certain defamatory material a copy of which is annexed hereto and marked 'A'.
- 4 The defamatory matter complained of and referred to in paragraph 3 above in its natural and ordinary meaning conveyed or was understood to have conveyed the following defamatory imputations each of which is defamatory of the Plaintiff:-
 - (a) The Plaintiff fabricated history (paragraphs 6, 8).
 - (b) The Plaintiff's conduct in denying the holocaust is abhorrent and should be condemned unreservedly (6, 8).
 - (c) The Plaintiff is an holocaust denier (1, 3, 5, 6, 7, 8).
 - (d) The Plaintiff is an anti-Semite (6, 7, 8, 11, 12, 14).
 - (e) The Plaintiff has a racist anti-Jewish agenda (6, 7, 8, 11, 12, 14).
 - (f) The Plaintiff deserved to have spent time in prison in Australia and Germany for anti-Semetic activities (whole article).
 - (g) The Plaintiff deserved to spend time in prison in Australia and Germany for his holocaust denial (whole article).

5 Whereby the Plaintiff has been greatly injured in his character, credit, business,
personal and professional reputation and has been brought into public hatred,
ridicule and contempt.

6 And the Plaintiff claims the relief referred to above.

Particulars of Publication

The matter complained of was published in "The Australian" of 21 June 2013 which
said newspaper was sold, distributed and circulated throughout the States and
Territories of the Commonwealth.

Particulars of Aggravated Damages

The Plaintiff says his hurt and upset has been increased by his knowledge that the
imputations are false.

'A'

Split in Greens over Holocaust denier

EXCLUSIVE

CHRISTIAN KERR

Greens courted Holocaust denier

EXCLUSIVE

Dear Frederick,
As co-convenors of the NSW Parliamentary Friends of

How *The Australian* broke the story yesterday

1 SPLITS have emerged in the Greens after leader Christine Milne refused to rebuke NSW MP David Shoebridge for his contact with Holocaust denier Fredrick Toben.

2 *The Australian* revealed yesterday Mr Shoebridge invited Dr Toben, who has served prison time in Australia and Germany for his Holocaust denial and anti-Semitic activities — to a fund-raising event for Gaza in April.

3 Mr Shoebridge said the invitation was rescinded when he became aware of Dr Toben's extreme views. Senator Milne yesterday attacked Dr Toben's views but offered no condemnation of Mr Shoebridge, placing her at odds with the Greens' lead Senate candidate in NSW, Cate

Faehrmann, and her former communications director, Tim Hollo.

4 "The Australian Greens totally reject and condemn anti-Semitism... It is abhorrent. We condemn unreservedly Holocaust denials. It has no place anywhere in Australia society," Senator Milne said. "The horrendous consequences of the Holocaust are still being felt around the world and I am appalled that people like Dr Toben engage in fabrication of history and... spread and engage in anti-Semitism."

5 But she stopped short of condemning Mr Shoebridge.

6 The invitation was sent to Dr Toben after an email exchange with Shoebridge staffer Mark Riboldi, who sent a link to a March

25 debate in the NSW Legislative Council on a study trip to Israel that was hijacked by pro-Palestinian MPs. In the exchange Mr Riboldi agreed he would "definitely not" be bending to Jewish pressure.

7 Mr Hollo condemned Mr Riboldi's conduct: "As a proud Jewish Green, I have spent years convincing people it is wrong and offensive to conflate criticising Israel's government and armed forces with anti-Semitism. In this context, David Shoebridge's staffer's approach to Fredrick Toben is an inexcusable error that is completely out of step with Greens policies, values and action.

8 He should not be allowed to tarnish the great work done by the

rest of the party." Ms Faehrmann apologised for the incident. "At the very least, it was appropriate that the invitation was rescinded, however Mr Toben should never have been invited in the first place. I apologise to the Jewish community unreservedly for any hurt and upset this error of judgment may have caused," she said.

9 Executive Council of Australian Jewry executive director Peter Wertheim said Mr Shoebridge was avoiding the real issue.

10 "This is not about the revocation of an invitation," he said. "It's about why those who claim to be supporting Palestinian rights consistently attract the enthusiastic support of people with an explicitly racist anti-Jewish agenda."

11 NSW Greens senator Lee Rhiannon, who has formerly backed the Boycott, Divestment and Sanctions movement, declined to comment.

EDITORIAL P13

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SIGNATURE OF LEGAL REPRESENTATIVE

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

A handwritten signature in black ink, appearing to be "P. Hume".

Capacity

solicitor on record by his employed solicitor

Date of signature

28/6/13

NOTICE TO DEFENDANT

You will be in default if you do not file a defence within 28 days of being served with this statement of claim. The court may enter judgment against you without any further notice to you. The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

You can get further information about what you need to do to respond to the claim from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Law Courts Building, Queens Square, Sydney NSW 2000
Postal address	
Telephone	

[on separate page]

#PARTY DETAILS

[Include only if more than two plaintiffs and/or more than two defendants.]

PARTIES TO THE PROCEEDINGS**Plaintiff****Dr FREDRICK TOBEN****Defendant**

CLIVE MATHIESON (First Defendant)
CHRISTIAN KERR (Second Defendant)
SENATOR CHRISTINE MILNE (Third Defendant)

[repeat as required for each additional plaintiff]

[repeat as required for each additional defendant]

FURTHER DETAILS ABOUT PLAINTIFF[S]**[First] plaintiff**

Name

Dr FREDRICK TOBEN

Address

C/- Suite 17, Level 1 1-5 Harrow

[The filing party must give the party's address.]

Auburn NSW 2144

#Frequent user identifier

[include if the plaintiff is a registered frequent user]

[repeat the above information as required for the second and each additional plaintiff]

Legal representative for plaintiff[s]

Name

Trevor Carter

Practising certificate number

Firm

Carters Law Firm

Contact solicitor

David Hansen

Address

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DETAILS ABOUT DEFENDANT[S]**First defendant**

Name **CLIVE MATHIESON**
Address c/- "The Australian"
2 Holt Street Surry Hills

Second defendant

Name **CHRISTIAN KERR**
Address c/- "The Australian"
2 Holt Street Surry Hills

Third defendant

Name **SENATOR CHRISTINE MILNE**
Address Suite SG-112 Parliament House
Canberra ACT 2600