



HIGH COURT OF AUSTRALIA

Public Information Officer

11 February 2004

REX ANTHONY BASHFORD v INFORMATION AUSTRALIA (NEWSLETTERS) PTY LIMITED

The High Court of Australia today dismissed an appeal by Mr Bashford, who claimed a trade journal defamed him when it said he, rather than his consultancy, was liable for a false report that caused another company harm and loss.

In 1993, Mr Bashford's company, RA Bashford Consulting Pty Ltd, and Risk Management Concepts Pty Ltd ran an item headed "Chemwatch wins copyright case" in a newsletter the two companies were involved in, called Infax. The Infax article erroneously asserted that Chemwatch had successfully challenged two companies for breaching copyright by using Chemwatch's material safety data sheets (MSDS) on their database. The item implied that Chemwatch competitor Acohs Pty Ltd was one of the two companies, but Chemwatch had not in fact succeeded in its copyright action. In 1997, the Federal Court found Bashford Consulting and Risk Management Concepts had engaged in misleading or deceptive conduct contravening the Trade Practices and ordered the two companies and Chemwatch's proprietor Bernie Bialkower to pay \$20,000 in damages to Acohs. The Occupational Health and Safety Bulletin, published by Information Australia, ran an article on the Federal Court case, and referred to RA Bashford, rather than to RA Bashford Consulting.

Mr Bashford sued for defamation, and in the High Court he claimed both the New South Wales Supreme Court and the Court of Appeal had erred in finding that the Bulletin article attracted the defence of qualified privilege. He alleged the defence was not available because the report was inaccurate and because there was not the necessary reciprocal interest or duty between the Bulletin's publishers and its subscribers.

The High Court held, by a 5-2 majority, that there was the necessary reciprocity of duty or interest as the subscribers to the Bulletin were people responsible for health and safety in the workplace. The narrow focus of the Bulletin's subject matter and its readership was different from general news media.

The Court held that misidentification of Mr Bashford as the publisher of the Infax article did not alter or reduce the connection between the privileged occasion and the defamatory matter. Communication of the statement – that to assert successful prosecution for MSDS copyright infringement had been held to be false and misleading conduct – fulfilled the reciprocal duties or interests involved in communication of health and safety information. The Bulletin could not rely on the defence of a fair and accurate report of judicial proceedings, but the qualified privilege defence was available.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*