

Damaging Damages: Australia's Actress Rebel Wilson's Defamation Case

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Global Research, September 14, 2017

Region: [Oceania](#)

Theme: [Law and Justice](#), [Media](#)
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Featured image: Rebel Wilson (Source: Wikimedia Commons)

There is very little to be gained pondering whether celebrity journalism should be protected with the zeal that some of its advocates do. A person with the dirt-directed fanaticism of a Piers Morgan is not to be treasured and his court losses in defamation actions have, at times, warranted jubilation. But nor do the victors – in one notable case, Naomi Campbell – warrant our cheers either. Both, in one sense, are made for each other.

The problem, as with anything to do with areas of expression, is how far celebrity acts as a veil to draw upon criticism and comment. Orgies, proclivities and perversions, while interesting to some members of the public, are hardly in the public interest. What a clueless celebrity does with her money or sense is hardly of interest to the finer interests of a deliberating public. The only thing left in all of this is pure, unalloyed malice.

The Australian actress Rebel Wilson has had a stroke of astonishing judicial luck. In June this year, a jury of six examined a series of eight articles published in *Woman's Day* and *Australian Women's Weekly* suggesting, in no uncertain terms, that Wilson was a "serial liar" on matters touching on age, name and other aspects of her background.

Bauer Media, the umbrella company owning both publications, were also told that they had published the articles knowing the assertions to be untrue, yet still maximising the print and online run to catch website traffic with the release of *Pitch Perfect 2* in May 2015.

Justice Dixon was sympathetic to Wilson, suggesting that the dizzyingly large award of \$4.56 million was necessary "to convince the public that Ms Wilson is not a dishonest person and bestow vindication in accordance with the jury's verdict."^[1]

Not that Bauer Media had a confident legal foot to stand on. Australian jurisdictions tend to be happy hunting grounds for defamation actions. Even if Bauer Media could show that qualified privilege applied (effectively a duty to publish defamatory information), it would still fail for having been published for a large audience. It would also have to be "reasonable".

What strikes a chord of unintended humour in the verdict is the very assertion that a thespian could possibly have a complaint about being accused of lying, averse, as it were, to the verity of things. The very basis of acting, it might be argued, is the grand lie, the illusion, artful dissimulation. To suffer damages for being accused of engaging in exactly what one excels at is an odd measure by any stretch.

This makes Justice Dixon's ruling on marketability even more peculiar.

"Ms Wilson's reputation as an actress of integrity was wrongly damaged in a manner that affected her marketability in a huge, worldwide marketplace."

This entailed accepting the tenuous argument that the articles had a direct, causal relationship with a supposed career dive. (Wilson, before taking a different angle, initially insisted that missing out on roles in such wonders as *Kung Fu Panda* and *Trolls* was directly attributable to the articles.)

The good judge also decided to engage in something that would have even made a reader of tarot cards blush. Wilson, the judge was swayed, could have ended up with anywhere from up to four roles after *Pitch Perfect 2*.

Each could garner up to \$USD5 million each, or so the astrologists of the celebrity scene suggested. Justice Dixon, after chewing over the issue of roles, went for three (oh, why not?), discounted the value accounting for agent fees, tax and Wilson's relationship with her company, yielding a handsome fee of just under \$USD3 million (a tickle under \$4 million in Australian currency). General damages, comprising aggravated damages, were added to the ledger, topping \$650,000, making the payout a truly renting one for Bauer Media and the largest in Australian defamation history.

The media company evidently did itself few favours. It had refused an offer of settlement with Wilson for a distinctly more modest \$200,000. It had refused to provide a right of reply, or apologise, and bore a good set of fangs against her during the 20 days of legal proceedings. It was certainly personal for Wilson, who claimed that Bauer Media had "viciously tried to take me down with a series of false articles." [2]

Plato expended some effort to explain why the performing poet or thespian would have no place in his ideal Republic, largely because anyone who fabricates a role, a sort of homo faber of identity, must be treated with due suspicion:

"It seems, then, that if a man, who through clever training can become anything and imitate anything, should arrive in our city, wanting to give a performance of his poems, we should bow down before him as someone holy, wonderful, and pleasing, but we should tell him that there is no one like him in our city and that it isn't lawful for there to be. We should pour myrrh on his head, crown him with wreaths, and send him way to another city" (The Republic, Book III, 398a).

Admittedly, Plato left room for a concession: that

"we ourselves should employ a more austere and less pleasure-giving poet and story-teller, one who would imitate the speech of a more decent person and who would tell his stories in accordance with the patterns we laid down when we first undertook the education of our soldiers."

In Wilson's case, she has received myrrh on her head, crowned and duly congratulated in pursuing the press jackals with such enthusiasm. Not sending her on her way or perhaps admitting her as one of the approved story tellers of her age, may well curtail an already

uninteresting area of journalistic snark – but it would be foolish to wholeheartedly rejoice in the demise of the errant gossip scribblers.

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Notes

[1] <http://assets.justice.vic.gov.au/supreme/resources/f4da7c3c-b502-40db-8773e3af8b4760f4/rebelwilsonvbauermediafinaljudgment130917.pdf>

[2] <http://www.news.com.au/entertainment/celebrity-life/rebel-wilsons-abysmal-pay-for-early-hollywood-roles/news-story/8bcb33af5e5c11d8900676590bf9e88a>

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