Notes for oral submission to Supreme Court/VCAT by Demetrios Vakras
(note "breech" has been used instead of "breach")

VAKRAS submission on striking out VCAT

We have a legitimate grievance, for breech of contract.
And for this breech a remedy is available to us under law.

We have a right, guaranteed to us by law, to seek remedy for that grievance, even if we write about that grievance and communicate our grievance to other parties.

We are seeking remedy for this grievance in VCAT.

That Cripps' camp claim that our writing about our grievance causes his reputation harm does not mitigate our right to seek redress for that grievance on which we write, nor absolve him of his liability to the damage that he caused us by his actions (our grievance), because we have written about it.

It is irrelevant to VCAT before which we are suing Cripps for the breech of contract, that we wrote of our grievance, or that by us writing about our grievance we have "defamed" Cripps, or that he is suing us for defamation over it; it is equally irrelevant to the Supreme Court hearing the matter of defamation that we are seeking a legal remedy for our grievance in VCAT, about the matters he says have lessened his reputation since being written about by us.

It does not alter or limit our ability to seek remedy for breech of contract in VCAT because we wrote of that grievance that he claims has caused damage to his reputation. He can sue us for defamation for that, which is what he is doing.

Conversely, whether we can seek remedy from VCAT over what we describe is irrelevant to the Supreme Court hearing the defamation matter. All the Supreme Court is concerned with is whether Cripps' reputation has been affected, regardless of the truth, though the truth does provide us with an "excuse" to write about our genuine grievance which caused us damage.

A person, any person, may commit any kind of act(s) which will cause them to look bad to others. Some of these acts are unlawful, but not necessarily criminal. However, there is no exemption in law that has it that a person's reputation is so important that the need to protect that reputation overrides their culpability for whatever bad act they have done. That is, there is no law that says that just because we wrote of what Cripps did, that he suddenly is absolved of liability for the injury he caused us.

The Supreme Court hearing the defamation claim only has to look at the element of harm Cripps claims happened to his reputation because we wrote about how he behaved.

The considerations of one court (or tribunal) are irrelevant to the considerations of the other court (or tribunal).

The court, HERE, is being told that someone should be absolved of being answerable for their bad actions because those actions were conveyed to a third party, and that this is being dealt with as "defamation". However, this fails to address our right sue him over what he did. This is why they want matter struck out of VCAT. They don't want Cripps to be liable for damages for his actions.

Indeed Cripps' camp is claiming that our writing about how he behaved with us, and how he has behaved with others, has caused ruin to his business. The obverse however is true: it is the way he behaves, and how he has behaved with others, that ruined his own business, NOT BECAUSE WE WROTE ABOUT IT. Cripps is attempting to profit from his bad behaviour that caused his business problems by using defamation

Both are separate matters. Amalgamating both cases will only add greater confusion to what confusion already exists. Each court has a different consideration to take into account, even if the decision pertains to matters which might "materially be the same". This does not make it the same case.

Both courts approach the matter from a different perspective and the decision of one court is immaterial to the decision in the other.

The desire by Cripps to have his breech of contract be considered through the prism of defamation law is intended to limit our capacity for redress of that breech of contract. And I mean this in this way; former High Court judge (McHugh), in a Dublin speech for the Australian Bar Association, considers the preservation of reputation to be paramount (above it seems the right to freely impart information). If the legal consideration is weighted on considering the damage done to Cripps' reputation because we wrote of his breech of contract, then, what damage Cripps did to us by breeching the contract will be subsumed by the consideration under defamation that we have committed some greater evil being by lessening Cripps' reputation.

The ideas that underpin defamation law are anathema to our pursuit for damages that Cripps caused us, which are claimed to be defamatory; the attempt to have the matter struck out of VCAT is intended to absolve Cripps of liability over the actions that he claims defame him because we wrote about them.

Indeed, we believe that the desire to have the matter from VCAT is because of the concerns the Cripps camp have over the additional damage this will do to their client's reputation when he loses the case.

We believe that when the defamation act was framed that it did not properly anticipate a circumstance such as this one. Michael McHugh in his Dublin speech claims that "truth", is an admission to have defamed, but truth means it's "not actionable", without going into any detail of whether any reporting of any unlawful act or criminal act is reducible to being a "defamation" because any such reporting, although true, lessens another party's standing/reputation. In our example the evidence that we collected showing Cripps' breech of contract which was intended to make a defamation action against us "not actionable", as McHugh describes it, is instead being used as proof of defamation. And with regards to such considerations under defamation law, it would be impossible to reconcile that with a breech of contract.

And, just because defamation law did not properly consider the circumstances of defamation does not mean that there is any grounds for having our claim for breech of contract struck out simply because it pertains to matters which might "materially be the same".

Cripps' camp is attempting to have a pre-trial trial, and this is evidenced in their constant submissions of "the articles", as if of themselves they prove something. It should not be up to this court in this hearing to decide, not without allowing for discoveries, interrogatories, and all other procedures associated with having a fair trial with the evidence being properly presented and considered. The minutiae are irrelevant as to whether the matter is to be struck out or not, except that the minutiae are presented with the intention of an over presentation.

They are, by submitting and resubmitting the same material, attempting to claim that since it appears we are arguing over the same material, then it may as well be the one case. This is wrong.

The point is: our pursuit of damages for breech of contract is incompatible with the aims of defamation law. Having the matter struck or merged with the defamation case out will be prejudicial to us in our pursuit for remedy to breech of contract.

When people do bad things:

1- people do not want it known that they have done bad things;

2 - those that do bad things don't want to make amends for the bad they have done.

Cripps wants both: by having the matter struck out he will succeed in not having to make amends, and via defamation law he is attempting to make "unknown" that he ever did bad things.

There is no grounds on which to strike out the VCAT matter. Its outcome is irrelevant to the defamation claim.

Additional Points

(*additional comments: senior member Vassie was explicit & clear in his directions. He gave directions as to when they had to submit their affidavit, and how long we had to submit our response. However, TaoJiang keeps making submissions well outside those time frames, and usually at the end of the business day immediately before a public holiday; one affidavit was submitted on Australia Day, the last affidavit being on the day before ANZAC day. TaoJiang's affidavits are with regards to "the articles", which of themselves are irrelevant. The "articles" are the minutiae that should be considered in a proper trial, but they are irrelevant in demonstrating which, trial or court that should be, or that "the articles" constitute evidence that would establish that the matter is either defamation or breech of contract. Although we dealt with some of the minutiae in our own affidavit, it is irrelevant unless the intention is to have a pre-trial trial. And, as I stated above:* **They are, by submitting and resubmitting the same material, attempting to claim that since it appears we are arguing over the same material, then it may as well be the one case.** *)*

Possible Conflicts in time: There is no set court-date for the defamation case. The best estimates are early next year as the case is anticipated to last around 14

days. There is no reason for this to interfere with VCAT which should be resolved well before this date.

We would also like to point out that there would be no defamation case against us had not Cripps conspired with his staff to commit a number of unlawful acts which were designed to keep me (& therefore us) out of the gallery. Cripps' staff may have conspired with Cripps against us out of different impulses (whether that is their fear of him, or that his yelling caused them distress, whatever) but their mutually desired for objective was unlawful and that was to keep us out of the gallery. It was in their interest to remain quiet, and it was their lack of action that prevented us from suing him for defaming us.

Cripps' charged us with racism (verbally) which is something that we could not show he did as his staff conspired with him and would not corroborate what he said.

And it was not until we received a letter of demand from him via his initial legal team William Winters, that we finally acquired proof of his claim of racism made against us. The Williams Winter letter used the same clause in Federal Law cited by the HREOC for use against "cyber-racism"..

Finally, as we stated in our submission, we believe that the defamation case is itself an abuse of process which intends on limiting further any expression of speech of any sort.

We believe that the claim that both cases can or should be combined to be patently absurd as the aims of the respective laws pertaining to each case are irreconcilable. And that the desire to have the matter struck out of VCAT is self-serving ; it attempts to achieve without proper court processes (those being a trial) a victory in which their client has successfully breeched his contract, gotten away with it, and then sued for defamation because it was written that he breeched his contract.

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From: ----------@supremecourt.vic.gov.au
Subject: **C5251/2011: Vakras, Raymond v Redleg Museum Services Pty Ltd, Cripps**
Date: 27 April 2012 11:49:37 AM AEST
To: taojianglawyers@optusnet.com.au