



21 December 2015

David Barrow  
63/135 Cardigan Street  
CARLTON VIC 3053

OUR REF SYD:RJL:150074

YOUR REF

and by email: david [REDACTED]

WITHOUT PREJUDICE

Dear Mr Barrow

### Defamation Claim

We act for Her Honour Judge Judith Gibson and refer to your letter dated 16 December 2015 to our client. We ask that you direct all future communications in relation to the present matter to this firm.

#### 1. Alleged Imputation

- 1.1. To the extent that your letter can be regarded as a “*concerns notice*” for the purposes of section 14 of the *Defamation Act 2005* (Vic) (the *Act*), we note that only one “*imputation of concern*” can be discerned from your letter, specifically an imputation to the effect that you are bankrupt.
- 1.2. Our client accepts that you were not a bankrupt at the time our client’s conference paper titled “*From McLibel to eLibel: Recent Issues and Recurrent Problems in Defamation Law*” (the *Publication*) was presented at the NSW State Legal Conference in March 2015, and that you are not presently bankrupt.
- 1.3. We do not accept, however, that the *Publication* is actionable.
- 1.4. In the first place, in any defamation action, our client would be entitled to the benefit of a defence of qualified privilege at common law and under section 30 of the *Act*. In particular, we note that:
  - 1.4.1. the *Publication* was presented by our client at the NSW State Legal Convention, published on the website of the District Court of New South Wales and referred to on Twitter, to an audience of persons with a legitimate interest in receiving information on the subject matter of the *Publication*, namely recent issues and recurrent problems in defamation law;

GLOBALEX TAX & LEGAL PTY LTD

ABN 96 601 968 334 — AN INCORPORATED INTERNATIONAL LEGAL PRACTICE

SYDNEY | AUSTRALIA Level 34, AMP Centre, 50 Bridge Street, Sydney NSW 2000  
PO Box R70, Royal Exchange NSW 1225, Australia

TEL +61 (2) 8216 0888 FAX +61 (2) 8216 0880 EMAIL [sydney@globalexlegal.com](mailto:sydney@globalexlegal.com) DX 10169 Sydney Stock Exchange

ADELAIDE | DUBAI | HONG KONG | LONDON | SYDNEY

- 1.4.2. we are instructed that our client genuinely believed at the time of each publication that you were bankrupt, based upon statements attributed to you that appeared in an article on the *Crikey* website written by Myriam Robin to the effect that you “*would have to declare bankruptcy*” and make a fresh start, “*able to earn a living albeit with a number of restrictions and a blighted credit history*”; and
- 1.4.3. the Publication was published without malice.
- 1.5. Secondly, in any defamation proceedings, our client would also be entitled to the benefit of the statutory defence of triviality in section 33 of the Act. To this end, we note that:
  - 1.5.1. you associated yourself with bankruptcy by the quotes attributed to you in the *Crikey* article referred to above, which were substantially repeated in the *Media Briefs* article on Crikey published on 6 January 2015;
  - 1.5.2. these statements, and other statements by you asserting your impecuniosity, including statements on your website at [www.andrewboltparty.com](http://www.andrewboltparty.com), remain accessible in the public domain;
  - 1.5.3. it would be astonishing in such circumstances if you were to assert that associating you with bankruptcy in the Publication was harmful to your reputation; and
  - 1.5.4. in any event, it is unlikely that any harm, or any substantive harm, can be attributed to the Publication independently of the public associations between you and bankruptcy that you appear to have introduced to the public domain.

## 2. Offer to Make Amends

- 2.1. Notwithstanding the above matters, our client hereby makes the following offer to make amends to you for the purposes of section 15(1) of the Act:
  - 2.1.1. Upon acceptance of this offer, our client will remove the words “(and now bankrupt)” from the online version of the Publication posted on the website of the District Court of New South Wales, and append the following statement to the online version of the article as close as practicable to where the removed words appeared:

*CORRECTION: In an earlier version of this article, I said that David Barrow was bankrupt. Mr Barrow had been quoted publicly as stating that he would have to declare bankruptcy as a result of the costs orders made against him in his unsuccessful proceedings against Andrew Bolt and the Herald & Weekly Times Pty Ltd. I accept that Mr Barrow has not in fact been made bankrupt.*
  - 2.1.2. Upon acceptance of this offer, our client will make the following statement on Twitter, together with a hyperlink to the online version of the Publication posted on the website of the District Court of New South Wales:

*CORRECTION: Contrary to what I wrote in my NSW State Conference paper presented on 30 March 2015, David Barrow was and is not a bankrupt.*

and

2.1.3. Upon acceptance of this offer, our client will pay any expense reasonably incurred by you before this offer was made and in consideration of this offer, with such expense to be agreed or, in default of agreement, set out in a proper and itemised Bill of Costs and taxed by the Costs Court of the Supreme Court of Victoria.

2.2. Pursuant to section 16(1) of the Act, this offer to make amends may be withdrawn by notice in writing to you at any time before it is accepted.

2.3. This offer to make amends is deemed not to be accepted if you commence any legal action or proceeding against our client in connection with the Publication. We put you on notice that, in that event, our client will rely on this offer to make amends in support of the defence in section 18 of the Act.

2.4. Without limiting the generality and effect of section 13(4) of the Act, this offer to make amends is made without prejudice.

2.5. We await receipt of your response to this offer.

### 3. Suggested Mediation

We are of the view that our client's offer to make amends is fair and reasonable in the circumstances and, accordingly, do not see any value in the mediation suggested.

### 4. Prospective Proceedings

4.1. If you decide not to accept the offer to make amends and commence proceedings against our client, we hereby give notice that our client reserves the right to apply for security for costs of the proceedings against you.

4.2. We have instructions to accept service for and on behalf of our client.

This letter is written **without prejudice** save as to costs.

Yours faithfully

**GLOBALEX TAX & LEGAL**

Per:



**Dr Ricky J Lee**

*Managing Partner*

Tel: +61 2 8216 0888

Email: ricky.lee@globalexlegal.com