

NATIONAL WA COURTS

The text messages that cost a Perth man \$8000, and how to avoid a similar fate

By [Kate Hedley](#)

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The legal risks of defaming someone via text message have been laid bare in a WA Supreme Court ruling which saw a former newspaper editor awarded \$8000 after being called a "f---head" by a former friend.

In a decision based on four text messages sent almost three years ago, one-time editor of *The West Australian*, Paul Armstrong, had his complaint upheld following a trial.



The risks of sending defamatory text messages have been laid bare in the WA Supreme Court.
GLENN HUNT

The defamatory messages were sent during what was at the time a heated family dispute, with the sender of the texts – Gregory McIntosh – the former brother-in-law of Mr Armstrong.

And while the text messages were only ever viewed by one other person, with the presiding judge finding there had been “minimal damage” done to Mr Armstrong’s reputation, they were serious enough to have given rise to distress, anxiety and a sense of outrage in the victim.

The messages, which Mr McIntosh unsuccessfully tried to argue were not defamatory, included claims Mr Armstrong was “evil”, had “plotted, schemed and lied”, and referred to Mr Armstrong as having a “need to fuel his ego” and enjoying conflict.

Subsequent text messages showed Mr McIntosh referred to Mr Armstrong as a “f--head”, “low-life scum”, and a “tax fraud”.

The decision was handed down earlier this month and included an injunction to stop Mr McIntosh repeating any of the claims about Mr Armstrong.

The price of justice

While the damages awarded to Mr Armstrong are unlikely to come anywhere close to covering the costs of pursuing such a matter through the state’s highest court, the number of people choosing to fight such matters could be on the rise, according to a WA defamation expert.

“It’s sometimes more about vindication than the money,” Cove Legal practice director Roger Blow said.

“And [cases such as this] could become more common with the courts recognising this is a serious issue.

“But it’s often not a money-making exercise.”

Mr Blow said courts were starting to see a lot more cases of “grassroots” defamation, with text messages and social media posts making it far easier, quicker, and therefore more dangerous for anyone seeking to publish potentially spurious claims about another.

“The law of defamation is perhaps seen by a lot of people as the most easy legal concept to understand,” Mr Blow said.

“But in a legal context it is one of the most complicated and at times costly legal actions to run.

“I don’t think people realise it can be taken this far. Any defamation event requires a considered, proportionate response. That won’t always be a court claim.

“[But] the fact is, a simple text message could land you in the Supreme Court and, while you may win, you’re probably going to pay a lot more [to fight the case] than you’re going to win.”

So what can you and can you *not* say in a text?

Executive counsel for Nine Publishing Larina Alick suggests these three tips to keep yourself safe from a costly defamation case in the future:

No ID, no entry ... to the defamation court. If you do not identify the person you are criticising, they cannot sue for defamation. But identity is more than just their name.

It can be their physical appearance, job, where they live, or their relationship to you.

If you post about your ex-husband, chances are the readers know exactly who you mean.

Choose your audience. Do you really need to make a public post that can be seen by the entire world? Or do you just need to vent to your best friend in a message?

The number of people who receive your communication affects the amount of damages that could be awarded. And the smaller the audience, the less chance of the target of your wrath ever finding out about it.

Think Big. One of the few upsides of Australian defamation laws is that large companies cannot sue here. If any company has 10 or more employees, it has no case at all.

That means you can defame big business all you like. Just be wary of mentioning any individuals who working within those companies, as they can still sue.

And non-profit organisations can sue too, regardless of their size.



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