PARTIES:	FREDERICK ARTHUR FINCH
	v
	AUSTRALIAN BROADCASTING CORPORATION
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	TERRITORY JURISDICTION
FILE NO:	228/1994 (9420377)
DELIVERED:	5 June 1997
HEARING DATES:	22 and 23 May 1997
JUDGMENT OF:	Bailey J

REPRESENTATION:

Counsel:

Plaintiff:	Mr A. Wyvill
Defendant:	Mr Sexton

Solicitors:

Plaintiff:	Ward Keller
Defendant:	Cridlands

Judgment category classification:	C
Judgment ID Number:	BAI97015
Number of pages:	8

BAI97015

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 228 of 1994
(9420377)

BETWEEN:

FREDERICK ARTHUR FINCH
Plaintiff

AND:

AUSTRALIAN BROADCASTING CORPORATION
Defendant

CORAM: BAILEY J

REASONS FOR DECISION

(Delivered 5 June 1997)

By summons dated 4 April 1997, the plaintiff seeks to compel the defendant to answer the plaintiff's interrogatories of 6 December 1996. By oral application on behalf of the plaintiff (23 May 1997) I granted leave to the plaintiff to amend the summons by adding an application to extend the time for the plaintiff to file and serve interrogatories to 6 December 1996 (time for such filing and service pursuant to an order of the Master having expired on 26 August 1996).

Mr Sexton, on behalf of the defendant, submits that the plaintiff's interrogatories, running to 38 pages and on his calculations comprising some 868 questions, are oppressive. He submits that on the authority of *American Flange & Manufacturing Co. Ltd v Rheem (Australia) Pty Ltd* [1965] NSWR 193, the plaintiff's entire set of interrogatories should be struck out. Myers J at p. 194 held:

> "It was established under the earlier English rules that interrogatories which were prolix and oppressive or unnecessary could be disallowed as a whole, even though some of them were proper, and that the Court was not required to go through interrogatories of that kind and ascertain which were admissible and which were not. It was also established that the Court was entitled to come to the conclusion that interrogatories were of the kind specified on a general view of the interrogatories and indeed that the mere obligation of the opposite party and the Court to go through the interrogatories and pick out from a large number that were improper the comparative few that were allowable, was itself unreasonable and itself could constitute oppressiveness."

In seeking to establish the oppressive nature of the plaintiff's interrogatories, taken as a whole, Mr Sexton made specific objections to around half of the plaintiff's interrogatories on the basis that particular questions are speculative, vague, inappropriate, extraordinary, irrelevant and/or unanswerable.

The defendant did not adduce any evidence as to the time required, inconvenience or cost of answering the plaintiff's interrogatories. In Mr Sexton's submission the oppressive nature of the interrogatories taken as a

whole is obvious from the nature and form of the questions asked by the plaintiff.

For the plaintiff, Mr Wyvill stresses the unusual nature of the defendant's submission that the plaintiff's entire set of interrogatories be struck out. He submits that it is open to the defendant "simply to object to any question as to which it has a valid objection and that it is only in exceptional circumstances that the Court will exercise its inherent jurisdiction to strike out a complete set of interrogatories which include valid ones, and then only very sparingly" (see *Lilydale Pastoral Co. Pty Ltd*, , (Unreported) Supreme Court of Queensland, Derrington J, 24 and 28 September 1990).

Mr Wyvill stresses that the number of questions alone cannot be determinative of whether the interrogatories as a whole are oppressive. He notes that the Statement of Claim in this action for defamation relies on three separate publications allegedly raising nine imputations against the character of the plaintiff. Further in its defence, the defendant in addition to denying the alleged imputations relies on alternative defences of implied Constitutional freedom of publication (see *Theophanous v The Herald and Weekly Times* 182 CLR 104 and *Stephens v WA Newspapers* 182 CLR 211), qualified privilege, absolute privilege and fair comment. He submits that in the circumstances the number of relevant and necessary interrogatories will necessarily be substantial. Mr Wyvill also made submissions in response to the specific objections made by the defendant of particular numbered interrogatories. In the course of the hearing, he also applied to delete one

interrogatory (No. 30) and amend others (Nos. 11, 14, 32, 33, 35, 36 and 40) which met, at least in part, some of the defendant's objections. These applications were granted without objection from the defendant.

While I intend no discourtesy to counsel, I do not propose to address all their submissions regarding individual interrogatories. In an application of the present kind, it is not the function of this Court to undertake a line-by-line analysis of the plaintiff's interrogatories and decide whether individual questions are objectionable, in whole or in part. It may be that some individual interrogatories are so obviously prolix, oppressive, unnecessary, irrelevant, vague or otherwise objectionable that they should be struck out. However, I consider the primary approach is to consider whether, having regard to their length and character in the light of the pleadings, the interrogatories taken as a whole should be struck out in their entirety.

In the present case, it is clear that simply focussing upon the number of questions sought to be asked by the plaintiff cannot determine whether the interrogatories taken as a whole are oppressive. The number of publications and alleged imputations against the plaintiff in the present case would inevitably give rise to a large number of relevant interrogatories. For the defendant, Mr Sexton accepts that there is no valid objection to more than four hundred of the proposed questions. Moreover, the form and structure of many of the interrogatories are, in my view, likely to be susceptible to one word answers in relation to a substantial number of questions.

On the other hand, it is reasonable to observe that the form of the interrogatories is unnecessarily complex and repetitive. Mr Wyvill defends the approach adopted as necessary in terms of precision and protection against inviting true, but incomplete, answers.

In my view – and taking into account the absence of any evidence as to the time required, inconvenience and cost of answering the interrogatories – the interrogatories, taken as a whole, are not so obviously oppressive that they should be struck out in their entirety. However, I do accept that there are certain interrogatories which are so obviously objectionable, as drafted, that they can and should be struck out without calling upon the defendant to respond to them.

It is convenient to deal with each of the interrogatories in this category separately – albeit briefly.

Interrogatory No. 12

This interrogatory seeks to ascertain the desires of the defendant and the understanding or belief of the (second) defendant (or any of its servants or agents) as to the first defendant's desires as to fourteen particularised items, many of which are of an imprecise and subjective nature. The interrogatory, as drafted, is vague and too wide and, in relation to the first defendant, calls for the defendant to express an opinion which he is not qualified to give.

Interrogatory No. 13.5

Interrogatory number 13.4 queries whether the defendant or any of its reporters, servants, officers or agents believed an anonymous letter was rumour mongering, a poison pen letter or contained wrong facts, and in the case of an affirmative answer, seeks details of the nature and basis of that belief. Interrogatory number 13.5 is in similar terms aside from querying whether the defendant or any of its reporters, servants, officers or agents had "any view" rather than a belief as to such matters. Interrogatory number 13.4 itself is criticised as vague and imprecise by the defendant, but irrespective of the validity of that objection, there can be no doubt that interrogatory number 13.5 suffers both these qualities and, assuming for the present the validity of interrogatory number 13.4, is repetitive and unnecessary.

Interrogatories Nos. 17 and 18

Interrogatory number 14 queries the beliefs of the defendant, its servants and agents as to the accuracy of statements in the alleged defamatory publications and requires the defendant to relate its answers to each sentence in such publications. It may well be that the defendant will object to answering fully this interrogatory upon the basis that it is not obliged to itemise its beliefs, or otherwise, as to the accuracy of the statements in the alleged defamatory publications (see *Palmer v John Fairfax & Sons Ltd* [1986] NSWLR 727 and *Spasojevic v Riznic* [1982] 1 NSWLR 278). However, whatever view is ultimately taken of interrogatory number 14, the questions raised in interrogatory number 17 (and the ancillary questions in interrogatory number 18) regarding the defendant's "views" as to the nature, quality,

accuracy of anonymous information, the potential bias of the provider and the need for "corroboration" are, on any view, unclear, vague, too wide and in some respects devoid of any certain meaning.

Interrogatory No. 25

This interrogatory seeks the extent of checking by the defendant's editorial staff to ascertain whether the publications complained of were "suitable for publication". Without qualification, this is an entirely subjective criterium. The questions, as drafted, are vague and unclear.

Interrogatory No. 28

Interrogatory number 27 queries the defendant's knowledge of the plaintiff's professional reputation in a number of detailed respects. Interrogatory number 28 addresses the same topic but queries the defendant's **belief** as to the plaintiff's reputation in relation to the particularised matters and calls for the source of such beliefs and precisely which of the defendant's servants, agents or officers held such beliefs. This is not relevant to any issue between the parties and to require the defendant to answer this interrogatory would also be oppressive.

Interrogatories Nos. 39 and 40

These interrogatories query the extent to which, if any, the defendant warned its staff to take care in compiling material for publication as a result of the alleged defamatory publications. The plaintiff submits that such questions are relevant to the reasonableness of the defendant's actions in publishing the

alleged defamatory material. However, any action by the defendant prompted by the publications complained of, the present proceedings or communications from the plaintiff after the event, could reflect the plaintiff's desire to avoid future litigation (regardless of its merits) just as easily as some form of implied acknowledgement of defamation. These interrogatories have no relevance to any issue between the parties.

Conclusions

The defendant is ordered to answer the plaintiff's interrogatories of 6 December 1996 with the exception of interrogatories numbers 12, 13.5, 17, 18, 25, 28, 39 and 40. I will hear counsel as to the time within which the defendant is required to file and serve sworn answers to such interrogatories.

It may well be that the defendant can establish valid objection to some, or at least some parts, of the interrogatories which are the subject of this order. However, this can, of course, be addressed when the defendant answers the interrogatories (of which there are a very large number) to which there is no objection.

The defendant objected to the plaintiff's application for an extension of time to 6 December 1996 for filing and service of interrogatories only to the extent it was a relevant consideration as to whether the plaintiff's interrogatories should be struck out in their entirety. I have rejected that submission. Accordingly, I also grant the plaintiff's application for the extension of time sought.