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### Articles



Most of Australia's high-profile defamation proceedings are now commenced in the Federal Court even though Australia's defamation law is based on model provisions enacted only by Australia's states and territories. The Federal Court often exercises a so-called 'pure' defamation jurisdiction derived from cross-vested jurisdiction of the Supreme Courts of the Australian Capital Territory and Northern Territory. However, the Federal Court does not apply the model provisions in the same way as the courts of those Territories or the states. This article examines the sources of the Federal Court's jurisdiction over defamation proceedings and, in particular, argues that the Court applies an incorrect approach to the exercise of its 'pure' defamation jurisdiction. It also makes suggestions for legislative reforms to the jurisdiction of Federal Court aimed at returning Australia to the path of uniformly applied defamation laws.



The exact scope and operation of the 'implied undertaking' — restricting use of certain documents obtained in legal proceedings to the 'purpose of the proceedings' — has been controversial. The rule affects significant public interests — including principles of open justice and its proper administration, as well as freedom of expression, privacy and confidentiality. This article compares the prohibition on collateral use and its perceived justifications in the United Kingdom and Australia to reflect on the New Zealand jurisprudence. The prohibition occupies a unique yet important legal niche, with implications for media and the public as illustrated by its relevance to high-profile decisions. In New Zealand, these implications may be greater than generally understood.

### International Update



Judges in the Canadian provinces of Ontario and British Columbia are now empowered by 'anti-SLAPP' statutes to dismiss, on a case-by-case basis, legitimate defamation lawsuits where the

defendant has no viable defence. The threshold requirement for the exercise of this broad judicial discretion is that the lawsuit 'arise from expression that relates to a matter of public interest'. A plaintiff facing a defendant's anti-SLAPP application has the onus of proving that the public interest in vindicating the plaintiff's reputation outweighs the public interest in protecting freedom of expression. This judicial weighing process seldom admits of obvious answers. There is a huge and ever-growing body of case-law under the Ontario and BC anti-SLAPP statutes. Anti-SLAPP applications that involve meritless defamation lawsuits filed by powerful, wealthy plaintiffs to silence or deter public criticism are rare. Anti- SLAPP hearings tend to be time-consuming, complex and expensive. Anti-SLAPP applications are probably incentivised by the punitive costs provisions in the statutes, which presumptively entitle successful applicants to full indemnity for their legal costs but presumptively disentitle plaintiffs from recovering costs when they are successful in resisting dismissal. The Ontario and British Columbia statutes prohibit any further steps in the defamation litigation until all appeals have been finally determined, resulting in many defamation lawsuits remaining frozen for years. Unless the statutes are amended, most written defamation rulings of courts in Ontario and British Columbia are likely to be about anti-SLAPP law for the foreseeable future.