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MEDIA LAW REFORM

The Australian media needs to do more than thunder "angry frustrated editorials" to defend freedom of speech. It needs to contribute to the fullest examination of the impact of laws on the media — for without such information, how can we tell how freedom is faring?

"Might we not run the risk that it is eroded before our distracted eyes?", Mr Justice Kirby, Chairman of the Australian Law Reform Commission asked recently.

Mr Justice Kirby looked at recent developments in Defamation Reform, Consumer Actions, Privacy Law, Contempt of Court and Official Secrecy in his June 15 address to the N.S.W. Institute of Technology's course in Legal Aspects of Communication.

Mr. Justice Kirby said more attention should be paid to the training of journalists in the law; and the media of Australia, in defence of free speech and the free press, should be contributing more to the empirical and analytical examination of the impact of Australia's laws on the media.

"As it is, they content themselves with a thundering editorial from time to time, fiery cris de coeur at the occasional convention and grumbling in the back room.

Yet the most superficial examination of the directions of media law in Australia would suggest the need for a more coherent examination of media law. There is no Institute of Media Law in Australia, specifically established for journalists, lawyers and others to review the way things are developing.

For all the talk of the wealth of the 'barons of the press', there is not a single endowed chair of media law in this country.

There is absolutely no collection of the statistics of defamation actions, contempt proceedings and other legal process that inhibits the free press. Yet without such information, how can we tell how freedom is faring? Might we not run the risk that it is eroded before our distracted eyes?"

Mr. Justice Kirby continued:

"In order to illustrate the need for a more coherent and empirical approach to the impact of Australia's developing law on the media, I want, briefly, to illustrate the way in which laws governing the media are changing."

[Editor: For an earlier review of future directions in Australia's media law see **(1981) 1 CLB 25].**

What have been the main developments in the past twelve months?

DEFAMATION REFORM

The 1979 report of the Law Reform Commission on defamation and privacy was sent to the Standing Commission of Attorneys-General that year.

The Law Reform Commission's report urged a uniform defamation law, new speedier procedures for defamation actions to combat 'stop writs'; new procedures of correction and reply, to reduce the emphasis on money damages, wider defences and a small, defined zone of privacy protection.

The new Federal Attorney-General, Senator Gareth Evans has announced that a uniform law on defamation for the whole of Australia should be finally agreed upon by July 1983. [See **(1983) 3 CLB-7**].

Media reaction to this announcement was uncertain. The Melbourne *Age*, in an editorial 'On the road to reform', reflected on the slow pace at which the 'wheels of law reform turn'.

The *Age* was dubious about the proposal to reject the Law Reform Commission's approach that truth should be a complete defence and to substitute 'truth and public benefit' as the justification requirement.

The *Australian* also emphasised that uniformity would be a considerable achievement but only if the new law was a good one.

New attention to defamation law came with the issue by the NSW Premier of defamation proceedings following the Four Corners program.

Attention was also attracted to defamation law by enquiries into alleged abuse of parliamentary privilege.

An enquiry by the Joint Committee of Parliamentary Privilege by the NSW Parliament confronted complaints both by citizens and parliamentarians. The citizens complained that they had been attacked under

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ACCIDENTAL OR INCIDENTAL CIGARETTE

The Australian Broadcasting Tribunal has released a Draft Policy Statement on accidental or incidental advertising for cigarettes or smoking.

Licensees are banned from broadcasting or televising direct advertising for cigarettes or smoking by the **Broadcasting and Television Act.**

The ban does not prevent the broadcasting or televising of matter of an advertising character, **if** it is accidental or incidental to the matter being broadcast, and **if** the licensee does not receive payment or valuable consideration for it.

The statement says the broadcasting or televising of advertising matter relating to cigarettes will not be regarded as "accidental" if the circumstances of the broadcast or telecast show that it is more likely than not that the licensee intended to promote a particular brand of cigarettes, or cigarette smoking in general.

The Tribunal has also noted that the Draft Statement is intended to avoid the need for more specific action, but that failure to comply with the letter and the spirit of the law may lead to the determination of Standards relating to incidental cigarette advertising.

Written comments on the Draft Policy Statement should be lodged with the Secretary, at PO Box 1308, North Sydney, NSW, 2060, by 5 pm, 27 August 1983.

DRAFT POLICY STATEMENT

Advertising Matter Relating to Cigarettes or Cigarette Tobacco

1. INTRODUCTION

1.1 Sub-section 100 (5A) of the Broadcasting and Television Act 1942 ("the Act") states that —

> "A licensee shall not broadcast or televise an advertisement for, or for the smoking of, cigarettes *or cigarette tobacco*."

Sub-section 100 (10) of the Act states —

> "A reference in sub-section ... (5A) ... to the broadcasting or televising ... of an advertisement shall be read as not including a reference to the broadcasting or televising of matter of an advertising character as an accidental or incidental accompaniment of the broadcasting or televising of other matter in circumstances in which the licensee does not receive payment or other valuable consideration for broadcasting or televising the advertising matter."

1.2 The purpose of this Policy Statement is to outline the principles the Tribunal will apply in the administration of sub-sections 100 (5A) and (10) of the Act.

2. AN ADVERTISEMENT FOR, OR FOR THE SMOKING OF, CIGARETTES OR CIGARETTE TOBACCO

2.1 The Act does not define the circumstances in which matter amounts to an advertisement for, or for *the smoking of, cigarettes or cigarette tobacco. In the Tribunal's opinion, any matter which can be* reasonably said to promote cigarettes, or encourage the smoking of cigarettes, falls within sub-section *100 (5A), whether or not it displays or mentions the name of a brand of cigarettes or of a cigarette* manufacturer. Advertising matter which displays or mentions the name of a cigarette manufacturer, *but does not explicitly promote cigarettes, or encourage cigarette smoking, may still fall within sub-*section (5A) if the overall effect can be reasonably said to promote the consumption of all that *company's products, of which cigarettes may be one.*

2.2 An advertisement (for any purpose) may be constituted by sound effects, music or spoken words *and/or the visual display of names, logos, slogans or other identifiably promotional material, whether* occupying full screen, or in titles of events, in backdrops or billboards, or on clothing, vehicles, etc.

2.3 Illustrations of matter which would, in the Tribunal's opinion, be covered by sub-section 100 (5A) are provided in the following hypothetical examples:-

Example A: X manufactures a very popular brand of cigarettes which are sold under the brand name "Y". X also sells a much smaller number of pipes and cigarette lighters under the name "Y". A television advertisement by X shows a pipe and a lighter with the slogan: "Y — the best in quality".

Example B: X sponsors a television talk show. Part of the arrangement is that the host conducts some interviews in front of a backdrop which displays the Brand "Y" logo and the slogan "the best in quality".

Example C: Brand "Z" is commonly identified in the public mind with a certain musical theme, and a western image. A televised item shows a cowboy on a horse lighting a cigarette, with the musical theme in the background, but Brand "Z" is not specifically indentified.

2.4 Some kinds of advertising are not covered by sub-section 100 (5A). Advertisements concerning the adverse medical effects of cigarette smoking are not prohibited. Also, promotional material for companies whose activities include the manufacture of cigarettes is not prohibited, provided it could

not reasonably be said to be an advertisement for the cigarettes produced by the company. For example, a diversified manufacturer (whose products include cigarettes) may wish to promote itself as a vigorous company expanding into new fields and creating new jobs. This would be permissible if the advertisement did not directly or indirectly promote the cigarettes produced by the company. Such corporate promotion is less likely to be at risk where the company name is not readily identified with its tobacco products. In cases where a company name is also a brand name, considerable care should be exercised.

3. ACCIDENTAL OR INCIDENTAL ADVERTISING

3.1 Sub-section 100 (10) of the Act provides an exception from sub-section 100 (5A) in circumstances where "matter of an advertising character" —

(a) is an "accidental or incidental accompaniment" of other broadcast or televised matter; and

(b) "the licensee does not receive payment or other valuable consideration" for broadcasting or televising it.

3.2 **Accidental or Incidental Accompaniment:**

The broadcasting or televising of advertising matter relating to cigarettes will not be regarded as "accidental" if the circumstances of the broadcast or telecast show that it is more likely than not that the licensee intended to promote a particular brand of cigarettes or cigarette smoking, in general. For example, television coverage of a sporting event which refers extensively to the fact that the event is sponsored by Brand "Y", and incorporates Brand "Y's" logo into the program titles, would be prima facie evidence of intention to promote Brand "Y". A similar inference might be drawn if televised interviews with personalities in a sporting (or other) event are all conducted in front of a backdrop advertising Brand "Y", when other interview locations are available which do not show such a backdrop.

3.3 Even where advertising matter for cigarettes is not deliberately broadcast or televised, it will not be within sub-section 100 (10) if it is not an 'incidental accompaniment', ie if it dominates a spoken segment of visual scene, or is a substantial part of the segment or scene. These are questions of judgement and it is not possible to provide any precise or comprehensive tests on the matter. However, questions of 'tone' and 'frequent repetition' are factors in determining these questions.

3.4 **Payment or Valuable Consideration:**

The exception under sub-section 100 (10) in relation to cigarette advertising applies only where a license does not receive 'payment or other valuable consideration' for broadcasting or televising the matter in question. Direct payments to the licensee are expressly included whether or not they are made by a manufacturer or retailer of cigarettes. 'Valuable consideration' has been defined in law to consist either of 'some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other': **Currie** v. **Misa** (1975) L.R. 10 Ex. 162. Provision of goods or services will, of course, be included as 'valuable consideration'.

3.5 More difficult questions arise where a licensee has itself paid for the rights to televise a sporting event, and each party knows and accepts that 'incidental' perimeter cigarette advertising will take place, and that it cannot practicably be avoided in the telecast. The licensee obtains 'valuable consideration' from the sporting body, ie the right to televise the event, but this will not normally be "valuable consideration for ... televising the advertising matter", and hence that limb of sub-section 100 (10) will normally apply in those circumstances.

3.6 The situation would be quite different if the evidence showed that an agreement was for the right to televise a sporting event in exchange for —

(a) payment by the licensee; and

(b) an express or implied undertaking by the licensee to televise the perimeter advertising,

especially if it appeared that a discount had been allowed to the licensee by reason of the undertaking. Not only could this amount to "valuable consideration for ... televising the advertising matter, but it would probably result in a finding by the Tribunal that the televising of the advertising matter was not an 'incidental accompaniment' of the telecast of the sporting event.

4. ENFORCEMENT

4.1 It is an offence under section 132 of the Act to fail to comply with sub-section 100 (5A), rendering a licensee liable to a fine not exceeding $10,000.

4.2 By virtue of section 129 of the Act, sub-section 100 (5A) is a condition of a licence; any breaches will be taken into account at the next occasion on which the performance of the licensee is reviewed: see sub-paragraphs 86 (11B) (c) (iii) and 88 (1) (a) (iii).

4.3 This Policy Statement is intended to avoid the need for more specific action. However, the Tribunal points out that failure to comply with the letter and the spirit of sub-sections 100 (5A) and (10) may lead to the determination of Standards relating to incidental cigarette advertising.

THE AUSTRALIAN BROADCASTING TRIBUNAL AND THE FREEDOM OF INFORMATION ACT 1982

BY ROBYN DURIE

The Australian Broadcasting Tribunal ("ABT") recently received a request for information pursuant to the Freedom of Information Act 1982, and Section 106A of the Broadcasting and Television Act 1942 ("B & T Act").

The request basically was for information on the cost of purchasing or producing Australian programs by Australian commercial television stations and the revenue earned by their re-sale.

The request was made by Actors' Equity for use in replying to the Tribunal's discussion paper on Australian content requirements for commercial television.

Separate decisions were made under each Act.

The Chairman alone, as the principal officer of the ABT, pursuant to Section 23 of the Freedom of Information Act, gave a decision under the Freedom of Information Act on 30th May.

The Tribunal, comprised of the Chairman and Messrs. K.A. Archer and J. Wilkinson, gave a decision pursuant to Section 106A of the B & T Act on 27th May.

1. **Freedom of Information Act**

The only relevant documents for the purpose of the Act were those which had come into the Tribunal's possession after 1st December, 1982.

The particular document identified by the Tribunal as being relevant to the request made by Actors' Equity, apart from published accounts, was ABT form no. ABT-12.

The Chairman had previously formed the view that Section 27 of the Act applied, that is, those who had supplied the documents to the Tribunal might reasonably wish to argue that such documents were exempt under Section 43.

Submissions were made to the Tribunal following notification.

The Chairman made it clear that access must be sought to a particular document or documents, but in this case, that had been done. He held that Form ABT-12 was exempt under Section 43 (a)(c), but not Section 43 (1)(a).

Section 43 (1)(a) provides that a document is exempt if it would disclose trade secrets. Presumably, this was intended to apply to information which is protected by an action for breach of confidence. The relevant part of paragraph (c) was that which provides that a document is exempt if ... "the disclosure ... could reasonably be expected to, and reasonably affect that person adversely in respect of his lawful business or professional affairs, or that organisation, or undertaking, in respect of its lawful business, commercial or financial affairs ..."

He said that similar considerations would apply in deciding whether the release of a document would constitute prejudice within the terms of Section 106A (5) of the B & T Act.

Accordingly, he found that the disclosure of documents not already published would disclose information which fell within Section 43 and thus such documents were exempt.

2. **Decision under Section 106A (3)(b)**

Section 106A of the B & T Act provides that the Tribunal shall assemble information relating to broadcasting and television in Australia.

Such information shal be that information either supplied pursuant to Section 106, required under 106A (2), or otherwise required by the Tribunal.

This information may be made available on request, unless its supply "would be prejudicial to the interests of any person" [Section 106A (5)].

Most of the submissions lodged did not oppose the release of audited balance sheets and profit and loss accounts which were published documents.

In relation to Section 106A, the Tribunal noted that a principal use of the information assembled by it was as a dempartmental and public resource, in addition to permitting it make informed decisions and to access licence fees.

In relation to sub-section 5, it was noted that Section 19 provided that as the basis of its considerations, the Tribunal should have regard to the principle that it is desirable that, inter alia, contents of documents lodged with the Tribunal should be made available to the public. This principle is not repeated in Section 106A.

The Tribunal defined the phrase — "prejudicial to the interest of any person" as meaning the causing of detriment or damage to a person, whether personally or in his business affairs, by action in which his rights have been disregarded. This prejudice must occur as a result of the manner of the release of the information or the state of affairs surrounding it. It noted that there was no provision for weighing the prejudice to one person against the benefit to another by reason of the release of information.

The Tribunal rejected the submissions that form ABT-12 had been provided voluntarily and pursuant to an agreement that it was confidential. The Tribunal regarded that document as one provided pursuant to Section 106 (1)(c)(i), which relates to the provision of accounts. It held this, notwithstanding the fact that ABT-12 contains other information.

The Tribunal went on to say that it had consistently taken the view that information supplied under Section 106 (1)(c)(i) should be treated as confiden-

tial, unless it was otherwise publicly available.

In relation to Equity's request, the Tribunal said that it must be assumed that once the information requested was supplied, it would potentially be available to others, including competitors. It was said that it could be argued that no case had been made out on the balance of probabilities that the release of documents would be prejudicial to licensees; merely that life would be made more complicated or risky.

However, the Tribunal rejected that argument, and said that the release of the information would be prejudicial as:-

(a) it could be used to the advantage of competitors and to the disadvantage of persons supplying the information;

(b) provision of information would be of advantage to other media with whom television competes for advertising;

(c) the availability of information would be of advantage to people with whom licensees are obliged to negotiate, and to the detriment of licensees, for example, production companies and unions; and

(d) the information in ABT-12 is open to misinterpretation by people not familiar with the intricate details of the financial management of television stations.

Accordingly the Tribunal held, under Section 106A (3)(ii) that only published information would be available.

The Tribunal indicated its willingness to consult with Equity regarding the nature and form of financial performance information which it regularly issued, on an industry or market basis.

3. **Conclusion**

This decision, brings some certainty into the interpretation of the Freedom of Information Act as far as the Broadcasting Tribunal is concerned, by equating the two "access to information" sections.

However, the Tribunal's comments as to the strength of the arguments raised by the licensees of commercial television stations raises some doubt as to how such cases should be put.

It is hard to imagine that such licensees would not have raised those issued.

BOOKS IN BRIEF

MEDIA LAW IN AUSTRALIA — a manual
By Mark Armstrong, Michael Blakeney and Ray Watterson
(Oxford University Press)

Essentially aimed at non-lawyers* and covers all you would expect from the title — defamation, copyright, contempt, radio & television, advertising — plus such topical extras as leaked government documents, electronic interception & recording and protecting business reputation.

The chapter on sub judice publication is worth reading alone for the paragraph, "The scope of potential contempt is sometimes exaggerated in the minds of media practitioners, to become broad or absolute to an extent which the law does not require" (echoing the CLB editor's experience through two decades of 'when in doubt, leave out' journalism!). Seeking to push the law of prejudicial contempt to its limits seems a worthier aim (see p.103). This same chapter might serve as a valuable adjunct to formal journalistic training (the electronic media need not feel neglected, "... film of an accused person entering or leaving the court building is fairly commonplace." When does this amount to contempt? (p.112).

*Legal practitioners may benefit from the extensive references collated at the back as handy guides to the leading & latest case law on the various subjects.

AUSTRALIAN TRADE MARK LAW and PRACTICE
By D.R. Shanahan (Law Book Co. Ltd.)

Practising patent attorney's guide through the law of trade marks in Australia (at at February, 1982). Also brings into focus the relevant consumer protection (misleading or deceptive marks to be considered in assessing what is "contrary to law" — section 28 Trade Marks Act 1955) and restrictive trade practices' (assignment & licensing of trade marks) provisions of the Trade Practices Act.

For the non-expert in this field, the lists of contrasted trade names and trade marks, held to either infringe or not infringe, is a useful guide to Australian and New Zealand decisions.

PRICE DISCRIMINATION LAW — regulating market behaviour
By Michael Blakeney (Legal Books)

Although generally not concerned with communications law, this copiously footnoted treatise on section 49 of the Trade Practices Act highlights a problem zone for advertisers — cooperative advertising deals (supplier and purchaser combining to advertise supplier's product in conjunction with the promotion of specific retailers) may amount to price discrimination (p.97).

Media Law Reform —

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parliamentary privilege without adequate means of address.

In the Law Reform Commission's report, the qualified privilege attaching to a fair report of a parliamentary defamation would be conditional upon the media giving the person defamed a prompt right of reply.

But parliamentarians themselves also complained of problems arising from the scope of the absolute privilege of Parliament. Were letters written on behalf of a constituent to a Minister covered by the absolute privilege?

One case during the year past also illustrated the importance of journalists' double checking press releases issued by parliamentarians and others enjoying privilege. In May 1983, the Federal Court held that a newspaper was unable to claim privilege over the publication of an inaccurate extract from a public register, even though the material had been supplied in an official press release, prepared by the authority which kept the register.

The Court dismissed with costs an appeal by the publishers *Canberra Times* against an award of $7,500 damages (Hook v. John Fairfax & Sons Ltd.). Once again the absolute nature of defamation laws and the minefield through which even careful journalists walk, was illustrated vividly.

NEW CONSUMER ACTIONS

Perhaps the most dramatic development of recent months has been the decision of Mr Justice Toohey in the Federal Court sitting in Perth in a case brought against a newspaper not under defamation law but under the Federal Trade Practices Act. [See **(1983) 3 CLB-1**].

The judge dismissed an application that a statement of claim based on the Trade Practices Act failed to disclose a cause of action known to law.

West Australian Newspapers published reports and comments of passengers who had travelled on the cruise ship Dalmacija in 1980. As a consequence, other prospective passengers reportedly cancelled their tickets and tourist offices withdrew brochures.

The shipping line sued the newspaper under the Trade Practices Act claiming that its articles were 'misleading and deceptive' and therefore amongst the prohibited unfair trade practices proscribed by that Act.

The newspaper, whilst acknowledging that its trade was publishing and selling newspapers, claimed that the Federal statute was limited to such cases as publishing false circulation figures. It did not extend to the actual content of newspaper articles. Mr Justice Toohey said that this was too narrow an interpretation of the Act for it was 'unreal to divorce the paper from its contents'.

Perhaps the most interesting point in Mr Justice Toohey's judgment was the suggestion that the Federal Court might be able, under its expanded 'pendant' jurisdiction, to attract to the Federal hearing brought under the Trade Practices Act, an associated claim based on State defamation law. This would depend upon whether there was a "common substratum of facts relating to the cause of action in respect of which jurisdiction exists under the Trade Practices Act and to the cause of action sought to be attached".

Needless to say, the decision caused something of panic in media and other circles. The Australian Press Council expressed concern at this new line of limitations on the press. It said that development was particularly troublesome as it came at the very time that the Standing Committee were working towards a uniform Defamation Act. The Trade Practices Act, it declared, was not intended to provide a "backdoor entry to defamation actions".

The Federal Attorney-General, Senator Evans also expressed concern and said that an appropriate amendment of the Trade Practices Act was being considered.

Meanwhile, the newspapers appealed to the Full Federal Court. The case came before the Court sitting in Perth early in June 1983. However, it went off on a technicality, the Chief Judge, Sir Nigel Bowen, making it clear that the Court was not expressing any view about the correctness or otherwise of Mr Justice Toohey's decision.

PRIVACY LAW

The Law Reform Commission's recommendations on privacy appear to be stalled.

It will be recalled that the Commission recommended that a small and closely defined cause of action in privacy should be incorporated in uniform defamation laws.

One of the reasons for making this suggestion was the proposal that, in the Uniform Act, the dual defence of "truth and public benefit" or "truth and public interest" should be dropped in those States which presently express justification in that way. Until now, the obligation of the defendant to establish "public benefit" or "public interest" has constituted a de facto protection for privacy.

CONTEMPT OF COURT

The latest project given to the Australian Law Reform Commission involves review of the law of contempt of court.

The terms of reference followed immediately the release from prison of Mr Norm Gallagher, a trade union official who had been imprisoned as a result of comments made by him concerning the Federal Court. The comments were made in a press release and in subsequent statements made by Mr Gallagher during a media interview.

On the subject of the relevant law of contempt, however, the High Court of Australia was divided. The majority treated the case as one of a serious contempt by a union official asserting publicly that union pressure had forced the Federal Court in an earlier proceeding to reverse a contempt order against him. A strong dissent by Mr Justice Murphy asserted the right of people, rightly or wrongly, to criticise the courts.

The Law Reform Commission is not authorised to examine contempt of Parliament. Senator Button, whilst in Opposition, introduced a Bill to reform procedures for contempt of Parliament. It is not known whether that Bill will be proceeded with, but the Law Reform Commission will now be examining the law of contempt. And amongst the questions it is asked to answer are:

- who should hear and determine contempt cases?
- what non-judicial tribunals should have contempt powers and protections?
- what punishments should be imposed?
- how the balance should be struck between free speech and the protection of the integrity of the judicial process, particularly in relation to 'scandalising the court' (Press release G.J. Evans 7.4.83, 38/83,1).

Amongst the enquiries the Com-

by Mr Justice Kirby

mission will make will be enquiries directed at the actual operation of contempt law. Already it has been suggested to me that newspapers that have been subject to contempt orders and fines tend to be more profoundly affected by them than by defamation verdicts. The latter are sometimes seen as part and parcel of the costs of running a media operation. Contempt fines can be interpreted as just plain bad management. Yet it may not be so. And the stifling operation of contempt law, at the workface will have to be closely examined by the Law Reform Commission.

OFFICIAL SECRECY

The whole law of secrecy has come under scrutiny as a result of the proceedings in the High Court involving the *National Times*.

The Press Council has criticised the use of injunctions by the Federal Government to block publications by the media of sensitive documents.

In relation to the proceedings in the High Court, fear was expressed that Mr Brian Toohey, editor of the *National Times* would be forced to disclose the sources of the copies of classified documents his journal had procured. In the event, Mr Toohey was never pressed.

In this case, as in most others, governments and courts are loathe to insist upon the disclosure of journalistic sources and the breach of confidences that would be involved. This is an issue that is being examined by the Law Reform Commission in its project on evidence law reform.

Close attention is being paid by us to the recent developments in England.

The Police and Criminal Evidence Bill 1982, which lapsed with the dissolution of the United Kingdom Parliament, provided that if a journalist [or a doctor] refused to part with confidentially held documents, a judge would have the power to issue a search warrant. Following an outburst concerning this legislative proposal, significant concessions were made by the Government (The Age, 23.4.83, p.3.).

Clearly, careful thought will have to be given to these developments in the context of Australia's laws of evidence.

Until now the law of privilege has been very closely confined. It has attached to the client of a lawyer and, in some States, the doctors' patients and priests' penitents.

There is an important question as to the extent to which we should limit the courts in gaining access to relevant evidence. There is an equally important question of the public interest in the effective operation of a vigorous media and the public interest in the protection of confidential communication. As in so many matters of law reform, a balance must be struck. The task of the Law Reform Commission will be to suggest that balance and the rules and procedures to secure it.

CONCLUSIONS

A review of Australia's legal scene over the past year demonstrates a continuing challenge to free speech and free press in Australia.

The challenge may come from the closure of the courts.

It may come from the unexpected operation of consumer protection laws.

It may come from the effort of anti-discrimination laws to discourage stereotyping, racism and sexism.

It may come from our ramshackle defamation laws.

It may come from the law of contempt; for though Mr Gallagher was imprisoned, journalists may equally be at risk.

It may come from the uncertain laws of secrecy, from injunctions to prevent publication of secrets and from a threatened obligation to force journalists to disclose their sources.

The media itself is generally content to bleat from the sidelines about the state of the law.

The powerful media interests of our country do very little, institutionally, to promote continuing attention to the law of the media in Australia. They continue to labour within the present rules, accepting them with a touching resignation. They do virtually nothing to fund independent empirical research about the adverse effects of the present rules and about the way in which those rules could be improved.

Lord Scarman once said that the genius of English speaking people lay in their ability to reduce difficult problems to a routine. What we clearly need is routine, orderly attention to the whole mosaic of media law in Australia.

I am afraid that this means gathering more information about the operation of the law at the workface, the collection of statistics and impressions, the better training of journalists in what the law actually says and coherent, interdisciplinary attention to its improvement.

It means properly funded and independent institutes of media law.

It means independently endowed chairs of media law.

It means more than angry frustrated editorials.

The danger to free speech in our country does not lie in some legislative assault. Rather it lies in erosion by the slow attrition of the law and by community attitudes cynicism and indifference. I hope that what I have said will encourage those in a position to do so, to expend more than words upon the renewal and reform of Australia's media laws," Mr Justice Kirby concluded.

COMING EVENTS

September 1-2	Copyright Law and Practice symposium (Boulevarde Hotel, Sydney) - Copyright Society of Australia Inc. and Australian Copyright Council.
September 7	"Data Networks" luncheon (12.30 Masonic Centre, Sydney) - Australian Society for Computers & Law.
September 28	Australian Communications Law Association annual general meeting and dinner (venue to be announced).
October 26	Contempt of Court, Mr Justice Samuels A.C.L.A. luncheon (Sydney venue to be announced).
November 11	Defamation and Copyright, Federal Attorney-General, Senator Gareth Evans, A.C.L.A. and Copyright Society luncheon (Sydney venue to be announced).

INTERNATIONAL SATELLITE TELEVISION

A REPORT ON THE THIRD BIENNIAL COMMUNICATIONS LAW SYMPOSIUM SPONSORED BY THE UCLA SCHOOL OF LAW AND THE INTERNATIONAL BAR ASSOCIATION — By Martin Cooper *

Even the aftermath of an extraordinary combination of tornados, earth and major flooding and storms could not entirely dampen the splendors of the Marina City Club at Marina del Rey, Los Angeles, which was the venue for the conference held on March 4th and 5th, 1983.

The conference attracted over 200 delegates including lawyers, administrators, satellite engineers and academics from Europe, United Kingdom, United States, Canada and Australia who heard papers delivered by a cross section of individuals representing similar interests.

A summary of the papers delivered follows (copies of the very expansive resources material given to all delegates, can be obtained from Charles M. Firestone, Director, Communications Law Program, UCLA, Los Angeles, California.):

PAPER 1 — THE STATE OF THE INDUSTRY — A PRIMER ON INTERNATIONAL SATELLITE TECHNOLOGY

Dr Joe Pelton, executive assistant to the Director General of Intelsat and with degrees in physics, international relations and political science, is one of those enthusiastic techniocrats who is able both to be entertaining about his subject and to crystal ball gaze fascinatingly.

In summary his paper amounted to stating that the technology is there, all that is now required is for man's capacity to use it to catch up.

Pelton outlined the basic technology involved in satellite communications and talked of the new generation of satellites currently being prepared for launch which will carry about 30,000 telephone circuits, or 200 television channels, or transmit 3 billion bites of information per minute (i.e. the equivalent of about 20 sets of the Encyclopedia Britannica per minute).

PAPER 2 — THE SATELLITE TELEVISION MARKETPLACE

Three speakers addressed this subject: Mr Clay Whitehead, President of the Hughes Communication Services Inc. (the company manufacturing the proposed Australian communications satellite), Mr David Webster, Director — United States for the British Broadcasting Coporation and Dr Devendra Verma, Manager of Systems Interfaces for Intelsat — VI Spacecraft Program.

Mr Whitehead expressed the view that satellite television outside the United States will not parallel the development in the U.S. and what he described as the "agonising" jump from over-the-air to cable television will not occur. He also expressed the view that direct broadcasting satellites will not be the future but only a part of it.

Mr Webster, adopting the view that BBC television is the best in the world, expressed considerable doubts about the value of satellite technology to broadcasting since it would permit greater diversity without necessarily greater choice. "Any county without a strong indigenous production industry will be swamped without legal and business barriers against international satellite technology" he proclaimed and expressed very real concern for the protection of artistic property rights. In essence, the BBC view appears to be that satellite technology is merely a new means of delivery and nothing more.

Dr Verma directed his attention to the special problems of the third world in relation to satellite technology. He pointed out the very grave problems that have befallen India because its first satellite launch failed and because of the special problem created by the multitude of languages and cultures contained within the Indian sub-continent.

However, third world countries see satellite technology as enabling them to make a quantum jump in communications technology without having to establish a massive terrestrial distribution network as a preliminary. His view is that the primary objective should be to create very cheap receiving stations since, from a global point of view, it is the cost of these stations in total which far exceed the cost of the satellites themselves.

KEYNOTE ADDRESS

By means of a satellite receiving dish of approximately 3 metres in diameter placed on a hotel forecourt immediately adjoining the room in which the symposium was being conducted, an address and then question-and-answer session involving Mr Mark Fowler (Chairman of the Federal Communication Commission) and two key advisers, speaking from Washington DC, was arranged.

Ranging over an array of topics, Fowler, firstly, expressed the view that to date we have not got international television since only a limited number of major events (such as the British Royal Wedding) and some news events have approached international programming. There is a question as to whether international programming can ever be a viable proposition.

Mr Fowler persistently reiterated the current administration's view that broadcasting should be deregulated and asked whether broadcasting policy should be a device to meet the needs of individual users or be subject to overriding national or political goals. In this respect, he particularly expressed the view that there should be no controls upon programming content as a matter of philosophy as well as in view of the First Amendment to the United States Constitution (the free speech provision of the U.S. Bill of Rights).

Looking to the future, he saw a greater use of satellite to satellite links which would reduce the need for ground stations and interchanges whilst emphasising the competition between satellites and fibre-optics. He sees the latter as having attraction to those governments which are seeking to have greater control over cross border transmissions.

On the subject of piracy of satellite transmissions, Mr Fowler saw self-protection by the transmitter of such signals as the only practical approach. He also spoke at some length on the problems of who is the broadcaster when a satellite transmission is occurring and at what point the act of broadcasting ceases and reception occurs. The FCC has ruled that domestic reception dishes are not a part of direct broadcasting satellite transmission. The question of where the transmission ends and the reception begins is a vital policy issue which constantly exercises the FCC regulator's minds. There is no clear cut or final demarcation point.

Mr Fowler expressed the interesting view that applicants for direct broadcasting satellite licences ought to be telling the FCC how they ought to be regulated rather than waiting for the FCC to tell them how they will be regulated.

(This report will conclude next issue).

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