CONFERENCE REPORTS (CTD)

CENTRE FOR MEDIA AND TELECOMMUNICAITONS LAW AND POLICY SEMINARS

THE RIGHT TO INVESTIGATE AND REPORT

DAY 2 - 31 OCTOBER 1993

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The emphasis on the second day was the role and responsibility of the media in Australia, particularly reforms to the current law.

Current progress on reform to the law was illustrated by two inquiries, the NSW Law Reform Commission Defamation Inquiry and the Senate Standing Committee on Legal and Constitutional Affairs into Rights and Obligations of the Media, were discussed.

Defamation law reform has been on the agenda in New South Wales for some time. The last comprehensive examination of the law was undertaken by the Australian Law Reform Commission between 1976 and 1979. There have been several unsuccessful attempts to establish uniform national defamation law, currently there are different laws in relation to defamation in each of the States and Territories. Thus, a national broadcaster must be aware of eight different sets of defamation laws!

In 1990, New South Wales, Queensland and Victoria decided to work toward uniform laws in their respective States. Defamation Bills were introduced into each Parliament in November 1991 but the NSW bill was referred to a legislative committee. The recommendation of that committee was that defamation law in NSW should be reviewed by the NSW Law Reform Commission (NSWLRC).

Currently, the NSWLRC is examining the ways in which defamation law should be reformed in NSW. The areas being examined include: remedies and procedures, review of damages, alternative remedies and the role of judges and juries in defamation actions. The final report of the NSWLRC will be released in April 1994.

The second major inquiry is one convened by the Senate Standing Committee on Legal and Constitutional Affairs. Its chair, Barney Cooney, outlined the inquiry's terms of reference. The Committee is to report by 31 March 1994 on the rights and obligation of the media, with particular reference to: the right to privacy and the right to know; the need for journalists to protect the identity of their sources; the right of access to the media by members of the public; courts and Tribunals and the media; journalistic ethics and disciplinary processes for journalists.

The second session focussed on reporters' sources and their protection. The two speakers were Neil McPhee QC, a defamation lawyer and Quentin Dempster, a journalist. The main issue in this debate is whether journalists ought to be afforded 'privilege' against the disclosure of sources. The only other profession which has an 'absolute privilege' against disclosure of information is the legal profession.

The issue of whether a journalist should be able to protect his or her source is a vexed issue for the law, particularly in the context of defamation proceedings. Currently, a journalist can be compelled to reveal their source. There was discussion of the recent spate of contempt proceedings which have been brought against journalists who refused to name their sources.

It would seem that the most likely reform to this area of the law would be an amendment to the various Evidence Acts in each jurisdiction, giving the judge discretion as to whether a journalist should be compelled to reveal their source. The test which is adopted in English courts is one of necessity, not simply relevance (as is currently the test in NSW courts).

The final session, 'Recognition of Media Rights', involved an examination of the law as it currently stands in relation to free speech. Professor Cheryl Saunders, Director of the Centre for Comparative Constitutional Studies at the University of Melbourne, focussed on two recent decisions of the High Court which seem to imply that there is protection of some kind for political speech. This raises the question of whether the Australian public would like to see stronger protection for free speech or whether our democratic processes speech afford adequate protection. She pointed to other common law countries such as New Zealand and Canada, both of which have specifically enacted a Bill of Rights.

The extent of this 'implied freedom of political speech' will be tested further in two more cases which are to be heard in the near future. Both concern the law of defamation.

Mark Armstrong, Director of of the Centre for Media and Telecommunications Policy advocates the enactment of a Bill of Rights to protect free speech in Australia. He does not believe that we should simply rely on judicial pronouncements of such rights. He believes that we need legislative reform in order to protect such rights such as: specific freedom of speech laws; 'shield laws' to protect journalists; laws to protect 'whistleblowers' and a general requirement within the law to have regard to media freedoms and responsibilities.

A report from Day 3 of the conference:, Access to the Spectrum and the New Radiocommunications Act, will be included in Update No 15.