

Media surfing: do readers get the right message?

The High Court has reminded journalists of the difficulties of safely summarising court cases

In the past few years, courts have noticeably become more user-friendly. Some have enlisted media officers and judgments are delivered in clearer formats. The High Court gives the public instant free access to transcripts and judgments over the Internet. The recent MUA dispute saw cameras allowed into courtrooms and judgments explained to the public.

But the complexity of legal processes means that it is not always easy for the media to neatly distil the essence of argument and outcome. And the media is only protected from defamation or contempt proceedings if it delivers "fair and accurate" reports.

Chakravarti v Advertiser Newspapers (May 20, 1998) appears to be the first time the High Court has considered the fair report defence in detail. The case has an interesting background. The trial judge awarded record breaking damages (for South Australia) of \$268,000 plus interest. On appeal, the Full Court found only one of two articles was defamatory and substituted a \$40,000 verdict.

The judgments cover a wide range of issues. The most concerning for the media covers interpretation of meanings and application of the fair report defence where otherwise accurate quotes from proceedings are edited or put in a different context.

The *Advertiser* ran two articles in July 1992 about evidence given at the Royal Commission into the near collapse of the State Bank of South Australia. The former Beneficial Finance head told the commission that he had given information to the Premier about four executives including Chakravarti and told the Premier that: "There was a question of either civil or criminal misconduct to be looked at".

After reporting this, the first article continued with evidence about alleged events involving two other executives. Though not expressly linking Chakravarti to those events, the court found that quotes in the article about "those involved" would be read as including Chakravarti, imputing that Chakravarti had been involved in civil or criminal misconduct as a Beneficial Finance executive, in respect of loans from Beneficial to himself.

The second article reproduced excerpts from a tendered file note. One of several difficulties with this article was that a prominent graphic quoting the file note omitted a crucial intervening sentence, replacing it with an ellipsis (three dots). The effect of this editing was to make it look like the statement "May be criminal rather than civic (sic)" referred to loans to Chakravarti, rather than to an unrelated transaction mentioned in the missing sentence. This and other material led to several imputations, including that Chakravarti was party to a conspiracy concerning unauthorised loans and had been involved in criminal or at least civil misconduct in obtaining them.

The encroachment of the information age on old laws was reflected in comments by Justice Kirby that: "in a society increasingly used to the immediacy of 'channel surfing' with remote controls and accessing the Internet with computers" publishers needed to take care with prominent items like headlines and captions. Many readers "including not a

few judges and jurors" do not look beyond headlines and photographs. This strict approach to publisher obligations was counterbalanced by the "importance attached to freedom of communication." This approach departs from the recognised assumption that readers read the whole article. The majority did not address this issue specifically.

On the fair report defence, diverging views appeared. Brennan CJ and McHugh J considered the defence was not necessarily lost if there were inaccuracies leading only to imputations which weren't sued on. But if there was a "substantial misrepresentation of a material fact prejudicial to the plaintiff's reputation" the defence would be lost. Kirby J did not specifically address this point and Gaudron and Gummow JJ took the opposing view that a report was either entirely fair or not at all.

But all agreed the articles were not fair reports as they were "substantially inaccurate" due, among other things, to the imprecise juxtaposition of words, which caught up Chakravarti with other allegations, and the editing of the file note in the second article. This reaffirmed the test that readers should get the same impression as if present at the proceedings.

The *Advertiser* also failed to comply with a "reasonable right of reply" requirement in the SA legislation by failing to publish correcting letters sent by Chakravarti. Curiously, the court also found a common law privilege for fair reports of a royal commission on a matter of public interest. This didn't apply as the report was not "fair".

The case has been sent back to the Full Court to revisit damages questions. The message for the media is to expect little sympathy when editing unintentionally changes the flavour of a legal report.

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