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# Social Media: An Update on the "Wild West of Publishing" In Less Than 140 characters *smiley face*

## In a speech to CAMLA members and guests, Matthew Lewis provides an update on recent developments in defamation law in a social media context.

Social media has fundamentally changed the way we communicate with each other. Instantaneous status updates and tweets mean that there is a greater risk of someone defaming another person. It is a constantly developing area. Recently, one Judge remarked that social networking is to be considered "*the Wild West in modern broadcasting*" thereby inspiring the title to this seminar. I will do my best to give you a flavour of what is happening both here and overseas in that area.

Before we begin, some interesting information. Some of you may already be familiar with the fact that the Standing Council on Law and Justice (SCLJ, formerly SCAG) met on 5 October 2012 to discuss a coordinated national approach to issues surrounding social media and the law by referring it to the working group chaired by Victoria. I have recently received an email from the Federal Attorney General's Department that the working group will provide recommendations to the SCLJ following consultation with representatives of social media organisations, news media organisations, justice officials, law enforcement authorities and the courts.

For context and a bit of fun, I thought some statistics in relation to social media might be of interest:

- One out of eight couples married in the United States met on social media.
- If Facebook were a country it would be the third largest in the world.
- There are over 60 million status updates on Facebook every day.
- There are 200 million tweets per day and I even hazard a guess that in relation to the 60 million status updates and 200 million tweets per day they would not have the benefit of any pre-publication advice!
- If you are paid $1 for every article posted on Wikipedia you would earn $1.7 million per hour.[1]

These brief statistics emphasise that the way we interact with one another has fundamentally changed. That has, of course, thrown up some very interesting legal challenges.

I intend to focus primarily on five issues: first, recent authorities relating to search engines as publishers; second, defendants (both social media platforms and individuals) who have been sued in defamation for "tweets"; third, developments in respect of the anonymous putative defendant; fourth, some recent judicial comment on social media and damages considerations; and fifth, some procedural pointers in relation to issuing a subpoena on a social networking entity.

### Search engines as publishers

We will all be familiar with the *Bunt v Tilley [2007] 1 WLR 1243* line of argument that search engines are a mere conduit and are not publishers for the purpose of defamation law at least

1 See generally Erik Qualman's book: *Socialnomics: How Social Media Transforms the Way We Live and Do Business* and YouTube video "Social Media Revolution" at http://www.youtube.com/watch?v=sIFYPQjYhv8.

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in common law. It would appear, in light of recent developments, that the courts have indicated a willingness to depart from that approach in certain circumstances.

In particular, both the Victorian Supreme Court (*Trkujla v Google [2012] VSC 533*) and the Court of Appeal in England and Wales (*Tamiz v Google Inc [2013] EWCA Civ 68*) considered that Google could be a publisher of defamatory information. The issue has not yet been definitively answered.

## One out of eight couples married in the United States met on social media

*Tamiz* is the most recent authority of any substance and given it referred to Trkujla, I intend to focus on that authority.

*Tamiz* concerned the provision of a service called Blogger (also known as Blogger.com) by Google Inc. The service includes design tools to help users create layouts for their blogs and, if they do not have their own URL (web address), enables them to host their blogs on Blogger URLs. The service is free of charge but bloggers can sign up to a linked Google service that enables them to display advertisements on their blogs, the revenues from which are shared between the blogger and Google Inc. The claim was brought against Google Inc in respect of allegedly defamatory comments posted on a particular blog hosted on Blogger. At first instance, Eady J found that at common law Google Inc. was not a publisher and, in any event, Google took reasonable care in passing the complaint to the blogger after it was notified, thereby entitling it to a defence under the relevant legislation and, in addition, the defence of triviality was clearly engaged. An issue on appeal, amongst others, was whether there was an arguable case to say Google Inc. was a publisher of the defamatory comments.

Lord Justice Richards thought that after Google Inc. had been given notice of defamatory material being present on its site, and because it provided the service for designating a blog, Google *could* be a publisher and thereby departed from the *Bunt v Tilley* line of argument. The court was assisted by a giant noticeboard analogy. His Lordship said at [33]:

I have to say that I find the noticeboard analogy far more apposite and useful than the graffiti analogy. The provision of a platform for the blogs is equivalent to the provision of a noticeboard; and Google Inc. goes further than this by providing tools to help a blog and design the layout of his part of the noticeboard and by providing the service that enables the blogger to display advertisements alongside the notices on his part of the noticeboard. Most importantly, it makes the noticeboard available to bloggers on terms of its own choice and it can readily remove or block access to any notice that does not comply with those terms.

In *Trkulja,* the plaintiff was awarded $225,000 against Yahoo!7 by reason of searching the plaintiff's name on the search engine would result in, one hit, directing attention to a website called "Melbourne Crime" which contained the alleged defamatory matter. It was not in issue whether Yahoo!7 was a publisher for defamation law but, as in *Tamiz*, there was a live issue as to whether Google was a publisher. The jury found Google was a publisher by directing third parties to the relevant website by virtue of the results generated by a search of the plaintiff's name, distinguishing the first instance decision of *Tamiz* (above).

Most recently, the issue of whether Google is a publisher for defamation law was considered by the Federal Court of Australia in *Rana v Google Australia Pty Limited & Ors* [2013] FCA 60 per Mansfield J. However, this case would seem to have little utility given that the plaintiff alleged that Google *Australia* was a publisher despite a dearth of evidence to that effect (it will be noted that in the first instance decision of *Tamiz,* Eady J dismissed the plaintiff's allegation against Google UK on jurisdictional grounds. A point that was not pressed on appeal). Accordingly, his Honour found that the plaintiff's claim could not be sustained and therefore summarily dismissed the matter. However, his Honour gave the plaintiff leave to replead against Google Inc. noting that the law in this respect is unsettled. To date, there have been no further developments.

It would therefore appear at first blush that the courts have indicated an intention to move away from the *Bunt v Tilley* line of authority but that much still depends on the technology in question. For example, in *Tamiz,* the court was concerned with the particular blogging platform and how Google controlled that particular platform. How this more recent approach would effect social networking sites is yet to be determined. However, assuming the same arguments would apply, social media platforms could argue they are more passive facilitators.[2]

This area of the law requires urgent attention. There are ostensibly conflicting judgments between Eady J (*Bunt*) and Richards LJ (*Tamiz*) Beach on the one hand and J (*Trkulja*) on the other. Whilst, in a misleading and deceptive conduct context, the High Court of Australia have also recently held that Google are not publishers for the purposes of endorsing/adopting the representations of advertisers: *Google Inc v ACCC* [2013] HCA 1. It must surely be only a matter of time before the appropriate test case comes before the courts. The sooner the better.

2 See forthcoming article by Dr David Rolph, Sydney University.

## Social networks as defendant

Instances in which a social networking site is a named defendant (in the defamation context) are comparatively few. This may be attributable to the likely cost involved as well as jurisdictional issues including the reluctance of the States to enforce any foreign judgment (particularly from the UK) where its citizens did not benefit from the same protection prescribed by the 1st Amendment.

In Australia there is only one recent example of any note, namely *Meggit v Twitter* (2012). However, this case came to nothing. I have recently spoken to the lawyers representing Mr Meggit and I am told that Mr Meggit has subsequently abandoned the litigation. I would apprehend that the whole process was too expensive a process and too hard a process generally for the reasons discussed below.

The facts are as follows. Joshua Meggit wanted to sue over a tweet by writer and TV identity Marieke Hardy. Ms Hardy wrongly outed Mr Meggit as an author of a "hate blog" dedicated to her. Eventually, Mr Meggit settled with Ms Hardy for purportedly $15,000.00. However, Mr Megitt maintained his action against Twitter Inc. for the re-tweets and the subsequent comments by other Twitter users.

The case did pose some very interesting issues that plaintiffs would face should they wish to proceed against Twitter or any other social network platform in Australia. In particular:

- Is Twitter present in the jurisdiction? *Adams v Cape [1990] Ch 433]* considerations arguably apply.
- Even if a plaintiff could establish a cause of action, the defendants are likely to avail themselves of defences such as clause 91: *Broadcasting Services Act (Cth)* 1992/Innocent dissemination

I interpolate, as foreshadowed, that another problem for Meggit may have been the *SPEECH Act 2010* (US) as well as the Communications Decency Act (US) 1996. The former Act came into force in the States on 10 August 2010. Shortly put, it is a retreat from judicial comity and is intended to protect US citizens from liable tourism stemming from the decisions of the England and Wales High Court. It therefore purports to protect its citizens from being sued in jurisdictions that provide less protection for free speech than the US (i.e. under the First Amendment). The Act is important because if a defendant (who is a US citizen) has no assets in Australia the plaintiffs may encounter problems in enforcing any Australian judgment in the States. The Act has been subject of some authority concerning the enforcement of Canadian judgments (which follows the English model of defamation law). Of interest to those practitioners present tonight would be the following recent cases: *Investorshub Com, Inc v Mina Mar Group, Inc.*, 2011 US DIST Lexis 87566 (ND FLA. June 20, 2011) and *Pontigon v Lord*, 340 SW3D 315 (MO.CT.APP.2011). Interestingly, the American court in the *Mina Mar* refused to acknowledge even a consent order. In an Australian context, this Act has been considered comparatively recently in *Barach v UNSW* [2011] NSWSC 431.

Additionally, *AB Limited v Facebook Ireland & Ors* [2012] is interesting for various reasons and is worth noting (and I shall return to this case below in a different context). Tthe plaintiff complained that it was receiving abusive messages posted on its Facebook site by anonymous users. The plaintiffs brought their claim against Facebook as well as the anonymous defendants. The claim was eventually dismissed against Facebook in October 2012 by the High Court of Northern Ireland. However, there is no judgment available as to why the claim was dismissed against Facebook. I have of course looked at all the relevant sites on the Internet such as the *Gazette of Law and Journalism* and blog sites such as *Inforrm* and they, as I have discovered, could not find any judgment.[3]

## Social media: Individuals as defendants

Typically, it is more common to see individuals named as a defendant in a matter involving social media. In a defamation context, there are currently a few interesting cases involving Twitter which should be noted.

### 1.1 Australia

*Crosby v Kelly* (Federal Court of Australia) concerns the Politician Mike Kelly who tweeted on 1 October 2011: "Always grate [sic] to hear moralising from Crosby, Texta, Steel and Gnash. The mob who introduced push polling to Aus." It is being argued that as principals of Crosby Textor Research Strategies Results, the named individuals introduced a polling technique that had the deceitful purpose of deliberately influencing voters with material slanted against the opposing candidate.

There was a jurisdictional challenge that was finally determined by the High Court of Australia in favour of the Federal Court retaining jurisdiction. On 5 May 2013, Foster J said, during an interlocutory hearing where it was apparent that the parties could reach settlement, the matter was heading to be "a famous defamation". The matter continues.

**The Act is important because if a defendant (who is a US citizen) has no assets in Australia the plaintiffs may encounter problems in enforcing any Australian judgment in the States.**

### 1.2 United States of America

In 2011, Courtney Love reportedly settled a defamation action commenced by fashion designer, John R Zimmerman over her tweets for $430,000.00 (Nevada Lawyer June 2011 at [50]). However, Ms Love must have been very dissatisfied with her lawyers because she tweeted directly after her settlement:

> I was fucking devestated when Rhonda J Holmes Esquire of San Diego was brought off. [sic]
>
> I've been hiring and firing lawyers to help me with this.

Whilst I tried to obtain some updated information from this particular case, I believe the case must either have settled or has not yet gone to trial. There is currently a dearth of information about it online.

### 1.3 United Kingdom

The most recent case is, of course, *Lord McAlpine of West Green v Sally Bercow* [2013] EHWH 1342 (QB). Briefly stated, on 2 November 2012 the BBC's Newsnight programme broadcasted a report relating to child abuse in North Wales and the involvement of a "leading conservative politician from the Thatcher years". Ms Bercow, who is high profile wife of the Speaker of the House of Commons, published to her 56,000 followers on 4 November 2012: "Why is Lord McAlpine trending? *innocent face*"

Lord McAlpine commenced proceedings against Ms Bercow and other high profile tweeters. For those tweeters with less than 500 followers they were invited to merely apologise to Lord McAlpine and a website was set up for that purpose.

Mr. Justice Tugendhat in the last few weeks considered the well known rules relating to natural ordinary meaning and innuendo, and held that: (1) a reasonable reader would have linked Lord McAlpine to the tweet because firstly Ms Bercow's followers were interested in politics and current affairs and (2) the use of the word "Lord" would have meant that a reasonable reader would know he was prominent even though he was otherwise not in the public eye at the time. There was much speculation as to who the unnamed "leading politician" was.

Tugendaht J had to further consider the use of "*innocent face*" and whilst there may be some element of a baby boomer explaining Gen Y lingo, his Lordship quite properly stated:

3 See "News: Northern Ireland judge orders Facebook to identify account holders" at http://inforrm.wordpress.com/2012/08/20/news-northern-ireland-judge-orders-facebook-to-identify-account-holders/.

In my judgment the reasonable reader would understand the words innocent face as being insincere and ironical. There is no sensible reason for including those words in the tweet if they are to be taken as meaning that the defendant simply wants to know the answer to a factual question. (at [84])

His Lordship went on to say:

There is no alternative explanation for why this particular peer was being used in the tweets which produced a trend, then it is reasonable to infer that he is trending because he fitted a description of the unnamed abuser. I find the reader would infer that. The reader would reasonably infer that the defendant had provided the last piece in the jigsaw. (at [85])

**Things can be held to be seriously defamatory, even when you do not intend them to be defamatory and do not make any express accusation**

In considering the repetition rule, his Lordship stated that Mrs Bercow was to be treated as if she had made the allegation herself, with the insertion of Lord McAlpine's name. It was an allegation of guilt which the Judge said the tweet meant in its naturally and ordinary defamatory meaning that the claimant was a paedophile who was guilty of sexually abusing boys living in care. Alternatively, it bore an innuendo meaning the same effect.

Defamation lawyers believe that this was the expected result. However, as has already been noted by Hugh Tomlinson QC, how would a reader of a tweet who had no idea of the Newsnight broadcast understand what the tweet concerned? It would surely be another Twitter 'in joke' that no one understands.[4] Some have said that this judgment may be a case of "twitter chill".[5] I doubt that. If it does give some pause for thought, that is arguably a good thing and might act as some sort of pre-publication veto before they publish. Such advice to the media does not necessarily have a chilling effect on free speech.

The Lord McAlpine case has now settled post judgment. Mrs Bercow issuing the following stern warning to other Twitter users:

Today's ruling should be seen as a warning to all social media users. Things can be held to be seriously defamatory, even when you do not intend them to be defamatory and do not make any express accusation. On this, I have learned my own lesson the hard way".[6]

## Trivial defamation

In the context of plaintiffs complaining of purported defamatory content published on social media platforms by individual defendants, it is also worth noting very briefly that defendants in the UK are increasingly seeking to strike out trivial claims as an abusive process, where the claimant cannot demonstrate that the allegations are sufficiently serious or there is insufficient publication. We are, to my knowledge, yet to see that in Australia: *Kordowski v Hudson* (2011) EWHC 2667 (QB); *Wallace v Meredith* [2011] WWHC 75 (QB); *McBride v Body Shop Int PLC* [2011] EWHC 1658.

## Anonymous defendants: recent developments

We are all familiar of course with trying to trace anonymous users of blog sites and of social networking platforms by way of the use of IP addresses and identifiers. In August 2012, the High Court of Northern Ireland ordered Facebook to identify anonymous account holders responsible for abuse messages posted on the site. Facebook in that case had to provide email addressees within 24 hours and supply further information within 10 days. The basis of those orders was probably the equitable order called "Norwich Pharmacal Order".[7]

In February 2013, and after Facebook departed the litigation, McClosky J handed down judgment in *AB Limited*[8]. This may well be a symbolic judgment because it seems that the attempts to identify the anonymous defendants failed. Of particular note, Justice McClosky said at [13]:[9]

It is indisputable that social networking sites can be a force for good in society, a truly positive and valuable mechanism. However, they are becoming increasingly misused as a medium through which to threaten, abuse, harass, intimidate and defame. They have been a source of fear and anxiety. So called "trolling" appears to be increasingly commonplace. There is much contemporary debate about evil such as the bullying of school children and its potentially appalling consequences. Social networking sites belong to the "Wild West" of modern broadcasting publication and communication. They did not feature in the Leveson enquiry and, in consequence, I am not addressed in the ensuing report (for a respectable recent commentary, see the UK Human Rights blog, a source of much viable material and analysis). The misuse of social networking sites and the abuse of the right to freedom of expression march together. Recent impending litigation in Northern Ireland confirms that, in this sphere, an increasingly grave mischief confronts society.

[14] … The solution to this mischief is far from clear and lies well beyond the powers of this court. Self regulation and/or statutory regulation may well be necessary. In the meantime, this unmistakably pernicious evil is repeatedly manifest. Recourse to the courts for appropriate protection and remedies is an ever expanding phenomenon. The courts in Northern Ireland have demonstrated their availability and willingness to protect the interest of those whose legal rights are infringed by the cowardly and faceless perpetrators of this evil. As the present cases demonstrate, the law, through the courts, penetrates the shield and masks of anonymity and concealment. Effective remedies are available and will be granted in appropriate cases. The courts will continue to play their parts as the vehicle for the protection and vindication of legal rights and interests, and where violated, in a society governed by the rule of law and belonging to a super national legal order in which human rights have been placed at the centre, as a result of the Lisbon Charter of Fundamental Rights, a dynamic, revolutionary and directly effective measure of EU law.

Other cases considering Norwich Pharmacal Orders in the UK which may be of interest despite falling outside the scope of "recent developments", would be: *Sheffield Wednesday FC v Hargreaves* [2007] England Wales High Court 2375 (QB): anonymous website postings. Application partially unsuccessful; *Applause Store Productions Limited v Raphael* (2008) EWHC 1781 (QB): Norwich Pharmacal Order against Facebook to reveal, amongst other things, IP addresses; *An Author*

4 See Hugh Tomlinson, "Case Law: McAlpine v Bercow (No.2), Sally Bercow's tweet was defamatory" at http://inforrm.wordpress.com/2013/05/24/case-law-mcalpine-v-bercow-no-2-sally-bercows-tweet-was-defamatory-hugh-tomlinson-qc/.

5 See "McAlpine v. Bercow and a New Era of 'Twitter Chill'" at http://thetrialwarrior.com/2013/05/24/mcalpine-v-bercow-and-a-new-era-of-twitter-chill/.

6 Note 4.

7 Note 3. See also "Belfast judge orders Facebook to identify abusive account holders" at http://www.bbc.co.uk/news/uk-northern-ireland-19293161.

8 [2013] NIQB 14.

9 See "Case Law, Northern Ireland, AB Ltd v Facebook Ireland, Libel damages for anonymous posts" at http://inforrm.wordpress.com/2013/03/05/case-law-northern-ireland-ab-ltd-v-facebook-ireland-libel-damages-for-anonymous-posts/ and see also "News: Northern Ireland Judge awards £35,000 damages for anonymous Facebook libels" at http://inforrm.wordpress.com/2013/02/09/news-northern-ireland-judge-awards-35000-damages-for-anonymous-facebook-libels/.

*of a Blog v Times Newspapers Limited* [2009] EWHC 1358 (QB); no legally enforceable right for a blogger to remain anonymous (that is, privacy arguments).

Of course, in New South Wales, seeking to reveal the anonymous putative defendant would be done by way of a preliminary discovery application under UCPR r5.2. A preliminary discovery application has to be firstly necessary and secondly, has to follow reasonable enquiries having been made. It may therefore be arguably onerous for a plaintiff to establish such a test and be costly.

The most recent authority which practitioners should be aware of in respect of preliminary discovery under the UCPR in NSW is of course *The Age Company Limited & Ors v Liu* [2013] NSWCA 26, where Bathurst CJ confirmed that preliminary discovery was an objective test and the plaintiff must disclose the substance of the enquiries to the court - but not in every detail (at [52] – [53]). If a court is unable to conclude that reasonable enquiries have been made, the application will fail. Likewise, Bathurst CJ also said (at [53]): "Similarly if the court is unable to conclude that the applicant for preliminary discovery does not in fact know the identity or whereabouts of the putative defendant the application will also fail" (emphasis added).

In the Federal Court of Australia, note: *Costin v Duroline Products Pty Limited* [2013] FCA 501 per Yates J (to the same effect as Liu).

## Damages considerations

As to damages considerations referable to social networking platforms, I do not consider that there has been, or will be, dramatic changes to 'regular' considerations. However, some of the recent authorities referred to above demonstrate that 'regular' considerations are brought sharply into focus when looking through the lens of social media.

For example, it is 'damages 101' to say that a defamatory statement to one person will cause infinitely less damage than publications to the world at large. Yet, as demonstrated by the *McAlpine* and *Cairns* litigation (above), social media provides a mechanism for the 'rapid fire' of defamatory matter. What may have been intended to be a communication from a putative defendant to one/a few other persons can, within the blink of an eye, go 'viral', that is be communicated to the world at large by way of the use of such mechanisms as 'liking' or 're tweets'. An amount of damages may well reflect such publication (albeit that a cap of course exists under the *Australian Uniform Defamation Acts*).

Likewise, damages may be aggravated by further 'tweets'/'likes'/other publications on social media. For example, in the McAlpine litigation, Mrs Bercow tweeted of Lord McAlpine's lawyers: "His lawyers ambulance chasers tbh #bigbullies". It is clearly arguable that such a tweet may go towards aggravating damages. Because Mrs Bercow has settled her claim against Lord McAlpine, the court does not have to deal with this issue. *Cf Cruddas v Adams* [2013] EWHC 145 (QB).[10]

By the same token, a defendant may use social media to reduce damages. For example, the relevant social networking platform may be used to publish, to the same readership as the original defamatory matter complained of, an equally rapid withdrawal of a defamatory statement, apology and an admission of falsity. That would arguably have the effect of diminishing the impact of the original publication complained of. In what may be an extreme case, the Guardian (UK) reported in 2011 on a Malaysian case where a defendant (politician's aid) agreed to apologise 100 times on Twitter over the course of three days.[11] Needless to say, it emphasises that defendants may use social media in creative ways to reduce their liability in damages.

It is abundantly clear then, as the court noted in *Cairns*, that: "…with the ready availability of the world wide web and of social networking sites, the scale of this problem has been immeasurably enhanced, especially for liable complaints who are already, for whatever reason, in the public eye. In our judgment, in agreement with the Judge, this percolation phenomenon is a legitimate factor to be taken into account in the assessment of damages." at [27].

Whilst there is nothing new in this approach, it perhaps lends credence to the view that the 'grapevine effect', an established principle in Australian defamation law (and was expressly referred to with approval by their Lordships in *Cairns*) is just as apposite (if not more so) to social media as it is to the more mainstream media.

From a practical perspective, practitioners may note that to establish 'readership' expert evidence may be required - as was done in Cairns where a median approach was taken: *Cairns v Moody* (No.2) at [26] and [27].

The final point I wish to quickly highlight in relation to damages in the context of social media, is that the courts appear to differentiate between celebrity use on social networking platforms and the general public. In particular, it has been said that: "Publications by celebrities via social media, a format designed to inculcate celebrity and influence, are quite different than ephemeral "saloon bar" banter in anonymous web forum": Cairns v Modi (No 2).

**'regular' considerations are brought sharply into focus when looking through the lens of social media**

## Social networking entities: Subpoenas

To conclude, I wish to say something briefly about the appropriate procedure in serving a social media organisation with a subpoena.

Recently, some plaintiffs have tried to circumvent the procedure prescribed in NSW by the UCPR (Rule 11.5) and, in the Federal context, the Federal Court Rules (Rule 10.44). Rather than serve that subpoena on the (invariably) American corporation attempts are made to serve a subpoena on the Australian entity of the relevant social networking corporation (e.g. Facebook Australia Pty Ltd as opposed to Facebook Inc.). This is clearly the wrong approach. Unsurprisingly, the relevant Australian entity will, in this context, challenge any subpoena on, amongst other things, jurisdictional grounds. There is no mystery that social media platforms have advertising and/or marketing offices based in Sydney, and for that reason they are, ordinarily, the incorrect recipients of subpoenas. Any subpoena intended to be served upon a social networking entity should be addressed to the proper officer of the relevant social network corporation based in the States. International comity considerations dictate that it is imperative for plaintiffs to comply with the 'long arm' procedures prescribed in the rules.

For the same reasons, if a plaintiff attempts to serve a subpoena on a social networking entity by way of a substituted service order on the defendant's solicitors (who were protesting jurisdiction) that subpoena may well be set aside with costs. See for example *Styles v Clayton Utz*, 2010 NSWSC, Davies J, unreported, citing *Laurie v Carroll* (1958) and 98 CLR 310.

***Matthew Lewis is a Barrister at 5th Floor Wentworth Chambers.*** ***This paper was presented to CAMLA members and guests on 28 May 2013 at Allens, Deutsche Bank Place, corner of Hunter Street and Phillip Street, as part of a seminar entitled: "Setting the Record Straight: Recent Developments in the Defence of Qualified Privilege and Other Current Issues in Defamation Law". The author would like to acknowledge and thank Dr. David Rolph for his insights on this presentation and for sharing his forthcoming (as yet untitled) paper on many of the issues discussed that evening. The seminar was conducted along with Bruce McClintock SC and Gabriella Rubagotti.***

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10 Note 4.

11 See "Malaysian to tweet apology 100 times in Twitter defamation case" at http://www.guardian.co.uk/world/2011/jun/02/malaysian-tweet-apology-defamation.