

RECENT CASES

A roundup of recent case law

ICAC v Cornwall

The Supreme Court of New South Wales recently considered the nature of confidentiality of journalists' sources, and in doing so, found the *Sydney Morning Herald* journalist, Deborah Cornwall, guilty of contempt. The contempt arose from Ms Cornwall's repeated refusals to disclose to the Independent Commission Against Corruption the source for her two 1992 articles concerning police corruption.

In delivering judgment, Abadee J acknowledged that there is a clear public interest in the provision of fair and accurate information in the media, which is aided by the exposure of important information to the community by anonymous persons. However, he emphasised that there is also a public interest in the public knowing the truth. Abadee J emphasised that there is no conscientious right which enables journalists to refuse to comply with lawful directions, to place themselves above the law. No private undertaking to a source could exonerate a journalist from complying with the law.

Although Abadee J expressed sympathy for Ms Cornwall, he found that there was no protection afforded by the Code of Ethics which binds journalists. He examined cl3 of the Code, which provides that "(i) in all circumstances they (journalists) shall respect all confidences received in the course of their calling". This provision, taken in conjunction with the evidence of Mr Christopher Warren the Federal Secretary of the Media Arts and Entertainment Alliance, led Abadee J to assert that on one view, the Code was drafted to "operate despite the law and perhaps intended to operate beyond it." The words "in all circumstances" were interpreted by Abadee J as being subject to the laws of the land. In this way, the Code and any subjective personal ethic which prevented the disclosure of the identity of sources, provided no ground

or excuse for a refusal to answer lawful questions or produce documents lawfully required.

Counsel for Ms Cornwall sought to rely on an implied freedom of speech based on the High Court decisions in *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 66 ALJR 695 and *Nationwide News Pty Ltd v Wills* (1992) 66 ALJR 658. Abadee J rejected this argument, observing that the *Australian Capital Territory* case was decided in the context of a representative democratic government. The freedom which Ms Cornwall purported to assert did not relate to a discussion of a political matter. In addition, Abadee J stated that Ms Cornwall was free to write and have her story published. What was at issue was "her silence".

Cruise v Southdown Press Pty Ltd

Tom Cruise and Nicole Kidman recently sought an injunction in the Federal Court preventing the publication of a photograph of their child. In rejecting their application, Gray J stated that in the absence of a right of privacy in Australia, counsel for the applicants would have to argue protection of confidential information, breach of copyright and defamation.

The confidential nature of the photograph was asserted to be a "right to keep private the appearance of the child". Gray J stated that he was not at all sure if that were a matter capable of being the subject of a claim to impose confidentiality. Gray J said he simply did not know if the applicants were the owners of the copyright in the photograph, and that if they were, remedies other than an injunction were available for breach of copyright. Such remedies were assessed by Gray J to be "perfectly adequate", if the applicants were not attempting to squeeze the privacy claim into a claim for breach of copyright.

The claim of defamation was rejected by Gray J as well. His Honour observed that it is extremely rare for

an injunction to be granted to restrain in advance the publication of material alleged to be defamatory.

Lever v Murray

The New South Wales Court of Appeal was once more called upon to consider an appeal in this defamation matter. The case involved statements by Mr Wal Murray, then Deputy Premier of New South Wales, about opponents to a proposed North Coast land development. The plaintiff claimed that Mr Murray had made statements that he falsely pretended to be an aboriginal and made land rights claims for an area to which he was not entitled.

It was previously reported in the *Communications Law Bulletin* (Vol 12 No 4) that the Court of Appeal had held that the trial judge erred in discharging a jury, after comments made by the plaintiff's counsel which the trial judge considered painted Mr Murray as a racist.

That matter was tried again with the judge entering judgment for the defendant. The plaintiff appealed claiming inter alia that the trial judge erred in withdrawing from the jury the imputation that the plaintiff was not worthwhile as a human being.

The basis for the imputation that the "plaintiff is not worth regarding as a human being" was the statement by Mr Murray that "we are not going to be pushed around by a heap of imports". Evidence was called by the plaintiff to establish that "import" had a special meaning in relation to Aboriginal people. The trial judge would not allow this evidence to go to the jury and ruled that the matter pleaded was incapable of conveying the imputation claimed to the ordinary reasonable reader. Sheller JA, with whom the other appeal judges agreed, agreed with this.

The appeal was dismissed and the plaintiff was ordered to pay costs.

Recent Cases was prepared with the assistance of Sarah Ross-Smith of Blake Dawson Waldron.