difficult for this to happen in relation to ATSIC, our funding body. If there is an adverse story about a regional council or councillor it becomes very difficult when these same people decide on your organisation's funding.

National Indigenous Media Association

As Indigenous media groups we have operated for many years in separate arenas. There were the groups who received DAA/ATSIC funding, and the groups who broadcast on Public radio; others who broadcast on the ABC; the print media; the television and video production groups and not forgetting our individual Indigenous media worker's in the ABC and the SBS.

In May of 1992 a meeting was held in Canberra which formed the National body on an interim basis and in May 1993 the National Indigenous Media Association of Australia held its inaugural Annual General Meeting. The association's major objective is to represent Indigenous media groups individually and collectively on a local, state, national and international basis while maintaining and respecting the uniqueness and authority of every group. As a collective of all indigenous media in Australia we want to enhance and further develop the industry nationally and assist communities in the establishment, operating and development of their own media.

Future Vision

I would like Australia to recognise there is an Indigenous media sector which does exist and has existed and developed for many years. We currently have the ABC and SBS fully funded and resourced by the Federal government as national media services. Why then not a national Indigenous media service? Why not a national Indigenous television station which can be accessed from anywhere in Australia.

The service should have the capacity to not only be televised from a capital city, but also to broadcast nationally from a region such as the Kimberley. Also, Indigenous media should have the capabilities of BRACS, and be able to intercept the national broadcast and televise our own local programs. This would need to be an important aspect of the service in recognition of our cultural diversity and the language differences within Australia's indigenous nation. The same approach could also apply to radio on a national scale.

An organisation such as the National Indigenous Media Association could provide support and resources to its member associations by way of providing a national news service, music library, research assistance, technical advise and even administer the funding to its member groups.

Non-Indigenous Australians could benefit enormously from a strong Indigenous media service. You would not only get a better informed view about our culture but also you'd be able to see pictures of yourselves from another point of view. What about Aboriginal people making a series of documentries about white suburbia? What about Aboriginal comedy and soapies? I'm sure you as White Australians are sick of seeing and hearing all the political and contentious issues surrounding us, but there's a lot more to life and we can share this with you.

Everyone in Australia could benefit from such a media service which would give a more truthful and positive view about ourselves as Indigenous Australians. The possibilities for our future development are endless but we can't do it without community and government support. After all we are an essential service and we see ourselves as providers of a service for all Australians. A service that reflects the cultural diversity of this country. With this, a greater understanding and awareness will evolve and a healthier Australia will emerge.

I will end with these words from a poem of Jack Davis'.

Let these two worlds combine,
Yours and mine.
The door between us is not locked,
Just ajar.

Dot West is Chairperson of NIMAA, Training and Broadcasting Co-ordinator for the Broome Aboriginal Media Association, and presents a weekly program on Radio Goolarri in Broome.

The innocent dissemination defence in defamation

Paul Svilans reviews a recent decision on the defence of innocent dissemination in defamation proceedings and its implications for broadcasters

In a recent decision by Gallop J in the ACT Supreme Court, *Thompson -v- Australian Capital Television and Ors*, the availability of the defence of innocent dissemination in defamation proceedings has been extended to include broadcasters taking material by relay.

The Proceedings

The proceedings arose out of the broadcast of *"The Today Show"* in February 1994 in the Australian Capital Territory by Australian Capital Television ("Capital TV"). The programme contained a segment in which a woman made allegations that her father (being the Plaintiff) had an incestuous relationship with her while she was a child. Those allegations were false.

The Plaintiff first instituted defamation proceedings against Channel Nine, Sydney in the Supreme Court of NSW. Channel Nine was responsible for broadcasting the matter in Sydney, which was taken on relay by Capital TV. The proceedings against Channel Nine were subsequently settled by Deed of Release in which Channel Nine agreed to pay the Plaintiff the sum of $50,000 damages.

The Plaintiff thereafter instituted additional defamation proceedings, this time against Capital TV over the publication of the same broadcast in the Australian Capital Territory. The imputations relied upon by the Plaintiff were that the Plaintiff was guilty of incest with his daughter of seven years of age and thereafter, and that the Plaintiff had

fathered a child with his daughter when she was only fourteen years of age.

Save for an argument on the imputations pleaded, Capital TV pleaded the defence of innocent dissemination and defences arising out of the release given by the Plaintiff to Channel Nine.

Innocent Dissemination

Gallop J held that it was settled law that a person who was not the author, printer of the "first or main publisher of a work which contains a libel", but has only taken "a subordinate part in disseminating it" will not be liable if he succeeds in showing:

(a) that he did not know that the book or paper contained the libel complained of;

(b) that he did not know that the book or paper was of a character liable to contain a libel; and

(c) that such want of knowledge was not due to any negligence on his part.

These principles are an application of those stated in the decision in *Emmens -v- Pottle And Ors.*

In the circumstances of the subject proceedings, Gallop J found that:

(a) Capital TV had received no forewarning from Channel Nine or otherwise of the content of the programme containing the matter complained of;

(b) Capital TV played no part in editing any of the material which went to air, nor did it have any means in place or other arrangement with Channel Nine by which the material to go to air could be previewed;

(c) there was no indication to Capital TV prior to the programme being transmitted that the programme was likely to contain defamatory matter and Capital TV did not have any reason to suspect that it might;

(d) there was nothing in the licence agreement between Channel Nine and Capital TV which gave Capital TV as licensee the right to vary or interfere with the content of the broadcast, except to insert local advertising materials;

(e) the first Capital TV knew of any complaint concerning the content of the broadcast was when a letter of demand was subsequently received from the Plaintiff's solicitors.

The court concluded that Channel Nine was in complete control of the conduct of the broadcast and it was intended and expected by Channel Nine that the matter would be published without alteration. In short, it was found that the role of Capital TV was that of a conduit. Consequently, Gallop J determined that Capital TV was in the circumstances entitled to succeed upon the defence of innocent disseminator.

Release from Channel Nine

Capital TV also argued that it was entitled to rely upon the Deed of Release given by the Plaintiff to Channel Nine in its defence because Capital TV and Channel Nine were joint tortfeasors and the release by the Plaintiff of Channel Nine operated as a release in favour of Capital TV. Further, it was argued, inter alia, that the terms of the Deed of Release also covered Capital TV, and therefore Capital TV was also released from the Plaintiff's cause of action.

Despite holding that Channel Nine and Capital TV were both joint tortfeasors, Gallop J determined that the effect of *section 11* of the *Law Reform (Miscellaneous Provisions) Act, 1955 (ACT)* precluded him from finding that the release of Channel Nine also operated so as to release Capital TV. His Honour followed the reasoning of Beazley J in *New South Wales -v- Mccloy Hutcherson (1993)* where it was held that the rule that the release of one joint tortfeasor operates in favour of all joint tortfeasor did not survive the enactment of *section 5(1)* of the *Law Reform (Miscellaneous Provisions) Act (NSW).*

However, Gallop J found that the Plaintiff did intend, in the Deed of Release between the Plaintiff and Channel Nine, to embrace any publication for which Channel Nine was responsible, wherever it took place, including publication by Capital TV in the ACT, and Capital TV was therefore also entitled to succeed on this ground.

His Honour consequently ordered judgment in favour of Capital TV.

The Plaintiff has appealed to the Full Bench of the Federal Court *(Ed - refer "Recent ACT defamation cases" this issue).*

Implications

Subject to the judgment withstanding the appeal, the judgment will provide welcome relief to the many broadcasters who take programmes on relay. Such broadcasters often find themselves sued for defamatory material contained in broadcasts taken on relay, despite the broadcaster having no other involvement whatsoever in the material sued upon. The decision would appear to recognise that a Plaintiff will not suffer any prejudice by having to sue the original broadcaster, who will in the usual course be liable for the republication of the matter subsequently rebroadcast.

However, a Plaintiff may suffer prejudice where the original publisher is not solvent or where the prospective Plaintiff incurs some disadvantage if the proceedings cannot be heard in his/her own choice of forum. It is submitted that such prejudice would be minimal and the circumstances are no different to the traditional circumstances where a distributor of, say, imported magazines may have the defence available irrespective of the solvency of the overseas publisher.

The decision may also give some impetus to the finding of a similar defence for printers. There are numerous defamation proceedings on foot in a number of jurisdictions against printers of allegedly defamatory material. While historically one could understand why a printer could be held to have taken a relatively substantial part in the publication of material held to be defamatory, printers under modern technological conditions no longer have such an input, arguably entitling them also to take advantage of the innocent disseminator's defence.

As far as the joint tortfeasor rule is concerned, there would be few who would be unhappy with the burying of the rule. The rule has been a notorious "trap for young players" and its demise may avoid the necessity for utilising cumbersome covenants not to sue when settling with one joint tortfeasor but not the other.

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