# Interview: Michael Cameron

**Michael Cameron, National Editorial Counsel at News Corp Australia, and winner of the 2017 Press Freedom Medal, sits down with co-editor, Eli Fisher, to discuss recent developments in free speech in Australia.**

**ELI FISHER:** Michael, thank you so much for your time. First things first, congratulations from all of us at CAMLA for being awarded the 2017 Press Freedom Medal in recognition of your role as an advocate of transparency and open justice. You have been a fierce advocate for free speech in Australia for many years. What does the medal mean to you?

**MICHAEL CAMERON:** Thanks Eli. It was a great honour to receive the award. I accepted it on behalf of the entire editorial legal team here, in particular Larina Mullins, as well as Gina McWilliams, Stephen Coombs and Tim Matchett. Ours is a small but very dedicated team which provides legal advice seven days a week to more than 100 newspapers, websites and magazines. To have your work acknowledged in this way is just terrific.

**FISHER:** You have been connected with News for approximately 30 years, as a lawyer but also, prior to that, as a journalist. Can you tell us a little bit about your career thus far, and how your earlier positions played a role in the lawyer you have become today?

**CAMERON:** My first journalism job at News was with the Daily Mirror, an afternoon tabloid, in Sydney in the late 1980s. I reported on police rounds, courts and politics. I ended up as the chief of staff of its sister newspaper The Daily Telegraph and worked as a journalist in New York before crossing over to the law. I love the industry and, for me, becoming a media lawyer was a natural progression of what I liked to do as a political journalist: telling a lot of people about things that only a few people know about. When you have an understanding of the law, particularly our libel laws, you are able to push the envelope as a reporter just a bit further. I think the Fourth Estate's role in holding people in power to account is a very valuable thing. I don't think this is a concept fully appreciated in Australia but they sure know it in America these days. My formative years as a lawyer were spent in the United States where I developed a real appreciation for the constitutional protections afforded the press by the First Amendment. Australia, of course, has very little constitutional protection for freedom of speech and I think our democracy is poorer for it.

**FISHER:** You warned in 2013 that Australia risked being left behind as a media law backwater. In light of the time you spent working abroad, can you comment on some of the most concerning cultural and legal differences that you regularly see playing a restrictive role in Australian media companies, as compared to those overseas?

**CAMERON:** I think the lack of genuine public debate about free speech in this country is really alarming. Our defamation laws are an embarrassment by western standards. In the absence of a bill of rights we must look to the legislature to protect free speech. Given that members of parliament are regular users of our defamation laws it's no wonder there appears to be little impetus for defamation law reform. As you note in your question, there are significant cultural issues at play as well. Apart from Mr Trump, I think the media is afforded more respect in the United States and politicians generally recognise the importance of engaging the press as part of a healthy pluralistic democracy. In my experience in Australia the opposite is the case. Some politicians employ press secretaries with the expressed purpose of keeping their names out of the media. We are in dire need of advocates within parliament to push the cause of defamation law reform. Heck, Australia still has criminal defamation laws on its books. While it may be seldom used you can still be pursued in the criminal courts in this country over a defamatory comment when it is acknowledged by most Western nations that libel actions should only be brought in the civil courts. Even Zimbabwe, a country not known for its human rights record, banned criminal defamation actions recently.

**FISHER:** In terms of your workload, and cost to your organisation, which restrictions or types of legal action create the biggest burden?

**CAMERON:** Clearly, defamation actions continue to be the scourge of media organisations such as ours. There's a small army of plaintiff lawyers out there just waiting to jump on a mistake, no matter how small, and convert that mistake into a profitable exercise for themselves and their clients. While there is now a cap on damages for defamation actions


in Australia (just south of $400,000) there is obviously no cap on legal fees. If a case goes to trial then the legal cost is likely to far outweigh your potential exposure on damages. Even if you prevail in a case, such as we did in *Dank v Nationwide News*, there is no guarantee that you are going to recover any costs from the other side. Defamation is clearly the biggest burden. A large part of our practice involves the provision of advice to our clients prior to publication with the goal of minimising the risk of defamation claims being brought. We are sent hundreds of articles each week to review.

**FISHER:** One particular difficulty is that, unlike the United Kingdom, Australia does not impose a serious harm test. Could you elaborate on why this causes such concern?

**CAMERON:** I can think of several undeserving plaintiffs whose cases would have fallen at the first hurdle if there was such a test in Australia. As I understand it the English Act requires a plaintiff to make an initial showing of the serious harm they have suffered as a result of the defamatory publication or broadcast. This can be rebutted by factors such as the size of the audience which read or viewed the contentious material; the speed with which a media organisation removed the offending article and apologised; the lack of financial harm (or any kind of harm) suffered by the plaintiff. Such a test would knock out a lot of the silly cases in this country. For example, it would most likely preclude a prisoner serving time in jail for a serious crime bringing an action against a media organisation over an inaccurate report on one of his lesser crimes. It might, for example, prevent a horse trainer who has been found guilty of doping horses from bringing an action over an article which suggested he was cruel to his horses. I think a serious harm test would also knock out a fair share of those neighbour-on-neighbour Facebook cases.

**FISHER:** On the subject of defamation law, you have noted that Australia has a very plaintiff-friendly defamation system. Are there some examples you can point to of the difficulties that publishers have faced in recent times because of restrictive defamation laws, the lack of legal certainty in some areas, or the costs of litigation? And are there any specific reforms you would like to see made to the Defamation Act, which you see as being of particular concern?

**CAMERON:** Don't get me started. I think we need a serious discussion on reforming the entire system starting with defamation trial practice. Basing your cause of action on a series of confected imputations serves no one beyond those barristers paid substantial sums to interpret these labyrinthine concepts. Why not base it on the publication as a whole?

It's been 12 years since our defamation laws were last reviewed and there are several legislative reforms that our states and territories could introduce without the need for any serious upheaval. Top of my list would be a single publication rule. As the law now stands a person can bring a defamation action against a publisher for something published on the web 20 years ago. In most other civilised countries there is a one year statute of limitations for such actions. But under our law you publish, for internet purposes, whenever your article is downloaded on the internet. The introduction of a single publication rule would bring Australian law into line with most of the Western world. Second on the list would be the introduction of a serious harm test. I would also lobby for the introduction of laws that provide a "safe harbour" for website owners who wish to provide a forum for readers to comment. As the law now stands you are liable for any defamatory comment left by a third party on your website. Section 230 of the *Communications Decency Act* in the United States gives website owners complete immunity from liability over comments left on their sites (unless they edit those comments). This encourages an aggrieved party to go after the commentator rather than those who provide the platform for those comments. I think this is a much healthier approach.

**FISHER:** Turning to suppression orders, News has been extremely busy challenging suppression orders in Court, especially in the last few years. How important is it for media organisations to intervene to oppose suppression orders or seek to have them lifted? What trends are you seeing in relation to the nature and frequency of suppression orders being made?

**CAMERON:** It's vital for media companies to continue challenging suppression orders. There is an inexplicable culture of suppression among the courts in this country, particularly in Victoria and South Australia where some members of the judiciary appear to believe it is their job to protect the privacy of

litigants. The benefit of having an internal legal team such as ours is that it does not cost you thousands of dollars every time you want to appear before a judge to challenge a non-publication order. But even our resources are finite. There appears to be a view among some judges and parliamentarians that media companies have this endless ability to resource challenges to suppression orders. Those days are sadly over, if they ever existed at all.

**FISHER:** In light of the recent *Nationwide News Pty Limited v Qaumi* [2016] NSWCCA 97 and *AW v R* [2016] NSWCCA 227 hearings, in which News has been involved, could you comment on your attitude to Courts making orders for the take down of online material? Do you see that as justified for the most part, or does this trend misunderstand the fundamental nature of online publication?

**CAMERON:** Both these decisions are significant in that they support the proposition that it is next to futile for a court to order a media company to remove articles from the web in the expectation that such an action will protect a potential juror from reading material that may be damaging to the accused's right to a fair trial. Such orders are useless because these articles will seldom be the only source of pre-trial publicity dealing with the accused. It is an unfortunate reality that many articles, particularly those published by my clients, are copied without authorisation by third parties, many of whose websites are hosted in foreign jurisdictions. So ordering Australian media to remove their articles is not going to totally remove the information from the web. Further, a properly-instructed juror would know the penalties under law if they decided to defy directions from the bench by conducting their own independent investigations of the accused online. In my experience most jurors take their roles pretty seriously and know that the quality of the information received in the courtroom is infinitely superior to the material contained on their best mate's Facebook page.

**FISHER:** You were publicly critical of the Attorney-General's approach to disclosing his diaries, in response to a Freedom of Information application. Is the current FOI regime in Australia sufficient to ensure that the Fourth Estate is free to operate as a check on government?

**CAMERON:** Freedom of information in this country (while perhaps better than China or Russia) is a complete misnomer. The various state and federal FOI acts and regulations have so many exemptions and qualifications that it remains very easy for politicians and bureaucrats to withhold the release of any information that may be politically embarrassing. There's also the stifling effect of FOI fees. One of my clients was recently told it would take 300 hours of labour in order for a particular department to recover a modest amount of material sought by the journalist.

**FISHER:** Racial vilification laws have animated many commentators over the last few years, especially following the successful 2010 claim brought against one of News' most high-profile commentators, Andrew Bolt. First, is section 18C a limitation on speech that frequently plays a role in your pre-publication work? And secondly, now that Parliament has failed to pass the proposed changes, should the fight continue?

**CAMERON:** I have not handled any claims based on the *Racial Discrimination Act* in the four years that I've been in my current position. I think serious reforms are needed – and not just for the RDA. I think that most anti-vilification laws in this country (both state and federal) are the product of a nanny state mentality. The threshold for an action is simply too low. I'm insulted and offended by many things I read but I do not need a piece of legislation to tell me what is racist or what amounts to sexual vilification. I think hate speech says more about the speaker than it ever does about the target of that speaker's bile. As with most free speech issues I think the Americans have the balance right here. In the absence of a clear and present danger "hate speech" is afforded free speech protection under the First Amendment. That protection does not apply when the speech is accompanied by a real threat of violence. I won't hold my breath waiting the social engineers in this country to adopt this approach.

**FISHER:** While Australia is more restrictive of speech than other Western democracies with stronger legal protection of its freedom, Australian laws in relation to an individual's privacy are much more permissive than those abroad. Given what you say about Australia taking a more restrictive approach to speech than other Western democracies, why do you think that Australian law is so comparatively permissive in this regard?

**CAMERON:** I'm not entirely sure why we have been spared these privacy laws in Australia. Many people would most likely disagree with me but I don't think historically we have had the same level of intrusiveness among our newspapers as the Fleet Street tabloids. The Brits seem obsessed with the bedroom antics of their celebrities. Australians don't seem to care as much – unless it involves someone in power using public money to fund their romantic dalliances. Even in America you will find significant differences between the jurisdictions over privacy laws. In California, for instance, where the movie studios are all powerful, there are strong anti-paparazzi laws to protect celebrities. In contrast in New York State, where most of the big news media companies are headquartered, there are very few restrictions on the paparazzi. Florida is also very big on protecting celebrities' privacy, as Gawker media recently found out with its $US33 million payout to Hulk Hogan. I would strongly resist any attempt by the nanny state brigade to introduce a tort of privacy in this country. It is completely unnecessary.

**FISHER:** Thank you for your time. On behalf of our readers, thank you so much for your thoughts on these matters, and congratulations again on the medal!

**CAMERON:** Thanks Eli. It's been a pleasure.