Libel laws in two countries — panel debates

The August edition of the Australian Press Council News featured an interesting article on the controversial issue of libel. The article is reprinted by kind permission of the Australian Press Council.

A seminar held in Sydney in July looked at where defamation laws stand in the US and in Australia and at attempts to reform these laws.

At a conference, 'Communication and Diversity' — jointly organised by the International Communications Association and the Australian and New Zealand Communications Association — a panel discussion was held, comparing US and Australian defamation laws. The discussion, 'Suing to Muzzle the Press: How Libel Laws Limit Press Freedom in Australia and the United States and What Can Be Done About It', featured experts from both countries. The US contingent consisted of Professor John Soloski from the University of Iowa (whose Iowa Libel Research project has been at the forefront of the movement to reform the US libel law) and Professor Kyu Youm from the Arizona State University. In the Australian corner were Adrian Deamer (former editor of The Australian and recently retired as legal counsel for the John Fairfax Group) and Professor David Flint (Chairman of the Australian Press Council). The session was chaired by Professor Glasser from Stanford University.

Mr Deamer, a member of the Press Council's Freedom of the Press Committee, was looking at how defamation laws presently worked in Australia. He suggested that freedom of speech in Australia could not be taken for granted until it was enshrined in a bill of rights. "If you compare the Australian approach to things in America ... we do not have a philosophical regard for freedom of speech," he argued. He suggested that "... we should have the constitutional guarantee of free speech which would come from a bill of rights ... then free speech would be taken for granted." He noted that, while Australia was party to the International Covenant on Civil and Political Rights, there was nothing in the Commonwealth or the states that upheld the principle of free speech. Defamation laws, he asserted, were used by the courts and judges to "take away control of the media" and to "stop them running riot" in Australia.

Professor Flint, looking at the suggestions for reform in Australia, told the seminar that although Australia had encouraged protection of reputation in the past, this was changing. The impetus for this change, he argued, was the High Court — when dealing with the Federal Government's attempt to ban political advertising — finding of an implied guarantee of political communication in the Constitution. The Court was presently considering two other cases arising from attempts by politicians to sue and had been asked to extend the implied guarantee. "Those of us who believe that the present state of defamation law in Australia is a chill on investigative reporting can rely on a number of examples where this is very true," Professor Flint said. He argued that the only hope for change in the law rested with the judges, as political figures had been shown as unable to reform the law because the conflict of interest was too great.

Professor Soloski discussed the recent attempts at reform of the US libel law. He said that very high damages awards could largely disappear under the provisions of the new Uniform Corrections Act. In spite of the First Amendment guarantee of free speech, there was a "chilling effect" on the media because, even though there were few successful actions and many large awards were overturned on appeal, the defence cost the media huge sums. Many smaller newspapers determined to withhold information rather than face the possibility of libel action. "The average libel case takes four years and can be used to harass the media," Professor Soloski said. He estimated the cost of defending a libel action at $250,000 or more. He also argued that the Uniform Corrections Act could break this pattern. The new law would give both sides a strong incentive to avoid legal action seeking damages and instead focus on corrections and retractions. Under its provisions, a plaintiff could not sue for damages without first seeking a retraction. If the publisher retracted, the plaintiff's claim was limited to actual economic loss. Only where there was no retraction could there be a claim for punitive damages. Those provisions — involving voluntary, not court-ordered corrections — provided the media with a big incentive to correct reports that contained false or misleading information.