

# Fair and accurate reporting or trial by media?

Judging by the *Letters to the Editor* column of the *NT News*, some members of the public are concerned about the way the media has reported some recent controversial cases and proceedings.

One proceeding that has been the subject of some of these letters is the disciplinary proceedings before the Nurses' Professional Review Tribunal involving Ms Pam Fitton.

One letter writer implied that the media reporting of those proceedings left one with the impression that Ms Fitton was guilty of numerous serious charges of patient neglect and fraud, when, in fact, she was only found guilty of minor technical breaches. Whilst the truth lay somewhere in between, the letter did raise an important issue.

It was claimed that a false impression was created because when the matter first came to light, the media widely reported that there were allegations of patient neglect against Ms Fitton. These charges were constantly repeated leading up to the hearing of the matter, notwithstanding that the Nurses Board, the body responsible for the preliminary investigation and formulation of charges, did not consider that the allegations of neglect and fraud were sufficiently grounded to warrant referral to the Tribunal.

When Ms Fitton was ultimately found guilty of certain breaches in relation to the implementation of protocols for the administration and storage of dangerous goods, the media did not make it sufficiently clear that the more sensational allegations had either not been referred to the Tribunal, or had been dismissed.

Thus, a member of the public with no direct knowledge of the proceedings could be left with the false impression that Ms Fitton was in fact guilty of patient neglect and fraud.

In the Northern Territory, a fair and accurate report of public court proceedings is privileged by statute and by the common law (see section 5 of the *Defamation Act*). The statutory privilege is limited to court proceedings and certain other public meetings and proceedings (see section 6), however the common law privilege

extends to the proceedings of other bodies such as statutory tribunals (see *Perera v Peiris* [1949] AC1 at 21). To attract this privilege, the report must be a substantially accurate expression of what took place in that part of the proceedings of which it purports to be a report (see *Waterhouse v 2GB Pty Ltd* (1985) 1 NSWLR 58 at 62).

Of course, in lengthy proceedings involving numerous charges and allegations it is quite possible to produce a series of fair and accurate reports of particular parts of the proceedings without accurately expressing the overall effect of the proceedings and their ultimate outcome.

This arises because a reporter is not required to fairly and accurately report everything that occurs in the proceedings. The same kind of privilege applies to reports of the proceedings of Parliament. Lord Denning said about that privilege:

*In these days the debates in Parliament take so long that no newspaper could possibly report the debates in full, nor give the names of all the speakers, nor even summarise the main speeches. When a debate covers a particular subject matter, there are often some aspects which are of greater public interest than others. If the reporter is to give any impression at all of the*



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*proceedings, he must be allowed to be selective and to cover those matters only which appear to be of particular public interest. Even then, he need not report it verbatim word for word or letter by letter. It is sufficient if it is a fair presentation of what took place so as to convey to the reader the impression which the debate itself would have made a hearer of it." (See *Cook v Alexander* (1974) 1 QB 279 at 288).*

These comments apply equally to the reporting of court proceedings. Indeed, Muirhead J made similar comments about the reporting of court proceedings in a Northern Territory case of *Whear v News Services* (1981) 8 NTR 13 at 18 to 19.

Thus a reporter is generally permitted to focus on particular parts of a proceeding and still attract the privilege.

So, malice aside, it is possible to have a series of privileged fair and accurate reports which focuses exclusively on the sensational aspects of a proceeding, or even the reporter's particular slant on them.

In my view this possibility can have the tendency to encourage trial by the media.

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The risk of this happening is heightened by, among other things, the competition among modern media outlets, the media's penchant for sensationalism and the desire of individual reporters to promote a career boosting story..

Trial by the media would not be so bad if it were fair and just. However, the common experience is that the media is rarely fair to those whom it puts "on trial". Reputations are ruined, careers destroyed and many people are emotionally scarred by the process. Of course, these things can also occur with a trial at law. The difference is that a court of law is required to dispense justice according to identified legal principles and there are various ethical and other rules constraining what counsel and others can say about a case both in court and to the media.

Furthermore, the media "trial" more often than not comes up with a very different result from the real trial conducted by the court. This can cause damage to the standing and integrity of the court system because many members of the public conclude, based upon the false impression of the case portrayed by the media, that the court, and not the media, got it wrong.

So the question is: should a fair and accurate report of court or other similar proceedings require some contextual relevance to the whole proceedings before it attracts this privilege?①

## **Slicing up the pie** **- the Federal Budget's legal spending**

The Commonwealth Government has allocated \$33.8m within the Attorney-General's portfolio to support access to legal advice and information, including information about options outside the court system.

### **Resolving disputes outside the court system**

\$27.2m over four years to support primary dispute resolution services in helping families sort out conflict themselves wherever possible, rather than going to court.

This figure includes:

\$22.8m for community-based primary dispute resolution services

\$4m for Legal Aid Commission family law conferencing

\$400,000 for staffing costs associated with implementing these measures

### **Supporting community legal services in regional Australia**

\$5.3m over four years for community legal services in regional and rural Australia, including five new community legal services established under the 1999-2000 budget in Broken Hill, Gippsland, Mount Gambier, Riverland and Kalgoorlie, with outreach services from Darwin.

### **Australian Law Online**

\$1.3m for 2002-03 to support access to the free Family Law Hotline and the Family Law Online website which are designed to help people identify the best way to solve their family law problems and get in touch with legal professionals who can help them.

### **Centenary of the High Court**

The Federal government has allocated \$164,000 in 2002-03, and a further \$706,000 in 2003-04 for the High Court to celebrate the centenary of its first sitting in Melbourne's Banco Court on 6 October 1903. Events are likely to include a ceremonial sitting of the Court in Melbourne and an international legal conference in Canberra.①

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