



DEFAMATION (Cont'd from PAGE 14)

system acknowledged that public debate in the U.S. is much more scrupulous of personal reputation, and careful with the facts, than it is in more anxious jurisdictions like the U.K. and Australia.

Why, in the country of Patrick White and Thomas Keneally and David Williamson and Stephen Sewell do we put up with the State looking over our writers' shoulders?

Why does the recall and pulping of Ross Fitzgerald's "History of Queensland from 1915 to the Present" because of a complaint by the Chief Justice, Sir William Campbell, not provoke protests from academic believers in free scholarship?

Why do those great believers in individual creativity, the city architects, passively accept what Kevin Rice, president of the NSW chapter of the Royal Australian Institute of Architects, calls a debate on architectural standards 'stifled' by the laws of libel?

Why does one of the country's finest playwrights, Alex Buzo, have to shell out to David Hill, head of the State Rail Authority, because Hill chose to identify himself as one of the less attractive characters in "Mackassar Reef"?

The assumptions running through our system of State regulated speech were well illustrated when the National Times published the story that Robert Askin when he was Premier of New South Wales had received \$100,000 a year in payments from organised crime figures.

There was a storm of abuse of the National Times, the reporter, David Hickie, and the then editor, David Marr. It was 'despicable', said the then leader of the NSW Liberal Party, Bruce McDonald. It was in 'appalling bad taste' said the National Party's expert in family morality, Ian Sinclair. Neville Wran said it was 'tasteless in the extreme.' Askin's widow, Molly, wept on ABC radio as she asked why Marr and Hickie 'had to be such utter curs to wait until he died.'

The grieving widow did not have the consolation of the huge damages which no doubt would have been hers if the story had been published when Askin was alive. But she did have some consolation. When Askin died he left an estate of \$1.8 million. When she died, Molly left \$3.4 million. From a Premier's Salary.

The question which no politician asked while heaping abuse on the National Times was the one James Fairfax, chairman of the Fairfax Board, asked when he read the story: 'Why was this not published when Askin was Premier?'

I think the answer to this and the other fundamental questions about our libel system is another question: why do we not trust ourselves?

**Robert Pullan**

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In its directions, the Tribunal also commented on the question of relevance. It decided not to require production of a number of documents which the parties had requested because they were not sufficiently relevant.

The ABT noted that the enquiry was not a judicial enquiry but an administrative one. It differed from a Court dealing with a dispute in that:-

- (a) a Court had the benefit of issues being confined by pleadings, within a framework of established and well defined categories of forms of action, as well as a large volume of case law precedent;
- (b) the legal rules of evidence have the effect of excluding from the proceedings of Courts a large amount of material which would otherwise arguably be relevant. Pursuant to s25(2) of the Act the Tribunal is not bound by the rules of evidence;
- (c) the restraints of time and money which exert a natural break on prolixity in most proceedings of courts do not necessarily operate in proceedings before the ABT. In this regard the ABT noted that television markets of a size comparable to Perth were sometimes valued in the commercial world at over \$50 million. With such economic interests involved, it was only natural that some delay might be preferred.

Accordingly, the issues which had some relevance to the enquiry were very broad. The ABT considered that it was required by the Act to make practical judgments about the likelihood, as a matter of practical reality, of its being helped to make a decision about the licence by evidence which as to profitability logical relevance was not sufficient. Accordingly, detailed internal financial information about advertising revenue would be required. For the same reasons a meticulous comparison with other metropolitan markets such as Brisbane and Adelaide was not relevant.

The enquiry is still proceeding.

Robyn Durie