

Relationship between Ethics and Law – some similarities

- Freedom of expression as a right
 - With that right comes a responsibility not to cause harm
 - Not all unethical practices are illegal, but some are ...

COMMS 201 – MEDIA LAW



• Areas that are important to journalism

- Defamation
- Privacy
- Dealing with the police
- Contempt of Court – including Reporting of Court Proceedings & Name Suppression



COMMS 201 – MEDIA LAW



DEFAMATION

- Comes under civil not criminal law
- Protects a person's reputation against attack
- "A defamatory statement is one that is untrue and lowers a person in the estimation of 'ordinary members' of society.
- The notion of freedom of speech vs. the right of an individual to their reputation unimpaired by false statement.

DEFAMATION DEFINED

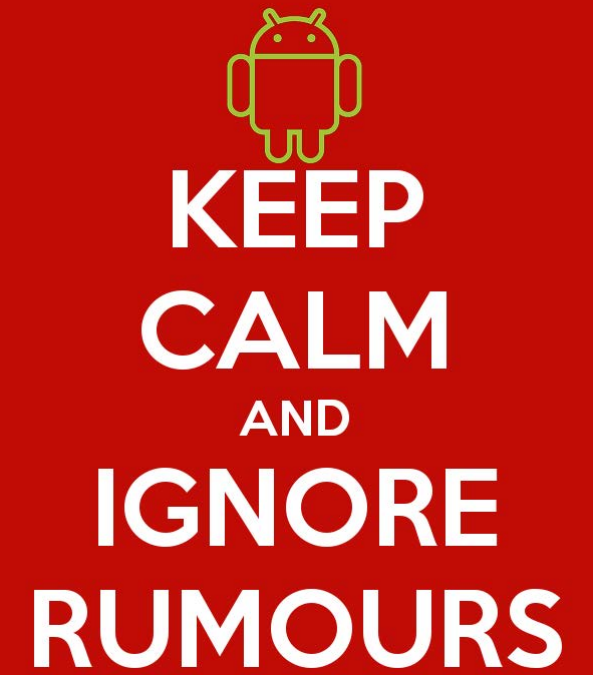
- That the words are defamatory
- The statement must identify that person in some way
- The statement must be published but only be to one additional person (can thus be emails).
- A corporation can sue but must show that it has suffered financially or may do so.

MIHAKA VS. WELLINGTON PUBLISHING CO.

- An article about M said: “he [the plaintiff] spent most of the next 15 years in jail”.
- Fact — M had many convictions but his imprisonment totalled less than 12 months.
- M sued — what do you think happened?

DEFAMATION

- Unintentional defamation still counts
- Double-check you are correct
- Placement of images and accuracy must be checked too.
- Repeating a rumour or another report can still leave you liable.



- Cover: Anita: the truth about those rumours
- Contents page: Tell me it isn't true Anita.
- Finally article — quotes Anita saying she had never even met Karen Hadlee.
- Inference and (reader) conclusion
- Case Study 2: *NZ Magazines Ltd v Hadlee*

DEFAMATION — PROBLEMS WITH MEANING



DEFAMATION - REMEDIES

- Damages - \$5K-\$50K for ordinary folk, \$50K-\$500K for celebrities and millions for corporations.
- Apologies
- Injunctions (rare)
- Declarations, corrections, retractions or rights of reply
- “Settled out of court”

DEFAMATION - DEFENCES

- Statutory qualified privilege – parliamentary and court-reporting, reports based on statements by police
- Honest opinion – v. important defence
- But which is comment, which is fact? “*This parliamentarian is biased and bigoted.*”
- “*This parliamentarian who voted against homosexual law reform is biased and bigoted.*”
- Truth – in the balance of probabilities

PRIVACY

- Hard to define
- Generally, means the right to be left alone
- Different kinds of privacy – spatial (physical) or informational (private information about you).

PRIVACY PROTECTED BY ...

- Broadcasting Act 1989 and the Privacy Standard of the Broadcasting Standards Authority
- Privacy Act 1993 and the Health Information Code
- Patients' Code of Rights issued under the Health & Disability Commissioner Act 1994
- Privacy tort that has a close relationship with other causes of action - breach of confidence, intentional infliction of emotional distress and defamation.

THE PRIVACY ACT AND JOURNALISM

- Privacy pertains to how you obtain and disseminate information
- NZ has privacy legislation setting guidelines for those that collect and use personal information.
- The Privacy Commissioner, a high ranking civil servant, can assess complaints (currently John Edwards)
- When information is withheld because of the 'privacy act' – you should assess as someone might be blocking you.



Bringing an action might occur when:

- Facts about someone are revealed where there would be an expectation of privacy
- Publicity of these facts would be considered highly offensive, or could cause humiliation and distress
- Primary remedy is damages, but injunction is possible
- There is a public interest defense

PRIVACY LAW —
A) 'CIVIL ACTION IN PRIVACY'



- Intentional and unauthorized intrusion
- An area of seclusion – bathroom, bedroom etc.
- Infringement of reasonable expectation of privacy
- One that is highly offensive to normal person

PRIVACY LAW— B) BREACH OF SECLUSION

- BSA deals with complaints if a broadcaster has breached privacy
- Deal with same territory as A and B above
- In addition, can address broadcasts that encourage harassment
- NZMC covers similar territory - also requires care in identifying relatives of those convicted of crimes, and attention to those suffering trauma and grief.

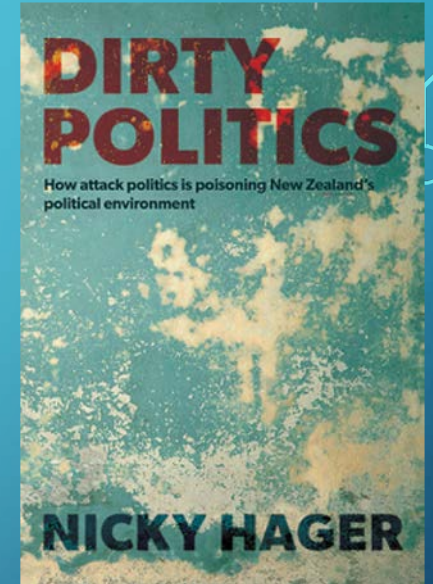
PRIVACY – BSA & NZ MEDIA COUNCIL

- Not a legal wrong to badger or question a person persistently
- Loitering or following is illegal if your intent is to intimidate
- Intentionally intercepting private communication is illegal (phone bugging, recording with smart phone)
- Participant recording is legal, media can record if the journalist is party to the communication – and provided it does not breach other privacy provisions.

HARASSMENT AND SURVEILLANCE

JOURNALISM AND THE POLICE

- Don't get in way of emergency vehicles – if police say go away and you don't, you might have obstruction charges filed.
- Police can search all premises for firearms, drugs, espionage, but for other purposes, must have a warrant.
- They may use production and examination orders which forces media to make information available.
- If this happens, you have the right to read the warrant and to protect your sources before the search (Hager vs. Attorney-General 2015). There are quite strict guidelines the police must follow.



COURT REPORTING

- Open justice is a fundamental principle – courts open to public and media
- Have to apply and be recognized, subject to Ethics, BSA or NZMC (bloggers?)
- What can be published determined by the nature of the offence and the trial court (Youth Court)
- Restrictions may apply to protect justice & the integrity of the trial process & and a defendant's right to a fair trial
- Material may be suppressed by a judge – name suppression. Controversial.
- If you break any of the rules you may face 'contempt of court' charges
- Problem with 'new media' – Google and the Grace Millane case