

MEDIA LAW

A QUICK REFERENCE GUIDE FOR MAGAZINE PUBLISHERS ASSOCIATION

Tuesday, 13 July 2010

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THE NEED AND PURPOSE

As a journalist you need to know the information in this Guide in order to perform your functions to high professional standards.

The main purposes of this Guide are:

- to help you by giving key information;
- to identify trigger points that should result in risks being handled in a professional way – in other words, **maximum story, maximum photograph, maximum risk;** and
- to avoid the stress, costs and penalties that arise from errors.

The Guide is only a primary source and does not give an exhaustive treatment of the law. Instead, it concentrates on identifying risks and trigger points so that appropriate action can be taken.

If you want more information, ask your editorial team or contact me.

HOW TO USE THIS GUIDE

Read the Guide carefully.

If you do not understand any aspect, ask the editorial team or contact me.

You should use the Guide as your first reference point on the topics covered.

The Guide flags matters where there are risks and guides you towards:

- taking extra care;
- flagging your copy; or
- referring the problem story to your editorial team.
- The Guide flags the legal issues that should be referred to your editorial team.
- Your referral should be the trigger for the editorial team to consider the position.
- The editor may seek detailed advice from a lawyer experienced in media law matters.

Correct use of this Guide will:

- Help you to write with more confidence and to a high professional standard.
- Minimise risks.

DEFAMATION

A statement is defamatory when it tends to lower a person in the estimation of right thinking members of society generally.

A statement may be in the form of words, pictures, visual images, gestures or other means of signifying meaning.

To be actionable as defamatory, a statement must be published of and concerning an identifiable person.

Who May Sue and Be Sued?

Proceedings in defamation are regulated by the Defamation Act 1992.

The only person who can bring a claim in defamation is the person actually and personally defamed.

The definition of a person includes a body corporate or company. In the case of a company, in order to be successful it must be proved that the publication of the matter complained of has caused or is likely to cause pecuniary loss to that company.

A person must bring an action within two years from the date on which the cause of action accrued which will generally be the date of publication.

The Defences

That the defendant did not publish any of the matter complained of.

The matter complained of did not refer to the plaintiff.

The matter complained of did not bear any meaning defamatory of the plaintiff.

The matter complained of was true in substance and in fact.

The matter complained of was published on an occasion of absolute or qualified privilege.

The categories of qualified privilege are both statutory (see the First Schedule, Defamation Act 1992) and Judge made e.g. *Lange v. Atkinson*. The Defamation Act 1992 gives qualified privilege to the publication of:

- the proceedings of Parliament and its select committees;
- Court proceedings;
- overseas parliaments and Courts;
- local bodies (unless the media are excluded);
- certain enquiries (like Royal Commissions) and disciplinary proceedings;

- Press Council decisions;
- public meetings;
- certain company and corporate meetings and reports;
- certain press conferences by the Government, Local Authorities and some others;
- a matter issued for the information of the public by the Government, a department, local government or an officer thereof.

The matter complained of being an expression of opinion was the honest opinion of the defendant.

The matter complained of was published innocently by the defendant acting solely as a processor and distributor or as an employer or agent of such a person.

The defendant has published a correction as recommended by the Court.

Republication

It is no defence to a claim in defamation that the matter has been published previously. Every publication constitutes a new defamation.

Ø If in doubt about an article seek advice or have the article vetted.

EDITING COPY

- Ø **You must be careful in editing material received from the NZPA.**

You must ensure that you do not change the sense of an article so that it may be read in a way that was not intended.

Be very careful about changing speech from direct to indirect speech or paraphrasing (see honest opinion defence).

Ensure that comments are attributed to the correct person.

Be very careful not to delete facts which are central to a story and give the article balance.

Headlines

- Ø **Be very careful about the headlines placed on copy that is published. Do not use a headline that cannot be backed up by the body of the story. If uncertain, ensure that the headline is vetted along with the story.**

A publisher still may be liable if the headline is defamatory even if the body of the article is not.

Balance

It is important to ensure that articles published are balanced in a sense that both sides to a debate are set out.

If making allegations about a person you should, in most circumstances, put those allegations to them and allow them time to reply before publishing the same.

POLICE STATEMENTS

Newspapers are often asked by the Police to publish photographs of people that the Police are searching for.

- Ø **It is no defence to publish something provided by a Police officer where there is an obvious risk that the information provided would, if published, prevent an accused from receiving a fair trial.**

The Courts have found, however, that one exceptional situation exists, namely, when the Police request the media to publish a name suppressed by the Court to aid recapture of an absconder.

- Ø **Be careful, however, to ensure that there is a real need to publish the photographs or details, and further, be careful to ensure that the copy that accompanies the photograph is not likely in itself to prejudice the right to a fair trial (see contempt).**
- Ø **What about other statements made by the Police? Don't publish Police statements verbatim without considering the contents of those statements. If**

a statement issued by the Police contains information that may prejudice a fair trial (such as a statement which includes reference to the previous convictions of an accused), then the newspaper publishing that statement will be in contempt of Court.

Reports or summaries of Police statements generally attract qualified privilege in terms of the Defamation Act 1992.

For a report to be privileged it is necessary to be able to prove that the statement was a statement issued by the Police (and was sufficiently official in nature), was issued for the information of the public and was on a matter of public interest in the place that it was published. Always be certain that the Police statements relied upon are official statements from an appropriately ranked Police officer.

It will always be a matter of fact and degree whether or not the defence will apply. Accordingly, when in doubt, please seek the advice of the Editor or seek legal advice.

LETTERS TO THE EDITOR

In publishing letters to the editor, care must be taken to ensure that the content is not defamatory as publishers will be liable.

The Rules should be set out.

Ø Particular care must be taken in relation to the contents of emails which tend to be less formal.

If it is necessary to respond to a letter or email sent directly to the plaintiff do not enter debate with the sender and be careful with your wording.

PHOTOGRAPHS

Copyright

A photograph is an “artistic work” as defined by the Copyright Act, and the copyright belongs to either the photographer or the person who paid the photographer to take the photo.

In Court

Only with the permission of a Judge in accordance with 2003 Guidelines.

You should obtain a copy of the Guidelines from the High Court.

Contempt of Court

Discussed later.

Defamation

A photograph, just like a cartoon or the written word, can be defamatory.

Privacy

In New Zealand it has been held that a tort of privacy exists although the nature and extent of the tort is still to be determined.

Photograph Endorsing Products

If a photograph endorsing products includes a public figure, e.g. Jonah Lomu, it should be authorised by that public figure.

Stock Photos for Unrelated Story

Do not use stock photos to illustrate a story when the contents of the story may be defamatory of the person in the photograph or embarrass them in some way. For example when doing a story about child abuse do not use a photograph of identifiable children or adults.

Juxtaposition

- Ø **The placement of a headline for another article and a photograph alongside relating to another article can be defamatory. Look at the page as a whole.**

CHILDREN AND YOUNG PERSONS

General

There are a number of Acts which restrict the ability of the media to report matters relating to children and young persons.

There may also be a Court order prohibiting publication.

The reasons for the restriction is to avoid publicity that may adversely affect the child or young person.

- Ø **Where a child or young person is involved in any capacity you should take care to check that there is no restriction.**
- Ø **Remember there can be a restriction in relation to a children or young person who is:**
 - a victim of an offence;
 - accused of an offence;
 - a witness in criminal proceedings
 - involved in custody or other civil matters.

- Ø **Be careful about the age of the child or young person and the requirements of the Acts.**

The Children and Young Persons and Their Families Act defines:

- A child as under the age of 14 years; and
- A young person as over the age of 14 years but under 17 years.

Court Order Prohibiting Publication

The inherent power of the Court is very wide and may be used when prohibition is necessary in the interests of the administration of justice. It is often used when a children or young person is involved. The prohibition may just be of the name or particulars likely to lead to identification, but it can extend to any evidence or the whole or part of the proceedings.

Family Court Conference

The media have no right to attend a family group conference.

There is a prohibition against publishing any report of the proceedings of a family group conference.

Youth Court

Any accredited news media reporter is entitled to be present during a Youth Court hearing (subject to the usual powers of the Judge to clear the Court). The attendance of the news media is an important constitutional right to ensure that justice is not only done but is seen to be done.

However, there is a prohibition on the publication of a report of proceedings of the Youth Court except with the leave of the Court which heard the proceedings.

If you want to write about administration of the Youth Court or a particular case or cases (whether or not you were present), consult your supervisor or editor. He or she will probably seek legal advice and the leave of the Youth Court may be sought.

District Court, High Court and Court of Appeal

Be careful in any appeal about using the name or particulars of a child or young person.

The statutory prohibitions normally continue to apply to an appeal.

Likewise, an order in the court appealed from is likely to continue in force even though the case has gone on appeal to a higher Court.

- Ø **Scope of Prohibition**

The prohibition in relation to a child or young person normally applies to the **name, address, or other particulars likely to lead to the identification** and in relation to

Court proceedings (e.g. the Youth Court), to the whole or any part of the proceedings (unless there is an order allowing publication).

Information from Independent Sources

If you have information from a source independent of the Court that is the same or similar to that which is prohibition from publication, it may be possible to publish the independent information without infringing the prohibition. It is important to note however that there is divergent case law on this issue. The newspaper will probably have to prove that the information was obtained independently of the Court. Discuss the position with your supervisor or editor.

Confidential or Private Information

You may obtain information relating to a child or young person that is confidential or private, e.g. medical records. The child or young person has the same rights as other persons to confidentiality and privacy and may have the right to obtain an injunction to restrain publication or to sue for damages.

If you have any information you think may be confidential or private, ask your supervisor or editor.

STATUTORY PROHIBITIONS ON PUBLICATION

Examples of statutory prohibitions relevant to newspapers include:

Act	Subject Matters	Exception
Adoption Act 1955	Report of proceeding	Court order
Child Support Act 1991	Report of proceedings for application or appeal	Court order
Children & Young Persons and their Families Act 1989	Family Group Conference Report of proceedings – this includes the Youth Courts	No exception Court order NOT the name of the youth
Criminal Justice Act 1985		
Section 139(1) (the victim sub-section)	The name of the person UPON OR WITH whom the offence has been or alleged to have been committed (THE VICTIM) or particulars likely to lead to the identification of the victim.	The victim being over 16 and a Court order. (Court must make the order if the person is over 16 and applies and understands the effect of the order.) NOTE: If the person is 16 or under there can be NO publication.
Section 139(2) (the perpetrator subsection)	The name of the person accused or convicted of incest (s.130 Crimes Act) or sexual intercourse with girl under care or protection.	NO exception.
Section 139A (Child witness in criminal case)	Name or particulars likely to lead to identification of any child witness under the age of 17.	Where the witness is also accused.
Domestic Violence Act 1995	Report of proceedings	Court order
Guardianship Act 1968	Report of proceedings	Court order
Insolvency Act 1967	Report of Examination	Consent of Court
Citizenship Act 1977	Report of proceedings	Prohibited if Court orders
Evidence Act 2006		Prohibited questions
Family Proceedings Act 1980	Report of proceedings	Court order. In relation to status of marriage (unless prohibited) the names of the parties, the Judge and the

		order made may be published.
Property (Relationships) Act 1976	Report of proceedings (except criminal)	Court order

HUMAN RIGHTS ACT 1993

The Human Rights Act makes it unlawful to discriminate on the grounds of sex, race, ethnicity or age.

The Act provides that it is unlawful to publish threatening, abusive or insulting matters which are likely to incite hostility against or bring into contempt a group of persons in New Zealand.

Newspaper, magazines, periodicals, radio or television will not breach this provision if the report accurately conveys the intention of the person who previously published or distributed the matter of broadcast or used the words.

PRIVACY ACT 1993

The Privacy Act 1993 applies to agencies as defined in s.2 of that Act.

“News Medium” in carrying out news activities falls outside the Privacy Act.

News medium means any agency whose business or part of whose business consists of news activity.

News activity means the gathering of news or preparation or compiling of articles or programmes concerning the news etc.

CONTEMPT OF COURT

General

Contempt of Court (contempt) is anything that tends to interfere with the administration of justice.

Often contempt involves the boundary line between the right of the public to freedom to information (ie freedom of the press) and the right of an individual to a fair trial.

Civil and Criminal

The part of the manual applies to both civil and criminal proceedings.

The Courtroom

In relation to the administration of justice in the courtroom, the following can be contempt:

- an organised demonstration;
- making threats – including threats to a witness or juror;
- bribing a witness or juror;
- intemperate language; or

- taking photographs or making a sketch (without permission of the Judge).

The System and/or Judge

- Ø **Allegations against the Court system or a Judge suggesting improper practice or motives can constitute contempt. For example, if it is claimed that a Judge is biased.**

If you want to make such an allegation you will need to have clear evidence of impropriety. You should refer the matter to your editor or supervisor at an early stage.

The Jury

- Ø **A jury and its deliberations are entitled to a degree of confidentiality.**

Identifying a juror or soliciting a juror's account of what happened in the jury room, or of the juror's own views can be contempt.

Before you identify or approach a juror, refer to your editor or supervisor.

The Witnesses

- Ø **A publication criticising (or enhancing) a witness, particularly if the trial is pending, can be contempt.**

Before you write about or approach a witness, refer to your editor or supervisor.

Right to a Fair Trial

- Ø **Publication that may affect the right of an individual to a fair trial is the main area of contempt that affects the media.**

The period for this type of contempt is from the time of arrest (or when it is imminent) to the expiration of any appeal or time for appeal.

Where the Police give information or supply a photograph to assist their enquiries, prior to an arrest, the information or photograph may normally be published because the contempt period has not started. **Always** check with your editor or supervisor prior to publication.

- Ø **The publication of any material (for or against the accused) that may interfere with a fair trial during the period can be contempt. The most significant and common contempts are:**

- **The publication of the prior convictions** of the accused or the fact that he or she has **prior record**. (This is said to prejudice the jury against the accused).
- **Photographs** of the accused. (This can influence the jury or a witness who may have to make an identification of the accused). Where the identity of the

accused is not in issue, a photograph may be published but this **must** have the prior express approval of the editor.

- **The publication of admissions or confessions by the accused.** In many cases, especially prior to videotaped interviews by the Police, the accused would challenge the validity in law of an admission or confession. The publication of an admission or confession, that could be challenged, may prejudice the trial of the accused.

If prior convictions, photographs, admissions, or confessions are referred to in the Court hearing, they may be reported as part of a fair and accurate report of the proceedings.

Contested applications for bail are normally dealt with in chambers so as to avoid publicity about prior convictions. Even if the Police provide information that the accused committed crime whilst on bail, publication during the contempt period can be contempt.

Reasonable pre-trial publicity is permissible but, if it is so extensive or one-sided as to prejudice the trial, it can be contempt. Be careful about publishing the pleadings of one party only. Be aware too that the defence of qualified privilege in defamation does not apply to pleadings until the case is set down.

Contempt of Parliament

- Ø **Allegations against Parliament, the Speaker, or members, suggesting improper practice or motives can constitute a contempt of Parliament. For example, if it were claimed that the Speaker was biased.**

If you want to make such an allegation you will need to have clear evidence of impropriety. You should refer the matter to your editor or supervisor at an early stage.

Unless the select committee allows publication, there can be a contempt if, between the time a submission is delivered to Parliament or a select committee and the time the committee reports to the House, material in the submission is published or commented on. The basic theory is that the committee should be able to consider the submissions without comment in the media.

However, committees now normally hear submissions in public and the confidential to Parliament – for example, contents of the budget prior to that document's presentation in the House.

PRESS COUNCIL CODE OF ETHICS

See www.presscouncil.org.nz

Accuracy

Publications (newspapers and magazines) should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission.

Corrections

Where it is established that there has been published information that is materially incorrect then the publication should promptly correct the error giving the correction fair prominence. In appropriate circumstances the correction may be accompanied by an apology and a right of reply by an affected person or persons.

Privacy

Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest. Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matters reported.

Confidentiality

Editors have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable.

Children and Young People

Editors should have particular care and consideration for reporting on and about children and young people.

Comment and Fact

Publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment.

Advocacy

A publication is entitled to adopt a forthright stance and advocate a position on any time issue.

Discrimination

Publications should not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, race, colour or physical or mental disability unless the description is in the public interest.

Subterfuge

Editors should generally not sanction misrepresentation, deceit or subterfuge to obtain information for publication unless there is a clear case of public interest and the information cannot be obtained in any other way.

Headlines and Captions

Headlines, sub-headings and captions should accurately and fairly convey the substance of the report they are designed to cover.

Photographs

Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the manipulation.

Letters

Selection and treatment of letters for publication are the prerogative of editors who are guided by fairness, balance and public interest in the correspondents' views.

Council Adjudications

Editors are obliged to publish the substance of Council adjudications that uphold a complaint.

<p>The Power of Magazines</p> <p>NZ Magazine Publishing Association</p> <p>Date: July 12th 2010</p> <p>Brief Author: MPA AdPromo Subcommittee</p>	<p>Objective: Introduce an advertising campaign into the NZ marketplace to support the premise that New Zealand's magazine publishing industry is alive and well in today's changing media environment, and will continue to be a vital part of the media mix for advertisers.</p> <p>The Power of Magazines campaign seeks to reshape the broader conversation about magazines, challenge misperceptions about the medium's relevancy and longevity, reinforcing the important role that magazines play in our readers lives. This needs to be communicated in a positive tone, not defensive.</p> <p>The perceptions predominantly focus 'print is dying' as the digital landscape rapidly evolves. It is important to note the magazine publishing environment is more diverse than ever, reaching consumers across multiple touch points (e-newsletters, social media, events, online etc) and it is the brand/masthead that holds the equity that engages audiences across multiple platforms.</p> <p>The campaign will also become a tool to support publishers' ad sales teams, ultimately achieving collective growth in ad spend share for the magazine category.</p>	<p>First review: Campaign to be broken up into two stages:</p> <ol style="list-style-type: none"> 1. First creative and copy (2 executions) and media plan to present to the MPA Board on August 23rd 2. Second stage to implement the remaining 4 creative executions, micro site supported with pre & post research. <p>Launch: Suggest launching campaign in September to capture the Oct/Nov issues on sale however up for discussion on launching this campaign Jan 2011</p>
<p>Brand DNA</p>	<p>Engaging, Effective, Everywhere</p>	
<p>Why is this brief here?</p>	<p>The face of traditional media is changing, so is the communication platform and consumers can be reached within information and advertising across multiple touch points.</p> <p>There appears to be a perception by some advertisers and agencies that magazines are dying, losing valuable audiences and circulation and readership are falling.</p> <p>We need to communicate the benefits of magazines to the advertising audience, that magazines are an enduring and engaging media force in a format that showcases rich content and has a bond with consumers that is uniquely powerful.</p> <p>Other media have been actively promoting their category to agencies and advertisers. In NZ, magazines have been noted for not having taken a united message to the industry, only individual publisher pitches.</p>	

What do we want people to DO as a result of this communication?	We want advertisers and industry influencers (they are the primary target, rather than 'the public' or 'all readers') to have positive perceptions of the health, relevance and vitality of magazines in NZ.
How do we expect communications to work towards achieving this?	<p>Focus the creative and copy on 6 themes – engaging, effective, everywhere, interactive, immersive and invigorated.</p> <p>Give people interesting, easy to understand and easy to re-quote positive facts about magazines and message uptake delivered by strong research and measurement tools.</p> <p>It is important that the copy and language not to be overtly trade as the creative will be carried in selected Consumer titles.</p>
Who are we trying to influence?	Advertisers, advertising agencies, media planners, marketing/brand managers, key influencers and industry opinion makers.
Key message	Magazines are alive and well: they are everywhere, and are an effective way for advertisers to reach and engage their target audience.
Support	Print (magazine), micro site, research – pre & post
Tone of voice	Conversational, clever, confident, thought provoking and humorous without sounding arrogant or <u>defensive</u> .
Inspiration	USA campaign, "the Power of Print"
Mandatories	NZ Tagline logo as developed by Fairfax for MPA ADPromo subcommittee - "The Power of Magazines".
Specific requirements	<p>MPA Board would like a cost first, for Y & R to develop the first two executions (creative & copy) – tailored for NZ market.</p> <p>DPS and Full Page colour print ads - 6 executions (Files must be re-sizeable for various magazine dimensions).</p> <p>The media plan needs to be targeted to reach our desired audience (not mass market NZ) via print (magazine). While mass market weeklies may not be as effective for this target, it is felt that Metro or Listener, Idealog, Unlimited (and others) deliver this key audience. A media plan featuring a combination of trade publications and consumer titles is required, supported with a micro site.</p>
Budget	<p>Budget based on initial estimate to execute 6 creative's for print only, research, micro site, account service and media planning:</p> <p>To bill in two parts:</p> <p>Stage 1</p> <p>Stage 2</p>
Approved	<p>John McClintock & Kath Hurley (MPA Management Office)</p> <p>Pip Costello & Andrew Miller (MPA ADPromo subcommittee)</p> <p>Final board approval will be required on creative executions</p>

