

often merely little more than a promise of self-censorship by media trying to avoid legal restraints.

M\*A\*S involve the public as well as media organisations and journalists. And they mean ‘doing, not just talking’. The focus shifts to accomplishing the necessary good things, not just abstaining from certain bad things.

By producing excellent media products and by providing the public with ‘unimpeachable journalistic services’, the Fourth Estate will survive as a critical institution of information in a democracy.

No doubt some journalists may cynically regard Bertrand’s scenario as potentially producing a ‘chilling’ effect on media freedom. But others will agree with him that not only are M\*A\*S the best, but the only reliable protection of press freedom. And this is a timely wake-up call about public faith in the media.

#### References

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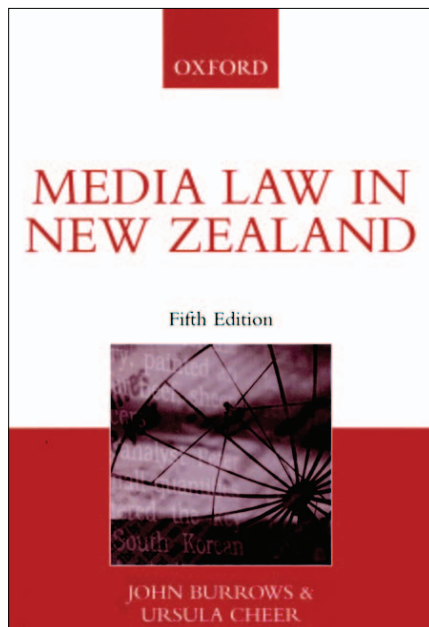
## Unchallenged bible of NZ media law

*Media Law in New Zealand* (5th ed.), by John Burrows and Ursula Cheer. South Melbourne: Oxford University Press, 2005, 742 pp. ISBN 0 19 558499 6.

*The Journalist’s Guide to Media Law: Dealing with Legal and Ethical Issues* (2d ed.), by Mark Pearson, Crows Nest: Allen & Unwin., 2004, 380pp. ISBN 1 86 508914 1.

IT IS hard to imagine any New Zealand law or academic office with a news media focus—or press organisation, for that matter—without a copy of John Burrows QC, and Ursula Cheer’s *Media Law* on its shelves.

The unchallenged bible of local media law, first appearing in 1974, has been re-emerging, chrysalis-like, every few years, each time with carefully considered amendments and expansions. This year’s version—the fifth edition—is impressive, nearly 200 pages fatter than its previous incarnation.



The additions, clearly signalled, are to do with developments in privacy protection laws, changes to defamation law and court reporting rules, and a brave attempt to apply New Zealand media law to the new technologies, notably the internet.

Crucially, Burrows and Cheers have provided a greatly expanded analysis of the developing area of privacy law, an area watched with trepidation by the news media after several high profile court cases, both in New Zealand and overseas. Most importantly, it provides an explanation of *Campbell v MGN*, the precedent-setting case of Naomi Campbell in which a series of *Daily*

*Mirror* articles and photographs revealed the fashion model to be receiving treatment for drug addiction. A majority in the House of Lords held there to have been an unjustifiable infringement of Campbell's privacy rights, a decision irking to those journalists who believe celebrity availability cannot be compartmentalised.

Of course *Hosking v Runting*, the lively local case arising from freelancer photographs of broadcaster Mike Hosking's twin daughters which, significantly, recognised a tort of invasion of privacy in New Zealand (though rejecting Hosking's specific claim), is also given a thorough hearing. Burrows and Cheers extract from a majority decision, two fundamental requirements for a claim: the existence of facts in respect of which there is a 'reasonable expectation' of privacy; and publicity given to those facts that would be considered 'highly offensive to an objective reasonable person'. Among a list of conditions to be taken into account, they further point out that the concern must be with publicity—not facts—and the publicity must be highly offensive to the reasonable person. There is also a welcome public interest defence, described as 'a legitimate public concern in the information'.

Burrows and Cheer also give a clear summary of law since the

Hosking and Campbell decisions. Their descriptions of the test of a breach, depending on a judgment of what a 'reasonable person' in the position of the plaintiff would find disclosure of to be objectionable—and a subsequent need to balance a right of confidence with a news media right to impart information—will not remove industry unease. But at least the definitive analysis is in print for measured consideration.

Given its scope and scholarship, it is hard to criticise this book. The section of Family Court reporting is slightly out of date: Burrows and Cheer prefigure recent changes with a hurried entry, 'Change is imminent ... the thrust of these reforms will be to open the Family Court to greater scrutiny'. Which is exactly what has happened, with reporters now free to report custody hearings, but not identify participants.

The book could have been made more accessible—at least for journalists—with more sub-headings, especially in long case descriptions where, with glassy eyes, majority and minority opinions inexorably blur. (This is a book valued just as much by an industry readership as a legal or academic one.) And though reference to the internet has been filtered into relevant sections, it would have been helpful to have a separate analysis of the web's susceptibility to the long

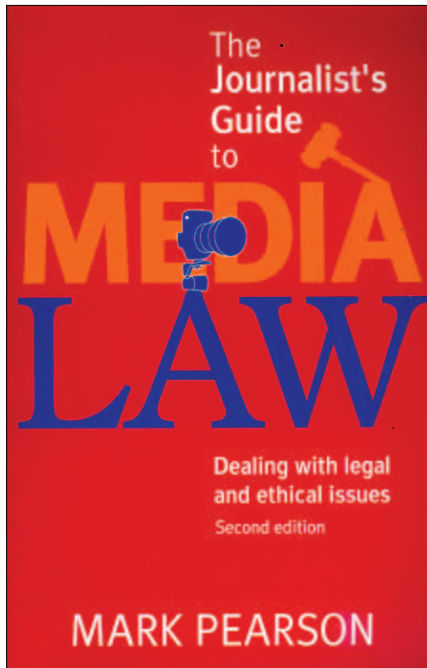
arm of the law, especially under defamation, an area much talked about but little tested. Under copyright, a new section on the digital technology has been included.

But to dwell too much on these matters would be to carp. As always, Burrows and Cheer have produced a superb summary of the law, from defamation to copyright, breach of confidence to contempt of court—and everything in between. The summaries of the law of defamation and of defences to defamation action, could hardly be bettered.

REGARDLESS how excellent Bond University Queensland law professor Mark Pearson's account of the law across the Tasman, as a text for New Zealand readers, *The Journalist's Guide to Media Law: Dealing with Legal and Ethical Issues* necessarily bows to Burrows and Cheer.

Obviously there are differences between New Zealand and Australian media law. As Pearson shows, for example, the *Lange v Atkinson* decision in which our Court of Appeal extended the qualified privilege defamation defence to allow criticism of the performance of politicians, makes comment freer on this side of the Tasman.

Pearson could have been clearer in his explanation of the Lange case: he doesn't make the crucial point that



the freedom only applies to criticism of a politician's performance (see Burrows and Cheers, p. 97). He goes on to make the interesting observation that, should future cases follow the principle expressed, 'the weight attributed to freedom of political communication in New Zealand defamation law would be distinctly greater than in the corresponding laws of either Australia, Canada or the United Kingdom'. That statement too, warrants expansion for New Zealand readers.

But this book does have value for New Zealand journalists. Unlike *Media Law in New Zealand*, it is not a

legal text, but a wide-ranging guide to journalists in their relationships with—in the widest sense—the law. To this end it covers the full gamut of law-related subjects, from big-picture issues such as freedom of the press to the emotional issue of protecting sources, recently a bit of a problem for a couple of Melbourne journalists refusing to reveal the origin of a Federal Government leak.

Perhaps more importantly, this new edition outdoes its first-edition predecessor in the key area of Australian journalism ethics—no that's not an oxymoron. Of course, a New Zealand reader must be careful to consult New Zealand law not Australian, New Zealand codes of ethics not Australian, etc, and judge the numerous case studies in their national context. But *Journalist's Guide* is an immensely accessible book, with plenty of good advice for young journalists whichever side of the ditch. On the subject of sources, for instance, it advises: 'Don't keep notes of off-the-record conversations'—a sober reminder to a reviewer who was once caught napping, that tapes and notes can be seized during a police search.

The same goes for the section on court reporting. Once you get past the different court structures in Australia, the actual writing tips are spot on—starting with the necessity of getting the age, occupation and full

address of the accused—though Pearson fails to explain the absolute need for full name at first mention.

Pearson also deserves praise for his clear chapter on the freedom of the press, a fundamental concept that is too easily glossed over in benevolent democracies. It is a shame that his international comparisons do not involve New Zealand in any detail. Press freedoms have from time to time been threatened here—witness the 2001 Labour Government attempt to bring in criminal libel provisions during an election build-up period.

But all in all, *Journalist's Guide* provides invaluable insights, whichever side of the Tasman one brandishes one's shorthand notebook. Someone clever might consider producing a look-alike, equally accessible version tailored specifically for a New Zealand audience.

#### **References**

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