

CONFERENCE 5RB

5RB Media and Entertainment Law
Conference 2010

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OVERVIEW

5RB Media and Entertainment Law Conference 2010

CONFERENCE5RB will take place at a time when Parliamentary and world media attention has focused with renewed vigour on the balance to be struck between freedom of expression and the right to protect reputation and privacy in English law.

The conference will aim to distil the experiences of 5RB barristers, keynote speakers and guest contributors from across the media sector on a range of recent developments, provide a platform for informed expert discussion and provide enhanced understanding on a number of challenging areas through interactive smaller workshops and seminars.

Keynote speaker

John Whittingdale MP was the former Chair of the Culture, Media and Sport Select Committee. The Committee monitors the policy, administration and expenditure of the Department for Culture, Media and Sport and its associated public bodies, including the BBC, on behalf of the House of Commons and the electorate. The committee published their report, *Press Standards, Privacy and Libel* on 24 February 2010.

Guest participants

Sir Charles Gray was called to the Bar in 1966. In 1984, he was made QC, specializing in media and IP cases, acting for most national newspapers and TV channels and for many well-known national figures. Sir Charles was appointed High Court Judge in 1998 and in 2007 retired from the High Court Bench but continues to sit on the High Court Bench and as an arbitrator.

HH Judge Richard Parkes QC was appointed to the circuit bench in 2009. Richard spent his entire Bar career at 5RB and was instructed in many significant cases. He continues to be involved in media and entertainment law as joint general editor of *Gatley on Libel & Slander*; contributing editor of Civil Procedure (*The White Book*); and co-edits the *Entertainment and Media Law Reports*.

Professor Alastair Mullis currently holds a chair in law (and is Dean) at the Norwich Law School, University of East Anglia. He is also a visiting research professor at the Faculte des Sciences Juridiques, Tunis and holds visiting chairs at the Universities of Muenster, Germany and Thammasat, Thailand. His main research and teaching interests lie in the areas of the law of defamation, international commercial law and torts. He has published widely in these areas and is currently the general editor of the new edition of *Carter-Ruck on Libel and Privacy*.

Dr Andrew Scott is a senior lecturer in the Department of Law at the London School of Economics and Political Science. Andrew's research interests lie in the fields of media law and regulation, constitutional law and competition law. Current research projects include the role of competition law in the media sector, privacy and defamation, broadcasting regulation and freedom of political expression, and the regulation of journalistic newsgathering practices.

Dr Laurence Godfrey, a physicist and former academic researcher and lecturer, has for the past 10 years acted as an expert witness and consultant / technical adviser in internet-related litigation. He was also the successful claimant in

21 September 2010

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a number of internet libel actions, including the landmark defamation case *Godfrey v Demon Internet Limited*.

Oliver Codrington is the Head of Compliance and Licensing at the British Horseracing Authority. A former pupil of 5RB, he previously worked for the Royal College of Veterinary Surgeons.

Ian Birdsey is Head of UK & International TMT Claims at Hiscox. He specialises in media and technology claims on behalf of clients involved in the publishing, broadcasting, advertising, marketing, PR and technology sectors. During his time at Hiscox he has been involved in a number of leading media cases. Hiscox has a unique view of the media law landscape as the leading media insurer with involvement in a range of different media disputes.

Alastair Brett is Legal Manager to Times Newspapers Limited, the publisher of *The Times* and *The Sunday Times*. Alastair pioneered rights of audience for solicitors in the High Court action, *Leo Abse v Cyril Smith and Radio Trent* and recently chaired a working sub-committee for Lord Justice Rupert Jackson on a Civil Legal Aid Fund for libel actions. He is now secretary to Sir Charles Gray's Committee on an Early Resolution Procedure for libel actions.

Marcus Partington is Deputy Secretary / Group Legal Director of Trinity Mirror Plc. As current Chair of the Media Lawyers Association, he gave evidence to the Culture, Media and Sport Select Committee. He was a member of the Working Group on Libel reform set up by the Lord Chancellor and is currently on the Master of the Rolls Working Group on Super Injunctions.

Prash Naik is Controller of Legal and Compliance at Channel 4 Television. During his 16 years at Channel 4 Prash has played a key role in the broadcast of many ground-breaking and controversial programmes, including *Brass Eye*, *Ali G*, *Beneath the Veil*, *The Chosen* and *Inside Britain's Israel Lobby*. He was part of the legal team which won the libel action brought by Dr Andrew Wakefield and the Medical Protection Society against *Dispatches: MMR*.

Andrew Southam qualified as a solicitor at DLA Piper and specialised in intellectual property and general media issues. Andrew moved to BBH, a global creative advertising agency, in 2007 where he has primary legal responsibility for work produced by the Agency for clients including Unilever, Barclays Bank, Diageo and Audi.

PROGRAMME

8.15-9.00

Registration

9.00-9.05

Welcome and introduction

Desmond Browne QC and Adrienne Page QC

9.05-9.35

Keynote address (Provisional)

John Whittingdale MP

Former Chair of the Culture, Media and Sport Select Committee

9.35-10.20

Current Defamation issues

Adrienne Page QC and William Bennett

- Fair comment: *BCA v Singh* and *Joseph v Spiller*
- Reynolds: *Flood v Times Newspapers*
- Public authorities: *Clift v Slough Borough Council*
- Update on internet publications
- Reputation as an Article 8 right

10.20-10.50 Mid-morning **break**

10.50-11.35

Current Privacy issues

Desmond Browne QC and Mark Warby QC

- *Mosley* in the European Court of Human Rights: should there be a notice requirement?
- Injunctions: should *Bonnard v Perryman* apply in Article 8 cases?
- Superinjunctions: *John Terry* and the Master of the Rolls's Working Group Report
- Photographic surveillance: when is Article 8 engaged? *Wood v MPC*, and *Murray v Express Newspapers*

11.35-12.05

Morning Q&A

Moderated by Adrienne Page QC

Morning speakers will open the floor for an interactive session

12.10-1.10

Workshop session 1

Pre-chosen from the selection listed

1.10-2.40 Battlebridge Room **lunch**

2.40-3.40

Workshop session 2

Pre-chosen from the selection listed

3.40-4.10 Mid-afternoon **break**

4.10-5.10

Workshop session 3

Pre-chosen from the selection listed

5.15-5.55

Reform debate: Defamation Act 2011

Moderated by Desmond Browne QC. Panel members: Professor Alastair Mullis of the University of East Anglia, and Dr Andrew Scott of the London School of Economics v Alastair Brett, Times Newspapers and Marcus Partington, Mirror Group Newspapers and Ian Birdsey, Hiscox. The floor will be opened for an interactive session.

- Trial by jury
- Libel tourism
- Corporate claimants
- Electronic archives

5.55-6.00

Closing remarks

Desmond Browne QC

6.00 +

King's Gallery **Champagne reception**

Workshops

Please select your 1st, 2nd and 3rd options. We will do our best to match all of your choices. If this is not possible, we will contact you to re-arrange.

1 Justification: the nuts and bolts

Alex Marzec and Prash Naik of Channel 4

- A practical workshop based on a case study, looking at the challenges in pleading / proving, or resisting, a justification defence, and how to meet them.

2 Reynolds and the defence of public interest

Justin Rushbrooke and Richard Munden

- What amounts to a real public interest in communicating the information?
- How significant is verification of the information, and what is the standard of verification?
- The problem of undisclosed sources: how far can the defendant rely on them?
- *Flood v Times* and other recent cases
- What is reportage, and when is it a defence?
- Is there need for reform?

3 Children, family and media

Adam Wolanski and David Sherborne

- The April 2009 media access rules in perspective: has anything changed?
- The new reporting regime under the Children, Schools and Families Act 2010
- Media access to documents in child cases following *Ward v Ward*
- How private are divorce cases? What can be reported? Can parties prevent media access?
- What use can be made of improperly obtained documents in divorce cases following *White v Withers* and *Imerman v Imerman*?

4 What to do/what not to: a judicial perspective

Sir Charles Gray, HH Judge Richard Parkes QC

5 A practical guide to privacy injunctions

James Price QC, Godwin Busuttill and Victoria Shore

- The threshold test, the 'parallel analysis', and discretionary factors which may lead to refusal of an injunction
- Complying with s.12 Human Rights Act
- Complying with the CPR and Practice Directions, including when super-injunctions may properly be granted
- Avoiding the pitfalls shown up by the John Terry case
- The defamation rule, how it impacts on privacy injunctions, and when false private information can be injunctioned
- When should the media be notified of the hearing, and who should be notified
- Injunctions against persons unknown

6 Internet and new media issues

Jonathan Barnes, David Hirst and Dr Laurence Godfrey

- The "new" medium's accessibility and reach
- Principles for liability, identifying those responsible for "publication"
- Evidence of readership, chicken or egg?

7 Sport

Jacob Dean, Stephen Bate, Victoria Jolliffe and Oliver Codrington of the BHA

- Regulatory control in practice: licensing, discipline and media relations
- The "fit and proper" test: football and racing
- Appeal and judicial oversight: *BHA v McKeown*

8 The impact of Article 8 on defamation claims

Adam Speker and Christina Michalos

- After *Terry*: changes to libel to protect Article 8 rights, including:
- Qualified privilege for public authorities after *Wood v West Midlands Police* and *Clift v Slough BC*

9 New media opportunities & risks: an ad agency's practical perspective

Andrew Southam of BBH

- UGC
- Product placement
- Apps
- Social networks and Twitter

5RB members of chambers

Desmond Browne QC is joint head of chambers and was Bar Council Chairman for 2009. His well-known media cases include *Collins Stewart v Financial Times*, *McKenna v MGN*, *McKennitt v Ash*, *Douglas v Hello!*, *Naomi Campbell v MGN*, *Hamilton v Al Fayed*, *Berezovsky v Forbes*, *Spycatcher*, *Kiam v MGN* and *Loutchansky v Times Newspapers*. He was a member of the Working Group on Libel reform set up by the Lord Chancellor and currently is on the Master of the Rolls Working Group on Super Injunctions.

Adrienne Page QC is joint head of chambers. Recent cases include *British Chiropractic Association v Singh (CA)*, acting for Channel 4 and production company, Studio Lambert, in their defence of the libel action by Matt Fiddes over their documentary about the Jackson family, which is coming up for trial in June 2010, acting for the television channel Al Jazeera in a libel action brought by Palestinian politician Mohammed Dahlan which settled shortly before trial in January 2010.

Patrick Milmo QC was head of chambers for more than 15 years and has long experience in libel, confidentiality and privacy. He sits part-time as an employment judge and as chairman of the Disciplinary Committee of the Royal Pharmaceutical Society (RPS) is joint editor of *Gatley on Libel & Slander*.

Gordon Bishop has recently acted for Barry George in his successful libel actions against News Group and MGN and he is now representing him in his claim against the Government for compensation for miscarriage of justice. In addition to his media practice he acts as a mediator in a wide range of cases.

James Price QC specialises in all aspects of media law, defamation & privacy. Recent cases include *Reynolds v Times Newspapers*, *Jameel v Wall Street Journal Europe*, *Campbell v MGN (costs)*, *X&Y v Persons Unknown*, *Browne v Associated Newspapers*, *Mosley v News Group Newspapers*, *Radu v Houston*, *Napier v Pressdram* and *Flood v Times Newspapers*.

Mark Warby QC combines media practice with disciplinary and sports law. Recent media cases include *Mosley v News Group* and *Murray (Rowling) v Big Pictures*. His work for the horseracing regulator in gambling corruption cases includes successfully resisting a 2009 High Court challenge by banned jockey Dean McKeown. He sits as a sports arbitrator in Premier League and FA arbitrations.

Stephen Bate acted for Aston Barrett, former bassist of the Wailers, in his royalty battle with Island Records; and also for Universal Studios in their licensing dispute over *The Jerry Springer Show*. He is a Chartered Arbitrator and a member of the Licensing Committee of the British Horseracing Authority. He is also on CEDR's panel of mediators.

Andrew Monson specialises in defamation, privacy, IP and sports law. His defamation work includes acting for Kieren Fallon and Harry Kewell. Recent cases include *McKeown v British Horseracing Authority* and *Budu v BBC*.

Iain Christie specialises in the human rights aspects of media law. He is an accredited mediator, a member of the Attorney General's B Panel, and joint editor of *The Law of Privacy and the Media* (OUP). Iain is currently acting for the Government in the ECHR application brought by Max Mosley.

Alex Marzec recently acted for Tom Bower in his successful defence of a libel action brought by Richard Desmond. She appeared as junior counsel in the Court of Appeal for News Group Newspapers in its successful defence of the appeal brought by *Big Brother* contestant Lisa Jaynes and for *The Times* on its appeal in the case of *Curistan*.

Tony Smith is currently Pro-Vice Chancellor and Dean of Law at the University of Wellington. He is an acknowledged expert on contempt of court, being co-author of the leading textbook, *Arlidge, Eady & Smith on Contempt*.

David Sherborne is currently representing Max Mosley in his complaint to the European Court of Human Rights. He has been involved in a number of high-profile privacy injunctions and is also acting for Stelios in his libel action against Ryanair and Peter Andre in his case against Katie Price. His specialism in matrimonial cases has meant that he acted in the leading cases of *L v L*; *Marco-Pierre White v Withers* and *Imerman v Tchenguiz*.

Justin Rushbrooke's recent cases include acting for Dr Rachel Polonsky in her dispute with Orlando Figes over his 'anonymous' Amazon reviews, for Tesco against the *Guardian*, for Sheldon Adelson and Las Vegas Sands Corp against the *Mail*, for Collins Stewart against the *FT*, and for Mohammed Jameel against the *Wall Street Journal*.

Matthew Nicklin was Chambers and Partners Privacy & Defamation Junior of the Year in 2007 and 2009. He has a mixed practice of both claimant and defendant work and has represented most national newspapers and television companies. Recent cases include *Fiddes v Channel 4*, *Flood v Times*,

Warren v Random House and *Curistan v Times Newspapers*. He is a barrister member of the Bar Standards Board and was appointed a Recorder on the South Eastern Circuit in October 2009.

Jonathan Barnes acted for the defendant picture agency in *Murray v Big Pictures*, the JK Rowling pushchair privacy case, and for *The Times* in last year's groundbreaking case concerning blogger anonymity, *The Author of a Blog v Times Newspapers*. He also acted for Henrik Thomsen, the Danish medic and academic sued in libel and slander by GE Healthcare concerning his contribution to the debate over the safety of a medical scanning agent.

Godwin Busuttil represented J K Rowling's son, David, in his privacy claim against Big Pictures. He acted for the successful defendant in the case of *Lonzim plc v Sprague*. He is currently acting for Brad Pitt & Angelina Jolie in their false privacy claim against the *News of the World*. He is a contributing editor of *Gatley* and a co-editor of the *Entertainment & Media Law Reports*.

Adam Wolanski has over the last year acted for newspaper publishers in claims brought by Roman Abramovich, Craig Bellamy, Barry George, Brad Pitt and Angelina Jolie. He was junior counsel for Al Jazeera Television in a case brought by Palestinian politician Mohamed Dahlan and was *amicus curiae* in *Re Child X*, the leading case concerning the new rules on media access to family courts.

William Bennett has recently acted for: the police officer Gary Flood in his case against *The Times*; the Haringey social worker Sylvia Henry in her claims against Haringey Council, the *Evening Standard*, the *Daily Mirror* and the *Independent* concerning allegations about her involvement in the Baby P case; and the Tamil hunger striker Parameswaran Subramanyam against the *Daily Mail* and *The Sun*.

Christina Michalos is the author of *The Law of Photography and Digital Images*. She was junior counsel for the claimant in *Clift v Slough Borough Council* (defamation jury trial) and for the defendant in *HRH Prince of Wales v Associated Newspapers*. She is on the Treasury Counsel A Panel of barristers approved to act on behalf of the government. She also practices sports law.

Jacob Dean acted for Trafigura in its libel claim against the BBC. He has been advising and appearing for the British Horseracing Authority in a number of licensing and disciplinary matters. Other recent cases include *Martin v Channel Four*, *Levi v Bates* and *Dee v Telegraph*.

Anna Coppola's work this year includes acting for Russian billionaire Yelena Baturina in her libel action against Times Newspapers Limited for articles published in the *Sunday Times*. She is duty lawyer for ITN.

Adam Speker has been instructed for Associated Newspapers in claims brought by Shahrokh Mireskandari, Ali Dizaei, Gordon Taylor and others. His claimant clients have included Mohammed Asha who was awarded £115,000 in compensation from *The Sun*, Cristiano Ronaldo and President Jacob Zuma.

Richard Munden's recent defamation and privacy cases include *North London Central Mosque Trust v Policy Exchange*, *APJ v Facebook*, *Budu v BBC*, *Warren v Hide* and *Emlick v Gulf News*. He has also acted in a number of media and entertainment-related copyright and contractual disputes.

David Hirst is currently instructed in a major appeal concerning the irreconcilability of the law of privacy and self-help in divorce cases and defending a libel claim concerned with the IT forensics of a disputed email sending. In 2009 he acted in *Metropolitan International Schools Ltd v Google*, a case which developed the liability of search engines for reproducing defamatory content.

Victoria Shore is currently instructed by foreign media defendants in a number of connected libel actions and over the past year has successfully struck out defamation proceedings against a national newspaper. She regularly provides both pre-publication and litigation advice to broadsheet newspapers and commercial publishers. Her claimant practice includes her involvement in the successful privacy action brought by Max Mosley against the *News of the World*.

Victoria Jolliffe is currently instructed as junior counsel for the defendant in *Lait v Evening Standard Ltd*. She was sole counsel for the defendant in the abuse of process case *Williams v MGN*. She also acts for the British Horseracing Authority in disciplinary matters.

Yuli Takatsuki is currently instructed to act as Junior Counsel for Channel 4 and Studio Lambert in a libel action brought by Matthew Fiddes. She has also been instructed by *The Spectator* in two connected libel actions. She regularly provides pre-publication advice to *The Guardian*, *The Observer* and *The Sunday Times*. Before coming to Chambers, she spent a year working as an in-house lawyer at Ofcom.

BOOKING FORM

5RB Media and Entertainment Law Conference 2010

21 September 2010

Kings's Place, 90 York Way, London N1 9AG

For more information visit www.5RB.com/conference

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6.5 hours

Fee

£375 + VAT = **£440.63**

Documentation

All delegates will receive full conference documentation, complete with copies of all presentations and a delegate list on a USB flash drive.

In attempts to cut down on paper, printed documentation will be available for an additional £25 + VAT = £29.38 for delegate attendees.

If you cannot attend the conference or would like additional documentation, it may be purchased for £125 + VAT = £146.88. This will be forwarded after the conference. Please complete the form overleaf.

Booking enquiries

Completed booking forms should be sent by post/fax to our conference organisers Outsourced Events on:

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Cancellations and substitutions

All cancellations must be made in writing. Cancellations received on or before 31 August 2010 will be liable for an administration fee of £35+VAT. Cancellations made on or after 1 September 2010 will be liable for the full registration fee. Substitutions can be made at any time without additional charge.



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(Delegates receive one USB flashdrive included in the delegate fee)

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CONFERENCE5RB has been designed as a break-even, non-profit making venture

WORKSHOPS session request

There will be 3 workshop sessions on the day:

Workshop **1** will take place between 12.10 and 1.30

Workshop **2** will take place between 2.40 and 3.40

Workshop **3** will take place between 4.10 and 5.10

Please indicate the workshops you are interest in, in order of preference

___ **Justification: the nuts and bolts**

Alex Marzec and Prash Naik of Channel 4

___ **Masterclass on Reynolds**

Justin Rushbrooke and Richard Munden

___ **Children, family and media**

Adam Wolanski and David Sherborne

___ **What to do/what not to: a judicial perspective**

Sir Charles Gray and HH Judge Richard Parkes QC

___ **A practical guide to privacy injunctions**

James Price QC, Godwin Busuttill and Victoria Shore

___ **Internet and new media issues**

Jonathan Barnes, David Hirst and Dr Laurence Godfrey

___ **Sport**

Jacob Dean, Stephen Bate, Victoria Jolliffe and Oliver Codrington of the BHA

___ **Article 8 + defamation**

Adam Speker and Christina Michalos

___ **New media opportunities and risks: an ad agency's perspective**

Andrew Southam, BBH

Places in the workshops are limited and will be allocated on a first come, first served basis.

Please note that the subject and content of each Workshop is a work in progress. The Workshop agenda may change on the run-up to the event. We reserve the right to cancel a Workshop should not enough interest be shown in a particular subject.

What delegates said about the last Conference 5RB

Nigel Tait Carter-Ruck "Quite simply the most professional and informative conference in this area of the law. The speakers cogently explain recent developments in the law and provide an invaluable insight into the direction that media law and practice will be heading."

Jaron Lewis Reynolds Porter Chamberlain "This conference provides an opportunity to get an unparalleled insight as to where the law stands and where it is going. At the price, it's also excellent value for money."

Gideon Benaim Schillings "Surely the media law conference of the year!"

Chris Thirsk Channel 5 "A very useful update on recent developments in media law, delivered from the coal face."