

## **Speeches at the launch of the third edition of *The Law of Privacy and the Media*, Royal Courts of Justice, 25 February 2016**

### **MATTHEW NICKLIN QC, Joint Head of 5RB**

Having checked my diary, it makes me feel old to realise that our launch party for the first edition of *The Law of Privacy and the Media* was on 12 December 2002.

As Sir Michael Tugendhat, midwife to the birth of this book, has observed in the foreword, it was by no means a certainty that there was any law of privacy when the book was launched. Indeed, it came as something of a blow in 2003 when Lord Hoffmann declared that English law did not recognise a general right of privacy. One can imagine a few tense phone calls from OUP about that one. Nevertheless, proving the wisdom of Ray Kinsella who, in the “Field of Dreams”, was persuaded that if he built a baseball diamond, they would come, happily a fully functioning law of privacy has been built, and they did come. And we are into our third edition rather than the remainder bin.

I am pleased to stand here this evening to welcome you not only as joint head of 5RB, but also one of the authors of this work. My contribution is a humble single chapter. But it nevertheless entitles me to call myself an author, and indeed to take advantage of the OUP author’s discount.

My late grandmother was particularly impressed at my joining the ranks of authors. She never read the book, but I rather got the impression that she regarded practice as a barrister as rather menial. I’m not convinced she was wrong. But from 2002 she was relieved to be able to introduce me, with pride: “This is my grandson, he’s an author”. There was never any mention of my day job as a barrister.

The development of the law of privacy has been remarkable. In the 13 or so years since the House of Lords pronounced it as a non-starter, judicial industry of an unprecedented order has hammered out a refreshingly clear and serviceable tort, abandoning in the process some of the shackles imposed by the old equitable doctrine of breach of confidence.

It might be said that proper recognition of privacy rights in England & Wales was a long time coming. Unlike freedom of expression, which was a right so familiar to judges of whatever station that it was like a comfortable pair of slippers, the notion of a general privacy right appeared as a dangerous continental notion, to be treated with suspicion.

Today, the Courts are much better able to recognise and give effect to Article 8 rights. But arguably there is still work to be done. Although the tension between Article 10 and Article 8 has been the subject of intense judicial consideration, it bears comparison with the tension between Article 8 and Article 6, which has received very little indeed. Before the House of Lords held that there was no presumptive priority between Article 8 and Article 10, freedom of expression was sometimes regarded as a the “trump card that always wins”. The same might be said of open justice and its treatment as a trump card over privacy rights, particularly in the criminal courts. Perhaps a subject for a new chapter or even a new book.

There are many people to thank in relation to the publication of the Third Edition, and I am going to leave that duty to those who follow. On behalf of 5RB however, I must thank Karen Rock Monnick for the arrangements this evening and to our faithful and excellent brand guardians, Ian Chilvers and AtelierWorks.

And now it is my pleasure to welcome Prof. Tony Smith to say a few words on behalf of Joint Author Nicole Moreham who sadly can't be with us this evening.

### **Prof. Anthony Smith (on behalf of Nicole Moreham)**

I wholeheartedly endorse (but won't pre-empt) Mark's votes of thanks to everyone who has contributed to the book, particularly the chapter authors. I think this book is yet another example of what's to be gained by combining what we do in the universities with the expertise and skill that comes with legal practice.

Of course, from my point of view, Mark is the linchpin in that partnership. It is a privilege to have worked with him both on this book and the second edition. I learn a great deal from him not just about the practice of this area law but also about the art of writing and about negotiating one's way through a project of this nature. It think it's collaboration which is better than the sum of its parts - I want to thank Mark for his part in that.

The only downside of this working relationship is that, being on opposite sides of the planet, we can't easily get to each other's parties. It was with regret that I decided that I couldn't make it over for this one. But I will raise a drink at breakfast time tomorrow and leave you in Mark's capable hands.

### **SIR MARK WARBY**

This event has brought to mind births and marriages.

These of course are private life events which are made the subject of proud public announcements. But that is not why the subjects came to mind.

The topic of **birth** came to mind first – let me be frank – because I do believe that the experience of editing a book is as close as a man can get to the pain of childbirth. It may not get very close, but it feels that way.

Birth announcements, though, are something else. It is at this point that, as we know, a sense of pride may emerge. There is a tendency to point out the sweet little nose and the blue eyes – just like her mother. The parent has the slightly anxious desire for the child to make its way in the world, to make friends and to be liked. In an attempt to avoid seeming boastful the parent may engage in humblebrag.

Let me not disappoint. Let me instead **humbly** commend this third edition – and my second book child to you. It is not much but it does have certain virtues, I believe. It contains most of what was there before – tightened we hope, and certainly updated. It has changed in its structure and incorporated new material. We have a new chapter on intrusion. We have a chapter on harassment by publication. We have

an entire chapter on new media. This, I must say, is pretty good. All of this aims to reflect the changing legal landscape.

The **marriage** link is all about praise and thank yous.

I should start with the many contributors to this edition. Former colleagues at 5RB are the most numerous. Some have found it in themselves to contribute for a second or third time, which is in some ways a surprise but certainly a delight. I am particularly pleased that Matthew has volunteered to produce an entire new chapter for the next edition. It is also gratifying that we managed to draw in several who were not contributors to the previous edition – for the fairly straightforward reason that they were not members of chambers in that long ago era of 2010 – the time of the superinjunction, known to some as BINDO – “before interim non-disclosure orders”

Next most numerous amongst the contributors are our academics. Their contributions are especially valued, as they bring a perspective that practitioners tend to lack and – as I suspect they would say – some additional intellectual rigour.

Talking of which, thanks and praise are due in full measure to the indomitable Dr Nicole Moreham. Sadly she cannot be here today as she is, as she usually is, in Victoria NZ. So I can say this, behind her back, without embarrassing a very modest person. She is a truly remarkable scholar, whose commitment to the completion of this work and careful and thoughtful analysis fully justifies her top billing on the cover of this edition. My warmest personal thanks to her.

This brings me to two people who I am delighted to say are with us today: Sir Michael Tugendhat and Iain Christie – the two who got the project started. Iain’s enthusiasm and broad knowledge of human rights law, from his time at the Foreign Office were invaluable. As for Michael, I can do no better than quote from the Acknowledgments in this edition, which is dedicated to him and his family.

we believe that much remains of the stamp of his scholarship, erudition, and humanity, which made the first edition such a success.

Perhaps that is more humblebrag. This next bit is said with the greatest sincerity. Though he is not a contributor as a writer, he has contributed through his judgments and – as we write:

... The modern law of privacy and the media owes so much to his conscientious and scrupulous policing of the sometimes foggy boundaries between privacy and freedom of expression.

The quote is incomplete – to read it in full you have to buy the book.

Finally – my thanks to OUP for supporting the creation and production of this book, to OUP and 5RB for putting on this excellent evening, and to all of you for coming and – I hope – cooing over the young one as she sits over there on the table waiting for someone to pay her some attention....