

The Trafigura Super-Injunction

Natalie Buck discusses the Trafigura 'super-injunction' episode in the UK, the role Twitter played in undoing the injunction and whether such injunctions are ever appropriate.

The recent and rather spectacular failure of the 'super-injunction' obtained by oil trader Trafigura in the UK is a compelling reminder about the importance of open justice, parliamentary processes and the mobilising power of the internet and social networking sites like Twitter.

The injunction was intended to prevent a document called the Minton Report from becoming public which showed that Trafigura knew that the waste it dumped in the Ivory Coast's biggest city, Abidjan, was potentially toxic and could have a serious impact on the health of people exposed to it. The term 'super-injunction' was coined because the order also prohibited any disclosure of the injunction's existence. The company also obtained anonymity orders so that a person searching in the law lists for the case would never know that Trafigura, a multi-national corporation, was involved.

Carter-Ruck applied for the now infamous super-injunction to prevent publication of anything about the Minton Report, including its contents and the fact of its existence. The order also prohibited any publication of the existence of the injunction itself.

Trafigura and its lawyers, Carter-Ruck, tried to stop the *Guardian* newspaper, which had a copy of the report, from publishing anything about the Minton Report or the existence of the injunction. Subsequently a member of parliament tabled a question about the injunction in parliament and Trafigura tried to prevent the debate from going ahead on grounds that the matter was sub judice.

The company also tried to stop the *Guardian* from reporting on the proceedings of parliament during which the question on the injunction was to be asked. A 'tweet' by the *Guardian's* editor mobilised the Twittersphere and the relevant details were quickly uncovered and made public. Thus in the midst of a collision of the courts, parliament and media, with a little help from the Twitterati, Trafigura's super-injunction quickly became defunct.

Background

Trafigura has operations in 42 countries and had a turnover of US\$73 billion in 2008. It is one of the world's largest commodity trading enterprises in the energy sector.¹

In July 2006 the *Probo Koala*, a vessel chartered by Trafigura, attempted to discharge the contents of its slop tanks in the port of Amsterdam.² The vessel was informed that due to the waste's high level of toxicity and its high content of mercaptans, which was causing a foul stench, it would have to be processed at Rotterdam a cost of €900 per m³.³ Trafigura rejected this quote.⁴ On 19 August 2006 in the Ivory Coast, the *Probo Koala* engaged a local contractor to off-load its toxic waste and dump it in various sites in the district of Abidjan for a cost of between \$30-\$35 per m³.⁵ The sites included drains, village tips and waterways. According to a UN Report, "none of the dumping sites had proper facilities for the treatment of chemical waste [and] suffocating odours originated from the dumping sites."⁶ On 20 August 2006 and the weeks afterwards, tens of thousands of people in Abidjan reported symptoms of nausea, headaches, vomiting, abdominal pains, skin lesions and a range of respiratory, pulmonary and gastric problems.⁷ Official estimates state that 15 people died, 69 were hospitalised and more than 108,000 medical consultations took place in relation to the incident.⁸ An assessment by the Ivorian Ministry of Health and Public Hygiene concluded that there were 63,296 probable and 34,408 confirmed cases of exposure to the waste from the *Probo Koala*.⁹

Trafigura told the UN Special Rapporteur investigating the issue that the characteristics of the waste from the *Probo Koala* could have resulted in a highly unpleasant smell, but could not have led to the widespread injuries, illnesses and deaths alleged.¹⁰ The company has issued a series of statements, stating that the waste had been routinely disposed of and was not harmful.¹¹

In February 2007 a class action was brought in the High Court of England and Wales against Trafigura on behalf of thousands of people in Abidjan who alleged they were injured after being exposed to the waste. The company paid £100m to the Ivorian government to remove the waste but denied any liability for the events.¹² This payment allegedly led to the release from an Ivorian prison of Trafigura's company president, Claude Dauphin, and the dropping of criminal charges in Ivory Coast.¹³ In October 2007 the head of the local Ivo-

1 United Nations Human Rights Council, *Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Okechukwu Ibeanu: addendum: Mission to Côte d'Ivoire (4 to 8 August 2008) and the Netherlands (26 to 28 November 2008), A/HRC/12/26 ADD.2, 3rd September 2009: <<http://www.unhcr.org/refworld/type,MISSION,UNHRC,CIV,,0.html>> (18 Nov 2009) at 7.

2 Ibid, at 8.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.

7 Ibid at 9.

8 Ibid.

9 Ibid.

10 Ibid at 10.

11 See eg, *Trafigura's Response to Professor Ibeanu's Report*, 16 September 2009: <http://www.trafigura.com/our_news/probo_koala_updates.aspx#Lr4tyNmXEwR5> (18 Nov 2009); Meirion Jones and Liz MacKean, 'Dirty tricks and toxic waste' *BBC*: live stream at <<http://news.bbc.co.uk/2/hi/programmes/newsnight/8048626.stm>> (18 November 2009).

12 '16 September 2008' *Trafigura*: <http://www.trafigura.com/our_news/probo_koala_updates.aspx#MRvVKzZTDVND> (18 Nov 2009); Liz MacKean, 'Trafigura "to pay out over waste"' *BBC*: <<http://news.bbc.co.uk/2/hi/programmes/newsnight/8259482.stm>> (18 Nov 2009).

13 See eg, 'Case profile: Trafigura lawsuits (re Côte d'Ivoire)' *Business and Human Rights Resource Centre*: <http://www.business-humanrights.org/Categories/Law-lawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TrafiguralawsuitsreCtedIvoire?&batch_start=11> (18 November 2009); Jones and MacKean, above n11.

rian contractor engaged by Trafigura was jailed in relation to the dumping of the waste.¹⁴

In May 2009 the BBC2 programme Newsnight obtained documents from the Amsterdam port authority detailing the composition of the waste dumped in Abidjan. The programme broadcast a segment on the dumping and published a story on its website, including an interview with a toxicologist from the Royal Society of Chemistry saying that the waste "would bring a major city to its knees."¹⁵ Trafigura announced shortly afterwards that it would sue Newsnight for libel.¹⁶ These proceedings are still underway.

In September 2009 the *Guardian*, BBC and media in the Netherlands and Norway published internal emails from staff at Trafigura revealing that they knew that the waste was highly toxic; its disposal was potentially hazardous; and that proper treatment of it would have been expensive.¹⁷ Around this time Trafigura agreed to a compensation payment of £1,000 each to 30,000 people allegedly made ill after exposure to the dumped waste.¹⁸

The Minton Report

In September 2009 *The Guardian* also obtained a copy of The Minton Report (the **report**). The report had been commissioned by Trafigura in 2006 to obtain a preliminary picture of the extent of the possible damage resulting from its dumping of waste in Abidjan.¹⁹

The threat of injunction or as happened here, super-injunction, poses a major challenge for journalists engaged in responsible journalism.

The report stated that based on the "limited" information provided, the dumped waste was potentially harmful and "capable of causing severe human health effects".²⁰ It said that the large scale reports of medical problems in Abidjan were consistent with the release of a cloud of hydrogen sulphide gas over the city as a result of the dumping of the untreated waste.²¹ It stated that possible consequences of exposure to the waste include "burns to the skin, eyes and lungs, vomiting, diarrhea [sic], loss of consciousness and death."²² The report recommended that the waste be treated by a special chemical process called "wet-air oxidation" in order to make it safe.²³ It also concluded that the dumping was in contravention of European Council Directive 1999/31/EC and "would be forbidden in a European member state".²⁴

The contents of the report were clearly highly sensitive and allegedly were not disclosed to Trafigura's opponents in the personal injury class action.²⁵ Trafigura continues to maintain that the Minton Report was both preliminary and inaccurate and that further tests of the vessels' contents revealed the waste to be harmless.²⁶ The *Guardian* asked the scientific consultant Minton, Treharne and Davies which authored the report about the truth of its contents.²⁷

The super-injunction

In response to The *Guardian's* questions, Carter-Ruck on behalf of Trafigura, applied for the now infamous super-injunction against the newspaper and 'persons unknown' to prevent publication of anything about the Minton Report, including its contents or the fact of its existence.²⁸

The order also prohibited any publication of the existence of the injunction itself. It states:

*The application hearing to which this Order relates was held in private and the publication of all information relating to these proceedings or of information describing them or the intended claim is expressly prohibited.*²⁹

Trafigura also applied to have its name anonymised and substituted with the letters 'RJW' and 'SJW'.³⁰ The proceedings would then be referred to as *RJW and SJW v The Guardian*. As well, the company sought orders that any person notified of the order who knowingly assisted or permitted a breach of the order would be in contempt of court.³¹

On 11 September 2009 Mr Justice Maddison heard the application in private and issued the injunction. The court file was sealed. A breach of the injunction would constitute contempt of court, punishable by imprisonment, fine or seizure of the company's assets.³² There is no specific defence to this kind of contempt. The injunction against publication was apparently argued on the grounds that the report was confidential and privileged because it had been commissioned for use in litigation.³³

The Parliamentary Debate

On 12 October 2009 Paul Farrelly, Labour MP for Newcastle-under-Lyme placed a question on the House of Commons' order paper (known here as a notice paper) asking what measures were being taken by ministers to protect whistleblowers and press freedom following the injunction obtained by Trafigura.³⁴ Order papers are published and freely available online. Two days later, Carter-Ruck wrote

14 'How the Trafigura story unfolded' *Guardian*: <<http://www.guardian.co.uk/world/2009/oct/13/how-trafigura-story-unfolded>> (18 November 2009).

15 Jones and MacKean, above n11.

16 'Trafigura sues BBC for libel' *Trafigura*: <http://www.trafigura.com/our_news/probo_koala_updates.aspx#GXyUO9JbF2DB> (18 Nov 2009)

17 'Trafigura knew of waste dangers' *BBC*: <<http://news.bbc.co.uk/2/hi/programmes/newsnight/8259765.stm>> (18 Nov 2009).

18 'Settlement vindicates Trafigura' *Trafigura*: <http://www.trafigura.com/our_news/probo_koala_updates.aspx#MRvVKzZTDVND> (18 Nov 2009); *Guardian*, above n14.

19 *Guardian*, above n14.

20 Minton, Treharne & Davies Ltd, 'RE: Caustic Tank Washings, Abidjan, Ivory Coast' (Minton Report) at 1, pdf at <<http://www.guardian.co.uk/world/2009/oct/16/carter-ruck-abandon-minton-injunction>> (19 Nov 2009).

21 *Ibid* at 5.

22 *Ibid*.

23 *Ibid* at 7, para 8.3.

24 *Ibid* at 6, para 8.2.

25 David Leigh, 'Revealed: Trafigura-commissioned report into dumped toxic waste' *Guardian*: <<http://www.guardian.co.uk/world/2009/oct/17/trafigura-minton-report-revealed>> (18 Nov 2009).

26 'Probo Koala Updates' *Trafigura*: <http://www.trafigura.com/our_news/probo_koala_updates.aspx#MRvVKzZTDVND> (18 November 2009).

27 Above n25.

28 *RJW and SJW v Guardian News and Media Limited and the person or persons unknown*, Claim No. HQ09 (11th September 2009); see pdf at Alan Rusbridger, 'Trafigura: the anatomy of a super-injunction' *Guardian*: <<http://www.guardian.co.uk/media/2009/oct/20/trafigura-anatomy-super-injunction>> (18 Nov 2009).

29 *Ibid*, at 3, para 6.

30 *Ibid*, at 3, para 5(b).

31 *Ibid*, at 5, para 18.

32 *Ibid*, at 1.

33 David Leigh 'Minton Report: Carter-Ruck give up bid to keep Trafigura study secret' *Guardian*: <<http://www.guardian.co.uk/world/2009/oct/16/carter-ruck-abandon-minton-injunction>> (18 Nov 2009).

34 Paul Farrelly, United Kingdom, House of Commons, *Parliamentary Business*, 13 Oct 2009, at Column 163: <<http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/cm091013/debtext/91013-0004.htm>> (18 Nov 2009).

to the Speaker of the Commons, John Bercow, and circulated the letter to every MP and peer, arguing that parliament should not proceed with a debate on the issue because the matter was sub judice.³⁵ The speaker has discretion to allow debate on matters which are sub judice within specified limits. Bercow, allowed Farrelly's question and a debate on "the effects of English libel law on the reporting of parliamentary proceedings" to proceed on 21 October 2009.³⁶

Reporting on Parliamentary Proceedings

The *Guardian* made several requests to Carter-Ruck to have the terms of the injunction varied to allow the paper to report on the question and parliamentary debate. The paper was told by Carter-Ruck the paper would be in contempt of court if it reported the proceedings.³⁷ The *Guardian* reported on its front page that it had been "prevented from identifying the MP who has asked the question, what the question is, which minister might answer it, or where the question is to be found".³⁸ In turn parliamentarians accused Carter-Ruck of being in contempt of parliament and threatened to report the firm to the Law Society for obtaining an injunction which had the effect of banning reporting on parliamentary proceedings.³⁹

As he left his office at 9.05pm on 12 October 2009, *Guardian* Editor Alan Rusbridger posted this on Twitter:

*Now Guardian prevented from reporting parliament for unreportable reasons. Did John Wilkes live in vain?*⁴⁰

Wilkes is often cited as the father of political journalism. A parliamentarian in the 18th century, he was instrumental in securing the right to report parliamentary proceedings and was jailed in the process of his campaign.

42 minutes later, Twitter users had revealed that the source of the question was Paul Farrelly MP and that it concerned a toxic waste dumping incident by Trafigura in West Africa.⁴¹ Common #hashtags were created by users, making access to the information faster and easier. The next morning *Private Eye* published Farrelly's questions on its political page and by noon the three most popular search terms on Twitter were 'outrageous gagging order trafigura dumping scandal', 'ruck' and 'guardian'.⁴² Shortly after this and an hour before *The Guardian* was due in court, Carter-Ruck agreed to alter the terms of the injunction to allow the *Guardian* to report Farrelly's question.⁴³ Rusbridger responded that Trafigura's attempt at obscurity had morphed into mass notoriety: "Twitter's detractors are used to sneering that nothing of value can be said in 140 characters. My 104 characters did just fine."⁴⁴ Comedian Stephen Fry, who has around 830,000 followers on Twitter tweeted: "Can it be true? Carter-Ruck caves in! Hurrah! Trafigura will deny it had anything to do with Twitter, but we know, don't we?"⁴⁵

Discussion

There are constant pressures on courts not to give effect to open justice, and this case provides another illustration. Trafigura is a powerful interest which sought to prevent an issue of public inter-

est from being discussed and presented a clear challenge to open justice and the integrity of parliamentary processes. Open justice is an integral principal of the English (and Australian) legal system. It is a means of ensuring public confidence in the justice process: justice is not only done, but also seen to be done. Whilst injunctions have a proper place in preserving people's rights, a super injunction, where the public does not even know of the existence of the underlying injunction, is deeply concerning – especially where the justification for blanket secrecy is highly questionable.

The reasons for which the super injunction were issued are unlikely to ever be entirely clear, because the proceedings were conducted in private and not recorded. There appears to be a pivotal argument about the confidentiality and privileged nature of the Minton Report on the basis that it was prepared in relation to legal proceedings. The finding by the judge that the report was in fact confidential is highly problematic given that it had been published on the Wikileaks website and media outlets in Norway and the Netherlands had copies of it. Assuming for a moment that it was confidential, the judge should have given serious consideration to the public interest in the public having access to information about the conduct and knowledge of a large multi-national in the developing world.

A newspaper should not be threatened with contempt of court for reporting parliament.

Carter-Ruck's argument to stop parliamentary debate was that the injunction related to a matter currently before the court. There are ongoing libel proceedings between the BBC and Trafigura in relation to the Newsnight programme. The Minton Report could be highly damaging in these proceedings in establishing that what was broadcast about the knowledge of Trafigura staff, regarding the harmful nature of the Abidjan-dumped waste, is true. However, given that the report predates the matter complained of in the UK libel proceedings by three years, it was arguably not prepared in relation to those proceedings and should never have been granted on that basis.

As to the personal injury proceedings, Trafigura had reached a settlement and made compensation payments to the victims exposed to the waste in Abidjan, so arguably that matter was no longer sub judice. Trafigura is being prosecuted in the Netherlands in relation to representations it made to Amsterdam port authorities about the contents of the *Probo Koala's* slop tanks. It may be that the report relates to these proceedings but this arguably would not support a total secrecy order in the UK, which is a different jurisdiction.

In a statement from Trafigura published on the BBC website, the oil trader complained to the broadcaster that in any story about the UN Special Rapporteur's Report into the company's activities "it is incumbent upon you to ensure that Trafigura's response to the report is reflected in full..."⁴⁶

35 Letter, Adam Tudor of Carter-Ruck to David Bercow, Speaker of the House of Commons, 'Trafigura Ltd and Trafigura Beheer BV', 14 October 2009, at 2: <<http://www.paulfarrelly.com/news/westminster-news/news.aspx?p=102173>> (18 Nov 2009).

36 Robert Booth, 'MPs' "super-injunction" debate to go ahead' *Guardian*: <<http://www.guardian.co.uk/politics/2009/oct/18/mps-superinjunction-debate-to-go-ahead>> (18 Nov 2009); David Leigh, 'Carter-Ruck in new move to stop debate in Parliament' *Guardian*: <<http://www.guardian.co.uk/uk/2009/oct/15/carter-ruck-trafigura-parliament-injunction>> (18 Nov 2009).

37 Letter, Isobel Hudson of Carter-Ruck to Isobel Griffiths of the *Guardian* '(1) RJW (2) SJW – and – (1) The Guardian (2) Persons Unknown', 12 Oct 2009: pdf at <<http://www.paulfarrelly.com/news/westminster-news/news.aspx?p=102173>> (18 Nov 2009).

38 David Leigh, 'Guardian gagged from reporting parliament' *Guardian*: <<http://www.guardian.co.uk/media/2009/oct/12/guardian-gagged-from-reporting-parliament>> (18 Nov 2009).

39 See eg, above n34.

40 Alan Rusbridger, 'The Trafigura fiasco tears up the textbook' *Guardian*: <<http://www.guardian.co.uk/commentisfree/libertycentral/2009/oct/14/trafigura-fiasco-tears-up-textbook>> (18 Nov 2009).

41 Robert Booth, 'Trafigura: a few Tweets and freedom of speech is restored' *Guardian*: <<http://www.guardian.co.uk/media/2009/oct/13/trafigura-tweets-freedom-of-speech>> (18 Nov 2009).

42 Ibid.

43 Ibid.

44 Above, n40.

45 Stephen Fry, *Twitter*: <<http://twitter.com/stephenfry/status/4833549338>> (18 Nov 2009).

46 'Trafigura statement' *BBC*: <<http://news.bbc.co.uk/2/hi/programmes/newsnight/8260004.stm>> (18 Nov 2009).

The irony of Trafigura now insisting on having its response voiced will not be lost on *Guardian* journalists. When the *Guardian* contacted the authors of the Minton Report to give them an opportunity to respond, they were slapped with a super-injunction prohibiting any mention of the report or the order itself. The threat of injunction or as happened here, super-injunction, poses a major challenge for journalists engaged in responsible journalism.

Could it happen here?

Privacy law in the UK appears to have led to an increasing number of injunctions with broad terms of reference being granted on privacy grounds to protect individuals' privacy. The *Guardian* reports that it has been served with at least 12 notices of injunctions that could not be reported so far this year, which it reports is double the number issued to it in 2006.⁴⁷ The courts in the UK are supposed to weigh up the public interests in privacy and free speech. It is not clear that an effective balance is being struck.

Is a similar scenario playing out in Australia, or could it? Obviously one of the problems of super-injunctions is that they are secret, so an exercise designed to quantify their existence and assess their impact in Australia faces some significant stumbling blocks. We just don't know.

It is possible to argue, however, that the fact that the Australian legal system takes a different view of corporations' reputations and refuses to afford niceties such as standing for defamation means that courts may look significantly less favourably on a similar application for a Trafigura-style super-injunction. It seems difficult to imagine an instance where an application to anonymise the name of a multi-national corporation would be viewed by courts in this country as in the public interest. Here, party names are often anonymised in family court or immigration proceedings and some criminal proceedings. This is because on a particular set of facts the defendant's right to a fair trial outweighs the importance of open justice, or there is a public interest in the suppression of a party's identity – and the party in question is generally not a multi-national corporation.

The mere fact that something is embarrassing to an individual party will generally not be grounds for the court to be closed or a party's name to be anonymised or suppressed. There are of course questionable exceptions to this, such as the suppression of the names of three footballers in 2006 who tested positive in drug tests under the Australian Football League's 'three strikes policy'.⁴⁸ It is important that there is vigilance amongst appeal judges towards any readiness by themselves or trial judges to unnecessarily suppress or anonymise party names or close courtrooms to the public and the media. That a multi-national company should have taken steps to prevent the media from reporting on proceedings of parliament is a marked assault on freedom of the press and the integrity and openness of parliamentary processes established over hundreds of years. A newspaper should not be threatened with contempt of court for reporting parliament.

Fairfax was recently subject to an injunction in relation to a story it sought to publish in the Sydney Morning Herald on the Advanced Medical Institute's (AMI) impotence treatments. AMI was granted an interlocutory injunction by Justice Ian Gzell on the basis that the story would have published confidential details leaked by a former employee of its practices in relation to the treatment of erectile dysfunction.⁴⁹ When a Commonwealth Parliamentary Standing Committee held a roundtable forum on impotence medications, Fairfax applied for

a variation of the injunction on the basis that its reporting of those proceedings would constitute a breach of the court order. The forum was broadcast on the internet. Justice Nigel Rein ordered a variation of the injunction, saying that the Herald was "entitled to publish a fair and accurate report of the proceedings."⁵⁰ He cited Blackburn CJ in *Comalco Ltd v Australian Broadcasting Corporation*⁵¹ and referred to Article 9 of the Bill of Rights 1688 which provides:

*That the freedom of speech, and the debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.*⁵²

The same article that was frequently quoted by UK politicians in the wake of the Trafigura incident.

The difference between this example and the UK is that the existence of the AMI injunction was public and could be published. Furthermore, unlike Trafigura and the BBC, AMI as a corporation cannot sue Fairfax for defamation, so it has to rely on breach of confidence to protect its interests. It should be noted, however, that when the confidentiality proceedings did occur, NSW Supreme Court Justice Paul Brereton closed the court.⁵³

Both here and in the UK, orders which place restrictions on the ability of publishers to report on either the proceedings of courts or those of parliament which are critical of the courts should be approached with extreme caution by judges.

Is a super-injunction ever justified?

The chair of the Press Complaints Commission in the UK, Conservative peer Lady Buscombe, has described the use of super-injunctions as "anathema to democracy."⁵⁴ Only in exceptional circumstances should this type of secret injunction be granted. In cases concerning state secrets they may warranted. Lord Judge, the Lord Chief Justice of England and Wales has pointed to the necessity of secrecy, for example, when imposing an order to freeze the assets of one member of a fraud ring in order to prevent other members of the ring from disposing of their assets or fleeing the country.⁵⁵ The incident highlights the importance of the separation of powers in the Westminster model. Lord Judge has also emphasized that the decision by parliament on whether to discuss sub judice proceedings should be decided by parliament on public interest grounds and should not be the result of a court order.⁵⁶ Paul Farrelly, the MP who tabled the questions told the *Guardian*: "Carter-Ruck's manoeuvres this week, were it not so serious, would be tantamount to high farce."⁵⁷

The internet

The Trafigura incident is a compelling illustration of the fact that the internet is a powerful force and repository not necessarily respectful of court orders. It is salient to note that it is not the province of Twitter or the internet to discriminate between information in the public interest and information that the public is interested in. It should be up to the courts to provide that guidance. However, if courts refuse to adopt a strict view of open justice by providing shields of secrecy, then they must recognise that they themselves may be subjected to judgment from the online community – the ultimate of open judgments on open justice.

Natalie Buck is a member of the media law team at Banki Haddock FIORA.

47 James Robinson, 'How super-injunctions are used to gag investigative reporting' *Guardian*: <<http://www.guardian.co.uk/uk/2009/oct/13/super-injunctions-guardian-carter-ruck>> (18 Nov 2009).

48 *Australian Football League v Age Company Ltd* [2006] VSC 308.

49 *AMI Australia Holdings Pty Limited v Fairfax Media Publications Pty Limited* [2009] NSWSC 612.

50 *AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd* [2009] NSWSC 863 at 20.

51 [1983] 50 ACTR 1 at 3.

52 *Ibid* at 17.

53 *AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd* [2009] NSWSC 1290.

54 'Baroness Buscombe speech to the annual conference of the society of editors' *Press Complaints Council, UK*: <<http://www.pcc.org.uk/news/index.html?article=NjA0OA>> (18 Nov 2009).

55 Judicial Communications Office, Statement of the Lord Chief Justice, *Lord Chief Justice's views on 'super-injunctions'*, 20 Oct 2009: <http://www.judiciary.gov.uk/publications_media/media_releases/2009/jco-statement-super-injunctions.htm> (18 Nov 2009).

56 *Ibid*.

57 Leigh, above n36.