Does Australia Need a "Right to be Forgotten"?

As issues of internet privacy receive increasing attention around the world, Jarrod Bayliss-McCulloch draws on the experience overseas and explores the tension between the individual's right to privacy in the online world and the right of third parties to freedom of expression. He considers whether a statutory "right to be forgotten" would be appropriate in the Australian context.

Introduction

On 24 January 2014, a Hamburg court ordered Google Inc. to block search results linking to photos of a sex party involving former Formula One boss Max Mosley from its website in Germany.[1] This is only the latest in a long series of legal actions Mosley has brought in relation to the photos across multiple jurisdictions, and comes after a French court ordered Google to find a way to remove recurring links to images of Mosley on 6 November 2013.[2]

It is not hard to understand why Mosley wanted the photos removed. The images showed him engaging in sexual practices and were sourced from a news story, published back in 2008 in News Corporation's now-defunct *News of the World* Newspaper, which alleged he had organised a "sick Nazi orgy",[3] a claim later shown to be defamatory. Mosley was awarded 60,000 pounds (US $99,800) in damages by an English court as a consequence of that story. The Court ruled the alleged Nazi theme had no foundation in fact and that the story was not in the public interest. Mosley received a similar ruling in France in 2011 when a judge ordered News Corporation to pay 32,000 euros in fines and fees in relation to the story.[4]

In the latest episode of this saga in Hamburg, the Court has ruled that while Google did not take the pictures, it was responsible, as a distributor, for linking its search results to a page that housed the images. In making the order for Google to block images of Mosley from its search results the Court appears to have taken into account the graphic and damaging nature of the content involved;[t]he banned pictures of the plaintiff severely violate his private sphere, as they show him active in sexual practices" the court said.[5] Was this in fact the *right* [legal] outcome? This question will be discussed later in the article, but for present purposes the whole Mosley scenario raises several poignant questions that help to frame the issues around a "right to be forgotten."

When even a wealthy, highly respected business person living in a region of the world that is renowned for its strong privacy protections has to fight through years of intense and costly legal battles in multiple jurisdictions for the right to remove private material from the internet that has been illegally published, there is something wrong with the system. Is it a sign that technology's reach has exceeded the law's grasp? Do individuals need a more explicit right to be forgotten in the online world? If so, how would such a right be enforced?

There is an old Jewish tale that illustrates the struggle we are increasingly grappling with these days concerning the flow of information. It likens the lies told by a man about a Rabbi in the village to pillow feathers blown about by the wind, which are later all but impossible to gather. Variations of this story have been used for centuries to demonstrate the harm of careless words and their impact on a person's reputation. The story finds new relevance today, where words fly on the wings of the internet to the most distant parts of the world, before coming to rest in a permanent record. As we increasingly spend time and energy communicating online, embracing the power of user-generated content and interactive experiences, we cast more feathers to the wind: blog entries, status updates, tweets, text, images and video. The average social network user receives 285 pieces of content daily, including 54,000 words and 443 minutes of video.[6]

Google does not have to remove legal and correct personal information from search results, even if that information is damaging to an individual's reputation, because this would "entail an interference with [its] freedom of expression."

Importantly, today these feathers are not simply scattered to *the wind*. "Once [data] is out there, it's hard to control."[7] Content may be duplicated and replicated on multiple sites. It may be indexed and searchable, in a fraction of a second in one of the 1.2 trillion Google searches conducted every year. Indeed, "today it is easier and cheaper to remember than it is to forget. This can have a big impact on people's lives,"[8] as Mosley's experience bears out.

---

1 Reuters, *German court orders Google to block Max Mosley sex pictures* (Frankfurt, 24/1/2014), http://www.reuters.com/article/2014/01/24/us-google-germany-court-idUSBREA0N0Y420140124, accessed 21/2/2014.

2 CNET, *Privacy ruling forces Google to delete racy images* (6/11/2013) http://news.cnet.com/8301-1023_3-57611176-93/privacy-ruling-forces-google-to-delete-racy-images, accessed 21/2/2014.

3 Reuters, see above n1.

4 Bloomberg, *Google Inc told 'Nazi-themed' orgy images linked to Max Mosley must be blocked from search results in Germany* (24/1/2014) http://business.financialpost.com/2014/01/24/google-inc-max-mosley/?__lsa=5be3-f5f9, accessed 21/2/2014.

5 Reuters, see above n1.

6 IACP Center for Social Media, (2013) 'Fun Facts', http://www.iacpsocialmedia.org/Resources/FunFacts.aspx#sthash.YB2KT47e.dpuf, accessed 30/10/2013.

7 Jonas, J., in Thierer, A., (2011) 'Erasing Our Past On The Internet', *Forbes*, 17/4/2011, http://www.forbes.com/sites/adamthierer/2011/04/17/erasing-our-past-on-the-internet, accessed 29/10/2013.

There have been numerous recent international developments in this area. In September, the State of California introduced a bill that will allow minors to ask websites to remove personal content.[9] In Europe, the European Commission continues to debate how the "right to be forgotten" should practically be enforced through its data protection regulations.[10] In Australia, the Australian Law Reform Commission (***ALRC***) is currently considering whether Australia should adopt a right to be forgotten to address privacy problems on the internet,[11] including "a requirement that organisations, such as social media service providers, permanently delete information at the request of the individual who is the subject of that information."[12]

Formulating a "right to be forgotten" requires balancing interests in freedom of expression with the right to privacy, concepts deeply informed by cultural sensitivities, as the Californian and European experiences demonstrate. Beyond this lies a significant technical question: whether it is even possible to enforce such a right in an open system like the internet.

In considering whether an explicit right to be forgotten would be beneficial in such cases, it is important to keep in mind also that Australian law already provides recourse in many situations where illegal content is posted online, without a specific right to be forgotten

Privacy considerations and the rights of the individual

In theory, the right to be forgotten addresses a serious problem in the digital age. People "often self-reveal [online] before they self-reflect and may post sensitive personal information about themselves - and about others - without realizing the consequences."[13] Proponents of a right to be forgotten point to examples like President Obama, who wrote about drug use in his autobiography *Dreams of My Father*,[14] or current litigants like Max Mosley. Although the case of Obama is hypothetical because graphic evidence of his drug use as a youth never entered the public domain, we can speculate about the devastating consequences that content about a person's youthful indiscretions could have if seen by a potential employer or political opponent, even decades after the event. The proliferation of private content about a person's more recent indiscretions as an older person, as in Mosley's case, can be even more harmful.

"Dignity, honour, and the right to private life" are recognised among the most important fundamental rights for Europeans,[15] and Europe has a history of protecting individuals from such harm, traditionally prioritizing people over media and technology companies.[16] The intellectual origins of the right to be forgotten are seen in the French *droit à l'oubli*, and the modern day laws of Switzerland,[17] which allow a rehabilitated criminal to object to the publication of the facts of his conviction.[18] The underlying premise is that criminals do not remain of public interest forever, so the public should not have access to their criminal records indefinitely.

There is, however, an important distinction to be drawn here. Publication of a rehabilitated criminal's reasons for conviction is a serious matter, with the potential to incite ongoing prejudice against an individual who has already made atonement in the eyes of the law. It is also a different thing entirely from the retention of information once expressed by an individual in the public domain from which he or she later wishes to resile . In each example the individual has a clear interest in having injurious content removed from public viewing but in the latter case, the harm is of a different nature; rather self-inflicted and arguably deserving less sympathy in the eyes of the law. When discussing the scope of the right to be forgotten, however, European Commissioner Reding applied the historic principle to such modern day situations, noting particular risks for teenagers in revealing compromising information they may later regret.[19]

Importantly, the notion of protecting the individual is not as pronounced in Australia's privacy laws as those articulated in Europe. Australia has no historical equivalent of the right to be forgotten. Nor is there any general right of an individual to privacy. Rather Australia's privacy law provides strong protections when it comes to the handling of personal information, and it would not be entirely out of character for the Australian legislature to strengthen individual rights further in the online world. After all, it is a world where the individual is structurally disadvantaged, with little say in how personal data is distributed. Powerful online operators impose standard terms granting them broad rights over user content.[20] Individuals retain limited control over data once they "agree": a prerequisite to accessing platforms which are increasingly seen as essential to modern life.

---

8 Selby, J., in Clark, L., (2013) 'Should we have a right to be forgotten?', *Bandt*, 17/10/2013, http://www.bandt.com.au/news/digital/should-we-have-a-right-to-be-forgotten, accessed 31/10/2013.

9 California Senate Bill No. 568, Chapter 22.1 "Privacy Rights for California Minors in the Digital World", available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB568, accessed 29/10/2013.

10 See for example, European Commission, (2012) *Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)*, 25/1/2012, http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf, accessed 28/10/2013.

11 Australian Law Reform Commission (2013), *Serious Invasions of Privacy in the Digital Era: Issues Paper 43*, October 2013, http://www.alrc.gov.au/publications/invasions-privacy-ip43, accessed 29/10/2013.

12 Ibid, at para 170.

13 Steyer, J., (2013) 'Why Kids Need an "Eraser Button"', Common Sense Media, 19/9/2013, http://www.commonsensemedia.org/blog/why-kids-need-an-eraser-button, accessed 29/10/2013.

14 Selby, J., in Clark, L., see above, n. 3.

15 Weber, R. H., (2011) 'The Right to be Forgotten: More Than a Pandora's Box?' 2 (2011) JIPITEC 120, at 121, para. 5.

16 Consider for example the 19th Century case involving famous French author Alexandre Dumas, Dumas, 13 A.P.I.A.L. at 250 ("[L]'effet même de la publication . . . que si la vie privée doit être murée dans l'intérêt des individus, elle doit l'être aussi souvent dans l'intérêt des moeurs . . . ." in Whitman, J. "The Two Western Cultures of Privacy: Dignity Versus Liberty" 113 Yale Law Journal 1153, at 1176, http://www.yalelawjournal.org/images/pdfs/246.pdf, accessed 30/10/2013.

17 See for example, Swiss Federal Court, October 23, 2003, 5C.156/2003.

18 Rosen, J., (2012) 'The Right to be Forgotten', 64 *Stan. L. Rev. Online* 88 (13/2/2012), http://www.stanfordlawreview.org/online/privacy-paradox/right-to-be-forgotten, accessed 29/10/2013.

19 Reding, V. (2012) 'The EU Data Protection Reform 2012: Making Europe the Standard Setter for Modern Data Protection Rules in the Digital Age' 5 (Jan. 22, 2012), http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/26&format=PDF, accessed 30/10/2013.

20 Chow, E., (2013) 'Learning from Europe's "Right to be Forgotten"' The Huffington Post, 9/9/2013, http://www.huffingtonpost.com/eugene-k-chow/learning-from-europes-rig_b_3891308.html, accessed 29/10/2013.

Thus the Australian legislature may have some interest in strengthening the rights of vulnerable individuals to remove damaging content from the online environment. However such measures must be reasonably adapted to preserve other fundamental rights they may inadvertently erode, including freedom of expression.

Freedom of expression and the right to be forgotten

Three broad variations of the right to be forgotten pose progressively greater threats to the right to freedom of expression.[21] The first of these Fleischer describes as the "right to access and rectify one's own personal data."[22] This is nothing new to Australian law, and is not particularly controversial. Indeed the individual's right to access and correct personal information is already reflected in various privacy principles under the *Privacy Act*.[23] This "data minimisation" approach poses little threat to freedom of expression. [24]

By contrast, if the right is viewed "more sweepingly as a new right to delete information about oneself, even if published by a third-party"[25] (including photos, blogs or third party content) , the idea that the law should support this right would be troubling. In a world where freedom of expression may attach to minor expressions such as a click of a "like" button,[26] any such extension of the law sets the individual's right to be forgotten on a collision course with the third party's right to share and discuss information. A whole new body of law would need to be developed to determine when and in what circumstances one right should prevail over the other. In the meantime, the service provider would have to act as arbiter, under the shadow of penalties and uncertainty as to the true meaning of the law. As Rosen observes, "Facebook [would] have to engage in…difficult line-drawing exercises... and [with] the prospect of ruinous monetary sanctions…opt for deletion in ambiguous cases, producing a serious chilling effect."[27] This chilling effect may be even greater in Australia, where freedom of expression is a "precarious freedom" that relies on a common law tradition rather than an entrenched statutory or constitutional protection.[28]

Fleischer's third and most extreme interpretation of a right to be forgotten goes even further, extending to require deletion of content merely linked to by a third party.[29] On this issue, the European Court of Justice (ECJ) is currently considering the complaint of a Spanish man who discovered records of an auction of his property (which stemmed from a legal notice published in a newspaper) could be found on Google. [30] The man asked for this information to be deleted and the Spainish courts upheld the complaint, but Google refused to comply.

In a non-binding opinion the ECJ's adviser stated that Google does not have to remove legal and correct personal information from search results, even if that information is damaging to an individual's reputation, because this would "entail an interference with [its] freedom of expression."[31] This resonates with Google's view that requiring search engines to suppress "legitimate and legal information" would amount to censorship.[32] This principle, that imposing an obligation to block access to *legally-published* content would dangerously interfere with freedom of expression and users' rights to access information, as well as a search engine's right to do business, is equally valid in the Australian context.

Of course, there are times when information is published online *illegally*. An important question then arises as to whether merely *linking* to illegal information published by a third party should be illegal, or at least a circumstance in which an innocent third party whose information is linked to by a search engine should have a legal remedy to have such a link removed from the search engine's index.

Hypothetically, even if a search engine were to delete all links to the illegal content held on all third party pages at a given point in time, there is no guarantee that somewhere, somebody has not stored a copy of the illegal content

This is the issue that was raised in Mosley's (multiple) claims against Google identified at the outset of this paper. Those circumstances are very different from those at play in the ECJ case; auction results for a property transaction involving an ordinary member of the public seem rather innocuous when compared to sex photos of a public figure published in the context of an alleged "nazi-themed" sadomasochistic orgy. For Mosley, the stakes were immensely higher; the potential harm immeasurably greater. It is easy to say that he *should* not have to suffer harm as a result, whether of primary publication, secondary publication or third party links to such content. As a practical matter, were it not for Google's role in linking to those images, very few people would ever see that content, and consequently, Mosley would suffer very little harm;; Google is therefore at least somewhat to blame for the harm he suffered and should be held accountable.

There is no denying that Google is very powerful. The vast and labyrinthine structure of the internet makes us all so reliant on search engines like Google to navigate it. Living in the information age, a world where the old maxim "knowledge is power" resonates more deeply than ever before, we have a special vulnerability in this respect, as Google increasingly becomes our primary portal for gathering information. It is this power, stemming from Google's dominant execution of its core search capability, that recently propelled Google briefly to surpass Exxon Mobil as the second most valuable US company by market capitalisation.[33]

The law has long had an important role in protecting the weak from the powerful, and this principle applies equally in the case of

21 Fleischer, P., see above, n. 8.

22 Ibid.

23 Consider the application of Australian Privacy Principles 12 and 13, which will come into effect in March 2014.

24 Fleischer, P., see above n. 8.

25 Ibid.

26 *Bland v Roberts* No. 12-1671, 2013 WL 5228033 (4th Cir. Sept. 18, 2013).

27 Rosen, J., see above, n. 16.

28 Gelber, K., (2003) 'Pedestrian Malls, Local Government and Free Speech Policy in Australia', (2003) 22(2) Policy and Society: Journal of Public, Foreign and Global Policy 23.

29 Fleischer, P., see above, n. 8.

30 *Google Spain S.L. and Google Inc. v Agencia Española de Protección de Datos, Case C-131/12*.

31 Opinion of Advocate General Jääskinen, *Case C-131/12*, (25 June 2013), at 134, http://curia.europa.eu/juris/document/document.jsf?text=&docid=138782&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=11341#Footnote1, accessed 2/11/2013.

32 Echikson, W., (2013) 'Judging freedom of expression at Europe's highest court', (26 February 2013), http://googlepolicyeurope.blogspot.co.uk/2013/02/judging-freedom-of-expression-at.html, accessed 3/11/2013.

Google. Yet it is important to remember that although powerful, Google is not omnipotent. It remains bound by the same constraints as the rest of us when it comes to the fundamental nature of the internet. For this reason, the decision of the Hamburg court may not be the *right* one and perhaps despite initial appearances Mosley's should not be an open and shut case.

After balancing interests in privacy and freedom of expression, a limited right to be forgotten may be appropriate given the permanence of online records and their potential impact on an individual's life and employment prospects

Google of course, is one step removed from News Corporation. Google did not take the pictures and publish them, nor did it download the pictures from the News Corporation website and deliberately or conscientiously republish them on a separate website. All it did was link to content, which had been republished by a third party. After all, Google is a search engine, a content aggregator. That is what Google does. It trawls the internet indexing content and creating links so that we can have the information we want available at our fingertips whenever we want it. We take it for granted these days, but that is a phenomenal achievement, because the internet is a big place. Almost incomprehensibly so. When I type "Free Speech" into Google, "about 1,060,000,000" results are returned. The task of proactively identifying a web page containing illegal sex pictures of a particular individual, from amongst the billions of web pages Google indexes, with a view to plucking that page out of Google's vast and complex repository of data, puts the old metaphor of "searching for a needle in a haystack" to shame. Should a search engine like Google really be responsible for proactively monitoring even the smallest components of the enormous and constantly changing, writhing mass of content it transmits and stores for its users?

Perhaps this is why the French court, in Mosley's case in November 2013, only ordered Google to pay 1 Euro (US $1.37) in damages despite finding in Mosley's favour. Perhaps the French court was also influenced by the fact Google, like other search engines are generally cooperative and responsive when met with take down requests seeking for them to remove illegal content. Indeed, in a blog post published in September, Google said it had already removed "hundreds of pages for Mr. Mosley" as part of a process that helps people delete specific pages from Google's search results after they have been shown to violate the law.[34] The fact that there were only nine pages left for the court to order Google to remove at the time the case reached the French court, and a mere 6 in Germany, suggests that Google's internal processes were at least largely effective in allowing Mosley to remove damaging content from its links.

In considering whether an explicit right to be forgotten would be beneficial in such cases, it is important to keep in mind also that Australian law already provides recourse in many situations where illegal content is posted online, without a specific right to be forgotten. The tort of defamation provides civil remedies and injunctive relief for publication of material that exposes a person to ridicule or injures their reputation. In addition, the expanding common law principles of breach of confidence[35] protect individuals from harm including emotional distress[36] suffered from disclosure of confidential information. These causes of action are not limited in their application to online matters; harmful content that causes harm can and should be removed from source websites under existing law. Once so removed, the content will also disappear from a search engine's index, rendering a further "right to be forgotten" unnecessary.

Yet the Google experience shows that the debate around the right to be forgotten may be raising false expectations in the community.[37] Fleischer reports receiving "requests from people to 'remove all references to me…from the Internet.'"[38] Such sweeping requests are not only unrealistic in the context of the online world, but they raise questions about how the right should be balanced against the public interest in accountability, journalism, history, innovation and scientific inquiry.[39] Should political figures be able to request removal of reports containing views they no longer hold? Should the author of a scientific study be able to request withdrawal of the publication? Who should decide, and under what principles?[40] These questions highlight the risk that an extensive right to be forgotten could undermine the preservation of history, the individual and collective memory of society,[41] and "may [even] lead to 'the society that was forgotten'."[42]

The practical difficulties of enforcing a "right to be forgotten"

Even if the benefits of a right to be forgotten in protecting individual privacy were found to outweigh the threat it poses to freedom of expression, a "purely technical and comprehensive solution to enforce the right in the open Internet is generally impossible."[43]

The fundamental technical challenges in enforcing a right to be forgotten are fourfold:

(i) identifying and locating all personal data items;

(ii) tracking all copies of an item and of information derived from it;

(iii) determining a person's right to request removal of data; and

(iv) effecting the removal of all exact or derived copies of the item, once authorised.[44]

The third challenge may be addressed through clear drafting of the statutory provision giving the right to request removal of data, assuming it is possible to specify with precision the exhaustive circumstances in which the right may be exercised. This seems doubtful

33 B. Womack, *Google Briefly Tops Exxon as 2nd-most valuable US Firm* (Bloomberg, 8/2/2013), http://www.bloomberg.com/news/2014-02-07/google-passes-exxon-to-become-second-most-valuable-u-s-company.html, accessed 24/2/2014.

34 Reuters, see above n1.

35 See *Giller v Procopets* [2008] VSCA 236.

36 In *Giller v Procopets* [2008] VSCA 236, the Victorian Court of Appeal awarded damages for emotional distress for breach of confidence, in cases where that action is akin to a tort of "misuse of private information".

37 Fleischer, P., see above n. 8.

38 Ibid.

39 European Network and Information Security Agency (ENISA) (2011) 'The right to be forgotten - between expectations and practice' (18/10/2011), at 12.

40 Ibid.

41 Beckles, C., (2013) 'Will the Right to be Forgotten Lead to a Society that was Forgotten?' *IAPP* (14/5/2013), https://www.privacyassociation.org/privacy_perspectives/post/will_the_right_to_be_forgotten_lead_to_a_society_that_was_forgotten, accessed 2/11/2013.

42 Ibid.

43 ENISA, see above, n. 36, at 7.

44 Ibid, at 13.

considering provisions proposed in other jurisdictions and the challenges involved in reliably anticipating the ongoing development of new technologies and means of distributing information.

The remaining challenges are even more difficult to resolve. They relate to the underlying information system. Specifically, the ability to enforce a right to erasure is technically feasible only in 'closed' systems that reliably account for the processing, storage and dissemination of all information, in which all participants are linkable to real-world entities located in jurisdictions that enforce the right.[45]

In an open system like the internet, anyone can make copies of public data items and store them at arbitrary locations, on an anonymous basis, without copies being tracked. This activates the first and second challenges identified above: it is not generally possible for a person to locate and track all personal data items (whether exact or derived) stored about them.[46] Even if the right to request removal of a data item is granted, the fourth challenge arises: like feathers scattered to the wind, no single entity will have the authority or practical ability to delete all copies. Generally speaking, enforcing the right is impossible in an open, global system.[47]

Regardless of the nature of the underlying system, "unauthorized copying of information… is ultimately impossible to prevent by technical means";[48] personal information stored offline, on tape archives or flash devices, cannot easily be located or removed, representing another practical barrier to enforcing a right to be forgotten.

This is part of the challenge faced by Google and other search engines as prospective arbiters of the "right to be forgotten" in relation to content which has already been declared illegal, as in the case of Mosley. Hypothetically, even if a search engine were to delete all links to the illegal content held on all third party pages at a given point in time, there is no guarantee that somewhere, somebody has not stored a copy of the illegal content. In fact, as a practical matter, it is almost guaranteed that somewhere in the world, somebody *will* have a copy of the illegal content, whether on their iPad or portable storage device or even cached on their personal computer. There is nothing to stop such a person from posting that content online again, at which point the process of syndication, replication and indexing can start all over again. The result is a never-ending game of catch up played out on a global scale that technology giants struggle to keep up with based on current innovations and the law can never hope to win.

Conclusion

After balancing interests in privacy and freedom of expression, a limited right to be forgotten may be appropriate given the permanence of online records and their potential impact on an individual's life and employment prospects. The right, however, should be limited to the least intrusive conception identified by Fleischer and the protection of particularly vulnerable groups.

This was the view adopted by the Californian legislature in SB 568. Unlike the broad principles proposed in Europe, which risk intruding on freedom of expression, the Californian law is less extensive. It protects only minors who are registered users of a website, giving them rights to request deletion of their own posts and not posts of third parties. One may query whether similar regulations are required at all in Australia, given the majority of websites already afford users the ability to control information they have uploaded. Legislating beyond this, to enforce the second or third conception of the right, would impose unacceptable constraints on freedom of expression in Australia. It would also be unnecessary given other remedies available to individuals to remove harmful content under existing law.

Remember the tale of the feather pillow. It is generally easier to avoid casting feathers in the first place than to gather and return them to the pillowcase. This is particularly true when it comes to distributing information across an open network like the internet. Perhaps the key then is education and personal responsibility.

While the right to privacy in the online world is important, so is freedom of expression. Let us not forget one of the greatest collective benefits the internet affords society. The right to have its many voices heard, no matter how remote; the chance for its citizens to be remembered, for all the right reasons.

The internet is not a risk-free playground but an extension of the real world, in which discretion must be exercised. With this in mind, perhaps we can avoid the need for an extensive right to be forgotten in Australia and allow freedom of expression to flourish, to the enduring benefit of society.

Jarrod Bayliss-McCulloch is a lawyer at Baker McKenzie. Jarrod won the 2014 CAMLA Young Lawyer essay competition with an earlier version of this article.

45 Ibid, at 13.
46 Ibid, at 15.
47 Ibid, at 13.
48 Ibid, at 13.