

LAWYERS TO TAKE UP THE VANGUARD AGAINST FAKE NEWS?



By **Michael Williams**

One of the early visions of what the internet might become was a democratised media environment, free of publishers, editors, censors, and other meddling gatekeepers of information. There would be equal access to information and knowledge, and everyone would have a voice.

That vision has largely been realized, albeit with some troubling side-effects. One of these is that it has become easier to lie. For better or for worse, a diverse array of information sources dilutes the authority of any one of them. Propagandists, who thrive when the waters of truth are muddied, have been quick to exploit this.

Enter “fake news”, a phrase born of this zeitgeist. Originally, the expression fake news referred to the phenomenon of dressing up misinformation as legitimate news. Subsequently, and perhaps more sinisterly, it was co-opted to describe any news or opinion with which one didn’t agree. This development opened the door for a broad undermining of the mainstream media, which is now routinely and opportunistically dismissed as “fake news” by those on the wrong side of a story.

This is dangerous territory to occupy, as it seems that our media literacy is not always up to the task of identifying and dismissing fake stories before they take root. A case in point is the campaign the London-based public-relations firm Bell Pottinger ran in this country. Many South Africans have only recently woken up to the full, fiendish extent of this campaign, which engaged a small army of divisive rhetoricians and fake Twitter profiles to deflect attention from the Gupta family.

Fake news and the cynical deployment of that term to undermine real news are probably here to stay. But this does not mean that citizens cannot arm themselves to defend the truth. To do so, we must cultivate a more savvy and robust media literacy. In other words, our collective *bullshit* detectors need a software upgrade.

Lawyers could help design any such upgrade. The position of a media consumer is much like that of a busy judge. Daily, they both adjudicate among several competing claims, and neither has the time to investigate thoroughly every source of information. A judge, however, has the benefit of a well-worn set of principles to guide her towards a fair and well-supported decision. The average reader of the news is more at sea.

Some of these courtroom principles could be adapted to form the bones of a quick, practical and reflexive methodology

for processing information. At the back of every citizen’s mind should be a checklist, or a few guidelines, designed to penetrate the noise and the spin to deliver a critical but fair assessment of the integrity of any claim.

Imagine for a moment that the following headline appeared on your news feed one morning: “Hillary Clinton runs sex trafficking operation from basement of Washington DC pizzeria.” This is an absurd but true example of a fake news story, which was so convincing to one Edgar Maddison Welch that he took it upon himself to investigate the claim and fired shots into the unlucky pizzeria. One would expect a more temperate response from a judge, who might ask: Has Hillary Clinton had the opportunity to answer to this? What claims are made and who has the onus to prove them? Is the evidence direct, or circumstantial? If circumstantial, what inferences might logically be drawn from it? Does the claimant rely on hearsay, or on any other evidence that would ordinarily not be admitted (for lack of probative force or otherwise)?

These basic procedural and evidential questions quickly undermine any obviously fake news story. But what of more cunning misrepresentations? One characteristic of fake news is its innate suggestion that all points of view are valuable and legitimate, or at least that they “make you think”. This idea appeals to our democratic instincts, but ultimately erodes any hierarchy of truth and reliability and allows nutty claims to compete with respectable ones. Here, the rules of expert evidence might well help. Would a judge consider an expert report from a politician on the topic of climate science, or from a blogger on the topic of vaccinations?

The courtroom requires a pragmatic approach to assessing the integrity of information, which reflects the needs of the modern media consumer. It’s an approach that privileges evidence and expertise over alternative points of view *for their own sake*.

Given their familiarity with courtroom principles, lawyers should take up the mantle for procedural integrity, fairness, and the search for truth in public discourse more generally. At the least, this means being exemplars of principled debate and the bulwarks of the robust, but fair interrogation of information put out into the marketplace.

The truth should be sought everywhere and always – and not only in the courtroom. **A**