

# Facebook impact on Family Violence Protection Act

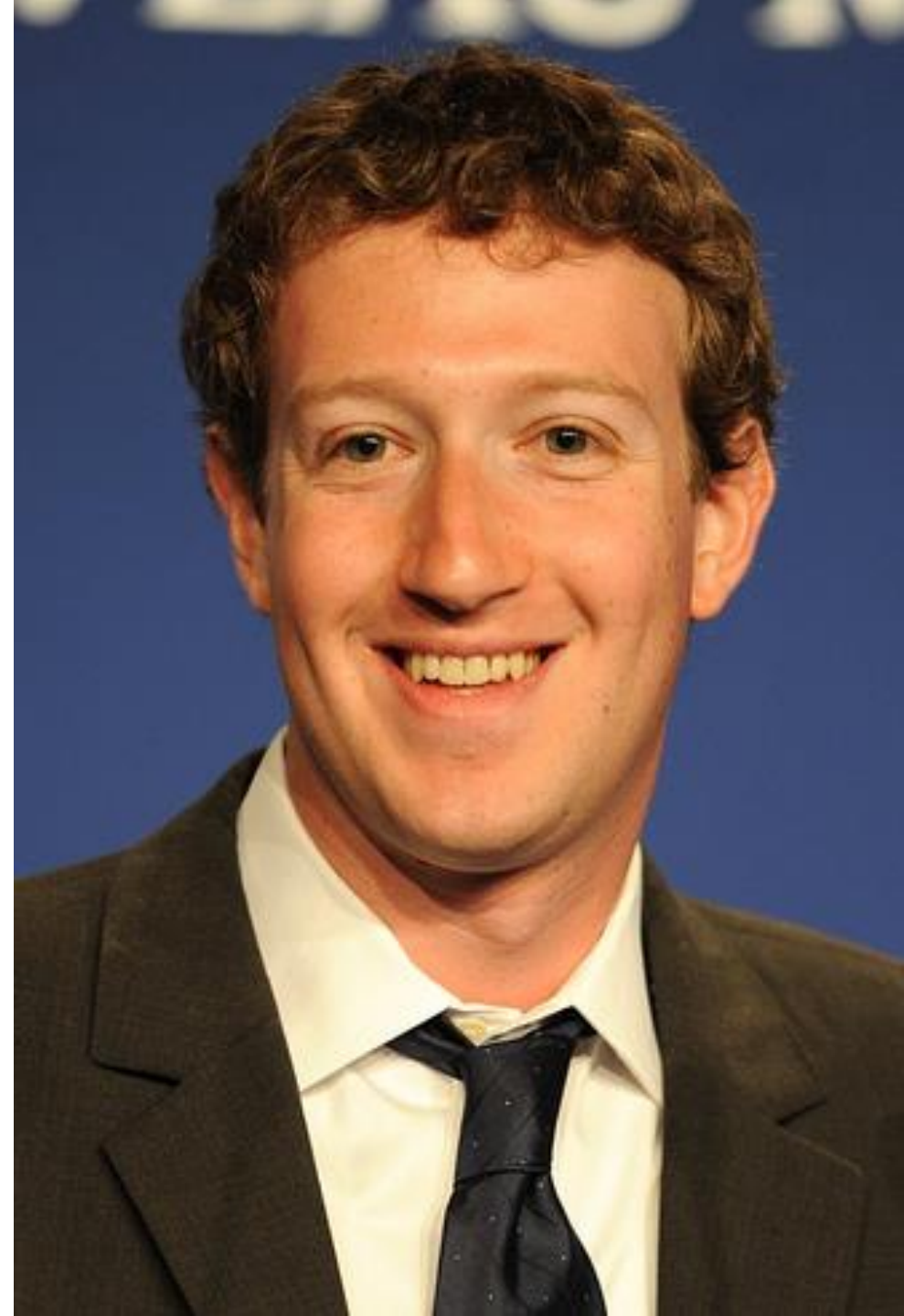
*CPD Presentation*

*Date 15 March, 2018*

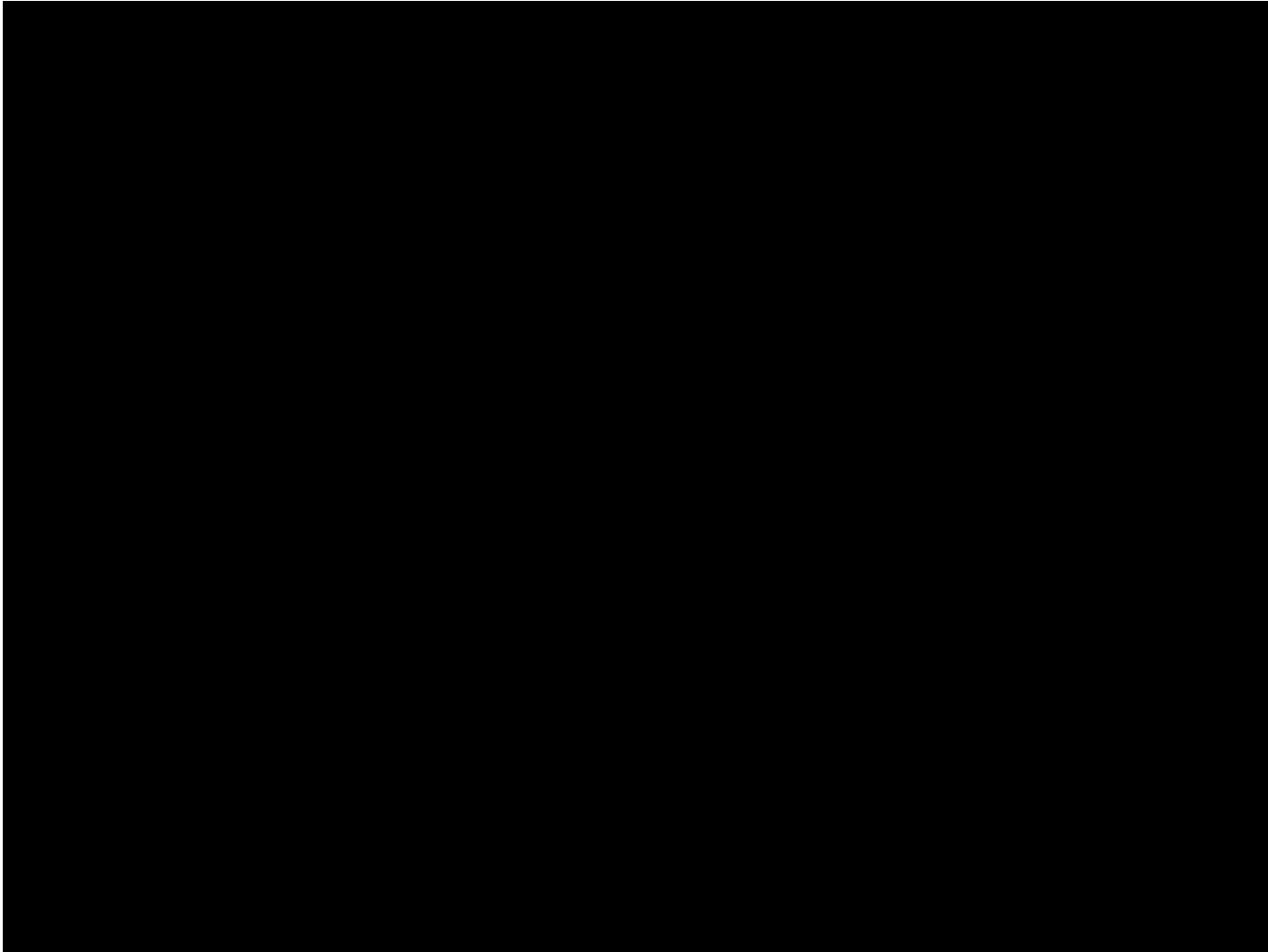
Presenter: Campbell Horsfall

“I'm a little intoxicated, not gonna lie. So what if it's not even 10 pm and it's a Tuesday night? What? The Kirkland Dormitory face book is open on my desktop and some of these people have pretty horrendous face book pics. I almost want to put some of these faces next to pictures of some farm animals and have people vote on which is more attractive.”

Mark Zuckerberg  
Harvard University  
Boston Massachusetts  
2003



# The Social Network



## **FAMILY VIOLENCE PROTECTION ACT (2008) KEY PROVISIONS:**

### **Definition of Family Violence (Section 5)**

Definition of Family Violence is behaviour that is physically or sexually abusive, emotionally or psychologically abusive, threatening or coercive, or in any other way controls or dominates the family member and causes that family member to fear for his or her safety or wellbeing or for the safety or wellbeing of another person.

### **Definition of Family Member (Section 8)**

Includes a person who has, or has had, an intimate personal relationship with the relevant person;

### **Final Order (Section 74)**

The court may make a final order if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member **and is likely to continue to do so or do so again.**

### **Rules of Evidence (Section 65)**

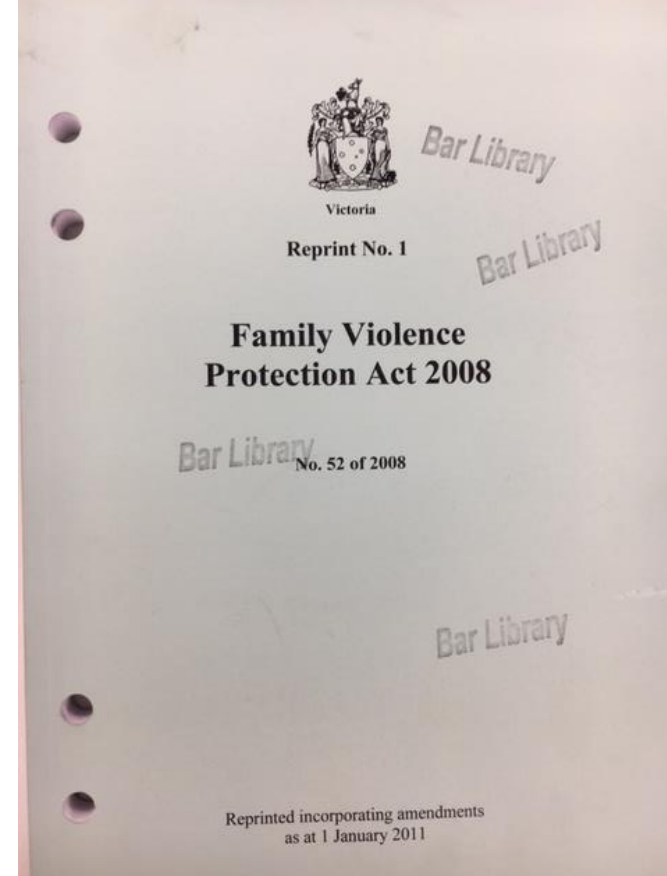
Court may inform itself as it thinks fit despite rules of evidence

# Statistics

- 58,934 Family Violence Applications finalised including Interims
- 95% increase in the past ten years increase in the number of Family Violence Applications issued (1)
- In 2008 when Family Violence Protection Act was introduced, Facebook had 100 million users
- Facebook now has over 2 billion users (2)

(1) Magistrates Annual Report 2015-16

(2) [www.statista.com/statistics](http://www.statista.com/statistics)



## Procedure:

Court Events (Not including appeals)

1. Initial Application (generally ex parte) and exclusionary order
2. Service must be personal service by the police
3. First Mention (short)
4. Directions Hearing (short)
5. Final Hearing Contest



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# EVIDENCE ACT 1995 - SECT 161

## Electronic Communications

- (1) If a document purports to contain a record of an electronic communication other than one referred to in section 162, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that the communication:
  - (a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and
  - (b) was sent or made by or on behalf of the person by or on whose behalf it appears from the document to have been sent or made; and
  - (c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and
  - (d) was received at the destination to which it appears from the document to have been sent; and
  - (e) if it appears from the document that the sending of the communication concluded at a particular time--was received at that destination at that time.
- (2) A provision of [subsection](#) (1) does not apply if:
  - (a) the proceeding relates to a contract; and
  - (b) all the parties to the proceeding are parties to the contract; and
  - (c) the provision is inconsistent with a term of the contract.

Note: Section 182 gives this section a wider application in relation to Commonwealth records.



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## **EVIDENCE ACT 1995 - SECT 146 Evidence produced by processes, machines and other devices**

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#### **Evidence produced by processes, machines and other devices**

(1) This section applies to a document or thing:

(a) that is produced wholly or partly by a device or process; and

(b) that is tendered by a [party](#) who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily produces that outcome, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

Note:

*Example:* It would not be necessary to call evidence to prove that a photocopier normally produced complete copies of documents and that it was working properly when it was used to photocopy a particular document.

# Acknowledgments

1. Social Media as Evidence By Alison Stanford a College of Law webinar
2. Magistrates Annual Report 2015-16
3. The Social Network directed by David Fincher written by Aaron Sorkin based on a book by Ben Mezrich