

My Tweets Don't Defame, *Innocent Face*

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Twitter, the increasingly popular 140 character networking machine has taken the social networking world by storm. Recently reaching its seventh birthday, Twitter has well over 200 million active users that create over 400 million Tweets each day.¹

However, just because the content is shortened to 140 characters does not mean that the content cannot be held defamatory, as a recent decision of the English High Court of Justice demonstrates.

Before we consider the law though, let's consider the technology and machinations of Twitter-speak.

Twitter – What is it and how does it work?

Twitter is an unfiltered stream of thought (whether fully considered or not) limited only to the users imagination and 140 characters. Users can follow other users of their own volition, and read their Tweets at leisure. Some notable users of Twitter include:

- His Holiness, the Pope - @Pontifex
- Politicians, such as @JuliaGillard and @TonyAbbottMHR
- Publications, such as the New York Times @nytimes and
- Lawyers and law firms, such as the writer @trentonschreurs and @mcinneswilson.

Absent from the Twitter stream of those users, on most occasions, are 'emoticons' or stage like directions. Emoticons such as : -) for a smiling face or directions such as *turns head and laughs* are increasingly, for better or much worse, becoming part of the modern lexicon.

Also, if enough users on Twitter are discussing or exchanging Tweets on a particular news item or story, it can become 'trending', which means that it has been deemed by

Twitters algorithms as a story which is a hot topic for conversation.

The Decision – Background

On or about 2 November 2012, a BBC program broadcasted a story which contained a serious allegation of child abuse, made by a complainant who was living in a care home in Wales in the 1970's to 1980's.

The complainant identified one of his abusers to be, as referred to by him, a “leading Conservative from the time” and “a leading Conservative politician from the Thatcher years” among other descriptions. The BBC program, however, did not identify the alleged abuser though the surrounding media circus attempted to identify the Claimant, Lord McAlpine of West Green, through a process of finger pointing and elimination.

Unfortunately, Lord McAlpine was a victim of mistaken identity by the complainant, and also a victim of the ensuing media storm.

The Decision – The Tweet

Shortly following the BBC program, on 4 November 2012 the Defendant, Sally Bercow, the wife of the Speaker of the House of Commons and a well known television personality Tweeted to her 56,000 followers:

“Why is Lord McAlpine trending? *Innocent face*”

Within the decision, the Claimant Lord McAlpine sought to portray the Tweet through its ordinary meaning or innuendo as meaning that he was a paedophile who was guilty of sexually abusing boys living in care.

On the other hand, the Defendant Ms Bercow denied that her Tweet was defamatory to the Claimant. Ms Bercow suggested that her Tweet was neutral, with nothing to be inferred.

The Decision

In considering the plain, ordinary meaning of the Tweet and the words it contained, His Honour Justice Tugendhat of the High Court of Justice, Queen's Bench Division found that the Defendants followers on Twitter were, more likely than not, people who shared the political interest of the Defendant. They were people who would have been aware of the elements of the story, the allegations of abuse and the decision of the BBC not to

identify the name of the alleged abuser.

In the judgment of His Honour the use of the words “innocent face” were understood by the readers of the Tweet to be insincere and ironical.

His Honour found that the Tweet of the Defendant, in its natural and ordinary meaning, suggested that the Claimant Lord McAlpine was a paedophile who was guilty of sexually abusing boys living in care.

What does this decision hold for the future?

Social media in general, and not Twitter alone, has ever increasingly come under scrutiny of the law, particularly with respect to breaches of privacy and personal information and defamation.

Just because a Tweet, or post, is short and apparently satirical does not obfuscate its potential defamatory content.

Users of all ages should pay heed to what they put online, in whatever fashion, as it may be held to be defamatory, even if unabashed humor is attempted. The Defendants Tweet in this decision could not be taken to be anything less than defamatory. *Shakes head*.

A copy of the decision of the High Court of Justice can be found [here](#).

¹ Karen Wickre, @kvox, Official Twitter Blog 21 March 2013, blog.twitter.com/2013/celebrating-twitter7

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