

GD MEDIA LAW BULLETIN 1

GD Media Law Bulletin is a news review compiled quarterly by Goodman Derrick's Media Group. The aim of the Bulletin is to provide a brief summary of interesting developments in media law and regulation. The Bulletin is directed at journalists, producers and compliance officers. Detailed guidance on how those developments may impact upon programme makers and broadcasters is available from any member of the Media Group.

Legal

Youth Justice and Criminal Evidence Bill

This Bill, which has now completed its passage through the Lords, contains some important restrictions on the media's ability to report the courts and criminal proceedings. The most far reaching measures will (if they pass into law) restrict the identification of any person under 18 who is involved (whether as accused, victim or witness) in any incident after the commencement of a criminal investigation. This is intended to plug perceived gaps in the present regime where bans on identification only apply in respect of reports of proceedings in court (unless of course the offence has a sexual element). It was this lacuna which should have enabled the media to identify the Home Secretary's son when he was interviewed by the police for allegedly supplying cannabis. Persistent lobbying of the Home Office by broadcasters and newspapers has led to a relaxation in the restrictions in the Bill and the introduction of a public interest defence. A more detailed report on the Bill will appear in a subsequent issue of GD Media Law Bulletin.

Juveniles in adult courts

The High Court has rejected an application for judicial review of a judge's decision to allow reporting of the names of two youths convicted of the rape of a schoolgirl.

The Court held that there must be a good reason for making a banning order under section 39 of the Children and Young Persons Act 1933 and that in deciding whether there was a good reason the court would give considerable weight to the age of the offender. In exercising their discretion, judges must balance the interests of the public in knowing as much as possible about what has happened in the court, against the desirability of not causing any possible harm to the child concerned in the proceedings. As a general proposition, there is a strong public interest in knowing the identity of those who have committed crimes, particularly serious and detestable crimes.

PACE

A reminder of the wide-ranging powers of the police to obtain material from journalists under the Police and Criminal Evidence Act 1984; as the first edition of ITV's new current affairs programme "Tonight" neared broadcast, the police applied to a judge at the Old Bailey for an order for production by Granada of all materials relating to the interviews with the Lawrence 5. This application was adjourned until after the broadcast of the programme, following which an order was made for disclosure of all the journalists' material including notebooks, but subject to the exclusion of certain confidential material.

Use of TV Clip not infringement

Carlton Television did not infringe the copyright of a German broadcaster by using a clip of an interview with Mandy Allwood, the Court of Appeal held. There was a successful defence of fair

dealing as Carlton's programme was "*made for the purpose of criticism of works of chequebook journalism in general, and in particular the recent treatment by the media of Ms Allwood's multiple pregnancy*".

Fair dealing with copyright material for the purposes of criticism or review or reporting current events is a defence to a claim for breach of copyright.

Libel

Defamation Act 1996

The provisions of this Act relating to statutory privilege were brought into force from April 1. These provisions update existing privileges which apply to fair and accurate reports of proceedings and the publications of courts and governments and certain other bodies. They provide a complete defence to a claim for libel ("absolute privilege") for fair, accurate and contemporaneous reports of court proceedings (including European and certain other foreign courts) and a more limited defence ("qualified privilege") to certain reports and other statements, such as copies of or extracts from government publications and reports of proceedings at public meetings.

No win, no fee

The first recorded libel action pursued on a no win, no fee basis has come to trial. Luisa Morelli and Vincent Coyle had sued the Sunday Times over an allegation that their complaints of a 'flight from hell' in respect of a holiday trip to the Caribbean were without foundation. They were awarded damages of £30,000 and £15,000 respectively.

Diva defamation

Opera singer Jessye Norman lost her bid to sue for libel over a quip about her size which she claimed was "*vulgar and undignified*". Classic CD magazine had related a story that when she became trapped in swing doors on the way to a concert and was advised to turn sideways to release herself, she replied: "*Honey, I ain't got no sideways*". The Court of Appeal held that these words, when taken in context with the whole of the piece, were not defamatory.

No names but still a libel

For any successful libel claim it is essential that the claimant establishes that the words complained of refer to him. As actions brought by police officers in recent years have routinely shown the mere fact that the claimant is not named does not prevent a successful libel action. This was recently seen in an action (settled out of court) brought by three police officers against the BBC. The officers' counsel said that "*Although the plaintiffs were not named, many people, both within the police service, and more importantly among their families and friends and the local ethnic communities, were able to identify them as the officers being criticised.*" In reporting stories it is essential to have regard to the size of the pool of persons described. By referring to a particular group e.g. those officers on duty at a Police Station on a particular day, you may increase considerably the risks of a successful claim.

Libel damages

Some recent awards

- Neeson & Richardson v. Telegraph £100,000 *
- Neeson & Richardson v. Mirror £50,000 *

For suggesting their marriage was breaking up.

- Cruise & Kidman v. Express £100,000 *

For suggesting their marriage was a sham.

- McCartan v. Times £75,000 (reduced by Court of Appeal from £145,000)

For reporting unprovable comments on the Plaintiff's conduct of Private Lee Clegg's defence.

- Barry & Clinton v. Sun (Scotland) £45,000 and £120,000

For suggesting this Roman Catholic priest and teacher had had a sexual relationship.

- Morelli & Coyle v. Times £45,000

See "No win, no fee"

- Edwardes v. Times £20,000

For allegations concerning Sir Michael Edwardes' presidency of the S.R.A.

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Regulatory

Language and Sex

The inclusion of bad language and sexual behaviour in programmes has recently given rise yet again, to a series of complaints which have been upheld by the ITC. These include the use of words "mother fuckers", "fuck" and "shit" during day-time or early evening programmes. The 9 p.m. watershed continues to need careful consideration; programmes with explicit sexual references should be scheduled later. For example, a brief rape sequence and a programme about the vice trade which were both broadcast at 9 p.m. had complaints upheld against them.

Particular care needs to be taken with programmes which start before the watershed but continue beyond it as these are likely to retain younger viewers.

Swift action helped reduce ITC sanction

The ITC has upheld a complaint against the Christian Channel Europe because one of its US imported programmes, "Praise the Lord", contained an appeal for funds for religious ends and also denigrated other faiths. While both acts were in breach of the Code, the ITC imposed no fine taking account of the swift and vigorous action taken to uncover the cause of the lapse and the improvements made to the compliance arrangements. An object lesson in coming clean promptly and putting your house in order.

A good reputation can go a long way

The ITC also upheld 42 complaints against Yorkshire Television for its recurrent use of images of mutilation of women in its programme "Trial and Retribution II". The ITC regarded as serious the inclusion of such graphic imagery of violence in programmes starting soon after the watershed.

However, the ITC accepted that YTV's compliance procedures were properly in place and employed and in view of YTV's excellent compliance record in recent years, decided to take no further action.

In or out? The limits on sex

The BSC has issued a statement to remind broadcasters that gratuitous scenes of violent or coercive sex are unacceptable. While the BSC acknowledged shifts in the public's acceptance of sexual portrayal within a dramatic or informative context, the Commission has said that the inclusion, for its own sake, of erotic material in a free to air television service is a step change in the use of sex on British Television and runs the risk of encouraging both the amount of such material and the erosion of standards generally.

Talking of Sex ...

Live TV broadcast extended shots from a hidden camera showing Piers Merchant MP and Anna Cox together in bed and clearly indicating sexual activity between them. The ITC Programme Code specifies that secretly recorded material is acceptable only if it is "essential to establish the credibility and authority of a story and where the story itself is equally clearly of important public interest". The broadcaster argued that its use of the footage was justifiable on this basis. However, the ITC upheld complaints of breach of privacy on the grounds that the footage shown exceeded that necessary to establish the credibility of the story, particularly as the MP had already announced his resignation six days earlier.

Secret Filming

The BSC has upheld a complaint by Dixons that secret filming at its stores by BBC's Watchdog amounted to an unwarranted invasion of privacy. Watchdog was investigating alleged selling of second hand goods as new. However, the footage produced did not contain any evidence to support these allegations. Although the BSC was satisfied that the investigation was in the public interest it concluded that further research should have taken place before deciding whether to deploy secret filming. In other words, secret filming could not be used as part of a fishing exercise for incriminating evidence. The decision is also interesting because it recognises the rights of privacy of a corporate identity. However, this aspect of the decision will shortly be the subject of a judicial review.

Statistics

In 1998 the number of complaints received by the ITC in respect of news and factual programming were as follows: *

- ITV: 1034
- C4: 426
- Cable/Satellite: 294
- C5: 68

These range from issues of fairness and privacy to taste and decency, religious and racial offence.

***From the ITC's Programme Complaints and Interventions Report for December**

Perils of using archive footage

The BSC upheld a complaint by a nurse arising out of a news item concerning the selective termination at Queen Charlotte's Hospital of one foetus of a twin pregnancy. It included library footage from an unrelated hospital in which the nurse appeared and was identifiable. She complained that the use of this footage suggested she had been involved in the termination of pregnancies when in fact she had exercised the rights enjoyed by clinical staff not to participate in

termination operations. The BSC found that the use of this footage in these circumstances was unfair to the nurse and upheld her complaint.

Use of archive footage can also give rise to infringement of privacy complaints. Interviews with, or footage of, individuals who have moved and developed a new life may lead to unwanted material being made known to new friends, neighbours and work colleagues.

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This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice.

further information:

If you would like more information about any of Goodman Derrick's Media Law services please telephone and ask to speak to a member of the Media Group.

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