

British Court Extends 'Reynolds Privilege' to Publishers

Privilege Protects Publishing False Information in the Public Interest

The British Court of Appeal for England and Wales extended qualified protection from libel suits for the authors and publishers of books on Oct. 11, 2007, ruling that they enjoy a qualified privilege so long as they act responsibly. The ruling may make it more difficult for libel tourists to win defamation suits in England.

The case, *Charman v. Orion Publishing Group*, 2007 WL 2941638 (C.A. Civ. Div.) (appeal taken from Q.B.), interpreted the so-called "Reynolds Privilege" or "Reynolds Defense" to protect authors and publishers of books for the first time. The "Reynolds Privilege" protects journalists who fairly report false information, which if true, would have been of exceptional interest and importance to the public. The House of Lords originally recognized the defense in 1999 with respect to newspapers in *Reynolds v. Times Newspapers Ltd.*, (2001) 2 A.C. 127 (H.L.) (appeal taken from Ir.).

Reynolds involved a suit by former Irish Taoiseach (Prime Minister) Albert Reynolds against Times Newspapers concerning a story about his 1994 resignation from public office. In *Reynolds*, Times argued all political reports should enjoy a qualified privilege, but the court refused to recognize such a broad privilege. Instead, the court stated the privilege attaches where the timeliness and importance of the information are so great that the press has a duty to report it.

Lord Nichols, writing for the court, identified several factors relevant to the consideration of whether the work should qualify for the privilege including: the seriousness of the allegation, the nature of the allegation (whether it is in the public interest), the source of the information, the steps taken to verify the information, the urgency of the matter, whether the author sought comment from the person defamed, the tone of the publication, the timing of the publication, and whether the publication contained the "gist" of the defamed person's side of the story. The court held that whether the privilege attaches to a specific publication is a question of fact and law to be determined by the judge based on the particular facts of each case.

According to the House of Lords, if the report qualifies for the privilege, the author and publisher may not be sued for defamation so long as their motives

were good. Motives that remove the privilege include intent to injure the plaintiff, knowledge that the report is false, and reckless disregard for the truth.

The *Charman* case arose when a police officer named Michael Charman sued Orion and author Graeme McLagan over allegations contained in the book *Bent Coppers*. The book chronicled the British effort to ferret out police corruption beginning in the 1960s. *Bent Coppers* devoted considerable attention to the 1994 introduction of a secret group of detectives charged with cleaning up Scotland Yard known as the “Ghost Squad.”

The book states that shortly after the Ghost Squad’s introduction, detectives investigated whether Charman earned £50,000 from a cell phone scam. Though Charman was never charged in the incident, Scotland Yard forced him to resign in May 2004 when a disciplinary panel found he was “likely to bring discredit to the reputation of the force,” the Court of Appeal opinion said.

In October 2005 Judge Gary ruled that the book falsely suggested there were “cogent grounds” for believing Charman was involved in the corruption. In December 2006 Gary dismissed Orion’s qualified privilege defense.

In a unanimous decision, a three-member panel of the Court of Appeal reversed. The Lord Justices held that the book constituted responsible journalism and its subject matter was in the public interest. “*Bent Coppers* is in my judgment an exercise of entirely responsible journalism and as such is entitled, to the protection of the law against what would otherwise be the consequences of its defamatory imputation against the claimant,” Lord Justice Sedley said.

The court held that the book contained serious allegations that were within the public interest. The Lord Justices noted McLagan’s expertise; he had worked for the BBC since 1971 focusing on Scotland Yard from the late 1970s onward. Because McLagan had expended considerable effort to verify the information he reported, and sought unsuccessfully to interview Charman, he had engaged in “responsible journalism” protected by the Reynolds Privilege.

“Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals,” Lord Justice Ward wrote. Fair and responsible journalism, whether in books, newspapers, or another medium, enjoys qualified protection from libel suits, even if the information later proves to be defamatory, he said.

McLagan's solicitor Caroline Kean called the case "ground-breaking" in an October 11 BBC report. Peter Roche, chief executive officer of Orion said, "[t]his judgment will enable serious investigative works covering matters of public concern to be published in [the] future and increase the freedom of debate in the UK."

"For too long newspapers and book publishers have been deterred from publishing serious investigative journalism by the threat of incredibly complex and expensive libel proceedings if they made the slightest error," Kean said, according to an October 11 report in the *Times Online*.

The Police Federation, which backed Charman, will have to pay the legal costs of McLagan and Orion, the *Times Online* reported. McLagan estimated those costs amounted to at least £1 million.

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