

The Debating Group



A Parliamentary forum for Media and Marketing Debate

Do public figures who court the press have any grounds to object to press intrusion?

“I believe this debate is about control of the media by the rich and powerful”. These were the words of Christopher Hutchings, Partner at Charles Russell solicitors. He was speaking at the Debating Group debate at the House of Commons on 7 July 2003 for the motion “Public figures who court the press have no grounds to object to press intrusion”. The debate was sponsored by the Periodical Publishers Association and chaired by Lord Dubs, Chairman of the Broadcasting Standards Commission.

Christopher Hutchings stressed that the motion was not about Privacy Law. It was about whether those who are actively engaged in getting the support of the press for their own benefit should be afforded the same privacy as private citizens. Are they entitled to the same protection as those who do not seek publicity?

The Human Rights Act 2000 gives people the right to privacy and the complaints courts face a balancing act in ruling on freedom of expression.

Christopher Hutchings described three cases which illustrate the way law is developing in this area.

- **Jamie Theakson vs MGN Ltd.** In this case a well-known presenter of TV programmes found himself in a house of ill-repute and the women of the house offered photographs and a story to the press. The Judge awarded an injunction on the photos, but the story was allowed. The Judge stated: “I consider the Claimant has placed aspects of his private life, whom he had intimate relations with, and his general attitude towards sexual relations, and personal relationships, into the public domain, discussing them willingly so as to create and project an image calculated to enhance his appeal. Through enhancing his fame, popularity and reputation, he has courted publicity of that sort and not complained when it has been largely favourable to him”.

- **Flitcroft (Court of Appeal).** The Court of Appeal overturned an injunction in respect of privacy in the case of the footballer Garry Flitcroft. The Judges ruled that people did have a right to privacy protection in certain circumstances, but if a person had courted attention he had less right to protection. “Where an individual was a public figure, he is entitled to have his privacy respected in appropriate circumstances, but should recognise that because of his public position he had to expect and accept his actions would be more closely scrutinised by the media whether he had courted publicity or not. If he had courted public attention, he had less ground to object to the intrusion that followed”.

- **Naomi Campbell vs MGN Ltd (Court of Appeal).** The Court stated: “The fact that an individual has achieved prominence on the public stage does not mean that his or her private life can be laid bare by the media. We do not see why it should necessarily be in the public interest that an individual who has been

adopted as a role model, without seeking this distinction, should be demonstrated to have feet of clay”. However, “By ‘mendaciously asserting to the media that she did not take drugs’ it rendered it legitimate for the media to put the record straight. Where public figures make untrue pronouncements about their private life, the press should normally be entitled to put the record straight”.

Christopher Hutchings pointed out that differences of opinion thus existed in this area. He concluded “ We should not forget freedom of expression of the media. There has to be a balance between the rights of individuals and a free press”.

Right to privacy

Opposing the motion, John Thurso MP, Member of the DCMS Select Committee Inquiry into press intrusion, pointed out that we enjoy a robust and free press and no one would seriously argue that our press and its rights are not a vital part of our democracy. There are valid arguments regarding degree, but the right of freedom of the press is not disputed.

However, everyone is entitled to some degree of privacy. Indeed it is no longer a matter of opinion, but of law that every citizen, by virtue of Article 8 of the European Convention of Human Rights has the right to respect of his or her private and family life, home and correspondence. “We are not arguing about freedom of the press, or the right to privacy, but about degree. John Thurso argued that whilst there can be no absolute rule for the degree of privacy accorded to public figures there can equally be no justification for the assertion of this motion that public figures, by virtue of their actions can be unilaterally deprived of all their rights to privacy. The motion is absolute and states unequivocally that public figures who court the press have no grounds to object to press intrusion.

John Thurso went on to discuss the nature of press intrusion. Very often these are illegal activities such as the interception of emails and bugging telephones. A report of the DCMS Select Committee identifies the following as possible intrusion: bugging of emails; trawling dustbins; long lens photography, as well as illegally obtaining information from public and commercial entities such as the police, BT, private detectives or other intermediaries.

John Thurso questioned whether a public figure forfeits his or her right to privacy from this kind of intrusion. He believes that public figures are entitled to protection. A right to privacy may be diminished but it is not given up.

He argued that what interests the public is not the same as public interest. The mere fact that salacious details are a titillating read is not a defence for intrusion.

“What this motion asserts is absolute – that any public figure who courts the press loses all grounds to object to any intrusion whatsoever, no matter how private the detail, no matter how illegal or loathsome the manner of intrusion. That is not freedom of the press. That is a simple denial of a basic fundamental human right that we should all be guaranteed in a civilised society”.

Press complaints

Guy Black, Director of the Press Complaints Commission, in seconding the motion, pointed out that the PCC reviews some 3000 complaints and 700 –800 of these relate to some aspect of privacy. But privacy is an art not a science and involves a rich tapestry of conflicting interests. There are no absolutes. Every intrusion has to be

balanced against a range of other interests. As far as the PCC is concerned, everyone has equal rights of privacy and the same protection of the Code. However, there are occasions when the right to privacy is compromised, because public figures have actively courted the press to promote their image.

Being a public figure is not easy. It is sometimes necessary to promote yourself or put yourself on show. Politicians sometimes need to use their families in their campaigns. The PCC recognises that public figures are as entitled to privacy as any other and are given equal protection under the Code. Many factors are taken into consideration to see if the complaint is proportionate.

If you court publicity, you play with fire and limit your rights. If people sell stories about their private lives, they limit their ability to complain and protect themselves in the future. The alternative is that public figures would use the media to their own advantage and control what is printed.

The public continues to look to the press to protect its interests. To vote for the motion is to be on the side of a responsible, investigative press.

Prurient fascination

John Greager, Solicitor at Fox Williams, in seconding the opposition, began with a quotation from Juvenalis ‘Sed quis custodiet ipsos custodes?’ (Who shall guard the guardians?). “Had he lived today in Britain he may well have asked ‘Who shall guard the *Guardian* (or the *Sun* or the *News of the World!*)?’”

No one argues that to uphold the values of a free society we need a free and independent press. And yet when you pick up a tabloid newspaper you are more likely to be overwhelmed by in-depth coverage on Geri’s latest diet, Madonna’s latest tipple or whether Little Mo is going to leave Eastenders, than by investigative journalism exposing fraud and corruption and upholding the values of freedom. The public’s appetite for celebrity gossip is unabated.

John Greager considered why we say that public figures who court the press must be able to complain about press intrusion into their private lives. First, the press have powers and privileges beyond those of the individual. The press have the means of obtaining information from sources which are not available to everyone. The newspapers pay vast sums for exclusive stories and information. They will pay police informants for confidential information. They will obtain details of private phone conversations and emails which have been intercepted without the parties’ knowledge or consent. They will obtain photographs taken with long-lens cameras of people’s private business and they will publish these in national newspapers. Sometimes there is a ‘public interest’ which may excuse the use of otherwise improper means of getting information eg exposing criminal activity, protecting public health and safety or preventing the public from being misled by a statement of an individual or organisation. What is not acceptable or reasonable is intruding into the lives of public figures for no other reason than to satisfy a prurient fascination with them, or to sell more papers.

Communication on the scale enjoyed by the daily papers is all but impossible to those outside the media. If the media do not report an event, it may as well not have happened. Celebrities and public figures whose careers depend on maintaining popular publicity know this to be true. Which is why they court the press. The relationship is symbiotic. Without a steady stream of celebrity news and gossip, many newspapers and magazines would have less to report on. Without publicity generated by the press, many celebrities would cease to be celebrated.

The problem is that when the press turns against a public figure, the result is not only devastating for the individual concerned, but he or she has no effective redress. The best the PCC can offer them, after the event, is an apology which is almost never given the prominence of the original story. In these situations, the individual whose rights have been trespassed, has no voice.

“You might say that if public figures court the press and indeed, *use* the press to promote themselves they cannot plead naiveté when things go against them. But we would all find it abhorrent if it were suggested that there should be no rules protecting workers in dangerous places. Press intrusion into the lives of public figures can be damaging. When a newspaper or magazine reports on some salacious gossip concerning the private life of a celebrity they can ruin that person’s life and career.

Public figures who court the press have grounds on which to object to press intrusion, as does every individual. The enormous power and impact of the press must be weighed against a person’s fundamental human right to privacy. If we erode the right to privacy for public figures, it will not be long before it is eroded for everyone.

From the floor

Undecided

- The speaker disagreed that to publish details of Geri Halliwell’s diet was intrusion. Intrusion for a public figure is not the same as intrusion for a private individual. There is a difference when you choose to sell some aspect of your private life. However the wording of the motion is too extreme in saying *no grounds*.
- There is a *de facto* Privacy Law in this country. The PCC protects people in hospitals and on beaches. We have evolved to a stage where the PCC will allow people to come to them to decide if intrusion took place in a private or public place.
- There is a problem with the wording of the motion. *Little* grounds rather than *no* grounds, would make the decision easier.
- Editors hate publishing apologies dictated by the PCC. In France the press have Privacy Funds to deal with cases of litigation against them.

For the motion

- In a 1997 case, three or four pop stars behaved badly on an aircraft. Because they sought publicity this balanced their position as fair game for the press. Their right to privacy was surrendered and there was no reason why they should not be exposed.
- The Editor of *Now* pointed out that many people enjoy the publicity. They are not objecting. They work hand-in-glove with the press to provide material.
- For many public figures any publicity is good publicity
- Those who support the motion should do so in the spirit of the motion. There should be a balance between intrusion and courtship.

Against the motion

- If a politician puts himself forward in the public domain, why should he have a long lens pointed at his home? If we allow the press to pillory public figures, the better people will not go into public life because they do not want media intrusion in their lives. Public figures should have the same rights as private individuals.
- To say public figures who court the press have *no* rights is wrong.

- To have more legislation is totally unnecessary. We already have Human Rights legislation and a mature set of defamation laws.
- Why is that information acquired in a criminal manner can be made public? Newspapers calculate the costs they will incur when publishing items about public figures and balance these costs against increased circulation. Often people who write hide behind their newspaper. The speaker was not sure if it was fair to distinguish between private and public figures.
- We want actors, celebrities and politicians. If they are not allowed the right to privacy, what kind of politicians will we have?
- Individuals have a right to object to intrusion. Public figures will be courted by the press and they will court the press. You shouldn't pillory people because they have courted the press.

Summing up

John Thurso recognised that we have a robust free press in this country and did not want the French system. But, he asked "Is there no limit? Is there nowhere I can have some degree of privacy? Is there nowhere we can go with our wives and children without fear of intrusion? Is it fair that if you court the press, you forfeit everything? I like to think there is a line they cannot cross and that we belong to a civilised society where there are limits".

Guy Black pointed out that the PCC codes prevent intrusion using long lens cameras. The press play an important role in this country. The tabloid press helped to put Lord Archer in prison. The days of Maxwell issuing writs almost daily are over.

Celebrities like Posh Spice phone up the media. They use media to present a certain image. The motion says this should be under scrutiny.

The result

The motion was defeated by a show of hands.

Next Debate

The next debate will take place on Monday 20th October 2003, sponsored by The Advertising Association. Details from Debating Group Secretary, Doreen Blythe (Tel: 020 8202 5854) dblythe@varinternational.com
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