



PRIVACY AND DEFAMATION ON SOCIAL NETWORKING WEBSITES

By Gavin Goffe

Social networking websites, such as Facebook, MySpace and Hi5, have grown immensely in popularity in Jamaica over the past 3 years, particularly with the younger generation. Like never before, persons of all ages and maturity levels have a portal to a worldwide audience. That a person may publish material without it being screened or edited by anyone, coupled with the sense of anonymity that the internet may give, leads us to consider the potential for defamation on these websites.

The Nature of Defamation

Defamation can come in many forms: through words spoken, written, emailed or 'blogged', through photographs or video clips - basically any material that is published that tends to lower someone else in the eyes of the right-thinking public. On social networking sites, however, it seems that the preferred method of defaming someone is by creating a profile in the name of the victim and publishing inaccurate and disparaging material about the victim to that fake profile. This type of defamation is particularly offensive because it gives the impression to viewers that the victim is the author of the material and therefore the material must be true. To add authenticity, the perpetrator will often copy photographs of the victim, and mix accurate information (such as date of birth and place of employment) to the defamatory material.

The Famous Facebook Case

It was this type of impersonation on Facebook that led to what is perhaps the most famous English lawsuit of its kind, thus far: *Applause Store Productions Ltd & Matthew Firsht v Grant Raphael*. In that case, which was decided in 2008, Mr Raphael copied material from the Facebook page of his former friend, Mr Matthew Firsht, and created a new profile page on Facebook for him. On this cloned page, Raphael listed Firsht's sexual preferences as "Looking for Whatever I Can Get" and signed up for the group "Gay Jews in London". He also created a group named "Has Matthew Firsht Lied to You?" supposedly for persons whom Matthew Firsht owed money to and lied about when he would pay. The cloned page was on Facebook for 17 days before it came to Firsht's attention. He immediately got Facebook to remove the page and obtained a search order from the Court requiring Facebook to disclose the email address of the person who created it and the IP addresses of the computers used in the process. The information pointed directly to Raphael, whose defence was that someone else must have used his laptop in his apartment (on several occasions) and created the fake profile page and group page. The Judge found the defence to be utterly implausible and far-fetched. He awarded Mr Firsht and his company £22,000 in damages for the defamation and breach of privacy.

A Legitimate Expectation of Privacy?

One of the interesting features of the Firsht Case was that it was commonly accepted that Firsht had a "legitimate expectation of privacy" and that the misuse of private information was a separate cause of action from defamation. Unlike in an action for defamation, it was no defence to say that the private information was true. Therefore, even if Firsht was gay, Raphael would still be liable for breaching his right to privacy, although he would not be liable for defamation.

Another interesting feature was the amount of information that Facebook (and presumably other similar sites) collects about users' activity on the site. Evidence was presented of the date and time that the fake profile was created, the IP address and geographic location of the computer used to create the profile, the names of the per-

sons that Raphael searched for on Facebook, as well as the names of the persons who accessed the group page and saw the defamatory material. It is somewhat ironic that the right to privacy was protected through the collection and disclosure of data which itself could be considered private.

Liability of Parents

Given the popularity of social networking websites with young children, there is cause for parents to be concerned that what their child might consider to be a harmless prank could turn into a legal battle between parents. Some children are no longer satisfied by writing anonymous, mean messages on the bathroom wall at school. They have much more powerful tools now, and a mistaken belief that what they do online cannot be traced back to them, or their parents.

The Courts have the power to order websites and internet service providers to disclose information that would aid the victim of defamation on the internet in finding the source. Even in the absence of a witness to the act, the technical data may identify the likely author in a defamation case in much the same way that DNA does in a criminal case.

While it is unlikely that the Jamaican Courts would be prepared to recognize the right to privacy to the same extent that an English Court would, our Courts are likely to consider falsehoods involving a person's sexual orientation to be especially damaging in the context of the Jamaican society.

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