
From: Hugh Flemington[/O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HUGH.FLEMINGTON14106A9A-9886-403D-BF5B-E08821F432B3]
Sent: Wed 03/07/2013 8:53:54 PM (UTC)
To: Rodric Williams; [redacted] Susan Crichton [redacted]
Subject: Re: Second Sight [CMCK-UK.FID945106]

Yes but apart from that
Only joking!

From: Rodric Williams
Sent: Wednesday, July 03, 2013 08:52 PM
To: Hugh Flemington; Susan Crichton
Subject: Re: Second Sight [CMCK-UK.FID945106]

Indeed, but what expectation of privacy do we have when we:

- participate in a review conducted with an MP;
- which arose as a response to adverse publicity; and
- which we expressly acknowledged that the findings would be published?

From: Hugh Flemington
Sent: Wednesday, July 03, 2013 08:20 PM
To: Susan Crichton; Rodric Williams
Subject: Fw: Second Sight [CMCK-UK.FID945106]

Interesting

From: BARTY, Susan [redacted]
Sent: Wednesday, July 03, 2013 07:32 PM
To: Hugh Flemington
Subject: RE: Second Sight [CMCK-UK.FID945106]

Hugh

You are right that with a company it would more usually be a question of confidentiality, and I mentioned this to Rodric as something we should keep in mind. However, there was a case back in 2000, in fact which one of my colleagues was connected with, which made clear that a company could sue for an unwarranted infringement of privacy. This particular case was in the context of secret filming by the BBC and a complaint made to the then Broadcasting Standards Commission ("BSC") which was upheld.

In this case, on an application by the BBC to the High Court for judicial review, and in the context of the European Convention on Human Rights, the High Court ruled in favour of the BBC, its reasoning being based on a finding that privacy could only be applied to individuals and not companies. The Court of Appeal then reversed this decision and held that the BSC was entitled to uphold privacy complaints by companies, as a company does have activities of a private nature which may need protection from unwarranted intrusion. By way of example, the Court of Appeal said that it would be a departure from proper standards to listen clandestinely to, or to record secretly, a board meeting or to broadcast private correspondence.

Kind regards
Susan

Susan Barty

Partner

CMS Cameron McKenna LLP

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From: Hugh Flemington [GRO]
Sent: 03 July 2013 19:56
To: BARTY, Susan
Subject: Re: Second Sight [CMCK-UK.FID945106]

What kind of argument does a company mount re privacy plse???

From: BARTY, Susan [GRO]
Sent: Wednesday, July 03, 2013 06:46 PM
To: Hugh Flemington
Subject: RE: Second Sight [CMCK-UK.FID945106]

Hi Hugh

It usually applies to individuals, but could also apply to a company.

Kind regards
Susan

Susan Barty

Partner

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From: Hugh Flemington [GRO]
Sent: 03 July 2013 19:43
To: BARTY, Susan
Subject: Re: Second Sight [CMCK-UK.FID945106]

Thanks Susan

Stupid question but does privacy only attach to individuals or can it apply to companies in any way?

From: BARTY, Susan [GRO]
Sent: Wednesday, July 03, 2013 06:19 PM

To: Susan Crichton; Hugh Flemington
Subject: Second Sight [CMCK-UK.FID945106]

Dear Susan and Hugh

You have asked for my opinion as to whether we can obtain an injunction in relation to the Second Sight report.

The availability of an interim injunction to restrain a defendant from publication of a defamatory document pending trial is much more restricted in defamation cases and the courts have consistently demonstrated a reluctance to grant interim injunctions. Even where it can be shown that there is a clear intention to publish a defamatory statement, English case law makes it clear that an injunction can only be granted in relation to defamation cases where it can be shown that the statement is unarguably defamatory, there are no grounds for concluding that the statement may be true, and there is no other defence which might succeed. This has been well established as being a relatively low hurdle for any defendant to overcome and, in effect, has meant that wherever a defendant says that they will justify any defamatory comments made in a document to be published, or during a proposed broadcast or in a proposed article, an injunction will be refused. This is, in essence, because of the importance attached to the right of free speech. The situation is somewhat different where clear issues of confidentiality and privacy are involved and if it can be shown that there is threatened publication of private or confidential information.

Kind regards
Susan

Susan Barty
Partner
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