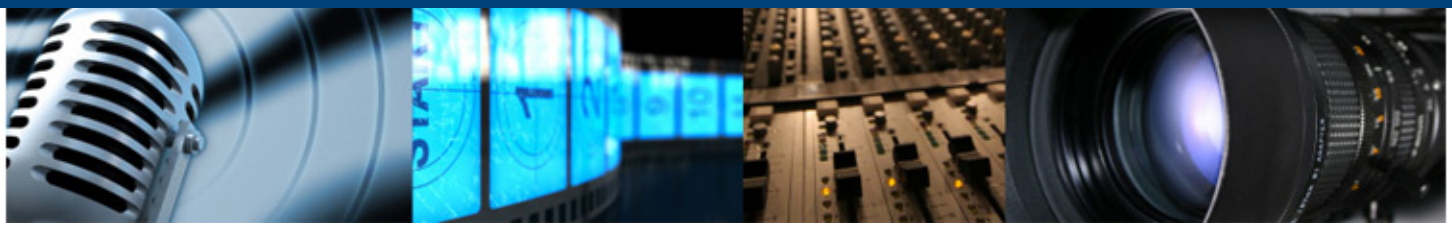

Entertainment & Media Law Signal

Heenan Blaikie

Can a Tweet Be Defamatory?

October 5, 2011 by Bob Tarantino

Julie Hilden has written a very thoughtful piece (Should the Law Treat Defamatory Tweets the Same Way It Treats Printed Defamation?) (hat tip: Media Law Prof Blog) which explores whether a tweet (i.e., a post on the micro-blogging service Twitter, which limits individuals posts (or "tweets") to 140 characters) can ever be considered "defamatory".

There is at least some indication that US courts are prepared to conclude that tweets can be defamatory: in the *Simorangkir v. Love* case (which was settled for a reported $430,000) a Los Angeles Superior Court judge refused a motion to strike the claim based on a series of defamatory tweet. Canadian courts to date do not appear to have considered a defamation case based on Twitter postings (but see our recent discussion about defamation in the context of blogging: *Baglow v Smith* - The Increasing Importance of Context in Defamation Claims).

It strikes me that a tweet can certainly meet the threshold for "defamatory" (i.e., a statement of fact which would tend to lower the reputation of the plaintiff in the eyes of a reasonable person (*Grant v Torstar Corp.*, 2099 SCC 61), but that, as seems to be the trend more generally in defamation cases, the context in which a tweet occurs is relevant to the analysis. At a minimum, analysis of a purportedly defamatory tweet should take into account any preceding or following tweets from the same source - 140 characters isn't an awful lot of room in which to convey subtlety and context, so the meaning of a single tweet in a stream of them can have its meaning meaningfully altered by the content of "surrounding" tweets. It will also, as was the case in the trial decision in *Baglow v Smith*, it may also be relevant to assess whether an impugned tweet was a unilateral communication or part of a "back and forth" discussion/debate/combat between two (or more) parties. Finally, the nature of the platform itself may be a relevant consideration - as the Supreme Court of Canada indicated, in the context of the "fair/honest comment" defence, in *WIC Radio v Simpson* (2008 SCC 40 at para 48):

The key point is that the nature of the forum or the mode of expression is such that the audience can reasonably be expected to understand that, on the basis of the facts as stated or sufficiently indicated to them, or so generally notorious as to be understood by them, the comment is made tongue-in-cheek so as to lead them to discount its “sting” accordingly.

In other words, maybe people just don't take Twitter "seriously" enough - or they might not take particular expressions on Twitter, particularly from certain participants seriously enough - to warrant a finding that the statement was defamatory.

Irrespective of those analytical subtleties, though, Twitter is not and should not be viewed as a free-fire zone when it comes to defamation and it remains the case that publication on Twitter is still "publication" for purposes of a defamation claim, and so Twitter users should, to borrow from the boilerplate of lawyers' letters from time immemorial, conduct themselves accordingly.
