

On Dec. 14, 2006 a judgment was handed down in an appeal of a UK privacy case known as *McKennitt vs Ash*. Following the judgment, a Canadian newspaper *The Globe and Mail* printed 3 articles about the case. One was by Doug Saunders, the *Globe's* European Bureau Chief. In addition to describing Loreena's music as *cod-celtic*, her home as *Nova Scotia* (among much more serious errors), Mr. Saunders sought to establish that a right to privacy was not needed in the world, and that the judgment on which he was commenting had only to do with the 'rich and famous' airbrushing their image.

The following is Loreena's response to this article.

Who Watches the Watchdog?

A Tale of Media, Privacy and the Cult of Celebrity

"The media often appear Janus-faced: on the one hand, they can be characterised as the fearless guardians of the people as watch-dogs and safeguarding democracy...

...On the other hand, the media are prepared on occasions to tear lives apart by invading privacy, or destroying reputations, and (more rarely) to render fair criminal trials impossible, through prejudicial coverage, often largely or wholly motivated by commercial concerns."

*(Media Freedom under the Human Rights Act
Fenwick & Phillipson, Oxford University Press 2006)*

I read the very end of your column (*A toast to 2006, a very good year - Dec. 30*) and realised with some amusement that you could only bring yourself to admit one error in your Dec. 16 column (*Privacy isn't a right. It's an indulgence.*) regarding the name of the province I grew up in. I wonder if it will be next week that you consider correcting the fact that it was my *fiancé* who drowned in a boating incident and not my *husband* and it was *eight* years ago and not *ten*.

But these are mere facts and, in the 6+ articles the *Globe & Mail* has devoted to the UK privacy case in which I have been involved, factual accuracy has been incidental to their standard of journalism. Indeed in this particular case, these facts *are* perhaps relatively incidental. None the less, when one realises how basic and easily accessible they are, it is difficult to respect what further comment a writer asks their readership to believe. Especially if that writer is the *Globe's* European Bureau Chief.

Although you seem upset with the result of this case, if you had done just a bit of research you would have realised there was nothing about this ruling which would impinge on the media's ability to pursue matters which are truly in the public's interest and not just serving their prurient curiosity.

And if you had more *thoroughly* done your research, or even spoken to me before you wrote your column, you would have realised that in the music industry I am almost regarded as an 'anti-celebrity', who drives an old Honda to my office each day, manages budgets, timelines and staff and all that comes with running my own business and independent label. These were choices I made long ago so that I would *not* become the kind of commodity celebrity you would like to portray me as. These biographical facts are well-documented in articles and television profiles over the years, warts and all.

But the most glaring of errors in your column and upon which your thesis seems to rest is that I never challenged the truth of the contents of Ms. Ash's book and have only tried to cover-up certain assertions about my character and life. That in itself suggests that you have never studied the judgment of Dec. 21, 2005 which speaks at length to a variety of disputed matters and false accusations.

So if one takes away that underpinning from your thesis and your premise that the right to privacy is only the concern of the rich and famous, it makes the subject a little more complex, even more sympathetic, because after all, we are talking about a basic human right, not a 'right for the rich and famous.' But perhaps that was not the result you wanted to seek from your readership.

Given slumping sales of newspapers, it was predictable that numerous media outlets would be unhappy about the outcome of this case as no doubt the protection of the personal life of public figures will cut deeply into their bottom line.

Your distorted interpretation of this human rights case which set out to balance the rights inherent in Articles 8 (right to privacy) & 10 (freedom of expression) of the European Convention on Human Rights suggests that you, (along with your Globe colleagues Michael Posner, Kate Taylor and your editor Edward Greenspon) have either allowed yourselves to be influenced by the spin of a disgruntled individual and/or through your own *self-interest*, have compromised your impartiality and your ability to serve the *public's* interest.

Although it is implied that you might have read the Appeal judgment of Dec. 14, 2006, there is no evidence that you have read the judgment of the original trial judge, Mr. Justice Eady of Dec. 21, 2005. (Extraordinarily, all the journalists by whom I have been interviewed, have confessed they too, have not read the judgment(s) let alone understood them.)

What was not reported?

What is in Justice Eady's Dec. 2005 judgment which should be of interest to the public but which you chose not to address?

Perhaps it could be that the name of your Globe colleague Michael Posner appears in paragraph 160, a fact which he has failed to disclose to his readership in the two articles he has written since that judgement. (He too found it difficult to

achieve factual accuracy in his four articles about the case dating back to Aug. 5, 2005. In his Oct. 15, 2005 article, although he interviewed Ms. Ash at length, he never sought my response, and when challenged on this, apologised.)

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In relation to the tactics Ms. Ash deployed around a 2001 property dispute, the judge determined (in paragraphs 106-127): that she had constructed a false case against me; that she was found having adjusted the evidence (which he thought "unedifying to say the least" (127); that Ms. Ash's unhappiness regarding this property dispute was the motivation for writing her book (122); and that he did not find "anything to [my] discredit whatever." (125) The judge also commented on the fact that part of her strategy of constructing this false case was to interest the media and leverage my reputation to "extract a better deal [from me] by the threat of publicity." (118, 120-123) Not surprisingly, these findings undermined her attempt at trial to mount a public interest defence.

Do you think there is any relation to this kind of strategic thinking and why Ms. Ash courted Mr. Posner as early as July 2005 (when she brought this book dispute to his attention) and has kept him posted until this very day?

Why has it not been reported by the Globe that she has had the opportunity before and after last year's trial to re-write her book which she stead-

fastly refused? This hardly supports the accusation of book banning on my part which Ms. Ash seems to want to promote, and as, apparently, do you. And if there is any confusion as to who led this matter to court, read Mr. Posner's Oct. 15, 2005 article, where Ms. Ash declares she is only going to have a court and judge determine what is permissible to write or not.

Although Mr. Posner continues to propagate the falsehood (as do you) that I did not challenge the "veracity" of the book's contents, perhaps he means I didn't bother challenging the contents with HIM. I know some media find it difficult to accept that everyone's business is not necessarily theirs, but out of respect for the legal process I did not feel it appropriate to enumerate and debate every lie or distortion contained in a 300+ page book, with anyone who was not integral to the case, media or otherwise. Additionally, it was a privacy case and it was not necessary to sift through every one of Ms. Ash's accusations to determine which were true or false if those communications fell within a reasonable zone of privacy. In other words, there can be no protection in false information (this too you would have learned had you read the judgment).

Unless we have now moved to a society of trial by media, there are courts of law which are set up to scrutinise the facts, evidence and circumstances of individual cases, should that process be warranted. Ms. Ash seemed to think it was and they did. In fact, there were *two* courts, *three* hearings and a total of *seven* judges which undertook this process with great diligence and came out unequivocally in my favour.

Do you honestly believe that the right to privacy, as outlined in the European Convention on Human Rights and the UN Declaration of Human Rights, was conceived only for the rich and fa-

mous? Most people I know, who are not rich and famous nor have anything to hide, still have a great deal of interest in their privacy being protected from surveillance, intrusion or harassment. This includes others who also found themselves in Ms. Ash' book(s) and are deeply offended by her revealing their personal life.

I can see how those who didn't do their due diligence, or who may have a commercial vested interest in "unfettered expression," (see your editor's

editorial of Dec. 16, 2006) might be susceptible to perpetuating the spin that this case was about a celebrity who wanted to airbrush the stains out of their life.

In my case, Mr. Justice Eady found that there had been serious intrusions into my personal and family life, not the least of which involved my grief at the death of my fiancé which had nothing

to do with airbrushing anything. Evidence was brought forth that I have made genuine attempts to ensure my basic privacy as any other member of the public naturally enjoys theirs, as a result of their anonymity. It is only your selective and self-serving mind which says privacy is synonymous with keeping unflattering information secret.

What is private information?

When you or your colleagues are in a more self-reflective mood, may I suggest picking up a book called *Media Freedom under the Human Rights Act* by Fenwick and Phillipson. It is referenced in the appeal judgment and was released late in 2006. As a judicial reference, and with regards to privacy it quotes Lord Hoffman as identifying "*private information as something worth protecting as an aspect of human autonomy and dignity ... the right to control the dissemination of information about one's life ... and that the Strasbourg court has recently stated that Article 8 is primarily intended to ensure the development, without outside interference, of the personality*

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of each individual in his relations with other human beings." Are these not qualities of life, you also desire and enjoy? Why would you deny them to me or any one else who becomes well-known for what ever reason?

Is the Media's Interest the Public's Interest?

More importantly, why would you distort or belittle the value of privacy and in so doing, mislead your readership as to the very essence of what this case was concerning? And whose interests are you serving? The public's? Your newspaper's? Your colleague Michael Posner's who became part of the case and by extension Ms. Ash's advocate? Are these not substantial enough issues deserving of a more respectful presentation than you and some of your colleagues at the Globe have given them?

How is it in the public's interest to neglect doing your research and checking your facts, and then proceeding to deride someone in 'Canada's National Newspaper' when there will likely never be an equal opportunity for response or defence? (Of course, I would only be too happy to offer my own comment in your newspaper should you care to extend freedom of expression that far!)

Is this what stands-in for responsible journalism?

Taking up the mirror analogy in your column, have some journalists become celebrities in their own right, preening before their untouchable self-importance, and missing the real stories, only to become part of them? Are they shirking their professional responsibilities and their own code of ethics only to wallow in the hypocrisy that privacy means nothing until their own is infringed upon? And are they not protected by the brotherhood of those who hide behind the clarion call of freedom of expression?

Perhaps, you and your colleagues at the Globe may want to consider whether or not *you've* been misled. It may not be much comfort, but you, Judy Stoffman at the Toronto Star, and Morley Walker at the Winnipeg Free Press, among others, may not be alone. So too, perhaps, might have been the insurance company who paid for Ms. Ash's very experienced legal team up to the eve of last year's trial. Who knows, maybe so were the lawyers who took up her appeal this past year on a no-win no-fee basis. Maybe even the British media, some of whom initially thought this was about freedom of expression sought to intervene in the case, only to learn that this was about manufactured and calculated revenge.



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Ms. Ash has not needed to spend any of her own money in this attempt to achieve her aims, as she has been careful to select assistance by those who share vested interests in trading in the commodity of well-known people and are prepared to become her

patsies. In the end, as someone who signed a confidentiality agreement, she has been the architect of her own fate as she has written this book and lost this case.

It is nothing new that a portion of the media derives considerable revenue from trading in the lives of well-known people and that it is largely responsible for the manufacturing of so called 'celebrities' for that trade. The blood sport is to seek them out, build them up, deride them and tear them down, and that columns such as yours, not even well researched, much less well thought out, are intended to serve as a chill to *any* individual who wants to protect the dignity of their privacy.

The cult of celebrity is an increasing plague on our society. The sense of ownership by the media with regards to newsworthy individuals progresses from freedom of expression to freedom of exploitation

to freedom of stalking. Pursued by bounty hunting paparazzi and reporters, the well-known are targets like animals in a chase, corralled in an ever diminishing habitat. In many cases, it is nothing short of barbaric and cruel.

And in case you might bridle at the notion that it is the media itself who manufactures the cult of celebrity, I have yet to learn of an editor with a gun to his or her head obliging them to compose or carry the next piece about the 'latest' celebrity. Feigning that you can't help but report on publicity-seeking-individuals, is like accusing a woman who is wearing a short skirt that she is begging to be accosted and you just couldn't help it. You offer the stage. You can hardly complain of it being used. Try allowing that stage to be used for more weighty issues and leave the publicity seekers to wallow in their own obscurity.

We all know there is great importance in freedom of expression and we know there is tremendous value to a free and democratic society in having a rigorous and robust media. This must involve among other things, due diligence, fact checking, balanced reporting, and resisting becoming the emissaries of disgruntled individuals.

As a friend once pointed out, when the media is privately owned and commercially driven, how can we trust that they will always look after the public's interest before serving their own?

One last question. Who watches the watchdog?

In Fenwick and Phillipson's introduction to *Media Freedom under the Human Rights Act* (OUP 2006) they are quoted as saying: "*This introduction -and the book as a whole- challenges the assumptions quite often made about the harmony between the rationales underpinning freedom of expression and the claims of the media for freedom from various*

forms of interference. It questions the unthinking assumption that media freedom is an unqualified good, and argues that the relationship between the two interests is often of a deeply complex and problematic nature, when looked at under closer analysis. The media often appear Janus-faced: on the one hand, they can be characterised as the fearless guardians of the people as watch-dogs and safeguarding democracy... On the other hand, the media are prepared on occasions to tear lives apart by invading privacy, or destroying reputations, and (more rarely) to render fair criminal trials impossible, through prejudicial coverage, often largely or wholly motivated by commercial concerns."

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Perhaps we here in Canada, could do worse than thoughtfully echo UK judge Lord Justice Sedley's suggestion in his Blackstone lecture of May 13, 2006, calling for a effective media regulatory body. If you and your colleagues' work

represents current journalism standards upon which the citizenry must rely to make decisions about what political party is in power, whether our troops should be in Afghanistan, or corporate accounting is kept straight, it would be comforting to know that the media could be held accountable. At a time where there are British journalists before the courts for illegally tapping into the royal household's telephones, the idea of setting up independent regulatory bodies doesn't sound like an unreasonable thing to consider. Is it any surprise that journalists sit at the bottom of the list of whom the public trusts and respects?

Perhaps, the Globe would like to initiate a national discussion regarding media accountability and human rights issues in Canada without the public having to press for it.

Other journalist and writer friends who have followed this case and have studied the documents, are truly aghast at the actions of the Globe and some other media. Not just for me but more

deeply, as journalists, for themselves, for they realise that this reflects poorly on their profession. The deeper implications pertain to what your editor Mr. Greenspon referred to in his Nov. 5, 2005 article concerning the media and the public's trust: *"Today, trust must be earned and re-earned and then earned again. It is as perishable as milk left unattended on the counter."*

Well Mr. Saunders, through the success of my work I have had the resources to defend my contracts and rights, and I am proud that the precedent of this case will be available to everyone, even you. While I await a response from Mr. Greenspon to my letter of Dec. 18, 2006, I may continue to buy the Globe from time to time for my entertainment but not for anything more substantial than that. As a reader and as a subject of your reporting, you have lost my trust, and I know I am not alone. In the meantime, for me, you are back to the drawing board when it comes to the media and the public's trust. Or is it the refrigerator? Is that where you keep the Celtic-Cod?



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