

**ALISTAIR MOFFAT v. WEST HIGHLAND PUBLISHING CO  
LTD [1999] ScotCS 235 (11th October, 1999)**

**OUTER HOUSE, COURT OF SESSION**

0159/6/98

**OPINION OF LORD CAMERON OF  
LOCHBROOM**

in the cause

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**ALISTAIR MURRAY MOFFAT**

Pursuer:

against

**WEST HIGHLAND PUBLISHING  
COMPANY LIMITED**

Defenders:

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**Pursuer: Paton, Q.C., Balfour & Manson (for Levy & McRae, Glasgow)**

**Defenders: Boyd, Currie Gilmour & Co (for MacArthur & Co, Portree)**

11 October 1999

In this action the pursuer who holds a number of positions within the Scottish Media Group plc, complains of the publication by the defenders, the publishers of the West Highland Free Press newspaper, of defamatory statements concerning him. He seeks damages for the loss, injury and damage occasioned by their publication. The pursuer is a main Board Director of Scottish Media Group plc, a member of the Executive Group responsible for the day to day running of the Group, as well as Managing Director of Scottish Television Enterprises, a network production company which produces television programmes for ITV, Channel 4, Channel 5 and for the Gaelic Broadcasting Committee.

The article complained of appeared in an edition of the defenders' newspaper published on 30 October 1998. The article appeared within a column entitled "Clippings from the phrase shed". It was critical of the Scottish Television soap opera "Machair". It was in the following terms:

"Ochone, ochone, Somebody else has been slagging "Machair", STV's embarrassing Gaelic soap opera which has made almost as much money for the Lairds o' Coocaddens as soap made for Lord Leverhulme.

It was the most scathing criticism of all and it came from the award-winning writer, Ajay Close, who admitted that this encounter with "Machair" was her first.

She wrote last Saturday: "Judging from a sample one, the typical episode features a man in a suit striding over a rocky hillside, watched by a quintet of laconic sheep. Cut to two old ladies winding wool. Cut to woman driving over rocky hillside, braking sharply with look of horror on face.

Cut to interior shot of boy with ponytail playing piano accordion to teenagers in faded denim (the Jeremy Clarkson effect not having reached Stornoway yet). Cut back to ambulance speeding over rocky hillside. Strangely enough, this is to be the last series."

But we now come to the interesting bit in the plot. Cut to Alistair Moffat, the Laird o' Coocaddens' in-house bully reading the 'Herald' which, like STV, is owned by the Scottish Media Group. Cut to television crit by .....Ajay Close. Cut back to Moffat stroking beard and considering his options.

For, as Free Press readers know, any whiff of criticism about "Machair" guarantees a thunderous response from the great man. So is Ajay Close for the chop? Will Moffat send his usual thunderbolt on behalf of the Scottish Media Group to the letters column of the "Herald"? Or will STV finally decide to cut the crap and just get on with counting the CCG's money?

Better than "Machair", isn't it? Ochone, Ochone."

Article 4 of the condescence, as amended at the bar, avers as the substance of the pursuer's case that the article "alleged that the pursuer was an "In-house bully" for Scottish Media Group plc. This statement implies behaviour on the part of the pursuer of a threatening nature intended to cause fear or distress in those employed by the Scottish Media Group plc. Such an article is calumnious and defamatory of the

pursuer. The article falsely and calumniously represented and was intended to represent directly and by innuendo that the pursuer bullies employees of the Scottish Media Group."

For the defenders it was submitted that the words complained neither directly bore the implication of behaviour averred nor did they carry the innuendo sought to be placed upon them. The words had to be read in the context of the article as a whole. Reference was made to *Brooks v. Lind* 1997 Rep LR 83 and *Thomson v. News Group Newspapers* (Outer House 6 March 1992). The tenor of the article was, it was suggested, satirical and lampooning in style. This too fell to be taken into account. Reference was made to *Bell v. Haldane* 2 SLT 320. Accordingly there being no relevant averments to support the conclusions of the action, the action should be dismissed.

For the pursuer it was submitted that the words complained of were capable of bearing a defamatory meaning. Under reference to the meaning ascribed to the word "bully" in both the Shorter and the Concise Oxford Dictionaries, as being one who was a tyrant and coward and who made himself a terror to the weak, counsel contended that the word "bully" introduced by the word "in-house", identified the pursuer as one who tyrannised those in a weaker position within the employees of the Scottish Media Group plc and gave them a bad time. This was not mere ridicule. It went further than saying that the pursuer was what might be called a trouble-shooter. It attributed to the pursuer a private character flaw or vice or behaviour which no right-minded person would wish to have attributed to them. Reference was made to instances of defamatory material in passages in Gloag & Henderson's Introduction to Scots Law (10th ed) para. 35.5 and in Walker on Delict (2nd ed) pp.771 *et seq.* For instance, the words "coward and scoundrel" had been held capable of having a defamatory meaning

It was not in dispute between counsel that the words complained of require to be read in the context of the article as a whole. Nor was it suggested that in determining as a matter of law whether the words complained of were, within that context, capable of being read as an attack on his character or reputation and thus defamatory, any test should be used other than that of reference to the reasonable and fair minded reader. See *Thomson v. News Group Newspapers Ltd.* In the article itself the subject matter is directed to a particular published criticism of the television programme "Machair". The writer of the article then parodies the style of the criticism in guessing at the likely reaction to that criticism either by STV or on its behalf by the Scottish Media Group. The article suggests, and no complaint is made on this head by the pursuer, that the pursuer has in the past responded to "any whiff of criticism" of the programme on behalf of the Scottish Media Group and has done so in letters published in the "Herald". It is to be noted that the pursuer does not complain of the use of the word "bully" alone but of its conjunction with the word "in-house". But to term a man a bully does not mean that he has been given to bullying, just as to call a man a fraud does not mean that he has committed a fraud. Furthermore the word "in-house" does not normally do more than connote that a person is directly employed by a company or corporation or similar body. In the article the word is preceded by the reference to "the Laird o' Coocaddens' ", thereby identifying the employer. In my opinion, in its context in the article the word "in-house" in its conjunction with the word "bully" can only be reasonably read in the same sense as, for instance, the term "in-house lawyer" would be so understood, namely as a person directly employed by the "Laird o' Coocaddens". That being so, I do not consider that the words complained of are capable of bearing the defamatory meaning which the pursuer seeks to attribute to them. The pursuer is a man who holds a position which on behalf of those who employ him, has brought him into the public notice in a way akin to those who take part in public business. Indeed he is described in the pleadings as occupying a position of professional responsibility in the media world. In that respect he may require to suffer that

which might be described as rough language or unmannerly jests so long as such statements do not attack his private character or reputation or indeed disparage his business reputation or fitness for his office. See *Gloag & Henderson* para. 35.5. In the present case I do not find that in the context of the article there is any substance in the suggestion that the private character of the pursuer or his business reputation is attacked by the words complained of or that the words are capable of being so read either directly or by way of the innuendo averred. That being so, I shall sustain the first plea-in-law for the defenders and dismiss the action.

I deal briefly with a subsidiary argument arising from the defenders' second plea-in-law which was advanced on the basis that their primary argument seeking dismissal, failed. This related to certain of the pursuer's averments of loss and damage, counsel being agreed that if the pursuer's case was otherwise relevant, then the action should proceed by way of proof before answer. The first passage to which exception was taken relates to a possible adverse impression which members of the Gaelic Broadcasting Committee, who did not know the pursuer, might form. The pursuer then goes on to aver that the Committee has the ability to provide funding to Scottish Television Enterprise programmes, "of which company the pursuer is a director". I consider that the criticism directed to the lack of any relevant connection between the Committee's ability to provide funding to such programmes and any personal loss and damage suffered by the pursuer, is well taken. On the other hand the fact that an adverse impression of the pursuer will be formed by individual members of the Committee as a result of reading the article, may be relevant to the pursuer's case of personal injury, loss and damage. I would therefore have excluded from probation only that sentence which dealt with the funding ability of the Committee. The remaining criticism was directed to a passage which set out that "such an article could have a detrimental effect on the pursuer's relations with existing staff" and then went on to assert that it could discourage prospective staff from applying for jobs with the Scottish Media Group and further that journalists with the newspaper division of the Group could be "adversely influenced in their dealing with the pursuer" since he took part in decision making to the newspaper division. In my view, apart from the reference to detriment to the pursuer's relations with existing staff, the remainder of the averments concerning prospective staff and journalists within the newspaper division, are entirely inspecific and speculative and do not form proper ground for any assessment of personal injury, loss or damage sustained by the pursuer. I would therefore have excluded these averments also from probation, had I otherwise been minded to send this action to proof before answer.