

RESPONSE

The effects of the English libel laws on medicine and research – a student's view

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Until a year ago, I was blissfully naive when it came to the flaws in academic research, publication and the impact of English libel laws in science. I was still (reasonably) fresh from my undergraduate degree and assumed that everything I read was correct, that everything that should be printed would be printed, and that it was accessible enough so the public not only knew about it, but also understood it. I thought that all doctors and researchers were honest and that if there were any 'bad seeds' amongst us, we could report them to the appropriate boards and they would be publicly discredited.

My two month internship with the charity Sense About Science (SAS) ended all that! Back in October 2009, SAS was deeply involved with their 'Keep libel laws out of science' campaign (see <http://www.senseaboutscience.org.uk/index.php/site/project/333/>). I was thrown into a pile of newspaper clippings and endless lists of websites documenting cases where journals, newspapers and individuals had been threatened with libel action by large companies that had featured in an unflattering article or been the subject of criticism. In many circumstances, the publisher or individual being summoned (defendant) had documented evidence to support their claims, but they still faced the prospect of being dragged through the English libel courts, racking up thousands of pounds in legal costs (Singh, 2009). All too often, the threat of such expense meant that the defendant could not afford to fight the case. So, the story or comment was retracted and an apology made to the claimant (Cohen, 2009).

This completely baffled me. I make no claims to understand the complexity of law or politics in this or any other country, but even I could see that there was a massive fly in the ointment. If libel cases cost so much and the threat of them was enough to send most journals, papers and individuals running for the hills, then it meant that being truthful and having 'right' on your side meant nothing. Whoever had the money had the power.

Another case that shocked me when I was working with SAS was that of Peter Wilmschurst and NMT Medical. A well-respected cardiologist is approached by NMT Medical to serve on the steering committee for a trial assessing whether the Starflex

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device (designed to close an atrial septum defect) would be useful in the treatment of patients suffering from migraines. He is chosen for his prior knowledge of the field and because of the papers he has published discussing data suggesting that atrial hole closure could be used to treat severe migraine (Wilmschurst *et al.*, 2005). He is the expert and will know more than NMT. The trial ensues and some disagreements develop over the analysis of the closure of the cardiac hole. Data are reassessed and it is found that there is some difference in the success rate of hole closure with Starflex, depending on who is assessing the post-surgical closure. Data analysis is what gives results, drives discussion and leads to conclusions. If there are differences in the results related to who is performing the analysis, then this should raise concern.

After some debate, NMT decided to press ahead with its original observations and publish its findings. Wilmschurst raised his concern about the trial's post-surgical analysis at an American conference, and his comments were published in a Canadian journal. He now finds himself being sued by NMT in the English libel courts (Gornall, 2010). I am sorry, but ... huh? Even if we forget the fact that Wilmschurst was making comments on matters he had knowledge of, and putting aside for a moment the company's arguments, why is NMT not suing Wilmschurst in America or Canada?

This is where the weaknesses of English libel laws are exposed for all to see. Embarrassingly, NMT are suing Wilmschurst in the UK because 'they can'. In America, freedom of speech is celebrated (even encouraged) and it is likely NMT could not sue Wilmschurst successfully there. However, the English libel system has a reputation for being 'soft' and favouring the claimant. So, because Wilmschurst's comments were published in an online journal, allowing the British public to access and read his concerns about the trial, NMT could use the English libel system to mount their case. This blatant case of libel tourism shows just how preposterous our English libel laws are. One consequence of the situation is that the English may come to know less than people who live in other countries. English libel laws are now so notorious that American legislation now protects US writers, journalists and academics from British libel law (Dunt, 2010).

Science affects us all. It should be completely open for everyone to see and understand. We should feel free to discuss, encouraged to debate and comforted in knowing that the people who are doing good science are protected. I know I am a newbie scientist with a tendency to see things in black and white, and I probably still have a slither of that naivety I mentioned at the beginning of this response, but it should surely be as simple as this: it should not cost a scientist thousands of pounds to present scientific evidence, no matter who is offended.

References

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