

Freedom of scientific expression

An English High Court judgement highlights the need for reform of a libel law that discourages open scientific discourse.

A visitor to the UK can easily witness the penchant of its citizens for open debate in any pub or by attending that quintessentially British institution, the debating society. Indeed, it is no coincidence that animated discussions by interested scientific amateurs during the age of enlightenment in this country paved the way for our present scientific culture. On the other hand, England has evolved one of the strictest libel laws anywhere, maybe because debate tends to get personal and spill over into the media.

The protection of persons and institutions against malicious slander is as essential in science as it is elsewhere. However, a recent libel case serves as a stark reminder that open scientific discourse can all too easily enter the courts. In April 2008, the well respected popular science writer Simon Singh published a 'comment' in the Guardian, a UK broadsheet, criticizing alleged claims by members of the British Chiropractic Association (BCA) that spinal manipulation can treat conditions such as colic, asthma and ear infections in children. The court ruled against Singh, stating that the language used implied that BCA promoted treatments they knew did not work. Singh argued that his intended meaning was that "alternative therapists who offer treatments unsupported by reasonable evidence are deluded rather than deliberately dishonest". Whatever the language used, Singh raised an issue of significant public interest. It is lamentable that the BCA did not publish a defence based on scientific arguments and the peer reviewed literature, which would have ensured that the evidence could be judged by the same readers. In our view, falling back on legal proceedings may instead appear defensive, although the BCA stated "To stifle scientific debate would clearly be wrong... However, scientists must realize that they cannot simply publish with impunity what they know to be untrue."

The case is raising widespread support for Singh, who is planning to appeal. Signatories to a statement entitled 'we the undersigned believe that it is inappropriate to use the English libel laws to silence critical discussion of medical practice and scientific evidence', published by the charity Sense about Science, include Martin Rees, President of the Royal Society, the present and former directors of the Wellcome trust, Mark Walport and Bridget Ogilvie, and the presidents of a number of scientific societies. David King, former chief scientific advisor to the UK government, commented "It is ridiculous that a legal and outdated definition of a word has been used to hinder and discourage scientific debate. We must be able to fairly and reasonably challenge ideas without the fear of legal intimidation." Numerous scientific editors, journalists, lawyers, politicians, novelists, poets and comedians have also expressed their solidarity. Another disturbing case that took 17 months and cost half a million pounds to defend before it was dropped was that of columnist Ben Goldacre, who was sued by a businessman allegedly promoting vitamin tablets as a cure for AIDS. A central concern about English libel law is that it favours the plaintiff in that the

burden of proof rests with the defendant. This is in marked contrast to other countries, including the US, where the plaintiff generally has to disprove the allegations, and it has already resulted in a number of books not being published in the UK. A second issue is that the enormous costs in defending libel allegations in court will make any writer think twice before criticizing powerful interest groups. Tracey Brown, director of Sense about Science, says "it is not only about the rights of scientists to inform the public, but about the right of the public to hear their voices. We have had a long battle to get scientists to speak up and share with the public their reasoning. There was a time when some people did not deign to. Now I think there is a real danger that people won't dare to."

The law also has a direct impact on the scientific literature: it can in principle be used by pharmaceutical companies to block opinions critical of their products. Such censorship can preclude access to information that is clearly in the public interest. Liberal Democrat science spokesman Evan Harris commented in an editorial in the *British Medical Journal* "it is essential in the scientific sphere, and in particular the world of medicine, for claims of efficacy to be subject to the most stringent examination and criticism... all practitioners need to be able to justify their claims in a transparent and scientific way. If that debate is chilled, then the medical profession, patients' interests, and scientific discourse are severely undermined." Importantly, libel law applies just as much to online commenting and blogs, which can be written in a much more casual style. As the *Nature* journals enable commenting on primary papers, we have to consider the legal options and mechanisms for doing this. We could in principle face a claim over user-generated content of which we had no knowledge or control. In the meantime, we have added functionality for readers to efficiently flag up libellous statements and may have to remove potentially defamatory content since we did not write, let alone research, it. The law will also affect decisions such as whether to publish referee reports, as for example already practiced by the *EMBO Journal*. We hope the current legislation does not discourage informed commenting. Purely factual information is not a cause for concern, but extrapolation to individuals and institutions must be considered carefully (also in referee reports).

It is essential that the law does not dampen open scientific debate and the scrutinizing of claims, irrespective of the commercial or personal value attached to them. As it stands, English law discourages critical discussion, impeding the constitutional right to freedom of expression. The web has dramatically facilitated and democratized this open discourse and it would be tragic if outdated laws destroy this core value of our scientific culture.

The House of Commons did launch an inquiry into libel law last year, which is pending. It is encouraging that three senior parliamentarians sent a letter of support to Sense about Science, arguing for a change in the law. The hope is that concrete recommendations for a more balanced law will emerge. Reform is not only in the interest of people living in England: any text, including online content, accessed in England is also subject to the law, which has led to what Evan Harris has called 'libel tourism'.

Further reading: Connotea.org/user/ncb/tag/Englishlibellaw