

A DAMNABLY HAZARDOUS ENTERPRISE

*The celebrated case brought by Jani Allan against Channel 4 TV is a salient reminder of how difficult libel cases are to win. **KERRY SWIFT** takes a whimsical look at other examples and suggests journalists should think twice before suing for defamation*

SUING for defamation (libel) is a damnably hazardous enterprise and one which journalists pursue at their peril as the celebrated case of Jani Allan Vs Channel 4 TV in London clearly showed. But Jani Allan was only one of many journalists to suffer ignominious defeat in the defamation courts, not the least of them *Citizen* editor Johnny Johnson who also took a fierce drubbing last year.

The Johnson case arose from an article Denis Beckett wrote in the old *Frontline* magazine, which referred to the "increasingly depraved Johnny Johnson".

Johnson claimed R50 000 damages on the grounds that the average reader would understand by the words "increasingly depraved" that he was morally corrupt.

Mr Justice Goldstein disagreed. In the Witwatersrand Local Supreme Court he ruled that the article was not defamatory and that, in the context of the article, "increasingly depraved" referred to Johnson's weekly column, *The Height Street Diary*, and not his person. The judge held that Beckett's description of Johnny Johnson was fair comment.

Dissatisfied with this ruling, Johnson took the judgement on appeal which was duly dismissed — with costs.

Worse was to follow for the luckless editor. Besides losing his case, Johnson had to endure a painfully schoolmarmish critique of his writing ability from the appeal judge, Mr Justice Corbett, who described his newspaper columns as "bad, both in style and content; they trivialise important matters in a manner no doubt intended to be humorous but seldom achieving this; the language used is often ungrammatical and is replete with slang, much of which is derived from



Afrikaans; certain of the writing is in extremely poor taste... and there is throughout the writings a recurring theme of sexual suggestiveness of the crude variety".

Now Johnny Johnson is a seasoned newspaperman — indeed, one of the best in the business — and should have known better than to pursue Beckett, who has the distinction of being an advocate by training if not by desire, and who has had ample practice in dealing with all manner of defamation actions over the years.

Instead, Johnson joined that long list of distinguished journalists who have been unable to stomach a dose of their own muti and who have stumbled blindly into litigation only to find that the law is no great respecter of reputations and that defamation cases are extremely difficult to win, even when *God is on your side*.

One is reminded of the celebrated case in Britain of Nora Belloff, an *Observer* columnist who came unstuck in a libel action against the satirical magazine *Private Eye*.

Ms Beloff instituted a libel action on the back of a single sentence which had appeared in the magazine. It read: "Miss Bailiff, a sister of the late Sir Alex Douglas-Home, was frequently to be found in bed with Mr Harold Wilson and senior members of the previous administration, although it is thought that nothing improper occurred."

It was an ambitious case to bring as Beloff was neither related to Sir Alex, nor was her surname Bailiff. It was also patently absurd to suggest that she had somehow managed to bed the Labour prime minister. The aggrieved sentence was obviously a joke. As a commentator at the time put it: "The idea that this dry old stick who took herself so toweringly seriously could ever have been found in bed with Wilson was too absurd to need explanation."

But Beloff's lawyers argued in the High Court that the offending sentence was intended to suggest that she had had an affair with Harold Wilson and, remarkably, she won her case and was awarded the equivalent of R15 000 damages.

Private Eye, however, engineered a cruel revenge on the litigious Ms Beloff. It opened a special register, calling on

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readers to contribute to "The Ballsoff Fund", an appeal which ran in the *Eye* for many months as the magazine campaigned to raise the money to pay the damages. Needless to say, nicknames have a nasty way of sticking.

All this begs the question whether journalists, regardless of provocation, should sue for defamation at all. Perhaps journalists who feel the urge to run to their lawyers at every slight should take a leaf out of *The Spectator* columnist, Auberon Waugh's book before rushing to the courts to seek redress.

Waugh certainly has a thicker hide than the editor of the *Citizen*. Following the publication of his memoirs (*Will This Do, Century*), Waugh had to endure a flurry of wicked barbs from certain 'colleagues' among the British television and newspaper critics.

Nora Bellof — the same 'dry old stick' *Private Eye* had neutered so wickedly some years before — described Waugh on *Thames Television* as "nastiness personified... a shallow, vindictive man who relies on his father's name..."

Waugh shrugged off this decidedly bitchy suggestion that he somehow trades on the late and great Evelyn Waugh's reputation by saying he could scarcely sue *Thames Television* because "Beloff's austere judgement was balanced by incense-like clouds of the most fulsome praise from other quarters".

Translated, Waugh was suggesting, in the nicest possible way, that Beloff's opinion was of small consequence compared to that of her peers.

He was equally calm in the face of the *Guardian's* description of him as "vicious, backbiting, snobbish, bullying, ignorant, puerile and slightly psychopathic," saying a defence of *volenti non fit injuria* might be applied since he had agreed to be interviewed in the first place.

Here he gracefully accepts the Confucian principle that he who breaks wind in public must expect occasional kick on shins.

Equally sanguine was his response to the *Mail on Sunday's* television critic who sneered: "Could anybody be so impossibly rude, vituperative, conceited, sexist, snobbish, reactionary, violent and self-centred?" Waugh conceded that the man was only asking — a vintage case of waging Waugh if ever there was one.

He admitted, however, to feeling a "slight frisson" when the *Daily Express's* television critic described him as "arrogant, brutal, snobbish and conceited", an "unprincipled hack", a "malevolent prig" and "journalism's answer to the viper".

Waugh suggested that the expression "unprincipled hack" is certainly libellous, but he saw no reason to attempt a libel action off the back of that old taunt.

To none of these decidedly nasty jibes did this prince of columnists rise, but there is a limit to the stiff upper lip.

It was an item in the London *Sunday Times* that finally got Auberon on the Waugh-path. The incident arose from a suggestion in Waugh's *Spectator* column that the London *Sunday Times* had attempted to discredit a witness to a shooting incident in Gibraltar on March 6, 1988, when three IRA suspects were fatally shot by an Special Air Services unit. These shootings created a storm of indignation in Britain against the Thatcher government, which had long been suspected of a shoot-to-kill policy in dealing with members of the IRA.

Waugh suggested a Royal Commission should look into the shootings to determine whether, in fact, they were state-sponsored assassinations, and he questioned the possible role the *Sunday Times* had played in the whole affair.

The *Sunday Times* 'Atticus' column, written by the editor Andrew Neil and his deputy Ivan Fallon, responded to Waugh as follows:

"Atticus has several times been forced to expose the wickedness of that miserable little man, Auberon Waugh. Now Atticus has made a more important discovery: Waugh is a liar. Writing in this week's *Spectator*, Mr Waugh implies that Mrs Thatcher 'persuaded' the *Sunday Times* to attack a witness in the 'Death on the Rock' incident. There is not an iota of truth in that. But Waugh is such a malicious creep when it comes to the *Sunday Times* that truth has rarely interfered with what he writes."

Waugh responded: "One observes the whining, persecuted note of self-pity at the end. Poor *Sunday Times*. In fact, the *Sunday Times* has paid for no fewer than three of its employees to sue me for libel and deserves everything it gets. Writing an autobiography or appearing in a television documentary is rather like

opening your house to the public, and you cannot complain too much if one or two members of the public shit on the carpet. They have not had our advantages after all... it is true that I have few genial feelings towards the *Sunday Times*, and it is possible that I was thinking of its editor when I wrote in *The Spectator* of the danger that those who lie with dogs will rise with fleas. What is not possible is that I lied in implying that Mrs Thatcher had persuaded the *Sunday Times* to attack a witness to the Gibraltar shootings because there is not the faintest hint of any such implication in my article ... To call a journalist a 'malicious creep' and a 'miserable little man' for asking such questions may be no more than the expression of an honest opinion, but to call him a liar in this context might prove rather expensive for that dismal newspaper and its snivelling flea-ridden editor."

It was at this point of the public fracas that Waugh fell silent, leaving the threat of a libel action to hang and mature in the wind like one of those plump pheasants that can still be found hanging in butcher shops around Somerset where he lives, and hungry journalists around Britain were left waiting to feast on the carcass once it was served up in the courts.

When would the writ arrive on Andrew Neil's desk at the *Sunday Times*, and, even more tantalizing, what amount was Waugh going to whack the 'flea-ridden editor' for?

Those of us following the case from afar waited patiently for the answers but alas, we waited in vain. Nothing happened. Not another word was printed on the subject and Waugh's weekly columns gave no hint of malevolent intent. The silence was deafening.

Unable to stand the tension any longer, I wrote to Auberon Waugh asking about his intentions.

I quote from his reply: "I never had the slightest intention of suing the *Sunday Times*, merely to give the snivelling Neil a few nights' anxiety. I had him over a barrel, libelwise, but I don't have the time, energy or resources to pursue the matter and the simple truth is that where either plaintiffs or defendants are backed by a rich organisation like the *Sunday Times*, it is a one-sided fight."

Surely there is a lesson for journalists in all of this? ●