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Privacy law spreads into new areas

- No longer purely celebrity-versus-media cases
- Public sector struggling to predict when it is breaching rights to private life

The use of privacy arguments in UK court cases has rapidly spread into new and unexpected areas of law, reveals research from Sweet & Maxwell, the leading legal information provider.

In the UK the use of legal arguments based on the claimant's right to a private life were almost exclusively restricted to cases brought by celebrities against newspaper groups but have now mushroomed into other fields.

The research by Sweet & Maxwell shows that of the 28 reported court cases in the last year (to May 31 2009) that made use of privacy arguments 26 had no connection to the traditional battle between high profile individuals and the media.

The trend for privacy arguments to diversify into entirely new areas was most dramatically highlighted in the recent Purdy v DPP case where terminally ill Debbie Purdy successfully argued that the lack of clarity in UK law on assisted suicide was a violation of her right to lead a private life.

Jonathan Cooper, barrister at London's Doughty Street Chambers and editor of Sweet & Maxwell's 'European Human Rights Law Review' says that although the right to a private life has been well developed in international human rights law the UK has lagged behind in the development of this legal concept.

Says Jonathan Cooper: "The wider use of privacy arguments in the UK courts is really the UK playing catch up with other countries where the concept of privacy has been taken more seriously."

"The absence of privacy rights has been a defect of UK law."

Sweet & Maxwell, a Thomson Reuters business, says that the growth in new areas seeing privacy arguments used stems from the European Convention on Human Rights allowing a broad definition of what is and is not 'private'. As a result, what actually constitutes a lawful interference of one's privacy or private life can be open to challenge.

According to Sweet & Maxwell, the public sector in particular has faced cases from individuals arguing an unlawful interference into their private life.

Jonathan Cooper explains that most of the problems arise when a public body has failed to consider whether their interference in an individual's right to privacy is proportional to the public benefit that might be created by that infringement.

Examples of cases challenging the public sector include asylum seekers threatened with deportation having committed a crime arguing that forcing them to return to an unsafe zone or to be separated from their family would constitute a breach of their right to a private life.

Also reported is a recent case where an individual claimed a ban for safety reasons on him having an open-air funeral pyre when he died would be an invasion into his rights to a private life.

Further issues that formed the basis for privacy cases in the last year include:

- A single mother went to court to argue that the Child Support Agency's attempts to enforce receipt of child maintenance arrears from the estranged father was so inefficient that the ability of her and her children to lead a private life was breached
- A nurse argued that her rights to private relationships with the patients she cared for were breached by officials taking too long to decide whether or not she should be allowed to continue caring for them
- A police constable argued that certain documents should not be used as evidence in a trial over his conduct during a shooting, as they contained information that would breach his privacy if made public
- At a public meeting, an individual had photos of him taken and then retained by the Police. He argued that these actions constituted a breach of his privacy

Mounting privacy restrictions on the media

Jaron Lewis, Media Partner at Reynolds Porter Chamberlain LLP (RPC), the City law firm, says privacy arguments are increasingly being used by high profile individuals against the media to prevent publication of stories without a full court hearing.

Comments Jaron Lewis: "Many media organisations feel that privacy arguments have been pushed too far in the UK and are now putting unnecessary restrictions on the media's ability to publish news of public interest."

"Public figures are making more use of interim injunctions to stop stories not on the basis that the reporting is inaccurate but purely on the basis that the reporting infringes their privacy."

"These emergency injunctions can be imposed on the media at short notice, perhaps late at night or over the weekend, often by phone to a judge."

"The problem is that the court system doesn't properly track these emergency injunctions so it is hard to quantify the problem."

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Notes to Editors:

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