

# Be careful what you say on social media: The changing landscape of defamation law in Hong Kong

June 10, 2021

Technology has transformed the way in which people communicate with one another. With the introduction of social media, communication is now easy and ideas can be spread quickly and widely. This has allowed social media users a platform to publish potentially defamatory remarks. Traditionally, the laws on defamation have largely evolved from publications in the print medium. Now the courts must adapt and address claims arising from reputational attacks made through digital means. The recent case of *Chow Wing Kai v. Liang Jing*<sup>1</sup> demonstrates the Hong Kong Court's approach in this regard.

The Defendant in *Chow Wing Kai* was an insurance agent. He sent text messages and published posts on various social media platforms to complain about his superior, the Plaintiff, shortly before and after he received a written notice of termination of his insurance agent contract. Alleging that the Defendant's remarks were defamatory and malicious, the Plaintiff sued the Defendant for libel and sought damages, including aggravated and exemplary damages and injunctions relating to the publications.

In determining whether the relevant words published by the Defendant were defamatory, the court adopted the usual approach, i.e. ascertaining the "meaning in which reasonable people of ordinary intelligence, with the ordinary person's general knowledge and experience of world affairs, would be likely to understand them." This involves an objective assessment: the court would have regard to the circumstances and context in which the words were published, step into the shoes of a fictitious "ordinary reader" to ascertain the meaning of the words and rule out utterly unreasonable interpretations. Given that the target audience (i.e. social media users) tend to scroll through messages/posts relatively quickly and do not pause and ponder on what meaning the statements might possibly bear, the court considered that an **impressionistic** (rather than analytical) approach should be adopted in ascribing meanings to the words published by way of posts on social media.

Having analysed the relevant statements in the Defendant's online publications, the court found one of them, which suggested the Plaintiff had mistreated his fellow team members by legally questionable and unethical treatment, was defamatory. As for the Defendant's private messages to his former colleague, while the relevant words indicated that the Plaintiff had bullied and mistreated members of the team by taking advantage of their submissiveness and imposing inappropriate rules and restrictions on them, the court did not hold those words to be defamatory. In so concluding, the court noted that the words were published as a private conversation with a fellow colleague in the course of the Defendant's sharing of his unpleasant working experience in the team. Taking the view that this kind of private conversation is commonplace among work colleagues, the court did not consider the words to be sufficiently serious to amount to defamation.

The court awarded general damages for injury to the Plaintiff's reputation in the amount of HK\$250,000, in view of a genuine need for the Plaintiff's professional reputation to be sufficiently vindicated and the fact that the relevant posts remained on the internet for some time and were republished by other readers. The court also awarded aggravated and exemplary damages in the sum of HK\$50,000 and granted an injunction restraining the Defendant from republishing the defamatory words.

The Plaintiff further sought an order to compel the Defendant to make an apology to him in relation to the libel, although the Defendant was not willing to do so and such order has never been made in a libel action in Hong Kong before. While holding that the court has a general equitable jurisdiction to make an apology order, the court was of the view that such order can be justified only in exceptional circumstances. The court also observed that no useful purpose would be achieved by requiring an unwilling defendant to apologise. The court ultimately refused to exercise its discretion to grant the relief sought, as the Plaintiff was not able to explain why he required such an apology to be made reluctantly from the Defendant in addition to the awards of damages and injunctions.

As digital forums continue to evolve, the courts are also developing the law to address the novel issues arising from the fast-paced online world. This case serves as a sober reminder to social media users to be careful of what they say on the internet. Words do have consequences.

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1. [2021] HKDC 609.

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