

## Trivial pursuits on trial

Writers will have to be much more careful in what they reveal about their subjects after a court ruling

Rupert Elliott

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The Canadian folk singer Loreena McKennit may not be a familiar name to the British media, but a legal dispute over a book about her life means she will become well known among lawyers at least.

At the end of a trial held in private at the high court in London, and unreported until now, the book was injunctioned, the singer awarded £5,000 damages and the publishing industry landed with a ruling that represents a significant shift in privacy law.

The singer objected to the publication of *Travels with Loreena McKennit: My Life as a Friend*, written by Niema Ash. The writer had been a confidante of McKennit for about 20 years. The book followed a dispute between them; besides its autobiographical material it contained a raft of information about the singer and their friendship.

Every autobiography worth reading will touch upon the writer's relationships with other people. Publishers are used to the libel implications of such material and aware of the consequences of revealing sexual adventures or medical problems.

But in his ruling, Mr Justice Eady went further, tipping the balance away from freedom of expression for the media, in favour of the "the legitimate expectation of citizens to have their private lives protected". In a world increasingly saturated with trivial gossip about those in the public eye, this has far-reaching implications.

The judge drew heavily from Princess Caroline of Monaco's recent victory at the European court of human rights over pictures, published in Germany, that were taken in a public place. In the McKennit case, the judge ruled that information does not forfeit its "private" quality simply because it concerns events that could have been witnessed in a public place or because third parties are involved. In short, it is not a trump card for authors to assert they have a right to freedom of expression by telling their life stories if that exercise involves revealing information about someone else. "Such revelation should be crafted, so far as is possible, to protect the other person's privacy," the judge ruled.

Even trivial information may be protected - such as what we put in our shopping basket, what we eat, how we decorate our home. The touchstone will be whether the claimant had a reasonable expectation of privacy in relation to that information. Often, the more trivial the information, the more unexpected, and upsetting, its disclosure.

A particular sanctity will attach to how we behave in our own homes and the details of how we live: "People feel, and are entitled to feel, free in their homes to speak unguardedly and with less inhibition than in public places," said the judge.

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Publishers should not feel protected even if some information is already in the public domain: a person is entitled to reveal limited aspects of his private life about which he feels "comfortable" without inviting a free-for-all scrutiny of the rest. Finally, the "public interest" defence will only sparingly be applied: a publisher will need to demonstrate "a very high degree of misbehaviour" by a claimant before a court will be persuaded that publication of otherwise private information was justified in the public interest.

This judgment is littered with chilling pre-publication lessons for publishers. They will need to scrutinise with extra care what they publish if stock-in trade autobiographies and routine interviews are to avoid a raft of expensive privacy claims.

Rupert Elliott specialises in media law at One Brick Court. He acted for the Defendant.

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