

LSE-Featherstone

Sexual Orientation and Gender Identity

Moot Competition Problem 2019

Q v News Press Media

Facts

1. Q is a former backbench MP. He was elected in 2001 and lost his seat in 2017. He is no longer politically active and does not intend to stand for Parliament in the future.

2. As an MP, he consistently voted against equal rights for LGBT people:
 - In 2014, he voted against enabling the courts to deal with proceedings for the divorce of, or annulment of the marriage of, a same sex couple.
 - In 2014, he voted against making same sex marriage available to armed forces personnel outside the UK.
 - In 2013, he voted against allowing same sex couples to marry.
 - In 2009-2010, he voted against the Equality Act 2010 at every reading.
 - He voted against the Civil Partnership Act 2004 at every reading.
 - He voted against the Gender Recognition Act 2004 at every reading.
 - In 2003, he voted against repealing section 28 of the Local Government Act 1988.

3. During passage of the Gender Recognition Act 2004 he was interviewed by his local newspaper, the Biddlesworth Post, where he commented that “men who wear dresses should get counselling, not legal recognition as women”. During the passage of the Equality Act 2010 he made a speech in Parliament arguing against “Gender Reassignment” being a protected characteristic on the basis that gender dysphoria was an illness and there was already the protected

characteristic of disability. In response to this speech, the Queer Tribune described Q as “Parliament’s biggest transphobe”.

4. Q’s only subsequent reported comments on LGBT issues were in an interview of 22 June 2017 with the Biddlesworth Post, soon after he lost his seat. He confirmed that he did not regret any of his votes but described being labelled “Parliament’s biggest transphobe” as absurd as he only had sympathy for “people who are afflicted”.
5. On 13 May 2019, a post on “Photogram” by T showed an individual in full drag at a well-known LGBT venue in London. The post was a scan of a polaroid photo dated 05.04.12. Although almost totally unrecognisable, the individual was Q.
6. The post was liked by Q’s Photogram account. This Photogram account was set up when Q was an MP and was used as a way to keep constituents updated with his constituency and Parliamentary activities. Following Q liking the post, it could be seen by his 12,532 followers. The vast majority of his followers were his former constituents, rather than people known personally to Q.
7. The Photogram post was removed within 2 hours of it being uploaded as Q became concerned about being recognised.
8. On 21 May 2019, The Daily News (owned by News Press Media) received an anonymous email with a screenshot of the Photogram post. The email stated that the individual was Q. Q, as “Queen Maggie”, often attends London LGBT venues. There was no evidence that he has been identified as Q by anyone attending these venues.
9. The anonymous email stated that they were sending the newspaper the Photogram post as they were frustrated that Q had consistently attempted to

undermine LGBT rights while enjoying the benefits of there being a safe space where he could express an aspect of his gender identity.

10. Q has been married to X for 20 years and they have as a 16-year-old son, Y. Neither X or Y know that Q has the alternative persona of "Queen Maggie".
11. On 12 June 2019, The Daily News approached Q stating that it intended to publish a story describing Q's double life in order to expose his hypocritical stance on LGBT rights as an MP. The Daily News informed Q that they had a screenshot of the Photogram post and invited him to provide a comment.

Interim Injunction Application

12. On 13 June 2019, Q applied for an interim injunction preventing publication of the article on the basis that it would be a misuse of private information in breach of his rights under Article 8 ECHR.
13. He argued that wearing drag was a manifestation of his gender identity that engaged Article 8. Q argued that as he was so well disguised, and that so few people knew his persona, that he had a reasonable expectation of privacy.
14. H argued that his outing would have a devastating impact on his family and likely lead to his son being bullied at school.
15. News Press Media resisted the injunction application. They argued that he had appeared in a public space in drag while he was an MP therefore had no reasonable expectation of privacy. If he did have a reasonable expectation of privacy then this was diminished by the picture being liked by his Photogram account.
16. News Press Media argued that even if Q did have a reasonable expectation of privacy then it was clearly outweighed by the public interest in publication. Q was until recently an elected MP. He had been a leading opponent of LGBT

equality in Parliament and the photo taken while he was an MP, showed him to a hypocrite and there is no evidence to suggest that he has changed his views.

17. News Press Media argued that the rights of X and Y should be given minimal weight as a family member being LGBT was nothing to be ashamed of.

Judgment

18. Following a hearing on 20 June 2019, Paul J granted an interim injunction preventing publication of the screenshot or any reference to Q having an alternate drag queen persona. In a brief ex tempore judgment, Paul J held:

“A person’s gender identity is a highly intimate aspect of their private life, which is protected by Article 8 ECHR. Considering all the facts of the case, the Claimant had a reasonable expectation of privacy in relation to the photos and his gender identity more generally.

I do not consider that his reasonable expectation of privacy was materially weakened by him being in a public space. He was practically unrecognisable and only a small group of trusted friends was aware that the drag queen was the Claimant. Indeed, no evidence was presented that he had ever been identified when “in role”. While the photo was posted on Photogram, it was swiftly removed. That it was liked by the Claimant’s Photogram account which was previously used when he was an MP, did not materially reduce his right to privacy. While the Claimant was an MP, he no longer is and he has effectively withdrawn from public life and is entitled to privacy. While the photo was taken when he was an MP, the story would lead to intrusion in his private life today, when he is a private individual.

The Claimant’s family also have Article 8 rights. I give particular weight to the Article 8 rights of the Claimant’s son, a child. Given that we cannot hear evidence from the Claimant’s son, I take judicial notice that a 16-

year-old boy is likely to be bullied at school if his father is publicly outed and there is extensive coverage in the media.

I do not consider there to be a compelling public interest in publication. While the public may find it interesting to see a former MP “outed” as LGBT, that is very different from it being in the public interest. The focus of the Defendant’s submissions on public interest were that the photo was taken while the Claimant was an MP and he was an outspoken critic of legislation advancing LGBT equality and as such the article would expose the Claimant’s hypocrisy. I do not accept that the Claimant has been a hypocrite. His actions are in fact entirely consistent with someone who considers being transgender to be an “affliction” as he has tried very hard to keep his true gender identity a secret.

As such, I consider that the Claimant and his family’s Article 8 rights are stronger than the countervailing Article 10 considerations.”

Appeal

19. The Defendant has been granted permission to appeal and seeks to challenge the following findings:

- i) The Claimant had a reasonable expectation of privacy.
- ii) The Claimant was likely to succeed, balancing the Claimant and his family’s Article 8 rights with the countervailing Article 10 considerations.