



Judging public relations: An analysis of an Israeli court judgement on a defamatory and negative campaign



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ABSTRACT

This article analyzes a recent court ruling in Israel and argues that it has major implications for the public relations community internationally. To date, the public relations literature on legal judgments has focused on cases where media channels were sued for defamation. The article uses a 2012 Israeli court decision that may be unique in ruling out defamatory intentions in a public relations plan that was part of a lawsuit. The defendant in this case was not the media but rather a company that hired a public relations firm to, according to the judgement, conduct a defamatory campaign against a competitor. Although this is just one case in one country, the article also considers some of the wider implications for the profession and for democracy.

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1. Introduction

The scholarly literature has paid scant attention to deliberations on public relations by judges in court. Moreover, the publications that do consider legal issues in public relations used examples in which media channels were sued for defamation while ignoring the contribution of public relations to the defamatory publicity (Hearit, 1996; Lattimore, Baskin, Heiman & Toth 2012; Parkinson, Ekachai & Traynovwicz Hetherington, 2001; Seitel, 2003). That literature tends to confirm Gower's (2008) claim that "Most books on mass communication law focus on the law as it affects journalists" (p. vi). This article provides a rare opportunity to learn from an Israeli court's judgement that ruled defamatory intentions in a public relations plan were unacceptable. Significantly, the defendant in this case was neither a journalist nor a media organization but rather a company. According to the judgement, that company hired a public relations firm to conduct a defamatory campaign against a competitor. The public relations firm prepared plans for verbal defamation as well as actual activities aiming to damage the competitor's reputation and business.

This article analyzes the judgement from a public relations rather than legal perspective and considers potential implications for the profession. It raises concerns around practitioners' abuse of power as well as court interventions in regulating public relations work and court decisions about what should be considered a negative public relations campaign. Using information from the judgement, as well as an in-depth interview with the judge and interviews with other experts, it considers the case's implications for the profession and democracy.

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At the outset, it must be acknowledged that legal systems are different in each country. Nevertheless, the Israeli judgement is relevant in raising fundamental issues around the power and responsibilities of public relations almost anywhere. More specifically, the case illustrates Fitzpatrick's (2006) warning:

Irresponsible behaviour attracts the bright light of public scrutiny and invites increased legal restrictions on public relations work. Indeed, as the distinctions between *legal* public relations and *ethical* public relations narrow, legal standards may become increasingly important gauges of acceptable professional conduct. (p. 15)

2. Background

An Israeli District Court judge, Dr. Michal Agmon-Gonnen (2012b), stated in her written June 2012 judgement that “we have to stop the practice of negative public relations campaigns” (p. 45) [Author translation from Hebrew, henceforth ATH] and that “the court has to shape a society in which a public relations campaign that aims at hurting someone would not be accepted as legitimate at all” (p. 30) (ATH).

Agmon-Gonnen's judgement establishes malice by using a public relations programme as evidence. She did so even though that programme was not fully implemented. In his testimony under oath, the public relations practitioner argued that smear campaigns are common practice in the industry. His defense included the claim that “the acceptable concept is that you put pressure [“noise in the media”] on the opponents till they agree to compromise and make a deal in order to get the media off their back” (cited in Agmon-Gonnen, 2012b, p. 15) [ATH].

The plaintiffs in the case were Eli Azour, an Israeli businessman who owns several communications companies, and his company, Mirkai Tikshoret (communication screens). The defendants were the Canadian company Canwest Global Communications Corp, which owned TV channels and publications around the world; Richard Leipsic who was General Counsel and Senior Vice President at Canwest; Leonard Asper, who was President and CEO of Canwest and a major shareholder; the Israeli public relations agency Morel-Tzur Communications Ltd (deleted from the defendants list in 2008 by agreement of both sides); and Moshe Ronen, a business consultant to Canwest who connected the Canadian company with Morel-Tzur.

According to the judgement, Canwest signed a letter of agreement in 2004 with Mirkai Tikshoret to jointly purchase the shares of the *Jerusalem Post* newspaper from Hollinger International. Eventually Canwest was left out when the newspaper was sold to Mirkai Tikshoret and Eli Azour. After the negotiations with Canwest about the *Jerusalem Post* ownership's terms failed, Canwest, according to Azour's complaint, became vindictive and promised to “destroy” him. In 2005 Canwest sued Mirkai Tikshoret in New York for breaching their agreement and demanded that the arbitrator order continuation of the negotiations between the two parties over the ownership and management of the newspaper. In 2006 the New York arbitrator ruled that the letter of agreement was not a legal contract and rejected Canwest's claims.

While the arbitration process was going on in New York, Canwest hired the services of Morel-Tzur, an Israeli public relations firm owned by Motti Morel and Ronen Tzur. The engagement agreement was signed in February 2005 and was part of the documents submitted to the court. This document became a major part of the evidence to prove Canwest's defamatory intentions. The plaintiffs argued in court that the public relations firm was hired to defame Azour and destroy his business, against Canwest's defense argument that they hired the Israeli firm to protect their reputation, voice their position in this business conflict, and inform the public about their intention to continue the negotiations about the *Jerusalem Post* deal (Agmon-Gonnen, 2012b, p. 4) [ATH]. Canwest denied any intention to defame the plaintiffs.

The engagement agreement between Canwest and Morel-Tzur was a critical factor in the final decision. It included a public relations plan entitled “The *Jerusalem Post* Project Preliminary Game Plan,” which consisted of a list of activities to present the arguments of Canwest to the media and to decision makers in the Knesset (Israeli Parliament). The plan recommended:

Finding out details about Eli Azour's controversial business tactics from former business associates and others; attempting to initiate a negative profile article about Eli Azour in the press;... exploring the possibility of unions and union action in Azour's printing press; exploring ways to exploit public outrage at Azour's policy on soccer broadcasts – “How Charlton/Azour is ruining and corrupting Israeli Soccer” [Charlton is a broadcasting company co-owned by Azour]; ...initiating a second Knesset committee hearing about Azour's unacceptable soccer broadcast policies and pricing; publicizing minutes of hearings; enlisting one or two members of the Knesset to publicly attack Azour and Charlton. (Agmon-Gonnen, 2012b, pp. 10–11) [ATH]

The “Game Plan” also suggested pressuring the Israeli income tax office to conduct an investigation about the purchase of the *Jerusalem Post* and to follow rumours that Azour bought it as part of a tax evasion plan. Morel-Tzur promised to provide the media with information about the income tax investigation.

The judge concluded that the proclaimed goal of the public relations “Game Plan” was to damage Azour's business. (Agmon-Gonnen, 2012b, p. 12) [ATH]. Canwest failed to convince her that they had not initiated, asked for, or accepted the “Game plan” and that it was not an integral part of the engagement agreement with Morel-Tzur. She was convinced that the defendants wanted to use public relations to put pressure on Azour, so that he would return to the negotiation under their terms. In an interview the judge emphasized the importance of the intent, and the interest behind the published information: “you may tell a truthful story but mislead by hiding the real intent behind it” (Agmon-Gonnen, 2012a). The intent to harm Azour's reputation through a public relations campaign was a major factor in her judgement: “the problem here is the intention behind the activities and not just the content of the messages” (Agmon-Gonnen, 2012a).

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