



OUTER HOUSE, COURT OF SESSION

[2019] CSOH 98

P1083/19

OPINION OF LORD PENTLAND

In the petition of

JO SWINSON

Petitioner

for interdict and interdict *ad interim*

**Petitioner: Dunlop QC, MacGregor; Gilson Gray LLP**

**First and Second Respondents: Mitchell QC; Martin, Solicitor to the Scottish National Party**

28 November 2019

[1] This is a slightly expanded version of the reasons I provided at the conclusion of the hearing on the evening of 26 November 2019, at which I granted *interim* interdict against the first and second respondents. The substance of my reasoning remains unaltered.

[2] The petitioner is the leader of the Liberal Democrats and their candidate for the East Dunbartonshire constituency at the forthcoming General Election. The first respondents are the Scottish National Party. Their candidate for the constituency is the second respondent, Ms Amy Callaghan. The third respondents are Royal Mail Group Limited; they were not represented at the hearing.

[3] The petitioner complains that a statement contained in an election leaflet produced by the second respondent with the assistance of the first respondent is defamatory of her and that the statement infringes section 106 of the Representation of the People Act 1983

("the 1983 Act") because it is a false statement of fact in relation to the petitioner's character or conduct.

[4] The statement complained of is in the following terms:

***"make climate change a priority, unlike Jo Swinson who accepted a £14K donation from a fracking company"***.

[5] The petitioner avers that the statement is false and defamatory of her. She maintains that she has never accepted a donation from a "fracking company". She says that her constituency office received a donation of £14,000 from Mr Mark Petterson, who is one of the directors of Warwick Energy Limited ("Warwick Energy"), a company specialising in offshore wind energy. At the hearing I was informed that Warwick Energy has 14 directors. The petitioner avers that the donation was made by Mr Petterson in a personal capacity. Warwick Energy has, according to the petitioner's averments, never made any donation to any political party or to any politician.

[6] The petitioner goes on to say in her averments that whilst Warwick Energy has been granted a fracking licence, it has never carried out any shale gas fracking operations and, so far as the petitioner is aware, has no intention to engage in such operations.

[7] The petitioner avers that, as is well known, she has made various pledges to tackle climate change and has adopted a stance which is opposed to fracking. She maintains that the statement represents, directly and by innuendo, that she is a hypocrite, prone to accepting money from companies who engage in the very conduct that she campaigns against.

[8] In my opinion, the statement of which the petitioner complains is, on the information put before the court, false in substance and materially inaccurate.

[9] The petitioner or her constituency office, and I consider these to be one and the same for present purposes, did not accept a donation from a fracking company. The donation in question, as Mr Mitchell QC accepted, came from an individual and not from a corporation.

[10] Moreover it is not, in my opinion, true to say that the donor was a fracking company. The company referred to in the pleadings, Warwick Energy, is a company which holds a licence permitting it to carry out fracking operations, but it has never in fact undertaken any such activities and the petitioner avers that the company has no present intention so to do.

[11] The petitioner offers to prove that her stance as a campaigner against fracking is one that is publicly and politically well known.

[12] Against that background, it seems to me that the statement complained of is one that is liable to create in the mind of the reasonable reader the impression that the petitioner is hypocritical in relation to her position on the politically controversial issue of fracking. On the one hand the petitioner is said to have campaigned against fracking. At the same time she is alleged to have accepted money from a fracking company.

[13] In these circumstances, I consider that the petitioner has put forward in the petition a *prima facie* case that the statement in the leaflet would tend to make electors think the worse of her, and that the statement would tend to lower her reputation in the estimation of reasonable readers. There is therefore, in my view, a *prima facie* case to the effect that the statement complained of is defamatory.

[14] As to the second branch of the petitioner's case, that is to say the case insofar as it is brought under section 106 of the 1983 Act, I am satisfied that here too the petitioner has put forward a *prima facie* case to the effect that the false statement relates to her personal character or conduct. As I have already said, the gist of the representation made is that the petitioner has acted hypocritically by accepting a substantial financial donation from a

fracking company, that being conduct which is alleged to be incompatible with her stated political position as an opponent of fracking. This reflects adversely on her personal character or conduct.

[15] I conclude that the petitioner has in her petition put forward a strong *prima facie* case on both branches of her pleaded allegations.

[16] As to the balance of convenience, in my opinion, this favours *interim* interdict being granted so as to prohibit further distribution of the election leaflet. Whatever currency may have already been given to these or similar allegations, I do not consider that it would be right for an official election leaflet, which contains *prima facie* defamatory statements and statements that are in breach of section 106 of the 1983 Act, to be distributed by the Royal Mail. That would, in my opinion, be contrary to sound public policy.

[17] As to the terms of the interdicts which are sought in the prayer of the petition, in my view the wording of the interdict sought against the third respondents, Royal Mail Group Limited, is too vaguely stated and may be liable to give rise to practical difficulties. That part of the order should, I consider, be precisely focused on distribution of the leaflet in its present form containing the statement complained of. I shall allow Mr Dunlop QC an opportunity to amend the terms of subhead (b) in the prayer. As to subhead (a), which is directed against the first and second respondents, I am prepared to grant that as it is currently set out.

[18] I have found the first and second respondents liable to the petitioner in the expenses of the hearing on the motion for *interim* interdict.