nature immunology

A libelous state of affairs

The archaic nature of English libel law and its pernicious effect on scientific and medical reporting is widely criticized. Despite some recent positive developments, the situation remains perilous.

Journalists have long struggled with the unnecessarily punitive nature of English libel law, but recent events have also given the scientific community a rude awakening. In a 2008 newspaper article, the well-known science writer Simon Singh questioned the veracity of some of the more outlandish claims about chiropractic therapy, such as its ability to cure asthma. This subsequently led the British Chiropractic Association (BCA) to sue Singh personally for libel. At stake was the ability of people to question and criticize scientific or medical claims. Earlier this year, the case of the BCA versus Simon Singh was thrown out by the Court of Appeal with the defense of "fair comment," whereby the defendant can argue that their claims are made in the public interest. This victory, however, did not come without a struggle and may not have happened at all were it not for an impassioned campaign supported by scientists, journalists and the public at large (http://www.libelreform.org/). Even though the BCA eventually backed down, if the legal situation does not change fundamentally, any scientist following this case could well be deterred from commenting on controversial topics in the future.

There are many things wrong with English libel law, and these remain essentially unaltered despite Singh's success in the courts. One of these is the disproportionately high cost of fighting a libel case in England and Wales; in fact one, study by the University of Oxford has put the figure at 140 times the European average. No fair-minded person would deny that some form of legal redress needs to be available to protect people from damaging and untruthful accusations; however, the guiding principle should always be the restoration of a claimant's reputation rather than financial gain.

A welcome development came on 9 July, when the UK government announced a consultation to reform of libel law, which would be followed by a bill some time "early in the new year" (http://www.parliamentlive.tv/Main/Player.aspx?meetingId=6412). It remains to be seen what the scope of these reforms will actually be; we hope they will go some way to making it feasible for the average person to fight a libel case as well as reduce the incentive for speculative 'have-a-go' claims. However, even without the threat of bankruptcy, defending against a libel claim can be both time-consuming and traumatic. Under English libel law, the onus is on the defendant to prove the accuracy of their claims; it would be far preferable for the claimant to provide evidence of falsity or unfairness.

English libel law was also obviously not written with the specific needs of scientists in mind, and it seems inappropriate to bring these laws to bear on scientific matters. Having to continually tiptoe over libel eggshells would in short bring scientific and medical progress to a standstill, as well as ruin more than a few blameless people along the way. Of course, not every scientific claim has the scope to support a libel case, but it is a different story for the fields of medicine, pharmacology and technology, in which there can be genuine financial interests at stake. Indeed, a survey of UK general practitioners has suggested that they do not discuss issues of drug safety for fear of a libel suit. British parliamentarians can claim an 'absolute privilege' to make or repeat defamatory remarks in the House of Commons (the UK's lower house) without the fear of libel because it is argued that this is in the public's interest. Perhaps something similar should exist for claims in the scientific arena. At the very least there should be a stronger public interest defense for scientists and journalists. Similarly, there needs to be a broader definition of what is meant by "fair comment"; at the moment, this is tortuous to prove. As for scientific and medical issues, any party who feels aggrieved should first provide the scientific or medical evidence to support their position before seeking legal redress. In retrospect, the BCA would have been much better served by trying to rebut Singh's claim on scientific grounds. Although it is doubtful they would have met with much success, they would have at least come across as an organization that respects evidence-based medicine.

Another troubling issue is that of so-called 'libel tourism'. The peculiar nature of libel laws in England has encouraged claimants to bring their cases to London. Only the most tenuous connection to England is required for a claimant to have their case heard in an English court. For example, a book published overseas but downloadable in England can be subject to English libel laws even when the claimant has no reputation to defend in England. This is plainly ludicrous, and the law needs to reflect the arrival of the internet. The global reach and pernicious influence of English libel laws has already been demonstrated by the case of British cardiologist Peter Wilmshurst, who raised concerns about data relating to a US-made medical device. He is now being sued for libel in the UK. This case is ongoing, and losing it could result in Wilmshurst's financial ruin. Sensibly, the US Senate has responded to this with its so-called "Libel Tourism Bill," which would prohibit the recognition and enforcement of foreign defamation judgments.

Although there have certainly been some recent positive developments, there is still clearly a long way to go. Pressure must continue to ensure that English libel law can no longer punish well-meaning people and prevent it from ever being wielded as a weapon to shut down balanced scientific discourse.