

# Global Workplace Law & Policy

## Free speech in a globalized world

David Mangan (Maynooth University (Ireland)) · Monday, May 13th, 2019



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*What is the scope for freedom of expression in globalization?*

Regulating for Globalization focuses on its namesake with an emphasis on trade, labour and European Union law. Each of these topics can be discussed on their own. There are, additionally, topics which link each of them. It is contended that free speech is one of them. The equivocation in the previous sentence may seem odd. It stems from the surprising precarity in which free speech finds itself; notably at a time when there is unprecedented capacity for free speech.

Ideas surrounding the regulation of speech (by way of an action in defamation) compel considered time and effort by many around the world, including the [Law Commission of Ontario](#). An international conference on comparative defamation and privacy law discussed the international aspects of defamation. A podcast was produced (coming out of the event) hosted by Dr. Tom Bennett and Dr. Paul Wragg with a panel comprised of Professor Russell Weaver (Brandeis School of Law, US), Professor Dario Milo (Partner at Webber Wentzel and Visiting Professor at the University of Witwatersrand, South Africa) and myself. Matters discussed include some of those below, but this blog contribution situates the discussion within the parameters of the Regulating for Globalization context.

### *The public interest*

The public interest forms one aspect of this free speech discussion. Developments along this line in Canada include the Canadian Supreme Court's creation of the defence of 'responsible publication on matters of public interest'. Legislation (in the Canadian Province of Ontario, *Protection of Public Participation Act 2015*) stands out as particularly useful for the individual expressing herself online regarding matters of public interest. The UK Government released its [Online Harms White Paper](#) which proposes 'a world-leading package of online safety measures that also supports innovation and a thriving digital economy.' Ideas mooted there include establishing a duty of care towards online users.

Some further points for engagement regarding free speech in the context of globalization are noted

below

### Free press compared with free speech

Freedom of expression has been classified as the ‘cornerstone of democracy’. Though free speech is valued in democracies, free press has been the more central focus of endorsement. Free press may be distinguished from free speech insofar as the latter term alludes to the individual right and the former a more particular form of the right. This distinction seems crucial for the law’s application to the broad forms of communication. Information technology platforms invigorate the idea of free speech insofar as the individual possesses an accessible means for expression. However, if free speech is viewed as a free press, the role and influence of these platforms may be significantly truncated.

### Permeability of free speech in the workplace

In the UK, as one example, workers free speech on information technology platforms (such as social media) has garnered little protection. The matter is made starker by the disconnect between these decisions and legislative and common law movements regarding UK defamation law. For example, the [importance of freedom of expression](#) was a frequent refrain in the debates leading up to the passage of the UK’s [Defamation Act, 2013](#). The distance between protection of speech for workers and citizens outside of the workplace prompts deeper engagement. It is a troubling distinction that the law protects free speech in the tort of defamation for writing about a range of matters; while workers’ remarks may also fit under the same heading but are not considered in a similar manner. The categorization of social media as an inferior form of speech (thereby intimating that mainstream media is (more if not exclusively) worthy of protection) constitutes a particular difficulty.

### Social media and speech

As noted in the last section, the classification of venues for speech requires further elaboration. The following passage from the UK Supreme Court’s April 2019 decision in [Stocker v Stocker](#)[2019] UKSC 17 illustrates:

‘I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.’

This statement seems overbroad. Considering, as one example, the uses of social media by government as well as traditional newsmedia. If the UKSC is referring to the private citizen and her postings, it may be worthwhile factoring in the role of social media during the ‘Arab Spring’ – a topic explored in detail by [Zeynep Tufekci](#) in [Twitter and Tear Gas](#) (Yale University Press, 2017).

This entry was posted on Monday, May 13th, 2019 at 8:33 pm and is filed under [Canada, Labor Law, Regulating, UK, USA](#)

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