

# Hold Media Platforms Accountable for Published Content

Peter Champagnie Q.C | February 17, 2021



The recent posting by an American JetBlue employee, Miss Kalina Collier, suggesting that she was kidnapped and being held against her will in Jamaica serves to bring into focus once again the irresponsible and reckless behaviour of some users on social media.

This comes in the wake of a revelation by Jamaican authorities that the employee was placed in quarantine after testing positive for COVID-19, as mandated by the Disaster Risk Management Act.

It is understood that the employee's posting ignited a digital wildfire on social media, resulting in all manner of derogatory comments in respect of Jamaica, with some even going so far in the way of issuing death threats to government officials.

With the revelation of the reasons behind her 'detention', some had demanded that she be charged with Creating Public Mischief. There are those who have posited the view that if she were a Jamaican, she would have long been charged for such an offence.

Within this context, however, the reminder needs to be given that the offence of Creating Public Mischief does not extend to the type of action that was associated with Miss Collier's conduct.

A condition precedent to the successful prosecution of any such charge must be that the person arrested for such an offence made the false report to a peace officer. That is to say, in this instance, a member of the Jamaica Constabulary Force.

This has long been the law since the ruling by our Court of Appeal in *Margaret Simmonds v Queen* in 1960. This position has not changed. In the present situation, it does not appear that Miss Collier, although making a complaint of a false nature, reported this matter to the police, and, consequently, any charges brought would not have been successful.

This being the case, however, does not absolve persons like Miss Collier and other users of social media who, without regard for the truth, spew venomous comments with great regularity. Such users are commonly referred to as 'trolls'.

The comments, although typically defamatory in nature, from a practical point of view, are hardly ever actionable due to the fact that these trolls hide behind the veil of anonymity and, in some instances, operate outside the island of Jamaica.

## **LEGISLATORS NEED TO ACT NOW**

Whereas Section 9 of the Cybercrimes Act provides for criminal charges to be laid against persons who publish information electronically, which may have the potential of inciting violence or causing harm to individuals, it does not take into account publications which, whilst not explicitly inciting violence or harm, nevertheless are equally damaging. The victims of such vile comments are often holders of public offices and persons of prominence.

The extent to which such comments can cause irreparable damage are unimaginable. The clearest example of this beyond Miss Collier's case, were the utterances of former United States President Donald Trump, who created fertile ground for what was to follow by way of an insurrection which, among other things, resulted in the loss of lives.

Must we in Jamaica wait until trolls have reached the zenith of their vitriolic commentaries before we act to curb their traits? Should we, in the name of free speech, continue to allow such purveyors of false and injurious information to capture and occupy at their will, the various social media platforms without any legal consequences?

The better view, while recognising the right to free speech, is to impose by law a measure of restraint in respect of these trolls.

The approach taken by the court in Australia last year, in **Fairfax Media Publication; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller**, may well be the solution to this issue. The court held that the host of a media platform was itself accountable for damaging statements republished by it from a third party. This decision is consistent with the actions taken by the various social media platforms to ban President Trump from publication via their platforms.

The Fairfax case is instructive. Were such a position to be adopted here with the governance of legislation, it would mean that the host of social media platforms would be mandated to redact injurious comments received before posting. With the media landscape being heavily populated as it now is, those with social media pages are all too eager to sacrifice truth and respect for the dignity of others at the altar of expedience.

In all the circumstances, therefore, would it be too much to expect, and stipulate that, hosts of media platforms here in Jamaica be held accountable for the content of their publication when trolls remain elusive?

After all, 'If yuh cyaan ketch Quaku, yuh ketch im shut'. Our legislators need to act now.