WIC Radio Limited v Simpson (2008):

Background:

Rafe Mair is a well-known and sometimes controversial host of a talk show on WIC radio. Kari Simpson is a widely known social activist who is opposed to any positive portrayal of a gay lifestyle. The two took opposing sides in a debate about whether to introduce material dealing with homosexuality in public schools. Mair believed it would promote tolerance while Simpson argued t would promote a homosexual lifestyle.

In an editorial, Mair compared Simpson to Hitler, the Ku Klux Klan, and skinheads. Simpson sued, claiming the broadcast was defamatory. At trail, Mair testified that he not implied that Simpson condoned violence toward the gay community – he simply wanted to convey that she was an intolerant bigot. The trial Judge dismissed the complaint nothing that the defence of fair comment applied.

The Court of Appeal reversed the trial Judge’s decision, saying that the defence of fair comment was not available in this case. There was no evidence that Simpson had ever promoted or condoned violence against gay people, nor did Mair testify that he had an honest belief that Simpson would condone violence.

WIC Radio appealed to the Supreme Court of Canada.

Legal Question:

What is the objective test that would grant a defence of fair comment?

Decision:

In a unanimous decision, the Supreme Court overturned the Court of Appeal and restored the decision of the trial Judge. The Court reasoned that although Rafe Mair did make defamatory comments about Kari Simpson, his comments were protected by the defence of fair comment. The tests related to the defence of fair comment included:

1. The comments must be on a matter of public interest
2. They must be based on fact
3. The comments must be recognized as comment
4. The person who made the comments must believe them to be true

The Court ruled that the last test should be modified to read “if any person could honestly express that opinion based on the same facts.”

Legal Significance:

In this case, the Supreme Court set a precedent by stating:

The fair comment defence should not include an element of honest belief … It is no longer justifiable, for purposes of the fair comment defence, to judge a person’s opinions on an objective basis other than to require that they have some basis in fact.

Analysis Questions:

1. How did the issue of “fair comment” figure in all three court decisions in this case?
2. What is your opinion of this judgement?