

# Blogger liable to plastic surgeon for defamatory posts about botched breast augmentation

Defamation | Litigation | Litigation & Dispute Resolution

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A British Columbia plastic surgeon successfully sued a former patient for defamation following comments she posted online alleging botched breast augmentation surgery: *Peterson v Deck*, 2021 BCSC 1670 (CanLII) <https://canlii.ca/t/jhqsf>

The defendant, a professional blogger, had retained the plaintiff surgeon for a breast augmentation consultation and surgery. The surgeon had suggested that the defendant consider asymmetrically sized implants in response to her medical condition known as a “sunken chest”. The defendant instead chose two symmetrical implants, which the surgeon implanted in a November 2015 surgery.

Following the surgery, the defendant was unhappy that one implant sat higher on her chest than the other. She complained to the surgeon who informed her that this was not uncommon and the implant would likely settle over the coming months as her chest muscles relaxed. When the implant failed to settle as the defendant wished, the surgeon offered to perform a “capsulotomy” surgery to provide sufficient room in the defendant’s chest to allow the implant to settle free of charge.

The defendant instead decided to visit a different local plastic surgeon to have her current implants removed and receive new implants. The second surgeon also recommended that the defendant select asymmetrical implants. This time the Defendant agreed to the asymmetrical implants and was happy with the results of the second surgery.

Following her second surgery, the defendant posted a lengthy “review” of the surgeon on her personal blogging website. In her review, she disparaged the surgeon’s bedside manner, alleged that he took “measly” notes, and denied, incorrectly, that he too had suggested asymmetrical implants to address her “sunken chest”. The defendant’s blog went on to state she was “scared to have [the surgeon] operate on [her] again” and “[the surgeon]’s mistake was more than [she] bargained for.” The defendant posted a similar Google Review two months later adding comments that her original review had gone “viral”, and that the surgeon had tried to get her to take the review down and publicly bully her.

The surgeon sued the defendant for defamation in the Supreme Court of British Columbia after she refused to remove the online reviews.

Before considering the merits of the defamation claim, the court addressed whether the lawsuit should be dismissed under the British Columbia *Protection of Public Participation Act* which is designed to “screen out actions that have the effect of limiting a defendant’s participation in public debate”. Although the court confirmed that a consumer review of a plastic surgeon’s skills is within the ambit of public interest, it determined that the surgeon’s defamation action should be allowed to continue on the basis that the “harm caused to [the surgeon] by the Posts was serious enough that society’s interest in continuing the proceeding outweighs society’s interest in protecting the defendant’s expressions.”

To succeed in his claim for defamation, the surgeon was required to demonstrate the factors established by the Supreme Court of Canada in *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII) (the “Grant Factors”) that the words:

- a. Are defamatory in the sense that they are capable of lowering the surgeon’s reputation in the eyes of a reasonable person;
- b. in fact refer to the plaintiff; and

c. were published to at least one person

The surgeon claimed that a reader of the impugned posts would infer that:

- “he provided substandard care”,
- made a “fundamental error”,
- he was motivated by financial gain without proper concern for the defendant’s health, and
- he carelessly or intentionally failed to inform the defendant about her “sunken chest” condition and how this could complicate the surgery.

There was no question that the posts had referred to the surgeon by name and that he was a plastic surgeon in Kelowna.

Further, the impugned posts would, the surgeon argued, lower his reputation to members of society. The court agreed with the surgeon.

The third *Grant* Factor requires that the defamatory statements be published to a third party. While the extent and breadth of the publication will impact a plaintiff’s damages award, the plaintiff only has to prove that they were published to a single third party to succeed in their defamation action.

While there was limited evidence that the online posts had reached a wide audience, the surgeon’s assistant confirmed that she had read the posts, and the defendant’s own Google Review stated that her original review had gone “viral”. The court was willing to infer that given “the realities of 21st century communications and internet-based publications,” the online posts had been published to a third party. The third *Grant* Factor was satisfied.

As the surgeon had confirmed that the Posts met the *Grant* Factors, the burden shifted to the defendant to establish a viable defence.

A defendant can defeat a defamation claim if they can show the court that the statements are “true, or substantially true” or were a “fair comment” of an honestly held opinion.

With regard to the first defence of truth (or “justification”), a defendant must show that regardless of the impact of the statements on the plaintiff, they were justified because they were true. The court found however that the defendant had inaccurately stated that the surgeon failed to address the “complexity” of her chest, when in fact he had made the same recommendation as the second plastic surgeon that she consulted, namely asymmetrical implants. Rather, it was the defendant who selected symmetrical implants.

The posts also stated that the surgeon’s suggested “capsulotomy” surgery was to “correct his mistake”. The court disagreed that the surgeon had made a mistake in the first surgery as it was not uncommon for implants to settle at different times. As the posts “read in their entirety and in the context of what occurred” were not true, the defendant could not rely on a justification defence.

Defamatory comments may be protected by the defence of “fair comment” if they are founded on facts and based on honestly held beliefs. In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 (CanLII), the Supreme Court of Canada confirmed that a comment “may include a deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof.” The comments must be distinguishable as such and a defendant cannot rely on “comment” to disguise defamatory untrue facts.

As the defence of fair comment can only succeed if it is based on true facts, the defence was defeated based on the same assessment of her factual statements which were found to be false.

The court concluded that “defamatory comments dressed up as “reviews” that are not factual or do not qualify as fair comment are subject to the laws of defamation.” The court awarded the surgeon \$30,000 in damages and ordered the defendant to remove the defamatory comments.

The decision demonstrates that online reviewers may be held liable for defamation if their blog or review posts about professional services they have received are not factually true. Before posting an online review, one should ensure that the facts underlying the opinions expressed therein are accurate. A PDF version is available to download [here](#).

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact **James Cook** at 416.865.6628 or **Kevin Mooibroek** at 416.865.8259.

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