

Claim against Google for hosting defamatory reviews allowed to proceed

Defamation | Litigation | Litigation & Dispute Resolution | Online Reviews | Removal of online posts

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Online search engines such as Google allow businesses to market their services to a wide customer base. Businesses may also be subject to online reviews which are readily accessible to the same potential customer base. The ease with which online reviews may be posted can be problematic for a business if the reviews are false, misleading, or otherwise defamatory. While the reviewers may be subject to legal proceedings for defamatory reviews, Canadian law has generally shielded online platforms from liability for the content of third-party reviews. A summary judgment decision in the Ontario Superior Court of Justice shows that a shift may occur to hold online hosts liable.

In *Thorpe v. Boakye, 2022 ONSC 7176 (CanLII)*, the plaintiffs owned a daycare in Brampton, Ontario. A former customer of the daycare posted reviews of the daycare, along with her husband and another person who was either a friend or a fictitious person created by them, neither of whom were ever customers of the daycare. Some of the reviews were demonstrably false and misleading, stating that the daycare's owner was a fraud and that there was a police investigation against her.

The reviews were posted on Google Search, Google Maps and Local Reviews, where users can interact with information about a business by leaving a review, uploading a photo, or reporting inaccurate or outdated information about a business.

In 2019, the plaintiffs sued the individual defendants for defamation, as well as Google for providing the platform for the reviews. The individuals did not defend the action and were noted in default.

In response to the claim, Google took the position that it could not determine whether or not the reviews were defamatory until the plaintiffs obtained a court order requiring the reviews to be removed.

In early 2020, the plaintiffs obtained a court order declaring that the reviews were defamatory and requiring them to be removed. Google did so and brought a motion for summary judgment to have the action dismissed.

Google's position on the motion was that under Canadian law, passive intermediaries are not "publishers" of content authored by others and bear no liability if such content is defamatory. Google argued that it was not the author of the reviews, did not monitor or assess their content before the reviews were posted and that it removed the reviews once the plaintiffs obtained a court order declaring their content to be defamatory.

In response, the plaintiffs argued that Google did publish the reviews, which were defamatory on their face, and that Google failed to remove the reviews promptly upon being advised of the plaintiff's objections. The plaintiffs argued that they made Google aware of the defamatory nature of the reviews before serving the statement of claim and that Google wrongly refused to remove the reviews until they obtained a court order declaring their content to be defamatory and ordering their authors to remove them. The plaintiffs sought to continue the action for damages against Google on the grounds that they had to incur thousands of dollars in legal fees and suffer a loss of business during the time it took them to obtain the court order that Google required before Google would remove the defamatory reviews.

For the purposes of the motion, there was no dispute that the plaintiffs had established the first two parts of the test required to prove defamation pursuant to *Grant v. Torstar Corp., 2009 SCC 61 (CanLII)*: that the impugned words were defamatory, in the sense that they would tend to lower the reputation of the plaintiffs in

the eyes of a reasonable person, and that the words in fact referred to the plaintiffs.

The issue was the third part of the test, whether the words were published, meaning that they were communicated to at least one person other than the plaintiffs.

In *Crookes v. Newton*, 2011 SCC 47, the Supreme Court of Canada held that the publisher of a hyperlink was merely a passive intermediary in respect of the third-party content referenced by the hyperlink. While Canadian courts have defined “publish” broadly, the Crookes decision provided some shelter from liability to defendants who published defamatory material authored by third parties, on the grounds that they fall within an exception that the courts have created for publishers who were acting merely as passive intermediaries in relation to such content.

The motion judge distinguished Crookes, however, reasoning that hyperlinks do not give the host of the internet platform where they appear control over the content of the third-party material to which the links provide its users access. In the motion judge’s view, the Crookes decision should not be applied broadly to extend immunity to publishers for third-party content over which they are able to exercise control.

The court noted that Google did participate in the creation or development of the third-party content by creating the platform on which the authors of the reviews first posted them. Additionally, Google acknowledged that it used business information to help surface relevant local search results across Google, such as in Google Maps and Google Search. Whether Google owed a duty of reasonable care toward its users against defamation against them occurring on its platform was a genuine issue that could not be resolved on the motion.

Further, the plaintiffs’ claim against Google was based in part on its failure to act promptly to remove the defamatory reviews. While Google argued that it hosted up to 7 billion reviews each year, making it impossible to monitor the content of the posts, there was no evidence filed on the motion as to the volume of complaints it received. Whether Google should be regarded as a passive intermediary was an issue that would need to be determined based on the specifics of what would be required for Google to assess the contents and act upon being notified of allegedly defamatory posts.

Accordingly, there were key factual issues to be determined regarding when Google had received proper notice of the alleged libel pursuant to Ontario’s *Libel and Slander Act*, and what steps, if any, it took at that time to examine or remove the content. In the motion judge’s view, the action could not be dismissed at a motion for summary judgment without those issues having been fully addressed on discovery.

As a result, Google’s motion to dismiss the action was dismissed and the action will continue against it. While the motion judge’s comments suggest potential grounds for liability on Google’s part, it remains to be seen whether an online platform will be held responsible for the defamatory content of third-party reviews and other posts. A PDF version is available to download [here](#).

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