

Claim for defamatory tweets dismissed

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Can one who freely wades into the choppy waters of Twitter complain about getting splashed? So asked the Ontario Superior Court of Justice in a recent case involving allegedly defamatory tweets and re-tweets: *Mondal v. Evans-Bitten*, 2022 ONSC 809 (CanLII). The decision shows that social media commentary on matters of public interest may be protected from defamation claims.

The individual plaintiff was the owner of a medical imaging and diagnostic clinic in Guelph, Ontario. He was an active Twitter user and commented on a variety of social and political matters.

At issue were several messages sent out on the plaintiff's corporate Twitter account that the defendants understood to be homophobic and transphobic. One tweet at issue contained a photograph of Prime Minister Justin Trudeau waving a flag that combined a Canadian maple leaf emblem with a rainbow flag. This tweet was accompanied by the plaintiff's commentary stating, amongst other things, "do not defile our flag." A second tweet contained derogatory comments about Toronto Mayor John Tory attending a drag show in the Church-Wellesley Village.

In 2021, one of the defendants re-tweeted several of the plaintiff's tweets as a reminder of what she considered to be his unacceptable views. These re-tweets were accompanied by her own commentary indicating that members of the LGBTQ community were forced to use other healthcare diagnostic services because the plaintiffs' service was "owned and lead by a man who thinks and tweets this stuff".

Two of the defendants were the executive director and executive assistant at Guelph Family Health. They forwarded re-tweets to their constituency of physicians, many of whom refer patients to the plaintiffs' clinic. The Guelph Family Health email reminded the recipients that their organization is committed to diversity, anti-oppression and inclusion.

The plaintiff and his company commenced actions against the defendants alleging that their tweets were defamatory and caused damages. The plaintiffs claimed to have lost business as a result of the defendants' tweets or re-tweets.

In response, the defendants brought motions under section 137.1 of the *Courts of Justice Act* ("CJA") to dismiss the actions as strategic litigation against public participation ("SLAPP"). The defendants argued that the defamation claims were a means of silencing them on issues of public interest.

Under section 137.1(3) of the *CJA*, a moving defendant must first satisfy the motion judge that the proceeding arises from an expression relating to a matter of public interest: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, at para 18.

The court had no hesitation finding that impugned statements were expressions relating to matters of public interest. The majority of the statements at issue were verbatim re-tweets of the plaintiffs' own messages, which were themselves specifically aimed at commenting on matters of public interest. The plaintiffs' tweets referenced both the Prime Minister of Canada and the Mayor of Toronto by name in criticizing their actions. The court reasoned that there was no reason to tweet commentary on public figures if not to delve into the arena of public interest and public debate.

The brief commentary added to the re-tweets by the defendants was written as an express dissociation from the plaintiffs' messages and a reinforcement of the public policies of diversity and inclusion to which they strived to adhere.

One of the tweets at issue warned members of the LGBTQ community that they may encounter adversity if they used the plaintiffs' medical services. Whether or not that was an accurate characterization of the plaintiffs' business, it was certainly a matter of interest to the public. It was widely broadcast to the public during

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Pride Week, a time when such a message might receive maximum public attention.

Once the preliminary “public interest” threshold has been established, the onus under [section 137.1\(1\)\(a\)](#) of the [CJA](#) shifts to the plaintiff to establish that there are grounds to believe that the action has “substantial merit”. The plaintiff must demonstrate that there is a basis in the record and the law “for finding that the underlying proceeding has substantial merit and that there is no valid defence”: *Pointes Protection*, at para 39.

The plaintiffs established a recognizable allegation of defamation. By commenting on the plaintiffs’ lowbrow communications, the defendants would have lowered the plaintiffs’ reputation among reasonable people in their professional and business network. The impugned communications were likely to be read by the very community of doctors and patients in Guelph that formed the plaintiffs’ customer base. There was some evidence in the record establishing that the plaintiffs had in fact lost business and would likely suffer economic harm.

However, the plaintiffs also had to show that the defendants did not have a valid defence. The defendants relied on the defence of “fair comment,” which requires that a defendant show that the statements were comments on matters of public interest made without malice: *Blair v. Ford*, 2021 ONCA 841.

The defendants submitted that the subject matter of the plaintiffs’ own tweets, as commented upon and re-published by them, was blatantly political. By their own evidence, the plaintiffs had a genuine disagreement with the defendants on an issue of politics. The court noted that one cannot express strongly-held and harshly articulated political views without expecting to get back more of the same.

As to the medium where the statements were made, “Twitter is a rhetorically harsh speech environment whose very pervasive harshness reduces the seriousness with which it is taken.” The court noted that a stark difference in political views does not make commentary malicious or undermine the fact that commentary is fair comment.

As a result, the plaintiffs’ claims against the defendants were dismissed as being Strategic Litigation Against Public Participation.

The decision shows that in the context of Twitter feud, you should expect to get back as good as you give, and re-tweets or commentary on one’s own messages will likely not amount to actionable defamation. As noted by the motion judge, if you choose to jump into the turbulent river of Twitter commentary with vulgarly worded observations, you will likely get wet in the process.

For more information please contact: **James Cook** at **416.865.6628** or jcook@grllp.com

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Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com