

Defamation action against “consumer alert” reporter dismissed (*Boraks v. Hussein*)

Defamation | Dismissal of Action | Litigation | Litigation & Dispute Resolution | SLAPP | Torts

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In general, ordinary consumers of goods and services are viewed as a vulnerable class. While in certain circumstances, consumers can be protected by government through strong and effective consumer protection legislation, consumers remain victim to many forms of schemes that can cause them financial harm. In response to these schemes and other unscrupulous business practices, media have for years dedicated reporters to provide consumers with coverage of stories or complaints that are of potential concern to the unwary consumer. The purpose of these consumer alerts is to provide practical advice to the consumer, and to make the consumer aware of debate over certain goods and services so that they can exercise caution on the matters reported upon.

In *Boraks v. Hussein*, 2023 ONSC 4294, a former immigration lawyer, B, sued, among others, journalists for their coverage of a story related to B's representation of scores of undocumented workers on a purported government “Pilot Project” that would result in them obtaining landed status.

However, a consumer alert reporter for Global News received a complaint from one of B's clients that the alleged government “Pilot Project” did not exist. The complainant claimed to have paid \$10,000 to B, in part to submit an application under the “Pilot Project”.

After interviewing the complainant, several government officials, lawyers and B, the news network published a story about the “Pilot Project” and B's work in this regard.

Other media stories followed, including stories that were published in the Portuguese media.

B alleged that the stories attacked his personal and professional competence, integrity and reputation. B insisted that the government had in fact announced a “Pilot Project” for undocumented workers at the end of 2016 at a press conference given by then Minister of Immigration John McCallum, that MP Peter Fonseca announced the creation of the “Pilot Project” at a meeting held with multiple groups, including the Undocumented Workers Committee, on December 23, 2016, and that the “Pilot Project” was only ended with an announcement from new immigration minister, Ahmed Hussein, on 23 February 2018. B commenced a claim against the media defendants along with Minister Hussein and others who had commented on the existence of the “Pilot Project”.

The media defendants sought the dismissal of B's action under section 137.1 of the *Courts of Justice Act*, Ontario's strategic litigation against public participation legislation. The media defendants contended that they acted responsibly in investigating and publishing their stories on a matter that involved the public interest. The media defendants also raised the defences of truth or justification, fair comment and responsible communication or journalism.

B submitted that the media defendants had either accused him of fraud, ridiculed him or stated that he was an extortionist. To various degrees, B accused the media defendants of having failed to follow up with key officials or never exploring or investigating relevant sources regarding the existence of the Pilot Project.

The court found that the published stories were about B and that the topic was a matter of public interest. This shifted the burden under Ontario's anti-SLAPP legislation to B to prove on a balance of probabilities that i) his case had substantial merit, ii) the defendants had no valid defences, and iii) the public interest in allowing his action to continue outweighed the interest of the media in protecting their expressions on the matter.

B failed to meet his burden of proof and his action was dismissed. The court held that B’s claim lacked substantial merit and that there were valid defences which, in any event, would defeat his claim, and, alternatively, that the harm likely to be suffered by B was not sufficiently serious such that the public interest in permitting the proceeding to continue outweighed the public interest in protecting the expression of the media.

With respect to assessing the substantial merit of B’s action, the motion judge held that B had not met the rather low threshold described in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 (CanLII), at paragraph 47:

While the plaintiff need not definitively demonstrate that its claim is more likely than not to succeed, the claim must nonetheless be sufficiently strong that terminating it at a preliminary stage would undermine the legislature’s objective of ensuring that a plaintiff with a legitimate claim is not unduly deprived of the opportunity to vindicate that claim.

B’s claim had to have a real prospect of success. It did not.

Overall, the published stories did not accuse B of any wrongdoing. Rather B himself stated that the Pilot Project existed, while the media defendants spoke about the project in the context of the uncertainty regarding its existence about the project. The court found that the only mention of fraud came from B and that the only potential for negative comments about B came from his complaining clients.

With respect to the defences raised by the media defendants, B was required to show that those defences did not tend to weigh in favour of the defendants. B failed to do so.

The defence of truth or justification protects defamatory statements that are substantially true. Not every word must be true.

Furthermore, as noted in *Bent v. Platnick*, 2020 SCC 23 (CanLII), this defence will fail if a publication contains accurate facts, but the sting of the libel is false. However, the sting of the media stories were substantially true and the stories only reported on the fact that B took money from clients for an alleged “Pilot Project” that the government itself said did not exist.

Even B admitted that the alleged Pilot Project was not posted on the government’s website, officially published in the Canada Gazette or published elsewhere. There was simply nowhere to get any information on the “Pilot Project”.

The responsible communication defence, set out in *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII), is comprised of two parts. First, the publication must be on a matter of public interest. Second, the publisher must act responsibly in preparing a story. The second part is measured having regard to:

- a. the seriousness of the allegation;
- b. the public importance of the matter;
- c. the urgency of the matter;
- d. the status and reliability of the source;
- e. whether the plaintiff’s side of the story was sought and accurately reported;
- f. whether the inclusion of the defamatory statement was justifiable;
- g. whether the defamatory statement’s public interest lay in the fact that it was made rather than its truth; and
- h. any other relevant circumstances.

The court found that the story was a matter of public interest and that the media defendants had been responsible in confirming the accuracy of their reporting. Indeed, B had been interviewed by the media.

Lastly, B was unable to establish that he had suffered harm and that any harm suffered by him was the result of the media stories. Although he may have suffered some harm in connection with the stories, which he acknowledged had a tremendous public interest, he did not suffer serious reputational harm about the debate regarding the non-existence of the Pilot Project that was triggered by a letter from the Minister of Immigration.

B did not establish that he suffered a decline in his billings or that the media publications were related to restrictions that had been placed on B’s legal practice by the Law Society of Ontario. The evidence showed that even after the federal government announced that there was no Pilot Project for undocumented workers, B continued to accept applications to represent clients in relation thereto.

This case demonstrates that the media will be protected against defamation claims, especially where their reporting is balanced, responsible and non-accusatory. Drawing attention to consumers about schemes that could cause them to spend money unwisely and helping them to avoid potential financial losses is valuable



and justified.

B retired from the practice of law in 2021. A PDF version is available to download [here](#).

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