

Defamation claim against Twitter allowed to proceed in British Columbia

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When defamatory statements are alleged to have been transmitted internationally via social media, the question of where to start a lawsuit is often a key issue. While a defendant should ordinarily only be sued in one jurisdiction, internet-based defamation makes this presumption difficult to apply fairly given the multiple countries where a plaintiff has a reputation to protect.

In *Giustra v Twitter, Inc.*, 2021 BCSC 54 (CanLII), the plaintiff commenced a lawsuit in British Columbia against Twitter claiming damages and an injunction for defamatory tweets authored by others. Some of the tweets described the plaintiff's alleged relationship with Bill Clinton, his alleged involvement in "pizzagate," and other personal attacks accusing him of being in a pedophile ring. The tweets strayed far beyond political commentary.

The tweets were read in Canada and the United States and elsewhere given Twitter's international reach. Twitter argued that California, where it was based, was a more convenient forum for the lawsuit (the doctrine of *forum conveniens*). The plaintiff wanted the action to proceed in British Columbia. Of note, Twitter would have no liability to the plaintiff in California due to the freedom of speech protections in United States law. No such statutory protection exists in Canada.

The governing authority regarding jurisdiction over internet defamation cases is the Supreme Court of Canada's decision in *Haaretz.com v. Goldhar*, 2018 SCC 28 (CanLII), [2018] 2 SCR 3. At para. 36, the Supreme Court confirmed that in the case of internet communications, "the publication of defamatory statements occurs when they are read or downloaded by the recipient."

The plaintiff's unchallenged allegation was that the defamatory statements were read by persons in British Columbia. Accordingly, Twitter had to rebut the presumption that British Columbia was the appropriate jurisdiction ("jurisdiction *simpliciter*"). The key consideration was whether it would be reasonable to expect Twitter to answer a claim in British Columbia.

Similar to the facts in *Haaretz* (which involved statements published in a prominent Israeli newspaper and web site), the Twitter articles were published on the internet and accessed by people in the proposed jurisdictions. In both cases, the plaintiffs were international business persons with reputations in and connections to several countries.

Twitter attempted to distinguish itself from a newspaper on the basis that it was simply a neutral "platform" for content posted by others. Twitter cannot, it argued, be expected to defend actions in any jurisdiction in which an allegedly defamed person has a reputation and in which the offending tweet has been accessed.

Although the British Columbia court noted that whether an un-mediated platform such as Twitter was legally responsible for content posted or tweeted by others was not a settled point in Canadian law, this issue was not the focus of a jurisdictional challenge hearing.

The motions judge was satisfied that the plaintiff was not only relying on his residence in British Columbia for his jurisdiction; rather he was relying on evidence that he had a significant reputation in and strong ties to the province (which had apparently at least 500,000 twitter users). Finally, there was no evidence that the tweets had been orchestrated by persons in other jurisdictions which made those jurisdictions the more appropriate forum for the dispute. Accordingly, Twitter failed to rebut the presumption that the plaintiff's claim had a real and substantial connection based on a tort committed in British Columbia.

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Other relevant factors for the jurisdictional challenge included the location of proposed witnesses and availability of documents. The motions judge found the location of witnesses to be a neutral consideration, particularly because the courts in Canada had developed the capability during the COVID-19 pandemic to effectively deal with the remote participation of witnesses in a trial. Similarly, the availability of electronic documents meant that their physical location was of little importance.

The major point raised by Twitter focused on international comity - that it would be a breach of comity to apply Canadian law to Twitter's conduct in the U.S. The plaintiff argued that British Columbia was the only appropriate forum and California was not an alternative at all because California bars a finding of liability against Twitter. Twitter countered that California was an alternative forum, and the fact that the plaintiff could not succeed there was a result of the substantive law which should not, under principles of comity, be used as a factor in favour of assuming jurisdiction in British Columbia.

The motions judge dismissed Twitter's argument on the basis that it had failed to show that California was clearly a more appropriate forum to adjudicate tweets published and harm suffered in British Columbia. This was not a situation of a defendant being sued in a province where they did not do business. Comity does not go so far as to dictate that a court must decline jurisdiction simply because the law of the alternative jurisdiction does not provide a cause of action (para.115).

The plaintiff's action against Twitter will therefore proceed in British Columbia.

The internet and social media platforms with an internal reach present a unique issue for defamation claims where there are multiple jurisdictions in which to litigate a dispute. There is no hard rule as to appropriate jurisdiction, and the motion judge's [decision](#) confirms that the test involves a balancing of factors as noted by the Supreme Court of Canada in *Black v. Breeden*, 2012 SCC 19 at para. 37:

In the end, some of the factors relevant to the *forum non conveniens* analysis favour the Illinois court, while others favour the Ontario court. The *forum non conveniens* analysis does not require that all the factors point to a single forum or involve a simple numerical tallying up of the relevant factors. However, it does require that one forum ultimately emerge as *clearly* more appropriate. The party raising *forum non conveniens* has the burden of showing that his or her forum is *clearly* more appropriate.

The case shows how a court will conduct an assessment based on balancing a number of factors in determining the appropriate jurisdiction for an internet-based defamation claim. A PDF version is available to download [here](#).

Appeal dismissed December 10, 2021

In December 2021, the Court of Appeal for British Columbia dismissed Twitter's appeal: *Giustra v. Twitter*, 2021 BCCA 466. The Court of Appeal found that the motion judge was correct in finding that Twitter had failed to rebut the presumption of jurisdiction simpliciter, based on the connecting factor that a tort had been committed in British Columbia. As Twitter had adduced no relevant contrary evidence, there was no onus on the respondent to adduce evidence beyond the pleadings to establish harm to his reputation in his chosen forum. Further, the motion judge did not ignore comity when he found that Twitter's immunity in the alternative forum was a relevant consideration.

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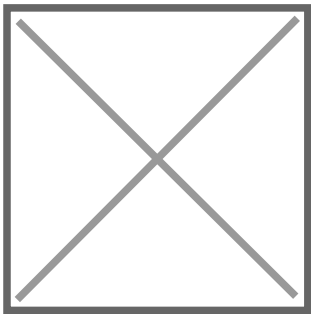
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