

Fence Dispute Leads to \$70,000 Defamation Judgment

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A dispute between two neighbours over a fence led to a \$70,000 judgment against an online activist who posted defamatory comments about one of the neighbours: *Duncan v. Buckles*, 2020 ONSC 3219 (CanLII).

The Plaintiff, Duncan, bought a house in Aurora, Ontario, and built a fence on her side of her property line with a gate to enclose the yard for her puppy. Duncan's neighbour Buckles objected to the fence as being too high and too close to her house, which was only eight inches from Buckles' side of the property line. The Town inspected the fence, required that some of the posts be lowered, but otherwise found no by-law infractions.

This led to a series of social media postings by Buckles about Duncan and the fence dispute. To assist with this strategy, Buckles engaged the Defendant, Lepp, a self-described "Trusted Street View Photographer and Municipal Activist." Lepp embarked on an internet media campaign consisting of blog postings, petitions, emails and YouTube videos commenting about Duncan, the property (clearly identified by street address) and the fence.

While this was going on, Buckles sued Duncan in Small Claims Court claiming that the fence was illegal. Duncan prevailed. Even after the Small Claims Court ruled that the fence was legal, Lepp continued with his negative online posts about Duncan and the fence.

Duncan gave notice to Buckles and Lepp of a claim under the Ontario *Libel and Slander Act*, R.S.O. 1990, c. L.12, which resulted in Buckles removing her social media posts. Lepp refused to do so. Lepp challenged the competence and qualifications of a lawyer Duncan had retained to assist her with the dispute. Duncan served Lepp with a Statement of Claim for defamation which only caused Lepp to escalate his negative public commentary, stating that Ms. Duncan was "a liar" who "built the fence illegally," that she was "a bit of a nut case," and that she would not pay her lawyers.

Lepp failed to devote similar effort to defending Duncan's defamation action. He did not file a defence within the time prescribed to do so and was noted in default. The Court subsequently dismissed a motion by Lepp to set aside the noting in default, due to Lepp's delay and the absence of a credible or acceptable explanation for not trying to defend the action earlier. Due to his failure to set aside the default, Lepp was not permitted to bring an anti-SLAPP motion pursuant to section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

The defamation claim was heard by Madam Justice Favreau in early 2020.

In Justice Favreau's [decision](#) released on 25 May 2020, Her Honour had no hesitation finding that the statements made about Duncan were defamatory:

In isolation, some of the statements made by Mr. Lepp may not be sufficient to affect Ms. Duncan's reputation. However, the cumulative and relentless barrage of communications and statements about Ms. Duncan's honesty and integrity would no doubt affect her reputation. In this case, this is made clear by the fact that many people signed the petition circulated by Mr. Lepp and posted negative responses about Ms. Duncan and the fence in response to Mr. Lepp's posts.

Justice Favreau determined that an award of \$50,000 in general damages was appropriate based on the ongoing nature of the attacks on Duncan's reputation and their broad dissemination over the internet. Duncan was also awarded \$10,000 in aggravated damages based on the stress and humiliation she experienced, and an additional \$10,000 in punitive damages which Favreau J. imposed to denounce and deter similar conduct.

Finally, in a rare move, Favreau J. issued a permanent injunction requiring Lepp to remove all blogposts, YouTube videos or internet content he made that referred to Duncan, the fence, or her property, and to refrain from publishing any such content in the future.

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The decision illustrates how court proceedings may assist a litigant who is targeted by an online campaign of disparaging commentary combined with an award for damages. One can only wonder if the decision will lead to neighbourly peace after a dispute that appears to have lasted more than three years.

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