

From Print to Digital Newspapers, The Ontario Libel and Slander Act and Online Newspapers

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As technology continues to usher individuals towards online based content, it has initiated the mummification of printed media, spearheading a new era of online news. Over the past decade, there has been a steady decrease in the number of people accessing the news through traditional print sources, and a marked increase in online forums. The low cost, widespread access and convenience of online news platforms have made it simple for traditionalist to convert.

As is often the case with technological shifts, there has been a legislative disconnect in the meanings and definitions related to online content. The Ontario Court of Appeal (“ONCA”) in *John v. Ballingall*, recently clarified its position with respect to the definition of “newspaper” in the Ontario *Libel and Slander Act* (“LSA”) in relation to applicable limitation periods in defamation cases.

Overview

The plaintiff, Darren John, is a rapper. In 2013, the plaintiff wrote a rap titled “Got Yourself a Gun” and as a result of the song, he was charged criminally. Alex Ballingall, a reporter working for the Toronto Star, interviewed the plaintiff about these charges, and on December 4, 2013, the Star published an article about the plaintiff’s proceedings online under the title “Rapper says death threat just a lyric”. The plaintiff took issue with the title of the article, and complained to the Star. No further communication occurred between the parties until April 2015.

In mid-April 2015, the plaintiff emailed Ballingall and alleged libel, requested a retraction and threatened legal action. On 28 April 2015, the plaintiff issued a statement of claim in which he alleged that the words “Rapper says death threat just a lyric” in the online version of the story were “false, defamatory, and libellous”. The defendants, Ballingall, Toronto Star Newspapers Inc., and Torstar Corporation, brought a motion to strike the claim based on the action being statute-barred due to the limitation period contained in the LSA. The LSA limitation period is shorter than the standard two year period in order to protect freedom of the press and limit libel actions that might unduly restrict this freedom. Under the LSA, there is a six-week libel notice requirement and a three month limitation period.

In this case, the plaintiff issued his statement of claim sixteen months after the event in question. The defendants’ motion to dismiss asserted that John’s action was barred by his failure to meet limitation periods prescribed by the LSA.

The plaintiff’s submissions relied on his assertion that the LSA did not apply to online newspaper publications. The LSA defines “newspaper” as:

A paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year.

The plaintiff submitted that the online version was not published “in a newspaper” because it was not printed on physical paper and that the article in question was therefore excluded from the meaning of the LSA and so its limitation periods did not apply to his claim. Justice Trimble of the Ontario Superior Court of Justice did not accept this argument and held that the LSA does apply to online publications because “a newspaper is no less a newspaper because it appears in an online version” and dismissed the action.

The decision was appealed.

The Appeal

On appeal, the ONCA unanimously agreed with the decision of Justice Trimble and confirmed that an online newspaper is a “newspaper” within the meaning of the LSA. The Court reaffirmed its decision in *Weiss*, where Justice Armstrong held that “the word ‘paper’ is broad enough to encompass a newspaper which is published on the internet” and that defining paper more restrictively to mean “the substance upon which a newspaper is ordinarily printed” would create an absurd result and go against the tenants of statutory interpretation.

The ONCA disagreed with the plaintiff’s argument that a new cause of action exists each day that allegedly libellous words remain online. Instead, the ONCA held that “any limitation period based on discoverability will run from the point where the internet defamation is discovered” and determined that the December 5, 2013 message sent to the newspaper was evidence that the plaintiff knew that statements were made that might be considered libellous.

The appeal was dismissed.

While on its face the ONCA decision may be based on common-sense, it has a significant impact on the legislative interpretation of the meaning of “newspaper” under the LSA. The ONCA’s interpretation leaves open whether something defamatory online by any entity, blogger, website, etc., could be defined as a “newspaper”. The ONCA has now placed a strict notice requirement and stricter limitation period, which may impact a plaintiff’s ability to commence a cause of action. In addition, it appears that the ONCA’s decision reflects a continued emphasis in the courts towards the protection of freedom of the press in the midst of changing media platforms.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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