

Injunction granted to stop defamatory posts published on Instagram

Defamation | Injunction | Litigation | Litigation & Dispute Resolution | Torts

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Social media is a great tool for, among other things, the promotion of personal or business interests, or connecting with like-minded individuals. It provides a window to the world that didn't exist when I first began to practise law in 1992. However, as we have written in previous blogs the use of social media has a dark side. In the hands of some, social media has become a weapon to harm the personal or business reputations of others. Although a victim of defamation can bring a lawsuit to seek damages for reputational harm for defamatory publications posted on social media, by the time a victim gets to court a defamatory post might be seen by tens of thousands of people, if not more, both locally and worldwide. The psychological harm caused by such online harassment and bullying can be devastating, and accordingly a person who is defamed on social media may be well-advised to seriously consider obtaining an injunction.

Although obtaining an injunction in a defamation action to prevent the publication of defamatory statements is not easy, the decision of Justice Steele in *Maison Privé v. Moazzani*, 2020 ONSC 8199 shows that courts are willing to award this equitable remedy in the right circumstances to prevent further online harassment.

In this case, the plaintiff American company had sued the defendant in connection with an alleged failed business transaction which involved the transfer of cash and luxury handbags in exchange for high-end rare watches. After the American company obtained an *ex parte* Anton Piller order and a Mareva injunction against the defendant, one of the company's principals started a campaign of sending messages to the individual defendant through various media, including Instagram posts and stories. The messages were threatening and hateful.

Multiple cease and desist letters did not stop the campaign. Accordingly, the defendant brought a counterclaim for, among other things, defamation, and sought an injunction to prevent the publication of any future defamatory Instagram posts and stories and the removal of already existing Instagram posts and stories on the American company's social media account and other Instagram accounts that had allegedly been created by one of the company's principals. The evidence showed that Instagram users were encouraged to visit one Instagram account in particular from the company's Instagram account.

The Instagram posts and stories threatened to ruin the defendant and to make her suffer. The posts included statements such as: "You're a dead woman walking", "Your life is over...", "The worst is yet to come" and "You're a liar and a thief". There were also statements that the defendant and her boyfriend were "dangerous sociopaths" and a suggestion that the defendant had killed her former boyfriend.

There were also inaccurate and misleading statements regarding the ongoing court proceedings between the parties.

In defamation law, the general three-part injunction test established by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney General)*, 1994 SCC 117 does not apply to a motion for an injunction to prevent future defamatory publications. The test is more stringent, and as stated in *Fortress Real Developments Inc. v. Franklin*, 2018 ONSC 296 at para. 15, an injunction "should only be granted in the rarest and clearest of cases, and where the words are so clearly defamatory and impossible to justify that the claim would almost certainly succeed."

In *Bagwalla v. Ronin*, 2017 ONSC 6693, the Ontario Divisional Court determined that the following needed to be satisfied in order for an injunction to be granted in a defamation action:

- a. The publication complained of must be clearly defamatory;

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- b. If the Defendant states an intention to justify or rely on fair comment, the injunction must be refused unless it is clear that any such defence will inevitably fail; and
- c. The Plaintiff must establish irreparable harm if the injunction is refused.

The Supreme Court of Canada in *Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC) at para. 49 has also commented on the subject, citing from *Rapp v. McClelland & Stewart*, 1981 CanLII 1696 wherein Justice Griffiths said:

The guiding principle then is, that the injunction should only issue where the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse by the Court of Appeal. To put it another way where it is impossible to say that a reasonable jury must inevitably find the words defamatory the injunction should not issue.

Justice Steele found that based on the evidence led on the motion there were countless examples of statements which were *prima facie* defamatory in nature and that the principals of the American company were behind all of the posts and stories that had been circulated on various Instagram accounts.

The American company led no evidence to justify the posts and stories.

The court was satisfied that there were no defences to some of the statements and no evidence whatsoever to support comments that the defendant had admitted all her crimes on film, that a bench warrant against her would be issued and that she would be arrested.

Accordingly, the defendant had met the requirements that the statements at issue were clearly defamatory and that the statements were unjustified.

With respect to irreparable harm, the sheer extent and volume of the posts and stories were such that the court had no doubt that the defendant would suffer irreparable harm if an injunction was not granted. The campaign launched against her was relentless and was being conducted over a medium which resulted in the wide distribution of the posts. Although it was contended that the defendant had no reputation to protect, Justice Steele rejected this argument as having no merit. Moreover, even if the defendant did not have a good reputation in the luxury merchandise industry as contended, this did not mean that name-calling, threats, and other comments would not cause the defendant reputational harm.

The defendant therefore satisfied the test, and Justice Steele granted the injunction prohibiting the publication of future defamatory posts.

Her Honour also ordered the removal of existing defamatory posts from the American company's Instagram account and all other Instagram accounts that had been established by the principals of the company. There was no evidence from the principals that the other Instagram accounts that contained defamatory statements about the defendant were not established by them.

This case demonstrates that obtaining an injunction in a defamation action is not impossible, particularly where the alleged defamer has embarked on a relentless campaign of harassment against a person. Further, where the internet and social media is being used to wage this campaign, the court will accept that this is a significant factor that should be taken into consideration because of the wide distribution of the defamatory statements. Although freedom of speech is an important right in a free and democratic society and worthy of protection in the law of defamation, the right is not absolute and will be restrained where a party publishes multiple alleged defamatory comments and uses the publications to harass a person. A PDF version is available to download [here](#).

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact [Stephen Thiele](#) at 416.865.6651.

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