

Instagram social media influencer liable for defamation (Achor v. Ihekweme)

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In *Achor v Ihekweme*, 2023 ABKB 606 (CanLII), the plaintiffs obtained damages for defamation against a social media influencer who had posted statements about them on Instagram.

The parties were part of the Nigerian community in Edmonton, Alberta. The plaintiff Dr. Achor was a psychologist and a member of the Alberta College of Physicians and Surgeons. He and his wife and co-plaintiff both enjoyed personal and professional reputations as well-respected individuals and members of their community.

The defendant was described by the Achors to be a popular “social media influencer” with some 16,000 followers on Instagram.

A friendship developed between Ms. Achor and the defendant in 2020. During the first half of 2021, Ms. Achor let the defendant borrow some clothing which was never returned and led to a default judgment against the defendant for \$8,868.45.

The defendant told Ms. Achor that she thought that her husband, Dr. Achor, was “interested in her sexually”, which led to the break-up of their friendship. It also led to the defendant beginning to post things about Ms. Achor on social media. After Ms. Achor demanded the return of the loaned clothing, the defendant’s posts escalated, and she began to disparage Dr. Achor. She also began posting about personal things Ms. Achor had told her.

The defendant alleged in some of her postings that Ms. Achor had posted nude pictures of the defendant on her social media. The defendant allegedly created fake social media accounts in Ms. Achor’s name to fabricate evidence.

In March 2022, Ms. Achor and the defendant commenced proceedings for restraining orders against each other. In May 2022, Ms. Achor obtained a restraining order against the defendant and an oral hearing was set for 26 August 2022 to review the competing restraining orders.

In July 2022, the Achors commenced an action against the defendant for defamation. The defendant was noted in default and did not take any steps to have the noting in default set aside.

In December 2022, the court made a mutual no-contact and restraining order, which also directed the defendant to remove all social media posts related to the Achors. The defamation action was allowed to proceed.

Various steps were taken thereafter to compel compliance with the undertakings given by the defendant which culminated in a contempt order granted against the defendant in May 2023, which ordered that she be arrested and brought before the court to show cause or be sanctioned.

In the interim, the Achors brought an application for default judgment in the defamation action.

As the defendant was noted in default, she was deemed to admit the facts and allegations in the statement of claim. The court referred to the test for the tort of defamation in *Bent v. Platnick*, 2020 SCC 23, at para 92, requiring that the plaintiffs must prove:

1. The words complained of were published, meaning that they were communicated to at least one person other than the plaintiff;

2. The words complained of referred to the plaintiff; and
3. The impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person.

The statements at issue by the defendant ranged from allegations of illegal conduct and immorality by the Achors to claims that they were dishonest, untrustworthy, arrogant and disloyal. The statements would have obviously lowered the Achors' reputations in their social, cultural or religious community. The impugned statements were "published" as some of them were spoken to or communicated to Ms. Achor's friends directly by the defendant while others were posted on Instagram. The defendants' statements were therefore defamatory.

As for damages, damages are presumed in a defamation action so it was not necessary for the plaintiffs to call witnesses to testify that they thought less of the plaintiffs due to the defamatory communications. The court noted that in defamation cases involving social media, the nature of the publication of the statements on the internet contributed to the damages:

The insidious nature of comments posted on social media is that the plaintiff will never know the impact on their reputation as a result of defamatory comments. Certainly the more people exposed to lies the greater the likely harm.

Ms. Achor's evidence included a letter from her physician stating that she was under extreme stress as a result of online bullying.

With regard to Dr. Achor, the motion judge referred to the Ontario Court of Appeal's decision in *Rutman v. Rabinowitz*, 2018 ONCA 80 (CanLII), at paragraph 66, concluding that "the injurious effects of defamatory statements regarding a professional are particularly acute".

After consider damage awards in other similar cases, the court [awarded](#) Ms. Achor \$50,000 in general damages, having regard to the malicious nature of the attacks on her, and particularly considering that the attacks came from a fellow Nigerian community member and that some were made online to a following of some 16,000 viewers.

Dr. Achor was awarded \$75,000 for the same reasons, plus the fact that he was a professional person for whom reputation was important for his livelihood.

The decision is a cogent example of a court awarding damages for defamatory statements posted on social media. While monetary awards may not undo the damage caused by defamatory social media posts, the case shows that there are significant consequences to using social media to make unfounded attacks on the reputation of other people. A PDF version is available for download [here](#).

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