

Lawyer wins \$500,000 in defamation action

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Damage awards in a defamation case can be significant. This is especially the case where the person defamed is a professional.

In *Soliman v. Bordman*, 2021 ONSC 7023, a prominent and high-profile Bay Street lawyer sought damages against an alternative news media journalist and commentator for statements posted to the Internet. In 2019 and 2020, the journalist had a weekly show on TAG TV, which operated a YouTube channel and a Facebook account. In various broadcasts and Facebook posts, the journalist made statements about the plaintiff lawyer which asserted that he:

- (a) was an extremist or a supporter of extremist, terrorist Islamic organizations such as the Muslim Brotherhood, which organizations are dedicated to usurping Canadian democracy and replacing it with a Muslim caliphate;
- (b) was a closet anti-Semite and a supporter of Al Quds Day, which is a holiday founded by the Muslim State of Iran to celebrate its hatred and to condemn Israel, and that he hides his anti-Semitism from his Jewish law partners; and
- (c) sought and supported the introduction of Sharia law into Canada to supplant or override Canadian law.

The plaintiff lawyer is a highly regarded expert in corporate, commercial and securities law. Among other things, he has won awards for his legal work, is the former chair of one of the largest law firms in the world, and is a member of the SickKids Hospital Foundation board. He has been actively involved in politics as well, chairing Patrick Brown's bid to be leader of the Ontario PC Party and chairing Erin O'Toole's campaign to become leader of the federal Conservative Party.

The elements of a defamation claim are:

- (1) the defendant makes a statement;
- (2) the words of the statement are defamatory – i.e. the words of the statement lower the plaintiff's reputation in the eyes of a reasonable person;
- (3) the statement refers to the plaintiff; and
- (4) the statement is published.

To determine if the words of the statement are defamatory, a court is required to consider their plain and ordinary meaning, the context in which the words are used and any reasonable implications that the words may bear. The audience who hears or reads the words and the manner of expression are also relevant to determine meaning.

It has been held that general damages can be inferred where, for example, the words attribute to a person the qualities of being a terrorist or a terrorist supporter. Such words are seen as obviously likely to cause serious harm to a person's reputation.

In this case, on a motion for summary judgment brought by the plaintiff lawyer, the court found that the elements of the tort were met and thus the court was required to consider the defences.

In defending the defamation action, the journalist originally relied on the defences of justification, fair comment and responsible communication. However, at the summary judgment motion, the journalist abandoned the justification defence.

The fair comment defence requires a defendant to show that an impugned statement was:

- (a) a comment or opinion and not a statement of fact, although the comment or opinion could include inferences of fact;
- (b) a matter of public interest;
- (c) a comment or opinion based upon true facts;
- (d) objectively fair in the sense that any person could honestly express the comment or opinion based on the proved facts; and
- (e) made without malice.

The law has also determined that if there is a factual foundation for the comment or opinion, there is no requirement that the comment or opinion be reasonable.

The court found that the journalist's fair comment defence failed because the statements could not be classified as comments or opinions. Even if the statements were accepted as comments or opinions, it was held that the fair comment defence failed because the comments were not based upon true facts and were not objectively fair since no person could honestly express the same comments based on the proved facts.

Based on the evidence relied upon by the journalist to support his comments, the court found that no person could honestly express the conclusion that the plaintiff lawyer was a member of the Muslim Brotherhood.

Regardless of the foregoing, the court concluded that the defence of fair comment failed because the journalist's comments and opinions were made with malice. The journalist's comments were made with reckless disregard or indifference to the truth. The plaintiff lawyer had never been interviewed by the journalist before the comments were published and were based on rumours, Internet gossip and innuendo.

The journalist's responsible communication defence also failed.

The responsible communication defence requires a defendant to show that:

- (a) the impugned statement is a matter of public interest; and
- (b) the publication of the statement was responsible in that:
 - (i) reasonable steps were taken to ensure the overall accuracy of any factual assertions; and
 - (ii) reasonable steps were taken to ensure the fairness of the publication of the statements.

The court explained that in assessing the defence, it could consider:

- (a) the seriousness of the allegation;
- (b) the public importance of the matter;
- (c) the urgency of the matter;
- (d) the status and reliability of the source;
- (e) whether the plaintiff's side of the story was sought and accurately reported;
- (f) whether the inclusion of the defamatory statement was justifiable;
- (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth (reportage); and
- (h) any other relevant circumstances.

In the circumstances, the journalist's statements were found to have been made irresponsibly. The facts showed that the journalist did not take reasonable steps to ensure the accuracy of his comments or to ensure fairness of what he said. As well, the comments were malicious.



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Malice defeats the responsible communication defence.

With respect to damages, the court explained that the reputation of a professional is paramount to his or her livelihood and that defamatory statements will cause serious harm thereto.

In assessing quantum, the court was to consider:

- (a) the plaintiff's position and standing;
- (b) the nature and seriousness of the defamatory statements;
- (c) the mode and extent of publication;
- (d) the absence or refusal of any retraction or apology;
- (e) the whole conduct and motive of the defendant from publication to judgment; and
- (f) any evidence of aggravating or mitigating circumstances.

The court noted that the use of the Internet to publish defamatory comments intensified harm because, among other things, the Internet's reach was worldwide and its audience could easily be potentially persuaded by false information.

The evidence showed that the plaintiff lawyer suffered distress, hurt, humiliation and embarrassment from the defamatory comments, and accordingly, having regard to the plaintiff lawyer's standing in the community, the serious nature of the comments and the medium used by the journalist, the plaintiff lawyer was entitled to \$500,000 in damages.

An injunction was also ordered against the journalist to prohibit him from making any further comments about the plaintiff lawyer.

This case once again establishes the sanctity of a person's reputation. Moreover, it shows that where a person's reputation is important to their livelihood, a court will not hesitate to grant a significant monetary award, particularly in this era where more and more defamation cases are based on the publication of defamatory words on the Internet. Accordingly, a case like this serves as another warning to those who use the Internet as a medium to publish or broadcast comments about others – if you cross the defamation comment line, you could face a serious monetary penalty because defamation on the Internet intensifies reputational harm. 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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