

Lawyer's defamation action against former colleague dismissed

Defamation | Litigation | Litigation & Dispute Resolution | Torts

23 December 2024

"A law partnership is a cooperative but also a competitive environment. The same group of partners generate revenues but then must divide a finite pool of profits between themselves. In doing so, personal criticisms regarding a partner's work ethic, contributions to the firm, and relative value to the firm will inevitably, frequently, and necessarily arise."

Justice Keith, Nova Scotia Supreme Court

Law firms are not necessarily the easiest environments in which to work. The stresses of constantly dealing with multiple files and clients, uncivil opposing lawyers and tight time deadlines can cause significant wear and tear on the most robust of constitutions, and cause lawyers lose their own perspective and compass and engage in battles with their own colleagues.

In *Fraser v. MacIntosh-Wiseman*, 2024 NSSC 378, communications between colleagues ultimately resulted in the plaintiff suing the defendant for defamation on the grounds that one of those communications lowered his reputation and publicly placed him in a false light. However, the defendant brought a successful summary judgment motion to have this claim dismissed.

The war of words between the plaintiff and defendant began shortly before the defendant took a leave of absence from the firm where the plaintiff and defendant were partners. At the time that the defendant announced her imminent departure, she indicated that she might continue to work on firm matters. The plaintiff was concerned by this suggestion and sent an email to all of the firm's partners wondering whether this should be allowed.

The plaintiff and defendant exchanged further emails, which became heated and personal. In an email sent at 12:01 am on 1 April 2019, the plaintiff sharply criticized the defendant for "frittering" off on [her] personal interests over the firm at the end of 2018. The managing partner of the firm was copied on this email.

The next morning the defendant wrote to the managing partner that the plaintiff's last email in the exchange caused her to consider resigning from the firm. On 8 March 2020, she did so, effective as of December 31, 2019.

A year later, on 9 March 2021, the defendant sent an email to the plaintiff stating that, among other things, she considered the plaintiff's exchanges of communications the year before to have been unkind, uncollegial, unprofessional and inaccurate. The defendant stated that the emails were directly responsible for her decision to walk away from the practice of law, the partnership and the firm that her grandfather had started and her father had led.

The defendant copied her father, who was a senior partner at the firm. She understood that her email would be shared by her father with the partners of the firm and the firm's office manager. The email was not shared with anyone else, except the defendant's husband.

The plaintiff contended that the defendant's email wrongly accused him of being responsible for her leaving the firm and the practice of law, and that the defendant had presented a false narrative "ostensibly to mask the fact that she was a failure as a lawyer in private practice, who...could not cut it".

The plaintiff further contended that the defendant's email inflicted emotional, reputational and financial harm on him by dishonestly casting him as a villain who forced the defendant out of the firm.

In determining the defendant's summary judgment motion, the court considered the questions set out in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89 to assess if, among other things, the pleadings disclosed a genuine issue of material fact, whether the challenged pleading required a determination of a question of law, and if the challenged pleading had a real chance of success.

In a defamation action, a plaintiff must show that the impugned words referred to the plaintiff, that the words were published to at least one person other than the plaintiff, and that the impugned words tended to lower the plaintiff's reputation in the eyes of a reasonable person.

While the court found that the impugned words referred to the plaintiff and were published to others, the facts did not disclose that the impugned words tended to lower the plaintiff's reputation in the eyes of a reasonable person. The court explained that the latter requirement was a question of law that was to be assessed on an objective standard.

Within the context of the summary judgment motion, the court found that there was no genuine issue or dispute in connection with material facts involving either the exchange of emails that occurred immediately prior to the defendant's announcement that she was taking a leave of absence and her eventual resignation or involving a conversation that took place between the defendant and one of the managing partners of the firm prior to the delivery of the impugned email of 9 March 2021.

In the latter conversation, the managing partner told the defendant that the plaintiff had told or implied to the defendant's former partners that he knew the defendant's long-term career intentions and had for some time, that the plaintiff and defendant were close friends, and that the defendant had backed away from managing partner duties in 2018 for reasons that were related to the current managing partner. The plaintiff did not dispute these facts. This information prompted the defendant to write the 9 March 2021 email, which was the basis for the plaintiff's claim.

With no genuine issue of material facts in dispute, the court then considered whether there were questions of law in dispute.

The court found that there were questions of law in dispute, thereby requiring it to consider whether the plaintiff's action had a real chance of success. The court found that the action did not, because the impugned email was contrary to the plaintiff's allegations. Moreover, the alleged defamatory meaning of the words had to be considered within the context in which they were used, the audience to whom they were published and the manner in which they were presented.

In this regard, the court was entitled to take into account the class of persons to whom the impugned words were published and whether the sensibilities of that class might be such that the words would have no impact on a plaintiff's reputation.

The court noted that the defendant's email was published among a small number of partners and the firm's office manager within a law partnership who: (a) knew the individuals involved and the subject of the publication, and (b) knew, among other things, that the plaintiff and defendant had exchanged harsh words in the past.

Accordingly, those who received the defendant's impugned email were able to put it in its proper perspective such that it did not tend to lower the plaintiff's reputation or express anything more than the sort of criticisms made by law partners about other partners.

The key takeaway from this case is that the audience who receives an alleged defamatory publication is important. Where the recipient of an alleged defamatory publication is unlikely to think anything less of the person being defamed, the required elements of the tort will not be met.

This case also illustrates that law firms can be incredibly tense environments that unfortunately pit partners against partners and serves as a reminder to everyone in the legal profession to step back and be mindful of their own dealings with others in the profession, including their own colleagues. For those who manage a law firm, the case further suggests that issues which may cause stress and tension between colleagues or an individual lawyer should be addressed rapidly so as to avoid internal heated exchanges or the loss of perspective among colleagues. A law firm that tackles these issues early on and that avoids the pitfalls of heated exchanges or frequent criticisms between colleagues will make for a healthier work environment. A PDF version is available to download [here](#).

Stephen Thiele is the co-author of *A Practical Guide to the Law of Defamation* (LexisNexis: 2024). His co-authors are Gardiner Roberts LLP colleagues Gavin Tighe, K.C. and James Cook.

For more information please contact: **Stephen Thiele** at **416.865.6651** or sthiele@grllp.com

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



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com