

Lawyers obtain interlocutory injunction to stop defamatory social media posts (Leeb v. Kenny)

Interlocutory Injunction | Internet Harassment | Litigation | Litigation & Dispute Resolution

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As we have previously [discussed](#), online defamation and [harassment](#) have become a major issues in Canadian society. Given the notoriously slow speed of civil proceedings, plaintiffs may need to seek interim relief to stop such conduct from continuing before trial.

In *Leeb v. Kenny*, 2023 ONSC 4655 (CanLII), two lawyers sought an interlocutory injunction restraining the defendant or any person acting on his behalf from publishing, posting or reposting communications that were defamatory or harassing towards them or employees and officials of the Canadian Union of Public Employees (CUPE). Their concern was a Facebook profile, “Cupe Member”.

The defendant (LK) was a former Winnipeg School Division employee who belonged to a CUPE local in Manitoba. LK was identified as the individual responsible for the “Cupe Member” profile, which was created around October 2019.

Posts about the plaintiffs were featured prominently on the “Cupe Member” profile. The posts included comments about the plaintiffs as well as photographs of them and their family members.

The postings caused the plaintiffs to commence an action against LK for defamation, intentional infliction of mental stress and internet harassment, and to seek an injunction pending trial because the posts from the “Cupe Member” profile had not stopped since the moving parties started their action.

On the motion for an interlocutory injunction, the plaintiffs, who were both lawyers, filed evidence of the posts that were defamatory, harassing, and abusive, including various photos with captions alleging that one of the plaintiffs, GL, used his position to bully and harass other CUPE members to keep them in line.

A post described the second plaintiff, KB, as being a “bitch/prick with human beings” and a “typical, unethical, immoral lawyer.” A photo of KB’s mother was captioned to state that KB was using her knowledge “to hurt other female union members”. Also, KB was accused of absenteeism, tardiness and abuse of power. Lastly, the “Cupe Member” profile posted an old obituary of KB’s father, identifying him as the father of KB, “CUPE Legal Lawyer”.

While LK did not deny responsibility for the “Cupe Member” profile, he claimed that was merely exercising his right to freedom of speech.

In assessing whether to grant the injunction, the motion judge referred to the traditional test for the granting of an injunction which requires a moving party to establish (a) a serious question to be tried; (b) irreparable harm if the injunction is not granted; and (c) that the balance of convenience favoured granting the injunction: *RJR MacDonald Inc. v. Canada (Attorney-General)*, 1994 CanLII 117 (SCC).

The motion judge noted that where an injunction would restrain speech, the party requesting the injunction must establish a high degree of certainty that it will succeed on the issue of liability and that the available defences to a defamation claim will fail. In the motion judge’s view, it was highly likely that at least some of the “Cupe Member” posts would be found to be defamatory and highly unlikely that the defamatory portions of those posts would be found to be true, to constitute fair comment or to be privileged.

This was sufficient to establish that there was a serious issue to be tried.

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With regard to the potential for irreparable harm, the motion judge addressed the paramount importance of the lawyers' reputations, referring to the Supreme Court of Canada's decision in *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC):

The reputation of lawyers is of paramount importance. Clients depend on the integrity of lawyers, as do colleagues. Judges rely upon commitments and undertakings given to them by counsel. Our whole system of administration of justice depends upon the counsel's reputation for integrity. Anything that leads to the tarnishing of a professional reputation can be disastrous for a lawyer.

The comments on the "Cupe Member" profile about GL and KB attacked their professional reputations as lawyers in general terms. Some of the comments suggested that they were actually anti-employee and acted in the interests of the employer rather than fellow union members. Given the damaging nature of internet-based defamation, discussed by the Court of Appeal in *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), at paragraph 31, the motion judge concluded that the plaintiffs had established that they would suffer irreparable harm if an injunction was not granted.

Lastly, the court was satisfied that the balance of convenience favoured the injunction. The moving parties only sought to restrict defamatory or harassing posts on the "Cupe Member" profile, not all posts. This was a reasonable balance because it would prevent postings that were harmful to the plaintiffs, but allow other postings that would not interfere with LK's freedom of speech.

In the result, the court granted an interlocutory injunction restraining the defendant or any person acting on his behalf from publishing, posting or reposting communications that were defamatory or harassing of employees and officials of CUPE, including the plaintiffs. The court dispensed with the usual requirement for the moving parties to provide an undertaking to pay potential damages arising from the injunction since it was unlikely to be a case where the defendant would suffer any damages as a result of the order.

The case demonstrates the circumstances where a plaintiff may obtain an injunction to stop defamatory social media posts pending trial.

Curiously, no reference was made in the decision to the test for granting injunctions in defamation cases discussed in *Bagwalla v. Ronin et al and Ronin v. Ronin et al*, 2017 ONSC 6693 (CanLII), where the Ontario Divisional Court held that the traditional *RJR MacDonald* injunction test does not apply to motions for injunctive relief restraining alleged defamation because the test would seldom protect controversial speech. It seems clear, however, that the motion judge was satisfied that the plaintiffs would suffer irreparable harm if the defamatory conduct was not stopped pending trial, so the result may not have been any different. A PDF version is available to download [here](#).

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