

Media article that reports on court decision not proper subject for a defamation claim (*Masjoody v. Burnaby Beacon*)

Anti-SLAPP Motion | Defamation | Litigation | Litigation & Dispute Resolution

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In general, a court proceeding is open to the public. Unless the court issues a sealing order, what takes place in a court room or a court decision made after a hearing can be reported upon by the media without fear of recourse. Indeed, court decisions have always been available to the public whether published in books or now electronically through online platforms like CanLII.

Notwithstanding the public interest in the publication of court decisions, the plaintiff in *Masjoody v. Burnaby Beacon*, 2024 BCSC 1983 commenced a defamation action against the defendant news outlet and journalist for an article that reported on a 2021 court decision (*Masjoody v. Trotignon*, 2021 BCSC 1502) in which he was involved. In response to the claim, the news outlet and journalist brought a motion under section 4 of British Columbia's *Protection of the Public Participation Act* (the "PPPA") to have the plaintiff's action struck.

The motion was successful.

The underlying facts in this case related to the plaintiff's employment with Simon Fraser University. The plaintiff had been terminated from his job after a dispute arose with another employee. The plaintiff claimed damages against the University and another member for defamation and conspiracy to commit defamation.

This litigation was complicated as the defendants therein sought to strike the plaintiff's claim on the grounds that the court did not have jurisdiction over what was a labour relations matter and that the proceedings were an abuse of process.

Furthermore, under the University's Human Rights Policy, the other member named in the plaintiff's action brought a human rights complaint to the Human Rights Office against him.

The plaintiff then filed a grievance against the Chair of the University's mathematics department, but later withdrew it.

Eventually, the court made a ruling that the plaintiff's action against the University was beyond its jurisdiction and that the dispute was governed under the Teaching Support Staff Union of Simon Fraser University Collective Agreement.

On 15 September 2021, this court decision was discovered by the defendant journalist. The decision had been published on CanLII.

A few days later, the defendant news outlet published an article written by the journalist that summarized and reported on the court case. The journalist did not know the plaintiff and the pair had never spoken to each other.

In support of his defamation action against the defendant news outlet and journalist, the plaintiff referred to conspiracies between the parties and other persons not named as parties. However, none of those allegations were supported by any facts.

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Under BC's PPPA, the initial burden is on the moving party to demonstrate that the expression at issue relates to a matter of public interest. The court found that the law was clear that if a matter is reported, orally or in writing, in a judgment in open court, that matter is in the public interest.

As well, the court stated that media reports on judicial decision are a matter of public interest protected by section 2(b) of the Charter because the public has a right to know what happens in court. Accordingly, the defendants met their initial burden.

This shifted the onus onto the plaintiff to demonstrate that (a) there were grounds to believe that his proceeding had substantial merit and that the defendants had no valid defence, and (b) the harm he had suffered as a result of the defendants' expression was serious enough that the public interest favoured his action continuing rather than protecting the expression. Under the latter onus, the BC legislation requires a plaintiff to demonstrate that the harm claimed is serious and causally connected to the expression.

The defendants relied on the defences of privilege, fair comment, justification and responsibility. While the defendants conceded that words in the article were capable of a defamatory meaning, they argued that the plaintiff failed to demonstrate that they had no valid defence.

The court accepted that the impugned article was a fair and accurate report of the court decision and that the defences of justification, fair comment and responsible communication clearly had merit.

The court also accepted that the defence of privilege applied.

The defendants argued that the article was protected by a statutory privilege under BC's *Libel and Slander Act* (the "LSA") or by qualified privilege under the common law and that under section 3(1) of the LSA, the publication of the article was sufficiently contemporaneous with the decision for the statutory privilege to apply. The article had been published 43 days after the decision was released.

In any event, the court noted that the common law privilege did not require contemporaneous publication and that there was no proof of malice.

Based on these findings, the court did not need to consider whether the harm suffered by the plaintiff was serious enough that the public interest favoured his action proceeding rather than protecting the expression.

However, the court found that the plaintiff did not meet this burden either as he had only alleged harm, without particulars connecting those allegations to the article, the court decision or the events surrounding the decision.

As can be seen, BC's PPPA operates exactly the same as Ontario's anti-SLAPP legislation found at section 137.1 of the *Courts of Justice Act*. The moving party bears the initial burden of establishing that the expression at issue relates to a matter of public interest. If this burden is met, the onus then shifts to the plaintiff to meet a substantial merits and public interest threshold. Furthermore, this case confirms that a person has no cause of action in defamation for the publication of a summary or report on a court decision, and would be wise to avoid bringing such an action. A PDF version is available to download [here](#).

[Stephen Thiele is the co-author of *A Practical Guide to the Law of Defamation* (2024: LexisNexis), with his colleagues Gavin J. Tighe, K.C. and James Cook.]

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