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Gratuitous Defamatory Tweets About Plaintiff Not Protected as a Matter of Public Interest

By Stephen Thiele

Stephen Thiele
Partner
416.865.6651
sthiele@grllp.com

The internet and social media have spawned much civil litigation in the area of defamation. There is no cost to obtaining a Twitter account, for example, and to "tweeting" out a widely-viewed post. For those interested in political issues, Twitter provides an individual with their soapbox to express their opinions and to attempt to hold others, such as elected politicians, to account. However, users sometimes convert their soapboxes into platforms from which to launch broad and unfounded personal attacks against others falsely wrapped in the context of debate over matters of public interest. In the law of defamation, such an attack will not be easily protected when the speaker seeks to protect himself or herself from a defamation claim.

This was the result of the court in *Cheema v. Young*, 2021 BCSC 461 where a Twitter user attempted to dismiss the plaintiff's defamation under British Columbia's *Protection of Public Participation Act*, S.B.C. 2019 c. 3 (the **"PPPA"**). This statute is the equivalent of Ontario's s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43. The purpose of these statutes is to protect public participation in matters of public interest and to prevent or limit actions commenced for the purposes of silencing individuals or organizations that speak out about, or advocate a position on, issues of public interest.

In this case, the defendant had posted a series of tweets from his Twitter soapbox that made reference to the plaintiff and reference to the appointment of a Police Chief for the City of Surrey. Following the 2018 municipal election, the newly elected Mayor of Surrey and his municipal political party which won 7 of the 8 seats on City Council, sought to create a Surrey police department to replace the policing services otherwise provided by the RCMP.

The plaintiff was a campaign volunteer for the Mayor and had known him personally for over 20 years. However, he had no involvement in the party's platform and had never been consulted in connection with policing issues either prior to or after the election.

The defendant had a strong interest in Surrey politics and used his Twitter soapbox to broadcast his views and opinions. He was interested in policing and the policing transition that the

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newly elected Mayor and his party wanted to implement. In pursuit of his interest, the defendant offered to arrange a meeting between the Mayor and a former Delta, B.C. Police Chief. The defendant advocated that the former Police Chief and Delta's Chief Constable lead the transition to a municipal police force. The Mayor did not respond to the offer and ultimately the defendant's support for the Mayor and the new council began to wane.

Starting in or around April 2019, the defendant broadcast a series of tweets about the policing transition and city business which also made reference to the plaintiff. Given the plaintiff's lack of involvement in the issue, it was unclear why he was mentioned in the tweets.

The plaintiff claimed that the defendant's tweets had the following natural and ordinary meanings:

> (a) that he surreptitiously wielded influence and power over elected representatives of Surrey;
>
> (b) that he was unethical, dishonest and of disreputable character;
>
> (c) that he associated with persons who were unethical, dishonest, and of disreputable character;
>
> (d) that he encouraged, facilitated and supported the abuse of power by elected representatives of Surrey;
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> (e) that he acted in a manner that was harmful to the interests of Surrey taxpayers;
> (f) that he was engaged in conduct deserving of public investigation, exposure and rebuke;
>
> (g) that he manipulated, intimidated, and bullied the media and members of Surrey's elected councillors;
>
> (h) that he orchestrated a secretive, improper scheme in relation to Surrey's proposed municipal police force;
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> (i) that he was involved in decision-making for Surrey's proposed municipal police force;
>
> (j) that he had hand-picked the chief of police for Surrey's proposed municipal police force;
>
> (k) that he engaged in, approved, or condoned criminal conduct in Surrey;
> (l) that he improperly benefitted from his relationship with the Mayor of Surrey; and
>
> (m) that he supported the Mayor of Surrey to further his own financial interests.

The plaintiff contended that as a result of the defendant's tweets, he felt depressed and ashamed, had become socially isolated and had placed his business interests in the City on hold. He had been treated for stress and was prescribed medication for high blood pressure.

Given the similarity between B.C.'s SLAPP legislation and Ontario's SLAPP legislation, the B.C. court applied the recent Supreme Court of Canada decisions in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 and *Bent v. Platnick*, 2020 SCC 23 to the PPPA and to the defendant's motion to dismiss the plaintiff's action.

The first step in the analysis was to determine whether the PPPA even applied to the action. For the PPPA to be relied upon by the defendant his tweets had to relate to a matter of public interest. At this stage, a contextual inquiry was required to assess what was the expression really about. This required consideration of why the plaintiff was even referenced in the tweets

given his lack of involvement in the affairs of Surrey's council following the election. While the defendant explained that his motivation was founded on his passion for Surrey's transition to a local police service, transparency around a report, the appointment of a chief constable and the plaintiff's relationship with the Mayor, the tweets on their face did not relate to those issues at all. The court stated that gratuitously adding the plaintiff to the tweets did not cloak the comments about the plaintiff with the protection of public discourse on the matters discussed. Accordingly, the defendant's tweets about the plaintiff failed the initial threshold under the PPPA. The expressions did not relate to the public interest issues that the defendant had identified.

Although this basis alone defeated the defendant's application to dismiss the action, the court also found that the plaintiff's claim had substantial merit, that there was no valid defence to the claim and that the harm suffered by the plaintiff outweighed the public interest in protecting the defendant's expression.

With respect to substantial merit, the statements made by the defendant met the threshold test of being defamatory. Individually and collectively, the statements tended to lower the plaintiff in the estimation of right-thinking members of society, and exposed him to hatred, contempt and ridicule.
With respect to the issue of no valid defence, none of the defences relied upon by the defendant (justification, qualified privilege or fair comment) tended to weigh more in favour of the defendant. There was no factual basis to justify the attacks on the plaintiff, and there were a number of reasons to believe that the defence of qualified privilege would not succeed. Meanwhile, the fair comment defence did not apply to 4 of 7 impugned statements because the statements expressed facts, not opinion, and there were grounds to believe that the other statements would fail because the factual foundation for the comments was unstated. There was evidence to show that the facts on which the defendant relied upon were not widely known.

Lastly, there was evidence that the plaintiff suffered substantial harm to his reputation, while there was little public interest in protecting the defendant's statements.

As stated at paragraph 75 of *Pointes Protection*, there is a lower public interest in protecting statements that contain deliberate falsehoods or gratuitous personal attacks. Here, the defendant's comments about the plaintiff did not further public debate or discussion about the transition to a municipal police force, the decisions made by the Mayor and Council to hold some meetings *in camera*, or to delay release of a report.

Twitter has become a powerful communication tool. It has given every individual the ability to communicate their views and interests to a wide audience and to engage others who share similar interests and views. In the world of politics, Twitter has provided individuals with their own soapbox in the proverbial Town Square from which to advocate their ideas and to challenge the decisions of government. However, the tool can be misused and as shown in *Cheema*, courts will carefully scrutinize defamatory comments made on Twitter where a defendant claims that those statements have been made in the public interest and that his or her expression should not be subject to a defamation claim because of potentially chilling effects on freedom of expression.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at sthiele@grllp.com.

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