

KEEPING CURRENT

June 30, 2022

Defendant liable for defamatory tweets about university instructor

By James R.G. Cook

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

James R.G. Cook
Partner
416.865.6628
jcook@grllp.com

As an Ontario court has previously recognized, Twitter is a rhetorically harsh speech environment. A stark difference in political or other views may be expressed through tweets that are comments or opinions without making false factual allegations about another person. However, when tweets devolve into an unfounded attack on another person's reputation, that may give rise to a claim in defamation.

In *Post v. Hillier*, [2022 ONSC 3793 \(CanLII\)](#), the plaintiff was a teacher in an English department at an Ontario University for over 18 years. She had a PhD in Literature and Cultural Studies and was married with two young children.

In 2008, the defendant was a student in two undergraduate English courses taught by the plaintiff. They became friends and in 2014, the defendant was a member of the plaintiff's wedding party.

In 2020, the friendship deteriorated over political differences which were

expressed by the women on Twitter.

The defendant unsuccessfully vied for public office in the 2021 federal election and the 2022 Ontario provincial election. Her father previously held a seat in the provincial legislature.

In early November 2021, the plaintiff retweeted a thread that criticized anti-vaccine protests at hospitals and other tactics that had been endorsed by the defendant and her father.

In reaction, the defendant tweeted that the plaintiff had secretly dated a student at the University, followed by a series of tweets that featured wedding photos of the plaintiff and her bridal attendants, including the defendant, which described the plaintiff as a "violent white nationalist".

The defendant's tweets were automatically sent to everyone who followed her Twitter account which had over 9,300 followers. After the plaintiff

reported the tweets, the defendant's account was indefinitely suspended for violating Twitter's rules against targeted abuse and harassment.

Shortly thereafter, the defendant began posting from a new Twitter account, which initially had over 1,500 followers. The defendant posted tweets in the new account which described the plaintiff as a predator, a "gaslighter", and an abuser. She accused the plaintiff of having slept with her students and having "fed them Ativan in parking lots". The defendant included the University's Twitter account on at least one occasion and tagged her father's account. His account and the University's account each had roughly 50,000 followers.

The defendant used a photo of the plaintiff's wedding party as her profile picture on the new Twitter account and the plaintiff's Twitter "handle" in her profile description. Like her first account, this one was public which meant that anyone searching for the plaintiff's name (or who saw the defendant's account for any other reason) would see the tweets about the plaintiff.

Twitter users responded to the defendant's tweets about the plaintiff and compared her to Amber Heard; expressed shock that the University would hire "such a disgusting professor"; called for her termination or a criminal investigation; and implied that she was sexually promiscuous.

On December 7, 2021, the plaintiff sent a notice of libel to the defendant. The defendant acknowledged receipt of the notice by email but announced (via her Twitter feed), that she had no intention of removing her tweets about the plaintiff.

The plaintiff then sued the defendant for defamation. Notwithstanding that she was served

personally with the statement of claim, the defendant did not serve a statement of defence and was noted in default.

The defendant did, however, mention the lawsuit in many subsequent tweets. She and other Twitter users mocked the plaintiff for taking legal proceedings, saying she was greedy, mentally ill, and unable to care for her children. The defendant derided the plaintiff for setting up a GoFundMe account to raise money for her legal fees and suggested the lawsuit was pointless because she had no assets against which a judgment could be executed.

While the latter point may ultimately be of concern for enforcement purposes, the plaintiff was not dissuaded from moving forward to seek default judgment.

In June 2022, the Ontario Superior Court of Justice issued [Reasons for Judgment](#), finding that the defendant's tweets were defamatory.

The plaintiff established the three-part test required to prove defamation: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff: *Grant v. Torstar Corp.*, [2009 SCC 61 \(CanLII\)](#).

For the first part, the court stated that it was hard to conceive of a more damaging accusation for a teacher than an allegation that she was a sexual predator who drugged her students. Such statements would seriously damage a teacher's reputation in the eyes of her employer, her students, and the world at large. The plaintiff could have been criminally charged and lost her

job. The tweets did in fact cause others to think ill of the plaintiff since responses called for her to be fired and criminally investigated.

Secondly, the defendant's words unmistakably referred to the plaintiff, as they referred to her by name, disclosed her profession, her employer, and her Twitter handle, and attached photos of her. The plaintiff's evidence was that she was harassed by Twitter users who identified her based on the defendant's tweets.

Thirdly, the transmission of the defendant's statements via tweets constituted publication. They were seen by thousands of followers on accounts that were widely accessible and could have been seen by anyone who searched for the plaintiff's name. The defendant also used the #MeToo hashtag in some of the tweets, which made it more likely that they would show up in search results. The defendant's tagging of some tweets with her politician father's account and the University's Twitter handle also expanded their reach.

As the defendant had failed to raise a defence, the court turned to assessing damages. Damages in a defamation claim do not depend on proof of financial loss but generally serve three purposes: (1) to compensate a plaintiff for the distress suffered from the defamation (2) to repair the harm done to their personal and professional reputation; and (3) as a "vindication of reputation": *Mina Mar Group v. Divine*, [2011 ONSC 1172](#), at para. 13.

In the case at hand, the court was satisfied that the plaintiff's position and standing as a university instructor required that she be seen as honest and ethical, and she was particularly likely to be harmed by allegations that she abused drugs and sexually exploited her students. The

defendant's use of the widely available Twitter accounts compounded the harm.

Finally, the court's view was that the defendant had acted with malice and noted that she had refused to publish any retraction or apology. She displayed contempt not only for the plaintiff but for the idea that she was obliged to respect the norms of civilized behaviour observed by other members of society.

As a result, the court awarded the plaintiff \$75,000 in general and aggravated damages, and a further \$10,000 in punitive damages. The defendant was ordered to post a retraction on her Twitter account for 60 days, acknowledging that her statements about the plaintiff were false and defamatory, and providing a link to the court's decision on CanLII. The court reasoned that this was an appropriate remedy since the defendant was a public figure with a significant social media following.

The decision shows that Twitter users may face significant consequences, in terms of damages, due to the impact of defamation through social media. As noted by the motion judge, while Twitter is designed to get the greatest amount of attention or traffic possible, regardless of the truthfulness or value of a tweet's contents, this does not mean that its users can escape legal liability for untrue and malicious tweets.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or jcook@grllp.com.

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