

# KEEPING CURRENT

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## The law of defamation in a nutshell (*Stratuscent Inc. v. Chehade*)

By Stephen Thiele

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.

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Over the past few years, we have written a lot of blogs on the law of defamation.

Defamation is a common cause of action. However, there are many nuances in this area of law that make it complex for those lawyers who only dabble in defamation cases or members of the public who are likely only exposed to the law of defamation once in their lives.

Although our blogs comment on and summarize specific cases, the intent is that they be educational. The law is not just for lawyers. The law is for the public at large.

In this regard, the decision of [Stratuscent Inc. v. Chehade, 2023 ONSC 3977](#) is an excellent case for teaching purposes and to help those unfamiliar with the law of defamation to get some basic understanding of the applicable tests and the remedies that are available, particularly a permanent injunction.

In this case, the plaintiffs, a corporation, S, and its Chief Executive Officer, A, sued the defendant for defamation based on comments the defendant

had published about them either via email or on the internet, including the defendant's own website. With respect to A, the defendant's comments were made to, among others, the University from which he graduated, his employer, the INSEAD business school, Immigration, Refugee and Citizenship Canada and news media.

The defendant accused A of various things, including that he was "sneaky and sly", had a "fraudster's smirk", possessed child pornography on his computer, absconded with company funds, was involved in the "black market immigration business" and worked in the "black market faulty COVID-19 technology for obvious nefarious reasons", was part of the immigration mafia and was a "dangerous criminal fraudster".

The defendant also made comments about S's product, Noze, alleging that it was "murderous". However, those comments were focused on A.

The plaintiffs viewed the defendant's written comments as lowering their

reputation in the eyes of a reasonable person. A made a complaint about the defendant's conduct to the Quebec Ministry of Justice, which resulted in the issuance of an arrest warrant against the defendant, and commenced a proceeding for defamation.

But rather than seeking damages, the plaintiffs sought the following relief:

- a) a declaration that the defendant's comments were defamatory;
- b) a permanent injunction prohibiting the defendant from making further defamatory comments about them; and
- c) a mandatory injunction for the removal of a website operated by the defendant. The website served as a forum by which the defendant disseminated his statements about the plaintiffs. To support the mandatory injunction for the website's removal, the plaintiffs submitted hyperlinks and a screenshot which showed folders of the website.

As reviewed by the court, in a defamation action, a plaintiff bears the initial burden of proof. A plaintiff must establish the following three things:

- i) the impugned words of the defendant's defamatory statement tended to lower the plaintiff's reputation in the eyes of a reasonable person;
- ii) the words in fact referred to the plaintiff; and
- iii) the words were communicated to at least one person other than the plaintiff.

The court found that the defendant's comments were clearly defamatory and lowered the reputation of the plaintiffs because, among other

things, the comments accused the plaintiffs of being engaged in criminal activities, including fraud.

In general, falsely accusing someone of actually being engaged in criminal activity reasonably lowers the reputation of the person being accused in the eyes of a reasonable person.

However, rather than seeking damages, the plaintiffs sought injunctive relief against the defendant. In this regard, the court was required to review the test for an injunction that applies to a defamation action.

In general, to obtain an injunction in a defamation action, the plaintiff must show that the impugned publication is clearly defamatory, that no defence applies and that there will be irreparable harm if the injunction is refused. Where a defendant relies on justification or fair comment, as in this case, the injunction must be refused unless it will inevitably fail.

The court found that the test was met.

With respect to the defence of fair comment, the court held that the defendant's impugned statements were baseless. However, S was unable to satisfy the applicable test because the impugned statements were largely focused on A and it was unclear that the defence of fair comment in respect of the COVID-19 technology would inevitably fail because the technology was novel.

The court also granted a permanent injunction against the defendant.

Although a permanent injunction is considered to be an extraordinary remedy, the court explained that this remedy was available in a defamation action. As described in [Astley v. Verdun, 2011 ONSC 3651](#), a permanent injunction will be granted where either:

- a) there is a likelihood that the



defendant will continue to publish defamatory statements despite the finding that he or she is liable to the plaintiff; or

b) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible.

The evidence established that the defendant was engaged in a campaign of defamation and that he would continue to publish defamatory comments about A. Indeed, despite the issuance of the arrest warrant for criminal harassment and extortion, the defendant steadfastly continued to make impugned comments about A.

There was also evidence that the defendant tried to extort money from A and his spouse to stop making defamatory statements and that the defendant had stated: “I will keep doing this to them and “I have only started and have yet to quench my thirst...”.

However, with respect to the defendant’s website, which had been discontinued and taken down, the plaintiffs’ evidence was insufficient to obtain relief because as determined by the Supreme Court of Canada in [Crooks v. Newton, 2011 SCC 47](#), reference to the existence and/or location of content on the internet by a hyperlink does not constitute publication. Furthermore, the plaintiffs’ evidence was simply insufficient to establish that the content which had appeared thereon was defamatory. The screenshot of the defendant’s website failed to show specific content that had been posted on the site.

In summary, this decision is useful because, from a practical level, it clearly sets out the essential test for a successful defamation action, the test that applies for obtaining an injunction in a defamation action, and when a court will grant a permanent injunction in a defamation case.

As well, the decision serves as a reminder that a plaintiff must provide sufficient evidence of defamation in order to succeed. If defamatory comments are posted on a website, screenshots of the actual defamatory comments should be taken. The fact that a website contains a hyperlink to a defamatory publication is insufficient to support an action or to obtain a remedy.

### **Contact us**

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

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