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Law firm sues former client for defamatory online review

By **James R.G. Cook**

Law360 Canada (December 14, 2023, 10:57 AM EST) -- As with any business, a law firm may be the target of online reviews by disgruntled customers. Reviews of a business by consumers are generally seen by the courts to be matters of public interest. Online reviews are nevertheless subject to the general laws of defamation, so a firm that believes an online review is false or damaging to its reputation may consider pursuing a civil claim for damages against the reviewer.

The Ontario Superior Court of Justice decision of *D'Alessio v. Chowdhury*, 2023 ONSC 6075, is an example of a successful claim by a law firm against a former client for defamation as a result of the client's online review.



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The law firm and two of its lawyers acted for the defendant in a motor vehicle accident tort and accident benefits claim. In November 2020, after a fundamental breakdown of the solicitor-client relationship, the retainer ended and the defendant's files were transferred to another lawyer.

On or about Jan. 14, 2021, the defendant posted a negative Google Review on the law firm's online "Your Business Google Account."

The firm responded to the plaintiff's post and stated, among other things, that the facts stated in the review were malicious and false and that they would vigorously prosecute a \$3-million libel lawsuit against her.

The firm expressly gave notice under s. 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c.L.12, of their demand for the defendant to correct or retract her post along with a full apology.

On Jan. 16, 2021, the defendant responded. She refused to take down the review and claimed that truth was an absolute defence to a defamation lawsuit. In her words, "No one is punished for speaking the truth, even if it is an ugly truth." The firm's claim ensued thereafter.

In April 2021, after being posted for three months, the defendant removed the online review.

In September 2023, the firm and lawyers brought a motion for summary judgment of their claim. The defendant was self-represented, and while she had filed a statement of defence, she filed only a single document in response to the summary judgment motion. The document was not in affidavit form and was not signed or commissioned.

The only communication at issue was the Google Review. The plaintiffs argued that the words in the review were defamatory in the sense that they lowered their reputation in the eyes of a reasonable person. They pointed to the defendant's choice of words used to describe them.

The motion judge agreed with the plaintiffs that the Google Review was defamatory based on the well-established principles in *Grant v. Torstar*, 2009 SCC 61, [2009] 3 S.C.R. 640. The defendant's words impugned their reputation as competent, trustworthy personal injury lawyers. In the motion judge's view, a reasonable person reading the words would conclude that one should not retain the

plaintiffs as lawyers and therefore “the impugned words lowered the professional reputation of the plaintiffs.”

The motion judge was unable to determine from the defendant’s pleading what defence she was relying on in response to the defamation claim. The defendant claimed that the action was an abuse of process and that she had not “broadcasted any false or malicious or indecent statement to intentionally cause damages.” She also pleaded that the plaintiffs had not suffered any damages as alleged and that the plaintiffs had failed to mitigate their losses and damages.

However, none of these defences were pertinent to a defamation claim.

At the hearing, the defendant also attempted to rely on the anti-SLAPP provisions in s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43. However, she had not brought a formal motion to have the action dismissed on this basis and had not filed any material in support of her position as to why the action met the criteria for a proceeding that attempted to limit freedom of expression on matters of public interest.

While the motion judge acknowledged that the defendant was self-represented, the simple fact that she was self-represented did not relieve her of her obligation to follow proper procedures and provide the court with the necessary evidence. In this regard, the motion judge pointed to the statement of the Court of Appeal for Ontario that “[a] judge must not cross the line between assisting self-represented litigants in the presentation of their evidence and becoming their advocate.” (*Grand River Conservation Authority v. Ramdas*, 2021 ONCA 815, at paragraph 21.)

The motion judge concluded that the defendant had not pleaded or advanced any defences to the defamation claim of the plaintiffs.

As for damages, the motion judge referred to the decision of *Barrick Gold Corp. v. Lopehandia*, 71 O.R. (3d) 416, and subsequent decisions, which have addressed damages for defamation based on the Internet’s distinctive capacity to cause instant and irreparable damage to reputation.

The defendant’s review was posted online in Google Reviews with a broad berth of viewers and was publicly available for just under three months. The allegations in the review were serious and intended to diminish the plaintiffs’ reputations as competent and effective personal injury lawyers. The defendant was also given the opportunity to apologize and take the review down before the lawsuit was commenced but refused to do so.

The motion judge was critical of the defendant and sternly noted that “[o]nline comments are easy to do and seem distant and not accountable. But they are not. ... The defendant should have thought about her state before typing the content and sending the Google Review that she did.”

The damages awarded to the plaintiffs were in the relatively modest amount of \$20,000, which may cause some plaintiffs to reflect upon whether or not a civil claim is worth the cost of pursuing. In many cases, plaintiffs may determine that the cost of litigation is simply not worthwhile. Nevertheless, the decision should serve as a warning that online reviews may be subject to a claim for damages and that a law firm may take steps to obtain judicial relief to protect its reputation.

James R.G. Cook is a partner at Gardiner Roberts LLP and has been with the firm since he articulated there in 2002. As a litigator in the firm’s dispute resolution group, he has experience in a broad range of commercial, real estate and professional liability litigation.

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