

# KEEPING CURRENT

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## Injunction against CBC denied in contractor's defamation claim (*Evangelisti v. Canadian Broadcasting Corporation*)

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A party seeking an injunction to prevent a broadcaster from publishing a story about them will face significant obstacles due to the principles of freedom of expression in Canada, as illustrated by *Evangelisti v. Canadian Broadcasting Corporation*, [2024 ONSC 2048 \(CanLII\)](#).

In the case, the applicant contractor operated a business providing landscaping and pool services to residential and commercial customers. The Canadian Broadcasting Corporation (CBC) began to work on a news story regarding alleged breaches of contracts by the contractor and his business, who had been sued in 11 separate actions by dissatisfied customers and suppliers.

In February 2024, the CBC contacted the contractor by email to request his response to the allegations that some clients were not happy with the work he had performed. The contractor did not provide a substantive or timely response to the CBC's request.

Instead, the contractor commenced an application in the Ontario Superior

Court of Justice seeking an interim, interlocutory, and permanent injunction to prevent the CBC from publishing "any news to the general public" regarding the applicants. The contractor also sought damages from the CBC and some of his former customers who spoke to CBC reporters about this story.

In the [decision](#) dismissing the injunction application, the application judge noted that the general test for injunctions from *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) does not apply to injunctions in defamation proceedings. An injunction preventing the publication of a news story can only be justified in the clearest of circumstances. In such cases seeking to restrain future speech, a court will only issue an injunction where it is satisfied that any reasonable trier of fact would find the words to be spoken so manifestly defamatory and impossible to justify that an action in defamation would almost certainly succeed.

The approach of the courts to these cases is based on the principle that prior

restraint of speech is contrary to the values that lie at the core of the right to free expression. An injunction preventing future speech interferes with the right to freedom of expression, which is protected by [section 2\(b\)](#) of the [Canadian Charter of Rights and Freedoms](#).

In the case at hand, the contractor's first obstacle was that he did not point to any particular words to be used by the CBC that were defamatory. Rather, his position was that the CBC *intended* to report on customer complaints that the contractor believed to be frivolous and vexatious. Based on the application evidence, there was no basis to conclude that CBC's story would be defamatory at all, let alone in a manner that would support an anticipatory injunction.

Further, courts will refuse to issue injunctions where the responding party states an intention to raise a defence of justification or fair comment unless it is clear that such a defence will obviously fail: *Canada (Human Rights Commission v. Canadian Liberty Net*, [1998 CanLII 818 \(SCC\)](#), [1998] 1 S.C.R. 626, at paragraphs [48-49](#).

CBC argued that the defence of justification would be raised pursuant to which it intended to prove the substantial truth of the sting of the impugned statements about the contractor. CBC's planned story intended to report that the contractor's former customers had made complaints and that the complaints had not yet been satisfactorily resolved. To succeed in this defence, CBC only had to prove that the complaints had been made, which appeared to be evident based on existing lawsuits against the contractor.

CBC also argued that the defence of absolute privilege applied since it was reporting on existing legal proceedings and had provided the contractor with the opportunity to respond

to the allegations. CBC intended to publish a report that complied with [subsection 4\(1\)](#) of the [Libel and Slander Act](#), which provides that a fair and accurate report without comment of proceedings publicly heard before a court of justice, if published contemporaneously with such proceedings, is absolutely privileged unless the defendant has refused or neglected to provide a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. In the application judge's view, it appeared very likely that CBC would succeed with this defence.

Two additional defences also applied. CBC relied on the defence of qualified privilege because it was reporting on allegations made in court proceedings and members of the public have a right to information before the courts. While the defence is defeated by malice, there was no evidence that what CBC intended to say is clearly malicious.

Lastly, CBC relied on the defence of responsible communication which protects publication on a matter of public interest in which the broadcaster diligently tried to verify the allegations. As CBC diligently tried to verify the allegations and offered the contractor several opportunities to respond, it appeared that CBC was also likely to succeed with this defence.

All told, the contractor would not have even met the traditional test for an injunction as there was no serious question to be tried, much less a strong *prima facie* case, and no irreparable harm. Damages would be an adequate remedy if a court were ultimately to conclude that CBC defamed him. Where damages would be an adequate remedy, courts are reluctant to issue an injunction to restrain speech: *Rapp et al. v. McClelland & Stewart Ltd. et al.*, (1981), [1981 CanLII 1696 \(ON SC\)](#).

The balance of convenience also strongly favoured the CBC given the constitutional protection of freedom of expression. The application was therefore dismissed in its entirety.

CBC was awarded costs on a substantial indemnity basis as it appeared to the application judge that the proceeding was an attempt to muzzle journalists attempting to report on a story of significant public interest on a matter of consumer protection. In the application judge's words: "The courts must dissuade these applicants, and all persons, from such brazen attempts to interfere with the constitutionally protected right of journalists to write and publish news stories."

The case demonstrates the significant difficulties that a party will face if they seek the assistance of the court to stop the publication of a news story. Rather than trying to stop a publication outright, a party may wish instead to respond to the media to try and explain their side of the pending story.

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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](mailto:jcook@grllp.com).

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