

KEEPING CURRENT

May 17, 2024

Kielburger defamation claim against Canadaland survives anti-SLAPP motion (*Kielburger v. Canadaland Inc.*)

By James R.G. Cook

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A defamation action brought by the mother of WE Charity founders Craig and Marc Kielburger against Canadaland Inc. was allowed to continue after an anti-SLAPP motion was dismissed by the Ontario Superior Court of Justice: *Kielburger v. Canadaland Inc.*: [2024 ONSC 2622 \(CanLII\)](#).

The plaintiff commenced the action following a 2021 podcast hosted by Canadaland journalist, Jesse Brown, during which he interviewed the author of a 1996 article in *Saturday Night* magazine about the WE organization and Craig Kielburger.

A portion of the 1996 article, dubbed the "Money Passage," made untrue statements which claimed that the plaintiff deposited hundreds of thousands of dollars in donations directly into her family's personal bank account and that the family accepted large charitable donations before they were a legally registered charity.

The 1996 article led to a defamation action against *Saturday Night* and the author concerning the untrue statements. The action was eventually settled for payment of \$319,000 to the plaintiff's

son in return for an order dismissing the action. The settlement was not made confidential notwithstanding the defendants' request to do so.

The theme of the 2021 *Canadaland* podcast repeated portions of the 1996 article and the Money Passage that had been the subject of the defamation action. The podcast was promoted as "The White Savors True Crime" with teasers regarding "uncomfortable questions about money". One caveat in the podcast was that the author of the 1996 article "didn't accuse the family of stealing".

The plaintiff commenced a new defamation action on the basis that the 2021 podcast constituted a repetition of the 1996 libel. Neither Mr. Brown nor anyone else at Canadaland had reached out to the plaintiff for comment, and never contacted her for a response to the allegations that were again being made in the podcast.

The defendants brought a motion under [section 137.1](#) of the Ontario *Courts of Justice Act* (the "*CJA*"), which permits the dismissal of proceedings that limit debate on matters of public interest.

Section [137.1](#) places an initial burden on the moving party defendants to satisfy the court that the proceeding arises from an expression relating to a matter of public interest. The plaintiff conceded that the issue of whether a large amount of money donated for charitable purposes was diverted to private use was a matter of public interest pursuant to [section 137.1\(3\)](#) of the [CJA](#).

The burden then shifted onto the plaintiff to satisfy the criteria set out in [section 137.1\(4\) \(a\) and \(b\)](#) of the [CJA](#), specifically that there were grounds to believe that the proceeding has substantial merit, that the moving party defendants had no valid defence, and that the public interest in permitting the proceeding to continue outweighed the public interest in protecting the expression: *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22 \(CanLII\)](#), at paragraphs [18](#), [33](#).

As to whether the claim had substantial merit, the plaintiff established the three elements for a defamation action set out by the Supreme Court of Canada in *Grant v. Torstar Corp.*, [2009 SCC 61](#):

- (i) 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;
- (ii) the words in fact referred to the plaintiff; and
- (iii) the podcast was published and made available to third parties. In that regard, Canadaland podcasts are accessible to the public without charge and a transcript of the Kielburger podcast was available on Canadaland's website. In 2021, there were over 475,700 downloads of the Kielburger podcast series.

The court held that it would not be newsworthy enough for the podcast to simply state that the

charitable funds were received when the charity was in the process of being registered such that another account was used to hold the funds in the interim. Rather, the "sting" was in the inference of improper conduct and mishandling of substantial funds on the plaintiff's part.

In contrast to the Canadaland host, the author of the 1996 article carefully chose her words during the interview and did not comment on, summarize, or repeat the earlier allegations in the Money Passage.

Accordingly, for the purposes of [section 137.1\(4\) \(a\)\(i\)](#) of the [CJA](#), the court concluded that there was substantial merit to the plaintiff's claim in respect of Canadaland's repetition of the Money Passage, but there was no merit in the claim that the author of the 1996 article participated in that aspect of the podcast. The impugned words in respect of the Money Passage repetition were those of Mr. Brown and Canadaland alone.

The court then assessed the defences raised by the defendants: privilege, responsible communication and reportage, and fair comment. None of the defences were found to be valid.

The defence of privilege applies to reports of court proceedings but does not extend to pleadings filed before the matter gets to court or to summaries of or opinions about court proceedings whose publication is not part of the open courts policy: *Douglas v. Tucker*, [1951 CanLII 54 \(SCC\)](#). Here, the statements in the podcast that the plaintiff "deposited hundreds of thousands of dollars in donations directly into the family's personal bank account" was not a privileged report of proceedings in open court but a restatement of the Money Passage.

The defence of responsible communication requires that a defendant show that (i) the publication was on a matter of public interest; and (ii) publication was responsible, in that he or she was diligent in trying to verify the

allegation(s), having regard to all the relevant circumstances: *Grant v. Torstar Corp.*, [2009 SCC 61](#), at paragraph [98](#).

While there was little doubt that the subject of the podcast was of considerable public interest, the court held that Canadaland did not satisfy the “responsible” requirement of the defence given its failure to contact the plaintiff to respond to the allegations. The podcast also omitted important information from the plaintiff’s accountant that had been raised during the original defamation proceedings.

Lastly, the court found that Canadaland and Mr. Brown did not have a valid defence of fair comment, which applies to statements that are “a mere matter of opinion, and so incapable of definite proof”: *Hansman v. Neufeld*, [2023 SCC 14](#), at paragraph [108](#). In the court’s view, the statement that the plaintiff “deposited hundreds of thousands of dollars in donations directly into the family’s personal bank account” was one of fact, not opinion. The statement could be verified as either true or false. Financial documentation would be able to prove the factually correct version of events.

As to the public interest balancing, the court concluded that there was personal harm to the plaintiff from the accusations of theft or fraud, and the essence of the defamation was a personal attack on her character rather than a genuine discussion of the We Organization. In those circumstances, the need for the plaintiff to vindicate her reputational rights outweighed the need for a public airing of the impugned statements.

The motion brought by Canadaland and Mr. Brown was therefore dismissed, and the action will continue towards trial. The result may have been different had they been able to establish that they had conducted a responsible and diligent effort to verify the allegations before the podcast, including contacting the plaintiff to obtain her response.

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.

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