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BLOG

Online publisher loses benefit of three-month libel time bar (Massoudi v. Vice Media LLC)

Defamation | Litigation | Litigation & Dispute Resolution

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Ontario's *Libel and Slander Act* protects newspapers and broadcasters from defamation claims that are not brought within short statutory deadlines. A person claiming to have been libelled in a newspaper must give written notice within six weeks after the libel comes to their knowledge and must commence the action within three months. The short deadlines are meant to give publishers a timely opportunity to correct, retract or apologize. However, a defendant must meet the statutory preconditions to rely on the deadlines, one of which is that the newspaper clearly identifies its publisher to readers.

In *Massoudi v. Vice Media LLC*, 2026 ONCA 771, the Court of Appeal for Ontario revived a defamation action, previously dismissed on summary judgment as time-barred, arising from a 2013 article about the office of then-Toronto mayor Rob Ford.

On November 5, 2013, an article entitled "Rob Ford's Office Hired a Hacker to Destroy the Crack Tape" appeared on the VICE.com/en_ca website. It identified the plaintiff (at the time, the mayor's communications director and press secretary) as the staff member who had hired the alleged hacker.

Within hours, the plaintiff emailed the author and the editor in chief of Vice Media Inc., the global parent company, denying the article's accuracy, putting them on notice that it was defamatory and false, and saying that he might need to consult a lawyer.

On March 14, 2014, just over four months after the article was published, the plaintiff commenced a defamation action against Vice Media Inc., the author and the article's anonymous source. Vice Media Canada Inc. was later added as a defendant on consent.

In 2017, the defendants advised that they intended to amend their defence to plead that the action was time-barred, and in 2022 they moved for summary judgment on that basis.

Under section 6 of the *Libel and Slander Act*, an action for libel in a newspaper must be commenced within three months after the libel comes to the plaintiff's knowledge.

However, two threshold requirements, found in section 7 and subsection 8(1), must be met before a defendant can rely on the notice requirement in subsection 5(1) or the limitation period in section 6.

Section 7 provides that those provisions apply "only to newspapers printed and published in Ontario."

Subsection 8(1) provides that no defendant is entitled to their benefit "unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper."

The motion judge found that both requirements were satisfied and dismissed the action because the plaintiff had been required to sue by February 5, 2014.

On section 7, the motion judge relied on the facts that the author was based in Toronto, the article concerned Toronto politics, its readership was primarily in Ontario, and the plaintiff claimed damages in Ontario.

GARDINER ROBERTS

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

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For subsection 8(1), the motion judge found that an "About Us" masthead page linked from every page of the website was the digital equivalent of "flipping a page" to a print masthead. Because it listed the Canadian editorial leadership and a Toronto office address, the motion judge held that it was clear that Vice Media Canada Inc. was the publisher, and that the plaintiff, who had complained within hours, had in fact received the notice that subsection 8(1) was meant to provide.

On appeal, the plaintiff's challenge to the section 7 finding failed. Having conceded that the website was a "newspaper" and that the article was published in Ontario, he argued that it had not been "printed" in Ontario, since the data was housed on a server in Virginia.

The Court of Appeal disagreed. Following *Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA), and *John v. Ballingall*, 2017 ONCA 579, the Court of Appeal reaffirmed that a newspaper does not cease to be a newspaper because it appears online. There was no principled basis for requiring evidence of a physical object generated in Ontario. Where a newspaper appears only online, the place of printing is the same as the place of publication.

Further, the Court of Appeal confirmed that a defendant bears the onus of proving that section 7 is satisfied, and that mere accessibility to Ontario readers is not enough, since that could capture content with no connection to Ontario at all. Relevant factors include where the content was created; who created it and in what capacity; the location of the publisher and proprietor; the target audience and subject matter; any indication on the website of the place of publication; and the location of the readers.

Here, the article concerned Toronto's mayor, relied on a Toronto source, was written in the Canadian publisher's Toronto office, and was read predominantly in Ontario according to page-view evidence. A U.S. server and some U.S. editorial oversight did not outweigh those factors.

The appeal turned instead on subsection 8(1) of the *Act*. Reviewing the established authorities, including *Scown v. Herald Publishing Co.* (1918), 56 S.C.R. 305, and *Elliott v. Freisen*, 1984 CanLII 1922 (ON CA), the Court of Appeal explained that imperfect compliance with subsection 8(1) can be forgiven. Where the publisher and proprietor are the same, naming them once is sufficient, and information placed in the wrong spot on the editorial page is not necessarily fatal. However, a defendant must show at least partial compliance or an attempt to comply.

Here, by contrast, the defendants had failed to comply with the requirements of subsection 8(1) altogether, and no case has condoned such an unmitigated failure. The name "Vice Media Canada Inc." appeared nowhere on the website excerpts in evidence, and an individual was instead listed as the publisher of "Vice Canada." While the "About Us" page might otherwise have been an acceptable location, and the omission of the proprietor could have been overlooked because it was also the publisher, what could not be overlooked was the requirement that the publisher be "unequivocally identified in a prominent location." In the Court of Appeal's view, to require less would strip subsection 8(1) of its purpose.

The Court of Appeal also concluded that the motion judge had misapprehended the evidence. References on the masthead to Canadian editorial staff and a Toronto office did not reasonably imply that a separate Canadian corporation was the publisher. The first office on the masthead was "VICE NEW YORK," the only address to which readers could send letters. The article referred only to "VICE," and pre-publication emails seeking comment referenced "Vice Media Inc." with New York contact information.

The defendants argued that, even if they did not comply with subsection 8(1), the plaintiff suffered no prejudice. This argument failed for two reasons.

First, imperfect compliance with technical requirements differs from no meaningful compliance at all.

Second, the motion judge erred in finding that the plaintiff knew who the publisher was. His own email described the article as appearing on a "U.S. website" and VICE.com as "a sensationalist website based outside the jurisdiction of our courts." Furthermore, the plaintiff's original claim did not name the Canadian company.

Since the defendants had not substantially complied with subsection 8(1), they could not rely on the section 6 time bar.

In the result, the dismissal of the plaintiff's action was set aside, and the plaintiff was awarded all-inclusive partial indemnity costs of $42,000 for the appeal. The action may now proceed even though it concerns an article published more than twelve years ago.

The decision illustrates that the prudent course of action for a plaintiff is to serve notice and sue within the statutory deadlines whenever a claim may involve a newspaper or broadcast, including a digital-only one. Arguments based on the location of a foreign server are unlikely to succeed. Where a deadline has been missed, however, the time bar is not automatic, since the defendant bears the onus of proving the section 7 and subsection 8(1) preconditions. For media organizations, the decision underscores the importance of naming the correct legal entity as publisher, with an address of publication, in a prominent place. Corporate groups publishing local editions through subsidiaries under a single global brand should pay particular attention to the requirements identified by the Court of Appeal.

GARDINER ROBERTS

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

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Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com

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