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Defamation action for media article based on a court decision dismissed

By **Stephen A. Thiele, Gavin Tighe, James R.G. Cook**

Law360 Canada (December 5, 2024, 10:09 AM EST) -- In British Columbia and Ontario, a defendant in a defamation action can bring an anti-SLAPP motion for its dismissal at an early stage of the proceedings.

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An anti-SLAPP motion requires the defendant to establish that the plaintiff's action involves an issue that relates to a matter of public interest. If the defendant is able to meet this threshold, the burden of proof shifts to the plaintiff to satisfy the court that it is reasonable to believe that the action has merit and that the defendant has no valid defence (i.e. the substantial merits threshold) and that the public interest in permitting the plaintiff's action to continue outweighs the public interest in protecting the defendant's alleged defamatory comments (i.e. the public interest threshold).

In *Masjoody v. Burnaby Beacon*, 2024 BCSC 1983, the defendants, a media outlet and its journalist, brought a successful anti-SLAPP motion under British Columbia's *Protection of Public Participation Act, 2019* (the PPPA) to have the plaintiff's defamation action against them dismissed. The defamation action has sought damages for the publication of an article that summarized and reported upon a previous court decision that the plaintiff had brought against Simon Fraser University (SFU) and a former colleague.

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In the previous action, the plaintiff had also sought damages for defamation and "conspiracy to defamation." However, this action was dismissed by the court for lack of subject-matter jurisdiction over the claim and, in the alternative, that the action was an abuse of process. The court explained that the plaintiff's complaints in the action against SFU were inextricably bound up and related to the plaintiff's employment at the university and that the plaintiff's dispute was governed by the Teaching Support Staff Union of Simon Fraser University Collective Agreement.

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Indeed, the colleague that the plaintiff had sued had submitted a complaint to SFU's Human Rights Office under the university's *Human Rights Policy*, and the plaintiff had filed a grievance, which was later withdrawn, against another colleague under the collective agreement.

The court's decision in the previous action was published on CanLII and was discovered by the defendant journalist. A few days after the discovery of the decision, the defendant media outlet published an article about the decision.

The plaintiff and the journalist did not know one another, and they had never spoken to each other.

The media outlet and journalist argued that it was appropriate to dismiss the plaintiff's defamation action against them because it related to a matter of public interest. The media outlet and the journalist also contended that the defences of (a) privilege, (b) fair comment, (c) justification and (d) responsible communication applied.

The court agreed that the law was clear that if a matter is reported, orally, or in writing, in a judgment in open court, the matter is in the public interest.

In *Edmonton Journal v. Alberta Attorney General*, [1989] 2 S.C.R. 1326, the Supreme Court of Canada also stated that journalistic reports of legal proceedings were protected under s. 2(b) of the Charter.

This shifted the burden to the plaintiff to meet the substantial merits and public interest thresholds under s. 4 of the PPPA. The plaintiff was unable to meet his burdens.

The court concluded that all of the defences raised by the media outlet and its journalist could be met.

In particular, the court agreed with their submissions that the article was a fair and accurate report of the court decision. The wording in the article was identical to the wording in the decision and in keeping with its meaning.

The article was also protected under the statutory privilege under B.C.'s *Libel and Slander Act* (LSA) or qualified privilege at common law.

While the article was published 43 days after the decision was released, the court held that there was no delay in the publication of the article such that the article was sufficiently contemporaneous with the decision's release under s. 3 of the LSA for the purposes of privilege.

As well, the court noted that since the journalist and the plaintiff had no dealings with each other, malice was not proven.

With respect to the public interest threshold, the plaintiff was required to demonstrate that the harm

he allegedly suffered was serious and that it was causally connected to the alleged defamatory expression. However, the plaintiff only alleged harm. He provided no particulars connecting the allegations of harm to the article or the events surrounding the decision. Accordingly, the court found that this burden was not satisfied.

The key takeaway from this decision is that a claim for defamation based on the publication of a summary or report of a court case will likely be unsuccessful. This kind of publication will be strongly protected by the courts. Thus, as a matter of practical guidance, a plaintiff should be discouraged from bringing such an action.

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