

Realtor's action for invasion of privacy and conspiracy dismissed under Anti-SLAPP law (*Riopelle v. Riopelle*)

Anti-SLAPP | Courts of Justice Act | Litigation | Litigation & Dispute Resolution | Real Estate

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Court decisions continue to show that Ontario's "Anti-SLAPP" legislation may be used to dismiss claims that are not limited to defamation.

In *Riopelle v Riopelle*, 2023 ONSC 3169 (CanLII), the plaintiff was a real estate agent based in Ottawa. In July 2019, she was charged with various offences including, assault, harassment, and operating a vehicle in a manner dangerous to the public.

A reporter prepared an article concerning the charges faced by the realtor that was published in the Ottawa Citizen and Ottawa Sun on 30 August 2019. The article was based on an anonymous tip received by the Ottawa Citizen's "tips line".

After reviewing the court materials, the reporter spoke to the realtor's defence counsel, who told him that the realtor maintained her innocence and that there was an upcoming hearing.

The reporter then corresponded with the realtor's husband over Facebook. The husband refused to discuss the charges. This was the only time the reporter communicated with the husband.

The article was originally published with the headline "Female realtor facing trial on assault, harassment, mischief charges after incidents in Orléans". The article discussed the charges against the realtor but did not describe the domestic context in which most of the charges arose. The reporter was not aware that the realtor and her husband were in the midst of a marital breakdown.

In January 2021, the realtor was convicted of two charges. An "Editor's Note" was appended to the online version of the article, stating that she had been convicted of criminal harassment and mischief under \$5,000.

In April 2021, the realtor commenced an action for damages against the reporter on the basis that he invaded her privacy and conspired with her ex-husband to cause her injury. She included her husband as a defendant.

The reporter moved under section 137.1 of the *Courts of Justice Act* for an order dismissing the action against him on the basis that "the proceeding arises from an expression made by the person that relates to a matter of public interest".

In response to the motion, the realtor argued that the article was not an expression that ought to attract protection under section 137.1. In that regard, she contended that the article failed to report that her husband made the complaints giving rise to the charges following a heated moment during their acrimonious separation, that the dispute occurred in the matrimonial home, and that her husband and his new girlfriend were the "male homeowner" and "adult woman" referred to in the article.

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The realtor argued that these omissions showed that the reporter sought to provoke an unwarranted public reaction about her actions. She also argued that the reporter failed to investigate the source of the story and the true nature of her relationship with her husband.

The motion judge was satisfied that the reporter's article related to a matter of public interest, based on whether "some segment of the community would have a genuine interest in receiving information on the subject: *Grant v. Torstar Corp*, 2009 SCC 61, at paragraphs 101-2. The article had reported on the criminal charges and, absent a publication ban, the press was free to inquire and comment on the workings of the courts, including the publicly-available court files. There was no exception due to the circumstances relating to domestic issues.

Since the article related to a matter of public interest, the burden shifted to the realtor to show there were grounds to believe that her claims had substantial merit and that the reporter had no valid defence: *Courts of Justice Act*, section 137.1(4)(a).

For the purposes of the motion, the court did not accept the reporter's argument that the action was "a dressed up defamation claim" since the realtor was seeking damages for conspiracy and breach of privacy beyond those that were merely reputational.

However, the motion judge agreed that the realtor had not established that there was substantial merit to the conspiracy claim. Rather, the evidence on the motion, including the realtor's own testimony, was overwhelmingly to the contrary.

A civil conspiracy requires an agreement between the alleged conspirators: *MC York Properties Inc. v. Siudak*, 2022 ONCA 635 at paragraphs 69-70. The reporter's evidence was that he had never met the realtor's husband, did not recall ever speaking with him, and only corresponded with him once via Facebook, where the husband declined to discuss the charges against the realtor.

Even the realtor's evidence was that she did not believe there was an agreement between the reporter and her husband to publish the article, nor did she believe the reporter was trying to be malicious or to intentionally cause her injury. The conspiracy claim was therefore dismissed.

The realtor argued that she should nevertheless be allowed to pursue "the tort of publicity which places a person in a false light," discussed in *Yenovkian v. Gulian*, 2019 ONSC 7279 (CanLII). This tort is not limited to defamation but applies when a defendant gives publicity to a matter that places the plaintiff before the public in a false light that would be highly offensive to a reasonable person, and the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.

The motion judge rejected this claim on the basis that the article did not represent the realtor in a false light but rather reported on the charges. The failure to identify the charges as domestic did not constitute a major misrepresentation of the realtor's character or activities such that a reasonable person would find the expression to be highly offensive. Further, there was no evidence of malice or reckless disregard on the reporter's part.

Lastly, the realtor argued that the reporter was liable for the "public disclosure of private facts", which turns on whether a defendant had publicized an aspect of the plaintiff's private life without the plaintiff's consent that would be highly offensive to a reasonable person and was not of legitimate concern to the public: *Jane Doe 72511 v. N.M.*, 2018 ONSC 6607 (CanLII), at paragraph 99.

This tort was similarly dismissed on the basis that the criminal charges that the realtor was facing were not private facts. They were, at all times, publicly-available in a court file. The realtor was unable to identify any "private" fact in the article. That the article involved a private matter with her family was contrary to the public nature of the charges and the open court principle.

The motion judge therefore found that none of the realtor's claims had substantial merit or that the reporter did not have valid defences. The action was dismissed.

Although not necessary for the result, the motion judge also concluded that the action would have been dismissed on the basis that the public interest in allowing the action against the reporter to continue was far outweighed by the deleterious effects on the public interest in having free and unencumbered reporting of the court and its processes. In the motion judge's words: "The ability of the free press to consult and report on court files helps make the justice system fair and accountable". A PDF version is available to download [here](#).

Addendum

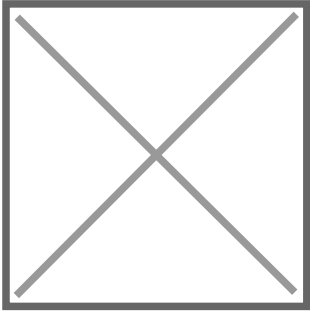
In a subsequent decision on costs, the court ordered the realtor to pay costs on a full indemnity basis in the amount of \$78,580.35, based upon the statutory presumption in section 137.1 of the *Courts of Justice Act* that the successful moving party will be awarded costs on a full indemnity basis unless the judge

determines that such an award is not appropriate: *Riopelle v. Riopelle*, 2023 ONSC 4110 (CanLII).

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