

Snapchat post results in liability for defamation

Defamation | Litigation | Litigation & Dispute Resolution | Social Media

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Capturing and reposting a screen shot of a private Snapchat photo sent by another person can result in liability for damages if it includes defamatory comments about the images therein, as shown by a recent decision of the Ontario Superior Court of Justice: *Lavallee et al. v. Isak*, 2021 ONSC 6661 (CanLII).

On 30 May 2020, two sisters were involved in filming a video that got into the hands of unintended parties, attracting severe and far reaching consequences in their personal and professional lives. One of the sisters captured a short video (15-20 seconds in length) of the other wrestling and horsing around with a friend. She then posted the video to Snapchat and shared it with a select group of her friends.

Unbeknownst to her, one of the sister's followers took a screenshot of one scene in the video and shared it with their own social media followers. The screenshot depicted the plaintiff's sister face down on the ground with her friend on top of her, holding her hands behind her back and placing his knee in the middle of her back.

The defendant received a copy of this screenshot and shared it with her own followers, denouncing the actions of the plaintiff sisters as racist. The defendant was of the view that they were not simply play fighting but were mocking the tragic death of George Floyd, which had shaken the public just five days prior on 25 May 2020.

The defendant invited her followers on Instagram and Twitter to join her in condemning the behaviour of the plaintiffs.

The consequences of the defendant's online crusade against the plaintiffs were devastating. One of the sisters was summarily fired from her job with the Canada Border Services Agency and she was unable to secure employment with the government or the Royal Canadian Mounted Police. The other sister was fired from her job at Boston Pizza and was investigated by the Ontario College of Teachers, ultimately having her offer of employment with the Ottawa Catholic School Board rescinded. The sisters' home was vandalized, their neighbour's car was seriously damaged, and their friends and family were subjected to death threats and harassing phone calls and social media messages.

In response to the unexpected viral and intense backlash that the screenshot caused, one of the plaintiffs posted a heartfelt apology to her social media platforms to address the impact of her video during such a sensitive time following the senseless murder of George Floyd.

The two sisters then brought an action against the defendant in defamation for her social media posts. The plaintiffs pleaded that their lives were ruined overnight because of the defendant's actions. They alleged that their reputations had been destroyed and that they suffered deep humiliation, fear and anxiety.

In response, the defendant argued that any damages that may have been suffered by the plaintiffs were attributable to their own inappropriate actions and their clear lack of judgment.

In July 2021, the court heard a motion for summary judgment brought by the sisters against the defendant.

To succeed in their claim for defamation, the sisters were required to demonstrate the factors established by the Supreme Court of Canada in *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII) (known as the "Grant factors"), that the words:

- a. are defamatory in the sense that they are capable of lowering their reputations in the eyes of a reasonable person;
- b. in fact, refer to the plaintiffs; and
- c. were published to at least one person

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In assessing the evidence filed on the motion, the court found that there was no question that the posts had referred to the two sisters by name.

Further, the defendant's act of resharing the impugned screen shot along with publicly denouncing the conduct of the plaintiffs would have the effect of lowering the reputations of the two sisters to members of society.

The third *Grant* factor requires that the defamatory statements be published to a third party. While the extent of the publication will impact a plaintiff's damages award, a plaintiff only has to prove that they were published to a single third party to succeed in a defamation action.

The defendant admitted to posting the screen shot to her Instagram and Twitter platforms. Additionally, the online post had reached a wide audience, attracting the condemnation of not only complete strangers to the sisters, but their employers and prospective employers as well.

The court found that the defendant's words were defamatory in accordance with the *Grant* factors. As the tort of defamation is one of strict liability, the burden shifted to the defendant to establish a viable defence to the action.

A defendant can defeat a defamation claim if they can demonstrate to the court that the statements are "true, or substantially true" or were a "fair comment" of an honestly held opinion.

With regard to the first defence of truth (or "justification"), a defendant must show that regardless of the impact of the statements on the plaintiff, they were justified because they were true. Here, the defendant relied on the public apology of one of the plaintiff sisters as evidence of an admission of guilt. However, the court rejected this as proof that the plaintiffs' actions were in fact based on racism.

As to the defence of fair comment, defamatory comments may be protected by this defence if they are founded on facts and based on honestly held beliefs. In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 (CanLII), the Supreme Court of Canada confirmed that a comment "may include a deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof."

Here, the defence was defeated because the defamatory words were neither based on fact nor recognizable comment. The evidence clearly established that the two sisters were kind-hearted members of the community with outstanding character.

As a result of the court's rejection of the defences raised by the defendant, the plaintiffs were granted summary judgment for their claim in defamation. The sisters were each awarded \$50,000.00 in general damages, plus interest and costs.

The plaintiffs were also granted a permanent injunction requiring the defendant to take down all social media posts regarding them, and an order permanently prohibiting the defendant from publishing any defamatory statements, or encouraging any other person to publish defamatory statements, about the plaintiffs.

While the court was tempted to award aggravated and punitive damages, it declined to do so. The defendant's conduct was reprehensible, inexcusable and demonstrated complete disregard for the sisters' well-being, and was deserving of punishment. However, the court accepted that the defendant's actions were impulsive, naïve, and misguided. She was easily swayed by one person claiming to have heard the words "police brutality" in the video and blindly embarked on a brutal and unempathetic campaign to destroy the lives of two young women, without verifying that the information was true.

The court also noted that the "serious lapse in judgment" by the defendant was shared by the third parties who rushed to judgment of the two sisters without taking the necessary time to review the entirety of the evidence.

The decision demonstrates that the act of sharing someone else's private Snapchat to other social media platforms while publicly denouncing the alleged conduct of the persons therein can attract liability in an action for defamation. Before posting any commentary about videos involving other persons, one should consider the potential consequences if what they allege cannot be justified on the actual facts. A PDF version is available to download [here](#).

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact **James Cook** at 416.865.6628 or **Mikaela Chorney** at 416.865.6714.

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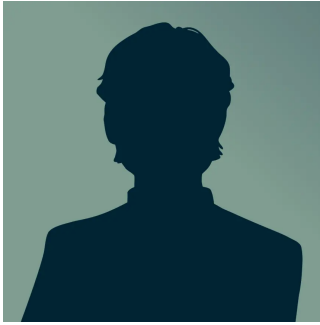


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