

The other side of MeToo

Defamation | Litigation | Litigation & Dispute Resolution

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The #MeToo movement has started a revolution. No longer are women, in particular, afraid to speak about incidents in which they have been sexually assaulted or harassed.

Certainly, no one (woman, man or child) should live in fear as a result of having been a victim of sexual assault or harassment.

Certainly, no one should feel pressured to submit to unwanted sexual contact or harassment in order to get a job, keep a job or get promoted in the workplace.

But as we are now beginning to see, the revolution that has been started by the #MeToo movement is facing hurdles. While multiple accusations made against Hollywood celebrities have resulted in the toppling of the careers of the alleged perpetrators, the mob justice mentality that has grown with each new published alleged incident of sexually inappropriate behaviour by a politician or a well-known personality is being met with the threat of legal retaliation, and in particular the threat of a defamation action.

The stakes in a defamation action are extremely high, especially in cases where the rush to justice in the court of public opinion has destroyed an untarnished career. Media reports of sexual misconduct or harassment are now easily accessible to the entire world and are not easily erasable from the internet.

Accordingly, where an allegation of sexual misconduct or harassment that has gained significant media exposure is shown to be completely false, both the accuser and the media who published the allegations could be sued for millions.

Damages for the tort of defamation are at large. Therefore, there is no ceiling to the amount of general damages that a court can award to a person who has been falsely accused of inappropriate sexual conduct. The sky is the limit.

As the #MeToo movement continues to encourage victims to bring forth new, and often times salacious allegations of inappropriate conduct committed by actors, politicians and others, it will be interesting to see how courts react to the monetary claims of perpetrators who can demonstrate in a defamation action that they were falsely and maliciously accused of such behaviour.

While a significant monetary award will never be able to fully restore a falsely accused perpetrator's reputation, it may certainly go a long way to permit such an individual to emerge out of the other side of the #MeToo movement with the ability to live comfortably for the rest of their lives.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



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