

Volunteer Coaches' Defamation Claim Dismissed as Contrary to Public Interest

Courts of Justice Act | Defamation | Litigation | Litigation & Dispute Resolution | Ontario Superior Court of Justice

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The Ontario Superior Court of Justice dismissed a defamation claim which arose from an email sent by parents of a competitive ringette player expressing their dissatisfaction with the league and the team's volunteer coaches: *Gorham et al. v. Behm et al.*, [2020 ONSC 6469 \(CanLII\)](#).

The email in question was 7 single-spaced pages, and recounted the family's perspective as to why their 15-year-old daughter left her ringette team after a dispute with the team's coaches. The email was copied to "essentially every ringette organization around." Although the email did not directly identify any of the coaches by name, the relevant community would have known who was being discussed. The Court noted that it was clear that the author was "very biased" and described a one-sided history about key conversations and events and the highly subjective emotional reactions felt by a 15-year-old player.

The volunteer coaches felt "vilified" and commenced a defamation claim against the player's parents seeking damages of \$35,000. They took great exception to the way their conduct was characterized in the email, arguing that they are volunteer coaches with personal and professional reputations to preserve.

In October, 2020, the player's parents brought a motion before Justice K. Phillips of the Ontario Superior Court of Justice to dismiss the lawsuit on the basis that the email related to "a matter of public interest" under Ontario's anti-SLAPP legislation in section 137.1 of the *Courts of Justice Act*. The parties agreed that the recent Supreme Court of Canada decisions of *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#) and *Bent v. Platnick*, [2020 SCC 23](#), ought to govern the Court's decision-making.

Justice Phillips determined that the motion could be decided by answering two questions:

- Have the Defendants established on a balance of probabilities that the proceeding arises from an expression made by them that relates to a matter of public interest?
- Have the Plaintiffs shown that the harm that has been or is likely to be suffered by them as a result of the Defendants' expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression?

With regard to the first question, there was little question for Justice Phillips that the email concerned a matter of public interest given the subject of the ringette community: "The social context at play involves a power structure, along with policies, rules, decision-making and enforcement, all meant to advance the community's shared interest." The Court reviewed the words of the email which expressed an interest in sharing the family's experiences and concerns to the community in general so that other children did not encounter a similar situation. Justice Phillips stated that the parents' motivation was reasonable and that one could expect that a sports organization would welcome feedback from an athlete who chose to leave the sport because of dissatisfaction with the organization.

With regard to the second question, Justice Phillips noted that those who volunteer their personal time to coach kids' sports are valuable assets in any community and their reputations are deserving of appreciation and respect. However, the harm to the coaches that could be said to have been caused by the email in question sits at "the low end." The email only touched on the individual coaches in a collateral way, and that the central complaint in the email was about the decisions made by the league. Further the coaches, even if arguably maligned, were dealt with as a collective which would attenuate the effect on an individual's reputational damage. In Justice Phillips' view, to have been part of a group complained of is different from being said to have done something wrong as an individual.

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While the email was obviously biased and full of reports of subjective feelings, it clearly set out the factual basis for each of those feelings and accompanying opinions and conclusions. In that regard, the email did not make unexplained assertions in a vague or indirect way that invited the reader to fill in the blanks. The email was an emotionally-biased recounting of events that were, at the end of the day, likely not uncommon in the world of competitive team sports, which Justice Phillips described as follows:

I must say that the alleged offenses committed by the coaches strike me as pretty small potatoes. The worst one, meeting with a player in a four on one way is hardly a high crime. Even accepting that it was ill-advised and maybe contrary to league policy, the adults in question were of mixed ages and genders and were familiar faces. The player was 15, not five. While it stands to reason that she would have found the meeting unpleasant, I do not think any reasonable person hearing of that event would find the coaches’ conduct unduly concerning. ... Finally, the unequal allocation of ice time is part of competitive sport. There would not be a competitive coach anywhere who has not received complaints from parents or players on that subject.

Justice Phillips did not see any likelihood that a reader of the impugned email would actually think less of the Plaintiff coaches as a result of the allegations of a disgruntled player’s family made in the email.

On the other hand, there was public interest in protecting the expression in question and the ringette community should have an interest in the subject matter in order to ensure that its governing actions and policies do not have any unintended negative effects on any individual involved in the sport. The policy behind the league’s decision may be valid but there was utility in exchanging ideas about it from the perspective of both sides. In the Court’s view, the value of freedom of expression on matters of public interest was high in this social context. The action was therefore dismissed pursuant to the anti-SLAPP provisions in section 137.1 of the *Courts of Justice Act*.

The decision reflects a careful consideration by the Court of the impugned expression and the context in which it was made. In the final analysis, the Court found that the Plaintiff coaches failed to show any serious harm to their reputations as a result of the email which outweighed the public interest in protecting the expression at issue. While individual reputations are worthy of protection, so is expression on matters of interest to the general public including within a sports community.

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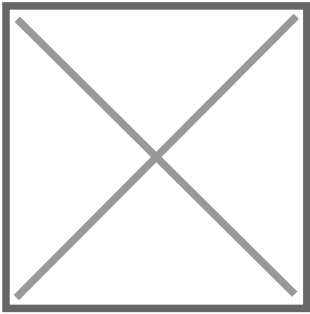
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