

CITATION: Kielburger v. Canadaland Inc., 2024 ONSC 3856
COURT FILE NO.: CV-21-00671189-0000
DATE: 20240705

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THERESA KIELBURGER, Plaintiff

– and –

CANADALAND INC., JESSE BROWN, OLUSOLA ADEOGUN, ISABEL VINCENT, MARK SLUTSKY, JAREN KERR, JONATHAN GOLDSBIE AND KIERAN OUDSHOORN., Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Peter Downard, Lily MacLeod, and William McDowell*, for the Plaintiff

Brendan Hughes, for the Defendants, Canadaland Inc., Jesse Brown, Olusola Adeogun, Mark Slutsky, Jaren Kerr, Jonathan Goldsbie, and Kieran Oudshoorn

Iain A.C. MacKinnon, for the Defendant, Isabel Vincent

HEARD: Costs submissions in writing

COSTS ENDORSEMENT

[1] On May 8, 2024, I issued my decision in this anti-SLAPP motion: *Kielburger v. Canadaland Inc.*, 2024 ONSC 2622. I granted the relief sought by the Defendant, Isabel Vincent (“Vincent”), and dismissed the action as against her. I did not grant the relief sought by the other Defendants (“Canadaland”), and dismissed their motion.

[2] As one would expect given this mixed result, Vincent seeks costs from the Plaintiff and the Plaintiff seeks costs from Canadaland.

[3] Costs are generally discretionary under section 131 of the *Courts of Justice Act*, RSO 1990, c. C.43 (“*CJA*”). That is true for anti-SLAPP cases as well, although some steering of that discretion is contained in sections 137.1(7) and (8) of the *CJA*:

(7) if a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, *unless the judge determines that such an award is not appropriate in the circumstances;*

(8) if a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, *unless the judge determines that such an award is appropriate in the circumstances* [emphasis added].

[4] Vincent seeks to have her full costs of \$92,049.69 paid by the Plaintiff. Given the presumption embodied in section 137.1(7), I see no reason why she should not get what she requests (with, perhaps, some rounding off for convenience). I understand why the Plaintiff sued her – the Plaintiff is immersed in the issues which are very personal to her, and from her vantage point the entire Canadaland podcast in which Vincent was a guest interviewee was a repetition of a previous libel that had been litigated in the 1990s.

[5] Vincent was, in a sense, caught up in a conflict that she doubtless now realizes she should have stayed out of. Canadaland has been so focused on the Kielburgers and the publicity they generate that there was always a danger that a lawsuit would ensue from a Canadaland podcast that that placed them first in a series called “True Crime”. Instead of steering clear of the entire enterprise, Vincent did the next best thing: she chose her words very carefully. I suspect she expected that Canadaland would do the same, but it did not. In any case, her careful approach saved her from any liability, but it did not save her from being named as a co-Defendant with Canadaland and having to defend herself.

[6] In my reading of the situation, Vincent’s legal expenditures were really caused by her misplaced faith in how Canadaland would handle the podcast in which she appeared. However, she was not adverse in this litigation to Canadaland, she was adverse to the Plaintiff; and it is the Plaintiff who is liable for her costs. Given that the case has been dismissed against her on the basis that nothing she said was libelous in the first place, there is no reason for me to exercise the discretion I am given under section 137.1(7) to deviate from full indemnification of her. She deserves the costs that she seeks.

[7] Turning the Plaintiff’s claim for costs against Canadaland, she seeks substantial indemnity costs of 80% of her actual costs, for a total of \$110,630.82. I do not know what Canadaland spent on this motion as it did not submit a Bill of Costs or a Costs Outline. But considering that Vincent, who had the minor role in this action and motion, incurred over \$90,000, the Plaintiff’s request of just over \$110,000 appears in line with what the Defendants would expect her to have incurred.

[8] In Canadaland’s case, I do find reason to exercise the discretion I am given in section 137.1(8) of the *CJA* to award costs to the Plaintiff. Canadaland not only defended its position, but did so brazenly. In the first place, having apparently researched the Kielburgers very thoroughly over the years, it would be surprising if Canadaland and its principal did not know that the central theme of the 1990s litigation – the so-called “Money Passage” in which the Plaintiff was accused of manipulating and appropriating charitable funds for her family’s personal gain – was long ago shown to be false by the Plaintiff’s accountant and the donor of those funds.

[9] And yet none of that information ever found its way into the podcast and never formed the basis of any concession by Canadaland. The Plaintiff would be entitled to wonder how many times she will have to disprove what has already been disproved and pay legal fees for having to do so.

[10] Moreover, Canadaland continued its callous disregard of the Plaintiff in its principal's testimony in the motion itself. As I indicated in my reasons for decision, Canadaland's deponent was asked why Canadaland never took the usual journalistic approach of seeking comment from the Plaintiff on the allegations contained in the Money Passage that were being repeated in the podcast. His response was a flippant one: that the Plaintiff – the mother of the two renowned Kielburger brothers – was no more involved in the matter than his own mother.

[11] I will concede that was probably meant as a clever, if slightly insulting quip, and it was a sharp retort to what was perceived as an accusatory question. But this was not a comedy venue where the deponent was bantering with a heckler in the front row. It was a moment that called for sincerity, not an edgy one-liner.

[12] This kind of stinging personal attack attracts the courts' attention: *Levant v. Day*, 2019 ONCA 244, at para. 18. It was a form of “doubling down” on the initial libel, and as such has an impact on costs and on my exercise of discretion under section 137.1(8).

[13] The Plaintiff deserves the substantial indemnity costs sought by her counsel.

Disposition

[14] Using round numbers for convenience, the Plaintiff shall pay Vincent costs in the all-inclusive amount of \$90,000. Canadaland shall pay the Plaintiff costs in the all-inclusive amount of \$110,000.

Date: July 5, 2024

Morgan J.