CITATION: *Ontario Federation of All Terrain Vehicle Clubs v. Ireland*, 2024 ONSC 5723
COURT FILE NO.: CV-23-91685
DATE: 2024/10/15

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
ONTARIO FEDERATION OF ALL TERRAIN VEHICLE CLUBS	)	Charles Daoust, for the Applicant
Applicant	)	
– and –	)	
PAUL IRELAND	)	
Respondent	)	No one appearing, for the Respondent
	)	**HEARD:** February 27, 2024

RULING ON APPLICATION

CORTHORN J.

Introduction

[1] The Ontario Federation of All Terrain Vehicle Clubs ("the Federation") is a not-for-profit corporation. As of the spring of 2023, when this application was commenced, the Federation had 22 member clubs.

[2] The Federation oversees the maintenance and management of all terrain vehicle ("ATV") trails in Ontario. The Federation issues permits to ATV-ers who wish to use the trails. The Federation's objectives include maintaining safety standards for ATV sportspeople throughout Ontario.

[3] Paul Ireland (also known as Robert Paul Ireland) resides in Ontario. At times, Mr. Ireland was a member of ATV clubs associated with the Federation.

[4] The Federation banned and excluded Mr. Ireland from Federation-related activities. The Federation did so because Mr. Ireland failed to observe the Federation's rules and safety standards, including those set out in the *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4 and the regulations under that statute.

[5] Since at least July 2021, Mr. Ireland has engaged in an online campaign in which he attacks the Federation, its clubs, and its leadership. Mr. Ireland carried out that campaign by publishing posts online, which the Federation alleges contain false information.

[6] The Federation asks the court to consider 20 posts published by Mr. Ireland, on his Facebook page, in 2021, 2022, and 2023 ("the Posts"). Specifically, the Federation asks the court to (a) declare that the Posts are unlawfully defamatory; (b) require that Mr. Ireland remove the Posts from his social media platform; and (c) permanently enjoin Mr. Ireland from publishing any further defamatory remarks about the Federation.

[7] Prior to commencing this application, the Federation, through its counsel, asked Mr. Ireland to remove the Posts; Mr. Ireland did not do so.

[8] After the notice of application was served on Mr. Ireland, the Federation offered Mr. Ireland the opportunity to participate in mediation as a cost-effective means by which to resolve the issues raised in that document. Mr. Ireland chose not to participate in mediation.

[9] Mr. Ireland did not deliver a notice of appearance in response to the notice of application. The consequences to Mr. Ireland resulting from his decision to not deliver a notice of appearance are addressed in r. 38.07(2)(a)-(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those consequences include that Mr. Ireland was not entitled to receive notice of any further step in the proceeding; to receive any further document in the application; to file material; or to be heard at the hearing of the application, except with leave of the presiding judge.

[10] Despite those consequences, the Federation, through its counsel, provided Mr. Ireland with a copy of the application record and informed him of the return dates, over time, for the hearing of the application. Mr. Ireland did not attend the February 2024 hearing of the application.

[11] The court determines the application based on the Federation's application record and factum. The evidence upon which the Federation relies is an affidavit, sworn in February 2024, by Shari Black ("the Black affidavit"). As of the date on which she swore her affidavit, Ms. Black was the Federation's executive director.

[12] For the reasons which follow, the court makes the declaration and grants the equitable relief requested by the Federation.

The Issues

[13] The court must first determine whether the impugned words in one or more of the Posts are defamatory. If the court finds that any of the impugned words are defamatory, then the onus shifts to Mr. Ireland and the court must determine whether he has established that he has a valid defence to the defamatory statements.

[14] Last, if the court finds that the impugned words are defamatory and that Mr. Ireland does not have a valid defence, then the court must determine the type of relief to which the Federation is entitled.

Issue No. 1 – Are the impugned words in the Posts defamatory?

a) The Evidence

[15] In her affidavit, Ms. Black explains her role within the Federation; describes the Federation's purpose and mission; provides context for Mr. Ireland's relationship with the Federation; sets out each of the Posts; and reviews the Federation's communication with Mr. Ireland about the Posts, both prior and subsequent to the commencement of this application. There are no issues regarding the admissibility of Ms. Black's evidence on those topics.

[16] Based on Ms. Black's uncontradicted and unchallenged evidence, I make the following findings:

- Mr. Ireland operates a Facebook page under the pseudonym "Lone Wolf ATV-er";
- As of February 2024, when the Black affidavit was sworn, Mr. Ireland had over 3,100 followers of his Lone Wolf ATV-er Facebook page; and
- Mr. Ireland is solely responsible for the Posts, all of which were published on his Lone Wolf ATV-er Facebook page.

[17] Attached as Schedule 'A' to this ruling is a list of the Posts. The "impugned words" to which I refer in this ruling are the underlined portions of the Posts. It is not my intention to repeat the Posts in the body of this ruling. By way of example, set out below are posts from each of 2021, 2022, and 2023:

> July 6, 2021 (Facebook): The Market Shop / Markdale Flowers / Susan's Delicatessen / <u>Do you know DGATV is using your donations to manipulate their political agenda?</u> #LoneWolfATVer

> July 26, 2022 (Facebook): Apparently the Ontario Federation of ATV Clubs has a need for charges to be laid against themselves, Dufferin Grey ATV Club, Renfrew County ATV Club, and Nation Valley ATV Club for fraud, mischief, etc. #LoneWolfATVer
>
> April 22, 2023 (Facebook): Look at this bullshit from Ontario Federation of ATV Clubs' legal council (sic). This is what to expect in the future from this corrupt organization. One lie after another… See what shit I have to deal with!

[18] I turn next to the law of defamation and its application to the Posts.

b) The Law

[19] In *Grant v. Torstar*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28, the Supreme Court of Canada sets out a three-part test to be met for a finding of defamation to be made. Writing for the majority, McLachlin C.J. therein says that a plaintiff advancing a claim based in defamation must establish that,

i) the impugned words "would tend to lower the plaintiff's reputation in the eyes of a reasonable person";

ii) "the words in fact referred to the plaintiff"; and

iii) the words "were communicated to at least one person other than the plaintiff" (i.e., the words were published).

[20] The three-part test described in the preceding paragraph is referred to in the balance of this ruling as "the *Grant* test".

[21] Chief Justice McLachlin concludes para. 28 by highlighting that defamation is a tort of strict liability: "The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless."

[22] In *Grant*, the discussion of claims based in defamation is in the context of an action, with the parties to the proceeding referred to as "the plaintiff" and "the defendant". It is, however, open to an individual to proceed by way of application and request, as the Federation has, declaratory and equitable relief.

[23] If the court finds the impugned words communicated are defamatory, that finding gives rise to a presumption that the impugned words are false: *Yates v. Iron Horse Corporation and St. Martin*, 2023 ONSC 4195, at para. 108. The onus shifts to the defendant (or respondent) to establish that they have a valid defence to the defamatory statements. Whether Mr. Ireland has a valid defence to defamatory statements, if found, is addressed below under Issue No. 2.

c) Analysis

[24] Starting with the first criterion under the *Grant* test, I find that on their face, or by way of innuendo, the impugned words imply that the Federation, its clubs, or its leadership engaged in one or more of the following types of conduct:

- "corrupt" practices or activities and/or wilful blindness to such corruption;
- unlawful or unjust manipulation of club membership rolls to further an illicit purpose;
- intentional or illicit misleading of Federation members;
- embezzlement or misappropriation of club funds;
- misuse or mismanagement of club funds;
- use of club funds for an inappropriate purpose;
- lying or misleading government authorities in relation to criminal matters;
- "criminal" or "illegal" conduct; and
- utilization of club resources to further a "political agenda".

[25] Would the impugned words, on their face, or by way of innuendo, tend to lower the Federation's reputation in the eyes of a reasonable person?

[26] In support of its request for the court to answer that question in the affirmative, the Federation relies on the following evidence from Ms. Black (para. 33 of the Black affidavit): "I am told by the directors and members of OFATV's affiliated clubs and I sincerely believe that Mr. Ireland's widely broadcast Facebook posts have undermined their authority and reputation in the eyes of ATV sportspeople."

[27] The above-quoted passage from the Black affidavit does not meet the requirements for affidavit evidence, based on information and belief, on an application. Rule 39.01(5) of the *Rules of Civil Procedure* stipulates that "An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit."

[28] First, although Mr. Ireland did not respond to the application, whether the impugned words tend to lower the Federation's reputation in the eyes of a reasonable person is 'contentious' – at least to the extent that it requires a determination from the court. Second, Ms. Black does not disclose the identity of the individuals from whom she received the information summarized in para. 33 of her affidavit.

[29] For those reasons, para. 33 is struck from the Black affidavit.

[30] The lack of subjective evidence on behalf of the Federation is not, however, fatal to the Federation's position on the first criterion of the *Grant* test. The first criterion sets an objective test. Evidence of actual harm to reputation (i.e., subjective evidence) is not required at this stage of the analysis: *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 78.

[31] Instead, the court considers the impugned words from the perspective of "a reasonable person". Specifically, the court considers whether there is "a realistic threat that the statement, in its full context, would reduce a reasonable person's opinion of the plaintiff": *WIC Radio Ltd.*, at para. 78.

[32] I find that the Posts, all of which contain allegations of ethical misconduct, criminality, and corruption, would tend to lower the reputation of the Federation in the eyes of a reasonable person.

[33] Turning to the second criterion of the *Grant* test, I once again consider the impugned words in the full context of the Posts (as required pursuant to *WIC Radio Ltd.*, at para. 78). I find that the impugned words in the Posts in fact refer to the Federation.

[34] Last, the Federation has satisfied the third criterion in the *Grant* test. By putting the Posts on his Facebook page, Mr. Ireland communicated them to one or more of his many followers.

[35] With the three-part *Grant* test satisfied, and in accordance with the decision of this court in *Yates*, at para. 108, I (a) find that the Posts are defamatory, and (b) presume the impugned words to be false. The onus therefore shifts to Mr. Ireland to establish that he has a valid defence.

Issue No. 2 – Does Mr. Ireland have a valid defence to the defamatory content of the Posts?

[36] The defences most commonly raised to claims in defamation are (a) justification; (b) fair comment; and (c) qualified privilege. I consider each of those defences, albeit in the absence of any evidence from Mr. Ireland.

a) Justification

[37] At para. 33 of *Grant*, McLachlin C.J. highlights that, for the defence of justification to succeed, "a defendant must adduce evidence showing that the statement was substantially true."

[38] Mr. Ireland did not respond to the application. Based on the Black affidavit, I find that none of the impugned words in the Posts are substantially true. The defence of justification is not made out.

b) Fair Comment

[39] For the defence of fair comment to be successful, the defendant (or respondent) must satisfy each of the following four criteria (*Grant*, at para. 31):

i) The comment was made on a matter of public interest;

ii) The comment is based on fact;

iii) The comment, even if it includes inferences of fact, is recognizable as comment; and

iv) Objectively speaking, a person could honestly express the opinion on proved facts.

[40] Even if those four criteria are satisfied, the defence of fair comment can be defeated if the plaintiff (or applicant) establishes that the individual who made the comment was motivated by malice: *Grant*, at para. 31.

[41] The defence of fair comment is not made out because there is no evidence to support a finding that any of the impugned words in the Posts are based on fact (the second criterion listed in para. 40, above). It is not necessary for the court to consider any of the other criteria or to address whether Mr. Ireland acted out of malice.

c) Qualified Privilege

[42] "Qualified privilege", as developed in the case law, "is grounded not in free expression values but in the social utility of protecting particular communicative occasions from civil liability": *Grant*, at para. 94. It is difficult to see how there could exist a social utility to protecting from civil liability Mr. Ireland's Facebook page posts about a not-for-profit corporation with which he became disenchanted.

[43] In any event, there is no evidence to support a finding that the criteria for reliance on the defence of qualified privilege are met. Those criteria are discussed in *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at paras. 121-22 and summarized by the Court of Appeal for Ontario in *Thatcher-Craig v. Clearview (Township)*, 2023 ONCA 96, 480 DLR (4th) 639, at para. 56.

d) Summary

[44] Mr. Ireland does not have a valid defence to the finding that the impugned words in the Posts constitute defamatory statements.

Issue No. 3 – To what relief is the Federation entitled?

[45] Based on the outcome under Issue Nos. 1 and 2, the Federation is entitled to (a) a declaration that the Posts are unlawfully defamatory of the Federation, and (b) an order requiring Mr. Ireland to remove the Posts from his social media platform.

[46] The Federation asks the court to permanently enjoin Mr. Ireland from publishing or otherwise communicating, whether in writing or verbally, statements such as or similar to those made in the Posts. To determine whether it would be reasonable to impose a permanent injunction, I consider Mr. Ireland's conduct over time, including in the context of this proceeding:

- Eleven of the Posts pre-date February 13, 2023 – the date on which Mr. Ireland was personally served with the libel notice;
- After being served with the libel notice, and before receiving a second copy of the libel notice by email from the Federation's lawyer on March 5, 2023, Mr. Ireland published three of the Posts; and
- After being served with the notice of application, on March 20, 2023, Mr. Ireland published the six most recent of the 20 posts.

[47] In response to the libel notice and the notice of application, Mr. Ireland did not cease the campaign he began in July 2021. Instead, he continued the campaign, posting nine of the 20 posts in roughly three months during the first half of 2023 (from late February to mid-May 2023).

[48] I also consider Mr. Ireland's communication with the Federation's lawyer before the commencement of and during this proceeding. For example, in the spring of 2023, the Federation's lawyer sent a copy of the notice of application to Mr. Ireland by email. In the cover email, the Federation's lawyer informs Mr. Ireland that efforts are being made to schedule the hearing of the application on a date in June 2023.

[49] Mr. Ireland responds to the Federation's lawyer by email, with an email including the following content (reproduced as it appears in the original):

> That's fine by me
>
> I'll have the criminal charges for the past and current Dufferin Grey ATV Club Inc. executives, past Central Ontario ATV
>
> Club executives, current executives of Renfrew ATV Club, also past and current executive of Nation Valley ATV Club
>
> plus the current Ontario Federation of ATV Clubs executives executed shortly.
>
> I'm sure that will satisfy the plaintiffs.

[50] Later in 2023, the Federation's lawyer informs Mr. Ireland, by email, that the hearing of the application is scheduled for October 31, 2023. In the same email, the lawyer highlights to Mr. Ireland that he has not delivered a notice of appearance. The lawyer also summarizes for Mr. Ireland the steps he needs to take to be permitted to make submissions at the hearing.

[51] Mr. Ireland once again responds by email. In his email sent on October 23, 2023, Mr. Ireland responds as follows (reproduced as the content appears in the original):

> You proceed as you see fit.
>
> If there is a judgement against myself being the victim in the case I will reciprocate a claim 10 times the amount.
>
> Be assured this is a guarantee of the total collapse of the OFATV.
>
> I take this opportunity to inform you that the failure to schedule MANDATORY MEDIATION has rendered your attempts meaningless.

[52] Mr. Ireland is incorrect in referring to mediation as mandatory in an application. Regardless, and as reviewed in para. 8, above, the Federation, through its lawyer, presented Mr. Ireland with the opportunity to participate in mediation. Mr. Ireland did not respond.

[53] Based on Mr. Ireland's conduct, both prior to and in the context of this proceeding, I find that it is likely that Mr. Ireland will, despite the findings made in this ruling, continue to publish defamatory statements about the Federation. The Federation does not seek damages from Mr. Ireland. The Federation has satisfied the criteria for entitlement to a permanent injunction (see: *Astley v. Verdun*, 2011 ONSC 3651, 106 O.R. (3d) 792, at para. 21).

[54] Granting a "broad ongoing injunction is an extraordinary remedy which should be used sparingly in defamation cases": *St. Lewis v. Rancourt*, 2015 ONCA 513, at para. 16. A permanent injunction is, however, reasonable where there has been a campaign of defamatory statements and it is likely that the campaign will be continued. The Federation's request for that relief is granted.

Amending the Title of Proceeding

[55] On the return of the application, the Federation requested that the title of proceeding be amended, with the respondent named as "Robert Paul Ireland". The Federation relies on an affidavit sworn on February 27, 2024 by a paralegal with the lawyers of record for the Federation.

[56] The court grants the Federation leave to file that affidavit. Mr. Ireland was not entitled to service of that document and is not in any way prejudiced by the Federation being permitted to rely on it.

[57] The paralegal's evidence is that a title search of property believed to be owned by Mr. Ireland reveals that title to the property is registered in the name of "Robert Paul Ireland". Mr. Ireland concludes the March 25, 2023 post (see Schedule 'A', post no. 5) with "R.P. Ireland."

[58] I am satisfied that the respondent's proper name is "Robert Paul Ireland". The Federation is granted leave to amend the title of proceeding, as requested, and the amended title of proceeding shall appear in the judgment issued pursuant to this ruling.

Disposition

[59] In summary, the declaratory and equitable relief requested by the Federation is granted. In addition, the Federation is granted leave to amend the title of proceeding to identify the respondent as "Robert Paul Ireland".

[60] The Federation requests costs of the application in the all-inclusive amount of $5,000. In the bill of costs, which the Federation filed for the return of the application, the partial indemnity costs claimed total approximately $5,800. The Federation filed an application record and factum and provided the court with a hard copy of the book of authorities. The request for costs in the all-inclusive amount of $5,000 is entirely reasonable and is granted.

[61] It is reasonable to require that the respondent pay the costs within 30 days of the date on which he is served with a copy of the judgment. That requirement is analogous to the 30-day period within which costs of a motion are to be paid: r. 57.03(1)(a) of the *Rules of Civil Procedure*.

[62] Mr. Ireland did not deliver a notice of appearance. It is not necessary for the Federation to obtain Mr. Ireland's approval as to the form and content of a draft judgment. A judgment shall issue in accordance with the draft judgment filed by the Federation on the return of the motion, subject to a minor, non-substantive, revisions made by the court.

Madam Justice Sylvia Corthorn

Released: October 15, 2024

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