BLG win: defamation claim against municipal councillors dismissed

May 27, 2022

On May 26, 2022, the Ontario Superior Court granted an “anti-SLAPP” motion to dismiss a defamation claim brought by the plaintiffs, Joseph Volpe and the newspaper Corriere Canadese. The plaintiffs had sued City of Toronto councillors Kristyn Wong-Tam and Paul Ainslie; four school board trustees; and Yahoo Media, among other media entities and journalists. The plaintiffs’ claim sought over $30 million in damages.

The defendants brought motions to dismiss the action under section 137.1 of the Courts of Justice Act, also known as an “anti-SLAPP” motion.

Factual Background

The plaintiffs had published a series of articles which strongly opposed various positions taken by the defendant trustees with respect to issues affecting the LGBTQ2S+ community in the school board.

On January 8, 2021, the plaintiffs published an article which used incendiary language to criticize a link on the school board website to Youthline, which is operated by a non-profit organization that provides resources, anonymous peer support and referrals to LGBTQ2S+ youth (the Youthline Article).

The defendant councillors and trustees responded to the Youthline Article in a variety of ways, including a number of tweets which were critical of the language used in the Youthline Article. The councillors proposed a motion to City Council which initially sought that the City cease all paid advertisements in the plaintiff newspaper and require the plaintiff newspaper to comply with the City’s Human Rights and Anti-Harassment/Discrimination Policy. A virtual press conference was also held in support of the motion.

The plaintiffs subsequently issued a $30 million claim against the defendants alleging, among other things, that their comments defamed the plaintiffs.

The Decision

The Court released a comprehensive decision dismissing the plaintiffs' action pursuant to section 137.1 and held as follows:

- The defendants met the threshold to establish that the proceeding arises from an expression that relates to a matter of public interest, which includes (i) the issue of whether public taxpayer funds should be used for advertisements in media which expressed the views in the initial and YouthLine Articles, and (ii) the responsibilities of the trustees and councillors to represent their constituents (including LGBTQ2S+ students, parents, and teachers) and ensure an inclusive and safe school environment; and
- The plaintiffs failed to establish that the defendants did not have valid defences to the plaintiffs' claim.

Given that the plaintiffs failed to establish that the defences advanced by the defendants were not valid, the Court was not required to proceed to the final stage of the analysis under section 137.1; however, the Court nevertheless did so.

The final stage has been held by the Supreme Court of Canada to be the "crux or core of the 137.1 analysis." The Court held that the plaintiffs failed to establish under s. 137.1(4)(b) that the harm suffered from the impugned statements was "sufficiently serious" that the public interest in permitting the claim to continue outweighed the public interest in protecting the defendants' expression.

The Court specifically held as follows:

> There is little or no evidence of harm, weighed against the importance of the defendants' expression seeking to ensure LGBTQ2S+ inclusion in the [school board], the use of public taxpayer funds for City advertising, and the safety of LGBTQ2S+ students in the [school board], particularly in the context of the public debate in which the plaintiffs were engaged.

In dismissing the action, the Court held as follows:

> "What is really going on" in the present case is an attempt by the plaintiffs to chill speech of elected officials who choose to speak up, in the interests of their constituents, against what they believe are homophobic, transphobic, and anti-LGBTQ2S+ comments which raise issues of the spending of public money and the protection of the LGBTQ2S+ community. The plaintiffs chose to enter the public debate on LGBTQ2S+ issues, used language which they knew would attract criticism of them as homophobic, transphobic, and anti-LGBTQ2S+, and now ask the court to permit them to seek more than $30 million in damages from the defendants.
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> To permit such a claim to proceed would have a chilling effect on public debate, allowing councillors and trustees to be sued for expressions, even if defamatory, which cause limited or no damage in the face of overwhelming public interest. The anti-SLAPP legislation was created to prevent that result.

Key Takeaways

This decision strongly supports the reality that elected officials are not acting outside of their duties, nor are they acting in bad faith, when they take strong positions on matters in furtherance of their service to constituents. The decision includes a comprehensive summary of the defences which may be available to elected officials in responding to similar claims, including the defences of fair comment, qualified privilege and statutory immunity for acts done in good faith in the performances of their duties.

BLG acted for the councillor defendants on the motion.

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