Online newspapers can rely on Ontario's defamation limitation period, but conditions apply

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Ontario's *Libel and Slander Act*, RSO 1990, c L.12 (LSA) came into existence long before courts needed to grapple with defamation on the internet. The Court of Appeal's recent decision in *Massoudi v. Vice Media LLC*, 2026 ONCA 771 confirms that online newspapers can benefit from the 3-month limitation period in the LSA, as long as the other statutory requirements are met.

Under ss. 5(1) and 6 of the LSA, a person alleging defamation in a newspaper must provide written notice within six weeks and commence an action within three months after learning of the alleged libel. If those requirements are not met, the action cannot proceed. However, pursuant to s. 7 of the LSA, these sections only apply where a newspaper is "printed and published in Ontario". In this recent decision, the Court of Appeal held that an exclusively online newspaper may be considered "printed and published in Ontario" even if the data generating the publication is hosted on a server outside the province.

But meeting that requirement alone does not entitle a publisher to rely on the LSA's limitation period. Section 8(1) also requires the newspaper to identify its publisher and proprietor and its address of publication. The Court of Appeal held that this strict requirement was not complied with in this case and accordingly, the defendant was unable to claim the benefit of the time bar under the LSA.

Key takeaways

- **The LSA's limitation period applies in the digital context**. The Court confirmed that an exclusively online newspaper may satisfy the s. 7 requirement that a newspaper be "printed and published in Ontario". A physical newspaper need not be generated in the province.
- **Mere access by Ontarians is not enough to establish that online content is published in Ontario**. The Court set out a number of contextual factors including where the content was created, the location of the publisher and proprietor of the content, its target audience and subject matter, and the location of the persons who accessed and read it.

- **Publishers must meaningfully comply with s. 8(1) to obtain the benefit of the LSA's limitation period**. Although technical defects may be forgiven where there has been partial or attempted compliance, the Court held that the publisher's identity cannot simply be omitted.

Background

The dispute arose from a November 2013 article published on VICE.com concerning allegations that someone in then-Toronto mayor Rob Ford's office had hired a hacker to destroy a video. The article identified Amin Massoudi, the mayor's communications director and press secretary, as the staff member who had hired the alleged hacker. Hours after publication, Massoudi contacted the article's author and VICE's editor-in-chief, threatening legal action and alleging that the article was defamatory.

Massoudi commenced his defamation action against VICE, the author of the article, and the anonymous source identified in the article, on March 14, 2014, just over four months after publication. The defendants sought summary judgment on the basis that the action was commenced outside the three-month limitation period prescribed by s. 6 of the LSA.

The motion judge held that the statutory requirements to dismiss the application under the LSA had been met. The motion judge found that:

- the article was printed and published in Ontario;
- the publisher's information was made available through an "About Us" page; and
- Massoudi had commenced the action more than three months after the publication.

The motion judge consequently dismissed the action as statute-barred under the LSA.

The Court of Appeal's decision

The Court of Appeal unanimously allowed the appeal, holding that while the motion judge did not err in her interpretation or application of s. 7, a reversible error was committed in interpreting and applying s. 8 of the LSA.

Section 7: applying "printed and published in Ontario" to online newspapers

The Court rejected Massoudi's position that the article could not have been "printed" in Ontario for the purposes of satisfying s. 7 because the data generating VICE's online content was housed on a server outside of Ontario. Referencing earlier decisions in *Weiss v. Sawyer*, 2002 CanLII 45064 (ON CA) and *John v. Ballingall*, 2017 ONCA 579, the Court emphasized that the LSA must be interpreted in a manner capable of applying to evolving methods of publication. Newspapers do not lose their character as newspapers merely because they are published online, and the LSA's notice and limitation regime apply equally to digital publications. The Court therefore held that, where a newspaper only appears online, s. 7 may be satisfied even though its content is "printed" exclusively in digital format. In these circumstances, the place of printing is the

place of publication, and the physical location of the server hosting the publication's data was not determinative.

In establishing the location of the publication, mere accessibility to Ontario readers is insufficient. The Court set out the following relevant considerations:

- where the content was created;
- who created the content and in what capacity;
- the location of the publisher and proprietor of the online content;
- the target audience and subject matter of the online content;
- any indication on the website of the place of publication or printing; and
- the location of persons who accessed and read the content.

Section 8: "substantial compliance" has limits

The Court held that the motion judge adopted an unduly broad conception of substantial compliance with s. 8 of the LSA. Although prior decisions permit some technical deficiencies in satisfying s. 8(1), they do not permit a publisher to omit critical information altogether. In this case, the deficiency was substantive rather than merely technical. The motion judge found Vice Media Canada Inc. to be both the publisher and proprietor, yet its name did not appear on the relevant "About Us" pages or masthead. Instead, an individual was identified as the publisher. The Court held that the complete failure to identify Vice Media Canada Inc. could not be treated as substantial compliance. While the Court acknowledged that an "About Us" page could, in appropriate circumstances, substantially comply with the publication requirement, the publisher must nonetheless be unequivocally identified in a prominent location.

The Court also rejected the proposition that Massoudi's own knowledge cured the deficiency. The evidence did not establish that Massoudi understood Vice Media Canada Inc. to be a separate Canadian corporation or the publisher responsible for the article. Indeed, his initial claim named Vice Media Inc. but did not name Vice Media Canada Inc., which was added later, on consent.

The Court therefore held that the defendants had not substantially complied with s. 8(1) and were consequently not entitled to rely on the three-month limitation period in s. 6. It allowed the appeal and set aside the order dismissing the action.

By

Natalie D. Kolos, Teagan Markin, Melissa De Angelis

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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