Inappropriate Statements Posted On Facebook By Employees Can Lead To Much More Than Their Dismissal

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Dismissals as a result of inappropriate messages having been posted by employees on social media have been increasing in recent years. Employers are increasingly reacting to employees who violate their relationship of trust by the statements they post on social media. These inappropriate publications, apart from breaking the bond of confidence needed to maintain the employer-employee relationship, can also damage and prove seriously prejudicial to the employer's public image. Under these circumstances, the employer, in addition to terminating the employment of the wrongdoing employee, may also seek damages from him or her, on grounds of defamation.

In the Court of Québec case of *Servant* c. *Ritchie*, decided on July 18, 2016, the defendant, Mr. Ian Ritchie, was ordered to pay a total sum of $17,500 in moral and punitive damages to the plaintiffs, Mrs. Nancy Servant and Mr. Mohamed Fekhi Ahmed, in just such circumstances.

Mrs. Servant was operating two centres specializing in the care of patients with physical or mental disabilities, in Sept-Îles. Her husband, Mr. Ahmed, acted as manager of both institutions.

In February 2016, Mr. Ahmed hired Mr. Ian Ritchie as an attendant. Mr. Ritchie was fired just a few days after being hired, on February 26, 2016, as a result of his failure to meet the standards and requirements of the job. Mr. Ritchie did not contest his dismissal.

On February 29, Mr. Ritchie published the following message on his personal Facebook page, as well as on the page of the public group called "Spotted Sept-Îles":

[Translation]

"Psst. When you're working in a private residence and you see an employee dragging a patient by the legs, that's the pits... But when you talk to your boss about it and he kicks you out saying that you're criticizing the work done by your colleagues... What do you say then... ?"

On March 1, 2016, Mr. Ritchie was back at it again, this time writing the following message on the Facebook page of "Spotted Sept-Îles":

[Translation]

"Hi, on the weekend, I was in training at the Résidence Mgr Blanche when I saw an employee dragging an intellectually deficient patient by the legs to her room because she refused to cooperate. When I reported this to the chief attendant, she told me she'd speak to the boss about it, but I got a call during the day telling me I was fired because I was criticizing the work of my colleagues; when they screw up in private homes, you know what happens when the doors are closed."

Those words remained posted for about a month on the Facebook page in question and it was proven that slightly more than 10,000 people look at that page regularly.

The plaintiffs, Mrs. Servant and Mr. Ahmed, then personally instituted proceedings against Mr. Ritchie, claiming a sum of $22,500 for damages, defamation and injury to their reputations.

It was established that certain individuals in the Sept-Îles area had made statements questioning the services provided in the plaintiffs' institutions. The plaintiffs testified that rumours began spreading throughout the town as a result of this publication, whereas the accusations made by Mr. Ritchie were false and totally unfounded. The plaintiffs contended that a planned expansion of one of the residences had been interrupted because of this situation and that they were now having difficulty recruiting staff.

The Court held that the inappropriate postings by Mr. Ritchie caused plaintiffs to lose self-esteem and their good name and also gave rise to hostile feelings about them in the community. For that reason, Justice Le Reste awarded Mrs. Servant the sum of $15,000 in moral and punitive damages and Mr. Ahmed $2,500 in moral damages.

We believe, however, that this decision must be analyzed with caution.

In the first place, although the burden of proof lies with the plaintiff in defamation suits, the defendant, in this case, never appeared and was absent at the time of the hearing, and so adduced no evidence whatever.

Moreover, the fact that the plaintiffs were working in a remote region must be taken into consideration. Such postings would probably not have had the same impact in a more heavily populated area, such as metropolitan Montréal. Indeed, defamatory words must be analyzed under an objective (rather than a subjective) standard, and it must be determined whether they would tend to discredit or to bring into disrepute the reputation of the individual or the institution concerned, in the mind of an ordinary citizen reading the words for the first time.

In this regard, we note the case of *Syndicat des travailleurs et travailleuses de la santé et des services sociaux de Sept-Îles – CSC* et *Centre de santé et des services sociaux de Sept-Îles*[1], in which the dismissal of a patient attendant was maintained after offensive, shocking, crude and vulgar words were posted on social media. The facts of that case also occurred in the town of Sept-Îles and the defamatory message related to the employee's immediate supervisor and her employer, a healthcare institution. The

Court in that case took into account the impact the words used by the complainant had on the institution's subsequent staffing difficulties, insisting on the fact that the establishment was already very short of personnel.

In the present case, the words disseminated on the Facebook page garnered a relatively high readership, considering that over 10,000 persons checked the "Spotted Sept-Îles" page regularly. Nevertheless, although the page enjoyed great popularity, it did not enjoy any great credibility.

[1] D.T.E. 2014T-262 (T.A.).

By

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