

SUPREME COURT OF YUKON

Citation: *Connective Support Society v Melew*
2025 YKSC 49

Date: 20250808
S.C. No.24-A0036
Registry: Whitehorse

BETWEEN:

CONNECTIVE SUPPORT SOCIETY

PLAINTIFF

AND

YONIS MELEW

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Luke S. Faught

No one appearing for the Defendant

REASONS FOR DECISION **(Application for assessment of damages for defamation and for permanent injunction)**

Overview

[1] The defendant Yonis Melew, a former employee of the plaintiff Connective Support Society (“Connective”), has posted statements on his Facebook page, Canadiansforfairtreatment, describing Connective as Black-hating, racist, phony, and drug-dealing since July 2023. As of the date of the hearing of this application on February 17, 2025, posts about Connective on the page continued up to January 10, 2025.

[2] The plaintiff commenced a defamation action against the defendant on March 19, 2024. The defendant did not respond and on August 1, 2024, the plaintiff obtained default judgment against the defendant.

[3] This is an application under Rule 17(17)(a) of the *Rules of Court* of the Supreme Court of Yukon (the “*Rules*”) for a summary assessment of damages further to the default judgment obtained by the plaintiff on August 1, 2024, and for a permanent injunction. Specifically, the plaintiff claims general damages in the amount of \$50,000, pre- and post-judgment interest, and costs. The permanent injunction is to prevent the defendant from publishing any defamatory statement referring to the plaintiff Connective or any of its directors, officers, employees, or agents by name or some means of identity, including statements describing Connective as Black-hating, racist, phony, drug-dealing or drug-distributing.

[4] The defendant did not appear for the hearing despite being duly served. No materials were filed by him or on his behalf.

[5] The issues to be determined are:

- a) whether the assessment of damages should proceed summarily under Rule 17(17) by way of affidavit;
- b) are the Facebook posts defamatory;
- c) if the posts are defamatory, what is the quantum of general damages and costs; and
- d) whether a permanent injunction should be issued.

Background

[6] Connective is a community-based social services non-profit organization. Among other things, it operates the Whitehorse Emergency Shelter, a service that provides temporary housing and support services to vulnerable community members.

[7] The defendant, Yonis Melew, was employed by Connective in Whitehorse until July 17, 2023, when his employment was terminated. In August 2023, he began posting on a Facebook page he established and operates, Canadiansforfairtreatment, about Connective, describing the organization as Black-hating or Black-hater, racist, phony and drug-dealing. The page is accessible to the public. The posts have continued regularly up to the time of the hearing of this application in February 2025, despite the plaintiff's legal counsel requesting in August 2023 that the defendant stop posting and remove the existing posts by September 2023, because of their serious and harmful nature affecting Connective and its employees. The filing of this legal action in March 2024 and the granting by this Court of an interlocutory injunction preventing him from publishing has not caused Mr. Melew to retract the content of the posts, to stop posting, nor to apologize.

[8] The conduct of Mr. Melew, who has represented himself since August 2023, has included:

- Refusing to remove posts after being asked to do so by Connective's lawyer, and writing "NOBODY will stop me telling the truth and exercising my Freedom of Speech".
- As a result of his behaviour that endangered the safety of the Deputy Sheriffs tasked with serving Mr. Melew with court documents, he caused

Connective's counsel to apply for and obtain an order for substituted service by email.

- Mr. Melew did not file a statement of defence.
- Mr. Melew did not attend court to respond to this application, nor did he attend court in response to the application for interlocutory injunction on March 26, 2024.
- Towards the end of the time allotted for the hearing on March 26, 2024, Mr. Melew telephoned the courtroom to say he was sick and at the hospital; the Court in response adjourned the hearing to April 5, 2024.
- On April 5, 2024, Mr. Melew did not attend court, but on April 4, 2024, he sent a note to the Court (but not to counsel for the plaintiff) saying that he had to fly to Ethiopia due to his ill grandfather, and his friend Brandon would appear in Court on his behalf the following day. Brandon did not appear, the hearing proceeded, and the interlocutory injunction was granted on April 9, 2024.
- Despite the court order, Mr. Melew continued to publish posts describing Connective as racist, phony, and a drug dealing/drug distribution centre.

Analysis

a) **Should the assessment of damages proceed by summary determination under Rule 17(17)?**

[9] Connective obtained a default judgment against Mr. Melew on August 1, 2024, on the basis of Rule 17(7) which provides that where a claim is solely for unliquidated damages, the plaintiff may enter judgment against that defendant for damages to be assessed and costs.

[10] Rule 17(17)(a) allows the court when assessing unliquidated damages to proceed summarily by affidavit instead of trial:

(17) Where a plaintiff has obtained judgment under subrule (7), (8) or (9), instead of proceeding to trial to assess the damages or the value of the goods, the plaintiff may apply to the court and the court may

(a) assess the damages or value of the goods summarily upon affidavit or other evidence,

[11] This has been interpreted to provide the Court with “wide discretion” (*Canada (Attorney General) v Menzies*, 2014 YKSC 73 at para. 17).

[12] An identically worded rule was considered by the Supreme Court of British Columbia in *Rutherford et al v Knutsson*, 2004 BCSC 1021 at paras. 14-15. Factors identified in support of proceeding by affidavit were:

- i) the amount of damages is relatively small;
- ii) the matter can be deposed to by the principal of the plaintiff;
- iii) the affidavit material in support of the application has been served upon the defendant and they have not appeared to contest the matter; and
- iv) proceeding by affidavit will not be patently unjust because there are no matters of opinion or judgment that may raise questions about evidence being affected by self-interest.

[13] In this case, all four factors are satisfied. Connective seeks \$50,000, a small amount of damages, which is consistent with or less than amounts claimed in other cases where affidavits were considered suitable - \$213,144 (*Rutherford* at para. 19); and \$50,930.78 (*Menzies* at para. 5). Connective’s Chief Administrative Officer filed the affidavit in support of the application. The application and material were served on the defendant and he did not contest the application. Finally, the request for damages is not

based on the opinion or judgment of the plaintiff: instead, it is based on undisputed facts, readily ascertainable by affidavit as well as the principle that general damages in a defamation case are awarded “at large”.

b) Are the Facebook posts defamatory of Connective?

[14] The plaintiff is required to prove three elements on a balance of probabilities to establish defamation entitling them to damages:

- the impugned words tend to lower the plaintiff’s reputation in the eyes of a reasonable person;
- the words refer to the plaintiff; and
- the words were published, meaning they were communicated to at least one person other than the plaintiff.

[15] Defamation is a strict liability tort, meaning that the intention to do harm or carelessness need not be proved. Once the three elements are proved, falsity and damage are presumed. The onus then shifts to the defendant to advance a defence (*Grant v Torstar Corp.*, 2009 SCC 61 (“*Grant*”) at paras. 28-29).

[16] In this case, the three elements are proved through the affidavit evidence filed by the plaintiff. First, the words used in the posts, which Mr. Melew admitted to creating and posting, to describe Connective as racist, Black-haters, phony, drug-dealing and a drug distribution centre would all tend to lower Connective’s reputation in the eyes of a reasonable person. Second, the posts name Connective, show photographs of its senior managers and clearly link the words used to Connective. Third, the words about Connective were posted on a publicly accessible Facebook page, fitting the definition of published.

[17] The defendant, by failing to respond to this application in any way, including by not filing a statement of defence, has not provided any defence to these manifestly defamatory words. A consequence of a default judgment is that the defendant is deemed to have admitted all of the allegations in the statement of claim: *Mintie v Iverson* (1963), 45 WWR 403 (BCSC); *ICBC V Wiese*, 2011 BCSC 238. In the decision granting the interlocutory injunction, this Court analyzed the possible defences, in response to potential defences addressed by the plaintiff's counsel in the absence of the defendant. I adopt the same analysis here, including the possibility of the justification defence for the use of the word "drug distribution center" [as written]. While this defence may be possible given the confirmation by Connective's counsel that Connective employees do hold prescription medication for clients for safekeeping and distribute them as required, without any evidence or explanation by the plaintiff, I accept that this too is defamatory. Viewed in the context of the other statements made by the defendant, the logical inference is that Connective distributes or facilitates the distribution of illegal drugs.

c) What is the quantum of general damages and costs?

[18] A charitable or non-profit corporation is entitled to general damages for defamatory statements (*Church of Scientology of Toronto v Globe and Mail Ltd.* (1978), 84 DLR (3d) 239 at 241 (Ont. HCJ)). Damage to the reputation of a charitable or non-profit entity may discourage financial donations or funders, or impede the ability of the entity to achieve its objectives (*Derbyshire County Council v Times Newspapers Ltd.*, [1993] AC 534 at 547 (HL)).

[19] Once defamation is proved, damages to a non-profit entity are presumed. They are awarded “at large”, meaning that the entity need not prove a particular loss or damage. However, a non-profit entity cannot obtain compensation for injured or hurt feelings, nor are they entitled to aggravated damages.

[20] Instead, damages represent the amount necessary to compensate the entity for harm suffered to its reputation, for the loss of goodwill, and to clear its name publicly or vindicate its reputation (*Walker v CTFO Ltd* (1987), 37 DLR (4th) 224 (ONCA). It is not necessary to prove loss of business. The focus of the compensation is on the seriousness of the statements made and their falsity. A failure to retract or apologize may result in a larger recovery (*Walker* at para. 26).

[21] The factors to consider in determining general damages include:

... (a) the plaintiff’s position and standing; (b) the nature and seriousness of the defamatory statements; (c) the mode and extent of the publication; (d) the absence or refusal to retract the libel or to apologize for it; (e) the conduct and motive of the defendant; (f) the presence of aggravating or mitigating circumstances: *Barrick Gold Corp v Lopehandia* (2004) 239 DLR (4th) 577 at para. 29; *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at p. 1203

Mina Mar Group v Divine, 2011 ONSC 1172 (“*Mina Mar*”) at para. 11.

[22] In this case, the plaintiff has a reputation it seeks to maintain and uphold in the Yukon in the provision of safe and secure temporary housing for those at risk of or experiencing homelessness as well as the provision of mental health and substance use supports to vulnerable community members.

[23] Between July 2023 and September 2024, the defendant published 65 defamatory posts to the Facebook page. The plaintiff provided a list of those posts in a schedule attached to the outline. At the hearing, plaintiff’s counsel referenced a new affidavit filed

by one of their legal assistants, showing 22 new posts up to January 10, 2025. The repeated descriptors of Connective are phony, racist, Black-hating, and drug dealing/drug distribution centre.

[24] These posts were on the defendant's Facebook page, accessible to the public at large. The posts have continued for at least 18 months. While I do not minimize the potential scope and harm of social media postings, the reach of his page is unknown. Whether or not the posts have been shared is unknown. Canadiansforfairtreatment is not an established authoritative news source or institution. As a result, although the factor of mode and extent of publication on social media is to be considered and given some weight, it is also tempered by these other considerations.

[25] The defendant has not retracted the posts nor apologized. He has violated the interlocutory injunction issued on April 17, 2024, by failing to remove posts and publishing new ones. When asked by legal counsel to remove posts before litigation was commenced, he was defiant and belligerent in his written refusals to do so, citing his right to exercise his freedom of speech guaranteed by the *Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, and his right to protest against Black-haters and cold-blooded racists any time he wanted.

[26] The defendant's conduct throughout has been either to demonstrate an attitude towards Connective consistent with his posts (i.e. disrespectful, falsely accusatory, and self-righteously indignant) or to refuse completely to engage with the proper court process or comply with court orders.

[27] While each case is unique, and specific facts are important in determining damage quantum, other cases can still provide guidance.

[28] In *Seafarers' International Union of Canada v Mitchelitis*, 2023 ONSC 2456, the defendant in that case published four defamatory statements on her Facebook account which had a public setting. She was a former union member and accused her former union of falsifying survey results and survey distribution and later ascribing ulterior motives to their defamation suit against her. \$50,000 in general damages was awarded.

[29] In *Mina Mar*, the defendant individuals were noted in default for their failure to defend a defamation suit for postings on Internet bulletin boards and websites describing the plaintiffs as thieves, crooks, sham artists, liars, dishonest, corrupt, incompetent and immoral. There were two plaintiffs: one a Canadian corporation that acts for publicly traded companies providing investor relations services, and the other the principal of the corporation. The Court awarded \$50,000 in general damages and permitted the plaintiffs to reserve their rights to claim and prove actual pecuniary loss at a later date.

[30] In *Farallon Mining Ltd. v Arnold*, 2011 BCSC 1532, the defendant publicly posted statements on a website for internet users to discuss topics related to publicly traded companies, saying the plaintiff company manipulated and misused the courts, mislead investors, engaged in fraud, and participated in a conspiracy resulting in a theft of a mining property. The Court awarded \$40,000 in general damages.

[31] On the facts of this case and given the range of damages in other recent cases reviewed of defamatory claims brought by corporations, I agree with plaintiff's counsel that \$50,000 in general damages is appropriate.

[32] No submissions were made on costs and no bill of costs was provided. I will grant the plaintiff an award of \$5,000 for this application.

d) Should a permanent injunction be granted?

[33] The plaintiff seeks an injunction permanently enjoining the defendant, and anyone acting on his behalf, from publishing by any means any defamatory statement referring to the plaintiff Connective or any of its directors, officers, employees or agents by name, or any other means of identity, including describing them as Black-hating, racist, phony, drug-dealing or drug-distributing.

[34] A permanent injunction may be issued in defamation cases where it is likely the defendant will continue to publish defamatory statements against the plaintiff (*Mirzadegan v Mahdizadeh*, 2022 ONSC 6082 at para. 17). In the alternative if recovery of general damages is unlikely, this may also be a reason to grant a permanent injunction.

[35] Here, both factors are met. Clearly the defendant has demonstrated an ongoing intention to post, as he has continued to do so, despite Connective counsel's demand to cease, despite the initiation of the defamation action and despite the interlocutory injunction enjoining him to cease. There is nothing to suggest that he will do otherwise once the interlocutory injunction ceases to have effect as a result of the termination of the action. Counsel also noted the likelihood of not being able to satisfy the damage award, given his lack of cooperation and elusiveness with respect to other court proceedings.

[36] A permanent injunction shall be granted.

Conclusion

[37] The plaintiff is awarded \$50,000 in general damages, plus pre- and post-judgment interest in accordance with ss. 35 and 36 of the *Judicature Act*, RSY 2002,

c 128, as amended, plus costs in the amount of \$5,000. The defendant, his agents, servants, or any others acting on his behalf is enjoined permanently from publishing or causing to be published by any means, any defamatory statement referring to the plaintiff Connective or any of its directors, officers, employees, or agents as Black-hating, racist, phony, drug-dealing or drug-distributing.

DUNCAN C.J.