

Superior Court of Justice
Cour supérieure de justice

Endorsement Record/Order of the Court
Fiche d'inscription/Ordonnance judiciaire

SC-18-00149716-0000
Court File No./ N° de la demande

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AUG 28 2018

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Superior Court of Justice
Cour supérieure de justice

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Ottawa
Small Claims Court / Cour des petites créances de
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SC-18-00149716-0000
Court File No./ N° de la demande

BETWEEN / ENTRE:

SEAN BRUYEA

Plaintiff
Demandeur

and / et

SEAMUS O'RGAN; ATTORNEY GENERAL OF CANADA

Defendant
Défendeur

Representative of the plaintiff(s): BRUYEA
Représentant du demandeur :
Representative of the defendant(s): K. O'NEILL / C. O'NEILL
Représentant du défendeur :

Event type: Motion on notice
Type d'affaire:

On 24-AUG-2018 , a hearing was held in the above matter and the following order was made:
Le 24-AUG-2018 une audience a eu lieu concernant l'affaire susmentionnée, et l'ordonnance suivante a été re

ORDER TO GO AS ASKED.
CLAIM IS DISMISSED.
NO COSTS.
RESULT ATTACHED.
Decision released: Aug 28/18

[Signature]
Signature of judge / Signature du juge

SC - 18 - 149716

SEAN BRUYEA

Plaintiff

**SEAMUS O'REGAN, also known as MINISTER OF VETERANS
AFFAIRS, and the ATTORNEY GENERAL OF CANADA**

Defendants

REASONS FOR ORDER

Heard – August 24, 2018

Reasons released August 28th 2018

Plaintiff's Representative - In Person

Defendants' Representative – Alexandre Kaufman, Sanam Goudarzi

Deputy Judge - David Dwoskin

OVERVIEW

- [1] This was a motion to dismiss the plaintiff's action for damages in the amount of **\$25,000** for defamation. The motion is brought pursuant to *s. 137.1 of the Courts of Justice Act*, which provides a summary method to dismiss an action on the basis that the proceedings arise from an expression made by a person that relates to a matter of public interest
- [2] The claim relates to an article written by the Minister and published in the Ottawa Citizen on February 25, 2018, and the Hill Times on February 26, 2018, in response to an article written by the plaintiff published in the Ottawa Citizen on February 20, 2018 and in the Hill Times on February 12, 2018.
- [3] The plaintiff claims he suffered general and reputational damages and claims **\$25,000** against the defendants. The defendants assert that the promulgation of the *Protection of Public Participation Act, 2015*, resulting in the enactment of *s.137 of the Courts of Justice Act*, sought to promote broad participation in debates on matters of public interest and reduce the fear of legal action resulting from participating in such matters.

FACTS

- [4] The plaintiff is a freelance columnist, journalist, and a disabled veteran who advocates on behalf of disabled veterans and their families. The defendant Seamus O'Regan is the Minister of Veterans Affairs ("the Minister").
- [5] This action relates to the articles referred to, *supra*, written by the Minister in response the plaintiff's article. The plaintiff's article stated, in part:

"The new Liberal plan for veterans is all about saving money, yet again, at the expense of veterans."

...First, let's cut through the thick and misleading rhetoric.

...I was far too hasty (and confused) in evaluating this aspect of the announcement. Upon reflection, there is much deception here.

...Sadistically procrastinating to bring about change, government has been able to transfer more than \$1 billion over the past five year once paid to deceased World War II veterans and their survivors towards the slow trickle of program changes for Canadian forces veterans."

[6] The impugned portions of the Minister's response state, *inter alia*:

"But let me be very clear: individuals like Sean Bruyea, who are stating mistruths about Pension for Life and are leaving out parts of our programs, are doing so to suit their own agenda.

...He incorrectly states that those receiving "Pension Act benefits collected more in pain and suffering payments" than those who will be eligible for Pension for Life."

...The piece also misstates that all "injured Canadian Forces veterans, under all three plans essentially have access to the same income loss."

...While there are numerous other errors in the opinion piece, I want to focus on just one more..."

ISSUES

[7] 1 - Is the subject matter of this litigation, the Liberal Government's pension plans for veterans, a matter of public interest?

2 - Were the articles by the Minister an "expression" pursuant to s137.1 (2) of the Act?

3 – Has the plaintiff proven that his proceeding has substantial merit, and that the defendants have no valid defence to his proceeding? And,

4 – That the harm likely to be suffered by the plaintiff as a result of the Minister’s articles is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression?

ANALYSIS

[8] There was no serious argument regarding points 1 and 2, *supra*. The Minister’s articles were clearly an “expression” within the meaning of **s.137.1 (2)** of the Act, and veterans have a genuine stake in the matters raised in those articles.

[9] Regarding point 3, *supra*, the defendants have raised a number of defences:

A – There is no reasonable likelihood that the plaintiff’s action will succeed, i.e. the impugned words were not defamatory;

B – In any event, the defences of fair comment, qualified privilege, and responsible communication all apply to this claim and the plaintiff has not shown that none of these defences are available to the defendants, as he is required to do under **s137.1 (4)(a)(ii) of the Act**.

[10] Finally, as to point 4, *supra*, the defendants assert that the plaintiff has not shown that the harm likely to be suffered by him as a result of the Minister’s article is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

[11] I am not persuaded, on a balance of probability, that plaintiff has shown that his proceeding has substantial merit, nor that the defendants have no valid defence in the proceeding.

[12] The measure of what is defamatory should not be the standard of a member of the public “avid for scandal”. The test is an objective one – the statement is judged by the standard of an ordinary right-thinking member of society. Impressions about the content of the publication should be assessed from the perspective of someone reasonably thoughtful and informed rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers.

Moon v Sher, [2003] OJ #264

[13] In examining the full context of the impugned publications, and in considering what reasonable and right thinking viewers would understand from the article, I am not persuaded that they are defamatory.

[14] The impugned articles compared the new Pension for Life Plan with previous entitlements and there was obviously a difference of opinion regarding the parties’ understanding of those differences.

[15] In my view, there is no credible and compelling evidence adduced by the plaintiff that a reasonable person would find the plaintiff to be dishonest, based on the articles.

[16] In any event, I find that the plaintiff has failed to prove, on a balance of probability, that no valid defences to the claim exist.

[17] Specifically, I find that the subject matter of the articles was an expression of public interest; based on facts; clearly a statement of opinion inferred from those facts; and is properly construed as comment. A defence of fair comment can therefore reasonably be raised as a defence to the claim.

- [18] Regarding the defence of qualified privilege, I find that the Minister had a duty to speak on issues of public interest, in particular the Pension for Life Plan, and has the right to respond to criticism in a reasonably appropriate manner which, I find, was the case here.
- [19] The defence of “responsible communication on matters of public interest” was created by the Supreme Court of Canada in 2009. The defendant is required to show that the publication was on a matter of public interest and was responsible in the relevant circumstances, *inter alia*:
- urgency;
 - reliability of source;
 - public importance;
 - seriousness of the allegation;
 - whether the plaintiff’s side was accurately reported.

Grant v Torstar, 2009, SCC 61

- [20] I find, on a balance of probability, that the defence of “responsible communication on matters of public interest” has a reasonable chance of success, based on the above criteria.
- [21] The defences of fair comment, qualified privilege and responsible communication on matters of public interest may be defeated if the plaintiff proves, on a balance of probability, that the defendants were motivated by malice. In my view, he has not done so here.
- [22] The plaintiff has not shown that there is credible, compelling evidence that the Minister’s articles were anything but responsible reasonable communication on a public issue (the merits of the Pension for Life Plan) intended to influence public opinion on that issue.

[23] Finally, the defendant has the onus to prove that he suffered harm so serious that it outweighs the public interest in protecting freedom of expression, and, again, has not done so here.

s.137.1(4)(b).

[24] The plaintiff has a medical history of post-traumatic stress disorder relating to prior experience and litigation. There is no credible evidence of a rational connection between the Minister's articles and any current mental or psychological distress suffered by the plaintiff.

[25] The plaintiff has adduced no evidence of reputational or special damages related to the Minister's articles nor are particulars of those damages pleaded.

[26] The Minister's response to the plaintiff's article about veteran's benefits was to be expected and was both measured and reasonable. The protection of free expression outweighs the harm alleged to be suffered by the plaintiff.

ORDER

[27] In the result an Order will go as asked and the action is dismissed.

COSTS

[28] The defendants have not sought costs and each party will therefore bear their own costs.

Dated at Ottawa this 28th day of August 2018.



Deputy Judge D. Dwoskin