

Federal Court



Cour fédérale

**Date: 20100708**

**Docket: T-1646-08**

**Citation: 2010 FC 734**

**Ottawa, Ontario, July 8, 2010**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**GARY SAUVÉ**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

**Defendant**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an action brought by Mr. Gary Sauvé (the plaintiff) against Her Majesty the Queen in Right of Canada (the defendant) seeking damages for defamation.

[2] In his statement of claim, the plaintiff alleges that the RCMP is responsible for defamatory statements posted on a website entitled RCMP Vets Net (Vets Net). In her statement of defence, the defendant denies that the RCMP is responsible for Vets Net or its contents.

### **SUMMARY OF THE EVIDENCE**

[3] The plaintiff called two witnesses at trial; a friend, Mr. Brian Kelly, and himself.

[4] The plaintiff testified that he joined the RCMP in 1986 and became an investigator with the narcotics section in Ottawa in approximately 2000.

[5] In cross-examination and from the documentary evidence filed (exhibit D-1), it is established that in October 2004 the plaintiff was arrested and charged with uttering death threats and harassment. He was detained at the Ottawa detention centre, denied bail, and convicted on March 7, 2005, of two counts of criminal harassment. This information is on public record.

[6] In cross-examination, the plaintiff confirmed that in October 2006, the RCMP suspended him with pay and launched a public investigation.

[7] On October 16, 2004, the Ottawa Citizen published an article reporting the charges and the bail hearing, entitled "Mountie denied bail in death threats case". The Ottawa Citizen article did not come to the plaintiff's attention at the time; he testified not remembering when it did. Mr Kelly, for his part, testified seeing it in 2004.

[8] Mr. Kelly testified that on August 19, 2008, he was browsing the internet when he came across the following statement on a “profile” of the plaintiff on a website entitled “Zoominfo” (the Zoominfo article):

Gary John Sauve, 45, was charged in July and again earlier this month over issues that stem from a paternity dispute that made its way from Quebec family court to the Supreme Court of Canada.

Evidence presented in Thursday’s bail hearing is protected under a publication ban. Before taken into custody, Cst. Sauve, an 18 year member of the force, was employed as an investigator with the RCMP’s drug section in Ottawa, which primarily investigates narcotic offences in Eastern Ontario and Quebec.

He testified that he did not link this statement with the Ottawa Citizen article, which he had read almost four years earlier.

[9] On August 21, 2008, Mr Kelly met with the plaintiff. Together, they accessed the Zoominfo article. The plaintiff was upset upon reading it, because it did not specify the year when he was charged. Thus, a person reading it could think that he had been charged in 2008. Furthermore, as it did not specify the charges against the plaintiff, a reader could imagine that he was charged with anything from jaywalking to murder.

[10] The plaintiff and Mr. Kelly then decided to investigate the source of Zoominfo article. It was linked to a “Web Reference”; when the plaintiff clicked on the hyperlink, he was taken to the Vets Net “courtesy page” containing various articles and postings including a newsletter published by a Frank Richter, a retired RCMP member. However, they could not find any text similar to the

Zoominfo article. In cross-examination, the plaintiff acknowledged not having seen a disclaimer which appeared in small print on the Zoominfo “profile,” just above the article, stating that “[t]his profile was automatically generated using 1 reference found on the internet. This information has not been verified” (emphasis in the original). The plaintiff further admitted that other information contained on the profile was, in fact, inaccurate. (Mr Sauvé’s employer was said to be “RCMP Vets,” while his address and phone number were given as being in Regina, where he never worked.)

[11] The plaintiff also admitted in cross-examination that he never contacted the owner of the website, Mr. James Forsyth, before commencing this action. He also never contacted Zoominfo to ask its owners or operators to remove the Zoominfo article or issue a retraction.

[12] The defendant called two witnesses, Mr. Forsyth and Mr. Christopher Power. Mr. Forsyth, a retired RCMP member, is the founder and CEO of Vets Net. He is also a current member of the Board of Directors of the RCMP Veterans Association. He produced a record confirming his ownership of the domain name [www.rcmpvets.net](http://www.rcmpvets.net) (Exhibit D-4). This document and his testimony clearly demonstrate that he is the sole owner of Vets Net.

[13] He explained that he created Vets Net in 1996, as a place where retired RCMP members could stay in touch. Although Mr. Forsyth might have been a pioneer of social networking before the term even came into existence, he did not go on to fame and fortune, and still operates Vets Net alone. He stated that the RCMP neither funds nor controls the website in any way.

[14] While he displays the RCMP Veterans Association's logo on Vets Net with the association's permission, and the association provides a hyperlink to Vets Net from its own website, he confirmed that he exercises complete editorial control over his website's contents, being the only person with the ability to post anything on it. He acknowledged that he published a newsletter by Frank Richter and admitted in cross-examination that the article which Messrs. Sauvé and Kelly later read on Zoominfo might have appeared in the publication, but he never saw it.

[15] As for the defendant's other witness, Mr. Power, he is the Acting Manager of New Media with the RCMP. I find his testimony straightforward and credible. Mr Power confirmed that the RCMP is not responsible and does not control Vets Net directly or indirectly; it does not even provide a hyperlink to it on the RCMP corporate website. The only way to navigate from the latter to the former is, first, to go from the RCMP's website to the RCMP Veterans' Association's website; and then from the association's website to Vets Net. However, Mr. Power testified that a disclaimer page, of which he produced a printout (exhibit D-5), warns visitors to the RCMP website when they are about to leave it by clicking on a hyperlink to an external website that the RCMP is not responsible for the contents of any external websites to which it provides hyperlinks. Anyone navigating from the RCMP website to the Veterans' Association website would see that warning.

## **THE PARTIES' SUBMISSIONS**

### **The plaintiff**

[16] The plaintiff submits that the Zoominfo article is defamatory, because it suggests that he was facing new charges, in addition to those brought against him in 2004. He contends that the source of the Zoominfo article is Vets Net, and that the same defamatory text must have appeared on that website. He argues that the RCMP is responsible for its publication on Vets Net, which it controls via the RCMP Veterans Association. He insists that the use of the RCMP's name and logo by Vets Net, and the posting on that website of internal RCMP information are indicative of the RCMP's support and approval of Vets Net. In the alternative, the RCMP had a duty to supervise Vets Net, and was negligent in failing to discharge this duty and to have a defamatory statement removed from the website.

[17] The plaintiff further submits that the defamatory statement was published in Ontario (where he accessed it), but also throughout Canada, in the United States, and elsewhere; he reasons that since he is able to access websites from around the world, people from around the world were able to access Vets Net. It negatively affected his reputation and prospects for future income; and that it caused him humiliation, embarrassment, and stress.

[18] He claims general, aggravated, and punitive damages.

### **The defendant**

[19] The defendant denies that it is responsible for the allegedly defamatory statement or that it is, in fact, defamatory. In order to succeed, the plaintiff has the burden of demonstrating that it was the defendant and not some other person or entity who published the allegedly defamatory words to a third person. However, the plaintiff did not demonstrate that the RCMP published the impugned paragraphs. Indeed, there is no proof of their publication except in the Ottawa Citizen and on the Zoominfo website.

[20] In particular, the Zoominfo page on which the plaintiff relies is not proof of the statement's publication on Vets Net; that page itself contains cautions as to its reliability, and many inaccurate statements. Furthermore, the plaintiff did not provide any evidence as to how information is collected by Zoominfo. In any case, even if the Zoominfo article corresponds exactly to what was published on Vets Net, the RCMP does not control or bear any responsibility for that website.

[21] The defendant further submits that the Zoominfo article is not defamatory. While it erroneously indicates that the plaintiff was charged "in July," an assertion that a person has been charged with an offence is not injurious to his or her reputation, because the public would know that one is to be considered innocent until proven guilty.

## ANALYSIS

### 1. The applicable law

[22] As the Supreme Court explains in *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640 at par. 28:

[a] plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

It is also evident that in order to succeed against a particular defendant, the plaintiff must show that that defendant is in fact responsible for the publication he complains of.

[23] The defendant does not dispute that the impugned statement in this case referred to the plaintiff. I will first consider the question whether the Defendant can be held liable for its publication, and then the question whether it is indeed defamatory.

### 2. Is the RCMP Responsible for Publishing the Impugned Statement?

[24] A hyperlink one finds is not always the missing link one was looking for. The hyperlinks which the plaintiff found do not justify the inferences he asks the Court to make.



[25] First, I find that the evidence does not establish that the alleged defamatory paragraphs were reproduced anywhere but in the Ottawa Citizen and on the Zoominfo website. The plaintiff himself testified to the unsuccessful efforts he made to establish that this was so. While Mr. Forsyth admitted that such a text *might* have been published on Vets Net as part of one of Frank Richter's newsletters, this is not enough to prove that it *was* and that if it was, it reproduced in whole or in part the same text found on the Zoominfo website.

[26] Second, even if I did conclude that a text identical to the Zoominfo article was at any time published on Vets Net, I find that the evidence clearly establishes that the RCMP was not responsible for this publication because that it did not and does not control Vets Net. I accept Mr. Forsyth's testimony that he is the only person owning and controlling Vets Net. This is corroborated by Mr. Power's testimony: the RCMP exercises no control over, and is not even hyperlinked to Vets Net. The facts that the RCMP Veterans Association has given Mr Forsyth permission to use its logo and that he is a member of its Board of Directors (as well as of certain committees of that board) cannot on their own justify the inference that the RCMP Veterans Association exercises control over Mr Forsyth's activities. On the contrary, Exhibit D-4 confirms that it he is the sole owner and operator of Vets Net. Mr. Forsyth is not a servant of the Crown and does not operate his website under the control of the RCMP.

### 3. Was the Impugned Statement Defamatory?

[27] It is well-established that a statement that a person has been *charged* with an offence, as opposed to a statement that a person is *guilty* of an offence, is deemed not to lower that person in the estimation of a reasonable person, because a reasonable person “would be mindful that an accused is presumed innocent until proven guilty” (*Miguna v. Toronto (City) Police Services Board*, [2004] O.J. No. 2455 at par. 6 (On. Sup. Ct. J.), *aff’d Miguna v. Toronto (City) Police Services Board* [2005] O.J. No. 107 (On. C.A.); see also *Hakim v. Laidlaw Transit Ltd.*, 156 A.C.W.S. (3d) 585, [2007] O.J. No. 1318 at par. 16 (On. Sup. Ct. J.)).

[28] The Zoominfo article states that Mr Sauvé has been charged, and that a bail hearing has been held. It does not say that he has been found guilty of anything; indeed a well-informed reader would know that a bail hearing precedes a trial and could only conclude that no finding of guilt can have been made. Thus, as a matter of law, I am of the opinion that the article is not a defamatory statement.

### CONCLUSION

[29] On consideration of the evidence adduced, I find on a balance of probability that the plaintiff failed to establish that the defendant published the defamatory words and that the RCMP has control

over or is responsible for the RCMP Vets net website, which is privately owned and operated. In addition, that impugned words are not defamatory as a matter of law.

[30] The plaintiff's action is accordingly dismissed, with costs to the defendant, in accordance with Column III of Tariff B.

**JUDGMENT**

**THIS COURT ORDERS** that the action be dismissed, with costs to the defendant, in accordance with Column III of Tariff B.

“Danièle Tremblay-Lamer”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1646-08

**STYLE OF CAUSE:** GARY SAUVÉ v. HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** June 14 and 15, 2010

**REASONS FOR JUDGMENT:** TREMBLAY-LAMER J.

**DATED:** July 8, 2010

**APPEARANCES:**

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