

Case In Point

New False Light Privacy Tort Recognized by Ontario Court

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The case of [Yenovkian v. Gulian](#) is a significant case that, for the first time in Canada, has recognized a new privacy tort – “publicity placing a person in a false light.”

The decision was decided by Justice Kristjanson of the Ontario Superior Court of Justice and released in late 2019. The case arose out of a family law dispute involving a father who engaged in what the Court characterized as “outrageous and egregious conduct at the extreme of reprehensibility.” In particular, his conduct included years of cyberbullying against his children, their mother and their grandparents. The attacks were on websites, YouTube videos, online petitions and emails and included videotapes and photos alleging that the mother and the grandparents were abusing and drugging the children. Previous Court orders prohibiting the cyberbullying were breached by the father. The mother feared for her own safety and the safety of her children and claimed, among other things, damages for intentional mental suffering, invasion of privacy and punitive damages.

New Privacy Tort

Justice Kristjanson reviewed the American invasion of privacy “four-tort catalogue” from the *Reinstatement (Second) of Torts*, and noted that the last of the remaining privacy torts in the catalogue^[1] – “publicity placing a person in a false light” – had not yet been recognized in Ontario. She concluded that this case was an appropriate one for this cause of action to be recognized.

As a result of this case, the new tort of “publicity placing a person in a false light” will be established where a person “gives publicity to a matter concerning another that places the other before the public in a false light” if:

- (a) the false light in which the other was placed would be highly offensive to a reasonable person; and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Justice Kristjanson noted that while the publicity giving rise to this cause of action will often be defamatory, defamation is not required. She stated that “[t]he wrong is in publicly representing someone, not as worse than they are, but as other than they are.” “False light” invasion of privacy

requires that the defendant know or be reckless to the falsity of the information.

Damages for the new privacy tort were awarded in the amount of \$100,000. This is significantly more than the cap of \$20,000 the Court of Appeal awarded for damages for the privacy tort of intrusion upon seclusion in *Jones v. Tsige*. The case suggests that the conduct of the father warranted higher damages.

This decision marks the expansion of the privacy torts in Ontario and demonstrates a fine line between the false light privacy tort and defamation. While defamation claims are not necessarily new to employers on the basis of vicarious liability as a result of employee misconduct, this new privacy tort brings yet another potential avenue of exposure for organizations. Accordingly, employers will want to ensure that any information they put into the public domain about a person does not represent that person in a false light or as something other than what they are.

[1] Justice Kristjanson noted at paras. 166-168 that the other three (3) torts (intrusion upon seclusion, public disclosure of private facts and appropriation of likeness) had been previously recognized in Ontario.

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