

Civil Litigation

Case could set precedent in determining social media giants' liability for defamation: legal expert

By **Ian Burns**

(January 26, 2021, 11:46 AM EST) -- A B.C. court has given the green light to a defamation action against social media giant Twitter, with a legal expert saying the case has the potential to settle a major unresolved issue in Canada — what is the liability of social media companies for comments users post online.

Frank Giustra, the B.C.-based founder of entertainment company Lionsgate, brought a defamation action against Twitter for comments made about him online concerning his relationship with Bill Clinton and the Clinton Foundation, the former U.S. president's charity. He was targeted by online trolls who connected him to the debunked "pizzagate" conspiracy theory concerning a supposed Satan-worshipping pedophile ring consisting of many high-profile individuals from around the world. Posters also made comments about his involvement with the Boys Club Network charity, of which he is a founding patron.

Twitter asked the action to be dismissed, arguing California was a more suitable venue for any complaint against the San Francisco-based company. But Twitter would have no liability in the United States due to the freedom of speech provisions in the First Amendment to the U.S. Constitution and s. 230 of the *Communications Decency Act of 1996*, which gives Internet platforms immunity for tort claims arising from the dissemination of content by third-party users.

But B.C. Supreme Court Justice Elliott Myers sided with Giustra, writing the court does have jurisdiction due to the billionaire's close ties to the province and the fact that many tweets referred to B.C. and were published there (*Giustra v. Twitter, Inc.* 2021 BCSC 54).

"The presumption is that a defendant should be sued in only one jurisdiction for an alleged wrong, but that is not a simple goal to achieve fairly for Internet defamation," he wrote in his Jan. 14 decision. "[Giustra] has gone far enough in demonstrating damage to his reputation here. I do not agree with Twitter, who argues that of all places in the world, the plaintiff's reputation has not been harmed in B.C."

In an online post, Giustra said that he believed "words do matter."

"Recent events have demonstrated that hate speech can incite violence with deadly consequences," he said on Twitter.



Howard Winkler, Winkler Dispute Resolution

Howard Winkler of Winkler Dispute Resolution, who was not involved in the case, called the decision important because the issue of social media platforms' liability for the content individuals post on their sites is undecided in Canada.

"I probably get on average two calls a week from people who are looking for some kind of advice about false or malicious postings about them or their businesses online," he said. "And the reality is that for most people, until the issue of liability is resolved, they just don't have the resources to take on these huge enterprises so they are really left without any remedy whatsoever."

Winkler noted Giustra has the resources to overcome any obstacles that may be put in his path, and said if he is able to overcome those obstacles his action could ultimately set the precedent in determining the social media giants' liability in Canada.

"And if the courts find that there are circumstances under which the Facebooks and Twitters of the world are liable once they become aware of the defamatory nature of any content, then what is going to happen is one of two things — they will change their model and exercise some degree of control over the content once they receive complaints, or if they refuse to do that we will know that there is a remedy available," he said.

Counsel for Twitter declined to speak on the case, and the company's representatives did not respond to a request for comment. *The Lawyer's Daily* also reached out to Giustra for comment but also received no response.

If you have any information, story ideas or news tips for The Lawyer's Daily please contact Ian Burns at Ian.Burns@lexisnexis.ca or call 905-415-5906.