COURT OF APPEAL FOR ONTARIO

CITATION: Rainy River (Town) v. Olsen, 2017 ONCA 605
DATE: 20170720
DOCKET: C63224

Sharpe, Lauwers and Roberts JJ.A.

BETWEEN

The Corporation of the Town of Rainy River and Deborah Ewald

Applicants (Appellants)

and

Paul Olsen

Respondent (Respondent)

Allan D. McKitrick, for the appellant

No one appearing for the respondent

Heard: July 17, 2017

On appeal from the order of Justice Helen M. Pierce of the Superior Court of Justice, dated December 20, 2016, with reasons reported at 2016 ONSC 8009.

REASONS FOR DECISION

[1] The Town of Rainy River and its mayor, Deborah Ewald, brought an application to stop the respondent, Paul Olsen, from continuing to harass and defame the mayor, members of Town council, and staff. The application was

brought under r. 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, on the basis that it was "unlikely that there will be any material facts in dispute." There were no facts in dispute since Mr. Olsen declined to participate and the only evidence before the application judge was provided by representatives of the Town. However, the application judge refused to grant any of the relief sought.

[2] On this appeal, counsel's focus was on whether the application judge erred in refusing to issue a declaration that Mr. Olsen's conduct breached the Town's "Violence Free in the Workplace Policy" and the "Harassment Policy" under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, on the basis that the Town has a duty to protect its workers under the terms of the Act.

[3] The application judge found, at para. 35, that neither the *Occupational Health and Safety Act* nor the Town's policy under it had any application to Mr. Olsen, since the harassment occurred outside the workplace and Mr. Olsen is not a worker or co-worker as defined by the Act. We see no error in this determination.

[4] Counsel then focused on the application judge's refusal to issue a permanent injunction restraining Mr. Olsen from making "in any manner whatsoever directly or indirectly, any statements or comments about Deborah Ewald or any other town councillor, employee or agent that are defamatory

and/or made with malice or ill-will." Counsel expressed particular concern about personally harmful effects of the dissemination of "emails that are malicious vexatious, harassing, defamatory and/or abusive."

[5] The application judge pointed out, at para. 60, that a permanent injunction would have been appropriate if there had been a verdict of defamation or a final judgment in defamation, but there has been none here. She noted that the court will award a permanent injunction after there has been a finding of defamation, as noted in *Astley v. Verdun*, 2011 ONSC 3651, 106 O.R. (3d) 792, where Chapnik J. wrote, at para. 21:

> Permanent injunctions have consistently been ordered after findings of defamation where either: (1) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (2) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible. [Citations omitted.]

[6] Such injunctions are not at large, as the appellants sought in this case, but are invariably linked to a finding that defamation has occurred: see *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.), at para. 78; *Astley*, at para. 35; *Ottawa-Carleton District School Board v. Scharf*, [2007] O.J. No. 3030 (S.C.), at para. 30, aff'd 2008 ONCA 154, leave to appeal ref'd, [2008] S.C.C.A. No. 285.

[7] As this court noted in *St. Lewis v. Rancort*, 2015 ONCA 513, 337 O.A.C. 15, leave to appeal ref'd, [2015] S.C.C.A. No. 407, at para. 16: "A broad ongoing

injunction is an extraordinary remedy which should be used sparingly." Our society protects freedom of speech as essential to democratic life. Restraints on it are carefully limited. One such restraint is the common law of defamation. However, the appellants did not seek a declaration that Mr. Olsen had defamed the mayor or anyone else, and the application judge did not make such a finding. We see no error in her refusal to issue a permanent injunction regarding defamatory speech.

[8] We do not condone any of Mr. Olsen's abusive misconduct and are sympathetic to the concerns expressed by the mayor and others, including their fears that his misconduct could be escalating. Mr. Olsen should draw no comfort from our words. Nothing prevents the mayor or others from suing Mr. Olsen for defamation on the basis of his most recent email transmissions or should he repeat his conduct, subject to applicable notice and limitation periods. A definitive finding could well lead to a permanent injunction and expose him to penalties for contempt of court if he persists, such as imprisonment. Mr. Olsen would be well advised to desist.

[9] The appellants also have available other remedies to restrain Mr. Olsen's behavior such as issuing a trespass notice under the *Trespass to Property Act*, R.S.O. 1990, c. T.21, or pursuing a peace bond under the *Criminal Code*.

[10] Finally, the appellants also sought a permanent order restraining Mr. Olsen from maintaining or purporting to maintain, without permission or authority from the Town, any Town property, including any municipal streets, sidewalks and road allowances. The evidence justifies this relief and the application judge erred in not addressing it directly. We allow this aspect of the appeal. Order accordingly.

[11] The appeal is allowed in part with costs payable by Mr. Olsen to the appellants in the amount of $2,500.00, inclusive of disbursements and taxes, if payment is demanded by the appellants.

"Robert J. Sharpe J.A."
"P. Lauwers J.A."
"L.B. Roberts J.A."