

Canwest Publishing Inc. and Elaine O'Connor (appellants/plaintiffs/defendants by counterclaim)
v. Charles Blair Wilson (respondent/defendant/plaintiff by counterclaim)
(CA038733; 2012 BCCA 181)

Indexed As: Canwest Publishing Inc. et al. v. Wilson

British Columbia Court of Appeal
Ryan, Saunders and Levine, J.J.A.
April 27, 2012.

Summary:

A newspaper owned by Canwest (The Province) featured an article written by O'Connor. The article contained allegations of family debt and wrongful campaign spending respecting a Liberal Member of Parliament, Wilson. Some of the information was provided by three confidential sources who spoke on condition of anonymity. Wilson claimed damages for defamation against Canwest and O'Connor. Wilson delivered interrogatories to O'Connor. O'Connor refused to answer questions contained in two of the interrogatories on the ground of journalist-source privilege. Wilson applied to compel O'Connor to answer the questions.

The British Columbia Supreme Court, in a decision with neutral citation 2010 BCSC 1871, allowed the application and ordered O'Connor to answer the questions. O'Connor and Canwest appealed.

The British Columbia Court of Appeal allowed the appeal.

Evidence - Topic 4191

Witnesses - Privilege - Communications to news media - General - A newspaper journalist was ordered to answer interrogatories in the context of a defamation action which would have revealed confidential sources - The journalist appealed, arguing that the chambers judge erred in holding that the identity of the confidential source was relevant to the issue of malice - The British Columbia Court of Appeal rejected this ground of appeal - See paragraphs 32 to 45.

Evidence - Topic 4191

Witnesses - Privilege - Communications to news media - General - A newspaper journalist wrote an article, based partly on confidential sources, which contained allegations of wrongful campaign spending by a member of Parliament - The journalist was ordered to answer interrogatories in the context of a defamation action which would have revealed the confidential sources - The journalist appealed - The British Columbia Court of Appeal allowed the appeal, holding that the chambers judge erred in the expression and application of the Wigmore criteria to the claim of journalist-source privilege - In the court's opinion, consideration of the pertinent factors favoured preserving the privilege at this preliminary stage of the proceedings in the defamation action - See paragraphs 48 to 64.

Evidence - Topic 4191

Witnesses - Privilege - Communications to news media - General - The British Columbia Court of Appeal discussed the test for journalist-source privilege - See paragraphs 48 to 50.

Cases Noticed:

R. v. National Post et al., [2010] 1 S.C.R. 477; 401 N.R. 104; 262 O.A.C. 1; 2010 SCC 16, refd to. [para. 24].
CTVglobemedia Publishing Inc. v. Canada (Attorney General) et al., [2010] 2 S.C.R. 592; 407 N.R. 202; 2010 SCC 41, refd to. [para. 24].
Globe and Mail v. Canada (Attorney General) - see CTVglobemedia Publishing Inc. v. Canada (Attorney General) et al.
Grant et al. v. Torstar Corp. et al., [2009] 3 S.C.R. 640; 397 N.R. 1; 258 O.A.C. 285; 2009 SCC 61, refd to. [para. 34].
Hill v. Church of Scientology of Toronto and Manning, [1995] 2 S.C.R. 1130; 184 N.R. 1; 84 O.A.C. 1, refd to. [para. 38].
Bronson et al. v. Hewitt et al., [2008] B.C.T.C. Uned. E21; 2008 BCSC 1605, refd to. [para. 40].
Alberta (Treasury Branches) v. Ghermezian (1999), 242 A.R. 326; 1999 ABQB 407, refd to. [para. 51].

Counsel:

D.W. Burnett, for the appellants;
J.L. Straith and D. Fiorvento, for the respondent.

This appeal was heard in Vancouver, British Columbia, on March 16, 2011, before Ryan, Saunders and Levine, J.J.A., of the British Columbia Court of Appeal. The following decision was delivered for the court, by Ryan, J.A., on April 27, 2012.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon