

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Grimmer v. Carleton Road Industries Association*, 2009 NSSC 169

Date: 20090528

Docket: Ken No 297098

Registry: Kentville

Between:

Peter R. Grimmer

Plaintiff

v.

**Carleton Road Industries Association
and Brad Corkum**

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: July 17, 2008; September 16, 2008; January 8, 2009; and
February 23, 2009

**Final Written
Submission:** April 24, 2009

Subject: Application to Strike the claim for defamation and/or Application for
Summary Judgment

Summary: The plaintiff had been advised by the defendants at a meeting that there were concerns regarding the plaintiff's employment. At this meeting, the defendants provided the plaintiff with a written summary of the allegations against the defendant and scheduled a further meeting. Prior to the scheduled meeting, the plaintiff directed his counsel to write a letter advising that the plaintiff was unable to attend the meeting due to health concerns and requested that the allegations be forwarded to the counsel. The defendant Corkum, as a representative to the defendant Association, wrote a responding letter to the solicitor's request. Shortly after the letter was received, the plaintiff filed a Statement of Claim against both defendants for defamatory comments contained in the letter to the solicitor and against the defendant Association for wrongful dismissal.

Issue:

- 1) Is the letter to the plaintiff's counsel a publication in law, making it appropriate to strike the portions of the Statement of Claim?
- 2) Did the plaintiff consent (*volenti non fit injuria*) to the letter, making it appropriate to grant the summary judgment?
- 3) If the letter to the plaintiff's counsel is a publication in law, is it covered by absolute privilege?

Result:

- 1) The Court reviewed the applicable case law regarding whether it was appropriate to strike the portions of the Statement of Claim and found that as the plaintiff had authorized his counsel to write the defendant Association requesting the allegations be written to the counsel, that the plaintiff had consented to the allegations to be written by the defendant Corkum, on behalf of the defendant Association, and therefore the portions of the Statement of Claim related to the defamation should be struck.
- 2) Further, the Court reviewed the affidavits filed on behalf of the plaintiff and the defendants and found that based solely on the undisputed facts, that there was "no arguable case to be tried" regarding the portion of the Statement of Claim related to the defamation claim and therefore granted summary judgment in favour of both defendants regarding the defamation claim.
- 3) The Court determined that based on the claim of absolute privilege, it could not have granted the summary judgment.

As the Court had granted the summary judgment in favour of the defendant Corkum, a volunteer member of the Association, the Court awarded costs to the defendant Corkum on a solicitor-and-client basis, which costs will be briefed at a later point.

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