

SUPREME COURT OF NOVA SCOTIA

Citation: *Mosher v. Coast Publishing Ltd.*, 2010 NSSC 153

Date: 20100414

Docket: Hfx No. 326977

Registry: Halifax

Between:

William Mosher and Stephen Thurber

Applicants

v.

Coast Publishing Limited and Google Inc.

Respondents

Judge: The Honourable Justice M. Heather Robertson

Heard: April 14, 2010, in Chambers, Halifax, Nova Scotia

Decision: April 14, 2010 (**Orally**)

Written Release: April 19, 2010

Counsel: Michelle Awad, Q.C. and Cindy Locke, articulated clerk for the applicants

Robertson, J.: (Orally)

[1] This is an application brought on behalf of two individuals, the Chief and Deputy Chief of the Halifax Regional Fire Services for an abridgement of the notice period required to bring this application and for disclosure of information from the two respondents that the applicants hope will lead them to the individuals who authored the comments published in The Coast newspaper, that they allege are defamatory.

[2] I have read Ms. Locke's affidavit. She sets out all the information with respect to these various anonymous internet users. Counsel for the applicants has told the Court that Mr. Coles who represents the Coast Publishing Limited has indicated he will not appear in opposition to the application. Google Inc. have similarly communicated that they will obey any order of the Court, but will not appear.

[3] So, first of all let me grant the abridgement in time.

[4] Now secondly, with respect to the main application the order for production, I note that you have been searching the new *Rules* to see how this might be achieved and you have relied on *Rule* 18.12(2).

18.12 (1) A judge may order a witness or a custodian of a document, electronic information, or other thing to submit to discovery.

(2) A judge may order discovery before a proceeding has started in one of the following circumstances:

(a) the party who moves for the discovery wishes to start a proceeding but is prevented from doing so immediately, and evidence needs to be preserved.

[5] Now 18.12(2) specifically deals with the court's power to order discovery of a party that may lead to a disclosure before a proceeding is started. That is not really what is requested in this application.

[6] I believe that an order for production under *Rule* 14.12(1) is more appropriate.

A judge may order person to deliver a copy of a relevant or relevant electronic information to a party or at the trial or hearing of a proceeding.

[7] And I believe that these *Rules* are flexible enough to require such production in the pre commencement stage of an action, which is where you are. You need to identify those individuals who have committed the alleged defamations and you cannot start an action until you know who they are. Your requested order entails a process to identify the individuals.

[8] I have no problem in principle with your application and prepared to grant the order. Because the court does not condone the conduct of anonymous internet users who make defamatory comments and they like other people have to be accountable for their actions. So, this is an appropriate circumstance where your clients should have the right to seek the identity of those persons so you can take the appropriate action with respect to the alleged defamatory acts. I reviewed all of the authorities that you presented to me and obviously the most compelling is the *York University v. Bell Canada Enterprises*, [2009] O.J. No. 3689, Justice Strathy's handling of anonymous internet users. But, the interesting thing about that decision is that York University sought the information from Bell Canada. I am wondering if you are going to be required as a second step to come back to the court and get an order requiring a local internet provider to identify the actual account and I.P. user.

...

MS. AWAD: That's our understanding as well My Lady and I agree with your reading of the *York University* case, that they were actually at step two, a bit further than we are right now and we don't know at this stage whether a step two would be required. ...

THE COURT: You do not know what response The Coast will make and whether they have some other source of information as to the identity of these people. So, that's the nature of your order then.

MS. AWAD: Yes, as Your Ladyship probably deduced from Mr. Fraser's affidavit the wording of the order as it relates to Google was actually something that Google had input into. They tell us that they have received court orders that,

ask them to do things they couldn't do either because of the wording or because of the way the technology is set up. The Coast order has not been negotiated in the same way, the provisions of the order relating to The Coast, but I 'm sure Mr. Coles and I ...

THE COURT: So, with respect to Google they can provide you with a name, account status, secondary e-mail, (I am not familiar with that particular aspect, but there must be a process involved there), account services, account creation date and the Canadian I.P. data. So, that is the most telling piece of information, the Canadian I.P. address. And, then with respect to the Coast Publishing Limited they will give you all information in their possession regarding the identity of these people.

MS. AWAD: Correct. And, I note that the draft order didn't actually mention Rule 18 so it wouldn't necessarily require amendment in light of Your Ladyship's

THE COURT: I think *Rule* 14 is the way to go, but we will accept that we have had this discussion.

Discussion regarding form of the order.

MS. AWAD: In the event there is a part two, we are hopeful that there isn't, I take it Your Ladyship wouldn't consider yourself seized in any way with this, that I would just bring that up

THE COURT: Yes, I would be seized with the matter because you may need a part two and you may either have to go to Bell or Eastlink wherever the I.P. addresses have been generated by a specific user account.

MS. AWAD: So, if there is a part two then I would be in touch with Your Ladyship.

THE COURT: Yes, you may. Thank you.

Justice M. Heather Robertson