

Crookes v. Pilling, 2007 BCSC 630 (CanLII)

[PDF Format](#)

Date: 2007-03-16

Docket: S063287

URL: <http://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc630/2007bcsc630.html>[Reflex Record](#) (noteup and cited decisions)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Crookes v. Pilling***,
2007 BCSC 630

Date: 20070316

Docket: S063287
Registry: Vancouver

Between:

Wayne Crookes and West Coast Title Search Ltd.

Plaintiffs

And:

**Michael Pilling, Craig Hubley, Hayley Easto, Warren de Simone,
and the said Michael Pilling, Craig Hubley, Hayley Easto and
Warren de Simone carrying on business as Open Politics.Ca
and the said OPENPOLITICS.CA, and "Anonymous",**

Defendants

Before: The Honourable Mr. Justice E. R. A. Edwards

Oral Reasons for Judgment

In Chambers
March 16, 2007

Counsel for Plaintiffs

R.A. Kasting

Counsel for Defendants

D. Burnett

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** One of the four defendants in this case applies under Rule 18A for summary dismissal of the plaintiffs' claim against him. The plaintiffs' allegation is that the defendant was one of four persons who published articles on a website which libeled the plaintiff. The plaintiffs discovered the articles on the website in July of 2005. I am advised that the plaintiffs have obtained default judgment against one of the defendants and that the other two are unrepresented. In these reasons I will simply refer to the applicant Warren de Simone as "the defendant".

[2] This action was commenced in May of 2006. The specific allegation against the defendant is that "he was at all material times the publisher and a member of the steering committee of openpolitics.ca". That is the website in question. It was on this website that the alleged libels were published. It is further alleged at paragraph 9 of the statement of claim, with respect to one of the three alleged libelous articles, that:

It was posted with the express or implicit approval of the individual defendants as publishers and members of the website's steering committee with the express or implicit approval of the defendants Pilling, Easto and Hubley ...

without reference to the defendant.

[3] The defendant denies in his statement of defence that he published the alleged libels. Plaintiffs' counsel on this application acknowledged that the onus is on the plaintiffs to prove that the defendant published the alleged libels.

[4] The plaintiffs' counsel argues that the case is unsuitable for disposition under Rule 18A because there is a credibility issue with respect to the defendant's affidavit evidence supporting his pleaded denial of publication. In respect of that denial he deposed as follows:

On or around March or April 2005 Michael Pilling contacted me by phone and e-mail with regard to livingplatform.ca steering committee. He did not request and we did not discuss my involvement in any other projects. We did not discuss the plaintiffs in this action. In those discussions, Michael Pilling informed me about wiki technology and how he wanted to make wiki technology available to other demographics. Michael Pilling was specifically interested in my marketing expertise and reaching a broader audience.

I agreed to attend a steering committee teleconference meeting that was held on or around April 21st, 2005. The meeting related only to livingplatform.ca. Leading up to that meeting, Michael Pilling and I had two or three conversations all limited to livingplatform.ca, covering questions of layout and possible print and PDF versions of living platform.

In the April 21st, 2005 teleconference meeting the substance of the discussion was about Living Platform. The only mention of openpolitics.ca was a conceptual idea to set up the site. I was never involved in setting up openpolitics.ca or any of its content. Copies of the minutes of that meeting are attached as Exhibit A to this affidavit.

After that teleconference on or around April 27th, 2005, I telephoned Michael Pilling and stated that I could no longer participate with Living Platform. I effectively

resigned any involvement with Living Platform from that day on. I signed nothing to affect my participation in the Living Platform steering committee that lasted about four to five weeks. I never wrote or published or approved any articles, nor did I have knowledge of the plaintiff. Prior to this litigation I have never even seen the articles regarding the plaintiff which are in issue.

[5] The exhibited minutes of the April 21, 2005 meeting were obtained from the internet. These minutes show a motion to commence the website openpolitics.ca was apparently endorsed by two of four persons all represented by initials which correspond to those with the four personal defendants in this action. There is a question mark following the initials WDS, that is, those of the defendant. The meaning of this question mark is unexplained. If anything, this suggests that the defendant may not have endorsed commencing the website openpolitics.ca or that he had reservations about doing so.

[6] I find that these minutes could prove no more than that the defendant might have endorsed opening the openpolitics.ca website while at the meeting of April 21, 2005. They do not show when openpolitics.ca began operation nor whether the defendant continued his involvement after the April 21, 2005 meeting. That is, they do not contradict his sworn statement that he ceased to be involved about a week later.

[7] The plaintiff Crookes swore an affidavit to which he exhibited copies of what appear to be minutes published on the internet of a number of meetings of the openpolitics.ca "steering committee" from May 3 to September 19, 2005, in which the defendant's name is recorded as a member of the steering committee. With respect to these minutes, the plaintiff states as follows at his affidavit in response to this application:

In following the links within this website, I was able to determine that a group of people known as the interim OP steering committee was responsible for all major decisions for this website. Listed as members of this interim OP steering committee in the May 3rd, 2005 posting, a copy of which is attached as Exhibit F hereto, were all of the defendants including Warren de Simone. I do not know Warren de Simone and do not believe that we had ever met.

[8] The minutes exhibited to the plaintiffs' affidavit are in effect hearsay and Mr. Crookes' statement that he was able to "determine" certain things, including that the defendant was a member of the OP steering committee is the evidentiary equivalent of stating that he was informed, by a person he was unable to identify, that the defendant was "a member of the OP steering committee." There is no evidentiary basis for the admission of these minutes as business records. In my view, the minutes are not admissible evidence on a Rule 18A application. In any event, they do not refute the defendant's sworn statements with regard to his membership or involvement on the OP steering committee. This "evidence", that is the exhibit to which I have just referred, the minutes of the May 3rd through September 19th meetings, if anything would only form the basis for further investigation by the plaintiff as to the defendant's involvement.

[9] At paragraph 13 of the his affidavit, Mr. Crookes states as follows:

About three weeks after the filing of the writ of summons in this action, I spoke by telephone to Warren de Simone. He advised me that he had attended, participated or was involved in, in his words "just a few" meetings of the OP steering committee. He did not tell me that he had never been a member of this committee.

[10] This statement is answered by the defendant's subsequent affidavit as follows:

Regarding paragraphs 7 to 10 of Mr. Crookes' affidavit, I was not even aware that I had been listed as a member of any committee on the Open Politics website. I did not see the pages attached to Mr. Crookes' affidavit. This illustrates my lack of involvement. If I had seen my name listed as a committee member, I would have informed them there was an error and asked my name be removed.

Regarding paragraphs 6 to 11 of Mr. Crookes' affidavit, I did not understand the content of the website to be created or approved by any committee. From my brief involvement, I did not believe it was true that any committee created or approved postings. I understood the website was to be a wiki site where users would be able to post their own thoughts on issues. I was never involved in the set-up or maintenance of the site.

Regarding paragraph 13 of Mr. Crookes' affidavit, I remember him telephoning me. His affidavit omits the part of the conversation in which I explained to him that I had nothing to do with any publications about him. My reference to "just a few" telephone calls was to the discussions described in my first affidavit, nothing more. All of them including one steering committee meeting I attended were all by telephone.

[11] Taken at its highest, the plaintiffs' admissible evidence could support an inference that the defendant was at some time a member of the OP steering committee. I refer to the asserted admissions made by the defendant over the telephone to Mr. Crookes as set out in the excerpt I have read from his affidavit. Since the minutes exhibited to Mr. Crookes' affidavit are inadmissible, the only evidence of when the defendant could have been a member of the OP steering committee is the defendant's own evidence, that is that he was involved in some way between April 21st and April 27th. Unless there is evidence that the publication took place during that period, there is no evidence to connect the defendant to the publication.

[12] The statement of claim alleges that one of the alleged libelous articles "Gang of Crookes" was published "sometime prior to July 1, 2005." A second article was published on or about March 21, 2005, and a third on February 28, 2005. The last two dates are prior to April 21 to 27, which is the only period with which, as I have said, there is any admissible evidence establishing the defendant's connection to the OP steering committee, during which he could have been involved in the publication. Seemingly inexplicably, these alleged publication dates are prior to the meeting at which it appears that a decision may have been taken to begin the operation of the OP website. The third alleged publication date sometime before July 1, 2005, could be before or after the defendant could have been on the OP steering committee in April of 2005.

[13] I find on the basis of what I have outlined that there is insufficient evidence to support the allegation that the defendant was "at all material times," that is on the alleged dates of publication, a "publisher or member of the OP steering committee."

[14] I note that the plaintiffs have had well over a year since discovering the alleged libels and about 10 months since commencing this action to find evidence linking the defendant to publication. The possibility that the plaintiffs might still do so must be weighed against the sworn evidence of the defendant. I find that this case is suitable for disposition under Rule 18A. In this case the plaintiffs have shown not a conflict of evidence on a question of credibility but only a possible basis for further investigation when no investigation apart from an internet search has apparently been done to establish that the defendant was indeed a publisher of the alleged

libels. Accordingly, I grant the defendant's motion. The application for dismissal of the action against him is allowed, with costs on Scale 3.

“E.R.A. Edwards, J.”
The Honourable Mr. Justice E.R.A. Edwards

[Scope of Databases](#) | [RSS Feeds](#) | [Terms of Use](#) | [Privacy](#) | [Help](#) | [Contact Us](#) | [About](#)

by  for the  Federation of Law Societies of Canada