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## A CROWN PROSECUTOR HAVE A CRITICAL BLOGGER CONDEMNED FOR DEFAMATION

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PRECIS : In the matter of *Buckle v. Caswell* [2009 SKQB 363 (CanLII)], the Queen's Bench for Saskatchewan granted plaintiff Wayne Buckle damages as well as an injunctive relief to have defamatory statements posted on defendant Gay Caswell's blog removed as well as prevent the occurrence of further defamation.

Plaintiff Wayne Buckle is a senior Crown prosecutor working in the La Ronge district office for the Saskatchewan Department of Justice. Mrs. Gay Caswell, the defendant, operates a blog on the Internet. On March 19, 20 and 23, 2009, Buckle read on Caswell's blog statements that he found libellous and as a result, retained legal counsel. These statements read as follows:

"Mr. Buckle: sources: northern locals. Mr. Buckle and his sister were busted for a grow operation. (They were charged with growing marijuana). Mr. Buckle lost his licence as a lawyer with the Sask. Law Association because he took money belonging to a client. He then headed the Legal Aid office but misused funds there. He is a well known and publicly known cocaine user. One person told me his personal experience when judge, lawyer (Buckle) and he, the accused had a court adjournment to toke-up (do marijuana) behind the La Ronge court house."

Buckle's counsel wrote to Caswell, demanding the publication of a retraction of her statements as well as an apology, but this letter remained unanswered. The defendant was therefore served with a statement of claim on May 31, 2009, to which she indirectly replied by means of a new comment published on her blog on June 2<sup>nd</sup>, 2009:

Mr. Buckle, lawyer and crown prosecutor, according to his lawyer is expecting me to go to court and to apologise for mentioning a few

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reasons why Buckle is unfit for the job. If I apologised I would be lying. Liars go to hell. The persecuted sometimes go to court. No apology will be offered.”

While very much opinionated on her blog, Mrs. Caswell did not seem to put as much energy on her defence, since the action was noted for default on June 23, 2009. Because there had been no application on her part to open up the default judgement and to seek leave to file a defence, Madam Justice Rothery stated that Buckle was entitled to have his motion for judgement determined by the court.

The Judge first recalled the nature of the tort of defamation, as enunciated by the Supreme Court of Canada in *Botiuk v. Toronto Free Press Publications Ltd.*, [1995 CanLII 60 (S.C.C.)]: “[A] publication which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt or ridicule, is defamatory and will attract liability”. She then went on by applying the three-step analysis developed in *Warman v. Grosvenor*, [2008 CanLII 57728 (ON S.C.)] in order to decide if Caswell’s words could rightly be qualified as defamatory. The Court easily found that the terms chosen by Caswell, judging from their ordinary meaning, were per se defamatory. It also stated that Buckle had proven that these libellous affirmations were published. Finally, Justice Rothery had no difficulty concluding that Buckle was clearly identified as the person defamed.

These three elements having been established on a balance of probabilities, the only question remaining was that of the assessment of damages. On that matter, the Judge stressed the importance of taking into consideration Buckle’s profession in order to properly quantify the harm caused to the Crown prosecutor. He did so by citing Cory J., former judge of the Supreme Court of Canada, who, in *Hill v. Church of Scientology of Toronto* [1995 CanLII 59 (S.C.C.)], spoke these words:

“In the present case, consideration must be given to the particular significance reputation has for a lawyer. The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.”

Accordingly, damages granted by the Court amounted to \$50,000. The Judge expressed the view that Caswell’s refusal to apologize and continued publication of libellous statements via her blog could very well have cost her aggravated damages, but since Mr. Buckle had sued under the simplified procedure rules alone (namely, Rules 114(4), 119 and 122 of the Queen’s Bench Rules), he was limited to an award for general damages. Justice Rothery also granted the plaintiff the injunctive relief he

was seeking, therefore ordering the defendant to remove all defamatory content from her blog as well as put an end to the publication of libellous statements on the internet or through any other method or medium.

It is to be noted that defendant Gay Caswell is appealing the Queen's Bench's decision, as it appears from the notice of appeal posted on her blog on October 9, 2009. As for her latest blog entry, dated October 14, 2009, it is undoubtedly eloquent of her new-found fighting spirit:

"I am taking Mr. Buckle to court this time not the other way round and I'm in no hurry at all. It's time that the fearful, compromised and angry victims of drugs and corruption have time to gather their courage and come forward. Let the clean-up begin. In Christ, Gay."

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