

# Blakes Bulletin

## Litigation

### Toronto Star Wins Libel Appeal; Ontario Court of Appeal Decision is First Canadian Case to Apply Responsible Journalism Defence

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On November 28, 2008, the Ontario Court of Appeal overturned a jury verdict against the *Toronto Star* that had awarded C\$1.475-million in damages to a northern Ontario businessman and his private corporation for libel.

Peter Grant had sued the *Toronto Star* over an article written by investigative journalist Bill Schiller in June 2001, which detailed the concerns of Grant's neighbours regarding his proposed private golf course development on Crown land by a lake in northern Ontario. The article also discussed Mr. Grant's connections to the provincial Progressive Conservative Party and then premier Mike Harris.

The Court of Appeal agreed with the appellants that the trial judge had erred in his analysis of the new defence of "public interest responsible journalism." That defence, the court affirmed, is intended to favour publication of articles on matters of public interest that are responsibly researched and published. The court held that it was incumbent on the trial judge to consider the defence with this in mind, something he had failed to do. This is the first case in Canada to consider the application of this new defence, developed over the past decade in England.

On the facts of the case, the Court of Appeal was critical of the judge for taking a narrow view of "public interest," as he had limited it to those who lived in the area. This was wrong, as the article dealt with "the private acquisition of Crown lands by a person who had made large political contributions to the governing political party, as well as with cottagers' environmental concerns." The trial judge also overlooked many relevant facts showing that the journalist acted in a responsible

and fair manner in preparing the story, Grant's refusal to respond to Schiller's questions and the journalist's explanation of why some things were not included in the story.

The court also concluded that the trial judge erred in instructing the jury on a number of points. Most significantly, the judge incorrectly told the jury that the defence of fair comment turned on whether a "fair-minded" person could believe the comment. The judge's charge misled the jury as the correct test is broader – whether a person could honestly hold the opinion on the facts proved. Although he stated it correctly at the outset, the trial judge went on to import a "fair mindedness" test, which he repeated several times.

In addition, the court held that a decades-old standard jury charge relied on by the trial judge regarding the issue of the meaning of allegedly defamatory words was wrong and misleading. As well, the trial judge made other errors, such as not making the test for malice clear, and failing to fairly summarize important evidence.

The Court of Appeal set aside the jury's verdict and ordered a new trial, as it concluded that the meaning of the impugned article must be decided by a jury before the court can consider the applicability of the responsible journalism defence.

The appellants were represented by a team from Blakes led by Paul Schabas and including Simon Heeney and Erin Hoult. Blakes Media Group has the leading lawyers in the field. It regularly acts for newspapers, broadcasters and publishers on defamation and related matters.

*Grant v. Torstar Corporation*, 2008 ONCA 796:  
<http://www.ontariocourts.on.ca/decisions/2008/november/2008ONCA0796.htm>

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