

SUPREME COURT OF NOVA SCOTIA

Citation: *Randell v. Hickory Wind Productions Inc.*, 2026 NSSC 293

Date: 2026-09-17

Docket: Yar No. 550132

Registry: Yarmouth

Between:

Gerry Randell

Plaintiff

v.

Hickory Wind Productions Inc. O/A Frank Magazine

Defendant

DECISION ON SUMMARY JUDGMENT MOTION
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Judge: The Honourable Justice Scott C. Norton

Heard: September 17, 2026, in Yarmouth, Nova Scotia

Oral Decision: September 17, 2026

Counsel: Sinead Russell, for the Plaintiff
Andrew Douglas, S/R Director of the Defendant

By the Court (Orally):

[1] The Defendant Hickory Wind Productions Inc. is the publisher of Frank Magazine. In this proceeding, the Plaintiff alleges that an article published by the Defendant was defamatory. The Defendant brings this motion for summary judgment on evidence pursuant to *Civil Procedure Rule* 13.04 and seeks an Order dismissing the Plaintiff's claim.

[2] The facts can be briefly stated. The article in question was published by Frank Magazine on November 6, 2025. On January 15, 2026, the Plaintiff filed a Notice of Action and Statement of Claim against Frank Magazine claiming the article defamed him. The Notice was served on Frank Magazine on January 21, 2026. On February 6, 2026, the Defendant advised the Plaintiff of the proper legal name of the Defendant and on February 11, 2026, the Plaintiff filed an amended Notice and Statement of Claim naming the Defendant. On March 11, 2026, the Defendant filed a Notice of Defence and Statement of Defence claiming, *inter alia*, that the Plaintiff had failed to comply with the mandatory requirements of the *Defamation Act* RSNS 1989, c. 122 ("*Act*"), in particular, that the Plaintiff, prior to commencing the action, failed to provide the notice required by s. 18(1) of the *Act*.

[3] There is no dispute that Frank Magazine is a newspaper as defined in the *Act*.

[4] The Defendant says that there are no material facts in issue requiring trial and argues that s. 18(1) of the *Act* bars the action because the Plaintiff failed to provide the requisite notice. The Defendant's brief relied on the decision of Justice Nunn in *Butler v. Southam Inc.*, 2000 NSJ 420. There, Justice Nunn struck the Statement of Claim of the Plaintiff Butler on the basis that the notice requirement in the *Act* was a precondition to the existence of a cause of action. Justice Nunn rejected the argument that the Plaintiff should be relieved from this result pursuant to his discretion under the then-applicable *Limitation of Actions Act*, RSNS 1989, c. 258.

[5] The Plaintiff's response brief points out that the *Butler* case was overturned in part on appeal (2001 NSCA 121). Justice Cromwell, writing for the Court of Appeal, held that Justice Nunn was correct to find that he had jurisdiction under s. 3(2) of the then applicable *Limitation of Actions Act*, to relieve against the notice requirements after considering the prejudice to each party (at para. 122). However,

Justice Cromwell found that Justice Nunn had erred in his application of the *Limitation of Actions Act* and set aside the limitation defence in respect of certain of the claimants.

[6] On September 1, 2015, a new limitation statute came into force: the *Limitation of Actions Act*, SNS 2014, c. 35. It is this statute that applies to the matter before the court. Neither of the parties addressed the application of this legislation to the issues before the court in their evidence or briefs.

[7] Section 18(1) of the *Defamation Act* states:

Notice of action

18 (1) No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper [newspaper], seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days notice in writing of his intention to bring action, specifying the defamatory matter complained of.

[8] However, section 23(1) of the *Defamation Act* states:

Application of defamation action procedure

23 (1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of Sections 18, 19 and 22 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

[9] Neither party addressed this provision in their written submissions. On the record before me there is no evidence that the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper. The burden of establishing this is on the Defendant. See *Dingle v. World Newspaper Co.*, 1918 CarswellOnt 14, 57 S.C.R. 573 (SCC).

[10] Having failed to establish this requirement, the Defendant is not entitled to rely upon s. 18(1) of the *Act* on this motion.

[11] The motion for summary judgment is denied.

[12] I will note that the s. 18 notice issue remains alive for future determination in this matter. One of the questions for the court will be whether the Plaintiff can and should be granted relief from the notice requirement under the 2014 *Limitation*

of Actions Act, and to what extent the analysis in *Butler* is applicable to the new legislation.

[13] I have also noted for counsel that there is an issue with the Notice of Action. It states that the matter is a claim under *Rule 57*. Defamation actions are required to be heard by a jury under the *Judicature Act*. The Plaintiff will be required to seek amendment to the Notice of Action to say that the matter is not subject to *Rule 57*.

[14] As neither party addressed the legislative provision on which this motion was determined, the costs of the motion shall be costs in the cause.

Norton, J.