



# What's New in HR Law

## New Tort of Harassment in Internet Communications

February 26, 2021

### Bottom Line

In a [recent decision](#), the Superior Court of Justice for Ontario recognized a new tort: harassment in internet communications. While the Court of Appeal for Ontario [previously held](#) in *Merrifield v Canada (Attorney General)* that an independent tort of harassment was not recognized in the province, in this most recent case the court identified that, absent such a cause of action, the civil remedies at its disposal were insufficient to address the defendant's harassing and abusive behaviour.

### Malicious Campaigns of Online Harassment

The defendant, Nadire Atas, carried out "campaigns of malicious harassment and defamation" through the internet spanning over many years. Atas' behaviour arose from four sets of grievances. The first three sets of grievances all concerned underlying litigation over mortgage enforcement proceedings brought against the defendant. The fourth set of grievances originated from Atas' dismissal from her employment in the 1990's. Atas' employment had been

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terminated for cause for alleged dishonesty and unethical conduct as a real estate agent, including allegations of forging extensions to a listing agreement.

In connection with these grievances, the defendant would engage in various vile and abusive communications, cyber-stalking, and online posts with defamatory statements about the various parties to the grievances. The nature of attacks usually shifted from statements alleging professional misconduct to allegations of sexual criminality, most often pedophilia or sexual predation. For example, Atas began making defamatory statements about her former employers, by calling them “scammers” and “thieves” that were engaged in “fraud”. Over time, the defendant began calling them “pedophiles” and “dangerous pedophiles”. These statements were not limited to the “primary targets” or parties to the sets of grievances, but also extended to attack the relatives and business associates of Atas’ primary victims.

### **Internet Harassment – Developing Area of Law**

After setting out how various jurisdictions have attempted to address harmful online communications by amending or passing legislation, Justice Corbett described the area of law dedicated to this issue as continually “developing”. The Justice also found that the existing remedies under the law in Ontario did not adequately address the harmful online conduct of the defendant, nor were they applicable to this particular case.

After establishing the need to recognize a new cause of action, the court adopted the following three-part test for the tort of harassment in internet communications:

1. The defendant maliciously or recklessly engages in communications or conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance;
2. The intent of such communications or conduct is to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff; and
3. The plaintiff suffers harm.

The court stated that the incidents of online harassment in this case met this “stringent test”.

The court then provided a number of reasons for distinguishing the case from the facts in *Merrifield*, where the Court of Appeal held that there was no common law tort of harassment. In particular, the court stated that this case necessitated a remedy and that unlike in *Merrifield*, the traditional remedies and available causes of action did not adequately address Atas’ conduct.

### **Remedies**

Once the court found that the facts met the test for harassment in internet communications, a permanent injunction was ordered, prohibiting Atas from using the internet to harass the plaintiffs and other victims closely related to the plaintiffs. The court also ordered that the

offensive content be removed from the internet. The court further stated that this would be done by vesting title of the posts to the plaintiffs and enabling them to take steps to have the content removed themselves.

## Check the Box

While it is unclear how this new tort of internet harassment will be treated in subsequent cases (or by the legislature), employers should be aware of potential harassment-related liability that may arise under this new cause of action. As work, and even full workplaces, continue to transition to remote or virtual platforms and settings, employers should continue to:

- maintain awareness of potential online harassment in the workplace;
- respond appropriately to any harassment claim/complaint, including those arising from the internet; and
- review and update their policies, training, and investigation procedures to ensure that they are taking appropriate and reasonable steps to protect against workplace harassment that may occur online.

In addition to continuing to safeguard the health and safety of their workplaces from harassment – in whatever form it may take – employers may also wish to consider how this new cause of action may be relied upon in the event they themselves become targets of online harassment. For instance, in situations where a current or former employee takes aim at their employer, this new cause of action may, in the right circumstances, provide a remedial course of action where one did not previously exist.

**Date:** January 28, 2021

**Forum:** Ontario Superior Court of Justice

**Citation:** [Caplan v Atas, 2021 ONSC 670](#)

## Need more information?

For more information about issues around workplace harassment, workplace investigations, or related litigation, contact your regular lawyer at the firm.



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