CANADA / JUDGMENT

# Niemela v. Malamas

**2017 BCSC 260**

COURT
Supreme Court of British Columbia

DECIDED
25 January 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 260 Niemela v. Malamas IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Niemela v. Malamas, 2017 BCSC 260 Date: 20170125 Docket: S146067 Registry: Vancouver Between: Glenn J. Niemela also known as Glenn John Niemela Plaintiff And Strato Malamas, Strato Malamas also known as Doris Ligman also known as Doris L also known as Vafal also known as Kukaz also known as Kukaz Kasay, Robin Hood, John Doe #1 also known as Robin Hood, Larry Roberts, Larry Roberts also known as Robin Hood, John Doe #2 also known as Larry Roberts also known as Robin Hood, Vafal, John Doe #3 also known as Vafal, Kukaz Kasay, John Doe #4 also known as Kukaz Kasay, Kukaz, John Doe #5 also known as Kukaz, Dr. Stephen Johnson, John Doe #6 also known as Dr. Stephen John, Hacer Quepagu, John Doe #7 also known as Hacer Quepagu, Valentino, John Doe #8 also known as Valentino, John Doe #9, Walter Blackstock, Walter Blackstock also known as Larry Roberts also known as Robin Hood, John Doe #10 also known as Walter Blackstock also known as Larry Roberts also known as Robin Hood, John Doe #11, John Doe #12, John Doe #13, John Doe #14, John Doe #iS, John Doe #16, John Doe #17, John Doe #18, Doris Ligman, Jane Doe #1 also known as Doris Ligman, Doris L and Jane Doe #2 also known as Doris L Defendants Before: The Honourable Madam Justice Gray Oral Ruling In Chambers The Plaintiff, Glenn J. Niemela: In Person The Defendants: No Appearances Counsel for Google Inc.: P.R. Senkpiel Place and Date of Hearing: Vancouver, B.C. January 25, 2017 Place and Date of Ruling: Vancouver, B.C. January 25, 2017

[1] THE COURT: I will give brief reasons for judgment.

[2] The plaintiff is a lawyer. At one point, he represented the first named defendant, Mr. Malamas, in a civil matter. That matter settled.

[3] The plaintiff then was subjected to a number of telephone calls from someone who said he was Robin Hood. This appeared to be an effort to extort some money from the plaintiff.

[4] After that there have been some postings on the internet which I am satisfied are defamatory of the plaintiff. They call him things like a "criminal" and a "thief" and a "crook". The plaintiff's evidence is he is none of those things. He has applied previously and obtained previous orders for the defendants to be ordered to remove the postings from the internet.

[5] The first named defendant has filed a response to the lawsuit but there is a default judgment against all the other named defendants.

[6] Mr. Senkpiel is here of behalf of Google Inc., which is not a party to this lawsuit, but has received notice of this application. Google has a voluntary policy. In the past, it has been prepared to block URLs if a defendant fails to comply with a court order that the URL be removed. So, while there has been no representation on behalf of Google Inc. that it will follow that policy in this case, there appears to be a good chance that it may choose to do so.

[7] I am being asked to order that the defendants take down the content of the URLs within seven days of this court order, and to adjourn the question of costs.

[8] I am prepared to make those orders. I am satisfied that the comments are defamatory. While there is a right to free speech, it does not go so far as to permit someone to refer to people as "criminals" when it is not proven that they are.

[9] I see Mr. Senkpiel is standing, so I may have said something wrong. What is you would like to tell me?

[10] MR. SENKPIEL: Forgive me, My Lady. It is understood between Mr. Niemela and I, but just for clarification, Google's policy applies to removing or de-indexing URLs from Google.ca, the Canadian version of the search engine, not from ".com". And that is how we have proceeded in the past, as [indiscernible] by Mr. Niemela, and that is so. There are issues in relation to the jurisdictional US free speech issues and whatnot, and so we have proceeded on the ".ca" basis.

[11] THE COURT: Thank you for that clarification.

[12] On that basis, I am prepared to make the order sought. The proposed order is attached to the notice of application, Schedule A, and proposed order 1 is fine. As I understand, it proposed item 2 would not be ordered. With respect to what is now item 3, there will be the adjournment of the application for special costs.

[13] MR. NIEMELA: Yes.

[14] THE COURT: All right. So I will make that order. Thank you.

[15] MR. SENKPIEL: My Lady, may I ask one further question. This relates to future matters, not the current one, but the issue has been raised in the past about whether or not there might be a more time effective matter to deal with these matters going forward.

[16] As you will have seen Mr. Niemela as sworn 27 affidavits.

[17] MR. NIEMELA: I think it is 24 now.

[18] MR. SENKPIEL: 24 affidavits now. I am fairly constantly getting emails saying we will Google de-index these, we will Google de-index these, even though the policy is well understood. And it is gotten to the point where Mr. Niemela is, understandably perhaps, but is finding search results on page 70 and 73 of the second layer of Google search results, which requires you to go through hundreds of Google search results before you get down to the layer that he is -- he is asking for these matters to be addressed.

[19] And while I am sympathetic, it is a tremendous cost and time imposition on both the court and Google. So I wonder if there is a way that this can be dealt with in writing or some other manner.

[20] THE COURT: Well, I will say this. I have not yet worked out the details, but I am planning to retire to judging at some point in 2017. So I am not going to seize myself because we do not know when that would be, but I am willing to hear this at 9 o'clock. If you put your material together, you can seek an appearance before me at 9 a.m.

[21] In addition, we travel as judges of this Court. It comes up surprisingly often. I am happy to try to schedule something in front of me at 9:00 a.m. I will not seize myself. How is that?

[22] MR. NIEMELA: I did not mean to interrupt you, My Lady. I am happy to appear in front of you. That is -- that is perfectly fine.

[23] Now, the issue of these URLs that show up on page 70 or 70 of a second - second-layer search, in my experience through the four or so years of dealing with this or five years, the four and a half years, those URLs migrate fairly quickly to the very first page of a search of my name on Google. And so I have taken to trying to get rid of them as soon as possible so they do not migrate and show up on the first page. And then deal with them as quickly as possible and not leave them -- leave them on -- on searches of my name.

[24] MR. SENKPIEL: With respect to the suggestion, it is very helpful. I think our experience in the past is that a similar suggestion was made by I believe Madam Justice Sharma or Madam Justice Fenlon, but I am not quite sure. And the registry advised that because Their Ladyships had not formally seized themselves, we could not actually request or appear before them. I do not know if that remains the case, but --

[25] MR. NIEMELA: Well, I -- I have requested -- each time I have requested -- there has been three separate judges. Madam -- Mr. Justice N. Smith first of all and then Madam Justice Sharma and then Madam Justice Fenlon. And I have -- and in -- in around June 2016 Madam Justice Fenlon, of course, was elevated to the court of appeal. But prior to her elevation and after she made the order on April 21st I sought permission to appear before her. And there were -- there was an order in June of 2015 and July 2015 before Madam Justice Sharma. So I did make those requests, and I made the requests again before this application to appear before Mr. Justice Smith and Madam Justice Sharma. But they were not able to hear the matter, so we wound up in regular chambers.

[26] And it -- the -- it is in my opinion, submission, much easier to deal with it if we have a judge that is seized of the matter and we can appear quickly and not have to sit in chambers and now have a new judge go through all this material.

[27] THE COURT: Well, as I have said, the problem is I am going to be retiring later this calendar year. I will not be until the summer. But --

[28] MR. NIEMELA: Well --

[29] THE COURT: -- I can seize myself until then --

[30] MR. NIEMELA: Yes, certainly that --

[31] THE COURT: -- if that is helpful.

[32] MR. NIEMELA: -- that would be fine.

[33] THE COURT: Okay. I will seize myself, except for applications where I cannot be available in a timely way.

[34] MR. SENKPIEL: Thank you, My Lady.

[35] THE COURT: All right.

[36] MR. SENKPIEL: If we do not appear before you, congratulations on the impending retirement.

[37] THE COURT: Thank you. "Gray J."


## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bccourts.ca/jdb-txt/sc/17/02/2017BCSC0260.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/niemela-v-malamas-2017

Prepared on 30 October 2026 · Esheria