

U.S. newspaper can be sued in Canada

By PAUL WALDIE

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A former senior official at the United Nations has won the right to sue The Washington Post for libel in a Toronto court even though the lawsuit has nothing to do with Canada.

The case involves Cheickh Bangoura, who headed a UN agency in Africa from 1994 to 1997.

Mr. Bangoura's contract was not renewed after a series of articles appeared in The Washington Post which accused him of sexual harassment, financial improprieties and nepotism.

Two United Nations' panels later cleared him of any wrongdoing and ordered the organization to pay him compensation.

The decision "not to continue [Mr. Bangoura's] employment was tainted by abuse of power on the part of the [UN] Administration," one of the panels concluded.

Mr. Bangoura, who moved to Canada in 1997, sued the Post last year for libel in the Ontario Superior Court. He is seeking \$10-million in damages. He is also suing a former spokesman for UN Secretary-General Kofi Annan for allegedly repeating the allegations during a press conference.

The Washington Post moved to have the lawsuit dismissed and argued Ontario was not a proper venue. But in a recent ruling, Mr. Justice Romain Pitt said the case can go ahead because the newspaper made the articles available on its website.

"Those who publish via the Internet are aware of the global reach of their publications, and must consider the legal consequences in the jurisdiction of the subjects of their articles," the judge wrote.

"Admittedly, [the Post and the UN spokesman] have no connection to Ontario, but the Washington Post is a major newspaper in the capital of the most powerful country in a world now made figuratively smaller by, inter alia, the Internet."

Paul Schabas, a Toronto lawyer representing the Post, said the ruling could set an important precedent. "It's an important issue because of the potential ramifications of foreign newspapers who publish, or make their material available on the Internet, as to whether they can be sued in other countries where they might not have expected to be sued."

Mr. Schabas said the Post has not decided whether to appeal.

Kikélola Roach, a Toronto lawyer representing Mr. Bangoura, said he had no choice but to sue in Ontario.

"It's almost impossible for Mr. Bangoura to launch this case in Washington, D.C.," she said. "He has never lived there and he has no intention of moving there."

Mr. Bangoura grew up in Guinea and has a doctorate in international law, she added. He joined the UN in 1987 and later became an assistant regional director in the UN Drug Control Program in Africa.

A day after the Post articles appeared, Fred Eckhard, a spokesman for UN Secretary-General Annan, announced that Mr. Bangoura's contract would not be renewed because of the allegations in the articles.

"That basically was quite devastating to him because he was a career international civil servant," Ms. Roach said.

Mr. Bangoura appealed his case to a UN tribunal which concluded in a report released in 2002 that none of the allegations was proven. The panel also found that comments by Mr. Eckhard

were defamatory and it ordered the UN to apologize to Mr. Bangoura. Another UN panel came to similar conclusions.

"What we find totally perplexing is that here you have the UN clearing this man not once but twice, and yet the Washington Post, which is a very reputable paper, refuses to take that material off of its website," Ms. Roach said.

The newspaper has not filed a statement of defence in the case.

Ms. Roach said Mr. Bangoura has had trouble finding work since arriving in Canada. However, he is currently assisting a lawyer from her firm who is part of the defence team at the International Criminal Tribunal for Rwanda.

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Battle over nets heats up in court

Kelly Toughill

Globe and Mail

ATLANTIC CANADA BUREAU

HALIFAX—Fishing boats that drag heavy nets across the ocean floor destroy habitat crucial to the survival of Canada's once-rich fishing industry, environmentalists argued yesterday.

A long-running fight between those who fish with hooks and those who fish with nets ended up in federal court yesterday, with a Halifax environmental group asking for a judicial review of rules that allow boats to drag the ocean bottom.

"Look at the science, look at the economics, use a little common sense," Mark Butler, of the Ecology Action Centre, told reporters during a break. "There is a better way to do this."

Lawyers for the Ecology Action Centre showed dramatic footage in court of how draggers use a net to scrape the bottom of the ocean, ripping up the rocks and seaweed that juvenile fish use to hide from predators.

"The DFO (Department of Fisheries and Oceans) is not respecting its own legislation," Butler said. "By licensing draggers, they are facilitating the destruction of fish habitat."

The Ecology Action Centre has asked the court to rule that the fisheries department violated the Fisheries Act when it allowed draggers on George's Bank, a productive section of the seabed south of Nova Scotia.

More than 100 draggers now fish the Bank, Butler said, as well as long-liners, which use a hook to catch their fish. But the court case goes far beyond the battle over George's Bank.

Both sides recognized that if the court agrees with the environmentalists, the precedent could affect thousands of boats along the entire East Coast.

Roughly 30 per cent — or \$500 million — of the fish caught in Atlantic Canada each year is plucked from the sea with a net.

There is intense rivalry between fishermen who use nets and those who use hooks. Many hook-and-line fishermen blame the disappearance of cod on draggers that they say suck entire schools of fish from the ocean and destroy the habitat necessary for reproduction.

DFO officials refused to comment on the case yesterday. However, regional director Leslie Burke noted that other methods of fishing threaten endangered sea turtles and most types of fishing are incompatible with rare deep sea coral.

The DFO has restricted fishing on sensitive areas of George's Bank and elsewhere to preserve fragile habitat, he said.

Ottawa to appeal residential school ruling

Canadian Press

Globe and Mail

Friday, Feb. 6, 2004

Ottawa — The federal government will appeal to the Supreme Court to overturn a B.C. judgment that put Ottawa solely on the hook for hefty native residential school settlements in the province, sources say.

The December appeal court ruling overturned a 1998 judgment that made the United Church partly liable for abuse at a former school in Port Alberni, B.C.

The appeal judgment dealt strictly with the United Church in that case, but has implications for the Roman Catholic, Anglican and Presbyterian church groups that also ran residential schools across Canada.

Plaintiffs were being informed Friday of the Justice Department's decision to appeal to the high court, sources said.

An official announcement is expected Monday.

There is no guarantee that the top court will agree to review the case. It selects most of its docket based on whether cases are of national importance and can set legal precedents.

Ottawa has offered to pay 70 per cent of validated abuse claims that are settled out of court.

Plaintiffs must collect the rest from the church involved.

The federal government is not willing to let a judgment stand that places total responsibility for compensation on its shoulders, said a government source on condition of anonymity.

The unanimous ruling by five B.C. Court of Appeal judges made Ottawa 100 per cent liable for compensation owed to former students who were sexually abused.

That judgment overturned the trial judge's finding that Ottawa is 75 per cent liable and the United Church is 25 per cent liable.

The appeal court cited "significant developments" since the trial judge ruled, including a Supreme Court of Canada decision.

"It appears that the fact that the church is in the category of a non-profit charitable organization is one which weights in favour of not imposing vicarious liability upon it in circumstances where, as in this case, the injured party can make full recovery from Canada," wrote Justice William Esson.

Churches operated residential schools for the federal government until the 1970s. Ottawa originally set up the live-in institutions to help "Christianize" native people, starting with their children.

Former Indian affairs minister Jane Stewart officially apologized in 1998 for widespread abuse in the schools. The move unleashed a wave of lawsuits against the federal government.

More than 12,000 plaintiffs are now suing for compensation.

Ottawa has announced a \$1.7-billion plan to speed out-of-court settlements, of which it will pay 70 per cent for proven physical or sexual abuse.

At current rates, it's estimated residential school claims would drag on in court for 50 years and run up legal bills of at least \$2 billion — not including settlements.

Ottawa also faces a class-action lawsuit that, if certified, seeks up to \$12-billion in damages for all forms of abuse, including loss of native languages and culture.