

# Anonymous internet commenter fails to set aside default judgment

February 22, 2021

On February 5, 2021, the Ontario Superior Court of Justice released its decision in [Theralase Technologies Inc. v. Lanter](#), 2021 ONSC 943. The decision is the second installment in a defamation dispute between the plaintiffs and previously unidentified internet commenters. The decision confirms that remedies do exist against anonymous internet commenter defendants, particularly when the defendant is operating in a commercial or professional context.

## Background

In [Theralase Technologies Inc. v. Lanter](#), 2020 ONSC 205, the plaintiffs, a pharmaceutical company and two of its officers, obtained default judgment against a number of anonymous internet commenters who had made derogatory comments on stockhouse.com, a website designed for investors. Although the commenters could not be identified, many of them had been served via their stockhouse.com emails in accordance with a court order for substitute service. The majority of the commenters did not respond to the lawsuit.

After the default judgment was granted, the plaintiffs continued in their efforts to identify the anonymous defendants. The plaintiffs were able to identify one of the defendants and contact him. Once the defendant realized he had been identified, he moved to set the default judgment aside.

[BLG's case summary on the first decision can be found here.](#)

## The decision

The Court dismissed the defendant's motion for a number of reasons. Firstly, the defendant acknowledged previously receiving a number of emails from the plaintiffs, which he deposed he "did not actually believe to be serious." The Court saw the defendant's dismissal of the plaintiffs' service emails as a conscious decision not to participate in the proceedings. Following [Sunlife Assurance Company of Canada v. Premier Financial Group Incorporated \(Premier Financial\)](#), 2013 ONCA 151 the Court held that the defendant's motion could be dismissed on this basis alone.

The Court held that the defendant had not moved promptly to set the judgment aside, as he had waited to be identified by the plaintiff before acting. The Court added that even if the merits of the case were to be considered, the defendant’s limitations defence must fail as he cannot conceal his identity then allege that the plaintiffs ought to have found him sooner. Finally, the court added that prejudice and the interests of justice weigh in favour of the plaintiffs as they had invested significant time, effort and money into locating the defendant, and allowing the defendant to reopen the proceeding would be an “abuse of process”.

## Commentary

The decision indicates that with persistence, it may in fact be possible to successfully claim against anonymous internet commenter defendants for defamation. However, the decision does distinguish the defendant, a “seasoned professional in the investment industry”, from a non-professional, indicating that the Court may be especially harsh on defendants who post anonymously in a commercial or professional context.

By

[Natalie D. Kolos](#), [Daniel Milton](#)

Expertise

[Disputes](#), [Cybersecurity](#), [Privacy & Data Protection](#), [Insurance Claim Defence](#)

---

### BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.