

# The Guy Who Wrote 'More Than a Feeling' Just Lost a 5-Year Libel Lawsuit

It was in response to the *Boston Herald's* coverage of his bandmate's suicide.

BY LUKE O'NEIL NOV 25, 2015



The Massachusetts Supreme Court has ruled against Tom Scholz, guitarist of the band Boston, in a libel suit he brought against the *Boston Herald*, saying the musician must also compensate the tabloid for \$132,000 in expenses. It's a decision that brings a lengthy series of appeals to an end, and it could also have implications for similar cases brought against the media.

"This is a huge victory not only for the *Herald*, its publisher, its editors, and its journalists, but one for journalists across the country," the *Herald's* attorney Jeff Robbins said.

In his filings in 2010, Scholz contended that, in writing about the suicide of his longtime bandmate, singer Brad Delp in 2007, the paper, and Delp's ex-wife Micki, had falsely and maliciously placed the blame on him in a series of interviews with

the paper's gossip column "The Inside Track." (A second case brought against Micki was consolidated with the one against the *Herald*.) But the unanimous decision today found that Scholz "could not establish a required element of his libel claim, i.e., that the articles contained any false statements of fact." The court ruled:

**"Because the statements even arguably attributing responsibility for Brad's suicide to Scholz were statements of opinion and not verifiable fact, and therefore could not form the basis of a claim of defamation, we conclude that summary judgment properly was entered for the *Herald* by the second motion judge, and that the first motion judge correctly allowed Micki's motion for summary judgment."**

It's a somewhat heartening ending to what has been a sordid and saddening saga for the beloved band, who have sold over 31 million albums since their formation in 1975 and are known for hits like "More Than a Feeling." For years, the band has engaged in a series of bitter feuds, based largely around fights between Scholz and the three other founding members of the band, Barry Goudreau, Fran Sheehan, and Sib Hashian. As Delp's ex-wife contended at the time, it was that tension of being caught between the two opposing factions of the band that exacerbated Delp's mental crises. Scholz and Delp continued to tour over the years off and on with a rotating cast of of some 20 musicians.

Although Micki and Delp divorced in 1996 due to the latter's mental health issues, she said, they remained close up until the time he committed suicide by carbon monoxide poisoning. Strangely, Delp had been caught after installing a camera in the bedroom of his new wife's younger sister at the time, the guilt of which, he explained in one of his suicide notes, was too much to live with.

"Mr. Brad Delp. J'ai une solitaire. I am a lonely soul," one of them read. "I take complete and sole responsibility for my present situation."

After his suicide, the *Herald's* gossip column published a series of articles about the story sourced to friends and insiders.

"Friends said it was Delp's constant need to help and please people that may have driven him to despair. He was literally the man in the middle of the bitter break-up of Boston—pulled from both sides by divided loyalties," the first read.

In March of 2007, the *Herald* followed up with a piece that seemed, in Scholz's reading, to more forcefully point the blame at him.

"Pal's snub made Delp do it: Boston rocker's ex-wife speaks," read the headline. The story continued:

**"According to Micki Delp, Brad was upset over the lingering bad feelings from the ugly breakup of the band Boston over 20 years ago. Delp continued to work with Scholz and Boston but also gigged with Barry Goudreau, Fran Sheehan and Sib Hashian, former members of the band who had a fierce falling out with Scholz in the early '80s. As a result, he was constantly caught in the middle of the warring factions. The situation was complicated by the fact that Delp's ex-wife, Micki, is the sister of Goudreau's wife, Connie."**

A third article suggested that Scholz and Delp "Have been at odds for decades and the lingering bad feelings from the breakup of the original band more than 20 years ago reportedly drove singer Delp to take his own life in March."

As the Supreme Court found, none of those statements are legally actionable because they were not stated as fact, statements of pure opinion being constitutionally protected. In fact, even talking about why someone may have committed suicide in the first place is, by its very nature, almost always a speculative opinion, the court found, writing:

**"Although a view might be expressed as to the cause, rarely will it be the case that even those who were close to the individual will know what he or she was thinking and feeling when that final decision was made. While we can imagine rare circumstances in which the motivations for a suicide would be manifestly clear and unambiguous, this is not such a case."**

Statements from Micki, and the language used by the paper—"reportedly," "may have," and so on—further framed the information in the story as obviously theoretical deductions.

Of particular note, as regards the media, they also found that the phrase Scholz contended was the most strongly worded statement of fact—the second article's headline—was exempt, in part because it was a headline.

"The most extreme language appeared in the headline, which a reasonable reader would not expect to include nuanced phrasing," the wrote.

Another point of distinction made in the ruling was the article's appearance in an entertainment column, not the hard news section.

"In context, a reasonable reader would consider the statements about the cause of Brad's suicide to have been nothing more than conjecture or speculation, reflecting the opinion of the speaker."