

UNIFORM DEFAMATION ACT

(1994 Proceedings at page 48)

Definitions

1 In this Act,

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds that are intended to be received by the public directly or through the medium of relay stations, by means of

- (a) a device that uses electromagnetic waves,
- (b) cable, wire, fibre-optic linkage or laser beam,
- (c) a community antenna television system operated by a person licensed under the *Broadcasting Act* (Canada) to carry on a broadcasting receiving undertaking, or
- (d) an amplifier or loudspeaker transmitting a tape recording or other recording;

"court" means (*Each enacting jurisdiction should specify the proper name of the appropriate court of that jurisdiction*);

"defamation" means libel or slander;

"newspaper" means a paper that

- (a) contains news, intelligence, occurrences, pictures, or illustrations or remarks or observations on those things,
- (b) is printed for sale, and
- (c) is published periodically, or in parts or numbers, at intervals not exceeding 31 days between the publication of any two of those papers, parts or numbers;

"public meeting" means a meeting lawfully held in good faith for a lawful purpose and for the furtherance or discussion of a matter of public concern, whether admission to the meeting is general or restricted.

Action for defamation

2(1) An action lies for defamation.

(2) Where defamation is proved, damage shall be presumed.

Defamation of deceased

3(1) In this section, "interested person" means a person who, in the opinion of the court,

(a) has a sufficient business, family, professional or other relationship with the deceased person to bring an action in defamation with respect to the publication of alleged defamatory matter about the deceased person; and

(b) in bringing the action, is motivated primarily by a concern about the attack on the reputation of the deceased person.

(2) Where a person publishes matter in relation to a deceased person that would have constituted defamation if the deceased person had been alive, an interested person may bring an action for defamation against the publisher of the alleged defamatory matter for a declaration that the publisher has published defamatory matter regarding the deceased person and for an injunction preventing further publication of the defamatory matter.

(3) No action for damages shall be brought under this section.

(4) No action shall be brought under this section more than five years after the death of the person who was allegedly defamed.

Allegations of plaintiff

4(1) In an action for defamation, the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense.

(2) The pleading is put in issue by the denial of the alleged defamation, and where the matters set forth, with or without the alleged meaning, show a cause of action, the pleading is sufficient.

Single cause of action

5 A claim in defamation that is based on a single publication and that relies on the natural and ordinary meaning of the matter complained of and on other facts and circumstances that allegedly make the matter defamatory constitutes a single cause of action.

Defence to be pleaded

- 6** In an action for defamation, the defendant must expressly plead each defence relied on.

Rolled-up plea abolished

- 7** The plea known as the rolled-up plea is abolished.

Amends

- 8(1)** The defendant may pay into court, with his or her defence, moneys by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability.

- (2) The payment mentioned in subsection (1) has the same effect as payment into court in other cases.

General or special verdict

- 9(1)** On the trial of an action for defamation,

(a) the jury may give a general verdict on the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action;

(b) the court may give its opinion and directions to the jury on the matter in issue as in other cases; and

(c) the jury may find a special verdict on the issue if the jury considers it appropriate to do so.

- (2) The proceedings after the verdict, whether general or special, shall be the same as in other cases.

Consolidation of actions

- 10(1)** On an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order to consolidate those actions.

- (2) After an order has been made under subsection (1) and before the trial of the action, the defendants in a new action instituted with respect to the same or substantially the same defamation mentioned in subsection (1) are entitled to be joined in a common action on a joint application by the defendants in the new action and the defendants in the action already consolidated.

(3) In the trial of a consolidated action, the court or jury shall assess the whole amount of the damages, if any, in one sum and give a separate verdict for or against each defendant in the same way as if the consolidated actions had been tried separately.

(4) If the court or jury gives a verdict against the defendants in more than one of the consolidated actions,

(a) the court or jury shall apportion the amount of the damages between and against those defendants; and

(b) if the plaintiff is awarded the costs of the action, the judge may make any order that the judge considers just for the apportionment of the costs between and against those defendants.

Other damages, compensation

11 In an action for defamation, the defendant may plead or present evidence in mitigation of damages that the plaintiff has already recovered damages in an action, or received or agreed to receive compensation, with respect to the same defamation or a substantially similar defamation.

Apology

12(1) In an action for defamation, the defendant may plead or present evidence in mitigation of damages that the defendant made or offered to make an apology or retraction at an appropriate time and in an appropriate manner.

(2) In an action for defamation, the plaintiff may plead or present evidence in aggravation of damages that the defendant refused or failed to make an apology or retraction at an appropriate time and in an appropriate manner.

Unintentional defamation

13(1) In this section, "publisher" means a publisher of an alleged defamatory matter.

(2) A publisher who claims that an alleged defamation was innocently published may make an offer of amends to the aggrieved person under this section.

(3) A publisher who makes an offer of amends shall make the offer of amends in writing as soon as practicable after the publisher receives notice that the matter is or might be defamatory of the aggrieved person.

(4) A publisher who makes an offer of amends shall express that the offer of amends is made for the purposes of this section.

(5) An offer of amends must include:

(a) a statement of explanation setting out the facts relied on to show that the matter complained of was published innocently in relation to the aggrieved person; and

(b) an offer to publish, or join in the publication of, a suitable correction of the alleged defamatory matter and a sufficient apology.

(6) If an offer of amends is accepted by the aggrieved person and is duly performed, the aggrieved person shall not take or continue any action for defamation against the publisher with respect to the publication of the alleged defamation.

(7) Subsection (6) does not prejudice any cause of action against any other person jointly responsible for the publication of the alleged defamation.

(8) If an offer of amends is not accepted by the aggrieved person, it is a defence, in an action for defamation by the aggrieved person against the publisher, to allege and prove

(a) the facts and circumstances that establish that the alleged defamation was published innocently in relation to the plaintiff;

(b) that the offer of amends fulfilled the requirements of this section; and

(c) that the offer has not been withdrawn.

(9) For the purposes of a defence under subsection (8) and unless the court directs otherwise, no evidence, other than evidence of the facts set out in the statement of explanation mentioned in clause (5)(a), is admissible on behalf of the defendant to prove that the matter was published innocently in relation to the plaintiff.

(10) If an offer of amends is not accepted by the aggrieved person,

(a) the offer is not to be construed as an admission of liability on the part of the publisher; and

(b) without the consent of the publisher, the aggrieved person shall not refer to the offer in an action for defamation brought against the publisher with respect to the publication in question.

(11) For the purposes of this section, an alleged defamatory matter is to be treated as published innocently by the publisher in relation to the aggrieved person if the publisher exercised all reasonable care in relation to the publication and one of the following circumstances has occurred:

(a) the publisher did not intend to publish the alleged defamatory matter concerning the aggrieved person, and did not know of circumstances by virtue of which that matter might be understood to refer to the aggrieved person; or

(b) the matter was not defamatory on its face, and the publisher did not know of circumstances by virtue of which that matter might be understood to be defamatory of the aggrieved person.

(12) A reference in subsection (11) to the publisher includes a reference to any of the publisher's employees or agents who were concerned with the contents of the publication.

(13) Where an offer of amends is accepted by the aggrieved person, a judge, in default of agreement between the parties and on application by one of them, may

(a) determine the form or manner of publication of the correction or apology;

(b) order the publisher to pay the costs of the aggrieved person on a solicitor-client basis and any expenses reasonably incurred by the aggrieved person as a result of the publication in question;

(c) where there are unsold copies of the publication in question, make any order that the judge considers appropriate, including an order

(i) permitting the continuation or resumption of the distribution of those copies unamended,

(ii) requiring the inclusion in those copies of a correction of the words complained of that is adequate or reasonable in the circumstances, or

(iii) prohibiting the continuation or resumption of the distribution of those copies; or

- (d) do all or any combination of the matters described in clauses (a) to (c).

Defence of justification

14 Where an action for defamation is brought with respect to the whole or any part of alleged defamatory matter,

- (a) the defendant may allege and prove the truth of any part of that matter; and
- (b) the defence of justification is held to be established if the alleged defamation, taken as a whole, does not materially injure the plaintiff's reputation having regard to any part that is proved to be true.

Defence of fair comment

15(1) In an action for defamation, the defendant may raise the defence of fair comment where the alleged defamation is a statement of opinion on a matter of public interest, and the statement of opinion is

- (a) grounded on a substantial basis of fact;
 - (b) one that a reasonable, albeit biased, person might hold concerning those facts; and
 - (c) honestly held by the person making the statement.
- (2) The defence of fair comment is defeated where the plaintiff establishes that the defendant published the defamatory matter for malicious purposes.
- (3) Where a defendant published an alleged defamation that is an opinion expressed by another person on a matter of public interest, a defence of fair comment is not defeated by reason only that the defendant did not hold the opinion if a person could honestly hold the opinion.
- (4) The defendant mentioned in subsection (3) is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.
- (5) In an action for defamation with respect to a matter including or consisting of an expression of opinion, a defence of fair comment is not defeated by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by the defendant as a foundation for the opinion, if the assertions that are proved to be true are relevant and afford a foundation for the opinion.

Broadcasts of Parliament and legislatures privileged

- 16** The absolute privilege that attaches to words spoken during proceedings of the Parliament of Canada or the legislative assembly of a province or territory attaches to broadcasts of those proceedings if the broadcast is an unedited live or delayed broadcast of the whole or substantially the whole of the proceedings. (*Reference to "territory" should be omitted by an enacting jurisdiction that defines "province" to include territory in its Interpretation Act.*)

Reports of public proceedings privileged

- 17(1)** A fair and accurate report of the following proceedings that are open to the public is privileged, unless it is proved that the publication was made maliciously
- (a) the Senate or House of Commons of Canada;
 - (b) the legislative assembly of a province or territory of Canada;
 - (c) a committee of a body mentioned in clause (a) or (b);
 - (d) a commissioner of inquiry authorized to act under statute or other lawful authority;
 - (e) a tribunal, board, committee or body that is formed or constituted and exercises functions, under a public Act of the Parliament of Canada or of the legislative assembly of a province or territory of Canada;
 - (f) a municipal council, school board, board of education, board of health or any other board or local authority constituted under an Act of the Parliament of Canada or the legislative assembly of a province or territory of Canada; or
 - (g) a committee of a municipal council, board or local authority mentioned in clause (f).
- (2)** A fair and accurate report in a newspaper or in a broadcast of the findings or decisions of an association, or a committee or governing body of an association, relating to a person who is a member of or subject, by virtue of a contract, to the control of that association is privileged, unless it is proved that the publication was made maliciously.

(3) For the purposes of subsection (2), **"association"** means

(a) an association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in an art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate on matters of interest or concern to the association, or the actions or conduct of persons subject to that control or adjudication;

(b) an association formed in Canada for the purpose of promoting or safeguarding the interests of a trade, business, industry or profession, or of the persons carrying on or engaged in a trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate on matters connected with the trade, business, industry or profession;

(c) an association formed in Canada for the purpose of promoting or safeguarding the interests of a game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate on persons connected with or taking part in the game, sport or pastime.

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decisions of a professional body or a committee or governing body of a professional body relating to a person who is a member of or subject, by virtue of a contract, to the control of that professional body is privileged, unless it is proved that the publication was made maliciously.

(5) For the purposes of subsection (4), **"professional body"** means a body that is empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the professional body or the actions or conduct of persons subject to that control or adjudication.

(6) A fair and accurate report in a newspaper or in a broadcast of a public meeting held in Canada or of a press conference held in Canada that is convened to inform the press or other media of a matter of public concern is privileged, unless it is proved that the publication was made maliciously.

(7) The publication in a newspaper or a broadcast of a document circulated at a public meeting or press conference described in subsection (6) to persons lawfully admitted to the meeting or press conference is privileged, unless it is proved that the publication was made maliciously.

(8) The publication in a newspaper or a broadcast of a report, bulletin, notice or other document that is issued for the information of the public by or on behalf of a department, bureau, office or public officer of the Government of

Canada or of a province or territory of Canada is privileged, unless it is proved that the publication was made maliciously.

(9) In an action for defamation with respect to the publication of a report of a matter in the circumstances described in this section, the provisions of this section are not a defence if it is proved that

(a) the plaintiff asked the defendant to publish a reasonable letter or statement of explanation or contradiction at the defendant's expense and in a manner that is adequate or reasonable in the circumstances; and

(b) the defendant refused or neglected to publish the letter or statement mentioned in clause (a), or published the letter or statement in a manner that is not adequate or reasonable in the circumstances.

(10) Nothing in this section limits or abridges any privilege that now exists by law.

(11) Nothing in this section protects the publication of any matter that is not a public concern, or the publication of which is not for the public benefit.

(12) Nothing in this section applies to the publication of seditious, blasphemous or indecent matter.

Reports of proceedings in court privileged

18(1) A fair and accurate report of proceedings publicly heard before any court is absolutely privileged if the report

(a) contains no comment;

(b) is published contemporaneously with the proceedings that are the subject matter of the report, or within 30 days after those proceedings are completed; and

(c) contains nothing of a seditious, blasphemous or indecent nature.

(2) In an action for defamation with respect to the publication of a report or other matter in circumstances mentioned in subsection (1), the provisions of this section are not a defence if it is proved that

(a) the plaintiff asked the defendant to publish a reasonable letter or statement of explanation or contradiction at the defendant's expense in a manner that is adequate or reasonable in the circumstances; and

- (b) the defendant refused or neglected to publish the letter or statement mentioned in clause (a), or published the letter or statement in a manner that is not adequate or not reasonable in the circumstances.

Headlines and captions

19 Sections 17 and 18 apply to a headline or caption that relates to a report contained in a newspaper or other publication.

Where plaintiff to recover special damages only

20(1) A plaintiff shall recover only special damages if it appears on the trial that

- (a) the alleged defamation was published in good faith;
- (b) there were reasonable grounds to believe that the publication was for the public benefit;
- (c) the alleged defamation did not impute to the plaintiff the commission of a criminal offence;
- (d) the publication took place in mistake or misapprehension of the facts; and
- (e) a full and fair retraction of and a full apology for any statement in the defamatory matter alleged to be erroneous were
 - (i) published in the newspaper in which the alleged defamation was published within a reasonable time, and in a place and type that is as conspicuous as was the alleged defamation, if the alleged defamation was published in a newspaper, or
 - (ii) broadcast from broadcasting stations from which the alleged defamatory matter was broadcast within a reasonable time, on at least two occasions on different days, and at the same time of day as the alleged defamation was broadcast or as near as possible to that time, if the alleged defamation was broadcast.

(2) Subsection (1) does not apply in the case of defamation against a candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

(3) This section applies only to actions for defamation with respect to defamatory matter published in a newspaper or from a broadcasting station against

- (a) the proprietor or publisher of the newspaper;
- (b) the owner or operator of the broadcasting station; or
- (c) an officer, employee or agent of a person mentioned in clause (a) or (b).

Action against newspaper

21(1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of section 20 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

(2) The production of a printed copy of a newspaper is proof, in the absence of evidence to the contrary, of the publication of the printed copy and the truth of the information mentioned in subsection (1).

Action against broadcaster

22(1) No owner or operator of a broadcasting station who is a defendant in an action for defamation published from the broadcasting station is entitled to the benefit of section 20 unless the owner or operator complies with subsection (2).

(2) If a person sends a registered letter to the broadcasting station containing the person's return address, alleging that a defamation against the person has been broadcast from the broadcasting station and requesting the name and address of the owner or operator or the names and addresses of the owner and the operator, the owner or operator or the owner and the operator shall deliver or send by registered letter to the person the requested information within 10 days of the receipt by the broadcasting station of the first mentioned letter.