

Defamation of Character and Its Defences (All About Law, Gibson, 368-372)

Defamation is an unjustified or untrue attack on a person's reputation. The attack may be intentional or unintentional, and it must lower the person's reputation, cause people to avoid him or her, or expose the person to hatred, contempt, or ridicule. A damaged reputation may result in difficulty in finding or keeping jobs, or strained friendships. A person whose reputation has been harmed through defamation can sue for damages. In such an action, the plaintiff must establish that the defendant's statements have seriously injured his or her reputation. Otherwise, only nominal damages are possible.

Protection of a person's reputation, however, may conflict with another person's right. Freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication, are guaranteed in section 2(b) of the *Canadian Charter of Rights and Freedoms*. Across Canada, the laws governing defamation attempt to balance the rights of individuals. People should be free to seek and share information and all kinds of ideas without fear of censorship or legal action. Yet, people should not be allowed to make groundless or unproven statements about others without being subject to defamation of character laws.

For a statement to be defamatory, it must be false, be heard or read by a third party, and bring the person defamed into ridicule, hatred, or contempt. The more malicious or vicious the remarks, the more serious the tort. Defamation may take the form of slander or libel. The difference between them has been abolished by legislation in Alberta, Manitoba, New Brunswick, Prince Edward Island, and Newfoundland and Labrador.

Slander

Slander is defamation through spoken words, sounds, physical gestures, or facial expressions. Slander may be unintentional. If, for example, Niko is making negative comments to Istvan about Istvan himself, and Laura enters the room and overhears the conversation, then slander may have occurred. Even though Niko did not intend anyone but Istvan to hear the criticism, she took the risk of having her defamatory remarks overheard.

Libel

Libel is defamation in a more permanent visual or audible form than slander, such as in radio or television broadcasts, publications, cartoons, photographs, tape recordings, films, or videotapes. Like slander, libel does not have to be intentional. If a person writes defamatory statements about another in a private diary, the remarks are not libel. However, if someone else reads them, libel may exist.

Newspapers publish the names and addresses of persons arrested for criminal offences so that persons with the same names are not defamed. If a publication is sued for libel, the reporter, the editor, the publisher, and the owner are all liable for defamation. Often, however, it is the publisher or owner who pays the damages. The award may be reduced if the defendant makes an apology or prints a correction in another issue of the newspaper.

Defences for Defamation

The most common defences for defamation of character are the truth, absolute and qualified privilege, and fair comment. These defences help ensure a balance

between the protection of a person's reputation and the guarantees of freedom of speech and expression.

Truth

The best defence against defamation is to prove that the statements made are the truth. The law protects persons from false statements only. An action for damages will fail if the defendant can show that the statements made are absolutely true and justified. This is a complete defence, even if the remarks have harmed the plaintiff's reputation. However, truth is not an adequate defence if a person repeats statements that he or she believes to be true when they are actually false. Repeating remarks that harm a person's character is just as serious as making the remarks in the first place. As a result, editors and publishers of newspapers and magazines have great responsibility to ensure that their reporters' stories are completely accurate.

Absolute Privilege

Members of Parliament, members of the provincial legislatures, and all persons participating in courts, coroners' inquests, and judicial hearings are given absolute privilege. This means that they may make statements openly, honestly, and freely, without the fear of being sued. The statements must be made within the confines of where the proceedings take place. The principle of absolute privilege is based on the belief that society's interests are best served by open debate, even at the cost of someone's reputation.

However, if a defamatory statement is repeated outside the protected locations, the defamed person may take civil action. For example, if an MP makes a defamatory statement to reporters on the front step~, of the Parliament Buildings in Ottawa, which is later found to be untrue, the member could be sued for slander. If the same statement had been made within the House of Commons, absolute privilege would have protected the MP.

Qualified Privilege

People who are required to express their opinions during the course of their work are protected by qualified privilege. Its purpose is to encourage free speech on matters of public importance. Qualified privilege will succeed as a defence if the defendant can prove that the statements were made in good faith and without malice. If malice is involved as a motive, qualified privilege is not a valid defence.

The law believes that there are certain times when open and honest communication is more important than protecting a person's reputation. For instance, employers and teachers are often asked to write letters of reference for former employees and students. Also, credit-reporting agencies are required to provide information on a person's credit rating and ability to meet loan payments. Qualified privilege enables such people, acting in good faith, to provide honest, but negative, references without fear of legal action, even if the statements turn out to be untrue and defamatory. This defence is also available to doctors, nurses, and teachers who have a legal duty to report suspected child abuse.

Unlike elected federal and provincial politicians, who are granted absolute privilege in Parliament and provincial legislatures, government officials who take part in local or municipal council meetings are only granted qualified privilege.

Fair Comment

Media critics who review plays, theatre performances, sports events, and concerts provide information to the general public. Fair comment, the right to criticize openly

and honestly, is an accepted part of our society. Critics should be able to comment on matters of general interest to the public without concern for legal action. However, if the comments are not fair and can be proved to be malicious, then the defendant can be held liable. It is fair comment for a critic to offer an opinion that a particular actor has just given the worst performance of her life in her new film. It is not fair comment to make untrue statements about an actor's performance or malicious comments about a performer's private life.