

UNDERSTANDING CANADIAN DEFAMATION LAW

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If you've ever attended an event on press freedom, you've heard the question:

HOW CAN I MAKE SURE WHAT I'M PUBLISHING WON'T GET ME SUED?

The defamation lawsuit is a concern for anyone who speaks or writes about controversy.

So, to help you better understand defamation law, we've put together this primer.

WHAT IS DEFAMATION?



DEFAMATION IS
A BROAD LEGAL
CATEGORY
THAT COVERS
BOTH

SLANDER



LIBEL



SLANDER

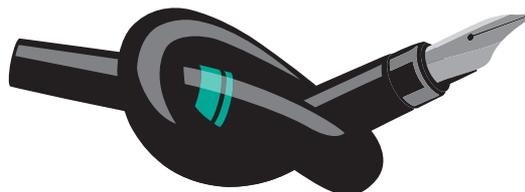
OCCURS IN
CONVERSATION



LIBEL

IS THE PUBLICATION
OR BROADCAST OF A
DEFAMATORY STATEMENT

BOTH ARISE FROM STATEMENTS THAT LOWER
A PERSON'S REPUTATION OR EXPOSE THE
PERSON TO HATRED, CONTEMPT OR RIDICULE.
THEY COULD HURT A PERSON'S LIVELIHOOD.



HOW

DOES LIBEL LAW AFFECT FREEDOM OF EXPRESSION?

Libel law may not directly curb your right to free expression,
but it can intimidate writers and media into silence.



LIBEL CHILL



is the result of such intimidation—the fear of a libel lawsuit
can discourage discourse. Strategic Litigation Against Public
Participation (SLAPPs) are lawsuits that censor, intimidate
and silence critics by burdening them with the cost of a legal
defence until they abandon their criticism or opposition.

DEFAMATION LAW IN CANADA IS CONSTANTLY EVOLVING



There have been both victories
and losses for free expression.
The list of accepted defences is still
growing, thanks to the work of
lawyers, journalists and free
expression organizations.
Many aspects of defamation
law are still undefined.



In November 2015, only two provinces had anti-SLAPP legislation: Quebec and
Ontario. British Columbia once had an anti-SLAPP law but it was repealed.

HOW DO YOU DEFEND AGAINST A DEFAMATION CLAIM?

There are a few common-law defences against a defamation claim, including **TRUTH**, **FAIR COMMENT** and **RESPONSIBLE COMMUNICATION**

TRUTH

is an absolute defence against defamation. A true statement **CANNOT** be actionable—no one is entitled to an undeserved good reputation. However, it can be very difficult to prove that a statement is true in a court of law through admissible evidence.

“I see libel law as the invisible hand of censorship.”

—Brian MacLeod Rogers, Canadian lawyer

THE DEFENCE OF

“FAIR COMMENT”

is often used for editorials and criticism, but can also cover any broadcasts or published statements of opinion and interpretation on matters of public interest. To be defensible as fair comment, the statement must express an opinion that someone could honestly hold without malice or hidden motive. It must also be based on true facts that are presented in the same story or are generally known.

FAIR COMMENT IN COURT

WIC Radio Ltd. v. Simpson (2008)

- This libel lawsuit helped strengthen the defence of fair comment.
- On air, a WIC Radio host made defamatory comments about a political activist.
- The trial judge agreed the comments were defamatory but ruled that the defence of fair comment applied. The Supreme Court of Canada agreed.

FACT: The largest award in Canada for a defamation lawsuit was \$1.6 million in *Hill v. Church of Scientology of Toronto* (1995).

THE DEFENCE OF

RESPONSIBLE COMMUNICATION

was established in 2009 to allow the publication of defamatory statements on matters of public interest, even if they can't be proven as true. The defence was created to avoid “libel chill.” To use this defence, the defendant (e.g., writer, publisher, broadcaster) must be able to show diligence in the effort to verify the defamatory information before publication and at least an attempt to include the other side's views.

RESPONSIBLE COMMUNICATION IN COURT

Grant v. Torstar Corp. (2009) and *Crookes v. Newton* (2011)

- In *Grant v. Torstar Corp.*, the court ruled that the existing defamation law in Canada was overly strict: “This, in turn, may have a chilling effect on what is published. Information that is reliable and in the public's interest to know may never see the light of day.” This ruling resulted in the creation of the “responsible communication” defence for journalists.
- In *Crookes v. Newton*, the court ruled that publishing a hyperlink to defamatory material does not make one liable for defamation. The ruling helped increase protection for journalists.



DISCLAIMER: Defamation law can vary from province to province, and it is important to check the legislation in your province. This infographic is not a substitute for the legal advice of a media lawyer. A good rule of thumb for anyone concerned about defamation: when in doubt, consult a lawyer!