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c 237 Libel and Slander Act

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CHAPTER 237

Libel and Slander Act

INTERPRETATION

1.—(1) In this Act,

Interpretation

(a) “broadcasting” means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(i) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(ii) cables, wires, fibre-optic linkages or laser beams,

and “broadcast” has a corresponding meaning.

(b) “newspaper” means a paper containing public news, intelligence, or occurrences or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. R.S.O. 1970, c. 243, s. 1 (1); 1980, c. 35, s. 1.

(2) Any reference to words in this Act shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning. R.S.O. 1970, c. 243, s. 1 (2). ^{Meaning of words extended}

LIBEL

2. Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel. ^{What constitutes libel}
R.S.O. 1970, c. 243, s. 2.

3.—(1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously: ^{Privileged reports}

1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth

that may exercise any sovereign power acquired by delegation or otherwise.

2. The proceedings of any administrative body that is constituted by any public authority in Canada.
3. The proceedings of any commission of inquiry that is constituted by any public authority in the Commonwealth.
4. The proceedings of any organization whose members, in whole or in part, represent any public authority in Canada.

Idem

(2) A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously.

Publicity releases

(3) The whole or a part or a fair and accurate synopsis in a newspaper or in a broadcast of any report, bulletin, notice or other document issued for the information of the public by or on behalf of any body, commission or organization mentioned in subsection (1) or any meeting mentioned in subsection (2) is privileged, unless it is proved that the publication thereof was made maliciously.

Decisions, etc., of certain types of association

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

1. An association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication.
2. An association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its

constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession.

3. An association formed in Canada for the purpose of promoting or safeguarding the interests of any 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 upon persons connected with or taking part in the game, sport or pastime.

(5) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. Improper matter

(6) Nothing in this section limits or abridges any privilege now by law existing or protects the publication of any matter not of public concern or the publication of which is not for the public benefit. Saving

(7) The protection afforded by this section is not available as a defence in an action for libel if the plaintiff shows that the defendant refused to insert in the newspaper or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1970, c. 243, s. 3. When defendant refuses to publish explanation

4.—(1) A fair and accurate report without comment in a newspaper or in a broadcast of proceedings publicly heard before a court of justice, if published in the newspaper or broadcast contemporaneously with such proceedings, is absolutely privileged unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. Report of proceedings in court

(2) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1970, c. 243, s. 4. Improper matter

5.—(1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to his knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. Notice of action

Where plaintiff to recover only actual damages

(2) The plaintiff shall recover only actual damages if it appears on the trial,

- (a) that the alleged libel was published in good faith;
- (b) that the alleged libel did not involve a criminal charge;
- (c) that the publication of the alleged libel took place in mistake or misapprehension of the facts; and
- (d) that a full and fair retraction of any matter therein alleged to be erroneous,
 - (i) was published either in the next regular issue of the newspaper or in any regular issue thereof published within three days after the receipt of the notice mentioned in subsection (1) and was so published in as conspicuous a place and type as was the alleged libel, or
 - (ii) was broadcast either within a reasonable time or within three days after the receipt of the notice mentioned in subsection (1) and was so broadcast as conspicuously as was the alleged libel.

Case of candidate for public office

(3) This section does not apply to the case of a libel against any candidate for public office unless the retraction of the charge is made in a conspicuous manner at least five days before the election. R.S.O. 1970, c. 243, s. 5.

Limitation of action

6. An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action. R.S.O. 1970, c. 243, s. 6.

Application of ss. 5 (1), 6

7. Subsection 5 (1) and section 6 apply only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario. R.S.O. 1970, c. 243, s. 7.

Publication of name of publisher, etc.

8.—(1) No defendant in an action for a libel in a newspaper is entitled to the benefit of sections 5 and 6 unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper.

(2) The production of a printed copy of a newspaper is admissible in evidence as *prima facie* proof of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

Copy of newspaper to be *prima facie* evidence

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that a libel against him has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 5 and 6 do not apply with respect to an action by such person against such owner or operator for the alleged libel unless the person whose name and address are so requested delivers the requested information to the first-mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station. R.S.O. 1970, c. 243, s. 8.

Where ss. 5, 6 not to apply

9.—(1) In an action for a libel in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel or, if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff.

Newspaper libel, plea in mitigation of damages

(2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he broadcast a full apology for the libel. R.S.O. 1970, c. 243, s. 9.

Broadcast libel, plea in mitigation of damages

10. In an action for a libel in a newspaper or in a broadcast, the defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1970, c. 243, s. 10.

Evidence in mitigation of damages

11. A defendant may pay into court with his defence a sum of money by way of amends for the injury sustained by the publication of any libel to which sections 5 and 9 apply, and except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment has the same effect as payment into court in other cases. R.S.O. 1970, c. 243, s. 11.

Payment into court

Consolidation of different actions for same libel

12.—(1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels the same or substantially the same in different newspapers or broadcasts, brought by the same person or persons, may make an order for the consolidation of such actions so that they will be tried together, and, after such order has been made and before the trial of such actions, the defendants in any new actions instituted by the same person or persons in respect of any such libel or libels are also entitled to be joined in the common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Assessment of damages and apportionment of damages and costs

(2) In a consolidated action under this section, the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and, if the jury finds a verdict against the defendant or defendants in more than one of the actions so consolidated, the jury shall apportion the amount of the damages between and against the last-mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he considers just for the apportionment of the costs between and against such defendants.

Application

(3) This section does not apply where the libel or libels were contained in an advertisement. R.S.O. 1970, c. 243, s. 12.

Security for costs

13.—(1) In an action for a libel in a newspaper or in a broadcast, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits and that the statements complained of were made in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given.

Where libel involves a criminal charge

(2) Where the alleged libel involves a criminal charge, the defendant is not entitled to security for costs under this section unless he satisfies the court that the action is trivial

or frivolous, or that the circumstances which under section 5 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstances that the matter complained of involves a criminal charge.

(3) For the purpose of this section, the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim. Examination of parties

(4) An order made under this section by a judge of the Supreme Court is final and is not subject to appeal, but, where the order is made by a local judge, an appeal therefrom lies to a judge of the Supreme Court whose order is final and is not subject to appeal. R.S.O. 1970, c. 243, s. 13. When order of judge respecting security final

14. An action for a libel in a newspaper or in a broadcast shall be tried in the county where the chief office of the newspaper or broadcasting station is, or in the county where the plaintiff resides at the time the action is brought; but, upon the application of either party, the court may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice or that it will promote a fair trial, and may impose such terms as to the payment of witness fees and otherwise as seem proper. R.S.O. 1970, c. 243, s. 14. Place of trial

15. On the trial of an action for libel, the jury may give a general verdict upon 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 libel and of the sense ascribed to it in the action, but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. R.S.O. 1970, c. 243, s. 15. Verdicts

16. An agreement for indemnifying any person against civil liability for libel is not unlawful. R.S.O. 1970, c. 243, s. 16. Agreements for indemnity

SLANDER

17. In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it is not necessary to allege in the plaintiff's statement of claim or to prove that special damage resulted to the plaintiff from the utterance of Slander of women

such words, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 17.

Slander affecting official professional or business reputation

18. In an action for slander for words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 18.

Slander of title, etc.

19. In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

- (a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form ; or
- (b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 19.

Security for costs

20.—(1) In an action for slander, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given.

Examination of parties

(2) For the purpose of this section, the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1970, c. 243, s. 20.

LIBEL AND SLANDER

21. In an action for libel or slander, the plaintiff may aver ^{Averments} that the words complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and, where the words set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient. R.S.O. 1970, c. 243, s. 21.

22. In an action for libel or slander where the defendant ^{Apologies} has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. R.S.O. 1970, c. 243, s. 22.

23. In an action for libel or slander for words containing ^{Justification} two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1970, c. 243, s. 23.

24. In an action for libel or slander for words consisting ^{Fair comment} partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1970, c. 243, s. 24.

25. Where the defendant published defamatory matter that is ^{Fair comment} an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. 1980, c. 35, s. 2.

