



Defamation by Doug Paterson, Q.C.

Defamation is when you communicate to others something about a person or group that is false and which hurts the character or reputation of that person or group and therefore injures them.

To prove defamation, a degree of maliciousness on the part of the Defendant must usually be proven as well.

Slander is spoken defamation and libel is printed defamation. A current example of a defamation action is that of Phoenix Coyote captain Shane Doan. He has filed a defamation lawsuit against Liberal M.P. Denis Coderre. Apparently, Coderre feels Doan made an ethnic slur to an NHL referee and therefore Coderre feels Doan should not be on Canada's Olympic hockey team. Doan denies he ever made such a remark and feels Coderre has slandered him when Coderre made his comments publicly.

Defamation actions in Manitoba are governed by the Defamation Act. It is quite modern and takes into account electronic media as well as print media.

It also takes into account the situation where the Defendant

has offered or made an apology in writing before the lawsuit or as soon as possible after the lawsuit. In that situation, damages would be reduced.

All defamation actions reaching the trial stage must be heard by a jury of six people – not the usual twelve. The jury can give a general verdict and not necessarily one that the Plaintiff requested. Also if the presiding justice, in her or his charge to the jury, gives the jury the court's opinion and directions, then the jury may also give a special verdict on certain specific issues if it thinks fit.

The Act also covers the situation where a Defendant publishes alleged defamatory matter that is an opinion expressed by another person; a defence of fair comment can be advanced by the Defendant but only if the Defendant did not know the person expressing the opinion did not hold the opinion and a person could honestly hold the opinion. Confusing and difficult – like many areas of the law.

Many everyday news reports are privileged, meaning they cannot be the subject of a defamation lawsuit. If the news report is fair

and accurate and covers a public meeting without any maliciousness, then it is privileged. Examples would be news reports of the Commons, Senate, legislature, a Royal Commission, city council or the school board.

If a news outlet publishes information at the request of a government body or officer, the contents are privileged, again if no malice was involved.

News reports of court proceedings are absolutely privileged if the report contains no comment, the report is within 30 days of the court hearing, and the report contains no seditious (hurts national security), blasphemous (antireligious) or indecent material.

One really useful section of the Act relates to publication of libel against a race, religion or sexual orientation which is likely to expose members of those groups to hatred, contempt or ridicule. If such occurs, then a member of such a group may seek an injunction from the Court of Queen's Bench to prevent the continuation and circulation of the libelous publication.