

Definitions

Defamatory Libel – Criminal Code of Canada

Definition

298. (1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

Mode of expression

(2) A defamatory libel may be expressed directly or by insinuation or irony

(a) in words legibly marked on any substance; or

(b) by any object signifying a defamatory libel otherwise than by words.

R.S., c. C-34, s. 262.

Publishing

299. A person publishes a libel when he

(a) exhibits it in public;

(b) causes it to be read or seen; or

(c) shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

R.S., c. C-34, s. 263.

Punishment of libel known to be false

300. Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 264.

Definition of Defamation (Canada)

character assassination *n* the act of deliberately attempting to destroy a person's reputation by defamatory remarks Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

Noun 1. character assassination - an attack intended to ruin someone's reputation

[assassination](#), [blackwash](#), [calumniation](#), [calumny](#), [defamation](#), [hatchet job](#), [traducement](#), [obloquy](#)

- a false accusation of an offense or a malicious misrepresentation of someone's words or actions -

Based on WordNet 3.0, Farlex clipart collection. © 2003-2008 Princeton University, Farlex Inc.

From <http://www.duhaime.org/LegalResources/TortPersonalInjury/LawArticle-76/Defamation.aspx> :

Character Assassination Law & Legal Definition From
<http://definitions.uslegal.com/c/character-assassination/>

Character Assassination refers to the slandering or vicious personal verbal attack on a person with the intention of destroying or damaging that person's reputation or confidence. In other words it is malicious verbal assaults designed to damage or tarnish the reputation of a person. Once done, these acts are often difficult to reverse or rectify. Therefore it is likened to a literal assassination of a human life. The damage sustained can last a lifetime or, for historical figures and important personalities, for many centuries after their death.

It involves a deliberate attempt to destroy a person's reputation, especially by criticizing them in an unfair and dishonest way when they are not present. It can also involve exaggeration or

manipulation of facts to present an untrue picture of the targeted person, double speak, spreading of rumors, innuendo or deliberate misinformation on topics relating to the subject's morals, integrity, and reputation. It is a form of defamation.

“**Defamation** tort law protects your reputation, not your feelings. The major points of defamation law in Canada are as follows:

Defamation is an unusual tort in that it is a "**strict liability**" tort. In other words, it does not matter if the defamation was intentional or the result of negligence.

Defamatory material is presumed to be false and malicious. "Whatever a man publishes", according to one case, "he publishes at his peril."

Defamation must be a direct attack on an actual reputation, not an alleged reputation that a "victim" believes they deserve. A judge will assess the statement against the evidence of the victim's reputation in their community.

The remarks **must be harmful** (i.e. "defamatory") and this will be assessed on a case-by-case basis. Some statements are clearly defamatory. Other statements would only be defamatory to the person targeted by the remarks. What may be a nonsensical or mildly offensive remark to one person may constitute serious defamation to another. The judge will consider the situation of the person defamed in assessing the claim of defamation.

The defamatory remark must be clearly **aimed at the plaintiff**. General, inflammatory remarks aimed at a large audience would not qualify as the remarks must be clearly pointed at a specific person.

The defamatory remarks must be somehow conveyed to a **third party**. Private defamation just between two parties causes no damage to reputation because there are no other persons to be impacted by the remarks. With **libel**, the damage is presumed as it is published. With **slander** (verbal defamation), proof of repetition to other people is essential to the claim; damages have to be proven (there are four exceptions: the defamation imputes the commission of a crime, the unchaste status of a woman, a "loathsome disease", or a **professional incompetence**).

There are a number of special defences available against defamation:

The "defamatory" remark was basically **accurate**.

The plaintiff agreed with the defamatory remarks. For example, if the plaintiff subsequently publishes the remarks, they would be hard pressed to succeed in a defamation claim.

Some special privileges exist for remarks made in certain venues such as in a court room during trial or in a legislative assembly or one of its committees. A privilege against defamation claims also exists for judicial or legislative reports.

There is what is known as a "**qualified privilege**" where remarks that may otherwise be construed as being "defamatory", were conveyed to a third party non-maliciously and for an honest and well-motivated reason. An example would be giving a negative but honest job reference. The criteria for this defence are: defamation was incidental to the protection of an interest or discharge of a duty and the remarks were given to a person who had an interest in receiving the information. In assessing this defence, judges will ask themselves whether a reasonably intelligent person would have given the information to the person to whom it was conveyed.

Citizens are entitled to make **fair comment on matters of public interest** without fear of defamation claims. A good example of this is a letter to the editor on a matter of public concern. The author of the remarks may even go so far as to presume motives on the part of the person who's actions are being criticized provided only that the imputation of motives is reasonable under the circumstances. The rule of thumb is that the **fair comment must reflect an honestly held opinion based on proven fact and not motivated by malice**. It should be noted, however, that some provinces have enacted laws which give their citizens varying rights to **fair comment**.

Situations which involve racial or hate defamation might find a more expeditious and cost-effective recourse through human rights legislation rather than defamation.

You should also be aware that most provinces have implemented very short limitation periods with regards to alleged defamation appearing in newspapers or broadcast (as short as six weeks in some cases) so time may be of the essence."

Malice From <http://www.duhaime.org/LegalDictionary/M/Malice.aspx> :

"Spite, ill-will, bad faith or indirect motive. In Ramsey v State:

"The legal and technical sense of the word malice differs from its sense in ordinary or common speech. In the technical sense it is a term of art importing wickedness and excluding a just cause or excuse. Malice in law refers to that state of mind which is reckless of law and of the legal rights of the citizen in a person's conduct toward that citizen."

In Wilkinson, Justice McMahon of the Alberta Court of Queen's Bench adopted these words:

"Malicious: characterized by, or involving, malice; having, or done with, wicked, evil or mischievous intentions or motives ; wrongful and done intentionally without just cause or excuse or as a result of ill will."

In a 1978 defamation case, Cherneskey, Justice Dickson of Canada's Supreme Court wrote, albeit in dissent:

"Malice is not limited to spite or ill will, although these are its most obvious instances. Malice includes any indirect motive or ulterior purpose, and will be established if the plaintiff can prove that the defendant was not acting honestly when he published the comment. This will depend on all the circumstances of the case."

But in 1995, in Hill v Church of Scientology, the same court added:

"Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes ... any indirect motive or ulterior purpose that conflicts with the sense of duty or the mutual interest which the occasion created.... Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth."

In the context of defamation on the defence of qualified privilege, the Court will look for an indirect motive or ulterior purpose that conflicts with the sense of duty or the mutual interest which the occasion created, or dishonesty or reckless disregard for the truth.

In ATU v ICTU, Justice Lutz of the Alberta Court of Queens Bench used these words:

"Malice may be shown either from the nature, character and relevance of the words used or from evidence as to the behaviour, motive and knowledge of the defendant when publishing them, or in defending the action, or in failing to take appropriate steps in correcting, retracting or apologizing for the defamatory remarks.

"I note that while the burden of proving malice is normally on the plaintiff, in certain circumstances, the affirmative evidence of malice may be sufficiently cogent to require the Defendant to answer it or stand condemned.

"There are a number of factors that can indicate the presence of malice. For example, malice can be found where the published statements are false, and are known to be false by the Defendant. In addition, the conduct of the parties, or the manner of use of the words can indicate the presence of malice. In addition, malice may be shown by the constant repetition of the same or similar remarks.... The evidence is admissible even though the subsequent words may be independently actionable."

| In libel and slander, malice is distinguished from irrationality, stupidity or obstinacy."