

# Defamation Act

CHAPTER 122 OF THE REVISED STATUTES, 1989

*as amended by*

2018, c. 1, Sch. A, s. 104



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CHAPTER 122 OF THE REVISED STATUTES, 1989  
amended 2018, c. 1, Sch. A, s. 104

**An Act Respecting Defamation**

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**Short title**

**1** This Act may be cited as the *Defamation Act*. R.S., c. 122, s. 1.

**Interpretation**

**2** In this Act,

(a) “broadcasting” means the dissemination of any form of radio-electric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds, by means of Hertzian waves intended to be received by the public either directly or through the medium of relay stations;

(b) “defamation” means libel or slander;

(c) “newspaper” means a paper containing news, intelligence, occurrences, pictures or illustrations, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;

(d) “public meeting” means a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted;

(e) “words” includes pictures, visual images, gestures or other methods of signifying meaning. R.S., c. 122, s. 2.

### **Broadcast is publication**

**3** For the purposes of this Act and of the law relating to libel and slander, the broadcasting of words shall be treated as publication in permanent form. R.S., c. 122, s. 3.

### **Pleading**

**4** In an action for defamation the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation and, where the matters set forth, with or without the alleged meaning, show a cause of action, the pleading is sufficient. R.S., c. 122, s. 4.

### **Apology**

**5** In an action for defamation in which the defendant has pleaded a denial of the alleged defamation 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 or printed apology to the plaintiff for the defamation before the commencement of the action or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity. R.S., c. 122, s. 5.

### **Evidence in mitigation of damages**

**6** In an action for defamation the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for defamation in respect of the publication of matter to the same effect as the matter on which the action is founded, or has received or agreed to receive compensation in respect of any such publication. R.S., c. 122, s. 6.

### **Payment into court**

**7** The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment shall have the same effect as payment into court in other cases. R.S., c. 122, s. 7.

### **Verdict of jury**

**8** On the trial of an action for defamation 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 defamation 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., c. 122, s. 8.

#### **Justification**

**9** In an action for defamation in respect of words containing 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 plaintiffs reputation having regard to the truth of the remaining charges. R.S., c. 122, s. 9.

#### **Fair comment**

**10** In an action for defamation in respect of words consisting 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., c. 122, s. 10.

#### **Consolidation of actions**

**11** Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions so that they shall be tried together, and after an order has been made and before the trial of the actions, the defendants in any new actions, instituted in respect of any such defamation shall also be entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated. R.S., c. 122, s. 11.

#### **Separate verdicts**

**12 (1)** In a consolidated action under Section 11 the court or jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately.

**(2)** If the court or jury gives a verdict against defendants in more than one of the actions so consolidated it shall apportion the amount of the damages between and against those defendants, and, if the plaintiff is awarded the costs of the action, the judge shall make such order as he considers just for the apportionment of the costs between and against those defendants. R.S., c. 122, s. 12.

#### **Privileged report**

**13 (1)** A fair and accurate report published in a newspaper or by broadcasting of any of the following proceedings that are open to the public is privileged unless it is proved that the publication was made maliciously:

(a) proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this Province or any other province of Canada or in a committee of any such bodies;

(b) proceedings of a meeting of a city, town or municipal council, the Conseil scolaire acadien provincial, a board of health or of any other board or local authority formed or constituted by or under any Act of Canada or of this Province or any other province, or of any committee of or appointed by any such body;

(c) the proceedings of any administrative body that is constituted by any public authority in Canada;

(d) the proceedings of any commission of inquiry that is constituted by any public authority in the British Commonwealth;

(e) the proceedings of a meeting of commissioners authorized to act by or pursuant to statute or other lawful warrant.

(2) A fair and accurate report published in a newspaper or by broadcasting of the proceedings of a public meeting is privileged unless it is proved that the publication was made maliciously.

(3) The publication in a newspaper or by broadcasting of a copy or a fair and accurate report or summary of a notice, report, bulletin or other document issued for the information of the public by or on behalf of any of the bodies mentioned in subsection (1) or (2) or by or on behalf of any government department, bureau or office or public officer is privileged unless it is proved that the publication was made maliciously.

(4) A fair and accurate report published in a newspaper or by a broadcasting 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:

(a) 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;

(b) 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; or

(c) 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 applies to the publication of seditious, blasphemous or indecent matter.

(6) Subsections (1), (2), (3) and (4) do not apply where

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast, or as near as possible to that time.

(7) Nothing in this Section shall limit or abridge any privilege now by law existing, or apply to the publication of any matter not of public concern or the publication of which is not for the public benefit. R.S., c. 122, s. 13; 2018, c. 1, Sch. A, s. 104.

#### **Report of court proceeding**

**14 (1)** A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court is privileged if

(a) the report contains no comment;

(b) the report is published contemporaneously with the proceedings that are the subject-matter of the report, or within thirty days thereafter; and

(c) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) does not apply where

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time. R.S., c. 122, s. 14.

**Sections 13 and 14 apply**

**15** Sections 13 and 14 apply to every headline or caption in a newspaper that relates to any report therein. R.S., c. 122, s. 15.

**Offer of amends**

**16 (1)** A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this Section and in any such case

(a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for defamation shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this Section, it shall be a defence, in any proceedings by him for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

**(2)** An offer of amends under this Section must be expressed to be made for the purposes of this Section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved and for the purposes of a defence under clause (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

**(3)** An offer of amends under this Section shall be understood to mean an offer

(a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;



(b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this Section is accepted by the party aggrieved,

(a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the Trial Division of the Supreme Court or a judge thereof, whose decision thereon shall be final;

(b) the power of the Court or judge to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under clause (a), shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question,

and if no such proceedings as aforesaid are taken, the Court or judge may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this Section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say,

(a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication, and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Clause (b) of subsection (1) shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice. R.S., c. 122, s. 16.

**Defamation action**

17 Sections 18 to 22 apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in such newspaper or from such broadcasting station. R.S., c. 122, s. 17.

**Notice of action**

18 (1) No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper [newspaper], seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days notice in writing of his intention to bring action, specifying the defamatory matter complained of.

(2) The notice shall be served in the same manner as an originating notice. R.S., c. 122, s. 18.

**Special limitation period**

19 Notwithstanding the *Limitation of Actions Act*, an action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or any officer, servant or employee of such newspaper or broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed, but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action. R.S., c. 122, s. 19.

**Court**

20 The action shall be tried in the county where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, or in the county wherein 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, and may impose such terms as to payment of witness fees and otherwise as the court deems proper. R.S., c. 122, s. 20.

**Proof of mitigation**

21 (1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant

(a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily pub-

lished at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or

(b) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) 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 defamation to the same purport or effect as that for which action is brought. R.S., c. 122, s. 21.

### Only special damage

22 (1) The plaintiff shall recover only special damage if it appears on the trial that

(a) the alleged defamatory matter was published in good faith;

(b) there was reasonable grounds to believe that the publication thereof was for the public benefit;

(c) it did not impute to the plaintiff the commission of a criminal offence;

(d) the publication took place in mistake or misapprehension of the facts; and

(e) where

(i) the alleged defamatory matter was published in a newspaper, a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter, or

(ii) the alleged defamatory matter was broadcast, the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) Subsection (1) shall not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election. R.S., c. 122, s. 22.

**Application of defamation action procedure**

**23** (1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of Sections 18, 19 and 22 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

(2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that defamation 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 18, 19 and 22 shall not apply with respect to an action by such person against such owner or operator for the alleged defamation 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., c. 122, s. 23; revision corrected.

**Application of Act**

**24** This Act applies only to causes of action arising after the thirteenth day of April, 1960. R.S., c. 122, s. 24.

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