



Technology Safety for Women and Children: Legal Remedies for Defamation

INTRODUCTION

This information sheet is designed to assist frontline anti-violence workers, usually non-lawyers, to better understand the legal causes of action related to defamation and the possible legal remedies for their clients when they are addressing defamation incidents. The sheet provides general legal information. Legal advice or representation must come from a lawyer who can advise you whether you should do something in a lawsuit or whether you should take certain actions in a court matter.

Defamation is any written or spoken words that insults a person or injures their reputation by exposing that person to hatred, contempt, or ridicule. It is unlawful for these written or spoken words to be communicated to the public, or a third person, if they are untrue or convey false information about the victim. The perpetrator may defame a victim in an online social media platform or webpage, or through emails or text messages sent to persons other than the victim.

There are several Canadian cases that illustrate what the courts have found as an actionable case for defamation. In *G(HR) v L(MS)*¹, the perpetrator sent a letter to his wife's employer saying she has a background as a "prostitute and pimp". In *Davis v Singerman*², the female perpetrator made a public Facebook post alleging child abuse by the ex-wife of her current boyfriend.

WAYS TO COLLECT EVIDENCE

Before collecting evidence ensure you are doing so safely. Ensure to the best of your ability that all the devices are not being monitored, tracked or spied on. For more information on safety on technology safety strategies

http://nnedv.org/downloads/SafetyNet/OVW/NNEDV_TechSafetyQuickTipsChart_2011.pdf

If the defamatory statement is posted on an online social media platform by the perpetrator, use the screen shot photo function on a cell phone or the print screen function option on a computer or laptop to capture the statement and identifying information about the perpetrator. It is best to also take a photo, with another camera, of the cell phone or computer, with the statement and identifying information of the perpetrator visible on the screen. Many social media platforms also contain a report function, allowing the victim to request that the image be removed from the website. This function

¹ 2007 BCSC 930.

² 2014 QCCS 70.



should be easily identifiable under or around the image and once accessed provides additional protection and a record of the image being posted and removed.

If the defamatory statement has been sent through text message, email, or an instant messaging platform to a third person who is willing to aid the victim, have that third person save the message and then take further steps to preserve the evidence. Print off emails. Take a screen shot photo of any text messages, but first ensure the phone number of the sender is visible on the screen (as opposed to only a contact name). Again, it is best to also take a photo, with another camera, of the cell phone with the message visible on the screen. Do the same for an instant messaging platform. For those available on a computer or lap top, use the print screen function. Again, it is best to also take a photo of the computer screen with the message visible on the screen.

If the defamatory statement was published online, but has now been removed, you may still be able to find the statement using an online Internet archive website such as www.archive.org. Usually, this works by going to an online archive website, typing in the name of the website where the defamatory statement was posted, and searching through the records. There is no guarantee, however, that the archive website contains the defamatory statement or that it will be easy to find if it does. Thus, it is important to save the evidence before it is removed.

If the perpetrator has communicated the defamatory statement online anonymously, it may be more difficult to prove the perpetrator's identity. In a criminal proceeding, the police may be able to get a warrant to obtain this information. In a civil proceeding, you may be able to get an order from the court to get this evidence from the website. This, however, can both be costly and timely, and almost impossible if the website is not based in Canada.

POSSIBLE LEGAL REMEDIES

If a person is being defamed by another person there are civil and criminal remedies to consider for protection, to stop the defamation, and hold the person accountable.

A. Protection Orders:

Peace Bond

A peace bond requires a potential perpetrator keep the peace and follow any other conditions specified by the court (e.g. not contact the victim). If the peace bond is entered into and any of its conditions are violated, the perpetrator can be charged criminally. You can report any violations directly to the police. Generally, the peace bond lasts for one year and there is no fee to apply. If necessary, you can apply to the court at a later stage to change or cancel the order.



If you fear that someone might commit an offence against you or somebody you know, you can ask the police to draft a peace bond. If you do not want to involve the police, you can go directly to the courthouse and ask to speak with the clerk of the criminal court, who will help you with the process.

Family Law Act Protection Order

A family law act protection order protects you and your family from physical, emotional, verbal, psychological, and sexual abuse by another family member. The definition of family member includes present or past spouses, a past or present person you have lived with in a marriage-like relationship, and a parent or legal guardian (or any of their relatives) of your child. The order can require that your family member not contact or follow you as well as stay away from your home, workplace, or any other place you frequently visit. If the family law protection order is issued and any of its conditions are violated, the perpetrator can be charged criminally. You can report any violations directly to the police. There is no fee to apply so long as you do so in the BC Provincial Court. If necessary, you can apply to the court at a later stage to change or cancel the order.

You can apply for a family law protection order directly at a provincial court to protect you and/or other members of your family from past or present family members.

B. Criminal Proceeding:

In a criminal proceeding, it is the Crown or government that starts the proceedings against a perpetrator, the accused. The purpose of the proceeding is to prosecute the accused. The victim aids only by reporting the offence, complying with police investigations, and potentially being a witness in court.

These are potential offences in the *Criminal Code* that the Crown may charge a perpetrator with in connection to defamation:

- **Defamatory libel (ss 300; 301)** – it is an offence to intentionally communicate defamatory material that the perpetrator knows to be false. There must also be an intention to damage a person's reputation.
- **Extortion by Libel (s 302)** –it is an offence to threaten to publish defamatory material in order to extort money from a person.
- **Hate speech (ss 318, 319)** – it is an offence to wilfully promote hatred against an identifiable group of society (e.g. based on sex, ethnic origin, sexual orientation, mental or physical disability, etc.).



- **Criminal harassment (s 264)** – it is an offence to send repeated and unwanted communications to a person, directly or indirectly, in a manner that causes that person to fear for their safety, either physically or psychologically (e.g. consistently posting hateful comments about a person on a social media platform). The perpetrator must know, or be reckless as to whether their behaviour is harassing.

In *R v Knight*³, the perpetrator was found guilty of defamation under s 300 of the criminal code (Defamatory Libel) for writing a letter to an ethics committee falsely accusing his ex-wife of engaging in sexual activity with mental health patients.

C. Civil Proceeding:

In a civil proceeding, it is the victim of the defamation, called the plaintiff, who starts the case against the perpetrator, who is called the defendant. The purpose of the civil case is to compensate the plaintiff or order the defendant to do, or stop from doing, certain actions (e.g. remove a comment from an online profile page). Often a lawyer is helpful, but costly. You may wish to proceed without a lawyer, however, the process can be complex and difficult to manage alone.

There is a potential action that may be used in a civil proceeding against the perpetrator – and what will need to be proven in connection to defamation is listed below:

- **Defamation**
 - the words were defamatory - in that they tend to lower the reputation of the plaintiff in the eyes of reasonable thinking members of society and
 - the words refer to the plaintiff and
 - the words were published - in that they were communicated to at least one other person – by the perpetrator.

In *Davis v Singerman*⁴, a judge found the female perpetrator liable for defamation after making a Facebook post claiming that the ex-wife of her current boyfriend was abusing her children. The perpetrator was ordered to pay the ex-wife a total of \$5,000 - the sum being lower since the perpetrator only had 18 Facebook friends, and thus, not too many people saw the post when it was “published”.

³ 2008 CarswellAlta 2299.

⁴ 2014 QCCS 70.



CONCLUSION

If working with a person who appears to have a defamation case, remember to review with her the ways to collect and preserve the evidence and then have her consider the safety planning and legal remedies available to her to keep her safe, stop the defamation and hold the perpetrator accountable.⁵

RESOURCES

General tools for victims:

www.justiceeducation.ca/legal-help/lawsuits-legal-system/lawsuits/starting-lawsuit
www2.gov.bc.ca/gov/content/safety/crime-prevention/protection-order-registry/qa

Legal Consultation:

Law Students' Legal Advice Program: 604-822-5791 www.lslap.bc.ca

Access Pro Bono: 604-878-7400 www.accessprobono.ca

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