

TECHNOLOGICALLY-FACILITATED VIOLENCE:

DEFAMATORY LIBEL CASE LAW

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A. OFFENCE ELEMENTS

Defamatory Libel

s 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.

B. SELECTED CASE LAW

I. MANITOBA

i. [1995] 4 WWR 153 (MBCA)

[1995] 4 WWR 153 (MBCA) provides a historical overview of defamatory libel and considers the constitutionality of defamatory libel provisions in the *Criminal Code*. Mr. S produced and disseminated posters which displayed a photo of his former intimate partner with text describing her as desperate and suicidal. He put the posters up around her university's campus, where the victim was studying to be a teacher. One poster claimed that the victim "could not keep a guy" and stated that she had had an abortion. Another poster stated that the victim was a known sex offender. Mr. S also sent a letter to the victim's employer purporting to be a collective of concerned parents. The letter falsely claimed that the victim posed a risk to children and had previously molested a ten-year-old boy.

At trial, the Court found that the posters contained false allegations which Mr. S made knowingly in order to insult and defame the victim. Mr. S was ultimately sentenced to 15-months imprisonment. On appeal, the Court upheld the sentence and found that s 300 of the *Criminal Code* (aggravated defamatory libel) was constitutional.

Also see: [1993] MJ No 312 (MBPC); [1994] MJ No 148 (MBQB); [1995] SCCA No 133.

II. ONTARIO

ii. 2014 ONCA 144

2014 ONCA 144 involved a restaurateur defaming an unhappy customer who posted negative reviews online. The customer telephoned Ms. S' restaurant to criticize the service she received,

and later posted reviews online. Ms. S used the customer's contact information to set up fake email accounts and used the fake accounts to send defamatory emails to the victim's employer. Ms. S also posted a sexually explicit message to an adult online-dating website claiming to be the victim and using the victim's photograph.

Defence counsel conceded that the messages amounted to libel but argued that the Crown had not proven that Ms. S authored the message beyond a reasonable doubt. The Court disagreed, finding that Ms. S created the posts and authored the defamatory messages because the dating site posting was registered and billed to Ms. S' home address. Ms. S was convicted of two counts of defamatory libel and sentenced to 90-days imprisonment. The Ontario Court of Appeal dismissed Ms. S' appeal of her conviction, but allowed the mother of three to serve her sentence intermittently on weekends.

iii. 2014 ONSC 2516

In **2014 ONSC 2516**, Mr. K applied for an order to charge his nephew with defamatory libel for comments he posted on Facebook that stated Mr. K had contributed to his wife's death, that he had acted dishonestly in a land dispute, that he was impoverished and his family had disowned him, and that a complaint had been made to the police about Mr. K. The court held that the statements did not meet the threshold of criminal libel and dismissed the application.