

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 83—Report on Defamation

Date: October 1985

The common law recognized that damage to a person's reputation is as serious a matter as an injury to their person or damage to their property. Where that damage is caused by false or malicious utterances, a remedy in damages was made available. If the false utterance was written, it was called libel; if spoken, slander. Collectively, these torts are called "defamation." As with many other torts, the interests protected by the law of defamation are not absolute; the law of defamation has not kept pace with technology, nor with the contemporary needs of a society in which the free exchange of ideas and information is crucial.

In 1983, the Law Reform Commission constituted a Special Committee to undertake an examination of the law in relation to defamation and to consider and report to the Law Reform Commission with its recommendations for its development and reform. This report was the first time that the Commission exercised its power under section 4 of the *Law Reform Commission Act* to appoint a committee charged with examining a discrete area of the law with a few to formulating recommendations for reform. The members of the committee were:

Bryan Baynham—Chairman

Barrie Adams

Jerome Atrens

Rees Brock, Q.C.

Peter Butler, Q.C.

Hon. Mr. Justice W.A. Esson

John Laxton (appointed by resolution of 28 April 1983)

David Gooderham

Michael Hunter

Kenneth C. Mackenzie

Anthony J. Spence

Hon. Mr. Justice M.R. Taylor

Bryan Williams, Q.C.

Due to conflicts with other duties, Mr. Justice Esson, Mr. Hunter, and Mr. Laxton resigned from the committee during the course of the project.

The major conclusion arising out of the Committee's report was that the existing *Libel and Slander Act* is laced with anachronisms and is wholly out of tune with legislative developments in other jurisdictions during the last 50 years. This conclusion follows from a detailed examination of the provisions of the Act, treating such subjects as the distinction between libel and slander, corporate and class action plaintiffs, privilege, fair comment, procedure and limitation periods, and remedies. Consequently, much of the report is devoted to examining and assessing approaches adopted in other jurisdictions to the reform of the law of defamation. However, the recommendations of the report are specific to the needs of British Columbia.

That report was considered and the Law Reform Commission adopted the conclusions and recommendations therein. While the Committee's recommendations were adopted, the Commission commented on two aspects of the Commission's report: the "Cherneskey Provision" and the "Rolled Up Plea." Both of these issues relate to the defence of fair comment.

The Committee's report reproduced as part of this formal report of the Law Reform Commission.

Further Developments

The report's recommendations have not been implemented by legislation.