

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Background

LRC 50—Report on Cable Television and Defamation

Date: March 1981

This report dates from a time shortly after the introduction of cable television to British Columbia. Cable television had become very popular very quickly, but the law was not so quick to react to some of the issues that arose from cable television's advent. This report is focussed on one of those issues. It concerns an anomaly in the *Libel and Slander Act*, which offers protection to conventional broadcasters but appears to exclude cable broadcasters.

The law of defamation concerns the protection of a person's reputation. Defamation occurs when a person *publishes* to a third party words, images, or other material containing a defamatory imputation against the character of another. (*Publication* in the law of defamation is a specialized term, comprising virtually any communication of information that may be received by a third party.) Defamation may be classed as either *libel* or *slander*. In simple terms, this distinction turns on the form of publication. Publication in a permanent form (such as printed or written words) is classed as libel. Publication in a transitory form (such as spoken words or gestures) is *slander*. The main significance of this distinction is that libel, but not slander, can support a lawsuit even in the absence of proof of damages.

Society's interest in protecting the reputation of persons is often in tension with another of society's interests—a free press. The press is in a particularly vulnerable position in regards to defamation. This is because much news content consists of words from other sources and the press is often at the mercy of those sources as to their accuracy. Further, one of the key principles of the law of defamation is that a person who republishes a defamatory statement made by another may be held liable. The legislature has sought to balance these concerns by means of a number of provisions in the *Libel and Slander Act*. Relevant provisions of that Act provide a privilege for reporting judicial proceedings and public meetings and give a special status to a timely apology or retraction.

The issue tackled in this report is whether these protections are available to cable television broadcasters. This issue turns on the limited definition of "broadcasting" found in section 1 of the *Libel and Slander Act*. Under that definition, "broadcasting" is "radio communication," which requires transmission of electromagnetic waves that are "propagated in space without artificial guide." The use of a cable as a means of broadcasting constitutes ar-

tificial guidance, which leaves cable television outside the scope of this definition and, as result, of the protections afforded conventional broadcasters under the Act.

The report concluded by examining the options for reform of the law. It recommended that the definition of “broadcasting” in the *Libel and Slander Act* be amended to bring cable television operators fully within the scope of the Act. The report also briefly considers the constitutional issues arising from such legislation, concluding that it would be within the legislative powers given to the province.

Further Developments

See *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (now *Libel and Slander Act*, R.S.B.C. 1996, c. 263, s. 1 “broadcasting”).