

Roy v. Ottawa Capital Area Crime Stoppers et al. 2018 ONSC 4207
Superior Court of Justice, C. MacLeod J. July 5, 2018

The plaintiff found an unattended purse in a shopping mall and turned it over to a bus driver. The owner of the purse reported it to the police as stolen. The police obtained surveillance video of the plaintiff taking the purse and posted it on the Crime Stoppers website with a caption that referred to a “purse snatching” and described the plaintiff as a “suspect” who “stole a purse”. The plaintiff sued the police and Crime Stoppers for damages for libel and negligence. The defendants brought a motion for summary judgment dismissing the claims.

Held, Crime Stoppers’ motion should be granted in part; the police motion should be dismissed.

Crime Stoppers had a complete statutory defence to the libel claim under s. 3(3) of the *Libel and Slander Act* as it published a fair and accurate synopsis of a notice issued for the information of the public by a public authority and there was no allegation of malice. The libel claim against Crime Stoppers was dismissed. The police defendants were unable to demonstrate conclusively at the summary judgment stage that they came within one of the recognized defences to a defamation action. There were genuine issues for trial on that issue and on the issue of whether either defendant owed the plaintiff a duty of care. The libel claim against the police and the negligence claim against both parties should proceed to trial.

The Law of Defamation

[16] The law of defamation is complex and seeks to balance the interests of society in protecting individuals from unjustified assaults on their reputation against the constitutionally protected right of freedom of speech. Shaped by common law and statute, there are nuanced but significant differences in the law in various jurisdictions. In 2009, the Supreme Court of Canada revisited and revised the common law as it applies in most of Canada in the *Torstar* decision. The governing statute in Ontario is the provincial *Libel and Slander Act* but the Act is not a complete code. The statute must be read together with common law principles.

[17] In the case at bar, the law to be concerned with is libel law. Whereas slander concerns the spoken word, defamation by means of publishing words or images is libel. In Canada, libel is established if the plaintiff can prove three things. **First**, the words must be defamatory, in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person. Generally, words suggesting a person is guilty of a criminal act will easily meet this test. **Second**, it must be shown that the defamatory words referred to the plaintiff. Here that is clear. **Third**, the defamatory words must have been “published”. This means that they were communicated to at

least one person other than the plaintiff. Publication on a website would easily meet this test.

[18] Under Canadian law, if these elements are established then the libel is complete. This means the words are presumed to be untrue and the plaintiff is presumed to have suffered damage.

In this sense it is a tort of strict liability. In this regard, Canadian libel law is different from the law of slander and different from libel law in the United States. While recognizing that these presumptions have been the subject of criticism, the Supreme Court reaffirmed this statement of the law in the *Torstar* decision. What is significant is that the plaintiff need not prove the statements are false nor that she sustained damage. <If the elements of the tort are established>, the onus then shifts to the defendants to advance a defence in order to escape liability.

[19] There are eight recognized defences in defamation actions. They are as follows:

- (a) *Truth or "Justification"*. The defendant may prove that the words published were justified because they are factually accurate and substantially true.
- (b) *Absolute Privilege*. Anything said or written in Parliament, in court or in a complaint to a regulatory body cannot be defamatory because it is cloaked with immunity.
- (c) *Statutory Privilege*. Section 3 of the *Libel and Slander Act* protects broadcasts or publication of fair and accurate reports of certain public meetings and proceedings. Such reports are protected unless the publication is made with malice and provided the statutory conditions are met.
- (d) *Qualified Privilege*. This exists in the absence of malice when the person communicating the information had a duty or legitimate interest in communicating the information to the person who received it and the person who received it had a corresponding duty or interest in receiving it.
- (e) *Public Interest Responsible Communication*. This is the new defence articulated by the Supreme Court in *Torstar*. Publishers are protected if they have acted responsibly by taking reasonable steps to ascertain the reliability of the information and if the information relates to a matter of public interest.
- (f) *Fair Comment*. Comments made without malice, based on fact, recognizable as comment and fairly made on a matter of public interest are protected.
- (g) *Consent*. While seldom a factor, this is a recognized defence. If the plaintiff explicitly or implicitly agreed to the publication of the libel, this is a defence.
- (h) *Statutory Bar*. Examples of statutory bars are limitation periods, statutory notice requirements, preconditions to suing or provisions providing that retraction in a specified manner limits the plaintiff's damages.

[20] To this list may be added the "innocent dissemination" defence which relieves booksellers, libraries, news vendors and Internet service providers of liability for dissemination of libellous content that they were unaware of. This defence was recognized by the Supreme Court in *Crookes v. Newton*. As stated by the court, "'subordinate' distributors may escape liability by showing that they 'have no actual knowledge of an alleged libel, are aware of no circumstances to put them on notice to

suspect a libel, and committed no negligence in failing to find out about the libel” and “some acts are so passive that they should not be held to be publication”.

Negligent Injury to Reputation

[21] Besides claiming defamation, the plaintiff has pleaded in negligence. Negligent publication leading to *reputational damage and economic* loss is actionable in Canada even if the words published would not meet the tests for defamation. This does not mean that a plaintiff can simply ignore the technicalities of defamation law and “dress up a defamation action as negligence” but concurrent or alternative liability is possible.

[22] For a claim in negligence to succeed, the plaintiff must prove a duty of care rooted in the facts of proximity and foreseeability. As with any negligence claim, the plaintiff must then prove that the defendant’s actions were careless and fell below a standard of reasonable care. Finally, the plaintiff must prove actual damages that have an economic component beyond simple harm to his or her reputation.

[23] In *Young v. Bella*,⁷ the Supreme Court upheld a finding of negligence. Specifically, the court held that a duty of care will be established when there is a relationship of sufficient proximity and in which negative consequences of a careless statement are foreseeable. If proximity and foreseeability are established and the damages cover more than just damage to reputation, a negligence claim is possible.

[45] It is the position of Crime Stoppers that in publishing police notices, it relies upon the police entirely and it enjoys immunity pursuant to s. 3(3) of the *Libel and Slander Act*. Absent malice, it argues, it is not defamatory to publish a fair and accurate synopsis in a broadcast of a notice issued for the information of the public by a public authority.

[46] I agree with this proposition. On the evidence, the publication by Crime Stoppers is “a fair and accurate synopsis” of a “bulletin, notice or other document issued for the information of the public by . . . a public authority in Canada”. As malice is not alleged and there is no evidence of malice, Crime Stoppers falls under the protection of the Act.