

Defamatory statements made in a pleading are immune to attack

Absolute Privilege | Defamation | Defences | Litigation | Litigation & Dispute Resolution | Torts

25 November 2022

The law of defamation permits a defendant to raise specialized defences to defeat a claim. The most common defences are justification/truth, qualified privilege and fair comment. However, there are other powerful specialized defences that can be raised in narrow circumstances. One of those defences is absolute privilege. The absolute privilege defence is powerful because it will protect a defendant even though the defendant may have acted with malice.

In *Lombard v. Semaganis*, 2022 SKQB 224, the court was asked to consider the absolute privilege defence on a motion to strike the plaintiff's defamation action.

The case arose out of a failed law partnership between the plaintiff, L, and her partners S and W.

Only a few years into the partnership, the partnership commenced an action against L (the "Partnership Action") in which it was alleged that, among other things, she had converted, diverted and/or misappropriated funds that should have been received by the partnership, that she had advised a client to make payment into a bank account in her name, and that she had breached her duties of loyalty and good faith to the partnership.

L contended that these statements made in the Partnership Action caused her reputational harm and irreparable loss, and that the statements were malicious and driven by ill-will. L argued that the impugned statements made in the Partnership Action went beyond merely the statement of claim therein and that they were communicated to others to be widely disseminated.

Accordingly, L claimed damages in her defamation action for \$750,000.

The lawyer acting for the partnership in the Partnership Action sought to strike L's defamation action on the grounds that the statements made in that action were protected by absolute privilege. The partnership also relied on absolute privilege and submitted that L's action disclosed no reasonable cause of action and was either frivolous, vexatious or an abuse of process. The court agreed.

The law of defamation protects statements made in the course of judicial proceedings and quasi-judicial proceedings, and statements contained in documents made in judicial or quasi-judicial proceedings with an absolute privilege. This protection has a long judicial history and extends to statements that may be malicious or false or made in bad faith provided that in the context of judicial or quasi-judicial proceedings they are intimately connected with the litigation.

In *1522491 Ontario Inc. v. Stewart, Esten Professional Corp.*, 2010 ONSC 727, Justice Ferrier succinctly stated that "absolute privilege applies to false or malicious statements in pleadings and factums."

L's claim against the partnership and its lawyer was entirely based on the allegation that defamatory statements were made in the statement of claim in the Partnership Action. Those pleadings were protected by absolute privilege and thus it was plain and obvious that L's action could not succeed against the partnership and its lawyer. L's claim simply did not disclose a reasonable cause of action.

The court ruled that since L's claim did not disclose a reasonable cause of action it was an abuse of process and that her action could not be cured by any amendment.

Although one can sympathize with L and the potential harm that might be caused to her reputation as a result of the allegations made against her in the Partnership Action, the law of absolute privilege is straightforward in the statements it protects. Absolute privilege is harsh in scope and as demonstrated in this case defamatory statements made in a pleading, whether made maliciously, without justification or excuse, or negligently, are immune to attack. The remedy to

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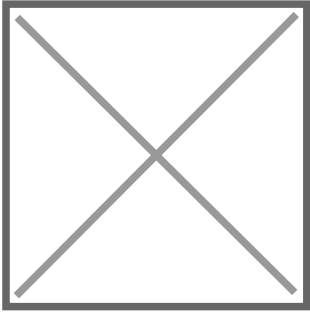
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sanction false and malicious allegations in a pleading is generally to be found by way of an award of costs in the proceeding in which the allegations were made rather than by way of a stand-alone claim for reputational damage. A PDF version is available to download [here](#).

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