BLOG

Examining Saskatchewan's new defamation act (The Defamation Act)

Defamation | Legislation | Litigation & Dispute Resolution | Torts

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Societal change and technological development often cause statutes to become outdated. With respect to the law of defamation, the statutory laws across Canada are somewhat archaic because they were drafted well before the development of the internet and the explosion in the use of social media platforms. Accordingly, statutory provisions related to the requirement to give notice for defamatory publications in the media do not, in general, apply to online defamatory publications unless they are first published in a traditional printed newspaper or aired on a radio or television broadcast.

For example, section 5(1) of Ontario's *Libel and Slander Act* (the **"LSA"**) states as follows:

No action for libel in a *newspaper* or in a *broadcast* lies unless the plaintiff has, *within six weeks* after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. (Emphasis added)

The word "broadcasting" is defined using terms that simply do not capture the dissemination of information via the internet. Under section 1 of the LSA, "broadcasting" means:

the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

- any form of wireless radioelectronic communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or
- cables, wires, fibre-optic linkages or laser beams.

"Broadcast" has a corresponding meaning.

The old statutes also fail to grant express authority to a court to order third parties, like Google, to remove defamatory publications from the internet or social media platforms or de-index defamatory publications from internet search engines. This is significant because a defamatory publication which remains accessible to the public continues to damage the reputation of the person who is defamed.

On October 1, 2026, Saskatchewan repealed its century-old defamation statute and replaced it with a modern statute, *The Defamation Act* (the **"Act"**), which is responsive to the way in which people today share information and publications on the internet.

The new legislation makes no reference to "newspapers".

Accordingly, unlike the LSA, Saskatchewan's law applies equally to all publishers, including digital and online media. This is reflected in the definition of the word "publication" found in section 2 of the Act, which states: "'Publication' includes words published in any electronic medium."

Furthermore, unlike the dual requirements of a notice period and limitation period set out in the LSA, the Saskatchewan legislation only requires a person to give 14 days' notice in writing to the publisher of the person's intention to commence an action.

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Under section 3(4) of the Act, the failure to provide notice thereunder only impacts the amount of damages and costs. In contrast, Ontario courts have determined that the failure to provide notice under the LSA is fatal to a claim.

Saskatchewan's new legislation also uses a singular definition for "defamation", essentially eliminating the distinction between "libel" (a written defamation) and "slander" (a spoken defamation). Although the use of a singular term in this area of law may conform with the accepted use and understanding of the word defamation by the public, the distinction between "libel" and "slander" may continue to be important under Saskatchewan law because, in general, the amount of damages awarded for a libel versus a slander can significantly differ due to the wider reach of a written defamation.

Another new feature of the Act is a "single publication rule". This means that the statute now codifies that the limitation period for bringing an action starts from the date of first publication and not from the date of subsequent publications or reposts. In this regard, a person who is defamed will not be able to rely on subsequent publications to shift the commencement date of the limitation period to a later date. Accordingly, the provision provides greater certainty to the law.

Most significantly, Saskatchewan's new legislation expressly empowers the court to grant orders to require requiring defamatory publications to be removed from the internet and de-indexed. These remedies are refreshing because online defamatory publications can spread rapidly and continue to cause reputational loss years after a court has concluded that an online publication is defamatory.

Although courts have used the common law to make mandatory orders against defendants to remove defamatory publications from the internet and refrain from continuing to publish defamatory statements about a plaintiff, the Act goes further by allowing the court to "order any internet intermediary or other person or organization to make every reasonable effort to remove or de-index all publications that include the defamatory words."

The term "internet intermediary" means, as adopted from Saskatchewan's *The Protection from Human Trafficking Act*, "a person or organization that hosts or indexes third party content through an online platform." Accordingly, internet search engines should familiarize themselves with Saskatchewan's new law and implement processes and procedures to ensure that they are able to comply with potential orders from the Saskatchewan courts to remove defamatory content and de-index specified content from their search engines.

Modernizing defamation laws is a step that all provinces should take in an era where online use continues to increase and some individuals use the internet and social media platforms to engage in malicious campaigns of defamatory harassment for the sole purpose of destroying a person's reputation. A person's good reputation is worthy of the strongest protection possible and, while an internet search platform or social media platform host may not be the party directly responsible for defamatory publications, they arguably have a great responsibility as good corporate citizens to act responsibly and reasonably to ensure that defamatory content is not widely disseminated and is hidden from public access and consumption. After all, social media platform hosts and search engines have significant control over access to information.

It remains to be seen whether other provinces will follow Saskatchewan's lead and amend their archaic libel and slander statutes. Although defamation statutes are not necessarily high on the priority list for amendment or redrafting, archaic statutes deserve to be modernized.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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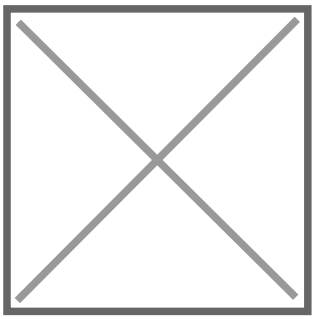

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