

# Modern, flexible approach to assessment of defamation pleading applied to republication (*Sawatzky v. Prince Albert Golf and Curling Club Inc.*)

Defamation | Litigation | Litigation & Dispute Resolution | Torts

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Pleadings are important documents in a civil litigation case. The pleadings tell the story about a dispute. Under court rules, the parties are required to describe material facts on which they rely to support their claim or defence.

For a plaintiff, a proper pleading provides notice to the defendant about the plaintiff's complaint and allows a court to determine whether legal thresholds have been met for a valid claim. Where a plaintiff fails to properly plead the necessary elements for a valid claim, a defendant can seek to have the claim dismissed for disclosing no reasonable cause of action.

In *Sawatzky v. Prince Albert Golf and Curling Club Inc.*, 2025 SKCA 16, the Saskatchewan Court of Appeal was required to assess whether a plaintiff's pleading in a defamation action had been improperly dismissed on the grounds that it failed to plead the proper elements of the tort.

The plaintiff was a former employee of the defendant golf club. He had been terminated without cause, and had received 4 weeks pay in lieu of notice.

Dissatisfied with the circumstances surrounding his dismissal, the plaintiff sued the golf club and the chairperson of its board of directors for wrongful dismissal and defamation.

With respect to the defamation claim, the plaintiff alleged that the golf club and the chairperson had made statements, couched in innuendo, that he had stolen money from the club and that he was a thief and untrustworthy. The plaintiff further alleged that third parties republished the defamatory words.

The defendants denied the allegations and brought a motion under Rule 7-9(2)(a) of *The King's Bench Rules* to strike multiple paragraphs related to the defamation allegations from the statement of claim.

*Grant v. Torstar Corp.*, 2009 SCC 61 established that to succeed in a defamation action, a plaintiff must prove: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

A plaintiff's statement of claim is required to describe the material facts that will satisfy these three elements. Although historically, the material facts would include a verbatim recounting of the defamatory words, the time and place of publication, and the names of the recipients of the defamatory statement, Canadian law has now adopted a modern, flexible approach to the assessment of defamation pleadings such a plaintiff is not necessarily required to provide full particulars of all allegations.

In *PMC York Properties Inc. v. Siudak*, 2022 ONCA 635, the Court of Appeal for Ontario stated that: “The animating principle behind the modern, flexible approach to pleadings in defamation (like the approach to pleadings in general), is that a claimant must plead in good faith and with sufficient particularity the constituent elements of the tort of defamation so that the defendant is not left in the dark as to the case to be met” [Original emphasis]

This means that while a plaintiff must still identify the exact defamatory words, if known, in the statement of claim, a claim for defamation will be allowed to proceed in circumstances where the exact defamatory words are unknown if the pleading identifies the offending communication with sufficient precision and particularity such that the defendant knows the case against them, and is able to plead to it and prepare a defence. (See *Hope v. Gourlay*, 2015 SKCA 27).

In regard to the republication of alleged defamatory statements by third parties, the plaintiff’s claim had been struck because the Chambers judge, who heard the defendants’ motion at first instance, found the statement of claim devoid of any allegation of facts capable of supporting a finding that the defendants had been responsible for the defamatory words allegedly repeated by others.

An original publisher of a defamation will be responsible for a republication, as well as the republisher themselves, where:

- i. The original publisher authorized or intended the republication;
- ii. The original statement is such that the person to whom it is made is under some moral, legal or social duty to repeat it to another and the original publisher knows of that obligation; and
- iii. The repetition or republication to a third person is in some other way the natural and probable result of the original publication.
- iv. probable result of the original publication.

In his statement of claim, the plaintiff pleaded that the particulars of the republication were that on December 30, 2020, during the golf club’s Annual General Meeting, a member of the club stated: I heard many times that [the plaintiff] was stealing. [JT] told me on the 15<sup>th</sup> hole that an email would be sent out why [the plaintiff] was fired.

At the same meeting, [NV] stated: “As a matter of fact in the November board meeting I asked about the negative and disparaging comments that were being made about [the plaintiff] and in response I was told that I didn’t have all the information and that I needed to know what was going on behind the scenes to understand some of this disparaging commentary and negative attitudes towards [the plaintiff].”

The plaintiff further alleged republication in connection with an email the club sent to all members about the fact that he had been terminated.

In a reply to a demand for particulars, the plaintiff explained that the defamatory remarks made by the chairperson had been made to three specific people and that the plaintiff relied on “each and every publication and republication that is the natural consequence of any initial publication to which he is presently aware, but of which he discovers particulars prior to trial.”

The plaintiff added: “To the best of the Plaintiff’s knowledge to date, [2 members] republished the defamatory remarks, however the Plaintiff is currently unaware of the exact dates of the republications, to whom the republications were made, and the exact words used, however, the Plaintiff is aware that the republications were made to the Board Members” identified in the reply to the demand for particulars.

The appellate court concluded that the republication claim should not have been struck because it was not plain and obvious that the statement of claim when read together with the reply to the demand for particulars disclosed no reasonable cause of action.

The appellate court also explained that the modern, flexible approach to a defamation pleading extended to pleadings for republication such that the plaintiff should not be penalized for being unaware of the precise words that were repeated by third parties.

Lastly, the appellate court found that the plaintiff was not proceeding in bad faith or that the republication claim was a fishing expedition.

Other aspects of the chambers judge’s decision to strike parts of the plaintiff’s defamation claim were upheld by the appellate court. However, the plaintiff was granted leave to amend his statement of claim to cure the deficiencies in the pleadings.

The key takeaway from this case is that the pleadings in a defamation case should precisely establish the material facts to prove the three elements of the tort. However, where the pleadings contain gaps or imprecision, a court will not necessarily strike a defamation claim due to the application of the modern and flexible approach that applies to the assessment of a defamation pleading. This modern and flexible approach applies to all claims for defamation, including a claim for republication. A PDF version is available to download [here](#).



[Stephen Thiele is a co-author of *A Practical Guide to the Law Defamation* (LexisNexis: 2024). Stephen's co-authors are his Gardiner Roberts LLP colleagues, Gavin Tighe, K.C. and James Cook.]

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