



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

DEFAMATION ACT

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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DEFAMATION ACT

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DEFAMATION ACT

CHAPTER D-5

1. Definitions

In this Act

- (a) “**broadcasting**” means the dissemination of any form of radio-electric communication, including radiotelegraph, radio-telephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;
- (b) “**defamation**” means libel or slander;
- (c) “**newspaper**” means a paper containing public news, intelligence or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;
- (d) “**public meeting**” means a meeting in good faith and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted. *R.S.P.E.I. 1974, Cap. D-3, s.1.*

2. Action lies for defamation

An action lies for defamation, and in an action for defamation, where defamation is proved, damage shall be presumed. *R.S.P.E.I. 1974, Cap. D-3, s.2.*

3. Pleadings in action

The plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation, and where the matter set forth, with or without the alleged meaning, shows a cause of action, the pleading shall be sufficient. *R.S.P.E.I. 1974, Cap. D-3, s.3.*

4. Defense, and mitigation of damages

Where the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity. *R.S.P.E.I. 1974, Cap. D-3, s.4.*

5. Payment into court with defense

The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment shall have the same effect as payment into court in other cases. *R.S.P.E.I. 1974, Cap. D-3, s.5.*

6. Jurisdiction of jury and court in action

On the trial of an action for defamation the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action; but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, and the proceedings after verdict, whether general or special, shall be the same as in other cases. *R.S.P.E.I. 1974, Cap. D-3, s.6.*

7. Application by two or more defendants, consolidation of actions

Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions, and after an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of any such defamation shall also be entitled to be joined in a common action upon a joint application by the new defendants and the defendant in the actions already consolidated. *R.S.P.E.I. 1974, Cap. D-3, s.7.*

8. Consolidated actions, jurisdiction of jury

- (1) In a consolidated action under section 7 the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately.

Apportionment of damages between defendants

- (2) If the jury finds a verdict against the defendants in more than one of the actions so consolidated, they shall apportion the amount of the damages between and against these defendants; and, if the plaintiff is awarded the costs of the action the judge shall make an order for the apportionment of the costs between and against these defendants. *R.S.P.E.I. 1974, Cap. D-3, s.8.*

9. Defence of fair comment available to publisher of opinion of third party

- (1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if,
 - (a) the defendant did not know that the person expressing the opinion did not hold the opinion; and
 - (b) a person could honestly hold the opinion.

No duty to inquire

- (2) For the purpose of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion. *1987, c.15, s.1.*

10. Reports of certain proceedings privileged

- (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, of proceedings in the Senate or House of Commons of Canada, in the legislature of this province or any other province of Canada, or in a committee of any of such bodies, or of any meeting of a municipal council, education authority, board of health, or of any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority, shall be privileged, unless it is proved that the publication was made maliciously.

Publication at request of government privileged

- (2) The publication in a newspaper or by broadcasting, at the request of any government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public shall be privileged, unless it is proved that the publication was made maliciously.

Exception to subsections (1) and (2)

- (3) Nothing in this section applies to the publication of seditious, blasphemous or indecent matter.

Exceptions to subsections (1) and (2)

- (4) Subsections (1) and (2) do not apply where,
- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or
 - (b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time. *R.S.P.E.I. 1974, Cap. D-3, s.9; 2016, c.6, s.113.*

11. Limitation on exceptions

Nothing in section 10 limits or abridges any privilege now by law existing, or applies to the publication of any matter not of public concern or the publication of which is not for the public benefit. *R.S.P.E.I. 1974, Cap. D-3, s.10.*

12. Report of court proceedings privileged

- (1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court shall be absolutely privileged if
- (a) the report contains no comment;
 - (b) the report is published contemporaneously with the proceedings that are the subject matter of the report, or within thirty days thereafter; and
 - (c) the report contains nothing of a seditious, blasphemous or indecent nature.

Exception to subsection (1)

- (2) Subsection (1) does not apply where,
- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspapers a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or
 - (b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting station from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Headlines and captions, status

- (3) For the purposes of this section, every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report. *R.S.P.E.I. 1974, Cap. D-3, s.11.*

13. Application of sections 14-19

Sections 14 to 19 apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station, or an officer, servant or employee thereof with respect to defamatory matter published in such newspaper or from such broadcasting station. *R.S.P.E.I. 1974, Cap. D-3, s.12.*

14. Notice of intended action

- (1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, five, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days notice in writing of his intention to bring an action, specifying the language complained of.

Service of notice

- (2) The notice shall be served in the same manner as an originating notice. *R.S.P.E.I. 1974, Cap. D-3, s.13.*

15. Action against proprietor or publisher of a newspaper, time limitation for action

An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action. *R.S.P.E.I. 1974, Cap. D-3, s.14.*

16. County in which action to be heard

The action shall be tried in the county where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may

direct the action to be tried, or the damages to be assessed, in any other county, and may impose terms as to payment of witness fees and otherwise. *R.S.P.E.I. 1974, Cap. D-3, s.15.*

17. Issues raised in mitigation of damages

- (1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant
 - (a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or
 - (b) broadcast such retraction and apology, from the broadcasting station from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Mitigation of damages, damages already recovered

- (2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation with respect to defamation to the same purport or effect as that for which action is brought. *R.S.P.E.I. 1974, Cap. D-3, s.16.*

18. Special damages recoverable

- (1) The plaintiff shall recover only special damage if it appears on the trial
 - (a) that the alleged defamatory matter was published in good faith;
 - (b) that there was reasonable ground to believe that the publication thereof was for the public benefit;
 - (c) that it did not impute to the plaintiff the commission of a criminal offence;
 - (d) that the publication took place in mistake or misapprehension of the facts; and
 - (e) where the alleged defamatory matter was published in a newspaper, that a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter; or
 - (f) where the alleged defamatory matter was broadcast, that the retraction and apology were broadcast from the broadcasting station from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Application of subsection (1) in case of candidate for public office

- (2) Subsection (1) does not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election. *R.S.P.E.I. 1974, Cap. D-3, s.17.*

19. Sections 14, 15 and 18 applicable only where

- (1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 14, 15 and 18 unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

***Prima facie* evidence of publication**

- (2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

Request for name of owner or operator, application of sections 14, 15 and 18

- (3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that defamation against him has been broadcast from the station and requests the name and address of the owner or the operator of the station, or the names and addresses of the owner and the operator of the station, sections 14, 15 and 18 do not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him ten days from the date on which the first mentioned registered letter is received at the broadcasting station. *R.S.P.E.I. 1974, Cap. D-3, s.18.*

20. Uniform construction of Act

This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. *R.S.P.E.I. 1974, Cap. D-3, s.19.*