

Attacks on your reputation: potential responses

Following publication of my article "Reputation and Real Estate" in the February, 1998 edition of the Canadian REALTOR News, I received a number of telephone calls from real estate agents who have found themselves in the unenviable position of having been the object of defamatory statements.

Understandably, emotionally upset victims often look directly to litigation as the "only" response in such personal matters.

Seeking a remedy under the court process is often a reasonable response. However, there are other responses which may provide a defamed person with less expensive and less disruptive alternative solutions.

Given the unlimited types of potential defamatory comments, there is a range of potential responses, several of which are discussed below.

Contact the author directly

If you are the object of a defamatory statement, the immediate and main goal is typically to ensure that further defamatory statements are not made. A secondary goal is often the receipt of an apology.

Frequently, both of these goals can be achieved by simply contacting the author of the statement and demanding that he or she (i) not publish any further such statements, and (ii) apologize or retract the statement. Such an approach may achieve one or both of the desired goals.

It will also put the author "on notice" that you object to the statement having been made. A complainant at this stage can also expressly reserve his or her right to proceed with further legal action at a later date.

Typically, compensation in the form of cash is not forthcoming from the author under this approach. However, if the desired goal is simply to "correct the record", this initial response is often, if successful, the

most satisfactory way of resolving what can otherwise become a protracted and expensive course of events.

Lawyer's letter

If you are unable to resolve the matter quickly on your own, a second option is to have your lawyer write to the author of the defamatory statement. These letters, on a similar basis described above, typically set out the statement complained of, the effect it has had and may have on the complainant, a demand that further defamatory comments not be made, a further request for an apology, and finally, a warning of further action if the other demands are not met.

Often (although not always) the receipt of a letter from a lawyer will deter an otherwise imprudent author from publishing further defamatory statements. In exchange for no further legal action, apologies and/or corrections are often forthcoming.

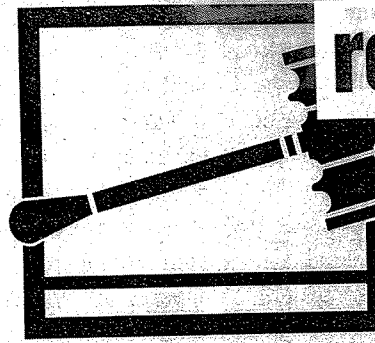
Defamation Actions

If the first two options fail, or if there is a need for an immediate and strong response, a legal proceeding can be commenced. Being sued for defamation will typically get the attention of the offending person.

The costs and potential liability of a defamation claim will often themselves provide incentives for the author of the statement to become more "willing" to resolve a matter on acceptable terms.

However, commencing litigation does not come without its costs. If the matter does not settle, defamation litigation can be very invasive and costly for everyone involved, including the complainant. As a result of discovery procedures, otherwise private information becomes the subject of examination and potentially a matter of public record.

If matters proceed through to trial, many hundreds of thousands of dollars may be spent pursuing a claim which, on the basis of the average libel award in Canada, may only be worth \$20,000 to \$30,000



The Law and You

by
Trevor Farrow

(awards may be much lower or higher, depending on the nature and extent of the defamation). At the end of the day, the cost and personal aggravation may not justify the award and of course, a favourable result is not guaranteed.

However, again depending on the nature and extent of the defamation at issue, pursuing a claim through the litigation process may be an appropriate method of dealing with a defamatory statement.

Other courses of conduct

Other resolution mechanisms exist which may reach an acceptable result, but which often entail lower legal and other costs, including private arbitration, mediation and other forms of "alternate dispute resolution". Such procedures, while typically less formal, can provide parties with effective dispute resolution mechanisms.

Parties can choose to be represented or not, depending on the nature of the process and the needs of the parties. Typical advantages include speed, privacy and lower costs.

Being the object of a defamatory statement is clearly a serious matter. The emotions involved in such situations are understandable. The traditional litigation process typically provides a reasonable forum for resolving defamation actions.

Plaintiffs are provided with an

opportunity to review the basis upon which the impugned statement was made and to attempt to "clear" their name. Defendants are also provided with an opportunity to attempt to justify and/or explain the statement.

A "day in court", while not always, can be a satisfying and therapeutic experience. Further, depending on the nature of the defamation and the result, a monetary award in the form of "damages", depending on the amount, is potentially available, although certainly not guaranteed.

However, given the costs and invasive nature of defamation litigation, it is always worthwhile to consider seriously other options. An early settlement, while not necessarily resulting in a monetary award, may be the most effective means of preserving your good name.

Defamation is a very technical area of the law. If you are the object

of a defamatory statement, it is important that you act quickly given the various limitation periods which may apply.

It is always recommended to call your lawyer. He or she will help guide you through the various potential responses which, as set out above, may resolve the matter quickly and effectively in a way that avoids a costly litigation battle.

Trevor Farrow practises civil litigation at Tory Tory DesLauriers & Binnington in Toronto, with a focus on corporate commercial litigation, including defamation litigation. He may be contacted at (416) 865-0040.

The content of the Law and You articles is necessarily general in nature and cannot be regarded as legal advice. Please consult your own lawyer to discuss the application of matters contained in this article to specific situations.