

Freedom of speech versus defamation

by Gail H. Forsythe, LL.M.



ILLUSTRATION: STEPHEN MACEACHERN

Sounding off can carry a stiff penalty.

"No *!*&! way!" bellowed the exhibitor to all at ringside, as a competitor's dog received a top award. Disgruntled with the competitor's win, the angry exhibitor spent the rest of the day 'educating' anyone who would listen about the 'faults' of the competitor's dog.

"That judge is political."

"Yes, my competitor has an okay dog... it's just too bad that he's producing puppies with [insert the genetic disorder or fault of your choice]. I'd never breed anything to that dog."

"The only reason those people win, is because they are [insert your choice of friends with the judge; related to a judge; bribing the judge]."

"That handler is terrible – ruined my friend's dog. I would never send a dog out with her."

"I've filed a complaint with the CKC. Just listen to what that person did... I'm going to get them thrown out of dogs once and for all. I'm sending copies of my complaint to every member of the club!"

Sound familiar? Do you hear this regularly in the competitive world of dogs? Does it wear you out listening to people tear apart the competition and blame others for their lack of success? Have statements of this nature (often made under the guise of educating others who are presumed to be less knowledgeable or capable of reaching their own conclusions) cost you a win, a stud service, a client or an assignment? Did the statement damage your reputation?

In the competitive world of dogs, people may say: "I have a *right* to express my point of view." In some cases, the person expressing that point of view is known by the fancy as a poor sport. The individual's opinion is ignored because the person lacks the respect of others. In other cases, the opinion is accepted and a reputation is damaged. Damage can be so severe as to compromise another person's ability to earn a livelihood, compete or do business in the dog world.

What do the courts say about damage to one's reputation? In 1995, the Supreme Court of Canada issued its judgment in *Hill v. The Church of Scientology of Toronto*. In Canada, the "right" to express oneself arises from the *Charter of Rights and Freedoms*. This case centred around the public reading

of court documents (freedom of expression) that were based on allegations that the party knew were untrue (defamation). The court stated: "the common law must be interpreted in a manner which is consistent with *Charter* principles. The common law strikes an appropriate balance between the twin values of reputation and freedom of expression. The protection of reputation is of vital importance.... Although it is not specifically mentioned in the *Charter*, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the *Charter* rights. Further, reputation is intimately related to the right to privacy, which has been accorded constitutional protection.... The law of *defamation* is not unduly restrictive or inhibiting. Freedom of speech, like any other freedom, is subject to the law and must be balanced against the essential need of individuals to protect their reputation."

The Supreme Court held that general damages in *defamation* cases are *presumed* from the very making of the false statement. The court stated: "... It is members of the community in which the defamed person lives who will be best able to assess the damages. The jury as representative of that community should be free to make an assessment of damages which will provide the plaintiff with a sum of money that clearly demonstrates to the community the vindication of the plaintiff's reputation. No cap should be placed on general damages for *defamation*.... The award of \$300,000 by way of general damages was justified in [the Hill] case."

The Supreme Court concluded that all persons involved in the spreading of the untrue commentary were liable for the damages caused by their action. In the Hill case, the untrue reports were circulated in the press and on television. The court found that the setting and the persons involved gave the coverage an aura of credibility and significance that must have influenced all who saw and read the accounts.

In the dog world, damage to reputation may originate by the making of slanderous statements (e.g., oral statements at ringside) or by making defamatory statements (e.g., written statements published by e-mail). Either way,

the making of the untrue statement (even to just one person) is the "publication" that the court will examine. The test applied is: Would a reasonable person in these circumstances believe the plaintiff's reputation suffered? The amount of damages awarded varies. In some cases, a symbolic amount is awarded; in other cases, the amount may be substantial. *Hill v. The Church of Scientology of Toronto* demonstrates that there is no upper limit! Additional damages may be recoverable for loss of business profit if the court is satisfied that a deliberate attempt was made to interfere with the plaintiff's ability to earn a livelihood – for example, by discouraging puppy buyers, bitch owners, judging assignments or handling clients.

As competitors dedicate more and more of their resources to attaining 'success' in the sport of dogs, it is just a question of time before comments similar to those at the start of this article are the subject of litigation. Whether those comments are defamatory will be decided on a case-by-case basis and in accordance with common law defences. Provincial statutory law – e.g., the *Defamation Act of Ontario* – would also apply. If you believe that the defence of "truth" applies, how will you objectively prove that truth in a court of law? Can you afford the emotional and litigation costs to do so?

What can competitors do? Difficult as it may be, resist the temptation to make negative comments about others or their dogs. Direct that energy into achieving positive accomplishments with your own dogs. Allow others the dignity of reaching their own conclusions. Demonstrate your ability to portray leadership and ethical behaviour as required by the CKC Code of Ethics. In this way, you will win the respect of others. Not only will the sport be more pleasant, but there will be no reason for a process server to knock on your door!

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