

**CONSOLIDATION OF DEFAMATION ACT**  
R.S.N.W.T. 1988,c.D-1

*(Current to: March 11, 2014)*

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2010,c.4,s.15

s.15 in force March 23, 2010

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 2011

S.Nu. 2013,c.20,s.7

s.7 in force May 16, 2013

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## DEFAMATION ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"broadcasting" means the dissemination of any form of radioelectric communication, including radio-telegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds by means of Hertzian waves; (*radiodiffusion*)

"defamation" means libel or slander; (*diffamation*)

"judge" means a judge of the Nunavut Court of Justice; (*jugé*)

"newspaper" means a paper containing

- (a) news, intelligence, occurrences, pictures or illustrations, or
- (b) remarks or observations on news, intelligence, occurrences, pictures or illustrations,

that is printed for sale and published periodically or in parts or numbers, at intervals not exceeding 36 days between the publication of any two papers, parts or numbers; (*journal*)

"public meeting" means a meeting held lawfully and in good faith for a lawful purpose and for furthering or discussing a matter of public concern, whether admission to the meeting is general or restricted. (*assemblée publique*)

S.Nu. 2010,c.4,s.15(2).

### ACTION FOR DEFAMATION

#### Action for defamation

2. An action lies for defamation and may be commenced without alleging or proving special damage.

#### Allegation of plaintiff

3. (1) In an action for defamation, 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.

#### Sufficiency of pleading

(2) A pleading in an action for defamation is put in issue by the denial of the alleged defamation and the pleading is sufficient where the matters set out in the pleading, with or without the alleged meaning, show a cause of action.

#### Apology in mitigation of damages

- 4.** In an action for defamation in which
- (a) the defendant has pleaded only a denial of the alleged defamation, or
  - (b) judgment has been given against the defendant by default or on motion for judgment on the pleadings,
- the defendant may give evidence, in mitigation of damage,
- (c) that the defendant made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or
  - (d) if the action was commenced before there was an opportunity to make or offer an apology, that the defendant did so as soon afterwards as he or she had an opportunity.

#### Payment into court

- 5.** (1) The defendant may pay into court, with his or her 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.

#### Effect of payment

- (2) A payment made under subsection (1) has the same effect as payment into court in other cases.

#### General or special verdict

- 6.** (1) Where an action for defamation is tried with a jury, the jury may give a general verdict on the whole matter in issue in the action and shall not be required or directed to find for the plaintiff merely on proof of
- (a) publication by the defendant of the alleged defamation, and
  - (b) the sense ascribed to the defamation in the action,
- but the presiding judge shall, according to his or her discretion, give his or her opinion and directions to the jury on the matter in issue as in other cases and the jury may on that issue give a special verdict if they think fit to do so.

#### Proceedings after verdict

- (2) The proceedings after verdict by a jury, whether general or special, shall be the same as in other cases.

#### General or special finding by judge

- 7.** Where an action for defamation is tried by a judge without a jury, the judge may make a finding of a general or special nature as the judge thinks fit.

#### Consolidation of actions

- 8.** (1) A judge may order the consolidation of two or more actions commenced by the same person for the same or substantially the same defamation, on the application of two or more defendants in the actions.

#### New defendants

(2) Where an order is made under subsection (1) and before the trial of the actions, the defendants in any new action commenced in respect of the defamation are entitled to be joined in a common action, on a joint application by the new defendants and the defendants in the actions already consolidated.

#### Assessment of damages in consolidated action

**9.** (1) In an action consolidated under section 8, the jury or judge, as the case may be, shall assess the whole amount of the damages, if any, in one sum, but a separate verdict or finding shall be given for or against each defendant in the same way as if the actions had been tried separately.

#### Apportionment of damages and costs

(2) A jury or judge that makes a verdict or finding against the defendants in more than one action consolidated under section 8 shall apportion the amount of the damages between and against the defendants and where the plaintiff is awarded the costs of the action, the judge shall make an order that the judge considers just apportioning the costs between and against the defendants.

#### Defence of fair comment

**10.** (1) Where the defendant published alleged defamatory matter comprising 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 have held the opinion at the time of publication.

#### 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 holds the opinion.

### PRIVILEGED PUBLICATIONS

#### Application

**11.** (1) This section does not apply to

- (a) the publication of any matter that is not of public concern;
- (b) the publication of any matter that is not for the public benefit; or
- (c) the publication of any matter that is seditious, blasphemous or indecent.

#### Privileged publications

(2) The publication in a newspaper or by broadcasting of a fair and accurate report of

- (a) a public meeting,

- (b) proceedings in the Senate or House of Commons, the Legislative Assembly, the legislature of a province or territory or a committee of any of these bodies, except proceedings to which members of the public or reporters are not admitted,
- (c) a meeting of commissioners who are authorized to act by or under an Act or other lawful warrant or authority of the Government of Canada or the government of a province or territory, or
- (d) a meeting of a board or local authority formed or constituted under an Act of Nunavut, Canada, a province or territory, or of a committee appointed by that board or local authority,

is privileged, unless it is proved that the publication was made maliciously.

#### Other privileged publications

(3) The publication in a newspaper or by broadcasting of a report, bulletin, notice or other document issued for the information of the public is privileged where the publication was at the request of a department, bureau or office or public officer of the Government of Nunavut, the Government of Canada, the government of a province or territory or the council of a municipality, unless it is proved that the publication was made maliciously.

#### Exception

(4) Subsections (2) and (3) do not apply where

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant was 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 or she has done so; or
- (b) in the case of publication by broadcasting, the plaintiff shows that the defendant was 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 or she has done so
  - (i) from the broadcasting station from which the alleged defamatory matter was broadcast,
  - (ii) at least twice on different days, and
  - (iii) at the same time or as near as possible to the same time of day as the alleged defamatory matter was broadcast.

#### Existing privileges

(5) Any privilege existing in Nunavut by law on October 27, 1949, continues to apply and is not limited or abridged by this section. S.Nu. 2010,c.4,s.15(2).

#### Absolute privilege

**12.** (1) The publication in a newspaper or by broadcasting of a fair and accurate report of proceedings publicly heard before a court is absolutely privileged, if

- (a) the report contains no comment;



- (b) the report is published contemporaneously with or within 30 days after the proceedings that are the subject-matter of the report; and
- (c) the report does not contain anything of a seditious, blasphemous or indecent nature.

#### Exception

(2) Subsection (1) does not apply where

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant was 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 or she has done so; or
- (b) in the case of publication by broadcasting, the plaintiff shows that the defendant was 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 or she has done so
  - (i) from the broadcasting station from which the alleged defamatory matter was broadcast,
  - (ii) at least twice on different days, and
  - (iii) at the same time or as near as possible to the same time of day as the alleged defamatory matter was broadcast.

#### Headlines and captions

**13.** For the purpose of sections 11 and 12, every headline or caption in a newspaper that relates to a report in the newspaper shall be deemed to be a report.

### NEWSPAPERS AND BROADCASTING

#### Application

**14.** Sections 15 to 20 apply to actions for defamation against the owner or publisher of a newspaper, the owner or operator of a broadcasting station or an officer or employee of the newspaper or broadcasting station in respect of defamatory matter published in the newspaper or broadcast from the station.

#### Notice of action

**15.** (1) No action lies unless, within three months after the publication of the defamatory matter has come to the notice or knowledge of the plaintiff, the plaintiff gives the defendant 14 days written notice of his or her intention to bring an action.

#### Contents and service of notice

(2) A notice under subsection (1) must

- (a) specify the language complained of; and
- (b) be served on the defendant in the same manner as a statement of claim.

### Limitation period

**16.** (1) An action may not be commenced more than six months after the time when the publication of the defamatory matter has come to the notice or knowledge of the person defamed.

### Other defamations

(2) An action commenced within the period specified in subsection (1) may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same broadcasting station within one year before the commencement of the action. S.Nu. 2013,c.20,s.7(2).

### Place of trial

**17.** (1) An action must be tried in the district where, at the time the action commenced,

- (a) the chief office of the newspaper or of the owner or operator of the broadcasting station is situated; or
- (b) the plaintiff resides.

### Exception

- (2) Despite subsection (1), on the application of either party, a judge may
- (a) direct the action to be tried or the damages to be assessed in another district if it appears to be in the interests of justice; and
  - (b) impose terms as to payment of witness fees and otherwise that the judge considers proper.  
S.Nu. 2010,c.4,s.15(2).

### Mitigation of damages

**18.** (1) The defendant may prove in mitigation of damages that the defamatory matter was published in the newspaper or 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 of the defamatory matter and a full apology for the defamation or, where the newspaper is ordinarily published at intervals exceeding one week, the defendant offered to publish the retraction and apology in any newspaper to be selected by the plaintiff; or
- (b) broadcast a full and fair retraction of the defamatory matter and a full apology for the defamation
  - (i) from the broadcasting station from which the defamatory matter was broadcast,
  - (ii) at least twice on different days, and
  - (iii) at the same time or as near as possible to the same time of day as the defamatory matter was broadcast.

*Idem*

(2) The defendant may prove in mitigation of damages that the plaintiff has

- (a) already commenced an action,
- (b) recovered damages, or
- (c) received or agreed to receive compensation,

in respect of defamation to the same purport or effect as that for which the action is commenced.

## Recovery of special damages

**19.** (1) The plaintiff shall recover only special damages where it appears at the trial that

- (a) the alleged defamatory matter was published in good faith;
- (b) there was reasonable ground to believe that the publication of the alleged defamatory matter was for the public benefit;
- (c) the alleged defamatory matter did not impute to the plaintiff the commission of a criminal offence;
- (d) the publication of the alleged defamatory matter took place in mistake or misapprehension of the facts; and
- (e) a full and fair retraction of and a full apology for any statement in the publication alleged to be erroneous were published before the commencement of the action
  - (i) where the alleged defamatory matter was published in a newspaper, in the same newspaper in as conspicuous a place and type as the alleged defamatory matter was published, or
  - (ii) where the alleged defamatory matter was broadcast, from the same broadcasting station at least twice on different days and at the same time or as near as possible to the same time of day as the alleged defamatory matter was broadcast.

## Exception

(2) Subsection (1) does not apply to the case of defamation against a candidate for public office unless the retraction and apology were made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the day of the election for that public office.

## Name of owner and publisher of newspaper

**20.** (1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of section 15, 16 or 19 unless the name of the owner and publisher and the address of the publication are stated in a conspicuous place in the newspaper.

## Proof

(2) The production of a printed copy of a newspaper is, in the absence of evidence to the contrary, proof of the publication of the printed copy and of the truth of the statements respecting the names and addresses referred to in subsection (1).

Names and addresses of defendants

(3) No owner, operator, officer or employee of a broadcasting station who is a defendant in an action for defamation published by broadcasting is entitled to the benefit of section 15, 16 or 19 unless the broadcasting station has, within 10 days after receiving a written request from the plaintiff, supplied the plaintiff with the names and addresses of

- (a) the owner or operator of the station; and
- (b) the officers and employees of the station who were involved in the broadcast in respect of which the action is commenced.