DEFAMATION + PUBLICATION RISK MANAGEMENT

We help individuals, businesses and institutions protect reputations, conduct litigation and solve problems arising out of the handling and distribution of information.

OUR EXPERTISE

Our clients are diverse. We respond to the various needs of clients engaged in print and electronic media and publishing. We also represent municipal governments, hospitals, universities, school boards, professional regulatory bodies, benefit providers, think tanks, as well as individual citizens and politicians, to advise on their communications and media issues and to defend their publications.

OUR SERVICES

Litigate*:* Where our clients' interests require it, we litigate. Our depth of experience in such litigation is considerable. We refer to our more notable Supreme Court and Court of Appeal decisions below.

Resolve*:* Members of our team regularly assist clients to achieve quick resolution of defamation-related disputes where litigation is not appropriate. Where warranted, we are familiar with handling retractions, clarifications and apologies.

Manage Risks in Publishing*:* We recognize that some clients have a mandate or organizational need to convey their message to the public or to a target audience. We help such clients craft appropriate strategies when silence is not an option. Prior to publication, we frequently review materials to assess the merits and likelihood of adverse action, and we recommend ways to minimize the risks involved.

We work with our clients and, where applicable, their media advisors and professional communications staff, to implement internal risk management practices and to advise on the handling of sensitive information.

Protection of Reputation*:* We are frequently retained to uphold our clients' most valuable asset - their reputation. We have experience in compelling publishers to remove infringing materials from the internet, including social media forums such as blogs and Facebook. We strive to remedy damage done by demanding and crafting effective apologies.

Insurance Issues: We have extensive experience in reporting to and working with insurers who provide coverage in this area. Our experience with

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insurance coverage issues in defamation related claims also enables us to advise clients when underwriters should be involved.

We appreciate that this area of the law frequently requires quick action and we respond accordingly. Information both on the internet and in mainstream news now travels on a 24 hour-a-day basis. The proliferation of social media has added an additional complexity for many organizations. Professionals and institutions often require immediate advice regarding their need to convey potentially defamatory messages. We act to ensure that clients have fast access to the advice they need.

Speed alone is not sufficient. Defamation and publication risk management are highly technical legal subjects and we bring a high level of expertise and experience to this area of the law.

REPRESENTATIVE MATTERS

- *Level One Construction Ltd v Burnham*, 2017 BCSC 2470: We successfully argued that the plaintiff's expert opinion as to the standard of care of a journalist/ publisher was inadmissible as it was unnecessary to assist the court in assessing the defence of responsible communication in the public interest. The trial court held that application of the defence did not require specialized or technical knowledge outside the scope of the trial judge.
- *Level One Construction Ltd v Burnham*, 2018 BCSC 1354: We successfully defended the Canadian Broadcasting Corporation in a defamation action brought by a construction company that was the subject of an consumer affairs broadcast and internet article. The court found that the CBC's publications were not defamatory, and would have been protected by the defences of fair comments and responsible communication in the public interest
- *Wiebe v. Her Majesty the Queen in Right of Canada, Bouchard et al.,* (2008) 58 C.C.L.T. (3d) 114 (B.C.S.C.): We successfully defended a libel action brought against a university professor and herresearch assistants with respect to a research report published by the federal government. The report was also published on a government website. The research report included an analysis and commentary about websites on the internet that portrayed women in negative ways. The research report included a description that a particular website was a "hate site". A libel claim against the authors of the research report was dismissed at trial. The court ruled that the content of the research report was defensible as fair comment on a matter of public interest. A subsequent appeal by the claimant was struck out.
- *Hunter v. Chandler*, [2010] B.C.W.L.D. 8027 (S.C.): We defended a British Columbia municipal councillor who was facing two allegations of slander. We successfully defended one of the allegations of slander by establishing the occasion was one of qualified privilege. This was also one of the first cases that considered the application of the new defence of responsible communication set out by the Supreme Court of Canada in the decisions of *Grant* v. *Torstar Corp.* and *Quan* v. *Cusson*.

- *Bajwa v. British Columbia Veterinary Medical Association et al.,* [2008] B.C.J. No. 905 (S.C.): We successfully defended the British Columbia Veterinary Medical Association ("BCVMA") and professional committee members and staff in several Supreme Court actions brought by 16 plaintiffs. The litigation included defamation claims against the BCVMA and its representatives, including claims in which the plaintiffs alleged that the BCVMA defamed them by publishing on their website information concerning pending discipline complaints. The plaintiffs discontinued their action shortly before trial and we obtained orders for increased costs and orders barring the plaintiffs from bringing similar claims in the future.
- *Lane v. Board of School Trustees of School District 68 (Nanaimo-Ladysmith*), [2006] B.C.J. No. 129 (S.C.): We successfully defended a local school board and four school trustees in a claim by a former school superintendent arising out of extensive media coverage involving a controversy in the local media. The claim was dismissed in its entirety after a 105 day trial and with a costs award in favour of our clients for approximately $700,000.
- *Lions Gate Marketing Company Ltd. v. Used Car Dealers Association of* Ontario (2005), 41 B.C.L.R. (4th) 243 (C.A.): We conducted a successful appeal, on behalf of an Ontario based trade association, from a trial ruling that information in a newsletter distributed by the association was defamatory. We appeared as co-counsel with the association's lead counsel from Ontario. The Court of Appeal dismissed the claim against our client.
- *P.G. Restaurant Ltd. v. Northern Interior Regional Health Board et al.* [2004] B.C.J. No. 294 (S.C.), [2006] B.C.J. No. 280 (C.A.): Our team successfully defended a regional health board in an action commenced by a restaurant after the local newspaper published an article entitled, "Vomit serves up virus at buffet." The case was dismissed against our clients as it was found that the statements made by our clients did not identify the restaurant and alternatively were protected by the defences of fair comment and justification.
- *Carter v. B.C. Federation of Foster Parents Association et al.* [2004] B.C.J. No. 137 (S.C.), [2005] B.C.J. No. 398 (C.A.): We acted in a case involving allegations of internet defamation arising from comments that were published on a chat room forum operated by our client and on a website referred to by our client in a newsletter. This case raised a number of novel issues involving libel and internet publication and was one of the first Canadian cases to consider the issue of limitation periods in the context of internet publication.
- *William v. Kelowna (City) et al.* 2012 BCSC 421: We successfully defended the City of Kelowna in a defamation and negligence action by arguing, among other things, that the alleged negligence was not causative of the plaintiff's loss and the alleged defamation was defensible on the basis of qualified privilege.

NETWORKS + AFFILIATIONS

Our leaders are members of Ad IDEM, Advocates In Defense of Expression in Media, also known as the Canadian Media Lawyers Association (CMLA).

OUR LITIGATION WORK

Where our clients' interests require it, we litigate. Our depth of experience in such litigation is considerable. Above, we refer to more notable Supreme Court and Court of Appeal decisions. We have also appeared before tribunals, including the Immigration of Refugee Board, to successfully obtain cameras in the hearing room and oppose applications for publication bans.