

DEFAMATION

Your Reputation & The Law

LEGAL INFO 
NOVA SCOTIA



DEFAMATION: LIBEL & SLANDER

A good reputation is part of your self-worth and dignity. Once harmed, a good reputation is hard to get back.

The law of **defamation** protects a person's reputation from harm that is not justified.

Defamation is communication about a person that tends to hurt their reputation. It causes people who read or hear the communication to think less of the person.

The law doesn't protect you from a personal insult or a remark that injures only your pride. It protects your reputation in the minds of others, not your feelings.

For example, if someone in a public meeting calls you a nasty word, your feelings might be hurt, but you would have a difficult time showing the communication lowered your reputation in the minds of others.

If someone tells others you cheat in your business dealings, then you would have a much stronger claim that this harms your reputation and is defamatory.

The law tries to balance a person's right to protect their reputation against competing rights such as the guarantee of freedom of expression under the [Charter of Rights and Freedoms](#).

Sometimes, even though someone makes a defamatory statement that harms a person's reputation, the law may say another right, like freedom of expression, is more important.

This legal information is about civil defamation. It does not talk about criminal defamation. Defamation can also be a crime under the [Criminal Code](#), but criminal charges for defamation are rare. This information does not give legal advice.

DIFFERENT FORMS OF DEFAMATION: LIBEL AND SLANDER

Libel

If defamation is written or recorded in some other way, it is called **libel**. Libel is defamation that leaves a permanent record. Examples of libel are statements on social media or other online platforms, in newspapers, letters, or emails, or on radio or TV broadcasts. Libel can also be a picture.

Slander

If the defamation leaves no permanent record, it is called **slander**. Mostly this is spoken statements. It can also be a hand gesture or something similar.

Under Nova Scotia's [Defamation Act](#), libel and slander are treated the same: either can be 'defamation', and can be the basis of a civil lawsuit.

Defamation can be committed against a group or an individual.

OPTIONS IF SOMEONE MADE DEFAMATORY COMMENTS ABOUT YOU

Collect all of the information you can about:

- ▶ what was said and to who,
- ▶ whether it was published somewhere (and if so, keep a copy),
- ▶ when it was said and how often (dates),
- ▶ whether it was repeated by anyone else, and
- ▶ any damaging effects that you have noticed. This might include money loss, loss of business or customers, emotional or psychological effects.

If you've been bullied online or had intimate pictures of you shared without your consent, you're protected under Nova Scotia's *Intimate Images and Cyber-protection Act*. See "Online bullying" below, and contact [Nova Scotia CyberScan](https://novascotia.ca/cyberscan/) at novascotia.ca/cyberscan/ or call 902-424-6990 or 1-855-702-8324 for help.

You might try writing a 'cease and desist' letter. This is a letter telling the person to stop making the defamatory comments right now and in the future. The letter can threaten to sue if the defamatory statements do not stop. You could write the letter yourself or hire a lawyer to write it for you.

Ask the person to publicly retract (take back) the comments and apologize.

If someone defames you, you might be able to sue them for money (called **damages**) for harming your reputation.

It is a good idea to contact a lawyer and get advice about whether you have the basis to sue the person who made the comments, or to perhaps get them to retract them and apologize.

You should get advice as soon as possible as there are time limits, called limitation periods, on when you can sue and they can vary depending on who you plan to sue. The limitation period in certain defamation cases can be as short as 3 to 6 months, so it is a good idea to get advice as soon as possible after you learn that defamation happened. If the limitation period is missed, a judge will not allow the claim to proceed, even if it has merit.

To show that someone defamed you, you must show that the communication:

- ▶ was defamatory — that it would tend to lower your reputation in the eyes of a reasonable person,
- ▶ referred to *you*,
- ▶ was false, and
- ▶ was communicated by the defendant to at least one other person.

You are not required to show the defendant *intended* to do harm, or even that the defendant was careless. If you prove the required elements, the defendant must then prove a **defence** in order to escape liability.

DEFENCES TO A DEFAMATION CLAIM

The following are defences to a defamation claim:

Consent

If you give your consent for a defamatory statement to be published, you cannot sue the publisher for defamation.

Truth or justification

A statement may hurt your reputation, but if the statement is true, that is a complete defence to a defamation claim. The person who made the statement can defend their statement by proving it is more likely true than not.

Absolute privilege — Statements made in a court or tribunal process

A statement made in a court or tribunal process is protected by a defence of **absolute privilege**. This is a complete and unqualified defence to an action for defamation.

This defence protects defamatory statements made in a civil lawsuit. It covers statements made in court, as well as all steps to prepare for court, including court filings and examinations for discovery.

Absolute privilege also protects defamatory statements made in all stages of a criminal case. For example, a complaint to the police is protected by absolute privilege — as long as the complaint is not repeated to others.

Absolute privilege also protects a person who makes a defamatory statement in a proceeding that is like court (called quasi-judicial), like a hearing before a professional regulatory body such as the Nova Scotia Barristers' Society or a human rights tribunal hearing.

And absolute privilege protects statements in Parliament or a provincial legislature.

Some of the reasons for this protection include:

- ▶ allowing people to freely represent their position in court
- ▶ encouraging witnesses to give full and frank testimony, without worrying about people suing them afterward.

But absolute privilege does not protect a person who repeats their statement outside of the court or tribunal process.

Qualified privilege

A defamatory statement made in performing a public or private duty can be protected by **qualified privilege**. The protection only applies to statements made to people with a corresponding interest in receiving the statement.

An example of qualified privilege is when a previous employer provides a bad reference to a potential employer. If the previous employer honestly believes what they are saying in providing the bad reference, qualified privilege may protect them.

The duty can be legal, social, or moral. The test is whether a person of ordinary intelligence would think there was a duty to give the information to the audience it was made to.

There are no exact rules about when qualified privilege applies. It depends on the facts of a case. If the communication is made under qualified privilege, the defence applies even when very strong language is used, or the statement is false. However, the communication must be relevant to the reason for which it was made.

If a defendant acted with malice (with an intention to cause harm) in making a defamatory statement, they cannot rely on the defence of qualified privilege.

It is hard to rely on this defence for statements made on the internet because the defence protects a person only if they limit their defamatory statements to people who have an interest in hearing the communication. Defamatory statements on the internet are not limited this way. Instead, they go to the public in general. So they do not meet this test unless it is a matter the public would be interested in, or the communication is on a members-only site or service and not open to the public.

Fair comment

We all are free to comment — even harshly — about issues of public interest, as long as we are clear that our comments are:

- ▶ expressed in a way that shows they are opinion, not fact,
- ▶ based on facts that can be proven and those facts are either stated or otherwise known to readers or listeners, and
- ▶ not made maliciously (on purpose to hurt someone).

For example, a newspaper columnist may write about a politician who says they support equality and equal rights, but are opposed to same-sex marriages. The columnist may write that the politician is hypocritical. If the politician sues the columnist for defamation, the columnist may put forward the defence of fair comment.

Responsible communication on matters of public interest

A more recent defence to defamation claims deals with reporting on matters of public interest. Journalists should be able to report statements and allegations — even if not true — if there's a public interest in distributing the information to a wide audience. This defence, which looks at the whole context of a situation, can apply if:

- ▶ the news was urgent, serious, and of public importance, and
- ▶ the journalist used reliable sources, and tried to get and report the other side of the story.

The courts have defined the term “journalist” widely to include bloggers and others publishing material of public interest in any medium.

Innocent dissemination

The defence of innocent dissemination is important in the internet era. Generally, a person who takes part in publishing a defamatory statement is responsible for its publication. This includes a writer, editor, printer, and distributor. But a person who acts only as a distributor may be able to rely on the defence of innocent dissemination if they:

- ▶ did not know they were distributing a defamatory statement, and
- ▶ were not negligent in not knowing, and
- ▶ removed the statement from their website or from distribution right away when they learned of the defamatory statement.

The defamer can also be liable for damages caused by a third party repeating the defamatory comment(s).

SOMEONE REPORTED ME TO THE POLICE AND I WAS CHARGED WITH A CRIME BUT FOUND NOT GUILTY — CAN I SUE?

Anyone may report a crime to the police if they honestly believe that a crime has been committed. In order to encourage citizens to report crime such reports to the police are considered in the public interest and are protected by a qualified privilege. However, if the person who reported you did not honestly believe that you had committed a crime, but instead acted maliciously or recklessly when reporting you to the police, this privilege will not protect them. In this situation, the person might be charged with a crime themselves, such as public mischief, but you may also be able to sue them for malicious prosecution.

I GOT A LETTER CONTAINING LIES ABOUT ME — CAN I SUE FOR DEFAMATION?

To sue for defamation, the statements must in some way be communicated to a person other than you. If someone sends you a letter making defamatory statements about you, but does not show or send the letter to anyone else, there will be no harm to your reputation and you will not be able to sue for defamation. The communication to a third party must be made without your consent, so you still will not be able to sue for libel even if you show the letter to someone else.

WHAT'S INVOLVED IN SUING SOMEONE FOR DEFAMATION?

A defamation claim happens in the Supreme Court of Nova Scotia. Nova Scotia Small Claims Court cannot deal with defamation – it is outside its jurisdiction (power).

A defamation claim must be brought within a specific time limit called the **limitation period**. The clock starts running when the defamatory statement was made or published, or when the person harmed finds out about the defamatory statement, whichever is later. In some case the time limit for making a defamation claim may be as short as three (3) months, so it is a good idea to act as soon as possible and get legal advice about time limits.

To start the lawsuit, you must file documents in court and deliver them to (“serve” them on) the other party. You can get information about going to the Supreme Court of Nova Scotia at www.courts.ns.ca.

A few things to think about before starting a lawsuit:

- ▶ Going to the Supreme Court of Nova Scotia is time-consuming, stressful, and expensive. Even if you win, you may spend more on legal fees than you get in damages. A court can award costs to the winner of a lawsuit, but costs cover only a small portion of your full legal costs.
- ▶ You risk paying the defendant's costs (some or all of their legal fees) if you lose.
- ▶ Does the person you want to sue have money to pay you if you win?

WHAT KINDS OF DAMAGES MIGHT BE AWARDED IN A DEFAMATION LAWSUIT?

If the person bringing a defamation lawsuit (the "plaintiff") can prove the defendant defamed them, and the defendant does not have a defence to the claim, then a court may award general damages for loss of reputation. General damages can range from small to large amounts. It depends on several factors, including:

- ▶ the plaintiff's position and standing in the community,
- ▶ the nature and seriousness of the defamation,
- ▶ the mode and extent of publication,
- ▶ the absence or refusal of any retraction or apology, and
- ▶ the conduct of the defendant from the time of the defamatory statements to judgment.

The mode and extent of publication is a particularly significant consideration in assessing damages in internet defamation cases.

The plaintiff may also be entitled to **special damages**, such as lost earnings, but only if they can prove that the lost earnings resulted from the defamatory statement, and not from other factors.

If someone makes defamatory statements with malice (an intent to injure), the plaintiff may also be entitled to aggravated or even punitive damages.

WHAT IS THE EFFECT OF AN APOLOGY?

A timely and public apology or retraction does not prevent someone from suing for defamation. But the person whose reputation was harmed may decide an apology is enough and decide not to sue.

If a case goes to trial though, the compensation awarded by the court may be lower, as a timely apology or retraction may limit the damages.

CAN DEFAMATION HAPPEN ONLINE?

Yes. Online statements are typically treated in the same way as statements published in any other way, with the same potential defences. In some countries, even comments made in chat rooms have been considered defamatory. As the internet is international, you may be sued for defamation by people outside Canada. Generally, the laws of the country you are being sued from apply instead of Canadian laws, unless you are able to show good reasons why Canadian law should apply instead.

Even if you win a lawsuit in Canada against someone who lives outside Canada and who defamed you online, other countries may not be willing to enforce a Canadian judgment. It may be hard to collect damages if the person you are suing does not have assets in Canada.

ONLINE BULLYING

Nova Scotia's *Intimate Images and Cyber-protection Act* deals with cyber-bullying, intimate images and personal privacy online. The law aims to protect people from being bullied online, or from having intimate images of themselves shared without their consent. Cyber-bullying is when someone uses electronic communication, like email, text messaging or social media communication, to harm your health or well-being. They might be doing this on purpose to hurt you or they might not care about hurting you.

Examples of cyber-bullying:

- ▶ creating a website, blog or profile that takes your identity
- ▶ sharing sensitive personal information or breaking your confidence
- ▶ threatening, intimidating, harassing or scaring you online
- ▶ making false statements about you
- ▶ communications that are grossly offensive, indecent, or obscene
- ▶ encouraging you to commit suicide.

Cyber-bullying can include encouraging or forcing someone else to do these things.

The law also protects you if someone distributes a private intimate image of you, such as an intimate photograph, film, or video, without your consent. An intimate image is one that is private, and shows sexual activity or nudity or partial nudity. It is an image you have good reason to think will stay private.

For example, without asking you and to try to hurt you, your former partner posts a private, sexually explicit, intimate picture of you on Facebook that you had good reason to think was going to stay private.

A cyber-protection order can order the person to stop the bullying and/or sharing of images, and do things like:

- ▶ stop the person from contacting you
- ▶ order that they take down or disable access to an intimate image or communication about you; and/or
- ▶ award damages to the victim.

You can apply to the Supreme Court of Nova Scotia for a cyber-protection order — the Small Claims Court cannot make those orders. You can apply with a lawyer’s help or on your own. A parent or guardian of a victim under the age of 19 can also apply to Supreme Court for a cyber-protection order. You can get information about applying to the Supreme Court of Nova Scotia for a cyber-protection order at courts.ns.ca.

Nova Scotia’s CyberScan Unit oversees Nova Scotia’s Intimate Images and Cyber-protection Act and can give you help and information, including about applying to court for a cyber-protection order. Contact CyberScan at novascotia.ca/cyberscan/ or call 902-424-6990 or 1-855-702-8324.

FOR MORE INFORMATION

- ▶ [Contact a lawyer in private practice](#)
- ▶ Contact the Legal Information Society of Nova Scotia by telephone at **1 800 665-9779** or **902-455-3135**, email questions@legalinfo.org or live chat at legalinfo.org, for free legal information
- ▶ Get information about going to the Supreme Court of Nova Scotia at courts.ns.ca
- ▶ There is a Free Legal Clinic for people who are representing themselves at the Supreme Court of Nova Scotia. Go to courts.ns.ca for more information
- ▶ Nova Scotia’s [Defamation Act](#) is online at nslegislature.ca/sites/default/files/legc/statutes/defamation.pdf
- ▶ Online bullying and harassment support and information — CyberScan at novascotia.ca/cyberscan or call **902-424-6990** or **1-855-702-8324**.

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