

## Case In Point

# The Truth Hurts: Employer Not Liable In Defamation For Bad Reference Because It Was True

**Date:** April 27, 2017

The Ontario Superior Court has affirmed that employers are not liable for defamation when they provide candid and truthful references about former employees.

In *Papp v Stokes et al*, 2017 ONSC 2357, the plaintiff, Adam Papp, worked as an economist for Stokes Economic Consulting for 2.5 years when his employment was terminated without cause in December 2013. After Mr. Papp was let go, he asked Ernest Stokes, the president of Stokes Economic Consulting, to be a reference. Mr. Stokes agreed.

Between May and July of 2014, Mr. Papp went through a screening process for a position with a prospective employer which included an interview. After the interview, Mr. Papp was advised that he was the top-ranked candidate subject to reference checks. In July 2014, the prospective employer contacted Mr. Stokes for a reference. The prospective employer took notes of the conversation which, among other things, indicated that Mr. Stokes said that Mr. Papp did not get along well in a team setting and did not get on “greatly” with his co-workers. In response to a question about whether Mr. Stokes would re-hire Mr. Papp, he responded “no way.”

Ultimately, Mr. Papp was advised he would not be offered the job because of the reference check. Mr. Papp sued Stokes Economic Consulting and Mr. Stokes for defamation, wrongful dismissal, punitive, exemplary and aggravated damages, and intentional infliction of mental suffering.

In a helpful decision for employers, the Court dismissed Mr. Papp’s defamation claim relating to the reference provided by Mr. Stokes.

The Court considered the test for defamation as set out in *Grant v. Torstar*. Specifically, in order to prove a claim in defamation Mr. Papp was required to prove three things:

1. that the impugned words would lower his reputation in the eyes of a reasonable person;
2. that the words in fact referred to him; and
3. that the words were published, meaning they were communicated to at least one person other than Mr. Papp.

The Court found that the reference provided by Mr. Stokes was defamatory because: 1) it tended to lower Mr. Papp’s reputation in the eyes of the prospective employer; 2) the words in fact referred to Mr. Papp; and 3) the words were published (e.g. communicated to the prospective employer).

However, Mr. Stokes was not liable for defamation because his reference was protected by two defences: justification (truth) and qualified privilege.

First, the Court found that the reference provided by Mr. Stokes was substantially true. The evidence established that Mr. Papp’s co-workers found it difficult to work with Mr. Papp because, among other things, he conveyed a feeling of superiority and he did not work well in the team setting. The defence of justification applied.

Second, the Court accepted that words published in the context of reference checks fall into an accepted category of qualified privileged. In order to defeat the defence of qualified privilege, Mr. Papp had to prove that there was malice. However, the Court found no evidence of malice. In particular, Mr. Stokes provided a reference that he genuinely believed to be true and he

took steps to verify the information he had been provided about Mr. Papp with various individuals in the workplace. He had also attempted to discuss Mr. Papp's positive traits with the prospective employer.

The Court's decision reaffirms that employers may provide truthful references about employees without being liable for defamation. However, employers providing references should be careful to ensure that they take steps to verify the information if it is not firsthand knowledge, that they have a clear and objective justification for providing a negative reference and they are not acting with malice or in bad faith when providing the reference.