

## Case In Point

# Appellate Court Confirms Employer not Liable for Defamation for a Negative Reference Where the Reference is True

**Date:** March 28, 2018

The Divisional Court has affirmed that an employer is not liable for defamation where a candid and truthful reference about a former employee has been provided.

In [Papp v Stokes et al](#), the plaintiff had sued his former employer (Stokes Economic Consulting) and its President (Ernest Stokes) for defamation, wrongful dismissal, punitive, exemplary and aggravated damages, and damages for the intentional infliction of mental suffering. The plaintiff brought the claim after he was advised by a prospective employer that he would not be offered a job as a result of the reference provided by Mr. Stokes.

At trial, the trial judge dismissed the plaintiff's defamation claim. Although trial judge found that the reference provided by Mr. Stokes was defamatory, the reference was protected by two defences: justification (truth) and qualified privilege. Ultimately, the trial judge's decision confirmed that an employer may provide truthful references about its former employees without being liable for defamation.

The plaintiff [appealed this decision to the Divisional Court](#), citing five grounds of appeal:

1. the trial judge erred in not specifying the defamatory words or their meaning
2. the trial judge erred in accepting unpleaded defences of justification and qualified privilege
3. the trial judge failed to provide adequate reasons for the credibility findings
4. the trial judge failed to adequately address the claims of intentional infliction of mental suffering, bad faith in the manner of dismissal, aggravated damages and punitive damages, and
5. if leave is granted to appeal the cost award, the trial judge erred in principle or rendered a clearly wrong award.

The appeal failed on all grounds, except in regards to the cost award, which was remitted to the trial judge.

The Court's decision confirms that employers may provide truthful references, which may be negative, about former employees without being liable for defamation. However, employers providing a negative reference should be careful to ensure that steps are taken to verify the information if it is not firsthand knowledge, there is 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.