

# **Social Media and the Law – Gourmet v Risotto**

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### Social Media and the Law – Gourmet v Risotto

In today's world, technology gives people a plethora of opportunities to express their opinions regarding other people, society as a whole, and topics of interest to the general public. In Canada, freedom of expression allows all citizens to express their opinions without the threat of prosecution; this freedom is outlined in s.2 (b) of the Canadian Charter of Rights and Freedoms. One can declare their opinions through various forms of the media, utilizing resources such as the newspaper, television, radio, and Internet as means of assertion.

However, there arrives a time when a statement can cross the proverbial line that separates an honest opinion from an expression directed at damaging a person's reputation. If a released statement maliciously degrades an individual, the speaker of that statement can be sued for defamation by the targeted individual. Defamation is the damage to a person's reputation, caused by hateful comments that can either be written or spoken (Defamation: Libel and Slander). In the sample case, Rachel Risotto fabricates horrible fallacies on an internet blog. These fallacies are intended to damage the reputation of her classmate, Gavin Gourmet, and ruin his chances of employment. This type of defamation is known as libel, as it is written and permanently recorded (Defamation: Libel and Slander). Given Rachel's lack of justification for her actions, the absence of qualified privilege, and her failure to remain civil and truthful while announcing her opinions, Gavin will be successful if he launches a lawsuit against Rachel for defamation.

Gavin would most likely be successful if he launched a lawsuit against Rachel for defamation, due to the damages he suffered and Rachel's lack of justification for the malicious comments she made. One of the most common defenses for libel is justification, in which the defendant attempts to justify the reason for his or her libelling words. A defendant can argue that the statements made about the plaintiff were true, and that they reflect on her freedom of expression. They can avoid all consequences

if they are able to prove the truth behind their statements (Defamation: Libel and Slander). When analyzing the tort case between Gavin and Rachel, it is evident that Gavin was never employed as a waiter at ABC Restaurant, and therefore he could have never been fired for theft. The burden of truth is placed solely on Rachel, the defendant, for if she pleads justification as her defense, she must fully intend to prove the truth of her declarations, as “no withdrawal, apology, or mitigation of damages is compatible with this defence... it must be fully proved” (Pepper). In this case, the evidence provided by the defendant is greatly contradictory to the statements made online by the plaintiff, thus rendering it almost impossible that she wins this case on basis of justification. In fact, the consequences suffered by Rachel will most likely be augmented due to her inability to justify, or prove the truth, of her defamatory statements regarding Gavin’s work habits (Pepper).

Rachel’s lack of qualified privilege in the case also will provide Gavin the opportunity to be successful, should he launch a lawsuit. The defence of qualified privilege can be defined as when “remarks that may otherwise be defamatory were conveyed to a third party non-maliciously and for an honest and well-motivated reason” (Defamation: Libel and Slander). The theory behind this defence is that as long as the degrading comments are published as criticism by a member of authority, then he or she who uttered the comments is protected against a defamation lawsuit. In other words, if the speaker of the defamatory comments is acting under legal, moral, or social duty, he has the freedom to express his opinion regarding another person, provided that he does so in an honest manner to a listener who has the same obligation as he has (legal, moral, or social), or who has a specific interest in the affairs concerning that person (Pepper). The defence of qualified privilege usually presents itself in defamation cases in which an employee believes his chances of employment were affected due to communication between potential employers and former employers. However, in this case Rachel is not a member of authority. She does not possess the freedom to publicly express her criticisms regarding Gavin and his

work affairs. Since what she expresses is untrue and also lacks the qualified privilege necessary to express those sorts of degrading comments, she will most likely lose the case.

*“Is the defendant protected under s.2 (b) freedom of expression?”* This question is continuously asked during defamation cases, and the answer can vary, depending on the actions committed by the speaker. Freedom of expression, one of the fundamental freedoms outlined in the Charter, allows members of the public to freely provide commentary on issues that are considered important to the public (White), provided that they reflect an opinion, that they are based on facts, and that they are not made maliciously (Defamation: Libel and Slander). Rachel is given the freedom to voice her opinion under s.2 (b) of the Charter; however, her statement does not satisfy any of the conditions that would allow her to harshly point out the supposed activities performed by Gavin. Her statements reflect more of a fabricated fact than an opinion. She does not base these “facts” on the truth and she declares her “facts” in a malicious manner, intended to harm Gavin, ruin his reputation, and jeopardize his chances for employment. “It must be shown that the facts upon which the comment is based are truly stated and that the comment is an honest expression of the publisher’s opinion relating to those facts. Where a comment imputes evil, base or corrupt motives to a person, it must be shown that such imputations are warranted by, and could reasonably be drawn from those facts” (Brown). Unfortunately for the defendant, her remarks do indeed corrupt motives to a person, and in no way can these remarks be drawn from facts. In addition, her accusations may not necessarily be deemed of importance to the greater public, thus causing those accusations to be even more libellous. To conclude, Rachel is not protected under s.2 (b) of the Charter due to not only the lack of truth or concrete evidence needed to support her argument, but also due to the overly hateful, malicious nature of her statements.

I believe that Gavin will be successful if he launches a lawsuit against Rachel for defamation because she lacks justification for her actions, she does not possess the qualified privilege needed to

express those degrading criticisms, and because she fails to remain civil and truthful while announcing her opinions. It is evident that she intended to harm Gavin's reputation through her statements released on her blog, and that she did so by creating malicious lies. Unfortunately for Rachel, she is not protected under s.2 (b) of the Charter, as her comments had no truth to them, and were designed for the sole purpose of hurting another individual. We can all learn from this case, as it is important to remain civil and truthful in our expressions, regardless of the means used to convey them.

Works Cited

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