

Libel Criminal Code Provision Ruled Unconstitutional

On May 2, 2008, the Newfoundland Supreme Court struck down section 301 of the Criminal Code, which made it an offence to publish defamatory libel. In *R. v. Byron Prior*, Mr. Byron Prior distributed flyers claiming that a public justice figure had raped and impregnated his sister in 1966.[1] His sister denied this allegation. Mr. Prior was charged with section 301 of the Criminal Code:

Everyone who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.[2]

This provision does not require that the accused know a libelous statement is false. In this case, the Crown did not attempt to show that Mr. Prior had knowledge his statements were false.

The Crown and the defence agreed that s. 301 violated the Charter right to freedom of expression. Accordingly, Justice Lois Hoegg ruled that s. 301 of the Criminal Code violates s. 2(b) of the Charter of Rights and Freedoms. Section 2(b) states that everyone has the right to:

freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.[3]

The issue was whether the law was a reasonable limit, under s. 1 of the Charter, of the right to freedom of expression. Justice Hoegg ruled that s. 301 could not be upheld by s. 1 of the Charter. Hoegg held that the possible objectives of the libel legislation, either protecting reputation from attack or preventing breaches of the peace, were not significant enough to save the law from being struck down.[4] Further, criminalizing libel without requiring the Crown to prove the defendant had knowledge of a libelous statement's falseness conflicts with "a core value of our society: the search for, and the promotion of, truth." [5] Hoegg concluded by saying that unpopular or false statements deserve to be protected by the Charter unless they are violently expressed.[6]