

Injurious Falsehood

Involves the Spreading of False Information About a Business

Helpful Guide to Understanding the Law Including Elements Applicable to the Tort of Injurious Falsehood



Similar to defamation matters, injurious falsehood involves the publication of falsities; however, unlike the element requirements applicable within a defamation case, injurious falsehood involves statements, either written or verbal, about the business or the property of a person rather than a falsity about a person and that such falsities be published in a manner calculated to encourage others to avoid business dealings with the person.

The specific elements of the tort were articulated by the Court of Appeal in the case of *Lysko v. Braley*, [2006 CanLII 11846](#) whereas it was stated:

[133] Brown summarizes the elements of the action for injurious falsehood at 28.1(1) as follows:

Actions for injurious falsehood involve the publication of false statements, either orally or in writing, reflecting adversely on the plaintiff's business or property, or title to property, and so calculated as to induce persons not to deal with the plaintiff. There must be a showing that the published statements are untrue, that they were made maliciously, that is without just cause or excuse, and that the plaintiff suffered special damages.

[134] Unlike the claim for defamation, the plaintiff "must plead and prove that the words were false, that they were actuated by malice, and that the plaintiff suffered special damages" (Brown, *supra*, at 28.1(1)). Section 17 of the *Libel and Slander Act*, [R.S.O. 1990, c. L.12](#) provides that in an action for malicious falsehood, it is not necessary to allege special damages "(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form ...".

Accordingly, and it is highly notable, that the common law elements state that special damages are required; however, such is statutorily amended by the *Libel and Slander Act*, [R.S.O. 1990, c. L.12, s. 17](#), such that the requirement of suffering special damages is absent when, properly pleaded, and of course adequately proven, that the words were published in a written fashion and maliciously calculated to cause financial injury. Specifically, the *Libel and Slander Act* states:

17 In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage.

Damages

General Damage

Within the case of *Procor Ltd. v. United Steel Workers of America, et al*, [1990 CanLII 6637](#) awards of general damages and punitive damages were awarded when the union was found as maliciously alleging customs fraud without a foundation for such accusations and all with the intent of venting hostilities on behalf of unionized employees. Whereas special damages were unproven yet some measure of harm plainly resulted from, among other things, the expenses arising from, and the loss of other productivity and opportunity for those persons associated in defending the allegations, general damages of \$100,000 were awarded.

Punitive Damage

Also in *Procor*, at page 30 to page 31, punitives damages were awarded whereas the court was satisfied that:



... as a result of a deliberate act consciously directed against the plaintiff's reputation or malicious conduct, or conscious, contumelious and calculated wrong-doing, or behaviour that can be characterized as gross, reckless, outrageous, reprehensible and irresponsible, or high-handed, insolent, vindictive or consciously contemptuous of the plaintiff's rights.

(See Raymond E. Brown, *The Law of Defamation in Canada*, Vol. II at pp. 1061-8.)

Costs Award

As a significant additional sanction within the *Procor* decision, legal costs on a solicitor-client basis were awarded against the union for failing to accept offers as well as for continuing the allegations, despite obvious evidence to the contrary, prior to, and during, the trial.