COURT FILE NO.: 3294/05
DATE: 20060407

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Corporation of the Town of Halton Hills and Terry Alyman
v. Al J. Kerouac

BEFORE: Corbett J.

COUNSEL: John Schaljo, for the Plaintiffs

Ryder L. Gilliland, for the Defendant

E N D O R S E M E N T

[1] In this case, a local internet-based news purveyor is sued by the Town of Halton Hills in defamation. It is also sued by the Town's Director of Parks and Recreation, Terry Alyman. The plaintiffs allege that the defendant called Mr. Alyman "corrupt" in connection with his work for the Town.

[2] The defendant says that the claim asserted by the Town ought to be dismissed as disclosing no cause of action. The defendant seeks this order on two bases:

(a) the statements complained of do not refer to the Town, and thus cannot constitute a libel of the Town; and

(b) in any event, a government may not sue in defamation.

[3] The first argument is correct on a simple reading of the statement of claim. However, this deficiency could be addressed by amendment.

[4] The second argument is also correct, and is a complete answer to the claim made by the Town. No government may bring an action in defamation: authority in support of this conclusion from the United Kingdom, the United States of America, South Africa and Australia, is correct and ought to be followed. Canadian authority to the contrary, which predates the *Charter of Rights and Freedoms*, and relies upon English authority now expressly overruled, is no longer the law of Canada.

Disposition

[5] Accordingly, I order that the claim of the Town of Halton Hills be dismissed, without leave to amend, with costs to the defendant fixed in the amount of $5,000 plus GST, payable within 14 days.[1]

REASONS

Nature of the Motion

(a) Motions To Strike

[6] On a motion to strike a claim as disclosing no reasonable cause of action, the court assumes that the facts in the statement of claim are true. The pleading is to be read generously to accommodate drafting deficiencies.[2]

[7] It is only in the clearest of cases that the pleading should be struck. The outcome must be "plain and obvious" or "beyond doubt".[3]

[8] Even where the facts are not in dispute (for the purposes of the motion), where there is a novel point of law, it is generally necessary to have a trial. In the common law, legal principles are advanced incrementally on the facts of particular cases, and not in a factual vacuum.[4]

[9] These principles apply in constitutional cases. Even where adjudicative facts are uncontested, contextual facts, especially in respect to any Section 1 defence under the *Charter*, may be complex and not easily grasped on a reading of the bare allegations in the pleadings.[5]

[10] In short, the defendant bears a high burden to succeed on this motion.

(b) Defamation Actions by Corporations

[11] A corporation does not have a reputation in a personal sense, but it does enjoy a business reputation which it may protect. Thus corporations – both business and charitable – may bring defamation actions.[6]

[12] However, in general, the statement that is the subject-matter of the action must be made about the corporation for it to have a claim. For example, where the corporation has been described as corrupt, having misused funds, or acted as a front for a cult, the corporation may maintain an action for defamation in its own right.[7] A corporation may be defamed by statements made about one of its members, but only where the association between the individual and the corporation is very close, and perhaps indivisible in the context of the defamatory statement.

[13] The Town of Halton Hills is a corporation. Thus, it may have a "business reputation" to protect. Further, a local government is created pursuant to sections 8 and 9(1) of the *Municipal Act*,[8] and has all the powers and rights of a "natural person". And of course, a natural person may sue in defamation.

(c) Defamation Actions By Government

[14] Prior to the *Charter*, Canadian courts held that governmental bodies, including local governments, could maintain actions in defamation.[9]

[15] With the advent of the *Charter*, Canadian courts did not foreclose actions by governmental bodies for defamation.[10]

[16] The issue before me was also argued before Pedlar J. in *Township of Montague v. Page* (2006), CV705/05 (Ont. S.C.J.). The decision in that case was released as my decision was being finalized. Since I came to the same conclusion as Pedlar J. independently, without the benefit of His Honour's reasons, it was not necessary to have counsel re-attend to make submissions concerning the weight that I ought to place on Pedlar J.'s decision. As is evident, I agree with Pedlar J.'s conclusion, and his thoughtful and thorough analysis. It is necessary, though, for me to release my own reasons to address several legal points argued before me that were apparently not raised before Pedlar J., and help to frame the result in the Canadian constitutional context.

(d) Summary Judgment and *Charter* Cases

[17] The defendant takes the position that the *Charter* precludes actions in defamation by a local government. This bar is an incident of freedom of expression under s. 2(b) of the *Charter*. In simple terms, everyone should be free to criticize democratically elected governments, be they federal, provincial or local, without risking a defamation action. Only at the extreme margins of speech, covered by the ancient and seldom invoked laws of sedition, should the right to criticize government be curtailed.

[18] The Town of Halton Hills says that since there is no decided case in Canada that forecloses a local government from suing in defamation[11], the matter should be left for trial, so that the court will have a full factual record.

[19] The Town's argument has force, but on balance should not succeed. The legal proposition advanced by the defendant contemplates an absolute bar at common law to defamation suits by government. This is purely a question of law. It does not involve striking down or reading down any legislation, so there is no legislative history to consider. The adjudicative facts are not in issue for the purposes of this motion: those pleaded are taken as true, with liberal allowance for any technical defects in the pleadings. And there is no Section 1 defence under the *Charter* asserted.

[20] In written submissions, the Town of Halton Hills puts the argument as follows:

> Without evidence of the deleterious effects of the law of defamation on freedom of expression, the Court is faced with evaluating the *Charter* challenge in a factual vacuum and potentially delivering an ill-considered opinion without due consideration

> for the ramifications associated with accepting the primacy of *freedom to criticize public officials over the individual's right to the protection of his or her reputation*. The Court should not attempt to resolve constitutional challenges in the absence of a factual foundation relating to all aspects of the challenge.[12]

[21] The italicized portion of this passage conflates the rights of individuals (such as Mr. Alyman) to sue in defamation, and the ability of political bodies to do so. This motion does not concern defamatory comments made of an individual public official. It is clear law that public officials may sue in defamation. In this case there is a public official suing in defamation, and the defendant does not challenge Mr. Alyman's right to seek redress. The question is not whether public officials have protection, or the extent of the protection that they may enjoy. The question is whether the Town, itself, has protection under the laws of defamation.

[22] During oral argument, the court posed this question: what additional facts could be elicited at a trial which could bear on the Town's position on the constitutional issue? No Section 1 defence is pleaded, but assuming leave were granted to deliver a reply in which one was asserted, what would it be? The clash of positions on the issue goes directly to the content of the protection of freedom of speech. These are issues of political and legal moment, to be sure, but what factual matrix would place the issues in a broader context and illuminate the question further?

[23] Counsel had no answer for the question. That is because there is no additional factual record required. And that is because the defendant does not attack any law enacted by Parliament or a legislature. Instead, the defendant asks that the common law be interpreted and applied in light of *Charter* values.

[24] And if there is no need to develop a further factual record, what need is there for a trial? Rule 21 is not solely for cases that are frivolous – which have been decided authoritatively already. It is to be used to dispose of matters where no trial is needed. That includes constitutional cases where there are no facts in dispute and no complex Section 1 record is required. That includes this case.

The Constitutional Argument

Overview

[25] Without free speech, there is no free press. Without a free press, there is no free political debate. Without free political debate, there cannot be true democracy. Freedom of speech, writ large, is a pillar of democracy.

[26] Must free speech be entirely unfettered to be truly free? No: freedom of speech, like all other freedoms, is constrained to recognize other important rights. Laws against hate speech limit free speech to protect people from persecution on the basis of a group affiliation.[13] The law of defamation limits free speech to protect people from untrue and damaging statements made about them. Laws against sedition may limit free speech that advocates the violent overthrow of the state: to the extent that this speech is fettered, it is on the basis that society as a whole may guard against its own continued existence.[14]

[27] A law that restricts free speech, even slightly and for noble purposes, has some chilling effect. The chill is greater than the metes and bounds of the restriction itself, since the risk of prosecution or litigation will surely discourage speech near the boundaries of what is permitted.

(a) Local Governments

[28] As stated, a municipality has the rights, powers and privileges of a natural person, and of a corporation.

[29] Municipalities are also local democracies. Representatives are elected by the people. The courts should exercise caution in substituting their views for those of democratically elected representatives, who are responsible to the people in their communities. The courts have recognized the increasingly important role played by local governments, and apply a liberal and benevolent interpretation of their powers and authority.[15]

[30] Unlike public officials, local governments do not have private reputations. Their sole existence is public: they exist to conduct public business, and have no other purpose. In this respect they are unlike other corporations, and unlike "natural persons", and instead are more akin to the democratically elected governments of the provinces and the federal government.

[31] The authority and respect now accorded to local governments brings them closer to constitutionally recognized legislative bodies. And while local governments remain subordinate to the governments that created them, they are subject to the same public law values that constrain the Provinces and the federal government, at least in respect to democratic values.

[32] In a democracy, it is essential that the government be in the public domain, and be available for criticism of all kinds. Individual members of government, whether elected representatives or public servants, do not, by virtue of their offices, have all of their private interests subordinated to their public service. They maintain private reputations, which may be damaged, and which may be vindicated in defamation proceedings. Here the legal terrain may be murky. American jurisprudence favours a large and robust territory for criticism of public officials.[16] To date, Canadian courts have not accorded as much deference to freedom of speech at the expense of the private reputations of public servants.[17]

[33] Unlike public officials, governments have no private interests, no private reputations. They exist wholly in the public domain, and it is in this arena that their reputations may be attacked and defended. There may be some circumstances where a statement made about a public body irreducibly tarnishes the reputation of specific individuals. Such was the case in *Kenora Police Services Board v. Savino*. In that case, a First Nations person died in a altercation with police. In the aftermath, a solicitor for the deceased's family blamed police and called them racist. In a small community of 10,000 persons, in connection with a well-publicized incident, the general statement about the police could be understood to refer to specific police officers.

[34] The *Kenora* decision was also a motion for summary judgment. The analysis described above leads to the following statement of principle: where a defamatory statement made about a public body is properly understood to refer to a specific individual, that individual may have a right of action in defamation. I agree with this statement of principle. That does not mean that the converse principle is sound. It may well be that a defamatory statement made about an individual public servant reflects badly on the public authority itself, but that does not make the statement "about" the public authority.

[35] It should also be clear that the *Kenora* decision does not advance the constitutional argument raised in the case before me. Stach J. was not considering whether the public body - in that case the Police Services Board - had a right of action in defamation. The analogous case would have been if no mention had been made of Mr. Alyman in the defamatory comments, but instead the Town had been labelled corrupt as a result of conduct by Mr. Alyman. Would Mr. Alyman then have had a right of action? On the logic of *Kenora*, he might well have.

(b) Defamation Actions by Governments

> It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed, a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of *free and uninhibited speech* permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized.[18]

[36] The defendant argues:

> … [I]t is antithetical to free speech that a public body such as the Town should use public funds to sue a taxpayer. Such state action is oppressive, has an inevitably inhibiting effect on freedom of speech, and is contrary to s. 2(b) of the *Charter*.

[37] Great care must be taken to place this issue in the proper framework. Broad rhetorical statements of principle can be dangerous. For example, I do not find it inimical to the basic principles of democracy that a government might sue an individual for some wrong allegedly done by that person. If (for example), a person damages public property, steals money from the state, or commits some other wrong and causes damage to the state, I see no reason why the state should not have recourse. To do so it will have to expend public resources. So it is not the expenditure of "public funds" to sue "a taxpayer" that is at issue. Rather, it is the restriction on freedom of speech – the rendering of certain statements made about the state actionable – that is the real mischief. Further, it is not the funding of an action in defamation that is necessarily oppressive (as discussed below), but any law that restricts speech of and about government that is inimical to the basic tenets of democracy.

(c) International Jurisprudence

[38] Justice Fisher of the Illinois Supreme Court put it thus more than eighty years ago:

> Where any person by speech or writing seeks to persuade others to violate existing law or to overthrow by force or other unlawful means the existing government he may be punished… *but all other utterances or publications against the government must be considered absolutely privileged.* [emphasis added]
>
> …
> It follows, therefore, that every citizen has a right to criticize an inefficient or corrupt government without fear of civil as well as criminal prosecution. This absolute privilege is founded on the principle that it is advantageous for the public interest that the citizen should not be in any way fettered in his statements, and where the public service or the administration of justice is involved *he shall have the right to speak his mind freely*.[19]

[39] Naturally, the absolute freedom to comment upon public administration cannot be confined to situations where the criticism is well-founded, for there is no monopoly on right-thinking in a democracy. Everyone has a right to her opinion, whether sound or ill-advised, moderate or extreme, well-documented, or utterly baseless. And everyone has a right to voice her opinion, whether orally or in writing.

[40] The House of Lords considered this issue in relation to a local government in 1993. Lord Keith distinguished a local authority from other corporations, a distinction in keeping with the greater recognition local government is now accorded in Canada:

> There are, however, features of a local authority which may be regarded as distinguishing it from other types of corporation, whether trading or non-trading. The most important of these features is that it is a governmental body. Further, it is a democratically elected body…. *It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of civil action for defamation must inevitably have an inhibiting effect on freedom of speech.**[20]***

[41] The Supreme Court of New South Wales described a defamation action by a local authority as “entirely misconceived”, and held that if defamation actions were available to local governments, “it would open the way to oppression of a most serious kind”.[21] It appears that a similar position prevails in South Africa: “there are good practical reasons why such an action [a defamation claim by a public authority] should not now be recognized in South Africa.”[22]

[42] The defendant summarizes his position as follows:

> [t]he modern approach appears to be the same in all jurisdictions to have considered the issue…. [T]he universal view is that government actions for defamation are oppressive and contrary to free expression…. A government suit against a citizen for speaking his mind – or [facilitating] the *right* of others to do so, is contrary to the *Charter*.[23]

[43] I agree with this conclusion, but not primarily on the basis described by the defendant. His argument, in skeletal form, is as follows:

(a) freedom of speech is important and protected by the *Charter*;

(b) speech about a local government is "political speech" and thus lies at the core of protected speech;

(c) defamation actions are an impediment to free speech;

(d) therefore defamation actions brought by local governments impede free speech and are contrary to the *Charter*; and

(e) other modern democracies have adopted this approach.

[44] Arguments (a) through (d) can also be said about defamation actions brought by public officials respecting statements made about them in their capacities as public officials. Indeed, the same might also be said about large trading corporations or persons who are in other respects "public figures". Defamation actions brought in respect to any matters of public interest will inevitably "chill" public discussion of those topics to some extent. Yet there is no bar against defamation actions in these other contexts. The court should be able to reconcile these principles in these related contexts to conclude safely that defamation actions by government are barred.

[45] In the *Prince George* case,[24] the court observed that "it is beyond question that municipal corporations have reputations". This, of course, is true. The same may be said about all manner of governments. The court went on to find that barring governments from suits in defamation "would leave municipalities the helpless victims of all those who choose to publish untrue imputations which injure their reputations".[25] This, with the greatest of respect, is not so.

[46] As noted by Kirby J. (as he then was) in *Ballina Shire Counsel v. Ringland*:

> A ... government ... may convene meetings. It may publish assertions which will often be privileged. It may respond to criticism by media releases of its own which, in the heat of local controversy, will usually attract attention. It may set up a local inquiry. It may conduct public hearings and investigations. It may even pass ordinances dealing with matters...[26]

I agree with these observations. Governments also pass resolutions, call elections, and reshape themselves within their executive functions.

[47] Governments have numerous responses to criticism. For while a government has a reputation, sometimes called a "governing reputation", it exists wholly in the public sphere. A government has no reputation apart from this public "governing reputation". And the courts are not a fit institution to sit in judgment on the fairness, or otherwise, of critical comments made about government. The options available to government are all public in nature, even when they involve the judiciary by means of a public inquiry or Royal Commission. For in that context, the jurist is responsible to and reports to the legislature that laid down the task for the inquiry. That legislature, in turn,

is responsible to the public. Ultimate judgment will be made by the public in periodic elections.

[48] I agree with Gleeson C.J. where he notes as follows:

> The fact that the institutions are democratically elected is supposed to mean that, through a process of political debate and decision, the citizens in a community govern themselves.
>
> ... [T]o maintain that an elected governmental institution has a right to a reputation as a governing body is to argue for the existence of something that is incompatible with the very process to which the body owes its existence.[27]

[49] I also agree with the observation of Kirby J. that "if this could be done [defamation actions by government], it would open the way to oppression of the most serious kind".[28]

[50] Care must be taken, however, to root the source of this principle in the bedrock of public law and constitutional principle. It is clear law in Canada that public officials enjoy private reputations, and may sue in defamation. Further, while the case may be clear for democratically elected governments, it is not clear that the principle applies with equal force to all public bodies. Finally, even though defamation actions are not available to governments, actions in injurious falsehood may be available to them in limited circumstances. It is only if the basis for the prohibition is connected analytically to public law and constitutional principle that these other areas of controversy may develop in a manner that is consistent with the overall balancing of interests that the law seeks to maintain.

[51] **Existence of "governmental reputation"**: American courts have foreclosed defamation actions by government for two principled reasons:

(i) a governmental unit is not a person and thus has no reputation that can be defamed;[29]

> As long as ultimate sovereignity (sic) resides in the people, the state cannot be thought of having a separate personality and, therefore, cannot be said to have been defamed.[30]

(ii) such actions are constitutionally unsound;[31]

> Criticism of government is at the very center of the constitutionally protected area of free discussion.[32]

[52] In *Chicago v. Tribune Co.*, Thompson C.J. described in stark contrast the theories of public defamation under a hereditary monarchy and under a republican system of government. This sort of mythology may add colour and force to the exposition of American constitutional doctrine. However, political bodies can and do have reputations separate from the members of those bodies, an observation that applies to organizations of all kind. It strikes me that it is problematic to limit the legal personality of the state in this way, and it is not necessary to do so for the purposes of this case. Canada's constitutional monarchy maintains the legal differentiation between the state and its members while at the same time locating the source of

political legitimacy and accountability at the ballot box.

[53] The distinction is all the more cogent when considering subordinate governmental authority. Local governments do not have constitutional stature. Local governments have all the powers of a "natural persons" and it clouds a proper understanding to suggest that the legal personality of these governments is somehow different in the context of defamation than it is in other contexts.

[54] I agree that defamation actions by government are "constitutionally unsound". This statement is a conclusion, not an analysis: to have force, this conclusion must flow from an analysis of constitutional principle that places it within an overall framework for the regulation of speech, the protection of reputation and freedom of speech in a democracy.

[55] **Use of State Resources**: Some courts have concluded that it is wrong for a government to use public funds to sue a taxpayer in defamation. Again, this argument has rhetorical force, but is not tenable as framed. The "*State*" v. "*Taxpayers*" is permissible in other contexts. The state may prosecute taxpayers for breach of criminal or regulatory laws. The state may sue taxpayers in tort and contract. The state may pursue taxpayers for taxes: And of course, taxpayers may bring proceedings against the state as well. Why is it incongruous for the state to bring its financial might to bear against a taxpayer in those contexts, but not in the context of defamation? Further, as noted already, it is permissible for public servants to sue in defamation. Where the defamatory comments have been made concerning the public servant's performance of his public duties, it may be permissible for the state to fund the lawsuit. The expenditure of public money is a matter for which government is responsible to the people. It may be thought that individuals will not wish to devote themselves to public service, at modest remuneration, if they would not be supported in the defence of their reputations by their employer. It is not clear to me that a prohibition on defamation actions by government would preclude the use of public funds to finance defamation actions brought by public servants.[33]

[56] **"Taxpayers" Are Not Privileged Speakers**: Taxpayers" do not have a superior right to criticize government. Some courts have focused on the rights of "taxpayers" or "citizens" or "residents" or other "members" of a polity to criticize their government. With respect, it is not the identity of the speaker that precludes a defamation action. This can be seen from two perspectives:

> (1) If some privilege arises because of the relationship between the speaker and the governmental authority, it is difficult to see why this privilege would not exist in respect to statements made about public officials. The relationship would be analogous.
>
> (2) There is no reason, in principle, that persons who are not "citizens" or "taxpayers" or "residents" should not be able to criticize government. Why should non-Canadians have any less freedom to criticize a Canadian government? Canadian media might well criticize foreign governments: should their ability to do so be constrained by their personal relationship with that government?

> For example, assume that a Canadian newspaper publishes a defamatory article about, say, the Government of Canada. In my view, no action lies against the paper by Canada. I see no reason, in principle, why the result would change if the article was published in an American newspaper. Further, some of the most disadvantaged persons in Canadian society may not be "taxpayers": surely their rights to criticize government are not constrained by their poverty? Others may also not be "citizens" or "residents" and yet they are surely not constrained thereby from voicing their criticism of government. I conclude that it is not the relationship between the speaker and the government that gives rise to the unavailability of defamation actions. It is in the very nature of a democratic government itself that precludes government from responding to criticism by means of defamation actions.

[57] **Protecting Public Officials:** it has been argued that protecting government from unfair criticism is necessary to attract capable persons to the ranks of public service. This argument is not logical. As in the case before me, the public servant has a right of action for defamatory statements made about him. As in the *Kenora* case, where statements are made about a public authority that are directed at a particular person, that person may have a right of action. That is sufficient protection of the private reputations of public servants.

[58] **Speech About Government Is Absolutely Privileged**: The reason for the prohibition of defamation suits by government lies not with the use of taxes, or with some abstruse theory about the indivisibility of the state and the people who make up the state. Rather, it lies in the nature of democracy itself. Governments are accountable to the people through the ballot box, and not to judges or juries in courts of law. When a government is criticized, its recourse is in the public domain, not the courts. The government may not imprison, or fine, or sue, those who criticize it. The government may respond. This is fundamental. Litigation is a form of force, and the government must not silence its critics by force.

[59] Section 2(b) of the *Charter* guarantees freedom of expression. Statements made about public affairs generally, and about government in particular, lie at the very core of this democratic value.

[60] None of this would preclude the state from enacting laws that could restrict the freedom to criticize government, and the laws against sedition are an example.[34] In such a case, there would be a law, enacted by the government, which would have to pass constitutional muster. But the starting position, at common law, is that statements made about government are absolutely privileged.

[61] Statements made about public servants, be they employees of government or elected officials, are not subject to the same absolute privilege because the individuals have private reputations which they are entitled to protect. The underlying principles are the same: no doubt according public servants the right to sue in defamation chills criticism of those public servants. However, it is in the public interest that the state be able to attract and retain competent persons of good repute as public servants. It is not

likely to be able to do so if these persons may be subject to false personal attacks without recourse. The same cannot be said of the government itself.

[62] I conclude as follows:

1) Section 2(b) of the *Charter* guarantees freedom of expression;
2) expression about public affairs in general, and government in particular, lies at the core of freedom of expression;
3) any legal restriction on freedom of expression about public affairs has a chilling effect on freedom of expression generally, and infringes the Section 2(b) guarantee;
4) infringements of the Section 2(b) guarantee may be justified pursuant to Section 1 of the *Charter*. Laws against sedition, for example, may be justified, since society may guard against its own violent overthrow. Laws against hate speech may be justified to protect the victims of hate speech. The common law tort of defamation may be justified on the basis that private persons (including public servants) are entitled to protect their personal reputations;
5) there is no counterveiling justification to permit governments to sue in defamation. Governments have other, better ways to protect their reputations;
6) any restriction on the freedom of expression about government must be in the form of laws or regulations enacted or authorized by the legislature; the common law position, in the absence of such legislation, is that absolute privilege attaches to statements made about government;
7) "Government" includes democratically elected local governments.

_____

Corbett J.

DATE: April 7, 2006

---

[1] Costs were addressed at the argument of the motion, with the parties seeking between $3,500 to $5,000 if successful on the motion. The motion required more than half a day to argue. The issues were important. Factums were filed and reflected considerable preparation prior to the motion. Thus, the higher figure is appropriate.

[2] See: Rule 21.01(2), *Prete* v. *Ontario* 1993 CanLII 3386 (ON C.A.), (1993), 16 O.R. (3d) 161 at 170 (C.A.), *McCann* v. *Ottawa Sun* reflex, (1993), 16 O.R. (3d) 672 at 674 (Gen. Div.), *Trendsetter Developments Ltd.* v. *Ottawa Financial Corp.* (1989) O.A.C. LEXIS 665 (C.A.), *Lennon* v. *Harris* reflex, (1999), 45 O.R. (3d) 84 at 88-89 (S.C.J.), *Aiken* v. *Ontario* reflex, (1999), 45 O.R. (3d) 266 at 270-271 (S.C.J.), *Folland* v. *Ontario* 2003 CanLII 52139 (ON C.A.), (2003), 64 O.R. (3d) 89 (C.A.).

[3] See: *Rex ex rel. Tolfree* v. *Clark*, [1943] O.R. 501 at 515 (C.A.), *Hunt* v. *Carey Canada Inc.*, 1990 CanLII 90 (S.C.C.), [1990] 2 S.C.R. 959, *Mantini* v. *Smith Lyons LLP* 2003 CanLII 22736 (ON C.A.), (2003), 64 O.R. (3d) 516 at 519 (C.A.).

[4] See *R.D. Belanger & Associates Ltd.* v. *Stadium Corp. of Ontario Ltd.* 1991 CanLII 2731 (ON C.A.), (1991), 5 O.R. (3d) 778 at 782 (C.A.), *Folland* v. *Ontario*, *supra.*, at O.R. 96, *Krouse* v. *Chrysler Canada Ltd.*, [1970] 3 O.R. 135 at 136 (H.C.J.).

[5] See *Hill* v. *Church of Scientology* reflex, (1994), 18 O.R. (3d) 385 at 414-415 (C.A.), *Kenora Police Services Board* v. *Savino*, *supra.*

[6] *Walker* v. *C.F.T.O. Ltd.* 1987 CanLII 126 (ON C.A.), (1987), 59 O.R. (2d) 104 at 112-114 (C.A.), *Hunger Project* v. *Council on Mind Abuse* (1994), A.C.W.S.J. LEXIS 75843 (Ont. Gen. Div.).
[7] *Journal Printing Company of Ottawa* v. *MacLean* (1894), 25 O.R. 509 at 512-514 (Q.B.), *Hunger Project* v. *Council on Mind Abuse, supra.*
[8] *2001*, S.O. 2001, c.25.
[9] *Prince George* v. *B.C. Television System Ltd.* (1979), 10 M.P.L.R. 24 (B.C.C.A.).
[10] *Windsor Roman Catholic Separate School Board* v. *Southam Inc.* (1984), 46 O.R. (2d) 231 at 234-236 (H.C.J.), *Kenora Police Services Board* v. *Savino* (1995), A.C.W.S.J. LEXIS 46544 (Gen. Div.), per Stach J.
[11] Argument took place before release of the decision in *Township of Montague v. Page* (2006), CV 705/05 (Ont. S.C.J.) per Pedlar J.
[12] Factum of the Town of Halton Hills, paragraph 12 [emphasis added].
[13] See *Criminal Code*, ss. 318-319; *R. v. Keegstra*, 1990 CanLII 24 (S.C.C.), [1990] 3 S.C.R. 397, 61 C.C.C. (3d) 1, 1 C.R. (4th) 129.
[14] See *Criminal Code*, ss. 59-62.
[15] *Shell Canada Products Ltd.* v. *Vancouver*, 1994 CanLII 115 (S.C.C.), [1994] 1 S.C.R. 231, *Fourth Generation Realty Corp.* v. *Ottawa*, [2004] ON.C. LEXIS 3372 (Ont. S.C.J.).
[16] *New York Times* v. *Sullivan* (1964), 376 U.S. 254 at 270-271.
[17] *Hill v. Church of Scientology*, 1995 CanLII 59 (S.C.C.), [1995] 2 S.C.R. 1130.
[18] (*Edmonton Journal* v. *Alberta (Attorney General)*, 1989 CanLII 20 (S.C.C.), [1989] 2 S.C.R. 1326 at 1336, per Cory J.) [emphasis added]
[19] *The City of Chicago* v. *The Tribune Company* (1923), 307 Ill. 595 at 606-608 [emphasis added].
[20] *Derbyshire County* Council v. *Times Newspapers* Ltd., [1993] A.C. 534 at 547 (H.L.) [emphasis added].
[21] *Council of the Shire of Ballina* v. *Ringland* (1994), 33 N.W.S.L.R. 680, [1994] NSW LEXIS 14010 at 76-77 (C.A.).
[22] *Die Spoorbond and Another* v. *South Africa Railways*, [1946] A.D. 999 at 1014. See also *Argus Printing and Publishing Co. Ltd.* v. *Inkatha Freedom Party*, [1992] 3 S.A. 579 (A.D.).
[23] Defendant's factum, paras. 21 and 23.
[24] [1979], 2 W.W.R. 404 (B.C.C.A.)
[25] ibid., at W.W.R. 409, per Aikins J.A.
[26] ibid, at N.S.W.L.R. 707, per Kirby J.
[27] ibid., at N.S.W.L.R. 691, per Gleeson C.J.
[28] ibid., at N.S.W.L.R. 707, per Kirby J.
[29] See, for example, *Grafton (Village) v. American Broadcasting Co*., 70 Ohio App. 2d 205, 435 N.E. 2d 1131 (1980), and
[30] *State v. Jive Inc.* at 249 So.29 328 at 329. *NY Times v. Sullivan* 376 U.S. 254 (1964); *Rosemblatt v. Baer* 383 u.S. 75 (1966.
[31] *Chicago (City) v. Tribune Co.* 307 Ill. 595, 139 N.E. 86, 28 A.L.R. 1368 (1923)
[32] *Rosenblatt v. Baer*, 383 Y.S. 75 at 85 (1966) per Brennan J. See also *Weymouth Township Bd. of Educ. v. Wolf* 178 N.J. Super. 481, 429 A. 2d 431, per Gibson J.S.C.
[33] I note that these may be both legal and political dimensions to the issue. That which the law permits the law does not necessarily require.
[34] In so saying I am presuming but not finding that those laws are constitutional.