

Subject: Democracy - the right to criticize local government.

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Date: Sat, 03 May 2008 19:51:18 -0700

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To all those who value democracy,

I have followed the Powell River case with great interest as it can have a profound influence on citizen participation in local governance. The issue first surfaced (for me) in the SUN article of April 25th "Civil rights group files lawsuit against city of Powell River" and continued with the SUN article of May 3rd "Lessons in democracy, Powell River Style".

For more details see

http://www.zwire.com/site/news.cfm?newsid=19449139&BRD=1998&PAG=461&dept_id=221589&rfi=6

<http://www.canada.com/vancouver/news/editorial/story.html?id=b9d0062d-0e36-4324-b0cb-b90de2477129>

The important quote to remember is

"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."

- Justice Corbett, *Halton Hills (Town) v. Kerouac*, Ontario Superior Court 2006

<http://www.canlii.org/en/on/onsc/doc/2006/2006canlii12970/2006canlii12970.html>

The further extract from the above reads

[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.

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Keep this in mind when a citizen is critical of a municipal council. The exercise of our freedoms is the only way to retain them.

Yours truly,

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