

Bill No. 51 of 1947.

**A BILL TO MAKE UNIFORM THE LAW RESPECTING  
DEFAMATION**

**NOTE.**

The Act proposed by this Bill has been adopted by the Conference of Commissioners on Uniformity of Legislation and has already been enacted by the Legislature of Manitoba. The most important feature of the Bill is that it makes the law as to libel and slander uniform and makes slander actionable in the same circumstances as libel.

At common law there is a marked difference in the right to bring a successful action for damages for libel and slander respectively. Thus a libel, being a false defamatory statement expressed or conveyed by written or printed words or in some permanent form is actionable without proof of special damage, while a slander, with certain exceptions, is not actionable without proof of special damage. Most of the provisions of this Bill are the same or substantially the same as those contained in *The Libel and Slander Act* which is repealed by section 20 of this Act. There are new provisions dealing with radio broadcasting. "Broadcasting" is defined in paragraph (a) of section 2.

Section 3 places libel and slander, which together constitute defamation (section 2 (b)) in the same category and make both actionable without proof of damage, which is presumed.

Section 10 which in the Act now in force protects newspapers publishing a fair and accurate report of public meetings, proceedings in legislatures, and in various public bodies, unless malice is proved, is extended to similar reports made by broadcasting.

Section 11 deals with reports of public court proceedings and is substantially the same as the section now in force except that it extends to broadcasting reports. This section makes absolutely privileged such reports if they contain no comment and if certain other conditions set out in subsection (1) are complied with. Subsection (2) is new and takes the above privilege away from a newspaper and a broadcasting station, etc., which fail to comply with a request for publication of a reasonable letter or statement of explanation or contradiction in the case of a newspaper or to broadcast a similar explanation or contradiction on two occasions on different days in the case of a broadcasting station.

Section 13 provides that no action will lie against a newspaper or broadcasting station unless within three months after the publication of the defamatory matter has come to the notice of the Plaintiff, he gives notice of his intention to bring an action. This limit of three months is changed from six weeks as it is in the section now in force.

Section 14 requires the action to be brought within six months after the publication has come to the notice of the Plaintiff. This limit is three months in the section now in force.

Section 16 providing for an apology in mitigation of damages is extended by paragraph (b) to broadcasting stations. Subsection (2) of this section is new.

Section 17 is in effect the same as section 8 of the Act now in force extended to broadcasting.

Section 18 in subsection (3) has special provisions requiring a broadcasting station to disclose the name and address of the owner and operator of the station, with the penalty for non-disclosure that the Defendant will not be entitled to the benefit of sections 13, 14 and 17.

W. S. GRAY,  
*Legislative Counsel.*

*(This note does not form any part of the Bill but is offered in explanation of its provisions.)*

# BILL

No. 51 of 1947.

An Act to Make Uniform the Law Respecting Defamation.

(Assented to , 1947.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Defamation Act*".
2. In this Act unless the context otherwise requires,—
  - (a) "Broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;
  - (b) "Defamation" means libel or slander;
  - (c) "Newspaper" means a paper containing public news, intelligence or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;
  - (d) "Public meeting" means a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted.
3. An action lies for defamation and in an action for defamation, where defamation is proved, damage shall be presumed.
4. The plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and where the matter set forth, with or without the alleged meaning, shows a cause of action, the pleading shall be sufficient.
5. Where the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed

apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity.

**6.** The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment shall have the same effect as payment into court in other cases.

**7.** On the trial of an action for defamation the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action; but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases.

**8.** Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions so that they shall be tried together; and after an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of any such defamation shall also be entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated.

**9.—(1)** In a consolidated action under section 8 the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) If the jury find a verdict against the defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against these defendants; and, if the plaintiff is awarded the costs of the action the judge shall make such order as he deems just for the apportionment of the costs between and against these defendants.

**10.—(1)** A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, of proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this province or any other province of Canada, or in a committee of any of such bodies,

or of any meeting of a municipal council, school board, board of education, board of health, or of any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority, shall be privileged, unless it is proved that the publication was made maliciously.

(2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public shall be privileged, unless it is proved that the publication was made maliciously.

(3) Nothing in this section shall apply to the publication of seditious, blasphemous or indecent matter.

(4) Subsections (1) and (2) shall not apply where,—

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or
- (b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(5) Nothing in this section shall limit or abridge any privilege now by law existing, or apply to the publication of any matter not of public concern or the publication of which is not for the public benefit.

**11.—**(1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court shall be absolutely privileged if,—

- (a) the report contains no comment;
- (b) the report is published contemporaneously with the proceedings that are the subject matter of the report, or within thirty days thereafter; and
- (c) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) shall not apply where,—

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or state-

ment of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(3) For the purposes of this section, every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report.

**12.** Sections 13 to 18 shall apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in such newspaper or from such broadcasting station.

**13.—(1)** No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, five, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the language complained of.

(2) The notice shall be served in the same manner as a statement of claim.

**14.** An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action.

**15.** The action shall be tried in the judicial district where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, or in the judicial district wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may direct the action to be tried, or the damages to be assessed, in any other judicial district if it appears to be in

the interests of justice, and may impose such terms as to payment of witness fees and otherwise as the court deems proper.

**16.—**(1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant,—

- (a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or
- (b) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought.

**17.—**(1) The plaintiff shall recover only special damage if it appears on the trial,—

- (a) that the alleged defamatory matter was published in good faith; and
- (b) that there was reasonable ground to believe that the publication thereof was for the public benefit; and
- (c) that it did not impute to the plaintiff the commission of a criminal offence; and
- (d) that the publication took place in mistake or misapprehension of the facts; and
- (e) (i) where the alleged defamatory matter was published in a newspaper, that a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter; or
- (ii) where the alleged defamatory matter was broadcast, that the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different

days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) Subsection (1) shall not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

**18.—**(1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 13, 14 and 17 unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

(2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that defamation against him has been broadcast from the station and requests the name and address of the owner or the operator of the station, or the names and addresses of the owner and the operator of the station, sections 13, 14 and 17 shall not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first mentioned registered letter is received at the broadcasting station.

**19.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

**20.** *The Libel and Slander Act*, being chapter 132 of the Revised Statutes of Alberta, 1942, is hereby repealed.

**21.** This Act shall come into force on the day upon which it is assented to.

No. 51

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FOURTH SESSION  
TENTH LEGISLATURE

11 GEORGE VI

1947 ,

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**BILL**

A Bill to Make Uniform the Law  
Respecting Defamation.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MAYNARD.

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A. Shnitka, King's Printer  
1947