

Defamation and fair comment defense

By Jean-Pierre Casavant



On February 19, 2001, the Court of Appeal upheld the Superior Court decision in the case of *Dhawan v. Kenniff* (500-09-005711-973). It acknowledged that “a reasonably fair comment cannot result in liability of its author”.

In this case, Dhawan, a professor at Concordia University, alleged that he was falsely accused of sexual harassment and, dissatisfied with the way the institution was treating the case, he went on a hunger strike and gave interviews to newspapers to express his point of view.

Interviewed in turn, Rector Kenniff compared Dhawan to Fabrikant inasmuch as each of them refused to follow the established procedures to assert their grievances and were intransigent.

The Court found that it was defamatory to qualify Dhawan as intransigent and resistant to using the established process. However, it accepted that it was a “fair comment” allowed in the circumstances.

The criteria applied to determine if the fair comment defense is admissible are those found in the *Steenhaut v. Vigneault* [1996] R.R.A. 548 (C.A.) decision:

- 1) the existence of public interest in the subject matter on which the author is expressing himself;
- 2) the intent to serve a just cause;
- 3) a reasonably supportable conclusion with regard to the reported facts.

The first two do not create any difficulty. As to the third, Justice Dussault feels that in view of the security measures taken following the Fabrikant affair and the hypersensitive environment of such a situation within the institution, it was reasonably supportable to make such a parallel at the time it was made, in that it was made while Dhawan was on a hunger strike. Consequently, the action in damages was dismissed.

Caution is therefore appropriate when a delicate situation is commented upon and the facts surrounding the declaration are very relevant in justifying its contents.

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