

Defamation.com

Hilary Findlay, a lawyer, and Rachel Corbett, a risk management consultant, are founders and directors of the Centre for Sport and Law. They are regular contributors to Coaches Report.

In July 2002, an Ontario court issued one of the largest Canadian defamation awards for Internet libel — \$400,000. The court found that the defendant had threatened to publish, and had in fact published, a number of allegations and lies on at least seven Web sites. Such cases are becoming increasingly prevalent and have significant implications for publishers of information on Web sites.

So what has this to do with sport? Lots. The Internet is an important tool for sport organizations and people working within sport. It has become a primary mode of communication with members and is also used by staff, committees, and volunteers to do their essential work. Many sport organizations post new information on their Web sites on a daily basis. Coaches and athletes who are physically separated do much of their essential communication by e-mail. Many organizations also host chat rooms or bulletin boards to give members and the public an opportunity to post comments or opinions on all sorts of matters relevant to the sport. Very often these comments are anonymous and go unedited. And herein lies the problem.

While most of the information on Internet Web sites is factual and legitimate commentary, a number of sport organizations have described situations where people have posted some unsavoury comments on their sites or on other sites set up to distribute information about a particular sport world wide. Such comments have been made about particular coaches and athletes and about situations or issues going on within an organization.

We have had direct experience with this phenomenon. We were administering a high-profile arbitration and discovered that the arbitrator was receiving unsolicited e-mails about one of the parties from an unknown third person. Fortunately, the arbitrator was astute enough not to open them. In another case, we were running an appeal of a selection dispute for a major Games, and a number of unidentified people were posting very nasty comments about the applicant and his coach on a bulletin board hosted by a provincial sport organization. Apart from being potentially defamatory, such “cybergossip” can (and in this case, did) worsen an already touchy situation. Such comments are also extremely hurtful to those who are the subject of them.

In the Fall 2000 and Winter 2001 issues of Coaches Report, we wrote a two-part piece on defamation in the sport setting and various defences to it. We identified three elements that make a communication defamatory:

- ❑ A written or spoken communication must be made to a third person.
- ❑ The communication must convey a defamatory meaning or be capable of being interpreted in a defamatory manner.
- ❑ The defamatory meaning must be about the person bringing the allegation.

Distributing material on the Internet is publication. An Ontario judge noted, “Anybody who posts defamatory information on the Internet is a broadcaster and can be sued as if they were a regular newspaper or broadcast outlet.”

Many view the Internet as the last bastion of free speech, but it is clear that some limits apply. The application of the law of defamation is still evolving when it comes to electronic publication or transmission. Nonetheless, the basic principles of defamation law apply, and in fact, they do so with lightning speed. Messages can travel infinitely faster and further on the Internet than through traditional publication channels. Five employees at a law firm in London, England, found out just how fast and how far when their employers disciplined them after a colleague sent them a sexually explicit e-mail that they forwarded along to their friends. By the time they were called in by their superiors, the material had reached 20 million people around the world.

Both those writing the material and those hosting the Web site (usually, the sport organization) need to be aware of their vulnerability and accountability for material on the Internet. During the course of a recent student election at Brock University (the educational institution with which the Centre for Sport and Law is associated), one candidate hosted a chat room on his Web site. Derogatory and blatantly discriminatory comments about one of the other candidates showed up. As the person with control over what was published on his site, the student was held responsible for the publication. As noted by one court in an Internet libel case, "Publishers are not obliged to publish on the Internet. If the potential reach is uncontrollable, then the greater the need to exercise care in publication."

It is further sobering to note that people or organizations publishing material on the Internet could face legal liability anywhere in the world, not just in the country where the material originated. A court in Australia recently allowed an Australian businessman to bring a defamation suit in Australia for an article published online in the United States. The publisher, in this case a corporation, will have to defend a case brought in Australia under Australian defamation law.

The courts have reinforced that defamation is all about damage to a person's reputation and, inasmuch as a reputation can be damaged anywhere the message is received, an action can be brought in any such place. As well, there is much more widespread damage to reputation when a mass audience receives the defamatory material. Electronic mail makes it possible to communicate with hundreds of people in an instant, and any one of those recipients can themselves communicate with hundreds more people. Publication on a Web site can reach an audience of millions instantaneously.

Under Canadian law, the breadth of distribution of a defamatory publication influences the magnitude of an award. In other words, the larger the audience, the larger the monetary damages that might be imposed on the publisher.

Coaches and athletes alike should be cautious about what they say about others in e-mails or in a chat room. And sport organizations must be diligent in monitoring what appears on their Web sites and should not hesitate to remove disparaging material from a Web site over which they have control.