

Learning Network

Mobilizing knowledge to end gender-based violence

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Defamation Law and Gender-Based Violence in Canada: A Primer for Survivors and Service Providers

The law of defamation is intended to protect people from reputational harm. A claim of defamation only requires that the communication (written or spoken) is made to just one other person.¹

Defamation actions are being strategically used by those accused of gender-based violence (GBV) to protect their own reputation, while also discrediting people who have experienced gendered violence.² Such lawsuits, or the threat of a lawsuit, can silence discussions about GBV and discourage formal reporting. The strategic use of defamation law in cases of GBV disproportionately impacts women, who face higher rates of GBV, while men are most often the perpetrators.³

Examples of defamation suits in cases of GBV include:

- Sharing a public disclosure of GBV on social media.⁴
- A written disclosure to family and friends.⁵
- An individual initiates a legal action for sexual violence and are countersued for defamation.⁶
- Reporting to the police.⁷
- Making visual art about their experience reporting.⁸
- Reporters and news outlets report on people accused of GBV.⁹



A United Nations report stated that:

“In a perverse twist in the #MeToo age, women who publicly denounce alleged perpetrators of sexual violence online are increasingly subject to defamation suits or charged with criminal libel or the false reporting of crimes. Weaponizing the justice system to silence women feeds impunity while also undermining free speech.”¹⁰

Lawyers, advocates, and researchers have noticed a similar trend in Canada; however, it is difficult to assess since defamation cases are not tracked formally in Canada.¹¹ Several defamation lawsuits for gendered violence have been reported by media but most will never make the news.¹²

This Brief identifies the motivations of those using defamation suits in cases of GBV, the impacts of these suits at the individual and systemic levels, and what the legal process of a defamation suit involves. This Brief does not constitute legal advice.



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Motivations for Using Defamation Law

Media most often reports on defamation lawsuits in cases of GBV when the people involved are public figures. However, non-public figures are also being sued and initiating defamation lawsuits. For instance, the TIME's Up Legal Defense Fund, initiated following #MeToo to support Americans who have experienced workplace sexual violence, reported that 33 of the 193 cases they were supporting involved workers who came forward and were then sued for defamation.¹⁴

While people who are innocent will use defamation law to defend themselves, abusive individuals will use it as retaliation and to cast themselves as the true victims.¹⁵

Jennifer Freyd's concept of **DARVO** (deny, attack, and reverse victim and offender) can be useful to understand the motivation for initiating defamation lawsuits in cases of GBV.¹⁶

Here is how DARVO might be applied:

DENY: A perpetrator claims they did nothing wrong.

"That never happened!" or "They're imagining things."

ATTACK: A perpetrator attacks the credibility and character of the survivor.

"She didn't say no – she wanted it." or "They are not well. You cannot trust a word they say."

REVERSE VICTIM AND OFFENDER: A perpetrator portrays themselves as the victim and the accuser as the offender. Abusive men threaten defamation lawsuits and make false accusations against the individual who confronted them to further situate themselves as the victims of an unfair attack.¹⁷ This is done strategically to create the impression that they are the real victim and the person who has made the complaint about their behaviour is the offender. The more actions that are taken to hold the offender accountable, the more victimhood the abuser can claim. A defamation action can legitimize their victimhood regardless of the legal outcome.

The Myth of False Accusations

Conversations about defamation law often bring in myths about the rates of false allegations of GBV. This myth is due to a variety of things including:

1. Gendered discrimination within police forces which results in a disproportionate number of cases of sexual violence being labelled as "unfounded."¹³
2. Biased and harmful assumptions that women, in particular marginalized women, often lie or are too sensitive.
3. Lack of formal reporting of sexual violence to police which is then used to question the credibility of the survivor: "Why didn't you go to police?" Women may not go to police for a variety of reasons including systemic racism and ableism.

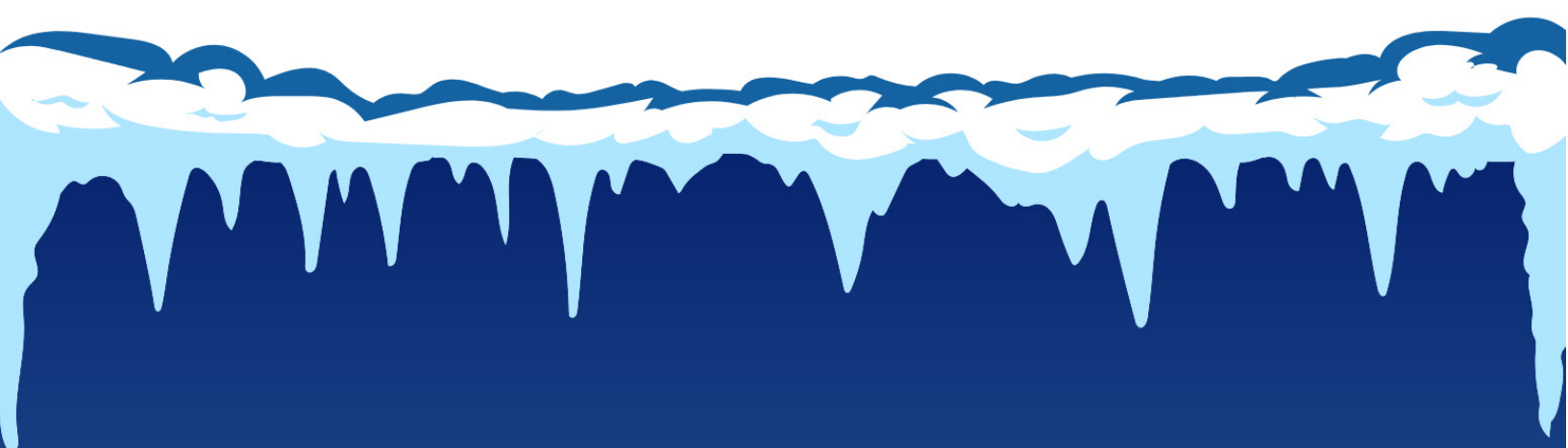


Chilling Impacts at All Levels

Defamation law can have a “chilling effect” where individuals and groups are deterred from reporting or disclosing GBV or supporting survivors out of fear of a defamation lawsuit. This chilling effect operates at the individual level by deterring those who have experienced sexual violence from speaking up and at a systemic level by silencing media reports and broader public discourse about GBV.

For individuals, they may fear the possibility of facing a defamation lawsuit if they speak up, be directly threatened that it will happen, and/or be subject to an existing defamation lawsuit. This can result in survivors not being able to express what happened to them, even to those closest to them. For instance, two sisters accused their uncle of childhood abuse in an email sent to the rest of the family. The uncle accused of the sexual abuse then successfully sued the sisters for defamation and was awarded \$125,000 in damages with costs.¹⁸

Defamation lawsuits can also deter third parties from sharing about the violence. For instance, a university professor learned that her former colleague was being considered for a job at another university. This colleague was investigated for sexually harassing students and terminated by the university she was employed by. The professor shared the allegations of sexual misconduct with the new university when they contacted the professor about their former colleague. The former colleague successfully sued her for defamation from another country.¹⁹



In addition to the chilling impacts, the impacts of defamation lawsuits also have economic, social, and emotional impacts as survivors must navigate their own healing in addition to a legal battle.

At the systemic level, there are also examples of reporters and news outlets being sued by people accused of sexual violence. This may contribute to what is called ‘libel chill’ because it may deter news outlets from publishing stories about gendered violence or limiting allegations due to concerns about litigation. For example, a human rights lawyer and expert in sexual abuse by physicians was sued by a medical association for an opinion piece she wrote about physicians who sexually assault their patients.²⁰

When speech about GBV is chilled, survivors are further marginalized while perpetrators have enhanced impunity for their actions.

Processes of Defamation Law in Canada

Alleged defamatory statements can either be oral or written statements communicated to at least one other person. Most legal proceedings arise from written statements, including formal reports of gendered violence to third parties such as survivor organizations and healthcare providers.²¹ The plaintiff (the person initiating legal action) is most frequently a man accused of gendered violence but can also sometimes be organizations that are attempting to protect their reputations.²² Defendants (the person being sued) can occupy a range of roles such as a survivor, bystander, service provider, journalist, or advocate.²³ In Canada, each province and territory has its own rules of civil procedure, but in most substantive respects, they share many similarities.²⁴

Below, we share some of the ways that processes of defamation law, and related legal processes proceed in Canada:

1. Cease-And-Desist

A cease-and-desist letter can be written by anyone but will often be written by a lawyer. The letter can request that the recipient take a range of actions which may include removing social media posts, a full retraction of the allegations, or issuing a public apology.²⁵

A cease-and-desist is not legally binding and does not require a response or that any action be taken. It is possible that the letter is simply a threat intended to intimidate the recipient into silence. A cease-and-desist letter is relatively low cost, or free if the individual writes their own letter without the help of a lawyer. If actions are not taken by the recipient, it is possible that legal action will proceed.

It is best for the individual who receives a cease-and-desist to consult with a lawyer who can inform them on best actions to take according to the specifics of what is alleged to have occurred in the letter.

2. Initiation of Civil Legal Action

Civil legal action begins with a written statement of claim. In Ontario, in most circumstances, civil legal action must be commenced within two years of the defamatory statement.

The timelines may differ in each province or territory and can depend on other circumstances (for example, if the statement was published by a traditional news media outlet).²⁶ All the defendants named on the lawsuit must be served with the lawsuit within an amount of time as defined by the provincial or territorial rules of civil procedure.



It is highly recommended that anyone who is named on a statement of claim consult with a lawyer as soon as possible to decide what action to take.²⁷ Defendants have several options available to them after they have been served. Some of the potential responses include:

- Filing a notice of defence – there are a range of defences available depending on the circumstances. Defences most often used in these cases include Truth, Qualified Privilege, and Fair Comment.
- Trying to settle all or part of the claim with the person suing them.
- Counter-claiming against the person suing (for example, initiate civil legal action for sexual harm).
- Crossclaiming against another defendant in the action or a third-party.

If the defendant decides not to file a defence, the plaintiff can request a default judgment from the court. If the defendant is noted in default because they did not respond to the claim, they are deemed to have admitted all the allegations outlined in the statement of claim. They cannot take any steps in the action and are no longer entitled to notice of any steps in the action.²⁸

Following written pleadings, the next stage is called “discovery.” Discovery allows for both parties to assess the strength of the witnesses and overall likelihood of success at trial. There are two phases of discovery, which include document exchange and oral examination. In document exchange, the parties may be required to disclose all relevant documents related to the lawsuit including personal communications such as emails, social media accounts, and other records. The oral examination allows for opposing lawyer to ask questions.²⁹ In cases of gendered violence, sometimes lawyers will rely on discriminatory stereotypes about sexual violence or use discovery to obtain private information about the defendant for the plaintiff that may not actually be relevant to the proceedings.³⁰

3. Mediation

Mediation is a confidential way for people in a lawsuit to resolve the lawsuit without going to court. It is facilitated by a neutral third party who helps the parties come to an agreement. The purpose of mediation is not to determine winners and losers of the case but to resolve the dispute and avoid a trial.

Statements made in mediation cannot be used in court. Agreements that are made in mediation must be made in writing, signed by all parties or their lawyers. These agreements are legally binding.³¹ In Ontario, some cases require mediation before the court will allow the matter to go to trial.³² There is growing discussion across Canada about the use of non-disclosure agreements in mediation specifically when there are allegations of gendered violence.³³



4. Civil trial

If the parties cannot come to an agreement in mediation, the case will proceed to trial.³⁴ In Canada, most civil cases are tried by a judge alone.³⁵ If the defendant is found not liable, the judge will dismiss the case. If the defendant is found liable, however, a judge will consider the following before deciding what the monetary damages will be: the remedy that the plaintiff has requested, the facts of the case, and compensation for the plaintiff. In Canada, typically, the party who loses a civil proceeding or motion must make a significant contribution to the winning party's legal costs.³⁶



Responses Through Anti-SLAPP Legislation

Ontario and British Columbia have introduced what is commonly referred to as “anti-SLAPP” (Strategic Lawsuits Against Public Participation) legislation to protect citizens from lawsuits that are intended to chill speech of public importance.

The Supreme Court of Canada describes SLAPPs as *“initiated by plaintiffs who engage the court process and use litigation not as a direct tool to vindicate a bona fide claim, but as **an indirect tool to limit the expression of others.** In a SLAPP, the claim is merely a façade for the plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party’s speech and deter that party, or other potential interested parties, from participating in public affairs.”*³⁷

This legislation is intended to encourage individuals to engage in expression on matters of public interest without concerns that they will be sued.³⁸ The legislation does not narrowly define what constitutes public interest to ensure broad interpretation.

To date, several lawsuits pertaining to communications about GBV have been dismissed by the courts using this legislation.³⁹ The reasons the lawsuits have been dismissed are often specific to the facts of the individual case but tend to be in cases where the individual made a formal report to an organization and did not share the allegations with many people.⁴⁰

However, there are also defamation lawsuits that have not been dismissed.⁴¹ The courts have stated that although gendered violence may be of public importance, this does not necessarily mean that all expression about gendered violence should be protected at the expense of the plaintiff.⁴² For example, to date, anti-SLAPP motions involving allegations being posted on social media have not been protected by the legislation.⁴³



Barriers to Justice

Retaining legal counsel can be challenging for several reasons:

- It is expensive and not covered by legal aid.
- It may be difficult to find counsel with expertise in defamation law, which is a niche area of law.
- Defamation lawyers may not have a comprehensive understanding or analysis of GBV.
- Not-for-profit legal clinics are often unable to represent people in defamation lawsuits.

The result is that survivors, in particular marginalized survivors, are left to navigate the complex legal system alone and are further harmed by it without support.



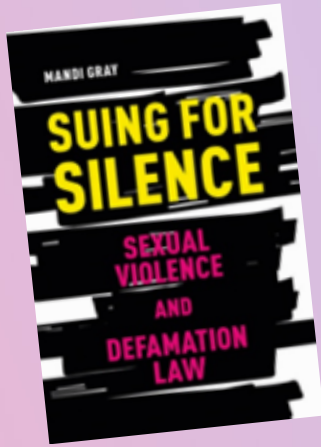
Recommendations for Future Advocacy

There are many difficulties for people who have experienced gendered violence and who must navigate a defamation lawsuit. There are ways for those in the GBV sector to advocate for change.

To address the strategic use of defamation lawsuits to harm survivors of GBV, actions that can be taken include:

1. Improving education for lawyers and police about GBV including the relevant power dynamics, DARVO, and dispelling myths about GBV.
2. Offering training to service providers and bystanders around defamation law, including how to support survivors and the possibility of their own risk of a defamation lawsuit.
3. Additional research on how to support survivors who have or have not formally reported GBV and then faced discrimination during a defamation lawsuit.
4. Creating spaces of shared learning for survivors about defamation law which include those with lived experience as experts.
5. Provincial level advocacy to provide legal protection from defamation lawsuits for formal reports of GBV.
6. Improving data on civil defamation lawsuits in Canada.





Learn more: *Suing for Silence Sexual Violence and Defamation Law* by Mandi Gray

Suing for Silence is a groundbreaking examination of how abusive men use defamation lawsuits as a weapon against anyone who attempts to hold them accountable.

As Mandi Gray demonstrates, Canadian defamation law is being employed to silence survivors and advocates who speak out about sexual violence, perpetuating the myth that false allegations are common.

Gray draws on media reports, courtroom observations, and interviews with silence breakers, activists, and lawyers from across Canada to examine the impact of so-called liar lawsuits on those who report or are thinking of reporting sexual violence, and on public discourse.

Disclaimer: The information provided in this brief is intended for informational purposes only. This brief is not legal advice and was not written by a lawyer. It is recommended that anyone with specific questions about their situation or the situation of a client contact a lawyer for legal advice. In every case named in this resource, the men who have initiated legal action have denied the allegations of gendered violence against them. This document does not to ascribe assignments of truth to any allegations addressed in this document. The intention of this Brief is educational and to provide readers with a better understanding of defamation lawsuits due to communications about gendered violence in Canada.

Many provinces and territories now offer free Independent Legal Advice for people who have experienced sexual violence. To find resources in your province/territory, [click here](#).

The legal information contained in this brief does not include information for Quebec residents. In Quebec, defamation cases fall under the Quebec Charter of Human Rights and Freedoms and the Civil Code of Quebec.

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