

Employer Victorious in \$800,000 Lawsuit Concerning Bad Job Reference

Can a company be sued for defamation if it gives a bad job reference? Not if it's honest. So says the Ontario Superior Court of Justice in a decision just released this week. In the case of *Papp v. Stokes Economic Consulting Inc*, a young economist named Adam Papp sued our client, Stokes Economic Consulting, after it fired him without cause.

Wanting to help its former employee find a new job, Stokes agreed to give Mr. Papp a reference and to confirm his technical capabilities. Mr. Papp eventually found a position with the Government of Yukon and made it all the way to the last stage of the interview and recruitment process. He was the top ranked candidate, and that was left was for him to get a reference check.

When Stokes received the call from the Yukon, it was hoping that it would get an opportunity to praise Papp's technical capabilities and strong computing skills. Unfortunately, the Government of Yukon was only really interested in one thing – how Papp got along with others. The truth was that Stokes was a very small office and Papp did not get along well with his coworkers. After being repeatedly pressed about Papp's ability to get along with others, the reference came out as mixed at best, and Papp did not get the job. Papp then sued Stokes **for almost \$800,000.00**.

Samfiru Tumarkin LLP's Gurlal Kler and Jon Pinkus successfully argued that the job reference, while certainly not glowing, was not defamation. The court agreed that although the reference was not positive, it was also the truth.

"This decision should reassure employers that they can and should give honest job references without fear of liability for a defamation lawsuit," said Pinkus. "Without honest evaluations, the entire reference check process is a futile exercise."

The court also held that a company needs to have leeway to give its honestly held opinion in a reference check, and as long as that opinion is not being given maliciously, a reference check cannot be defamation. Papp's defamation claim was dismissed completely.

"The only obligation on the employer when providing a reference check is to be honest," said Kler. "The onus is on the employee to do her own due diligence prior to listing someone as a reference."

SOURCE: Samfiru Tumarkin LLP

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