

# Can your old boss badmouth you? Yes.

Bad references are justifiable, court rules

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An economist who acted like an “intellectual snob” and called his coworkers at a forecasting company “stupid” has failed in his efforts to sue the Ontario company for defamation, after he was given a negative reference when he applied for a new job.

The decision of Ontario Superior Court “dispels the notion that an employer is bound to limit its comments to only the positive attributes of an employee when agreeing to provide a reference,” said Gurlal Kler, who defended Stokes Economic Consulting against the claim by former employee Adam Papp.

“Because employers are so fearful that they’re going to be exposed to some defamation lawsuit, they’ve now narrowed the context of the reference to only confirming the individual’s position and job duties,” Kler said. “That’s not what a reference is supposed to be... This decision reaffirms that a reference check enjoys the protections provided by qualified privilege, which allows the employer to provide an honest reference and not expose itself to liability for the reference check.”

In 2011 Papp, then in his late 20s, got his first job as an economist, preparing forecasts about Ontario for Stokes Economic Consulting. He had been let go for cost-cutting, not cause, and was applying for a new job with the government of Yukon in 2014 when Ernest Stokes, the company’s founder and president, agreed to be a reference for him.

Papp had applied for a job as a socio-economic statistician for the government of Yukon and was the first-ranked candidate. The only remaining obstacle was the reference check. That is where things went south.

As Kler described it, Stokes thought he could mention the interpersonal problems and still give an overall positive reference.

Stokes told Amanda Ho, who worked for Yukon, that Papp was let go because of a “performance and attitude issue.” He said he was not pleased with Papp’s work, that he “has a chip on his shoulder” and does not work well in a team.

That killed his prospects for the job. Soon after, Papp sued for \$65,000 for wrongful dismissal, \$500,000 for defamation, plus \$200,000 in punitive damages, and \$30,000 for intentional infliction of mental suffering.

Those claims failed, and the judge on Tuesday only ordered he be paid a little more than \$17,000 for wrongful dismissal.

Judge Gisele Miller concluded that what Stokes told Ho was “substantially true,” and though it was defamatory in the sense that it would lower Papp’s reputation in the mind of a reasonable person, he was justified in saying it.

Counsel for Adam Papp did not respond to requests for comment.

National Post  
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