

Mr. Justice Cory, though pressed by Scientology's lawyers and the media's lawyers, declined to adopt the American rule of "actual malice." Mr. Justice Cory pointed out that, in the United Kingdom and in Australia, this rule has been refused. Moreover, he noted that a number of jurists in the United States have advocated a reconsideration of this rule, and quoted American Justice White that:

...these First Amendment values are not at all served by circulating false statements of fact about public officials. On the contrary, erroneous information frustrates these values....As the Court said in *Gertz*: "There is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interests in 'uninhibited, robust, and wide-open' debate on public issues."

Finally, on the issue of judicial privilege as a protection from liability, Mr. Justice Cory ruled that the court's privileges are not to be abused, that wrongdoing can oust privilege and that barrister Manning's behaviour defeated any privilege, saying:

...it is my conclusion that Morris Manning's conduct far exceeded the legitimate purposes of the occasion. The circumstances of this case called for great restraint in the communication of information concerning the proceedings launched against Casey Hill. As an experienced lawyer, Manning ought to have taken steps to confirm the allegations that were being made....In those circumstances he was duty bound to wait until the investigation was completed before launching such a serious attack on Hill's professional integrity. Manning failed to take either of these reasonable steps. As a result of this failure, the permissible scope of his comments was limited and the qualified privilege which attached to his remarks was defeated.

The press conference was held on the steps of Osgoode Hall in the presence of representatives from several media organizations. This constituted the widest possible dissemination of grievous allegations of professional misconduct that were yet to be tested in a court of law. His comments were made in language that portrayed Hill in the worst possible light. This was neither necessary nor appropriate in the existing circumstances...it was certainly high-handed and careless. It exceeded any legitimate purpose the press conference may have served. His conduct, therefore, defeated the qualified privilege that attached to the occasion.

About the negative effect of the defamation, Mr. Justice Cory said:

The written words emanating from the news conference must have had an equally devastating impact. All who read the news reports would be left with a lasting impression that

Casey Hill has been guilty of misconduct. It would be hard to imagine a more difficult situation for the defamed person to overcome....A defamatory statement can seep into the crevices of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime. Seldom does the defamed person have the opportunity of replying and correcting the record in a manner that will truly remedy the situation.

Mr. Justice Cory noted the planned nature of the barristers Manning and Ruby's defamatory statement, as well as the location of the defamation. He said:

The publication of the libelous statement was very carefully orchestrated. Members of the press and the television media attended at Osgoode Hall in Toronto to meet two prominent lawyers, Morris Manning and Clayton Ruby. Osgoode Hall is the seat of the Court of Appeal and the permanent residence of the Law Society. The building is used as the background in a great many news reports....In the minds of the public, it is associated with the law, with the courts and the justice system. Manning went far beyond a simple explanation of the nature of the notice of motion. He took these very public steps without investigating in any way whether the allegations made were true.

Mr. Justice Cory revealed the deliberate nature of barristers Manning and Ruby's action saying:

The existence of the file on Casey Hill under the designation "Enemy Canada" was evidence of the malicious intention of Scientology to "neutralize" him. The press conference was organized in such a manner as to ensure the widest possible dissemination of the libel....It pleaded justification or truth of its statement when it knew it to be false.

The Hon. the Speaker: Senator Cools, I am sorry to interrupt, but your speaking time has expired.

Senator Cools: Honourable senators, I would be happy to adjourn my remarks until Tuesday.

The Hon. the Speaker: It is not a question of adjourning your remarks. Your time has expired. Unless leave is granted, it is not possible for you to adjourn your remarks.

- (1530)

How much time does the honourable senator need?

Senator Cools: Five minutes. I would be happy to carry on. It is not a problem.