

Libel—the high cost of truth

by Eric Eggertson
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Publishers in Canada are running scared in the face of expensive libel suits. Newspaper and book publishers, responding to a rash of suits costing thousands of dollars, are careful not to tread on potentially libellous ground.

"We don't have any interest in publishing something with libel possibilities," Jack McClelland, president of McClelland and Stewart, a major Canadian publishing company, said in a recent magazine interview. "Life is too short for publishing companies, and libel is too costly."

The future of investigative journalism in Canada comes into question when publishers won't publish sensitive material.

"If something like Watergate had happened in Canada, a smart paper would have hushed it up, because that would have opened them up to a libel suit," says UBC associate law professor Bill Black. "In Canada Nixon could have sued and they would have had to bring Deep Throat to court to prove their case."

Under Canadian law, the party being sued must prove that what they said is true. Journalists must either reveal their

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sources or face possible jail sentences. American journalists however, can demand government documents to back up their cases under freedom of information legislation. Some Canadian writers obtain information in the U.S. that cannot legally be written or talked about in Canada.

Two books about the RCMP security service (SS) drew libel suits in the past few years, partly because of the sensitive political climate surrounding the Mounties. Until recently, the SS was a secret organization, but Ian Adams' *S: Portrait of a Spy* and John Sawatsky's *Men in the Shadows: the RCMP Security Service*, and a royal commission have brought it to the public's attention.

Writers and publishers rallied to Adams' support when he was sued for the alleged libellous content of his novel. In the 1977 novel, a SS agent is revealed to be a triple agent, working for the CIA and the KGB. Adams and his publisher were sued for \$2.2 million by a former SS agent, Leslie James Bennett. Bennett alleged that he was recognizable as the triple agent S, and that his reputation was damaged by the book.

Adams and Gage, his publisher,



VANDER ZALM . . . and his winged friends drew a libel suit for the *Victoria Times*, 1978

settled out of court with Bennett. If the case had gone to court it might have set a precedent for libel suits against works of fiction.

"If you're writing fiction you take a

real chance of referring to real people," Black said. Whether or not a book is fiction, a libel can take place. If a "reasonable person" thinks a story is about J.L. Bennett, Bennett can sue for libel.

A libel suit against a book has one immediate effect: that book goes out of circulation. Adams' novel came out in 1977. Due to its controversial subject it sold well—15,000 copies in 40 days. But when Bennett began his suit the book was immediately withdrawn and has been unavailable since.

Adams has obtained the publishing rights for *S: Portrait of a Spy*. That cost him \$10,000 in addition to the \$30,000 settlement with Bennett, and his own legal costs.

The Bennett vs. Adams case might seem to be a typical libel case, until one considers that it concerns a work of fiction. A disclaimer at the beginning reads "all characters fictional and any resemblance to persons living or dead is purely coincidental." But that disclaimer carries no weight under Canadian law.

Canada is riding on the coat-tails of the American concept of free speech. Writers in Canada are incredibly

vulnerable to legal suits. When sued, the writer must go to court and prove his or her case.

The politics behind the Ian Adams case are perhaps an example of the most disturbing aspect of the cloak and dagger tactics that get dragged to the brink of the courtroom but are often settled out of court.

Recent evidence reveals that *Toronto Sun* editor Peter Worthington was behind Bennett's libel suit. In a series of letters, published recently by *This Magazine*, Worthington wrote to Bennett, feeding him information and innuendo about Adams' book.

The Worthington letters were all written at the time the book was published. At first Worthington told Bennett:

Apparently it is fiction based on fact. I have been told people are identifiable. I apparently am in it... You are "S". I've been told he claims to have gotten information from you, to have talked with you, and that you are his "principle" (sic) source.

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As I say, this is what he is alleged to have said on TV (not shown yet) and to have told interviewers off-camera.

At the time no one had publicly stated that Bennett was "S". It seems doubtful that anyone but Bennett's friend, Worthington, had yet linked Bennett with Adams' novel.

Worthington tells Bennett in a

second letter:

What the 'fictionalized' book is, is a hatchet-job of RCMP security... You forget very quickly that it is supposed to be 'fiction' and assume everyone is real. Bluntly he (Adams) says you were KGB who was probably turned by CIA, thus becoming a triple agent.

Isolated in Australia, Bennett was relying on Worthington's word. He took Worthington's advice and hired Worthington's libel lawyer, taking what was essentially Worthington's case to court.

What Bennett did not know (and this could well have changed his mind about who he wanted to sue) was that his friend Worthington was the first journalist to link him with the fictional "S". One has to wonder if Bennett would have sued Adams if he had known the circumstances of the publicity behind Adams' book.

But when you get to court, it doesn't matter why you were libelled, or why you are suing, it's whether or not you were libelled. And high legal fees are forcing Canadian journalists to back off some sensitive topics.

Even letters to editors are being pared down to avoid possible libels. When two law students sent a letter to the *Saskatoon Star-Phoenix* calling a local city councillor racist, they left the paper open to a libel suit. The councillor sued, and when the law students didn't show up in court, was awarded \$25,000 in damages and costs.

Newspaper cartoons, which have always been noted for their savage, often malicious humor, have also been found to be libellous. The B.C. Supreme Court awarded provincial cabinet minister Bill Vander Zalm \$3,500 in damages after the *Victoria Times* published a cartoon of Vander Zalm plucking the wings off flies. Vander Zalm claimed the cartoon lowered his reputation by suggesting that he gained pleasure from inflicting pain on others.

The *Times* fought back, saying most people would understand that the cartoon was a satirical comment on his welfare programs. The B.C. Court of Appeal sided

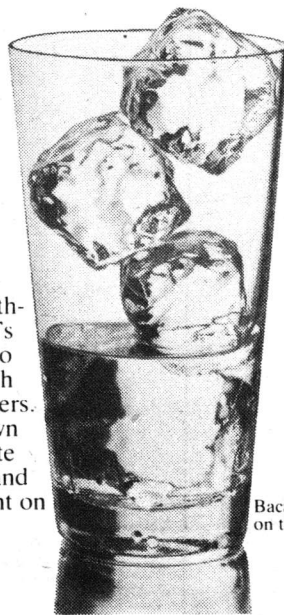
with the *Times* and reversed the decision, but editors will always remember their shock when they heard Vander Zalm had won.

The high cost of telling the truth in Canada is continuing to rise, as more and more writers, newspapers and publishers fight expensive battles over libellous material.

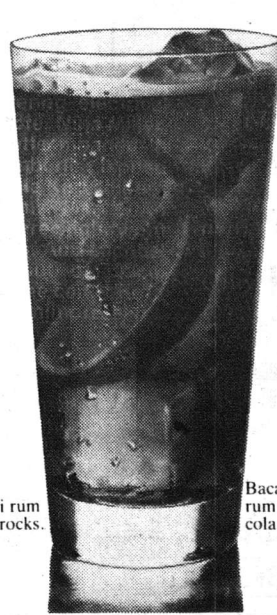


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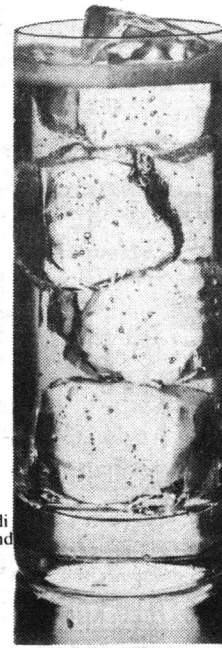
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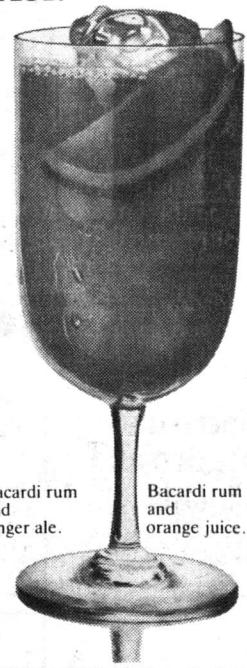
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