

the occasion of these words were protected by judicial privileges which sheltered them from liability. Moreover, Scientology and Mr. Manning were supported by the media in their initiative as they urged the Americanization of Canadian law through the adoption of the United States' "actual malice" rule of the *New York Times v. Sullivan* decision in defamation cases.

Honourable senators, the problem is a profound one, and is at the heart of the crisis in civil and criminal justice in Ontario. The problem is the use by barristers of the court process for harassing and injuring others, that is, for civil molestation. The technique is the utilization of false accusation, untruth and falsehood in court documents and the subsequent shielding of these words and actions behind judicial privilege. It is their use of the courts, court documents, court privileges and proceedings as instruments of malice and injury. The entire field of judicial privilege, including solicitor-client privilege, begs clarification. The abuse of legal and judicial process by the legal profession compels attention and examination.

Regarding Scientology's attitude to Casey Hill as a Crown attorney, Mr. Justice Cory in his judgment states:

Long before he gave advice to the OPP in connection with a search and seizure of documents which took place on March 3 and 4, 1983, Casey Hill had become a target of Scientology's enmity. Over the years, he had been involved in a number of matters concerning Scientology's affairs. As a result, it kept a file on him. This was only discovered when the production of the file was ordered during the course of this action. The file disclosed that...Scientology closely monitored and tracked Casey Hill and had labelled him an "Enemy Canada." Casey Hill testified that from his experience, persons viewed by Scientology as its enemies were "subject to being neutralized."

Despite the fact that Casey Hill was cleared of the allegations, and Mr. Justice Cromarty had made a judicial determination to this effect, the Church of Scientology and Mr. Manning persisted in their attack on Casey Hill. Mr. Justice Cory states:

Scientology continued its attack against Casey Hill throughout the trial of this action, both in the presence of the jury and in its absence. More than once, it reiterated the libel even though it knew that these allegations were false. Clearly, it sought to repeatedly attack Casey Hill's moral character....Counsel for Scientology subjected Casey Hill to a lengthy cross-examination which the Court of Appeal correctly described as a "skilful and deliberate attempt at character assassination."

Mr. Justice Cory continued:

The day after the jury's verdict on October 4, 1991, Scientology republished the libel in a press release delivered

to the media. A few weeks later, it issued another press release attacking the verdict of the jury as "outrageous" and "so exorbitant..." Shortly thereafter, it proceeded with a motion before Carruthers J. to adduce evidence which, it contended, would bear "directly on the credibility and reputation of the plaintiff S. Casey Hill."

Mr. Justice Cory cited the Ontario Court of Appeal about barristers Manning and Ruby's insistence saying:

What the circumstances of this case demonstrated beyond peradventure to the jury was that Scientology was engaged in an unceasing and apparently unstoppable campaign to destroy Casey Hill and his reputation. It must have been apparent to the jury that a very substantial penalty was required because Scientology had not been deterred from its course of conduct by a previous judicial determination that its allegations were unfounded nor by its own knowledge that its principal allegation...was false.

About defamation and the Charter of Rights and Freedoms, Mr. Justice Cory said:

Certainly, defamatory statements are very tenuously related to the core values which underlie s.2(b). They are inimical to the search for truth. False and injurious statement cannot enhance self-development. Nor can it ever be said that they lead to healthy participation in the affairs of the community. Indeed, they are detrimental to the advancement of these values and harmful to the interests of a free and democratic society.

Mr. Justice Cory condemned false allegations saying:

False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.

Mr. Justice Cory outlined the religious and legal history of the affirmation of truth and the punishment of untruth. He referred to the Roman era, the Bible, the Mosaic Code and the Talmud. He traced the history of the common law action for defamation to the efforts of the Star Chamber to eradicate duels and blood feuds, the favoured method of vindication for injured parties. Mr. Justice Cory upheld the time-honoured principles on false allegations saying:

To make false statements which are likely to injure the reputation of another has always been regarded as a serious offence.