

Arts Magazine

SILENT NO LONGER

FOR ALMOST TWO YEARS, DONNA SMYTH WAS SILENCED, but now she has a story to tell.

Her story is about many things. It is about a citizen speaking out for a cause and facing bankruptcy as a result. It is about two professors, nearly as opposite as it is possible to be in their lives and beliefs. It is about the Canadian nuclear industry and Canadian libel laws. And it even has a happy ending ... so far.

By KEN BURKE

On January 18, four men and three women walked into a Halifax courtroom after five hours of deliberation and read their verdict. With broad grins on some of their faces, they marched through the varieties of libel in Canada, through every possible way damages could have been awarded, and one by one found Acadia University professor Donna Smyth not guilty. As her friends and supporters released their pent-up emotions into the thickly wooden chamber, the little publicized case of Yaffe vs Smyth came to a close.

Sitting in her small home in Ellershouse, Nova Scotia, Donna Smyth acts most unlike a victor in a nasty legal battle. The jubilation in her voice is measured, the release tempered by hard lessons learned during her judicial ordeal. "For once," she says with a wan smile, "I guess we can say thank heaven for small victories." If the victory is small, it is because the case is far from closed for her.

Despite her legal innocence and the jury's instruction of McGill Chemistry professor Leo Yaffe to pay her court costs, she still awaits a legal bill of approximately \$20,000 above what court costs will cover. She spent two years with the loss of all she owns hanging on the jury's verdict. And all for writing a commentary in the Feb. 15, 1982 Halifax *Chronicle-Herald* criticizing a pro-nuclear energy speech given by Yaffe in Wolfville, N.S. weeks earlier.

The offending sentence: "He is only one of many 'experts' the nuclear industry will parade in front of us in their desperate attempt to sell 'nuclear' to Nova Scotia."

The Legalities

What sets this case apart from any other squabble between two Canadians conducted through the legal system? Just this; instead of charging both Smyth and the newspaper, which distributed over 100,000 copies of what he called a "diatribe" and a "smear", Yaffe singled out Smyth in his suit, cutting her off from sharing a defence and legal costs with the much greater resources of the newspaper. It was possibly the first time in Canada a writer had been sued without also naming the publication which printed the allegedly libellous article, paragraph, or word.

The reasons a libel suit usually includes both author and publisher haven't changed much over the years. While the writer creates the supposedly libellous wording, the nature of libel is that it is damaging words **distributed to and read by others**. Without the publishing and distribution, no real harm can be said to have occurred. Also, in most cases, publications have a greater ability to actually pay damages than an individual. As a result, grouping the two together always made sense.

The dangers arise when Canadian laws protect the media companies better than the individuals who write in them. The Nova Scotia Defamation Act is such an example, placing a three-month statute of limitations on serving notice to publishers, while allowing a year for the litigation-minded to sue authors not employed by the publisher. Yaffe's lawyers

served notice of his suit a scant two weeks before the one-year limit was up.

The implications can be staggering. With similar laws, nobody writing in the public forum of letters to the editor or commentaries can be sure a contentious letter won't cost them thousands in lawyers' fees. To an individual, the costs of successfully defending a libel suit can be more financially deadly than losing a \$100,000 settlement is to a newspaper. A guilty verdict would almost ensure bankruptcy.

This leaves the floodgates open for the use of libel as a weapon. When a plaintiff financially outweighs the defendant and can afford to dump money into a trial they know is likely to fail, the resulting harassment can be very cost-effective. But this isn't exactly news to professional journalists.

"Libel proceedings are a form of intimidation," said Max Allen, CBS *Ideas* producer, in a magazine article. When working on *As It Happens*, Allen fell victim to a controversial lawsuit. "They're not out to collect a lot of money, and smart journalists view them as such."

This reality has raised many social activists' fears about the dangers of daring to speak out against individuals or companies with vast legal resources to bear against them. "There's been a general worry about what you can say," says Susan Holtz, an employee at Halifax's Ecology Action Centre. "We've been trying to win a place at the table of expertise, and when you see the gains you've made being right, eroded by fear of speaking out, it's really disappointing."

The fear also has tremendous potential to affect news coverage—and news blackouts. "Obviously media people can't afford to cover issues they'll have to worry about law suits with," says Holtz. She saw the beginnings of this when she became involved with the Nuclear Critics' Defence Fund, a group raising money for Smyth and monitoring other potential cases. "When we had a press conference on the formation of the fund, it was reported to me that the CBC had their short piece on it checked over by media lawyers," she says.

One specific example of a blackout occurred when Southam news columnist Allan Fotheringham was sued by the then-powerful liberal advisor Jim Coutts. Under his lawyers' advice, the name of Coutts did not appear in a Fotheringham column until Coutts ran in a Toronto by-election.

He printed nothing for the same reason Donna Smyth was unable to publicly comment on her suit for two full years before it came to court—under Canadian libel law, comments made after a legal writ is issued can be used against the defendant to increase a settlement or as proof of guilt. This informal, inescapable gag rule frustrated Smyth when interviewed before the trial.

"I really am deeply angry," she said, tapping her foot as if impatient. "I can't directly express my feelings about what is happening to me because it could lead to aggravation of damages. It's a very

frustrating situation to be in.

"People should realise, not only does this go on for a long time," says Smyth, "but it also becomes more expensive as it goes on—besides the psychological drain.

"Nobody who gets involved in a libel suit comes off cheaply. It just is a very expensive procedure."

Anybody wondering how all these libel cases can get to court and why people are worried if they are right, can take cold comfort in the following fact. The truth, or "fair comment", isn't always an effective defence in Canada, as Max Allen found out in 1977 when an expose he produced on the Canada Metal Company cost the CBC thousands despite the accuracy of its claims. Under Canadian laws, it seems it's not enough to be accurate; the truth of an article's statements has to be either well known to the public or explicitly proven within the article to prevent a suit sticking. Many times, what's "proven" or not is an area grey enough to land a writer in court.

The Setting

The road both to and from this trial stops at the small village of Ellershouse, Hants County, Nova Scotia. Near the University town of Wolfville where Smyth teaches English, Ellershouse is on the edge of the Annapolis Valley and some of the richest farmland in Canada. Around the village, the land becomes too hilly for large-scale farming, but the moist, fertile nature of the land shows through the lush green smudges of terrain seen from the train ride in.

The view passing from Halifax to Ellershouse has a lot to say, more than most train trips. As the two-car VIA express clacks through the surrounding area, hill and dale are plainly visible, but so are the objects which connect them like a nervous system—the lakes, marshes and rivers running through the land. As the onrushing window exposes lakes rimmed with marshes and streams winding down the middle of valleys they carved out over the centuries, it's clear how interconnected the area really is. It's something the people who live there can't forget. So when they caught wind that several companies were exploring the area with an eye toward setting up a uranium mining operation, the locals, including Donna Smyth, were concerned... to put it lightly.

While the very mention of the words URANIUM and RADIATION is enough to make most people nervous, there are reasons aplenty for such fears.

One person who knows this well is Gordon Edwards, President of the Canadian Coalition for Nuclear Responsibility and professor of Mathematics and Science at Montreal's Vanier College. Edwards has spent a good deal of his life researching the nuclear cycle and serving as a paid consultant on government commissions. And when he examines uranium mining, he sees a nightmare of environmental dangers almost everywhere he looks.

"The main impact is the large amount of nuclear waste," says Edwards. As mines

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