

Raising the Steaks - *[picture of farmed salmon steaks]*

DEFAMATION, *INJURIOUS FALSEHOOD* AND SUING ENGOS IN CANADA

This article is editorial opinion and not legal advice.

The rapid spread of information, and misinformation, that today's technology allows can make any industry vulnerable to crippling attacks by parties motivated by a contrary agenda.

Aquaculture industry and Environmental Non-Governmental Organizations (ENGOS) are a perfect example. Historically, in the battle of perceived right and wrong in the media, the ENGOS have come out ahead, way ahead.

Let's be frank: aquaculture gets its ass kicked on a daily basis. Google "farm salmon" and see who wins the battle for the most hits. The public is bombarded by advertisements designed to sway their emotions and wallets away from aquaculture products whilst ENGOS who finance the campaign are protected by the freedom of speech doctrine. A majority of the public are not educated about seafood farming and will simply accept as fact what a respected ENGO decides to put in the paper. This is not a level playing field for aquaculture proponents.

Individual business owners, employees, suppliers, contractors all have a stake in the general acceptance of the product that is, after all, the purpose of the venture. Advertising that harms this is injurious to the industry as a whole and its individual pieces.

While aquaculture continues to improve towards its goals of stewardship and sustainability, the most damaging information disseminated by ENGOS is the untrue information, the *falsehoods*. I am sure most readers (including those ENGOians that buy this magazine to monitor the industry – hi guys) can think of or find examples of information which is purposely manipulated to cause injury to the industry. How else but by attacking it do you put an end to aquaculture?

In light of this attack, how vulnerable are the attackers to being sued for anti-aquaculture campaigning?

A brief introduction to defamation law is in order. Defamation is generally damage to one's reputation. When you speak of defamation people generally think of slander or libel. Slander is spoken defamation, libel is written defamation.

A law suit for defamation may work in some industries, and not in others. This is because in order for a court to find that a plaintiff was defamed, there must be proof that the plaintiff's actual reputation in the community was harmed. The court will assess very carefully the evidence of the plaintiff's reputation before the alleged defamation, and after. If there is no damage to the public reputation, then there was no defamation, even

though there were a lot of very hurt feelings or angry shareholders. In the case of aquaculture, the ENGOs have been so successful from the very beginning at campaigning against aquaculture, lawyers for an aquaculture company would have a hard time showing that the plaintiff's general reputation could be any worse than it is. Hence there could be no damages.

There is hope however in the tort of *injurious falsehood*. Unlike suing an ENGO for defamation, a plaintiff who sues for *injurious falsehood* need not show that there was damage to their reputation. To succeed in suing for *injurious falsehood* the plaintiff needs to show, generally, that:

- The defendant communicated untrue information about the Plaintiff or their product to a third party;
- The defendant did so with the intent to cause harm to the plaintiff; and
- The plaintiff sustained economic damages.

Injurious falsehood has been characterized as a law that discourages interference with economic affairs. Again, the benefit of proceeding against ENGOs using the tort of *injurious falsehood* is that there does not have to be measured effect to the plaintiff's reputation. You sue not for damage sustained in the eyes of others, but for damage to your bottom line. Rasputin could sue for damages.

One example of an economic damage attributable to an *injurious falsehood* might be a claim for profit that was not realized because a contract was cancelled by a buyer when they were pressured to back out amid controversy over damning "report" released by an ENGO that was in some material way untrue.

It is likely that at some point the aquaculture industry will take a run at an ENGO for *injurious falsehood*. In light of judicial history, British Columbia may be a favourable jurisdiction for the industry to establish case law that protects itself from sloppy and manipulative anti-aquaculture campaigning. In any jurisdiction however, the test cases, and there should be several, must be carefully chosen.

Although stewardship and sustainability are the goals of both environmentalists and aquaculturists, we get our pay cheques from different places, and there will always be a war to be waged. Aquaculture will always seek to improve on its self, and ENGOs will always seek to discredit aquaculture, in whatever way they can. It is time that aquaculture fought back.

Darren Williams is a marine industry lawyer in Victoria, British Columbia, Canada, and can be reached through www.MarineLaw.ca.