

NO: CV 02304

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
JUDICIAL DISTRICT OF YELLOWKNIFE

BETWEEN:

JOHN MAPES



Plaintiff

- and -

HUB PUBLICATIONS LTD., LESLIE GOUDREAU
and CHRIS BRODEUR

Defendants

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE H.L. IRVING

The plaintiff Mapes is a resident of the Town of Hay River and claims damages against the defendants for defamation, arising from the publication of a cartoon in the Hub weekly newspaper on February 7, 1990.

The Hub newspaper is owned by the corporate defendant; the defendant Brodeur is its publisher, and the defendant Goudreau was employed by Hub as its design consultant, primarily concerned with the preparation of graphic advertisements. One of her other duties was to prepare the cartoon which is normally featured on the editorial page of each issue.

At trial, counsel for the parties narrowed the issues requiring determination to the following:

1. Was the cartoon defamatory, if so;
2. Was the defence of "fair comment" available to the defendants; failing that defence,
3. What, if any, damages were suffered by the plaintiff.

The plaintiff has been a resident of Hay River for over 40 years, and is a well-known businessman of good reputation. Apart from his various business endeavours he has in years past served as a Town Counsellor and been prominent within the local Liberal Party.

At the relevant time, the plaintiff operated a business called Wesclean in Hay River which distributed and sold janitorial supplies and chemicals to government institutions, businesses, and janitorial customers in the Great Slave Lake area, and to communities along the MacKenzie River, perhaps as far west as Norman Wells.

For several years prior to 1980 the plaintiff had been one of the owners of a commercial fishing camp for sport fishermen located on the south Thuban Lake which was located approximately 200 miles easterly of Hay River and which was accessible by aircraft. He had sold out this business interest about 1980. He wished to establish a fishing camp on north Thuban Lake, and on enquiry to officials of the Territorial Government, he understood that his fishing camp ambitions would progress more quickly if he were first to construct the rudiments of a fishing camp after which he could apply to the Territorial Government for appropriate licensing, and to the Department of Indian Affairs and Northern Development of the Government of Canada (DIAND) to purchase or lease the required lands. Accordingly, the plaintiff constructed two small single room cabins and other minor improvements such as a privy-sized smoke

house, a small storage building and a wharf at the lakeshore. From 1980 the plaintiff sought to buy or lease the necessary land from DIAND but was consistently refused. For its part, DIAND regarded the plaintiff as a trespasser and on several occasions over the years demanded that he vacate the lands and remove his buildings. These demands prompted the plaintiff to renew negotiations with DIAND but without success.

By a Summons issued out of this Court on October 16, 1989, the Attorney General for Canada, on behalf of DIAND, gave Notice to the plaintiff to show cause why his improvements should not be removed from the lands.

News/North is a newspaper published in Yellowknife and competes with the Hub in Hay River and elsewhere. In its January 29, 1990 issue, News/North published a news article about DIAND's pending application for possession. When the defendant Brodeur read the News/North article he determined Hub should feature the DIAND-Mapes dispute in an early issue of the Hub particularly because the dispute involved a well-known resident of Hay River.

Within two to three days the Hub's normal weekly editorial meeting was held and was attended by key personnel including the defendant Brodeur, the editor Shirley Latour, the defendant Goudreau, and others; amongst many other matters, the DIAND-Mapes dispute was discussed and those at the meeting agreed that the dispute should be researched and a story published if possible in the next issue. It was also decided that the dispute would also be made the subject of the cartoon which the Hub normally included on its editorial page. This prompted the defendant Goudreau to start roughing out her cartoon during the latter part of the editorial meeting.

Initially, the editorial group anticipated that the news story and the cartoon would appear in the same issue and complement each other. Occasionally, but rarely, a cartoon might be published in the absence of some earlier or some accompanying news story. For some reason a news story was not available for publication in the February 7, 1990 issue. The defendant Goudreau had already prepared her draft cartoon by Monday evening, February 5th. While she was acquainted with the plaintiff Mapes she nevertheless obtained from the Hub's photo file a photograph of the plaintiff so that her cartoon of Mapes would be readily recognized. Goudreau explained that her cartoons were normally acerbic and that in the DIAND-Mapes dispute, the theme she intended to convey in the cartoon was one illustrating the problems of a citizen defending himself from powerful governments. The editor Latour saw the cartoon late on Monday evening, February 5th (that evening was the deadline for the February 7th edition) and suggested several changes. Since the cartoon depicted Mapes holding a gun, Latour suggested to Goudreau that the position in which he held the gun should be changed to present a less violent appearance.

Her second suggestion requires some explanation. Before employment with the Hub, Latour had been the manager of the Hay River Tourism Association. On one occasion she had seen Mapes' camp on North Thuban Lake in 1986 from an aircraft in which she was a passenger while it was tied up briefly at the wharf, and had been generally aware of some controversy between Mapes and government officials over whether he was illegally using the fishing camp commercially for gain. She knew that Mapes had denied this, although her government contacts suspected otherwise. It was probably Latour who suggested the cartoon include a cash register to reflect this suspected usage. Latour's evidence on this point is apposite:

Q MCLENNAN: All right. Now, you have related to us the fact that some people thought Mr. Mapes was running some kind of tourist operation?

A Yes.

Q For profit, a fish camp?

A M'hm.

Q Correct?

A Yes, I have.

Q Okay, and do you know whether or not the cash register and the cash that's lying about in the cartoon, Exhibit 1, makes reference to that?

A Yes, I believe that is the reference that's there or that is to be drawn from that particular part of the cartoon.

Goudreau altered the cartoon accordingly and it was then approved by the editor Latour and the defendant Brodeur. The cartoon was published in the February 7th edition in the normal cartoon space on the editorial page. A copy of the cartoon is attached to these reasons. There was of course no news story to explain the cartoon, nor would a reader of the newspaper have any explanation about the meaning of the cartoon unless he might have read the news story about the DIAND-Mapes dispute in the News/North Newspaper edition of January 29th.

The plaintiff denied in his evidence that he had ever used the fishing camp commercially. He stated that he occasionally permitted friends to use the camp; or if he with others went to the camp, they would normally prorate the cost of the charter flight, the food costs and other expenses between them. On one occasion Mapes permitted an acquaintance, Broadhead, to use the camp so that an amateur hockey club from Hay River could have a fishing outing. The club looked after its own charter costs, food and gasoline and made no payment to Mapes although afterwards the club members contributed to buy a jacket for Mapes to show their gratitude.

I accept the evidence of the plaintiff that his modest fishing camp was not operated commercially and that the use which he made of it was primarily for himself, his family, his friends, and occasionally a group such as the hockey club was permitted to use it.

Is the Cartoon Defamatory?

The question for determination is whether the cartoon would tend to injure the reputation of the plaintiff, to lower him in the estimation of right-thinking members of society generally, and so expose him to feelings of hatred, ridicule or contempt.

The witness Vossler, called by the defence, was shown the cartoon and stated that it depicted Mapes as a "Rambo type person--he isn't that type". The plaintiff himself was offended by the cartoon and felt that the cartoon made him appear vicious, criminal, stupid, but wealthy. He felt that it had affected his business. He also said that for a time the cartoon caused many of his business contacts to ask him what he had been doing to occasion the cartoon.

Counsel for the defendants cross-examined the plaintiff closely about whether he was actually flattered, rather than offended by the cartoon, because a copy of the cartoon had been posted in his office for some time. The plaintiff explained that one of his employees had posted the cartoon in Mape's office, which Mapes then removed. Sometime later someone put it up again and after some interval Mapes again removed it. Despite this somewhat equivocal conduct I am satisfied that the plaintiff believed the cartoon to be defamatory. But his own reaction to the cartoon does not determine whether it is defamatory.

What meaning would the reasonable man with ordinary intelligence and general knowledge and experience in worldly affairs find in the cartoon. I conclude that the cartoon would cause a reasonable man to infer that Mapes was illegally operating a commercial fishing camp in defiance of lawful authority. The open cash register, with its bountiful supply of money, and the label "donations", juxtaposed to the sign saying "The Non-Licensed, No-Name, Not Really Here, Fishing Camp" etc., etc., clearly infers, at least, that Mapes is profiting through the sham of accepting "Donations" to disguise an illegal commercial use of the camp. While the defendant Goudreau may have intended that the theme of the cartoon was to portray a citizen defending against powerful governments, the message actually portrayed through the cartoon is substantially different and degrading to Mapes. Accordingly, I find the cartoon to be defamatory.

Is the Defence of Fair Comment Proved?

In order to establish this refuge, the defendants must show that the defamatory statement was an honest expression of their real view based on true facts. The case law illustrates the difficulty sometimes encountered in distinguishing between comment and statements of fact, and can easily arise where a cartoon is said to be defamatory. But the ordinary rules of law about defamation apply as much to a cartoon as they do to other forms of communication.

I think the reasonable reader would find both fact and comment in the cartoon. For example, it suggests as fact a dispute between DIAND and the plaintiff, which was true. But it also suggests as fact (the cash register, the money and "non-licensed, no name, not really here") that the plaintiff was operating an illegal, but profitable fishing camp by using the sham of taking donations. If this was intended as fact, it was untrue. If the defendants intended this as comment, it was not based on true facts.

Accordingly, the defence of fair comment cannot succeed.

Damages

The cartoon defamed the plaintiff; many of his business acquaintances brought the subject up seeking an explanation. However, the plaintiff's counsel concedes that the defamation involved in the cartoon, when compared with other cases involving defamation, would result in damages measured at the low end of the scale. For his part, counsel for the defendant suggests that an appropriate measure of damages would best be measured in the hundreds rather than thousands of dollars.

At the relevant time the Hub's circulation was about 3,800 copies to paying subscribers. The cartoon was acerbic as it was intended to be, and clearly defamed the plaintiff particularly with the inference conveyed that the plaintiff was illegally and profitably operating a commercial fishing camp. However, the plaintiff was a well-known citizen of good repute in Hay River, and I conclude from the evidence that the defamatory cartoon probably caused him considerable embarrassment for a time, although the evidence did not indicate any substantial long-term harm to his good name.

In all these circumstances I would assess the damages sustained by the plaintiff in the sum of \$7,500.00.

Conclusion

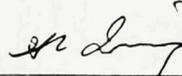
The defendants' counsel has urged that no judgment should go against the defendant Goudreau personally since she was acting under instructions of her superiors. Both counsel agree that this issue can be deferred for further argument if it becomes necessary.

Accordingly, the plaintiff will have judgment against the defendant Brodeur and the corporate defendant in the sum of \$7,500.00 together with taxable costs.

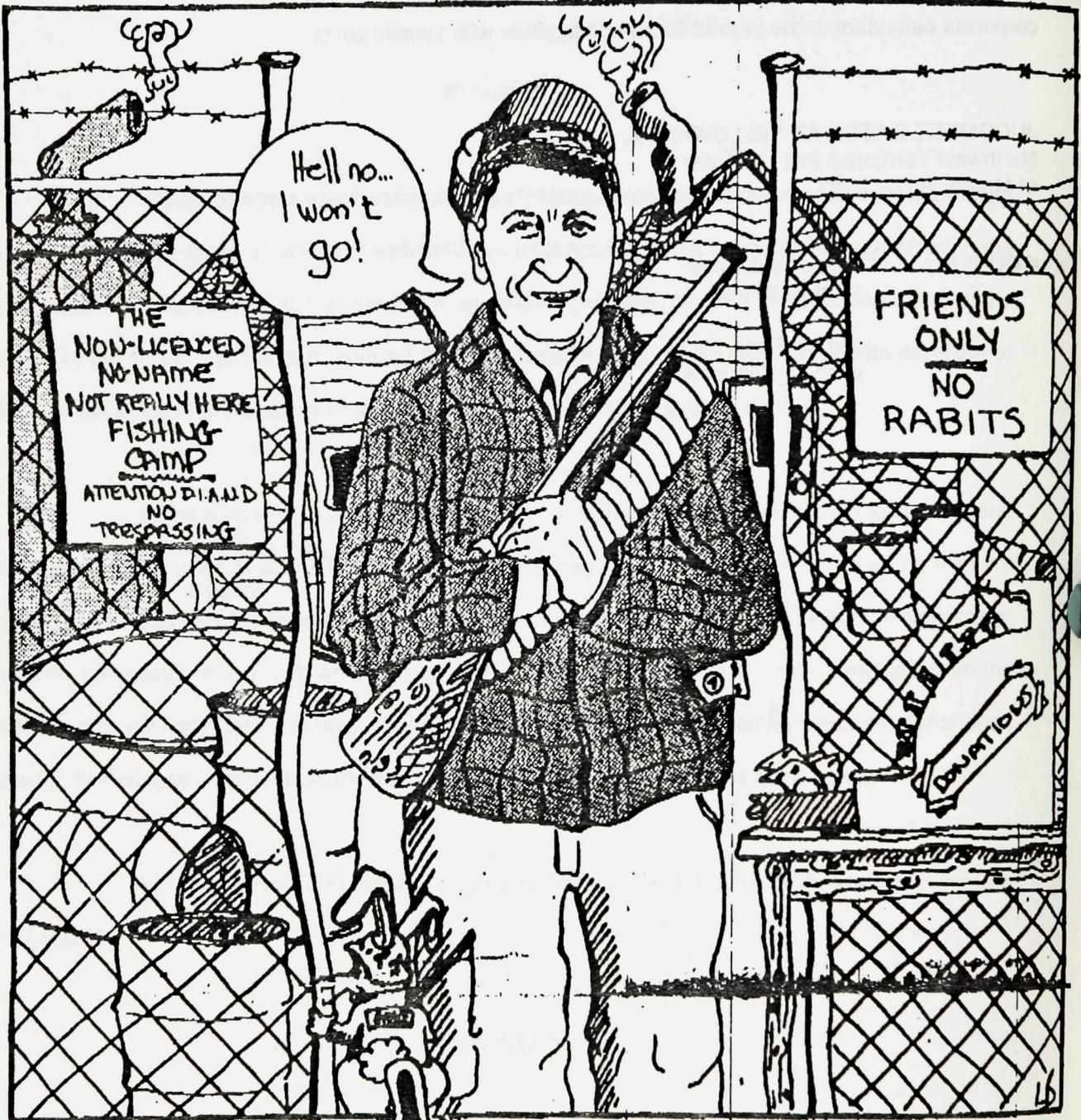
JUDGMENT DATED AT YELLOWKNIFE,
Northwest Territories this 1st day
of March, A.D. 1993

COUNSEL: Graham McLennan
for the Plaintiff

John U. Bayly, Q.C.
or the Defendants



Irving J.



DIAND says:

"Move it Mapes..."

IN THE SUPREME COURT OF THE UNITED STATES

JOHN WARRS

- 2 -

BY APPOINTMENT OF THE BOARD OF
SCHOOL DIRECTORS

TO THE BOARD OF SCHOOL DIRECTORS



Witness my hand and the seal of the Board of School Directors
this 1st day of August, 1950.

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