

Threatening Rob Ford with a libel suit serves no one's interests

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Canadian defamation laws have not been good for freedom of expression in our country. That's why it is distressing that a Toronto *Star* journalist, with, moreover, the support of his paper, has threatened to sue Toronto mayor Rob Ford for libel.

Daniel Dale, a well-respected city hall reporter, served a libel notice on Mayor Ford Thursday 12 December for comments Ford made during an interview with Conrad Black. At the same time, Dale served a libel notice on Vision TV, which broadcast the interview.

In the interview, Ford said of Dale, "He's taking photos of little kids. I don't want to say that word, but you start thinking 'What's this guy all about.'" According to the libel notice, in the "plain and ordinary meaning" of these words, "Rob Ford is calling Mr. Dale a paedophile."

Back on 2 May 2012, Dale had been near the Ford home, researching a story on Ford's plan to buy a parcel of land owned by the city. Ford noticed Dale, confronted him, and called the police. The police neither charged nor warned Dale with regard to anything in the incident.

Dale is asking for an apology from Ford for insinuating that Dale is a paedophile and from Vision TV for broadcasting that insinuation. He is also asking that Ford acknowledge that Dale was not taking pictures, that no children were present, and that Dale did not invade the Ford family's privacy. Otherwise, Dale says, he will take Ford to court.

In response, Ford's brother, Doug Ford, a Toronto city councillor, says that it was Dale who mentioned paedophilia, not Ford. Rob Ford says that he stands by his allegations regarding the facts.

Canadian defamation laws have not been good because they have served to chill the climate for candid discussion. They prevent people from publicly speaking their minds, from engaging in disputes fully and honestly. Information and opinion would flow more freely were Canadians not concerned that their remarks might cost them the time and stress of litigation, not to mention the money they might pay should they lose.

We all should value highly the free flow of information and opinion, but certainly a journalist and his paper should be especially concerned to keep discussion open and candid. If Daniel Dale's case goes to court and Dale wins, a terrible precedent will be set that, ironically, will adversely affect the *Star* and all other papers and news venues in Canada.

Now, of course, we all have a strong interest in protecting our good name. When we think we have been lied about, we are properly keen to set the record straight. (If by having our good name questioned we are hurt financially, we will also be keen to recover the money our defamer has denied us.) Libel and other anti-defamation laws, some say, have their justification

in the protection they offer us from people who would lie about us. They don't block the flow of information, just the flow of malice.

There are two responses to this line of thought. The first is that the goals of anti-defamation laws can be met in other ways. The second is that we all do well to know who the liars amongst us are.

We can restore our good name when we've been defamed simply by telling our story publicly. We can counter lies with the truth. Surely the *Star* would be happy to let us know what really happened the night Dale went to research a story.

Indeed, that's what will happen should the matter make it to a court. Yes, but, in a court, a judge will announce with more authority than the *Star* could that such-and-such is the truth—or at least so one might think. In fact, though, whatever a court says will itself be evaluated by the rest of us, and accepted or rejected for our own good reasons, just as a story or editorial in the *Star* would be.

Anti-defamation laws have the effect of preventing the liars and defamers among us from lying and defaming, and that would, at first, seem to be all for the best. Unfortunately, it's not. The would-be liars and defamers are not made honest by the threat of prosecution, they're just inhibited. (Or they become more subtle.) When I vote for a person for public office, I want to know whether he or she is actually honest, and not just feigning it out of fear.

Rob Ford would not be made honest, if he's a liar, by the fear of being caught and punished, even though he might not speak anything but the truth. But now that I am denied evidence that he's a liar, I might decide to vote for him. The problem, then, is that I want to know what I'm getting, and laws against defamation prevent me from knowing what I'm getting.

It's not in the public interest to force Rob Ford, or any other politician, to think twice. We want to know what a politician is honestly about.

My argument is not that Daniel Dale's reputation could never be hostage to what Rob Ford says, though that might be the key to Ford's defence, if the matter progresses to court. It is, rather, that everything Dale would seek to achieve by going to court is better available to him without going to court. It is also that by threatening to go to court, Dale and the *Star* sin against the free expression of opinion as well as put public figures on notice that they best hide their real selves from us.

Even if Rob Ford has maliciously lied about Daniel Dale, Dale is not serving either his own or the public interest by threatening to go to law. Maybe Dale is too close to the situation to realize this. The *Star*, however, has no excuse.

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