

Providing A Reference: If You Can't Say Anything Nice...

Many employers have a “no reference” policy, refusing to confirm anything but the bare minimum regarding a former employee’s employment - dates of employment and title. This practice stems largely from the idea that if you can’t say anything nice, it’s best to say nothing, or at least very little, for fear of being accused of defamation by departed employees. A recent case from Ontario, however, has shown this may be an overly cautious and unnecessary practice.

Adam Papp recently failed in his attempt to sue his former employer for defamation. Papp was employed by Stokes Economic as an Economist before being terminated. Papp asked the owner of the company, Ernest Stokes, to provide a reference for him in his search for a new position, and Stokes agreed.

When a prospective employer subsequently called Stokes, he responded by commenting, in part, on Papp’s subpar performance and his “demeaning” attitude. The prospective employer declined to move forward with his candidacy and Papp blamed Stokes (and the reference he had given), suing him for \$65,000 for wrongful dismissal (arising out of his termination), \$500,000 for defamation (arising out of the reference), \$200,000 in punitive damages, and \$30,000 for intentional infliction of mental suffering.

The trial judge rejected the bulk of Papp’s claims however, granting an award only for the wrongful dismissal claim. She found that Stokes gave a reference based on what he genuinely believed to be true, that it was not done with malicious intent and that he was justified in saying what he did. Stokes verified stories he heard about Papp’s interpersonal problems with independent sources and was found not to have been reckless in the assessment he delivered. Based upon this decision, it seems employers may have more leeway to provide an honest (and negative) assessment of a former employee than previously thought.

That said, if an employer is going to provide a reference, they should ensure that their statements are factual and justified (and positive for the most part). A reference should never be given with malicious intent or with the aim of sabotaging a former employee’s reputation. Seeking corroboration rather than relying on personal opinions, especially when discussing personality traits, is also a good practice. In general, absent exceptional circumstances, we



recommend employers provide a reference to terminated employees, even if only a few positive things can be said about the former employee, as the sooner the former employee gets a new job the better. We also recommend being honest, while avoiding negative commentary, as far as possible, for the same reasons.

If you have any questions or concerns about providing a former employee a reference, please feel free to contact e2r® to speak with an Advisor.

