



Employer avoids liability for providing negative reference

Adam Papp commenced his employment with Stokes Economic Consulting Inc. in March 2011. In December 2013, Papp’s employment was terminated due to a shortage of work.

Shortly thereafter, Papp began searching for alternate employment. In May 2014, Papp interviewed for a position with the Yukon Government. At the conclusion of the interview, Papp was advised that he was the first ranked candidate for the job. Papp was also advised, however, that before making an official offer, a reference check had to be completed. Papp provided Ernest Stokes, President and Secretary/Treasurer of Stokes Economic Consulting Inc., as his reference after receiving confirmation from Stokes that he would act as a reference.

Consequently, Stokes was called and asked the following series of questions about Papp:

	QUESTION	ANSWER
1.	In what capacity did Adam work for you? For how long?	Economic modeling for a couple of years. Let go because he was not needed anymore and a performance and attitude[SIC] issue.
2.	How would you rate his quality of work?	We were not that pleased.
3.	Describe how he gets along in a team setting?	Not well. He has a chip.
4.	How well does he get along with his co-workers?	Not greatly. a. And his supervisor? At one time supervised. One time we got along.
5.	Is he able to develop good working relationships?	Did not see any evidence[SIC] of it.
6.	What are his strengths?	Ok in computing
7.	What could he improve on?	See above
8.	Would you re-hire?	No way

Almost immediately after the reference check was completed, Papp was advised that he would not be offered the position. It was made clear to Papp that the reference from Stokes was the reason for that decision.

Papp subsequently brought a claim against Stokes Economic Consulting Inc. and Stokes personally for wrongful dismissal in the amount of \$65,000; damages for defamation in the amount of \$500,000; punitive, exemplary and aggravated damages in the amount of \$200,000 and damages on the basis of intentional infliction of mental suffering in the amount of \$30,000.

With respect to Papp’s claim for defamation, the court found that while Stokes’ comments were defamatory, his statements were substantially true and therefore succeeded on a Defence of justification. Further, the court found that the Defence of qualified privilege also applied as Stokes genuinely believed what he said about Papp and did not act recklessly or with malice. In fact, rather than accepting at face value what he had been told by one particular co-worker, Stokes had spoken with three co-workers to verify Papp’s performance and attitude.

In our experience, many employers have developed a practice of simply providing a confirmation of employment rather than a reference for former employees. If employers decide to provide substantive references for former employees, this case emphasizes the importance of giving only honest, accurate and objective information in good faith. This case also serves as an important reminder to employees to carefully select references and be aware of the type of information that they will provide before passing along their contact information to a prospective employer.

