

Ducharme Disputes Free Press Allegations

by Patrick J. Ducharme

This is a newspaper article written by Patrick Ducharme in the Detroit Free Press. Ducharme was allowed to write this article as part of a settlement for damages after he commenced an action against the Free Press and sports writer Keith Gave. The cash settlement paid by the Free Press to Ducharme was donated to Sick Children's Hospital.

[This case is now used in journalism classes in Canada and the United States as an example of the difference between the rules of legal proof in libel and slander cases in the two countries. The action was brought in Ontario. The lawyers for the defendants attempted to have the case transferred to Michigan. The advantage to the defendants if the case was transferred to a U.S. jurisdiction would be that the plaintiff would be required to prove malice. In Canadian jurisdictions, the onus of proof is upon the defendants to establish that what they have published is true once the plaintiff proves what was said and proves that it was libelous or slanderous.]

Lawyers understand that from time to time their efforts and the motives underlying their efforts on behalf of clients can be misconstrued or misunderstood. So, a lawyer defending an individual charged with impaired driving in a case involving a fatality may hear that he thereby condones drinking and driving, or, if he defends a person charged with a narcotics offense, that he tolerates drug abuse.

One important pre-condition to a successful law practice is the willingness of lawyers to at once respect and tolerate such criticism even if they feel it is occasionally misguided.

But what a lawyer surely does not respect, and need not ever tolerate, is a type of criticism such as that found in a column written by a hockey reporter named Keith Gave and published a few weeks ago in this newspaper.

In that column, Gave suggested that I was the cause of Bob Probert's problems with the law and with the Red Wings, that I had consistently misguided Bob, and that I had done so because I had put an interest in money and my own ego before the best interests of my client.

The carping, negative tone of the article didn't bother me much. In fact, that aspect of it was fairly typical of the columns Gave normally writes.

But the distortions of fact were so numerous, and so obvious to anyone at least remotely familiar with Bob Probert's relationship with the Red Wings and with me as his lawyer and agent, that ignorance alone could not account for their presence.

My counsel, Harvey Strosberg, advised me to sue because the article was libelous, and I gave the Free Press notice of my intention to do so, which, in Ontario, is a pre-condition to the issuance of a lawsuit for libel.

And now, as a way of settling my claim against Gave and the newspaper, the Free Press has agreed to donate \$5,000 U.S. in my name and Bob Probert's name to a charity of my choice and to allow me to respond today to Gave's allegations. But first a bit of background.

Gave's failure to report the Probert story accurately goes back to a time in 1988 when he reported, falsely, that Bob was encountering financial difficulties and had been forced to move out of his apartment. His information for that story, he said, was an unnamed Red Wings source.

In truth, Bob had a considerable amount of money in the bank; he moved out of the apartment in question because at the time the Immigration authorities had prohibited him from entering the

United States. Forced to reside in Windsor, he decided as a matter of common sense to save the rent on the Detroit residence.

Bob and I asked Gave to retract the story. He initially refused. Nor would he reveal his "unnamed Red Wings source." Later, after another columnist reported that those comments were false, Gave reported comments from me disputing his assertion that Bob was having financial problems.

All the while, he continued to press Bob and me for interviews. Now, on my advice, Bob refused, though he did agree to an interview with the columnist for a competing newspaper.

When, subsequently, a series of articles appeared in the Hockey News relating to Bob's recent smuggling charge and my relationship to my client, Gave apparently couldn't take being on the outside anymore.

Hurricane Keith exploded and, as the storm blew, all concern for accuracy, for reportorial distance, vanished altogether: I caused Bob's problems; I forced him back upon the Red Wings; I failed to assist him in his rehabilitation; I connived to get my picture, not the athlete's on a magazine cover. On and on, the litany of sins.

Here, now, are just a few of the facts the hockey reporter might have gotten straight with even a modest amount of initiative or good will.

Fact: I didn't force the Red Wings to take Bob back from suspension. I reminded them that by the express terms of his contract they had a duty to pay him whether or not they played him.

Fact: Far from failing to recognize Bob's substance abuse problems, I met with the Red Wings perhaps 40 or more times to discuss the subject, and I personally enrolled him or assisted in enrolling him (sometimes at considerable expense) in the following treatment and counseling programs: Sacred Heart, Detroit; The Brentwood Recovery Home, Windsor; Brighton Hospital, Brighton, Mich.; The Betty Ford Center, Rancho Mirage, Calif.; and the facility in which Bob currently resides.

For the times when Bob was not actually in attendance at one of these treatment centers, I arranged for 13 separate counselors to assist him virtually every day, sometimes 24 hours a day, in acknowledging and coping with his addiction.

Bob is with me now even as I write this article, and he acknowledges that one of his major problems in the past was the failure not only to appreciate all the help extended to him but also to admit that he even had an addiction in the first place.

Fact: I represented Bob on seven criminal charges, including two impaired drivings, one breach of probation, one charge of driving a vehicle while prohibited, and one charge of driving without insurance. For these offenses, Bob received from the courts fines totaling \$2,000.

Bob paid his legal bill promptly and without complaint.

Later, near the conclusion of his contract negotiations, the Red Wings effectively reimbursed him for his legal expenses by increasing his signing bonus in the approximate amount I had earlier charged him for my legal services.

Aside from the time devoted strictly to legal matters, I have spent literally hundreds of hours with Bob, his immediate family, and the extended Red Wings family dealing not only with his problems but also with the terms of a new three-year contract. For these things I have charged him nothing.

Bob is now more than a client; he's a friend. And the time I have spent on his behalf has been worthwhile and satisfying to me in ways that cannot be measured in money. When he finally conquers his problems and actualizes his full potential, personally and professionally, I will feel an even greater satisfaction.

Fact: I didn't allow Bob to purchase an \$80,000 boat. After he had done so without my knowledge or advice, I urged him to sell it. This fact was well-known to anyone close to Bob or me, and, in my opinion, Gave knew this or reasonably ought to know it.

Fact: The boat did not come close to sinking as Gave alleged. It was vandalized one evening, along with others, while moored in a marina when Bob was out of town. Any modicum of research would have confirmed this fact.

Fact: I didn't advise Bob to buy a Corvette either, though both the Red Wings and I knew that he wanted to buy one and intended to do so once his new contract was settled. Indeed, his signing bonus was specifically set at an amount designed to allow him to purchase the vehicle.

Fact: Gave has also written that Bob drove the car into the ground. Wrong again: He drove it into a garage where it remains today, in storage, in Detroit, in mint condition.

Gave's column is shot through with these and many more inaccuracies.

By what strange set of circumstances could a writer conceive and publish such an article in which virtually none of the details is correct? Sloppy journalism? Personal malice? Incompetence? The reader must decide.

Time passes. As Bob Probert's problems with the authorities are dealt with in due course, and as his professional career unfolds, my hope is that, for better or worse, events involving Bob will be reported in this and other news papers fairly, professionally.

Post script: The institution that I have selected for the \$5,000 donation is Children's Hospital, Detroit.

Editor's Note

On March 21, 1989, Free Press hockey writer Keith Gave published a column expressing his opinions on the handling of suspended Red Wings player Bob Probert by Patrick Ducharme, Probert's Windsor attorney-agent.

Ducharme subsequently served the Free Press a notice that he would sue for libel in Canada, because some copies of the newspaper are sold in Ontario, and Ducharme is Canadian.

The Free Press believes that Gave's statements concerning Ducharme were opinions protected by the United States Constitution and therefore could not be the basis for suit in this country. Were Canadian law to apply, however, those same protections probably would not be available.

In the interest of fairness, the free Press wants to give Ducharme an uncensored response to Gave's criticism and does so here. The Free Press agreed to resolve what could have become a protracted international legal contest by making a \$5,000 contribution in Ducharme and Probert's names to a worthwhile charity, Children's Hospital, Detroit.

