



1st Session, 36th Parliament,
46-47 Elizabeth II, 1997-98

THE SENATE OF CANADA

BILL S-12

An Act to amend the Criminal Code (abuse of process)

Preamble

WHEREAS the pervasive, intrusive and instantaneous nature of modern media news coverage increases the pressure on counsel in judicial proceedings to participate publicly in news events in the interests of their clients or in other ways extend their activities as counsel to include conduct considered unethical under the rules of their profession;

AND WHEREAS it is in the public interest that conduct of that kind be made criminal and not merely unethical in order to prevent the administration of justice being adversely affected;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-46; R.S., cc. 2, 11, 27, 31, 47, 51 52 (1st Supp.), cc. 1, 24, 27, 35 (2nd Supp.), cc. 10, 19, 30, 34 (3rd Supp.), cc. 1, 23, 29, 30, 31, 32, 40, 42, 50 (4th Supp.); 1989, c. 2; 1990, cc. 15, 16, 17, 44; 1991, cc. 1, 4, 28, 40, 43; 1992, cc. 1, 11, 20, 21, 22, 27, 38, 41, 47, 51; 1993, cc. 7, 25, 28, 34, 37, 40, 45, 46; 1994, cc. 12, 13, 38, 44; 1995, cc. 5, 19, 22, 27, 29, 32, 39, 42; 1996, cc. 8, 16, 19, 31, 34; 1997, cc. 9, 16,

17, 18, 23, 30, 39

1997, c. 17, s. 29

1. The *Criminal Code* is amended by adding immediately after section 134 the following:

Public statements by counsel

135. (1) Every person who, while acting or purporting to act as counsel in respect of any anticipated, current or completed judicial proceedings, makes any public statement of facts in relation to the judicial proceedings out of the presence of the tribunal or body authorized by law to conduct the proceedings

(a) knowing that some or all of the facts asserted in the statement are not true,

(b) having no reasonable grounds for believing that the facts asserted in the statement are true, or

(c) having failed to take reasonable measures before making the statement to ascertain the truth of the facts asserted in the statement,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Statement includes court documents

(2) For the purpose of subsection (1), a statement of facts in relation to the judicial proceedings includes a reading from or an express reference to documents

(a) deposited or filed with or intended to be deposited or filed with the tribunal or body authorized by law to conduct the proceedings, or

(b) deposited or filed in any other judicial proceedings.

Abuse of process

135.1 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who, as counsel in any judicial proceedings, institutes or prosecutes proceedings that he or she knows are brought primarily for the purpose of intimidating or injuring another person.

Idem

(2) Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who, as counsel in any judicial proceedings,

(a) wilfully deceives or knowingly participates in deceiving the tribunal or other body legally authorized to conduct the proceedings, or

(b) wilfully presents or knowingly relies upon a false, deceptive, exaggerated or inflammatory document, whether or not under oath.