

IN DEPTH: FICTION AND LITERARY LIBEL

The Beacon on the Hill—like most of the stories in *Sunshine Sketches*—can be traced back to real events in Orillia, Ontario. Mariposa's Church of England Church and its Dean Rupert Drone were based on Orillia's St. James' Anglican Church and its Canon Richard W.E. Greene. Like Drone, Greene was a widower. Greene's wife—the founding president of their Women's Auxiliary—passed away in 1906. And more significantly, just like Drone, Greene oversaw the construction of a new church.

St. James worshipped in a stone church when Reverend Greene arrived in Orillia in 1888. The building was much beloved by the congregation. However, Greene wanted to expand the facility. Unfortunately, the stone church's foundations and walls could not support structural expansion. So just like the old stone Church of England Church in *Sunshine Sketches*, the old stone St. James' Anglican Church in Orillia was pulled down to make way for a new building. The December 3, 1889 minutes of St. James' Building Committee describes what was to become of the old church:

The Old Church after the first of April be handed over to the Contractor with the exception of the seats, windows and their parts retained by the Wardens-the stove above ground in the new church to be taken from the heat stove in the present Church.⁶²

So much like Leacock's fictional church in *Sunshine Sketches*, "the stone of the little church was... devoutly sold to a building contractor" (75).

Orillia's new church opened in March 1891. Fifteen years later, the new church caught on fire. However, unlike the catastrophic fire at Mariposa's Church of England Church, St. James did not burn to the ground. The congregation of St. James was able to restore their building. And unlike Leacock's story, the fire at St. James was not a case of insurance fraud. In fact, church records show that St. James was forced to make financing plans to fund the restoration.

As can be seen, the circumstances of Dean Drone and Mariposa's Church of England Church are not far removed from the circumstances of Reverend Greene and Orillia's St. James' Anglican Church. But Leacock's version does not paint Greene and his stewardship of the church in a particularly good light. Stephen Leacock was not the first—and certainly will not be the last—fiction writer to base a character on someone from real life. So is there anything that the law can do if a person is lampooned by a writer?

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Saint James' Anglican Church. *Meeting of the Building Committee 1889-1892*. 3 December 1889.

DEFAMATION AND FICTION

Defamation is the injury of a person's reputation or good name. If it is written it is called libel. If it is spoken it is called slander. When a writer bases their fiction on real-life people and their lives, the writer risks being taken to court if the portrayal defames the real-life person. This has happened countless times. For example, in 2013 French author Christine Angot and her publishers were ordered to pay €40,000 in damages to Angot's ex-lover over the book *Les Petits*. The book's portrayal of Angot's ex-lover drove her to attempt suicide. As well, in the 1990s English author DJ Taylor was forced to settle out of court for basing one of the main characters of his novel *Real Life* on a pornographer he had met some years earlier.

Rodney Smolla, an American jurist, has summarised what authors should do to minimize the risk of being sued when creating characters based on real people:

When an author wants to draw from a real person as the basis for a fictional character, there are two relatively "safe" courses of action from a legal perspective: First, the author may make little or no attempt to disguise the character, but refrain from any defamatory and false embellishments on the character's conduct or personality; second, the author may engage in creative embellishments that reflect negatively on the character's reputation, but make substantial efforts to disguise the character ... to avoid identification. When an author takes a middle ground, however, neither adhering perfectly to the person's attributes and behavior nor engaging in elaborate disguise, there is a threat of defamation liability.⁶³

If a person believes that they have been defamed in a work of fiction, they could sue the author. For the suit to be successful, three arguments must be proven:

1. That the words would lower the person's reputation in the eyes of a reasonable person,
2. That the words refer to that person, and
3. The words were published.

If these three conditions are proven, then the author may be responsible for paying general damages for pain and suffering, and specific damages for any direct costs or loss of earnings that occurred because of the portrayal.

⁶³ Smolla, Rodney. "Could I Be Liable for Libel in Fiction?" *Rights of Writers*, 18 December 2010. www.rightsofwriters.com/2010/12/could-i-be-liable-for-libel-in-fiction.html

In the case of *Sunshine Sketches of a Little Town*, many of the thinly-veiled characters could have created the possibility of a defamation lawsuit. Even though Leacock remarks in the preface that “I must disclaim at once all intentions of trying to do anything so ridiculously easy as writing about a real place and real people” (x), it is clear that *Sunshine Sketches* is about Orillia and its people. Legal scholars say that while such disclaimers can be helpful for lawyers to point to if a writer is accused of writing about real people, if the statement is not true it is not helpful.

Leacock was never taken to court by the real-life people he wrote about for his thinly-veiled, over-the-top portrayal of Orillia. However, Mel Tudhope, an Orillian lawyer and Leacock’s friend did send him “a mock letter threatening to sue me for libel against these people”⁶⁴. This was the closest Leacock ever came to being sued by someone in Orillia over *Sunshine Sketches*.

Today, the descendants of those people Leacock wrote about could not sue Leacock’s estate for defamation on behalf of their ancestors. The law of defamation generally follows the principle that “the dead cannot be defamed.” Claims of defamation are meant to protect a person’s reputation so that they can earn a living and remain in good standing in their community. Neither a person’s ability to earn a living nor their standing in a community can be altered once a person is dead. Therefore, the courts would usually not agree to hear such a case.

DISCUSS

1. Review Rodney Smolla’s advice to avoid lawsuits for libel. Do you think Leacock took reasonable precautions in *Sunshine Sketches* to avoid a libel suit?
2. Re-read the preface of *Sunshine Sketches*, especially Leacock’s disavowal of having written about a real place and real people (pages x-xi). Note that he says it was only his “intentions” not to write about a real place and real people. What does that mean?



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Sandwell, B.K. “Leacock Recalled: How the ‘Sketches’ Began.” *Saturday Night*, vol. 67, issue 46.