

# NEW RULING CLARIFIES DEFAMATION LAW INVOLVING PORTRAYAL OF PEOPLE IN FICTIONAL TELEVISION SHOWS AND MOVIES

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It is not uncommon for fictional television dramas or movies to be “inspired” by real events or people. This week, a New York appeals court had to decide whether the fiction came close enough to reality to form the basis of a colorable defamation claim. In doing so, the court clarified a key aspect of defamation law in New York.

This week, the New York Appellate Division for the First Department issued a decision in *Cayuga Nation and Clint Halftown v. Showtime Networks, Inc., et al.*, 2021 WL 683344 (1st Dep’t Feb. 23, 2021). The defamation case was brought on behalf of the Cayuga Nation and one of its members, Clint Halftown, against Showtime Networks, Inc. and executives associated with the hit show *Billions* for the show’s depiction of the “Cayuga Tribe” and one “Jane Halftown.” The plaintiffs alleged that they were falsely portrayed as having been involved in an illegal casino land deal, bribery of a public official, and blackmail. Showtime and the other defendants moved to dismiss the case, arguing that the show is fictional and does not portray any real individuals and that a governmental entity like a tribal national cannot be defamed. The trial court granted that motion.

On appeal, the First Department affirmed the dismissal. With regard to Clint Halftown, the Court held that the allegedly defamatory matter was not “of and concerning” him such that he could maintain a defamation claim. The Court began its analysis with the basic principal that to have an actionable defamation claim, the allegedly defamatory statement must be about the plaintiff. When the person is not specifically named or identified in the subject statement, the defendant could still be liable if the person described is “so closely akin’ to plaintiff that a viewer ‘would have no difficulty linking the two.’” The Court found that the fact that Mr. Halftown and the fictional character were both members of the Cayuga Nation, had the same surname, and held the same or similar positions within Cayuga Nation was not sufficient to link the two. The Court indicated that the allegations may have been sufficient if Mr. Halftown could have credibly alleged that he, like the fictional character, was involved in negotiating real estate deals or electoral issues for the Cayuga Nation.

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The Nation's claims were dismissed because a governmental entity cannot maintain a libel claim. The First Department affirmed that dismissal as well.

**Takeaway:** A fictional television show or movie can defame a real person, but that person faces significant pleading hurdles when they are not actually named in the fictional show or movie, but nonetheless believe the only logical conclusion is that the statement is about them. The plaintiff's pleading must, effectively, eliminate the possibility that the subject statements are about someone else. For example, if the statement uses the title of someone within an organization, and only one such position exists, then it may be sufficiently "of and concerning" that individual to sustain a defamation claim.

For any question you have regarding whether this recent decision impacts any of your organization's activities, please contact [Ryan Cummings](#) (716.848.1665) or [Aaron Saykin](#) (716.848.1345).