

CANADA / JUDGMENT

Bhullar Enterprises Inc. v. Miller

2025 BCSC 2326

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Supreme Court of British Columbia

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2025 BCSC 2326 Bhullar Enterprises Inc. v. Miller

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bhullar Enterprises Inc. v. Miller,

2025 BCSC 2326

Date: 20251126

Docket: S252410

Registry: New Westminster

Between:

Bhullar Enterprises Inc. d.b.a. Atlas Animal Hospital & Emergency Vancouver and Dr. Hakam
Bhullar

Plaintiffs

And

Kathleen Eklas Miller a.k.a. Larke Miller

Defendant

And

Bhullar Enterprises Inc. d.b.a. Atlas Animal Hospital & Emergency Vancouver Ltd., and Dr.
Hakam Bhullar

Defendants by Counterclaim

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the Plaintiffs and Defendants by Counterclaim:

A. Bajwa

The Defendant, appearing in Person:

K. Miller

Place and Date of Hearing:

New Westminster, B.C.

August 26-27, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 26, 2025

Table of Contents

Overview.. 3

Preliminary Issue - the Affidavit of Dr. Bhullar.. 4

Legal Principles. 8

Applications under the Protection of Public Participation Act 8

Defamation. 11

Section 4 Analysis. 12

Background to the Podcast and the Litigation. 12

Progress of the Litigation and this Application. 18

Step 1: Expression in which the Public Has an Interest 21

Step 2: Whether There is Substantial Merit to the Proceeding. 24

Step 3: Whether There is No Valid Defence to the Proceeding. 25

Justification. 25

Fair Comment 31

Responsible Communication. 34

Qualified Privilege. 35

Step 4: Balancing Harm and the Public Interest in Protecting the Expression. 36

Conclusion on Section 4 Analysis. 41

Ms. Miller's Claim for Damages. 41

Costs. 42

Disposition.. 42

Overview

- [1] In this defamation claim, the defendant, Larke Miller, applies to strike the claim of the plaintiff veterinarian, Dr. Hakam Bhullar, and the corporation through which he runs veterinary clinics, Bhullar Enterprises Inc. d.b.a. Atlas Animal Hospital & Emergency Vancouver ("Atlas"). Ms. Miller applies to strike the claim pursuant to s. 4 of the Protection of Public Participation Act, S.B.C. 2019, c. 3, on the basis that the claim was brought to suppress Ms. Miller's expression of her views on the regulation of veterinary competence, the competence of Dr. Bhullar, and the standard of veterinarian medicine provided at Atlas clinics. She argues that the opinions she expressed are on matters of public interest, were well-researched, honestly-held, can be justified and were, for the most part, already in the public domain. She argues that any harm done to Dr. Bhullar and Atlas is not connected to her expressions but to the information already being in the public domain. She argues that the balance between the harm to Dr. Bhullar and Atlas, and the public interest in her expressions, lies in favour of protecting her expressions such that the claim brought by Dr. Bhullar and Atlas ought to be dismissed.
- [2] The defamation claim is for comments that Ms. Miller made in a podcast she recorded after she took her cat, Lily, to an Atlas clinic. In the podcast, Ms. Miller described her experience with Lily at Atlas, the investigation she undertook, and what she considers to be an abandonment of regulation of veterinarians, including Dr. Bhullar and Atlas clinics, by the British Columbia College of Veterinarians.
- [3] The comments that Atlas alleges are defamatory include comments about Atlas' billing practices compared to Atlas' advertising, the competency of persons who work at Atlas, and the standard of veterinary services provided by Dr. Bhullar and others at Atlas clinics.
- [4] Atlas and Dr. Bhullar argue that the podcast does not contain expressions on a matter of public interest because the matters are of no more interest to the public than any matter about which the public may be curious. They assert that their claim that certain statements are defamatory has substantial merit. They assert that because Ms. Miller's complaint to the British Columbia College of Veterinarians was dismissed, and because she did not state in her podcast that the College had apologized to Dr. Bhullar for discriminatory practices when investigating prior complaints against him, there is no substantial merit to her defences of justification, honest comment, responsible communication or qualified privilege. They submit that the harm done to them by the statements outweighs any public interest because of the gravity of the alleged defamatory statements and because there is no public interest in Ms. Miller's statements.

Preliminary Issue - the Affidavit of Dr. Bhullar

- [5] Ms. Miller applied to strike the affidavit of Dr. Bhullar on the basis that it was delivered late and does not conform to the requirements for an affidavit. Specifically, it does not contain a statement that the affiant swears or affirms the content to be true, does not state the address of the affiant, does not state the relationship of the affiant to the corporate plaintiff or that he is making the affidavit on behalf of the corporate plaintiff. Ms. Miller also objects to the contents of the affidavit because it contains hearsay and double hearsay from unidentified sources, does not state that the affiant believes the hearsay to be true, contains inadmissible opinion evidence, and contains argument including inflammatory rhetoric.
- [6] The statement of Dr. Bhullar is described as an affidavit but although it is signed and witnessed by a commissioner, it does not contain a statement by Dr. Bhullar swearing or affirming its contents to be true. For that reason, I will refer to it as the Bhullar statement.
- [7] The Bhullar statement is tendered in response to Ms. Miller's Protection of Public Participation Act application, which she served on Dr. Bhullar and Atlas on August 23, 2024, and set for hearing on October 31, 2024. Neither Dr. Bhullar nor Atlas filed an application response or any materials prior to the return date. On October 31, 2024, their counsel attended and was provided an audience by the court despite not having delivered an application response. Justice Sukstorf ordered that Dr. Bhullar and Atlas respond to the application by November 15, 2024. The Bhullar statement was filed on November 18, 2024, and served on Ms. Miller on November 25, 2024. An unfiled version of the Bhullar statement and application response were sent to Ms. Miller at around 8 p.m. on November 15, 2024.
- [8] Accordingly, the Bhullar statement was delivered after the deadline required by the Supreme Court Civil Rules and also in contravention of a court order. The late filing resulted in an adjournment of the first scheduled date for the hearing. No explanation has been provided for the late filing and service.
- [9] In the body of the affidavit, Dr. Bhullar did not identify himself as the maker of the statement. His name appears under a signature line at the end. He neither swore nor affirmed the contents to be true. There is a jurat that says that the affidavit was sworn before the commissioner, but the jurat is not a replacement for the maker of the statement to personally swear to or affirm the contents of the statement.
- [10] Dr. Bhullar refers to "Atlas" without describing Atlas as the plaintiff Bhullar Enterprises Inc. doing business as Atlas Animal Hospital & Emergency Vancouver. Ms. Miller has deposed that she cannot find a business incorporated in British Columbia under this name, thereby rendering significant Dr Bhullar's failure to identify who he is referring to when he refers to Atlas.
- [11] At paras. 2-3, the affidavit contains hearsay evidence without the source being identified. At paras. 5-12, the affidavit also contains hearsay evidence, about which the reader could infer the source of the hearsay is Lily's Atlas medical records even though Dr. Bhullar does not

identify that as the source. If that is a correct inference, the hearsay is double hearsay, and Dr. Bhullar has not stated that he believes the medical records to be true. Ms. Miller has sworn affidavits explaining why some of what is recorded in the medical records does not make sense given what she observed when she was in the Atlas clinic with Lily, what she was told by Atlas clinic personnel about what was going on with Lily when Ms. Miller was not at the clinic, and with the timing of various events.

- [12] It is also questionable whether all of the statements in paras. 5-12 came from the medical records. For example, at para. 7, Dr. Bhullar deposed that the attending veterinarian, Dr. Kundlas, following a physical examination of Lily, advised Ms. Miller that Lily might not survive the night. That does not appear in the records.
- [13] For another example, at paras. 10-12, there is discussion about an authorization Ms. Miller was asked to sign, the timing of the authorization in relation to the physical examination, and treatment in the form of an oxygen chamber being discussed and orally approved by Ms. Miller before Ms. Miller signed the authorization form. Those timing issues are not recorded in the medical records. At para. 12, Dr. Bhullar ascribes certain actions to Dr. Kundlas because he was "[r]ecognizing the urgency of the situation and the seriousness of Lily's condition". There is nothing in the medical records that describes what was motivating Dr. Kundlas. Dr. Bhullar stated that Dr. Kundlas received consent from Ms. Miller for his treatment plan, but Ms. Miller deposed that she only consented to hydration and oxygen therapy, and not to other treatments, for example x-rays.
- [14] At para. 13, Dr. Bhullar states that Lily died despite Dr. Kundlas "best efforts". This is unattributed hearsay and inadmissible opinion evidence.
- [15] At paras. 14-17 and 19-20, Dr. Bhullar describes Ms. Miller's podcast. This evidence is not necessary because the podcast itself is in evidence.
- [16] At para. 18, Dr. Bhullar appends the College's decision setting out its reasons for dismissing Ms. Miller's complaint. This paragraph and the attachment are not objectionable except that they are part of an unsworn/unaffirmed statement.
- [17] At paras. 21-22, Dr. Bhullar states that Ms. Miller's podcast "cherry picks" facts and states that Ms. Miller was not providing the public with the full picture of what happened. These paragraphs are inadmissible argument.
- [18] At para. 24, Dr. Bhullar refers to Ms. Miller's statement that the Atlas fees are a bait and switch scam. There is nothing objectionable about this paragraph except that at the end, he seems to be saying that Ms. Miller signed the authorization form before proceeding, which contradicts his previous statement that Ms. Miller signed the form after the physical examination of Lily and before treatment.

- [19] At para. 25, Dr. Bhullar states the number of subscribers to Ms. Miller's YouTube account and the number of views on the podcast video. That evidence is unobjectionable except that it is part of an unsworn/unaffirmed statement.
- [20] At paras. 26-27, Dr. Bhullar states that he has received calls and questions about the podcast video and that these questions make him feel humiliated. He also states that Atlas' business reputation and his professional reputation have been seriously injured. These paragraphs are not objectionable except that they are made in an unsworn/unaffirmed statement.
- [21] At para. 28, Dr. Bhullar attributes a statement to Ms. Miller in the video podcast, referring to another veterinarian as evil. Ms. Miller did call that other veterinarian evil in the video podcast. Dr. Bhullar also appends an obviously AI-generated transcript (the header is GoTranscript). Ms. Miller deposed that this transcript has errors. She has appended a transcript of the video podcast and provided the video podcast on a USB key. The version that Dr. Bhullar appends to his affidavit is not admissible.
- [22] Most of the Bhullar statement is inadmissible hearsay or argument. Some of it is internally contradictory and some of it is just wrong. None of it is supported by a statement by Dr. Bhullar swearing or affirming its truth, including his belief in the matters about which he does not have first hand information. Very few of the paragraphs would be wholly admissible even if they were supported by a statement that they were sworn to be true. Another few would be partially admissible. Those that describe the podcast are unnecessary because the evidence is elsewhere in the record.
- [23] Dr. Bhullar and Atlas have known about Ms. Miller's reasons for objecting to the Bhullar statement since she filed her notice of application to strike it on January 2, 2025. They have not taken steps to address the objections, for example by filing a sworn or affirmed version of the affidavit. That is a rather obvious failing easily addressed if Dr. Bhullar is prepared to swear to or affirm the contents. I conclude he is not prepared to swear to or affirm the contents.
- [24] Dr. Bhullar's statement is inadmissible.

Legal Principles

Applications under the Protection of Public Participation Act

- [25] In the Protection of Public Participation Act, the legislature seeks to protect speech or expression made on matters of public interest from strategic litigation against public participation ("SLAPP").
- [26] Typically, a SLAPP suit has the object of silencing or deterring the expression of ideas or views on matters of public interest, rather than to remedy harm suffered by the plaintiff: *Hansman v. Neufeld*, 2023 SCC 14 at para. 48; *Simán v. Eisenbrandt*, 2024 BCCA 176 at para. 32; *Galloway v. A.B.*, 2021 BCSC 2344 at para. 48, rev'd in part on other grounds 2024 BCCA 8, leave to appeal to SCC ref'd 41167 (10 October 2024); *Hobbs v. Warner*, 2021 BCCA 290 at

para. 6, leave to appeal to SCC ref'd, 39922 (28 April 2022). SLAPP suits create tensions between competing public interests: the interest of justice in addressing disputes on their merits, and the public interest in protecting freedom of expression.

[27] Ms. Miller brings her application pursuant to s. 4 of the Protection of Public Participation Act:

Application to court

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

- (a) the proceeding arises from an expression made by the applicant, and
 - (b) the expression relates to a matter of public interest.
- (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
- (a) there are grounds to believe that
 - (i) the proceeding has substantial merit, and
 - (ii) the applicant has no valid defence in the proceeding, and
 - (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[28] The following description of the steps when considering an application under s. 4 of the Protection of Public Participation Act are borrowed from Simán.

[29] First, under section 4(1), the burden is on the applicant to show, on a balance of probabilities, that the proceeding arises from expression, and that this expression relates to a matter of public interest, based on the criteria in ss. 4(1)(a) and (b).

[30] The words "matter of public interest" in s. 4(1)(b) are to be given a "broad and liberal interpretation": 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at para. 26 [Pointes]. The key question is whether "some segment of the community would have a genuine interest in receiving information on the subject", based on the expression assessed as a whole: Pointes at para. 27, citing Grant v. Torstar Corp., 2009 SCC 61 at paras. 101-102.

[31] If the applicant fails to meet this burden, then the application will fail and the action will not be dismissed: Pointes at paras. 21-23.

[32] Second, if the applicant meets the burden under s. 4(1), then the burden shifts to the application respondent to demonstrate that there are grounds to believe the action has substantial merit, pursuant to s. 4(2)(a)(i).

- [33] In *Pointes* at para. 39, the Supreme Court of Canada explained that "grounds to believe" requires a basis in the record and the law but also takes into account the stage of the litigation. The evidence must be reasonably capable of belief. Substantial merit means the prospect of success of the underlying claim "tends to weigh more in favour of the plaintiff". That is assessed by considering the record before the court on the application, and the applicable law, taking into account the stage of the proceeding, to determine whether the plaintiff in the underlying action has the better case: *Pointes* at para. 49-51. Substantial merit means:
- [50] a claim with merely some chance of success will not be sufficient to prevail. Nor will a claim that has been merely nudged over the line of having some chance of success. a real prospect of success requires that the claim have a prospect of success that, while not amounting to a demonstrated likelihood of success, tends to weigh more in favour of the plaintiff. [Emphasis in original.]
- (See also *Simán* at paras. 39-40.)
- [34] Third, under s. 4(2)(a)(ii), if a claim is found to have substantial merit, the application respondent/plaintiff must then demonstrate there are grounds to believe there is "no valid defence to the claim". The analysis is based on the defences that are "put into play" by the applicant/defendant. If there is even one valid defence, then the application to strike should succeed, and the claim should be dismissed: *Pointes* at para. 58.
- [35] This inquiry and the one on substantial merit require the application judge to evaluate the strength of the claim or any defences as part of an overall assessment of the prospect of success of the underlying claim: *Pointes* at para. 59. Similar to substantial merit, a defence is valid if it tends to weigh more in favour of the defendant based on the record and the law: *Bent* at para. 103.
- [36] The fourth and final step is the balancing exercise required by s. 4(2)(b). At this stage the burden is on the plaintiff to show that they have suffered harm or will suffer harm due to the applicant's expression. They must show that the harm is serious, and serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting the expression: *Simán* at para. 43.
- [37] In *Simán* at para. 45, the Court of Appeal also explained that monetary or non-monetary harm can be sufficient, but causation is mandatory: *Simán* at para. 45, citing *Pointes* at para. 71 and *Hansman* at para. 68. Despite the presumption of damages in defamation cases, the s. 4(2)(b) analysis requires evidence of causation and presumption of damages cannot establish serious harm: *Simán* at para. 45, citing *Hansman* at para. 67.

- [38] In Simán, the Court of Appeal described s. 4(2)(b) as a "robust backstop" for the judge to dismiss even technically meritorious claims due to where the public interest lies: at para. 43, citing Pointes at paras. 53, 62. In Pointes, the Court described the weighing exercise as the "crux" or "core" of the analysis because it engages directly with the overarching concerns that the legislation seeks to address by assessing the public interest and public participation implications: Pointes at paras. 61-62; Hansman at para. 58.
- [39] In Hansman at para. 51, the Court held that a core feature of the Protection of Public Participation Act is that s. 4(2) provides for claims with substantial merit to be dismissed where the public interest in preserving free debate outweighs the harm to the plaintiff that the litigation purports to address.

Defamation

[40] To prove defamation, Atlas and Dr. Bhullar must establish that:

- a) the impugned statements were published by being communicated to at least one person other than the plaintiff;
- b) the impugned statements would tend to lower the reputation of the plaintiffs in the eyes of a reasonable person; and
- c) the impugned statements referred to the plaintiffs.

(See Grant at para. 28.)

[41] The first element is a question of fact that is rarely in issue.

[42] The second element is about whether the impugned statements are defamatory in content from the perspective of a reasonable person. In Bent at para. 97, the Court cited *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 118, 1995 CanLII 59 and *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 92, 1995 CanLII 60, for the proposition that allegations of professional misconduct generally will meet the test of lowering the reputation of the professional in the eyes of reasonable person. In Bent the plaintiff was a doctor, and in Hill the plaintiff was a lawyer.

[43] The third element of a defamation claim is that the statement must refer to the plaintiff. The test is met if the context of the publication reasonably relates the defamatory statements to the plaintiff such that reasonable people acquainted with the plaintiff would reach the conclusion that the statements in question refer to the plaintiff: *Rooney v. Galloway*, 2024 BCCA 8 at para. 100-101.

Section 4 Analysis

Background to the Podcast and the Litigation

- [44] These proceedings arise out of a visit Ms. Miller made to an Atlas veterinary clinic with her cat Lily on June 30, 2022, during the heat dome that afflicted southwest British Columbia. Ms. Miller thought Lily was dehydrated.
- [45] Ms. Miller deposed that she did some internet research for a veterinary clinic open late, and found that Atlas Animal Hospital was open 24 hours and would examine a pet for a \$30 fee. She deposed that when she arrived, she experienced rude and inattentive treatment, in addition to being required to pay a \$1,000 deposit to access the \$30 assessment. She deposed that she told the receptionist and the veterinarian, Dr. Kundlas, that she wanted Lily to receive fluids for dehydration. Ms. Miller deposed that the receptionist required her to sign an authorization form in which she agreed to pay between \$1,600 and over \$2,000 for various treatments, and was required to do that before Lily was seen. Ms. Miller deposed that she signed the agreement because she was desperate to have Lily seen and that when she saw the veterinarian, she told him she only consented to fluids for dehydration and oxygen therapy.
- [46] Ms. Miller deposed that Dr. Kundlas did not examine Lily in her presence. However, she also deposed that in her presence, he took Lily's weight, put a medical instrument in Lily's ear, and commented on Lily being dehydrated while pulling at Lily's fur.
- [47] Ms. Miller deposed that Dr. Kundlas took Lily away and that she next saw Lily sitting in a glass box, which I infer to be an oxygen therapy chamber. Ms. Miller deposed that she was not permitted to wait in the animal hospital so she left. She deposed that some time later she received a call advising her that Lily was doing very poorly and so she rushed back to the Atlas clinic. On her way she received another call telling her that Lily was dead despite the attempts of the veterinarian to revive her after she stopped breathing. She deposed that she saw Lily's body when she got back to the clinic, and there were no signs that Lily had been given an intravenous IV and no signs that a CPR apparatus had been used on her.
- [48] The receptionist provided Ms. Miller with the results of the bloodwork they had done on Lily. Ms. Miller deposed that the final invoice she received did not list fluids and she believes that Lily was never given fluids. Ms. Miller deposed that after two requests for Lily's x-rays, Atlas sent them to her. She deposed that the time stamp on one of the x-rays is six minutes after she received a phone call advising her that Dr. Kundlas was doing CPR on Lily. Because it does not make sense to x-ray a cat x during CPR or after unsuccessful CPR, Ms. Miller believes that Dr. Kundlas did not perform CPR.
- [49] Shortly after Lily died, Ms. Miller began researching Atlas online and found a lot of information. The information included positive and negative reviews. Ms. Miller reviewed a lot of information pertaining to a history of complaints with the College (formerly the British Columbia Veterinary Medical Association) about the principal of the Atlas clinics and Dr. Bhullar.

- [50] Ms. Miller found that in 2004, Dr. Bhullar and several other veterinarians commenced a human rights proceeding alleging that the College employed racist regulatory practices and was biased against veterinarians of South Asian descent.
- [51] Ms. Miller reviewed a decision of the College in *Bhullar v. British Columbia Veterinary Medical Association*, dated December 2, 2009 (the "2009 BCVMA decision"). In that decision, a majority of the Council of the College determined that Dr. Bhullar was not governable following disciplinary proceedings relating to his treatment of four animals as well as alleged contraventions of marketing guidelines. The minority agreed with the findings, but would have allowed Dr. Bhullar to apply for reinstatement after four years.
- [52] Dr. Bhullar appealed the 2009 BCVMA decision to this court, which, in reasons indexed at *Bhullar v. B.C. Veterinary Medicine Association*, 2011 BCSC 182, allowed the appeal on penalty and remitted the matter to the College to address Dr. Bhullar's allegations of bias. The College appealed that decision; the Court of Appeal allowed the appeal, and upheld the College's decision, in part, because the bias issues were in the course of being addressed at the Human Rights Tribunal. Dr. Bhullar sought leave to the Supreme Court of Canada but was not successful.
- [53] It appears that Dr. Bhullar's licence to practice veterinary medicine was reinstated in 2011 in his appeal of the 2009 BCVMA decision to this court. Although the decision of this court was overturned by the Court of Appeal, my understanding is that Dr. Bhullar has continued to be a licenced veterinarian since 2011.
- [54] The human rights proceeding was commenced well before the 2009 BCVMA decision and finished well after. Ms. Miller reviewed the decision of the Human Rights Tribunal in *Brar and others v. B.C. Veterinary Medical Association and Osborne* (No. 22), 2015 BCHRT 151 [2015 Human Rights Tribunal decision]. In that decision, the Human Rights Tribunal found that the College had racially discriminated against Dr. Bhullar and other veterinarians including in the investigation pertaining to the 2009 BCVMA decision, but did not address the substance of the complaint or the findings of erasure.
- [55] Ms. Miller read a statement by the Minister of Agriculture pertaining to that judicial review in which he expressed disappointment that the College was seeking to judicially review the 2015 Human Rights Tribunal decision. Ms. Miller reviewed the apology the College made to Dr. Bhullar at the time.
- [56] Ms. Miller deposed, and has appended to her affidavit, several online statements of people whose experiences with Atlas were similar to her experience and some statements from people who had negative experiences different than hers. She discovered a video released by a former Atlas employee speaking out about problems at Atlas entitled "proof of atlas animal hospital is a public health threat" and showing a dog in distress at one of the clinics. She communicated with this former Atlas employee, whom she identified by name. She deposed that he told her about assault of animals, cruelty to animals, medical incompetence, and unhygienic conditions at the Atlas clinic at which he worked. Ms. Miller deposed that this

person told her that he had complained to the College about Atlas and received confirmation that his complaint was being investigated about 11 months after he made the complaint. Ms. Miller deposed that this person told her he had been threatened by Atlas personnel.

- [57] One of the people Ms. Miller talked to, whom Ms. Miller identified by name, told Ms. Miller that she had initiated a complaint with the College against Atlas in relation to her experience at Atlas. She told Ms. Miller that 20 months after commencing the complaint, the College had not yet investigated it. Ms. Miller told this person, in March 2024, that Atlas and Dr. Bhullar had commenced a civil claim for defamation against Ms. Miller. This person told Ms. Miller that she was concerned that Atlas and Dr. Bhullar would do the same to her, so she was no longer going to talk to Ms. Miller.
- [58] Ms. Miller deposed that she found a Facebook page entitled, "Atlas Animal Hospital Honest Opinions aka Atlas Called Me Racist and Threatened to Sue Me, and Atlas Animal Hospital Horror Stories". She exchanged messages with the page creator, whom she identified by name.
- [59] In August of 2022, Ms. Miller filed a complaint with the College. She deposed that around the same time, she came across a report entitled, "A Review and Report on the complaints process of the College of Veterinarians of British Columbia" by Harry Cayton (the "Cayton report"). In his report, Mr. Cayton noted that the College had not had an investigative hearing into a complaint against any veterinarian since the 2015 Human Rights Tribunal decision. She deposed that the report did not give her confidence that her complaint would have any positive effect.
- [60] In September 2022, Ms. Miller attempted to meet with the British Columbia Attorney General about her view that the 2015 Human Rights Tribunal decision was interfering with victims of abuse at Atlas obtaining justice but was unable to secure a meeting. She also attempted to file a police report.
- [61] Ms. Miller deposed that as a result of what she had learned, she decided to undertake an investigatory podcast series on the failures of veterinary regulation from the perspective of a pet owner.
- [62] Ms. Miller deposed that she concluded that the College has failed to effectively regulate veterinarians, including Atlas and Dr. Bhullar, who is the head of the Atlas clinics. Ms. Miller deposed that although many of her concerns had already been reported in the media at length, including in statements made by Dr. Bhullar to the media, that coverage was not from the perspective of pet owners.
- [63] The video podcast, called #MeowToo episode 1, was published on YouTube on July 11, 2023. It was linked to a Facebook post on July 23, 2023. It is 24 minutes and 59 seconds in length. In it, Ms. Miller describes her experience taking Lily to the Vancouver Atlas clinic, but does not identify the veterinarian she saw there, Dr. Kundlas, by name. She explains that she made a complaint to the College, but she is skeptical that Atlas will be held accountable. She

explains why she is skeptical by discussing the 2009 BCVMA decision and the 2015 Human Rights Tribunal decision.

- [64] In the podcast, Ms. Miller talks about a dog named Wendy whose treatment was one of the subjects of the 2009 BCVMA decision. Ms. Miller states that Dr. Bhullar was incompetent to perform the surgery, never obtained informed consent to perform the surgery, and that the surgery resulted in Wendy's death. Ms. Miller states that in the 2009 BCVMA decision, the College determined Dr. Bhullar should be erased from the College Registry.
- [65] Ms. Miller describes the proceedings before the Human Rights Tribunal and that the tribunal member found that Dr. Bhullar and 12 other Indo-Canadian veterinarians had been victims of systemic racism by the College. She links this decision to why Dr. Bhullar is still practicing through "low-cost veterinary clinics". Ms. Miller states that in her experience, the advertised low-cost services were basically a "bait and switch scam". Ms. Miller expresses her opinion that the finding of the tribunal member in the 2015 Human Rights Tribunal decision about credibility of a south Asian veterinarian who testified against Dr. Bhullar to be "completely baseless and bias". Ms. Miller describes the Cayton report's finding that the College has not had any discipline hearings since the 2015 Human Rights Tribunal decision, and states that she believes that the 2015 Human Rights Tribunal decision neutered the College, leaving pets and their owners vulnerable to unscrupulous veterinarians. She discusses the Attorney General office's oversight of the Human Rights Tribunal, and that she believes that the Minister of Agriculture interfered with her request for a meeting with the Attorney General.
- [66] On July 27, 2023, former counsel for Dr. Bhullar and Atlas sent Ms. Miller a letter captioned, in part, "Cease and desist", asserting that the podcast contains false statements that twist and manipulate facts. Counsel demanded that Ms. Miller remove "all defamatory statements about Atlas Veterinary Clinic and Dr. Hakam Bhullar" from social media platforms, issue a public apology, and pay damages of \$50,000, failing which they would issue a notice of civil claim.
- [67] Ms. Miller responded that the assertions were without merit and that she would not comply with the demands in the cease and desist letter. Ms. Miller deposed that she suspended production of further #MeowToo episodes.
- [68] In late July 2023, Ms. Miller received the first communication from the College about her claim. In September 2023, Ms. Miller received the medical records relating to the treatment of Lily at Atlas from the College. Ms. Miller communicated with the College pointing out discrepancies and errors in the records, such as Lily's name, date of birth, breed and colour, as well as the fact that it does not state any items used for IV fluids. Ms. Miller deposed that she was advised by the investigating veterinarian that her comments would be included in a memorandum provided to the investigation committee. Ms. Miller deposed she was also told that the memorandum was provided to the subject of the complaints. Ms. Miller deposed that she has asked for the memorandum but has not been provided with it.

[69] On January 9, 2024, a different former counsel for Atlas and Dr. Bhullar sent Ms. Miller a second cease and desist letter setting January 23, 2024, for the deadline.

Progress of the Litigation and this Application

[70] In their notice of civil claim filed on February 9, 2024, Atlas and Dr. Bhullar claim that certain statements in the #MeowToo episode 1 podcast are defamatory. Ms. Miller asserts that they have been taken out of context. To ensure the statements are understood in context of the part of the podcast in which they are made, I reproduce the text from the podcast in which the allegedly defamatory words are found and have bolded the portions that Atlas and Dr. Bhullar asserts are defamatory:

Statement 1: " we're going to be discussing the notorious Atlas Animal Hospital in Vancouver which is rumoured to be an animal hospital of horrors."

Statement 2: "My beloved cat Tiger Lily died at the Atlas hospital last summer under mysterious and suspicious circumstances. After her death, I found out that there were other victims, there are hundreds of other victims.

Statement 3: "I stumbled upon the website for Atlas Animal Hospital in Vancouver. And they advertised Emergency Care 24hrs a day, and \$30 examinations 24/7. I called them, to see if they treated dehydration, and they assured me that they did, and they told me they would treat Lily immediately. The story changed when we arrived. And ah, long story short, Tiger Lily was never administered the fluids that I had rushed her to the hospital for, and she never received that \$30 advertised examination, or any examination at all. Instead she was subjected to what I believe were harmful and unnecessary procedures. And ah, I did not consent to those procedures. And I believe they caused her death that night.

Statement 4: According to the Decision, Dr. Bhullar owns or he owned anywhere between 5-25 so-called "low cost" veterinary clinics. In my experience, the low-cost services advertised by Dr. Bhullar's Atlas clinic, were basically just a bait-and-switch scam."

[71] Ms. Miller deposed that she tried but could not find affordable counsel and so responded to the notice of civil claim herself and had represented herself since then, a process she deposed has been "incredibly stressful". She filed her response to civil claim on February 28, 2024. She also filed a counterclaim in which she asserts breach of contract, conspiracy, fraud/misrepresentation, intimidation, negligence, harassment, assault, conversion, and intentional or negligent infliction of mental suffering. She claims damages for the loss of Lily, for personal injury, aggravated damages, and punitive damages.

[72] On March 28, 2024, former counsel for Dr. Bhullar and Atlas wrote to Ms. Miller and stated their view that because the College had dismissed her claims, any defences she asserted to the defamation claim were bound to fail. Counsel for Dr. Bhullar and Atlas proposed that they agree to a dismissal of their claims and Ms. Miller's counterclaim and asked her to respond by April 5, 2024. On April 5, 2024, Ms. Miller responded advising that she did not

view the College's decisions as deciding anything so far as the British Columbia Supreme Court would be concerned, and that she stood by her statements.

- [73] Ms. Miller delivered a list of documents and the documents listed to counsel for Atlas and Dr. Bhullar on April 25, 2024. Counsel for Dr. Bhullar and Atlas had earlier stated that they would deliver their list of documents in April 2024 if Ms. Miller did not agree to their proposal to dismiss the claim, but they did not deliver it until November 18, 2024, when ordered to do so by Justice Sukstorf.
- [74] Ms. Miller sought the name of the receptionist and the College investigative memorandum, which the College had told her was provided to Dr. Bhullar but would not be provided to her. Atlas and Dr. Bhullar refused to provide both.
- [75] By the summer of 2024, Atlas and Dr. Bhullar had not done anything to advance the action. Ms. Miller filed this application on August 23, 2024, setting it for October 31, 2024. On August 30, 2024, Ms. Miller received a notice of intention to act in person filed by the plaintiffs. On September 16, 2024, Ms. Miller received a communication from the plaintiffs' current counsel, advising that he had been retained and was unavailable for the hearing date. Ms. Miller responded that she would not agree to adjourn the hearing and she expected evidence supporting an application to adjourn if one was brought.
- [76] On October 25, 2024, counsel for Atlas and Dr. Bhullar advised that they would be sending an agent to adjourn the October 31, 2024 hearing despite that Atlas and Dr. Bhullar had not filed a response to the application or an application to adjourn.
- [77] On October 31, 2024, Ms. Miller proceeded with this application. Justice Sukstorf allowed Dr. Bhullar and Atlas an adjournment despite that they had not filed an application response and despite that they had not filed an application for an adjournment. Justice Sukstorf directed them to respond to Ms. Miller's previous requests for documents and to this application by November 15, 2024. Atlas and Dr. Bhullar filed their application response on November 18, 2024.
- [78] On November 18, 2024, Atlas and Dr. Bhullar also provided a list of documents. Ms. Miller deposed that list does not include documents that are responsive to the requests she has made, including the College investigative memorandum. She raised the issue with counsel for Dr. Bhullar and Atlas, and counsel responded variously that she needed to demonstrate that the documents were material and that she would have to file a separate application.
- [79] Ms. Miller reset the application for January 31, 2025, and also set her application to strike the affidavit of Dr. Bhullar for that date. Counsel for Atlas and Dr. Bhullar sent an agent to adjourn it.
- [80] Justice Lamb adjourned the hearing and ordered counsel for Atlas and Dr. Bhullar to provide five dates in each of the months when long chambers dates were available in the spring of 2025, and permitted Ms. Miller to set the date for the application unilaterally if she was not able to set the matter on the dates that counsel for Atlas and Dr. Bhullar provided. That is

how matters unfolded, and Ms. Miller set the application for May 16, 2025. Counsel for Dr. Bhullar and Atlas, again, sent an agent to have the matter adjourned due to counsel's unavailability. He told Ms. Miller he would do so the day before he hearing.

- [81] On May 16, 2025, no judge was available, but the parties were offered May 20, 2025. Counsel for Atlas and Mr. Bhullar advised he was not available. Justice Hamilton head the matter for the purpose of scheduling a hearing and set it down for August 26-27, 2025.

Step 1: Expression in which the Public Has an Interest

- [82] I summarize the impugned statements about which the burden is on Ms. Miller to establish on the balance of probabilities that there is a public interest:

- a) Statement 1: the notorious Atlas Animal Hospital in Vancouver is rumoured to be an animal hospital of horrors.
- b) Statement 2: Lily died at an Atlas clinic under mysterious and suspicious circumstances, and Ms. Miller found there are hundreds of other victims.
- c) Statement 3: Lily was not administered the fluids that Ms. Miller had rushed her to the hospital for, she never received the \$30 advertised examination, or any examination at all but was subjected to harmful and unnecessary procedures to which Ms. Miller did not consent and which caused Lily's death that night.
- d) Statement 4: the low-cost services advertised by Dr. Bhullar's Atlas Clinic were a bait and switch scam.

- [83] The burden is on Ms. Miller to establish on the balance of probabilities that there is a public interest in these statements.

- [84] Atlas and Dr. Bhullar do not dispute that the impugned statements are expressions. They dispute that they do not relate to any matter of public interest because the matters are no more of interest to the public than any matter about which the public may be curious. They rely on Grant at para. 102, where Justice McLachlin explained that public interest is not satisfied by the matter being one that is of interest to the public, in the sense of being something which raises curiosity. It must be something about which the public has a genuine interest in receiving information.

- [85] The public interest bar at the s. 4(1) stage is low. The expression should be assessed as a whole, and must merely relate to any matter of public interest, defined broadly and focussed on the object and subject of the expression as opposed to the quality and quantity of the rhetoric: Pointes at paras. 26 - 28, 30. The term "expression" in s. 4(1)(a) is interpreted in a "generous and expansive fashion" to mitigate the risk that an application judge will never reach the weighing exercise, which is the crux of an application under s. 4 of the Protection of Public Participation Act: Pointes at para. 30; see also McDonald v. Goranko, 2023 BCSC 231 at paras. 46-51.

- [86] In *Universalcare Canada Inc. v. Gusciglio*, 2025 ONCA 583, the Ontario Court of Appeal upheld the chambers judge's analysis in characterising the object of the expressions giving rise to the defamation action as the standard of care in long-term care homes generally and the specific care home in particular. That finding supported dismissing the defamation action, regardless of whether the "vast majority of the tweets constitute personal invective and are accordingly of low value": at para. 10.
- [87] Applying the *Universalcare Canada* approach to characterizing the expressions, the statements in this case relate to the quality of veterinary services at veterinary clinics in general, and the quality of service at the Vancouver Atlas clinic specifically.
- [88] Atlas and Dr. Bhullar concede that the protection of animals in the care of veterinarians may garner public interest, but they assert that accusations of unethical behaviour and calling Atlas a "hospital of horrors" is beyond the parameters of public interest.
- [89] With regard to the "hospital of horrors", part of statement 1, Ms. Miller states that the Vancouver Atlas clinic is "rumoured to be an animal hospital of horrors". In her material on this application, she has demonstrated that before she made the podcast, she came across material with that phrase used in relation to Atlas clinics and the word "horror" used by more than one person describing experiences at Atlas clinics. When viewed in the context of the whole of the expression, it is clear that Ms. Miller is borrowing that phrase from other persons who have described Atlas clinics.
- [90] In the podcast, Ms. Miller talks about the 2009 BCVMA decision in which the substandard practices of Dr. Bhullar are discussed in some detail. Ms. Miller talks about that in connection with her view that the 2015 Human Rights Tribunal decision resulted in the College refusing or failing to regulate Dr. Bhullar and Atlas clinics.
- [91] When read in context and as a whole, the animal hospital of horror phrase and statements 1, 2 and 3 are expressions that convey the concept that Atlas provides substandard veterinary services, so substandard that they are dangerous to pets and can cause animals to suffer and/or die. The public has an interest in knowing the quality of veterinary services at clinics, especially but not only if they are taking their pets to a clinic in an emergency.
- [92] Atlas and Dr. Bhullar's argument about accusations of unethical behaviour are about statement 4, in which Ms. Miller stated that Atlas' advertising of a \$30 examination is a bait and switch scheme.
- [93] I disagree with Atlas and Dr. Bhullar that this goes beyond something in which the public has a genuine interest. The evidence shows that Atlas promotes its \$30 examination through significant advertising aimed at the pet-owning public. The advertising also refers to emergency care 24/7. The advertising is aimed at pet owners who have animal health emergencies. Such persons who show up at an Atlas clinic expecting to have their pet seen for \$30 and discover that they must pay a \$1,000 deposit as did Ms. Miller, may have fewer options available to them than if they knew that they might be required to make a

substantial deposit at Atlas beforehand. The pet-owing public has an interest in full and timely information about the \$30 examination fee for emergencies 24/7.

- [94] Accordingly, assessing the expressions as a whole and taking into account the broad definitions of "expression" and "public interest" under s. 4(1)(a), I conclude the statements are on a matter of public interest.

Step 2: Whether There is Substantial Merit to the Proceeding

- [95] On this step, the burden is on Atlas and Dr. Bhullar to demonstrate grounds to believe the action has substantial merit in reference to the elements of defamation. The question is whether one or more of the impugned statements refers to the plaintiffs and would tend to lower the reputation of the plaintiffs in the eyes of a reasonable person.
- [96] Ms. Miller has not made any submissions pertaining to the merits of the claims brought by Atlas and Dr. Bhullar that the statements are defamatory. Her submissions relate to the defences she has to the claim.
- [97] In defamation cases, the focus is on the "gist" of what the words were intended to convey, or their "sting", not the literal truth of the words used: *Cimolai v. Hall*, 2005 BCSC 31 at paras. 171-173, *aff'd* 2007 BCCA 225.
- [98] The gist of statements 1, 2, and 3 are that Atlas clinics provide substandard veterinary services, so substandard that they are dangerous to pets and can cause animals to suffer or die. The gist of statement 4 is that Atlas uses misleading advertising tactics by advertising \$30 examinations available 24/7, because a person who shows up with a pet seeking an examination has to pre-authorize services that may also be required and cost much more than \$30, as well as pay a \$1,000 deposit to access the veterinarian who is going to do the examination.
- [99] Ms. Miller made these statements as part of her podcast, the theme of which was that College was not effectively regulating veterinarians, or at least not regulating Dr. Bhullar and Atlas clinics, because the College had been cowed by the 2015 Human Rights Tribunal decision.
- [100] There is substantial merit in the assertion that each of the statements is defamatory. They were all published in the podcast. There is no doubt that each of the statements could lower a reasonable person's view of the reputation of Atlas. Dr. Bhullar's name only appears in relation to the fourth statement. In the podcast, Ms. Miller identified him as the owner of the Atlas clinics and a veterinarian. She did not identify him as the veterinarian who was involved with Lily. In the podcast, she also talks about the consideration of his competency in the 2009 BCVMA decision. In my view, there is substantial merit to the assertion that a reasonable person would associate Dr. Bhullar with all of the impugned statements.

Step 3: Whether There is No Valid Defence to the Proceeding

- [101] Ms. Miller has put in issue the defences of justification, fair comment, responsible communication, and qualified privilege.
- [102] The burden is on Atlas and Dr. Bhullar to demonstrate that none of the defences to the claim are valid. If one is valid - meaning it weighs in favour of Ms. Miller - then the application will succeed.

Justification

- [103] If the gist or sting of the statement used is true, then minor inaccuracies do not defeat the defence of justification: *Hudson v. Myong*, 2020 BCSC 517 at para. 141. But, if the overall impression of a statement is false, even if some or all of the literal words are proven to be true, the defence will fail: *Cimolai* at para. 173, *Bent* at para. 107.
- [104] Like in *Surrey Animal Hospital Ltd. v. Veira*, 2023 BCSC 1298, the gist of alleged defamatory statements 1, 2, and 3 are that Atlas and Dr. Bhullar offer bad veterinary services that are substandard and dangerous to the point of harm or death to animals, and there are many other animals and their owners that have been negatively affected by them.
- [105] The gist of statement 4 is that Atlas advertises services for a certain price, but does not deliver them for that price unless the vulnerable persons who need them agree to pay more upfront.
- [106] Atlas and Dr. Bhullar argue this defence is not available because Ms. Miller cannot say that her comments were substantively true. They say this is so because the College denied her complaint and because she did not mention the 2015 Human Rights Tribunal decision when making them. Atlas and Dr. Bhullar do not address each of the impugned statements when making these arguments; they say these matters defeat the defence for all of the impugned statements.
- [107] The sting of the portions of statements 1 and 2 that are not specific to Lily are that many pets have received substandard care at Atlas clinics and have suffered or died as a result. The research that Ms. Miller did prior to publishing the podcast included many reports of other people from which one can infer that Atlas clinics and Dr. Bhullar have substandard practices and skills, and have endangered animals' lives, as a result of which animals have died and their owners have been traumatized or at least negatively affected. In her evidence on this application, Ms. Miller appended many reviews of the veterinary services provided at Atlas clinics, which include comments about Atlas veterinarians and Atlas facilities that align with her observations and views about what happened to Lily. Those observations include that the facilities were not hygienic, pets were handled roughly, pets were in distress, and blood and feces were in plain sight. Ms. Miller interviewed some of these people and described her interviews in her evidence on this application.
- [108] Ms. Miller also reviewed a disturbing video of a dog in distress at an Atlas clinic posted by an Atlas employee with whom Ms. Miller spoke to confirm the events.

- [109] Ms. Miller led evidence of the 2009 BCVMA decision which described the complaints and made factual findings about substandard veterinary services provided to several animals and their owners.
- [110] That evidence includes the 2009 BCVMA decision, the factual findings of which have not been disturbed by any of the subsequent matters between Dr. Bhullar and the College, in which findings were made that support Ms. Miller's defence of justification.
- [111] Atlas and Dr. Bhullar argue that Ms. Miller cannot rely on the justification defence by pointing to the 2009 BCVMA decision without also pointing to the 2015 Human Rights Tribunal decision which found that the College's investigations were biased and discriminatory based on race and the College's subsequent apology.
- [112] In my view, this submission is without substance when the whole of the podcast is reviewed. Ms. Miller addresses the 2015 Human Rights decision; it is a significant feature of the podcast because her thesis is that the College was cowed into ceasing investigating and disciplining Dr. Bhullar and other Atlas veterinarians because of it, leaving pets and pet owners vulnerable to their substandard practices. During the podcast, the College's apology is displayed on the screen while Ms. Miller is talking. On this application, Ms. Miller argues that the 2015 Human Rights decision did not overtake any of the factual findings the College made about Dr. Bhullar's competency and what happened to the pets described in the 2009 BCVMA decision. I consider it open to Ms. Miller to argue that at trial. In other words, there is substantial merit to her assertion of incompetency and substandard care even though the College was found to have discriminated against Dr. Bhullar and others.
- [113] In Veira at paras. 46-50, Justice Gibb-Carsley, when considering the justification defence for a statement that a veterinary clinic was a "slaughterhouse", held that when that phrase was considered "colloquially", it was a way to describe bad veterinary services, as was the statement that the clinic "abuses animals". Justice Gibb-Carsley held that it was not impossible for the defendant in that case to defend those statements on the basis of justification.
- [114] While that case was the hearing of an interim injunction, where the question is whether justification is "impossible", I am of the view that the same reasoning applies in this case to the much higher standard of whether the defence has substantial merit, especially given the unchallenged evidence of Ms. Miller that multiple animals suffered and died at Atlas clinics.
- [115] Ms. Miller has also led evidence of her own experience which related to statements 2 and 3 in which Ms. Miller states her belief that Lily died due to her treatment at Atlas, including because she was not provided with hydration and subjected to unnecessary procedures.
- [116] Atlas and Dr. Bhullar assert that these statements are contradicted by the College's dismissal of her complaint and the medical records and, therefore, cannot be justified.

- [117] Ms. Miller had neither the medical records nor the College's response to her complaint when she made the podcast. Ms. Miller had x-rays and a report of bloodwork. The x-rays raised her concerns because the time stamp on them was very close to the time that she was told that the veterinarian was performing CPR on Lily. The blood work does not, to a lay person, provide any information.
- [118] Ms. Miller did not receive the medical records until after she published the podcast, and she received them from the College, not from Atlas. She deposed that she saw discrepancies in the records between what she saw at the Atlas clinic and the timing recorded in the records, and that is why she did not change her views about what had happened based on the records.
- [119] At the time that Ms. Miller published the podcast, the College had not communicated with Ms. Miller about her complaint even though Ms. Miller had made the complaint almost a year previously. A substantial part of the complaint investigation was the memorandum prepared for the discipline committee. Ms. Miller asked the College for it when she became aware of its existence, but the College did not provide it to her. Ms. Miller requested that Atlas and Dr. Bhullar produce it in the litigation. They have taken the position that it is not relevant and need not be produced.
- [120] It is contradictory to assert that the decision is so relevant that it precludes a justification defence but the memorandum, on which the decision was presumably based since there was no hearing, is irrelevant.
- [121] Assuming the dismissals would contain information that undercuts Ms. Miller's assertions, the College's dismissal of the complaint would be evidence that the complaint was dismissed, but any facts found by the College would not be admissible evidence at trial. If the College's dismissal of the complaint undercuts Ms. Miller's allegations of substandard and dangerous veterinary practices at Atlas, that Lily's death was caused by Dr. Kundlas, and that Atlas uses bait and switch advertising techniques, that evidence would have to be supported by opinion evidence at trial. Atlas and Dr. Bhullar have no such evidence on this application.
- [122] I do not conclude Lily's medical records or the College's dismissal of her complaint undercuts Ms. Miller's justification defence.
- [123] However, on Ms. Miller's evidence, I conclude that she does not have the better case on whether Lily died due to substandard veterinary care. Her evidence is that Lily was sick, and sick enough for her to seek emergency care. Although she does not believe the veterinarian gave Lily fluids or performed CPR and has led some evidence to substantiate that, those facts would not reach the substantial merit threshold to conclude that Lily died due to not being given fluids or not having CPR performed. On this application, there is no evidence that links Lily's death to something that happened or did not happen at that Atlas clinic.

- [124] I reach the same conclusion about substantial merit with regard to the part of statement 3 that Lily was not examined by a veterinarian. Although Ms. Miller does not accept that what Dr. Kundlas did was an examination, Ms. Miller deposed that he took Lily's weight, handled Lily including putting some sort of instrument in her ear, and made comments about Lily's skin and fur.
- [125] With regard to the portion of statement 3 that Ms. Miller did not consent to procedures, Atlas and Dr. Bhullar deposed to the authorization Ms. Miller signed and argue that she consented and so will not be able to justify this statement. However, Ms. Miller has deposed that she was required to sign that authorization before she could have Lily seen by Dr. Kundlas, and when she did so, she stated that she did not consent. She deposed that the receptionist told her she could tell Dr. Kundlas that, and she did tell Dr. Kundlas that. She deposed that she told Dr. Kundlas that all she consented to was fluids for hydration and oxygen therapy. Dr. Bhullar and Atlas have not led any admissible evidence contradicting Ms. Miller's evidence. I conclude that the evidence favours Ms. Miller, so the fact that she signed the authorization does not preclude the defence of justification on that part of statement 3.
- [126] There is no admissible evidence contradicting the body of evidence that Ms. Miller has identified on statements 1, 2, and 3 except Ms. Miller's evidence about Dr. Kundlas seeing Lily. I conclude the body of evidence tips the merits in favour of justification on statements 1, 2, and 3 with the exception of whether Lily was examined and the cause of Lily's death.
- [127] With regard to statement 4, Ms. Miller's evidence is that when she realized she needed to take Lily to see a veterinarian, she saw the advertisement for 24 hour a day care and a \$30 examination. She said she called and spoke to the receptionist, explained that she thought her cat was dehydrated, and asked if she could have her seen for \$30. The receptionist explained that she could. When she arrived at the clinic, the receptionist required her to pay a \$1,000 deposit and sign an authorization consenting to procedures that were listed as costing hundreds of dollars, before she could have the \$30 examination.
- [128] The receptionist Ms. Miller dealt with at Atlas would presumably have evidence that either supports or does not support Ms. Miller's version of events. Atlas and Dr. Bhullar have refused to disclose that information. Dr. Bhullar and Atlas have not led any evidence from the receptionist contradicting Ms. Miller's version.
- [129] Ms. Miller deposed that in her research and review of online reviews, she found others who had experienced similar interactions with regard to the \$30 fee.
- [130] If Ms. Miller's evidence about her own experiences is accepted, or if she leads evidence from others who had a similar experience, there is substantial merit to a justification defence for the statement that the \$30 fee is a bait and switch scheme, because she could not access the \$30 fee unless she authorized treatment that could cost many hundreds of dollars and put a \$1,000 deposit towards such treatment.

[131] Ms. Miller's evidence provides substantial merit for a defence of justification on statement 4, and there is no evidence contradicting it.

Fair Comment

[132] The defence of fair comment applies where:

- a) the comment is on a matter of public interest;
- b) the comment is based on fact;
- c) the comment is recognizable as comment; and
- d) the comment satisfies an objective test, namely whether any person could honestly express the opinion on the proved facts.

[133] If the plaintiffs prove the defendant was motivated by malice, the defence is not available.

[134] Atlas and Dr. Bhullar argue that the defamatory comments are motivated by malice because they go beyond the protection of animals and accuse them of scandalous behaviour without any factual or evidentiary foundation. I understand them to be disputing that facts support the comment, and that a person could objectively honestly express the opinion.

[135] With regard to the lack of factual or evidentiary foundation, there must be a factual foundation for the comment, even if the facts do not support the comment: Hansman at para. 100. In other words, there must be facts on which the opinion is based, even if a person might not agree with the opinion.

[136] In this case, all of the statements are a mix of fact and opinion. All of them are supported by facts that are at least, in part, expressed in the podcast, except the portion where Ms. Miller said that Lily never received an examination and that she was subjected to harmful and unnecessary procedures that caused her death.

[137] When the podcast is viewed in its entirety, it is clear that Ms. Miller is expressing her opinion when she speaks the impugned statements, except the portion where she says Lily never received any kind of an examination.

[138] The reasons she has those opinions are ones that can be reasonably held except for her opinion that Lily was not given an examination and her opinion that Lily was subjected to unnecessary and harmful procedures that caused her death. Ms. Miller does not express facts underlying her opinion that Lily did not receive any examination or her opinion that Lily was subjected to harmful and unnecessary procedures. By not stating why she holds those opinions, Ms. Miller did not give her listeners the opportunity to make up their own minds as to whether the procedures were unnecessary or harmful and whether they caused Lily's death.

- [139] I am of the view that there is substantial merit to Ms. Miller's defence of fair comment except for the portion of statement 3 where she states that Lily was not examined and that Lily was subjected to harmful and unnecessary procedures.
- [140] With regard to malice, if there is substantial merit to the assertion that Ms. Miller made the statements knowing they were false, with reckless indifference as to their truth, to injure Dr. Bhullar and Atlas, or for some other improper purpose, then malice will mean that the defence of fair comment is not available: Bent at para. 136; Smith v. Cross, 2009 BCCA 529 at para. 34. Proof of malice "may be intrinsic or extrinsic: that is, it may be drawn from the language of the assertion itself or from the circumstances surrounding the publication of the comment": WIC Radio Ltd. v. Simpson, 2008 SCC 40 at para. 100. A finding of a subjective honest belief negates the possibility of finding malice: WIC Radio Ltd. at para. 53.
- [141] I am of the view that there is no evidence of malice. As I recite below, Ms. Miller undertook a great deal of research before she published her podcast. She includes in the podcast facts favourable to Atlas and Dr. Bhullar, including the finding that they had been victims of racism at the hands of the College. She describes that the tribunal member on the 2015 Human Rights Tribunal decision did not believe one of the College's witnesses whom she found had not testified truthfully because he wanted to undermine Dr. Bhullar's reputation. Ms. Miller says why she disagrees with the Human Rights Tribunal member about that. In the podcast, Ms. Miller asks questions: Was Dr. Bhullar targeted by racists investigators? Were Dr. Bhullar and other veterinarians being investigated more because the majority of complaints made were about them? While Ms. Miller's view is clear, she states both sides of the debate.
- [142] Contrary to the assertion of Dr. Bhullar and Atlas on this motion, in the podcast, Ms. Miller did not fail to mention the apology made by the College. During one portion of the podcast, a newspaper article describing the apology is displayed on the screen as Ms. Miller is speaking.
- [143] In addition, when the podcast is reviewed as whole, the impugned statements and Dr. Bhullar's alleged incompetence do not occupy the majority of the podcast. What happened to Lily, about which Ms. Miller is clearly upset, is a very small part of the podcast. The majority of the podcast is focused on the human rights complaint, and whether it caused the College to fail to regulate Dr. Bhullar and Atlas clinics. Ms. Miller also expresses negative views of the Attorney General and the Minister of Agriculture, suggesting they are playing a role in the problem.
- [144] With regard to the statements about Lily, it is clear that Ms. Miller believes them and has believed them all along. She has provided evidence as to why, and although I do not believe her conclusions have been factually substantiated to the point of a substantial merit, they are also not fabrications. They are based on some facts and her account of conduct by Atlas personnel, which is somewhat substantiated by the record.

[145] I conclude that Ms. Miller was not animated by malice.

Responsible Communication

[146] In Grant at paras. 95, 98-99, the Court described the defence of responsible communication which applies when the publication is on a matter of public interest, and the maker has been diligent in verifying the allegations. At para. 126, the Court held that if public interest in a statement is shown, the question of whether the communication was responsible should be considered taking into account:

- a) the seriousness of the allegation;
- b) the public importance of the matter;
- c) the urgency of the matter;
- d) the status and reliability of the source;
- e) whether the plaintiff's side of the story was sought and accurately reported;
- f) whether the inclusion of the defamatory statement was justifiable;
- g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth; and
- h) any other relevant circumstances.

[147] Atlas and Dr. Bhullar argue this defence is not available because Ms. Miller was not responsible with regard to whether what she was publishing was true or not and "limited her accusations towards a selective choosing of certain facts". Specifically, Atlas and Dr. Bhullar argue that Ms. Miller did not include any reference to an apology that the College made to Dr. Bhullar for racial discrimination against him and other South Asian veterinarians during investigations into complaints against them. A Vancouver Sun news article sets out the apology as follows:

The college accepts the findings of discrimination against Indo-Canadian veterinarians and apologizes to all of the complainants for the loss of dignity, pain and suffering caused by the college's conduct, including Dr. Hakam Bhullar and his family who suffered professional and personal distress by the College's removal of his licence in December 2009.

[148] For the reasons I have set out, I accept that the podcast was on a matter of public interest, namely whether Dr. Bhullar and Atlas clinics provide substandard veterinarian services that endanger animals, whether they falsely advertise \$30 examinations to people who have emergency situations with their pets, and whether the College ceased effectively regulating veterinarians due to the 2015 Human Rights Tribunal decision.

- [149] The allegations are serious, and they are on a very important public matter, with some urgency because of the emergency situations in which some people take their pets to clinics that provide 24/7 emergency care.
- [150] Overall, Ms. Miller's evidence supports her claim that she exercised diligence. She did a large amount of research. She did not limit herself to reading comments or accounts online, she attempted to interview people and did interview some. A large body of information came from the 2009 BCVMA decision, the factual findings of which have never been disturbed. Ms. Miller included balancing facts in her story, including putting the apology up on the screen, and reciting parts of the 2015 Human Rights Tribunal decision that she disagreed with, and saying why.
- [151] I conclude there is substantial merit to the defence of responsible comment except for on the portions of statement 3 about Lily not receiving an examination and being subjected to harmless and unnecessary treatments that caused her death. In addition to what I have already said about those portions of statement 3, Ms. Miller did not exercise diligence in investigating those statements before she made them, and they are not justifiable.

Qualified Privilege

- [152] This defence is available where the maker of the defamatory statement has a legal, social, moral, or personal duty to make the statements and the recipients have a duty to receive them. The defence is about the occasion on which the statements were made, not the statement itself: *Bent* at para. 121. If the scope of the occasion of privilege was exceeded, the defence will fail. In *Bent*, the defendant was a lawyer who believed she had discovered that a doctor had altered another doctor's report while providing an assessment of a plaintiff's condition to the insurer. Ms. Bent posted her findings on a plaintiff's lawyer's listserv, for the purpose of educating her colleagues about the steps that she took that she alleged uncovered the matter. The Supreme Court of Canada held that qualified privilege did not attach to the post of the findings on listserv. It questioned whether the occasion gave rise to a privilege because of the lack of persuasive evidence that there was social utility to the listserv that would support the qualified privilege, but even if there was, the statements made went beyond the social utility identified.
- [153] The reasoning in *Bent* is applicable to this case.
- [154] Ms. Miller asserts that the occasion is her podcast. There is no substantial merit to the assertion that Ms. Miller had a duty to make the podcast or the listeners had a duty to receive it. An interest in making other pet owners aware of her concerns is not the same thing as a duty. While it is arguable that Ms. Miller felt a moral or personal duty to disclose what she learned when she investigated Atlas clinics and Dr. Bhullar, I cannot consider that to be a duty rather than an interest.

[155] If the podcast did give rise to qualified privilege, there is no evidence to determine whether the communications stayed within the scope of the privilege. Ms. Miller has not identified a specific purpose for her specific comments, which is necessary to ensure that the communications fall within the scope of the asserted privilege.

Step 4: Balancing Harm and the Public Interest in Protecting the Expression

[156] On this final step, the burden is on Atlas and Dr. Bhullar to show that the harm they suffered, or will suffer, due to Ms. Miller's expression, is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting the expression. The court must be satisfied that they are bringing their lawsuit to remedy a legitimate injury and not using litigation as a tool to quell expression and silence Ms. Miller: Bent at para. 150.

[157] The balancing exercise remains necessary because even if though there is substantial merit to the claims of defamation and no valid defence to some of the statements, the court must still grapple with the balance of the interests of protecting individual reputation with freedom of expression.

[158] As Pointes, Hansman, and Simán stress, evidence of actual or future serious harm is necessary.

[159] Ms. Miller disputes that harm has been established. She points to evidence that Dr. Bhullar has courted the media attention pertaining to his human rights challenge and pertaining to other negative statements made about him and even has links to some of it on his website. In addition, Ms. Miller has led evidence of recent and highly negative commentary about Dr. Bhullar and Atlas clinics from several places on the internet. If Ms. Miller is not the only one making statements that damage the reputation of Dr. Bhullar and Atlas clinics, the causal link between Ms. Miller's podcast and any harm asserted by Dr. Bhullar and Atlas is called into question: Hansman at para. 68; see also Pointes at para. 72.

[160] Atlas and Dr. Bhullar have led no admissible evidence of harm. Dr. Bhullar made statements about harm in his inadmissible statement. He has known since January 2025 that Ms. Miller challenges the admissibility of the statement including because he did not swear or affirm its contents to be true, yet he did not take the step of swearing or affirming it to be true. Accordingly, I am left with drawing an inference of harm.

[161] Given the body of evidence of what Dr. Bhullar has gone through and how his reputation suffered during the investigations that led up to the 2015 Human Rights Tribunal decision, and which were ameliorated by the College's apology, I infer that the podcast has caused him further reputational harm and emotional anguish.

- [162] However, the caselaw makes it clear that the balancing exercise pertains to serious harm, and while harm can be presumed or inferred from defamation, serious harm cannot: Simán at para. 45, citing Hansman at para. 67. Serious harm is required because it is necessary to understand the magnitude of the harm to engage in a meaningful balancing exercise between harm and protecting expression that has a public interest value: Hansman at para. 67.
- [163] I infer that the failure of Dr. Bhullar and Atlas to lead any admissible evidence on serious harm, or to swear or affirm Dr. Bhullar's statement pertaining to harm, is because he is not in a position to lead evidence that elevates presumptive harm to serious harm. In any event, they have not done so.
- [164] In addition, Atlas and Dr. Bhullar have shown little interest in proceeding with this matter, other than in filing it. The first communication from their former counsel asserting that Ms. Miller had defamed them was in July 2023. Ms. Miller refused to remove the podcast from social media. They did not take further steps, meaning the material was still on social media, for seven months, at which time new counsel wrote a letter to which Ms. Miller replied refusing to remove the material. This claim was then commenced. After they commenced it, they did nothing. Ms. Miller delivered her response and a timely list of documents. They did not deliver a list of documents despite her request. Ms. Miller made specific requests for disclosure, to which they did not respond.
- [165] There is no evidence that counsel for Atlas and Dr. Bhullar communicated with Ms. Miller as to why they were not taking steps to proceed with the action. Ms. Miller was simply left with the allegations of defamation against her outstanding. Six months after Atlas and Dr. Bhullar commenced this action and then did nothing, Ms. Miller filed this application.
- [166] Once this application was filed, pursuant to the Protection of Public Participation Act, no other steps can be taken in the litigation. One would then presume that Atlas and Dr. Bhullar, if they intended to proceed with their defamation allegations against Ms. Miller, with the podcast remaining on social media, would take steps to have this application heard so that they could resume with their claim. They did not. Instead, they did not respond to the application and then sought an adjournment. After being ordered to file a response, they did so late, ignored Ms. Miller's application to strike Dr. Bhullar's affidavit, and sought an adjournment the next time the matter was returnable, again successfully.
- [167] The assertion of Atlas and Dr. Bhullar that they have been harmed by the podcast have to be assessed against the dilatory steps they took to bring this action after the podcast was published, the complete lack of action after the litigation was commenced, and their foot dragging in having this application heard. All of that has prolonged the podcast remaining on social media. If there was harm occurring, then one would expect them to be moving for an order to have it removed, and in order to do that, they need to have the court hear their claim on its merit. The lack of any demonstrated interest in having the claim heard on its merits, other than commencing the claim, speaks against any appreciable harm done.

- [168] These delay and obstruction tactics are evidence that the purpose of the litigation is to silence Ms. Miller, not to seek injunctive and compensatory relief for real and serious harm. The conduct of Atlas and Dr. Bhullar before the litigation, including the two cease and desist letters separated by about six months, commencing this litigation, proposing the parties drop their claims, doing nothing to advance the claim when Ms. Miller did not agree to drop her counterclaim, and not dealing with this application but obstructing it being heard, is otherwise inexplicable.
- [169] This case has other strange aspects that are indicative of this dynamic. Ms. Miller has deposed that she could not find an entity with the name of a corporate plaintiff by searching public registries. While there is no doubt that the Atlas veterinary clinics exist, it is not clear that Bhullar Enterprises Inc. is doing business as Atlas Animal Hospital and Emergency Vancouver. Bhullar Enterprises Inc. is listed as the owner of Atlas Animal Hospital, and there is a separate legal entity called Atlas Animal Hospital and Emergency Vancouver Ltd. Ms. Miller has pointed that out in her affidavits and arguments for almost a year.
- [170] As noted above, Dr. Bhullar did not address the issue about the corporate plaintiff, nor even say what role he had in making his unsworn affidavit for Atlas. That gap leads to the conclusion that the claim has been commenced with a misnomer due to carelessness that speaks to the lack of legitimacy of the claim.
- [171] Atlas and Dr. Bhullar argue that Ms. Miller's expressions lack a public interest component because Ms. Miller is not a known animal-rights advocate such that there is a public interest in her making expressions on these matters that outweighs the harm done to Dr. Bhullar's reputation.
- [172] Atlas and Dr. Bhullar also argue that the connection between Ms. Miller's expression and the types of expressions protected by s. 2(b) of the Canadian Charter of Rights and Freedoms is tenuous. Where that connection is tenuous, there is less of a public interest in protecting a statement that contains gratuitous personal attacks (Bent at para. 163; Hill at para. 106; see also Hansman at para. 79). Where the expression relates to truth-seeking, participation in political decision-making and diversity in the forms of self-fulfillment and human flourishing, there is greater public interest in protecting it: Pointes at para. 77.
- [173] The podcast is not just about what happened to Lily, it is also about what has happened with the regulation of veterinarians in connection with the 2015 Human Rights Tribunal decision and the impact that has on animal welfare and the well-being of animal owners. That is sufficiently connected to s. 2(b) matters such as truth-seeking and political discord to be worthy of significant efforts to protect.
- [174] Ms. Miller has demonstrated a great amount of interest in the topic of the competency of Atlas and Dr. Bhullar, in the treatment of pets and pet owners by veterinarians and veterinary clinics, and in the regulation of veterinarians. She has dedicated a substantial amount of time to investigating these topics, interviewing other persons, and even

attending at College hearings. Ms. Miller deposed that she is a member of multiple animal welfare organizations and volunteers for one. In addition, Ms. Miller is a stand-up comedian and has been contracted by the CBC to discuss animal advocacy in nationally broadcast productions.

[175] In any event, the failure of Dr. Bhullar and Atlas to demonstrate serious harm is fatal to the balancing; public interest comes into play only once serious harm has been shown to be causally related to the expression: *Pointes* at para. 73.

[176] In summary, Atlas and Dr. Bhullar have not led any admissible evidence of harm, and there is no evidence of serious harm. Their conduct in the litigation and conduct on this application demonstrates a disinterest in the merits of the litigation. I infer from this that the purpose the litigation serves for them is to constrain Ms. Miller's expressions as opposed to addressing the merits of their claim. Ms. Miller's expressions in the podcast are of sufficient public interest to merit protection, and with no evidence of serious harm against which to weigh them, the balance falls in favour of protecting those expressions.

Conclusion on Section 4 Analysis

[177] The application to dismiss the claim pursuant to the Protection of Public Participation Act is allowed.

Ms. Miller's Claim for Damages

[178] An application made under s. 4 also permits the court, on its own motion or as requested by the applicant, to award damages against the respondent should it be found that the respondent brought the proceeding in bad faith or for an improper purpose: *Protection of Public Participation Act*, s. 8.

[179] Ms. Miller asserts that she has been intimidated by Dr. Bhullar and Atlas. At the time this action was commenced, she was making further episodes of the #MeowToo podcast which she suspended while responding to the claim and because of the claim. Ms. Miller asserts that her mental health, already negatively affected by what happened with Lily, was further negatively affected by being sued.

[180] Although I have concluded that Atlas and Dr. Bhullar brought this claim to try to silence Ms. Miller, this lengthy application was about proving matters in relation to a *Protection of Public Participation Act* s.4 application, not about proving damages at trial. I am hesitant to adjudicate Ms. Miller's claim for damages because she has also brought a counterclaim, in which she alleges intimidation, harassment, and intentional or negligent infliction of mental suffering. Since the counterclaim will remain to be litigated after this application, it is my view that the interests of justice lie with litigating the issues once, in that broader counterclaim.

Costs

- [181] Ms. Miller seeks her costs of this application on a full indemnity basis, relying on s. 7(1) of the Protection of Public Participation Act which provides that if a dismissal order is made under s. 4, the applicant is entitled to costs assessed as full indemnity costs, unless such an order is "inappropriate in the circumstances": *Mawhinney v. Stewart*, 2023 BCCA 484 at paras. 44, 49.
- [182] Dr. Bhullar and Atlas did not make any submission at all on the topic, and so did not make any submission as to why such an order would be inappropriate.
- [183] I award Ms. Miller costs of defending the claim brought by Atlas and Dr. Bhullar against her to be assessed on a full indemnity basis.

Disposition

- [184] The Bhullar statement, described on its face as the affidavit of Hakam Bhullar, and filed on November 18, 2024, is inadmissible.
- [185] The claim brought by Atlas and Dr. Bhullar is dismissed.
- [186] Atlas and Dr. Bhullar shall pay Ms. Miller's costs of defending the claim, including this application, assessed on a full indemnity basis.

"Matthews J."

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