

CANADA / JUDGMENT

Bondar v. Neufeld

2024 BCSC 594

COURT

Supreme Court of British Columbia

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2024 BCSC 594 Bondar v. Neufeld

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bondar v. Neufeld,

2024 BCSC 594

Date: 20240411

Docket: S39947

Registry: Chilliwack

Between:

Carin Bondar

Plaintiff

And

Barry Neufeld

Defendant

Before: The Honourable Justice Stephens

Reasons for Judgment

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Place and Dates of Trial:

Chilliwack, B.C.

November 14-17 and 20-21, 2023

Place and Date of Judgment:

Chilliwack, B.C.

April 11, 2024

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OVERVIEW

- [1] The plaintiff, Carin Bondar, sues the defendant, Barry Neufeld, for defamation over something Mr. Neufeld said during an online interview on September 21, 2022.
- [2] In the course of an approximately one-hour interview hosted by Action4Canada, at about the 24-minute mark, when describing candidates for an upcoming municipal school board election, he said:

Richard Procee ran against that strip-tease artist in the by-election four years ago (the "Impugned Words")

- [3] Dr. Bondar contends that the Impugned Words were made about her and that they were defamatory.
- [4] Mr. Neufeld disputes that the Impugned Words were defamatory and also contends that he has available defences in any event: that it was justified or protected by the fair comment or qualified privilege doctrines. He further contends that no damages should be awarded.
- [5] The issues I must decide are:
1. Were the Impugned Words prima facie defamatory?
 2. If so, do any of the following defences apply?
 - a) the defence of justification;
 - b) the defence of fair comment; or
 - c) the defence of qualified privilege.
 3. If Mr. Neufeld is liable for defamation, what award of damages is appropriate?
 - a) general damages;
 - b) aggravated damages; or
 - c) punitive damages.
- [6] These Reasons are not about, and do not address, the merits of any policy issues relating to public education, or the content of school curriculum, in Chilliwack or the Province of British Columbia more generally. Instead, these Reasons concern the application of the law of defamation to the Impugned Words.
- [7] For the reasons that follow, I find that the Impugned Words were defamatory; that no defences are made out; and that Mr. Neufeld shall pay Dr. Bondar general damages of \$35,000 and punitive damages of \$10,000.

FACTUAL BACKGROUND

- [8] Dr. Bondar has been a school trustee of the Chilliwack School Board since February 2021. She describes herself as a biologist, popular science educator, and a science blogger. She received a BSc in Biology, and then obtained a PhD from the Faculty of Forestry at the University of British Columbia (2007). She is an adjunct instructor at the University of the Fraser Valley ("UFV"). She has also taught STEM workshops to girls in the Chilliwack school district.
- [9] Mr. Neufeld is a retired corrections, probation, and youth criminal justice restorative facilitation officer, positions he held from 1981 to 2008. From 1992 to 2008, and from 2011 to 2022, Mr. Neufeld was also a school trustee of the Chilliwack School Board.

- [10] Dr. Bondar first ran for election as school trustee in a by-election held on February 14, 2021. At that time, Mr. Neufeld was an existing school board trustee.

The "Organisms Do Evolve" Video

- [11] In 2014, Dr. Bondar performed in a music video entitled "Organisms Do Evolve" (the "Parody Video"), which is available on her YouTube channel. She describes the Parody Video as a parody of another music video (this video was not tendered in evidence at trial), and the Parody Video is about biology. The Parody Video is approximately four minutes in length, and Dr. Bondar briefly appears naked (other than boots) during one part of it, seen from behind, while swinging on a ball. In other parts of the Parody Video, she is wearing underpants and a sleeveless t-shirt that Dr. Bondar describes as "very skimpy."

The February 2021 School Board By-Election

- [12] Dr. Bondar testified that a campaign began against her during the February 2021 by-election campaign.
- [13] The Parody Video was the subject of a February 2, 2021 article in the Chilliwack Progress entitled "Chilliwack school board byelection candidate defends naked parody video." Among other things, that news article reports, and Mr. Neufeld confirmed in his evidence at trial, that he shared the Parody Video in a private Facebook group. This news article, among other things, attributes to Dr. Bondar the statement that she "stands by her work."
- [14] In addition, on or about February 4, 2021 during the by-election campaign, a billboard sign was posted in a field next to a road in Chilliwack that showed a screenshot of Dr. Bondar in the Parody Video. In that screenshot, she is wearing underpants and a t-shirt. The billboard contained Dr. Bondar's name and the words, "Is this your child's idea of a School Trustee?" The sign was later taken down.
- [15] The Chilliwack Progress ran a February 4, 2021 article about the billboard sign entitled "Anti-Bondar billboard that appeared in Chilliwack corn field taken down by landowners," which included a photograph of the billboard.
- [16] Dr. Bondar testified that, starting from the by-election campaign (which included the billboard incident), she began to receive some negative feedback, including from emails, from Mr. Neufeld, and others. In her affidavit put in evidence at trial, she deposed that "[w]hen I ran for school trustee in 2021, activists who opposed me used the video to attack my integrity," referencing the billboard incident, for example. This upset and frustrated her. She testified that she believes the attention she received misrepresented her work in her videos and was, and is, unfair.

- [17] On February 5, 2021, an article entitled "Chilliwack school trustee Darrell Furgason calls Carin Bondar video 'soft porn' in email to UFV president" appeared in the Agassiz-Harrison Observer. That article stated that "Bondar said she stands by the video and her approach of using a measure of shock and artistic presentation to get her messages across as a scientist," among other things.
- [18] None of the things said about Dr. Bondar during the by-election campaign are alleged to be defamatory in the notice of civil claim to which this action relates.
- [19] Dr. Bondar was elected as school trustee during the February 14, 2021 by-election.

The October 2022 School Board Election Campaign and the Impugned Words

- [20] A subsequent Chilliwack School Board trustee election was held on October 15, 2022. Both Dr. Bondar and Mr. Neufeld ran for re-election.
- [21] Around that time, Mr. Neufeld was separately involved in other litigation where he was a plaintiff in a defamation action. (A s. 4 application in this litigation under the Protection of Public Participation Act, S.B.C. 2019, c. 3 [PPPA] subsequently resulted in the Supreme Court of Canada's May 19, 2023 decision in *Hansman v. Neufeld*, 2023 SCC 14.)
- [22] On September 21, 2022, Mr. Neufeld participated in an interview for a group called "Action4Canada," in a segment entitled "Empower Hour." His interview was later posted online. In the interview, among other things, he spoke about his then pending hearing in the Supreme Court of Canada in the *Hansman* litigation, and he also spoke about candidates for the then upcoming Chilliwack School Board election.
- [23] It was at around the 24-minute mark during this interview that Mr. Neufeld spoke the Impugned Words.
- [24] Later in September 2022, prior to an all-candidate debate, Dr. Bondar raised this remark with Mr. Neufeld and took two videos of their conversation: one video was of a portion of a conversation she had with him; and the other was a video, taken at around the same time, of her making comments with Mr. Neufeld in the background.
- [25] On October 11, 2022, Dr. Bondar posted a statement on YouTube addressing the Impugned Words, and she announced that she intended to commence legal proceedings against Mr. Neufeld. In her video statement, she said (in part):

I am coming to you today with a statement that I really would prefer not to have to make. I am suing Barry Neufeld for defamation of character

On Tuesday, September 21, Mr. Neufeld was a guest on Action4Canada's Empower Hour. During this interview he referred to me as a strip tease artist. I am not a strip tease artist, nor have I ever been one. I am currently a full-time instructor at the University of the Fraser Valley in both the Biology Department and the School of Land Use and Environmental Change

[Emphasis added.]

- [26] Portions of Dr. Bondar's October 11, 2022 video statement (underlined above) were later re-played on a news commentary program called Steele and Vance.
- [27] Dr. Bondar's intention to sue Mr. Neufeld for defamation was also reported in the Chilliwack Progress in an October 11, 2022 article entitled "Carin Bondar suing fellow Chilliwack school board candidate Barry Neufeld for defamation."
- [28] Dr. Bondar was re-elected as school trustee in the October 15, 2022 Chilliwack School Board election. Mr. Neufeld was not re-elected.

Subsequent Events

- [29] Dr. Bondar commenced this action on November 3, 2022.
- [30] Mr. Neufeld distributed a newsletter dated February 2, 2023 (entitled "Neufeld Newsletter #25") to approximately 800 people, which, among other things, related to Dr. Bondar's action against him and said "I would appreciate some support" (the "February 2023 Newsletter"). In his newsletter, he quoted the Impugned Words, among other things, and also included a screenshot of Dr. Bondar, naked and sitting on a ball, taken from the Parody Video, with a caption saying "I am NOT a strip tease artist!"
- [31] Also appended to the February 2023 Newsletter were six other screenshots of Dr. Bondar from other videos she appeared in, with comments about, or quotations attributed to, her from those videos. The evidence at trial is that those screenshots are from animal biology-themed videos in a series Dr. Bondar appeared in from 2012 to 2013 entitled "Wild Sex." However, neither party tendered any of the videos from the Wild Sex series in evidence at trial. (The Parody Video is not from the Wild Sex series.)

CREDIBILITY AND RELIABILITY

- [32] Both parties testified at trial. No other witnesses testified.
- [33] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), as follows:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the

demeanour of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont.H.C.); Faryna v. Chorny, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [Faryna]; R. v. S.(R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).

- [34] I find that both Dr. Bondar and Mr. Neufeld tried to give correct evidence at trial, and that they were both honest witnesses. Accordingly, I find both of them to be generally credible during their testimony.
- [35] I found that Dr. Bondar was, at times, argumentative in her answers on cross-examination, but I note that she was cross-examined for approximately 12 hours, and I do not otherwise find this to detract from her credibility. However, her memory of some events was not good, including those of dates, which does detract from the reliability of her evidence.
- [36] Mr. Neufeld gave direct answers to questions put to him on direct and cross-examination. I found him to be fair in his responses to questions on cross-examination. For example, despite pleading in his response to civil claim that the Impugned Words did not identify Dr. Bondar by name, he acknowledged in his testimony that he imagines that most of his viewers would have understood that the Impugned Words referred to Dr. Bondar.

DISCUSSION

Adverse Inferences Sought

- [37] Both parties asked the Court to draw adverse inferences against the other.
- [38] Dr. Bondar contends that an adverse inference should be drawn against Mr. Neufeld for not tendering the full version of the Wild Sex videos in evidence, the screenshots of which are in evidence, including those that are in the February 2023 Newsletter.
- [39] Mr. Neufeld opposes this and contends that, if anything, an adverse inference should be drawn against Dr. Bondar for not putting those videos in evidence.
- [40] He also contends that an adverse inference should be drawn against Dr. Bondar for deleting emails that she testified related to adverse comments from the public arising from Mr. Neufeld's Impugned Words. In her evidence on cross-examination, Dr. Bondar testified that she had received many critical emails (she does not recall how many) relating to the Impugned Words, but had deleted them.
- [41] An "adverse inference may be drawn against a party if, without sufficient explanation, that party fails to call a witness who might be expected to provide important supporting evidence if their case was sound": Kim v. Baldonero, 2022 BCSC 167 at para. 71. The "inference is not to be drawn if the witness was equally available to both parties and unless a prima facie case is established": Kim at para. 71, citing Thomasson v. Moeller, 2016 BCCA 14 at para. 35; Singh v. Reddy, 2019 BCCA 79 at para. 27.

- [42] I decline to draw an adverse inference against either party for their failure to tender in evidence the videos to which the screenshots of Dr. Bondar in evidence relate (including in the February 2023 Newsletter). Each party had the power to have done so, if they chose to, but neither did.
- [43] Nor do I draw an adverse inference against Dr. Bondar for deleting emails. However, to the extent that Dr. Bondar did not tender in evidence those emails in support of matters wherein she bears the burden of proof, I will take the absence of such evidence into account when determining if she has met her burden.

Issue 1: Were the Impugned Words Prima Facie Defamatory?

- [44] Dr. Bondar does not allege that the Impugned Words - "strip-tease artist" - are defamatory based on their literal meaning. She instead contends that they have a defamatory meaning through popular innuendo or, in the alternative, legal innuendo.
- [45] Specifically, she pleads in her notice of civil claim that:
4. Dr. Bondar's own opinion is that there is nothing wrong with strip-tease artistry. Indeed, a major focus of her career has been on educating the public about sex in nature and decreasing stigma around healthy sexuality. However, and unfortunately, there is a widely held societal view that strip-tease artistry is dishonourable or shameful, and particularly that it is inappropriate of a candidate for public office and a school trustee. There is also a widely held societal view, which the Defamatory Statement engages, that women should not behave in a sexually liberated manner in public, and that women who do so do not have integrity and are not suitable for public office.
- [46] Dr. Bondar also contends that the Impugned Words were made with actual malice and for the improper or ulterior motive of impugning her integrity in the eyes of Chilliwack voters by deploying misogynistic stereotypes about women.
- [47] Mr. Neufeld denies that using the term "strip-tease artist" in the context of the subject publication was defamatory, either expressly or by innuendo.

Legal Principles

Defamatory Statements

- [48] To make out a claim that the Impugned Words are prima facie defamatory, the plaintiff must demonstrate: (i) that the impugned words were defamatory, in the sense they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (ii) that the words in fact referred to the plaintiff; and (iii) that the words were published, meaning that they were communicated to at least one person other than the plaintiff: *Simán v. Eisenbrandt*, 2023 BCSC 379 at para. 43, citing *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28.

- [49] *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2017 BCCA 431 at para. 45 [Taseko BCCA] sets out the definition of a defamatory statement (adopting the test from *Color Your World Corp. v. Canadian Broadcasting Corp.*, 38 O.R. (3d) 97 at 106, 1998 CanLII 1983 (C.A.) [Color Your World], per Justice Abella):
- [14] A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him [or her] in the estimation of right-thinking members of society generally and in particular to cause him [or her] to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one
- [50] In *Weaver v. Corcoran*, 2017 BCCA 160, Justice Dickson explains:
- [68] Words that tend to lower the plaintiff's reputation in the eyes of a reasonable person are defamatory: *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28. The central question is whether the meaning conveyed by the impugned words genuinely threatened the plaintiff's actual reputation:
- [citations omitted].
- [51] For a statement to be defamatory, it must "lower the reputation of the plaintiff in the estimation of right-thinking members of society generally, or expose the plaintiff to hatred, contempt, or ridicule": *Hudson v. Myong*, 2020 BCSC 517 at para. 105.
- [52] The court "assess[es] the allegedly defamatory words from the perspective of a person who is reasonably thoughtful and informed but not excessively sensitive or fragile": *Hudson* at para. 105, citing *Weaver* at paras. 68-69.

Proof of Defamatory Meaning

- [53] Words can convey a defamatory meaning literally, inferentially (also called the "false" or "popular" innuendo meaning), or by legal innuendo: *Weaver* at para. 71. Literal meaning is conveyed directly; inferential meaning, indirectly; and legal innuendo, by extension based on extrinsic facts: *Weaver* at para. 71.
- [54] These three types of defamatory meanings can be proven in three ways:
- a) If the literal meaning of the words complained of are defamatory;
 - b) If the words complained of are not defamatory in their natural and ordinary meaning, but their meaning based upon extrinsic circumstances unique to certain readers (the "legal" or "true" innuendo meaning) is defamatory; or
 - c) If the inferential meaning or impression left by the words complained of is defamatory (the "false" or "popular" innuendo meaning).

Weaver at para. 71, citing *Lawson v. Baines*, 2012 BCCA 117 at para. 13, aff'g 2011 BCSC 326 [Lawson BCCA].

[55] What is defamatory "may be determined from the ordinary meaning of the published words themselves or from the surrounding circumstances": Weaver at para. 73, citing *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62, 1995 CanLII 60. To determine a publication's meaning, the court "may take into consideration all the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented": Weaver at para. 73, citing *Botiuk* at para. 62.

[56] The "standard of what constitutes a reasonable or ordinary member of the public" should "not be so low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation": Hudson at para. 108, citing *Color Your World* at 106. Rather, the impression about a publication "should be assessed from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers": Hudson at para. 108, citing *Color Your World* at 106.

Common Sense Approach

[57] Courts apply an objective, common sense approach in determining whether the meaning of a publication or statement is defamatory, and avoid seizing upon the worst possible meaning: Simán at para. 49, citing Weaver at para. 69; *Lawson BCCA* at para. 117. Likewise, the "least harsh interpretation" of the words is not assumed; "a court must not strain to interpret words in a mild or inoffensive sense in order to relieve a defendant from liability": *Level One Construction Ltd. v. Burnham*, 2019 BCCA 407 at para. 46. Rather, the court must be careful to examine the impugned statement from the perspective of a reasonable, right-thinking person.

[58] The alleged defamatory meaning:

must be one which would be understood by reference to an ordinary and reasonable person, and not a meaning by someone who may be naturally inclined to attribute the best or worst meaning to words published about the plaintiff. The impugned words must be construed in their natural, normal, ordinary, plain, usual, fair, obvious, and commonly accepted sense.

Taseko BCCA at para. 42.

[59] Further, in *M.D. Mineralsearch Inc. v. East Kootenay Newspapers Ltd.*, 2002 BCCA 42 at para. 20 [M.D. Mineralsearch], the Court of Appeal endorsed the following similar definition of "defamatory":

A communication is defamatory if it tends so to harm the reputation of another as to lower [them] in the estimation of the community or deter third persons from associating or dealing with [them].

- [60] "[M]ere words of abuse which injure a person's feelings, insult [their] pride, or cause annoyance or embarrassment are not actionable," and the "law does not redress solely for wounded sensibilities": Hudson at para. 109. "Nor is there an action for insults which do not diminish a person's standing in the community; the law regards as innocuous language which is merely offensive and vituperative": Hudson at para. 109, citing 567893 B.C. Ltd. v. Aasen, 2007 BCSC 663 at para. 24.
- [61] "A plaintiff does not have to prove directly that the words complained of were brought to the knowledge of a third party if that can reasonably be inferred": Rook v. Halcrow, 2019 BCSC 2253 at para. 25, citing Graham v. Purdy, 2017 SKQB 42 at para. 52.
- [62] Statements or publications can be defamatory of a person without identifying the person specifically. Statements "which do not refer to the plaintiff by name will meet the 'of and concerning' requirement if they may reasonably be found to refer to the plaintiff in light of the surrounding circumstances": Casses v. Canadian Broadcasting Corporation, 2015 BCSC 2150 at paras. 334-335. Whether a statement or publication in fact refers to, or is "of and concerning," the plaintiff is determined "from the perspective of an ordinary or reasonable reader or viewer": Casses at para. 333.

Inferential (or Popular Innuendo) Meaning

- [63] The plaintiff bears the onus of proving alleged inferential meanings: Hudson at para. 107, citing Lawson v. Baines, 2011 BCSC 326 at paras. 35-36, aff'd 2012 BCCA 117 [Lawson BCSC].
- [64] Where a defamation claim is based on the inferential meaning of words, "the question is one of impression: what would the ordinary person infer from the words in the context in which they were used? Both literal and inferential defamatory meaning reside within the words, as part of their natural and ordinary meaning": Weaver at para. 72. (With respect to legal innuendo, the "impugned words take on defamatory meaning from outside circumstances beyond general knowledge, but known to the recipient": Weaver at para. 72.)
- [65] The basic test to apply when discerning whether an "inferential" meaning is defamatory "is based on the natural and ordinary meaning that a reasonable person would infer from the entirety of the publication": Simán at para. 62, citing Taseko BCCA at para. 47.
- [66] I have therefore considered the words pleaded, but I have also considered the "meaning of the words" as they are "generally understood in the context of all of the circumstances and the publication as a whole": Simán at para. 57, citing Taseko BCCA at para. 44.

- [67] An inferential meaning is one "which the ordinary person, without special knowledge, will infer from the words complained of and this meaning must be determined objectively": Rook at para. 23, citing Lawson BCCA at para. 23.
- [68] In determining the impressions about the content of the alleged defamatory words, I have examined those words from the perspective of a reasonable reader who is "reasonably thoughtful and informed, rather than someone with an overly fragile sensibility," and with "a degree of common sense" attributed to viewers: Simán, at para. 61, citing Taseko BCCA at para. 45; Color Your World at paras. 14-15. A reasonable reader is a person "not avid for scandal": Simán at para. 61, citing Catalyst Capital Group Inc. v. West Face Capital Inc., 2021 ONSC 7957 at para. 137.
- [69] However, the law of defamation "does not require proof that anyone in fact thought less of a plaintiff as a consequence of the defamation; the test is an objective one": Simán at para. 47.
- [70] "Evidence concerning what the reasonable and ordinary meaning of the words is, or the sense in which they might be understood, or of facts giving rise to the inferences to be drawn from the words is inadmissible if this means of proof is relied upon": Simán at para. 59, citing Lawson BCCA at para. 23; Taseko BCCA at para. 46.

Findings

- [71] Applying the principles above, I find that:
- a) the Impugned Words were defamatory, in the sense that they would tend to lower Dr. Bondar's reputation in the eyes of a reasonable person;
 - b) the Impugned Words in fact referred to Dr. Bondar; and
 - c) the Impugned Words were published, meaning that they were communicated to at least one person other than Dr. Bondar.
- [72] Mr. Neufeld spoke the Impugned Words when he was describing candidates in an upcoming school board trustee election. Spoken in this context, I find that the Impugned Words, specifically the words "that strip-tease artist," would tend to injure and lower the reputation of the person to whom it refers. Such words would tend to lower the person's reputation in the estimation of right-thinking members of society generally and cause them to be exposed to contempt or ridicule: Taseko BCCA at para. 45.
- [73] In short, I find that the Impugned Words genuinely threatened Dr. Bondar's actual reputation: Weaver at para. 68.
- [74] Mr. Neufeld argues that the onus is on Dr. Bondar to lead evidence of what the Impugned Words means to people. However, the defamation test is an objective one, and Dr. Bondar's failure to call evidence about what other people thought the Impugned Words meant does not preclude her claim from being successful: Simán at para. 47; Casses at para. 319.

- [75] Further, I find that the Impugned Words would lead a reasonable person who knew Dr. Bondar to conclude that they were of and concerning the plaintiff: *Pereira v. UNITE HERE Local 40*, 2022 BCSC 1450 at para. 15, aff'd 2024 BCCA 27. I so find when considered in light of the surrounding circumstances, including when Mr. Neufeld referred to a prior Chilliwack School Board election in the Empower Hour interview; and that both Dr. Bondar and Mr. Procee ran in the last by-election, and Mr. Procee was not elected, but Dr. Bondar was. (That the last by-election had taken place approximately 19 months prior, and not "four years" prior as stated in the Impugned Words, does not render the Impugned Words not of and concerning Dr. Bondar.)
- [76] I also find that it is reasonable to infer that the Impugned Words were received by at least one other person other than Dr. Bondar: Rook at paras. 25-26. Mr. Neufeld testified that he could see about 20 faces on his computer, and that other people were also listening in by audio.
- [77] Having found the Impugned Words to have a defamatory meaning based on their popular innuendo (or inferential meaning), it is unnecessary to consider whether they also have a defamatory meaning based on legal innuendo.

Issue 2: Justification Defence

- [78] Relying on a justification defence, Mr. Neufeld pleads at para. 4 in his response to civil claim that:

To the degree that the phrase "strip-tease artist" has an objective meaning, it accurately describes the plaintiff her highly sexualized public performances and as defined, for example, in the Merriam-Webster Dictionary:

"an act or dance in which a person gradually removes her clothing piece by piece in a seductive or provocative manner especially to the accompaniment of music."

Legal Principles

- [79] A justification defence will succeed if the defendant proves the truth of the statement: *Cimolai v. Hall*, 2005 BCSC 31 at para. 171. Put another way, "a justification defence will succeed if the words complained of are true or substantially true, in the sense they convey no worse meanings than an accurate account": *Pereira v. Klonarakis*, 2023 BCSC 1760 at para. 55, aff'd 2024 BCCA 75 [Klonarakis]; see also *Klonarakis* at para. 54, citing *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2016 BCSC 109 at paras. 20-23, rev'd in part on other grounds 2017 BCCA 431 [Taseko BCSC].
- [80] What is "required to be proven is not the truth of each and every word or the literal truth of the statement, but rather the truth of the substance of the allegation or the sting of the charge": *Cimolai* at para. 172.

- [81] The "sting of the charge" in the Impugned Words is that Dr. Bondar is, or has performed as, a strip-tease artist: Wright v. Van Gaalen, Van Gaalen v. Wright, 2011 BCSC 707 at paras. 102, 104, 109-110.
- [82] Where "the gist or sting of the charge is proven to be true, minor inaccuracies do not defeat the defence of justification"; however, "if the overall impression of the publication is false, the defence fails even if some or even all of the literal words are proven to be true": Cimolai at para. 173.
- [83] Indeed, "[h]alf-truths can be just as damaging as outright falsehoods, and their effect may be even more severe because they can be more difficult to explain": Cimolai at para. 173.
- [84] Further, "[w]here the alleged defamatory words are both statements of fact and expressions of opinion, the defendant must prove the truth of each, unless the expression of opinion is protected by the defence of fair comment": Cimolai at para. 174.

Findings

- [85] I find that Mr. Neufeld has not made out the justification defence: Bent v. Platnick, 2020 SCC 23 at paras. 107-108.
- [86] The justification defence does not require reporting the "whole truth," which is too high a standard: M.D. Mineralsearch at para. 24.
- [87] However, where a publication creates an impression that is misleading and potentially damaging to the plaintiff's reputation, the justification defence is not made out: M.D. Mineralsearch at para. 25.
- [88] Dr. Bondar did appear briefly naked (other than wearing boots), shown from behind, in the Parody Video. To that extent, factually, her clothes were removed. However, while Dr. Bondar was briefly shown naked in the Parody Video, it is not accurate to characterize her as "that strip-tease artist." Doing so did not give the factual context for her performance in the Parody Video: she was clothed for the vast majority of it; the topic of the spoken words was science-themed; and she did not remove her clothing. In short, she was not, and did not perform as, a strip-tease artist in the Parody Video.
- [89] Therefore, by using the Impugned Words, Mr. Neufeld gave an impression of Dr. Bondar (based on the Parody Video) that was "misleading and potentially damaging" to her reputation: M.D. Mineralsearch at para. 25.
- [90] Put another way, I find that the gist or sting of the charge in the Impugned Words have not been proven to be true: Cimolai at para. 173.
- [91] Other portions of the Parody Video relied on by Mr. Neufeld, including where she was shown with a microscope and a sledgehammer, also do not justify the characterization of Dr. Bondar as "that strip-tease artist." Nor do the screenshots of Dr. Bondar from other videos justify an impression that she is a strip-tease artist.

[92] Because the impression of Dr. Bondar given by the Impugned Words is false, truth cannot be relied on as a defence: M.D. Mineralsearch at para. 25.

[93] By using the Impugned Words, Mr. Neufeld gave a false impression of Dr. Bondar, and he has not justified the Impugned Words on the basis of the Parody Video or the other evidence tendered at trial. He therefore cannot rely on the justification defence.

Issue 3: Fair Comment Defence

[94] Mr. Neufeld also relies on the fair comment defence and contends that the subject publication related to a matter of public interest, and is recognizable as editorial, colourful, and/or rhetorical opinion that reflects his honestly held views based on proven facts.

Legal Principles

[95] The fair comment defence has five elements:

First, the "comment must be on a matter of public interest" (Grant, at para. 31). Second, it must be "based on fact" (para. 31). Third, "though it can include inferences of fact, [it] must be recognisable as comment" (para. 31). Fourth, it must satisfy an objective test: "could any person honestly express that opinion on the proved facts?" (para. 31). Finally, even if the above elements are met, "the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice" (para. 31). Consideration of the elements of the fair comment defence requires an assessment of the defamatory words used in the full context surrounding their use (WIC Radio, at paras. 55-56).

Hansman at para. 96.

[96] The defendant "must prove the elements of the fair comment defence before the onus switches to the plaintiff to defeat the defence by establishing malice by the defendant": Hansman at para. 97.

[97] With respect to the second element - whether the expression was based on fact - to constitute fair comment, "a factual basis for the impugned statement must be explicitly or implicitly indicated, at least in general terms, within the publication itself or the facts must be 'so notorious as to be already understood by the audience': Hansman at para. 99. The defence is unavailable if "the factual foundation is unstated or unknown, or turns out to be false": Hansman at para. 99. Put another way, the "question is whether the statement can be tethered to an adequate factual basis so the reader can be an informed judge": Hansman at para. 102.

[98] With respect to the fifth element - whether there was malice - malice can be proven "by demonstrating the defendant made the statement knowing it was false, with reckless indifference as to its truth, to injure the plaintiff out of spite or animosity, or for some other improper purpose": Hansman at para. 115.

Findings

- [99] I find that Mr. Neufeld has not made out the fair comment defence.
- [100] I find that the Impugned Words are recognizable as a comment, or an opinion, of Mr. Neufeld about Dr. Bondar. While I acknowledge that Mr. Neufeld testified that the Impugned Words "was just a fact as I saw it," I find that the Impugned Words also constituted a comment of and concerning Dr. Bondar.
- [101] However, the factual basis for the Impugned Words was not explicitly or implicitly indicated, at least in general terms, within the publication itself.
- [102] The Impugned Words were spoken at about the 24-minute mark of the Empower Hour interview. At this point, Mr. Neufeld was at a part of the interview where he was speaking about candidates for the then upcoming school board election. When the Impugned Words were spoken, the words "that strip-tease artist" were not tethered explicitly or implicitly to any factual basis.
- [103] Nor has Mr. Neufeld proven on a balance of probabilities that the factual basis for his comment - being the Parody Video or the screenshots of other videos (those latter videos were not in evidence) - was so notorious as to be already or readily understood by the audience.
- [104] The billboard sign, which had received some media attention, displayed a screenshot from the Parody Video where Dr. Bondar was shown in underpants and a t-shirt. I do not find that the billboard, or the other news articles about Dr. Bondar that are in evidence before me which predate the Impugned Words, was of such a nature as to render the full and complete, or even substantial, factual context of the Parody Video itself notorious and readily understood by a reader or listener.
- [105] The Impugned Words were spoken in a context where a reasonable person who knew Dr. Bondar would conclude they were of and concerning her (Pereira at para. 15) - who had defeated Mr. Procee in the last by-election. However, it was spoken without the sufficient factual context to make an informed judgment about Mr. Neufeld's "strip-tease artist" comment of and concerning Dr. Bondar.
- [106] Having found that the fair comment defence fails on the second element of the test, it is unnecessary for me to consider the fourth and fifth elements of the test.

Issue 4: Qualified Privilege Defence

[107] Mr. Neufeld also relies on the qualified privilege defence. He contends that, as a candidate up for re-election for the Chilliwack School Board, he had a legal, social, moral or personal interest or duty to express his honestly held views about the conduct and character of other candidates, and the community had a corresponding interest to receive such information. In particular, he relies on *Mawhinney v. Stewart*, 2022 BCSC 1243 at paras. 53-54; and *Bent* at paras. 121-122.

Legal Principles

[108] The qualified privilege defence provides a defence to defamation, which can be defeated by the existence of the speaker's malice, or where the scope of the occasion of qualified privilege is exceeded. The defence requires a specific "occasion of qualified privilege." As described in *Bent* at para. 121:

An occasion of qualified privilege exists if a person making a communication has "an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published" and the recipient has "a corresponding interest or duty to receive it": *Downard*, at §9.6 (footnote omitted). Importantly, "[q]ualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself": *Hill*, at para. 143; *Botiuk*, at para. 78. Where the occasion is shown to be privileged, "the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff": *Hill*, at para. 144; *Botiuk*, at para. 79. However, the privilege is qualified in the sense that it can be defeated. This can occur particularly in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded (*Downard*, at §1.9; see also *Hill*, at paras. 145-47; *Botiuk*, at paras. 79-80).

Findings

[109] Mr. Neufeld's position that the Impugned Words were spoken on an occasion of qualified privilege is contrary to authority from the Supreme Court of Canada: see *Globe and Mail Ltd. v. Boland*, [1960] S.C.R. 203, 1960 CanLII 2 [Boland]. There, the Court described the "publication of comment in newspapers as to candidates for election to public office, and made during the course of an election campaign, are uttered on occasions of qualified privilege" as "an erroneous statement of the law": *Boland* at 206-207. In this context, there is no such duty "which gives rise to an occasion of qualified privilege": *Boland* at 207.

[110] *Boland* was cited in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 106, 1995 CanLII 59 for the proposition that "an extension of the qualified privilege to the publication of defamatory statements concerning the fitness for office of a candidate for election would be 'harmful to that common convenience and welfare of society'"; see also the dissenting opinion of Justice Côté in *Hansman* at para. 175.

- [111] There are some minor factual differences between this case and Boland, including that Boland concerned a federal election, whereas this case concerns a municipal school board election. Those differences are not material, however, and I find that Boland is binding on me on this point.
- [112] Mr. Neufeld relies on Mawhinney, which concerned a s. 4 PPPA application, where the Court was not required to consider and conclusively apply the qualified privilege defence on its merits. There, the Court found that the defendant had "established a reasonable basis to advance [the] defence" based on a "social or moral duty to the electorate" in press releases and press conferences for the purposes of a qualified privilege defence: para. 54. However, that was only one of several grounds on which the Court found that the plaintiffs had not satisfied the Court that there were grounds to believe that the defendant had no valid defence: see paras. 46, 52, 59.
- [113] I find that Mawhinney, which did not make a final determination upholding a qualified privilege defence on the merits, and did not refer to Boland, is not binding on me. Nor do I find that Bent leads to the conclusion that the Impugned Words were spoken on an occasion of qualified privilege.
- [114] Having found that the qualified privilege defence fails on these grounds, it is not necessary to address the issue of whether Mr. Neufeld acted with malice. I instead deal with the allegation of malice further below in my assessment of damages.

Issue 5: General Damages

- [115] Mr. Neufeld denies that Dr. Bondar has suffered any damages caused by the Impugned Words. He argues that the controversy surrounding her videos pre-dated the alleged defamatory statement, and that she ended up being elected by receiving the highest number of votes, and thus suffered no adverse consequences from that statement. In short, he contends that her reputation was not damaged at all as a consequence of the Impugned Words.
- [116] Mr. Neufeld relies on Chase v. Anfinson, 2018 BCSC 856, among other authorities.
- [117] Dr. Bondar does not seek a specific monetary award but instead contends that an award in the mid- to high-range of general damages is justified to not only repair the harm suffered and vindicate her reputation, but to also compensate her for the distress she has suffered as a result of the Impugned Words.
- [118] In this regard, she contends that an aggravating factor in assessing damages is a hostile and unnecessarily lengthy cross-examination that she had to undergo. She also contends that Mr. Neufeld repeated the defamatory statement during cross-examination.

Legal Principles

[119] General damages in defamation cases are presumed from the very publication of the false statement: Hill at para. 164; Rook at para. 31; Rutman v. Rabinowitz, 2018 ONCA 80 at para. 62, leave to appeal to SCC ref'd, 38048 (9 August 2018).

[120] In such cases, general damages can serve three distinct functions: (a) to act as a consolation to the plaintiff for the distress they suffer; (b) to repair the harm to their reputation; and (c) as a vindication of their personal or business reputation: Rook at para. 27.

[121] Further, the Ontario Court of Appeal in Rutman at para. 65 states:

The inability to point to specific reputational harm is not an admission that such harm did not occur. To the contrary, the courts have accepted that, "[t]he consequences which flow from the publication of an injurious false statement are invidious" and that, "[a] defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime": Hill, at paras. 168-169.

[122] Hill sets out the factors a court must consider in determining the quantum of general damages:

182 The factors which should be taken into account in assessing general damages are clearly and concisely set out in *Gatley on Libel and Slander* (8th ed.), supra, at pp. 592-93, in these words:

SECTION 1. ASSESSMENT OF DAMAGES

1451. Province of the jury. In an action of libel "the assessment of damages does not depend on any legal rule." The amount of damages is "peculiarly the province of the jury," who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and "the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action," and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow "for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused." They should also take into account the evidence led in aggravation or mitigation of the damages.

[Emphasis added.]

Findings

[123] I now consider each of these factors in turn.

Conduct of the Plaintiff

[124] I find that Dr. Bondar has not engaged in any conduct that would militate towards reducing the quantum of damages. I find that she has suffered injured feelings and anxiety as a result of the Impugned Words, which is a factor relevant to the determination of damages: Rook at para. 30.

The Plaintiff's Position and Standing

[125] Dr. Bondar is a Chilliwack School Board trustee and UFV adjunct instructor. During cross-examination, Mr. Neufeld described Dr. Bondar as, among other things, eminently qualified to teach at the college or university level. He also described her identities as including a mother and a scholar, among other things.

[126] Mr. Neufeld relies on Chase at para. 116, wherein Justice Steeves states: "As a matter of damages, it is relevant to consider the reputation of the plaintiff in an action for defamation and in one case, the plaintiff was held to have had no reputation capable of being injured." However, that proposition is not applicable to this case: I have found that Dr. Bondar had a good reputation, and I do not find that she had "no reputation capable of being injured": Chase at para. 116. Nor do I find that Dr. Bondar is similar to the plaintiff in Chase (at para. 117).

[127] To the contrary, I find that Dr. Bondar enjoyed a good reputation and standing in her community.

[128] However, I also consider the fact that Dr. Bondar was nevertheless successfully re-elected as school board trustee after Mr. Neufeld had spoken the Impugned Words.

The Nature of the Libel and Mode and Extent of Publication

[129] I have considered that the publication is through electronic means on the Internet, which increases the extent of injury due to the "pernicious effect of defamation on the Internet": Rutman at paras. 68-70.

[130] I find that the Impugned Words were objectively insulting (beyond mere words of abuse that injure a plaintiff's feelings) and demeaning to Dr. Bondar, a woman who was running for school board trustee in her community.

[131] In *Clancy v. Farid*, 2023 ONSC 2750, one of the plaintiffs was awarded general damages of \$85,000 for over 70 defamatory postings. Dr. Bondar relies on this case since the defamatory words included the words "former stripper": para. 82. However, while those words were similar to the Impugned Words, they were accompanied by several other words, including "criminal, or engaging in criminal acts, a former prostitute and escort, sexual deviant": para. 82. That plaintiff was also awarded punitive damages of \$9,000 (no aggravated damages were awarded): paras. 218, 225, 236.

The Absence or Refusal of Any Retraction or Apology

[132] Mr. Neufeld has refused to apologize to Dr. Bondar or retract his comment.

The Whole Conduct of the Defendant from the Time When the Libel was Published to the End of Trial

[133] Mr. Neufeld did not engage in any misconduct during the trial. However, he has repeated the Impugned Words in the February 2023 Newsletter that seeks financial contributions for this and other litigation.

The Conduct of Defence Counsel

[134] Counsel for Dr. Bondar contends that her cross-examination was lengthy, and while it was at times repetitive in terms of topics canvassed, I do not find that the conduct of Mr. Neufeld's counsel ought to increase the damages award in this case.

Other Relevant Circumstances

[135] Dr. Bondar had already experienced negative comments associated with the Parody Video and Wild Sex videos during the February 2021 by-election campaign, which occurred approximately 19 months before the Impugned Words were spoken on September 21, 2022. For example, a billboard sign was put up by the road in Chilliwack with a screenshot of Dr. Bondar from the Parody Video.

[136] Dr. Bondar also testified that she has been approached by people in her community who are supportive of her, but this is despite their perception of her as a result of the Impugned Words. For example, they have said, "we got you, we know you know had a past." She testified this upsets her.

[137] It is difficult to separate out the reputational harm Dr. Bondar experienced as a result of the February 2021 by-election comments from the September 2022 Impugned Words. In her testimony, I find that she, at times, combined the two events when describing the negative feedback and commentary she has received. She acknowledged that "the campaign against me began during the by-election," and that "the campaign against me by Mr. Neufeld began before that strip-tease comment began as soon as I entered the by-election race." She started feeling upset during the by-election campaign, about 19 months before the Impugned Words were spoken.

Conclusion - General Damages

- [138] Overall, I find that Dr. Bondar has experienced anxiety, upset, and reputational harm associated with the Impugned Words. However, I also find that the anxiety and upset she experienced has been associated, in part, from events during the February 2021 by-election campaign that pre-date, and are not causally connected to, the Impugned Words spoken on September 21, 2022. In my view, this is a factor that militates towards a lower measure of general damages.
- [139] I add that Dr. Bondar herself did repeat Mr. Neufeld's characterization of her as a "strip-tease artist" during the course of her October 11, 2022 video statement denying this and announcing that she intended to commence legal proceedings against Mr. Neufeld. She thus publicly repeated material portions of the Impugned Words in the course of her denial. Her October 2022 video was also seen by others, including when material portions of it were replayed on a news commentary program. That said, I do not consider that this video should reduce the measure of damages.
- [140] Dr. Bondar relies on Rook, where the plaintiff was awarded \$175,000 in general damages, but the facts in that case were different from the case at bar. In that case, the defendant engaged in numerous posts on social media calling the plaintiff a drunk, a loser, a cheater, and someone who spreads STDs: paras. 10-12, 42).
- [141] So too is Rutman distinguishable from the case at bar. In that case, the plaintiff was awarded \$200,000 in general damages against three defendants who orchestrated an Internet campaign against an accountant and businessman, involving postings on the Internet of numerous defamatory allegations, including that he had engaged in tax fraud and was a thief and a cheat: paras. 2-3.
- [142] Having regard to the foregoing, including using as a guide the quantum of general damages ordered in Clancy (\$85,000) for defamatory words that went beyond words similar to the Impugned Words, I find that an award of \$35,000 in general damages is appropriate in this case.

Issue 6: Aggravated Damages

- [143] In addition to general damages, Dr. Bondar seeks an award of aggravated damages. She provides a range of damage awards based on Rook (\$25,000), Rutman (\$200,000), and Hill (\$500,000).
- [144] An aggravated damages award requires a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff: Hill at para. 190; see also Rook at para. 32. There must be an "unjustifiable intention to injure the plaintiff": Hill at para. 190.

[145] Express malice exists if a defendant publishes the defamatory words:

- Knowing them to be false; or
- With reckless indifference as to their truth; or
- For the dominant purpose of injuring the plaintiff out of spite or animosity; or
- For some other dominant purpose which is improper or indirect.

Rook at para. 33.

[146] However, after reviewing these four criteria in *Hansman*, the majority of the Supreme Court of Canada also held that a "finding of a subjective honest belief negates the possibility of finding malice": para. 115. The Court referred to *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 53, which states:

Some commentators have suggested that proof of honest belief negates the possibility of a finding of malice. This is not necessarily true. If a defendant relies on objective honest belief the defence can still be defeated by proof that subjective malice was the dominant motive of the particular comment.

[*Italic emphasis in original.*]

[147] Dr. Bondar contends that Mr. Neufeld repeated the Impugned Words during cross-examination, in turn justifying an aggravated damages award. I was not referred to any case law where a defendant's use of impugned words during their testimony at trial, in the course of answering questions, would justify such an award, and I decline to order aggravated damages on this basis.

[148] Further, Mr. Neufeld testified that he honestly believed that Dr. Bondar was a strip-tease artist in the Parody Video. In addition, just prior to the all-candidates debate in late September 2022, when Dr. Bondar asked Mr. Neufeld about speaking the Impugned Words in the Empower Hour interview, he replied that she had appeared naked in the Parody Video.

[149] I find that Mr. Neufeld acted with reckless indifference as to the truth of the Impugned Words when he characterized Dr. Bondar as "that strip-tease artist."

[150] However, in his evidence at trial, Mr. Neufeld testified that he did honestly believe that Dr. Bondar was a strip-tease artist in the Parody Video:

Q. And any at time when you were speaking throughout that session on Empowerment Hour, at any time, did you make any lies about Professor Bondar?

A. No, what I said was actually my honestly held belief - a person who makes a video first scantily clad, then totally nude, except for rubber gum boots, in my mind, that was a strip-tease artist. And I knew my audience would know who I was referring to, but I did not mention her by name. It was not mudslinging, it was just a fact as I saw it

I accept Mr. Neufeld's evidence that he did subjectively honestly believe that Dr. Bondar was a "strip-tease artist." Although he was wrong in that belief, I find that that was his subjective honest belief.

[151] Case authority binding on me requires that I find that such a subjective honest belief negates the possibility of finding actual malice on Mr. Neufeld's part and defeats a claim for aggravated damages: Hansman at para. 115; Hill at para. 190.

[152] Accordingly, no aggravated damages award shall be made against Mr. Neufeld.

Issue 7: Punitive Damages

[153] Dr. Bondar also seeks an award of punitive damages. She does not seek a specific amount but instead provides case law, including Hill (\$800,000) and Rutman (\$300,000 total).

[154] In Hill at para. 196, the Court held:

Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant.

[155] Punitive damages are "in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner": Hill at para. 196. For this reason, they "should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence": Hill at para. 196.

[156] In *Malak v. Hanna*, 2023 BCSC 1337 at para. 301, citing *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 94; *McKnight v. Hutchinson*, 2022 BCCA 27 at para. 161, Justice Mayer summarized the considerations when determining a punitive damages award:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;

- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
- f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[157] Further, "punitive damages are most applicable where an award of solely compensatory damages would result in nothing more than a license fee to continue the defamation": Malak at para. 302, citing *Newson v. Kexco Publishing Co.*, 17 B.C.L.R. (3d) 176 at para. 35, 1995 CanLII 1182 (C.A.).

[158] In support of her punitive damages claim, Dr. Bondar contends that Mr. Neufeld has "animated a small but persistent group of followers who have followed Mr. Neufeld's lead in his defamatory campaign against Dr. Bondar." There was not much direct evidence at trial about this. On the evidence before me, I am unable to make any findings about whether Mr. Neufeld has a "group of followers" who may have engaged in a similar "defamatory campaign" against Dr. Bondar, or about the specifics of how and who may have done that.

[159] Dr. Bondar also relies on an email that she received on Friday, February 3, 2023 at 13:14 p.m. with words written in it and the subject line "Trapeze Artist?", which she then forwarded to her legal counsel. While the copy of this email put in evidence attaches images of Mr. Neufeld's February 2023 Newsletter, Mr. Neufeld disputes that the newsletter was, in fact, appended to the original email she received.

[160] Dr. Bondar sought to rely on this email as an instance of the Impugned Words associated with further negativity and derision from others in the community. However, she had no memory of receiving this email, and there is not a sufficient indication on the face of the email she received that there are attachments. The affidavit of one of Dr. Bondar's counsel in evidence also does not demonstrate whether the email had attachments when it was initially received.

- [161] Although it is possible that the February 2023 Newsletter was attached to this email, Dr. Bondar did not satisfy me on a balance of probabilities that the newsletter was, in fact, attached to the email she received. While I accept that she received the email, I am not satisfied on a balance of probabilities that she demonstrated that this email was causally connected to the Impugned Words on the basis that it was accompanied by Mr. Neufeld's February 2023 Newsletter which included the Impugned Words.
- [162] Dr. Bondar further argues that, after the initial publication, Mr. Neufeld posted the Impugned Words on Facebook to 5,000 followers. However, that Facebook post (Ex. 14 at trial) has a bubble placed on a screenshot of Dr. Bondar that states "I am NOT a strip tease artist"; it does not state the Impugned Words.
- [163] The cases Dr. Bondar relies on in support of the range of punitive damages are distinguishable from the case at bar: see e.g. Hill (punitive damages of \$800,000 awarded in a defamation case involving reading from and commenting upon allegations contained in a notice of motion by which the Church of Scientology intended to commence criminal contempt proceedings against the respondent, a Crown counsel. The notice of motion alleged that the respondent had misled a judge and had breached orders sealing certain documents belonging to Scientology); see also Rutman (punitive damages of \$300,000).
- [164] As noted, Mr. Neufeld spoke the Impugned Words with a subjective honest belief that they were true, but he was reckless as to their truth.
- [165] These defamatory words were objectively insulting and demeaning to Dr. Bondar, who was an elected school board trustee and a university adjunct instructor.
- [166] Mr. Neufeld has subsequently repeated the Impugned Words in the February 2023 Newsletter, which also attributes the words "I am NOT a strip tease artist" to Dr. Bondar, in support of a fundraising effort for litigation he is involved in. He testified that he had raised approximately \$9,000 after this litigation began.
- [167] Again, using Clancy (punitive damages of \$9,000) as a jurisprudential guide, and on the facts of this case, I find that an award of \$10,000 in punitive damages is appropriate in the circumstances of this case.

CONCLUSION

- [168] Mr. Neufeld referred to, and incorrectly characterized, Dr. Bondar as "that strip-tease artist" during a Chilliwack school trustee election campaign, inaccurately equating, or substantially equating, a fleeting image of her being shown naked from behind during a science-themed parody music video with a "strip-tease artist." This was an effort to discredit his opponent in a school board trustee election, which crossed the line and constituted defamation.
- [169] His words about Dr. Bondar were defamatory, and no defences have been made out.

[170] I do not accept Mr. Neufeld's argument that Dr. Bondar willingly entered an ideologically charged political arena that is well-known for "use of intemperate, offensive or harsh language aimed at discrediting one's opponent" (Hansman at para. 127, per Côté J. dissenting), which, in turn, somehow makes the Impugned Words not defamatory, or serves as an affirmative defence to defamation.

[171] Further I do not find that Dr. Bondar brought this action for a collateral purpose as Mr. Neufeld contends in his written submissions at trial.

[172] While Dr. Bondar was nevertheless elected as school board trustee, she has experienced stress and anxiety, in part as a result of the Impugned Words.

[173] For all these reasons, I make the following orders:

- (a) Mr. Neufeld shall pay Dr. Bondar general damages in the amount of \$35,000; and
- (b) Mr. Neufeld shall pay Dr. Bondar punitive damages in the amount of \$10,000.

COSTS

[174] Mr. Neufeld requested an opportunity to address the matter of costs following the determination at trial.

[175] If the parties cannot agree on costs, they may make submissions on costs in writing, with the plaintiff, Dr. Bondar, providing submissions of no more than five pages within ten days, and with the defendant, Mr. Neufeld, providing responsive submissions of no more than five pages within ten days thereafter. The plaintiff, Dr. Bondar, shall have five days to provide a written reply, if any, of no more than three pages.

"Stephens J."

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