

CANADA / JUDGMENT

Callender-Prasad v. Tesfay

2025 BCSC 2398

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Supreme Court of British Columbia

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2025 BCSC 2398 Callender-Prasad v. Tesfay

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Callender-Prasad v. Tesfay,

2025 BCSC 2398

Date: 20251204

Docket: S207963

Registry: Vancouver

Between:

Jacob Joshua Murli Callender-Prasad

Plaintiff

And

Feven Tesfay, Helen Proskow,

John Doe 1 and John Does 2-15

Defendants

Before: The Honourable Justice Branch

Reasons for Judgment

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December 4, 2025

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I. INTRODUCTION

- [1] This is an application to dismiss the defamation claims advanced against the defendant Helen Proskow pursuant to section 4 of the Protection of Public Participation Act, S.B.C. 2019, c. 3 [PPPA], referred to commonly as an "anti-SLAPP application".
- [2] For the reasons expressed below, I grant the application, but only in part. There is a core issue regarding an allegation of sex with underage girls that is deserving of a trial.

II. BACKGROUND

A. The Plaintiff

- [3] The plaintiff is a member of Vancouver's Black community. His family has a long history of working to advance the rights of Black persons in Canada. His grandmother acted as the executive director of the National Congress of Black Women Foundation. As described in further detail below, the plaintiff himself became a leader in the community through his involvement in the protests that arose following the death of George Floyd in the United States.

B. The Defendant Helen Proskow

- [4] Ms. Proskow is also a member of the Black community. She had a difficult upbringing and suffers from various mental health challenges, including autism, ADHD and PTSD. She earns income primarily as a sex worker. She also became involved in the protests.

C. The Protests

- [5] Ms. Proskow and the plaintiff met on May 31, 2020, at the Vancouver Art Gallery while attending an anti-Black racism protest.

- [6] Ms. Proskow and the plaintiff both later worked on a "Black Vancouver" protest on June 5, 2020, at Jack Poole Plaza in Vancouver. The plaintiff was very prominent at the protest. He was interviewed by several media outlets. Ms. Proskow organized safety packages for volunteers.

D. The Disagreements

- [7] Following the June protest, Ms. Proskow and the plaintiff had various political and strategic disagreements, particularly with respect to Ms. Proskow's support of using slogans such as "F--k the Police"[1] and "Defund the Police". As a result of these disagreements, the plaintiff blocked Ms. Proskow on Instagram, saying in a private message "Helen needs to go".
- [8] Around this same time, other suggestions of misconduct began to surface online against the plaintiff, including allegations relating to the plaintiff's conduct towards underaged girls. It was alleged that girls in this age range were attending parties organized by the plaintiff.

E. Ms. Tesfay's Comments

- [9] The allegations became more pointed over time. The defendant Feven Tesfay (who did not participate in the present application) made the following comments on social media on or about June 18, 2020:

Hey @boypollo why do you hit on underage girls? why do you try to get them drunk? is that why you constantly refer to trump because you can understand pedophiles? why did you refuse a black trans speaker at a black lives matter protest? Why do you defend the police when they're killing our own people? Why did you say anti indigenous racism is another issue? Why did you say homelessness is another issue? Why do you constantly post your shitty music? Is it true you held a protest for attention? Correct me if I'm wrong, please I dare you! You are a disgusting human being who should've have never been given a platform and I'm gonna do everything I can to take it away from you BITCH.

("Tesfay Statement v1")

- [10] There was a second version of this post in the record that used slightly harsher language as follows (and underlined for the changes):

Hey @boy_pollo why do you hit on underage girls? why do you try to get them drunk? Is that why you constantly refer to trump because you can understand pedophiles? Why did you refuse a black trans speaker at a black lives matter protest? Why are you defending police when they constantly kill our people? Why do you dismiss anti indigenous racism and say that's a another issue? Why did you say homelessness is another issue? Why do you constantly post your shitty music? Is it true you held a protest so you can get attention? Correct me if I'm wrong pls I dare u cause I have receipts for all this shit. You are not the leader of the black community in BC. You are a disgusting human being and you should have never been given a platform and I'm going to do all that I can to take it away from you BITCH.

("Tsfay Statement v2")

[11] Following these postings, Ms. Tsfay posted several screenshots of messages from different anonymous online accounts alleging that the plaintiff had committed inappropriate conduct with girls aged 13-17 years old.

F. Ms. Proskow's Instagram Stories

[12] The claims advanced against Ms. Proskow relate to two series of Instagram "Stories" (the "Stories") that she posted on her private Instagram account on June 19 and 21, 2020.

[13] The first publication at issue was posted on June 19, 2020, and recorded in a video (the "First Video"). It included the following expressions at issue in this litigation:

Expression 1: "Apparently Boy Pollo is doing a live stream today about mental health after he called me mentally ill and said I was out of control to a bunch of people get the f--k out of here you're f--king phoney"

This statement was made by Ms. Proskow as text overlaying a video of her speaking to the camera. In the First Video it was onscreen for approximately 28 seconds.

Expression 2: Not the VPD saying well this n---r likes us

This statement was made by Ms. Proskow as text overlaying a screenshot of what appears to be a post made including a picture of the plaintiff speaking to a police officer and text talking about his previous experiences working with a police school liaison officer. It was onscreen for approximately 5 seconds.

Expression 3: Anyone wanna have a bonfire dm me

This statement was made by Ms. Proskow as text overlaying a video of her speaking to the camera. It was onscreen for approximately 4 seconds.

Expression 4: Boy pollo your a f--king idiot THESE PEOPLE ARE F--KING HOMELESS AND DIRT POOR F--K YOU YOU f--king phoney and if I find out your doing the freedom march I'm telling ever how dumb again and I don't care if som people in the community hates me

This statement was made by Ms. Proskow as text overlaying a screenshot of a social media comment section, with a comment from an account belonging to the plaintiff. It was onscreen for approximately 3 seconds.

Expression 5: Hey @boypollo why do you hit on underage girls? why do you try to get them drunk? is that why you constantly refer to trump because you can understand pedophiles? Why did you refuse a black trans speaker at a black lives matter protest? Why do you defend the police when they're killing our own people? Why did you say anti indigenous racism is another issue? Why did you say homelessness is another issue? Why do you constantly post your shitty music? Is it true you held a protest for attention? Correct me if I'm wrong, please I dare you! You are a

disgusting human being who should've have never been given a platform and I'm gonna do everything I can to take it away from you BITCH.

This was a screenshot of a post by the defendant Ms. Tesfay, referred to above, posted by Ms. Proskow on the Stories. It was onscreen for approximately 5 seconds.[2]

Expression 6: Recent allegations (that we can neither confirm nor 'deny) concerning an event organizer we previously associated with have been brought to our attention. We would like to take this moment to reiterate that we do NOT tolerate any of the inappropriate actions spoken about in the slightest. We do not intend to shy away from addressing issues faced in our community, and intended to speak up on this issue. As of now, we will be cutting all ties with this associate.

This was a screenshot of a post by the account "blackvancouver", and included in the Stories with text overlaying it authored by Ms. Proskow. It was onscreen for approximately 2 seconds.

Expression 7: The f--k kinda response is this !! Also @blackvancouver I got some dirt of you from others that you didn't not apologize also what the f--k do

This statement was made by Ms. Proskow as the text overlaying the statement by the account "blackvancouver" discussed as Expression 6. It was also onscreen for approximately 2 seconds.

Expression 8: Can't believe boy pollo tried to fight me when I called him out for working with the police regarding the police at a live panel discussion tonight.

This was a screenshot of a Twitter post by account "VennettaACABHottie @uninformedsis" posted to the Stories without any additional text. It was onscreen for approximately 3 seconds.

Expression 9: Are you f--king kidding me I got reported because of a f--king meme get the f--k out of here.

This statement was made by Ms. Proskow as text overlaying an image of an Instagram notice that "Your Story Goes Against Our Community Guidelines". It was onscreen for approximately 4 seconds.

Expression 10: I went to an alt school with him and to say the least he is very problematic I'm sorry you're dealing with this.

This was a screenshot of what appears to be a message written to Ms. Proskow by an anonymous third party, posted by her to the Stories. It was onscreen for approximately 4 seconds.

Expression 11: OH F--K LOOK WHO BLOCKED ME.

This statement was authored as text overlaying a screenshot of the Instagram account "blackvancouver". It was onscreen for approximately 5 seconds.

Expression 12: I met him once at a nightclub last year, where he kept putting himself between me and my friends and pulling me away to "talk" to me. He came onto the dancefloor at one point and swept me away from my group to "dance," but was more or less just him throwing himself

onto me & trying to make out and get his hands all over me -- but he was so aggressive in doing so he lost his balance and pushed me backwards onto the ground & hitting my head on the floor, with him ON TOP of me. In the middle of the dancefloor. It was super humiliating, and when I got myself back up -- he was gone.

This was a screenshot of a post by the defendant Ms. Tesfay, posted by Ms. Proskow to the Stories with overlaying text. It was onscreen for approximately 7 seconds.

Expression 13: I know the girl deleted these posts but we're going to keep them up and I got receipts and I kept the information because these girls need justice.

This statement was made by Ms. Proskow as the text overlaying the post which was Expression 12. It was also onscreen for approximately 7 seconds.

Expression 14: I've also hung out with him around mutual friends and he started yelling about wanting to buy coke and getting f ked up even after I expressed my discomfort as I am a recovering drug addict.

This was a screenshot of a message made by an anonymous third party, which was posted by Ms. Proskow to the Stories. It was onscreen for approximately 4 seconds.

Expression 16: He has been hanging out with girls as young as 14 for as long as I can remember at house parties, inviting them to party buses and even telling underage girls he can get them into clubs.

This was in the same screenshot as Expression 15, and was also onscreen for approximately 4 seconds.

[14] A second publication was posted on or around June 21, 2020, and also recorded in a video (the "Second Video"). It included the following language:

Expression 20: DON'T FORGET TO UNFOLLOW THIS GUY HE SEXUAL ASSAULT UNDERAGE GIRLS.

This was a typed statement, and Ms. Proskow agrees that she typed the statement. It was onscreen in the Second Video for approximately 5 seconds.

Expression 22: GO FOLLOW MY BACK UP

This was also a typed statement by Ms. Proskow. It was also onscreen for approximately 5 seconds.

[15] Collectively, the challenged expressions are referred to as the "Expressions".

G. The Nature and Distribution of Instagram Stories

- [16] Based on the limited record before me, it appears that each Video was published for no longer than 24 hours, and then automatically disappeared. For each observer, the video would only play once. Only Ms. Proskow's private Instagram followers could have viewed the videos directly. Not all of Ms. Proskow's followers would have viewed every video she posted. On average, approximately 20-50 of Ms. Proskow's private Instagram followers would view her videos.
- [17] It is possible to take screenshots of or record the Stories and publish them more widely. Indeed, some of the material shown in Ms. Proskow's own videos appears to be Instagram postings by others that she recorded. That said, there is no evidence that the Videos were redistributed in this case.
- [18] Both Videos were provided to the Court through an affidavit from the plaintiff's mother, indicating that at least she viewed them.

H. The Admission

- [19] The plaintiff admits that:
- a) he organized parties in houses and on party buses;
 - b) girls aged 13-17 participated in these parties; and
 - c) alcohol was served at the parties.

However, he is adamant that he never sexually assaulted underaged girls.

I. The Apology

- [20] On October 8, 2020, Ms. Proskow published an apology (the "Apology") on her Instagram page to the plaintiff. It included the following language:
- a) "These accusations were not made as the result of any first hand knowledge."
 - b) "I did not witness him engage in any misconduct, sexual or otherwise, against anyone."
 - c) "I did not make sufficient efforts to verify that the stories were true prior to posting. My failure not only hurt Jacob, it hurt Jacob's employers and the organizations where he worked."
 - d) "I unreservedly apologize Jacob in no way deserved to face my attacks on Instagram and elsewhere and I am truly sorry".
- [21] The plaintiff asserts that the Apology had no beneficial effect. I review his evidence as to the alleged impact of the Expressions in greater detail below.

J. The Litigation

- [22] On August 11, 2020, the plaintiff commenced this action against Ms. Proskow, Ms. Tesfay, and several John Doe defendants.
- [23] The plaintiff took no steps to move the litigation forward for 18 months. On April 8, 2022, the plaintiff served a notice of intention to proceed.
- [24] The plaintiff again took no steps to move the litigation forward for an additional 14 months. On June 19, 2023, the plaintiff served a second notice of intention to proceed.
- [25] On September 28, 2023, the plaintiff unilaterally set a trial date for November 4, 2024.
- [26] On June 21, 2024, Ms. Proskow provided the plaintiff with a proposed amended response to civil claim and requested the plaintiff's consent to file same. No consent was ever provided. (Although the amended response has not yet been filed, the plaintiff confirmed that he was prepared to argue the present motion on the basis of the defences raised in this proposed pleading.)
- [27] On July 5, 2024, Ms. Proskow filed the within application to dismiss the action pursuant to s. 4 of the PPPA. Under PPPA s. 5, once an anti-SLAPP application is filed, no further steps may be taken in the action until the application is decided. Hence, the trial was adjourned pending the outcome of this application.
- [28] Although the amended response has not yet been filed, the plaintiff confirmed that he was prepared to argue the present motion on the basis of the defences raised in this proposed pleading.

III. ANALYSIS

A. SLAPP

- [29] Strategic lawsuits against public participation ("SLAPP") are suits initiated against individuals or organizations that speak out or take a position on an issue of public interest. They are initiated by plaintiffs who engage the court process not as a direct tool to vindicate bona fide claims, but as an indirect tool to limit the expression of others by deterring them from participating in public affairs: 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 [Pointes] at para. 2.
- [30] In *Hansman v. Neufeld*, 2023 SCC 14, the majority of the Supreme Court of Canada summarized the nature of such cases as follows:
- [48] the consistent defining feature of a SLAPP is that the proceeding acts to silence the defendant, and more broadly, to suppress debate on matters of public interest, rather than to remedy serious harm suffered by the plaintiff.
- [31] The legislature has sought to limit or prevent such suits through the PPPA legislation, which allows victims to obtain early dismissal of the cases if the requisite test is met.

B. The Test

[32] The PPPA gives defendants a means to strike suits early in a proceeding. Section 4 provides as follows:

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.

i. The Shifting Burden

[33] The burden at the first s. 4(1)(a) stage of the test is on the defendant alleged to have made the defamatory statement. The defendant must establish, on a balance of probabilities, that the proceeding against them arises from an expression made by the defendant; and the expression relates to a matter of public interest: *Pointes* at paras. 21-23.

[34] Once the defendant has satisfied its onus at the first stage, the onus shifts back to the plaintiff to satisfy the court that:

- 1) there are grounds to believe the proceeding has substantial merit;
- 2) there are grounds to believe the defendant has no valid defence to the action; and
- 3) the harm likely to have been or to be suffered by the plaintiff as a result of the defendant's expression is serious enough that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the defendant's expression.

Rooney v. Galloway, 2024 BCCA 8 [Galloway BCCA] at para. 78.

ii. Grounds to Believe

[35] The "grounds to believe" element of the test requires that the court look beyond the pleadings to find a basis in both the evidence and the law that the underlying action has substantial merit and that there is no valid defence: *Pointes* at paras. 36-41. It means

something more than mere suspicion, but less than proof on the balance of probabilities. Any basis in the record and the law is sufficient to meet this standard as long as the basis is "legally tenable and reasonably capable of belief": Galloway BCCA at para. 80, citing Bent v. Platnick, 2020 SCC 23 at para. 88.

iii. Substantial Merit

- [36] For a claim to have "substantial merit", the claim must have more than "some chance" of success. It must have more than a "reasonable prospect" of success. It must be more than an "arguable case".
- [37] However, at the other end of the spectrum, the test does not require a "strong likelihood" of success, nor does it need to satisfy the test for summary judgment. Rather, it must just have a "real prospect" of success: Pointes at paras. 49-51.
- [38] In assessing whether there is a real prospect of success, the court should only engage in a limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep dive into the evidence to a later stage, where judicial powers of inquiry are broader and pleadings more fully developed. The motion judge should be conscious of the early stage in the litigation process at which this type of motion is brought and should be wary of turning his or her assessment into a de facto summary judgment motion.
- [39] This is not to say, however, that the motion judge should take the motion evidence at face value, or that bald allegations are sufficient: Pointes at para. 52.
- [40] In assessing the strength of the suit, one first asks whether a defamatory statement has been made. It is a question of law whether an expression is capable of expressing a defamatory meaning. It is a question of fact whether the expression actually expressed a defamatory meaning: Taseko Mines Limited v. Western Canada Wilderness Committee, 2017 BCCA 431 [Taseko] at para. 48.
- [41] In Hudson v. Myong, 2020 BCSC 517, Justice Douglas described the appropriate approach to this issue as follows:
- [109] Generally speaking, mere words of abuse which injure a person's feelings, insult his or her pride, or cause annoyance or embarrassment are not actionable. The law does not redress solely for wounded sensibilities. 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: 567893 B.C. Ltd. v. Aasen, 2007 BCSC 663 at para. 24.
- [42] Whether or not the Expressions are defamatory must be decided by reference to how they would be understood by "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": Taseko at para. 42.

iv. No Valid Defence

- [43] Assuming substantial merit is shown, the court turns to the question of defences. Once the defendant has put a defence in play, the onus is on the plaintiff to demonstrate that there are grounds to believe that there is no valid defence. If a defence is valid, the plaintiff has not met its burden. Again, the court must determine this question while conducting only a limited assessment of the evidence. The inquiry mirrors that required to determine "substantial merit". The plaintiff must show that the defences put in play are not legally tenable or not supported by evidence that is reasonably capable of belief, such that they can be said to have no real prospect of success: *Pointes* at paras. 57-60.
- [44] The parties agree that Ms. Proskow has put in play the following defences through her proposed amended response to civil claim: (1) justification, and (2) fair comment.

Justification

- [45] A statement will be substantially true for the purposes of the justification defence where the "gist" or "sting" of the defamatory statement can be shown to convey no worse meanings than an accurate account: *Pereira v. Klonarakis*, 2023 BCSC 1760 at para. 55, *aff'd* 2024 BCCA 75.

Fair comment

- [46] The fair comment defence is premised on the idea that citizens must be able to openly declare their real opinions on matters of public interest without fear of reprisal in the form of actions for defamation: *Hansman* at para. 95.
- [47] The fair comment defence has five elements:
- a) the comment "is on a matter of public interest";
 - b) it must be "based on fact";
 - c) "though it can include inferences of fact, [it] must be recognizable as comment";
 - d) it must satisfy an objective test: "could any person honestly express that opinion on the proved facts?"; and
 - e) 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":

see *Galloway* BCCA at para. 106.

- [48] Consideration of the elements of the fair comment defence requires an assessment of the defamatory words used in the full context surrounding their use: *Hansman* at para. 96.

- [49] 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.
- [50] There is, however, no requirement that the facts support the comment in the sense of confirming its truth. The expression must relate to the facts on which it is based, but the comment need not be a reasonable or proportionate response. The purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them "to make up their own minds" as to its merit: Hansman at para. 100.
- [51] For an expression to constitute fair comment, the statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact. A comment includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof." This is a low threshold; "the notion of 'comment' is generously interpreted": Galloway BCCA at para. 108.
- [52] Malice may negate a defence. A defendant is actuated by express malice if they publish a defamatory expression:
- i) knowing it was false; or
 - ii) with reckless indifference whether it is true or false; or
 - iii) for the dominant purpose of injuring the plaintiff because of spite or animosity; or
 - iv) for some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.
- Galloway BCCA at para 115.
- v. The Weighing Stage
- [53] Assuming the parties have met the shifting burdens above, the court turns to the final weighing stage. The final stage may result in a case found to be adequately meritorious being dismissed due to broader policy concerns.
- (a) The Causation of Harm Prerequisite
- [54] Before entering into the final weighing exercise, the plaintiff must show two things:
- a) the existence of harm; and
 - b) the fact that the harm was suffered as a result of the plaintiff's expression:
- Simán v. Eisenbrandt, 2024 BCCA 176 at para. 44.

- [55] Either monetary or non-monetary harm may be relevant to the existence of harm. There is no threshold requirement for the harm to be sufficiently worthy of consideration: Simán at para. 44. That said, presumed general damages alone or bare assertions of harm are insufficient: Hansman at para. 67. While the plaintiff is not expected to come to court with a fully developed damages brief, bare assertions and vague suspicions of what other persons may think or believe are insufficient: Hansman at para. 65.
- [56] Even where the actual harm suffered by the responding party is serious, s. 4(2)(b) requires some evidence that enables the judge to infer a causal link between the defendant's defamatory expression and the harm suffered. Evidence of a causal link between the expression and the harm will be especially important where the harm may have been caused by sources other than the defendant's expression: Simán at para 46.
- [57] The statutory language employed in s. 4(2)(b) is "harm likely to", which modifies both "be" and "have been"; this indicates that the plaintiff need not prove harm or causation, but must provide evidence for the motion judge to draw an inference of likelihood: Galloway BCCA at para. 84.
- (b) The Factors to Weigh on Public Interest
- [58] Assuming the requisite harm standard is met, the judge must determine whether the harm is so serious that the public interest in allowing the underlying proceeding to continue outweighs the public interest in protecting the speech by striking the claim: Simán at para. 45. This has been described as the "crux" or "core" of the analysis. It provides a "robust backstop" for the court to dismiss even technically meritorious claims if the public interest in protecting the expression outweighs the public interest in allowing the proceeding to continue: Pointes at paras. 62-63.
- [59] The term "public interest" is used differently here than at the first stage of the test. Under the initial aspect, the "public interest" query is only concerned with whether the expression relates to a matter of public interest. The assessment is not qualitative -- i.e. it does not matter whether the expression actually helps or hampers the public interest. However, at the final weighing stage, not just any connection to a matter of public interest will be enough. Instead, the quality of the expression and the motivation behind it become relevant.
- [60] A statement that contains deliberate falsehoods or gratuitous personal attacks may be an expression that relates to a matter of public interest sufficient to meet the first part of the test, but at the final stage, the public interest in protecting that speech will be less than it would have been had the same message been delivered without lies or vitriol: Pointes at paras. 74-75.
- [61] The final weighing stage allows the court to "scrutinize what is really going on" in the case before it and to determine whether the claim warrants a full trial: Pointes at para. 81. When scrutinizing the situation, various factors may be considered, including:

- a) any history of the plaintiff using litigation or the threat of litigation to silence critics;
- b) any financial or power imbalance that strongly favours the plaintiff;
- c) a punitive or retributory purpose animating the plaintiff bringing the claim;
- d) minimal or nominal damages suffered by the plaintiff;
- e) the importance of the expression;
- f) the history of litigation between the parties;
- g) any broader or collateral effects on other expressions of matters of public interest;
- h) any potential chilling effect on future expression by a party or by others;
- i) the defendant's history of activism or advocacy in the public interest;
- j) any disproportion between the resources being used in the lawsuit and the harm caused or the expected damages award; and
- k) the possibility that the expression or the claim might provoke hostility against an identifiably vulnerable group or a group protected under s. 15 of the Charter of Rights and Freedoms or human rights legislation.

See Pointes at paras. 78-80. The application of these factors must always be tethered to the text of the legislation and the considerations explicitly contemplated by the legislature: Pointes at para. 80.

vi. Pruning

[62] If a court accepts that only certain expressions fail to pass the test, they may be "pruned" from the claim: Galloway BCCA at paras. 71, 118, 142. Each alleged defamatory statement constitutes its own cause of action. Any remedy that flows from each expression is, in principle, separate and distinct. The court should not generally entertain pruning if a defendant applies to prune only certain expressions: Galloway at paras. 140-142.

C. Application of the Test

i. Expressions on a Matter of Public Interest

[63] At the outset of the hearing, there was an issue as to whether Ms. Proskow could rely on the legislation in relation to certain challenged Expressions which she denied making: Christman v. Lee-Sheriff, 2023 BCCA 363 at paras. 64-65. However, this issue was avoided after (1) Ms. Proskow agreed that she made the key abuse expression identified as Expression 20, and (2) the plaintiff confirmed that, at this stage, he was not pursuing the claim in relation to any of the statements denied by Ms. Proskow.

[64] It is not disputed that the Videos constitute expressions published by Ms. Proskow. The plaintiff also did not vigorously contest that the public interest aspect of the test was met. I find that Ms. Proskow has met her burden in this respect. As noted, courts favour a "broad and liberal interpretation" in deciding what is an expression on a matter of public interest: Galloway BCCA at para. 79. These Expressions occurred within the broader context of a political dispute over the control of, and the proper approach to, Vancouver's "Black Lives Matter" movement.

ii. Substantial Merit/No Valid Defences

[65] As noted above, the burden in relation to the balance of the test falls on the plaintiff.

(a) Evidence of publication

[66] Ms. Proskow admits that the First and Second Videos contain her published Expressions. The evidence from the plaintiff's mother is sufficient to establish that the Expressions were seen by at least one other person.

(b) Expressions refer to the plaintiff

[67] The plaintiff is not expressly named within certain of the specific Expressions under attack. Where a plaintiff is not expressly named in a publication, the question is: would the expression lead a reasonable person to conclude that it refers to the plaintiff? An immediate suspicion on a recipient's part is insufficient. The test is whether the recipient would, in light of the surrounding circumstances, reasonably believe that the person referred to in the Expressions is the plaintiff: *Weaver v. Corcoran*, 2017 BCCA 160 at para. 84.

[68] While the plaintiff is not expressly named within each the challenged Expressions embedded in the First Video, the plaintiff's mother's evidence asserts that the First Video was one continuous recording, notwithstanding that the editing is choppy. Ms. Proskow led no evidence to the contrary.

[69] As such, the use of the plaintiff's acknowledged nickname "boy pollo" early in the video would be enough to cause any reasonable person to understand that it was the same person referred to in the subsequent challenged Expressions. I do, nonetheless, address this issue in more detail in my specific analysis of each expression below, where necessary.

[70] All the challenged Expressions, save Expressions 20 and 22, come from the First Video.

[71] Regarding the Second Video, there is again little doubt about who is being discussed as the remaining Expressions overlay a post that uses the plaintiff's nickname.

[72] With those basic requirements addressed, we move to a specific analysis of each Expression.

(c) Analysis of the Challenged Expressions

Expression 1: Apparently Boy Pollo is doing a live stream today about mental health after he called me mentally ill and said I was out of control to a bunch of people get the f--k out of here you're f--king phoney

[73] It is admitted that this Expression was published by Ms. Proskow and that it refers to the plaintiff.

[74] However, I find that the substantial merit standard is not met for this Expression. Use of the term "phoney" is ubiquitous in Canadian culture and cannot be viewed as scandalous or salacious. At most, use of the word "phoney" amounts to mild abuse. The claim related to Expression 1 will be struck.

Expression 2: Not the VPD saying well this n----r likes us

[75] It is admitted that this Expression was published by Ms. Proskow and that it refers to the plaintiff.

[76] Ms. Proskow acknowledges that this Expression relates to her allegation that the plaintiff is overly supportive of the the Vancouver Police Department and the so-called "Blue Lives Matter" movement. She accepts that the use of the "n-word" is more scandalous than the earlier use of the word "phoney", but notes that it is still a common expression used by members of the Black community in song lyrics and on social media. She accepts that the term may be offensive and somewhat abusive, but argues that, on its own, the term does not have the effect of lowering the plaintiff's reputation.

[77] Ms. Proskow also argues that the Expression is based on the following admitted facts, and is therefore subject to the defence of justification:

- a) The plaintiff supported and worked together with the Vancouver Police Department when organizing Black Lives Matter protests.
- b) The Vancouver Police Department shared a post on social media confirming that the plaintiff was mentored by the police and worked with the police when organizing the Black Lives Matter protests.
- c) The plaintiff supported the presence of police liaison officers in public schools.
- d) The plaintiff had personally experienced unjustified discriminatory mistreatment from the police, which may have been tied to his identity as a Black man.

[78] Additionally, she argues that the Expression is subject to the defence of fair comment, as:

- a) Ms. Proskow is a vocal advocate against police brutality and supports movements to defund the police.
- b) It reflected Ms. Proskow's opinion that opposition to the 'Blue Lives Matter' movement and support for defunding the police are important issues facing the black community in Vancouver, BC.

[79] I find that there are grounds to believe that the claim against Ms. Proskow with respect to this Expression has substantial merit, and that there are no valid defences. For the plaintiff to be considered a viable representative of the Black Lives Matter community, he must command respect. Being associated with the opposing "Blue Lives Matter" movement would most certainly lower his standing, particularly when coloured by the use of an offensive slur term. In terms of the defences, I do not find that the facts in the record are sufficient to ground an allegation that the plaintiff was associated with the VPD as suggested. Furthermore, the Expression was more than a mere comment. It implies a factual relationship between the plaintiff and the VPD that is not justified in the circumstances, at least based on the present record. As such, this Expression survives this aspect of the test.

Expression 3: Anyone wanna have a bonfire dm me

[80] It is admitted that this Expression was published by Ms. Proskow. But the Expression does not refer to the plaintiff. It most logically refers to Ms. Proskow seeking out others to share a bonfire on the beach following her involvement in a protest related to the Crab Creek Park homeless encampment.

[81] This Expression does not have a defamatory meaning. It merely refers to Ms. Proskow's effort to find others who were interested in having a bonfire. There are no grounds to believe that the claim against Ms. Proskow with respect to this Expression has substantial merit. It should be struck.

Expression 4: Boy pollo your a f--king idiot THESE PEOPLE ARE F--KING HOMELESS AND DIRT POOR F--K YOU YOU f--king phoney and if i find out your doing the freedom march I'm telling ever how dumb again and I don't care if som people in the community hates me

[82] It is admitted that this Expression was published by Ms. Proskow and that it refers to the plaintiff by his nickname.

[83] However, I find that this Expression lacks a defamatory meaning. Alternatively, the fair comment defence carries adequate weight.

[84] The defendant confirms that the statement refers to the plaintiff's lack of support for protests against the removal of the homeless encampment at Crab Creek Park.

[85] Similar to Expression 1, the terms "idiot" and "phoney" amount to mere words of abuse and do not tend to lower the plaintiff's reputation.

[86] Ms. Proskow is a vocal advocate for the rights of homeless and marginalized communities. She did not support removing the homeless encampment. In Ms. Proskow's opinion, this is a key issue for the black community, as many people of colour form part of homeless encampments. She is effectively commenting that the plaintiff, as an acknowledged community leader, did not provide adequate support for this cause.

Expression 5: Fentxsfay Hey @boypollo (JACOB CALLENDER-PRASAD) why do you hit on underage girls? why do you try to get them drunk? is that why you constantly refer to trump because you can understand pedophiles? why did you refuse a black trans speaker at a black lives matter protest? Why do you defend the police when they're killing our own people? Why did you say anti indigenous racism is another issue? Why did you say homelessness is another issue? Why do you constantly post your shitty music? Is it true you held a protest for attention? Correct me if I'm wrong, please I dare you! You are a disgusting human being who should've have never been given a platform and I'm gonna do everything I can to take it away from you BITCH.

[87] It is admitted that this Expression was published by Ms. Proskow and that it refers to the plaintiff. It was a screenshot of a posting by another person, the defendant Ms. Tesfay.

[88] I find that this Expression does have sufficient weight to convey a defamatory meaning and there are no defences with sufficient merit. Suggesting that the plaintiff hits on young girls, tries to get them drunk, understands pedophiles, and is a "disgusting human being" collectively implies that the plaintiff is a pedophile, perhaps the most serious and harmful allegation that one person can make against another.

[89] The fact that the plaintiff admits to organizing parties that would be attended by high-school-aged girls is insufficient to support the defence of justification. Nor does the fair comment defence carry sufficient validity, given that the statement goes beyond comment to a specific allegation of fact--the plaintiff hits on underaged girls.

Expression 6: Recent allegations (that we can neither confirm nor 'deny) concerning an event organizer we previously associated with have been brought to our attention. We would like to take this moment to reiterate that we do NOT tolerate any of the inappropriate actions spoken about in the slightest. We do not intend to shy away from addressing issues faced in our community, and intended to speak up on this issue. As of now, we will be cutting all ties with this associate.

[90] I find that, in the context of the video as a whole, a reasonable person would assume that "this associate" is the plaintiff.

[91] The defendant argues that the Expression does not have a defamatory meaning, as:

- a) It is a screenshot of a post from another Instagram account called "blackvancouver", and is not the plaintiff's own words;
- b) The Expression expressly states that the allegations against an unnamed individual are "neither confirmed nor denied";
- c) The post does not state what specific allegations it is referring to;
- d) The post merely confirms that these unspecified allegations have been brought to the attention of the writer of the original post does not "tolerate" the unspecified "inappropriate actions".

[92] The plaintiff notes that in *Galloway v. A.B.*, 2021 BCSC 2344, the Court stated:

[330] Thus, simply using the word "alleges" or saying that a person is "suspected" of criminal conduct will not necessarily transform a defamatory statement into one that is not defamatory. The court will still have to consider whether, in context, the statement carries a defamatory meaning.

[93] While I accept this general principle, I find that even within the broader context, this particular expression would not lead a reasonable person to understand the nature of the unconfirmed allegations referenced in the post. The language is so vague and provides so little information about the actual allegations that I believe it would not have the tendency to lower the plaintiff's reputation.

Expression 7: The f--k kinda response is this!! Also @blackvancouver I got some dirt of you from others that you didn't not apologize also what the f--k do

[94] It is admitted that this Expression was published by Ms. Proskow. However, it does not refer to the plaintiff. It refers to the Instagram account "blackvancouver" and apparently written in response to Expression 6. The plaintiff has provided no evidence to suggest that he is reasonably associated with the account "blackvancouver".

[95] I find that this Expression does not have a defamatory meaning. The Expression states that Ms. Proskow has "dirt" on the Instagram account "blackvancouver"; however, even in that respect no particulars are included to provide viewers with any context for what this refers to, and there is no evidence associating the plaintiff with "blackvancouver".

Expression 8: Can't believe boy pollo tried to fight me when I called him out for working with the police regarding the police at a live panel discussion tonight.

[96] It is admitted that this Expression was published by Ms. Proskow and that it refers to the plaintiff by his stage name, "boy pollo". It is a screenshot from a posting by another user, "venetta". I find that this Expression falls into the same category as Expression 2, i.e. it is a suggestion that the plaintiff is "working with the police" that would have the tendency to lower his standing in the eyes of the black community. There are no sufficient defences.

Expression 9: Are you f--king kidding me I got reported because of a f--king meme get the f--k out of here.

[97] It is admitted that this Expression was published by Ms. Proskow. However, it does not refer to the plaintiff. This post refers to Ms. Proskow's Instagram account receiving a temporary ban because of a meme that she posted. This Expression does not have a defamatory meaning; it does not tend to lower the plaintiff's reputation in any respect.

Expression 10: I went to an alt school with him and to say the least he is very problematic I'm sorry you're dealing with this.

[98] It is admitted that this Expression was published by Ms. Proskow. It was a screenshot of a direct message between two other individuals and does not expressly refer to the plaintiff. That said, I find that the Expression does nonetheless carry a defamatory meaning. A reasonable individual would assume that the "problematic" content referred to is the alleged pedophilic activity discussed earlier, which was directed at the plaintiff. At issue is the reference to an unknown individual being "very problematic". Given the earlier content, the Expression is likely to lower the plaintiff's reputation. I find that engaging in "very problematic" activity is an allegation of fact that does not qualify as a comment. The Expression survives this aspect of the test.

Expression 11: OH F--K LOOK WHO BLOCKED ME.

[99] It is admitted that this Expression was published by Ms. Proskow, however, it does not refer to the plaintiff. It refers to the Instagram account "blackvancouver". Again, I note that the plaintiff has provided no evidence to suggest that he is associated with the Instagram account "blackvancouver". This Expression does not have a defamatory meaning.

Expression 12: I met him once at a nightclub last year, where he kept putting himself between me and my friends and pulling me away to "talk" to me. He came onto the dancefloor at one point and swept me away from my group to "dance," but was more or less just him throwing himself onto me & trying to make out and get his hands all over me -- but he was so aggressive in doing so he lost his balance and pushed me backwards onto the ground & hitting my head on the floor, with him ON TOP of me. In the middle of the dancefloor. It was super humiliating, and when I got myself back up -- he was gone.

[100] It is admitted that this Expression was published by Ms. Proskow and that the publication refers to the plaintiff. It was a screenshot of Ms. Tesfay's post. The plaintiff is also suing Ms. Tesfay over this Expression.

[101] I find that this Expression does have a defamatory meaning, particularly in the context of the entire Video. The post reports an incident of clear sexual misconduct, which follows and builds on the sexual misconduct allegations raised through Expressions 5 and 10. The Expression refers to the plaintiff as "trying to make out" with the victim, that he was "get[ting] his hands all over me", and being "aggressive". There is no need to resort to innuendo. These acts alone would likely qualify as a sexual assault. There is no reasonable defence available.

Expression 13: I know the girl deleted these posts but we're going to keep them up and I got receipts and I kept the information because these girls need justice.

[102] It is admitted that this Expression was published by Ms. Proskow. Again, given the content of the entire Video, I find it would be understood to refer to the plaintiff. I find that this Expression falls in the same category as Expression 12. Ms. Proskow states that the person who authored Expression 12 "needs justice", implying that their stories are true. The expression that she's "got receipts" suggests that she has proof that they are true. It is beyond mere comment and has a defamatory meaning. It survives this aspect of the test.

Expression 14: I've also hung out with him around mutual friends and he started yelling about wanting to buy coke and getting f--ked up even after I expressed my discomfort as I am a recovering drug addict.

[103] It is admitted that this Expression was published by Ms. Proskow, but it was merely a screenshot of a message between others unknown. Although the Expression does not refer to the plaintiff by name, I find that the continuous flow of the Video would imply to a reasonable individual that it is referencing the plaintiff.

[104] I find that "yelling about wanting to buy coke" is sufficient to create a defamatory meaning, given that purchasing cocaine remains illegal in Canada: Sauck v. Carr, 2022 BCSC 1949 at para. 66. There are no available defences.

Expression 16: He has been hanging out with girls as young as 14 for as long as I can remember at house parties, inviting them to party buses and even telling underage girls he can get them into clubs.

[105] It is admitted that this Expression was published by Ms. Proskow. It shows a screenshot posted by someone else. I find this Expression falls into the same category as Expressions 5, 10, and 12. Its meaning builds on the earlier statements. "Getting underage[d] girls into clubs" is an illegal activity. The fact that he admits organizing and inviting underaged girls to parties is insufficient to support a defence of justification. Factual allegations are made, not simply comments.

Expression 20: DON'T FORGET TO UNFOLLOW THIS GUY HE SEXUAL ASSAULT UNDERAGE GIRLS.

[106] The plaintiff admits that she made this statement and that it does have a defamatory meaning.

Expression 22: GO FOLLOW MY NEW INSTAGRAM Im backed up bitches.

[107] It is admitted that this Expression was published by Ms. Proskow; however, it does not refer to the plaintiff: It refers to Ms. Proskow's Instagram account being restored after a temporary ban. I find that it does not have a defamatory meaning.

iii. The Public Interest Weighing Exercise

[108] Expressions 2, 5, 8, 10, 12, 13, 14, 16, and 20 have survived through to the final stage of the test. The balance must be pruned.

(a) Evidence of Harm and Causation

[109] The next step is to assess whether the plaintiff has provided sufficient evidence that he suffered harm.

[110] The plaintiff has pleaded that he suffered reputational harm and associated emotional distress because of the Expressions. The plaintiff alleges that he suffered the following:

- a) loss of all connections in the music industry;
- b) denial of admission to various bars and restaurants in Vancouver, BC;
- c) threats of physical injury and harm;
- d) loss of virtually all social relationships;
- e) ejection from social events;
- f) exclusion from the black community;
- g) being banned from dating apps;
- h) inability to obtain a steady girlfriend;
- i) general depression; and
- j) inability to pursue post-secondary education.

[111] Ms. Proskow argues that these Expressions have not been shown to have any causal link to any harm, particularly in the context of the other items posted by others, including Ms. Tesfay. Ms. Proskow also notes that:

- a) The plaintiff admits that he has been able to maintain social connections and to engage in a steady romantic relationship notwithstanding the publication of the Videos.
- b) The plaintiff provides statements that amount to double hearsay regarding the damage to his reputation. For example, he states that his cousin living in Barbados contacted his mother to discuss the alleged defamation.
- c) While the plaintiff asserts that the alleged defamatory accusations have reached "students from every high school" that the plaintiff has attended, he provides no particulars as to which former high school classmates are aware of the alleged defamation.
- d) The plaintiff says that he has been terminated from his employment on multiple occasions due to the alleged defamation, but he has provided no documentary evidence to support these assertions. The plaintiff provides no letter of termination, and the plaintiff later deposes that he was terminated from Joey's Restaurants due to scheduling conflicts. The plaintiff alleges that he was terminated from Steam Works Brew Pub liquor store as a result of a group of "girls" recognizing him. But no further particulars of what occurred are provided in order to substantiate the bald allegation that his employment was terminated as a result of this alleged interaction. No particulars are provided as to how this group of girls

came into contact with management at the liquor store so as to influence his termination.

- e) The plaintiff alleges that he has been "recognized" at other workplaces but provides no particulars of these alleged interactions that would permit the court to assert their legitimacy and the causal link to the surviving allegations.
- f) The plaintiff states that every table of "young people" in restaurants in Vancouver will "know him," which prevents him from seeking employment in Vancouver. But the plaintiff has provided no evidence that his alleged recognition is a direct result of the alleged defamation. By the plaintiff's own admission, he was a prominent and recognizable figure in Vancouver prior to any alleged defamation. Furthermore, he does not depose that the "young people" who recognize him at various workplaces and restaurants are only for negative reasons.
- g) The plaintiff alleges that he has been denied access to resources at the Sarah McLachlan School of Music as a direct result of the alleged defamation. But he provides no documentary evidence or third-party validation of the suggestion.
- h) The plaintiff asserts that none of the music producers he formerly worked with are willing to work with him, but he provides no direct evidence from those producers.
- i) The plaintiff alleges that Blueprint Entertainment banned him from their establishments. However, the evidence suggests he was banned from these establishments as a result of girls feeling "uncomfortable" around him rather than being linked to the alleged defamation.
- j) The plaintiff references being denied entry to a downtown establishment on the day Ms. Proskow filed her anti-SLAPP application. It appears that the plaintiff is asking the court to infer that bouncers at downtown bars would somehow be aware of an anti-SLAPP application being filed. This would seem to be highly unlikely absent direct evidence.
- k) The plaintiff provides particulars related to general hostility and physical violence he has experienced as a result of the alleged defamation. However, the plaintiff admits to being subjected to hostility and violence prior to any alleged defamation.

[112] I largely accept these critiques about the plaintiff's evidence. However, in my view, the plaintiff has still done (just) enough to clear the requisite harm/causation hurdle at this stage. As set out below, he provides sufficient evidence of harm caused by the defamatory statements (although it is admittedly lightly particularized and largely bereft of documentary or third-party support). Specifically, he does provide some evidence that:

- a) He was shocked and upset to be called a pedophile.
- b) He had to immediately take steps to defend himself on social media.
- c) He was advised that he needed to make additional public statements in order to retain his position in the movement and to avoid "something" happening to him.

- d) Three girls entered the store at his new employment and "made it clear that they recognized me from negative rumours posted about me online, and my employment got terminated."
- e) There was an internet posting made about him that stated:

Another important message about Jacob Callendar-Prasad aka boy pollo people publically aware of what he's done, and try to get justice by any means necessary. Whether that means him loosing his job, being banned from places with minors, making minors aware of who he is..Whatever the victims need to feel safe and make others feel safe. It doesn't matter if his little girlfriend is threatening us with violence think that's gonna help him in court? Just makes him look even guiltier.

- f) Finally, the plaintiff provides evidence that:

Within the first month after the defamation began, I lost 100% of my music connections, booking for shows in clubs and theatres, and artist collaborations and ongoing son [sic] productions

Because of the defamatory online posts at issue in this lawsuit, I was banned from clubs I had previously worked at

On Canada Day, July 1, 2023, I was beaten up by two guys I did not know They instantly said "You're the effing guy. You're the fucking rapist." Before I could say anything, I was getting punched in the face

During the spring of 2022, I was confronted by a native man outside my building who called me a rapist and was trying to fight me. He told me that he knew me and the "shit" I had done and that he was going to fuck me up

On September 3, 2022, I attended a frat party only to be ejected because of the defamatory accusations. The host claimed the girls felt uncomfortable with me there

I quickly became aware after June 18, 2020 that the false accusations about me had come to the attention of Black Lives Matter Vancouver I was barred from further participation in Black Vancouver after the defamatory accusations were posted Black Lives Matter still has not removed the 2020 posts about me from their Instagram page

I was banned from all internet dating applications because of the defamatory accusations .

It put me in a depressive state to read the many online attacks against me which followed the initial attacks by the Defendant Tesfay and the Defendant Proskow This has caused me to want to end my life on countless occasions I saw a therapist three times as a result of the defamatory accusations.

[113] More generally, I find that the nature of an Internet-based allegation of pedophilia is so explosive that it facilitates the Court's ability to infer damage from a more limited evidentiary record. In terms of the effect of internet defamation, in *Rutman v. Rabinowitz*, 2016 ONSC 5864, aff'd 2018 ONCA 80, application for leave to appeal dismissed 2018 CanLII 736215 (S.C.C.), the Court stated:

[238] The damages award in this case must, therefore, take account of the fact that the defamation took place on the internet, where it was instantly available to an unknown number of recipients...

[239] The English Court of Appeal recently observed in *Cairns v. Modi*, supra, at para. 27, that the online nature of internet defamation is relevant to the damages assessment:

as a consequence of modern technology and communication systems such stories will have the capacity to 'go viral' more widely and more quickly than ever before . [T]oday, with the ready availability of the world-wide web and social networking sites, the scale of this problem has been immeasurably enhanced, especially for libel claimants who are already, for whatever reason, in the public eye. In our judgment, in agreement with the judge, this percolation phenomenon is a legitimate factor to be taken into account in the assessment of damages.

[240] In *Barrick Gold Corporation v. Lopehandia* (2004), 2004 CanLII 12938 (ON CA), 71 OR (3d) 416 (CA), the Court of Appeal held that defamation through the internet, or cyber libel, is a particularly egregious form of defamation which may attract a higher damages award. Internet defamation is distinguished from its less pervasive cousins in terms of its potential to damage the reputation of individuals and corporations, as a result of its interactive nature, its potential of being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. Blair J.A. prefaced his judgment with a discussion of the impact of using the internet as a medium for communication:

The Internet represents a communications revolution. It makes instantaneous global communication available cheaply to anyone with a computer and an internet connection. It enables individuals, institutions, and companies to communicate with a potentially vast global audience. It is a medium which does not respect geographical boundaries. Concomitant with the utopian possibility of creating virtual communities, enabling aspects of identity to be explored, and heralding a new and global age of free speech and democracy, the Internet is also potentially a medium of virtually limitless international defamation.

See also *Pritchard v. Van Nes*, 2016 BCSC 686 at para. 83 and *Malak v. Hanna*, 2023 BCSC 1337 at para. 167, aff'd 2024 BCCA 370.

[114] The B.C. Court of Appeal accepted in *Galloway BCCA* that sexual abuse claims may lie close to the high end of the spectrum, as is the public interest in allowing such claims to proceed: paras. 388-390 (see also *Smith v. Nagy*, 2021 ONSC 4265 at para. 93; *McDonald v. Goranko*, 2023 BCSC 231 at paras. 118, 127, and 134).

- [115] Given the early stage of the proceeding, a damages assessment must be recognized as an ongoing process: *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation*, 2021 ONCA 26 [Subway] at paras. 55, 104. A plaintiff must simply provide evidence for the Court to draw an inference of likelihood in respect of the existence of the harm and the relevant causal link: *Subway* at para. 86.
- [116] In terms of causation, it will admittedly be difficult for the Court to attribute responsibility for any harm as between Ms. Tesfay and Ms. Proskow: *Hansman* at para. 68. However, that difficulty should not deprive the plaintiff of the opportunity to pursue the claim and have the causation difficulties sorted out at trial: *Galloway BCCA* at paras. 545, 612-613, 641. He has once again done (just) enough to raise a viable argument in support of causation that deserves a trial: *Galloway v. A.B.*, 2025 BCSC 1855 at para. 56.
- (b) Weighing the Relevant Factors
- [117] The final step in the test allows for a broader weighing of relevant factors. Ms. Proskow says that the following factors weigh in favour of dismissing any surviving allegations:
- a) The Apology: Even if the plaintiff has suffered harm as a result of the Instagram Stories, Ms. Proskow asserts that she effectively mitigated any damage by posting the Apology shortly after the Videos were published. The common law has long recognized that, while an apology is no defence to an action for defamation, it may be considered in mitigation of damages: *Pineau v. Glacier Media Inc.*, 2025 BCCA 101 at para. 70. The mitigating effect of an apology is greater the sooner the apology is published: *Pineau* at para. 71. I accept that this factor weighs in the defendant's favour, but its mitigation effect is itself mitigated by the fact that it was not as fulsome as it could, or arguably should, have been: *Austin v. Lynch*, 2016 BCSC 1344 at paras. 136-139. For example, in the Apology she says only that she did "not witness him engage in any misconduct" rather than simply stating that the allegations were untrue.
 - b) The failure to mitigate: Ms. Proskow argues that the plaintiff could have, and still could, share her Apology. She argues that if a plaintiff has chosen not to take such an easy step to vindicate his reputation, the Court should ask whether it is in the public interest to allow the plaintiff to seek vindication through the courts at the expense of trial resources. Although the plaintiff is not compelled to make use of an apology, I accept that this failure does weigh in Ms. Proskow's favour.
 - c) The limited distribution: The Expressions were only available online for a short time. Each individual Expression was on screen for a very few seconds. Ms. Proskow had a limited number of followers. She does not enjoy a stature within the community that gave the Videos particular weight. I accept that this all weighs in favour of Ms. Proskow's position, but its weight is mitigated by the fact that screenshots or recordings could have been taken and redistributed (as Ms. Proskow did herself with the posts of others).

- d) The power imbalance: Ms. Proskow is a marginalized member of the black community who is well known to suffer from mental health concerns. I accept that Ms. Proskow is part of a marginalized group, but the plaintiff is also not a large multinational corporation "throwing its weight around". The plaintiff is also Black, and while he may have more resources than Ms. Proskow, there is no indication that he is well off. I accept that this factor weighs in favour of the defendant, but only slightly.
- e) The conduct of the litigation: Ms. Proskow alleges that the plaintiff waited until Ms. Proskow was self-represented before setting the matter down for trial. That may be true factually, but I am unable to find that it was done intentionally to maximize leverage over Ms. Proskow. I do not agree that the plaintiff is pursuing litigation against Ms. Proskow to dissuade her from participating in Vancouver's Black activist community. This factor does not weigh in the defendant's favour.
- f) The public interest in the Expressions: I accept that counter-speech motivated by the defence of a vulnerable or marginalized group in society engages the values at the core of s. 15(1) of the Charter; namely, the equal worth and dignity of every individual: Hansman at para. 82. I accept that Ms. Proskow had a history of activism before making the Expressions. I also accept that Ms. Proskow has been deterred from future involvement in protests by this litigation conflict. However, the weight of this factor is reduced by the fact that the Expressions were largely counter-speech within the leadership of a vulnerable group, not against the interests of the vulnerable group. I accept that the Expressions could also be characterized as having been made to protect the interests of women and girls against the harms caused by sexual assault. However, in terms of "what is really going on", the defendant's allegations of sexual assault appear to have largely been used as a weapon to destroy the plaintiff's leadership position within a vulnerable group rather than being advanced to pursue a positive broader end. Again, this factor carries some weight in Ms. Proskow's favour, but only very lightly.

[118] In sum, on the last weighing aspect of the test, I conclude as follows:

- a) The factors outlined above generally weigh in the defendant's favour. However, none carry a particularly heavy weight when put up against the strong interest held by the plaintiff in ensuring that he is not improperly viewed in the community as a pedophile or drug user. The plaintiff appears to have been on the cusp of becoming a respected organizer in Vancouver's black community. The Expressions, if defamatory, may have improperly denied the public access to an important leader advancing the Charter principles of peace and understanding across society.
- b) There is no evidence of ulterior motive, abuse of power or other improper purpose on the part of the plaintiff: Subway at para. 102.

- c) I conclude that the "delicate equilibrium" inclines in favour of allowing the action to proceed with respect to remaining Expressions 5, 10, 12, 13, 16 and 20. The suggestion that the plaintiff engaged in sexual misconduct, including sexual assault of underaged girls, is simply too serious, too specific, too likely to cause harm, and too far removed from the benefit of encouraging free speech within the Black Lives Matter movement. I come to the same conclusion in relation to the allegation of criminal drug use in Expression 14.
- d) However, I find that the public interest in permitting Ms. Proskow to express the views in Expressions 2 and 8 regarding the plaintiff's relationship with the police outweighs any harm that the plaintiff has experienced as a result thereof. His evidence of harm is focused almost exclusively on the allegations of sexual misconduct. Balancing all the factors above, I find that the subject of these particular Expressions is bound to the need to encourage free expression within the Black Lives Matter movement in Vancouver, particularly regarding its political tactics and philosophical approach vis-à-vis the police. As such, it would be inappropriate to allow the allegations to be pursued further when weighing all the relevant factors.

IV. CONCLUSION

[119] In conclusion, I have exercised my discretion to trim particular expressions from the claim at each stage of the test. At the end of the day, I find that this pruning is the most efficient and appropriate outcome, since it will result in a trial that addresses the serious sexual assault and drug use allegations advanced, while trimming away any collateral issues that are not defamatory or should be protected. Specifically:

- a) I strike those aspects of the Claim pursuing defamation claims regarding Expressions 1, 2, 3, 4, 6, 7, 8, 9, 11 and 22;
- b) I allow the claim to continue in relation to the sexual misconduct-related statements at Expressions 5, 10, 12, 13, 16, and 20, and the drug-use allegation at Expression 14.

[120] The plaintiff has leave to make any necessary amendments to the Notice of Civil Claim.

[121] In relation to costs, s. 7 of the PPPA provides:

- (1) If the court makes a dismissal order under section 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances.
- (2) If, on an application for a dismissal order under section 4, the court does not dismiss the proceeding, the respondent is not entitled to costs on that application unless the court considers it appropriate in the circumstances.

[122] Given that Ms. Proskow was only partially successful on her application, I would default to a direction that each party bear their own costs, unless either party wishes to make further argument on costs. Any such argument should be delivered in writing within 30 days of this judgment, and the other side will have 10 days to reply thereto.

"The Honourable Mr. Justice Branch"

[1] I have chosen not to reproduce a number of slurs in full throughout this decision by hyphenating the internal letters. In the communications in question, the full words were used.

[2] Based on some of the evidentiary record, it appears that the expression posted by Ms. Proskow to her Stories may have actually been the Tesfay Statement v2, with additional references to "receipts" and the plaintiff not being the "leader of the black community in BC". As the notice of civil claim, other pleadings and submissions before the court on this application reference the Tesfay Statement v1, it is the version of the statement which I have quoted here and analyse through the rest of this decision.

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