

CANADA / JUDGMENT

Galloway v. A.B.

2025 BCSC 1738

COURT

Supreme Court of British Columbia

DECIDED

5 September 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1738 Galloway v. A.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Galloway v. A.B.,

2025 BCSC 1738

Date: 20250905

Docket: S1811588

Registry: Vancouver

Between:

Steven Galloway

Plaintiff

And:

A.B., Keith Maillard, Annabel Lyon, Chelsea Rooney, Alicia Elliot,

Brit Bachmann, Mandi Gray, Theresa Smalec, Glynnis Kirchmeier,

Kiera Anderson, Emily Kellogg, Mada Chouain, Adeline York, Arielle Rombough, John Bell,
Bethany Killen, Dana Kagis, Wendel Schwab,

Marcelle Kosman, Alasdair Rees, Suziebedbug, John Doe,

Jane Doe, Jane Roe, and Jill Roe

Defendants

Before: The Honourable Madam Justice Francis

Reasons for Judgment

Counsel for the Plaintiff:

D.W. Burnett

Counsel for the Defendant A.B.:

D. Wotherspoon

Counsel for the Defendants Annabel Lyon and Keith Maillard:

K. Zimmer

K. McGoldrick

Counsel for the Defendant Chelsea Rooney:

A. Puchta

J. Lowenstein

No other appearances

Place and Dates of Hearing:

Vancouver, B.C.

June 13 and 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 5, 2025

Table of Contents

Introduction.. 3

Legal Framework.. 4

Paragraph 43. 8

Does paragraph 43's predecessor, paragraph 37 of the ANOCC, contain an admission?. 8

Should Mr. Galloway have leave to make the proposed amendments?. 13

Paragraphs 17, 36 and 42. 16

Paragraph 25. 19

Summary. 21

Introduction

- [1] The plaintiff seeks leave to file a second amended notice of civil claim (the "2AN OCC"). The 2AN OCC contains a number of proposed changes, but counsel have commendably worked together to resolve their differences, and many of the proposed amendments are consented to by the defendants. The application before me proceeded on a limited number of proposed amendments to which some of the defendants object.
- [2] Steven Galloway is a writer and former Chair of the Creative Writing Program at the University of British Columbia ("UBC"). He lost his job as a professor after sexual assault and other allegations were made against him by his former student A.B., with whom he had been in a sexual relationship. The nature of the relationship between A.B. and Mr. Galloway, and whether the sexual relationship was consensual, is contested.
- [3] This defamation action was commenced by Mr. Galloway on October 26, 2018 against a large number of people who, in various fora, published statements that Mr. Galloway says are defamatory, relating directly or indirectly to the allegations A.B. made against him. That original notice of civil claim was amended once, and the amended claim was filed on March 21, 2019 (the "AN OCC").
- [4] Commencing in May, 2019, twelve of the named defendants brought applications to have the actions against them dismissed under the Protection of Public Participation Act, S.B.C. 2019, c. 3 [PPPA]. Those applications (the "PPPA Applications") took approximately six years to work their way through this Court and the BC Court of Appeal.
- [5] In reasons indexed as *Galloway v. A.B.*, 2021 BCSC 2344 ("SC RFJ"), Justice Adair determined the PPPA Applications. She allowed Mr. Galloway's action to proceed with respect to some of the alleged defamatory statements, but she dismissed the action with respect to other such statements and fully dismissed the claims against two defendants (Professor Lyon and Ms. Elliott).
- [6] Both sides appealed Adair J.'s order (the "PPPA Appeal"). In reasons indexed as *Rooney v. Galloway*, 2024 BCCA 8 ("CA RFJ"), the defendants' appeal was dismissed. Mr. Galloway's appeal and cross appeals were allowed in part. The Court of Appeal held that the chambers judge had erred in deciding some of the limitations issues and that the question of whether certain claims were statute barred should be left for trial on a full record. As a result, Mr. Galloway is allowed to pursue his claim with respect to certain publications that the chambers judge had originally determined were statute barred.
- [7] Subsequent to the release of the CA RFJ, partially as a consequence of determinations made by the Court of Appeal, Mr. Galloway seeks leave to file the 2AN OCC.
- [8] There are four defendants who object to the filing of the 2AN OCC: Professor Maillard, Professor Lyon, A.B., and Chelsea Rooney. These defendants take issue with only five paragraphs in the 2AN OCC. The paragraphs in issue are:

- a) Paragraph 43: all four respondents object to the proposed change of this paragraph on the basis that it amounts to a withdrawal of an admission.
- b) Paragraphs 17, 36 and 42: Professor Lyon objects to her name being referenced in these sections, since all claims against her have been dismissed, but for two that were revived on the PPPA Appeal.
- c) Paragraph 25: Professor Maillard objects to this paragraph on the basis that it should be struck as a consequence of the Court of Appeal's decision.

Legal Framework

- [9] It is perhaps not surprising, given the amount of hard-fought litigation that has taken place in this case--which has included the PPPA Applications, the PPPA Appeal, procedural applications, scores of affidavits, and extensive cross examination on those affidavits--that this application to amend a notice of civil claim was more complex than an ordinary pleadings application. Much of the argument in this application surrounded questions about what, precisely, was meant by the Court of Appeal in certain paragraphs of the CA RFJ, and whether the consequence was that certain claims by Mr. Galloway were no longer sustainable. In this way, it does appear to me that the parties at times have lost sight of the task at hand in a pleadings application and instead sought to make arguments more appropriate for an application for summary determination under Rule 9-6 or 9-7 of the Supreme Court Civil Rules. As such, it is useful to step back and consider the foundational principles that govern pleadings, applications to amend, and admissions.
- [10] In *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362, the Court of Appeal highlighted the foundational nature of pleadings and the important role they play in ensuring the fair determination of cases on their merits:
- [21] Pleadings are foundational. They guide the litigation process. This is true in relation to the discovery of documents, examinations for discovery, many interlocutory applications and the trial itself.
- [22] Pleadings also give effect to the underlying policy objectives of the Rules, which are to ensure the litigation process is fair and to promote justice between the parties: *Wong v. Wong*, 2006 BCCA 540 at paras. 22-23. They enable the parties and the court "to ascertain with precision the matters on which parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision": *1076586 Alberta Ltd. v. Stoneset Equities Ltd.*, 2015 BCCA 182 at para. 55, citing D.B. Casson & I.H. Dennis, eds, *Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice*, 21st ed (London: Stevens & Sons, 1975) at 75-76.
- [23] For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court. In order for the court to fairly decide the issues before them, the pleadings must state the material facts succinctly: *Sahyoun v. Ho*, 2013 BCSC 1143

at paras. 15-22; *Shoolestani v. Ichikawa*, 2018 BCCA 155 at para. 30; *Weaver v. Corcoran*, 2017 BCCA 160 at para. 63. They must be organized in such a way that the court can understand what issues the court will be called upon to decide: Frederick M. Irvine, ed., *McLachlin & Taylor, British Columbia Practice*, 3rd ed, vol 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) (loose-leaf updated 2021) at 3-6; *Simon v. Canada (Attorney General)*, 2015 BCSC 924 at paras. 17-18, *aff'd* 2016 BCCA 52.

[11] Rule 6-1 governs the amendment of pleadings:

- (1) Subject to Rules 6-2 (7) and (10) and 7-7 (5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,
 - (a) once without leave of the court, at any time before service of the notice of trial, or
 - (b) after the notice of trial is served, only with
 - (i) leave of the court, or
 - (ii) written consent of the parties.

[12] In *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 at para. 166, the Court of Appeal, citing from *Chouinard v. O'Connor*, 2011 BCCA 121 at para. 13, endorsed the following principles to be applied in an application to amend pleadings:

- (a) amendments should be permitted as are necessary to determine the real question in issue between the parties.
- (b) the court will not give its sanction to amendments which violate the rules that govern pleadings, including the prohibition of pleadings which disclose no reasonable claim. In considering this question, the court will apply the same tests and considerations as applicable on an application to strike claims already pleaded
- (c) a party is not required to adduce evidence in support of a pleading before trial
- (d) on an application to amend the facts alleged are taken as established
- (e) the discretion is to be exercised judicially, in accordance with the evidence adduced and the guidelines of the authorities. Factors to be considered include: the extent of delay, the reasons for delay, any explanation put forward to account for the delay, the degree of prejudice caused by the delay, the extent of the connection between the existing claims and a proposed new cause of action. The over-riding consideration is what is just and convenient .

- [13] Consistent with the foundational role of pleadings in setting out the issues between the parties, amendments to pleadings should be allowed if they enable the real question in issue between the parties to be determined. However, there are circumstances where allowing an amendment to a pleading would not serve the interests of justice. For example, where there is prejudice to a party, the Court may refuse to give leave to amend: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2018 BCSC 1831 at paras. 48-50.
- [14] A right to file an amended pleading does not include a right to withdraw an admission in such an amendment: *Mand v. Cheema*, 2023 BCSC 521 at para. 17. If a party seeks to withdraw an admission in a pleading, the applicable test is not the test developed in the cases that apply Rule 6-1. Instead, Rule 7-7(5)(c) applies. This rule states that a party is not entitled to withdraw an admission made in a pleading except by consent or leave of the court.
- [15] Not every statement in a pleading is an admission for the purposes of Rule 7-7(5)(c). The rule applies to admissions "deliberately made by the party pleading it as a concession to its opponent": *British Columbia Ferry Corp. v. T&N plc*, [1993] B.C.J. No. 1827, 31 C.P.C. (3d) 379 at para. 14.
- [16] A pleading must contain a deliberate and unambiguous admission to fall within the scope of Rule 7-7(5)(c): *Colter Developments Ltd. v. Squamish JV Ltd.*, 2015 BCSC 415 at para. 31; *Sommer v. Coast Capital Savings Credit Union*, 2013 BCSC 881 at para. 18. Pleadings genuinely made in error are not considered to be deliberate admissions, but the fact that a pleading was made in haste does not mean that it was not a deliberate concession intended to be relied upon: *Lam v. University of British Columbia*, 2012 BCSC 670 at paras. 25 and 29.
- [17] The test for withdrawal of an admission is well settled. In *Sidhu v. Hothi*, 2014 BCCA 510 at para. 25, the Court of Appeal set out the following factors that should be considered in determining whether a withdrawal of an admission is in the interests of justice:
- (a) whether the admission was made inadvertently, hastily, or without knowledge of the facts;
 - (b) whether the "fact" admitted was or was not within the knowledge of the party making the admission;
 - (c) where the admission is one of fact, whether it is or may be untrue;
 - (d) whether and to what extent the withdrawal of the admission would prejudice a party; and
 - (e) whether there has been delay in the application to withdraw the admission and any reason offered for such delay.

- [18] I will consider each of the five contentious paragraphs of the 2AN OCC with reference to the above authorities. In that context, I will reference various publications by the defendants that have been defined in the notice of civil claim, AN OCC, and 2AN OCC. They are defined according to the defendants' names and the sequence in which they are pled, and include: A.B. No. 1, Maillard No. 1, Lyon No. 1, Lyon No. 2, Lyon No. 3, and Rooney No. 1.

Paragraph 43

- [19] All respondents on this application oppose Mr. Galloway's amendments as they pertain to paragraph 43 of the 2AN OCC. Paragraph 43 of the 2AN OCC states:

The plaintiff did not become aware of the publications described herein until after October 26, 2016 except where noted herein or so ruled in Rooney v. Galloway. 2024 BCCA 8. A.B. Defamation 1, Maillard Defamation 1, Lyon Defamations 1 and 2 and Rooney Defamation 1 until the spring of 2016 and was unable to reveal the information publicly until the fall of 2018 by virtue of confidentiality requirements of an UBC investigative process and later a grievance process.

- [20] The application respondents argue that paragraph 37 of the AN OCC, the predecessor to paragraph 43 of the 2AN OCC, contained an admission, and that Mr. Galloway's proposed amendment to this paragraph constitutes a withdrawal of an admission that should not be allowed by this Court.

- [21] A threshold issue is therefore whether paragraph 37 of the AN OCC did indeed contain an admission and is therefore subject to the test under Rule 7-7(5)(c), rather than the ordinary rule for amending pleadings under Rule 6-1(1).

Does paragraph 43's predecessor, paragraph 37 of the AN OCC, contain an admission?

- [22] In the AN OCC, proposed paragraph 43 is paragraph 37. It reads:

The plaintiff did not become aware of A.B. Defamation 1, Maillard Defamation 1, Lyon Defamations 1 and 2 and Rooney Defamation 1 until the spring of 2016 and was unable to reveal the information publicly until the fall of 2018 by virtue of confidentiality requirements of an UBC investigative process and later a grievance process.

- [23] The application respondents argue that, in the AN OCC, Mr. Galloway admits that by the spring of 2016, he knew about the alleged defamatory statements described in A.B. No. 1, Maillard No. 1, Lyon Nos. 1 and 2 and Rooney No. 1. In his proposed new pleading in the 2AN OCC, he seeks to make a more complex statement about his awareness of these alleged defamatory publications. He proposes to state that he did not become aware of the "publications described herein" until "after October 26, 2016", with two exceptions: "where noted herein" and where "so ruled" in the Court of Appeal's decision.

- [24] The application respondents argue that paragraph 43 of the 2ANOC enables Mr. Galloway to avoid limitations defences that would render certain claims statute-barred under the pleadings as they presently stand. They argue this is a withdrawal of an admission because, in the previous version, Mr. Galloway admitted that he was aware of the defamations referred to in that paragraph in the spring of 2016.
- [25] In their arguments before the Court of Appeal, some of the defendants made a similar argument, namely that paragraph 36 of the ANOCC contained an admission. At paragraph 319 of the CA RFJ, the Court of Appeal considered this submission and held:
- [319] Ms. Rooney raises numerous issues in response to Mr. Galloway's cross appeal. She contends that para. 37 of the ANOCC (i.e., that Mr. Galloway became aware of "Rooney Defamation 1 [in] the spring of 2016") is an admission Mr. Galloway knew of the publication of Rooney No. 1 before July 2016. The judge did not address nor rely on para. 37 of the ANOCC for Ms. Rooney or otherwise. While para. 37 may speak to an individual or specific publication of Rooney No. 1, for example to Ms. Flegg, it is unlikely to pertain to publications Mr. Galloway was unaware of. Furthermore, whether an admission can be withdrawn (R. 7-7(5)) depends on whether it is in the interests of justice to do so. That inquiry is "highly fact specific" and will depend on various considerations including whether the admission was made without knowledge of the facts and whether relevant evidence was solely in the control of the other party (*Nagra v. Cruz*, 2016 BCSC 2469 (Master), at paras. 5-6, affirmed 2017 BCSC 347; *Century Services Inc. v. LeRoy*, 2014 BCSC 702, at paras. 45, 47, rev'd in part 2015 BCCA 120, at paras. 14-15). These conclusions on para. 37 of the ANOCC also pertain to A.B., Professor Maillard and Professor Lyon.
- [26] Counsel for Mr. Galloway, in argument before me, submits that in the above cited paragraph, the Court of Appeal rejected any argument that paragraph 37 contained an admission about when Mr. Galloway became aware of the various defamations. It is not clear to me that this is exactly what the Court of Appeal said in the above referenced paragraph. Rather, it appears to me that the above paragraph contains three connected ideas:
- a) In the context of Mr. Galloway's cross-appeal of Justice Adair's ruling that some of his claims were statute barred, Ms. Rooney sought to rely on para. 37 as an admission that Mr. Galloway had discovered the claims referenced in that paragraph by spring of 2016 and that those claims were statute barred. The Court of Appeal rejected the notion that Justice Adair found that the claims were statute barred on the basis of an admission at para. 37 because Justice Adair did not address or rely on para. 37 when she concluded that the claims were statute barred.
 - b) In any case, para. 37 could not be an admission of all publications of Rooney No.1, but can only be an admission that Mr. Galloway was aware of a specific publication of Rooney No. 1.

- c) If para. 37 did contain an admission, that admission could be withdrawn in certain circumstances, which would invoke a highly fact specific inquiry.

[27] Therefore, while I do not accept that the Court of Appeal made a specific finding about whether or not paragraph 37 contained an admission, what is clear is that the Court of Appeal held that Mr. Galloway could not be seen in paragraph 37 to be admitting to anything other than a specific publication of each of the alleged defamations referenced: A.B. No. 1, Maillard No. 1, Lyon Nos. 1 and 2 and Rooney No. 1. Therefore, to the extent that paragraph 37 does contain an admission, it is not an admission that Mr. Galloway was aware of all of the publications of each of these alleged defamations. It may, however, contain admissions with respect to specific publications of specific defamations.

[28] Counsel for Ms. Rooney argues that her client was "led down the garden path" because, for six years, Mr. Galloway's pleadings have contained a clear admission that he knew of Rooney No. 1 by spring of 2016, lulling her into a sense of security that the claims against her were statute barred. She points to the fact that Rooney No. 1 is defined at paragraph 32 of the ANOCC as follows:

The defendant Chelsea Rooney (Rooney), on or about November 18, 2015, spoke the following false and defamatory words to Erin Flegg, Sierra Skye Gemma and others known to her:

"Steven Galloway raped A.B." (Rooney Defamation 1)

[29] Ms. Rooney submits that, when paragraph 32 and paragraph 37 are read in conjunction, it is clear that paragraph 37 contains not just an admission that Mr. Galloway knew, by spring 2016, about a single publication of Rooney No. 1, such as Ms. Rooney's publication to Ms. Flegg, but that he also knew about Ms. Rooney's publication to Ms. Skye Gemma and to "others known to her."

[30] However, as the Court of Appeal explicitly points out in the very paragraph relied on by Ms. Rooney in support of her argument, paragraph 37 cannot reasonably be construed to be an admission that Mr. Galloway had discovered all publications of Rooney No. 1 by spring 2016, as it is clear that there were some publications of Rooney No. 1 that he did not know until evidence was disclosed in the course of the PPPA Applications. Therefore, to the extent that Ms. Rooney was lulled into a sense of security that all claims against her with respect to Rooney No. 1 were statute-barred because of her interpretation of paragraph 37, her interpretation of this paragraph was not reasonable.

[31] Nevertheless, having found that the Court of Appeal did not squarely determine the question of whether paragraph 37 contains admissions about when claims were discovered by Mr. Galloway, I must consider that issue.

[32] As set out above, in order for a statement in a pleading to constitute an admission, it must be a deliberate and unambiguous concession to the opposing party. Even if I did find that paragraph 37 contained a deliberate concession to the opposing party with respect to a material fact (namely, the date at which claims were discoverable to Mr. Galloway with

respect to certain expressions of A.B. No. 1, Rooney No. 1, Maillard No. 1 and Lyon Nos. 1 and 2), I could not find the admission to be unambiguous. It is not possible to discern from the language of paragraph 37 of the ANOCC which expression of each of the alleged defamations was known to Mr. Galloway by the spring of 2016. For this reason alone, I cannot find that paragraph 37 has the necessary qualities of deliberation and clarity required to constitute an admission that would require the Court's leave to withdraw.

- [33] Further, in order to constitute an admission, a statement in a pleading must amount to a deliberate concession of a legal position. In *Kamei Sushi Japanese Restaurant Ltd. v. Epstein* (1996), 25 B.C.L.R. (3d) 366, 1996 CanLII 1682 (B.C.S.C.), the Court, describing an admission in a pleading, noted at para. 15:

The rule appears to contemplate a party giving careful thought to the matters in issue and making an informed decision to concede some matter of fact in order to narrow those issues.

- [34] For a pleading to contain an admission, there must be an indication that the author of the pleading deliberately intends to take an issue "off the table." In my view, paragraph 37 does not contain language that could reasonably be construed as a deliberate concession of an issue. In fact, paragraph 37, reasonably construed, has the opposite effect. Instead of stating material facts in support of an admission that certain claims are statute barred, Mr. Galloway makes two statements of material fact (one about when he discovered the alleged defamations, and one about why he was bound by confidentiality terms not to disclose them), presumably intended to support the conclusion that his claims are not statute barred. As a result, in my view, nothing in paragraph 37 amounts to an admission as that term has been interpreted in the jurisprudence.

Should Mr. Galloway have leave to make the proposed amendments?

- [35] Counsel for Mr. Galloway submits that the Court of Appeal's findings about limitation periods, as well as the Court's finding that each publication, repetition, or republication grounds a separate cause of action, necessitate amendments to paragraph 37 of the ANOCC. He says his proposed amendments are intended to clean up his pleadings to bring them in line with the order of the Court of Appeal.
- [36] Professors Maillard and Lyon do not take issue with the proposition that paragraph 37 needs to be amended, but they propose the following language that would list those publications Mr. Galloway was not aware of until the spring of 2016:
43. The plaintiff did not become aware of the following publications until the spring of 2016, which information he was unable to reveal publicly until the fall of 2018 by virtue of confidentiality requirements of an UBC investigative process and later a grievance process:
- a) Maillard Defamation 1 to several colleagues of the plaintiff in the UBC Creative Writing Department on or about November 13, 2015;

- b) [If paragraph 25 remains part of the claim] Maillard Defamation 1 to Chelsea Rooney between November 12 and 18, 2015;
 - c) Lyon Defamation 1;
 - d) Lyon Defamation 2;
 - e) [Publications by A.B. and Rooney, in accordance with the submissions of their counsel]
- [37] A pleading that implicitly suggests that Mr. Galloway knew about all expressions of certain defamation except for certain enumerated expressions is problematic because, of course, Mr. Galloway cannot know what he does not know. It also would fly in the face of the Court of Appeal's decision, which left open the door to further publications or republications emerging during discovery:
- [257] Whether any other publications or republications of A.B. No. 1, that were disclosed during the PPPA application or that may emerge during discovery, are statute barred will be a matter for trial. The trial judge will likely be faced with a different evidentiary record.
- [38] The point of paragraph 37 of the ANOCC/ paragraph 43 of the 2ANOCC is to convey what Mr. Galloway knew, and when he knew it, to enable him to argue that certain expressions are not statute barred as a result of his late discovery of them. Professors Maillard and Lyon's proposed language could preclude Mr. Galloway from making the case that later discovered expressions are not statute barred, because it refers only to a limited number of expressions that were discovered in the spring of 2016. Since the question on any proposed pleadings amendment is whether it enables the real question in issue between the parties to be determined, I find the professors' proposed amendment falls short.
- [39] Counsel for Ms. Rooney candidly accepts that paragraph 37 needs to be amended to account for the Court of Appeal's determination that Rooney No. 1, along with the other pleaded defamations, may consist of a number of different publications, at different times, which Mr. Galloway may not have discovered all at once. When asked how she thought an amended paragraph 37 should read, she suggested something along the lines of "the plaintiff did not become aware that Rooney No. 1 was being spoken to Erin Flegg, Sierra Skye Gemma and others known to Ms. Rooney until the spring of 2016." In her submission, this would capture the fact that Mr. Galloway did in fact know about at least two of the Rooney No. 1 publications in spring 2016, while not saying he knew about every single Rooney No. 1 publication in spring 2016. She submits that this more accurately reflects the evidence before the Court about what Mr. Galloway knew, and when he knew it.
- [40] There are two problems with this submission. First, this is an application to amend pleadings. The court may only consider evidence bearing on an allegation that the amendment will give rise to prejudice or constitute an abuse of process, and may not consider evidence to address the substance of the claim or defence in question: *W.O.M. Mastercraft Construction Ltd. v. TFN Meadows Development Limited Partnership*, 2020 BCSC 1345 at para. 10. Counsel for Ms. Rooney asks me to delve into the evidence about what

Mr. Galloway knew, and when he knew it, in order to ascertain whether a paragraph in his pleading may stand. To the extent her submissions rely on affidavit and cross examination evidence, I find they misconstrue the process that the court undertakes in a pleadings application, which is not to evaluate pleaded claims but rather to ensure that no party is prejudiced by a pleadings amendment.

- [41] The second difficulty I have with Ms. Rooney's submission is that it fails to recognize the consequence of the Court of Appeal's finding that each expression of a defamatory statement may form a separate claim, with its own discoverability rules. Were I to require Mr. Galloway to leave paragraph 37 unchanged, or accept the proposed amendments of counsel for Ms. Rooney, this would be contrary to the Court of Appeal's determination that each publication is a separate cause of action. Each communication of Rooney No. 1, including by Ms. Rooney to Ms. Flegg, to Ms. Gemma, and to each one of the "others known to Ms. Rooney," may form a separate cause of action with separate discoverability rules. It is clear from the Court of Appeal's decision that Mr. Galloway cannot reasonably be seen to have admitted that he knew about all expressions of Rooney No. 1 by the spring of 2016, or at any time prior to full discovery.
- [42] Mr. Galloway proposes amendments to paragraph 37 that say he did not discover the various alleged defamations until October 2016, except "where noted herein" or as found by the Court of Appeal. By tethering his pleadings about discoverability to the Court of Appeal's findings, and not closing the category of expressions that he did not know about prior to October 2016, Mr. Galloway brings his pleadings into accordance with two aspects of the Court of Appeal's decision:
- a) The Court of Appeal accepted that, by early 2016, Mr. Galloway knew about A.B.'s initial publication of A.B. No.1 to Professor Maillard, Professor Lyon and Ms. Rooney, the republication of A.B. No.1 by Professors Maillard and Lyon at the November meeting, the expression of Maillard No. 1 at the November meeting, the expression of Lyon No. 1 at the November meeting, and Ms. Rooney's publication of Rooney No. 1 to Ms. Flegg. This is why his cross appeal was dismissed with respect to these expressions.
 - b) Because every republication of a defamatory statement is a separate cause of action, Mr. Galloway could not be said to be admitting in paragraph 37 of the ANOCC to having knowledge of all publications of the various pleaded defamations.
- [43] Pleadings amendment applications are not opportunities for parties to obtain tactical advantage, but rather they are opportunities for the court and the parties to ensure that the real matters at issue between the parties can be fairly adjudicated.
- [44] In order to ensure that all issues, including the limitations defences on the remaining claims, are properly before the Court, Mr. Galloway must plead material facts about when he discovered the remaining publications and republications that form the subject matter of his claim. While his suggestion for how to do so is not the most elegant, it achieves these purposes. It ensures, as he puts it in his written submissions, that "there is no danger of

admitted or ruled instances of the plaintiff having "discovered" defamations prior to the limitation date being taken away from the defendants." It enables all limitations defences to stay on the table to be fairly adjudicated on a full evidentiary record at trial.

[45] On the basis, I find that Mr. Galloway should be allowed to amend his pleading in accordance with the proposed language at paragraph 43 of the 2AN OCC.

Paragraphs 17, 36 and 42

[46] The proposed paragraphs 17, 36 and 42 state:

17. A.B. actively encouraged Keith Maillard, Annabel Lyon and Chelsea Rooney to repeat A.B. Defamation 1, 1A, 1B and 1C and find others who would support or repeat it, and as such, each of these defendants was part of a common design and jointly liable for Maillard Defamation 1, Lyon Defamations 1 and 2 and Rooney Defamation 1 set forth below. Further, A.B. intended, encouraged, or did or should have foreseen the republication of AB. Defamation 1, 1A, 1B and 1C by the defendants Rooney, Lyon and Maillard and is liable for each such republication.

36, Between November 12 and 18, 2015, Lyon repeated Maillard Defamation 1 to Chelsea Rooney and others known to her and is liable for her republication of Maillard Defamation 1.

42. The Defendants Keith Maillard, and Annabel Lyon had encouraged Rooney to make her defamatory statements above, to repeat Maillard Defamation 1 and Lyon Defamations 1 and 2 to others and to solicit others to come forward and make similar allegations. They acted in a common design with Rooney and as such are jointly liable for Rooney Defamation 1.

[47] Professor Lyon objects to these paragraphs being included because she submits that all claims against her, with the exception of two, have been dismissed. She argues that it is crystal clear that only two distinct publications by her survived the PPPA Applications. Any other defamation claim against her has been dismissed.

[48] While the orders would appear to speak for themselves, for the purposes of this pleadings application, it is necessary to take a deeper look at the matters that were considered and resolved at each level of court, in order to determine whether Mr. Galloway is prohibited from making the proposed amendments to the 2AN OCC that concern Professor Lyon.

[49] Professor Lyon, like the other defendants, brought an application to have the entire action against her dismissed pursuant to section 4 of the PPPA. Justice Adair's analysis of the claims against Professor Lyon can be summarized as follows:

a) Mr. Galloway was successful in showing grounds to believe that his claims with respect to Lyon No. 1 and Lyon No. 2 (the only defamatory statements considered by the Court in the PPPA Applications) had substantial merit: at paras. 432-436.

b) Mr. Galloway failed to meet his burden to show that Professor Lyon had no valid defence, based on the expiry of the limitation period regarding Lyon No. 1 and Lyon No. 2: at para. 530.

c) Professor Lyon's application was granted and the proceeding against Professor Lyon was dismissed: at para. 788(c).

[50] Mr. Galloway appealed the dismissal of the claim against Professor Lyon. The Court of Appeal's analysis can be summarized as follows:

a) The chambers judge did not err in finding that Lyon No.1, as published at the November meeting, was statute barred: at para. 285.

b) The judge erred in dismissing the claim with respect to Lyon No. 2 because the question of what Mr. Galloway reasonably ought to have known about this expression, and when, are matters to be determined at trial: at paras. 288 and 296.

c) Lyon No. 3 was not addressed by the chambers judge: at para. 301.

d) Mr. Galloway's appeal with respect to the publication of Lyon No. 2 on November 15 and the publication of Lyon No. 3 to Professor Taylor is allowed. Whether these publications, or any other publications disclosed during discovery, are statute barred, will be for the trial judge: at para. 302.

[51] The Court of Appeal was clear at paragraph 302 that the question of whether Lyon No. 2, Lyon No. 3 and any other publications disclosed during discovery are statute barred must be matters for trial. As such, it is not correct, as counsel for Professor Lyon contends, that the current state of the pleadings, after the BC Supreme Court's dismissal of the entire claim against Professor Lyon and the Court of Appeal's revival of the claim of Lyon No. 2 and Lyon No. 3, is that any defamation claim against Professor Lyon that is not Lyon No. 2 or Lyon No. 3 has been dismissed. On the contrary, the Court of Appeal made it very clear that, but for the publication of Lyon No. 1 at the November meeting, any limitation period issues with respect to any allegedly defamatory expressions must be determined by the trial judge.

[52] As a result, I am unable to find that the claim at paragraph 36 relating to Professor Lyon's republication of Maillard No. 1 has been disposed of by the Court of Appeal.

[53] For the same reason, I cannot find that the common design allegations made at paragraphs 17 and 42, which are made in the the NOCC, the ANOCC, and the 2ANOCC, can be deemed to have been dismissed by either level of court. Neither Court discussed the common design allegation, or appears to have turned its mind to the allegation at all.

- [54] With respect to Professor Lyon, the primary focus of the Courts' consideration during the PPPA Applications and PPPA Appeal was a determination of limitation defences with respect to specific expressions. Whether the common design allegation was overlooked by the Court, or whether it was never raised by the parties, it is clear that neither level of court adjudicated, or even considered, the common design allegation against Professor Lyon.
- [55] I am mindful of my role on a pleadings application, which is to ensure that all matters in issue are properly framed so that they can be fairly adjudicated at trial. In my view, it is appropriate that these paragraphs remain in the 2ANOC so they can be tried on their merits.

Paragraph 25

- [56] The proposed paragraph 25 of the 2ANOC states:

Between November 12 and 18, 2015, the defendant Maillard further defamed the plaintiff by verbally repeating Maillard Defamation 1 to Chelsea Rooney, and others known to him.

- [57] Paragraph 25 is not a new paragraph. It existed in substantially similar form in the ANOC. The concern raised by Professor Maillard is that paragraph 25 did not survive the PPPA Applications. This is because the Court of Appeal said the following with respect to Professor Maillard's communications with Ms. Rooney:
- [268] Mr. Galloway's allegation of an earlier publication of Maillard No. 1 by Professor Maillard to Ms. Rooney (ANOC, at para. 22) stands on a different footing. The judge, early in her chronology, said:
- [123] As Professor Maillard recalled, without him disclosing to Ms. Rooney what A.B. had told him about Mr. Galloway, or Ms. Rooney telling him that she knew about A.B.'s claims against Mr. Galloway, Ms. Rooney raised her own concerns about Mr. Galloway.
- [269] The foregoing description of the conversation between Professor Maillard and Ms. Rooney is consistent with the evidence. Professor Maillard affirmed in his affidavit, and then confirmed during his cross-examination, that he did not discuss A.B.'s allegations during his conversation with Ms. Rooney. Ms. Rooney's evidence was to similar effect. Though Mr. Galloway argues that "[i]t is obvious [Professor Maillard and Ms. Rooney] must have discussed A.B.'s sexual assault allegations", there is no evidence or finding to support that contention.
- [58] Professor Maillard submits that both this Court and the Court of Appeal soundly rejected Mr. Galloway's factual assertion that Professor Maillard repeated Maillard No. 1 to Ms. Rooney, on the basis that there was simply no evidence to support such a finding. As such, it is appropriate that this paragraph be struck from the 2ANOC.
- [59] There are a number of reasons why I cannot accede to Professor Maillard's assertion that, on this application to amend the plaintiff's ANOC, paragraph 25 should be struck. First, the Court of Appeal did not dismiss Mr. Galloway's defamation claim regarding the publication

of Maillard No. 1 by Professor Maillard to Ms. Rooney. The order of the Court of Appeal on the PPPA Appeal stated, with respect to Maillard No. 1, that Mr. Galloway's appeal was allowed, other than its initial publication at the November meeting. In other words, Mr. Galloway's claims with respect to Maillard No. 1, with the exception of the statute barred claim relating to the November 15 meeting, are alive to be pursued at trial, and this includes the alleged publication of Maillard No. 1 by Professor Maillard to Ms. Rooney.

- [60] The second reason I decline to accede to Professor Maillard's submissions regarding paragraph 25 is that the comments of the Court of Appeal, at their highest, suggest that, at the pre-discovery stage of PPPA proceedings, there was no evidence that Professor Maillard communicated Maillard No. 1 to Ms. Rooney. No finding of fact was made that bound this trial court, nor could such a finding of fact have been made, given the clear direction from the Supreme Court of Canada that judges hearing PPPA applications (and appeals) must leave the fact finding to the trial judge. Indeed, this sentiment was recognized by the Court of Appeal when the panel noted at paragraph 272, in the context of Professor Maillard's communications more broadly, that "what Professor Maillard actually said is a matter that is best left for trial."
- [61] Finally, I note that this is the plaintiff's application to amend pleadings; it is not Professor Maillard's application to summarily determine a paragraph in the plaintiff's claim. However, even if it were open to me on this application to amend pleadings to summarily dismiss a portion of the plaintiff's claim on the basis that the Court of Appeal, on the PPPA Appeal, held that there was no evidence of it, I would not do so in this case. Professor Maillard submits that I can infer from paragraphs 268 and 269 that the Court of Appeal dismissed Mr. Galloway's claims with respect to Professor Maillard's communication of Maillard No. 1 to Ms. Rooney. He says the Court of Appeal's failure to state this in the summary of orders at paragraph 704 of the CA RFJ was "an obvious oversight". If para. 704(c) of the CA RFJ, which was then substantially reproduced in the Court of Appeal's order, contained an oversight or slip that needs correction, that is a matter for the Court of Appeal. It is not the role of this Court to correct reasons for judgment and orders of our appellate court on the basis that they appear to contain errors.

Summary

- [62] For the reasons described above, Mr. Galloway's application for leave to file the 2AN OCC is granted. Costs will be in the cause.

"Francis J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/17/2025BCSC1738.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/galloway-v-a-b-2025-bcsc-1738>

Prepared on 28 October 2026 · Esheria