

CANADA / JUDGMENT

Galloway v. A.B.

2025 BCSC 1855

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Supreme Court of British Columbia

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2025 BCSC 1855 Galloway v. A.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Galloway v. A.B.,

2025 BCSC 1855

Date: 20250925

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, Ari Rombough, John Bell, Bethany Killen, Dana Kagis, Wendel Schwab,

Marcelle Kosman, Alasdair Rees, Suziebedbug, John Doe,

Jane Doe, Jane Roe, and Jill Roe

Defendants

Restriction on Publication: A publication ban has been imposed by an order of this Court restricting the publication, broadcast or transmission in any way of information or evidence that could identify the defendant referred to in these proceedings as "A.B." This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice Francis

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.

June 20 and 27, 2025

Place and Date of Judgment:

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September 25, 2025

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Introduction

- [1] Seven defendants apply for an order that the trial of this matter be bifurcated into two stages, relying on Rules 12-5(67) and 22-5(6) of the Supreme Court Civil Rules [Rules]. Specifically, they seek an order that the claims in defamation against certain defendants proceed to a trial ("Phase One") in advance of the claims in defamation against other defendants ("Phase Two"). The applicants argue that bifurcation will encourage a just, speedy, and less expensive determination of the case while promoting access to justice. The plaintiff, Steven Galloway, opposes the application and says that bifurcation will lead to inefficiency, delay, and expense.

- [2] Mr. 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 against a large number of people who, in various fora, published statements that relate directly or indirectly to the allegations A.B. made against him. Mr. Galloway says these statements are defamatory.
- [4] Six of the seven applicants (Marcelle Kosman, Kiera Anderson, Brit Bachmann, Mandi Gray, Ari Rombough, and Theresa Smalec) are members of a group they define as the "Twitter Defendants". Broadly speaking, these are not people who had a personal relationship with Mr. Galloway, nor were they involved with the UBC Creative Writing Department at the time of his dismissal in November 2015, or the subsequent investigation into A.B.'s allegations against him. Rather, they are people who entered into the public debate sometime later. The Twitter Defendants' online comments on social media are different in nature, and subject to some different defences, than the alleged defamations made by those defendants who were personally acquainted with Mr. Galloway and more directly involved in the events surrounding his dismissal (the "UBC Defendants").
- [5] A.B. is the only UBC Defendant who has brought a parallel application for bifurcation, although I am advised that the other defendants all support the applications for bifurcation. The only party opposing the applications is the plaintiff.

Background Facts

- [6] Because the applicants' argument rests in part on the factually distinct nature of the claims against the Twitter Defendants, versus the UBC Defendants, a careful factual review of the claims and defences regarding each defendant is necessary.

The UBC Defendants

- [7] The UBC Defendants are all people who were involved in the UBC Creative Writing Department at the time that Mr. Galloway lost his job. This includes A.B., Keith Maillard, Annabel Lyon, and Chelsea Rooney.
- [8] A.B. is alleged to have made defamatory statements to multiple people, accusing Mr. Galloway of sexually assaulting her (A.B. No. 1). Mr. Galloway alleges that A.B. repeated her defamations to the other UBC Defendants and encouraged them to repeat her defamatory statements. He also alleges that in 2018, A.B. published defamatory statements (A.B. No. 2) in an art show she participated in (the "Art Show").

- [9] In her response to civil claim, A.B. pleads, among other things, that the allegedly defamatory statements she made were subject to privilege, were true, and were fair comment. She also pleads that Mr. Galloway's claim against her is statute barred.
- [10] Keith Maillard is a professor in the Creative Writing Department at UBC. In 2012, he was A.B.'s thesis supervisor. In 2015, he was a friend and colleague of Mr. Galloway. Mr. Galloway alleges that Professor Maillard uttered defamatory words to several of their mutual colleagues in the UBC Creative Writing Department on November 13, 2015. Mr. Galloway specifically alleges that Professor Maillard stated that he raped, sexually assaulted, and physically assaulted A.B. (Maillard No. 1). He also alleges that Professor Maillard repeated those defamatory statements at a faculty meeting on November 15, 2015, although that expression has been held by the Court to be statute barred (Rooney v. Galloway, 2024 BCCA 8 [Galloway Appeal]). Mr. Galloway also alleges that Professor Maillard further defamed him by repeating defamatory statements to Ms. Rooney.
- [11] In addition to the claims made against Professor Maillard relating to expressions made in November 2015, Mr. Galloway makes two other claims of defamation against Professor Maillard. He claims that on February 11, 2018, Professor Maillard published false and defamatory words about him on Twitter (Maillard No. 2). Also, in September 2018, Professor Maillard published an essay titled "Burn" in which he said, of the allegations made by A.B., "I believe her" (Maillard No. 3). Mr. Galloway claims that this publication was also defamatory.
- [12] Annabel Lyon is a professor in the UBC Creative Writing Department. She is alleged to have made defamatory statements on November 15, 2015 at a faculty meeting and elsewhere, and on November 16, 2015, with respect to A.B.'s allegations against Mr. Galloway. Some, but not all, of the claims of defamation against Professor Lyon have been dismissed by the Court.
- [13] In their response to civil claim, Professors Maillard and Lyon plead, among other things, limitation defences, qualified privilege, justification, and fair comment.
- [14] Chelsea Rooney is a former student in the UBC Creative Writing Department. She was a student of Mr. Galloway and he, along with Professor Maillard, supervised her thesis. It is alleged that Ms. Rooney was tasked by Professor Maillard to speak to a large number of students and former students to ask them to come forward with allegations against Mr. Galloway. Mr. Galloway claims that in this context, Ms. Rooney defamed him to various people (Rooney No. 1).
- [15] Mr. Galloway also claims that Ms. Rooney defamed him on Twitter on the following dates: October 28, 2016; November 16, 2016; November 24, 2016; December 5, 2016; and March 4, 2017 (Rooney Nos. 2-7).
- [16] In her response to civil claim, Ms. Rooney pleads that the claim against her is statute barred. She also claims that she did not speak the words complained of and that the words she spoke were not defamatory. She pleads the defences of qualified privilege, justification, and fair comment.

- [17] With respect to all of the UBC Defendants, Mr. Galloway pleads that they were part of a common design and are jointly liable for many of the defamatory statements made by other UBC Defendants.

The Twitter Defendants

- [18] The applicant Twitter Defendants are Marcelle Kosman, Ari Rombough, Theresa Smalec, Brit Bachmann, Kiera Anderson, and Mandi Gray.
- [19] None of the Twitter Defendants knew Mr. Galloway personally, nor were any of them involved in the UBC Creative Writing Department in November 2015. All the Twitter Defendants are people who, in one way or another, engaged in online public debates about Mr. Galloway subsequent to his dismissal from UBC.
- [20] Marcelle Kosman is an academic with no personal connection to any of the UBC Defendants. In March, 2017, she participated in a panel discussion at the University of Alberta. In response to a question about whether Mr. Galloway's writings should be taught in the UBC curriculum, she said, "You cannot teach a rapist if you do not want to promote rape culture." The panel discussion, including this comment, was live-tweeted (Kosman No. 2). On May 29, 2017, at another panel, Dr. Kosman live-tweeted the comments of another speaker, which included the statement, "We will never fully know the scope of Galloway's violence and can never fully account for it" (Kosman No. 1).
- [21] In her response to civil claim, Dr. Kosman denies that either of the statements attributed to her are defamatory of Mr. Galloway. She relies on the defences of justification, fair comment, and qualified privilege.
- [22] Ari Rombough (they/them) is an individual who has no personal connection to Mr. Galloway or to A.B. On January 8, 2018, they posted on Twitter that Mr. Galloway was fired for sexual assault (Rombough No. 1). It does not appear that Mx. Rombough has filed a response to civil claim in this proceeding so it is not entirely clear what defences they are relying on, although it can be inferred that their defences will be similar to those invoked by the other Twitter Defendants.
- [23] Theresa Smalec is a university professor who resides in the United States. Prior to 2018, she did not know A.B. However, in 2018, she attended A.B.'s Art Show for the purposes of reviewing it. Before she published her review of the Art Show (Smalec No. 1), Dr. Smalec provided a draft of her review to A.B. At A.B.'s request, she changed the word "alleged" to "reported" in describing the alleged sexual assault of A.B. by Mr. Galloway.
- [24] Dr. Smalec, in her response to civil claim, pleads that the statements she made were not defamatory of Mr. Galloway. She pleads the defence of fair comment and invokes her right to free expression under s. 2(b) of the Canadian Charter of Rights and Freedoms and the First Amendment of the U.S. Constitution.

- [25] Brit Bachmann is a former UBC student who published two statements on Twitter, both on January 7, 2018, which stated that Mr. Galloway had sexually assaulted a student (Bachmann Nos. 1 and 2).
- [26] Kiera Anderson (they/them) is an academic who resides in the UK. They have never met Mr. Galloway or A.B. They made two statements on Twitter on January 15 and 16, 2018, both of which refer to Mr. Galloway assaulting A.B. (Anderson Nos. 1 and 2). Mr. Galloway alleges these statements to be defamatory.
- [27] In a joint response to civil claim filed by a number of defendants, including Dr. Anderson and Ms. Bachmann, the defendants deny that the words they used were defamatory of Mr. Galloway. These defendants also plead responsible communication, justification, and fair comment.
- [28] Mandi Gray was an active participant in the public discussion on Twitter about Mr. Galloway and the allegations against him. She made a number of statements on Twitter that Mr. Galloway claims to be defamatory. These statements were made on November 15, 2016 (Gray Nos. 1, 2, and 3), March 14, 2018 (Gray No. 6), and July 6, 2018 (Gray No. 7). Unlike the other Twitter Defendants, Dr. Gray does have a personal connection to the UBC investigation. She became friends with A.B. in 2015. Gray No. 7 refers to her attending her friend A.B.'s Art Show, which she describes as "a very important installation about campus sexual violence."
- [29] In her response to civil claim, Dr. Gray pleads that her statements were not defamatory of Mr. Galloway. She also pleads the defences of responsible communication, fair comment, and qualified privilege.
- [30] Glynnis Kirchmeier is not an applicant in this application, but the applicants argue that, because she is also a Twitter Defendant, the claims against her should be adjudicated at Phase Two. She is a former UBC student who published a statement online on February 6, 2018, that referred to Mr. Galloway raping A.B. (Kirchmeier No. 1).
- [31] In her response to civil claim, Ms. Kirchmeier asserts that her statement was not defamatory and she pleads the defence of fair comment. She also invokes her right to free expression under s. 2(b) of the Canadian Charter of Rights and Freedoms, as well as her rights as a U.S. citizen and resident under the First Amendment of the U.S. Constitution.

Governing Legal Authorities

[32] The Twitter Defendants bring this application under Rules 12-5(67) and 22-5(6).

[33] Rule 12-5(67) says:

The court may order that one or more questions of fact or law arising in an action be tried and determined before the others.

[34] Rule 22-5(6) says:

If a joinder of several claims or parties in a proceeding may unduly complicate or delay the trial or hearing of the proceeding or is otherwise inconvenient, the court may order separate trials or hearings or make any other order it considers will further the object of these Supreme Court Civil Rules.

- [35] The submissions of the Twitter Defendants do not distinguish between these two rules. Counsel for Mr. Galloway submits that these rules serve different purposes. Most applications for bifurcation are considered under Rule 12-5(67). These are cases in which easily severable issues are heard separately for the purposes of efficiency and economy (for example, severing liability and damages in a personal injury claim). Counsel for Mr. Galloway submits that Rule 12-5(67) only deals with bifurcating issues of fact or law, not bifurcating defendants and ordering separate trials for certain defendants.
- [36] I agree with Mr. Galloway that Rule 12-5(67) is an awkward fit for what the Twitter Defendants seek to accomplish in this application, although I do find ample authority to order what they seek in the language of Rule 22-5(6). The plain language of that rule contemplates not only a severance of issues, but also of parties.
- [37] However, I do not find this distinction to be particularly important because, regardless of whether cases are decided under one rule or the other, both Rule 12-5(67) and Rule 22-5(6) are trial management rules that must be applied in the context of the overarching purpose of the Rules, which is to secure the just, speedy, and inexpensive determination of every proceeding on its merits: Rule 1-3(1). Cases under both rules refer to similar principles of trial management, which require me to exercise my discretion bearing in mind the nature of the dispute and the most expeditious and fair process for adjudicating it: *British Columbia (Director of Civil Forfeiture) v. Conrad*, 2024 BCCA 10 at para. 94; *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388 at para. 71, *aff'd* 2017 BCCA 59, citing *Wirtz v. Constantini* (1982), 137 D.L.R. (3d) 393, 1982 CanLII 282 (B.C.S.C.). The fact that there is a paucity of cases in which defendants, rather than issues, have been severed does not change the analysis in any way. I must look at all the circumstances of this case and determine whether bifurcation will assist in fairly resolving this case in a manner that is proportionate, timely, and accessible.
- [38] In *Conrad*, the Court of Appeal cited with approval the summary of Justice Martinson in *Nguyen v. Bains et al.*, 2001 BCSC 1130:
- [11] Courts have considered the question of when some issues should be tried before others. These are some of the points that have been made:
- a. A judge's discretion to sever an issue is probably not restricted to extraordinary or exceptional cases. However, it should not be exercised in favour of severance unless there is a real likelihood of a significant saving in time and expense.
 - b. Severance may be appropriate if the issue to be tried first could be determinative in that its resolution could put an end to the action for one or more parties.

- c. Severance is most appropriate when the trial is by judge alone.
 - d. Severance should generally not be ordered when the issue to be tried is interwoven with other issues in the trial. This concern may be addressed by having the same judge hear both parts of the trial and ordering that the evidence in the first part applies to the second part.
 - e. A party's financial circumstances are one factor to consider in the exercise of the discretion.
 - f. Any pre-trial severance ruling will be subject to the ultimate discretion of the trial judge.
- [39] Severance is not reserved for extraordinary cases. However, there must be "some substance" to the arguments in favour of severance. There must be enough case-specific information to give the court confidence that severance could lead to a significant savings in time and expense: Conrad at para. 79. The applicant should be able to tell the court "what specific issues, evidence or legal arguments" would be avoided by severance, and why: Conrad at para. 79, citing Nguyen at para. 12.
- [40] The necessity that issues be sufficiently distinct, and not interwoven, was highlighted by the Court in Conrad:
- [86] Whether or not the issues to be determined first if severance is granted are sufficiently distinct, or are interwoven with other issues to be determined, is of concern to trial judges for two reasons. First a judge will want to have all material evidence relevant to an issue before them when deciding an issue; and second, a trial judge will want to avoid the possibility of inconsistent findings as between the issues decided in the first stage of a trial and those decided in the second stage. These concerns are often discussed in other contexts as well, such as applications for summary trial of one issue before another.

Analysis

- [41] I will begin by discussing whether the claims against the UBC Defendants and the Twitter Defendants are interconnected, as this informs my analysis of whether there is a real likelihood of a significant saving in time and expense.

Interconnection of Issues at Trial

- [42] The Twitter Defendants emphasize that the factual matrix of the claims against them and the UBC Defendants are distinct, with little factual overlap. To a certain extent, I agree with this. The UBC Defendants are people who knew Mr. Galloway personally and who knew one another. They were part of a small community of professors, students, and alumni of the UBC Creative Writing Program who were key players in the events that began in mid-November 2015, when Mr. Galloway was investigated and fired. In the second amended notice of civil claim ("2AN OCC"), Mr. Galloway alleges that the UBC Defendants were acting pursuant to a common design. The Twitter Defendants, on the other hand, are mostly people with little or no connection to Mr. Galloway who participated in online public discourse about the allegations made by A.B. against Mr. Galloway and the ensuing UBC

investigation. There is no common design claim made against the Twitter Defendants.

- [43] Because of this, much of the evidence surrounding the defamation claims against the UBC Defendants will have no bearing on the Twitter Defendants.
- [44] Notwithstanding the ease with which the UBC Defendants and the Twitter Defendants can be sorted into two distinct categories based on the factual matrix of the claims against them, it is necessary to undertake a more careful review of the issues, and not just the facts, to determine whether the claims are connected. If some of the issues proposed to be severed and heard in Phase One are enmeshed with issues that arise at Phase Two, there is a prospect of extra cost, duplication of efforts, and, potentially, a risk of inconsistent findings.
- [45] There are clearly some issues that only arise in the context of the UBC Defendants. The defences the UBC Defendants raise in the context of what was, in November 2015, mostly spoken communication to enumerated individuals are different from the defences available to the Twitter Defendants who were, at least in their own minds, engaging in a public debate in the wider community of the internet. For example, Professors Maillard and Lyon raise defences grounded in labour law that do not apply to the other defendants. Also, all of the UBC Defendants raise the defence of qualified privilege, which, while also raised by some Twitter Defendants, would have an application in the context of the events of November 2015 that is distinct from its application in the context of online discourse.
- [46] However, the lines between the Phase One and Phase Two issues are not as clear as the applicants would suggest. While some of the UBC Defendants' publications took place in and around November 2015 and many of the Twitter Defendants' expressions were later, in terms of chronology, the various alleged defamations are enmeshed in time. Rooney No. 2 was posted on October 28, 2016. Gray Nos. 1-3 were published on November 15, 2016. Rooney No. 3 was published the next day, on November 16, 2016. Rooney Nos. 4-7 were published between November 24, 2016, and March 4, 2017. Kosman No. 2 was published on March 29, 2017, and Kosman No. 1 was published on May 29, 2017. The remaining Twitter Defendants published their statements between January and August 2018. Maillard No. 2 was published on Twitter on February 11, 2018. A.B. No. 2 was published in or around May 2018. There is therefore a significant temporal overlap between Maillard No. 2, Rooney Nos. 2-7, A.B. No. 2, and the claims against the Twitter Defendants.
- [47] In terms of the forum in which the alleged defamation took place, Professor Maillard and Ms. Rooney are both sued for defamatory postings on Twitter, as are the bulk of the Twitter Defendants. The Maillard and Rooney Twitter statements give rise to the same defences as the tweets of the Twitters Defendants, particularly justification, fair comment, and responsible communication. Similarly, Mr. Galloway's claims with respect to A.B. No. 2 (Phase One) and Smalec No. 1 (Phase Two) raise overlapping issues about the extent to which the Art Show was defamatory and what defences are available to an artist, and her reviewer, in this context. All of the claims against the Twitter Defendants, as well as A.B. No. 2, Maillard No. 2, and Rooney Nos. 2-7, give rise to questions about where the line is to be

drawn between public discourse about a sexual assault allegation and defamation. These are issues that the Court will have to delve into at Phase One, and they will significantly impact the claims against the Twitter Defendants at Phase Two.

- [48] This brings me to what is, in my view, the most significant interconnecting factor in this case. Almost all of the defendants, including A.B., the other UBC Defendants, and the Twitter Defendants, have raised at various stages of this litigation the importance of supporting sexual assault survivors in the public sphere and the care the Court must take to not allow defamation law to be used to silence public discussion about sexual assault. See, for example, the arguments made on behalf of A.B. at the application to dismiss the claim under the Protection of Public Participation Act [PPPA] hearing, described by Justice Adair in her reasons indexed at 2021 BCSC 2344 [PPPA Application]:
- [663] In Ms. Birenbaum's submission, at stake in A.B.'s PPPA Application (at the very least) is "the genuine commitment of the justice system to valuing the reporting of sexual violence and the ability of survivors to heal and process their trauma by speaking to those close to them and through other socially valuable expressive means, such as art." Also at stake, in Ms. Birenbaum's submission, is whether survivors will be deterred from reporting. In Ms. Birenbaum's submission, A.B.'s PPPA Application is an opportunity for the court to "try to set things right." In Ms. Birenbaum's submission, if A.B.'s expressions are subservient to Mr. Galloway's asserted reputational harms, "it will be difficult to provide a positive answer to any complainant who asks: Why report?" In Ms. Birenbaum's submission, the potential harm to Mr. Galloway "does not outweigh the public interest in protecting the right to report and heal from sexualized violence."
- [49] Similar arguments were made by counsel for Ms. Rooney (at para. 664), counsel for Professor Maillard (at para. 668), Dr. Gray (at para. 669), and the other applicants in the PPPA Application (at para 670).
- [50] These arguments, although made in the context of the weighing exercise under s. 4(2)(b) of the PPPA, are likely to be invoked in some form by the defendants at trial, or at least by those who have pleaded the defences of fair comment and/or responsible communication, which includes Ms. Rooney, Professors Maillard and Lyon, A.B. (with respect to A.B. No. 2), Dr. Gray, Dr. Kosman, Ms. Bachmann, Dr. Anderson, Ms. Kirchmeier, and Dr. Smalec. In fact, a number of defendants have expressly alluded in their pleadings to the importance of public discourse about sexual assault. For example, at para. 15 of Division 3 of her response to civil claim, Dr. Gray pleads that her statements are protected by qualified privilege in part because they were made to "identify issues of urgent and fundamental importance relating to sexual violence and accountability." Similarly, Ms. Bachmann pleads at para. 37(g) of Division 1 of her response to civil claim that Bachmann No. 1 was "made in an effort to and in the interest of engaging with a serious issue in Canadian society, namely violence against women and the debates surrounding how to address allegations of sexual assault and harassment."

- [51] The extent to which there is a public interest in online debates about high profile allegations of sexual violence in our society, and the degree to which one can engage in such debates without falling afoul of defamation law, is an overriding issue that permeates this entire proceeding. It is difficult to conceive how these arguments can be properly heard and determined by the Court at Phase One with the participation of only some of the defendants who are likely to make these arguments.
- [52] Another area of interconnection is Mr. Galloway's claim that the defendants should be liable for the republication of their defamatory statements. This pleading is contained at para. 90 of the 2AN OCC. More specifically, at para. 21 of the 2AN OCC, Mr. Galloway pleads that A.B. is liable for the republication of A.B. No. 2 by Dr. Smalec.
- [53] A defendant can be liable for each republication of their initial publication in at least three situations: (i) if the defendant has authorized the republication; (ii) if the republication is the natural and probable consequence of the initial publication; and (iii) if the republication was foreseen or reasonably foreseeable by the defendant: *Bent v. Platnick*, 2020 SCC 23 at para. 152. Mr. Galloway submits that this is an obvious area of overlap between the claims against A.B. and the claims against the Twitter Defendants. The Twitter Defendants seek to minimize this area of potential overlap, arguing that A.B.'s liability for republication by Dr. Smalec and the other Twitter Defendants could be determined at Phase One with damages to be assessed at Phase Two. They submit that the only relevant evidence on republication will come from A.B. and that, therefore, the Twitter Defendants are not necessary witnesses on the question of A.B.'s liability for republication.
- [54] With respect, I find this argument glosses over the very real practical challenges that would arise if A.B.'s liability for republication by the Twitter Defendants were adjudicated prior to and separate from the trial concerning the liability of the Twitter Defendants and prior to the Twitter Defendants giving evidence. This would place Mr. Galloway in the difficult position of having to prove liability for republication in the absence of any evidence about the republication. If Mr. Galloway did call the Twitter Defendants as witnesses in Phase One to prove the republications, those defendants would then be required to testify again at Phase Two when the defamation claims against them were adjudicated. Even if all of the Twitter Defendants are not called as witnesses at Phase One, the Twitter Defendants acknowledge that Dr. Smalec and Dr. Gray are likely necessary witnesses at Phase One as well as Phase Two.
- [55] The final area of overlap is damages. Justice Adair discussed the challenge of assessing damages in a case like this, referencing a metaphor used by Mr. Galloway's counsel:
- [640] Mr. Galloway says that this case involves a libel of criminal conduct, widely published, and the nightmare that the defamatory statements have caused has been extreme. Mr. Galloway says that his reputation, career and future have been devastated. He explained that, from his perspective, the sum total of the damages he has suffered is inseparable from the parts. Mr. Galloway used the metaphor of "getting the salt out of the soup," to describe

the causation of damage he has suffered, with the individual statements being the salt and all of the damage he has suffered being the soup. From his perspective, it is impossible to separate the salt from the soup, in the sense of that it is impossible to identify particular damage as being caused by a discrete expression. All of the expressions at issue are salt in the soup.

- [56] At this stage, I needn't determine whether it is, indeed, impossible to sort out causation of injury from the various expressions at issue. However, I do agree that, if liability for defamation is found against more than one defendant, causation will be a difficult exercise even if the entire proceeding is heard as a single trial. If the proceeding is bifurcated, it is difficult to see how the Court could possibly assess damages for defamation at Phase One prior to determining liability of the Phase Two defendants.
- [57] This is not to say that there is no way to untangle the various interconnected issues between the claims against the UBC Defendants and the Twitter Defendants. Such an exercise may well be possible. For example, the Court could order that the assessment of damages for any defamation found to have occurred at Phase One could be deferred to Phase Two. However, the question at this stage of the inquiry is not whether, through careful case management and procedural orders, the interconnected issues can be separated. The relevant question is whether the issues in the claim against the Twitter Defendants are interwoven with the issues in the claim against the UBC Defendants. I find that they are in a very significant way.

Likelihood of a Significant Saving in Time and Expense

- [58] At this stage, the applicants should be able to tell the Court "what specific issues, evidence or legal arguments" would be avoided by severance, and why: Conrad at para. 79, citing Nguyen at para. 12. The question is therefore whether any claims or issues will be resolved and "taken off the table" if the claims against the UBC Defendants are adjudicated first.
- [59] The common thread connecting most cases in which severance is ordered for reasons of judicial economy and convenience is a threshold issue that, if decided a particular way, would make the rest of the litigation unnecessary or, at the very least, would make settlement more likely: Conrad; Enterprising Minds Technology v. Lululemon Athletica et al., 2006 BCSC 1168; Johnston; Volkers v. Emcon Services Inc., 2024 BCSC 1986.
- [60] Absent an identifiable threshold issue, such as the resolution of a Charter breach allegation in the civil forfeiture context or a finding on liability in a personal injury context, it is generally difficult for a party seeking severance to demonstrate a real likelihood of a significant saving in time and expense if the litigation is bifurcated.
- [61] In this case, the applicants argue that if, at the Phase One trial, A.B. successfully proves on a balance of probabilities that her allegations of sexual assault against Mr. Galloway are true, the litigation will likely settle before a Phase Two trial takes place. This is because many of the Twitter Defendants have pleaded the defence of justification. While the applicants do not characterize the truth of A.B.'s allegations as a threshold issue, they do submit that, if

resolved in favour of A.B., it would be determinative of a number of outstanding issues in the litigation and would lead to settlement.

- [62] It appears to me that, if the determination of the truth of A.B. No. 1 is an issue on which the rest of the litigation hinges, the appropriate bifurcation order would be to sever the issue of the truth of A.B.'s allegations and have a first trial on that issue. That way, if A.B. were successful in proving the truth of A.B. No. 1, all defendants who have pleaded justification would be similarly relieved from having to make out that defence, not just the majority of the Twitter Defendants. Mr. Burnett, in reply argument, submitted that Mr. Galloway would be quite happy to consent to this issue being severed and made the subject matter of a separate trial. However, this is not what the Twitter Defendants seek and I understand that all defendants would oppose such an order.
- [63] It is difficult to see a real likelihood of a significant saving in time and expense if the matters are bifurcated in the manner sought by the applicants. In terms of time, the trial is already set to be heard for twelve weeks commencing in October 2026. Needless to say, this was a difficult date to schedule given the large number of counsel whose calendars, along with the Court's, needed to be coordinated. While it is true that a Phase One trial will likely be shorter than twelve weeks, it will be some time, likely more than a year after reasons for judgment are issued on the Phase One trial, before a Phase Two trial could be scheduled. It is therefore unquestionable that bifurcation will result in a longer timeframe for this matter to be completely adjudicated.
- [64] The applicants suggest that there will be a net reduction in court dates because issues will be narrowed after Phase One. This is because findings will be made at the Phase One trial on common issues, such as reputational harm, damages, and the defence of justification. As noted above in my discussion of the interconnection of issues, I am skeptical that these common issues could be fairly adjudicated without the participation of the Phase Two defendants. In any case, the applicants' argument regarding a reduction in court time is really only applicable to the defendants. I accept that the Phase Two trial would likely be much shorter than the Phase One trial if the bulk of the issues in this proceeding are dealt with in Phase One. I also accept that this will save time and money for the Twitter Defendants. However, Mr. Galloway must participate in both trials. If the case is bifurcated, there will likely be two shorter trials instead of one long trial, but it appears highly unlikely to me that there will be a net reduction in the total number of trial days required unless Phase Two is settled and never proceeds.
- [65] Further, in the event of bifurcation, there will be an overlap of witnesses that will likely result in the duplication of witness testimony, adding to the time and expense of two trials. There are some parties who will likely have to testify as witnesses in both Phase One and Phase Two, including Dr. Smalec (who is a relevant witness to A.B. No. 2 and Smalec No. 1) and Dr. Gray (who is a relevant witness to A.B. No. 1 and A.B. No. 2, as well as her own alleged defamations). Of course, the most significant witness who would appear to be necessary to both Phase One and Phase Two is A.B. A.B. supports bifurcation and has

brought a parallel application of her own seeking bifurcation, but she and the other applicants submit that, notwithstanding the proposed severance of the proceeding into two separate trials, she should not be required to testify more than once. Of course, the most obvious way to avoid A.B. having to testify twice would be to have all matters determined in a single trial.

- [66] There are additional practical issues that cause me concern about any procedural orders that would delay the final adjudication of all matters in this case, the inevitable result of having two separate trials. Scheduling the trial was difficult. Scheduling a second trial, and coordinating the schedules of counsel for each of the Twitter Defendants, will also be difficult. The more time that passes, the greater the risk of unforeseen events such as a party, a lawyer, or even the judge becoming unavailable for various reasons. Should that happen, even further delay will almost certainly ensue.

Parties' Financial Circumstances

- [67] One of the primary bases on which the Twitter Defendants seek bifurcation is their compromised financial circumstances. Most of them are represented by pro bono counsel and their counsel submit that they simply do not have the capacity to attend a twelve-week trial for which they are not being paid. This is a valid concern. Access to justice is an important consideration in the exercise of my discretion. I accept that the trial should be managed in a way that promotes the parties' ability to be represented by counsel at trial.
- [68] However, in considering the cost of litigation, I must consider not only cost to the defendants but also to the plaintiff. This is not a "David and Goliath" case where a well funded person or company is suing impecunious people for defamation. Mr. Galloway lost his job at UBC in 2015 and, according to the evidence before Adair J., has made an extremely modest income since. He no longer works in academia and he no longer publishes books: Galloway Application at paras. 636-637. Two trials, even if they are shorter, case-managed trials, will inevitably cost much more for Mr. Galloway than one trial.
- [69] I recognize and accept the importance of the access to justice issues raised by the applicants, but it seems to me that bifurcation of the trial is not the only means to address the valid concern that pro bono counsel cannot be expected to hold their calendars free for a twelve-week trial. In my view, careful trial management can address these concerns just as effectively as the severance order sought by the applicants.
- [70] I therefore dismiss the applications for bifurcation.

Conclusion and Trial Management Orders

- [71] While I am not persuaded that bifurcation is the answer, it is clear that creative trial management orders are called for to ensure that the defendants, particularly the Twitter Defendants, are not placed in the near impossible position of having to send a pro bono lawyer to sit through a twelve-week trial in which evidence relevant to them forms only a small portion of the evidence at trial.
- [72] Possible trial management orders that would alleviate the concerns of the Twitter Defendants include: excusing counsel from attending days of trial that do not invoke the interests of their clients, directing that the plaintiff's trial schedule be provided well in advance of trial (months rather than weeks so that counsel can arrange their schedule to attend only when needed), directing that the parties exchange detailed will-say statements well in advance of trial, and staging the evidence at trial on an issue by issue basis. While the Twitter Defendants argue that the latter direction is effectively the same as bifurcation, in my view this approach is far superior to bifurcation because, while the evidence may proceed in a certain order to accommodate parties and their counsel, the Court will determine all the interconnected issues in this proceeding together in a single trial. This will promote efficiency and the timely and fair resolution of this complex, multi-party case.
- [73] As such, I direct the parties to set down a one-day case management conference at which the parties will make submissions about the precise trial management orders they seek to ensure the efficient and fair hearing of this case on its merits.
- [74] Costs will be in the cause.

"Francis J."

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