

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vedic Hindu Cultural Society v. Joshi*,
2014 BCSC 1070

Date: 20140613
Docket: S136008
Registry: Vancouver

Between:

**Vedic Hindu Cultural Society, Parshotam Goel,
Satish Kumar, Mahesh Gupta**

Plaintiffs

And

Karuna Joshi

Defendant

Before: The Honourable Madam Justice Ross

Reasons for Judgment

Counsel for the Plaintiffs:

Christopher S. Flerlage

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Place and Date of Hearing:

Vancouver, B.C.
April 10 and 11, 2014

Place and Date of Judgment:

Vancouver, B.C.
June 13, 2014

Introduction

[1] This is an action for defamation that arose in the context of a number of complaints made by members of the plaintiff society concerning the conduct of other members. The defendant has brought an application pursuant to Rules 9-7 and 14-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, seeking a determination of the issue of liability and the dismissal of the plaintiffs' action.

[2] The plaintiff Vedic Hindu Cultural Society (the "Society") is a society duly registered under the *Society Act*, R.S.B.C. 1996, c. 433. The purposes of the Society include advancing the teachings of the Vedas and the Hindu Dharma faith, as well as establishing, maintaining and supporting a house of worship with services conducted in accordance with the tenets and doctrines of the Hindu Dharma faith (the "Temple").

[3] The Society has two separate governing bodies. The Board of Directors (the "Board") manages the day-to-day business of the Society. The Governing Council (the "Council") has specific duties, including overseeing elections and instituting the process for disciplinary action against a member or elected officer of the Society when a complaint has been made.

[4] The plaintiff Mahesh Gupta is the current Vice President of the Board. The plaintiff Satish Kumar is the current Council Chair. The plaintiff Parshotam Goel is the current President of the Board. Collectively, I shall refer to these parties as the "Individual Plaintiffs".

[5] The defendant Karuna Joshi has been a long-time active member of the Society. Ms. Joshi served as the Vice President of the Board, with a term ending in March 2013. She had previously served as President of the Board.

[6] The notice of civil claim identifies three allegedly defamatory publications as follows:

- (a) an email authored by Ms. Surinder Dhaliwal, forwarded by Ms. Joshi to Ms. Santosh Bhushan and Mr. Suresh Bhayana, and copied back to Ms. Dhaliwal (the “Complaint Letter”);
- (b) an email authored by Ms. Joshi dated July 23, 2013, sent to Ms. Santosh Bhushan, Mr. Suresh Bhayana, Mr. Vinay Sharma and Ms. Surinder Dhaliwal (the “Complaint Letter Reply”); and
- (c) an email authored by Ms. Joshi dated August 2, 2013, sent by Ms. Joshi to Mr. Satish Kumar, Mr. Vinay Sharma, Mr. Suresh Bhayana, Ms. Santosh Bhushan and Mr. Narender Singla (the “Grievance Report Reply”).

[7] These publications arose in the following context. The plaintiff Mahesh Gupta was the Treasurer of the Board during Ms. Joshi’s tenure as Vice President. Conflict between Ms. Joshi and Mr. Gupta resulted in reciprocal complaints being made to the Council. Ms. Joshi’s complaints, in part, concerned allegations of gender discrimination. A Grievance Committee was struck to investigate, and eventually issued a report highly critical of Ms. Joshi (the “Grievance Report”). She wrote a response, which is one of the publications at issue, the Grievance Report Reply.

[8] Shortly after Ms. Joshi’s tenure on the Board had come to an end, but before the Grievance Committee had issued its report, Ms. Joshi received a complaint from Surinder Dhaliwal, another member of the Society, alleging that senior members of the Society had made disparaging comments about her character. Ms. Joshi forwarded the complaint to members of Council who were responsible for dealing with such matters and copied that email back to Ms. Dhaliwal. This is the Complaint Letter.

[9] Ms. Joshi then sent a response to Ms. Dhaliwal expressing support and referencing the difficulties she had encountered herself. This is the Complaint Letter Reply.

[10] Ms. Joshi submits that the letters were all published on an occasion of qualified privilege and seeks to have the action dismissed. In addition, Ms. Joshi submits that the Society is not a suitable plaintiff and seeks to have its claim struck on that basis.

[11] The plaintiffs take the position that this matter is not suitable for summary determination because credibility is at issue and because the plaintiffs have raised the issue of malice. In addition, and in the alternative, the plaintiffs submit that the occasion was not one of qualified privilege, that the privilege was exceeded and that Ms. Joshi was motivated by malice. Finally the plaintiffs submit that the Society is a suitable plaintiff.

Suitability

[12] A helpful summary of the applicable principles with respect to the issue of suitability for summary determination was provided by Madam Justice Ker in *McVeigh v. Boeriu*, 2011 BCSC 400 at paras. 42-43 and 49 [*McVeigh*]:

[42] Whether a matter is suitable for disposition by means of the summary trial procedure has generated a significant amount of jurisprudence over the years. The proper approach on a summary trial under the former Rule 18A was set out in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) [*Inspiration Management*]. This test remains the same under the new Rule 9-7 of the *Supreme Court Civil Rules*, and whether a matter is suitable for disposition can be distilled to consideration of two critical factors:

- i Are there sufficient facts before the Court in which to make the necessary findings of fact?
- ii. Is it unjust to decide the case on a summary trial application?

[43] Where the court is able to find the facts necessary to decide the issues before it, and it is not otherwise unjust to decide the matter summarily, the court should give judgment. At para. 7 of his decision in *Mariotto v. Waterman* (1996), 32 B.C.L.R. (3d) 125 (C.A.), McEachern C.J.B.C. stated the following with respect to Rule 18A applications: "Where possible it is always to be hoped that judges will give judgment and I repeat that admonition here."

...

[49] The fact that there are conflicting affidavits does not necessarily make this matter unsuited to summary trial. On this point, McEachern C.J.B.C. observed in *Inspiration Management* that a chambers judge is not obliged to remit a case to the trial list just because there are conflicting affidavits. The

Chief Justice observed that other admissible evidence could make it possible to find the facts necessary for judgment to be given. See also the decision of Holmes J. in *Lalli v. Lalli*, [1998] B.C.J. No. 2791 (S.C.) (QL) and the decision of Kelleher J. in *Le. v. Haro Pacific Enterprises Co.*, 2005 BCSC 134.

[13] These principles are reflected in the recent decision of the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, in which Justice Karakatsanis, for the Court, noted at paras. 1-5:

[1] Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

[2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[3] Summary judgment motions provide one such opportunity. Following the *Civil Justice Reform Project: Summary of Findings and Recommendations* (2007) (the Osborne Report), Ontario amended the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (*Ontario Rules* or *Rules*) to increase access to justice. This appeal, and its companion, *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, address the proper interpretation of the amended Rule 20 (summary judgment motion).

[4] In interpreting these provisions, the Ontario Court of Appeal placed too high a premium on the “full appreciation” of evidence that can be gained at a conventional trial, given that such a trial is not a realistic alternative for most litigants. In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.

[5] To that end, I conclude that summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.

[14] In the present case there are conflicts in the affidavits; however, many of these conflicts do not need to be resolved in order to decide the matters at issue on

this application. Further, where these conflicts do need to be resolved in order to come to a decision on this application, I have concluded that I am able to make the necessary determinations on the basis of the evidence before this court.

[15] There is an extensive evidentiary record before me. The parties filed 18 affidavits. The plaintiffs have had the benefit of two days of examination for discovery.

[16] As mentioned, I have concluded that I am able to find the facts necessary to adjudicate the matter. On a careful review of the evidence before the court on this application, I have formed the view that a full trial will not be necessary to provide a just result. In addition, this summary trial will dispose of the liability aspect of the litigation no matter which way it is decided. It will be, therefore, an efficient use of the court's time.

[17] Accordingly, in the circumstances of this case the summary trial will provide a "proportionate, more expeditious and less expensive" resolution to the matters at issue in the litigation.

Facts

[18] As noted above, Mr. Gupta served as the Treasurer of the Board during Ms. Joshi's tenure as Vice President. Ms. Joshi and Mr. Gupta had ongoing differences of opinion about the management of the Society's finances and its accounting practices. These differences of opinion culminated in an argument between the two at a joint meeting of the Board and Council on January 20, 2013. Ms. Joshi had suggested that the Society seek a second opinion in relation to its method of reporting on charitable donations for tax purposes.

[19] Ms. Joshi deposed that Mr. Gupta had acted aggressively toward her in the argument and dismissed her concerns and comments as having no value. She stated that she believed that he placed no value on her comments because she is a woman and expressed that view in the course of their argument at the meeting.

[20] On January 23, 2013, Ms. Joshi filed a complaint with the Council concerning Mr. Gupta's behaviour at that meeting. Ms. Joshi directed her letter of complaint to Narender Singla, who was then Council Chair. Ms. Joshi later sent an email to Mr. Singla on February 24, 2013, asking for an update on the status of her complaint. At that point no steps had been taken by the Council to deal with the matter.

[21] During this same period, a controversy was developing within the Society concerning the disenfranchisement of life members pursuant to a resolution adopted at the 2012 Annual General Meeting. The details of this dispute are discussed in *Bector v. Vedic Hindu Cultural Society*, 2014 BCSC 230.

[22] 2013 was an election year for the Society. However, the controversy concerning the status of disenfranchised life members had now included threats of litigation. In response to those concerns, on March 22, 2013 the Council passed a resolution to postpone the election of the Board. Mr. Joshi, the defendant's husband, was a member of the Council at the time who voted in favour of the resolution. Ms. Joshi had taken the same position with the Board; however, the Board did not agree to delay the election.

[23] Elections in the Society are conducted on the basis of slates. Ms. Joshi had put her name forward to be a candidate for Vice President on Mr. Goel's slate. Mr. Gupta also put his name forward to serve as a candidate for the same position on that slate. Mr. Goel chose Mr. Gupta to be on his slate as candidate for Vice President. No other slates were put forward and Mr. Goel's slate was elected by acclamation on March 24, 2013.

[24] On March 23, 2013, Mr. Gupta wrote a response to Ms. Joshi's complaint. His response included a complaint of his own against Ms. Joshi. The response is very strongly worded and stated in part:

Facts given by her are nothing but a fabrication of false allegations by an arrogant and self proclaimed messiah who considers, herself is the only one who is always right and is in the habit of indulging in unwarranted and uncalled for arguments with me all the times [*sic*]. When she does not get the desired results then she wants to be treated like a brat, spoiled baby [*sic*].

[25] On March 24, 2013, the Board passed a resolution removing Messrs. Singla and Joshi, two of the four Council members who had voted in favour of postponing the election, from Council and directing the remaining members to appoint replacements. A Council election was then held at the Annual General Meeting in April 2013.

[26] On June 14, 2013, Mr. Kumar, now Council Chair, wrote to Ms. Joshi informing her that a Grievance Committee was to be struck to deal with the dispute between herself and Mr. Gupta. Communications followed between the Grievance Committee and Ms. Joshi. Ms. Joshi held the view that Messrs. Singla and Joshi had been wrongly removed from Council, calling into question the legitimacy of the Council as it stood. That issue too was before the courts. In the circumstances, she declined to name a representative to the Grievance Committee on the basis that the legitimacy of the process was compromised. Council member Santosh Bhushan also expressed concerns about proceeding with the grievance process when the question of the proper constitution of the Council was extant.

[27] On July 16, 2013, Surinder Dhaliwal forwarded the Complaint Letter to Ms. Joshi and Ms. Bhushan. This contained a complaint she made on July 14, 2013 to Mr. Singla as Council Chair concerning Mr. Goel, his wife and Mr. Kumar. Ms. Dhaliwal's complaint was that those individuals were spreading false and defamatory rumours about her, including suggestions that she was a woman of loose character.

[28] Ms. Dhaliwal deposed that she initially directed her complaint to Mr. Singla, believing him to be the Chair of the Council. He wrote back informing her that he was no longer on the Council and could not deal with her complaint. Ms. Dhaliwal deposed that she then directed her complaint to Ms. Joshi and Ms. Bhushan, believing them to be senior female members of the management of the Temple. She also sent her complaint to Vinay Sharma and Suresh Bhayana, the only other people she thought were involved in the governance of the Society whose email addresses she knew.

[29] Ms. Joshi forwarded the Complaint Letter to Council members Ms. Bhushan and Mr. Bhayana, and copied the complainant, Ms. Dhaliwal, on that email. This is the first publication at issue in the litigation.

[30] On July 23, 2013, Mr. Goel, who was the Chair of the Grievance Committee dealing with the complaints of Ms. Joshi and Mr. Gupta, sent an email concerning the Dhaliwal complaint. The Grievance Committee was meeting to finish dealing with those matters on that very day (having previously convened on July 20, 2013). One of the addressees of the email is Mr. Gupta, the subject of Ms. Joshi's complaint.

[31] The email chain shows that Santosh Bhushan had forwarded the complaint to Mr. Kumar for action. Mr. Goel's email questions the motivation for bringing the matter forward. He alleges that the complainant is being directed by Ms. Joshi and that the complaint is part of a "well planned malicious attempt to pursue their corrupt agenda." He suggests that Santosh Gupta, aka Santosh Bhushan, is also part of this team working "to help these people to damage the Society". He requests that she be investigated "...as she is constantly acting illegally and damaging the Society....The reasons given by her are nothing but a fabricated corrupt argument..."

[32] On July 23, 2013, Ms. Joshi sent the Complaint Letter Reply by email to Ms. Dhaliwal, copying Council members Ms. Bhushan and Mr. Bhayana. This is the second publication at issue in the litigation. The email states in part:

... You have [sent] me this email as a vice-president. Right now this management's [existence] is in question. I am unable to address your concerns, but if you require any support, [or] emotional [help], I will be more than happy to do any thing to the best of my ability.

[33] The Grievance Committee did proceed with its deliberations and issued the Grievance Report, which was authored by Mr. Goel and provided to Ms. Joshi by email dated July 31, 2013 from Mr. Kumar. The Grievance Report accused Ms. Joshi of having a "malicious intention to fabricate false allegations" and asserted that she had behaved "unlawfully". It recommended that her membership in the Society be terminated.

[34] Ms. Joshi sent the Grievance Report Reply by email dated August 2, 2013. The Grievance Report Reply was sent to persons who had some role in the process: Mr. Kumar, who had forwarded the Grievance Report to her; Mr. Vinnay Sharma, Secretary of the Board, charged with keeping records of Society matters; Mr. Suresh Bhayana, Secretary of the Council; Ms. Bushan, Council member and member of the Grievance Committee; and Mr. Singla, former Council Chair to whom Ms. Joshi had originally sent her complaint.

The Society as Plaintiff

[35] Ms. Joshi submits that the Society is not a proper plaintiff because the sting of the allegedly defamatory statements is directed at the present management of the Society, not the Society itself, and because the extremely limited circulation of the statements was such that there was no realistic possibility of the Society's reputation and ability to raise funds suffering damage.

[36] The position of the plaintiffs is that an allegation that the management of the Society is operating improperly or mistreating women, or condoning such treatment, is likely to have an impact on donations and membership. Accordingly it is a proper plaintiff.

[37] The right of a non-profit corporation to sue for libel tending to injure its business reputation was confirmed in *Church of Scientology of Toronto v. Globe & Mail Ltd. et al.* (1978), 84 D.L.R. (3d) 239, 19 O.R. (2d) 62 (H.C.J.) [*Church of Scientology*], in which Mr. Justice Cory, as he then was, stated at 241:

Then authorities lead one to the conclusion that there can be no doubt of the right of a non-profit corporation to bring an action for libel or slander without proof of special damages which would affect it in its property or financial position or in the nature of its trade or calling. Where the trade or calling as here is one of "religion" the scope for injury in the trade or calling may be very broad indeed.

[38] However a distinction must be drawn between words that refer to a corporation itself and those that refer to its members or officers. Bull J.A., in a

separate concurring judgment, stated in *Prince George v. British Columbia Television System Ltd.*, [1979] 2 W.W.R. 404 at 406, 95 D.L.R. (3d) 577 (B.C.C.A.):

....that a trading or non-trading corporation clearly has a right to sue for libel if it be defamed as a corporation, bearing in mind the vital distinction between defamation of the corporation as such and defamation of its individual officials, officers, members, servants or agents.

[39] That principle was applied in *Church of Scientology*. The alleged defamation was that members of the Church of Scientology had been practising medicine without a licence. The plaintiff alleged that by these words the defendants meant that the plaintiff was an organization that was breaking the law. Cory J. concluded that the words complained of referred to the members of the organization and not to the plaintiff, and so struck the statement of claim as not disclosing a reasonable cause of action.

[40] With respect to the Complaint Letter, the notice of civil claim states:

10. The e-mail described in paragraph 10 above states the following with respect to the plaintiffs, Parshotam Goel, Santosh Goel, Satish Kumar and the Society:

"I am writing this letter to make official complaint against Mr. Parshotam Goyal, President Laxmi Narayan mandlr, his wife Mrs. Santosh goyal and brother-in-law and council member Mr. Satish kumar.

These people are engaged in spreading false, destructive and defamatory rumors about me by saying things like "gundi, loose character, dar dar firan wali and kanjri" that are extremely offensive, hurtful and untruthful. No woman deserves to be called these names or to be treated with such disrespect."

[41] In my view, it is clear that the words alleged to be defamatory in the Complaint Letter refer to the Individual Plaintiffs and not to the Society.

[42] The notice of civil claim states the following with respect to the Complaint Letter Reply:

8. On July 23, 2013 the defendant falsely and maliciously printed and published an e-mail addressed to Surinder Dhaliwal, which the defendant sent to Suresh Bhayana, Vinay Sharma and Santosh Bhusan, in which the defendant stated the following concerning the plaintiff, Parshotam Goel and the Society:

“I’m sorry to know these people have been spreading these types of filthy rumors about you. This is not new for this management... Present management gives them promotion if you misbehave with women. Mr. Parshotam Goel himself going around in the lowermainland’s [sic] South Asian community and congregation spreading rumors that I have (Karuna) gone to the POLICE, I HAVE GOT RID OF KARUNA, I HAVE TAKEN HER POWERS AWAY....Mr. Goel makes decision on the basis of hearsay, rumors and gossips”[.]

[43] In my view, the reference to “these people”, “this management” and “present management” are words that refer to individual officers and members and not to the Society.

[44] The notice of civil claim refers to the following in relation to the Grievance Report Reply:

7. The e-mail described in paragraph 7 states the following with respect to the plaintiffs, Satish Kumar, Parshotam Goel, Mahesh Gupta and the Society:

“Secondly you have no respect for the VHCS Constitution. I did not see your committee had followed a Constitution or Canadian Law.... Secondly, some women had reported that Mr. Satish Kumar you, Mr. Parshotam Goel and Mr. Mahesh Gupta has been following them in the Temple, harassing them and intimidating them also yells at them if they do not agree with your decision.... I am glad one woman has the courage to come forward and filed a complaint against you and Mr. Parshotam Goel. In her complaint she mentioned you have called her Gundi and Kanjar in Indian language. It almost calling her prostitute.... On February 22, 2013, when I called for emergency as a acting president of VHCS you came to my house and threatened me to stop that meeting. I requested you leave my house.”

[45] In my view, the words alleged to be defamatory in the Grievance Report Reply do not refer to the Society but to the individuals and the Committee.

[46] I have concluded that the words complained of in the three publications at issue do not refer to the Society. It follows that the Society is not a proper plaintiff and the claims it advances are struck.

Qualified Privilege

[47] Ms. Joshi submits that each of the three publications was published on an occasion of qualified privilege. Counsel submits that a longstanding devotee

complained of sexual harassment by senior members of the Society's governing body, including its president. The complainant sent the complaint to Ms. Joshi in her capacity as a long-serving member of the Board and a senior female member of the Society. Ms. Joshi, herself the victim of what she believed to be gender discrimination and who, herself, had a grievance before the Council, forwarded these serious allegations to the very entity charged with dealing with such complaints. She also forwarded her comments of solidarity, and concern, to the Council, as well as to the complainant herself, with whom, counsel submits, she shared a "mutual concern".

[48] Counsel submits that, flowing from the nature of this privilege, the case law has generally recognized four key contexts in which qualified privilege may be found to exist:

- a) protection of one's own interests;
- b) protection of another's interest;
- c) protection of common interests; and
- d) protection of the public interest.

See Lewis N. Klar, *Tort Law*, 5th ed. (Toronto: Thomson Reuters Canada, 2012) at 809-814; and *Rolfe v. Hertz*, 2009 BCSC 1522 [*Rolfe*].

[49] Counsel further submits that in the case of the Grievance Report Reply, Ms. Joshi, like the defendant in *Falk v. Smith et al.*, [1940] 4 D.L.R. 765, [1941] O.R. 17-20 (C.A.) [*Falk*] and the defendant described in *Horrocks v. Lowe*, [1974] 1 All E.R. 662, [1975] A.C. 135 (H.L.) [*Horrocks*], sought to defend herself against a decision, made by what she perceived to be and what counsel submits in actuality was a biased grievance committee, expelling her from the Society and calling her a liar.

[50] The plaintiffs submit that no qualified privilege attached to the communication of the Complaint Letter because Ms. Joshi was under no duty to communicate the

letter, she had no personal interest in communicating it, and she had not been asked to pass it on by the complainant.

[51] The plaintiffs submit that Ms. Joshi was under no duty to communicate the information in the Complaint Letter Reply to Ms. Dhaliwal and that there was no reciprocal interest or duty in making and receiving the information because Ms. Dhaliwal had no authority to deal with Ms. Joshi's complaint.

[52] With respect to both the Complaint Letter and the Complaint Letter Reply, the plaintiffs submit that the law does not recognize a qualified privilege based on "mutual concern".

[53] With respect to the Grievance Report Reply, the plaintiffs submit that there was no duty to communicate the information to Mr. Singla, who was not a member of Council.

[54] Qualified privilege has been defined as follows in *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 78, 126 D.L.R. (4th) 609 [*Botiuk*]:

Qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself. It was explained in this way by Lord Atkinson in *Adam v. Ward*, [1917] A.C. 309 (H.L.), at p. 334:

. . . a privileged occasion is . . . an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

[55] The test to determine whether the occasion is one giving rise to a qualified privilege is objective. This was made clear by the court in *Rolfe* at para. 22:

[22] . . . The issue is not whether the defendant had a right to make the communication or thought that he or she had a duty to make it, but rather whether a reasonable person would feel compelled by a duty to make the communication: *Halls v. Mitchell*, [1928] S.C.R. 125, [1928] 2 D.L.R. 97. In *Sapiro v. Leader Publishing Co. Ltd.*, [1926] 2 W.W.R. 268, 20 Sask. L.R. 449 at 453 (C.A.), Lamont J.A. listed the factors usually considered in the assessment:

... the Judge will consider the alleged libel, who published it, why, and to whom, and under what circumstances. He will also

consider the nature of the duty which the defendant claims to discharge, or the interest which he claims to safeguard, the urgency of the occasion, and whether or not he officiously volunteered the information, and determine whether or not what has been published was germane and reasonably appropriate to the occasion.

[56] Both the Complaint Letter and the Complaint Letter Reply dealt with the treatment of female members of the Society by senior members of the Society's governing body. Ms. Joshi received the complaint and forwarded it to the members who were charged with dealing with such matters.

[57] In my view it can hardly be said that in so doing she was acting as an officious volunteer. Reporting allegations of harassment to the authority charged with dealing with them has been found to be an occasion of qualified privilege; see *J.W. v. Van Bibber*, 2013 YKSC 58 at paras. 65-67, aff'd 2013 YKCA 15; and *Ha v. Harnois*, 2004 SKCA 172 [*Ha*].

[58] The publications in this case occurred in the context of a debate among senior members of the Society concerning these issues, as is evident from Ms. Joshi's complaint, Mr. Gupta's response and complaint, and Mr. Goel's July 23, 2013 email. I find that the Complaint Letter was published on an occasion of qualified privilege.

[59] With respect to the Complaint Letter Reply, I note that in *Rolfe* at para. 29, Madam Justice Holmes concluded that reporting an allegation of sexual harassment to a co-worker who was not in the direct chain of command responsible for dealing with the issue was an occasion of qualified privilege because of the shared interest in the working environment:

[29] I have considered in particular whether Ms. Hertz's statements to Amanda Baxter fell outside the scope of the qualified privilege because Ms. Baxter held no direct supervisory responsibility for Ms. Hertz. However, although Ms. Baxter may not have been Ms. Hertz's superior in a formal chain of command, she was a senior co-worker with a shared interest in the work and working environment of the club's lifeguards. The situation is somewhat analogous to that which Mr. Justice Sigurdson described in *P.B. v. R.V.E.*, 2007 BCSC 1568 at para. 352, in the different context of allegations

of sexual assaults within a family, when he concluded that qualified privilege attached to the communications within the family in part because:

... all family members, particularly adults, share a common interest in potential misconduct by one of their own when young children are concerned. ... In other words, the communications were made by R.V.E. who had an interest in preventing sexual, physical or verbal abuse in the family and they were made to people, namely her brother, her sister and then to all of her siblings and their spouses who I find would have an interest in receiving this information.

[60] In the present case, Ms. Joshi and Ms. Dhaliwal likewise shared a common interest in the behaviour of senior members of the Society with respect to harassment and gender discrimination. I conclude that the Complaint Letter Reply was published on an occasion of qualified privilege.

[61] With respect to the Grievance Report Reply, I agree with Ms. Joshi's submission that she had a clear interest in responding to the Grievance Report, the findings of which essentially amount to a personal attack. In *Botiuk*, Cory J. noted at para. 86:

... As this Court held in *Douglas v. Tucker*, [1952] 1 S.C.R. 275, at p. 286, following *Adam v. Ward*, *supra*, a response to a personal attack is protected by a qualified privilege. However, that response must be "germane and reasonably appropriate to the occasion". See also *Gatley on Libel and Slander*, *supra*, at p. 218.

[62] I find that Ms. Joshi's response was germane and reasonably appropriate. The fact that she used strong language does not defeat the privilege; see *Netupsky v. Craig*, [1973] S.C.R. 55 at 62, 28 D.L.R. (3d) 742. In addition, Ms. Joshi was responding to strong language in the Grievance Report. In such circumstances, the language used is not to be carefully scrutinized and she was entitled to attack the character of her attacker. As stated in *Falk* at 766:

The underlying principle is laid down by Mr. Justice Riddell in *Nixon v. O'Callaghan*, [1927] 1 D.L.R. 1152, 60 O.L.R. 76, in the following terms: A person has a perfect right to answer an attack on his character or conduct. We live in a work-a-day world with men of red blood with natural passions and the language used in repelling an attack is not to be carefully scrutinized.

[63] The audience of the communications was restricted to those Ms. Joshi copied, members of Council, which has oversight of the grievance process, the Secretary who had oversight of the records, and Mr. Singla.

[64] The plaintiffs submit that the privilege with respect to the Grievance Report Reply was exceeded because she copied Mr. Singla, who was no longer on Council, on her email. However, Mr. Singla had been the Chair of the Council when Ms. Joshi made her complaint that initiated the process. Moreover, as noted, Mr. Singla had been removed from his position in a controversial decision of the Board, whose legitimacy had been challenged in a matter that, at the time, was before the courts.

[65] In *Ha*, a case regarding a sexual harassment complaint involving a Master of Tae Kwon Do, the respondent wrote a letter of complaint to the President of the W.T.F. Tae Kwon Do Association of Canada describing two incidents of harassment and requesting an investigation. The letter was copied to 28 other people. All but eight of those recipients were associated with Canadian Tae Kwon Do Associations. The others were representatives of other government sports agencies or other Tae Kwon Do Associations, including international associations. The Saskatchewan Court of Appeal upheld a liberal reading of the association's guidelines identifying persons in authority and supported the finding that the publication was protected by qualified privilege. In the present circumstances, I conclude that publication to Mr. Singla did not defeat the privilege.

[66] I therefore conclude that the Grievance Report Reply was also published on an occasion of qualified privilege.

Malice

[67] The legal effect of the defence of qualified privilege and the issue of malice were addressed by the Supreme Court of Canada in *Hill v. The Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 144-45, 126 D.L.R. (4th) 129, as follows:

The legal effect of the defence of qualified privilege is to rebut the inference, which normally arises from the publication of defamatory words, that they

were spoken with malice. Where the occasion is shown to be privileged, the *bona fides* of the defendant is presumed and the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff. However, the privilege is not absolute and can be defeated if the dominant motive for publishing the statement is actual or express malice. See *Horrocks v. Lowe*, [1975] A.C. 135 (H.L.), at p. 149.

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in *Cherneskey, supra*, at p. 1099, “any indirect motive or ulterior purpose” that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, *Taylor v. Despard*, [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. See *McLoughlin, supra*, at pp. 323-24, and *Netupsky v. Craig*, [1973] S.C.R. 55, at pp. 61-62.

[68] Once the occasion is found to be one of qualified privilege, the burden shifts to the plaintiff to establish malice; see *Horrocks*.

[69] The plaintiffs have submitted that Ms. Joshi bore a great deal of ill will toward Mr. Gupta, citing her letter of complaint as well as statements the Individual Plaintiffs say that she made about Mr. Gupta, statements which Ms. Joshi denies making.

[70] The plaintiffs allege that Ms. Joshi’s “malice towards Mr. Goel appears to be centered on the fact that he decided to leave her off his slate as Vice President and a Director.” The plaintiffs allege that this animosity resulted in Ms. Joshi taking steps to stop the election. Ms. Joshi denies being particularly upset at the decision to not include her on the slate.

[71] The plaintiffs allege that Ms. Joshi bore ill will to Mr. Kumar arising from angry exchanges between the two concerning the controversy over the elections and later with respect to the process of the Grievance Committee.

[72] The plaintiffs argue that the case at bar is similar to *Caldwell v. McBride* (1988), 45 C.C.L.T. 150, [1988] B.C.J. No. 967 (S.C.). In that case, the defendant played poker at a men’s club. He lost a substantial sum to the plaintiff, a professional gambler, and to others in the game. The plaintiff paid off the other players at the defendant’s request, taking postdated cheques from the defendant in return. The

defendant, however, placed a stop payment on the cheques. Eventually the plaintiff took legal action. The plaintiff was discussing the litigation at the men's club when the defendant entered and accused the plaintiff of cheating at cards. This was some two years after the game. Madam Justice Southin, then a Justice of this Court, concluded at 154 that the "defendant attempted to intimidate the plaintiff and ruin his reputation in the hopes that the plaintiff would not pursue his claim." She went on to find that the defendant was motivated by malice, which defeated the claim of qualified privilege.

[73] The plaintiffs have pointed to conflicts in the evidence with respect to whether particular statements were made, conflicts they submit cannot be resolved in a summary trial. However, the proper question is whether the court can find the facts necessary to resolve the relevant issue. In that regard, the relevant issue here is not whether there was ill will between Ms. Joshi and any or all of the Individual Plaintiffs, but whether malice was the dominant motive for the publication.

[74] As Madam Justice Kirkpatrick stated for the court in *Smith v. Cross*, 2009 BCCA 529 at para. 36:

[36] The question of motive in a defamation case was fully explored in Lord Diplock's speech in *Horrocks v. Lowe*, [1975] A.C. 135 (H.L.) at 149-50:

So, the motive with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or a desire to protect the relevant interest. So he is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. 'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

...

[75] Ms. Joshi deposed that her emails "were intended for the Board and Council and were made in an effort to bring to their attention gender based harassment such

that the Council could address that harassment, as it is mandated to do by the Society's bylaws." She noted that she limited her publication to:

...only those key members of Council who were either involved in dealing with the matter specifically, or to Mr. Sharma, who by virtue of his position [on] the Board, would have a role to play. I did not send these emails to the full Board and Council, which combined are composed of approximately 20 members.

[76] Ms. Joshi also deposed that her comments reflect the kind of robust debate and comment that could have taken place in the confines of a Board or Council meeting.

[77] The context of the publication, including the distribution and content of the communication, is consistent with Ms. Joshi's evidence concerning her motives. I am satisfied that the plaintiffs have not met their burden in establishing that the dominant motivation for the publication was an intent to injure, or indeed any other oblique motive.

[78] The plaintiffs have suggested that the motivation for publication was tied to the controversy concerning the election. I find that this was not the case. Ms. Joshi put her name forward to be included on the slate and was passed over. Ms. Joshi and the Individual Plaintiffs wound up on opposite sides of the controversy concerning the disenfranchised life members and the disputed election. However, I am not satisfied that any connection has been established between those matters and the motive for publication of the three allegedly defamatory emails, nor am I of the view that a trial will make any difference on that point. In that regard, I note that the disputed election and the removal of the Council members had all occurred months before these publications.

[79] The plaintiffs have additionally suggested that the motive for the publication of the Complaint Letter Reply was to delay the Grievance Committee hearing. Implicit in this submission is the suggestion that Ms. Dhaliwal's complaint is a fabrication put together by Ms. Bhushan and Ms. Joshi. All three women deny the suggestion of such collusion.

[80] In addition, the timing does not make sense. The Grievance Committee was to meet on July 20, 2013. Ms. Joshi received the email on July 16, 2013. If the purpose of sending the email was to delay the meeting, Ms. Joshi would have sent it before that first meeting of the Grievance Committee, not on July 23, 2013.

[81] Aman Atwal provided an affidavit in which she deposed as follows:

6. On July 4, 2013 I spoke with Mrs. Surinder Dhaliwal and invited her to attend a "Teeyan" practice, which is a cultural dance. Mrs. Bhushan was also present at that time. We were to practice in the Shanti Niketan hall. While Mrs. Dhaliwal was out at her car, I spoke with both Mr. Satish Kumar and Mr. Parshotam Goel in Punjabi about this practice. During this discussion, both Mr. Kumar and Mr. Goel made rude comments about [Mrs.] Dhaliwal and Mrs. Bhushan. When Mrs. Dhaliwal returned I informed her of this, and also that I had heard Mrs. Goel make rude comments about her on January 1, 2013.
7. Mrs. Dhaliwal was shocked and very upset that these individuals were spreading false rumours about her. She asked me to write down what I had told her. My English is not perfect so she suggested that I write it down in Punjabi. I did so and gave it to her on July 8, 2013.

This evidence provides independent corroboration of the matters raised in Ms. Dhaliwal's complaint.

[82] The issue of the honest belief of the defendant is relevant to the issue of malice. The plaintiffs submit that:

If the defendant is to put in issue her honest belief then it will be impossible for the court to decide this issue on the basis of Affidavits as the issue revolves upon the credibility of witnesses, which can only be determined at trial with the benefit of cross examination.

[83] There are two problems with this submission. First, it suggests that the burden is on the defendant to prove honest belief, which is not the case once the occasion is found to be one of qualified privilege, as in the present case. Rather, the burden is on the plaintiff to establish malice.

[84] The second problem is that it suggests that any time malice is at issue, the matter is not suitable for summary trial. There is, however, no such rule. Suitability is a matter to be determined in the circumstances of the particular case. For example,

in *Haight-Smith v. Neden*, 2002 BCCA 132, leave to appeal ref'd [2002] 4 S.C.R. vi, the court upheld the trial judge's decision to determine the issue of qualified privilege and malice summarily. In *Rolfe and McVeigh*, the issues of qualified privilege and malice were found suitable for summary determination.

[85] The plaintiffs have submitted that Ms. Joshi did not have an honest belief in her statements because she had not investigated Ms. Dhaliwal's allegations and because some of her statements were broader than her beliefs. For example, the plaintiffs submit as follows:

With respect to her statement in her e-mail of July 23, 2013 that Mr. Goel always makes decisions on the basis of hearsay, rumors and gossip's [*sic*] she said in discovery that she was only referring to Mr. Goel's false accusation that she had gone to the police.

The defendant said in her July 23, 2013 e-mail: "I'm sorry to know that these people have been spreading these types of filthy rumors about you, but this is not new for this management". When asked who she meant by management she only referred to Mr. Kumar. She was then asked if she believed that Mr. Kumar had spread filthy rumors about other women to which she replied "I'm not sure."

[86] With respect to the issue of honest belief, Ms. Joshi deposes:

2. I understand there is a question about my honest belief in the statement I made in my reply to the complaint letter of Mrs. Dhaliwal (the "Complaint Letter Reply") which reads "I am sorry to know that these people have been spreading these types of filthy rumours about you. But this is not new for this management."
3. A few days ago I saw the statement from Mrs. Aman Atwal attached as Exhibit "A" to the affidavit of Mrs. Surinder Dhailwal sworn on April 7, 2014. That statement has refreshed my memory that sometime in July Mrs. Atwal had conveyed to me the negative statements made by Mr. Kumar and Mr. Goel about both Mrs. Dhaliwal and Mrs. Bhushan.
4. As I testified, as a result of my experience, I recognize how difficult it is for women to come forward with complaints. I also am aware from my experience working with South Asian women and as a counsellor, of women feeling harassed and belittled and having difficulty coming forward to make complaints.
5. To be clear, while I fully believe in the complaints raised by these women, I, of course, cannot know if in fact they were true – only that I believed in their complaints and felt it important that they be brought to the attention of the appropriate limited group of individuals within governance who could deal with those complaints, particularly in light of having received Mrs. Dahliwal's complaint.

[87] In addition, Vijay Arora deposed with respect to an incident involving Mr. Gupta that occurred in March 2011, which she reported to Ms. Joshi. Ms. Bhushan also deposed about incidents that she had reported to Ms. Joshi which had occurred between herself and Mr. Kumar, and later Mr. Goel, in July 2013.

[88] In my view, what is required to establish an honest belief in the circumstances of this case, if there were any such requirement, is that women were making complaints to Ms. Joshi, that she believed those complaints, and that she believed they should be investigated. I find that this has been made out on the facts before me, and that Ms. Joshi did have an honest belief in what she published.

Disposition

[89] It follows that the plaintiffs have not established that Ms. Joshi published with malice. Accordingly, the defence of qualified privilege stands with the result that the action is dismissed. Unless the parties have further submissions to make with respect to the issue, Ms. Joshi is entitled to her costs.

“Ross J.”