

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Newman et al v. Halstead et al*,
2006 BCSC 65

Date: 20060111
Docket: S040599
Registry: Vancouver

Between:

**Edmund Hunter Newman, Charlotte Elizabeth Mary-Ann Harvey,
Roberta Ling, David Ralph Harvey, Kenneth Irvine Piercy,
Elizabeth Jean Eakin, Andrew Duncan Chisholm, David Carl Halme,
John Francis Hurley, David Leonard Morrow and Gale Wheeler**

Plaintiffs

And:

**Susan Pearl Halstead, Telus Corporation, Shaw Communications Inc.,
Yahoo! Canada Co. and Yahoo!, Inc.**

Defendants

And:

British Columbia Teachers' Federation

Defendant by Counterclaim

Before: The Honourable Madam Justice Dorgan

Reasons for Judgment

Counsel for the Plaintiffs and Counsel for
the Defendant by Counterclaim:

H.A. Mickelson
A.D. Gay
L.C. Fong

Counsel for the Defendant:
Susan Pearl Halstead

No one appearing

Dates and Place of Trial/Hearing:

January 24, 25, 26, 27 and 31,
2005;
February 1, 3, 7 and 8, 2005
Nanaimo, B.C.

March 17 and 18, 2005
Victoria, B.C.

INTRODUCTION

[1] A defamation case, by its nature, requires the court to consider the values of acceptable social behaviour founded on respect for individual dignity and reputation, together with that of free speech, a cornerstone of which is fair comment. Added potential defences of justification, or truth, and/or qualified privilege may also pertain.

[2] In this case of alleged defamation, nine of the plaintiffs are public school teachers, one of the plaintiffs is a retired school board trustee, and one is a parent whose children formerly attended public school. Two of the plaintiffs, Elizabeth Eakin and Andrew Chisholm, reside in Prince George and the plaintiff David Halme lives in the Cowichan Valley. The rest of the plaintiffs and the defendant all reside in the Comox/Courtenay area.

[3] The defendant, Ms. Halstead, long involved in her community as a volunteer, has become focused on her concern that certain teachers, school board officials and parents involved in the education system have acted improperly. The defendant has posted her views, including very serious allegations of manifestly improper conduct, on Internet websites, chat rooms and via e-mail. Most of her allegations involve the plaintiffs.

[4] For context, evidence was called regarding years of interaction, sometimes conflict, between Ms. Halstead and a number of people holding various positions within School District 71, the Comox Valley District (the "District"). The plaintiffs' claim is in relation to events alleged to have taken place within two years of the commencement of their action.

THE ACTION

[5] The plaintiffs commenced this action in January 2004. They seek damages, including punitive damages, and broad injunctive relief. In addition to Ms. Halstead, the plaintiffs named several Internet service providers and Internet website hosts. The plaintiffs discontinued against the other named defendants and proceeded solely against Ms. Halstead.

[6] Ms. Halstead, then represented by counsel, filed a statement of defence in March 2004. In May 2004 she filed a counterclaim against the British Columbia Teachers' Federation ("BCTF") alleging the organization is the force behind the plaintiffs' action, and alleging it had committed the tort of maintenance or champerty.

[7] In June 2004, counsel for Ms. Halstead advised plaintiffs' counsel that the defendant intended to "walk away" from the litigation (including all pre-trial proceedings and the actual trial). While Ms. Halstead still had counsel, the plaintiffs obtained an order compelling Ms. Halstead to participate in examinations for discovery in August 2004. It appears that Ms. Halstead has represented herself from that point on.

[8] Ms. Halstead was examined for discovery over the course of six days. In response to demands for pre-trial discovery, she produced over 6,000 pages of documents, many of which are exhibits in this trial.

[9] Ms. Halstead chose not to participate in the trial of this matter. She did not appear on the first day of this trial, either personally or through an agent. The court was offered no explanation for her absence.

[10] The plaintiffs applied pursuant to Rule 39(33) for an order that the trial proceed. While they were then in a position to take default judgment against Ms. Halstead, they instead pressed the court to try their case on its merits (with all the risks that entailed), to allow them the opportunity

to prove that they were in fact the subject of defamatory statements made and published by the defendant. In making that ruling, I found as facts that Ms. Halstead knew the date and place of trial and that her absence was deliberate. I ordered that the trial would proceed, notwithstanding the absence of Ms. Halstead: **Newman v. Halstead** (3 February 2005), Nanaimo S040599 (B.C.S.C.) (unreported).

[11] The Second Amended Statement of Claim (the "Amended Statement of Claim") cites over sixty allegedly defamatory statements which the plaintiffs say were published by Ms. Halstead. The plaintiffs allege that commencing in the summer of 2002, Ms. Halstead created two or more Internet "chat rooms" or "bulletin boards" through which she communicated with parents and others in the education system, and that in February 2003 she created a website named "GAFER", apparently an acronym for "Growing Advocacy for Education Reform". The plaintiffs allege that Ms. Halstead published defamatory statements over the Internet through these vehicles she created and operated.

[12] Ms. Halstead writes e-mail prodigiously. Some of the alleged defamatory statements enumerated in the Amended Statement of Claim are contained in e-mail messages distributed to large numbers of recipients. The alleged defamatory statements attributed to Ms. Halstead are repetitious, and use the same, or variations of the same, language.

[13] Each of the plaintiffs except Andrew Chisholm gave evidence, as did non-party witnesses called by the plaintiffs. I was advised that the defendant apologized to Mr. Chisholm and that accordingly, Mr. Chisholm would seek a ruling on the tort claim and, if successful, nominal damages.

THE COUNTERCLAIM

[14] Ms. Halstead presented no case to support her claims and, accordingly, her counterclaim against the BCTF is dismissed with costs.

BACKGROUND

[15] Ms. Halstead is a parent whose children attended public schools in the Comox Valley. She is self-described as a long-time community volunteer activist. She appears to be a quasi-public figure in the Comox/Courtenay area. From 1999 to 2000, she sat on the executive of the Cumberland Junior School Parent Advisory Council ("PAC"). She was also a member of the executive of the PAC at Cumberland Elementary and GP Vanier Secondary School. For a number of years, concluding in 2001, she was on the executive of the District PAC, an umbrella organization of which all the PACs are members. She was involved with the BC Confederation of Parent Advisory Councils ("BCCPAC") of which each District PAC is a member. She was the parent representative on the accreditation team which reviewed and accredited Cumberland Junior School and various other schools.

[16] Ms. Halstead has also been on the executive and chaired various advocacy groups including: "Parents Against Violence Everywhere" ("PAVE"), of which she is co-founder and current president; and the Comox branch, which she founded, of the Cowichan Valley Learning Disability Association ("CVLD"). As president of PAVE she has had contact with the media, with government representatives, and others in the "anti-bullying" movement. She has spoken to audiences of over 200 people in locations around the province.

[17] Ms. Halstead twice campaigned for the office of school trustee in School District 71, once in 1999 when she apparently lost by a single vote,

and again in 2002. She regularly writes letters to the editors of the local newspapers, letters she signs as "President, PAVE ñ Parents Against Violence Everywhere Society" or "President, CVLD ñ Comox Valley Learning Disabilities Association". She has attended innumerable District 71 School Board (the "School Board") meetings over the years. She formerly sat on a number of School Board committees.

[18] Further, Ms. Halstead has filed human rights complaints and freedom of information requests. She has dealt with the provincial Office of the Ombudsman. In other words, she is well acquainted with the processes involved with and required in dealing with authoritative institutions within her community and indeed the province.

[19] The evidence, including Ms. Halstead's own evidence on discovery, clearly shows that she created Internet chat groups or bulletin boards through which she communicated with parents and others within the education community in the Comox Valley and beyond. In February 2003 she created the GAFER website, the access to which was through addresses on the Shaw and Telus systems. These modes of Internet communication supplemented her use of e-mail by which she distributed messages to a broad audience, at times copying 20 or 30 people with her original message, some of whom were the plaintiffs' employers and immediate supervisors, including principals, vice principals, and the Superintendent and Assistant Superintendent of School District 71. By e-mail, Ms. Halstead regularly made allegations of teachers' misconduct and allegations that the School Board mishandled or covered up the behaviours she referred to.

[20] On Ms. Halstead's GAFER website was a page entitled "B.C.'s Least Wanted". On that page was a chart designed in a rogues' gallery format entitled "Least Wanted Educators". The chart consisted of a gallery of names and photographs of people Ms. Halstead considers to have engaged in wrongful conduct within the education system. The "Least Wanted Educators" chart was broken down into a number of subcategories, including:

"Criminal Convictions" - where there were names and pictures of teachers and others who have been convicted of crimes. Many of these are sex-related crimes committed against students;

"Criminal Charges" - where there were names and pictures of teachers and others who have apparently been charged with crimes;

"Decertifications" - where there were names and pictures of teachers who have had their certificates revoked by the College of Teachers;

"College of Teachers' Discipline" - where there were names and pictures of teachers who have been disciplined by the College of Teachers;

"Educators in Court" - where there were names and pictures of teachers and others involved in various forms of litigation;

"Bully Educators" - where there were names and pictures of teachers and others who Ms. Halstead alleges have committed acts deserving of rebuke, or deserving of the description "bully"; and

"School Board Bullies" - where various school boards were named as having engaged in 'bully tactics', allegedly against parents and students.

[21] Seven of the plaintiffs were named as "Bully Educators" in the "Least Wanted Educators" chart: Edmund (Ted) Newman, David Leonard (Len) Morrow, Roberta Ling, Kenneth Piercy, Andrew Chisholm, Elizabeth Eakin, and David Halme. Photographs of Mr. Newman and Mr. Morrow were posted on the site

under the "Bully Educators" heading. Those whose photographs were not posted on the site were depicted by a cartoon image of an apple with a worm in it.

[22] There was a further link on the GAFER site to "RCMP investigations". The plaintiff Mr. Newman was identified on this page in addition to being named a "Bully Educator".

[23] A click of the mouse on the name or photograph of a person on the "B.C.'s Least Wanted" page linked the viewer with documentation regarding the person's alleged misdeeds. That documentation included newspaper articles, letters to the editor, correspondence exchanged between Ms. Halstead and others, documents obtained by Ms. Halstead from regulatory bodies, and commentaries written by Ms. Halstead.

[24] Ms. Halstead created a separate link on the "B.C.'s Least Wanted" page to a "Bully Parent" page. The link to that page was represented by a cartoon image of a boxer. Ms. Halstead placed the plaintiff Gale Wheeler's name on that page. A click of the mouse on Ms. Wheeler's name linked the viewer to information and commentary on the alleged misdeeds of Ms. Wheeler. Ms. Wheeler then had two children in the local school system and was active in the Parent Advisory Committee with Ms. Halstead for a number of years.

OVERVIEW OF THE LAW OF DEFAMATION

[25] The common law recognizes that every person is entitled to his or her good name or reputation. That good name or reputation cannot be impeached without lawful justification or excuse. In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129 (*Hill*), Cory J. explained the importance of dignity to a person's reputation as follows (at paras. 107-108):

[107] ... A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws. ...

[108] Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.

[26] In a defamation action, a plaintiff has the burden of establishing that the impugned words were written and published, that the words referred to the plaintiff, and that the words complained of are defamatory. See *P.G. Restaurant Ltd. v. Northern Interior Regional Health Board et al* (2004), 25 B.C.L.R. (4th) 242, 2004 BCSC 294 at para. 111, rev'd on other grounds 2005 BCCA 210 (*P.G. Restaurant*).

[27] In law, "publication" in this context, is essentially the communication of a defamatory statement to a third party; publication to a wide audience is not required. This can take place through a variety of media, including through the Internet.

[28] A published defamatory falsehood in writing constitutes a libel. The threshold inquiry in every defamation action is whether the words that are published are reasonably capable of a defamatory meaning: *Brown, The Law of Defamation in Canada*, 2nd ed., (Toronto: Carswell, 1994) at 171.

[29] The essence of a defamatory statement is its tendency to injure a person's reputation. A statement is defamatory if it tends to lower the reputation of the plaintiff in his or her community in the estimation of reasonable persons: ***Botiuk v. Toronto Free Press Publications Ltd.***, [1995] 3 S.C.R. 3 at 24, 126 D.L.R. (4th) 609 (*Botiuk*).

[30] In the case of ***Cronk v. Cundall*** (1993), 87 Man. R. (2nd) 141, M.J. No. 379 (Q.B.) (QL) (*Cronk*), Justice Wright of the Manitoba Court of Queen's Bench wrote at paras. 26 to 27:

[26] The law of defamation protects a person's reputation from defamatory falsehoods. A publication is considered defamatory if it has the tendency to lower that reputation in the estimation of right thinking members of society. The court's duty is to determine if the alleged defamatory material, upon being given its natural and ordinary meaning as understood by average right thinking and reasonable persons, could convey a derogatory meaning tending to defame the plaintiffs.

[27] Courts have found statements to be defamatory where their impact is to expose a person to hatred, contempt and ridicule, or cause a person to be detested, despised or regarded with feelings of dislike, fear or scorn.

[31] In ***Cronk***, Justice Wright further notes that if a statement published by a defendant is found to be defamatory, it is presumed to be false. If the truth of material found to be defamatory is established, the publication of the material is not actionable no matter "how callous or malicious the defendant may be in publishing ..." (at para. 29).

[32] The affirmative defences to defamation are found in the plea of justification, or of fair comment, or of qualified privilege. If the plaintiff proves the published words are in fact defamatory of him or her, the defendant has the onus of proving that at least one of the defences applies. In this case, while the principal defence raised by Ms. Halstead's pleadings is justification, she also pleads fair comment and/or qualified privilege.

[33] While it is acknowledged that Ms. Halstead would not participate in the trial process and that she bears the onus of establishing the defences raised in her pleadings, the plaintiffs specifically addressed the three defences raised in Ms. Halstead's statement of defence in their evidence and submissions. They submit they did so because the law acknowledges that public vindication is pivotal in a libel action and because they viewed as imperative the need to present the fullest possible case in the absence of Ms. Halstead.

[34] Justification is the technical name for a defence of truth: ***Hare & Grolier Society v. Better Business Bureau***, [1947] 1 D.L.R. 280, 1.W.W.R. 25, at 284 (B.C.C.A.) leave to appeal to S.C.C. refused (1947), 1 W.W.R. 289. It is a complete defence to a defamation action. Truth is a defence even if the defendant spoke maliciously with the intention of ruining the plaintiff's reputation: ***Taylor-Wright v. CHBC-TV, a division of WIC Television Ltd.***, [1999] B.C.J. No. 334, at para. 34 (S.C.), affidavit without discussion on this point (2000), 194 D.L.R. (4th) 621 (B.C.C.A.). The defendant's state of mind is irrelevant to the defence of justification.

[35] The defence of fair comment was summarized by Goepel J. in *P.G. Restaurant*, *supra*, at paras. 156 and 157, as follows:

[156] As Brown states in vol. 2 at p. 15-14, the defence of fair comment is established where the following five elements are present:

To satisfy the requirements of this defence, it must be shown that the words are (1) comment; (2) based upon facts that are true; (3) made honestly and fairly; (4) without malice; (5) on a matter of public interest.

[157] For a statement to be a comment it must be clearly recognizable as a statement of opinion, not as a bare statement of fact: see *Vander Zalm v. Times Publishers Ltd.* (1980), 109 D.L.R. (3d) 531 at 535 (B.C.C.A.).

[36] The defence of fair comment will fail if the plaintiff proves that the dominant motive for publishing the defamatory expression is actual or expressed malice.

[37] A defendant is actuated by express malice if he or she publishes a defamatory expression:

1. Knowing it is false (*Hill* at para.145; *Botiuk* at 29); or
2. With reckless indifference whether it is true or false (*Botiuk* at 29); or
3. For the dominant purpose of injuring the plaintiff because of spite or animosity; or
4. For some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion: *Botiuk* at 29.

[38] The defence of qualified privilege protects defamatory errors of fact which are not excused under the defences of justification or fair comment. Qualified privilege applies to an occasion where the defendant has an interest or duty (legal, social, or moral) to communicate the defamatory expression and its recipients have a corresponding duty or interest to receive that communication: *Pressler v. Lethbridge* (2000), 86 B.C.L.R. (3d) 257 at 295, 2000 BCCA 639. On the facts in the case at bar, I find that the defence of qualified privilege simply does not apply.

[39] Each of the defences of justification and fair comment require proof that the impugned statements, or the facts upon which they are based, are true. In her pleadings, Ms. Halstead asserts that her published statements are true, yet she refused to come to this trial to support that assertion. The evidence shows that Ms. Halstead is a prolific writer, and that she converses with persons in authority and deals with authoritative institutions regularly and readily. One would have thought she would take advantage of the opportunity this trial afforded her; the opportunity to make public, yet again, her apparently long-held belief that each of the plaintiffs has acted improperly. This trial was her chance to prove the truthfulness of her allegations yet she deliberately chose not to attend. She simply would not take the witness stand in a public courtroom.

[40] Our courts regularly hear from self-represented litigants, some of whom are decidedly less articulate than Ms. Halstead appears to be. Much of Ms. Halstead's correspondence and publications filed as evidence in this trial indicates that Ms. Halstead is capable of researching legal topics, and

understanding and utilizing regulatory regimes. For example, in some of her writing, she refers to sections of legislation, or to the law generally, in support of her positions. Against this backdrop, it is surprising that Ms. Halstead did not appear in her defence. Ms. Halstead should not expect to escape the legal consequences -- the responsibility for her actions -- by simply opting out of the process at the eleventh hour.

CONTEXT IN WHICH THE ALLEGED DEFAMATION OCCURRED

[41] The context in which the alleged defamatory statements were made by Ms. Halstead is of some import. Several witnesses testified regarding Ms. Halstead's lengthy campaign of conflict within the school system. The evidence establishes that since in or about 1997, Ms. Halstead has been highly conflict-driven, waging battles with everyone from PAC parents to teachers, trustees, and the Superintendent of Schools.

[42] Danny White, a public school trustee in School District 71 since 1986, testified that Ms. Halstead has become well known to him in the years he has worked as a school trustee. He testified that in around 1996 or 1997, Ms. Halstead began sending letters to District 71 School Board members on a frequent basis. Much of the correspondence he received as a Board member was correspondence from Ms. Halstead directed to the Superintendent or others within the District, (such as School Board staff), copied to the seven members of the Board.

[43] Mr. White testified that he kept track of the e-mail correspondence he received from Ms. Halstead between the spring of 2003 and early 2004. That e-mail correspondence comprises 11 computer floppy disks. The court received a 2-inch binder as an exhibit containing over 40 e-mail messages Mr. White received from Ms. Halstead and they represent, according to Mr. White, about one percent of those he received from her between 1997 and 2003.

[44] Mr. White testified that Ms. Halstead's output of correspondence exceeded the combined output of all other persons in the entire District who wrote to the Board. He testified that many of Ms. Halstead's letters or messages were lengthy.

[45] Ms. Halstead's e-mail messages were sent to a wide audience, including District staff, trustees, principals and vice principals, media outlets, and politicians such as the MLA for the Comox area and the Minister of Education.

[46] In addition to the correspondence were Ms. Halstead's written complaints to various officials, agencies and tribunals, which she copied widely to various people including Board members. Mr. White and the plaintiff Mr. Morrow, a former Board member and chair, testified that the number of "official" complaints from Ms. Halstead was "considerable". Mr. White testified this included complaints to the Human Rights Tribunal, the Ombudsman, the College of Teachers, the Workers Compensation Board, the Information and Privacy Commissioner, and the Superintendent of Schools.

[47] Mr. White further testified that as part of her campaign, Ms. Halstead filed an immense number of Freedom of Information ("FoI") requests, followed up by a number of formal complaints to the Information and Privacy Commissioner. Mr. White testified that Ms. Halstead would use the requests to try to obtain confidential information from the files of various personnel, including those of teachers. The frequency and scope of Ms. Halstead's FoI requests became so oppressive that the Board made an application under

the **Freedom of Information and Protection of Privacy Act** for permission to cease responding. Mr. White testified that this resulted in a mediated agreement whereby Ms. Halstead was limited to filing two requests every three months.

[48] The evidence shows that Ms. Halstead has a significant number of supporters in the parent community. For example, a number of parents wrote letters to the Select Standing Committee on Education to express support for positions taken by Ms. Halstead in a submission to that Committee.

[49] Ms. Halstead's campaign had an increased profile due to Ms. Halstead's frequent reference to herself as the president of either PAVE or the Comox Valley branch of the CVLD. There is evidence to suggest that Ms. Halstead used these organizations, and her title of "president", to advance her personal views and her personal campaign. For example, in a PAVE press release, Ms. Halstead twice refers the reader to her own GAFER website, referring to it as "the one-stop advocacy site". Another example is Ms. Halstead's October 24, 2001 letter to the Board complaining about Mr. Morrow's behaviour at a student disciplinary hearing. Ms. Halstead attended that hearing as an "advocate" for the family, not as a representative of the Learning Disabilities Association, yet she put her complaint on the Association's letterhead. Further, Ms. Halstead frequently signed letters to the editor as "Sue Halstead, President" of PAVE or the CVLD.

[50] Ms. Halstead's profile appears to have extended broadly within education circles. In one of her e-mail messages, dated July 16, 2003, Ms. Halstead attaches a further message from the Project Coordinator of an anti-bullying project sponsored by the Canadian Public Health Association. The Coordinator states that Ms. Halstead was recommended by a representative of the University of British Columbia as "being able to offer excellent advice and information from a parent's perspective on the issues of bullying".

[51] Ms. Halstead repeatedly used highly charged language in making allegations and accusations in published statements to and about the Board, allegations and accusations which, according to the evidence of Mr. White and Mr. Morrow, were not warranted. She frequently published statements that the Board was involved in unimaginable corruption and engaged in "cover-ups" or "collusion". She would further allege that the Board was covering up "child abuse" and "crimes", and was guilty of "inciting hatred" and levelling "war-like psychological abuse" against her.

[52] Mr. White testified that almost all of Ms. Halstead's correspondence contained accusations of misconduct about someone. The evidence of the plaintiff Mr. Morrow and the plaintiff Ms. Wheeler corroborated this evidence. Mr. White and Mr. Morrow categorically denied Ms. Halstead's allegations that the Board was corrupt and engaged in cover-ups of alleged misconduct. They testified that all complaints made to the Board, including those of Ms. Halstead, were investigated. Whenever Ms. Halstead's complaints were found to be groundless, thereby requiring no further Board involvement, she often made and published statements that the Board was "covering up" or was otherwise incompetent.

[53] On a number of occasions, Ms. Halstead complained to outside agencies and was told that her allegations had not been substantiated. For example, the Ombudsman was "not able to substantiate" Ms. Halstead's complaint that "School District 71 failed to respond to her queries and efforts to hold the Board of Trustees accountable for the conduct of various district staff".

[54] One of Ms. Halstead's allegations was that she herself was being libelled and slandered. She went so far in one piece of correspondence

to say that it had been "proven" that Mr. Morrow had libelled her. Mr. Morrow testified this simply was not true.

[55] Once this action was commenced, Ms. Halstead filed complaints with the B.C. College of Teachers about a number of the plaintiffs. She described the plaintiffs' lawsuit against her as "vengeful" and "vexatious".

[56] There is evidence that Ms. Halstead actively promoted her GAFER website and received press coverage in relation to it throughout the year 2003. Her website was referred to in an article in the *Vancouver Sun* and in a Mission newspaper from the Fraser Valley. Her website was also referred to in articles in the *Cowichan News Leader*. At one point, V.I. News interviewed Ms. Halstead as part of a larger piece on education. Her website and the work she was doing to "advocate" for children were referred to in a CHEK-TV news report and in a *Vancouver Sun* article. Mr. White testified that in 2002, there was an article or letter published in one of the local Comox Valley papers approximately every two weeks that made reference to Ms. Halstead's GAFER website. Many of Ms. Halstead's e-mails indicate they were sent to media outlets including the *Comox Valley Echo* and the *Vancouver Sun*.

[57] Mr. White testified that all of the District trustees were aware that Ms. Halstead had a website named "GAFER". He testified that it was the topic of conversation among trustees, including at the Vancouver Island level and at the Annual General Meeting of the B.C. School Trustees Association. He also testified that the GAFER site was widely known amongst District staff. A hit counter on that site shows the extent of access to it. Before this action started and as of December 30, 2003, the GAFER site had 3,598 "hits". By July 13, 2004, it had 5,113 "hits".

[58] The evidence shows that Ms. Halstead consistently and regularly, through correspondence, articles, and her website, expressed anti-teacher sentiment. An example of such sentiment is found in an e-mail message Ms. Halstead wrote to the plaintiff Mr. Morrow in which she stated:

As far as my personal beliefs of the political climate in education, I find it very depressing and personally am feeling the heat from all partners. The turf war has started no doubt Teachers are out of control. I believe a strike will be deadly for the teachers because the support workers have suffered much to supply them with their big wages, job security and PERCSÖ [emphasis in original]

[59] Further evidence of this sentiment is found in Ms. Halstead's November 1, 2002 e-mail to the Superintendent of School District 71, where she writes:

So grow up and start behaving like the professionals every teacher keeps harping about being and stop trying to keep parents from seeing what exactly it is that you do during your 6.5 hour day.

...

How can we respect a profession when they don't respect themselves? They certainly don't demand respectful behaviour of each other either.

[60] In a May 2003 e-mail sent to Mr. White, Ms. Halstead expressed her views of the BCTF:

It [the website] shows that parents can make a difference, but it seems we can only make a difference by being as loud, obnoxious and tenacious as the BCTF...

Don't forget that Administrators came from teaching roots and ideologies. When things get uncomfortable for them they will fall back on that.

[61] In her submission to the Select Standing Committee on Education, Ms. Halstead concluded her submission by saying:

As long as the BCTF is driving the bus, Children will continue to be the road kill left at the side.

[62] Mr. White testified that by about 1997, Ms. Halstead became "very opposed to the public system" and "very aggressive" toward District staff. He testified that Ms. Halstead would "go through" the entire staff of the District office, and that her relationship with each individual would start positively and then inevitably turn sour.

[63] The plaintiff Mr. Morrow testified that he had a good relationship with Ms. Halstead in the early to mid-1990s and that Ms. Halstead's input and involvement were constructive at that time. He testified that this changed between 1996 and 1997, and that he became the lightning rod for her increasing animosity. Mr. Morrow testified that this was one of the reasons why he voluntarily stepped down as Board Chair in 1997, and ultimately one of the reasons he did not run in the 2002 election for the School Board.

[64] The plaintiff Ms. Wheeler also testified that Ms. Halstead was relatively balanced and very constructive in the school their children attended in the early and mid-1990s. She testified that in around 1996 to 1997 she began to see changes in Ms. Halstead. Ms. Wheeler testified that Ms. Halstead became increasingly conflict-oriented and accusatory of others.

[65] Ms. Wheeler testified that relationships within the PAC began breaking down and that by the fall of 1998 Ms. Halstead appeared to be in conflict with virtually everyone in the school. As a consequence, Ms. Wheeler resigned from the PAC executive. Thereafter she had no contact with Ms. Halstead until she received Ms. Halstead's August 26, 2000 letter sent to various former members of the PAC executive. In the letter Ms. Halstead put the former PAC executive members on notice that she had obtained a legal opinion on the law of defamation.

[66] Further illustrations of Ms. Halstead's approach is found in the evidence relating to an incident referred to as the "ambush" and to an incident referred to as the "rampage". The evidence shows that six years prior to the commencement of this action, the Comox Valley School District decided to eliminate the "Summit Program". The program was designed to help students with severe behavioural problems and was headed by a teacher, the plaintiff Mr. Harvey. A June 2, 1998 meeting was held, attended by a number of parents concerned with the proposed cancellation of the program. Mr. Harvey and the plaintiff Mr. Newman, a teacher also involved in the program, attended the meeting, albeit briefly. The evidence shows that at the request of the principal, Mr. Newman and Mr. Harvey left the meeting shortly after it started. According to the evidence of witnesses who were at the meeting, in particular parents such as Ms. Grant and Ms. Jager, Mr. Harvey and Mr. Newman left the meeting without incident and the meeting continued uneventfully.

[67] The evidence of both Mr. Harvey and Mr. Newman was that they attended the meeting for a short time and, at the request of their principal who suggested there may be a conflict of interest for teachers to be at that particular meeting, said goodbye and quietly left the room.

[68] In evidence is a letter that Ms. Halstead and another member of the PAC wrote to the Superintendent of Schools regarding the June 2, 1998

meeting. In it Ms. Halstead alleged that the principal was "politically ambushed" by the teachers Mr. Harvey and Mr. Newman and that those same teachers "very rudely" showed "disrespect" to the principal, "very loudly slammed the door" on the way out and behaved "inappropriately". The letter alleged that the "intention" of these teachers "was to put the principal in the position of having no real way to defend himself" and that the teachers were using parents as "political pawns". The letter called for disciplinary action to be taken against Mr. Harvey and Mr. Newman.

[69] Ms. Grant testified that the description of the meeting set out by Ms. Halstead presented a completely false account of what took place.

[70] Approximately five years later, and in 2003, Ms. Halstead published statements on the Internet regarding this same June 2, 1998 meeting. She alleged that Mr. Newman was involved in a "violent" ambush of the school principal. The plaintiffs' Amended Statement of Claim makes references to the 2003 publication. They include the following excerpts:

... two teachers were involved in an ambush of their principal, on their off time, displaying violence and documented insubordination with efforts to have parents demonstrate against him in the parking lot for the removal of a Severe Behaviour Program from the school
...

... Yet Mr. Newman was my daughter's special education teacher. Mr. Newman was angry about a formal complaint I had co-signed with my PAC Co-Chair about earlier violence we were both eye witnesses to.

[71] Further, Ms. Halstead published a number of statements to the effect that Mr. Harvey is "violent" and in her Statement of Defence, cited the June 2, 1998 meeting as one of her particulars for justification.

[72] Ms. Halstead's testimony under oath at her examination for discovery simply does not support the allegations which she made and published regarding the June 2, 1998 meeting. In stark contrast to her published statements, her discovery evidence relevant to this point is as follows:

... She admitted that she did not watch what Mr. Newman was doing at the meeting and she agreed that nothing he said or did made any particular impression on her.

... She admitted she did not know why Mr. Newman was at the meeting but thought that "maybe he had been manipulated by somebody into the situation".

... When questioned about her published statement that the two teachers displayed violence, she confirmed that neither Mr. Newman nor Mr. Harvey hit or otherwise physically assaulted anyone at the meeting.

... She agreed that Mr. Newman did not push, swear at, or threaten anyone. Indeed she testified that he said nothing at the meeting.

... She testified that she witnessed no physical altercation at the meeting involving Mr. Harvey. The only "violence" she could point to involving Mr. Harvey at the meeting was alleged "intimidation".

... She conceded that she did not see Mr. Newman slam the door upon departure from the meeting and that he did not

participate in the "refusing to leave" she described in her published statements.

[73] Further, and again in 2003, Ms. Halstead published statements initially made in a February 10, 2003 complaint filed with the B.C. Human Rights Commission in which she described the reactions of Mr. Harvey and Mr. Newman on June 4, 1998 when they became aware of the letter she wrote to the Superintendent after the June 2, 1998 meeting (the letter referred to in para. [68] of these Reasons).

[74] Ms. Halstead's 2003 description of the events of June 4, 1998, described the teachers, particularly the plaintiffs Mr. Newman, Mr. Harvey and Ms. Harvey as going on a "rampage" through Cumberland Junior School during which they "abandoned" their classes and that they "... continued their terrorism throughout the School for the rest of that morning". She wrote and published that Mr. Newman held the whole school "hostage" for the entire morning. Her published statements include the following:

... These are just two incidents of this teacher's behaviour that has affected my daughter. Finally I made a formal complaint. The man [Newman] became so enraged he terrorized the whole school for the entire morning ... After five teachers gathered in this LA class and cried and made threats they all abandoned the kids and continued on down the hallways, slamming doors, threatening the administrators and finally threw a secretary out of the room ...

...The two teachers, upon finding out they were reported, went nuts in the school, and yelled verbal threats to hear at both the parent witness and the principal ... special needs students were abandoned and shaking and frightened, in their classroom ...

In the case of Mr. Newman, for instance, on at least one occasion he stormed around the school swearing and threatening people, including myself ...

He's [Newman] "gone off" on entire special ed classrooms. He held the school hostage for this entire morning ...

[A] special ed class was abandoned after displaying his [Newman's] anger at me in a violent and uncontrolled manner with other teachers in front of the class. One of those teachers was openly crying. Other students remarked "whoa, this is scary". After abandoning the class, he screamed threats to bodily hurt me and the principal as he rampaged down the hall with these other teachers ...

He was the one who gave orders to administrators at the school not to call the police while Ted Newman, Dave and Charlotte Harvey and ... went on this tantrum throughout the school that scared my daughter and the other special ed children they abandoned. Charlotte Harvey was in the class crying in front of all the children ...

[75] At her examination for discovery, Ms. Halstead was asked questions regarding her 2003 published version of the events she alleged took place on June 4, 1998. Again, in stark contrast to her published version, Ms. Halstead testified that:

... She was not present in the school during these alleged events.

... Apart from the students in the learning assistance room, Ms. Halstead had no knowledge that any other students in the school knew anything was going on in the school during the alleged rampage/hostage situation, and no knowledge that any such students felt they were being held hostage in the school.

... Her use of the "hostage" language was an overstatement that she now regrets.

... As for what happened in the learning assistance room, Ms. Halstead confirmed the only person from whom she obtained information was her daughter who was in the learning assistance class for a maximum of 50 minutes and so could not have witnessed events for more than that length of time.

... When the teachers were in the learning assistance room, they were in a soundproofed glassed-in area, so that it was unlikely the students could hear anything and nothing was specifically said to the students.

... She did not know if Mr. Harvey was even present for this event.

... As for the alleged "abandonment", her daughter "believes" the teachers were out of the class for "at least half an hour". But Ms. Halstead admitted her daughter has difficulty estimating time, and says she "would not want to put on record that it was any particular length of time". She agreed she "wouldn't want to put a lot of stock" in her daughter's estimates of time.

... She was not certain whether a teaching assistant remained in the learning assistance class when the teachers allegedly left.

... As for the assertion that all the teachers abandoned their classes, she had "no idea" if the plaintiff Charlotte Harvey did this, and added "I don't know that [my daughter] made an allegation that people abandoned the class, that's my allegation ...".

... As for the assertion that Charlotte Harvey was "openly crying" in front of the class, Ms. Halstead's information from her daughter was that Ms. Harvey "appeared to be crying" because Ms. Harvey was "all red-eyed".

... It was exaggeration to say that Mr. Newman "terrorized the whole school for the entire morning".

... She had no recollection of her daughter telling her any of the teachers were "swearing" in the school that day.

[76] Ms. Langdon, a teaching assistant who was in the learning assistance room on June 4, 1998 testified. When referred to the defendant's written description of the events of the "rampage", Ms. Langdon testified that she had no recollection of any such events taking place at that time or at any time in the 12 years she worked as a teaching assistant at Cumberland Junior School. I accept Ms. Langdon's evidence.

[77] Again, with respect to the "rampage" incident, Ms. Halstead published that one of the school's secretaries told her that Mr. Newman was on the phone in the school office making verbal threats to the principal. Ms. Halstead's version of events implied that the school secretary would have been

aware or would have seen the behaviour of the teachers as described by Ms. Halstead. Further, she published that a school secretary told Ms. Halstead she was afraid of Mr. Newman and that no one had ever held Mr. Newman accountable.

[78] Ms. Rennison testified that she was a secretary at Cumberland Junior School for 14 years and the secretary working in that capacity on June 4, 1998. She was referred to the evidence of Ms. Halstead's written description of the "rampage". She testified she had no recollection of such an event; specifically she had no recollection of Mr. Newman "storming around the school", "swearing and threatening people", and "going nuts in the school". She denied having any conversation with Ms. Halstead about Mr. Newman's behaviour either on that day or generally. In particular she denied telling Ms. Halstead that Mr. Newman was on the phone, verbally threatening the principal of the school. She denied telling Ms. Halstead that she was "afraid" of Mr. Newman or that "no one had held Mr. Newman accountable". Further, Ms. Rennison testified that in all the years she worked at Cumberland Junior School with Mr. Newman, she was never afraid of him. I accept Ms. Rennison's evidence.

[79] The evidence of Mr. Newman, Mr. Harvey and Ms. Harvey is that Ms. Halstead's published version of the events of June 4, 1998 is entirely fictitious. Ms. Halstead's own testimony on discovery clearly confirms that is so.

THE PLAINTIFFS

[80] As stated above, seven of the plaintiffs were labelled as "Bully Educators" and "Least Wanted Educators" on the "B.C.'s Least Wanted" page of Ms. Halstead's GAFER website. Those plaintiffs are each depicted in a chart entitled "Least Wanted Educators", which also identifies teachers who have been convicted of or charged with criminal offences or who have been disciplined by the College of Teachers. In addition, Gale Wheeler was named as a "Bully Parent" on the same website.

[81] In the Amended Statement of Claim, the plaintiffs plead that the "B.C.'s Least Wanted" page has a number of defamatory components: the label "Least Wanted Educator"; the label "Bully"; those whose photographs were not posted on the site are depicted as an apple with a worm in it; those whose names are on the site are generally depicted as bad or rotten apples; and those whose names appear in the "Least Wanted Educators" chart are associated with convicted criminals.

[82] Do these labels bear a defamatory meaning? The plain meaning of the labels "Least Wanted Educators" and "B.C.'s Least Wanted" is that the people identified in the chart are undesirable as educators. These labels suggest that an assessment has been made of the plaintiffs' fitness as educators and that they are the least fit in the B.C. school system. It suggests the education system would be better off without these individuals. Further, these labels are a play on the more common "Most Wanted" label used by police forces to identify the alleged criminals they are most desirous of apprehending.

[83] A number of witnesses testified that the term "bully" has taken on new significance in education circles in recent years. Bullying behaviour is taken very seriously by the School Board and by administrators, and indeed Mr. White testified the Board now has anti-bullying policies in place. Allegations of bullying are thoroughly investigated. Clearly the label "bully" is a very negative term. Ms. Halstead herself, in her examination for discovery, testified that a "bully educator" was a very negative label.

[84] I find that the labels "Bully", "Least Wanted Educators" and "B.C.'s Least Wanted" serve to lower the plaintiffs (and others so labelled) in the eyes of the reasonable observer, and impair their personal and professional reputations. They are clearly defamatory.

[85] Under Canadian law, a statement that a person is a "bad apple" is seen to be a derogatory statement and has been considered defamatory: *Gauvin v. Twin Deer* (1999), 269 A.R. 201, A.J. No. 1604 (Q.B.).

[86] A defamatory imputation may arise through the juxtaposition of one picture alongside another, or by juxtaposition of pictures and words: Brown, *The Law of Defamation in Canada*, 2nd ed. (Scarborough, Ont.: Carswell, 1994) vol. 1 at 201. A defamatory imputation may be drawn by way of a cartoon: *O'Neal v. Pulp, Paper & Woodworkers of Canada* (1975), 4 W.W.R. 92, [1974] B.C.J. No. 522 (S.C.). Here, a defamatory imputation follows both from a teacher being represented by a "bad apple" cartoon, or by being grouped together with others who are represented as "bad apples" even though he or she may have his or her own photograph posted rather than an apple depiction. The depiction of the plaintiffs as "bad apples" is defamatory in that such a depiction would tend to lower the reputation of the plaintiffs in their community in the estimation of reasonable persons.

[87] The association of the plaintiffs with other educators who have committed serious offences is analogous to the association of a person with criminals as occurred in *Monson v. Tussauds Limited*, [1894] 1 Q.B. 671 (E.W.C.A.). That case illustrates that the law will recognize a defamatory imputation arising from a plaintiff being associated with serious wrongdoers, which in turn implies his or her own serious wrongdoing. The case law further recognizes that the association of a person with wrongdoers in a rogues' gallery format may bear a defamatory meaning: *Wheeler v. Somerfield*, [1996] 2 Q.B. 94 at 104.

[88] In the case at bar, the "Least Wanted Educators" chart was a classic rogues' gallery. It was a public display of names and photographs designed to elicit feelings of contempt for those identified therein. The rogues' gallery included names and photographs of notorious sex offenders and pedophiles. Many of the plaintiffs expressed shock and horror at seeing their names in the same chart as Robert Noyes, for example.

[89] The seven plaintiffs named in these charts have never been charged with a criminal offence. Of course it follows that they have never been convicted. Nor have they been decertified by the College of Teachers or otherwise disciplined.

[90] Although the plaintiffs were identified in a separate subcategory of the chart ("Bully Educators") and that subcategory was separated by a certain amount of space from the category "Criminal Convictions", this takes little away from the sting of the association as the viewer of the site sees the criminals at the outset, and all subcategories fall under the global headings "B.C.'s Least Wanted" and "Least Wanted Educators".

[91] Mr. Piercy testified that viewers of the site who used a conventional modem connection, rather than a high-speed connection, would not see the intervening subtitles at all, and that all the pictures appeared under the heading "Criminal Convictions" for several minutes before other subheadings appeared.

[92] The plaintiffs testified to feelings of shock, horror, revulsion, and of feeling sick to the stomach upon viewing their names and depictions on the "Least Wanted Educators" chart.

[93] I have concluded that the chart, in its association of the plaintiffs with those convicted of criminal or otherwise undesirable conduct, is harmful to the plaintiffs' reputations, both professional and personal. I find that the "B.C.'s Least Wanted" page is designed to, and does, lower the plaintiffs in the eyes of the reasonable observer, and subjects them to scorn and dislike.

Edmund (Ted) Hunter Newman

[94] Mr. Newman's career in education spans 20 years. For the last 14 years he has taught at Cumberland Junior School. His expertise is in math, physical education and in the learning assistance field. His post-secondary education includes a Diploma in Business Administration, Industrial Education and a Bachelor of Education from the University of British Columbia. He testified that educating young people is his passion, his "calling".

[95] Mr. Newman's tireless work extends beyond the classroom. He testified that he has coached basketball and track; and he coached girls' basketball for nine years. His typical schedule from October to March was that four nights per week were consistently devoted to coaching or refereeing. He held an open basketball practice session on Sundays. From March to June, he ran a spring league for girls' basketball.

[96] Inexplicably, Mr. Newman appears to have been Ms. Halstead's primary target. I say inexplicably because, on his evidence, which I accept, Mr. Newman had very little direct contact with Ms. Halstead and over the years his contact with the Halstead children when they attended Cumberland Junior School was limited to their attendance at his Learning Assistance class from time to time.

[97] The allegations of defamation pled in respect of Mr. Newman can be categorized as follows:

- a) that Mr. Newman is a bad teacher;
- b) that Mr. Newman is a violent teacher;
- c) that Mr. Newman has engaged in professional misconduct;
- d) that Mr. Newman has engaged in criminal conduct; and
- e) that Mr. Newman is a person of low moral character.

[98] Ms. Halstead identified Mr. Newman by name and photograph on the "B.C.'s Least Wanted" page of her website as a "Least Wanted Educator" and a "Bully Educator", and further named him on the GAFER site under "RCMP investigations". On the latter site, Ms. Halstead referred to Mr. Newman as the subject of an RCMP investigation. What she did not publish is that she herself made the complaint that initiated the RCMP investigation, and that following the investigation, the RCMP concluded there was simply no need to take further steps; in other words, that her complaint was apparently groundless. Thereafter, she filed a report with the Police Commissioner concerning the RCMP officer who undertook the investigation.

[99] By letter of October 27, 2003, the RCMP advised Ms. Halstead that no further steps would be taken regarding her request for an investigation of Mr. Newman. Nevertheless, on December 29, 2003, Ms. Halstead still placed Mr. Newman's name on the "RCMP investigations" page of her website, and later reported him to the College of Teachers.

[100] In evidence are the many allegations Ms. Halstead has published regarding Mr. Newman's conduct and character. Ms. Halstead wrote and widely

published statements that Mr. Newman is a violent teacher. These included extreme statements about Mr. Newman such as that he "dissolves into blind rages on a regular basis", exhibits "explosive violence", commits "psychological terror", and "puts children at risk". In addition, she alleged that Mr. Newman was violent in her published fictitious versions of the "ambush" and "rampage" incidents.

[101] Witnesses at this trial, ranging from teaching colleagues to parents, students, and past administrators, testified that they had no experience with Mr. Newman being violent. Quite the opposite, the witnesses unanimously and persuasively described Mr. Newman as fun, caring, and as an excellent teacher. He was described in the evidence as the sort of teacher who "goes the extra mile" to help his students succeed.

[102] Ms. Watson testified that she took grades 7 and 8 math from Mr. Newman between 2000 and 2002. She recalled Mr. Newman as a good, funny teacher; one she looked forward to seeing each day. She stated that "kids could relate to him". She testified that she was never fearful of him nor did she perceive that other students were. She also recalled being disciplined by him but not in a manner that made her fearful. She testified she does not recall Mr. Newman ever being violent or prone to throwing rages. Ms. Watson was a credible witness.

[103] Mr. Bombback testified that he took a number of Mr. Newman's classes between 2000 and 2003. He testified that he has no recollection of Mr. Newman acting violently, raging at students, or assaulting students. He recalled being disciplined by Mr. Newman in a calm and even handed manner. He never saw Mr. Newman exhibit violent behaviour. He never felt fearful of Mr. Newman. I found Mr. Bombback to be a credible witness.

[104] Ms. Grant testified that her son was in Mr. Newman's learning assistance classes for grades 7, 8, and 9 between 2001 and 2003. She testified that her son and Mr. Newman had a "great relationship". At no time did her son tell her that Mr. Newman exhibited violent behaviour. She testified that she felt her son "made it through" junior school because of Mr. Newman's help. She testified that her son created an alien figurine called the "Newmanator" in recognition of the help Mr. Newman gave him in learning denominators and numerators. I found Ms. Grant to be a credible witness.

[105] Ms. Jager testified that her son was in Mr. Newman's learning assistance class in the 1998/1999 school year. She credibly testified that her son "just loved Mr. Newman" and that she still hears "Mr. Newman this and Mr. Newman that". She testified that Mr. Newman prepared materials for her son to help him keep up with his school work during the summer.

[106] The plaintiff Mr. Hurley worked with Mr. Newman as a teacher at Cumberland Junior School for many years. He testified that Mr. Newman was liked and respected by the staff and the students. He never heard anything about Mr. Newman being violent, and that such behaviour would be "so alien to his personality".

[107] The plaintiff Mr. Harvey testified that in his position as a teacher of students with severe behavioural problems, he has heard many "teacher" stories. He testified that in his experience such students are prone to being negative about teachers. However, many of these students tell him that Mr. Newman is a "very, very good teacher".

[108] Mr. Irwin testified that he was Mr. Newman's principal at Cumberland Junior School prior to 1990. He described Mr. Newman as a "first class teacher", "personable"; a teacher who really "loved the kids"; and a

teacher that the "kids responded to". He neither observed nor heard nor received any complaints about violent behaviour or assaults on students by Mr. Newman. He testified that "he couldn't imagine it". I found Mr. Irwin to be a credible witness.

[109] Mr. Newman testified he strongly supports teaching students, by example and otherwise, how to deal with bullying behaviour. He is clear that he permits no bullying in his classes and beyond. He noted this is especially so in his P.E. class, which he testified is a common place for bullying. He testified that his home room is always open; it is a safe haven for students who do not have a place to hang out. He testified that over the years many parents have asked that he be their child's homeroom teacher.

[110] Ms. Halstead further wrote and published a statement that Mr. Newman "took a student, D.R., down to the ground and slammed his head against a concrete floor several times". On May 26, 2003, she published her version of this alleged incident on her website. This description, as written and published by Ms. Halstead, if true and proven, describes criminal conduct - an assault - a decidedly serious allegation and a serious attack on Mr. Newman's professionalism.

[111] At her examination for discovery, Ms. Halstead confirmed that she filed this complaint against Mr. Newman via an e-mail she sent to the Superintendent of the Comox Valley School District. Her complaint was based on "rumours" that Mr. Newman had taken a student referred to as "D.R." down to the ground and slammed that student's head against a concrete floor several times. In her e-mail to the Superintendent, she refers to the allegation as being based on rumour only.

[112] On discovery, Ms. Halstead admitted having no personal knowledge whatever of any such event. She confirmed that she had never spoken to the student "D.R." about this event, and had learned of the rumour by overhearing a conversation between two unknown students outside of the school office, four and one-half years before she reported the incident to the Superintendent in May 2003.

[113] On and after May 26, 2003, Ms. Halstead published on her website an exchange of e-mails between herself and the Superintendent, along with other correspondence she had relating to this alleged incident. In these published statements, she styled the episode with the student D.R. not as rumour or gossip, but as "common knowledge" within the community.

[114] In his evidence, Mr. Newman flatly denied any such event and denied that he ever at any time acted in a violent manner towards students or indeed, any person.

[115] Ms. Halstead repeatedly published that Mr. Newman has assaulted other students without giving any particulars or any proof. She has published, for example, that he has been "physical against students", and that he "physically assaulted two boys at different times". However, she has never furnished any facts to support her allegations, and ultimately admits that she merely overheard vague statements. Further, Ms. Halstead has repeatedly published that Mr. Newman "throws students across rooms and against lockers". But on examination for discovery she admitted that she did not witness Mr. Newman throwing students across the room or against lockers, her daughter did not report that to her, and that her only source of information might have been (but she did not know) a discussion in the hallway between students, which she overheard. Mr. Newman denied all of these allegations.

[116] The evidence shows that Ms. Halstead repeatedly asserted on her website, on her Internet chat sites and in correspondence to senior officials in the education community (ranging from the principal to the Minister of Education) that Mr. Newman threatened Ms. Halstead's daughter and other students with special needs "both verbally and with weapons (a baseball bat and a mallet)". Mr. Newman denied the allegations.

[117] Despite what she wrote on the Internet, and elsewhere, Ms. Halstead agreed, on discovery, that there was no basis for her suggestion that Mr. Newman had "threatened" the children with a baseball bat.

[118] With respect to "threatening to hit children with a mallet", Ms. Halstead reported this alleged behaviour of Mr. Newman to many authorities, including the District Superintendent, the B.C. College of Teachers, the local MLA, and the Minister of Education. Mr. Newman testified that at no time did he threaten anyone or any student with a mallet in the course of any of his classes. The two former students who testified confirmed and corroborated Mr. Newman's evidence in this regard, as did the testimony of a number of Mr. Newman's colleagues. On discovery, Ms. Halstead testified that her only source of information for this assertion was her daughter who, from time to time, attended Mr. Newman's class for learning assistance. She agreed on discovery that while she considered the possibility that her daughter had misinterpreted Mr. Newman's actions, at no time did she question her about it.

[119] The gist of Ms. Halstead's discovery evidence leads me to conclude that without substantiating the comments she heard from her daughter, or the "rumours" she supposedly heard from others, she proceeded to publish her comments as though they were supported facts, and she did so on the Internet. Eventually, and at her examination for discovery, Ms. Halstead admitted that her daughter was not even a student in Mr. Newman's class in the year the alleged "threats" to hit children with a mallet were made.

[120] Ms. Halstead further wrote and published allegations that Mr. Newman threatened to hit children with pencils, chalk brushes, chalk and erasers in a violent manner. Mr. Newman testified that he would from time to time toss a pencil or an eraser, or lob a piece of chalk, at one of the students in a playful manner, particularly if they asked for some of the equipment. He denied doing so in a "violent" or "threatening" manner.

[121] Ms. Halstead made and published allegations that Mr. Newman screamed and yelled at her daughter to "get out of school", and threatened to make sure that she would not receive learning assistance the following year. Mr. Newman testified he did no such thing. He testified further that in any event he has no authority to prevent a student from accessing learning assistance. He testified that in the four years that Ms. Halstead's daughter was at Cumberland Junior School between 1996 and 2000, she at times attended Mr. Newman's learning assistance block, and that he had very little contact with Ms. Halstead and certainly no contact he remembers as negative.

[122] It is instructive to note that long after Ms. Halstead's daughter ceased attending Cumberland Junior School, Ms. Halstead wrote and published allegations that Mr. Newman threatened her daughter during her attendance there. Yet the evidence clearly shows that during that child's four years at Cumberland Junior, no one brought such allegations to the attention of the school administration, or to Mr. Newman.

[123] Ms. Halstead also wrote and published that Mr. Newman threatened her in the school parking lot. He denies doing so. It is this alleged threat that Ms. Halstead reported to the RCMP which led to the investigation of Mr. Newman referred to earlier in these Reasons.

[124] Ms. Halstead confirmed on discovery that she wrote and published an allegation that Mr. Newman was "stoned" at a school play and that he was addicted to marijuana. Mr. Newman denied these allegations in his evidence. On discovery, Ms. Halstead admitted she had no evidence to support that allegation and in September 2004, she wrote plaintiffs' counsel claiming she was "sorry especially about the allegations of Mr. Newman being stoned at the play", and that while she perceived his marijuana addiction to be true, she had no proof.

[125] Ms. Halstead wrote and published that Mr. Newman's foster child was removed from his care by the Ministry of Children and Families. In fact, Mr. Newman has never been a foster parent. Her published allegation included a statement that Mr. Newman "told" her that his foster child had been removed from his care. Mr. Newman testified he said no such thing to Ms. Halstead. On discovery, Ms. Halstead testified that Mr. Newman did not tell her that his foster child had been removed from his care; rather, this allegation arose from "something" she overheard him discussing with others while she was in the school.

[126] Ms. Halstead wrote and published allegations that Mr. Newman was engaged in behaviour which somehow violated her and her daughter's human rights, and that he somehow conspired against Ms. Halstead to "set up" unspecified "conflicts". She wrote and published that he was engaged in some kind of unspecified misconduct which would lead to revocation of his teaching certificate, and that he incited unnamed teachers' aids and two teachers to defame Ms. Halstead to staff at Cumberland Junior School.

[127] Ms. Halstead referred to Mr. Newman on her website as a "Bin Laden Wanna Be". At discovery, she admitted that she meant that description to apply to someone else, but she agreed a reader could understand it to apply to Mr. Newman. Despite this admission, she referred to Mr. Newman as "being capable of the Columbine massacre".

[128] I found Mr. Newman to be a most credible witness and a person whom I would describe as the very antithesis of the person described by Ms. Halstead. Furthermore, on all of the evidence I heard of Mr. Newman's career as an educator, I conclude without hesitation that he has been and is a talented, dedicated teacher ñ a truly exemplary professional.

[129] I find that Ms. Halstead engaged in a prolonged and deliberate campaign to discredit Mr. Newman as a teacher. Her numerous published statements about Mr. Newman were without substance and manifestly untrue. They were clearly designed to lower Mr. Newman's reputation in the community in the eyes of the reasonable observer. Accordingly, Mr. Newman has met his burden of proving defamation.

David Ralph Harvey

[130] Mr. Harvey began his career as an educator in Victoria in 1987 after graduating from the University of Victoria with a Bachelor of Education degree. He has taught in the public school system in the Comox Valley since the mid-1990's. Mr. Harvey is married to the plaintiff Charlotte Harvey.

[131] The allegations of defamation pled in respect of Mr. Harvey can be categorized as follows:

- a) that Mr. Harvey is a violent teacher;
- b) that Mr. Harvey engages in professional misconduct and is generally unprofessional; and

- c) that Mr. Harvey is a person of low moral character, including that he and his wife, the plaintiff Ms. Harvey, knowingly associate with a child pornographer.

[132] As with Mr. Newman and other teachers, Ms. Halstead published statements alleging that Mr. Harvey is a violent teacher. Mr. Harvey testified that such allegations are especially damaging and counter-productive to his work with students who exhibit severe behavioural problems. As he explained to the court, his students are those who have been "at the bottom" and they do not have a lot trust in educators or in the school system generally. Mr. Harvey testified that Ms. Halstead's published statements particularly denigrate his trustworthiness and that it is trust that he must demonstrate to these students and to their parents in order to teach them. Again, some of the impugned statements, if true, would be worthy of criminal action.

[133] As with Mr. Newman and referred to earlier, in 2003 Ms. Halstead published that Mr. Harvey participated in an "ambush" of the school principal and exhibited "violence" and "insubordination" at a meeting on June 2, 1998.

[134] Following the "ambush", Ms. Halstead alleged that Mr. Harvey joined Mr. Newman and others on the June 4, 1998 "rampage" through Cumberland Junior School, and again exhibited various forms of "violence" as referred to earlier in these reasons.

[135] Mr. Harvey testified as to his involvement and that of Mr. Newman in the June 2, 1998 meeting. Mr. Harvey was a credible witness. I accept without hesitation his version of the events of June 2, 1998. Ms. Halstead's published version of those same events is not worthy of belief.

[136] According to Ms. Halstead's version of the "rampage" incident, "Ted Newman, Dave Harvey and Charlotte Harvey and [E.B.] went [on] a temper tantrum throughout the school that scared my daughter and other special ed kids they abandoned". Ms. Halstead also alleged that during the incident Mr. Newman and Mr. Harvey made threats of violence against her.

[137] Mr. Harvey's version of the events of June 4, 1998 differed markedly from the various versions subsequently written and published by Ms. Halstead. In this respect, and throughout his testimony, I found Mr. Harvey to be a credible witness. Further, on all the evidence it is clear that Mr. Harvey is a dedicated, competent and talented educator.

[138] Ms. Halstead's published allegations in regard to Mr. Harvey and the innuendo she deliberately created from and by them is without substance and is entirely unbelievable. Her "ambush" and "rampage" theme go to the heart of Mr. Harvey's professionalism as a teacher. He is depicted as a teacher who misconducts himself by being violent towards students, parents, and to his principal.

[139] Further, as a continuation of a common theme, Ms. Halstead groups Mr. Newman and the Harveys together as persons of low moral character. Ms. Halstead treats the Harveys with contempt, alleging they are a family associated with a known user of child pornography. On May 23, 2003, Ms. Halstead published the following on the Internet:

I forgot to mention one thing. Mr. and Mrs. Harvey loved to entertain the students at all of their assemblies etc. with their three piece band through these years. The third member of the band was Mr. Donald Burton McLeod. If you would like to know what happened to him following his conviction for child pornography check out the least wanted educators website. He's on there also. He was the special education aide in the school and a good

friend of the Harveys. Ö Just a nice big happy family in this school district. If you are willing to wallow in the gutter you get along fine here. If you aren't willing to do that then you are forced to your knees anyway.

[140] The clear implication is that the Harveys condone the acts of a person convicted of an offence related to child pornography and that they belong to a "nice big happy family" accepting of such criminal acts.

[141] Mr. Harvey's evidence was that since both he and his wife are musicians, they and others were often called upon to provide music at school assemblies. He testified that other staff members and students often participated in the band on such occasions. He testified that he recalls a teaching assistant, Mr. McLeod, was one such occasional participant. He testified further that neither he nor Ms. Harvey had any relationship with Mr. McLeod outside of school events. He testified that as much as two years after these musical events, he came to know that Mr. McLeod got "involved with the criminal law". I accept Mr. Harvey's evidence in this regard.

[142] Further, and as with Mr. Newman, Ms. Halstead published statements which associated the Harveys with a "bingo thief" at their "regular Friday night drinking parties". Again, these statements were designed to attack the Harveys' professional and personal reputations.

[143] Ms. Halstead published various statements in 2003 and thereafter regarding Mr. Harvey's alleged professional misconduct. For example:

... boy it sounds like everyone keeping the professional misconduct of ... Newman and the Harveys quiet are probably going to lose their certificates before the bad guys do Ö

... the special education staff consisting of Ted Newman, Charlotte Harvey and her husband Dave and this Val decided to start going after me with set up conflicts.

[144] Mr. Harvey credibly denied all such allegations made by Ms. Halstead. Nothing in Ms. Halstead's own testimony given under oath at her examination for discovery could possibly support the truthfulness of her depictions of Mr. Harvey's character or demeanour in the context of his profession, in his role as a parent, or otherwise as a citizen.

[145] Ms. Halstead's statements serve to lower Mr. Harvey's reputation in the community both professionally and personally. Indeed, they were intended to have that effect. Accordingly, I find that Ms. Halstead's published statements regarding Mr. Harvey are clearly defamatory.

Charlotte Elizabeth Mary-Ann Harvey

[146] Ms. Harvey is a public school teacher with 20 years of teaching experience; the last nine within the Comox Valley. She is married to the plaintiff David Harvey. Her specialties are drama and choral music. She holds a Bachelor of Education and a Master's degree. The Harveys have three children who attended or still attend public school in the Comox Valley.

[147] Among her other responsibilities, Ms. Harvey has organized and organizes field trips to drama and musical productions. She takes students to Vancouver annually. She has organized and accompanied students on such trips to Oregon and to New York City.

[148] As well, Ms. Harvey has organized local students in drama and musical productions, one of which ran for six nights to a combined audience of over 5,000 people at Cumberland Junior School.

[149] Ms. Harvey strikes me as a dedicated, highly energetic teacher; one determined to give her students a broad fine arts experience. She commits a significant portion of her personal time to promoting and attaining educational goals. She sets a high standard for herself.

[150] The defamatory stings contained in the statements Ms. Halstead published about Charlotte Harvey can be categorized as follows:

- a) that Ms. Harvey has engaged in professional misconduct and is generally unprofessional;
- b) that she is incompetent, particularly as regards the organization and management of school field trips; and
- c) that she is a person of low moral character, including that she is lewd, manipulative, and knowingly associates with child pornographers.

[151] In the two years prior to the commencement of this lawsuit and beyond, Ms. Halstead repeatedly published statements regarding Ms. Harvey's conduct on a day trip Ms. Harvey organized in 1997 for approximately 50 students to attend "The Phantom of the Opera" in Vancouver (the "Phantom" trip). The trip involved grade 7 students plus some elementary school children, including Ms. Harvey's own children. Ms. Halstead attended the trip as a parent chaperone.

[152] Ms. Halstead published statements on her website, in chat groups and in e-mails, which included two categories of assertions regarding the 1997 Phantom trip. First, that Ms. Harvey made sexually inappropriate comments to, or in the presence of, students on this field trip. Second, that Ms. Harvey was incompetent in her management of the trip.

[153] With respect to Ms. Harvey's alleged sexual inappropriateness on the Phantom trip, Ms. Halstead published statements in 2002 and 2003 which include the following:

[Ms. Harvey] openly discussed sexual issues with the students and a male teacher chaperone

[Ms. Harvey] discussed tricking the Principal into coming to her house while waiting for him to arrive she slipped into a see-through nightie which was what she was wearing when she met him at the door. She stated that she tried to get him to come in but he wouldn't. She felt it was important that the grade 7 students, myself, the male teacher and the bus driver know that she had gotten her principal in this situation.

[Ms. Harvey] also felt it was important for them to know they were too young to lose their virginity ...

[Ms. Harvey] likes to speak about see-through nightie set-ups and the loss of her virginity in front of grade seven kids on a bus trip. That I witnessed with my own ears.

Because the teacher had told them all the story of waiting for him in a see-through nightie, whenever she'd fall all over him in front of the kids they would all laugh and recount the story to each other.

[154] I am satisfied that these allegations are designed to attack Ms. Harvey at the core of her professional function, as she is a teacher who is repeatedly placed in a position of trust in connection with school field trips and extracurricular choral and dramatic productions. Ms. Halstead's clear inference from her published statements is that Ms. Harvey sought to seduce the principal. Not only is this innuendo offensive from the perspective that Ms. Harvey is married, and knew her principal to be married, but it suggests an immense lack of professional judgment on her part.

[155] Ms. Halstead wrote at great length in an attempt to discredit Ms. Harvey's competence in connection with the Phantom trip, which she depicted as an unmitigated disaster. The evidence shows that Ms. Harvey has an outstanding record in connection with the many field trips she led both before and after the Phantom trip. The only person ever to have complained about a trip led by Ms. Harvey, including the Phantom trip, is Ms. Halstead. Her published allegations of incompetence include:

Things were so bad, so unsafe Ö that formal complaints of misconduct were filed at the time.

The wife [Ms. Harvey] snuck her own child on the bus and directed the class to hide him from the busdriver as we were over limit. She never counted heads when we got on and off ferries, she let the other teacher (male) drink alcohol while sitting with the kids at lunch Ö

[Ms. Harvey] let the kids roam around Vancouver Robson on their own without supervision telling them to meet back at the theatre when the show was to start. This despite her bringing her kid's friends from different schools (even elementary) on the trip while kicking kids from our school out.

She made us miss the ferry sightseeing in the bus so we didn't get home until after midnight despite the fact parents were prepared to pick their kids up much earlier. This meant that we had 2 hours to kill in horseshoe bay and she just told the kids to do what they wanted and meet us as [sic] the ferry in 2 hours.

Other parents went on other really bad trips with this woman.

I never let my kids go to a teacher's house or on a field trip without me. I've just seen too much to know that on the rare occasion they end up in bad situation with irresponsible teacher's [sic] there is no recourse to make sure it doesn't happen again. Both these teachers are still teaching and still going on trips galore. The parents filed complaints with Mr. Woolman and Mr. Joubert, after going to the principal and him getting no support from the senior administrators. Nothing ever was done at the district level to ensure our kids safety. Once the bus is away from the school the teachers are in control. They can stop and pick up other kids, leave kids unsupervised and rowdy. They can do pretty much anything they want. ... My daughter was hurt at Horseshoe Bay on that bus trip. Her entire chin was ripped open. The first aide fellow on the ferry told me that she needed to be sewn up immediately when we got to Nanaimo. Charlotte (the teacher) didn't want to stop because we were already so late going home. I didn't argue. I didn't want to spend anymore time with this woman Ö

After venting about these two scary trips with most irresponsible teachers I ever met I asked my daughter if she remembered the one 5 years ago with the drama teacher and the young, good looking English Teacher. I know when it was because it took place during accreditation and this teacher was causing all kinds of trouble with that as well. [Ms. Halstead's daughter] said what she remembered most about the trip was that the teachers kept ditching the kids. I asked her what she meant and she said 'you were the only one that took care of any of us'.

[156] As well, Ms. Halstead stated that during the trip Ms. Harvey "was lying to these children (grade 7) and then telling them their principal was the bad guy so they'd lose respect for him and think she was their heroine". This allegation was in connection with Ms. Harvey's attempt to organize a field trip to New York, something she had done three times in the Victoria School District.

[157] Ms. Harvey denied each allegation levelled by Ms. Halstead. I find that Ms. Harvey was a credible witness, one whose evidence I accept without hesitation. Further, Ms. Flawse (then a student) and Mr. Olsen (another teacher), both of whom were on the Phantom trip testified. Neither recalls anything untoward occurring on the field trip. Both Ms. Flawse and Mr. Olsen described a trip they recall as being well organized, well run and generally unremarkable. Ms. Flawse gave credible evidence that if Ms. Harvey (or any teacher for that matter) had spoken to students in the sexually explicit manner which Ms. Halstead asserts she did, it would be memorable; yet, she had no recollection of such conversations on the Phantom bus trip.

[158] Mr. Olsen, also a credible witness, testified that he has no recollection of Ms. Harvey talking of sexual matters on the Phantom trip. As with the evidence of Ms. Flawse, I conclude from Mr. Olsen's evidence that, as one would expect, a conversation of this nature in such a setting would be so remarkable as to be unforgettable. Yet he has no recall of it. Mr. Olsen denies Ms. Halstead's allegation that students were left unattended or unsupervised on this trip. He denies that any teacher or indeed anyone on the trip consumed alcohol.

[159] I wish to emphasize that, as with the "ambush" and "rampage" statements, Ms. Halstead published her statements about the Phantom trip at least five years after the alleged events; and she published them widely.

[160] I have concluded that Ms. Halstead's version of the Phantom bus trip, first published in a letter she wrote immediately upon her return from that trip, and subsequently re-published years later, is manifestly untrue. The publication of these allegations serves to undermine Ms. Harvey's exceptional 20-year record of organizing and leading field trips without incident. That record has been tarnished by these public allegations of incompetence.

[161] In reference to the June 4, 1998 "rampage", Ms. Halstead published the following with respect to Ms. Harvey:

Ö went on a tantrum throughout the school that scared my daughter and the other special ed kids they abandoned. Charlotte was in the class crying in front of all the children Ö

Her husband worked in our school also and was one of the ones that went on the rampage with Mr. Newman. She stood in front of the class and cried during that. My daughter was in the class. Then she joined the rampage and they all abandoned their classrooms.

[162] Again, these statements suggest a lack of professionalism, a lack of composure, and in the case of "abandoning" students, professional misconduct.

[163] Further, Ms. Halstead has attempted to paint Ms. Harvey as immoral, lewd and manipulative. This attack goes directly to her character and reputation and adversely affects her role as a teacher, parent and spouse, and as a citizen generally. The impugned statements made and published by Ms. Halstead include the following:

In fact this complainant had also filed a complaint against Mr. Harvey's wife (another teacher) in the School for "lewd" conduct on a bus trip in which she openly discussed sexual issues with the students and a male teacher chaperone.

Our school board did not follow like lemmings after an impassioned and very dramatic performance by our School Board chair last night. I didn't know whether to burst out laughing or cry at how embarrassing it was. She's obviously been taking lessons from Charlotte Harvey and/or Meghan Cursons (two close friends cut from the same cloth). Both those ladies have used that theatrical technique to manipulate so much out of so many.

Mr. and Mrs. Harvey loved to entertain the students at all of their assemblies etc. with their three piece band through these years. The third member of the band was Mr. Donald Burton McLeod. If you would like to know what happened to him following his conviction for child pornography check out the least wanted educators website. He's on there also. He was the special education aide in the school and a good friend of the Harveys. Just a nice big happy family in this school district. If you are willing to wallow in the gutter you get along fine here. If you aren't willing to do that then you are forced to your knees anyway.

[164] The last of these statements is particularly offensive in that the clear innuendo is that the Harveys possess the same moral character as a person convicted of a child pornography-related offence. The references to "good friend" and "one big happy family" and "wallow in the gutter" were drafted so as to connect the Harveys with Mr. McLeod and to suggest they are all equally deserving of contempt. This is an assertion of guilt by association and the clear innuendo is that it was a knowing association.

[165] Ms. Halstead also published a statement that Ms. Harvey engaged in "sexual harassment of the principal" and that she was insubordinate to the school principal, in that she "openly trashed him to students", a matter which again, if true, would show a serious lack of professional judgment. As in the case of other plaintiffs Ms. Halstead reported Ms. Harvey to the B.C. College of Teachers after the commencement of this lawsuit. That complaint was dismissed in June 2004.

[166] Ms. Harvey testified that prior to the "Phantom" bus trip she had not met Ms. Halstead and that she had virtually no contact with her thereafter. Ms. Harvey never taught any of the Halstead children.

[167] It is clear that Ms. Harvey has met her burden of proving defamation. Ms. Halstead's published statements regarding Ms. Harvey were designed to attack Ms. Harvey's reputation both professionally and in the community at large.

John Francis Hurley

[168] John Hurley was an educator for over 30 years; 23 of those were spent at Cumberland Junior School. He is now retired. While at Cumberland Junior, Mr. Hurley taught woodworking and metal shop.

[169] The allegations of defamation regarding Mr. Hurley can be grouped as follows:

- a) that Mr. Hurley turned a blind eye to the ongoing sexual harassment of a student;
- b) that Mr. Hurley professionally misconducted himself or was an unfit teacher by stashing and consuming alcohol in his classroom, ridiculing his students, and being incompetent in the classroom.

[170] Ms. Halstead has published on the Internet that Mr. Hurley turned a blind eye to the fact that her daughter, a student in Mr. Hurley's shop class, was harassed by a group of boys throughout a school year. Mr. Hurley credibly denied that assertion. Ms. Halstead's published version of a 1989 incident surfaced twelve years after the fact:

My oldest daughter is now 28. In grade nine she was the only girl in a shop class. One day a substitute teacher walked in and caught the boys in the class ganging up on her and pulling her pants down. He reported it to the Principal of Cumberland Junior School and the RCMP had to be called in because we found out following this exposure that the whole class had been doing this to her all year and her shop teacher, Mr. John Hurley had not stopped it. Melissa has never forgotten this. We had just moved to this community. She had epilepsy and learning disabilities and she was sexually harassed in the most disgusting of ways. She was a new student and too frightened to tell. How could she protect herself from the retaliation of a "whole class" of boys. Especially when the male teacher did nothing to protect her. She is still suffering from that abuse.

[171] Mr. Hurley taught a wood-working class in the 1988/1989 school year in which Ms. Halstead's daughter was the only female student. Mr. Hurley was not teaching the day of the 1989 incident involving Ms. Halstead's daughter. Mr. Hurley testified that he was an advocate of having females in his shop classes. He testified he was aghast when his substitute teacher reported an incident to him involving students pulling down Ms. Halstead's daughter's pants. He immediately sought permission from the school administration to invite an RCMP officer to lecture the class on sexual harassment. As well he, quite sensitively in my view, asked Ms. Halstead (the student) in advance if she wished to be excused or wished to attend the lecture.

[172] Ms. Halstead's published statements portray Mr. Hurley as a sexist, bad teacher who did not care if a female student was sexually harassed in his class. Such statements are damaging to any teacher, and particularly hurtful to Mr. Hurley who advocated for the participation of females in his shop classes, and who is the father of two girls.

[173] Ms. Halstead's statement that Mr. Hurley turned a blind eye to the harassment of her daughter whom she described as epileptic, is a particularly offensive statement to Mr. Hurley. The imputation is that he is the sort of teacher and person who allows the people in his care who have disabilities to be harmed. Mr. Hurley testified that his daughter is profoundly disabled and suffers from grand mal epileptic seizures on a daily basis. He and his wife have cared for her on a daily basis for the last 23 years, and will continue to

do so for as long as they live. It is clear that Mr. Hurley is especially conscientious in his life and in his work of caring for persons with disabilities. It bears noting that at no time did the Halsteads inform Mr. Hurley or the school administration that their daughter had epilepsy. Further, it is instructive that after the lecture by an RCMP officer, Mr. Hurley heard absolutely nothing further of the 1989 incident from the Halsteads or anyone else.

[174] Mr. Irwin, the principal at Cumberland Junior School in 1989, testified. He recalled that Mr. Hurley immediately, actively and appropriately dealt with the single reported incident involved the Halsteads' daughter. He testified that following the lecture to the shop class by the RCMP officer, he heard absolutely nothing further from the Halsteads, other parents or the students. He does not believe the assertion that the conduct complained of continued throughout the school year. He described the allegation as "preposterous".

[175] Mr. Irwin testified that Mr. Hurley was a strict teacher who would not have tolerated such behaviour. Further, Mr. Irwin testified that at no time was he told that Ms. Halstead's daughter lived with epilepsy.

[176] Mr. Jarvis, the vice-principal at Cumberland Junior School in 1989, echoed Mr. Irwin's evidence. Mr. Irwin and Mr. Jarvis, like Mr. Hurley, were credible witnesses whose evidence I accept without hesitation.

[177] Further, and at the time of his retirement, Ms. Halstead published that Mr. Hurley stashed alcohol in the classroom, ridiculed students and was incompetent in the classroom, as follows:

I would like to take a moment and wish a fond farewell to a retiring teacher who should not have ever been in a classroom in the first place. It was his last day today. I'd like to think one day these types of teachers that make kids miserable would all be retired but alas, it is not age that determines this but rather unsuitability and lack of proper training.

Ö

Now we will never find out if the "bottle" in his desk was for real.

Despite the fact that absolutely everyone is convinced it is, I don't believe it. I think anyone that stashed booze in their classroom would have a much better disposition. I've never seen the man smile. I think it is just gossip to create an excuse for his incompetence.

You see, being a drunk is no crime. It is not even considered unprofessional in this district. You can raise to the highest heights. However, being incompetent is something nobody will admit anyone has ever been in SD#71.

Let us give thanks that he is retired and whether he is either one of those things will remain a mystery. Another sigh of relief for the district brass that they've gotten another one through all these years and not choked on what they've swept under the carpet.

This is actually a two way celebration as this idiot has also served on the union executive.

Ö

Anyway lets hope this man is not on our on-call list, double dipping. I would like him to live a long happy life and perhaps one day when he is in an old folks home one of the students who had to endure the humiliation of being in his class can be in charge of his care.

What goes around comes around. We all know these young people will one day be looking after all of us.

[178] Mr. Hurley denied the allegations of professional misconduct alleged and published by Ms. Halstead. His denial was entirely supported by the evidence of his administrators to which I have earlier referred. Like Mr. Irwin, I must conclude that Ms. Halstead's allegations of Mr. Hurley's professional misconduct are preposterous and entirely without merit. On the evidence I heard, throughout his long career as an educator, Mr. Hurley conducted himself in an exemplary, professional fashion.

[179] These statements by Ms. Halstead are particularly vicious because they were written on the date of Mr. Hurley's retirement, after he had dedicated over thirty years to the education system with an unblemished professional record.

[180] Ms. Halstead's published statements regarding Mr. Hurley attacked his reputation on both a professional and personal level. They were clearly intended to discredit him as a teacher and undermine his years of service in education.

David Leonard (Len) Morrow

[181] Mr. Morrow was a school trustee in the Comox Valley School District from 1990 to 2002. Prior to running as a candidate for School Board, Mr. Morrow, a chemical engineer with a Master's degree in Business Administration, owned and operated two thriving businesses in the Comox Valley, both of which employed a significant number of people.

[182] When he retired from business in 1992, Mr. Morrow increasingly devoted his time and considerable energy to the Comox Valley community and in particular to the education and training of its young people. He was elected to the School Board for four consecutive terms. He chaired the Board from 1992 to 1996. Mr. Morrow was and continues to be an active volunteer in the Comox Valley.

[183] The defamatory stings contained in the statements that Ms. Halstead published about Mr. Morrow can be categorized as follows:

- a) that he violated his oath of office, the **Local Government Act**, and the **Criminal Code**;
- b) that he is a bully and a harasser;
- c) that he is unprofessional in light of his romantic interest in an administrator of whom the Board of Trustees is the employer; and
- d) that he was corrupt and knowingly in a conflict of interest when in office.

[184] Ms. Halstead posted Mr. Morrow's name and photograph on the "B.C.'s Least Wanted" page of the GAFER website, and labelled him a "Bully Educator" and a "Least Wanted Educator".

[185] Mr. Morrow testified that as Chair of the School Board he received volumes of correspondence from Ms. Halstead. I agree with Mr. Morrow's

characterization that much of that correspondence which is in evidence and directed to Mr. Morrow was indeed outrageous and scandalous.

[186] In an e-mail message published by Ms. Halstead to the media, to her Internet chat groups, to senior District staff, and to Mr. Morrow's MLA, she made the following statements:

MR. MORROW, IN MY OPINION, HAS BROKEN HIS OATH OF OFFICE WHICH IS REQUIRED UNDER THE SCHOOL ACT, AS WELL AS THE LOCAL GOVERNMENT ACT UNDER ELECTION OFFENCES (INTIMIDATION) AND THE HARASSMENT POLICY #3065 R1 FOR SD #71 THAT STATES [capital letters in original]

Ö A pattern of behaviour characterized by deliberate objectionable conduct or comment that demeans, belittles, intimidates Ö or

Ö The exercise of power or authority in a manner which serves no legitimate work purpose and which a person ought reasonably to know is inappropriate, including such misuses of power or authority as intimidation, threats, coercion and blackmail Ö

Ö

In my opinion also Mr. Morrow has broken the law under criminal code: [Section 298 of *Criminal Code* set out (defamatory libel)]

Ö

I don't care if unions and administrators and trustees are comfortable with these types of criminal acts in the interest of politics. I am not and my family is not.

[187] Ms. Halstead couched the first two statements as her "opinion". On the evidence, it appears that Ms. Halstead deliberately used the word "opinion" from time to time; a strategy she may have believed made her immune from a defamation claim.

[188] A statement does not become "opinion" and therefore relevant to the defence of fair comment simply by labelling it as "opinion". Ms. Halstead's attempt to raise a disclaimer by stating that the advocacy items she posted on her various sites were "opinions" is completely ineffective in the context of this case.

[189] Most, if not all, of Ms. Halstead's statements are assertions of fact, not opinion. For opinion to be fair comment it must be shown to be based on true facts as a starting point. Ms. Halstead has not shown her "opinions" to be based on truth and the evidence satisfies me it is unlikely she could do so.

[190] Mr. Morrow testified that he took his oath of office very seriously and always tried to live by the letter of that oath. I accept his evidence without reservation. To suggest Mr. Morrow has violated his oath is to denigrate him in the eyes of the reasonable observer and to suggest he is unworthy of holding public office. As to the notion that Mr. Morrow committed election related offences or an offence under the ***Criminal Code***, I find that such statements are defamatory and scandalous, particularly in the context of an elected official. Without question, such an allegation would effectively lower Mr. Morrow's status and image in the community and generally impair his reputation.

[191] Beyond labelling and describing Mr. Morrow in the fashion noted, Ms. Halstead accused him of violating the District harassment policy. Further,

and on September 30, 2003, she published the following statement on the Internet designed to paint Mr. Morrow as a vindictive person:

Watch out for the next torpedo from the "loose cannon" Morrow Ö I have now publicly disagreed with someone who I feel has a Napoleonic complex and I will pay for it Ö

[192] Mr. Morrow testified that the local newspapers generally published one or two letters to the editor from Ms. Halstead each month. From time to time he would write a letter to the editor in response.

[193] In July 2002, Mr. Morrow wrote a letter to the editor (which was published) in response to Ms. Halstead's published letter to the editor about a Ministry survey on safety in schools. Subsequently, Ms. Halstead accused Mr. Morrow of being deliberately malicious when he authored his letter. In particular, Ms. Halstead published the following:

Mr. Morrow (an official spokesperson of the board) not only seemed to feel nobody could be concerned about school violence but also I had no right to even offer opinions on a survey of students that was a public document posted on the Ministry website and which was publicly addressed in the paper by principals.

Mr. Morrow was fully aware that my daughter had been beaten in her school hallway and treated abusively by her special ed teacher. He was fully aware she'd dropped out of school traumatized and attempted suicide shortly thereafter. He was fully aware I was talking from experience and concern.

[194] Mr. Morrow categorically denied that he knew any of these things when he wrote his letter to the editor. I accept Mr. Morrow's evidence and find as a fact that he had no such knowledge. To assert that he did is to infer that Mr. Morrow callously and deliberately sought to injure Ms. Halstead and/or her daughter.

[195] Ms. Halstead published the foregoing statement on at least three occasions, once in an e-mail dated July 8, 2003 sent to trustees, senior District officials, Mr. Morrow's MLA, the Minister of Education, the BCCPAC, the BC School Trustees Association and others; a second time in another e-mail of the same date, and a third time on her GAFER website.

[196] In a widely circulated e-mail, and on one of her Internet chat groups, Ms. Halstead romantically linked Mr. Morrow to an educator in the District. She stated of Mr. Morrow, "He likes Ms. Carpenter, VERY MUCH" [capital letters used in the original].

[197] Particularly troubling to Mr. Morrow was the fact that the Board of Trustees is Ms. Carpenter's employer, and to suggest that Mr. Morrow was somehow romantically involved with, or interested in, an employee suggests unprofessionalism as it could give rise to a conflict of interest.

[198] After the commencement of this litigation, Ms. Halstead posted (republished) on her "BoredwithBoards" Internet chat group, an e-mail message from an individual named Dwight Macdonald which read, in part, as follows:

How will these teacher's [sic] act under oath and cross examination. This should be extremely interesting. Morrow has pretty much removed any doubt as to where he stands, or should I say were [sic] he stood. With the Union paying for his part in the suit, it is now totally clear that he was in the union's pocket.

[199] To publicly suggest Mr. Morrow was "in the union's pocket" while a school trustee is an allegation of corruption, bias, and conflict of interest. Such an assertion undermines the integrity of Mr. Morrow and the office he held. If this statement were true, it would mean that Mr. Morrow was in violation of his oath of office and was someone who compromised principle for personal gain. This clearly serves to lower Mr. Morrow in the eyes of the reasonable observer.

[200] I find Mr. Morrow was a credible witness and I accept his evidence. I have concluded that Mr. Morrow has an abiding interest in and devotion to the well being of his community and particularly to the education of its young people. I note that much of his time was and is given on a volunteer basis.

Gale Wheeler

[201] Ms. Wheeler is a parent of two children who attended public school in the Comox Valley. She was on the PAC executive with Ms. Halstead in 1998.

[202] Ms. Wheeler was labelled as a "Bully Parent" on the GAFER website.

[203] In addition, Ms. Halstead published the following on the GAFER website:

Also Ted Newman is the Baseball [sic] bat, F. Word, rampaging teacher Jain and I keep telling everyone about. Jill Peacocke is the one who threatened to drag my daughter by the hair to her mother in front of the whole class. Because I don't accept that behaviour it threatens Gale Wheeler's warm and fuzzy feelings about these teachers. Therefore she took part in a conspiracy to "deep-six" me out of the picture. Both of them are mentioned in her letter to the editor, perfectly timed for the elections.

[204] I find that the label "Bully" as used by Ms. Halstead to describe Ms. Wheeler is clearly negative and designed to lower the reputation Ms. Wheeler would otherwise have. Further, the statement that Ms. Wheeler feels "threatened" by the fact that Ms. Halstead does not accept the behaviour attributed to Mr. Newman and Ms. Peacocke implies that Ms. Wheeler either condones this kind of behaviour or, alternatively, is knowingly supportive of teachers who have engaged in forms of professional misconduct.

[205] The statement carries on to say "therefore" Ms. Wheeler took part in a conspiracy to "deep six" Ms. Halstead. I agree with counsel's submission that the word "therefore" is important because it implies that Ms. Wheeler was motivated to harm Ms. Halstead because of their differing views about the alleged misconduct of Ms. Peacocke and Mr. Newman. To suggest that Ms. Wheeler wanted to "deep six" Ms. Halstead to silence her criticism of the conduct infers that Ms. Wheeler either condone the conduct or hoped that it would go unpunished.

[206] The allegation that Ms. Wheeler was involved in a conspiracy to cause harm to Ms. Halstead is defamatory since a conspiracy involves acting in concert with one or more other people to cause harm to another, in this case, to Ms. Halstead. Such an allegation serves to lower Ms. Wheeler in the eye of the reasonable observer, as it suggests she is conniving and underhanded.

Roberta Ling

[207] Ms. Ling is a teacher of 32 years experience. Nearly 20 years of her career has been spent in the Comox Valley. Like the other plaintiff teachers in this lawsuit, her professional record is unblemished. As with the others, she devotes a considerable amount of her time to the extra curricular activities of her students. In addition to her professional involvement, she is also active in her community.

[208] Ms. Ling was labelled a "Bully Educator" and a "Least Wanted Educator", and depicted as an apple with a worm in it, on the "B.C.'s Least Wanted" page of the GAFER website. In addition, Ms. Halstead published statements that Ms. Ling is not a good teacher, does not believe in freedom of speech, and is guilty of inciting hatred against Ms. Halstead.

[209] In the circumstances, it is rather remarkable that the evidence shows that Ms. Ling has never met Ms. Halstead nor has she taught any of the Halstead children. Ms. Ling, a most credible witness, testified that in June 2003 she wrote a letter to the editor of the local newspaper. It was published. She testified that she was motivated to write because Ms. Halstead's often published letters were "so anti-education, anti-school board and anti-teacher". Ms. Ling testified as to her upset with Ms. Halstead's description of events in the education field that as a long-time teacher she had never once encountered.

[210] In her June 2003 letter, Ms. Ling advocated that the newspaper publish a more balanced view of teachers. She noted that Ms. Halstead's anti-teacher views were given more and more press over time, and felt that publishing other views would be a fairer depiction of the circumstances.

[211] Ms. Halstead responded to the Ling letter on a number of fronts. She filed a complaint about Ms. Ling with the College of Teachers, a complaint which was subsequently dismissed. Ms. Ling testified that in all her years of teaching, Ms. Halstead's complaint is the only complaint made about her to the College. Ms. Halstead also registered a complaint about Ms. Ling with the BCTF and with her Superintendent of Schools. Further, she placed Ms. Ling's name under the "Bully Educator" heading on her website and depicted her as a "bad apple". Ms. Halstead further publicly proclaimed that Ms. Ling did not believe in free speech and was inciting hatred against her.

[212] With regards to Ms. Ling's alleged beliefs regarding free speech, Ms. Halstead published the following:

By the way Dwight I just checked and yes Mr. Piercy is teaching in this cesspool of Sue Halstead haters but the kids have so far given him a 0. Nobody's rated him. My kids would rate him a "weird guy" Roberta Ling isn't even on the list to be rated. I know nothing about her except that she doesn't believe in freedom of speech.

[213] In referring to a discipline case where a member of the B.C. College of Teachers published statements demeaning homosexual people, Ms. Halstead stated that Ms. Ling was similarly abusing her power by inciting hatred against her:

There is no difference in the motives of inciting hatred in this case and the motives of inciting hatred in Ms. Ling's publication, except Ms. Ling names an individual person to incite hatred against it is the same abuse of power that trustees and past trustees practice, thus setting the example for their employees.

[214] Ms. Ling testified that she was shocked at the scorn shown to her by Ms. Halstead. In my view, the depictions of Ms. Ling as a teacher who bullies a parent, as a bad teacher, and as someone who incites hatred against a

parent go to the heart of her professionalism as a teacher. The imputation is that she is a teacher who uses bullying tactics and abuses her position to get what she wants. These statements would clearly lower Ms. Ling's reputation in the eyes of the reasonable observer.

[215] Ms. Ling was singled out by Ms. Halstead only after Ms. Ling wrote a letter to the editor apparently espousing views with which Ms. Halstead was not in agreement. Ms. Halstead's publications are clearly defamatory of Ms. Ling.

Kenneth Irvine Piercy

[216] Mr. Piercy is an art teacher in the Comox Valley and has been teaching for 23 years. He completed his post-secondary education at the University of Victoria and the University of British Columbia. During his career he has worked extensively with troubled youth. Mr. Piercy gave the court credible evidence.

[217] Mr. Piercy testified that he had noticed that Ms. Halstead was receiving a lot of attention in the local newspapers and decided to write a letter in response to what he felt were her anti-teacher and anti-union sentiments. On the evidence, it appears that Mr. Piercy became a target of Ms. Halstead by expressing views in opposition to hers.

[218] Thereafter, Mr. Piercy appeared on the GAFER website, and labelled as a "Bully Educator" and "Least Wanted Educator", and depicted as an apple with a worm in it.

[219] In Mr. Piercy's case, there is one further allegedly defamatory statement published by Ms. Halstead:

Ken Piercy taught my children art in Cumberland Junior a number of years ago. Cumberland Junior is a training ground for union radicals. There is an underground training camp in that school. Despite the principal's efforts at keeping it under control the district works against him by supporting the union. These well trained militants then move on to executive positions in the CDTA. The good teachers usually choose to stay at Cumberland Junior and become professionals, with the exception of the underground trainers [sic], of which there are now only two left, the third having retired in January.

[220] Counsel asserted that this statement suggests that Mr. Piercy is a radical and a militant within the school, and that he has an agenda to radically promote unionism at the school. Whether Ms. Halstead meant that Mr. Piercy is a militant within the school, or whether she meant he trains militants within the school, it is submitted that the statement means that Mr. Piercy militantly or radically promotes the cause of unionism within the school.

[221] The reference to an "underground training camp" serves to heighten the impression that Mr. Piercy's alleged actions in the school are illicit and unprofessional.

[222] While there is nothing defamatory about a statement that someone promotes their union, it is the suggestion that Mr. Piercy used the school setting for militant pro-union activism that bears the sting. The whole statement suggests that Mr. Piercy puts his radical and militant views ahead of the interests of students in the school. This is particularly so where Ms. Halstead contrasts the "good teachers" with the "radical trainers [sic]".

[223] I find these statements and the labels on the website lower Mr. Piercy's reputation as a teacher in the eyes of the reasonable observer by portraying him as an undesirable and incompetent teacher and one who puts his "militant" union activities ahead of his students and that by doing so he is guilty of unprofessional conduct.

David Carl Halme

[224] David Halme began teaching in 1972. He has a Master's degree in Education and taught math and science at the high school level for 12 years. He is now the president of the Lake Cowichan Teachers' Association.

[225] Mr. Halme was labelled a "Bully Educator" and a "Least Wanted Educator", and depicted as an apple with a worm in it, on the "B.C.'s Least Wanted" page of Ms. Halstead's website. Ms. Halstead's site also featured a "Cowichan Bully Board" with reference to the "Bully Teacher Union President".

[226] As in the case of the plaintiff Roberta Ling, it seems Mr. Halme became a target of Ms. Halstead because she believed he had written a letter to the press asserting views she did not agree with. Ms. Halstead published the following statement about Mr. Halme on her Internet chat group "Bullyinginformation":

Well everyone look at this. This man is the union president in Cowichan that has been duking it out in the press there with me. He is the one that used filthy language in the press. He's even got a spot of honour on the bully educator page if you want to reread it.

[227] I find that when one looks at the totality of this statement, it is clearly defamatory. By stating that a teacher, and the head of a teachers association, would use "filthy" language in the press, Ms. Halstead suggests that Mr. Halme has engaged in unprofessional conduct. Further, by linking the so-called "duking it out in the press" to the use of filthy language and to the "spot of honour on the bully educator page" is to cause the reader to believe that Mr. Halme's conduct in writing letters to the press has been unprofessional and an act of bullying.

[228] It is important to note that Ms. Halstead's attack on Mr. Halme was actually made in error. By her own admission, Ms. Halstead was mistaken in her belief that Mr. Halme wrote the letters to the editor that she linked to his name on the GAFER website. In fact, the letters were authored by a person whose name is similar to that of Mr. Halme.

Elizabeth Jean Eakin

[229] Ms. Eakin has been a teacher for 23 years and presently teaches Grade 1 in Prince George. She holds a Bachelor of Education degree from the University of British Columbia. She too is and has been involved in extracurricular activities, including coaching track and field, and organizing track meets. Ms. Eakin received a district Teacher Recognition Award in 1991.

[230] The alleged defamatory statements in connection with Ms. Eakin concern her being placed on the "B.C.'s Least Wanted" page of Ms. Halstead's website. On that website she is labelled as a "Bully Educator" and a "Least Wanted Educator", and depicted as an apple with a worm in it.

[231] As I have concluded that the impugned labels and depictions on the "B.C.'s Least Wanted" page are defamatory, it is clear that Ms. Eakin has met her burden of proving defamation.

Andrew Duncan Chisholm

[232] The defamatory statements that are alleged in connection with Mr. Chisholm concern his being placed on the "B.C.'s Least Wanted" page of Ms. Halstead's website. On that page he is labelled as a "Bully Educator" and a "Least Wanted Educator", and depicted as an apple with a worm in it.

[233] In her Statement of Defence, Ms. Halstead admitted that those defamatory statements in respect of Mr. Chisholm were false. However, Ms. Halstead would not admit that it was defamatory to place Mr. Chisholm (or any of the other plaintiffs for that matter) in a chart that also identifies teachers who have been convicted of, or charged with, criminal offences, and teachers who have been disciplined by the College of Teachers. Further, Ms. Halstead would not admit that these labels and depictions bore defamatory meanings.

[234] Mr. Chisholm seeks a finding that the labels and depictions identified did bear the defamatory meanings alleged, and that being identified in a chart that names convicted criminals and teachers who have been subject to discipline by the College is, by itself, defamatory.

[235] As I have concluded that the impugned labels and depictions on the "B.C.'s Least Wanted" page of the GAFER website bear defamatory meanings, it is clear Mr. Chisholm has met his burden of proving that he was defamed by Ms. Halstead.

[236] In summary, I find that each of the plaintiffs has proved that each of the impugned statements as pled was made or created by Ms. Halstead, that Ms. Halstead published each statement, and that each of the statements is in fact defamatory of the plaintiff referred to.

DEFENCES

[237] As noted earlier, if a plaintiff meets the burden of proving defamation, the onus shifts to the defendant to prove a defence. Only the defences of fair comment and justification have any bearing on this case.

[238] This case presented an unusual situation in that the defendant, Ms. Halstead, refused to participate in the trial and neither she nor an agent on her behalf was present in her defence. The plaintiffs submitted that, notwithstanding Ms. Halstead's absence, the available defences should be addressed at trial due to the importance of the case to the plaintiffs. As I have found that the impugned statements were indeed defamatory, I will address whether or not Ms. Halstead could have had a defence open to her.

[239] The defences of fair comment and justification both have as their foundation proof of the truth. On Ms. Halstead's own evidence, it is clear that the impugned statements were either false, inaccurate, or were grossly exaggerated beyond any resemblance to the actual events. To illustrate that point I refer again to the fact that Ms. Halstead wrote and published that, among other things, Mr. Newman's foster child was removed from his care, that he threatened students with a baseball bat, that he threatened students with a mallet, and that he assaulted a student. On discovery, Ms. Halstead admitted that she did not directly witness or have first-hand knowledge of any of these alleged events. As a result, I find that Ms. Halstead is entirely without credibility. Her evidence on discovery completely contradicts what she would have to establish in order to prove either the defence of justification or of fair comment. A defendant in these circumstances would face a challenge in successfully mounting either of these defences.

[240] Further, with regards to fair comment, even if it could be shown that some of the statements were based on facts that were true and were clearly statements of opinion, because the plaintiffs have shown that the dominant motive for publishing the statements was malice, it is difficult to see how that defence could be successfully established. Ms. Halstead seems to have targeted many of the plaintiffs for no reason other than her perception that they hold beliefs or educational philosophies different from her own, or that she has in some way been wronged by them.

[241] In summary, I find that each of the defamatory statements is untrue, and that each was motivated by actual malice. Accordingly, the applicable defences as pled, justification and fair comment, must fail.

REMEDIES

1. Damages

[242] The principal remedy in defamation suits is an award of damages. General or compensatory damages are intended to compensate a plaintiff for the injury suffered as a result of the defamatory publication and also to provide for vindication of reputation: **Brown v. Cole** (1998), 61 B.C.L.R. (3d) 1, B.C.J. No. 2464 (C.A.) (QL) at para. 107.

[243] The following factors should be considered in an assessment of general damages for defamation: the plaintiff's conduct, position and standing; the nature of the defamation; the mode and extent of publication; the absence of any retraction or apology; and the whole of the defendant's conduct from the time of publication to the end of trial: **Hill, supra**, at para. 182. In assessing the amount of damages, the court must have regard to the applicable authorities (and many were provided), recognizing always that each plaintiff is unique: **Botiuk, supra**.

[244] An award of compensatory damages may also include an amount awarded for aggravating circumstances where the defendant's conduct increased the plaintiff's "humiliation or anxiety arising from the libellous statement": **Hill, supra**, at para. 188. If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice: **Hill, supra**, at para. 190. I find that in respect of all of the plaintiffs, except Mr. Chisholm, an aggravated damages component is appropriate and that finding is reflected in the fixed damage award for each of those plaintiffs.

[245] In contrast to compensatory damages, punitive damages are designed to punish a defendant for her or his conduct and to serve as a deterrent to a defendant and to others. Punitive damages may be awarded where there is malicious, oppressive and high-handed conduct offending the court's sense of decency, and where the award of general and aggravated damages will be insufficient to achieve the goal of punishment and deterrence: **Hill, supra**, at para. 196.

[246] Whereas general damages are intended to be compensatory and, as such, an assessment of the defendant's ability to pay does not play a part, punitive damages are in the nature of a fine -- a rebuke -- and accordingly, the defendant's ability to pay is a valid consideration: **Spong v. Westpres Publications Ltd.** (1992), 2 C.C.E.L. 228, B.C.J. No. 1066 (S.C.); aff'd [1984] B.C.J. No. 2078 (C.A.). I must make the observation that the evidence in this case with respect to Ms. Halstead's ability to pay is limited.

[247] When Ms. Halstead "walked away" from this lawsuit, she apparently stated that she was, in effect, judgment proof. She has since repeated that information a number of times. I am satisfied she did so in an effort to dissuade the plaintiffs from proceeding; taking the approach, "who needs an empty judgment?" (my description). Further, I am satisfied that it served Ms. Halstead's purposes to contrast her self described impecuniosity with what she considers to be the means of the plaintiffs and her suggestion, without proof and quite incorrectly, that all the plaintiffs are supported in this litigation by the BCTF. Ms. Halstead's depiction of her economic status serves to support her characterization of the plaintiffs as "Goliath" and herself as "David" within this litigation. I find that as with her non-attendance at this trial, her statement regarding her economic circumstances is a simple attempt to avoid accountability.

[248] Ms. Halstead cannot escape the consequences of her actions simply by stating that she is judgment proof. Nor can she use her economic status as a method of side-stepping any attempt by the plaintiffs to have their reputations vindicated.

Edmund (Ted) Hunter Newman

[249] Of all the plaintiffs, Mr. Newman has borne the brunt of Ms. Halstead's attacks. The statements against him are extreme. They go to the core of his professional reputation. They were often repeated, were deliberately designed to discredit him, and were made in concert with a campaign to embarrass and harass him through reports made by Ms. Halstead to various agencies, including his school district, the Ombudsman, the Workers Compensation Board, the British Columbia College of Teachers, the Human Rights Commission, Children and Family Services, and the RCMP.

[250] Ms. Halstead's statements, and the nature of her tireless campaign against Mr. Newman, must be weighed against the credible evidence of witnesses who all testified as to Mr. Newman's dedication and the excellent reputation he has always enjoyed. Colleagues (present and past), parents, and students testified. Mr. Newman's colleagues, when seeing his name on the website, found it inconceivable that he could be a teacher deserving of rebuke.

[251] Mr. Harvey testified that he has known Mr. Newman for seven years. He stated that in the last few years, coincidental with Ms. Halstead's publications, Mr. Newman has "disappeared off the radar screen". Mr. Harvey also expressed that "as much as I have suffered, I can't imagine how much more that Ted has suffered".

[252] Mr. Newman testified with regards to a telephone call from his colleague, Ken Piercy, in which Mr. Piercy told Mr. Newman of Ms. Halstead's website. Some days later Mr. Newman looked at it. He said he was so upset when he saw his name there that he could not read through it all.

[253] He testified that as the website and various of Ms. Halstead's published assertions became more public, he found himself withdrawing socially. He lives in a small community. He has family and friends in the Comox Valley. He has taught many children in the community. He testified that he "really felt affected personally" by Ms. Halstead's published comments.

[254] Mr. Newman also testified that he felt affected professionally. He testified that Ms. Halstead's allegations have created "baggage" which he had to pack around. His own children are entering the field of education; he knows other young people who want to be teachers. He looks

forward to their infusion of energy. But he is concerned that they may be subjected to that which he has endured at the hand of Ms. Halstead.

[255] He testified that "right now he is tarred by a brush" and that "if administrators did not know me, then no one would want me as a teacher". He feels that the publicity about him due to Ms. Halstead's website could affect his ability to move positions. He testified that he feels his reputation has been "besmirched", and that Ms. Halstead's false allegations have constrained him professionally and seriously affected his career choices. He testified he had become a hermit, a fact confirmed by Mr. Harvey. I accept Mr. Newman's testimony as to the far reaching and devastating effect Ms. Halstead's defamatory statements have had on him.

[256] Canadian courts have recognized the increased potential for harm associated with the publication of defamatory material on the Internet. The Ontario Court of Appeal in *Barrick Gold v. Lopehandia* (2004), 71 O.R. (3d) 416, O.J. No. 2329 (QL), stated (at para. 34), "The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases." In the case at bar, Ms. Halstead's use of the Internet in the publication of defamatory statements was incessant and the reach was broad.

[257] Mr. Newman testified that in his community he has been approached by people about this lawsuit and about the website. While he has not heard directly from parents of his students, he testified that he feels uncomfortable not knowing who has read the website and what they may have concluded if they have.

[258] While Ms. Halstead would not testify at this trial, the court has heard evidence from her through her testimony given under oath at her examination for discovery, some of which was read in and therefore forms part of the evidence in the plaintiffs' case. I took some time to refer to that discovery evidence as it relates to the many, many allegations Ms. Halstead made in respect of Mr. Newman. Clearly, on Ms. Halstead's own evidence, her assertions in respect of Mr. Newman's character, and his professional and personal life, are entirely fictitious. She has repeatedly made sweeping, serious allegations of misconduct about Mr. Newman, allegations which, on her own evidence, are entirely groundless. I find there is not a scrap of truth in any of Ms. Halstead's assertions in respect of Mr. Newman. Despite this, Ms. Halstead has never offered Mr. Newman an apology nor retracted any of her statements. Rather, she has continued to assert the truth of her allegations.

[259] Finally, the whole of Ms. Halstead's conduct both prior to, and during, the litigation is worthy of strong rebuke. Her campaign of defamation against Mr. Newman was intended to harm his professional reputation. The effects of her actions on Mr. Newman have been compounded by her refusal to participate in these proceedings and her characterization of the litigation as somehow unfair.

[260] As a result of the foregoing, I fix the damages against Ms. Halstead in respect of Mr. Newman at \$150,000.

David Ralph Harvey

[261] Mr. Harvey testified that it was extremely hurtful to him and to Ms. Harvey that Ms. Halstead's publications insinuated that the Harveys knowingly associated with a "child pornographer". I find that nothing could be further from the truth. What is particularly troubling for both Mr. and Ms.

Harvey is that these statements were published while the Harveys' children were still attending public school in the Comox District.

[262] As to the effect on him in his professional capacity, Mr. Harvey testified that the contents of Ms. Halstead's website and her publications generally, impacted negatively on his ability to do his job and that they continue to do so. He emphasized that as a special needs teacher he and his students and his students' parents must have a positive connection, a rapport. He explained that in his work there must be a trust relationship established before the necessary learning skills can be taught. He testified that Ms. Halstead's published statements about him have created turmoil; that they have interfered with the required relationship building and that they have very seriously impeded his work as a teacher.

[263] On a wider level, Mr. Harvey testified that Ms. Halstead's publications have dishonoured himself and the teaching profession generally; all without accountability in his view. He testified that as a result he would find it difficult to encourage his children or other young people to enter the teaching profession. I accept Mr. Harvey's testimony with respect to the impact Ms. Halstead's defamatory statements have had on him both professionally and personally.

[264] As with Mr. Newman, Ms. Halstead published statements about Mr. Harvey on the Internet. The statements were targeted at discrediting Mr. Harvey professionally. They have affected his work and have never been retracted. Nor has Mr. Harvey received an apology. The harm caused is further aggravated by Ms. Halstead's lack of attendance at the trial.

[265] I assess damages for Mr. Harvey at \$75,000.

Charlotte Elizabeth Mary-Ann Harvey

[266] Ms. Harvey credibly testified that the allegations, made by and published on Ms. Halstead's website and through e-mail and copied to so many people, have left her numb and angry. She testified that she had been "silenced"; that her approach to her professional responsibilities and her life in the community as a parent and generally is much more guarded as a result.

[267] Ms. Harvey further testified that she felt like she has lost her spirit and that she worries about whether colleagues, students and their parents, and parents of her children's friends, have read what Ms. Halstead has written about her. This concern has caused her to become distant from parents and students. I accept Ms. Harvey's testimony about the limiting effect Ms. Halstead's defamatory statements have had on her both professionally and socially.

[268] I find that Ms. Harvey enjoyed good standing as a teacher and made significant efforts to have her students participate in and enjoy drama and music. Part of this was organizing and leading school trips to see dramatic productions. Ms. Halstead engaged in a campaign to discredit Ms. Harvey's professional reputation by alleging her incompetence with respect to the Phantom trip and that she otherwise conducted herself unprofessionally. Further, Ms. Halstead's statements regarding Ms. Harvey's alleged sexual conduct towards the school principal are particularly embarrassing and undermine Ms. Harvey's reputation both professionally and socially.

[269] As referred to above with respect to Mr. Newman and Mr. Harvey, Ms. Harvey did not receive an apology from Ms. Halstead, nor were any of the

defamatory statements retracted. The whole of Ms. Halstead's conduct has further exacerbated the harm done to Ms. Harvey.

[270] Accordingly, I assess damages with respect to Ms. Harvey at \$125,000.

John Francis Hurley

[271] Mr. Hurley testified that he was alarmed to see the letter published on Ms. Halstead's website stating that he turned a blind eye to the sexual harassment of her daughter. He testified that this went to the core of his value system and was highly offensive. Mr. Hurley was very concerned that the website may affect his ability to find and retain caregivers for his daughter who is seriously disabled. I accept Mr. Hurley's testimony in this regard.

[272] I make particular note of the fact that Ms. Halstead published her defamatory statements regarding Mr. Hurley's alleged drunkenness and incompetence while a teacher on the occasion of his retirement from 30 years of teaching. This had the potential to ruin what may otherwise have been a happy milestone for Mr. Hurley.

[273] As referred to above with respect to the other plaintiffs, Ms. Halstead did not apologize to Mr. Hurley nor did she retract the defamatory statements. The vehicle for her attack on Mr. Hurley's professionalism and integrity was the Internet and here, again, her attitude toward the trial has only served to increase the harm caused.

[274] I find that damages for Mr. Hurley in the amount of \$75,000 is appropriate.

David Leonard (Len) Morrow

[275] Mr. Morrow testified that he considered Ms. Halstead's use of the Internet to spread what he states to be untrue statements about himself and others he worked with to be insidious. He testified most persuasively that it has taken him and others a lifetime to build a good reputation and that Ms. Halstead's vicious and merciless attacks are difficult to defend against. He has concluded that as a result of Ms. Halstead's actions he has lost the opportunity to run for any other elected office so "tainted" is his reputation, in his view. He testified that "I cannot live long enough to repair my reputation". Mr. Morrow did not strike me as a melodramatic person; I accept he has reached his stated conclusions after much measured consideration and I accept his testimony in this regard.

[276] The statements published by Ms. Halstead about Mr. Morrow are particularly serious as they allege criminal and other offenses that go to the core of his position as a holder of public office. As with most of the other plaintiffs, Ms. Halstead has refused to apologize to Mr. Morrow and her conduct during these proceedings has only served to further the harm to Mr. Morrow.

[277] On the basis of the foregoing, I assess damages for Mr. Morrow at \$100,000.

Gale Wheeler

[278] Ms. Wheeler is a graphic artist and an active member of her community. She has been very involved in her children's schools through the years. She testified that Ms. Halstead's website has caused her significant

concern, particularly because a prospective employer or a volunteer organization with whom she works could come across her name on the site by 'Googling' her name on the Internet. She stated that a number of people had mentioned to her that they had seen her name on the site.

[279] I accept Ms. Wheeler's testimony with regards to the impact Ms. Halstead's defamatory comments, neither retracted nor apologized for, have had on her life.

[280] I find that an appropriate award of damages for Ms. Wheeler is \$15,000.

Roberta Ling

[281] As stated above, Ms. Halstead's attack on Ms. Ling was in response to one letter to the editor written by Ms. Ling. Shortly thereafter, Ms. Ling learned that she had been reported to the School Board, her union and was the subject of a complaint by Ms. Halstead to the College of Teachers. Ms. Ling testified that she was shocked that after 32 years of teaching, her respect and professionalism as a teacher could be damaged by one person whom she had never met. It is clear that Ms. Halstead's targeted attack on Ms. Ling was in retaliation for Ms. Ling's letter to the editor she wrote in defence of teachers.

[282] Ms. Ling testified that she is concerned that there may be parents who do not want their children to be in her class because of what they have read on the website. Further, she worries that her daughter's ability to teach in the Comox Valley may be impacted as she carries the name "Ling". I accept Ms. Ling's testimony in this regard.

[283] Ms. Halstead has never apologized to Ms. Ling or retracted her defamatory statements with respect to Ms. Ling. As with the other plaintiffs, Ms. Halstead's conduct during this litigation served to exacerbate the harm caused to Ms. Ling.

[284] I assess damages in respect of Ms. Ling at \$25,000.

Kenneth Irvine Piercy

[285] Mr. Piercy testified that when he saw his name on Ms. Halstead's website, he felt shocked and angry that his name was posted on the same page as that of convicted pedophiles. He felt particularly offended because he spent years working with children who had been the victims of sexual abuse and predators. He felt angry that he could be treated in such a fashion for simply responding to her letters to the editor. I accept Mr. Piercy's testimony in this regard.

[286] Taking into consideration the fact that Mr. Piercy, too, did not receive an apology or retraction from Ms. Halstead, and the other factors set out above, I assess the amount of damages for Mr. Piercy at \$25,000.

David Carl Halme

[287] Mr. Halme testified that he was "flabbergasted" when he saw his name on Ms. Halstead's website on the same page as those of convicted criminals, and that the sight of his name on the chart made his eyes water. Indeed, and as with all of the plaintiffs, Mr. Halme was visibly shaken during his testimony. Mr. Halme stated that he was very concerned that prospective employers and conference organizers would have come across his name

on the "B.C.'s Least Wanted" page by doing an Internet search using his name. I accept Mr. Halmeís testimony as to the effect Ms. Halsteadís defamatory statements have had on him.

[288] While Ms. Halstead apologized to Mr. Halme, Mr. Halme testified that he felt that the apology was "insincere" and that it was too late as the damage to his reputation had already been done. Illustrative of Ms. Halsteadís recklessness, she admitted that she confused Mr. Halmeís name with that of another person whom she meant to criticize. In light of this, and the other factors set out above, I find that damages in the amount of \$15,000 is appropriate for Mr. Halme.

Elizabeth Jean Eakin

[289] Ms. Eakin is the only plaintiff teacher who teaches primary school children. She testified that due to the young age of her students, it is extremely important that she maintain a reputation for trustworthiness. Ms. Eakin was "stunned", "horrified" and "flabbergasted" to see her name posted on the "B.C.'s Least Wanted" page of Ms. Halsteadís website. She was particularly appalled to see her name associated with that of Robert Noyes, whose name she recognized as that of a notorious sex offender. I accept Ms. Eakinís testimony in this regard.

[290] As with some of the other plaintiffs, it appears that Ms. Halstead posted Ms. Eakinís name on her website in retaliation for letters to the editor authored by Ms. Eakin which did not meet with Ms. Halsteadís approval.

[291] As Ms. Halstead refused to apologize to Ms. Eakin, and as a result of the other factors which have been considered above, I find that an award of damages in the amount of \$20,000 for Ms. Eakin is appropriate.

Andrew Duncan Chisholm

[292] Ms. Halstead eventually apologized to Mr. Chisholm and retracted the statements she made about him. Mr. Chisholm did not attend the trial. He seeks an award of nominal damages. I am satisfied that the timing and nature of the apology does not negate Mr. Chisholmís entitlement to general damages. Accordingly, I award Mr. Chisholm \$1,000 in nominal damages.

Punitive Damages

[293] I find that an award of punitive damages is warranted in this case. Ms. Halstead published the defamatory statements in the context of a prolonged and sustained campaign of character assassination against each of the plaintiffs. Her conduct was clearly motivated by malice and was oppressive. Ms. Halsteadís shockingly vicious attack upon, and her manifestly fictitious account of, each of the plaintiffsí character and conduct is deserving of rebuke.

[294] All involved in this lawsuit accept that discourse on matters of public interest, education being one such subject, is to be encouraged. The law carefully guards the rights of citizens to freely express their views, however unpopular.

[295] However, Ms. Halsteadís widely published statements are vitriolic and untrue; they are defamatory. Her actions are malicious and cruel. Such publications and actions have absolutely nothing to do with freedom of expression. Ms. Halstead has seriously transgressed the boundaries which prescribe that hallowed right.

[296] Further, by refusing to participate in the trial process and by continuing to assert the truth of her allegations, Ms. Halstead has attempted to thwart the plaintiffs' efforts at seeking vindication and repairing the damage to their reputations. Accordingly, I award punitive damages in the amount of \$50,000 to be shared equally by the plaintiffs.

2. Injunctive Relief

[297] The plaintiffs also seek interim and permanent injunctive relief. They submit that a permanent injunction prohibiting Ms. Halstead from publishing any statements with reference to the plaintiffs is necessary as there is a serious possibility that she will continue to publish defamatory statements notwithstanding an award of damages against her. Further, Ms. Halstead has made it known that she considers herself effectively judgment proof. If that is so, the plaintiffs will be unable to collect on any award of damages against her.

[298] Injunctive relief is an exceptional remedy which will only be imposed by the courts in the clearest of cases. In my view, in a case such as this, where there is a likelihood that the publishing of defamatory statements will continue and where there is a real possibility that the plaintiffs will not actually be compensated by the payment of damages, injunctive relief must be carefully considered as a possible remedy.

[299] In *Kohuch v. Wilson* (1988), 71 Sask. R. 33 (Q.B.), the court granted an injunction where the defendant was judgment proof and there was more than a reasonable apprehension that the defendant would repeat the defamation. In *Campbell v. Cartmell* (1999), 104 O.T.C. 349, O.J. No. 3553 (Sup. Ct. J.) (QL), the court ordered broad injunctive relief in the context of a defamatory letter-writing campaign against a school board by a teacher and her family. The court granted a permanent injunction restraining the defendants from publishing any statements concerning the plaintiffs.

[300] Throughout this litigation, Ms. Halstead has continued to assert the truth of her allegations and has continued to publish her defamatory statements with respect to some of the plaintiffs. There is more than a reasonable possibility that she will continue to publish defamatory statements on the Internet and elsewhere regarding the plaintiffs. Further, there may be no real hope that the plaintiffs will actually be compensated in damages. Accordingly, I find that injunctive relief is undoubtedly appropriate in this case, the terms of which are:

1. Susan Pearl Halstead shall not publish the defamatory statements and depictions referred to in paragraphs 28, 29, 30, 30A, 30B, 30D, 30E, 30F, 30H, 34, 34A, 34B, 38, 42, 46, 46A, 50, 54, 58, 62, 67, 68, 69, 69A, 73 and 76A of the Second Amended Statement of Claim in any form or by any medium, including the Internet;
2. Susan Pearl Halstead shall not make or continue any publication of any kind, whether by way of the Internet or otherwise, which states, alleges, or expresses the opinion that the statements and allegations made by her which are referred to in the Second Amended Statement of Claim are true, in whole or in part;
3. Susan Pearl Halstead shall not publish, or cause to be published, or otherwise disseminate or distribute in any manner whatsoever, whether by way of the Internet or otherwise, any

statements or other communications which refer to any of the plaintiffs by name, by depiction, or by description;

4. Susan Pearl Halstead may apply to this court, on seven days notice to the plaintiffs through their counsel of record Gudmundseth Mickelson, for leave to publish, or to cause to be published, any statements that would otherwise be prohibited by paragraph 3;
5. Each of the plaintiffs has liberty to apply for further directions in respect of injunctive relief;
6. The terms of this Order are subject to further order of this Court.

[301] References to the Second Amended Statement of Claim require it to be attached to the order reflecting these Reasons.

CONCLUSION

[302] In the circumstances of this case, I am satisfied that further comment is warranted. First, in light of the unique circumstances surrounding this litigation, it is appropriate to comment on the conduct of counsel for the plaintiffs. Their presentation of this case was extremely thorough, measured and fair. Without exception, their conduct as officers of the court was exemplary.

[303] Finally, it is my hope that each of the eleven plaintiffs will, with the conclusion of this litigation, find a way to move on in their personal and professional lives. Each of these remarkable people has displayed strength of character and professionalism throughout; each has exhibited a passion for and a commitment to the education and well being of young people in their communities. Not only students, but the community as a whole, suffers when those involved in education are unfairly and unnecessarily publicly maligned. The plaintiffs' communities deserve no less than the full participation of these individuals, free from the shadow cast by Ms. Halstead's defamatory statements. The plaintiffs are entitled to resume their professional and personal lives without the distraction of Ms. Halstead's actions. Each is entitled to his or her well deserved good reputation.

[304] Costs follow the event.

J.L. Dorgan, J.
The Honourable Madam Justice J.L. Dorgan