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Docket: CI 20-01-28613  
(Winnipeg Centre)  
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Cited as: 2025 MBKB 34

**COURT OF KING’S BENCH OF MANITOBA**

**B E T W E E N:**

OUMER KINNARATH, ) Imran A. Qureshi  
 ) Max MacLeod  
 plaintiff, ) Ahmed Selim, Articling  
 ) Student-at-Law (by video)  
 - and - ) for the plaintiff  
 )  
 ) Karine Devost (by video)  
 ) co-counsel for the plaintiff  
 MONIQUE CHOISELAT, YOGI HENDERSON, )  
 ) Jordan E. Smith  
 STEVEN FLETCHER, PEOPLE’S PARTY OF ) for Monique Choiselat  
 CANADA, TODD McDOUGALL, )  
 DEREK STORIE, JOHN DOE, JANE DOE, and ) Robert L. Tapper, K.C.  
 ABC INC., ) for People’s Party of Canada  
 defendants. )  
 ) Sharon Singh (watching brief)  
 )  
 ) Yogi Henderson (by video)  
 ) on his own behalf  
 )  
 ) Derek Storie  
 ) (no appearance)  
 )  
 ) Todd McDougall  
 ) (no appearance)  
 )  
 ) JUDGMENT DELIVERED:  
 ) March 11, 2025

## **LANCHBERY J.**

### **INTRODUCTION**

[1] This action involves the plaintiff, a self-described activist, the People’s Party of Canada (PPC), the Chief Executive Officer of the PPC Electoral District Association for Winnipeg Centre (PPCEDA) (also referred to as the riding), and the PPC’s candidate running in the PPCEDA.

[2] These litigants, directly or indirectly, interacted with the owner of an art gallery who offered space within her gallery for a meet and greet with the PPC candidate for Winnipeg Centre. These events occurred in July 2019.

[3] The allegations, which are the subject of this action, occurred on the worldwide web, electronic traditional news media, Facebook, Twitter (now known as X), and by e-mail.

[4] Social media is an open marketplace for the exchange of ideas. The ideas exchanged are often done with personal vitriolic attacks challenging the character of the person about whom the attacks are made. This case is demonstrative of the open social media marketplace.

#### **The Parties**

[5] The plaintiff, Oumer Kinnarath (also known as Omar Kinnarath), is a proud Muslim man and father of three children. His family emigrated to Canada in 1979, eventually settling in Winnipeg. Mr. Kinnarath’s self-described activism is anti-fascist, opposed to the oppression of LGBTQ2S+ people, and anyone who opposes

immigration. The evidence shows his opposition to what he described as far-right groups such as the PPC.

[6] The PPC ran candidates in the Canadian federal election for the first time in 2019. Monique Choiselat was the Chief Executive Officer of the Winnipeg Centre PPCEDA. As is Ms. Choiselat's right, she chose not to testify during the trial. Her evidence was entered by way of read-ins by plaintiff's counsel from the transcript of her examination for discovery.

[7] The defendant, Yogi Henderson (Mr. Henderson), was the candidate for the PPC in Winnipeg Centre. Mr. Henderson was a former resident of Manitoba, but the PPC chose him to be their candidate in the Winnipeg Centre EDA. He also chose not to testify during the trial, which is his right.

[8] The defendant, Derek Storie (Storie), did not file a Statement of Defence and was noted in default. The defendant, Todd McDougall (McDougall), filed a defence to this action. Neither Storie nor McDougall participated in any of the pre-trial conferences or the trial proper, although each of them was provided with notice of every pre-trial and the trial itself. At the commencement of trial, I granted default judgment in favour of the plaintiff against Storie and McDougall. The damages' hearing shall be booked by the plaintiff following the release of these reasons.

[9] The claim against Steven Fletcher was discontinued.

[10] Claims against Jane Doe, John Doe, and ABC Inc. were abandoned by the plaintiff prior to the trial.

## **EVIDENCE**

[11] Mr. Kinnarath admits he was the catalyst behind the gallery owner cancelling an arranged meet and greet in her gallery for the PPCEDA candidate, Mr. Henderson.

[12] After the cancellation of the PPCEDA's rally, Mr. Kinnarath was referred to as a "terrorist" in two Facebook posts and a single tweet on Twitter by Ms. Choiselat. Those posts included a photograph of Mr. Kinnarath, a definition of "terrorist", and his personal contact information. Ms. Choiselat referred to Mr. Kinnarath as an arsonist as well as a vile person.

[13] Ms. Choiselat's actions occurred within a two-day period in July 2019, which subsequently led to traditional media posting articles about the events in question on their internet news' sites.

### **The Claims**

[14] Mr. Kinnarath claims against:

- **THE PPC:**
  - (i) Vicarious liability for defamatory publication by Monique Choiselat;
- **MONIQUE CHOISELAT:**
  - (ii) Defamation;
  - (iii) Publicity of private facts;

(iv) A suggested new tort of malicious publicity of personal private information, “doxxing”; and

- **YOGI HENDERSON:**

(v) Defamation, including what was described as a sub-issue of innuendo.

## **BACKGROUND**

[15] The PPC was created in September 2018. A fixed-date federal election was to occur in October 2019. The evidence before me confirms the PPC’s focus was to ensure its leader, Maxime Bernier, could appear on stage at the publicly televised national debates. To qualify for the national debates, a registered political party was required to run a candidate in 90 percent of the 338 federal ridings in existence in 2019.

[16] For an EDA (Electoral District Association) to be established, Elections Canada required two individuals be in positions of authority. The two representatives in PPCEDA Winnipeg Centre were Ms. Choiselat in her capacity as Chief Executive Officer, and Mr. Derek Lambert as the EDA Financial agent. This was confirmed in the evidence of Daniel Tyrie and Caleb Voskamp, representatives of the national PPC office.

[17] Daniel Tyrie testified he was responsible for drafting the election handbook for the EDA (Handbook), which became the official EDA Handbook following the

PPC party leadership approving it. The Handbook was entered into evidence by admission of Exhibit No. 1 (Agreed Book of Documents (ABD)).

[18] Ms. Choiselat acknowledged she received and reviewed the Handbook. The applicable sections of the Handbook contained restrictions for social media use and sharing of personal views (Exhibit No. 1, Tab 2).

[19] Ms. Choiselat completed the electronic pledge and non-disclosure forms required by the executive board members identified in the Handbook (Exhibit No. 1, Tab 2, at pp. ABD 042-045), together with Elections Canada EDA registration forms (Exhibit No. 1, Tab 4, at pp. ABD 047-048).

[20] In July 2019, the Winnipeg Centre EDA leased space from the Cre8ery Gallery and Studio (inc.) art gallery (gallery) for a single event referred to as a meet and greet for the PPC candidate in Winnipeg Centre, Mr. Henderson.

[21] Mr. Kinnarath became aware of the upcoming meet and greet. The evidence discloses Mr. Kinnarath disagreed with the political platform of the PPC, including its stand on LGBTQ2S+'s rights and opposition to what he described as its anti-immigrant stance. Mr. Kinnarath reached out to the gallery owner about his concerns. He also had members of the fascist-free Treaty 1 organization reach out to the gallery owner. As a result, the gallery owner cancelled the candidate's meet and greet.

[22] In the years following the election, Mr. Kinnarath's evidence is he ran for a position on Winnipeg City Council. He testified that he encountered resistance at doorsteps for the posts described above. He admitted there was also resistance

due to his social media posts and admitted he made anti-Semitic comments and misogynist comments in 2011. The comments were published by CBC under the headline, "Winnipeg council candidate asks voters to accept he's grown since he issued hateful tweets". A tweet dated December 23, 2011 reads:

I'd like to thank my parents for raising me muslim cause I don't have to do this crazy xmas thing, you all are stressin and makin jews rich.

[23] On September 13, 2011 he tweeted:

I think I have to drop this class act on women, fine wine, fine dine and respect isn't working. Just gonna treat em like shit, seems to work.

[24] In 2024, two posters appeared in Bar Italia (Exhibit No. 1, Tab 22, at p. ABD 159) with what Mr. Kinnarath alleges is the same image posted by Ms. Choiselat during the 2019 election campaign. Instead of being called a terrorist, these posters referred to Mr. Kinnarath as a "False Prophet".

[25] On February 2, 2024, he posted on Twitter a photograph of the images of the poster found in Bar Italia (Exhibit No. 1, at p. ABD 195). The tweet states:

Found in the Bar Italia bathroom. At least they're confident in my abilities. Just think about the time and effort it took to make this. There are some bored and disturbed people out there. But that room I live in, rent free in their head is comfortable.

### **Positions of the Parties**

#### ***Mr. Kinnarath***

[26] Mr. Kinnarath identifies allegations of defamation. As against Ms. Choiselat, he argued the statements are individually and collectively defamatory as the

postings were rapidly posted in response to an ongoing online conversation. The allegations are:

- Firstly:

On or about July 22, 2019, Choiselat posted on her Facebook the following statements:

Some anti-hate-fa group is trying to shut down our rally in Winnipeg. Gee thanks CBC.

Just got a call from the venu owner. Someone threatened to burn down her building. So she's scared and cancelled.

Just to let you know Omar K[e]nnarath who works at Shaw is the one who did this to her [*sic*].

- Secondly:

On or about July 22, 2019, Choiselat posted the following comments on her Facebook page:

She cancelled because you omar tried to ruin her business. We aren't mad at her. You bullied her by posting evil lies about her on line that reduce her to tears. What you did was evil and mean.

Someday, omar, you will want forgiveness for this sin and there may be no one left who cares enough about your moral reversal to forgive you[.]

- Thirdly, on July 22, 2019 Choiselat posted the following statement on her Facebook account: in response to Ms. Jordan Miller and the PPC cancelling the PPC meet and greet:

Omar you are a terrorist.

That's what terrorists do, they threaten people to get [their] own way.

- Fourthly, Ms. Choiselat posted on her Facebook account a colour photograph of Mr. Kinnarath wrapped in what appears to be a Palestinian flag, with the word "TERRORIST" beneath it and the comment:

"Just saying...". The photograph was also surrounded by the following text:

THIS THE TERRORIST'S DETAILS: [Kinnarath's full name, home address, phone number and email address] This terrorist shutdown our Rally to introduce our PPC Candidate by ruining online the little woman who was renting us our venue. He called this activity, "Free Speech" Definition of terrorism: the systematic use of terror especially as a means of coercion [*sic*]

Facebook removed this post at the request of Mr. Kinnarath, and Ms. Choiselat posted the exact post a second time (Exhibit No. 1, at p. ABD 069). This post was also removed:

On or about July 23, 2019, the following comment was posted on the Twitter account 'PPC Winnipeg Centre' (@PPCWpgCntre) and Choiselat's Facebook page:

Our rally is cancelled because this guy terrorized the struggling gallery owner into cancelling our venue[.]

Ms. Choiselat continued to comment on Facebook:

On or about July 22, 2019, Choiselat responded to a Facebook user's concerns regarding the Post being defamatory, stating "No this is exactly accurate...".

Ms. Choiselat tweeted:

On or about July 23, 2019, the Twitter account 'PPC Winnipeg Centre' (@PPCWpgCntre) shared the Post with the comment:

Terrorism is not Free Speech. Just saying...

Finally, Ms. Choiselat commented to the traditional media outlet City News, which resulted in the following being published:

On or about September 17, 2019, CityNews published an article by Lauren Boothby titled "PPC critic demands apology, takes legal action against party over 'doxxing'" (the "CityNews Article"). When asked for a comment with respect to the legal action, Choiselat responded with the following:

I simply don't care who it is. If someone commits a vile act, terrorizing a vulnerable person to fulfil his or her own agenda, even if the victim will not stand up for her or himself, I will call it out. All Canadians must, if we want to preserve our civilized, law-abiding country. Democracy is not a spectator sport. Further, I can guarantee nothing has happened to the vile person or his family, on the other hand I have been harassed by the FF! entity non[e] stop since I exposed this abomination without support of the police, the people's party or any of my friends and relatives. [*sic*]

[emphasis in original]

***Ms. Choiselat***

[27] Ms. Choiselat submits her defence to Mr. Kinnarath's allegations is fair comment. She claims the published comments are of public importance and factually correct. Therefore, his claim should be dismissed.

***Mr. Henderson***

[28] Mr. Kinnarath's defamation claim against Mr. Henderson is based on Mr. Henderson's comment to a journalist, "there were extremists on both sides". Mr. Henderson submits this comment is not defamatory. In the alternative, he advances the defence of fair comment. Therefore, Mr. Henderson says the claims against him should be dismissed.

***The PPC***

[29] Mr. Kinnarath claims the PPC is liable for Ms. Choiselat's defamatory comments. However, it is the PPC's position that it cannot be held liable for Ms. Choiselat's defamatory comments. These were Ms. Choiselat's comments

alone; the law prohibits a political party to be vicariously liable for the comments of a third person.

## **THE LAW**

[30] The leading case in defamation is ***Grant v. Torstar Corp.***, 2009 SCC 61, [2009] 3 S.C.R. 640. The court commented the protection of free speech granted under the ***Charter*** is not absolute:

[2] But freedom of expression is not absolute. One limitation on free expression is the law of defamation, which protects a person's reputation from unjustified assault. The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other's reputation....

.....

[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, e.g., R. A. Smolla, "Balancing Freedom of Expression and Protection of Reputation Under Canada's *Charter of Rights and Freedoms*", in D. Schneiderman, ed., *Freedom of Expression and the Charter* (1991), 272, at p. 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous *per se*: R. E. Brown, *The Law of Defamation in Canada* (2<sup>nd</sup> ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.) The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[29] If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

### **Fair Comment**

[31] In *Grant* (at para. 31), a defendant who advances a fair comment defence must satisfy the following test: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment, though it can include inferences of fact, must be recogni[z]able as comment; (d) and the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts; and (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by malice (see also *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 1).

### **Vicarious Liability for Defamation**

[32] On defamation, Brown, Raymond E. *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed., Toronto, Ont: Carswell, c1994, vol. 7, at pp. 18-208 and 18-224, refers to vicarious liability as follows:

If the servant exceeds the scope of his or her authority, the principle is not liable.<sup>989</sup> If he or she departs from the master's business to accomplish a purpose of his or her own, no liability will attach to the principal.<sup>990</sup> "The question is whether or not there is any authority to communicate on behalf of the [principal] any comment or statement of opinion at all."<sup>991</sup>

.....

A corporation is not liable for every idle statement made by an agent or employee.<sup>1082</sup> It must be established that the defendant ratified the acts of the agent,<sup>1083</sup> or that the person was authorized to act on behalf of the defendant,<sup>1084</sup> or was acting within the scope of his or her agency,<sup>1085</sup> or that the employees were acting in the course<sup>1086</sup> or furtherance<sup>1087</sup> of the employer's business, or discharging their duties at the time and were acting within the scope of their employment or apparent authority when the publication was made.

## **ANALYSIS**

### ***Mr. Kinnarath's Claim against Ms. Choiselat***

[33] I agree with Mr. Kinnarath's position that Ms. Choiselat's statements satisfy the test for defamation outlined in ***Grant***. The words of Ms. Choiselat, outlined by Mr. Kinnarath above, are defamatory. The evidence shows the words directly identified Mr. Kinnarath, included his photograph, his address, and a telephone number. Using words such as terrorist and making accusations about being responsible for arson would tend to lower his reputation in the eyes of a reasonable person. Ms. Choiselat published the claims against Mr. Kinnarath on her personal Facebook page on two occasions. Facebook removed the first post when Mr. Kinnarath filed a formal objection as to the content. Ms. Choiselat ignored Facebook's decision and reposted the same post for a second time. When Facebook removed the second post, she published the same post on the PPC Winnipeg Centre Twitter account. This post, being the third post by Ms. Choiselat of the same material, was eventually removed by Twitter.

[34] Mr. Kinnarath having met his onus, Ms. Choiselat bears the burden of advancing a defence. Ms. Choiselat's defence is her published comments are protected by fair comment.

[35] In July 2019, the evidence from multiple witnesses confirms at the time these events occurred, the country was in the middle of a federal election campaign making this a matter of public interest.

[36] As to the objective test, "could any person honestly express that opinion on the proved facts?" By including words that Mr. Kinnarath is a terrorist, a vile person and suggesting, although Mr. Kinnarath was never named, was responsible for burning down a building in the vicinity of the gallery owner, those statements are not proven. Although Mr. Kinnarath is not named in reference to the burning of a building in the vicinity of the gallery owner, I find Ms. Choiselat's choice of words in context leads to a reasonable inference it was Mr. Kinnarath who was responsible for the arson. Those facts or inference are not proven by Ms. Choiselat. While Ms. Choiselat says she withdrew the comments about arson as not being factual, this retraction relates only to the question of damages as she still published those defamatory words.

[37] Simply, in the circumstances, I find that a person could not honestly express the words published by Ms. Choiselat on the proven facts. Rather, Ms. Choiselat has stated as facts against Mr. Kinnarath multiple statements which are not proven, cannot be inferred and are defamatory. When Ms. Choiselat posted on Facebook and Twitter, Ms. Choiselat possessed no knowledge of Mr. Kinnarath's personal circumstances. She subsequently acknowledged she was mistaken in her words that Mr. Kinnarath was responsible for burning down the building in question. Even when another user alerted her that her post may be defamatory in the opinion of a third party as they appeared to be statements of fact as opposed to comment, she refused to remove the post and claimed the statements were factual.

[38] I find Ms. Choiselat was actuated by malice. When Facebook alerted her that her first post was removed, it should have prompted her there were problems with the post. There is no evidence she requested Facebook to clarify the reason for removal of the first post.

[39] The uncontroverted evidence is Ms. Choiselat immediately reposted the same defamatory information on Facebook. At this stage, the only reasonable conclusion is she published maliciously.

[40] Even if her second Facebook post is not malicious, there is no question she acted with malice when, for a third time, Ms. Choiselat posted the same information on the PPC Winnipeg Centre Twitter account. She knew from reviewing the PPC policy, she was to avoid posting on PPCEDA social media attacks such as these. I accept the read-ins from her examination for discovery transcript, she understood the limitations of her ability to post. Although the PPC permitted her to post on the Winnipeg Centre social media accounts, her authority was limited to post positive stories about Mr. Henderson, the PPC candidate, and the PPC in general. The policy provided guidance on how to turn negative questions into positive answers about the PPC. One of the restrictions in the PPC Handbook was to, “not promote any personal idea or make personal comments.”

[41] Having acknowledged, as she read and understood the PPC social media policy, Ms. Choiselat chose to post, knowing she had no authority to do so, on the PPC Winnipeg Centre Twitter account. Accusing Mr. Kinnarath of terrorism without a shred of truth defeats any claim of fair comment. Her continued refusal to

withdraw those comments up to the conclusion of trial demonstrates she was actuated by malice against Mr. Kinnarath.

[42] Therefore, I reject Ms. Choiselat's defence of fair comment.

***Claims against Yogi Henderson***

[43] Mr. Henderson, when asked to comment on Ms. Choiselat's posts about him stated, "both were extreme views". Mr. Kinnarath claims this statement should be considered defamatory whether directly or by innuendo.

[44] Mr. Kinnarath's argument against Mr. Henderson's words is as follows:

The response when he is told about the cancellation of the event, the controversy surrounding the cancellation, and then the allegations of terrorism and the defamatory statements, what he effectively at that did - - he had an opportunity to expressly either in his personal capacity or on behalf of the party in that riding, he had an opportunity to say that what Monique had said was not true. He had an opportunity to say that should never have been said. He had an opportunity to say the party distances itself from that. He had an opportunity to retract. He had an opportunity to even apologize if he saw himself as the true representative of the party in that riding.

He had a number of options available to him and instead, what he did was he equivocated both the cancellation of the event and what was said to Mr. Kinnarath afterwards. Both were extreme views. Both were extreme views. The failure to retract an express allegation of terrorism and to distill it or equate it with the cancellation of a rally, is absolutely irresponsible.

[45] Turning to the words, "both were extreme views", Mr. Kinnarath's position is, by fact or innuendo, Mr. Henderson's words created the impression he was an extremist. I disagree. These words were spoken during the 2019 federal election. I find Mr. Henderson only commented on how he viewed Mr. Kinnarath's and Ms. Choiselat's actions. These views, expressed in the middle of an election campaign, are not defamatory. Even if they are found to be defamatory, the words

are clearly Mr. Henderson's opinion based on the fact of the posts and not a statement of fact. Mr. Henderson's comments fall within the protections offered by the fair comment defence.

[46] Therefore, I dismiss the claim against Mr. Henderson.

***Claims against the PPC***

[47] The PPC was made aware of Ms. Choiselat's Facebook posts and tweet on the PPC Winnipeg Centre Twitter account days after they were published. Mr. Kinnarath submits, by granting Ms. Choiselat general authority to post on the PPC Winnipeg Centre Twitter account, the PPC was vicariously liable for her actions.

[48] I disagree. I accept the evidence of the PPC representatives Caleb Voskamp and Daniel Tyrie (see para. 16), the PPC was very mindful of the risk political posts pose. The PPC understood other political parties would use any information on its social media pages to its own advantage. The PPC policies went to great lengths to instruct its candidates and the PPCEDA to refrain from such activity. I find Ms. Choiselat's posts were personal opinions not in accordance with PPC policies and were unauthorized. That is, Ms. Choiselat exceeded her authority and acted without apparent authority.

[49] I also find the PPC did not ratify the acts of Ms. Choiselat. Although the PPC took some time to remove Ms. Choiselat's posts, there were no further posts by anyone on the PPC EDA Twitter account after Ms. Choiselat's post, and the PPC removed her from her position with the PPC.

[50] Mr. Kinnarath's argument, if successful, would create strict liability for political parties for every comment made by candidates, executives, or even members of a party. Defamation is a strict liability tort for the speaker or publisher of the comment. Here, the claim against the PPC is based on vicarious liability. I find the PPC did not approve or endorse Ms. Choiselat's published comments. I also find the PPC did everything reasonably possible to prevent these types of posts. To extend vicarious liability to a political party in these circumstances is unwarranted. Ms. Choiselat, being motivated by malice, bears the sole responsibility for her comments.

[51] However, in the days of social media, there may be circumstances where a party could be responsible for the comments, but I find the PPC took all reasonable steps to prevent anyone on its behalf from making such posts. The facts of this case are Ms. Choiselat posted defamatory comments twice about Mr. Kinnarath on her *personal* Facebook page and then posted on the PPC EDA website contrary to the rules she understood existed.

[52] I find, considering all the facts of this case, the PPC is not vicariously liable for Ms. Choiselat's publications. Therefore, Mr. Kinnarath's claim against the PPC is dismissed.

### **New Tort of "Doxxing"**

[53] Turning to whether I should create a new tort of "doxxing", Mr. Kinnarath's statement expressing concerns for the safety of his family were well founded.

However, in this case, the information such as the physical address and his e-mail address were incorrect at the time of the posting.

[54] Doxxing is a new term where personal identifiers are published hoping to disrupt the person identified or their family. The post would result in demonstrators showing up at a person's home or place of work in protest. This invasion of their personal privacy would result in damage to the person or family identified.

[55] ***The Privacy Act***, C.C.S.M. c. P125 provides:

2(1) A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.

[56] I share Mr. Kinnarath's concern his young son was using the cellphone to play online games at the time of the posts, and his son could have received disturbing calls and texts, but there is no evidence any such calls were received. I recognize doxxing is a serious issue in today's society, but as there is a legislative enacted tort to address violations of privacy, I see no reason to create a new tort of doxxing.

### **Publication of Private Facts**

[57] Turning to the tort of publication of private facts, a current case involves a party posting nude or suggestive photographs of another person without consent (See ***ES v Shillington***, 2021 ABQB 739). Those circumstances are vastly different than the facts before me. At the time of publication, the photo complained about in the three social media posts were taken from Mr. Kinnarath's publicly available

social media page. These facts are distinguishable for this reason alone. To extend the tort of publicity of private facts to the circumstances of this case is unwarranted. Therefore, I reject this claim.

## **DAMAGES**

[58] The leading case in Manitoba on defamation damages is *Bibeau v. Chartier*, 2022 MBCA 5. Messrs. Bibeau and Chartier were business competitors. In a public place, in the presence of a person who was the banker for each of them, Mr. Bibeau called Mr. Chartier a thief. The jury awarded general damages in the amount of \$500,000 to Mr. Chartier and the jury declined to make an award for punitive damages.

[59] In *Bibeau*, Burnett JA reduced the damage award stating (at paras. 45-52):

I do not accept the defendant's submission that the defamatory comments were relatively minor. The plaintiff's business rests on trust and integrity, and the defendant's comments that the plaintiff was a thief and stole funds from him were extremely serious and utterly false allegations. As Blair J observed in *131843 Canada Inc v Double "R" (Toronto) Ltd*, 1992 CarswellOnt 437 (Ct J (Gen Div)), such allegations (at para 13):

. . . go to the heart of a person's integrity, and to my mind, are analogous to allegations of fraud. They are "allegations of improper conduct seriously prejudicial to the character or reputation of a party". . . .

However, when one considers the mode and extent of publication and the absence of any actual harm (as distinct from implicit harm) to the plaintiff's reputation and standing, the jury's award of \$500,000 is wholly disproportionate and shockingly unreasonable (see *Young v Bella*, 2006 SCC 3 at para 64).

The defamatory comments were made orally on one occasion to two people. This was not a case of widespread or repeated publication of defamatory statements in the print media, radio, television or on the

internet, and there was no actual effect on the plaintiff's reputation or business interests (see *Cable Assembly Systems Ltd v Barnes*, 2019 ONCA 1013 at para 20). The persons to whom the defamatory comments were made clearly did not believe them and continued to do business with the plaintiff.

It is widely accepted that defamation cases are fact-sensitive and unique and that there is little to be gained from a detailed comparison to other decisions (see, for example, *Hill* at para 187; and *Soliman v Bordman*, 2021 ONSC 7023 at para 208). However, having considered more than 50 recent decisions where damages were awarded for reputational harm, it is readily apparent that the present award is well beyond the "maximum limit of a reasonable range" (*Hill* at para 159) for the damage suffered by the plaintiff.

[Appendix of cases considered in original]

While the facts in this case are relatively straightforward, the quantification of damages is much less so. As has been observed on many occasions, there is no mathematical formula to determine an appropriate quantum of damages. I am fully aware of the defendant's conduct before and during the litigation, as well as his failure to apologize. I am also aware of the need for judicial restraint and caution before making any variation in the assessment of damages in this case. Having said all of that, it is my view that \$50,000 for general and aggravated damages would be at the upper end of a reasonable range in the present circumstances, and I would therefore award this amount.

### *Cross Appeal*

Defamation is the intentional publication of an injurious false statement (see *Hill* at para 170), but the fact that a defamatory statement was made intentionally is not, by itself, sufficient to attract punitive damages. In *Hill*, the Supreme Court of Canada stated (at para 196):

Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and

aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

I am not persuaded that the defendant's conduct in the present circumstances was "so malicious, oppressive and high-handed" (*ibid*), or so egregious or truly outrageous to warrant punitive damages. In my view, a compensatory award of \$50,000 for general and aggravated damages is "adequate to achieve the objectives of retribution, deterrence and condemnation in the circumstances of this case" (*Cable Assembly Systems* at para 20).

[60] With this background, what are Mr. Kinnarath's damages? Although damages are presumed, it is my responsibility to determine the damage award. I must consider whether the damages are significant, as suggested by Mr. Kinnarath, or are minimal, as suggested by the defendants.

[61] Mr. Kinnarath was an active participant in the social media exchanges. In this case, the comments were published on social media and the internet, making them more accessible to a wider audience. Statements such as those of Ms. Choiselat and Mr. Kinnarath never truly disappear. Social media comments are widely published by their very nature, distinguishing them from ***Bibeau***.

[62] However, as in ***Bibeau***, there is no evidence of reputational harm suffered by Mr. Kinnarath. Mr. Kinnarath testified he encountered potential voters when he ran as a candidate in the City of Winnipeg election, and was questioned if he was the same person as the one Ms. Choiselat called a terrorist. Mr. Kinnarath did not testify that people dismissed his candidacy outright because of Ms. Choiselat's posts or the traditional media news stories.

[63] Mr. Kinnarath described himself as a social activist. Merriam-Webster's dictionary defines an activist as follows:

...one who advocates or practices activism: a person who uses or supports strong actions (such as public protests) in support of or opposition to one side of a controversial issue...

[64] Mr. Kinnarath continues his work as an activist in Winnipeg. In 2023, he claimed he was named the University of Winnipeg social activist of the year. His evidence was, he would win for 2024 but would decline. His own evidence supports the impact on him was minimal. Mr. Kinnarath ran for a position on Winnipeg City Council and although he testified people remembered the 2019 comments, the focus of the media story was on his own reprehensible posts on social media (CBC online news story, Exhibit No. 4). He posted what are clearly anti-Semitic comments and misogynist comments. Although he acknowledges the damage caused by his posts (see paras. 22 and 23) currently do not reflect his current view, those online posts remain in the public square.

[65] Mr. Kinnarath posted on Twitter (Exhibit No. 1, at p. ABD 195) in response to a poster discovered by a third party in Bar Italia, Corydon Avenue, Winnipeg, Manitoba that contained the same image from Ms. Choiselat's posts, emblazoned with recognizing the words "False Prophet".

[66] His social media response, after discovering the image, included these words:

...there are some bored and disturbed people out there. But in that room I live in, rent free in their head is comfortable...

[67] Notwithstanding Mr. Kinnarath's evidence he was upset by this post, his own words posted on social media do not demonstrate his concern. His own position was he enjoys being "rent free in their head is comfortable". I find the

circumstances of the case at hand are distinguishable from cases cited by Mr. Kinnarath. In ***Paramount v. Kevin J. Johnston***, 2019 ONSC 2910, the defendant, without any provocation, used his own website to broadcast hate against Canadian Muslims, including the plaintiff. The plaintiff was engaged in many charitable works. He was deeply committed to community service without regard to race, religion or ethnicity. The court found this was not the only time Johnston published online criticism of Muslims. Damages in the amount of \$2,500,000 were awarded.

[68] In ***Kaur v. Virk***, 2022 ONSC 6697, the defamatory posts were a result of a business relationship gone bad. Ms. Virk posted four videos on various social media sites claiming Ms. Kaur was a promiscuous woman in order to harm her business. General damages were awarded in the amount of \$5,000, and \$10,130 in loss of income claim subject to a 25 percent contingent reduction. Special damages, and punitive damages were denied. Aggravated damages were not sought.

[69] In ***Supel v. Cunningham***, 2022 MBQB 96, the defendant posted on social media defamatory statements about his landlord, Dr. Supel, being his girlfriend. These statements were posted in the middle of a landlord-tenant dispute and were absolutely untrue. Martin J. awarded general damages of \$25,000, aggravated damages of \$10,000 and punitive damages of \$10,000, for a total award of \$45,000. Martin J. awarded special damages of \$262.50.

[70] Other cases submitted by Mr. Kinnarath include a spiritual leader being identified in a documentary about assassination of Dr. Noor Ali Tabandeh and having him replaced by a leader acceptable to the Iranian government (*Hosseini v. Gharagozloo*, 2024 ONSC 1106). *Canadian Union of Postal Workers v. Quebec Core Media*, 2024 ONSC 6484, concerns defamatory statements spoken during a television broadcast about the union's political activities. Those cases are not comparable to the facts herein.

[71] Mr. Kinnarath's words demonstrate what is at the core of social activism; to make people uncomfortable.

[72] I find, in these circumstances, minimal damages are appropriate. His activism continued unabated in the years that followed. Any suggestion that damages should be awarded, similar to those in *Paramount* or *Supel*, are inappropriate.

[73] Considering the above, I award nominal general damages in the amount of \$5,000.

[74] On the question of aggravated damages, I find the comments in *Hill* to be helpful (at para 188):

Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. The nature of these damages was aptly described by Robins J.A. in *Walker v. CFTO Ltd.*, *supra*, in these words at p. 111:

Where the defendant is guilty of insulting, high-handed, spiteful, malicious or oppressive conduct which increases the mental distress -- the humiliation, indignation, anxiety, grief, fear and the like -- suffered by the plaintiff as a result

of being defamed, the plaintiff may be entitled to what has come to be known as "aggravated damages".

[75] **Hill** states (at para. 191):

There are a number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of aggravated damages. The jury may also consider whether there was a repetition of the libel, conduct that was calculated to deter the plaintiff from proceeding with the libel action, a prolonged and hostile cross-examination of the plaintiff or a plea of justification which the defendant knew was bound to fail. The general manner in which the defendant presented its case is also relevant. Further, it is appropriate for a jury to consider the conduct of the defendant at the time of the publication of the libel. For example, was it clearly aimed at obtaining the widest possible publicity in circumstances that were the most adverse possible to the plaintiff?

[76] The aggravating factor present before me is Ms. Choiselat never issued an apology for her choice of words. Five years after her initial post, she maintains calling Mr. Kinnarath a terrorist. Although I found the general damages to be minimal, Ms. Choiselat's actions require me to award Mr. Kinnarath aggravated damages for her conduct. Although many of the examples from **Hill** are not present, Ms. Choiselat refused to withdraw her defamatory words other than the references to arson. Because of her continued refusal, I award Mr. Kinnarath aggravated damages in the amount of \$5,000.

[77] On the question of whether punitive damages should be awarded, I considered the comments of Burnett JA in **Bibeau**:

In **Hill**, the Supreme Court of Canada stated (at para 196):

Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and

high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[78] I do not find Ms. Choiselat's conduct to be so malicious, oppressive and high-handed to offend the court's sense of decency in this case, for the same reasons I awarded nominal general damages. For those same reasons I am not awarding punitive damages.

## **CONCLUSION**

[79] In conclusion, I find Ms. Choiselat defamed Mr. Kinnarath and has not established the defence of fair comment. I dismiss all claims against the other defendants who were not noted in default. I award \$5,000 in favour of Mr. Kinnarath for general damages as against Ms. Choiselat. I also award \$5,000 for aggravated damages to Mr. Kinnarath as against Ms. Choiselat. Costs are awarded to Mr. Kinnarath in his claim against Ms. Choiselat. Costs are awarded to the PPC and Mr. Henderson in the claim filed against each of these defendants by Mr. Kinnarath. In the event the quantum of costs cannot be agreed, please book an appearance before me.

[80] As well, a time should be booked with me to address damages against Mr. McDougall and Mr. Storie who were both noted in default.

\_\_\_\_\_ J.