IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beland v. Cardy,*
2025 BCSC 656

Date: 20250408
Docket: S236398
Registry: Vancouver

Between:

Colleen Beland, Philip Cooper, Gregory Cowan, Birgit Keys and Brendan Keys

Plaintiffs

And:

Courtney Cardy, Rhonda Davidson, Diana Wood-Hutchinson, Jim Taylor

Defendants

Before: The Honourable Madam Justice Francis

Reasons for Judgment

Counsel for the Plaintiffs:	A. McConchie
Counsel for the Defendants:	R. Dueckman
Place and Dates of Hearing:	Chilliwack, B.C. January 8-10, 2025 Vancouver, B.C. February 19, 2025
Place and Date of Judgment:	Vancouver, B.C. April 8, 2025

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I. INTRODUCTION

[1] In this action, the plaintiffs have sued the defendants for defamation. The case arises from an unfortunate dispute between members of rival community groups in the Stave Falls area of Mission, BC. It appears that this once tight-knit community has, over matters that to an outsider may seem minor, become polarized to the point that neighbours no longer talk to neighbours, and seemingly every person has sided with one camp or another. In this context, in a frenzy that appears to have built up primarily over social media, a number of statements were made in a Facebook group that were highly critical of the plaintiffs. The plaintiffs have sued some of the authors of these statements, as well as the administrators of the Facebook group in which they were made, claiming that the statements were defamatory and have caused the plaintiffs reputational and other damage.

[2] In advance of any determination on the merits of the plaintiffs' claim, the defendants have brought an application to have the action dismissed pursuant to s. 4 of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 (the "*PPPA* Application"). In the alternative, the defendants seek summary dismissal of the plaintiffs' claim. Two cross applications were also before me: an application to strike portions of the defendants' response to civil claim in which the defendants plead the defence of fair comment, and an application to strike certain portions of affidavits submitted on behalf of the defendants on the basis that they contain inadmissible hearsay, argument, opinion, and irrelevant evidence.

[3] The defendants submit that the plaintiffs' two applications should not be considered by me in the context of the *PPPA* Application because s. 5 of the *PPPA* operates to stay any steps in the litigation until the *PPPA* Application is determined.

[4] In these reasons for judgment, I will first review the factual background and the alleged defamatory statements in issue. I will then consider the applications before me and determine whether the plaintiffs' applications should be heard in the context of the defendants' *PPPA* Application. I will then consider and determine the *PPPA* Application, as well as the alternative relief sought by the defendants.

II. BACKGROUND FACTS

A. The Stave Gardens Community Association

[5] Stave Falls is a rural community in Mission, BC. The plaintiffs and defendants are residents of Stave Falls and all appear to be active members of their community.

[6] Two community groups with seemingly parallel mandates exist in Stave Falls. The Stave Gardens Community Association is a group that was dissolved in 2012 for failure to file annual reports, and then reinstated in 2016 (the "SGCA"). The Stave Falls Community Association (the "SFCA") was also started in around 2016.

[7] The plaintiffs are all former board members of the SGCA.

[8] The SGCA was reinstated primarily for the purpose of restoring an old community hall that had fallen into disrepair (the "Community Hall"). In the late 1940s, the SGCA had constructed the Community Hall and in 1955, the District of Mission granted the SGCA title to the property on which the Community Hall was situated (the "Property"). By 2016, the Community Hall had fallen into disrepair. Members of the community learned that the Property had escheated to the Crown after the SGCA was dissolved. They decided to reinstate the SGCA so that they could reclaim the Community Hall.

[9] The decision to reinstate the SGCA does not appear to be one that was universally supported in the community and some of the defendants were highly critical of the decision. A neighbour who lived adjacent to the Community Hall, Jay Semple, had been paying property taxes on the Property, apparently in the hopes of acquiring an interest in it. Some members of the community felt that it was unfair to Mr. Semple for the SGCA to re-acquire the Property in the face of his apparent interest in obtaining it. In any case, the SGCA was unable to realize any plans for the Property because they were unable to summon the necessary funds to pay an outstanding tax debt of $72,801.88. As a result, shortly after the SGCA was reinstated and the Property was reacquired, the SGCA sold the Property to pay the outstanding tax debt.

[10] After the Property was sold, and the outstanding tax debt paid, the SGCA had approximately $265,000. The SGCA used these funds to host community events, fund a bursary, and pay for an outdoor classroom at the local elementary school.

B. The November 2022 AGM

[11] The SGCA held an AGM on November 2, 2022 (the "AGM"). New members signed up for membership in the SGCA at the AGM, including the defendants Courtney Cardy and Rhonda Davidson.

[12] An election was held at the AGM to elect a board of directors for the SGCA. Eight directors were to be elected at that meeting. Thirteen people ran for election, including Ms. Cardy.

[13] At the end of voting, votes were counted by the plaintiff Colleen Beland's husband, Dave Beland, and by Ms. Davidson. Ms. Beland assisted with the counting of ballots and the plaintiff Gregory Cowan acted as an unofficial scrutineer. The result of the election was that the plaintiff Birgit Keys, Ms. Beland, the plaintiff Brendan Keys, Tony Reid, the plaintiff Philip Cooper, Bruno Wissman, and Mr. Cowan were all elected to the board of the SGCA. All seven of these individuals were incumbents. Two people were tied for eighth place: Johan Neilson and Ms. Cardy. Immediately after the election, in light of the tie, the seven incumbent members of the board began discussions to add a ninth person to the board. Before that motion was subject to a vote, Ms. Cardy announced that she no longer wanted to sit on the board.

C. Context for the Facebook Posts

[14] Shortly after the AGM, the defendants and others began posting about the governance of the SGCA on the Stave Falls Community Facebook Group (the "Facebook Group"). The Facebook Group was started in 2016 by Ms. Cardy and Darlene Schopman. According to information on the site, the administrators of the Facebook Group are Ms. Schopman, Ms. Davidson, and Ms. Cardy. The

administrators of the Facebook Group are able to approve or deny group membership requests and to remove and comment on posts.

[15] In posts on the Facebook Group, the defendants and others discussed a number of issues that concerned them about the SGCA (the “Facebook Posts”). These issues included the manner in which the AGM was conducted, as well as other things that the SGCA board was doing that were alleged to be (to use a word frequently employed in the Facebook Posts) “shady”. Some factual context is necessary to understand the Facebook Posts and the concerns and disputes that appear to have motivated them.

[16] One issue of stated concern appears to be the SGCA board’s decision to ask its directors to sign a confidentiality agreement to protect the board’s communications at a time when the SGCA was discussing a potential merger with the SFCA. The request for directors to sign a confidentiality agreement appears to have engendered a great deal of suspicion amongst the defendants and some members of the community.

[17] Also, shortly after the AGM, the SGCA commenced discussions with the City of Mission about the potential development of parkland adjacent to the Stave Falls Elementary School. On December 19, 2022, Mr. Cowan and Ms. Keys, on behalf of the SGCA, attended a meeting of the City of Mission Council. At an SGCA general meeting on January 4, 2023, Ms. Keys reported on the presentation that the SGCA made to City Council. The means by which the SGCA board communicated with the City about the parkland development is another topic that the defendants and others in the community appear to have been unhappy about.

[18] Another issue of contention amongst community members was the fact that the SGCA board appeared to have approved the expenditure of funds to purchase a sign restricting access to a park to ensure that it was used only by locals (the “Park Sign”). The Park Sign was not erected until almost a month after the SGCA had recorded it as an expense in its financial records. The Park Sign cost $593.60, including tax.

[19] Finally, confusion around the filing of the SGCA's bylaws appears to have caused consternation for the defendants and others. The issue stemmed from the fact that in 2018, the SGCA was required to file new bylaws as party of a transition to BC's new Societies legislation. It appears that the lawyer for the SGCA filed the new bylaws without obtaining a special resolution from the SGCA approving the bylaws, contrary to legislative requirements.

D. Alleged Defamatory Statements

[20] The alleged defamatory statements are appended to these reasons for judgment as appendices. Below, I have summarized a selection of them, in an attempt to provide a chronology as to how the alleged defamatory speech in the Facebook Posts evolved over the course of a short period of time in late 2022 and early 2023.

[21] The first post on the Facebook Group that the plaintiffs point to as defamatory is a post by Ms. Wood-Hutchinson on November 7, 2022, that says, among other things:

> Being forced to sign a non-disclosure agreement so the community association can ensure that the community doesn't know what is going on is wrong.
>
> …
>
> In light of your post here, the suspicions in the other post about the election not being held in a fair manner, sounds justified (especially when everyone involved with it were either on the ballot or related to someone on the ballot).

[22] The tone of messages on the Facebook Group quickly escalated over the days following Ms. Wood-Hutchinson's post. Ms. Cardy posted on the same day that the SGCA disseminated "misinformation", and "screwed over a long-time resident" (presumably a reference to Mr. Semple). On the same day, Ms. Wood-Hutchinson posted that the actions of the board were "super fishy". When Keith Hall (not a defendant) posted that "the question of voter fraud should be raised by everyone in the community", Ms. Wood-Hutchinson responded, "sounds fishy", and noted that an audit was necessary in order to ensure that fraud did not take place at the AGM.

[23] On November 20, 2022, Ms. Wood-Hutchinson posted a message in which she complained about the secrecy demonstrated by the SGCA. She noted:

> At this point, it feels like we're living in some poorly written Disney movie where a con man comes to town and steals a community asset.

[24] On the same day, Ms. Cardy sent a post that contained the following, with reference to the SGCA board:

> Instead, it's been lies and secrecy. I don't think anyone has any desire to sit in a meeting with a dictatorship. This is an open forum, they could have shared their 5 part series where everyone could see it, but they have no desire to open up to the community, it would mean they would have to finally admit wrong doing and make changes. They would be corrected with facts, emails and witness statements, but they don't want to be corrected, because again, this will show their wrong doings.
>
> …
>
> This is the same shady crap that has been happening since the sneaky reinstatement. I've had enough, and I will ensure the truth gets out.

[25] A number of other people posted on the Facebook Group on November 20, 2022, stating that the actions of the SGCA were "super shady", "[bordering] on illegal", and sounded like "outright theft of a community asset". None of these comments were taken down by the administrators.

[26] On December 19, 2022, Ms. Davidson wrote a post on the Facebook Group referring to the $593.60 sign purchased by the SGCA and said, "[t]he whole thing smells". On the same day, Ms. Wood-Hutchinson published a post that said:

> Since stealing our community asset they have not shown any interest in listening to the community engagement.
>
> …
>
> By forcing everyone on the board to sign a non-disclosure they are ensuring that the community has no idea what they are doing with our money.

[27] On December 21, 2022, Ms. Cardy published a post on the Facebook Group that referred to the board and said, "they operate on lies and deceit".

[28] On January 17, 2023, Ms. Cardy published a post on the Facebook Group wherein she stated that the SGCA was "reinstated deceitfully and has continued to operate in that manner".

[29] On February 10, 2023, Ms. Davidson posted a message in the Facebook Group wherein she referred to the SGCA as a "dictatorship". On February 15, 2023, Ms. Davidson posted:

> It just reeks of sneaky snake to me. I've questioned many of their spendings that are on the books (not all the $'s line up either btw) and wonder what else we don't know.

[30] On March 1, 2023, Ms. Cardy published the following message on the Facebook Group:

> Absolutely appalled by the joke that is the Stave Gardens Community Association, or should I say, dictatorship. Absolutely disgusting! They only want to play by their made up rules as they go along. Time for a call to BC Societies! An audit is definitely in order!

[31] On the same day, an individual named Reese Kopeschny posted:

> I really wonder how much money they personally borrowed and now [owe] from the association. Something illegal is going [on] with that, the NDA's and everything else is going on. This needs to be taken further and they should be reported. For sure they are embezzling money and don't want to be caught.

[32] Reese Kopeschny's comment about the board embezzling money was "liked" by Ms. Davidson.

[33] On the same day, an individual named Brynn Hall published a post on the Facebook Group that said:

> *Courtney Cardy* they must be doing something shady – illegal to be acting like this. It is absurd and absolutely unheard of for an organization of any type to act like this.

[34] Brynn Hall's post was "liked" by four people, including Ms. Cardy.

[35] While the above posts contained clear accusations of illegal activity on the part of the SGCA, the administrators of the Facebook Group took no steps to take them down.

[36] On August 10, 2023, Mr. Taylor posted about the issue of the society's bylaws being submitted without going through a general meeting. He said:

> …I will also be asking the Province's Civil Resolution Tribunal to examine and report on the SGCA's conduct since 2016. I have not made this decision lightly, however, following conversations with the BC Society Registry, I have come to understand how seriously the filing of documents in violation of the Society act is taken.

[37] On August 23, 2023, Mr. Taylor published a post on the Facebook Group that said:

> Interestingly, no committee members asserted that the 2019 filings were fraudulent. However, in later conversations with Service BC and the Registrar of Societies, that terminology was used as one possible scenario. It would certainly be beneficial to have all files connected to these filings made public.

E. Evidence of the defendants on cross-examination

[38] The defendants were cross-examined on their affidavits filed in support of the *PPPA* Application.

[39] On cross-examination, Ms. Cardy admitted that she is not aware of any expenditures by the SGCA that have not been disclosed to the membership. She admitted that she had no information that the SGCA directors were personally profiting from SGCA funds. She was unable to identify what "misinformation" she was referring to when she posted that the SGCA had issued a "five-part series of misinformation". She admitted that she did not know what alleged lies she was referring to when she referred to the SGCA telling lies, and she had no idea what "shady crap" she was referring to in her posts. When asked why she had posted that the plaintiffs could not be trusted, she could give no answer. Overall, Ms. Cardy's cross-examination makes it clear that there is no factual foundation behind many of the allegedly defamatory statements she made in the Facebook Posts.

[40] Mr. Taylor was also cross-examined. He admitted that he had never spoken with anyone at the Civil Resolution Tribunal ("CRT") who told him that the CRT had jurisdiction to "examine and report on the SGCA's conduct since 2016". He could not recall anyone at the Registrar of Companies telling him "how seriously [it took] the filing documents and violation of the Societies Act". He further admitted that the Registrar of Companies never told him that the SGCA or its counsel engaged in fraud and that he cannot recall anyone at Service BC using the word "fraud" during his conversation with them. Mr. Taylor's cross-examination responses suggest that many of the statements he made were misleading.

[41] At her cross-examination, Ms. Wood-Hutchinson admitted that she accused the SGCA board of stealing a community asset. She admitted that she attended the AGM and has no information that any fraud occurred or that there was any miscounting of ballots. When asked why she posted that the AGM election would not withstand scrutiny, she could give no additional information. Ms. Wood's cross-examination responses also suggest that she made a number of inflammatory comments about the SGCA board without any factual foundation.

[42] Ms. Davidson attended the AGM and, with Ms. Beland, counted the ballots for the election of the board. She admitted on cross-examination that she did not notice any irregularities with the ballots or fraud with the election. She admitted that, notwithstanding her post in which she said, "the sign was only erected much after the expense was questioned at a general meeting", she in fact has no information about when the signs were ordered. Even though she knows the signs exist, she maintains that she still does not know if they were "some sort of fictitious purchase". She could not recall what alleged "untruths" she was referring to in her post about the SGCA board, and could not recall why she alleged that the SGCA's finances were not "lining up." Like the other defendants, Ms. Davidson appears to have been willing to make inflammatory statements about the SGCA board with little regard to whether there was a factual foundation for those statements.

III. THE PLAINTIFFS' APPLICATIONS

[43] The plaintiffs first filed an application on April 11, 2024, prior to the filing of the defendants' *PPPA* Application, for an order striking the defence of fair comment from the response to civil claim. That application was never heard.

[44] The plaintiffs now have two applications before the court that they seek to have determined concurrently with the defendants' *PPPA* Application. The first, which I will refer to as the "Striking of Defence Application," was filed on June 4, 2024, after the defendants filed the *PPPA* Application. This is substantially the same application as the one they filed on April 11, 2024. The Striking of Defence Application seeks an order striking the defence of fair comment from the response to civil claim, on the basis that the defendants have failed to provide particulars as required under Rule 3-7(21)(b) of the *Supreme Court Civil Rules*. The second application seeks to strike certain portions of responding affidavits filed by the defendants on the basis that they contain inadmissible evidence (the "Striking of Evidence Application").

A. Should the plaintiffs' applications be heard?

[45] Section 5 of the *PPPA* limits the ability of either party to take any steps in a proceeding after an application has been brought pursuant to s. 4 of the *PPPA:*

> **5** (1) Subject to subsection (2), if an applicant serves on a respondent an application for a dismissal order under section 4, no party may take further steps in the proceeding until the application, including any appeals, has been finally resolved.
>
> (2) Subsection (1) does not apply to an application for an injunction.

[46] Caselaw interpreting s. 5 and its equivalent provision in Ontario legislation has observed a distinction between taking a step in a proceeding after an application for dismissal under s. 4 has been served (which is prohibited by s. 5), and taking a step in relation to the application itself (which is not prohibited by s. 5): *United Soils Management Ltd. v. Katie Mohammed*, 2017 ONSC 904 at para. 20; *Galloway v. A.B.,* 2019 BCSC 1417 [*Galloway 2019*] at para. 40. The decision of Justice Murray in *Galloway 2019* was upheld by the Court of Appeal, wherein Chief Justice Bauman

held that the court's authority to make document disclosure orders as part of the process leading up to the hearing and disposition of a s. 4 application "cannot be doubted": *Galloway v. A.B.*, 2020 BCCA 106 at paras. 46–47.

[47] The prohibition on any further steps being taken in a proceeding once an anti-SLAPP motion has been served prevents parties from engaging in extraneous litigation that may undermine the efficiency of the process established by the legislation: *The Catalyst Capital Group Inc. v. West Face Capital Inc.,* 2021 ONSC 125 at para. 196. In *Kim v. Norton Rose Fulbright Canada LLP,* 2023 BCSC 1251, Justice Veenstra described the purpose of s. 5 as follows:

> [158] The purpose of s. 5 of the *PPPA* is substantially different. It is intended to prevent the use of extraneous litigation steps that might undermine the efficiency and economy of what is intended to be an expedited process, or otherwise compound the mischief the *PPPA* is designed to prevent. In my view, the policy underlying this and other provisions of the *PPPA*, including s. 9(3), which provides that an application under s. 4 must be heard "as soon as practicable", is that proceedings be heard quickly, efficiently and economically.

[48] As such, any litigation between the time an application under s. 4 of the *PPPA* is filed, and when it is heard, must be carefully circumscribed: *Kim* at para. 160.

[49] With respect to the Striking of Defence Application, the failure to provide particulars of the facts upon which a comment is based may result in the fair comment defence being struck out: Rule 3-7(21)(b); *Malak v. Hanna,* 2013 BCSC 2010 at paras. 22–24; *Vogel v. Canadian Broadcasting Corporation* (1981), 26 B.C.L.R. 340, 1981 CanLII 564 (S.C.) at para. 18. In this case, the plaintiffs have demanded particulars with respect to the fair comment defence and the defendants have declined to provide them. The defendants therefore face a significant risk that, were the Striking of Defence Application to be considered on its merits, the sole defence pleaded by the defendants would be struck out.

[50] I am sympathetic with the position the plaintiffs find themselves in. Despite repeated requests for particulars, and an application to strike the defence of fair comment for failure to provide particulars being filed for the first time in advance of

the *PPPA* Application, particulars have not been provided. This has placed the plaintiffs at a significant disadvantage in the context of the *PPPA* Application, because it is difficult for the plaintiffs to know which words in the expression complained of are alleged to be statements of fact, as well as the underlying alleged facts on which each comment is based.

[51] However, were I to determine the plaintiffs' Striking of Defence Application before or in conjunction with this *PPPA* Application, I could be making an order that would deprive the defendants of the sole defence pleaded in this action, not just for the purposes of the *PPPA* Application, but for the purposes of the entire proceeding. There can be no question that hearing the Striking of Defence Application, which could significantly alter the landscape of the underlying action, constitutes a step in the proceeding, not just in the *PPPA* Application. As such, I find that s. 5 of the *PPPA* requires me to adjourn the Striking of Defence Application generally.

[52] The Striking of Evidence Application calls for a different analysis. The application to strike portions of affidavits that contain inadmissible evidence is an application relating specifically to the *PPPA* Application before me. It is clearly part of this Court's authority on a chambers application to determine what evidence is, and is not, admissible. To the extent that the defendants suggest that s. 5 of the *PPPA* deprives the Court of such power, I disagree.

[53] Therefore, I am prepared to consider the plaintiffs' Striking of Evidence Application with respect to the admissibility of some of the evidence contained in the affidavits filed by the defendants in support of this *PPPA* Application.

B. Striking of Evidence Application

[54] The plaintiffs seek to strike certain impugned passages from the affidavits filed in support of the defendants' *PPPA* Application. The plaintiffs submit that these passages contain hearsay, argument and opinion evidence. Examples include:

a) Mr. Taylor deposed at paragraph 9 of his affidavit, "I view this action as a deliberate attempt to shut down public discussions about the Society's

governance". The plaintiffs submit that this statement is opinion evidence/ argument.

b) Ms. Davidson deposed at paragraph 6 of her affidavit, "In all of these comments, I was offering an honest opinion and critique of the board's management of the Association". The plaintiffs submit that this statement is opinion evidence/argument.

c) Ms. Cardy deposed at paragraph 15 of her affidavit, "I have also been advised by others that they are afraid that they will be named as John Does in this action if they speak up…". The plaintiffs submit that this is unattributed hearsay.

d) Ms. Wood-Hutchinson deposed at paragraph 14 of her affidavit, "I believe that such a practice pits directors' loyalty to the board at odds with the desire to avoid being sued". The plaintiffs submit that this is opinion evidence/ argument.

[55] I agree with the plaintiffs that the defendants' affidavits are rife with unattributed hearsay, opinion evidence, and argument. However, I am also mindful of the preliminary nature of a *PPPA* Application. A decision on an anti-SLAPP motion is "unequivocally not a determinative adjudication of the merits of a claim": *Bent v. Platnick*, 2020 SCC 23 at para. 4.

[56] I consider the impugned evidence, howsoever flawed, to be of some assistance on this application. This evidence is relevant to the assessment of the viability of the defence of fair comment that the defendants have put in play. It speaks to whether a person could reasonably express the opinions expressed and whether they were motivated by malice.

[57] As such, I decline to strike the problematic portions of the defendants' affidavits, although I have placed little, or in some cases no, weight on the more egregiously inadmissible portions such as the unattributed hearsay statements,

which simply have no evidentiary value to the court in considering this *PPPA* Application.

IV. *PPPA* APPLICATION

A. Legal Test

[58] Section 4 of the *PPPA* states:

> **4** (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that
>
> (a) the proceeding arises from an expression made by the applicant, and
>
> (b) the expression relates to a matter of public interest.
>
> (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
>
> (a) there are grounds to believe that
>
> (i) the proceeding has substantial merit, and
>
> (ii) the applicant has no valid defence in the proceeding, and
>
> (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[59] The *PPPA* seeks to give effect to two equally important legislative purposes. The first is to protect free speech by screening out, at an early stage, strategic lawsuits that adversely affect debate and participation in matters of public interest. The second is to ensure that people can seek redress for harm to their reputations caused by defamatory statements: *Teneycke v. McVety,* 2024 ONCA 927 at para. 34.

[60] In *Hobbs v. Warner,* 2021 BCCA 290 at paras. 11–15, our Court of Appeal described the multi-step process under s. 4 for determining whether a proposed action should proceed:

a) In the first step, under s. 4(1)(a)–(b), the onus is on the applicant defendant to demonstrate on a balance of probabilities that:

i. the proceeding arises from an expression made by the defendant; and

ii. the expression relates to a matter of public interest. The words "relates to a matter of public interest" are to be given a broad, liberal interpretation: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes*] at para. 28.

b) In the second step, under s. 4(2)(a), the onus shifts to the respondent plaintiff to show that the action should not be dismissed. At this stage, the plaintiff must satisfy the judge that there are grounds to believe that:

i. the proceeding has substantial merit; and

ii. the defendant has no valid defence to the proceeding.

c) The final step, under s. 4(2)(b), requires weighing the public interest in allowing meritorious lawsuits to proceed against the public interest in protecting expression on matters of public interest.

B. Analysis

1. Section 4(1)(a): does the proceeding arise from an expression made by the defendants?

[61] The plaintiffs submit that, while the proceeding mostly arises out of expression made by the defendants, there are a number of expressions referenced in the notice of civil claim that were made by other individuals who are not named in the lawsuit (the "Third Party Expressions"). The plaintiffs submit that these expressions cannot be the subject matter of an application under s. 4 of the *PPPA*, as the statute clearly states that, in order for an application to apply for dismissal under the *PPPA,* the proceeding must arise from an expression made by the defendant applicant.

[62] Counsel for the defendants argue that the Third Party Expressions can be considered in the application under s. 4 of the *PPPA* because of the connection between the Third Party Expressions and the expressions made by the individual

defendants. They say that the proceeding arises from the expressions of the defendants, even if the plaintiffs have sued the defendants about the Third Party Expressions as well. I agree with the defendants on this point. Ms. Cardy and Ms. Davidson are administrators of the Facebook Group. They had the ability to remove posts. Instead of removing them, Ms. Cardy and Ms. Davidson each "liked" posts that contained allegations of criminal behaviour on the part of the SGCA board. In *I Buy Beauty LLC v. Dong,* 2024 BCSC 815 at para. 43, I found that liability can attach to an administrator of a site for third party content that is defamatory.

[63] The defendants cannot apply pursuant to the *PPPA* for dismissal of claims made against them for the Third Party Expressions without admitting that they published those expressions: *Christman v. Lee-Sherriff,* 2023 BCCA 363 at paras. 63–71. I therefore understand the defendants' submission that the Third Party Expressions ought to be treated the same as the posts made by the individual defendants to be a tacit admission that Ms. Cardy and Ms. Davidson, as administrators who allowed the Third Party Expressions to stay on the Facebook Group and "liked" many of the expressions, are responsible for publishing those expressions.

[64] I find that the defendants have satisfied the threshold burden under s. 4(1)(a) of the *PPPA* as it pertains to expressions made by the defendants and the Third Party Expressions.

2. Section 4(1)(b): does the expression relate to a matter of public interest?

[65] The plaintiffs submit that the defendants have not met the threshold burden of demonstrating that the expression in question relates to a matter of public interest.

[66] Given the broad, liberal interpretation I must apply, I accept that the defendant applicants have shown that the expression that forms the subject matter of this lawsuit was expression that relates to a matter of public interest. The expression relates to the operations of the SGCA and how those operations impact

the small community of Stave Falls. Discussions about the community association are clearly matters of public interest within that community.

3. Section 4(2)(a)(i): Are there grounds to believe the proceeding has substantial merit?

[67] The plaintiffs must satisfy the court that there are grounds to believe that the plaintiffs' claim is legally tenable and supported by evidence that is reasonably capable of belief, such that the claim can be said to have a real prospect of success: *Hobbs* at para. 13.

[68] "Grounds to believe" means something more than mere suspicion, but less than proof on the balance of probabilities standard: *Pointes* at paras. 39–40.

[69] Fulfillment of the "grounds to believe" standard only requires "a basis in the record and the law — taking into account the stage of the litigation": *Pointes* at para. 39. This means that any basis in the record and the law will be sufficient. A basis will exist if there is a single basis in the record and the law to support a finding of substantial merit and the absence of a valid defence: *Bent* at para. 88.

[70] The "substantial merit" standard is less stringent than a strong *prima facie* case, or the test for summary judgment. However, "substantial merit" is more demanding than a claim having some chance of success, and more demanding than the claim having a reasonable prospect of success: *Pointes* at paras. 51–52.

[71] In assessing whether there are grounds to believe that the plaintiffs' defamation proceeding has substantial merit for the purposes of s. 4(2), I must consider the following three criteria that the plaintiffs will have to establish to make out a case in defamation:

a) the words complained of were published, meaning that they were communicated to at least one person other than the plaintiffs;

b) the words complained of referred to the plaintiffs; and

c) 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.

See *Hamer v. Jane Doe*, 2024 ONCA 721 at para. 56.

[72] It is not contentious that the words complained of were published. However, the defendants say that the plaintiffs have not established grounds to believe that the proceeding has substantial merit because they cannot win on the second and third parts of the test. In other words, the defendants argue that the plaintiffs will be unsuccessful in proving that the words complained of referred to the plaintiffs, and that the impugned words were defamatory.

a) Are there grounds to believe that the words complained of refer to the plaintiffs?

[73] The defendants submit that the plaintiffs will be unable to establish that the posts in issue are personally about them. The individual plaintiffs, specifically Ms. Beland, Mr. Cooper, Mr. Cowan, Ms. Keys, and Mr. Keys, are not specifically named in any of the Facebook Posts. To the extent the Facebook Posts accuse someone of fraud and illegal activity, it is the SGCA board, and not the individual plaintiffs, who are the subject of these Facebook Posts.

[74] Even if a person is not named expressly in defamatory expression, liability may be imposed if the expression would reasonably lead persons acquainted with the plaintiff to believe that they were the person referred to: *Manno v. Henry*, 2008 BCSC 738 at para. 92. A private individual can be defamed by reference to a corporation or organization that they are in control of or affiliated with: *Wilson v. Switlo,* 2011 BCSC 1287 at paras. 155–161, aff'd 2013 BCCA 471.

[75] In this case, given the context in which the Facebook Posts were made and the role of the plaintiffs as board members of the SGCA at the relevant time, there are grounds to believe that the plaintiffs will be successful in demonstrating that the Facebook Posts are directed at them personally.

b) Are there grounds to believe that the words complained of are defamatory?

[76] In a defamation claim involving a series of online posts, it is important not to take a piecemeal approach to the impugned statements by requiring the plaintiffs to prove each one in isolation of the other. Rather, it is necessary to consider the cumulative effect of all the posts and comments that form the subject matter of the dispute: *Hamer* at paras. 58–59.

[77] As in *Hamer*, I find that in this case, the posts in question are inseparable from each other and must be considered as a whole so that the sting, or the main thrust of the defamation, can be properly ascertained. When considered collectively, it is clear that the sting or main thrust of the impugned statements is the allegation that the plaintiffs, as board member of the SGCA, are engaged in secretive and illegal activities for their own benefit and to the detriment of the Stave Falls community.

[78] Clearly, the sting of implying that a community association board is engaging in illegal activity is very damaging to the reputation of the plaintiffs in the very small community of Stave Falls.

[79] As such, I find that there are grounds to believe that the plaintiffs' claim is legally tenable and supported by evidence that is reasonably capable of belief, such that the claim for defamation can be said to have a real prospect of success. This branch of the test is met.

4. Section 4(2)(a)(b): Are there grounds to believe the applicants have no valid defences?

[80] The next step in the analysis requires the Court to assess whether there are grounds to believe that the applicants have no valid defences to the plaintiffs' action. At this stage, the defendants first put into play the defences they intend to present, and the plaintiffs, who bear the statutory burden, must then show that there are grounds to believe that none of those defences have a real prospect of success: *Hobbs* at para.14.

[81] In the recent decision of *40 Days for Life v. Dietrich,* 2024 ONCA 599, leave to appeal to SCC ref'd, 2025 CanLII 17168, the Ontario Court of Appeal reiterated the relatively low bar required to meet the merits-based threshold at para. 43:

> This court has on several occasions cautioned against setting the bar higher at the merits-based hurdle than s. 137.1 requires, but it bears repeating: the plaintiff is not required to establish that the defendant has no valid defence, only that there are grounds to believe that there is no valid defence. The standard is less than a balance of probabilities. This burden is satisfied where there is a basis in the record and the law for concluding that the defences asserted will not succeed: *Mondal*, at paras. 50-51; *Bent*, at para. 103; and *Subway Franchise Systems of Canada Inc. v. Canadian Broadcasting Corporation*, 2021 ONCA 26, 455 D.L.R. (4th) 525, at paras. 66-68, leave to appeal refused, [2021] S.C.C.A. No. 87.
>
> [Emphasis in original.]

[82] What does it mean to "put into play" a defence? In *Pointes*, Justice Côté noted that, while the burden is on the plaintiff under this section of the analysis, it would be unreasonable to encumber a plaintiff with the task of anticipating every defence the defendant might raise and rebutting those defences. Therefore, there is an evidentiary burden on the moving party to first put in play the defences it intends to present. The responding plaintiff must then show that there are grounds to believe that those defences are not valid: at para. 56.

a) What defences have been put in play?

[83] On an application under s. 4 of the *PPPA*, there is an evidentiary burden on the party making a motion to put in play a defence by filing material that is sufficiently detailed that the court can clearly identify the legal and factual components of the defences advanced: *Brown v. Landriault,* 2024 ONSC 7027 at para. 45.

[84] In this application, the defendants' counsel argues that they have met their evidentiary burden to put in play two defences: fair comment and justification.

i. Fair Comment

[85] With respect to each of the alleged defamatory statements in the notice of civil claim, the response to civil claim states:

> The statements alleged are not defamatory, would be considered fair comment or could reasonably be considered factual inasmuch as the statement makes claims as to facts.

[86] This is the only pleading of a defence in the response to civil claim.

[87] I am satisfied that the defendants have properly put in play the defence of fair comment by pleading it in their response to civil claim.

ii. Justification

[88] In reply submissions on the last day of this hearing, in response to a question from the bench, the defendants advised the Court that they were also relying on the defence of justification. The defence of justification was not raised in the response to civil claim, nor in the notice of application for this *PPPA* Application.

[89] The defendants argue that the pleading language used in the response to civil claim (and cited above) is a plea of both fair comment and justification. As such, they argue that they have put the defence of justification in play.

[90] The plaintiffs correctly point out that the above plea is not a plea of the defence of justification. Rather, it is a “rolled-up plea”. The concept of the rolled-up plea is described by R.D. McConchie and D.A. Potts in *Canadian Libel and Slander Actions* (Toronto: Irwin Law Inc., 2004), at 584:

> The “rolled-up” plea raises the defence of fair comment, not justification. Typically, this plea alleges that insofar as the words complained of consist of statements of facts, they are true in substance and in fact, and insofar as they consist of an expression of opinion, they are fair comment made in good faith and without malice, upon the said facts which are matters of public interest.

[91] In *Sutherland v. Stopes* (1925), AC 47 (H.L.), the House of Lords held that a rolled-up plea is a plea of fair comment. It is not a plea of justification. This holding has been adopted in British Columbia: *Kazakoff v. Taft*, 2017 BCSC 66 at para. 58. Therefore, I reject the defendants’ submission that they have pleaded the defence of justification in their response to civil claim.

[92] Rule 3-7(21)(b) of the *Rules* expressly deals with rolled-up pleas. It states:

> (21) In an action for libel or slander,
>
> …
>
> (b) if the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and that insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant must give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.
>
> [Emphasis added.]

[93] In this case, despite requests (and a pending notice of application) from the plaintiffs, the defendants have provided no particulars with respect to their rolled-up plea.

[94] As I have set out, at this stage of the analysis, there is an evidentiary burden on the moving party to first put in play the defences it intends to present. The responding plaintiff must then show that there are grounds to believe that those defences are not valid: *Pointes* at para. 56. In this case, the defendants did not meet this burden. They did not expressly raise the defence of justification until their reply submissions. This gave the plaintiffs no opportunity to tender evidence to show grounds to believe that the defence of justification is not valid. To allow the defendants to put a new defence in play by way of raising the defence during reply submissions would result in a manifest unfairness to the plaintiffs.

[95] As such, I find that the only defence that has been properly put in play by the defendants is the defence of fair comment.

b) Are there grounds to believe that no defences have a real prospect of success?

[96] If the defendants put a defence in play, then the plaintiffs bear the persuasive burden of demonstrating that there is a basis in the record and the law—taking into account the stage of the proceeding—to support a finding that the defence does not tend to weigh more in the defendants' favour. In *Bent*, Côté J. described this stage of the analysis as follows, at para. 103:

> … The logical syllogism is clear: (i) Dr. Platnick must show that there are grounds to believe that Ms. Bent's defences have no real prospect of success (*Pointes Protection*, at para. 60); (ii) this requires a showing that there are grounds to believe that the defences do not tend to weigh more in favour of Ms. Bent (para. 49); (iii) in light of the definition of "grounds to believe", this means that there must be a basis in the record and the law — taking into account the stage of the proceeding — to support a finding that the defences do not tend to weigh more in favour of Ms. Bent (para. 39).

[97] At this stage, the court must determine a defence's validity on a limited record at an early stage of the proceeding: *Hobbs* at para. 14.

[98] A determination that a defence could go either way, in the sense that a reasonable trier could accept or reject it, is a finding that a reasonable trier could reject the defence: *Simán v. Eisenbrandt,* 2023 BCSC 379 at para. 106, aff'd 2024 BCCA 176.

[99] In this case, the plaintiffs argue that there are grounds to believe that the defence of fair comment, the only defence in play, has no real prospect of success.

[100] In order for a defence of fair comment to succeed, it is necessary for the comment to have a factual foundation. The comment must be an expression of opinion on a known set of facts, and the audience must be in a position to assess or evaluate the comment: *Mainstream Canada v. Staniford*, 2013 BCCA 341 at para. 24.

[101] In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 28, Justice Binnie re-stated the test for the defence of fair comment:

> …
> (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 recognisable as comment;
>
> (d) the comment must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?
>
> (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was [subjectively] actuated by express malice.
>
> [Emphasis in original.]

[102] In *Rooney v. Galloway*, 2024 BCCA 8*,* the Court of Appeal offered a helpful discussion of what a defendant must establish to successfully rely on a fair comment defence:

> [108] To rely on the defence of fair comment successfully, the expression must truly be a comment upon given facts and cannot simply be a statement of facts. The comment must be recognizable as comment and cannot be so intertwined with fact that a reader is unable to distinguish between what is comment and what is fact (*Ager v. Canjex Publishing d.b.a. Canada Stockwatch*, 2005 BCCA 467, at para. 43; *Brown on Defamation*, at § 15:5). Whether an expression is comment or fact is determined from the perspective of an ordinary, reasonable reader. *Hansman* said this regarding the difference between comment and fact:
>
> > [108] For expression to constitute fair comment, the statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact... A comment includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof" … This is a low threshold; "the notion of 'comment' is generously interpreted" …
> >
> > [References omitted.]
>
> [109] To demonstrate the comment is based on fact, the comment must indicate, at least generally, the facts on which the comment is being made (*Hansman*, at para. 100; *WIC*, at para. 31). The factual basis for the impugned expression "must be explicitly or implicitly indicated, at least in general terms, within the publication itself or the facts must be 'so notorious as to be already understood by the audience'" (*Hansman*, at para. 99, citing *WIC*, at para. 34). Thus, the facts must be sufficiently stated or otherwise known to the expression's audience such that they can make up their own minds on the merits of the comment (*WIC*, at para. 31). The fair comment defence is not available if the factual foundation is unstated, unknown or discovered to be false (*WIC*, at para. 31).

[103] In *Hansman v. Neufeld,* 2023 SCC 14, Justice Karakatsanis noted that the factual foundation requirement will be met if the statement can be tethered to an adequate factual basis so the reader can be an informed judge: at para. 102.

[104] The plaintiffs say that there are grounds to believe that the defendants will not be successful in establishing each of the required elements of a defence of fair comment. Specifically, they argue that the comments in question are not based on fact, are not recognizable as comment, fail to meet the objective test (that any person could honestly express the opinion on the proved facts), and were actuated by express malice.

[105] Part of the challenge for the plaintiffs in this application is that the defendants have failed to plead particulars. It is impossible for the plaintiffs to know which words in the expression complained of are alleged to be statements of fact, and which are alleged to be comments, nor to know what evidence is available to support the allegation that those facts are true.

[106] As noted above, the failure to provide particulars of the facts upon which a comment is based may result in the fair comment defence being struck out: Rule 3-7(21)(b), *Malak* at paras. 22–24*; Vogel* at para. 18. It was on this basis that the plaintiffs brought their Striking of Defence application to strike the fair comment defence from the response to civil claim.

[107] I have declined, at this stage, to strike the defence of fair comment from the response to civil claim, meaning that I must consider this application on the basis that the defence of fair comment is in play. However, the defendants are not entitled to benefit from failing to follow the rules. It is not open to the defendants to say on this application, as they have done, that the plaintiffs have failed to meet their burden of showing grounds to believe that the defence of fair comment has no real prospect of success, when the particulars of the defence are unknown to the plaintiffs due to the defendants' failure to reveal them prior to this application—despite demands and the clear requirement under the *Rules* to do so.

[108] In other words, I do not agree with the defendants that the burden on the plaintiffs at this stage of the analysis requires the plaintiffs to marshal evidence to disprove a defence of fair comment, where no particulars have been provided that would enable the plaintiffs to understand what underlying facts the defendants are relying on. The question, as the Supreme Court of Canada noted in *Hansman*, is whether the statement can be tethered to an adequate factual basis so the reader can be an informed judge.

[109] In this case, a number of the comments at issue are made without reference to their factual foundation. A purported comment that does not identify the facts on which it is based will not be eligible for a fair comment defence. Further, there are a

number of comments that would be reasonably understood to be statements of fact, not comments on facts. There are also a number of comments for which the factual foundation is unstated or unknown.

[110] In my view, even without particulars, there are a number of reasons to believe that the defence of fair comment will not succeed.

[111] There are grounds to believe that the fair comment defence would not apply to the following statements because they appear to express facts, not opinions: *Wood No. 2, Wood No.3, Wood No. 10, Wood No. 11, Cardy No. 2, Cardy No. 3, Cardy No. 5, Cardy No. 7, Cardy No. 8, Cardy No. 9, Cardy No. 10, Cardy No. 13, Cardy No. 15, Cardy No. 18, Hall No. 1, Hall No. 2, Kopeschny No. 1, Skene No. 1, Banning No. 3, Kopeschny No. 3,* and *Brynn No. 1.*

[112] There are grounds to believe that the fair comment defence would not apply to the following statements because, while they contain comment, the factual foundation for the comments is unstated and would not necessarily be known to the audience: *Wood No. 4, Wood No. 5, Wood No. 7, Wood No. 8, Cardy No. 11, Cardy No. 12, Cardy No. 16, Cardy No. 17, Davidson No. 2, Davidson No. 4, Davidson No. 5, Huculack No. 1, Semple No. 1, Goodman No. 1, Mitchell No. 1, Huculack No. 2, Ross No. 1, Kopeschny No. 2, Banning No. 1, Banning No. 2, Banning No. 4, Owen No. 1, Banning No. 5,* and *Hall No. 3.*

[113] Finally, there are grounds to believe that the fair comment defence would not apply to the following statements because, on cross-examination, the defendant who expressed the statement admitted that it was at least partially untrue: *Wood No. 1, Cardy No. 1, Cardy No. 4, Cardy No. 14, Taylor No. 1, Taylor No. 3, Davidson No. 1,* and *Davidson No. 3.*

5. Malice

[114] Even if the fair comment defence is properly made out, it can be defeated by malice, which is a “state of mind”: *Smith v. Cross*, 2009 BCCA 529 at para. 42.

[115] In *Bent*, Côté J. wrote, at para. 136:

> [136] . . . Malice is not limited to an actual, express motive to speak dishonestly. Instead, it can be established by "reckless disregard for the truth": *Hill*, at para. 145; *Botiuk*, at para. 79. Notably, an ostensibly honestly held belief may still be spoken recklessly and the privilege defeated if the belief was "arrived at without reasonable grounds": Downard, at §§9.60 and 9.61. "The more serious the allegation in issue, the more weight a court will give to a failure by the defendant to verify it prior to publication as evidence of malice, in the sense of indifference to the truth": §9.74 (footnote omitted).

[116] The plaintiffs argue that there are grounds to believe that the defendants were actuated by malice, which is sufficient at this stage to defeat a defence of fair comment.

[117] The posts, when read together, contain the following inferential meanings:

a) The plaintiffs engaged in a scheme to rig the election for the SGCA board of directors;

b) The plaintiffs then sought to conceal their scheme from the public;

c) The plaintiffs may be guilty of embezzling funds from the SGCA;

d) The plaintiffs are shady;

e) The plaintiffs stole a community asset;

f) The plaintiffs screwed over Jay Semple;

g) The plaintiffs are unfit to run the SGCA;

h) The plaintiffs are dishonest;

i) The plaintiffs are dictators;

j) The plaintiffs are deceitful;

k) The plaintiffs are untrustworthy;

l) The plaintiffs are incompetent;

m) The plaintiffs are unprofessional;

n) The plaintiffs are guilty of wrongdoing;

o) The plaintiffs are in a conflict of interest;

p) The plaintiffs violated the BC *Societies Act*, S.B.C. 2015, c. 18; and

q) The plaintiffs are guilty of fraud.

[118] To the extent that the concept of malice encompasses reckless disregard for the truth, I find that there are grounds to believe in this case that the defendants were actuated by malice. The above-noted clear connotations from the Facebook Posts, as well as the express references to the plaintiffs as liars, shady, “sneaky snakes”, and dictators, constitute allegations of wrongdoing and inferences of criminal behaviour. Two of the more explicit allegations of criminal activity in the Facebook Posts are Reese Kopeschny’s statement that, “for sure they are embezzling money and don’t want to be caught”, and Brynn Hall’s statement that, “they must be doing something shady – illegal to be acting like this.” The former statement was “liked” by Ms. Davidson and the latter statement was “liked” by Ms. Cardy.

[119] Such allegations must be verified prior to publication and, as noted by Justice Côté in *Bent*, a failure to do so can be evidence of malice, in the sense of indifference to the truth.

[120] As set out above, each of the defendants was cross-examined. Each admitted that they had no factual foundation for a number of the inflammatory statements they made about the plaintiffs in the Facebook Posts. In my view, it is clear that the defendants were reckless and indifferent to the truth of many of their statements.

[121] I am satisfied that there are grounds to believe that the defendants were actuated by malice in this case and that the plaintiffs have met their burden in this regard.

6. Section 4(2)(b) Weighing Exercise

[122] This final stage is the crux of the analysis. It requires weighing the public interest in allowing meritorious lawsuits to proceed against the public interest in protecting expression on matters of interest: *Hobbs* at para. 15.

[123] It must always be kept in mind in this weighing exercise that the objective of the *PPPA* is to quickly identify and deal with strategic lawsuits, and ensure abusive litigation is stopped but legitimate action can continue: *Pointes* at paras. 61–62.

[124] In *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811 at para. 47(d), the Ontario Court of Appeal explained why the weighing exercise is at the crux of a *PPPA* application:

> … It is at this stage that the intention behind the legislation is given expression and force. It is here that the court determines whether the public interest in the impugned speech is such that it should not be silenced or chilled by the threat of litigation. It is here that the strategy in allegedly strategic litigation is potentially identified and exposed. It is here that the court considers "what is really going on" and assesses the extent to which "allowing individuals or organizations to vindicate their rights through a lawsuit — a fundamental value in its own right in a democracy — affects, in turn, freedom of expression and its corresponding influence on public discourse and participation in a pluralistic society": *Pointes Protection*, at para. 81.

[125] At para. 47(i), the Court of Appeal in *Burjoski* listed some of the relevant factors to be considered by the court undertaking a weighing exercise:

> The weighing of interests under s. 137.1 is an "open-ended" exercise which requires the motion judge to consider all relevant factors. These include whether the hallmarks or indicia of a classic SLAPP are present, such as: whether the plaintiff has a history of using litigation or the threat of litigation to silence critics; a financial or power imbalance that strongly favours the plaintiff; a punitive or retributory purpose animating the action; and minimal or nominal damages suffered by the plaintiff: *Marcellin*, at para. 111. Other factors that may be relevant include the importance of the expression, the history of litigation between the parties, broader or collateral effects on other expressions on matters of public interest, the potential chilling effect on future expression either by a party or by others, the defendant's history of activism or advocacy in the public interest, any disproportion between the resources being used in the lawsuit and the harm caused or the expected damages award, and the possibility that the expression or the claim may provoke hostility against an identifiably vulnerable group or a group protected under s. 15 of the *Charter* or human rights legislation: *Pointes Protection*, at para. 80.

[126] As noted by our Court of Appeal in *Hobbs*:

> [18] An inevitable result of the weighing process is that, on occasion, plaintiffs will be prevented from vindicating their rights through otherwise valid and legitimate lawsuits. Conversely, notwithstanding the deleterious effects on freedom of expression and public participation, defendants will occasionally have to defend against lawsuits claiming damages for expressions that relate to matters of public interest.

[127] As a prerequisite to the weighing exercise contemplated by s. 4(2)(b) of the *PPPA*, the plaintiff must establish both the existence of harm and that the expression caused the harm: *Hobbs* at para. 19. In defamation actions, general damages are presumed, and this is sufficient to constitute harm: *Hobbs* at paras. 81, 84. Nevertheless, it is necessary for the court to evaluate harm on an application of this nature, because the magnitude of the harm is relevant to assessing whether the public interest in permitting the action to continue outweighs the public interest in protecting the expression: *Bent* at para. 144.

a) Have the plaintiffs established the existence of harm?

[128] In this case, the plaintiffs have tendered considerable evidence about the emotional distress and reputational damage they have suffered as a result of the alleged defamation by the defendants. They describe people giving them the finger when they are out in public, and that they are made to feel like pariahs in their own community. At least one has decided to leave Stave Falls because of the harassment and poor treatment she receives in the community since the alleged defamatory statements were made about her. All describe stress and psychological damage as a result of the statements that were made about them on the Facebook Group.

b) Was harm suffered as a result of the defendants' expression?

[129] Some statements are so obviously likely to cause harm to a person's reputation that the likelihood of damage may be inferred even if a plaintiff fails to lead any evidence to show any damage: *Lascaris v. B'nai Brith Canada,* 2019 ONCA

163 at para. 41. Where statements concern allegations of criminal conduct, the harm arises from the nature of the allegation, and there is no obligation on the plaintiff to prove actual loss: *Galloway v. A.B.,* 2021 BCSC 2344 [*Galloway 2021*]*,* at para. 633.

[130] In this case, a number of posts by the defendants accuse the plaintiffs of secrecy and duplicity, and some contain the implication that the plaintiffs engaged in criminal activity. The defendants accuse the plaintiffs of being “sneaky”, “shady”, disseminating “disinformation”, and “hiding” information from the community. Third party posts alleging that the plaintiffs were embezzling funds and engaging in illegal acts were “liked” by certain of the defendants.

[131] There is a clear correlation between the defendants’ online accusations of wrongdoing on the part of the plaintiffs and the treatment the plaintiffs have received in the community. Each of the plaintiffs describes the numerous ways in which their social and recreational lives have been detrimentally impacted since the Facebook Posts started being published in November 2022. Their standing in the community has diminished as a result of the reputational harm they have suffered, which is clearly connected to the statements made on the Facebook Group.

c) Weighing of the public interests

[132] Once the harm has been shown to be causally related to the expression, s. 4(2)(b) requires that the harm and corresponding public interest in permitting the proceeding to continue be weighed against the public interest in protecting the expression. At this stage of the process, public interest becomes critical to the analysis: *Pointes* at para. 73.

[133] “Public interest” is used differently in s. 4(1)(b) than it is in s. 4(2)(b). As noted by Justice Côté in *Pointes* at para. 74*:*

> … Under s. [4(1)(b)], the query is concerned with whether the expression relates to a *matter* of public interest. The assessment is not qualitative — i.e. it does not matter whether the expression helps or hampers the public interest. Under s. [4(2)(b)], in contrast, the legislature expressly makes the public interest relevant to specific goals: permitting the proceeding to continue and protecting the impugned expression. Therefore, not just *any matter* of public interest

> will be relevant. Instead, the *quality* of the expression, and the *motivation* behind it, are relevant here.
>
> [Emphasis in original.]

[134] If the expression in issue contains factual inaccuracies, then the public interest in protecting such expression may be less than the interest in protecting expression that is in the nature of clear opinion: *Sikhs for Justice v. The Macdonald-Laurier Institute*, 2021 ONSC 7063 at paras. 67–68.

[135] To what extent are the Facebook Posts speech that, from a public interest perspective, is worthy of protection? The weighing exercise requires me to look not at the general value of public participation in community debates, but at whether there is a public interest in preserving the precise speech at issue in this case, which includes accusations of wrongdoing that do not appear to have a foundation in fact. It is whether this expression is deserving of protection that I must consider. Here, the vitriolic nature of the statements, the presence of malice, and the admitted lack of factual foundation for many of the allegations made against the plaintiffs, are all factors that work against the defendants in the weighing exercise.

[136] On the other hand, the plaintiffs' claim bears none of the traditional criteria of a SLAPP suit, as described by Côté J. in *Pointes*, at para. 78. There is no history of the plaintiffs using litigation to silence critics, no financial power imbalance that favours the plaintiffs, no apparent retributory purpose animating the claim, and the plaintiffs appear to have suffered real damages.

[137] When I consider "what is really going on" in respect of the plaintiffs' claims against the defendants, I am not persuaded that the plaintiffs' goal is to silence the defendants, so as to prevent them from speaking about important subjects of interest to their community: *Pointes* at para. 81. Rather, the goal is to vindicate the reputation of the plaintiffs, which they say has been seriously harmed by what they characterize as an online campaign of defamation. The comments of Justice Adair in *Galloway 2021* at para. 784, albeit relating to a different online platform and a different alleged crime, are helpful in my view:

> Defamatory statements cannot lead to healthy participation in public affairs: *Hill*, at para. 106. I do not accept that, unless Dr. Kosman is permitted to publicly label Mr. Galloway as violent, a rapist and criminal, she is unable to carry on her work. This, again, is a false dilemma. There is no public interest in promoting the careless or reckless use of Twitter. Rather, in my view, the public interest lies in promoting the opposite.

[138] I echo these comments. There is no public interest in promoting the careless or reckless use of any social media platform. The defendants did not need to accuse the plaintiffs of dishonest, secretive, and even illegal activity in order to engage in dialogue on Facebook about matters of importance to them. The public interest weighs against this type of social media engagement.

[139] Accordingly, I conclude that the public interest in allowing the plaintiffs' claims to go forward outweighs the public interest in protecting the defendants' expressions.

[140] I therefore dismiss the defendants' application for dismissal of the plaintiffs' claim under s. 4 of the *PPPA.*

V. APPLICATION TO STRIKE

[141] The defendants have also sought an order "further and in the alternative" under Rule 9-6 of the *Rules* "striking the claim for failing to disclose a valid cause of action".

[142] Rule 9-6 governs summary judgment applications. Rule 9-5 governs applications to strike. It is not clear from the defendants' notice of application, which cites Rule 9-6 but appears to refer to the text of Rule 9-5, which of these two avenues the applicants seek to pursue in their alternative relief. The "Legal Basis" section of the notice of application further complicates matters, as it purports to rely on the "*Court Rules Act*, in the alternative including Rule 9-7 and 9-8." The notice of application does not contain any further reference to the alternative relief sought. In oral submissions, counsel for the defendants did not clarify the legal basis for his alternative relief seeking to strike the plaintiffs' claim.

[143] To the extent that the defendants seek to combine their application under s. 4 of the *PPPA* with an application to strike pleadings pursuant to Rule 9-5(1) of the *Rules,* I refer to the thorough discussion of this issue by Justice Veenstra in *Kim*, in which he concluded:

> [167] In my view, it is inimical to the intent of the legislation to allow the coupling of *PPPA* motions, as a matter of course, to applications to strike pleadings, for summary judgment, or to otherwise advance alternative bases on which to dismiss or circumscribe an action. Because a *PPPA* application inherently requires some consideration of the merits of the claim, it will be a rare case in which it could not be argued that there is some degree of crossover or commonality of one or more issues between the *PPPA* application and some potential application under any one or more of Rules 9-5, 9-6 and 9-7. However, the fact there is one or more issues as to which there is a degree of commonality does not overcome the strong public policy reflected in the *PPPA* that such applications are to be limited in scope and heard and disposed of quickly, efficiently and economically.

[144] I agree. Even if the defendants' alternative relief had been properly pleaded and argued, I would not agree to hear their alternative application for summary dismissal or striking of the plaintiffs' claim. The alternative relief sought by the defendants is therefore adjourned generally.

[145] The defendants' *PPPA* Application is dismissed. If the parties are unable to agree on costs, they may arrange a short appearance before me to address the costs consequences of this application.

"Francis J."

APPENDIX "A" – DEFAMATORY STATEMENTS ALLEGED TO HAVE BEEN MADE BY DIANA WOOD-HUTCHINSON

Statement	**Pleaded**
Wood No. 1	On or about November 7, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Being forced to sign a non-disclosure agreement so the community association can ensure that the community doesn't know what's going on is wrong*. … *In light of your post here, the suspicions in the other post about the election not being held in a fair manner, sound justified (especially when everyone involved with it were either on the ballot or related to someone on the ballots).*
Wood No. 2	On or about November 7, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: ***Crystal Bee:*** *I've re-read your comment a few times and I think you're asking if other allegations have been made.* *If that's what you're asking, then there was another post. People were questioning:* *1) A sign purchased by the SGCA for more than seemed reasonable for a property owned by somebody other than the SGCA.* *2) There were (sic) a number of questions regarding the validity of the election. They have not offered any kind of explanation into the irregularities people brought up.*
Wood No. 3	On or about November 7, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *This makes me want to see a Financial Audit occur because either this cost is created to hide something or this Board of Directors are choosing to spend community funds on District owned land... which makes no sense. I can see one person perhaps thinking this makes sense but why would the entire board agree to do this? This is super fishy.*

Statement	**Pleaded**
Wood No. 4	On or about November 7, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group replying to *Hall No. 1* (see Appendix E) and containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Sounds fishy. I voted and didn't see that many people there.* *…* *I think this community is owed an audit where members who are NOT on the ballot examine the ballots and membership records. If they cannot produce these they should be required to do another election where observers can examine the ballot box (to ensure it's not pre-filled).* *...* *If there's no voter fraud found, then the vote stands, otherwise we should be looking at another vote under proper supervision.*
Wood No. 5	On or about November 7, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *I also think there will be grounds to hold another election. I say this because I have been to a number of AGMs in a (sic) different associations (including this one) and this election (and AGM) had some things about it that makes me question, if it will withstand scrutiny.*
Wood No. 6	On or about November 20, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *While I think non-disclosure agreements are common in businesses, I have never heard of one being used by a community association.* *...* *Whatever reasoning they have, they have not tried to defend this in anyway (sic), so we are left to draw our own conclusions to why they want to (sic) anything but forthright with the community.* *…* *When the hall was sold, I believed what I was told. I was told by SGCA that they would get community input. Over the years since, I have seen mostly secrecy and less and less engagement. They never had the public meeting they told me they were going to have regarding the hall. Instead they quietly just went about how they plan to spend "their" money.*

Statement	**Pleaded**
	Yes, that's always bothered me that in every public meeting they referred to the money as "theirs", not the community's. *At this point, it feels like we're living some poorly written Disney movie where a con man comes to town and steals a community asset. Usually at this point in the movie the townsfolk stand up for themselves.*
Wood No. 7	On or about November 20, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Honestly, integrity and transparency .... There can't be any when you 're legally bound not to be.*
Wood No. 8	On or about November 20, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *...This avoidance of the issues makes them look super shady. Liars will answer questions you ask with answers to questions you didn't ask. Is this the image they're going for?*
Wood No. 9	On or about November 20, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group replying to *Wood No. 8* and containing, *inter alia,* the following expression of and concerning the Plaintiffs: *I thought this comment explained why so many of us are finding the SGCA's behaviour so shady.*
Wood No. 10	On or about December 19, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Since stealing our community asset they have not shown any interest in listening to the community engagement.* *…* *By forcing everyone on the board to sign a non-disclosure they are ensuring that the community has no idea what they are doing with our money.*

Statement	**Pleaded**
Wood No. 11	On or about December 19, 2022, and continuing to this date, the Defendant Wood-Hutchinson published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *They even went so far as ensuring the community has not (sic) clue what is happening by forcing board members to sign non-disclosures. They have no right spending community funds without ANY community involvement. It's just plain wrong.*

APPENDIX "B" – DEFAMATORY STATEMENTS ALLEGED TO HAVE BEEN MADE BY COURTNEY CARDY

Statement	**Pleaded**
Cardy No. 1	On or about November 7, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Just as I thought, they are not willing to publicly share this conversation, so if you would like to see their 5 part series of misinformation, you will have to join their group.*
Cardy No. 2	On or about November 7, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *In doing what they did, they screwed over a long-time resident without even speaking to him, cutting him right out of the picture. ...* *This behaviour continues to this day. They even signed an NDA....*
Cardy No. 3	On or about November 20, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *After my last post, they decided to release a 5 (sic) part series on their Facebook group: Stave Gardens Community Association Group, regarding the resurrection of the association and sale of the hall. They neglected to tell the whole story, left out critical information, as well as providing wrong information. They decided to do this on their private group (which has 85 members), where they can control the narrative...* *... All directors that have signed an NDA should step down, and allow for a new, diverse, all (sic) inclusive board...*
Cardy No. 4	On or about November 20, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *I think you may need to look up their definitions. If they had of lead with these, we wouldn't be in this situation. Instead, it's been lies and secrecy. I don't think anyone has any desire to sit in a meeting with a dictatorship. This is an open forum, they could have shared their 5 (sic) part series where everyone could see it, but they have no desire to open up to the community, it would mean they would have to finally admit wrong doing and make changes. They would be corrected with facts, emails, and witness statements, but they don't want to be corrected, because again, this will show their wrong doings.* *…*

Statement	**Pleaded**
	This is the same shady crap that has been happening since the sneaky reinstatement. I've had enough, and I will ensure the truth gets out.
Cardy No. 5	On or about December 19, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: ***Darlene Lucky*** *don 't waste your time, they like to tell you what they think you might like to hear, then sneakily push through their own agenda! They won't even allow you to comment on there (sic) post. This is the same ugly crap they've been pulling since the beginning!*
Cardy No. 6	On or about December 19, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Their most recent post (on their private group) just proves yet again that they can't be trusted and will continue operating as they wish until we as a community step in and stop it.*
Cardy No. 7	On or about December 21, 2022, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *They operate on lies and deceit. I would like to see a board that we can trust to carry forward the community voice.*
Cardy No. 8	On or about January 16, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *When they didn't like how things were going, they ran off and convinced a few other community members that had no idea of what was happening to reinstate Stave Gardens under false pretenses.*
Cardy No. 9	On or about January 17, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group replying to *Kopeschny No. 2* (see Appendix E) and containing, *inter alia,* the following expression of and concerning the Plaintiffs: ***Reese Kopeschny*** *definitely hiding the truth...* *...They still won't come out with the truth. This is a conflict of interest. You can not (sic) have a director that is a developer, have drawings drawn up, and submit them on behalf of the community association. Especially when the idea was not discussed with the community.*
Cardy No. 10	On or about January 17, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs:

Statement	**Pleaded**
	Paul Wozney, this association was reinstated deceitfully, and has continued to operate in that manner. Don't be fooled by the smoke screens (events).
Cardy No. 11	On or about January 30, 2023, and continuing to this date; the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *More dirty deletes done by the SGCA ... They are very' confused! They seem to think that anyone that may call them out, or correct them, are belittling and mean. I think they need to grow a backbone and start answering for all the misinformation they are putting out. They speak as if you just need to email them to get answers, like they are actually going to answer them truthfully for you! [laughing emoji]. It sure is easy to lie when nobody else is a part of the conversation. Just like they did about the NDA and the building in the park ...*
Cardy No. 12	On or about February 2, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: ***Sam Jones, Tobias Skene,*** *I have (sic) went over what very little has been offered in the way of financial statements. There is no breakdown of expenditures. I have found several expenses that are questionable amounts ...*
Cardy No. 13	On or about February 2, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *They were also being lead (sic) by a developer who is known for his shady deals...might have something to do with it...*
Cardy No. 14	On or about February 2, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Misinformation is what has been provided by the SGCA.*
Cardy No. 15	On or about February 2, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *Steelhead does not have an accountant, an NDA/non confidentiality agreement, nor a lawyer. They manage to function with a larger asset just fine. They also make an income off of their asset, but they are all volunteer and nobody is personally profiting, therefore they pay no taxes and have no need for an accountant. [winking emoji]*

Statement	**Pleaded**
Cardy No. 16	On or about March 1, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: **Absolutely appalled by the joke that is the Stave Gardens Community Association, or should I say, dictatorship. Absolutely disgusting! They only want to play by their made (sic) up rules as they go along. Time for a call to BC Societies! An audit is definitely in order!**
Cardy No. 17	On or about March 1, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: ***Bruno Wissman** of course a member of a dictatorship would feel that way.*
Cardy No. 18	On or about March 1, 2023, and continuing to this date, the Defendant Cardy published a post in the Facebook Group containing, *inter alia,* the following expression of and concerning the Plaintiffs: *They're just making up rules as they go!*

APPENDIX "C" – DEFAMATORY STATEMENTS ALLEGED TO HAVE BEEN MADE BY RHONDA DAVIDSON

Statement	**Pleaded**
Davidson No. 1	On or about November 7, 2022, and continuing to this date, the Defendant Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *I started attending meetings religiously to QUESTION expenses and *hopefully* have them be held accountable; we have a right to know where our community asset money is being spent as well as have a say in it; the non existent (sic) overpriced 'foresty (sic) sign' for one, yearly tax filings costing over a grand, tip of the iceberg but thats (sic) the general idea.*
Davidson No. 2	On or about December 19, 2022, and continuing to this date, the Defendant Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *Community Association funds on City property for a "future park" *not yet approved at the time* sign (sic), grossly overpriced if thats (sic) the true story, not to mention nowhere near the supposed area trespassers would even use to access the lot (which was part of the reasoning of the sign in the first place when questioned) ; no sign of atv trespassers noted btw. The whole thing smells.*
Davidson No. 3	On or about January 7, 2023, and continuing to this date, the Defendant Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *(the sign was only erected much after the expense was questioned at a general meeting as its (sic) grossly over and above what a similar sign would cost for literally anyone and no work order was ever shown)* *…* *Not only does it go against the societys (sic) act, the sign isnt (sic) even places (sic) in the proposed park property.*
Davidson No. 4	On or about February 2, 2023, and continuing to this date, the Defendant Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *From their page post they're clearly keeping a quick edit to any posts that may clarify their untruths! You've said nothing that "goes against*

Statement	**Pleaded**
	*their guidelines" so no reason to delete your posts. *cough* dictatorship-much? *cough**
Davidson No. 5	On or about February 15, 2023, and continuing to this date, the Defendant Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *It just reeks of sneaky snake if you ask me. I've questioned many of their spendings that are on the books (not all the $'s line up either btw) and wonder what else we don't know.*

APPENDIX "D" – DEFAMATORY STATEMENTS ALLEGED TO HAVE BEEN MADE BY JIM TAYLOR

Statement	**Pleaded**
Taylor No. 1	On or about August 10, 2023, and continuing to this date, the Defendant Taylor published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *The problem is, that despite repeated requests, none of the current Executive is willing to explain how these bylaws were submitted without going through a general meeting and two thirds vote of the membership. When I spoke with the registrar's office I was told that this would be a violation of the Society Act. We have been told that they were filed by the Association 's lawyer but none of the executive are able or willing to identify that lawyer. Requests for copies of the correspondence with the lawyer have gone unanswered. Repeated requests for copies of itemized invoices for Association legal services have gone unanswered. Even a simple request for an itemized costing for the park sign on Brackley Ave has gone unanswered.* *…* *I will do all of the above but, in cooperation with a number of other members, I will also be asking the Province's Civil Resolution Tribunal to examine and report on the SGCA 's conduct since 2016. I have not made this decision lightly, however, following conversations with the BC Society Registry I have come to understand how seriously the filing of documents in violation of the Society act is taken.*
Taylor No. 2	On or about August 10, 2023, and continuing to this date, the Defendant Taylor published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Hilda Goddard*** *Thanks, All I have are a lot of questions that no one will answer. I can not (sic) see any reason for this secrecy in a small community association. ...*
Taylor No. 3	On or about August 23, 2023, and continuing to this date, the Defendant Taylor published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *Interestingly no committee members asserted that the 2019 filings were fraudulent. However, in later conversations with Service BC and the Registrar of Societies, that terminology was used as one possible scenario. It would certainly be beneficial to have all files connected to these filings made public.*

APPENDIX "E" – DEFAMATORY STATEMENTS ALLEGED TO HAVE BEEN MADE BY THIRD PARTY NON-DEFENDANTS

Statement	**Pleaded**
Huculack No. 1	On or about November 7, 2022, and continuing to this date, Teresa Huculack published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *This avoidance of the issues makes them look -super shady. Liars will answer questions you ask with answers to questions you didn't ask. Is this the image they're going for?*
Hall No. 1	On or about November 7, 2022, and continuing to this date, Keith Hall published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *A better question to ask is how were the (sic) 90 voter ballots the other night and only 35 people in attendance at the meeting this question of voter fraud should be raised by everyone in the community as we have a group of people acting like they own the place and they shouldnt (sic) even be sitting on the board*
Hall No. 2	On or about November 7, 2022, and continuing to this date, Keith Hall published a post in the Facebook Group replying to *Wood No. 4* (see Appendix A) and containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Diana Wood-Hutchinson*** *thankyou i (sic) attended that meeting and nothing seemed right about this group ask you (sic) husband how we can go about requesting an audit as there is no chance there were 90 people at that meeting*
Semple No. 1	On or about November 20, 2022, and continuing to this date, Jay Semple published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *The moment they reinstated the hall it was up for grabs at tax sale. And time was ticking it was the stupidest and most underhanded thing they could have done at the time. And screwed me out of all that effort!*
Goodman No. 1	On or about November 20, 2022, and continuing to this date, Jen Goodman published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *Now there is one group handling a whole bunch of community money and having NDAs - sounds super shady.*

Statement	**Pleaded**
Kopeschny No. 1	On or about November 20, 2022, and continuing to this date, Reese Kopeschny published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *NDA 's have zero place in a community association and is straight up BS, they are basically trying to hide behind it. It's just very (sic) very shady business and shows they don 't care about what we want they are just doing what they want like it's their own money. They won't answer any questions and are trying to manipulate everything with a big no (sic) no and shows what kind of people they actually are.*
Mitchell No. 1	On or about November 20, 2022, and continuing to this date, Cindy Mitchell published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *This seems pretty ridiculous and boarders (sic) on illegal.*
Huculack No. 2	On or about November 20, 2022, and continuing to this date, Teresa Huculack published a post in the Facebook Group replying to *Mitchell No. 1* and containing, *inter alia*, the following expression of and concerning the Plaintiffs: *Boarders (sic) on illegal? It sounds like outright theft of a community asset!*
Ross No. 1	On or about January 16, 2023, and continuing to this date, Brad Ross published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *And I would definitely suggest not sneaking around with secret plans to keep that dream alive lol*
Kopeschny No. 2	On or about January 17, 2023, and continuing to this date, Reese Kopeschny published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *I have never seen such an unprofessional community association in my life. Companies don't draw up drawings for free and it looks like they are trying to hide the actual costs and the truth.*
Banning No. 1	On or about January 28, 2023, and continuing to this date, Jana Banning published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *When is the next Stave Gardens secret society meeting?...* [Image omitted.]

Statement	**Pleaded**
Banning No. 2	On or about February 2, 2023, and continuing to this date, Jana Banning published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Courtney Cardy*** *shady!*
Skene No. 1	On or about February 2, 2023, and continuing to this date, Tobias Skene published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *A small group sold out the entire community for self (sic) gratification. I'd audit their funds.*
Banning No. 3	On or about February 2, 2023, and continuing to this date, Jana Banning published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *The second a group with an ulterior motive reinstated that association it forces the sale of the hall.* *…* *A handful of people made the decision to do that on behalf of the community and now we have $240k, no hall and some shady happenings.*
Banning No. 4	On or about February 2, 2023, and continuing to this date, Jana Banning published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *You shouldn't hold office if you have skeletons in your closet.*
Owen No. 1	On or about February 2, 2023, and continuing to this date, Owen Davidson published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Sam Jones*** *they absolutely do. And you say all the questions have been answered but with half truths (sic) misinformation...*
Banning No. 5	On or about February 15, 2023, and continuing to this date, Jana Banning published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Brynn Hall*** *some shady happenings with this group for sure.*
Kopeschny No. 3	On or about March 1, 2023, and continuing to this date, Reese Kopeschny published a post in the Facebook Group replying to *Cardy No. 16* (see Appendix B) and containing, *inter alia*, the following expression of and concerning the Plaintiffs:

Statement	**Pleaded**
	I really wonder how much money they personally borrowed and now own from the association. Something illegal is going own with that, the NDA's and everything else is going on. This needs to be taken further and they should be reported. For sure they are embezzling money and don't want to be caught.
Brynn No. 1	On or about March 1, 2023, and continuing to this date, Brynn Hall published a post in the Facebook Group replying to *Cardy No. 18* (see Appendix B) and containing, *inter alia*, the following expression of and concerning the Plaintiffs: ***Courtney Cardy*** *they must be doing something shady -- illegal to be acting like this. It is absurd and absolutely unheard of for an organization of any type to act like this.*
Hall No. 3	On or about March 29, 2023, and continuing to this date, Keith Hall published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *From the outside looking in it appears that this board of directors are only willing to talk to this community when they are in full control, this to me shows a high level of guilt.* *…* *In the time my family has lived in this community i (sic) have only had one dealing with this association board and i can say it was extremely unprofessional to the point of criminal.*
Bee No. 1	On or about August 22, 2023, and continuing to this date, Crystal Bee published a post in the Facebook Group containing, *inter alia*, the following expression of and concerning the Plaintiffs: *Your Bylaw Committee found that the bylaws were changed in 2019 and there was apparently no community vote as required by BC Societies Act.*