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(Winnipeg Centre)
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New Democratic Party of Manitoba et al.
Cited as: 2025 MBKB 124

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

PATRICK ALLARD,	)	Scott W. Cannon
	)	for the plaintiff
plaintiff,	)	
	)	
- and -	)	Abram Silver
	)	Avery A.E. Sharpe
NEW DEMOCRATIC PARTY OF MANITOBA, TRUDY SCHROEDER and MARK ROSNER,	)	for the defendants
	)	
defendants,	)	Judgment Delivered:
	)	October 16, 2025

Corrected Judgment: *An Erratum was issued on October 17, 2025. The text of the initial judgment is reproduced here with corrections, and the Erratum is appended at the end of this Corrected Judgment.*

PERLMUTTER A.C.J.

INTRODUCTION

[1] The plaintiff Patrick Allard claims he was defamed by the defendants. At the time, Mr. Allard was running as an independent candidate in a by-election for a seat in the Manitoba Legislative Assembly. This by-election took place during the Covid-19 pandemic when related Provincial public health orders were in effect. Mr. Allard had gained notoriety in the Province as a vocal and prominent opponent of Covid-19 vaccine mandates and the Provincial and Federal government's responses to the Covid-19 pandemic. On March 3, 2022, the campaign of the defendant Trudy Schroeder, who was

the candidate for the defendant New Democratic Party of Manitoba ("NDP"), put out a press release on NDP letterhead entitled "Manitoba Liberals Try to Give Anti-Vaxxer Platform". This press release included the following which are alleged to be the defamatory words at issue:

> Trudy is happy to have a debate but the Liberal proposal to give Patrick Allard a platform to spout his anti-vaccination and racist rhetoric is wrong. Our campaign is surprised and disappointed.

[2] Mr. Allard says that the portion of the press release accusing him of spouting "racist rhetoric" (the "impugned words") is defamatory. While the defendants concede Mr. Allard was defamed, they advance the defences of justification, responsible communication, qualified privilege, and fair comment.

[3] In addition, at the commencement of the trial, the defendants filed a motion to strike out the statement of claim with alternative and related relief on the basis that Mr. Allard disseminated evidence obtained during this action for unrelated purposes in breach of the deemed undertaking rule not to do so. They also assert these breaches amount to an abuse of the court process and contempt.

EVIDENCE

[4] At trial, Mr. Allard testified, as did Evan Krosney on behalf of the NDP, Ms Schroeder, and the defendant Mark Rosner. The parties also filed an agreed statement of facts and an agreed book of documents.

[5] The by-election was prompted by the resignation of Brian Pallister who had been the Premier of Manitoba and the Member of the Legislative Assembly ("MLA") for Fort Whyte, in Winnipeg. The press release followed a call for an all-candidates debate by

Willard Reaves who was the candidate for the Manitoba Liberal Party. After the press release was sent to the media, it was reported on by local news outlets and the alleged defamatory words (as set out above) were included in an article published on March 3, 2022, in the Winnipeg Free Press, which is a widely circulated newspaper in Manitoba.

Mr. Allard

[6] The by-election was Mr. Allard's first political campaign. He mostly ran it himself and campaigned for less than a week. He did not win. Thereafter, in October 2022, he ran for the position of school trustee, and in 2023, he ran to be the MLA for St. John's. Each of his campaigns have gotten progressively larger, although he did not win either of these other elections.

[7] Mr. Allard felt that based on the public health orders in place in 2021 and early 2022, as an unvaccinated person, he was treated as a "second class citizen" because there were limitations on his entitlement to participate in society. Mr. Allard publicized his disagreement with the government's responses to the Covid-19 pandemic, including in social media posts, in media interviews, and by attending protests. Mr. Allard was ticketed numerous times for breaking public health orders and was arrested twice. He testified a lot of supporters reached out to him.

[8] Mr. Allard supported (but did not attend) the "freedom convoy" in Ottawa and took part in the "blockade" in early 2022, on Memorial Street, in Winnipeg to bring attention to his point of view. He denies the accuracy of news reports that there was racist imagery, including Nazi flags, at the Memorial Street blockade. On cross-examination, Mr. Allard disagreed that the swastika is "racist rhetoric", instead describing it as a hate symbol,

although he acknowledged that Nazis were racist because they wanted one race to be supreme.

[9] With respect to the words "racist rhetoric" as used in the press release and then published in the Winnipeg Free Press, Mr. Allard testified that the inference is that he is racist. He testified he is not a racist.

[10] As discussed further below, a basis for the NDP's reference in the press release to "racist rhetoric" are these two "Facebook" posts by Mr. Allard that, according to him, were part of a chain of comments under a post that encouraged people to report to authorities people who were disobeying Covid-19 related public health orders:

> [M]ake sure to turn in any attic hiding jews while you're at it
>
> [T]he similarities between the two are identical. Just doing my job wasn't an excuse then. It isn't now. Turning on your Neighbour is never cool.

[11] Mr. Allard testified that the second comment above was to clarify and elaborate upon the first comment and that the two statements go together. At trial, the exchange between Mr. Allard and the other participants in the Facebook chain of comments was not available as Mr. Allard's Facebook messages had been deleted.

[12] Mr. Allard testified his comment about "attic hiding jews", reflects that during 1930's Germany, Jewish people were persecuted, and the government encouraged people to call the authorities to turn in their Jewish neighbours. He testified that in the pandemic, there were people encouraging their neighbours to turn in people who were not following public health orders and the "whole thing is turning on your neighbours" because the government is telling you "that's your enemy". With respect to the reference "the similarities between the two are identical. Just doing my job wasn't an excuse then.

It isn't now. Turning on your Neighbour is never cool.", the "identical" part is turning on your neighbour, calling the authorities on people who are not following the government's orders.

Defendants' Evidence

[13] The testimony of Mr. Krosney, Ms Schroeder, and Mr. Rosner was generally consistent and included the following.

[14] Mr. Rosner, who is now the Chief of Staff of the Premier and at the time of the by-election was Chief of Staff of the Leader of the Official Opposition (now the Premier), was an NDP volunteer and helped coordinate communications for Ms Schroeder's campaign. While the press release was a collaborative drafting effort among Mr. Rosner, another NDP volunteer, and Ms Schroeder's campaign manager, Mr. Rosner wrote the sentence with the impugned words. Ms Schroeder approved the press release. The press release was prompted by a request from a Winnipeg Free Press reporter for comment that she could include in an article regarding Mr. Reaves's request to organize an all-candidates forum.

[15] The purpose of the press release was to inform the voters of Fort Whyte why, if there was to be a debate involving Mr. Allard, Ms Schroeder's campaign would not participate. The NDP considered it atypical, and thus raised "red flags", for a candidate (Mr. Reaves) or a political party (the Manitoba Liberal Party) to call an all-candidates debate as these are typically called by community groups. Ms Schroeder's campaign believed the request for the debate would have the consequence of giving a platform to Mr. Allard who the NDP believed had views that would detract from both the efforts,

which the NDP supported, to encourage support for public health measures and to combat racist rhetoric. Mr. Rosner testified that part of the consideration in drafting the press release was his awareness of Mr. Allard's commentary about public heath officials, public health orders, and Mr. Allard's citations for violating public health orders, as well as his actions as part of the blockade and the comparison he made to the Holocaust, for example, which Mr. Rosner viewed as wrong. In addition, Mr. Rosner testified they had to respond to the media request the same day it was received.

[16] In how the press release was drafted, Mr. Rosner relied upon, and was influenced by, Mr. Allard's comments in his two Facebook posts (quoted above). He testified that the reference to "racist rhetoric" in the press release is the way Mr. Allard described people and the implied comparison in his first post, as borne out by the comment in the second post, that whether someone is breaking a public health order in Manitoba in 2022, is akin to telling Nazis or their collaborators that there is a Jewish person hiding in an attic and turning them in so they can be arrested, imprisoned, and presumably murdered. While Mr. Rosner did not attend the protests, he read in the media about people in these protests that had flown a Nazi flag. He testified that supporting or being a participant in a convoy protest does not mean one spouts racist rhetoric, but in Mr. Allard's case, it was the fact that not only did he participate, but was a vocal supporter, and then made comments which cohered and contributed to Mr. Rosner's belief that he was accurate when he used "racist rhetoric".

[17] Mr. Rosner withstood challenge on cross-examination to his evidence that he saw these Facebook comments by Mr. Allard ***before*** the press release. In my view, it makes

sense that Mr. Rosner did, in fact, see these comments before the press release as Mr. Allard himself testified that the Facebook comments were posted prior to the press release; they were publicly available; and, as testified to by Mr. Rosner, given that Mr. Allard was a candidate in the by-election who was a public figure known for publicly flouting health orders, it was important for the NDP to know about his positions in order to advise Ms Schroeder whether to participate in the proposed debate.

ANALYSIS

I. Defamation

[18] In a defamation claim, a plaintiff must prove that: (1) the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) the words in fact referred to the plaintiff; and (3) the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. (***Grant v. Torstar Corp.***, 2009 SCC 61, para. 28)

[19] In the case at hand, the defendants concede that Mr. Allard was defamed. There is no doubt that the impugned words referred to Mr. Allard. The words were published when they were sent in the press release to the media for inclusion in their reporting. As well, being described as spouting racist rhetoric would tend to lower Mr. Allard's reputation in the eyes of a reasonable person.

[20] If the plaintiff proves the required elements for defamation, the onus then shifts to the defendant to advance a defence to escape liability (***Grant***, para. 29).

II. Defences

[21] Where statements of fact are at issue, historically, only two defences have been available: the defence that the statement was substantially true (justification); and the defence that the statement was made in a protected context (privilege) (***Grant***, para. 32). With the issuance of ***Grant***, the Supreme Court of Canada recognized the availability of an additional defence for defamatory statements of fact: the defence that the statement was published on a matter of public interest and the publisher was diligent in trying to verify the allegation(s) prior to publication (responsible communication) (***Grant***, paras. 98, 126, 140).

[22] When the defamatory statement is not a statement of fact, but rather comment or opinion, the defence of qualified privilege remains available because the privilege attaches to the occasion upon which the communication is made and not to the communication itself (***Grant***, para. 30; ***Bent v. Platnick***, 2020 SCC 23, para. 121). The additional defence of fair comment also becomes available (***Grant***, para. 31; ***Hansman v. Neufeld***, 2023 SCC 14, para. 96).

III. Justification

[23] In ***Bent***, Côté J. explained the defence of justification as follows:

> [107] Once a *prima facie* showing of defamation has been made, the words complained of are presumed to be false: *Torstar*, at para. 28. To succeed on the defence of justification, "a defendant must adduce evidence showing that the statement was substantially true": para. 33. The burden on the defendant is to prove the substantial truth of the '"sting', or main thrust, of the defamation": Downard, at s.1.6 (footnote omitted). In other words, "[t]he defence of justification will fail if the publication in issue is shown to have contained only accurate facts but the sting of the libel is not shown to be true": Downard, at s.6.4.

[24] To succeed on the defence of justification, the defendant must adduce evidence showing that the statement was substantially true - the "sting" of the words is justified. It, therefore, follows that the sting or main thrust of the impugned words must lend itself to a true/false assessment.

[25] Mr. Allard and the defendants disagree about the nature of the sting. It is Mr. Allard's position that by describing him as spouting racist rhetoric, the inference is that he is racist, and this is the main thrust of the impugned words.

[26] For his part, Mr. Rosner testified that the choice of the words "racist rhetoric", and not to label Mr. Allard as a "racist", was intentional. He testified that through Mr. Allard's comparison of the similarities between the two historical periods to draw a conclusion and advance his position, Mr. Allard was making an argument and that is the force of the word "rhetoric". Mr. Rosner focussed on the types of arguments Mr. Allard was advancing which Mr. Rosner viewed as racist in character.

[27] Are these two differing characterizations of the sting meaningful? They are, if they lead to different conclusions about whether the impugned words constitute comment or statement of fact.

[28] By advancing the defence of justification, the defendants are necessarily arguing that it is a fact that Mr. Allard spouts racist rhetoric, or to put it a bit differently, that it is possible to prove as true that Mr. Allard was spouting racist rhetoric in his two Facebook posts.

[29] In many cases, Canadian courts have determined that "loose, figurative or hyperbolic labels" or generalizations, like labeling someone homophobic, transphobic,

bigoted, racist, or sexist are properly characterized as comment, not fact (***Hansman***, para. 111). In ***Hansman***, Karakatsanis J., writing for the majority of the Supreme Court of Canada, agreed that "an allegation of bias or prejudice is 'a debatable assertion as to a state of mind' and will typically be classified as a comment" (para. 111).

[30] Mr. Rosner testified that he read Mr. Allard's two Facebook posts in succession and took them to be related. Mr. Rosner also testified that the context of these comments by Mr. Allard was his perspective on whether public health orders were appropriate.

[31] Mr. Rosner further testified that the comparison Mr. Allard made between the public health orders and the Holocaust, and, in particular, the idea that limits on public gatherings and the encouragement of taking a vaccine was akin to the wilful murder of millions due to their racial background, political beliefs, or disabilities trivializes the historical fact of the Holocaust. He testified this harms the memory of those people and contributes to a diminishment of the seriousness and significance of those events, as well as a skepticism about the wrong of the Holocaust, which contributes to negative views about the groups of people who were targeted and killed in the Holocaust. He testified there are many facts which distinguish the two events that are morally significant, such as there was no organized murder of millions in Canada in 2022, based on racial, ethnic, religious, and political lines.

[32] Can it be proven, on a balance of probabilities, that the comparison Mr. Allard made in his Facebook posts is racist? Certainly, this is the way that the NDP interpreted it. However, this determination must be made in light of Mr. Allard's testimony, about which he withstood extensive cross-examination, that in his Facebook posts he was not

comparing the systemic extermination of six million Jewish people and countless others to the Covid-19 pandemic, but was instead comparing the government's actions of encouraging people to turn in their neighbours, in the case of the Holocaust for being Jewish and in the case of the Covid-19 pandemic for non-compliance with public health orders.

[33] The problem in answering this question is that the term "racist" is difficult to define. There is no accepted definition of "racism" or "racist" at law, although specific acts, like discrimination based on race or perceived race, ancestry, and ethnicity are prohibited under human rights legislation (see, for example, section 9 of ***The Human Rights Code***, C.C.S.M. c. H175).

[34] While a dictionary might define the term "racist" as "having, reflecting, or fostering the belief that race is a fundamental determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race" (see e.g. Merriam-Webster), common usage gives it a much broader, and more nuanced, connotation. There is a very subjective component to the use of the term. For example, while many, probably most, people would call a Holocaust denier "racist", the belief that the Holocaust did not happen or was grossly exaggerated does not fit neatly into the dictionary definition of "racist". The same can be said for Holocaust trivialization.

[35] The language that Mr. Allard chose to use to compare turning in your neighbour during the Nazi era to turning in your neighbour during the Covid-19 pandemic was insensitive and hyperbolic, and the flippant use of the phrase "attic hiding jews" was particularly demeaning and offensive. However, as objectionable as Mr. Allard's

language, I am not satisfied that it is possible to determine in this instance and context, as a matter of truth or falsity, what spouting racist rhetoric means so as to determine whether in making his two offensive Facebook posts Mr. Allard was, in fact, spouting racist rhetoric. In my view, the impugned words would be recognizable by an ordinary person, not as a statement of fact, but as "a statement of opinion as to the estimate to be formed of a person's writings or actions" (***Ross v. Beutel***, 2001 NBCA 62, para. 58). Because the defamatory statement that Mr. Allard was spouting racist rhetoric is best characterized as comment or opinion, the defence of justification is unavailable to the defendants.

IV. Responsible Communication

[36] In ***Grant***, McLachlin C.J. formulated the substance of the test for responsible communication as:

> 98 …First, the publication must be on a matter of public interest. Second, the defendant must show that publication was responsible, in that he or she was diligent in trying to verify the allegation(s), having regard to all the relevant circumstances.

[37] In considering whether the publisher was diligent in trying to verify the allegation, McLachlin C.J.C. noted as a "core" factor:

> [116] … In most cases, it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond…

[38] Not only is it common ground that no attempt was made by the defendants to contact Mr. Allard to give him an opportunity to respond to the defamatory statement prior to issuing the press release (i.e. the second part of the test was not satisfied) but

given that the impugned words are properly characterized as comment, the defence of responsible communication is unavailable in the circumstances.

V. Qualified Privilege

[39] In ***Bent***, Côté J. provided the following principles with respect to the defence of qualified privilege:

> [121] An occasion of qualified privilege exists if a person making a communication has "an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published" *and* the recipient has "a corresponding interest or duty to receive it": Downard, at s.9.6 (footnote omitted). Importantly, "[q]ualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself": *Hill*, at para. 143; *Botiuk*, at para. 78. Where the occasion is shown to be privileged, "the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff": *Hill*, at para. 144; *Botiuk*, at para. 79. However, the privilege is *qualified* in the sense that it can be defeated. This can occur particularly in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded (Downard, at s.1.9; see also *Hill*, at paras. 145-47; *Botiuk*, at paras. 79-80).
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> [122] For this reason, a precise characterization of the "occasion" is essential, as it becomes impressed with the limited, qualified privilege, which in turn becomes the benchmark against which to measure whether the occasion was exceeded or abused.
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> …
>
> [124] …Indeed, "the threshold for privilege remains high": *Torstar*, at para. 37. Privilege is "grounded" not in "free expression values but in the social utility of protecting particular communicative occasions from civil liability": para. 94.
>
> …
>
> [128] Qualified privilege may be defeated "when the limits of the duty or interest have been exceeded": *Hill*, at para. 146; *Botiuk*, at para. 80. This is the case when the information communicated in a statement is not relevant to the discharge of the duty or the exercise of the right giving rise to the privilege, or when the information is not reasonably appropriate to the legitimate purposes of the occasion: Downard, at s.9.91; *Botiuk*, at para. 80; *Hill*, at paras. 146-47; *RTC Engineering Consultants Ltd. v. Ontario (Solicitor General)* (2002), 58 O.R. (3d) 726 (C.A.), at para. 18.
>
> …

> [136] I add that malice is an alternative way to defeat the defence of qualified privilege. 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 s.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": s.9.74 (footnote omitted).

Does an occasion of privilege exist in this case?

[40] In deciding whether a statement was made on an occasion of privilege, the interest that the defendant sought to serve in issuing a defamatory statement should not be viewed technically or narrowly. The interest sought to be served may be personal, social, business, financial, or legal. The nature of the statement, the circumstances under which it was made, and by whom and to whom it was made are all relevant in determining whether the defence of qualified privilege applies. (***RTC Engineering Consultants Ltd. v. Ontario*** (2002), 58 O.R. (3d) 726 (C.A.), para. 16)

[41] The onus of proof lies on the defendants to establish the reciprocal interest or duty on a balance of probabilities.

[42] In the case at hand, the defendants made their defamatory statement in response to a media inquiry from the Winnipeg Free Press. They provided the press release to, and it was picked up by, more than one media outlet. The impugned words were quoted in a Winnipeg Free Press article.

[43] The defendants' position is that the statement in the press release was made to the public to explain to voters in the by-election why Ms Schroeder would not participate in a proposed all-candidates debate, and that the public had a corresponding interest in receiving it.

[44] Mr. Allard's counsel did not dispute that in the course of the by-election, Ms Schroeder's campaign had a need to make known to the public that Ms Schroeder would not be participating in the proposed debate. However, he argues that the public, as the recipient of this communication, did not have a corresponding interest or duty to receive it because not every person who received it would read it or would care why Ms Schroeder was not attending the proposed debate. As well, given that the defendants were responding to the media request for comment, it was not the public to whom the defendants felt some obligation to communicate.

[45] While Canadian courts have, in the past, been reluctant to find an occasion of qualified privilege exists in circumstances where a statement has been made to the public at large (***Grant***, para. 34, which references ***Globe and Mail Ltd. v. Boland***, [1960] S.C.R. 203), more recently, courts have been increasingly willing to do so "provided that they [defendants] can show a social or moral duty to publish the information and a corresponding public interest in receiving it" (***Grant***, paras. 35-36). In ***Neufeld v. Bondar***, 2025 BCCA 51, relying on ***Grant***, the British Columbia Court of Appeal expressed that the ratio in ***Boland*** (i.e. qualified privilege was unavailable where the publication was made in a newspaper or the scope of the publication was unduly wide) is no longer an accurate description of the state of the law (paras. 73-75).

[46] In the present case, the press release arose at the time of a by-election. Both Ms Schroeder and Mr. Allard, along with Mr. Reaves, were candidates. With the media inquiry to Ms Schroeder's campaign about her response to Mr. Reaves's call for an all-candidates debate and the indication that the response would be included in a related

newspaper article, in my view, Ms Schroeder had an interest in communicating her decision to voters not to participate in the proposed debate and why. In his testimony, Mr. Allard did not dispute the NDP's intention in issuing the press release was to tell voters that Ms Schroeder was not going to the debate and why. On cross-examination, Mr. Allard agreed that the public and private views of a candidate for public office are matters of public interest. I agree. In my view, the information published in the press release was information about which the public had a corresponding interest to receive. Objectively, this was the occasion on which the impugned words were communicated, and I find that on this occasion, a qualified privilege existed.

[47] Support for my finding is also found in ***Ward v. Clark***, 2001 BCCA 724, where the British Columbia Court of Appeal considered whether qualified privilege existed in the context of the defendant politician's statements to the media about the plaintiff. The defendant's remarks were made in response to public statements that the plaintiff had made in the media about the government of which the defendant was a member and a project for which he was the responsible minister. The court found that in making the defendant's defamatory remarks he had a corresponding public duty and interest in satisfying the interest of the public in knowing whether there was any reason to doubt the reliability of the plaintiff (para. 63), and, further, that the public nature of the plaintiff's remarks gave the defendant a similar entitlement to respond publicly (para. 51). Here, Mr. Allard made his Holocaust comparison, which formed a foundation for the impugned words, on social media (Facebook), such that they too were publicly available.

Rebutting or Defeating the Defence of Qualified Privilege

[48] Once the court is satisfied that a defamatory statement was published on an occasion of privilege, the presumption is that the defendant made their statement in good faith (***RTC Engineering***, para. 14, ***Hill v. Church of Scientology of Toronto***, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, para. 144). As outlined in ***Bent***, the onus then shifts to the plaintiff to rebut this good faith presumption by proving the defendant either exceeded the limits of the duty or interest giving rise to the occasion of privilege; or acted out of malice in making the communication. Malice in this context includes more than actual or express malice. As stated by Cory J. in ***Hill*** :

> 145 Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in *Cherneskey*, *supra*, at p. 1099, "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, *Taylor v. Despard*, 1956 CanLII 124 (ON CA), [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. See *McLoughlin*, *supra*, at pp. 323-24, and *Netupsky v. Craig*, 1972 CanLII 19 (SCC), [1973] S.C.R. 55, at pp. 61-62.

Has the scope of qualified privilege been exceeded?

[49] It is Mr. Allard's position that with the publication of the impugned words, any privilege was defeated because the scope of the occasion of privilege was exceeded. His counsel noted that the press release was made available not only to voters, but to the public at large, and argued that words "to give Patrick Allard a platform to spout his anti-vaccination and racist rhetoric is wrong" were not "reasonably appropriate to the legitimate purposes of the occasion" (***Bent***, para. 128). Mr. Allard's counsel also took the position that it was unnecessary for the defendants to include in the explanation for

Ms Schroeder not attending the proposed debate the reference to Mr. Allard spouting racist rhetoric given that there were several other reasons that were not included.

[50] As Mr. Krosney testified, the defendants had no other effective way to get a hold of voters and a press release to the media is a very effective way of communicating information as it is quick and a lot of people read the media. In the circumstances, I accept this approach as reasonable and, in my view, does not demonstrate that the scope of privilege was exceeded.

[51] In ***Ward***, the British Columbia Court of Appeal indicated that the scope of an occasion of privilege is not exceeded merely because the defendant fails to use bland and strictly factual language in their defamatory statement. Esson J.A. stated:

> 56 … The law does not require either blandness or accuracy as a condition of successfully invoking qualified privilege. The law was stated thus by Lord Atkinson in *Adam v. Ward*, *supra*, at p. 173:
>
> > These authorities, in my view, clearly establish that a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege; but that, on the contrary, **he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.**
>
> [emphasis added]

[52] Similarly, in ***Wang v. British Columbia Medical Association***, 2014 BCCA 162, the British Columbia Court of Appeal indicated that courts should not be too quick to determine that a defendant's remarks exceed the scope of the interest or duty giving rise to an occasion or privilege, once privilege has been established. Newbury J.A. explained:

> [99] Once a privileged occasion has been established, courts are somewhat reluctant to permit it to be defeated by a claim of 'excess'. According to Brown:
>
> > In light of the policy supporting qualified privileges, the question of excess should not be viewed narrowly. The language used by the defendant on a privileged occasion is not to be subjected to too strict a scrutiny and all excess found to defeat the protection which the privilege affords. [At §13.7(5).]
>
> The same principle was referred to in the Privy Council's decision in *Laughton v. Bishop of Sodor and Man* (1872) L.R. 4 P.C. 495, quoted approvingly in Lord Dunedin's speech in *Adam v. Ward* at 330:
>
> > To submit the language of privileged communications to a strict scrutiny, and to hold all excess beyond the absolute exigency of the occasion to be evidence of malice would in effect greatly limit, if not altogether defeat, that protection which the law throws over privileged communications. [At 508.]
>
> Expressing the same point in more colourful terms, the Court in *Birchwood Homes Ltd. v. Robinson* [2003] EWHC 293 (Q.B.) observed that "a person speaking on a privileged occasion should not be regarded as a tightrope walker without a safety net, with the judge waiting underneath with bated breath hoping for a tumble." (At para. 27.)

[53] On cross-examination, Mr. Rosner testified that his point in the press release was to provide the weightiest reasons for not attending the debate which reflected the values of the Schroeder campaign and the NDP, as this was what was owed to the public.

[54] Given the public interest aspect of the privileged occasion, the uncontested evidence that the public and private views of a candidate for public office are matters of public interest, and considering the foregoing caution against allowing a claim of qualified privilege to be defeated notwithstanding the use of potentially disproportionate language (***Ward*** and ***Wang***), I find that including "to give Patrick Allard a platform to spout his anti-vaccination and racist rhetoric is wrong" is "relevant to the discharge of the duty or the exercise of the right giving rise to the privilege" and this information is "reasonably appropriate to the legitimate purposes of the occasion" (***Bent***, para. 128). This

information was part of the reasoning for Ms Schroeder not participating in the proposed debate and part of the description of Mr. Allard's views, as understood by the NDP, which were views that the public would have an interest in knowing as they could impact the work of the candidate, if elected, as an MLA. Framed slightly differently, I find it was both necessary and appropriate to the occasion to refer to Mr. Allard in the manner provided in the press release because it was the defendants' concerns about Mr. Allard having a platform to spout racist rhetoric, whose views the public had an interest in knowing, that were being explained in the press release as to why Ms Schroeder would not be participating in the proposed debate.

Did the defendants act out of malice?

[55] Mr. Allard's counsel argues that the defence of qualified privilege is defeated because the dominant motive behind the impugned words was malice.

[56] As stated previously, malice in the context of a defamation claim includes a defamatory statement made out of spite or ill will (actual or express malice), or from any other improper motive that conflicts with the duty or interest giving rise to the occasion of privilege, or where it can be shown that the defendant acted with reckless disregard for the truth when making their statement.

(a) *Actual or Express Malice*

[57] Mr. Krosney, Ms Schroeder, and Mr. Rosner all testified that they wished no ill will toward Mr. Allard. Indeed, Ms Schroeder testified that she was inclined to be quite positive about Mr. Allard as she described him as a "very community caring person who actually does a lot of good". As well, the defendants quite reasonably did not believe

Mr. Allard had any chance of winning the by-election given that he was unaffiliated with a political party and spent only a week campaigning. In these circumstances, there is simply no persuasive evidence that the defendants' motive for publishing the impugned words was actual or express malice.

[58] In addition, there is no compelling evidence that the defendants were intentionally communicating untruths about Mr. Allard. Indeed, I found all of Mr. Krosney, Ms Schroeder, and Mr. Rosner's testimony to reflect their sincerely held beliefs that what they described as Mr. Allard's rhetoric was, in fact, racist. Each of them provided detailed and compelling explanations why they held these beliefs, which is best described in the recitation of Mr. Rosner's testimony (above). Indeed, I found Mr. Rosner, who drafted the impugned words, to be particularly thoughtful and reflective in explaining how he took care not to label Mr. Allard a racist and instead to focus on the argument or "rhetoric" that he was advancing.

(b) *Improper Motive*

[59] Mr. Allard's counsel argues that the press release was malicious as, in reality, it was used as an opportunity to connect Mr. Reaves, who, as the candidate for the Liberal Party of Manitoba was the NDP's biggest opponent in the by-election, to contentious issues like anti-vaccination as represented by Mr. Allard. As evidence of this, Mr. Allard's counsel points to the headline of the press release "Manitoba Liberals Try to Give Anti-Vaxxer Platform" and that the NDP did not believe that Mr. Allard was a serious contender for the seat such that there was no other reason to refer to him in the press release. As

well, Mr. Allard's counsel points to evidence that the NDP saw this request for a debate as merely a political stunt by an opposing candidate.

[60] I find this argument to be unpersuasive. There is nothing in the wording of the press release that is inconsistent with its purpose, which was to indicate that Ms Schroeder would not attend the proposed debate and why. The headline "Manitoba Liberals Try to Give Anti-Vaxxer Platform" is factually accurate – the NDP did not want to give Mr. Allard (who admitted to being a vocal and prominent opponent of Covid-19 vaccine mandates) a platform at the debate and it was the Manitoba Liberal candidate who was proposing the debate which would have included Mr. Allard. I agree with the defendants' counsel's submission that these were all key facts that made sense to communicate in the heading. Similarly, there is nothing in the body of the press release that Mr. Allard takes issue with except for the impugned words "racist rhetoric".

[61] Mr. Allard's counsel argues that because the press release was sent to multiple media outlets, the defendants acted with malice. However, as already mentioned above, as Mr. Krosney testified, the defendants had no other effective way to get a hold of voters and a press release to the media is a very effective way of communicating information to the public as it is quick and a lot of people read the media. I agree with this reasoning and find that, in the circumstances, sending the press release to the media as an attempt to communicate the information in it does not demonstrate that the defendants acted out of an improper motive.

(c) *Reckless Disregard for the Truth*

[62] The remaining question is whether, as strenuously argued by Mr. Allard's counsel, the defendants were reckless in communicating the impugned words. As noted in ***Bent***, "an ostensibly honestly held belief may still be spoken recklessly and the privilege defeated if the belief was 'arrived at without reasonable grounds'" and 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" (para. 136).

[63] Mr. Rosner testified that the basis upon which he arrived at what was said about Mr. Allard in the press release was from Mr. Allard's own public commentary on his positions, which, in the broader context, was Mr. Allard's public support of the convoy in Ottawa and blockade movement in Manitoba. Mr. Rosner testified that from media reports, it was not long after that someone held a swastika on Parliament Hill, and Mr. Allard associated himself with these kind of hate-filled ideas. In addition, as outlined above, Mr. Rosner based what was said about Mr. Allard in the press release on Mr. Allard's own words in his Facebook posts. On cross-examination, Mr. Allard agreed that it did not strike him as weird that the NDP did not contact him with respect to the press release and there was nothing nefarious about it. He testified that one would not necessarily reach out to other parties before issuing statements or press releases. When this evidence is considered in light of Mr. Allard's own Facebook posts (as detailed above), notwithstanding the serious nature of the defamatory description of Mr. Allard (assuming

the sting of "racist rhetoric" is that Mr. Allard is racist), in my view, this is sufficient to conclude that the defendants were not reckless or indifferent to the truth.

[64] As a whole, I find that the reference to Mr. Allard spouting racist rhetoric was an honestly held belief by the defendants for the reasons articulated in their testimony (as outlined above). I also find that this honestly held belief was not stated with reckless disregard for the truth, even assuming the sting is that Mr. Allard is racist, as this belief was arrived at on reasonable grounds.

[65] In his testimony, Mr. Allard denied that he was denouncing Jewish people and testified that it was an historical fact that Jewish people hid in attics during the Holocaust because the government was telling people to turn in their Jewish neighbours. But, comparing turning in Jewish people during the Holocaust, where the consequence could be their death, to turning in someone disobeying Covid-19 pandemic orders, where the consequence may be a fine, shows such insensitivity that it could reasonably lead someone to find it to be racist. Particularly considering the language chosen by Mr. Allard to make his point – the flippant and demeaning use of the phrase "attic hiding jews" – a reasonable person could find the comparison to be racist.

[66] Mr. Allard's counsel also argued that ascribing the impugned words to a "campaign spokesperson", as was done in the press release, is evidence of malice in the sense of reckless disregard for the truth because of Ms Schroeder's testimony to the effect that she would have paid more attention to the impugned words if they were attributed to her personally. Ms Schroeder testified that this "rhetorical device" allowed a statement of position to be conveyed without attribution and was appropriate in this case because at

the time of the press release, she did not know Mr. Allard and trusted the experienced people in her campaign to provide the necessary advice. She testified that in the context of the pandemic and within the public sphere, she was satisfied that this was the right approach. In my view, in this context, this explanation is reasonable and does not demonstrate malice.

VI. Fair Comment

[67] In ***Hansman***, Karakatsanis J. enumerated the elements to establish a defence of fair comment:

> 96 The fair comment defence has five elements. First, the "comment must be on a matter of public interest" (*Grant*, at para. 31). Second, it must be "based on fact" (para. 31). Third, "though it can include inferences of fact, [it] must be recognisable as comment" (para. 31). Fourth, it must satisfy an objective test: "could any person honestly express that opinion on the proved facts?" (para. 31). Finally, even if the above elements are met, "the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice" (para. 31). Consideration of the elements of the fair comment defence requires an assessment of the defamatory words used in the full context surrounding their use (*WIC Radio*, at paras. 55-56).

[68] As discussed above, I find that the impugned words are properly characterized as comment. In addition to falling within the kind of "loose, figurative or hyperbolic" label reflected in the term "racist" which many courts have determined would be recognized by a reasonable reader as comment (***Hansman***, paras. 108, 111), here, given the political context of the press release, I am satisfied that a reasonable reader would have interpreted the impugned words as an expression of the opinion of the NDP and the Schroeder campaign (***Hansman***, paras. 108-109). For the reasons discussed in my analysis of qualified privilege as to why voters had an interest in receiving the information in the press release, I am also satisfied that the impugned words were on a matter of

public interest and for the reasons that I found the occasion of qualified privilege was not defeated because of malice, I find that the defendants were not actuated by malice.

[69] As well, as discussed above, I am of the view that a person could honestly express the opinion reflected in the impugned words given Mr. Allard's Facebook posts. However, in my view, the fair comment defence fails because a substantial factual basis relied upon by Mr. Rosner (Mr. Allard's two Facebook posts) for the impugned words (the comment) is neither explicitly nor implicitly indicated in the press release, nor was it demonstrated that the two Facebook posts were so notorious as to be already understood by the audience, such that the reader can "make up their own minds" as to the merit of the impugned words. In ***Hansman***, Karakatsanis J. explained:

> [99] To constitute fair comment, a factual basis for the impugned statement 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" (*WIC Radio*, at para. 34). The defence is unavailable if "the factual foundation is unstated or unknown, or turns out to be false" (para. 31).
>
> [100] There is, however, no requirement that the facts *support* the comment, in the sense of confirming its truth (para. 31). The expression must relate to the facts on which it is based, but the comment need not be a reasonable or proportionate response (paras. 39, 51 and 59). The purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them "to make up their own minds" as to its merit (para. 31).

[70] The defendants' counsel submits that the reference in the press release to both Mr. Allard's opposition to vaccines and his support of the freedom convoy/blockade along with his related notoriety as an opponent of public health orders at least implicitly provided the factual basis for the impugned words. However, being opposed to vaccines and supporting a convoy protest do not relate to one spouting racist rhetoric (as testified to by Mr. Rosner). The facts of the present case are unlike those in ***Hansman***, where,

in the context of the dismissal of Mr. Neufeld's defamation action, the Supreme Court of Canada agreed with the Chambers Judge that Mr. Neufeld failed to adequately challenge the fair comment defence. Like in the present case, Mr. Neufeld's Facebook post was a basis for most of the impugned statements. But, in ***Hansman***, "[a]ll of the challenged publications either reproduced, linked to, quoted from, or otherwise described Mr. Neufeld's original Facebook post…" and "Mr. Neufeld's views were therefore available to readers within the four corners of the publications, either within the text itself or via hyperlinks to further articles and explanations" (para. 103).

[71] I have determined that the defences of justification and responsible communication are unavailable to the defendants, while the test for fair comment has not been met. I am dismissing Mr. Allard's action because the defendants have established the defence of qualified privilege. Nonetheless, if it is later concluded that I have erred in my conclusion, I have provisionally assessed Mr. Allard's damages.

VII. Damages

[72] Mr. Allard did not advance a claim for special damages. He seeks general, aggravated, and punitive damages. In support of a sizeable damage award, Mr. Allard points out that the defamation at hand involves a public statement by a political party and thus communicated with substantial weight and broadly disseminated, having been sent to the media for further publication. He argues this was done with a view to the NDP and Ms Schroeder's campaign being seen as the more moral and ethical party than Mr. Allard or the Manitoba Liberal Party. In the circumstances, Mr. Allard suggests that

a minimum of $50,000.00 in general damages are appropriate along with aggravated and punitive damages.

[73] The defendants submit that due to what they say was Mr. Allard's poor public reputation prior to the publication of the press release, his poor reputation for reasons unrelated to the press release, and his own repeated republication of the press release, nominal damages are appropriate. They suggest $500.00. The defendants also argue that the requisite material facts to advance a claim for aggravated damages based on malice have not been pled or proven, such that they are not recoverable. The defendants advance a similar argument as to why punitive damages are not recoverable.

General Damages

[74] In ***Hill***, the Supreme Court of Canada provided the following regarding general damages in defamation actions:

> 164 It has long been held that general damages in defamation cases are presumed from the very publication of the false statement and are awarded at large. …
>
> 165 The consequences which flow from the publication of an injurious false statement are invidious. …
>
> 166 …A defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime. Seldom does the defamed person have the opportunity of replying and correcting the record in a manner that will truly remedy the situation. ...
>
> …
>
> 169 A very different situation is presented with respect to libel actions. In these cases, special damages for pecuniary loss are rarely claimed and often exceedingly difficult to prove. Rather, the whole basis for recovery for loss of reputation usually lies in the general damages award.

[75] In ***Chartier v. Bibeau***, 2022 MBCA 5, by reference to ***Hill***, Justice Burnett provided the following regarding the assessment of general damages for defamation:

> [41] In *Hill* [*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130], the Supreme Court of Canada identified six factors to be taken into account in assessing general damages for defamation: (1) the plaintiff's conduct, (2) their position and standing, (3) the nature of the defamatory statement, (4) the mode and extent of publication, (5) the absence or refusal of any retraction or apology, and (6) the conduct of the defendant "from the time when the libel was published down to the very moment of [the jury's] verdict" (at para 182). The jury is also required to "take into account the evidence led in aggravation or mitigation of the damages" (*ibid*).

[76] The word "racist" is inflammatory language and invokes strong emotions. Being described in a widely published way as racist invites, very legitimately, all manner of condemnation. As Mr. Allard testified, nobody wants to be known as a racist or be associated with a racist. There was no apology offered by the defendants. Throughout trial, the defendants maintained that the impugned words are true. All these factors militate in favour of a higher damage award. However, these factors are to be weighed against Mr. Allard's conduct, along with his position and standing, as follows.

[77] Prior to publication of the press release, Mr. Allard was ticketed multiple times for breaching public health orders and was arrested in a public manner. In the link related to his fundraiser, Mr. Allard described himself as "arguably the province's most heavily ticketed individual for Covid lockdown defiance, and was also arrested twice for peacefully protesting". Mr. Allard did not dispute the accuracy of several news stories about him prior to publication of the press release which discuss these breaches and his arrest, as well as making social media posts encouraging people who are against masks and Covid-19 vaccines to block traffic for the Winnipeg Blue Bombers football home opener game.

In my view, this public conduct by Mr. Allard would have tended to lower his standing in the community.

[78] In evidence were also social media posts after publication of the press release wherein posters used various derogatory terms to describe Mr. Allard other than "racist". These include "horrible", "hateful", "misogynistic", "homophobic", "transphobic", and "hate group member". None of these were included in the press release and I infer these posters were basing their descriptions of Mr. Allard on something other than the press release. This would point to a low standing of Mr. Allard unrelated to the press release.

[79] As well, Mr. Allard appeared on podcasts and other media to discuss the press release and shared a link on his fundraising page regarding the press release, all of which means he himself repeatedly drew attention to the press release.

[80] This evidence all weighs heavily against anything more than a nominal damage award. Also weighing against a substantial damage award is Mr. Allard's agreement on cross-examination that people who supported him did not fall off after the issuance of the press release.

[81] In all of these circumstances, I agree with the defendants' submission that only nominal general damages would be in order. I would assess these damages at $1.00.

Aggravated Damages

[82] For the reasons discussed in my consideration and findings regarding qualified privilege, having found that the defendants were not motivated by actual malice and with no evidence that the defendants' conduct was particularly high-handed or oppressive, I would not award aggravated damages (***Hill***, paras. 188-190).

Punitive Damages

[83] Given my conclusion that aggravated damages are not to be awarded, it follows that there can be no suggestion that "general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence" (***Hill***, para. 196). As such, I would not award punitive damages.

VIII. Breach of Deemed Undertaking

[84] The defendants allege that Mr. Allard disseminated evidence obtained during the discovery process for purposes other than those of this action in breach of the deemed undertaking rule not to do so. They argue that this also constitutes a breach of the court process and contempt. As a result, they move for an order striking out the statement of claim or in the alternative injunctive relief, and declarations that Mr. Allard breached the deemed undertaking rule and is in contempt of court.

[85] It is Mr. Allard's position that a pleading is only to be struck in the most egregious of cases and that this is not such a case as it would be disproportionate. While Mr. Allard denies that the defendants have established that he breached the deemed undertaking rule, if he is found to have done so, he argues that he did so inadvertently, without malice, and with minimal prejudice to the defendants, such that he proposes alternative remedies such as costs.

[86] Court of King's Bench Rule 30.1(3) provides the following deemed undertaking with respect to evidence and information obtained on discovery:

> All parties and their lawyers are deemed to undertake not to use evidence or information to which this Rule applies for any purposes other than those of the proceeding in which the evidence was obtained.

[87] In ***Jumanm v. Doucette***, 2008 SCC 8, the Supreme Court of Canada considered the scope of the "implied undertaking rule". Binnie J. provided the following:

> [20] The root of the implied undertaking is the statutory compulsion to participate fully in pre-trial oral and documentary discovery…
>
> …
>
> [25] The public interest in getting at the truth in a civil action outweighs the examinee's privacy interest, but the latter is nevertheless entitled to a measure of protection. The answers and documents are compelled by statute solely for the purpose of the civil action and the law thus requires that the invasion of privacy should generally be limited to the level of disclosure necessary to satisfy that purpose and that purpose alone…The general idea, metaphorically speaking, is that whatever is disclosed in the discovery room stays in the discovery room unless eventually revealed in the courtroom or disclosed by judicial order.
>
> [26] There is a second rationale supporting the existence of an implied undertaking. A litigant who has some assurance that the documents and answers will not be used for a purpose collateral or ulterior to the proceedings in which they are demanded will be encouraged to provide a more complete and candid discovery. …
>
> [27] For good reason, therefore, the law imposes on the parties to civil litigation an undertaking *to the court* not to use the documents or answers for any purpose other than securing justice in the civil proceedings in which the answers were compelled (whether or not such documents or answers were in their origin confidential or incriminatory in nature). …
>
> …
>
> [29] Breach of the undertaking may be remedied by a variety of means including a stay or dismissal of the proceeding, or striking a defence, or, in the absence of a less drastic remedy, contempt proceedings for breach of the undertaking owed to the court.

[88] In the case at hand, in an article published in the newspaper prior to the start of trial, written by Marty Gold, "GOLD: There's no winning for the NDP in Patrick Allard's court case" *Winnipeg Sun* (May 14, 2025), the following is included:

> …In any event, in pre-trial examination Rosner confirmed he was involved in the writing of the release and had texted another party official that, "Under no circumstances do we debate Patrick Allard".
>
> …
>
> This wasn't a spontaneous, off-the cuff remark in a media scrum or at a voter's doorstep. It took days of planning through back-and-forth emails and texts among

> campaign officials, and Schroeder herself, to cook up a press release to try to link Reaves, who is undeniably Black, to a supposed racist.

[89] In evidence at trial were the text messages of the NDP and Mr. Rosner referenced in the foregoing. Other than through the discovery process, there is no explanation for how Mr. Allard would have obtained these documents and information and how they would have ended up as part of Mr. Gold's article. None of Mr. Krosney, nor Ms Schroeder, nor Mr. Rosner provided these text messages or information to Mr. Gold. Mr. Allard testified that he did not know how Mr. Gold obtained the text messages referred to in his article and suggested that Mr. Gold may have watched Mr. Allard's appearance on Winnipeg Alternative Media. Of course, this would not make the circumstances any more favourable for Mr. Allard as he would still be providing this information for a purpose other than this action.

[90] In these circumstances, the only reasonable inference is that it was Mr. Allard who provided this information to Mr. Gold. There is no suggestion that providing this information to Mr. Gold was for any legitimate purpose of this action. As such, I find that Mr. Allard breached the deemed undertaking in Rule 30.1.

[91] As well, in a podcast interview prior to the trial, Todd McDougall, "Prairie Truth #319 – Patrick Allard on NDP Defamation Lawsuit" (February 3, 2025), online (podcast), Mr. Allard stated:

> …But there's, there's text messages between quite a few people in the NDP going back and forth on this claim, so they knew what they were doing.
>
> …
>
> One other thing, anybody that wants to donate prior to donating or after donating. If they want more disclosure, I'm happy to send them PDFs of all the Statement of Claim, the Statement of Defence, all the transcripts. There's about of (*sic*) transcripts from the examinations. If someone you know wants to say, "hey, I

> don't know if I want to give this guy 50 bucks. I want to know what I am donating to." I'd be [happy to] send it out.

[92] In offering to provide transcripts from the examinations for discovery, Mr. Allard testified that he wanted to be transparent for those who may want to donate to him. He also testified that no one took him up on this offer for which he is thankful because he has now learned that this would not have been appropriate. Mr. Allard testified that at the time, he did not know what he was doing was inappropriate. In his testimony, he explained that as a lay person, having paid for transcripts, he viewed them as something to do with as he wished. Nevertheless, in proceeding as he did, I find that Mr. Allard again breached the deemed undertaking rule by using the examination for discovery transcripts for a purpose collateral or ulterior to the action in which they came about.

[93] I now turn to the question of sanction.

[94] Based on Mr. Allard's testimony (as outlined above), I accept that he was not acting with malice. His evidence was essentially that he did not know about the deemed undertaking rule and therefore inadvertently breached it. Of course, this should be a reminder to all counsel that, as officers of the court and being bound by the deemed undertaking rule, counsel should diligently ensure that their clients as parties are clearly told about the rule, along with potential and likely sanctions for its breach.

[95] I have no basis to question Mr. Allard's testimony that he did not provide the discovery transcripts to anyone and, now that he appreciates and understands the deemed undertaking rule, I would expect that, in the future, he would not produce the discovery transcripts or disclose any other evidence or information that would breach the rule. In these circumstances, I see no reason to issue an injunction preventing him from

doing so. Indeed, if he were to again breach the deemed undertaking rule, significant sanctions could easily follow.

[96] While Mr. Allard breached the deemed undertaking rule, which also amounts to a breach of the court process, given his evidence that he did not have actual knowledge of the deemed undertaking rule and that he did not intend to breach it, I am unable to find that he is in contempt (***Carey v. Laiken***, 2015 SCC 17, paras. 34-35).

[97] I agree with Mr. Allard's counsel that the prejudice to the defendants resulting from Mr. Allard's breaches of the deemed undertaking rule is minimal. At trial, it was not a contentious fact that Mr. Rosner drafted the impugned words and there was evidence tendered regarding related text messages. Given this evidence and the evidence as to the inadvertence of Mr. Allard's breaches, I am not striking his statement of claim. Rather, given that Mr. Allard's conduct directly relates to the conduct of the action, it is most properly dealt with as a factor to be weighed against him in assessing costs.

CONCLUSION

[98] In conclusion, I am dismissing Mr. Allard's action because the defamatory statement in the press release attributed to the defendants was published on an occasion of qualified privilege. Had I found in Mr. Allard's favour, I would have awarded him nominal damages of $1.00. I also find that Mr. Allard breached the deemed undertaking contained in King's Bench Rule 30.1(3), which breaches are a factor, weighing against him, to be considered on an assessment of costs. If the parties cannot agree on costs, they may file written submissions.

[99] In dismissing this action, I will underscore that my findings ought not to be interpreted or construed as license to publish, with impunity, remarks which may be defamatory and untrue about another simply because they are published in the context of an election campaign. It is not the fact of an election campaign that, in itself, necessarily gives rise to an occasion of qualified privilege. As was done in the case at hand, to demonstrate an occasion of qualified privilege, it must be shown that the person making the communication has the requisite interest or duty to publish the information in issue to the person to whom it is published and the recipient has a corresponding interest or duty to receive it. To avoid exceeding the privilege, the comments in question must be relevant, necessary, and appropriate, as I found them to be in this case.

[100] Finally, in considering whether to publish the words, the defendant's dominant motive cannot be malice, which includes reckless disregard for the truth. That is, even an honestly held belief will be considered as communicated recklessly if the belief was arrived at without reasonable grounds. For the reasons discussed (in paragraph 65), here, I find that the portion of the press release accusing Mr. Allard of spouting "racist rhetoric" was not stated with reckless disregard for the truth as it was the defendants' honestly held belief that was arrived at on reasonable grounds.

"Shane Perlmutter"

A.C.J.

Date: 20251016
Docket: CI 22-01-38812
(Winnipeg Centre)
Indexed as: Allard v.
New Democratic Party of Manitoba et al.
Cited as: 2025 MBKB 124

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

PATRICK ALLARD,	)	Scott W. Cannon
	)	for the plaintiff
plaintiff,	)	
	)	
- and -	)	Abram Silver
	)	Avery A.E. Sharpe
NEW DEMOCRATIC PARTY OF MANITOBA, TRUDY SCHROEDER and MARK ROSNER,	)	for the defendants
	)	
defendants,	)	Judgment Delivered:
	)	October 16, 2025

PERLMUTTER A.C.J.

E R R A T U M

The following amendment has been made to the above-noted judgment:

The name "Rosener" has been removed throughout the entire judgment and replaced with the name "Rosner".

Please replace the entire existing judgment with the attached judgment.

DATED this 17th day of October, 2025.

_____ A.C.J.