NOVA SCOTIA COURT OF APPEAL
Citation: *Fraser v. MacIntosh-Wiseman*, 2025 NSCA 90

Date: 20251223
Docket: CA 540689
Registry: Halifax

Between:

Donn Fraser and DLF Law Practice Incorporated

Appellants

v.

v.

Sarah MacIntosh-Wiseman

Respondent

Judges:	Wood, C.J.N.S., Farrar and Bourgeois, JJ.A.
Appeal Heard:	November 13, 2025, in Halifax, Nova Scotia
Facts:	The case involves a defamation action initiated by the appellants against the respondent. The individual appellant and the respondent were former partners in the same law firm. The dispute arose from an email sent by the respondent to the appellant, which allegedly contained false and defamatory statements that harmed the appellant's reputation and caused emotional, reputational, and financial damage (paras 1-8).
Procedural History:	• *Fraser v. MacIntosh-Wiseman*, 2024 NSSC 378: The motion for summary judgment was granted, dismissing the defamation action with costs to be determined (paras three3-4).
Parties' Submissions:	• Appellants: Argued that the email sent by the respondent was defamatory and placed the appellant in a

false light, causing harm to his reputation and career (paras 8-9).

- Respondent: Contended that there were no genuine issues of material fact for trial and sought summary judgment to dismiss the defamation claim (para 9).

Legal Issues:

- Did the judge commit legal error in his approach to the law of defamation?
- Did the judge make impermissible findings of fact or determinations on the motion?

Disposition:

- The appeal was allowed, and the summary judgment order was set aside.

Reasons:

Per Farrar J.A. (Wood C.J.N.S. and Bourgeois J.A. concurring):

The judge erred by conflating the legal question of whether the words were capable of a defamatory meaning with the factual determination of whether they were defamatory. The judge's mischaracterization of the issue was fatal to his analysis, as it involved disputed issues of fact inappropriate for a summary judgment motion (paras 12-17). The judge also made impermissible findings of fact by delving into the evidence and drawing inferences, which is not the role of a judge on a summary judgment motion (paras 18-23). The court also set aside the decision dismissing the tort of publicly placing an individual in a false light, noting that whether this tort exists in Nova Scotia is a matter for another day (paras 25-26). Costs of the appeal were set at $5,000, inclusive of disbursements (para 27).

NOVA SCOTIA COURT OF APPEAL

Citation: *Fraser v. MacIntosh-Wiseman*, 2025 NSCA 90

Date: 20251223

Docket: CA 540689
Registry: Halifax

Between:

Donn Fraser and DLF Law Practice Incorporated

Appellants

v.

Sarah MacIntosh-Wiseman

Respondent

Judges:	Wood, C.J.N.S., Farrar and Bourgeois, JJ.A.
Appeal Heard:	November 13, 2025, in Halifax, Nova Scotia
Written Release:	December 23, 2025
Held:	Appeal allowed, with costs, per reasons for judgment of Farrar, J.A.; Wood, C.J.N.S. and Bourgeois, J.A. concurring.
Counsel:	Donn Fraser, self-represented appellant Donn Fraser, for the appellant DLF Law Practice Incorporated Sarah MacIntosh-Wiseman, self-represented respondent

Reasons for judgment:

Introduction

[1] The appellant Donn Fraser and the respondent Sarah MacIntosh-Wiseman[1] were partners in the now defunct law firm known as "Mac Mac & Mac" until Ms. Wiseman resigned from the partnership effective December 31, 2019. Mr. Fraser remained a partner in the firm until its dissolution at the end of September, 2021.

[2] The appellants commenced action against Ms. Wiseman in defamation as a result of what they considered to be false and defamatory statements concerning an email sent by her to Mr. Fraser on March 9, 2021. Ms. Wiseman defended the action and made a motion for summary judgment on evidence pursuant to *Civil Procedure Rule* 13.04.

[3] The motion was heard before Justice John A. Keith on April 29, 2024 and by decision dated December 10, 2024,[2] he granted it with costs to be determined.

[4] At the time of hearing this appeal, costs of the motion had still not yet been determined.

[5] Following argument from the parties (both of whom were self-represented), we allowed the appeal, set aside the summary judgment order with reasons to follow. These are those reasons.

Background

[6] The defamation action underlying this appeal, as noted, arose out of an email dated March 9, 2021 from Ms. Wiseman to Mr. Fraser. As it is the focus of the defamation action and this appeal, I will repeat it here in its entirety.[3]

> Donn,
>
> Please note that I am sending this email from my personal account to keep it private, but I do not intend to engage in this discussion further. I wanted to

[1] At the oral hearing the respondent advised she now goes by the name Sarah Wiseman, as a result I will refer to her as Ms. Wiseman unless the context requires otherwise.
[2] 2024 NSSC 378.
[3] The bolded portions of the email are referred to in the appellants' Amended Statement of Claim dated March 8, 2024 as tending "to lower the reputations of the Appellants".

acknowledge your recent invitation for a beer, and to explain to you why I am going to decline.

I have recently learned that you told/implied to my former partners: 1) that you know my long term career intentions, and have for some time; 2) that we are on close social terms; and 3) that I backed away from managing partner duties in 2018 for reasons that were related to Julie. [In case you are wondering, no email exchanges have been provided to me, but the narrow fact that you made those communications to the partnership was shared with me.] Donn, none of those messages are accurate or truthful. Regardless, you have no right to speak on my behalf or to hold yourself out as knowing my mind.

When you asked me to meet for a beer in the Fall, I explained my preference to let bygones be bygones. Not because I had any change of perspective on your emails from March/April 2019, but because I did not see any value in discussing the matter. ***I still consider your emails to have been one of the most unkind, uncollegial, unprofessional and inaccurate exchanges I have ever had with anyone, let alone someone I had considered a friend and partner.***

Let me be clear. The emails you sent at midnight the night before I started my partnership-supported leave were directly responsible for the fact that I walked away from not only a law practice that I loved and excelled at, but a partnership and firm that I considered family. The partnership and firm that my grandfather started; my father then led; and which I intended to practice with for the remainder of my career (excepting only my intended temporary two year leave). Your angry, late night email started the snowball rolling through which my partnership and planned future disappeared almost overnight. While I could have turned back to address the issue with you to its conclusion, I knew that the partnership had enough on its plate in dealing with the news of Gerald's health. His situation gave me enough perspective to realize the right thing to do was to walk quietly away and let the partnership deal with that more important issue.

When you eventually reached out to speak with me around Christmas, almost two years later, the time for an apology had long since passed.

That said, as a courtesy to you, and out of respect for what I had considered to be a long standing relationship of mutual respect, I agreed to meet. I do not wish to hold you any ill will. To the contrary, I have considered it a personal and professional loss that our relationship ended as it had. I had always held you and your opinion in high regard. ***I accepted your apology in January, notwithstanding the fact that you carefully apologized only for the timing of your emails, not the content.***

I now understand that you used that one courtesy meeting as a basis to suggest to my former partners that I have confided my long term career intentions to you. Donn, I want to be crystal clear - you do not have any right to speak on my behalf, nor to leave an impression that you know my mind. When you asked

> about my future plans, I gave you polite and evasive responses, as I had no desire to have a real discussion about my future plans with you***. Nor did I see value in being blunt about the fact that I would never rejoin a partnership with you, given the disrespectful way you treated me.***
>
> ***I have no idea what conversation you are referencing regarding my decision to step back from managing partner duties, but I can assure you that I discussed every aspect of that decision openly with Julie at the time, and in no way do I attribute my decision to anything negative related to Julie.*** Julie and I have remained in contact and friends through that period, and to this day. We do not always share a common approach to issues, but we have always been able to discuss any differences openly, and respectfully.
>
> While I do not know the details of what is occurring at the firm, I do know that things are complicated. But since you have reached out to ask to meet for another drink, I thought it best that I tell you that I know you have misrepresented our earlier discussions. I have no interest in debating my perspective with you, nor in holding grudges or ill will. Whatever is happening with the partnership in 2021 is not something that involves me. ***But I will not permit you to reference me in conversations that I am not part of, nor to give others the impression that you are informed to speak about my thoughts/plans, past or present.***
>
> Donn, my statements that I hope you and Heather are well and that I miss the MMM crew were genuine. But I do not appreciate being used for strategic convenience in matters that are not related to me, nor in having anyone else purport to speak on my behalf. I am not sharing this email with the partnership, just as I had not communicated with them about our earlier meetings.
>
> Sarah

[7] Ms. Wiseman sent a copy of the email to her father, Bruce MacIntosh, who had formerly been a senior partner at Mac Mac & Mac. She understood that Mr. MacIntosh would share the email with Mr. Fraser's existing law partners and, as well, the firm's office manager.[4]

[8] By notice of action filed March 10, 2023 and amended on June 14, 2023 and March 13, 2024, Mr. Fraser sued Ms. Wiseman alleging that the March 9, 2021 email was defamatory and publicly placed him in a false light. Mr. Fraser says that the email wrongfully accused him of being responsible for her leaving the law firm and the practice of law. Mr. Fraser further alleges it inflicted emotional, reputational and financial harm by dishonestly casting him as a villain who forced the respondent's departure from the firm.

[4] Decision, para. 15.

[9] Ms. Wiseman brought the motion for summary judgment on the basis that there were no genuine issues of material fact for trial.

Issues

[10] In the notice of appeal, the appellants raise a number of grounds of appeal. To decide this appeal the only issues I need to address are:

1. Did the judge commit legal error in his approach to the law of defamation?
2. Did the judge make impermissible findings of fact or determinations on the motion?

Standard of review

[11] The standard of review applicable to appeals from summary judgment motions is well established and is set out in *Burton Canada Company v. Coady*:[5]

> [19] The standard of review applicable to summary judgment motions in Nova Scotia is settled law. The once favoured threshold inquiry as to whether the impugned order under appeal did or did not have a terminating affect, is now extinct. There is only one standard of review. We will not intervene unless wrong principles of law were applied or, insofar as the judge was exercising a discretion, a patent injustice would result. See for example, **AMCI Export Corporation v. Nova Scotia Power Inc.**, 2010 NSCA 41; **Innocente v. Canada (Attorney General)**, 2012 NSCA 36 at ¶21-29; **WBLI Chartered Accountants, supra**; and **Nova Scotia v. Roué**, 2013 NSCA 94.

Analysis

Issue 1 - Did the judge commit legal error in his approach to the law of defamation?

[12] In his decision, the judge identifies the ultimate issue to be whether the impugned words were defamatory. He found it to be a question of law:

> [66] The issue in this motion comes down to the final element of the test: whether the impugned words were defamatory, in the sense that they would tend to lower Fraser's reputation in the eyes of a reasonable person.

[5] 2013 NSCA 95, para. 19.

> [67] ***The Courts have clearly established this element of the test is a question of law*** (*Mantini v. Smith Lyons LLP* (2003), 64 O.R. (3d) 516 (Ont. C.A.) ("***Mantini***"), at para. 10). The Courts have also clearly stated that an objective standard is applied when addressing this question. In *Colour Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97 (Ont. C.A.), Abella, J.A. (as she then was) wrote:
>
> > A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him [or her] in the estimation of right-thinking members of the society generally and in particular to cause him [or her] to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one [at para. 14].
> >
> > [Emphasis added]

[13] With respect, the judge incorrectly identified the ultimate question as being a question of law. The case he cites, *Mantini*, does not stand for that proposition.

[14] *Mantini* identifies a two-step process. The first step in the process is a question of law, that is whether the impugned words are capable of a defamatory meaning.[6] If the first step is satisfied, the second part of the test asks whether the words actually conveyed a defamatory meaning. That is a question of fact.[7]

[15] The judge did not identify the two step process. He made the same error as the motion judge in *TPG Technology Consulting Ltd. v. Canada (Minister of Industry Canada)*.[8] In *TPG* the Ontario Court of Appeal explained the two stages of the approach to determining whether statements are defamatory:

> [15] The motion judge appears to have failed to distinguish between the two stages of the process to be followed when determining whether the impugned statements were capable of defamatory meaning. ***The first stage requires a determination of whether the impugned expression is capable of bearing a defamatory meaning. This is "a question of law and has been referred to as the 'gatekeeper function'"***: see Mantini v. Smith Lyons LLP, supra, at para. 11; [page103] Laufer v. Bucklaschuk, 1999 CanLII 5073 (MB CA), [1999] M.J. No. 553, 181 D.L.R. (4th) 83 (C.A.), at para. 25, leave to appeal to S.C.C. refused [2000] S.C.C.A. No. 77, 189 D.L.R. (4th) vii; Roger D. McConchie and David A. Potts, Canadian Libel and Slander Actions, at p. 295.

[6] *Mantini*, para. 10.
[7] *Mantini*, para. 11.
[8] 2012 ONCA 87.

> [16] ***The question of whether the words actually conveyed those meanings, on the other hand, is a question of fact***: see, for example, Young v. Toronto Star Newspapers Ltd. (2005), 2005 CanLII 35775 (ON CA), 77 O.R. (3d) 680, [2005] O.J. No. 4216, 259 D.L.R. (4th) 127 (C.A.), at para. 68; Laufer v. Bucklaschuk, supra, at para. 25.
>
> [17] The motion judge did not advert to the two-stage process and appears to me to have conflated the initial threshold legal issue with the second factual issue that properly belonged to the trier of fact. He concluded, at para. 23, that the bureau's statement that the appellants' objective was to maximize the rate they would charge for their services "[was] a fair characterization of what the plaintiffs sought to achieve by engaging in bid-rigging". Similarly, at para. 24, the motion judge found that statements to the effect that the appellants "had 'secretly' coordinated their bids to illegally defraud the government" was a "fair characterization of the charges to which [sic] the plaintiffs were accused".
>
> [18] ***In my view, in the context of this case, the question whether the statements made by the respondents were a "fair characterization" of the charges against the appellants involved issues of fact and belongs to the second stage of the two-stage analysis. It was not appropriate for the motion judge to make those findings on the material before him on a rule 21.01(1) motion***.
>
> [Emphasis added]

[16] As in *TPG*, the judge here conflated the initial threshold legal issue of whether the words were capable of a defamatory meaning with the ultimate factual determination of whether they were defamatory.

[17] The judge's mischaracterization of the issue before him was fatal to his analysis. As explained below, it involved disputed issues of fact inappropriate for a Rule 13.04 motion. For this reason alone I would allow the appeal.

Issue 2 – Did the judge make impermissible findings of fact or determinations on the motion?

[18] The judge examined in detail the circumstances surrounding the alleged defamatory comments and drew inferences from those facts which were impermissible on a summary judgment application.

[19] The judge properly identified the test to determine if words are defamatory as being objective and based on the standard of a right-thinking individual.[9]

[9] Decision, para. 143.

[20] However, the judge went further and applied the test to the facts of the case. He took it upon himself to determine what an ordinary, reasonable and right-thinking person would conclude about the remarks. In doing so he attempted to put them in the context in which they were made. He strayed into the forum intended for the ultimate finder of fact. The following excerpts from his decision illustrate the point:[10]

> [144] In this case, the March 9, 2021, e-mail was distributed among a small number of partners and office manager within a law firm who:
>
> 1. Personally know the individuals involved and of the subject of the publication; and
>
> 2. *Had personal knowledge of*, for example:
>
> a. MacIntosh-Wiseman's financial contributions as a partner in the years leading up to departing for REN and her subsequent resignation as a partner; and that her father, Bruce MacIntosh provided support by engaging her on certain of his files;
>
> b. The fact that MacIntosh-Wiseman did not enjoy the unanimous support of the partners at Mac Mac & Mac in the months leading up to her resignation; and
>
> c. The fact that MacIntosh-Wiseman and Fraser exchanged harsh words in the past.
>
> [145] In short, they would be able to put MacIntosh-Wiseman's March 9, 2019, e-mail in its proper perspective – including MacIntosh-Wiseman's historical performance and including her and Fraser's exchanges during the period surrounding her leave of absence.
>
> [146] As important, a reasonable and right-minded ordinary person would not see MacIntosh-Wiseman's comments in the March 9, 2019, e-mail as tending to lower Fraser's reputation having regard to the nature of this unique, small audience. The impugned comments relate almost entirely to a time when Fraser and MacIntosh-Wiseman were law partners and the time period leading up to MacIntosh-Fraser's resignation from the law firm.
>
> [147] A law partnership is a cooperative but also a competitive environment. The same group of partners generate revenues but then must divide a finite pool of profits between themselves. In doing so, personal criticisms regarding a partner's work ethic, contributions to the firm, and relative value to the firm will inevitably, frequently, and necessarily arise.

[10] The excerpts are lengthy but necessary to demonstrate the extent the judge had to go to make findings of fact to conclude the words were not defamatory.

[148] The uncontested fact is that MacIntosh-Wiseman's March 9, 2021, e-mail was not distributed beyond those persons and partners who would be familiar with the partnership environment and relevant context. A reasonable, right-minded ordinary person would not see the March 9, 2021, e-mail as tending to lower Fraser's reputation or as anything more than the sort of criticisms made by law partners about other partners or in defence of themselves. Certainly MacIntosh-Wiseman's March 9, 2021, e-mail is not more actionable than:

> 1. Fraser's 12:01 a.m. April 1, 2019, e-mail criticizing MacIntosh-Wiseman – regardless of whether the subjective beliefs expressed in this email were justified; or
>
> 2. Fraser's admitted participation (with other partners) in joking about and mocking MacIntosh-Wiseman's working style and efforts while she was CEO at REN. I note that this occurred during a time when MacIntosh-Wiseman was still their partner on a leave of absence. This same conclusion holds despite the fact that the subjective views of Fraser and the other partners who engaged in this mocking were not in a position to observe and evaluate MacIntosh-Wisman's work at REN.

[149] With respect to certain, more specific allegations, a reasonable and right-thinking ordinary person would readily know that:

> 1. Fraser lacked the authority to speak on MacIntosh-Wiseman's behalf. Any statement to the contrary would not diminish Fraser's reputation;
>
> 2. MacIntosh-Wiseman's observations regarding Fraser's carefully crafted apologies would not diminish Fraser's reputation because:
>
> > a. Neither MacIntosh-Wiseman nor anyone else can legally demand an apology; and
> >
> > b. More importantly, Fraser's comments in his 12:01 a.m. April 1, 2019, e-mail may have been unnecessary and severe, but they are not defamatory in the confines of a law partnership, as discussed;
>
> 3. The March 9, 2021, e-mail does not say that Fraser acted coyly, deceptively and/or deceitfully in his interactions with MacIntosh-Wiseman and inappropriately abused MacIntosh-Wiseman's trust for his own strategic purposes regarding matters unfolding at Mac Mac & Mac (Second Amended Statement of Claim, para. 30A and 30(b)(vi)). At most, in the March 9, 2021, e-mail MacIntosh-Wiseman expresses her understanding and concern that Fraser "used one courtesy meeting as a basis to suggest to my former partners that I have confided my long term career intentions to you." Fraser does not deny making certain communications to his partners following a meeting with MacIntosh-Wiseman. The fact that MacIntosh-Wiseman would express concerns

> about that would not diminish Fraser's reputation in the eyes of a reasonable and right-minded, ordinary person.
>
> 4. MacIntosh-Wiseman denied Fraser's assertion about MacPhee being the reason for MacIntosh-Wiseman walking away from managing partner duties at the firm. Again, Fraser does not deny making these statements. The fact that MacIntosh-Wiseman felt compelled to provide her perspective on Fraser's version of these events would not diminish Fraser's reputation in the eyes of a reasonable and right-minded, ordinary person particularly given that MacIntosh-Wiseman had long left the firm, had [no] continuing involvement in the firm, and the issues were singularly related to her.

[21] Of particular note, the judge essentially took judicial notice of a law firm environment, finding that "personal criticisms regarding a partner's work ethic, contributions to the firm, and relative value to the firm will inevitably, frequently, and necessarily arise".[11] There was no evidence before him regarding whether this was the prevailing environment at Mac Mac & Mac. His characterization of a law firm environment was critical to the judge's finding, in that context, the words could not be seen as defamatory.

[22] Another example of the judge contextualizing the issue was his conclusion Ms. Wiseman's words would not diminish Mr. Fraser's reputation in the eyes of a reasonable and right-minded, ordinary person "particularly given that MacIntosh-Wiseman had long left the firm."[12] While it was an undisputed fact Ms. Wiseman had left the firm in 2019, it is unclear how the timing of Ms. Wiseman's departure somehow could be a factor in determining the words were not defamatory.

[23] In order to conclude the words were not defamatory, it was necessary for the judge to delve into the evidence in considerable detail and draw factual inferences from that evidence. That is not the role of a judge on a summary judgment motion.

[24] I would allow this ground of appeal.

<u>The tort of publicly placing an individual in a false light</u>

[25] Whether this tort exists in Nova Scotia, as a matter of law, is for another day based on a full factual record. In this particular circumstance, the judge essentially

---

[11] Decision, para. 147.
[12] Decision, para. 149.

dismissed the tort, assuming it is available in Nova Scotia, for the same reasons he allowed the summary judgment motion.[13]

[26] We would set aside the judge's decision on that issue as well. However, we make it clear we are not recognizing the tort exists in Nova Scotia, nor that the factual foundation for such a tort is borne out by the record.

Costs

[27] Costs of this appeal are set in the amount of $5,000.00 inclusive of disbursements. Costs of this appeal and of the motion below shall be costs in the cause.

Disposition

[28] The appeal is allowed and the order dated January 20, 2025 granting summary judgment and dismissing the appellants' action is set aside. The quantum of costs on the motion below is remitted to Keith, J. for determination.

Farrar, J.A.

Concurred in:

Wood, C.J.N.S.

Bourgeois, J.A.

[13] Paras. 151; 152.