

Court of King's Bench of Alberta

Citation: Maiani v C-Jazz, 2026 ABKB 187

Date: 20260311
Docket: 1201 06600
Registry: Calgary

Between:

Patrick Maiani

Plaintiff

- and -

**C-Jazz, the Calgary Jazz Association, Richard Sherry, John Bell, Barry Kenley, Tyler
Hornby, Stephanie Walsh, and Marcie Gwynne**

Defendants

**Reasons for Judgment
of the
Honourable Justice Colin C.J. Feasby**

I. Introduction

[1] The Plaintiff, Patrick Maiani, was the Executive Director of the Calgary Jazz Festival from the early 2000s until its demise in 2010. The Calgary Jazz Festival was run by the Calgary Jazz Association which was sometimes called C-Jazz. Richard Sherry, a Defendant in this proceeding and Interim President of the Calgary Jazz Association in 2010, blamed the cancellation of the Calgary Jazz Festival on Mr. Maiani citing what he considered to be financial mismanagement. Mr. Sherry's statements were widely reported in the Calgary media. Mr. Maiani claims that the statements of Mr. Sherry and similar statements by John Bell, a member of the Board of Directors of the Calgary Jazz Association in 2010, were defamatory.

[2] Mr. Sherry and Mr. Bell are the only remaining defendants. The claims against the other individual defendants were settled and discontinued. The Calgary Jazz Association has long since ceased operations. Mr. Maiani abandoned his claim for unpaid contract fees against the Calgary Jazz Association.

[3] Neither Mr. Sherry nor Mr. Bell attended at trial to defend themselves against Mr. Maiani's allegations. Under normal circumstances, where the defendants fail to appear and the plaintiff proves a claim there would often be no reason to publish Reasons for Judgment. However, defamation is different because it is a wrong committed in public. Where a defendant fails to apologize or otherwise make amends for the wrong, it is appropriate that the judgment of the defendant's conduct be made public. Put differently, because Mr. Maiani's injury occurred in public, it is appropriate that his vindication occur in public.

II. The Law of Defamation

[4] Justice Côté, writing for the majority in *Bent v Platnick*, 2020 SCC 23 at para 92 reaffirmed that the test for defamation is as follows:

1. The words complained of were published, meaning that they were communicated to at least one person other than the plaintiff;
2. The words complained of referred to the plaintiff; and
3. 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.

[5] Truth is a defence to defamation. The defendant bears the burden of showing that statements are substantially true: *Bent v Platnick* at para 107. There are other defences to defamation, including qualified privilege and fair comment: see *Bent v Platnick* at para 121ff and *WIC Radio Ltd v Simpson*, 2008 SCC 40. Neither qualified privilege nor fair comment were pleaded by the Defendants.

[6] Since the Defendants did not attend trial, Mr. Maiani was only required to satisfy the three-part test for defamation. I nevertheless consider whether the statements were true as it is relevant to the assessment of damages.

III. Analysis

A. Defamation

[7] Mr. Maiani was active in the Calgary arts community in various capacities from the 1990s through to 2010. During that time, he held different roles as a performer and administrator, including, amongst others, President of the 4th Street Business Redevelopment Zone where he was a lead organizer of the Lilac Festival, performer with the Green Fools Theatre Company, responsible for venue bookings for the Bridgeland Community Association, and Executive Director of the Calgary Jazz Association where he was responsible for organizing the Calgary Jazz Festival. His involvement in the Calgary arts community ended with the cancellation of the Calgary Jazz Festival. Since 2010 he has lived in the Columbia Valley in British Columbia and has worked outside the arts field. He testified that the publicity surrounding the cancellation of the Calgary Jazz Festival ended his career in the arts in Calgary.

[8] The Calgary Jazz Festival was in financial trouble in 2009 owing creditors significant sums of money. This circumstance was compounded by the failure of the Calgary Jazz Association to file the financial reporting required to maintain its charitable status on time. The failure to file the financial reporting caused the Calgary Jazz Association to lose its opportunity for a casino fundraiser with the Alberta Gaming and Liquor Commission (“AGLC”) and what was anticipated to be \$60,000 or more in revenue. Mr. Bell was removed from his position as Vice President in September 2009 because the financial reporting to maintain charitable status was his responsibility.

[9] Sometime in the spring of 2010, half of the Calgary Jazz Association Board of Directors resigned, including the President. Mr. Sherry took over as the Interim President. Mr. Bell remained as a member of the Board of Directors.

[10] On April 5, 2010, Mr. Maiani provided the Calgary Jazz Association Board of Directors with a 9-page document titled “Executive Director’s Report.” The report discussed fundraising, the budget, staff issues, the need for an audit, sponsorship arrangements and grant applications, and the preliminary line-up for the 2010 Calgary Jazz Festival. Mr. Maiani’s report comprehensively addressed the issues facing the Calgary Jazz Association for the Board of Directors.

[11] Mr. Sherry failed to respond to a Notice to Admit Facts. Pursuant to Rule 6.37(3) and the Order of Master Robertson dated January 17, 2019, Mr. Sherry is deemed to have admitted the facts stated in the Notice to Admit Facts. Mr. Bell also failed to respond to a Notice to Admit Facts and is accordingly deemed to have admitted the facts stated in the Notice to Admit Facts pursuant to Rule 6.37(3) and the order of Master Mason dated August 17, 2021. Some of the relevant admitted facts are as follows:

- Mr. Maiani had reported cash flow and expenses to the C-Jazz Board throughout 2009 and 2010.
- Mr. Maiani provided a detailed breakdown of expenses for the 2010 Jazz Fest months before the scheduled date of the event.

[12] Mr. Maiani testified that he was responsible for booking musical acts for the Calgary Jazz Festival, booking venues, and arranging sponsorships. He emphasized that while he was involved in matters that had financial consequences, he did not have signing authority for the Calgary Jazz Association nor was he responsible for preparing financial statements. Marci Gwynne, the Treasurer, was responsible for financial oversight and reporting.

[13] During the spring of 2010, there was tension amongst the Calgary Jazz Association Board of Directors and Mr. Maiani. Mr. Maiani and several members of the Board of Directors resigned at the beginning of June 2010. Mr. Maiani agreed to stay on in his role to provide stability for the Calgary Jazz Festival for 2010 which was to take place in late June.

[14] The Calgary Jazz Association Board of Directors held an emergency meeting on June 19, 2010 to discuss whether to cancel the 2010 Calgary Jazz Festival. Mr. Maiani opposed cancelling the 2010 Calgary Jazz Festival because he believed that cancelling it would be more damaging in financial and reputational terms than going ahead and he believed that the Calgary Jazz Association’s problems would be resolved by ticket revenue and funding that had been promised by sponsors and granting agencies but not yet received. Mr. Sherry and others on the Board disagreed and decided to cancel the 2010 Calgary Jazz Festival.

[15] Late on June 19, 2010, the Calgary Jazz Association issued a press release announcing the cancellation of the 2010 Calgary Jazz Festival. The press release stated:

According to Interim C-Jazz President Richard Sherry, “For several months the Board had been asking the C-Jazz Executive Director [Patrick Miani] for a detailed rundown of expenses and cash flow required for the 2010 festival. It wasn’t until today, two days before the festival, that we finally got a look. We were surprised that our wishes to scale down the festival following the difficult 2009 festival were, for the most part, disregarded.

[16] On Monday June 21, 2010, the *Calgary Herald* published an article titled “Organizers pull plug on cash-strapped Jazz Festival at last minute” which reported as follows:

The decision to shut down the festival came after a six-hour emergency meeting called by organizers on Saturday, during which board members allege financial mismanagement meant they were going to dip far into the red putting on the event this year, said interim president Richard Sherry.

[17] On Tuesday June 22, 2010, the *Calgary Herald* published an article titled “Jazz festival supporters getting refunds” which reported as follows:

“Unaccountability, refusal to cooperate, making commitments on behalf of the organization without authorization, and a lack of transparency in the financial commitments he did make, authorized or not,” said Sherry, who joined the board last year. “And I didn’t even know what the lineup was going to look like, until I saw the program.”

[18] The statements by Mr. Sherry, quoted in part above, identified Mr. Maiani directly or by clear implication. Similar statements by Mr. Sherry were quoted in other publications and on Calgary radio at around the same time as admitted by reason of his failure to respond to the Notice to Admit Facts.

[19] On June 22, 2010, Mr. Maiani’s lawyer wrote to Mr. Sherry demanding that he retract “libellous and/or slanderous comments regarding Mr. Maiani’s role as the former Executive Director of CJAZZ to local newspapers and radio stations” and cease and desist from making future defamatory statements about Mr. Maiani.

[20] Two days later, *Fast Forward*, a local arts and entertainment newspaper, published an article titled “Internal strife, lack of money kills Calgary jazz festival.” The *Fast Forward* article included statements by Mr. Sherry and the following statement by Mr. Bell:

“It’s always been such a shamble the way things were run,” says board member John Bell, blaming many of the issues on the festival’s former executive director, Pat Maiani.

[21] The gist of the statements by Mr. Sherry and Mr. Bell was that Mr. Maiani’s financial mismanagement was the sole or primary reason for the cancellation of the 2010 Calgary Jazz Festival. These statements were untrue. As Mr. Bartsch, a former Calgary Jazz Association board member testified, the Calgary Jazz Association’s financial situation had always been precarious. The financial situation was exacerbated in 2010 by cost-overruns in 2009 and Mr. Bell’s failure to complete the financial reporting necessary to maintain the Calgary Jazz Association’s AGLC casino fundraiser. Though Mr. Maiani was responsible for booking

musical acts and venues, he communicated what he was doing to the Calgary Jazz Association Board of Directors as reflected in his April 5, 2010 report. The Calgary Jazz Association Board of Directors at all times retained control over the organization's bank accounts and was responsible for financial reporting.

[22] Ms. Gwynne testified as follows:

Q Now, in reviewing, subsequent to the lawsuit, those statements, is it still your view that the statements by various board members to the media are fair and accurate?

A I ... I would say no.

...

We were a board dealing with a debt. We couldn't come to a consensus with Patrick Maiani on a festival budget. If I were to blame anybody, it would be everyone involved. We had regular resignations. The president resigned. We had an acting president. I would say that it's the – it's the board and – we were all in it together, basically.

[23] Ms. Gwynne's assessment rings true. The cancellation of the 2010 Calgary Jazz Festival and the demise of the Calgary Jazz Association was a collective failure. Perhaps Mr. Maiani overreached or maybe, as other documents suggest, he did not have enough support in his role. Regardless, the buck stops with the Board of Directors who were responsible for supervising the business of the Calgary Jazz Association and at all times maintained control of the organization's finances. If the Board of Directors did not understand what Mr. Maiani was doing despite his thorough April 5, 2010 report, it was their obligation to take charge of the situation long before it became catastrophic.

[24] The decision of Mr. Sherry and Mr. Bell to pin the cancellation of the 2010 Calgary Jazz Festival on Mr. Maiani was cowardly and their statements were defamatory. Mr. Sherry and Mr. Bell made their statements to media outlets knowing or intending that they would be published. The statements deflected blame from themselves and the other members of the Board of Directors and scapegoated Mr. Maiani. Their statements would tend to lower Mr. Maiani's reputation in the eyes of a reasonable person.

B. Damages

[25] I summarized the approach to defamation damages in *Alberta Health Services v Johnston*, 2023 ABKB 209 at para 110 as follows:

General damages in defamation cases are presumed without proof of actual injury: *Defamation Act*, s 2(2); *Hill* at para 164. Cory J, writing for the majority in *Hill*, at para 182 adopted the factors for assessing general damages set out in Philip Lewis, *Gatley on Libel and Slander*, (8th ed) (London: Sweet & Maxwell, 1981) at 592-593 as follows:

- (a) The plaintiff's position and standing;
- (b) The nature and seriousness of the defamatory statements;
- (c) The mode and extent of publication;

- (d) The absence or refusal of any retraction or apology; and
- (e) The whole conduct and motive of the defendant from publication through judgment.

[26] Prior to the defamatory statements, Mr. Maiani had worked in the Calgary arts community for approximately 20 years. He was well-established and well-respected. Since the defamatory statements, he has not worked in the Calgary arts community and has pursued different lines of work out of the Province. The defamatory statements effectively ended his career as an organizer and administrator in the Calgary arts community.

[27] The defamatory statements were serious in that they impugned Mr. Maiani's competence and assigned him the exclusive blame for putting many musical artists and music venues to great inconvenience and financial loss by reason of the cancellation of the 2010 Calgary Jazz Festival. Mr. Maiani's inability to work in the Calgary arts community since that time is a logical consequence of the defamatory statements.

[28] The defamatory statements were made via press release and in direct communications with local media. Mr. Sherry and Mr. Bell intended their statements to be heard by the community of musicians, agents, venue owners, and public who were affected by the cancellation of the 2010 Calgary Jazz Festival because the purpose of the statements was to shield the Board of Directors from responsibility and to assign blame to Mr. Maiani.

[29] Mr. Sherry and Mr. Bell remain unrepentant. They have neither retracted their statements nor apologized to Mr. Maiani.

[30] Though *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 indicates that the conduct of defendants after making the statements is a matter that may be considered under the rubric of damages, I limit my consideration of the Defendants' post-statement conduct to their failure to retract the statements or apologize. I address the Defendants' litigation conduct as a matter of costs.

[31] The assessment of defamation damages is more art than science: *Best v Weatherall*, 2010 BCCA 202 at para 46. There is no way that I can accurately estimate the impact of the defamatory statements on Mr. Maiani. The defamatory statements had a devastating impact on his career and caused him significant distress. A material award of damages is warranted. Mr. Maiani proposed an amount of \$50,000 which I consider to be modest but appropriate. I apportion \$40,000 in damages to Mr. Sherry and \$10,000 in damages to Mr. Bell to reflect the fact that Mr. Sherry's statements were both more numerous and pointed with respect to Mr. Maiani.

IV. Costs

[32] Rule 10.33 directs a Court to consider litigation conduct when making costs awards: *Yangarra Resources Ltd v Advanced Upstream Ltd*, 2026 ABKB 158 at para 22.

[33] The foundational rules provide a standard by which to measure litigation conduct. Rule 1.2(1) explains that the purpose of the *Rules of Court* is to facilitate the timely and cost-effective resolution of disputes. Litigants are instructed by Rule 1.2(2) to use the *Rules of Court* "to facilitate the quickest means of resolving a claim at the least expense" and "to oblige the parties to communicate honestly, openly, and in a timely way."

[34] This action has taken nearly 14 years to get to trial. That is inexcusable. While Mr. Maiani must shoulder some of the blame, his difficulty in advancing the litigation is understandable given his limited means following his relocation to BC. The cause of delay is mostly attributable to the failure of the Defendants to engage in the litigation process in good faith.

[35] The Defendants' bad faith in the litigation process is evident in, for example, Mr. Sherry's refusal to provide an email address for service which required repeated use of a process server. The most egregious example of the Defendants' bad behaviour was their failure to show up at trial after opposing pre-trial steps. If the Defendants did not intend to defend themselves, they could have capitulated anytime after the filing of the Statement of Claim and spared Mr. Maiani the expense and stress of prolonged litigation. And early capitulation would almost certainly have come at a lesser cost to the Defendants.

[36] The Defendants' litigation conduct was deplorable and warrants an award of solicitor-client costs. However, an award of solicitor-client costs will only prolong this proceeding by requiring Mr. Maiani to adduce evidence of his expenditures and proceed through the assessment process to confirm the quantum of his costs and disbursements. I am satisfied that it is appropriate to instead make a lump sum award of costs in the amount of \$50,000. In my view, \$50,000 is a modest amount considering that Mr. Cody is senior counsel, the action lasted nearly 14 years, there was questioning of multiple defendants, there were several interlocutory applications as reflected in the Procedure Card which is 9 pages long, and the action culminated in a three-day trial.

V. Conclusion

[37] Mr. Maiani is awarded \$50,000 in damages with Mr. Sherry and Mr. Bell being severally liable for \$40,000 and \$10,000 respectively. I award a further \$50,000 in costs for which the Defendants are jointly and severally liable.

Heard on the 9th-11th days of March, 2026.

Dated at the City of Calgary, Alberta this 11th day of March, 2026.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Shaun B. Cody
for the Plaintiff

No appearance
for the Defendants Richard Sherry and John Bell