COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Neufeld v. Bondar*,
2025 BCCA 51

Date: 20250224
Docket: CA49851

Between:

Barry Neufeld

Appellant
(Defendant)

And

Carin Bondar

Respondent
(Plaintiff)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated April 11, 2024 (*Bondar v. Neufeld*, 2024 BCSC 594, Chilliwack Docket S39947).

Counsel for the Appellant:	P.E. Jaffe
Counsel for the Respondent:	S.A. Quail J. Wahba
Place and Date of Hearing:	Vancouver, British Columbia December 11, 2024
Place and Date of Judgment:	Vancouver, British Columbia February 24, 2025

Written Reasons by:
The Honourable Mr. Justice Harris

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer

Summary:

Mr. Neufeld appeals from an order finding him liable in defamation to Ms. Bondar and awarding $45,000 in general and punitive damages. He argues that the judge erred in concluding that the impugned words were defamatory and in concluding that the defences of justification, fair comment, and qualified privilege were not available. He also submits that the judge erred in awarding more than nominal damages and in awarding punitive damages.

Held: Appeal dismissed. The judge made no reviewable errors in finding that Mr. Neufeld's statement was defamatory and that the defences raised were not available. His award of damages is entitled to deference and was reasonable on the record before him.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

[1] Mr. Neufeld appeals from the order of Justice Stephens finding him liable in defamation to the respondent, Ms. Bondar, and ordering $35,000 in general damages and $10,000 in punitive damages. The claim in defamation concerned a statement made by Mr. Neufeld in which he characterized Ms. Bondar as "that strip-tease artist". In reasons for judgment indexed at 2024 BCSC 594, the judge found that the statement was defamatory and that no defence was made out.

[2] Mr. Neufeld's central argument on appeal is that the judge ignored what Mr. Neufeld says was the critical political context to his statement about Ms. Bondar: an ongoing "ideological battle" in Chilliwack about sexual orientation and gender identity curricula ("SOGI") in schools. Mr. Neufeld argues that his statement was part of the "thrust and parry" of political discourse in this debate. He says it would be interpreted by any reasonable audience as just another in a long line of "colourful and provocative" comments made by Mr. Neufeld. He says his impugned statement is inextricable from this broader debate, and the judge erred in failing to consider this context in assessing whether the statement was defamatory or, if so, whether defences had been made out.

[3] The core of Ms. Bondar's argument on appeal is that Mr. Neufeld's comment was not about Ms. Bondar's political views. It was a comment about her character

and suitability as a woman in public office. She says that likening a candidate for school trustee to a strip-tease artist obviously threatens that person's reputation. Ms. Bondar says that the judge was alive to the political context, but correctly considered that context not to determine whether Mr. Neufeld's statement was defamatory.

[4] I agree. As the judge noted, this case is not about public education policy. It is about the application of the law of defamation to Mr. Neufeld's comment about Ms. Bondar. I find no reviewable error in the judge's assessment of the defamatory character of Mr. Neufeld's statement, or in his consideration of the various defences raised by Mr. Neufeld.

[5] For the reasons that follow, I would dismiss the appeal.

Background

[6] Dr. Bondar describes herself as a biologist and science educator. She has a doctorate from the Faculty of Forestry at the University of British Columbia, is an adjunct instructor at the University of the Fraser Valley, and has taught science, technology, engineering and math (STEM) workshops to girls in the Chilliwack school district. In February 2021, Dr. Bondar was elected as a school trustee of the Chilliwack School Board. She was re-elected in October 2022.

[7] Mr. Neufeld was a corrections, probation, and youth criminal justice restorative facilitation officer from 1981 to 2008. He has served multiple terms as a school trustee of the Chilliwack School Board and was serving in that position when Dr. Bondar first ran in the school board by-election in February 2021. Mr. Neufeld participated in the October 2022 school board election with Ms. Bondar and was not re-elected.

[8] Dr. Bondar has a YouTube channel. One of the videos hosted on this channel is a science-themed parody music video entitled "Organisms Do Evolve". The parody video is approximately four minutes long, and Dr. Bondar briefly appears

wearing only boots, seen from behind while swinging on a wrecking ball. Elsewhere in the video she appears wearing what she described as “very skimpy” clothing.

[9] The parody video was the subject of some controversy in the lead up to the February 2021 by-election in which Dr. Bondar was first elected as a school trustee. Dr. Bondar gave evidence that she received negative comments and emails, including from Mr. Neufeld and others, centering on her performance in the parody video and other videos on her YouTube channel. News articles in Chilliwack at the time reported on the controversy, which included a billboard sign that briefly appeared in Chilliwack showing a screenshot from the parody video. The sign contained Dr. Bondar’s name, and the statement: “Is this your child’s idea of a School Trustee?”.

[10] Both Dr. Bondar and Mr. Neufeld ran for re-election in the October 2022 Chilliwack School Board trustee election. On September 21, 2022, Mr. Neufeld participated in an interview for a group named “Action4Canada”, in a segment called “Empower Hour”. The interview was hosted on Zoom. Mr. Neufeld’s evidence was that he recalled about twenty faces visible on the Zoom call. The interview was subsequently posted online by Action4Canada.

[11] In the interview, Mr. Neufeld spoke about a number of topics, including his then-pending hearing before the Supreme Court of Canada in other litigation (see *Hansman v. Neufeld*, 2023 SCC 14 [*Hansman*]), his views on the debate around SOGI, and the upcoming Chilliwack School Board election.

[12] At around the 24-minute mark of the interview, which lasted about an hour, Mr. Neufeld said, while describing candidates for the upcoming school trustee election:

> ... Richard Procee ran against that strip-tease artist in the by-election four years ago …

These were the impugned words that formed the basis for the subsequent action brought in defamation by Ms. Bondar against Mr. Neufeld.

[13] Later in September 2022, Ms. Bondar raised Mr. Neufeld's comments with him prior to an all-candidate debate, and recorded and shared video of a portion of their conversation. On October 11, 2022, Dr. Bondar posted a statement on YouTube in which she addressed Mr. Neufeld's comment in the Action4Canada interview and announced that she intended to commence legal proceedings against Mr. Neufeld for defamation. In her video statement, she stated, in part:

> … On Tuesday, September 21, Mr. Neufeld was a guest on Action4Canada's Empower Hour. During this interview he referred to me as a strip tease artist. I am not a strip tease artist, nor have I ever been one. I am currently a full-time instructor at the University of the Fraser Valley in both the Biology Department and the School of Land Use and Environmental Change …

[14] Dr. Bondar commenced her action against Mr. Neufeld on November 3, 2022. On February 2, 2023, Mr. Neufeld distributed a newsletter to approximately 800 people which addressed, among other things, the pending litigation. In the newsletter, Mr. Neufeld quoted the impugned words, and also included a screenshot of Dr. Bondar, taken from the parody video, with a caption saying, "I am NOT a strip tease artist!" The newsletter also solicited financial support for Mr. Neufeld's pending litigation, including the litigation with Dr. Bondar.

Reasons for Judgment

The defamatory character of the impugned words

[15] The first substantive issue addressed by the trial judge was whether the impugned words were *prima facie* defamatory. He noted that Dr. Bondar did not allege that the literal meaning of the words "strip-tease artist" was defamatory, but that their defamatory meaning was based on popular innuendo. He quoted, at para. 45 of his reasons, from Dr. Bondar's notice of civil claim:

> 4. Dr. Bondar's own opinion is that there is nothing wrong with strip-tease artistry. Indeed, a major focus of her career has been on educating the public about sex in nature and decreasing stigma around healthy sexuality. However, and unfortunately, there is a widely held societal view that strip-tease artistry is dishonourable or shameful, and particularly that it is inappropriate of a candidate for public office and a school trustee. There is also a widely held societal view, which the Defamatory Statement engages, that women should not behave in a sexually liberated manner in public, and

> that women who do so do not have integrity and are not suitable for public office.
>
> [Emphasis added.]

[16] The judge set out the applicable legal principles and the elements of the tort of defamation. He held that to establish the *prima facie* defamatory character of the impugned words, the plaintiff had to demonstrate that i) the impugned words would tend to lower the plaintiff's reputation in the eyes of a reasonable person; ii) the impugned words in fact referred to the plaintiff; and iii) the words were published, meaning they were communicated to at least one person other than the plaintiff: at para. 48, citing *Simán v. Eisenbrandt*, 2023 BCSC 379 at para. 43 [*Simán*], citing *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28 [*Grant*].

[17] He also held that words can convey their defamatory meaning either literally, by "legal" innuendo, or by "popular" innuendo. The judge held that words conveyed defamatory meaning by "popular" innuendo where "the inferential meaning or impression left by the words complained of is defamatory": at paras. 53–54, citing *Weaver v. Corcoran*, 2017 BCCA 160 at para. 71. He noted that courts "apply an objective, common sense approach in determining whether the meaning of a publication or statement is defamatory", without "seizing upon the worst possible meaning", or do not assume the "least harsh interpretation": at para. 57, citing *Simán* at para. 49 and *Level One Construction Ltd. v. Burnham*, 2019 BCCA 407 at para. 46. Courts examine the impugned statement from the perspective of a reasonable, right-thinking person.

[18] The judge held that, where the claim in defamation is based on the inferential meaning of the words, i.e., "popular" innuendo, the question is what the ordinary person would infer from the words in the context in which they were used: at para. 64, citing *Weaver* at para. 72. The judge found that, with respect to the impugned words at issue, Dr. Bondar had proven on balance of probabilities that the words would tend to lower her reputation in the eyes of a reasonable person, that they in fact referred to her, and that they were communicated to at least one person other than Dr. Bondar herself: at para. 71.

[19] Having satisfied himself that the words were *prima facie* defamatory, the judge then turned to consider the defences to defamation raised by Mr. Neufeld.

The defence of justification

[20] The first defence Mr. Neufeld advanced was that the statement was justified on the basis that it was literally or substantially true. Mr. Neufeld pleaded that the phrase "strip-tease artist", in its objective meaning, "accurately described the plaintiff in her highly sexualized public performances": at para. 78. Mr. Neufeld pleaded that the literal meaning of "strip tease", as defined in the Merriam-Webster Dictionary, was:

> … an act or dance in which a person gradually removes her clothing piece by piece in a seductive or provocative manner especially to the accompaniment of music.

[21] The judge held that the defence of justification can succeed where the defendant proves that the substance of the statement is true. He found that the substance of the statement, the "sting of the charge", was that Dr. Bondar was, or had performed as, a strip-tease artist: at paras. 79–81.

[22] The judge found that, while Dr. Bondar did appear briefly naked in the parody video, it was not accurate to characterize her as a "strip-tease artist". This characterization, he reasoned, did not give the factual context for her science-themed performance in which she was clothed for the vast majority and did not remove her clothing: at para. 88. In short, he concluded that the impugned words gave a "misleading and potentially damaging" impression of Dr. Bondar, and the substance of the statement had not been proven to be true. On this basis, he rejected the defence of justification: at paras. 89–93.

The defence of fair comment

[23] The judge set out the elements of the defence of fair comment as recently confirmed by the Supreme Court of Canada in *Hansman*: at para. 95, citing *Hansman* at para. 96. He found that the impugned words in this case were recognizable as a comment or opinion of Mr. Neufeld's about Dr. Bondar, but he

found that Mr. Neufeld had not established on a balance of probabilities that the factual basis for the comment was explicitly or implicitly indicated within the publication itself: at paras. 100–101.

[24] The judge found that the factual basis for Mr. Neufeld's comment was the parody video itself. The comment, made at the 24-minute mark of a wide-ranging interview, was not tethered to any factual basis within the publication, and the judge found that Mr. Neufeld had not established that the parody video was "so notorious as to be already or readily understood by the audience": at para. 103. The judge acknowledged the media attention which the controversy around the video had attracted during the February 2021 campaign, and the billboard sign in Chilliwack, but found that this publicity was not of such a nature that the audience of Mr. Neufeld's comment would have readily understood its substantial factual context: at para. 104. Having satisfied himself that the second element of the defence of fair comment was not met, he held that it was unnecessary to consider the other elements: at paras. 105–106.

The defence of qualified privilege

[25] The judge next considered Mr. Neufeld's argument that, as a candidate for re-election in the Chilliwack School Board trustee election, he had a legal, social, moral, or personal interest or duty to express his honest views about Dr. Bondar's character, and that the community had a corresponding interest in receiving such information: at para. 107.

[26] The judge held that he was bound by the Supreme Court of Canada's decision in *Globe and Mail Ltd. v. Boland*, [1960] S.C.R. 203 [*Boland*], to reject this defence. The judge relied on *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 106 [*Hill*], citing *Boland* at 208, for the proposition that "an extension of the qualified privilege to the publication of defamatory statements concerning the fitness for office of a candidate for election would be 'harmful to that common convenience and welfare of society'": at para. 110.

[27] While the judge noted some “minor factual differences” between the case before him and the facts in *Boland*, he determined that *Boland* was not meaningfully distinguishable and the above statement of the law was binding: at para. 111. On this basis, he dismissed the defence of qualified privilege.

Damages

[28] The judge analysed the factors set out in *Hill* that are to be considered in assessing the quantum of general damages in defamation cases. He concluded that Dr. Bondar had not engaged in any conduct that would militate towards a lower award: at para. 124. He took into account her standing as a respected public figure and educator, the objectively insulting and demeaning nature of the defamatory statement, the fact that Mr. Neufeld had refused to apologize or retract his comment, and the fact that Mr. Neufeld had repeated the defamatory statement in his February 2023 newsletter to supporters to solicit financial support: at paras. 125–133.

[29] He also considered that Dr. Bondar had been re-elected notwithstanding the effects of Mr. Neufeld’s statement, and that she had already been the subject of controversy and criticism relating to the parody video before Mr. Neufeld’s defamatory statement: at paras. 128, 135. The judge also considered damage awards that had been ordered in similar defamation cases, including in *Clancy v. Farid*, 2023 ONSC 2750, where the plaintiff was awarded $85,000 in general damages for 70 defamatory posts, which included the phrase “former stripper”.

[30] The judge concluded that it was difficult to separate the reputational harm and distress Dr. Bondar had suffered from Mr. Neufeld’s statement from the harm and distress caused by the broader criticisms and attacks she had suffered since the February 2021 campaign: at para. 137. In light of these various factors, and considering the caselaw on damages in comparable circumstances, he concluded that an award on the low end of the range was appropriate. He ordered general damages in the amount of $35,000: at para. 142.

[31] The judge next considered whether aggravated damages were appropriate. He concluded that the Supreme Court of Canada's statement in *Hansman* that a finding of a "subjective honest belief negates the possibility of finding malice"—a precondition to an aggravated damages award—was binding on him. Since he found as a fact that Mr. Neufeld subjectively honestly believed the truth of his defamatory statement, he held that he was bound not to award aggravated damages: at paras. 151–152.

[32] On the question of punitive damages, however, the judge found that, notwithstanding Mr. Neufeld's subjective honest belief that the defamatory statement was true, he was reckless as to its truth. The words were objectively insulting and demeaning, and Mr. Neufeld had subsequently repeated them. He noted also that Mr. Neufeld had testified that he had raised approximately $9,000 after the litigation with Dr. Bondar began. For these reasons, the judge concluded that an award of $10,000 in punitive damages was appropriate: at paras. 164–167.

Analysis

[33] Mr. Neufeld appeals from the order on the grounds that the judge erred in each of his conclusions set out above. Mr. Neufeld argues that the impugned words were not defamatory, and that, if they were, the defences of justification, fair comment, and qualified privilege properly applied. He further contends that the judge erred in awarding general damages beyond nominal damages, and in awarding punitive damages.

[34] Dr. Bondar takes the position that the judge made no reviewable errors in his analysis. I agree, save for some aspects of his analysis of qualified privilege. For the most part, Mr. Neufeld's grounds of appeal engage the judge's application of the law to the facts before him, and these questions attract deferential review. I find no palpable and overriding errors in the judge's conclusions. Mr. Neufeld submits, and Dr. Bondar concedes, that the judge's reasons on the defence of qualified privilege issue raise questions of law. As I will explain, his legal conclusions were not entirely correct, but I would reach the same conclusion on different grounds.

The defamatory statement

[35] The judge concluded that the impugned words, “that strip-tease artist”, were *prima facie* defamatory because they would tend to lower Dr. Bondar’s reputation in the eyes of a reasonable person; they in fact referred to Dr. Bondar; and they were communicated to at least one other person. Mr. Neufeld concedes that the second and third elements of the test are met: the words, while they did not use Dr. Bondar’s name, clearly referred to her and would have been understood by his audience to refer to her. He also made the impugned statement to a group of at least 20 people on the Zoom call, which was subsequently published to the Internet. The sole question, then, is whether the words were defamatory in themselves.

[36] The judge concluded that they were, and this conclusion is entitled to deference. The standard of review to be applied on such a question depends on the nature of the error alleged on appeal. As this Court explained in *Kazakoff v. Taft*, 2018 BCCA 241:

> [29] … If the issue is whether the words are reasonably capable of bearing the alleged meaning, then that is a question of law reviewable on a correctness standard. If the issue is whether the words are in fact defamatory then the palpable and overriding error standard applies. Thus, even where a trial judge has merged the two steps into one and concluded that the words are in fact defamatory, this Court must review whether the words are capable of being defamatory on a correctness standard, if that is the alleged error.

See also *Rooney v. Galloway*, 2024 BCCA 8 at para. 28.

[37] The question, then, is two-fold: first, whether the judge was correct that the words “that strip-tease artist” were reasonably capable of bearing the alleged defamatory meaning; and second, whether the judge made a palpable and overriding error in concluding that the words, in their context, were in fact defamatory.

[38] I have no hesitation in concluding the judge was correct that the impugned words were reasonably capable of bearing the alleged defamatory meaning. As set out above, Dr. Bondar pleaded that the impugned words, by inference, engaged the “widely held societal view that strip-tease artistry is dishonourable or shameful” and

that women who "behave in a sexually liberated manner in public … do not have integrity and are not suitable for public office". There can be no real question—and Mr. Neufeld does not dispute—that the words were capable of bearing a defamatory meaning by implication.

[39] Mr. Neufeld submits, in his factum, that the judge's conclusion that the words were, in fact, defamatory, was wrongly premised on the literal meaning of the words, rather than their inferential meaning, notwithstanding that the parties agreed the words were not defamatory in their literal sense. As Dr. Bondar notes, this argument is premised on a flawed reading of the judgment below. The judge was well aware that Dr. Bondar did not allege the words to be defamatory in their literal meaning: see para. 44 of his reasons. It is clear that the judge rests his finding that the words were defamatory on their inferential meaning by popular innuendo: at para. 77. The portion of the judgment to which Mr. Neufeld refers on appeal to show that the judge considered the words' literal meaning comes from the judge's discussion of the defence of justification, in which context the literal meaning of the words was relevant: at para. 81.

[40] Mr. Neufeld also contends that the judge was wrong to find that the words were defamatory without regard to the whole context in which they were spoken. He says this context is critical to determining "whether the meaning conveyed by the impugned words genuinely threatened the plaintiff's actual reputation": *Weaver* at para. 68 (emphasis added). He argues that the judge failed to consider that Dr. Bondar's actual reputation had been the subject of months of controversy at the time that Mr. Neufeld made his comments. He argues, in his factum, that: "[i]t is only by ignoring the surrounding circumstances that one could find such an innocuous remark … would have even been noticed by the audience, let alone by the greater community".

[41] This argument seems to hinge on the following statement of the law from *Weaver*:

> [68] Words that tend to lower the plaintiff's reputation in the eyes of a reasonable person are defamatory: ... For example, allegations of

> dishonourable or dishonest conduct in an individual's professional life will typically meet this definition. ... The central question is whether the meaning conveyed by the impugned words genuinely threatened the plaintiff's actual reputation.
>
> [Citations omitted, emphasis added.]

[42] On its face, this statement from *Weaver* may seem to suggest that it is the plaintiff's actual reputation, to be assessed on the evidence, which must be threatened by the defamatory words. However, in a subsequent case involving the same *Weaver* plaintiff, *Weaver v. Ball*, 2020 BCCA 119, this Court clarified that the above statement "did not establish a higher threshold for proving that words are defamatory, as compared to the classic test, nor did it suggest that actual harm to reputation must be proven": at para. 35. The words "actual reputation" referred, rather, to the well-established principle that statements are not defamatory where they merely threaten a person's "wished-for reputation or pride", or are "merely rude, abusive or insulting": at para. 35.

[43] The use of the phrase "actual reputation" in *Weaver* did not, therefore, change the classic test to determine if words are defamatory. This test was set out by the trial judge in his reasons: at paras. 48–52. The judge did not misdirect himself on the law. The actual reputation of a plaintiff may well be relevant to the assessment of damages, but not to the question whether a statement is *prima facie* defamatory. The fact that a plaintiff's actual reputation may have been damaged by other attacks on her reputation does not extinguish the defamatory character of any particular statement that tends to reduce a person's reputation.

[44] Mr. Neufeld also contends that the judge erred in failing to consider Mr. Neufeld's own reputation. He says he was "well known as politically incorrect, inflammatory, [and] offensive to many people". He submits that this is also important context that the judge ignored in finding that the words spoken were *prima facie* defamatory. In support of this argument, Mr. Neufeld relies heavily on the following

passages from Justice LeBel, in dissent in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 [*WIC Radio*]:

> [75] People who voluntarily take part in debates on matters of public interest must expect a reaction from the public. Indeed, public response will often be one of the goals of self-expression. In the context of such debates (and at the risk of mixing metaphors), public figures are expected to have a thick skin and not to be too quick to cry foul when the discussion becomes heated. This is not to say that harm to one's reputation is the necessary price of being a public figure. Rather, it means that what may harm a private individual's reputation may not damage that of a figure about whom more is known and who may have had ample opportunity to express his or her own contrary views.
>
> [76] Turning to the facts of this case, I agree that the impugned statement constituted comment rather than fact. As a result, Mair's audience would necessarily treat it differently than a statement of fact. In addition, both Mair and Simpson were public figures involved in an ongoing public debate on the issue of the introduction of materials dealing with gay issues in the classroom. That debate would have informed public opinion. Even those not familiar with the issue would have understood the comment in the context of this debate because Mair made reference to it in the impugned editorial. Further, Mair's "sizeable following" ... would have understood his comments in light of his well-known style, which involves strong opinions sometimes conveyed with colourful and provocative language.
>
> [Citations omitted, emphasis added.]

[45] As Dr. Bondar points out, LeBel J. was writing in dissent on the issue of whether the impugned words in that case were *prima facie* defamatory. The fact that a defendant has a reputation for "politically incorrect, inflammatory, offensive" comments, or, in the language used by LeBel J., "strong opinions sometimes conveyed with colourful and provocative language" does not alter the defamatory character of a statement. Having a reputation for repeatedly making defamatory statements similarly does not alter their defamatory character. To hold otherwise invites the degradation of civil discourse and responsible (even if robust) debate on topics of public interest and importance.

[46] Justice Binnie, writing for the majority of the Court in *WIC Radio*, succinctly articulated the values that animate and inform the development of this area of the law:

> [2] … the worth and dignity of each individual, including reputation, is an important value underlying the *Charter* and is to be weighed in the balance

> with freedom of expression, including freedom of the media. The Court's task is not to prefer one over the other by ordering a "hierarchy" of rights ... but to attempt a reconciliation. An individual's reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to "chill" freewheeling debate on matters of public interest. ...
>
> [Citations omitted, emphasis added.]

[47] In summary, Mr. Neufeld has not demonstrated that the judge erred in law in determining that the impugned words were *prima facie* defamatory. To the extent that Mr. Neufeld simply disagrees with the judge's conclusion that the words were defamatory in fact, he has identified no palpable and overriding error in the judge's analysis capable of justifying appellate intervention.

[48] I would not accede to this ground of appeal.

Justification

[49] Mr. Neufeld argues that the judge erred in failing to give effect to the defence of justification, on the grounds that the impugned words were substantially true in their description of Dr. Bondar's performance in the parody video. He argues that the judge stated but failed to correctly apply the principle set out in *Pereira v. Klonarakis*, 2023 BCSC 1760, aff'd 2024 BCCA 75 [*Pereira*], that "[t]he meaning of the words (or expression) must be true or substantially true in order for the defence [of justification] to succeed": at paras. 54–55, citing *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2016 BCSC 109, rev'd in part on other grounds 2017 BCCA 431, at para. 20.

[50] A statement will be substantially true for the purposes of the defence of justification where the "gist" or "sting" of the defamatory statement can be shown to convey no worse meanings than an accurate account: *Pereira* at para. 55. If the "overall impression" of the defamatory statement, notwithstanding minor inaccuracies, is false, then the defence of justification cannot succeed: *Cimolai v. Hall*, 2005 BCSC 31 at para. 173, aff'd 2007 BCCA 225.

[51] The judge set out the applicable law, and correctly stated the test that Mr. Neufeld had to meet to succeed on the defence of justification. He considered the literal meaning of the term “strip tease” as pleaded by Mr. Neufeld, and viewed and analysed the parody video. He found as a fact that Dr. Bondar’s performance in the parody video was not a strip tease, and, as such, the defamatory statement was not substantially true.

[52] Mr. Neufeld disagrees. He submits that it is a matter of subjective opinion whether Dr. Bondar’s performance in the parody video was like a strip tease, and raises several arguments for why the judge should have found otherwise. He argues that the judge ignored many of the examples of sexually-explicit content in the parody video and other of Dr. Bondar’s videos. He submits that, given these features of Dr. Bondar’s work, he “could have fairly used more inflammatory words than an innocuous term like ‘strip-tease artist’”.

[53] Dr. Bondar argues that this alleged error raises a simple question of fact, and that Mr. Neufeld is inviting this Court to substitute its own conclusions for those of the trial judge. I agree. It is not a question of law whether a performance in a video is or is not a strip tease. Mr. Neufeld’s submissions on this point misconceive the role of this Court, and the onus on Mr. Neufeld in the court below. A *prima facie* defamatory statement is presumed to be false; it is for the defendant to prove that it is substantially true: *Grant* at para. 28. It is no answer to the judge’s finding of fact to say that it is a matter of subjective opinion.

[54] Mr. Neufeld is entitled to his own opinion about Dr. Bondar’s performances, but mere disagreement with the conclusion reached by the judge is no basis to set aside the decision on appeal: *Ibrahim v. Hashemi*, 2024 BCCA 383 at para. 42.

[55] I would not accede to this ground of appeal.

Fair comment

[56] Counsel for Mr. Neufeld devoted much of his time in oral argument before this Court to the defence of fair comment. Mr. Neufeld takes issue with the judge’s

conclusions that the defamatory statement was not "tethered explicitly or implicitly to any factual basis", and that the factual basis for the comment was not "so notorious as to be already or readily understood by the audience": at paras. 102–103. Mr. Neufeld submits that this is symptomatic of a broader theme in the judge's reasons, where he ignored the broader context of the political debate, in which Mr. Neufeld and Dr. Bondar were both participants, in assessing the defamatory statements.

[57] Mr. Neufeld acknowledges that the judge's conclusion on this point raises a question of mixed fact and law and is reviewable on a standard of palpable and overriding error. He says, however, that the judge could only have reached his conclusion by ignoring the undisputed facts as set out in the pleadings and at trial. He notes that, in her notice of civil claim, Dr. Bondar pleaded that the parody video was used "to malign her character and integrity", and that she had been "the target of a persistent attack on the basis of her perceived inappropriate behaviour as a woman". He notes that Dr. Bondar's pleadings stated that members of the audience to the Action4Canada interview who were familiar with Chilliwack local politics would have been aware of the parody video and the "misogynistic backlash it garnered".

[58] Mr. Neufeld argues that the facts disclosed widespread public awareness of the "political ideological battle" to which both Mr. Neufeld and Dr. Bondar were parties, which had been ongoing for years. Mr. Neufeld submits that the whole purpose for the Action4Canada interview was for Mr. Neufeld to express his opposition to SOGI and what he refers to as the "sexualization of our children through the education system". This, Mr. Neufeld says, was the relevant factual context to the defamatory statement. He submits that it was a palpable and overriding error for the judge to conclude that this context was not so notorious as to be already or readily understood by the audience.

[59] In support of his argument, Mr. Neufeld relies on the Supreme Court of Canada's decision in *Hansman*, in which Justice Karakatsanis, writing for the majority of the Court, addressed the factual basis for the impugned statements in

that case in the context of the fair comment defence. Notably, as Mr. Neufeld points out, the Court in *Hansman* was referring to the very same political debate in Chilliwack School Board politics that Mr. Neufeld says provides the relevant context to his statement in this case. In *Hansman*, Karakatsanis J. found that:

> [104] … [Mr. Neufeld's] views had achieved a level of notoriety such that they would have been known to the reading audience. This was a high-profile local controversy that spanned over a year. Both [Hansman and Neufeld] were public figures. … In this context, it was reasonable to conclude that it was unnecessary to set out the background to the controversy in great detail for all 11 publications.

[60] Mr. Neufeld says the same conclusion ought to have been reached here. The controversy involving both Mr. Neufeld and Dr. Bondar was widely known, and their opposition over SOGI was a matter of public record. As Dr. Bondar's own pleadings acknowledge, the audience would have been aware of Dr. Bondar—indeed, this is why, as Mr. Neufeld conceded at trial, it was fair to say that the audience would have recognized the words "that strip-tease artist" as referring to Dr. Bondar.

[61] Dr. Bondar submits, in response, that Mr. Neufeld misapprehends the relevant factual context. She argues that the defamatory statements, unlike the ones at issue in *Hansman*, are not statements about Dr. Bondar's political views. They are, she says, statements about Dr. Bondar's character, her integrity, and her fitness for public office. As such, it is beside the point that the broader public debate about SOGI would have been well known to the audience who received Mr. Neufeld's defamatory statement. The relevant factual context was the content of the parody video itself. That context was not implicitly or explicitly indicated within the publication itself, and the judge found as a fact that it was not so notorious as to be already or readily understood.

[62] Dr. Bondar says it is not enough for the audience to know that *other people* were upset about or critical of Dr. Bondar's performances in the videos. This, she says, would not provide, in itself, an adequate basis for the audience to fairly judge Mr. Neufeld's comment, as required by the second element of the fair comment defence. Furthermore, knowing that Mr. Neufeld has strong views on the SOGI

issue, or that his views conflict with Dr. Bondar's, provides no basis on which his audience could judge if it was fair for Mr. Neufeld to describe Dr. Bondar as a "strip-tease artist".

[63] The rationale for the fair comment defence is that "citizens must be able to openly declare their real opinions on matters of public interest without fear of reprisal in the form of actions for defamation": *Hansman* at para. 95, citing *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067 at 1086. The defence aims to reconcile the values of free debate on the one hand, and the protection of individual reputation from unwarranted attack on the other: *Hansman* at para. 95; *WIC Radio* at para. 1, citing *Price v. Chicoutimi Pulp Co.* (1915), 51 S.C.R. 179 at 194.

[64] The second element of the test, the only element of the test at issue on this appeal, is that:

> [99] … 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" ... The defence is unavailable if "the factual foundation is unstated or unknown, or turns out to be false" ...
>
> [100] … 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 ...
>
> [*Hansman*, citations omitted.]

[65] The factual basis for the impugned statement, then, must provide the context necessary for the audience to judge for itself whether the comment is fair or not. Provided that the factual basis is identified in such a way that the audience can draw its own conclusions, the target of the comment may rely on the good judgment and common sense of the reader or listener to ignore or give no heed to unfair or unwarranted comments. In this way, the free expression interests of the defendant and the reputational interests of the plaintiff are reconciled.

[66] However, where the factual foundation for the comment is unknown or unstated, the defence is unavailable: *Hansman* at para. 99. This follows logically from the rationale for the fair comment defence: it is not possible for the audience to

gauge whether a comment is fair or not without knowing the basis for the comment, and the context in which it was made. Mr. Neufeld says that context was his ideological opposition to SOGI and Dr. Bondar's candidacy for school board trustee. I disagree.

[67] The factual context for Mr. Neufeld's comment was the parody video itself. For the audience to know if it was fair to refer to Dr. Bondar as a "strip-tease artist", the audience would have had to be aware of the actual content of the video or, arguably, other videos of hers with a sexual content. The judge found as a fact that this was not the case. While it was not disputed that the controversies around SOGI and Dr. Bondar's videos were widely known, it does not follow that the contents of the videos were so notorious as to be readily or already familiar to Mr. Neufeld's audience.

[68] I do not, therefore, accept that the judge ignored the evidence before him in concluding that the defence of fair comment was not made out. The judge correctly stated the test, and made a reasonable finding of fact on the basis of the evidence. That conclusion is entitled to deference, and Mr. Neufeld has failed to demonstrate any palpable and overriding error that would justify this Court's interference. As did the trial judge, I consider it unnecessary to address the other elements of the defence of fair comment, because the judge made no error in his conclusion that the second element was not made out.

[69] I would not accede to this ground of appeal.

Qualified privilege

[70] Mr. Neufeld argues that the judge erred in law in finding that the defence of qualified privilege was unavailable. He says the judge erred in finding that *Boland* was binding in the circumstances of this case, and that, in any event, the law has evolved since *Boland*. Dr. Bondar concedes that this raises a question of law reviewable on the standard of correctness. She argues, however, that the judge did not err in concluding that the defence of qualified privilege was unavailable.

[71] The judge's brief reasons on qualified privilege suggest that he read *Boland* as standing for the broad proposition that the publication of comment in media during the course of an election about the fitness of candidates for public office does not give rise to an occasion of qualified privilege: at para. 109. Respectfully, I think this is too sweeping a proposition.

[72] The defence of qualified privilege was considered by the Court in *Bent v. Platnick*, 2020 SCC 23 [*Bent*], where the majority emphasized that the qualified privilege attaches specifically to the occasion on which a statement was made, not to the statement itself:

> [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" ... Importantly, "[q]ualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself" ... 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" ... 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 ...
>
> [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.
>
> [Citations omitted, emphasis by underlining added.]

[73] As noted above, the judge's conclusion on the defence of qualified privilege in this case turned on his reading of *Boland*. *Boland* concerned an unflattering editorial published in the Globe and Mail newspaper about the plaintiff, who was, at the time, a candidate in the forthcoming federal elections. The specific *ratio* of the decision on qualified privilege in *Boland* was that qualified privilege was unavailable as a defence where the publication was made in a newspaper: at 207, relying on the earlier statement in *Douglas v. Tucker*, [1952] 1 S.C.R. 275 at 287–288 [*Douglas*]. Justice Cartwright, who also wrote the Court's judgment in *Douglas*, held that in finding otherwise the trial judge had "confused the *right* which the publisher of a

newspaper has … to report truthfully and comment fairly upon matters of public interest with a *duty* of the sort which gives rise to an occasion of qualified privilege": at 207 (emphasis in original). The principle of law relied upon was that qualified privilege would be lost where the scope of the publication was unduly wide: *Douglas* at 288.

[74] Since *Boland*, even this narrow *ratio* has been limited by the Supreme Court of Canada. In *Grant*, Chief Justice McLachlin, writing for the majority of the Court, described Cartwright J's decisions in *Douglas* and *Boland* as reflecting a "conservative stance … which struck a balance that preferred reputation over freedom of expression": at para. 34. She noted that:

> [35] In recent decades, courts have begun to moderate the strictures of qualified privilege, albeit in an *ad hoc* and incremental way. When a strong duty and interest seemed to warrant it, they have on occasion applied the privilege to publications to the world at large. For example, in suits against politicians expressing concerns to the electorate about the conduct of other public figures, courts have sometimes recognized that a politician's "duty to ventilate" matters of concern to the public could give rise to qualified privilege ...
>
> [36] In the last decade, this recognition has sometimes been extended to media defendants. For example, in *Grenier v. Southam Inc.* ..., the Ontario Court of Appeal (in a brief endorsement) upheld a trial judge's finding that the defendant media corporation had a "social and moral duty" to publish the article in question. Other cases have adopted the view that qualified privilege is available to media defendants, provided that they can show a social or moral duty to publish the information and a corresponding public interest in receiving it ...
>
> [Citations omitted.]

[75] I agree with Mr. Neufeld, therefore, that the statement in *Boland* is no longer an accurate description of the state of the law. It does not follow, however, that the judge's conclusion that no privilege attached to the occasion of Mr. Neufeld's comments was incorrect.

[76] As emphasized in *Bent*, qualified privilege attaches to the specific occasion upon which the impugned communication is made, not the communication itself. As indicated in the passage from *Grant* reproduced above, there may well be occasions on which the privilege would extend to statements about the fitness of candidates for

public office, including statements published to the world at large. For instance, had Mr. Neufeld made his defamatory statement at an all-candidates meeting or an electoral debate, where he may have had an interest and a duty to convey his honest opinion, and his audience may have had a reciprocal interest and duty to hear that opinion, his statement may have been at least *prima facie* privileged. It would still be an open question whether the two limits on the qualified privilege would have operated to defeat the defence under those circumstances.

[77] In my opinion, the occasion on which Mr. Neufeld in fact made his defamatory statement was not such a privileged occasion. Mr. Neufeld submits that he had a duty to communicate his honestly-held views to his supporters and the electorate, and that his audience for the Action4Canada interview had a reciprocal interest in hearing his views. It may be that Mr. Neufeld, as a candidate for public office, had a "duty to ventilate" his honest views about the conduct of other public figures like Dr. Bondar: *Grant* at para. 35, citing this Court's decision in *Parlett v. Robinson*, (1986) 5 B.C.L.R. (2d) 26 (C.A.) at para. 40. However, the privilege attaches to the occasion, not the communication. It does not necessarily follow that, on the particular occasion when he spoke the defamatory words, he and his audience had the necessary reciprocal interests and duties relating to his unvarnished opinion of Dr. Bondar's character.

[78] On the facts as found by the judge, and as Mr. Neufeld has repeatedly emphasized both in this Court and the court below, the Action4Canada interview was an opportunity for Mr. Neufeld to address a nation-wide audience on his campaign against SOGI, his ongoing litigation, and the upcoming school board elections. Mr. Neufeld exceeded the scope of any possible privilege because his comments were published not only to persons with a reciprocal interest in the local Chilliwack elections, but to the world at large, particularly when the interview was subsequently posted to the Internet. Moreover, the principal topic was not Mr. Neufeld's opinion of his fellow candidates, but instead Mr. Neufeld's views on SOGI generally. To find a qualified privilege attached to this occasion would, in my view, extend the privilege in a way that would be "harmful to that 'common

convenience and welfare of society'": *Hill* at para. 106. It cannot be that any public event that takes place during any election campaign attracts qualified privilege on the part of a candidate for public office.

[79] Even if qualified privilege did attach to the occasion of the Action4Canada interview, I am satisfied that the privilege would not apply to Mr. Neufeld's defamatory statement. The judge found as a fact that Mr. Neufeld was reckless as to the truth of his statements about Dr. Bondar: at para. 149. This, in itself, defeats the defence of qualified privilege: *Bent* at para. 121.

[80] Counsel for Mr. Neufeld, in reply oral argument on appeal, objected to this characterization of the scope of the publication. He argued that it was not material that the interview was posted to the Internet, since, in this digital age, nearly everything is available on the Internet. He pointed out that even emails exist somewhere on the Internet. I do not accept this argument. The point is not that the interview is theoretically accessible through the Internet; the point is that it was published and disseminated on the Action4Canada website, as an open invitation for anyone interested, in Chilliwack, in Canada, or anywhere in the world, to watch the video.

[81] Counsel for Mr. Neufeld also objected to the idea that the scope of the privilege could be exceeded because the audience was bigger than just Chilliwack. He argued that Mr. Neufeld's opinions on SOGI and his experiences in the school board elections were of broad interest to Canadians because the debate around SOGI transcends the local context and is a matter of public interest throughout the country. In my view, this only serves to highlight the lack of reciprocity, specifically with reference to Mr. Neufeld's opinion of Dr. Bondar's character as a candidate for public office. A local electoral event such as an all-candidates meeting might attract qualified privilege because the audience would have a specific interest in the candidates' character and fitness for public office. The same cannot be said of the Action4Canada interview. A broadcast to the whole country primarily on a political

topic of general interest is not a privileged occasion on which Mr. Neufeld could attack Dr. Bondar's character and her reputation with impunity.

[82] In summary, I agree with the judge that the defence of qualified privilege was not available to Mr. Neufeld, though I would caution that the statement of the law in the judgment below is not entirely correct.

[83] I would not accede to this ground of appeal.

Damages

[84] On the topic of general damages, Mr. Neufeld submits that, if the judgment on liability is not set aside, only nominal damages are warranted. He says the judge erred in concluding that Dr. Bondar suffered any real reputational harm from the defamatory statements. He notes that the judge found that it was "difficult to separate out the reputational harm Dr. Bondar experienced" as a result of the controversy that had arisen during her 2021 by-election campaign from the harm done by Mr. Neufeld's defamatory statements. Mr. Neufeld submits that "impossible" would be a more apt term than "difficult".

[85] Dr. Bondar, for her part, notes that the judge's conclusions on damages rest on findings of fact reviewable on the standard of palpable and overriding error. She submits that, as a matter of law, damages are presumed once defamation has been established, and that it was open to the judge to find that the "very modest" award of $35,000 was appropriate to compensate Dr. Bondar and vindicate her interests.

[86] On punitive damages, Mr. Neufeld submits that the judge found that Mr. Neufeld had an honest belief in the accuracy of his comment about Dr. Bondar, and that there was no finding of malice or dishonesty. He says that the basis for the judge's award of punitive damages "is not ascertainable". Dr. Bondar responds that the judge clearly based his award of punitive damages on his finding that Mr. Neufeld was reckless as to the truth of the impugned words, and that Mr. Neufeld had repeated the defamatory words after the claim was filed in an effort to solicit financial support for the litigation. She notes, too, that punitive damages

may be ordered where a modest compensatory award is insufficient to satisfy the objectives of compensation, punishment and deterrence.

[87] A judge's assessment of damages is entitled to significant appellate deference. In *Woelk v. Halvorson*, [1980] 2 S.C.R. 430 at 435, Justice McIntyre, writing for the Court, held that:

> It is well settled that a Court of Appeal should not alter a damage award made at trial merely because, on its view of the evidence, it would have come to a different conclusion. It is only where a Court of Appeal comes to the conclusion that there was no evidence upon which a trial judge could have reached this conclusion, or where he proceeded upon a mistaken or wrong principle, or where the result reached at the trial was wholly erroneous, that a Court of Appeal is entitled to intervene ...

See also *Taylor v. Dr. Lens Change Inc.*, 2024 BCCA 401 at para. 31, and *Valley Traffic Systems Inc. v. Malak*, 2024 BCCA 370 at para. 52.

[88] There was evidence before the judge on which he could have, and did, base his conclusion that a modest award of general damages was warranted. Mr. Neufeld points to no mistake or error in principle on the part of the judge, and I see none reflected in his reasons.

[89] I would note at this juncture that Mr. Neufeld, throughout his written and oral submissions on appeal, consistently characterized his comments about Dr. Bondar as "innocuous". Saying this, however, does not make it so. The judge found that these comments caused significant distress and upset to Dr. Bondar, and that they were objectively offensive and demeaning to her. These is no basis, in my view, to interfere with the judge's modest award of general damages under these circumstances.

[90] As to the question of punitive damages, it was open to the judge to decide, as he did, that a relatively modest punitive damages award of $10,000 was appropriate, given the modest quantum of the general damages award, given Mr. Neufeld's recklessness in speaking the defamatory words, and given that Mr. Neufeld repeated the words after the claim had been commenced. As Dr. Bondar notes,

recklessness can form the basis for an award of punitive damages: *Kachanoski v. Grace*, 2002 BCCA 615.

[91] In his reply factum, Mr. Neufeld takes issue with the idea that there could be any relevance in this case to the principle of deterrence in awarding punitive damages. He submits that it is "horrifying" to suggest "that courts ought to punish people for expression honestly held views on matters of public interest … especially if the case turns on something so subjective as different opinions about the nature of artistic performances." In my view, this submission misstates the substance of this case. This is not a case of someone being punished for sharing their sincerely-held beliefs about artistic performances. It is also not a case about the underlying political disagreements between Mr. Neufeld and Dr. Bondar. Mr. Neufeld's comment about Dr. Bondar was a demeaning denigration of her reputation.The judge's general and punitive damage awards reflected careful and measured consideration of the record before him, and the relevant law.

[92] I see no basis on which to interfere with the judge's award of general and punitive damages.

Disposition

[93] I would dismiss the appeal.

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Iyer"