KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 81**

Date: **2025 06 13**
Docket: QBG-RG-00903-2017
Judicial Centre: Regina

BETWEEN:

CANDIS MCLEAN

PLAINTIFF

- and -

MICHELLE STEWART

DEFENDANTS

Counsel:

Tavengwa Runyowa	for the plaintiff
Roxanne Ouellette	for the defendant

JUDGMENT
June 13, 2025

ROBERTSON J.

Contents

INTRODUCTION

[1] This decision addresses an application for summary judgment.

[2] For the reasons which follow, the application is granted in part. The defendant is found liable under the tort of defamation and for inducing breach of contract, but not for intentional interference with economic relations. Damages are awarded.

BACKGROUND

Evidence

[3] The parties filed the following evidence, which I considered in deciding the application.

Plaintiff:

(a) Notice to Admit Facts filed November 26, 2019;

(b) Affidavit of Candis McLean sworn April 20, 2021 [McLean Affidavit #1];

(c) Transcript of questioning of Michelle Stewart on March 8, 2023 [Stewart Transcript];

(d) Affidavit of Candis McLean sworn September 13, 2024 [McLean Affidavit #2];

(e) Reply to Undertakings of Candis McLean filed May 2, 2025;

Defendant:

(f) Affidavit of Michelle Stewart sworn June 21, 2022 [Stewart Affidavit]; and

(g) Transcript of questioning of Candis McLean on May 17, 2023.

Facts

[4] From the filed evidence and public record, I find the following facts.

Death of Neil Stonechild

[5] On the night of November 24-25, 1990, Constables Brad Senger and Lawrence Hartwig of the Saskatoon Police Service were on patrol together in Saskatoon, Saskatchewan. On November 24, 1990 at 11:59 p.m., Cst. Senger queried the name of Neil Stonechild on the Canadian Police Information Centre (CPIC).

[6] On November 29, 1990, the frozen body of Neil Stonechild was found in a field in Saskatoon. He was 17 years old on the date of his death, which was believed to be November 25, 1990. His death was attributed to exposure with no foul play.

Neil Stonechild Inquiry

[7] On February 20, 2003, the Government of Saskatchewan appointed Justice D.H. Wright of the Court of Queen's Bench for Saskatchewan to conduct an inquiry into the death of Neil Stonechild and the conduct of the investigation into his death.

[8] On September 24, 2004, the Commission delivered a final report containing its findings and recommendations to the Minister of Justice and Attorney General of Saskatchewan [Report] (Saskatchewan Publications Centre website). In his Report, Justice Wright found that on November 24-25, 1990, Constables Hartwig and Senger had taken Neil Stonechild into their custody and that injuries and marks on Mr. Stonechild's body were likely caused by handcuffs. Justice Wright also found that the Saskatoon Police Service had not conducted a proper investigation into Mr. Stonechild's death.

Dismissal of Saskatoon Police Officers

[9] On November 12, 2004, the Chief of Police for the Saskatoon Police Service dismissed Cst. Senger and Cst. Hartwig for neglect of duty on November 24-

25, 1990 in failing: to arrest Neil Stonechild on an outstanding warrant and then keep him in their custody and bring him to the police station for booking; and to properly record their interaction with him in their notebooks and reports.

Appeals and Applications

[10] Cst. Hartwig and Cst. Senger appealed their dismissal under s. 61 of *The Police Act, 1990*, SS 1990-91, c P-15.01. The appeal proceeded to a hearing before a hearing officer.

[11] On February 28 and March 13, 2006, respectively, Mr. Hartwig and Mr. Senger, along with the Saskatoon City Police Association, applied under s. 11 of *The Court of Appeal Act, 2000*, SS 2000, c C-42.1 to quash that portion of the Report as it related to Neil Stonechild being in the custody of Mr. Hartwig and Mr. Senger on November 24-25, 1990.

[12] On October 31, 2006, Hearing Officer Silversides issued his 187-page decision dismissing the appeals of Mr. Hartwig and Mr. Senger against their dismissals as police officers (Saskatchewan Police Commission website). Mr. Hartwig and Mr. Senger appealed against this decision to the Saskatchewan Police Commission.

[13] On April 11, 2007, the Court of Appeal for Saskatchewan agreed to hear the application to quash portions of the Report: *Hartwig v Saskatchewan (Justice)*, 2007 SKCA 41.

[14] On July 6, 2007, the Court of Appeal made rulings on evidence which would be considered at the hearing of the application: *Hartwig v Commission of Inquiry into Matters relating to the death of Neil Stonechild*, 2007 SKCA 74, 284 DLR (4th) 268.

[15] On September 24 and 25, 2007, the Court of Appeal heard the application to quash parts of the Report.

[16] On June 19, 2008, the Court of Appeal dismissed the application: *Hartwig v Commission of Inquiry into Matters relating to the death of Neil Stonechild*, 2008 SKCA 81, [2008] 9 WWR 615.

[17] On July 28, 2008, the Saskatchewan Police Commission dismissed the appeals in its 46-page decision (*Hartwig v The Chief of Police* (28 July 2008) (Decision of the Saskatchewan Police Commission)) The Commission's decision at paras. 223-225 reads as follows:

> 223. A review of the record also convinces us that it was also open to the Hearing Officer to question the credibility of the Appellants. The Hearing Officer, in his detailed review of the record, identified specific evidence which could reasonably support his conclusion that parts of the Appellants' testimony was not credible.
>
> 224. In conclusion, we find that there was sufficient evidence upon which the Hearing Officer could reasonably conclude that Neil Stonechild was in the custody of the police officers on the night of November 24/25, 1990. Therefore, we conclude that his subsequent findings with respect to the particulars set out in the Notice of Order of Dismissal were reasonably supported by the evidence. That being the case, the findings of the Hearing Officer are not reviewable.
>
> 225. Therefore, the appeals of Lawrence Hartwig and Bradley Senger, pursuant to s. 70 of *The Police Act, 1990*, are hereby dismissed.

[18] On October 24, 2008, Laurence Hartwig filed a notice of motion seeking judicial review of the Saskatchewan Police Commission decision: QBG-SA-01261-2008. On November 3, 2008, Bradley Senger filed a Notice of Motion seeking judicial review of the Saskatchewan Police Commission decision: QBG-SA-01289-2008. (These applications never proceeded to hearing and are considered abandoned.)

[19] On December 18, 2008, the Supreme Court of Canada dismissed applications by the Saskatoon City Police Association, Larry Hartwig and Brad Senger for leave to appeal against the decision of the Court of Appeal for Saskatchewan: *Saskatoon City Police Association v Hartwig*, 2008 CanLII 68235 (SCC).

Book

[20] The plaintiff, Candis McLean, [Ms. McLean] wrote a book published in 2015 titled *When Police Become Prey: The Cold Hard Facts of Neil Stonechild's Freezing Death* (Calgary: Hummingbird Press Ltd., 2015) [*Book*]. The premise of the Book is that the Saskatoon police officers who were dismissed were innocent of any wrongdoing (McLean Affidavit #1 at para. 19, Exhibit 3).

[21] Ms. McLean planned a book tour in Saskatchewan and Manitoba in November 2016 to promote sales of the *Book*, with scheduled book signings in Regina, Saskatchewan on November 5, Yorkton, Saskatchewan on November 8 and Winnipeg, Manitoba on November 12, 2016 (McLean Affidavit #1 at para. 22; and McLean Affidavit #2 and Reply to Undertakings dated July 31, 2024).

Protest against *Book*

[22] The Saskatchewan Coalition Against Racism [SCAR], a group of individuals dedicated to eliminating racism, began a public campaign opposing Ms. McLean's efforts to promote her *Book*. The defendant, Dr. Michelle Stewart [Dr. Stewart], supported and participated in this campaign. The campaign included calling book signing venues asking them to cancel the book signing events and picketing book signing events (McLean Affidavit #1 at paras. 29–50, Exhibit 10; and Stewart Affidavit at para. 20).

[23] Dr. Stewart called and encouraged others to call some of the book signing venues asking them to cancel the book signing events. As a result, the book signing

venues cancelled Ms. McLean's bookings (McLean Affidavit #1 at paras. 43–46 and 50–51; and Stewart Transcript at pages 51 and 54).

[24] On November 5, 2016, Ms. McLean held a book signing on a sidewalk in Regina. Dr. Stewart participated in picketing that book signing (McLean Affidavit #1 at paras. 47-48).

[25] On November 5, 2016, Dr. Stewart posted on social media her opposition to the *Book*, which she described in a Facebook post as "racist garbage" (McLean Affidavit #1 at para. 41 and Exhibit 12; Stewart Affidavit at para. 20; and Stewart Transcript at pages 45-46 and 82).

[26] Dr. Stewart did not publish a retraction or make an apology (McLean Affidavit #1 at para. 83; Stewart Affidavit at paras. 33-34; and Stewart Transcript at page 50).

[27] The protest campaign against the *Book* generated publicity in both social media and traditional media (Stewart Affidavit at paras. 24 and 26–30, Exhibits J, K, L and M).

Litigation history

[28] The Court file records the following litigation history.

2017

April 10 Statement of Claim filed

September 13 Statement of Defence filed

2019

November 26 Plaintiff files Notice to Admit Facts

2022

April 12	Plaintiff files Notice of Application for summary judgment
May 3	Krogan J. adjourns application *sine die* (to be returned on a future date not yet determined), while directing parties to file materials setting deadlines (No order issued.)
November 2	Mitchell J. directs defendant to file brief by March 28, 2024 and plaintiff to file reply materials by April 19, 2024. Local Registrar directed to set hearing date after filings are completed. (No order issued.)

2023

March 8	Plaintiff's questioning of Dr. Stewart
May 17	Defence questioning of Ms. McLean

2024

May 23	Defendant files unsigned Application Without Notice for order setting deadlines for serving and filing briefs of law
May 24	Klatt J. grants consent Order setting filing deadlines for briefs of law
July 15	Defendant files Application Without Notice to amend Klatt Order to vary deadlines for filing briefs of law
July 16	Klatt J. approves issuance of filed Order
July 16	Labach J. grants consent Order to vary Klatt Order

July 22 Klatt Order issued

July 22 Labach Order issued

July 22 Plaintiff files Notice of Application for Dr. Stewart to attend for cross-examination on her affidavit

July 26 Defendant files application for Ms. McLean to attend for cross-examination on her affidavit

2025

May 2 Robertson J. hears application for summary judgment, with decision reserved

ISSUES

[29] The application for summary judgment raises the following issues:

(1) Is the dispute suitable for decision by summary judgment?

(2) Has the plaintiff established liability on the basis of:

(a) the tort of defamation?

(b) the tort of direct inducement of breach of contract?

(c) intentional interference with economic relations?

(3) If so, has the plaintiff proved damages?

(4) What, if any, award of costs should be made?

POSITION OF PARTIES

Plaintiff

[30] The Book written by the plaintiff challenged a widely accepted narrative, which she had herself initially accepted. The defendant wrongfully interfered in the plaintiff's efforts to promote sale of the *Book*, which caused economic damages, and defamed the plaintiff by calling the *Book* "racist garbage" in a post on social media.

[31] There is nothing in the *Book*, which the defendant had not even read, to support her description of it as "racist". The word "racist" attacked the plaintiff's character and the word "garbage" demeaned the plaintiff's intellect and professional ability as a writer and journalist. This satisfies the elements of defamation by damaging the plaintiff's reputation. The personal attack was malicious. The defendant has not made out any of the defences, so damages should follow.

Defendant

[32] The tort of defamation is not made out, because the comment of "racist garbage" was about the *Book*, not the plaintiff-author. The comment also falls within the defence of fair comment on a controversial subject of public interest. While the defendant may not have read the entire *Book*, she had reviewed parts and understood its premise. The *Book* rejects findings of the Neil Stonechild Inquiry, made after hearing evidence and argument from affected parties, including the former police officers who were represented by counsel at the Inquiry.

[33] Even if defamation was proved, there is no evidence of damage to reputation. An apology was offered but rejected. With respect to the cancellation of book signing venues, there is no evidence of any contracts, so no damages could result. The protests generated publicity for the *Book*.

ANALYSIS

[34] I will address the issues in the order they are stated above.

(1) Is the dispute suitable for decision by summary judgment?

[35] *The King's Bench Rules* in Rules 7-2 to 7-5 allow for summary judgment. Rule 1-3, which states the purpose and intention of the Rules, is also relevant.

[36] In *A.M. v Hagen*, 2023 SKKB 176 at paras 55 – 56, Chief Justice Popescul summarized the summary judgment roadmap:

> [55] Rule 7-5(1)(a) provides that the Court may grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence. Rule 7-5(2) sets out the factors that the Court must and may consider when determining whether there is a genuine issue requiring trial:
>
> > 7-5 (2) In determining pursuant to clause (1)(a) whether there is a genuine issue requiring a trial, the Court:
> >
> > (a) shall consider the evidence submitted by the parties; and
> >
> > (b) may exercise any of the following powers for the purpose, unless it is in the interest of justice for those powers to be exercised only at a trial:
> >
> > (i) weighing the evidence;
> >
> > (ii) evaluating the credibility of a deponent;
> >
> > (iii) drawing any reasonable inference from the evidence.
>
> [56] The leading authority on summary judgment applications is *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87. Therein, the Court noted at paragraph 47 that "[s]ummary judgment motions must be granted whenever there is no genuine issue requiring a trial". There will be no genuine issue requiring a trial when the judge is able to reach a fair and just

> determination on the merits. At paragraph 49, the Court noted that a fair and just determination can be made when the process:
>
> (1) allows the judge to make the necessary findings of fact;
>
> (2) allows the judge to apply the law to the facts; and
>
> (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[37] The hearing of applications for summary judgment are governed by General Applications Practice Directive #9: "Scheduling of Summary Judgment, Set Aside and Judicial Review Applications" [GAPD #9]. That Practice Directive contemplates filing of all materials to be relied upon at the hearing, including briefs of law, before the Chambers Judge certifies it as ready to proceed to hearing. See: *Richardson Pioneer v Lamb*, 2024 SKKB 214 at para 24; *Standing Buffalo Dakota First Nation v Ron S. Maurice Professional Corporation (Maurice Law Barristers and Solicitors)*, 2023 SKKB 42 at para 41; *Kuffner v Jacques*, 2023 SKKB 14 at para 67; and *Chernick v Chernick*, 2020 SKQB 168 at para 18.

[38] The first stage review required by GAPD #9 considers both content and format. It is therefore preferable for the parties to agree to facts and exhibits and for the applicant to file all of the materials intended for the hearing in a binder with an index and tabbing of contents. This promotes a better hearing where the materials relied upon by the parties are identified and both the lawyers and hearing judge can easily locate and refer to the materials at the hearing. This did not occur in this case.

[39] The plaintiff's first brief of law dated May 28, 2024 was served but not filed, so not received by the Court until after the summary judgment hearing. The plaintiff's materials contained citations referring to both evidence and case law that were inaccurate. This was unhelpful.

[40] Although the materials were not organized as they should have been, the dispute is suitable for determination by summary judgment. The essential facts are known and largely undisputed. The case can be decided on the basis of the facts found from filed materials and the public record as set out above. There is no genuine issue requiring trial.

[41] I will proceed to consider each cause of action pled. If liability is established, I will then proceed to consider the issues of damages and costs.

(2)(a) Has the Plaintiff Established Liability on the Basis of the Tort of Defamation

[42] The law of defamation recognizes the importance of reputation and value of a good name. The individual's concern for reputation is nothing new. William Shakespeare in his play *The Tragedy of Othello, Moor of Venue,* written around 1603, makes this point in Act 3, Scene 3:

> Who steals my purse steals trash. 'Tis something, nothing:
> 'Twas mine, 'tis his, and has been slave to thousands. But he that filches from me my good name robs me of that which not enriches him and makes me poor indeed.

[43] The Law Reform Commission of Saskatchewan, *Reform of The Libel and Slander Act Final Report*, March 2024 (2024 CanLIIDocs 2137), at page 9 stated under the heading "Purpose of Defamation Law" that "Defamation seeks to protect the reputation and dignity of individuals."

[44] Professor Hilary Young, in her article titled "But Names Won't Necessarily Hurt Me: Considering the Effect of Disparaging Statements on Reputation" (2011) 37 Queen's LJ 1 (2011 CanLIIDocs 529) [2011 Article] wrote at page 4 that "The purpose of the law of defamation is to protect reputation without unduly inhibiting freedom of expression.", citing *WIC Radio Ltd. v Simpson,* 2008 SCC 40 at para 1, [2008] 2 SCR 420.

Elements

[45] The tort of defamation requires proof of:

(a) words about the plaintiff;

(b) which are communicated, verbally (slander) or in writing (libel), to a third party; and

(c) that would lower the plaintiff's reputation in the eyes of a reasonable person.

[46] Defamation is a tort of strict liability. Proof of intent is only required for the publication element.

[47] If the plaintiff proves the three elements on a balance of probabilities, then a *prima facie* case of defamation is established, with falsity, malice and damages presumed. The onus then shifts to the defendant to establish one of the available defences to escape liability. The usual defences are truth (justification), fair comment, responsible communication, and qualified privilege.

[48] See: *Grant v Torstar Corp.*, 2009 SCC 61 at paras 7 and 28–29, [2009] 3 SCR 640 [*Grant*]; Hilary Young, "The Canadian Defamation Action: An Empirical Study" (2017) 95-3 Can Bar Rev 591 (2017 CanLIIDocs 236) at pages 593–594, [2017 Article]; *Tsatsi v College of Physicians and Surgeons of Saskatchewan*, 2018 SKCA 53 at paras 20 – 23, leave to appeal to SCC dismissed, 2019 CanLII 18826; and *Reform of The Libel and Slander Act Final Report* at pages 12–14.

[49] Professor Young, at pages 7–8 of her 2011 Article, explained the test for defamation.

> Given defamation law's focus on reputation, it has never been defamatory to simply say something disparaging of the plaintiff

> unless what was said also tends to lower the plaintiff in the estimation of right-thinking people. In deciding whether a statement tends to diminish the plaintiff's reputation, a judge must first determine whether, as a matter of law, it can bear the defamatory meaning alleged. The trier of fact must then determine whether the statement does in fact bear that meaning. This depends on two separate but related questions: what the impugned words mean, and whether people would tend to think less of the plaintiff because of publication. Where the judge is the trier of fact, all three questions are often merged into a single analysis. …
>
> [Footnotes omitted]

Distinguishing disparagement from defamation

[50] Defamation requires more than mere insult. Where is the line crossed from one to the other?

[51] Lord Moulton, then a Lord Justice of the Court of Appeal of the United Kingdom, spoke to the Authors' Club in London during the First World War. The speech was later published in the July 1924 issue of *The Atlantic* magazine and republished in its July 1942 issue as an article titled "Law and Manners". In his speech and in the article, Lord Moulton distinguished between what people must do or not do because the law commands it and what a free people choose to do because they should. The latter may be described as morals, community standards, conventions or simply good manners. Lord Moulton described such voluntary compliance as "the domain of Obedience to the Unenforceable." (Lord Justice Moulton, "Law and Manners" *The Atlantic* (July 1942) at 31).

[52] Courts do not regulate manners, except in the courtroom. I do, however, take note of an erosion of civility in public discourse, especially on social media where people are sometimes reckless and needlessly offensive. It becomes the province of the Courts when such commentary crosses the line into defamation of identifiable persons.

[53] Professor Young in her 2011 Article distinguished between disparagement and defamation, cautioning at page 15 that judges may sometimes be too quick to find defamation.

> Whether of not the comments were actually defamatory, the motions judge misapplied the law of defamation. Logically, she could not have concluded both that the statements were "clearly" defamatory and that a reasonable person would not have found them credible. If a right-thinking person would not find the statements credible, she would not think less of the plaintiff because of them, and they would simply not be defamatory. As in *Vaquero*, [*Vaquero Energy Ltd v Weir*, 2004 ABQB 68, [2006] 5 WWR 176] the court in *Barrick Gold* [*Barrick Gold Corp v Lopehandia* (2004), 71 OR (3d) 416 at para 43, 239 DLR (4th) 577 (CA)] reduced a central components of the test of defamatory meaning to a mere matter of quantifying damages. The judge appears to have equated defamatory meaning with disparaging meaning.

[54] Commentary like "racist garbage" may be viewed as part of a cancel culture which, rather than debate disagreeable ideas or views, prefers to shut down discussion by *ad hominem* attacks directed against the person, rather than their position. This curtailment of public debate is justified by asserting a monopoly on truth or acceptable belief. But democracy is imperilled when people think it better to supress or ban books than debate their merits.

[55] The use of such disparaging or defamatory labels as "racist' can be used to achieve this result, since no one wants to be identified in the court of public opinion as a racist or other similar slur on their character. Many Canadians will shun and decline to listen to a racist.

The *Book*

[56] Defamation is about the person, not their work. But if the content of the *Book* is racist, that might be evidence that the author was racist, since an author is closely tied to their work. Having read the *Book*, I do not find that it is racist. The

defendant's statement that the *Book* is racist is objectively false. Nor did the defendant point to anything in the *Book* that would support her posted comment.

[57] Dr. Stewart, in the Stewart Affidavit at para. 10, comments on the *Book*:

> 10. The Book is a product of a vanity press and as such has not been subjected to outside fact checking nor rigorous scrutiny. It selectively looks at the evidence and has a strong bias in favour of the perspective of the officers who were implicated in the death of Neil Stonechild. My confidences lies in the NSI [Neil Stonechild Inquiry] and corresponding Report, not in the contents of the Book which frequently contradicts the Report.

[58] Having read the *Book,* the Report and the decisions which followed from the subsequent appeals and application, this is fair comment.

[59] The *Book*'s literary merits are a matter on which reasonable people can have opinion, even to the extent of calling it "garbage". To the extent that the plaintiff relied on that part of the posted comment in her claim of defamation, I find that the defence of fair comment would apply to that particular criticism of the *Book*.

[60] I will now return to the three elements necessary for defamation and consider whether they are established.

Words about the Plaintiff

[61] Dr. Stewart in her statement of defence and argument argued that her description of the *Book* as "racist garbage" is her opinion of the *Book* and not a reference to Ms. McLean.

[62] The *Book* is not a work of fiction. It is a work of advocacy, expressing and explaining the author's personal opinion and belief informed by her research. It is closely tied to the author. I find that a reasonable person might, from the impugned

words and the context in which they were posted, reasonably infer that the author was racist or that was the intended implication. This element is satisfied.

Written Communication to Third Party (Libel)

[63] The offending statement was the Facebook post describing the *Book* as "racist garbage".

[64] Dr. Stewart in her oral questioning admitted that the Facebook posting was "broadcast to the community at large", so satisfied the element of communication to a third party.

> A. [Dr. Stewart] Well, I don't know if this will answer your question, but I'm posting on Facebook, which is pretty wide broadcast to the community at large. So I don't –
>
> (Stewart Transcript, page 55, lines 14-17)

[65] Dr. Stewart, in the Stewart Affidavit at para. 20, admitted making the offending posts. She went on at para. 21 to explain that she posted on the SCAR Facebook page because "I wanted to reach like-minded individuals who would be concerned about the Book, and the contents of the Book."

[66] This element is satisfied.

Harm to Reputation

[67] Professor Young in her 2011 Article at pages 21–27, set out six factors to consider in deciding whether a reasonable person would think less of the plaintiff because of the disparaging remarks:

> *A. Pre-Publication Knowledge and Opinion about the Plaintiff*
>
> The nature of the plaintiff's pre-existing reputation is clearly

relevant to whether disparaging remarks are defamatory …

(page 21)

...

B. Pre-Publication Knowledge and Opinions about the Defendant

What the audience knows and thinks about the defendant (and about the speaker to whom the words are attributed, where the speaker and defendant are not the same) is also important in determining whether comments tend to injure the plaintiff's reputation. …

(page 23)

...

C. Subject Matter to which the Impugned Words Relate

Prior knowledge and opinions about the subject matter also influence whether a statement is prima facie defamatory. As discussed above, in relation to *Assad* [*Assad v Cambridge Right to Life* (1989), 69 OR (2d) 598 (WL) (SCC)], if the subject matter of the impugned comments is one on which people hold strong opinions or on which much is known, identifying someone with one side of the debate is less likely to be defamatory – even if harsh to unreasonable words are used. This is because a person with greater knowledge or stronger opinions is less likely to change her opinion of the plaintiff. …

(page 24)

...

D. Other Relevant Information about the Audience

In addition to what the right-thinking person knows and thinks about the plaintiff, the defendant, and the subject matter, it is important to consider such factors as education level and resources. The right-thinking person is, by definition, well-informed and possesses common sense, but in specific contexts he may also be especially well-educated and well-informed. …

(page 26)

> ...
>
> *E. The Form in which the Statements Were Expressed*
>
> The form in which a message is expressed in relevant to whether its meaning is defamatory. This is because the form of communication can affect the credibility of its message. …
>
> (page 27)
>
> ...
>
> *F. Comment Versus Fact*
>
> … It is a matter of common sense that statements of fact have more of an effect on reputation than statements of opinion – all things being equal. … Facts are objective, and comment is subjective.
>
> (pages 27– 8)

[68] I will consider these factors and three questions also set out in the 2017 Article in deciding whether the impugned words would diminish the reputation of the plaintiff in the eyes of the reasonable or right-thinking person.

Pre-Publication Knowledge and Opinion about the Plaintiff

[69] The plaintiff was a professional journalist based in Alberta who had followed and reported on alleged mistreatment of Indigenous persons by police officers in the Saskatoon Police Service. Ms. McLean wrote an article titled "Canada's Ugly Side" *Alberta Report* (October 2001) with the caption "The findings of a Saskatchewan probe into racism against Indians may be horrifying indeed." The cover page of the magazine promoted the article with the headline "Racist Cops". The article was about the alleged "Starlight Tours" and referred to the investigation into the death of Neil Stonechild (McLean Affidavit #1 at para. 8, Exhibit 1 and Exhibit 3, page 14).

[70] Ms. McLean, in her Reply Brief of Law dated November 4, 2024 at paras. 11 and 16 acknowledged both "her prior accusations of racism against the SPS

[Saskatoon Police Service]" and that "Ms. McLean's previous writings on 'Racist Cops' may have qualified as defamation against the SPS and specific officers. Those comments may not have been protected under fair comment, but that publication never led to a civil lawsuit to establish that fact." [Emphasis in original].

[71] Ms. McLean later changed her views, writing an article titled "Case (Not) Closed: What really happened to Neil Stonechild that cold night in November 1990? An investigative report that finds that it may not be what most people think." *Western Standard* (December 2004) at 31 (McLean Affidavit #1 at para. 13, Exhibit 2).

[72] Ms. McLean at para. 18 of the McLean Affidavit #1 states, "For ten years of my life, I was focused on determining what happened to Mr. Stonechild." The result of her research was the *Book* (McLean Affidavit #1 at para. 19, Exhibit 3).

[73] The *Book* is not a neutral reporting of events. It takes and advocates a contrarian position on what Ms. McLean knew to be a controversial subject. From her affidavit, the plaintiff is committed to the cause of justice, as she sees it, by exonerating the dismissed police officers (McLean Affidavit #1 at paras. 13–20).

[74] The *Book* disparages other persons, in particular those involved in the investigations and inquiry which found evidence or made findings against the dismissed officers. There are charges of incompetence, corruption and conspiracy made directly and indirectly by innuendo throughout the *Book* (McLean Affidavit #1, Exhibit 3 at pages 7, 25, 37, 53, 77, 116, 120, 151, 256, 258, 260-261, 266, 307, 331 and 337. In listing these references, I excluded quotes in the *Book* to similar effect from third parties.). A few examples will suffice:

> … If any of this is true, both the Royal Canadian Mounted Police and the Saskatchewan Department of Justice would go to shocking lengths to support lies.
>
> But why? Is it possible the sole motivation was chillingly cold, cynical and calculated – to shape the outcome to be publicly and

> politically acceptable?
>
> (page7)
>
> ...
>
> Once they began to interpret the evidence to fit Jason Roy's allegation, it appears they set out simply to prove his allegation, manipulating some evidence to make it inculpatory, and suppressing exculpatory evidence. **This, quite clearly, would constitute criminal misconduct.**
>
> [Emphasis in original]
>
> (pages 76-77)
>
> ...
>
> … This is fabrication of witness evidence by the RCMP [Royal Canadian Mounted Police].
>
> (page 151)
>
> ...
>
> The conduct of RCMP officers during their investigation seems unprofessional, biased, malicious, and even to constitute criminal mischief. Worse, it seems this can also be said for those who followed the lead of the RCMP (those in charge of the inquiry and Police Chief Sabo), as well as those Sask Justice officials who may have directed the RCMP investigation in the first place.
>
> (page 266)

[75] These accusations are arguably defamatory. Defamation against a group can constitute defamation of an individual, if they are identifiable.

Pre-Publication Knowledge and Opinion about the Defendant

[76] The defendant is a tenured Professor at the University of Regina since 2015, working in the Department of Gender, Religion and Critical Studies. Dr. Stewart's Ph.D. thesis, completed in 2011, was titled "Subjects of Prevention: Risk, Threat and Anticipation in Canadian Policing". Her focus is on social justice, the role of settler colonialism and systemic racism in the justice system (Stewart Affidavit at

para. 3). Given her academic credentials, her public statements about racism may carry more weight than that of others.

[77] From her affidavit, the defendant is committed to the cause of justice, as she sees it, by opposing racism (Stewart Affidavit at paras. 3, 16-17, and 31).

Subject Matter to which the Impugned Words Relate

[78] The use of the word 'racist" was as an adjective to the word "garbage", which referred to the *Book*. However, it is reasonable to extend the slur to the plaintiff as author of the *Book*.

Other Relevant Information about the Audience

[79] Since the words were posted on the SCAR website, the primary audience would be people who share SCAR's mission. The Stewart Affidavit at para. 21 states "My understanding of SCAR is that it is a coalition of individuals focused on addressing the impacts of racism and colonialism in Saskatchewan. I wanted to reach like-minded individuals who would be concerned about the Book, and the content of the Book."

The Form in which the Statements were Expressed

[80] The claim alleges defamation by libel (writing). The impugned words were posted on the SCAR website. While available to the general public, this website would likely have a more limited audience than a daily newspaper. Reasonable people likely discount such posts, since they know they may be posted with little thought or reflection and with no editorial oversight. They may be more reflective of emotion than reason.

Comment versus Fact

[81] The impugned words expressed subjective comment, rather than

objective fact.

[82] With this review of the factors in mind, I turn next to the three questions recommended by Professor Young in her 2011 Article to analyse whether words are defamatory.

Whether, as a Matter of Law, the Impugned Words can Bear the Defamatory Meaning Alleged?

[83] The words "racist garbage", in the context in which they appeared, can bear the defamatory meaning, namely that the plaintiff is a racist or promotes racism.

[84] "Racist" is defined as "a person who is racist: someone who holds the belief that race … is a fundamental determinant of human traits and capacities and that racial differences produces an inherent superiority of a particular race" online: *Merriam-Webster Dictionary*.

[85] The Parliament of Canada and the Legislature of Saskatchewan have legislated against racism and other forms of discrimination in the *Canadian Human Rights Act*, RSC 1985, c H-6 and *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2. Both Parliament and the Saskatchewan Legislature enacted earlier, landmark laws against discrimination, including on the basis of race, in the *Canadian Bill of Rights*, SC 1960, c 44, s 1, and *The Saskatchewan Bill of Rights Act, 1947*, SS 1947, c 35 (since rep).

[86] Saskatchewan's motto is "*Multis e gentibus vires*", which means "From many people strength", celebrates diversity. The motto appears on the Saskatchewan Coat of Arms granted by Royal Proclamation in 1986.

[87] Right-thinking people oppose racism and other forms of discrimination. I accept that being called a racist is defamatory, if untrue.

What the Impugned Words Mean?

[88] The obvious meaning of the words "racist garbage" is that the *Book* is racist or promotes racism.

[89] It does not require any great leap to connect the disparagement of the *Book* to its author. If a reasonable person believed that the *Book* was racist, they might then believe that the author was as well.

Whether People Would Tend to Think Less of the Plaintiff Because of the Publication?

[90] The 2011 Article at page 21 states "The nature of the plaintiff's pre-existing reputation is clearly relevant to whether disparaging remarks are defamatory, as LeBel J. noted in *WIC Radio*." [Footnote omitted]. The 2011 article at page 31 cautions, "Since people do not necessarily take statements of fact or opinion at face value, it is wrong simply to assume that disparaging statements have a tendency to harm a plaintiff's reputation."

[91] Disparagement of a person might not be defamatory if the reasonable person would not be influenced in their opinion of the plaintiff by the disparaging words. That might occur for various reasons. Even if the words would ordinarily be considered defamatory, the disparaging remarks might be unlikely to be believed, because they were so outlandish or because the source was not credible. The disparagement might also not be defamatory because the plaintiff did not have a good reputation to begin with, so the disparagement would have no adverse effect. Put another way, would a reasonable and informed person think any less of the plaintiff than they did before hearing the disparaging remarks?

[92] In this case, the argument as I understand it is that the plaintiff, having disparaged or defamed others in published works, including on the same charge of

racism, has diminished her own reputation. If so, then a defamation against the plaintiff of this kind would not lessen her reputation. The saying "those that play with fire can expect to be burned" might sum up this argument.

[93] While there is merit to this argument, after consideration of relevant factors, I find it more likely than not the publication of the impugned words harmed the plaintiff's reputation. "Racist" is a highly charged word today. It is not an insult to be thrown around carelessly, as occurred here.

[94] This element is satisfied.

Conclusion on Defamation

[95] I find that the elements required to establish defamation are met. This means that a *prima facie* defamation is established. The next step is to ask whether the defendant has proved any of the possible defences and thereby escaped liability?

Defences

[96] In *Grant* at paras 57 – 58, then Chief Justice McLachlin for the Supreme Court discussed the balancing of the individual's right to free expression against the individual's right to protect their reputation in explaining why the law limits defences to defamation.

> [57] I conclude that media reporting on matters of public interest engages the first and second rationales of the freedom of expression guarantee in the *Charter* [*Canadian Charter of Rights and Freedoms*]. The statement in *Hill* [*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130] (at para. 106) that "defamatory statements are very tenuously related to the core values which underlie s. 2(*b*)" must be read in the context of that case. It is simply beyond debate that the limited defences available to press-related defendants may have the effect of inhibiting political discourse and debate on matters of public importance, and impeding the cut and thrust of discussion necessary to discovery of the truth.

> [58] This brings me to the competing value: protection of reputation. Canadian law recognizes that the right to free expression does not confer a licence to ruin reputations. In assessing the constitutionality of the *Criminal Code*'s [RSC 1985, c C-46] defamatory libel provisions, for example, the Court has affirmed that "[t]he protection of an individual's reputation from wilful and false attack recognizes both the innate dignity of the individual and the integral link between reputation and the fruitful participation of an individual in Canadian society": *R. v. Lucas*, [1998] 1 S.C.R. 439, at para. 48, *per* Cory J. This applies both to private citizens and to people in public life. People who enter public life cannot reasonably expect to be immune from criticism, some of it harsh and undeserved. But nor does participation in public life amount to open season on reputation.

Truth (Justification)

[97] Dr. Stewart in her Statement of Defence and in argument did not claim justification by truth. There is no evidence that the plaintiff is a racist. I find therefore that any statement, whether express or by implication, that the plaintiff was a racist is false. This possible defence is not established.

Fair Comment

[98] It is not fair comment to imply that the author of an opinion piece is racist simply because you have a different view of the subject, even if your view is correct. This defence is not established.

Responsible Communication

[99] The Supreme Court in *Grant* at paras 98 and 126 formulated a new defence of responsible communication with two essential elements: public interest; and responsibility. The defendant must establish two elements:

(1) The publication was on a matter of public interest; and

(2) The defendant was diligent in trying to verify the allegation, having regard to all relevant circumstances.

[100] As I understand it, Dr. Stewart argues a form of responsible communication in that her life work is opposition to racism. The Stewart Affidavit at para. 31 states:

> 31. … As a recognized expert in the field of colonialism and policing, it was not only my right to comment on the Book, it was my responsibility. It was also my obligation as a responsible person living on Treaty 4 lands.

[101] This defence fails on the failure to establish the second element of diligence in verification. The communication was reckless, not responsible.

[102] Dr. Stewart made the post without reading the *Book* or at least not in full. Further, Dr. Stewart put forward no evidence to show either that the *Book* or Ms. McLean was racist. This defence fails.

Conclusion on Defences to Defamation

[103] I conclude that the defendant has not established any defence to the established defamation. She is therefore found liable on the tort of defamation.

(2)(b) Has the plaintiff established liability on the basis of the tort of direct inducement of breach of contract?

Elements

[104] The Statement of Claim in paras. 19 and 20 similarly describe the causes of action of inducing breach of contract and intentional interference with contractual relations as based upon the cancellation of the book signing venues.

[105] In *Boyd v Eacom Timber Corporation*, 2012 SKQB 226 at paras 156–163, [2013] 1 WWR 569, Dawson J. summarized the elements required to establish the

tort of inducing breach of contract by direct interference. This tort requires proof of five elements:

(1) The existence of a contract;

(2) That the defendant had knowledge of the contract;

(3) That the defendant intended to procure breach of the contract;

(4) That the defendant directly induced a third party to break the contract; and

(5) That the plaintiff suffered actual damages from the breaking of the contract.

Existence of a Contract

[106] Dr. Stewart argued that there were no actual contracts, just bookings. I find otherwise. Ms. McLean made bookings with the book signing venues. Those bookings were confirmed in writing (McLean Affidavit #2; and Reply to Undertakings of Candis McLean filed May 2, 2025).

[107] These bookings constituted a contract. There was a meeting of minds on the terms. There was certainty, with the date and place identified. There was consideration in a promise to pay the identified rental amount. The bookings were recording and confirmed in writing. This element is satisfied.

Defendant Knew of the Contract

[108] Dr. Stewart must have known of the contracts. Why else would she have contacted and encouraged others to call the venues asking them to cancel the scheduled bookings? She provided these others with names and phone numbers to call. This element is satisfied.

Intention to Procure Breach of Contract

[109] The evidence is clear that Dr. Stewart personally called at least one venue and likely other venues. She also encouraged others to do the same with the intention of procuring cancellation of the bookings. This element is satisfied.

Directly Induced Third Party to Break Contract

[110] Those efforts to procure breach of the contracts were successful. There was no other reason for the cancellations. This element is satisfied.

Plaintiff Suffered Actual Damages

[111] The plaintiff provided proof of damages, both actual and estimated, in the McLean Affidavit #1 at para. 53 and Exhibit 14. This element is satisfied (I will consider what claimed damages are actually compensable under the heading "Damages" below.). This element is satisfied.

Defence of Justification

[112] In *Johnson v BFI Canada Inc*., 2010 MBCA 101 at paras 54 and 78, 326 DLR (4th) 497, the Manitoba Court of Appeal recognized the defence of justification to a claim based upon inducement of breach of contract. The Court at para. 78 quoted from Philip H. Osborne, *The Law of Torts*, 3d ed (Toronto: Irwin Law Inc., 2007) on what constitutes justification:

> 78 In considering the defence of justification, the position of the defendant who is accused of unjustifiably inducing a breach of contract is central to the analysis. See Philip H. Osborne, *The Law of Torts*, 3d ed. (Toronto: Irwin Law Inc., 2007) (at p. 316):
>
> > Justification is not susceptible of precise or predictable guidelines. The situations in which the issue arises are so diverse and fact-specific that each requires a careful

> examination of the individual circumstances to determine whether or not the motive, object, and reason for inducing a breach of contract should excuse the defendant.

[113] I reject any defence of justification. In so far as the defendant argued that she was morally compelled or justified to procure breach of the contracts, I find there was no legal justification.

Conclusion

[114] This cause of action is established.

(2)(c) Has the Plaintiff Established Liability on the Basis of Intentional Interference with Economic Relations?

[115] In *A.I. Enterprises Ltd. v Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 SCR 177 [*A.I. Enterprises*] the Supreme Court of Canada summarized the elements required to establish the tort of intentional interference with economic interests by unlawful means. Writing for the Supreme Court, Cromwell J. cautioned at para. 5 that "the tort should be kept within narrow bounds" and at para. 35 that it should be viewed "as one of narrow scope".

[116] The Ontario Court of Appeal applied *A.I. Enterprises* in *Grand Financial Management Inc. v Solemio Transportation Inc.*, 2016 ONCA 175, 395 DLR (4th) 529; leave to appeal to SCC dismissed, 2016 CanLII 58416.

[117] In *Taheri v Buhr*, 2021 SKCA 9 at para 68, 456 DLR (4th) 306, then Chief Justice Richards, writing for the Court of Appeal for Saskatchewan, cited *A.I. Enterprises* in his statement of the tort.

> [68] In my view, the Chambers judge made no bottom-line error in deciding as he did. The tort of unlawful interference with economic interests is committed only in third-party situations where the defendant commits an unlawful act against a third party and that act intentionally causes economic harm to the

> plaintiff. See: *A.I. Enterprises* at para 5, and *Saskatchewan Financial Services Commission v Mallard*, 2014 SKCA 78, 438 Sask R 316.

[118] This tort requires proof of three elements:

> (1) The defendant committed an unlawful act;
>
> (2) against a third party; and
>
> (3) that intentionally caused economic harm to the plaintiff.

[119] The unlawful act must be conduct that is contrary to law, such as a criminal offence. The plaintiff does not identify any public offence committed by Dr. Stewart in protesting against the *Book*. There is little evidence about the content of the calls to the booking venues. On the evidence, I do not find an unlawful act against a third party. The calls to the booking venues appear to have been lawful attempts to persuade, not to criminally intimidate or threaten. Dr. Stewart did not break any law in protesting against the *Book*.

[120] While these rights existed long before the *Canadian Charter of Rights and Freedoms* [*Charter*], s. 2 of the *Charter* guarantees fundamental freedoms, including in clause 2(b) freedom of expression.

> **Fundamental freedoms**
>
> 2 Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> (c) freedom of peaceful assembly; and
>
> (d) freedom of association.

[121] Dr. Stewart was engaged in lawful public protest. Public protest is protected in Canada. Of course, s. 2 of the *Charter* protected both the plaintiff's right to publish and promote the *Book* and the defendant's right to lawfully protest against the *Book*.

[122] Since this element is not satisfied, the cause of action of intentional interference with economic relations cannot succeed.

(3) If so, has the Plaintiff Proved Damages?

[123] The Statement of Claim identifies damages under the following headings: general; consequential; aggravated; and punitive. The plaintiff, in her Brief of Law dated May 28, 2024, sought damages of $165,642.63, comprised of: general damages of $75,000; special damages of $45,642.63; aggravated damages of $25,000; and punitive damages of $20,000.

[124] In *Houseman v Harrison*, 2020 SKQB 36, Elson J. explained the difference between these categories of damages in the context of awarding damages for defamation.

> [28] The overall purpose of a general damages award is, to the extent possible, to make good the losses sustained by a plaintiff and allow for meaningful recovery going forward. As observed in *Halsbury's Laws of Canada, Defamation*, 1st ed (Markham: LexisNexis, 2018) at para HDE-192, the purpose "is to compensate the plaintiff for loss of reputation and injury to the plaintiff's feelings, console the plaintiff and vindicate the plaintiff so that the plaintiff's reputation may be re-established." This necessarily calls for a contextual assessment of all the circumstances.
>
> ...
>
> *Special Damages: Law*
>
> [43] In defamation cases, the meaning of the term "special damages" must not be confused with the meaning of the same

term in the assessment of damages for personal injury. While the terms are identical in wording, their respective meanings differ. In personal injury awards, "special damages" refer to the specific out-of-pocket expenses that a plaintiff incurs, as a result of the injury, up to the date of trial. Other calculable damages, such as for lost past and future income or future cost of care, if claimed, are regarded as "pecuniary damages". Conversely, in assessing damages for defamation, the term "special damages" covers all calculable damages from the publication of the offending words, including past pecuniary losses and any out-of-pocket expenses caused by the defamatory words.

...

Aggravated Damages: Law

[55] Aggravated damages are another form of compensatory damages. In this respect the award is to compensate a defamed plaintiff for the malice exhibited in the defamation and the surrounding circumstances. In *Hill* [*Hill v Church of Scientology Toronto*, [1995] 2 SCR 1130], Cory J. described the nature of such an award at paras. 188-190:

> 188 Aggravated damages may be awarded in circumstances where the defendant's conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. The nature of these damages was aptly described by Robins J.A. in *Walker v. CFTO Ltd.* [(1987) 59 OR (2d) 104], supra, in these words, at p. 111:
>
> > Where the defendant is guilty of insulting, high-handed, spiteful, malicious or oppressive conduct which increases the mental distress — the humiliation, indignation, anxiety, grief, fear and the like — suffered by the plaintiff as a result of being defamed, the plaintiff may be entitled to what has come to be known as "aggravated damages."
>
> 189 These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct. Like general or special damages, they are compensatory in nature. Their assessment requires consideration by the

> jury of the entire conduct of the defendant prior to the publication of the libel and continuing through to the conclusion of the trial. They represent the expression of natural indignation of right-thinking people arising from the malicious conduct of the defendant.
>
> 190 If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff. See, for example, *Walker v. CFTO*, supra, at p. 111; *Vogel* [*Vogel v Canadian Broadcasting Corp.*, [1982] 3 WWR 97], supra, at p. 178; *Kerr v. Conlogue* (1992), 1992 CanLII 924 (BC SC), 65 B.C.L.R. (2d) 70 (S.C.), at p. 93; and *Cassell & Co. v. Broome*, supra, at pp. 825-826. The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. See *Taylor v. Despard*, supra, at p. 975 [1956 CanLII 124 (ON CA), [1956] OR 963].

[56] As for the factors a court can consider in assessing aggravated damages, Cory J. identified the following seven considerations:

> a. whether there was a withdrawal of the libellous statements and an apology tendered;
>
> b. whether there was a repetition of the libel;
>
> c. whether the defendant acted in a calculated manner to deter the plaintiff from proceeding with the libel action;
>
> d. whether there was a prolonged, hostile cross-examination of the plaintiff;
>
> e. whether there was a plea of justification which the defendant knew was bound to fail;
>
> f. the general manner the defendant presented its case;

> g. the conduct of the defendant at the time of the publication of the libel.
>
> ...
>
> *Punitive Damages: Law*
>
> [64] Punitive damages, generally, are awarded in circumstances where the defendant's conduct is so malicious, oppressive or high-handed that the court's sense of decency is offended. Unlike other heads of damages, a punitive award is not compensatory. Its principal purpose is to deter the defendants and others from acting in the manner that has so offended the court.
>
> [65] Even so, it must be remembered that compensatory damages may, by themselves, act as a sufficient deterrent. This becomes particularly important in defamation actions. At para. 196 of the judgment in *Hill*, Cory J. observed that, in libel cases, punitive damages should be awarded where the combined awards of general and aggravated damages is "insufficient to achieve the goal of punishment and deterrence". That said, this is not an absolute rule. Cory J. subsequently qualified this observation, at para. 199, with the following comment:
>
> > 199 Punitive damages can and do serve a useful purpose. But for them, it would be all too easy for the large, wealthy and powerful to persist in libelling vulnerable victims. Awards of general and aggravated damages alone might simply be regarded as a licence fee for continuing a character assassination. The protection of a person's reputation arising from the publication of false and injurious statements must be effective. The most effective means of protection will be supplied by the knowledge that fines in the form of punitive damages may be awarded in cases where the defendant's conduct is truly outrageous.

[125] I will consider damages for each cause of action.

Damages for Defamation

[126] The 2017 Article at p. 623 states "Damage awards are meant to reflect the conduct of the defendant and the extent of reputational harm to the plaintiff."

[Footnote omitted]. The 2017 Article at p. 616 states that "general damages are presumed from a finding of liability."

> In every case in which there was an award of damages, there was an award of general damages. This is expected given that general damages are presumed from a finding of liability. General damages constitutes a majority of total damage awards.

[127] In *Rubin v Ross*, 2013 SKCA 21 at para 70, [2013] 7 WWR 299 [*Rubin*], Jackson J.A. for the Court of Appeal for Saskatchewan set out a non-exhaustive list of factors to consider in determining damages for libel.

> [70] In *Church of Scientology*, [*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130] the Court endorsed the principles articulated in *Gatley on Libel and Slander*, 8th ed., London: Sweet & Maxwell, 1981 at pp. 592-593 as the basis upon which damages for libel should be assessed. The trier of fact is entitled to take into consideration all of the circumstances, including in particular: (i) the conduct of the plaintiff, his position and standing; (ii) the nature of the libel; (iii) the mode and extent of publication; (iv) the absence or refusal of any retraction or apology; and (v) the whole of the defendant's conduct from the time when the libel was published down to the very moment of the verdict. These general principles subsume many others, referred to in the jurisprudence. …

[128] These factors are fully reviewed above, except for retraction or apology. The parties disagreed over whether there was any retraction or apology.

[129] Dr. Stewart, in her Statement of Defence at para. 11 and in argument, argued that she was prepared to offer a clarification, but "[s]uch amends were essentially rejected by the Plaintiff." A defendant does not require the agreement of the plaintiff to make a retraction or apology. A conditional offering does not amount to a retraction or apology that would affect an award of damages.

[130] A prompt retraction and apology may justify an award of nominal damages only, since any harm done was mitigated. In this case, there was no retraction

or apology for the defamation. On the contrary, the Stewart Brief of Law dated and filed October 7, 2024 – long after 2016 events – is unapologetic and unrepentant. For example, the Brief at paras. 100 and 134 stated:

> 100. Given Dr. Stewart's professional background, personal experience with the Truth and Reconciliation Commission of Canada, and demonstrated commitment to the reconciliation process, she has a moral obligation to combat racism wherever she sees it. In supporting the protest and cancellations of the Book signing, Dr. Stewart was acting in accordance with this moral obligation. …
>
> …
>
> 134. … At all material times, Dr. Stewart had the best interests of the public in mind and was advocating for better treatment of Indigenous peoples in Canada. Her conduct ought to be commended not punished. …

[131] The parties, in their briefs of law, referred to decisions outside Saskatchewan. In determining appropriate damages, Saskatchewan Courts are usually guided by decisions of Saskatchewan Courts. Saskatchewan Courts have considered making awards of damages in the following defamation cases.

[132] In *Stilborn v Dunn*, 2024 SKKB 223, Norbeck J. awarded general damages totalling $10,000 to two plaintiffs and pre-judgment interest for eight years. Claims for special and aggravated damages were dismissed. The defamation consisted of letters from an insurance broker to prospective insurers describing the plaintiffs as a bad risk for insurance. There was no retraction or apology.

[133] In *Moen v Mackay*, 2024 SKKB 206, Sinclair J. awarded general damages of $5,000 against each of five defendants. Claims for special, aggravated and punitive damages were dismissed. The defamation consisted of a single post by volunteers with a dog rescue organization falsely accusing the plaintiffs of theft of the dogs. There was no retraction or apology, but the post was removed after two days.

[134] In *Zwarych v Lalonde*, 2020 SKQB 68, Scherman J. awarded general damages of $10,000. The defamation was by YouTube postings which falsely alleged the defendant Royal Canadian Mounted Police [RCMP] officer had sexually assaulted the plaintiff, maliciously prosecuted the plaintiff, engaged in unprofessional conduct and obstruction of justice and perjury. The plaintiff retracted some of his allegations at trial and apologized, blaming his mental illness. He still claimed the police has harassed him without cause.

[135] In *Canadian Broadcasting Corporation v Whatcott*, 2016 SKCA 17, 395 DLR (4th) 278; reversing 2015 SKQB 7, 380 DLR (4th) 159, the Court of Appeal reversed the award of aggravated damages and reduced the award of general damages to $1,000. The defamation was a nationally televised news segment which falsely claimed the plaintiff advocated killing homosexuals.

[136] In *Gourlay v Wallace*, 2018 SKQB 307, Zuk J. dismissed a claim for defamation where, although the plaintiff proved the three elements for defamation, the plaintiff failed to prove any damages.

[137] In *Graham v Purdy*, 2017 SKQB 42, Labach J. awarded general damages of $50,000 and aggravated damages of $50,000. The defamation consisted of newspaper articles falsely alleging medical malpractice by the plaintiff surgeon. There was no retraction or apology published.

[138] In *Tsatsi v College of Physicians and Surgeons of Saskatchewan*, 2016 SKQB 389; upheld 2018 SKCA 53; leave to appeal dismissed 2019 CanLII 18826 (SCC), Pritchard J. dismissed the claim in defamation on summary judgment, applying the defences of justification and qualified privilege. The plaintiff radiologist alleged defamation because of critical comments in a professional competency review.

[139] In *Hope v Gourlay,* 2015 SKCA 27, 384 DLR (4th) 235, the Court of Appeal upheld the striking of a claim in defamation on the basis that the words spoken at an annual general meeting of the Hamlet of Turtle Lake, Saskatchewan were not defamatory. In doing so, Richards C.J.S., writing for the Court at para. 40, stated "[i]n other words, if the defamatory effect of otherwise innocuous or innocent words turns on extrinsic facts, then those facts must be pleaded…"

[140] In *Taylor v Lamon,* 2013 SKQB 144, 419 Sask R 38, *Taylor v St. Denis,* 2013 SKQB 145. 419 Sask R 92, and *Taylor v Cox,* 2013 SKQB 146, 419 Sask R 98, Currie J. dismissed defamation claims on the basis they were not proven. If they had been proven, he would alternatively have applied the defence of qualified privilege to dismiss the claims. The alleged defamatory remarks were statements made about the competency of a candidate in exchanges between union members during a union election. No costs were awarded.

[141] In *Rubin*; reversing 2010 SKQB 249, [2010] 12 WWR 271; leave to appeal to dismissed 2013 CanLII 51858 (SCC), the Court of Appeal held that the trial judge erred by finding the defamatory statements were protected by qualified privilege and awarded general damages of $100,000 and costs of the action, but not the appeal. The defamatory statements, accusing the plaintiff of harassment, were posted on the Union's website and published in posters at the University where the plaintiff worked. In deciding upon the damage award, Jackson J.A. for the Court of Appeal at para. 83 commented that "the highest award granted in this Province remains *Duke v. Puts*, 2001 SKQB 130, 204 Sask R 130, aff'd 2004 SKCA 12, 241 Sask R 187, at $100,000 general damages and $150,000 aggravated damages."

[142] In *Palen v Dagenais,* 2013 SKQB 39, 413 Sask R 10, Gabrielson J. granted summary judgment for the plaintiff in a defamation action ordering a permanent injunction and awarding general damages of $10,000. The defamatory statements were

made in a false complaint to the RCMP that the plaintiff RCMP officer had attempted to murder the defendant by tasering him during a vehicle inspection. In declining to award aggravated or punitive damages, Gabrielson J. wrote at para. 19:

> [19] After considering all of the factors referred to above, in my opinion an award of compensatory, general damages in the amount of $10,000 is appropriate in the circumstances of this case. I do not consider this to be a case where aggravated or punitive damages are appropriate for the following reasons:
>
> (1) Aggravated damages are to be awarded in situations where the defendant's conduct is particularly high-handed or malicious and increases the mental distress of the plaintiff. See *Hill v. Church of Scientology of Toronto*[[1995] 2 SCR 1130], *supra*, at para. 189.
>
> (2) Punitive damages are awarded in exceptional cases and are intended to deter the defendant and others from such conduct. See *Vellacott v. Laliberte* [2012 SKQB 23, 390 Sask R 120], *supra,* at para. 19.
>
> (3) Even in situations where there has been a default of defence and allegations of malice have been raised by the plaintiff, aggravated or exemplary damages and punitive damages are not always awarded if it is established that the effect of the publication of the libellous material was minimal. In the case of *McElroy v. Cowper-Smith, supra,* [[1967] SCR 425] Hall J. stated at para. 4:
>
> > 4 My brother Spence has indicated his opinion "that the ordinary hard-headed businessmen might be little affected by these statements from someone he knew to be of unstable character". I would be more inclined to say that no reasonable businessman would be likely to be affected in his dealings with the respondents by statements coming from the source which they did in this case, and as I feel that reasonable businessmen constitute the most important source of potential clientele for both the respondents, I think that their exclusion from the persons likely to be affected by the alleged libels is a factor which

> should have been taken into account as a mitigating circumstance negating an award of punitive or exemplary damages.
>
> It is my opinion that the effect of the publication by Dagenais in this case would have been minimal because members of the RCMP or the Commission would not have placed any significance in respect to Palen's reputation based upon the source of the allegations. Although Dagenais's conduct was malicious, the impact on Palen falls short of that needed to justify a separate award for aggravated damages.
>
> …

[143] In *Vellacott v Saskatoon StarPhoenix Group Inc.*, 2012 SKQB 359, 404 Sask R 160, Danyliuk J. dismissed a claim in defamation arising from two newspaper articles alleging abuse of mailing privileges by the plaintiff Member of Parliament. The Court applied the defence of fair comment.

[144] In *Vellacott v Laliberte*, 2012 SKQB 23, 390 Sask R 120, Popescul, C.J.Q.B., awarded general damages of $5,000 to the plaintiff Member of Parliament. The defamation was made during a live broadcast where the plaintiff Member of Parliament was answering questions. The defendant asked "[w]ere you also removed from North Park Church because you were charged with sexual assault on your secretary?" (para. 1). The Court found there was no factual basis for the question. The Court declined to award aggravated or punitive damages (paras. 34 – 38).

[145] In *D.N. v T.T.*, 2011 SKQB 58, 368 Sask R 253, Whitmore J., as he then was, awarded general damages of $15,000 and aggravated damages of $5,000 for defamation where the defendant had falsely claimed that her plaintiff brother had sexually molested her as a child. The false allegation appeared motivated by a dispute over division of their mother's estate. The defendant maintained the claim at the defamation trial.

[146] In *Buckle v Caswell*, 2009 SKQB 363, 341 Sask R 281; aff'd. 2010 SKCA 116, 362 Sask R 141, Rothery J. ordered an injunction prohibiting further defamation and awarded general damages of $50,000 and fixed costs of $5,000. The defendant used her blog to make defamatory statements against the plaintiff Crown Prosecutor, falsely alleging he had been disbarred for embezzlement, used illegal drugs and was involved in illegal drug trafficking.

[147] In *Kurtenbach v Lalach*, 2008 SKQB 20, Acton J. awarded general damages of $15,000 and fixed costs at $3,000 for defamation of the plaintiff RCMP officer. The defamatory statement spoken to a third party falsely alleged that the married plaintiff had engaged in inappropriate sexual relationships with young women in the town. Acton J. at para. 29 described the actions of the defendant:

> [29] The actions of the defendant were clearly designed to damage the reputation, the career and the stability of the home life of the plaintiff. From the evidence provided by the defendant, it is clear that the slanderous statement made by Lalach to Henry Bender was part of a vicious and malicious attempt to have the plaintiff removed from the R.C.M.P. …

[148] In *Benko v Scott*, 2007 SKQB 176, 295 Sask R 202, Pritchard J. awarded general damages of $7,500 with pre-judgment interest. The defamation was made in anonymous letters written by the defendant who falsely told co-workers that the plaintiff was fired for employee theft. The defendant admitted doing so and offered a retraction on the eve of trial.

[149] In *Strudwick v Lee*, 2006 SKQB 397, 284 Sask R 283; aff'd 2007 SKCA 11, 289 Sask R 269; leave to appeal to dismissed, 2007 CanLII 27568 (SCC), McMurtry J. awarded general damages of $10,000, declining to award aggravated or punitive damages. The defamation was in letters written by the defendant to government officials falsely impeaching the plaintiff's honesty and credibility. The defendant did

so as apparent retribution for rejection of his re-zoning application. He blamed the plaintiff as municipal administrator, even though it was not her decision.

[150] In *McCaslin v Biden*, 2002 SKQB 525, 228 Sask R 63, Zarzeczny J. awarded general damages of $25,000 and aggravated damages of $10,000 and solicitor/client costs. The defamation was in letters written to family, friends and employers of the plaintiff after the plaintiff ended their close relationship. The letters falsely alleged that the plaintiff was untrustworthy, mentally unstable, a drug addict, alcoholic, and sexually promiscuous.

[151] In *Igor v Ghajar*, 2005 SKQB 374, Goldenberg J. found defamation, but held that no damages had been proved. If there were damages, he would have awarded one dollar (The plaintiff had asked for damages of $250,000.). The alleged defamation was that the defendant told the police the plaintiff was intending to leave the country, resulting in the plaintiff being detained and his passport being seized.

[152] In *Ha v M.H.*, 2004 SKQB 34, 247 Sask R 18; aff'd 2004 SKCA 172, 257 Sask R 69, Sandomirsky J. dismissed an action for libel. The Court applied the defence of qualified privilege where the alleged libel was the defendant's reporting to the regulatory authority of what she believed to be inappropriate touching by the plaintiff.

[153] In *Roth v Aubichon* (1998), 171 Sask R 271 (QB), Noble J. dismissed an action in defamation, finding the offending words, spoken at a meeting of the Moose Jaw local of the Metis Nation of Saskatchewan, were not defamatory. No costs were ordered.

[154] In *Woldu v Desta* (1998), 170 Sask R 18 (QB), Wimmer J. awarded general damages of $1,000 and taxable costs. Slander was found where the defendant had falsely told co-workers that the plaintiff had a criminal history. The Court found

little damage to the plaintiff's reputation, noting that former co-workers who testified spoke highly of the plaintiff.

[155] In *Symons v Toronto Dominion Bank*, [1997] 9 WWR 132 (Sask QB), Gunn J. struck a defamation claim on the basis that it did not disclose a reasonable cause of action. The offending words were spoken by the defendant bank manager to the plaintiff in demanding payment of an outstanding loan. The claim described this as "character assassination" and said it had embarrassed the plaintiff in front of his family and accountant. Costs were ordered against the plaintiff.

[156] While not suggesting the plaintiff is to blame, she knew she was courting controversy in writing and promoting the *Book*. She made disparaging remarks against others in the *Book* and in other publications which would receive more public attention than the offending post. These circumstances are relevant to her own reputation.

[157] The defamation was made in a single post and was an indirect attack on the plaintiff. Such posts are often made in haste and not well-considered. While defamatory, given the manner of publication, a reasonable person would discount it to some degree. Had Dr. Stewart made a prompt retraction and apology, I might not have awarded damages. However, in this case, I find that a nominal general damage award is appropriate to deter others who might be tempted to be equally reckless in their language.

[158] The plaintiff claims her health was adversely affected by the controversy (McLean Affidavit #1 at para. 54). The only evidence is a doctor's note at Exhibit 15 of the McLean Affidavit #1. That short note, written on February 15, 2017, simply repeats the plaintiff's own report of "stress surrounding her recent book fiasco" and goes on to state that the premature ventricular contractions "are sometimes a normal phenomenon of the aging process." This evidence falls far short of proving damages.

[159] Having regard to the facts and law reviewed above, I award general damages of $1,000.

[160] I make no award for special, aggravated or punitive damages. As the cases reviewed above show, such damages are not usually awarded for defamation. The fact of this case do not warrant such award.

Damages for Inducing Breach of Contract

[161] The plaintiff, in the McLean Affidavit #1 at para. 53 and Exhibit 14 claims $8,142.63 in expenses and losses incurred as a result of the cancelled book signings, comprised of: $3,600 for her time; $2,092.02 in lost book sales; (total $5,692.02); and $2,450.61 for out-of-pocket costs.

[162] I award general damages of $3,000 and $2,450.61 as pecuniary damages for the out-of-pocket expenses for a total award of $5,450.61.

[163] I decline to award compensation for the lost time, because Ms. McLean was not then earning a wage or salary. She was attempting to promote sales of the *Book* and was successful in doing so. I decline to award compensation for the lost book sales, since it is an estimate and again, what sales were lost by the cancelled book signings, were likely more than made up in later sales from the publicity generated by the protests. The aim of the book tour – to promote the *Book* – was achieved, though not in the manner she had planned.

[164] I decline to award additional damages in the form of aggravated or punitive damages.

Intentional Interference with Economic Relations

[165] This cause of action was not established, so there is no award of damages. If I had found otherwise, the damages awarded for inducing breach of contract would

apply. In other words, there would be no additional damage award.

Conclusion on Damages

[166] The plaintiff is awarded damages in the amount of $6,450.02, comprised of: $1,000 general damages for defamation; $3,000 general damages for inducing breach of contract; and $2,450.02 actual damages resulting from the tort of inducing breach of contract.

[167] There is no award for other special damages or for aggravated or punitive damages, which are not warranted on the facts of the case.

Pre-judgment Interest

[168] *The Pre-Judgment Interest Act*, SS 1984-85-86, c P-22.2, ss 5(3) allows for an award of pre-judgment interest in limited circumstances:

> **Award of interest**
>
> **5**(1) The court shall award interest on a judgment for damages or for the recovery of a debt calculated in accordance with this Act.
>
> (2) The court shall not award interest:
>
> (a) on that part of a judgment that represents pecuniary loss arising after the day of judgment and that is identified by the court;
>
> (b) on interest awarded under this Act;
>
> (c) on exemplary or punitive damages;
>
> (d) on an award of costs in the action;
>
> (e) on money, and interest on that money, borrowed by a party in respect of damages escribed in subsection 6(2);
>
> (f) on money that is paid into court and accepted in satisfaction of a claim;
>
> (g) on a judgment given on consent, unless agreed to by the parties;

> (h) if there is an agreement between the parties respecting interest; or
>
> (i) if the payment of interest is otherwise provided by law.
>
> (3) If it is proven to the satisfaction of the court that it is just to do so having regard to the circumstances, the court may, with respect to the whole or any part of the amount for which judgment is given, refuse to award interest under this Act or award interest under this Act at a rate or for a period, or both, other than a rate or period determined pursuant to section 6.

[169] The plaintiff shall be entitled to pre-judgment interest on the damage award from April 10, 2017 (date of issuance of Statement of Claim) to the date of judgment.

(4) What, if any, Award of Costs Should be Made?

[170] The plaintiff sought solicitor-client costs. Such damages are rarely awarded. The facts of this case do not justify such an extraordinary award.

[171] The plaintiff has been substantially successful and is entitled to an award of costs on Column 2 of the *Tariff of Costs*.

Neil D. Robertson J.
D.N. ROBERTSON