IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pan v. Gao*,
2018 BCSC 2137

Date: 20181130

Docket: S1611795

Registry: Vancouver

Between:

Miaofei Pan

Plaintiff

And

Bing Chen Gao

Defendant

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for Plaintiff:	L.D. Ridgedale, S.J. Marescaux, N. Yan
The Defendant, appearing in person:	Bing Chen Gao
Place and Date of Trial:	Vancouver, B.C. October 4-6, 10-13, October 16 & 17, 2017, November 14, 2017, and February 16, 2018

Place and Date of Judgment: Vancouver, B.C.

November 30, 2018

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[1] The plaintiff, Miaofei Pan, alleges that the defendant, Bing Chen Gao, published a series of Articles between December 2016 and February 2017, which defamed him. The plaintiff sues for defamation and seeks general, aggravated and punitive damages, and a permanent injunction. The defendant denies that the statements are defamatory, but if they are found to be defamatory, he submits that he is protected from liability as the impugned statements are either true, responsible communication or the result of fair comment.

[2] The plaintiff is a businessman who immigrated to Canada from China. He held volunteer leadership positions in three charitable associations well known in the Chinese-Canadian community (the “Community Associations”).

[3] The defendant is a journalist and blogs under the pseudonym “Hebian Huang”. He worked as a journalist in China for 20 years before immigrating to Canada in 2004. He currently holds a number of positions with Chinese language media outlets. However, the published statements at issue in this case were contained in publications he wrote in his own capacity.

[4] The plaintiff and the defendant had never met or communicated prior to trial.

[5] The allegedly defamatory statements are contained in Articles on the defendant’s social media account and are written in Chinese (English translations were entered as exhibits at trial together with the Article in the original Chinese). The defendant represented himself during the trial. Neither party speaks English so their testimony was translated by an interpreter, hired by the plaintiff. Indeed, the entire trial was translated by the same interpreter.

[6] The defendant does not dispute that he wrote and posted the statements on WeChat, a social media platform popular amongst Chinese speaking people around the world. The defendant claims that he was prompted to investigate and then write about the plaintiff because of an Article titled “Influential Chinese-Canadians paying to attend private fundraisers with Trudeau” published in the *Globe and Mail* newspaper on

December 2, 2016. That Article reported about a dinner hosted by the plaintiff in his home, which Prime Minister Trudeau attended along with about 80 other people. The Article was introduced into evidence, but not for the truth of its contents.

[7] The following extracts from that *Globe and Mail* article refer to the plaintiff. The significance of this article is that the defendant testified when he saw the plaintiff attending a rally, he recalled the article's reference to the plaintiff and that piqued his interest:

> …
>
> Mr. Chan was at the most recent Trudeau fundraiser, which was held on Nov. 7 at the West Vancouver mansion of B.C. developer Miaofei Pan, a multimillionaire from Wenzhou province who immigrated to Canada a decade ago. More than 80 guests got their pictures taken with Mr. Trudeau at the $1,500 per ticket event, including Mr. Chan.
>
> The plaintiff told The Globe and Mail he lobbied the Prime Minister to make it easier for well-heeled investors from China to come to Canada. He said he told Mr. Trudeau the program put in place by the former Conservative government was "too harsh."
>
> In exchange for permanent residency, rich immigrants must invest $2-million and are subject to strict audits.
>
> 'If they don't do business over two years here, they cannot stay or they have to leave the country. So I wanted the Prime Minister to know that is not a very merciful policy towards these people because they want to invest or stay,' the plaintiff said. 'It's all about investment that Canada needs. I have friends, and [they are] wealthy people, who want to stay and invest.'
>
> A Chinese government agency in the plaintiff's hometown that builds ties with and keeps tabs on expatriate Chinese, supplied photos of the Trudeau-Pan event to media in China. The Foreign and Overseas Chinese Affairs Office of the Wenzhou People's Government promotes China's interests abroad, according to former Canadian diplomat and China expert Charles Burton.
>
> 'That is an agency of the Chinese Communist Party,' Mr. Burton told The Globe and Mail. 'The fact that the photos appeared in the [Wenzhou Metropolis Daily] in China suggests that the people who participated in that activity must have been tasked by the Chinese state to try and promote the Chinese position with influential people in Canada. In this case, our Prime Minister.'
>
> The plaintiff is honorary chair of a Chinese-Canadian organization that is an unabashed backer of Beijing's territorial claims in the South China Sea and East China Sea.
>
> In 2012, he was part of a campaign by overseas Chinese groups to rally public support for the Chinese government's position in a dispute with Japan over islands in the East China Sea that are close to key shipping lanes, bountiful fishing grounds and possible petroleum reserves.
>
> That year, the plaintiff was quoted in the Macau Daily newspaper saying his organization, the Canadian Alliance of Chinese Associations, had 'declared its stand in

> newspapers' and that 'overseas Chinese were responsible for defending China's territorial integrity.'
>
> In 2015, the Canadian Alliance of Chinese Associations held a symposium at which speakers backed Beijing's assertion of title to islands, reefs and banks in the South China Sea, and issued a Statement saying it 'strongly supports the Chinese government's defence of sovereignty over the South China Sea.'
>
> …

I. PRELIMINARY MATTERS

A. The Claim

[8] In his claim, the plaintiff has identified defamatory meanings that he says exist in 10 Articles written and published by the defendant (the "Articles"). In addition to the plaintiff, three witnesses testified as part of his case. They were: Daoling Liang, former president the Zhejiang United Friendship Society (the "Zhejiang Association"); Suping Chen, vice-president at the Wenzhou Friendship Society (the "Wenzhou Society"); and Allan Zhang, the plaintiff's chartered accountant.

[9] In addition to himself, the defendant called two witnesses: they were Ning Yu (Louis) Huang, a colleague and friend of the defendant; and Qi Bo Wang, a former business associate of the plaintiff.

B. The Pleadings

[10] The plaintiff submitted the defendant's pleadings are deficient in that the defences of fair comment and responsible communication are not explicitly raised. I did not understand the plaintiff to complain that the defence of justification was not raised in the pleadings.

[11] As recently noted by the Court of Appeal in *Weaver v. Corcoran*, 2017 BCCA 160 [*Corcoran*], pleadings define and clarify the issues of fact and law the Court must determine, and give the other side notice of the case to be met: para. 63.

[12] While plaintiff's counsel acknowledged the difficulties faced by a non-English speaking defendant conducting a defamation trial without a lawyer, she submitted that the Court should

not be lenient regarding fundamental elements of the legal test or *Rules of Court* because of those factors. She asserted that would be unfair to the plaintiff.

[13] The defendant's response to civil claim does not explicitly plead the defence of responsible communication. However, I find that is not a bar to it being raised. In Part 3 of his amended response filed March 24, 2017, the defendant does refer to himself "[a]s a journalist for over 30 years", and in his second amended response he states he "has been working as an investigative journalist for more than thirty (30) years". I am satisfied that in those and other places in his response, and in the circumstances of this case, it was clear that the defendant holds himself out and has been a journalist for many years. I find that is sufficient to invoke the defence of responsible communication. I did not understand the plaintiff to deny that he was aware that the defendant holds himself out to be a journalist, so I am satisfied he was not prejudiced by my allowing the defence to be argued.

[14] A more difficult issue is the plaintiff's position that the pleadings do not appear to explicitly refer to the defence of fair comment. However, it was clear from the tone and style of the Articles themselves, the defendant's submissions and the manner in which he presented his case, that large portions of the Articles represented his opinion and commentary. The issue is whether that is sufficient to allow him to rely on the defence of fair comment.

[15] Plaintiff's counsel made submissions on all defences including fair comment, although she did not concede the pleadings were sufficient. I am satisfied that there is no issue of surprise or prejudice from not knowing the case to meet. That is one of the fundamental goals of ensuring precise pleadings.

[16] The Court's foremost obligation is to ensure a fair trial for both parties. That obligation flows from the primary duty to ensure justice is done, and seen to be done in the courtrooms of British Columbia. For a number of reasons, I find it just and fair to allow the defendant to rely on the defence of fair comment.

[17] Justice requires that I not ignore the specific circumstances of the parties before the Court. The defendant did not come to this Court seeking any advantage or special accommodation because of his circumstances. Instead, he was sued, and as is his right, chose to defend himself. It

was my understanding that he was not a man of means. He enlisted the assistance of a friend who does read and speak English, albeit with some struggle. I permitted him to sit at counsel table with the defendant. His friend had been a lawyer in China, but had little familiarity with Canadian legal processes. The Articles and almost all material documents were before the Court in translation, and both parties testified through a translator.

[18] I also find that the defendant's pleadings raise elements of the defence of fair comment. He asserts in several places that the issues upon which he wrote involving the plaintiff raised issues of public importance, one of the elements of the fair comment defence; he specifically asserts at paragraphs 9 and 25 that the plaintiff is a public figure. . At paragraph 3 he wrote that the plaintiff "[a]s a famous Chinese community leader and entrepreneur, the public has the right to examine the plaintiff closely and strictly", and that Canadian citizens have the right to "question any suspicious tax issues, especially to those community leaders". At paragraph 4, the defendant pled that "[a]s a millionaire and a leader in a variety of Chinese associations and societies, the public has the right to question if the plaintiff reported his taxes honestly". To present matters in order to question or scrutinize facts is to invite or reveal commentary on those facts.

[19] He also pleads in paragraph 6(g) that it was reported that the plaintiff entertained the Prime Minister at his home, and that Canadians have the right to know about someone who "not only … is the leader of many Chinese organizations in Canada, also … he has connections to a variety of government officials". He states a number of times that he has drawn reasonable inferences from what he says are the facts he has presented (para. 6(g)) or to "question" certain facts (see para. 13, "my responsibility to disclose this interview to the public and question this unfairness").

[20] I also find that the defence arose from the Articles themselves when read in their entire context, and by the evidence revealed during the trial. My analysis necessarily focussed on the allegedly defamatory statements themselves was not difficult when reading the Articles to discern what was opinion and commentary, and what was being put forward as truth.

[21] In my view, the defendant most probably could have successfully sought an amendment to his response to civil claim at the end of trial to identify what he says were statements

amounting to fair comment, since it arose from his testimony when discussing the Articles. In the normal course, that may have resulted in an adjournment to allow the plaintiff to consider whether he needed to amend or re-frame his case. However, given the thorough submissions of his counsel, that was, and would have been, unnecessary.

[22] Accordingly, I am satisfied that the plaintiff is not prejudiced by allowing the defendant to rely on the defences of responsible communication, and fair comment. In my view, this is the appropriate way to proceed in the circumstances of this case to ensure a fair trial.

C. Application to Re-open the Trial to Admit Fresh Evidence

[23] The trial of this matter took longer than was originally scheduled. Evidence was completed on October 17, 2017, and the parties returned on November 14, 2017 to provide final submissions, but they did not complete submissions that day. The last day of submissions was February 16, 2018.

[24] On February 16, 2018, the defendant wanted to introduce evidence that did not exist when the parties were last before the Court in November 2017. The Court did not have time on February 16, 2018 to fully address the issue. I directed the defendant that if he wanted to pursue an application to have me consider this further evidence, he would need to file an application with supporting affidavits. The parties agreed if filed, that application could be heard on April 6, 2018.

[25] The defendant did bring that application, and he relied on his own affidavit, affirmed March 6, 2018. He submits that events that took place after November 14, 2017 show that the plaintiff's "standing in the Chinese-Canadian community remains undamaged" and that he continues to be "honoured and recognized by the Chinese Government for his overseas leadership and community work". In support of his assertion, the defendant refers to the following:

a) a January 26, 2018 printout from what the defendant asserts is the website of the second largest stated-owned new agency in China (www.chinanews.com) about an event that took place on January 24, and 25, 2018. That event was

First session of the 12th Shandong Provincial Committee of the Chinese People's Political Consultative Conference (CPPCC). Attached to his affidavit are pictures (including one of the plaintiff), short news story and a "List of Members and Non-voting Members in Groups" of the CPPCC. The defendant deposed that the CPPCC serves as a political advisory body in China, and that the plaintiff's attendance at that event "represents the highest political honour given by the Chinese Government to a leader of the overseas Chinese Community".

b) a February 16, 2018 printout from what the defendant describes as "a prominent Chinese-language website based in Vancouver" (Lahoo) about the Alliance's celebration of the Chinese New Year which took place February 14, 2018. Lahoo published a story with pictures about the event. The attendees included the Consul General of China in Vancouver (Tong Xiaoling) and about 300 leaders from more than 100 Community Associations. The plaintiff attended the event and appears in one of the photographs. The defendant submits the plaintiff's close proximity in the picture to the Consul-General is indicative of his undiminished reputation.

c) another story with pictures published on Lahoo on February 23, 2018 about the Canadian Sichuanese Friendship Association's celebration of Chinese New Year, which took place on February 22, 2018. The plaintiff (and others) appears in one of the pictures receiving a certificate of appreciation from Qiquan Hu, the group leader of overseas Chinese affairs in the Chinese Consulate General of Vancouver (part of the Office of Foreign and Overseas Chinese Affairs of Sichuan Province). The Article reports that over 400 attended the event. It also states that the former president of the Canadian Sichuanese Friendship Association introduced "distinguished guests" including "honorary chairperson of the Alliance Miaofei Pan".

d) an Article and pictures published on what the defendant deposed is a prominent Chinese-language website based in Vancouver (Dawa Business

Press) published on February 15, 2018. It described the Wenzhou Friendship Society's celebration of its 18th anniversary, and "grand inaugural ceremony" for newly elected directors which took place February 12, 2018 with over 700 attendees. The Article describes Miaofei Pan as the "fourth and fifth president of the Friendship Society". Also in attendance were Attorney General David Eby and Minister of State for Trade, George Chow. One of the pictures in the Article shows the plaintiff receiving a "certificate of honour" from the Chinese Consul General in Vancouver.

[26] The plaintiff provided a responsive affidavit in which he disputes the defendant's submission that he continues to be honoured and recognized by the Chinese government. He deposed that his attendance at the four events mentioned above was not in his capacity as a community leader, and that he "did not receive any recognition related to any community leadership roles". He also deposed that he has not been appointed to "any new community leadership roles" since the trial.

[27] As specific responses to the exhibits and defendant's commentary about those exhibits, the plaintiff deposed that:

a) he attended the CPPCC as a Chinese overseas consultant and that it was the 5th year he had done so. He disputes his role as consultant is one of the "highest political [honours] given by the Chinese Government". He deposed he was merely an observer and did not participate in the decision-making process or receive any special recognition.

b) he attended the events described in the defendant's affidavit, as described above in sub-paragraphs (b), (c) and (d). The plaintiff deposed these were holiday celebrations and that he "did not carry out any community leadership role", but only attended as the guest of friends.

c) the certificate of appreciation he received from the Sichuanese Friendship Association was not related to any position he held, but to mark his donation in August 2017 to the victims of an earthquake that took place in the Sichuan

province of China. Similarly, he deposed the certificate he received form the Wenzhou Friendship Society “appear to be in relation to a donation, thought I do not recall making a donation to this Society”. He stated the certificate was blank and he felt “uncomfortable and embarrassed” to receive it.

d) he was not invited to an event, which he had been invited and attended in previous years as a community leader: the Chinese New Year Symposium held at the Chinese Embassy. He deposed he was not invited in 2017 or 2018.

[28] The plaintiff opposed the defendant’s application on a number of grounds. He submits that the application to adduce fresh evidence is in reality an application to recall the plaintiff for further cross-examination based on the news Articles. Because the news Articles are hearsay, they are inadmissible for their truth. On that basis, the plaintiff asserts the application must fail.

[29] In the alternative, if the evidence is admissible, the plaintiff submits the application fails because the defendant cannot meet the legal test. The plaintiff submits the inferences the defendant asks me to draw are unreasonable based on the evidence, and the evidence is not the type to likely change the outcome, in any event.

[30] Trial judges have discretion to re-open a trial, even after a decision is rendered so long as the order has not been entered. In *Hodgkinson v. Hodgkinson*, 2006 BCCA 158, paras. 35 to 37, the Court of Appeal considered the law regarding when a trial should be opened to review fresh evidence. This review was discussed and helpfully summarized in a latter case, *Zhu v. Li*, 2007 BCSC 1467. In *Zhu*, Justice Ehrcke set out the principles which apply in an application to re-open a trial to adduce new evidence at para. 20:

1. Prior to the entry of the formal order, a trial judge has a wide discretion to re-open the trial to hear new evidence.
2. This discretion should be exercised sparingly and with the greatest care so as to prevent fraud and abuse of the court's process.

3. The onus is on the applicant to show first that a miscarriage of justice would probably occur if the trial is not re-opened and second that the new evidence would probably change the result.
4. The credibility of the proposed fresh evidence is a relevant consideration in deciding whether its admission would probably change the result.
5. Although the question of whether the evidence could have been presented at trial by the exercise of due diligence is not necessarily determinative, it may be an important consideration in deciding whether a miscarriage of justice would probably occur if the trial is not re-opened.

[31] The plaintiff relies on *Houston v. Kine*, 2011 BCCA 358 and *Stone v. Ellerman*, 2009 BCCA 294. Those cases are not helpful because they addressed a slightly different issue than the issue before me.

[32] In *Houston*, the trial did not finish in the allotted time so there was a five month hiatus. Only seven days before the resumption of the trial did the defendant reveal the existence of, and its intention to rely on, video surveillance of the plaintiff, which was taken very shortly after the trial had adjourned, four and a half months earlier. The Court of Appeal upheld the trial judge's refusal to admit into evidence the video. The Court of Appeal stated that late disclosure was fatal to the admission of evidence, regardless of any prejudice.

[33] In *Stone*, the Court of Appeal focussed on the balance between the probative value and prejudicial effect of the evidence. The Court of Appeal held that the trial judge allowing admission during the trial of evidence, which the party failed to adequately describe on its list of documents, amounted to a failure to disclose in accordance with the *Rules*. The "new" evidence was a pain journal kept by the plaintiff, which her counsel wanted to introduce during the plaintiff's examination in chief. Thus disclosure was the controlling factor in that decision.

[34] The issue before me is somewhat different. The defendant seeks to introduce evidence that only came into existence after the evidentiary portion of the trial concluded, but before submissions finished. He did raise the issue during the trial, albeit on the last day of final submissions, when there was inadequate time to fully address the issue. I directed him, if he wished to pursue the issue, to bring an application

supported by affidavit evidence. In my view, this makes the situation more akin to an application to re-open a trial to adduce fresh evidence rather than an attempt to "continue a cross-examination" that has already concluded as characterized by the plaintiff.

[35] Applying the first factor stipulated in *Zhu*, there is no possibility of fraud or abuse of the court's process because the evidence simply did not exist during the trial. Nevertheless, the threshold for admission is high because it requires the applicant to prove on a balance of probabilities that a "miscarriage of justice" would probably occur if the trial is not re-opened and secondly, that the new evidence would probably change the result.

[36] The defendant submits the evidence is relevant to the plaintiff's claim that his reputation has suffered. While it is true the plaintiff is not obliged to adduce evidence about damage once defamation has been established, where damage to reputation is alleged, the trial judge must assess damages. To assess the quantum of damages, evidence relevant to the extent of the damage suffered by the plaintiff is admissible: *Saturley v. CIBC World Markets Inc*., 2011 NSSC 4, at para. 80. This point was elaborated on in *Best v. Spasic*, [2004] O.J. No. 5765 (S.C.J.). According to the court at para. 59, there are two intangible things that the compensatory award is designed to repair: (a) the injury sustained as a result of the lessening of the esteem in which he or she is held in the eyes of the community because of the defamatory statements; and (b) the injury caused to his or her feelings by the defamatory statements. The court emphasized that because general damages are compensatory, the damages are not a windfall, but "must flow directly from the defamation and be only as large as is required to repair the damage done to the Plaintiff".

[37] There is no dispute that the plaintiff alleges damage to his reputation, but he also makes a more specific allegation. At para. 57 of the amended notice of civil claim (the "NOCC"), the plaintiff pled that the defamatory posts were made with "malice, spite, ill will and were calculated to disparage [the plaintiff], to damage his reputation in the community and in relation to the organizations in which he serves…". Furthermore, at paras. 389-91 of the plaintiff's written closing submissions, he submits the defendant was motivated "to attack the plaintiff's reputation as a leader in the Chinese community" and that he succeeded in doing so; he similarly submits the defamation is particularly

harmful because they “attack the plaintiff’s reputation as a community leader and undermine his ability to carry out those roles, or similar roles in the future”.

[38] Thus, the plaintiff is asking the Court to assess damages based on the particular harm done to his role as a community leader. The defendant alleges the fresh evidence contradicts that there has been such damage as alleged.

[39] The plaintiff denied that he has been appointed to any new leadership roles, but he confirmed in his affidavit the substance of many of the facts stated in the defendant’s affidavit. Therefore, those portions in the news Articles confirmed by the plaintiff’s evidence can be relied upon for their truth. Accordingly, I am satisfied the evidence meets the credibility concern mentioned in *Zhu*.

[40] The plaintiff seeks a total of between $360,000 and $450,000 in damages. He does so largely on the strength of his evidence and submissions about how the defendant’s writings have affected his role as a community leader. The evidence presented by the defendant is clearly relevant, credible and challenges the evidence led by the plaintiff. I am satisfied a miscarriage of justice would probably occur if the evidence is not allowed to be introduced. This is especially so considering that the defendant could not have adduced this evidence during the evidentiary part of the trial, as the evidence did not yet exist. I am also persuaded that the result on the issue of the quantum of damages would probably change in light of the new evidence.

[41] The plaintiff also submitted the application should be dismissed because the inferences the defendant asks me to draw from the evidence are unreasonable. In my view, that goes to the weight of the evidence rather than its admissibility and is not a relevant factor to determine admissibility of fresh evidence.

[42] For all those reasons, I admit into trial as fresh evidence the affidavit filed by the defendant dated March 6, 2018. Out of fairness, I also admit into evidence the plaintiff’s responsive affidavit made March 15, 2018.

D. Summary of the Testimony

1. Plaintiff's Witnesses

a. Miaofei Pan

[43] The plaintiff is a businessman who moved to Canada from China about 11 years ago. He has a wife and four daughters (two sets of twins). His primary business interest is real estate. He admitted that he is a very wealthy person.

[44] He is an active member of the Chinese Canadian community serving on a number of charitable organizations. He explained that he felt lucky to be successful because he grew up in poverty, which moved him to give back to the community, first in China, but now also in Canada.

[45] He also described the social media platform on which the allegedly defamatory statements were posted, called WeChat. His description was not contested by the defendant. It is a platform used world-wide by Chinese speaking people. He believed it has up to two billion users. It is free, and fast. One of the charity organizations with which he is involved uses it for communication and he also communicates with his daughters on it. People can participate as individuals or within groups on WeChat. He belongs to several groups which I understood to be very common. The plaintiff has never subscribed to any WeChat group hosted by the defendant, but he had read the Articles because they were forwarded to him by other people.

[46] The plaintiff confirmed that he hosted the Prime Minister at his house at an event organized by the Liberal party. The plaintiff objected to the insinuation in the *Globe and Mail* Article (referred to above) that the event was designed so he could influence the Prime Minister on economic policy. He instructed his lawyers to write to the newspaper. He intimated no further Articles were written on the topic as a response to the letter, but there was no evidence to confirm that, and no retraction was printed.

[47] The defendant was also sent a letter by the plaintiff's lawyer, but he continued to publish Articles. The plaintiff explained that is why he sued the defendant and not the *Globe and Mail* in response to the assertion that he treated "western" media outlets different from "Chinese" media.

[48] The plaintiff said all the statements he alleges are defamatory are false. He also confirmed that at no time did the defendant ever contact him to ask or verify any of the statements in the Articles.

[49] A major issue in the case is the defendant's statement that the plaintiff received the Canada Child Tax Benefit (the "CTB"), which the plaintiff denied. One of the sentences in the first Article, which the plaintiff claims is defamatory, is : "… the plaintiff concealed his income … -how unbearable embarrassing that a wealthy man should receive full Canada child tax benefit that only a mere $30,000 in income would qualify for?" During his direct testimony, the plaintiff was asked by his counsel, "[h]ave you ever on any form or in any questionnaire or with Revenue Canada stated your income as $30,000 annually?" He answered no. It was clear from the line of questioning and the answers given in the context of the case that the question and answer were meant to be understood that he made more income than the $30,000 ceiling for claiming the CTB.

[50] The defendant also alleged that the plaintiff gave an interview to *China Weekly* magazine (the "*China Weekly*" article) under the pseudonym Yi An Wang, which the plaintiff firmly denied. That is significant because in that Article, Mr. Wang indicated he received the CTB despite being very wealthy. The plaintiff testified that he was unaware of the *China Weekly* article until the litigation and that he was never interviewed, or used a pseudonym for any purpose.

[51] Yet, on re-direct, the plaintiff acknowledged that for some years his household income would have made him eligible for the CTB, but he testified that he did not collect it because he had ample savings. That change in testimony only came about because mid-trial I ordered the plaintiff to produce his income tax returns, which, remarkably, he had failed to do throughout the litigation.

[52] The plaintiff responded to allegations in some of the Articles that he was responsible for a failed real estate project that left "hundreds" of people facing large financial losses. That real estate project, Huachen Yipin (the "Project"), was one that the plaintiff's company, Wenzhou City Linyang Estate Company (the "Linyang Company") originally won a bid to complete. The plaintiff testified that in 2006, he sold 100% of the

shares of the Linyang Company to a Mr. Zufan Zheng, who then became the sole owner of the company. The plaintiff testified that he had no involvement whatsoever in the Project nor any involvement with the Linyang Company after 2006. He acknowledged that the Project ran out of capital and that Mr. Zheng was detained by the local police in connection to the Project. The plaintiff stated that all of this occurred after he had sold his shares to Mr. Zheng in 2006.

[53] The defendant submits that the plaintiff's testimony about his ownership of the Linyang Company was inconsistent. During his direct testimony, the plaintiff stated that he sold the company in 2006. He then conceded during cross-examination that it was possible that after 2006 his name was still listed as a majority shareholder in the Linyang Company on the share register maintained by the Industrial and Commercial Administration Bureau in China (the "Share Registry"). The plaintiff speculated the purchaser did not pay all the taxes, which prevented the updating of the Share Registry to reflect the 2006 sale. The plaintiff also stated that although the Share Registry was not updated and it may be that his name still appeared on it as owner, "the Chinese tax authority understood" the situation. I understood the plaintiff to mean that somehow the tax authority understood and accepted that the Share Registry was not accurate. He maintained that he had no involvement with the Linyang Company or the Project since 2006.

[54] None of that evidence was given during his direct-examination. During cross-examination the plaintiff explained that he did not think it was "necessary" to mention why his name might still appear on the Share Registry as a shareholder in the Linyang Company during his direct testimony.

[55] In other Articles, the defendant alleged the plaintiff and his wife personally owed large amounts of taxes in China. The plaintiff denied ever owing taxes in China, and he testified neither did his wife. However, he admitted it is possible that one of the companies he used to own in China did not pay all its tax bills. He stated that might have accounted for the appearance of his name on a list of people with large amounts of unpaid tax published by the Chinese government (he did not admit the list as presented to him was authentic). He claimed that he went to China attempting to get

information about what the defendant published. He found out that properties he may have put up for security in the past could be sold off if a company did not pay its tax bills and speculated that may have resulted in his name appearing on a so-called “List of Dishonoured”. He testified that he found nothing else consistent with what the defendant had written. The plaintiff denied that he has any personal responsibility for the non-payment of taxes, or other debts in China

[56] The plaintiff acknowledged he held leadership positions with the Community Associations. His positions on organizations was characterized in the Articles as having been given to him because he “paid for them”. The plaintiff denied this and said he was asked to serve. While he donated money to the Community Associations, he testified the donation was never tied to his receiving any type of position in return. He also denied there was anything nefarious in how he obtained the positions.

[57] He said he was elected leader of the Wenzhou Friendship Society in Vancouver (the “Wenzhou Society”) in February 2011 until he resigned that position after serving two full terms in February 2017. After resigning on February 22, 2017 (because he already served the two terms), he testified that “a lot of people asked me to maintain as honourary president” but that he did not accept that. He explained that he is “just the regular member of that Wenzhou Association now”. The plaintiff was elected Executive Chairman of the Canadian Alliance of Chinese Associations (the “Alliance”) on June 6, 2012 and held that position until 2014 at which time he retired. He was made Honourary Chairman of the Alliance in 2016. At the time of trial, the plaintiff was Chairman of the Zhejiang United Friendship Society (the “Zhejiang Association”) and had served as its Vice-President between 2011 and 2014.

[58] The plaintiff admitted that he had donated money to both the Wenzhou Society and the Alliance, but denied donating any money to the Zhejiang Association. He admitted that he loaned the Wenzhou Society $400,000 in October 2011 and donated $400,000 to the Wenzhou Society in 2012 to help the organization build its facility, but that had no connection to his later obtaining leadership positions in the Community Associations. He

claimed he was elected to those positions. The plaintiff also acknowledged that he "may have spent over $50,000" of his own money for the Alliance.

[59] The plaintiff described the effect the Articles had on him. He stated that the Articles caused him significant harm, including despair, emotional pain, depression, sleeplessness, and anxiety. He became depressed and could not understand why he would be attacked for performing good works through the Community Associations. He stated that his reputation has been damaged to the extent that it hardly exists.

[60] The plaintiff was asked in direct-examination if the statements had an effect on his ability to serve as a leader of the Community Associations. He testified that because of the statements, he decided he would no longer be Honourary Chairman of the Alliance, although the fresh evidence seems to contradict his claim (above at para. 25(c)). Apparently, the plaintiff was introduced at a large public event as the Honourary Chairman of the Alliance. I do not rely on the newspaper report for the truth of the facts contained in it, but a public description of his being the Honourary Chairman is sufficient to doubt his testimony on this point. He also testified that he resigned from his position as president of the Wenzhou Society in February 2017 (after the statements had been posted) because he "didn't want to any more" despite the organization asking him to stay on as Honourary President. The fact that the Wenzhou Society wanted the plaintiff to remain in a leadership position after publication of the Articles further casts doubts on the plaintiff's claim of a damaged reputation.

[61] The plaintiff claimed that the Articles have caused him to lose two business opportunities in relation to a real estate project in Vancouver as the potential partner expressed concern about the plaintiff's integrity and character. The plaintiff stated that they "did not know each other for a long time" and believed the allegedly defamatory statements caused a loss of the new found trust. However, on cross-examination, the plaintiff was inconsistent in describing these lost business opportunities stating that it was Mr. Zheng's wife who made the decision not to go into business with the plaintiff.

[62] Toward the end of his direct testimony, the plaintiff stated that he believed the defendant was attempting to blackmail him based on things he heard from other people.

He offered no admissible evidence for that belief; he simply testified about what other people told him.

b. Daoling Liang

[63] Mr. Liang was a former president of the Zhejiang Association. He gave evidence about the election of the plaintiff as president of the organization in 2014. He denied that any "horrifying battle" occurred in respect to the leadership race (as described in one of the Articles) in 2014 as the plaintiff was unopposed.

[64] Mr. Liang testified that the Zhejiang Association elected the plaintiff because it believed him to have the "experience to do the society work" and "would be very suitable to take the role as president" based on his time as president of the Wenzhou Society. Mr. Liang also stated that part of the reason they elected the plaintiff was because "financially he also had the capability… As president…you definitely have to make a financial contribution because when you organize events you need money". However, he denied that the plaintiff secured his position by donating $100,000 (a specific allegation in one of the Articles).

[65] Mr. Liang confirmed that he had read some of the Articles posted about the plaintiff in a WeChat group. He stated that he might have been a subscriber to the defendant's WeChat public account and read the Articles directly, but also that a friend forwarded him one of the Articles.

[66] Mr. Liang testified that he initially did not know whether to believe the defendant's assertion that the plaintiff had collected the CTB and considered whether he had chosen the wrong person for the president's position. He stated when he first spoke to the plaintiff about that allegation, Mr. Liang felt he "couldn't completely trust [the plaintiff] or anybody else". When asked if his opinion of the plaintiff had changed since reading the Articles, Mr. Liang stated that he now believed the plaintiff's refutation of the accusation, reasoning that he did not believe anyone who had actually collected the CTB would launch a legal action as the plaintiff had done.

c. Suping Chen

[67] Ms. Chen was a former vice-president responsible for finance at the Wenzhou Society and gave evidence about the process under which the plaintiff was elected president in 2011. She testified that the plaintiff was not elected president because of his $400,000 donation or any promise to make a donation. However, she confirmed that in 2007 the plaintiff donated $10,000 to the Wenzhou Society, and a few years later he donated another $400,000.

[68] When asked during direct examination if the plaintiff had made any other financial contributions to the Society before he became president (other than the $10,000), she replied: “Yes. Every time before the year-end parties…that’s when he was not the president yet and he would contribute money to buy gifts to give to the fellow townsmen”.

[69] Ms. Chen testified that she had read five or six of the Articles on a WeChat group and that these posts raised doubts in her mind about whether the plaintiff had collected the CTB. She testified that “after I read that I did not believe it. So I called [the plaintiff’s] wife”. Ms. Chen testified that in a conversation she had with the plaintiff after reading some of the Articles she told him, “I believe you, but others don’t…Of course I trust you.”

d. Allan Zhang

[70] Mr. Zhang had not originally been on the plaintiff’s witness list, but once I ordered production of the plaintiff’s income tax returns, rather than re-take the stand to testify about his returns, the plaintiff chose to put Mr. Zhang forward to testify about the income tax returns. Mr. Zhang is a chartered accountant who has been in practice for 15 years and he has been the plaintiff’s accountant since 2007. He stated in his direct evidence that he worked at Fairhall Zhang and Associates Limited. He testified that while the plaintiff was eligible for the CTB each year from 2007 to 2010, he never applied for or received it. On cross-examination, Mr. Zhang stated that he was always the one who prepared the plaintiff’s tax returns.

[71] On day seven of the trial, Mr. Zhang was recalled to testify after the defendant raised concerns about the veracity of portions of Mr. Zhang's testimony. Specifically, Mr. Zhang was recalled to answer questions about the following information: i) the name of the accounting firm that is shown on page 5 of the plaintiff's T1 Generals from 2007 to 2010, and; ii) the tax returns bearing the date October 7, 2017.

[72] When recalled, Mr. Zhang confirmed that the name of the accounting firm that appeared on the plaintiff's tax returns was "Li Jing Accounting & Tax Services" and not "Fairhall Zhang and Associates". He testified that Li Jing Accounting & Tax Services was the former sole proprietorship business owned by his wife at the time. Mr. Zhang stated that in the years in question, he also worked part-time in his wife's business and that is why that business name appears on the plaintiff's tax forms.

[73] The defendant submits it is suspicious that the plaintiff's tax work was not done through Mr. Zhang's regular employment, and more importantly that Mr. Zhang did not explain this during his direct testimony. Furthermore, only after the defendant questioned why there was no public record of Li Jing Accounting and Tax Services, did Mr. Zhang state that the business ceased operations in 2010.

[74] With regard to the second issue raised by the defendant, Mr. Zhang testified that October 7, 2017 is the date the documents were printed. The defendant suggested the documents were not only printed but created, with inaccurate information, on October 7, 2017 for the sole purpose of rebutting in this lawsuit the suggestion that the plaintiff claimed the tax credit.

[75] Mr. Zhang disagreed. He explained the process he used to "restore" the plaintiff's tax forms in order to print and tender them as evidence before the Court. He stated (Trial Transcript, day 8, p 46-47):

> The common practice is when we finish a tax return, we print out a summary for the client for reference for their recordkeeping, not the full set… Back then very few accounting firms were archiving by PDF files…So when it's needed, we will restore the original data from the data file. …

[76] I find it extremely difficult to believe that neither Mr. Zhang, an experienced chartered accountant, nor the plaintiff, an experienced businessman, possess between them a single true

copy of any of the plaintiff's tax returns as they were filed each year, with the accurate filing date printed on it. Furthermore, according to Mr. Zhang, he would have prepared a summary and given that to the plaintiff. No such summary was produced in evidence. No explanation was offered as to why it was not. As discussed in more detail below (paras. 169-174) the plaintiff's failure to produce these crucial documents has led me to draw an adverse inference against him.

2. Defendant's Witnesses

a. Bing Chen Gao

[77] The defendant testified that he is an editor and reporter for the Canadian City Press, a magazine under the Sing Tao Newspaper, as well as a blogger on WeChat. He stated that he used the pseudonym "Hebian Huang" to post Articles on WeChat because he believed the Chinese government had previously cancelled his WeChat accounts

[78] The defendant admitted writing all Articles which contain the allegedly defamatory statements and posting them to his WeChat account. During cross-examination, the defendant conceded that he created a website in April 2017 called "Overseas Chinese Focus Net", where he republished the Articles in original form. The defendant testified web traffic for the site was 16,870, a figure which the plaintiff contests as being too low. The defendant also conceded that he created a YouTube channel in April 2017 called "Huang He Bian Bo Bao", where he posted four videos in which he discussed the trial.

[79] The defendant stated that the Articles are informed by his research which uncovered the documents on which the allegedly defamatory statements are based. The defendant admitted that he never attempted to contact the plaintiff to verify any of the information he wrote about the plaintiff because he did not believe it was "necessary" to do so.

[80] He tendered into evidence various news articles and screenshots from Chinese government websites and news agencies, the contents of which he claimed were verified by British Columbia lawyers. However, no evidence of that was ever presented to the Court. Those documents included:

- Photographs of the plaintiff with Chinese and Canadian officials;
- Photographs of the Project;
- *China Weekly* article dated 2011;
- Xinhua News Agency report dated 14 December 2016;
- "China Enforcement Information Disclosure Website" dated 18 August 2017;
- Debt Enforcement document for Miaofei Pan by the Wenzhou City Lucheng District People's Court dated 18 August 2017 (this is a document referred to as a "List of Dishonoured");
- Debt Enforcement document for Chen Hanpin by the Zhejiang Province Ouhai District People's Court dated 26 July 2016 (this is a document referred to as a "List of Dishonoured");
- Zhejiang Province Lucheng District People's Court "Listing Information of Dishonest Debtors" dated 1 November 2016 (;this is a document referred to as a "List of Dishonoured");
- two 2015 tax notices issued by the Cangnan County Tax Bureau, Zhejiang, China and appearing in the *Wenzhou Daily* newspaper (online) dated 25 September 2015;
- Wenzhou Huize Holding Company Ltd. "Company Basic Information" dated 7 May 2009;
- A 2012 magazine Article in the *Wenzhouness in Canada*;
- Lingyang Company Share Registry for the years 2014 and 2015.

[81] The defendant also tendered many documents referred to or reproduced in the Articles. The plaintiff challenged the admissibility of all foreign documents because there was no certification as to their authenticity, and because the constituted hearsay.

[82] The defendant's position is that print-outs from official Chinese government websites should be accepted as authentic, in part, because no one would dare to hold themselves out as being part of the Chinese government, if that was not true. He stated the Chinese government controls the internet traffic in China, which is a notorious fact.

[83] While there is some intuitive logic to the defendant's position, I found the documents were admissible but not for the truth of their content. They were admissible to demonstrate the basis upon which the defendant claimed his assertions were true. I add, however, that I find the defendant's belief in the reliability and authenticity of the documents was genuine, and reasonable. The documents' appearance was consistent with them being official Chinese government publications. However, that was insufficient for me to accept them as authentic.

[84] The defendant explained that he believed the *China Weekly* article written about Mr. Wang was in fact, about the plaintiff, using a pseudonym. The defendant testified that he made this assumption based on the number of similar traits and characteristics shared by both men (the plaintiff admitted these similarities), including that: they both had two sets of twin girls; their first wife was a judge in China; they were well known in a Canadian city to which they emigrated in 2006, and; they received recognition in their youth from a Chinese institution for their entrepreneurship. Most remarkably, the Article records Mr. Wang telling a story about running out of fuel on the way to Whistler and being assisted by a police officer, which had a great impression on him of how much different, and better, the police behaved in Canada than China. The plaintiff recounted the same story during the trial.

[85] The defendant stated that other people he spoke with in regard to the *China Weekly* Article also believed that Mr. Wang was a pseudonym for the plaintiff, including Ning Yu Huang, one of the defendant's witnesses.

[86] On cross-examination, the defendant testified that as a journalist he did strive for accuracy. He believed he could rely on the contents of the *China Weekly* Article without independently verifying the facts alleged given its "very high credibility".

[87] In support of the statements that the plaintiff owed taxes in China, the defendant tendered tax notices that he believed were issued by Cangnan County Tax Bureau, Zhejiang, China in 2015 showing both the plaintiff and his wife owing substantial amounts in unpaid tax. The defendant testified that these tax notices also appeared in the Wenzhou Daily newspaper (online) on September 25, 2015. In the relevant part, the tax notice dated September 23, 2015 stated:

> In accordance with the Article 106 of 'the Detailed Rules for Implementation of PRC Tax-Levying Administration Law', we serve on you this 'tax matter notice' by a public bulletin and as soon this notice is made public [sic], the said notice is deemed to have been served on you.
>
> Cause: you have failed to pay your personal income tax, business tax, construction and maintenance tax and education surtax etc.
>
> Within 15 days from the date of the service of this notice, you must present yourself to Cangnan Local Tax Bureau…to pay your taxes and delay penalty charge.'

[88] In support of his assertion that the plaintiff was involved in the Project, the defendant relied on a screenshot of the Share Registry information of the Linyang Company. That document lists the plaintiff as holding a 77% shareholding interest in the Linyang Company as of July 29, 2008. The defendant also stated that other official documents show that from 2003 to July 29, 2008 the plaintiff was the legal representative of Linyang Company. The defendant testified that Chinese government publications recorded that on 14 September 2010, 10 million yuan was injected into the Linyang Company. He further stated that an online search in September 2017 of the Cangnan County's Industry and Commerce Administration Bureau, Wenzhou, shows the Linyang Company is owned by the Wenzhou City Depei Commerce & Trading Co. Ltd., which is owned by the plaintiff and his wife.

[89] The defendant claims the totality of the preceding evidence proves that the plaintiff was actively involved in the Linyang Company after 2006. He stated his sources are reliable as they are from the official information portal under the Chinese State Administration for Industry and Commerce.

[90] In relation to the accusation that the plaintiff "bought" the positions he held in the Community Associations, the defendant pointed to a publication (*Wenzhouness in Canada),* which he submits proves that in 2012 the plaintiff paid $50,000 and $400,000 to the Community Associations; the plaintiff admitted he made those donations. The defendant relied on the fact of the donations combined with the recent timing of the plaintiff's immigration, and how quickly the plaintiff assumed positions after donating the money as proof that the positions had been "bought". The defendant also stated that since the plaintiff obtained the leadership positions, the plaintiff has not donated a significant amount of money to any of the Community Associations.

[91] In support of the statements made in various Articles that the plaintiff had substantial debts in addition to unpaid taxes, the defendant relied upon a screenshot of a List of Dishonoured from the website of the Supreme People's Court of China on which the plaintiff's name appears. The defendant testified that documents he retrieved in August 2017 from the official website of the Chinese Supreme Court, contained the plaintiff's information and the amount owing. The document, "China Enforcement Information Disclosure Website" issued August 18, 2017, appears to contain the plaintiff's name, ID card, a case file number, and a document for carrying out the debt enforcement by the Wenzhou City Lucheng District People's Court.

[92] The defendant also tendered evidence he submits shows that the plaintiff is a majority shareholder of Wenzhou City Huize Holding Co. Ltd. as well as a Chinese court judgment showing that company owes 60 million yuan with the plaintiff responsible for 90% of that debt.

b. Ning Yu (Louis) Huang

[93] Mr. Huang testified that he has known the defendant for 10 years and that the defendant is an "independent media personality" who makes "comments or provides commentaries to stories in news that's often going on in Canada and in all around the world".

[94] Mr. Huang's evidence largely related to his positive impression of the defendant's character. He stated that he had read the Articles as well as a republished version of the Articles posted by someone other than the defendant.

c. Qi Bo Wang

[95] Mr. Q.B. Wang testified that he had a bad business deal with the plaintiff in the past and had filed a lawsuit against him in a Chinese court. He stated that the plaintiff made statements against him that resulted in Mr. Q.B. Wang's detention in China for 30 days.

[96] Mr. Q.B. Wang also stated that he believed that the Mr. Yi An Wang, the subject of the *China Weekly* Article (as relied upon by the defendant in Article One) was a pseudonym for the plaintiff based on his own "research".

E. Authenticity and Reliability of Documents

[97] The defendant adduced documents that he testified he obtained from various official Chinese government websites. He submits those document are authentic, and can be trusted to prove the truth of their contents. However, there was no expert or other evidence to verify the authenticity of the documents.

[98] I take judicial notice of the fact that China is not considered a free, democratic society with a free press, and the Chinese government supervises and controls in China the media and access to the internet. It is not controversial that the Chinese government does not operate in ways akin to the Canadian government, especially with regard to accountability to its citizens. As such, the Court is not content to rely on documents apparently published by various Chinese government entities (which includes newspapers) to be proof of the facts stated in those documents without some other basis to support that.

[99] However, I also recognize that the omnipotent control the Chinese government exercises over the internet, makes it unlikely that a website which purported to be, but was not, an "official" Chinese government website, would be allowed to remain active. The defendant argued on that basis, I could accept the documents are authentic, and truthful.

[100] I accept as true the defendant's testimony that he obtained the documents from websites that he sincerely believed to be Chinese government websites. The issue therefore, is whether that testimony is sufficient to find the documents were, in fact, published by some arm of the Chinese government, which includes the Chinese media[1].

[101] The argument that the Chinese government would automatically shut down any "imposter" websites is somewhat compelling, but I am not persuaded that it amounts to a fact so notoriously understood or accepted that I can take judicial notice of it. Instead, it is an inference that the defendant is asking me to draw. There was no evidence or reasonable inference that

could be drawn from admissible evidence, which would allow me to reasonably make that inference.

[102] Therefore, the documents are admissible as establishing the sources the defendant relied on. However, the truth of the content of the documents is not established by that admission into evidence.

F. The Parties' Credibility and Reliability as Witnesses

[103] I have serious doubts about the plaintiff's credibility. I found him to be evasive and defensive at times during his cross-examination. He explicitly asked me more than once if he "had to answer" particular questions; he stated more than once that he did not have to provide a particular answer because he was allowed to keep certain information (about his business or finances) confidential. He challenged the defendant by telling him he could not ask particular questions. A number of times, I had to direct the plaintiff to answer questions. At other times he scoffed at the defendant with obvious disdain. These are behaviours that I observed as the trial judge. They tend to hinder his credibility, but were not determinative of his credibility.

[104] The plaintiff's evidence about his reported income was inconsistent, and the reason it was not consistent impacts his credibility and the strength of his case. Despite the fact that the defendant's response to civil claim does clearly plead "truth", the plaintiff never listed nor produced his Canadian income tax returns in the litigation. During the trial, his counsel argued absent a specific request, the plaintiff was not required to do so because that amounted to "shifting the burden" onto the plaintiff to prove that he did not claim the CTB; in defamation, burden is on the plaintiff to establish the truth of any defamatory statements that are defended as being true.

[105] During the trial, I ruled against the plaintiff on that issue; litigants are obliged to produce all documents in their possession that "could, if available, be used by **any party of record** to prove or disprove a material fact" (Rule 7-1(1)(a)(i)). That does not amount to shifting any legal burden. By not listing his income tax returns, the plaintiff did not comply with that fundamental obligation. I ordered his tax returns be produced.

[106] On its own, his initial non-disclosure is very troubling. Further circumstances about the evidence the plaintiff tendered regarding his income tax returns supports my drawing an adverse inference that the plaintiff did qualify for and did claim the CTB (which is fully discussed later in this judgment at paras. 169-177).

[107] Even without drawing that inference, I find there were inherent and irreconcilable contradictions within the plaintiff's testimony about his knowledge of his tax status. The plaintiff testified that he relied heavily on Mr. Zhang to take care of his taxes, and professed a degree of ignorance about taxation and the CTB. Yet, at the same time, he insisted that he instructed his accountant not to claim the CTB even though he was apparently eligible to do so. Neither man provided a cogent reason why the plaintiff would not claim the benefit to which he was legally entitled.

[108] More disquieting is an express contradiction in the plaintiff's testimony about his reported income. As noted above at para. 49, the plaintiff explicitly denied that he ever claimed his income was $30,000 or less in a context in which I find it was clear, he meant he never claimed an income that would make him eligible to claim the CTB. That evidence was given before I ordered production of his tax returns. However, he was forced to change his evidence after his accountant testified that in fact, the plaintiff's reported income on his tax returns did make him eligible to claim the CTB, although both men claimed the plaintiff did not do so. I find this contradiction was not an innocent mistake or misunderstanding. Instead, I find the plaintiff was untruthful with the Court during his testimony in chief.

[109] I also find it is relevant to the plaintiff's credibility that he made a serious allegation against the defendant's integrity, which was unsupported by any other evidence. Specifically, he testified that he was told by someone that the defendant wrote false articles in order to blackmail the plaintiff to pay him off to stop publishing. He claimed someone told him another person had endured that type of blackmail. The person from whom the plaintiff stated he got this information was not called to testify, even though he was listed on the plaintiff's trial brief.

[110] Thus, the plaintiff made an assertion without any corroboration and, although in contact with and originally intending to call as a witness someone who apparently could

corroborate his testimony, that witness was not called. In my view, it is appropriate to draw an adverse inference that had that witness been called, he would not have supported the plaintiff's testimony. In my view, the plaintiff is not credible in making the accusation of blackmail, and his decision to make an entirely unsubstantiated accusation against the defendant further undermines his overall credibility.

[111] In light of my above discussion, I have grave concerns about the plaintiff's credibility. I approach his testimony with great caution.

[112] In contrast, I found the defendant to be a sincere in his testimony. I accept that he truly believed that his reasoning and his research were sufficient to come to a conclusion that what he wrote about the plaintiff was true. I accept his testimony that he never tried to blackmail someone so that he could be paid off. I accept his testimony that he believes himself to be an honest journalist trying to expose wrongdoing in the Chinese-Canadian community. In other words, I do not accept that he had any kind of animus towards the plaintiff personally. Overall, I found the defendant to be a credible and reliable witness.

[113] In respect to the evidence given by Mr. Huang, I agree with the plaintiff that his testimony is not helpful to the Court; he has no personal knowledge on questions relating to the truth of the allegations in the Articles and his opinion evidence is not admissible in that regard. I do not rely on the testimony of Mr. Q.B. Wang. His evidence related to an irrelevant and unproven business deal he purportedly had with the plaintiff. Also, his belief that he was detained in China because of something the plaintiff said or did revealed a potential bias against the plaintiff. I place no weight on Mr. Wang's evidence.

[114] I also have significant concerns about Mr. Zhang's credibility. It took him being recalled before he conceded that the professional accounting software he uses permitted him to manipulate data when creating the document he produced at trial. He failed to reveal during direct testimony the accounting work he did for the plaintiff was apparently not done through Mr. Zhang's accounting firm, but through his wife's now defunct accounting business (sole proprietorship). At no time did he provide any cogent reason why the work was not done through

his regular employment. Coincidentally, that business apparently ceased operations in 2010, the last year of the tax returns entered into evidence.

[115] Most concerning, Mr. Zhang never provided an explanation for why he did not have access to a true copy of the plaintiff's tax returns or any other tax documents, and instead could only provide documents that were printed and dated in October 2017.

[116] Given all of these concerns, I do not find Mr. Zhang's testimony to be credible, and I do not accept the tax returns he put into evidence as being true copies of what was filed with the CRA.

II. LEGAL PRINCIPLES

A. Defamation

[117] Defamation law recognizes that an individual's reputation is central to his or her sense of self-worth and dignity. Once tarnished, repairing one's reputation may be difficult, especially in a professional context. However, its protection must be balanced with the *Charter* guarantee of freedom of expression: *Hill v. Church of Scientology of Toronto,* [1995] 2 SCR 1130 at para. 124.The importance of freedom of expression cannot be overstated, nor can the importance of a free press.

[118] To prove a *prima facie* case in defamation, a plaintiff must establish three elements:

a) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;

b) that the words referred to the plaintiff; and

c) that they were published, meaning that they were communicated to at least one other person other than the plaintiff.

[119] Words that tend to lower the plaintiff's reputation in the eyes of a reasonable person are defamatory: *Grant v. Torstar Corp*., 2009 SCC 61 at para. 28. The classic phrase for defamatory meaning was restated by Abella J.A. (as she was then) in *Canadian Broadcasting Corp*. v. *Color Your World Cor*p., 38 O.R. (3d) 97 (C.A.) [Colour Your World]:

> A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him [or her] in the estimation of right-thinking members of society generally and in particular to cause him [or her] to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right- thinking member of society. Hence the test is an objective one …
>
> …
>
> The standard of what constitutes a reasonable or ordinary member of the public is difficult to articulate. It should not be so low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation. The impressions about the content of any broadcast -- or written statement -- should be assessed from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers.

[120] Her comments – and particularly her view that the reasonable person is not someone with an "overly fragile sensibility", are now widely referred to when assessing whether something crosses the line into defamatory meaning: see e.g. *Corcoran* at para. 69; *Weaver v. Ball*, 2018 BCSC 205 at para. 66 [*Ball*].

[121] It follows that "[n]ot every criticism of a person or disparaging comment is defamatory": *Lougheed Estate v. Wilson*, 2017 BCSC 1366 at para. 156, rev'd in part, 2018 BCCA 441. The central question is whether the meaning conveyed by the impugned words genuinely threatened the plaintiff's actual reputation: *Vander Zalm v. Times Publishers et al*. (1980), 109 D.L.R. (3d) 531 at 535 (B.C.C.A.).

[122] Whether a statement is defamatory depends on the natural and ordinary meaning of the words and must be considered in the context of the publication as a whole. The "traditional axiom is that 'the bane and the antidote must be taken together', that is, a statement taken out of context may be considered defamatory but its 'sting' may be neutralized by another part of the publication": *Lougheed Estate* at para. 157.

[123] One of the challenges in defamation cases is that words are imprecise instruments of communication. The same words used in a particular context may lead different minds to reach divergent, but reasonable, conclusions for distinct reasons. Therefore, courts should avoid assuming the worst possible meaning: *Corcoran* at para. 69. How to read defamatory words in their proper context was described by the Court of Appeal in *Corcoran* at para. 79:

> [79] …a primary source of alleged defamation and other materials may form part of the same context for purposes of evaluating defamatory meaning. The surrounding circumstances and contemporaneity of the other material with the primary source should be considered to see if they are so intimately connected as to affect the way in which the impugned words would be understood. If so, they should be read together for meaning…

[124] A finding that the words are capable of having a defamatory meaning is a question of law, and the finding that the words *actually* contain defamatory meaning is a question of fact: *Mainstream Canada v. Staniford,* 2013 BCCA 341 at paras. 14-15 [*Mainstream*].

[125] The general rule is that a person is only responsible at law for defamatory words in respect to publications he or she has made directly: *Pritchard v. Van Nes*, 2016 BCSC 686 at para. 78. However, a defendant may attract additional liability if the words are republished. The court in *Pritchard* outlined three such scenarios that may attract distinct liability: (i) if the defendant intends or authorizes another person to publish the defamatory words on his or her behalf; (ii) if a defendant publishes the words to someone who is under some moral, legal or social duty to repeat the information to another person, or; (iii) if the republication was the natural and probable result of his or her publication.

[126] Where the plaintiff establishes a *prima facie* case of defamation, falsity and damage are presumed and the onus shifts to the defendant to advance a defence in order to escape liability. Defamation is a tort of strict liability, so it is unnecessary to prove that the defendant was careless or intended to cause harm: *Grant* at paras. 28-29.

B. Defences to Defamation

[127] Different defences in defamation law are available depending whether the impugned statement is fact or opinion. Statements of fact can be defended as truth or responsible communication, while opinion is generally defended as fair comment. Therefore, to determine the defence available to the defendant, it is important to consider whether the defamatory statements are fact or opinion: *Lougheed Estate* at paras. 159-60. The Supreme Court discussed what constitutes "comment" in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 26:

> ... ‘comment’ includes a ‘deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof’. Brown's *The Law of Defamation in Canada* (2nd ed. (loose-leaf)) cites ample authority for the proposition that words that may appear to be Statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used (Brown, vol. 4, at p. 27-317) in the context of political debate, commentary, media campaigns and public discourse. …

1. Truth

[128] A complete defence to a defamation claim is justification or substantial truth. The meaning of the words must be true or substantially true in order for the defence to succeed. The test is whether the defamatory statement would have a different effect on a reader or listener than what the pleaded truth would have produced: *Lougheed Estate* at para. 164, citing Madam Justice Adair in *Casses v. Canadian Broadcasting Corp.*, 2015 BCSC 2150 [*Casses*].

[129] It is sufficient for the defendant to establish that "the gist or sting of the defamation was true, and it is sufficient if the defendant proves that a defamatory expression was substantially true"; even minor inaccuracies do not prevent the defendant succeeding on the defence, "so long as the publication conveyed an accurate impression" (*Casses* at 550).

[130] If the Court determines that the words are not substantially true, the defendant is liable even if he or she published the words with an honest belief in the truth based upon reliable information supplied by someone else: *Nazerali v. Mitchell,* 2016 BCSC 810, varied on appeal, 2018 BCCA 104 at para. 132.

2. Responsible Communication

[131] The defence of responsible communication protects defendants against liability for false and defamatory facts in circumstances where the publisher has acted responsibly in attempting to verify information on a matter of public interest.

[132] The test for responsible communication was set out in *Grant* at para. 98. First, the publication must be on a matter of public interest. Second, the defendant must show that publication was responsible, in that he or she was diligent in trying to verify the statement(s), having regard to all the relevant circumstances.

[133] Whether a statement's publication is in the public interest involves factual issues, however, it is primarily a question of law: *Grant* at para. 100. "To be of public interest, the subject matter 'must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached'… [s]ome segment of the public must have a genuine stake in knowing about the matter published": *Grant* at para. 105.

[134] The following factors should be considered when determining whether the statements constitute responsible communication:

a) the seriousness of the statement;

b) the public importance of the matter;

c) the urgency of the matter;

d) the status and reliability of the source;

e) whether the plaintiff's side of the story was sought and accurately reported;

f) whether inclusion of the defamatory Statement was justifiable;

g) whether the defamatory Statement's public interest lay in the fact that it was made rather than its truth ("reportage")[2], and;

h) other considerations.

[135] At para. 122, the Court in *Grant* stated that the above factors are non-exhaustive and that all relevant matters to whether the defendant communicated responsibly can be considered.

3. Fair Comment

[136] In *WIC Radio*, Justice Binnie described the fair comment defence as holding the balance between two fundamental values: protecting reputations from unjustified harm and freedom of expression and debate: para. 1. At para. 28, Binnie J. lays out the elements of the defence:

a) the comment must be on a matter of public interest;

b) the comment must be based on fact;

c) the comment, though it can include inferences of fact, must be recognisable as comment;

d) the comment must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?

e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was [subjectively] actuated by express malice.

[137] In *WIC Radio*, the Court stated that the public interest is a “broad concept” and is “relatively easy to discharge”: para. 30. The Court in *WIC Radio* also stated that the “notion of ‘comment’ is generously interpreted” and, like establishing the public interest, is “relatively easy to discharge”: para. 30.

[138] With respect to the requirement that the comment must be based on fact, Binnie J. in *WIC Radio* stated at para. 31:

It is true that "[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made... What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their

own minds on the merits of [the impugned] comment. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available…

[139] This requirement was also described in Raymond E. Brown, *The Law of Defamation in Canada*, 2d ed., vol. 2 (Canada: Thomson Reuters, 1999) at 15-84 to 15-86, in a passage cited by our Court of Appeal in *Creative Salmon Company Ltd. v. Staniford*, 2009 BCCA 61 at para. 58:

> [The facts] must be truly stated, or, at least, be substantially true. They must not be patently distorted or materially misstated, or so incomplete as to lead to a material alteration of the truth. A necessary foundation for the defence of fair comment is the truth of the facts commented upon. It is not sufficient to show some of the facts upon which the comment is made are true if some are also false, or if material facts are omitted which would fundamentally change the complexion of the facts which are stated.
>
> [Footnotes omitted]

[140] It follows that "[s]tatements purporting to be factual, that are mere inventions or fabrications of the defendant, or at best mis-statements or half truths, will not support a plea of fair comment": *The Law of Defamation in Canada* at 15-115. The defendant bears the burden of proof.

[141] The defendant must also show that the comment could be honestly expressed on the proven facts. This is assessed on an objective basis: *WIC Radio* at para. 1.

[142] However, even if the defendant successfully invokes the fair comment defence, he may still be liable if the plaintiff can establish malice. Malice focuses on the personal motives of the defendant. The burden of proving malice is on the plaintiff: *WIC Radio* at para. 28. In *Smith v. Cross*, 2009 BCCA 529, Madam Justice Kirkpatrick summarized the circumstances in which a finding of malice can be made at para. 34:

A defendant is actuated by malice if he or she publishes the comment:

> i) Knowing it was false; *or*
>
> ii) With reckless indifference whether it is true or false; *or*
>
> iii) For the dominant purpose of injuring the plaintiff because of spite or animosity; *or*
>
> iv) For some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.

[143] To prove malice, it is not sufficient merely to show that the words are false and defamatory. The plaintiff must tender evidence that the defendant had knowledge that the words were false at the time he published them, or that the defendant did not

believe they were true, or that he recklessly published that which was untrue, or had absolutely no foundation for his charge: *Nazerali* at para. 131.

[144] With respect to the meaning of express malice, Justice Cory, writing for the majority of the Supreme Court of Canada in *Hill* stated at para. 145:

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes … "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created… [m]alice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth…

[145] A finding of malice can take into consideration conduct of the defendant throughout the course of events, both before and after the publication of the defamatory words, as well as throughout the trial: *Nazerali* at para. 131.

III. ANALYSIS OF DEFAMATORY MEANINGS

[146] A few observations about the Articles are in order.

[147] The context in which alleged defamatory statements are made is critical. It is vital that the statements the plaintiff pleads are defamatory not be read in isolation. In this case, it would be onerous to reproduce the English translation of the 10 Articles within this judgment, so I have not done so. However, I emphasize that I conducted my analysis and based my findings upon my reading of the entire Articles and not just the extracts identified by the plaintiff in the NOCC.

[148] I find that the tone and language in the Articles is relevant to their interpretation. The defendant uses colourful phrases, analogies, idioms, sarcasm, humour, rhetorical questions (he has included a hand-drawn cartoon in some of the Articles) and hyperbolic expressions throughout the Articles. The style and tone are somewhat exaggerated in order to be engaging and captivating to read. In that type of writing, the inclination to interpret the language as being offensive may be tempered by its inherently flamboyant content and style.

[149] Also, it is significant that all the publications at issue are being analyzed in translation; they are all written in Chinese. The allegedly defamatory statements were posted on social media and available within and outside of Canada, but only to those who can read Chinese. Thus, no matter how accurate, there may be something “lost in translation”. English and Chinese do not share a root language, but more importantly are fundamentally different because written Chinese is a logographic language. As such, no matter how good the interpretation, word for word translations may not capture the full tone or character of the writing. In my view, that must be taken into account when analyzing the meaning of the Articles.

[150] I review the Articles in chronological order. After a brief summary, I reproduce from the pleadings the plaintiff's allegations about which words are defamatory (the "Impugned Statements"), and the plaintiff's assertion as to the meaning of the Impugned Statements as set out in the NOCC. I conclude as a matter of law that all of the Impugned Statements are capable of having a defamatory meaning, unless specifically indicated otherwise.

[151] I then turn to my factual findings about whether any of the Impugned Statements actually have a defamatory meaning. There is some repetition among the alleged defamatory meanings pled in the NOCC. Next, if necessary, I analyze the applicability of the defences of truth and fair comment.

[152] The defendant relies on the defence of responsible communication. My analysis of that follows the analysis of all 10 Articles since the factors in the legal test for responsible communication focuses more on the actions of the defendant.

A. Article One - December 12, 2016

[153] On December 12, 2016 the defendant posted an Article on his public WeChat account titled "*A famous wealthy overseas Chinese Community leader of Vancouver allegedly revealed that he lived in a luxury mansion and concealed his income to receive full Canada child benefit"* (Article One). The Article is 30 paragraphs and comprises about 8 pages when printed out in English ignoring the advertisements and other "pop-up" content that appears.

1. Summary of Article One

[154] The beginning of Article One comments on a rally against "Chinese Exclusion" that took place in Richmond. The main thrust of the Article is the defendant's commentary and opinion on the topic of whether wealthy Canadians of Chinese descent have any reason to publicly protest that they are being discriminated against in Canada, and the impact of such protests on the Chinese-Canadian community as a whole. He refers to certain "anti-Chinese flyers" that apparently circulated in the community, which he speculated prompted the rally. However, he criticized the Alliance for encouraging participation in the rally. He wrote: "If people were willing to take part [in the protest], they can suit themselves, but how was it a pressing need for you guys [the Alliance] to join in by mobilizing others? Were you discriminated against somehow? Anyway, many, myself included, did not feel that way". He commented that the "so-called 'ideological trend of Chinese Exclusion' is non-existent".

[155] He then quoted from some document apparently published by the Alliance in which the authors stated:

The accusations made in the recent anti-Chinese immigrant flyers that target Chinese immigrants are unjust:

One of the accusations is “living in luxury mansions without paying taxes.” Canada is a nation under the rule of law. Any nonpayment or underpayment of tax or other unlawful activity will be subject to legal sanctions and punishment. So if anyone has conclusive evidence showing a Chinese evading paying tax they can bring that person to justice through the reporting process. But to accuse people of “living in luxury mansions without paying taxes” without any basis is irresponsible…

[156] The defendant then wrote:

[a]fter reading this paragraph, I almost burst out laughing. Binding the trash among a small number of furtive wealthy immigrants to the vast Chinese community is in itself most inappropriate. It is public knowledge that “living in luxury mansions without paying taxes while collecting benefits has long been a chronic illness in some wealthy families in the Chinese Community, which is abhorred by all Chinese who are nonetheless burdened by the notoriety”. The English newspaper has identified so any facts and yet the Alliance still claims it has no knowledge whatsoever, and continues to act as the wronged innocent.

[157] He further wrote that since the “Alliance has brought things out into the open today” he will scrutinize its leadership. The Article then makes reference to the plaintiff’s hosting the Prime Minister at his house and then claimed the plaintiff is “worth upwards of 100 million yuan”[3] and “surprisingly, he also collected child benefits granted to low-income families by the Canadian government”.

[158] After reviewing the rules related to the CTB, the defendant reproduced an Article that appeared in *China Weekly* in 2011. In that Article, the author related an interview with an individual named Yi An Wang. The defendant explained his belief that the plaintiff used a pseudonym and it was the plaintiff who was actually interviewed for the *China Weekly* Article. The defendant wrote that it is “unbearably embarrassing” that a wealthy person would conceal his income and receive the CTB. The defendant also stated that it was “amazingly ironic” that the plaintiff would appear at a protest parade. In the body of the December 12, 2016 Article the defendant wrote “[w]e care to know how much income he concealed”.

[159] The plaintiff alleges the following sentences from that Article defame him (Impugned Statements):

The article is dictated by a Yi An Wang who is in fact Miaofei Pan according to many informed individuals.

…

In fact, a description was also provided online of the relationship between Miaofei Pan and the person assuming the pseudonym Yi An Wang. Naturally, such online material can’t really be relied upon per se, but so long as no correction is made to the Statement Yi An Wang is Miaofei Pan, that in and of itself is sufficient evidence!

…

Miaofei Pan fled abroad and under a pseudonym Yi An Wang.

…

That is, Mr. Pan concealed his income at least back then – how unbearably embarrassing that a wealthy man should receive full Canada child tax benefit that only a mere $30,000 in income could qualify for?

…

And isn't it amazingly ironic that this Mr. Pan also appeared in today's "protest" parade? Not only westerners but all Chinese would discriminate against such a set of circumstances[…] Surely the plaintiff doesn't care about the $2,000 in child tax benefits, but we care to know how much income he concealed such that he could collect so much child benefit.

[160] At paragraph 13 of the NOCC, the plaintiff asserts the Impugned Statements in Article One convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff concealed his name for an improper purpose, including to gain a tax benefit to which he was not entitled;

b) the plaintiff has evaded paying taxes;

c) the plaintiff's actions are improper and therefore attract discrimination; and

d) the plaintiff is not a good representative of Chinese people.

2. Are the Impugned Statements in Article One Defamatory?

[161] I do not agree that Article One makes the accusation as it is pled at the beginning of para. 13(a) – that the concealed identity was in furtherance of claiming the CTB. Instead, the defendant identified similarities between the interviewee in the *China Weekly* Article and the plaintiff, which he claimed were too specific and too many to be mere coincidences. The defendant relied on his belief that the plaintiff was the person interviewed as "proof" that the plaintiff did claim the CTB (because the interviewee admits to doing so). There is no suggestion that he concealed his identity in order to claim the CTB. Nor do I find the allegation that the plaintiff used a pseudonym when allegedly interviewed to be defamatory.

[162] Although he qualified that conclusion by writing that the *China Weekly* Article "can't really be relied upon *per se*", he continued and stated that, and "as long as no correction is made then that is sufficient evidence". That statement and his testimony

made clear that the defendant expected it was up to the plaintiff to refute the accusation if it was not true.

[163] I also note that Article One is specific in alleging the plaintiff claimed the CTB, not "a tax benefit to which he was not entitled". The assertion as pled is much broader than the accusation in Article One. The difference might be important; presumably not all tax benefits represent the same monetary benefit, which might be relevant to whether the allegation is defamatory. Although defamation pleadings are meant to be strictly construed, I proceed on the basis that the plaintiff's asserted meaning was properly limited to the defendant's allegation as it was published. However, in light of the preceding paragraph, I do not find the meaning asserted in para. 13(a) is conveyed in Article One.

[164] Article One accused the plaintiff of not declaring his true income, thus both evading taxes and claiming the CTB to which he was not entitled. I agree the meaning pled at para. 13(b) of the Article is conveyed, and I find that meaning is defamatory.

[165] I do not find the asserted meaning pled at para. 13(c) is conveyed by Article One. The defendant offers the view that the complaints about discrimination at the rally and in the Alliance's publication were not warranted. In the Article, the defendant criticizes the plaintiff for participating in the rally, writing that "[n]ot only westerners but all Chinese would discriminate against such set of circumstances".

[166] The sentence is difficult to understand because the word "discriminate" is used in an unorthodox, possibly erroneous, manner. However, I do not find any reasonable person reading the sentence in context would interpret the defendant's comments as suggesting that the plaintiff's actions have actually attracted discrimination. Instead, the phrase is a clearly rhetorical statement that the plaintiff's behaviour would be disagreeable in the eyes of others, regardless of whether they are "westerners" or "Chinese". Nor do I find the asserted meaning in para. 13(c) conveyed anywhere else in the Article.

[167] At para. 13(d) of the NOCC, the plaintiff pleads that Article One conveys a message that he is not a "good representative" of Chinese people. Labelling someone as not being a "good representative" of an identifiable group, is so vague as to be almost meaningless. It is not clear to me that reasonable people reading Article One would conclude that the accusations against the plaintiff for what the defendant believes are improper actions (wrongly claiming the CTB and participating in the rally) means the plaintiff is a poor example or model of a "Chinese person".

[168] However, reading Article One as a whole, the defendant links the Alliance to the protest (because it apparently mobilized the rally) and the plaintiff to the Alliance, because he was its Honourary Chairman. The defendant thus condemns the plaintiff for publically professing to be discriminated against when, as a wealthy person with some status in the Chinese-Canadian community, he has evaded taxes by wrongly claiming the CTB. In that sense, I agree the assertion at para. 13(d) is conveyed and is defamatory.

3. Do Any of the Defences Apply with Respect to Article One?

a. Truth

[169] I discussed earlier in this judgment problematic aspects of the plaintiff's evidence about his tax status, and my concerns about his credibility, generally. Most disturbing is the plaintiff's position at trial that he was not obliged to produce his T1 Income Tax Returns. They ought to have been produced before trial. When given the chance to correct that deficiency during the trial, the plaintiff relied on his accountant who did not bring a true copy of the document submitted to CRA; instead he brought documents created during the trial. From that omission and based on my discussions at paras. 70-76, I draw an adverse inference that the plaintiff did not produce a true copy of his filed income tax returns because if he had done so, they would have revealed that he did claim the CTB.

[170] In the event I am wrong to draw that inference based on the initial non-disclosure, I conclude looking at the totality of the evidence that the inference is reasonable. Only when recalled, did Mr. Zhang explain that the professional accounting software he used to create the returns that were put into evidence, generates the date on the final signature line which is date the data is run through the software. He testified that is why the date on all four returns adduced at trial was October 7, 2017. He also explained that to create the returns he had to restore the original, raw data and run the program. He testified that the software is sophisticated and allows professionals to *manipulate* any portion of that data in order to allow consideration of the implications of tax blending, or amendments to previous returns. He confirmed anything (figures and dates) can be changed. Given those factors, I did not accept the returns as being reliable.

[171] I also note that many boxes on the returns are blacked out and cannot be read; the version sent to CRA would not contain those redactions. In other words, what the plaintiff produced were "new" documents. They were not true copies of the tax forms submitted to CRA.

[172] Also, Mr. Zhang testified that he prepared summaries for clients about their tax returns, yet no summary was produced. No tax assessment were put into evidence either.

[173] Furthermore, no explanation was given for why Mr. Zhang prepared the plaintiff's income tax returns, not through his regular employment, but via his wife's now defunct business. He did not mention this until he was recalled to give evidence. It is difficult to believe that was merely an oversight.

[174] The plaintiff was given the opportunity (which arguably, he may not have been entitled to) to remedy his non-disclosure of clearly relevant documents, mid-trial. What the Court expected was the plaintiff would produce true copies of his T1 Income Tax Returns submitted to CRA for the years 2007 to 2010. Those were not produced. Therefore, in the alternative, relying on the initial non-disclosure and all circumstances referred to in the preceding paragraphs, I draw the adverse inference that the plaintiff did claim the CTB.

[175] Is the allegation that the plaintiff evaded taxes true? As noted earlier (para. 49 in his direct testimony, the plaintiff denied that he had ever claimed his income was low

enough to make him eligible for the CTB. His evidence on that during his direct-examination was firm and unqualified. However, he was forced to recant in order to buttress the testimony of his accountant that the plaintiff was legally entitled to claim the CTB, but chose not to. That reversal was telling and further eroded the plaintiff's credibility.

[176] I have already concluded it is appropriate to draw an adverse inference that the tax returns submitted in court were not the original ones submitted to CRA, and are not reliable. It is noteworthy that there are substantial redactions on the returns that were put into evidence. No permission was sought ahead of the admission into evidence of those returns to remove such information. If there was a concern about privacy, that could have been raised, and it is possible that those exhibits could have been sealed, or with the Court's permission, portions redacted. Rather than pursue either course, the plaintiff chose to simply black out information on his tax returns. Based on those factors, I infer that the plaintiff has not disclosed his "true income".

[177] Accordingly, I find on a balance of probabilities that the plaintiff did claim the CTB and he did evade paying taxes. The defendant is entitled to rely on the defence of truth with regard to para. 13(b).

[178] I do not find the truth defence applies to the defamatory meaning that the plaintiff is not a "good representative" of Chinese people because that is a subjective assessment incapable of proof. I examine in the following paragraphs whether it is fair comment.

b. Fair Comment

[179] As discussed above, to qualify as fair comment, the statement must be: (i) on a matter of public interest; (ii) based on fact; (iii) recognizable as comment even if it includes inferences of fact, and; (iv) satisfies the objective test of whether any person could honestly express the opinion on the proved facts. The defence will be defeated if the plaintiff proves the defendant was motivated by express malice.

[180] I pause to note that some of the leading sources -- including *The Law of Defamation in Canada* -- consider whether the statement is recognizable as comment (i.e. step iii) prior to examining whether it is based on fact (i.e. step ii). In the circumstances of this case I find this approach is preferable and I will do so.

i. Public Interest

[181] As discussed below (at paras. 385-391) I conclude that the Impugned Statements are on a matter of public interest in the context of responsible communication. That conclusion is not determinative as to public interest for the fair comment defence in any particular Article, but the analysis underlying it is pertinent. I therefore adopt and apply my comments and analysis relating to public interest under responsible communication to the assessment of the public interest aspect of fair comment for all 10 Articles.

[182] Looking specifically at Article One, I do find it addresses a matter of public interest. Public interest is a "broad concept" which is "relatively easy to discharge": *WIC Radio* at para. 30. The plaintiff is a public figure in the Chinese-Canadian community. His hosting of the Prime Minister at his home garnered national press attention. The defendant explained how he was reminded of the *Globe and Mail* Article when he saw the plaintiff at the rally, and thus questioned why someone who had a connection with the Prime Minister should be protesting about discrimination. That is clearly a matter of public importance.

ii. Recognizable as Comment and Based on Fact

[183] The plaintiff's position is that the defence of fair comment is unavailable to the impugned statements in the first Article as they are statements of fact, not comment.[4] Furthermore, the plaintiff argues that, even if they are considered comment, they are not based on proven facts. Thus, the plaintiff says, the fair comment defence is not available to the defendant.

[184] I disagree. Whether a person is a "good" or "bad" representative of any group is clearly a subjective opinion, and a comment not capable of proof. Moreover, the comment was based on facts, which I discuss under the next subheading.

iii. Based on Facts which are Truly Stated

[185] There is no dispute that the plaintiff was at the time he participated in the rally an honourary chairman of the Alliance, the organization that mobilized the rally. There was no dispute the national press had recently reported his hosting of the Prime Minister at his home. Both are factors that can be relied on as the plaintiff "representing" Chinese-Canadians in some fashion. As indicated above, I have concluded the defendant is entitled to rely on truth for the accusation that the plaintiff claimed the CTB. It is undisputed that the plaintiff is wealthy. I conclude no one can reasonably read Article One and conclude the defendant's belief about the plaintiff's poor representation of the Chinese people was anything other than his comment and opinion.

iv. Could Others Honestly Express the Opinion?

[186] This factor is assessed on an objective basis. In my view, there can be little doubt that someone could honestly express the view that the plaintiff was not a "good" representative of the Chinese people based on the facts mentioned above.

v. Malice

[187] The defendant has succeeded in proving on a balance of probabilities that fair comment applies to the defamatory statements in Article One. However, he will still be liable for damages if the plaintiff can prove that the defendant was actuated by malice. This analysis focusses on the attitude, actions and demeanour of the defendant and does not depend upon the specific content of the Article. Given that, my analysis and conclusion on this topic applies to all 10 Articles.

[188] To succeed with this argument, the plaintiff has the onus of demonstrating any one of four things. The first is that the defendant knew the statements were false. I am not satisfied the

evidence demonstrates that the defendant published any of the defamatory comments knowing they were false. As discussed earlier, I find that the defendant believed the statements were true because he sincerely believed he was relying on authentic, official documents; at no point did he wavier from that belief. I find this element is not met.

[189] The plaintiff can also succeed in establishing malice if he demonstrates on a balance of probabilities that the defendant recklessly published statements that were untrue, or that the defendant had absolutely no foundation for his allegations (*Nazerali* at para. 131). The statements of fact in all the Articles were all presented with a factual foundation, which the defendant attempted to prove with the documents he tendered at trial. While I did not admit those documents into evidence for the truth of their contents, I did find the defendant sincerely believed the documents were authentic and reliable. The defendant consistently identified the sources he relied upon. I find on a balance of probabilities that the defendant was not reckless.

[190] Finally, if the plaintiff can prove that the defendant published the defamatory statements either for the dominant purposes of injuring the plaintiff, out of spite, or for some other improper purpose, then malice will be established. The plaintiff argues that the defendant set out to hurt the plaintiff out of spite or animosity. The evidence does not support that conclusion. The parties had never met or had any communication prior to the trial. There was no evidence of personal animosity, threats, or hostility between them before trial. The plaintiff's position is based solely on the content of the Articles. The defendant's testimony and submissions consistently denied that he was motivated by ill will; he believed he was engaged in the pursuit of truth. I find that his belief was sincere. For all those reasons, the plaintiff has failed to establish malice.

[191] While it is true that a defendant's conduct throughout the trial should be considered when considering malice (see *Nazerali* at para. 131), it is also true that the motives of the defendant are relevant. The plaintiff points to the defendant's conduct throughout the litigation as "arrogant defiance". The plaintiff argues that when the defendant was asked to stop publishing defamatory Articles, he kept publishing during trial which amounted to "bullying". I do not agree that behaviour amounts to bullying. The defendant did not cease publication because of his stubborn belief that he was reporting the truth; I find his belief was genuine.

[192] The defendant wrote in Article 10 that he harboured no animus towards the plaintiff, something he repeated more than once at trial during his testimony and his submissions. I accept the defendant's testimony that he was not motivated by any ill will; he instead took a firm, principled and dogmatic stance against what he believed was the plaintiff's attempt to intimidate him into silence with the litigation. He was very wedded to his ideological view of the world, but that is not the same as his demonstrating malice towards the plaintiff.

[193] Looking at the evidence at a whole, I am satisfied that the defendant's motivations were based in revealing what he genuinely perceived to be misconduct and injustice – not for the dominant purpose of injuring the plaintiff. I found no evidence that the defendant was motivated by spite or animosity when he continued publishing during

the trial. Rather, he was keen to demonstrate he was not cowed by the criticism that had brought him to trial by the plaintiff. He also views the litigation itself to be intimately tied to the topic he addressed in his Articles. As the trial judge, I find the defendant genuinely held these ideological stances that are unrelated to any kind of personal vendetta or vindictiveness, which would support a finding of malice.

[194] The plaintiff also argues that while he and the defendant had no personal relationship, the malice is occasioned by the defendant's indirect motive of attacking wealthy Chinese people in Canada, the plaintiff being an example of that broader socio-economic group. I do not agree.

[195] This is not a case where the defendant is writing from a perspective diametrically or fundamentally opposed to the plaintiff and the Community Associations for which he held leadership positions. Instead, the Articles address his concerns over the abuse of power that he identified within the plaintiff's and other's conduct. The plaintiff does not agree with that perspective, but the defendant's unbending assertions do not equate to a malicious attitude. I conclude the plaintiff has mistaken the defendant's strident expression of a philosophy with malicious intent.

[196] I also note that this motivation could be said to be the motivation of many journalists working today. To state that the defendant was actuated by malice for an alleged "dislike" of wealthy Chinese people (even if I accepted that he had that dislike, which I do not), would be akin to stating every journalist who considers class division or economic inequality in his/her writing about corruption or misconduct is actuated by malice if the subject-person of that reporting happens to be wealthy.

[197] I add that having observed the parties during the trial, and particularly the defendant both as a witness and advocating for himself, it was clear the defendant did not act out of any malicious intent. The defendant was certainly stubborn, defiant and uncompromising in his position and his beliefs. However, what the plaintiff perceived as animus, was instead the defendant's unyielding belief that he had a duty to continue to uncover what he genuinely believed to be the truth. I also find that he was sincerely motivated to comment on issues which he believed for the enlightenment and betterment, for lack of a better term, of the "little guy".

[198] The Articles do use sarcasm and colourful language, rhetorical questions and exaggerated language in discussing the topics, but those stylistic elements cannot be mistaken for animus.

[199] For all these reasons, the plaintiff has failed to discharge his onus demonstrating the defendant was operating with malice in writing any of the Impugned Statements, defamatory statements or the 10 Articles.

B. Article Two - December 13, 2016

[200] On December 13, 2016 the defendant posted an Article on his public WeChat account titled "Threatens to sue me? Sharing again Comrade Miaofei Pan's notice of tax arrears! Not for the faint of heart – – Unveiling the Secrets of a 'questionable'

Overseas Chinese leader in Vancouver: II" (Article Two). Excluding advertisements, other pop-ups and documents authored by someone else than the defendant, the English translation of Article Two comprised 15 paragraphs covering almost five pages.

1. Summary of Article Two

[201] In this Article as noted above, the defendant begins by repeating one of the defamatory statements from Article One. He then described that the plaintiff forwarded Article One to the Alliance seeking comments; the plaintiff's post on the Alliance's WeChat group is reproduced in full within Article Two. It read:

I have never received one cent of Child Tax Benefit, nor have I ever changed my name. [The defendant] has been using his own Vancouver Public Account to mislead the public with false statements, smear and defame me, start and spread malicious rumors, and twist the facts. Serious harm has been done to my reputation. I have taken action through legal venues. Dear honorary chairs, honorary vice chairs, advisors and co-chairs, any thoughts?

[202] The defendant then commented that, "[l]ooking at the battle formations, I figured my lifting of the 'lid on the class war' wasn't done sufficiently after all!". I note that this sentence conveys the tone of a large amount of the defendant's writings, at least in translation, in that he uses figurative language, colourful phrases and intentional exaggerations and sometimes what I assume is meant to be humour.

[203] The defendant then questioned how the plaintiff could win the law suit since (in the defendant's estimation) the allegation that the plaintiff collected the CTB came from the plaintiff himself. This is a repeat of one of the defamatory statements from Article One, combined with a continuation of the accusation that the plaintiff is the same person as the Mr. Wang interviewed in the *China Weekly* article. The defendant continued: "[e]ither he spilled the beans himself when interviewed by the reporter, or it was totally fictitious and he just ran off at the mouth; how are we to blame for any of these?". He then reproduces, again, the China Weekly Article.

[204] He then wrote that, "[s]ince Mr. Pan is suing, as a pal I just need to create some more conditions for him". This too accurately captures the tone of many portions of the Article; it is clearly a sarcastic comment.

[205] What follows is what the defendant testified was a screen shot of a Notice of Tax Arrears published by the Chinese government, which he identified was issued by Zhejiang Province Cangnan Country Local Tax Affairs Bureau Lingxi Tax Affairs Branch and published on the Wenzhou Daily News on September 25, 2015. His comments on that tax notice are contained within the Impugned Statements reproduced above.

[206] The defendant then directly addressed the plaintiff:

… you being a famous overseas Chinese leader in Vancouver, abiding by the law is but part of your duty. So that the curiosity of the uninformed spectators may be satisfied, and to not let

down the mainland Chinese government agencies…and to further maintain the overall honor of the [Alliance], why don't you take a few steps forward and show us your 2015 tax returns! We look forward to it!

Just a friendly reminder, the plaintiff: always speak based on the facts rather than shout lawsuits willy-nilly ….

[207] The Impugned Statements are set out in the NOCC paras. 15 and 16:

Many were stunned after I disclosed yesterday that Mr. Miaofei Pan, a current honourary chair of the Canadian Alliance of Chinese Associations, had allegedly revealed his concealment of personal income and receipt of child tax benefits that only low-incomes would qualify for. A famous patriotic overseas Chinese community leader now suddenly turned into a senior "questionable" overseas Chinese leader".

…

Dear readers, trust you've seen clearly that the personal income tax owed by Mr. Pan in mainland China for last year is 32.312m RMB ($6m CAD) on top of sales tax, city maintenance and development tax, education tax, and so forth, totalling 440,000 RMB.

Also take a look at the tax collection notice for Mr. Pan's wife, Ms. Winhuan Yang.

…

Now the uninformed onlookers, trust you've all seen this clearly? I had to rub my eyes hard to see the digit group separators clearly. This notice shows that Mrs. Pan owes 9.2m yuan (RMB) in personal income tax.

The two notices total 32,312,000 + 440,000 + 9,200,000 = 41,952,000 yuan or $8.3m CAD!!

[Although not impugned by the plaintiff, next is written in large bolded text "My goodness", accompanied by a drawing of what could possibly be three angry chickens].

Folks, these only represent taxes such as the income tax and sales tax the Pans owe. People would have to wonder, how much on earth did Miaofei Pan earn that year.

According to informed sources, these amounts were declared by Miaofei Pan himself, and involved a half-baked building construction project called Huachen Yipin in Cangnan County. People say the project defrauded hundreds of local home buyers. The entire project was constructed by a Zhejiang Linyang Real Estate Company in which Miaofei Pan held a controlling interest while the frontline person-in-charge was Zufan Zheng, a partner of Pan. From what we've learned so far, Zheng has been detained by police.

…

[208] At paragraph 17 of the NOCC, the plaintiff asserts the Impugned Statements in Article Two convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) The plaintiff was dishonest about his personal income in order to improperly obtain a tax benefit;

b) The plaintiff has not paid Chinese government taxes owing;

c) The plaintiff's business project in China caused hundreds of purchasers to lose their money, and;

d) The plaintiff was business partners with a person suspected of criminal activity.

2. Are the Impugned Statements in Article Two Defamatory?

[209] With regard to the asserted meaning contained in para. 17(a), I adopt and repeat my earlier analysis and conclusions about similar statements in Article One at para. 164, which I did find were defamatory.

[210] Reading Article Two as a whole, the reference to "government taxes owing" in para. 17(b) is taxes owed to the Chinese government. I am not persuaded the accusation of not paying taxes owing to the Chinese government would necessarily lower someone's reputation.

[211] I take judicial notice that China is not considered a free democracy akin to Canada (see also discussion above at paras. 98 and 99, and that it is reasonable to assume Canadians harbour doubts about whether the Chinese government treats its citizens fairly with regard to taxation. It could be that there are facts that would temper or rebut the facts for which I have taken judicial notice, but no evidence was led to establish that. Nor was any evidence led to demonstrate that Chinese Canadians have a different perception than I have described. The burden is on the plaintiff to persuade the Court that Impugned Statements are defamatory. I am satisfied based on the status and reputation of the Chinese government that it is not defamatory to suggest someone owes taxes to the Chinese government.

[212] I agree the asserted meaning pled in para. 17(c) is conveyed in Article Two, and that the accusation is defamatory. The Articles suggest the plaintiff's business was responsible for a project that harmed hundreds of people.

[213] With regard to the asserted meaning pled at para. 17(d), the defendant wrote in Article Two that the "frontline person-in-charge was Zufan Zheng, a partner of Pan" and that he had been detained by police. The plaintiff asserts this statement would be understood to be an accusation he was business partner of someone accused of "criminal" behaviour.

[214] I do not agree that meaning is conveyed. Nowhere in the Impugned Statement is the word "criminal" used. Nor am I satisfied that being detained by the Chinese authorities would equate in the minds of reasonable Canadians with that person necessarily being a "criminal". It is

reasonable to assume that Canadians would immediately question whether the detention was lawful, legitimate or fair according to the Canadian standard of detention for alleged criminality. I also find it to be a notorious fact of which I take judicial notice that the breadth of behaviour caught by the Chinese government's perception of "criminal" is far wider than that in Canada, and captures behaviours that in Canada would never fall into that category.

[215] Accordingly, I do not find the Article conveys the Impugned Statement pled at para. 17(d).

3. Do Any of the Defences Apply with Respect to Article Two?

a. Truth

[216] With regard to the defamatory meaning pled at para. 17(a), I adopt my reasoning and conclusions with regard to the truth of that Impugned Statements from Article One (paras169-177). The defendant is entitled to rely on truth as a defence.

[217] The plaintiff did not dispute a portion of what is pled in para. 17(c). There was no dispute that a company which the plaintiff owned at one time was responsible for the Project which ultimately failed, harming hundreds of people. The sting comes from the suggestion that the plaintiff had some responsibility for the Project because of his connection with the developer. The issue is whether the defendant has proven that to be true or substantially true. For the following reasons, I find he has.

[218] In his direct-examination, the plaintiff testified that he had nothing to do with the Project or the Linyang Company after selling 100% of his shares in 2006, well before the Project failed. He also confirmed that the Project did fail because it ran out of capital, causing financial harm. During cross-examination, the plaintiff accepted it was possible that his name still appeared on the Share Registry years after 2006 as a majority shareholder of Linyang Company. He explained that a share transfer in China must be registered with the Commercial Bureau. To do so, you must pay a fee. According to the plaintiff, Mr. Zhang did not pay that fee, thus the Share Registry's records may not have been updated. The plaintiff continued, however, that even though his name may appear there, "the Chinese police, Chinese tax authority and Chinese government, they understand what really is going on".

[219] This testimony is damaging to the plaintiff's primary position. Why would the plaintiff have any knowledge or claim that any government agency "knew what was going on" unless it was true that his name did actually appear on the Share Registry? That conclusion is supported by the fact that the plaintiff only provided the explanation during cross-examination. When he was asked why he did not provide that explanation during his testimony in chief, he first asked the Court if he had to answer the question. He then answered he did not give that background because he was not asked, and also that he did not think it was necessary to explain. This was combined with several attempts by him to avoid answering direct questions.

[220] Furthermore, during cross-examination the plaintiff was asked whether he loaned money to Mr. Zhang after 2006. The plaintiff resisted answering the question, asking what that had to do with the case. He was asked the question again and I had to direct him to answer because he was evasive. He then admitted he lent Mr. Zhang money after "selling" Linyang Company to him, and that Mr. Zhang paid him back, but not all at once. He said that was the extent of his commercial relationship with Mr. Zhang. Given my concerns about his credibility, his evasiveness and reluctance to answer this question, I have trouble accepting the plaintiff's denial of a business relationship with Mr. Zhang and involvement in Linyang Company after 2006.

[221] Other testimony buttresses my concern. Despite his avowed disassociation with the Project from 2006, he was able to explain with some detail why the Project failed. In particular, he testified the new owners expanded the company's operations too quickly and ran out of capital before construction was finished. He also stated they took money from loan sharks who charged very high interest. It is difficult to accept he would know, or profess to know, those details if he truly had no involvement.

[222] Assessing all of this evidence, I find on a balance of probabilities that it was substantially true that the Project that failed was the "plaintiff's business".

[223] Because the defendant has succeeded with the truth defence on both defamatory statements in Article Two, I do not analyze any other defence.

C. Article Three - December 14, 2016

[224] On December 14, 2016 the defendant posted an Article on his public WeChat account titled "*$450K? $550K? Guess how much comrade Miaofei Pan spent on three Chinese 'official leadership positions' combined unveiling the secrets of a "questionable" overseas Chinese leader, Vol. III"* (Article Three) which was posted with a copy of the letter sent to the defendant from the plaintiff's counsel. Article Three contains about 23 paragraphs of content authored by the defendant and excluding reproduced documents and other irrelevant content, it is about five pages in length.

1. Summary of Article Three

[225] The defendant claimed in Article Three that "[t]here has never been any false information in my 600 Articles over the last two years". He claimed that screenshots pictures texts and "even witnesses" are the evidence for his writing. He then comments that "when an overseas Chinese leader[5] denies things brazenly…[a] cadre of helpers is sure to follow behind and all of them are in the same boat". He then reproduced a post in support of the plaintiff that apparently appeared on the Alliance's group chat on WeChat. The defendant refers to the named author of that post as a "sweet talking overseas Chinese leader" and said the post was "beyond hilarious". That theme is further explored in the next four paragraphs.

[226] The defendant then reproduced portions from a pamphlet obtained from the Wenzhouness Association which he claimed was his source for the information about the plaintiff's donations

to Community Associations. It is important to note that Article Three accurately reports that the plaintiff donated large sums of money to community associations, and that he held leadership positions within those coincidental with the timing of his donations.

[227] In the 15th and 16th paragraphs of Article Three, the defendant asks whether the plaintiff would have ascended to the positions without spending money. He then remarked that "it is public knowledge that overseas Chinese leaders are either 'self-proclaimed' or acknowledged by small circles of people, and registering an association costs little more than 100 dollars". He asks another question: "what kind of thickheads would want to spend money to buy one [position in Community Association] – the lights are on but no one's home?". He continued that, in fact, everyone misjudged that situation and that "rich businesspeople are brainy" because they use those leadership positions to try and gain political influence in China.

[228] Article Three then speculates that the plaintiff wanted to obtain these leadership positions because of litigation in China and then he could "wear [those positions] back to …regions where he had business 'troubles', to bluff local business associates, competitors and those inept officials in the Chinese government…".

[229] The impugned sections of that Article are:

It was only in response to the call of the Canadian Alliance of Chinese Associations in the past few days for 'production of evidence showing wealthy immigrants live in luxury mansions while concealing income to avoid paying taxes' that I wrote two Articles on things about Miaofei Pan, an honourary chair of the Alliance, that weren't so "honourable" or genuine with a view to saving the overseas Chinese community leadership, for one thing, and also in the hope that the alliance would set off to straighten out its leadership first, so as to invigorate the organization.

….

You guys know my basic attitude towards this type of "lawyer's letters." If it is nonsensical badgering, for each letter received, I would return two articles with further disclosure. But in dealing with Miaofei Pan, an overseas Chinese leader, and quite famous at that, I need to give it more weight. So for each letter received, I have decided tentatively to return 3 Articles with disclosure, and I do not renege on my promise. In fact, this is to help the Canadian Alliance of Chinese Associations to "reform" itself, as well as to save the ever declining reputation of our overseas Chinese "leaders."

…

The three 'overseas Chinese leadership' positions held by Miaofei Pan in Canada are: executive chair of the Canadian Alliance of Chinese Associations (currently an honourary Chairman), president of Zhejiang Association of Canada, and president of Wenzhou Association Vancouver.

To compete for these "serving the people" positions, Miaofei Pan almost invariably spent money. To take over the office of executive president of the Canadian Alliance of Chinese Associations from his predecessor and townsman Mr. Da Teng, he shelled out $50,000.

As a result of his pledge to contributing $400,000 in funding for the premises of the Wenzhou Association, he took office as president of the Headquarters of the Wenzhou Association smoothly…

In addition, based on the information I have gathered, he did not take office as president of the Zhejiang Association without undergoing a "horrifyingly brutal battle". In the end, some say, he expended $100,000 to finally secure the presidency. The money was not, however, included in the "Record of Achievements" listed by Pan, and further verification is required as to the specific amount. All in all, money was spent.

…

…The most important purpose for them to shell out money and buy these "official" positions is so they can return to mainland China to "have discussions", which is totally unrelated to the mandate of any fellow townsmen's associations to serve fellow townsmen. And the sound practices at these overseas fellow townsmen's association have since been missed up. If you would like to make donations, go ahead and make donations. But if they are conditioned upon you becoming the president, then it is position buying.

Miaofei Pan immigrated to Vancouver only 10 years ago and assumed the three overseas Chinese leadership positions from 2012-2013, when he had been in Vancouver for just 5 to 6 years, and likely had just found out about the relationship between West Vancouver and Vancouver West. Nonetheless, he held those three important positions all at once. And it was a time when he was embroiled in all sorts of lawsuits in China. He wasn't eager to serve his fellow townsmen, but to spend money on these official titles real fast so he could wear them back to Wenzhou, Jinan and Shanghai, regions where he had business "troubles," to bluff local business associates, competitors and those and those inept officials in the Chinese government, because any clear-handed official would see through it right way.

Basically, this trick pulled by Miaofei Pan delivered some results.

[230] At paragraph 22 of the NOCC, the plaintiff asserts the Impugned Statements in Article Three convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) The plaintiff did not honestly report his taxes;

b) The plaintiff paid money to obtain leadership positions in organizations rather than obtaining them for a meritorious reason; and

c) the plaintiff became chairman of various organization for personal business, legal and political reasons, not to serve the people of those organizations.

2. Are the Impugned Statements in Article Three Defamatory?

[231] I do not find the meaning pled in paragraph 22(a) of the NOCC is conveyed ordinarily or by innuendo anywhere in Article Three. In the opening paragraph (reproduced above in the Impugned Statements), the defendant explained that in order to answer a call by others to produce evidence "that wealthy immigrants live in luxury mansions while concealing income to avoid paying taxes" that he wrote "two Articles on things about [the plaintiff], an honorary chair of the Alliance, that weren't so 'honorable'… ". The defendant is referencing his previous Articles in which he does make that accusation, but the accusations are not repeated in Article Three so there is no defamation in Article Three on that ground.

[232] Paragraphs 22(b) and (c) plead that the plaintiff obtained leadership positions at the Alliance, the Wenzhou Society, and the Zhejiang Association based on financial donations he made to those organizations to gain personal, political and business advantages.

[233] I have some doubt whether the confluence of making a large donation and obtaining a leadership position within a community organization would lower a person's reputation in the community. Indeed, some people may reason that a large financial donation is a legitimate reason to confer on someone a position on the organization. However, Article Three goes further by stating that the plaintiff "bought" the positions, which implies there was a *quid pro quo* arrangement. The defendant also alleged that the plaintiff's motivation to obtain those positions was not to provide service to the community, but to gain a business or other advantages back in China. It is an accusation that his philanthropy was not genuine. For those reasons, I agree those statements could tend to lower the plaintiff's reputation, and they are therefore defamatory.

3. Do Any of the Defences Apply with Respect to Article Three?

a. Truth

[234] If I am wrong about my conclusion that the meaning in para. 22(a) is not conveyed, I would have found the defendant is entitled to rely on the defence of truth for the same reasons as discussed earlier (paras. 169-177).

[235] With regard to the meanings pled in para. 22(b) and (c), there is no dispute that the plaintiff donated large sums of money to the Wenzhou Society and Alliance. He denied "spending money" on the Zhejiang Association, but that is contradicted by Mr. Liang's testimony that a person "definitely [has] to make a financial contribution" as president because you organize events that cost money. Therefore, on the issue of whether the plaintiff donated any money to the Zhejiang Association, I specifically prefer the evidence of Mr. Liang over that of the plaintiff, and I find that the plaintiff did donate a sum of money to it.

[236] However, the plaintiff denied both that his donations were conditional on obtaining a position and that he was motivated to donate for personal gain only. Ms. Chen's testimony addressed primarily the election process, but she also answered questions about donations. She was the vice-president in charge of finances for one of the associations for a number of years. She denied that the plaintiff pledged a large donation of money in order to obtain a position on the executive.

[237] Mr. Liang testified that part of the reason they elected the plaintiff was because "financially he also had the capability… As president…you definitely have to make a financial contribution because when you organize events you need money". A reasonable interpretation of Mr. Liang's testimony is that one of the reasons someone would be qualified for a leadership position would be the capacity to make significant financial contributions. He specifically identified that as a reason he felt the plaintiff was suitable for the position as President.

[238] Despite that, I am not convinced on a balance of probabilities that the defendant has proven it is true that the plaintiff's donations were conditional upon his obtaining a position on the Community Associations. Nor has the defendant proven that the plaintiff was not primarily motivated to serve on the Community Associations by a desire to serve his community. Accordingly, I find the meaning pled at para. (b) and (c) are defamatory. Since this defence is unsuccessful, I turn to the defence of fair comment.

b. Fair Comment.

i. Public Interest

[239] As discussed later in this judgment under the public interest aspect of responsible communication, the plaintiff is a public figure, having taken on a number of leadership roles in the Community Associations. The statements specifically challenge the manner in which he gained those roles, as well as his incentive for taking the roles. In my view, the manner in which a public figure gains a position in a prominent, public organization, and his motives for doing so, are in the public interest.

ii. Recognizable as Comment and Based on Fact

[240] Article Three begins by noting the three leadership positions that the plaintiff held in Community Associations. It then states that in order to "compete" for those positions, "Miaofei Pan almost invariably spent money." The Article then describes donations made by the plaintiff. It asks, rhetorically, whether the plaintiff would have received one of the leadership positions had he not made the donations – the implied answer being "no". It further asks rhetorically why wealthy people like the plaintiff would want to hold positions in relatively small organizations such as the Community Associations. The answer, the Article states, is that these positions provide holders access and connections in China.

[241] In my view, the statements made in the Article about how the plaintiff gained the leadership positions in the Community Associations, and why he pursued those leadership positions, would in the eyes of a reasonable reader be construed as comments in the form of an inferences of fact (as discussed in *WIC Radio* at para. 26) . A reasonable reader would understand that the Article, having established that the plaintiff made large donations to charitable organizations with which he had leadership positions, was now inferring a connection between those donations and the leadership positions. That is comment (the receiving of the leadership positions) based on fact (the donations). Similarly, a reasonable reader would understand that the Article's comments on the plaintiff's incentive for taking on those positions

was an inference of fact, based on the proven fact that the plaintiff had taken on those positions in the first place.

[242] The plaintiff contends that each of the impugned statements is capable of proof, and is therefore fact rather than comment. I disagree. As a general matter, motives are not considered capable of proof: *Awan v. Levant*, 2016 ONCA 970 at para. 75. There was no way to prove, in a definitive manner, whether the plaintiff's donations are what permitted him to be chosen for leadership positions. The plaintiff relied on the testimony of Ms. Chen and Mr. Liang, both of whom denied the existence of an explicit *quid pro quo* for the donations. However, Mr. Liang's testimony was consistent with the inference drawn by the defendant.

[243] Furthermore, I find it highly improbable that anyone reading the statements that the plaintiff "bought" the positions would expect there had been an explicit deal. It is unrealistic to suggest any record would exist to demonstrate an explicit exchange of a large donation of a position on the Community Associations, or that anyone who had a conversation to that effect would want to admit that publically.

[244] I conclude any reasonable person reading Article Three would recognize the accusation that the plaintiff "bought" positions on the associations was the defendant's inference and opinion. I also find reasonable people could conclude that was not a meritorious reason for someone to serve on the board.

iii. Based on Facts Which are Truly Stated

[245] The allegation that the plaintiff "bought" his positions on Community Associations is based on the undisputed facts that he did donate money to the Alliance and Wenzhou Society.

[246] With regard to the Zhejiang Association, both the plaintiff and Mr. Liang denied that the plaintiff spent $100,000 to secure the presidency. However, Mr. Liang's testimony confirmed a nexus between "spending money" and being president of the association. The defendant wrote that, "some say, [the plaintiff] expended $100,000 to finally secure the presidency"….but "further verification is required as to the specific amount". Thus, the defendant has left open the possibility that the plaintiff did not spend that much money, but maintains his claim that he did "spend money".

[247] Other than describing the association and its purpose, the plaintiff was only asked one question about the accusation that he spent money to become president of the Zhejiang Association:

Q And did you spend $100,000 to secure the position

of chairman with that association --

A No. Until now, so far, I have never spent a

single penny for this Zhejiang Association.

Q -- to secure the position of president?

A Not a single penny on that, no.

[248] The plaintiff denied that he secured the presidency by spending money. It is not clear to me that the above testimony is also a denial that he ever donated any money to the Zhejiang Association. Based on the testimony of Mr. Liang, I infer that the plaintiff would have supported, by some financial contribution, the Zhejiang Association.

[249] I am prepared to accept that the defendant's comments that the plaintiff "bought" leadership positions is his comment based on inferences drawn from facts that he did occupy leadership positions on the Community Associations, and that he donated large sums of money to two of the organization, and more likely than not spent some money on behalf of the Zhejiang Association. There is no evidence to support the allegation that he spent $100,000 on the latter, but the defendant does not present that as a proven fact because he noted verification is required.

[250] However, the meaning asserted at para. 22(c) of the NOCC goes further by suggesting that the plaintiff's successful pursuit of leadership positions was for "personal business, legal and political reasons" rather than philanthropy. The Impugned Statements in Article Three connect the plaintiff's positions on the organizations to an ability to "bluff local business associates, competitors and…inept officials in the Chinese government" where he had business "troubles".

[251] The implication is that his leadership positions in the local associations somehow gave the plaintiff an advantage, although it is unclear and unstated how they did that. These are not stated as "facts" capable of proof. The defendant is drawing conclusions based on the timing of donations relative to his appointment, along with the recency (at the time of his appointment) of the plaintiff's immigration to Canada.

[252] I find reasonable people reading the Article would understand that the Article is primarily critical commentary or an opinion piece. The defendant asserts that the plaintiff was able to persuade or influence people in China to his advantage because he held these positions. That type of allegation is inherently speculative since it is not based on objective facts, actions or spoken words; it relies on human nature, powers of suggestions and influence.

iv. Could Others Honestly Express the Opinion?

[253] I also find that a person could reasonable come to the same conclusion if given the facts identified in the Article. In my view, the defendant has met all the factors sufficient so successful invoke the defence of fair comment with regard to the meanings asserts in para. 22(b) and (c) of the NOCC.

[254] For the reasons discussed earlier in this judgment, I do not find the plaintiff has proven the defendant was motivated by malice in publishing Article Three.

D. Article Four - December 17, 2016

[255] On December 17, 2016 the defendant posted an Article on his public WeChat account titled "*[Explosive] Over 100 Million in Debt; his subordinate arrested; himself banned from leaving the country; a patriotic overseas Chinese leader turned "deadbeat" who might have trouble travelling to/from mainland China – unveiling the secrets of a "questionable" overseas Chinese leader in Vancouver, Vol. IV"*. The Article is about 31 paragraphs long and absent irrelevant content not authored by the defendant, it comprises about 5 ½ pages.

1. Summary of Article Four

[256] In the first few paragraphs of Article Four, the defendant explained his belief that certain public accounts on WeChat have been removed, by implication by the Chinese government. He elaborated on this during his testimony. He said that is why he uses a pseudonym for his Articles. In some of the Articles he also explains how readers can still access his content should his account be shut done without notice. He said that had happened to him many times.

[257] The defendant then asked his readers to guess why the plaintiff might have been "on edge and losing sleep", denying that it was due to the Articles written about him. Instead, the defendant referenced to a publication he said was from the Xinhua News Agency that "faithless defaulters" (people who have not paid all their taxes in China) would be prevented from obtaining exit and re-entry visas to and from China. He reproduced the Xinhua News Article which describes a new collaboration between Chinese transportation companies and the Supreme People's Court to share information about people with unpaid debts. Court documents list people's ID card numbers (I infer which is also needed for travel). The defendant then reproduced what he claimed are results of searching a website "public information on the List of Faithless Defaulters Subject to Enforcement by Courts Across the Nation". He reproduced a print out that suggested the plaintiff was on that list.

[258] The defendant then recounted that the plaintiff typically flew back and forth between China and Canada three of four times a year, but that in 2015, "he was nowhere to be seen on all [local Chinese language media] or at any event held in Vancouver by the Zhejiang Association and Wenzhou Association, both of which were in his control, and naturally not at those events held by the [Alliance]". He then noted the plaintiff did attend a public event in January 2016. The defendant then wrote:

Miaofei Pan tried to inoculate himself on many occasions, saying "some say I was banned from leaving China. That's an outright rumour!" Even before you could say he had been banned from leaving the country, he went ahead to dispel the rumour. That volunteered defence actually gave him away instead.

[259] He refers again to the dispute surrounding the Project and described why in his view, these latest revelations prompted him to "thump the table, get up and do something".

[260] The defendant repeated some of the content of the First and Second Articles.

[261] The Impugned Statements of this Article are:

Starting yesterday, I figure comrade Miaofei Pan, a former executive president and current honorary chair of the Canadian-Alliance of Chinese Associations, and president of both Zhejiang Association of Canada and Wenzhou Association Vancouver, would be on edge and losing sleep, but certainly not because of the Articles I have written in the past few days about his collecting low-income child benefit or his purchasing of leadership positions, as these are such minor issues that he could totally deny them brazenly before the facts.

As a matter of fact, he assumed a pseudonym Yi An Wang and agreed to be interviewed by a mainland Chinese media outlet under that name; he says he did not.

…

A half-baked complex ensnared hundreds of households. Local media outlets covered related stories in great detail, many pointing fingers at the boss behind the scene, Miaofei Pan.

And so we hear that Zu Fan Zheng, the underling of Miaofei Pan, was undoubtedly arrested.

Presently, this man is being held in custody in Leqing Detention Centre. According to news from a related agency within the Wenzhou City government, because of group appeals filed by hundreds of households to higher authorities for help with the "half-baked building complex", Cagnan County government was ready to take measures against Miaofei Pan.

At that time, Miaofei Pan worked all kinds of connections, put on the "patriotic overseas [Chinese] leader" hat as a bulletproof vest, and exploited the relationships he had quickly developed with the political circles in mainland China while serving as an overseas Chinese leader to narrowly get away with it after paying, it is believed, tens of millions of yuan in taxes.

…

…The double-faced nature of this "patriotic overseas Chinese leader" has thus been fully exposed appears to be fairly typical.

Sometimes when "overseas Chinese leaders" like Miaofei Pan hop around on stage acting, the majority of immigrants, old and new, and those fellows townsmen who know them well would simply pass by, covering their noses. But these people have taken what's gross for fun and become increasingly engaged in their show. They have taken all immigrants for fools and hotheads. I had not said much about any one Alliance leader before mainly because I wanted to be sensitive to their feelings and reputation. But these people feared nothing and have gone deeper and deeper with their defrauding of the mainland Chinese and Canadian governments. I will have a hard time navigating this New Year if I fail to thump the table.

[262] At paragraph 26 of the NOCC, the plaintiff asserts the Impugned Statements in Article Four convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff improperly obtained the CTB;

b) the plaintiff obtained leadership positions in various organizations because he paid money to do so, rather than by obtaining them on merit;

c) the plaintiff concealed his real identify in an interview;

d) the plaintiff was involved in a real estate development project that harmed hundreds of families, many of whom blamed him;

e) the plaintiff used his connections and status as an overseas Chinese leader to exploit the relationship to avoid criminal liability for the fraud that caused hundreds of families to suffer;

f) the plaintiff is deceitful to others about himself; and

g) the plaintiff has improperly 'played tricks' on the Chinese and Canadian governments.

2. Are the Impugned Statements in Article Four Defamatory?

[263] At paragraph 26(a) through 26(d) of the NOCC, the asserted meanings are substantively similar to assertions discussed earlier in this judgment, and I adopt my analysis and conclusions here. Specifically, with regard to the allegation the plaintiff wrongfully claimed the CTB (para. 26(a)), I agree that allegation is defamatory. I adopt my reasoning and analysis in Article Three (at paras. 232-233) that the allegation that the plaintiff "bought" leadership positions on Community Associations (para. 26(b)) is defamatory. I do not find the assertion at para. 26(c) of the NOCC that the plaintiff used a pseudonym in an interview to be defamatory as discussed under Article One at para. 161. I do find the accusation that the plaintiff "was involved" in a real estate development that harmed hundreds of people to be defamatory (para. 26(d)) for the reasons discussed at para. 212.

[264] With regard to para. 26(e), I do not agree the Impugned Statement conveys that the plaintiff avoided criminal liability by settling his outstanding taxes and calling on his political connections. Instead, Article Four refers to the plaintiff avoiding arrest and detention by Chinese authorities. I repeat my comments from earlier in the judgment about right-thinking Canadians perception of what that means in China, distinguishing it from what the Canadians understand "criminal" to mean (para. 214).

[265] Although it may be possible for me to dismiss the allegation on the basis of imprecise pleading, I will not do so. In my view, the sting of the Impugned Statement is the plaintiff's ability to protect himself from the consequences of the Project that were visited upon his business partner: arrest and detention by Chinese officials. The plaintiff was not arrested and detained in China, so that portion is true. However, the sting comes not from his avoidance of punishment alone, but from the implication that he was able to achieve that avoidance because of his status as a community leader. I agree that is defamatory.

[266] I do not agree that a bare allegation someone is deceitful to others about himself or herself (para. 26(f)) or "played tricks" on government (para. 26(g)) would lower that person's reputation. The statements are general and essentially meaningless with elaboration. However, reading the statements within the context of Article Four, I accept that the deceit and "trickery" alleged related to the plaintiff's ability to avoid punishment in China for his alleged role in the Project. I agree that is defamatory.

[267] However, I do not agree that Article Four conveys the meaning that the plaintiff deceived or played tricks on the Canadian government as asserted in para. 26(g). The statements about deceit and trickery are too far removed form the single and passing mention to the plaintiff's claiming of the CTB to accept that meaning is generally conveyed. Accordingly, I only find that portion of 26(g) relating to tricking the Chinese government is conveyed in Article Four.

3. Do Any of the Defences Apply with Respect to Article Four?

a. Truth

[268] I rely on previous analysis and conclusions about substantially similar meanings pled about other Articles as those apply to the asserted meanings at paras. 26(a) and (b). Thus, I confirm that I find the meanings contained in Article Four's Impugned Statements as pled at paras. 26(a) are substantially true (as discussed above at paras. 169 to 177). Also, for the reasons discussed above at paras. 235 to 238, I conclude the defendant is not entitled to rely on this defence for the meanings pled at paras. 26(b).

[269] With regard to para. 26(e), there is no attribution in the Impugned Statements for the defendant's statement that the plaintiff parlayed his status as a community leader in Canada and paid outstanding taxes to persuade officials not to pursue him in relation to the Project. No attempt is made in the Article to identify why and how he drew that conclusion, or from whom he obtained that information. Accordingly, he cannot rely on the defence of justification. The defamatory meanings conveyed in para. 26(f) and (g) (as it relates only to the Chinese government) are tied to the specific allegations contained in para. 26(e), and therefore the defendant cannot rely on justification for those meanings either.

b. Fair Comment.

i. Public Interest

[270] Although the events discussed in the defamatory statements in Article Four took place in China, I do find they are also of public interest because of the nature of the activity (alleged fraud) and the impact (harmed 100s of people). Those factors along with the prominence of the plaintiff in the Chinese-Canadian and Canadian community at large, satisfy this element of fair comment.

ii. Recognizable as Comment and Based on Fact

[271] The defendant makes only passing reference to the plaintiff's alleged "buying" of positions in the Community Associations near the start of Article Four with reference to Articles he had written "in the past few days". However, that passing reference is not qualified in any way, nor does it include any of the indicia of commentary that exists in Article Three (at paras. 240-244). The defendant downplayed the accusation by stating that it is a "minor issue" and suggests the previous Articles would not have made the plaintiff "be on edge and losing sleep".

[272] In my view, the assertion in para. 26(b) would only be recognized as comment if a reader had read and remembered how the defendant discussed the leadership positions in the previous Article. There is some basis for such an assumption because the Articles are not published at large on the internet; someone has to subscribe to the defendant's WeChat account in order to have received Article Four directly. However, the evidence indicated that the Articles were easily forwarded. Nor is there any guarantee that a subscriber would carefully read all the Articles in sequence.

[273] For those reasons, I find the meaning contained in para. 26(b) is presented as a fact and not as commentary.

[274] With regard to the allegation pled at para. 26(d), I concluded it was defamatory for many of the same reasons that a similar statement in Article Three was defamatory. However, there is an important difference between how the allegation is presented in Article Three and Article Four. I concluded the allegation in Article Three was an inference drawn on facts sufficient to find as substantially true that the Project was the "plaintiff's business". Article Four is more explicit and alleges the "plaintiff was involved". Article Four also alleges that the local Chinese government was considering taking "measures" against the plaintiff, and that Chinese media were "pointing fingers at the boss behind the scene", meaning the plaintiff. These statements in Article Four imply a great degree of knowledge and participation in the Project than the comment that it was the "plaintiff's business" that was the developer. Nor is there any reference to official records or specific attribution about these additional accusations. Thus, unlike my conclusion for Article Three. I conclude the meaning in para. 26(d) is presented as fact, not commentary.

[275] I agree with the plaintiff that that portion of Article Four that conveys the meaning pled at para. 26(e) is not presented as comment but as a report of things that happened. Article Four is blunt in stating that the plaintiff "worked all kinds of connections…and exploited the relationships we had quickly developed with political circles in mainland China" from his positions on local Community Associations. It is also unequivocal in stating that those connects allowed him to "narrowly get away with [liability for the Project] after paying…tens of millions of yuan in taxes".

[276] However, I find the meanings conveyed in para. 26(f) and (g) are in the nature of opinion and commentary. They are stated as general characterizations about the plaintiff and are inferences that the defendant has drawn. A focus of Article Four is that the plaintiff has been deceitful in the sense that he is "double-faced" by presenting himself to the local Chinese-Canadian community as acting in leadership positions for altruistic reasons, while using the same

position in China as currency to avoid liability. These same circumstances cause the defendant to opine that the plaintiff has "tricked" Chinese officials.

[277] I find those are inferences based on the facts that the Project, which had been the plaintiff's business, failed; a person involved in the Project with whom the plaintiff had a commercial relationship was detained by Chinese authorities; the plaintiff was not detained or arrested in China (he admitted this); he did hold leadership positions in the Community Associations. Also, while the plaintiff denied he had any active involvement with the Project, but he did explain how his name may appear on some records as having an ownership interest in the Linyang Company (paras. 218 and 219). It is also relevant that it was accurately reported in both the Chinese media and Canadian press that the plaintiff hosted the Prime Minister at his home for a fundraiser. This combined with his admitted role in Community Associations gives credence to his having recognition and status with Chinese officials.

[278] In my view, the preceding factors are sufficient to establish that the opinions expressed by the defendant are based on facts.

iii. Based on Facts Which are Truly Stated

[279] As noted above, the only two asserted meanings in para. 26 that I agree are commentary are those identified in 26(f) and (g). As discussed in the preceding paragraph, I find they are inferences based on facts, which have been truly stated.

iv. Could Others Honestly Express the Opinion?

[280] I also find that a reasonable person could objectively and honestly hold the opinion that the plaintiff is deceitful in the sense of being "two faced" and in the sense of duping Chinese authorities based on the facts noted above. The plaintiff's status in local associations, his widely reported hosting of the Canadian Prime Minister, his connection to the failed Project, which resulted in the person to whom he sold Linyang Company being detained, combined with his avoidance of detention are bases upon which a reasonable person could honestly express the view that he was able to avoid responsibility because of his status. That is the essential claim of the defamatory statements.

[281] As already noted, the plaintiff has failed to prove malice. Therefore, I conclude that the defendant is entitled to rely on the defence of fair comments with regard to para. 26(f) and (g).

E. Article Five - December 20, 2016

[282] On December 20, 2016 the defendant posted an Article on his public WeChat account, titled "*[Breaking News] Results of the latest poll: only 2% support having the questionable leader represent overseas Chinese, highlighting the Mainland's overseas Chinese affairs hardly connects with the grassroots overseas!"* Article Five is 21 paragraphs long excluding irrelevant content and content not authored by the defendant, and is about five pages long.

1. Summary of Article Five

[283] This Article begins with a poll composed by the defendant asking his readers to answer "yes", "no" or "no comment" to the question: Can an overseas Chinese leader like [the plaintiff] represent overseas immigrants old and new? He then discusses the results of his poll in the next four paragraphs.

[284] The defendant then observed the risk he has taken by making accusations against "questionable" overseas Chinese leaders, although he wrote that being in Canada he can "dare to be so blunt". Most of the Article is a discussion in historical and contemporary terms of the concept of "questionable overseas Chinese leaders", by which the defendant means someone who serves as an "overseas Chinese leader" and uses the title for personal gain in China. He refers to another person about whom he apparently wrote some months prior to Article Five.

[285] It is in that context that he then wrote that the plaintiff is "not an isolated case". Most of the Article is the defendant's dissertation on the "evils" of people who are "double-faced". He refers to quotes from Chairman Mao Zedong, "Comrade Deng Xiaoping", "Comrade Xi Jinping" and current publications of the Chinese communist party, which discuss the nature of someone who is "double-faced". He refers to what he calls a worrying trend among "certain wealthy immigrants" driven by greed to "wine and dine local" that "violates the Chinese communist Party's Eight Rules but facilitates the ever growing trend of vanity". He wrote with regard to this trend that "overseas Chinese must stop shilly-shallying and turning a blind eye to the lice on a bald head". He also suggested that "negligent oversight and collaboration of some mainland Chinese agencies post abroad are also to blame".

[286] Towards the end of the Article, he clarifies that he is not condemning all the Community Associations, but that he sees serious issues at stake that concern those organizations' "credibility and representativeness as a result of the messiness and overlapping of these organizations given their converging missions, the same groups of people they represent, and the long-lasting flaws in the election system…".

[287] The impugned sections of this post are the following:

In fact, most of the "questionable rich" aren't so terrible. What's truly terrible is for a "questionable rich person" to serve as an overseas Chinese leader and use the Chinese title for personal gain. …

…

…Mr. Miaofei Pan is definitely not an isolated case. Over the years overseas Chinese have witnessed more and more "double-faced" personalities vying and jostling for "overseas Chinese leadership" positions in such large and integrated organizations as the Alliance, the better known the organization and the wider its coverage, the more contenders in the battle, leading to frequent "buying of official leadership posts". Many scoop various political titles and honours in China through different means including banquets, presents and donations, and use them for personal

profit and business purposes, severely damaging the reputation of overseas Chinese, in particular that of overseas Chinese leaders.

[288] At paragraph 29 of the NOCC, the plaintiff asserts the Impugned Statements in Article Five convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff obtained leadership positions in various organizations because he paid money to do so, rather than obtaining them for a meritorious reason;

b) the plaintiff became chairman of various organizations for personal business, legal and political reasons, not to serve the people of those organizations; and

c) The plaintiff damaged the reputation of overseas Chinese and overseas Chinese leaders.

2. Are the Impugned Statements in Article Five Defamatory?

[289] Paragraph 29(a) and (b) is worded virtually identically to paras. 22(b) and (c) of the NOCC, which is about Article Three. However, I do not find the meanings are conveyed in Article Five.

[290] As noted above, a large portion of Article Five is concerned with a somewhat philosophical discussion of the trails of people who are "double-faced" and how that is manifested in certain behaviours of overseas Chinese leaders and certain wealthy immigrants.

[291] The plaintiff is mentioned once in the Impugned Statements and only four other times in Article Five. Of those five references, the only one that could be read as being linked to his "buying" leadership positions for personal gain is the one cited in the Impugned Statements, which is not an explicit reference.

[292] Article Five (and the bulk of the Impugned Statements) discusses what the defendant saw as a general trend in which leadership positions in community organizations are "bought" to better the person's reputation and standing in China. He refers to people "jostling" for positions which leads to "buying of official leadership posts". He opines the practice is becoming more frequent. The defendant then wrote: "[m]any scoop various political titles and honours in China through different means including banquets, presents and donations, and use them for personal profit and business purposes, severely damaging the reputation of overseas Chinese, in particular that of overseas Chinese leaders". The preceding discussion is introduced with the statement that the plaintiff "is not an isolated case", but it is clear the discussion is not about the plaintiff individually.

[293] I do not find a reasonable person reading the whole Article Five would conclude that the accusations as pled in para. 29(a) and (b) are specifically levelled against the plaintiff in Article Five. I find the only way in which the specific accusations pled in para. 29(a) and (b) are conveyed is if one reads Articles Three and Five together. The plaintiff did not plead they ought to be together, and it is unclear in what circumstances multiple publications may be read together to determine defamatory meaning: *Corcoran*, at para.

83. Thus, I am obliged to interpreted the “inferential meaning of the impugned words [as it] resided within those words, considered in their immediate context”, which is Article Five (*Corcoran*, para. 94)

[294] For those reasons, I do not find that the meanings identified in paras. 29(a) and (b) are contained in Article Five. Nor do I find the reference to the plaintiff in the Impugned Statements as “not an isolated case” defames the plaintiff.

[295] As to the meaning asserted in para. 29(c), Article Five does assert people who “buy” positions on community organizations damage the reputation of overseas Chinese, but that accusation is directly connected to the “scoop[ing of] various political titles and honours in China through different means [including banquets, presents and donations], which has never been an accusation levelled at the plaintiff. More importantly, the discussion is about a trend observed by the defendant amongst many people. A reasonable reader would not read that and think it only targeted the plaintiff in a way to convey that the plaintiff harmed the reputation of others. Because in my view, the Impugned Statements underlying the pleading at para. 29(c) of the NOCC are not reference to any one person, it cannot be defamatory of the plaintiff.

F. Article Six - December 22, 2016

[296] On December 22, 2016 the defendant published a post on his public WeChat account titled “*Miaofei Pan, a problematic Chinese community leader, launched a legal action yesterday against me, old Huang, at BC Supreme Court, eager to be a plaintiff after getting used to being defendant in mainland China”*. Like the other Articles, it is about five pages long, with 15 paragraphs.

1. Summary of Article Six

[297] The Sixth Article begins with a description of the defendant being served with the original notice of civil claim. He sarcastically refers to the apparent habit of ceasing hostilities during the holidays, writing that he thought he may not write about the plaintiff in the Article. He continued that it looked to him like they would spend a “battling holiday” and thanks the plaintiff for his “selflessness and his sacrifice”.

[298] In response to the claim, he confirms an intention to respond and that he will continue to “disclose all the improper conduct of Mr. Pan as a ‘Chinese community leader’”. He claimed that the plaintiff’s strategy with all media was to deny anything. He also wrote that he “thought that [Miaofei] Pan, after the mainstream media in Canada had published negative news about him, he would either produce convincing evidence to refute that, or sincerely accept the criticism while providing explanation or clarification to some details”.

[299] Next, he alleged that “no single [local Chinese language media] outlet dares to do anything to [the plaintiff]”, but not because they need advertising revenue, “but rather they are afraid of getting sucked into a lengthy litigation process that could tire them out in the end”. He maintained that, “[a]ll written evidence used for the purpose of exposing [the plaintiff] was from official organizations of mainland China” and stated that if the plaintiff had “the guts to sue those

official organizations and media in mainland China and win, your chutzpah". In the remainder of the Article, the defendant expressed the belief that he would ultimately succeed in the litigation.

[300] The Impugned Statements in Article Six are:

… I will continue to disclose all the improper conduct of Mr. [Miaofei] Pan as a "Chinese community leader". The same rule still applies: I will respond to each legal document by writing 3 articles. Thirdly, as Pan launched the lawsuit, before he withdraws his claim I will not stop writing Articles to expose [him]. Fourthly, I encourage Mr. Pan to take the litigation to the very end. Better yet, all the way to the federal Supreme Court of Canada, so that the entire Chinese community and the Canadian society will all be able to see how a problematic mogul became a problematic leader of the Chinese community, leaving a huge negative impact on the Chinese community in China. Meanwhile the force behind him that he has relied upon will feel the shake.

…

[Miaofei] Pan has always had an illusion, no matter how much he has been bombarded by the Canadian main stream media, no single Chinese media outlet dares to do anything to him. This is not because these Chinese media outlets want to get his business of advertising, but rather they are afraid of getting sucked into a lengthy litigation process that could tire them out in the end.

Unfortunately, man proposes, God disposes. Who would have known – a new media outlet "Broadcasted by He Bian Huang – Vancouver Public Account," appeared and provided him with a few medicinal eye drops. He immediately became agitated, brandishing his "weapon of law"; furthermore, he wants to create a certain level of uncertainty for the person who speaks up in defence of justice, and tries to force him into a make-belief trap of "astronomical amount of compensation."…This is clearly self-destruction by raking up your own faults, inviting humiliation to yourself and revealing your own defects… This is called [Miaofei] Pan style of self-destruction in 3 ways with a guarantee.

[301] At paragraph 33 of the NOCC, the plaintiff asserts the Impugned Statements in Article Six convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff has engaged in improper conduct;

b) the plaintiff is a problematic person and has caused a negative impact on the Chinese community;

c) the plaintiff has caused local Chinese language media outlets to fear criticizing him because of the threat of unjust litigation by the plaintiff, and;

d) the plaintiff has commenced this action in order to force the defendant to pay compensation to him.

2. Are the Impugned Statements in Article Six Defamatory?

[302] The word improper is broad and vague; whether accusing someone of behaving "improperly" impacts his or her reputation depends on the surrounding context of the accusation. Some types of behaviour that are "improper" may not damage a person's reputation, whereas others might. In my view, as pled and as it appears in Article Six, there is insufficient context to imbibe the phrase "improper conduct" with any meaning that can be defamatory.

[303] Only one sentence in the Impugned Statements refers to improper conduct: that sentence stated the defendant would "continue to disclose all the 'improper conduct'" of the plaintiff. It is difficult to understand how a general statement that a person's "improper conduct" will be exposed is defamatory, without any kind of description of what that conduct is.

[304] That sentence follows the defendant's description of the NOCC that was served on him. The defendant pledged to write three Articles in response to every legal document he received, but he does not refine or further clarify anywhere else in Article Six what "improper conduct" he has or will be exposing. The plaintiff's pleadings do not identify what about the accusation of impropriety in the Article could lead to a diminution of the plaintiff's reputation.

[305] Nor do I find labelling someone a "problematic" person to be defamatory. "Problematic" simply means presenting a problem; a problem can either be something that needs to be fixed, or a situation inviting further investigation. The rest of the asserted meaning in para. 33(b) is that the plaintiff has negatively impacted "the Chinese Community in China". For the reasons I have already identified earlier in this judgment (See paras. 98, 211 and 214). I do not find right-thinking Canadians equate negatively impacting what people in China think of a person with the lowering of that person's reputation.

[306] Moreover, those statements must be read in context. The defendant encouraged the plaintiff to "take the litigation to the very end" so that the "entire Chinese community and Canadian society will be able to see how a problematic mogul became a problematic leader of the Chinese community, leaving a huge negative impact on the Chinese Community in China". The meaning is that the negative impact caused by the "problematic" actions of the plaintiff will be revealed in the litigation. I do not find that prediction defamatory of the plaintiff.

[307] Accordingly, I lean toward a conclusion that neither meaning pled at para. 33(a) and (b) is capable of being defamatory, at law. However, I acknowledge the distinction between what is defamatory as a matter of law versus as a question of fact is not a determination vital in a judge-alone trial: *Mainstream* at paras. 14-15. Accordingly, I also conclude for the same reasons, as a matter of fact, Article Six's accusation that the plaintiff's undefined improper conduct will be revealed in future is not defamatory. I also find as a fact that calling someone "problematic" in a way that causes people in China to think negatively of you, is not defamatory.

[308] At para. 33(c) the plaintiff asserts that local Chinese language media are fearful that criticizing the plaintiff would result in them being "sucked" into lengthy and tiring litigation. That Impugned Statement is a criticism of the media more than it is of the plaintiff. Also, the word "unjust" is not used to describe the other litigation and I do not find that meaning is conveyed in the Impugned Statements. The defendant decries the time and cost of litigation, but does not describe it as unjust. Even if that meaning was conveyed in Article Six (and I do not

find it is) I do not find it defamatory. Reasonable people may disagree whether a person has a "legitimate" reason to commence litigation, but even if he or she does not, I am not persuaded that would lower a person's reputation.

[309] I also find nothing defamatory about the assertion that the plaintiff commenced the action to force the defendant to pay compensation; that describes the majority of civil litigation in the court. Does that mean that plaintiffs' reputations are lowered because they commenced litigation seeking damages? That suggestion is not only absurd, it is clearly not defamatory.

[310] Moreover, the plaintiff led evidence that refuted his position on this point. Mr. Liang testified that he actually believed the plaintiff's refutation of the accusations in the Articles based specifically on the fact that the plaintiff had commenced legal action against the defendant, reasoning anyone who would launch a civil suit must be telling the truth in his refutations.

[311] I do not find any of the Impugned Statements in Article Six to be defamatory. Accordingly I will not analyze any defence with regard to para. 33 of the NOCC.

G. Article Seven - December 29, 2016

[312] On December 29, 2016 the defendant posted an Article on his public WeChat account titled, "*Miaofei Pan, Honourary Chairman of Canadian Alliance of Chinese Associations, will pay a hefty price for playing the game of launching a reckless lawsuit*" (Article Seven). The portion of the Article written by the defendant is about four and a half pages long and there are 23 paragraphs in the English translation.

1. Summary of Article Seven

[313] Article Seven begins with the defendant's colourful explanation of his perception of the difference between his and the plaintiff's station in life. He then stated that the plaintiff's lawyer only sent letters to Western media who reported on his hosting the Prime Minister at his house, whereas the plaintiff decided to sue the defendant. He wrote the plaintiff treats Chinese and Westerns differently. He refers to this as an outright abuse of the legal process. The defendant then explained what in his view, amounts to abusive litigation, which is when a "law suit has malicious intentions and lacks a reasonable basis". He asserted that the plaintiff knew this litigation had no chance of success.

[314] He wrote the plaintiff should have expected scrutiny upon taking up the position of a community leader. He wrote not only will he respond to the law suit, but he will launch a counterclaim. He questioned how the plaintiff could "deny the official information released by the highest court and ministry of public safety of mainland China?". He suggested that the plaintiff did not have the fortitude to challenge those agencies, but instead chose to sue the defendant. The defendant then described the support he has received within the Chinese-Canadian community. He stated that he is ready to confront the law suit against the plaintiff "who thinks the court room is his grandma's house". He wrote that the "hideous character of the type of Chinese community leaders such as [Miaofei] Pan will be revealed without mercy

throughout the whole litigation process". He reported that in contrast to the support he has received no other Chinese community leaders has "surfaced" to support the plaintiff.

[315] He ended the Article by stating that a "tax return contains the truth" and scolded the plaintiff for not disclosing his income tax returns.

[316] At paragraph 35 of the NOCC the plaintiff alleges the following passages from Article Seven are defamatory:

A dignified former executive chairman, a current honourary chairman of the Canadian Alliance of Chinese Associations after spending a few hundred thousand dollars on a title of 'Chinese community leader' ran unworthily running between China and Canada for many years. With him being a tall-tale teller and overly ostentatious, all kinds of his past misdeeds as a 'seasoned-liar' were revealed after being heavily reported by Chinese and overseas media for having spent money and taken the Prime Minister of Canada to his house for some fish balls. [Miaofei] Pan, however, only sent lawyer's letters to the westerners' media outlets, but to a Chinese media person such as me, old Huang, who knows every detail of his scandalous conduct he brought on a 'legal action'. [Miaofei] Pan surely treats Chinese and Westerners differently!

This is an outright abuse of legal proceedings!

…

[Miaofei] Pan clearly knows his likelihood of winning the case is close to zero, yet he plays a game such as this one, bringing disgrace to leaders of the Chinese community overseas.

…

...I am also going to distribute the 'abusive notice of claim' all over the place these days, inviting Chinese people inside and outside China and western media to take a look. Spreading the word of your private scandals is particularly effective to people like you.

...

Do you have the guts to take the highest court of mainland China, the Public Security bureau and the People's government of Cangnan county, to the court? I guess you don't even dare think about it. You just figured that I, old Huang, a middle-to-senior aged literature worker with no money, no social status and no 'official position', am vulnerable for you to take advantage of, right?

…

Everybody rest assured, the hideous character of the type of Chinese community leaders such as [Miaofei] Pan will be revealed without mercy throughout the whole litigation process. The whole process will be turned into a written record and distributed to those official organizations where [Miaofei] Pan, the leader of the Chinese community, once served, for instance, the National

Overseas Chinese Office, the Overseas Chinese Committee of the National Congress, the Overseas Chinese Associations of Heilongjiang province, Beijing, Jinan City and Zhejiang province. Of course, there is also the Vancouver Chinese Consulate ... let [Miaofei] Pan pay dearly for his abusive use of the litigation process. We will also let the Chinese in Vancouver and all those Chinese overseas take a look at the 'multiple-faceted' life of this former executive chairman...

[317] At paragraph 37 of the NOCC, the plaintiff asserts the Impugned Statements in Article Seven convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff is a 'seasoned liar';

b) the plaintiff treats Chinese people worse than he treats Western people;

c) by commencing and prosecuting this action, the plaintiff has abused and is abusing the legal process;

d) by commencing and prosecuting this action, the plaintiff has brought disgrace to overseas Chinese community leaders, and;

e) the plaintiff is a hideous character.

2. Are the Impugned Statements in Article Seven Defamatory?

[318] The natural and ordinary meanings of being a "seasoned liar" (para. 37(a)) and "hideous character" (para. 37(e)) are that the plaintiff is dishonest and an unsavory person. The phrase "seasoned liar" appears once in Article Seven together with the assertion that the plaintiff is a "tall-tale teller and overly ostentatious" and that "his past misdeeds" were reported in the media.

[319] The phrase "hideous character" appears once in Article Seven in the context of the defendant's promise that "this type of Chinese community leader" will be revealed during the litigation. The rest of that paragraph records the defendant's assertion that the litigation will provide a "written record" that can be distributed to numerous organizations. I agree in the context of Article Seven, these statements are defamatory.

[320] I find the meaning asserted at para. 37(b) is not conveyed in Article Seven. The defendant wrote that when faced with critical media stories, the plaintiff sent a letter from his lawyer to some outlets, but only sued the defendant. The defendant is referring to the plaintiff's differential treatment of different media, not Chinese and Canadian people in general. Even if Article Seven was understood to contain the defendant's accusation that the plaintiff treated Chinese people worse than Western people (and I find it does not), I would not find that resulted in the lowering of the plaintiff's reputation. To do so, I would have to accept both that people reading Article Seven would automatically conclude that the content of the *Globe and Mail* article and the defendant's Articles were virtually identical, and that suing one and not the other was "worse"

treatment. I do not agree that right-thinking Canadians would make those mental leaps. Instead, they inherently understand litigation can be complex and there are many reasons why some may or may not sue a party.

[321] The defendant referred to this litigation as "an outright abuse of legal proceedings", which is identified as defamatory at para. 33(c) of the NOCC. The sting of that statement is not that the plaintiff has somehow corrupted or deceived the legal system. Instead, the litigation is "abusive" in the sense that the defendant believes the plaintiff's case is baseless and has no chance of success (which is explicitly stated earlier in Article Seven). Reading other parts of the Impugned Statements, the defendant's accusation is that despite "knowing" he will lose the case, the plaintiff has persisted with it and that choice is "abusive". I read Article Seven as the defendant suggesting that the lawsuit is abusive against him in the sense of it having no merit, and possibly as being vexatious. Although I think it is arguable, ultimately, I agree this accusation defames the plaintiff.

[322] I do not find Article Seven conveys the meaning articulated at para. 37(d) (that this litigation has brought disgrace to overseas Chinese community leaders). The Impugned Statements makes no reference to disgracing anyone. There is a reference that the defendant will distribute the litigation documents so "Chinese people inside and outside China and western media to take a look" and see the plaintiff's "private scandals". Nothing in the words pled refers to disgracing Chinese people as a whole, and I do not find that meaning conveyed by innuendo in Article Seven.

3. Do Any of the Defences Apply with Respect to Article Seven?

a. Truth

[323] I find none of the defamatory statements in Article Seven are statements of fact that are capable of proof. Whether someone is a "seasoned liar" is not simply an accusation that the person lied; it is an assessment that a person has lied and has become adapt at lying. It is a comment about a person's character. Similarly, whether someone is hideous is clearly a subjective opinion.

[324] With regard to the defamatory meaning contained in para. 37(c), I do not find the defendant's use of the phrase "abuse of process" was intended or understood to be a legal conclusion, which is capable of proof. Even if it did, the defendant was speculating on the conclusion of this judgment, which at the time he wrote it, did not exist.

[325] For all those reasons the defence of truth does not apply.

b. Fair Comment

i. Public Interest

[326] The main thrust of Article Seven is this litigation, which is clearly a matter of public interest. Among other things, the plaintiff refers again in Article Seven to the *Globe and Mail* Article, which is a national publication that commented on the plaintiff's hosting of the Prime

Minister. There can be little question that the matters addressed in Article Seven attract public interest.

ii. Recognizable as Comment and Based on Fact

[327] The accusations that the plaintiff is a seasoned liar and a hideous character are clearly commentary. They are clearly opinions held by the defendant about the plaintiff's character.

[328] The accusation that the plaintiff is a seasoned liar is written in combination with his being a tall-tale teller and overly ostentatious. Those descriptions arise in a paragraph where the defendant mentioned the reporting in Chinese and overseas media that the plaintiff "spent money and [took] the Prime Minister of Canada to his house for some fish balls". Reading the Article as a whole, the defendant is saying that the hosting of the Prime Minister was widely reported in the Chinese and Canadian media, and that reporting revealed "all kinds of his past misdeeds as a 'seasoned liar'". Article Seven thus states it was the reporting in other media which exposed the plaintiff to be a "seasoned liar".

[329] That description follows the identification of the plaintiff as a "dignified former executive chairman, a current honourary chairman of the Canadian Alliance".

[330] In my view, reasonable readers would understand that the accusation that the plaintiff had been revealed in other reports of being a seasoned liar is an inference drawn by the defendant, and I find there is a factual basis for the inference. The plaintiff was correctly identified as former executive and now honourary chairman of the Alliance, he did host the Prime Minister at his home and the event was reported in the Chinese and Canadian media.

[331] The accusation in para. 37(c) that the plaintiff is "abusing the legal system" is equally recognizable as an opinion. It is based on the plaintiff's serving the NOCC on the defendant and commencing the law suit for the Articles. The *Globe and Mail* article made some comments and drew some inferences not too dissimilar with the defendant's, yet it was not sued by the plaintiff. That different treatment is a fact upon which the defendant's comment that the plaintiff is abusing the legal system is based.

[332] Calling someone "hideous" is also clearly an opinion entitled to the fair comment defence. In Article Seven, the defendant has described the plaintiff as "hideous" in relation to being a type of "Chinese community leader". The context in which this comment appears is the defendant's description of himself as "middle-aged and having elderly members and young children to take care of in family" in contrast to the plaintiff who is a community leader. Reading Article Seven as a whole, the comment is also reflective more generally of the defendant's belief that the law suit has no merit. It also reflects the defendant's identification of the amount of support he has received from the community in response to being sued. In a nutshell, the defendant's charge is the plaintiff is "hideous" for launching a lawsuit against the defendant given their vastly different social standing, and the wide support the defendant claims to have for defending himself against a law suit he believes will fail. I find there is a factual basis for the claim as pled at para. 37(e).

iii. Based on Facts Which are Truly Stated

[333] I do find the comments are inferences drawn from facts truly stated. As noted above, the seasoned liar and hideous comment is an inference based on a number of true facts. The plaintiff was correctly identified as a former executive, and current honourary chairman of the Alliance. The plaintiff did host a dinner, which Prime Minister Trudeau attended. That dinner was reported in Chinese media, and in the *Globe and Mail*. The opening paragraph of the latter described that (and other) dinners as an "an under-the-radar strategy" used to raise large sums of money by providing wealthy Chinese Canadians with "intimate face-time with the Prime Minister that can be used as business currency at home and in China". The *Globe and Mail* article was admitted into evidence, but not for the truth of its content, but the plaintiff testified the dinner was a fund-raiser for the Liberal Party of Canada and the attendees (including Prime Minister Trudeau) were his "friends". The defendant's inference of the plaintiff being a seasoned liar and hideous relies on the contrast between his "community leader" public image with his hosting of a political fundraiser.

[334] The comment about the law suit being an abuse of legal process is based on true facts: the law suit was commenced against the defendant; the plaintiff did not sue other media organizations that critically reported on the plaintiff's hosting of the Prime Minister; there is a significant difference in the plaintiff's and defendant's wealthy and social standing.

iv. Could Others Honestly Express the Opinion?

[335] I am satisfied that reasonable people could honestly express the opinions the defendant has made in Article Seven as pled at para. 37(a), (c) and (e). The test is not that people would have to agree, but that objectively speaking it is reasonable that a person could make the same comment or come to the same opinion based on the facts upon which the comments are made. Although I do think it is close to the line, I agree a person could honestly express the view that the plaintiff was a "seasoned liar" because of the contrast of his public image for years as a community leader, juxtaposed against the reporting of his hosting a political fundraiser for the benefit of wealthy friends. The phrase "hideous character" has a wide range and I find it certainly includes someone who sues a lone person of modest means for reporting on events also reported by large media organizations, which are not sued. These same circumstances are also a basis upon which someone could honestly believe the law suit is "abusive".

H. Article Eight - January 1, 2017

[336] On January 1, 2017, the defendant posted an Article on his public WeChat account titled "*Another Scandal of Miaofei Pan, the prominent Chinese community leader in Vancouver: his involvement suspected in the case where his nephew was dishonoured for owing a 60-million-dollar debt*" (Article Eight).

1. Summary of Article Eight

[337] This Article starts by alleging that the plaintiff and his wife are on a Chinese a "List of the dishonoured" for "ill-gotten gains" released by Chinese government agency and the Chinese court. The defendant questions how the plaintiff could serve as a community leader with such debts.

[338] The defendant also asserts that the plaintiff's nephew (Han Pin Chen) is on the same "List of Dishonoured" and that the nephew was the plaintiff's "main assistant and front-running operator". The defendant suggests that the plaintiff is responsible for his nephew's debts as he is in real control behind his nephew. Speculating that he will receive another letter of complaint from the plaintiff's lawyer, the defendant then explains how he concluded Han Pin Chen is the plaintiff's nephew by reproducing an obituary that lists both men as belonging to the same family. (The plaintiff admitted the person referred to in Article Eight is his nephew).

[339] The defendant then sets out what he claims is the connection between the nephew's debt and the plaintiff. He describes again the Project and states that the chief executive officer of Linyang Company before 2013 was the plaintiff's nephew. He repeats the allegation that the plaintiff owns 77% of the shares in the Linyang Company, and that the person the plaintiff testified took over the company (Mr. Zheng) took control of the company and according to the defendant, has been arrested for attempting to continue the Project in a fraudulent manner. The defendant reproduced what he says is a record from the Commercial Bureau to back up his claim.

[340] The defendant then states the number of companies in which both the plaintiff and his nephew own shares and described their partnership as "multi-faceted", and "as clear as the lice on a monk's head".

[341] The Impugned Statements in Article Eight are the following:

[Miaofei] Pan, the former executive chairman, current honourary chairman of Canadian Alliance of Chinese Associations, and his wife both managed to get on the 'list of the dishonoured' released by both the highest court of China and the Public Security Bureau of China. The total amount of the ill-gotten-gains to be enforced is as high as 28.50 million yuan RMB. As soon as the news broke, the public went in an uproar. Many business investor category immigrants who are Zhejiang natives and now living in Vancouver are angry. How do you justify having such a person serve as a Chinese community leader? ...

...Now that with [Miaofei] Pan doing business deals, he brought his own nephew into trouble by turning him into a 'liar'. ...

This gentleman is even more amazing. According to someone with inside knowledge, the current allocated debt to be enforced is as high as 60 million yuan RMB. The person in real control behind this nephew is [Miaofei] Pan. In short, Pan brought his nephew down.

…

The partnership between [Miaofei] Pan and Han Pin Chen is multi-faceted. Ever since Pan spent money on a few official titles as a 'Chinese community leader', he has been letting his nephew deal with regular business activities and get in the spotlight. Even in the company where Pan controls most shares, his nephew has shares as well.

…

As a dishonoured party subject to enforcement, Han Pin Chen was involved in the ill-gotten-gains of 60 million...

[342] At paragraph 41 of the NOCC, the plaintiff asserts the Impugned Statements in Article Eight convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff wrongfully obtained monetary gains;

b) the plaintiff owes millions of yuan pursuant to court orders in China;

c) the plaintiff's conduct means he is unfit to be a leader of the Chinese community; and

d) The plaintiff has caused his nephew to get into trouble, including financial debt.

2. Are the Impugned Statements in Article Eight Defamatory?

[343] Reading the entire Article Eight, I find the asserted meanings pled in para. 41(a) and (b) refer to the same words in the Impugned Statements. That is because there is a comment about "ill-gotten-gains" (wrongfully obtained monetary gains) is clearly related to the accusation that his name is on a "List of the Dishonoured". The list purports to be a list of people who have court orders against them for unpaid debts (the asserted meaning in para. 41(b)). However, the Article also refers to the Project and includes pictures of demonstrators angry about the collapse of the Project. I am satisfied that the meanings pled at para. 41(a) and (b) are conveyed and they are defamatory.

[344] At para. 41(c) the plaintiff alleges a meaning conveyed in Article Eight is that "the plaintiff's conduct means he is unfit to be a leader of the Chinese community". I do not find this meaning conveyed in Article Eight. The defendant reports on reactions he received to a previous Article he wrote, in which people asked "how do you justify having such a person serve as a Chinese community leader?". Article Eight focusses on the alleged unpaid debts of the plaintiff and his nephew, and the alleged businesses in which they are both involved.

[345] Paras 41(d) refers to the business relationship between the plaintiff and his nephew, and specifically refers to their involvement with the Linyang Company, and through it, the Project. Article Eight alleges the plaintiff still owns a controlling interest in the company. It also alleges that the plaintiff's nephew was, before 2013, a listed statutory representative of the Linyang Company. More generally, Article Eight suggests the plaintiff implicated his nephew in his business dealings. The defendant wrote that the plaintiff "brought his nephew down" and turned him into a liar. I agree that is defamatory.

3. Do any of the Defences Apply with Respect to Article Eight?

a. Truth

[346] The defendant reproduces in his Article several documents, all of which he claimed are genuine and official documents. As noted above, none of them were authenticated and they were not admitted into evidence for the truth of their content. The plaintiff denied he owed any debts in China. However, as discussed above, he conceded it was possible his name might appear on a "List of Dishonoured" because he pledged some property as security, which may have been realized. However, Article Eight alleges the plaintiff owes millions of yuan which is not captured by the plaintiff's speculation. Because of the inability to authenticate the document upon which the defendant relies, he is unable to rely on the defence of truth with regard to his allegations about the plaintiff's debts in China, or "ill gotten" gains.

[347] As to the pleadings relating to his nephew, the plaintiff testified that upon reading Article Eight he interpreted it to be the defendant saying "we are all bad people" and that the defendant was now defaming his nephew. In explaining his reaction, the plaintiff denied that his nephew owed money in China or in Canada or that he owned shares in any of the plaintiff's companies.

[348] However, none of that testimony is relevant to what is pled. The plaintiff cannot assert a claim for the alleged defamation of his nephew. The alleged defamation is that the plaintiff "caused his nephew to get into trouble". Thus, the defendant has the burden of proving as substantially true both that the nephew was "in trouble" and that the plaintiff caused that. The plaintiff admitted that his nephew was the "face" of one of his companies, and was a "manager", but not that he engaged in any irregularities.

[349] In my view, the defendant was unable on a balance or probabilities to prove that the nephew "was involved in the ill-gotten gains of 60 million [yuan]" or was on the List of Dishonoured.

b. Fair Comment

i. Public Interest

[350] I am satisfied that Article Eight addresses matters of public interest. Among other things, the Article itself refers to the "outrage" the defendant claimed was expressed to him in reaction to some of his reporting. The plaintiff's stature as a public figure also supports the conclusion.

ii. Recognizable as Comment and Based on Fact

[351] Article Eight relies on a number of documents as proof of the claims made about the plaintiff's debt. The defendant does not equivocate on the existence of size of the debts. For that reason, the defence of fair comment cannot succeed with respect to the accusations about the plaintiff's "ill gotten gains" and millions of yuan debt.

[352] The plaintiff admitted that his nephew was involved with his company, as a manager. He described his nephew as the "face" of one of his companies. At paragraph 40, the plaintiff pled that in Article Eight the defendant was incorrect in describing the business relationship between him and his nephew.

[353] Most references in Article Eight about the plaintiff's interaction with his nephew are general in nature: he turned his nephew into a liar; he brought his nephew down, and he is the real power behind his nephew. None of these are objective facts capable of proof. Other references about their interaction in Article Eight are that: the partnership between the plaintiff and his nephew is "multi-faceted" and that the plaintiff lets his nephew "deal with regular business activities". I find these references are recognizable as commentary and opinion based on the fact that the nephew was the "face" and/or manager of the plaintiff's business and the plaintiff admitted he left many day-to-day responsibilities in the nephew's hands.

[354] However, Article Eight goes further and claimed the nephew too was on the "List of Dishonoured" for owing large debts, something not proven to be true. That is the sting of the asserted meaning contained in para. 41(d). I find it is not presented as commentary, but as fact. Accordingly, the defence of fair comment cannot apply.

I. Article Nine - January 12, 2017

[355] On January 12, 2017 the defendant posted an Article on his public WeChat account titled "*Miaofei Pan, a questionable overseas Chinese leader in Vancouver, has deceived official mainland Chinese media by telling colossal lies again, claiming Articles criticizing him have provoked indignation among many Chinese and overseas Chinese!"* (Article Nine). In this post, the defendant republished two Articles: China Net, "*An Overseas Chinese Leader' – a bridge and link between China and the world"* (4 January 2017) and China Net, "*Always remembering his motherland and aiming high, an old steed in the stable still aspires to gallop a thousand miles*" (11 January 2017). Article 10 has about 20 paragraphs written by the defendant, comprising approximately four pages of text.

1. Summary of Article Nine

[356] Article Nine begins with the defendant describing the plaintiff as "a fighter jet among the deadbeats", and explains why he thinks publishing his allegations ultimately betters the image of China and Overseas Chinese leaders. He states he has been busy responding to the law suit but recounts, by way of contrast, what he claimed the plaintiff had been doing in the same period of time. The defendant writes that the plaintiff's son organized people to "report [the defendant] using their real names" to WeChat, painting the defendant as a "certain 'Gong'" (which I infer by context is a reference to a practitioner of Falun Gong), a Tibetan separatist, "anti-party" and "anti-Chinese". The defendant speculates the plaintiff's aim was to have the Chinese government believe the defendant is part of "an adversarial force overseas".

[357] The defendant then wrote that the plaintiff wanted to rebuild "his glorious image" and in support of that accusation, the defendant reproduces two articles from other Chinese media [Articles from *China Net]* which the defendant has characterized as "brown-nosing" Articles. He also refers to an article apparently published on the Xinhua Net, that the defendant characterizes as equally obsequious. The defendant states that it was the Articles he authored which provoked indignation among Chinese and overseas Chinese, rather than the fact of his criticism of the

plaintiff outraging people as the other articles appear to suggest. He also points out that the complimentary articles apparently only ran in media in China, and not Chinese language media in Vancouver.

[358] Following the articles reproduced and described in Article Nine, the defendant questions the claim in those articles that may people are supportive of the plaintiff.

[359] The impugned sections of the defendant's post are the following:

Though hardly surprised to see Miaofei Pan so deceives mainland Chinese party media, I am nonetheless amazed by this guy being such a fighter jet among the deadbeats, which goes to show again that my Articles criticizing Pan are not only accurate but current. ...

…

My dear Miaofei Pan, what kind of eyesight do you have? Where are all the crowds that you say there are? ... Are you betting on the reporters from official mainland Chinese media being unable to make it to Vancouver? Or that the officials at the mainland's agency charged with promoting overseas Chinese affairs have no time to come to Vancouver for a field investigation? ... It is in fact your deadbeat behaviour that provoked indignation among old and new immigrants but you had the reporter take the hint and write that these Articles critical of you provoked indignation among many Chinese and overseas Chinese. My fellow countrymen, how unbearably pathetic!

[There appears again in bold type the words "My Goodness" and the drawing of three angry chickens]

Flat out lying through his teeth – for leader Miaofei Pan to so deceive the mainland Chinese party and government is highly risky!

I'd ask leader Pan meekly, would you have the confidence and strength to have the "brown-nosing" Articles written following your hint run by the Chinese language media in Vancouver? Have you the cheek to distribute and broadcast them all over Vancouver? Isn't it just an effort at "disinfection" in mainland China only?

[360] At paragraph 44 of the NOCC, the plaintiff asserts the Impugned Statements in Article Nine convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) The plaintiff has deceived the media;

b) The plaintiff has lied to and deceived the government of China; and

c) The plaintiff's conduct has been negative such that it has provoked indignation amongst Chinese immigrants in Canada.

[361] The plaintiff's conduct has been negative such that it has provoked indignation amongst Chinese immigrants in Canada.

2. Are the Impugned Statements in Article Nine Defamatory?

[362] The sting of the allegation in para. 44(a) has two elements. First, that the plaintiff manipulated the media in China to have complimentary articles about himself published. Secondly, that the plaintiff (and/or his son) spread false accusations about the defendant to the same media. The defendant characterizes both as being deceptive. The Article specifically points out the same alleged manipulation or deception was not directed at the local Chinese language media in Vancouver.

[363] In my view, the meaning conveyed by the Impugned Statements is more of an indictment of the gullibility or malleable nature of the Chinese media as opposed to a criticism of the plaintiff. However, even if it was an accusation against the plaintiff, I do not find it defames him. I take judicial notice that the Chinese media is controlled, heavily supervised and censored by the Chinese government. I do not think right-thinking and thoughtful Canadians would lower their estimation of a person who lied to the Chinese media, because the Chinese media is not understood to be a "free press". I was presented with no evidence to suggest that people who consume that Chinese media might perceive that accusation differently. I am not satisfied that the Impugned Statement is defamatory.

[364] The meaning identified at para. 44(b) is conveyed once in the Impugned Statements of Article Nine. The defendant wrote that the plaintiff was "flat out lying through his teeth" and then suggested that to "so deceive the mainland Chinese party and government is highly risky!". The accusation of lying is related to the defendant's assertion that the plaintiff had manipulated Chinese media to report that many in China and overseas were outraged by the defendant's accusations. Thus, the alleged deception is how the plaintiff apparently managed to have himself portrayed in certain Chinese media articles. One must remember in this context the Chinese media, Chinese "Party" and government are all state controlled. Reading this Article as a whole, it is clear that the accusation that the "government of China" has been deceived in this instance is a reference to Chinese state media. As I explain in the preceding paragraphs, I do not find an accusation that a person deceives the Chinese media to be defamatory, and I adopt that reasoning here.

[365] There are two elements to the asserted meaning pled at para. 44(c): the plaintiff has engaged in unspecified negative conduct, and that conduct provoked indignation amongst Chinese Canadians. The first element is not a favourable description, but it hardly amounts to the lowering of someone's reputation because it is imprecise. At most, the negative conduct would most probably be a reference to the defendant's assertions that the plaintiff has deceived the Chinese state media. The second element of the sentence is not a comment on the plaintiff, but on the alleged behaviour of Chinese Canadians and therefore is not defamatory of the plaintiff.

[366] I do not find that Article Nine conveyed any defamatory meanings as alleged by the plaintiff.

J. Article 10 - January 13, 2017

[367] On January 13, 2017 the defendant posted an Article on his public WeChat account titled "*The first case ever in Canada where a 'famous Chinese community leader' sues a Chinese media person has officially begun: plaintiff Miaofei Pan may take down four types of people with him, a big show has just begun!"*. Article 10 has approximately 23 paragraphs and comprises just over 5 pages of text.

1. Summary of Article 10

[368] Article 10 starts with a picture of the defendant holding his response to the NOCC. He asks whether the plaintiff's intent is to "scare" the defendant with the law suit. He also points out that to "counter several articles of mine" criticizing the plaintiff, the plaintiff should reveal his tax returns. The defendant asserted that instead of doing that and "taking the short route" the plaintiff chose to launch the law suit.

[369] The defendant then provided his view of the strength of his case in this litigation. He denied that he is seeking the spotlight for financial benefit, and instead, suggested "some businesses may be too afraid to buy any ad on my public account". He then explained why he continued to defend himself in the law suit, and I infer, in his WeChat Articles. He suggested that the "Chinese media industry in Vancouver has been humiliated by people like [Miaofei] Pan for too long" and that the Articles written about the Chinese community reflect a Western point of view and that there has been "a collective abandonment by the [local Chinese language media]". He ended the Article by stating he had "no personal grudge or any financial dispute" with the plaintiff and that he is engaging in "the pursuit of truth as is and the search for right or wrong".

[370] The impugned sections of this Article are the following:

December 21 last year, [Miaofei] Pan took me, old Huang, to the Supreme Court of BC, claiming that the Articles written by me had shed a negative light on his 'glorious image'. This was a case of the emperor's new clothes. I feel my disclosure was made a bit late. Unfortunately, Mr. Pan has not only shown no remorse, but he is also making aggressive moves.

...You did not resort to any kind of communication, but insisted to have it the hard way. I old Huang, am an obstinate person and will not allow you to puff up with arrogance. You have money, so what? You can abuse the litigation process just because you have money?

…

Instead of taking the short route, achieving something in two minutes, he chose to make the trouble and spend the money to launch a legal action, causing me, old Huang, to deal with the lawsuit with my income from writing for the entire year. Is this a sensible choice for a multi-millionaire?

This exactly shows there is something fishy going on with [Miaofei] Pan...

…

...This is a money-losing deal, but why do I insist on doing it? This is mostly because the Chinese media industry in Vancouver has been humiliated by people like [Miaofei] Pan for too long. For a long time, this group of people has been domineering the Chinese media with their business and capital, diminishing its inherent responsibility of scrutiny to almost non-existent.

…

... After the litigation, win or lose, the bullet proof jacket of [Miaofei]Pan as a 'patriotic overseas Chinese community leader' will be ripped off completely. We won't know if he has only his undershirt or underpants left; it is quite possible that Pan, the overseas Chinese community leader, will have to be running naked.

[371] At paragraph 47 of the NOCC, the plaintiff asserts some of the Impugned Statements in Article 10 convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) the plaintiff is using wealth to take advantage of the defendant in this legal proceeding; and

b) the plaintiff is engaging in deceitful wrongdoing.

[372] At paragraph 49 of the NOCC, the plaintiff asserts some of the Impugned Statements in Article 10 convey the following meanings in their natural and ordinary meaning, or in the alternative, by ordinary innuendo:

a) The plaintiff has humiliated the local Chinese language media in Vancouver, and has been domineering towards the local Chinese language media through improper business and financial influence;

b) The plaintiff is not qualified to be a Chinese community leader, regardless of the outcome of this legal action.

2. Are the Impugned Statements in Article 10 Defamatory?

[373] Paragraph 47(a) refers to a few places in Article 10 where the defendant points out his income for a year would likely not cover the legal costs of the trial. He stated that rather than "[resorting] to any kind of communication", by which the defendant meant the plaintiff's publically revealing his tax forms, the plaintiff "insisted to have it the hard way". He asked whether the plaintiff is trying to scare him with a law suit, and whether the plaintiff "can abuse the litigation process just because [he has] money?".

[374] I find Article 10 implies that the plaintiff was hoping to scare the defendant by suing him, and in that context, the plaintiff's wealth is an advantage over the defendant, because of the latter's modest income. In that sense, Article 10 does convey the meaning as pled in NOCC para.

47(a). While I do not think that accusation would necessarily degrade someone's reputation, reading Article 10 as a whole, I find the defendant presented the plaintiff's law suit in contrast to the simple task of revealing his "true" income by releasing his tax returns. Thus, the defendant is suggesting the plaintiff's tactics shed a negative light on him. I accept that is defamatory.

[375] With regard to para. 47(b), plaintiff pleads that this meaning is conveyed only in the first seven paragraphs of the Impugned Statements in Article 10 (because the opening words of para. 47 limit the asserted meanings to Impugned Statements that come from those seven paragraphs). These seven paragraphs in Article 10 recount the law suit being commenced, the defendant's refusal to be "scared" by it, and the defendant's suggestion that the plaintiff ought to have revealed his tax returns instead of bringing the law suit.

[376] The only explicit mention of "wrong doing" is a statement in the fifth paragraph that in 2015 the plaintiff "was chased by the local tax authority of Cangnan county of China for owing tens of millions in taxes". While reference is also made to the CTB, there is no explicit accusation that he did so by concealing his true income. That accusation is made in other Articles, but I do not find it in Article 10; instead, the fourth paragraph suggests the issue of whether he claimed the CTB could be cleared up if he disclosed his tax returns.

[377] The issue is whether the accusation that he "was chased" for tens of millions of taxes in China is akin to suggesting the plaintiff engaged in "deceitful wrongdoing". I repeat my finding that reasonable Canadians would not find an allegation that a person did not pay Chinese government taxes necessarily lowered the reputation of a person (paras. 98 and 211). I note that in Article 10, all that is stated is that the plaintiff was "chased"; no reference is made as in other Articles to the Chinese documents the defendant believed proved the unpaid taxes. Thus, I am not satisfied that someone reading on the first seven paragraph of Article 10 would lower her estimation of the plaintiff. At most, a question has been raised as to whether the plaintiff has truthfully reported all his income.

[378] Nor do I agree that the Impugned Statements in Article 10 convey the meanings asserted in para. 49. The plaintiff limits the alleged defamatory meanings plead in para. 49 to arise from different Impugned Statements (appearing in the 11th and 16th paragraph) of Article 10. The defendant did write that the local Chinese language media in Vancouver has been "humiliated by people like [Miaofei] Pan" for too long. He claimed this humiliation arose from the ability of a group of people who have been "domineering" the local Chinese language media with their "business and capital" has diminished the local Chinese language media's "inherent responsibility of scrutiny to almost non-existent". I agree the implication is the "group of people" of which the plaintiff is one, is a reference to wealthy Chinese-Canadians, but I do not agree that Article 10 accuses the group of "improper business and influence". I find the Impugned Statements in Article 10, and Article 10 as a whole, is primarily critical of the local Chinese language media's attitude because it "no longer dare[s] to upset big business".

[379] Nor do I agree that Article 10 links the "humiliation" of the media to the plaintiff's influence, much less a domineering influence resulting from improper business practices. While the plaintiff's name is specifically mentioned, the point being made is a much larger one. The plaintiff is a marker for wealthy people who have businesses who can afford to choose to withhold advertising if they are unhappy with the media's reporting. There is no reference to any

specific incident or action taken by the plaintiff to put him into that category; the link is merely the plaintiff's admitted wealth.

[380] Accordingly, I do not find the meaning asserted in para. 49(a) is contained in Article 10 because the Impugned Statement does not single out the plaintiff to be capable of being defamatory, as a matter of law.

[381] If I am wrong, however, and Article 10 can be read as making specific allegations against the plaintiff, I also find the meaning is not defamatory as a matter of fact. As noted above, the primary target of the defendant's criticism is the local Chinese language media. I do not find that the ability of wealthy people to "influence" the media is characterized as those people behaving improperly, as much as the local Chinese language media abandoning its journalistic duties.

[382] Paragraph 49(b) is a reference to the 16th paragraph in Article 10 where the defendant wrote that, "[a]fter the litigation, win or lose, the bullet proof jacket of [the plaintiff] as a 'patriotic overseas Chinese community leader' will be ripped off completely". Reading the entire Article, and placing the asserting meaning in context, the defendant is suggesting the litigation, regardless of who wins, will expose certain things about the plaintiff. The Article further opines that even if the defendant loses, he will have been "honoured" for pursing what he believes to be the publication of the truth. One of the themes of Article 10 is the defendant's assertion that the plaintiff should not complain about being scrutinized in the media.

[383] I do not find anything in Article 10 lowers the plaintiff's reputation. Nor do I find Article 10 to imply or explicitly state that the so called "bullet-proof" vest relates to the plaintiff's status as a community leader; it could equally be conferred by his wealth. The point being made is the process of litigation will ultimately not benefit the plaintiff, even if he wins. However, that predicted result is not linked to his qualification as a community leader. In my view, the meaning as asserted in para. 49(b) is not conveyed in Article 10.

K. Can the Defendant Rely on the Defence of Responsible Communication?

[384] For ease of reference, I repeat the main elements of this defence. There are two basic elements. First, the matters reported on must be of public interest. Second, the defendant must have been diligent in his reporting. The following are factors identified in *Grant* that should be considered when determining whether the defendant was diligent: (i) the seriousness of the matter; (ii) the public importance of the matter; (iii) the urgency of the matter; (iv) the status and reliability of the source; (v) whether the plaintiff's side of the story was sought and accurately reported; (vi) whether inclusion of the defamatory statement was justifiable; (vii) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth, and; (viii) other considerations.

[385] This defence focusses more on the conduct of the defendant than the content of the publications at issue. In this case, despite there being 10 separate Articles, the

analysis for the above factors is virtually identical for all Articles. Therefore, I apply my reasoning and conclusions to the availability of the defence for all 10 Articles.

1. Were the Publications on a Matter of Public Interest?

[386] The defendant submits that the purpose of reporting on the plaintiff "was for the benefits of the public, mainly the Chinese community in British Columbia". The defendant submits that "[a]t the heart of this matter is an interest to uncover the truth and hold public officials accountable for their actions when it is a matter of public interest". The defendant submits that as a leader of the local Chinese community, the plaintiff is a public figure.

[387] In his amended response to civil claim, the defendant pleads that because the plaintiff uses his "title of overseas leader of Chinese organizations to meet many Chinese officials" and Canadian officials such as Prime Minister Trudeau, "Canadian [sic] have the right to know the full image of [the plaintiff]" (para. 6(g)).

[388] Mr. Huang's testimony supported the defendant's position. He testified that the defendant is an "independent media personality" who makes "comments or provides commentaries to stories in news that's often going on in Canada and in all around the world".

[389] The plaintiff conceded that he is a civic community leader in Vancouver which may result in his being the subject of public interest. He also conceded that the Articles have generated significant interest on the Internet and in the Chinese-Canadian community in Vancouver. Indeed, the courtroom was filled with spectators throughout most of the trial. I was informed that the *Globe and Mail* requested access to the transcripts of the trial. There was evidence that the defendant was interviewed by local Chinese language media during the trial.

[390] However, the plaintiff submits that the defendant's statements fall outside the range of what could be considered to be in the public interest as they are "sensationalized statements not based in reality" and thus not "deserving of the protection of public interest". I do not understand the logic of this submission. A defendant will not be liable for defamatory statements about a matter of public interest as long as the defendant was responsible in publishing the statements by making a diligent effort to verify the facts. That protection is available if the defendant meets the test, no matter how incendiary the defamatory statements are.

[391] I find that the 10 Articles addressed matters of public interest. There is no dispute in the evidence that at the time the Articles were published, the plaintiff was President of the Wenzhou Society and the Zhejiang Association as well as Honourary Chairman of the Alliance. He hosted the Prime Minister at his home as reported by the *Globe and Mail*. There can be no doubt that the plaintiff is a figure of local prominence, especially in the Chinese-Canadian community.

[392] I also infer from the witnesses' testimony that significant public notoriety is attached to the defendant's allegations. Both Ms. Chen and Mr. Liang, for example, reported being surprised by the allegations and that they understood many people in the Chinese-Canadian community in Vancouver were discussing the issues raised by the defendant. I conclude this was because the publications genuinely invited public attention to matters important to their community.

2. The Seriousness of the Impugned Statements

[393] The plaintiff submits the defamatory statements are highly serious in nature, thus attracting a more demanding degree of diligence. In *Grant*, the Court stated that statements which devastate the target's reputation and career are the most serious. So too are allegations of corruption or criminality on the part of a public official and they "demand more thorough efforts at verification than will suggestions of lesser mischief": para. 111.

[394] I am not convinced that a person's reputation would be devastated by the assertions in the Articles. The two most serious accusations are that the plaintiff defrauded home owners in China, implicating his nephew in the fraud and that he evaded Canadian taxes and claimed the CTB to which he was not entitled. I agree the seriousness of those two accusations are moderately high. However, I do not agree the other allegations are of high or moderately high seriousness. Those relate to the plaintiff's interactions (alleged to be wrongful) with Chinese government agencies. As noted elsewhere in this judgment, I am not satisfied reasonable Canadians would regard those allegations as damaging a person's reputation given the reputation of the Chinese government, and I had no contrary evidence. I also find the allegations regarding the plaintiff's "buying" of positions in Community Associations and using them for personal benefit are only moderately serious, as there is nothing inherently criminal in that type of activity.

[395] Given these conclusions, I find that the defendant needed to exercise a moderate to moderately high degree of diligence to successfully invoke this defence.

3. The Public Importance of the Matters

[396] The greater the public importance (as opposed to the public's interest in being informed about it) of the matter, the more likely its publication will be seen as responsible (*Grant*, para. 112). The plaintiff submits the defamatory statements are of "moderate public importance" as they do not relate to matters of government or the safety and security of the general public. However, the plaintiff concedes that the issues do carry some importance to the Chinese-Canadian community in Vancouver and possibly to a broader community of people of Chinese descent.

[397] The defendant says the defamatory statements are of high public importance because they relate to the reputation of the Chinese–Canadian community and the character and conduct of the elected leadership of Community Associations.

[398] I agree with the plaintiff that public importance of the defamatory statements fall short of the highest mark; they do not pertain to grave matters of national security, for example. However, I also find they rise above what the Court in *Grant* called "prosaic business of everyday politics". I find they are of moderate or moderately high public importance. I find the accusations about the plaintiff's involvement with the Project that affected hundreds of people would raise the importance above topics of moderate interest. I also find the accusation of not being honest with the CRA to be moderately serious. The allegations of improper behavior of community leaders is not of the same public importance as in the case of a government-elected

officials, but are still significant to a society like Canada that places so much trust in civic organizations.

[399] Overall, I find the public importance of the defamatory statements is moderate, which leans somewhat towards a conclusion that the defendant was diligent.

4. The Urgency of the Matters

[400] The plaintiff submits there was no urgency for the defendant to publish the defamatory statements "one after another within a short period of time". The plaintiff argued the defendant could and should have taken the necessary time to verify the truth of the defamatory statements, and as a result of rushing publication, he failed to exercise adequate diligence.

[401] I find there was urgency, in the journalistic sense of the word, for publishing Article One because of the coincidental timing of the rally and the *Globe and Mail* Article. Furthermore, the defendant testified that immediately upon publishing Article One, he was threatened with legal action by the plaintiff. The defendant viewed the legal action as a threat and he felt it was his "responsibility to unearth more information before inevitably reaching some type of litigation". In Article Two, he wrote "[b]eing called out and on the receiving end of criticism, [the plaintiff] was fuming. This morning, he himself sent my article from yesterday to the Alliance leadership's WeChat Moments, and threatened to sue me thereafter in their 'Alliance' Group. He says the rapid timing of the subsequent Articles was in response to the plaintiff's conduct.

[402] While I agree with the plaintiff that the quick succession of the Articles inherently limited the amount of time possible for the defendant to conduct due diligence in respect of the allegations made, I also find that the defendant sincerely believed that due to the imbalance in power between the parties, the plaintiff was attempting to suppress his journalistic expression with the threat of legal action. I accept that the defendant published the subsequent Articles in relative quick succession in an attempt to provide more evidence to strengthen the veracity of his previous statements. It is notable that despite the rapid publication, the defendant did refer to and rely on a number of internet sources for his claims, which he believed were official publications of the Chinese state. In my view, that accords with the exercise of diligence.

[403] At para. 113 of *Grant*, the Court held that the factor would weigh in the plaintiff's favour "if a reasonable delay could have assisted the defendant in finding out the truth and correcting any defamatory falsity without compromising the story's timelines". I do not find that applies to this case. The defendant procured most of the documents upon which he relied from the internet. He made it clear he could not afford to go to China to authenticate or find originals of those documents. Thus, no amount of delay could cure those shortcomings.

[404] This factor weights in favour of a conclusion that the defendant was diligent.

5. The Status and Reliability of the Sources

[405] I incorporate into this analysis my discussion of the basis upon which I admitted into evidence the documents upon which the defendant relied and believed were official publications

of the Chinese government (see above 97 to 102). The defendant also relied on what unnamed people told him, and Articles published by Chinese media, which he claimed were inherently reliable. This was consistent with his submission that Chinese media and governmental websites are reliable because they are controlled by the Chinese government and no one other than the official governmental organization could possibly operate under such a domain.

[406] I agree with the plaintiff that the defendant's subjective belief in the truth of the information relied upon in publishing the defamatory statements is insufficient to meet this factor. However, I cannot ignore the difficulty a lone journalist, who believes his previous WeChat accounts have been cancelled by the Chinese government, would have in authenticating official Chinese government documents. Nor can I ignore the inherent difficulties this Court might face in deciding what reliance could be placed on oaths or certifications provided by Chinese government authorities. I repeat that I find the defendant's belief in the accuracy and authenticity of the documents to be genuine, and reasonable. I add that viewing the documents, they at least have the appearance of "official" documents. Thus, even though the documents were not admitted for their truth because of the lack of authenticity, I find the preceding reasons establish that there was a moderate degree of reliability of the defendant's sources, which is somewhat consistent with the defendant being diligent.

6. Whether the Plaintiff's Side of the Story was Sought and Accurately Reported

[407] The evidence is uncontroverted that the defendant never contacted the plaintiff to obtain his side of the story.

[408] The plaintiff's reaction and response to Article One was included in Articles Two and Three. The defendant displayed a screenshot of a letter written to the defendant by plaintiff's counsel, stating the allegations were false and defamatory (para. 224) as well as the plaintiff's written response to the allegations of Statement One posted on the Alliance's WeChat group (para. 201). However, the letter and reproduction of the plaintiff's blog post were published before the defendant published the rest of the Articles so the plaintiff's version of the alleged facts contained in the defamatory statements was missing.

[409] Accordingly, this factor does not support a conclusion that the defendant was diligent.

7. Whether Inclusion of the Defamatory Statement was Justifiable

[410] The Supreme Court of Canada has said that considerations of editorial choice should be granted "generous scope"; *Grant* at para. 118. Combined with the fundamental and unquestioned primacy of protecting freedom of expression and freedom of the press, I conclude the threshold for a defendant meeting this factor is very low.

[411] The plaintiff submits that the defendant could have written the Articles highlighting the same topics without making the defamatory statements. I disagree. Article One was prompted by the confluence of the defendant's seeing the plaintiff participating in the rally and recalling the plaintiff's hosting of the Prime Minister in his home. His subsequent Articles were responsive

both to the plaintiff's response to Article One and the plaintiff's announcement that he would sue the defendant.

[412] The defendant believed the defamatory statements were necessary to communicate a matter of public importance and I have found they were in the public interest. I find the defendant's position logically consistent and objectively reasonable, regardless of whether a person would agree with him or not.

[413] In my view, this factor weighs in favour of concluding the defendant was diligent.

8. Whether the Public Interest of the Defamatory Statements Lay in the Fact that they were Made Rather than Their Truth

[414] For convenience I repeat the four factors from *Grant* that the Court laid out at para. 120 for invoking reportage: (1) the publication attributes the statement to a person, preferably identified, thereby avoiding total unaccountability; (2) the report indicates, expressly or implicitly, that its truth has not been verified; (3) the report sets out both sides of the dispute fairly; and (4) the report provides the context in which the statements were made.

[415] The plaintiff submits that the defendant has failed to satisfy any of the legal elements of reportage. I agree that the defendant has not met the second and third factors, and for that reason, this aspect of the defence does not favour the defendant.

9. Additional Considerations

[416] The Court in *Grant* was clear that the factors identified in that judgment were not exhaustive, and "[u]ltimately, all matters relevant to whether the defendant communicated responsibly can be considered" (para. 122).

[417] I identified earlier in this judgment specific complexities about this case (paras. 146-152). I also discussed the status of the Chinese government documents relied upon by the defendant as verification of his allegations (paras. 97 to 102). In my view, both topics are relevant to assessing whether the defendant was responsible as a journalist.

[418] The defendant took advantage of the internet to consult what he believed to be official Chinese government sources to support his allegations. He clearly identified (usually reproducing within the Articles) the documents upon which he relied. He was reporting in his personal capacity, not backed by any financial aid to assist him in his writing. I find the facial appearance of the documents are consistent with them being pulled from an "official" Chinese government website. I also cannot ignore the defendant's submission that no one "would dare" post a "fake" Chinese government website, and if they did, it would be quickly removed.

[419] I add that the plaintiff initially alleged the defendant "fabricated" the documents, but then admitted the possibility of his name appearing on at least one of those documents (the Share registry). Similarly, he provided a possible reason why his name may have appeared on a list of people who owed large unpaid debts. I acknowledge he denied the veracity of the documents and

their contents, but the fact that he could readily come up with a logical reason why his name might appear is relevant.

[420] I question whether a journalist who claims he has had his WeChat accounts shut down by the Chinese government could ever succeed in getting the certification necessary required to authenticate Chinese government documents. Presumably that would need to come either from the Chinese embassy or consulate, or by his travelling to China (or hiring someone in China) to do so. However, given my comments about the nature of the Chinese government, I wonder what reliance this Court should place on such certification even if it was obtained?

[421] Despite all of these factors, I agree with the plaintiff that the rules of evidence do not allow for the admission of the documents for their truth, and I have not done so. However, that should not be an absolute barrier to invoking the defence of responsible communication. In my view, the preceding paragraphs are factors that must be considered together with all other circumstances of this case.

[422] Lastly, it is relevant that the plaintiff relied completely on the presumption of falsity for his claims. It is inconceivable that he did not understand that the defendant relied primarily on what he believed to be "official" Chinese government documents to support many of his allegations, including about tax evasions and unpaid debts. The plaintiff took the position that the presumption relieved him of the obligation to produce documents that would tend to prove or disprove a material fact. Thus, he did not produce his Canadian tax returns or any document whatsoever backing up his claim that he sold 100% of his interest in the Linyang Company in 2006. Nor did he produce any kind of document to verify the information he claimed he received from the Chinese officials that there is no such thing as a "List of Dishonoured". Because I found the plaintiff's credibility to be impaired, the lack of these documents takes on greater significance. In my view, that is relevant to the defendant's ability to rely on this defence.

[423] The plaintiff argued that I cannot rely on his non-production at trial of documents for any purpose because that would amount to shifting the legal burden onto him to "disprove" the claims made by the defamatory statements. I disagree.

[424] Nothing about a defamation action removes the obligation of all parties to produce relevant documents. The defendant clearly pled truth in his response to civil claim. Thus, any document that the plaintiff had that could prove or disprove the truth of the defamatory statements was bound to be produced under the *Rules*. I have no knowledge why documents were not produced at trial because the plaintiff relied wholly on his submission that he had no obligation to do so. I find it difficult to believe that no documents existed, and I infer that the plaintiff preferred not to produce any. In my view, this raises the possibility that any such documents would be harmful to his case, although I decline to go so far as to draw that adverse inference.

10. Conclusion on Responsible Communication

[425] The Supreme Court of Canada has noted that journalists can take advantage of the defence of responsible communication, but in order to do so they must demonstrate a diligence to

search for the truth in what they publish. The defence is grounded in the conduct of the defendant. The Court also held that not all factors are weighed equally.

[426] I find that the defendant satisfied the first element of the defence of responsible communication: the defamatory statements were a matter of public interest. I also conclude that the public importance of the topics weighed more in favour of concluding the communication was responsible. I found that the defendant was justified in including the defamatory statements in the Articles, and that delaying publication would not have assisted in verifying the truth. The Articles addressed topics that were moderately serious requiring a moderate degree of diligence. I concluded that a consideration of the status and reliability of the sources, taking into account all circumstances and complexities of this case, was consistent with the defendant being diligent.

[427] However, I am concerned by the defendant's failure to contact the plaintiff to receive and then report his reaction to the Articles, and the defendant's insistence that such a step was unnecessary. The Supreme Court of Canada did not state that any one factor was determinative, but it acknowledged not all factors are weighed equally. I note that the Supreme Court of Canada did not state that this factor was a necessary aspect to successfully invoke this defence, and it could have done so.

[428] Nevertheless, I find it is well embedded within Canadian culture and journalistic ideals that a publisher will contact the target of a publication to allow that person to respond, and publish that response (or lack of response). This factor will weigh heavily in the assessment of the defence.

[429] The essence of the defence is whether the author has been diligent. The defendant did not cite any difficulty or barrier to contacting the plaintiff directly before publishing Article One. Rather, he believed he was under no obligation to do so. I do not find that is consistent with the defence of responsible communication. While this factor is not a necessary condition for the defence, I conclude the absence of a reasoned explanation for even attempting to contact the plaintiff, deprives the defendant of this defence.

L. Conclusions on Defamatory Meanings

[430] To summarize my conclusions, I have concluded the following Articles contain defamatory statements about the plaintiff to which no defence was applicable:

a) Article Four - specifically the meanings as pled at para. 26(b), (d) and (e) in the NOCC: that the plaintiff obtained his positions in certain organizations because he paid money to do so, rather than obtaining them on merit; that the plaintiff was involved in a real estate project that harmed hundreds of families (many of who blamed him), and; that the plaintiff exploited his connections and status overseas to avoid liability for a fraud perpetuated on those families.

b) Article Eight - specifically the meanings as pled in para. 41(a), (b) and (d) in the NOCC: that the plaintiff wrongfully obtained monetary gains; that the plaintiff owes millions of yuan pursuant to Chinese court orders, and; that the plaintiff used his nephew as a front

for his business in China, causing him to be in trouble, including incurring debts in China.

IV. REMEDIES

[431] The plaintiff seeks general, aggravated and punitive damages and submits that a global range of between $360,000 and $450,000 would be appropriate.

A. Legal Principles about Damages

[432] General damages are presumed from the publication of defamatory statements and are awarded at large: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 164. However, as discussed above relating to the admission of fresh evidence (paras. 23-42), evidence about the extent of damage to the plaintiff's reputation is relevant and admissible to an award of damages.

[433] Aggravated damages may be awarded where the defendant's conduct has been particularly high-handed or oppressive, which increases the harm done to the plaintiff. There must be a finding by the Court that the defendant was motivated by malice, which increased harm to the plaintiff's reputation or increased emotional suffering in order to award aggravated damages: *Hill* at paras. 188-191.

[434] Punitive damages may be awarded in cases where the defendant's misconduct is so malicious, oppressive or high-handed that it offends the sense of decency. The objective of punitive damages is to punish the defendant, not to award the plaintiff. It should only be awarded in circumstances where general and aggravated damage awards are insufficient to achieve the goal of punishment and deterrence: *Hill* at para. 199; *Nazerali* at para. 192.

[435] In *Lougheed Estate*, the Court stated that the assessment of damages should take into consideration the nature and circumstances of the defamatory publication, the nature and position of the plaintiff, the possible effects of the defamatory words on the plaintiff and the actions and motivations of the defendant: para. 615.

B. Analysis of Damages

[436] As a starting point, I have concluded the plaintiff has not established the defendant was actuated by malice and therefore the plaintiff is not entitled to aggravated damages. Similarly, for the reasons why I did not find malice had been established, I do not agree that the defendant's behaviour justifies an award of punitive damages.

[437] The issue remains as to what amount of general damages are appropriate. Damage is presumed, but the case law establishes that a substantial award of damages must be supported by evidence of harm: *Acumen Law Corporation v. Nguyen*, 2018 BCSC 961 para. 23. Evidence is

also needed to quantify or assess the level of damages: *Canadian Broadcasting Corporation v. Whatcott*, 2016 SKCA 17 at 32; see also discussion above at paras. 37 and 38.

[438] I am not persuaded that the plaintiff has established on a balance of probabilities that his reputation as a community leader has been damaged by the defamatory statements published by the defendant.

[439] Most telling is the fact that the plaintiff was not asked to resign any position on any Community Association. He claimed his reputation was harmed yet the associations themselves apparently did not think so. Most detrimental to his position is the fact that even after he choose to resign as president of the Wenzhou Society, many people wanted him to remain as the "honourary" president. This was in February 2017 after publication of all 10 Articles.

[440] The plaintiff's witnesses' evidence did not support his claim of damage to his reputation. Both Mr. Liang and Ms. Chen ultimately believed the plaintiff's version of events, even if at first they were suspicious. That amounts to nothing more than a temporary doubt raised in those people's minds about his character. That doubt was easily dispelled by both witnesses and does not support a conclusion that his reputation suffered, or that he is entitled to a substantial award of damages.

[441] I find the fresh evidence adduced by the defendant demonstrates that the plaintiff's reputation in the Chinese-Canadian community has not suffered as he claimed at trial. The plaintiff agreed the events described in the fresh evidence were accurate, but challenged the inferences the defendant asked me to draw. However, I find the evidence itself, without any explanation by either party, was more consistent with the defendant's position than the plaintiff's. I do not accept that someone who receives "honourary certificates" at well attended functions in the local Chinese-Canadian community is someone with a damaged reputation.

[442] In his affidavit responding to the application to adduce fresh evidence, the plaintiff deposed that he has not been invited back to a particular annual event hosted by the Chinese embassy, which he had been invited to and attended in the past. I repeat my general concern about the plaintiff's credibility which makes me cautious in accepting his evidence. However, even if true, without direct evidence from the consulate, I do not know why an invitation was not extended to the plaintiff. The plaintiff asked me to draw the inference he was not invited because of the defendant's defamatory statements, but there are other plausible explanations that are reasonable. The event may have been cancelled or the guest list may have been reduced. It is also conceivable only current board members of the larger Community Associations, on which he no longer held a current position, were invited. Or, the issues raised in the *Globe and Mail* Article may have contributed to the lack of invitation. Accordingly, I am not persuaded to infer or find that the lack of an invitation is evidence about damage to the plaintiff's reputation.

[443] Moreover, even if I did accept that the lack of an invitation flowed directly from the defamatory statements (which I do not), that would amount to only one example of the defamatory statements negatively impacting the plaintiff's status in the community. That is more than off-set by the fresh evidence indicating he enjoys a continued good reputation.

[444] I conclude the plaintiff has failed to adduce sufficient evidence to warrant a substantial award of damages because he has failed to persuade me on a balance of probabilities that his status within the Chinese-Canadian community was diminished as a result of the publication of the defamatory statements.

[445] However, he also testified of personal difficulties he suffered because of the shame he felt from the Articles: lack of sleep, stress and anxiety. I am not satisfied based on his word alone that the defamatory statements caused those difficulties given my concerns about his credibility. Moreover, I would have found it at least equally probable (if not more) that the stress and anxiety were caused by the allegation that he claimed the CTB, which I have concluded is true.

[446] In conclusion, on an evidentiary basis, I am not satisfied that the plaintiff has demonstrated he suffered any actual damage or harm to his reputation, or personal difficulties to an extent that he would be entitled to a substantial award of damages.

[447] In my view, only a nominal award is appropriate in this case, based on two factors. First, the paucity of evidence as I discussed above is most consistent with awarding only nominal damages.

[448] Secondly, I am disturbed by the plaintiff's lack of candour with the Court, manifested both in his testimony and his lack of document production in this litigation. I emphasize I did not draw an adverse inference about his claiming the CTB lightly. His evasiveness with this Court on that issue is deserving of rebuke, and I decline to award him substantial damages on that basis.

[449] The issue of the CTB was not the only instance where I did not accept the plaintiff's evidence or position. I am satisfied on a balance of probabilities that the plaintiff fabricated a story that someone tried to blackmail the plaintiff into paying cash to stop the defendant's continued publications about him. In relation to the documents relied upon by the defendant, the plaintiff denied their authenticity, which was a reasonable stance in the litigation. However, he went further at first by alleging at trial that documents were "faked". However, he then backtracked on his accusation and instead tried to provide a different reason why his name was on two of the documents (the Share Registry and the List of Dishonoured).

[450] I also note the lack of documentation produced by the plaintiff. It is true that he did not have any burden to prove the defamatory statements were false. However, he had an obligation to disclose relevant and material documents related to the issues in the litigation. It was clear from the defendant's response to civil claim that he asserted the allegations in the Articles were true. Given the content of the Articles (and the pleading itself) his claim of truth was not merely pure speculation, but based, at least in part on the documents he reproduced within the Articles, which the defendant asserted were official records of the Chinese government. Requiring the plaintiff to disclose and produce documents relevant to the truth of the allegations is not the reversal of a legal burden. If such documents existed I would have expected him to adduce them at trial.

[451] Had that suspicion been my only concern about the plaintiff's posture in this litigation, my conclusions may have been different. However that is not the case. Anchoring all of these

concerns is my serious concerns about the plaintiff's credibility. From my purview as the trial judge, and exclusive fact-finder, the plaintiff demonstrated on a number of occasions throughout his testimony an attitude that he should not have to answer to the defendant, and indirectly to this Court, about his business affairs. That combined with his decision to rely purely on deemed falsity of the defamatory statements rather than backing up his testimony with documents, strongly confirmed my disinclination to find the plaintiff credible or reliable.

[452] For all those reasons, I award nominal damages to the plaintiff in the amount of $1.

C. Injunction

[453] In addition to damages, the plaintiff seeks a permanent injunction restraining the defendant from publishing the defamatory material or any material similar to it, and an order requiring the defendant to remove the defamatory statements from his website.

[454] The plaintiff relies on four cases in support of the injunction, all of which are distinguishable.

[455] In *WeGo Kayaking Ltd. v. Sewid*, 2006 BCSC 334, the defendant did not appear at the hearing. Although the statement of defence was filed, the court held that no valid defence to defamation was pled. The defendant was a business competitor of the plaintiffs who published on the internet a "review" stating the plaintiffs, among other things, had "done things to try and make First Nations become token Indians who are only needed as items of attraction or convenience". The defendant also suggested there were "some environmental concerns with their operating practices as well". As a result, both plaintiffs adduced evidence as to a significant drop in their business revenues.

[456] Similarly, the defendant did not appear at the trial in *Newman v. Halstead*, 2006 BCSC 65. The court found the defendant liable for defamation and granted punitive damages. It also issued a permanent injunction because it was satisfied that the defendant had declared herself judgment proof, and there was a likelihood the defendant would continue to publish defamatory statements.

[457] A similar finding was made in *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939, the third case cited by the plaintiff. The court concluded it was likely the defendant would continue to publish defamatory statements given that a "request to stop the publications, the commencement of proceedings against him, and the award of substantial damages in similar cases have not deterred" the defendant. The court also noted that the defendant was a resident of Mexico and there was no evidence that he had significant assets.

[458] In *Mainstream*, the Court of Appeal reversed the trial judge's conclusion that the defendant was entitled to the defence of fair comment. The trial judge had commented on the defendant's misconduct in her decision on costs. That misconduct provided an evidentiary basis to find a likelihood that the defendant would continue defaming the plaintiff, evidence I am not satisfied exists in this case. At para. 50, the Court of Appeal summarized the misconduct:

(a) he relaunched the [defamatory] website during the trial and announced that an injunction would not stop him;

(b) in separate Facebook postings he accused a First Nation of accepting 'blood money' from the plaintiff and he compared the trial to a kangaroo court; and

(c) he made 'sexist and puerile' comments on Internet postings about two female witnesses called by the plaintiff and, after the incident was discussed in court, he repeated his comments in an interview that was posted on YouTube.

[459] None of those cases involved facts similar in any way to what was tried before me. The defendant is a journalist who reported on matters of public interest and importance. He did so without malice but in a genuine search for truth.

[460] The plaintiff submits that there is a likelihood the defendant will continue to publish defamatory statements. I do not agree the evidence at trial established this on a balance or probabilities. The plaintiff pointed to the defendant's testimony during cross-examination that the defendant believed the plaintiff was a "problematic" community leader and that on that basis, he would continue to publish about him. I did not find the defendant's description of the plaintiff as problematic to be defamatory, so this is not evidence tending to support the conclusion that the defendant will continue to defame him.

[461] The plaintiff also points to the defendant's refusal to stop publishing stories after receiving a letter from his lawyers, and after being served with the NOCC. The fundamental problem with that submission is that it is premised on the notion that the plaintiff's position was correct. In fact, of the 10 articles the plaintiff alleged were defamatory, I found only two were.

[462] Moreover, unlike any of the cases cited by the plaintiff, the defendant is a journalist who was engaged in investigative journalism of a public figure. I did not find that he was motivated by malice. Nor did he have anything to gain monetarily by his publications.

[463] The plaintiff also submits he will suffer irreparable harm, personally and to his reputation, if the injunction is not granted. Given my findings that the evidence of damage to his reputation was insufficient to entitle the plaintiff to an award of substantial damages, I also find it is highly improbable that he will suffer any lasting harm to his reputation.

[464] Granting an injunction on future publications is a form of prior restraint. It is "an exceptional remedy which will only be imposed by the courts in the clearest of cases": *Newman* at para. 298. Its use should be particularly rare in cases where a plaintiff wants to restrain a member of the press.

[465] For all those reasons, I decline to issue an injunction.

[466] The plaintiff also seeks to have the defendant remove the defamatory statements from his website (where he published all 10 articles). I have found defamatory statements in Articles Four

and Eight. I agree it is appropriate to grant an order that he remove those Articles from his website.

V. CONCLUSION

[467] Although I have found the defendant made defamatory statements about the plaintiff in two of the Articles he wrote, I am not persuaded that anything other than a nominal award of damages in the amount of $1 is appropriate in all the circumstances of this case. I decline to issue an injunction, but I do order the defendant to remove Articles Four and Eight from his website.

VI. COSTS

[468] If either party wishes to address costs, he may do so by requesting from trial scheduling within 30 days of the date of this judgment a brief hearing before me.

"Sharma J."

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[1] Throughout this judgment, "Chinese media" means the state controlled media in China. Based on my reading of all the Articles and pleadings, at times the translated phrase "Chinese media" is instead a reference to Chinese language media in Canada, and specifically Vancouver. Accordingly, I will use the phrase local Chinese language media when that is the case, in contrast to media in China.

[2] "Reportage" requires the statements are attributed to a person, it is indicated that its truth has not been verified, both sides of the dispute are provided; and context is provided in which the statements were made: *Grant* at para. 119.

[3] The plaintiff accepted this is roughly accurate during cross-examination.

[4] The plaintiff takes this position with respect to all Impugned Statements in the Articles, except for the reference to the plaintiff as a "problematic Chinese community leader" in Article Six.

[5] I understood the defendant to use the term overseas Chinese leaders as a person of Chinese origin that had some type of leadership position in a country where they had settled outside of China.