IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Christian Advocacy Society of Greater Vancouver v. Arthur,* 2013 BCSC 1542

Date: 20130826
Docket: VLC-S-S-127466
Registry: Vancouver

Between:

Christian Advocacy Society of Greater Vancouver and Crisis Pregnancy Centre of Vancouver Society

Plaintiffs

And

Joyce Arthur on her own behalf and on behalf of the members of the Pro-Choice Action Network

Defendants

Before: The Honourable Madam Justice Russell

Reasons for Judgment

Counsel for the Plaintiffs:	G. Trotter
Counsel for the Defendants:	D.G. Crane
Place and Date of Hearing:	Vancouver, B.C. April 5, 2013
Place and Date of Judgment:	Vancouver, B.C. August 26, 2013

Introduction

[1] This application arises in relation to an action concerning the publication of a report authored by the defendant Joyce Arthur titled "Exposing Crisis Pregnancy Centres in British Columbia" in January 2009 (the "Report"). In her Report, Ms. Arthur defines crisis pregnancy centres ("CPCs") as "abortion counselling centres … [which] are actually anti-choice Christian ministries, often pretending to be non-biased medical clinics or counselling centres. Their main goal is to stop women from having abortions and to convert women to Christianity."

[2] The defendants, Ms. Arthur on her own behalf and on behalf of the Pro-Choice Action Network, bring an application pursuant to R. 9-7(15)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] for judgment in their favour on the issue of whether the alleged defamatory content set out in paragraphs 13 through 31 of the Further Amended Notice of Civil Claim ("Amended Claim") is of and concerning the plaintiffs.

[3] The defendants also seek an order pursuant to R. 9-5(1)(a) striking paragraphs 35 and 36 of the Amended Claim for failing to disclose a reasonable claim.

[4] Finally, the defendants ask for the action to be dismissed and costs.

[5] The plaintiffs, the Christian Advocacy Society of Greater Vancouver ("CAS") and the Crisis Pregnancy Centre of Vancouver Society ("CPCVS"), operate two CPCs, which are located in Vancouver and Burnaby. These centres "support women struggling with an unplanned pregnancy". The plaintiffs oppose all applications brought by the defendants.

Background

The Report

[6] In January 2009, the defendants published the Report on their website.

[7] The Report's stated objective is to research anti-abortion counselling centres, or "fake clinics", in British Columbia. The Report refers to these clinics as "CPCs" — the commonly used term, the author says, to describe these clinics in North America.

[8] The first part of the Report documents various research methods it has undertaken to discover what CPCs are doing and saying to women in British Columbia and whether they are engaging in deceptive or harmful practices. The Report discusses these research methods and findings from pages 3 to 12. Some of the findings also relate to the inadequacy of British Columbia doctors' offices, hospitals and walk-in clinics with respect to their knowledge of abortion services and the information they provide on these services to the public (in particular, refer to pages 8 - 12).

[9] The next section of the Report is entitled "Misinformation and Deceptive Tactics from CPCs" (pages 13 - 16). It is organized in sub-headings describing various deceptive tactics of CPCs in North America. The sources relied upon are both American and Canadian.

[10] The subsequent sections of the Report, "Adoption", "CPC Structure and Hierarchy", "Funding of CPCs" and "Conclusion", continue to discuss CPCs broadly in the North American and Canadian context.

[11] The appendices to the Report document in further detail the findings discussed in the first sections of the Report researching CPCs and public health services provided in relation to abortion in British Columbia.

The Alleged Defamation

[12] The plaintiffs filed their Notice of Civil Claim on October 25, 2012 alleging defamation against the defendants. The Notice of Civil Claim was amended on December 12, 2012 and amended once again on February 20, 2013.

[13] In the Amended Claim, the plaintiffs allege the Report refers to them in the following ways:

The Report includes both the Vancouver Centre and the Burnaby Centre in the list of about 30 crisis pregnancy centres ("CPCs") in British Columbia in Appendix 3;

a. The Report quotes and makes reference to the Plaintiffs' executive director, Brian Norton, including by name (p. 14);

b. The Report specifically identifies CAS as one of the co-founding members of the Canadian Association of Pregnancy Support Services (CAPSS), a national organization which resources and helps develop, train, and support best practices at CPCs in Canada; and

c. The Report speaks extensively about a university student which Arthur tasked with "Infiltration" of a CPC (see particularly page 3) by signing up as a CPC volunteer counsellor and undergoing CPC training (the "Undercover Volunteer"). The Undercover Volunteer applied to and was accepted into the training program at the Burnaby Centre. All of the content in the Report attributed to the Undercover Volunteer is of and concerning the Burnaby Centre and the Plaintiffs.

[Underlining in original.]

[14] The Report contains the following impugned statements, as pleaded in the Amended Claim:

13. Page 14 of the Report alleges that "CPCs use graphic videos and pictures to shock and horrify young women about abortion …. This is practically a form of terrorism …."

…

15. Page 15 of the Report alleges that "CPCs … won't say upfront they are religious, and will lie about being religiously-affiliated to get a woman into the centre."

…

17. Page 13 of the Report alleges: "Deception: CPCs hide their true agenda and deceive women" and "They entice a woman into their office under the pretence they will help them with an abortion …"

…

19. Page 14 of the Report alleges that CPCs "provide misinformation about abortion and its risks, designed to scare, confuse, and dissuage [sic]."

…

20. Page 13 of the Report alleges that CPCs "provide a simple drugstore pregnancy test and make the woman wait half an hour for the results,

> while subjecting her to anti-abortion propaganda or videos. Often they are not upfront with clients, e.g. they won't say directly whether she's pregnant or not, and may lead women to believe they are pregnant when they're not (to indoctrinate them".
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> …
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> 24. Page 15 of the Report alleges that: "CPC's abuse a woman's trust and … [are] breaking her confidentiality" including by "call[ing] her home afterwards to apply pressure, inform[ing] her parents or her doctor about her intent to get an abortion, or harass[ing] her later if she has an abortion."
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> …
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> 26. Page 15 of the Report alleges that "CPCs tend to imply in ads and on the phone that their range of services and ability to help are greater than they really are."
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> …
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> 28. In its Conclusion portion at page 18, the Report recommends that CPCs "Stop deceptive advertising and false representations of CPCs in the media."
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> …
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> 30. In addition to the specific defamatory allegations above, the Report, taken as a whole, in its natural and ordinary meaning meant and was understood to mean that the Plaintiffs:
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> a. consider the 'ends to justify the means' and are willing to engage in unethical, deceptive, harmful, or illegal conduct in order to prevent women from obtaining an abortion;
>
> b. do in fact engage in unethical, harmful, deceptive, or illegal conduct in order to prevent women from obtaining an abortion; and
>
> c. do not care about the wellbeing of the women they serve, but only about preventing women from obtaining an abortion.

[15] The plaintiffs have also pleaded in paragraph 35 of the Amended Claim that in or about December 7, 2011 and subsequently, Ms. Arthur spoke with CTV News reporter Jon Woodward in respect of the plaintiffs' CPC in Vancouver. Ms. Arthur provided to Mr. Woodward (or Mr. Woodward's editor) a copy of or a link to the Report and she allegedly made verbal statements about the plaintiffs. Those statements are unknown to the plaintiffs, although the plaintiffs also say those statements include some or all of the alleged defamatory content contained in the Report. This information in turn served as the basis for the creation of a three-part

television series relating in part to the CPC in Vancouver, which was broadcast on CTV television on January 17, 18 and 19, 2012.

[16] The plaintiffs further plead in paragraph 36 that the defendants undertook a fundraising campaign for the purpose of distributing the Report to various individuals and organizations known to the defendants located in Vancouver and Burnaby, where the plaintiffs' CPCs are located. Copies of the Report were distributed, thereby republishing the Report. In the course of distributing and republishing the Report, the defendants either expressly stated or implied, through the geographic location of the recipient of the Report or otherwise, that the alleged defamatory content in the Report was true or likely true of the plaintiffs.

Position of the Parties

The Defendants

[17] The defendants say that in order to be actionable, the impugned passages in the Report must reasonably be understood to be of and concerning the plaintiffs. Immediate suspicion on the part of the reader is not sufficient to prove the impugned statements relates to the plaintiffs.

[18] The defendants say the proper test for determining whether the alleged defamatory content of the Report is of and concerning the plaintiffs has two parts: as a matter of law, whether the impugned words are capable of referring to the plaintiff and, if so, whether as a matter of fact, the impugned words would lead a reasonable person who knew the plaintiff to conclude that they refer to the plaintiff. The defendants take the position that the plaintiffs have failed to satisfy both parts of this test.

[19] The defendants say the plaintiffs have formulated the test for of and concerning the plaintiffs improperly as "a suspicion that takes root in the mind of an ordinary person". The traditional test remains whether the statements could reasonably be found to be defamatory of the named plaintiffs.

[20] The defendants submit the impugned statements in the Report expressly relate to practices common to "many or most" CPCs in North America, of which there are approximately 4,200. They suggest the Report does not aim to describe the practices of any particular CPC. No reasonable reader of the Report would therefore be able to draw any conclusion about the practices of the CPCs operated by the plaintiffs.

[21] The defendants reject the plaintiffs' position that the defamatory content is serious and should heavily weigh in the analysis of whether the impugned statements are of and concerning the plaintiffs. They note that the plaintiffs did not commence their action until three years after the Report's publication on the Pro-Choice Action Network website. The defendants also note that the plaintiffs do not take issue with the findings in the Report that are specific to the British Columbia context.

[22] The defendants suggest that the plaintiffs' group defamation claim is larger than "virtually all group defamation cases which have come before the courts" as the impugned comments clearly relate to all CPCs across North America. The case law, they assert, indicates that the larger the group, the more difficult it is to prove personal injury has been sustained by a member of the group. Courts have been reluctant to find that statements made about large groups are defamatory of individual members of the group because it is difficult to conclude that such general statements can reasonably be attributed to individuals. Furthermore, courts are unwilling to find liability in such circumstances out of concern for "the unwarranted intrusion on the right to freedom of expression".

[23] The defendants maintain that the risk of stifling freedom of speech is significant in this case as the Report is well-researched and engages a matter of public interest: the issue of a woman's reproductive choice. As a large number of pregnant women are coming into contact with CPCs across North America seeking counseling, whether those women do so with full understanding of the "true agenda"

of CPCs is a matter of public concern. The defendants note the meaning of "public interest" has remained broadly defined and open-ended.

[24] Defamation law seeks to balance the competing interests (at times) of freedom of expression and protection of personal reputation. The defendants submit that the proper approach to determine liability in respect of group defamation claims that engage a matter of public interest is to place greater weight on the protection of freedom of expression.

[25] The defendants also ask the Court to strike paragraphs 35 and 36 of the Amended Claim on the basis they fail to disclose a reasonable claim.

[26] The defendants say the law is clear that a plaintiff must plead what each defendant is alleged to have said in a claim of defamatory publication. Vague generalizations will not suffice. The defamatory words should be set out verbatim or at least with sufficient particularity to enable the defendant to respond.

[27] The defendants say the pleadings in paragraph 35 of the Amended Claim lack any meaningful particulars of what was alleged to have been said by Ms. Arthur to Mr. Woodward or his editor. The plaintiffs simply allege that her statements included some or all of the defamatory content of the Report. Given the breadth of the defamatory content at issue, these pleadings as they stand are too vague.

[28] The defendants say the plaintiffs should not be permitted to speculate as to the impugned words which may have been spoken in the hope that they may later discover the actual defamatory words. These statements are not in the exclusive knowledge of the defendant, as the plaintiffs themselves plead knowledge of the impugned statements by third parties. The defendants say the plaintiffs have failed to exercise reasonable diligence to establish particulars; it is an attempt at a fishing expedition.

[29] They argue that paragraph 36 of the Amended Claim similarly lacks any particulars of what was said, to whom, by whom or when the impugned statement was made.

[30] The defendants note that by letter dated March 20, 2013, the plaintiffs purported to give further particulars in respect of the pleadings in paragraph 35 of the Amended Claim. The defendants suggest that those particulars are inadequate and in fact relate to new matters that are incompletely pleaded.

The Plaintiffs

[31] As far as I can gather, the plaintiffs do not oppose the disposition of the issue of whether the impugned statements are of and concerning the plaintiffs by way of summary trial.

[32] The plaintiffs submit that both applications should be dismissed.

[33] With respect to the question of whether the alleged defamatory content is of and concerning the plaintiffs, the plaintiffs submit that a number of factors are to be considered to determine whether statements made about a group could reasonably be found to be defamatory of individual members of the group, referring to the Supreme Court of Canada decision *Bou Malhab v. Diffusion Métromédia CMR Inc*., 2011 SCC 9 at paras. 57 - 79: (i) the size of the group; (ii) the nature of the group; (iii) the plaintiff's relationship with the group; (iv) the real target of the defamation; (v) the seriousness or extravagance of the allegations; (vi) the plausibility of the comments and their tendency to be accepted; and (vii) extrinsic factors.

[34] The plaintiffs say that the proper test for determining whether the defamatory content of the Report is of and concerning the plaintiffs is "a suspicion that takes root in the mind of the ordinary person".

[35] They say this test is met in these circumstances for the following reasons:

i. the plaintiffs' centres make up approximately 10% of the small group of CPCs in British Columbia, of which there are only 22.

ii. the defamatory content in the Report should be read as a culmination of or summary of research relating to the subject matter of CPCs in British Columbia;

iii. the Report describes CPCs in British Columbia as a homogeneous group in the following ways: by referring to their membership in the umbrella group Canadian Association of Pregnancy Support Services ("CAPPS"), their standardized training videos and manuals and their link to a toll-free crisis help line. The Report also makes general recommendations in relation to CPCs, from which it can be inferred that these centres are similar in nature;

iv. The plaintiffs' CPCs are prominent amongst CPCs in British Columbia as they are located in major cities and receive a greater number of women who seek counselling;

v. the Report makes serious allegations involving deception, misconduct and breach of trust;

vi. the Report presents itself as a research project and makes numerous "precise and descriptive allegations about CPCs in British Columbia, often about the majority of them" (emphasis in original). Furthermore, Ms. Arthur is a respected pro-choice commentator who resides in Vancouver, where one of the plaintiffs' CPCs is located.

[36] All of these factors taken together lead to the conclusion that the ordinary person reading the Report would form a discreditable view of the plaintiffs.

[37] The plaintiffs say the defendants' discussion of free speech is premature; this consideration does not enter into the analysis of whether the alleged defamatory content is of and concerning the plaintiffs. It is properly considered in the responsible communication defence to defamation.

[38] With respect to the defendants' application to strike paragraphs 35 and 36 of the Amended Claim, the plaintiffs say they are only required to set out the particulars of the alleged defamation to the extent that they are known by them or are reasonably discoverable. As the particulars are only reasonably available to the defendants, the plaintiffs are entitled to plead the extent of their knowledge to discover the defendants and the plaintiffs may later amend the Amended Claim.

Summary Trial Application

Is the Court able to determine the Issue by way of Summary Trial?

[39] The relevant portions of R. 9-7(15) of the *Rules* reads as follows:

> (15) On the hearing of a summary trial application, the court may
>
> (a) grant judgment in favour of any party, either on an issue or generally, unless
>
> (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law … .

[40] No opposition is raised to the suitability of determining the question of whether the alleged defamatory content found in paragraphs 13 through 31 of the Amended Claim is of and concerning the plaintiffs by summary trial.

[41] The court will generally endeavour to grant judgment unless credibility issues preclude the fair adjudication of matters on affidavit evidence: *Coast Foundation v. Currie*, 2003 BCSC 1781 at para. 12. On the other hand, caution must be exercised when the court is asked to give judgment on a particular issue, as opposed to the claim generally. This caution was explained by Mr. Justice Groberman (as he then was) in *Coast Foundation* with regard to R. 9-7's predecessor, R. 18A:

> [14] Where a Rule 18A application requires determination of a difficult issue of law that might not need to be resolved in order to decide the claim at trial, for example, the court may conclude that the appropriate development of the common law demands restraint: ***Bacchus Agents (1981) Ltd. v. Phillipe Dandurand Wines Ltd.***, 2002 BCCA 138, 164 B.C.A.C. 300.
>
> [15] The court must also be wary of making determinations on particular issues on a Rule 18A application when those issues are inexorably intertwined with other issues that are to be left for determination at trial: ***Prevost v. Vetter***, 2002 BCCA 202, 210 D.L.R. (4th) 649; inter-relatedness of issues is not always obvious, and caution is necessary whenever a party seeks judgment on an issue as opposed to judgment generally under Rule 18A: ***B.M.P. Global et al v. Bank of Nova Scotia***, 2003 BCCA 534, [2003] B.C.J. No. 2383.
>
> [16] It must be borne in mind that the primary purpose of Rule 18A is the efficient resolution of disputes. Where the court does not consider that the determination of an issue under Rule 18A will assist in the efficient resolution of the dispute, it ought not to make the determination.
>
> [17] There are at least two aspects to be considered in gauging the efficiency of the summary trial process. First, this court must be concerned about the allocation of its own resources: ***North Vancouver (District) v.***

> ***Lunde*** (1998), 60 B.C.L.R. (3d) 201 at 212 (C.A.) (paragraph 33). Summary trial applications that will not, even if successful, reduce the length of trial, should, in general, be discouraged. The court must recognize the reality that judicial time is a scarce resource.
>
> [18] Second, the court must consider the efficiency of a partial determination from the standpoint of the litigation itself. Piecemeal decision-making is rarely an efficient manner in which to resolve a dispute. It raises the possibility of multiple appeals on individual issues, and this will generally impede rather than hasten the orderly determination of the action.

[42] I am satisfied that the issue is suitable for disposition by way of summary trial. I am not concerned that it is "litigating in slices": *Gichuru v. Pallai*, 2013 BCCA 60 at para. 31; disposition of this issue addresses the whole claim against the defendants with respect to the impugned content of the Report. It does not involve any issue of credibility, complexity or conflicting evidence. I am persuaded that it is the most efficient manner by which to resolve the proceeding and that I am able to find those facts that are necessary to determine the issue. Finally, I find it would not be unjust to decide the issue.

[43] I will simply add that even though this is a chambers application, there is no reversal of the onus of proof: the plaintiff must still prove their claim: *Gichuru* at para. 35.

Legal Framework

[44] The core objective of the law of defamation is to provide a remedy for publications that damage a person's reputation. However, the courts have developed the law in Canada in a manner that seeks to balance the protection of reputation with the right to freedom of expression.

[45] In order to prove an action in defamation, the plaintiff must demonstrate on a balance of probabilities that

i. the impugned words are defamatory;

ii. the impugned words refer to the plaintiff; and

iii. the impugned words were published to a third person.

See Raymond Brown, *Brown on Defamation*, (loose-leaf) 2nd ed., vol. 1 (Toronto: Carswell, 1999) at 1-41 - 1-42 ("*Brown on Defamation*"). For a succinct summary of the elements of defamation and its defences, refer to *Nu Fibre Inc. v. Ishkanian*, 2013 BCSC 1255 at paras. 43 - 47.

[46] The focus of this summary trial is narrowed to the second element of the cause of action in defamation: whether the alleged defamatory statement is of and concerning the plaintiff?

[47] The leading Supreme Court of Canada decision addressing this issue is *Bou Malhab.* This case arose in Quebec. As a brief background, by way of a class proceeding, which was certified, the appellants sought compensation for allegedly suffering injury as a result of racist comments made by a radio host concerning Montréal taxi drivers whose mother tongue was Arabic or Creole. The respondents succeeded in arguing before the Court of Appeal that the class members had not been personally affected and could not be compensated. A majority in the Supreme Court of Canada upheld that decision, finding there was no personal injury.

[48] In determining whether there has been personal injury, Madam Justice Deschamps, writing for the majority, held that the plaintiff must prove "that an ordinary person would believe that [the statements] tarnished the plaintiff's reputation" (para. 57). She instructed that this test similarly applies to impugned statements that are made concerning a group: the plaintiffs must prove that an ordinary person would have believed that each of them sustained damage to their reputation.

[49] She described the proper approach for determining this issue as follows:

> [58] The judge must thus analyse the impugned comments, taking into account all the circumstances in which they were made. Although it is impossible to draw up an exhaustive list of the criteria used to determine whether personal injury has been sustained, a number of factors can nevertheless help the judge in this process. Very similar factors are used for this purpose in the countries to which Canada and Quebec look for comparative law purposes. They have to do with the affected group, the comments made and the circumstances extrinsic to the comments or gestures. These factors provide guidance in determining whether one, some

> or all members of the group have sustained personal injury as a result of the impugned comments or gestures. This list is not exhaustive, however, and none of the factors it contains is determinative on its own.

[50] Before reviewing the factors to which Deschamps J. refers, it is important to note that her reference to the concept of personal injury develops out of her discussion of defamation in the civil law context of Quebec. This concept of personal injury, however, is translatable to the common law context as it is at the heart of the question whether the defamatory statement is of and concerning the plaintiff: *Bou Malhab* at para. 63. As explained by Deschamps J. earlier in her reasons:

> [43] An action in defamation can succeed only if personal injury has actually been sustained by the plaintiff or plaintiffs. This requirement also applies where the defamatory comments are made about a group. …
>
> [48] It must be inferred from this that an individual will not be entitled to compensation solely because he or she is a member of a group about which offensive comments have been made. The member or members of the group who bring an action must have sustained personal injury. In other words, defamation must go behind the screen of generality of the group and affect its members personally.
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> [49] That being said, the victim does not have to be expressly named or designated to be able to bring an action in defamation. The attack does not have to be specific or particularized. The person who made the impugned comments cannot avoid liability by hiding behind the fact that he or she used general terms applying to a group. Attacks on a group may in fact personally affect some or all of the group's members. While the injury must be personal, it does not have to be unique, that is, different from the injury sustained by the other members of the group. The reputation of more than one person may be tarnished by the same wrongful comments. While the law does not punish the defamation of groups having no juridical personality, it does punish multiple individual defamation … .

[51] Deschamps J. identifies the following factors that are relevant to considering whether the plaintiff has proved personal injury in the context of a group defamation claim: (i) the size of the group; (ii) the nature of the group; (iii) the plaintiff's relationship with the group; (iv) the real target of the defamation; (v) the seriousness or the extravagance of the allegations; (vi) the plausibility of the comments and their tendency to be accepted; and (vii) extrinsic factors (the maker or target of the comments, the medium used and the general context).

[52] Deschamps J. expanded on those factors by making these observations:

i. the larger the group, the more difficult it is to prove that personal injury has been sustained by the member(s) bringing the action. At the same time, this is not a decisive factor and it must be balanced with other considerations (paras. 59, 63, 64);

ii. the more strictly organized and homogeneous the group, the easier it will be to establish that the injury is personal to members of the group. Groups that are identifiable in the community and/or vulnerable may strengthen weight accorded to the "nature of the group" factor (paras. 65, 67, 68);

iii. the plaintiff's status, duties or responsibilities in the group may make it easier to prove the impugned comments are of and concerning the plaintiff (para. 69);

iv. the precision or generality of the allegations will influence the analysis of the personal nature of the injury. As an example, Deschamps J. compared attacks on doctrine, policy, opinion or religion to attacks on persons supporting those views and beliefs, the latter being easier to prove. Additionally, when comments apply to only one segment of a group by virtue of such qualifying language as "some", "a few", "most" or "all but one", it will be more difficult for a member of the group to argue the comments reflect personally on them (paras. 71, 72);

v. the more serious or inflammatory the allegation, the wider may be its sting; at the same time, the extravagance of the allegation may have the opposite effect of impressing upon the ordinary person the comment was an exaggeration (paras. 73, 74);

vi. a plausible or convincing allegation will capture the ordinary person's attention more and will make it easier for that person to connect the allegation with a member of the group (para. 76); and

vii. the reliability of the medium used and the credibility of the person making the comments are additional factors that can lead to a belief the impugned comments are of and concerning the plaintiff (para. 78).

[53] Deschamps J. concluded her discussion of the factors with these comments:

> [79] Ultimately, the court must not conduct a compartmentalized analysis or seek to find all the relevant criteria. What must be determined is whether an ordinary person would believe that the remarks, when viewed as a whole, brought discredit on the reputation of the victim. The general context remains the best approach for identifying personal attacks camouflaged behind the generality of an attack on a group.

[54] Applying those factors to the facts, Deschamps J. found the group, comprising of Montréal taxi drivers who spoke Arabic and Creole, was of considerable size and heterogeneity. Further the comments were extreme, irrational and sensationalist generalizations about this heterogeneous group. She concluded that an ordinary person would not have formed a less favourable opinion of each Arab or Haitian taxi driver.

[55] The dissenting opinion of Madam Justice Abella endorsed the list of factors developed by Deschamps J. as helpful, although she differed in her application of the factors (para. 109). Abella J. found the group was identified with sufficient precision and the statements were specific enough to be harmful to the reputation of each of the members of the group. She further did not accept that the radio host's comments were so extravagant that they would not be taken seriously. He made those statements seriously, not satirically or ironically (paras. 119 - 120).

[56] The plaintiffs suggest the proper test for determining whether the impugned statements were of and concerning the plaintiffs is "a suspicion that takes root in the mind of the ordinary person", as expressed by Deschamps J. at para. 72 in *Bou Malhab*. There is no question that "suspicion" has different meaning from "belief" and entails a lower threshold. This statement of the law arises in Deschamps J.'s discussion of English and American jurisprudence. She makes it resoundingly clear that the test is whether an ordinary person would have believed that the comments, viewed as a whole, damaged the reputation of the plaintiffs: see paras. 57, 79, 81

and 104. It is the test she sets out at the beginning of her discussion of the law and the test that she applies to the circumstances of that case. It is the same test enunciated in the dissenting opinion of Abella J. (see para. 104). I do not believe there is any controversy surrounding the test to be applied.

[57] The plaintiffs say the defendants are wrong in arguing that this sort of defamation claim should be rejected because it stifles free speech. They submit that Deschamps J. makes no mention of public interest and freedom of expression in her discussion of relevant factors to consider when determining whether the defamatory content is of and concerning the plaintiffs. These considerations, they say, are properly engaged in the analysis of the defence of responsible communication.

[58] It is obvious that freedom of expression informs the analysis in defamation. It forms the general context for causes of action in defamation as the courts strive to balance protection of reputation with the promotion of freedom of expression: *Bou Malhab* at para. 21 (refer also to Deschamps J.'s concurring reasons in *Crookes v. Newton*, 2011 SCC at para. 54). While freedom of expression is not an enumerated factor, Deschamps J. seeks to give effect to the balance between freedom of expression and the protection of personal reputation by identifying relevant factors to consider when determining whether an impugned statement is of and concerning the plaintiff. This approach is in keeping with Mr. Justice Cromwell's discussion of "intensity of suspicion" in *Butler* at paras. 56 - 70 (refer also to *Bou Malhab* at para. 64).

Disposition

[59] I turn to examine whether an ordinary person would believe the impugned statements of the Report, viewed as a whole, damage the reputation of the plaintiffs.

[60] As a preliminary comment, the purpose of the *Bou Malhab* factor analysis is to determine whether the impugned statements in respect of a group are of and concerning the plaintiff. A defamatory statement referring to a named plaintiff would satisfy the test for showing the defamatory statement was of and concerning the plaintiff; no further investigation would be required.

[61] The plaintiffs say that the Report expressly identifies them. The real issue, therefore, is whether the defendants can "immunize themselves from liability to the Plaintiffs by prefacing allegations in the Report with 'hedging' language such as '[t]he following activities and strategies are common to many or most CPCs throughout North America.'" They then proceed to engage in the *Bou Malhab* analysis to determine whether the remarks concerning CPCs as a group were directed at the plaintiffs.

[62] I note the plaintiffs' Vancouver and Burnaby Centres are identified in Appendix 3 of the Report. The executive director of CAS, Brian Norton, is identified in the Report. CAS is also referred to as a co-founder of CAPPS. That is the extent of the express references to the plaintiffs in the Report. However, I will make it clear at the outset of this analysis that the plaintiffs are not named in any of the impugned statements particularized in the pleadings.

[63] On this basis, it is necessary to examine whether the alleged defamatory statements about CPCs would lead the ordinary person, reading the Report as a whole, to believe the Report brought discredit upon the plaintiffs.

The Bou Malhab Factors

[64] The size of the group at issue is contentious for obvious reasons. The plaintiffs suggest that since the Report predominantly concerns CPCs in British Columbia, the group is limited in size to British Columbian CPCs. The defendants counter by submitting that the impugned statements are limited to the portion of the Report concerned with CPCs in North America, of which there are approximately 4,200.

[65] For the most part, the impugned statements that are particularized in the pleadings are found in the "Misinformation and Deceptive Tactics from CPCs" portion of the Report. This section of the Report specifically relates to CPCs in North America.

[66] There is one other particularized defamatory statement — a recommendation found in the "Conclusion" section of the Report to "[s]top deceptive advertising and false representations of CPCs in the media". It is difficult to determine whether the impugned recommendation is addressed specifically at CPCs in British Columbia as the Conclusion does not refer to British Columbia.

[67] I decline to consider the pleading in para. 30 of the Amended Claim, which in essence alleges the entire Report is defamatory. It is wholly inadequate as it amounts to a vague, general statement of the alleged defamatory content of the Report. While it is possible to allege that an entire publication is defamatory, where portions of the article are not defamatory or refer to persons other than the plaintiff, particulars of the defamatory words should be provided. Otherwise, the court may strike the pleadings or order that the statement of claim be amended: *Cooper v. Hennan*, 2005 ABQB 709 at paras. 25 - 26. As this analysis falls under the summary trial rule, I will simply decline to consider this pleading in the determination of whether the alleged defamatory content of the Report is of and concerning the plaintiffs.

[68] It is quite obvious that the discussion of "Misinformation and Deceptive Tactics from CPCs" relates to CPCs across North America. An ordinary person would certainly notice the introductory line of this section: "the following activities and strategies are common to many or most CPCs throughout North America." The ordinary person would also notice that some of the example studies and anecdotes are drawn from the American context.

[69] It is also obvious that this section of the Report is distinct from the earlier portions of the Report that focus upon the British Columbia context. Those earlier sections are written in the first person plural, documenting the research methods of the author and the Pro-Choice Action Network and their findings (pages 3 -12). The Misinformation and Deceptive Tactics section of the Report, in contrast, relays general information in a neutral voice.

[70] It is interesting to note that the plaintiffs do not take any issue with respect to the information found in the Report specific to CPCs in British Columbia (pages 3 - 12). Instead, the plaintiffs take issue with the section of the Reports that discuss CPCs in North America.

[71] The real issue, in my view, is whether the phrase "many or most" is a sufficient qualifier.

[72] It is also important to note that the recommendations in the Conclusion are not particularized to British Columbia and could very well apply to Canada as a whole, particularly since the Conclusion's recommendations refer to "governments" and "Canada Revenue Agency". No specific mention is made of CPCs in British Columbia in the Conclusion of the Report.

[73] In support of their argument that the defamatory content would inevitably be read as applying specifically to CPCs in British Columbia, the plaintiffs rely on *Mainstream v. Staniford*, 2012 BCSC 1433. In that case, the court rejected the defendant's claim that his statements related to global aquaculture rather than British Columbia-based aquaculture.

[74] *Mainstream* is the most recent case from the British Columbia courts to apply the *Bou Malhab* factors. This case involved a defamation claim against an environmental activist, Mr. Staniford, who led a campaign against salmon farming. The plaintiff Mainstream was the second largest producer of farmed salmon in British Columbia. It commenced proceedings against Mr. Staniford for statements published on his campaign website. The impugned statements drew parallels between the harms of smoking and harms of salmon farming by way of words and images. The posting of these impugned statements coincided with the Seafood Summit held in Vancouver, an annual international gathering of members of the seafood industry as well as non-governmental organizations.

[75] When considering whether the statements were of and concerning the plaintiff, the court rejected the defendant's assertion that his campaign was of and

concerning the salmon farming industry world-wide. In support of her conclusion, the court noted that Mr. Staniford's statements specifically referred to British Columbia and, in some instances, the plaintiff. The court also observed that some of the mock cigarette package images stated "Norway - Get out of British Columbia"; other cigarette package images depicted the Norwegian flag and coat of arms and referred to foreign ownership. These statements were clearly references to Norwegian investors' ownership of British Columbian salmon farms. Furthermore, it was obvious that the "Salmon Farming Kills" statements were made in reference to the British Columbia Salmon Farmers Association campaign, which was directly connected with Mainstream.

[76] Additionally, the size of the group was a particularly important consideration in the court's view:

> [138] In addition, the group of Norwegian-owned salmon farming companies in B.C. is small, with only three members. While this is not conclusive when trying to decide whether comments ostensibly about a group are defamatory of individual members, it is an important factor. Unlike the Creole- and Arabic-speaking taxi cab drivers in ***Bou Malhab***, the group of Norwegian-owned salmon farming companies in B.C. is not only small, but – in the context of the statements alleged to be defamatory – homogeneous. Mr. Staniford attacks them because they are Norwegian-owned, and operate salmon farms in B.C. Mr. Staniford asserts that "Salmon Farming Kills" and "Salmon Farming Kills Like Smoking." These seem to me to be close to the example given by Lord Porter in ***Knuppfer v. London Express Newspaper Ltd.***, [1944] A.C. 116 (H.L.), at p. 124, where he wrote:
>
> > I can imagine it being said that each member of a body, however large, was defamed where the libel consisted in the assertion that no one of the members of a community was elected as a member unless he had committed a murder.

[77] Finally, the court found the defendant's comments were plausible, making it more likely the comments would capture the ordinary person's attention and thus making it easier for that person to connect the allegation with each or some of the group's members personally (para. 140).

[78] I note this decision was reversed on other grounds (2013 BCCA 341).

[79] The size of the group alone in *Mainstream* makes this case distinguishable from these circumstances. It was also obvious that the defendant was referring to the plaintiff in view of his direct references to Mainstream and the salmon farming industry in British Columbia, the timing of his campaign and his references to foreign ownership, taken together.

[80] Size of the group, as indicated by the Supreme Court of Canada, is a particularly important factor; in some instances it is determinative. Certainly, the size of the group in *Mainstream* was an important consideration.

[81] In *Butler*, the court found that the size of the group militated heavily against the appellants' claim as the number of persons who could be considered to be referred to in the articles was so large as to be indeterminate; the group potentially numbered in the hundreds. The court was concerned by the risk of multiplicity of law suits and the imposition of indeterminate liability upon the respondents (para. 72).

[82] The size of the group at issue in these circumstances is relatively clear — it is an approximate number of 4200. This group is very large and I consider this factor alone to weigh heavily against the plaintiffs.

[83] With respect to the nature of the group, no facts are pleaded with respect to the group's organization, structure or hierarchy. In their written argument, the plaintiffs only allude to how the name "crisis pregnancy centre" suggests homogeneity.

[84] In *A.U.P.E. v. Edmonton Sun* (1986), 49 Alta. L.R. (2d) 141 (Q.B.), homogeneity was easily established. The court held that the ordinary meaning of the words taken in the context of the whole article referred to all guards employed at the Fort Saskatchewan Correctional Centre. The court continued at 152:

> A reader who either knew one of the Plaintiffs and was aware that he performed such duties at the Fort Saskatchewan Correctional Centre or who identified one of the Plaintiffs by the distinctive uniform which he wore, would be of the opinion that this article referred to that individual.

[85] *A.U.P.E.* involved a group of 200 members, but those members were all employed by the same association to which the defamatory comments referred. In contrast, Ms. Arthur was explicit at the outset of the Report that "CPC" was a term selected only because these types of centres are commonly known by that name throughout North America. This selection of terminology does not in and of itself prove homogeneity.

[86] I decline to consider the plaintiffs' argument that the Report's general recommendations with regard to CPCs suggest that CPCs are a homogeneous group and that readers of the Report would have the same understanding. This inference amounts to circular reasoning.

[87] Some information on the nature of the group, however, can be gleaned from the Report itself. From what I can gather, CPCs are somewhat standardized in training. Training materials for CPCs are the "same or similar" throughout North America (note page 17 of the Report). Canadian CPCs "mostly" follow Care Net guidelines. Toll-free lines are coordinated across North America to ensure that women are directed to their local CPC. Funding is coordinated for CPCs. CPCs seem to operate under larger umbrella organizations (CAPPS, Heartbeat International and Care Net, as examples).

[88] However, the Report also points to some distinction between CPCs at page 17:

> Birthright is also a major player and founded the first anti-abortion centre in Toronto in 1968. Today they have 400 chapters mostly in the U.S. and Canada. In comparison to other CPCs however, Birthright tends to be much milder in terms of tactics and counselling techniques.

[89] Evidently from this comment, different CPC organizations have adopted different views on what types of services they should offer. The size of the group strengthens this inference.

[90] In terms of visibility in the community, I accept that the plaintiffs' CPCs are located in major urban centres. Mr. Norton's affidavit describes the Burnaby and

Vancouver Centres operated by the plaintiffs as "leaders among peers" (para. 12); Mr. Norton deposes that he has provided advice to other centres in the province. Also, the plaintiffs' centres are publicly advertised in "community directories, pamphlets, website, Yellow Pages, SkyTrain advertisements (until approximately 2010), bench ads, and signage at the Centres" (para. 3). This factor, however, diminishes in significance as the group is not limited to the province of British Columbia.

[91] In my view, the generality of the impugned statements in the Report is a decisive factor in this analysis. Deschamps J. in *Bou Malhab* instructs that where allegations apply to only one segment of a group, it will be more difficult to find those statements reflect personally on all members of the group. As an example, she uses the term "most".

[92] As it is never made clear in the Report what "many or most" entails with regard to CPCs across North America, it is difficult to say the "deceptive" tactics reflect personally on the plaintiffs. The impugned statements do not have any specificity; the Report describes the tactics in broad generalizations.

[93] Similarly, it is not clearly stated as to whether the recommendation to "stop deceptive advertising and false representations of CPCs in the media", with which the plaintiffs take issue, is limited in application to British Columbia CPCs.

[94] It is obvious the impugned statements are serious and are not intended to be exaggerations. The seriousness of the statements is enhanced by their publication in report-form.

[95] The plaintiffs say the credibility of the Report is further bolstered by the fact that the author of the Report is a recognized leader in the pro-choice movement (Mr. Norton's affidavit at para. 16). This factor may, in fact, diminish the reliability of the Report as it is written by a known advocate of the pro-choice movement, potentially making her opinions partial.

[96] I do not accord the location of the residence of the author and her co-publisher a great deal of weight in view of the size of the group at issue.

[97] I find these factors, taken together, do not support the conclusion that an ordinary person, reading the Report as a whole, would believe the impugned statements brought discredit to the plaintiffs' reputation. The purpose of the Report is clearly to educate the public about CPCs. It does so, in part, by canvassing practices that have been developed by CPCs across North America, with which the plaintiffs take issue. The size of this group diminishes the strength of the presumption that CPCs are a homogeneous entity. CPCs are run by different organizations with different values, as evident in the Report. This is precisely the reason why the Report includes the phrase "many or most" in describing practices of CPCs broadly in North America. Significantly, no particularity is given in this portion of the Report to the British Columbia context or the plaintiffs' CPCs for that matter.

[98] I conclude the alleged defamatory statements are not of and concerning the plaintiffs.

[99] This determination disposes of the plaintiffs' claim with respect to the Report.

Application to Strike

Legal Framework

[100] Rule 9-5(1) of the *Rules* reads as follows:

> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,

> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[101] The defendants apply to strike paragraphs 35 and 36 of the Amended Claim pursuant to R. 9-5(1)(a).

[102] The basis for this application is insufficient particulars.

[103] I recently summarized the law for striking pleadings in *Ari v. Insurance Corporation of British Columbia*, 2013 BCSC 1308 at paras. 21 - 28.

[104] It is well settled that the test for striking pleadings is whether it is plain and obvious, assuming the facts as pleaded are true, that the pleadings disclose no reasonable claim: *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 at para. 17.

[105] In *Imperial Tobacco*, the Supreme Court of Canada reviewed the purpose of this test and its application:

> [19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> [20] This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
>
> [21] Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedley Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new

> developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson.* Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.
>
> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[106] The *Rules* provide for pleadings in libel and slander pursuant to R. 3-7 as follows:

> (21) In an action for libel or slander,
>
> (a) if the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff must give particulars of the facts and matters on which the plaintiff relies in support of that sense, and
>
> (b) if the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and that insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant must give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

[107] The law with regard to pleadings for defamation causes of action is simply stated: the plaintiff is required to set out the exact words in the pleadings unless those words can only become known after examination for discovery: *Central Minera Corp. v. Lavarack*, 2001 BCSC 349 at para. 12.

[108] The pleading requirements were set out as follows in *Cooper* at para. 18:

> The material facts in a defamation suit must include the publication made by each defendant, the words published by that defendant, which plaintiff was

> defamed by the publication, the time and place of the publication, the manner of the publication, and to whom the publication was made. It is not sufficient to name multiple defendants in a paragraph of the pleading unless all of the defendants committed the alleged conduct. If such is the case then the pleading should so state.

See also *Brown on Defamation* at 19-31.

[109] The plaintiff cannot rely on a vague, general statement of the defamatory words: *Fraser v. Central Ready-Mix Ltd*., [1999] B.C.J. No. 2061 (S.C.) at para. 12.

[110] As stated by Mr. Justice Grauer recently in *Nu Fibre*:

> [20] In considering the allegations, it is important to remember that defamation proceedings are technical in nature and pleading-dependent. A plaintiff must be precise in respect of the alleged defamatory words and their publication, just as a defendant must be precise as to the facts which he alleges justify his words in support of a plea of justification. [citations omitted.]

[111] However, in instances where the plaintiff does not know and has no means of ascertaining the exact words spoken except by extracting them from the defendant, the plaintiff may determine the exact words spoken through examination for discovery if they are able to establish they have a good cause of action: *Central Minera* at para. 14. The plaintiff would be able to amend their pleadings once they obtained the new information through discovery.

[112] The plaintiff is not relieved from their obligation to plead particulars when they can determine the precise words by investigating them. In *Isaac v. Guardian Capital Group Ltd*., 2004 BCSC 254, the court held that the plaintiff failed to indicate in his pleadings that he had attempted to ascertain the precise words, forming one of the bases for striking the defamation claim (para. 35).

[113] If the alleged defamatory words have been entirely omitted, that omission usually results in the impugned paragraphs being struck or an order that it be amended to include the actual words written or spoken: *Frost v. Fox Brokers Ltd. (c.o.b. Demara Insurance Brokers)*, [1999] B.C.J. No. 2562 (S.C.) at paras. 10 (affirmed 2000 BCSC 93).

Disposition

Paragraph 35

[114] Paragraph 35 pleads:

> 1. In or about December 7, 2011, and subsequently, Arthur spoke with Bell Media Inc.'s *CTV News Investigators*' reporter Jon Woodward in respect of, *inter alia*, the Vancouver Centre. Arthur provided Woodward (who works in Vancouver) - or to Woodward's editor (who also works in Vancouver) who then provided to Woodward with a copy of, or a link to, the Report and made defamatory assertions about the Plaintiffs verbally which are unknown to the Plaintiffs but known to Arthur, but which include some or all of the Defamatory Content. As a direct result of Arthur's defamatory verbal comments and republication of the Report to Woodward, Woodward understanding from Arthur that the Report was of and concerning the Plaintiffs' Centres or the Vancouver Centre, and in reliance upon the verbal comments and the Report, coordinated the creation of a 3-part television series relating in part to the Vancouver Centre which was broadcast on CTV television on January 17, 18 and 19, 2012. In the course of his investigation, Woodward was guided by, asked questions regarding, and conducted investigations in respect of, the Defamatory Content allegations in the Report.
>
> [Emphasis in original.]

[115] I only need to address the alleged defamatory verbal statements made by Ms. Arthur to Mr. Woodward pleaded in paragraph 35 of the Amended Claim as I have already disposed of the defamation claim relating to the contents of the Report.

[116] The plaintiffs do not plead the precise defamatory words.

[117] Accepting the facts pleaded as true for the purpose of this application, the alleged defamatory statements are known by Mr. Woodward and/or Mr. Woodward's editor.

[118] I cannot consider any of the evidence tendered by the plaintiffs in support of their submissions in response to the application to strike paragraph 35: see R. 9-5(2).

[119] The plaintiffs indicate in their argument that they have exercised reasonable diligence in attempting to ascertain the precise words of Ms. Arthur's defamatory

statements. This submission is supported by an affidavit sworn by counsel for the plaintiffs' legal secretary, dated March 1, 2013.

[120] In a letter dated March 20, 2013, addressed to counsel for the defendants, counsel for the plaintiffs confirmed that his client would continue to pursue relief for the pleadings in paragraph 35 of the Amended Claim. He also confirmed that the plaintiffs' investigation into the particulars of paragraph 35 was ongoing. He then provided further particulars to be read together with the pleadings in paragraph 35 of the Amended Claim. These particulars, which are not properly included in an amended Notice of Civil Claim, are as follows:

1. Particulars of Arthur's defamation of the Plaintiffs to Woodward include the following:
    a. By making the false statement on December 7, 2011 to Mr. Woodward that "many" CPCs "accepted funding from US-based organizations including Heartbeat International."
    b. By making the false statements on January 11, 2012 that:
        i. staff in CPCs were scientifically ignorant;
        ii. CPCs were not up front about their aims;
        iii. CPCs did not provide medical help that is intimated in advertising;
        iv. that the majority of CPC's [sic] seek to counsel women out of abortions using deceptive information; and
        v. CPC's [sic] "often confused the name of a [crisis pregnancy] centre with the name of a nearby abortion clinic, using Everywoman's Health Centre on Commercial Drive, Vancouver as an example." In fact, no CPC in Vancouver has ever had a name similar to Everywoman's Health Centre, and the Vancouver CPC predates any abortion clinic in Vancouver.
2. On January 11, 2011, Arthur provided to Woodward a document obtained by the Undercover Volunteer which outlined the CAPSS policy on abortion, which document Woodward featured on the television broadcasts which identified the Plaintiffs' Vancouver Centre,
3. Questions asked by Woodward of Cody, or statements made by Woodward to Cody, during the January 10, 2012 interview, which reflect the allegations which he read in the Report (and/or to the defamatory assertions made to Woodward by Arthur) which Woodward believed to refer to the Plaintiffs, include:
    a. "Do you think it's fair to the public to advertise offering three options but only offer really two? … My sense being that yes you offer information of all three but you don't offer abortion referrals but you do

> offer help on the ground for parenting and adoption, but not abortion referrals, that's not clear from what we can tell from the advertising. Do you think you should change the advertising to reflect two rather than three options?"
>
> b. "…the concerns expressed in the States and then by that other, you know that pro-choice study was that centres like these exist to scare women away from having abortions?" The "Pro-choice study" is a reference to the Report.
>
> c. "Locally, there have been calls, I'm sure you're aware of this, for centres like this to lose their charity status if they mislead potential patients, what do you think of that?" The 'local calls' were made by Arthur in the Report and in separate reports/complaints made by Arthur in the Report and in separate reports/complaints which she made directly to Canada Revenue Agency. (Canada Revenue Agency subsequently audited the plaintiffs and found that they expended all funds appropriately)[.]
>
> d. "Are you misleading women that come in here?"
>
> [Emphasis in original.]

[121] I agree with the defendants that these particulars fail to include any statements of fact to show these statements are defamatory. Even so, the particulars set out in paragraph 1 refer to general statements about CPCs without specifying the plaintiffs. Paragraph 2 does not refer to any defamatory statement. The remainder of the particulars relate to questions posed by Mr. Woodward in his interview, not statements made by the defendants.

[122] I also note that attached to the March 20, 2013 letter are Mr. Woodward's written responses to questions posed by counsel for the plaintiffs with respect to his investigation into the allegations made in paragraph 35. I find question 4 and Mr. Woodward's response noteworthy:

> *4. Did Joyce Arthur ever communicate to you that the allegations in the Report, or allegations which you now know to be similar in nature to the allegations in the Report, were true of, or may be true of, the Vancouver Crisis Pregnancy Centre or the Burnaby Crisis Pregnancy Centre? Provide Particulars.*
>
> No.
>
> [Emphasis in original.]

[123] I am satisfied this investigation into further particulars is a fishing expedition.

[124] Accordingly, I find that paragraph 35 of the Amended Claim fails to disclose a reasonable claim based on its failure to plead material particulars. This paragraph is struck.

Paragraph 36

[125] Paragraph 36 of the Amended Claim alleges the defendants distributed and republished the Report and in the course of distribution and republication, the defendants either expressly stated or implied, through the geographic location of the recipient of the Report or otherwise, that the defamatory content in the Report was true or likely true of the plaintiffs.

[126] This pleading is deficient. It fails to identify the defamatory words with any precision. It fails to identify the defendants or the recipients of the impugned statements. It is not clear whether the statements are oral or derived from the Report's contents itself. Significantly, the plaintiffs fail to indicate any efforts to ascertain the precise words.

[127] Paragraph 36 of the Amended Claim fails to disclose a reasonable claim based on its failure to plead material particulars. This paragraph is also struck.

Conclusion

[128] The plaintiffs' action with respect to the alleged defamatory content of the Report is dismissed pursuant to R. 9-7(15) of the *Rules*.

[129] Paragraphs 35 and 36 of the Amended Claim are struck.

[130] Costs are in the cause.

"L.D. Russell J."

The Honourable Madam Justice Loryl D. Russell