

But Court of Queen's Bench Justice Grant Currie ruled the patients couldn't testify because their stories weren't relevant to Baert's case and would prejudice the jury.

Graham said Baert was partially responsible for her injuries because she did not return to the hospital when she experienced increasing pain at home.

His lawyers also argued bowel perforations are a recognized but rare risk of tubal ligations. And instruments inserted into the abdomen mistakenly puncture the bowel in about four of every 10,000 surgeries.

*Jordan, Cooke's lawyer, said the risks increase if a woman has had prior abdominal surgery, which was the case with Cooke.*

*The 41-year-old mother of three argued she told Graham about her prior surgery, although Graham claimed she did not, said Jordan.*

*Graham, granted a licence by the B.C. College of Physicians and Surgeons despite Baert's injuries in Saskatchewan, went ahead with Cooke's tubal ligation on Oct. 31, 2002.*

*Graham had to cut through lesions and adhesions formed during Cooke's prior surgery. When Graham saw the abnormalities, he should have stopped the surgery, said Jordan.*

*"He didn't have the skill to do the dissection. It's a whole other level of surgery, not what obstetricians and gynecologists should be doing."*

*But he continued and the operation took 45 minutes, Jordan said, four times as long as Baert's surgery and what Graham testified was normal.*

*Jordan said Graham kept Cooke in hospital overnight to monitor her condition but she was released the next day. She soon returned to the hospital in pain but Graham diagnosed her with a gastrointestinal problem and sent her home.*

*She returned to hospital a second time, and another doctor discovered she was suffering from septic shock. She was sent to hospitals in Grand Prairie and Edmonton for life-saving surgeries.*

*Doctors determined two puncture holes in her bowel occurred during the tubal ligation, said Jordan.*

*He said Cooke is still in chronic pain and has an incisional hernia in her abdomen.*

*She has returned to work as a medical office assistant. But because she no longer has stomach muscles, she needs to wear a girdle each day to hold herself in.*

*Graham voluntarily stopped doing laparoscopic operations after Cooke's surgery.*

*But four months later, Dawson Creek media reported 35-year-old Dana McLellan had to be air-lifted to Vancouver after Graham cut her bladder during a hysterectomy.*

*The hospital, the Northern Health Authority and the B.C. College of Physicians and Surgeons reviewed complaints against Graham but his licence was not revoked.*

*College spokesperson Susan Prins said Graham voluntarily agreed to have his skills assessed at the University of Saskatchewan. And although he passed, he did not return to work.*

Graham, 55, testified in the Baert case that he was unable to work after a heart attack in 2003. He underwent quintuple bypass surgery, then developed a depressive illness.

He now lives in St. Albert, just north of Edmonton.

[Italics are mine]

[75] It was Dr. Graham's position that the italicized portions of this article contained false, malicious and defamatory words that were understood to mean:

- (a) That he negligently performed surgery on Lisa Baert, thereby causing her to suffer devastating injuries and the jury's verdict exonerating him of negligence was wrong and should be given no credibility;
- (b) He negligently performed surgery on Gloria Cooke, thereby nearly causing her death;
- (c) He negligently failed to address post-surgery complications experienced by Gloria Cooke, thereby nearly causing her death;
- (d) His negligent treatment of Gloria Cooke caused her to suffer septic shock, permanent chronic pain, an incisional hernia in her abdomen and the permanent loss of her stomach muscles; and

- (e) He negligently performed surgery on Dana McLellan, placing her health and life in jeopardy.

[76] Counsel for the defendants agreed that the italicized portions of this article were defamatory insofar as they implied that Dr. Graham was negligent in his treatment of Gloria Cooke and Dana McLellan. However he denied that the natural and ordinary meaning of the words complained of were defamatory in any other sense as suggested by Dr. Graham. He acknowledged that the statutory defence of privilege under s. 11 of *The Libel and Slander Act* was not available as this article was not a contemporaneous reporting of court proceedings. He also advised that he was not advancing the defence of responsible communication as the evidence did not support it in this instance.

[77] The defendants admit that the italicized words are defamatory and I agree. The natural and ordinary meaning of these words is reasonably capable of a defamatory meaning. A reasonable person of ordinary intelligence would believe that, at the very least, these words meant that Dr. Graham negligently treated Gloria Cooke and Dana McLellan. However, I am also satisfied that a reasonable person would conclude that these words are reasonably capable of being given the extended meaning ascribed to them by Dr. Graham.

[78] The byline references that Dr. Graham was not negligent in the lawsuit but the context of the article as a whole and the specific words complained of make it appear that the jury was wrong to find him not at fault for Ms. Baert's injuries. The article does not report solely on the jury's verdict but includes serious allegations made by two of Dr. Graham's former patients that he was negligent in his treatment of them. By including a discussion of these two patients, and in the case of Ms. Cooke a detailed discussion, of their complaints, leads to the inevitable conclusion that Dr. Graham was negligent in their cases and ergo must have been negligent in the

Baert case. The only reason he was found not liable was because the jury was not allowed to hear about their cases.

[79] The words themselves do not simply point to Dr. Graham being negligent in his treatment of Ms. Cooke and Ms. McLellan but go farther that he caused Ms. Cooke specific injury and nearly death and that he put Ms. McLellan's life in jeopardy. The words Ms. Purdy used to describe Ms. Cooke's treatment, or mistreatment, were "she almost died and struggled to hang on for a month", that she was sent for "life-saving surgeries", she is "still in chronic pain", has "an incisional hernia in her abdomen", and "no longer has stomach muscles". The meaning of these words is clearly more than just that Dr. Graham was negligent in his treatment of her.

[80] There is only one paragraph in the article speaking about Ms. McLellan but by using the words "air-lifted to Vancouver" the meaning is that the cut to her bladder was so serious that she needed to be flown to a bigger hospital to be treated. Again, the meaning of these words is more than that Dr. Graham was simply negligent in his treatment of Ms. McLellan.

[81] The evidence satisfies me that the natural and ordinary meaning of the words complained of and the implied meaning of these words in the context of the article as a whole, are that Dr. Graham negligently performed surgery on Ms. Baert causing her devastating injuries and the jury's verdict exonerating him was wrong, that he negligently performed surgery on Gloria Cooke and negligently failed to address her post-surgery complications thereby causing her specific injuries and nearly causing her death and that he negligently performed surgery on Dana McLellan and placed her life in jeopardy and this is defamatory.

**(iii) The First November 29, 2007 Article**

[82] Two separate articles written by Ms. Purdy appeared in the Star Phoenix newspaper and on their websites on November 29, 2007. The first of these articles reads as follows:

**Gynecologist not negligent  
Punctured bowel led to brain damage**

*The gynecologist found not negligent Wednesday in the case of a Lloydminster mother left with devastating injuries after a routine tubal ligation recently settled a second lawsuit with another patient who nearly died following the same surgery.*

*Dr. Kenneth Graham settled the second suit out of court for an undisclosed sum earlier this month, said lawyer John Jordan of Nanaimo, B.C.*

*Jordan said his client, Gloria Cooke, was referred to Graham for the laparoscopic tubal ligation at Dawson Creek and District Hospital in 2002. He mistakenly punctured her bowel twice during the surgery.*

*"She almost died and struggled to hang on for a month," said Jordan.*

On Wednesday, after nine weeks of trial, a Saskatoon jury determined Graham was not negligent in his care of Lisa Baert when he punctured her bowel during a tubal ligation at the Lloydminster hospital in 1999.

*Baert went into septic shock and doctors had to amputate her hands and feet. She also suffered severe brain damage.*

Baert and her family were claiming more than \$10 million in damages against Graham. Prior to trial, they reached an undisclosed settlement with the Lloydminster hospital and some nurses.

One of the six jurors, her bottom lip quivering as the verdict was read, wiped tears from her face and glanced at Baert's husband, Mark, and his three sons sitting in the courtroom.

The jurors did not have to be unanimous, but five of the six had to agree on each question posed in a six-page verdict sheet in order to reach their decision.

Baert, confined to a wheelchair and living at the Parkridge Centre long-term care home, was unable to make it to the courthouse for the verdict. And her husband did not talk to reporters when he left the building.

Graham, who no longer works as a doctor, also wasn't at the courthouse. His lawyer, Christine Glazer, said he was busy with personal matters.

Graham, who no longer works as a doctor, also wasn't at the courthouse. His lawyer, Christine Glazer, said he was busy with personal matters.

She said the trial was difficult for her client and obviously the jury.

I realize how difficult it would have been for the jury to reach the conclusion that it did," said Glazer. "But the jury did what it had to do, and that was set aside its emotion and look at the case objectively."

Baert's lawyers planned to call about 10 other patients during the trial, some – like Cooke – suffered complications during surgeries conducted by Graham.

But Court of Queen's Bench Justice Grant Currie ruled the patients couldn't testify because their stories weren't relevant to Baert's case and would prejudice the jury.

Graham said Baert was partially responsible for her injuries because she did not return to the hospital when she experienced increasing pain at home.

His lawyers also argued bowel perforations are a recognized but rare risk of tubal ligations. And instruments inserted into the abdomen mistakenly puncture the bowel in about four of every 10,000 surgeries.

*Jordan, Cooke's lawyer, said the risks increase if a woman has had prior abdominal surgery, which was the case with Cooke.*

*The 41-year-old mother of three argued she told Graham about her prior surgery, although Graham claimed she did not, said Jordan.*

*Graham, granted a licence by the B.C. College of Physicians and Surgeons despite Baert's injuries in Saskatchewan, went ahead with Cooke's tubal ligation on Oct. 31, 2002.*

*Graham had to cut through lesions and adhesions formed during Cooke's prior surgery. When Graham saw the abnormalities, he should have stopped the surgery, said Jordan.*

*"He didn't have the skill to do the dissection. It's a whole other level of surgery, not what obstetricians and gynecologists should be doing."*

*But he continued and the operation took 45 minutes, Jordan said, four times as long as Baert's surgery and what Graham testified was normal.*

*Jordan said Graham kept Cooke in hospital overnight to monitor her condition but she was released the next day. She soon returned to the hospital in pain but Graham diagnosed her with a gastrointestinal problem and sent her home.*

*She returned to hospital a second time, and another doctor discovered she was suffering from septic shock. She was sent to hospitals in Grand Prairie and Edmonton for life-saving surgeries.*

*Doctors determined two puncture holes in her bowel occurred during the tubal ligation, said Jordan.*

*He said Cooke is still in chronic pain and has an incisional hernia in her abdomen.*

*She has returned to work as a medical office assistant. But because she no longer has stomach muscles, she needs to wear a girdle each day to hold herself in.*

*Graham voluntarily stopped doing laparoscopic operations after Cooke's surgery.*

*But four months later, Dawson Creek media reported 35-year-old Dana McLellan had to be air-lifted to Vancouver after Graham cut her bladder during a hysterectomy.*

*The hospital, the Northern Health Authority and the B.C. College of Physicians and Surgeons reviewed complaints against Graham but his licence was not revoked.*

*College spokesperson Susan Prins said Graham voluntarily agreed to have his skills assessed at the University of Saskatchewan. And although he passed, he did not return to work.*

*Graham, 55, testified in the Baert case that he was unable to work after a heart attack in 2003. He underwent quintuple bypass surgery, then developed a depressive illness.*

He now lives in St. Albert, just north of Edmonton.

[Italics are mine]

[83] This article is identical to the November 28, 2007 article written by Ms. Purdy that was published on the Star Phoenix websites. It appeared on the front page of the November 29, 2007 edition of the Star Phoenix and continued on page A8. The only difference between this article and the previous article is the byline. The byline that appeared on the front page attached to this article was “Gynecologist Not Negligent” and on page A8 attached to the continuation of the story was “Suit: jury not allowed to hear from other patients”.

[84] The words in this article that Dr. Graham complains of are the same as the words he complained of in the November 28, 2007 article. His complaints about this article are the same as his complaints about the previous article for all the same reasons set forth previously. Given this article was identical to the previous article, both counsel’s arguments about this article were identical to their arguments on the previous article.

[85] From my perspective it would be superfluous for me to reiterate my reasoning and comments from the previous article here and I see no need to do so. Suffice it to say that my conclusion remains that the words Dr. Graham complains of are defamatory both on their natural meaning and on their implied meaning in the context of the article as a whole. The fact that the byline in this article is somewhat different than in the November 28 article and this article appeared on the front page of the newspaper does not alter my reasoning or conclusions.



**(iv) The second November 29, 2007 Article**

[86] A second separate article written by Ms. Purdy appeared on page A8 of the Star Phoenix newspaper on November 29, 2007 and on their websites. It read as follows:

**Routine surgery became health nightmare**

Lisa Baert was 21 when she went to the Lloydminster hospital on July 14, 1999, to have her “tubes tied.”

Lisa Baert was 21 when she went to the Lloydminster hospital on July 14, 1999, to have her “tubes tied.”

She and her husband Mark, financially strapped and already parents to two sons, had decided they didn’t want more children. And Mark didn’t want a vasectomy.

*During the routine laparoscopic operation, Graham unknowingly punctured Baert’s bowel, and the two-millimetre hole allowed toxins to leak into her body.*

*But the surgery was completed, clips were placed on her fallopian tubes, and she was stitched up and sent home. Two days later, an ambulance rushed her back to hospital suffering from septic shock.*

*Her bowel was repaired but because of reduced blood flow and dead tissue, doctors had to amputate her hands at the wrist and her legs below the knees.*

*She also suffered severe brain damage, due to cardiac arrests during surgery, leaving her with the mental capacity of a child.*

*Now 29, Baert lives in Saskatoon’s Parkridge Centre long-term care home, where staff help with daily tasks such as changing her diapers and putting on her prosthetic limbs.*

Baert and her family launched a multimillion-dollar lawsuit in 2000 against Graham, the hospital and several nurses. The hospital and nurses settled out of court for an undisclosed sum shortly before the trial began in September, leaving Graham the lone defendant.

Graham, who no longer practices as a doctor, denied any negligence, claiming bowel perforations are a recognized, although rare, risk of tubal ligation surgeries. And he said it was up to nurses to monitor Baert for symptoms of complications after the surgery.

Graham also argued Baert was partially responsible for her injuries for not returning to the hospital when she experienced increasing pain at home following the surgery.

When Baert was discharged from hospital, a nurse gave her an instruction sheet stating she should call her doctor or return to the hospital if she experienced more pain.

Baert and a concerned neighbour allegedly called the hospital three times during the next two days, concerned about her increasing pain. They talked to unknown nurses who said Baert should wait out the pain and gave permission for her to take the neighbour's prescription pain killers.

Baert's lawyers argued she did what any reasonable patient would have.

*They claimed Graham used improper technique during the surgery and should have known that he punctured her bowel when equipment in the operating room measured a high pressure reading.*

*They said Graham had a duty to pass that information on to Baert and the nurses so they would more closely watch for symptoms of complications.*

*They further argued Graham didn't properly explain to Baert the risks of the surgery or the consequences of a bowel puncture, and therefore he didn't get her informed consent to operate.*

[Italics are mine]

[87] Dr. Graham complains that the italicized words in this article were false, malicious and defamatory and were understood to mean:

- (a) He negligently performed surgery on Lisa Baert, thereby causing her to suffer septic shock;
- (b) He negligently performed surgery on Lisa Baert, thereby causing her to suffer cardiac arrests resulting in severe brain damage, leaving her with the mental capacity of a child and requiring her to live in a long-term care facility;
- (c) He negligently performed surgery on Lisa Baert, thereby causing her to suffer reduced blood flow and dead tissue, necessitating the amputation of her hands and her legs below the knees;

- (d) He deliberately and deceitfully did not advise the nurses or Lisa Baert that he had punctured her bowel during surgery, or alternatively, that he negligently failed to do so; and
- (e) He deliberately concealed from Lisa Baert the risks associated with tubal ligation surgery and therefore did not receive her informed consent to perform such surgery.

[88] Counsel for the defendants acknowledged that the meaning of the italicized portions of the article was defamatory in that they meant that Dr. Graham was negligent in his treatment of Ms. Baert, but he denied that the words were defamatory in any other sense as suggested by Dr. Graham. He took specific issue that the words in question could be interpreted to mean that Dr. Graham caused certain things, was deliberately deceitful or deliberately concealed information. He encouraged me to consider the article as a whole. He did not advance any other arguments.

[89] The defendants admit that the plain meaning of the words complained of in this article are defamatory insofar as they mean that Dr. Graham was negligent in his treatment of Ms. Baert. I accept that the plain meaning of these words is defamatory but the meaning goes farther than the defendants' counsel suggests.

[90] The article as a whole says nothing about the verdict in the case, nor does it tie in any of the information to the judge's instructions in the case, the jury's deliberations or their ultimate verdict. Reading this article, a person would have no reason to believe that Dr. Graham was found not negligent in the case. The words complained of in the first five paragraphs of the article outline the cause and the effect: Dr. Graham performed surgery on Ms. Baert, he punctured her bowel in the process, she developed sepsis that eventually led to other complications and as a result of that she ended up living in a care home. Thus the words are defamatory but the

meaning of the words includes more than just that Dr. Graham was negligent; it includes the results of his negligence as well.

[91] The last three paragraphs Dr. Graham complains about in the article are Ms. Baert's lawyer's comments about what Dr. Graham did wrong. The plain meaning of these words is that Dr. Graham was supposed to do some things and he did not, for example, he did not pass on information to the nurses or properly explain the risks of the surgery to Ms. Baert. Without presenting Dr. Graham's lawyer's arguments on these points or indicating that the jury vindicated him of these allegations, the words indicate he was negligent by not doing these things. I am not however satisfied that these words were understood to mean that Dr. Graham deliberately did not do these things or that he was, in any way, deceitful.

[92] Therefore, on the evidence, the defamatory meaning of the words complained of is that Dr. Graham negligently performed surgery on Ms. Baert causing her septic shock, amputation of her hands and feet, cardiac arrest, severe brain damage leaving her with the mental capacity of a child and requiring her to live in a long-term care facility and further, that he did not advise the nurses or Ms. Baert that he had punctured her bowel or that he negligently failed to do so and he did not properly advise Ms. Baert of the risks associated with the surgery and did not therefore receive her informed consent to the surgery.

**(v) November 30, 2007 Article**

[93] The following article appeared in the Star Phoenix newspaper and on its websites on November 30, 2007:

**Baert family mulls appeal of suit decision**

Lisa Baert may have the mental capacity of a child, but she can still comprehend the loss of her multimillion-dollar malpractice lawsuit against her former gynecologist.

Mark Baert said Thursday that when he told his wife of the jury's decision and the judge's dismissal of the suit, she was understandably upset.

"It's a lot of hopes and dreams there being crushed," said Mark.

The couple and their two sons were claiming more than \$10 million in damages against Dr. Kenneth Graham. Prior to trial, they reached an undisclosed settlement with the Lloydminster hospital and some nurses.

Lisa, 29, sat in her wheelchair throughout most of the trial but was not in the courtroom for the decision on Wednesday.

Graham unknowingly punctured her bowel, allowing toxins to leak into her body, during a routine tubal ligation in July 1999. She was discharged from hospital but two days later was rushed back suffering from septic shock.

Doctors had to amputate her hands and feet. She also suffered severe brain damage.

After nine weeks of testimony in the civil trial, the six-member jury – all women – decided Graham had Lisa's informed consent to perform the surgery and provided a standard level of care both during and after the operation.

Graham's lawyers argued bowel perforations are rare but recognized risks of tubal ligations, and it was up to the nurses to watch for symptoms of complications after the surgery.

Graham also claimed Lisa was partially at fault for not immediately returning to the hospital when she experienced increasing pain at home.

Because Lisa was not mentally capable of testifying in the case, Mark told the jury Lisa and a concerned neighbour called the hospital three times about her pain following the surgery. But nurses who answered the calls told them to wait out the pain and gave permission for Lisa to take the neighbour's prescription pain killers.

*Graham, 55, recently settled another lawsuit in a similar case involving a woman from Dawson Creek, B.C.*

*Gloria Cooke almost died after Graham twice punctured her bowel during a tubal ligation in 2002. After several life-saving surgeries, she was left with chronic pain and has an incisional hernia in her abdomen.*

*The jury in the Baert trial was not allowed to hear about Graham's other patients.*

*Mark said he's glad Graham is no longer working as a doctor. After a heart attack in 2003, Graham underwent a quintuple bypass and then developed a depressive illness.*

*Mark said he went public with Lisa's injuries in 1999 to warn others about Graham.*

*But the doctor moved to B.C. and was granted a medical licence there.*

"I certainly wouldn't wish harm upon him," said Mark. "He's human. He makes mistakes. I understand that."

Mark said he's not sure if his family will appeal the ruling. One of his lawyers, David Risling, said because the Baerts lost the suit, they will likely be on the hook for Graham's legal fees.

The majority of damages claimed in the lawsuit – \$8.7 million – were ear-marked for future health-care costs to move Lisa into a private group home.

Mark, unable to comment on the amount of the settlement with the hospital, also couldn't say whether the move is still possible.

Lisa currently lives in Saskatoon's Parkridge Centre, a publicly funded and government-subsidized long-term care home.

Staff help with daily tasks such as changing her diapers and putting on her prosthetic limbs.

Lisa has some movement in her shoulders and elbows but is basically immobile. Her wheelchair has a headrest because she can't hold her head up for long without support.

[Italics are mine]

[94] It was Dr. Graham's argument that the italicized words in this article were false, malicious and defamatory and were understood to mean:

- (a) He negligently performed surgery on Lisa Baert, thereby causing her to suffer devastating injuries;
- (b) The verdict of the jury exonerating him of negligence in his treatment of Lisa Baert was perverse;
- (c) He negligently performed surgery on Gloria Cooke, thereby nearly causing her death;
- (d) He negligently performed surgery on Gloria Cooke, thereby causing her to suffer permanent chronic pain and an incisional hernia in her abdomen; and
- (e) He is guilty of habitual negligence in his surgical practice and should not be permitted to carry on practice as a surgeon because of the unacceptable risk he poses to the life and health of patients.

[95] Dr. Graham also argued that in the alternative, these defamatory meanings were conveyed by way of legal innuendo by the combined effect of the November 24, 28, 29 and 30 articles.

[96] The defendants agreed that to the extent that the italicized words in this article meant that Dr. Graham negligently performed surgeries on Lisa Baert and Gloria Cooke, they were defamatory. However once again, counsel took issue with any additional meanings attributed to the words by Dr. Graham or that in the context of the first four articles referenced, legal innuendo conveyed the meanings attributed to the words by Dr. Graham. Counsel did not make any other argument in relation to this article.

[97] The meaning of the words complained of must be looked at in the context of the entire article. The article says that Dr. Graham unknowingly punctured Ms. Baert's bowel allowing toxins to leak into her body. Two days later she was rushed back to the hospital with septic shock. Doctors had to amputate her hands and feet, she suffered severe brain damage, she has the mental capacity of a child, she is in

a wheelchair and lives in a long-term care home. Thus in my view, when Mark Baert said that he went public with Lisa's injuries in 1999 to warn others about Graham, an ordinary person would conclude that he believed that people should know that Dr. Graham negligently performed surgery on his spouse and that she suffered devastating injuries as a result thereof.

[98] The words complained of relating to Ms. Cooke are that Dr. Graham twice punctured her bowel, she almost died, she had several life-saving surgeries, she has chronic pain and an incisional hernia in her abdomen, she sued Dr. Graham and he settled with her. A reasonable person looking at these words would obviously say that Dr. Graham negligently performed surgery on her that nearly caused her death and resulted in her suffering permanent chronic pain and an incisional hernia in her abdomen.

[99] In addition to the article speaking of Dr. Graham's negligent surgery on Ms. Baert and the injuries she suffered as a result of that, the article also speaks of Ms. Baert being upset to learn that the jury's decision resulted in the dismissal of her lawsuit against Dr. Graham, that Dr. Graham was sued by Gloria Cooke in British Columbia in a similar case and he settled with her. Looking at the words that "the jury in the Baert trial was not allowed to hear about Dr. Graham's other patients" in the context of the article as a whole, a reasonable person would think that had the jury been allowed to hear Ms. Cooke and other of Dr. Graham's patients, it would have been obvious to them that he was habitually negligent in his surgical practice and that the verdict exonerating him would have been different.

[100] I cannot however agree with Dr. Graham's contention that the ordinary meaning of the impugned words or the legal innuendo meaning conveyed by the previous articles is that he should not be permitted to practice as a surgeon because of



the unacceptable risk he poses to the life and health of his patients. The words, even in the context of the article as a whole and/or read in concert with the previous articles written by Ms. Purdy, do not lend themselves to this meaning. Dr. Graham, according to the article, stopped practicing as a doctor in 2003 after suffering a heart attack and later depression. This is a point made in the November 28 article and both articles on November 29. These words do not connote the meaning that this man should be prohibited from being a doctor going forward. A reasonable man would glean that he has already ceased practicing medicine as a result of his own medical issues and is not a concern anymore.

**(vi) The December 1, 2007 Article**

[101] On December 1, 2007 an article written by Chris Purdy appeared on page A4 of the Star Phoenix and on the newspaper's websites. The article read:

**Former patient wanted chance to confront doctor**

*Dr. Kenneth Graham made surgical mistakes that led to complications with four other patients before the tubal ligation on Lloydminster mother Lisa Baert in 1999 left her a quadriplegic with brain damage.*

*Sharry Michels, 50, said the gynecologist accidentally clamped her femoral artery, nerve and vein during a hysterectomy at the Lloydminster hospital in 1998.*

*When she woke up in the recovery room, her right leg was cold and felt like it was asleep. She later learned of the complication and the possibility she might never regain feeling in her leg.*

*"I was terrified," Michels said Friday.*

*Although her knee is still numb and has no reflex, her leg has recovered about 85 per cent of its normal functions.*

*Michels said a lawyer advised her against filing a lawsuit, and she chose not to lay a complaint about Graham with the College of Physicians and Surgeons of Saskatchewan.*

*But after she learned of Baert's devastating injuries, she regretted that decision.*

*"There's a guilt thing," said Michels. "Maybe if I'd said something earlier."*

*Graham unknowingly punctured Baert's bowel, allowing toxins to leak into her body, during the routine tubal ligation in July 1999. The 21-year-old was discharged from hospital but two days later was rushed back suffering from septic shock.*

*Doctors had to amputate her hands and feet. She also suffered severe brain damage.*

Earlier this week, after nine weeks of evidence in a civil trial launched by Baert and her family, a jury decided Graham was not negligent in the case.

Graham's lawyers argued bowel perforations are rare but recognized risks of tubal ligations, and it was up to the nurses to watch for symptoms of complications after the surgery. Graham also claimed Baert was partially at fault for not immediately returning to the hospital when she experienced increasing pain at home.

Michels and other former patients were supposed to testify in the trial, but Court of Queen's Bench Justice Grant Currie ruled their stories weren't relevant to Baert's case and would unfairly prejudice the jury.

*Among them was Gloria Cooke of Dawson Creek, B.C., who almost died after Graham twice punctured her bowel during a tubal ligation there in 2002. After several life-saving surgeries, she was left with chronic pain and an incisional hernia in her abdomen.*

*Cooke recently settled a lawsuit with Graham out of court for an undisclosed sum.*

*Michels said she doesn't hold a grudge against Graham, although she's glad he is no longer practising. Graham stopped working after a heart attack in 2003.*

*"My situation is nothing compared to Lisa's and I'm fine," she said. "I want to express my own absolute horror that she is not getting justice. It's absolutely unacceptable."*

*Jessie Isabelle Hurlburt was 73 when she went into the Lloydminster hospital for a hysterectomy in 1996. Graham punctured her bowel during the operation, and she was sent to Saskatoon for life-saving surgery.*

*After three weeks in intensive care, she left with an ileostomy bag that she would need for the rest of her life.*

*“Once she recovered, she was quite angry about what happened to her,” said her son Les. “My mother said, ‘I want you to do something about this because I don’t want this to happen to anyone else.’”*

*Hurlburt died four years later from encephalitis, or an infection in the brain.*

*Les said he formally complained to the college of physicians and surgeons about his mother’s surgery. Its investigation found “no medical mismanagement” by Graham.*

*Also in 1996, Marleen Burgess saw Graham for a hysterectomy.*

*The 52-year-old said when she woke up in the Lloydminster hospital, Graham told her she’d had a “complete” hysterectomy but he left one ovary to help her through menopause.*

*But in 2004, while undergoing surgery to remove a grapefruit-sized cyst on the remaining ovary, another doctor told Burgess she’d never had a complete hysterectomy. She still had a cervix.*

*Burgess said her new doctor said her insides were a “mess.”*

*“She said, ‘Oh, my Lord. Who did this to you?’”*

*Lynn Laursen said Graham cut the main artery feeding her left leg during a hysterectomy in Lloydminster in 1997.*

*“I was in danger of losing my leg and my life,” said Laursen, now 53.*

*She said another surgeon rushed in to stitch up the artery, and save her life. She later needed two more surgeries.*

*“When Dr. Graham did this to me, he never came and saw my husband and me to explain what happened,” said Laursen.*

*She said she wanted the chance to testify in the Baert case and face him. “I would just ask him why it happened,” she said.*

*Glen Luther, a law professor at the University of Saskatchewan, said the judge in the Baert trial would have weighed both the prejudicial and prohibitive values of the testimony of Graham’s other patients.*

*“He would have had to make a close call.”*

Luther said Baert's lawyers may have grounds for an appeal because there is not much precedent on the issue in the civil courts.

[Italics are mine]

[102] Dr. Graham argued that the italicized words in this article contained false, malicious and defamatory words that were understood to mean:

- (a) He negligently performed surgery on Lisa Baert, thereby causing her to become a quadriplegic, to suffer septic shock, severe brain damage and the amputation of her hands and feet;
- (b) He negligently performed surgery on Sharry Michels, causing her to suffer permanent numbness and the loss of reflex in her right knee;
- (c) His negligent acts and omissions in his treatment of Sharry Michels warranted severe disciplinary sanction by the College of Physicians and Surgeons of Saskatchewan;
- (d) He negligently performed surgery on Gloria Cooke nearly causing her death and causing her to suffer chronic pain and an incisional hernia in her abdomen;
- (e) He negligently performed surgery on Jessie Isabelle Hurlburt nearly causing her immediate death and resulting in her requiring an ileostomy bag for the rest of her life;
- (f) The complications caused by his negligent surgery resulted in Jessie Isabelle Hurlburt suffering encephalitis, a brain infection, which eventually led to her death;
- (g) His aforesaid conduct concerning Jessie Isabelle Hurlburt warranted severe disciplinary sanction by the College of Physicians and Surgeons of Saskatchewan;
- (h) He dishonestly and deceitfully misrepresented to Marleen Burgess that he had performed a complete hysterectomy on her;
- (i) He negligently performed surgery on Marleen Burgess creating a surgical mess;

- (j) He negligently performed surgery on Lynn Laursen, nearly causing her death and the loss of her left leg; and
- (k) He is guilty of habitual negligence in his surgical practice and should not be permitted to carry on practice as a surgeon because of the unacceptable risk he poses to the life and health of patients.

[103] Dr. Graham also argued that alternatively, these defamatory meanings were conveyed by legal innuendo by the combined effect of the articles written by Ms. Purdy on November 24, 28, 29 and 30, 2007 and this December 1 article.

[104] The defendants agreed that the italicized portions of this article were defamatory. They agree that the plain meaning of these italicized words was that Dr. Graham was negligent in his treatment of Lisa Baert, Sharry Michels, Gloria Cooke, Jessie Isabelle Hurlburt, Marleen Burgess and Lynn Laursen. They deny that these words have any other meaning. The defendants did not raise any other defences in relation to these words.

[105] Once again, I am satisfied that the natural and ordinary meaning of the words complained of go farther than simply that he was negligent in his treatment of these six individuals. The paragraphs complained of relating to Lisa Baert, when read together, would lead a reasonable person to believe that Dr. Graham made surgical mistakes on four other women before the mistakes he made during Ms. Baert's tubal ligation and that as a result of his mistakes, she suffered septic shock, severe brain damage, doctors had to amputate her hands and feet and she is now a quadriplegic.

[106] As relates Sharry Michels, the words in the paragraphs complained of should be read together. The gynecologist, who she later identified as Dr. Graham, accidentally clamped her femoral artery, nerve and vein during a hysterectomy he was performing on her in 1998. When she woke up in the recovery room her right leg was

cold and felt like it was asleep. She later learned that she may never regain feeling in her leg. Her knee is still numb and she has no reflex in it but her leg has recovered about 85 percent of its normal function. She consulted a lawyer about suing Dr. Graham but he advised against it and she decided not to lay a complaint against him to the Saskatchewan College of Physicians and Surgeons, a decision she now regrets.

[107] The defendants already admit that these words indicate that Dr. Graham negligently performed surgery on Ms. Michels. But it is apparent to anyone reading the words that as a result of that negligent surgery, she has permanent numbness and no reflex in her right knee. I cannot however conclude that a reasonable person considering these comments complained of, read alone, or in the context of the article as a whole, or even read in conjunction with the other articles written by Ms. Purdy, would understand that these words meant that Dr. Graham's negligent acts and omissions in his treatment of Ms. Michels warranted severe disciplinary action by the College of Physicians and Surgeons of Saskatchewan. Ms. Michels is not referenced in any other articles except this one and the words make it clear that she did not pursue either a lawsuit or a complaint to the College after receiving legal advice. Having found out about Ms. Baert's case, she now regrets not making a complaint. The construction of these paragraphs does not allow one to draw the conclusion that Dr. Graham's treatment of her warranted severe disciplinary sanction. The reasonable person would interpret these words as meaning that based on the legal advice she received, there was no point pursuing a complaint about Dr. Graham to the College.

[108] The words in the paragraphs complained of referencing Gloria Cooke are very clear in their meaning. Ms. Cooke almost died after Dr. Graham twice punctured her bowel during a tubal ligation in 2002 and after several life-saving surgeries she has chronic pain and an incisional hernia in her abdomen. Even without

considering the comments that she sued Dr. Graham and he settled with her, an ordinary person would understand these words to mean that Dr. Graham negligently performed surgery on Ms. Cooke, that she nearly died as a result of that surgery and that she now has chronic pain and an incisional hernia as a result of his mistakes.

[109] There are words in the paragraphs complained of that relate to another of Dr. Graham's former patients, Jessie Isabelle Hurlburt. These portions again are quite clear in their meaning. Dr. Graham performed a hysterectomy on her in 1996 and in the course of doing so, punctured her bowel. As a result of that, she was sent to Saskatoon for life-saving surgery. She was left with an ileostomy bag that she would need for the rest of her life. She was upset about this surgery and asked her son Les to do something about it. He filed a formal complaint with the College of Physicians and Surgeons. What is omitted from the words complained of by Dr. Graham, but which appear in the article, is that after an investigation the College found "no medical mismanagement" by him. Four years later Ms. Hurlburt passed on as a result of a brain infection. Again, the defendants admit that these words indicate that Dr. Graham was negligent in his treatment of Ms. Hurlburt but these words also clearly indicate that as a result of this negligence she almost died, had to have life-saving surgery and thereafter required an ileostomy bag for the rest of her life.

[110] These words though do not leave one believing that she developed encephalitis as a complication of Dr. Graham's negligent surgery on her some four years earlier. A reasonable person looking at these words themselves, in the context of the article as a whole or in light of the previous articles complained of written by Ms. Purdy, would conclude a brain infection occurring some four years later was separate and apart from any complication resulting from a negligent hysterectomy.

[111] I am also not satisfied that looking at these words by themselves, in the context of the article as a whole or in light of the previous articles complained of, that a reasonable person would take from the words that as a result of Dr. Graham's negligent surgical conduct severe disciplinary sanction by the Saskatchewan College of Physicians and Surgeons was warranted. This is the only article that speaks about Ms. Hurlburt. As earlier pointed out, Dr. Graham conveniently admitted from the words complained of that the College, after investigating his treatment of Ms. Hurlburt, determined that there was no medical mismanagement on his part. Read in this light, a reasonable person would understand that these words meant that Dr. Graham's treatment of Ms. Hurlburt did not warrant disciplinary sanction from the College.

[112] The next person mentioned in the words complained of is Marleen Burgess. The words in these paragraphs in the article advise that in 1996, Dr. Graham saw her for a hysterectomy. Reading the paragraphs as a whole, it is clear that Dr. Graham was the person who performed the hysterectomy on her. When she woke up after the surgery, Dr. Graham told her she had a complete hysterectomy but he had left one ovary inside her. In 2004 she had surgery to remove a cyst from that ovary. The doctor who did that surgery told her that she did not previously have a complete hysterectomy and that her insides were "a mess". Bearing in mind that the defendants admit that these words mean that Dr. Graham was negligent in his treatment of Ms. Burgess, the objective, natural and ordinary meaning of these words as a whole is that Dr. Graham misrepresented to Ms. Burgess that he had performed a complete hysterectomy on her and that as a result of his negligent treatment of her, her insides were a mess. In the context of the article as a whole or in relation to the previous articles complained of, there is nothing that would lead a person to believe that Dr. Graham made the misrepresentation to Ms. Burgess dishonestly or deceitfully.



[113] The words in the paragraphs complained of referring to Lynn Laursen are short and to the point. Dr. Graham, in the course of performing a hysterectomy on her in 1997, cut the main artery feeding her left leg. She almost lost her leg and her life. Another doctor stitched up her artery and saved her life. The clear meaning of these words to anyone reading them is that Dr. Graham negligently performed surgery on Ms. Laursen nearly causing her death and the loss of her left leg.

[114] Finally, Dr. Graham argues that the words and paragraphs he has identified as problematic lead to the defamatory meaning that he is guilty of habitual negligence and should not be permitted to carry on practice as a surgeon because of the unacceptable risk he poses to the life and health of patients. Looking at all of the words Dr. Graham complains of and the context of the entire article, an ordinary person would reasonably interpret that Dr. Graham was habitually negligent in his surgical practice. But this article, like the other articles written by Ms. Purdy on November 28, 29 and 30, makes it clear that Dr. Graham stopped working after a heart attack in 2003 and is no longer practicing medicine. Given this information in light of the article as a whole, a reasonable person would conclude that thankfully, Dr. Graham has already retired from the practice of medicine for health reasons and is no longer a problem.

**(vii) The January 3, 2008 Article**

[115] This is the last article that Dr. Graham complains of. It appeared on page A3 of the Star Phoenix on January 3, 2008 and on the newspaper's websites. This article reads as follows:

**Baert to appeal tubal ligation ruling**

Lisa Baert and her family are appealing the decision of a civil jury that found her gynecologist not negligent after a routine tubal ligation left her a brain-damaged quadriplegic.

Baert's lawyers filed the notice with the Saskatchewan Court of Appeal in Regina on Dec. 27.

The 12-page document claims mistakes were made by Court of Queen's Bench Justice Grant Currie, both during the trial and with his instructions to the jury. The notice asks the province's top court to find Dr. Kenneth Graham liable and assess damages or order a second trial in Saskatoon.

Baert and her family claimed more than \$10 million in damages against Graham. The family reached an undisclosed settlement with the Lloydminster hospital and some of its nurses before the trial began in the fall.

In November, after sitting through nine weeks of evidence, an all-female jury determined Graham was not negligent in the case. Baert was 21 when she went to the Lloydminster hospital on July 14, 1999, to have her "tubes tied." She and her husband, Mark, were financially strapped and already had two children.

*During the laparoscopic operation, Graham unknowingly punctured Baert's bowel and the two-millimetre hole allowed toxins to leak into her body.*

*She was discharged from hospital but two days later was rushed back in septic shock. Doctors had to amputate her hands and feet. She also suffered severe brain damage.*

*Baert, now 29, lives in Saskatoon's Parkridge Centre, a long-term care home where staff change her diapers and put on her prosthetic limbs.*

Graham, who no longer practices as a doctor, testified bowel perforations are a recognized although rare risk of tubal ligations. The 55-year-old said it was up to nurses to monitor Baert for symptoms of complications after the surgery.

Graham also argued Baert was partially responsible for her injuries because she did not return to the hospital when she experienced increasing pain at home.

Baert and a concerned neighbour allegedly called the hospital three times in the two days following the surgery, concerned about her increasing pain. They talked to unknown nurses who said Baert should wait out the pain and gave permission for her to take the neighbour's prescription pain killers.

*Baert's lawyers argued Graham did not get informed consent for the surgery, used improper technique and should have known he*

*punctured her bowel when equipment in the operating room measured a high pressure reading.*

*They said Graham also had a duty to pass that information on to Baert and the nurses so they could better watch for symptoms of complications.*

[Italics are mine]

[116] Dr. Graham states that the natural and ordinary meaning of the italicized words in this article are false, malicious and defamatory and were understood to mean:

- (a) He negligently performed surgery on Lisa Baert, thereby causing her to suffer septic shock, the amputation of her hands and feet and severe brain damage;
- (b) He performed surgery on Lisa Baert without her informed consent; and
- (c) He deliberately and deceitfully concealed from Lisa Baert and from her nurses the fact that he had punctured her bowel during surgery thereby unconscionably exposing his patient to the risk of death or severe injury.

[117] In the alternative, Dr. Graham stated that the aforesaid defamatory meanings were conveyed by legal innuendo, by the combined effect of all of the other articles written by Chris Purdy that he complained of.

[118] Defendants' counsel argued that the natural and ordinary meaning of the words complained of is non-defamatory. In his view, this article was about the Baert family's decision to appeal the jury's determination in the case. The defendants did not raise any other defences in relation to the words Dr. Graham complains of in this article.

[119] The first three paragraphs that Dr. Graham complains of are juxtaposed together in the article. Prior to these three paragraphs, the article twice states that

Dr. Graham was found not negligent after a jury trial and further that a notice of appeal has now been filed alleging a number of mistakes made by the presiding judge and in his instructions to the jury. The paragraphs following these three paragraphs complained of summarize Dr. Graham's position at trial and Ms. Baert's lawyer's arguments at trial.

[120] These first three paragraphs are a summary of what happened to Ms. Baert. The plain meaning of these words is that Dr. Graham unknowingly punctured Ms. Baert's bowel thereby allowing toxins to leak into her body, two days later she returned to the hospital in an ambulance suffering from septic shock and consequently doctors had to amputate her hands and feet and she suffered brain damage. These words are reasonably capable of having the defamatory meaning that Dr. Graham was negligent in his treatment of Ms. Baert and that he caused her catastrophic injuries.

[121] However, these paragraphs must be considered in the context of the article as a whole. The byline indicates that the Baerts are going to appeal the decision and the article twice states that Dr. Graham was found not negligent in the case. This is an antidote to the defamatory comments in the three paragraphs complained of by Dr. Graham. A reasonable person looking at this article in its entirety would understand that Dr. Graham was found not negligent of puncturing Ms. Baert's bowel and causing her these devastating injuries and the Baerts have appealed this decision. It is inappropriate to consider these three paragraphs separate from the rest of the article. When that is done, the bane is removed by the antidote.

[122] The other words complained of by Dr. Graham in the article also do not carry the defamatory meanings that he suggests. The comments that Dr. Graham did not get Ms. Baert's informed consent for the surgery, that he used an improper

technique, that he should have known he punctured her bowel and that he had a duty to pass that information on to Ms. Baert and the attendant nurses are attributed to the argument made by Ms. Baert's lawyers at trial. The two paragraphs in question make that clear. They start with the words "Baerts' lawyers argued ..." and "they said ...". Immediately preceding these two paragraphs are two paragraphs summarizing Dr. Graham's arguments at the trial. A reasonable person reading this article would understand that these were the positions taken by each of the parties at trial, that Dr. Graham's position was accepted as he was found not to be negligent, that the Baerts' arguments were not accepted and now the Baerts have appealed. These words do not support the defamatory meaning that Dr. Graham suggests.

[123] Even looking at the combined effect of all of the previous articles complained of by Dr. Graham, a reasonable person would still not be left with the impression that these words meant that Dr. Graham performed surgery on Ms. Baert without her informed consent and that he deliberately and deceitfully concealed from her and the nurses that he had punctured her bowel thereby unconscionably exposing her to risk of death or severe injury. That person would still understand that these comments are about the Baerts appealing and what they are appealing. The allegations that this January 3, 2008 article is defamatory are dismissed.

[124] To summarize, the evidence establishes that Ms. Purdy defamed Dr. Graham in articles she wrote and that were published in the Star Phoenix newspaper and/or on the newspaper's websites on November 28, 29 (both articles), 30 and December 1, 2007, the defamatory meanings of those words being:

- (a) He negligently performed surgery on Lisa Baert causing her to suffer devastating injuries and the jury's verdict exonerating him of negligence was wrong;
- (b) He negligently performed surgery on Lisa Baert causing her to suffer septic shock, amputation of her hands and her legs below the

knees, cardiac arrests resulting in severe brain damage leaving her with the mental capacity of a child and requiring her to live in a long-term care facility;

- (c) He negligently performed surgery on Lisa Baert causing her to become a quadriplegic;
- (d) He did not advise the nurses or Lisa Baert that he had punctured her bowel during surgery or alternatively that he negligently failed to do so;
- (e) He did not advise Lisa Baert of the risks associated with tubal ligation surgery and did not receive her informed consent to perform such surgery;
- (f) The verdict of the jury exonerating him in his treatment of Lisa Baert was perverse;
- (g) He negligently performed surgery on Gloria Cooke and negligently failed to address post-surgery complications that led to septic shock, permanent chronic pain, an incisional hernia in her abdomen, the permanent loss of her stomach muscles and nearly caused her death;
- (h) He negligently performed surgery on Dana McLellan placing her health and life in jeopardy;
- (i) He negligently performed surgery on Sharry Michels causing her to suffer permanent numbness and the loss of reflex in her right knee;
- (j) He negligently performed surgery on Jessie Isabelle Hurlburt nearly causing her immediate death and resulting in her requiring an ileostomy bag for the rest of her life;
- (k) He misrepresented to Marleen Burgess that he had performed a complete hysterectomy on her;
- (l) He negligently performed surgery on Marleen Burgess creating a surgical mess;
- (m) He negligently performed surgery on Lynn Laursen nearly causing her death and the loss of her left leg; and

(n) He is guilty of habitual negligence in his surgical practice.

[125] Having reached this conclusion, I must determine the liability of the remaining defendants.

[126] Rod Nickel was the city editor at the Star Phoenix newspaper from September 2007 to January 2008. He assigned Chris Purdy to cover the Baert trial. He does not recall the instructions he gave to her or any particular discussion he had with her prior to the trial. He would have had a day-to-day understanding of what Ms. Purdy was reporting on and what articles she was submitting on the trial. He could not explain what investigation he undertook to determine if Ms. Purdy covered the trial in a balanced fashion except to say that he was doing his job while she was covering the trial.

[127] Mr. Nickel did not recall what input he had on what Ms. Purdy reported on or what days of the trial she attended but normally he would discuss with her what stage the trial was at and what was possibly coming up.

[128] He was aware that Ms. Purdy was writing articles about Dr. Graham's previous patients but he was not sure when he became aware of that. He did not recall if he assigned her to do this or if she came up with this on her own. He did not recall what discussions he had with her about her research efforts or verifying the allegations made by these other patients. He did not recall whether he confirmed with Ms. Purdy whether she spoke to any medical doctors that had treated these patients after Dr. Graham.

[129] After reviewing Ms. Purdy's articles dated November 24, 2007 through to and including the January 3, 2008 article, he could not recall if he performed an editorial function over these articles before they were published nor did he recall

having any discussions with Ms. Purdy concerning their content or any revisions or edits.

[130] Dale Brin was the publisher and general manager of the Star Phoenix newspaper from 2004 to 2010. He had no involvement in the content or editing of any articles written by the reporter covering the Baert trial, he was not advised about the reporting in the case nor did he have any conversations with anyone about the reporting.

[131] Cameron Hutchinson was the managing editor of the Star Phoenix in 2000. In 2007 he was aware that Ms. Purdy was covering the Baert trial but he does not recall having any involvement in the reporting or editing of the stories she wrote. He did not believe that he would have seen the stories until they appeared in the newspaper as at that time he oversaw the newsroom and reported to Steven Gibb and Rod Nickel. He did not recall having any conversations with Mr. Nickel about any of the articles Ms. Purdy wrote prior to publication. He had no recollection about whether concerns were raised or whether they had any discussions about Ms. Purdy's reporting on other patients of Dr. Graham or about what Ms. Purdy's investigation of the allegations made by these other patients may have been.

[132] Steven Gibb was the editor-in-chief of the Star Phoenix from 1993 to 2010.

[133] The defendant, Canwest Publishing Inc. owned the Star Phoenix newspaper and its websites and employed the other named defendants. The Star Phoenix newspaper, Canwest Publishing Inc. and/or its assets were purchased by Postmedia Network Inc. in or around 2012.



[134] In a case such as this, all persons who aid or participate in the publication of defamatory expression, in furtherance of a common design, may be held liable in damages to the plaintiff, whether or not at the time they realized they were committing the tort of defamation. The law regards them as joint tortfeasors. *Botiuk* at paras. 73 to 77; *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para 176 [*Hill*].

[135] The publication of a libel, composed by one, printed by another and distributed by a third, is a joint tort, with joint and several liability. Therefore, where it is published in a newspaper, the injured person may sue in the same action the editor, the proprietor, the printer and the publisher, and each is liable on the judgment for the whole amount; the publication is the joint act of all. *Lambert* at para. 6.

[136] In this case, and in light of the aforementioned case law, I am satisfied that at the time of the publishing of the defamatory articles, Rod Nickel, being the city editor and Ms. Purdy's immediate supervising editor, Cameron Hutchinson being the managing editor, Dale Brin being the publisher and general manager of the Star Phoenix and Steven Gibb being the editor-in-chief of the Star Phoenix are all joint tortfeasors of Ms. Purdy's defamatory comments and as such, jointly and severally liable in defamation to Dr. Graham.

[137] I am also satisfied that Canwest Publishing Inc. as the former owner of the Star Phoenix and its websites and Postmedia Network Inc. as the current owner of the Star Phoenix and its websites are also joint tortfeasors with Ms. Purdy and the other defendants noted and as such are jointly and severally liable in defamation to Dr. Graham.