IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Roshard v. St. Dennis,* 2013 BCSC 1388

Date: 20130801
Docket: S098637
Registry: Vancouver

Between:

Christ'l Roshard

Plaintiff

And

Patrick St. Dennis

Defendant

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment

Counsel for the Plaintiff:	R.A. McConchie
Counsel for the Defendant:	M.J. Ford
Place and Date of Trial:	Vancouver, B.C. February 6-9, 2012
Place and Date of Judgment:	Vancouver, B.C. August 1, 2013

2013 BCSC 1388 (CanLII)

2013 BCSC 1388 (CanLII)

1. Introduction

[1] This defamation case deals with statements given in an interview by the defendant Patrick St. Dennis, who was a candidate for re-election to the District of Lillooet Council, about the plaintiff Christ'l Roshard, who was running for re-election as mayor. The interview was published on a website and the offending portions of it were quoted in a newsletter, both of which were associated with a local political group that opposed Ms. Roshard.

[2] Ms. Roshard alleges that these statements by Mr. St. Dennis defamed her by conveying the meanings that:

1. She was promoting a local grape-growing initiative in a way that put her in a conflict of interest with her position as mayor; and

2. She had failed to notify Mr. St. Dennis and another councillor, Dennis Bontron, of meetings that were relevant to the Council's work, and had also deliberately scheduled them on days that Mr. Bontron was unavailable.

2. The Grape Project

[3] Ms. Roshard was a Lillooet councillor from 2002 - 2005 and was then elected mayor in 2005.

[4] Mr. St. Dennis was a long-serving councillor, with two terms in the 1990s and two additional terms covering the time period in question here -- 2005 to 2011.

[5] In 2004, while still a councillor, Ms. Roshard had become involved in an economic diversification project for the Lillooet and Lytton areas that was known as the "Grape Project". It involved growing test plots of various kinds of grapes for wine production, to see if this could become a viable industry in the area. The idea was eventually to replace some of the economic activity that had been lost through the decline in the forest industry.

[6] Funding was obtained through a non-governmental agency called Forrex. The District of Lillooet never actually provided any funding, although it provided in-kind support by having its financial officials administer the Project's money for about the first year of its existence.

[7] Ms. Roshard and other volunteers were involved in obtaining and propagating the grape plants. She provided an acre of her own property as one of the test plots. She and her husband devoted considerable time and effort to preparing their property and growing the grapes, and spent their own money on supplies, for which they never sought reimbursement. She emphasized in her evidence that because of the size of her available property and its location in a residential neighbourhood, she could never have turned this test plot into a viable commercial operation for herself. The only benefits to her from having hosted a test plot were the grape canes themselves and several weather stations that were installed on the property to collect essential data.

[8] Before she embarked on this stage of the project Ms. Roshard had confirmed, through a legal opinion obtained by the Council, that she would not be in any conflict of interest with her duties as a councillor, because no Lillooet funds were being used.

[9] Ms. Roshard's involvement with the Grape Project was controversial among some members of the community.

[10] After she became the mayor, serious allegations against her were made by the Lillooet Ratepayers Association ("LRPA"), a local community advocacy group spearheaded by a former mayor. It appears that the LRPA was broadly opposed to Ms. Roshard's initiatives and positions as mayor. She believed that its members disliked her.

[11] In October of 2007, one of the LRPA's leading members, Ron Richardson, raised concerns about conflicts of interest arising from her involvement in the Grape Project in a letter to Lillooet's chief administrative officer, Grant Loyer. These alleged

2013 BCSC 1388 (CanLII)

conflicts had to do with the lack of Council approval for putting a test plot on her property, the personal benefits to her of having a plot there, the failure to select more suitable properties owned by others, and her use of municipal resources for hiring an employee for the Grape Project.

2013 BCSC 1388 (CanLII)

[12] Mr. Loyer investigated the allegations and obtained a legal opinion concerning them from the District's solicitors. He then prepared a report for Council, which he presented in an *in camera* meeting on January 7, 2008. Council voted to disclose his report at its public meeting that same night.

[13] In essence, Mr. Loyer's report cleared Ms. Roshard of all of the allegations. Specifically, he found that none of the funds for the Project came from the District and that the District had no role in determining the location of the test plots. Further, Ms. Roshard had received no meaningful benefit from having a test plot on her property and none of the council proceedings in which she participated could have conferred such benefits.

[14] Mr. Loyer's report contained two reservations. He concluded that it would have been better in hindsight if the Project employee position had not been advertised in a format that made it appear as though it was a District position, and if the interviews for it had not been held at the District office. More importantly for this case, Mr. Loyer included the following recommendation:

> The Mayor should continue to take public perception into consideration on issues that could arise under Sections 102 (Inside Influence) and 103 (Outside Influence) of the *Community Charter*. Council members should make it clear when they are acting in their personal capacity and when they were acting pursuant to their elected position even if no district funds were used and no Council decisions were taken.

[15] Mr. Loyer testified that in October of 2008, with District elections looming, more allegations were "flying around" about Ms. Roshard being in a conflict of interest. On October 20, Council voted to release its solicitors' opinion on the previous complaints against her to the public, once the solicitors had been consulted about the propriety of doing so. As it turned out, the legal opinion was not released until sometime after the election.

3. The Interview

[16] After the council meeting, likely around October 25, Mr. St. Dennis, who was standing for re-election, gave a recorded interview to Sydney Easton. She was associated with the “Town Talk” website and the “Lillooet Insider” newsletter, which raised issues of local political interest. There was evidence that these outlets were connected to the LRPA.

[17] The format for the interview was that Mr. St. Dennis was asked a single question at the outset: “Why should we vote for you?” What followed was a wide-ranging monologue by him, touching on numerous community issues. He conceded that his comments had been transcribed accurately.

[18] Mr. St. Dennis’ allegedly defamatory statement about Ms. Roshard in relation to the Grape Project was:

> I don’t disagree with her motion [possibly an incorrect transcription of “*pro*motion”, although the context is clear and nothing turns on its precise meaning] of her grape site. I think it’s a great idea but she shouldn’t be in charge, and it’s hard to rebut because all she’ll do is say: ‘if you don’t agree, if you don’t support this, then say so.’ And I say ‘well I support the idea, but I don’t think you should be taking up taxpayer’s time promoting it,’ and to me that’s a Conflict of Interest. [Punctuation in the original.]

[19] His statement about the lack of notification of meetings being provided to him and Mr. Bontron was:

> And very often Dennis and I are not notified that there is a meeting, or that it’s happening, or we’re told about it after it’s happened. Call it on a Thursday afternoon when she knows Dennis is out of town.

[20] The complete interview transcript from which these comments are drawn is about 11 pages long. It would be fair to characterize it as a wide-ranging litany of complaints about Ms. Roshard’s actions as mayor.

4. Are the statements defamatory?

[21] The first step is to determine whether either of these statements is defamatory -- that is, whether they were untrue statements that tended to lower

2013 BCSC 1388 (CanLII)

Ms. Roshard's reputation in the community. If they are, then the burden shifts to Mr. St. Dennis to establish the defences he has pleaded: *Grant v. Torstar Corp*., [2009] 3 S.C.R. 640 at para. 28.

[22] A statement can be defamatory on the basis of the meaning that would reasonably have been ascribed to it by an ordinary person in light of generally known facts. This includes both the actual words and what would have been inferred from them by an ordinary person. The overall circumstances and context within which the statements were made and would have been understood must be considered. Alternatively, a statement can be found to have a defamatory meaning in light of the special circumstances, facts or knowledge that were present at the time of its publication, if the statement is reasonably capable of supporting that meaning and it was received by at least one person who was aware of that special information. This is often described as the statement's "legal" or "true" innuendo meaning: *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62; *Lawson v. Baines,* 2012 BCCA 117 at para. 13.

[23] The intention of the person making the statement is not relevant to a determination of its defamatory character: *Grant* at para. 28.

[24] The particular form of defamation alleged here was oral statements by Mr. St. Dennis in the course of the interview. This would be slander, which is not normally actionable *per se* without proof of special damages. However, slander that disparages the plaintiff's work reputation, including in the discharge of an elected public office, is an exception to the usual requirement of special damages: see for example, *Geddie v. Rink*, [1935] 1 W.W.R. 87 (Sask. C.A.), at para. 6. I am satisfied that, if these statements bear the meanings attributed to them by Ms. Roshard, then they certainly call into question the integrity of her actions as mayor and would be actionable in themselves on that basis.

[25] Ms. Roshard submits that Mr. St. Dennis' statement about the Grape Project objectively conveys the meaning that she was acting in a manner contrary to the conflict of interest sections of the *Community Charter,* S.B.C. 2003, c. 26, ss. 110 -

2013 BCSC 1388 (CanLII)

103. These sections prohibit a council member from attending meetings that deal with a matter in which she has a "direct or indirect pecuniary interest" or from using her office to influence a "decision, recommendation or other action" in relation to that matter. Mr. Loyer's report concluded that Ms. Roshard had not been guilty of any such infraction, and that conclusion is well-supported by the trial evidence.

2013 BCSC 1388 (CanLII)

[26] I do not think it is necessary to impute to the ordinary reader an understanding of this specific legislation in order to find that this statement was defamatory. I take notice that "conflict of interest" is a widely-used term in public discussions of politics in Canada. It is applied quite generally to allegations of politicians operating under any divided loyalty between their public duties and personal interests. A reasonable reader here would certainly understand that Ms. Roshard was being accused of using her time to advance a personal interest in the Project, instead of devoting herself completely to the interests of local taxpayers as she had been elected to do. Such an accusation is very damaging for any elected office-holder and would undoubtedly have lowered her reputation in the eyes of the community.

[27] The innuendo meaning of the passage was also defamatory. Those members of the Lillooet community who had followed the actions of the District Council over the preceding year would know that formal allegations of conflict of interest with respect to the Grape Project had been levelled at Ms. Roshard as mayor by Mr. Richardson and the LRPA and that she had been exonerated by Mr. Loyer's inquiry. To readers familiar with those circumstances, Mr. St. Dennis' use of the term "conflict of interest" in relation to the Grape Project would have been fraught with meaning -- indicating in essence that Mr. Loyer's findings were not conclusive of the true nature of the wrongdoing by Ms. Roshard in this affair and that he did not accept her innocence in the matter. Again, this would have lowered her reputation in the eyes of such followers.

[28] I am satisfied, given the purpose of the website and newsletter and their clear connections with the LRPA, that at least one reader with the particular knowledge of

the previous inquiry received Mr. St. Dennis' comments. There was reliable evidence in the trial of the public availability of the Lillooet Insider newsletter.

[29] As to the comments about the scheduling of meetings without notifying Mr. St. Dennis and Mr. Bontron, or holding them on Thursdays when Mr. Bontron was unavailable, these would obviously cause the ordinary reader to draw the inference that Ms. Roshard was deliberately manipulating the business of Council, so as to exclude two of its members. Any doubt that the imputation of the first sentence ("And very often Dennis and I are not notified that there is a meeting, or that it's happening, or we're told about it after it's happened") is of deliberate conduct, or that this conduct was being laid at Ms. Roshard's feet, is resolved by the second sentence, which describes the calling of meetings on a day that "*she* [which in context could only be Ms. Roshard] *knows*" Mr. Bontron could not make it (emphasis added). The location of this passage -- within a monologue essentially dedicated to listing Ms. Roshard's wrongdoing -- makes its ordinary meaning even clearer.

[30] The evidence does not disclose any specific legal innuendo meaning arising from these comments than would have been known to a smaller, more knowledgeable audience that the general reader.

[31] This is not a case where a review of the entire interview undermines or modifies the defamatory meanings of the specific passages that are being litigated. The remaining passages share a common tone of hostility towards Ms. Roshard with the defamatory ones.

5. Defences

[32] Mr. St. Dennis has raised the defences of justification, qualified privilege, fair comment and reasonable communication on matters of public interest.

2013 BCSC 1388 (CanLII)

2013 BCSC 1388 (CanLII)

a. Justification

[33] The defence of justification requires proof of every injurious imputation conveyed by the publication: *P.G. Restaurant Ltd. (c.o.b. Mama Panda Restaurant) v. Cariboo Press (1969) Ltd.*, 2005 BCCA 210 at para. 33; leave to appeal ref'd [2005] S.C.C.A. No. 270.

[34] On the conflict of interest allegation, I have already noted that there was no evidence in the trial that Ms. Roshard's involvement with the Grape Project violated the prohibitions in ss. 102 and 103 of the *Community Charter*. Mr. St. Dennis wisely did not argue that it had. Rather he sought to justify his comments by reference to a conflict that arose from her role in spearheading the Project.

[35] It was his view that Ms. Roshard should not have been spending any of her time as mayor promoting the project, particularly during Council's brief and precious audiences with provincial government officials.

[36] Looking at the sting (that is, the defamatory meaning or implication) of his comments about the Grape Project, the truth that Mr. St. Dennis must prove with respect to them in order to succeed with this defence is that:

1. Ms. Roshard used "taxpayers' time" -- that is, time that should have been spent fulfilling her duties as the mayor -- to promote the project; and

2. this placed her in a conflict of interest, either an actual one under the *Community Charter* or a more general situation in which her personal activities were in conflict with her duties.

[37] The defence evidence centred on Ms. Roshard's discussions of the Grape Project at Council meetings and with government officials, particularly with provincial government cabinet ministers during the Council's brief meetings with them at the Union of British Columbia Municipalities ("UBCM") conventions. Time with each minister at the convention is strictly apportioned and therefore extremely valuable,

and in their evidence Mr. St. Dennis and Mr. Bontron both accused Ms. Roshard of consuming significant amounts of this precious time by promoting the Grape Project.

[38] Ms. Roshard conceded that she reported on the Project to Council, more frequently in 2007 and perhaps every couple of months in 2008. She testified that when the topic came up with government officials it arose incidentally, brought up by them, and it would have been poor manners for her to refuse to speak of it.

[39] She agreed she had unable to attend the Monday session of the UBCM convention in 2008 because of a tour of grape-growing sites in the Lillooet area, which included a renowned figure in the B.C. wine industry and provincial cabinet minister Pat Bell. The tour culminated in a wine-tasting on her property. Mr. Bell himself had arranged that tour and because of its subject matter she had a more extensive conversation with him about the Project than would otherwise have arisen during her meetings with provincial government officials.

[40] At the 2008 UBCM convention, which occurred during the fall, before Mr. St. Dennis gave his interview, she said that she had discussed the Project for perhaps 30 seconds out of the 15-minute allotted meetings with each minister, and then only to reply politely if the minster brought it up. The one exception she acknowledged was that when they were meeting with Premier Campbell she gave him a bottle of wine to pass on to his wife. It had been made by her father.

[41] She agreed that she had not identified herself as speaking in the capacity of a private citizen during the brief discussions at UBCM, despite Mr. Loyer's comments in his report about the importance of distinguishing her two roles. She also agreed that Mr. St. Dennis complained about her having these discussions.

[42] She denied ever "promoting" the Project in her dealings with government officials, although she ultimately agreed her role as mayor would certainly have provided her with opportunities to do that.

[43] I found Mr. St. Dennis' evidence to be vague and unhelpful on this issue.

2013 BCSC 1388 (CanLII)

[44] He was unable to point to any actual interference with Council business caused by Ms. Roshard's reports to Council on the progress of the Project, other than to say that it "kind of featured" at meetings. As to the supposed monopolization of UBCM meetings with her discussion of it, which he characterized as his "major beef", even his own description of how the topic arose acknowledged that the cabinet ministers had asked Ms. Roshard about it in some cases. He said that this "was fine except we had limited time and things to discuss." He did not particularize his concern about these conversations, beyond conveying the general impression that they intruded to some extent on the Council business that should have formed the exclusive subject-matter of these meetings.

[45] His overall evidence concerning Ms. Roshard was imbued with a host of petty criticisms that were irrelevant to either of the libels in issue, such as that she attended one of the UBCM meetings in a wheelchair after sustaining an injury instead of designating a substitute, or that she instituted a policy of non-fraternization with staff while continuing to engage in the practice herself.

[46] Aside from the allegation of monopolizing UBCM and Council meeting business, the rest of the conflicts he described were the ones that had been raised by the LRPA and found to be unjustified by Mr. Loyer.

[47] Most telling was his admission on cross-examination that he formed his conclusion that she was in a conflict *after* Mr. Loyer had delivered his report. He never read the report until the lawsuit began, despite acknowledging his duty to inform himself about this serious issue, but he disagreed with its conclusion nonetheless. He referred to his understanding from his previous terms as councillor that under the legislation the appearance of a conflict was the same as a conflict, but was unable to support that belief by reference to any actual legislation or policy. He ultimately formed his opinion that there was a conflict based on "reports", but he was unable to identify any of them. He said that it was "a mental process - not a paper process." When it was put to him that he had no basis for his opinion he said, "In my

2013 BCSC 1388 (CanLII)

mind I believe there is a certain amount of appearance of conflict", but that in terms of an objective basis he had no information on hand.

[48] Overall, his attempts to articulate any guiding principle leading to his conclusion that Ms. Roshard was in a conflict of interest were incoherent.

[49] I conclude that Mr. St. Dennis has failed to prove that Ms. Roshard was "taking up taxpayers' time promoting [the Grape Project]." That being the basis of his assertion of any conflict, the defence of justification fails with respect to it.

[50] To justify the allegation with respect to meetings, Mr. St. Dennis must prove that:

1. he and Mr. Bontron were not notified by Ms. Roshard about meetings involving council members until after they had been held; and

2. she deliberately set meetings on Thursday knowing that Mr. Bontron was not free to attend.

[51] For her part, Ms. Roshard testified that there were no meetings from which she had ever deliberately sought to exclude any of her colleagues.

[52] The meetings that Mr. St. Dennis and Mr. Bontron said they were not informed of until afterwards were with the local MLA, a cabinet minister, the school district, the regional health authority, the RCMP and a senior provincial government forestry official. These were not actual council meetings, but impromptu opportunities to meet with other agencies and levels of government that arose from time to time. Mr. St. Dennis thought that two of these meetings occurred in 2007 but could not be more specific than that. Mr. Bontron believed that the meetings with the school board and the RCMP were in 2006.

[53] However, Mr. St. Dennis presented no evidence that Ms. Roshard herself had deliberately failed to inform him of any of these meetings, or had caused him not be notified. He conceded that he did not know who had organized the various meetings and could not say that she had failed in this regard. Mr. Bontron similarly conceded

2013 BCSC 1388 (CanLII)

that he did not know if the mayor had asked the staff to invite him to meetings, which was the staff's responsibility, and cannot say that she took any deliberate steps to exclude him -- all he knows is that he "wasn't there." The meeting invitation for dinner with their MLA arrived in his office the morning after the dinner had taken place, but again he could not lay that at Ms. Roshard's feet.

2013 BCSC 1388 (CanLII)

[54] Mr. Bontron is an accountant. He had a second office in Pemberton and his practice was to work out of that office on Thursdays. He complained that he was missing a lot of meetings and said that Ms. Roshard had told him that government officials are only able to meet on Thursdays. As a result, he switched his Pemberton days to Fridays.

[55] Ms. Roshard's evidence was that she was aware of Mr. Bontron's commitments on Thursdays and tried to accommodate him when they could. The only exceptions were actual Council meetings that had to be scheduled in order to pass a measure by a certain date. She recalled the meeting involving the forestry official -- Mr. Bontron was quite upset that it was set for a Thursday and it ended up being rescheduled to a date a month later, when everyone except a different councillor could make it.

[56] I conclude that Mr. St. Dennis has failed to prove the truth of this assertion. The reasons that he and Mr. Bontron may not have received certain meeting notices remain murky, and there is no evidence of Ms. Roshard's complicity in that failure and no basis to infer it. As to the scheduling of meetings on Thursdays, the most that can be said about the defence evidence is that at some point Mr. Bontron took issue with it occurring. No evidence links her to a deliberate choice of that day for any specific meetings. Mr. Bontron's evidence that she claimed that it was the only day on which government officials could come to town seems highly unlikely and I do not accept it. He would have known that was not the situation in any case, because he testified about other meetings with government officials that he would have attended if he had received notice.

2013 BCSC 1388 (CanLII)

b. Qualified privilege

[57] An occasion of qualified privilege arises when a defendant had a legal, social or moral duty to make the statement, and the person to whom it was made was under a reciprocal duty to receive it. The privilege attaches to the *occasion* on which the statement was made, and not to the statement itself. The privilege can be defeated by proof of express malice on behalf of the defendant: *Martin v. Lavigne,* 2011 BCCA 104 at paras. 33 - 36.

[58] Occasions involving statements to the media have generally not been found not to attract the privilege, because the communication is to “the world at large”, rather than to someone under a reciprocal duty. However, courts have occasionally recognized a duty on the part of the speaker to “ventilate” an issue of great public concern: *Grant* at paras. 34 and 35.

[59] For example, in *Parlett v. Robinson* (1986), 5 B.C.L.R. (2d) 26 (C.A.), it was held that the defendant, a Member of Parliament who was his party’s critic of the Solicitor General’s ministry, had spoken on an occasion of qualified privilege when he alleged that a corrections official was improperly profiting from the work of prison inmates. The defendant had not disseminated his accusations too widely by speaking at a press conference, because of the electorate’s strong interest in knowing about the situation.

[60] I find that no such occasion arose in this case. As Mr. St. Dennis admitted, he took up the invitation from Ms. Easton to be interviewed in the hopes of obtaining additional votes in the election. There was no purpose for his communications beyond that, and certainly none of the recognized duties that could create an occasion of privilege were present. This was a self-serving and highly partisan exercise, and he has not shown that anything from his long list of grievances with the Roshard regime particularly needed ventilating. I draw the inference that he was essentially free-associating about his political opponent in front of an open microphone, and that he hit upon the two comments that end up being provably defamatory through no particular design.

[61] I accept that there is a public interest in knowing where candidates stand on election issues, and that there certainly could be occasions in which a specific burning issue in the community could be found to attract a reciprocal public interest that is sufficient to support this defence. To do so here however, would be to licence defamation in the service of no more worthy a purpose than settling random scores and advancing one's own position, in a purely political context.

2013 BCSC 1388 (CanLII)

c. Fair comment

[62] This defence is available when a defamatory comment is: (1) on a matter of public interest, (2) based on facts, (3) recognizable as comment, and (4) an opinion that a person could honestly have expressed on the proven facts: *WIC Radio Ltd. v. Simpson*, [2008] 2 S.C.R. 420, at para. 38.

[63] The statements in issue in this case can be characterized as relating broadly to matters of public interest. This seems to be a lower threshold than for finding the existence of a public duty that would create an occasion of qualified privilege.

[64] With respect to the conflict of interest allegation, Ms. Roshard's counsel is correct that the mere inclusion of the words "To me" does not in itself change the statement's character from a factual assertion to a comment: *Randall v. Weich,* [1982] B.C.J. No. 862 (S.C.), at para. 19.

[65] Even if it could be seen as a comment, Mr. St. Dennis' bigger difficulty is that the facts underlying the assertion that she was "taking up taxpayers' time promoting it" were neither contained elsewhere in the interview nor generally known to the readership.

[66] I am satisfied on the evidence that Ms. Roshard was an enthusiastic proponent of the Grape Project and that she both kept Council updated and readily answered inquiries from cabinet ministers about its progress. That is a far cry from proof that she consumed time that would otherwise have been utilized to the direct benefit of the business. I find that her comments at UBCM were largely, if not

completely, in response to questions put to her by ministers and that it would have been absurd for her to refuse to answer.

[67] More importantly, neither Mr. St. Dennis nor Mr. Bontron could point to any specific piece of district business that was not addressed in a timely way because of her involvement in the Project, including during the supposedly tightly-packed and time-limited UBCM meetings. Even Mr. Bontron's high-water mark estimate of three to five minutes of Grape Project discussion per 15-minute meeting (which I am rather skeptical that cabinet ministers would want to engage in, even if they asked the initial question) did not lead to any assertion that agenda topics were not addressed.

[68] As a result, I am not satisfied that the facts underling the comment have been proven, or that anyone could honestly have expressed the opinion on the actual facts, that Ms. Roshard was using up taxpayers' time promoting the Grape Project. The defence of fair comment for this statement fails.

[69] The meeting scheduling statement is more straightforward. These are self-evidently statements of fact, which I have found to be unsupported, and by no reasonable analysis can they be characterized as comments that arose from some underlying set of established facts.

[70] If the defences of qualified privilege and fair comment had not failed on the merits, I would have concluded that they were invalidated with respect to the conflict of interest statement because Mr. St. Dennis made it with express malice. In this case malice does not arise from a direct intention to harm Ms. Roshard, but instead from an ongoing, and if I may say quite obstinate, disregard for the truth of the situation on his part: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 145-6. Any viable accusation of conflict of interest against Ms. Roshard was a dead letter as of January 2008, when Mr. Loyer exonerated her. Based on further "reports" and discussions that he is now unable to identify, and without reading Mr. Loyer's report, Mr. St. Dennis developed his own view that a conflict existed, based on a past legislative standard about appearances equalling a conflict

2013 BCSC 1388 (CanLII)

that he is also unable to identify, and then sought to fortify the accusation by re-casting it to focus on the time she took up with the Grape Project. I find that this was an unreasonable adherence to a discredited theory, which led to his reckless use of the incendiary term "conflict of interest" during the interview.

2013 BCSC 1388 (CanLII)

d. Responsible communication in the public interest

[71] To succeed in this defence, the defendant must show that the publication was on a matter of public interest and that it was responsible in light of a variety of considerations, including whether he made any efforts to verify the information or get the plaintiff's side of the story: *Grant* at para. 126. Mr. St. Dennis' counsel did not spend a lot of time on this defence in his submissions, and I think that was wise.

[72] As was the case for fair comment, even conceding that matters of conflict of interest and deliberate exclusion of council members from meetings could raise concerns in the public interest, the elements of responsibility were not met for these communications. These are relatively serious allegations to make against an elected official, yet the importance and urgency of the events that had led to them had long since dissipated when they were made. That fact that allegations against Ms. Roshard were still "flying around" the community, as Mr. Loyer described it, did not make it responsible for Mr. St. Dennis to make his own unfounded contributions to the debate. It would really make a mockery of this defence, which was carefully crafted by the Supreme Court of Canada primarily to protect journalists who have done their best to get the story right on matters of great public importance, if it became a shield for petty and malicious sniping of this kind. Accordingly, this defence fails as well.

6. <u>Damages</u>

[73] *Best v. Weatherall*, 2010 BCCA 202 contains a helpful summary of the law on assessing damages in defamation actions:

> [46] There are many different statements intended to capture the difficulty of assessing the quantum of damages in defamation cases. It has been said that the calculation of damages for defamation is speculative and an inexact

> science, that there is no objective measure, and that damages need not be calculated mathematically. Further, although damages for defamation are difficult to assess, courts should sensibly and rationally attempt to arrive at a monetary sum that will compensate the plaintiff appropriately, i.e., achieve *restitutio in integrum*. Such an award should provide "solatium, vindication and compensation": see Brown, *The Law of Defamation*, vol. 3 at 25-7 - 25-11.
>
> [47] In *Hill v. Church of Scientology of Toronto*, Mr. Justice Cory (at para. 182), referring to Gatley on *Libel and Slander*, 8th ed. (London: Sweet & Maxwell, 1981), endorsed the following factors as being relevant to the assessment of general damages for defamation: the conduct of the plaintiff, his position and standing; the nature of the libel; the mode and extent of publication; the absence or refusal of any retraction or apology; the conduct of the defendant from the time of publication to the time of verdict; the conduct of the defendant before and after the action, and in court (including conduct of defendant's counsel); and evidence of aggravation or mitigation of damages.

[74] Ms. Roshard has conveyed through her counsel that her principal purpose in pursuing this lawsuit was to vindicate her reputation, and that monetary considerations are quite secondary to that. Nevertheless, her counsel has provided cases involving awards of general damages ranging from $15,000 to $400,000 for what were argued to be analogous cases involving defamation of public officials:

- *Olson v. Runciman*, 2001 ABQB 495 - $25,000 was awarded against the president of an aircraft repair company for writing letters alleging that a Transport Canada inspection was biased in favour of a rival company and had accepted favours from it.

- *Wells v. Sears*, 2006 NLTD 63 - $40,000 was awarded against a city councillor for defaming the mayor during a council meeting by alleging that he had done improper favours for his campaign donors, including developers.

- *MacRae v. Santa*, [2006] O.J. No. 3852 (S.C.J.) - $25,000 was awarded against a mayoral candidate who published a brochure alleging that the city manager was incompetent, acted contrary to the public interest and purposely withheld information.

2013 BCSC 1388 (CanLII)

- *Hunter v. Chandler*, 2010 BCSC 729 - $15,000 was awarded against a councillor for alleging, to just one other person, that the plaintiff, a member of the recreation commission who had previously done consulting work for the commissions, was in a conflict of interest.

- *Clark v. East Sooke Rural Association*, 2004 BCSC 1120 - $100,000 was awarded against a community association that, in the course of a bitter dispute with a development company, circulated a pamphlet alleging that one of the company's directors, a former regional councillor, had previously acted improperly to aid the company's principal.

- *Hodgson v. Canadian Newspapers Company Limited* (1998), 39 O.R. (3d) 235 (Gen. Div.); rev'd with respect to punitive damages (2000), 49 O.R. (3d) 161(C.A.) - $400,000 was awarded against a newspaper for publishing a series of articles alleging that a municipal engineering commissioner had acted corruptly to benefit a developer friend by recommending that the municipality pay the developer a large sum of money for a property, despite a previous agreement that it would be conveyed to the municipality at no cost.

- *Lawson v. Baines*, 2011 BCSC 326 - $30,000 awarded against a reporter for writing an article alleging that a senator, when he was the head of a union in the 1980s, had conducted himself corruptly in his dealings with two fraudulent stock promoters.

[75] While these cases share the common theme with the present case of damaging allegations of corruption against municipal officials or public servants, I think that their usefulness to me in arriving at an appropriate award is limited. In all of them, the defamatory meaning was part of the central thrust of the communication and in all of them except *Clark* there could have been no other purpose than to bring the alleged wrongdoing to the attention of the widest possible audience.

2013 BCSC 1388 (CanLII)

[76] Without attempting to excuse or minimize Mr. St. Dennis' comments, the reality is that they were parts of a long stream-of-consciousness narrative of criticisms of a political opponent, only two segments of which turned out to be actionable against him. The defamatory passages were given no particular emphasis among the many other grievances. Although they have been shown to be false and would certainly have lowered Ms. Roshard's reputation among the readers, they are in essence the by-products of Mr. St. Dennis' tongue running away from his good judgment in front of an open microphone.

[77] Further, while publication has certainly been proven, Town Talk and the Lillooet Insider, as organs of community discontent, did not offer him as broad a platform to damage Ms. Roshard's reputation as the newspapers, televised council meetings and widely distributed campaign literature gave to the defendants in these previous cases. Again without downplaying the potential of his comments to adversely affect Ms. Roshard's reputation, I infer that the publication of this interview would largely have been a case of preaching to the converted -- hard-core opponents of Ms. Roshard and her policies.

[78] In all of the circumstances, I conclude that an award of general damages of $5,000 is appropriate.

[79] I am not satisfied that aggravated damages should be awarded. As I have said, Mr. St. Dennis' malice in this case was more of the obstinate variety -- clinging to long-spent allegations largely because, as he agreed on cross-examination, Ms. Roshard's conduct irritated him. I recognize that he flatly refused to apologize in court when offered the opportunity, and that his defence was conducted essentially as a repetition of the same baseless accusations that Mr. Loyer dismissed or that underlay his defamatory statements, but I am still unable to find that there has been "particularly high-handed or oppressive" conduct by Mr. St. Dennis "thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement", as required by the Supreme Court of Canada in its discussion of aggravated damages at para. 188 of *Hill*.

2013 BCSC 1388 (CanLII)

[80] Finally on the question of damages, I allowed Mr. St. Dennis to amend his pleadings to add a reference to s. 11 of the *Libel and Slander Act*, R.S.B.C. 1996, c. 263, s. 1, which in the case of publication of libel "in a newspaper or other periodical publication or in a broadcast" permits evidence of settlements with other defendants to be given in mitigation of damages.

[81] Section 1 of the *Act* defines these terms:

> "broadcasting" <u>means</u> the dissemination of writing, signs, signals, pictures, sounds or intelligence of any nature intended for direct reception by, or which is available on subscription to, the general public
>
> > (a) by means of a device utilizing electromagnetic waves of frequencies lower than 3 000 GHz propagated in space without artificial guide, or
> >
> > (b) through a community antenna television system operated by a person licensed under the Broadcasting Act (Canada) to carry on a broadcasting receiving undertaking,
>
> and "broadcast" has a corresponding meaning;
>
> …
>
> "public newspaper or other periodical publication" <u>includes</u>
>
> > (a) a paper containing public news, intelligence or occurrences, or any remarks or observations in it printed for sale and published periodically, or in parts or numbers at intervals not exceeding 31 days between the publication of any 2 papers, parts or numbers, and
> >
> > (b) a paper printed in order to be dispersed and made public weekly or more often, or at intervals not exceeding 31 days, and containing only, or principally, advertisements.
>
> [Emphasis added.]

[82] Mr. St Dennis relies on s. 11 and has the onus of showing that the publications of his words after he spoke them to Ms. Easton fall within it.

[83] The Town Talk website does not appear to meet the definition of "broadcast" on its face, and no evidence was led to show that in fact a website can be accessed by the general public in either of the ways described in the definition, as opposed to by cables or telephone lines, as is popularly understood. A similar conclusion was reached on a more expansively worded definition of "broadcast" in *Shtaif v. Toronto Life Publishing Co.,* 2011 ONSC 6732 at paras. 18 - 19.

2013 BCSC 1388 (CanLII)

2013 BCSC 1388 (CanLII)

[84] There was no evidence that the Lillooet Insider is published with a frequency and regularity that would meet the definition of public newspaper or periodical under s-s (a). However, the overall definition only “includes” the specific definitions given, so other kinds of publications could, in theory, fit within it.

[85] I was only provided with the issue of the Insider that contained the excerpts from Mr. St. Dennis’ interview, along with evidence of where it was available for pickup by the public in Lillooet. It is obviously not one of the enumerated newspapers or periodicals in the s. 1 definition. It looks to me like a handout made up of a single article, word-processed in a rudimentary fashion and lacking any of the purpose, content or formatting that one would associate with a journalistic endeavour, even a basic one. I am not persuaded that it meets even the most expansive definition in s. 1. If that definition applied to this crude a product, which is at best a kind of polemical pamphlet or tract, that definition would be meaningless, becoming co-extensive with publication in any fashion. Accordingly, s. 11 is not available to Mr. St. Dennis.

[86] If I am incorrect on this point, it is clear from the evidence of the settlements with other parties that my award of damages is considerably lower than the settlement amounts, so the danger of an improper windfall to Ms. Roshard based on my inability to consider those settlements in mitigation is non-existent.

7. <u>Other orders</u>

[87] As Ms. Roshard sought in her pleadings, I also impose a permanent injunction against Mr. St. Dennis, prohibiting him from publishing any of the defamatory statements complained of in this lawsuit, or words to the same effect.

[88] Ms. Roshard has had substantial success in this trial and is entitled to her costs at scale B.

The Honourable Mr. Justice T.A. Schultes