IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lyncaster v. Metro Vancouver Kink Society,* 2019 BCSC 2207

Date: 20191219
Docket: S202460
Registry: New Westminster

Between:

Seann Lyncaster

Plaintiff

And

Metro Vancouver Kink Society, Adrian Estergaard, Beverly Gunn, Terra Hunter, Paul Jones, Sara Knappe, Daphne Kowalczyk, Erin Kyle, Vicky Monterrosa, Andrea Painter, and Victor Salmon

Defendants

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

Counsel for the Plaintiff:	G. Allen
Counsel for the Defendants:	B. Baynham, Q.C. D. Reid
Place and Date of Trial/Hearing:	New Westminster, B.C. November 1, 2019
Place and Date of Judgment:	New Westminster, B.C. December 19, 2019

Introduction

[1] This application is brought by the defendants to dismiss a defamation claim pursuant to the provisions of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [*PPPA*].

[2] The plaintiff, Seann Lyncaster, is a long standing member of the bondage and discipline, submission and masochism community (also known as the “BDSM” or “kink” community) in the Lower Mainland area of Vancouver.

[3] One of the defendants, Metro Vancouver Kink Society (“MVKS”), is a society whose purposes include educating and advocating for members of the Vancouver kink community. MVKS regularly hosts a variety of educational and social events for its members and for members of the broader kink community.

[4] Mr. Lyncaster claims in defamation against both the MVKS and its individual directors in respect of an open letter published on or about July 12, 2017 (the “Open Letter”), statements made at a town hall meeting of the MVKS on August 4, 2017 and the subsequent publication of minutes of the town hall meeting on September 5, 2017.

[5] The Open Letter was addressed to a pseudonym used by Mr. Lyncaster, Lord Braven, and was published on internet sites commonly accessed by members of the Vancouver kink community. The Open Letter included statements that Lord Braven (Mr. Lyncaster) had invited a minor to attend at his home for a BDSM-related discussion, had abused vulnerable young women, and had performed BDSM acts without the consent of his partners.

[6] The statements made at the August 2017 town hall meeting, amongst other things, outlined concerns of the MVKS regarding potential predatory sexual conduct and potential legal exposure resulting from Mr. Lyncaster inviting a minor to have a BDSM-related discussion. The Open letter was read at this meeting.

[7] Mr. Lyncaster claims that the Open Letter and the statements made at the town hall meeting and later published constitute defamatory statements. He seeks damages and injunctive relief against the MVKS and its directors.

The Legislative Framework

[8] The *PPPA* received Royal Assent on March 25, 2019. It applies to all proceedings commenced on or after May 15, 2018. The legislation is based on the *Uniform Protection of Public Participation Act* adopted by Uniform Law Conference of Canada in 2017, which was modeled on the anti-SLAPP (strategic lawsuits against public participation) provisions of the Ontario *Courts of Justice Act,* R.S.O. 1990, c. C.43, ss. 137.1-137.5 [*CJA*]: British Columbia, Legislative Assembly, *Official Report of Debates (Hansard),* 41st Parl, 4th Sess, No 197 (13 February 2019) at 6974 (David Eby).

[9] The relevant provisions of the *CJA* and the *PPPA* are substantially similar but unlike the *CJA*, the *PPPA* does not contain a provision outlining the purposes of the legislation. The *PPPA*'s purposes can be gleaned to some extent from the legislative debates preceding its entry into force. The B.C. Attorney General, the Honourable David Eby, stated the following:

> The purpose of this act is to enhance public participation by protecting expression on matters of public interest and litigation that unduly limits such expression …
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> … [T]he act would provide for a legal basis and expedited process by which, at an early stage in the proceedings, a court would be able to determine whether a lawsuit arises out of expression on a mater of public interest and, if so, to weigh whether the likely harm to a plaintiff is serious enough that the public interest in allowing the lawsuit to continue would outweigh the public interest in protecting the expression that gave rise to the lawsuit. In so doing, the act would improve access to justice, would balance the protection of freedom of expression with the protection of reputation and economic interests.
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> (British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 4th Sess, No 197 (13 February 2019) at 6974.)
>
> …
>
> This is a bill that is intended to protect an essential value of our democracy, which is public participation in the debates of the issues of the day, and in particular, to respond to a mischief that has arisen, which is people who are

> powerful and wealthy and able to afford lawyers initiating lawsuits or threatening lawsuits against individuals who are critical of them in order to stop them from participating in that public debate.
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> (British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 4th Sess, No 198 (14 February 2019) at 7018.)

[10] I adopt the following comments of Madame Justice Ross at para. 57 of her reasons in 2019 BCSC 2028, where she set out the purposes of the *PPPA:*

> … The expressed purposes are very broad. They are similar to the obvious intent of the *PPPA* as disclosed in the wording of the *Act*. The *PPPA* is aimed at preventing SLAPP lawsuits and encouraging public participation in debate on matters of public interest. It provides a screening mechanism whereby the plaintiff is required to address the merits of the claim and show that the interests of the plaintiff outweigh the public interest in free and open debate.

[11] Section 4 of the *PPPA* sets out the requirements for dismissal of a defamation action. These requirements are as follows:

> **4** (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that
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> (a) the proceeding arises from an expression made by the applicant, and
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> (b) the expression relates to a matter of public interest.
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> (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
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> (a) there are grounds to believe that
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> (i) the proceeding has substantial merit, and
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> (ii) the applicant has no valid defence in the proceeding, and
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> (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[12] There are two main stages in an analysis under s. 4. In the first stage, the defendant bringing an application for dismissal must satisfy the court that the expression at issue was made by them and that it relates to a matter of public interest. If the defendant fails to do so, their application must be dismissed.

[13] In the second stage, the onus shifts to the plaintiff, who must then satisfy the court that there are grounds to believe that defamation claim has substantial merit and that there is no valid defence. In addition, the plaintiff must show that it is in the public interest to allow the proceeding to continue. That is, the plaintiff must demonstrate that the harm potentially suffered by him or her if the defamation action does proceed outweighs the public interest in promoting the value of freedom of expression.

Issues

[14] For the purposes of this application, the defendants concede that the statements at issue, the Open Letter and later statements, constitute expressions made by them. I accept that this is the case.

[15] The first issued to be decided is whether under the first stage of the analysis, the Open letter and later statements relate to a matter of public interest.

[16] Second, if I find that the Open Letter and later statements relate to a matter of public interest, I must then decide whether the defamation claim and the defence relied upon have merit. In this case the defence relied upon is that the expressions are protected by qualified privilege.

[17] Finally, if the merits-based hurdle is satisfied I must then determine whether, on balance, the expressions satisfy the public interest requirement under s. 4(2) of the *PPPA*.

Do the Expressions Relate to a Matter of Public Interest?

[18] Under s. 4(1)(b) the onus is on the defendants to satisfy the court that the alleged defamatory statements relate to a matter of public interest.

[19] In my view, the key alleged defamatory statements, are almost entirely contained within the Open Letter. The Open Letter was read out during the town hall and minutes of that meeting were later published. My analysis will, therefore, focus on the statements contained within the Open Letter.

[20] The Open Letter, which purports to have been sent on behalf of the MVKS board of directors, begins by advising Lord Braven (Mr. Lyncaster) that MVKS is terminating its "professional relationship" with him. The reasons cited for this termination were the recent allegations of misconduct made against him, his refusal to accept accountability for the conduct alleged, and his "pattern" of denying the allegations. In the letter MVKS states that it will no longer work with him or recommend him in any professional capacity as a result of the recent allegations made against him and a pattern of past bad behavior and that it would no longer work with him or recommend him in any professional capacity.

[21] Next, the drafter of the Open Letter explains the reasons for using that format, including the following:

a) MVKS wanted to explain its decision-making process (in ending its relationship with Lord Braven) to the kink community;

b) MVKS thought that its concerns regarding Lord Braven's behaviour were serious enough to warrant publication; and

c) MVKS thought that the allegations against Lord Braven were serious, credible and numerous.

[22] The Open Letter then goes on to set out representative examples of the allegations of misconduct, which I have already summarized above (see paras. 5 and 6). It concludes by listing the types of activities that MVKS will no longer engage in with Mr. Lyncaster.

[23] In August 2018, the Ontario Court of Appeal released judgements in six appeals that were heard together, all of which concerned applications to set aside defamation actions. In one of those decisions, *1704604 Ontario Ltd. v. Pointes Protection Association,* 2018 ONCA 685 [*Pointes*], the court set out its interpretation of the anti-SLAPP provisions in s. 137.1 of *CJA.* In the debate leading up to the enactment of the *PPPA*, the B.C. Attorney General, David Eby, referenced *Pointes*

as an interpretive aid for the *PPPA*. I find the reasoning in *Pointes* to be helpful in my analysis of this application.

[24] In *Pointes* the court considered the meaning of "public interest" in s. 137.1(3) of the *CJA*. As is the case in s. 4 of the *PPPA,* the phrase "public interest" is not defined in the Ontario statute. The court stated that whether the subject matter of an expression relates to the "public interest" is determined by asking "what is the expression about, or what does it pertain to?": *Pointes* at para. 54. In my view, an additional and related question is: how is the general public, or a segment of the general public, impacted by the subject matter of the expression?

[25] There is no exhaustive list of topics that can fall under the rubric of "public interest". Some examples extracted from a number of authorities include the following: expressions concerning the suitability of a person to hold elected office; the expenditure of public funds; questionable business practices; legal rights; scientific or environmental matters; religion or morality; the arts; and public health and safety. Whether an expression relates to a matter of public interest is, therefore, to be determined on a case-by-case basis.

[26] The following principles apply to a consideration of whether a matter is of public interest:

a) A matter of public interest must be distinguished from a matter about which the public is merely curious or has a prurient interest.

b) The phrase "public interest" must be given a broad, although not unlimited, interpretation.

c) The public interest is to be determined objectively, having regard to the context in which the expression was made and the entirety of the relevant communication.

d) An expression can relate to a matter of public interest without engaging the interest of the entire community, or even a substantial part of the

community. It is enough that some segment of the community would have a genuine interest in the subject matter of the expression.

e) The characterization of the expression as a matter of public interest will usually be made by reference to the circumstances as they existed when the expression was made.

f) Neither the merits of an expression, nor the motive of the author in making it, should be taken into account in determining whether an expression relates to a matter of public interest.

g) To be of public interest, the subject matter must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or to which considerable notoriety or controversy has attached.

(*Grant v. Torstar Corp.* 2009 SCC 61 [*Grant*] at paras. 103-106; *Pointes* at paras. 57-65; *Walsh v. Badin,* 2019 ONSC 689 at para. 32).

[27] Reading the entirety of the Open Letter and the communications which followed, it is clear to me that the comments made largely concern allegations of improper conduct on the part of Mr. Lyncaster in the context of a public announcement explaining the decision of MVKS to terminate any further engagement with him. Issues of consent boundaries and safe interactions between members of the Vancouver kink community concern the welfare of community members, that is, their safety and health, and therefore would be of substantial concern.

[28] I do not consider that the expressions at issue arise solely in the context of a private dispute between individuals or a grouping of individuals. They are not merely a defamatory attack veiled as a discussion of a matter of public interest.

[29] In summary, I find that the defendants have satisfied their onus to show that the expressions within the Open Letter, and made later at and after the town hall

meeting, concern matters of public interest. The onus now shifts to Mr. Lyncaster to satisfy the merits-based hurdle.

Are There Reasonable Grounds to Believe that Mr. Lyncaster's Claim Has Substantial Merit?

[30] Pursuant to s. 4(2)(a)(i), the onus is on Mr. Lyncaster to satisfy the court that there are grounds to believe that his defamation action has substantial merit.

[31] The court in *Pointes* interpreted the word "satisfies" as meaning proof on a balance of probabilities. The court interpreted "grounds to believe" as meaning reasonable grounds to believe. As stated by the court at para. 69, "[a] statute that requires a judge to have 'grounds to believe' implicitly requires that those grounds be reasonable". Finally, the court interpreted "substantial merit" as meaning that a claim is shown to be "legally tenable and supported by evidence, which could lead a reasonable trier to conclude that the claim has a real chance of success": *Pointes* at paras. 68-69, 80. The court's interpretation of the words used in s. 137.1 of the *CJA* is very helpful in interpreting the words in s. 4(2) of the *PPPA*, given that the relevant provisions are substantially the same. I adopt these interpretations.

[32] Therefore, in summary, s. 4(2)(a)(i) requires Mr. Lyncaster to prove, on a balance of probabilities, that there are reasonable grounds to believe that his defamation claims are legally tenable and supported by evidence, which could cause a reasonable trier of fact to conclude that his claims have a real chance of success.

[33] As was pointed out in *Pointes*, the analysis at this stage is not equivalent to that which would be undertaken on a summary judgment application – in which a more significant evidentiary record would be before the court and the parties would be required to put their best foot forward. This application is brought, after all, very early in the litigation proceedings. I simply have to decide whether a positive finding in respect of Mr. Lyncaster's claim falls within the range of conclusions reasonably available on the motion record: *Pointes* at paras. 73, 75-78.

[34] Some assessment of the evidence put forward by the parties in support of their claim is required – but this assessment is not intended to be a final determination on the merits: *Pointes* at paras. 79,82.

[35] As set out at para. 28 of *Grant*, a plaintiff in a defamation case is required to prove that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; that the words referred to the plaintiff; and that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[36] There does not appear to be any dispute at this stage, that a judge could reasonably find that these requirements have been met. In fact, the defendants acknowledge that the Open Letter, the statements at the town hall and the subsequent publication of the minutes are expressions that could reasonably be held to be defamatory.

[37] I find that a reasonable trier of fact could conclude that the requirements for proof of a defamation claim set out in *Grant* have been met and therefore, that Mr. Lyncaster's claims have substantial merit. Therefore, he has satisfied the requirement under s. 4(2)(a)(i) of the *PPPA.*

Are There Reasonable Grounds to Believe that the Defendants Have No Valid Defence?

[38] Pursuant to s. 4(2)(a)(ii), the onus is on Mr. Lyncaster to satisfy the court that there are reasonable grounds to believe that the defendants have no valid defence to his defamation claim.

[39] The Ontario Court of Appeal in *Pointes* interpreted "valid" as meaning successful. The court, at para. 84, explained how the plaintiff can demonstrate that there is no valid defence:

> … The onus rests on the plaintiff to convince the motion judge that, looking at the motion record through the reasonableness lens, a trier could conclude that none of the defences advanced would succeed. If that assessment is among those reasonable available on the record, the plaintiff has met its onus. [Emphasis added.]

[40] Although the defendants have pleaded three defences to Mr. Lyncaster's defamation claim – qualified privilege, fair comment and responsible communication on a matter of public interest – they only rely on the defence of qualified privilege for this purposes of this application.

[41] The defence of qualified privilege is pleaded as follows at para. of Part 3 of the defendants' response to civil claim:

> 4. The alleged defamatory expressions … fall within the protection of the common law of qualified privilege as the Defendants were performing a public duty and the alleged defamatory statements were only made to people with a corresponding interest in receiving those statements.

[42] In a decision of this Court, *Rolfe v. Hertz,* 2009 BCSC 1522, Madam Justice Holmes, as she then was, summarized the key elements of the defence of qualified privilege as follows:

> [20] A qualified privilege entitles a person, in certain circumstances, to publish false defamatory statements with impunity. The privilege arises not from the type or the content of the statements, but from the nature of the occasion on which they were made. The defendant carries the burden of establishing that he or she made the statement on an occasion that attracts the privilege.
>
> [21] An occasion of qualified privilege may arise where the maker and the recipient of the statements had mutual interests or duties to make and receive them. As Professor Brown explains at s. 13.2(5):
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> > The law will protect the publisher of a defamatory statement provided the publisher has an interest or duty to communicate the information and the recipient has a corresponding duty or interest to receive it. Reciprocity of interest in essential.
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> [22] Because the occasion is assessed objectively, the defendant's personal belief that he or she was fulfilling a duty to communicate does not create such a duty. The is not whether the defendant had a right to make the communication or thought that he or she had a duty to make it, but rather whether a reasonable person would feel compelled by a duty to make the communication …

[43] Based on the evidence in the motion record before me, it is arguable that the defendants had an interest in, or a duty regarding, the publishing of the Open Letter and the statements which followed at the town hall meeting. I find this given MVKS's educating and advocating for members of the Vancouver kink community and its

involvement in organizing social events for its members and for members of the broader kink community. I find that a reasonable judge could likely find that this aspect of the test for a defence of qualified privilege is made out.

[44] Even where an interest or duty to publish a defamatory statement is found a defence of qualified privilege may be defeated if the communication is published to an excessively wide field. In the decision of *Jones v. Bennett,* [1969] S.C.R. 277 at 285 [*Jones*], the Supreme Court of Canada stated:

> ... it must be regarded as settled that a plea of qualified privilege based on a ground of the sort relied on in the case at bar cannot be upheld where the words complained of are published to the public generally or, as it is sometimes expressed, “to the world”.

[45] The principle that publication to the world at large defeats a defence of qualified privilege is not absolute: *Moises v. Canadian Newspapers Co.* (1996), 24 B.C.L.R. (3d) 211 at para. 24 (C.A.).

[46] Without some reason for publishing a defamatory statement to the world at large, via the internet such publication may defeat the defence of qualified privilege. In a more recent decision from the Ontario Superior Court of Justice, *Canadian Standards Association v. P.S. Knight Co. Ltd.,* 2019 ONSC 1730 [*Knight*], the court stated at para. 58:

> The privilege will be defeated if the information is communicated to an inappropriate or excessive number of peoples or if the information that is communicated was not reasonable appropriate to the legitimate purposes of the occasion (*i.e.,* excessive distribution or inappropriate content). Publication by Internet is rarely treated as necessary or reasonable. In addition, the privilege does not extend to reporting uncorroborated allegations of criminal wrongdoing to the general public as opposed to law enforcement or investigative authorities.

[47] The Open Letter was published on the MVKS Facebook page and a kink community website, FetLife. The minutes of the town hall meeting were also published on FetLife. Although I accept that, as suggested by the defendants, most people accessing these sites would likely be from the kink community, I do not understand that broad public access to those websites was restricted.

[48] Not everyone who had access to the MVKS Facebook page or FetLife would have had a reciprocal interest in receiving the Open Letter or minutes of the town hall. The evidence in the motion record before me establishes that the Open Letter would be viewed by those outside of the Vancouver kink community with little or no risk of harm resulting from contact with Mr. Lyncaster. In particular, I note the following evidence from Ms. Knappe:

a) the impugned postings would be seen by people around the world;

b) the postings would be read by people who may never interact with Mr. Lyncaster;

c) Ms. Knappe did not know exactly who would view the postings;

d) the audience for the postings went far beyond MVKS's own membership;

e) not everyone viewing the websites was a member of the kink community; and

f) Ms. Knappe knew that she had no control over whether the postings would be shared by users of the relevant websites.

[49] In addition, in response to questions during cross-examination on her affidavit, Ms. Knappe admitted that some members of the kink community attend at kink include events at Mr. Lyncaster's and others do not. She admitted that the most likely situation for someone in the kink community to encounter Mr. Lyncaster is either through a kink event at his home or at another specific event that he frequents. There does not appear to have been any effort to direct the distribution of the alleged defamatory statements to those attending kink events at his home or those attending events which he attended.

[50] By publishing to the world at large at the town hall and in print on-line the defendants may be unable to establish the required reciprocity necessary to engage the defence of qualified privilege: see *Ferreira v. Da Costa,* 2019 ONSC 1853 at para. 42. In my view, a reasonable judge could find that the Open Letter and the

meeting minutes were published, unnecessarily, “to the world” and therefore that the defence of qualified privilege would not succeed.

[51] I do not accept the defendants’ contention that because the documents posted on the websites referred to Mr. Lyncaster by his pseudonym, Lord Braven, and only members of the Lower Mainland kink community would have known who Lord Braven actually was, that they were effectively published to only a smaller group, namely members of the kink community who would have an interest in this communication. In my view, the use of a pseudonym for Mr. Lyncaster in this communication may not be found by a reasonable judge to insulate the defendants from an assertion that the communication was made to the world at large. Whether or not those viewing the communication would know or be able to discovery that Lord Braven was actually Mr. Lyncaster is a question that should be dealt with at trial.

[52] In my view the alleged defamatory statements include not so thinly veiled allegations of criminal misconduct on the part of Mr. Lyncaster – in particular, allegations of non-consensual sexual conduct. There is evidence on the record before me which suggests that these allegations were uncorroborated. In *Knight* the court found that the defence of qualified privilege does not extend to reporting uncorroborated allegations of criminal wrongdoing to the general public, as opposed to law enforcement or investigative authorities. I would not go this far as there may be circumstances in which it is beneficial or necessary to report allegations of criminal wrongdoing beyond the police, to a targeted group of individuals who are potentially impacted by future misconduct. In this case I find that a reasonable judge could conclude that the alleged defamatory statements were published “to the world” and not only to people who had a corresponding interest in receiving them.

[53] In conclusion, on the record before me, I find that Mr. Lyncaster has met his onus of proving that a reasonable judge could conclude that the defence of qualified privilege would not succeed.

Does the Public Interest in Continuing the Proceeding Outweigh the Public Interest in Protecting MVKS's Expression?

[54] Pursuant to s. 4(2)(b), Mr. Lyncaster must also satisfy the court that the harm that was or is likely to be suffered by him as a result of the publication of the alleged defamatory statements is serious enough that the public interest in allowing his defamation claims to continue outweighs the public interest in protecting those statements on the basis of freedom of expression.

[55] As stated in *Pointes*, this portion of the test for dismissal of a defamation claim, which the Ontario Court of Appeal refers to as the "public interest hurdle", reflects a legislature's determination that "the success of some claims that target expression on matters of public interest comes at too great a cost to the public interest in promoting and protecting freedom of expression": at para. 87. In other words, in some cases, claims that succeed on the merits-based portion of an application for dismissal under anti-SLAPP legislation may still be properly terminated for public interest reasons: *Pointes* at para. 86. The relative societal benefits of dismissing a defamation suit at an early stage in the interests of promoting freedom of expression and avoiding the chilling effect of a defamation proceeding, are compared to the benefits of letting the claims proceed to a full trial. What is required is a weighing of these competing benefits in any given case.

[56] On the plaintiff's side of the scale is the harm that has been or would be suffered from the publication of the alleged defamatory statements. A plaintiff seeking to satisfy the public interest portion of the test for dismissal under s. 4(2)(b) must provide some evidence of harm. Harm may include non-monetary harm, such as to the preservation of a plaintiff's good reputation or personal privacy. It is not necessary or practical for a plaintiff to provide a fully developed damages brief at this stage. A common sense reading of the claim, supported by sufficient evidence to draw a causal connection between the alleged defamatory statements, and damages that are more than nominal will suffice: *Pointes* at paras. 88, 90.

[57] Mr. Lyncaster provided evidence that the publication of the Open Letter and the other alleged defamatory statements have negatively impacted his standing in the kink community and the success of his events. He states in his affidavit, filed in response to the defendants' application, that since the publication of the Open Letter, the attendance at BDSM events at his home has dropped and he has not conducted any workshops. He states that this change has caused both financial harm and stress, as he can no longer rely on entry fees to offset his costs. He states that he may lose his home because of this financial stress.

[58] In addition, Mr. Lyncaster provided evidence that his social circle, which largely consists of members of the BDSM community, has been negatively impacted because of being "branded an abuser and a dangerous predator". He says that he has lost numerous friendships as a result of the publication of the Open Letter.

[59] Mr. Lyncaster provided affidavit evidence that his mental and physical health have been impacted. He says that that, since the publishing of the Open Letter, he has been diagnosed with generalized anxiety disorder and that his pre-existing depression has worsened. In addition, he claims that he was recently diagnosed with atrial fibrillation, which he believes was at least partially caused by extreme stress experienced because of the accusations made against him.

[60] The defendants say that Mr. Lyncaster has not provided independent medical evidence with respect to the alleged psychological and physical impacts of the publication of the Open Letter and later materials. In any case, they say that a causal link between the alleged health-related and financial impacts has not been shown. In my view, at this stage of the proceeding, it is not surprising that Mr. Lyncaster has not provided medical evidence.

[61] I am satisfied that, given the stage of this proceeding, Mr. Lyncaster has satisfied his obligation to demonstrate that he may have suffered some financial, physical, psychological and social harm as a result of the publication of the Open Letter and later expressions. Notwithstanding that there may be other causes for some of the harm alleged by Mr. Lyncaster, including alleged defamatory statements

that are the subject of other proceedings, on a common sense reading of the claim and an evaluation of Mr. Lyncaster's evidence, I find that there is a causal connection between the alleged defamatory statements and at least some of the harm he alleges that he has suffered.

[62] It should be remembered that not all expressions on matters of public interest serve the values underlying freedom of expression. In assessing the public interest favouring the defendants' freedom of expression, a judge must assess the public interest in protecting the actual expression that is the subject of the lawsuit. The relevant expressions in this case concern the allegations criminal misconduct. In my view, there is reduced public interest in the publication of uncorroborated allegations of criminal misconduct to an excessively broad field. On the record before me, there appears to be a serious question of whether there is evidence corroborating the allegations made against Mr. Lyncaster. I am not satisfied that the public interest in ensuring the safety and health of members of the Vancouver kink community could not have been served by reporting the allegations of criminal misconduct to the police.

[63] In addition, the claim of Mr. Lyncaster does not have the hallmarks of the type of anti-SLAPP suit contemplated in the legislative debate. He first asked that MVKS withdraw the alleged defamatory statements and they refused. I do not conclude that this is a situation in which Mr. Lyncaster is attempting to use this litigation to stifle expression or silence his critics. There does not appear to be a power differential in favour of Mr. Lyncaster arising from a greater access to the financial resources required to advance his litigation. Arguably, with respect to the parties' ability to fund this litigation, the power differential favours the defendants.

[64] In summary, I am satisfied that Mr. Lyncaster has demonstrated that the harm likely suffered by him as a result of the publication of the Open Letter, and the relevant communications that followed, is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expressions.

Conclusion

[65] For the reasons set out above, the application of the defendants to dismiss the defamation claim of Mr. Lyncaster is dismissed.

"Mayer, J."