

ONTARIO

SUPERIOR COURT OF JUSTICE

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| BETWEEN: |) | |
| |) | |
| Mike Bullard |) | |
| |) | Asher Honickman and Joseph Villeneuve, |
| Plaintiff |) | for the Plaintiff |
| |) | |
| – and – |) | |
| |) | |
| Rogers Media Inc., Sarah Boesveld and Christina Vardanis |) | Andrew Bernstein and Sarah Whitmore, for the Defendants |
| |) | |
| Defendants |) | |
| |) | |
| |) | |
| |) | HEARD: February 21, March 6 and May |
| |) | 21, 2019 and February 28, 2020 |

REASONS FOR DECISION RE: S. 137.1 MOTION

MCKELVEY J.:

Introduction

- [1] By 2016 the plaintiff, Mike Bullard, had achieved considerable success as a comedian and radio personality. He hosted a radio program daily on a prominent Toronto radio station, CFRB, which is operated by Bell Media. He also made frequent appearances at private events which generated a significant amount of additional income. Between August of 2015 and April of 2016, Mr. Bullard was involved in a romantic relationship with another prominent member of the media, Cynthia Mulligan, who was a Toronto broadcast journalist with City TV, which in turn was owned by Rogers Media.

- [2] By the fall of 2016, following the breakup of their relationship, Mr. Bullard faced a series of criminal charges, which included a charge of criminal harassment under s. 264(2)(b) of the *Criminal Code of Canada*, as well as a charge of harassing communications under s. 372(4) of the *Criminal Code*. At a preliminary hearing, Mr. Bullard was discharged on the charge of criminal harassment, but was committed to trial on the harassing communications charge as well as other charges which related to his conduct following the laying of the initial charges. He subsequently pleaded guilty on June 8, 2018 to

several of the charges, including the harassing communications charge. Both the laying of the criminal charges as well as his plea of guilty attracted considerable media attention.

- [3] Shortly following Mr. Bullard’s plea of guilty to the criminal charges, *Chatelaine Magazine*, on June 13, 2018, published an article based on an interview with the victim, Cynthia Mulligan. The article was also posted online. Following publication of the article, Mr. Bullard brought an action for defamation against Rogers Media, which publishes *Chatelaine* as well as Sarah Boesveld, who was the author of the article and Christina Vardanis, who was the executive editor at *Chatelaine* and was responsible for editing the article. Interestingly, Cynthia Mulligan, whose comments formed the basis for the article was not named as a defendant in the action.
- [4] Following delivery of their statement of defence, the defendants brought a motion pursuant to s. 137.1 of the *Courts of Justice Act* to dismiss the action. This section is often referred to as the “anti-SLAPP” legislation. These Reasons explain why I have concluded that Mr. Bullard’s action should be dismissed pursuant to s. 137.1 of the *Courts of Justice Act*.

Applicable Legal Principles

- [5] The provisions of s. 137.1 of the *Courts of Justice Act* have generated a large volume of caselaw since they were first passed in 2015. The Ontario Court of Appeal has dealt with the interpretation of the provisions on frequent occasions. Appeals from two of its decisions are currently under reserve by the Supreme Court of Canada. It is not surprising that the provisions have generated so much litigation given that two competing interests come into conflict with the legislation. The first interest is the right of a person who is defamed to clear his or her name and demand compensation. The second interest involved is the right of individuals to express themselves on matters of public interest. This conflict was captured by the comments of the Supreme Court of Canada in their decision in *Grant v. Torstar Corp.*, 2009 SCC 61, where Justice McLachlin quotes Justice Binnie in an earlier decision where he states, “[a]n individual’s reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to ‘chill’ freewheeling debate on matters of public interest”.
- [6] The purposes of s. 137.1 are set out at subsection 1 which are stated to be as follows:
- (a) to encourage individuals to express themselves on matters of public interest;
 - (b) to promote broad participation in debates on matters of public interest;
 - (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
 - (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

- [7] Subsection (3) of s. 137.1 provides that on a motion by a defendant, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.
- [8] Subsection (4) sets out the test that a responding party must meet to avoid a dismissal of the action. This section states,
- A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,
- (a) there are grounds to believe that,
- (i) the proceeding has substantial merit, and
- (ii) the moving party has no valid defence in the proceeding; and
- (b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.
- [9] The Ontario Court of Appeal decision in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 is one of the leading Ontario Court of Appeal decisions on the proper interpretation of s. 137.1. The *Pointes* decision is one of the two decisions that were recently argued before the Supreme Court of Canada, but pending a decision by the Supreme Court of Canada, the principles enunciated by the Court of Appeal in the *Pointes* decision remain binding on this Court. The *Pointes* decision accepts that the purpose of s. 137.1 is that expression on matters of public interest is to be encouraged and that litigation, “of doubtful merit that unduly discourages and seeks to restrict free and open expression on matters of public interest should not be allowed to proceed beyond a preliminary stage.” (para. 45).
- [10] The Court in the *Pointes* decision confirms that the onus is on the defendant (the moving party) to satisfy the motion judge that the proceedings arise from an expression made by the defendant and that the expression relates to a matter of public interest. If those conditions are met, the onus then shifts to the plaintiff or responding party to satisfy a motion judge that the tests set out in subsection (4) have been met by the defendant. Thus, a defendant will be required to satisfy a motion judge that there are grounds to believe: 1) that the proceeding has substantial merit; 2) that the moving party has no valid defence in the proceeding; and 3) that the harm suffered by the plaintiff is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.
- [11] In considering the issue of whether the action has substantial merit and whether the moving party has no valid defence, the Court of Appeal cautions that motion judges have to be careful that s. 137.1.1 motions do not slide into *de facto* summary judgment

motions. The test of substantial merit is shown to be legally tenable and supported by evidence where that evidence could lead a reasonable trier to conclude that the claim has a real chance of success. Similarly, once a defendant has put a defence in play, the persuasive burden moves to the plaintiff to satisfy a motion judge that there are reasonable grounds to believe that none of the defences put in play are valid. As noted by the Court in *Pointes* 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 reasonably available on the record, the plaintiff has met its onus”.

[12] It is apparent, therefore, that the onus of a defendant under subsection (4)(a) is a relatively low bar.

[13] The court in the *Pointes* decision recognizes that the real heart of the anti-SLAPP legislation is found in subsection (4)(b) which considers the public interest in protecting the expression as compared to the degree of harm that has been suffered by the responding party.

[14] At para. 88 of the *Pointes* decision, the Court of Appeal states,

The harm suffered or likely to be suffered by the plaintiff as a consequence of the defendant’s expression will be measured primarily by the monetary damages suffered or likely to be suffered by the plaintiff as a consequence of the impugned expression. However, harm to the plaintiff can refer to non-monetary harm as well. The preservation of one’s good reputation or one’s personal privacy have inherent value beyond the monetary value of a claim. Both are tied to an individual’s liberty and security interests and can, in the appropriate circumstances, be taken into account in assessing the harm caused to the plaintiff by the defendant’s expression.

[15] At para. 90 of the *Pointes* decision, the court notes that a plaintiff must provide a basis upon which a motion judge can make some assessment to the harm done or likely done to it by the impugned expression. The court notes that “this will almost inevitably include material providing some quantification of the monetary damages”. The court accepts, however, that a plaintiff is not expected to present a fully developed damages brief. At para. 92, the court notes that equally important to the quantification of the damages, a plaintiff must provide material which can establish the causal link between the defendant’s expression and the damages claimed.

[16] At para. 99 of the decision, the court notes that,

[I]f the defendant has demonstrated that the plaintiff has not suffered any significant harm and has brought the lawsuit to silence or punish the defendant, the public interest analysis should be straightforward and lead

to a dismissal of the action without the need to engage in the more difficult and time-consuming merits-based analysis.

Summary of the Chatelaine Article

[17] The title of the Chatelaine article is “‘He was like two different people’: Cynthia Mulligan on Mike Bullard’s Harassment And His Guilty Plea.”

[18] In the preamble of the article, the author states,

Toronto broadcast journalist Cynthia Mulligan first heard from comedian and radio host Mike Bullard in the run up to the last federal election in 2015, when he messaged her over Twitter with a compliment about her work and an invitation to coffee. “He was very charming, very funny — knew his news, knew his politics,” she says. But when they started dating, Bullard got “very intense” very quickly. Over the next few months, they would break up and get back together three times before he started relentless calling and texting her, despite Mulligan’s repeated pleas to leave her alone.

In July of 2016, Mulligan reported his behaviour to police, who gave him a warning, and then two more when he wouldn’t stop. That fall, Bullard lost his job on Newstalk 1010 after being charged with criminal harassment, obstruction of justice and breaching conditions to stay away from Mulligan, who feared for her safety.

In court on Friday, Bullard pleaded guilty to one count of harassing communications and two counts of breaching court orders. His lawyer called it “willful blindness,” fuelled by love. Mulligan calls it harassment. Her victim impact statement (which she wrote while covering the Ontario election, interviewing premier-designate Doug Ford minutes before racing to court to hear the judge’s ruling) made her message clear: “no woman should ever have to go through this simply because she ended a relationship”.

[19] Later in the preamble, the author states,

In an exclusive interview at her Toronto home, which is still protected by security cameras and an alarm, Mulligan told Chatelaine what this two-year legal saga has been like for her and her daughters, now 18 and 14, how the court system can improve and why harassment needs to be taken much more seriously in our culture.

[20] The article then proceeds with a question and answer format. The focus of the article is on Ms. Mulligan’s views about the harassment she suffered, together with comments about how the court system could improve, and why she felt that harassment needs to be taken much more seriously.

[21] The portions of the article which have attracted the most attention are as follows:

You still have security cameras outside your house, and in fall 2016, police actually suggested you find somewhere else to live temporarily, for your own safety. How else has this affected your day-to-day life?

During the period of harassment, Bullard would text me while I was on air. It was awful, my hands would start shaking. I'd be on air, I'd look down because my scripts were on my phone and all of a sudden his name would come up or it's dialling and I'm live. If I worked late, security would walk with me. He never physically threatened me. Yet I did feel threatened because there is something about when someone won't leave you alone repeatedly – it starts to become incredibly unnerving.

Did you talk to your daughters much as this was happening?

They were aware because they kept seeing my phone explode with his name on it, over and over again. They'd ask, "What is he doing? Mom! Why won't he leave you alone?" They were upset for me. The toughest part was when I came home from the police station after Bullard's arrest to tell my daughters that police suggested we should move.

You said in your victim impact statement that when a mother is being harmed in this way, her children are too.

Absolutely. I was trying to shield them from it, I wasn't letting them know at that point that I was getting scared. I wanted to protect them from that as much as possible. When we had to move out of our house, that was devastating to me. But they're actually the ones who wanted me to speak up about this — they said, "Keep going. Don't stop."

The Plaintiff's Allegations

[22] At para. 12 of the Statement of Claim, the plaintiff sets out the basis for his claim of defamation. This paragraph states as follows,

12. Mr. Bullard states that the defamatory words in their natural and ordinary meaning, and by innuendo, falsely and maliciously meant and were understood to mean that: he was guilty of criminal stalking despite the charge having been dismissed by the court; the allegations against him are true, despite being dismissed by the court; and by virtue of same, he is unfit for employment and/or intimate relationships.

[23] At para. 13 of the Statement of Claim, the alleged defamatory words are set out. They are as follows:

1. “After being charged with criminal harassment, obstruction of justice and breaching conditions to stay away from Mulligan, who feared for her safety”
2. “Her victim impact statement ... made her message clear”
3. “In an exclusive interview at her Toronto home, which is still protected by security cameras and an alarm...”
4. “You still have security cameras outside your house and in fall 2016, police actually suggested you find somewhere else to live temporarily, for your own safety”
5. “If I worked late, security would walk with me”
6. “Yet I did feel threatened...”
7. “The toughest part was when I came home from the police station after Bullard’s arrest to tell my daughters that police suggested we should move”
8. “I wasn’t letting them know at that point that I was being scared...when we had to move out of our house, that was devastating to me”
9. “There are more plea deals and more people walking away...it’s just about attrition and that is not justice”
10. “I received many emails from other women since I released my victim impact statement and it is so sad because they are telling me the same thing. We are victimized the first time and then again by the courts.
11. “The criminal case ended Friday with Bullard’s guilty plea and conviction ordering him to serve six months probation and take a domestic violence course”
12. “I don’t think he will admit even to himself that he did these things”

[24] In his supporting affidavit, Mr. Bullard summarizes his complaints about the article at para. 12 as follows:

The defamatory article heavily features claims that Ms. Mulligan was afraid to the point of: (i) installing security cameras; (ii) having security walk her to her vehicle; (iii) dealing with recommendations to move out of her home; and (iv) moving out of her home. By highlighting things that were not proven in court, and conflating the June 1, 2018 and June 8, 2018 hearings, the defendants distorted the

record and made it appear as though the charge to which I did plead guilty, was in fact criminal harassment (which requires objective fears for safety) and/or that I made a plea deal to escape conviction on the most serious offence.

[25] At para. 16 of his affidavit, Mr. Bullard states more succinctly,

There are grounds to believe that the subject article is to act as a malicious hit piece perpetrated against me by the defendants and/or the accuser in the criminal proceedings and/or others (ie. confidential “source”) working with the defendants.

Chronology of Events

[26] The events leading up to the publication of the Chatelaine article have a long history and for the most part are well documented including many of the messages which were sent by Mr. Bullard.

[27] Between August of 2015 and April of 2016, Mr. Bullard and Ms. Mulligan were involved in a romantic relationship. The evidence of Ms. Mulligan is that this relationship was ended by her in April, 2016.

[28] After the relationship ended it would appear that there were communications between Ms. Mulligan and Mr. Bullard and she did not appear to have a problem hearing from him. However, that changed on June 12, 2016 after Ms. Mulligan sent a message to Mr. Bullard wishing him “happy birthday”. In response Mr. Bullard texted back the following message,

I assume you are back. The latest rumor regarding me this week is that I showed up at your award dinner to stalk you. Unfortunately (sic) I kept your text asking me to come and forwarded them to Pam. It is my hope that you will remedy this misconception at your next morning meeting. I think it would be the right thing to do since everyone is looking for the next Gomeshi and we both know that’s the last thing I am. I have no desire to use my show as a platform to set the record straight. Thanks.

[29] The message from Mr. Bullard was not received well by Ms. Mulligan who responded,

Threatening to talk about me on your show is an abuse of power and I have no doubt your previous text is intended as a threat, this is becoming toxic and unhealthy. Please do not contact me. Please do not contact me again and stop contacting my friends.

[30] Mr. Bullard continued to send messages to Ms. Mulligan. On June 14, 2016 he sent the following message:

Please do as I ask for once and give my helmet to Pam when she comes back to work tomorrow.

- [31] On June 25, 2016, Mr. Bullard wrote to Ms. Mulligan: “If I don’t hear from Jamie by 4 tomorrow, I will address situation on Dave Eddy’s show tomorrow evening.”
- [32] Jamie is a reference to Jamie Tumelty who was the cameraman for Ms. Mulligan. Mr. Bullard’s text suggests clearly that he is going to talk about his relationship with Ms. Mulligan on the radio. Ms. Mulligan did not respond to this message.
- [33] On June 26, 2016, Mr. Bullard sent Ms. Mulligan two additional messages. The first read, “It’s well after 4”, the second one read, “Leaving now”.
- [34] On June 27, 2016, Mr. Bullard wrote to Ms. Mulligan, “Sorry had to be said and I will get in touch with Jamie”.
- [35] On June 28, 2016, Mr. Bullard sent the following email to Mr. Tumelty with a copy to Ms. Mulligan:

Jamie, people I trust inform me that you have been spreading lies about my behaviour with Cynthia. Don’t bother denying it. I don’t know what masturbatory white knight fantasy was behind it and I’m not interested in hearing your reasons. Turn it around now. I have asked Cynthia on numerous occasions to remedy this situation and she is unwilling to do so. That’s fine because I would forgive her anything. You are a different story. I am sure the snow peas between your legs would prevent you from having a face to face with me, but if you decide to screw up the much needed courage required feel free to bring Cynthia with you as she has a tendency to bring out my gentle side. I better hear from you. Mike

- [36] Following this email both Ms. Mulligan and Mr. Tumelty were becoming very apprehensive about the tone of Mr. Bullard’s messages. Their employer, Rogers, contacted Bell Media to report their concerns resulting in the following message from Mr. Bullard to Ms. Mulligan on June 30, 2016,

Interesting day. Rogers contacted Bell Media today regarding the email I sent to you and your friend. Came pretty close to losing my job. Its ok. I am a big boy. Sorry for any discomfort I caused you as far as the question you asked him. Not sure how I feel anymore. Best, Mike.

- [37] On July 7, 2016, Mr. Bullard wrote to Ms. Mulligan as follows:

At the behest of Bell Media I have been asked to take a bit of a leave to clear my head. Not sure when I am leaving or how long they want me gone. Just know it will be soon. We are both highly visible people and it is a small town so I wondered if we could meet at a time convenient to you – for you to put our differences to bed. I have always been and will always be a gentleman where you are concerned but I have a couple of issues to address. If you don’t want to that is ok but don’t expect me to

do it by phone for obvious reasons. Nothing else (sic) this would be a great opportunity for Vinnie White if I decide not to return.

- [38] By July 9, 2016, Ms. Mulligan had gone to the police to report her concerns about Mr. Bullard's continuing contact with her, having been clearly told by her that he was to stop. Despite this, Mr. Bullard continued to contact her by phone and written messages. For example, on July 30, 2016, he sent the following message:

Kinda buzzed. Excuse text. Could never hate you, little girl, matter of fact, will always love you in spite of crappy things you did, hate dating but will keep doing it. You knew I was a combination renaissance man dinosaur when we were together. Awhile. Can't believe. Didn't stand up for me and called the cops but that's ok, I know what problem is. Weird though still best thing that ever happened to me. Bye, Mike.

- [39] On August 9, 2016, Mr. Bullard wrote:

Thanks and thanks for the mess you have made of my life. Get some landmark counselling before you fuck up yet another good man.

- [40] Ms. Mulligan once again reported her concerns to the police on August 12 about Mr. Bullard continuing to contact her. Police met again with Mr. Bullard. The communications from Mr. Bullard continued. Ms. Mulligan's evidence at the preliminary hearing on the criminal charges was summarized by the preliminary hearing judge as follows:

In late August, early September, Mulligan received phone calls from payphones. The first was from Bullard. He asked why she would go to the police as he had never threatened her. She said it was harassment and Bullard's voice grew louder and she hung up. There were six more calls from payphones where the caller would – as she described – hork and spit, and hang up or just hang up. On one such call she recognized Bullard's voice before the hang up. When she realized that he was horking and spitting, her feelings changed. It was degrading. She testified that if it happened in person it would be an assault. On another call there was silence. Mulligan said, "I know its you" and the caller hung up. Mulligan testified that she felt these texts were sent in anger. They were stressful to receive. She needed them to stop. They were destroying her sense of peace and security. Her hands would shake when she would get them. She felt Bullard was not acting rationally. She was becoming concerned about his state of mind. She contacted the police thinking it would stop the communications.

- [41] On September 21, 2016, Mr. Bullard was charged with criminal harassment and making harassing communications. These charges were widely reported in the media. In addition, following the initiation of these charges, Mr. Bullard lost his job at CFRB Radio.

- [42] Mr. Bullard was released with conditions following those charges. On October 13, 2016, Mr. Bullard sent a message to a friend of Ms. Mulligan's and asked the friend to forward it to Ms. Mulligan. The note or text contained the phone number of the investigating police officer and read, "She said if Cynthia called her of her own volition and withdraw the complaint, they would withdraw the charge".
- [43] The above communication was forwarded to the police and a further charge of obstruction of justice was filed against Mr. Bullard.
- [44] Further, on October 26, 2016, Mr. Bullard was charged with a further criminal offence; failing to comply with his recognizance as he was not residing with his surety as required.
- [45] A preliminary hearing on the outstanding charges was conducted in April, 2018. The decision of the preliminary hearing judge was rendered on June 1, 2018. At that time, the criminal harassment charge was dismissed. Mr. Bullard was, however, committed over to trial on other charges including the harassing communications charge, the obstruction of justice charge, and the failure to comply with his recognizance.
- [46] The criminal harassment charge and the harassing communications charge were both based on the alleged harassing communications made by Mr. Bullard. The difference between the two charges was based on whether the conduct of Mr. Bullard caused the other person reasonably, in all of the circumstances, to fear for their safety, which is a requirement to convict on a charge of criminal harassment. The prohibited conduct for both charges in the present case is virtually the same. Under s. 264(2), the prohibited conduct consisted of repeatedly communicating with, either directly or indirectly, the other person or anyone known to them. Under the harassing communications charge under s. 372(3) of the *Criminal Code*, everyone commits an offence who without lawful excuse and with intent to harass a person, repeatedly communicates or causes repeated communications to be made, with them by means of a telecommunication.
- [47] In dismissing the charge against Mr. Bullard for criminal harassment, the preliminary hearing judge commented as follows,
- There was nothing in any of the communications which gives rise to a reasonable inference that her safety was being threatened, While the communications could be seen as persistent, unwanted, bothersome, conduct for which he will be committed to trial, nothing in his past behaviour towards her nor these communications allude to directly or circumstantially, exclusively or implicitly to any threat to her safety.
- [48] On June 8, 2018, Mr. Bullard pleaded guilty to three remaining charges. In particular he pleaded guilty to harassing communications. He also pleaded guilty to failing to comply with a condition of his release, namely, to abstain from communicating directly or indirectly with Cynthia Mulligan. This charge related to his contact with Ms. Mulligan through a friend asking her to withdraw the charges. Finally, he pleaded guilty to breaching a recognizance requiring him to reside with his surety.

[49] As part of his plea of guilty, Mr. Bullard acknowledged most of the preceding chronology. The facts read in on his plea included the following:

On July 9, 2016, Ms. Mulligan attended 55 Division to report that she was concerned over a number of text messages being sent to her even though the complainant Ms. Mulligan had made it clear to Mr. Bullard that the relationship was over and that she didn't want to communicate with Mr. Bullard any longer. At that point, the complainant Ms. Mulligan expressed to the police that she didn't have any safety concerns and only wanted the communication from Mr. Bullard to cease. Officers spoke with Mr. Bullard and advised the communication with the complainant was unwanted and that it should end to avoid any possibility to avoid criminal charges.

On August 12, 2016, Ms. Mulligan contacted the Toronto Police and advised that the situation was still ongoing and that she had been receiving calls from unknown numbers and Bell payphones. On one occasion, she answered a call believing it may have been from work. The call was actually from Mr. Bullard who was angry demanding closure and advised Ms. Mulligan that she had no right to go to the police. Ms. Mulligan then received approximately 12 text messages over the, it says, prior week. The complainant began to become concerned over Mr. Bullard's behaviour and his inability to let go. Mr. Bullard was once again contacted by a Toronto police officer and was cautioned about the possibility of the situation escalating to criminal charges if he didn't stop contacting the complainant.

Apologies. Alright, ok. So, and I apologize because it would appear to cut off before the facts actually ended in that matter. So now I will go from memory. Mr. Bullard did communicate after that third caution with the police officer. As a consequence of which the Toronto Police advised him that he should turn himself in to be arrested at 55 Division.

[50] Both Crown and defence made a joint submission with respect to sentence. Following his conviction, the trial judge agreed that Mr. Bullard should receive a conditional discharge. He was placed on probation for six months and was required to complete a partner assault response service program.

[51] Prior to sentencing, there was an issue about the right of Ms. Mulligan to make a victim impact statement. The defence objected to the introduction of the victim impact statement on the basis that it contained some unproven allegations. The court allowed Ms. Mulligan to deliver most of her victim impact statement. The victim impact statement included the following comments by Ms. Mulligan:

And you were abusive in so many ways, driving by my work, endless texts and phone calls, often while I was on air, despite the fact I clearly

told you to stop. You abused your power as a radio host as well, threatened to talk about me on your show if I didn't do as you ordered. That is blackmail, and you carried out with your threat. Your harassment continued despite not one, not two, but three warnings from the police to leave me alone. Ironically, I was trying to protect you from yourself hoping your out of control spiral would stop. It didn't. And then after months of continued harassment, your anonymous calls from a different Bell payphone began, day after day. Police even have security video of you pulling up to one of the phone booths and making a call. When I received them, I kept wondering what you were going to do next. Your irrational behaviour was escalating, and I was scared. There is no excuse. The hardest part other than the growing pervasive fear was when I had to tell my two daughters that police were concerned for our safety, and we had to move out of our home. When a man abuses a mother, he abuses her children as well, and they become collateral damage. I tried, but I couldn't protect them from you and your abuse, and it broke my heart. No woman should ever be treated that way, no woman should ever have to move out of her home because she fears for her safety and she fears for her children's safety, and my children were afraid. For months, my younger daughter wanted me to sell our house, she was scared. She was only 12 at the time. You did that to her. I am here today because I refuse to be a victim.

[52] Immediately after the court proceedings following his plea of guilty Mr. Bullard gave an interview to the press. The content of the interview was as follows:

- Mike Bullard: I never want to see this person again and like I said I bear her no ill will and I feel badly for her. The victim impact statement was the most ridiculous thing I ever hear (sic) in my life. I had to move out of her house? Why didn't it come out there in the preliminary hearing. So that's pretty much it for me, other than the fact that I want to thank the wonderful women who stood by me and who have been my friends for a long time and I want to thank the people who knew me when. Because I haven't got much use for anybody who became by friend after I got a TV show and a radio show. What it proved to me is that your old friends are your best friends.
- Interviewer: She was really emotional in that impact statement in the courtroom you know, she was pretty upset and she had some pretty harsh words for you.
- Mike Bullard: She's pretty good at it.
- Interviewer: So what are you saying?

- Mike Bullard: Pretty good at it.
- Interviewer: At what?
- Mike Bullard: At the emotions...really good at it.
- Interviewer: Your insinuating that she was...
- Mike Bullard: I am insinuating nothing James, you know I have known you for a long time and I don't appreciate your behaviour throughout the course of this whole thing. That's all.
- Second interviewer: Were you calling her every day? Or like the stuff that was said about her?
- Mike Bullard: No, no, no. And like I said, the next courtroom I'm in is civil but not her, other people.

- [53] From the comments made by Mr. Bullard in his interview with the press following his plea of guilty, I infer that he was suggesting that Ms. Mulligan was faking her emotions in the victim impact statement and that the criminal charges against him, and to which he had just pleaded guilty to, had no merit.
- [54] The court proceedings in which Mr. Bullard pleaded guilty attracted considerable media attention. A Toronto Star article reported much of what Ms. Mulligan told the court in her victim impact statement including the fact that Mr. Bullard's irrational behaviour was escalating and that she told the court she was scared. The article also referred to her two daughters who were fearful and one of them asked Ms. Mulligan to sell their house to feel safe. The CBC also reported on the proceedings including Mr. Bullard's comment that Ms. Mulligan's victim impact statement was "the most ridiculous thing I have ever heard in my life". It also reported on a statement by Mr. Bullard who said, "I have never stalked or abused a woman in my life. I have never made an obscene phone call in my life, and I never will".
- [55] Mr. Bullard made a number of tweets about his experience in the court system. On November 7, 2018, he issued a tweet stating, "And God help everyone if [name of the prosecutor] ever becomes a judge".
- [56] On December 8, 2018, Mr. Bullard tweeted, "Finally done with this disgusting excuse for a legal system. Gag coming off".
- [57] On January 26, Mr. Bullard tweeted, "I have to pay for a trial to tell my side... fucked up system and lies in Star killed my mom too".

Did the Chatelaine article relate to a matter of public interest?

[58] In order to engage the provisions of s. 137.1, the defendants must establish that the proceeding arises from an expression relating to a matter of public interest. In this case, the article focused on three areas. First, it describes Ms. Mulligan’s experience as a victim of gendered harassment. It also explores her opinions on the judicial system and finally, the need for reform of the judicial system to assist victims. In the *Torstar* decision the Supreme Court gives guidance on the meaning of public interest. To be of public interest the subject matter “must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached”. There can be no doubt that comments with respect to the legal system and the need for reforms are matters of public interest. Nevertheless, the issues which are raised in this lawsuit relate to comments made about Mr. Bullard and the question which must be addressed is to what extent were the comments made about Mr. Bullard a matter of “public interest”. In my view, the comments are a matter of public interest as they relate to gendered based harassment which is a legitimate area for public concern. Further, while the private lives of well-known people are not on their own sufficient to render an essentially private matter public for purposes of defamation law, this case attracted considerable public notoriety and controversy from the time the charges were laid. The concerns with respect to Mr. Bullard’s behaviour therefore in my view fall within what is contemplated by “public interest” as reflected by Mr Bullard’s own comments to the press immediately following the court proceedings. The onus therefore shifts to the plaintiff to satisfy the court that the provisions of subsection (4) apply, failing which the proceeding must be dismissed.

Are there grounds to believe that the proceeding has substantial merit?

[59] In the *Grant v. Torstar* position, the Supreme Court sets out the three factors which a plaintiff must prove in order to obtain judgment and an award of damages in a defamation lawsuit. The three factors are: (1) 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; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. In this case, I have concluded that the defence has met its burden of establishing that the article was defamatory in that a reasonable person reading the article would have a considerably lower view of Mr. Bullard in light of the allegations of a criminal conviction and the details of harassment which led to the conviction.

Has the plaintiff established that the defendants have no valid defence in the proceeding?

[60] In the present case, the defendants have raised the defences of justification and fair comment.

- [61] To succeed on a defence of justification a defendant must establish that the statement was substantially true. In the present case, there is considerable evidence to support the factual allegations contained in the Chatelaine article. In his plea of guilty to the charge of harassing communications, Mr. Bullard acknowledged that he did, without lawful excuse, and with intent to harass Cynthia Mulligan, repeatedly communicate with her. Police spoke with Mr. Bullard on several occasions and expressed to him that his communications were unwanted and that they needed to end to avoid the possibility of criminal charges. The court transcripts confirm that he did plead guilty to the charge of harassing communications and as part of his sentence he was ordered to serve 6 months probation and take a partner assault response service program which can fairly be described as a domestic violence course. The facts read in and acknowledged at the time of his plea included reference to Ms. Mulligan receiving telephone calls and messages from Mr. Bullard. The messages themselves as described in the article were frequent and unrelenting despite pleas by both Ms. Mulligan and the police asking Mr. Bullard to stop. All of this took place in an environment where Mr. Bullard had been told to stop by Ms. Mulligan as well as by the police on several occasions. Mr. Bullard showed little insight into the serious and inappropriate nature of his conduct, nor did he stop this behaviour even having been warned by the police that criminal charges would follow if it continued.
- [62] The plaintiff takes issue with the fact that the article did not specifically report on the fact that the charge of criminal harassment had been dismissed prior to his plea of guilty to the harassing communications charge. The plaintiff suggests that by innuendo, a reader of the article would be led to believe that he had been found guilty of “criminal stalking” and that the article unfairly conflated the dismissed charges of criminal harassment with the harassing communications charges to which Mr. Bullard pleaded guilty to on June 8, 2018. I disagree. The article accurately states in the preamble that Mr. Bullard was “charged with criminal harassment”. In the follow-up paragraph, the article states, “in court on Friday, Bullard pleaded guilty to one count of harassing communications and two counts of breaching court orders”. In my view, the article correctly and accurately states facts which are demonstrably true. The harassing communications charge to which Mr. Bullard pleaded guilty to is accurately stated in the article and a reasonable reader would not be under any misapprehension as to what Mr. Bullard had pleaded guilty to. The article also specifically notes that Mr. Bullard never physically threatened Ms. Mulligan.
- [63] In addition, in the preamble, the article gives an accurate summary of what led to the charges. The article states, “over the next few months, they would break up and get back together three times before he started relentless calling and texting her, despite Mulligan’s repeated pleas to leave her alone”.
- [64] The plaintiff also takes issue with certain other facts which are alleged in the article. These include references to an allegation that police suggested to Ms. Mulligan that she find somewhere else to live temporarily and that Ms. Mulligan and her family had to move out of the home temporarily. There is also reference to the fact that she had security cameras outside her house.

[65] None of the above-noted facts are referenced in the agreed facts at the time of Mr. Bullard's plea of guilty. He suggests that these facts are not true because they are not specifically contained in the police records. Of course, the fact that they are not contained in the police records does not establish the falsity of the allegations. However, there is a live issue raised by Mr. Bullard about the accuracy of these alleged facts.

[66] This type of issue was the subject of comment by the Supreme Court in *Grant v. Torstar* where at para. 33 the court states,

To succeed on the defence of justification, a defendant must adduce evidence showing that the statement was substantially true. This may be difficult to do. A journalist who has checked sources and is satisfied that a statement is substantially true may nevertheless have difficulty proving this in court, perhaps years after the event. The practical result of the gap between responsible verification and the ability to prove truth in a court of law on some date far in the future, is that the defence of justification is often of little utility to journalists and those who publish their stories.

[67] In the present case, there is an argument that taking the article in context, the facts referred to are "substantially true". However, it must be recognized that the statements with respect to moving out of the home and the presence of security at Ms. Mulligan's home contribute in a significant way to the "sting" of the article.

[68] In light of the evidentiary gap identified by the plaintiff to support the above-noted assertions, together with the fact that at this point there can only be a very limited weighing of the evidence, I have concluded that the plaintiff has satisfied his burden of establishing that the defence of justification might not succeed.

[69] The second defence raised by the defendants is that of fair comment. Ms. Mulligan describes how she was afraid. She acknowledges that Mr. Bullard never physically threatened her, but comments that she felt "scared".

[70] The defence of fair comment was summarized by the Supreme Court in the *Grant v. Torstar* decision at para. 31 where the court states,

As reformulated in *Simpson*, at para. 28, a defendant claiming fair comment must satisfy the following test: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment, though it can include inferences of fact, must be recognisable as comment; (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?; and (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.

[71] I have concluded that the facts to support the opinions expressed in the article have been established in this case. The comments in the article are on a matter of public interest.

Facts which are beyond dispute are set out in the article and I also accept that a person could honestly express opinions about how she and her family felt afraid based on those facts even excluding the references to Ms. Mulligan having to move out and/or install a security system or the other facts which the plaintiff asserts are not true. It is important to note that unlike the criminal charge of harassment which requires the Crown to establish beyond a reasonable doubt that a reasonable person would fear for their safety, the defence of fair comment in a civil defamation action only requires that a person could honestly express that opinion. I have concluded that this latter test has been met. Ms. Mulligan's opinion makes sense in the context of this case when she is reported as saying, "He never physically threatened me. Yet I did feel threatened because there is something about when someone won't leave you alone repeatedly – it starts to become incredibly unnerving."

- [72] The plaintiff takes issue with the final requirement and asserts that the author of the article was motivated by malice. In support of their position, the plaintiff refers to the fact that both Ms. Mulligan and Chatelaine are owned by Rogers Media and there is no declaration of a conflict of interest in the article. The plaintiff also refers to the fact that Mr. Bullard was not interviewed for purposes of the article. In addition, the plaintiff relies on two messages which the author, Sarah Boesveld sent to a program called "Toronto Mike" on June 11, 2018. Mike Bullard was apparently scheduled to be on this show. Ms. Boesveld sent the following two messages:

Are you really gonna have Mike Bullard on your show?

- (I mean I think it's bullshit that anyone would threaten you for doing so, just to be clear).

- [73] When asked about these messages on cross-examination, Ms. Boesveld testified as follows:

Question: Did you wish the best for Mr. Bullard? You wanted him to get fully reintegrated, be on the Toronto Mike show without anybody being concerned about him being on the show, taking photos with Bonnie Crombie, it doesn't matter.

Answer: I thought perhaps he could go away for a while and consider his guilty plea in criminal court.

- [74] The comments of Ms. Boesveld represent her personal views of Mr. Bullard's conduct. Having said that, it does not form a reasonable basis to establish malice. Malice is established where someone publishes a defamatory statement knowing that it is false or recklessly indifferent as to whether it is true or false, with the dominant purpose of injuring the plaintiff because of spite, animosity or some other improper purpose. See *Amorosi v. Barker*, 2019 ONSC 4717. In the present case, the comments in the Chatelaine article which are in issue in the action were primarily made by Ms. Mulligan. There is no credible evidence to suggest that Ms. Mulligan was motivated by malice at

the time of the interview and she is not even named as a defendant in this action. Viewed in the context of the relevant background and the nature of the messages sent by Mr. Bullard, the comments expressed by Ms. Mulligan in the article are not surprising.

- [75] The article itself also contains statements by Ms. Mulligan which are inconsistent with a malicious intent on the part of either her or Ms. Boesveld. For example, Ms. Boesveld includes Ms. Mulligan's comment that Mr. Bullard never physically threatened her.
- [76] It is also significant that Ms. Boesveld has a history of writing articles about women who have survived sexual harassment and sexual assault. These other articles are unrelated to Mr. Bullard.
- [77] With respect to the alleged conflict of interest between Rogers and Bell Media, I have concluded that there is no evidence that this supports a finding of malice. At the time the article was published, Mr. Bullard was no longer employed by Bell Media and in fact, his employment had terminated well prior to the publication of the article. Further, the criminal charges which were laid against Mr. Bullard and the disposition of those charges were a matter of wide reporting by the media generally. There was no requirement in my view for Rogers to refer to any conflict of interest in the context of an article which was one of many published at around that time.
- [78] I also do not accept that the failure to interview Mr. Bullard is evidence of malice. The focus for the article was the impact of Mr. Bullard's criminal activity on the victim. In this regard, there was no compelling reason to interview Mr. Bullard and I do not accept that this failure is evidence of malice. Further, there is no evidence that Ms. Boesveld knew either Mr. Bullard or Ms. Mulligan before the interview for the article was conducted.
- [79] For the above reasons, I conclude that the defendant has not supported an allegation of malice with credible evidence. Nevertheless, because of the issues relating to the defence of justification which have been referred to above, the plaintiff has met his onus under subsection (4)(a). Therefore, the decision on whether to dismiss the action depends on an analysis on whether the harm suffered by the plaintiff as a result of the article is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

Is the harm likely to have been suffered by the plaintiff as a result of the article sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression?

- [80] I have concluded that the plaintiff has failed to meet his burden under subsection (4)(b).
- [81] The plaintiff argues that the criteria to answer this question depends almost exclusively as to whether the factors for a SLAPP lawsuit have been satisfied.
- [82] A strategic litigation against public participation or "SLAPP" lawsuit has been defined as a lawsuit initiated against one or more individuals or groups that speak out or take a

position on an issue of public interest. SLAPP's use the court system to limit the effectiveness of the opposing parties' speech or conduct. SLAPP's can intimidate opponents, deplete their resources, reduce their ability to participate in public affairs and deter others from participating in discussions on matter of public interest.

[83] The recognized indicia of a SLAPP lawsuit were set out by the Court of Appeal in their decision in *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163. Those indicia are:

- A history of the plaintiff using litigation or the threat of litigation to silence critics;
- A financial or power imbalance that strongly favours the plaintiff;
- A punitive or retributory purpose animating the plaintiff's bringing of the claim; and
- Minimal or nominal damages suffered by the plaintiff.

[84] This case has some, but not all of the traditional indicia of a SLAPP lawsuit. There is, for example, no history of the plaintiff using litigation or a threat of litigation to silence critics. Further, there is no financial or power imbalance that strongly favours the plaintiff. To the contrary, any power imbalance would favour the defence.

[85] There is evidence to suggest a punitive or retributory purpose may have animated the plaintiff's initiation of the claim. Mr. Bullard's comments after his plea of guilty certainly suggest his intention of trying to "settle the score" in a civil court. There is also reason to believe that Mr. Bullard might have had some desire to strike back at Rogers Media which owned Chatelaine at the relevant time. Rogers initially reported their concern about Mr. Bullard's behaviour to Bell Media and based on these reports, it appears that Mr. Bullard's employment with Bell Media at CFRB Radio was placed in some jeopardy.

[86] I have also concluded that the damages suffered by Mr. Bullard fall within the nominal range as will be discussed subsequently.

[87] It therefore does appear that Mr. Bullard's action does have some but not all features associated with a SLAPP lawsuit. Having said that, I do not accept the defence position that these are the only criteria to take into account. The wording of subsection (4)(b) requires a broader scope of analysis.

[88] It is significant in my view that virtually all of the facts and opinions expressed in the Chatelaine article mirror those which Ms. Mulligan expressed in her victim impact statement. As the victim impact statement is covered by absolute privilege as a statement given in court, the opinions of Ms. Mulligan and her factual assertions with respect to the security steps she took were all available to be reported on as part of the court proceeding. And in fact, most of the factual allegations and the opinions expressed by Ms. Mulligan were contained in articles which were published by other news organizations. There is, therefore, very little that was published in the Chatelaine article

which had not previously been reported shortly following Mr. Bullard's plea of guilty. This includes a report in a Toronto Star article which referred to Ms. Mulligan's statement that one of her daughters asked her to sell the house to feel safe.

[89] In the *Pointes Protection Association* case, the Court of Appeal commented that the harm suffered or likely to be suffered by the plaintiff as a consequence of the defendant's expression will be measured primarily by the monetary damages suffered or likely to be suffered by the plaintiff as a consequence of the impugned expression. It notes as well that harm to the plaintiff can refer to non-monetary harm as well. The plaintiff cannot, however, rely on bald assertions in the statement of claim relating to damages, or on unsourced unexplained damage claims contained in the pleadings. The motion judge must be able to make an informed assessment, at least at a general, "ballpark" level about the nature and quantum of the damages suffered or likely to be suffered by the plaintiff. Equally important to the quantification of damages, the plaintiff must provide material which can establish the causal link between the defendants' expression and the damages claimed. The plaintiff in his supporting affidavit asserts that he had pending job or "gig" opportunities before the Chatelaine story was published. Those prospects were lost once the defamatory article was circulated according to Mr. Bullard. On cross-examination, however, Mr. Bullard was not able to point to any specific contract opportunity which had been lost.

[90] Mr. Bullard also refers to a statement from his agent, Ed Smeall. In an email dated January 28, 2019, Mr. Smeall states,

Since this episode with Ms. Mulligan became public knowledge in the fall of 2016, it has been difficult to get you any live performance work in the Greater Toronto area.

Now with this article in the nationally distributed Chatelaine magazine it is impossible to get you work anywhere in Canada and I fear this will never go away any time soon.

[91] It is apparent that Mr. Smeall was attempting to be strongly supportive of Mr. Bullard and the content of his letter seems to be influenced by a desire to help him. The letter which was an attachment had a covering email from Mr. Smeall which stated, "Here it is in pdf attachment plug copy and paste, the wording of removing you from the website, in my opinion, is only to make your case stronger and seem more dramatic". (Emphasis added.) Mr. Smeall's bald assertion that it was the Chatelaine article which ruined Mr. Bullard's career in Canada is unpersuasive and inconsistent with the history of his performing at various events.

[92] Included in the material on this motion was a list of Mr. Bullard's gigs or event contracts. This list shows a history of well-paying contracts up until April of 2016. Between that point and 2019, there were only three contracts which paid a minimal amount to Mr. Bullard. It is apparent that following the charges being laid against Mr. Bullard, his contract performance revenue dried up almost entirely. In responding to an email from

the plaintiff's solicitor, Mr. Smeall commented, "Most work came to a halt after he was fired from his job at Newstalk after the original accusations became public".

- [93] On the final day of argument Mr. Bullard introduced some further evidence consisting of an affidavit which attached a tweet dated August 11, 2019. The tweet was a retweet of the Chatelaine article by Carly Lewis, a journalist at the Globe and Mail. Above the article, Ms. Lewis made the following comment,

Why are people retweeting m*ke bull*rd even as a joke? Please read this, from only a year ago, and think about the role ironic sarcastic fandom in post-harassment allegation redemption campaigns.

- [94] It is unclear to me what Ms. Lewis is actually trying to say about Mr. Bullard, but I accept that it is not complimentary. The plaintiff argues that the tweet suggests that Mr. Bullard should be socially ostracized as punishment for harassing Cynthia Mulligan and is further evidence of the libelous nature of the defamatory article. I disagree. The tweet is evidence that the Chatelaine article continues to be accessed online. Depending on an individual's background and disposition, members of the public may well hold views critical of Mr. Bullard's conduct. This does not mean that the article has destroyed Mr. Bullard's career, especially when most of the facts described in the article are true and the opinions expressed are fair comment. It also does not mean that the damage to Mr. Bullard's reputation is causally related to the article as the evidence points clearly to the fact that the damage to Mr. Bullard's reputation occurred well prior to the Chatelaine article being published. The Chatelaine article was also only one of a number of publications which reported on his criminal behaviour. The Chatelaine article focused on how the criminal behaviour affected the victim. However, it was certainly not the only publication that reported on the impact of his behaviour on the victim.

- [95] The evidence suggests that there are far more important factors which have led to the serious financial and career problems which are faced by Mr. Bullard.

- [96] The firing of Mr. Bullard from CFRB, a prominent Toronto radio station, is in my view, one of the most damaging repercussions of Mr. Bullard's behaviour. Mr. Bullard's dismissal occurred just after criminal charges were laid along with the ensuing media coverage. It had nothing to do with the Chatelaine article which was published almost two years later. At paragraph 53 of Mr. Bullard's affidavit, he comments,

At the time that the defamatory article was published, I had been unemployed for nearly two years since losing my job due to the subject criminal proceedings. I was actively seeking employment opportunities.

- [97] The dismissal of Mr. Bullard from CFRB Radio not only caused Mr. Bullard to lose a substantial income from his on-air work. It also meant his association with CFRB and Bell Media which operates a major media business in Canada was lost. This association provided a valuable platform to attract other private event work. It is not surprising in these circumstances to see that Mr. Bullard's history of well-paying contracts disappeared

virtually overnight after the charges were laid and he lost his employment with Bell Media and CFRB.

- [98] Following publication of the article, Mr. Bullard was able to obtain a position with a local radio station in Mississauga, but at a substantially reduced salary and with a substantially reduced public profile which would have compromised his ability to obtain other contract work. I was advised in the final day of argument that this radio station subsequently has gone out of business and that Mr. Bullard once again is unemployed for reasons unrelated to the Chatelaine article.
- [99] For 2017, which is the year prior to publication of the Chatelaine article and his plea of guilty, Mr. Bullard's CRA assessment indicates that apart from RRSP income, he only earned \$2,552 of income.
- [100] All of these factors lead me to conclude that Mr. Bullard's career took a dramatic and sustained downturn following the laying of the original charges in the fall of 2016. None of this is causally related to the Chatelaine article.
- [101] There are certainly some cases where the nature of the defamatory statements would justify allowing the lawsuit to proceed. For example, in *Levant v. Day*, 2019 ONCA 244, the Court of Appeal dealt with a situation where the defendant made allegations of criminal conduct. The court noted that while the harm suffered or likely to be suffered may often be measured primarily by the monetary damages, the preservation of a good reputation has inherent value beyond the monetary value of the claim. The court noted that even if the appellant's characterization of the respondent's reputation was correct, that this reputation, "is different from a reputation tainted with criminal conduct depriving innocent victims of charitable donations". In that scenario, the court concluded that any damages awarded would not necessarily be nominal or that the respondent had suffered only an insignificant harm. The court referred back to the *Pointes* decision which held that deliberate falsehoods, gratuitous personal attacks or vulgar and offensive language may reduce the public interest in protecting that speech compared to cases where the message is delivered "without the lies, vitriol and obscenities".
- [102] I do not view the Chatelaine article as one where the statements are delivered full of lies, vitriol and obscenities. Nor do I view the Chatelaine article as damaging the plaintiff's reputation in a way that is inconsistent with the damage which had already occurred prior to publication of the article. Most of the material facts in the article are demonstrably true and the comments in the article represent fair comment which was widely reported based on the victim impact statements read by Ms. Mulligan in court. On the contrary, I believe that this case falls closer to a situation dealt with by the Court of Appeal in *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689. That case dealt with statements by an opposing politician characterizing the plaintiff as a bully and posing a threat to the safety of others. In dismissing the action under s. 137.1, the court stated that the message to be taken from the enactment of s. 137.1 is that, "not every foot over the defamatory foul line warrants dragging the offender through the litigation process." The court added that by enacting s. 137.1, the legislature acknowledged that, in some circumstances, permitting

the wronged party to seek vindication through litigation comes at too high a cost to freedom of expression.

- [103] I am also of the view that the value of freedom of expression is high in this case. Gender based abuse is recognized as a serious social problem in our society. It is generally understood that there are systemic barriers to reporting this type of activity. The consequences of gendered based harassment are too often severe and the public interest in expression on this topic is high.
- [104] In these circumstances, I have concluded that the plaintiff has failed to establish that the harm he has suffered is so serious that it outweighs the public interest in protecting the expression.

Conclusion

- [105] Mr. Bullard was guilty of some very bad conduct following the dissolution of his relationship with Ms. Mulligan. This ultimately crossed the line and became criminal in nature. Mr. Bullard cannot be faulted for questioning whether society's reaction to his criminal behaviour was appropriate or fair. That is not the question before me, however. What is clear in this case is that the damage to Mr. Bullard's career and reputation occurred well prior to and independent of the publication of the Chatelaine article. What is also clear is that the comments of his victim are views one could honestly hold based on the proven facts as referenced in the article and form part of a public dialogue on a matter of significant public interest. To address the issue raised by Justice Binnie and referred to earlier in these Reasons, I have concluded that based on the circumstances in this case, the right to free expression must take precedence over the plaintiff's personal interest to proceed with this litigation.
- [106] For the above reasons, the plaintiff's action is dismissed. If costs are demanded and cannot be agreed upon, then an appointment should be taken out with the trial coordinator within 30 days of the release of this decision to address the issue of costs. In such event, the parties will deliver concise briefs at least 2 days before their attendance. If no arrangements are made within 30 days for an appointment to speak to costs, there will be no order for costs.

Justice M. McKelvey

Released: May 15, 2020

CITATION: Bullard v. Rogers Media Inc., 2020 ONSC 3084

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Mike Bullard

Plaintiff

– and –

Rogers Media Inc., Sarah Boesveld and Christina
Vardanis

Defendants

REASONS FOR DECISION RE: S. 137.1 MOTION

Justice M. McKelvey

Released: May 15, 2020

2020 ONSC 3084 (CanLII)