

**CITATION:** Paramount v. Kevin J. Johnston, 2019 ONSC 2910

**COURT FILE NO.:** CV-17-580326

**DATE:** 20190513

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** PARAMOUNT FINE FOODS and MOHAMAD FAKIH, Plaintiffs

**AND:**

KEVIN J. JOHNSTON, RANENDRA BANERJEE and  
FREEDOMREPORT.CA, Defendants

**BEFORE:** J.E. Ferguson J.

**COUNSEL:** *Jonathan C. Lisus and Khrystina McMillan*, for the Plaintiffs

*Kevin J. Johnston*, in Person (accompanied by Edward Wallerstein  
("Mr. Wallerstein") a licensed paralegal on the consent of plaintiffs' counsel and  
this court

**HEARD:** April 30, 2019

**REASONS**

**OVERVIEW**

[1] The plaintiffs Paramount Fine Foods ("Paramount") and Mohamad Fakihi ("Mr. Fakihi") bring this motion for summary judgment against the defendants, Kevin J. Johnston ("Mr. Johnston") and FreedomReport.ca ("Freedom Report") (the "Johnston defendants"), in respect of certain publications which they allege to be defamatory. As case management judge I had already made an order that this was an appropriate summary judgment motion. The action against Ranendra Banerjee ("Mr. Banerjee"), was dismissed after he provided an unqualified apology to the plaintiffs.

[2] I have received and reviewed comprehensive materials from the plaintiffs. These include a two-volume motion record; a supplementary motion record; a separate motion record for an injunction dealing with plaintiffs' counsel; a compendium of evidence; a chart breaking down the various defamatory themes; an affidavit of Cathy Guthrie; and a factum. The Johnston defendants did not file any materials. As a result there are no material facts in issue. I have reviewed the references in the plaintiffs' factum and am satisfied that they accurately reflect the record. As a result, I am not including them in these Reasons. I have relied heavily on the plaintiffs materials in these Reasons.

[3] For the reasons below I have found that the Johnston defendants have defamed the plaintiffs. I have awarded general, aggravated, punitive, and special damages in the amount of \$2.5 million. I have also granted permanent injunctions.

## **BACKGROUND**

[4] Mr. Fakih is a Canadian-Muslim businessman and the Chief Executive Officer of Paramount. He knows first-hand the impact of religious violence and terrorism. He was born in Lebanon, where he witnessed gunfights, bombings, and sectarian violence during Lebanon's civil war. His mother was a victim of a bombing in Beirut.

[5] Mr. Fakih immigrated to Canada after having visited a friend in Toronto and falling in love with Toronto's multiculturalism. He started his life in Canada working at a jewelry store in the Eaton Centre during the day and working the night shift at a Coffee Time restaurant. In 2006, he purchased a small restaurant in Mississauga. He took over the business, renovated, and converted the restaurant into Paramount's flagship location in May of 2007.

[6] Under Mr. Fakih's leadership, the Paramount chain has since expanded to approximately 40 locations across Canada and 14 other locations worldwide. Paramount employs over 2,000 people around the world, the vast majority in Canada.

[7] Mr. Fakih is well-known for his charitable works and he is deeply committed to community service without regard to race, religion, or ethnicity. As an example, Mr. Fakih donated the funds to cover the funeral costs for the Canadians slain in the mass shooting in January of 2017 in a Québec City mosque, raised over \$100,000 for the victims' families, and offers discounts at all Paramount restaurants to emergency service workers in uniform.

[8] Mr. Fakih is especially active in working with refugees and on interfaith engagement. Paramount has funded employment support counsel to help recruit new Syrian Canadians and connect them with jobs, and has hired 80 Syrian refugees to work in Paramount restaurants. In May of 2018, Mr. Fakih and UNHCR launched a partnership through which Mr. Fakih advocates for refugee issues in Canada.

[9] In 2017 Mr. Fakih was recognized by the Senate and the Canadian Parliament as an Exemplary Canadian Citizen and Businessman.

[10] Mr. Johnston is a self-styled journalist and the owner of FreedomReport.ca. He also owns and operates numerous YouTube channels, Twitter accounts, Facebook accounts and other social media accounts and websites (the "Johnston online platforms").

[11] It is impossible to know with certainty how many online platforms the Johnston defendants own and operate as at any point they can establish more. They platform on any number of websites and social media platforms. The Johnston defendants may have established other Johnston online platforms to replace any accounts that have been suspended or disconnected, or just to expand dissemination of their hateful messages.



[12] Mr. Johnston uses the Johnston online platforms to broadcast hate. He has called Canadian Muslims “terrorists”, “terrorist scumbags”, “racist terrorist scumbags” and “Nazis”. According to Mr. Johnston, Islam is “non-civilized garbage”. Mr. Johnston has repeatedly called Muslims “rapists” and has said that Muslim immigrants bring sexually-transmitted diseases to Canada. He has also stated that Muslims are part of a “system designed to rape, kill and pillage and destroy” that would force a Canadian man to “pin his daughter down on the ground and cut her labia and clitoris off with a razorblade”.

[13] Mr. Johnston claims that Muslims are in Canada “to take this country over”, “to kill me, and kill my children, and kill the entire future of this entire nation” and have “the maple leaf removed from the flag to be replaced by the crescent moon”. He has also publicly encouraged people to

Buy guns, people. Go the gym, learn how to fight. Buy knives and learn how to use them. Stock up on cross-bow bolts. Stock up on arrows for your bow. Stock up on everything you need because, believe me, it’s gonna hit the fan [referring to when Muslims bring Sharia law to Canada] and when it does it’s gonna hit hard. You have to hit back three times harder.

[14] Mr. Johnston makes these statements with no regard for the law. He customarily invites the targets of his attacks to initiate legal proceedings against him, to “bring it on” or to “come and see me”, or words to that effect.

[15] Mr. Johnston profits from the promotion of hatred. He takes paid speaking engagements featuring anti-Muslim statements, and Freedom Report solicits “donations”. The Johnston defendants have also offered for sale a variety of anti-Muslim paraphernalia including: a comic book written and published by Mr. Johnston titled “Muslimland” which is described as a “tale of woe and warning about a world run by political Islam”; and a “documentary” created and produced by Mr. Johnston titled “Rohingya Lie – A Documentary by Kevin J. Johnston” which “reveals” that there is no Rohingya crisis but rather “an invasion force of Bengali Muslims who raped and killed their way into the peaceful Buddhist nation”.

[16] On July 24, 2017, Mr. Johnston was charged with two counts of wilful promotion of hatred against Muslims contrary to s. 319(2) of the Criminal Code, and as part of his release, agreed not to come within 100 meters of any Mosque or Muslim community centers in the province of Ontario.

[17] On July 20, 2017, Paramount hosted Prime Minister Justin Trudeau at a Liberal party of Canada fundraiser (the “event”). The event was held at the original Paramount restaurant at 1290 Crestlawn Drive in Mississauga, Ontario (the “restaurant”).

[18] Mr. Johnston and Mr. Banerjee attended outside the restaurant on the day of the event. They brought a camera and a megaphone. They made multiple attempts to disrupt the event, and made a number of false and malicious statements about Mr. Fakihi and Paramount to people outside the restaurant.

[19] From July 23 to August 1, 2018, the Johnston defendants published a series of eight videos from the day of the event with accompanying text and title pages posted widely on many websites of the Internet, including Freedom Report and the Johnston online platforms (the “event videos”). In the event videos, Mr. Johnston makes a number of false and malicious statements about Paramount and Mr. Fakhri including:

- (a) the Restaurant is in the middle of an industrial area “for the sole purpose of allowing Islamic discussion whether it be terrorist talk or not”;
- (b) “I can’t for the life of me understand why a restaurant would be here unless the restaurant was up to something nefarious”;
- (c) You have to be “Jihadist” or have raped someone else’s wife as a condition of entry to the Restaurant;
- (d) Mr. Fakhri is a “racist restaurant owner” and an “economic terrorist”;
- (e) “Mohamad Mr. Fakhri wants to be part of giving money to convicted terrorists”;
- (f) “Why do Muslim business men in Mississauga hate white Christian men so much?”;
- (g) Paramount is “little more than a front” and “this man [Mr. Fakhri] was under investigation by CSIS and by the Canada Revenue Agency...they were trying to figure out where this man’s money came from”;
- (h) “the Pakistani spy agency ISI is giving him the money that he needs to utilize his stores as a front to bring more refugees/illegal aliens into the country, all whom, of course, are Muslim”; and
- (i) “boycott Paramount Fine Foods until they come clean on terror involvement”.

[20] The restaurant’s façade and logo are clearly visible in the event videos. The videos include a photograph of Mr. Fakhri altered to depict blood on his hands and face with the Paramount logo altered to appear as though splattered with blood (the “bloodied Mr. Fakhri photo”).

[21] A libel notice was served on the Johnston defendants on July 27, 2017. The Johnston defendants refused to apologize, and instead responded by immediately broadcasting more false and malicious content. Mr. Fakhri commenced this lawsuit on August 4, 2017.

[22] The Johnston defendants responded to this lawsuit with even more false and malicious content about the plaintiffs on the Johnston online platforms, including statements that:

- (a) Mr. Fakhri is a “radical Muslim”, “Muslim business owner hates white people” and is “making sure that only Muslim refugees get hired”;



- (b) Paramount restaurants are “hidden from the public” because “something nefarious” is going on, and Mr. Fakh is a “radical Muslim terror funder. There is no other way to word that. That’s what he does. He funds terror”;
- (c) Mr. Fakh is taking money from “ISI, the Pakistani spy agency, the CIA of Pakistan” and/or that ISI is laundering money through me and/or Paramount which is sent to Bangladesh and Myanmar “so that the Arakan Rohingya Salvation Army (“ARSA”), can continue cutting Hindus, Buddhists and Christians in half with swords, stabbing them with swords, cutting them in half with knives, beheading them, shooting them and lighting them on fire”;
- (d) Mr. Fakh provides funding for ARSA, a terrorist group that is “worse than ISIS in their atrocities” and who murder “the most peaceful people on Earth”, including children by slicing their faces with swords;
- (e) Mr. Fakh is an “economic terrorist” who is or was under investigation by CSIS and the Canada Revenue Agency “to figure out where this man’s money came from. We know, I know, that the Pakistani spy agency ISI is giving him the money that he needs to utilize in his stores as a front to bring in more refugees – illegal aliens – into the country, all of whom, of course, are Muslim”;
- (f) “BOYCOTT Paramount Fine Foods until the [sic] come clean on their alleged involvement with the Pakistani Spy Agency, ISI”;
- (g) Mr. Fakh and Paramount are “working very closely with the Pakistani spy agency to bring not just me [Johnston] down but you down and all of Canada down too. If you’re eating at this guy’s [Mr. Fakh’s] restaurant, you are supporting terror worldwide. That’s a brash statement I know – and I’m going to state that clearly in a Court of law when I’m under oath when I swear on a Christian Bible and not the book of hell, the Quran”.

[23] On April 10, 2018, Mr. Fakh was at Erin Mills Town Centre mall with his three children (then aged 4, 11 and 13). In front of Mr. Fakh’s children, Mr. Johnston called Mr. Fakh a coward and other names and accused Mr. Fakh of supporting terrorism and funding terror organizations “so they can cut babies in half”. Mr. Fakh asked Mr. Johnston to respect that he was there with his three children, but Mr. Johnston continued and even captured Mr. Fakh’s children in photos and recordings of the interaction. Moreover, when Mr. Fakh and his children tried to escape by leaving the mall, Mr. Johnston followed them into the parking lot.

[24] The Johnston defendants then posted a selectively edited and manipulated recording of the incident on social media and several websites, including Freedom Report, with the false and defamatory statements “Paramount Middle Eastern Cuisine – Funding Terrorism Since 2007”. This video was subsequently removed after the plaintiffs’ lawyers put the Johnston defendants on notice to preserve all records in their possession, power, or control relating to the incident.



[25] Mr. Fakih reported the incident to the police as he was afraid for his and in particular, his children's safety. For days after the incident, Mr. Fakih's children asked him why Mr. Johnston was calling him a coward and a terrorist and Mr. Fakih's four-year-old son would wake up in the middle of the night asking about "the scary man" that hates his dad. Mr. Fakih explained to his children that while they should never run away from bullies, he trusts the legal system to deliver justice.

[26] Since the commencement of this action, the Johnston defendants have repeatedly and consistently shown little regard for these proceedings.

[27] The Johnston defendants purposefully and intentionally evaded service. Between August 7 and August 11, 2017, the plaintiffs' agents made nine attempts to serve the Johnston defendants. Despite being aware of these attempts, Mr. Johnston refused to accept service. Indeed on one occasion, Mr. Johnston lied to the process servers telling them that he would be available for service at an out-of-town location: he never attended as he said he would. Mr. Johnston was eventually served with the statement of claim on September 8, 2017 outside the Region of Peel courthouse where he was attending on criminal charges for promoting hatred.

[28] The Johnston defendants have also harassed counsel. They superimposed plaintiffs' counsel's contact information and photographs in the title page for a number of the defamatory videos inviting their followers to contact counsel. In addition, Mr. Johnston pursued the plaintiffs' lawyers outside the courthouse with a cameraman after a September 2017 chambers appointment. The Johnston defendants later posted a video of Johnston's confrontation with the lawyers on a range of websites and social media platforms, in which Mr. Johnston can be heard associating the plaintiffs' lawyers with "the global caliphate".

[29] On September 16, 2017, Jonathan Lisus – one of the plaintiffs' lawyers, received a threatening voicemail message from an unidentified caller who says that he heard about the Johnston defendants' defamatory statements against Mr. Fakih and Paramount from his cousin in New York. The caller refers to having been a member of the "aggressive" Nazi party.

[30] The Johnston defendants are in breach of numerous court orders. I, as the case management judge, have made three orders to advance this litigation. I have made cost orders which have not been paid. The Johnston defendants have ignored each order. When the plaintiffs' lawyers wrote to the Johnston defendants seeking to enforce the court's orders and push the litigation forward, Mr. Johnston responded that he would be "dealing with you and your client my way".

[31] Throughout 2017 and 2018, the Johnston defendants broadcast the following statements about this action, including:

- (a) Mr. Fakih "can go F himself in every way. I'm not one bit impressed by the Libel Notice in any way [...] And once again, he can go to hell. I'm not sorry that I said what I said";
- (b) "[t]here is the Islamic collective tactic of bullying that comes out of the Quran which is to keep your opponents down as often as you can";



- (c) “[N]ow a Muslim man is suing a Christian white man because the Christian white man is asking questions”;
- (d) The plaintiffs initiated this lawsuit “in league” with Bonnie Crombie as a tactic to interfere with Mr. Johnston’s campaign for mayor of Mississauga;
- (e) The plaintiffs and their lawyers “have pulled a fast one” and “talked a judge into” granting \$2.5 million against Johnston;
- (f) That “the judge is in on this”;
- (g) Our courts’ “white judges” and this “white woman judge” in particular are letting Mr. Fakhri fund terror;
- (h) Threatening Mr. Fakhri to “watch out” because he “poked the bear one too many times”; and
- (i) Further threatening “believe me, Mr. Fakhri, you’re gonna pay for this.”

[32] On June 20, 2018, Justice Nakatsuru released his Reasons for Decision, dismissing Mr. Banerjee’s motion to dismiss the action against him (the “Reasons”). In his Reasons, Justice Nakatsuru held that the comments in the event videos share “all the essential hallmarks and attributes” of hate speech that:

go beyond offensive or hurtful expression. They involve hallmarks of hate. [Mr. Banerjee] refers to the patrons [of Paramount] as “jihadists”. While the term can have different meanings, looked at in context and objectively, the statement signifies that only Muslim insurgents or terrorists were allowed into Paramount restaurant. In this day and age, such an imputation can only inspire extreme ill-will and disdain. He further states that you would have to “rape your wife a few times” to be allowed in. These representations “abuse, denigrate or delegitimize” those who attend Paramount restaurant and its owners. The expression renders them as “lawless, dangerous, unworthy or unacceptable in the eyes of the audience.”

[33] Justice Nakatsuru further held that plaintiffs are “the clear targets” of the defendants’ hateful expressions, and the remarks are “facially defamatory and would tend to lower Paramount and Mr. Fakhri’s reputation in the eyes of a reasonable person”.

[34] Following the release of Justice Nakatsuru’s dismissal of Mr. Banerjee’s motion, the plaintiffs reached a settlement with Mr. Banerjee for the dismissal of the plaintiffs’ claims as against him (the “Banerjee settlement”). As part of the Banerjee settlement, Mr. Banerjee made an unqualified apology to the plaintiffs for his and Mr. Johnston’s defamatory and hateful remarks (the “Banerjee apology”):

These statements [made by him and Mr. Johnston on July 20, 2017 when they attended Paramount Fine Foods at 1290 Crestlawn Drive, Mississauga] were entirely without merit and I provide this unqualified apology to Paramount Fine Foods and

Mr. Fakih for any harm I may have caused them because of the statements made that day.

I have learned that it was wrong to attack Mr. Fakih because of his religion or where he is from. Such hate has no place in Canada, and I will not make public comments of this nature in the future. I hope everyone seeing or reading this apology learns from my mistake.

[35] On October 23, 2018, after reviewing the plaintiffs' motion record for summary judgment, I determined that summary judgment was appropriate and ordered the parties to attend Civil Practice Court ("CPC") to schedule the hearing date.

[36] The parties attended CPC on November 27, 2018, a date selected to accommodate Mr. Johnston's schedule because Mr. Johnston advised that he was going to be out of the province until then. Notwithstanding having insisted that the CPC attendance be scheduled to accommodate his travels, Mr. Johnston did not attend. Mr. Wallerstein appeared on behalf of the Johnston defendants (with the plaintiffs' consent).

[37] The hearing of the plaintiffs' motion for summary judgment was scheduled for April 29, 2019, with the Johnston defendants' consent. The CPC order of Justice Firestone further directed the parties to schedule a case management conference to fix a timetable for the motion.

[38] At the December 13, 2018 case management conference, I set the timetable for the motion. Because neither Mr. Johnston nor Mr. Wallerstein attended the case management conference (Mr. Wallerstein was stuck in traffic), I directed that I would hear a motion in writing in chambers if the Johnston defendants took issue with any of the dates in timetable. The Johnston defendants were properly served with the timetable order and counsel for the plaintiffs advised Mr. Wallerstein of my availability to hear any motion by the Johnston defendants to vary the timetable dates if necessary.

[39] The Johnston defendants did not bring any motion to vary the timetable, and failed to provide any responding materials on this motion. As set out above, there are no material facts in issue.

[40] It is impossible to know exactly how many people have accessed the Johnston defendants' statements. The Johnston defendants own and operate multiple websites that are available for worldwide access, as well as a multitude of social media accounts with thousands of followers. The statements linking the plaintiffs with "jihadism", "terrorism", and "rape" have been deeply damaging from both a business and personal perspective.

[41] The plaintiffs' reputations are extremely important to them. Business success is obviously important, but the plaintiffs also see the potential to cross cultural barriers and overcome negative stereotypes by making fresh and affordable Middle Eastern food widely available. For example, Paramount is the first halal food restaurant in Terminals 1 and 3 at Pearson International Airport in Toronto. Being associated with "jihad", "terrorism", and "rape" adversely impacts the plaintiffs'



reputations and one of the foundations of Paramount's brand: to popularize and destigmatize halal food.

[42] Since the Johnston defendants' videos were published, Mr. Fakhri has been and is often approached at public events by strangers who comment on having heard the statements linking Paramount and him to "jihad", "terrorism" and "rape". Sometimes, strangers have asked Mr. Fakhri to declare or prove to them that he does not subscribe to these practices and ideologies.

[43] In October of 2017, Mr. Fakhri's eldest son returned home from school and told Mr. Fakhri and his wife that he had been harassed by other students who had seen the Johnston defendants' videos online or heard about their contents from other students. Mr. Fakhri's son feared that someone in their family would be "hurt".

[44] The statements have had an impact on Paramount's employees. For example, soon after the event videos were posted widely on the internet, an Executive Vice President at Paramount asked to speak with Mr. Fakhri. That individual expressed concern that someone had shown the videos featuring the statements made by the Johnston defendants to members of his family. That individual resigned his position at Paramount approximately three months later.

[45] Customers at Paramount restaurants have raised questions about the Johnston defendants' statements, including statements linking Paramount to "jihad".

[46] Paramount continues to actively explore growth opportunities in Canada and abroad. In September of 2017, Mr. Fakhri travelled with a group of Paramount employees to the United Arab Emirates to meet with a potential partner (the "business meeting"). That potential partner had expressed interest in serving as a master franchisee in the Middle East and the Paramount team was there to negotiate terms, including detailed discussions on a master franchise fee in exchange for the rights to open Paramount locations in that area ("Master Franchise Fee") and terms for a percentage of revenue generated from sales in franchised restaurants returnable to Paramount ("Franchise Sales Fee"). The negotiated deal was based on the following terms: a Master Franchise Fee of approximately \$750,000 and agreement on a Franchise Sales Fee of approximately 5% of revenue generated from franchised restaurants, expected to total approximately \$75,000 per year per franchised restaurant with an expectation of approximately 25 restaurants.

[47] Before the deal was concluded, however, the potential partner showed the Paramount team screenshots from the Johnston defendants' videos that they had obtained on the internet. The potential partner asked Mr. Fakhri and his team about the statements in the videos, including the statements linking Paramount and Mr. Fakhri with "terrorism" and "jihad". The negotiations at the business meeting did not progress beyond this conversation and the deal was lost.

[48] In one of the defamatory videos posted on a number of websites and social media platforms on September 4, 2018, Mr. Johnston brags about the harm he has caused the plaintiffs saying (among other things), "Now, if my research leads to him losing money yah baby, I'm happy about that [...] ya baby I'll take credit for that. You're damn right I will."

## THE ISSUES

[49] There are five issues in this motion:

- (a) Are the impugned statements defamatory?
- (b) If so, are there any defences available to the Johnston defendants?
- (c) What is the appropriate amount of damages to compensate the plaintiffs for the harm suffered as a result of the Johnston defendants' hateful and defamatory remarks?
- (d) Is an award of punitive damages warranted?
- (e) Are permanent restraining orders (injunctions) appropriate?

### **(A) Are the impugned statements defamatory?**

[50] There are three elements to the tort of defamation: (1) the words complained of were published to at least one other person; (2) the words complained of referred to the plaintiffs; and (3) the impugned words are defamatory, in the sense that they would tend to lower the plaintiffs' reputation in the eyes of a reasonable person. Where these three things are established, falsity and damages are presumed.

[51] The impugned Johnston defendants' statements meet all three of these elements: (1) they were posted online on a variety of social media platforms and websites with at least thousands of followers, where they are accessible worldwide; (2) the plaintiffs are the clear targets of the defendants' hateful expressions which expressly identify the plaintiffs by name and post images of Mr. Fakih and Paramount restaurants/logos; and (3) the remarks associate the plaintiffs with terrorists and criminals (rapists and child killers) which would tend to lower their reputation in the eyes of a reasonable person.

[52] In his Reasons, Justice Nakatsuru held that the plaintiffs are "the clear targets" of the defendants' hateful expressions, and the remarks are "facially defamatory and would tend to lower Paramount Fine Foods' and [Mr. Fakih's] reputation in the eyes of a reasonable person". In making his findings, Justice Nakatsuru closely reviewed and considered the defamatory remarks in the Event Videos. The balance of the impugned statements are substantially similar to those within the Event Videos, with consistent defamatory imputations and themes. There is no basis to interfere with Justice Nakatsuru's finding with respect to the Event Videos or to make an inconsistent finding with respect to the other defamatory remarks at issue. I agree with Justice Nakatsuru's findings.



[53] Justice Nakatsuru further held that the defendants' expressions shared "all the essential hallmarks and attributes of an expression that is not worthy of protection"<sup>1</sup> blaming members of the group for the current political problems in society alleging they are a powerful menace, carrying out secret conspiracies, or plotting to destroy civilization; labelling them as criminals, parasitic, or pure evil; equating the targeted group with groups traditionally reviled in society such as child abusers or deviant criminals; and dehumanizing the targeted group by describing them as animals, lesser creatures, or the like.<sup>2</sup>

[54] The other false and malicious statements published by the Johnston defendants throughout 2017 and 2018 also bear the hallmarks of hate. Among other things, the Johnston defendants' statements: refer to Mr. Fakhri as a "Muslim business owner" or a "Muslim man" who discriminates against "white" or Christian people; accuse the plaintiffs of conspiring to take down the Johnston defendants' online accounts and working with politicians and law enforcement officials to sabotage Mr. Johnston's political aspirations; accuse the plaintiffs of "nefarious" activities and funding/supporting terrorist organizations "so they can cut babies in half"; further accuse the plaintiffs of working "very closely with the Pakistani spy agency to bring not just [Mr. Johnston] down but you down and all of Canada down too".

[55] The impugned statements are defamatory.

**(B) Are there defences available to the Johnston defendants?**

[56] A defendant is required to plead particulars of justification/truth in their statement of defence. The basis for this rule is that a plaintiff should be fully informed of a defendant's case. The evidence that may be introduced at trial is therefore limited to the pleaded particulars of justification/truth. In the absence of particulars, the defendant cannot introduce evidence in support of the defence at trial: *Raymond E. Brown, Brown on Defamation*<sup>3</sup>; *Yorkshire Provident Life Ins. v. Gilbert*<sup>4</sup>; *Govenlock v. London Free Press*<sup>5</sup>, and *Parkland Chapel v. Edmonton Broadcasting*<sup>6</sup>.

[57] In this case, the Johnston defendants have provided few particulars or facts with respect to the defences in their pleadings.

[58] Counsel for the plaintiffs suggests that a very liberal reading of the Johnston defendants' statement of defence raises the defences of justification, fair comment and/or responsible communication, none of which are available to the Johnston defendants. I agree with counsel for the plaintiffs' analysis of these defences.

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<sup>1</sup> *Paramount v Johnston*, 2018 ONSC 3711 at para 38.

<sup>2</sup> *Paramount v Johnston*, Ibid at paras 36-38, citing *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11 at paras 44-46.

<sup>3</sup> Raymond E. Brown, *Brown on Defamation*, loose-leaf, 2nd ed. (Toronto: Thomson Reuters, 2017), at 10-121.

<sup>4</sup> *Yorkshire Provident Life Ins. v. Gilbert*, [1895] 2 Q.B. 148.

<sup>5</sup> *Govenlock v. London Free Press Co.* (1915), 35 O.L.R. 79 (C.A.) at 83.

<sup>6</sup> *Parkland Chapel v. Edmonton Broadcasting* (1964), 45 D.L.R. (2d) 752.



[59] There is no basis on which a finding of justification can be made in this case. The tort of defamation is one of strict liability where the above-described elements are established, as here.<sup>7</sup> It is not for the plaintiffs to prove the impugned statements are false, but rather for the Johnston defendants to prove their truth. Despite being aware of this motion, and consenting to the hearing date, the Johnston defendants have chosen not to respond. They have led no evidence whatsoever on this motion or the underlying action of any factual basis for any of their defamatory remarks against the plaintiffs.

[60] In any event, the hateful Islamophobic remarks have no basis in fact. Indeed, the Johnston defendants refer to their comments as “satire” and “political satire” in their defence. By definition, satire is not fact.

[61] Nor can there be any defences of fair comment or responsible communication. Even if the other elements of these defences could be made out in this case (they cannot), each of these defences is only available for statements on a matter of public interest, and each are defeated by malice.<sup>8</sup> Hate communication, such as the Johnston defendants’ malicious and hateful statements against the plaintiffs, raises no subject matter that is related to the public interest, regardless of its other features. Indeed, the public interest lies in its suppression.<sup>9</sup>

[62] Rather than raising any of these defences, in defending this action the Johnston defendants appear to rely primarily on their freedom of expression rights under s. 2 of the Charter. The Charter does not apply to litigation between private citizens and the common law has already taken into account freedom of expression in defining the tort of defamation.<sup>10</sup>

[63] Even if the Charter did apply to this situation, it is well-established at law that not all expression falls within the protected sphere of s. 2. Violent and threatening expression falls outside the *Charter* protected expression.<sup>11</sup> As described above, the Johnston defendants have a history of inciting violence against Muslims and have made a number of statements threatening Mr. Fakhri: saying that Mr. Fakhri should “watch out”, that he is “gonna pay for this [litigation]”, and that Mr. Johnston will deal with Mr. Fakhri “my way”.

[64] Hate speech also runs contrary to the spirit of s. 2(b) because it distorts or limits the robust and free exchange of ideas by silencing the voice of the target group.<sup>12</sup> Limitations on hate speech, including limitations on political speech, do not offend the *Charter*.<sup>13</sup> The Supreme Court explains:<sup>14</sup>

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<sup>7</sup> *Grant v Torstar Corp.*, 2009 SCC 61 at para 28.

<sup>8</sup> *WIC Radio Ltd. v Simpson*, 2008 SCC 40 at para 28; *Grant v Torstar Corp.*, 2009 SCC 61 at para 126.

<sup>9</sup> *Paramount v Johnston*, supra at paras 46, 48-49.

<sup>10</sup> *Hudspeth v Whatcott*, 2017 ONSC 1708 at para 125.

<sup>11</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, supra at paras 112 - 114.

<sup>12</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, Ibid at paras 112 - 114.

<sup>13</sup> *Hudspeth v Whatcott*, supra at para 136.

<sup>14</sup> *Paramount v Johnston*, supra at para 46, citing *R v Keegstra*, [1990] 3 SCR 697.



The suppression of hate propaganda undeniably muzzles the participation of a few individuals in the democratic process, and hence detracts somewhat from free expression values, but the degree of this limitation is not substantial. I am aware that the use of strong language in political and social debate – indeed, perhaps even language intended to promote hatred – is an unavoidable part of the democratic process. Moreover, I recognize that hate propaganda is expression of a type which would generally be categorized as “political”, thus putatively placing it at the very heart of the principle extolling freedom of expression as vital to the democratic process. Nonetheless, expression can work to undermine our commitment to democracy where employed to propagate ideas anathemic to democratic values. Hate propaganda works in just such a way, arguing as it does for a society in which the democratic process is subverted and individuals are denied (respect and dignity simply because of racial or religious characteristics. This brand of expressive activity is thus wholly inimical to the democratic aspirations of the free expression guarantee.

[65] There are no defences available to the Johnston defendants.

**(C) What is the appropriate amount of damages to compensate the plaintiffs for the harm suffered as a result of the Johnston defendants’ hateful and defamatory remarks?**

[66] In defamation cases, three types of compensatory damages can be awarded: general, special and aggravated.

[67] General damages are presumed, without the need for proof of actual injury, once defamation is made out and none of the defences apply. Though there is no formula for the quantification of damages, the following factors are considered in determining the quantum of the general damages award: (a) the plaintiffs’ position and standing; (b) the nature and seriousness of the defamatory statements; (c) the mode and extent of publication; (d) the absence or refusal of any retraction or apology; (e) the conduct and motive of the defendant from publication through judgment; and (f) any aggravating or mitigating circumstances.<sup>15</sup>

[68] The Court of Appeal has indicated that, where the defamatory statements are disseminated over the Internet, these factors must be examined in light of the ubiquity, universality and utility of that medium. Communication via the internet is instantaneous, seamless, interactive, blunt, borderless and far reaching. As such, “internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by [...] its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility.”<sup>16</sup>

[69] The plaintiffs are public proponents of civic engagement and social unity in Toronto and Canada. For their success and extensive community and philanthropic work, the plaintiffs have

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<sup>15</sup> *Barrick Gold Corp. v Lopehandia*, 2004 CarswellOnt 2258, [2004] OJ No 2329 at para 29 (ONCA).

<sup>16</sup> *Barrick Gold Corp. v Lopehandia*, Ibid at para 31 (ONCA).



been covered by a number of media outlets and received numerous awards and citations, including a public acknowledgement and acclamation by the Parliament of Canada.

[70] The Johnston defendants' statements are the most harmful types of statement. Accusing any person, and in particular a Muslim individual, of terrorism is about as serious and damaging an allegation as can be made in these times.<sup>17</sup> Similarly, allegations of criminal conduct, and sexual misconduct and "rape" in particular, are "so obviously and materially harmful to reputational interests".<sup>18</sup> Given the severity of these extremely serious and damaging allegations, malice and significant damages are presumed.<sup>19</sup>

[71] Mr. Johnston is a prolific and determined publisher of content on his websites and social media platforms. The Johnston defendants own and/or operate a multitude of Johnston online platforms with thousands of followers. Each of the defamatory statements was published on a number of different websites and social media platforms, with no way of knowing how many times they were copied or replicated elsewhere on the internet.

[72] The plaintiffs have no way of knowing what members of the public or the Paramount team may have been affected by the Johnston defendants' remarks.<sup>20</sup> Notwithstanding the inherent difficulty measuring the complete harm suffered by such severe allegations, the evidence on this motion establishes that the Johnston defendants' false statements have undone years of time and effort Mr. Fakih committed to charitable efforts and his public profile and reputation as a trustworthy broker of interfaith and intercultural dialogue, and the face of Paramount in its mission to popularize and destigmatize halal food in Canada.

[73] The serious damage to the plaintiffs' reputations from the Johnston defendants' repeated and widely disseminated false statements associating the plaintiffs with discrimination, conspiracy, rape, murder, and terrorism (including vivid imagery used of child murder) may never be able to be undone. As recognized by the Court of Appeal, given the "extraordinary capacity" of the internet to replicate defamatory statements "almost endlessly", "the truth rarely catches up with a lie".<sup>21</sup>

[74] Aggravated damages are awarded in defamation cases, such as this, where the defendants' conduct has been particularly high-handed, malicious or oppressive, thereby increasing the plaintiffs' humiliation and anxiety arising from the defamatory statement. The entirety of the defendants' conduct, including prior to the publication of the libel, is taken into account.<sup>22</sup>

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<sup>17</sup> *Lascaris v B'nai Brith Canada*, 2019 ONCA 163 at para 40.

<sup>18</sup> R.E. Brown, *The Law of Defamation in Canada*, supra at p 4-552, citing *Bell v. National Republican Congressional Committee*, 187 F. Supp. 2d 605 (S.D. W. Va. 2002), at 616.

<sup>19</sup> R.E. Brown, *The Law of Defamation in Canada*, Ibid at pp 4-311, to 4-313, 4-362.

<sup>20</sup> *Hill v Church of Scientology of Toronto*, 1995 CarswellOnt 393, Ibid at paras 169, 180.

<sup>21</sup> *Barrick Gold Corp. v Lopehandia*, supra at paras 28-34 (ONCA).

<sup>22</sup> *Hill v Church of Scientology of Toronto*, supra at paras 191-194.



[75] The Johnston defendants have a history of hateful speech against Canadian Muslims. They have never apologized or even acknowledged their defamatory conduct, despite having been served with a detailed libel notice and the statement of claim nearly two years ago. On the contrary, they have continued their defamatory and harassing campaign against the plaintiffs with no abatement after the commencement of these proceedings. Indeed, the Johnston defendants made a number of posts in which Mr. Johnston explicitly states that he is not sorry for his comments about the plaintiffs, and would stand by them in a court of law: “[Mr. Fakh] can go to hell. I’m not sorry that I said what I said”. Mr. Johnston also brags about causing the plaintiffs serious harm: “Now, if my research leads to [Mr. Fakh] losing money yah baby, I’m happy about that [...] ya baby I’ll take credit for that. You’re damn right I will”.

[76] Moreover, the Johnston defendants’ harassment of the plaintiffs has not been confined to the internet. In the spring of 2018, Mr. Johnston accosted Mr. Fakh and his three young children in a public shopping mall. Mr. Johnston followed them as they tried to escape, terrifying the children with his false and malicious accusations against their father. Following the incident, Mr. Fakh’s four-year old son would wake up in the middle of the night, afraid of “the scary man” who hates his dad.

[77] In addition to the irreparable reputational harm that the plaintiffs have suffered, the Johnston defendants’ hateful remarks have had a demonstrable effect on the plaintiffs’ business. The plaintiffs are entitled to compensation for these special damages as they are the natural and proximate result of the defamation and are capable of monetary measurement.

[78] In particular, the plaintiffs lost a lucrative business opportunity in the United Arab Emirates that was anticipated to result in approximately \$1,875,000 a year in Franchise Sales Fees for Paramount, plus an initial \$750,000 Master Franchise Fee. In the circumstances, the \$2,000,000 in compensatory damages sought in the statement of claim falls short of compensating the plaintiffs for just one year of special damages from this single lost transaction (\$2,625,000), leaving aside any of the other serious and irreparable harm suffered for which the plaintiffs are entitled to compensation.

**(D) Is an award of punitive damages warranted?**

[79] The Johnston defendants’ conduct further gives rise to an award of punitive damages. Punitive damages bear no relation to the plaintiffs’ compensatory damages: their aim is to punish the defendants rather than to compensate the plaintiffs.<sup>23</sup> They are the means by which the court expresses its outrage for the egregious conduct of the defendants.

[80] Throughout the course of this action, the Johnston defendants have repeatedly disrespected this court process. From the commencement of this action, the Johnston defendants have engaged in a variety of tactics to stall progress of this action including: knowingly and intentionally avoiding service of the originating process; lying to process servers as to their whereabouts for

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<sup>23</sup> *Focus Graphite Inc. v Douglas*, 2015 ONSC 1104 at para 60.



service; failing to respond to correspondence from the plaintiffs' lawyers in a timely fashion, or at all; and forcing the parties to delay scheduling steps in this matter to accommodate Mr. Johnston's schedule, including lengthy travels of which Mr. Johnston gave no advance notice, even for appearances that Mr. Johnston did not attend personally. The Johnston defendants' conduct persisted notwithstanding the court's involvement to move this litigation forward; they have made multiple false and/or contradictory statements to the court and they have flouted each of the court's orders.

[81] Indeed, the Johnston defendants have published numerous statements expressing contempt for these proceedings and maligning this court and its judges. In particular, in a video posted on October 31, 2018, Mr. Johnston accuses the court of being "in on" a conspiracy to "pull a fast one" on the Johnston defendants, and says that our courts' "white judges" - "this white woman judge", are letting Mr. Fakih get away with funding terror.

[82] A punitive award is further warranted given the nature of the Johnston defendants' remarks: hate speech is a special category of expression deserving of sanction. As the Supreme Court has repeatedly recognized, the harm from hateful comments is "of a pressing and substantial concern."<sup>24</sup> Hate speech leads to "grave psychological and social consequences" "from the humiliation and degradation caused by the hate propaganda" to the targets of the speech, as well as other members of the targeted group.<sup>25</sup> Hate speech also impacts on the targeted group's ability to respond to substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy: "Indeed, a particularly insidious aspect of hate speech is that it acts to cut off any path of reply by the group under attack."<sup>26</sup>

[83] The harm spreads beyond the emotional distress to the targeted individuals and groups: there are harmful effects on society at large "by affecting a subtle and unconscious alteration of views concerning the inferiority of the targeted group".<sup>27</sup> Hate speech is, at its core, an effort to marginalize and delegitimize individuals based on their membership in a group. When a group of people (in this case, Muslims) are considered inferior or vilified as blameworthy or undeserving, it is easier to justify discriminatory treatment:<sup>28</sup>

As the majority becomes desensitized by the effects of hate speech, the concern is that some members of society will demonstrate their rejection of the vulnerable group through conduct. Hate speech lays the groundwork for later, broad attacks on vulnerable groups. These attacks can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide.

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<sup>24</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, supra at para 73.

<sup>25</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, Ibid at para 73.

<sup>26</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, Ibid at para 75.

<sup>27</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, Ibid at para 74.

<sup>28</sup> *Whatcott v Saskatchewan Human Rights Tribunal*, Ibid at paras 71, 74.



**(E) Are permanent restraining orders (injunctions) appropriate?**

[84] Permanent injunctions have been ordered in defamation actions where: (a) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiffs for defamation; or (b) there is a real possibility that the plaintiffs will not receive any compensation, given that the enforcement against the defendant of any damage award may not be possible.<sup>29</sup>

[85] Both are met in this case. There is a strong likelihood that the Johnston defendants will continue to publish defamatory communications about the plaintiffs after judgment. The Johnston defendants' campaign of harassing the plaintiffs by defamatory publications and posts has continued for almost three years and did not abate even after this action was commenced.<sup>30</sup>

[86] There is also a real possibility that the Johnston defendants will refuse or be unable to pay any judgment. The Johnston defendants have a history of ignoring and breaching orders of this court. They have refused to pay any of the costs awards already made against them for their breaches of court awards and have made a number of public comments maligning this court and the case management judge.

[87] In this case an injunction is also being sought preventing the Johnston defendants or anyone acting on their behalf, direction or in conjunction with them from coming within 100 metres of 145 King Street West, the office of Lax O'Sullivan Lisus Gottlieb LLP ("LOLG"); attending the offices of LOLG; video or audio recording, photographing or attempting to video or audio record, or photograph anyone from LOLG; and from disseminating posting on the internet, publishing or broadcasting in any manner whatsoever, either directly or indirectly, any defamatory statements concerning LOLG as well.

**CONCLUSION**

[88] In conclusion, I feel compelled to stress the wider societal issues that this very disturbing case represents. In this fractious 21<sup>st</sup> century – where social media and the internet now allow some of the darkest forces in our society to achieve attention - these issues are numerous and profound, and their impact extends well beyond the borders of this country.

[89] At its core, the horrific behaviour of the Johnston defendants has been a grievous injustice to a valued member of the Canadian community who deserves nothing less than our respect. That is lamentable enough, but it is more than that. Motivated by ignorance and a reckless regard for acceptable norms, the Johnston defendants' behaviour reflects a contempt for Canada's judicial process, an abuse of the very freedoms this country affords them and a loathsome example of hate

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<sup>29</sup> *Sustainable Development Technology Canada v Sigurdson*, 2018 ONSC 7320 at para 57.

<sup>30</sup> *Sustainable Development Technology Canada v Sigurdson*, Ibid at para 58.

speech at its worst, targeting people solely because of their religion. Left unchallenged, it poisons the integrity of our democracy.

[90] It is important for us to assess the behaviour of the Johnston defendants in its wider context. It is not an isolated example; instead, it reflects an overall rise of hate speech in Canada. According to Statistics Canada, the number of hate crimes reported to the police in 2017, the last year for which data was collected, reached an all-time high. And they were largely driven by incidents targeting Muslim, Jewish and black people. Buried in these statistics are the stories of actual people. We know some of their names, and they are included in this judgment.

[91] The victims of these incidents deserve our respect and empathy, as the perpetrators warrant our condemnation and rebuke. In so doing, as this judgment suggests, hateful speech always needs to be identified, and confronted when warranted.

### **ORDERS MADE**

[92] The Johnston defendants are ordered to pay \$2.5 million in damages to the plaintiffs.

[93] The Johnston defendants are required to remove and/or destroy any copy of or reference to the videos and the defamatory content identified in this action from any source, medium or place accessible to any third party.

[94] The Johnston defendants are permanently restrained, or anyone acting on their behalf, direction, or in conjunction with them, from:

- (a) coming within 100 metres of the residence of Mr. Fakhri;
- (b) coming within 100 metres of Mr. Fakhri, or members of his family;
- (c) directly or indirectly contacting, communicating with, or attempting to contact or communicate with Mr. Fakhri or members of his family;
- (d) video or audio recording or photographing, or attempting to video or audio record or photograph Mr. Fakhri or members of his family; and
- (e) disseminating, posting on the Internet, publishing, or broadcasting in any manner whatsoever, either directly or indirectly, any defamatory statements concerning the plaintiffs or its officers, directors, shareholders, employees or related entities.

[95] The Johnston defendants are permanently restrained, or anyone acting on their behalf, direction, or in conjunction with them, from:

- (a) coming within 100 metres of 145 King Street West;
- (b) attending the offices of counsel to the plaintiffs, Lax O'Sullivan Lisus Gottlieb LLP located at 145 King Street West;



- (c) video or audio recording or photographing, or attempting to video or audio record or photograph anyone from Lax O'Sullivan Lissus Gottlieb LLP; and
- (d) disseminating, posting on the internet, publishing or broadcasting in any manner whatsoever, either directly or indirectly, any defamatory statement concerning Lax O'Sullivan Lissus Gottlieb LLP.

[96] The order can be sent to me directly for signature.

[97] I am prepared to receive brief submissions from the plaintiffs with respect to costs. They can be sent to my assistant by email at [Lorie.Waltenbury@ontario.ca](mailto:Lorie.Waltenbury@ontario.ca) within 14 days. The Johnston defendants can reply within 10 days thereafter.

A handwritten signature in blue ink, appearing to read "Jae E Ferguson J", is written over a horizontal line.

J.E. Ferguson J.

**Released:** May 13 2019.

**CITATION:** Paramount v. Kevin J. Johnston, 2019 ONSC 2910  
**COURT FILE NO.:** CV-17-580326  
**DATE:** 20190513

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PARAMOUNT FINE FOODS and MOHAMAD FAKIH

Plaintiffs

– and –

KEVIN J. JOHNSTON, RANENDRA BANERJEE and  
FREEDOMREPORT.CA

Defendants

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**REASONS**

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J.E. Ferguson J.

**Released:** May 13, 2019.