

CITATION: Soliman v. Bordman, 2021 ONSC 7023
COURT FILE NO.: CV-20-00636658-0000
DATE: 20211021

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
)
 WALIED SOLIMAN)
 Plaintiff) *Jonathan C. Lisus and Niklas Holmberg for*
) *the Plaintiff*
 - and -)
)
)
 DANIEL BORDMAN and TAG TV INC.)
 Defendants)
) *Jonathan Stainsby and Marcus Klee for the*
) *Defendant Daniel Bordman*
)
) **HEARD:** September 21, 2021

PERELL, J.

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A. Introduction and Overview

[1] In this action, the Plaintiff, Walied Soliman, alleges that he has been defamed by the Islamophobic hate speeches of the Defendant, Daniel Bordman. The alleged defamatory statements were video streamed across the Internet from a newsroom studio at TAG TV and from the Bordmans’ family home on various Internet social media and alternative news media. Mr. Soliman asserts that Mr. Bordman, in addition to being a defamer, is a hatermonger, a racist, and a member of the alt-right community of demagogues, hatermongers, conspiracy theorists, and Islamophobes.

[2] This is a summary judgment motion in one of two defamation actions. In the immediate action, Mr. Soliman sues Mr. Bordman and TAG TV Inc. The claim against TAG TV Inc. has been resolved, and the action against TAG TV is to be dismissed without costs. In a companion action, Mr. Soliman sues Mr. Bordman’s parents, physicians Joel and Risa Bordman.¹ The companion action also has been resolved; the action against Mr. Bordman’s parents is to be dismissed without costs. Orders may issue dismissing the actions against TAG TV Inc. and Joel and Risa Bordman.

[3] In the immediate action, Mr. Soliman brings a motion for summary judgment. Mr. Bordman resists the motion, and he submits that the case is not appropriate for a summary judgment. He submits that there are numerous genuine issues that require a trial.

[4] I disagree that a trial is required. In the immediate action, for the reasons that follow, I grant a summary judgment against Mr. Bordman. I award Mr. Soliman general and aggravated damages of \$500,000. I order that Mr. Bordman remove any media he controls and attempt to have removed any media controlled by others that he has published in the public domain that refers to Mr. Soliman. I permanently enjoin Mr. Bordman, or anyone acting on his behalf, on his direction, or in conjunction with him, from disseminating, posting on the Internet, publishing, or broadcasting in any manner whatsoever, either directly or indirectly, any statements concerning

¹ Court File No. 20-00638608-0000.

Mr. Soliman other than an apology, the text of which must be approved by Mr. Soliman.

[5] By way of overview of my reasons for the above summary judgment:

- a. The issues of hate speech and of whether Mr. Bordman is a racist, and a member of the alt-right community of demagogues, hatemongers, and Islamophobes is a genuine issue that would require a trial.
- b. Except for the issue of hate speech and whether Mr. Bordman is a racist, the case is an appropriate one for a summary judgment. There is, however, no need for a trial to justly and fairly determine that Mr. Bordman is liable and has no defence to Mr. Soliman's defamation action.
- c. I find as a fact that in his role of a news journalist, be it a news reporter or a news commentator, Mr. Bordman defamed Mr. Soliman using Internet social and alternative news media. The defamation began before and continued after the commencement of this litigation and it continues to this day, and it should be enjoined.
- d. Mr. Bordman's statements and continuing statements are defamatory, and the manner in which Mr. Bordman expressed his statements does evoke and motivate hate speech, but as already mentioned, on this summary judgment motion, it is not necessary nor appropriate nor fair to make any finding that Mr. Bordman's speech was hate speech or that Mr. Bordman is a racist, demagogue, xenophobe, *etc.*
- e. Mr. Bordman made many defamatory statements, but they may be synthesized into three main assertions; namely: (a) Mr. Soliman is an extremist or a supporter of extremist, terrorist Islamic organizations such as the Muslim Brotherhood, which organizations are dedicated to usurping Canadian democracy and replacing it with a Muslim caliphate; (b) Mr. Soliman is a closet anti-Semite and a supporter of Al Quds Day, which is a holiday founded by the Muslim State of Iran to celebrate its hatred and to condemn Israel, and Mr. Soliman hides his anti-Semitism from his Jewish law partners;² and (c) Mr. Soliman seeks and supports the introduction of Sharia law to Canada to supplant or override Canadian law.
- f. I find that Mr. Bordman's statements about Mr. Soliman were on a topic of public interest because of Mr. Soliman's political party activism and his association with provincial and federal political parties and their policies and ideologies including their aspirations to be more diverse and inclusive.
- g. However, Mr. Bordman's defences based on the importance of freedom of speech on topics of public interest fail. Mr. Bordman's freedom of expression defences fail because:
 - (i) Mr. Bordman's defence of justification was abandoned, and it was not advanced during oral argument. In any event, this defence was not established on the evidentiary record.

² Semites are descendants of peoples of ancient southwestern Asia including the Akkadians, Phoenicians, Hebrews, and Arabs, but anti-Semitism has come to be a reference to racist hatred of Jews.

- (ii) I find as a fact that Mr. Bordman made false statements of fact and not comments or opinions, and, thus, the defence of fair comment is not available to him.
- (iii) If I am wrong in classifying Mr. Bordman's statements as statements of fact, then the defence of fair comment fails because: (a) his comments or opinions were not based on true facts; (b) his comments or opinions were not objectively fair because no person could honestly express them based on the proved facts; and, (c) Mr. Bordman's comments or opinions were made with malice because they were statements made with reckless disregard or indifference to the truth.
- (iv) Mr. Bordman's defence of responsible communication fails because the publication of Mr. Bordman's statements was irresponsible. The statements were irresponsible because: (a) reasonable steps were not taken by Mr. Bordman to ensure the overall accuracy of the factual assertions; and (b) reasonable steps were not taken by Mr. Bordman to ensure the fairness of the making of the statements.

h. Accordingly, Mr. Soliman is entitled to a summary judgment. He did not advance a claim for special or pecuniary damages, but he is entitled to general and aggravated damages of \$500,000 and to injunctions enjoining Mr. Bordman's defamatory statements.

B. Character Assassination

[6] In the next section, I will describe the parties to this defamation litigation. However, before doing so, some observations, limitations, qualifications, and reservations are necessary about character evidence in civil matters including trials and summary judgment motions.

[7] In a civil action, the character of a party may be a material issue, in which case, character evidence would be relevant and admissible.

[8] A party's character may also be relevant to his or her credibility as a witness in which case, character evidence would be admissible to cross-examine the witness; however, the witnesses (the party's) answers would be subject to the collateral evidence rule, which holds that subject to certain exceptions, the questioner is bound by the answer and cannot lead evidence to contradict the witness. Unless the evidence is relevant to a material issue, the collateral evidence rule bars rebutting evidence when the witness denies accusations of bad character.³

[9] In *Deep v. Wood*,⁴ Justice Lacourciere stated for the Court of Appeal:

10. Evidence of good character in a civil action is ordinarily inadmissible since it is irrelevant in the determination of most issues arising in those cases. Nevertheless, cross-examination relating to general reputation for untruthfulness or to prior criminal convictions or to findings of professional misconduct involving dishonesty may be used to diminish the credibility of a witness. In contrast, the accused in a criminal case may not be cross-examined as to his character unless he puts it in

³ *Tsoukas v. Segura* 2001 BCCA 664; *Deep v. Wood* [1983] O.J. No. 23 (C.A.); *R. v. Treacy* (1944), 30 Cr. App. R. 93; *R. v. Anderson* (1938), 70 C.C.C. 275 (Man. C.A.); *Attorney General v. Hitchcock* (1847), 1 Ex. 91; *Harris v. Tippett* (1811), 2 Camp. 637.

⁴ [1983] O.J. No. 23 at para. 10 (C.A.).

issue by adducing evidence of good character. See *Criminal Code*, s.593; *R. v. McNamara et al.* (No.1) (1981), 56 C.C.C. (2d) 193 at 342-54. In regard to character evidence in civil matters, Sopinka and Lederman, *op cit.*, pp.288-89, put it as follows:

There are very few reported cases in which character evidence has been sought to be introduced by the examination of witness in chief. The vast majority of cases which deal with the use of character evidence as secondary evidence are cases where such evidence is attempted to be introduced by way of cross-examination. Here character evidence is admitted as part of a broader rule. On cross-examination, subject to the discretion of the trial judge to disallow any question which is vexatious or oppressive, a witness can be asked literally anything as a test of his credibility. This broader rule is subject to the qualification, however, that if the question is irrelevant to the facts in issue, but is asked purely for the purpose of testing credibility, the cross-examiner is bound by the answer. He cannot lead evidence to contradict the witness.

[10] A plaintiff brings a defamation action to defend and repair his or her own reputation and to be compensated and vindicated for the injuries caused by the defendant's libels, slanders, and character assassination. The character of the plaintiff is a material and relevant issue in the defamation action. I will describe my findings of fact about Mr. Soliman's character and reputation below.

[11] In a defamation action, the character of the defendant is not a constituent element of the cause of action. In a defamation action, save for its relevance to the issues of responsible communication, malice, and aggravated and punitive damages, the defendant's character and the character of the persons with whom the defendant associates are not typically material issues. In the immediate case, however, the plaintiff, Mr. Soliman has set out to prove that the defendant Mr. Bordman is a hateful extremist, racist, and a member of an alt-right community of hatemongers and Islamophobes.

[12] Mr. Soliman has made a contested material issue of Mr. Bordman's character, personality, Internet personae, connections, and associations. In what appears to be a counter character assassination, Mr. Soliman has led a great deal of evidence about Mr. Bordman's character and about the character of persons with whom Mr. Bordman associates. Mr. Soliman has set out to prove that in addition to being a defamer, Mr. Bordman is a hatemonger, a racist, and a member of the alt-right community of demagogues, hatemongers, conspiracy theorists, and Islamophobes.

[13] For examples, Mr. Soliman led evidence and proffered videos about Laura Lynn, who is an alt-right celebrity who hosted Mr. Bordman or who has been Mr. Bordman's guest on alternative news media broadcasts. There was evidence about Kevin J. Johnson, who was found civilly liable for over \$2.5 million for defaming Mohamad Fakih,⁵ who, as it happens, is another Muslim client of Mr. Soliman's lawyers, Lax O'Sullivan, Lisus, Gottlieb LLP. Mr. Soliman proffered evidence of the alleged hate crimes and contempt prosecutions of Mr. Johnson. Mr. Soliman proffered into evidence a video of Mr. Johnson's guest appearance on Laura Lynn's Internet broadcast. Mr. Soliman proffered into evidence a video of the appearance of Mark Friesen, known online as the "Grizzly Patriot," on Laura Lynn's Internet broadcast. Mr. Soliman also submitted evidence about hate speech in general, including reports or statements from the Toronto Police Service, the Ontario Human Rights Commission, The Government of Canada, the Law Society of Ontario, the South Asian Bar Association of Toronto. Mr. Soliman put into evidence some loathsome and threatening Internet posts and photos made by Mr. Bordman's fans.

⁵ *Paramount Fine Foods v. Johnston* 2019 ONSC 2910.

[14] Mr. Bordman vehemently denied this counterattack of character assassination. The examinations for discovery and the cross-examinations of all concerned were filled with vile attack and vile counterattack about Mr. Soliman, about Mr. Bordman, and about the people they both associate with.

[15] While it was fair for Mr. Soliman to use all this evidence on the material issues of responsible communication and malice and to prove that Mr. Bordman's statements caused harm, it was not fair nor necessary to use this evidence to prove that some of Mr. Bordman's fans and guests are deplorable and despicable or to ask the court to make findings that Mr. Bordman makes common cause and is himself a despicable racist. During oral argument, Mr. Soliman's counsel conceded that it was not necessary for the court to decide Mr. Soliman's allegations that Mr. Bordman was a racist to arrive at a summary judgment.

[16] A civil proceeding for defamation is not a hate-crimes prosecution under the *Criminal Code*, and as my findings of fact will demonstrate, Mr. Soliman can make his case in defamation without proving that Mr. Bordman would be liable for a hate crime, for which there are *mens rea* defences and a different standard of proof.

[17] All major faiths respect human dignity and endorse the golden rule that one should treat others as they would wish themselves to be treated, (colloquially do as you would be done by), and it is trite that two wrongs do not make a right, and in the immediate case it was unnecessary for Mr. Soliman to go as far as he did in defending his good name. In this civil action, while it is necessary to make findings about what motivated Mr. Bordman to say what he said, nevertheless, it would not be appropriate or fair to summarily decide that he is a racist. That is a genuine issue requiring a trial. Thus, whether Mr. Bordman is alt-right racist or a Canadian patriot, as he would describe himself, is something that I need not and shall not decide on this summary judgment motion.

[18] I shall also not be making findings of fact about some hotly contested issues that are collateral to the issues I must decide. Some of the uses being made by Mr. Soliman of some of the evidence proffered for this summary judgment motion about Mr. Bordman's character and some of the evidence proffered about the alt-right and xenophobic Internet trolls, and about defendants in other defamation cases was some mix of irrelevant, overreaching, hearsay, prejudicial, collateral, and unfair. Some of the hate crime's evidence proffered by Mr. Soliman was inadmissible under the rules of evidence, although the self-represented Mr. Bordman or his intermittently retained counsel failed to object.

[19] Some of the character evidence that would support Mr. Soliman's character assassination of Mr. Bordman is based on Mr. Bordman's words and actions and is part of the narrative that I shall describe below. Some of the character evidence about Mr. Bordman is relevant to the central issues of whether Mr. Soliman's has been defamed and whether Mr. Bordman acted recklessly or maliciously. To the extent that this character evidence about Mr. Bordman is relevant to some issues in the defamation action, I shall make findings of fact; however, for the purposes of Mr. Soliman's summary judgment motion, it is neither necessary nor appropriate to make findings about whether Mr. Bordman is a genuine racist demagogue or hatermonger.

C. Parties

1. Walied Soliman

[20] The Plaintiff Walied Soliman is a Canadian citizen of the Islamic faith. He is married and is the father of seven children. The family lives in Mississauga. His children attend parochial religious schools.

[21] Mr. Soliman was educated in Canada. He is a graduate of Osgoode Hall Law School. He is a highly regarded expert in corporate, commercial, and securities law. He has had and continues to have a very successful career as a lawyer. He has won awards and accolades for his legal services. He is highly ranked in lawyer-ranking publications. He is a former Global Chair of Norton Rose Fulbright, one of the largest law firms in the world. In Canada, he is a former chair of the Norton Rose Fulbright office. In 2020, he was appointed to lead the Ontario Government's task force to review the province's capital markets laws.

[22] Mr. Soliman is member of the board of SickKids Hospital Foundation. He is a founder and a board member of the Black North Initiative against anti-Black systemic racism. He is a former board member of the Canadian Civil Liberties Association. In 2019, the United Nations Association in Canada named him the "2019 Global Citizen Laureate."

[23] While not an elected politician, Mr. Soliman is a public figure and what he says, does, and advocates is a matter of public interest. Although he has never sought public office, Mr. Soliman has been a political activist since his youth. He was the campaign chair in Patrick Brown's bid to be leader of the Ontario PC Party. He was the campaign chair in Erin O'Toole's campaign to become leader of the Federal Conservative Party. He would appear to have an influential backroom voice in policy formation.

[24] Mr. Soliman has and continues to have an excellent reputation in the profession and in the community.

2. Daniel Bordman

[25] Daniel Bordman is a Canadian citizen of the Jewish faith born and raised in Toronto. He is the son of two physicians. He attended private school in Toronto and Queen's University in Kingston, Ontario. He has a BA (2013) in psychology. He was an adult in his late twenties during the events that are the subject of this defamation action. He is now in his thirties.

[26] Mr. Bordman has several occupations. He is formerly a stand-up comedian. He ran a media company. He is a video film producer. He is a news journalist and news commentator. Mr. Bordman operates the www.YouTube.com channel titled "Daniel Bordman" on which he uploads, among other videos, a weekly "news" program titled "Uninterrupted with Daniel Bordman." Mr. Bordman links his YouTube channel to his www.Twitter.com account "@Ranting4Canada" and to his www.Facebook.com account "@danielbordmanpolitics". Mr. Bordman has an online following of approximately 3,000 YouTube subscribers, approximately 1,500 Twitter followers, and approximately 20,000 Facebook followers. His video broadcasts are available to be seen by millions watching online.

[27] The Internet has seen the proliferation of news reporting outside of traditional mainstream media, and Mr. Bordman works in the world of the alternative news media, which also includes

use of social media. Mr. Bordman is a senior contributor to the “*National Telegraph*,” a website that describes itself as a news media organization fighting fake news and false narratives.

[28] Although he has no formal education as a journalist, Mr. Bordman has developed a career in what might be called performance journalism in the alternative news media. He sometimes describes himself as an investigative journalist and other times, he describes himself as more of a pundit, a news commentator or analyst with opinions of what he honestly believes to be true.

[29] Mr. Bordman is the communications coordinator of the Canadian Anti-Semitism Education Foundation and a board member of Canadians for the Rule of Law.

D. Factual Background

Introduction

[30] In this part of my Reasons for Decision, I shall set out the factual background to the defamation action. For the purpose of making my findings of fact for the summary judgment motion, I shall begin with the background factual circumstances that Mr. Bordman says he relies on to justify what he said about Mr. Soliman. I shall not begin with the history of the alleged defamatory statements; I shall begin with the back story.

[31] Thus, before discussing the history of the statements made by Mr. Bordman about Mr. Soliman, I shall first describe three background factual incidents and two background factual circumstances.

[32] The first of the three incidents, which occurred in 2014, I shall label the “the Khaled Al-Qazzaz Open Letter.” It was a public matter. The second and third incidents were private matters that were the work product of Mr. Bordman’s journalism and became public matters. I shall label the second incident, which occurred in November 2017, “the Soliman-Safavi Meeting.” I shall label the third incident, which began in May 2017 and continues to this day, as “the Soliman-Singh Transcript.” But for Mr. Bordman’s disclosure of the Soliman-Safavi Meeting it would not have been disclosed to the public. The Soliman-Singh Transcript was a sealed court document that had some disclosure to the public but concerned an internal dispute of the Progressive Conservative Party of Ontario.

[33] The first background factual circumstance is the private matter that Mr. Soliman’s children attend a parochial Muslim school. The second factual circumstance is Mr. Soliman’s stance with respect to the role of Sharia law in Canadian society. This is more a public than a private matter because Mr. Soliman has publicly expressed some views about Sharia law and its relationship to Canadian commercial financing law.

[34] Mr. Bordman relies on the three discrete incidents and the two factual circumstances to support his fair comment and responsible communication defence, and he relied on these background stories for his now abandoned justification defence.

[35] As the history of the alleged defamatory statements will reveal, the three incidents and the two factual circumstances come to be intertwined to base Mr. Bordman’s defences. As the text of the alleged defamatory statements will reveal, much of Mr. Bordman’s statements about Mr. Soliman relate to the three incidents and to the two factual circumstances. In his broadcast videos, in his Statement of Defence, in his Reply to a Demand for Particulars, during his examination for discovery, and during his cross-examination for the summary judgment, Mr. Bordman relies on

the three incidents and the two circumstances as the foundation or basis for what he had to say about Mr. Soliman and for his justification, fair comment, and responsible communication defences.

[36] In this part of my Reasons for Decision, after describing the background incidents and circumstances, I shall then describe the alleged defamatory statements. Finally, in the last part of this description of the factual background, I shall make some miscellaneous findings of fact. Later, in my decision, I will discuss the law and the legal significance of all my findings of fact and make some additional findings of fact about the back story events.

1. The Khaled Al-Qazzaz Open Letter

[37] Mr. Bordman relies on the Khaled Al-Qazzaz Open Letter as part of his fair comment and reasonable communication defences.

[38] Khaled Al Qazzaz is an engineer and educator. He is a Muslim. He went to university in Canada for graduate and postgraduate studies. He married a Canadian, Sarah Attia, who also holds graduate and postgraduate degrees in engineering. Their four children are Canadian-Egyptian citizens.

[39] Mr. Qazzaz and his family were living in Egypt, where he and his wife were working as educators. In 2012, after the Egyptian revolution, Mr. Qazzaz was chosen to be the Egyptian foreign relations secretary by the democratically elected president, Mohamed Morsi.

[40] In July 2013, the Egyptian military ousted Morsi's government, and Morsi and others, including Mr. Qazzaz, were arrested. Mr. Qazzaz was sent to a maximum-security prison. He was detained in brutal conditions, including solitary confinement, for over a year without being charged with any offence. His health was seriously compromised, and he was in danger of dying or suffering permanent life-threatening injuries. His wife and his children were in Canada.

[41] On July 16, 2014, Mr. Soliman was one of 131 Canadians citizens, including Mahar Arar, Margaret Atwood, Paul Copeland C.M, Allen Grant, Barbara Jackman, James Lockyer, and Clayton Ruby, C.M who signed an open letter to the Prime Minister of Canada (Stephen Harper) calling for the repatriation of Mr. Qazzaz to join his family in Canada. Mr. Qazzaz's wife, Sarah Attia, also signed the letter.

[42] The letter was signed by artists, authors, clergy, human rights activists, journalists, lawyers, physicians, politicians, university professors, and citizens associated with Amnistie Internationale Canada (Francophone), the Canadian Association of Muslims and Jews, Canadian Council of Churches, Canadians for Justice and Peace in the Middle East, Canadian Friends Service Committee (Quakers), the Canadian Muslim Civil Liberties Association, Canadian Muslim Professional Network, Canadian Voice of Women for Peace, International Civil Liberties Monitoring Group, International Rescue Committee, Islamic Foundation of Toronto, Lawyers' Rights Watch Canada, Ligue des droits et libertés, Ontario Human Rights Commission, the Royal Society of Canada, and the World Federalist Movement.

[43] Mr. Qazzaz was successfully repatriated to Canada, where he came to be employed by the Muslim Association of Canada ("MAC").

2. The Soliman-Safavi Meeting

[44] Mr. Bordman relies on the Soliman-Safavi Meeting as part of his fair comment and reasonable communication defences.

[45] Seyed Siavash Safavi is a political refugee from Iran, where he had been jailed and tortured by the Iranian Revolutionary Guard. Mr. Safavi came to live in Canada.

[46] In 2017, Mr. Bordman hosted a livestream Internet program called *Civil Space Network* with Mr. Safavi. Mr. Safavi was Mr. Bordman's business partner, and for a time they were roommates.

[47] Mr. Bordman and Mr. Safavi produced several videos about the Iranian government that went viral on the Internet. The videos drew the attention of policy wonks of the Federal Conservative Party. Messrs. Bordman and Safavi received an invitation to meet Walied Soliman, who at the time was a stranger to them. Mr. Safavi accepted the invitation and met with Mr. Soliman on November 23, 2017.

[48] Mr. Soliman has no record of a meeting with Mr. Safavi and has no recollection of meeting him.

[49] Approximately two and a half years later, in a voluntary and unsolicited statutory declaration that Mr. Safavi made on March 9, 2020, almost a year after Mr. Bordman mentioned the meeting on a broadcast and after Mr. Soliman had commenced his defamation actions, Mr. Safavi recounted what happened at his meeting with Mr. Soliman. Mr. Safavi deposed:

3. I spoke to [Mr. Bordman] and we both decided it would be more interesting if I went alone because I am an Iranian refugee. We decided I was going to ask: What were Mr. Soliman's views on extremist's organizations like NCCM? Was he aligned with any Islamist groups or Muslim Brotherhood front groups, Iranian lobbies, or anything like that? We assumed he would be more willing to open up if I went alone because of my background and because [Mr. Bordman] was Jewish.

4. In my meeting with Mr. Soliman, he assumed I was Muslim, since I told him I was a refugee from Iran. The Al Quds Day March was a hot political topic at the time, and it came up in conversation. He said that he wanted to be there in the protests, but he has Jewish clients, and it would offend them, and his first responsibility is to the firm, so he could not be seen to be involved.

5. He then mentioned he had a friend who had gone back to Egypt after the revolution to work for the Morsi Government, but after the coup he was stuck there, and Mr. Soliman said he pulled some strings and helped him get back into Canada. When I asked whether he was a member of Muslim Brotherhood, he quickly said no, but then said he just worked for Morsi's Muslim Brotherhood Government. I thought this was an odd statement because it is well understood in the Middle East, you could not work at a high level for the Morsi Government or his party if you are not part of the Muslim Brotherhood.

6. He then moved the conversation to Conservative politics and the Ontario Conservatives. He started bragging about how close he was to Patrick Brown and that they were friends for years and all the new policy ideas he and Patrick had. Walied then said the main concerns for him at the time were climate change and diversity. He continued talking about their plans for social justice and how they were going to help fight Islamophobia and change the party to be a more inclusive.

7. At that point I had enough, and I showed my hand and said that has nothing to do with Conservatives and what Canada needs right now from Conservatives. I said I think there are more pressing issues like free speech. He responded to me and said, "that doesn't win any votes."

8. Then he said to get his card from his secretary and call him if I ever needed anything, which I didn't, and I left.

[50] As the description below of the circumstances of the making of the alleged defamatory statements will reveal, in his videos, Mr. Bordman often recounted the story of the Soliman-Safavi Meeting.

3. The Soliman-Singh Transcript

[51] Mr. Bordman relies on the Soliman-Singh Transcript as part of his fair comment and reasonable communication defences.

[52] On May 24, 2017, Mr. Soliman had a meeting in Hamilton, Ontario with Vikram Singh and others. Mr. Singh had been seeking to be the candidate for election to the Ontario Legislature for the Progressive Conservative Party of Ontario for the riding of Hamilton-West. Mr. Singh was upset about Patrick Brown's designation of Benjamin Levitt as the party's candidate for the riding. The meeting in Hamilton between Soliman and Singh was a failed effort to settle Mr. Singh's grievances.

[53] Although agreeing that the meeting should be without prejudice and confidential and not recorded, Mr. Singh surreptitiously recorded on a cell phone his meeting with Mr. Soliman.

[54] After the meeting, Mr. Singh sued the Provincial Conservative Party for judicial review of the nomination process. He sued the Progressive Conservative Party of Ontario, Patrick Brown, Rick Dykstra, Bob Stanley, and Logan Bugeja. Mr. Singh alleged that the nomination election was rigged. As part of his judicial review application, Mr. Singh filed a transcript that had been made from his audio recording of the meeting in Hamilton.

[55] The transcript of the May 24, 2017 meeting was prepared by Kim Neeson of Neeson Court Reporting. She listened to the audio recording and transcribed the transcript that was to be an exhibit to a court filing. In what is an unfortunate feature of the immediate defamation case and what Mr. Bordman might describe as a "fun fact," which in truth is devoid of any merriment and which has produced much concernation and consternation, is the coincidence that Ms. Neeson is the spouse of Clifford Lax, a principal of the law firm Lax O'Sullivan Lisus Gottlieb LLP, which firm acts for Mr. Soliman in the immediate litigation and which firm also acted for respondents in the Singh litigation.

[56] In Mr. Singh's judicial review proceeding on July 6, 2017, Justice Cavanagh sealed the transcript from the meeting in Hamilton because of settlement privilege.⁶ Justice Cavanagh also ordered that persons with knowledge of his Order, other than Mr. Singh or the respondents to the judicial review application should return to Mr. Singh all hard copies of the transcript and the audio recording and should permanently delete all electronic copies of the transcript or recording.

[57] Years later, apparently from a source in the Hamilton police department, Mr. Bordman somehow obtained a copy of the transcript of the audio recording of the meeting in Hamilton. Mr. Bordman claimed journalist privilege as to his source for the transcript.

[58] Mr. Bordman referred to the transcript during his examination for discovery in the immediate case. At the discovery, Mr. Bordman testified that he learned from the transcript that

⁶ *Singh v. Progressive Conservative Party of Ontario*, 2017 ONSC 4168.

during the Hamilton meeting Mr. Soliman had admitted that he was a “Muslim Brotherhood guy.” During his examination for discovery, Mr. Bordman was questioned about this transcript and testified:

Q.114 And as I understand it, sir, the product of this investigative journalism quest that you undertook was the letter signed by Mr. Soliman calling for the return of this fellow who was imprisoned in Egypt; have I got that right?

A. That is one of the products of it.

Q.115 What are the other products?

A. The major product is a transcript that I have seen that was sealed by the courts with Walied Soliman talking with Vikram Singh and his associates. This is a rather what I would call open secret within some circles. In this transcript, Walied Soliman, this is the one where he says, and I quote, "I am a Muslim Brotherhood guy." This is a transcript in which Walied Soliman is -- seems to have very intricate knowledge of the Khalistani movement in Canada from a sort of 5,000 foot view and on-the-ground level in which he seems to be advising five people with Khalistani sympathies on how to bring their ideology into Canada, against the will of the Sikh community. He then states, I am a Muslim Brotherhood guy and I have faced the problems you have. This is paraphrasing. The problems would be the fact that the Sikh community is a big problem for the Khalistani extremists, just how the Muslim community is a big problem for the Muslim Brotherhood ideology. So, this transcript, which I have seen, which I believe to be real for many reasons, I would say would be the major product of my investigation into Walied Soliman.

[59] In understanding Mr. Bordman’s interpretation of what was said at the meeting between Mr. Soliman, who is a Muslim, and Mr. Singh, who is a Sikh, it is necessary to understand that the Khalistan movement is a nationalist movement to create an independent country for Sikhs living in the current Punjab State in India.

[60] Mr. Bordman relies on what Mr. Soliman is reported to have said in the transcript to support his fair comment and responsible communication defences. Indeed, Mr. Bordman explains that he delayed making any comments about Mr. Soliman until 2019 notwithstanding his suspicions until his beliefs were confirmed by what Mr. Soliman said in the transcript during his meeting with Mr. Singh. Mr. Bordman says that his delay in making any comments demonstrates that he acted responsibly and without malice.

[61] During his cross-examination for the summary judgment motion, Mr. Bordman was again questioned about the transcript of the meeting between Mr. Soliman and Mr. Singh. The cross-examination went as follows:

Q. 126 [Mr. Lisus:] You don't ask me questions.

A. [Mr. Bordman:] Well, okay. You told me you're doing it all *pro bono*.

Q. 127 Yes, Mr. Bordman --

A. Okay. Your law firm is doing this all *pro bono*.

Q. 128 Yes?

A. Then the wife of your business partner changes a transcript that is favourable to Mr. Soliman, in a favourable way.

Q. 129 Yes?

A. It doesn't really make sense that after three years of having a transcript where it says, "I am a Muslim brotherhood guy". To then all of a sudden need a change now. It also is highly suspicious that Mr. Soliman on the very date, categorically denied ever saying anything like that. I use the word categorically he did. And then I listened to it, and it didn't really seem that conclusive on the tape. It was -- I don't know. If you listened -- it sounded like what the original was, a lot. And then I took sometime and cleared my head, I tried to get back to it and I put what you said in my head, and I tried to listen for your interpretation. And then with that frame of mind, I got it. And then I went in with what the original was in my head, and then it sounded like that. So, I saw it as inconclusive audio. Also, you've confirmed to me that this entire transcript is true, and that wasn't even the most important part, that he said he's a Muslim brotherhood guy. Yeah, it's relevant that the number two man in the conservative party would describe himself as the Muslim brotherhood guy. But it was also relevant that he was having a conversation, Vikram Singh and his associates, about the process of advancing a political ideology, Khalistani in this case, throughout the Conservative Party. So, the real part of this transcript is your client, Walied Soliman is having a conversation with four people -- five. About the process of political infiltration of an extremist ideology, based on his experiences doing so. That is the key of what's in that transcript.

Q.130 That's your answer to my question?

A. That's my answer to your question.

[62] During Mr. Soliman's examination for discovery, he was asked about what he was alleged to have said at the Hamilton meeting with Mr. Singh. Mr. Soliman testified that the transcript did not reflect what he said at the meeting.

[63] Since, as I have already mentioned, it happens that Lax O'Sullivan Lisus Gottlieb LLP, who are Mr. Soliman's lawyers in the immediate case, were also counsel to respondents in Mr. Singh's judicial review proceeding, the law firm had the transcript and the audio recording. The firm reviewed its copy of the transcript and provided the audio recording to a forensic expert for enhancement.

[64] The law firm then sent the enhanced recording to Ms. Neeson. She confirmed that what Mr. Soliman said was: "people every day say that I'm a Muslim Brotherhood guy". Ms. Neeson issued a certified copy of the corrected transcript.

[65] A copy of the corrected transcript was sent to Mr. Bordman. The original version and the revised version are set out below. The only difference is the underlined and bolded text.

<p><i>Soliman</i>: So that's how you answer. It's a very simple answer, and I faced this.</p> <p><i>Randeed Chatha</i> [a Singh supporter]: There is no connection between them and those individuals who are not connecting to the community at all</p> <p><i>Soliman</i>: I know. So, there is a simple answer to it, all right? And he knows this. You know, <u>I was beginning to say</u> that I'm a Muslim Brotherhood guy</p> <p>[? <i>Speaker</i>]: Actually, accusations were made there.</p> <p><i>Soliman</i>: Crazy shit. My answer has been very simple. Just being very ... just being extremely careful, and again, that doesn't ... you're a beautiful man and believe me, I heard about you concurrently with him telling me</p> <p><i>Singh</i>: I am a troublemaker according to this.</p>	<p><i>Soliman</i>: So that's how you answer. It's a very simple answer, and I faced this.</p> <p><i>Randeed Chatha</i> [a Singh supporter]: There is no connection between them and those individuals who are not connecting to the community at all</p> <p><i>Soliman</i>: I know. So, there is a simple answer to it, all right? And he knows this. You know, <u>people every day say</u> that I'm a Muslim Brotherhood guy</p> <p>[? <i>Speaker</i>]: Actually, accusations were made there.</p> <p><i>Soliman</i>: Crazy shit. My answer has been very simple. Just being very ... just being extremely careful, and again, that doesn't ... you're a beautiful man and believe me, I heard about you concurrently with him telling me</p> <p><i>Singh</i>: I am a troublemaker according to this.</p>
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<i>Soliman</i> : No, you're not.·You're not.· No, you're not.

<i>Soliman</i> : No, you're not.·You're not.· No, you're not.

[66] After receiving the revised transcript and although, as set out above, he acknowledged during his cross-examination that he listened again to the recording and could subjectively hear both versions of what Mr. Soliman said, Mr. Bordman did not change his position about his fair comment and responsible communication defences, and he asserts that even the revised version supports his defences.

[67] Further, Mr. Bordman also relies on the Soliman-Singh Transcript incident as a genuine issue requiring a trial. In his factum for the summary judgment motion, Mr. Bordman submits:

32. One of the key pieces of evidence is the transcript with statements from Mr. Soliman. Mr. Bordman relied on this transcript which reported Mr. Soliman as saying he is a “Muslim Brotherhood guy.” There is no dispute that the original transcript contained this purported statement by Mr. Soliman.

33. The Plaintiff had a review and enhancement done of the recording. There is no explanation as to what enhancement was performed or why the corrected audio was missing from the original recording. The Plaintiff provided Mr. Bordman with a copy of the enhanced audio, but no explanation as to what was done to the original audio or how the enhancement was made.

34. Given the importance of the transcript to this case, the unusual circumstances of its creation and of the *ex parte* and unexplained amendment are important issues.

.....

46. The [fair comment] defence can be defeated if a plaintiff proves that the defendant was actuated by express malice. Mr. Bordman did not act with malice. Indeed, Mr. Bordman waited years before making any comments about Mr. Soliman, and only did so after reviewing the transcript which confirmed the evidence he had previously seen.

.....

55. Mr. Bordman’s comments were based on, *inter alia*, the following facts:

a. A transcript – filed and used in other court proceedings - which the parties agree originally included Mr. Soliman saying: “I am a Muslim Brotherhood guy” (any subsequent correction is irrelevant to opinions based on facts available at the relevant time);

[...]

56. With the exception of the evidence from Mr. Safavi (which Soliman says he “does not recall”), the Plaintiff does not appear to dispute these facts. For instance, the Plaintiff accepts (¶60) that Mr. Bordman “relied on” the transcript, which is now said to be inaccurate. At the time the statements were made, it was true that a transcript had recorded Mr. Soliman saying he is a “Muslim Brotherhood guy”. Indeed, the transcript was not “corrected” until after Mr. Soliman’s examination in this proceeding.

.....

70. Mr. Bordman’s comments were not made recklessly or with malice. Rather, Mr. Bordman possessed information about Mr. Soliman for years (including the disputed evidence of Mr. Safavi) but made no comments about Mr. Soliman until he “finally got an opportunity to read the transcript, [and] the entire contents of it were consistent” with Mr. Safavi’s evidence. This delay demonstrates that Mr. Bordman acted responsibly. Moreover, the transcript that Mr. Bordman relied upon was not altered until immediately after Mr. Soliman’s examination in this proceeding, where it was

raised. To the extent Mr. Bordman relied on facts reported by large, established news organizations, he can hardly be faulted.

[68] In the discussion and analysis portion of these Reasons for Decision, I will discuss the legal significance of the original version of the Soliman-Singh Transcript incident, but I shall not be addressing the matter of the preparation of the revised transcript. That matter is a collateral sideshow and distraction to the material issue of what Mr. Bordman relies on in support of fair comment and responsible communication defences.

[69] The revised version of the transcript is not relevant to Mr. Bordman's fair comment or reasonable communication defences that are being pursued because the transcript did not exist at the time when Mr. Bordman made his statements about Mr. Soliman.

[70] On his cross-examination, Mr. Soliman denied that the original version of the transcript was accurate, but that denial would not and does not negate Mr. Bordman's evidence that he relied on the veracity of the original transcript for his fair comment and reasonable communication defences, which remains to be determined on their merits based on the original version of the transcript.

[71] It was unnecessary for Mr. Bordman to impugn the integrity of the lawyers and of Ms. Neeson. Mr. Soliman's lawyer's efforts to corroborate Mr. Soliman's denial with the evidence about the revised transcript was inadmissible for being immaterial, irrelevant, collateral, hearsay, and derivative oath helping, which is all that Mr. Bordman needed to say to end the unseemly saga of the after-the-fact corrected transcript. There is no genuine issue requiring a trial here.

[72] I shall say little more about the revised transcript, but I will focus my attention on the original version, which is what Mr. Bordman relies on for his fair comment and responsible communication defences.

4. The Parochial School

[73] Mr. Soliman's children attend the Olive Grove School, which is a parochial Muslim school. Mr. Bordman relies on the circumstance that Mr. Soliman's children attend a parochial school as part of his fair comment and reasonable communication defences.

[74] More precisely, Mr. Bordman relies on the factual circumstance of how Mr. Soliman educates his children to connect Mr. Soliman to being a supporter of the Muslim Brotherhood. How Mr. Bordman makes this connection was revealed by Mr. Bordman's cross-examination of Mr. Soliman. At the time of Mr. Soliman's cross-examination, Mr. Bordman was self-represented, and he personally cross-examined Mr. Soliman. The cross-examination questioning about the children's education reveals how Mr. Bordman purports to make a connection between Mr. Soliman and the Muslim Brotherhood.

[75] The questioning also reveals that Mr. Bordman's line of reasoning also depends: (a) on the circumstance that Mr. Qazzaz, the Egyptian-Canadian who was repatriated to Canada, came to be employed by the Muslim Association of Canada ("MAC"); and (b) on Mr. Bordman's belief that MAC is a supporter of the Islamic State ("ISIS"), a militant terrorist group that is an offshoot of al Qaeda.

[76] Mr. Bordman's line of reasoning, as revealed by his questioning of Mr. Soliman, much of which was objected to by Mr. Soliman's counsel, was as follows.

[77] Mr. Qazzaz, who is now an employee of MAC, was a member of the Morsi Government, and is a member of the Muslim Brotherhood and a supporter of terrorism. Mr. Qazzaz is married to Sarah Attia. Ms. Attia is the daughter of El-Tantaway Attia, who presides at a mosque that Mr. Bordman believes follows the teachings of the Muslim Brotherhood. Sarah Attia is also employed by MAC, where she is the leader of curriculum development for some twenty MAC parochial schools. One of those schools is Olive Grove School. Mr. Soliman has chosen to send his children to a school associated with MAC with a curriculum developed by the wife of Mr. Qazzaz and the daughter of El-Tantaway Attia. So, with these connections, Mr. Bordman argues that it was fair comment and responsible communication for him to say what he said about Mr. Soliman.

[78] Mr. Soliman's answers to Mr. Bordman's cross-examination questions were that he did not believe that Mr. Qazzaz was a terrorist supporter. Mr. Soliman said that although he thought highly of his children's school, he was not aware of how it was organized and whether it actually had any connections to MAC. Mr. Soliman said he was not aware of what Sarah Attia did for a living or that she had anything to do with his children's education. Mr. Soliman was offended and appalled by this whole line of questioning.

5. Sharia Law and Canadian Financing Law

[79] One of Mr. Bordman's alleged defamatory statements is that Mr. Soliman is a covert advocate for Sharia law in Canada.

[80] Sharia law is Islamic law derived from the teachings of Muhammad in the holy book, the *Quran*. The principles of Sharia law cover family law rituals, criminal law, civil law, commercial law and such matters as dietary and health laws and ceremonial and religious observances such as fasting and prayer. Sharia law is interpreted and practised differently in different Muslim countries around the world. For example, Sharia law as it is practised in Afghanistan by the Taliban includes some abhorrent practices that are rejected by Muslims in other parts of the world.

[81] Sharia law prohibits the charging of interest. There are, however, ways to structure financial transactions that conform to the personal religious beliefs of the parties and any prohibitions against usury.

[82] The applicability and availability of Sharia law in Canada is a controversial topic because depending on how the Sharia law is interpreted it would be contrary to the legal and ethical values of Canada's multicultural society and the rule of law in Canada. The assertion or suggestion that a person is an advocate for the importation of Sharia law into Canada carries the inuendo of sedition and the imputation that the person wishes to have Canada governed in accordance with principles that are an anathema to Canadian secular values.

[83] In asserting that Mr. Soliman is a supporter of Sharia law, Mr. Bordman relies on his other statements about Mr. Soliman being "a Muslim Brother guy" and by submitting that Mr. Soliman has never publicly disavowed his advocacy of Sharia law. In particular, Mr. Bordman relies on a 2007 article in the *Globe and Mail* about financing Canadian commercial transactions and Sharia law for which Mr. Soliman was interviewed and quoted. Mr. Bordman insinuates that Mr. Soliman actually advocates Sharia law be imported into Canada.

[84] The article and the accompanying question and answer commentary quotes Mr. Soliman as stating:

Tavia Grant, globeandmail.com: Hello Walied, thank you for taking time out of your busy day to join us. Hundreds of comments have been posted online in response to the Globe articles on this, and I've been struck by several points. One is that this issue is certainly of great interest to people, partly because it touches on diversity and Canadian identity. The other is how scared -- and angry - - some people are by the idea of Sharia law and what they think it represents. Sticking strictly with how it applies to financial products, could you address some of those concerns? [...]

Walied Soliman replies: I am glad you have asked these questions. [...] These products are no different than any other products that meet the personal needs of individuals or companies. Sometimes investor needs are driven by ethical considerations (i.e., ethical funds etc.) or personal tax planning (i.e. flow-through products). Islamic finance products are driven by the personal beliefs of individual and commercial investors and borrowers. This is why Canadian financial institutions, investments dealers and others are considering this space- there is a market, products that can be relatively easily designed, and money to be made. Getting into specifics, as lawyers, we advise our clients on the regulatory aspects of implementing these products in Canada. Quite simply, financial institutions and lenders in Canada are not allowed to discriminate in their lending practises. In our practise I have never come across any tenet of the requirements under Islamic finance law that did not adhere to the principals of Canada's liberal democracy.

[AT] from Canada writes: Is a non-interest-based Islamic finance regime truly possible in Canada? It would seem that the current system--and the history of our economic model for the past 200 years--skews itself heavily in favour (and in defense of) the status quo. What factors make present conditions ripe for Islamic finance in Canada?

Walied Soliman replies: There is nothing that breeds innovation like demand, and it is becoming very clear to us that the retail demand is strong in Canada and that institutional interest is growing very quickly. If you ever want to have some fun with your lawyer, ask them if they can come up with an issues list for the implementation of a Malaysian or Qatari Islamic finance product in Canada- trust me, it is a fruitless exercise. At Ogilvy Renault we have spent lots of time on the drawing board designing these products and I can tell you that that there is only one way to make these products work in Canada and that is developing made in Canada solutions.

[85] In the analysis and discussion part of these Reasons for Decision, I will discuss whether Mr. Bordman's comments about Mr. Soliman and Sharia law are fair comments or responsible communications.

6. The Alleged Defamatory Statements

[86] In 2019 and 2020, Mr. Bordman had a weekly show *Uninterrupted with Daniel Bordman* on TAG TV and he also had a news review program entitled *The Worst of the CBC*.

[87] TAG TV is an Ontario-based online television and news network that can reach millions of viewers. It rents its studios out. TAG TV operates a YouTube channel with 184,000 subscribers as well as a Facebook account. Until his privileges to do so were cancelled, Mr. Bordman broadcast from a news desk using TAG TV's professional studio space and technical assistance giving him all of the features of the evening news, including a "crawler" at the bottom of the screen.

[88] On April 16, 2019, on *Uninterrupted with Daniel Bordman*, Mr. Bordman broadcast a video entitled: *The Qatar Paper-Patrick Brown's Islamist Connections*. For the first time, during this video, Mr. Bordman referred to Mr. Safavi's meeting with Mr. Soliman and to Mr. Soliman's alleged connections with the Muslim Brotherhood. Mr. Bordman stated:

The reason I know that Patrick Brown has Muslim Brother sympathies is [...] his campaign manager Walied Soliman. I used to run a media company with an Iranian fellow, and we were going to meet

with Walied Soliman, who is Patrick Brown's campaign manager. [...] I am the Jew, so you go meet with him just to see what he really thinks. [...]

[The Iranian fellow told me that] Walied Soliman, Patrick Brown's campaign manager, openly said: "hey I am not like a Muslim Brotherhood supporter, but a lot of my good friends were in Morsi government, and I helped get a lot of Morsi's people into Canada."

Now Mohammed Morsi was the Muslim Brotherhood government in Egypt. Now this is the original Muslim Brotherhood government. [...]

He [Walied Soliman] had friends in the Morsi government; [he] helped people from Morsi's government get into Canada when the government fell apart. So, I guarantee you that Patrick Brown was getting money from the Muslim Brotherhood. Guarantee you. This is his campaign manager. [...]

[89] On October 3, 2019, Mr. Bordman broadcast a video entitled *Uninterrupted with Daniel Bordman: Pakistan's Influence Over the Canadian Conservative Party*. During this video Mr. Bordman stated:

[...] with influence in the Muslim Brotherhood and the ISI [Pakistani Secret Service] and where it really comes from. It's not so much at the candidate level yet. The candidate level is sort of the endgame here, and we're starting to see that there are some candidates here that are connected to the ISI, but the way they really get in and the real big problem are with the people like Walied Soliman.

So, let's show Walied here. Now, Walied is part of the provincial Conservative Party, mostly, but he's a big player in the Conservative Party. [...]

Now, here is a first-hand account of my interactions with Walied Soliman. So, I've told this story before, but I'm just gonna say it again because this is firsthand, and this really should illustrate how these things work. Back when I was with *Civil Space*, I was making videos with an Iranian refugee [Mr. Safavi], all right, a couple years ago, that's where I started out, and we had made this video about Hamas and how it works it. And some people within the Conservative Party were doing some activism and really liked us over these videos, and they set us up with a bunch of different meetings. One of the meetings they kind of said: "hey we like you guys. Here meet with Walied Soliman. He's a big player in the Conservative Party and he helps make deals maybe he can help you guys out or you guys can get your foot in the door here, you know, thanks for making these videos".

And we talked, and I said "hey listen", and we both agreed before even filming - I'm Jewish, he's Iranian - let's not send the Jew to this meeting. Right? If we're going to meet with this guy Walied Soliman, we're guaranteed to get his real thoughts if there's no Jew in the meeting. Let's just see who he is. And I had asked my partner at the time [Mr. Safavi], like, lets just find out what he feels about the NCCM because that's like Carecan, that's what I think is like the most dangerous Muslim Brotherhood group in the country.

So, he [Mr. Safavi] comes back from the meeting and I go: "yo, hey man, what did he say about the NCCM?" and he's like: "dude I didn't ask him," and I'm like: "what? you didn't ask him?" I was about to go off on him, and he's like: "listen, this is what he said to me." So, Walied Soliman said to my business partner [Mr. Safavi] at the time: "oh yeah, you know I'm not a member of the Muslim Brotherhood, not supported member of the Muslim Brotherhood, but, you know, I had a lot of friends in the Muslim Brotherhood in Mohamed Morsi's political party -- the Muslim Brotherhood -- the actual Egyptian Muslim Brotherhood -- and once their government fell apart, I helped get a lot of my friends into Canada and get them positions in Canada" sort of a, sort of I guess like bragging.

Now I don't know who he [Mr. Soliman] meant exactly, my guess is Khaled Al Qazzaz, by the dots I've connected, that's my guess who is talking about here. So, he then brags about how he's helped

enable the Muslim Brotherhood party from Egypt, get their people into Canada and then bring them into Canadian politics. Straight up. So, that's Walied Soliman.

Now, the other thing he said is, it was quite interesting, is that he [Mr. Soliman] would support Al Quds Day. Al Quds Day is the march within Toronto that's supported by Islamic Iran. The destroy Israel march. There was a Hezbollah flag flying this year. Lots of, I did a whole live stream on it. Right? Bad News Bears. It's a pro-terrorist march. It's supposed to be illegal, but it happened this year. So, he said he would support that, but the only reason he would not support that is because he has Jewish colleagues in his law firm, and if you want to get your points, he told my business partner this, he's like "if you want to get your points across in Canada, if you want to undermine Israel you got to play the long game - you got to be smart about how you do it in Canadian politics. [...]"

So, that's Walied Soliman, and he's the guy bringing people into the provincial Conservative Party and he's connected to the federal Conservative Party he gave us Khalid, uh, Khalid Rashid, whose antics appear on many videos on these pages.

So, this is kind of where the Muslim Brotherhood and ISI are right now in the conservative party - where they have a lot of people in power, a lot of seemingly legitimate faces like Walied Soliman, whose brother is on the board of Islamic Relief Canada. Right? It is sort of connected, peripherally, who when they're out in front, say one thing, but then when behind closed doors, with my business partner who like "oh that's a Muslim" [...] here, okay so this is what I'm really actually a fan of Al Quds Day, and I do have friends in the Muslim Brotherhood government, and he was like nope that fell apart. So, that's Walied.

[90] On February 4, 2020, Mr. Bordman posted on his Facebook page an image of Erin O'Toole, who was then campaigning for leadership of the Federal Conservative Party with Mr. Soliman as his campaign chair. The text in the poster had the caption: "I stand with the Muslim Brotherhood but virtue signal around the Jews. Just ask my campaign chair." The posting was accompanied by the caption: "Walied Soliman once told my former business partner that he was bringing Muslim Brotherhood members from Egypt into Canada." Visualize, the posting:



[91] On a February 5, 2020, Mr. Bordman published on his Facebook account notice about that evening's broadcast on TAG TV. The announcement stated:

Hey everyone! I know for a fact that Erin O'Toole is aware of tonight's episode, and he is pissed. Help me get the Muslim Brotherhood out of Canadian politics by getting on twitter and pushing this. [...] on tonight's episode we will go over Erin O'Toole's campaign chair, Walied Soliman's connections to extremism and the Muslim Brotherhood... Tune in tonight at 6pm EST.

[92] On February 6, 2020, Mr. Bordman posted on the Internet a video entitled *Uninterrupted with Daniel Bordman: Erin O'Toole's Connections to the Muslim Brotherhood*. During the video, Mr. Bordman stated:

[...] You should not trust Erin O'Toole. His campaign chair, Walied Soliman, is bad news bears. [...] There are a few problems with who he [Erin O'Toole] has on his team. Let's bring up, Walied Soliman, the guy chairing his campaign. [...]

We once were set up with a meeting with him [Walied Soliman] back in the day during the day I was doing *Civil Space* videos. It was me and an Iranian refugee. [...] So, it's like, all right, I am Jewish. We all know that. You are the Iranian refugee. You go and meet with him. In case he is like not up to snuff, he would not tell it to the Jew in case he is like up to bad news. So, my business partner [Mr. Safavi] goes to meet with him.

Tell a long story short, one of the things he [Mr. Soliman] told him is he [Mr. Soliman] helped bring Muslim Brotherhood members from Mohamed Morsi's government, the actual Muslim Brotherhood, into Canada and get them set up here. Right? He is not a supporter of the Muslim Brotherhood, just helping bring Muslim Brotherhood members into Canada.

He [Mr. Soliman] also did tell us that he would support Al-Quds Day, the terrorist rally funded by Iran, but he doesn't because he has a lot of Jewish people who work at his law firm, and it might offend them. But he also said if want to undermine Israel or get your values into Canada, you've got to play a long game.

[...] Okay, Walied Soliman, going back to his campaign chair where the money is coming from. Fun fact: Hany Soliman, brother of Walied Soliman is on the board of Islamic Relief Canada.⁷ I'm sure that has nothing to do with anything. [...]

This is a bit more than the tip of the iceberg, on O'Toole and Walied, and his whole cesspool, but you can take a lot of this into context. So, Erin O'Toole keeps meeting with Islamic Relief Canada, even though he is very well aware they are listed as a terrorist organization by UAE. He also knows the Canadian laws, or he should. I mean, he has a legal background. Walied Soliman is the greatest. He's the chair of a major law firm, international law firm. He should know the law. Right? They both have legal background. They should know that Islamic Relief Canada sends money to Islamic Relief Worldwide. Islamic Relief Worldwide sends money to Hamas. He [Erin O'Toole] even admits this and he's brought it up with them. So, will he [Erin O'Toole] continue to associate with Islamic Relief Canada? Will he assess the accusations against campaign chair, Walied Soliman? And is he [Erin O'Toole] really a Blue Tory? [...]

[93] Mr. Soliman is pictured and named in the video postings. Visualize:



[94] On February 6, 2020, Ms. Bordman posted an edited version of the *Uninterrupted* broadcast to YouTube. The edited version includes only the portion that relates to Mr. Soliman and his alleged ties to extremism.

[95] On February 12, 2020, Mr. Soliman's counsel wrote Mr. Bordman demanding removal of the videos. The letter described the harm Bordman's statements caused to Mr. Soliman and to his

⁷ This is true, Hany Soliman, who is a medical doctor, oncologist and researcher at Sunnybrook Hospital is on the board of Islamic Relief Canada.

family. The lawyers demanded that Mr. Bordman publicly apologize.

[96] On February 13, 2020, Mr. Bordman posted the demand letter online with the following commentary:

Walied Soliman, Erin O'Toole's campaign chair, is threatening to sue me for saying the truth about him. This is another example of lawfare, ironically a common tactic used by Muslim Brotherhood affiliated groups. The idea is the cost of defending a frivolous lawsuit is the punishment. This claim completely misrepresents what I actually said, and does not address any of the real claims, but instead Walied plays the victim card.

If Walied Soliman would like to clarify is [sic] position on Muslim Brotherhood front groups, it would help if he publicly endorses a policy to declare Muslim Brotherhood front group as terrorist entities. This would put an end to the rapid rumour that have been circling around the conservative parties for years. Targeting me with lawfare is certainly not helping his case or Erin O'Toole's chances in the CPC leadership race, and in fact it raises more questions [...] However, I have said nothing that is untrue and will not apologize for reporting the truth as I see it.

[97] On February 18, 2020, Mr. Bordman and TAG TV were served with libel notices.

[98] As soon as TAG TV became aware of the Mr. Bordman's statements, it removed the videos from its platform, and it banned Mr. Bordman from using its studio space. (After the record on this motion closed, TAG TV acknowledged the statements were defamatory, and it posted a retraction and apology on its social media platforms.)

[99] On February 19, 2020, Mr. Bordman broadcast a video from his parents' basement mocking the libel notice. He called on Mr. Soliman to come on his show and publicly condemn extremism and renounce his ties to the Muslim Brotherhood and Islamism. During his broadcast, Mr. Bordman stated:

I've said, you say the truth as you see it. You say, No, no, no, I am Walied Soliman and I am hard on the Muslim Brotherhood. I think the Muslim Brotherhood front group should be declared a terrorist organization. You come on and give me some of that fire and brimstone, hey, congratulations. You convince me that what I said was wrong.

Because right now I'm just saying the truth as I see it, and maybe all these people who have told me things, maybe they are lying. Maybe you are telling the truth. It could be true. You come on and convince me that you are telling the truth, I'll do an apology video. I'll do a Daniel was wrong video. I'm happy to do that when I'm wrong, but right now you haven't sent me any evidence that I am wrong.

You have just threatened to sue me which, again, you don't want to do because I went into stand-up comedy because I have no impulse control. This is going everywhere. I am not going to shut up.

[100] On February 20, 2020, Mr. Soliman commenced a defamation action against Mr. Bordman and TAG TV.

[101] On February 22, 2020, after Mr. Soliman served the Statement of Claim, Mr. Bordman broadcast a video entitled *I'm Officially Getting Sued!* During the broadcast, Mr. Bordman stated:

Hey there, Canada. Daniel here. Don't know what you are up to right now, but currently I am reading my favourite new novel, the Statement of Claim against Daniel Bordman and Tag TV. It is an epic fantasy. Listen, I thought I was a comedian, but the high-priced lawyers who wrote this thing are hilarious. That's right, I am getting sued. You thought it might be Trudeau and his friends, but no, it is actually a very powerful person within the Conservative Party currently running one of the leadership campaigns. Yes, by the way, they want two and a half million dollars from me because I have hurt their ability to do social justice.

Yes, this is the Conservative Party of Canada. They really believe in free speech. So, this is standard Brotherhood Mohamed Morsi lawfare-style tactics against me. They did it to Bassem Yousef there. Same people coming here and doing it to me here. Oh, what fun and what country we have.

Now, I'll let you in on a little secret. Only one side of this actually wants to go to court and it's me, because they don't know, or they should know or maybe they don't, I have only said ten percent of the things I know about our friend out loud, which means if we go to court, I have a giant pile of evidence, a platform to inform everyone about it, and a little bit of pizzazz. Okay, a moderate amount of pizzazz, clearly.

They have a massive pile of money and resources that they can throw at me to silence me. This is the game we are going to play. I want this to go to court, because if this becomes public record in a discovery meeting, oh, boy, we can take a lot of extremists out of politics like that. But they are just going to try and throw me into a trunk and so we can't talk about this during the leadership campaign.

Now, if you are like me and you believe that in Canada we should have the right to freedom of expression and people running to become Prime Minister of Canada should be criticized during an election campaign based on the people they are associated with and their connections, well, then this is the cause for you. Right? If you believe that we need to get extremists out of our political system, then this is the thing for you.

If you are going to donate, I promise you every single dollar will go towards fighting extremism and free speech because, step one, I just need \$7,500 to get lawyers on retainer, then to fight them in court, because trust me if this goes to court I am going to win easily, not even close. But it is just they want to bleed me dry and shut me down before that. So, thank you so much to everyone who has donated and wants to help the cause, wants to rid Canada of extremism. I promise you; you contribute to this I will give you information I will get.

I am not the only one this has happened to. I'll get the stuff out there, because if you are like me and you hate extremist politicians in Canada and you just can't lie, in fact, none of your brothers have ever denied, and you see a politician walk in with an itty-bitty waist and an Islamist in his base, you get sprung with a two and a half million dollar claim for libel.

[102] On March 4, 2020, Mr. Bordman broadcast a video of *Uninterrupted* from his parents' home. During the broadcast, Mr. Bordman stated:

So, at the time, Patrick Brown signs a letter in support of a construction project funded by a Muslim Brotherhood foreign charity in Qatar but also being constructed by a group in Canada, that if he went to the 'About Us' section would see them say themselves - that is a bit of a tongue twister - that they follow Hassan al-Banna, the founder of the Muslim Brotherhood, and his Muslim Brotherhood movement. Fascinating, fascinating, fascinating, fascinating.

Why would Patrick Brown do that? Who was Patrick Brown's Campaign Chair and right-hand man at the time? Who could it be? Oh, I know his name. I just can't remember. Is it Wooheed Jolipin? Wooheed Jolipin? Solied Waliman? Solied Waliman? I think it is Solied Waliman. Oh, I can't remember. Oh, if only there were some legal documents with this guy's name on it around here somewhere. Anyways, I can't remember this guy's name, but maybe you can. So, who were the people advising Patrick Brown when he signed off on this Muslim Brotherhood-related project? We will never know. And why did he do that? I thought he got such good advice from such good people. Huh, huh, huh, it is a real tongue-twister, guys, head-scratcher. Huh, how could Patrick Brown and his inner circle, who are clearly, clearly not Muslim Brotherhood - and listen, if anyone says anyone connected to Patrick Brown is part of the Muslim Brotherhood, I will sue you for two and a half million dollars, let me tell you. But yet here they are writing letters of recommendation for a Muslim Brotherhood project. Huh. Huh.

You know what, I'll call Erin O'Toole. Maybe he'll have some good information on this. You know what, guys, I'll call my friend Erin O'Toole because he takes Canada security very seriously. So, if

you want me to help fight Erin O'Toole and his campaign staff's legal assault on me, because I'm not going to give those MF'ers two and a half million dollars, please, you know, you can donate to the GoFundMe in the description above or you can donate to the show on Patreon or PayPal, either way I will 'allahu akbar' you, it is great.

[103] On March 8, 2020, Mr. Bordman broadcast a video of *The Worst of the CBC*. During the video, Mr. Bordman stated:

[...] However, Walied Soliman's personal views on instituting Sharia financing and maybe Sharia law into Canada are never coming into question, and if you do question Walied Soliman's politically extremist views, he might sue you for two and a half million dollars, which is where I am.

So, I want to know, because Walied Soliman is obviously suing me for two and a half million dollars for telling a story that my basic allegation is Walied Soliman, let's spell it out, is I have offered proof that he has sympathies with the ideology of the Muslim Brotherhood. Okay, that is my standard allegation. I have proof of that, and I am willing to fight that in court. [...]

And if you want to help me, because this is going to court and this will be the thing, and there is proof that Walied Soliman does have Muslim Brotherhood sympathies, among other things, please donate to the GoFundMe so we can actually get this into court. I mean, Walied Soliman is a very powerful Bay Street lawyer, has a lot of different connections and a lot of different money.

So Walied Soliman has sort of unlimited resources to throw at these things, and now you are seeing all these sort of political favours that he has been calling in. So, I think Walied Soliman becomes fair comment, [...] because you see all the different type of people immediately saying he [Mr. Soliman] is my friend. Right? Patrick Brown, former leader of the Conservative Party of Ontario; Doug Ford, current leader of the Conservative Party of Ontario; Erin O'Toole, John Baird. So, by the amount of people coming to his defence, I think that makes the case that Walied Soliman is in fact fair public comment.

And I would just like to see him [Mr. Soliman] publicly address the statement does he believe in Sharia financing for Canada? Should does he think there should be aspects of Sharia law brought into Canada? And if he does the Andrew Scheer thing where he says, well, listen, I have personal views, but I don't want any Sharia law in Canada, then I would be happy to drop it. I would be happy to say Walied Soliman said he doesn't want Sharia law in Canada. But so far, in the last thirteen years Walied Soliman has advocated for Sharia financing and aspects of Sharia law and never answered a question about it. And I think that is wrong. [...]

See you tomorrow. And please help me out with Walied Soliman. All money donated goes to taking down the Muslim Brotherhood in Canada.

[104] On March 10, 2020, Mr. Bordman delivers his Statement of Defence.

[105] On March 13, 2020, a second libel notice is served on Mr. Bordman and on his parents.

[106] On March 23, 2020, Mr. Soliman commences a companion proceeding against Mr. Bordman's parents, and the same day Mr. Soliman delivers his Reply in his action against Mr. Bordman.

[107] On March 24, 2020, Mr. Bordman directed that the February 6, 2020 broadcast be re-posted on an anonymous YouTube account. He used the pseudonym of an O'Toole campaign staffer.

[108] As noted above, after being served with the Statement of Claim, Mr. Bordman set up a "GoFundMe" fundraiser online in which he sought to raise funds for a "legal offense fund". The GoFundMe page states:

This is not a legal defense fund, this is a legal offense fund, because every single thing I said was true, and I will prove it in court. By donating, you are helping me expose extremism in our political system and sending a message to the Conservative party that if they shake hands with the Brotherhood, the people will not stand for it [...]

I love Canada and will continue to fight for free speech and call out radicals, especially those in positions of power. I will fight all the way to the end but will need your help. All they have is unlimited money and resources. I have the truth.

This is standard lawfare, where they will try and drown me in threats and legal fees before I even have a chance to defend myself in a court of law. With your help we can get this much need [*sic*] information into the public record and push back against the radical forces hijacking our democracy. Thank you to everyone who clicked “Donate Now” and shared this fundraiser, the level of appreciation I have for your support is indescribable. I will say however, that this is a very winnable fight. Every dollar you send will go towards getting this information on to the official public record and exposing extremism and corruption in our political parties.

[109] On September 6, 2020, Mr. Bordman posted a video entitled *Legal Update: Walied Soliman vs. Daniel Bordman*. During the broadcast, Mr. Bordman stated:

So here is the most requested video on this channel of all time, probably, and it is the update of the legal case of: Walied Soliman vs. Daniel Bordman, where we answer the two and a half million dollar question, apparently of: Why is Erin O’Toole so buddy-buddy with Islamic Relief Canada, knowing all of this about their parent organization. What can the answer be? [...]

My plan is: Let’s make this all public. Because I have some interesting things that I think we should talk about [...] So hopefully we get a lot of answers.

And, bonus: If I take the stand September 14th, if they don’t drop it before then – which, you know, Walied, as your friend, I’m advising you probably should. We have to go to trial, and we get to subpoena lots of people [...] I mean, if [the transcript] not true – and I’m telling you, if the version I have shows to be a false one, I’ll let --- you know, I’ll work to clear Walied Soliman’s name, and I’ll let everyone know who gave me this false information...

7. Miscellaneous Findings of Fact

[110] Relevant to the determination of this summary judgment motion are the following miscellaneous findings of fact.

- a. Mr. Bordman has not published, taught, or studied in the area of national security, terrorism, or international relations. He has no formal education in journalism.
- b. Mr. Bordman has no notes or records of his investigation of Mr. Soliman.
- c. Mr. Bordman did not contact or attempt to contact Mr. Soliman for comment before broadcasting his statements.
- d. Mr. Bordman’s Internet video postings have received thousands of views. There is no way of determining how many postings have been forwarded to other viewers.
- e. Mr. Bordman has mocked, ridiculed, scorned, and derided Islamic culture in his video broadcasts. For example, in the February 1, 2020 broadcast of his program *The Worst of the CBC*, Mr. Bordman appeared wearing a bath towel.



- f. Mr. Soliman's testimony was that he has no associations with any terrorist groups. Mr. Soliman said he strongly opposes Al Quds Day, which he detests.
- g. Mr. Soliman says he is not a conspirator in a short- or long-term plan to undermine Israel or to import extremist ideologies to undermine Canada, its institutions, or its values.
- h. Mr. Soliman says that he is not in favour of Sharia law supplanting Canadian law.

E. Procedural History

[111] On February 18, 2020, Mr. Soliman serves Mr. Bordman and TAG TV with a libel notice.

[112] On February 20, 2020, Mr. Soliman commences a defamation action against Mr. Bordman and TAG TV Inc. He claims general damages of \$2.5 million and aggravated and punitive damages of \$250,000. Among other things, he claims injunctive relief.

[113] Mr. Soliman's lawyer of record is Lax O'Sullivan Lissus Gottlieb LLP. They are acting *pro bono*.

[114] On March 9, 2020, before Mr. Bordman has delivered a defence, Mr. Safavi affirms a statutory declaration for Mr. Bordman. The statutory declaration is in effect a witness statement. The statutory declaration is not immediately produced but it will find its way into Mr. Bordman's affidavit of documents delivered in the summer of 2020.

[115] On March 10, 2020, Mr. Bordman delivers his Statement of Defence. Mr. Bordman has been intermittently a self-represented litigant or a litigant with a lawyer or counsel of record. The Statement of Defence is prepared by RE-LAW LLP.

[116] In his Statement of Defence, Mr. Bordman admits that he published the videos and that the videos pertain to Mr. Soliman. He denies that the videos are libelous, false, or defamatory. He pleads that the statements of fact are substantially true. He relies on the defence of justification insofar as his statements are statements of fact, and on the defence of fair comment insofar as his statements consist of opinions or beliefs. Mr. Bordman also relies on the defence of responsible communication about a matter of public interest. He asserts that his statements were made without malice. He pleads that Mr. Soliman has suffered no actual harm or damage to his reputation.

[117] On March 10, 2020, Mr. Soliman delivers a Demand for Particulars. In the demand, Mr. Soliman demands full particulars of the factual basis for Bordman's opinion expressed at subparagraph 13(f) of the Statement of Defence that: "It is Bordman's honestly held opinion that the Plaintiff intends to assist individuals affiliated with the Muslim Brotherhood to emigrate to Canada and become involved in Canadian politics, first in more minor roles and then over time at the candidate level".

[118] On March 13, 2020, Mr. Soliman serves Mr. Bordman and his parents, Doctors Joel and

Risa Bordman, with a second libel notice.

[119] On March 19, 2020, Mr. Bordman delivers his Reply to the Demand for Particulars. For present purposes, the most pertinent answer is what Mr. Bordman relies on in support of his defence expressed at subparagraph 13(f) of the Statement of Defence. The answer is as follows:

Response: This request is not properly made, as the answer is not necessary for the Plaintiff to plead. However, and in any event, the factual basis for Bordman's opinion is, *inter alia*, the aforesaid meeting, the Quiggin Report (podcast launched by ex-military intelligence and counterterrorism expert Tom Quiggin), Mr. Patrick Brown's support for Muslim Association of Canada while the Plaintiff was his campaign chair, the Plaintiff's support of Kahlid Al Qazzaz, and the Plaintiff's support for Kaleed Rasheed, who publicly honoured Kahlid Al Qazzaz in the Ontario Legislature. Mr. Qazzaz was a former close aid for Mr. Morsi's Muslim Brotherhood backed government.

[120] On March 23, 2020, Mr. Soliman delivers his Reply, and he also commences a separate action against Mr. Bordman's parents.

[121] In August 2020, Mr. Bordman delivers an Affidavit of Documents. The affidavit includes the statutory declaration of Seyed Siavash Safavi dated March 9, 2020.

[122] Justice Schabas is assigned to case manage the action.

[123] On September 14, 2020, Mr. Bordman is examined for discovery. He has legal counsel at the examination.

[124] I assume on September 14, 2020, Mr. Soliman is examined for discovery. (The date was not disclosed in the Motion record copy of excerpts from the transcript.) Mr. Soliman is examined by counsel for Mr. Bordman and by counsel of Mr. Soliman's parents.

[125] On March 18, 2021, Mr. Soliman brings a motion for summary judgment supported by: (a) his affidavit dated March 16, 2021; and (b) a sealed transcript of the May 24, 2017 meeting between Mr. Soliman and Vikram Singh. The motion record comprises 463 pages along with video recordings.

[126] On May 21, 2021, Mr. Bordman personally prepares and delivers an Affidavit/Responding Motion Record (613 pages). He is self-represented at the time.

[127] On June 18, 2021, Mr. Soliman delivers a Reply Motion Record (42 pages) containing the affidavit dated June 18, 2020 of Eun Ji Yoon, a law clerk at Lax O'Sullivan Lisus Gottlieb LLP, Mr. Soliman's lawyers.

[128] On July 8, 2021, Mr. Soliman delivers a Supplementary Motion Record (216 pages) containing an affidavit dated July 8, 2021 from Ashley McKnight. Ms. McKnight is a law clerk with Lax O'Sullivan Lisus Gottlieb LLP, Mr. Soliman's lawyers.

[129] On July 29, 2021, Mr. Bordman and Mr. Soliman were respectively cross-examined for the summary judgment motion. Mr. Bordman is represented by counsel for his own cross-examination. Mr. Bordman personally cross-examines Mr. Soliman without the assistance of counsel.

[130] Justice Schabas denies Mr. Bordman's request for an adjournment and the motion is argued on September 21, 2021.⁸ At the hearing, the self-represented Mr. Bordman has counsel argue the

⁸ *Soliman v. Bordman*, 2021 ONSC 6107.

motion and deliver a supplementary factum for the motion.

F. Is the Case Appropriate for a Summary Judgment?

[131] The first issue to determine is whether the case at bar is an appropriate one for a summary judgment.

[132] Rule 20.04(2)(a) of the *Rules of Civil Procedure*⁹ provides that the court shall grant summary judgment if: “the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.” With amendments to Rule 20 introduced in 2010, the powers of the court to grant summary judgment have been enhanced. Rule 20.04 (2.1) states:

20.04 (2.1) In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[133] *Hryniak v. Mauldin* does not alter the principle that the court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial. The court is entitled to assume that the parties have advanced their best case and that the record contains all the evidence that the parties will present at trial.¹⁰ Thus, if the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party’s evidence or risk a summary judgment.¹¹

[134] In *Hryniak v. Mauldin*¹² and *Bruno Appliance and Furniture, Inc. v. Hryniak*,¹³ the Supreme Court of Canada held that on a motion for summary judgment under Rule 20, the court should first determine if there is a genuine issue requiring trial based only on the evidence in the motion record, without using the fact-finding powers introduced when Rule 20 was amended in 2010. The analysis of whether there is a genuine issue requiring a trial should be done by reviewing the factual record and granting a summary judgment if there is sufficient evidence to fairly and justly adjudicate the dispute and a summary judgment would be a timely, affordable and proportionate procedure.

[135] If, however, there appears to be a genuine issue requiring a trial, then the court should determine if the need for a trial can be avoided by using the powers under rules 20.04 (2.1) and (2.2). As a matter of discretion, the motions judge may use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if their use will lead to a fair and just result and will serve the goals of timeliness, affordability, and

⁹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

¹⁰ *Canada (Attorney General) v. Lameman*, [2008] 1 S.C.R. 372 at para. 11; *Dawson v. Rexcraft Storage & Warehouse Inc.*, [1998] O.J. No. 3240 (C.A.); *Bluestone v. Enroute Restaurants Inc.* (1994), 18 O.R. (3d) 481 (C.A.).

¹¹ *Toronto-Dominion Bank v. 466888 Ontario Ltd.*, 2010 ONSC 3798.

¹² 2014 SCC 7.

¹³ 2014 SCC 8.

proportionality in light of the litigation as a whole. To grant summary judgment, on a review of the record, the motions judge must be of the view that sufficient evidence has been presented on all relevant points to allow him or her to draw the inferences necessary to make dispositive findings and to fairly and justly adjudicate the issues in the case.¹⁴

[136] If a judge is going to decide a matter summarily, then he or she must have confidence that he or she can reach a fair and just determination without a trial; this will be the case when the summary judgment process: (a) allows the judge to make the necessary findings of fact; (b) allows the judge to apply the law to the facts; and (c) is a proportionate, more expeditious and less expensive means to achieve a just result.¹⁵ The motion judge is required to assess whether the attributes of the trial process are necessary to enable him or her to make a fair and just determination.¹⁶

[137] In the immediate case, Mr. Soliman made an elaborate policy argument that not only was the immediate case appropriate for a summary judgment but also that the shift in legal culture heralded by *Hryniak v. Mauldin* and the social need for a mechanism to respond to the use of the Internet and social media for misinformation, false news, propaganda, character assassination, bullying, harassment *etc.* required the administration of justice to develop fair and efficient and prompt legal responses to defamation claims.

[138] In Mr. Soliman's factum and in oral argument, I was told that since 2018, there have been thirteen defamation cases decided by summary judgment without appellate intervention. The thirteen cases, however, were not listed for me, although some were identified or identifiable in the books of authorities.¹⁷ I was told by Mr. Soliman that the summary judgment was authorized by Justice Schabas on a contested case conference over the objections of Mr. Bordman. Before the settlement, in the companion action, Mr. Bordman's parents had sought a summary judgment.

[139] For his part, however, Mr. Bordman argued that the case at bar was not appropriate for a summary judgment. He argued that it would not be fair to decide the case without a full trial. I was told by Mr. Bordman's counsel that while there have been defamation cases decided summarily, there were also defamation cases where the Court ruled that summary judgment was inappropriate.¹⁸ His counsel argued that the court should recognize that Mr. Bordman was often a self-represented litigant and fairness to him required a trial.

[140] I was told that in *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla*,¹⁹ Justice MacLeod disagreed with the proposition that summary judgment in defamation matters is now

¹⁴ *Campana v. The City of Mississauga*, 2016 ONSC 3421; *Ghaeinizadeh (Litigation guardian of) v. Garfinkle Biderman LLP*, 2014 ONSC 4994, leave to appeal to Div. Ct. refused, 2015 ONSC 1953 (Div. Ct.); *Lavergne v. Dominion Citrus Ltd.*, 2014 ONSC 1836 at para. 38; *George Weston Ltd. v. Domtar Inc.*, 2012 ONSC 5001.

¹⁵ *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 49 and 50.

¹⁶ *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 51-55; *Wise v. Abbott Laboratories, Ltd.*, 2016 ONSC 7275 at paras. 320-336; *Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc.*, 2016 ONSC 5784 at paras. 122-131.

¹⁷ *Bukhari v. Rahman*, 2021 ONSC 4655; *Zoutman v. Graham*, 2019 ONSC 2834, aff'd 2020 ONCA 767; *Weisleder v. Ontario Secondary School Teachers' Federation*, 2019 ONSC 5830, aff'd 2020 ONCA 181; *Labourers International Union of North America, Local 183 v. Castellano*, 2019 ONSC 506, var'd in 2020 ONCA 71; *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136; *Asghar v. Alon*, 2018 ONSC 3342, aff'd 2019 ONCA 249; *Paramount v. Kevin J. Johnston*, 2019 ONSC 2910.

¹⁸ *Vivo Canadian Inc v. Geo TV*, 2021 ONSC 5102; *Labine v. Webster*, 2019 ONSC 4023; *Roy v. Ottawa Capital Area Crime Stoppers*, 2018 ONSC 4207.

¹⁹ 2020 ONSC 136

routine; rather, he held that its availability in defamation cases requires a case-by-case analysis. In *Skafco Ltd.*, Justice MacLeod stated at para. 45:

45. I conclude that summary judgment is available in defamation actions but not in all cases. The analysis of whether or not a trial is necessary will be dependent on the evidence available to the motions judge, the matters that are in issue and of course the position taken by the parties having regard to the particularities of defamation law and procedure. In that regard, credibility assessment may not be the only concern as the court will also have to consider whether questions such as the defamatory nature of the published words, the impact of those words in the community and the assessment of damages can be properly undertaken on a paper record.

[141] I agree and adopt Mr. Justice MacLeod’s analysis. In my opinion, except for the matter of whether Mr. Bordman’s statements were hate speech and whether he is a racist, the immediate case is an appropriate case for a summary judgment.

[142] The parties are to be taken to have put their best evidentiary foot forward. In the case at bar, there is a fulsome evidentiary record. There is no doubt about what Mr. Bordman said and there is ample evidence from him explaining why he said what he said. I have listened and watched the video recordings – many, many times. I have heard Mr. Bordman’s explanations and elucidations of his statements. I have the examinations for discovery, transcripts of the cross-examinations, and Mr. Bordman’s two factums, one he authored himself and the second that was prepared by counsel where Mr. Bordman repeats his statements, explanations, and elucidations. Mr. Bordman has prudently abandoned the defence of justification and this concession has removed some genuine issues that might arguably have required a trial. As I have noted above, there are collateral issues that are immaterial and need not be adjudicated summarily - or at a trial for that matter.

[143] The few matters of credibility about genuine issues evaporate upon paying close attention to all the evidence. For example, in the video of April 16, 2019: Mr. Bordman recounts that Mr. Safavi said that Mr. Soliman said: “hey I am not like a Muslim Brotherhood supporter, but a lot of my good friends were in Morsi government, and I helped get a lot of Morsi’s people into Canada.” This denial by Mr. Soliman of his being a member of the Muslim Brotherhood concords with Mr. Safavi’s statutory declaration, where he deposes: “When I asked whether he was a member of Muslim Brotherhood, he quickly said no, but then said he just worked for Morsi’s Muslim Brotherhood Government,” which on the evidence turns out to just mean that Mr. Soliman along with 131 Canadians of all creeds and all political colours petitioned Prime Minister Harper to help the illegally and cruelly imprisoned Mr. Qazzaz be reunited with his family in Canada. Although I will have more to say about all this, there is no need to have a trial to determine whether Mr. Bordman’s statements were fair comment or reasonable communication about Mr. Soliman’s association with the Muslim Brotherhood *etc.*

[144] However, as I have already mentioned above, the immediate case is not an appropriate case to decide summarily whether Mr. Bordman’s statements amounted to hate speech and whether he is a racist. It is understandable why Mr. Soliman would advance the issue of whether Mr. Bordman preached hate because defamatory hate speech is criminal and indefensibly defamatory,²⁰ but as the analysis below reveals, Mr. Soliman does not need to go that far to succeed in his action against

²⁰ *Paramount Fine Foods v. Johnston*, 2018 ONSC 3711; *DEI Films Ltd. v. Tiwari*, 2018 ONSC 4423; *Hudspeth v. Whatcott*, 2017 ONSC 1708 at paras. 172–186; *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11; *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892; ²⁰ *R. v. Keegstra*,²⁰ [1990] 3 S.C.R. 697.

Mr. Bordman.

[145] To be clear, I do not support the categorical proposition that the issue of whether a defendant's statements constitute hate speech cannot be determined in a civil proceeding, and I do not doubt the correctness of the decision in *Paramount v. Kevin J. Johnston*.²¹ I rather conclude that in the immediate case, on a case-by-case basis, it is none of necessary, appropriate, or fair to decide that Mr. Bordman is a racist and a hatermonger.

[146] That said, the case at bar is an appropriate case for a summary judgment on the issues of whether Mr. Bordman, defamed Mr. Soliman, whether Mr. Bordman has the defences of fair comment or reasonable communication, and what remedies are available to Mr. Soliman should his defamation claim be proven and should Mr. Bordman's defences fail.

G. Discussion and Analysis

1. Mr. Soliman's Claim in Defamation

[147] As foreshadowed in the introduction to these Reasons for Decision and as the following discussion and analysis will demonstrate, Mr. Soliman has proven his cause of action in defamation and Mr. Bordman has failed to prove his defences.

[148] The elements of a claim of defamation are: (1) the defendant makes a statement; (2) the words of the statement are defamatory, *i.e.*, the words would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (3) the statement refers to the plaintiff; and (4) the statement is published.²²

[149] Statements are defamatory when they lower the plaintiff's reputation in the eyes of a reasonable person.²³ In determining the meaning to be taken from the words used by the defendant, their plain and ordinary meaning must be considered, and the context in which the words are used and any reasonable implications the words may bear; the audience, and the manner of expression are also relevant to determine meaning.²⁴

[150] The gravity of some statements, such as an attribution of the plaintiff being dishonest, immoral, a pedophile, a terrorist, a terrorist supporter, a racist, a human smuggler, a corrupt politician, a swindler, a racketeer, a gangster, a mobster, are defamatory and so obviously likely to cause serious harm to a person's reputation that the likelihood of harm and general damages can

²¹ 2019 ONSC 2910.

²² *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28; *Warman v. Grosvenor* (2008), 92 O.R. (3d) 663 at paras. 52-57 (S.C.J.); *Lysko v. Braley* (2006), 79 O.R. (3d) 721 (C.A.); *Mantini v. Smith Lyons LLP (No. 2)* (2003), 64 O.R. (3d) 516 (C.A.), leave to appeal to S.C.C. ref'd [2003] S.C.C.A. No. 344; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3.

²³ *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 28; *Grant v. Torstar*, 2009 SCC 61 at para. 28

²⁴ *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 29; *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 19; *Cusson v. Quan*, 2007 ONCA 771 at para. 34; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62.

be inferred.²⁵

[151] Mr. Bordman made many statements about Mr. Soliman, but they may be synthesized into three main assertions, each of which would lower Mr. Soliman’s reputation in the eyes of a reasonable person; namely: (a) Mr. Soliman is an extremist or a supporter of extremist, terrorist Islamic organizations such as the Muslim Brotherhood, which organizations are dedicated to usurping Canadian democracy and replacing it with a Muslim caliphate; (b) Mr. Soliman is a closet anti-Semite and a supporter of Al Quds Day, which is a holiday founded by the Muslim State of Iran to celebrate its hatred and to condemn Israel, and Mr. Soliman hides his anti-Semitism from his Jewish law partners;²⁶ and (c) Mr. Soliman seeks and supports the introduction of Sharia law to Canada to supplant or override Canadian law.

[152] Mr. Bordman never advanced the argument that these statements about Mr. Soliman’s character and activities were not defamatory, and albeit late in the day, Mr. Bordman abandoned the defence of justification. As I shall explain next below, Mr. Bordman’s remaining defences of fair comment and reasonable communication fail. There was no dispute about the publication of the defamatory statements, thus, Mr. Soliman succeeds in his defamation action against Mr. Bordman.

2. The Failure of Mr. Bordman’s Defences: Introduction

[153] In *Roy v. Ottawa Capital Area Crime Stoppers*,²⁷ Justice MacLeod said that there are nine recognized defences to defamation actions; namely: (a) “truth or justification”, where the defendant proves that the statement was factually accurate and substantially true; (b) “absolute privilege”, where statements in Parliament, in court, or in a complaint to a regulatory body are cloaked with immunity; (c) “statutory privilege”, where s. 3 of the *Libel and Slander Act*²⁸ protects broadcasts or publication of fair and accurate reports of certain public meetings and proceedings, unless the publication is made with malice and provided the statutory conditions are met; (d) “qualified privilege”, where the defendant has a duty or legitimate interest in communicating to an audience that has a legitimate interest in receiving the information and the statement is made without malice; (e) “fair comment”, where statements on a matter of public interest that are recognizable as comments or opinions are made without malice; (f) “public interest responsible communication”, which protects publishers if they have acted responsibly by taking reasonable steps to ascertain the reliability of the information and if the statement relates to a matter of public interest and was communicated without malice; (g) “consent”, where the plaintiff explicitly or implicitly agreed to the publication of the libel; (h) limitation periods, statutory notice requirements, and preconditions to suing or statutory provisions that limit the plaintiff’s damages; and (i) “innocent dissemination”, which relieves booksellers, libraries, news vendors and Internet service providers of liability for dissemination of libelous content of which they were unaware.

²⁵ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529, aff’g 2020 ONSC 323; *Skaftco Ltd. (c.o.b. Robbie’s Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 15; *Montour v. Beacon Publishing Inc. (c.o.b. Frontline Safety & Security)*, 2019 ONCA 246 at paras. 27-42; *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163 at para. 40-41; *Awan v. Levant*, 2016 ONCA 970, aff’g 2014 ONSC 6890, leave to appeal to S.C.C. ref’d [2017] S.C.C.A. 71; *Cooke v. MGN Limited*, [2015] 2 All ER 622 at para. 43 (C.A.); *Grant v. Torstar Corp.*, 2009 SCC 61

²⁶ Semites are descendants of peoples of ancient southwestern Asia including the Akkadians, Phoenicians, Hebrews, and Arabs, but anti-Semitism has come to be a reference to racist hatred of Jews.

²⁷ 2018 ONSC 4207.

²⁸ R.S.O. 1990, c. L.12.

[154] Mr. Bordman did not dispute that his statements about Mr. Soliman were defamatory. The defence of justification is made out if the defendant proves that the impugned statements are true or substantially true.²⁹ To succeed on the defence of justification, the defendant must lead evidence showing that the thrust of the statement was substantially true. Even if the statement has some accurate facts, the defence will fail when the "sting" of the defamation is shown to be untrue.³⁰ Mr. Bordman abandoned the defence of justification.

[155] Mr. Bordman advanced the two defences of fair comment and responsible communication to defend Mr. Soliman's defamation claim, to which I now turn.

3. Fair Comment

[156] The defence of fair comment requires that the defendant establish that the impugned statement was: (a) a comment or opinion and not a statement of fact, although the comment or opinion could include inferences of fact; (b) a matter of public interest; (c) a comment or opinion based upon true facts; (d) objectively fair in the sense that any person could honestly express the comment or opinion based on the proved facts; and (e) made without malice.³¹ If there is a factual foundation for the comment or opinion, there is no requirement that the comment or opinion be reasonable.³²

[157] In the immediate case, in my opinion, Mr. Bordman's statements cannot be classified as comments or opinions. The law of defamation differentiate statements that are statements of fact from statements that are comments, opinions, criticism, observations, inferences, conclusions.³³ Although the defence of justification may be available for statements of fact, the defence of fair comment is not available if the defendant makes a factual assertion rather than a comment or opinion.³⁴

[158] Depending on the context, statements that may appear to be statements of fact, may in pith and substance be construed as a comment or opinion or a finding from facts.³⁵ The distinction between a statement that is a statement of fact or a comment is determined from the perspective of what a reasonable reader would understand the statement to be in the context of the making of the

²⁹ *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 33.

³⁰ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529 at para. 23 aff'g 2020 ONSC 323; *Bent v. Platnick*, 2020 SCC 23 at para. 107.

³¹ *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 19; *Awan v. Levant*, 2016 ONCA 970 at paras. 74-77, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *St. Lewis v. Rancourt*, 2015 ONCA 513 at para. 7; *Grant v. Torstar*, 2009 SCC 61 at para. 31; *WIC Radio v. Simpson*, 2008 SCC 40 at para. 1; *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067.

³² *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 26.

³³ *2504027 Ontario Inc. (c.o.b. S-Trip!) v. Canadian Broadcasting Corp.*, 2021 ONSC 3471 at para. 47; *Awan v. Levant*, 2016 ONCA 970 at paras. 74-77, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *WIC Radio v. Simpson*, 2008 SCC 40 at paras/ 26-27; *Ross v. New Brunswick Teachers' Assn.* 2001 NBCA 62 at para. 56.

³⁴ *Bondfield Construction Co. v. Globe*, 2019 ONCA 166 at para. 17, aff'g 2018 ONSC 1880; *New Dermamed Inc. v. Sulaiman*, 2019 ONCA 141 at para. 13; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at paras. 26-28

³⁵ *Awan v. Levant*, 2016 ONCA 970 at paras. 74-77, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *WIC Radio v. Simpson*, 2008 SCC 40 at paras. 26-27.

statement.³⁶ Words that appear to be statements of fact may, in pith and substance, be properly construed as comment, particularly in an editorial context where loose, figurative, or hyperbolic language is used in the context of political debate, commentary, media campaigns and public discourse.³⁷

[159] In the immediate case, the statements that Mr. Bordman made were not expressed as comments or opinions but were uttered to be taken as true facts. Mr. Bordman described himself and presented himself as investigating the activities of the leaders and the candidates for leadership of the federal and provincial conservative parties. In some instances, Mr. Soliman was the cannon fodder for bringing down Patrick Brown or Erin O’Toole or anybody else that Mr. Bordman believed had Islamist connections. See: the video of April 16, 2019, entitled *The Qatar Paper-Patrick Brown’s Islamist Connections*; the video of October 3, 2019, *Pakistan’s Influence Over the Canadian Conservative Party*; the video of February 6, 2020, entitled *Erin O’Toole’s Connections to the Muslim Brotherhood*; the video of the March 4, 2020 episode of *Uninterrupted with Daniel Bordman*. In other instances, particularly after Mr. Soliman sued Mr. Bordman, Mr. Soliman was the more specific target of Mr. Bordman’s hunting. See: the video of February 19, 2020, where Mr. Bordman calls Mr. Soliman out; the video of February 22, 2020, entitled *I’m Officially Getting Sued*; and the March 8, 2020 episode of *The Worst of the CBC*.

[160] Mr. Bordman investigated connections between Mr. Soliman and various Muslim organizations in order to further his investigations of Patrick Brown and Erin O’Toole, who were Mr. Bordman’s main target. This is investigative reporting not commentary. Mr. Bordman took pride in the devise of having the Iranian Mr. Safavi meet with Mr. Soliman who would speak candidly to a person he would assume to be a co-religionist of the Muslim faith. Mr. Bordman was investigating to find facts and to expose them. He was reporting to his audience the product of his investigations. The statements that Mr. Soliman was a supporter of terrorism were not expressed as comments or opinions but were uttered to be taken as discovered true facts. Although there were also comments and opinions expressed, a reasonable viewer of the videos would understand that Mr. Bordman’s statements about Mr. Soliman were statements of fact. The defence of fair comment is not available for statements of fact.

[161] If I am wrong in this characterization of Mr. Bordman’s statements as statements of fact, then the defence of fair comment fails on its own merits. Assuming or accepting that Mr. Bordman’s statements about Mr. Soliman are comments or opinions, then to establish the defence of fair comment, Mr. Bordman has the onus of proving that the comment or opinion was: (a) a matter of public interest; (b) based upon true facts; (c) objectively fair in the sense that any person could honestly express the comment or opinion based on the proved facts; and (d) made without malice.

[162] In the immediate case, notwithstanding Mr. Soliman’s arguments to the contrary, I am satisfied that Mr. Bordman’s comments about Mr. Soliman, assuming that they were indeed comments, were about a matter of public interest.

[163] There is no exhaustive list of topics that are matters of public interest, and, depending on the context and circumstances, an expression may engage the public interest. In *Grant v. Torstar*

³⁶ *2504027 Ontario Inc. (c.o.b. S-Trip!) v. Canadian Broadcasting Corp.*, 2021 ONSC 3471 at para. 47; *Awan v. Levant*, 2016 ONCA 970 at paras. 74-77, aff’d 2014 ONSC 6890, leave to appeal to S.C.C. ref’d [2017] S.C.C.A. 71; *WIC Radio v. Simpson*, 2008 SCC 40 at paras. 26-27.

³⁷ *WIC Radio v. Simpson*, 2008 SCC 40.

Corp.,³⁸ Chief Justice McLachlin referred to Lord Denning's comments in *London Artists, Ltd. v. Littler*³⁹ where he described public interest broadly as matters that affect people at large so that they may be legitimately concerned about what is going on or what may happen to them or to others. The statement must address an issue about which the public has some substantial concern because it affects the welfare or concerns of citizens and the resolution of purely private disputes between more or less equals that has no bearing on the rights or obligations of others will seldom be a matter of public interest.⁴⁰

[164] An expression may be a matter of public interest without engaging a substantial part of the community; it is enough that some segment of the community would have a genuine interest in the subject matter of the expression.⁴¹ An expression that relates to a matter of public interest need not further the public interest and indeed may be harmful to the public interest.⁴² The concept of public interest is a broad one that does not take into account the merits or manner of the expression, nor the motive of the speaker.⁴³ An expression may be defamatory, false and malicious and still relate to a matter of public interest.⁴⁴

[165] Some topics are inherently a matter of public interest. Statements about a candidate's fitness for office made in the course of an ongoing election campaign qualify as expressions relating to a matter of public interest.⁴⁵ Statements concerning racism, sexism, corruption, abuse of funds, election rigging, and misconduct by a candidate for election in a local of a Canadian public sector union relate to a matter of public interest.⁴⁶ Statements about a public service union using union funds to support an organization that supports attacks on Israel and taking a position on the Middle East conflict relate to a matter of public interest.⁴⁷

[166] In *McLaughlin v. Maynard*,⁴⁸ alleged defamatory comments about the acts or omissions of a mayor and a municipal council member in the discharge of their public duties were held to be expressions relating to matters of public interest. In *Niagara Peninsula Conservation Authority v. Smith*,⁴⁹ comments about the governance of a conservation authority that was also a registered charity were held to be expressions relating to matters of public interest. In *Moraine United Soils*

³⁸ [2009] 3 S.C.R. 640.

³⁹ [1969] 2 Q.B. 375 (C.A.).

⁴⁰ *Grist v. TruGrp Inc.*, 2021 ONCA 309; *Sokoloff v. Tru-Path Occupational Therapy Services Ltd*, 2020 ONCA 730 at para. 19.

⁴¹ *Nanda v. McEwan*, 2020 ONCA 431 at para. 35; *New Dermamed Inc. v. Sulaiman*, 2018 ONSC 2517, aff'd 2019 ONCA 141; *Grant v. Torstar Corp.*, 2009 SCC 61 at paras. 102-105.

⁴² *1704604 Ontario Ltd. v. Pointes Protection Assn.*, 2018 ONCA 685 at para. 55, aff'd 2020 SCC 22; *Levant v. Day*, 2019 ONCA 244 at para. 10, aff'g 2017 ONSC 5956, leave to appeal refused [2019] S.C.C.A. No. 194; *Amorosi v. Barker*, 2019 ONSC 4717 at para. 11.

⁴³ *Sokoloff v. Tru-Path Occupational Therapy Services Ltd*, 2020 ONCA 730; *Nanda v. McEwan* 2020 ONCA 431 at para. 37; *Levant v. Day*, 2019 ONCA 244 at para. 11, aff'g 2017 ONSC 5956, leave to appeal refused [2019] S.C.C.A. No. 194.

⁴⁴ *Platnick v. Bent*, 2018 ONCA 687 at para. 38, aff'd 2020 SCC 23; *1704604 Ontario Ltd. v. Pointes Protection Assn.*, 2018 ONCA 685 at paras. 55-65, aff'd 2020 SCC 22.

⁴⁵ *Able Translations Ltd. v. Express International Translations Inc.*, 2018 ONCA 690 at para. 19. *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689 at para. 15.

⁴⁶ *Nanda v. McEwan*, 2020 ONCA 431; *Labourers' International Union of North America, Local 183 v. Castellano*, 2020 ONCA 71.

⁴⁷ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529, aff'g 2020 ONSC 323.

⁴⁸ 2017 ONSC 6820.

⁴⁹ 2017 ONSC 6973.

Management Ltd. v. Barclay,⁵⁰ the environmental implications of expanded dumping rights in an environmental protection area was a matter of public interest. In *McQueen v. Reid*,⁵¹ an article about the management of the Toronto Port Authority that was alleged to have tarnished the reputation of the chair of the authority was found to be a matter of public interest.

[167] In *Rizvee v. Newman*,⁵² the defendant’s defamatory social media postings about the character and suitability for election of a candidate for election to Parliament were held to be expressions relating to matters of public interest. Justice Fitzpatrick stated at para. 64 that: “While there is no static list of topics which qualify as matters of public interest, politics is the classic example of such a topic.” At para. 122, he added:

122. It is an obvious statement that free speech is one of the fundamental underpinnings to any democratic, open and tolerant society. The right to offer commentary free from fear of litigation is especially critical to our election process. How are citizens to make an informed, independent and objective selection of who should lead us without the exchange of ideas, critical or otherwise? The public has a strong interest in its citizens exchanging ideas respecting the merits of a candidate for public office.

[168] In the immediate case, while not an elected politician, Mr. Soliman is a public figure and what he says, does, and advocates is a matter of public interest. He would appear to have an influential backroom voice in policy formation for the conservative ideology in Ontario and nationally. Mr. Bordman’s comments about Mr. Soliman were often intertwined with comments about prominent leaders of the federal and provincial conservative parties and about those political parties and about their foreign and domestic policies all of which undoubtedly is a matter of public interest.

[169] Having succeeded in proving that his statements were about a matter of public interest, Mr. Bordman, however, has failed to prove that his comment or opinion was based upon true facts.

[170] The defence of fair comment has regard to the allegations of facts that are referred to in the expression of opinion that are proved to be true. Section 23 of the *Libel and Slander Act* states:

Fair comment

23 In an action for libel or slander for words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[171] It is a precondition to advancing a fair comment defence that the defendant stated the facts underlying the comment or opinion or that the facts are otherwise already known to the audience to allow them to make up their own minds about the value of the opinion.⁵³ The defence of fair comment is not available if the factual foundation for the comment is either unstated or unknown

⁵⁰ 2018 ONSC 1372.

⁵¹ 2018 ONSC 1662.

⁵² 2017 ONSC 4024.

⁵³ *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 26; *Mainstream Canada v. Staniford*, 2013 BCCA 341 at para. 24-25, leave to appeal to S.C.C. ref’d [2013] S.C.C.A 372; *WIC Radio v. Simpson*, 2008 SCC 40 at para. 31; *Roos v. Stent and Pretoria Printing Works, Ltd.*, 1909 T.S. 988 at p. 998 (Transvall S.C.).

or turns out to be false.⁵⁴

[172] The analysis of whether Mr. Bordman has met the onus of showing that his statements about Mr. Soliman were based on true facts, begins with the analysis of the nature of Mr. Bordman's evidence.

[173] Mr. Bordman primarily relied on: (a) Mr. Safavi's report of what Mr. Soliman said at the meeting of November 23, 2017; and (b) what Mr. Soliman is reported to have said in the first version of the transcription of the audio recording of the meeting in Hamilton on May 24, 2017 between Mr. Soliman and Mr. Singh. This evidence is double or triple hearsay. It is not admissible.

[174] This evidence was never proffered for the truth of its content, but, in any event, the evidence is double or triple hearsay for the proposition that the statements attributed to Mr. Soliman (which he denies saying), were even said. Mr. Safavi and Mr. Singh did not testify. Mr. Safavi's statutory declaration is not admissible evidence as such. Mr. Bordman's listening and repeating what he was told by Mr. Safavi or reading and reporting what he read in the first version of the transcript is triple hearsay.

[175] While the evidence about what Mr. Bordman said during his broadcasts about what he was told and read about what Mr. Soliman said is part of the factual narrative and is admissible to prove that defamatory statements were made, the evidence is not admissible to prove what Mr. Soliman may have said at the meetings with Mr. Safavi or Mr. Singh nor is it admissible to prove the content of what was said is a true fact.

[176] Moreover, apart from the inherently unreliable nature of the double and triple hearsay evidence about what Mr. Soliman is alleged to have said that would connect him to terrorists, but what he denies saying, at the meetings, with Mr. Safavi or Mr. Singh, it is not plausible that Mr. Singh did say what he is alleged to have said unless Mr. Soliman is an idiot, which he clearly is not.

[177] Mr. Safavi was an Iranian refugee who had been jailed and tortured by the Iranian Revolutionary Guard. Mr. Safavi had made anti-Iran videos and those videos were the *raison d'être* for the meeting with Mr. Soliman. While it is plausible that the hot political topic of the Al Quds Day March came up in conversation, it is not plausible that Mr. Soliman would be so insensitive and antagonize Mr. Safavi, who was a victim of Iranian torture and imprisonment, and tell him that he (Mr. Soliman) was a supporter of the pro-Iranian Al Quds Day March.

[178] Mr. Singh was a Sikh hoping to be nominated to the provincial legislature. It is plausible that Mr. Soliman would commiserate with Mr. Singh about being branded a Khalistani extremist, which is an interpretation of the audio recording that during his cross-examination, Mr. Bordman acknowledged was possible. Recall that Mr. Bordman testified: "And then I took some time, and cleared my head, I tried to get back to it and I put what you said in my head, and I tried to listen for your interpretation. And then with that frame of mind, I got it." It is plausible that the "crazy shit" that Mr. Soliman was discussing with Mr. Singh was being stereo-typed a terrorist. However, it is not plausible that Mr. Soliman would be so stupid as to brand Mr. Singh an extremist and then admit that he too was a member of another extremist group, the Muslim Brotherhood.

⁵⁴ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529 at para. 27, *aff'g* 2020 ONSC 323; *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 26; *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 31.

[179] The factual inferences that Mr. Bordman draws to establish true facts are illogical. It is indeed a true fact that Mr. Soliman along with 130 Canadians citizens signed an open letter to Prime Minister Harper calling for the repatriation of Mr. Qazzaz to join his family in Canada, but that does not make a true fact of the statement in Mr. Safavi's inadmissible statutory declaration that Mr. Soliman mentioned that he had a friend who had gone back to Egypt after the revolution to work for the Morsi Government, but after the coup he was stuck there, and Mr. Soliman said he pulled some strings and helped him get back into Canada.

[180] That Mr. Soliman signed the petition for the repatriation of Mr. Qazzaz does not make a true fact (as recounted by Mr. Bordman in his October 3, 2019 video *Uninterrupted with Daniel Bordman: Pakistan's Influence Over the Canadian Conservative Party*) that Mr. Soliman had lots of friends in the Muslim Brotherhood in Mohamed Morsi's political party that he helped get positions in Canada.

[181] Thus, Mr. Bordman has failed to prove that his statements if they are comments or opinions were based on true facts, and this is fatal to his fair comment defence. But, even if his comments or opinions were based on true facts, the fair comment defence would fail because his comments or opinions were not objectively fair because no person could honestly express them based on the proved facts.

[182] Section 24 of the *Libel and Slander Act* confirms that the test for fair comment is an objective test. Section 24 states:

Fair comment

24 Where the defendant published defamatory matter that is an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion.

[183] Mr. Bordman may have subjectively honestly expressed his beliefs about Mr. Soliman's membership or support of the Muslim Brotherhood *etc.*, but Mr. Bordman's opinions were not objectively fair because no person could honestly express them based on the proved facts. With a degree in psychology, Mr. Bordman would know that humans see and hear what they want to see and hear, humans frequently speak or say what they believe their audience wants to hear, and humans can be tuned up to see and hear stereotypically. Mr. Bordman may have convinced himself that the opinions were supported by the facts, but the facts discretely or in the aggregate are not convincing evidence. For example, no person could honestly express the conclusion that Mr. Soliman was a member of the Muslim Brotherhood based on the three incidents and two circumstances, described above.

[184] Moreover, in any event, Mr. Bordman's unfair comment defence fails because his comments and opinions were made with malice. The presence of malice is fatal to the defences of: (a) statutory privilege; (b) qualified privilege; (c) fair comment; and, (d) responsible communication.

[185] In *Hill v. Church of Scientology of Toronto*,⁵⁵ and *WIC Radio Ltd. v. Simpson*,⁵⁶ the Supreme Court adopted the definition of malice set out by Justice Dickson in *Cherneskey v.*

⁵⁵ [1995] 2 S.C.R. 1130 at para. 145.

⁵⁶ 2008 SCC 40 at para. 101.

Armada Publishers Ltd.:⁵⁷

Malice is not limited to spite or ill will, although these are its most obvious instances. Malice includes any indirect motive or ulterior purpose and will be established if the plaintiff can prove that the defendant was not acting honestly when he published the comment. This will depend on all the circumstances of the case. Where the defendant is the writer or commentator himself, proof that the comment is not the honest expression of his real opinion would be evidence of malice. If the defendant is not the writer or commentator himself, but a subsequent publisher, obviously this is an inappropriate test of malice. Other criteria will be relevant to determine whether he published the comment from spite or ill will, or from any other indirect and dishonest motive.

[186] Thus, malice includes spite or ill-will and may also be established by showing that the comment or opinion was made dishonestly with an indirect motive or ulterior purpose or was made knowingly or in reckless disregard to the truth.⁵⁸ Recklessness may be demonstrated by the defendant's lack of diligence to fact-check, to be accurate, and to correct inaccurate facts and mistakes when they are brought to his or her attention.⁵⁹

[187] If malice was the dominant motive of the defendant, proof of the defendant's honest belief in the comment will not negate a finding of malice.⁶⁰ In *Platnick v. Bent*,⁶¹ Justice Coté (Chief Justice Wagner, Moldaver, Brown and Rowe JJ. concurring) stated at para. 136:

136. [...] Malice is not limited to an actual, express motive to speak dishonestly. Instead, it can be established by "reckless disregard for the truth": [...] Notably, an ostensibly honestly held belief may still be spoken recklessly and the privilege defeated if the belief was "arrived at without reasonable grounds": [...]

[188] Without detracting what I said above that it would require a trial to make a finding that Mr. Bordman was a hater, a racist, and a member of the alt-right community of demagogues, hatemongers, conspiracy theorists, and Islamophobes, I conclude that there was malice in the immediate case. My finding of malice is based only on my finding of fact that Mr. Bordman made his statements with reckless disregard or indifference to the truth.

[189] Mr. Bordman never interviewed Mr. Soliman before Mr. Bordman made his admittedly defamatory statements. Mr. Bordman never gave Mr. Soliman an opportunity to comment before Mr. Bordman published his statements on the Internet. It was reckless for Mr. Bordman to rely on rumours and Internet gossip and innuendo. Perhaps motivated by how it would incite interest and promote his video broadcasts that Mr. Bordman called out Mr. Soliman to appear on his show after the fact of the making of the defamatory statements is just more recklessness. It was reckless for Mr. Bordman to rely on the hearsay, unreliable, and implausible evidence about the meetings with Messrs. Safavi or Singh. It was reckless for Mr. Bordman to rely on the flaccid line of reasoning that purported to connect the dots from Mr. Soliman's signing a letter along with some

⁵⁷ [1979] 1 S.C.R. 1067 at p. 1099

⁵⁸ *2504027 Ontario Inc. (c.o.b. S-Trip!) v. Canadian Broadcasting Corp.*, 2021 ONSC 3471 at para. 54; *Platnick v. Bent*, 2020 SCC 23 at para. 136; *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. Better Business Bureau Serving Eastern and Northern Ontario and Outaouais*, 2018 ONCA 383 at para. 33; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 145; *Taylor v. Despard*, [1956] O.R. 963 at para. 20 (C.A.).

⁵⁹ *Awan v. Levant* 2016 ONCA 970 at para. 94, aff'd 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71

⁶⁰ *Awan v. Levant* 2016 ONCA 970 at para. 92, aff'd 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *WIC Radio v. Simpson*, 2008 SCC 40 at para.53.

⁶¹ *Platnick v. Bent*, 2020 SCC 23 at para. 136.

distinguished Canadians to urge the repatriation of Mr. Qazzaz to his family in Canada to Mr. Qazzaz's wife designing curriculum for a parochial school to the conclusion that Mr. Soliman must be a member or supporter of a terrorist organization. It was reckless for Mr. Bordman to opine that Mr. Soliman supported the comprehensive adoption of Sharia law in Canada because of what Mr. Soliman said in an interview in the *Globe & Mail*. To say that it is possible to design a legal instrument for financing a commercial transaction that would satisfy not only the standards of Canadian law but also Sharia law that prohibits usury is not promoting Sharia law to supplant Canadian law.⁶² Adopting Justice Coté's words from *Platnick v. Bent*,⁶³ if Mr. Bordman had an honestly held belief to justify what he said about Mr. Soliman, Mr. Bordman's statements, nevertheless, were spoken recklessly and the privilege defeated because his belief was arrived at without reasonable grounds.

[190] I find as a fact that Mr. Bordman's defence of fair comment fails because he made his defamatory statements maliciously.

[191] For all these reasons, Mr. Bordman's fair comment defence fails.

4. The Responsible Communication Defence

[192] The defence of responsible communication requires that the defendant establish that: (a) the impugned statement is a matter of public interest; and (b) the publication of the statement was responsible in that (i) reasonable steps were taken to ensure the overall accuracy of any factual assertions and (ii) reasonable steps were taken to ensure the fairness of the publication of the statements.⁶⁴

[193] In determining whether a defamatory communication made on a matter of public interest was responsibly made, the court may consider (a) the seriousness of the allegation, (b) the public importance of the matter, (c) the urgency of the matter, (d) the status and reliability of the source, (e) whether the plaintiff's side of the story was sought and accurately reported, (f) whether the inclusion of the defamatory statement was justifiable, (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth (reportage), and (h) any other relevant circumstances.⁶⁵

[194] In the immediate case, although the impugned statements of Mr. Bordman were about a matter of public interest, his publication of the statement was irresponsible and the responsible communication defence fails.

[195] In the immediate case, for the reasons already set out above, Mr. Bordman did not take reasonable steps to ensure the accuracy of what he said, and Mr. Bordman did not take reasonable steps to ensure the fairness of what he said, and his words were said maliciously in the sense that

⁶² The *Old Testament* and the *New Testament* also have laws about usury which are variously interpreted, and a Jewish or Christian lender or borrower might be concerned that a commercial transaction under Canadian law does not offend the biblical laws about usury and the client might ask that the transaction be designed to comply with both Canadian and religious law.

⁶³ *Platnick v. Bent*, 2020 SCC 23 at para. 136.

⁶⁴ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529 at para. 27, aff'd 2020 ONSC 323; *Bondfield Construction Co. v. Globe*, 2019 ONCA 166 at para. 18, aff'd 2018 ONSC 1880; *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689; *Grant v. Torstar*, 2009 SCC 61 at para. 98.

⁶⁵ *Bondfield Construction Co. v. The Globe and Mail*, 2018 ONSC 1880 at para. 59, aff'd 2019 ONCA 166; *United Soils Management v. Mohammed*, 2017 ONSC 4450; *Grant v. Torstar Corp.*, 2009 SCC 61

he made his statements with reckless disregard or indifference to the truth. In short, Mr. Bordman was not a responsible journalist.

[196] For all these reasons Mr. Bordman's responsible communication defence fails.

5. Remedies

[197] In cases in which defamation is proven, the plaintiff's remedies may include: (a) general damages; (b) special or pecuniary damages that are causally connected to the defamatory statements; (c) aggravated damages; (d) punitive damages;⁶⁶ and (e) injunctive relief. Damages for defamation are assessed as the amount necessary under all of the circumstances to restore the plaintiff's reputation in the community and his or her injury to feelings and to provide consolation and public vindication.⁶⁷

[198] General damages and aggravated damages are compensatory and there may be some overlap in granting both general and aggravated damages.⁶⁸ Special damages for pecuniary loss are rarely claimed in defamation actions because they are exceedingly difficult to prove and the basis of recovery for loss of reputation usually lies in general damages, which are presumed from the publication of the libel.⁶⁹ The reputation of a lawyer and other professionals such as accountants, medical practitioners, engineers, is paramount to his or her livelihood and statements attributing, dishonesty, untrustworthiness, villainy, or immorality will cause serious harm to the professional's reputation and livelihood.⁷⁰

[199] The factors to consider in determining the quantum of damages for defamation include: (a) the plaintiff's 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 whole conduct and motive of the defendant from publication through judgment; and (f) any evidence of aggravating or mitigating circumstances.⁷¹ In contemporary times, where the mode of communication is the Internet this is a factor that intensifies the harm caused by the publication of the defamation because of the anonymous, interactive, and worldwide reach of an Internet communication and its insidious potential to persuade its audience of false information; defamation through the Internet is a particularly egregious type of defamation.⁷²

[200] In *Hill v. Church of Scientology of Toronto*,⁷³ the Supreme Court held that there is no cap

⁶⁶ *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 21.

⁶⁷ *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 20; *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at paras. 168-173, 182-83.

⁶⁸ *Awan v. Levant* 2016 ONCA 970 at paras. 97-108, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 7.

⁶⁹ *Rutman v. Rabinowitz* 2018 ONCA 80 at paras. 62-63, aff'g 2016 ONSC 5864; *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at paras. 167-172.

⁷⁰ *Rutman v. Rabinowitz* 2018 ONCA 80 at paras. 66-67, aff'g 2016 ONSC 5864; *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163 at para. 42-44; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at paras. 91-92; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 118.

⁷¹ *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.); *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130.

⁷² *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 68-69, aff'g 2016 ONSC 5864; *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 at paras. 31-34 (C.A.).

⁷³ [1995] 2 S.C.R. 1130 at paras. 167-173.

placed on general damages in defamation cases as was done in the personal injury context.⁷⁴

[201] Aggravated damages compensate the plaintiff for the damages caused where the defendant's conduct has been particularly high-handed, insulting, spiteful, malicious or oppressive increasing the plaintiff's humiliation and anxiety caused by the defamation.⁷⁵ In *Hill v. Church of Scientology of Toronto*,⁷⁶ Justice Cory stated at paras. 190-91:

190. If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff. [...] The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. [...]

191. There are a number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of aggravated damages. The jury may also consider whether there was a repetition of the libel, conduct that was calculated to deter the plaintiff from proceeding with the libel action, a prolonged and hostile cross-examination of the plaintiff or a plea of justification which the defendant knew was bound to fail. The general manner in which the defendant presented its case is also relevant. Further, it is appropriate for a jury to consider the conduct of the defendant at the time of the publication of the libel. For example, was it clearly aimed at obtaining the widest possible publicity in circumstances that were the most adverse possible to the plaintiff?

[202] In defamation cases, punitive damages are only appropriate where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.⁷⁷

[203] Mr. Soliman makes no claim for special damages or for pecuniary losses and Mr. Soliman's excellent reputation in the profession, in politics, and in social service remains intact. However, Mr. Soliman and his family, including his children, have suffered anguish and emotional harm from the defamation.

[204] Mr. Soliman suffered and is suffering distress, hurt, humiliation, and embarrassment from the defamatory statements continuing to be available in the cyberspace of the Internet. The responsibility for the harm caused by the vile and deplorable Internet postings aroused by Mr. Bordman's statements and not removed by him rests with Mr. Bordman. The indeterminate nature of Internet defamatory pollution is an aggravating factor intensifying the indignities, breaches of privacy, and harm caused by Mr. Bordman's defamatory statements.

⁷⁴ *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229; *Arnold v. Teno*, [1978] 2 S.C.R. 287, and *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, [1978] 2 S.C.R. 267.

⁷⁵ *Skafoo Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 21; *Paramount Fine Foods v. Johnston* 2019 ONSC 2910; *Awan v. Levant* 2016 ONCA 970 at para. 103, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 188-89; *Walker v. CFTO Ltd.*, [1987] O.J. No. 236 (C.A.).

⁷⁶ [1995] 2 S.C.R. 1130 at paras. 167-173. (Cory, J for La Forest, Gonthier, McLachlin, Iacobucci and Major JJ; L'Heureux-Dubé J. concurring.)

⁷⁷ *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 90-97, aff'g 2016 ONSC 5864; *Pate Estate v. Galway-Cavendish and Harvey (Township)*, 2013 ONCA 669; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 199-200.

[205] In the immediate case, Mr. Soliman is entitled to injunctive relief and to general damages and aggravated damages which I assess at \$500,000.

[206] As for the quantum of the general and aggravated damages in the immediate case, there is no mathematical formula to determine the quantum for pain and suffering. During oral argument, Mr. Soliman's counsel stated that Mr. Soliman's action was not about the money and, as noted above, Mr. Soliman's counsel conceded that it was not necessary for the court to decide Mr. Soliman's allegations that Mr. Bordman was a racist to arrive at a summary judgment.

[207] In my opinion, having regard to Mr. Soliman's position and standing in the community, the very injurious nature of Mr. Bordman's statements published continually on the often-pernicious medium of the Internet and the absence of any retraction or apology and having regard to Mr. Bordman's conduct before and during the litigation, \$500,000 is the appropriate award for general and aggravated damages in the immediate case. In my opinion, an award of punitive damages should not be made.

[208] Defamation cases are particularly fact-sensitive, and each case is unique and thus little is to be gained from a detailed comparison of libel awards,⁷⁸ but, there is something to be gained by having a little regard to comparable cases. I have therefore considered the following as helpful cases, amongst other cases that I did not find helpful, in assessing damages in the immediate case:

- In *Paramount Fine Foods v. Johnston*,⁷⁹ the defendant defamed the plaintiff, who was a Canadian-Muslim businessman, and his business with vile hate speech. The plaintiffs were granted permanent injunctions and awarded general, aggravated, punitive, and special damages in the amount of \$2.5 million.
- In *Rutman v. Rabinowitz*,⁸⁰ the defendant posted on the Internet numerous defamatory statements that the plaintiff, a chartered accountant and businessman, was engaged in tax fraud and was a thief and a cheat. The plaintiff was awarded \$200,000 in general damages, \$200,000 in aggravated damages, and \$250,000 in punitive damages for a total award of \$650,000.
- In *Awan v. Levant*,⁸¹ a defamation action brought under the simplified procedure which caps damages at \$100,000, the plaintiff who was a lawyer early in the career who was defamed as a liar and an anti-Semite was awarded general damages of \$50,000 and aggregate damages of \$30,000.
- In *St. Lewis v. Rancourt*,⁸² the defendant, who was a university professor, in two blog posts defamed the plaintiff, who was a university professor, by referring to him as the "house negro" of the university's president; the jury awarded the plaintiff general damages of \$100,000 and aggravated damages of \$250,000.
- In *Hill v. Church of Scientology of Toronto*,⁸³ at a press conference in front of Osgoode Hall, Morris Manning, who was acting for the Church of Scientology announced a criminal

⁷⁸ *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 81-84, aff'd 2016 ONSC 5864; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 190

⁷⁹ 2019 ONSC 2910.

⁸⁰ 2018 ONCA 80, aff'd 2016 ONSC 5864.

⁸¹ 2016 ONCA 970, aff'd 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71

⁸² 2015 ONCA 513.

⁸³ [1995] 2 S.C.R. 1130.

contempt proceeding against Crown Attorney Casey Hill (later Justice Hill). The press conference was broadcast on two television networks and reported in the *Globe & Mail*. Mr. Manning read from the notice of motion that alleged that Mr. Hill had breached court orders sealing the Church's documents that had been seized pursuant to a search warrant. Mr. Manning said that the Church was seeking to have Mr. Hill imprisoned for contempt of the court orders. The allegations were untrue, and after the contempt motion was dismissed, Mr. Hill sued for defamation. At a trial before a judge and jury, Mr. Manning and the Church were found jointly liable for general damages in the amount of \$300,000 and the Church alone was found liable for aggravated damages of \$500,000 and punitive damages of \$800,000.

[209] This case law, most particularly *Hill v. Church of Scientology of Toronto*,⁸⁴ and *Rutman v. Rabinowitz* supports an award of \$500,000 in compensatory damages as appropriate in the immediate case.

[210] Where the court finds that the defendant has defamed the plaintiff, a permanent injunction restraining the defendant from making further defamatory statements of the plaintiff may be ordered where either: (a) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (b) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible.⁸⁵

[211] In the immediate case, it is doubtful that Mr. Bordman has the money to pay this damages award, and, in any event, an injunction to stop Mr. Bordman making statements about Mr. Soliman is required to do justice in the immediate case.

[212] I order that Mr. Bordman remove any media he controls and attempt to have removed any media controlled by others that he has published in the public domain that refers to Mr. Soliman. I permanently enjoin Mr. Bordman, or anyone acting on his behalf, on his direction, or in conjunction with him, from disseminating, posting on the Internet, publishing, or broadcasting in any manner whatsoever, either directly or indirectly, any statements concerning Mr. Soliman other than an apology, the text of which must be approved by Mr. Soliman.

[213] I appreciate that I have made an absolute prohibition on Mr. Bordman making any statements about Mr. Soliman and not just defamatory statements. I do so because the evidence about Mr. Bordman's response to the libel notice and to the lawsuit against him demonstrates that insofar as Mr. Soliman is concerned Mr. Bordman does not have the ability to differentiate between non-defamatory statements and defamatory ones or the ability to differentiate between defamatory statements and defamatory statements that are defensible as fair comment or responsible communication. Insofar as Mr. Soliman is concerned, Mr. Bordman before and during the litigation has demonstrated that he is not a responsible journalist of any type. If I were to only enjoin Mr. Bordman from making defamatory statements about Mr. Soliman, there would just be another run of litigation or contentious contempt motions about whether the comment was defamatory or a fair comment. This is in neither party's interest.

⁸⁴ [1995] 2 S.C.R. 1130.

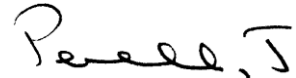
⁸⁵ *Paramount Fine Foods v. Johnston*, 2019 ONSC 2910; *St. Lewis v. Rancourt*, 2015 ONCA 513 at para. 13-16; *Astley v. Verdun*, 2011 ONSC 3651; *Ottawa-Carleton District School Board v. Scharf*, [2007] O.J. No. 3030 (S.C.J.) aff'd 2008 ONCA 154, leave to appeal refused, [2008] S.C.C.A. No. 285; *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 at para. 78 (C.A.)

H. Conclusion and Costs

[214] For the above reasons, I grant Mr. Soliman a summary judgment against Mr. Bordman. I award Mr. Soliman injunctive relief and general and aggravated damages of \$500,000.

[215] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with the submissions of Mr. Soliman within twenty days of the release of these Reasons for Decision followed by Mr. Bordman's submissions within a further twenty days.

[216] With regard to costs, costs belong to a litigant, not to his or her lawyer, and an award of costs is an indemnification for the legal expenses incurred by the litigant to prosecute or defend a lawsuit.⁵⁷ Costs compensate a litigant for the expense to which he or she has been put by the suit.⁵⁸ Mr. Soliman did not retain Lax O'Sullivan Lisus Gottlieb LLP based on a contingency fee retainer, and the law firm agreed to provide its legal services *pro bono*. Should the parties not come to an agreement about costs, I shall require submissions as to the relevance, if any, of the *pro bono* retainer in the immediate case.



Perell, J.

Released: October 21, 2021

⁵⁷ *Henhawk v. Brantford (City)* (2006), 79 O.R. (3d) 187 (S.C.J.).

⁵⁸ *Ryan v. McGregor* (1925), 58 O.L.R. 213 (S.C.).

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DATE: 20211021

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WALIED SOLIMAN

Plaintiff

- and -

DANIEL BORDMAN and TAG TV INC.

Defendants

REASONS FOR DECISION

PERELL J.

Released: October 21, 2021