

Court of Queen's Bench of Alberta

Citation: Fort McKay Métis Community Association v Morin, 2019 ABQB 185

Date: 20190319

Docket: 1813 00637

Registry: Ft. McMurray

Between:

Fort McKay Métis Community Association and Ron Riel Quintal

Plaintiffs

- and -

Corey-Ann Pruden Morin

Defendant

Corrected judgment: A corrigendum was issued on March 19, 2019; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Memorandum of Decision
of the
Honourable Mr. Justice Douglas R. Mah**

A. Background

[1] Contrary to the belief of many, the Rule of Law applies to the internet. It is not some kind of untamed frontier. When a person posts to the internet without restrictions, that person is posting to the entire world with instantaneous effect: *Vaquero Energy v Weir*, 2004 ABQB 68, at paras 18 and 19; *Inform Cycle Ltd v Draper*, 2008 ABQB 369, at para 32; and *Barrick Gold Corp v Lopehandia*, 2004 CanLII 12938 (ONCA), at paras 30 – 32.

[2] There will be circumstances where adverse legal consequences attach to irresponsible social media posts. That is the hard lesson imparted today to Ms. Morin, the Defendant in this case.

[3] She invokes Rule 9.15 to set aside the noting in default made against her in a defamation action, and to permit her to file a Statement of Defence setting out truth (or justification) and qualified privilege as defences.

[4] It is agreed between the parties that the test for setting aside a noting in default under Rule 9.15 is fairness, having regard to these guideline factors:

- whether the default is explainable;
- whether the set-aside application is made in a timely manner; and
- whether there is a meritorious defence in the sense of a triable issue of fact or law: *Don Reid Upholstery Ltd v Patrie*, (1995), 173 AR 233 (QB) at para 25; *3S Resources Inc v Improvisions Inc*, 2014 ABQB 746, at para 32; and *Al-Ghamdi v Alberta*, 2017 ABQB 169, at paras 115 to 119.

[5] Ms. Morin asserts that she satisfies these criteria and therefore ought to be allowed to defend. The Plaintiffs say that her default is not adequately explained, that the set-aside application is untimely and that neither of the proffered defences give rise to a triable issue.

[6] For the reasons that follow, as harsh as it may seem, I deny the application to set aside the noting in default.

B. The Parties

[7] This litigation takes place against the backdrop of politics within the Métis Nation of Alberta. The Fort McKay Métis Community Association (FMMCA) is a registered not-for-profit society whose stated purpose is the advancement of the interests of the Métis people in the Fort McKay area through the provision of social housing and health, educational and cultural programs for its members. It also functions as a form of local government for the Métis people of Fort McKay. The other Plaintiff, Mr. Quintal, is the elected president of FMMCA.

[8] Mr. Quintal deposes, and it is not disputed, that FMMCA established a Community Trust to fund its initiatives, including a program of housing enhancement for its members. Since the terms of the Trust do not permit an individual to benefit from payments, the housing program involved converting individually owned units into community housing, so that the units could be improved, but remain in the possession of the original occupants.

[9] Margie Wood is described as an elder of the Fort McKay Métis community and is a former board member of FMMCA. She was a board member at the time that the Community Trust was created. Ms. Wood is also an individual whose home was converted to community housing.

[10] The Defendant, Ms. Morin, is a self-proclaimed social activist of sorts, who carries on her activism through a Facebook page called Métis Voices of Alberta. (The page was more latterly known as Apeetogosan Scripted Métis 1885 but I will refer to it by its original name, Métis Voices of Alberta, for clarity.) Ms. Morin solely operates and controls Métis Voices of Alberta where she purports to report and comment upon issues of interest to the Métis community in Alberta. It is a public Facebook page, meaning there is no restriction on who may view the content of Métis Voices of Alberta. However, Ms. Morin is the main contributor and posts to the page under different names: Métis Voices of Alberta, Corey-Ann Pruden and Apeetogosan Scripted Métis 1885.

[11] The Métis Nations of Alberta Association (MNAA) is a province-wide non-profit society which, at the provincial level, provides a form of quasi-government for its members, as well as programs to promote their social well-being and indigenous identity. The overall MNAA consists of six zones or regions within Alberta, each with regional governance. In addition, the MNAA has local councils for local delivery of its programs and services.

[12] The FMMCA and MNAA have similar objectives, but are different organizations operating at different levels and with different membership criteria.

[13] At the time of these events, Mr. Quintal, in addition to being president of the FMMCA, was also standing as a candidate for the provincial presidency of the MNAA. Concurrently, Ms. Morin was a candidate for president of the MNAA's Region 1, which encompasses Fort McKay. The MNAA elections were held on September 18, 2018.

C. The Video

[14] On September 5, 2018, Ms. Morin posted on her Métis Voices of Alberta Facebook page a five minute video of Ms. Wood airing grievances against FMMCA, Mr. Quintal and a third party. In the video, Ms. Wood comments about her experience with FMMCA's social housing program, electoral impropriety in the last FMMCA election (during which Ms. Wood herself retired as a board member) and a cover-up of a sexual abuse incident involving third parties. The entire transcript of the video is reproduced as follows without corrections (emphasis added):

Transcript from "Métis voices of Alberta" September 5 Video:

[off camera, voice 1]: [0:00] introduce yourself, what your name is?

Margina Wood: My name is Margie Wood, I'm an elder from Fort McKay. I'm the elder for Métis there. And [garbled] when I went for help away from Métis office, they said "we can't, we have to have a meeting with Board of Directors." Why would I—why would they—they wanna have a meeting with Board of Directors when our President is Ron Quintal. [0:27] Ron Quintal don't run the show. Dwayne Roth he run the show. He runs everything. What Ron say, Dwayne steps in, even today, where's our president? No, Dwayne is right here, speaking for himself, Ron can't speak for himself, or what? That's what we vote him in, for the president, and when the election came that time, I ask Ron, I said "what's gonna happen now," I said, "when I get booted out?" [0:56] I said, "I got bills to pay, I owe this much",

he said, "don't worry, we'll take care of you." They don't take care of me. I have to beg, even for them to pay for my power, or my groceries, or my lights. [garbled] meeting I go to they pay me \$250 maybe \$450. I paid my power outta there, and I go to food bank once a month to get food. That's fucking ridiculous, I'm 70 years old. [1:20] **And when they bought my house, they got, they give us**

\$30,000. My house was the one my mum and dad owned that house. I lived like that for 18 years before they fixed my house and finally they fix my house, and I have to make a deal with them. They fix everything from top to bottom. [1:39] And then I got all the papers that had—the way my house, the way it look like—I still got ‘em. And I got prove it. But right now, when Ernest go there, they help

Ernest more than me or Theresa. Theresa, her, she goes to a meeting, they send her to Saskatchewan, go take cooking and everything for [garbled]. My sisters they can’t even—my sister—her—they can’t even ask her, like, to go to meeting—she’s an—she’s getting an elder, too, I was arguing about it, I even told Anderson about it, what’s wrong with my sister? [2:14] She’s an elder, too. Let

her start going to meetings. She—she was always young to admit she could take over. Because I was not going to be around forever. And I’m tired of it. And I’m sick all the time, I work from 2007 to 2017, [2:29] that day that they boot me out. [2:30] And Ron pay everybody off, voting, and that’s how we lost our voting, because they even went to Edmonton to go voting. And [Third Party 1] was

working there, as reception. [2:44] What did they do? They pay her off 10,000 for her to keep her mouth shut. That’s not fucking fair.

[off camera, voice 1] [2:50] **So what did they pay her \$10,000 to keep her mouth shut for?**

Margina Wood: [2:54] **‘cause, I don’t know if it’s true or not, but the way I heard, [Third Party 2] went and touch her private.**

[off camera, voice 1] [3:01] [gasp]

Margina Wood: [3:03] her private. And he’s still there working in the office. And [Third Party 1] said to you, he got a lawyer and everything and he was going to take ‘em to court. I don’t see anything—I don’t see anything going on yet.

[off camera, voice 1] [3:14] so how much money did he pay her?

Margina Wood: [3:15] I hear they pay her 10,000—

[off camera, voice 1] [3:17] –to keep her mouth shut?

Margina Wood: [3:19] yeah.

[off camera, voice 1] [3:20] oh my god.

Margina Wood [3:20] that's what I was told. I haven't—I asked Ron to come and see me, I was gonna ask her about it, she never come see me once yet today. So it must be true. 'Cause I heard even that car she's driving, I hear they paid for it a whole year for her to drive it. [3:38] So I don't know if it's true or not, I'm just going by what I was told by my community. I'm the elder there. I'm 70 years old. I'm Métis

from south side. Not Ernest or, or Theresa. [3:50] Theresa don't even have MNA card, and—and she's still voting.

[3:54] I thought you're supposed to have MNA card—

[off camera, voice 1] [3:55] —yes, you're supposed to have an MNA card.

Margina Wood [3:59] how I know, last time we had a meeting, I hear—I hear Theresa ask at reception, she said “where's these forms we fill for MNA card, me and my daughter?” So they didn't—they don't even have their MNA card, but they still go to the meeting.

[off camera, voice 1] [4:13] and they still get paid.

Margina Wood [4:14] they still get paid. They still get paid honorarium and all that.

[off camera, voice 1] [4:17] but you don't. Nothing. They don't give you nothing.

Margina Wood [4:20] they give me honorarium, yeah, maybe—maybe \$250 when I go meeting, yeah. But they tax me. Right now I owe income tax. \$14,000. It was \$20,000 I owe first time. Income tax. And then I paid that off. Little bit at a time. I only get my widow survivor, \$500. \$595 a month. [4:43] And my union pension.

[off-camera, voice 2] [4:44] Corey Ann!

Margina Wood [4:47] That's—that's what I'm living on.

[off-camera, voice 1] [4:48] OK. I will thank you for your time, and I will talk with you in a bit.

Margina Wood [4:50] And I'm not bullshitting either.

[off-camera, voice 1] [4:52] I believe you.

Margina Wood [4:54] They could come and see me, I got everything in my—at—everything—all the papers in my house—

[off-camera, voice 1] [4:57] OK, OK.

---September 5 Video ends---

[15] Accompanying the video on September 5, 2018, was this comment posted by Ms. Morin (reproduced *verbatim*):

Margie wood, elder from fort McKay ,, wanted her voice to be heard ,, she's an elder from fort McKay and her home was taken due to cant read or write , swindled by fort McKay community association ...

[16] In her Questioning on Affidavit held on November 20, 2018, Ms. Morin indicated there are 612 persons on her “friends” list for the Facebook page. At the time Mr. Quintal swore his Affidavit of December 21, 2018, various people had added 117 comments to the page relating to the September 5th video and post, and it had been “shared” 87 times. As I understand the operation of Facebook, there is potential for exponential exposure of an original post as it continues to be shared.

[17] Mr. Quintal was concerned that the video and post would have an adverse effect on his candidacy. He also says the content is categorically untrue. He instructed counsel on behalf of both himself and FMMCA to write “cease and desist” letters dated September 6, 2018, to each of Ms. Wood and Ms. Morin. The letters prescribed a deadline for the removal of the offending material, failing which litigation was indicated.

[18] Rather than cease and desist, over the ensuing month or so, Ms. Morin not only did not remove the material in question, she remained unrepentant. From the exhibits, it is difficult to ascertain the exact dates of some of these posts, but one can clearly infer that they were made between September 6, 2018 and the date of the noting in default on October 11, 2018. Here is a smattering, again reproduced *verbatim*:

Métis voices of Alberta So their sueing an elder ,,

(Accompanied by what appears to be a picture of the September 6, 2018 letter sent to Ms. Wood)

Métis voices of Alberta Margie wood said she's willing to go to court ,, with all her paper work ,, she's not scared (happy face emoji)

Corey Ann Pruden Margie got letter say to take the video down From Maurice Law Because they say When she got her buyout she agreed to terms not speak anything about the association or Ron

Corey Ann Pruden I guess I'll go to court but I'm not taking it down ,, take us to court !!!

Corey Ann Pruden Funny bribery tactics and bullying because an elder speaks out about this ... you guys want a leader like this for our province ,, he'll be sueing everyone for freedom of speech ,, they tried this before and nothing happened.. are they going to pay me 10,000.00 for deleting this ... I'll wait for cheque .. and a car (smiley face emoji)

Métis voices of Alberta Video is in bc / Alberta / sask/ Manitoba .. he better start serving all 22.3 k people who are passing this video around !!!!

Métis voices of Alberta I won't be silenced and I'm not letting an elder stand alone !!! Anyone else in Fort McKay let's get this started and before elections ,, they wanna play dirty ,, let's bring it out to the public !!! Bullying is not leadership !!!!!

Apeetogusan scripted metis 1885

5 October

Métis voices that won't be silenced !!!

Speaking up and against human rights f @ & ken sue me !!!!

Apeetogusan scripted metis 1885 Just think what type of president we'd have ,,

Sexual harassment from people who show man parts to women then make them sign contracts & pay them 10,000.00 to stay quiet ..

Taking seniors homes and sues them for speaking out about it ,, Sign the contracts so I can violate you ..

Third party authority in region one

Uses our region for numbered business and shares in teck

Does not help our citizens only violates them

Thank god everyday Audrey won ,, our province & citizens would suffer ,, we'd have status as members running our regions & locals .., violating our rights ,, region one last interim president allowed status and they were paid employees in locals

Treasure made millions in honorariums & travel yet their citizens have no homes and gotta sign contracts to give up their rights before getting their renovations ..

Human right violation after violations ..

Thank god Audrey won this election !!!!

Thank god !!!!

(emphasis added)

[19] Mr. Quintal ultimately lost the MNAA election for provincial president and attributes the loss, at least in part, to what he perceives as a campaign of character assassination and disinformation waged against him by Ms. Morin emanating from the September 5, 2018 video and post. The last quoted post above advertises to someone else winning that election. Ms. Morin herself was not successful in her own bid for office.

D. The Lawsuit

[20] The Statement of Claim was issued on September 10, 2018 and served either that day or the next. Ms. Morin admitted during Questioning on Affidavit that she understood she had been sued civilly for defamation and that she had read and understood the Notice to Defendant at the end of the Statement of Claim, requiring her to respond in some fashion within 20 days.

[21] Plaintiffs' counsel on September 28, 2017, took the step of contacting Ms. Morin to caution her again about the requirements for filing a Statement of Defence. This letter was sent to Ms. Morin by email, regular mail and courier, and she acknowledged receiving and reading it that same day. The letter, in its entirety, reads:

Further to our above-referenced Statement of Claim, filed and served upon you on September 10, 2018, we wish to bring to your attention the requirement for filing a Statement of Defence by September 30, 2018, pursuant to the Alberta Rules of Court, AR 124/2010, Rule 3.31(3)(a).

We have not yet received any response from you, but we are prepared to grant you an additional five (5) days within which to file your Statement of Defence, or to retain counsel to do so on your behalf. Thus, if we have not heard from you or your legal counsel by **Friday, October 5, 2018**, we will note you in default, per Rule 3.36(1)(b).

After you are noted in default, the Alberta Rules of Court permit us to proceed with the claim without notice to you. The Court may thereafter award costs against you, pronounce its judgment, make any necessary orders, or determine damages against you, among other powers.

[22] Ms. Morin did not contact Plaintiffs' counsel by October 5, 2018. She says she could not afford to hire a lawyer herself, but did take these steps:

- she took advantage of at least one and perhaps two free half hour online consultations with a lawyer on Google, during which she learned that truth is a defence to defamation;
- she reached out to family members and friends to help her with funds to hire a lawyer, but was unsuccessful;
- she understood as of September 5, 2018 that Legal Aid was an option for people who could not afford a lawyer;
- she spoke to a lawyer friend of hers who told her that she was being sued for defamation; and
- she thought she could respond to the Statement of Claim by attending the courthouse in Lac La Biche on the last business day of September, but was told that her matter was not on the list.

[23] The second of the Google lawyer consultations and her conversation with the lawyer friend did not occur until after Ms. Morin had been noted in default.

[24] On October 12, 2018, Ms. Morin contacted Plaintiffs' counsel by email to advise that she was waiting for certain police records that would substantiate some of her allegations and that she needed time to consult a lawyer, as she could not afford one at the time. Plaintiffs' counsel responded on October 16, 2018 advising that Ms. Morin had been noted in default in the action as of October 11, 2018. Ms. Morin contacted Plaintiffs' counsel twice on October 16, 2018 inquiring about a court date. Counsel responded by telling Ms. Morin that she should seek her own legal advice immediately and provided contact information for the Lawyer Referral Program and Legal Aid Alberta.

[25] In her cross-examination, Ms. Morin stated the following:

- At no time prior to or after the September 5th video and post did she speak with Mr. Quintal to seek his input regarding the statements made by Ms. Wood;
- Ms. Morin has no personal knowledge of the events transpiring between FMMCA and Ms. Wood; and
- Ms. Morin believes what Ms. Wood is saying in the video is true, because Ms. Wood is a senior and an elder.

[26] Ms. Morin also states in her cross-examination that the basis of her belief in the truth of Ms. Wood's statements is her discussion with 13 other members of the Métis Nation of Alberta, whom she met at Ms. Wood's house. She only identified three of these persons and did not say what any of these individuals told her.

[27] Mr. Quintal wrote a letter to Ms. Wood on September 10, 2018, in reaction to the September 5, 2018 video. In the letter, he reminded Ms. Wood that she was an FMMCA board member when the Community Trust was created and the Community Housing Program was established. The letter also reiterated some of the details of the transaction between Ms. Wood and FMMCA. In particular, her house was purchased from her for \$35,000 and then \$172,000 worth of upgrades were done. He pointed out that Ms. Wood continues to live in the house rent-free. He then addressed some of her other financial concerns.

E. Effect of Noting in Default

[28] The Plaintiffs say that, in ordinary meaning and within context, the September 5th video and post along with the subsequent posts directly state or imply that:

- the Plaintiffs swindled Ms. Wood out of her home;
- the Plaintiffs engaged in election fraud; and
- the Plaintiffs engaged in bribery to cover-up sexual abuse.

[29] There are other claims and innuendo concerning the Plaintiffs contained in the various Facebook posts, but the main allegations are stated above. The Plaintiffs say in their Statement of Claim that these statements are defamatory.

[30] The law of defamation is well established in Canada. In general, a communication is considered defamatory if it lowers the reputation of the subject person in the eyes of reasonable members of the community: *Grant v Torstar Corp*, 2009 SCC 61, at para 28.

[31] The case law establishes that the failure to defend an action, resulting in a noting in default, is a deemed admission on the part of the defendant of the plaintiffs' claim: see *McElroy v Cowper-Smith and Woodman* [1967] SCR 425; *Klinck v Drinnan* (1985), 41 Alta LR (2nd) 229 (QB) at p 306; *Dykes v Goczan* (1996), 38 Alta LR (3rd) 425 (QB) at pp 426 to 427; *Sulef v Parkin* (1966), 57 WWR 236 (ABCA) at p 239; and *Atlantic (HS Financial Ltd) v Punjabi*, 2017 ABQB 87, at para 52.

[32] In order to set aside this deemed admission, the Court must take into account the Defendant's decision to reverse field in light of the three factors outlined in *Don Reid* and similar cases to determine what is fair overall to the parties. To reiterate, the three factors are a satisfactory explanation for the default, a prompt set-aside application and an arguable defence.

F. Satisfactory Explanation for Default

[33] Ms. Morin has deposed to two reasons for not filing a Statement of Defence in time:

- she was focused on being the primary caregiver for her ailing mother during September and October 2018, including taking twice-weekly trips to Edmonton for cancer treatment; and
- she was intimidated by the legal process.

[34] With regard to the first explanation, I note:

- Her duties to her mother did not prevent her from mounting a political campaign until September 18, 2018, nor from maintaining and contributing to the Métis Voices of Alberta Facebook page.
- The Noting in Default occurred on October 11, 2018 and she learned of it on October 16, 2018. She was unable to obtain legal representation between September 5, 2018 (the date of the cease and desist letter) and October 11, 2018 (a period of 36 days), or between September 11, 2018 (date of service of the Statement of Claim) and October 11, 2018 (a period of 30 days). Yet, she was able to obtain legal representation on November 2, 2018, only 17 days after the date of learning about the noting in default. During this latter period, there was no real difference in Ms. Morin's life, except that she was no longer running for office after September 18, 2018.
- She knew as of September 5, 2018 that Legal Aid was an option for her. In addition to speaking with the Google lawyer, she could have contacted Legal Aid by telephone at any time after September 5, 2018.
- During any of her twice-weekly trips to Edmonton between September 5, 2018 and October 11, 2018, she could have attended at the Legal Aid Office in Edmonton.
- When she attended at the Lac La Biche Courthouse on September 28, 2018, she could have obtained information about Legal Aid.

[35] What the foregoing reveals is that despite Ms. Morin's responsibilities to her mother, she had ample opportunity to obtain legal representation prior to October 11, 2018. It was only when

she learned that her situation had worsened on October 16, 2018 that she decided to take any steps.

[36] Further, I do not find that Ms. Morin was intimidated by the legal process. Rather, she taunted the Plaintiffs on her Facebook page, daring them to pursue legal action against her. Ms. Morin acknowledged under cross-examination that she was not afraid of the legal process when she posted those taunts.

[37] Ms. Morin is an educated person. She has completed two college-level diplomas, and as of January 2019, was enrolled as a university student pursuing a Bachelor of Education degree. She understood that she had been sued civilly for defamation and had 20 days to file a Statement of Defence. She had the opportunity to do so, but chose not to take the proper steps to defend herself. In fact, Plaintiffs' counsel gave her extra time. I find that there is no satisfactory explanation for her default.

G. Timeliness of Set-Aside Application

[38] After retaining legal counsel on November 2, 2018, this application was filed on November 7, 2018. Less than a month had elapsed since the noting in default. I do not consider this period of time to be inordinate and steps were taken promptly to bring this application once legal counsel was in place.

H. An Arguable Defence

[39] Ms. Morin has put forward two defences. In her Affidavit, she relies on the defence of truth (or justification). During the hearing before me, her counsel (Ms. Weber) also advanced qualified privilege as an arguable defence.

[40] With regard to the defence of truth, I note:

- Ms. Morin herself is not personally aware of any information to substantiate the allegations made in the September 5th video or the post. She relies totally on what Ms. Wood has told her. Ms. Morin says that she spoke with 13 other individuals who have information, but she does not state what they know and 10 of them she does not identify.
- She believes the allegations as relayed by Ms. Wood in the video

[41] The Plaintiffs say that belief in a statement does not render that statement true, nor can it form the basis of the defence of truth in a defamation action: *Wilson v Switlo*, 2011 BCSC 1287, stating at para 440:

The legal presumption is that a defamatory expression is false. A defendant who pleads justification must prove its truth on the balance of probabilities. A defendant's honest belief in the truth of a statement is not sufficient (*Caldwell v McBride* (1988), 45 C.C.L.T. 150 at 156 (B.C.S.C.), citing *Gatley on Libel and Slander* (1981) (Eighth Edition) at 150).

[42] In *Hall v Kyburz*, 2006 ABQB 294, Erb J adopted these passages, as do I, from Chapter 10 of Raymond E. Brown's *The Law of Defamation in Canada*, 2nd Ed (Toronto: Carswell, 1999) at pp 17-20:

A person cannot escape liability by prefacing his or her accusations in the form of rumours or reports originally circulated by someone else. A defendant will succeed on a plea of justification only if he or she can prove that the content of what is reported is substantially true.

The defendant's liability does not depend on the adoption or reaffirmation of the defamatory comment. He or she cannot report a defamatory remark by one person about the plaintiff and justify it by proving that the other person said it; the substance of the remark which has been reported must be proved.

It is not a sufficient justification to prove that the source of the information actually said what the defendant repeated. No one is justified in stating false facts about another merely because someone else has done so. The sting of the words is in the defamatory information about the plaintiff, and that is what must be justified. Those who give currency to a defamatory report are responsible for its truth. The act of publication is an adoption of the original calumny, which must be defended in the same way as if invented by the defendant.

The state of mind of the defendant is not relevant to the defense of justification. It will not avail a defendant to show that he honestly and reasonably believed in the truth of his assertions or that, on the contrary, he disbelieved the reports and told people so, and disclosed the sources, if in fact the subject-matter of the information turns out to be false.

[43] As a matter of logic and common sense, the mere belief in the truth of something, no matter how honestly or fervently held, does not make it true. Otherwise, wild-eyed conspiracy theorists, climate change deniers and anti-vaccination adherents would all grasp the truth. Nor can repetition of an untrue statement make it true.

[44] I accept that Ms. Morin believes that what Ms. Wood has alleged in respect of the Plaintiffs is true. However, she puts forward no facts of any kind, other than the mere statement itself and her belief in same, that reasonably give rise to a triable defence of truth.

[45] The simple assertion that there is a defence is insufficient. The Court must evaluate whether there is a triable defence and can only do so if there are facts put forward, which if proven at trial, might well establish the defence: *GFK Capital Base Corporation v Fernando*, (November 5, 1993) 88 Man R 2nd 5, [1994] 1 WWR 735 (MBCA), at paras 13 and 14; *Canadian Union College v Bonamy*, 1995 Carswell Alta 767, [1995] AJ Number 1058, at para 58; and *Goulet v Da Silva*, 2002 ABQB 369, at para 74.

[46] Ms. Morin does, in her material, advert to certain documents that she suggests might be helpful, but that she has not yet received. Once such set of documents are police reports apparently related to the alleged sexual assault, but it is unclear how police reports would reveal evidence of bribery for the cover-up. In any event, even Margie Wood said in the video that she does not know whether the sexual assault allegation is true or not. Ms. Morin also talked about, in her Supplementary Affidavit of December 3, 2018, trying to retrieve documents from the Region 1 Council of the MNAA. It is not clear how such documents would be relevant since FMMCA and MNAA are separate organizations. She has not provided any facts, in connection with either set of documents, that would support the defence of truth.

[47] Next, the documents relating to Margie Wood’s transaction with FMMCA regarding her house are presumably available. Margie Wood would also be able to state what she was told by the FMMCA in relation to the transaction. Nothing in the way of fact, even alleged, is included in either of Ms. Morin’s Affidavits and there is no Affidavit from Ms. Wood.

[48] In any event, Ms. Wood’s description in the video of what occurred regarding her house is completely consistent with the explanation provided by Mr. Quintal in his letter of September 10, 2018 to Ms. Wood. Moreover, Ms. Wood at no point ever used the word “swindle”. The word emanates solely from Ms. Morin.

[49] In *Sidorsky v SFCN Communications Ltd*, 1994 CanLII 9042 (ABQB), the Court said that the pejoratives “swindle, scam, rip-off, flim-flam, duped, hoodwinked, fleeced, misrepresentation” all denote a scheme to deceive or deprive another wrongfully of their money or property. The deception in *Sidorsky* was proven and the defence of truth established by examination of the representations made to customers when compared to the documentation that the customers signed.

[50] Here, Ms. Morin has put forward no facts, even alleged, as to what Ms. Wood was told in comparison to the documentation she signed. No facts have been put forward by Ms. Morin to support the allegation that a swindle took place.

I. Defence of Qualified Privilege

[51] In argument, Ms. Weber raised the defence of qualified privilege. Ms. Cousineau objected to the Court allowing any argument on this ground because, in her submission, it was not disclosed in either of Ms. Morin’s Affidavits. Since Ms. Cousineau did not expect an argument of qualified privilege, I invited and received written argument from both counsel subsequent to the hearing.

[52] The defence of qualified privilege in this case is based on Ms. Morin’s assertion that she operated the Métis Voices of Alberta Facebook page for the express purpose of allowing members of Alberta’s Métis Nation to exchange views on matters of mutual interest. She says as much at paras 12 through 14 of her first Affidavit. These factual assertions permit the Court to at least consider whether there is, for the purposes of this application, an arguable defence based on qualified privilege.

[53] The common law defence of qualified privilege arises where the maker of a defamatory statement has a legal, public or social duty to communicate the information in question and the recipient has a corresponding valid duty or interest in receiving it. The reciprocity is essential and the privilege attaches to the occasion of the communication, not the actual words: *Banks v Globe and Mail Ltd*, 1961 CanLII 6 (SCC) [1961] SCR 474, at pp 482-83, and *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 SCC [1995] 2 SCR 1130 at 1188 – 89.

[54] In *Kent v Martin*, 2016 ABQB 314, Strekaf J (now JA) provides this useful summary at para 117:

[117] Defamatory statements are protected by qualified privilege where they are “fairly made on a privileged occasion by a person discharging some public or private duty, or... to pursue or protect some private interest, provided it is made to a person with a corresponding interest in receiving it”: *Brown on Defamation*, 2nd ed, (Toronto: Carswell, 2014) at para 13.1 [*Brown on Defamation*]. The duty can

be legal, social or moral. The test is whether people of ordinary intelligence and moral principle, or right minded people, would consider it a duty to communicate the information: *ibid*, see also *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130 at para 143 [*Hill*]. However, the Supreme Court noted in *Grant* that the threshold to establish qualified privilege is high and that the defence has been of little assistance to media organizations because “qualified privilege has traditionally been grounded in special relationship characterized by a ‘duty’ to communicate the information and a reciprocal ‘interest’ in receiving it. The press communicates information not to identified individuals with whom it has a personal relationship, but to the public at large”: *Grant* at paras 34-37.

[55] Having regard to the above, I have concluded that the defence of qualified privilege cannot possibly succeed in this case. Even if the stated purpose of Métis Voices of Alberta was to allow one member of the Métis Nation of Alberta to communicate information of political interest to other members, I note as follows:

- Métis Voices of Alberta was a public Facebook page and access to it was not restricted to members of the Métis Nation of Alberta;
- Ms. Morin, in several follow-up comments after September 5, 2018, exhorted others to share the video as widely as possible; and
- On December 21, 2018, the September 5th video and post had been shared with unknown persons 87 times, while Ms. Morin herself suggested that 22,300 people in four provinces were disseminating the video.

[56] In *Barrick Gold*, the Ontario Court of Appeal quoted with agreement this extract from Lyrissa Barnett Lidsky's article "Silencing John Doe: Defamation in Cyberspace", (2000), 49 Duke L J 855 at pp 862-65 (emphasis added) which describes the effect of internet posting (emphasis added):

Internet communications lack this formal distance. Because communication can occur almost instantaneously, participants in online discussions place a premium on speed. Indeed, in many fora, speed takes precedence over all other values, including not just accuracy but even grammar, spelling, and punctuation. Hyperbole and exaggeration are common, and "venting" is at least as common as careful and considered argumentation. The fact that many Internet speakers employ online pseudonyms tends to heighten this sense that "anything goes," and some commentators have likened cyberspace to a frontier society free from the conventions and constraints that limit discourse in the real world. While this view is undoubtedly overstated, certainly the immediacy and informality of Internet communications may be central to its widespread appeal.

Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by

printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that "the truth rarely catches up with a lie". The problem for libel law, then, is how to protect reputation without squelching the potential of the Internet as a medium of public discourse.

[57] At the outset of these Reasons, I noted that publication on the internet is instantaneous and ubiquitous. Here, the September 5th video and post were published to the world at large and shared numerous times with unknown persons. It is impossible for Ms. Morin to establish that she had a duty to publish unflattering statements about Mr. Quintal and the FMMCA to an incalculable number of unknown persons or that those untold persons had a corresponding duty or interest in receiving the statements.

J. Conclusion

[58] I conclude that Ms. Morin, through the instrumentality of the internet, deliberately or at least recklessly, published defamatory statements regarding Mr. Quintal and FMMCA. This publication occurred during an election in which both Ms. Morin and Mr. Quintal were candidates, and in which Ms. Morin was highly critical of Mr. Quintal's leadership and character. While Ms. Morin may honestly believe in the truth of the statements made, she has adduced no factual basis whatsoever to support their truth. She chose to publish the statements without restriction and encourage further dissemination by others. When asked by the Plaintiffs' counsel to cease and desist, she instead stepped up her efforts to blacken the reputations of the Plaintiffs and continued even after the election. Once sued, she took no steps to defend herself, although being given reasonable opportunity to do so, including an extension granted by the Plaintiffs' counsel seemingly because she was a self-represented litigant at the time. She only took steps to address her legal situation after being noted in default and realizing that she was in grievous civil jeopardy. In her Affidavits, she did not provide any factual foundation for the truth of the statements, which could raise a triable issue. Further, the extent of the publication precludes any defence of qualified privilege.

[59] In considering overall fairness, in view of the three factors for set-aside in cases such as *Don Reid*, I exercise discretion not to set-aside the noting in default. The application is dismissed.

[60] Costs of this application shall be determined when the Plaintiffs move for assessment.

Heard on the 7th day of January, 2019.

Dated at the City of Ft. McMurray, Alberta this 18th day of March, 2019,

Douglas R. Mah
J.C.Q.B.A.

Appearances:

Ms. Stephanie Cousineau and Mr. Aron Taylor
Maurice Law
for the Plaintiffs

Ms. Lisa D. Weber
Weber Law Office
for the Defendant

**Corrigendum of the Memorandum of Decision
of
The Honourable Mr. Justice Douglas R. Mah**

Para 14, the second last line was amended for a grammatical error.