CITATION: Rainbow Alliance Dryden et al v. Webster, 2025 ONSC 1161
Crichton et al v. Webster, 2025 ONSC 1162
COURT FILE NO.: CV-22-0096-00
CV-23-0058-00
DATE: 2025-02-20

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Rainbow Alliance Dryden and Caitlin Hartlen	)	*Mr. D. Judson* & *Mr. P. Howie*, for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
Brian Webster	)	*Mr. J. Kitchen*, for the Defendant
	)	
Defendant	)	
	)	
AND BETWEEN:	)	
	)	
Felicia Crichton and John-Marcel Forget	)	*Mr. D. Judson* & *Mr. P. Howie*, for the Plaintiffs
	)	
Plaintiffs	)	
-and-	)	
	)	
Brian Webster	)	*Mr. J. Kitchen*, for the Defendant
Defendant	)	
	)	*Mr. D. Girlando* & *Ms. K. MacFadyen*, for the Intervenor, Egale Canada
	)	
	)	**HEARD:** at Thunder Bay, Ontario on January 31, 2025 via Zoom

Madam Justice H. M Pierce

Reasons on Summary Judgment Motions

[1] The plaintiffs in two related libel actions move for summary judgment, as directed by the case management judge. They claim they have been libeled by the defendant and are entitled to general, aggravated, punitive, and exemplary damages, as well as costs.

[2] The defendant, Mr. Webster, denies that he libeled the plaintiffs and contends that these proceedings should be heard by a jury. He argues that the actions are not suitable for summary judgment proceedings.

Summary Judgment

[3] Mr. Webster submits that a jury should determine the "reasonable person" test, not a judge on a summary judgment motion.

[4] Are these actions suitable for determination in a summary judgment motion?

[5] Rule 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sets out the parameters of the summary judgment rule. Rule 20.04(2) provides that the court shall grant summary judgment if,

> (a) the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence; or
>
> (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

[6] Rule 20.04(2.1) provides that,

> 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.

[7] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, the Supreme Court of Canada considered the application of the summary judgment rule. It concluded the following at paras. 49–50:

> [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
>
> [50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[8] In *Skafco Limited v. Abdalla*, 2020 ONSC 136, 62 C.C.L.T. (4th) 14, Justice McLeod reviewed the history of procedure in libel actions. At para. 44, he concluded that summary judgment is available in some defamation actions where the motions judge has been able to conclude that there is no genuine issue for trial and the affidavit evidence is sufficient.

[9] At para. 45, Justice McLeod explains,

> 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.

[10] Mr. Webster submits that this is a novel case. He submits that the test for defamation is not met because there is no evidence that the impugned words lowered the plaintiffs' reputations in the eyes of reasonable people.

[11] He contends that credibility is an issue that only a jury fulfilling the function of "reasonable persons" can assess, including determining the impact of the words in the community and assessing damages. He also argues that an alternate meaning is available to understand the terms "grooming" and "groom", as used in the impugned posts on the Internet ("the posts"). The defendant also pleads fair comment.

[12] In this case, the individual parties in both actions have filed a fulsome record containing affidavit evidence from the parties and their experts, as well as cross-examinations of the deponents. The evidence includes the social context of the alleged defamatory words, and inferences to be drawn from the posts.

[13] As well, the documentary evidence establishes that the defendant was the publisher of the impugned internet posts; that the posts were published to at least one other person; and that the individual plaintiffs appear in the posts. The plaintiffs' documentary evidence also shows that the

posts refer to them, and discusses the allegation that they are defamatory based on the actual words used, and on expert evidence.

[14] Issues of law, including the sufficiency of the pleadings, the standing of the Rainbow Alliance Dryden to advance a claim, and the availability of the defence of fair comment are discussed in detail and supported by caselaw.

[15] I do not agree that these cases are unsuitable for summary judgment. As I have said, Rule 20.04(2.1) permits the court to weigh evidence, evaluate credibility, and draw inferences, as well as apply the law applicable to defamation. The summary judgment procedure is a proportionate, more expeditious, and less expensive means to achieve a just result, given the nature of the case before me.

[16] The parties have filed voluminous materials to allow the court to make the necessary findings of fact and apply the law in these cases. The plaintiffs have also filed caselaw in support of their claim for damages. I conclude that there is a complete record from which I will be able to consider the claims made by the plaintiffs and the defences advanced by the defendant, comparable to what could be presented at trial. For these reasons, I find these motions are entirely appropriate for summary judgment.

Pronouns

[17] Where an individual in these proceedings has expressed a preference in the use of personal pronouns, I will refer to them using those pronouns. For example, Caitlin Hartlen identifies as non-binary and prefers the pronouns they/them. Felicia Crichton identifies as a pansexual woman. Her

preferred pronouns are she/her. John-Marcel Forget identifies as two-spirit; his preferred pronouns are he/him. Dr. Mason's preferred pronouns are they/them.

The Use of Acronyms

[18] The witnesses and intervenor in this proceeding use different acronyms to refer to those who identify as sexually diverse and those having varying gender expressions and gender identities. For example, the plaintiffs use the acronym 2SLGBTQIA+, which refers to individuals who identify as two-spirit, lesbian, gay, bisexual, transsexual, queer, intersex, and asexual. Caitlin Hartlen explains in their affidavit that,

> while there are other formulations of this acronym, in my experience, they are used interchangeably and always intended to include the entire queer and trans community.

[19] By contrast, the intervenor, Egale Canada ("Egale"), prefers the acronym 2SLGBTQI, meaning two-spirit, lesbian, gay, bisexual, transsexual, queer, and intersex.

[20] The plaintiffs' expert witness, Dr. Cameron Crookston, uses the acronym LGBTQ2+, and explains why at the first footnote in his affidavit:

> I use the terms "queer" at various times to describe different LGBTQ2+ identities. Since the early 1990s, "queer" has been as an umbrella term for a range of sexual and gender diverse identities that fall outside of the world of heterosexual/cisgender….

[21] Dr. Corinne Mason is also an expert witness for the plaintiffs. They adopts the acronym, LGBTQ+, meaning lesbian, gay, bisexual, trans, and queer, and explains at the first footnote in their affidavit,

> I have chosen this acronym for consistency throughout this document, and to match the term used in most of the research I present here. There are various ways in which this acronym is presented, and regardless of form, it is used to refer to sexual and gender diverse communities.

[22] In these reasons, while inconsistent, I will use the acronym that is used by the witness or intervenor to whom I refer. However, whatever acronym is used, it is intended that the acronym apply inclusively to those who identify as part of a sexual and gender diverse community.

The Parties

The Kenora Action

[23] There are two plaintiffs in the Kenora action. The Rainbow Alliance Dryden ("RAD"), a federal, not-for-profit corporation that serves the Dryden area 2SLGBTQIA+ community. Its objectives are to advocate on behalf of the 2SLGBTQIA+ community, raise public awareness, and educate the community about sexual and gender diversity and inclusion through local events and initiatives. RAD was founded in 2017 and incorporated on January 17, 2023.

[24] Caitlin Hartlen resides in Dryden and works for an Indigenous child and family services agency. Mx. Hartlen is currently the co-chair of RAD and has been closely involved with organizing RAD's events. They have previously been active in establishing a Pride organization in the Fort Frances area and served on the board of Canada's national Pride organization, Fierté Canada Pride. Currently, they serve on the board of the Northwest Community Legal Clinic.

[25] Mx. Hartlen performs as a drag king under the alias of "Jack D" when they are before an audience comprised of all-ages. When performing before an adults-only audience, Mx. Hartlen's

stage name is "Jack Doff." They have no criminal record and have never been charged with any sexual or violent offence or accused of engaging in criminal or predatory conduct.

[26] The defendant, Brian Webster, currently resides in Calgary, Alberta, where he is employed in construction. He indicates that he does citizen journalism and commentary in his spare time.

[27] Mr. Webster admits to being the administrator of a Facebook page known as "Real Thunder Bay Courthouse – Inside Edition ("Courthouse Page") and to writing the impugned post in the Kenora action.

The Thunder Bay Action

[28] There are also two plaintiffs in the Thunder Bay action. Felicia Crichton is a long-time resident of Thunder Bay, Ontario, and is the married mother of four children between the ages of 6 and 14. In addition to her drag activities, she works as a painting instructor.

[29] Like Mx. Hartlen, Ms. Crichton has no criminal record. She has never been charged with any sexual or violent offence or accused of engaging in criminal or predatory conduct.

[30] Ms. Crichton's interest in theatre began in high school. She began attending drag performances in the early 2010s and created her drag character in 2014, mentored by her co-plaintiff, John-Marcel Forget. Her first drag performance was in 2015. She performs as a drag queen under the stage name, "Mz. Molly Poppinz."

[31] Ms. Crichton explains that, consistent with drag culture, her stage name incorporates puns, pop culture references, and innuendo. Her character speaks with a British accent. "Molly" is an

homage to the mother character, Molly Weasley, in Harry Potter. She acknowledges that some might identify her character with the British nanny character, Mary Poppins.

[32] She indicates that adults may recognize the innuendo from her stage name, "Molly Poppinz" as referring to "popping molly," a slang for consumption of a club drug. Ms. Crichton emphasizes that she does not use drugs and does not refer to "popping molly" during her performances.

[33] Ms. Crichton explains that story time with drag performers are part of the evolution of drag, now offered in cities across North America. She and Mr. Forget have been doing drag story hour in partnership with the Thunder Bay Public Library since 2018. The story time program includes children's stories, crafts, and singing, with a goal of "fostering acceptance and an appreciation of diversity."

[34] Ms. Crichton indicates that the defendant's post is,

> directly at odds with the messages of personal safety, positive self-image, self-confidence and belonging that we strive to communicate through the books and activities we chose for our story time events.

[35] The second plaintiff, John-Marcel Forget, is also a Thunder Bay resident and a farmer in the area. He has performed in drag for more than 20 years and, as a senior member of the drag community, he has mentored many who are interested in drag performance. Both these plaintiffs make an income from their drag performances.

[36] Mr. Forget's drag queen character is "Lady Fantasia La Premiere." He describes the character's name as a reference to fantasy. When entertaining children, he tells them that Lady

Fantasia is the "Princess of Love, Peace, and Pride" from "Glamazonia, a fictional place that values inclusion and belonging."

[37] Like Ms. Crichton, when he is before an audience of children, his drag costume is more conservative, using colourful clothing and simple makeup. With an adult audience, such as in a bar, he uses more provocative dress and makeup.

[38] Mr. Forget has never been criminally charged with child pornography offences, sexual abuse or misconduct, or any other offence related to the endangerment or abuse of children or young people.

[39] The defendant in this action is Mr. Webster, whom I have previously identified. He admits to being the administrator of the Courthouse Page previously referred to and the author of the impugned post in the Thunder Bay action. He states that he did not say that these particular drag queens are pedophiles.

Mr. Webster's Post in the Kenora Action

[40] In September 2022, RAD planned a weekend of drag events in Dryden, including a ticketed drag show for adults, a ticketed drag brunch for all ages, and a free drag story-time for all ages at the public library. Mx. Hartlen was scheduled to perform at the drag show for adults, but not at the other events. This was not Dryden's first drag event.

[41] Posters advertising the events were shared on social media and put up in the community. The posters featured pictures of the drag performers and their stage names. Mx. Hartlen's name and photo appeared on the posters.

[42] A few days before the events, Mx. Hartlen was interviewed on CBC Radio's *Superior Morning* about the coming drag events. This was a region-wide broadcast. After the broadcast, a person complained to the Ontario Provincial Police that the drag story-time at the library was an effort to "groom" children. The police investigated.

[43] The investigation was reported by the CBC's regional journalist, Jon Thompson, on September 16, 2022. His article was titled, "Dryden, Ont. was all set to host a weekend drag event. Then police responded to an unfounded prank call."

[44] On September 17, 2022, Mx. Hartlen discovered a Facebook page titled "Real Thunder Bay Courthouse – Inside Edition ("Courthouse Page") that contained a photograph of the Thunder Bay Courthouse. It claimed to be a "media/news" company.

[45] The post published screenshots of Mr. Thompson's article in which the plaintiffs' names are clearly identifiable. Mx. Hartlen's image also appears along with other drag performers depicted at a drag event held in Fort Frances in 2019. This unrelated photo included the image of a child being held by her parent, dressed as a drag performer.

[46] The screenshots were followed by text posted by the page administrator (capitals in original) that said:

> TAXPAYER FUNDED CBC REPORTER JON THOMPSON HAS AN AGENDA TO PROMOTE
>
> ASK YOURSELF WHY THESE PEOPLE NEED TO PERFORM FOR CHILDREN?
>
> GROOMERS. That's the agenda. Just look at the face of the one child in the photo. Tells you all you need to know.

> #DefundCBC

[47] Following the initial post, Mr. Webster edited the text of the post to add one sentence. The amended post then read as follows:

> TAXPAYER FUNDED CBC REPORTER JON THOMPSON HAS AN AGENDA TO PROMOTE
>
> ASK YOURSELF WHY THESE PEOPLE NEED TO PERFORM FOR CHILDREN?
>
> GROOMERS. That's the agenda. Just look at the face of the one child in the photo. Tells you all you need to know.
>
> Your tax dollars pay Jon Thompson to promote this stuff.
>
> #DefundCBC

[48] This post was publicly available on the internet, including to anyone with a Facebook account, and to all Facebook users, regardless of whether they "liked" or "followed" the Courthouse page. It was published on or about September 17, 2022.

[49] Mx. Hartlen deposes that around the time this post was made, the Courthouse Page had around 4,400 "likes" and 6,500 "followers." During this litigation, Mr. Webster indicated that he had been "locked out" of his Facebook page.

[50] Mr. Webster admits that the post was published to third parties. He also admits that he had no personal knowledge that the people depicted in the photograph were performing drag for children.

[51] The plaintiffs' factum observed that these third parties responding to the posts stated, or implied, that the plaintiffs and others associated with them and their events were,

> pedophiles, were mentally ill, were a danger to society that should be "hunted," and/or were grooming, sexually exploiting, or otherwise abusing children.

[52] Mr. Webster endorsed many of these third-party comments with "likes" and laughing emojis. He was served with the plaintiffs' notice of libel on October 27, 2022.

Mr. Webster's Post in the Thunder Bay Action

[53] On December 1, 2022, the plaintiffs in the Thunder Bay proceeding promoted an event on their Facebook page called "Story Time with TBay Drag Queens." The event was planned for December 10, 2022, at a branch of the Thunder Bay Public Library.

[54] The plaintiffs' post contained details of the event, headshot photos of Ms. Crichton and Mr. Forget as their drag characters, and text that identified them by their drag names. It was also posted on the library's internet page.

[55] On December 10, 2022, Mr. Webster published the plaintiffs' promotional image from their Facebook page on his Courthouse Page with the following text (capitals in original):

> CITY OF THUNDER BAY PROMOTING DEVIANT BEHAVIOUR TO CHILDREN
>
> Thunder Bay City Council is so far in left field that they are promoting Drag Queen Story Time to young children in our city.
>
> Apparently, our City Council is completely unaware of local drag queens who have been criminally charged with child pornography.

> Do your children a favour and have them avoid the library in Westfort today. Don't ask yourself why drag queens need an audience of children.
>
> The answer might involve the word "GROOMING"
>
> Local taxpayer subsidized news like TBLAZYWATCH & CBC continue to hide child porn and pedophile arrests from the public. In fact, a senior TBLAZYWATCH employee was just sentenced to 20 months in jail for making child pornography and uploading it through the TBLAZYWATCH internet. They refused to tell the public about it. Ask yourself why they are trying to hide this.
>
> READ MORE ON LOCAL DRAG QUEEN IN LINK BELOW [link 1]
>
> READ MORE ON TBLAZYWATCH CHILD PORN EMPLOYEE BELOW [link 2 and 3].

[56] The links to online articles identified individuals who had allegedly been charged with child pornography offences. They were not associated with the plaintiffs or with their event.

[57] Mr. Webster admits that he never attended the drag story events or any of the plaintiffs' performances. He admits that his post was published to third parties. The impugned post generated responses from third parties stating or implying that the plaintiffs were pedophiles, were mentally ill, that the drag story time events constituted pedophilia or sexual abuse of children, or that their event was sexually exploitive of children, grooming them or endangering young people.

[58] Mr. Webster was served with a notice of libel on January 13, 2023. The post was available for viewing online until January 18, 2023.

What Do the Plaintiffs Have to Prove?

[59] In *Grant v. Torstar Corp*., 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28, the Supreme Court of Canada summarized the elements of proof required in a defamation action:

> A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. […] The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[60] The Supreme Court added, at para. 29, that "[i]f the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability."

The Parties' Evidence

[61] At its core, the issue in both actions is whether the terms "groomers" or "grooming" are defamatory. The plaintiffs contend that these terms are a slur that implies that the plaintiffs influence and manipulate children for purposes of sexual exploitation – in other words, that the plaintiffs are pedophiles.

[62] In their affidavit, Mx. Hartlen commented on the defamatory meaning of the post. At para. 43 of their affidavit, Mx. Hartlen stated their understanding of the term, "grooming" as follows:

> I understand "grooming to mean sexually manipulating or conditioning children, often by building a relationship of trust, to make the young person vulnerable to exploitation, sexual abuse, trafficking, or pedophilia. The allegation that 2SLGBTQIA+ people or members of the drag community promote pedophilia, sexually exploit minors, "groom" or "lure" children or "recruit" people is part of a longstanding homophobic/transphobic myth and conspiracy theory. I have been an active 2SLGBTQIA+ advocate throughout my adult life and I am aware from that work that queer and trans people – including members of the drag community – have routinely and falsely been targeted with these types of accusations.

[63] At para. 42 of their affidavit, Mx. Hartlen commented that the post,

> states or strongly implies that I am a "groomer" because I am one of "these people" in the pictures who was going to be performing for children in Dryden, or that RAD is organizing events for sexual predators.

[64] At para. 41 of their affidavit, Mx. Hartlen reacted to the post:

> I found the Post deeply upsetting, offensive, misleading, and false. I worried about its impact on my reputation. I also worried about my personal safety and that of RAD's event attendees and performers. Given the nature of the internet, I also worried about the Post causing harm to third parties, in other locations.

[65] Ms. Crichton's affidavit was to similar effect: that "grooming" was a slur on 2SLGBTQIA+ individuals or members of the drag community born out of homophobia or transphobia: see para. 47.

[66] She observed, at para. 44 of her affidavit,

> This wording is clearly meant to indicate that our event has a predatory motive. This is clear to me because "grooming" children means to sexually manipulate or condition them, often by building a relationship of trust, to make the young person vulnerable to exploitation, sexual abuse, trafficking, or pedophilia. It is obvious that this is the defendant's meaning, because he also encourages parents to "avoid the library in Westfort today" [the venue for the event]. This remark in the Post further conveys to readers, or strongly implies, that our event is dangerous or that we are engaging in some nefarious or harmful activity targeting children.

[67] Ms. Crichton indicated that she was significantly distressed to see her work as a performer smeared in this manner, stating or implying that she is one of the "local drag queens who have been criminally charged with child pornography": see para. 42. She added that,

> The text of the Post also states, or strongly implies, that our story time event on December 10, 2022 is a scheme to sexually abuse or influence children.

[68] At para. 39 of her affidavit, she concluded:

> I found the Post deeply upsetting, offensive, misleading, and false. The Post caused me to worry about my reputation and also about my safety and that of our drag story time attendees and participants.

[69] Mr. Forget adopted the contents of the Hartlen and Crichton affidavits. At para. 12 of his affidavit he concludes,

> It has never been an aim or motive of the drag story time events I have participated in to "groom," sexually manipulate or otherwise condition children or young people for abuse or exploitation.

[70] The defendant's affidavits filed in both proceedings indicate he believes that the "disguised people" in the photo have an "agenda" for Drag Queen story hour, which he defines as grooming children to "live queerly." Mr. Webster indicates that "grooming", by definition, is the "practice of preparing or training someone for a particular purpose or activity."

[71] The defendant describes this as "drag pedagogy," a term he has adopted from an academic article published in Curriculum Inquiry, 2021, Vol. 50, No 5, pages 440–461. The article is authored by Harper B. Keenan, assistant professor of Gender and Sexuality Research in Education at the University of British Columbia and Lil Miss Hot Mess, who is a drag queen performer, author, board member for Drag Queen Story Hour, and a PhD candidate in Media, Culture and Communication at New York University.

[72] For the following reasons, I do not accept the evidence about drag pedagogy, incorporated by reference into Mr. Webster's affidavit. These are not his opinions. He purports to explain and justify his actions with academic commentary without identifying or qualifying the authors as

experts. Unlike the plaintiffs' expert reports filed in these proceedings, the authors do not acknowledge their duty to the court as experts.

[73] Furthermore, the opinion evidence offered as expert evidence about drag pedagogy is not included in an affidavit; indeed, it is not evident that the authors are aware that their academic writing has been used in this proceeding. These opinions have not been tested by cross-examination. This is purely self-serving material attached to Mr. Webster's affidavit for the purpose of justifying his posts *ex post facto*.

[74] In the Thunder Bay proceeding, Mr. Webster draws attention to Ms. Crichton's stage name, "Molly Poppinz," and the allusion "Molly" makes to the illicit drug, commonly known as "ecstasy."

[75] In this litigation, Mx. Hartlen produced to the defendant several stories that are read to children at Drag Queen Story events. Each of these stories deal with gender identity issues told in age-appropriate language with age-appropriate illustrations. They contain no reference to drug use or sexual practices; instead they focus on identity, self-worth, and acceptance.

[76] In his affidavit, Mr. Webster also attaches images of Lady Fantasia, which he described as "discoverable by the public", and which show Mr. Forget in various degrees of undress. He states that "[t]he pictures of Lady Fantasia are another way of teaching "living queerly" to anyone with access to a computer or a phone."

[77] In cross-examination, Mr. Webster stated that he retrieved these photos from Mr. Forget's Instagram account. This material was not appended to the notices for Drag Queen Story Hour. There is no evidence that Mr. Forget invited children at story hour to view his Instagram account.

[78] Mr. Webster indicated that while he has no knowledge of how Mr. Forget dresses for drag story hour, he guesses that the library does not let him appear in a state of undress.

[79] I find that there is no evidence that these images were available to children in the promotion of drag story hour at the library. Rather, I conclude these materials are intended to justify Mr. Webster's message for self-serving reasons.

[80] Mr. Webster deposes that his post described the behaviour of drag queens as deviant "because it departs from social norms." He also states,

> I brought awareness to the fact that some drag queens have been charged with child pornography and are otherwise pedophiles. I did not state that these particular drag queens are pedophiles."

[81] Mr. Webster also stated in his affidavit,

> I indicated that drag queens who need to perform for children might be grooming them which I define as teaching children to "live queerly," as explained in various academic articles.

[82] Mr. Webster's remarks are disingenuous. By attaching a link to a story about a person sentenced for possession of child pornography in Thunder Bay, a person who has no association with the plaintiffs, Mr. Webster clearly intended to connect the plaintiffs with this individual, even

though he was not a drag queen nor a participant in the plaintiffs' story hour. To create a false association was enough to amplify the slur.

[83] Readers of his post reacted to the coded message associating drag queens with pedophiles with some of the following responses:

- This is ridiculous. I cannot believe no one is putting a stop to this Pedophile movement. Hosted by the library? The world is going nuts!
- Anyone who promotes this stuff to children is clearly psychotic…
- This is how the city council spends our taxes. Not on police officers to protect our families. Not to protect our children from Pedophiles…
- They need to get rid of the pedophile movement and replace it with grandparents story time….
- Gross.
- Someone should do a protest there the same day! F&$k the pederasts…

[84] Mr. Webster's post in the Kenora proceeding produced a similar and, I conclude, an intended response. Readers comments included the following:

- Yeah why do they have to parade and push their agendas on children! Sickening!
- So that they expose themselves, in order for society to take care of them!! Now get your wrist rocket out and start shooting them some hard food.
- "The Guardians of the Pedophile!"
- Can we buy tags to hunt these animals??

[85] Mr. Webster amplified his message with signs of approval such as emojis that would have been understood by his audience in that light. By doing so, he created an echo chamber for hate speech, where like-minded persons reinforced each other based on the power of suggestion.

Expert Evidence

[86] The plaintiffs in both proceedings and the defendant have filed affidavit evidence from experts to assist the court. Rule 4.1.01 of the *Rules of Civil Procedure* discusses the duty of an expert as follows:

> 4.1.01 Duty of Expert
>
> (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,
>
> (a) to provide opinion evidence that is fair, objective and non-partisan;
>
> (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
>
> (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.
>
> (2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

[87] Rule 53.03(2.1) requires an acknowledgement of the expert's duty, signed by the expert, to be included in the expert's report.

[88] The plaintiffs' experts have acknowledged their duty within their affidavits; the defendant's expert has not.

[89] The plaintiffs submit that only their expert evidence assists the court and should be considered. The defendant disputes the admissibility of the plaintiffs' expert, Dr. Cameron Crookston, on the grounds of relevance.

[90] The defendant's expert, Dr. Cantor, argues that Dr. Crookston's evidence about the history of drag is irrelevant to current culture and does not relate to "the sudden and dramatic changes accompanying social media, which have no precedent in history at all."

[91] I do not agree with this submission. Dr. Cantor's objections to Dr. Crookston's evidence is an attempt to reframe the evidence in this case to fit his theory that sexual identity can be influenced by exposure to influences available on social media.

[92] Dr. Crookston has a doctorate in drama, theatre and performance, and sexual diversity studies from the University of Toronto. His doctoral dissertation discussed the role of drag performance in queer cultural memory. Presently, he lectures in the Department of English and Cultural Studies at the University of British Columbia Okanagan. His curriculum vitae is replete with peer-reviewed journal articles and book chapters, edited volumes and journals, conferences, presentations, and other related work.

[93] Dr. Crookston's evidence on the history of drag places drag culture in an historic context through the centuries, up to the present. He details the history of drag as performance art, central to queer cultural expression since the late 19th century.

[94] Originally, drag began as an underground activity. However, Dr. Crookston explains that over the last hundred years, drag has become a symbol of queer resistance and activism. In the 21st century, drag has had a visible presence in Gay Pride marches, protests and demonstrations, as well as in mainstream entertainment such as television, theatre, and film.

[95] His discussion about the history and purpose of Drag Queen Story Hour also describes the values of literacy and inclusion implicitly associated with reading at the library, not only in Dryden and Thunder Bay, but globally.

[96] Dr. Crookston detailed the history of Drag Queen Story Hour, an event that prompted the defendant's posts. He says that an award-winning author, Michelle Tea, began the story hour in San Francisco in 2015. As a queer parent, Ms. Tea was interested in creating positive and diverse educational activities for her child.

[97] Dr. Crookston explains at para. 47 of his affidavit,

> Drag Queen Story Hour quickly grew into a global phenomenon that has been largely embraced by both libraries and community members. In Canada, Drag Queen Story Hours have broken records for attendance in library programs. Participants and facilitators have observed that many elements of drag merge well with existing pillars of early childhood education….

[98] Dr. Crookston notes that Drag Queen Story Hour has become a vehicle for inclusion for LGBTQ2+ families, when their lived experience is reflected in mainstream community events.

[99] This evidence is beyond the scope of the court's knowledge and will be accepted as expert opinion evidence in accordance with the *Rules of Civil Procedure*.

[100] The plaintiffs' second expert is Dr. Corinne Mason. Their affidavit explains how the slurs "groomer" and "grooming" developed, and how sexual and gender diversity have pejoratively come to be associated with sexual deviance. They also discuss the impact of targeting drag performers with this type of hate rhetoric.

[101] Dr. Mason has a doctorate from the Institute of Feminist and Gender Studies at the University of Ottawa. They are a professor in Women's and Gender Studies at Mount Royal University, in Calgary, Alberta. Dr. Mason has been teaching and researching in gender and sexuality studies since 2013.

[102] Dr. Mason has a special interest in the study of sexualized and gendered violence, LGBTQ+ rights, equity, diversity and inclusion in post-secondary institutions, and reproductive justice. Their teaching experience focuses on the identities and experiences of gender and sexually diverse communities. Dr. Mason's curriculum vitae includes peer-reviewed journal articles, books, edited books and journals, and book chapters (including textbooks), among other professional work.

[103] Dr. Mason uses the term, "sexual diversity" to represent all non-heterosexual identities including, but not limited to, lesbian, gay, bisexual, asexual, and drag.

[104] At para. 22 of their affidavit, Dr. Mason adopts the definition used by Egale Canada for homophobia:

> …fear and/or hatred of homosexuality, often exhibited by name-calling, bullying, exclusion, prejudice, discrimination or acts of violence – anyone who is lesbian, gay, bisexual (or who is assumed to be) can be the target of homophobia.

[105] As well, Dr. Mason adopts Egale Canada's definition of transphobia:

> …the fear and/or hatred of any transgression of perceived gender norms, often exhibited by name-calling, bullying, exclusion, prejudice, discrimination or acts of violence – anyone who is trans and/or gender diverse (or perceived to be) can be the target of transphobia.

[106] Dr. Mason indicates that since the 1970s, anti-LGBTQ+ advocates promoted the notion that children were at risk from individuals who were part of the LGBTQ+ community and opposed their human rights protections in the workplace. Gays and lesbians were suspected of recruiting youth: since they could not reproduce, they were left to recruit. It was thought that being gay or lesbian was a choice and, therefore, that children could be trained to become gay. It was considered a matter of contagion.

[107] Anti-gay stigma grew during the height of the HIV/AIDS epidemic in the 1980s, when gay men were particularly seen as a threat to children. Consequently, individuals lost employment, lost custody cases, and had their familial relationships disrupted.

[108] Between the 1960s to the 1990s, an estimated 9,000 individuals lost federal employment in Canada, losing their jobs in policing, the armed forces, and the public service. These dismissals were accompanied by loss of pensions and benefits, severance, and/or opportunities for advancement. In 2017, the Prime Minister apologized on behalf of the Government of Canada for systemic discrimination toward LGBTQ+ Canadians.

[109] Dr. Mason notes that the history of drag as an art form is linked to safe places where LGBTQ+ do not experience discrimination and, therefore, drag is often and incorrectly associated with adult content, even when drag performances are not intended for purely adult audiences.

[110] Dr. Mason explained that,

> …grooming is manipulative behaviour used by sexual abusers "to gain access to a potential victim, coerce them to agree to the abuse, and reduce the risk of being caught. Allegations of "groomer" and "grooming" appear in hateful rhetoric to imply

> the LGBTQ+ people, or those perceived to be sexually or gender diverse, are pedophiles.

[111] Dr. Mason describes the "false and harmful narrative" of children being exposed to LGBTQ+ individuals and ideas about sexual orientation and gender identity as recruiting them into transgender ideology. They point to a rise in internet hate speech since 2022 using the term, "groomer" and attacks on queer and trans communities globally.

[112] They reference a warning from Canada's intelligence agency, CSIS, in 2024 that extremists could "inspire and encourage" serious violence against LGBTQ+ communities in the coming year.

[113] Dr. Mason deposed that,

> In Canada, drag performers and those who host drag events have received violent threats, including death and gun threats. In Canadian cities, events with drag performers at all-ages venues have been cancelled or rescheduled due to ongoing and active threats.

[114] Dr. Mason concluded that "groomer" slurs are widely used in hate rhetoric to target LGBTQ+ communities, especially drag performers and performances.

[115] The defendant's expert, Dr. James Cantor, is a clinical psychologist registered to practice in Ontario by the College of Psychologists of Ontario with a specialty in sexual behaviour research. He holds a doctorate from McGill University and is currently the Director of the Toronto Sexuality Centre.

[116] Dr. Cantor's curriculum vitae also contains multiple research papers, including those discussing pedophilia, gender dysphoria, and sexual deviance. He has studied biological and non-biological influences on sexuality ranging from pre-natal brain development to old age. The focus of his research has been the development of asexual sexualities, including sexual orientation, gender identity, pedophilia, etc.

[117] Dr. Cantor argues that Dr. Mason's opinion evidence should be excluded on the grounds that their evidence is not within the bounds of their expertise. He contends that because they have "no background, education or experience in psychiatry, mental health or illness, clinical science, or health care policy," they are not a qualified expert. As Dr. Cantor's academic training is in clinical psychology, and not psychiatry, it is surprising that he should object to Dr. Mason's lack of expertise in psychiatry.

[118] Dr. Cantor also contends that Dr. Mason incorrectly identified the American Psychiatric Association as apologizing to the LGBTQ+ community for characterizing "homosexuality" and "transvestism" as deviant behaviour associated with pedophilia when the apology was issued by the American Psychoanalytic Association. If he is correct, I do not find this misnomer material to the thrust of Dr. Mason's evidence: that stigma has resulted from associating these terms with pedophilia.

[119] Likewise, Dr. Cantor criticizes Dr. Mason's use of acronyms that differ from Dr. Crookston's choice of acronyms. In view of the evolution of language and culture relating to these groups, this criticism is petty and not at all helpful to the court, given the issues before it.

[120] Dr. Cantor uses a medical model as the lens against which to evaluate Dr. Mason's opinion, whereas the issue for the court to determine is whether the posts by the defendant were defamatory as understood by the legal construct of the "reasonable person." The court is not engaged in a diagnostic exercise but must make its determination in a social context.

[121] I accept the expert opinion of Dr. Mason to the extent that it deals with their stated purpose: to help the court understand the slurs "groomer" and "grooming" and the impact of hateful rhetoric against LGBTQ+ individuals. This evidence is beyond the scope of the court's knowledge and will be accepted as expert evidence in accordance with the *Rules of Civil Procedure*.

[122] The defendant submits that Dr. Cantor is the best proxy to stand in for the hypothetical "reasonable person." Respectfully, this misconceives the role of an expert witness, which is to enhance the court's understanding of an issue beyond the court's expertise but within that of the expert witness. As the rules prescribe, the opinion is to be offered in a non-partisan manner. It is not the role of the expert to become a substitute decision-maker, determining the issue before the court.

[123] Dr. Cantor indicated that the defendant sought his opinion on the following questions:

> 1. Are the terms "groomer" and "grooming," when used in connection with drag performers performing for and reading to children, capable of having one or more connotations with something <u>other</u> than pedophilia? [Emphasis in original.]
>
> 2. If so, what, in your opinion, is that other connotation or connotations?
>
> 3. What, in your opinion, is the origin of this connotation or connotations of the terms "groomer" and "grooming" when used in connection with drag performers performing for and reading to children?

[124] With respect to question 1, Dr. Cantor observes that in general language, grooming refers to preparing for a future activity or role. However, he opined that there are multiple connotations for the terms, "groomer" and "grooming" depending upon the context. He acknowledged that,

> although these terms are also used within my field by researchers and rehabilitation professionals working with sex offenders against children, the terms are not used as synonyms for pedophile or the sexual abuse of children.

[125] Dr. Cantor's opinion does not arise from his area of study or experience. Accordingly, it does not assist the court in understanding the context of the slur, "groomer" when directed at the drag community. Rather the question invites the answer which is given without any foundation: that there can be more than one meaning to the term, "groomer."

[126] With respect to question 2, Dr. Cantor commented that,

> These terms have been used, not only to mean influencing a child to gain the compliance or facilitate the sexual abuse of that child, but also to mean influencing children's identity development.

[127] He opines that "ubiquitous attention" is being paid to,

> … the concern the excessive overexposure to sexual and gender identity issues before youth are developmentally prepared for them is the cause of the explosive increases in rates of gender dysphoria (and other mental health concerns) being reported among minors throughout the Western world. Because the research evidence increasingly indicates that contemporary gender dysphoria, unlike sexual orientation, is highly susceptible to social influence, socially vulnerable children are being "groomed" (whether intentionally or not) to undergo medicalized gender transition, despite the evidence that most such youth would likely outgrow such feelings….

[128] The plaintiffs argue that Dr. Cantor, is not properly qualified because his opinions on the prevalence of gender dysphoria in young people are not grounded in a clinical practice that treats these children. They contend that he has never administered gender-affirming care and that his clinical practice involves patients whose average age is 30.

[129] In my view, Dr. Cantor's opinion about gender dysphoria may be grounded in his special research interest, but it is not helpful to the court's understanding of the issues. The plaintiffs' complaint is that the defendant's posts link them to pedophilia, not to gender dysphoria. Dr. Cantor's opinion is offered as an *ex post facto* justification for the defendant's posts.

[130] Dr. Cantor also expressed that "[a]lthough less frequently," he has seen the term, "grooming" refer to children "becoming desensitized by premature or excessive exposure to sexually explicit material."

[131] In this case, there is no evidence that the children attending the plaintiffs' story hours have been exposed to sexually explicit material. Indeed, the evidence, based on the curated story books in evidence, is to the contrary.

[132] Dr. Cantor's answer to question 3 about the origin of the connotation of the terms "groomer" and "grooming" when associated with drag story hour is similarly unhelpful as it does not arise from a properly qualified expert. It is an opinion outside his expertise. Dr. Cantor's education and experience is not grounded in the study of drag culture but rather sounds as a personal rather than a professional opinion.

[133] For these reasons, I attach little weight to Dr. Cantor's evidence.

Intervenor Submissions

[134] Egale Canada was granted intervenor status on these motions by order of Justice Nieckarz. It makes three submissions.

[135] First: Egale argues that allegations of grooming children serve to recycle old anti-2SLGBTQI tropes and contributes to increasing hate speech and violence against the 2SLGBTQI community. It points to drag as an expression of 2SLGBTQI identity and cultural expression.

[136] In *Hansman v. Neufeld*, 2023 SCC 14, 481 D.L.R. (4th) 218, at paras. 84–86, and 89, the Supreme Court of Canada recognized that transgender and gender non-conforming individuals have been historically disadvantaged and marginalized in society, facing stereotypes, prejudice, disadvantage, and vulnerability.

[137] While in recent times, drag story time has allowed children to experience a normalized gender and sexually diverse family experience, it has also become a target of anti-2SLGBTQI hate, based on the unfounded stereotype that 2SLGBTQI individuals and culture are dangerous and harmful to children.

[138] Egale also submits that drag performers, especially those engaged in drag story time, have increasingly become the target of harassment and threats of violence. As well, story time has attracted protests and even cancellations, leaving 2SLGBTQI at risk of violence.

[139] The Supreme Court of Canada recognized the harms that occur when 2SLGBTQI individuals are characterized as pedophiles, dangerous sex offenders, and deviant criminals who prey on children, thus perpetuating harmful and pervasive myths and stereotypes: see

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467, at para. 45.

[140] Egale submits that Canadian courts have accepted that allegations of grooming perpetuate the harmful age-old myth of sexual predation against children and refers to the anti-SLAPP decision of Justice Nieckarz *in Rainbow Alliance Dryden et al. v. Webster*, 2023 ONSC 7050, para. 20, in which the court defined the term "groomer" as a slur referring to a person who manipulatively develops a relationship or a connection with a child in order to exploit and abuse them.

[141] In *Bagwalla v. Ronin et al*., and *Ronin v. Ronin et al*., 2017 ONSC 6693 at paras. 12, 23 and 28, the Divisional Court held that,

> identifying a person as a sexual predator and sexual groomer only serves to lower the estimation of that person in the minds of right-thinking persons.

[142] The court concluded that the allegation in that case was clearly defamatory.

[143] Egale submits that alleging that 2SLGBTQI individuals have an agenda to groom children implicitly leads to fear-mongering about pedophilia and child pornography. Egale submits that this conclusion is borne out by the audience reaction to the posts in this case.

[144] Furthermore, Egale submits that falsely accusing the 2SLGBTQI community of grooming is harmful because it perpetuates the marginalization of these individuals, causes harm to their reputations, and exposes them to hatred, fear, and violence. In other words, it has a dehumanizing effect with a predictable loss of dignity.

[145] It notes that hate crimes motivated by sexual orientation is on the rise in Canada by 388% between 2016 and 2023.

[146] The second argument Egale makes is that falsely labelling 2SLGBTQI individuals as groomers cannot be a fair comment because perpetuating harmful myths and stereotypes about vulnerable members of society is not a matter of public interest.

[147] In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 28, the Supreme Court of Canada determined that a defence of fair comment must meet the following criteria:

> (1) be on a matter of public interest;
>
> (2) be recognizable as a comment as opposed to fact, although it can include an inference of fact;
>
> (3) the comment must satisfy the following objective test: "could any person honestly express that opinion on the proved facts?" and
>
> (4) the comment must not have been actuated by express malice.

[148] Egale submits that allegations that 2SLGBTQI persons are "groomers" or have an agenda to abuse children is not recognizable as comment because a comment includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof": see *WIC Radio*, at para. 26.

[149] On the other hand, a statement of fact, such as allegations of grooming, refers to criminal conduct which is verifiable and can be proven or disproven based on underlying facts: see *Bernier v. Kinsella et al*. 2021 ONSC 7451, 73 C.P.C. (8th) 280, at para. 50.

[150] In the *Hansman* case, the Supreme Court of Canada observed that "context is essential in distinguishing comment from fact": see paras. 108–109. Egale submits that the context in the case at bar,

> includes the persistent myths associating members of the 2SLGBTQI community with dangerous sexual offenders and child predators, and the severe discrimination, violence and hatred towards 2SLGBTQI community such myths have caused. Egale submits that the assertion that a group of 2SLGBTQI individuals are groomers or have an agenda to abuse children is a statement of fact, or at least could be characterized as factual. If readers react with the vilification that these statements have historically incited, for example, with suggestions that "they need to get rid of the pedophile movement" and that people "buy tags to hunt down these animals," these comments should be considered as further evidence that the expression was understood as fact and as describing the individuals as grooming children into sexual exploitation.

[151] The honest belief test, an element of the defence of fair comment as described in *WIC Radio* at paras. 40, 49, and 63, is whether "any [person could] honestly express that opinion on the proved facts, however prejudiced he may be, however exaggerated or obstinate his views."

[152] Egale submits that the test for "objective honest belief" underpinning the defence of fair comment is not made out here because the defendant did not know anything about the individuals targeted by his posts, nor what happens at drag story time, when he accused them of having an agenda to abuse children. The unfounded allegation of grooming children for sexual exploitation during story hour has no nexus between the opinion and the proved facts: see *Baglow v. Smith*, 2015 ONSC 1175 at para. 236.

[153] Finally, Egale submits that the impugned posts accusing 2SLGBTQI individuals of being sexual predators was motivated by malice.

[154] In *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, at para. 145, the Supreme Court of Canada held that malice is made out if the defendant publishes a defamatory expression either 1) knowing it was false, 2) with reckless indifference whether it be true or false, 3) for the dominant purpose of injuring the plaintiff because of spite or animosity, or 4) for some other purpose which is improper or indirect.

[155] Proof of malice may arise from the language of the assertion itself or from the circumstances surrounding the publication of the comment: see *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, para. 136.

[156] In the circumstances of this case, Egale submits that, at the very least, Mr. Webster's allegations constituted a reckless disregard for the truth amounting to malice.

[157] Egale also contends that the defendant's motivation to repeat heinous and false allegations against members of a vulnerable minority group and expose them to hatred was not accidental. He intended to perpetuate hate by accusing drag performers of having an agenda to groom children for sexual exploitation and was therefore malicious.

Analysis

Are the Impugned Words Defamatory?

[158] The first element the plaintiffs are required to prove is that the words are defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person.

[159] Mr. Webster argues that the plaintiffs' reputations were not lowered in the eyes of reasonable people. In support of his argument, he points to pay raises, promotions, participation

on a board of directors, and positive publicity. He believes that since none of the plaintiffs lost work or income or any social standing in their communities, their reputations were not lowered.

[160] The courts have recognized that falsely labelling someone as a pedophile or a sexual predator or sexual groomer is defamatory. See, for example *Hosseini v. Gharagozloo*, 2023 ONSC 2469, where the court held at, para. 82,

> 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 be inferred.

[161] As Egale notes, in *Bagwalla*, at paras. 12, 23 and 28, the Divisional Court held that,

> identifying a person as a sexual predator and sexual groomer only serves to lower the estimation of that person in the minds of right-thinking persons.

[162] In this case, the scurrilous responses of the readers to each post confirm that the plaintiffs have been lowered in their estimations. Mr. Webster posted these materials targeting the plaintiffs before an audience of his choosing; it does not now lie in his mouth to say that members of his intended audience were not reasonable people.

[163] Mr. Webster deposes in his affidavits that the plaintiffs did not appreciate that he intended an alternate meaning to the terms "groom" and "grooming", which he defines as "the practice of preparing or training someone for a particular purpose or activity." He rejects the plaintiffs' contention that "grooming" constitutes a slur in that it implies an adult is engaged in manipulative behaviour engaged in by sexual abusers to gain access to children.

[164] Mr. Webster's explanation is not credible. In the Kenora action, he was at pains to link children to drag queen performance. The post contains the inference that drag queens are grooming children for purposes of sexual abuse. He describes this as an agenda.

[165] Mr. Webster intentionally called into question the legitimacy of the plaintiffs' motives, asking *why these people* (i.e. drag queens) need to perform for children. Implicit in the messaging is that the drag queens have an improper purpose for associating with children. By highlighting the child in the photo with drag queens, he implies that there is an illicit connection between children and drag queens, stating "[j]ust look at the face of the one child in the photo. Tells you all you need to know." In fact, this child was in the arms of her parent.

[166] The readers of this post readily understood the intended slur – that drag queens are pedophiles – and responded accordingly with hate speech directed at the 2SLGBTQIA+ community, characterizing them as pedophiles who are mentally ill and who sexually exploit children. In short, Mr. Webster's language was a dog whistle to like-minded individuals.

[167] Likewise, Mr. Webster's contention that the plaintiffs in the Thunder Bay action misunderstood his intended meaning about "grooming" is not credible. It is an *ex post facto* justification that seeks to avoid liability for his defamatory post.

[168] In the Thunder Bay action, Mr. Webster's post on the internet was carefully crafted to elicit the response that he in fact achieved: that drag queen story hour promotes deviant behaviour and that drag queens are a risk to children for which they face child pornography and pedophilia charges. He poses the question, "Why do drag queens need an audience of children?" and emphasizes the word, "grooming" with capital letters.

[169] While the plaintiffs are not required to show intent, I find that Mr. Webster intended to create revulsion directed at the drag queens hosting the story hour, counselling people to keep their children away from the event. Predictably, his readers responded with hate speech, claiming that the plaintiffs were mentally ill pedophiles who exploit and sexually abuse children. Mr. Webster then approved of their hate speech with smiling emojis and other signs of approval.

[170] I find that, in each case, on a balance of probabilities, Mr. Webster's posts were defamatory because they lowered the plaintiffs' reputations in the eyes of reasonable persons.

Did the Words in the Posts Identify the Plaintiffs?

[171] Do the posts identify the plaintiffs? The caselaw establishes that the plaintiffs need not be named in a publication so long as they are clearly identifiable: see *Hosseini*, at para. 125.

[172] In the Kenora post, the plaintiffs submit that Mx. Hartlen and RAD are clearly identified, for the following reasons:

> (a) Mx. Hartlen's image appears in a photograph accompanying the CBC article while the post references "These People." The CBC article specifically names Mx. Hartlen seven times and RAD twice.
>
> (b) The defendant also made posts in the comments section where he included a close-up image of a child being held by one of the performers, commenting, "The look on the child's face says enough." In other words, the text of the post refers to the photographs included in the post.
>
> (c) The defendant's affidavit refers to the people in the photograph, indicating that they are the "groomers" he is referring to. He admits that Mx. Hartlen is depicted in the photograph.
>
> (d) The defendant admits in cross-examination that Mx. Hartlen appears in the post.
>
> (e) Previously in the proceeding, Jamie Petrin swore an affidavit stating that she recognized Mx. Hartlen in the post.

[173] This evidence was not challenged. I therefore conclude, on a balance of probabilities, that RAD and Mx. Hartlen are identified in the post in the Kenora action.

[174] Does the Thunder Bay post refer to the plaintiffs, Ms. Crichton and Mr. Forget?

[175] The plaintiffs submit that they are identified for the following reasons:

> (a) The post references the Drag Queen Story Time event announced by the plaintiffs on the library's website when it asks "why drag queens need an audience of children."
>
> (b) The post identified the specific event hosted by the plaintiffs when it advises readers to "avoid the library in Westfort today," thus identifying the time and place of the event.
>
> (c) The photograph in the post depicts the plaintiffs in character, alongside their performance names. This same image was used by the library.
>
> (d) The plaintiffs answered undertakings indicating that third parties recognized them in the post and contacted them.

[176] This evidence was also not challenged. I also conclude, on a balance of probabilities, that Ms. Crichton and Mr. Forget are identified in the Thunder Bay posts.

Were the Words Communicated to at Least One Person Other than the Plaintiffs?

[177] The defendant admits that, in each action, the impugned posts were published by him under the heading, "The Courthouse Page," and that they were published on the internet to at least one other person. I conclude, on a balance of probabilities, that publication has been proven in each case.

Does the Defendant Have a Defence?

[178] As the Supreme Court determined in *Grant*, if the plaintiff proves the foregoing required elements of proof of defamation on a balance of probabilities, the onus shifts to the defendant to advance a defence in order to avoid liability.

[179] As the plaintiffs submit, there are eight recognized defences in defamation actions. These are summarized at para. 19 in *Roy v. Ottawa Capital Area Crime Stoppers et al*., 2018 ONSC 4207, 142 O.R. (3d) 507, at para. 19:

(a) Truth or "Justification;"

(b) Absolute Privilege;

(c) Statutory Privilege;

(d) Qualified Privilege;

(e) Public Interest Responsible Communication;

(f) Fair Comment;

(g) Consent; and

(h) Statutory Bar.

[180] Pleading in defamation actions is very exacting. The plaintiffs submit that the defendant has not properly pleaded defences in either action. Rule 25.06(1) of the *Rules of Civil Procedure* requires that,

> Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or the defence, but not the evidence by which those facts are to be proved.

[181] As well, Rule 25.07(3) provides that,

> Where a party intends to prove a version of facts different than that pleaded by the opposite party, a denial of the version so pleaded is not sufficient, but the party shall plead the party's own version of the facts in the defence.

[182] Here, the statements of defence in each action are scant, lacking in a concise statement of material facts as required under the Rules.

[183] In the Kenora proceeding, the defendant challenges the standing of RAD to sue in defamation because it was not incorporated at the time of the alleged defamation and only incorporated after the statement of claim was served.

[184] Although this issue was pleaded in the statement of defence and addressed in the plaintiffs' factum, it was not dealt with in either the defendant's factum or in his oral argument. I conclude that the defendant abandoned this defence during the motion for summary judgment.

[185] However, if I am wrong in this regard, RAD was incorporated while the Kenora post continued to be published on the internet. RAD was identified with the members of the unincorporated collective, including the plaintiff, Mx. Hartlen.

[186] The plaintiffs amended their statement of claim after the incorporation of RAD and after notice of libel was served. Accordingly, the defendant was on notice of RAD's change in legal status, and its continuing claims in libel. The defendant did not move to strike out RAD's claim.

[187] I conclude that RAD has standing to sue.

[188] As well, Mr. Webster pleads in his statement of defence in the Kenora action that he has never met Mx. Hartlen and "never typed her name in any social media post." He denies that his post is defamatory of Mx. Hartlen, as his comments are "specific to the Canadian Broadcasting Corporation and their reporter."

[189] Having found that Mr. Webster's post identifies Mx. Hartlen and is defamatory of them, I conclude that this defence is not made out.

[190] In the Thunder Bay action, the defendant failed in the anti-SLAPP motion that would have provided him a defence. He pleaded that he had no knowledge of the plaintiffs, who are not named nor identified. Having concluded that Mr. Webster's post identifies the plaintiffs and is defamatory of them, this defence is not made out.

[191] Mr. Webster pleads that the post was deleted on January 18, 2023. That fact does not afford him a defence to defamation.

[192] The only defence that he does plead is the defence of fair comment, alleging that the post criticizes the Thunder Bay City Council and local taxpayer subsidized media, rather than the plaintiffs. No facts are pleaded with respect to the plaintiffs.

[193] In *WIC Radio*, at para. 28, the Supreme Court of Canada summarized the defence of fair comment, which must,

> (1) be on a matter of public interest;
>
> (2) be recognizable as a comment as opposed to fact, although it can include an inference of fact;

(3) the comment must satisfy the following objective test: "could any person honestly express that opinion on the proved facts?" and

(4) the comment must not have been actuated by express malice.

See also *Hansman*, at para. 96.

[194] The plaintiffs challenge this defence on five grounds:

(1) Mr. Webster's rhetoric is not a matter of public interest;

(2) it was not based on fact;

(3) it was not recognizable as comment;

(4) his opinion could not be expressed on proved facts; and

(5) the defendant was actuated by malice.

[195] In *Grant*, at para. 105, the Supreme Court defines the parameters of public interest as follows:

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

[196] The Court clarified in the same paragraph that "mere curiosity or prurient interest is not enough."

[197] In *Hudspeth v. Whatcott*, 2017 ONSC 1708, 98 C.P.C. (7th) 40, at para. 183, the court concluded that "hate speech is by its nature not in the public interest and hate speech interferes with public discourse and debate."

[198] Further, in *Paramount Fine Foods v. Johnston*, 2018 ONSC 3711, 142 O.R. (3d) 356, at para. 45, the court observed that,

> …someone who imbeds defamatory comments within political, economic or social commentary cannot claim immunity on the basis that this expression related to a matter of public interest. When it comes to hate speech, this is particularly important.

[199] The plaintiffs argue that the impugned posts relate to local events in which the drag performers and organizers are depicted as "groomers" who put children at risk of sexual exploitation.

[200] Mr. Webster contends that the public interest is in the use of taxpayer dollars to sponsor or promote drag events at the library. The court's decision in *Paramount Fine Foods* applies in this case. Mr. Webster was not engaged in political commentary when he made these posts. While the vehicle for the posts may be complaints about public libraries, the CBC, or City Council, the thrust of his posts was to identify the drag performers as "groomers," and cloak them in hate speech.

[201] As Egale put it in its submission, falsely labelling 2SLGBTQI individuals as "groomers" cannot be fair comment because perpetuating harmful myths and stereotypes about vulnerable members of society is not a matter of public interest. I agree.

[202] Thus, I do not accept that the public had an interest in Mr. Webster's posts. This aspect of Mr. Webster's defence fails.

[203] Secondly, fair comment must be based on fact. In *Hansman*, the Supreme Court of Canada held, at para. 99, that,

> To constitute fair comment, a factual basis for the impugned statement must be explicitly or implicitly indicated, at least in general terms, within the publication itself or the facts must be "so notorious as to be already understood by the audience." The defence is unavailable if "the factual foundation is unstated or unknown, or turns out to be false." [Citation omitted].

[204] The Court explained at para. 100 that,

> The purpose of this element is… to ensure the reader is aware of the basis for the comment to enable them "to make up their own minds" as to the merit. [Citation omitted].

[205] As Egale argued, a statement of fact, such as an allegation of grooming, refers to criminal conduct which is verifiable and can be proven or disproven based on underlying facts: see *Bernier v. Kinsella et al*., 2021 ONSC 7451, 73 C.P.C. (8th) 280, at para. 50. In the case at bar, there is no factual basis for the defendant's assertion that the plaintiffs "groom" children. None of them have been charged with or convicted of offences involving children.

[206] Accordingly, I find that Mr. Webster's posts are not based on fact.

[207] Are Mr. Webster's posts recognizable as comment? I conclude they are not. In the *Hansman* case, the Supreme Court of Canada observed that "context is essential in distinguishing comment from fact": see paras. 108–109.

[208] Mr. Webster's posts claim that the plaintiffs have an agenda to "groom" children and put them at risk of sexual abuse: they ask "[w]hy do drag performers need to perform for children?".

These statements are expressed as statements of fact, rather than statements of opinion. Therefore, his posts are not recognizable as fair comment.

[209] The plaintiffs also submit that Mr. Webster's honest opinion could not be expressed on proved facts. They contend that there is no evidence that any of the plaintiffs have an agenda to groom children for sexual abuse, nor that they have engaged in predatory conduct. I accept this submission. The plaintiffs' evidence is uncontradicted that, in their experience, drag story hour is a safe and inclusive environment for people of all ages and gender expression. Mr. Webster, on the other hand, admits that he has never attended a drag story hour.

[210] Finally, the plaintiffs submit that Mr. Webster was actuated by malice, accusing 2SLGBTQIA+ individuals of grooming children for the purpose of sexual exploitation, thereby exposing a vulnerable group to hatred.

[211] I agree. When cross-examined on his affidavit, Mr. Webster testified that he had never attended a drag story time event, had no knowledge of any of the plaintiffs and had no basis to believe that their events involved pedophilia or child abuse. He also admitted in cross-examination that he had no knowledge of whether any of the individuals, including Mx. Hartlen, depicted in the Kenora post, performed for children at the Dryden drag weekend about which Mr. Webster wrote.

[212] His conduct fits the definition of malice in the case of *Hill*: he published the posts knowing that they were false, with at least reckless indifference as to the truth of his statements, for the purpose of injuring the plaintiffs because of spite or animosity, and for an improper purpose.

[213] At the time the Kenora post was made in September of 2020, the Courthouse Page, published by Mr. Webster, had about 4,400 "likes" and 6,500 "followers" who accessed the page on the internet. There is no information on this page identifying the administrators of this page.

[214] Mx. Hartlen states in their affidavit that previous and subsequent posts on the Courthouse Page demonstrate hateful materials and attacks on 2SLGBTQIA+ individuals. They cite four examples of these posts. While there is no proof that Mr. Webster is the author of those posts, they appear in a publication for which he admits sole responsibility.

[215] In my view, it is particularly damaging that these posts were published as "The Courthouse Page," which depicts an image of the Thunder Bay Court House. In the absence of information about the page administrator, a reader may believe that the publication had the imprimatur of the courts. This impression would have been reinforced by the links connecting the post to reports of a sentence imposed on a sexual offender.

[216] I therefore conclude, on a balance of probabilities, that in each action, Mr. Webster was motivated by malice.

General Damages

[217] The plaintiffs each claim general damages of $75,000.

[218] The defendant submits that the quantum of damages flows from the severity of the libel. He argues that the damages claimed are excessive since the plaintiffs have not been accused of sexually abusing children. The defendant also submits that the cases cited by the plaintiffs are not comparable.

[219] It is settled law that a plaintiff in a libel case is not obliged to prove actual loss or injury; rather, damages are "at large" since damage is presumed once defamation is found: see *Rutman v. Rabinowitz*, 2018 ONCA 80, 420 D.L.R. (4th) 310, at para. 62.

[220] The plaintiffs point to general damages in the case law ranging from $20,000 in *Oliveira v. Oliveira*, 2019 ONSC 4400, at para. 56, to $125,000 in *Vanderkooy v. Vanderkooy*, 2013 ONSC 4796, at para. 225, all before inflation is considered.

[221] In *Oliveira*, the court awarded what it acknowledged was a lower award than in other cases of false allegations of pedophilia because there was "no internet sharing or publication on large websites or any broadcast within a community": see para. 56.

[222] In *Vanderkooy*, the defendants alleged that their uncle had sexually abused them as children and the plaintiff sought to defend himself within his family circle.

[223] In *Clancy v. Farid*, 2023 ONSC 2750, at para. 98, the court awarded general damages of $90,000 for multiple postings defaming a lawyer with allegations of sexual deviance, sexual predation, prostitution, as well as dishonesty and other allegations damaging to her professional reputation.

[224] In *Zall v. Zall*, 2016 BCSC 1730, paras. 92 and 94, the court awarded $75,000 in general damages when the defendant made baseless allegations of sexual impropriety to thwart a custody application.

[225] In my view, the general damages requested by the plaintiffs are reasonable. The defendant intended to smear the reputations of the individual plaintiffs and RAD with the message that they

used their drag queen/king persona and activities to groom children for sexual abuse. There could hardly be a more damning message than that, spread across the Internet. The message was clearly understood by Mr. Webster's readership: he called the plaintiffs pedophiles.

[226] In *Montour v. Beacon Publishing Inc*., 2019 ONCA 246, an anti-SLAPP motion, the court did not differentiate between the corporate and individual respondents. It concluded at para. 41, that,

> For the purposes of the anti-SLAPP motion, I would not differentiate between the corporate and individual respondents in this case. The individual respondent is so closely identified with the respondent corporation he founded, that a trier could conclude that defamatory statements about the corporation tarnish him to the same degree.

[227] The court declined to screen out the action by one plaintiff but not the other.

[228] I conclude that the corporate plaintiff is also entitled to damages. As a grass-roots organization, trying to build bridges between the queer community and the larger community, RAD's reputation is also deserving of protection from the slurs that may lead the community to distrust the persons and events identified with RAD.

[229] I consider that after Mr. Webster was served with a libel notice in the Kenora action on October 27, 2022, he made a second publication on December 10, 2022, with similar allegations in the Thunder Bay action, a post that remained on the internet until January 18, 2023. I can only conclude that he did so with a sense of impunity.

[230] As well, Mr. Webster's Courthouse Page showed a pattern of previous posts that were homophobic in nature. While Mr. Webster is not identified as the author of these posts, they were available on the Courthouse Page over which he had sole control.

[231] The plaintiffs, Rainbow Alliance Dryden, Caitlin Hartlen, Felicia Crichton, and John-Marcel Forget shall have summary judgment against the defendant, Brian Webster, in the amount of $75,000 each for general damages.

Aggravated Damages

[232] The plaintiffs in both proceedings also claim aggravated damages in the amount of $20,000 each, to show the court's condemnation of the defendant's conduct. The defendant disputes that his conduct has been high-handed, oppressive, outrageous, or malicious such that aggravated damages are warranted.

[233] The principles that apply to aggravated damages in defamation cases were set out in the *Hill v. Church of Scientology* at paras. 188–190. They may be summarized as follows:

> (1) Aggravated damages are available where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety.
>
> (2)The damages are compensatory and take into account the additional harm to the plaintiff's feelings by the defendant's outrageous and malicious conduct, taking into account the defendant's conduct prior to the publication of the libel through to the conclusion of trial. These damages reflect the natural indignation of right-thinking people arising from the defendant's malicious conduct.
>
> (3)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 the reputational damage or by increasing the mental distress and humiliation of the plaintiff.

[234] I am of the view that aggravated damages are warranted in this case for reasons I have already alluded to.

[235] Mx. Hartlen has been a drag performer for about eight years, employed in a child and family services agency, and active on a community legal clinic and in volunteer roles in the community, including producing and hosting a podcast about queer and trans issues.

[236] Mx. Hartlen was deeply upset and offended by Mr. Webster's post, fearful about their personal safety and that of others. At para. 45 of their affidavit, Mx. Hartlen states that they have never been charged with or accused of predatory sexual behaviour, adding:

> To be publicly accused or associated with such stigmatizing behaviours is deeply upsetting to me. It is also distressing to me to see the hard work of RAD to promote 2SLGBTQIA+ diversity and inclusion wrongly smeared as a nefarious or predatory scheme.

[237] Mx. Hartlen also worries about their professional reputation and standing in the community, potentially exposing them, their spouse, and RAD volunteers or event attendees to violence or harassment, making them a target. As well, Mx. Hartlen worries that the defamatory impact of Mr. Webster's post in future may never be known.

[238] At para. 27 of *Montour*, the Court of Appeal cited *Walker et al. v. CFTO Ltd. et al*., (1987), 59 O.R. (2d) 104 (C.A.) at p. 113, which recognized that injury to a corporation in a libel case may not be confined to loss of income but that its goodwill may also suffer. Mr. Webster cared little about RAD's loss of goodwill.

[239] Ms. Crichton acknowledges that she was aware of the longstanding homophobic/transphobic slur directed at the 2SLGBTQIA+ community falsely associating it with pedophilia. She stated, "[i]t has caused me significant distress to see my work as a performer smeared in this manner."

[240] Ms. Crichton worries that the post will impact her professional reputation, her income, her standing in the community, her personal safety and that of her family, as well as those attending drag story time or other drag events. Beyond that, she worries that the full defamatory impact of the post in future may never been known to her, depriving her of opportunities.

[241] Mr. Forget's affidavit discloses that as a young person, he did not fit in. He had things thrown at him from cars and slurs yelled at him in public, such that he dropped out of school to avoid the bullying he experienced.

[242] Mr. Forget described the creative outlet he has enjoyed as a drag performer for more than twenty years and the satisfaction he has from mentoring other drag performers. He expressed the pride he feels in the difference his drag persona has made to other members of the 2SLGBTQIA+ community.

[243] Since Mr. Webster has not attended any of the events involving the individual plaintiffs and is not personally acquainted with any of them, I conclude that the freedom he has felt to malign their reputations as a common bully is high-handed.

[244] There is a pattern of homophobic/transphobic conduct by the defendant's publication, both before and after the offending posts. Mx. Hartlen highlights these at para. 58 of their affidavit:

> a) On July 25, 2020, the Courthouse Page published a post about monkeypox vaccines that made homophobic comments towards Jason Veltri, the head of Rainbow Collective, a Thunder Bay-based 2SLGBTQIA+ organization. The defendant later commented on this post, sexually degrading and homophobic remarks about Mr. Veltri and claiming that Mr. Veltri ought to be the first monkeypox patient. The Defendant "liked" a comment from Mr. Balina on the same post that described 2SLGBTQIA+ people as "below normal human intelligence."
>
> b) On July 28, 2022, the Courthouse Page posted an article from the Daily Mail with the headline, "Police forced to escort Drag Queen to safety after protesters arrive." He captioned this article with a clown emoji and reacted with a laugh face to a Facebook user who commented on this post with an image of a progress Pride flag that was distorted to look like a swastika.
>
> c) On October 17, 2022, the Courthouse Page posted an image of a tweet about an article from Pink News about backlash to Netflix tagging its series about gay serial killer Jeffrey Dahmer as "LGBT" content. The Defendant's post about the comment compared Mr. Dahmer to "a Fort Frances lawyer which I believe is a reference to my lawyer, Mr. Judson, who is 2SLGBTQIA+ identifying.
>
> d) On December 29, 2022, the Defendant posted a meme with the words, "Ever Notice How Dogs Only Come in Male and Female…and Cutting The Balls Off Doesn't Make It Female?"

[245] I have already commented on Mr. Webster's defamatory post targeting the Thunder Bay plaintiffs with similar allegations after being served with a libel notice in the Kenora action. The Thunder Bay post remained on the internet until January 18, 2023. I can only conclude that Mr. Webster made the second post with a sense of impunity. Undoubtedly, he felt that no one would call him out on his views.

[246] As I have previously observed, it is particularly offensive that these posts were published as "The Courthouse Page," which depicts an image of the Thunder Bay Court House and links the page to other legal stories about sexual offenders.

[247] Mr. Webster chose this image carefully, in the expectation that his readers would believe that the publication had some official status with the imprimatur of the courts. Mr. Webster intended this effect: that his posts might seem more credible while they fostered disinformation and hate.

[248] In addition, the defamatory posts were published in the same geographic area of Ontario, with the cumulative effect of targeting the drag community in this area.

[249] It is evident that the defendant's posts have increased the plaintiffs' mental distress by his high-handed, spiteful, malicious, and oppressive conduct. I find that, on a balance of probabilities, Mr. Webster was motivated by actual malice toward the plaintiffs who were members of a vulnerable community.

[250] The court condemns this conduct. It was hate speech. In my view, aggravated damages are warranted to denounce Mr. Webster's conduct.

[251] The plaintiffs, Rainbow Alliance Dryden, Caitlin Hartlen, Felicia Crichton, and John-Marcel Forget shall also have aggravated damages against the defendant, Brian Webster, in the amount of $20,000 each.

Costs

[252] The plaintiffs are entitled to their costs in each action. They shall serve and file written submissions, not to exceed five pages, in addition to bills of costs and any offers to settle, within 20 days, and the defendant shall serve and file his response 10 days thereafter.

[253] I extend my thanks to counsel for Egale Canada whose submissions as intervenor were of great assistance to the court. Since Egale does not seek its costs, none are ordered.

Pierce J.

The Hon. Madam Justice H. M. Pierce

Released: February 20, 2025

CITATION: Rainbow Alliance Dryden et al v. Webster, 2025 ONSC 1161
Crichton et al v. Webster, 2025 ONSC 1162
COURT FILE NO.: CV-22-0096-00
CV-23-0058-00
DATE: 2025-02-20

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Rainbow Alliance Dryden and Caitlin Hartlen

Plaintiffs

- and -

Brian Webster

Defendant

AND BETWEEN:

Felicia Crichton and John-Marcel Forget

Plaintiffs

-and-

Brian Webster

Defendant

REASONS ON SUMMARY JUDGMENT MOTIONS

Pierce J.

Released: February 20, 2025