No. KEL-S-S-142409
Kelowna Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

TYSON COOK

Plaintiff

And

ACTION4CANADA INC., GRAEME FLANNIGAN, TAMMY ANN MITCHELL, TORI OLASON, AND PERSON A

Defendants

NOTICE OF APPLICATION

Name(s) of applicant(s): The Defendant, Action4Canada Inc.

TO: The Plaintiff

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or associate judge at the courthouse at 1355 Water Street, Kelowna, British Columbia, V1Y 9R3 during the week of December 8, 2025 at 9:45AM for the order(s) set out in Part 1 below.

The applicant(s) estimate(s) that the application will take 2 days..

☐ This matter is within the jurisdiction of an associate judge

☑ This matter is not within the jurisdiction of an associate judge

Part 1: ORDERS SOUGHT

1. An Order dismissing the within action pursuant to section 4(2) of the *Protection of Public Participation Act*, SBC 2019, c 3 (the "***PPPA***").

2. An Order for costs of this application and of the entire proceeding on a full indemnity basis pursuant to section 7(1) of the *PPPA*.

3. An Order against the Plaintiff for damages pursuant to section 8 of the *PPPA*.

4. Such further and other relief as this Honourable Court may deem just.

Part 2: Factual Basis

1. The Defendant, Action4Canada Inc., is a not-for-profit organization advocating for political change through letter writing, petitions, rallies and lobbying the government.

2. Action4Canada expands upon the letter writing campaign started by founder Tanya Gaw in 2015 as a response to policies advanced by the Liberal government.

3. The Plaintiff, Tyson Cook, is a drag artist and entertainer in the Okanagan community, who performs under the stage name "Freida Whales". He is also certified education assistant at Bankhead Elementary School in Kelowna, British Columbia.

4. On or about January 2023, the Defendant posted a petition on its website entitled "Stop Taxpayer Funded Drag Queen Sexualization of Children" requesting that the Mayor of the City of Kelowna stop using taxpayer money to support and fund Drag Queen Story Time at public libraries and family events and requesting that the school board reassess the Plaintiff's suitability as an educational assistant (the "**Petition**").

5. This Petition was part of the Defendant's broader stance against taxpayer funded drag performances in public venues open to and intended for children.

6. The Petition also raised concerns about videos and social media posts created by the Plaintiff employing profane and vulgar language, and depicting murder, cannibalism, and other graphic content that were publicly accessible including by children.

7. The Defendant further expressed concerns that these videos and social media posts call into question the Plaintiff's suitability to work as an educational assistant in the public school system.

8. The Defendant's concern regarding the Plaintiff arises from the vulgar and profane content that he has posted online to publicly accessible platforms. These concerns are fair comment on a matter of public interest.

9. The Plaintiff has promoted himself as a child friendly drag performer and as such has become a well-known figure in the Okanagan.

10. In so doing the Plaintiff has invited public attention and also public criticism.

11. Parents considering taking their children to one of the Plaintiff's events have an interest in knowing that an internet search of the Plaintiff may reveal content that they would prefer their children not see.

12. A person having viewed the Plaintiff's content may honestly be concerned about his suitability to work with children.

13. The Defendant's statements regarding the Plaintiff's suitability to work with children are a product of the Defendant's concern about children being exposed to inappropriate content such as the videos posted by the Plaintiff to publicly accessible platforms, and not malice as claimed by the Plaintiff.

14. On April 9, 2025, the Plaintiff prepared a list of documents pursuant to his obligations under Rule 7-1(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009. Notwithstanding, the list does not contain any documents that relate to harm the Plaintiff has allegedly suffered as a result of the Defendant's expression.

15. The motivation behind this action is not to remedy serious harm to the Plaintiff but to silence and punish the Defendant for expressing its viewpoint, and to deter others with similar views from expressing themselves on matters of public interest.

Part 3: Legal Basis

LEGAL FRAMEWORK

1. A strategic lawsuit against public participation ("**SLAPP**"), is a tactical action that seeks to suppress expression on matters of public interest. The goal of a SLAPP is not necessarily a legal victory, but a political one: to intimidate and suppress criticism with the threat of costly litigation. A key feature of a SLAPP is thus the strategic use of the legal system to silence contrary viewpoints.

Hansman v Neufeld, 2023 SCC 14 [*Hansman*] at para 46.

2. The consistent defining feature of a SLAPP is that the proceeding acts to silence the defendant, and more broadly, to suppress debate on matters of public interest, rather than to remedy serious harm suffered by the plaintiff.

Ibid at para 48.

3. Anti-SLAPP legislation, such as the *Protection of Public Participation Act*, SBC 2019, c 3 (the "*PPPA*"), creates a procedure for screening proceedings arising from expression on matters of public interest at an early stage.

Ibid at para 49.

4. The core feature of the *PPPA* is "the recognition that even claims with substantial merit will be dismissed where the public interest in preserving free debate outweighs the harm to the plaintiff that the litigation purports to address."

Ibid at para 51.

5. The test for dismissing an action under the *PPPA* is set out in section 4 which reads as follows:

Application to court

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

(a) the proceeding arises from an expression made by the applicant, and

(b) the expression relates to a matter of public interest.

(2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

(a) there are grounds to believe that

(i) the proceeding has substantial merit, and

(ii) the applicant has no valid defence in the proceeding, and

(b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

6. A section 4 application first requires the applicant (the Defendant) to prove, on a balance of probabilities, that the proceeding arises from expression that relates to a matter of public interest. If the defendant does so, the onus shifts to the respondent (the Plaintiff) under s. 4(2) to satisfy the court there are grounds to believe that: (1) the proceeding has substantial merit (s. 4(2)(a)(i)), and (2) the defences raised by the defendant are not valid, in that they can be said to have no real prospect of success (s. 4(2)(a)(ii)). If the court is not satisfied the plaintiff has met their onus as to one or both criteria, it must dismiss the proceeding.

Ibid at para 53.

7. Even if, however, the plaintiff meets their burden, the court must conduct a public interest weighing exercise under s. 4(2)(b), in which the plaintiff must satisfy the court that the harm they are likely to have suffered or are likely to suffer due to the defendant's expression outweighs the public interest in protecting that expression. In other words, once the court is satisfied that the proceeding arises from expression that relates to a matter of public interest, it must dismiss the proceeding if the plaintiff does not meet its onus as to either s. 4(2)(a) or (b). The order in which a judge chooses to address each of the elements under s. 4(2) is, of course, at the discretion of the court.

Ibid.

DEFENDANT'S ONUS

8. Under s. 4(1) of the *PPPA* the applicant/defendant who applies to have a proceeding against it dismissed has the onus of satisfying the court on a balance of probabilities that:

    1) The proceeding arises from an expression made by the applicant; and

    2) The expression relates to a matter of public interest.

Hobbs v Warner, 2021 BCCA 290 [*Hobbs*] at para 11.

9. The words "relates to a matter of public interest" are to be given a broad and liberal interpretation.

Ibid citing *1704604 Ontario Ltd v Pointes Protection Association*, [*Pointes*] 2020 SCC 22 at paras 26 and 28.

10. At this stage "it is not legally relevant whether the expression is desirable or deleterious, valuable or vexatious, or whether it helps or hampers the public interest — there is no qualitative assessment of the expression at this stage. The question is only whether the expression pertains to any matter of public interest, defined broadly. The legislative background confirms that this burden is purposefully not an onerous one."

Pointes at para 28.

11. In determining whether the expression relates to a matter of public interest "the expression should be assessed "as a whole", and it must be asked whether "some segment of the community would have a genuine interest in receiving information on the subject".

Pointes at para 27.

12. "The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence."

Pointes at para 27 citing *Grant v Torstar Corp*, 2009 SCC 61 [*Grant*] at para 106.

13. The expression at issue in this proceeding relates to two matters of public interest. The public debate about:

    1) what is acceptable off-duty conduct for a public educator, including whether it is permissible for a public educator to post explicit content to publicly accessible online platforms; and

    2) the inclusion of Drag Story Hour for children in publicly funded venues such as schools and libraries, and more broadly what is age-appropriate content for children in public schools.

14. The Plaintiff has put himself at the centre of both debates.

15. The Plaintiff decided to post videos to publicly accessible public platforms employing profane and vulgar language, depicting murder, cannibalism, and other graphic content while employed as a certified education assistant at Bankhead Elementary School in Kelowna, British Columbia.

16. Further, the Plaintiff has promoted himself as a child friendly drag performer and as such has become a well-known figure in the Okanagan performing at public venues such as schools and libraries.

17. In so doing, the Plaintiff has invited public attention and also public criticism.

18. Whoever seeks notoriety, or invites public attention, is said to challenge public criticism; and he cannot resort to the law courts, if that criticism be less favorable than he anticipated.

WIC Radio Ltd v Simpson, 2008 SCC 40 [WIC Radio] at para 57.

19. Thus, there can be no dispute that:

    1) this proceeding arises from the expressions made by the applicant Action4Canada; and

    2) that the expressions relate to matters of public interest.

20. Having satisfied the initial burden, the *PPPA* shifts the onus to the respondent/plaintiff to show that the action should not be dismissed.

Hobbs at para 12.

PLAINTIFF'S ONUS

21. Under s. 4(2) of the *PPPA* the court must dismiss the action unless the Plaintiff can satisfy the court of the following:

    1) there are grounds to believe that the proceeding has substantial merit;

    2) there are grounds to believe that Action4Canada has no valid defence to the proceeding; and

    3) the harm the Plaintiff is likely to have suffered or is likely to suffer due to the Action4Canada's expression outweighs the public interest in protecting that expression.

The Grounds to Believe Standard

22. The words "grounds to believe" refer to the existence of a basis or source for reaching a *belief* or conclusion that the legislated criteria have been met.

Pointes at para 36.

23. In determining whether there exist grounds to believe at this stage "courts must be acutely aware of the limited record, the timing of the motion in the litigation process, and the potentiality of future evidence arising".

Ibid at para 37.

24. Although "the limited record at this stage does not allow for the ultimate adjudication of the issues, it necessarily entails an inquiry that goes beyond the parties' pleadings to consider the contents of the record." The assessment is a subjective one made from the motion judge's perspective.

Ibid at paras 38 and 41, see also *Hobbs* at para 12.

25. In other words, although the court should resist a "deep dive" into the evidence, the court should not take evidence at face value or treat bald allegations as sufficient. Rather, the court "should engage in limited weighing and assessment of the evidence adduced."

Pointes at para 52.

Substantial Merit

26. For a claim to have substantial merit it must have a real prospect of success, that is, a prospect of success that, while not amounting to a demonstrated likelihood of success, tends to weigh more in favour of the plaintiff. The Plaintiff must satisfy the court that the claim is both legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success.

Pointes at para 49 and 54.

27. The substantial merit standard is more demanding than requiring that the claim have a reasonable prospect of success – it requires more than an arguable case. The substantial merit standard calls for an assessment of the evidentiary foundation of the claim tempered by a "grounds to believe" burden.

Pointes at para 50.

Are There Grounds to Believe the Claim of the Plaintiff has Substantial Merit?

28. A plaintiff in a defamation action is required to prove:

(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.

Grant at para 28.

Do the Alleged Defamatory Communications Refer to the Plaintiff?

29. In the case at bar, the alleged defamatory communications comprise of four Action4Canada posts, three of which refer to the Plaintiff, one of which does not.

30. The Plaintiff refers to an Action4Canada post from on or about January 24, 2023 (Notice of Civil Claim Part 1 at para 20), which is alleged to contain a photograph of the Plaintiff ("Action4Canada Post #2").

31. Action4Canada Post #2 does not make any reference to the Plaintiff or to any events hosted or performed by the Plaintiff. The sole basis for the Plaintiff's allegation that the words refer him is the photograph accompanying Action4Canada Post #2.

32. The image that the Plaintiff alleges was of him is in fact of "Lil Miss Hot Mess", a well-known drag performer whose legal name is Harris Kornstein and is a professor at the University of Arizona.

33. Action4Canada Post #2 does not refer to the Plaintiff. As such, the Plaintiff's claim against the Defendant, in so far as it relates to Action4Canada Post #2, has no real prospect of success.

Do the Alleged Defamatory Communications Convey the Alleged Meanings?

34. The court held in *Weaver v Ball*, 2020 BCCA 119:

> [37] Where, as here, a plaintiff claims that the complained of words bore an inferential meaning that is defamatory, the plaintiff must plead the alleged inferential meanings. In order to succeed, the plaintiff must prove, on a balance of probabilities, that the words complained of bore the meanings pleaded in the notice of civil claim or meanings that are substantially similar:
> *Lawson v Baines,* 2011 BCSC 326 at para. 35, aff'd 2012 BCCA 117.

35. The words used must be assessed, in context, from the perspective of a reasonable, right-thinking person, "that is, a person who is reasonably thoughtful and informed rather than someone with an overly fragile sensibility".

Weaver v Corcoran, 2017 BCCA 160 at para 69.

36. The Plaintiff alleged at paragraph 37 of the Notice of Civil Claim ("**NOCC**"):

> The Defamatory Publications mean and were understood to mean, in both their literal and inferential meanings, that the Plaintiff:
>
> (a) is a pedophile;
>
> (b) sexualizes children;

(c) exploits and abuses minors;

(d) is sexual deviant;

(e) indoctrinates children;

(f) is connected to a rise in child pornography and sexual abuse;

(g) performs sexually explicit content in the presence of children;

(h) promotes self-harm, murder, and cannibalism to children; and/or

(i) is inappropriate role model for children.

37. These broad conclusory statements do not accurately reflect the ordinary meaning of the alleged defamatory communications, nor could a reasonable right-thinking person understand them to have the alleged meanings.

38. The meaning properly attributable to the Action4Canada posts are not defamatory. The Action4Canada posts convey that there were grounds for concern raised by Plaintiff's videos and social media posts. These videos and social media posts contain profane and vulgar language, depict murder and cannibalism, among other adult themes, and were publicly accessible including by children.

39. The Plaintiff has the onus of proving that the Action4Canada posts bear the meanings set out at paragraph 37 of the NOCC or meanings that are substantially similar.

40. The inferential meanings proposed by the Plaintiff are not legally tenable or supported by evidence that is reasonably capable of belief and as such its claim cannot be said to have a real prospect of success.

Are There Grounds to Believe that Action4Canada has No Valid Defence

41. In its response to civil claim Action4Canada raises the defence of fair comment.

42. Having raised this defence, the Plaintiff must show that there are grounds to believe that the defence has no real prospect of success.

Pointes at para 60.

Fair Comment

43. The fair comment defence is premised on the idea that citizens must be able to openly declare their real opinions on matters of public interest without fear of reprisal in the form of actions for defamation (*Cherneskey v. Armadale Publishers Ltd.*, 1978 CanLII 20 (SCC), [1979] 1 S.C.R. 1067, at p. 1086).

44. The elements of the defence of fair comment were articulated by the court in *WIC Radio Ltd v Simpson*, 2008 SCC 40 [*WIC Radio*] at para 28 as follows:

a. the comment must be on a matter of public interest;

b. the comment must be based on fact;

c. the comment, though it can include inferences of fact, must be recognizable as comment;

d. the comment must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?

e. even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was [subjectively] actuated by express malice.

45. Consideration of the elements of the fair comment defence requires an assessment of the defamatory words used in the full context surrounding their use.

WIC Radio, at paras 55 and 56.

46. When invoked at trial, the defendant must prove the elements of the fair comment defence before the onus switches to the plaintiff to defeat the defence by establishing malice by the defendant

WIC Radio at para 52.

Based on a Fact

47. 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"

Hansman at para 99 citing *WIC Radio* at para 34.

48. There is, however, no requirement that the facts *support* the comment, in the sense of confirming its truth. The expression must relate to the facts on which it is based, but the comment need not be a reasonable or proportionate response. The purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them "to make up their own minds" as to its merit.

Hansman at para 100.

49. The factual basis for the Defendant's comment is explicitly indicated within each of the impugned publications. At paragraph 18 of the NOCC, the Plaintiff complains of an Action4Canada post from on or about January 20, 2023 (the "Petition Post") The Defendant clearly identifies that factual basis for its comment as follows:

> …Tyson [the Plaintiff] created videos depicting murders that also include cannibalism and a Satanic-like ritual. His social media posts consist of sexually vulgar and profane language. View evidence Here
>
> But of greatest concern is that he works with children with special needs as a certified Education Assistant in in the Kelowna SD 23 as well as with autistic children for AutismBC.

50. The link attached to the Defendant's post directs the reader to the content to which the Defendant refers.

51. The Defendant makes specific reference to the factual basis for its comment and takes the additional step of providing readers with a link to the content forming the factual basis of its comment thereby giving readers an opportunity to draw their own conclusions.

Recognisable as Comment

52. A comment includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof".

Hansman at para 108.

53. The statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact.

WIC Radio at para 27.

54. "This is a low threshold; "the notion of 'comment' is generously interpreted".

Hansman at para 108.

55. In *Hansman*, the court distinguished between statements suggesting concrete knowledge of past wrongdoing which may impute a fact as opposed to generalized critiques which are properly characterized as comment (at paras 110 and 111).

56. As the court held in *WIC Radio* "…words that may appear to be statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used in the context of political debate, commentary, media campaigns and public discourse (at para 26)."

57. In *WIC Radio*, the court held that the defendant Mair "was a radio personality with opinions on everything, not a reporter of the facts (at para 27)". In that context the court held that "the "sting" of the libel was a comment and it would have been understood as such by Mair's listeners (*Ibid*)."

58. The impugned expression in the case at bar must be viewed through the same lens. The Action4Canada website contains opinions on a wide array of political issues through a lens that is acknowledged as being informed by Judeo-Christian values.

59. The impugned publications of Action4Canada are no exception, and contain opinions widely expressed on the Action4Ccanada website that are not directly referable to the Plaintiff. This is made most clear by “the petition” linked to the Petition Post. The petition reads:

> I am writing to express my concern regarding the City using taxpayers' money to support and fund "Drag Queen Story Time" at public libraries and ‘Family Events.‘ (eg Canada Day 2022)
>
> I have further concerns about Mr. Tyson Cook, AKA Drag Queen Freida Whales, who is employed by the Kelowna school district.
>
> - Tyson Cook created a graphic video depicting a murder that also included cannibalism and a Satanic-like ritual. Several other disturbing videos were found wherein he takes an axe to his unconscious ' victim and then he attacks a woman from behind in an alley, knocks her out with chloroform, as his next victim.
>
> - Mr. Cook's social media is rife with vulgar and sexually explicit comments

60. The Defendant clearly delineates between its critiques of the Plaintiff, which are based on facts clearly indicated by the Defendant, and its broader concern regarding taxpayer funding of Drag Story Hour taking place in public venues.

61. However, the Plaintiff conflates the two matters converting the Defendant’s loose, figurative, and hyperbolic language used in the editorial context into allegations of fact.

62. The Petition Post states:

> As a further point of interest, Loyal Woodridge, openly gay Kelowna city councilor, is also on the board of the Okanagan Regional Library, and is strong supporter and advocate for the Drag Queen Story Hours. Is this conflict of interest?
>
> The amendment to the Human Rights code to include "gender identity and gender expression" protected class is not open invitation defense, for with adult sexual proclivities to have to, permit them to sexualize and exploit, children.
>
> It is, sadly, no surprise that reports of child porn and sexual abuse is on the rise. Kelowna RCMP forms unit to combat child porn in face of surge.

63. A reasonable consumer of Action4Canada content would not understand these statements as factual allegations that the Plaintiff: “is a pedophile; sexualizes children; exploits and abuses minors; is a sexual deviant; indoctrinates children; is connected to a rise in child pornography and sexual abuse; performs sexually explicit content in the presence of children” as alleged at paragraph 37 of the NOCC.

64. Rather a reasonable consumer of Action4Canada content would understand these remarks as part of the Defendants overall criticism of drag events for children and the "SOGI Agenda" – commentary which is expressed frequently and consistently on the Action4Canadawebsite in contexts which are in no way referable to the Plaintiff.

Honest Belief

65. The test for honest belief asks whether any person, however prejudiced they may be, however, exaggerated or obstinate in their views, could honestly express that opinion on the proved facts

WIC Radio at para 40.

66. In other words, the honest belief test is satisfied if it is "an opinion that could honestly have been expressed on the proved facts by a person "prejudiced . . . exaggerated or obstinate [in] his views". That is all that the law requires.

WIC Radio at para 62.

67. Here, the question is whether an opinion could honestly have been expressed denoting concern regarding the Plaintiff's suitability to work with children after viewing the content the Plaintiff posted to publicly accessible online platforms by a person prejudiced, exaggerated or obstinate in their views.

68. Based on the proved facts, a person could honestly have expressed concern about the Plaintiff's suitability to work with children, and that is all the law requires.

Malice

69. A showing of malice defeats a valid fair comment defence. This can be done by demonstrating the defendant made the statement knowing it was false, with reckless indifference as to its truth, to injure the plaintiff out of spite or animosity, or for some other improper purpose

Hansman at para 115.

70. Proof of malice "may be intrinsic or extrinsic: that is, it may be drawn from the language of the assertion itself or from the circumstances surrounding the publication of the comment"

Ibid citing *WIC Radio*, at para 100.

71. A finding of a subjective honest belief negates the possibility of finding malice

Ibid.

72. A finding of subjective honest belief can be based on the thrust of the defendant's evidence, read as a whole.

Ibid at para 117.

73. Here, the evidence before this court makes it clear that the Defendant honestly believes the views espoused in the impugned expression.

74. It is the Defendant's honestly held belief that it is inappropriate for someone to work with young children when that same person creates videos depicting murder, dismemberment and murder and posts them to websites that are easily accessible to children.

Affidavit No. 2 of Tanya Gaw at para 3.

75. The Defendant, as a Christian organization, honestly believes that there only two genders determined by biology, male and female, that marriage should be only between and woman, and that children have the best outcome inside traditional family. As such, the Defendant honestly believes that exposing children to things like drag story hour attempts to normalize concepts that are contrary to its faith.

Affidavit No. 2 of Tanya Gaw at para 30.

Public Interest Weighing

Evidence of Harm and Causation

76. Harm is principally important in order for the plaintiff to meet its burden. S. 4(2)(b) "expressly contemplates the *harm* suffered by the responding party *as a result* of the moving party's expression being weighed against the public interest in protecting that expression.

Pointes at para 68.

77. As a prerequisite to the weighing exercise, the statutory language therefore requires two showings: (i) the existence of harm and (ii) causation — the harm was suffered *as a result* of the moving party's expression.

Ibid.

78. Although general damages are presumed in defamation law, s. 4(2)(b) requires that the plaintiff demonstrate that the harm suffered as a result of the defendant's expression is serious. To be successful a plaintiff "must provide evidence that enables the judge "to draw an inference of likelihood" of harm of a magnitude sufficient to outweigh the public interest in protecting the defendant's expression. Presumed general damages are insufficient for this purpose, as are bare assertions of harm."

Hansman at para 67.

79. Even where the extent of harm suffered by the plaintiff is serious, however, the legislation also requires some evidence that enables the judge to infer a causal link between the defendant's expression and the harm suffered. Where the defendant is not the only one

speaking out against the plaintiff, inferring a causal link between the defendant's expression and the harm suffered by the plaintiff becomes both more important, and more difficult.

Hansman at para 68.

80. The Plaintiff has disclosed no evidence capable of supporting his claim for loss of income despite providing a list of documents on April 9, 2025.

81. By all appearances the Plaintiff's business performing as "Freida Whales" is thriving. The Plaintiff has stated that in 2023 and 2024 he had great years as a drag performer and he has also posted on social media about the large number of performances he has participated in to date.

Affidavit #2 of Tanya Gaw, paragraphs 41-44 and 48 and referenced exhibits

82. The Plaintiff has put forward no evidence that he lost performance engagements as a result of the impugned expression of the Defendant, nor has he suffered any consequences to his employment as an education assistant.

83. What remains is the Plaintiff's bare allegations of harm which are not sufficient for the purpose of establishing serious harm as is required by s. 4(2)(b).

Weighing Exercise

84. The weighing exercise under s. 4(2)(b) is the "crux" or "core" of the analysis and allows the judge to scrutinize "what is really going on" in a particular case before them.

Hobbs at para 16.

85. Once the harm has been shown to be causally related to the expression, s. 4(2)(b) requires that the harm and corresponding public interest in permitting the proceeding to continue be weighed against the public interest in protecting the expression.

Pointes at para 73.

86. The burden is on the plaintiff to show that the public interest in allowing the action to proceed outweighs the public interest in protecting the expression.

Hobbs at para 17.

87. For one factor to outweigh the other, the ratio between the two must be at least 51/49.

Ibid citing *Pointes* at para 66.

88. At this stage in the analysis, "the *quality* of the expression, and the *motivation* behind it, are relevant here."

Pointes at para 74.

89. A statement that contains deliberate falsehoods or gratuitous personal attacks may still be an expression that relates to a matter of public interest. However, the public interest in protecting that speech will be less than would have been the case had the same message been delivered without the lies or vitriol.

Ibid at para 75.

90. Here, the Defendant's expression contains no lies, vitriol, or gratuitous insults.

91. The motivation behind the impugned expression was at least twofold: 1) to raise concerns incited by the graphic content posted by Defendant to publicly accessible online platforms, and 2) to defend the public's right to express their concerns without being censored.

92. In the Defendant's view, members of the public who may have been considering taking their children to one of the Defendant's performances had the right to know that the Defendant posted content of this nature.

93. Further, the Defendant's initial post on the matter was in part a response to the removal of a petition from Change.org outlining similar concerns to those expressed in the impugned expression.

94. This motivation is clearly set out in the first few paragraphs of the Petition Post which read as follows:

> The Kelowna, BC Action4Canada Chapter leader, Laurie Baird, created a petition on Change.org and it was removed as they deemed it 'hate speech.'
>
> The topic of concern? A Drag Queen reading to and performing for children in public libraries and at 'Family Friendly Events" in the City of Kelowna, BC, paid for by taxpayers. The petition was polite and articulated legitimate concerns.
>
> In reponse [sic], Action4Canada created this further petition with CitizenGo to ensure that the public maintain the freedom to voice their concerns without fear of being censored. There is nothing hateful or offensive about wanting to protect the innocence of children and safeguarding them from indoctrination.

95. The Defendant is a Christian faith-based organization that is committed to defending expression on political and social issues expressing a Christian viewpoint.

96. Part of this mission entails publishing expression that other platforms refuse to publish or actively censor such as the Change.org petition.

97. Factors relevant to the weighing exercise in this case include the "…broader or collateral effects on *other* expressions on matters of public interest, the potential chilling effect on *future* expression either by a party or by others, the defendant's history of activism or advocacy in the public interest…".

Pointes at para 80.

98. Here, the broader effects on other expression and the potential chilling effect on future expression by the Defendant or others expressing similar view who might be sued in defamation is a significant factor.

99. As mentioned above at paragraph 13, the Defendant's expression relates to two matters of public interest:

1) what is acceptable off-duty conduct for a public educator, including whether it is permissible for a public educator to post explicit content to publicly accessible online platforms; and

2) the inclusion of Drag Story Hour for children in publicly funded venues such as schools and libraries, and more broadly what is age-appropriate content for children in public schools.

100. The danger of an action of this nature is that it attempts to close off one side of the debate by recharacterizing commentary on matters of public interest as defamatory expression towards those involved in advocacy for the opposing view.

101. For example, the view that Drag Story Hour is inappropriate for children because it exposes children to an art form that has until recently been confined to adult venues as a result of the explicit sexual content contained therein is recharacterized, as it has been in the case at bar, as an allegation that those who perform at Drag Story Hour exploit and abuse minors, and perform sexually explicit content in the presence of children, among other things (NOCC at para 37), so as to ground the basis of an action in defamation.

102. As the court warned in *Hansman* at paragraph 76 regarding the weighing exercise"…judges should be wary of the inquiry descending into a moralistic taste test."

103. As the court held in *Simpson v Rebel News Network Ltd*, 2022 BCSC 160 [*Simpson*]"…[m]any will find the views that it [the defendant] expresses, here and elsewhere, to be highly offensive. It is, however, precisely in such cases that the law's commitment to protecting freedom of expression will be most sorely tested."

104. That is because the value of expression is not measured by how many people agree of disagree with the views espoused.

105. The weighing exercise is informed by the court's s. 2(b) *Canadian Charter of Rights and Freedoms* (the "*Charter*") jurisprudence which grounds the level of protection afforded to expression in the nature of the expression. The closer the expression is to the core values underlying freedom of expression, the greater the public interest in protecting it.

Pointes at para 77.

106. The guarantee of free expression in s. 2(*b*) of the *Charter* has three core rationales, or purposes: (1) democratic discourse; (2) truth-finding; and (3) self-fulfillment.

Grant at para 47.

107. First and foremost, free expression is essential to the proper functioning of democratic governance. As Rand J. put it, "government by the free public opinion of an open society… demands the condition of a virtually unobstructed access to and diffusion of ideas".

Grant at para 48.

108. Second, the free exchange of ideas is an essential precondition of the search for truth. This rationale, sometimes known as the "marketplace of ideas", extends beyond the political domain to any area of debate where truth is sought through the exchange of information and ideas. Information is disseminated and propositions debated. In the course of debate, misconceptions and errors are exposed. What withstands testing emerges as truth.

Grant at para 49.

109. In the context of a defamation action, the "first two rationales for free expression squarely apply to communications on matters of public interest, even those which contain false imputations. The first rationale, the proper functioning of democratic governance, has profound resonance in this context. As held in *WIC Radio,* freewheeling debate on matters of public interest is to be encouraged, and must not be thwarted by "overly solicitous regard for personal reputation" (para. 2). Productive debate is dependent on the free flow of information. The vital role of the communications media in providing a vehicle for such debate is explicitly recognized in the text of s. 2(*b*) itself: "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication"

Grant at para 52.

110. The Defendant's expression on matters of public interest is close to the core of the values of democratic discourse and the search for trust which underlie freedom of expression, and as such the public has a strong interest in protecting that expression.

111. In summary, the public interest in protecting the impugned expression far outweighs the bare allegations of damage put forth by the Plaintiff.

COSTS

Section 7

112. Section 7(1) of the *PPPA* provides that:

> If the court makes a dismissal order under section 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances.

113. In the face of arguments that the s. 7(1) should be narrowly construed and that full indemnity is reserved for cases found to have been brought solely for a strategic purpose, the court of appeal clarified that "…the provision directs that when an action has been dismissed under the *PPPA*, the defendant is entitled to costs assessed on a full indemnity

basis unless an order to that effect would be "inappropriate in the circumstances". Full indemnity is the default position."

Mawhinney v Stewart, 2023 BCCA 484 at para 49.

114. S. 7(1) is intended to impose costs consequences that will serve as a strong deterrent to filing SLAPPs and encourage defendants to seek the quick termination of that kind of litigation.

Hobbs at para 102.

115. This action was plainly brought "to silence the defendant, and more broadly, to suppress debate on matters of public interest, rather than to remedy serious harm suffered by the plaintiff (*Hansman* at para 48)" rendering an award of full indemnity appropriate in the circumstances.

Section 8

116. Section 8 of the *PPPA* provides that:

> On an application for a dismissal order under section 4, the court may, on its own motion or on application by the applicant, award the damages it considers appropriate against a respondent if it finds that the respondent brought the proceeding in bad faith or for an improper purpose.

117. The principles that apply to an application for damages under s. 8 were summarized by Justice Brongers in *Todsen v Morse*, 2022 BCSC 1341, at paragraph 198 as follows:

> a) Section 8 of the PPPA represents an effort to separate out a subset of SLAPP [strategic litigation against public participation] cases. A case in which s. 8 is appropriately applied must therefore be one in which bringing the proceeding "goes beyond" simply reflecting an effort to limit expression and includes "active efforts to intimidate or to inflict harm on the defendant."
>
> b) If the court is satisfied on the record before it that an action has been brought in bad faith or for an improper motive, such as punishing, silencing or intimidating the defendant rather than any legitimate pursuit of a legal remedy, an additional remedy should be available for this improper conduct.
>
> c) While medical evidence is not necessary to establish damages under s. 8, an award must be compensatory. Damages will not arise in every case. The court cannot award punitive damages under s. 8.
>
> d) Whether an award of damages is warranted should also take into account the presumption set out at s. 7 that costs will be awarded on a full indemnity basis.

118. The court further explained in *Reynolds v Deep Water Recovery Ltd*, 2024 BCSC 1922 at paragraph 8-10:

> [8] The first principle implies that the level of "bad faith" or "improper purpose" required is more than that found in a "standard" SLAPP case. Simply trying to limit expression on a matter of public interest is not enough.
>
> [9] The second principle reflects the statutory language. The court must be satisfied on the record before it that the actions have been brought in bad faith or for an improper motive. Examples of such motives are punishing, silencing, or intimidating the defendant.
>
> [10] Since the award has to be compensatory, there has to be evidence from which damage can be inferred. Since indemnity costs are available, the damage cannot simply be the requirement to participate in costly and stressful litigation.

119. The bad faith in this proceeding is typified by the Plaintiff's false representation that Action4Canada Post #2 contained an image of the Plaintiff when it is in fact well know drag performer ""Lil Miss Hot Mess", a well-known drag performer whose legal name is Harris Kornstein

120. "Lil Miss Hot Mess" bears no resemblance to the Plaintiff. As such, the most plausible explanation for the inclusion of Action4Canada Post #2 is an attempt to bolster the Plaintiff's defamation claim by falsely representing that the expression contained therein was referable to him.

121. The Plaintiff's action is an active effort to punish, silence and intimidate Action4Canada.

122. The Plaintiff's actions can be summarized as follows:

1) December 4, 2024 Mr. Cook's legal counsel delivers cease-and-desist letter accusing Action4Canada of publishing statements online that are harassing, disparaging and defamatory aimed at damaging Mr. Cook's reputation and interfering with his business and employment and threatens legal action;

2) December 19, 2024 Mr. Cook's legal counsel files a Notice of Civil Claim ("NOCC") commencing this action;

3) January 6, 2025 Mr. Cook's legal counsel serves the filed NOCC on Action4Canada's legal counsel making the same accusations and threats set out in his letter of December 4, 2024 and adds an additional threat to seek injunctive relief;

4) April 9, 2025 Mr. Cook's legal counsel serves his list of documents;

5) April 15, 2025 Mr. Cook's legal counsel delivers another cease-and-desist letter to counsel for Action4Canada reiterating the accusations and threats contained in the December 4, 2024 letter and January 6, 2025 letter and adds an additional accusation that Action4Canada continues to publish disparaging and defamatory statements about the Plaintiff; and

6) May 6, 2025 Mr. Cook's legal counsel serves our legal counsel with a Notice of Application and supporting materials seeking an injunction.

123. Action4Canada filed an Application Response to the Plaintiff's injunction application on May 14, 2025 and provided copies of the materials to legal counsel for the Plaintiff.

16. On May 15, 2025 legal counsel for the Plaintiff proposed adjourning their application for an injunction generally and have taken no further steps since that time to pursue the application since it was adjourned.

17. The Plaintiff's actions have taken a financial and emotional toll on Action4Canada and on its leadership and volunteers. Action4Canada is funded by individual donors who are regular everyday Canadians. Action4Canada's operations depend on. This proceeding has caused great stress to the leadership team at Action4Canada and has taken many hours of leadership and volunteer time to address these proceedings.

124. The sole purpose of this action is to silence the Defendant rather than pursue a legitimate legal remedy. Simply put, the Plaintiff objects to the Defendant's point of view, and rather than confronting the Defendant's views with counter-speech (see *Hansman* at paras 81 and 82), the Plaintiff seeks to silence and punish the Defendant through the legal process.

125. Freedom of expression is the cornerstone of a pluralistic democracy and there must be room for views to be forcefully even intemperately presented in a public forum (*Hansman* at para 77) – the intention of this proceeding is to shrink or reduce the room to do so.

Part 4: MATERIAL TO BE RELIED UPON

1. Affidavit #2 of Tanya Gaw sworn September 26, 2025;

2. The pleadings herein; and

3. The inherent jurisdiction of this Court.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that:

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(ii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: September 26, 2025

Signature of **Lee C. Turner**, lawyer for applicant

This Notice of Application is filed by Lee C. Turner, of the firm of Doak Shirreff Lawyers LLP, whose place of business and address for service is 200-537 Leon Avenue, British Columbia, V1Y 2A9, Telephone 250.763.4323.

To be completed by the court only:

Order made

❒ in the terms requested in paragraphs _____ of Part 1 of this notice of application

❒ with the following variations and additional terms:

_____

_____

_____

Date: _____

Signature of ❒ Judge ❒ Associate Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts