



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

APPLICATION RESPONSE

Application response of: The Defendant, Action4Canada (the "application respondent")

THIS IS A RESPONSE TO the notice of application of the Plaintiff filed May 6, 2025.

The application respondent estimates that the application will take 4 hours.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of none of the orders set out in Part 1 of the notice of application.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of none of the orders set out in Part 1 of the notice of application.

Part 4: 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. Action4Canada expands upon the letter writing campaign started by founder Tanya Gaw in 2015 as a response to policies advanced by the Liberal government.
2. The Plaintiff, Tyson Cook, is a drag artist and entertainer in the Okanagan community, who performs under the stage name “Freida Whales”.
3. On or about February 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**”).
4. This Petition was part of Action4Canada’s broader stance against drag performances in public spaces open to children.
5. 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.
6. The Defendant further expressed the opinion that these videos and social media posts call into question the Plaintiff’s suitability to work with children.
7. On or about December 19, 2024, the Plaintiff filed a Notice of Civil Claim seeking, among other things, damages and injunctive relief on the basis of the comments made in the Petition and on posts on the Defendant’s website.
8. On or about February 6, 2025, the Defendant filed a Response to Civil Claim in this action setting out its position that the Plaintiff has failed to make out the elements of the cause of action of defamation and pleading the defence of fair comment.
9. On or about May 6, 2025, the Plaintiff filed a notice of application seeking an interlocutory injunction (the “**Notice of Application**”).
10. In support of the Notice of Application, the Plaintiff filed Affidavit No. 1 of Tyson Cook, made April 25, 2025 (the “**Cook Affidavit**”) where he particularizes the impugned words to a number of Action4Canada posts (the “**Impugned Words**”).

Cook Affidavit at paras. 11-22, 24-29, 32-42, 44-52, and 56-64, Ex. A-E, G-H, K-O, Q-X, AA, and CC-II.
11. The Cook Affidavit repeatedly recharacterizes statements of the Defendant as accusations that the Plaintiff engaged in specific verifiable acts.

12. The Plaintiff alleges that the Defendant published numerous statements accusing him of performing sexual content for children, exposing himself to children in a sexually explicit manner, grooming and preying on children, among other things.

Cook Affidavit at para 66.

13. The Plaintiff's allegations are categorically false.
14. The Defendant has raised concerns regarding the Plaintiff arising 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.
15. The Plaintiff has promoted himself as a child friendly drag performer and as such has become a well-known figure in the Okanagan.
16. In so doing the Plaintiff has invited public attention and also public criticism.
17. 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.
18. A person having viewed the Plaintiff's content may be honestly concerned about his suitability to work with children.
19. Many of the Plaintiff's false allegations seek to recharacterize the Defendant's opposition to drag performances open to children as factual allegations against the Plaintiff.
20. In this way, the Plaintiff seeks to stifle the Defendant's political speech by recharacterizing it as specific factual allegations against the Plaintiff.
21. No reasonable reader of the Action4Canada website would infer from the Impugned Words that the Defendant was making specific factual allegations against the Plaintiff as particularized by the Plaintiff at para 66 of the Cook Affidavit.

Part 5: LEGAL BASIS

1. The applicable test for an injunction to prevent defamation was articulated by the Court of Appeal in *Yu v 16 Pet Food & Supplies Inc*, 2023 BCCA 397 [Yu] as follows at para 71:
 1. The applicant must demonstrate that the impugned words are manifestly defamatory such that a jury finding otherwise would be considered perverse. To do so, the applicant must establish that:
 - a. the impugned words refer to them, have been published, and would tend to lower their reputation in the eyes of a reasonable observer; and
 - b. it is beyond doubt that any defence raised by the respondent is not sustainable.

2. If the first element has been made out, the court should ask itself whether there is any reason to decline to exercise its discretion in favour of restraining the respondent's speech pending trial.

2. Further, in applying the test the Court of Appeal set out at paras 72 and 73:

The second aspect of the test should take account of the full context before the court. Without intending to provide an exhaustive list of considerations, at the second stage, the court can consider factors such as the credibility of the impugned words, the existing reputation of the applicant, whether the applicant will suffer irreparable harm and whether the respondent is likely to continue to publish the impugned words.

If the impugned words are not credible, the applicant already has a deservedly poor reputation, an award of damages will suffice and/or the respondent is unlikely to continue to publish the impugned words, the court should normally decline to make an interlocutory order. Such an order would typically be either of little value or unnecessary.

3. Applications for interlocutory injunctions in defamation proceedings are treated differently than other interlocutory injunction applications. This is because they raise the competing public interest of freedom of speech, which ought not to be stifled in advance of trial on the merits except in the very clearest of cases ([*Amber Mortgage Investment Corp v Guo*, 2024 BCSC 1553](#) at para 25, citing [*Gant v Berube*, 2013 BCSC 1721](#), at para 16).

Do the Impugned Words Refer to the Plaintiff?

4. Here, the impugned words consist of several Action4Canada posts, some of which refer to the Plaintiff and some of which do not.
5. In particular, the Action4Canada post included at Exhibit "C" of the Cook Affidavit does not refer to the Plaintiff.
6. The Plaintiff alleges that the Action4Canada post that is the subject of Exhibit "C" of the Cook Affidavit includes a photo of the Plaintiff dressed as Freida Whales (Cook Affidavit at para 20).
7. The image that the Plaintiff references was pulled from a news article about "Lil Miss Hot Mess", a well-known drag performer whose legal name is Harris Kornstein, who is a professor at the University of Arizona. (Affidavit #1 of Tanya Gaw, paras 22 and 23)
8. The Post in question does not refer to the Plaintiff, it does not refer to any specific event hosted or performed by the Plaintiff, nor does it include any photos of the Plaintiff as alleged. As such, the Action4Canada Post included at Exhibit "C" of the Cook Affidavit cannot be said to refer to the Plaintiff.

Do the Impugned Words Convey a Defamatory Meaning?

9. To be successful on an injunction to prevent defamation the applicant has the onus to prove that impugned words are manifestly defamatory such that a jury finding otherwise would be considered perverse.

Yu at para 71.

10. As the BCCA set out in [*Weaver v Corcoran*, 2017 BCCA 160](#) [*Weaver*] at paras 66 and 67, there are two essential issues that must be determined in a defamation action:

The first is a threshold question: are the words complained of reasonably capable of bearing a defamatory meaning? This is a question of law subject to appellate review on a standard of correctness. If this threshold is met, the second question arises: do the words bear the defamatory meaning pleaded? This is a question of fact to be reviewed on a standard of reasonableness.

11. There are three ways in which words can convey a defamatory meaning:

- (a) if the literal meaning of the words complained of are defamatory;
- (b) if the words complained of are not defamatory in their natural and ordinary meaning, but their meaning based upon extrinsic circumstances unique to certain readers (the “legal” or “true” innuendo meaning) is defamatory; or
- (c) if the inferential meaning or impression left by the words complained of is defamatory (the “false” or “popular” innuendo meaning).

[*Lawson v Baines*, 2012 BCCA 117](#) at para 13.

12. In *Weaver*, the court concisely summarized the task of the trier of fact in regarding each of the foregoing circumstances as follows:

Where the literal meaning of words is in issue, it is unnecessary to go beyond the words themselves to prove that they are defamatory. Where a claim is based on the inferential meaning of words, the question is one of impression: what would the ordinary person infer from the words in the context in which they were used? Both literal and inferential defamatory meaning reside within the words, as part of their natural and ordinary meaning. In contrast, where legal innuendo is pleaded the impugned words take on defamatory meaning from outside circumstances beyond general knowledge, but known to the recipient.

Weaver at para 72.

13. 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 at para 69.

14. Where the Plaintiff relies on the inferential meaning or impression left by the words, “this means of proof requires that the meaning is that which the ordinary person, without special knowledge, will infer from the words complained of and this meaning must be determined objectively. Evidence concerning what the reasonable and ordinary meaning of the words is, or the sense in which they might be understood, or of facts giving rise to the inferences to be drawn from the words is inadmissible if this means of proof is relied upon.

Lawson at para 23.

15. The Plaintiff claims that the impugned words conveyed the following natural and ordinary meanings, or, in the alternative innuendo meanings:

That the Plaintiff:

- performs sexual content in front of children;
- is a sexual deviant or has sexual proclivities;
- sexualizes, exploits, indoctrinates, grooms and preys on children;
- promotes murder, self-harm, and cannibalism to children;
- has exposed himself to children in a sexually explicit manner; and
- is connected to a recent increase in instances of child pornography and crimes against children.

Notice of Application, Legal Basis at para 23.

16. These broad conclusory statements do not accurately reflect the ordinary or legal innuendo meaning of the impugned words.
17. As the court held in *Weaver*, “[b]oth literal and inferential defamatory meaning reside within the words (para 72).” Yet, the Plaintiff has failed to show how the impugned words could literally or inferentially convey the specific allegations of fact as particularized in his injunction application and set out above.
18. The Plaintiff has failed to direct the court to any statements of the Defendant’s capable of being understood as literal allegations that the Plaintiff engaged in the particularized conduct.
19. Similarly, the Plaintiff fails to explain why an ordinary person would infer from the impugned words that the Defendant was making specific allegations that the Plaintiff engaged in the particularized conduct.
20. Further, if the Plaintiff intends to rely on a legal innuendo meaning of the words, the Plaintiff has failed to provide evidence of extrinsic circumstances unique to certain readers to support the conclusion that the statements of the Defendant constitute allegations that the Plaintiff engaged in the particularized conduct.

21. The Plaintiff relies on [*Rainbow Alliance Dryden et al v Webster*, 2025 ONSC 1161](#) [*Rainbow Alliance*] to support his position that the impugned words are defamatory. However, the impugned words in *Rainbow Alliance* are qualitatively different than those in case at bar.
22. In *Rainbow Alliance*, the defendant made false allegations that the plaintiffs were groomers and that they had been criminally charged with sexual offences, posting along with a screenshot of the plaintiff:

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.

Rainbow Alliance at para 46.

23. In addition, the defendant in *Rainbow Alliance* published a promotional image for the plaintiffs' event with accompanying text stating that:

Apparently, our City Council is completely unaware of local drag queens who have
been criminally charged with child pornography.

Rainbow Alliance at para 55.

24. Central to the court's decision *Rainbow Alliance* was its holding that "...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.

Rainbow Alliance at para 205.

25. In the case at bar, the Plaintiff can point to no analogous statement of fact, or allegation, made by the Defendant similar to those made by the defendant in *Rainbow Alliance*.

Defences

26. To be successful in its application the Plaintiff must show that it is beyond doubt that any defence raised by the respondent is not sustainable.

Yu at para 71.

27. In [*Sandher Fruit Packers Ltd v MacAskill*, 2024 BCSC 1855](#) [*Sandher*] the court held that this language, “is the same type of language used in determining whether pleadings should be struck (at para 35)” where “[t]he court is permitted to reject proposed claims only if the action is “bound to lose” or there is no *bona fide* triable issue (*Sandher* at para 35 citing [*Steveston Seafood Auction Inc v Bahi*, 2013 BCSC 1072](#) at para 19).”
28. Further, the court in *Sandher* considered the language used in [*Amber Mortgage Investment Corp v Guo*, 2024 BCSC 1553](#) at paras 91-93, and 97 in applying the *Yu* test, concluding that: “The language “completely refuted”, “impossible”, “given some credence”, and “entirely remove” shows how difficult it will be for a plaintiff to meet the new *Yu* standard (*Sandher* at para 37).”

Fair Comment

29. The Defendant relies on the defence of fair comment.
30. 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).
31. 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.
32. 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).
33. 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).

Public Interest

34. The Public interest is a broad concept (*WIC Radio* at para 30).
35. 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.” ([Grant v Torstar Corp, 2009 SCC 61](#) at para 106).

36. In *WIC Radio* the court held that “the public debate about the inclusion in schools of educational material on homosexuality clearly engages the public interest. As the Ontario Court of Appeal recognized over a century ago in words that apply equally to the case on appeal, “[w]hoever seeks notoriety, or invites public attention, is said to challenge public criticism; and [s]he cannot resort to the law courts, if that criticism be less favorable than [s]he anticipated” (at para 57).”
37. The impugned words engaged two issues of public interest:
 - (a) the debate about the inclusion of Drag Story Hour for children in public venues such as schools and libraries; and
 - (b) concerns regarding public employees engaged to educate children, posting adult content on publicly accessible online platforms.

Based on a Fact

38. 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 v Neufeld, 2023 SCC 14](#) at para 99 citing *WIC Radio*, at para 34).
39. 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 v Neufeld, 2023 SCC 14](#) [*Hansman*] at para 100.
40. The Defendant refers to the facts that form the basis of Action4Canada’s concern about the Plaintiff as an education assistant.

...Tyson 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.

Recognisable as Comment

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

Hansman at para 108.

42. 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.

43. “This is a low threshold; “the notion of ‘comment’ is generously interpreted”.

Hansman at para 108.

44. 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).

45. 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).”

46. 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*).”

47. The impugned words 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.

48. Where the defendant has made an allegation of fact it is clearly stated. The Cook Affidavit at Exhibit “A” references the post on Action4Canada’s website entitled “STOP Taxpayer Funded Drag Queen Sexualization of Children” (“**Post No. 1**”).

Who is this drag man in question? Tyson Cook, AKA Miss Freida Whales. it was not difficult to come up with the following information. His extra-curricular activities are shocking to say the least. Tyson 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](#).

49. The link attached to the Defendant’s post directs the reader to the video to which the Defendant makes reference (and can be found in Tanya Gaw’s affidavit #1, at para 11, Exhibit “C”).

50. Post No. 1 goes on to say:

The amendment to the Human Rights code to include "gender identity and gender expression" as a protected class is not an open invitation nor defense, for men with adult sexual proclivities to have access to, or 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.

51. In contrast to the former statement, the latter comments would easily be identifiable by readers of Action4Canada's website as comment.
52. Put simply, a reasonable consumer of Action4Canada content would not understand these statements as factual allegations that the Plaintiff: "is connected to a recent increase in instances of child pornography and crimes", "performs sexual content in front of children" or "preys on children" as put forth by the Plaintiff in the Notice of Application.
53. Further, these comments are not directed at the Plaintiff but express the Defendant's general view regarding drag events performed for children and more broadly what the Defendant refers to as the "SOGI agenda" – views which are consistently and frequently expressed on the Action4Canada website (see: *Affidavit #1 of Tanya Gaw* at paras 25-35).
54. The Defendant clearly delineates between comments aimed at drag queen events in general and specific concerns with the Plaintiff relating to content posted to publicly accessible online platforms. The Defendant states in Post No. 1, in its "petition":

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

55. As stated above, based on the proved fact regarding Mr. Cook's videos and social media content the Defendant comments in Post No. 1:

But of greatest concern is that he works with children with special needs as a certified Education Assistant in the Kelowna SD 23 as well as with autistic children for Autism BC.

56. This statement is an expression of the Defendant's concern. This is the epitome of comment which includes "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof (*Hansman* at para 108)."

Honest Belief

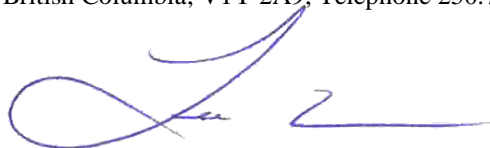
57. The test for honest belief asks whether any person, however prejudiced they may be, however, exaggerated or obstinate in their views, could honestly express that opinion on the proved facts (*WIC Radio* at para 40).
58. In other words, the honest belief test is satisfied if it is "an opinion that 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)."
59. Here, the question is whether an opinion could honestly have been expressed denoting concern regarding the Plaintiffs suitability to work with children after viewing the content the Plaintiff posted to publicly accessible online platforms (see: *Affidavit #1 of Tanya Gaw* at paras 11-21) by a person prejudiced, exaggerated or obstinate in their views.
60. 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.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Tanya Gaw, made May 14, 2025
2. The Pleadings filed in the within action.
3. Such further and other materials as counsel may provide and this Honourable Court may accept.
 - ☐ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.
 - ☒ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: c/o 200-537 Leon Avenue, Kelowna, BC, V1Y 2A9.

This Application Response 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.

Date: May 14, 2025



Signature of **Lee C. Turner**, lawyer for
application respondent