



No. 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 of applicant: Tyson Cook (the “**Plaintiff**” or the “**Applicant**”)

To: Action4Canada Inc.

And to: Graeme Flannigan

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the courthouse at 1355 Water Street, Kelowna, BC, during the assize week of May 26, 2025, at 9:45 a.m., for the orders set out in Part 1 below.

The Applicant estimates that the application will take three hours.

☐ 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 interlocutory injunction as follows:

- (a) An order enjoining the Defendants, Graeme Flannigan and Action4Canada Inc. (“**Action4Canada**”), or any agent of Action4Canada, from directly or indirectly writing, posting, publishing, printing, saying, emailing, and broadcasting, whether on the internet or otherwise, or causing any of the above to be posted, written, printed, emailed, and broadcasted, and in any way distributing or making public any disparaging statements regarding the Plaintiff, including, but not limited to any statements:

- (i) questioning the appropriateness of the Plaintiff being around children, as a drag performer, educational assistant, or otherwise and/or calling into question whether he is a suitable role model for children;
- (ii) linking the Plaintiff to the sexualization, indoctrination, grooming, or preying of children, child pornography and/or sexual crimes against children, and/or any other harms falling to children, sexually or otherwise;
- (iii) accusing the Plaintiff of performing sexually inappropriate content in front of children, promoting murder and cannibalism to children, and/or exposing children to age-inappropriate content; and
- (iv) containing homophobic or transphobic language otherwise intended to demean or cause harm to the Plaintiff and/or his reputation in the minds of right thinking individuals

(collectively, “**Defamatory Words**”).

- (b) An order that the Defendants, Graeme Flannigan and Action4Canada, shall forthwith remove all postings, publications, articles, blogs, posts, or any written material of any kind whatsoever that they or their agents have made on the internet, or have on websites, which contain or transmit Defamatory Words, including but not limited to all the Defamatory Statements identified in the first affidavit of Tyson Cook, made on April 25, 2025, and the first affidavit of Emma Leese, made on May 1, 2025.
2. In the alternative, an interim injunction on the same terms as those sought in paragraph 1 above, for a period of twelve (12) months.
 3. An order that the Plaintiff shall be at liberty to serve the Notice of Civil Claim, filed December 19, 2024, a copy of this Order, and any further court materials in this proceeding (collectively, the “**Documents**”) alternatively on the defendant Tori Olason by:
 - (a) Mailing a copy of the Documents to 16 Candide Drive, Lumby, BC by regular mail; and
 - (b) Sending a copy of the Documents via direct message to Tori Olason’s known and active Facebook account

and that such service is deemed to be good and sufficient service seven (7) days upon the above taking place.

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

Part 2: FACTUAL BASIS

I. The Injunction Application

1. The Plaintiff, Tyson Cook, is a drag artist and entertainer in the Okanagan community, who performs under the stage name "Freida Whales".
2. Since in or around January 2023, Action4Canada Inc. ("**Action4Canada**") and Graeme Flannigan (collectively in this application, the "**Injunction Application Defendants**"), have published malicious and false website posts, social media posts, videos, and emails, stating or implying, among other things, that the Plaintiff sexualizes children, has sexual proclivities, is a child groomer and predator, sexually exploits children, promotes murder and cannibalism to children, and is connected to a rise in child pornography and child sexual abuse (the "**Defamatory Campaign**" or the "**Defamatory Statements**").
3. The Defamatory Statements are particularized in Affidavit #1 of Tyson Cook, made April 25, 2025 (the "**Cook Affidavit**") and Affidavit #1 of Emma Leese, made May 1, 2025 (the "**Leese Affidavit**").

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; Leese Affidavit at paras. 7-19, Ex. E-G
4. The Defamatory Statements are all entirely false and misleading.

Cook Affidavit at paras. 65-67
5. Despite multiple demands, the Injunction Application Defendants have failed to retract or otherwise remove the Defamatory Statements from the internet. For its part, Action4Canada continues to post new Defamatory Statements.

Cook Affidavit at paras. 54-64, Ex. AA to II; Leese Affidavit at paras. 7-19, Ex. E-G
6. On or about December 19, 2024, the Plaintiff filed a Notice of Civil Claim seeking, among other things, damages and injunctive relief in respect of the Defamatory Statements.
7. On or about February 6, 2025, both Action4Canada and Graeme Flannigan filed a Response to Civil Claim in this action. In their respective responses, Mr. Flannigan relies on the defence of truth and fair comment, and Action4Canada relies on the defence of fair comment.
8. The Defamatory Statements are false and do not constitute fair comment.

Cook Affidavit at paras. 65-67
9. Notwithstanding the commencement of this litigation, and despite the fact that multiple demands to remove the publications have been sent to the Injunction Application Defendants, the Defamatory Campaign has continued and many of the Defamatory Statements remain online and accessible to anyone with internet access.

Cook Affidavit at paras. 44 and 54-64, Ex. Q and AA-II; Leese Affidavit at paras. 7-19, Ex. E-I

10. The Plaintiff has suffered significant harm to his dignity, feelings and self-worth as a result of the Defamatory Campaign. The Defamatory Campaign has resulted in the Plaintiff facing anxiety, a loss of dignity, and embarrassment in his community, and has damaged his reputation as a Certified Educational Assistant and as a child-friendly drag queen. If the Injunction Application Defendants are not enjoined from continuing the Defamatory Campaign and ordered to remove the Defamatory Statements from the internet, the Plaintiff will continue to suffer irreparable harm.

Cook Affidavit at paras. 68-79

11. In the circumstances, this Court's intervention is both necessary and warranted.

II. The Alternate Service Application

12. The defendant, Tori Olason ("**Olason**"), is an individual with a last known address at 16 Candide Drive, Lumby, BC.
13. On December 19, 2024, the Plaintiff filed a Notice of Civil Claim in this action, alleging, among other things, that Olason made defamatory statements about the Plaintiff on their Facebook account (the "**Facebook Account**") starting in or around February 10, 2024. The Facebook Account is still active and has nearly daily posts by Olason.

Leese Affidavit at para. 6, Ex. D

14. On or about January 14, 2025, a process server from Action Process Serving Ltd. engaged by counsel for the Plaintiff (the "**Process Server**") attempted to personally serve Olason at 16 Candide Drive, Lumby, BC (the "**Property**") with the Notice of Civil Claim and a letter addressed to Olason from the Plaintiff's counsel. The Process Server was informed by a person living on the Property that Olason lives in the lower suite of the main residence on the Property, and that that entrance could be accessed via the rear door of the main residence. The process server knocked on the rear door of the residence but there was no answer.

Affidavit of Kieanna Boomer-Jones, made January 17, 2024 [Boomer-Jones Affidavit]

15. On or about January 16, 2025, the Process Server attended at the Property again to effect personal service on Olason. The Process Server knocked on the door but there was no answer. The Process Server reported that at this time, a man came out onto the second floor deck of the residence and started angrily yelling, accused the Process Server of trespassing, and threatened to call the police. The Process Server noted that they did not feel safe and that they subsequently left the residence. The Process Server left the Notice of Civil Claim and letter in a sealed envelope addressed to Olason on the hood of a yellow Ford car parked in front of the entrance door of the lower suite.

Boomer-Jones Affidavit

16. It is the Process Server's belief that it would be impractical to serve the documents on Olason by personal service, due to safety concerns of entering the property again.

Boomer-Jones Affidavit

Part 3: LEGAL BASIS

I. The Injunction Application

17. An injunction may be granted by an interlocutory order of this Court in all cases in which it appears to the Court that it would be just and convenient that the order should be made.

Law and Equity Act, R.S.B.C. 1996, c. 253

18. The applicable test for a pre-trial injunction to prevent defamation requires:
- (a) the applicant 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:
 - (i) the impugned words refer to them, have been published, and would tend to lower their reputation in the eyes of a reasonable observer; and
 - (ii) any defence raised by the respondent is not sustainable.
 - (b) 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.

Yu v. 16 Pet Food & Supplies Inc., 2023 BCCA 397 [Yu] at para. 71

19. In this case, there can be no doubt that the Defamatory Statements refer to the Plaintiff. The Defamatory Statements all refer to the Plaintiff explicitly by name (either as Tyson Cook or as Freida Whales).

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; Leese Affidavit at paras. 7-19, Ex. E-G

20. It is also beyond doubt that the Defamatory Statements have been published. The law requires proof that the defamatory meaning was conveyed to at least one third party who actually read it. A court may infer that information placed on the internet is "published", given the modern realities of information dissemination via the internet.

Canada Easy Investment Store Corporation v. MacAskill, 2022 BCSC 202 [MacAskill] at para. 43

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; Leese Affidavit at paras. 7-19, Ex. E-G

21. Further, it is clear that the Defamatory Statements would tend to lower the Plaintiff's reputation in the eyes of a reasonable observer.
22. 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).

Amber Mortgage Investment Corp. v Guo, 2024 BCSC 1553 at para. 31

23. In their natural and ordinary meaning, or, in the alternative, by way of innuendo, the Defamatory Statements meant and were understood to mean, among other things, that the Plaintiff:
 - (a) is an inappropriate role model for children and his presence around children is inappropriate;
 - (b) performs sexual content in front of children;
 - (c) is a sexual deviant or has sexual proclivities;
 - (d) sexualizes, exploits, indoctrinates, grooms and preys on children;
 - (e) promotes murder, self-harm, and cannibalism to children;
 - (f) has exposed himself to children in a sexually explicit manner; and
 - (g) is connected to a recent increase in instances of child pornography and crimes against children.

Cook Affidavit at paras. 11-22, 24-29, 32-42, 44-52, 56-64, and 66, Ex. A-E, G-H, K-O, Q-X, AA, and CC-II; Leese Affidavit at paras. 7-19, Ex. E-G

24. Such serious statements and innuendos would clearly tend to lower the Plaintiff's reputation in the eyes of a reasonable observer.
25. Canadian courts have recognized that falsely labelling someone a pedophile, predator or groomer is defamatory. In addition, falsely stating that drag queen story hour promotes deviant behaviour and that drag queens are a risk to children and are connected to child pornography and pedophilia has been found to be defamatory, as these words lower a person's reputation in the eyes of reasonable persons.

Rainbow Alliance Dryden et al v. Webster, 2025 ONSC 1161 [*Rainbow Alliance*] at paras. 160 and 168-170

26. Additionally, it is clear that any defence raised by the Injunction Application Defendants is not sustainable on the facts of this case.
27. The Injunction Application Defendants' responses to civil claims plead the defences of truth and/or fair comment in relation to the Defamatory Statements. The onus of proof in relation to a defamation defence is on the defendant.

Connective Support Society v Melew, 2024 YKSC 15 [*Connective Support*] at para. 26.

28. Whether a given defence is available generally depends on whether the impugned statements are fact or opinion. Statements of fact can be defended as truth, and statements of opinion are generally defended as fair comment.

Holden v. Hanlon, 2019 BCSC 622 [*Holden*] at paras. 164-167

29. For the defence of fair comment to succeed, the comment must be made on a matter of public interest, must be based on fact, must be recognisable as comment, cannot be actuated by express malice, and must satisfy the following objective test: could any [person] honestly express that opinion on the proved facts?

WIC Radio Ltd v Simpson, 2008 SCC 40 [*Simpson*] at para. 28

30. 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.

Rainbow Alliance at para. 201

31. Moreover, the defence of fair comment is not available to the Injunction Application Defendants because there is no factual basis to the Defamatory Statements that the Plaintiff grooms, sexualizes, exploits, or acts inappropriately around or with children. Additionally, the Defamatory Publications are presented as fact, and are not recognisable as comment. Further, they could not have been honestly expressed on proven facts, as there is no evidence to support the allegations contained in the Defamatory Publications. The Defamatory Publications were made with clear malice, and perpetuate harmful myths and stereotypes about drag queens and members of the 2SLGBTQI community.

Cook Affidavit at paras. 11-22, 24-29, 32-42, 44-52, 56-64, and 66-67, Ex. A-E, G-H, K-O, Q-X, AA, and CC-II; Leese Affidavit at paras. 7-19, Ex. E-G
Cook Affidavit at paras. 23 and 53, Ex. F and Y

32. The defence of truth or justification must also fail. For this defence, the burden is on the defendant to prove the substantial truth of each statement. The question is not the literal truth of each and every word of a statement, but the "gist" or "sting" of the publication. In this case, the "gist" or "sting" of the Defamatory Publications are entirely untrue, and none

of the publications are substantially true. Where the Defamatory Publications refer to real events that happened, they are inaccurate, misleading, or tainted by the surrounding content. On that basis, the defence of truth or justification must fail.

Holden at paras. 169-170
Cook Affidavit at para. 67

33. Additionally, while the Injunction Application Defendants have not pled it, even if they were to rely on the defence of responsible communication, absolute privilege or qualified privilege, the sustainability of these defences for the Defamatory Publications is not possible, as none of these defences apply or could apply on the facts of this case.
34. Finally, there is no reason for this Court to decline to exercise its discretion to restrain the Injunction Application Defendants' speech pending trial.
35. The second step of the *Yu* test should take account of the full context of the circumstances before the Court, including but not limited to the following factors: 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.

Yu at para. 72

36. Here, each factor weights in favour of granting an interlocutory injunction. While untrue, the Defamatory Publications have been regarded with sufficient credibility to attract inquiries from members of the community and credible media organizations. Additionally, although his reputation has been negatively impacted by the Defamatory Publications, the Plaintiff is a well-respected and sought after drag performer. Additionally, the Plaintiff has worked in the education system for 13 years and has built a good reputation as a Certified Educational Assistant in Kelowna.

Cook Affidavit at paras. 30 and 31, Ex. I and J

37. Additionally, as set out in the Cook Affidavit at paragraphs 68 to 79, the Plaintiff has suffered and will continue to suffer from irreparable harm as a result of the Defamatory Publications should this injunction not be granted. The harm to the Plaintiff's reputation, dignity, and well-being cannot be compensated financially. Further, it is highly likely that Action4Canada will continue to post defamatory statements about the Plaintiff if the injunction is not granted, given that its participation in the Defamatory Campaign has only increased in frequency over time.
38. An interlocutory injunction, or alternatively, an interim injunction is necessary in the circumstances.

B. The Alternate Service Application

39. The Plaintiff relies on Rule 4-4(1) of the *Supreme Court Civil Rules*.

40. To grant an order for substituted service, the Court must be satisfied that the Plaintiff has taken reasonable steps to locate Olason and, if located, that reasonable efforts have been taken to effect personal service, and that the alternate method of service is proposed in a manner calculated for the Notice of Civil Claim to reach Olason.

Lonking (China) Machinery Sales Co. Ltd. v. Zhao, 2024 BCSC 79 at paras. 80-81

41. Applying the relevant factors, service via Facebook is appropriate in the circumstances because the Plaintiff has located Olason's Facebook account in her own name, and it is not a common name. Additionally, the Olason Defamatory Publications at issue in this action were published directly by the Facebook Account in question, thus leaving no question that the Facebook Account holder and the person sought to be served are one and the same. Further, the Facebook Account is active, as there are posts published by Olason from this account frequently on a near daily basis.

Leese Affidavit at para. 6, Ex. D
Chana v. Niwa, 2023 BCSC 200

42. In addition to service via Facebook private messaging, the Plaintiff submits that service by registered mail to the Property is appropriate in the circumstances, particularly as the Process Server has confirmed Olason currently resides at the Property.

Colter Developments Ltd. v. Squamish JV Ltd., 2015 BCSC 415 at paras. 65-68

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Tyson Cook, made April 25, 2025.
2. Affidavit #1 of Emma Leese, made May 1, 2025.
3. Affidavit of Attempted Service of Kieanna Boomer-Jones, made January 17, 2024.
4. The pleadings filed in the within action.
5. Such further and other materials as counsel may provide and this Honourable Court may accept.

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

Norton Rose Fulbright Canada LLP

per:

Date: May 6, 2025

Signature of Scott Silver
☒ Lawyer for the Plaintiff

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**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

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Defendants

NOTICE OF APPLICATION

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