



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Ralph v. Burgess*, 2024 NLSC 162

**Date:** November 29, 2024

**Docket:** 202201G0286

**BETWEEN:**

**CRAIG RALPH**

**PLAINTIFF**

**AND:**

**CARL BURGESS**

**DEFENDANT**

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**Before:** Justice Irene S. Muzychka

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**Place of Hearing:**

St. John's, Newfoundland and Labrador

**Dates of Hearing:**

September 16 & 17, 2024

**Summary:**

The Plaintiff claimed that he was defamed when the Defendant sent an email to his employer alleging that the Plaintiff abused his children and ex-wife. The Defendant failed to appear at trial and his discovery evidence was read into the record pursuant to the *Rules of Supreme Court*. The Court found that the impugned statements in the Defendant's email were defamatory and that the Defendant had failed to establish the truth of the impugned statements. The Court having found that the required elements of a claim in defamation were proven, awarded damages to the Plaintiff in the amount of \$45,000.00.

**Appearances:**

|                               |                                      |
|-------------------------------|--------------------------------------|
| Philip J. Buckingham,<br>K.C. | Appearing on behalf of the Plaintiff |
| Carl Burgess                  | Not Appearing                        |

**Authorities Cited:**

**CASES CONSIDERED:** *Grant v. Torstar Corp.*, 2009 SCC 61; *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130; *Tremblay v. Campbell*, 2010 NLCA 62; *Vanderkooy v. Vanderkooy*, 2013 ONSC 4796; *Austin v. Lynch*, 2016 BCSC 1344; *Fiola v. LeBrun*, 2002 MBQB 312; *Simpson v. Ontario*, 2010 ONSC 2119; *Andrews v. Fagan*, 2011 NLCA 15; *Peckham v. Mount Pearl (City)* (1994), 122 Nfld. & P.I.E.R. 142, 379 A.P.R. 142 (Nfld. (S.C.(T.D.))); *Farrell v. Cdn. Broadcasting Corp.* (1987), 66 Nfld. & P.I.E.R. 145, 204 A.P.R. 145 (Nfld. C.A.); *Seymour v. Nole*, 2022 BCSC 867

**STATUTES CONSIDERED:** *Defamation Act*, R.S.N.L. 1990, c. D-3

**RULES CONSIDERED:** *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

**TEXTS CONSIDERED:** Raymond E. Brown, *The Law of Defamation in Canada*, 2nd ed. looseleaf (Scarborough: Carswell, 1999); Lord Hailsham of St. Marylebone, *Halsbury's Laws of England*, vol 34, 4th ed. (London, UK: Butterworth, 1980); Philip Lewis, *Gatley on Libel and Slander*, 8th ed. (London: Sweet & Maxwell, 1981)

**REASONS FOR JUDGMENT****MUZYCHKA, J.:****INTRODUCTION AND BACKGROUND**

[1] Craig Ralph is suing Carl Burgess for defamation. On October 18, 2021, Mr. Burgess sent an email to Mr. Ralph's employer, alleging that Mr. Ralph is a wife and child abuser.

[2] At the time, Mr. Burgess was the romantic partner of Mr. Ralph's ex-wife. Mr. Ralph and his ex-wife have three children together, ranging in age from 13 to 20 years. The former couple shared parenting on a week about basis of the two younger children with the eldest child residing with Mr. Ralph.

[3] Mr. Ralph had only met Mr. Burgess on one occasion, October 15, 2021, when Mr. Burgess approached him at an ice skating rink, where family and friends gathered to watch [P] play hockey. At that time, Mr. Burgess asked Mr. Ralph to step away from the seating area and accompany him to the stairs, away from others as he had something to say and did not want to embarrass him in front of family and friends.

[4] Mr. Burgess introduced himself to Mr. Ralph and told him that he was Mr. Ralph's ex-wife's boyfriend, and that he wanted to discuss the way Mr. Ralph was behaving towards his ex-wife and children. Further, that if Mr. Ralph did not stop his behaviours, Mr. Burgess said he was going to contact Mr. Ralph's employer "... I'm letting your boss know what kind of a man you are".

[5] Three days later, on October 18, 2021, Mr. Burgess wrote and sent the email to Mr. Ralph's employer.

[6] Mr. Ralph has been employed by Avalon Laboratories Inc. for about 6 years as the General Manager and was employed at the time of trial.

## **POSITIONS OF THE PARTIES**

[7] Mr. Ralph claims that the email sent to his employer by Mr. Burgess is defamatory and seeks \$150,000 in compensation.

[8] He states that the email painted him as an abuser of his children and ex-wife, and as a liar. Mr. Ralph states that these allegations are untrue and that they caused him to suffer emotional harm and stress.

[9] In his Defence, Mr. Burgess denies that the contents of the email are defamatory and states that the allegations are true. He acknowledges that he wrote and sent the email to Mr. Ralph's employer on October 18, 2021. He claimed that the statements were made in good faith with Mr. Burgess believing the truth of the contents alleged.

[10] Mr. Burgess did not appear at trial, nor did he attend two recent pre-trial case management hearings despite being given notice. Mr. Burgess is no longer in a relationship with Mr. Ralph's ex-wife.

### **The Impugned Statements**

[11] Mr. Burgess' wrote the following:

“I believe you [Paul Antle] need to be fully aware of the continuous behaviour of this employee towards his ex-wife and two younger children.

[12] In the email, Mr. Burgess elaborated on his allegations of abuse as follows:

- a. “Craig Ralph has consistently bullied and mentally abused his ex-wife for the last 9 years, and mentally and physically abuses his two younger children, [H] 11, [P] 12.”
- b. “After spending thousands on flights dealing with this terrible news, she received another phone call from her daughter who was still at home with her grandfather saying that Craig and his family were beating at the doors of Heather's home trying to break in.”

- c. “Heather’s father had to call the RNC, and they removed Craig and his family members from the property and were informed not to return or they would be charged with trespassing and harassment. With these actions, Craig caused even more trauma for their daughter [P], who was shaking and terrified.”
- d. “Due to Craig’s actions involving the RNC, Child Protection Services was brought into the situation for evaluation.”

[13] Under the heading of “On-Going Child Abuse”, Mr. Burgess stated:

- e. “His son needs cream to apply to parts of this [sic] body of sores he has, due to the child scratching himself due to anxiety. When Craig puts cream on him and [H] states he is too rough, Craig then slaps the boy in the back of the head and tells him to shut up or worse”.
- f. “Craig consistently barges into the bathroom while [H] is showering, which is a clear glass shower, along with entering his bedroom while changing, this makes [H] extremely uncomfortable, and feels he is being exposed and not provided any privacy.”
- g. “Currently there is an active Child protection service file open against Craig, which they meet with him and told him these behaviours must stop against his ex-wife and children.”
- h. “You may ask Craig about it, and he most likely lies and says that it is not true, that is what a narcissist would say. Everyone around them is wrong must be lying.”

## ISSUES:

1. Are the statements contained in the email of October 18, 2021, to Mr. Ralph's employer defamatory?
2. Does Mr. Burgess have a defence?
3. If defamation is found, what is the appropriate quantum of damages?

## THE LAW

[14] To be found to be defamatory, the words used would have the effect of lowering the person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt, or ridicule.

[15] The Court must interpret words the way that the receiver reads them, in a way that would be commonly understood. "Courts must test the language in the real world by measuring the publication by the natural and probable effect it would have on the mind of the average recipient or those to whom the words were addressed: at pp. 5-19 to 5-23. Raymond E. Brown, *The Law of Defamation in Canada*, 2nd ed. looseleaf (Scarborough, Ont.: Carswell, 1999)

[16] In *Grant v. Torstar Corp.*, 2009 SCC 61, the Supreme Court of Canada outlined the principles applicable to litigating a defamation claim. They include at paragraph 28:

... (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;(2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and

damage are presumed, though this rule has been subject to strong criticism: see, e.g., R. A. Smolla, “Balancing Freedom of Expression and Protection of Reputation Under Canada’s *Charter of Rights and Freedoms*”, in D. Schneiderman, ed., *Freedom of Expression and the Charter* (1991), 272, at p. 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous *per se*: R. E. Brown, *The Law of Defamation in Canada* (2nd ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.) The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

## EVIDENCE

### Craig Ralph

[17] Mr. Ralph testified that he is an active member of the community. He is or has been involved with minor hockey, soccer, and baseball as well as coaching school volleyball in Mount Pearl and St. John’s. He has been coaching minor sports for many years as well as volunteering for various organizations including the Board of Trade. Mr. Ralph has been consistently employed since obtaining a diploma in business in 1993. For the past six years, he has been employed as the general manager with Avalon Laboratories with responsibility for up to 40 employees. He has re-married and between him and his wife, their blended family consists of six children.

[18] In August 2021, Mr. Ralph’s ex-wife’s recently separated partner died suddenly while she was enroute to Halifax to visit a friend and family. When Mr. Ralph received the news, he spoke with her and offered his condolences. Upon being told she wanted the children to go to Halifax to process the loss, Mr. Ralph advised that the children would not be travelling to Halifax under the circumstances. He advised her that he planned to take the week off work so that he could spend more time with the children and keep them active and busy until their mother returned home and could break the news to them. Despite the children being in Mr. Ralph’s care for the week, he offered to bring the children to her house so that she could tell them what happened and if they wanted, they could spend the night together.

[19] Mr. Ralph testified that he became aware, through a mutual friend, that there was unrest and erratic behaviour at the ex-wife's home upon her return to the province. He learned that she was planning to take the children to Halifax despite having communicated to her, his refusal to consent to their travel outside the province. Being unable to reach his ex-wife, Mr. Ralph contacted the Royal Newfoundland Constabulary ("RNC") to advise of his concerns with respect to removal of the children, his plans to file an application with the court and of the recent death in the family. The police advised him that they would conduct a wellness check at the ex-wife's home.

### **Sergeant Jason Nixon**

[20] Sergeant Nixon (Constable Nixon at the time of the event) was called as a witness at the trial. He testified that he had spoken with Mr. Ralph on August 26, 2021. Mr. Ralph told him that his ex-wife's partner had died suddenly, and that he was concerned with both her and their children's well-being. Mr. Ralph also reported that he had a court date for the following day (August 27, 2021) as he had concerns that his ex-wife was planning to leave the province with their two younger children.

[21] Sergeant Nixon attended the ex-wife's home at about 9:33 p.m. that evening and met with her and her father. He explained Mr. Ralph's concerns with her and the children's well-being because of the recent death along with Mr. Ralph's concern that she was planning to leave the province with the children, without his consent.

[22] Sergeant Nixon testified that the ex-wife was very upset, emotional and distraught by the death of her partner, and she told him that she had a close knit circle of support and disputed Mr. Ralph's claim that she was leaving the province. Upon satisfying himself that there were no immediate safety concerns, Sergeant Nixon went to speak with Mr. Ralph and concluded his file.

[23] Mr. Ralph testified that following the visit, Sergeant Nixon reported that he observed the children who were obviously upset and hurt, but safe and that the ex-wife confirmed she had no plans to leave the province.



[24] The following day, the ex-wife left with their son on a 5 a.m. flight to Halifax. Mr. Ralph obtained an Order from the Court that day, requiring the ex-wife to return to the province with [H] and prohibiting the removal of [P].

[25] Mr. Ralph attended his ex-wife's home on August 27, 2021, but not before contacting the RNC to advise that he planned to do so as he had a court order relating to the children. The police advised him not to approach the home until they arrived. He met a Constable Tibbo there who spoke with the ex-wife's father and confirmed that only [P] remained in the home.

[26] Mr. Ralph denies that he was removed from his ex-wife's home on August 27, 2021, by the RNC and further denies that Child Protection Services became involved as a result of the alleged incident at the home. Rather, he states that it was he who contacted the police before attending at his ex-wife's home and he who called Child Protection Services to report his concerns.

### **Ms. Molly Dillon, Social Worker, CSSD**

[27] Ms. Molly Dillon, a social worker with the Department of Children, Seniors and Social Development ("CSSD") was called to give evidence on behalf of Mr. Ralph. Ms. Dillon has worked with CSSD for five years, investigating and assisting families with ongoing child protection concerns. She was called to testify regarding her department's involvement with Mr. Ralph and his ex-wife.

[28] She testified that her first contact was with Mr. Ralph on August 26, 2021, following a screened in referral regarding an incident which was happening at the ex-wife's home between August 25-26, 2021.

[29] Upon speaking with Mr. Ralph, she was advised that the ex-wife was attempting to take the children to Nova Scotia, contrary to the parties' agreement. He reported that the children were having a difficult time because of the stepfather's sudden death. His main concern was to ensure that the children would be safe in

St. John's while dealing with the death of their stepfather as well as the threat of their removal.

[30] Ms. Dillon commenced her investigation on September 1, 2021, by interviewing the children and visiting the homes of Mr. Ralph and his ex-wife. Ms. Dillon advised Mr. Ralph that the children were safe with their mother and there were no concerns of potential harm or neglect.

[31] Ms. Dillon testified that there was no active child protection file against Mr. Ralph regarding his alleged treatment of his children and ex-wife. She stated that she, as the only social worker assigned to the file, had not told Mr. Ralph that the alleged abusive behaviour must stop. Ms. Dillon confirmed that there was no child protection file against Mr. Ralph prior to August 2021 nor one before October 2021.

[32] Ms. Dillon confirmed that there had been no complaints received by CSSD regarding the alleged abuse Mr. Burgess reported to Mr. Ralph's employer in his email of October 18, 2021.

### **Delivery of the Email and the Aftermath**

[33] On October 19, 2021, Mr. Ralph's employer called him to report he had received an email from Mr. Burgess. Mr. Antle forwarded the email to him and suggested Mr. Ralph speak with the company's legal counsel. The email he forwarded to Mr. Ralph was the email in question where Mr. Burgess made multiple allegations of physical and mental abuse by Mr. Ralph to his ex-wife and children.

[34] Mr. Ralph testified that the email was sent to Joanne Young at 4:50 p.m. on October 18, 2021, and forwarded by Mr. Antle to Mr. Ralph on October 19, 2021, at 9:07 a.m.

[35] Mr. Ralph printed the email and left to go to his car to read it. Mr. Ralph was devastated upon reading its contents and embarrassed that his boss had read the email as well.

[36] Mr. Ralph testified that because of the email to his employer, he became hypersensitive regarding his actions at work and experienced heightened sensitivity such that his social engagement changed.

[37] Mr. Ralph had discussions with his employer's in house legal counsel which led to a third person becoming aware of the defamatory contents of Mr. Burgess' email.

[38] At home, Mr. Ralph became more sensitive regarding the application of cream to his son and worried that something may be misconstrued and reported to his ex-wife. He felt he had been accused of behaving inappropriately with his son and stated that [H] had his own bathroom and complete privacy in his bedroom. Mr. Ralph stated further that he was always sensitive to the child's privacy when applying the cream to treat the eczema, particularly as he got older.

[39] Mr. Ralph recounted that he started to see a counsellor because he felt the dynamic and openness of his family had changed because of the allegations. He attended counselling for 18 months which he said helped him get his confidence as a parent back.

[40] Mr. Ralph said that these allegations still affect him and impact his decisions involving the degree or extent to which he will become involved in his children's sports.

**Mr. Carl Burgess**

[41] Excerpts from Mr. Burgess' discovery evidence (March 23, 2022) were entered into evidence, pursuant to the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D on account of his failure to attend trial.

[42] In his sworn discovery evidence, Mr. Burgess acknowledged drafting the email in question, dated October 18, 2021, addressed to Joanne Young with the subject line: "Re Regarding Craig Ralph, General Manager". Mr. Burgess testified that he contacted Avalon Laboratories Limited and asked for the owner's email. He was directed to send the email to Mr. Antle's assistant, who would forward the email to Mr. Antle.

[43] Mr. Burgess agreed that he sent the email to Mr. Ralph's employer to achieve a change in Mr. Ralph's behaviour using his employer's influence.

[44] Mr. Burgess acknowledged that he has never seen Mr. Ralph abuse his son or witness him physically abuse his daughter. Mr. Burgess stated that he overheard the son tell his mother that his father was rough when applying cream to his body and slapped him on the back of the head when he protested.

[45] Mr. Burgess recanted his allegation that Mr. Ralph physically abuses his daughter. He stated: "I might have misspoke when I wrote that but I never heard of [P] being hit by Mr. Ralph. ... I have never, so in my letter I mis, I might have misspoke about the children being abused. I should have said [H]". Mr. Burgess did not write or otherwise communicate with Mr. Antle to correct his statement with respect to this error.

**ISSUE 1 – Are the impugned statements defamatory?**

[46] In determining whether the words of the email of October 18, 2021, are defamatory, the natural and ordinary meaning of the words must be considered in the context of the email.

[47] Allegations of mental and physical abuse against children and ex-spouses are serious allegations and would have the effect of lowering the esteem of the alleged perpetrator in the eyes of reasonable right-thinking persons. These allegations have potential criminal consequences and would have the effect of maligning a person's character. I have no difficulty in finding that the impugned statements as to the allegations of physical and mental abuse in paragraphs (a) to (d) and (g) were defamatory.

[48] Similarly, veiled comments suggestive of sexual impropriety or immoral behaviour implied by the allegations in paragraph (f) relating to Mr. Ralph's alleged conduct with his son and claiming that he is under investigation by child protection services, would seriously undermine Mr. Ralph's character to any reasonable right-minded person.

[49] Finally, calling Mr. Ralph a liar in paragraph (h) clearly lowers the estimation of that person in the minds of right-thinking persons and is *prima facie* defamatory.

[50] Mr. Ralph claims that the email was designed, delivered and published to impugn Mr. Ralph's morals, character and integrity and to directly question and cast doubt on his competency as a father. He claims the words were deliberately used to advance the ex-wife's claim for a court order seeking to obtain full custody of their minor children.

[51] I find that the publication of the impugned statements contained in the email of October 18, 2021, were defamatory. I agree that the suggestion that Mr. Ralph is a liar, abuses his children, is emotionally abusive to an ex-spouse and is subject to

investigation by child protection services, seriously tarnishes Mr. Ralph's reputation. It has the effect of lowering the estimation of that individual in the eyes of right-thinking persons. Further, allegations that police intervention was required due to Mr. Ralph's alleged behaviour at the ex-wife's house and the innuendo of predatory or sexual actions towards his child suggests that Mr. Ralph is a bad parent at best or a sexual abuser at worst.

[52] The other required elements for establishing a claim in defamation being satisfied, that being acknowledgement that Mr. Burgess wrote and delivered the email to Mr. Ralph's employer, that it was received by at least one other person and clearly identified Mr. Ralph as the subject of the allegations, I find the case for defamation has been made out.

## **ISSUE 2- Does Mr. Burgess Have A Defence?**

### **The Defence of Carl Burgess**

[53] Mr. Burgess pleaded the truth of the allegations in his defence to this action. However, I find based on the evidence of Mr. Ralph, Ms. Dillon and Sergeant Nixon, that the allegations are in fact untrue.

[54] To establish his defence, the burden rests upon Mr. Burgess to prove the truth of his statements that are prima facie defamatory.

[55] With respect to the allegation (a) of mental abuse against the ex-wife, Mr. Burgess stated that the source of his knowledge was from the ex-wife herself in recounting various episodes over the years and seeing some of their email exchanges.

[56] As to allegations (b) and (c) regarding the alleged encounter between Mr. Ralph and his family members attending the ex-wife's house, Mr. Burgess stated that the ex-wife was the source, based on conversations she allegedly had with the police and her father. Mr. Burgess had no firsthand knowledge of these allegations but believed them to be true.

[57] As to allegation (d), Mr. Burgess stated that the ex-wife was the source of the allegations that RNC arranged for child protection authorities to become involved because of Mr. Ralph's encounter with the RNC described above in (c). Mr. Burgess stated he believed the allegations to be true based on the fact the ex-wife told him so.

[58] With respect to the allegation of an open child protection file and the alleged admonishment to Mr. Ralph to cease the behaviours against his ex-wife and children described in (g), Mr. Burgess again stated that his source of knowledge for this allegation was the ex-wife, which he believed to be true.

[59] Mr. Burgess stated that he did not do anything to confirm the veracity of the statements he wrote other than take the ex-wife's word for their accuracy.

[60] The evidence confirmed there was no open CSSD file against Mr. Ralph arising out of Mr. Burgess' allegations of abuse. Police and child protection services were not required regarding the alleged encounter at the ex-wife's home. No referrals to child protection authorities were ever made by Mr. Burgess or the ex-wife with respect to the alleged physical and emotional abuse.

[61] Mr. Burgess had no direct knowledge of the allegations he spoke of and admitted they were based almost entirely on statements made to him by the ex-wife.

[62] Mr. Burgess made no effort to independently verify the serious allegations made to him by the ex-wife (if in fact she said these things to him) before drafting his email to Mr. Ralph's employer. There was no basis for communicating these

allegations to the employer as they bore no relation to Mr. Ralph's employment. The email was written to embarrass Mr. Ralph in the hope that the employer's influence would bring about a change in Mr. Ralph's alleged behaviour.

[63] Having found that Mr. Burgess has not established the truth of the impugned statements, he has no valid defence to Mr. Ralph's claim in defamation. I turn now to the question of damages.

### ISSUE 3 - Damages

[64] The statute which applies in this matter is the *Defamation Act*, R.S.N.L. 1990, c. D-3. Section 3 provides that in an action for defamation, where defamation is proved, damages shall be presumed.

[65] The basis for an award of damages for defamation requires compensation to the plaintiff for the injury to his reputation and the hurt to his feelings. They operate to vindicate the plaintiff to the public and to console him for the wrong done. Special damages may also be awarded in the appropriate circumstances. General compensatory damages may be increased to reflect the defendant's motives or their conduct before or during the action. Lord Hailsham of St. Marylebone, *Halsbury's Laws of England*, vol 34, 4th ed. (London, UK: Buttersworth, 1980) at pp. 117-118.)

[66] The Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, at paragraph 185, identified the factors a court should take into consideration when awarding damages for defamation, referring to Philip Lewis, *Gatley on Libel and Slander*, 8th ed., (London: Sweet & Maxwell, 1981) at pp. 592-93. They include:

- i. the conduct of the plaintiff, his position and standing,
- ii. the nature of the libel,
- iii. the mode and extent of publication,



- iv. the absence or refusal of any retraction or apology,
- v. the conduct of the defendant from the time when the libel was published down to the very moment of the verdict.
- vi. the conduct of the defendant before action, after action, and in court at the trial of the action,
- vii. the fact that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused, and
- viii. taking into account the evidence led in aggravation or mitigation of the damages.

[67] An award of aggravated damages requires proof that the defendant was motivated by actual malice. The court must consider the defendant's conduct both before the publication and through to the conclusion of trial, (*Hill at paragraph 89*).

[68] The court may make a single award of damages taking into account all factors that would justify an appropriate level of damages, rather than make separate awards for general and aggravated damages. *Tremblay v. Campbell*, 2010 NLCA 62 at paragraph 45-47)

[69] Mr. Ralph claims the sum of \$150,000 in damages from Mr. Burgess. He claims that Mr. Burgess acted recklessly and maliciously in making the statements against him, particularly in relation to the implication of sexual abuse regarding his son.

[70] Mr. Ralph relies on the following cases:

- i. *Vanderkooy v. Vanderkooy*, 2013 ONSC 4796 where the sum of \$125,000 (\$157,954 adjusted for inflation) was awarded to the Plaintiff for defamatory allegations of child molestation involving his two young

nieces. Following the allegations, the Plaintiff was shunned by his family and had to face the allegations in public and his close-knit religious community.

- ii. *Austin v. Lynch*, 2016 BCSC 1344 where the sum of \$75,000 (\$91,067 adjusted for inflation) was awarded to the Plaintiff, a candidate running for MLA, who was accused of sexually abusing a foster child in his care. The allegation was made at a public debate. In considering *Vanderkooy*, the court noted that the defamation in *Lynch* did not occur in the context of a vendetta or longstanding dispute which removed it from the higher range of damages.
- iii. *Fiola v. LeBrun*, 2002 MBQB 312 where the Plaintiff who operated a foster care home for special needs children, was awarded damages in the amount of \$200,000 (\$314,055 adjusted for inflation) after a complaint was made alleging she was neglecting and abusing children in her care. The court noted that the damage to the Plaintiff's reputation in the community was significant and led to the loss of her livelihood. "The child care community is particularly sensitive to such allegations. Suspicions are hard to eradicate. Reputations are notoriously difficult to restore." (*Fiola* at paragraph 44)
- iv. *Simpson v. Ontario*, 2010 ONSC 2119, where the Plaintiffs were awarded \$250,000 in general damages (\$335,850 adjusted for inflation) following a report published by the Province, which alleged that the Plaintiffs, correctional officers at a youth detention facility, subjected the youth to excessive force and intimidation. The court found that the reputations of both correctional officers were badly damaged within their professional and personal communities.

[71] Mr. Ralph submits that the nature of the defamation in this case, involving malicious publication of allegations of physical and mental abuse of his children along with the specter of sexual impropriety and predatory action against his child and being called a liar, places this case at the higher end of the range of damages.

[72] He argues that the range for damages in this province for defamation claims do not involve the severity of the allegations as found in this case.

[73] A review of the decisions of this Court reveals a range of damages between \$7,000 and \$45,000,000 (roughly \$9,830 - \$188,287 adjusted for inflation). The following is a sampling of damage awards made in this jurisdiction:

- i. *Tremblay v. Campbell*, 2010 NLCA 62 where \$7,000 (\$9830 adjusted for inflation) was awarded in general damages) as a result of a letter circulated primarily among unit owners and residents of a condominium complex in St. John's, by Campbell which criticized Tremblay writing that he was: "dumb or deceitful, belittling lying criminal; telling half truths, which in the context are fake and misleading; and trying to rob the people around you".
- ii. *Andrews v. Fagan*, 2011 NLCA 15 where \$10,000 general damages and \$5,000 aggravated damages (total award adjusted for inflation \$13,734)) was awarded where the allegations against Andrews involved writing her employer describing her as an unprofessional and unethical liar. The court noted that while the publication created anxiety for the Plaintiff as the letter would remain in her personnel file, communication was restricted to the Dean of Science and University counsel only. Aggravated damages were awarded in the amount of \$5,000 to recognize that the Defendant's statement was made deliberately and maliciously and to inflict a greater professional humiliation on the Plaintiff. The court also considered that the Defendant's actions were "borne [sic] out of malice and spite and that he chose to send the offending letter to her employer when the issue and dispute had nothing to do with her employment."
- iii. *Peckham v. Mount Pearl (City)* (1994), 122 Nfld. & P.I.E.R. 142, 379 A.P.R. 142 (Nfld. (S.C.(T.D.)) (\$12,000 - \$22,320 adjusted for inflation) where the court awarded \$12,000 to a civil servant after a counsellor alleged the Plaintiff deliberately lied to a Minister and the

Premier. The court noted that to publicly call a person a liar was one of the most serious allegations one can make against another person.

- iv. *Farrell v. Cdn. Broadcasting Corp.* (1987), 66 Nfld. & P.E.I.R. 145, 204 A.P.R. 145 (Nfld. C.A.) (\$45,000 - \$188,287 adjusted for inflation) The defendant, on its radio and television outlets, reported that the plaintiff, a medical doctor and provincial cabinet minister, had deliberately set a fire in his apartment. The charges against the plaintiff were eventually dismissed at the preliminary inquiry stage. The Court of Appeal reduced the award of damages for defamation from \$80,000 to \$45,000 noting: “The offensive statements were published over a five day period up to October 5, 1978. Dr. Farrell was charged with arson on October 20, 1978. He was discharged on December 18, 1978 and certainly, if not by that date, then by the time Judge LeClair filed his written reasons for the discharge, Dr. Farrell would have been seen to be vindicated. If any odour of suspicion hung to Dr. Farrell after that time, there is no evidence that it caused any further damage to him.”

[74] None of these cases involve a fact scenario which is analogous with the case at bar. *Andrews* is the closest, in that it involved a letter to an employer maligning the plaintiff’s character with limited distribution.

[75] I find that the cases relied on by Mr. Ralph involve much more serious allegations than the case at bar, both from the allegations of sexual abuse and neglect and the wide dissemination of the defamatory statements therein.

[76] I find the decision involving allegations of sexual impropriety and abuse of a child referred to in *Seymour v. Nole*, 2022 BCSC 867 to be helpful in determining an appropriate level of damages.

[77] In *Seymour*, a case where unfounded claims of sexual impropriety by a teacher against a student, resulted in the plaintiff seeking damages for defamation. The defendant was the mother of a student who had accused the plaintiff of taking

advantage of her son. The court found that the student had engaged in sexual intercourse with the plaintiff while she was severely intoxicated and unable to consent. The defendant uttered the words in the presence of several people as well as writing to the school board - the plaintiff's employer, alleging that the plaintiff was acting unprofessionally in being intoxicated and pursuing young men and underage kids sexually. The allegations were investigated by the school board, and the plaintiff cleared of any wrongdoing.

[78] The plaintiff did not lose her employment due to the defamatory statements made by the defendant, however the court was satisfied that they negatively impacted the plaintiff's personal and professional standing in the community. She testified that she was the subject of gossip and denigration in her community. The Court found that publication of the statements to a small group of people, while inexcusable, mitigated against a large damages award and ordered general damages in the amount of \$30,000 together with \$20,000 in aggravated damages for a total award of \$50,000 (\$56,451 adjusted for inflation).

[79] In arriving at an appropriate damage award, I considered the factors outlined in *Hill*. I note the limited publication of the defamatory statements against Mr. Ralph. The email was sent to at most two persons within Mr. Ralph's employer. A third person, legal counsel for the employer, may have subsequently become aware. There was no widespread communication as in *Vanderkooy* where the plaintiff was shunned by his family and suffered loss of esteem with the public and his religious community. Likewise, there was no loss of livelihood, which attracted higher damages, as in *Fiola*.

[80] The nature of the allegations made by Mr. Burgess against Mr. Ralph to his employer are serious and would certainly diminish the esteem in which the employer would hold for him. Mr. Ralph's boss did not testify as to the impact, if any, the allegations in the email had on his regard for Mr. Ralph. However, Mr. Ralph testified that he did not suffer any consequences with his employment as a result of the email.

[81] Mr. Ralph described requiring counselling for 18 months to address the distress and hypersensitivity he experienced because of the defamatory actions of Mr. Burgess.

[82] I considered Mr. Burgess' conduct following the sending of his email. The evidence reveals that he began his course of action on October 15, 2021, when he approached Mr. Ralph at the arena where Mr. Ralph's daughter was playing hockey. At that time, he threatened Mr. Ralph with reporting his alleged behaviour to the employer unless he changed his behaviour. Just three days later, Mr. Burgess wrote and sent the email to Mr. Antle with no further communication with Mr. Ralph.

[83] He failed to retract the contents of the entire email or even the statement he admitted was wrong. There was no apology offered to Mr. Ralph. I find that the email was sent to the employer out of malice and to embarrass Mr. Ralph as there was no reason for the employer needing to be "made aware" of Mr. Burgess' concerns. Mr. Burgess was reckless in making serious allegations without personal firsthand knowledge of same or attempting to verify its accuracy before delivery of his email.

[84] Mr. Burgess was represented by legal counsel in this matter until May 2024, when an order was granted at his counsel's request to be removed as counsel of record. Subsequently, Mr. Burgess failed to respond to communication from Mr. Ralph's counsel or participate in several case management hearings leading up to trial. Finally, Mr. Burgess did not participate in the trial to defend his actions.

[85] Having considered the foregoing, I find that given the nature of the allegations and the limited distribution, the defamation in this case does not warrant the extent of damages sought by Mr. Ralph. Mr. Ralph emphasized the implied sexual or immoral conduct alleged which, while serious, falls well short of an accusation of sexual abuse leading to criminal charges, a trial and widespread dissemination in the community.

[86] I am satisfied that the appropriate level of damages would be higher than in the *Andrews* case given the nature of the allegations and the conduct of the Defendant but lower than in *Farrell*, given the public nature of Farrell's position and the wide publication over several days by newspaper, television and radio media. I find the allegations in *Seymour* to be more serious and the publication to be wider than the case at bar.

[87] This approach is consistent with the principled basis expressed by Goodridge C.J.N. in *Farrell*, where he wrote at paragraphs 17 and 18:

Damage awards should reflect the economic loss of the plaintiff to the extent that it is capable of calculation and the damages at large. There is no way to assess the damages at large by reference to the parties and the libel only. There must be reference to and comparison with other decided cases. The circumstances of a case under consideration may be assessed as more serious than one, less so than another, and thereby a figure will be indicated. Dollar amounts in earlier cases should be restated in current values for true comparisons.

The goal is predictability. Widespread inconsistencies create uncertainties.

[emphasis added]

[88] Having regard to all of the circumstances, I am satisfied that a global award which is inclusive of aggravated damages, in the amount of \$45,000 damages is appropriate.

[89] As the successful party, Mr. Ralph is entitled to his costs calculated pursuant to Column 3 of Rule 55 of the *Rules*.

[90] Judgment is entered for the Plaintiff as follows:

- i. Damages of \$45,000

ii. Costs pursuant to Column 3 of Rule 55 of the *Rules*.

[91] Order accordingly.

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**IRENE S. MUZYCHKA**  
Justice