

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Simpson v. Rebel News Network Ltd.*,  
2022 BCSC 1160

Date: 20220712  
Docket: S208950  
Registry: Vancouver

Between:

**Jessica Simpson**

Plaintiff

And

**Rebel News Network Ltd.**

Defendant

Before: The Honourable Mr. Justice Milman

## Reasons for Judgment

The Plaintiff, appearing in person:	J. Simpson
Counsel for the Defendant:	D.H. Coles N. Shirazian
Place and Date of Hearing:	Vancouver, B.C. May 20, 2022
Place and Date of Judgment:	Vancouver, B.C. July 12, 2022

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## **V. SUMMARY AND DISPOSITION**

### **I. Introduction**

[1] The plaintiff, Jessica Simpson, has brought this action against the defendant, Rebel News Network Ltd. ("Rebel News"), seeking an injunction, damages and other relief to address what she alleges to be Rebel News' harassment and defamatory publications about her on YouTube, its webpage and on various social media platforms.

[2] Rebel News applies to have Ms. Simpson's claim dismissed under s. 4 of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [PPPA]. It argues that this action is really "strategic litigation against public participation", or a "SLAPP" suit, inasmuch as the claim is without merit and was brought in an improper effort to silence legitimate reporting and commentary on a matter of public interest.

[3] For the reasons that follow, I have concluded that the application should be allowed.

### **II. Factual Background**

#### **A. Ms. Simpson's Public Persona and Litigation History**

[4] Ms. Simpson identifies on social media, and in this action, as a transgender and disabled woman. She has been active for many years on Twitter (with approximately 126,400 followers), Instagram (with approximately 31,500 followers), Facebook and other online platforms. In other legal proceedings, she has described herself as "an LGBTQ activist who deals with LGBTQ rights issues on a global scale [and thereby] has gained significant notoriety online."

[5] The tone of her online rhetoric is often highly combative. She has been critical of individuals, businesses, governments and other organizations for perceived wrongs against her and will often publicly announce or threaten the commencement of legal proceedings. Often, she follows through on those threats. She has been a prolific litigant before this Court, the Provincial Court and the British Columbia Human Rights Tribunal (“HRT”), using her current name, her previous one, “Jessica Yaniv”, or her birth name, “Jonathan Yaniv”.

[6] The following are some examples:

- a) a small claims action commenced by Jessica Yaniv in Provincial Court on March 17, 2020 against another individual for addressing the claimant using male pronouns and her birth name of “Jonathan”, seeking \$15,000 in damages and other relief;
- b) a small claims action commenced by Jessica Yaniv in Provincial Court on March 17, 2020 against another individual alleging harassment and uttering threats, and seeking \$35,000 in damages and other relief;
- c) a small claims action commenced by Jessica Simpson in Provincial Court on August 26, 2020 against the Township of Langley and the Langley RCMP seeking \$35,000 in damages for the following wrongs, among others:
  - i. a failure to respond properly to her 911 calls;
  - ii. addressing her following her arrest using male pronouns and her birth name; and
  - iii. a failure to accede to her demand that she be strip-searched only by female rather than male police officers.
- d) a small claims action commenced by Jessica Simpson in Provincial Court on January 18, 2021, alleging an unlawful release of her personal health information by employees of the Fraser Health Authority, seeking \$35,000 in damages and other relief;

- e) a small claims action commenced by Jessica Simpson in Provincial Court on March 23, 2021 against her strata corporation alleging various discriminatory acts, including, among other things:
  - i. a refusal to allow her the use of one of the two disabled parking stalls in the building; and
  - ii. requiring her to remove a rainbow flag from her balcony; and
- f) an action commenced by Jessica Simpson in this Court on May 20, 2021 against “the Attorney General of Canada and the Ministry of Justice of British Columbia” and two RCMP officers, alleging various wrongful acts committed by the police officers against her mother and another relative.

[7] Ms. Simpson has also been very active in advancing complaints before the HRT.

[8] In early 2018, she filed a complaint against a hair salon alleging that it had improperly refused to serve her because of her gender. By order made on January 31, 2019, the HRT permitted her to advance the complaint on an anonymized basis: *X v. Hot Mess Salon*, 2019 BCHRT 24. Following a hearing attended only by her (the respondent salon having since gone out of business for other reasons), the HRT ultimately dismissed the complaint for failure to show that Ms. Simpson had actually been denied any service: *X v. Hot Mess Salon (No. 2)*, 2020 BCHRT 42.

[9] Within a four-month period in early 2018, Ms. Simpson, then using the name “Jessica Yaniv”, filed 13 complaints before the HRT against various body waxing salons. Her central allegation in each was that she had wrongfully been denied body waxing services because she was transgender. In some instances, she had asked for a “Brazilian wax”, which, in her case, would have required the service provider to remove hair from the scrotum.

[10] Initially, the HRT allowed Ms. Simpson’s application for permission to advance the complaints anonymously: *J.Y. v. Various Waxing Salons*, 2019 BCHRT 106. After it emerged that she had been commenting publicly online about the proceedings, however, the HRT reversed that decision: *Yaniv v. Various*

*Waxing Salons*, 2019 BCHRT 147. Thereafter, her name appeared in all published decisions.

[11] Following separate hearings of seven of the complaints in July 2019, the HRT member, in a decision released on October 22, 2019, dismissed all seven and awarded costs to the respondents: *Yaniv v. Various Waxing Salons (No. 2)*, 2019 BCHRT 222. I will refer to this as the “Waxing Decision.”

[12] The HRT member dismissed the five complaints involving genital waxing on the grounds that the service providers did not customarily provide the service requested (namely, waxing of the scrotum). With respect to the remaining complaints, involving a refusal to wax Ms. Simpson’s arms and legs, the HRT member would have found at least one of them to be meritorious but nevertheless dismissed all of them too, on the grounds that all of the complaints were found to have been brought in bad faith and for an improper purpose. In particular:

[134] ... Ms. Yaniv’s overriding purpose was to manufacture the conditions for human rights complaints against unsophisticated and vulnerable respondents, in order to secure a financial settlement and punish individuals involved. In a majority of her cases, she also had the added motivation of punishing racialized and immigrant women whom she stereotypes as hostile to the interests of the LGBTQ+ community. ...

[13] That conclusion was based on the HRT member’s findings that Ms. Simpson:

- a) had initiated a large number of similar complaints, all of which involved respondents with racialized profiles;
- b) used deception to manufacture some of the complaints;
- c) was seeking to punish the respondents;
- d) was seeking to resolve all of the complaints for a financial settlement and displayed a pattern of withdrawing complaints in the face of opposition; and
- e) had displayed an animus against certain racial, religious, and cultural groups.

[14] The HRT member noted that in many cases, Ms. Simpson had attempted to deceive the service providers, many of whom worked from their private homes or in the homes of their clients, into booking appointments under false pretenses. After initially approaching them using the name “Jonathan” and being refused, she would attempt again to secure an appointment using the name “Jessica” and presenting a false profile with a photograph of someone else.

[15] The HRT member made the following findings with respect to Ms. Simpson’s racial animus against the respondents:

[126] Ms. Yaniv has expressed some of her racial animosity through her Twitter account. For example, in one tweet, she promised to “expose” the “bigotry” of Indian women who would not serve her. In another, she said that the “problem” is “people who come here with hateful views using their religion as a shield to spew hatred and refuse service on ‘religious grounds’”. She has expressed distress at “putting my health in the hands of people who don’t understand freaking English” and incredulity that everyone in her city speaks “JUST Punjabi, even though the official languages are English and French”. She suggested that immigration officers should conduct identification checks in Surrey. And finally, in her most explicitly anti-immigrant tweet, Ms. Yaniv wrote:

We have a lot of immigrants here who gawk and judge and aren't exactly the cleanest people. They're also verbally and physically abusive, that's one main reason why I joined a girls gym, cause I DON'T want issues with these people, nor do I want anything to do with them in anyway, shape or form. They lie about shit, they'll do anything to support their own kind and make things miserable for everyone else.

Those immigrant women don't join these clubs cause they have to be in gym clothes, so because they're not there and never will be, it's a "Safe place for me. [as written]

[16] At least one of the respondents was said to have gone out of business as a result of her interaction with Ms. Simpson.

[17] Finally, the HRT member found that an award of costs against Ms. Simpson was justified on the basis that she had:

- a) filed her complaints for an improper purpose;
- b) gave evidence calculated to mislead the HRT about the need for a publication ban;
- c) gave untruthful evidence at the hearings on the merits;

- d) engaged in "extortionate" behaviour; and
- e) made false and unfounded allegations against the respondents' counsel.

[18] Ms. Simpson's applications for a reconsideration of the Waxing Decision were dismissed.

[19] While the HRT proceedings were underway, Ms. Simpson continued to comment publicly about them on social media. In July 2019, she was interviewed about the case on a podcast called "Pulling the Trigger". The interview is posted on YouTube and has apparently been viewed almost 50,000 times.

[20] On August 5, 2019, Ms. Simpson participated from her home in an online interview with Blaire White, a widely-followed commentator on issues of interest to the transgender community, based in California. That interview appears to have been viewed over 2,650,000 times on YouTube. During the interview, Ms. White was highly critical of Ms. Simpson, referring to her repeatedly as a "predator" and a "monster," on the basis that she had, among other things:

- a) victimised women who provided waxing services;
- b) engaged in sexually explicit conversations online with young girls;
- c) walked into a female washroom dressed as a male and taken pictures of herself with young girls in the background; and
- d) promoted or participated in a topless pool party with young girls.

[21] At one point during the exchange, Ms. Simpson showed Ms. White a conducted electrical weapon, noting that it was illegal in Canada to have such a device in one's possession. Later that day, the police attended at Ms. Simpson's home and seized two conducted electrical weapons, a canister of pepper spray and a canister of red pepper gel.

[22] On November 29, 2019, an information was sworn charging Ms. Simpson (identified as "Jessica Jonathan Yaniv") with two counts of possessing a conducted electrical weapon without a license. On March 16, 2020, Ms. Simpson was convicted in Surrey Provincial Court on one of those counts and received a

conditional discharge, including a one-year period of probation. The following three items were forfeited by order made April 6, 2021:

- a) Taser, black, Damsel in Defence CEW Device;
- b) Taser, black, Damsel in Defence CEW “Camera”; and
- c) Sabre pepper spray and Sabre red pepper gel.

### **B. Rebel News and its Coverage of Ms. Simpson**

[23] The HRT proceedings attracted widespread public attention, with extensive coverage and commentary appearing in various online and print news media, both nationally and even internationally. Much of that coverage was highly critical of Ms. Simpson, her complaints and, at least before they were dismissed, the HRT for entertaining them.

[24] Few of those critics were more outspoken than Rebel News. Rebel News was founded in 2015 by its principal, Ezra Levant. Mr. Levant has deposed that Rebel News is an independent news media outlet, with its head office in Toronto. According to Mr. Levant, Rebel News reports on current events, focusing on topics of free speech, liberty, and constitutional freedoms. Its mission, he says, is to “tell the other side of the story” in a manner distinct from the mainstream media.

[25] Rebel News and Mr. Levant have courted considerable public controversy themselves, often resorting to litigation. They are no strangers to defamation suits or anti-SLAPP applications. Recently, in *Levant v. DeMelle*, 2022 ONCA 79, Nordheimer J.A., writing for the Court, awarded full indemnity costs against them for having brought what were found to be two SLAPP suits. The result rested partly on the following grounds, set out at para. 83:

... There is a history of the appellants using litigation to silence critics. Indeed, Mr. Levant has publicly proclaimed that commencing such lawsuits is part of a deliberate campaign, which he calls his “stop de-platforming strategy”. Other aspects of his public statements also make it clear that there is a retributory purpose to bringing these claims. These lawsuits are clearly designed to make critics think twice about expressing their criticisms of the appellants for fear of being sued.

[26] Rebel News first became interested in Ms. Simpson in the summer of 2019, when it began reporting about the waxing complaints. Initially, the theme of its

coverage and commentary focused on the perceived shortcomings of the HRT and its process. It was not long, however, before the focus shifted to Ms. Simpson herself.

[27] In the 15 YouTube video segments in issue in this action, five different Rebel News reporters provide a series of updates on what they refer to as the “Jonathan Yaniv” story. They repeatedly refer to her in highly disparaging terms and with male pronouns.

[28] They assert, among other things, that Ms. Simpson preys on young girls and immigrant aestheticians. They say that she is really a man pretending to be a woman so that she can gain access to female washrooms and change rooms. In many of the segments in issue, the reporters replay a video clip showing her being mechanically hoisted into a minibus for the disabled while seated in a mobility scooter. The reporters assert that she is not really disabled and purport to demonstrate that fact with another clip in which she is shown running a short distance without assistance or wielding a cane against a Rebel News reporter.

[29] A succession of Rebel News reporters followed Ms. Simpson to her various court appearances, to her home and to a hotel in Toronto where she was staying when she traveled there. While doing so, they put inflammatory questions to her, such as:

- a) Why do you send sexually explicit messages to young girls?
- b) are you faking being disabled as much as you are faking being a woman;
- c) were you sexually molested as a child;
- d) why do you go after immigrant women; and
- e) are you still stalking minors?

[30] As Rebel News’ coverage of Ms. Simpson evolved, the focus shifted again, this time to Ms. Simpson’s and her mother’s interactions, sometimes violent, with the Rebel News reporters themselves. In many of the segments, the reporters replayed video clips showing Ms. Simpson or her mother assaulting the reporters.

[31] On February 4, 2020, two of the reporters, Kean Bexte and David Menzies, commenced a small claims action against Ms. Simpson in Provincial Court seeking damages for assault and battery. Ms. Simpson responded with a counterclaim in which she raises many of the same allegations that are advanced in this action. On July 9, 2020, a criminal information was sworn charging Ms. Simpson (under the name “Jessica Yaniv”) with an assault on Mr. Bexte.

### **C. This Action**

[32] Ms. Simpson commenced this action on April 23, 2021. In her notice of civil claim (“NOCC”) she pleads, among other things, that she:

- a) is involved in “LGBTQ2SIA and human rights activism”; and
- b) had, until Rebel News began reporting about her, a “valued and unblemished reputation in the Province of British Columbia and elsewhere in Canada and throughout the world”.

[33] The NOCC alleges that, beginning in June 2019, Rebel News targeted her and “vilified [her] for their own monetary purposes in relation to her human rights complaints...” The NOCC also alleges that Rebel News harassed her by refusing her request to stop contacting her.

[34] The defamatory publications are said to have included a series of statements that are listed in an appended schedule, and defined collectively as the “Content.” The schedule lists 15 YouTube video clips published by Rebel News on YouTube between August 15, 2019 and September 7, 2020, along with the defamatory statements said to have been made in each of them.

[35] Those statements are alleged in the body of the NOCC to convey the false and defamatory message that Ms. Simpson:

- a) is a “disability faker”;
- b) is a “terrorist”;
- c) enables or supports terrorists;
- d) is not transgender;

- e) is not a woman;
- f) is a sex offender;
- g) enables or supports sex offenders;
- h) is a public menace;
- i) was in possession of a firearm;
- j) enables or supports those who illegally possess firearms;
- k) was in possession of a TASER;
- l) preys upon individuals;
- m) enables or supports those who prey on individuals;
- n) does not shave her genitals;
- o) is a con-man;
- p) commits fraud or participated in fraudulent activities;
- q) enables or supports those who commit fraud;
- r) is a “man, pretending to be a woman”;
- s) is a “gender-bender”;
- t) is a pedophile;
- u) enables or supports pedophiles;
- v) abuses children;
- w) abuses or supports the abuse of children;
- x) is involved in an incestual relationship with her mother;
- y) enables or supports those who commit incest;

- z) was sexually molested as a child;
- aa) enables or supports child molestation;
- bb) is transgender to “look at naked teenagers”;
- cc) goes after immigrant women;
- dd) enables or supports harassment against immigrants;
- ee) bullies people;
- ff) enables or supports bullying;
- gg) scams individuals;
- hh) enables or supports scams or defrauding people; and
- ii) flew to Toronto to meet a minor.

[36] The following harm is alleged to flow from Rebel News’ conduct:

The Content was posted maliciously, with strict intention to harm the Plaintiff, damage her reputation, or provoke concern for the safety of the Plaintiff and her family members. Rebel News's failure to remove the Content and prevent the ongoing and continued publication of defamatory and harassing statements, and cease their harassment towards the Plaintiff is outrageous, and has resulted in significant emotional distress, anxiety, depression, suicidal ideation for the Plaintiff and her family.

[37] The relief sought includes, among other things, a claim for damages and an injunction to prohibit further publication of the Content.

[38] In its response to the claim, Rebel News pleads that:

- a) the defamation cause of action is inadequately particularised;
- b) the NOCC fails to connect the statements listed in the schedule to the defamatory meanings alleged in the body of the NOCC; and
- c) some of the words listed in the schedule were not in fact published;

[39] In addition, Rebel News pleads the following defences in response to the claim:

- a) fair comment;
- b) qualified privilege and reportage;
- c) justification (truth); and
- d) responsible communication.

### **III. The Legal Framework**

[40] Section 4 of the *PPPA* states 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.

[41] The leading case on the interpretation and application of that provision is *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes*], which considered similar legislation enacted in Ontario. Justice Côté, writing for the Court, described the purpose of such legislation as being “to screen out lawsuits that unduly limit expression on matters of public interest through identification and pre-trial dismissal of such actions” (*Pointes*, at para. 16).

[42] At the first branch of the test, Rebel News must demonstrate on a balance of probabilities that this action arises from expression that “relates to a matter of public interest” (*Pointes*, at para. 23). If it does, then the action must be dismissed unless Ms. Simpson demonstrates on the remaining branches of the test that:

- a) there are grounds to believe that:
  - i. the action has substantial merit;
  - ii. Rebel News has no valid defence; and
- b) the harm that Ms. Simpson is likely to have suffered, or to suffer in the future, as a result of Rebel News’ expression is serious enough to outweigh the public interest in protecting Rebel News’ expression.

#### **IV. Discussion**

##### **A. Has Rebel News demonstrated that this action arises from expression relating to a matter of public interest?**

[43] In *Pointes*, the Court emphasised the need for the applicant to show a causal connection between the expression and the litigation. The nature of that connection must be construed in a “broad and liberal” manner, having regard to the objectives of the legislation (at paras. 24-30). On the other hand, not every connection, no matter how tenuous, will suffice. Justice Côté noted that expression that merely “makes reference” to a matter of public interest, or to a matter about which the public is “merely curious”, falls short of the mark (at para. 29).

[44] The factors to be considered in determining whether a matter is truly one “of public interest” were said to be similar to those set out in *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640 [*Torstar*]. There, McLachlin C.J., writing for the majority, offered the following guidance on the topic:

[102] How is “public interest” in the subject matter established? First, and most fundamentally, the public interest is not synonymous with what interests the public. The public’s appetite for information on a given subject — say, the private lives of well-known people — is not on its own sufficient to render an essentially private matter public for the purposes of defamation law. An individual’s reasonable expectation of privacy must be respected in this determination. Conversely, the fact that much of the public would be less than riveted by a given subject matter does not remove the subject from the public interest. It is enough that some segment of the

community would have a genuine interest in receiving information on the subject.

[103] The authorities offer no single “test” for public interest, nor a static list of topics falling within the public interest (see, e.g., *Gatley on Libel and Slander* (11th ed. 2008), at p. 530). Guidance, however, may be found in the cases on fair comment and s. 2(b) of the *Charter*.

[104] In *London Artists, Ltd. v. Littler*, [1969] 2 All E.R. 193 (C.A.), speaking of the defence of fair comment, Lord Denning, M.R., described public interest broadly in terms of matters that may legitimately concern or interest people:

There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment. [p. 198]

[105] To be of public interest, the subject matter “must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached”: *Brown*, vol. 2, at pp. 15-137 and 15-138. The case law on fair comment “is replete with successful fair comment defences on matters ranging from politics to restaurant and book reviews”: *Simpson v. Mair*, 2004 BCSC 754, 31 B.C.L.R. (4th) 285, at para. 63, per Koenigsberg J. Public interest may be a function of the prominence of the person referred to in the communication, but mere curiosity or prurient interest is not enough. Some segment of the public must have a genuine stake in knowing about the matter published.

[106] Public interest is not confined to publications on government and political matters, as it is in Australia and New Zealand. Nor is it necessary that the plaintiff be a “public figure”, as in the American jurisprudence since *Sullivan*. Both qualifications cast the public interest too narrowly. 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.

[107] Care must be taken by the judge making this determination to characterize the subject matter accurately. Overly narrow characterization may inappropriately defeat the defence at the outset. ...

[45] In deciding whether an expression relates to a matter of public interest, the court should not attempt to assess the value of the impugned expression. It is not legally relevant whether it is desirable or deleterious, valuable or vexatious, or whether it helps or hampers the public interest. Those considerations are to be weighed instead at the final stage of the analysis under s. 4(2)(b).

[46] I am satisfied that this action arises from “expression”. The subject matter of Ms. Simpson’s complaint consists of the statements made by the reporters in the 15 YouTube video clips that are identified in the schedule to the NOCC. Even that aspect of the claim alleging that the Rebel News reporters were improperly “harassing” her is said to arise from their behaviour in asking questions of her and refusing to stop when asked, all of which can fairly be said to fall under the rubric of “expression”, broadly defined.

[47] It is less clear to me, however, that all of the statements in issue can fairly be said to relate to a matter of public interest, however generously that concept might be understood. I accept that Rebel News’ coverage and commentary on the waxing complaints and other litigation involving Ms. Simpson fits within that broad category. However, some of the impugned statements have nothing to do with those things, but focus instead on Ms. Simpson’s character and unrelated life history. As counsel for Rebel News conceded during the hearing, not everything that has occurred in Ms. Simpson’s life is necessarily a matter of public interest. It is difficult to see, for example, what interest the public could genuinely have in knowing if Ms. Simpson had been molested as a child.

[48] That being said, the essential thrust of the claim appears to be directed at those statements that are alleged to have harmed Ms. Simpson’s reputation. In particular, the defamatory “sting” referred to in the NOCC appears to flow from the statements of Rebel News reporters suggesting that she:

- a) preys on vulnerable immigrant women;
- b) is deceitful, in that she:
  - i. is only pretending to be a woman for voyeuristic reasons;
  - ii. is only pretending to be disabled so she can avail herself of assisted public transit;
- c) is a pedophile who stalks children and communicates with them in sexually explicit terms; and
- d) is a violent criminal who has been, and should continue to be, incarcerated.

[49] I am satisfied that some members of the public would have a genuine interest in knowing about those things, if true, inasmuch as they can fairly be said to “affect the welfare of citizens”. In addition, Ms. Simpson has deliberately courted public notoriety and controversy through her online activism and otherwise. It follows that her public conduct can fairly be said to be matters “to which considerable public notoriety or controversy has attached.”

[50] In that sense, the circumstances of this case bear some resemblance to those in *Durkin v. Marlan*, 2022 BCSC 193. There, the plaintiff, a prominent businessman who had recently acquired a landmark hotel, was found in separate court proceedings to have engaged in theft and other dishonest acts. Justice Thompson had no difficulty in finding that the defendant’s news reporting about those things qualified as expression relating to a matter of public interest for the purpose of the *PPPA*.

[51] In summary, I have concluded that Rebel News has met its burden to show that this action arises from expression relating to a matter of public interest.

**B. Has Ms. Simpson shown grounds to believe that the claim has substantial merit?**

[52] The second stage of the test presents a “merits-based hurdle” for Ms. Simpson to meet. This is not a final adjudication on the merits but an assessment of the likelihood of a successful claim (*Pointes*, at para. 37). To meet its burden here, Ms. Simpson must show “a basis in the record and the law – taking into account the stage of litigation at which a [*PPPA*] motion is brought – for finding that the underlying proceeding has substantial merit and that there is no valid defence” (*Pointes*, at para. 39).

[53] As summarised in *Pointes*, at para. 54, Ms. Simpson must show:

[54] ... that there are grounds to believe that its underlying claim is 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.

[54] With that test in mind, I will address the two causes of action that appear to be advanced in the NOCC, namely, “harassment” and “defamation.”

[55] Ms. Simpson has not met her burden to show grounds to believe that she is advancing a viable claim for harassment. It has repeatedly been held that there is

no such tort in Canadian law: *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473; *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289; *C.D. v. Mostowy*, 2021 BCSC 1919; *Pinkerton v. Victoria Saanich Canadian Dressage Owners and Riders Society*, 2020 BCSC 1838; *Stein v. Waddell*, 2020 BCSC 253.

[56] What remains is the tort of defamation. The elements of that tort were conveniently summarised by McLachlin C.J. in *Torstar*, as follows (at para. 28):

- a) 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;
- b) the words in fact referred to the plaintiff; and
- c) the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[57] If these elements are established on a balance of probabilities, the falsity of the impugned statements and damage to the plaintiff are presumed.

[58] Rebel News argues that Ms. Simpson's defamation claim is untenable insofar as it suffers from a number of pleading defects, as set out in Rebel News' response to the NOCC. Although I accept that Ms. Simpson's pleadings may indeed be problematic in various respects, I am satisfied that many of the statements made by the Rebel News reporters in the 15 YouTube video clips in issue convey at least some of the defamatory meanings enumerated in the NOCC, and therefore that Ms. Simpson has met her burden on this branch of the test.

**C. Has Ms. Simpson shown grounds to believe that none of Rebel News' defences to the defamation claim are likely to succeed?**

[59] Rebel News argues that this application should be allowed because Ms. Simpson has not shown grounds to believe that its pleaded defences to the defamation claim are unlikely to succeed. In particular, it says that those defences are a complete answer to the claim, primarily because the impugned statements were either substantially true or fair comment.

[60] In that regard, Rebel News says this case is similar to *WIC Radio Ltd. v. Simpson*, 2008 SCC 40. In that case, the Supreme Court of Canada had occasion

to consider the nature and scope of the “fair comment” defence. Justice Binnie, writing for the majority, held that to qualify as “fair comment” for this purpose, the statement in issue:

- a) must be on a matter of public interest;
- b) must be based on fact;
- c) must be recognisable as comment;
- d) must be one that a person could honestly make on the proved facts; and
- e) must not have been actuated by malice.

[61] The same test was more recently summarised by Adair J. in *Galloway v. A.B.*, 2021 BCSC 2344, as follows:

[359] A properly disclosed or sufficiently indicated (or so notorious as to be already understood by the audience) factual foundation is an important objective limit to the fair comment defence: *WIC*, at para. 34. The facts must be sufficiently stated or otherwise known to readers so that they are able to make up their own minds on the merits of the comments and opinions expressed: *Neufeld*, at para. 28. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available: *WIC*, at para. 31. On the other hand, a single fact, proved to be substantially true, can provide a sufficient foundation for a fair comment defence: see *Simpson v. Mair and WIC Radio Ltd.*, 2004 BCSC 754, at paras. 56-60.

[62] In *Neufeld v. Hansman*, 2021 BCCA 222, the Court of Appeal reiterated that to demonstrate malice, the plaintiff must show that the defendant published the statement:

- a) knowing it to be false;
- b) with reckless indifference as to whether it was true or false;
- c) for the dominant purpose of injuring the plaintiff because of spite or animosity; or
- d) for some other dominant purpose which is improper or indirect.

[63] I have already found that the impugned statements were made on a matter of public interest. Most are recognisable as comment, in the sense that they can fairly be described as a “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof” (*WIC Radio*, at para. 26).

[64] On this branch of the test, Ms. Simpson carries the burden to show grounds to believe that Rebel News has no valid defences to the claim. Although Ms. Simpson has adduced an affidavit of her own in response to this application, it says almost nothing about the accuracy or otherwise of the impugned statements, or of the purported factual basis for them that Rebel News has asserted.

[65] With respect to the statements suggesting that Ms. Simpson bullies or preys upon vulnerable immigrant women, the requisite factual basis can be found in the Waxing Decision, which is expressly referenced in the impugned video clips themselves and would be generally known to the audience.

[66] The statements suggesting that Ms. Simpson is violent, dangerous, a “criminal”, has been incarcerated and possessed a “taser”, include both assertions of fact and comment. The factual basis for them appears to have derived from two sources:

- a) video footage showing her assaulting the reporters themselves; and
- b) the particulars of the criminal prosecutions that have been brought against her.

[67] The foundational facts for those statements were adequately attested and identified by the reporters as they were made. Ms. Simpson argues that some of them were false or misleading in various ways. She takes issue, in particular, with the reporters’ descriptions of the timing or duration of her incarceration, or the kind of conducted electrical weapon in her possession (namely, whether it was a “taser”). Even allowing for the possibility that some of the details in the impugned reports were inaccurate in the manner alleged, I am satisfied that they were substantially true, in the sense that they were no more injurious to her reputation than the true facts would have been.

[68] The imputation that Ms. Simpson is feigning a disability was based on video footage, replayed while the comments were being made, showing her engaged in physical activities, particularly running and wielding a cane as a weapon, that were suggested to be inconsistent with the need to use a mobility scooter.

[69] Ms. Simpson has deposed that she does indeed suffer from disabilities. Her affidavit states as follows:

I am a disabled woman who suffers from fibromyalgia, complex regional pain syndrome, chronic fatigue syndrome, severe bilateral sensorineural hearing loss, central pain sensitivity, sciatica, central sensitization syndrome and many other health ailments. ...

[70] However, her affidavit is silent with respect to the extent or impact of those ailments, and in particular, their connection, if any, to her need to use a mobility scooter. In an effort to bolster the factual support for this allegation, Rebel News has reproduced medical records that Ms. Simpson has filed in other legal proceedings. They show that during a consultation with a physician that took place on June 27, 2019, she reported that she was using a mobility scooter because she was experiencing “dizzy spells.” At a subsequent consultation on August 8, 2019, she reported to a physician that she had been using a scooter and walker since June due to ataxia. A few days later, on August 12, 2019, a physician advised her to “continue with walker/scooter for support/stability to prevent further falls.”

[71] The defence of fair comment can succeed if the opinion expressed is one that could honestly be held, even if unreasonably, based on the proven facts. In *Torstar*, McLachlin C.J. summarised the law in that regard as follows, at para. 31:

... *WIC Radio* expanded the fair comment defence by changing the traditional requirement that the opinion be one that a “fair-minded” person could honestly hold, to a requirement that it be one that “anyone could honestly have expressed” (paras. 49-51), which allows for robust debate. As Binnie J. put it, “[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones” (para. 4).

[72] It follows that it is not enough for Ms. Simpson to show that the reporters behaved unreasonably, or even outrageously, in labelling her as a “disability faker” on the limited factual foundation provided. In order to defeat the defence of fair comment, she would have to go further and show that the inference they drew is

not one that could honestly have been drawn on those facts, or that it was drawn maliciously. The evidence before me does not go that far.

[73] Most damaging of all to Ms. Simpson's reputation were the reporters' comments suggesting that Ms. Simpson is a "pedophile" and is merely "pretending to be a woman" for voyeuristic reasons. Those allegations appear to have been based on information drawn from several publicly available sources.

[74] Central to them are a series of what purport to be screenshots of sexually explicit text messaging conversations between Ms. Simpson and three girls who were, at the time, between the ages of 13 and 16. In an exchange dated May 26-27, 2018, for example, Ms. Simpson is said to have told her teenage correspondent about her experience in a female changing room with members of a teenaged swim team. Ms. Simpson is said to have described how the girls would smile at her while both she and they were naked. After conveying that information, Ms. Simpson is said to have asked her correspondent, "How can I bond with these girls from the swim team?"

[75] In his affidavit, Mr. Levant has reproduced the conversations in their entirety and has deposed that they are posted and available on several public websites. They featured prominently in Ms. Simpson's YouTube interview with Ms. White, with Ms. Simpson repeatedly denying their authenticity.

[76] Rebel News has also reproduced a written application submitted by Ms. Simpson to appear before the Council of the Township of Langley on July 22, 2019, so that she could seek the following:

Permission for LGBTQ2S+ organizations to be allowed to host an 'All-Bodies Swim' at ... civic pools ... for people aged 12+ where these events will be restricted to LGBTQ2S and Individuals will be permitted to be topless (at their leisure), In compliance with the laws of Canada and where parents and caretakers will be prohibited from attending these events as It's considered safe and Inclusive.

[77] In many of the video clips in issue, the reporters displayed a "selfie" photograph taken by Ms. Simpson into the mirror of what appears to be a women's washroom with what appear to be young girls visible in the background.

[78] During one of the video clips in issue, a Rebel News reporter told his audience that he had received a tip from an unnamed third party suggesting that

Ms. Simpson was in Toronto after being “catfished” (that is, lured by a fictitious source online) into travelling to Toronto to see a young girl who was said to have been admitted to a hospital there.

[79] Ms. Simpson has provided no evidence at all in response to these particular allegations. However tenuous the factual foundation for them may be, it suffices to meet the low threshold for fair comment, in the sense that the reporters could, relying on it, honestly have come to the opinions they expressed.

[80] Overall, I have concluded that Ms. Simpson has not met the burden on her under s. 4(2)(a)(ii) of the *PPPA* to show grounds to believe that Rebel News’ defences to the defamation claim are unlikely to succeed.

**D. Has Ms. Simpson’s shown that her interest in advancing the action outweighs its deleterious effects on expression and public participation?**

[81] I have found that Ms. Simpson has failed to meet her burden under s.4(2)(a)(i) in relation to the claim in harassment and under s. 4(2)(a)(ii) in relation to Rebel News’ defences to the defamation claim. It follows that the action must be dismissed. It is therefore not necessary to consider s. 4(2)(b).

[82] In case I am wrong in my conclusions under s. 4(2)(a), however, I offer the following observations with respect to that last branch of the test.

[83] In *Pointes, Côté J.* described the burden that Ms. Simpson must meet in that regard. In particular, she must:

[82] ... show on a balance of probabilities that [she] likely has suffered or will suffer harm, that such harm is *a result* of the expression established under s. [4], and that the corresponding public interest in allowing the underlying proceeding to continue outweighs the deleterious effects on expression and public participation. This weighing exercise is the crux or core of the s. [4] analysis, as it captures the overarching concern of the legislation, as evidenced by the legislative history. It accordingly should be given due importance by the motion judge in assessing a [*PPPA*] motion.

[Original emphasis.]

[84] The first matter to be addressed in this regard is the nature and extent of the likely harm to Ms. Simpson resulting from the impugned expression.

[85] Once defamation is proven, damage to the plaintiff's reputation is presumed: *Torstar*, at para. 28. Nevertheless, the nominal damages that are to be presumed in that context will not necessarily suffice, alone, to tip the scales in favour of allowing an action to proceed: *Bent v. Platnick*, 2020 SCC 23, at para. 144. Something more will usually be required.

[86] To that end, Ms. Simpson pleads that the impugned expression has caused her "significant emotional distress, anxiety, depression [and] suicidal ideation." In response to this application, she has deposed that it has caused her "extreme distress" and caused her to make "multiple suicide attempts."

[87] Contrary to Ms. Simpson's pleading in the NOCC, however, her reputation was not previously "unblemished". The evidence adduced by Rebel News reveals that she was already the target of extensive adverse publicity from other sources, even before Rebel News began reporting about her. Rebel News' was only one of many voices conveying a similar message.

[88] In addition, the invective directed by Rebel News at Ms. Simpson was often matched by that directed by her at Rebel News and others through her own social media posts. That is the nature of the arena in which she has chosen to engage. She has also resorted to litigation, or threats of litigation, including defamation suits such as this one, in an effort to stifle criticism.

[89] In any event, whatever harm Ms. Simpson may have suffered as a result of the impugned expression would have to be weighed against the public interest in protecting it. The considerations that arise in this part of the analysis were conveniently summarised in *Pointes* as follows:

[73] Once harm has been established and 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. Therefore, as under [s. 4(1)(b)] public interest becomes critical to the analysis.

[74] However, the term "public interest" is used differently in [s. 4(2)(b)] than in [s. 4(1)(b)]. Under [s. 4(1)(b)], the query is concerned with whether the expression relates to a matter of public interest. The assessment is not qualitative — i.e. it does not matter whether the expression helps or hampers the public interest. Under [s. 4(2)(b)], in contrast, the legislature expressly makes the public interest relevant to specific goals: permitting the proceeding to continue and protecting the impugned expression. Therefore, not just any matter of public interest will be relevant. Instead, the quality of the expression, and the motivation behind it, are relevant here.

[75] Indeed, “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” (C.A. reasons, at para. 94, citing *Able Translations Ltd. v. Express International Translations Inc.*, 2016 ONSC 6785, 410 D.L.R. (4th) 380, at paras. 82-84 and 96-103, aff’d 2018 ONCA 690, 428 D.L.R. (4th) 568).

[76] While judges should be wary of the inquiry descending into a moralistic taste test, this Court recognized as early as *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697, that not all expression is created equal: “While we must guard carefully against judging expression according to its popularity, it is equally destructive of free expression values, as well as the other values which underlie a free and democratic society, to treat all expression as equally crucial to those principles at the core of s. 2(b)” (p. 760).

[90] In assessing the value of the impugned expression at issue in this case, I accept that at least part of the motivation behind Rebel News’ reporting was to warn the public about what the reporters believed to be the threat that Ms. Simpson’s conduct poses to society. Rebel News says that it strives to present an alternative point of view. Many will find the views that it 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.

[91] Nevertheless, the expression in issue here was deeply problematic in various ways, both in terms of its quality and the apparent motivation behind it.

[92] First, it was, by any measure, heavily laden with vitriol and gratuitous insults. Although I have accepted that Rebel News has a viable defence of “fair comment”, on the basis that the views expressed were ones that could honestly be held on the facts presented, it does not follow that the underlying inferences were always reasonably drawn. Of particular concern in that regard is the fact that much of the name-calling directed at Ms. Simpson echoed, and tended to reinforce, pernicious stereotypes about transgender people generally.

[93] Further, the reporters’ conduct in confronting Ms. Simpson at her home or hotel and asking the same inflammatory questions over and over again, appears to have been intended primarily to provoke a scene and so provide entertainment at Ms. Simpson’s expense, rather than to elicit information to enrich the public discourse.

[94] Had Ms. Simpson been able to show real damage to her reputation flowing from the impugned reporting, the dubious quality of the expression in issue here could easily have tipped the scales in favour of allowing the action to proceed.

### **E. Costs**

[95] In the event that its application succeeds, as it has, Rebel News seeks to be paid full indemnity costs pursuant to s. 7(1) of *PPPA*. That provision states as follows:

#### Costs

7 (1) 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.

[96] In *Hobbs v. Warner*, 2021 BCCA 290, the Court of Appeal had occasion to consider the circumstances in which such an award might be considered inappropriate. Justice Goepel, writing for the Court, offered the following guidance in that regard:

[104] Section 4 applications will fall along a continuum ranging from lawsuits that have strong indicia of a true SLAPP to those where the competing interests of reputation and public expression are finely balanced. In those cases where there are strong indicia of a SLAPP, a full indemnity award may well be appropriate. The full indemnity starting point is clearly intended to disincentivize such litigation. On the other hand, when the proceeding bears little resemblance to a SLAPP but the public interest in protecting the expression leads to a dismissal of the action, it might well not be fair and reasonable to award full indemnity costs.

[97] I have found several of the hallmarks of a classic SLAPP suit to be present in this case, including:

- a) a weak claim on the merits;
- b) a history of threatening litigation and commencing legal proceedings with a view to stifling criticism; and
- c) scant evidence of actual harm flowing from the impugned expression.

[98] On other hand, this is not a case in which a well-funded plaintiff has brought disproportionate resources to bear against an impecunious defendant. If anything,

the imbalance in this case tilts in the opposite direction.

[99] In addition, although I have found that Ms. Simpson has failed to meet the burden upon her under s. 4(2)(a) of the *PPPA*, it does not follow, given my earlier observations, that she had nothing to complain about in how she was treated.

[100] In summary, I have concluded that an award of full indemnity costs would not be appropriate in the unusual circumstances of this case. Instead, my order will be that the parties are to bear their own costs.

#### **V. Summary and Disposition**

[101] The application is allowed.

[102] The action is dismissed, with each party bearing their own costs.

“Milman J.”