

NOV 06 2014



IN THE SUPREME COURT OF BRITISH COLUMBIA

S-148 577

No.
Vancouver Registry

BETWEEN:

GREGOR ROBERTSON AND GEOFF MEGGS

PLAINTIFFS

AND:

KIRK LAPOINTE AND CIVIC NON-PARTISAN
ASSOCIATION

DEFENDANTS

NOTICE OF CIVIL CLAIM

FORM 1 (RULE 3-1(1))
[AM BC REG. 95/2011, SCH. A, S. 11]

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. The plaintiff Gregor Robertson is Mayor of the City of Vancouver and a candidate for re-election in the 2014 municipal election with an address for service c/o Harper Grey LLP, 3200 – 650 West Georgia Street, Vancouver, British Columbia, V6B 4P7.
2. The plaintiff Geoff Meggs is a City of Vancouver Councillor and a candidate for re-election in the 2014 municipal election with an address for service c/o Harper Grey LLP, 3200 – 650 West Georgia Street, Vancouver, British Columbia, V6B 4P7.
3. The plaintiffs are both candidates for elective office running as nominees for the civic party Vision Vancouver (“Vision”). Vision was formed in the months leading up to the 2005 municipal election. Vision has campaigned on its long-standing commitment to fair collective bargaining and general opposition to the contracting out or privatization of municipal services.
4. The Canadian Union of Public Employees (“CUPE”) is a Canadian trade union serving the public sector. CUPE Local 1004 represents the City of Vancouver’s outside workers. In the 2008 municipal elections, CUPE Local 1004 donated \$55,000 to Vision. In the 2011 municipal elections, CUPE Local 1004 donated \$32,000 to Vision. In October of 2014, CUPE Local 1004 voted to give Vision \$34,000 for the 2014 municipal elections.
5. The defendant Kirk LaPointe (“LaPointe”) is a former journalist and a candidate for the office of Mayor in the 2014 municipal election.
6. The defendant Civic Non-Partisan Association (“the NPA”) is a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433, with a registered office at Suite 280-Park Place, 666 Burrard Street, Vancouver, British Columbia. The NPA nominates and supports candidates for elective office in the City of Vancouver. LaPointe is the NPA candidate for Mayor in the 2014 municipal election.
7. Beginning, on or about October 20, 2014 the defendants embarked upon a premeditated campaign to discredit the plaintiffs and their campaigns for re-election by way of a series of defamatory statements, particulars of which are set out below. The defendants had the hope and expectation that the campaign would so damage the good name and reputation of the plaintiffs that they would both be defeated in the 2014 municipal election with the result that LaPointe would be elected Mayor of Vancouver and the NPA slate would likewise be elected in whole or in part.

Defamatory Expression

The Province Defamation

8. On or about October 20, 2014 the defendants published or caused to be published the following false and defamatory words of and concerning the plaintiffs in the October 20, 2014 electronic version of the Province newspaper and the October 21, 2014 print version of the Province newspaper:

Kirk LaPointe: Vision Vancouver's cash-for-jobs deal with city union is corrupt.

No wonder Vancouverites don't trust city hall under Vision. Corruption corrodes confidence and this commitment smacks of backroom deals of yesteryear.

...the city's bargaining position is a breach of fiduciary duty.

The self-interests of Meggs, Robertson and Vision for re-election have been placed ahead of the city's interests in pursuing the most effective, efficient government.

Moreover, the brazen commitment raises questions of ethical conduct that require investigation by authorities...This is the kind of political deal that...plays into our darkest suspicions about how business is conducted at Gregor Robertson's city hall.

This episode is more evidence Vancouver takes a back seat to no one in operating a secretive administration, with insider deals, a lack of public access to information and a muzzled city management.

[hereinafter referred to as the "Province Defamation"].

9. The Province Defamation referred to and was understood to refer to the plaintiffs, the particulars of which are as follows:
- (a) the plaintiffs were identified by name and in reference to the 2014 municipal election.
10. The Province Defamation was published in the October 21, 2014 print version of the Province newspaper which was delivered to the Province's subscribers and was generally available for sale to the residents of Vancouver eligible to vote in the 2014 municipal elections and, more generally, to the public at large throughout the province of British Columbia on the morning of October 21, 2014. The Province Defamation was and continues to be published online at www.theprovince.com.
11. The Province Defamation is defamatory of and concerning the plaintiffs in its literal meaning.

12. In their natural and ordinary meaning, the words in the Province Defamation meant and were understood to mean that the Plaintiffs:
 - (a) are corrupt;
 - (b) are given to dishonest practices;
 - (c) have acted unlawfully and ought to be charged under section 122 (Breach of trust by public officer), and/or section 123 (Municipal corruption) of the *Criminal Code*, R.S.C. 1985, c. C-46;
 - (d) lack integrity;
 - (e) have breached their fiduciary duty to the citizens of Vancouver by giving advantage to CUPE in a manner inconsistent with their official duties;
 - (f) are dishonest and cannot be trusted;
 - (g) put their self interest in being elected ahead of the City's interests;
 - (h) sold out the City's interest for political expediency;
 - (i) are unethical; and
 - (j) conduct the City's business with insiders in secret and behind closed doors thereby excluding public access to information.
13. In the alternative, by way of innuendo, the words in the Province Defamation meant and were understood to mean that the plaintiffs:
 - (a) are dishonest politicians;
 - (b) ought not to be re-elected;
 - (c) practice "old time politics" where votes are bought in the "back room"; and
 - (d) have conducted politics over the last few years and have created a political culture which has caused the electorate to be cynical of all elected officials.
14. Each of the above meanings is false, malicious and defamatory of and concerning the plaintiffs.
15. Given that the defendants published the Province Defamation in the course of the 2014 municipal election campaign and the nature of the allegations set out therein, the defendants knew or ought to have known that the Province Defamation would be republished widely. Republication of the Province Defamation occurred in mainstream and social media, and was the natural and intended result of the defendants' actions for which they are both responsible.

The NPA Website Defamation

16. On or about October 27, 2014, the defendants published or caused to be published the following false and defamatory words of and concerning the plaintiffs to the NPA website ("www.npavancouver2014.ca"):

NPA mayoral candidate Kirk LaPointe accuses Gregor Robertson of distancing himself from corrupt deal that trades tax dollars for union financial and political support.

At mayoral debate, Robertson refuses to answer questions about secret union deals made by one of his Vision Councillors.

Kirk LaPointe, Non-Partisan Association mayor candidate, attacked Gregor Robertson yesterday for distancing himself from a backroom deal that trades taxpayer money for union cash and political support.

What other secret deals has Vision made for campaign contributions? Are Vancouver taxpayers seeing their tax dollars managed in their interests or in the interests of the mayor's friends?

[hereinafter referred to as the "NPA Website Defamation"].

17. The NPA Website Defamation referred to or was understood to refer to the plaintiffs, the particulars of which are as follows:
- (a) the plaintiffs were identified by name;
 - (b) the NPA Website Defamation contains a photograph of the plaintiff Gregor Robertson.
18. The NPA Website Defamation is defamatory of and concerning the plaintiffs in its literal meaning.
19. In their natural and ordinary meaning, the words in the NPA Website Defamation meant and were understood to mean that the plaintiffs:
- (a) are corrupt;
 - (b) have acted unlawfully and ought to be charged under section 122 (Breach of trust by public officer), and/or section 123 (Municipal corruption) of the *Criminal Code*, R.S.C. 1985, c. C-46;
 - (c) lack integrity;
 - (d) are dishonest and cannot be trusted;
 - (e) cut a secret deal with CUPE to stop outsourcing municipal jobs in exchange for a campaign donation;

- (f) have paid off CUPE;
 - (g) put their self interest in being elected ahead of the City's interests;
 - (h) sold out the City's interest for political expediency;
 - (i) are unethical; and
 - (j) conduct the City's business with insiders in secret and behind closed doors thereby excluding public access to information.
20. In the alternative, by way of innuendo, the words in the NPA Website Defamation meant and were understood to mean that the plaintiffs:
- (a) were buying votes;
 - (b) are dishonest politicians; and
 - (c) ought not to be re-elected.
21. Each of the above meanings is false, malicious and defamatory of and concerning the plaintiffs.
22. The defendants published or caused to be published the NPA Website Defamation with the knowledge, expectation and intention that the NPA Website Defamation would be read by citizens of Vancouver entitled to vote in the 2014 municipal election, and by the media at large and, as a result, would be republished widely. Republication of the NPA Website Defamation occurred in mainstream and social media, and was the natural and intended result of the defendants' actions for which they are both responsible.

The Press Conference Defamation

23. At an October 28, 2014 press conference LaPointe, on his own behalf and on behalf of the NPA, made the following false and defamatory statements of and concerning the plaintiffs:

Corruption is not a regular practice in politics. That was an extraordinary event and I hope that everybody understands that, that when you actually go to a union and basically say, "We're going to commit never to outsource any more services and now we are going to get your support for that".

I think it was a horrible act and I believe that our community understands that it was buying votes.

[hereinafter referred to as the "Press Conference Defamation"].

24. The Press Conference Defamation referred to or was understood to refer to the plaintiffs as the plaintiffs were referred to by name and occupation in the course of the press conference, and because the press conference was held during the 2014 Vancouver City

municipal election in which the plaintiffs are seeking re-election as part of the Vision slate.

25. In their natural and ordinary meaning, the words in the Press Conference Defamation meant or were understood to mean that the plaintiffs:
 - (a) are corrupt;
 - (b) were buying votes; and
 - (c) acted unlawfully and ought to be charged under section 122 (Breach of trust by public officer), and/or section 123 (Municipal corruption) of the *Criminal Code*.
26. In the alternative, by way of innuendo, the words meant and were understood to mean that the plaintiffs:
 - (a) are dishonest politicians;
 - (b) ought not to be re-elected;
 - (c) practice “old time politics” where votes are bought;
 - (d) lack integrity;
 - (e) have breached their fiduciary duty to the citizens of Vancouver by giving advantage to CUPE in a manner inconsistent with their official duties;
 - (f) cannot be trusted;
 - (g) sold out the City’s interest for political expediency; and
 - (h) are unethical.
27. Each of the above meanings is false, malicious and defamatory of and concerning the plaintiffs.
28. Given that LaPointe made the Press Conference Defamation at a press conference attended by reporters, and that the Press Conference Defamation was made in the course of the 2014 municipal election campaign, the defendants knew or ought to have known that the Press Conference Defamation would be republished widely. Republication of the Press Conference Defamation occurred in mainstream and social media, and was the natural and intended result of the defendants’ actions for which they are both responsible.

The Political Ad Defamation

29. On or about November 4, 2014 the defendants released to the media and began running paid advertisements on television and radio stations containing the following false and defamatory words of and concerning the plaintiffs:

In turn for cutting a secret deal with CUPE to stop outsourcing the union cut a cheque to support Gregor Robertson's party. That's not a payday but a pay-off that puts Vancouver Vision's interests ahead of the taxpayer.

The television version of the advertisement shows a For Sale sign in front of a photo of Vancouver City Hall over which is superimposed a headline from the Huffington Post containing the following headline:

Vision Vancouver Has Sold Out Taxpayers For Big Labour Money

[hereinafter referred to as the "Political Ad Defamation"].

30. The Political Ad Defamation referred to and was understood to refer to the plaintiffs, the particulars of which are as follows:
 - (a) the plaintiff Robertson was identified by name; and
 - (b) the television version of the advertisement contains a photograph of the plaintiff Meggs.
31. The Political Ad Defamation was provided to and published by various local television and radio stations on newscasts on November 4, 2014 and was published by various local television and radio stations as a paid political ad commencing November 5, 2014.
32. The Political Ad Defamation is defamatory of and concerning the plaintiffs in its literal meaning.
33. In the natural and ordinary meaning, the words in the Political Ad Defamation meant and were understood to mean that the plaintiffs:
 - (a) cut a secret deal with CUPE to stop outsourcing municipal jobs in exchange for a campaign donation;
 - (b) have breached their fiduciary duty as elected officials;
 - (c) put their self-interest in being elected ahead of the City's interests;
 - (d) sold out the taxpayers for big labour money; and
 - (e) have been paid off by CUPE.
34. In the alternative, by way of innuendo, the words meant and were understood to mean that the plaintiffs:
 - (a) are corrupt;
 - (b) were buying votes;
 - (c) acted unlawfully and ought to be charged under section 122 (Breach of trust by public officer), and/or section 123 (Municipal corruption) of the *Criminal Code*;

- (d) are dishonest politicians;
 - (e) ought not to be re-elected;
 - (f) lack integrity;
 - (g) cannot be trusted; and
 - (h) are unethical.
35. Each of the above meanings is false, malicious and defamatory of and concerning the plaintiffs.
36. Given that the defendants provided the Political Ad Defamation to various media outlets in the course of the 2014 municipal election campaign, and the nature of the allegations therein, the defendants knew or ought to have known that the Political Ad Defamation would be republished widely. Republication of the Political Ad Defamation occurred in mainstream and social media, and was the natural and intended result of the defendants' actions for which they are both responsible.

Damages and Injunctive Relief

37. By reason of the publication of the Province Defamation, the NPA Website Defamation, the Press Conference Defamation, and the Political Ad Defamation (collectively the "Defamatory Statements") the plaintiffs have been greatly injured in their character, credit and political reputation and have suffered damage.
38. The defendants have aggravated the damages suffered by the plaintiffs by disseminating the Defamatory Statements to the public at large and, in particular, to those citizens eligible to vote in the 2014 municipal election by use of social media and by the NPA election webpage.
39. LaPointe's conduct is sufficiently egregious to award an award of punitive damages, the particulars of which are as follows:
- (a) he knew or ought to have known the Defamatory Statements were false;
 - (b) the Defamatory Statements were made maliciously with the intent of damaging the reputation of the plaintiffs in the hope and expectation that the plaintiffs would not be re-elected but rather that he would be elected Mayor of Vancouver and the NPA slate would be elected in whole or in part; and
 - (c) the Defamatory Statements were published or caused to be printed and published as part of a deliberate campaign to defame the plaintiffs to as broad an audience as possible.
40. The publication of the Defamatory Statements complained of in this Notice of Civil Claim have caused and continue to cause injury, loss and damage to the plaintiffs, and were deliberately calculated by the defendants to expose the plaintiffs to contempt, ridicule and hatred, and to cause other persons to shun or avoid the plaintiffs, and to

lower the plaintiffs' reputation in the eyes of right thinking members of the community, all of which has in fact occurred.

41. The defendants were motivated in publishing the Defamatory Statements complained of in this Notice of Civil Claim by actual and express malice. In the alternative, the defendants published the Defamatory Statements with reckless indifference to the truth.
42. As a further consequence of the publication of the Defamatory Statements complained of in this Notice of Civil Claim, the plaintiffs have incurred and continue to incur loss, damage and expense and will incur loss, damage and expense in the future, including special damages, particulars of which will be provided on request.
43. The loss, damage and expense referred to in the preceding paragraph of this Notice of Civil Claim include, *inter alia*, substantial and persisting injury to the reputation of the plaintiffs; injury to pride and self-confidence of the plaintiffs; social damage to the plaintiffs; and injury to the professional and personal relationships between the plaintiffs and other persons.

Part 2: RELIEF SOUGHT

1. An interim and permanent injunction restraining the defendants, their agents, servants or otherwise from further writing, printing or causing to be written and printed, or otherwise publishing the alleged or any similar libel;
2. General damages;
3. Special damages;
4. Aggravated damages;
5. Punitive damages;
6. Special costs, or in the alternative, costs;
7. Interest pursuant to the *Court Order Interest Act*; and
8. Such further and other relief as this Honourable Court may seem meet and just.

Part 3: LEGAL BASIS

1. The plaintiffs rely on the statutory and common law in regards to defamation.
2. The plaintiffs rely on common law principles governing the assessment of damages for defamation.
3. The plaintiffs rely on common law and equitable principles concerning injunctive relief for defamation.
4. The plaintiffs also rely on the *Libel and Slander Act*, R.S.B.C. 1996, c. 263.

(1) The plaintiffs' address for service is:

HARPER GREY LLP
Barristers and Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7

Fax number for service: (604) 669-9385

(2) Place of trial: Vancouver


The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

(3) The name and office address of the plaintiffs' solicitor is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax: 604 669 9385
Attn: Bryan G. Baynham, Q.C.

Dated: 06 November 2014


HARPER GREY LLP
(Per Bryan G. Baynham, Q.C.)
Lawyer for the Plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and

- (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Defamation action.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM involves:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4: