

KING'S BENCH FOR SASKATCHEWAN

Date: 2026 03 11
File No.: QBG-RG-00735-2022
Judicial Centre: Regina

BETWEEN:

MICHELLE COUPAL

PLAINTIFF

- and -

DARRYL LEROUX

DEFENDANT

Counsel:

Paul J. Harasen and Gabrielle H. Robitaille
Yavar Hameed and Mareike van Nieuwkoop

for the plaintiff
for the defendant

JUDGMENT
March 11, 2026

LABACH J.

INTRODUCTION

[1] Both the plaintiff, Dr. Michelle Coupal, and the defendant, Dr. Darryl Leroux, have brought an application for summary judgment. Dr. Coupal's summary judgment application asks me to find that Dr. Leroux defamed her in a number of statements he made about her between August 9, 2021 and February 2, 2022, wherein he alleged that she relied on forged documents to claim Indigenous ancestry, that she was pretending to be Indigenous for economic gain, that she committed fraud and tried to hide her fraud. She asks that I order him to pay damages and costs.

[2] Dr. Leroux denies that he defamed Dr. Coupal, relying on the defences of justification and fair comment. His summary judgment application asks that I dismiss Dr. Coupal's claim and order costs against her.

FACTS

[3] Dr. Coupal was born in 1963 and grew up in Waterloo, Ontario, with her father, mother and two sisters. Her parents had been born in Timmins, Ontario in 1935. Her mother's parents were Joseph George Turcotte [Joseph] and Yvonne Brassard [Yvonne]. Joseph's mother was Marie-Anne St. Jean [Marie-Anne]. Marie-Anne was born in L'Île-Allumettes, Pontiac County, Quebec. She gave birth to Joseph in Black Bay, Petawawa, Ontario, a historic Algonquin community.

[4] Dr. Coupal's parents were both of French descent but she was told that her mother had Indigenous ancestry on her paternal side. More specifically, her mother told her that her great grandmother, Marie-Anne St. Jean, was half Indigenous and half French. Her mother referred to her great grandmother as Métis.

[5] Dr. Coupal's parents shared many stories with her about her great grandmother, Marie-Anne, and her grandfather, Joseph. One such story was that Joseph's wife, Yvonne, would not let her mother-in-law, Marie-Anne, into her house because she described her as a "dirty Indian". As Dr. Coupal got older, she spoke to her grandmother, Yvonne, about Joseph's family tree. Her grandmother confirmed that Joseph's mother, Marie-Anne, was Métis.

[6] Despite what she was told about her Indigenous ancestry, Dr. Coupal did not grow up with Indigenous culture, traditions or language, and none was evident in her immediate family. Her father spoke both French and English. Her mother spoke English and could converse in French. Her first language was French, which was later replaced with English when she began school. Her family traditions were French

Canadian and Roman Catholic. Dr. Coupal, herself, does not look Indigenous.

[7] Dr. Coupal's parents told her that their Indigenous ancestors tried to hide their indigeneity by passing themselves off as French because of the discrimination they faced as Indigenous peoples, including discrimination from non-Indigenous members of their own family. Being non-racialized, Dr. Coupal never suffered the discrimination of her ancestors.

[8] Dr. Coupal attended the University of Waterloo. In 1989, she received her Bachelor of Arts (Honours) in English literature, and in 1993, her Master's of Arts in English literature. In 1995, she received her Bachelor of Education from Western University. She did not identify as Indigenous but would share what she had been told about that part of her heritage when discussing her background with colleagues and friends. Her Indigenous colleagues and friends suggested she should formally identify as Indigenous and French.

[9] Sometime in and around 2010, Dr. Coupal spoke with James Bartleman, the former Lieutenant Governor of Ontario and author, at an event at Western University. Mr. Bartleman, who himself was Indigenous, asked her about her background. She shared with him that she was French with Indigenous ancestry, but had only ever heard horrible stories about her Métis side. He told her that a lot of people would be proud of that heritage.

[10] As a young person growing up, Dr. Coupal had been embarrassed by the racism in her family towards their Indigenous ancestry. After speaking to Mr. Bartleman, she felt ashamed of herself for not doing a better job of honouring her Indigenous heritage. Coupled with the encouragement from her Indigenous friends and colleagues, in 2010 Dr. Coupal began identifying as French and Métis.

[11] Dr. Coupal went on to pursue her Ph.D. in English literature at Western

University, specializing in Indigenous literatures, Canadian literature and 19th Century British literature. While working on her Ph.D., she worked at the Indigenous Services Centre and taught a third-year course on Indigenous literatures.

[12] In 2012, prior to completing her Ph.D., Dr. Coupal became aware that Laurentian University was advertising for two tenure track assistant professor appointments, one in “Aboriginal Rhetorics and Literatures” and the second in “Comparative Indigenous Literatures of the Americas”. The former position appealed to Dr. Coupal, however the advertisement contained an equity statement emphasizing the University’s commitment to appointing a larger number of Aboriginal faculty, particularly outside Aboriginal-specific programs. As a result, she thought they were looking for an Indigenous scholar with traditional cultural knowledge and she did not apply.

[13] In the fall of 2012, a recruiter, Deanne Cockell, reached out to Dr. Coupal regarding the two positions at Laurentian University. Ms. Cockell advised the University was looking for someone that was trained to teach both Indigenous literature and Canadian literature and she thought they may be interested in her. Dr. Coupal explained that the interest was mutual, however she thought they were looking for an Indigenous scholar, and while she had some Métis heritage on her mother’s side, she did not have any cultural connections, nor did she grow up with them. Ms. Cockell told her she would check with the hiring committee to see if they were still interested in her.

[14] Ms. Cockell got back to Dr. Coupal advising that the hiring committee were not concerned by her lack of cultural or traditional knowledge and would welcome an application from her as she had the rare combination of being able to teach both Indigenous and Canadian literatures. Ms. Cockell encouraged her to apply and to advise of her Métis connection.

[15] In November 2012, Dr. Coupal submitted an application to the Laurentian

University search committee, applying for the position of assistant professor of Aboriginal Rhetorics and Literatures. While her application included a discussion about her Ph.D. dissertation, her qualifications, her teaching philosophy and her current and prospective research, there was only one sentence in her application addressing her Indigenous ancestry. That sentence read, “My ancestry is Métis”.

[16] Dr. Coupal was short-listed and after a two-day interview, was offered the position. Her interview focussed on her teaching and research; her Métis ancestry was not raised. She accepted the offer.

[17] Dr. Coupal continued working on her Ph.D. dissertation entitled “Storied Truths: Contemporary Canadian and Indigenous Trauma Narratives”. A significant portion of her dissertation was devoted to literatures of residential schools, a large body of literary work by survivors of residential schools and their families. She successfully defended her dissertation and received her Ph.D. in May 2013.

[18] Dr. Coupal began her employment at Laurentian University on July 1, 2013. While there, she taught courses on residential school literature, Indigenous literature, Indigenous film and media, and Canadian literature. She sat on a number of committees, including numerous Indigenous committees, at all levels of the University. Her research focused on issues relating to the teaching of Indigenous literature and residential school literature and she published in her field. She organized and/or helped organize conferences and delivered a variety of papers, nationally and internationally. She received excellent teaching evaluations from her Indigenous and non-Indigenous students.

[19] In July 2017, Dr. Coupal applied for tenure and a promotion to an assistant professor. She was assessed by a five-person assessment committee who unanimously supported her promotion. The rationale for their support was set out on page 3 of their assessment:

...

Dr. Coupal is a very effective teacher, as her teaching evaluations, her teaching dossier and her teaching designation by the Dean as “exceptional” will attest. Her teaching dossier includes the challenges of integrating indigenous methodology with traditional methodologies and she has developed 15 credits of courses with Indigenous content that draw on her research expertise.

She is an active researcher. Dr. Coupal has a book contract with Wilfrid Laurier University Press for a monograph for which she was awarded a SSHRC Insight Development Grant (2016-2018) of \$55,691 as principal investigator. She co-edited an anthology. She published peer-reviewed articles and book chapters and she has delivered papers at a variety of academic conferences both nationally and internationally.

Dr. Coupal is active in university governance both within her department and at the faculty and university levels: she served on CELP from 2014-2016 and she currently serves on the Senate (2017-2018).

Both the Dean and the unit account Dr. Coupal as meeting or exceeding the criteria for promotion in every category. At the time of her promotion, she will have been teaching at Laurentian University for five years.

[20] There was no reference to her indigeneity in her assessment. On July 1, 2018, Dr. Coupal was granted tenure and promoted to the position of assistant professor.

[21] Dr. Coupal referred to herself as Métis because of her mixed French/Indigenous heritage. However, in 2013 she was made aware that it was politically incorrect to identify as Métis because of objections by the Red River Métis in Manitoba. That group argued that because of their distinct culture they were the only group that was entitled to use the term Métis. This ignored the many Indigenous communities that had been settled in Ontario and Quebec that comprised people of mixed European/Indigenous ancestry, of which Dr. Coupal understood she was one.

This led her to reach out to the Bonnechere Algonquin First Nation [BAFN].

[22] Many Algonquin communities had settled in small towns throughout the Ottawa River Watershed. Black Bay, Petawawa, where Dr. Coupal's grandfather was born, was one of these historic Algonquin communities. The BAFN was comprised of a number of core families, that is, families that could trace their roots to Algonquin ancestors. One of these core families was the Turcotte family which was her mother's maiden name and her maternal grandfather's last name.

[23] In and around June 2014, Dr. Coupal applied for membership in the BAFN on the basis of her grandfather's family line. That line could be traced through her grandfather's mother, Marie-Anne St. Jean, as she understood from what she had been told by her parents and her grandmother, that Marie-Anne was Métis.

[24] Nancy Ward worked for the BAFN as a program manager assistant, and was tasked with responding to Dr. Coupal's application. Ms. Ward advised Dr. Coupal that she, too, could trace her roots back through the Marie-Anne St. Jean family line and while she believed the line to be Indigenous, the line was no longer recognized as Algonquin. A process had been established by the Algonquins of Ontario [AOO], the Province of Ontario and the Government of Canada pursuant to a land claim agreement in principle to determine the Algonquin status of certain ancestors. Pursuant to that process, a hearing had been convened before a retired Ontario Superior Court Justice named James B. Chadwick. He had been appointed to decide these issues. In a written decision dated May 12, 2013, he had determined that the evidence before him did not satisfy him that the alleged Algonquin ancestor from which Marie-Anne St. Jean could trace her roots was Algonquin. In his decision he found that while the oral history regarding this family line was important, the absence of any reliable historical document indicating this ancestor was probably Algonquin was fatal. Unless and until such a historical document was located, this family line could not be considered

Algonquin.

[25] Ms. Ward, however, went on to tell Dr. Coupal that she was still eligible for membership in the BAFN but through her grandfather's father's ancestral line. This family line could be traced back to Thomas Lagarde [Lagarde] and Sophie Carriere. In 1999, the Algonquin Enrollment Board [AEB], the predecessor to the aforementioned process for determining Algonquin ancestral status, had determined that Thomas Lagarde was Algonquin. The Algonquins of Pikwàkanagàn First Nation [APFN], appealed this decision. In 2000, the AEB allowed the appeal and removed Thomas Lagarde from the list of Algonquins. But later in 2000, the AEB convened a further hearing to reconsider Thomas Lagarde's status. Based on new evidence provided, the AEB were again satisfied that he was Algonquin and he was placed back on the ancestors' list.

[26] In 2013, the APFN again protested Thomas Lagarde's inclusion on the List of Algonquin Ancestors. The protest came before retired Justice Chadwick. In a written decision dated March 31, 2013, he rejected the APFN's protest. He was aware of the previous decisions of the AEB, but based on the evidence before him, and in particular, a June 23, 1845 letter from a priest named Father Brunet to the Bishop of Montreal, he found that Thomas Lagarde was an Algonquin.

[27] In August 2014, Dr. Coupal's application was accepted and she was registered as a member of the BAFN. As a result of her membership in this Algonquin First Nation, she was eventually registered as a member of the AOO.

[28] Dr. Coupal was happy with her position at Laurentian University and had no plans to leave. However, a friend forwarded her an advertisement for a Canada Research Chair position in Truth and Reconciliation education at the University of Regina. Her friend encouraged her to apply and in January 2017, she did. The advertisement did not indicate that the University wanted to hire an Indigenous scholar

and she assumed the position was open to anyone. Her application package emphasized her education, research and teaching experience, and her professional service. The only reference to her indigeneity was a line in her cover letter wherein she stated, “I am a member of the BAFN”.

[29] Dr. Coupal was short-listed for the position and interviewed by the search committee in early 2017. The committee consisted of Ken Montgomery (Chair), the Dean of Research and Graduate Programs in the Faculty of Education, Dr. Angela Snowshoe, Associate Professor of Educational Psychology, Cheryl Quewezance, Interim Executive Lead-Indigenization, and Russell Fayant, Professor in the Gabriel Dumont Institute. Two other applicants were short-listed as well. Although the committee had not included any explicit preference for Indigenous applicants, all three candidates short-listed had self-proclaimed Indigenous ancestry.

[30] During her interview, Dr. Coupal represented herself as a scholar and teacher, and emphasized her work on indigenization, decolonization and reconciliation through literature. She was questioned by Ms. Quewezance about her Indigenous identity. Dr. Coupal advised that she grew up in Waterloo, Ontario with French, not Indigenous traditions, and did not speak an Indigenous language. She stated that if they were looking for an Indigenous person with culture, traditions and language, she was not that person.

[31] In March 2017, Dr. Coupal received an offer of employment as an associate professor with tenure at the University of Regina. The offer was conditional on the success of her nomination package by the Canada Research Chair Secretariat. On May 1, 2018, the Secretariat awarded Dr. Coupal a Tier 2 Canada Research Chair position in Truth and Reconciliation Education for a renewable five-year term. She began her new position at the University of Regina on July 1, 2018.

[32] Dr. Leroux was an accomplished academic much like Dr. Coupal. He has

a Bachelor of Arts (Honour) in native studies from Trent University, a Master's Degree in sociology and equity studies in Education from the University of Toronto, and a Ph.D. in sociology from Carleton University. He was a part-time professor in the Department of Sociology and Anthropology at the University of Ottawa for a year. Then in 2011 he became an associate professor at St. Mary's University in the Department of Social Justice and Community Studies. Since 2020, he has been an associate professor in the School of Political Studies at the University of Ottawa. Since approximately 2014, he has been studying the social, political and legal dynamics that lead white French descendent people to increasingly claim Indigenous identities in the 21st century and the effect this has had on Indigenous settler relations and politics across Canada. He has published several articles and books on this topic and has delivered papers at conferences.

[33] In November 2017, Dr. Leroux was speaking at Laurentian University. As part of his presentation, he spoke about his research questioning the validity of a land claim being made by the AOO. Dr. Coupal was in attendance and approached him after his presentation raising concerns regarding his comments about the land claim. Dr. Leroux's recollection was that their discussion was professional.

[34] In the fall of 2018, Dr. Coupal became aware of a document entitled "Organizations Representing Self-Identified 'Indigenous' People in Eastern Provinces and New England", that was circulating amongst some of her colleagues at the University of Regina. The document was authored by Dr. Leroux and was attached to a tweet he made on October 19, 2018 where he said:

I created this database to document all of the organizations that have membership policies that facilitate this form of #raceshifting in the "East". You'll note that all of the orgs whose members are allegedly involved in fraud are included.

[35] BAFN was listed in the document as one of the offending organizations.

Dr. Leroux did not identify Dr. Coupal as a member of the BAFN in the document, however some of her colleagues in the Faculty of Education were aware she was a member of the BAFN. This apparently led to some friction and in February 2019, she made a decision to transfer her Research Chair position from the Faculty of Education to the Department of English in the Faculty of Arts. In an email to her colleagues in the Faculty of Education advising of this transfer, Dr. Coupal said:

...

Unfortunately, the path for me in Education thus far has been challenging, particularly in terms of disciplinary issues and identity politics I am an English professor and had been appointed as a Canada Research Chair in a Faculty of Education that is devoted to teaching and service, while always encouraging research. The Canada Research Chairs program demands a high level of research productivity and comes with teaching and service releases to support that. If I am honest, the laudable goals and work of the Faculty of Education are not currently aligned well with the expectations of the Canada Research Chairs program.

I have always positioned myself honestly and ethically. Because I own a mirror, I know that I am white-coded, and I understand too well the many privileges my apparent whiteness has given me. When I was hired, I was forthright about my bifurcated subject position: I am Algonquin on my mother's side; I am a French settler on my father's. I was claimed as kin and welcomed into community and ceremony by my First Nation (which was started by two Algonquin women who had been kicked off of their reserve for marrying French men pre-Bill C-31). My First Nation is proud of me and the work I do. To insult me by regarding me and treating me as non-Indigenous is to insult my First Nation.

...

[36] In March 2019, Dr. Coupal was working with the University of Manitoba Press to get a collection of works published and she became aware that Dr. Leroux was also working with them to get a book published. She was concerned that Dr. Leroux's database and his allegations of fraud against BAFN members would be included in his

book. After discussing the matter with her friend and mentor, Dr. Deanne Reder, she reached out to David Carr, the Director of the University of Manitoba Press, with her concerns. She asked if it was possible to see part of Dr. Leroux's manuscript that referenced the BAFN. Mr. Carr told her he could not let her see the manuscript without Dr. Leroux's permission but that he would broker a conversation between them. Dr. Coupal was happy to discuss the matter directly with Dr. Leroux.

[37] Mr. Carr had Jill McConkey, who worked for the Press, pass Dr. Coupal's concerns on to Dr. Leroux. Dr. Leroux was not prepared to allow her to see the manuscript of his book, was annoyed at her for asking his publisher for a copy of it instead of coming to him directly, and felt she was being highly unethical. He responded to her concerns by an email to David Carr and Jill McConkey, but they never passed his responses on to Dr. Coupal.

[38] Having heard nothing from Dr. Leroux, and no conversation having been brokered, Dr. Coupal raised her concerns with Ms. McConkey at a conference they were both attending. Ms. McConkey encouraged her to reach out directly to Dr. Leroux. On June 9, 2019, she sent Dr. Leroux an email apologizing for not contacting him directly to begin with and stating:

...

My understanding is that you received the emails I sent about the biased document upon which (at least I think) you relied upon to conclude that Bonnechere Algonquin FN is composed of about 45% fake Indians. That number is incorrect. I would be very happy to have a conversation with you to explain why and how that document is not reliable, and to answer questions regarding the legitimacy of my FN.

Your database has caused me some professional harm. People believe what they read, especially when it comes from a good source like you. I am not here to shut down your speech or to demand that you remove my FN from either your database or your upcoming book. What I offer is clarification, insider

information, and more facts that you may not have access to, *should you want this.*

Again, I very much appreciate your good work. I think your book will spark important conversations that we need to have. I hope that you will consider speaking to me over the phone about Bonnechere Algonquin FN.

[39] Dr. Leroux never responded to Dr. Coupal's email.

[40] Sometime in 2021, Geoff Leo, a reporter with the CBC contacted the BAFN inquiring about Dr. Coupal's Algonquin ancestry. Richard Zohr, the Chief of the BAFN, replied to Mr. Leo's inquiries by email dated June 28, 2021, attaching the following response from Joan Holmes, the enrollment officer for the AOO:

... The purpose of this communication is to inform you that Michelle Coupal has been certified as meeting the Enrolment Criteria currently in place to identify Proposed Beneficiaries of the Algonquins of Ontario within the treaty negotiations that are currently underway with Canada and Ontario.

I will not discuss the particulars of Ms. Coupal's family history as this is private and confidential information supplied to my office for the purpose of enrolment. I can confirm that Ms. Coupal has met the criteria encompassing multiple requirements including: identification as Algonquin; direct lineal descent from an Ancestor named on the Schedule of Algonquin Ancestors; longevity and continuity of her family line in the Settlement territory and historic collectives throughout the historic period; and membership in a present day Algonquin community. These criteria were developed by the leadership of the Algonquins of Ontario after extensive deliberation and consideration of legal advice and historical information.

[41] The AOO had been having land claim negotiations with the governments of Ontario and Canada for some time. By 2021, those negotiations were in an advanced stage. The APFN had long protested the inclusion of a number of root ancestors on the List of Algonquin Ancestors with mixed success. Eventually, the APFN hired Dr. Leroux to evaluate the AOO's 2020 beneficiary criteria "with an eye on making

recommendations”. In his report dated July 19, 2021, Dr. Leroux identified ten root ancestors on the list of Algonquins whose “continued inclusion ensures that thousands of non-Algonquins are currently beneficiaries and tens of thousands more are eligible”. He identified Thomas Lagarde as one of these offending root ancestors. After an examination of a number of primary documents related to Lagarde’s life, he concluded that Thomas Lagarde was not Algonquin and was not Indigenous.

[42] In his report, Dr. Leroux also criticized the two approaches the AOO had adopted to prove whether an applicant was Algonquin and able to register as a beneficiary. To illustrate his point that both these approaches ensure that non-Algonquins can obtain beneficiary status, he used two scenarios. In the first scenario, he used himself as an example. After applying the enrollment criteria under both Approach A and B, he concluded he would meet the criteria to be considered Algonquin under either approach. In the second scenario, he used Dr. Coupal as the example. He did not use her name but explained that this person was the child of Estelle Turcotte, grew up in Kitchener-Waterloo, and became a member due to an ancestral connection to Thomas Lagarde and Sophie Carriere. After going through the analysis, he concluded that under both approaches this person could be registered as a beneficiary “even though they have no Algonquin, nor Indigenous ancestry”.

[43] On August 3, 2021, Dr. Coupal sent an email to Dr. Leroux requesting a meeting with him and his colleague, Dr. Coburn, to discuss her ancestry. In the email she said:

...

I am going to go out on a limb here, because I think that it’s important that those of us whose ancestry is being scrutinized accept that scrutiny and respond with openness and transparency.

I would like to request a brief meeting with the two of you to discuss my ancestry. I understand that you have some questions

about it, and I'm more than happy to share with you how I grew up, what I knew about my Algonquin relations growing up, what I didn't know and didn't learn, and what I've learned more recently by connecting with the Bonnechere Algonquin First Nation.

...

[44] Dr. Leroux and Dr. Coburn declined to meet with Dr. Coupal to discuss her ancestry.

[45] On August 9, 2021, a story written by Geoff Leo was posted to the CBC News website. The title of the story was "Mysterious letter linking 1,000 people to \$1B Algonquin treaty likely fake CBC investigation finds". The story questioned the authenticity of the June 23, 1845 letter from Father Brunet to the Bishop of Montreal. This was the same letter placed before retired Justice Chadwick at the hearing in 2013 to determine whether Thomas Lagarde was Algonquin. Retired Justice Chadwick was satisfied with the authenticity of the document and together with the other evidence before him, determined that Thomas Lagarde was Algonquin.

[46] The CBC story attempted to cast doubt on Chadwick's conclusion. The story quoted Professor Veldon Coburn as saying substantial amounts of documentation demonstrate that Thomas Lagarde was French, and Chief Lance Haymond of the Kebaowek First Nation as saying that Lagarde is part of a trend in which people falsely claim to be Indigenous based on dubious evidence. The story referenced an anonymous Twitter account claiming that more than 30 high-profile academics, artists and political figures are "pretend Indians", including a Saskatchewan university professor who traces her roots to Lagarde.

[47] The CBC emailed a detailed summary of the evidence it had gathered about the Father Brunet letter to the AOO. The lawyer for the AOO responded, telling CBC it was difficult to respond to their evidence "as it consists of vague statements and allegations presented in a summary way". The lawyer concluded by advising that there

was a process in place to contest someone's inclusion as an Algonquin ancestor and that anyone that believed they have a claim of impropriety may take advantage of that process.

[48] On August 9, 2021, after Mr. Leo's story appeared on the CBC News website, Dr. Leroux tweeted the following:

Darryl Leroux@Darryl Leroux • Aug 9

In this latest case of #raceshifting, 1,000+ white folks become "Algonquin" on basis of historical documents forged by a Knights Templar historian. The grift is mind-blowing.

[cbc.ca/news/canada/sa...](https://www.cbc.ca/news/canada/sa...)

These stories become harder and harder to believe. This week, we find out that white people in the Ottawa Valley were so desperate to be considered Algonquin that they presented 2 separate, forged documents in legal hearings that fudged their 4th generation ancestor's French-Canadian identity. The guy behind the ruse is a master conspiracy theorist who has written a number of books about the Knights Templar and fancies himself Dan Brown-esque. Not only did he transform both Thomas Laguarde and Emilie Carriere into "Algonquins" through a number of slights of hand – both are easily identifiable as French-Canadian in dozens of actual archival documents – but Laguarde also mysteriously became a Freemason, just like him!

Why is this important? Well, at least 15% of the individuals who the government considers Algonquin for the purpose of the largest comprehensive land claim in Canadian history are members on the basis of an ancestral relationship with Laguarde. And back in 2016, they voted in favour of the Agreement-in-Principle and for the extinguishment of Algonquin rights. About 40% of those deemed Algonquin through this process are white, French-Canadians.

Of course, the other big problem is that **there are individuals running around claiming to be Algonquin based on family lore and these forged documents. One of them is a Canada Research Chair in Truth, Reconciliation, and Indigenous Literatures at the University of Regina** and is launching her project "How to Teach Stories of Residential School" sometime

this year.

This all comes on the heels of last week, when we found out about Morris Blanchard, a white man from Atikokan (ON) who passed himself off as an Anishinaabe Elder and who claimed to be both a residential school and Sixties' Scoop survivor. Despite having a criminal record for numerous violent offences, he was hired to teach children at a local school board and won art awards granted by Queen's University and the City of Kingston. He also happened to be the "spiritual guide" and language teacher for the Canada Research Chair in Language Revitalization and Decolonizing Education at Queen's.

[Emphasis added]

[49] Sometime on August 9, Dr. Leroux made another tweet as follows:

Darryl Leroux@Darryl Leroux • 2h
Good point Jessica. As I wrote, **there's a professor in Saskatchewan right now who has leveraged her ancestral relationship with the same Thomas Laguarde to become an expert on "truth and reconciliation"** ... I know of about 40 other people in academia and the arts doing the same.

[Emphasis added]

[50] At some point following Mr. Leo's article, Dr. Coupal was approached by the Dean of Arts and advised that her Faculty page was the most visited page concerning her. The Dean suggested she consider how she might update her page to better showcase her research. In response to the Dean's "suggestion", Dr. Coupal removed the prose section of her Faculty page, including her identification as an Algonquin/French scholar, and replaced it with a list of her publications and special events she organized to better represent her work.

[51] On September 13, 2021, Geoff Leo posted a follow-up article on the CBC News website. This article, titled "Push to remove 'pretendians' from Algonquin membership rekindled after CBC investigation", indicated that based on the August 9 CBC article, the APFN would be renewing its efforts to remove Thomas Lagarde and his relatives from the AOO membership list. The article went on to quote Davie

Joanisse, the Chief of the Antoine First Nation, an Algonquin First Nation in northeastern Ontario, as welcoming a challenge to people who have been granted Algonquin membership based on “flimsy criteria”, if there was something that was done wrong or a document tampered with. However, the article also made clear that Chief Joanisse was not blaming those people relying on Thomas Lagarde’s ancestry as “pretend” Algonquins, stating:

Joanisse was also quick to point out that the vast majority of people who have been relying on that ancestry have likely been doing so in good faith, without knowing about the questions surrounding the Lagarde letter.

“I don’t think you can blame the individuals that applied under this process”, he said.

[52] The article specifically identified Dr. Coupal as one of the people “entangled in this controversy”, that she was a professor at the University of Regina holding the Canada Research Chair in Truth, Reconciliation and Indigenous Literatures, that she identified as an Algonquin/French scholar, was a member of the BAFN, and that she relied on Thomas Lagarde as one of her root ancestors. Mr. Leo quoted Dr. Coupal as having told CBC News that Twitter claims that she is a “pretend Indian” are false, that she remains Algonquin and a member of the BAFN, and that if her Algonquin status changes as a result of the fall protests and she is deemed to not meet federal and provincial standards, she will adjust how she identifies accordingly. The article also pointed out that the 2017 posting for her position at the University of Regina did not require the applicant to be Indigenous and quoted Dr. Coupal as saying that her Research Chair position does not depend on her Indigenous identity and that she was hired on the strength of her research.

[53] On September 13, 2021, Dr. Leroux had the following text message thread with Dr. Niigaan Sinclair, a professor in the Department of Native Studies at the University of Manitoba:

Hey Darryl hope you're well man. Is the person you're referring to Michelle Coupal? I don't know her but I was brought with her on a panel the other day. I'd like to know what's up there.

Hey Niigaan. That's right. I think the article explains it well ... but it's the second part of a series. The first article explains all the effort that went into getting a white French-Canadian couple added to the list of "Algonquin" ancestors for the treaty negotiations.

cbc.ca/news/canada/sa...

basically, their inclusion, which led to the inclusion of 1,000+ white folks, hinged on 2 forged documents.

Coupal's claim to being "Algonquin" rests on this couple, nothing more. She has no Algonquin ancestry.

Unbelievable but believable. Thanks for this. Incredible that people like this take positions and space.

Like what do they think that no one checks.

I'm not sure. The only reason I know about the basis for her claim is that she tried to convince my publisher to vet/veto the proofs when it came to a section that I talk about the Algonquins of Ontario organization.

The publisher checked in with me, I said no way. I stand by what I wrote.

She then informed them who her "Algonquin root ancestor" was and it turns out to be the French-Canadian couple in the article

they shared the info with me thinking it would help convince me of her claim;

but the section in my book debunked the entire fraud.

So, she almost got to the point where she had some sort of veto power over that entire section, I suppose to hide her own fraud

[Emphasis added]

[54] Joan Holmes, the enrollment officer for the AOO, received a copy of Dr. Leroux's report dated July 19, 2021, prepared for the APFN. On September 30, 2021, she prepared a report responding to Dr. Leroux's July 19 report as well as a further report he prepared dated September 16, 2021 (the second report was not filed as an exhibit nor was it referenced in relation to the present case). She was politely critical of both reports, identifying a number of flaws or problems with his reasoning. Specifically, Ms. Holmes said:

This report will purposefully not comment on any information related to specific ancestors. This is not meant to avoid addressing the matters raised by Dr. Leroux with respect to Algonquin Ancestors or to suggest that such matters should be ignored. Rather, it reflects my understanding that such matters are to be addressed in the context of the Algonquin Review Board and the Algonquin Tribunal. I note that the Algonquin Negotiations Representatives (ANRs) adopted a Special Resolution on April 20, 2021, which sets out the appeal/protest process administered by the Algonquin Review Board and the Algonquin Tribunal. Amongst other things, this process contemplates the hearing of protests that seek to challenge the inclusion of historical persons on the List of Algonquin Ancestors. The Special Resolution contemplates that the Enrolment Officer is to provide reports to the Board/Tribunal in the context of the dispute resolution process. So as to maintain the integrity of that process, I will refrain from commenting on or debating specific cases.

...

... My comments are directed at specific sections of Dr. Leroux's reports. However, by way of overall theme, I believe that my comments can be summarized by the following

points.

First, Dr. Leroux's reports do not fully articulate the steps associated with how the List of Algonquin Ancestors has developed over time. At the most fundamental level, Dr. Leroux's report does not mention the fact that the ANRs adopted the April 20, 2021 Special Resolution that allows for protesters to challenge Ancestors included on the List of Algonquin Ancestors. This is an important omission as the report seems to assume that the List of Algonquin Ancestors and those who have been enrolled as proposed beneficiaries is somehow no longer subject to review and challenge. This is not my understanding as the Board/Tribunal process will allow for applications, protests and appeals to be heard and determined.

...

Second, Dr. Leroux seems to suggest that Ancestors have been added to or removed from the List of Algonquin Ancestors in a haphazard way. This is done by identifying discrepancies between various lists of Algonquin ancestors as they existed from time to time. Algonquin Ancestors have not been added to nor removed from the List of Algonquin Ancestors in a haphazard way. Indeed, many of the names mentioned by Dr. Leroux result from deliberate changes to the list so as to consolidate the list and make it more rigorous. ...

Third, and with all due respect to Dr. Leroux, I am concerned that he has misinterpreted certain enrolment statistics. The effect of this mistake is to suggest that the number of individuals who, in his view, should not be enrolled as proposed beneficiaries is actually higher than it would otherwise be. In this regard, Dr. Leroux seems to suggest that the number of people who rely on an ancestor that he argues is not Algonquin do not have another ancestor or that the other ancestor or ancestors are also alleged not to be Algonquin. That does not appear to be the case as it is sometimes (but certainly not always) the case that such proposed beneficiaries have another ancestor with whom the report takes no issue. ...

[55] Ms. Holmes also addressed Dr. Leroux's position that Approach A and B for enrollment with the AOO easily allows non-Indigenous individuals to be able to qualify for Algonquin membership. She pointed out a number of flaws in his understanding of the approaches and then proceeded to analyze the two scenarios put

forth by him: himself and the child of Estelle Turcotte (Dr. Coupal). After properly applying the criteria in Approach A and Approach B, Ms. Holmes determined that Dr. Leroux would meet neither of the approaches and would not be placed on the Algonquin membership list. In relation to the scenario referencing Dr. Coupal, she stated:

3.2.2 Scenario 2 Estelle Turcotte's anonymous child

Leroux Report #1 draws its conclusion based on the allegation that the ancestors of this individual are not Algonquin. This has not been demonstrated within the appeal process agreed to by the ANRs in which it is anticipated that appointed and trained Algonquins will adjudicate protests and appeals.

Based on the information submitted by the anonymous applicant, he/she meets both Approach A and Approach B.

[56] On October 8, 2021, Dr. Leroux tweeted the following to an individual by the name of D.A. Lockhart, who worked at the University of Regina:

D.A. Lockhart@WRiverLockhart • 2h

I can spin a history of the overt anti-Indigenous racism I experienced as an employee at @UofRegina

Darryl Leroux@Darryl Leroux • 1h

I bet. **The administration has elected to protect a renowned and well-documented Canada Research Chair pretending to be Indigenous.**

[Emphasis added]

[57] On February 2, 2022, Dr. Leroux was a guest speaker at the Robinson-Huron Waawiindamaagewin Treaty Governance Forum, organized by the Anishinabek Nation of Ontario. His talk included a PowerPoint presentation. One of his slides had the names of three individuals. One of the three named was Dr. Coupal and the slide also contained her position as the Canada Research Chair in Truth, Reconciliation and Indigenous Literatures at the University of Regina. With the slide on the screen, Dr. Leroux told the attendees that these three individuals had “no Indigenous ancestry

but have built a career around their false claims through the Algonquins of Ontario and have made several millions of dollars in salaries from essentially their fraud”. His presentation was republished on YouTube and Twitter on or about February 23, 2022. Dr. Leroux has over 11,000 Twitter followers and as at September 28, 2023, 2,111 people had viewed the video of his presentation.

[58] On March 15, 2022, Dr. Coupal filed a statement of claim against Dr. Leroux alleging that his two August 9, 2021 tweets, his October 8, 2021 tweet and his February 2, 2022 presentation and its subsequent republication on YouTube and Twitter were defamatory. She claimed that he recklessly and maliciously made these defamatory statements with the intention of discrediting her reputation and exposing her to distress, embarrassment, loss of reputation and financial loss. A demand was made of Dr. Leroux to retract the statements, but he has refused to do so. Dr. Coupal claims pecuniary, non-pecuniary, aggravated, exemplary and punitive damages, pre-judgment interest and solicitor/client costs.

[59] On April 20, 2022, Dr. Leroux filed a statement of defence relying on the defences of justification and fair comment. He denied acting with malice, that Dr. Coupal suffered any damages, and asked for her claim to be dismissed with costs on a substantial indemnity basis.

[60] On January 9, 2023, Dr. Coupal filed an amended statement of claim wherein she added the September 13, 2021 text message thread between Dr. Sinclair and Dr. Leroux as being allegedly defamatory and part of her claim. On May 15, 2023, Dr. Leroux filed an amended statement of defence wherein he defended this September 13, 2021 text message thread, also on the basis of justification and fair comment.

[61] In April 2021, the ANRs had established a new process for determining whether historic persons could be considered to be Algonquin and thereby entitled to

enrollment under the proposed beneficiary criteria. By special resolution, the ANRs created the Algonquin Enrollment Board and the Algonquin Tribunal whose purpose it was to consider appeals and protests regarding enrollment.

[62] In June 2022, the ANRs referred certain historic persons on the Schedule of Algonquin Ancestors to the Tribunal to determine whether such historic persons are identified in a historic record or document in such a way that it would be reasonable to conclude that that person was considered to be Algonquin. Two of these referred historic persons were Thomas Lagarde and his wife, Sophie Carriere.

[63] In December 2022, Joan Holmes prepared reports for the Tribunal on each of Thomas Lagarde and Sophie Carriere. In her report on Thomas Lagarde, she concluded that the June 23, 1845 letter from Father Brunet to the Bishop of Montreal was the only historical document that indicated that Lagarde was Algonquin. However, the document had no proper archival source, its provenance had not been verified by an archive, it was difficult to decipher, and some of the content could not be verified or appeared contradictory. No other documentation indicated that Lagarde, his ancestors or immediate descendants, had any Indigenous or Algonquin heritage, married into known Algonquin families, resided with Algonquin families, signed any Algonquin petitions or witnessed any events by Algonquins. The documentation she was able to locate indicated that Thomas Lagarde was the eighth generation of individuals who had immigrated from France.

[64] In her report on Lagarde's wife, Sophie Carriere, Ms. Holmes concluded that none of the documentation regarding her, her immediate family, ancestors or descendants, identified any of them as having any Indigenous or Algonquin affiliation. No one from her immediate family married into an Algonquin family, resided with Algonquins or witnessed events by Algonquins. She determined Ms. Carriere's ancestors traced back to France.

[65] In June and July 2023, the five-person Tribunal heard submissions on whether both Thomas Lagarde and Sophie Carriere should remain on the Schedule of Algonquin Ancestors. On July 24, 2023, in separate written decisions, the Tribunal unanimously determined that based on the evidence (or lack thereof) before them, neither Thomas Lagarde nor Sophie Carriere were Algonquin and that they should both be removed from the Schedule of Algonquin Ancestors. The Tribunal was careful to say that their decisions were only with respect to Thomas Lagarde and Sophie Carriere and that it is possible that those who rely on one of them may have an alternate Algonquin ancestor or may be a descendant of another historical person who may qualify as an Algonquin ancestor. Of particular note, in paragraph 144 of the Lagarde decision, the Tribunal said:

144. ... The Tribunal also accepts that those who were enrolled on the basis of being a lineal descendant of Thomas Lagarde dit St. Jean (RIN #11565) did so in good faith.

[66] The Tribunal made the same comment in paragraph 130 of the Carriere decision in relation to those who were enrolled on the basis of being a lineal descendant of Sophie Carriere.

[67] On July 1, 2023, Dr. Coupal's Canada Research Chair position in Truth, Reconciliation and Indigenous Literatures was renewed for another 5-year term.

ISSUES

[68] Although each party has filed an application for summary judgment, the issues to be determined as between the parties are as follows:

- (a) Is this an appropriate case in which to grant summary judgment?
- (b) Did Dr. Leroux defame Dr. Coupal?
- (c) Is Dr. Leroux entitled to rely on the defence of justification?

(d) Is Dr. Leroux entitled to rely on the defence of fair comment?

(e) What damages, if any, is Dr. Coupal entitled to?

ANALYSIS

(a) Is this an appropriate case in which to grant summary judgment?

[69] Rule 7-5(1) of *The King's Bench Rules* sets out when summary judgment may be granted. This Rule states:

7-5(1) The Court may grant summary judgment if:

(a) the Court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.

[70] In *Michel v Canada (Attorney General)*, 2021 SKCA 126 [*Michel*], the Saskatchewan Court of Appeal explained how this Rule is to be applied. At para. 99, Leurer J.A. (as he then was), stated:

[99] Rule 7-5(1) contemplates two different situations in which summary judgment may be granted. Rule 7-5(1)(a) deals with cases where the use of the summary judgment procedure is contested. In that situation, the grant of judgment depends on the Court being “satisfied that there is *no genuine issue requiring a trial*” (emphasis added). Rule 7-5(1)(b) addresses cases where the parties agree to have all or part of a claim determined by the summary judgment procedure. In that context, the court must be “satisfied that it is *appropriate to grant summary judgment*” (emphasis added).

[71] Here, the parties agree that this case can be resolved by way of summary judgment and, as such, they fall under Rule 7-5(1)(b). However, just because both parties agree that the matter should be determined by summary judgment does not mean

I must do so. To acquiesce to the parties' desires, I must be satisfied it is appropriate to grant summary judgment. If I determine this is not an appropriate case in which to grant summary judgment, then I need not carry on and consider the substantive issues raised. In that instance, it would be incumbent on me to simply direct the matter on to trial in the ordinary fashion.

[72] By agreeing this case can be resolved by summary judgment, the parties are agreeing there is no genuine issue requiring a trial. There will be no genuine issue for trial if I am able to reach a fair and just determination of the case on the merits. While the summary judgment rules must be interpreted broadly in a way that favours proportionality and fair access to affordable, timely and just adjudication of claims, the rules must not be applied in a fashion which compromises the fairness of the procedure or the justness of the outcome. See *Casbohm v Winacott Spring Western Star Trucks*, 2019 SKQB 44 at para 10; *Michel* at paras 108-110; *McCorriston v Hunter*, 2019 SKCA 106 at paras 23 and 26.

[73] In determining whether I am able to reach a fair and just determination on the merits, I must consider whether the affidavit evidence (a) allows me to make the necessary findings of fact, (b) allows me to apply the law to the facts, and (c) is a proportionate, more expeditious and less expensive means to achieving a just result than going to trial. The issue is not whether the summary judgment process is as thorough or the evidence as complete as at trial. It is simply whether I am confident I can find the facts and apply the relevant legal principles so as to fairly resolve the dispute. If I am able to do that, then proceeding to trial is not proportionate, timely or cost effective. See *Hryniak v Mauldin*, 2014 SCC 7 at paras 49-50.

[74] Here, Dr. Leroux does not deny making the statements attributed to him, nor does he deny that the statements explicitly or implicitly refer to Dr. Coupal. Dr. Coupal says the statements Dr. Leroux made about her are defamatory and he

should pay damages to her. Dr. Leroux denies the statements he made were defamatory, but even if they were, they were the truth and/or a fair comment and Dr. Coupal's action for defamation should be dismissed. The issues in this case involve questions of law. Were the statements Dr. Leroux made defamatory? If they were defamatory, is Dr. Leroux able to rely on either the defence of justification or the defence of fair comment? If neither defence has been made out, what are the appropriate damages? Both parties have provided evidence in support of their respective positions and in so doing, have put their "best foot forward". In reviewing the material filed and the arguments made, I am satisfied there is no further evidence that would better assist me in determining the issues before me. It would be more cost effective to have the case dealt with by summary judgment and more expedient than the parties having to have a trial. Whatever the outcome of the hearing, all issues between the parties will be resolved.

[75] Based on the evidence before me, I am able to reach a fair and just determination on the merits of the case between Dr. Coupal and Dr. Leroux. There is no genuine issue requiring a trial. The parties have agreed to proceed by way of summary judgment, and I am satisfied that it is appropriate to grant summary judgment in this case and that I am able to do so.

(b) Did Dr. Leroux defame Dr. Coupal?

[76] Dr. Coupal takes issue with three Twitter posts Dr. Leroux made, some texts Dr. Leroux made to Dr. Sinclair in a text message thread between them, and the words Dr. Leroux spoke about her at a conference, a video of which was later uploaded to YouTube and Twitter. The defamation in these different statements is not Dr. Leroux's assertion that she is not Indigenous; the defamation in the statements he made were his assertions that she committed fraud, that she committed fraud for economic gain, that she actively hid her fraud, that she was pretending to be Indigenous,

and that she relied on forged documents.

[77] In order to pursue a defamation claim, a plaintiff must prove three things on a balance of probabilities: (a) 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, (b) that the words in fact referred to the plaintiff, and (c) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these three elements are proven, then the law presumes the words are false and the plaintiff will be entitled to damages. In that instance, the onus shifts to the defendant to advance a defence to escape liability. See *Grant v Torstar Corp.*, 2009 SCC 61 at paras 28 and 29 [*Grant*].

[78] The definition of defamation and the process for determining if words or statements are defamatory was discussed by Abella J.A. (as she then was) in *Color Your World Corp. v Canadian Broadcasting Corp.*, 1998 CanLII 1983 at paras 14-15, 38 OR (3d) 97 (Lexis) (ONCA):

14

...

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him [or her] in the estimation of right-thinking members of society generally and in particular to cause him [or her] to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one ...

...

15

The standard of what constitutes a reasonable or ordinary member of the public is difficult to articulate. It should not be so low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation. The impressions about the content of any broadcast - or written statement - should be assessed

from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers.

[79] The meaning to be attributed to the words is the plain and ordinary meaning, or by virtue of extrinsic facts or circumstances known to the listener or reader, a meaning by way of innuendo different from that in which it would ordinarily be understood. In determining the meaning of the words or statements, the Court may take into consideration all of the circumstances of the case, the context in which the words were used, the audience to whom they were directed, and the manner in which they were presented. See *Botiuk v Toronto Free Press Publications Ltd.*, 1995 CanLII 60 at para 62, [1995] 3 SCR 3; *Tsatsi v College of Physicians and Surgeons of Saskatchewan*, 2016 SKQB 389 at para 31 [*Tsatsi QB*].

[80] Words that are insulting, hurt a person's feelings, are an affront to a person's dignity, are unflattering or are rhetoric are not necessarily defamatory. However, the scope of defamatory statements is very wide, especially with respect to professional reputations. See *Tsatsi QB* at para 32; *Vellacott v Saskatoon StarPhoenix Group Inc.*, 2012 SKQB 359 at para 47.

[81] With these principles in mind, I will address each statement Dr. Coupal complains of separately.

(i) **August 9, 2021 Tweet – “Claiming to be Algonquin based on family lore and these forged documents”**

[82] Geoff Leo's August 9, 2021 CBC article sought to cast doubt on whether Thomas Lagarde was an Algonquin by showing that the June 23, 1845 Father Brunet letter relied on by retired Justice Chadwick to establish his indigeneity was a forgery. According to the article, 1,000 people relied on this forged document and the Lagarde ancestral line to allege they were Algonquin and thereby beneficiaries of a nearly

billion-dollar land claim agreement the AOO was in the final stages of negotiating. These people relying on the Lagarde ancestral line, of which a Saskatchewan university professor was one, were pretend Indians who have no rightful claim to the AOO land claim settlement.

[83] On the heels of Mr. Leo's August 9 article, Dr. Leroux posted a tweet on Twitter. His tweet followed up on the theme of Mr. Leo's CBC report. His tweet was entitled, "In this latest case of #raceshifting, 1,000+ white folks become 'Algonquin' on basis of historical documents forged by a Knights Templar historian. The grift is mind-blowing", and attached a link to Mr. Leo's report. In his tweet he stated definitively that the document proving Thomas Lagarde to be Algonquin was forged and that Lagarde was French Canadian, that 15 percent of the individuals set to share in the largest land claim in Canadian history claim their indigeneity through Lagarde, and that these individuals, including the Canada Research Chair in Truth, Reconciliation and Indigenous Literatures at the University of Regina, "are running around claiming to be Algonquin based on family lore and these forged documents".

[84] I am satisfied that Dr. Leroux's words are defamatory. He acknowledged posting the tweet on August 9, 2021 and the tweet would have been available for all those who were following him on Twitter to see. He did not name Dr. Coupal as the Canada Research Chair he was tweeting about but in his evidence he admitted that he was referring to her when he tweeted those words. On August 9, 2021, it was well known that Dr. Coupal held this Research Chair at the University of Regina and anyone checking the Faculty list on the University's website would be able to confirm that. It was clear that Dr. Leroux was referring to Dr. Coupal.

[85] Dr. Leroux's words must be considered with the whole of the tweet. In the heading to the tweet he uses the words "raceshifting" and "grift". Raceshifting refers to people with little or no Indigenous ancestry suddenly self-identifying as Indigenous

or Métis to access certain benefits or for personal gain. The word “grift” means acquiring money or property illicitly, usually by means of deceit or cheating, and is often used to describe a scammer or a con artist. Looking at the entire context of the tweet, including the byline, the link to the CBC article and Dr. Leroux’s words, a reasonable member of the public would believe that Dr. Coupal, the esteemed Canada Research Chair in Truth, Reconciliation and Indigenous Literatures at the University of Regina, was one of 1,000+ con artists relying on family lore and forged documents to dishonestly establish they are Algonquins to share in the largest land claim in Canadian history. This would most certainly bring Dr. Coupal into disrepute, deprive her of the benefits of public confidence and esteem and render her contemptible. As such, the words of Dr. Leroux in this August 9, 2021 tweet are defamatory.

(ii) August 9, 2021 Tweet – “Leveraged her ancestral relationship”

[86] On August 9, 2021, Dr. Leroux posted yet another tweet regarding Dr. Coupal. It appears he was exchanging tweets with an individual named “Jessica”. The words in the tweet complained of are “there’s a professor in Saskatchewan right now who has leveraged her ancestral relationship with the same Thomas Laguarde to become an expert on ‘truth and reconciliation’”. Although he does not name the “professor in Saskatchewan” he is referring to, he deposed in his affidavit material that he was referring to Dr. Coupal. He also deposed that the meaning behind these words was that Dr. Coupal has relied on her false Indigenous identity claims to advance her career as an expert in truth and reconciliation. This is troublesome. An ordinary, reasonably informed person reading these words would certainly think less of Dr. Coupal as a person and a professor. These words threaten her character and her reputation, and expose her to disesteem, disgrace, disrepute and even ostracism. The words were about Dr. Coupal, they were published on Twitter, and they are defamatory.

(iii) September 13, 2021 text message thread between Dr. Niigaan Sinclair and Dr. Leroux

[87] On September 13, 2021, Dr. Sinclair and Dr. Leroux were exchanging text messages when Dr. Sinclair asked Dr. Leroux if the person that he was referring to was Dr. Coupal. Dr. Leroux confirmed that he was speaking of Dr. Coupal, that her claim to being Algonquin rested on a French-Canadian couple whose basis for identifying as Indigenous hinged on forged documents, and that Dr. Coupal has no Algonquin ancestry. He went on to text that Dr. Coupal had reached out to his publisher to try to veto a section of his recently published book dealing with the Ontario Algonquins because she claimed that the Lagarde ancestral line, from which she was descended, was Algonquin. He stood by what he wrote and accused her of fraud. The specific words Dr. Leroux used were that “they shared the info with me thinking it would help convince me of her claim; but the section in my book debunked the entire fraud, so she almost got to the point where she had some sort of veto power over that entire section, I suppose to hide her own fraud”.

[88] According to Dr. Leroux, he was accusing Dr. Coupal of committing ethnic fraud. He deposed that he felt she provided false information to his publisher to convince them of her Indigenous identity or promote her false claim to being Indigenous. Then she tried to hide her own fraud by trying to screen any potential criticisms of the AOO’s land claim or any negative references towards the BAFN in his book.

[89] A reasonable member of the public would interpret Dr. Leroux’s words as suggesting Dr. Coupal was deliberately or intentionally dishonest and tried to cover up her dishonesty. There is an objective basis to believe that these words would tend to lower Dr. Coupal’s reputation in the eyes of a reasonable person, and cause her to be regarded with disdain or contempt. These words Dr. Leroux texted to Dr. Sinclair are defamatory.

(iv) October 8, 2021 Tweet – “Canada Research Chair Pretending to be Indigenous”

[90] In an October 8, 2021 Twitter conversation with someone named D.A. Lockhart, Dr. Leroux tweeted that “The administration has elected to protect a renowned and well-documented Canada Research Chair pretending to be Indigenous”, and then he attached a link to Geoff Leo’s follow-up CBC article of September 13, 2021. Mr. Leo’s article identifies this Canada Research Chair as being Dr. Coupal. And, in any event, Dr. Leroux again admits in his affidavit evidence that he was referring to Dr. Coupal in this tweet.

[91] The plain and ordinary meaning of Dr. Leroux’s comments are that Dr. Coupal is pretending to be Indigenous when she is not. In the eyes of a reasonable person, her reputation would be tarnished, the esteem in which she was held would drop and she would be disgraced. Again, another of Dr. Leroux’s tweets is defamatory.

(v) February 2, 2022 - Presentation to the Treaty Governance Forum

[92] At a February 2022 presentation at the Robinson-Huron Waawiindamaagewin Treaty Governance Forum, Dr. Leroux told a roomful of delegates that Dr. Coupal and two others, whose names were all projected on a slide for all to see, had no Indigenous ancestry but had built a career around their false claims through the AOO and have made several millions of dollars in salaries from essentially their fraud. This presentation was later posted on both YouTube and Twitter and had garnered a number of views.

[93] Dr. Leroux’s words are very clearly defamatory. A reasonable and ordinary person would view these words as suggesting that Dr. Coupal was deliberately misleading about her indigeneity so she could significantly profit therefrom. This would certainly negatively affect her reputation and her actions would be looked at with disdain, contempt and disgrace.

[94] I am satisfied that Dr. Leroux defamed Dr. Coupal in all five statements complained of. The onus now shifts to Dr. Leroux to establish either the defence of justification or the defence of fair comment.

(c) Is Dr. Leroux entitled to rely on the defence of justification?

[95] Truth or justification is a complete defence to a defamation action. To succeed on this defence, it is not sufficient for the defendant to prove that they believed the statements are true but rather, the defendant must show that they are substantially true. See *Grant* at para 33; *Tsatsi v College of Physicians and Surgeons of Saskatchewan*, 2018 SKCA 53 at para 22 [*Tsatsi CA*].

[96] A defendant does not have to prove that a statement or publication is literally accurate in every minute detail. They do not have to show the truth of each and every word or the literal truth of the statement; they must establish only that the whole of the defamatory matter is substantially true. What is required to be proven is the truth of the gist of the allegation or the sting of the charge, and any inferences of fact flowing from those charges. The gist or the sting is the main point, material part, or essence of the statement or publication that makes it hurtful. A court must not be too literal in its approach nor insist upon proof of every detail where it is not essential to the gist or sting of the statement. See E. Chamberlain and K. Eltis, *The Law of Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed (Carswell, 1994) (updated to release 2025-4) at pp10-57 to 10-63 [*Law of Defamation*].

[97] The truth will be measured at the time of the defamatory statement or publication. The words must be true when they are spoken. See *Law of Defamation*, p 10-44; *Tsatsi CA* at paras 41 and 43; *Makow v Winnipeg Sun*, 2003 MBQB 56 at para 61.

[98] With these principles in mind, I again look to each defamatory statement

complained of by Dr. Coupal.

(i) August 9, 2021 Tweet – “Claiming to be Algonquin based on family lore and these forged documents”

[99] Dr. Leroux argues that the gist of this tweet is that Dr. Coupal’s Indigenous ancestry and identity are false. He states that his research, the research of others, Mr. Leo’s CBC articles and Dr. Coupal’s own evidence verifies this conclusion. Respectfully, I do not agree.

[100] The gist or sting of this particular tweet is not as subtle as Dr. Leroux suggests. Considering the whole of the tweet, including the title and the link to the CBC article attached to the tweet, he is suggesting that Dr. Coupal is a con artist relying on family lore and forged documents to claim she is Algonquin so she can benefit in the AOO’s almost billion dollar land claim. The gist is that Dr. Coupal is dishonestly or fraudulently holding herself out to be Indigenous and is contemptible. Thus, the onus is on him to substantially prove the truth of the facts that Dr. Coupal was being intentionally dishonest. He has not done so.

[101] At the date of this tweet, Dr. Coupal was identifying as Algonquin through the Thomas Lagarde line. Thomas Lagarde’s Indigenous ancestry had been challenged a number of times but was upheld in a written decision of retired Justice Chadwick after a full hearing in March 2013. It is of some significance that Justice Chadwick’s decision was largely based on his acceptance of the Father Brunet letter and its authenticity. At the date of Dr. Leroux’s tweet, the AOO considered Thomas Lagarde and his descendants, of which Dr. Coupal was one, to be Algonquin and she had been continuously registered as such with the BAFN and the AOO.

[102] The AOO had a process in place for an individual’s indigeneity to be determined on the basis of a root ancestor or to be protested. Following retired Justice Chadwick’s decision that Lagarde was Algonquin, nobody protested his indigeneity

again until 2023, well after Dr. Leroux made his offending tweet.

[103] Dr. Leroux had prepared a report dated July 19, 2021, at the request of the APFN in which he suggested that a number of root ancestors who were recognized as being Algonquin, were not. Dr. Leroux examined a number of primary documents and concluded that based on these documents these root ancestors, one of which was Thomas Lagarde, were not Algonquin, nor Indigenous. In his report, he also criticized the AOO's two approaches for determining if a person was Algonquin. He used Dr. Coupal as an example of how someone from an ancestral line (the Lagarde line) that was not Algonquin could be found under either approach to be Algonquin.

[104] Other than Dr. Leroux's own report, he was not able to point to any other research or reports that existed at the time of his August 9, 2021 tweet that definitively established that Thomas Lagarde, and his family line that included Dr. Coupal, was not Indigenous.

[105] He tried to suggest that research prepared by Joan Holmes, the AOO enrollment officer, supported his decision, but as at August 9, she had not done any research that supported his conclusions. As a matter of fact, on or about June 28, 2021, at the request of the Chief of the BAFN, Ms. Holmes certified that Dr. Coupal met all of the AOO criteria to be considered Algonquin. Moreover, on October 6, 2021, after having reviewed Dr. Leroux's July 2021 report, Ms. Holmes wrote a report criticizing some of Dr. Leroux's findings. She also debunked his position that the two approaches developed by the AOO for determining Algonquin membership were faulty and pointed out that in the Dr. Coupal example, Dr. Leroux had started from the improper assumption that she was not Algonquin when she was. It was not until December 20, 2022, some 16½ months after Dr. Leroux's August 2021 tweet, that Ms. Holmes wrote a report concluding that Thomas Lagarde and his descendants may not be Algonquin. She wrote that report for the benefit of the AOO Tribunal who was preparing to hear

submissions on whether or not Thomas Lagarde was indeed Algonquin.

[106] Dr. Leroux argued that the research of two of his colleagues, Dr. Veldon Coburn and Dr. Jennifer Meness, supported his position in his August 9, 2021 tweet. However, no such evidence was tendered on this summary judgment application.

[107] Dr. Leroux suggested that Mr. Leo's three CBC articles dated August 9 and September 13, 2021, and December 9, 2022, supported his tweet. Putting aside the fact that only Mr. Leo's first article existed at the time of Dr. Leroux's August 9 tweet, none of these three articles definitively suggest that Thomas Lagarde or Dr. Coupal are not Algonquin. The articles encourage discussion about the Lagarde ancestral line but provide no proven facts supporting Dr. Leroux's conclusions. The effect of the information in the CBC articles was perhaps best stated by Robert Potts, the lawyer for the AOO. When he received the CBC's detailed summary of the information it had gathered, Mr. Potts responded by saying it is difficult to respond as the material "consists of vague statements and allegations presented in a summary way". Mr. Leo's articles provide food for a healthy debate on the indigeneity of Thomas Lagarde, but nothing more.

[108] Dr. Leroux pointed to the July 24, 2023 Tribunal decision wherein following a full hearing, the five-person AOO Tribunal unanimously concluded that Thomas Lagarde was not Algonquin. This decision was almost two years after his tweet and although they found that the evidence did not establish that Lagarde was Algonquin, what is notable about the decision is the Tribunal's comment that those who were enrolled on the basis of being a descendant of Lagarde did so in good faith. The Tribunal attributed no dishonest intention to Dr. Coupal or any others who relied on the Lagarde ancestral line for their indigeneity.

[109] Finally, Dr. Leroux argues that because Dr. Coupal admitted during the course of this litigation that she has never been a member of a Métis nation and does

not presently identify as Métis, but continues to assert she may be Algonquin on the basis of a root ancestor named Francoise Grenier, despite this lineage having been rejected by retired Justice Chadwick in a May 12, 2013 decision, that this somehow supports the truth of his tweet. It does not. Dr. Coupal, at one point, believed she was Métis based on family lore told to her by her parents and grandparents. However, in 2013, when speaking to the BAFN, she determined that that lineage was not recognized and has not suggested she was Métis since that time. There is no evidence she has held herself out as Algonquin on the basis of the Francoise Grenier ancestral line. She believed, and perhaps still believes, that Francoise Grenier was Algonquin but acknowledged that there was not enough evidence to establish that fact in 2013 and no further or better evidence has been located or brought forward to protest that decision. The evidence is that Dr. Coupal has only ever held herself out to be an Algonquin based on the Lagarde family line.

[110] The evidence does not satisfy me that the sting of Dr. Leroux's August 9, 2021 tweet, that Dr. Coupal was fraudulently or dishonestly holding herself out to be Algonquin to benefit from a land claim was substantially true.

(ii) August 9, 2021 Tweet – “Leveraged her ancestral relationship”

[111] The gist of this tweet is that Dr. Coupal has used her false claims to Indigenous ancestry to advance her career as an expert in truth and reconciliation. In so doing, Dr. Leroux alleges she has been dishonest and reckless. However, the evidence does not establish that this was substantially true.

[112] There was no evidence that Dr. Coupal was hired as an assistant professor in Aboriginal Rhetorics and Literatures at Laurentian University in 2012 because she dishonestly held herself out to be Métis. While her belief that she was Métis was based on nothing more than family lore, it was an honest belief that the information she was told by her parents and her grandmother was true. However, more importantly, I am not

satisfied that she was hired for this professorship on the basis of her claim to being Métis. She was honest and forthright with the recruiter who sought her out for the position that she was not an Indigenous scholar and that her Métis connection was tenuous. The recruiter discussed this with the Laurentian hiring committee, and it was not a concern for them. They welcomed her application, not because she was Métis, but because she was able to teach both Indigenous and Canadian literatures. Her application contained one four-word sentence indicating she had some Métis ancestry but at no point in her two-day interview was it addressed or raised. An Indigenous identity may have been preferred for the position, but it was not a requirement for the hiring committee.

[113] There was no evidence how many persons applied for the position or were interviewed for the position, but the evidence suggests that Dr. Coupal was hired because she was eminently qualified for the position.

[114] While at Laurentian University, Dr. Coupal was involved in a number of Indigenous-led initiatives. Dr. Leroux suggests that her involvement in these initiatives was based on her self-identification as Métis and later, Algonquin. He says that her involvement in these initiatives assisted her in obtaining tenure. I cannot agree. Dr. Coupal was involved in several Indigenous initiatives while at Laurentian University, but there is no evidence her involvement was based on her identifying as Métis or Algonquin. Moreover, as set out in her tenure assessment, she received tenure because she was an effective teacher, active researcher and active in university governance, and “was meeting or exceeding criteria for a promotion in all categories”.

[115] By the time Dr. Coupal applied for the position at the University of Regina in 2017, she was not only an accomplished assistant professor, but was also a confirmed member of the BAFN and the AOO based on a recognized Algonquin ancestral line. The application for the position of Canada Research Chair in Truth and

Reconciliation did not specify that the position was only open to an Indigenous scholar, however Dr. Coupal's application properly indicated that she was a member of the BAFN.

[116] Dr. Coupal was short-listed for the position and interviewed by the search committee. She was questioned about her indigeneity by Ms. Quewezance, one of the committee members. According to the evidence of Ken Montgomery, the Chair of the search committee, when questioned about her indigeneity, Dr. Coupal clarified she was raised with French cultural traditions, not Indigenous ones. Mr. Montgomery deposed that Dr. Coupal represented herself as a scholar and a teacher and not as an Indigenous person. He said her application was highly regarded by the committee from an academic and qualifications perspective, her areas of research very closely aligned with the needs of the position and her expertise in Indigenous reconciliation education exceeded that of the other candidates. The committee unanimously agreed to recommend her for the position with the full support of the University's Elder-in-Residence.

[117] Dr. Leroux filed an affidavit from Russell Fayant, a Métis professor who was also a member of the search committee. Mr. Fayant indicated that Dr. Coupal's Indigenous identity and lived experience as an Indigenous person made her a superior candidate and that that was the reason she was offered the position. However, he provides no indication of what "lived experience" he was referring to. There is no evidence that Dr. Coupal ever held herself out as having a "lived Indigenous experience" and as Mr. Montgomery deposed, she made it clear she was raised with French, not Indigenous traditions. Dr. Coupal was the most qualified applicant for the position based on her academic, and teaching experience and her research. Later in his affidavit, Mr. Fayant admitted as much when he deposed that he would not have voted to give the position to another candidate in the pool that they had before them because "in my eyes no other candidate was fully qualified for the position".

[118] Dr. Leroux filed a second affidavit from Mr. Fayant wherein Mr. Fayant attempted to backtrack on the evidence in his first affidavit stating that Dr. Coupal was not the “superior candidate” and that one of the other candidates was stronger than her. I find this to be disingenuous. If Mr. Fayant did not feel that Dr. Coupal was the best person for the position, I fail to understand why he and the rest of the committee were unanimous in their decision to offer her the position. I do not find Mr. Fayant’s evidence to be credible.

[119] I do not accept Mr. Fayant’s comments that Dr. Coupal was hired based on the superiority of her Indigenous identity. She was hired because she was the superior candidate for the position and she identified as having some Indigenous background.

[120] Dr. Coupal’s offer from the University of Regina was conditional on her nomination for the Canada Research Chair in Truth and Reconciliation being accepted. Although Dr. Coupal checked off the box in her nomination application indicating she was Aboriginal, this was not false as she had an honest belief that she was Indigenous and was recognized as Indigenous at that time. There was no indication that this Research Chair position was only open to Indigenous scholars, there was no evidence that she was in competition with others for the position, nor was there any evidence regarding the reasons her nomination was accepted.

[121] Finally, I note that even though Dr. Coupal stopped identifying as Algonquin and it eventually became apparent that the preponderance of the evidence pointed to Thomas Lagarde not being Algonquin, Dr. Coupal’s Canada Research Chair in Truth, Reconciliation and Indigenous Literatures was renewed for another five-year term. This suggests to me that this position was not about her indigeneity but about her research and academic qualifications.

[122] Dr. Leroux has not proven that his August 9, 2021 tweet is substantially

true.

(iii) September 13, 2021 text message thread between Dr. Sinclair and Dr. Leroux

[123] The gist of this text message thread is that Dr. Coupal is fraudulently claiming to be Indigenous. Dr. Leroux applies a civil standard of fraud in arguing that his text message is true. According to him, there is significant evidence establishing that the Thomas Lagarde Algonquin claim was based on forgeries, including the three CBC articles written by Mr. Leo, Dr. Leroux's own research establishing that Lagarde was French Canadian, the AOO Tribunal's finding in July 2023 that Lagarde was not Algonquin, and that no evidence has been provided by Dr. Coupal to contradict the forgery. Since the forged documents were the basis upon which retired Justice Chadwick found Thomas Lagarde to be Algonquin, the forged documents then became Dr. Coupal's basis for Algonquin membership. Ergo, since 2014 she has been relying on forged documents to prove her claim of indigeneity.

[124] Dr. Leroux goes on to argue that Dr. Coupal has shown a reckless disregard for the truth for a number of reasons. She told CBC that it would be highly unlikely for her ancestors to be removed from the List of Algonquin Ancestors, even after being aware of the conclusions in the CBC articles. She continued to identify as Algonquin until the Tribunal's July 2023 decision and she continues to identify as an Indigenous scholar today. She has not done any of her own genealogical research, she did not seek out an expert opinion on the Lagarde line, she has falsely claimed to be Métis in the past and she relies on family lore. Dr. Coupal admitted that Dr. Leroux's research regarding Thomas Lagarde may be accurate, she claims to lack the experience to do her own research, and her history of false Indigenous identity claims has many red flags.

[125] Dr. Leroux's arguments that his September 13 texts are true is premised

on his position that the fraud he is referring to in the texts is the civil standard of fraud. I do not accept this. Dr. Leroux's text messages do not particularize what the fraud is. What is evident is that he is stating that Dr. Coupal's claim to be Indigenous is fraud and that she was trying to hide her fraud by somehow vetoing a chapter in his book. He has used the word "fraud" in the ordinary sense of the word and not from any particular legal perspective. In D. Thompson, ed, *The Oxford Concise English Dictionary*, 9th ed (Clarendon Press, 1995), "fraud" is defined as: 1 criminal deception; the use of false representations to gain an unjust advantage. 2 a dishonest artifice or trick. Dr. Leroux is saying that Dr. Coupal made false or dishonest representations to gain her Indigenous identity. The definition of the term as utilized by him in his email is no more complicated than that. However, Dr. Coupal did nothing of the sort.

[126] At the time of the text messages between Dr. Sinclair and Dr. Leroux, Dr. Coupal was recognized by the BAFN and the AOO as Algonquin on the basis of her ancestor, Thomas Lagarde, and the processes established by the AOO. Dr. Coupal did not create her indigeneity out of thin air. There has never been a suggestion that she was not descended from Thomas Lagarde, only that Thomas Lagarde is not Algonquin and therefore, Dr. Coupal is not Algonquin.

[127] In 1999, under the AOO's enrollment process in place at the time, Thomas Lagarde was determined to be Algonquin. In 2000, that was protested and after a hearing, he was found not to be Algonquin. Another protest was heard later in 2000, and he was again determined to be Algonquin. And then there was a further protest in 2013 and retired Justice Chadwick, largely on the basis of the Father Brunet letter, upheld Lagarde's Algonquin status. No further protests or challenges to Thomas Lagarde's indigeneity occurred until 2023. Dr. Coupal did not file any material or make any arguments regarding Thomas Lagarde's indigeneity at any of these hearings. She applied to be registered with the BAFN and the AOO under the Lagarde family line in 2014, after retired Justice Chadwick's decision. There was nothing fraudulent about her

doing that.

[128] When the first CBC article came out in August 2021, Dr. Leroux, and others I am sure, jumped to the conclusion that a fraud had been perpetrated. And perhaps it had, but certainly not by Thomas Lagarde or Dr. Coupal. Neither of them created this purported forged document. Dr. Coupal had no reason to believe this document was not authentic; it was accepted as authentic at a hearing presided over by a retired justice of the Ontario Superior Court.

[129] When the AOO Tribunal revisited the matter of Thomas Lagarde's Algonquin heritage in July 2023, I understand a number of persons made submissions at the hearing. Dr. Leroux was one of those persons and according to the decision, he opposed Lagarde's Algonquin heritage, presented his paper tracing Lagarde's roots to France and questioned the legitimacy of the Father Brunet letter. The Tribunal's decision regarding the alleged Father Brunet letter is enlightening:

...

114. In short, the Tribunal is incapable of assessing the reliability of the Brunet Letter as it has been presented a photocopy of an unverified document, that in its own right is unusual, and therefore puts no weight on the document.

...

120. At best, this letter would indicate that Thomas Lagarde dit St. Jean (RIN #11565) identified himself as being a descendant of Algonquins in circumstances where Thomas Lagarde dit St. Jean (RIN #11565) wanted to be secretive. He is also reporting that he is a fugitive on the run from a death sentence. This is about as far from a public pronouncement as one might get.

...

123. Simply put, even if the Tribunal were to disregard the fact that the Brunet Letter is unverified, any weight that the Tribunal would put on Thomas Lagarde dit St. Jean (RIN #11565)'s apparent self-identification as Algonquin in the

circumstances described in the letter is not sufficient to provide a basis on which to reasonably conclude that Thomas Lagarde dit St. Jean (RIN #11565) “was considered to be an Algonquin or Nipissing” in light of:

- a) the preponderance of documents that confirm his French ancestry; and
- b) the lack of any other document pertaining to him, his parents or children suggesting that they are Algonquin or Indigenous.

[130] The Tribunal never determined that the Father Brunet letter was a forgery. At best, they were unable to assess its reliability and had concerns regarding its provenance. The Tribunal also went on to say:

144. ... The Tribunal also accepts that those who were enrolled on the basis of being a lineal descendant of Thomas Lagarde dit St. Jean (RIN #11565) did so in good faith.

[131] This sentiment was also echoed by Chief Joannis to the CBC and reported by Mr. Leo in his September 13, 2021 article.

[132] There is no evidence that Dr. Coupal came to represent herself as Algonquin dishonestly or by making any false representations. As both the Tribunal and Chief Joannis understood, those who relied on the Lagarde line for their Algonquin indigeneity did so in good faith. They did not forge materials and they were not the fraudsters here.

[133] Moreover, Dr. Leroux’s statement that Dr. Coupal was trying to convince his publisher to veto the proofs of the section of his book to do with the Algonquins of Ontario is not true. The evidence is that Dr. Coupal asked his publisher if she could review that part of his proof as she had concerns about what he had written based on previous views of his that she was aware of. When the publisher advised that that was not possible without Dr. Leroux’s permission, they discussed the publisher arranging a

discussion between her and Dr. Leroux so she could speak to him about her concerns. However, Dr. Leroux refused to speak to Dr. Coupal at all. Eventually, Dr. Coupal emailed Dr. Leroux directly but still he refused to speak to her. The evidence does not establish that Dr. Coupal ever tried to veto Dr. Leroux's book or any part of it to hide her fraud.

[134] Dr. Leroux has not established that his text statement to Dr. Sinclair that Dr. Coupal is fraudulently claiming to be Indigenous or she was trying to hide her fraud is substantially true.

(iv) October 8, 2021 Tweet – “Canada Research Chair pretending to be Indigenous”

[135] This tweet from Dr. Leroux contained a link to the September 13, 2021 CBC article entitled “Push to remove ‘Pretendians’ from Algonquin membership rekindled after CBC investigation”. The article identifies Dr. Coupal as a professor holding the position of Canada Research Chair in Truth, Reconciliation and Indigenous Literatures who is alleged to be a pretendian and quotes her responses to that allegation. The tweet and the article are meant to be read together. Considering Dr. Leroux's words and the article together, it is clear that the gist of Dr. Leroux's statement is that Dr. Coupal is a “pretendian”.

[136] A pretendian is a derogatory term for a non-Indigenous person who falsely claims to have Indigenous ancestry or identity for personal, financial or professional gain. Dr. Leroux is accusing Dr. Coupal of dishonestly holding herself out to be Indigenous. Again, the evidence does not establish that as at October 8, 2021, that was substantially true for largely the same reasons that his August 9, 2021 tweet was not true. Without repeating the entire analysis I went through when I determined in subparagraph (i) that Dr. Leroux's August 9, 2021 tweet was not substantially true, there is no evidence that on October 8, 2021 Dr. Coupal was holding herself out to be

Indigenous without any basis to do so. Dr. Leroux may not have accepted that basis, but Dr. Coupal was not dishonest in her belief, and she was not a pretendian. In 2013, Thomas Lagarde's Indigenous ancestry had been confirmed by retired Justice Chadwick. On October 8, 2021, Dr. Coupal still met the AOO criteria to be considered Algonquin and was still recognized as Algonquin by both the BAFN and the AOO. Despite the CBC articles and Dr. Leroux's July 19, 2021 report, Thomas Lagarde was still considered to be Algonquin, as were those descended from him. There is no evidence before me that establishes that as at October 8, 2021, Thomas Lagarde, and ergo Dr. Coupal, were not Indigenous. Dr. Coupal was not dishonestly holding herself out to be Indigenous. Dr. Leroux's statements that Dr. Coupal was pretending to be Indigenous were simply not true nor substantially true.

(v) February 2, 2022 – Presentation to the Treaty Governance Forum

[137] The specific comment Dr. Leroux made during his presentation to those gathered at the forum was that "Dr. Coupal and two others had no Indigenous ancestry but have built a career around their false claims through the Algonquins of Ontario and have made several millions of dollars in salaries from essentially their fraud". The gist of this statement was that Dr. Coupal and two others had committed a significant fraud netting them millions of dollars.

[138] This was false. Dr. Coupal had not committed a fraud. Using the ordinary and common definition of the word "fraud" and for the same reasoning outlined under subparagraphs (ii) and (iii), Dr. Coupal was not fraudulently holding herself out to be Indigenous. At the date of Dr. Leroux's presentation and when his presentation was posted on YouTube and Twitter, there was no evidence Dr. Coupal was dishonestly holding herself out to be Algonquin. Thomas Lagarde was still recognized to be Algonquin, Dr. Coupal was descended from his family line, and both the BAFN and the AOO considered her to be Algonquin. Moreover, her career trajectory was not based

on her Indigenous ancestry but rather on her outstanding academic, research and teaching abilities.

[139] The words used by Dr. Leroux also seem to indicate that Dr. Coupal and these two other individuals each made millions of dollars in salaries from the fraud. This is not true either. According to the evidence, Dr. Coupal's combined income from Laurentian University and the University of Regina from 2013 to 2021 was \$948,640, not a million dollars, let alone "millions of dollars".

[140] Dr. Leroux's statements about Dr. Coupal to the Treaty Governance Forum are not substantially true.

[141] Having determined that none of the five defamatory statements about Dr. Coupal made by Dr. Leroux are substantially true, Dr. Leroux is unable to avail himself of the defence of justification.

(d) Is Dr. Leroux entitled to rely on the defence of fair comment?

[142] Dr. Leroux can avoid liability for his defamatory statements about Dr. Coupal if he can establish the defence of fair comment. The elements of the defence were set out by the Supreme Court of Canada in *W.I.C. Radio Ltd. v Simpson*, 2008 SCC 40 [*W.I.C.*] as follows:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognizable as comment;
- (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts; and

- (e) even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves that the defendant was subjectively actuated by express malice.

[143] The defendant must prove the first four elements in *W.I.C.* in order to rely on the defence. If they do, the onus shifts to the plaintiff to defeat the defence by establishing malice. See *W.I.C.* at para 52; *Hansman v Neufeld*, 2023 SCC 14 at para 97 [*Hansman*].

[144] With respect to the second element, the factual basis for the impugned statement must be sufficiently stated in the publication itself or is otherwise already known to the audience who hear or read the comment so that they can reach their own conclusions on the merits of the comment. It is not necessary that all the facts be included in the publication as long as there is enough information to identify the basis upon which the comment is being made. A bald comment asserted where it cannot be understood as an opinion is likely to be treated as fact. See *W.I.C.* at paras 31 and 34; *Hansman* at para 99; *Awan v Levant*, 2014 ONSC 6890 at paras 99-101 [*Awan*].

[145] There is no requirement that the facts confirm the truth of the comment, only that the comment must relate to the facts on which it is based. However, the underlying facts must be true. It is through the true facts provided or otherwise known to the audience that the audience can arrive at their own conclusions and assess the publisher's opinion. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available. See *W.I.C.* at paras 31, 39 and 51; *Hansman* at paras 99-100; *Awan* at paras 99-101.

[146] In regard to the third element, the defence only applies to comment that is recognizable as comment. Statements of fact are not protected by this defence; if they are defamatory facts, they must be defended on the basis of justification or some other ground of defence. For a statement to constitute fair comment, the statement must be

one that would be understood by a reasonable reader as the subjective expression of opinion in the form of a deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof. This is a low threshold; the notion of comment is generously interpreted. See *Ross v New Brunswick Teachers' Association*, 2001 NBCA 62 at para 56; *W.I.C.* at paras 26, 27 and 30; *Hansman* at para 108; *Law of Defamation* at pp 15-39 to 15-44.

[147] Sorting out fact from opinion can be difficult. In some instances, statements of fact and statements of opinion are clear. In other cases, the line between them is tenuous. The question to ask is would an ordinary person, reading the material complained of, be likely to understand it as an expression of the writer's opinion or as a declaration of an existing fact? See *Law of Defamation* at pp 15-44 to 15-47.

[148] Where the facts and comments are intertwined so as to become indistinguishable from each other, the Court must determine whether the defamatory sting is in the one or the other. A comment, to be justifiable, must appear as a comment and not be mixed up with allegations of fact so that the reader cannot distinguish between what is fact and what is comment. They must not become so entangled that inferences cannot be distinguished from facts. In such a case, the defendant must accept the risk that what they have framed as an expression of opinion might reasonably be perceived by the public as a statement of fact to which the defence of fair comment will not attach. Any ambiguity in this regard will be resolved against the defendant. See the *Law of Defamation* at pp 15-65 to 15-66; *Ager v Canjex Publishing*, 2005 BCCA 467 at paras 43-44.

[149] The fourth element involves an examination of whether, based on the true facts, someone else could make the same comment or hold the same opinion as the defendant. The defendant must establish that the impugned comment reflected an honestly held belief, that is, could any fair-minded person honestly express the opinion based on the underlying facts. See *W.I.C.* at paras 40 and 49-51.

[150] Finally, an opinion which might otherwise be fair comment will lose its protection if it is published maliciously. This is a subjective test. The plaintiff must prove the defendant was acting for some indirect motive or ulterior purpose. This can be done by showing the defendant made the statement knowing it was false, with reckless indifference as to its truth, to injure the plaintiff out of spite or animosity or for some other improper purpose. Proof of malice may be drawn from the language of the statement itself or from the circumstances surrounding the publication of the comment. Moreover, malice must be the dominant motive for expressing the opinion. See *W.I.C.* at paras 100-107; *Hansman* at para 115; *Law of Defamation* at pp 15-178 to 15-184.

[151] Neither party suggested that the discussion regarding people falsely claiming to be Indigenous for personal gain or other benefit was not a matter of public interest. And rightly so. It certainly is happening, it is very controversial and properly attracts public attention and debate. As a result, I will review the five defamatory statements on the basis of whether the other elements have been established. After I have done that, I will address whether Dr. Leroux's statements were actuated by malice.

(i) **August 9, 2021 Tweet – “Claiming to be Algonquin based on family lore and forged documents”**

[152] The entirety of this particular tweet is a statement of facts. The heading to the tweet advises that 1,000 plus white people were Indigenous on the basis of forged historical documents. There is a link to the August 9 CBC article, but Dr. Leroux is telling the readers of his tweet what it says. He does not use words in his tweet to the effect that he is drawing conclusions or inferences from the CBC article or making his own personal observations from it. Instead, he used words like “This week we find out ...” and “This all comes on the heels of last week, when we found out ...”, indicating that this is what we already know as opposed to this is my opinion of the information or people referenced in the article.

[153] Dr. Leroux's statements in the tweet about Dr. Coupal are not a comment

or criticism of what she has purportedly done, that is, dishonestly held herself out to be Algonquin to benefit from the AOO land claim. Rather, his statements are that she was one of 1,000 plus white people that did dishonestly hold themselves out to be Algonquin. The former is opinion; the latter is a statement of fact.

[154] An ordinary person reading Dr. Leroux's defamatory statements that there are individuals running around claiming to be Algonquin based on family lore and forged documents and that one of them is the Canada Research Chair in Truth, Reconciliation and Indigenous Literatures at the University of Regina, and considering them in the context of the tweet as a whole, would have no hesitation understanding this to be a declaration of facts and not Dr. Leroux's opinion. I am not satisfied that this defamatory tweet is comment. The third element of the defence has not been made out.

(ii) August 9, 2021 Tweet – “Leveraged her ancestral relationship”

[155] There was no evidence as to what tweets were going back and forth between Dr. Leroux and the person referred to in this tweet as Jessica. I have no idea what they were discussing. There was also no evidence as to whether this tweet occurred before or after the other August 9, 2021 defamatory tweet of Dr. Leroux's or whether it was part and parcel of the discussion in that tweet.

[156] In his affidavit material, Dr. Leroux states that this tweet is based on the following facts:

- (a) Dr. Coupal is recognized as an expert on literature related to truth and reconciliation by virtue of her becoming the Canada Research Chair in Truth and Reconciliation at the University of Regina in 2018;
- (b) Dr. Coupal is recognized by the BAFN as Indigenous based on the assertion that Thomas Lagarde is Indigenous;

- (c) Dr. Coupal referenced herself as a member of the BAFN when she applied for the Canada Research Chair position at the University of Regina; and
- (d) Dr. Coupal was considered for the Research Chair position because of her claimed Indigenous identity.

[157] However, none of these facts are stated in the tweet. There is no evidence to lead me to conclude that Jessica, or others who read this tweet, would be aware of the facts that support Dr. Leroux's statement. There is no basis in the tweet upon which the defamatory statement of Dr. Leroux is being made and no ability for Jessica or any other reader to reach their own conclusions on the merits of Dr. Leroux's statement.

[158] Moreover, the statement itself is not an opinion but rather a statement of fact. Dr. Leroux is asserting something that he has apparently already written. An ordinary person reading this statement would understand it to be a statement of fact, not a comment. Neither the second nor the third elements of the offence have been established in regard to this tweet by Dr. Leroux.

(iii) September 13, 2021 text message thread between Dr. Sinclair and Dr. Leroux

[159] The defamatory statements in this text message thread are statements of fact which purport to assert an objective truth. Dr. Leroux is stating that a chapter in his book "debunked" the fraud that Dr. Coupal is Indigenous and that she was trying to veto that section of his book to hide her fraud. These are not statements of opinion or debatable inferences from facts. Dr. Leroux is asserting as a fact that Dr. Coupal committed a fraud.

[160] In a somewhat similar situation, the Ontario Superior Court of Justice found that allegations that someone has committed or participated in a fraud is an allegation of fact. In *Thompson v Cohodes*, 2017 ONSC 2590 [*Thompson*], the

defendant, while being interviewed by the Business News Network, imputed fraud against the plaintiff when he was a junior lawyer at Biovail Corporation. He said words that the plaintiff was “employed by Biovail, which was a complete and utter fraud”. In determining that the defence of fair comment was not available to the defendant because his comment was an allegation of fact, the Court said:

[27] The sting that one has committed or participated in fraud is an allegation of fact. In *Wasserman v. Freilich*, Eady J. stated that an allegation that a person has been dishonest is “generally regarded as a factual allegation”: [2016] EWHC 312 at para. 16 (Q.B.), stating at paras. 16 and 22:

Juries are deciding on every day of the week, as a matter of fact, whether a particular defendant was, or was not, dishonest. Accordingly, it is an allegation which in the context of libel is readily understood as being susceptible to a plea of truth...It is not thought to be a matter of opinion: nor can one convert an allegation of dishonesty (or for that matter, of murder or rape) into a matter of opinion by merely inserting in front of it a formula such as “I believe...” or “she thinks...An allegation of dishonesty, fraud or attempted fraud will usually fall fairly and squarely on the side of fact rather than opinion.

[161] For a similar result, see also *Levant v Day*, 2017 ONSC 5956.

[162] I recognize that whether a statement is construed to be fact or opinion is dependent on the particulars of the statement and the context and circumstances in which it was made. However, these comments in *Thompson* distinguish descriptors of what a person does, for example, lies, cheats, defrauds, steals, et cetera, from comments as to the general character of a person, for example, sexist, racist, misogynist, et cetera. The former are capable of an objective determination and are statements of fact and the latter are opinions.

[163] An ordinary person looking at the defamatory text from Dr. Leroux to Dr. Sinclair would understand it to be fact, not comment. The third element has not been made out.

[164] If I am wrong in this regard, I am also not satisfied that the fourth element of the defence has been made out in this text message thread. The underlying facts were referenced in the link to the second CBC article that Dr. Leroux included in his text messages to Dr. Sinclair. The second CBC article contained a link to the first CBC article published a month earlier. Reviewing these articles leads to an inference that a person by the name of Bill Mann and/or his sister were the perpetrators of the allegedly forged Father Brunet letter and that the others who have been relying on the Lagarde ancestral line for their claims of indigeneity, like Dr. Coupal, have been doing so in good faith with no knowledge or involvement in this alleged fraud.

[165] Moreover, Dr. Leroux's statement that Dr. Coupal was trying to convince his publisher to veto the proofs of the section of his book to do with the Algonquins of Ontario is not true. She was not trying to veto anything. All she wanted to do was have a discussion with him about his chapter on the AOO, but he refused to speak to her. She was not trying to hide her fraud because there was no fraud to hide.

[166] A fair-minded person knowing the true facts, and with any modicum of common sense, could not honestly express an opinion that Dr. Coupal had committed or participated in a fraud, nor that she was trying to hide a fraud.

[167] For these reasons, the defence fails in relation to Dr. Leroux's defamatory text messages to Dr. Sinclair.

(iv) October 8, 2021 Tweet – “Canada Research Chair pretending to be Indigenous”

[168] The defamatory tweet made by Dr. Leroux to Mr. Lockhart that a renowned and well-documented Canada Research Chair is pretending to be Indigenous is a statement of fact. As part of this tweet, Dr. Leroux included a link to the second CBC article. Mr. Lockhart or anyone else looking at Dr. Leroux's tweet can read the CBC article and determine if it accurately reflects his statement that Dr. Coupal is

pretending to be Indigenous. That is not the essence of comment. Comment is a person's subjective belief which is generally incapable of proof. The defendant has not satisfied me that an ordinary person reading this tweet would understand Dr. Leroux's comment to be his opinion. As such, the third element of the defence is not established in relation to this tweet.

(v) February 2, 2022 – Presentation to the Treaty Governance Forum

[169] Dr. Leroux's statements at the forum that Dr. Coupal and two other individuals have no Indigenous ancestry but have built a career around their false claims through the AOO and have made several millions of dollars in salaries from essentially their fraud is a statement of fact. In the leadup to these statements, Dr. Leroux told those attending his presentation that as a result of a CBC investigation it came to light that an individual forged documents regarding the Lagarde/Carriere root ancestors. As a result of this, he said that 50 percent of the membership of the AOO have no Indigenous ancestry whatsoever. Despite the protest going on at present, the AOO still recognizes these people as Indigenous even though the evidence says otherwise. Then he makes the statements about Dr. Coupal and the two others.

[170] Dr. Leroux is clearly stating that Dr. Coupal (and the two others) are not Indigenous as their ancestors' claim to indigeneity is based on these forged documents, they have built careers around their false indigeneity, have made several millions of dollars and have committed fraud. An ordinary person in the audience listening to this presentation would believe this to be fact, not opinion. Again, the third element of the defence has not been established.

[171] The elements of the defence of fair comment have not been established on any of the five defamatory statements made by Dr. Leroux and as such, he is not able to rely on this defence.

Malice

[172] Having determined that the elements of the defence of fair comment have not been made out in relation to any of Dr. Leroux's defamatory statements, there is no need for me to consider whether his dominant motive in making the statements was malice towards Dr. Coupal. However, had I had to address this issue, I would not have found that the defendant's actions in making these statements were actuated by malice.

[173] It is obvious that Dr. Leroux was upset with Dr. Coupal for speaking to his publisher about his upcoming book and asking to view a portion of the unpublished manuscript. According to his affidavit, this was "highly unorthodox", "unprecedented", "beyond the pale in academia" and "highly unethical". However, that occurred in the spring of 2019. Dr. Leroux did not start making his statements accusing Dr. Coupal of Indigenous identity fraud until some two years later and only after both he and the CBC had done some research and determined that there was a possibility that Dr. Coupal's Indigenous ancestors may not have been Indigenous after all, albeit for different reasons.

[174] Had Dr. Leroux paid closer attention to the CBC articles, he may have thought twice about accusing Dr. Coupal of being a fraud or dishonestly holding herself out to be Indigenous. But despite this, the evidence does not establish that he made the statements that he did knowing they were false, with reckless indifference as to their truth, to deliberately injure her out of spite or animosity, or for some other improper purpose.

[175] Just like Dr. Coupal did not make up her Indigenous ancestry but had an honest belief she was Algonquin, neither did Dr. Leroux make up his claims that she was not Indigenous. Based on his academic work and his research for the APFN, he was satisfied that there was a factual basis for his claims. In other words, he had a subjective honest belief that Dr. Coupal was guilty of ethnic fraud. However, rather

than letting the matter be properly determined according to the policies and procedures set out by the AOO to police their own membership, Dr. Leroux chose to pursue the matter in the “court of public opinion”. Given his experience in the area of ethnic fraud and raceshifting, and his knowledge of the intricacies of the AOO’s processes, it is baffling that he would make the statements he did instead of letting the matter be determined by the AOO Tribunal whose very task it was to determine issues like these. If his research and the CBC’s suppositions were as unassailable as he believed them to be, I would have assumed he would simply have let the Tribunal do their job and the public draw their own conclusions based on the Tribunal decision as to whether Dr. Coupal was culpable of ethnic fraud.

[176] In any event, Dr. Leroux chose to travel the road he did for his own reasons and that has led to this litigation. However, the plaintiff has not proven on a balance of probabilities that Dr. Leroux made the statements he did for any malicious reason, improper ulterior motive, or that his dominant subjective motive was other than advancing the public interest.

(e) What damages, if any, is Dr. Coupal entitled to?

[177] In her pleadings, Dr. Coupal claimed pecuniary, non-pecuniary, aggravated, exemplary and punitive damages, interest pursuant to *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2, and solicitor-client costs. However, in her closing brief and in oral argument, her counsel advised that she was only seeking general damages, punitive damages, pre-judgment interest and solicitor-client costs.

[178] Dr. Coupal argued that the use of the internet to disseminate the defamation, the egregious nature of the accusation leveled against her, its impact on her reputation and career, and the illegitimate defence of justification justified an award of \$200,000 for general damages, \$50,000 for punitive damages, pre-judgment interest from August 9, 2021 to date of judgment, and solicitor-client costs.

[179] Dr. Coupal's counsel referred me to the following cases:

(i) *Pineau v K.M.I. Publishing and Events Ltd.*, 2022 BCCA 426

The defendant published an article in its online publication falsely reporting that Pineau had been sued by his former employer for making fraudulent claims on his corporate expense credit card and that he had avoided detection because employees in the company were intimidated from reporting claims. The nature of Pineau's work was especially sensitive to matters of security and trustworthiness such that the blow to his reputation for ethics and integrity was particularly damaging to him and he had gone without a job for an extended period. The article was a contributing factor to Pineau's personal, professional and family struggles but not the only cause of that harm. The trial court awarded \$60,000 in general damages but nothing for aggravated and punitive damages because the defendant's conduct did not rise to the level of being malicious, high-handed, or oppressive.

On appeal, the Court of Appeal determined that the judge erred in his assessment of general damages by failing to consider the breadth of the defendant's circulation of the article by hyperlink and by relying on irrelevant factors to mitigate the damages. The Court increased the general damage award to \$120,000 but upheld the trial judge's decision not to award aggravated or punitive damages.

(ii) *Ager v Canjex Publishing Ltd.*, 2005 BCCA 467

Canjex published articles about Ager and a mining company which had purchased an interest in mineral claims from Ager that later proved to be worthless. The articles stated Ager had made misrepresentations, committed fraud, and had stashed money in offshore accounts. Ager was described as a worthless-property peddler and a participant in several schemes to commit stock fraud. He was identified as a target of court actions. The defendants were found liable in defamation as the articles alleged dishonourable and dishonest conduct on the part of Ager that harmed his reputation as a geophysicist. The trial judge fell short of finding malice on the part of the defendants. He assessed general damages of \$200,000, aggravated damages of \$100,000, but declined to award punitive damages.

On appeal, the Court of Appeal found that the \$200,000 general damages award was reasonable, however as no malice existed, aggravated damages were not appropriate and these were set aside.

(iii) *Rutman v Rabinowitz*, 2018 ONCA 80

The plaintiff was a chartered accountant. He and the individual defendants were business associates. Following a business disagreement, the defendants commenced litigation against the plaintiff. The litigation eventually settled however the defendants were unhappy with some of the terms of the settlement and subsequently began an internet defamation campaign against the plaintiff. The campaign was designed to harm the plaintiff's personal and professional reputations and involved internet postings of numerous defamatory allegations, including that he was engaged in tax fraud and was a thief and a cheat. The trial judge found the two defendants and the corporate defendant jointly and severally liable for defamation. He awarded \$200,000 general damages against all three defendants, \$200,000 aggravated damages and \$250,000 punitive damages against one defendant and \$50,000 punitive damages against the other.

On appeal, the Court of Appeal upheld the damages award. One defendant had admitted that his conduct was motivated by actual malice. The trial judge was aware of and properly applied the principles of punitive damages. The award of punitive damages was rational and proportional. The conduct had persisted over many years, neither defendant showed any remorse for their conduct, and they destroyed relevant evidence in the face of court orders.

[180] Dr. Leroux disagrees. He argued that Dr. Coupal has suffered no losses as a result of his statements as she was already the subject of public critique, alleging that she was a pretendian due to her affiliation with the forged Father Brunet letter, she has not demonstrated that she has lost any opportunities, her assertion that she was blacklisted for a talk at McGill University is false, and her Canada Research Chair position was renewed for another five years despite Dr. Leroux's statements. He also argued that his plea of justification does not merit a higher award and that punitive damages are not warranted in this case. In his view, only a nominal award of damages

is appropriate, somewhere in the range set out in the following cases:

(i) *Zoutman v Graham*, 2019 ONSC 2834

The defendant posted comments about the plaintiff doctor on a ratings website. The postings described the plaintiff as arrogant, obstinate, thin-skinned, delusional, ding bat, rude, conceited, a bully, unpopular among his colleagues, a threat to patient safety, and the epitome of all that is wrong with the health care system in this country. The defendant was never one of the plaintiff's patients but was upset by his testimony as an expert witness at the criminal negligence trial of a doctor who was alleged to have been responsible for the death of the defendant's brother.

After trial, the Court found the postings were defamatory and the language used to describe the plaintiff would lower the reputation of a doctor in the estimation of right thinking members in the community. The plaintiff was awarded \$25,000 in general damages and \$25,000 in aggravated damages. No punitive damages were awarded.

(ii) *Holden v Hanlon*, 2019 BCSC 622

The defendants had made a series of defamatory statements about the plaintiff and her private investigation business on social media platforms and internet discussion forums that damaged her personal reputation and the reputation and viability of her business. The Court ordered one defendant to pay \$20,000 general damages, \$7,500 aggravated damages but declined to award punitive damages. In relation to the other defendant, the Court only ordered him to pay \$1,000 in general damages.

(iii) *Strudwick v Lee*, 2007 SKCA 11

The defendant wrote letters to a Minister, the Premier and other officials indicating that the plaintiff, the administrator of the Municipality, had been untruthful and involved in criminal activities. The defendant refused a formal request from plaintiff's counsel that he retract the statements he made in the letters. The plaintiff applied for summary judgment. The judge found the plaintiff had been defamed and awarded her \$10,000 in general damages. No aggravated or punitive damages were awarded. The defendant appealed however the Court of Appeal dismissed the

appeal.

General Damages

[181] General damages are presumed from the publication of the defamatory statements. The purpose of a general damages award is to compensate the plaintiff for a loss of reputation and injury to the plaintiff's feelings, to console the plaintiff, and to vindicate the plaintiff so that the plaintiff's reputation may be re-established. While there is no obligation to prove actual loss or injury, there must be some rational relationship between the harm suffered by the plaintiff and the amount of damages awarded. See *Grant* at para 28; *Bent v Platnick*, 2020 SCC 23 at para 148.

[182] There is no formula for determining general damages. Each case is unique and the determination is very fact specific. In *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 at para 182, [1995] 2 SCR 1130, the Supreme Court identified the following non-exhaustive list of factors a court should consider:

- (a) the plaintiff's conduct, position and standing;
- (b) the nature of the defamation;
- (c) the mode and extent of the publication;
- (d) the absence or refusal of any retraction or apology;
- (e) the whole of the defendant's conduct from the time of publication to the end of trial; and
- (f) evidence led in aggravation or mitigation of damages.

[183] In this case, both Dr. Coupal and Dr. Leroux are academics. Their areas of study are different however both of their respective expertise lies in areas involving Indigenous peoples and issues. For this reason, they share many of the same colleagues. Prior to Dr. Leroux's defamatory statements, Dr. Coupal was a respected academic, researcher and teacher in the area of Indigenous literary studies. She was one of the few

experts in the country in Indian residential school literature and held the position of Canada Research Chair in Truth, Reconciliation and Indigenous Literatures at the University of Regina. She was an active scholar and devoted teacher of Indigenous literature, residential school literature, Indigenous film and media, and Canadian literature. She was invited to publish articles in other scholars' collections, book publishers reached out to her, she received regular invitations to speak at conferences, and she organized conferences herself. Her research achievements were varied and impressive, and her service to her Department and the University was exemplary. I do not accept Dr. Leroux's assertion that her reputation was damaged by the time he made the statements in question. Mr. Lewis's evidence indicates there were issues between Dr. Coupal and some of her colleagues in the Department of Education, but what those specific issues were, the extent of the issues and who was involved, was not clear. Nothing in Mr. Lewis's affidavit or any other evidence takes away from the fact that Dr. Coupal was a well-respected scholar.

[184] I accept Dr. Coupal's evidence that she had a legitimate concern that would change after Dr. Leroux made statements accusing her of Indigenous identity fraud and being a pretendian. According to her, Dr. Leroux knew a lot of her colleagues and had almost 12,000 followers on Twitter, and she was concerned that as a result of him labelling her a "pretendian", universities and conference organizers would stop inviting her to speak, and publishers would stop reaching out to her. She said that she was scared to submit papers and attend conferences because she was afraid of being humiliated, shunned and ostracized. She worried that students would read Dr. Leroux's comments and not want to take her courses or not take her courses seriously. She said that colleagues outside of the University of Regina and her immediate circle of friends stopped contacting her.

[185] Dr. Coupal acknowledged that her five-year term as Canada Research Chair was renewed in 2023 for another five years despite Dr. Leroux's statements, but

her work as Chair ground to a halt. She has trouble sleeping, has nightmares, is anxious and frequently depressed, has trouble concentrating, and is worried she will be fired.

[186] Dr. Leroux published three of his five defamatory statements on Twitter and his defamatory comments at the Treaty Governance Forum were put on YouTube and Twitter. Once something like this enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a forum like Twitter where only a certain number of people may have access to it, any one of them can republish the message by copying it and forwarding it on to a different discussion forum or to others. Depending on the message, it could be republished over and over. This makes it difficult to protect a person's reputation and provide them some measure of vindication.

[187] The fifth statement was made to Dr. Sinclair. Dr. Sinclair was involved in the area of Indigenous literary studies like Dr. Coupal. Based on what Dr. Leroux told him in the text message thread, she was afraid to attend the annual conference of the Indigenous Literary Studies Association as Dr. Sinclair is the president of that organization. She was also concerned about trying to connect with him on issues of truth and reconciliation.

[188] Dr. Leroux has not apologized for his statements, nor has he retracted them. Since making the statements, it appears to me that he continues to maintain that Dr. Coupal has been fraudulently holding herself out to be Indigenous and her academic career has benefitted significantly from this fraud. These assertions of his only appear to have gotten stronger since the AOO Tribunal's decision in July 2023 that Thomas Lagarde was not Indigenous.

[189] I do not consider the Tribunal's decision that Thomas Lagarde is not Indigenous, and ergo, those descended from him are not Indigenous, as mitigating in this case. The issue with Dr. Leroux's statements has always been that he accused Dr. Coupal of dishonestly or fraudulently holding herself out to be Indigenous. That

was never the case. Dr. Leroux's defence of justification failed because his allegations that she was a fraud, a pretendian, and that she leveraged this fraud to become an expert in truth and reconciliation, were not true. Dr. Coupal has always had an honest belief that she was Indigenous, and her belief was affirmed by the BAFN, the AOO and the failure of the Lagarde protests prior to 2023. She has never dishonestly or fraudulently held herself out to be Indigenous and the benefits she has attained in her academic career are due to her hard work and impressive resume.

[190] I do consider it somewhat mitigating that despite Dr. Leroux's statements and the Tribunal's decision, Dr. Coupal's Canada Research Chair position was renewed in 2023 for another five-year term. This just reinforces that she continues to be a respected scholar and academic in the area of truth, reconciliation and Indigenous literatures irrespective of Dr. Leroux's statements.

[191] Finally, while I appreciate that both parties have provided some case law supporting their respective positions on damages, I do not find either of their sets of cases particularly helpful to my determination. The cases referenced by Dr. Coupal contain circumstances that are far more egregious than those of her case. Similarly, the cases provided by Dr. Leroux involve facts that are significantly less egregious than those of the present case.

[192] In my view, the following cases have a more analogous fact pattern and provide a more accurate range of possible general damage awards:

- (i) *McNarin v Murphy*, 2017 ONSC 1678 [*McNarin*]

The plaintiff, an Ontario lawyer, was defamed by members of a condominium organization in Costa Rica in a series of emails. The plaintiff had agreed to serve as a volunteer president of the organization in an effort to resolve problems with the maintenance contract for the condominium. However, he later quit because of dissent in the organization over his choice of a new contractor. A dissatisfied owner (the first defendant) sent a defamatory email to

the 37 members of the organization falsely asserting the plaintiff quit after accusations of theft. The plaintiff attempted to address the matter privately with the first defendant, but she provided a disingenuous apology in an email copied to all 37 members of the organization which also included the plaintiff's original private communication to her. This caused another member of the organization (the second defendant) who was also a lawyer, to weigh in by email discrediting and maligning the plaintiff.

After further efforts to resolve the matter, the plaintiff commenced a defamation action in Ontario. The Court found that the defendants had defamed the plaintiff and awarded \$50,000 in general damages against the first defendant and \$70,000 against the second defendant. The Court awarded an additional \$10,000 in aggravated damages and \$10,000 in punitive damages against each of the defendants.

(ii) *DeLuca v 2404749 Ontario Ltd.*, 2023 ONSC 6465 [*DeLuca*]

The plaintiff, a prominent interior designer with a well-known public profile and a regular contributor on television, brought defamation proceedings against 2404749 Ontario Limited and its proprietor. The controversy stemmed from several provocative social media posts published on the defendant's Instagram that referenced the plaintiff's brief service in the Israeli defence forces. The defendants had used charged language, including reposting a statement that labelled the plaintiff a terrorist and implied that he used his background as a soldier to justify hateful actions against Palestinians. These posts further accused him of planning attacks and depicting him as a violent, dangerous criminal. The plaintiff argued that the posts had significantly tarnished his reputation and generated adverse consequences, including public humiliation, emotional distress and even death threats. He contended that these online statements crossed the boundary between vigorous public debate and slanderous, defamatory attacks. The defendants defended the posts as expressions of political opinion and claimed they were part of a heated public debate on social and political issues, including Zionism, antisemitism and support for Palestinian rights.

The Court found that the Instagram posts were defamatory in nature. It rejected the defence of fair comment. The Court ruled that the statements would lower the plaintiff's reputation in the eyes of

a reasonable person and noted that the posts were republished and lacked any retraction. The Court awarded the plaintiff \$75,000 in general and aggravated damages and an additional \$10,000 in punitive damages.

(iii) *Rubin v Ross*, 2013 SKCA 21 [*Rubin*]

The plaintiff was a veterinarian, a professor of veterinary medicine and director of the veterinary teaching hospital at the University of Saskatchewan. The defendant was the president and chairperson of the Union Grievance Committee. One union member believed she was being harassed by some members of the faculty and some fellow union members at the hospital and that the hospital management was not doing enough to prevent the harassment. She filed a grievance that was resolved in her favour. She was granted certain remedies, including the right to return to the workplace. When the employee attempted to return to work, she believed that two of her coworkers were continuing to harass her. She complained about it on numerous occasions to the plaintiff and she eventually filed a second grievance. In that grievance it was alleged the plaintiff refused to prevent further harassment of her, was an active part in the harassment itself and failed in his duty to provide a workplace that was free of harassment. The employee's complaint was found to be without substance and the union referred the matter to arbitration. Prior to the arbitration hearing, the Union attached the grievance report to notices posted on bulletin boards in the workplace, mass mailed to Union members and posted on the union's website. The plaintiff eventually resigned his position and commenced an action in defamation.

The trial judge dismissed the plaintiff's action. He found the plaintiff had been defamed but that the defendants could rely on the defence of qualified privilege. He provisionally assessed the plaintiff's damages at \$25,000.

The plaintiff appealed the dismissal and the provisional assessment of damages. The Court of Appeal allowed the appeals. They found that the trial judge erred by finding the defamatory statements were protected by qualified privilege. The defendants' actions caused the plaintiff, a highly respected individual occupying a significant position, to leave that position and then subsequently leave his country for a job of less stature. The trial judge's provisional assessment of damages of \$25,000 was erroneous. The defendants

had published the two documents by mailing them and placing them on the website over the University's objections, the documents remained on the website for six months, no apology or retraction was ever made, and the defendants had no conception of the harm caused to the plaintiff. General damages of \$100,000 were awarded.

[193] Accusing someone of being a pretendian or of fraudulently holding themselves out to be Indigenous is a serious allegation in today's world that brings with it serious repercussions to a person's reputation and employment. These types of accusations should not be made flippantly. Dr. Leroux should know this better than anyone as by his own admission, he is one of the leading experts in Canada of ethnic fraud and raceshifting. He deposed that he does not make claims of false Indigenous ancestry lightly, but that is exactly what he did in this case.

[194] Putting these statements on social media exacerbated the problem. The ease with which his statements could be shared brings with it a "guilty until proven innocent" mentality as charges are frequently taken at face value regardless of their veracity. Once posted online, his statements become extremely difficult to remove completely as information can be easily copied and redistributed, increasing the potential for ongoing harm to Dr. Coupal's reputation. Retractions are often ineffective.

[195] In these circumstances, and considering the factors aforementioned and the *McNarin*, *DeLuca* and *Rubin* decisions, I am of the view that an appropriate award for general damages in this case is \$70,000.

Punitive Damages

[196] Punitive damages may be awarded where the defendant's conduct is so malicious and high-handed that it offends the Court's sense of decency. Punitive damages are not compensatory, but rather are in the nature of a fine that is meant to deter the defendant and others from engaging in similar conduct. Punitive damages are

only awarded where the amount of general and aggravated damages is insufficient to achieve the objectives of punishment and deterrence. See *Nazerali v Mitchell*, 2018 BCCA 104 at para 73.

[197] A finding of malice for the purposes of damages is different from a finding of malice for the purposes of liability. The former is broader because it can take into account the conduct of the defendant before and after the publication of the defamatory statement, up until the point of trial. The latter only considers malice in the context of the published defamatory statement and is narrower in nature. See *Rubin* at para 88.

[198] Earlier in this decision, I discussed the issue of malice when addressing the availability of the defence of fair comment. I found that there was no malice on the part of Dr. Leroux regarding the publication of the five defamatory statements. Taking into account Dr. Leroux's conduct both before and after the statements were made and in light of my previous comments regarding malice, I am still of the view that his conduct was not malicious. Even on an expanded view of the evidence, I am not convinced that Dr. Leroux's conduct was so high-handed that it offends the Court's sense of decency. As such, Dr. Coupal's claim for punitive damages is dismissed.

Solicitor-Client Costs

[199] As the successful party, Dr. Coupal claims solicitor-client costs. In *Siemens v Bawolin*, 2002 SKCA 84, the Court of Appeal addressed the appropriateness of ordering solicitor-client costs, stating:

[118] These are the principles, relevant to this appeal, which I take from my review of the above authorities:

1. solicitor and client costs are awarded in rare and exceptional cases only;
2. solicitor and client costs are awarded in cases where

the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;

3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;

4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.

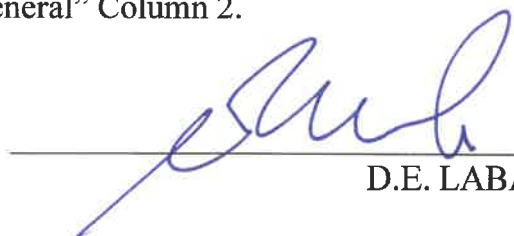
[200] There is nothing in Dr. Leroux's conduct that warrants an order of solicitor-client costs. Dr. Coupal shall be entitled to taxable costs assessed under Schedule I - "B - General" Column 2.

CONCLUSION

[201] In summary, I have determined that the five statements complained of by Dr. Coupal are defamatory and that neither the defence of justification, nor the defence of fair comment, apply in this case. In so doing, I have allowed Dr. Coupal's application for summary judgment. Given this result it goes without saying that Dr. Leroux's application for summary judgment is dismissed.

[202] I award Dr. Coupal general damages in the amount of \$70,000. I decline to award punitive damages. Dr. Coupal shall be entitled to pre-judgment interest on the awarded damages calculated from February 2, 2022, in accordance with the provisions of *The Pre-judgment Interest Act*.

[203] Finally, Dr. Coupal shall be entitled to her taxable costs in respect of this action assessed under Schedule I - "B - General" Column 2.



D.E. LABACH J.