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MEW J.

[1] The ongoing political and military conflict in the Middle East is and has been the source of diverse and passionately held views. These views have been expressed in many different ways, including demonstrations, campus occupations, resolutions, social media discourse, boycotts and reports and commentary in mainstream media.

[2] This case arises from a demonstration that occurred in Ottawa on 22 July 2014. The demonstration was in support of the Palestinian cause and in opposition to certain policies of the government of Israel, as well as in opposition to the Canadian government’s support of those policies (the “Demonstration”). Two representatives of the Canadian Union of Postal Workers (“CUPW” or the “Union”) were present at the Demonstration. Each of them carried a CUPW flag.

[3] Video footage and photographs taken at the Demonstration showed that another individual attending the Demonstration was carrying a flag that has been identified as the flag of Hamas. Hamas is designated as a terrorist organisation by the Canadian government. Hamas has controlled the territory known as the Gaza Strip since 2006.

[4] Statements published by the defendants in subsequent print and broadcast media relating to CUPW's participation in the Demonstration are alleged to have been defamatory. In general terms, the gist of the plaintiff's claims is that the impugned statements meant, and were understood to mean, that the Union and its members are terrorist sympathisers, that CUPW supports Hamas, and that the Union's representatives did not attend the Demonstration to show their concern and support for ordinary Palestinians.

The Parties

[5] CUPW is a trade union. Over 99% of the workers it represents are employed by Canada Post Corporation ("Canada Post"), which is a federal Crown corporation. The *Canada Labour Code*, R.S.C., 1985, c. L-2 governs workplace relations and collective bargaining between unions and federally regulated employers such as Canada Post. However, CUPW also represents three Private Sector Bargaining Units in Ontario whose collective agreements fall under the jurisdiction of Ontario labour-relations law, including the Ontario *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A ("OLRA") and the *Rights of Labour Act*, R.S.O, 1990, c. R. 33 ("ROLA").

[6] In addition to its "fundamental objective" of "promoting and defending the interests of its members against all attacks of the employer and government", the Union "actively commits itself to the objective of transforming the present social and economic order to make it consistent with the interests and aspirations of workers". In that regard, the Union has a wide range of policies, including policies on "Peace and Disarmament" (Policy D-24) and Palestine (Policy D-36). The Palestine policy, *inter alia*, declares that CUPW "supports the rights of the Palestinian people for respect, justice and peace".

[7] Quebecor Media Inc. was, at all times material to this action, the parent company of the Sun Media Corporation ("Sun Media") and Group TVA Inc. ("TVA"). Sun Media published a number of daily and weekly newspapers throughout Canada, including the *Toronto Sun*. In April 2015, Sun Media sold most of its print operations, including the *Toronto Sun*, to Postmedia, which today owns the *Toronto Sun*. TVA was and is a broadcasting company operating primarily in the province of Quebec. At the material times, Sun Media and TVA were the two partners of the Sun News Network ("Sun News"), a cable TV news channel based in Toronto. Sun News ceased operations in or around February 2015. I will refer to the corporate defendants as the "Sun Media" defendants.

[8] Jerry Agar was at all material times a freelance host of a current affairs television show on Sun News called "The Source". He was also a freelance contributor to the *Toronto Sun*. He was not an employee of any of the corporate defendants.

[9] Avi Benlolo is a human-rights activist who at all material times was the president and CEO of an organisation called the Friends of the Simon Wiesenthal Center for Holocaust Studies ("FSWC") and, as such, frequently spoke to the media. His involvement in this litigation arises from an interview which he gave to Mr. Agar on an episode of "The Source".

The Demonstration and its Aftermath

[10] On Tuesday 22 July 2014, what was described by its organisers, the Association of Palestinian Canadians ("APAC") as a "Protest in Solidarity with Gaza", took place in Ottawa. An

email originating from APAC, and received by CUPW, invited recipients to “join us to protest” what was described as Israel’s ongoing Gaza “massacre” and “to raise awareness about the atrocities being committed to our brothers and sisters in Palestine which are not being covered by the biased media”.

CUPW’s Participation in the Demonstration

[11] Tyler Levitan was one of the organisers of the Demonstration. At the time, he was the campaigns co-ordinator for a national organisation called Independent Jewish Voices (“IJF”). He testified that this organisation advocates for a just and peaceful resolution to the Israel-Palestine conflict. Its members and supporters are predominantly Jewish. The Demonstration was one of around five protests organised over the course of what Mr. Levitan described as an “assault on Gaza” by the Israeli army in July and August of 2014. There were around 1,000 people present at each protest.

[12] Mr. Levitan testified that the IJF would strongly oppose any demonstrations of support for terrorism. He testified that he had no reason to believe that APAC supported Hamas, and added that if APAC expressed support for Hamas, the IJF would not work with it.

[13] Peter Denley and Mike Evard were at the Demonstration representing CUPW. They took CUPW flags with them to the Demonstration. Mr. Denley testified that many organisations and individuals take banners and flags to demonstrations. He recognised some, but not all, of the flags at the Demonstration. His evidence was that he did not see, or become aware, of any representation of Hamas while he was at the Demonstration. There were no speeches in favour of Hamas. He testified that he would not have recognised a Hamas flag if he had seen one.

[14] On 23 July 2014, the *Ottawa Citizen* carried a story with the headline “Hamas flag causes social media stir”. A photograph immediately underneath showed a number of protesters, one of whom was carrying a flag which was described in the article as “a flag associated with Hamas”. After pointing out that Hamas, “the militant Palestinian group that has been negotiating the failed ceasefire with Israel” had been designated as a terrorist organisation in 2002, the article reported that:

“The flag was propped on the shoulder of Adam John, a 27-year-old Ottawa mechanic.

Asked why he was holding the flag, John replied:

‘This is a Muslim flag. What people don’t understand is, the colour green is a traditional colour for Islam and the inscription is just the first pillar of Islam, which is, ‘there is no God but Allah, and the prophet is the messenger.’

He acknowledged Hamas supporters use it, but he insisted it wasn’t only a Hamas symbol, comparing it to the Christian cross.

‘You could say there’s a connection, but it’s not meant to be’”.

[15] Mr. Denley said that he did not know who Adam John was and did not recall seeing him at the Demonstration. He acknowledged that one of the CUPW flags could also be seen in the photograph contained in the *Ottawa Citizen* report.

[16] On 23 July 2014, Jerry Agar was to host “The Source” broadcast in place of the regular host, Ezra Levant. John Egier was filling in for the senior producer role that day. The associate producer was Sarah Ramsaram and the chase producer was Kate Boivin. Mr. Egier had circulated a list of possible topics for the programme, one of which was described as “CUPW Parliament Hill protest”.

[17] Mr. Agar recalled having received an email from Mr. Egier on the afternoon of 22 July 2014, indicating “we have been asked to cover the Anti-Israel protests...on Parliament Hill”. Mr. Agar responded the next morning:

“Can we get someone to speak about the track record of CUPW’s support for terrorist leaders and regimes to tie into their marching with Hamas [*sic*] supporters yesterday?”

[18] Mr. Agar acknowledged that Mr. Egier’s initial email had said nothing about either CUPW or Hamas and that those features of the subsequent coverage had apparently been his, that is, Mr. Agar’s, idea. He testified that he knew from the news that there had been a pro-Palestinian protest, that varieties of people had shown up, and that what stood out to him were two sets of flags. He also acknowledged being aware of what he described as CUPW’s “track record” which, he said, included sending delegates to a World Social Forum – Free Palestine conference in Brazil, CUPW’s support for breaking an Israeli blockade of Gaza, which Mr. Agar said he saw as supporting Hamas, as well as CUPW support of Cuba, which Mr. Agar described as a “terrorist country”. Mr. Agar added that CUPW’s activities were of interest to him personally, as his father had worked for Canada Post.

[19] Mr. Agar testified that at an editorial meeting, a decision was made to contact CUPW to ask them about their participation at the Demonstration. He cannot recall specifically who had suggested, “Call CUPW. Ask them if they support terrorism?”

[20] Kate Boivin was tasked with contacting CUPW. She succeeded in making contact with Aalya Ahmad, a communications specialist at CUPW. Ms. Boivin does not recall the specifics of her conversation with Ms. Ahmad. She knows that she was asking if it would be possible to get someone from CUPW onto Mr. Agar’s show. She said that she wanted to be as upfront as possible about what Sun Media was trying to get them to talk about.

[21] On behalf of CUPW, Ms. Ahmad declined the interview request, but did provide a statement on CUPW’s position. Ms. Ahmad subsequently complained that Ms. Boivin had requested an interview with a CUPW representative to discuss the “union’s support for the terrorist organization Hamas” and that because of the “aggressive, misinformed and provocative way in which Ms. Boivin addressed the issue”, Ms. Ahmad was instructed to tell her that the Union would decline the interview request.

[22] Ms. Ahmad was not called as a witness at trial.

[23] Ms. Boivin testified that she did not recall her conversation with Ms. Ahmad being aggressive, misinformed or provocative. She also denied having been told by Ms. Ahmad that Ms. Ahmad had expressly requested that she not be identified as the author of the Union's statement. Ms. Boivin's evidence was that if such a request had been made by Ms. Ahmad, she would have communicated it to the entire production team.

[24] CUPW's statement on Gaza was sent by Ms. Ahmad to Ms. Boivin at 3:23 p.m. on 23 July 2014. It read:

As promised, here is CUPW's statement on the issue. You can also find our positions at the following links, including the debate from our Convention where our policies were voted on. If you require any further background information on CUPW's human rights and international solidarity policies, please don't hesitate to get in touch.

[Three hyperlinks provided.]

STATEMENT

Working people have as much right as anybody else to hold and express opinions on international issues. Our members support the human rights of the Palestinian people and want an end to the violence and killing.

CUPW condemns the current position of the Harper government in attempting to justify the unjustifiable. By making excuses for Israel's actions, the Canadian government is promoting war against the Palestinian people. Our government should be promoting peace, not war. The only way to achieve a lasting peace is through justice.

Our position on Israel and Palestine is established by a democratic process of debate followed by a vote. As postal workers, we stand by our actions in the face of propaganda efforts to silence and defame supporters of the Boycott, Divest and Sanctions movement. It is quite simply the right thing to do.

[25] Ms. Boivin testified that someone at the editorial meeting had suggested inviting Mr. Benlolo to be a guest for the show. She therefore emailed Mr. Benlolo's representative, and arrangements were made for him to participate in the show via Skype.

"The Source"

[26] In July 2014, Mr. Agar had a regular talk show on NewsTalk 1010 Radio, and wrote a column for the *Toronto Sun*. From time to time, he also filled in as the host on "The Source" show on the Sun News Network if the regular host, Ezra Levant, was not available. He described the show as consisting of a guest-oriented current affairs programme in which the host also had an opportunity to provide commentary. Mr. Agar was not a decision-maker on what would be included in the programme, but would be consulted.

[27] On 23 July 2014, after doing his regular radio show, Mr. Agar went to the television studio. He was told that the segment on the Demonstration would be going ahead, but that CUPW was not sending a representative. He was provided with Ms. Ahmad's email and CUPW's statement. Mr. Agar said that when he read the text of the email he was "gobsmacked" by the response. He said that he expected that if he was asked, "Do you support terrorism?", he would lead with a "no" answer. Instead, what CUPW had provided was a condemnation of Israel and Prime Minister Harper, and a link to the adoption by CUPW of its anti-Israel policy. There was nothing about an anti-Hamas policy. He said that he was "shocked" that CUPW did not provide a response that included a full and complete denial of supporting Hamas.

[28] The producers told Mr. Agar that they had booked Mr. Benlolo to appear on the show. Mr. Agar did not know Mr. Benlolo.

[29] Other than Mr. Agar's opening statement, the show was free-form and unscripted.

[30] Mr. Benlolo confirmed that he had been requested, through his communications director, to be a guest on "The Source". He was unable to attend in person so it was agreed that he would participate by Skype. He knew that the topic was the involvement of the postal workers at the Demonstration. However, he was not sent any questions in advance, nor did he speak to either Mr. Agar or Ms. Boivin before the programme was recorded and broadcast.

Toronto Sun and Sun Media

[31] On 28 July 2014, the *Toronto Sun* carried what was described as an "opinion" piece by Mr. Agar, titled "Hamas goes postal? Only in Canada". The first sentence of the article, which appeared in both the print and online versions, asked "Would you want a terrorist sympathizer coming to your door every day?"

The Impugned Statements

The Broadcast

[32] The plaintiff asserts that the following statements were defamatory:

(a) Made by Mr. Benlolo on "The Source" broadcast:

- i. "to support a designated terrorist organization is shocking and bewildering to us, particularly for a public organization like CUPW".
- ii. "I actually find that not surprising, sadly enough, because CUPW leadership has a history of partnering up with hate groups, anti-Israel groups".
- iii. "This is really shocking that an organization that should really function in the interests of Canadian workers, postal workers, should be so political and siding and partnering up with a hate group like Hamas".

(b) Made by Jerry Agar during "The Source" broadcast:

- i. "The Canadian Union of Postal Workers has often lent their support to terrorist groups".

(c) Banners shown throughout "The Source" broadcast segment:

- i. SUPPORTING TERRORISTS?

[33] In relation to the "The Source", the plaintiff also alleges that the Sun Media defendants, including Mr. Agar, made a number of inferences, which, taken on their own, might not have been defamatory, but which were defamatory of CUPW taken in the context of the broadcast as a whole:

- (a) By-line: "HAMAS, CUPW FLAGS FLY ON PARLIAMENT HILL".
- (b) Video footage showing Hamas flag and also showing CUPW's flag at the same demonstration.
- (c) Banner: "CUPW IN SUPPORT OF GAZA".
- (d) "They [CUPW] were at yesterday's protest on Parliament Hill. So why are they marching with Hamas supporters?"
- (e) "Don't we have to differentiate between supporting ordinary Palestinians and supporting Hamas?"
- (f) "You know, yesterday when I heard of this, I was hopeful that when we got a statement from CUPW, they themselves would differentiate. Maybe they'd say we didn't realize people were going to carry the Hamas flag, but this is what we received, in part..."
- (g) "There was no apology for marching with Hamas supporters".
- (h) "I've talked to people from Israel and they recognize how this current situation is for ordinary people on the street in Palestine. I don't think it's a tough differentiation to make..."

[34] CUPW alleges that these words meant, and were understood to mean, that CUPW and its members were terrorist sympathisers, that CUPW supports Hamas, and that CUPW was not attending the rally to demonstrate concern and support for ordinary Palestinians.

[35] CUPW also alleges that other statements made by Mr. Benlolo, while perhaps not defamatory on their own, taken in the context of the broadcast as a whole, wrongly inferred that CUPW supports and even partners with terrorists, including Hamas, that CUPW was not attending the rally to demonstrate concern and support for ordinary Palestinians, that CUPW supports the actions of Hamas in crowding public spaces with rocket launchers with children in order to inflict civilian casualties on its own population, and that CUPW supports the destruction of the state of Israel.

[36] Specifically, the plaintiff alleges that in response to the question “Don’t we have to differentiate between supporting ordinary Palestinians and supporting Hamas?”, Mr. Benlolo stated:

“Well, absolutely. We find it shocking that Hamas supporters would be marching in a rally like this. We believe that if you want to support the Palestinian cause, so be it, it’s your right to do so. However, to support a designated terrorist organization is shocking and bewildering to us, particularly for a public organization like CUPW”.

[37] Then, in response to Mr. Agar’s question, “I’ve talked to people from Israel and they recognize how this current situation is for ordinary people on the street in Palestine. I don’t think it’s a tough differentiation to make, but I would ask you: do you believe that Israel is engaged in human rights abuses at the moment?”, Mr. Benlolo stated:

“I don’t believe that Israel is engaged in human rights abuses. Sadly, innocent people are dying, but I do believe the culprit for that and the responsibility lies in the hands of Hamas. As you very well know, Hamas put its rocket launchers in designated public spaces, it crowds those spaces with rocket launchers with children in order to inflict civilian casualties on its own population. And therefore, if any kind of war crime challenges or anything like that arises as various parties are insinuating, I think that responsibility does lie with Hamas as a terrorist organization. And I would as well extend that to the Palestinian authority that is not condemning Hamas for placing innocent people around these rocket launchers”.

[38] CUPW asserts that these alleged defamatory statements made by Mr. Benlolo were particularly damaging given that he is a well-known public figure, serving as President and CEO of the Friends of Simon Wiesenthal Center for Holocaust Studies, with over 30,000 members.

The Article

[39] In respect of the article by Mr. Agar, CUPW asserts that the article was a republication of the libel contained in the broadcast, noting that on the same page of the printed edition of the *Toronto Sun* that Mr. Agar’s article appeared in, there were adjacent articles titled, “Israel must defend itself” and “Will Trudeau’s stand woo Jewish voters”.

[40] CUPW alleges that the following statement is defamatory:

“Would you want a terrorist sympathizer coming to your door every day? Apparently, that may already be happening.”

[41] CUPW also alleges that the article by Mr. Agar contained a number of inferences, which on their own would not be defamatory, but which are defamatory of CUPW in the context of the article as a whole, and its juxtaposition on the page with other articles that compare Hamas to Nazi Germany. Noting that there was a photograph published with the article depicting a Canada Post delivery truck and a “STOP” traffic sign, the following statements were alleged to contain false innuendos or inferences that are libelous of CUPW:

- (a) Title: “ Hamas goes postal? Only in Canada”;
- (b) “A pro-Palestinian rally in Ottawa last week demonstrated more than just support for the average Palestinian mother and child...”
- (c) “Among the protesters were those carrying the flag of Hamas, a group recognized officially by the Canadian government as a terrorist organization. Next to those flags flew the flag of the Canadian Union of Postal Workers (CUPW).”
- (d) “It is easy to believe there are many in Gaza who don’t support Hamas and their vicious, evil campaign to wipe the Jews from the face of the earth...It is also easy to believe that there are many in Canada who mean well when they support Palestine and want Israel to abandon its deadly offensive; one started in response to a daily barrage of rocket fire from Gaza. So in that spirit I was certain when and if CUPW responded to questions about why they were marching next to terrorist sympathizers, (and one would hope not actual terrorists) they would distance themselves by claiming they meant only to support peace and Palestinian civilians, including mothers and children, and were unaware that Hamas flags would be present. Apparently not.”
- (e) “Good people like Watson lost the vote, leaving CUPW roundly condemning Israel, while willingly flying their flag next to that of the terrorist organization, Hamas. The enemy of Hamas’ enemy is their friend.”

[42] CUPW’s allegations are that the words were used, were meant, and were understood to be, that CUPW and its members were terrorist sympathisers, that CUPW was not attending the rally to demonstrate concern and support for the ordinary Palestinians, and that CUPW supports Hamas and its objectives, which includes the genocide of the Jewish people. CUPW adds that the articles, both the online and print versions, combined with the photograph that accompanies the online version, and the juxtaposition of the print article on the page with the other articles mentioned, give rise to many innuendos that are false, including that postal workers are terrorist sympathisers, that CUPW supports a campaign to wipe the Jews from the face of the earth, that CUPW supports genocide, that CUPW supports the destruction of the state of Israel, and that CUPW would support the building of concentration camps or Auschwitz-style ovens to burn Jews as the Nazis did.

[43] CUPW’s notice of libel with respect to the print and online articles, and its request for a retraction and the removal of the online articles, was rejected. However, the Sun Media defendants did accede to a request that references to Ms. Ahmad be removed from the online publications.

Issues

[44] A threshold issue which arises is whether CUPW, as an unincorporated association, has the legal capacity or standing to bring an action in its own name for defamation.

[45] Assuming that the plaintiff succeeds on the standing issue, the next issue is whether the plaintiff has proved the threshold issues of the tort of defamation, namely that:

- (a) The words complained of were defamatory or would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- (b) The words complained of were about the plaintiff; and
- (c) The words complained of were published or communicated to at least one person other than the plaintiff.

[46] A corollary consideration is that of causation, namely whether the plaintiff's reputation was actually threatened by the impugned statements.

[47] If the tort of defamation is made out and the requirement of causation satisfied, the next issue is whether one or more of the defences to the tort of defamation are available. The principal defences available to the defendants are those of justification (truth) and fair comment. However, the Sun Media defendants also raise the defences of responsible communication and statutory privilege.

[48] Finally, if some or all of the defendants fail to make out any of the defences available to them, or if those defences are negated by the existence of malice on the part of the defendants, the court must consider the issue of damages.

Capacity of CUPW to Sue for Defamation

[49] A union is an unincorporated association. As such, the traditional position has been that the union has no legal personality, and, in the absence of an express enactment to the contrary, cannot sue in its own name for defamation: *Taff Vale Railway Co v. Amalgamated Society of Railway Servants*, [1901] A.C. 426 (H.L.)

The Law Has Evolved

[50] Over time, the law has evolved. The Supreme Court of Canada recognised this in *Berry v. Pulley*, [2002] S.C.R. 40, 2002 SCC 40, at para. 46. Observing that there is now a sophisticated statutory regime under which trade unions are recognised as entities with significant rights and obligations, the Court held that "unions are legal entities at least for the purpose of discharging their function and performing their role in the field of labour relations".

[51] If one takes the position that CUPW's commitment "to the objective of transforming the present social and economic order to make it consistent with the interests and aspirations of workers" falls outside the "field of labour relations", the issue of whether CUPW can sue for defamation in relation to its activities in pursuit of that commitment remains unsettled. This was recognised by Pelletier J. in a motion brought in this proceeding under Rule 21 of the Rules of Civil Procedure for determination of an issue of law before trial: *Canadian Union of Postal Workers v. Quebecor Media Inc.*, 2015 ONSC 4511, at para. 64. On an appeal from that decision, the Court of Appeal held that the issue of whether an unincorporated trade union has standing to bring an action for defamation was, as Pelletier J. had determined, best left for trial on a full record: *Canadian Union of Postal Workers v. Quebecor Media Inc.*, 2016 ONCA 206, at para. 17.

[52] More recently, in *CUPW v. B'nai Brith Canada*, 2020 ONSC 323, where the issue of the union's standing to sue in order to defend its reputation was raised in a motion under the anti-SLAPP legislation, MacLeod J. expressed the "preliminary view" (at para. 23) that "the law has evolved to the point that a union may now sue to defend its reputation and its right to do so is not dependent on any statute". He added:

Defending its reputation is an activity central to the core function of a labour union. The Supreme Court of Canada has ruled that unions have sufficient legal personality to sue and be sued for purposes related to their labour relations functions.

[53] MacLeod J. explained that he had declined to answer the question concerning the union's standing because of, *inter alia*, the Court of Appeal's pronouncement in this case that the question is not to be decided on a preliminary motion. In an appeal taken from Justice MacLeod's decision, the Court of Appeal made no comment on the issue of CUPW's standing to sue for defamation: *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529.

[54] A review of jurisprudence in a number of jurisdictions and levels of court underscores the broadening of the legal status accorded to trade unions.

[55] In *Public Service Alliance of Canada v. Canada (Attorney General)* (2002), 62 O.R. (3d) 682, 2002 CanLII 19258 (C.A.) ("*PSAC*"), Goudge J.A. reviewed the Supreme Court of Canada's decision in *Berry v. Pulley*, concluding that the case stood for three propositions, namely:

1. First, absent clear contrary legislation, the legal status of trade unions to assert their right in court, including common law rights, is now beyond question, at least in matters relating to their labour relations function and operations.
2. Second, while that legal status is founded in each case on the relevant provincial or federal labour legislation governing the union, it does not depend on any provision specific to that legislation. While variations exist among jurisdictions, the legal status accorded to trade unions derives not from specific provisions in any particular piece of legislation, but from the reality that, throughout Canada, the world of labour relations is governed by sophisticated statutory machinery which requires unions to have sufficient legal personality to discharge their role in that world. Thus, legislatures must be taken to have impliedly conferred on unions the legal status necessary for them to do so.
3. Third, this recognition of the broadening legal status accorded to trade unions is a reflection of the extraordinary evolution over the last half century of both their role and the complex labour relations regimes which now govern them and their activities. In order that unions be able to properly fulfill the functions now expected of them, courts must treat them as juridical entities.

[56] In *Fallowka v. Pinkerton's of Canada Ltd*, [2010] 1 S.C.R. 132, 2010 SCC 5, an action was brought against, *inter alia*, the union of which a fired striker at a mine had been a member. The striker had set an explosive device which, when detonated, killed nine replacement workers. While the union was not ultimately held liable, the Supreme Court of Canada agreed with the submission

that one of the purposes of recognising unions as legal entities is to allow victims of a group action to recover from the union's assets.

[57] To similar effect, in *Kiewning v. Communications, Energy and Paperworkers Union of Canada*, 2011 ONSC 712, Shaw J. held that he could see no sound policy reasons why a union should have immunity from being sued by the plaintiff for damages alleged to have been sustained by her as a result of systematic campaign of harassment and bullying on the part of the union local's president, "even if those claims do not directly deal with the union's role in labour relations".

[58] In *Ironworkers Local 97 of The International Assn. of Bridge, Structural and Ornamental and Reinforcing Ironworkers v. Campbell*, 1997 CanLII 1379 (BC SC), the Supreme Court of British Columbia rejected an argument that a union did not have the right to seek damages for defamation against the Liberal Party of British Columbia and its leaders as a consequence of a news release alleging involvement by the union in a kickback scheme. Macdonald J., at para. 14, cited with approval the opinion of the Court of Appeal of England and Wales in *National Union of General and Municipal Works v. Gillian*, [1946] 1 K.B. 81 (C.A.), which held that a trade union can sue in tort and maintain an action for defamation:

...if the *persona juridicae* is liable to be sued for infringing the rights of others, it must equally be able to sue to vindicate its own right.

(at pps. 86-7)

I can see no ground for excluding the action of defamation...no reason why...a trade union should be treated differently in law from a company...

(at p. 87)

A trade union...stands in the same position. It, too, has its reputation. Why should it not be protected?

(at p. 88)

[59] In *Labourers' International Union of North America, Local 183 v. Castellano*, 2019 ONSC 506 (varied on appeal, 2020 ONCA 71), B. Dietrich J. observed, at para. 78, that as with many organisations, a union's reputation "is critical to its brand as well as its ability to successfully bargain on behalf of its members and lobby all levels of government".

[60] The need for CUPW to be able to protect its general reputation in discharging its labour relations function was spoken to by Mr. Denley during the course of his evidence at trial. He referred to previous campaigns by CUPW to save Canada Post from privatisation and limit the use of community mailboxes. He explained that CUPW regularly has to interact with governments and with citizens' committees. As a result, he asserts the importance to CUPW of being able to defend its reputation by being able to sue for defamation, even if the genesis of the defamatory comments is the Union's advancement of social policies as opposed to more directly in relation to its labour relations role.

[61] The High Court of England and Wales recently dealt with the question of whether a trade union has the right to sue in defamation: *Prospect v. Evans*, [2024] EWHC 1533 (KB). While that decision deals with British legislation, the Court made references to secondary sources and comments which are consistent with the trends that have been recognised by courts in this country. At para. 36, Steyn J. referred to a passage from *Carter-Ruck on Libel and Privacy* (6th ed., 2010), at §8.41:

First, it is not clear that the possession of corporate status, or otherwise, should determine conclusively whether a trade union has right to sue. Other entities lacking corporate status, such as firms [i.e. partnerships], have a right to sue and the correct question to ask is surely whether the entity in question has a reputation that the law ought to protect. That the entity does not have corporate status may be a relevant factor but it is not determinative. As was noted in *Derbyshire County Council v Times Newspapers*, [[1993] A.C. 534 (H.L.),] ‘defamatory matter [about a trade union] may adversely affect the union's ability to keep its members or attract new ones or to maintain a convincing attitude towards employers’ and in consequence it is argued that a trade union should be entitled to protect that reputation.

[62] The second submission made in the extract from *Carter-Ruck on Libel and Privacy*, after noting an English authority interpreting the specific legislation existing in that jurisdiction, which held that a union could not maintain a claim for defamation, refers to "*dicta*" in “several decisions which assumes or states directly that trade unions can sue in defamation”. The extract concludes that although the point remains “arguable”, “it is submitted that the better view today is therefore that a trade union can sue for defamation”.

[63] Steyn J., again commenting on the ambit of the British legislation, concludes, at para. 52, that the finding that a trade union is entitled to bring a claim for libel is consistent with “*the fact* that a trade union has a distinct reputation, separate from its members...”

Provincial Legislation

[64] A small fraction of the plaintiff’s members – three bargaining units, to be precise – work for a cleaning company which cleans Canada Post’s plants in Windsor, Hamilton and Kitchener, Ontario. Approximately 50 employees are members of these bargaining units, which are provincially regulated, compared to the 55,000 employees covered by certificates under the *Canada Labour Code*.

[65] Section 3(2) of the *Rights of Labour Act*, R.S.O. 1990, c. R.33, provides:

A trade union shall not be made a party to any action in any court unless it may be so made a party irrespective of this Act or of the *Labour Relations Act*.

[66] The effect of the Court of Appeal’s decision in *PSAC* is that s. 3(2) of the *Rights of Labour Act* does not act as a bar to unions governed by federal legislation from commencing proceedings in their own name. However, Goudge J.A. commented, at para. 45 of *PSAC*:

Although it is not necessary to decide in this case, the answer I have given to the application of s. 3(2) of the [*Rights of Labour Act*] might well be different for unions

governed [Ontario's *Labour Relations Act*], something which could force them to attempt to access the courts using the antiquated and uncertain vehicle of the representative action described by Osler J. in [*Seafarers International Union of Canada v. Lawrence* (1979), 24 O.R. (2d) 257 (C.A.)]. Such a result would seem inconsistent with the broad, principled approach to the legal status of unions found in *Berry*. That approach reflects the reality that, across the country, unions share a common history and, speaking generically, perform common functions, and are governed by common legislative provisions. Viewed against this commonality, if s. 3(2) creates an anomalous result for some unions in a single province, it may be time, after more than 50 years, that it be revisited for possible revision.

[67] In *Windsor Salt Ltd./Sel Windsor Ltée.*, 2023 ONSC 1431, Justice Leach declined to make a definitive finding that s. 3(2) of the *Rights of Labour Act* should still be construed (to the extent that it had been in the past) as preventing unions from being named as defendants in litigation relating to labour disputes. He noted, in particular, the observation of Goudge J.A. at paras. 15-16 of *PSAC* that in 1944, when the *Rights of Labour Act* was originally passed, trade unions had only begun to emerge as important institutions in Ontario, and provincial legislation providing such unions with rights to compulsory collective bargaining was relatively new. Since then, the “enormous revolution” which Goudge J.A. described in *PSAC* had occurred. Importantly, Leach J. also observed, at para. 16(b)(ii) of his decision in *Windsor Salt* that s. 3(2) requires only that the ability of unions to be made a party to any action “not depend on the *Rights of Labour Act* or the Ontario *Labour Relations Act*”, and that “nothing in s. 3(2) demands an express grant of standing from the legislature” (quoting from para. 38 of *PSAC*).

Conclusion on Standing

[68] As Goudge J.A. observed in the *PSAC* case, the role of unions and the labour relations regimes in which they operate has undergone an “extraordinary evolution”. Part of that evolution has been an increased role played by some unions in a broader national and international political discourse which goes beyond the strict boundaries of labour relations.

[69] It logically follows that, with the recognition of expanded rights on the part of unions to engage in litigation, both rights and responsibilities are conferred. Indeed, in *Berry*, Iacobucci J., in holding that unions are legal entities, at least for the purpose of discharging their function and performing their role in the field of labour relations, also found that when claims are brought against unions, they can be held liable to the extent of their own assets.

[70] I conclude that, subject to comments which follow concerning the application of Ontario legislation governing provincially regulated unions, the plaintiff has standing to bring an action in its own name for defamation.

[71] Given the finding in *PSAC* that a federally regulated trade union may sue in its own name, and the ever-broadening legal status accorded to trade unions which has led me to conclude that the right of the union to sue and be sued includes defamation litigation, it would be an absurd outcome if the plaintiff was precluded from suing to protect its reputation as a result of its representation of just 50 employees out of over 55,000 employees being provincially, rather than federally, regulated.

[72] Aside from that absurdity, the ability of CUPW to be made a party to an action is not dependent on the *Rights of Labour Act* or the *Ontario Labour Relations Act* because, as a federally regulated union, it is, by virtue of the Court of Appeal's decision in *PSAC* and the subsequent evolution of the common law since that case, entitled to be a party to an action. The fact that three of its locals are provincially regulated should not, and, in my view, does not, undermine that standing. As a consequence, it is not necessary for me to find that s. 3(2) of the *Rights of Labour Act* has ceased to be an "express legislative provision" precluding an Ontario trade union from being named as a party in an Ontario proceeding,

Defamation

[73] It is conceded that the words complained of were published or communicated to at least one person other than the plaintiff.

Defamatory Meaning

[74] A classic explanation of the requirement that the words complained of were defamatory, or would tend to lower the plaintiff's reputation in the eyes of a reasonable person, was provided by Abella J.A. in *Color Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97, 156 D.L.R. (4th) 27 (C.A.), at 36 (D.L.R.)

[75] Abella J.A. took as her starting point the following definition of defamation:

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...

[76] She continued:

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 the 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.

[77] The natural and ordinary meaning of words includes any inferences or implications that they may reasonably bear. As Lord Reid explained in *Lewis v. Daily Telegraph Ltd.*, [1964] A.C. 234 (H.L.), at 258:

Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man [or woman] will infer from them, and that is also regarded as part of their natural and ordinary meaning.

[78] The evaluation of defamatory meaning necessarily requires account to be taken of the context in which the impugned statements were made. This includes consideration of the publication as a whole, not just isolated passages. Furthermore, the prominence which is given to the impugned words by their position in the publication, or by the emphasis which is provided by the type and heading employed, may be relevant. See, generally, Linden, Feldthusen, Hall, Knutsen and Young, *Canadian Tort Law*, 11th ed. (Toronto: LexisNexis Canada, 2018) at § 16.22-16.24.

[79] With one caveat, the defendants do not take serious issue with the defamatory character of the statements, made during the broadcast by Mr. Benlolo and Mr. Agar, as set out in paragraph 32 above. The caveat, which applies equally to the impugned statements that may not be defamatory when taken alone, but are alleged to be when considered in the context of the broadcast as a whole, arises from the observation by LeBel J. in *WIC Radio Ltd. v. Simpson*, [2008] 2 S.C.R. 420, 2008 SCC 40, at para. 75:

People who voluntarily take part in debates on matters of public interest must expect a reaction from the public. Indeed, public response will often be one of the goals of self-expression. In the context of such debates (and at the risk of mixing metaphors), public figures are expected to have a thick skin and not to be too quick to cry foul when the discussion becomes heated. This is not to say that harm to one's reputation is the necessary price of being a public figure. Rather, it means that what may harm a private individual's reputation may not damage that of a figure about whom more is known and who may have had ample opportunity to express his or her own contrary views.

[80] Mr. Agar and the Sun Media defendants question whether the impugned words actually threatened the plaintiff's reputation. As will be discussed below, the plaintiff has been extensively criticised over a number of years for the positions it has taken supporting the Palestinian cause and the Boycott, Divestment, Sanctions ("BDS") movement against Israel. Some of that criticism has come from within CUPW itself.

[81] While it is likely that a well-timed and appropriately worded denial by the plaintiff of any knowledge that a Hamas flag, or overt supporters of Hamas, were participating in the Demonstration, would have blunted the criticism that followed CUPW's participation in the Demonstration, there is, as Mr. Benlolo stated, a difference between supporting ordinary Palestinians and supporting a terrorist organisation like Hamas. The sting of the defamatory words used is the association with terrorism. Even for a union as politically active, and vocal about its activism, as CUPW, I find that words associating the plaintiff with a terrorist organisation and supporters of terrorism are capable of being injurious to the Union's reputation and, hence, defamatory.

[82] With respect to the inferences allegedly made by the Sun Media defendants and Mr. Agar, as set out in paragraph 33 (above), to the extent that these statements were made in the context of supporting the central allegation that CUPW was supporting or associating itself with a terrorist organisation, the statements are also capable of being defamatory in character. Nevertheless, as will be discussed below, several of the statements are, by CUPW's own admission, factually accurate.

[83] Mr. Benlolo's comment that "to support a designated terrorist organisation is shocking and bewildering to us", is a clear assertion that the plaintiff supports a terrorist organisation and, hence, defamatory.

[84] By contrast, the answer given by Mr. Benlolo set out in paragraph 37 (above), while strong in its condemnation of Hamas, does not, in my view, amplify Mr. Benlolo's defamatory statements. I therefore do not find that part of the impugned narrative to be defamatory.

[85] With respect to the inferences raised in article by Mr. Agar which appeared online and in print, when considered in the context of the article as a whole, as well as its juxtaposition with other articles, I find that the inferences, as set out in paragraph 41 (above), were capable of being understood as saying that CUPW and its members were terrorist sympathisers, and, hence, defamatory.

Were the words complained of about the plaintiff?

[86] Mr. Benlolo argues that his comments were expressly directed at CUPW's leadership, rather than the Union as a whole.

[87] In my view, Mr. Benlolo makes a distinction without a difference. The Union's constitution provides a mechanism whereby the leadership of the Union is elected by its members. In effect, the members at large of the Union delegate to the Union's leadership the authority to act on the Union's behalf. Mr. Benlolo may well have a quarrel with the Union's leadership (and would likely not have a quarrel with individual members of the Union who opposed the Union's adopted policies on Israel and Palestine), but his quarrel with the Union's leadership is a quarrel with those who the Union membership as a whole has chosen to represent them. Accordingly, I am satisfied that the Union has established that the words complained of were about the Union.

Defences

[88] Once the plaintiff has established, on a balance of probabilities, that the words complained of are defamatory, the defendants bear the onus of establishing that there are one or more defences available to them.

[89] The analysis of those defences is informed by the recent history of CUPW's political activism.

Some Context: CUPW's Political Activism

[90] To provide context for the defences raised by the defendants, it is appropriate to review the Union's political activism and, in particular, its policies on "peace and disarmament" and Palestine.

[91] The Union's policies are adopted at its national conventions. The policies are published in section D of the Union's national constitution. The Peace and Disarmament policy states, *inter alia*:

War and militarism cause death, grief, hardship and suffering for innocent people all around the world.

While recognizing that people living under oppressive regimes may engage in guerrilla or military actions to seek freedom from repression and to stop killing, torture and suffering in their countries, CUPW believes there are alternatives to war...

Individuals or states who commit acts of terrorism must be brought to justice through international law.

Terror and insecurity must be curtailed through the strengthening of international laws, reducing disparities between rich and poor, men and women, building democracy, replacing the global war economy, and ending the arms trade...

The Union will continue to work in coalition with others to oppose war and to promote peace, social justice and security for all people.

[92] The Union's policy on Palestine states:

The Canadian Union of Postal Workers supports the rights of the Palestinian people for respect, justice and peace.

The Canadian Union of Postal Workers recognizes that the so-called separation wall, the occupation of the West Bank and siege on Gaza are major obstacles to justice and a lasting peace.

The Canadian Union of Postal Workers will work in solidarity with organizations working for peace in Israel and Palestine.

CUPW will call for and actively work towards an end to the suicide bombings, military assaults and other acts of violence that take the lives of innocent people and demand that the Israeli-West Bank barrier be immediately torn down in accordance with United Nations (UN) resolutions.

CUPW will demand that the Israeli government immediately withdraw from the occupied territories in accordance with UN resolution 242.

CUPW will call on the Canadian government to increase humanitarian aid to Palestinians.

CUPW will support the international campaigns of boycott, divestment and sanctions until Israel recognizes the right of Palestinian people to self-determination and compliance with international law including the right of Palestinian refugees to return to their homes as stipulated in UN Resolution 194.

[93] The plaintiff's policy on Palestine was passed at its 23rd Triannual National Convention in April 2008.

[94] At the 2008 Convention, there was opposition to the proposed Palestine policy from within the Union's membership. One speaker said that the labour movement "is rapidly descending into anti-Semitism" and referred to the "absurd apartheid myth". Another delegate asked, "Have we lost our collective minds?", describing the proposed policy as anti-Semitic and adding, "Let us be very careful who we line ourselves up with. Hamas, democratically elected, but unwilling to denounce violence though they have been asked many times" and, "Do we really, really, really want to align ourselves by enshrining this in our Constitution with organizations who have made it clear they intend to eradicate another race of human beings off the face of this planet?". Another delegate said, "Our union talks about peace. Our union talks about how we are opposed to genocide and things like that. Yet, this is exactly what Hamas represents the opposite of. I have no trouble supporting the Palestinians and their rights".

[95] For a long time, a transcript of the debate at the 2008 Convention was accessible online. Indeed, Ms. Ahmad put a link to the transcript in her email to Ms. Boivin. Commenting on that, one of CUPW's witnesses at trial, Peter Denley, said, "We put it out there for the world to see", adding that CUPW's concerns about its own reputation did not stop it from taking positions, even positions which many Canadians might disagree with.

[96] CUPW's policies and activism in relation to Palestine have also attracted comment and criticism from others.

[97] In 2012, CUPW sent delegates to Brazil to attend a "World Social Forum – Free Palestine" conference. This attracted criticism not only because of the use of Union funds, but also because, following the event, the General Secretary of the Popular Front for the Liberation of Palestine (a designated terrorist organisation) wrote an open letter thanking people who had attended the World Social Forum. The issue was raised in the House of Commons by Pierre Poilievre MP. CUPW subsequently put out a bulletin which included the following statement:

Q: Did the head of a group considered to be a terrorist organization write a letter from jail thanking people at the WSF, including members of the Canadian Union of Postal Workers, as MP Pierre Poilievre suggested?

Ahmad Sa'adat, General Secretary of the Popular Front for the Liberation of Palestine, wrote an open letter which thanked people attending the WSF. He did not specifically thank members of the Canadian Union of Postal Workers as MP Pierre Poilievre suggested.

The bulletin continued:

Q: Did postal workers have the chance to meet supporters of a listed terrorist group and its leader, as some media suggested?

An article by Sun reporter Jessica Murphy said that postal workers could 'rub elbows' with 'supporters of a listed terrorist group and its leader.' It said CUPW's delegates had the 'option of attending a session devoted to calling for the release of Ahmad Sa'adat from an Israeli jail.'

The fact is CUPW did not know about this session. Furthermore, the Union is on record as supporting peace and non-violence.

[98] The Union's support of the BDS movement has been another source of commentary and criticism. Indeed, in 2008, Mr. Benlolo wrote a letter to Denis Lemelin, the President of CUPW, commenting on a published letter from Mr. Lemelin which had described Israel as an "apartheid state as part of an anti-Semitic smear campaign to target the Jewish State".

[99] A variety of newspaper columns and articles have criticized CUPW. A column in the *National Post* in 2010 was entitled "CUPW's radical policies and anti-Israel bigotry are a disgrace to letter carriers".

[100] As already referred to, an article by Jessica Murphy in the *Toronto Sun*, following the World Social Forum's "Free Palestine" conference, spoke of the opportunity for postal union members to rub elbows with supporters of a listed terror group. The article was entitled "Postal union takes heat over conference".

[101] A 2013 article in the *National Post* was titled "Beyond its mandate: Canada's 'radical' postal workers' union helps fund litany of controversial causes". The article quoted Bob Rae, at that time a Liberal MP, as saying, "I continue to be astonished by the extent to which ideas which should be on the 'loony tunes' margins of politics have now been adopted by a union which represents thousands of members".

[102] In 2010, CUPW lent its support to a "Canadian Boat to Gaza", which one of CUPW's witnesses, Mr. Denley, described as a boat organised to break Israel's blockade of Gaza, thereby enabling the delivery of mail to people in Gaza.

[103] In 2013, Mark Adler MP wrote a letter to Mr. Lemelin, commenting on a recent CUPW newsletter which had criticised Canada for allowing Israel to "terrorize occupied people" as well as CUPW's attendance at the World Social Forum, which he described as an attempt "to send union members to an anti-Israel conference...at which participants called for the release of a convicted terrorist".

Truth

[104] While the main thrust of the defences raised is fair comment, Mr. Benlolo argues that the words spoken by him are substantially true. Truth is a complete defence to defamation with respect to factual statements. While the defendant bears the burden of proving the truth of the words, the defendant need not prove every detail of the factual statements made. It is sufficient for the defendant to demonstrate that the factual statements are substantially correct: *Libel and Slander Act*, R.S.O. 1990, c. L.12, s. 22; *Sidorsky v. CFCN Communications Ltd.*, [1994] A.J. No. 718 (Q.B.), at para. 185, aff'd [1997] A.J. No. 880 (C.A.)

[105] If a defendant can demonstrate that the words are substantially true, those words are not actionable, even if they were spoken with malice.

[106] Mr. Benlolo argues that the evidence establishes the following true (or substantially true) facts:

- (a) Hamas is a designated terrorist organisation.
- (b) The Hamas flag was flown at the Demonstration. The CUPW and Hamas flags were in close proximity and captured in the same photos.
- (c) Senior CUPW officials, Peter Denley and Mike Evard were in attendance at the Demonstration and carried CUPW flags.
- (d) When asked to address the “union’s support for the terrorist organization Hamas”, CUPW’s responding statement did not deny support for Hamas.
- (e) CUPW supported the Gaza Boat effort to break the Israeli blockade.
- (f) CUPW leadership offered support for a speaking tour by George Galloway, a former British MP and pro-Palestinian advocate who had previously been banned from entering Canada, having been deemed a security threat for, according to media reports, his alleged support of Hamas.
- (g) CUPW has never expressly condemned Hamas in any public statement or resolution.
- (h) CUPW National President, Denis Lemelin, spoke at an anti-Israel Boycott, Divestment and Sanctions Conference in Montreal in 2010.
- (i) A CUPW delegation attended the World Social Forum – Free Palestine conference in Brazil.

[107] A number of these “true facts” are not challenged by CUPW. In respect of others, I make the following observations and findings based on the evidence.

[108] To start with, all of the parties acknowledge that Hamas is a terrorist organisation.

[109] The evidence of the CUPW witnesses is that they were unaware that a Hamas flag was being carried at a demonstration in close proximity to CUPW’s flag and that they would not, in any event, have recognised the Hamas flag as such.

[110] Jessica Hume, a Sun Media journalist who wrote for the Sun Newspapers and did TV work for Sun News, was covering the Demonstration. She had previously lived and worked in the Middle East for three years. She remembered seeing Hamas flags and Palestinian flags at the Demonstration. She believes that there was more than one Hamas flag, but acknowledged that there were no photographs showing more than one such flag (and did not have any photos in her possession showing more than one flag).

[111] I accept Mr. Denley’s evidence that at the time of the Demonstration, he was unaware that there was another demonstrator carrying a Hamas flag. I also accept CUPW’s evidence that none of its participants or officials associated with the Demonstration were familiar with the Hamas flag. Indeed, Ms. Hume noted that the Hamas flag is, in many respects, similar to the flag of Saudi Arabia.

[112] That having been said, the fact remains, and I so find, that the Hamas flag was flown at the Demonstration, that the CUPW and Hamas flags were carried in close proximity to each other, and that the CUPW and Hamas flags could be seen in the same photographs taken at the Demonstration.

[113] I also find that Mr. Denley and Mr. Evard were in attendance at the Demonstration and carried CUPW flags. Although Mr. Denley initially had no recollection of having been at the Demonstration, his memory was refreshed when shown a photograph from the Demonstration showing both himself and Mr. Evard each carrying a CUPW flag.

[114] CUPW did not take the opportunity to distance itself from any actual or implied association with the Hamas flag flown at the Demonstration. According to Ms. Ahmad, Kate Boivin had contacted her requesting an interview with a CUPW representative on the Jerry Agar show to discuss the “union’s support for the terrorist organization Hamas”. These are the words which Ms. Ahmad used in an email that she sent to Glenn Garnett at Sun Media on 30 July 2014 to describe Ms. Boivin’s request. Ms. Boivin has no independent recollection of that conversation but offered no reason to believe that the words attributed to her were inaccurate. She denied that her conversation with Ms. Ahmad was aggressive on either side, or that she was rude to Ms. Ahmad or provocative. It is uncertain whether specific reference was made to the presence of a Hamas flag. In the absence of contradictory evidence from Ms. Ahmad, I accept Ms. Boivin’s testimony.

[115] The subsequent statement which Ms. Ahmad provided to Ms. Boivin made no reference to Hamas or to any assertion, express or implied, that the Union had somehow associated itself with Hamas at the Demonstration. Rather, the statement spoke to the rights of working people to hold and express opinions on international issues, and the support of CUPW members for the human rights of the Palestinian people and the desire to end the violence and the killing.

[116] The evidence at trial clearly supports the assertion that CUPW supported the Canadian Boat to Gaza. The Canadian Union of Postal Workers was listed as one of the organisations endorsing the Canadian Boat to Gaza initiative.

[117] Similarly, CUPW clearly associated itself with a speaking tour by George Galloway. An article in the *Dalhousie Gazette* on 26 November 2010 described CUPW as one of the sponsors of the Halifax stop on Mr. Galloway’s Canadian speaking tour in November 2010 called “Free Afghanistan. Free Palestine. Free Speech”. The same article made reference to Mr. Galloway’s alleged support of Hamas.

[118] CUPW agrees that it has never passed a resolution criticising Hamas by name for its role in fomenting violence in the Middle East, or for any other reason. However, CUPW asserts, and I accept, that it has repeatedly criticised violence, terrorism, war, and suicide bombings.

[119] There is also no dispute that Mr. Lemelin attended and spoke at the BDS conference in Montreal in October 2010, or that a CUPW delegation attended the World Social Forum – Free Palestine conference in Brazil. However, I accept the Union’s evidence that none of the CUPW delegates attended the meeting which discussed the detention of Mr. Sa’adat, the General Secretary of the Popular Front for the Liberation of Palestine. I also accept Mr. Lemelin’s evidence that, to

the best of his knowledge, no CUPW delegates met with any representatives of Hamas or participated in any support for Hamas or other terrorist groups while at the World Social Forum.

[120] By contrast, the evidence does not establish as true that CUPW knowingly marched with Hamas supporters, that CUPW supports Hamas, that mail carriers could be terrorist sympathisers, or that CUPW willingly flew its flag next to that of Hamas.

[121] The defence of justification requires a defendant to prove the substantial truth of the “sting” or main thrust of the defamation: *Bent v. Platnick*, [2020] 2 S.C.R. 645, 2020 SCC 23, at paras. 107-108. Those statements relied upon by Mr. Benlolo which I find to be true do not demonstrate the truth of, or otherwise justify, his assertions that CUPW supports a designated terrorist organisation.

[122] The defence of justification therefore fails.

Fair Comment

[123] The defence of fair comment requires a defendant to establish four elements:

- (a) The comment must be on a matter of public interest;
- (b) The comment, though it can include inferences of fact, must be recognisable as comment;
- (c) The comment must be based on fact; and
- (d) The comment must satisfy the objective test “Could any person honestly express that opinion on approved facts?”

WIC Radio, per Binnie J., at para. 28.

[124] While fair comment may be defeated if the person making the comment is proved to have acted with malice, there is no requirement that a comment must be correct, or reasonable, or balanced, or respectful of those who hold differing opinions. In *WIC Radio*, at para. 4, Mr. Justice Binnie observed that “we live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones”.

[125] Although dissenting in part, the following observation by LeBel J. in *WIC Radio*, at para. 75, is apt:

People who voluntarily take part in debates on matters of public interest must expect a reaction from the public. Indeed, public response will often be one of the goals of self-expression. In the context of such debates (and at the risk of mixing metaphors), public figures are expected to have a thick skin and not to be too quick to cry foul when the discussion becomes heated. This is not to say that harm to one’s reputation is the necessary price of being a public figure. Rather, it means that what may harm a private individual’s reputation may not damage that of a

figure about whom more is known and who may have had ample opportunity to express his or her own contrary views.

A Matter of Public Interest

[126] A matter of public interest is “one which invites public attention or about which the public has some substantial concern”: *Grant v. Torstar Corp.*, 2009 SCC 61, at para. 105. It is not disputed that the defendants’ comments, if that is what they were, were made on a matter of public interest.

Recognisable as Comment

[127] A defamatory imputation can only be protected as fair comment if it is a comment upon given facts rather than a statement of facts. It is whether the matter would be recognisable to the ordinary reasonable person as a comment upon true facts, and not as a bare statement of fact: *Ross v. Beutel* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62 (CanLII), at paras. 55 and 57 (quoting, at para. 57, from Brown, *The Law of Defamation in Canada*).

[128] In analysing whether the words used are statements of comment or opinion, rather than fact, the court is required to examine whether the words used may, in pith and substance, be properly construed as comment (*WIC Radio*, at para. 26). In *Ross v. New Brunswick Teachers’ Assn.* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para. 56, the Court stated that “comment” includes a “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof”. After referring to this passage in *WIC Radio*, at para. 26, Binnie J. comments that:

This is particularly so in an editorial context where loose, figurative or hyperbolic language is used...in the context of political debate, commentary, media campaigns and public discourse.

[129] The fact that an article is positioned or described as an opinion or a column is not automatically determinative of whether the words are, in fact, opinion rather than fact: *Kent v. Martin*, 2016 ABQB 314, at para. 114.

[130] Relying on *Lascaris v. B’nai Brith Canada* (2019), 144 O.R. (3d) 211, 2019 ONCA 163, the plaintiff argues that the defendants have falsely stated that CUPW has a history of partnering with hate groups and that it supports terrorists, and have presented this as a statement of fact, and not as a comment.

[131] In *Lascaris*, the plaintiff, a lawyer, had spoken out on behalf of a man who had told him that his son had been killed extrajudicially by the Israeli authorities. The lawyer wrote that whatever the son may or may not have done, the Israeli government’s treatment of the father was an outrage. The defendant then published articles claiming that the plaintiff supported terrorists. The plaintiff sued for defamation. The defendant pleaded a number of defences, including fair comment. The defendant moved, initially successfully, under s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, for summary dismissal of the action on the basis that it was a SLAPP action. That decision was set aside by the Court of Appeal. At para. 34, Nordheimer J.A. wrote:

It would be open to a trier to conclude that the statements made about the appellant -- namely, that he supported terrorists -- were uttered as statements of fact, not as statements of opinion.

[132] Mr. Agar's evidence was that CUPW's support for the Gaza boat to break the Israeli blockade, its support for the government of Cuba, and its attendance at the World Social Forum – Free Palestine conference, were all facts that led him to hold the opinion that CUPW supported terrorism. The Sun Media defendants argue that the concept of "support" for terrorism is "essentially contestable", thereby indicating that the nature of the statement is that of comment incapable of proof, rather than a fact capable of proof. They add, quoting Binnie J. at para. 30 of *WIC Radio*, that "[t]he cases establish that the notion of comment is generously interpreted".

[133] The Sun Media defendants continue that it is not as if similar opinions to those expressed by Mr. Agar have not previously been expressed by others. When Mr. Denley was asked, during the course of cross-examination at trial, about the comment made by a Union member at the 2008 Convention to the effect that passage of the BDS resolution would amount to CUPW lining itself up with Hamas, Mr. Denley's response was "that's his opinion".

[134] While Ms. Boivin did not recall the details of her conversation with Ms. Ahmad (and Ms. Ahmad did not testify), implicit from Ms. Ahmad's subsequent complaint that Ms. Boivin had asked for CUPW to discuss the "union support for the terrorist organization Hamas" was that some basis for asking that question existed. CUPW did itself no favours by declining the opportunity to say at that time, as has been subsequently said in these proceedings, that it does not support terrorists, and never has. A plausible interpretation of CUPW's unwillingness to address the question, instead making a statement about the right of working people to hold and express opinions in support of the human rights of the Palestinian people, is that CUPW wanted to avoid directly answering the question. While I am not suggesting that CUPW's failure to take the opportunity to deny its support for Hamas could reasonably be construed as an acknowledgment that it did, in fact, support Hamas, it nevertheless left the door open for Mr. Agar and Mr. Benlolo to make the comments that are the subject of this action.

[135] Lawrence Goldstein was the Acting Comment Editor at the *Toronto Sun* in 2014. He edited Mr. Agar's article and put in the headline. Three days previously, his own article "Hamas is Insane: Anyone who thinks peace is possible between Israel and the Islamic Resistance Movement hasn't read its Charter" had run in the *Toronto Sun*.

[136] When he reviewed Mr. Agar's article, Mr. Goldstein saw that Mr. Agar was suggesting there may be terrorist supporters in CUPW. Mr. Goldstein testified that he regarded that to be a matter of public interest and debate. He reasoned that the facts in the article disclosed that CUPW flags and a Hamas flag had flown together at a demonstration, that Hamas was a terrorist organisation, and that CUPW had been asked for a response. The question was "do you support Hamas?". The answer did not talk about Hamas; it criticised Israel and the Canadian Government. The response from CUPW was quoted in the column. CUPW had also provided information about its support for the BDS resolution. Mr. Goldstein checked it. Information sent with the response also referred to the debate at the 2008 CUPW Convention. Mr. Goldstein checked that too. Israel was mentioned 120 times; Hamas was mentioned just twelve times, and then only by people opposed to resolution. There was no mention of Hamas having to do anything to achieve peace.

Mr. Goldstein concluded that Mr. Agar's column was fair comment and that Mr. Agar honestly believed there were terrorist sympathisers within CUPW.

[137] In my view, the comments made by Mr. Agar and Mr. Benlolo concerning CUPW's support for terrorist groups, its siding and partnering up with a hate group like Hamas, and questioning whether to differentiate between supporting ordinary Palestinians and supporting Hamas, were statements of opinion. In the case of the broadcast, this was underscored by the fact that throughout the broadcast, a banner ran which said, "Supporting terrorists?" - i.e., not a statement of fact, but a question.

Based on Fact

[138] The facts must be sufficiently stated in the comment or otherwise known to the audience. However, there is no requirement that the stated or known facts must objectively justify the comment. This was explained by Binnie J. in *WIC Radio*, at para. 31:

It is true that "[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made"; Brown, vol. 2, p. 15-36, and *Gatley on Libel and Slander* (10th ed. 2004), at para. 12.12. What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of Mair's editorial comment. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available (*Price v. Chicoutimi Pulp Co.* (1915), 51 S.C.R. 179], at p. 194).

[139] At para. 38 of *WIC Radio*, Justice Binnie continued his examination of the defence of fair comment, quoting, with approval, the opinion of Justice Gaynor in *Howarth v. Barlow*, 99 N.Y.S. 457 (N.Y. App. Div. 1906), at p. 459:

That such opinions or inferences are farfetched, high strung, or severely moral, or contrary to other opinions or inferences that seem more reasonable, does not matter so long as there be a basis for them in the acts or words of the person who is the subject of such criticism.

[140] A similar point was made by the Supreme Court of Canada in *Hansman v. Neufeld*, 2023 SCC 14, at para. 100, where it was stated that there is no requirement that the facts support the comment, in the sense of confirming its truth. Rather, "[t]he expression must relate to the facts on which it is based, but the comment need not be a reasonable or proportionate response".

[141] CUPW argues that at best, the facts upon which the defendants' "opinions" are based are that CUPW supports Palestine (along with the United Nations and Nobel Prize winners), that it supports BDS, and that it attended an event in support of Palestine where there happened to be a Hamas flag that CUPW did not know about. CUPW was then invited to come to an interview – a potentially hostile request – following which it made a statement. All of these facts being set alongside a background, which the defendants ignored, of CUPW having repeatedly denounced violence, terrorism, racism, and all that Hamas stands for (albeit without specifically mentioning Hamas).

[142] CUPW argues that these facts are incapable of forming a factual basis for the assertion that the Union knowingly associated itself with a Hamas supporter at the Demonstration, or that it supports terrorists.

[143] In response, the Sun Media defendants repeat the facts that they viewed as supporting Mr. Agar's position that CUPW supported terrorism:

- (a) The Gaza boat in 2010, in which a boat sponsored by Canadians would attempt to break the Israeli blockade of Gaza. Mr. Agar testified that an attempt to break an Israeli military blockade of Gaza would necessarily help the Hamas government in Gaza.
- (b) The attendance of six CUPW representatives at the World Social Forum – Free Palestine in 2012 which featured, among other things, a session calling for the release from an Israeli prison of Mr. Sa'adat of the Popular Front for the Liberation of Palestine, who had been convicted of murder in Israel. The Popular Front for the Liberation of Palestine being, like Hamas, a designated terrorist organisation.
- (c) CUPW's support for Cuba, which Mr. Agar felt "holds its people captive on threat of death", effectively making Cuba, in Mr. Agar's view, a terrorist country.

[144] Mr. Agar's article, "Hamas Goes Postal? Only in Canada" (the title of which was Mr. Goldstein's contribution, inspired, he said, by an old advertising slogan for a brand of tea) recites some of the facts forming the basis for his comments. After referring to the CUPW statement provided by Ms. Ahmad, he writes:

The CUPW statement continues, "Our position on Israel and Palestine is established by a democratic process of debate followed by a vote. As postal workers, we stand by our actions in the face of propaganda efforts to silence and defame supporters of the Boycott, Divest and Sanctions movement. It is quite simply the right thing to do."

The union vote supporting the boycott of Israel is described on the CUPW web page, "Postal workers take firm stand to support Palestinian workers."

Israel is condemned three times in the short statement. Hamas isn't mentioned at all.

CUPW's position was hammered out at its 23rd "Triennial National Convention" in April, 2008 in Ottawa.

The proceedings of that convention mention Israel 120 times, Hamas 12. Many of the mentions of Hamas were made by members protesting the position the union ultimately adopted.

An individual identified as Mr. D. Watson (Fundy Local) said, "Have we lost our collective minds? Why no resolutions on Darfur? Sudan? Ethiopia? Rwanda?"

Good people like Watson lost the vote, leaving CUPW roundly condemning Israel, while willingly flying their flag next to that of the terrorist organization, Hamas.

[145] Mr. Benlolo, referencing para. 59 of *WIC Radio*, notes that the law requires the comment to be based on “a sufficient substratum of facts to anchor the defamatory comment”. That factual substratum includes CUPW’s longstanding and very public history of activism in relation to Gaza and the Palestinian cause – press releases, verbatim transcript of proceedings, attendance at the Montreal conference on BDS, and attendance at the World Social Forum in Brazil. Mr. Benlolo’s own experience was that letters of complaint to the Union (and others) about its activism had got nowhere.

[146] Comment does not have to be reasonable. It can even be farfetched or extreme. So long as facts are sufficiently stated or otherwise known, the defence of fair comment will avail. I find that, to use the terminology adopted in *WIC Radio*, the necessary factual substratum for the opinions expressed by the defendants has been adequately demonstrated.

Opinion Honestly Expressed on Proved Facts

[147] In *WIC Radio* (at para. 49), Binnie J. explained that the honest belief requirement does not require that the defendant itself have an honest belief in the comment based on the proven facts, but that any person could have such an honest belief, based on the proven facts. The test is an objective one. Once it has been proved that any person could hold such an honest belief, the fair comment defence is available, whether or not the defendant itself had an honest belief in the comment. As the Sun Media defendants observed, this is an important qualification because it protects publishers who might publish opinions that they themselves do not share.

[148] Both Mr. Benlolo and Mr. Agar have a history of being critical of CUPW’s activism, including aspects of its policies and its activities in support of Palestine. They contrast CUPW’s clear and oft-repeated criticisms of Israel, with its lack of direct criticism of Hamas. Their belief that CUPW supports Hamas, a terrorist organisation, is, in my view, honestly held based on proven facts. It does not have to be a reasonable belief. But it must be an honest one. The evidence of both Mr. Agar and Mr. Benlolo established that they had an honest belief in their comments on CUPW. Indeed, Mr. Benlolo was never cross-examined on his evidence in chief that the words that he spoke during the broadcast were his honestly held opinions.

[149] In *WIC Radio*, Sopinka J. observed that testifying as to honest belief in the words spoken remains one of the most effective ways of satisfying the test that somebody could honestly express the view: *WIC Radio*, at para. 44.

Conclusion on Fair Comment

[150] I find that the defendants have met their burden of establishing the defence of fair comment. As Mr. Benlolo submitted in closing argument, there may be a range of views within Canadian society about the conflict in the Middle East. That is as true today as it was in 2014. Those views may at times be expressed in colourful terms.

[151] Mr. Agar and Mr. Benlolo are seasoned observers of and commentators on issues relating to conflict in the Middle East. They each have their angle. It is an angle which stands in stark contrast to the policies and activities of CUPW.

[152] As I will briefly discuss below, my finding of a subjective honest belief on the part of Mr. Agar and Mr. Benlolo eliminates the possibility of a finding of malice that would negate the defence of fair comment.

Responsible Communication

[153] Because of my conclusions on the issue of fair comment, I will make only brief reference to the two other defences raised by the Sun Media defendants, the first of which is responsible communication.

[154] In *Grant v. Torstar*, the Supreme Court of Canada concluded that the common law should be modified to recognise a defence of responsible communication on matters of public interest. McLachlin C.J. explained the rationale for the law at para. 65:

The law of defamation currently accords no protection for statements on matters of public interest published to the world at large if they cannot, for whatever reason, be proven to be true. But such communications advance both free expression rationales mentioned above – democratic discourse and truth-finding – and therefore require some protection within the law of defamation. When proper weight is given to the constitutional value of free expression on matters of public interest, the balance tips in favour of broadening the defences available to those who communicate facts it is in the public’s interest to know.

[155] For the defence of responsible communication to avail a publisher, the publisher must act responsibly. A publisher who fails to take appropriate steps, having regard to all of the circumstances, will be liable. At para. 62 of *Grant*, McLachlin C.J. wrote:

The requirement that the publisher of defamatory material act responsibly provides accountability and comports with the reasonable expectations of those whose conduct brings them within the sphere of public interest. People in public life are entitled to expect that the media and other reporters will act responsibly in protecting them from false accusations and innuendo. They are not, however, entitled to demand perfection and the inevitable silencing of critical comment that a standard of perfection would impose.

[156] It was presumably with this responsibility in mind that the Sun Media defendants asked CUPW to either comment on what had been observed at the Demonstration or to participate in “The Source” broadcast. At the risk of repeating what has already been said in these reasons in other contexts, CUPW’s communications specialist knew that the request for an interview was to discuss the “union’s support for the terrorist organization Hamas”. The statement that was produced by CUPW in response to that request did not address the premise of the request, namely, the Union’s alleged support for the terrorist organisation Hamas. CUPW had the opportunity to challenge that premise and any factual basis for it, but did not take it.

[157] Mr. Goldstein also checked the information provided by CUPW concerning its support for BDS and the proceedings at the 2008 Convention, before publishing the article.

[158] In my view, the Sun Media defendants discharged their duty of responsible communication.

Statutory Privilege

[159] The defence of statutory privilege was pleaded but not extensively argued.

[160] In its written submissions, the Sun Media defendants argue that insofar as the broadcast reported fairly and accurately on the fact that the Demonstration had taken place, that the CUPW banner had been displayed at the demonstration, and that the Hamas flag had been displayed in proximity to the CUPW banner, the broadcast is protected by the statutory privilege provided by s. 3(2) of the *Libel and Slander Act*, which provides:

A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously.

[161] I accept that submission.

Malice

[162] Malice defeats the defences of qualified privilege, fair comment, and responsible communication.

[163] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 145, the Supreme Court of Canada stated:

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067]..., at p. 1099, "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, *Taylor v. Despard*, 1956 CanLII 124 (ON CA), [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth.

[164] My finding of honest belief in their comments on the part of both Mr. Agar and Mr. Benlolo is a sufficient response to the plaintiff's allegation of malice. This was confirmed by the Supreme Court in *Hansman*, at para. 115, where Karakatsanis J. wrote that a "finding of a subjective honest belief negates the possibility of finding malice".

[165] Even if I am found to be wrong in my conclusion on the issue of honest belief, the plaintiff has not, in my view, met its burden of establishing malice or reckless disregard for the truth. CUPW raises valid criticisms of the accuracy of facts presented by the defendants. For example,

Ms. Hume made reference to Hamas “flags” (plural), when all of the evidence suggests that there was only one Hamas flag being flown in the Demonstration.

[166] CUPW also argues that Sun Media’s failure to make any real effort to find out what the Demonstration was about reflected a mindset that was bound and determined to link CUPW with Hamas and terrorism.

[167] I agree that both Mr. Benlolo and Mr. Agar had an angle. Mr. Agar seemingly reacted with a degree of relish when told that “The Source” programme that he was to present would deal with the Demonstration. In an email response, he said “Good one”, adding that CUPW had sent someone to the Brazil conference. And, as already discussed, Mr. Agar and Mr. Benlolo were longtime critics of CUPW’s political activities in relation to the conflict in the Middle East. But malice is a high bar. It requires a degree of spite or ill-will that I find not to have been established on the evidence.

[168] Both Mr. Agar and Mr. Benlolo acknowledged in the broadcast, and in Mr. Agar’s case, the article, that if you want to support the Palestinian cause, so be it, it is your right to do so.

[169] The converse is also true.

[170] It is arguable that if Mr. Agar and Mr. Benlolo had pursued their comments about CUPW’s support of terrorism in the face of an express disavowal by CUPW of any knowledge of the presence of the Hamas flag or the involvement of a Hamas supporter at the Demonstration, the dial could have been shifted in the direction of a finding of malice. But that is not what happened.

Damages

[171] In light of my findings on the issue of liability, I make no assessment of what damages would have been awarded had the plaintiff succeeded.

Disposition

[172] The conflict in the Middle East is a subject that generates passionate views, not all of which are expressed respectfully or in temperate language. Sadly, that remains the case over ten years after the words that are the subject of this case were spoken or written. It is a debate which the plaintiff and the individual defendants have engaged in from very different perspectives. On the one hand, CUPW is a harsh critic of the media and its representation of events in the Middle East. On the other, Mr. Agar and Mr. Benlolo deplore aspects of the Union’s activism.

[173] Nevertheless, the debate of these issues is what a free and democratic society does. The law of defamation places limits on free speech, but only when, to use the nineteenth century terminology of Baron Parke, it takes the form of an imputation calculated to bring the plaintiff into “hatred, contempt or ridicule” (see *Parmiter v. Coupland* (1840), 6 M. & W. 105 at 108, 151 E.R. 340, at 341); or, to use the more contemporary language of Abella J., when it tends to lower the plaintiff in the estimation of right-thinking members of society generally and in particular to cause the plaintiff to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem. And then only if the defences of truth, fair comment, privilege, or responsible communication are not established by the defendant.

[174] As Professor Fleming has explained, (John G. Fleming, *The Law of Torts*, 8th ed. (Sydney: The Law Book Company, 1992), at p. 524):

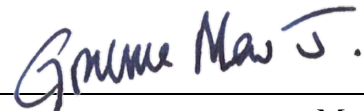
The law of defamation seeks to protect individual reputation. Its central problem is how to reconcile this purpose with the competing demands of free speech. Both interests are highly valued in our society, the one as perhaps the most dearly prized attribute of civilised [people], the other the very foundation of a democratic community. This antithesis is particularly acute when the matter at issue is one of public or general interest.

[175] It should be no surprise to CUPW that its active engagement in the charged debate about events in the Middle East provokes discussion that at times has become heated. When CUPW failed to respond to the opportunity the defendants provided to disavow any implied support for Hamas or terrorists, the reaction that followed afforded the defendants protection from their defamatory comments that might otherwise have been harder for them to establish. In those circumstances, CUPW, was, as LeBel J. might have said, too quick to cry foul.

[176] For the foregoing reasons, the action is dismissed with costs.

[177] If the parties are unable to agree on costs, I may be spoken to for the purpose of providing directions on costs submissions.

[178] I would be remiss if I did not acknowledge the skill, expertise and civility of counsel throughout the trial. The presentation of the case, the organisation of the materials, and the smooth running of the trial, reflected a commendable level of co-operation and communication between counsel.

A handwritten signature in dark ink, appearing to read "G. Mew J.", is written above a horizontal line.

Mew J.

CITATION: Canadian Union of Postal Workers v. Quebecor Media Inc., 2024 ONSC 6484
COURT FILE NO.: CV-14-62129 (Ottawa)
DATE: 20241121

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS

Plaintiff

– and –

QUEBECOR MEDIA INC., SUN MEDIA
CORPORATION, TVA GROUP INC., JERRY AGAR
and AVI BENLOLO

Defendants

REASONS FOR JUDGMENT

Mew J.

Released: 21 November 2024