

CITATION: Browne v. Picart, 2026 ONSC 3308
COURT FILE NO.: DC-24-2919
DATE: 2026/06/04

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	)	
	)	
Robin Browne	)	Ludmilla Jarda, counsel for the Appellant
	)	
Appellant	)	
	)	
– and –	)	
	)	
Richard Picart and Len Carby	)	Stephanie Okola, counsel for the
	)	Respondents
Respondents	)	
	)	
	)	
	)	
	)	HEARD: April 1, 2026
	)	

REASONS FOR DECISION

R. SMITH J.

Overview

[1] Robin Browne (the “Appellant”) appeals from the Small Claims Court decision of Deputy Judge Stauffer (“Deputy Judge”) dated August 25, 2024, on the grounds that he should have recused himself based on a reasonable apprehension of bias. Further, the Appellant alleges that the Deputy Judge erred by ruling that the defence of fair comment did not apply to Mr. Browne referring to Richard Picart and Len Carby (the “Respondents”) in his blog as “House Negroes” because they sent an unfavourable performance review to his employer.

[2] Mr. Browne initially brought a claim against Mr. Picart for \$6,717 for loss of income and benefits as a result of the unfavourable performance review sent to his employer. In the performance review, Mr. Picart stated that Mr. Browne had “threatened physical violence” against

him. The Appellant abandoned this claim at trial and amended his claim to seek \$35,000 for “punitive damages” against the Respondents.

[3] The Respondents then issued a defendant’s claim for \$35,000 for defamation against Mr. Browne, because he published a blog post referring to them as “House Negroes”, which the Deputy Judge found was a derogatory term. He awarded damages for defamation of \$35,000 to each of the Respondents and ordered Mr. Browne to pay costs of \$17,000.

Issues

[4] The following issues must be decided:

1. Did the Deputy Judge err by refusing to recuse himself based on a reasonable apprehension of bias?
2. Did the Deputy Judge err in finding that referring to a Black person as a “House Negro” was a derogatory term?
3. Did the Deputy Judge err when he decided that the defence of fair comment did not apply when Mr. Browne referred to the Respondents as “House Negroes”?
4. Did the Deputy Judge err by dismissing Mr. Browne’s defence of the truth of his statement?
5. Did the Deputy Judge err in awarding damages of \$35,000 to each of the Respondents for defamation?
6. Did the Deputy Judge fail to treat the Appellant with procedural fairness?

Background

[5] In late 2018, Mr. Browne brought a human rights complaint against his employer, the federal government, at Environment and Climate Change Canada (“ECCC”). As part of the settlement of his complaint, Mr. Browne was permitted to apply for a one-year “interchange program” with an organization known as the Federation of Black Canadians (“FBC”). The

Appellant remained employed by ECCC and received his regular salary while volunteering his time with FBC in Toronto.

[6] As part of the interchange program, the Appellant reported directly to Mr. Picart. Mr. Carby also held a senior position with FBC.

[7] On April 24, 2019, Mr. Browne sent an email to a friend using the FBC email system which was monitored by the employer. In this email, Mr. Browne stated “please stop me from bashing this dick [Mr. Picart] in the face when we next meet in person.” When Mr. Picart became aware of Mr. Browne’s email, he testified that he understood it to be a threat of violence against him. As a result of this email, FBC decided to terminate the interchange agreement involving the Appellant and to transfer him back to his previous employment at ECCC.

[8] Mr. Picart prepared a performance review of Mr. Browne as required by the interchange agreement regarding the time Mr. Browne worked at FBC. One of the reasons given for terminating the interchange agreement was that the Appellant had “threatened physical violence against his direct report.”

[9] Mr. Browne then sent an email to a small group of individuals which was published in a blog that he posted on the Internet on March 21, 2021. In the posting on the internet blog, Mr. Browne stated “I called both Carby and Picart house negroes [in his May 27, 2019 email] because, in my view, they were behaving like Samuel L. Jackson’s character Stephen in the movie Django Unchained...”

Analysis

Issue #1 - Did the Deputy Judge err by refusing to recuse himself based on a reasonable apprehension of bias?

[10] Mr. Browne brought a motion asking the Deputy Judge to recuse himself on the fifth and last day of trial on the basis that there was a reasonable apprehension of bias. Mr. Browne had raised a concern about the Deputy Judge hearing the trial with the Small Claims Court administrator before the trial commenced. Mr. Browne raised his concern because the Deputy Judge and the law firm of Tierney Stauffer LLP (“TSLLP”) were listed, in a separate action, as

defence counsel for one of two white children who had injured a Black child, who subsequently sued for damages arising from the injury.

[11] The Deputy Judge had met with the parents of one of the two white children and then transferred the file to another lawyer at TSLLP. He had no further involvement with this file and never met or spoke with Mr. Browne.

[12] The other white child, who had injured the young Black boy, was not represented by TSLLP. The other white child had commenced a counterclaim against Mr. Browne.

[13] The Deputy Judge replied through the Small Claims Court administrator that he felt comfortable presiding over the trial partly because he understood that the file had been concluded. Neither party provided any evidence at trial about when the action involving the two white boys and the Black boy was settled (i.e., when the minutes of settlement were signed). A settlement involving a child requires court approval before it becomes final. The court approved the settlement on February 29, 2024.

[14] There was no evidence contradicting the Deputy Judge's statement in his email of February 22, 2024, that at that time the file had been concluded. The trial in this matter before the Deputy Judge occurred from August 12, 2024, until August 19, 2024. This was almost six months after the final settlement of the claim involving another lawyer at TSLLP.

[15] In *R. v. Teskey*, 2007 SCC 25, [2007] 2 S.C.R. 267, at paras. 19-21, the Supreme Court of Canada stated that there is a strong presumption of judicial integrity. This presumption, however, can be rebutted by a reasonable apprehension of bias.

[16] In *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369, at p. 394, *per de Grandpré J.* (dissenting), the Supreme Court of Canada provided the test for reasonable apprehension of bias, stating as follows:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. [In other words] what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude.

[17] The Deputy Judge summarized his and his firm's involvement in the prior action, at paragraphs 133 and 134 of his decision, as follows:

[133] I proceeded to hear Browne's argument, which boiled down to the fact that the firm of Tierney Stauffer LLP ("TSLLP"), at which I am one of several Senior Counsel, had been involved in a case involving allegations of personal injury suffered by a Black child. The Black child had allegedly been injured by another, white child in the company of the white child represented by TSLLP.

[134] The child who allegedly hurt the other child was represented by another firm. That firm decided to make a Claim against Browne and 613/819 Black Hub, apparently an organization run by Browne. TSLLP made no Claim on behalf of its client against Browne or that organization. Further, the Claim brought against the client of TSLLP had settled and was inactive at the time the Trial herein commenced.

[18] I find that an informed, reasonable, right-minded person, viewing the situation realistically and practically, would not have a reasonable apprehension that the Deputy Judge was biased based on his law firm's prior involvement in defending a white child against the claim for damages brought by a Black child, for the following reasons:

- a) the subject trial involving Mr. Browne commenced on August 12, 2024, which was almost six months after the final settlement of the previous claim involving TSLLP, the Deputy Judge's law firm. I also infer that the minutes of settlement would have been signed some period of time before the final settlement was approved by the court;
- b) the child represented by TSLLP did not make any claim against Mr. Browne;
- c) the Deputy Judge did not have any prior involvement, contact, or communications with Mr. Browne;
- d) there was no evidence that the Deputy Judge received any information about Mr. Browne or received any information that would have caused him to form any opinion about Mr. Browne; and
- e) the Deputy Judge and/or TSLLP did not have any financial interest that was in any way affected by the outcome of this case involving Messrs. Browne, Picart, and Carby.

[19] For the above reasons, I find that there was no reasonable apprehension of bias by the Deputy Judge hearing the trial involving Messrs. Browne, Picart, and Carby.

Issue #2 - Did the Deputy Judge err in finding that referring to a Black person as a “House Negro” was a derogatory term?

[20] The Deputy Judge heard and relied on expert opinion evidence from Dr. Wendell Adjetey, a historian at McGill University, who testified that the term “House Negro” was offensive. He testified that calling a “Black public official or community leader a ‘House Negro’ is therefore to brand them an enemy of Black people and a tool of white supremacy.”

[21] In addition, the witness called by Mr. Browne at trial testified that the term “House Negro” was used as a derogatory remark and carries similar connotations to the word “sellout”.

[22] At the hearing of the appeal, counsel for Mr. Browne agreed that calling a Black person a “House Negro” was a derogatory term.

[23] I find that there was evidence to support the Deputy Judge’s finding, which he could and did accept, that calling a Black person a “House Negro” was derogatory.

Issue #3 - Did the Deputy Judge err when he decided that the defence of fair comment did not apply when Mr. Browne referred to the Respondents as “House Negroes”?

[24] The standard of review for findings of fact was set out by the Supreme Court of Canada in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 10: “[t]he standard of review for findings of fact is that such findings are not to be reversed unless it can be established that the trial judge made a ‘palpable and overriding error.’”

[25] The standard of review for questions of mixed fact and law was also set out in *Housen*, at paras. 32-33, as follows:

32. We are supported in our conclusion by the analogy which can be drawn between inferences of fact and questions of mixed fact and law. As stated above, both involve drawing inferences from underlying facts. The difference lies in whether the inference drawn relates to a legal standard or not. Because both processes are intertwined with the weight

assigned to the evidence, the numerous policy reasons which support a deferential stance to the trial judge's inferences of fact, also, to a certain extent, support showing deference to the trial judge's inferences of mixed fact and law.

33. Where, however, an erroneous finding of the trial judge can be traced to an error in his or her characterization of the legal standard, then this encroaches on the law-making role of an appellate court, and less deference is required, consistent with a "correctness" standard of review.

[26] The test for the fair comment defence was set out in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 28, 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 recognisable 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.

[27] The Deputy Judge applied the correct legal test as set out in paragraphs 76 and 77 of his decision where he referred to the criteria set out in *WIC Radio*. The Deputy Judge doubted that the performance review sent by Mr. Picart to Mr. Browne's employer, referring to threats of violence to his person by the Appellant, was a matter of public interest. Notwithstanding, he gave Mr. Browne the benefit of the doubt on this criterion.

[28] However, the Deputy Judge dismissed Mr. Browne's defence of fair comment because there was no clear evidence which could lead him to the conclusion that the term "House Negroes" was based on fact. This was a finding of mixed law and fact, where there was no finding that can be traced to an error of law and as such, deference is owed to the Deputy Judge's finding on a palpable and overriding error standard.

[29] I see no error in the Deputy Judge's finding of fact that there was no evidence the Respondents acted as "House Negroes" by preparing a performance review of Mr. Browne and sending it to his employer, as required pursuant to the interchange agreement. The reference to Mr. Browne having threatened Mr. Picart with violence accords with the plain meaning of the email sent by Mr. Browne to his friend, which Mr. Picart viewed.

[30] I also find that the Deputy Judge did not err in finding that no person could honestly express the opinion that the Respondents were "House Negroes" by preparing and sending the performance review to Mr. Browne's employer, as required by the interchange agreement.

[31] To summarize, I find that the Deputy Judge did not make any error in dismissing Mr. Browne's defence of fair comment, and I dismiss this ground of appeal.

Issue #4 - Did the Deputy Judge err by dismissing Mr. Browne's defence of the truth of his statement?

[32] Mr. Browne argued that the performance review was untrue and that Mr. Picart should be punished by ordering him to pay damages to the Appellant. He submitted that the threat to punch Mr. Picart in the face the next time he saw him was just a joke.

[33] Mr. Browne abandoned his initial claim for approximately \$6,717 for loss of income and benefits from his employer because of the receipt of his performance review. The Deputy Judge inferred that this was because no economic consequences were actually suffered by Mr. Browne as a result of the performance review. Mr. Browne replaced his initial claim with a claim for \$35,000 in punitive or aggravated damages against the Respondents.

[34] The Deputy Judge found no basis to award punitive or aggravated damages against the Respondents. The Supreme Court of Canada set out the test for punitive damages in the case of *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595. The Court held that punitive damages should only be imposed if there had been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour: at paras. 36, 94.

[35] In the Appellant’s performance review, Mr. Picart stated that the “[e]mployee threatened physical violence against a direct report who is a member of the board.” The Deputy Judge, after hearing the evidence at trial—including Mr. Browne’s evidence that the statement was only a joke—found that the email sent by Mr. Browne, when viewed by any reasonable reader, would be understood as “threatened physical violence”.

[36] The Deputy Judge found that the words written in the performance review, namely that Mr. Browne “threatened physical violence”, was true. This is a finding of fact. The Deputy Judge did not make any “palpable and overriding error” in making this finding because there was evidence before him that he could and did accept to support this finding.

[37] In addition, Mr. Picart had a duty to provide a performance review to ECCC pursuant to the interchange agreement. Although not argued, I do not see any error in the Deputy Judge’s statement that the Respondents may also have a defence of qualified privilege.

[38] For the above reasons, ground of appeal #4 is dismissed.

Issue #5 - Did the Deputy Judge err in awarding damages of \$35,000 to each of the Respondents for defamation?

[39] The Appellant argued that the amount of damages awarded by the Deputy Judge was excessive in the circumstances. I disagree. In the circumstances, the amount of damages awarded was within a reasonable range for the following reasons:

- A. In the case of *Nassri v. Homsy*, 2017 ONSC 4554, at paras. 17-18, citing *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28, the court held that once defamation is proven, general damages are presumed as a matter of law and do not require proof of actual reputational harm, as argued by the Appellant.
- B. The factors for determining damages in defamation cases were laid out by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 182, as follows:
 - a. the plaintiff’s position and standing;

- b. the nature and seriousness of the defamatory statements;
 - c. the mode and extent of publication;
 - d. the absence or refusal to retract the libel or to apologize for it;
 - e. the conduct and motive of the defendant; and,
 - f. the presence of aggravating or mitigating circumstances.
- C. Both Respondents were publicly connected to the Black community, as both held prominent roles in the FBC, an organization seeking to promote the interests of Black Canadians.
- D. Mr. Browne contacted the Respondents' employers in order to complain about them.
- E. Mr. Browne claimed a similar amount in punitive damages against the Respondents and, therefore, would have reasonably expected this amount of damages to be awarded if the Respondents were successful.
- F. The allegations that they were "House Negroes" caused serious harm to the Respondents' reputations, as they were public figures in the Black community with prominent roles with the FBC.
- G. Mr. Browne's blog was published on the Internet which can reach a large audience and remains there to be viewed. Mr. Browne refused a request to take down his defamatory blog post.

[40] For the above reasons, I dismiss ground of appeal # 5.

Issue #6 - Did the Deputy Judge fail to treat the Appellant with procedural fairness?

[41] At the trial, the Appellant was given the opportunity to be heard, to present his evidence, to cross-examine the opposing witnesses and to make final submissions during a five-day trial. I find that the Deputy Judge treated the Appellant in a procedurally fair manner throughout the trial.

[42] The Appellant argued that the Deputy Judge's finding that Mr. Picart became aware of Mr. Browne's email to his friend threatening physical violence in May 2019 somehow resulted in procedural unfairness to him. The evidence was uncontested that Mr. Picart saw Mr. Browne's threatening email before he sent his performance review to ECCC. The date that Mr. Picart became aware of Mr. Browne's threatening email had no consequence on the Deputy Judge's decision and does not amount to a breach of procedural fairness.

[43] For the above reasons, ground of appeal #6 is dismissed.

Disposition of the Appeal

[44] For the above reasons, the appeal of the Deputy Judge's decision is dismissed with costs as agreed at \$15,000 all-inclusive, payable by Mr. Browne to the Respondents.

Released: June 4, 2026

The Honourable Justice Robert Smith

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