

Court of King's Bench of Alberta

Citation: Authentic Southside Taekwon-Do Club (Tien Lung Taekwon Do Club Edmonton South) v Taylor, 2026 ABKB 470

Date:
Docket: 1503 10046
Registry: Edmonton

Between:

**Authentic Southside Taekwon-Do Club operating as Tien Lung Taekwon Do Club
Edmonton South, and Tien Lung Taekwon-Do Club operating as Tien Lung Taekwon-Do
Club**

Plaintiff

- and -

**Kim Taylor, Divine Interventions Physician Laser and Cosmetic Injectables Inc., Jillian
Haubrich, Jay Haubrich, and CTV, a Division of Bell Media Inc.**

Defendants

**Reasons for Decision
of the
Honourable Justice R.A. Jerke**

Overview

[1] Authentic Southside Taekwon-Do Club and Tien Lung Taekwon-Do Club (collectively referred to as Tien Lung) were Societies engaged in the promotion and teaching of Taekwondo in two Edmonton locations (the southside location and the headquarters location, also known as the 124 Street location). There were two other locations, Grande Prairie and Halifax, but those

locations were not the focus of this action. In these reasons I will refer to the Edmonton operations together as 'Tien Lung.'

[2] In August 2013, Jillian Haubrich registered two of her children in a two-month introductory Taekwondo lesson program at the southside location. In October 2013 each of the children was enrolled in a four year membership. The agreements were for a fixed amount but were payable in monthly increments.

[3] In February 2014 Ms. Haubrich called to cancel the membership for her younger daughter. After discussion she decided that, rather than paying \$1964 for a cancellation payment she would transfer the remaining membership from her younger daughter to her older daughter, who was remaining in the program. The required transfer agreement was prepared but never signed by Ms. Haubrich. Nor was the required \$50 administration fee paid. Nor were the ongoing monthly payments for the younger daughter paid.

[4] By May 2014 the monthly payments were \$435 in arrears. Ms. Haubrich was told that she needed to sign the forms and the charges would go away. Ms. Haubrich confirmed she would sign the following week. She did not.

[5] On September 2, 2014, Ms. Haubrich advised she wished to withdraw both children and requested information on how to withdraw. She was advised that there was \$1015 in arrears for the younger child's membership which must be paid before her membership could be cancelled.

[6] Ms. Haubrich paid the \$1015 and provided completed cancellation forms for both children. The forms include terms and conditions related to the completion of the cancellation process. She was advised the cancellation fees for the younger child were \$1616 and for the older child they were \$1832. Tien Lung requested confirmation of whether she wished to continue with the cancellation process. She was advised by email on November 17, 2014, that because the cancellation payments had not been made, the memberships were still current, and she was invited to continue the cancellation process by paying the amounts or arranging for payments. She has never paid these amounts.

[7] No further monthly payments were made on either membership, so Tien Lung advised that the memberships were still current and had not been cancelled. Tien Lung sent a collection letter advising of default under the agreements and seeking the entire remaining balance under the agreement. An invitation to discuss payment arrangements was made.

[8] Mr. Haubrich posted comments on social media websites which were picked up by CTV. Ultimately CTV ran a broadcast on their 'Consumer Watch' segment of the evening news. The broadcast was also published to the CTV News website and a link to the broadcast was posted to the CTV News Facebook page.

[9] Tien Lung claims the broadcast was defamatory and that they have suffered damages as a result.

Finding of Facts

[10] The evidence here proves the following facts on the balance of probabilities:

- On August 26, 2013, Ms. Haubrich signed student agreements and releases for two of her children. The agreements were 'introductory agreements' and ran for a term of two months.

- On October 21, 2013, Ms. Haubrich signed four year enrollment agreements for each of the two children (the agreement for the younger child was separated into two contracts - four months and 44 months). The agreements provide for a fixed tuition amount, the balances of which were \$7755 for one child, and \$6665 for the other. The agreements provided that “the tuition is arranged to be paid in monthly instalments and is not affected by the student’s training schedule and/or attendance.... the student’s failure to complete the training does not relieve the payor of the payor’s obligation to pay the tuition in full.”
- On enrolment Tien Lung provided all students with “The Tien Lung Guarantee.” While Tien Lung policy was to provide a copy of the guarantee to all students as part of the enrolment package it is unclear whether it was provided to Ms. Haubrich.
- The guarantee provides additional rights to the payor of the membership enrolment agreement to cancel, extend, and transfer the membership on certain conditions.
- On February 2, 2014, Ms. Haubrich called Tien Lung to cancel the membership for the younger daughter. She was provided with 3 options: 1) go on the extension program: i.e. continue to make the monthly payments and the extension time would be added to the end of the contract; 2) transfer the membership to the older child for a \$50 administration fee and if the younger child wanted to come back it could be transferred back to her; and 3) cancel for a cancellation payment of \$1964 being 30% of what was left to pay. Ms. Haubrich chose the transfer option.
- There were delays and complications, but the required transfer document was prepared but remained unsigned. Monthly payments were not made on the younger child’s contract.
- Following receipt of a collection letter dated May 18, 2014, for three missed payments on the contract for the younger child, Ms. Haubrich called Tien Lung, left a message, and was called by Tien Lung on May 28, 2014. She was told that she had not signed the required paperwork (there was a question about a void cheque which was resolved) and that as soon as she signed the paperwork the outstanding charges would ‘go away’, they would be ‘looked after’. Ms. Haubrich advised she would be in the following Tuesday to sign. But the agreement remained unsigned and no payments were made on the younger child’s contract.
- On July 13, 2014, Tien Lung sent a collection letter for five missed payments on the younger child’s contract.
- On September 2, 2014, Ms. Haubrich sent Tien Lung an email advising, “[both children] will not be attending Taekwondo any longer.....Please advise me on how to withdraw.” Tien Lung responded with directions on how to cancel and advised, “....in order to cancel, the memberships must

be up to date. Currently there is \$1015 owing on [the younger child's] membership that must be taken care of before it can be cancelled."

- On September 10, 2014, Ms. Haubrich sent Tien Lung an email summarizing her version of the events. On September 11, 2014, Tien Lung sent Ms. Haubrich a statement showing the outstanding fees and an email summarizing Tien Lung's version of the events and advising, "If you want to cancel the memberships, please pick up a cancellation form at the front desk as it contains all the instructions that you need to cancel. As I mentioned before, all memberships must be up to date in order to cancel. If you need payment arrangements for the outstanding, please let me know."
- On September 22, 2014, Ms. Haubrich called Tien Lung and raised a variety of concerns. No resolution was reached.
- On September 29, 2014, Ms. Haubrich sent Tien Lung an email inquiring "the total balance that I will have to pay today to cancel [both] out of the Tien Lung program." Tien Lung responded, "I cannot give you the correct number until I receive the cancellation forms.....[the younger child's] membership will need to be up to date before it can be cancelled. Currently there is \$1015 owing. Once that is clear and I receive your form, I will be able to let you know what the cancellation payment is.....For [the older child] I will be able to let you know what the cancellation payment will be, once I receive the cancellation form."
- Ms. Haubrich provided signed cancellation documents dated September 29, 2014, for both children and paid the sum of \$1015.
- On October 27, 2014, Tien Lung sent Ms. Haubrich an email and advised that the cancellation fees were \$1832 for the older child and \$1616 for the younger. Tien Lung inquired, "Please let me know if you would like to continue with the cancellation process as soon as possible."
- On November 17, 2014, Tien Lung sent Ms. Haubrich an email and advised that, "I do not see that the amounts contained in the email were paid, therefor the memberships are still current and have not been cancelled.....please let me know if you would still like to cancel the memberships and how you are planning to take care of the cancellation payments. If you need payment arrangements, please let me know."
- No payment was made. On December 17, 2014, Tien Lung advised that the accounts were in default, service under the enrolment agreement was suspended, and payment of the full amount of the account was due immediately. An offer to discuss available payment options including payment arrangements was made. The total amount sought was \$10,850 between the two accounts.

[11] On February 19, 2015, CTV News broadcast a segment entitled Consumer Watch hosted by Kim Taylor (the News Broadcast). The recorded video/audio broadcast was adduced as evidence. The script for the broadcast is attached as Appendix 'A'.

[12] The story was subsequently posted on the CTV Edmonton website and CTV National Facebook page. The website posting is headed, “Hard lesson cancellation fees.”

Plaintiff’s onus

[13] The onus is on the Plaintiff to prove, on the balance of probabilities, that the words complained of satisfy three elements:

- The words in fact refer to each of the Plaintiffs
- The words were published i.e. they were communicated to at least one third party
- The words were defamatory in the sense that they would tend to lower the Plaintiff’s reputation in the eyes of a reasonable person.

[14] The Defendants do not dispute that the News Broadcast, posting to the website, and posting to the Facebook page were published. On the evidence I find they were communicated to a third party. In fact, they were communicated to many third parties.

[15] The Defendants agree that the News Broadcast identifies the Plaintiffs, but dispute that the Facebook post identifies the Plaintiffs. The Defendants say the general statements do not disclose the identity of the Taekwon-Do studio the family attended. The flaw in the argument is that it fails to take into account the effect of the link to the News Broadcast. While not everyone reading the Facebook post would click on the link (Defendants contend that a transient viewer would not access the link or the News Broadcast) I find that a reasonable person, reading the Facebook post, would access the link and access the News Broadcast. The circumstances would lead a reasonable person to understand it was the Plaintiffs being identified: **732311 Alberta Ltd v Paradise Bay Spa & Tub Warehouse Inc**, 2003 ABQB 228 at para 48:

Similarly, the law in Canada is to the effect that the plaintiff in a defamation action need only establish that the circumstances attending a publication of a defamatory statement would lead a reasonable person to understand it was the plaintiff to whom the defendant referred: *Clarke v Stewart* (1917), 10 Alta LR 393 (CA); *Walker v CFTO Ltd* (1987), 19 OAC 10 (Ont CA). "The question is not so much who was aimed at as who was hit": Pound J in *Corrigan v Bobbs-Merrill Co*, 228 NY 58 (1920), cited in RE Brown, *The Law of Defamation in Canada*, 2d ed (Toronto: Carswell, 1994), at 3-10.

[16] I find that the Plaintiffs have established, on the balance of probabilities, the first two required elements of the tort of defamation as it relates to both Plaintiffs and both Defendants.

Were the broadcast and posting objectively defamatory?

[17] If the Plaintiffs prove, on the balance of probabilities, that the words are defamatory then falsity and damages are presumed: “The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability”: **Grant v Torstar Corp**, 2009 SCC 61 at para 28 (**Grant**).

[18] Some case law suggests that the Court has a gatekeeper role and must first determine, as a question of law, if the words are objectively capable of a defamatory meaning. This is unnecessary in this case for three reasons:

- This is a trial by Judge alone. The gatekeeping function may not be necessary when there is no jury.
- The Defendants have agreed that “some of the statements are capable of being defamatory.”
- I find as a fact, that the words are defamatory. They are therefore also objectively defamatory.

Were the broadcast and posting defamatory in fact?

[19] The test is stated in *Grant* at para 28:

...the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person.

[20] As stated in *Lawson v Baines*, 2011 BCSC 326 at para 39:

My task is to determine the sense in which the words would reasonably have been understood by an ordinary person in the light of generally known facts. The intention of the author and publisher is not relevant on the issue of meaning. Nor is the subjective opinion of the plaintiff as to the meaning of the expression any more relevant: *Hodgson v Canadian Newspapers Company Limited* (1998), 39 OR (3d) 235 at 253 (Ont Ct J Gen Div), varied on other grounds (2000), 49 OR (3d) 161 (CA), leave to appeal to SCC refused, [2000] SCCA No 465.

[21] The Ontario Court of Appeal more fully articulates the analytical framework in *Mantini v Smith Lyons LLP*, 2003 CanLII 22736, 64 OR (3d) 516 (CA) at para 10:

The test to determine whether allegedly libellous words are capable of a defamatory meaning has been reviewed in a number of authorities, including the recent decision of Lane J in *Hodgson v Canadian Newspapers Co* (1998), 39 OR (3d) 235, aff'd (2000), 49 OR (3d) 161 (CA). Under the heading "Legal principles with respect to meaning", Lane J said, at 252-253:

It is a question of law whether any imputation contained in the words complained of is capable of being defamatory....

In deciding whether the words are capable of a defamatory meaning the trial judge will construe the words according to the meaning they would be given by reasonable persons of ordinary intelligence and will not consider what persons setting themselves to work to deduce some unusual meaning might succeed in extracting from them....

To determine the natural and ordinary meaning of the words it is necessary to take into account the context in which the words were used and the mode of publication....

The natural and ordinary meaning of the words is to be determined according to the fair and natural meaning in which reasonable persons with the ordinary person's general knowledge and experience of worldly affairs, would be likely to understand them in the context in which they were used.

The test to be applied by the court is whether the words complained of, in their natural and ordinary meaning, determined in accordance with the principles stated above, may tend to lower the plaintiff in the estimation of reasonable persons or to expose the plaintiff to hatred, contempt or ridicule ... [authorities and citations omitted].

[22] I find that the natural and ordinary meaning of the words in the News Broadcast would tend to lower Tien Lung's reputation in the eyes of a reasonable person or expose Tien Lung to hatred, contempt, or ridicule.

[23] A good summary is provided by Inglis J in *Engel v Edmonton Police Association*, 2017 ABQB 495 at para 60:

The test for determining defamatory meaning is an objective one "and is judged on the standard of an ordinary member of society." *Left v Taylor, Zinkhofer and Conway* cited in *Color Your World Corp v Canadian Broadcasting Corp* (1998), 1998 CanLII 1983 (ON CA), 156 DLR (4th) 27 (Ont CA). Further, "an ordinary, right-thinking member of society is 'reasonably' thoughtful and informed, rather than someone with an overly fragile sensibility." *Left* at para 15. The defamatory meaning can be found in the plain meaning of the words published or the surrounding circumstances. Proof that the plaintiff's reputation is actually damaged is not required, and the motive of the statement made is irrelevant in this analysis.

[24] Objectively, an ordinary member of society would conclude that the broadcast is meant to warn consumers to carefully review contracts they sign to ensure they understand the risks and costs they might face. But that member of society would also conclude that the broadcast is meant to advise the public of concerning business practices of Tien Lung which include misleading its customers and then aggressively pursuing collection.

[25] In *Botiuk v Toronto Free Press Publications Ltd*, [1995] 3 SCR 3 the Court provided this guidance at para 62:

For the purposes of these reasons, it is sufficient to observe that a publication which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt or ridicule, is defamatory and will attract liability. See *Cherneskey v Armadale Publishers Ltd*, [1979] 1 SCR 1067, at p 1079. What is defamatory may be determined from the ordinary

meaning of the published words themselves or from the surrounding circumstances. In *The Law of Defamation in Canada* (2nd ed 1994), R E Brown stated the following at p 1-15:

[A publication] may be defamatory in its plain and ordinary meaning or by virtue of extrinsic facts or circumstances, known to the listener or reader, which give it a defamatory meaning by way of innuendo different from that in which it ordinarily would be understood. In determining its meaning, the court may take into consideration all the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented.

[26] I find the following words, taken within the context of the whole broadcast, to be defamatory.

- If you are not careful **you could end up with a \$10,000 bill** like the family, I spoke with.
- Tien Lung sent the Haubrichs an email saying a cancellation fee would be \$3500 dollars, **the Haubrichs decided to cancel their memberships. Then a bill arrived** for significantly more.
- So, \$10,000 seems pretty steep to me **for an 8 year old and a 6 year old to have to pay.**
- And its **due by Jan 20th or it starts** to acquire 28% interest.
- I cannot accept **the \$10,000, that's out of control** to me.
- The family has **chosen not to pay and now the studio has filed a claim** to get the money.
- **Going after people** for \$10,000 at 28% over a year **is in line with a nonprofit** organization?
- Tien Lung has **launched civil action against over 50 former members** for debt.
- What about Service Alberta? They do **encourage anyone to file a complaint**, and the provincial investigators can look at all aspects of a contract and disclosure.

[27] A right-thinking member of society would find that these statements infer or mean that:

- Tien Lung charged excessive or unreasonable amounts to customers seeking to cancel their contracts.
- Tien Lung does not honour their own representations: they make misrepresentations and are untrustworthy.

- Tien Lung aggressively pursues customers who do not pay for their children's extracurricular activity, while insisting on very high rates of interest.

[28] The message is amplified by the images in the video which show pictures of the young children, pictures of a cancellation clause (albeit not from the contracts in question), and a shot of a long list of filed lawsuits. The message is further amplified by the inclusion of the words in the CTV posting "Hard lesson cancellation fees"; "... charged a \$10,000 cancellation fee...."

[29] These meanings fall far short of the 'worst possible meanings on the words' warned against in **Weaver v Corcoran**, 2017 BCCA 160 at para 69. For example, meanings such as 'dishonest, unscrupulous, corrupt, immoral' are too extreme for a reasonable person to conclude on the statements in this case. The meanings I find are, in my view, the natural and ordinary meanings that a reasonable person would infer from the entirety of the publication: **Taseko Mines Limited v Western Canada Wilderness Committee**, 2017 BCCA 431 at para 47.

[30] The Defendants contend the Plaintiffs must plead with particularity and precision to support a claim in defamation, citing *Alberta Rules of Court*, Alta Reg 124/2010, r 13.7 and *Defamation Act*, RSA 2000, c D-7, s 3(1). The Defendants also cite **Anglin v Resler**, 2024 ABCA 113 which provides, at para 212:

The requirement to assert material facts that disclose a cause of action means that a plaintiff must do more than assert a cause of action. For example, it is not enough for a plaintiff to claim that the defendant has defamed the plaintiff. "A plaintiff bringing a claim for defamation must plead the specific words alleged to be defamatory, that the defamatory words were of and concerning the plaintiff, what the words were meant and understood to mean, the fact that they were published to one or more third parties, the identity of the third party or parties and that damages have been suffered".

[31] I find that the pleadings are sufficient here. Specific words are pled in para 7 of the four-times Amended Statement of Claim (the 4XASOC); the entire News Broadcast is complained of in para 8; and para 13 and schedule 'E' of the 4XASOC gives further particulars of claimed defamatory statements and concerns with them. The overarching theme or 'sting' of the broadcast, to warn the public of concerning business practices of Tien Lung, is clearly articulated in para 15 of the 4XASOC.

Defenses

General

[32] Once the three elements of defamation are proven on the balance of probabilities the onus shifts to the defendants to advance a defence in order to avoid liability: **Grant**. The standard of proof is the balance of probabilities.

Justification (truth)

[33] Justification, or truth, is a complete defence to defamation. The defence is summarized in RE Brown, *Law of Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed (online) at §10:2 as follows:

Justification or the truth of the matter asserted is a complete defence to an action for defamation. "The truth may be published with impunity." However disparaging the truth may be, it is not actionable. There is no liability if a defamatory statement of fact is true. Truth may always be proved in justification of a defamatory statement. The published material must be false. "What is true cannot be defamatory." No one can be heard to complain if only the truth is published about him. "The truth may sting, but it is the truth nonetheless". True statements, no matter how damaging or disparaging can never give rise to a cause of action for defamation. A plaintiff has no right to have his or her character or reputation free of an imputation that is not false. In the United States, truth has taken on a constitutional significance since on matters of public concern a false statement of fact is required in order to state a cause of action for defamation.

[Citations omitted]

[34] **Makow v The Winnipeg Sun**, 2003 MBQB 56 provides a good summary of the focus of an analysis of this defence at paras 55 and 61:

As stated in *Gatley on Libel and Slander*, *supra*, 9th ed, at c 11.7:

If the defendant proves that "the main charge, or gist, of the libel" is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable. "It is sufficient if the substance of the libellous statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything, be contained in a charge which does not add to the sting of it, that need not be justified."

A slight inaccuracy in one or more of the details will not prevent from succeeding in a defence of justification. It is the imputation contained in the words which has to be justified, not the literal truth of the words.

... ..

The defence of justification requires regard to be had for the setting, context and circumstances in which the words were used. Furthermore, the truth will be measured at the time of the publication of the article. In *The Law of Defamation in Canada*, vol 2, at pp 10-20 to 10-27, it states:

... The words must be true when they are spoken. A plea of justification cannot be sustained solely by evidence that the acts charged against the plaintiff occurred after the publication. ...

... However, it is not necessary to prove the truth of each and every word, or the literal truth, or "the truth of every fact" in the

publication, if the additional facts do not constitute a separate defamatory imputation, and the justification otherwise meets the gist or sting of the charge.

Substantial truth is the test. "It is sufficient if the substance of the allegation is justified." If the defamatory charge is true in substance, it is immaterial that there are slight inaccuracies in the details of the expression. The defendant must establish only that "the whole of the defamatory matter is substantially true". This includes the specific charges that are made and any inferences of fact flowing from those charges.

It is the "sting" of the words that the defendant must justify. There may be some slight inaccuracies if they are not offensive or material, and the substance of the charge is true. Minor inaccuracies do not amount to falsity if the gist or sting of the defamatory charge is justified. ...

[35] I find, on the balance of probabilities, that the words which lead to the sting "Tien Lung aggressively pursues customers who do not pay for their children's extracurricular activity, while insisting on very high rates of interest" is justified.

[36] The words which lead to this meaning are all true:

- The family has **chosen not to pay and now the studio has filed a claim** to get the money.
- **Going after people** for \$10,000 at 28% over a year **is in line with a nonprofit** organization?
- Tien Lung has **launched civil action against over 50 former members** for debt.

[37] Mr. Wiesnowski testified that Tien Lung's policy regarding collection of arrears, pursuant to board policy, is that if money is owed it is expected to be paid, but how it was to be paid was very flexible and payment arrangements were always open. In addition, on occasions, clients could provide services in lieu of fees. He testified that staff have no authority to waive or vary board policy.

[38] He explained the 28% interest rate was their usual business policy designed to encourage payment. He agreed it was punitive in the sense that it was designed to ensure debtors paid Tien Lung. He testified that Tien Lung will sue to recover amounts owed but prior to initiating action they followed a collection policy that included calls, letters, and emails.

[39] The conclusion that Tien Lung aggressively pursues customers who do not pay is a reasonable conclusion. The words are true, and the meaning is justified. The sting of the words is justified.

[40] However, I do not conclude, on the balance of probabilities, that the words which lead to the sting 'Tien Lung does not honour their own representations: they make misrepresentations and are untrustworthy' are justified.

[41] The words which lead to this meaning are as follows:

- Tien Lung sent the Haubrichs an email saying a cancellation fee would be \$3500 dollars, **the Haubrichs decided to cancel their memberships.** **Then a bill arrived** for significantly more,

[42] If each phrase of the sentences is considered separately, the words are true. The problem is that the order in which the information is presented is inaccurate and important information is not included. The result is that the meaning a reasonable person takes from the words, the sting, is untrue.

[43] The actual facts are that Ms. Haubrich inquired about cancelling both children from the program on September 29, 2014. She was advised that she must pay the outstanding arrears (\$1015), complete and provide the cancellation forms, and then she would be provided with the cancellation payment amounts. She did pay the arrears and provided the completed forms. The forms confirm cancellation requires payment of the cancellation fee. The cancellation amounts for both children were provided to her by email. It is interesting to note that, in accordance with the guarantee which based the fee on 30% of the go-forward amount, the cancellation amount for the younger child had, of course, declined since the time she had initially inquired about cancelling only the younger child (which had resulted in her decision at that time to transfer the membership, not cancel it).

[44] Tien Lung made a few inquiries of Ms. Haubrich on whether she wished to continue with the cancellation and payment arrangements were invited. No payments were made (which were required to complete the cancellation).

[45] On November 17, 2014, Tien Lung advised that “the amounts contained in the email were not paid, therefor the memberships are still current and have not been cancelled.....please let me know if you would still like to cancel the memberships and how you are planning to take care of the cancellation payments. If you need payment arrangements, please let me know.”

[46] No payment was made. On December 17, 2014, Tien Lung advised that the accounts were in default, service under the enrolment agreement was suspended, and payment of the full amount of the account was due immediately. An offer to discuss available payment options including payment arrangements was made. The total amount sought was \$10,850 between the two accounts.

[47] In other words, a correct reporting of the facts is as follows:

- Ms. Haubrich decided to cancel the memberships of both children.
- She inquired of Tien Lung how to do so and was advised that the arrears needed to be paid, completed cancellation forms provided, and then the cancellation payments would be calculated and she would be advised.
- She paid the arrears, submitted the forms, and was advised of the cancellation amounts.
- She did not pay those amounts as required, so the contracts were suspended and the full amounts owing under them were accelerated and due and payable.

[48] I find that the Defendants have failed to justify this defamatory statement. The sting, “Tien Lung does not honour their own representations: they make misrepresentations and are untrustworthy”, is untrue.

[49] The last sting to consider is the meaning, “Tien Lung charged excessive or unreasonable amounts to customers seeking to cancel their contracts.”

[50] The words which lead to this meaning are as follows:

- If you are not careful **you could end up with a \$10,000 bill** like the family, I spoke with.
- Tien Lung sent the Haubrichs an email saying a cancellation fee would be \$3500 dollars, **the Haubrichs decided to cancel their memberships. Then a bill arrived** for significantly more,
- So, \$10,000 seems pretty steep to me **for an 8 year old and a 6 year old to have to pay.**
- I cannot accept **the \$10,000, that’s out of control** to me.
- **Going after people** for \$10,000 at 28% over a year **is in line with a nonprofit** organization?

[51] A reasonable person would take it to mean that the \$10,000 is a cancellation fee. The message is amplified by the images in the video which show pictures of the young children and pictures of a cancellation clause. The message is further amplified by the inclusion of the words in the CTV posting “Hard lesson cancellation fees” and “.... charged a \$10,000 cancelation fee....”

[52] In fact, it was not a cancellation fee: it was an acceleration of the entire contractual balance due to default in payment. The contracts were suspended, but the children could return to the program at any time during the currency of the contracts once the balance had been paid in full.

[53] But the guarantee itself provides the obligation of payment of the entire contractual balance as an option for “Cancellation of Membership” in certain circumstances.

[54] In my view, the inference that the \$10,000 bill was a cancellation fee is substantially correct. It is clear that Ms. Haubrich was cancelling the contracts and had clearly stated she would not make any further payments. Neither child was attending the program and had not been for a considerable period of time. Practically speaking, they were cancelled.

[55] The meaning coming from the facts, that the \$10,000 was a cancellation fee, is substantially correct. It is both reasonable and sufficient: *JE v Alberta (Worker’s Compensation Board)*, 2015 ABQB 460.

[56] The analysis of the sting or meaning that the charge is excessive or unreasonable will be considered below in these reasons.

Fair comment

[57] The distinction between fact and comment and the test for the fair comment defence is stated in *WIC Radio Ltd v Simpson*, 2008 SCC 40 at paras 26-28:

The pleaded innuendo that Simpson was so "hostile toward gay people to the point that she would condone violence toward gay people" (trial reasons, at para 19 (emphasis added; emphasis in original deleted)) is framed as an inference ("would condone violence") from a factual premise, (i.e. was so "hostile toward gay people"). In *Ross v New Brunswick Teachers' Assn* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para 56, the New Brunswick Court of Appeal correctly took the view that "comment" includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof". Brown's *The Law of Defamation in Canada* (2nd ed (loose-leaf)) cites ample authority for the proposition that words that may appear to be statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used (Brown, vol 4, at p 27-317) in the context of political debate, commentary, media campaigns and public discourse. See also, RD McConchie and DA Potts, *Canadian Libel and Slander Actions* (2004), at p 340.

The respondent on this appeal did not challenge the view that Mair's imputation, that Simpson "would condone violence toward gay people", was a comment not an imputation of fact (Factum, at para 40). I agree that the "sting" of the libel was a comment, and it would have been understood as such by Mair's listeners. "What is comment and what is fact must be determined from the perspective of a 'reasonable viewer or reader'" (*Ross*, per Daigle CJNB, at para 62). Mair was a radio personality with opinions on everything, not a reporter of the facts. The applicable defence was fair comment. On that point, I agree with the trial judge.

For ease of reference, I repeat and endorse the formulation of the test for the fair comment defence set out by Dickson J, dissenting, in *Cherneskey* 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?
- (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. [Emphasis added; emphasis in original deleted; pp 1099-1100.]

(citing Duncan and Neill on Defamation (1978), at p 62)

[Emphasis in *WIC Radio*]

[58] Here, the facts on which the inference, "Tien Lung charged excessive or unreasonable amounts to customers seeking to cancel their contracts" is based are all substantially true. The sting: that \$10,000 is excessive or unreasonable" is a comment. I find that the sting is a fair comment for these reasons:

- Cancellation fees for children’s extra-curricular activities are a matter of public interest; they affect people at large, so that they may be legitimately interested in, or concerned with what is going on or what may happen to them or to others.
- The inferential comment, “excessive or unreasonable” is based on fact as discussed above.
- The inferential comment is readily recognizable as comment: it is not a factual inference.
- Any reasonable person could honestly express that opinion on the facts here.

[59] But the sting, “Tien Lung does not honour their own representations: they make misrepresentations and are untrustworthy” is not a fair comment. While the divided parts of the underlying statements are true the statements, considered together as a whole and in the order presented, are untrue as presented (as discussed above). The inferential comment that Tien Lung makes misrepresentations and is untrustworthy is not an inference that a reasonable person would honestly make on the facts here when they are properly presented.

Malice

[60] The defence of fair comment can be defeated if a plaintiff establishes a defendant is actuated by express malice: **WIC Radio** at para 1.

[61] In the Trial Brief of the Plaintiffs, at paras 86-87 and 92, the Plaintiffs argue the Court ought to find malice on the part of CTV:

In the context of defamation, the court will find a defendant is motivated by malice if they find that the defendant published defamatory materials:

- a) Knowing it was false; or
- b) With reckless indifference whether it was true or false; or
- c) For the dominant purpose of injuring the plaintiff because of spite or animosity; or
- d) For some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion. (**Smith v Cross**, 2009 BCCA 529)

The Plaintiffs submit that a finding of malice is appropriate as against the Defendants due to Taylor’s reckless disregard for the truth of the Broadcast [and] CTV’s lack of any safeguards and oversight that would have prevented the defamatory Broadcast, or the publication of the National Facebook Post by someone in the CTV National newsroom on February 20, 2015.

... ..

The level of diligence required has been tied to the seriousness of an allegation. In *Bent*, the *Supreme Court of Canada* stated:

I add that malice is an alternative way to defeat the defence of qualified privilege. Malice is not limited to an actual, express motive to speak dishonestly. Instead, it can be established by “reckless disregard for the truth”: Hill, at para 145; Botiuk, at para 79. Notably, an ostensibly honestly held belief may still be spoken recklessly and the privilege defeated if the belief was “arrived at without reasonable grounds”: Downard, at §§9.60 and 9.61. “The more serious the allegation in issue, the more weight a court will give to a failure by the defendant to verify it prior to publication as evidence of malice, in the sense of indifference to the truth”: §9.74... (footnote omitted).

[62] The Plaintiffs submit, at para 103 of the Trial Brief, that the national Facebook post ought to be found to have been created with malice on the part of CTV, for having been published with reckless indifference or reckless disregard for the truth.

[63] The onus is on the Plaintiffs to prove malice. The high bar to show malice is discussed in **Ross v Beutel**, 2001 NBCA 62 at paras 114 – 116:

The defence of fair comment can be defeated if a plaintiff shows that the comment was made with malice. Malice focuses on the personal motives of the defamer. The defence is lost if he makes the comment because of some private spite or ill, or some other improper motive that belies the defence's intended purpose to permit comment on matters of public interest. (See *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130, at para 145)

In the leading decision of *Horrocks v Lowe*, [1974] 1 All ER 662 (HL), Lord Diplock articulated the test of the dominant motive to determine whether the protection will be defeated. He said, at p 669:

'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

[Emphasis added]

The question whether feelings of resentment or indignation can be shown to be the dominant motive is discussed in the following passage in Brown, *The Law of Defamation in Canada*, *supra*, at pp 16-16.4 to 16.17:

It is the defendant's primary or predominant motive in publishing the defamatory remark that is determinative. "Incidental gratification of personal feelings is irrelevant." If the predominant motive is something other than the duty or interest giving rise to the occasion, the privilege will be lost. Dislike and ill will may be

present but actual malice may be entirely wanting. The fact that a defendant is annoyed, or dislikes the plaintiff, or even contemptuous of him, and takes special delight in offending or embarrassing him, and pleasure in the effect of the publication, or that he was angry and rude, or indignant and resentful, and welcomed the opportunity to expose him, will not defeat a privilege if it is otherwise exercised for a proper purpose.

[64] The principles were applied in *Casses v Canadian Broadcasting Corporation*, 2015 BCSC 2150 at para 534:

Even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice, and that this was the defendant's primary or predominant motive in publishing the comment. See *WIC*, at paras 28 and 63, and *Ross v New Brunswick Teachers' Assn*, 2001 NBCA 62, at paras 113-116. As *Ross* illustrates, a defendant can in fact have a great deal of ill-will towards a plaintiff, but a plaintiff may still fail to prove malice sufficient to defeat a defence of fair comment. The defence will not be defeated unless the court also concludes that the defendant's dominant purpose in publishing the material in issue was to injure the plaintiff because of spite or ill-will.

[65] In their brief, the Plaintiffs contend that the evidence shows the malice of Ms. Taylor and CTV because of the following factors:

- Ms. Taylor forged ahead with an extremely damaging News Broadcast with the full knowledge that she lacked an understanding of the facts, despite coming to possess the relevant documents on the afternoon of the News Broadcast.
- CTV's lack of any safeguards and oversight that would have prevented the defamatory News Broadcast, or the publication of the national Facebook post.
- Ms. Taylor knew on January 21, 2015, she was missing records. She sought those records from Ms. Haubrich on several occasions and only ever received them on the afternoon of February 19, 2015, when they were provided to her and discussed in detail with Mr. Wisniewski and staff.
- Ms. Taylor did not take the time to understand Tien Lung's agreement with Ms. Haubrich or her rights and obligations under the enrollment agreement and guarantee.

[66] In summary, the evidence shows that Ms. Taylor interviewed the Haubrichs, interviewed Tien Lung personnel, and obtained all the documents. There was no independent verification or review of the information by other CTV personnel, but the only real difference in the CTV posting from the News Broadcast was the use of the word 'cancellation'.

[67] The facts reported in the story are all true. It is the inference, or sting, that Tien Lung does not honour their own representations and makes misrepresentations and are untrustworthy, that is not true. And that arises from the order and manner of presentation, not the information reported.

[68] The evidence does not prove, on the balance of probabilities, that Ms. Taylor or CTV acted with reckless indifference whether the report was true or false. There is no evidence that the report was published for the dominant purpose of injuring the Plaintiffs because of spite or animosity or for some other dominant purpose which is improper or indirect.

[69] In short, the evidence falls far short of establishing that Ms. Taylor or CTV acted with malice. The Defendants' dominant purpose in publishing the material in issue was NOT to injure the Plaintiffs due to spite or ill-will.

[70] In their Reply Submissions the Plaintiffs contend that this case is similar to the case of **Leenen v Canadian Broadcasting Corp**, 2000 CanLII 22380 (Ont Sup Ct) where the Court found the existence of malice by the defendant. The Court said this at para 186:

Thus, to summarize the issue of malice, when one considers Mr. Regush's story outline, "Canada's Worst Drug Disaster", the systematic reporting of one side of the story, the deliberate refraining from making inquiries or allowing the plaintiff a fair opportunity to defend himself, one is easily led to the conclusion of malicious intent. Not only was there systematic reporting of one side of the story, there were significant omissions of important information from this broadcast, and the only reason for this is that this information would have been contrary to the program's thesis. To have based so much of this program upon a person so obviously biased as Dr. Brill-Edwards is, in and of itself, in my view, malicious. Added to that is the biased and disdainful attitude of the defendants Regush, Webster and Wood towards the plaintiff. The CBC's unabashed cheerleading and orchestration of the "good guys" and the manner in which the "defenders" were ambushed clearly demonstrates a malicious intent on the part of the defendants. The conduct of the defendants after the broadcast, prior to and during the trial is further evidence of malice. Even in the pleadings, the defendants demonstrate an unseemly attitude, stating that Dr. Leenen was the author of his own misfortune.

[71] Tien Lung summarizes their perspective on the case as follows:

30. The Court found the existence of malice by finding that CBC failed to provide Dr. Leenen with a fair opportunity to defend himself. Also, it was found that the producer of the story had a one track mind to malign Dr. Leenen despite knowledge of evidence to the contrary. Significant evidence regarding Dr. Leenen was omitted to provide for more dramatic impact. It was found to be malicious to create the us versus them narrative between the expert doctors when there were no real differences in their opinions.

[72] Here, while it is true that not all the information in the interview and documents was presented in the News Broadcast and was not presented to the extent and in the manner preferred by the Plaintiffs, I do not find that there is a disregard for the facts. While a significant fact was presented out of the true sequence, I do not find that it amounts to a reckless disregard for the truth.

[73] While it is clear that Ms. Taylor was advised of Tien Lung's enrollment and cancellation processes, the directive set by the societies' board concerning collections which the employees could not alter, and the rationale for and results of Tien Lung's implementation of these policy decisions, much of this was disclosed in the publication and none of it was misrepresented.

[74] I do not conclude, on the balance of probabilities, that the Defendants set out to, and did, portray the Plaintiffs as the 'bad guy'.

[75] I conclude that the Plaintiffs have failed to prove, on the balance of probabilities, that the Defendants acted with reckless indifference whether the report was true or false. They have failed to prove that the Defendants acted for the dominant purpose of injuring the plaintiff because of spite or animosity or for some other dominant purpose which is improper or indirect.

[76] The Plaintiffs have not shown that the Defendants acted with malice.

Responsible communication

[77] Given my conclusion that the inference from the publication (that Tien Lung does not honour their own representations and they make misrepresentations and are untrustworthy) is not justified nor is it fair comment, the Defendant is still entitled to claim the defence of responsible communication.

[78] Where the Defendant can show that the publication was responsible and that diligence was exercised in trying to verify the allegations having regard to all of the circumstances, it is entitled to avoid liability.

[79] The Supreme Court described the factors to consider in *Grant* at para 126:

The defence of public interest responsible communication is assessed with reference to the broad thrust of the publication in question. It will apply where:

- A. The publication is on a matter of public interest, and
- B. The publisher was diligent in trying to verify the allegation, having regard to:
 - (a) the seriousness of the allegation;
 - (b) the public importance of the matter;
 - (c) the urgency of the matter;
 - (d) the status and reliability of the source;
 - (e) whether the plaintiff's side of the story was sought and accurately reported;
 - (f) whether the inclusion of the defamatory statement was justifiable;
 - (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("reportage"); and

(h) any other relevant circumstances.

[80] This defamatory inference is a very serious allegation specifically related to Tien Lung.

[81] As part of her investigations Ms. Taylor received a bundle of emails which include the emails involving Ms. Laton and Ms. Haubrich between September and December 2014 including emails dated September 11, 2014, September 15, 2014, September 22, 2014, and October 27, 2014. These emails clearly set out the sequence of events and Tien Lung's expectations.

[82] But the publication omits many of these details, misstates the order in which the events occurred, and leads to the defamatory inference. The News Broadcast states:

.... Haubrich admits she didn't fill out the necessary paperwork to complete the transfer and her account fell behind. "If they had filled out this form, their cancellation would have been next to nothing." Not nothing. Tien Lung Taekwondo sent the Haubrichs an email saying a cancellation fee would be \$35-hundred dollars. The Haubrichs decided to cancel their memberships. Then a bill arrived for significantly more

[83] The facts could and should have been stated in the News Broadcast in a manner which provided the necessary background to the story without leading to the defamatory inference. The facts were therefore not accurately reported.

[84] There was no particular urgency to this matter.

[85] Ms. Taylor testified that:

The broadcast was about a family's experience with a contract, a contract they admit they did not carefully read. And the intent of the broadcast was to inform the public that you have to be very careful when you are signing those documents, even for children's activities, that you must read them and know everything you are signing up for.

[86] There was no need to raise the defamatory inference about Tien Lung to accomplish this purpose, and there was no justification in doing so.

[87] I find that the Defendants have failed to show diligence in verification of the allegation. The defence of responsible communication of the defamatory sting, (Tien Lung does not honour their own representations and they make misrepresentations and are untrustworthy) fails.

NOTICE UNDER THE *DEFAMATION ACT*

[88] The *Defamation Act*, RSA 2000, c D-7 provides notice requirements for plaintiffs in defamation actions:

Actions against newspaper or broadcasting station

12 Sections 13 to 17 apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in that newspaper or broadcast from that station.

Notice of intention to bring action

13(1) No action lies unless the plaintiff has, within 3 months after the publication of the defamatory matter has come to the plaintiff's notice or knowledge, given to the defendant, in the case of a daily newspaper, 7, and in the case of any other newspaper or when the defamatory matter was broadcast, 14 days' notice in writing of the plaintiff's intention to bring an action, specifying the defamatory matter complained of.

(2) The notice shall be served in the same manner as a statement of claim.

[89] The requirement of such a notice is not isolated to defamation actions, but it is not required in a significant number of civil cases involving a variety of causes of action. It is therefore important to keep in mind the purpose of the requirement.

[90] Authentic Southside Taekwon-Do provided written notice of its intention to commence a claim against CTV by letter dated May 15, 2015, within three months of the News Broadcast. Ms. Taylor is not referred to in the letter, nor was it delivered to, or served on her by the Plaintiffs. Tien Lung Taekwon-Do Club is not mentioned in the letter. During trial, I admitted the letter as an exhibit, after determining it was not subject to settlement privilege.

[91] There are three questions raised in this case:

- I. Does the notice requirement apply to postings on the CTV website or Facebook page?
- II. Was Ms. Taylor notified?
- III. Did Tien Lung Taekwon-Do Club provide notice?

Does the notice requirement apply to postings on the CTV website or Facebook page?

[92] The Plaintiffs submit that, according to section 12, the notice requirement in section 13 only applies to defamation "broadcast" from a broadcasting station. "Broadcasting" is defined in the *Defamation Act* as "a transmission, emission or reception to the general public of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3000 gigahertz".

[93] The Plaintiffs say this means that the notice requirements only apply to defamation by the News Broadcast, and not to defamation on the CTV Edmonton website or the CTV National Facebook page. The News Broadcast involved a two-minute broadcast, two times. All other instances were republication on the Internet, and much of the Plaintiffs' harm arose from this republication.

[94] Defence argues this is an evolving area of the law; there is limited case law addressing this issue. Defence relies on *John v Ballingall et al*, 2017 ONCA, aff'g 2016 ONSC 2245 (*John*) where the Ontario Court of Appeal agreed with the lower court in concluding that the notice and limitation periods in Ontario's defamation legislation applied to a newspaper's online version, that is, an online version of the newspaper was a "newspaper" for the purposes of the statute.

[95] In making this decision, the Court of Appeal addressed and distinguished the earlier case of *Shtaiif v Toronto Life Publishing Co*, 2013 ONCA 405. In *Shtaiif*, a motions judge ruled that

the online version of an article was not subject to the notice provisions of the defamation legislation because a website posting is not a newspaper, and further, the article was not broadcast in Ontario. The Court of Appeal determined the issue of whether the claim for libel in the Internet version of the article is subject to the notice provisions of the legislation ought to be determined at a trial, noting the evidentiary record was insufficient to determine the question.

[96] In my view, the notice requirements apply to all of the publications including any on the CTV Edmonton website or the CTV National Facebook page. Courts interpret legislation to apply to technological advances that did not exist when legislation was enacted: see **John** at para 24. I agree with the Court of Appeal: “Now that newspapers are published and read online, it would be absurd to provide different regimes for print and online versions”: **John** at para 25. Similarly, it does not make sense to have different regimes for publications shown on network television and those same publications shown on websites or social media.

Was Ms. Taylor notified?

[97] Defence submits that Ms. Taylor was not notified properly, or at all, as required by the *Defamation Act*, and thus, there is no action against her. Defence argues that the Plaintiffs’ letter of May 15, 2015, does not indicate any intention to bring an action against Ms. Taylor; it was not served on Ms. Taylor personally (as required in the *Defamation Act*); and was never delivered to or even brought to Ms. Taylor’s attention.

[98] The analysis engages two questions: must a plaintiff provide a defamation notice to the officers, servants and employees of broadcasters, as well as to the broadcasting entity itself? and if the individual employees must be served separately does the *Defamation Act* require strict compliance with its formalities: i.e. personal service or by recorded mail?

[99] The Plaintiffs ask the Court to consider all the circumstances and conclude that Ms. Taylor had notice of the claim. They say they either completely complied or substantially complied with section 13 for all Defendants.

[100] Both parties cite ***Alberta Adolescent Recovery Centre v Canadian Broadcasting Corporation***, 2012 ABQB 48 (**AARC**), where Martin J was asked to interpret section 13 of the *Defamation Act* in the context of an application to strike a defamation claim against certain defendants on the basis, they were not properly notified.

[101] Martin J explained the purpose of the notice at para 20:

The *Defamation Act* alters common law rights in respect of the tort of defamation. The *Act* provides definitions, conditions of application and sets out various requirements, including the giving of notice to potential defendants. It is accepted that the purpose of serving a defamation notice is to allow the intended defendant to correct or withdraw defamatory statements, to allow it to publish an apology before the plaintiff commences an action, and to mitigate or limit damages: *Paletta and Palmont Packers Ltd v Lethbridge Herald Co Ltd*. (1977), 2 AR 529, 2 Alta LR (2d) 166 (SCTD) at para 9; *Grossman v CFTO-TV Ltd* (1982), 39 OR (2d) 498 at 501 (Ont CA), 139 DLR (3d) 618; *Alberta Union of Provincial Employees v Edmonton Sun* (1986), 75 AR 253 (Alta

QB) at para 87. The notice provisions thus serve important functions and promote overall fairness.

[102] The Court noted the extremely high bar a party has when attempting to prove an action is bound to fail and set out five issues that led her to conclude the action was not bound to fail. One of those issues was “if the *Defamation Act* applies, can notice to the employer corporation ever be sufficient notice to the employees who are also sued personally?” The Court explained at para 41:

The answer to this question depends upon general principles establishing the separate legal identity of a corporation; how s 13 of the *Act* is interpreted; how s 13 of the *Act* relates to other sections of the *Act*, including s 12 and perhaps s 15; the public policy considerations about who needs, merits or should receive notice; and the available and apparently divided jurisprudence, much from jurisdictions with similar but not identical legislative language in their notice provisions.

[103] The Court noted that a line of cases, mostly from Ontario, have held that when a publishing entity and the employees of that entity are sued for defamation, both must be served with a defamation notice, namely *Emonts v McKeever*, 1992 CarswellOnt 3845 (Gen Div), *Boyer v Toronto Life Publishing Co*, 2000 CanLII 22369 (ON Sup Ct) (*Boyer*); *Janssen-Ortho Inc v Amgen Canada Inc*, 2005 CanLII 19660 (ONCA).

[104] Further, the Court noted another issue, namely “if the individual employees must be served separately does the *Act* require strict compliance with its formalities: i.e. personal service or by recorded mail? Alternatively, is there scope for a doctrine like substantial compliance, under which the focus would be on what each employee knew and when, rather than the method by which they received the required information.” In *AARC*, information about what the employees knew, and when, was not before the Court.

[105] Martin J noted two opposing lines of authority on this issue. Some cases have required strict compliance with notice provisions: *Buro v Southam Press Limited*, 1974 CanLII 258 (ABQB (Master)); *Fegol v National Post Co*, 2008 MBQB 84. In other cases, courts have looked for substantial compliance with the notice requirements, in the surrounding circumstances: *Knott v Telegram Printing Co Ltd*, 1917 CanLII 90 (SCC); *Sentinel-Review Co., Ltd v Robinson et al*, 1928 CanLII 9 (SCC); *Grossman v CFTO-TV Ltd*, 1982 CanLII 1768 (ONCA).

[106] In the *Sentinel-Review Company*, the Court found a defamation notice sufficient, stating:

Nor can I agree that the notice was not sufficient. The statute prescribes no form. The notice is sufficient, if the plaintiff's intention to sue is notified. The communication must, of course, indicate the intending plaintiff with reasonable certainty. But that is accomplished when words are used which are calculated to apprise the addressee of the identity of the complainant.

[107] More recently, the Ontario Superior Court of Justice in *Boyer* found notice sufficient although not addressed to each individual defendant and not served in strict compliance with the Ontario defamation legislation. In *Boyer*, the legislation specified notice “be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the

defendant.” Each individual defendant received a copy of the defamation notice (in letter format) in an envelope addressed to the corporate defendant but directed to the attention of each.

[108] Importantly, in **Boyer** the Court found that the defendants did not suggest they did not receive notice or were not aware the complaint.

[109] Justice Martin assumed, without deciding, that the s 13 notice must be given to employees as well as the corporation. But she made the following observations at para 48:

A plain reading of the *Defamation Act* and an analysis of the foregoing case law suggests that where both the employees of a broadcaster and the broadcaster are sued for defamation, both are entitled to notice. Section 12 specifically refers to "employees" and can be interpreted as referring to them as a separate entity from their employers. Both newspaper and broadcasting entities and their officers, servants and employees can be sued and found liable for defamation. The purpose of the notice provisions is to protect defendants who publish defamatory materials by giving them notice of the plaintiff's intention to sue and thereby allow them to mitigate their damages by correcting, apologizing or retracting the publication or broadcast. Since both broadcasting entities and their employees can be involved in, and sued for, defamatory broadcasts, the purpose of the notice provisions is advanced by requiring that both receive notice. The issue is uncertain and it is not my function to decide it, but only to determine whether the uncertainty is strong enough to prevent the Defendants from succeeding on this application.

[110] With the greatest of respect, I differ from the opinion of Martin J stated above in one respect. In para 44 of her reasons Martin J states, and I agree:

All that can be said is that s 12 recognizes that actions can be taken against the broadcaster, its officers, servants and or its agents. It provides little guidance on how to interpret s 13.

[111] Section 13 states, “No action lies unless the plaintiff has,given to the defendant..... in the case of any other newspaper or when the defamatory matter was broadcast.....notice in writing of the plaintiff’s intention to bring an action, specifying the defamatory matter complained of.”

[112] The *Act* does not say “given to all, or each defendant”. Nor does it say “specifying the defamatory matter and specific defendants”.

[113] Section 12 only requires notice in “actions for defamation against theowner or operator of a broadcasting station or anemployee thereof in respect of defamatory matterbroadcast from that station.” There is no distinction in the legislation of the defamatory matter vis-à-vis the employee and the owner or operator. This is not to say that the actions of the employee are necessarily the responsibility of the employer or vice versa: that may be subject to other legal or factual considerations. But the defamatory matter is defined in relation to “broadcast from that station.”

[114] Martin J identified a number of important general principles (para 41). To those I would add fairness of process to all parties, and the critical role of freedom of speech and freedom of the press. Specifically related to fairness, it is not difficult to conceive of circumstances where an officer or employee of a broadcasting station is directly implicated in a defamatory matter, but a plaintiff could not determine that within the statutorily limited period (three months). Consider a hypothetical situation where an unknown writer creates a defamatory script for a broadcast. The station would be known, as would the reporter, but the creator would not.

[115] Accordingly, I conclude that s 13 does not apply to Ms. Taylor in the circumstance of this case: she was an employee of or servant of CTV and was, as the reporter, personally and directly involved in the research, writing, and public broadcast of the impugned publication. In my view s 13 is satisfied where the required statutory notice is served on the employer/broadcaster in the circumstances such as the case at bar.

[116] If I am wrong in my interpretation, I must consider whether Ms. Taylor was served with notice in accordance with the *Act*.

[117] Martin J observed at para 66:

The second issue is whether it was necessary for the Plaintiff to personally serve the individual Defendants with a copy of the Defamation Notice in order for the notice to be sufficient in relation to them. Section 13(2) of the *Alberta Act* states that the "notice shall be served in the same manner as a statement of claim." Rule 11.5 states that service of a commencement document may be made by "being left with the individual or being sent by recorded mail addressed to the individual." On a purely literal interpretation, the fact that Rule 11.5 provides two methods by which service "may" be made leaves open the possibility that a defamation notice may be served in some other fashion.

[118] Ultimately, in *AARC*, Martin J held that she did not have sufficient facts to determine whether the individual defendants were provided copies of notice by others or received notice in some fashion other than personal service. It was not plain and obvious the plaintiffs would fail on their substantial compliance argument. In her view, "the law probably permits substantial compliance".

[119] On my reading of ss 12 and 13, I agree with Martin J. In my view, substantial compliance is sufficient in law, depending on the circumstances, to satisfy the requirements in ss 12 and 13. This is consistent with the purpose of the notice provisions "to protect defendants who publish defamatory materials by giving them notice of the plaintiff's intention to sue and thereby allow them to mitigate their damages by correcting, apologizing or retracting the publication or broadcast," per Martin J in *AARC* and the principles she identified at para 41 and to which I added in the discussion above.

[120] The Defendants state in para 182 of their brief, "Even then, Justice Martin indicated the question would turn on whether or how the individual employees later named as defendants came to know of the notice, which was an issue that was left for trial." I turn therefore to the facts of this case.

[121] Defence argues that the letter of May 15, 2015, was addressed only to CTV, and did not even refer to Ms. Taylor. The letter mentioned a possible claim against CTV only. Further, the letter was never delivered to Ms. Taylor, and there is no evidence it was brought to her attention. Her evidence was that she sent an email to Mr. Kobe on February 23 and heard nothing further about the Plaintiffs' complaints until after the Statement of Claim was filed.

[122] The Plaintiffs point to other evidence in the case including:

- An email dated February 20, 2015, from Tien Lung to Mr. Kobe raising concerns about Ms. Taylor (“[her] reporting is irresponsible”) and complaining about the broadcast.
- An email from Ms. Taylor to Ms. Haubrich dated February 22, 2015, which states, “Yes, they’ve been in touch with my News Director. I stand behind the story. It was fair and it was balanced.”
- An email dated March 2, 2015, from Mr. Kobe to Tien Lung responding to the February 20, 2015 email.
- An email dated March 3, 2015, from Charles Rusnell addressed to Tien Lung and to Ms. Taylor. It responded to an email from Tien Lung to Mr. Rusnell which stated, “CTV....ran a false and misleading story about 3 Alberta non-profit organizations. Although the reporter, Kim Taylor, was given all the facts, the final segment was deliberately biased, inaccurate, false and misleading.....I am shocked at this whole situation, CTV’s response, and Kim Taylor’s continued employment with CTV.”
- A letter dated April 20, 2015, from Mr. Lewis of CTV to Tien Lung responding to a complaint made by Tien Lung to the Canadian Broadcast Standards Council. Mr. Lewis was the Vice President and General Manager of CTV Edmonton. In his letter he refers to, “our reporter, Kim Taylor.”

[123] The Plaintiffs point out that Ms. Taylor did not deny receiving notice of the complaints or a potential claim. On cross-examination, she also recalled the March 3, 2015 email from Mr. Rusnell, which advised Tien Lung that the reporting was fair, copying Ms. Taylor on the email.

[124] Here, Ms. Taylor was a reporter/employee of CTV before, during, and after the broadcast. One of the requests in the letter was retraction and/or correction of the defamatory statements—the very purpose of the provisions.

[125] Mr. Kobe was CTV Director of News and Public Affairs. He was responsible for management and hiring and firing employees. He received an email from the solicitor for Authentic Southside Taekwon-Do Club and Terry Wisniewski dated February 19, 2015, which asked, “you follow up the reporting done by Kim Taylor,,,[her] reporting is irresponsible.....I would like the segment removed from all media outlets, including internet.....I would like an apology.” Mr. Kobe obtained the script from Ms. Taylor. He testified that he spoke with Ms. Taylor before sending his response which includes, “In summary, while CTV was unable to provide all the details regarding your experience with the Haubrichs, we believe the substance of the report was fair and accurate and presented both sides in this dispute. However, as a goodwill

gesture, CTV is prepared to post a written article on its website, to provide some additional details associated with this matter.”

[126] Ms. Taylor testified that with respect to her knowledge of a complaint by Tien Lung about her or the publication, she was aware of the February 19, 2015 email and that Tien Lung had complained to Mr. Kobe. She was later copied with the email from Mr. Rusnell on March 3, 2015.

[127] I find on the evidence here that Ms. Taylor was well aware that the broadcast was a serious concern to Tien Lung, that Tien Lung was pointing an accusatory finger at her, and that Tien Lung was seeking, among other things, correction or retraction of the broadcast. The written notice of May 15, 2015, when considered in light of all the circumstances, was sufficient notice to Ms. Taylor of Tien Lung’s intention to include her in an action for defamation from the broadcast and publication. Considering all of the evidence, Tien Lung substantially complied with the notice requirements on Ms. Taylor.

[128] My conclusion is substantiated by the June 10, 2015 correspondence from Ms. Shafran, counsel for CTV, responding to the May 15, 2015 letter from Tien Lung. In her response she included Ms. Taylor as part of their concern:

If your client is agreeable to the foregoing, CTV will require in exchange, a full and final release from your client including a confidentiality clause regarding the fact of the settlement along with the terms of the settlement. In addition, CTV will require the immediate removal of all negative and defamatory references to CTV, its reporter, Kim Taylor and the report in question.....including.....the following articles: “CTV gets it WRONG”, “Kim Taylor: How about the rest of the story?”.....CTV will also require your client’s agreement not to post or cause the posting or publication of any further derogatory or defamatory comments in the future related to CTV or its staff concerning this matter.

Was notice provided by both Plaintiffs in this action?

[129] Defence raises the question of whether the proper Plaintiffs provided the requisite notice. Defence argues that the letter of May 15, 2015, only refers to defamatory matters in respect of “Southside Taekwon-Do Club and Terry Wisniewski”. No reference is made to Tien Lung Taekwon-Do (124 Street). Defence states that, based on the May 15 letter, Southside is entitled to bring an action against CTV. However, since Tien Lung Taekwon-Do (124 Street) did not provide notice it has no action in relation to the CTV broadcast.

[130] In response, the Plaintiffs say that the Defendants clearly knew that the concern was the portrayal of “Tien Lung”, which is the shared name of both locations. They argue the Canadian Broadcast Standards Council complaint, attached to the letter and setting out the specifics of the defamation, forms part of the correspondence. That complaint clearly indicates both Plaintiffs. Plaintiffs also point to the correspondence sent by Tien Lung (Ms. Laton) to Mr. Kobe which includes both location/entities.

[131] Overall, the Plaintiffs say the purpose of s 13 has been substantially complied with on behalf of both Plaintiffs. The provision is capable of a liberal interpretation which permits one Plaintiff to give notice on behalf of all.

[132] I have already determined that substantial compliance is sufficient in law, depending on the circumstances, to satisfy the requirements in ss 12 and 13. The Court stated in *Sentinel*

Review-Company that, “The communication must, of course, indicate the intending plaintiff with reasonable certainty. But that is accomplished when words are used which are calculated to apprise the addressee of the identity of the complainant.”

[133] The purpose of the legislation is not to create some artificial barrier to Plaintiffs. “The purpose of the notice provisions is to protect defendants who publish defamatory materials by giving them notice of the plaintiff's intention to sue and thereby allow them to mitigate their damages by correcting, apologizing or retracting the publication or broadcast.” per Martin J in **AARC**.

[134] Considering all of the circumstances here, I am satisfied on the balance of probabilities that CTV were apprised of the intending Plaintiffs with reasonable certainty. Both Tien Lung Plaintiffs substantially complied with the notice requirements in the *Defamation Act*.

DAMAGES

[135] Once liability for defamation is proven, damages are presumed in law: *Defamation Act*, s 2(2). The quantum of damages is not presumed: it must be proven.

[136] The Ontario Court of Appeal stated in **James Bay Resources Limited v Mak Mera Nigeria Limited**, 2025 ONCA 448 at paras 79-80 (*James Bay*):

It is well-established that damages are presumed if defamation is established. However, there is no presumption as to the impact or amount of those damages: *United Soils Management Ltd v Mohammed*, 2019 ONCA 128, 53 CCLT (4th) 1, at para 22, leave to appeal refused, [2019] SCCA No 38592. Moreover, while a corporation may be entitled to general damages beyond nominal damages without proof of specific loss, it is unlikely to obtain a substantial award without proof of special damages or at least of a general loss of business or impact on reputation or goodwill: *Walker*, at pp 113-14.

As this court further noted in *Walker*, at p 113: “[U]nlike an individual, a company is not entitled to compensation for injury to hurt feelings or, it follows, to compensation by way of aggravated damages for a loss of this nature.” In the often-cited words of Lord Reid in *Lewis v Daily Telegraph Ltd*, [1963] 2 All ER 151 (HL), at p 156: “A company cannot be injured in its feelings, it can only be injured in its pocket. Its reputation can be injured by a libel, but that injury must sound in money.”

[137] The Plaintiff claims an award of damages against the Defendants, jointly and severally in the sum of:

- a) General and special damages in the amount of \$7,500,000;
- b) Punitive damages in the amount of \$2,500,000; and
- c) Interest pursuant to the *Judgment Interest Act*.

[138] I propose to analyse the claim by considering the heads of damage claimed separately.

Special Damages

[139] The Plaintiffs' bear the onus to show, on the balance of probabilities, that they are entitled to special damages for specific economic loss to them caused by the defamation. The task was more fully described in *WeGo Kayaking Ltd., et al v Sewid, et al*, 2007 BCSC 49 at paras 92-93:

I observe that general economic loss may also be an independent head of general damages, along with injury to the plaintiff's reputation and injury to the plaintiff's feelings: *Hubert v DeCamillis* (1963), 1963 CanLII 459 (BC SC), 41 DLR (2d) 495 (BCSC), at 510-11. This is important when a plaintiff establishes economic loss but without sufficient precision to support a claim for special damages. A claim for special damages, on the other hand, requires more specific proof.

A corporate plaintiff may also claim special damages for specific economic loss that was caused by the defamation. Special damages, unlike general damages, are not presumed. The plaintiff must allege and prove special damages at trial. Such losses must be the "natural and proximate result" of the defamatory publication, and capable of monetary measurement. Such losses must also be established with "reasonable certainty" and must be more than mere "speculation and surmise" (*Law of Defamation in Canada* at 25-24, 25-156).

[140] Tien Lung began operation as a society in 1992. Initially it operated in schools and then extended to its own basement location in Edmonton. There were relocations and expansions and ultimately the establishment of a second location at Edmonton South-side. Operations were also established in Halifax and Grande Prairie (although these locations are not part of this action).

[141] Membership in the societies increased over time from about 50 to 55 students in 1992 to a membership in 2015, of those on track to earn black belt, of about 650 to 700. If one included the mini-dragon and little-dragon programs then the number was closer to 1,000.

[142] The financial statement showed income from membership fees of about \$941,000.

[143] The Plaintiffs provided the report and *viva voce* testimony of Robert Doran as evidence of their specific economic loss resulting from the publication. Mr. Doran was qualified as a financial expert witness, entitled to give opinion evidence in relation to business losses generally and business losses of the Plaintiffs.

[144] As with other witnesses, a Court may determine the weight to give to an expert's report and testimony. Just because an expert has given an opinion does not require me to accept it. The Court considers the expert's qualifications, the reasons given for the opinion, the suitability of the methods used and the rest of the evidence in the case to decide how much or little to rely on the opinion.

[145] What an expert assumes or relies on as a fact for the purpose of offering his or her opinion matters. The closer the facts assumed or relied on by the expert are to the facts as found, the more helpful the expert's opinions are. To the extent the expert relies on facts that I do not find supported by the evidence, the expert's opinion becomes less helpful. That said, although I am not bound to agree with an expert witness, when the topic is technical and the expert evidence is uncontradicted, and there is no question of lack of qualifications or credibility, a trial judge needs some reason to reject the expert evidence: **Bowes v Edmonton (City)**, 2007 ABCA 347.

[146] Here there is no question of lack of qualifications or credibility of Mr. Doran. There are, however, questions related to assumptions he uses and facts he relies upon.

[147] Mr. Doran organized his analysis using three periods of time.

Periods 2 and 3 and Future Loss

[148] Period 3 is from September 1, 2022, to August 31, 2023 (the post COVID period) and future loss is the time from September 1, 2023, and onward.

[149] The COVID pandemic started in early 2020 and exerted a significant financial effect on businesses, including fitness centres like the Plaintiffs' business.

[150] Mr. Doran opined:

As we move further and further beyond the airing of the CTV story and post COVID, it becomes increasingly speculative how the Club might have performed. Given this uncertainty, we find it appropriate to ascribe no loss at the low end of the range. (para 66)

[151] He also stated that, "If the Court believes that the Club has suffered a permanent loss to its reputation and will be unable to return to a similar scale and profitability, we need to consider future loss." (para 69)

[152] The impugned News Broadcast aired twice on February 19, 2015. It remained on multiple CTV News websites until at least December 2023.

[153] The News Broadcast was posted to CTV's National Facebook page shortly after airing. This posting was removed prior to June 10, 2015.

[154] Mr. Wisniewski testified to negative and concerning phone, personal, email, and online comments shortly after the CTV News Broadcast. Comments were received from many places in the world. He testified that Tien Lung membership recruitment relied on folks coming in the facility to inquire about the program and then being signed up. He stated that after the News Broadcast fewer people came in and existing members asked where the cancellation clause was in their contracts.

[155] Mr. Doran accepted there was a reduction in membership numbers following the News Broadcast but testified that it was more accurate to use the decline in membership fees rather

than membership numbers in his calculations. He considered the membership numbers to lack sufficient detail and that they contained “noise” (extraneous information) such that they were less useful than the reported membership fees.

[156] Mr. Doran stated that by the end of 2016 membership fees had fallen by nearly 70% of the same fees earned in 2014. They fell again another 9% from 2017 to 2019 but according to Mr. Doran, “By the onset of the COVID pandemic in early 2020, [Tien Lung’s] member fees appear to be relatively stable...” (para 21)

[157] I do not find, on the balance of probabilities, that the Plaintiffs have shown that they might have performed better post-COVID but for the impact of the publication. And they have not shown that they are unable to return to a similar scale and profitability as 2014 due to the impact of the publication.

[158] They have failed to prove a specific economic loss for Period 3, the post-COVID period. And they have failed to prove a specific economic loss for any future loss.

[159] Mr. Doran analyzed Period 2 (“the COVID period” from March 1, 2020, to February 28, 2022) and found on the available information that he was, “unable to assess the impact of these deferral payments. Consequently, [he found] it difficult to support any loss to the Club for this Period.” (para 65)

[160] I find that the Plaintiffs have failed to prove a specific economic loss for Period 2, the COVID period.

Period 1

[161] In his report Mr. Doran calculated the Plaintiffs’ loss for Period 1, from February 19, 2015, (the airing of the News Broadcast) to February 28, 2020 (the approximate start of COVID). Based on his analysis the Club’s loss was in the range of \$2,449,435 to \$3,069,995.

[162] Mr. Doran relied on a list of key assumptions in completing his analysis and calculations. Two of those assumptions were:

The decline in the Club’s members and member fees that followed the editorial ran by CTV on February 19, 2015 up to the onset of the COVID-19 pandemic was due solely to the false and defamatory statements that were made in the editorial.

... ..

The damage from the false and defamatory statements made by CTV has had a permanent, or at least a long-term, adverse impact on the Club’s reputation and brand which continues to affect its ability to restore the scale of operations and profitability prior to the CTV story.

(Appendix C – Key Assumptions, paras 1, 7)

[163] There are a number of concerns with the assumptions. The concerns relate to causation: the Defendants did not raise an issue by way of defence that the Plaintiffs did not have a reputation capable of being defamed.

[164] First, there were a number of negative reviews and commentary regarding the Plaintiffs that appeared online prior to the CTV News Broadcast including on the Plaintiffs' YELP review page, the DOJOS review page, and the Better Business Bureau website. Mr. Wisniewski testified that these online postings had not resulted in a negative impact on the Plaintiffs.

[165] But Mr. Haubrich's November 20, 2014 posting to REDDIT (a social media site) articulating his perspective on the events attracted considerable public attention. The REDDIT post came to the attention of Ms. Taylor of CTV. The post generated significant negative commentary about the Plaintiffs in the public sphere. The commentary was sufficiently concerning that the Plaintiffs made a report to Edmonton Police Service and the RCMP prior to the CTV News Broadcast.

[166] It cannot be concluded that the negative public reviews and commentary prior to the News Broadcast had no impact on the Plaintiffs' reputation.

[167] Second, the CTV News Broadcast certainly amplified the public attention. The News Broadcast was immediately followed by a wave of very negative public discontent.

[168] Mr. Wisniewski testified about the public response following the News Broadcast. He described getting phone calls and emails the night after the News Broadcast. Going forward, parents expressed fear to bring their children to class. There were parents with contracts demanding to know where the \$10,000 cancellation clause was provided for. Tien Lung was contacted by folks from around the world including the head of the international Tae Kwon-Do Federation. They were contacted by a distributor of a machine Mr. Wisniewski held patent on. Tien Lung was contacted by instructors of other organizations who refused to bring their children to events where Tien Lung was the organizer, as they did not want to support the Tien Lung organization. The organizer of a Halifax seminar dis-invited Mr. Wisniewski to be a speaker. A posting was made at Mr. Wisniewski's daughter's school disclosing contact information and whereabouts of the daughter and her parents. And there were many messages posted on the Internet, many of which were very critical of the Plaintiffs.

[169] But the Defendants are responsible only for what they publish. And most of the CTV News Broadcast is not defamatory. Only one sting is defamatory. Was it the non-defamatory portions of the News Broadcast which triggered the public reaction? Or was it because they amplified the prior concerns already in the public domain? Or was it the defamatory sting? Or was it some combination of these factors?

[170] Third, as summarized above, the negative public response to the News Broadcast was immediate.

[171] But that does not appear to translate into an immediate economic loss. The Doran report shows that the member fees for 2015 fall short of the projected member fees (based on the assumption that the fees would be the same as the member fees in 2014) by \$152,000. It is not until 2016 that the fees fell to their lowest level, about \$629,000 short of the projected fees. Perhaps this could be explained, at least in part, by the relative stability of the Plaintiffs' fee structure given the three to four year commitment built into their membership contract structure.

[172] There were, of course, cancellation provisions available to members and Mr. Wisniewski's evidence was that many members were inquiring about cancellation. One way or another, this is not addressed in the Doran report.

[173] What is shown in the Doran report is that in 2015 the Plaintiffs did not experience a loss based on his calculations. They actually ended up \$23,000 ahead of their anticipated financial performance even with the reduced member fees due to saved costs.

[174] Fourth, coincident with the events after the CTV News Broadcast oil prices decreased, which negatively affected the Alberta economy. Mr. Doran states as follows:

The aftermath of the CTV story coincides with a decline in oil prices that negatively impacted the Alberta economy. In comparison with other cities in Alberta, Edmonton is less impacted by oil. That said, there was a steady demand for daycare and children's recreational programs buoyed by population growth and a significant number of women in the workforce that led to long waitlists. While [Tien Lung] competed with other groups offering martial arts, their primary competition was in fact other daycare programs and children's activities. (para 24)

[175] Mr. Doran's assumption dismisses any impact from the economic circumstances: "The decline inmembers and member fees.....was due solely to the false and defamatory statements...." (Appendix C – Key Assumptions, para 1)

[176] His conclusion is explained by reference to the steady demand for daycare and children's recreational programs that led to long waitlists even during the economic slowdown, and because Tien Lung competed with other groups offering martial arts, but their primary competition was other daycare programs and children's activities.

[177] The financial statement provided in evidence showed decreases in membership fees totaling about \$147,000 from September 2014 to August 2015 in relation to Daily Dragon memberships, other memberships, and sport memberships. The Daily Dragon members fees are around 53% of the total fees in 2014 and 56% of the total fees in 2015.

[178] Mr. Doran reported that by the end of fiscal 2016 (presumably August 31 as per Exhibit 6) fees had fallen by approximately \$1.2 million from fees projected. Mr. Doran used a "baseline level of sales... based on the 2014 actual results." (para 52) Mr. Doran warns that membership fees collected in 2016 were not recognized in the financial statements until 2017. Even so, he reports: "Following the big decline in 2016, member fees fall another 9% from 2017 to 2019. By the onset of the COVID pandemic in early 2020, [Tien Lung] member fees appear to be relatively stable and settle at \$484,958 in 2019." (para 21)

[179] Mr. Wisniewski described the Daily Dragon program for school-aged children, which was essentially a transported after-school program that also covered all day for professional development days, and summer camps.

[180] In cross-examination Mr. Doran testified that 2015 was the start of major recession/contraction in Alberta where oil prices plunged from \$100/barrel to \$30/barrel. Unemployment rose and there was a significant drop in nominal personal income. He agreed that

personal disposable incomes would be used for discretionary spending like Taekwondo lessons and testified that he was also aware that childcare programs were still busy, and he believed based on his knowledge that there was a steady demand for childcare despite the economic challenges.

[181] Despite Mr. Doran's view that demand for childcare continued, I conclude that the economic circumstances which emerged in 2015 did have some negative impact on the member numbers and therefore the member fees earned by the Plaintiffs.

[182] I am satisfied by the exhibits showing the negative public reaction; the evidence of Mr. Wisniewski describing the post-broadcast comments; and the evidence of the loss of members and the resulting decline in member fees that the CTV News Broadcast contributed to a significant negative impact on the Plaintiffs' reputation and goodwill.

[183] However, in light of all of the uncertainties and factors described and analyzed above, the Plaintiffs have not convinced me on the balance of probabilities that there was a specific economic loss caused by the defamatory sting in the CTV News Broadcast. The Plaintiffs have failed to show that the defamatory publication caused losses capable of monetary measurement. They have not shown that specific losses were the natural and proximate result of the defamatory publication.

General Damages

[184] I find the defamatory sting in the CTV News Broadcast did contribute to harm to the Plaintiffs' reputation and goodwill. It is not possible to isolate the extent of damage caused by the defamatory sting from the other contributing factors.

[185] The evidence proves there was damage to the Plaintiffs' reputation and goodwill from the News Broadcast. Mr. Wisniewski's evidence, summarized above, shows the immediate and negative effect of the News Broadcast on Tien Lung, and in particular, its reputation.

[186] Mr. Wisniewski testified about a proposal to have the Daily Dragons program licensed as a childcare program and able to receive subsidy. In summary, his evidence on this point was that Tien Lung had been working with MLA Heather Klimchuk, who was the head of Service Alberta, concerning the expansion of Tien Lung's after-school care program and bringing Tien Lung into the subsidy program for out of school care. Tien Lung provided a proposal in December 2014. Mr. Wisniewski felt the proposal had a high chance of a success. After the News Broadcast, Mr. Wisniewski had a conversation with Ms. Klimchuk and came away with the understanding that their organization was now a "hot potato" and that the concerns would hopefully die out and the matter perhaps be revisited later.

[187] While the proposal appeared to show promise, given the unpredictable nature of a Government response owing to factors such as the need for Government to consider and approve policy change, the lack of any evidence of discussion of the matter by Government, and the dissolution of the Legislative Assembly shortly after the News Broadcast I cannot find that the CTV News Broadcast caused the loss of this opportunity.

[188] This evidence does support the conclusion that the CTV News Broadcast contributed to harm to Tien Lung's reputation.

[189] Evidence of the public reaction is also shown in various exhibits at trial. While not unanimously negative, the predominance of the evidence shows a negative view of Tien Lung's reputation, some of it quite aggressively so.

[190] It is difficult to isolate reputational damage related to the defamatory 'sting', but a few comments show either uncertainty or strong negative views about the reputation of Tien Lung to honor its contract. For example,

- "So, how did it get from \$100 for two students to \$3448 to the \$10,000 that the story talks about?"
- "So, the non-profit company would have accepted an original cancellation payment of \$100, but the current bill exceeds one hundred times that amount?"
- "The original cancellation fee was \$50 – as per their defense of this posted on their website – how did that jump to ten grand?"
- "How did it go from \$3500 to \$10K?"
- "The original bill was not 10K, it has been accruing at a 28% interest rate."
- "Total criminals. Should be in jail for fraud."
- "Seems like a long drawn out letter for no reason without stating why there is a \$10,000 cancellation fee, unless the extra on top of the \$3500 owing is for defamation? I can only assume..."

[191] I find that the defamatory sting, 'Tien Lung does not honour their own representations: they make misrepresentations and are untrustworthy', contributed to the reputational damage and damage to the goodwill of the Plaintiffs.

[192] A useful summary of the principles and factors related to the assessment of a general damages award related to a corporation is found in **Silvercore Advanced Training Systems v Beer**, 2025 BCSC 538 at paras 224-228:

Silvercore seeks general damages for harm done to their reputation by the defendant's alleged defamation. General damages in defamation cases are presumed from the very publication of the false statement and serve three distinct functions: (a) to act as a consolation to the plaintiff for the distress they suffer; (b) to repair the harm to their reputation; and (c) as a vindication of their personal or business reputation: *Bondar* at paras 119-120.

[193] In **Hill v Church of Scientology of Toronto**, [1995] 2 SCR 1130 at para 182, the Supreme Court of Canada identified the following factors to be considered when assessing general damages for defamation:

- a) the nature of the defamation;

- b) the plaintiff's conduct, position and standing;
- c) the mode and extent of publication;
- d) the absence of any retraction or apology; and
- e) the whole of the defendant's conduct from the time of publication to the end of trial.

[194] Evidence of the harm effected by a defamatory statement is required to support a substantial award of damages. If a plaintiff cannot present evidence to substantiate the alleged harm caused by a defamatory statement, an award of nominal damages may be appropriate: *Acumen* at para 23.

[195] The principles guiding a damages award for defamation against a corporate plaintiff, specifically, were discussed in *Dover Investments Limited v Transpacific Petroleum Corp*, 2009 BCSC 1620:

The principles that emerge and apply in this case may be summarized as follows:

- a) Damages for a corporate plaintiff are to compensate for the harm to its goodwill and business reputation.
- b) The factors to be considered in assessing damages include the defendant's conduct, his position and standing, the nature of the defamation, the absence of an apology or refusal to apologize, and his conduct throughout, up to and including conduct at trial.
- c) In addition to general damages for defamation, a corporate plaintiff may be entitled to special damages for specific economic loss.
- d) In addition to general damages for defamation, in exceptional cases, a corporate plaintiff may be entitled to an award of punitive damages for malicious, oppressive and high-handed misconduct. Punitive damages are intended to punish a defendant rather than compensate a plaintiff.
- e) Compensatory damages, if substantial, may also be considered punishment, and should be taken into account when determining whether an award of punitive damages is warranted.

[196] The evidence here establishes that the Plaintiffs experienced a loss of business following the CTV News Broadcast. It likewise establishes that they experienced a significant impact on their reputation or goodwill. However, that loss of business appears to have been at least contained. By 2019, four years after the broadcast, "member fees appear to be relatively stable and settle at \$484,958 in 2019." (Doran at para 21) This is about 50% of the 2014 member fees. But Tien Lung was, "on pace in the months leading up to a shutdown [due to COVID] to generate the same [Discretionary Funds from Operations] as they were prior to the CTV story." (Doran at para 44)

[197] At the very least, this demonstrates that the impact of the CTV News Broadcast did not result in the total loss of the Plaintiffs' business reputation and goodwill.

[198] As stated above, the factors to be considered in assessing damages include a defendant's conduct, his position and standing, the nature of the defamation, the absence of an apology or refusal to apologize, and his conduct throughout, up to and including conduct at trial.

[199] About four months after the News Broadcast CTV offered to post a follow-up article on its website to provide additional information of concern to Tien Lung. It removed the CTV National post on Facebook together with the various comments posted. CTV changed the heading of the piece to remove any reference to cancellation fees and indicated CTV was willing to post a clarification on its website along with the original broadcast. The offer was not accepted by the Plaintiffs.

[200] Any concerns about the Defendants' conduct of the litigation are addressed by the strong efforts of the Defendants to have the matter proceed to trial without further delay.

[201] CTV is certainly a highly respected national news broadcaster. The reach of the News Broadcast and Facebook was very broad as evidenced by the comments generated from multiple local, national, and international locations.

[202] But the defamatory sting was only part of the News Broadcast. And the News Broadcast was only part of circumstances resulting in reputational harm: the prior negative reviews and in particular the posting by Mr. Haubrich, were part of the cause of the reputational harm. The amplification of the harm by the non-defamatory segments of the News Broadcast appears to be a significant contributor to the impact.

[203] Considering all of the foregoing I find that the Plaintiffs are entitled to a meaningful award of general damages beyond mere nominal damages. I assess those damages to be \$250,000. I find that to be adequate as it relates to the defamatory sting to act as a consolation to the Plaintiffs for the distress they suffered; to repair the harm to their reputation resulting from the defamatory sting; and to serve as a vindication of their personal or business reputation related to the sting.

Punitive Damages

[204] The Plaintiff's position is that an award of punitive damages should be granted because the Defendants acted with malice.

[205] Earlier in this judgment I concluded that the Plaintiffs have failed to prove, on the balance of probabilities, that the Defendants acted with reckless indifference or disregard whether the report was true or false. They have failed to prove that the Defendants acted for the dominant purpose of injuring the plaintiff because of spite or animosity or for some other dominant purpose which is improper or indirect. Accordingly, I concluded that the Plaintiffs have not shown that the Defendants acted with malice.

[206] I dismiss the Plaintiffs' claim for punitive damages.

Conclusion

[207] Given my findings, it is not necessary for me to address the more specific points and claims related to economic loss calculations.

[208] The Plaintiffs are entitled to judgment against the Defendants in the sum of \$250,000 plus pre-judgment interest in accordance with the *Judgment Interest Act*.

[209] If the parties are unable to agree on costs they may be spoken to.

Heard on the 8th – 17th day of September, 2025.

Dated at Edmonton, Alberta this 25th day of June, 2026.

R.A. Jerke
J.C.K.B.A.

Appearances:

Roger Baker
Baker Law Firm
for the Plaintiff

Sean Ward
Reynolds Mirth Richards & Farmer LLP
for the Defendants

Tess Layton
Reynolds Mirth Richards & Farmer LLP
for the Defendants

Appendix A

(**DANELLE)

Danelle: Young kids are involved in all sorts of activities, soccer, swimming, gymnastics – and sometimes they just change their minds and want out. But an Edmonton family is learning the hard way about cancellation fees and what happens if you don't read the fine print.

2 Shot

Danelle: Our Consumer Reporter Kim Taylor talked with them. She is here with more.

(**Kim**)

quad

Kim Taylor: Danelle... Parents want to expose their kids to lots of different activities – it helps them grow and sometimes they like it and sometimes they don't. And if you're not careful you could end up with a \$10,000 bill like the family I talked with.

(**SOT**)

(**SOT**)

Jillian Haubrich: I wanted them to learn some sort of self defence skills.

(**VO***) contracts and exterior

Kim Taylor: When Jillian Haubrich signed a pair of three year memberships at Tien Lung Taekwondo, she asked what would happen if her children changed their minds.

(***SOT***)

Jillian Haubrich: Oh we have a cancellation program, we have a cancellation fee, they explained that to me. And I mean cancellation fees to me in the past have been maybe \$20.

(***VO***) kids photos statements/paperwork

Kim Taylor: Haubrich's youngest quit after three months. She says Tien Lung told her she could fill out paperwork to transfer that time to her other daughter's membership. Haubrich admits she didn't fill out the necessary paperwork to complete the transfer and her account fell behind.

(***SOT***)

Terry Wisniewski: If they had filled out this form, their cancellation would have been next to nothing.

(***VO***) Viz of email

Kim Taylor: Not nothing. Tien Lung Taekwondo sent the Haubrichs an email saying a cancellation fee would be \$3,500. The Haubrichs decided to cancel their memberships. Then a bill arrived for significantly more.

(***SOT***)

Jill Haubrich: So \$10,000 seems pretty steep to me for an eight year old and a six year old to have to pay.

Jay Haubrich: And it's due by January 20th or it starts to accrue 28% interest.

(***VO***) long shot thru the door

Kim Taylor: The family has chosen not to pay. And now the studio has filed a claim to get the money.

(***SOT***)

Kim Taylor: Going after people for \$10,000 at 28% over a year is in line with a nonprofit organization?

Tien Lung: Yes, absolutely. I don't understand. Is there a problem with that?

(***VO***) wall posters in studio

Kim Taylor: Tien Lung tells us they expect students to stick with the program for a black belt – and they expect parents to keep the kids enrolled and honor contracts.

(***VO***) studio staff

Kim Taylor: Tien Lung says in order to keep the level of professionalism parents expect, they need parents to pay their memberships.

(***SOT***) might have to cover first part

Terry Wisniewski: We've upheld our side. We have professional instructors from Korea, Argentina, world class athletes, the best facilities, all that costs money.

(***VO***) Jillian with daughter

Kim Taylor: As for Jillian Haubrich – she's refusing the pay and has learned a valuable lesson about carefully reading documents.

(***SOT***)

Jillian Haubrich: But I cannot accept the \$10,000, that's out of control to me.

(**KIM**)

Kim Taylor: I went to the courthouse today. Tien Lung has launched civil action against over 50 former members for debt. Although they say they had to file these before the statute of limitations kicked in, Tien Lung also says they prefer mediation.

2 Shot

(**DANELLE**)

Danelle: What about Service Alberta? Do they have any advice for these situations?

(**KIM**)

Kim Taylor: They don't regulate fitness club contracts – and there's no precise requirement for all conditions to be contained in a contract. Having said that – they do encourage anyone to file a complaint and the provincial investigators can look at all aspects of a contract and disclosure.

(**DANELLE**)

Danelle: Thanks Kim.