

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *VinFast Auto Canada Inc. v. Ngo*,
2026 BCSC 1420

Date: 20260729
Docket: S257780
Registry: Vancouver

Between:

**VinFast Auto Canada Inc., VinFast Auto Ltd.
and Vingroup JSC**

Plaintiffs

And

Phuong Ngo

Defendant

And

**Vinfast Auto Canada Inc., Vinfast Auto Ltd.
and Vingroup JSC**

Defendants by way of Counterclaim

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Plaintiffs/Defendants by way
of Counterclaim:

I. Fischer
R.L. Collette
S. Livingstone

The Defendant, appearing in person:

P. Ngo

Place and Dates of Hearing:

Vancouver, B.C.
June 18–19, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 29, 2026

Table of Contents

I. INTRODUCTION	3
II. FACTUAL BACKGROUND.....	3
A. The Parties.....	3
B. The Impugned Posts	4
C. This Action.....	6
III. LEGAL PRINCIPLES.....	7
IV. DISCUSSION.....	8
A. Has Ms. Ngo shown that this action arises from expression relating to a matter of public interest?	8
B. Have the plaintiffs shown grounds to believe that the claim has substantial merit?	11
C. Have the plaintiffs shown grounds to believe that none of the defences are likely to succeed?	12
D. Have the plaintiffs shown that their interest in advancing the action outweighs its deleterious effects on expression and public participation?.....	16
I. SUMMARY AND CONCLUSION	18

I. INTRODUCTION

[1] The defendant, Phuong Ngo, applies to have this action dismissed under s. 4 of the *Protection of Public Participation Act*, SBC 2019, c. 3 [PPPA]. She says it is “strategic litigation against public participation” (or a “SLAPP” suit), inasmuch as the plaintiffs are improperly seeking through this action to silence her legitimate criticism of them and others.

[2] The plaintiffs oppose the application. They say that the defendant has been spreading malicious falsehoods about them on her Facebook page, garnering a wide online following and thereby causing them reputational harm. They seek an order dismissing the application and allowing the action to proceed.

[3] For the reasons that follow, I have concluded that the application should be dismissed.

II. FACTUAL BACKGROUND

A. The Parties

[4] The plaintiff Vingroup JSC (“VGR”) is the parent company of the other two plaintiffs and one of the largest corporations in Vietnam. Its founder, chair and largest single shareholder is Pham Nhat Vuong. Through its subsidiaries, it offers goods and services for sale to the public in Vietnam and internationally, including electric vehicles, hospitality, real estate, and private schools. The plaintiff VinFast Auto Ltd. (“Vinfast”) manufactures electric vehicles, which it imports and sells in Canada through its subsidiary, the plaintiff VinFast Auto Canada Inc.

[5] The defendant is a Vietnamese citizen who fled Vietnam and now resides in Vancouver. She obtained refugee status in this country on the basis that she was facing persecution in Vietnam as a result of her criticism of the government of Vietnam and a large Vietnamese company close to that government. In this proceeding, she has described herself as an “independent journalist and social activist exposing systemic fraud by Vingroup JSC ... [and other Vietnamese entities]

under Vietnamese government backing.” She operates a Vietnamese language Facebook page with over 200,000 followers.

B. The Impugned Posts

[6] The plaintiffs’ complaint in this action focuses on two of the defendant’s Facebook posts.

[7] The first of them is dated May 20, 2025. It included the following text, translated from the original Vietnamese, which was posted along with an accompanying video clip showing a truck transporting some of the plaintiffs’ VF9 model electric vehicles on a highway:

Is the VinFast VF9 really “Made in Vietnam”, being imported from China via the Huu Nghi border gate?

The image of the VF9 with its body and paintwork already finished in China makes me question the origin of VinFast vehicles. According to international regulations, the “Made in Vietnam” label can only be used if the vehicle is fully assembled in Vietnam and achieves a certain percentage of added value (usually 30-50%).

But if the bodywork, paint, and many major components are already manufactured in China, is the process in Vietnam sufficient to be called “Made in Vietnam”?

VinFast always promotes the VF9 as a “Made in Vietnam” product to foster national pride, but:

-Is it possible that VinFast only added a few minor parts in Hai Phong to ‘legitimize’ the country of origin label?

-What is the localization ratio of VF9? Why doesn’t the company disclose this clearly so that consumers can understand?

-If the cars are primarily manufactured in China, is “Made in Vietnam” a dishonest marketing tactic?

-Is there a difference in quality between cars imported from China and cars assembled in Vietnam?

...

[8] One year later, as of May 25, 2026, the May 20, 2025 post had received more than 1.6 million views, 9,000 reactions and 2,000 comments.

[9] The second of the impugned posts was published on October 9, 2025. It was accompanied by a photograph of Mr. Vuong and stated as follows (translated from the original Vietnamese):

Manipulating Trust and National Responsibility

The Vietnamese financial market is witnessing a drama so absurd it's almost cruel. In reality, the Vingroup empire is struggling with "sudden severe illnesses": its real estate sector is in trouble, its VinFast "money-burning" business is consistently reporting heavy losses, and an unprecedented boycott movement from consumers is spreading.

But on the stock market, a miracle occurred. VinGroup's stocks (VIC, VHM, etc.) are continuously having phenomenal price surges, defying all economic laws. This blatant contradiction is no longer just a simple market story. It has become a crisis of confidence, raising unavoidable questions about systemic manipulation and the role of state regulatory agencies.

1. Print its own paper document, determine its own value.

Let's call the issue by its true nature. The fact that Vingroup, and specifically Mr. Pham Nhat Vuong, are continuously establishing new subsidiaries and using VIC shares as capital contributions is an extremely dangerous financial mechanism.

Nature:

-VIC shares, basically, are a type of "security document" that the founder can "print" almost without limit.

They established a new company, completely under their control.

-They use "paper document" (VIC shares) to contribute capital, and determine the value of that "paper document" themselves based on market prices (that is also being "manipulated").

-Then, this subsidiary company can use that "paper documents" as collateral to borrow real money from the bank.

This is essentially a form of "legally printing money" on paper. They magically transform an asset based on belief (stocks) into cash without generating any surplus value from core business operations. By creating "virtual" transactions and "virtual" demand for VIC shares, they are distorting indices and valuations, breaking the most fundamental rule of a market economy: "value must come from labour and production."

2. A deliberate rescue by the Government or a deadly negligence?

The fact that VIC's share price has "skyrocketed" unreasonably, despite all the bad news, has led many to ask a sensitive question: Is there a governmental "invisible hand supporting" the price to save Vingroup?

Whatever the answer, it leads to an alarming conclusion about the role of regulatory authorities.

-There is a targeted ultimate goal:

If this is true, it demonstrates a failure of market principles. It means the Government is using resources (possibly through state-owned financial institutes) to protect a private enterprise, regardless of its risks and wrongdoings. This creates a huge “moral hazard”, undermines fairness, and sends the wrong message that if it is “big enough”, it cannot “fail.”

-There is no ultimate goal, only lax management:

Unless the government directly intervenes, the skyrocketing price of VIC shares can only be attributed to “price manipulation” or price rigging by a group of large investors.

So the question is:

Where was the State Bank of Vietnam when commercial banks (like Techcombank) could be lending tens of trillions of Vietnam dong based on collateral (VIC shares) whose value was unreasonably inflated?

Where was the State Securities Commission (UBCKNN) when unusual transactions and “price manipulation” sessions at the ATC (Auction Closing Time) occurred openly and systematically without any investigation or intervention strong enough for deterrence?

Regardless of the scenario, it exposes a serious flaw in the oversight mechanism. The silence or lack of decisive action by regulatory agencies has, intendedly, facilitated the erosion of trust and shifted the risk to millions of small investors and depositors.

The discrepancy between VinGroup’s business reality and its stock price is no longer just a market story. It’s a crisis of transparency and accountability.

The “self-printing, self-pricing” mechanism is an unprecedented form of manipulation. And the silence of regulatory authorities in the face of this absurdity raises the biggest question: If even the gatekeepers of the market don’t act, where will the people and investors place their trust in the fairness of the economy?

[10] As of May 25, 2026, the October 9, 2025 post had received almost 6,900 reactions, more than 1,300 comments, and had been shared more than 800 times.

C. This Action

[11] The plaintiffs commenced this action on October 17, 2025. The notice of civil claim alleges that the two posts described above are defamatory. It seeks, among other things, damages and orders requiring the plaintiff to remove the offending posts and to prohibit her in the future from posting those or any other defamatory statements about the plaintiffs.

[12] On November 7, 2025, the defendant filed a response to civil claim and a counterclaim. The response pleads, among other things, the defences of justification (truth), fair comment and qualified privilege. The counterclaim alleges that the defendant was persecuted by the Vietnamese government at the instigation of one or more of the plaintiffs. It seeks US\$100 million in damages, including US\$20 million “for malicious foreign interference” and “intentional infliction of emotional distress”.

[13] The defendant filed this application on November 14, 2025.

III. LEGAL PRINCIPLES

[14] Section 4 of the *PPPA* states as follows:

Application to court

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

(a) the proceeding arises from an expression made by the applicant, and

(b) the expression relates to a matter of public interest.

(2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

(a) there are grounds to believe that

(i) the proceeding has substantial merit, and

(ii) the applicant has no valid defence in the proceeding, and

(b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[15] The leading case on the interpretation and application of that provision is *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes*], which considered similar legislation enacted in Ontario. Justice Côté, writing for the Court, described the purpose of such legislation as being “to screen out lawsuits that

unduly limit expression on matters of public interest through the identification and pre-trial dismissal of such actions” (*Pointes*, at para. 16).

[16] At the first branch of the test, Ms. Ngo must demonstrate on a balance of probabilities that this action arises from expression that “relates to a matter of public interest” (*Pointes*, at para. 23). If she does, then the action must be dismissed unless the defendants can demonstrate on the remaining branches of the test that:

- a) there are grounds to believe that:
 - i. the action has substantial merit;
 - ii. Ms. Ngo has no valid defence; and
- b) the harm that the plaintiffs are likely to have suffered, or to suffer in the future, as a result of the defendant’s expression is serious enough to outweigh the public interest in protecting that expression.

IV. DISCUSSION

A. Has Ms. Ngo shown that this action arises from expression relating to a matter of public interest?

[17] In *Pointes*, the Court emphasised the need for the applicant to show a causal connection between the expression and the litigation. The nature of that connection must be construed in a “broad and liberal” manner, having regard to the objectives of the legislation (at paras. 24-30). On the other hand, not every connection, no matter how tenuous, will suffice. Justice Côté noted that expression that merely “makes reference” to a matter of public interest, or to a matter about which the public is “merely curious”, falls short of the mark (at para. 29).

[18] The factors to be considered in determining whether a matter is one “of public interest” were said to be similar to those set out in *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640 [*Torstar*]. There, McLachlin C.J., writing for the majority, offered the following guidance on the topic:

[102] How is “public interest” in the subject matter established? First, and most fundamentally, the public interest is not synonymous with what interests the public. The public’s appetite for information on a given subject — say, the private lives of well-known people — is not on its own sufficient to render an essentially private matter public for the purposes of defamation law. An individual’s reasonable expectation of privacy must be respected in this determination. Conversely, the fact that much of the public would be less than riveted by a given subject matter does not remove the subject from the public interest. It is enough that some segment of the community would have a genuine interest in receiving information on the subject.

[103] The authorities offer no single “test” for public interest, nor a static list of topics falling within the public interest (see, e.g., *Gatley on Libel and Slander* (11th ed. 2008), at p. 530). Guidance, however, may be found in the cases on fair comment and s. 2(b) of the *Charter*.

[104] In *London Artists, Ltd. v. Littler*, [1969] 2 All E.R. 193 (C.A.), speaking of the defence of fair comment, Lord Denning, M.R., described public interest broadly in terms of matters that may legitimately concern or interest people:

There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment. [p. 198]

[105] To be of public interest, the subject matter “must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached”: *Brown*, vol. 2, at pp. 15-137 and 15-138. The case law on fair comment “is replete with successful fair comment defences on matters ranging from politics to restaurant and book reviews”: *Simpson v. Mair*, 2004 BCSC 754, 31 B.C.L.R. (4th) 285, at para. 63, per Koenigsberg J. Public interest may be a function of the prominence of the person referred to in the communication, but mere curiosity or prurient interest is not enough. Some segment of the public must have a genuine stake in knowing about the matter published.

[106] Public interest is not confined to publications on government and political matters, as it is in Australia and New Zealand. Nor is it necessary that the plaintiff be a “public figure”, as in the American jurisprudence since *Sullivan*. Both qualifications cast the public interest too narrowly. The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence.

[107] Care must be taken by the judge making this determination to characterize the subject matter accurately. Overly narrow characterization may inappropriately defeat the defence at the outset. ...

[19] In deciding whether an expression relates to a matter of public interest, the court should not attempt to weigh the value of the impugned expression. It is not legally relevant whether it is desirable or deleterious, valuable or vexatious, or whether it helps or hampers the public interest. Those considerations are to be weighed instead at the final stage of the analysis under s. 4(2)(b): *Pointes*, at para. 30.

[20] Ms. Ngo submits that the Facebook posts in issue are a form of “expression” and that they relate to a matter of public interest, namely:

- a) the plaintiffs’ dishonest inflating of its own stock price, in collusion with the government of Vietnam; and
- b) the extent to which Vinfast’s vehicles are truly manufactured in Vietnam, as the plaintiffs claim.

[21] The plaintiffs do not dispute that the Facebook posts that are the subject of this action constitute “expression”. What is in dispute is whether that expression truly relates to a matter of public interest. In arguing that it does not, the plaintiffs rely on *Sandher Fruit Packers Ltd. v. MacAskill*, 2025 BCSC 844, in which Gibb-Carsley J. concluded that the impugned expression in issue in that case did not “relate to a matter of public interest” for the following reasons:

[95] To be of public interest, the subject matter must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or to which considerable notoriety or controversy has attached: *Pointes*, at para. 28; *Lyncaster*, at para. 26. While there is a public interest in genuine reporting on true facts; false, damaging, maliciously, or recklessly published information serves no positive public purpose. Step one is a threshold question. If the defendant fails to demonstrate the expressions relate to a matter of public interest, the application is dismissed.

[96] In my view, the defendant has failed to establish that the subject matter is in the public interest. While the idea that free speech is critical to the well-being of a democratic and just society is unassailable, in my view, the information the defendant has posted on his Blog is so woefully devoid of facts that it does not satisfy the definition of public interest. Indeed, unsourced and false accusations, may be better characterized as “misinformation”. The spreading of misinformation or lies is not in the public interest.

[22] I am unable to accept that submission. Regardless of what Gibb-Carsley J. may have intended by those *dicta*, the salient question at this stage, with respect, is not whether the expression in issue is “in” the public interest, but rather whether it “relates to a matter of public interest.” The former question is more appropriately addressed at the last stage of the analysis, not at this initial stage. As was stated in *Pointes*: “a statement that contains deliberate falsehoods, [or] gratuitous personal attacks . . . may still be an expression that relates to a matter of public interest” (at para. 75).

[23] I am satisfied that the expression in issue here relates to matters of public interest. The public has a genuine interest in knowing if there is widespread corruption at high levels of government in Vietnam and whether vehicles presented to the public as having been manufactured in Vietnam are in fact manufactured mainly elsewhere. This is not a case like *Cheema v. Young*, 2021 BCSC 461, an authority cited by the plaintiffs, in which defamatory social media posts were found to be merely incidental to a matter of public interest (in that case, a municipal council’s decision about policing) and therefore outside of the purview of the *PPPA*. In this case, the impugned posts speak directly to matters of public interest. I therefore accept that the defendant has met her burden on this first branch of the test.

B. Have the plaintiffs shown grounds to believe that the claim has substantial merit?

[24] The second stage of the test presents a “merits-based hurdle” for the plaintiffs to meet. This is not a final adjudication on the merits but an assessment of the likelihood of a successful claim (*Pointes*, at para. 37). To meet its burden here, the plaintiffs must show “a basis in the record and the law – taking into account the stage of litigation at which a [*PPPA*] motion is brought – for finding that the underlying proceeding has substantial merit and that there is no valid defence” (*Pointes*, at para. 39).

[25] As summarised in *Pointes*, at para. 54, the plaintiffs must show:

[54] ... that there are grounds to believe that [their] underlying claim is legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success.

[26] The elements of the tort of defamation were conveniently summarised by McLachlin C.J. in *Torstar*, as follows (at para. 28):

- a) the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- b) the words in fact referred to the plaintiff; and
- c) the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[27] If these elements are established on a balance of probabilities, the falsity of the impugned statements and damage to the plaintiff are presumed.

[28] I have no difficulty concluding that those elements are satisfied here.

[29] The posts were published and they refer to one or more of the plaintiffs. Their primary "sting" is that the plaintiffs are:

- a) misleading the public about the quality and place of manufacture of their VF9 model vehicles; and
- b) complicit in and profiting from improper manipulation of their stock price at the public's expense.

[30] Both propositions, if accepted as true, would be damaging to the plaintiffs' reputation.

C. Have the plaintiffs shown grounds to believe that none of the defences are likely to succeed?

[31] In *Pointes*, the Supreme Court of Canada noted (at para. 56) that although the plaintiffs must show at this branch of the test that there are grounds to believe that there are no viable defences to the claim, that burden applies only to those

defences that the defendant has “put in play”. In *Beland v. Cardy*, 2025 BCSC 656, Francis J. (then of this court) described what the defendant must do to put a defence in play for that purpose:

[83] On an application under s. 4 of the PPPA, there is an evidentiary burden on the party making a motion to put in play a defence by filing material that is sufficiently detailed that the court can clearly identify the legal and factual components of the defences advanced: *Brown v. Landriault*, 2024 ONSC 7027 at para. 45.

[32] The response to civil claim invokes the defences of justification, fair comment and qualified privilege. However, no facts are pleaded in support of those defences, other than the bald assertion that the statements made in the impugned posts were true and were made “for the purpose of exercising my freedom of expression on a matter of public interest.”

[33] Although the defendant has adduced four affidavits in support of the present application, no facts relevant to those defences are attested in any of them, other than the defendant’s own bald averment that the assertions of fact pleaded in the response to civil claim and counterclaim are “true to the best of my knowledge.”

[34] In her first affidavit, the defendant averred that the facts asserted in the impugned posts are true and that they were “made in the public interest to expose systemic fraud by Vingroup JSC exceeding ** tens of billions of USD ** as supported by translated evidence (Exhibit D)”.

[35] Attached as Exhibit D to that affidavit is what is described in the body of the affidavit as “Translated Fraud Report”. In fact, it appears to be a Vietnamese language Facebook post dated June 17, 2024, with accompanying translation into English, the author of which is not identified. The post alleges fraud by Vingroup in relation to a real estate development project in Vietnam. It says nothing about the subject matter of either of the two Facebook posts in issue in this action.

[36] Attached as Exhibit E is another Vietnamese language newspaper article, this one dated December 20, 2023, which reports that another Facebook user who had posted material critical of the Vinfast group had been detained by the police in

Vietnam. Among the claims he is reported to have made in those posts are the following:

- a) “Vinfast’s car lines were actually designed and developed by facilities belonging to Indian and Chinese companies”; and
- b) “[Vinfast] is associated with a series of ‘shell’ companies that hide losses and extremely complex financial flows”.

[37] Exhibit F is another newspaper article about the same individual. It is dated April 27, 2024 and reports that he “had to flee Vietnam and seek asylum after getting into trouble with the police over his analysis of Vinfast car company and Vingroup Corporation.”

[38] Exhibit G is a newspaper article dated September 12, 2025 from the BBC about the defendant and other online critics of Vingroup who are being sued by Vingroup. Exhibit H is another BBC article, this one about a whistleblower at Jaguar Land Rover who had been dismissed for criticizing his employer.

[39] In her second affidavit, the defendant attached, among other things, a number of newspaper articles. Exhibit K is an article dated September 20, 2025 discussing the number of domestically produced passenger cars in Vietnam. Exhibit L is an article that reports on the health of the Vietnamese stock market generally. Exhibit M is an article dated July 9, 2018 about Vingroup and its history. Exhibit N is an article about the defendant dated November 5, 2025, apparently authored by the Vietnamese police, that casts her in a negative light.

[40] The defendant’s third affidavit speaks to some of the steps taken in this litigation and has no bearing on the substantive defences raised. Her fourth affidavit, signed by the defendant but not properly attested, discusses what she believes to be censorship of some of her other Facebook posts in Vietnam and attaches another online article profiling her.

[41] I agree with the plaintiffs that the defendant has not put any of the nominally pleaded defences in play, insofar as she has not filed material “that is sufficiently detailed that the court can clearly identify the legal and factual components of the defences advanced.”

[42] In order to establish the defence of justification, the defendant would have to show that the defamatory sting was, in each case, substantially true: *Marks v. Allen*, 2022 BCSC 2024, at para. 26. The defendant has adduced no evidence of this, apart from her own bald statement that the assertions in the impugned Facebook posts are true, to the best of her knowledge. Indeed, the only real evidence before me on the point is that of the plaintiffs denying, in detail, the truth of those assertions. What is missing is any explanation by the defendant as to how she came to believe the things she asserts to be true in the impugned Facebook posts. This is fatal to the defence, to the extent it is in play.

[43] In *Manuel v. Astakeesic*, 2024 BCSC 991, Hori J. listed the elements of the defence of “fair comment”, which are as follows:

- a) the comment must be on a matter of public interest;
- b) it must be based on fact;
- c) although it can include inferences of fact, the comment must be recognizable as a comment rather than a statement of fact; and
- d) someone could honestly express the opinion on the proved facts.

[44] As Hori J. noted at para. 75, “[t]he plaintiffs may establish that the defence of fair comment has no prospect of success if the facts on which the comments are based are false.” I agree with the plaintiffs that, to the extent the impugned Facebook posts contain comment at all, it is not based on any facts that have been shown to be true.

[45] I have reached a similar conclusion with respect the defence of qualified privilege. That defence is said to be available when the defendant makes the

impugned statement in the discharge of a legal, social or moral duty, and the communication is made to someone with a reciprocal duty to receive it: *Marks* at para. 27. As MacNaughton J. (then of this court) stated in *Cheema*, “the privilege does not extend to publication of uncorroborated allegations of criminal wrongdoing to the general public, as opposed to law enforcement or investigative authorities” (para. 113). While the defendant has adduced some evidence to explain why she has not directed her complaints to the police or other regulatory authorities in Vietnam, there are other regulatory authorities elsewhere who could receive them, assuming they were “corroborated” in some way.

[46] In summary, I find that the plaintiffs have met their burden on this element of the test.

D. Have the plaintiffs shown that their interest in advancing the action outweighs its deleterious effects on expression and public participation?

[47] In *Pointes*, Côté J. described the burden that the plaintiffs must meet at this final branch of the test. In particular, they must:

[82] ... show on a balance of probabilities that [they] likely [have] suffered or will suffer harm, that such harm is a *result* of the expression established under s. [4], and that the corresponding public interest in allowing the underlying proceeding to continue outweighs the deleterious effects on expression and public participation. This weighing exercise is the crux or core of the s. [4] analysis, as it captures the overarching concern of the legislation, as evidenced by the legislative history. It accordingly should be given due importance by the motion judge in assessing a [PPPA] motion.

[Original emphasis.]

[48] The first matter to be addressed is the nature and extent of the likely harm to the plaintiffs resulting from the impugned expression. Once defamation is proven, damage to the plaintiff’s reputation is presumed: *Torstar*, at para. 28. Nevertheless, the nominal damages that are to be presumed in that context will not necessarily suffice, alone, to tip the scales in favour of allowing an action to proceed: *Bent v. Platnick*, 2020 SCC 23, at para. 144. In this case, the plaintiffs have shown that the defendant has garnered a large online following and that many of her followers

appear to have accepted the defamatory sting to be true. This demonstrates that the plaintiffs have suffered more than just nominal harm to their reputation as a result of those posts.

[49] That harm must be weighed against the public interest in protecting the expression in issue. The considerations that arise in this part of the analysis were summarised in *Pointes* as follows:

[73] Once harm has been established and shown to be causally related to the expression, [s. 4(2)(b)] requires that the harm and corresponding public interest in permitting the proceeding to continue be weighed against the public interest in protecting the expression. Therefore, as under [s. 4(1)(b)] public interest becomes critical to the analysis.

[74] However, the term “public interest” is used differently in [s. 4(2)(b)] than in [s. 4(1)(b)]. Under [s. 4(1)(b)], the query is concerned with whether the expression relates to a matter of public interest. The assessment is not qualitative — i.e. it does not matter whether the expression helps or hampers the public interest. Under [s. 4(2)(b)], in contrast, the legislature expressly makes the public interest relevant to specific goals: permitting the proceeding to continue and protecting the impugned expression. Therefore, not just any matter of public interest will be relevant. Instead, the quality of the expression, and the motivation behind it, are relevant here.

[75] Indeed, “a statement that contains deliberate falsehoods, [or] gratuitous personal attacks . . . may still be an expression that relates to a matter of public interest. However, the public interest in protecting that speech will be less than would have been the case had the same message been delivered without the lies, [or] vitriol” (C.A. reasons, at para. 94, citing *Able Translations Ltd. v. Express International Translations Inc.*, 2016 ONSC 6785, 410 D.L.R. (4th) 380, at paras. 82-84 and 96-103, aff’d 2018 ONCA 690, 428 D.L.R. (4th) 568).

[76] While judges should be wary of the inquiry descending into a moralistic taste test, this Court recognized as early as *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697, that not all expression is created equal: “While we must guard carefully against judging expression according to its popularity, it is equally destructive of free expression values, as well as the other values which underlie a free and democratic society, to treat all expression as equally crucial to those principles at the core of s. 2(b)” (p. 760).

[50] In assessing the value of the impugned expression at issue in this case, I have found no support in the evidence for the truth of the matters asserted in the impugned posts. At this stage, the *dicta* of Gibb-Carsley J. in *Sandher*, quoted above, are indeed apposite. In particular, I agree with his observation, at para. 96,

that “false, damaging, maliciously, or recklessly published information serves no positive public purpose” and that “unsourced and false accusations, may be better characterized as ‘misinformation’. The spreading of misinformation or lies is not in the public interest.”

[51] On balance, I have concluded that the plaintiffs’ interest in protecting their reputation outweighs the value of the defendant’s expression, insofar as the defendant has failed to substantiate any of her allegations of very serious misconduct.

I. SUMMARY AND CONCLUSION

[52] Having found the plaintiffs to have met their burden on each element of the statutory test under s. 4(2), I am dismissing the application.

[53] With respect to costs, s. 7(2) of the *PPPA* states that if the application is unsuccessful, as this one has been, the respondent is not entitled to costs unless the court considers it appropriate to make such an award in the circumstances. I am not persuaded that an award of costs is appropriately made here, given the steep power and resource imbalance that is an important feature of this case. Although the defendant has failed to provide any evidentiary support for the serious allegations of wrongdoing made in the impugned Facebook posts, I have not been persuaded that she actually knew them to be untrue. If the plaintiffs ultimately succeed in prosecuting the action to its conclusion now that I am allowing it to proceed, they may recover their costs in doing so. On this application, the parties will bear their own costs.

“Milman J.”