

COURT OF APPEAL FOR ONTARIO

CITATION: Canadian Union of Postal Workers v. Quebecor Media Inc., 2026

ONCA 562

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Paciocco, Thorburn and George JJ.A.

BETWEEN

Canadian Union of Postal Workers

Plaintiff (Appellant)

and

Quebecor Media Inc., Sun Media Corporation, TVA Group Inc., Jerry Agar and
Avi Benlolo

Defendants (Respondents)

Jessica Barrow and Karin M. Pagé, for the appellant

Tycho Manson and Brendan Brammall, for the respondents, Québecor Media Inc.,
Sun Media Corporation, TVA Group Inc., and Jerry Agar

R. Paul Steep, Christine L. Lonsdale and Lauren Weaver, for the respondent, Avi
Benlolo

Heard: May 5, 2026

On appeal from the judgment of Justice Graeme Mew of the Superior Court of
Justice, dated November 21, 2024, with reasons reported at 2024 ONSC 6484.

Thorburn J.A.:

OVERVIEW

[1] The appellant, Canadian Union of Postal Workers (“CUPW”) brought an action against the respondents for defamation stemming from a broadcast aired on July 23, 2014, and a column that appeared in print and online on July 28, 2014.

[2] The trial judge held that the impugned statements and inferences made by the respondents Jerry Agar and Avi Benlolo, suggested that CUPW supported terrorism, and was associated with Hamas. He concluded that those remarks were defamatory and that the defence of justification did not apply because the remarks were substantially untrue.

[3] However, he dismissed the action, finding that the respondents were entitled to rely on the defence of fair comment. He also held that some of the respondents’ communications were protected by the defence of responsible communication and statutory privilege under s. 3(2) of the *Libel and Slander Act*, R.S.O. 1990, c. L.12.

[4] CUPW appeals the conclusion that the remarks were fair comment as although they clearly engaged a matter of public interest, they were (i) statements of fact and not comment, (ii) not based on fact, (iii) did not reflect opinions a person could honestly hold, and (iv) were made with malice: *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 28. CUPW also appeals the finding that the defamatory statements were protected by the defence of responsible communication. CUPW submits that the trial judge failed to consider and apply the relevant factors, including whether the communications were made with malice,

which, if established, would defeat the defence: *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at pp. 687-94. Finally, CUPW challenges the trial judge's finding on statutory privilege. It maintains that the defamation action should have been allowed and that the trial judge's reasons were informed by improper "hindsight bias."

[5] The respondents do not contest that the comments were defamatory. However, they submit that the trial judge correctly upheld the defences of fair comment and responsible communication and found that certain statements were subject to statutory privilege. They argue that the trial judge "addressed the malice issue thoroughly" and that CUPW failed to prove malice. They claim that the fair comment defence alone was sufficient to dismiss the action and reject the allegation that the trial judge's reasons were tainted by hindsight bias.

[6] Before conducting my analysis of the trial judge's reasons, I will briefly outline the material facts.

BACKGROUND FACTS

The Parties

[7] The appellant CUPW is a public sector trade union representing Canadian postal workers across the country. In addition to representing its members in collective bargaining, CUPW engages in activism on issues relevant to working people.

[8] The respondent Québecor Media Inc. was at all material times, the parent company of the Sun Media Corporation (“Sun Media”) and Group TVA Inc. (“TVA”). Sun Media published various newspapers including the *Toronto Sun*. Sun Media and TVA were also joint partners in the Sun News Network, a cable TV news channel based in Toronto that broadcast “The Source”.

[9] The respondent, Jerry Agar, served from time to time as host of the current affairs broadcast, “The Source” on Sun News Network, in place of its regular host, Ezra Levant. He was also a freelance columnist for the *Toronto Sun*.

[10] On July 23, 2014, Mr. Agar hosted “The Source”. His guest was the respondent, Avi Benlolo, President and CEO of the Friends of Simon Wiesenthal Center. They discussed CUPW’s attendance at a recent “Protest in Solidarity with Gaza” in Ottawa.

[11] On July 28, 2014, Mr. Agar authored a column in the *Toronto Sun* titled “ Hamas goes postal? Only in Canada”. The piece discussed the demonstration, a “pro-Palestinian rally”, that according to Mr. Agar “demonstrated more than just support for the average Palestinian mother and child.”

The Demonstration Attended by CUPW Representatives

[12] On July 22, 2014, a demonstration was organized by the Association of Palestinian Arab Canadians and Independent Jewish Voices to raise awareness

for, and stand in solidarity with, Palestinians. CUPW submits that neither organization supports Hamas.

[13] The demonstration was held in Ottawa to protest what participants viewed as the Israeli and Canadian governments' responsibility for escalating violence in Gaza. Tyler Levitan, an organizer of the demonstration and campaign co-ordinator of Independent Jewish Voices testified that his organisation, whose membership is predominantly Jewish, advocates "for a just and peaceful resolution to the situation in Israel and Palestine." The demonstration was one of approximately five protests organized during what Mr. Levitan described as the Israeli army's "assault on Gaza" in July and August 2014. Approximately 1,000 people attended.

[14] On July 23, 2014, the *Ottawa Citizen* published an article with a photograph that showed the CUPW flag flying near the vicinity of the demonstrator who was holding a flag associated with Hamas at the demonstration.

[15] Peter Denley and Mike Evard attended the demonstration on CUPW's behalf. Neither Mr. Denley nor Mr. Evard recalled seeing or interacting with the demonstrator who carried the Hamas flag. Mr. Denley testified that at the time of the demonstration, he did not know what flags were associated with Hamas. Mr. Denley also testified that if there had been any indication that the demonstration "purported to be in favour of Hamas", CUPW would not have attended.

[16] Hamas is designated a terrorist organization by the Canadian government.

The Statements made by Jerry Agar and Avi Benlolo about CUPW

[17] Mr. Agar testified that on July 23, 2014, after learning of CUPW's participation in the demonstration, the editorial staff of "The Source" decided to ask CUPW directly "if they support terrorism". Sun News producer, Kaite Boivin reached out to CUPW to request an interview to discuss CUPW's participation in the demonstration, and the "union's support for the terrorist organization Hamas."

[18] Aalya Ahmad, a communications specialist at CUPW, declined to have a CUPW representative appear on the program. Following her conversation with Ms. Boivin, Ms. Ahmad complained of the "aggressive, misinformed and provocative way in which Ms. Boivin addressed the issue".

[19] On the afternoon of July 23, 2014, Ms. Ahmad followed up with an email with links to CUPW's "Peace and Disarmament Policy" which condemns violence generally, and CUPW's policy on "Palestine" which advocates for "peace in Israel and Palestine" and is critical of various Canadian and Israeli government policies. The email did not address whether CUPW did or did not support Hamas.

[20] The email also stated that:

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

government in attempting to justify the unjustifiable. By making excuses for Israel's actions, the Canadian government is promoting war against the Palestinian people. Our government should be promoting peace, not war. The only way to achieve a lasting peace is through justice. Our position on Israel and Palestine is established by a democratic process of debate followed by a vote. As postal workers, we stand by our actions in the face of propaganda efforts to silence and defame supporters of the Boycott, Divest and Sanctions movement. It is quite simply the right thing to do.

[21] Mr. Agar testified that he could not recall whether he reviewed the email and the enclosed statement and links before hosting Mr. Benlolo on "The Source" later that day. He began the July 23, 2014 program as follows:

Why are they [CUPW] marching with Hamas supporters?
Human rights advocate Avi Benlolo joins us with more
from Toronto.

[22] Mr. Agar then asked Mr. Benlolo what the difference was between supporting the Palestinian cause and supporting Hamas. Mr. Benlolo replied:

We believe that if you want to support the Palestinian cause, so be it, it's your right to do so. However, to support a designated terrorist organization is shocking and bewildering to us, particularly for a public organization like CUPW.

[23] Mr. Agar went on to ask Mr. Benlolo about CUPW's history of activism to which Mr. Benlolo replied:

I actually find that not surprising, sadly enough, because CUPW leadership has a history of partnering up with hate groups, anti-Israel groups, attending conferences in

South America about anti-Israel propaganda. ... You know, this is really shocking that an organization that should really function in the interest of Canadian workers, postal workers, should be so political and siding and partnering with a hate group like Hamas. [Emphasis added.]

[24] On July 28, 2014, Mr. Agar published a *Toronto Sun* column entitled, “Hamas goes postal? Only in Canada”. The first two sentences of the article began with the words: “Would you want a terrorist sympathizer coming to your door every day? Apparently, that may already be happening.” Mr. Agar testified that, before publishing the article, he had carefully reviewed Ms. Ahmad’s email. He maintained the view expressed in the column that “CUPW march against Israel and have not stated that they specifically condemn or make demands of Hamas.”

The Defamation Claim

[25] CUPW brought a claim alleging that these and other statements and inferences in the article and broadcast were defamatory, either on their own, or when viewed in context, as the words were meant and understood to convey that:

CUPW and its members were terrorist sympathisers, that CUPW was not attending the rally to demonstrate concern and support for ordinary Palestinians, and that CUPW supports Hamas and its objectives, which includes the genocide of the Jewish people.

ANALYSIS OF THE TRIAL JUDGE’S DECISION

[26] There is no dispute that the trial judge accurately set out the applicable legal tests. The issues under appeal are all questions of mixed fact and law for which

the standard of review is palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10, 22, 25, 33-36.

A. CUPW's Standing to Bring an Action for Defamation

[27] The trial judge held that CUPW had standing to bring a defamation claim because it has an interest in protecting its reputation, separate and apart from that of its members: *Berry v. Pulley*, 2002 SCC 40, [2002] S.C.R. 40, at para. 46. He also noted that there has been an increased role in political discourse and recognition of expanded rights on the part of unions to engage in litigation: *Public Service Alliance of Canada v. Canada (Attorney General)* (2002), 62 O.R. (3d) 682 (C.A.).

[28] On this appeal, the parties do not dispute that CUPW had standing to bring the defamation action.

B. Many of the Statements Made About CUPW were Defamatory

[29] The trial judge held that the respondents' remarks would tend to lower the plaintiff's reputation in the eyes of a reasonable person, as they associated CUPW with terrorism, with Hamas, and alleged that CUPW was partnered with hate groups: *Color Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97, at p. 106 (C.A.), leave to appeal refused, [1998] S.C.C.A. No. 170. In fact, Mr. Benlolo noted a difference between support for the Palestinian cause and support for a terrorist organization such as Hamas. The trial judge found that the

“sting of the defamatory words used” was in the “association [of CUPW] with terrorism”: *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at paras. 107-8.

[30] Moreover, the trial judge found there was no evidence that CUPW representatives knowingly marched with Hamas supporters, that CUPW supports Hamas, that mail carriers could be terrorist sympathizers, or that CUPW willingly flew its flag next to one associated with Hamas. Notably, none of the CUPW materials express support for Hamas; rather, they oppose violence. As such, the trial judge found both the statements made on air on “The Source” and the publication in the *Toronto Sun* to be defamatory.

[31] On this appeal, the respondents do not challenge the trial judge’s conclusion that the remarks were defamatory, and that the defence of truth or justification failed. The issues on this appeal concern the trial judge’s treatment of the defences of fair comment, responsible communication, and statutory privilege.

C. Messrs. Benlolo and Agar’s Defence of Fair Comment

[32] The respondents bear the onus of establishing the defences available to them including the fair comment defence. To succeed, they must establish that the comments are:

- i. on a matter of public interest;
- ii. words a reasonable person would recognize as comments or opinion based on facts;

- iii. the underlying facts must be disclosed or otherwise known; and
- iv. be opinions a reasonable person could honestly hold on the proven facts.

WIC Radio, at para. 28.

i. This was a matter of public interest

[33] The parties agree that the comments made were about a matter of public interest.

ii. A reasonable person would recognize the words as comments or opinion based on facts, not statements of fact

[34] The parties also agree that the trial judge correctly articulated the legal test for distinguishing comment from fact: namely, whether a reasonable person would recognize the words used as comment or opinion based on facts, rather than statements of fact: *WIC Radio*, at paras. 27-28.

[35] CUPW submits, however, that the trial judge erred in applying the test because:

- a) The trial judge was required to but did not review each comment and assess whether the remarks were said with sufficient clarity that an objective person would recognize them as comment and not fact; and

b) The trial judge erred in considering “primarily subjective evidence” from Messrs. Agar and Benlolo and their editor rather than assessing the statements objectively.

a. The trial judge was not required to analyze each remark separately

[36] The trial judge did not analyze each remark separately and was not required to do so.

[37] He followed the process set out in the Supreme Court’s decision in *WIC Radio*, at para. 26, that is, rather than review each remark separately, he sought “to examine whether the words used may, in pith and substance, be properly construed as comment” (emphasis added).

[38] A comment includes “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof”: *WIC Radio*, at para. 26, referring to *Ross v. Beutel*, 2001 NBCA 62, 201 D.L.R. (4th) 75, at para. 56.

[39] In *WIC*, the defendant’s overarching allegation was that the plaintiff “would condone violence toward gay people”. This was found to be comment not fact. The court emphasized that the defendant’s statements “would have been understood” as opinions by listeners, given the defendant’s role as a radio personality known for expressing his views on a wide range of subjects: *WIC Radio*, at paras. 27, 31. Similarly, in *Hansman*, at para. 117, the court held that the defence of fair comment

should not be analyzed “at a troubling level of technicality” and consideration should be given to the context in which the remarks were made.

[40] “[T]he notion of ‘comment’ is generously interpreted”, the analysis is “highly contextual” and there is a “low threshold” for what constitutes comment: *Solmar Inc. v. Hall*, 2026 ONCA 367, quoting *Hansman v. Neufeld*, 2023 SCC 14, [2023] 1 S.C.R. 519, at para. 109. This approach recognizes that “[p]ublic controversy can be a rough trade, and the law needs to accommodate its requirements”: *WIC Radio*, at paras. 15, 30.

[41] In this case, after outlining each of the remarks in issue, the trial judge concluded that in essence, the remarks were that “CUPW and its members were terrorist sympathizers, and that CUPW supports Hamas.”

[42] In deciding whether a reasonable person would recognize the words as comments or opinions based on facts rather than statements of fact, the trial judge reviewed the underlying factual context, that is, CUPW’s history of activism. He noted that:

- a) CUPW had previously attracted public criticism, including in a 2020 *National Post* article entitled “CUPW’s radical policies and anti-Israel bigotry are a disgrace to letter carriers”;
- b) CUPW’s policies on “Peace and Disarmament” and “Palestine” were passed at CUPW’s 23rd Triannual National Convention in 2008 and that several

CUPW members expressed their opposition to the policies for aligning with “what Hamas represents”;

- c) CUPW chose to send delegates to the “World Social Forum – Free Palestine” which was the subject of criticism in the House of Commons due to the conference’s association with the Popular Front for the Liberation of Palestine, a designated terrorist organization;
- d) CUPW had an association with George Galloway’s Canadian speaking tour, which attracted media attention due to his alleged support of Hamas;
- e) While CUPW has criticized terrorism, violence, war, and suicide bombings generally, it had never passed a resolution criticizing Hamas specifically for its role in promoting violence; and
- f) CUPW had been invited but elected not to address the allegation that CUPW were terrorist sympathisers and supported Hamas, which “left the door open” for the respondents to believe the union supported a terrorist organization.

[43] The trial judge concluded that Messrs. Agar and Benlolo expressed their “statement of opinion about the facts”: *Ross*, at para. 58; *WIC Radio*, at para. 27. Their statements of opinion about the facts, were that CUPW supported Hamas.

[44] I see no error in the trial judge’s decision to assess whether the remarks were comments not statements of fact by assessing the pith and substance of the remarks and reviewing the underlying evidentiary context.

b. The trial judge did not focus only on Messrs. Agar and Benlolo's evidence

[45] Nor do I see any error in the trial judge's decision to consider subjective evidence from Messrs. Agar and Benlolo and their editor.

[46] The trial judge's analysis was not based solely on "subjective evidence" from Messrs. Agar and Benlolo and their editor. He also relied on the evidence of CUPW's own witness, Mr. Denley who, when asked about the controversy at the 2008 convention, replied that whether CUPW supported terrorism was a matter of "democratically expressed opinion" that a union member could hold. Further, as noted above, the trial judge considered CUPW's refusal to answer questions regarding its alleged support for Hamas and how this refusal may have "left the door open" for the objective observer to draw the inferences drawn by Messrs. Agar and Benlolo.

[47] The trial judge considered what it meant to "support terrorism", reviewed the evidence, and concluded that the respondents formed an opinion that CUPW supported terrorism based upon the above facts. This, along with other evidence set out above, led him to conclude that a reasonable person would recognize the words used as comment or opinion based on facts, rather than statements of fact.

[48] The trial judge's finding that the impugned statements constitute expressions of opinion, not statements of fact, is entitled to deference. I would dismiss this ground of appeal.

iii. The underlying facts must be disclosed or otherwise known

[49] The facts underlying an opinion must either be set out, or commonly known, to enable the audience to evaluate the opinion and determine whether it is fair: *Neufeld v. Bondar*, 2025 BCCA 51, at paras. 63-67; *WIC Radio*, at para. 34; *Hansman*, at para. 99.

[50] However, while “[t]he expression must relate to the facts on which it is based ... the comment need not be a reasonable or proportionate response”: *Hansman*, at para. 100. What is important is that the facts be sufficiently stated or otherwise known that listeners or readers can make up their own minds on the merits of what is said: *WIC Radio*, at para. 31; *Hansman*, at para. 102; *Mainstream Canada v. Staniford*, 2013 BCCA 341, 364 D.L.R. (4th) 252, at paras. 36-38, leave to appeal refused, [2013] S.C.C.A. No. 372.

[51] CUPW submits that the trial judge erred by failing to apply the requirement that the facts underlying the comment or opinion be disclosed or otherwise known to the audience. CUPW claims that if he had, it would have been apparent that the remarks lack sufficient factual foundation to qualify as comment.

[52] I do not agree with this submission. The trial judge recognized that, “So long as facts are sufficiently stated or otherwise known, the defence of fair comment will avail.” Thereafter, contrary to CUPW’s submission, the trial judge excerpted sections of Mr. Agar’s column which included facts forming the basis of his opinion, including the fact that the CUPW statement provided by Ms. Ahmad did not

condemn Hamas, CUPW's policy on Palestine, and the debates at the April 2008 CUPW convention.

[53] The trial judge also noted that other relevant facts would have been known to the audience given "CUPW's longstanding and very public history of activism in relation to Gaza". In particular, "press releases, verbatim transcript of proceedings, attendance at the Montreal conference on boycott, divestment and sanctions, and attendance at the World Social Forum in Brazil."

[54] The trial judge concluded that there was a sufficient "factual substratum for the opinions expressed by the defendants" that CUPW supported Hamas while noting that the "[c]omment did not have to be reasonable".

[55] The trial judge correctly recognized that the fair comment defence extends even to opinions that are "farfetched or extreme", provided they are grounded in stated or otherwise known facts. He articulated those underlying facts and concluded that, "to use the terminology adopted in *WIC Radio*, the necessary factual substratum for the opinions expressed by the defendants has been adequately demonstrated."

[56] I would therefore dismiss this ground of appeal.

iv. Seen objectively, a person could honestly express the opinion on the proven facts

[57] CUPW argues that the trial judge erred by focusing on whether the respondents subjectively believed the opinions they expressed, rather than whether those opinions were capable of being honestly held by an objective person.

[58] A defendant needs only demonstrate that a person *could* honestly hold that opinion on the proven facts: *WIC Radio*, at para. 40; *Canadian Union of Postal Workers v. B'nai B'rith*, 2021 ONCA 529, 460 D.L.R. (4th) 245, at paras. 5-9.

[59] Evidence that the respondents genuinely and honestly believed the opinion they expressed is relevant as it may support the conclusion that the objective person could believe the opinion expressed: *WIC Radio*, at paras. 60-62.

[60] The trial judge found as a fact that Messrs. Agar and Benlolo “have a history of being critical of CUPW’s activism, including aspects of its policies and its activities in support of Palestine. They contrast CUPW’s clear and oft-repeated criticisms of Israel with its lack of direct criticism of Hamas.”

[61] He noted Mr. Benlolo’s unchallenged evidence that the statements he made during the broadcast were his honestly held opinions (Mr. Benlolo was not cross-examined on this point). He also noted that CUPW’s own witness, when asked about the controversy at the 2008 CUPW convention, replied that whether CUPW supported terrorism was a matter of “democratically expressed opinion”.

[62] Finally, he noted that as long as a person could honestly express the opinion on the proven facts, the comments need not be objectively fair as, “[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones”: *WIC Radio*, at paras. 4, 49-51.

[63] I see no error in the trial judge’s reasoning or his conclusion that a person could honestly believe that CUPW supported terrorism based on the information available to Messrs. Agar and Benlolo, including CUPW’s decision not to respond to the question of whether it supported Hamas.

v. Rejection of the allegation of malice

[64] The trial judge concluded that his finding that Messrs. Agar and Benlolo could honestly hold those beliefs was “a sufficient response to the plaintiff’s allegation of malice.” In so doing he relied on *Hansman*, at para. 115, where the court held that a “finding of subjective honest belief negates the possibility of finding malice”.

[65] Moreover, the trial judge’s finding that there was no malice was supported by Mr. Benlolo’s unchallenged evidence that the statements he made during the broadcast were his honestly held opinions. Messrs. Agar and Benlolo’s state of mind was a relevant consideration, as “[m]alice may be established by showing that the defendant spoke dishonestly”: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 145.

[66] In any event, the trial judge did not treat the finding of honest belief as dispositive of the issue. He recognized that a finding of malice may have been more readily available if the broadcast and publication had proceeded “in the face of express disavowal by CUPW” of its support for Hamas but “that is not what happened”. He concluded that a finding of malice, which “requires a degree of spite or ill-will”, was not “established on the evidence.”

[67] As each of the required factors was satisfied, I disagree with CUPW’s submission that the defence of fair comment must fail. This is sufficient to dismiss the appeal. I will therefore only briefly address the defence of responsible communication and statutory privilege.

D. The Corporate Defendants Satisfied the Defence of Responsible Communication

[68] CUPW submits that the trial judge failed to assess all relevant factors before deciding that the fair communication defence applied. The essential elements of the defence of fair communication are that:

- i. the publication is on a matter of public interest; and
- ii. the publication was responsible, as in the respondents were diligent in trying to address the allegations and sought to verify them.

Torstar, at p. 683; *B’nai B’rith*, at para. 27.

[69] Additionally, a finding of malice defeats this defence, as someone “who has acted with malice in publishing defamatory allegations has by definition not acted responsibly”: *Torstar*, at p. 694.

[70] The responsible communication defence only applies to statements of fact published in the public interest and not to matters of opinion: *Torstar*, at pp. 659-60; *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689, 143 O.R. (3d) 54, at para. 41. In *Armstrong*, this court emphasized that a publisher's obligation to verify information relates to the underlying facts being reported, not to an individual's opinion or characterization of those facts.

[71] As the trial judge explained, the respondents reached out to CUPW for a comment on “what had been observed at the [d]emonstration”. He concluded that “CUPW had the opportunity to challenge that premise and any factual basis for it, but did not take it.”

[72] CUPW claims the respondents did nothing more than vaguely reference some fact checking before publication. It submits that their investigation fell short of the diligence required to establish the defence of responsible communication: *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation*, 2021 ONCA 26, at para. 57, leave to appeal refused, [2021] S.C.C.A. No. 87.

[73] In my view, the corporate respondents made out the defence of responsible communication. They fact-checked that the demonstration had taken place, the CUPW banner was indeed displayed at the demonstration, and the Hamas flag was flown near the CUPW banner and CUPW demonstrators. Moreover, the respondents gave CUPW the opportunity to provide a written statement denying that they supported terrorism or to appear on the program to present CUPW's side of the story, which CUPW elected not to do.

[74] The trial judge recognized that some of CUPW's criticisms of the facts presented by the respondents were valid, that both Messrs. Agar and Benlolo "had an angle", and that Mr. Benlolo "acted with a degree of relish" in covering the demonstration. However, his earlier finding that Messrs. Agar and Benlolo had an honest belief in their comments was sufficient to negate the allegation of malice.

[75] I therefore see no basis to challenge the trial judge's conclusion.

E. Statutory Privilege

[76] Nor do I see any error in the trial judge's decision to apply the defence of statutory privilege to the basic facts contained in the broadcast and column.

[77] Section 3(2) of the *Libel and Slander Act* provides that "a fair and accurate report ... in a broadcast of the proceedings of a meeting lawfully held ... and for the furtherance of discussions of any matter of public concern ... is privileged."

[78] The trial judge accepted that the broadcast and column fairly and accurately reported on the demonstration, CUPW's involvement, and the Hamas flag flown near the CUPW demonstrators. Deference is owed to these findings of fact.

F. Hindsight Bias

[79] Lastly, CUPW claims there is a reasonable apprehension that the trial judge was biased.

[80] I see no merit to this allegation based on the few cursory references to the fact that the problems in the Middle East are longstanding and continuing. In my view, these references cannot reasonably be read as hindsight bias or to have otherwise influenced his decision on the merits.

CONCLUSION

[81] For the above reasons, I agree with the trial judge that, although it is agreed that the remarks were defamatory, they were fair comment and/or responsible communication subject to statutory privilege. As such, I would dismiss the appeal.

[82] On the agreement of all parties, each of the two sets of respondents is entitled to the sum of \$50,000 in partial indemnity costs, all inclusive, payable within 90 days.

Released: August 5, 2026 "D.M.P."

"Thorburn J.A."

"I agree. David M. Paciocco J.A."

"I agree. J. George J.A."