CITATION: Dosman v. Wilfrid Laurier University Graduate Students' Association, 2018, ONSC 2075
COURT FILE NO.: C-253-17
DATE: 2018/03/29

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Sandor Dosman and Kokken Village Café Inc. Plaintiffs	Andrew Mercer - Counsel for the Plaintiffs
– and –	
The Wilfrid Laurier University Graduate Students' Association Inc., Samantha Deeming and Wilfred Laurier University Defendants	Jessica DiFederico & Farhad Shekib - Counsel for the Defendant
	HEARD: March 26, 2018

THE HONOURABLE JUSTICE JAMES W. SLOAN

REASONS FOR JUDGMENT

[1] The Court was informed that the action against Wilfred Laurier University ("WLU") has been dismissed.

[2] This motion is brought by The Wilfrid Laurier University Graduate Students' Association Inc. ("GSA") and Samantha Deeming, seeking a dismissal of the plaintiffs' claims for libel and slander against them, pursuant to section 137.1 of the *Courts of Justice Act*.

[3] The plaintiff, Sandor Dosman ("Dosman"), owned and operated the Veritas Café on the WLU campus.

[4] The GSA is a not-for-profit corporation.

[5] At all material times, Samantha Deeming ("Deeming") was the president and Ellen Menage ("Menage") was the executive director and COO of the GSA.

[6] In May 2012, the GSA entered into a Service Agreement ("Agreement") with the plaintiffs, to have them operate the GSA's on-campus student Café for graduate students.

[7] On November 22, 2016, Dosman posted an ad looking for a new employee. It read in part that he needed to hire, "a new slave (full-time staff member) to boss (mentor) around at the Veritas Café."

[8] On December 9, 2016, an anonymous person tweeted the University via Twitter writing:

> "@ Laurier when you're a university which promotes education and equality and your on campus café uses the word "slave" in the job ad..."

[9] On December 12, 2016, the GSA terminated the Agreement, relying on the agreement's Materially Detrimental Clause. The GSA considered the use of the word "slave" in Dosman's job advertisement inappropriate and offensive.

[10] The ad, which included the logo for both the Café and the University read:

> I need a new slave (full-time staff member) to boss (mentor) around at Veritas Café! We are an independent Café (yah me) located on campus at Wilfrid Laurier University (parking sucks). We sell wake-up juice (coffee, espresso drinks), confidence booster (beer), dancing liquid (alcoholic drinks), life fuel (paninis, wraps, soups, salads and desserts)! This Café position is mainly Mon-Fri (No way!) But sometimes weekends ☹ but usually not...but maybe. But really, we are closed Sat and Sun (unless we are open). SmartServe is a must (or shortly after if you get the gig). Food safety certificate would help your cause to (we try not to

> kill our customers). We also operate a food truck (so man buns and tattoos are ok). But the truck is shut down for the winter so you will have time to grow that man bun or get inked (I will not hold it against you if you don't). Cash handling is part of the job (but mostly debit and credit these days! Ugh! Damn fees). If you know how to make those fancy latte drinks will be almost a shoe in (I suck at them). Sound like you could fit in here? Send me your life story (resmue) to info@kokken.ca attention "the best boss in the world".

[11] In June 2015, prior to the ad being placed, an incident occurred in the Café involving a black student. When the student asked why the Café was playing country music, Dosman allegedly responded that he was not going to play "your people's music" which has swearing and people wearing their pants around their knees.

[12] It is the defendants' position that after this incident, Menage spoke with Dosman explaining that his behaviour was not acceptable, to which Dosman replied he was only joking. Menage asked Dosman to arrange for sensitivity training for himself and the Café staff. Dosman never did arrange for the sensitivity training.

[13] It is the plaintiff's position, that when Menage advised Mr. Dosman about the above incident, she did not say it was in reference to Dosman's own conduct, and she provided no particulars in terms of the nature of the incident, time of the incident or individuals involved.

[14] It is the plaintiff's position that he followed up a few days later with Menage and was advised by her that there was no new information that she could provide to him with respect to the alleged incident. When the plaintiff followed up a couple of weeks later he was advised that it was a "non-issue" and that he should not concern himself with it and further.

[15] In addition, the plaintiff denies he was ever requested to engage in sensitivity training and if he had been asked, he would have taken the training.

[16] It is the plaintiff's position that the Vertitas Café has an unwritten policy to disallow stations that play music with explicit lyrics. He states that he did have an

employee who would put on stations with explicit music notwithstanding the policy and he does not know whether the alleged incident was in relation to that employee, however Dosman denies ever referring to any patron's music as "her people's music."

[17] In May 2016, Menage was visiting the Café and Dosman's wife complemented her on her new very short hairstyle. Dosman's wife told her that if she ever got a similar haircut Dosman would call her "a dyke". Dosman, who overheard this comment, laughed and told his wife to be quiet or she would get him "in trouble" again.

[18] The plaintiff denies having ever referred to anyone, including his wife as a "dyke".

[19] The termination of the Agreement attracted significant media coverage and vigorous public debate.

[20] On December 14, 2016 the GSA made its first statement as follows:

> On Dec. 12, the WLUGSA [Wilfrid Laurier University Graduate Students' Association] terminated its third-party contract with the provider who serviced the Veritas Café. We invoked clause 3.2.3.3 in our contract, which states that: "conduct on the part of the Service Provider that is materially detrimental to the Business or would injure the reputation of the WLUGSA as determined by the sole discretion of the WLUGSA" shall be grounds for immediate termination. Veritas Café will be closed while we consider how best to move forward. We understand the community could be impacted by this closure. However, the WLUGSA remains committed to providing services that align with Laurier community values and we will continue to work to do so in a proactive manner.

[21] On December 15, 2016, CTV television network interviewed the plaintiff, but GSA declined the interview request.

[22] On December 16, 2016, articles were published in the National Post, The Toronto Star and Waterloo Region Record, while newscasts were aired on CTV and CBC.

[23] In addition to the media coverage, the termination generated a great deal of public interest and commentary.

[24] In particular, a WLU student started a website and petition aimed at having the termination overturned. One of the university's professors penned an open letter in support of the petition which advised the GSA to run his decisions by "actual adults" so everyone could be spared the negative outcomes caused by "spoiled children" who are "given too much freedom of choice".

[25] In addition, the GSA faced criticism from a past president who was quoted in the campus newspaper, to the effect that he was "disappointed and embarrassed" by the GSA who had, in his view, overreacted.

[26] Although much of the public commentary was critical of the GSA's decision, there were some supporters, of note a WLU alumnus and CFL player Ese Mrabure-Ajufo.

[27] Thousands of public comments were left on media articles, social media sites and in emails to the GSA or Deeming directly. Several of these comments asked for a response from the GSA to provide more information as to why the Agreement was terminated.

[28] Some of the comments received via email and social media were personal attacks and threats to the GSA student leaders and in particular Deeming.

[29] After approximately one week, it appeared to the defendants that the media coverage and public commentary was one-sided, since only the plaintiff was telling his version of events.

[30] The plaintiff informed the National Post that he had not had any prior issues with the GSA and that their relationship was "100 percent positive". He told the Waterloo Regional Record that he had not received any prior warnings and was never advised that he had to take sensitivity training.

[31] On December 19, 2016, the GSA posted its second statement on its website:

> On Monday, December 12th at 3:30 pm, we terminated our service provision contract with Veritas Café.

> To this point we have resisted making any formal comments at the advice of counsel. However, given the direct personal threats towards our student leaders, we feel the need for a statement.
>
> Rest assured that in any employment or service provision contract, we would not sever the relationship without there having been clear opportunities for training, education and personal growth throughout the duration of the contract.
>
> We cannot discuss contractual and behavioural matters or refute accusations being made in the manner in which we would like. We honour the confidentiality of all members of our community who have been affected over the course of our service provision contract.
>
> The Veritas Café staff continued to work their allotted hours last week and this week we remain diligent in our efforts to reopen the café.

[32] In January 2017, the Veritas Café reopened under new management.

[33] The WLU student newspaper, The Cord, covered the reopening and reported statements from the Café's new operator and Deeming, which the plaintiffs allege to be defamatory. The statements were:

> Deeming also explained that the GSA will now be running Veritas as a social enterprise. "We are not looking at the bottom line of profits and any profits that we do make, go right back into the graduate student community. We are looking for different ways that we can spend those funds, in terms of scholarships, bursaries, providing food programs for graduate students specifically through Veritas … as well as GSA initiative … providing staff with living wages, again because we're not looking at the bottom line of profit."
>
> [...]
>
> Another factor that Deeming clarified was that there were prior issues with Dosman himself before he posted the ad. While the majority of the community's response to his termination has been that the decision was made too quickly and without a second chance, Deeming explained that second chances had already been made.

When asked if there was a reason for Dosman receiving more than just a slap on the wrist, Deeming said, "Yes. And then what I can say is that we protect the confidentiality of all people that we were involved and that is about all I can say towards that."

Deeming also talked about how this issue will start a larger conversation about tolerance and inclusivity on Laurier's campus.

"A lot of our members are looking for us to make a stance on social justice and protecting the rights of minorities and underrepresented groups. Not saying that that is a reason why this decision was made, in any means, but we look at the larger picture as well and that community feel that everyone is equal on campus. A joke, to someone, might have hurt someone else and that does not make it right, Deeming said.

[34] The issues are as follows:

(1) Did the statements made, pertain to matters of public interest?

(2) If the statements did pertain to matters of public interest, do the following apply:

i. have the plaintiffs discharged their onus that there are grounds to believe that their claim has substantial merit;

ii. have the plaintiffs discharged their onus of showing that there are grounds to believe that the defendants have no valid defence to the proceeding; and

iii. is the harm suffered by the plaintiffs sufficiently serious, such that the public interest in allowing the claim to continue, outweighs public interest in protecting the publication.

Position of the GSA (Moving Party)

Were the Statements Made a Matter of Public Interest?

[35] The defendants submit that the communication should objectively and reasonably be found to relate to a matter of public interest in its pith and substance.

[36] They rely in part on the cases of *Able Translations Ltd. v. Express International Translations Inc.* 2016 ONSC 6785, and *Grant v. Torstar Corp.* 2009 SCC 61.

[37] In the *Able* case, the court stated at paragraphs 24 and 25:

> [24] It is the subject matter of the communication, determined objectively and reasonably, that is the object of the inquiry in s. 137.1(3) of the CJA and not the motives of the speaker or writer. The objects of s. 137.1(3) of the CJA are set forth in s. 137.1(1) and include to "encourage individuals to express themselves on matters of public interest", "to promote broad participation in debates on matters of public interest" among others.
>
> [25] Mr. Vitu is not disentitled from holding opinions or expressing them simply because they involve a competitor directly or indirectly. Competitors are not disentitled from having opinions on matters of public interest or from expressing them. If the subject matter of the communication is objectively and reasonably found to relate to a matter of public interest in its pith and substance, the defendants have met their evidentiary burden. In such cases, the issue of motive arises in relation to the second phase of the inquiry under s, 137.1(4) of the CJA and in particular s. 137.1(4)(b). There is no reason to fear that wolves in sheep's clothing will pass by undetected. The determination of the true subject matter of the expression is to be made objectively and reasonably. Where the pith and substance of the matter is a defamatory personal attack thinly veiled as a discussion of matters of public interest, the court has all the tools it requires to determine the two nature of the expression and rule accordingly.

[38] In the *Grant* case, the court stated at paragraphs 101 to 105:

> [101] In determining whether a publication is on a matter of public interest, the judge must consider the subject matter of the publication as a whole. The defamatory statement should not be scrutinized in isolation. The judge's role at this point is to determine whether the subject matter of the communication as a whole is one of public interest. If it is, and if any of the evidence is legally capable of supporting the defence, as I will explain below, the judge should put the case to the jury for the ultimate determination of responsibility.

[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 the 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... 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 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 others; then it is a matter of public interest in 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 of which considerable public notoriety or controversy has been 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, ... 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.

[39] Based on the facts of this case, and the above cases, the defendants argue that it is clear the statements were a matter of public interest given media scrutiny, as well as thousands of online comments and emails from concerned citizens, many of whom were members or alumni of the University community.

[40] These citizens were interested in the reasons for the termination of the plaintiff and whether those making the decision had dealt fairly with the plaintiff, the closing of the café, and the reopening of the café under new management.

[41] The defendants submit, that if the court finds the subject comments were made about a matter of public interest, the burden of proof then shifts to the plaintiff. For this statement, they rely in part on paragraphs 45 and 46 of the *Able* decision:

> [45] In my view, when the Legislature required the responding party to satisfy the judge that there were "grounds to believe" (both that the claim has "substantial" merit and that the defences raised have none), the standard implied thereby is that of "reasonable grounds to believe".
>
> [46] The Supreme Court of Canada interpreted the phrase "reasonable grounds to believe" in the context of s. 19(1)(j) of the Immigration Act ... to require "something more than mere suspicion, but less than the standard applicable to civil matters of proof on the balance of probabilities": Mugesera v. Canada (Minister of Citizenship and Immigration), [2005] 2 SCR 100 ... at para. 114. The determination requires that "there is an objective basis for the belief which is based on compelling and credible information".

Does the Claim Have Substantial Merit?

December 14, 2016 Statement (1st statement)

[42] The defendants' December 14, 2016 statement was not defamatory in that it did not lower the reputation of the plaintiff, in the eyes of a reasonable person.

[43] The defendants submit that the contrary was true and that the majority of comments from the public were supportive of the plaintiff, with many exposing that he should not have been terminated, and at least one student started an online petition to have him reinstated.

[44] The plaintiff himself told the CBC that he was "shocked [and] overwhelmed" with the messages of support which he was receiving.

December 19, 2016 Statement (2nd statement)

[45] For reasons similar to the defendants' submissions on the first statement, they submit that the second statement did not tend to lower the plaintiff's reputation in the eyes of a reasonable person.

[46] Following the second statement, the plaintiff continued to receive support from a majority of public commentary. One day after the second statement, the plaintiff told the Waterloo Regional Record that he had been overwhelmed with job offers and messages of support.

[47] The defendants submit that the only evidence from the plaintiff about defamation is set out at paragraph 22 of his affidavit dated February 28, 2018, in which he baldly states that he is unable to find employment and that during interviews it becomes clear to him, that potential employers are concerned about the conduct alleged in "the statements made by the GSA defendants".

January 2017 - Article in The Cord (3rd statement)

[48] The defendants submit that the plaintiff takes issue with the first and last paragraph of the article from The Cord.

[49] The defendants submit that the first paragraph is simply an explanation of how the GSA will be running the café in the future and does not mention the plaintiff by name or refer to him in any way.

[50] The defendants submit that the last paragraph is similar, in that it makes a general statement of what the GSA stands for. The paragraph does not mention the plaintiff by name or refer to him in any way, in fact it specifically says in the last paragraph that, Deeming is "not saying that that is a reason why the decision was made". This line is in reference to her general statement of what the GSA stands for.

Are There Valid Defences to the Proceeding?

[51] The defendants submit they have valid defences, including justification, qualified privilege, and fair comment.

[52] The first statement is protected by the defence of justification because the words used by the defendants are substantially true. The defendants simply advised the University community that the café was closed, and that the plaintiff's contract had been terminated using the Material Detrimental Clause for so doing.

[53] The defences of justification and qualified privilege both apply to the second statement. There were opportunities for training, education and personal growth. There is objective evidence that on two prior occasions the plaintiff made comments which were inappropriate and unprofessional.

[54] On one occasion, a student made a formal complaint and the plaintiff was talked to about the complaint. Although the parties do not agree on the content of the discussion, there is at least mildly compelling evidence in the form of a June 30, 2015 email, which shows Menage received permission from the Diversity and Equity Office to disclose further particulars to the plaintiff about the formal complaint.

[55] The defendants submit, in light of this email, that Dosman's evidence that he was told it was a non-issue and that he had not been asked to arrange for sensitivity training is not credible. Therefore, taking all his evidence together, the plaintiff cannot establish that the defence of justification for the second statement is not valid.

[56] Qualified privilege protects statements if they serve "the common convenience and welfare of society". Claims of qualified privilege are to be assessed on an objective standard and in the context of the particular circumstances.

[57] In this case there was a pre-existing relationship between the GSA and members of the University community and the statement was made on the GSA website with the intention of communicating to the University community. The second statement was not made to media outlets although they ultimately reported on it.

[58] The GSA had an interest in and duty to comment and provide information to the members of the University community regarding the closure of the café, the reasons for termination and the plan going forward. The members of the University had an interest in receiving this information.

[59] In making its second statement on its website, the GSA also had an interest in and duty to communicate information, given the personal attacks and threats which were being directed at the GSA student leaders, both from the University and from beyond the University. The interest in making the second statement extended to individuals who are part of the University community and those who are not, but held views and were commenting on the matter nonetheless. These individuals had a corresponding interest in receiving the information.

[60] The third statement is protected by the defences of justification, qualified privilege and fair comment.

[61] The first paragraph of the third statement discusses plans for the café to be run as a social enterprise rather than a for-profit business. The information provided about the future plans for the café were true and accurate.

[62] The next two paragraphs referred to prior issues with the plaintiff's conduct and they are protected by the defences of justification and qualified privilege, for the same reasons previously discussed with respect to the second statement.

[63] The final paragraph of the third statement is protected by both justification and fair comment. The first two sentences about taking a stand and social justice and advancing a quality on campus are true and accurate.

[64] The final sentence in the third statement is a fact and is true, alternatively if not construed as a fact, then the defence of fair comment applies.

[65] The defence of fair comment, requires that the comment be on a matter of public interest, based on fact, recognizable as a comment, the comment must satisfy the objective test – that a person could honestly express the opinion based on the proved facts and the defence may be rebutted by subjective malice.

[66] The defendant submits that there is no evidence of malice.

Does a Public Interest in Protecting the Publication Outweigh the Plaintiff's Interest in Continuing the Litigation?

[67] The defendant submits that the plaintiff's claim of not being able to find employment is intentionally misleading because he has always been an entrepreneur working for himself. The plaintiff makes no mention of the food truck or any other entrepreneurial endeavors he may have tried. He has not detailed what his losses are, compared to prior years.

[68] He has not given a list of who he interviewed with for a job and why in each case he believed the reason for his not getting the job was because of the potential employers concern about his alleged conduct.

[69] The court in *Abel* stated at paragraph 91:

> [91] Bare statements of names of allegedly lost clients have been provided in the plaintiff's affidavit without evidence of the volume of business done with those clients in prior periods nor any explanation as to why, assuming any actual loss of business, the loss of such clients can be attributable to the statements made by the defendant as opposed to some other cause. The causal link to Mr. Vitu's comments is not at all self-evident and the bare statement of opinion from the plaintiff that it is so

> without any reasoned factual foundation to justify the opinion can be given no weight. The same criticism applies to the bare allegation of the 30% loss of revenue without any documentary backup and without any basis of attribution to the alleged loss to comments of Mr.Vitu.

[70] In addition, Dosman's claim of not being able to get employment is diametrically opposed to the evidence that he told the Waterloo Regional Record, when he said that he was overwhelmed with job offers.

[71] In balancing any harm suffered by the plaintiff against the public interest in protecting a publication, the court may have regard to where the publication falls on the spectrum from reasoned, to considered debate, to unreasoned hatred.

[72] The defendants submit that their publication was made in the attempt to provide information to an interested group on a matter of public importance and that the statements were considered and reasonable, with no evidence whatsoever of hatred or malice.

[73] Initially the defendants made efforts to refrain from commenting on a matter, however, based on the hundreds of comments being received, and in an attempt to stop personal threats/attacks on its student leaders, the GSA issued comments which were measured and careful.

[74] In partial support of their position the defendants rely on paragraphs 82, 83 and 98, where the court in *Able* stated:

> [82] The burden of satisfying s. 137.1(4)(b) of the CJA rest squarely with the responding party plaintiff. In the first stage of the analysis, I am required to consider the harm suffered by the plaintiff or likely to be suffered that can reasonably be attributed to the expression in question. In the second stage, I must consider the severity of that harm when weighing the public interest in affording redress for the harm against the public interest in protecting the communication that caused it.
>
> [83] While s. 137.1(4)(b) of the CJA does not carry forward the "grounds to believe" language of s. 137.1(4)(a), the summary nature of the proceeding is such that it cannot be presumed that the legislature intended

> that the plaintiff should be held responsible to prove damages to the full civil standard of proof. However, at a "low threshold" is clearly not the appropriate test either. In my view, the evidence of damages suffered or likely to be suffered in consequence of the impugned statement must be such that there is credible and compelling evidence of harm that appears reasonably likely to be proved at trial. In assessing that evidence, I must have regard both to the fact that this is the plaintiff's burden of proof but also duly appreciate the practical limitations on the plaintiff in the in a constrained, fast track summary proceeding.
>
> ...
>
> [98] The degree of public interest in protecting a particular communication turns not on a tally of how influential the communication might be or how many may find it important. The degree of public interest in protecting an expression can fairly be measured to some degree at least by a consideration of the quality of the expression. By the term "quality" I refer to whether a particular expression can be placed on a spectrum that stretches from considered, reasoned debate to unreasoned hatred even if the subject matter is one of public interest. Factors such as hatred, proven malice or gratuitous insults of the serious nature would tilt the balance away from the public interest even if the apparent subject matter itself – the fitness of candidate "X" for office – is clearly itself in relation to a matter of public interest.

Position of the Plaintiffs

[75] Although the parties agree to a great extent on what the law in this area is, the plaintiff does not agree with the defendants' submissions.

Is This a Public Matter?

[76] The plaintiff submits that this is not a public matter and relies on paragraphs 102 and 105 of the *Grant* case which have been previously quoted and in particular paragraph 105.

[77] Because it is not a public matter, the plaintiff submits that s. 137.1(1) of the *Courts of Justice Act* does not apply.

[78] Although conceding that there was interest, the plaintiff submits that this is not a matter of public interest from a legal perspective. He submits that this is a private matter and that this fact is stated by the defendants in their second statement of December 19, 2016, when they state, "We cannot discuss contractual and behavioural matters or refute accusations being made in the manner in which we would like."

[79] Because it is a private matter, the plaintiff submits, pursuant to paragraph 25 of the *Able* case, the defendants cannot get public protection.

The Merits of the Plaintiff's Case

[80] With respect to the issue of the plaintiff's potential damages, the plaintiff submits that he was not cross-examined on the issue of his food truck.

Findings

[81] Dosman's 2012 contract with the GSA was terminated on December 12, 2016, because of three alleged incidents.

First Incident (June 2015)

[82] The first alleged incident involved an allegation by a black student, that when "discussing" the music selection in the café she was told by Dosman that he would not be playing "your people's music" which had swearing and people wearing their pants around their knees. Although Dosman denies the statements attributed to him, the complaining student came forward, and her version of the facts appeared valid to the GSA.

[83] In response to this incident, the procedure employed by the GSA was to have someone from the GSA speak to Dosman, and suggested/advised, that he and his staff should take some sensitivity training. Again Dosman disputes that he was ever asked/advised to take any sensitivity training.

[84] Although the comments attributed to Dosman appear to be racially insensitive, it does not appear that he received any type of a written warning or confirmation about the

incident or, that as a result of the incident he and his staff were to take sensitivity training.

[85] Assuming that Dosman was asked/told to take the sensitivity training, it does not appear that there was any procedure in place, such that the GSA would follow up to confirm whether or not its request/demand had been followed through on.

Second Incident (May 2016)

[86] The second incident appears to involve the use of a slang word referring to someone's sexual orientation.

[87] It appears to be common ground that it was Dosman's wife who used the term during a conversation with Menage. Menage's concern about the comment made by Dosman's wife, was Dosman's facial expression and verbal reaction where he told his wife not to use that term, because it might get him in trouble.

[88] There is no evidence before me that anyone from the GSA discussed their concern with Dosman, or in any way drew his attention to their stated concerns about his lack of "human rights" sensitivity regarding this incident.

[89] This incident does not appear to have jogged the memory of anyone at the GSA, with respect to the first incident and no one inquired into whether or not Dosman and/or his staff had taken any sensitivity training.

[90] Again there did not appear to have been any type of a procedure in place for the GSA to deal with their stated concerns.

Third and Final Incident (November 22, 2016)

[91] This brings us to the third incident which involved the use of the word "slave", in what was obviously meant to be a humorous help wanted ad. In addition to the context in which the word slave was used, the word was immediately defined in the ad itself, as a "full-time staff member".

[92] On the evidence before this court, it appears that the chain reaction, leading exceptionally quickly to the cancellation of the plaintiff's contract, was set in motion by one anonymous Twitter comment dated December 9, 2016.

[93] WLU is a University in a predominantly English-speaking region of Canada, yet whoever made the Twitter comment appears to have focused on only one word to the absolute exclusion of the context in which it was used. Was the word slave used in an insensitive manner? If it was used in an insensitive manner what was the reasonable next step of the GSA?

[94] Without any "rule of law" or procedure being in place to deal with, what the GSA must have concluded was an extremely serious breach of clause 3.2.3.3, the plaintiff's contract was immediately cancelled three days later on December 12, 2016. The GSA, without any type of a hearing whatsoever, deemed in their "sole discretion" that the use of the word "slave" was so inappropriate and offensive that no "punishment" short of cancellation of the plaintiff's business contract (his livelihood) should/could be considered.

[95] However, the issue of whether or not the GSA had a legal right to cancel the contract is not before this court today.

[96] What I must decide is whether or not the comments and publications made by the GSA, are such that they could possibly support claims by the plaintiff against the defendants for libel and slander.

[97] The plaintiff engaged in what appears to have been some media style pre-litigation, that we sometimes see on the news. This occurs where parties to a dispute or their lawyers discuss the case extensively in the media.

[98] This in part set off a fire-storm of electronic commentary, much of it in support of the plaintiff, a good deal of it critical of the GSA's decision, and some of it crossed the line, (perhaps criminally) by personally threatening GSA student leaders.

[99] The GSA made three statements, two were posted to its website on December 14 and December 19, 2016, and one appeared as an article in the student newspaper in January 2017, after The Cord interviewed Deeming, at or shortly after the café reopened.

[100] After the December 14, 2016 GSA posting, the plaintiff continued to give interviews to the television and print media, prompting a second GSA posting to its website.

[101] If this was not already a public matter, I find that the plaintiff by his actions, turned it into a matter of public interest. Initially, the public interest was small and confined to the professors, staff, students and alumni of WLU, however after the plaintiff's interviews with the national media, the "genie was out of the bottle" and the matter took on a life of its own.

[102] Given the media storm, and the GSA's mandate to its members, I find that the GSA had an obligation to keep its members informed, and that in 2016, such communication would logically have been done through its website.

[103] Although someone can always argue by innuendo or otherwise, that a certain article is capable of more than one meaning, I find the GSA's posting of December 14, 2016, to be objective and that it relates essentially to a matter of public interest in both its pith and substance.

[104] Likewise I find, that as the media storm intensified and threats were made against student leaders of the GSA, the GSA again had an obligation to keep their members informed and also to disseminate information to the wider audience of people who were interested.

[105] The article in the student newspaper The Cord, is essentially informational on how the GSA hopes to run the café in the future. Although the plaintiff could argue that because the article states the GSA will be providing staff with a living wage, what they are really saying is that he was not providing his staff with a living wage.

[106] Based on the entire article I do not find that to be an objective interpretation. However, the irony of the GSA's submissions that the court should consider the subject matter of the publication as a whole, in the court's effort to determine the articles meaning, is not lost on the court.

[107] I find the plaintiff's claims that any of the three statements defame him to be extremely tenuous at best.

[108] I find that the defendant's defence of justification, is a good one because their words were measured and substantially true.

[109] Given my previous rulings I do not intend to deal extensively with the balancing procedures of whether the public interest in protecting the publication outweighs the plaintiff's interest in continuing it, except to say that on a summary judgment type motion, a party is obligated to put their best foot forward. The plaintiff has offered almost no proof of his damages.

[110] I therefore dismiss the plaintiff's claim against the defendants for libel and slander.

[111] If the parties are unable to agree on costs, Ms. DiFederico shall forward her **brief** submissions on costs to me by April 6, 2018. Mr. Mercer shall forward his **brief** response to me by April 12, 2018. Ms. DiFederico shall then forward her reply, if any, to me by April 17, 2018. Cost submissions may be sent to my attention by email, care of Kitchener.Superior.Court@ontario.ca

Obiter Dictum

[112] It appears that Dosman's contract was terminated essentially because of the inclusion of the word "slave" in his November 22, 2016 advertisement in which he was looking for a new employee.

[113] The main stated reason for the termination was that the GSA (in its sole discretion) determined that Dosman had breached clause 3.2.3.3 of the contract that allowed him to operate the café on campus.

[114] The GSA looked into the matter after the Director of the University's Diversity and Equity office received an anonymous tweet.

[115] The decision of the GSA was exceedingly swift.

[116] Who made the decision?

[117] Was a decision made by more than one person and if so, was the vote to terminate the contract unanimous? It appears that the decision-makers discussed the matter with the University's Diversity and Equity Office, representatives of the University, student members of the GSA and legal counsel.

[118] If more than one person was involved in making the decision, did any of those people play the role of the "devil's advocate" during the discussion(s)?

[119] Was Dosman ever advised that the GSA would be meeting to discuss cancelling his contract, before the GSA made their decision? It does not appear so.

[120] Was Dosman ever advised, as specifically as possible in writing, what the GSA felt his advertisement conveyed and specifically how the advertisement contravened clause 3.2.3.3.? It does not appear so.

[121] Was Dosman ever requested to appear before whatever person or "tribunal" was considering his fate? It does not appear so.

[122] How does the procedure used by the GSA to conclude that Dosman's contract should be immediately terminated, comply with any principle of fairness?

[123] What criteria did the GSA use to determine, "in its sole discretion," that Dawson's conduct was "materially detrimental to the Business" and/or how his conduct would "injure the reputation of the WLUGSA"?

[124] Was there any procedure in place that the GSA should have followed for this type of situation, and if so, did they follow it? No submissions were made to the court regarding what procedure, if any, was in place or used.

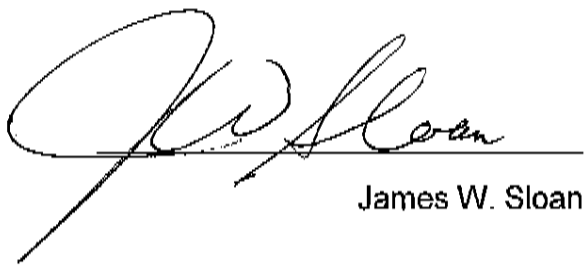
[125] It appears that if there was a procedure, it must be one that does not allow for the affected party to plead his or her case, nor does there appear to be any type of an appeal mechanism, since the court was not made aware of any.

[126] How can a decision, which appears to have been made behind closed doors, without any notice whatsoever having been given to Dosman and without his being allowed to plead his case, do anything but "injure the reputation of the WLUGSA"?

[127] After the decision by the adjudicating tribunal was made, was Dosman ever informed that the tribunal had come to a decision that he had breached the contract? That does not appear to be the case, at least not before he was escorted off campus.

[128] After reaching their decision that Dosman had breached clause 3.2.3.3, was he ever invited to speak to what his punishment should be? That does not appear to be the case.

[129] Did the punishment, if any was warranted, fit the "crime" in terms of severity?



James W. Sloan

Released: March 29, 2018