

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Hansen v. Tilley***,  
2009 BCSC 360

Date: 20090317  
Docket: S064241  
Registry: Vancouver

Between:

**Joey Hansen**

Plaintiff

And

**Kevin Tilley, Derrick Harder and  
Peak Publications Society (c.o.b. "The Peak")**

Defendants

Before: The Honourable Mr. Justice Blair

## **Reasons for Judgment**

Counsel for the Plaintiff

R.A. McConchie

Counsel for the Defendants

D.F. Sutherland  
D. Kripp

Date and Place of Trial/Hearing:

October 27-31,  
November 3 and 5, 2009  
Vancouver, B.C.

[1] The Plaintiff, Joey Hansen, seeks judgment against the defendants, the Peak Publications Society, and the defendant Derrick Harder, asserting that the defendants defamed him in three separate editions of The Peak newspaper. The plaintiff named Kevin Tilley as a defendant, but did not serve him.

[2] Mr. Hansen in 2006 was the financial and services coordinator for the Society of the Douglas Students' Union (the "DSU") which was created as a representative student organization operated by the students at Douglas College with a mandate to promote, direct and administer student affairs. Douglas College is a community college with campuses in New Westminister and Coquitlam.

[3] The Peak newspaper is published once a week in a tabloid-type format by the Peak Publication Society of Simon Fraser University ("SFU") in Burnaby and although it primarily offers material in relation to SFU, its news, features, opinions and arts have a scope beyond SFU's boundaries. It creates between 5,000 and 10,000 copies of each edition of the paper and these are distributed free at the SFU campus and at locations in Vancouver and Surrey. Copies of the newspaper are also available across Canada and worldwide on The Peak's website.

[4] Messrs. Harder and Tilley assumed their respective positions as The Peak's copy editor and news editor in April 2006, having been elected to those posts by what is described as the "collective", which consists of individuals who have been actively involved in writing for and working with The Peak for a period of time. The Peak does not have an editor-in-chief. Messrs. Harder and Tilley both wrote for The Peak prior to their election, but neither attended specific journalism courses nor did

they have extensive editorial or reporting experience. The defendants acknowledge that the three articles which led to Mr. Hansen's action were published by The Peak in its newspaper and on the internet, that the three articles were written by Mr. Tilley as news editor and that prior to their publication they were edited and approved by Mr. Harder as copy editor.

[5] Mr. Hansen, who is now studying law in the United States, was extensively involved in student government activities. Born in 1973, Mr. Hansen attended Douglas College from 1991 to 1993 before transferring to SFU from which he graduated in 1998 with a Bachelor of Arts degree. While at SFU he became involved in SFU's student government and the Canadian Federation of Students (the "CFS"), the latter being an umbrella organization for university and college students across Canada. He initially held a position with the B.C. branch of the CFS before his election as B.C.'s national representative in 1995, and in May 1998 he became the Ottawa-based treasurer for the CFS, a position he occupied until May 2001. In July 2001, the DSU appointed Mr. Hansen as its financial coordinator, a position he held until 2006 when the DSU's executive terminated his employment following concerns about his governance of the DSU's financial affairs. The termination was an untidy affair with an apparent split in both the DSU's executive and its representative committee involving factions for and against Mr. Hansen. The representative committee is the DSU's highest decision-making body.

[6] Concerns with DSU's financial affairs had developed over time but by early 2006 Douglas College, which collects membership fees for the DSU from the college's students, declined to transfer these fees to the DSU until it received reports

from DSU's accountants that DSU's finances conformed to statutory audit requirements.

[7] Accountant Ron Parks, who is recognized in B.C. as a well-known forensic auditor, testified that in March 2006 DSU treasurer Jessica Gojevic contacted him with respect to the DSU retaining him to conduct a forensic audit of the DSU's finances. Mr. Parks testified that Ms. Gojevic informed him that the DSU was interested in obtaining a forensic audit of the Society's financial affairs as it had concerns about certain financial transactions, the withholding of membership fees by Douglas College, and the DSU's cash flow difficulties.

[8] Mr. Parks met with the DSU's representative committee and others, including Mr. Hansen, at a date prior to March 16, 2006 and advised them of his qualifications, the process he proposed to follow in his audit, and the hourly fees he would charge. Mr. Parks testified that the representative committee authorized his hiring and he prepared a retainer letter confirming that he was retained by the DSU to conduct an audit in which he was to review DSU's banking and financial transactions. He described Ms. Gojevic as his liaison with the DSU executive and representative committee.

[9] Mr. Parks testified that soon after commencing his work for the DSU, it became apparent that there were few funds available to do a full forensic audit, which would have involved a complete review of the DSU's financial history, a detailed examination of DSU's financial records, and would have been prepared in contemplation of legal scrutiny. Rather than a forensic audit, he provided a forensic

review which provided an overview of the DSU's finances. Mr. Parks testified that the forensic review found in his April 18, 2006 report to the DSU involved less of a review of DSU's records than would a forensic audit.

[10] Mr. Parks testified that gathering the DSU's financial information proved difficult in the apparent absence of documents, including bank reconciliations, bank statements, cheques, and supporting documents for the cheques. Mr. Parks said that while preparing his review he attended a meeting of the DSU's representative committee at which he described his preliminary findings. Mr. Parks obtained information for his review from various individuals, including Ms. Gojevic, DSU staff, Mr. Hansen and the DSU's regular accountants, who were performing their audit of the DSU's finances while Mr. Parks performed his forensic review. In addition to some impromptu conversations with Mr. Hansen involving the location of certain financial documents, he conducted formal interviews with Mr. Hansen, which included a discussion of the issuing by the DSU of a \$20,000 cheque dated December 6, 2004 payable to Christa Peters, then Mr. Hansen's partner.

[11] Mr. Parks testified that he was informed by the DSU's accountants that the DSU had issued 100 cheques in addition to payroll cheques to Mr. Hansen. Mr. Parks apparently did not discuss the 100 cheques with Mr. Hansen. Mr. Parks testified that on April 19, 2006 he delivered his April 18, 2006 forensic review to the DSU's representative committee and in that report, at p. 8, he included the following statements to which the defendants referred in the articles which led to Mr. Hansen's action:

We note that over one hundred cheques, in addition to payroll cheques, were issued payable to Joey Hansen in the year ended August 31, 2005. We understand the auditors have requested from him documentation adequate to support these expenditures, but he has not yet provided same. We have not quantified the amounts involved, as your auditors are working on this, but regardless of the amounts, we regard this as a serious breach of internal control and accountability, and if Mr. Hansen is unable to produce adequate documentation, a misappropriation of funds.

We found a cheque payable to Christa Peters in the amount of \$20,000 dated December 6, 2004. The amount was repaid to DSU on December 22, 2004. We understand Christa Peters is the partner of Mr. Hansen, who confirmed that to us and stated that it was intended to be a temporary loan for the purpose of making a down-payment on a house. The cheque was signed by Mr. Hansen and Jeremy Gervan, who Mr. Hansen said "approved" the loan. In our view, Mr. Hansen and Mr. Gervan exceeded their authority, and the loan should have been approved, if at all, by the Representative Committee. Notwithstanding the repayment, this is an example of blatant misuse of DSU member funds.

[12] In his report Mr. Parks pointed to a number of apparent flaws, errors and omissions in the DSU's financial affairs and suggested revamping DSU's financial system, including changes to the internal controls and accountability improvements.

[13] The DSU representative committee received Mr. Parks' forensic review on April 19, 2006 at a meeting attended by approximately 12 individuals, including some entitled to vote and some non-voting staff members and liaison personnel. Mr. Parks attended the meeting and summarized the findings in his report. After hearing the summary, the representative committee members in attendance voted to terminate Mr. Hansen's employment. However, it was subsequently determined that the committee lacked the quorum necessary to convene a meeting and the vote to terminate Mr. Hansen was therefore invalid. Mr. Hansen was placed on paid leave

until the DSU terminated his employment in November 2006. Mr. Hansen through his union grieved the dismissal and mediation resulted in a settlement.

[14] In order to put into context Mr. Parks' comments in his forensic review involving Mr. Hansen, the latter's counsel wrote on June 28, 2006 to Mr. Parks advising that the forensic review contained errors both with respect to the number of cheques written to Mr. Hansen in the year ended August 31, 2005 and the \$20,000 cheque payable to Ms. Peters. Mr. Parks responded to counsel's letter by forwarding to the DSU a letter dated July 13, 2006 in which he wrote:

Further to our report of April 18, 2006, we wish to amend certain of our findings as follows.

On page 8 of our report, . . . we referred in the first paragraph to "over one hundred cheques, in addition to payroll cheques, were issued payable to Joey Hansen in the year ended August 31, 2005." This was information we received from your auditors, which they subsequently have amended. They have confirmed that the number of cheques in question was twenty-one, and that to date, despite their requests, they have received no supporting documentation for these cheques. This amendment does not change our conclusion regarding the issues of internal control and accountability.

In the second paragraph . . . we stated that we "found" a cheque payable to Christa Peters in the amount of \$20,000. The word "found" was an unfortunate choice, as we should have stated we were "informed" of the details of the cheque. We recently received a copy of the cheque and note that Joey Hansen did not sign the cheque. We are unable to clearly determine the first signatory, but the second appears to be Jeremy Gervan.

[15] Mr. Parks' amendments to his forensic review followed publication of articles in three editions of The Peak newspaper upon which Mr. Hansen brings this defamation action. The three articles follow from Mr. Parks' April 18, 2006 report, but were published prior to Mr. Parks' amendment of his original report.

[16] The interest of The Peak's staff, in particular Messrs. Harder and Tilley, in the DSU's financial situation developed with the delivery of Mr. Parks' forensic review on April 19, 2006 and resulted in the publication of the articles all under the by-line of news editor Mr. Tilley in the editions of The Peak newspaper dated May 8, May 23 and June 26, 2006 as well as on The Peak's internet site. Mr. Hansen asserts the articles defamed him and impeached his reputation, particularly in his work with student unions, including the Canadian Federation of Students to which he had committed himself for a number of years. Mr. Hansen contends that as a result of The Peak's internet publication, the articles in which he was defamed were spread across Canada, marring his reputation on a national basis.

[17] The defendants submit that they are protected from liability by qualified privilege, the articles being published as true and accurate accounts of Mr. Parks' report as it was presented during the April 19, 2006 meeting. The defendants further submit that the articles are also privileged under the recently enunciated privilege afforded public interest articles prepared by journalists behaving fairly and responsibly in gathering and publishing information in the public interest.

[18] With respect to each of the articles published in the Peak, Mr. Hansen stated in his statement of claim that he was libelled in the May 8, 2006 article by the following:

... the results of a forensic audit showed serious discrepancies in the way money was handled within the organization ...

The forensic audit revealed over 100 unapproved cheques payable to Mr. Hansen, which have yet to be documented or accounted for. Additionally, the auditor found a cheque to Christa Peters, Hansen's

partner, for \$20,000 allegedly for a down-payment on a house. The amount was repaid to the DSU two weeks later.

[19] Mr. Hansen stated in his statement of claim that he was libelled in the May 23, 2006 article by the following:

The College Board of Douglas College has been withholding the DSU's funds since last fall following a scathing financial audit which showed significant discrepancies in internal controls as well as possible fraud and misappropriation of funds by the DSU's Financial Coordinator.

[20] The plaintiff stated in his statement of claim that he was libelled in the June 26, 2006 edition of The Peak by a combination of the cover in which two police officers are drawn, one holding a magnifying glass and the other a notebook beside whom are found the following:

Busted! Police launch investigation on Douglas (College) Students' Union News, page 6.

[21] At page 6 there is the following headline:

Police investigate DSU

Police probe launched after financial mishandlings at Douglas Students' Union

[22] The article which follows under Mr. Tilley's by-line includes the following:

The New Westminster Police have launched an investigation at the Douglas Students' Union into crimes relating to the organization's finances, the DSU has recently confirmed.

The investigation was initiated after an anonymous Douglas College student contacted the police following a forensic auditor's report showing potential fraud and misappropriation of funds.

...

The DSU wouldn't say whether any specific individuals are under investigation, but Joey Hansen, the finance and services coordinator responsible for the union's finances remains on leave since the auditor's report.

Hansen was unavailable for comment.

The report notes a number of specific issues that drew attention to Hansen. In particular a \$20,000 cheque signed by Hansen was made out to Hansen's partner for the purpose of making a down payment on a house. The money, although paid back to the DSU several weeks later, was never approved by the organization.

...

This would not be the first time a high-ranking CFS official has been in the police spotlight.

[23] The defendants do not deny that the articles about which Mr. Hansen complains in his statement of claim appeared in The Peak's May 8, May 23 and June 26 editions as well as The Peak's internet sites. Nor, I find, is there any doubt that Mr. Hansen is the individual referred to in the excerpts from the articles referred to in his statement of claim and which he claims are defamatory. Although Mr. Hansen is not named in the May 23 article, there is reference in that article to the "DSU's financial coordinator" which is the position Mr. Hansen held with the DSU in May 2006. Given his prominence in student affairs, and the linkage between the articles found in the May 8 and May 23 editions, I find that the statements made in the May 23 article relate to Mr. Hansen.

[24] The trier of fact must determine the sense in which the words about which Mr. Hansen complains would reasonably have been understood by an ordinary person in the light of generally known facts: see *Lewis v. Daily Telegraph Ltd.*, [1963] 2 All E.R. 151 (H.L.) at 154-155, per Lord Reid. I find that the language found in the May 8 article given its natural meaning to the ordinary reasonable person would be:

(a) that over 100 cheques had been issued to Mr. Hansen without the approval of his employer and that in spite of the efforts of a professional forensic auditor the cheques could not be documented or accounted for; and

(b) that the auditor had “found” an unapproved \$20,000 cheque payable to Mr. Hansen’s partner, Christa Peters, allegedly for a down-payment on a house and that upon the cheque being discovered by the auditor, the \$20,000 was repaid to the DSU some two weeks later.

[25] I find that the language of the May 23 article would be understood to infer that Mr. Hansen, the DSU’s financial coordinator, was guilty of fraud and misappropriation of monies from the DSU or, at the very least, that there were reasonable grounds to conclude that Mr. Hansen was guilty of fraud and misappropriation of DSU’s funds.

[26] The contents of the June 26 edition of The Peak comprise both the drawing on the cover and Mr. Tilley’s article at pp. 6 and 7 of the newspaper and I conclude that this material would reasonably have been understood by an ordinary person to mean:

(a) that the two officers depicted on the cover are involved in a police investigation in which they had “busted” or charged someone as a result of the investigation of the DSU;

(b) that a complaint from an anonymous Douglas College student initiated the police investigation after the forensic review showed potential fraud and misappropriation of monies from the DSU;

(c) that the DSU would not say who was being investigated, but the article then added that Mr. Hansen, the finance and service coordinator responsible for the DSU's finances, had been on leave since the auditor's report inferring that Mr. Hansen was the individual under investigation;

(d) that the article further linked the police investigation directly to Mr. Hansen when it drew attention to Mr. Hansen in stating that a \$20,000 cheque signed by Mr. Hansen and payable to his partner, Ms. Peters, although repaid, was never approved by the DSU, inferring that Mr. Hansen was guilty of fraud and misappropriation.

[27] I am satisfied that the inferences flowing from the articles located in the May 8, May 23 and June 26 articles are false and that on an objective test they defame Mr. Hansen and lower his reputation in the community. It is defamatory to accuse an individual by implication or insinuation of committing a criminal act or omission, including offences relating to misappropriation or fraud as are found in the articles published by the defendants. In ***Pressler v. Lethbridge***, [1998] B.C.J. No. 1195 (S.C.), Owen-Flood J. at para. 49 cited with approval the following extract from ***MacDonald v. Mail Printing Co.*** (1901), 2 O.L.R. 278 (C.A.) at 282:

Any written words published are defamatory which impute to the plaintiff that he has been guilty of any crime, fraud, dishonesty, immorality, vice or dishonourable conduct, or has been accused or suspected of such misconduct, and so too are all words which hold the plaintiff up to contempt, hatred, scorn or ridicule, and which, by thus engendering an evil opinion of him in the minds of right-thinking men, tend to deprive him of friendly intercourse and society.

[28] Mr. Hansen has established a *prima facie* cause of action against the defendants. It is for the defendants to prove the truth of the statements which they

published with respect to Mr. Hansen in the May 8, May 23 and June 26 editions of The Peak which have provided the grounds for Mr. Hansen's action against them. Although it is for the defendants to prove the truth of their allegations against Mr. Hansen, they declined to do so, submitting that the truth of the statements is irrelevant as the contents of the articles are privileged.

[29] The plaintiff did address the allegations contained in the articles published by the defendants and established the following:

- a. that although the articles throughout incorrectly referred to Mr. Parks' report as a forensic audit, it was in fact a forensic review as stated on the face of his April 18, 2006 report and as such Mr. Parks acknowledged that the review was prepared with significantly less rigour than that required of a forensic audit;
- b. that Mr. Hansen in December 2004 obtained the approval from two members of the DSU executive to receive a \$20,000 advance secured against outstanding overtime for which he was owed in order to allow his partner, Ms. Peters, to purchase their home and that the \$20,000 was repaid within a couple of weeks as agreed;
- c. that two members of the DSU's executive signed the \$20,000 cheque, not Mr. Hansen as alleged by Mr. Parks and the defendants;
- d. that Mr. Parks in his July 13, 2006 letter to the DSU acknowledged that he did not "find" the \$20,000 cheque, that information coming from DSU's auditors, and after receiving a copy of the cheque he acknowledged that he erred in stating that Mr. Hansen had signed the cheque;
- e. that the inference from the defendants' articles that Mr. Hansen repaid the \$20,000 two weeks after Mr. Parks found out about the payment to Ms. Peters is wrong, as the payment and repayment of \$20,000 occurred in December 2004, some 16 months before Mr. Parks performed his forensic review;
- f. that Mr. Parks relied on inaccurate information from DSU's auditors when he wrote in his April 18, 2006 report that Mr. Hansen had received over 100 cheques which had yet to be accounted for or documented, there being only 21 cheques subject to scrutiny;

g. that there is no evidence that Mr. Hansen was guilty of fraud or misappropriation of funds from the DSU as suggested by the defendants and that the DSU acknowledged such in the agreement which settled Mr. Hansen's grievance against the DSU; and

h. that there is no evidence to support the defendants' allegation that police investigated DSU's finances, the police having declined to respond to Mr. Tilley's query. The best that Mr. Tilley could rely on in making this allegation was that there were rumours of an investigation, which included a statement to Mr. Tilley from a DSU board member who was a known opponent of Mr. Hansen as well as an unsubstantiated statement from a Douglas College student who advised Mr. Tilley that she had complained to the police based on Mr. Parks' April 18, 2006 report. A complaint does not necessarily result in an investigation.

[30] The defendants suggest that they are insulated from liability for defaming Mr. Hansen because they were relying on the truth of the information found in Mr. Parks' report of April 18, 2006, and that given the latter's reputation they were entitled to rely on the report's content without concern about its truth. I do not understand the law to shield the defendants from liability merely because they have relied on defamatory information relayed by a third party such as Mr. Parks, information which was in part subsequently corrected by Mr. Parks in his July 13, 2006 letter to the DSU. I conclude that it was for the defendants, prior to publication, to confirm the truth of Mr. Parks' report as it related to Mr. Hansen: see *Lewis v. Daily Telegraph Ltd.*, *supra*, at 173.

### **Statutory Qualified Privilege**

[31] The defence of qualified privilege is available to the defendants who satisfy the provisions of s. 4(1) of the *Libel and Slander Act*, R.S.B.C. 1996, c. 263 (the "*Libel Act*") which states:

4(1) A fair and accurate report published in a public newspaper or other periodical publication . . . of the proceedings of a public meeting . . . is privileged, unless it is proved that the report or publication was published or made maliciously.

Section 1 of the *Libel Act* includes the following definition of “public meeting”:

“**public meeting**” means a meeting genuinely and lawfully held for a public purpose, and for the furtherance or discussion of a matter of public concern, whether the admission to it is general or restricted;

### (a) Report of a Public Meeting

[32] The defendants assert that the articles published in the May 8, May 23 and June 26, 2006 editions of *The Peak* relating to Mr. Parks’ April 18, 2006 report with respect to the DSU’s financial affairs and Mr. Hansen fall within the qualified privilege provided by s. 4(1) of the *Libel Act*, being fair and accurate reports published in a newspaper of the proceedings of a public meeting.

[33] The defendants’ assertion raises the question of whether in the circumstances the articles can be construed as being reports of a public meeting. Raymond Brown, *The Law of Defamation in Canada*, 2d ed., Vol. 2, (Scarborough, Ont: Carswell, 1994) at 14-88-89 discusses reports of public meetings as follows:

There was no privilege at common law which accorded a privilege to newspapers or others to give a fair and accurate report of what occurred or was said at a public meeting. However, in most jurisdictions there is a qualified privilege on the part of newspapers or broadcasters to give a fair and accurate report of the proceedings of any public meeting, or a meeting *bona fide* and lawfully held for a lawful purpose to discuss a matter of public concern. The purpose of this privilege is to insure that members of the public who are entitled to but unable to attend would be put in precisely the same position as

those attending the meeting by making available to them fair and accurate reports of the proceedings.

[34] The question is whether the articles which have led to Mr. Hansen's action can be described as reports of a public meeting in order to fall within s. 4(1) of the **Libel Act**. The May 8, 2006 article reported on the financial situation at Douglas College as it had developed from the fall of 2005, leading to the preparation of what was described as a forensic audit and the purported termination of Mr. Hansen's employment at an April 19, 2006 meeting, followed by a determination by the DSU that the termination could not be sustained because of a lack of a quorum at the April 19, 2006 meeting.

[35] Although the May 8, 2006 article refers to the April 19, 2006 meeting, it does not provide a report of the proceedings at the meeting. The article does not mention Mr. Parks' presence at the meeting, that Mr. Parks was the author of what Mr. Tilley described wrongly as a forensic audit, that the contents of Mr. Parks' report were discussed at the meeting, the advice Mr. Parks gave the DSU representatives who attended the meeting, or any other part of the discussion which took place at the meeting. Nothing in the May 8, 2006 article appears to link to the April 19 meeting.

[36] Further, Mr. Tilley who wrote the May 8, 2006 article did not attend the April 19, 2006 meeting at which Mr. Parks presented his report. Mr. Tilley testified that in his article he was not reporting on the April 19 meeting, but was primarily relying on the contents of Mr. Parks' report and other information he obtained while pursuing the situation at Douglas College.

[37] The articles of May 23 and June 26 are silent with respect to the April 19, 2006 meeting upon which the defendants rely for the defence of qualified privilege provided by s. 4(1) of the **Libel Act**. There is no evidence of a public meeting or a meeting of DSU's representative committee as the basis for the May 23 article. Similarly, there is no evidence of a public meeting or a meeting of the DSU's representative committee at which there was any mention of a police investigation of DSU's financial situation which formed the basis for Mr. Tilley's June 23 article.

[38] I conclude that none of The Peak's three articles which I find defamed Mr. Hansen can be described as reports of public meetings and that finding alone precludes the defendants from gaining the immunity from Mr. Hansen's claim afforded by qualified privilege in s. 4(1) of the **Libel Act**.

[39] The plaintiff also submitted that the April 19, 2006 meeting of the DSU's representative committee was not a public meeting such as to fall within s. 4(1) of the **Libel Act**. As noted earlier, those attending the April 19 meeting voted in favour of terminating Mr. Hansen's employment with the DSU; however, that decision was ruled invalid as the gathering of the representative committee lacked the necessary quorum. Section 4(1) of the **Libel Act** specifically refers to the qualified privilege attaching to reports of a public meeting, but if there was no quorum on April 19, there was no meeting, public or otherwise, and without a meeting the defendants cannot obtain the immunity of qualified privilege provided by s. 4(1) of the **Libel Act** over the three articles upon which Mr. Hansen bases this action.

[40] *Gatley on Libel and Slander*, 8<sup>th</sup> ed. (London: Sweet & Maxwell, 1981)

discusses the nature of a public meeting covered by English statutory privilege and states at 281:

. . . if admission to a meeting can only be obtained by virtue of some personal qualification, it is not a “public meeting”.

[41] Ralph J. relied on that statement in ***Cassidy v. Abbotsford (City) Police Department***, [1999] B.C.J.No. 2961, (S.C.) at para. 10.

[42] The DSU’s bylaws restrict those eligible to attend a meeting of the representative committee primarily to Douglas College students and DSU employees. I conclude, given DSU’s restrictions on who might attend meetings of the representative committee, that the meeting, or purported meeting, of April 19, 2006 does not fall within the definition of a public meeting set out in ss. 1 and 4(1) of the ***Libel Act***. Mr. Parks attended the latter meeting to deliver and give a summary of his report to the representative committee and the report which he delivered on that occasion was marked “private and confidential” and addressed to the “Society of the Douglas Students’ Union”. I infer from that description that the report was not for consumption at a public meeting, but for the members of the DSU and, on that occasion, for the representative committee responsible for the administration of the DSU.

[43] I am aware from the evidence that some individuals who were not DSU members as defined by the bylaws attended some meetings of the representative committee, including the meeting called for April 19, 2006. However, I am unable to

conclude that the mere attendance of individuals not entitled to attend meetings of the representative committee turned such gatherings into a public meetings within the meaning of s. 4(1) of the *Libel Act*.

**(b) Fair and Accurate**

[44] In order to rely on s. 4(1) of the *Libel Act* the defendants must establish on a balance of probabilities that the reports are fair and accurate. The reports must be found to be substantially accurate on an objective basis. Mr. Hansen asserts that the three articles published by The Peak are neither accurate nor fair, thus precluding the defendants from gaining the immunity of qualified privilege under the *Libel Act*.

[45] The defendants' May 8 and May 23 articles both describe Mr. Parks' report as a forensic audit, not a forensic review. Mr. Parks' report, which Mr. Tilley obtained, was clearly marked as a forensic review both in the subject line as well as in the body of the report. While the incorrect description of Mr. Parks' report might first appear of little consequence, there is, as Mr. Parks acknowledged, a substantial difference between a forensic review and a forensic audit. The latter is a thorough and substantial investigation written to withstand rigorous examination and legal scrutiny whereas a forensic review represents the author's summary of matters of potential concern, but is far from exhaustive with the contents not necessarily verified.

[46] The difference manifested itself in this case when Mr. Parks in his July 13, 2006 letter corrected several substantial inaccuracies in his April 18, 2006 report,

inaccuracies which followed his having adopted as correct information provided by DSU's accountants. The inaccuracies included the number of cheques issued to Mr. Hansen which turned out be 21 rather than the 100 first stated by Mr. Parks and, of greater significance, the context under which the \$20,000 cheque was delivered in December 2004 to Christa Peters. Mr. Parks said the cheque was signed by Mr. Hansen. That was wrong and Mr. Parks later corrected the error, acknowledging that Mr. Hansen did not sign the cheque.

[47] The defendants' May 8, 2006 article also included that the auditor "found" the \$20,000 payment to Ms. Peters and stated that the \$20,000 was repaid two weeks later. That is an error. The \$20,000 cheque was issued to Ms. Peters in December 2004 and repaid two weeks later in December 2004, some 14 months before Mr. Parks became involved in DSU's financial affairs. The defendants' error in this respect is neither accurate nor fair.

[48] The defendants' June 26 article reported that Mr. Hansen was unavailable for comment with respect to an alleged police investigation. However, the evidence is that Mr. Hansen was available for comment prior to the publication. Mr. Harder testified in cross-examination that in June 2006, prior to June 26, he attended a DSU meeting at which he saw Mr. Hansen, but made no attempt to interview him. Mr. Hansen confirmed that he had attended a DSU meeting in June 2006, which was attended also by Mr. Harder. In the same June 26 article, Mr. Tilley wrote that the forensic auditor's report showed "potential fraud and misappropriation of funds". That is an inaccurate description of Mr. Parks' utilization of the words fraud and misappropriation of funds at p. 8 of Mr. Parks' April 18, 2006 report.

[49] The defendants also failed to include in the three articles that Mr. Hansen had provided an explanation for the issuing of the \$20,000 cheque and that there was a group within the DSU executive who wanted rid of Mr. Hansen. Mr. Tilley knew of this information, but he did not include it in the articles he wrote for The Peak.

[50] Mr. Hansen also submits that the drawing and headline on the cover page of The Peak's June 26, 2006 edition was such as to taint the fairness and accuracy of the article found within the paper. The drawing, referred to earlier in these reasons shows two police officers, one holding a magnifying glass and the other a note book, next to the headlines:

Busted! Police launch investigation on Douglas (College) Students' Union

[51] In ***Bennett v. Sun Publishing Co. (1972)***, 29 D.L.R. (3d) 423, [1972] W.W.R. 643 (B.C.S.C.), Anderson J. at 436 (D.L.R.) wrote that the headline in that case could not be cured by the balance of the article which appeared below it, adding:

Many members of the public do not read past the headlines and if they do they are mesmerized by the headlines.

[52] I find that statement applicable to the drawing and headlines found on the cover page of The Peak's June 26, 2006 edition. The cover page leaves the viewer with the impression that there had been a police investigation resulting in somebody being "busted", or found out, or arrested with criminal charges to follow the investigation, with the reader directed to p. 6 of the paper for further information.

The article at p. 6 advises the reader that Mr. Hansen is on leave from the DSU

following delivery of Mr. Parks' report and adds that Mr. Hansen was unavailable for comment, leaving the inference that Mr. Hansen did not want to respond to questions about the alleged police investigation. The information is inaccurate. Mr. Tilley was unable to confirm with the police that they were conducting an investigation. As for Mr. Hansen's availability, I have earlier noted that Mr. Harder and Mr. Hansen were both present at a DSU meeting in June 2006.

[53] Considering the aforementioned inaccuracies and what I conclude to be an inadequate presentation of Mr. Hansen's explanation for the events, I am not satisfied that the three articles published by The Peak reflect the appropriate standards of fairness and accuracy such as to enable them to gain the immunity of qualified privilege offered by s. 4(1) of the **Libel Act**.

[54] In summary I have reached the following conclusions:

- i. the three articles do not constitute reports of the proceedings of a public meeting or meetings;
- ii. that there was no meeting of the DSU's representative committee on April 19, 2006;
- iii. that attendance at meetings of DSU's representative committee was restricted and such meetings therefore were not public meetings; and
- iv. the articles were neither fair nor accurate.

### **Common Law Qualified Privilege**

[55] The defendants submitted in their opening that there was also a qualified privilege afforded under the common law to the defendant publication and its staff as

The Peak's three articles were reports of a matter of concern specifically to college and university students as well as to the public at large, addressing as they did the financial affairs of a student union operating within Douglas College, a publicly-funded college.

[56] However, the defendants' submission is contrary to the conclusion found earlier in these reasons that there is no privilege at common law according a privilege to newspapers giving a fair and accurate report of a public meeting: Brown, *The Law of Defamation, supra*.

[57] The defendants have not pursued their submission that there exists a common law privilege accorded newspapers when reporting on the proceedings at a public meeting. I conclude that the defendants have failed to establish that they are immune from Mr. Hansen's claim by virtue of a common law privilege if there is or was such a common law privilege as asserted by the defendants. That conclusion rests on my finding that the defendants' articles which are the subject of this action cannot by their content properly be described as reports of the proceedings of a public meeting. Contrary to the defendants' submissions, I have previously concluded in these reasons that the April 19, 2006 meeting of the representative committee was not a meeting in a legal sense as it lacked the quorum necessary to find it to be a properly convened meeting and that with attendance at meetings of the representative committee restricted by DSU's bylaws, such meetings could not be described as public meetings.

## Responsible Journalism and Qualified Privilege

[58] I turn next to the defendants' further submission that they are immune from Mr. Hansen's action by virtue of the public interest responsible journalism defence which has been accepted in various forms in the United States, Australia, New Zealand, the United Kingdom, and is finding ground in Canadian courts. The leading U.K. decisions are *Reynolds v. Times Newspapers Ltd. and Others*, [1999] UKHL 45, [1999] 4 All E.R. 609, and *Jameel and Others v. Wall Street Journal Europe Spri*, [2006] UKHL 44, [2006] 4 All E.R. 1279.

[59] The responsible journalism defence is succinctly stated by the Ontario Court of Appeal in *Cusson v. Quan*, 2007 ONCA 771, 286 D.L.R. (4<sup>th</sup>) 196, in which R.J. Sharpe J.A., writing for the court and relying primarily on the *Reynolds* and *Jameel* decisions states at paras. 143 and 144:

[143] ...The defence rests upon the broad principle that where a media defendant can show that it acted in accordance with the standards of responsible journalism in publishing a story that the public was entitled to hear, it has a defence even if it got some of its facts wrong. That standard of responsible journalism is objective and legal, to be determined by the court with reference to the broader public interest. The non-exhaustive list of ten factors from *Reynolds*, applied in the manner directed in *Jameel*, provides a useful guide. The defence is plainly intended to shift the law of defamation away from its rigidly reputation-protection stance to freer and more open discussion on matters of public interest and should be interpreted accordingly.

[144] To avail itself of the public interest responsible journalism test a media defendant must show that it took reasonable steps in the circumstances to ensure that the story was fair and its contents were true and accurate. This is not too much to ask of the media. What constitutes reasonable steps will depend of course upon the circumstances of the particular case. In assessing whether the media has met this standard the court will consider the ten factors outlined by the House of Lords in *Reynolds* (set out above at para. 89), or such of

them – or any other factors - as may be relevant in the circumstances. As *Reynolds* and subsequent authorities have noted, these factors are not a list of hurdles that media defendants must negotiate; rather, they are indicia of whether the media were truly acting in the public interest in the circumstances.

[emphasis added]

[60] The Supreme Court of Canada granted leave to appeal the decision in *Cusson* and the court's docket states that the appeal was heard February 17, 2009. Further the Supreme Court of Canada on February 18, 2009 granted leave to appeal the Ontario Court of Appeal's decision in *Grant et al v. Torstar Corporation et al*, 2008 ONCA 761 92 O.R. (3d) 561, another case raising the public interest responsible journalism defence, and directed that the hearing be expedited. It is scheduled to be heard April 23, 2009.

[61] While I am aware that the Supreme Court of Canada is presently considering the application of the public interest responsible journalism defence in the aforementioned cases, the case before me cannot await the determination by the Supreme Court of Canada of how or even if such a defence is the law in Canada. The defendants, having raised the defence, leave me obliged to consider it and I will do so in the context of the Ontario Court of Appeal decision in *Cusson*. In the latter decision, the court follows *Reynolds* and *Jameel* and concludes that the present law of defamation in Canada leans towards the protection of an individual's reputation over freedom of expression and that in situations where the media publishes material in the public interest the law ought to be more fairly balanced such as to reduce the weight given to an individual's reputation and increase the weight accorded freedom of expression.

[62] That rebalancing of reputation and freedom of interest apparently attracted the attention of Binnie J. at the February 17, 2009 hearing of the appeal in **Cusson** in which he is reported to have suggested that under the responsible journalism defence, reputation becomes “roadkill” in the larger public interest.

[63] In **Cusson**, the Ontario Court of Appeal held at para. 139 that in order to determine whether the defendant media ought to be accorded the privilege under the responsible journalism defence, the court must determine whether the journalists exercised due professional skill and care. In order to make such a determination, Lord Nicholls in **Reynolds**, affirmed by Lord Bingham in **Jameel**, set out ten factors the court might consider as indicia of whether the media was truly acting in the public interest in the circumstances. Lord Nicholls wrote at 626 (All E.R.):

Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable

- commodity.
7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
  8. Whether the article contained the gist of the plaintiff's side of the story.
  9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
  10. The circumstances of the publication, including the timing.

This list is not exhaustive. The weight to be given to these and any other relevant factors will vary from case to case. Any disputes of primary fact will be a matter for the jury, if there is one. The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge. This is the established practice and seems sound. A balancing operation is better carried out by a judge in a reasoned judgment than by a jury. Over time, a valuable corpus of case law will be built up.

[64] I will address each of the ten factors in the factual matrix of the evidence, in this case noting that it is for the defendants to establish the responsible journalism defence:

1. The Peak's allegations against Mr. Hansen involve criminal actions founded in fraud and misappropriation of funds and are of a most serious nature.
2. The information about DSU's financial difficulties and the allegations against Mr. Hansen with respect to the DSU's financial affairs have, I conclude, little interest to the public at large, but are of significant interest to college and university students, particularly the students at Douglas College whose fees funded the DSU.
3. The information utilized by the defendants came initially from Mr. Parks' flawed forensic review - flawed in the sense that it contained inaccuracies about Mr. Hansen. Unfortunately, that review formed the

basis for the first article from which followed the May 23 and June 26 articles. The defendants obtained other material from various sources, but I conclude that most of that information came from individuals belonging to the faction opposed to Mr. Hansen, including Jan Gunn who, in addition to being the partner of the defendant Mr. Harder, was opposed to Mr. Hansen. She was a primary information source for Mr. Tilley and claimed to have provided him with a copy of Mr. Parks' report.

4. Mr. Tilley acknowledged that in writing the three articles he relied on Mr. Parks' report and made no attempt to verify the information it contained. He made no attempt to interview Mr. Parks and failed to explore the difference between Mr. Parks' forensic review and a forensic audit, the latter being the term Mr. Tilley used to describe the forensic review. Mr. Tilley did not verify the circumstances surrounding the \$20,000 cheque payable to Ms. Peters and the cheques paid to Mr. Hansen. Mr. Tilley contacted the police but was unable to confirm the existence of an investigation into DSU's finances, relying instead on second hand information that such an investigation was underway.

5. As for the status of the information, Mr. Parks performed a cursory forensic review with respect to matters involving Mr. Hansen, but Mr. Tilley appears to have accepted the information revealed in the review as if it were the product of a much more intensive forensic audit. While the defendants might have been able to rely on a forensic audit, the status of the information produced in a forensic review did not provide the same level of reliability, notwithstanding Mr. Parks' reputation.

6. Mr. Parks delivered his April 18, 2006 report to the DSU on April 19, 2006 and as I understand Ms. Gunn's evidence, she obtained a copy of the report on the latter date, made copies of it, and delivered a copy to Mr. Tilley, although he could not remember receiving it from Ms. Gunn, saying it was delivered to him in a brown, blank envelope. He could not remember when he received the envelope, but believed it was on or about May 1, 2006. Mr. Tilley therefore had at least a week to write the first article in which to investigate the allegations against Mr. Hansen and had ample time to confirm the contents of the following two articles prior to their publication. I do not view Mr. Tilley as being subject to an urgent deadline in preparing the articles for which Mr. Hansen seeks judgment.

7. Mr. Tilley testified that he sought comment from Mr. Hansen, leaving both email and telephone messages at his office. He did not keep copies of his email messages or a record of the times he left messages. He did not leave messages or try to locate and attend at

Mr. Hansen's home. Mr. Hansen said he did not receive any email or voice mail messages from the defendants although throughout the period he regularly checked his emails and voice mail for messages. Mr. Hansen said his home telephone number was listed in the name of his partner, Christa Peters. Mr. Tilley acknowledged that he was aware that Ms. Peters was Mr. Hansen's partner, but did not attempt to find her telephone number or her home address.

When considering Mr. Tilley's efforts to contact Mr. Hansen, it is of interest that a reporting crew from a lower mainland television station later in 2006 was able to find Mr. Hansen outside his home early one morning and obtained a brief comment that he was not prepared to provide the crew with an interview.

Mr. Tilley wrote in the June 26, 2006 edition of *The Peak* that Mr. Hansen was unavailable for comment. He testified that he had exhausted his efforts to contact Mr. Hansen. He did not testify as to the attempts, if any, that he had made to contact Mr. Hansen with respect to suggestions that police were investigating DSU's financial affairs. Although, Mr. Harder and Mr. Hansen both attended a meeting in June 2006 prior to the June 26 edition of *The Peak*, Mr. Harder made no attempt to discuss DSU's financial situation or a police investigation with Mr. Hansen.

I conclude that the defendants' efforts to contact Mr. Hansen lacked the diligence expected of a journalist. Although the leading Australian case on responsible journalism, ***Lange v. Australian Broadcasting Corp.***, [1997] HCA 25, 189 C.L.R. 520 held that the defendant's conduct would not be reasonable unless the defendant sought a response from the person defamed and published the response, unless this was not practicable or was unnecessary, I do not think that it is absolutely crucial for the defendants to have contacted and obtained a comment from Mr. Hansen. However, at the very least I conclude that the defendants had an obligation in the circumstances of this case, considering the serious allegations which they were about to publish, to make diligent efforts to contact Mr. Hansen. I do not find the diligence required of the defendants manifests itself in the evidence.

8. The articles provide some hints of Mr. Hansen's side of the story, but they are only hints. I find the articles overall lack the balance required to describe to some extent the plaintiff's perspective of the situation.

9. The tone found in all three articles is that Mr. Hansen had committed fraud and had misappropriated monies, thereby conducting himself in a criminal manner, leading to his being "busted" as reflected in the June 26, 2006 article. The defendants' articles adopted

inaccurate allegations as statements of fact, rather than adopting a neutral stance and providing a balanced report and perhaps raising queries or calling for further investigation.

10. The circumstances of the publication, including the timing, are unfortunate, particularly for Mr. Hansen, but they do not hold any particular significance as a factor in determining whether the defendants have acted as responsible journalists.

[65] There is, however, one other factor that bears comment and that lies in the status of The Peak as a university newspaper staffed largely by students who for the most part give freely of their time in order to ensure the continued publication of the newspaper. Mr. Tilley and Mr. Harder received small honoraria given their position with The Peak, but I suspect these hardly reimbursed them for the hours they put into the newspaper. The question is whether unpaid and student journalists should be held to the same standard as that of professional journalists such as those working for the Wall Street Journal Europe and the Times Newspapers Ltd., the defendant publications in the *Reynolds* and *Jameel* decisions. Given that the damage to a plaintiff's reputation can be the same whether sullied by either amateur or professional journalists, I find that no distinction should be made between differing types of publications at least insofar as determining whether the public interest responsible journalism defence applies to render a publication immune from a defamation action.

[66] After considering my findings on the factors noted above, I conclude that the defendants' conduct leading to the publication of the three articles defaming Mr. Hansen is such as to preclude the defendants from relying on and obtaining the privilege provided by the public interest responsible journalism defence. That

assumes that there is such a privilege afforded by the law in Canada. If there is no such privilege, my conclusion becomes irrelevant. In reaching my conclusion, I have paid particular regard to the importance of freedom of expression and the important role that the media plays in our society, both as a bloodhound as well as a watchdog. It should not be impeded in these vital functions, but the media must recognize the responsibility which lies with it when contemplating the publication of articles containing serious allegations which have the potential for attracting a defamation action such as that brought by Mr. Hansen.

[67] I note that although the plaintiff originally alleged malice on the part of the defendants, malice was not pursued at trial. In any event, although there were some indications of malice in the evidence, I conclude they were insufficient to establish malice on the part of the defendants.

[68] I find the defendants, Derrick Harder and The Peak Publications Society, carrying on business as The Peak, have defamed Mr. Hansen. Mr. Hansen will have judgment against both defendants.

### **Damages**

[69] The range of general damages is in the \$1,000 to \$15,000 range according to the defendants, while Mr. Hansen submits various cases which would support general damages in excess of \$50,000.

[70] There are a number of factors to be considered when fixing general damages for defamation in which the plaintiff's reputation has been affected by the allegations

contained in the defendants' articles. The allegations of fraud and misappropriation of funds are criminal acts and strike at the core of Mr. Hansen's character, trustworthiness and integrity.

[71] Although the defendants' publication amounted to approximately 5,000 copies during the summer semester of May and June 2006, they were distributed widely through the student populations at Simon Fraser University, Douglas College and the Canadian Federation of Students in which Mr. Hansen had long been involved. Further, the defendants included the three defamatory articles in the newspaper's web sites thus disseminating the articles to a potentially much greater audience. Mr. Tilley testified that he had seen other students viewing the on-line edition of *The Peak* in Eastern Canada where at the time of trial he was studying law.

[72] Since the publication of the last article on June 26, 2006 there has been neither an apology nor a retraction of the allegations by the defendants in spite of the July 13, 2006 amendment by Mr. Parks of certain parts of his April 18, 2006 report as it dealt with Mr. Hansen. The defendants did not respond in any fashion to the June 23, 2006 email from Mr. Hansen's counsel with respect to the defamatory articles found in *The Peak* and its web site. The email from plaintiff's counsel was forwarded to an email address for *The Peak* which was apparently not scrutinized regularly by the defendants.

[73] Mr Hansen grieved his termination from DSU and in a settlement agreement dated September 10, 2007, but which was signed later, the DSU stated that it regretted any public discussion of Mr. Hansen at "a meeting or aborted meeting of

the representative committee on or about April 19, 2006". In the same agreement the DSU withdrew against Mr. Hansen "each and every allegation or imputation of misappropriation of funds or other dishonest conduct". No mention of the settlement and its terms was included in subsequent editions of *The Peak*.

[74] I am satisfied that the defendants are aware of the terms of the settlement between Mr. Hansen and DSU as the defendants rely on one of the terms as a basis for decreasing any damages which might be awarded Mr. Hansen. I am satisfied that the defendants became aware of Mr. Hansen's request for an apology and retraction and the defendants have ignored this request. The absence of an apology at law may increase a plaintiff's general damages: see *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 126 D.L.R. (4<sup>th</sup>) 129 at para. 182, citing *Gatley on Libel and Slander*.

[75] The defendants submit that any general damages awarded the plaintiff should be reduced by \$7,550, being the sum Mr. Hansen received from the DSU under a term of the settlement agreement which provided that the DSU would pay Mr. Hansen \$7,550 as damages for injury to his reputation.

[76] The defendants rely on s. 11 of the *Libel Act* as the basis for reducing general damages by the sum of \$7,550. The section provides that a defendant publication can mitigate its damages by showing that the plaintiff has already recovered, or has brought action for, damages, or has received or agreed to receive compensation in respect of a libel to the same effect as the libel for which the action has been brought.

[77] However, the evidence is unclear as to the nature of the injury to Mr. Hansen's reputation for which the DSU paid him \$7,550. There is nothing to establish that the injury to reputation referred to in the settlement agreement is the same as the allegations involving Mr. Hansen which were published by the defendants. It appears that the injury to Mr. Hansen's reputation might well have related to something which occurred within the DSU and had nothing to do with the defamatory statements made by the defendants' articles. Absent the necessary evidence I am not prepared to apply s. 11 of the **Libel Act**.

[78] After considering the cases cited by both the plaintiff and the defendants and the factors referred to above I award the plaintiff general damages of \$30,000. The defendants, Mr. Harder and Peak Publications Society (c.o.b. as "The Peak"), are jointly and severally liable.

[79] The plaintiff will have his costs at scale B, unless for some reason the parties wish to speak to costs in which case the question of costs will be set for hearing at a date prior to May 15, 2009.

"R.M. Blair J."  
BLAIR J.