

# KEEPING CURRENT

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## Defamation claim defeated as the statements were substantially true

By James R.G. Cook

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**James R.G. Cook**  
Partner  
416.865.6628  
jcook@grllp.com

Sometimes the most efficient way to defeat a defamation claim is to prove the defence of justification—namely, that the impugned statements that are alleged to be defamatory were substantially true.

The decision in *Bell v. GRFN*, [2022 ONSC 5603 \(CanLII\)](#), involved a claim for defamation by a councillor of a First Nation band against the First Nation's council, which was responsible for administration, policing, and inter-governmental relations, amongst other things.

During the COVID-19 pandemic, the First Nation, like other public entities, had to deal with the financial implications of the pandemic. The plaintiff councillor took issue with the financial disclosure produced during the council's budget process. In October 2021, the plaintiff posted a statement on Facebook which stated, in part: "During the last term I had requested a number of times our Financial Statements and a budget. For the last year we have seen nothing". There was no question that by "we," the plaintiff was referring to the council.

Council subsequently passed a motion requiring the councillor to remove the post and acknowledge that the information she posted was incorrect. The preamble to the motion stated that the councillor "has provided by way of her social media post is false information and information is very misleading to our members."

After the motion was withdrawn, the plaintiff sued two other members of the council for defamation, alleging that the statements in the motion were defamatory.

The defendants then brought a motion for summary judgment to dismiss the action on the basis, amongst other reasons, that the impugned portions of the motion were truthful and subject to the defence of justification.

In an action for defamation, a plaintiff has the initial burden to prove that the words complained of are defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person. The plaintiff must

also show that the words refer to her and that they were communicated (“published”) to at least one other person.

There was little question in the matter at hand that the impugned statements in the motion met these criteria since they were clearly about the plaintiff and claimed in minutes to a meeting that she was spreading false and misleading information.

In response, however, the defendants took the position that the words in the motion were substantially true and therefore the defence of justification applied.

To succeed on the defence of justification, a defendant must adduce evidence showing that the impugned statements were substantially true: *Grant v. Torstar Corp* [2009 SCC 61 \(CanLII\)](#). While in some circumstances this may be difficult to prove, the motion judge was able to focus on a precise comparison of the specific wording in the plaintiff’s social media post to the specific wording in the motion before council.

In the plaintiff’s Facebook post, she claimed that she had requested a financial statement and budget a number of times during the last year and had “seen nothing”.

The motion preamble quoted the Facebook post verbatim and then stated that the councillor was in fact present at meetings where an audit and the budget were presented. The motion was not concerned with the honesty or accuracy of all the plaintiff’s social media posts but only her claim that council had “seen nothing” regarding financial statements and a budget for over a year.

In order for the defendants to avail themselves of the justification defence, they had to prove, firstly, that the statement “For the last year we [council] have seen nothing [regarding financial statements and a budget]” is not true; and,

secondly, that the statement is “very misleading” to members of the First Nation.

Whether the financial information that was presented to council was inadequate or otherwise unacceptable was not relevant to the summary judgment motion. Rather, the issue was whether the “sting” of the motion—namely that the plaintiff’s statement that for two years “we [council] have seen nothing” regarding financial statements or a budget was false and “very misleading”—was substantially correct.

Based on the evidence filed, the motion judge was able to conclude that the plaintiff’s own statements that the councillors “have seen nothing” and that she had not seen any financial statements during the Council meetings was factually incorrect and therefore “very misleading”. Amongst other reasons, the court found as a fact that the plaintiff had attended the meeting where an audit was presented to council and that she had voted against approving the financial statements. Thus the alleged “sting” inherent in the words complained of by the plaintiff was in fact substantially correct.

Further, the inference in the plaintiff’s social media post was that financial information had been withheld from councillors, which is a serious accusation that imports a suggestion of gross negligence, or even fraud. Therefore, the statement that council had “seen nothing” was “very misleading” because it erroneously casted aspersions on the First Nation leadership’s competence and/or honesty based upon an erroneous factual foundation. This portion of the “sting” was therefore also substantially correct.

As a result, the court found there was no genuine issue for trial and granted summary judgment [dismissing the action](#).

The decision shows that summary judgment may be available to defendants in a defamation claim



where the impugned statements are contained in written materials that may be readily assessed and compared to the underlying factual events at issue in the statements. In appropriate cases moving for summary judgment to prove the defence of justification may be an efficient way of disposing of a defamation claim.

### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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