

COURT OF KING’S BENCH OF MANITOBA

B E T W E E N:

GORDON JEFFREY MCINTOSH, TANIS RAE)	<u>Aaron W.K. Challis</u>
MCINTOSH, DOING BUSINESS UNDER THE)	<u>Michael D. Zacharias</u>
FIRM NAME AND STYLE OF MCBARN)	for the plaintiffs
KENNELS, AND THE SAID MCBARN)	
KENNELS,)	<u>Levi A. Taylor</u>
)	for the defendants
- and -)	
)	
MIKE THIESSEN ALSO KNOWN AS MICHAEL)	
THIESSEN AND JENNIFER HILDEBRAND,)	
)	<u>Judgment Delivered:</u>
defendants.)	April 14, 2026

TOEWS J.

INTRODUCTION

[1] The plaintiffs, Gordon Jeffery McIntosh (“Jeff”) and Tanis Rae McIntosh (“Tanis”) brought an action against the defendant Mike Thiessen (“Mike”) and a further defendant Jennifer Hildebrand for defamation. The plaintiffs discontinued their action against the defendant, Jennifer Hildebrand and when this matter came to a hearing only Tanis was proceeding with the action. Jeff was no longer participating in the action and has offered

to have his action against the remaining defendant, Mike, discontinued without costs. That offer was rejected by Mike.

[2] Although the action was set down for a trial, Tanis brought a summary judgment motion. By agreement on the date of the hearing of the motion, the motion was converted into a one-day trial with all of the evidence at trial being submitted by way of affidavit. I agreed to proceed in that fashion.

[3] The issue in dispute arose as a result of various Facebook posts made by Jeff and Mike in respect of which Tanis alleges Mike defamed her as the owner of a dog grooming business, McBarn Kennels ("McBarn"). McBarn is not an incorporated entity and although the name was once a registered business name, that registration has expired. Tanis carries on this business in Stanley, Manitoba. McBarn primarily serves customers in the Morden and Winkler communities.

THE EVIDENCE

[4] Tanis states that she is the sole proprietor of McBarn which operates on land jointly owned by her and Jeff. She states that Jeff does not, and never has, played an active role in the business, either as an employee nor has he held an ownership interest in it. She states Jeff is a retiree who formerly worked in the HVAC business.

[5] On August 30, 2021, after a Covid-related rally was held in Winkler, Jeff published the following post on Facebook:

WINKLER.....what can be said other than this is fucking disgusting and this was only a fraction of who showed up at this rally.
Currently, I only have one place of business I deal with in Winkler, my insurance guy, who is a friend and who is double vaxed, and I will continue to support his business and probably other businesses providing "all" of their employees are double vaxed....which is a rarity there.

Outside of that, WINKLER, you are fucking dead to me. I have never in my lifetime seen such self-serving arrogance and stupidity. You will not see a dime from me. If your looking for the 80% of that community who are not vaxed....here they all are, morons. Iq's of a gnat.

Your disrespect toward our medical community is unprecedented, and all I can hope for is that that comes around and bites you in the fknass.

[6] Later the same day, in response to Jeff's post, Mike also posted on Facebook the following:

Here's Jeff. Jeff hates his neighbors and the community that made him his money. Jeff owns Controlled Air in Winkler and McBarn Kennels between Winkler and Morden. He has pledged to no longer support businesses in Winkler. I would suggest Winkler does the same for him. Feel free to share so that everyone knows what the owner of this business thinks of them.

[7] The next day, the second sentence was modified by Mike to say, "Jeff owns McBarn Kennels between Winkler and Morden", omitting the words "Controlled Air in Winkler". On September 7, 2021, Mike revised the second sentence of the post again, this time to say, "I believe Jeff owns McBarn Kennels between Winkler and Morden".

[8] Mike apparently came to the conclusion that Jeff was also an owner of McBarn Kennels on the basis that Jeff makes reference to himself as "Chief Pooper Scooper McBarn Kennels" and that he had seen a March 19, 2020 post in which Jeff referred to McBarn Kennels using the words "we" and "our", but also saying "my function is more of a maintenance man". Jeff also posted on social media about his work decommissioning McBarn's boarding building. Jeff's Facebook profile, posts, and replies were visible to every Facebook user, regardless of whether they were or were not his Facebook "friends".

[9] The evidence is that no one who viewed and commented on Mike's post referred to McBarn or Tanis directly. Without exception they referred to Jeff by name or by male

pronouns. The evidence also indicates that on cross-examination on her affidavit, Tanis admits that the post directs people not to support Jeff.

[10] Although Tanis states in her brief that she is the sole proprietor of the business, the facts suggest or establish that:

- a) McBarn's website does not list its owners;
- b) Tanis was the sole business name registrant of McBarn but at the time of Mike's post, that registration was inactive;
- c) Tanis and Jeff live and jointly own the property, including the buildings, on which McBarn operates;
- d) Tanis states that the ownership of McBarn can be determined by viewing her social media accounts although no exhibits have been produced to support that claim;
- e) At the same time Tanis takes the position that Jeff's social media account cannot be used to determine ownership, stating that Jeff's posts describing himself or his functions in relation to McBarn as the "Chief Pooper Scooper McBarn Kennels", the McBarn "maintenance man" or that he was responsible for decommissioning the boarding building as not being truthful; and,
- f) When Jeff posted about McBarn he used the pronouns "we" and "our".

[11] It is also noted that a year before Mike's post, Mike asked Jeff if he owned McBarn, Jeff responded, "No, but I do own lots of cows and chickens". Tanis states that while it

is true that Jeff does not own McBarn she admits that Jeff was not telling the truth about owning cows in that same response.

THE LAW

[12] The leading decision in Canada on the law of defamation is found in ***Grant v. Torstar Corp.***, 2009 SCC 61 (CanLII). The elements of a defamation action are set out in that decision as follows:

[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism: see, e.g., R. A. Smolla, "Balancing Freedom of Expression and Protection of Reputation Under Canada's *Charter of Rights and Freedoms*", in D. Schneiderman, ed., *Freedom of Expression and the Charter* (1991), 272, at p. 282. (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous *per se*: R. E. Brown, *The Law of Defamation in Canada* (2nd ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.) The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[29] If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

[13] There are essentially two defences which the defendant might raise in order to escape liability. First is the defence of justification. This defence has been characterized in ***Bent v. Platnick***, 2020 SCC 23 (CanLII) at paras. 107 and 108 as follows:

[107] Once a *prima facie* showing of defamation has been made, the words complained of are presumed to be false: *Torstar*, at para. 28. To succeed on the defence of justification, "a defendant must adduce evidence showing that the statement was substantially true": para. 33. The burden on the defendant is to prove the substantial truth of the "sting", or main thrust, of the defamation": Downard, at §1.6 (footnote omitted). In other words, "[t]he defence of justification will fail if the publication in issue is shown to have contained only accurate facts but the sting of the libel is not shown to be true": Downard, at §6.4.

[108] Of particular importance here is the fact that partial truth is not a defence. If a material part of the justification defence fails, the defence fails altogether: R. E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States* (2nd ed. (loose-leaf)) ("*Brown on Defamation*"), at pp. 10-88 to 10-90. However, a defendant may justify only part of a libel "if that part is severable and distinct from the rest": p. 10-89 (footnote omitted). This depends on the allegation being separate and self-contained rather than an "ingredient or part of a connected whole": p. 10-90 (footnote omitted).

[14] The second defence is that of fair comment which has been identified in ***WIC Radio Ltd. v. Simpson***, 2008 SCC 40 (CanLII), at para. 1 as follows:

[1] ... This appeal requires the Court to reexamine the defence of fair comment which helps hold the balance in the law of defamation between two fundamental values, namely the respect for individuals and protection of their reputation from unjustified harm on the one hand, and on the other hand, the freedom of expression and debate that is said to be the "very life blood of our freedom and free institutions": *Price v. Chicoutimi Pulp Co.* (1915), 1915 CanLII 66 (SCC), 51 S.C.R. 179, at p. 194. Under the present law, if a plaintiff shows the defendant published something harmful to his or her reputation, then both falsity and damage are presumed, and the onus shifts to the defendants to establish an applicable defence, including the defence of fair comment. In *Cherneskey v. Armadale Publishers Ltd.*, 1978 CanLII 20 (SCC), [1979] 1 S.C.R. 1067, Dickson J., in dissent, identified the elements of the "fair comment" defence as follows:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognisable as comment;
- (d) the comment must satisfy the following objective test: could any man honestly express that opinion on the proved facts?
- (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice. [Emphasis in original deleted; pp. 1099-1100.]

(citing *Duncan and Neill on Defamation* (1978), at p. 62)

Although on that occasion a majority of the Court insisted on framing the honest belief requirement in subjective terms (the comment must express an opinion honestly held by the speaker), I believe experience has shown that Dickson J.'s "objective" formulation of the "honest belief" test better conforms to the requirements of free expression endorsed as a fundamental value of our society by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. Of course, even if the elements of the "fair comment" defence are established, the plaintiff can still succeed by proving that the defendant was actuated by malice, i.e. for an indirect or improper motive not connected with the purpose for which the defence exists

(*Sun Life Assurance Co. of Canada v. Dalrymple*, 1965 CanLII 9 (SCC), [1965] S.C.R. 302, at p. 309).

THE ISSUES

[15] The issues are:

- a) Is Mike's post defamatory?
- b) Does the defence of justification apply?
- c) Does the defence of fair comment apply?
- d) If Tanis is successful, is she entitled to damages/relief?

THE POSITION OF THE PLAINTIFF

[16] Tanis takes the position that McBarn has established a strong *prima facie* case that Mike's posts would tend to lower McBarn's reputation in the eyes of a reasonable person. Tanis argues that Mike was not merely describing Jeff when he was referencing McBarn, but that he was saying to his community of Facebook followers and Winkler at large that the owner of McBain hates them. Tanis states that the reasonable person in Winkler and Morden or surrounding areas, reviewing what Mike wrote and seeing that "Jeff owns McBarn", would think less of McBarn.

[17] Tanis states that the defences of justification and fair comment are mutually exclusive and that if the statement is characterized as a statement of fact, only justification may apply. If it is characterized as opinion, only fair comment may be available. Tanis points out that in this case Mike has made it clear that his posts constituted expression of his opinion.

[18] However, in addressing the justification defence, Tanis states that Mike must establish the substantial "sting" of the defamatory statement, and since material facts

have been omitted, leading a reasonable person to draw a materially different impression of McBarn, the defence of justification must fail.

[19] Tanis argues that Jeff does not own McBarn, but merely resides on the land that it operates and at most can be said to have assisted with limited maintenance. Tanis states that there is no evidence that McBarn hates the community in which it operates. She argues that if Mike had done anything to verify the accuracy of his belief, he would have easily learned that McBarn was owned and operated by Tanis.

[20] In respect of the defence of fair comment, Tanis argues that Mike has failed to establish the elements necessary for a successful defence as outlined in ***WIC Radio Ltd.*** Tanis notes that malice will defeat a valid fair comment defence and that Mike was actuated by express malice. Tanis also argues in her brief, that Mike's comments were not based on fact and that a person could not honestly hold the opinion that McBarn "... thinks of them what Jeff is alleged to think of them solely by virtue of Jeff being married to the person who owns it." Furthermore, Tanis takes the position that Mike's posts are not a matter of public interest and therefore the defence of fair comment must fail on that basis as well.

THE POSITION OF THE DEFENDANT

[21] Mike submits that the comments he published refer to Jeff and not McBarn or Tanis. He states that his post is directing people to withhold support from Jeff and as stated by Tanis in cross-examination on her affidavit, "he's dictating to people not to, to do other things than participate with Mr. McIntosh". He states that contrary to Tanis's position, his post does not effectively or expressly state that McBarn holds the community

in contempt or that the community should hold McBarn in contempt. Mike states that the ordinary meaning of his words can be understood as follows:

- (a) "Here's Jeff" ordinarily means that Mike was showcasing a post by Jeff. Jeff is referenced by name.
- (b) "Jeff hates his neighbors and the community that made him his money" ordinarily means that Jeff hates his neighbours. Jeff is referenced by name.
- (c) "Jeff owns Controlled Air in Winkler as well as McBarn Kennels between Winkler and Morden" ordinarily means that Jeff is the owner of those businesses. Jeff is referenced by name.
- (d) "He has pledged to no longer support businesses in Winkler" ordinarily means that Jeff has stated he will not support businesses in Winkler. "He" refers to Jeff.
- (e) "I would suggest Winkler does the same for him," ordinarily means that Mike is suggesting that people withhold support from Jeff because Jeff stated he would not support businesses in Winkler. "Him" refers to Jeff.
- (f) "Feel free to share so that everyone knows what the owner of these businesses thinks of them" ordinarily means that Mike is inviting Facebook users to share this post so that people know what the owner of these businesses— who Mike clearly identified as Jeff – thinks about them (i.e. that community members are "morons" and "IQs of a gnat.") Again, the best result the plaintiff gets is that the owner of the business is Tanis, and Mike is inviting users to share the post so that people know what Tanis thinks of them. But Tanis doesn't claim that she was defamed. She claims that McBarn was defamed.

[emphasis is found in the original]

(See motions brief of defendant – Doc. No. 18, pp. 15-16)

[22] In respect of the defence of justification, Mike states that although his post contains statements of opinion, they create a "factual impression" which is substantially true. In this respect Mike notes:

- a) The statement "Jeff hates his neighbours" is true; and
- b) The statement "Jeff owns McBarn" is true and the evidence with respect to ownership is convoluted at best and misleading at worst.

[23] In respect of the defence of fair comment, Mike states that this defence is available to every member of the public and that the defamatory words as used in the full context

surrounding their use establish that the elements of the defence as identified in ***Hansman v. Neufeld***, 2023 SCC 14 (CanLII), have been established. Those elements are summarized at para. 96 of the ***Hansman*** decision as follows:

[96] The fair comment defence has five elements. First, the “comment must be on a matter of public interest” (*Grant*, at para. 31). Second, it must be “based on fact” (para. 31). Third, “though it can include inferences of fact, [it] must be recognisable as comment” (para. 31). Fourth, it must satisfy an objective test: “could any person honestly express that opinion on the proved facts?” (para. 31). Finally, even if the above elements are met, “the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice” (para. 31). Consideration of the elements of the fair comment defence requires an assessment of the defamatory words used in the full context surrounding their use (*WIC Radio*, at paras. 55-56).

ANALYSIS AND DECISION

[24] In respect of whether Mike’s post is defamatory, it is my opinion the evidence establishes that the impugned words do not defame Tanis in the sense that they would tend to lower her reputation either directly, or through the business which she owns, in the eyes of a reasonable person. The evidence is clear that if Mike’s post is defamatory, that defamation relates to the reputation of Jeff and Jeff has discontinued his action in this matter. It is not Tanis’s reputation that has been improperly “lowered”.

[25] I have come to the conclusion that it is not Tanis’s reputation that has been lowered on the basis of the following facts. First, on cross-examination on her affidavit, Tanis admitted that the post directed people not to support Jeff, stating in her cross-examination that, “[Mike is] dictating to people not to, to do other things other than participate with [Jeff]].” (page 32 of the cross-examination dated March 10, 2026). Second, no one who viewed or commented on Mike’s post referred to Tanis or McBarn directly. As admitted by Tanis in her cross-examination on her affidavit without exception

those who commented referred to Jeff by name or pronoun. (pp. 39-40 of the cross-examination dated March 10, 2026).

[26] While Tanis maintains that she is the sole proprietor or owner of McBarn, I agree with the submission of the defendant Mike that on the basis of the evidence before me McBarn's ownership is convoluted at best. At the time of Mike's post there was no current publicly available information as to who owned McBarn, and in terms of any legal registration, it was an inactive business.

[27] Tanis and Jeff live and jointly own the property on which this unincorporated business is carried out. This includes the joint ownership of the buildings in which the actual business is conducted. There is no indication on the basis of the evidence before me that ownership could be identified through any public sources.

[28] Although Tanis states that her ownership is evident from her social media accounts, no direct evidence of those social media accounts was submitted as evidence at this hearing. She claims in her affidavit that this ownership is evident by examining her Facebook account. She makes a similar claim in her brief about her Instagram account but does not make that statement on the basis of affidavit evidence. In the circumstances of this case, I am not prepared to accept her claim that at the time of Mike's post, those accounts establish her ownership without seeing contemporaneous evidence as to ownership from those accounts directly.

[29] Furthermore, there are a number of public statements made by Jeff, which in conjunction with his joint ownership of the land and property on and in which McBarn conducted its business, would lead to the very reasonable conclusion that he was or even

is an owner of the business. While Tanis states that those comments were either made in error or are untruthful, there is no question in my mind that Jeff was holding himself out publicly to have an active interest in the business of running McBarn. These public statements made on his social media account describe himself as the "Chief Pooper Scooper McBarn Kennels", that he was McBarn's "maintenance man" and that he "decommissioned" McBarn's boarding building. It is also noted that when Jeff posted about McBarn he used the pronouns "we" and "our".

[30] I would note that other than the expired business name registration, no other substantive business records were brought to my attention that would support Tanis's claim that she was the sole owner and operator of the business. The comments that Jeff made about his activities involving the running of the business of McBarn are in stark contrast to the position of Tanis set out in her brief at paragraph 34 which provides:

... Jeff does not own McBarn Kennels. He does not co-own it. He merely resides on the land that it operates, and at most can be said to have assisted with limited maintenance.

[31] I do not agree with Tanis's assessment of the evidence. On the basis of the evidence before me it is clear that on a balance of probabilities Jeff played an active part in the operation of the business in addition to jointly owning the land and buildings upon and in which the business was being conducted. It is my conclusion that he held himself out to the public as having a substantive interest in the running of the business, as well as owning the assets and the land on which the business conducted its operations.

[32] Assuming at this point that Mike's post is defamatory, but having concluded that Mike's post is directed at Jeff and not Tanis, I need not go further in my reasons for

dismissing the claim. However, I have also come to the conclusion that Mike has established the truth of his comments and, in the alternative, that it constitutes fair comments as well.

[33] It is Tanis's submission that since Mike has expressed his post in the nature of opinion only, the defence of fair comment and not justification is available as a defence to Mike. Without deciding whether an expression of opinion necessarily excludes the applicability of the defence of justification, and assuming for the purposes of this portion of the reasons that the defamation is directed at Tanis and McBarn and not just Jeff, in my opinion, whether Mike's post can only be characterized as comment or an opinion, it is my conclusion that the post is true. In my opinion, Mike has established the substantial "sting" of any defamatory statement.

[34] In my opinion, the comment "Jeff hates his neighbours" is true. Jeff clearly stated his opinion about his feelings towards the vast majority of the people living in Winkler and the surrounding area (80% as Jeff's post states). That is not disputed. Furthermore, the evidence before me establishes on a balance of probabilities that Jeff is an owner of the business operated as McBarn. Whether Mike's post is expressed as an opinion or otherwise, it is my conclusion that he has proven the substantial truth of his statements.

[35] In respect of the defence of fair comment, and in the full context surrounding the use of the impugned words, I am satisfied that Mike has met the onus of establishing the elements of a fair comment defence.

[36] I agree with Mike's submission that the words complained of relate to a matter of public interest. In this case the words relate to an outdoor public rally in which strongly

expressed feelings and opinions were raised and comments were made on the advisability of being vaccinated against the Covid 19 virus. It is clear from the evidence, as well as on the basis of notorious fact, that the steps taken by public health authorities, law enforcement, and government agencies generally in Manitoba during the Covid 19 epidemic provoked strong responses on both sides of the public debate. As is evident from both Jeff's and Mike's posts, their social media comments are directly related to this important matter of public interest. In this respect I rely on the ***Hansman*** decision, where the court held that a public debate centered on the inclusion in schools of certain educational material was a matter of public interest.

[37] As I have previously stated, the comments made by Mike are based on fact. Indeed, in my opinion he has demonstrated on the basis of the evidence here that Jeff hates his neighbours and that Jeff owns McBarn. In my opinion Mike has met the objective test that a person could honestly express that opinion on the basis of the proven facts.

[38] In my opinion, Tanis has not met the onus of establishing that Mike acted with express malice once Mike has established the four other elements of the defence. In order to establish malice, the court in ***Hansman*** held at para 115:

[115] A showing of malice defeats a valid fair comment defence. This can be done by demonstrating the defendant made the statement knowing it was false, with reckless indifference as to its truth, to injure the plaintiff out of spite or animosity, or for some other improper purpose (*WIC Radio*, at paras. 100-101 and 104; see also *Bent*, at para. 136; *Smith v. Cross*, 2009 BCCA 529, 314 D.L.R. (4th) 457, at para. 34). Proof of malice "may be intrinsic or extrinsic: that is, it may be drawn from the language of the assertion itself or from the circumstances surrounding the publication of the comment" (*WIC Radio*, at para. 100). A finding of a subjective honest belief negates the possibility of finding malice (para. 53).

[39] In my opinion the facts here do not establish malice as defined by the court in *Hansman*. If it had been necessary for me to do so, I would have found that the defence of fair comment has been established by the defendant and that the plaintiff has not demonstrated that Mike's comments were made knowing they were false, with reckless indifference to their truth, to injure the plaintiff out of spite or animosity, or for some other improper purpose.

DAMAGES

[40] In view of the fact that I am dismissing the claim of the plaintiff, I need not address the issue of damages. Where I called upon to do so, and reviewing the nature of the dispute and the comments made, as well as the case law, I would award an amount of damages fixed at \$7,500.

CONCLUSION

[41] In the result, I am dismissing the plaintiff's claim. In respect of the issue of costs, I would award one set of costs at the applicable tariff in favour of the defendant payable jointly and severally by Tanis and Jeff. If costs cannot be agreed upon, they may be spoken to.

_____ J.