



COURT FILE NO.: SC-19-4013
DATE: 20240112

ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

BETWEEN:)	
)	
SHAHRAM TABE MOHAMMADI)	WAWRZKIEWICZ, A & SALAHSHOOI,
Plaintiff(s))	A., Counsel for the Plaintiff(s)
)	
– and –)	
)	
)	
MOHSEN KHANIKI, BIJAN AHMADI,)	HONICKMAN, L, Counsel for the
MEHDI SAMADIAN, MEHRAN)	Defendant(s)
HOSSEINY FARAZMAND)	
Defendant(s))	
)	
)	
)	HEARD at Toronto October 21, 2022,
)	January 23, 2023, June 14, 2023, June 22,
)	2023, October 26, 2023

REASONS FOR JUDGMENT

Deputy Judge O. Kahane-Rapport

Introduction:

[1] In this Claim the Plaintiff, SHAHRAM TABE MOHAMMADI (“Plaintiff”) claims that a December 4, 2018 Article [Exhibit 2] and a March 28, 2019 article [Exhibit 6], published in the Iranian Canadian Journal on-line magazine (“ICJ”), which were written by one or all the Defendants, MOHSEN KHANIKI, BIJAN AHMADI, and MEHRAN HOSSEINY FARAZMAND, (the Plaintiff having dismissed the Claim as against the Defendant MEHDI SAMADIAN without costs) contained defamatory words referring to him because the words written in those articles suggested to the readers that the Plaintiff is an Islamophob, Iranophob and a person who contributes to hatred against Muslims. No claim was brought against the ICJ.

[2] The Defendants deny that the said articles contained defamatory words. In the alternative the Defendants advance three defences: the qualified privilege defence, the truth or justification defence, and the fair comment defence.

- [3] Although the issue of the Notice requirement under the *Libel and Slander Act* was argued at trial, at the end of the trial the parties advised the court that they were not seeking a decision from the court with respect to whether the Plaintiff met the Notice requirements, under sections 5(1) and 6 of the *Libel and Slander Act*, prior to commencing this Claim.

The Plaintiff's Pleading:

- [4] In a defamation claim it is important to identify the alleged defamatory words and their meaning.

- [5] With respect to the December 4, 2018 article ["Article 1"], the Plaintiff claims [at para 9 of the Amended Plaintiff's Claim] that the article contained statements that are false and defamatory with respect to the Plaintiff in their natural and ordinary meaning, and in their implied meaning. The Plaintiff alleged that the following statements defame him:

a. "Tabe Mohammadi's articles regularly **include extreme Islamophobic comments**";

b. "In April 2018 in **another Islamophobic article in Shahrvand, Tabe Mohammadi** tried to portray his opponents as individuals "with religious views who will try to bring the idea of religious police to Toronto to make sure women wear Hijab." All this was nonsense though as Tabe Mohammadi's opponents were young Iranian- Canadians raised in Toronto, all of them educated in top Canadian universities. He was accusing them for the benefit of his candidates and because Tabe Mohammadi's young opponents were supporters of peace and diplomacy with Iran. Tabe Mohammadi's fear mongering failed again and members of the ICC chose a different path";

c. "In his reports and articles [the Plaintiff] regularly attacks activists and organizations that support peace and diplomacy with Iran";

d. "For so long in the Iranian-Canadian community few individuals such as Shahram Tabe Mohammadi, Shahrvand and their associates have misrepresented the views of our community. **For so long these individuals pushed for an anti-Iran narrative contributing to the growing discrimination and Iranophobia our community members experience on a daily basis.** It is 2018, but in Canada today there are companies that refuse to even accept resumes of Iranian nationals. **Iranians experience discrimination on a daily basis due to policies that Tabe Mohammadi and the pro-sanctions lobby promote against Iran and Iranians**";

e. "Tabe Mohammadi in his report thanked Nima Machouf for arranging the meeting. Nima Machouf is the wife of the former MNA Amir Khadir. Amir Khadir was a representative for the radical separatist party Quebec Solidaire. **According to multiple reports Khadir and his family had close ties with Mujahedin-e-Khalq** (or the People's Mujahedin of Iran). In an interview Khadir said he was very involved with Mujahedin till mid-1980s. The United States in 1997, the European Union in 2002, and Canada in 2005 designated

MEK a terrorist organization. **MEK was designated in Canada as a terrorist organization as recently as 2012**"; and

f. "[The Plaintiff]" questioned our claim that the IC Journal is run by a group of volunteers and said that "the high quality graphics used by this website prove their connection to Iranian government".

The above statements are collectively referred to as the "**Impugned Statements in Article 1**".

[6] The Plaintiff further alleged [para 9 of the Amended Plaintiff's Claim] that the Impugned Statements in Article 1, are false, malicious, and defamatory of the Plaintiff. The Plaintiff's Claim reads:

"These words specifically identify him and are defamatory of him both personally and in his capacity as a professional journalist, a professor, and an esteemed member of the Iranian-Canadian community. The Defendants' representations of Mr. Tabe Mohammadi's statements in his articles are intentionally inaccurate, incomplete, misleading, and exaggerated in nature, in order to justify the Defendants' defamatory remarks. In both their natural and ordinary meanings, and by way innuendo and implication, the above quoted words, taken in context, mean and are understood to mean that:

- i. The Plaintiff is an Islamophob;
- ii. The Plaintiff regularly publishes articles which contain extremely Islamophobic comments;
- iii. The Plaintiff defamed his opponents at the ICC knowingly, maliciously, and in bad faith, by publishing statements indicating that, given the chance, they would establish religious police in Toronto to force women to wear the hijab, because of their extreme religious beliefs;
- iv. The Plaintiff regularly publishes articles attacking activists and organizations that support peace and diplomacy with Iran;
- v. The Plaintiff regularly misrepresents the views of the Iranian community in bad faith;
- vi. The Plaintiff regularly works to promote an anti-Iranian worldview, and by that work, causally contributes to an increase in discrimination against Iranians in Canada;
- vii. The Plaintiff knowingly, or through blameworthy ignorance, has significantly contributed to increasing discrimination against Iranians in Canada, to the point that such discrimination occurs on a daily basis;
- viii. There is good reason to suspect that the Plaintiff is meaningfully connected to the MEK, a terrorist organization;
- ix. The Plaintiff spreads hateful, violent and discriminatory rhetoric;
- x. The Plaintiff made the careless, idiotic and defamatory allegation that the Defendants' use of high quality graphics on their website was definitive proof that they were connected to the Iranian government ; and

- xi. The Plaintiff is, at best, an imbecile and a buffoon, who lacks the wisdom to realize that his actions harms his own people in the Iranian community.”

[7] With respect to the March 28, 2019 article [“Article 2”], the Plaintiff claimed [at para 19 of the Amended Plaintiff’s Claim] that the article contained statements that are false and defamatory of the Plaintiff in their natural and ordinary meaning, and in their implied meaning. The Plaintiff alleged that the following statements defamed him:

- a. “For the purpose of this article let’s only focus on two recent articles Shahram Tabe-Mohammadi wrote for Shahrvand. In his article published in May 2018 he wrote - Here is the translation of the text:

“Saman Tabasinejad’s public support for the policies of the Islamic Republic and her support for the regime create concerns and doubts that in case she enters the Ontario Parliament her work will be detrimental to the interests of Iranian-Canadians. For example, she might bring up topics such as recognizing the Sharia law in Ontario, which was brought up in Ontario a couple of years ago.”

The statement above is not only Islamophobic based on any definition you look at but also false and misleading. Saman was the only Muslim candidate in Willowdale in the last Ontario provincial election but she has never expressed support for any foreign government. Indeed, like many other progressive Canadian activists she has proudly supported and advocated for peace with Iran. Saman has also never supported or even talked about Sharia in Ontario. **Mr. Tabe Mohammadi’s statement demonizes the only Muslim candidate and a young Canadian woman in that election by suggesting that she has ulterior motives for running in the Ontario elections.”;**

- b. “In another part he said that if the candidates he opposed would be elected to the ICC board they would organize “**morality police and force Iranian women in Toronto to wear Hijab.**” While at first his comments might sound laughable, Tabe-Mohammadi is serious and he knows that he can rally and excite his base and readers of Shahrvand magazine with this nonsense. The problem with Tabe-Mohammadi’s writing becomes more clear when you realize that among the candidates he opposed and defamed there were young practicing Iranian-Canadian Muslims. Yet, none of them have ever expressed any intentions or support for compulsory Hijab and have always talked about the importance of freedom, democracy and human rights. In the UK, the All Party Parliamentary Group on British Muslims published a report to provide a working definition for Islamophobia. Here are two parts of the definition: “*Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Muslims as such, or of Muslims as a collective group, such as, especially but not exclusively, conspiracies about Muslim entryism in politics, government or other societal institutions;*”. Accusing Muslim citizens of being more loyal to the ‘Ummah’ (transnational Muslim community) or to their countries of origin, or to the alleged priorities of Muslims

worldwide, than to the interests of their own nations.” While majority of Iranians are Muslim, often in political infighting and arguments, especially about politics in Iran, **you read and hear Islamophobic comments and even at times verbal harassment that are hurtful and discriminatory... But for Shahram Tabe-Mohammadi perhaps the prudent advice would be to fire his lawyer and invest in taking sensitive training instead.**”

The above statements are collectively referred to as the “**Impugned Statements in Article 2**”.

[8] The Plaintiff alleged [Para 16 of the Amended Plaintiff’s Claim] that the Impugned Statements in Article 2, are false, malicious, and defamatory of him. The Plaintiff pleaded:

“These statements specifically identify him and are defamatory of him both personally and in his capacity as a professional journalist, a professor, and an esteemed member of the Iranian-Canadian community. The Defendants’ Farsi translations of Mr. Tabe Mohammadi’s statements are intentionally incomplete, misleading, and fraudulent in nature, as the translations have been altered to fit the Defendants’ definition of defamatory remarks. In both their natural and ordinary meanings and by way innuendo and implication, the above-quoted statements, taken in context, mean and are understood to mean that:

- i. The Plaintiff knowingly, maliciously, and in bad faith defamed Saman Tabasinejad by stating that she supported the Iranian regime when she had never expressed support for said regime;
- ii. The Plaintiff knowingly, maliciously, and in bad faith defamed Saman Tabasinejad by stating that she had nefarious ulterior motives for running as a candidate in Ontario’s provincial elections;
- iii. The Plaintiff defamed his opponents at the ICC knowingly, maliciously, and in bad faith, by stating that, if elected to the ICC, they would establish morality police in Toronto to force women to wear the hijab;
- iv. The Plaintiff spreads mendacious, dehumanizing, demonizing, or stereotypical allegations about Muslims, including conspiracies about Muslim entryism in politics, government or other societal institutions, and alleges or insinuates that Muslims are more loyal to the worldwide Muslim community, or their courtiers or origin, than to the interests of their own nations;
- v. The Plaintiff deceives, abuses and rallies his base of readers through violent and Islamophobic comments, and cannot be trusted;
- vi. The Plaintiff knowingly, or through blameworthy ignorance, engages in conduct that increases discrimination against Muslims and Iranians; and
- vii. The Plaintiff is, at best, an imbecile and a buffoon, who lacks the wisdom to realize that his actions harm his own community.”

The Defendants’ Pleading:

- [9] In their pleaded Amended Defence, the Defendants pleaded that Article 1 was written in response to a November 29, 2018, article which was written by the Plaintiff and published in Shahrvand magazine in the Farsi language, titled 'NDP Does not Side with the Islamic Government: A Meeting with MP Helene Laverdiere, Foreign Affairs Critic of the New Democratic Party' [Ex 17]. The Defendants pleaded that in that article, the Plaintiff stated that he had a meeting with Ms. Laverdiere and proceeded to publish false and defamatory information: (i) Of and concerning Board members of the Iranian Canadian Congress (“ICC”), as well as the ICJ; and (ii) Of and concerning the ICJ.
- [10] In their Plead Amended Defence the Defendants pleaded that Article 2 was published in response to the Plaintiff’s lawyer’s letter of March 4, 2019 [Ex 12] which letter stated that Article 1 was defamatory and demanded cessation of the defamatory publication, and in response to the Plaintiff’s article in Shahrvanad Magazine dated March 21, 2019 that included baseless claims against Iranian-Canadian activists’ actions without providing any evidence. This March 21, 2019 article, was not included in any of the exhibits provided to this court.

The Evidence at Trial:

- [11] The trial proceeded over 5 days. Evidence on both sides was detailed and at times above and beyond what is relevant for the determination of this Claim.

The Parties:

- [12] The Plaintiff is a highly educated individual with diverse interests in science and art. He is a scientist, and a social and political activist. He arrived in Canada from Iran as a refugee. He is very involved and well known within the Iranian community. The Plaintiff testified that he is Muslim born, but does not practice any religion. The Plaintiff does not believe in armed struggle or violence. The Plaintiff believes that human rights should be achieved by peaceful activism. The Plaintiff preaches for promoting human rights in Iran and he does not support the current Iranian regime.
- [13] The Plaintiff regularly writes articles in Iranian papers against the Islamic Republic of Iran. He has never written articles against Islam or the Muslim religion.
- [14] The Defendant Bijan Ahmadi provided evidence at trial on behalf of all of the Defendants. Mr. Ahmadi is a highly educated individual. Mr. Ahmadi is the executive director of the Institute for Peace & Diplomacy (IPD). Mr. Ahmadi works with Canadian scholars and researchers on issues that are important for advancing Canadian foreign policy and Canada’s interests with respect to Iran in the international stage. He is politically involved in the Iranian-Canadian community and writes for the ICJ. Mr. Ahmadi has presence in various media outlets. Mr. Ahmadi is a promoter of human rights in Iran and he does not support the Iranian regime nor is he a sympathizer of the Iranian regime or aligned with the ideology of this regime.

- [15] The ICJ is an online political and social commentary magazine. It covers stories on political and social activities that affect the lives of Iranians in general and Iranian-Canadians in particular. The ICJ is registered as a Canadian non-for-profit organization and it is led by a team of Iranian-Canadian volunteers. The Defendants Mr. Khaniki, Mr. Farazmand, and Mr. Ahmadi are the founders and initial members of the Board of Directors of the ICJ. Mr. Khaniki and Mr. Farazmand were the initial co-editors of the Journal. Mr. Ahmadi is a director and manager of operations of the ICJ.
- [16] The ICJ was established to address the growing need that the founders believed existed in the Iranian diaspora for an independent and progressive media and commentary platform, in order to: (i) Discuss challenges and stereotypes the Iranian diaspora encounter in Canada and around the world; (ii) Combat discrimination against the Iranian community in all its forms (in particular Islamophobia and anti-Iranian sentiment); and (iii) Promote peace, diplomacy, and constructive engagement in the Middle East and raise awareness about policies that escalate tensions and conflict in the region.
- [17] I find, based on the evidence that I heard at trial and the Exhibits which were entered by the parties, that:
- a. The Plaintiff and the Defendants, and in particular the Defendant Mr. Ahmadi, have been political and media rivals since at least 2016.
 - b. The parties are Muslim and Iranians. They live in Canada and hold different political views with respect to how to bring about change in Iran and how to better the lives of Iranians in Canada.
 - c. Both the Plaintiff and Mr. Ahmadi promote peace, human rights for Iranians in Iran and the wellbeing of Iranian-Canadians within Canada, albeit through different political ideology.
 - d. The parties acknowledge that stating in public that an individual is against the current Iranian Regime or associated with groups or actions that can be perceived as against that regime, may be dangerous to a person's life.
 - e. The individual parties are all media writers and contributors. They use their penmanship to express and promote their ideas, ideology and opinions.
 - f. The articles in the ICJ were published in English. The articles in Shahrvand magazine were published in Farsi. It appears to this court that the readers of both publications are mainly Iranians.
 - g. The parties agreed that calling a person "Islamophob" is defamatory. The parties also agree on the definition of Islamophobia.

The Claim and the Defence:

- [18] The Plaintiff's position was that Articles 1 & 2 published by the ICJ contained defamatory statements. The Plaintiff testified that Articles 1 & 2 accused him of being Islamophob, Iranophob, and a supporter of a terrorist organization which acts against the Iranian regime operating mostly from Iraq. Affiliation with this organization has serious life-threatening implications to any one accused of such affiliation.

[19] At trial the court asked the Plaintiff to specify and to identify what the defamatory words were in each of the two articles published by the ICJ. The Plaintiff testified as follows:

With respect to the December 4, 2018– Article 1 [Ex 2] – the Plaintiff specified that the article included the following defamatory words:

- “Tabe Mohammadi’s articles regularly include extreme Islamophobic comments”
- “Iranians experience discrimination on a daily basis due to policies that Tabe Mohammadi and the pro sanctions lobby promotes against Iran and Iranians.”

With respect to the March 28, 2019 – Article 2 [Ex 6] – The Plaintiff specified that the article labeled him as an Islamophob:

- When it was titled: “Mr. Tabe-Mohammadi, Learn More About Islamophobia”
- When it said that: “Mr. Tabe Mohammadi’s statement demonizes the only Muslim candidate and a young Canadian woman in that election by suggesting that she has ulterior motives for running in the Ontario elections. The statement above is not only Islamophobic based on any definition you look at but also false and misleading.”

[20] The Defendant Mr. Ahmadi testified that Articles 1 & 2 were published in response to publications by the Plaintiff in the Shahrvand magazine. The Defendants formed the opinion that the Plaintiff’s articles contained Islamophobic comments and felt that they must respond to those articles. They published in ICJ Articles 1 & 2 for that purpose.

[21] In particular, Mr. Ahmadi testified that Article 1 was published in response to the Plaintiff’s article in Shahrvand magazine dated November 29, 2018, titled 'NDP Does not Side with the Islamic Government: A Meeting with MP Helene Laverdiere, Foreign Affairs Critic of the New Democratic Party' [Ex 17].

[22] The Defendants testified that Article 2 was written by Mr. Ahmadi in response to the letter sent from the Plaintiff’s lawyer dated March 4, 2019 alleging that Article 1 was defamatory [Ex 12], and in an attempt to publish true information about what constitutes Islamophobia. Mr. Ahmadi also testified that Article 2 was also written in response to the Plaintiff’s article in Shahrvanad Magazine of March 21, 2019 that the Defendants say included baseless claims against Iranian-Canadian activists without providing any evidence.

[23] The Court notes that a March 21, 2019, article was not entered as an Exhibit. On June 22, 2023, Mr. Ahmadi testified with respect to this alleged article:

“I’m not sure if we have it in evidence, but I can explain that. Mr. Tabe Mohammadi wrote another article in Shahrvand magazine and attacked once again, both Iranian Canadian Journal and Iranian Canadian Congress, because of the work that we were doing at that time against well known, corrupt individuals who fled from Iran to Canada. And we were doing investigative work in Iranian Canadian Journal to

expose the corruption of these people. And Iranian Canadian Congress was following up these cases, they're famous cases, so I'm going to say that one is regarding a banker, Khavari, a banker who fled from Iran to here and has restaurants and many investments here. And the other one is related to a petro, a huge petrochemical corruption case in Iran, the lady who's involved in that fled to here as well. So we were doing investigative work in Iranian Canadian Journal about these. IC Congress was doing advocacy work with the Canadian government. And, and we then saw an article from Mr. Tabe Mohammadi again saying that these people are after these corrupt individuals because Islamic Republic is after them."

The Defendants' lawyer confirmed at trial that this March 21, 2019 article was not in evidence.

- [24] Mr. Ahmadi testified that Article 2 outlines facts relating to the Plaintiff's writings and why it was the Defendants' opinion that the writings of the Plaintiff contained statements and comments that could be considered Islamophobic. This topic is an important public topic in Mr. Ahmadi's view.
- [25] Mr. Ahmadi testified that in the Defendants' opinion, the following comments made by the Plaintiff were Islamophobic in nature:
- "Sister observe your hijab" – because it is a catch phrase used by the religious police in Iran. This is an Islamophobic comment because it intended to create fear in readers. The court notes that the Plaintiff wrote an article containing this phrase on April 19, 2018 [Ex 15].
 - Stating that someone is a supporter of the Iranian regime, aligns with its policy, and making dual loyalty accusation is also an Islamophobic comment; and
 - Making allegation that someone will promote Sharia Law is an obvious Islamophobic comment.
- [26] Mr. Ahmadi testified that he felt that the severity of the accusation against ICJ and other community members articulated in the Plaintiff's writing, made it necessary to respond. He testified that the Defendants felt that "enough was enough" and they had to put their opinion out there and "stop the Plaintiff".
- [27] The Defendants entered many examples of the Plaintiff's writing as exhibits. It became evident at trial that the Plaintiff's article titled "Sisters, Observe Your Hijab" dated April 19, 2018 [Ex 15] and the Plaintiff's article titled "NDP Does not Side with the Islamic Government: A Conversation with Helene Laverdiere, the Foreign Affairs Critic of the New Democratic Party" dated November 29, 2018 [Ex 17] were the catalyst to the Defendants publishing Articles 1 & 2 in the ICJ.
- [28] I note that some articles of the Plaintiff which were entered as exhibits were translated but the date on which they were published was not indicated (See for example, Exhibits 19, 20 and 24). I also note that Exhibit 23 contains an article dated May 9, 2019 titled

“Sympathizers of the Islamic Republic Are Nearing Their End” which appears to have been written after this Claim was commenced.

- [29] I note that the Defendants had published an article dated December 1, 2018 in which they provided MP Laverdiere’s email response to the Plaintiff article of November 29, 2018 [Ex 33].
- [30] I have reviewed the Plaintiff’s writings which were entered as exhibits by the parties and in my view they are political in nature.
- [31] This court does not have before it a claim by the Defendants (or any other person referred to in the Plaintiff’s articles) against the Plaintiff alleging defamation. This court was made aware that such a claim is pending in the Superior Court of Justice. This Court was not tasked with determining whether the Plaintiff defamed the Defendants.

THE LAW

The Test to Establish Defamation:

- [32] To prove defamation, a plaintiff has to prove the following: (a) that the words were defamatory, meaning they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person; (b) that the words refer to the plaintiff; (c) that the words were published to a third party. If these elements are established on a balance of probabilities, falsity and damage are presumed. 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. If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability. [*Grant v. Torstar Corp.*, [2009] 3 SCR 640 at paras. 28- 29]
- [33] A defamatory statement is one that causes the plaintiff to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. Comments, which when read collectively, establish that the sting of the defendants’ comments were that a plaintiff was homophobic, transphobic and anti-LGBTQ2S+, tend to lower the plaintiff’s reputation and were held by Canadian courts to be defamatory. [*Volpe v. Wong-Tam*, 2022 ONSC 3106 (CanLII) at para. 165; aff’d 2023 ONCA 680]
- [34] The threshold test is whether the statement is defamatory either through its natural and ordinary meaning or through innuendo. [*Leenen v. Canadian Broadcasting Corp*, 2000 CanLII 22380 S.C.J.]
- [35] The assessment of whether words are defamatory is dependent on their meaning. In considering whether words are defamatory, it is for the trier of fact to determine whether the words, when considered in the context in which they were presented, would reasonably lower the plaintiff in the estimation of an ordinary, objective, reasonable member of society, who has common sense, is reasonably thoughtful and informed, but who does not

have an overly fragile sensibility. [*Myers v. Canadian Broadcasting Corp*, [1999] O.J. No. 4380 (SCJ)]

- [36] The standard of what constitutes a reasonable or ordinary member of the public is difficult to articulate. It should not be as low as to stifle free expression unduly, nor so high as to imperil the ability to protect the integrity of a person's reputation. The impressions about the content of any broadcast - or written statement - should be assessed from the perspective of someone reasonable, that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to viewers. [*Your World Corp. v. C.B.C et al* (1998) 156 D.L.R. (4th) 27 (Ont.C.A.)]

Are the Impugned Statements in Articles 1 & 2 Defamatory?

- [37] There is no question that the words refer to the Plaintiff. His name is clearly stated in the Articles.
- [38] There is also no question that the words were published to a third party. They were published in an on-line magazine. A newspaper does not cease to be a newspaper when it is published online. The word "paper" is broad enough to encompass a newspaper which is published on the internet. [*John v. Ballingal*, 2017 ONCA 579].
- [39] I find that the Impugned Statements in Article 1 & 2, in the context of which they were made are defamatory as they suggested that the Plaintiff is an Islamophob who promotes hate against Muslims and as such would reasonably lower the plaintiff's reputation in the estimation of an ordinary, objective, reasonable member of society, who has common sense, is reasonably thoughtful and informed, but who does not have an overly fragile sensibility.
- [40] Although the Plaintiff was not specifically called an Islamophob, the Impugned Statements in Articles 1 & 2, when read collectively, establish that the sting of the Defendants' writings was that the Plaintiff is Islamophob and promotes anti-Muslimism or anti Iranians hatred or ideas, and as such the Defendants' writings are defamatory. The Defendants used Muslim tropes to convey meanings to their readers that suggest that the Plaintiff is an Islamophob (much like the Defendants claim that the Plaintiff did in his writings and the reason the Defendants gave for their need to respond). These statements come as close as calling the Plaintiff an Islamophob. In today's society these statements would cause the Plaintiff to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem, in the eyes of the general population and in the eyes of other Iranians who were clearly the target and readers of the ICJ.
- [41] As such I find that the Impugned Statements in Articles 1 & 2 are defamatory.

Defences

The Defence of Truth or Justification

- [42] The test for justification in respect of a publication of an allegedly defamatory statement is whether the statement was “substantially true” or “true in substance”. The defence of justification turns on the overall sting of the defamation, and not whether the published words were true in every respect. Minor inaccuracies which do not affect the substantial truth of the statement or add materially to its defamatory quality may be overlooked. [*P.G. Restaurant Ltd. v. Cariboo Press (1969) Ltd.*, 2005 BCCA 210 at para 33, application for re-hearing dismissed, 2005 BCCA 288, leave to appeal to SCC refused, [2005] S.C.C.A. No. 270.]
- [43] In determining whether the words are true in substance and fact, a court will “consider the statements in their entirety, and regard may be had for the setting, context and circumstances in which the words were used. It is the truth as the words reasonably would be understood in light of the particular circumstances that must be proved. Proof that statements are literally true is not required.” [*Brown on Defamation*, Vol. 3, loose-leaf (Toronto: Thomson Reuters Canada Limited, 2013) at 10-36 to 10-37 and 10-71].
- [44] Under this defence, a defendant is also entitled to assert that the words complained of have a different and lesser defamatory meaning than that asserted by the plaintiff, and to seek to justify that lesser defamatory meaning. [*Pizza Pizza Ltd. v. Toronto Star Newspapers Ltd.* (2000), 49 O.R. (3d) 254 (C.A.)].
- [45] In their Amended Defence the Defendants pleaded justification with respect to lesser and different meanings. The Defendants stated that viewed in their entirety and/or cumulatively, in their natural and ordinary meanings and by innuendo, in relation to the Plaintiff, the Impugned Statements in Articles 1 & 2 were meant or understood to mean a lesser more diluted “sting” than as perceived by the Plaintiff, and the more diluted meaning of the words used is justified because they are substantially true.
- [46] When asserting a lesser meaning the court in *Polly Peck (Holdings) plc v. Telford* [1998 CanLII 18866 (ON CA)] stated:
“In cases where the plaintiff selects words from a publication, pleads that in their natural and ordinary meaning the words are defamatory of him and pleads the meanings which he asserts they bear by way of false innuendo, the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different to that alleged by the plaintiff. The defendant is entitled to plead that in that meaning the words are true and give particulars of the facts and matters on which he relies in support of his plea.”

Did the Defendants Establish the Defence of Truth or Justification?

- [47] When I consider the statements in the ICJ in their entirety, and give regard to the setting, context and circumstances in which the words were used, I find, based on the evidence I heard and the exhibits provided at trial that the Plaintiff is a non-practicing Muslim who

cares deeply about the Iranian community in Canada. The Plaintiff is a political activist in the Iranian polarized political environment. The Plaintiff's writings are directed towards ideologically similar minded individuals, who read Farsi, with the intent of providing his views on various political issues that effect the Iranian community.

- [48] I do not agree that the Impugned Statements in Articles 1 & 2 are "substantially true" or "true in substance". I find that the Defendants did not establish that the Plaintiff is an Islamophob, that his articles contain extreme Islamophobic comments, or promote hatred against Iranians or Muslims.
- [49] With respect to the lesser meaning assertion as part of the defence of truth or justification, the Defendants would have to show that the words in the context of the whole publication bear a different meaning than that which the Plaintiff alleges.
- [50] The Defendants stated in evidence that they felt that the Plaintiff "had to be stopped", that they believed that the Plaintiff is an Islamophob and that calling the Plaintiff out to be an Islamophob would stop him. The Defendants felt that they must respond to the Plaintiff's articles as they contained Islamophobic tropes. Both the Plaintiff and the Defendants in this case attribute the exact same meaning to the words which are alleged to be defamatory. At trial the Defendants agreed that calling someone an Islamophob is defamatory.
- [51] Accordingly, I find that the Defendants intended to convey the meaning of the words they used as interpreted by the Plaintiff and not a lesser meaning as the Defendants pleaded in their Amended Defence. Had the Defendants articulated the pleaded lesser meaning in Articles 1 & 2, this case may have never been brought to Court. As such I find that the Defendants did not mean to express a different and lesser defamatory meaning than that which was asserted by the Plaintiff.
- [52] Accordingly, the defence of truth or justification was not established.

Qualified Privilege Defence:

- [53] In *RTC Engineering Consultants v. Ontario et al.*, [2002] O.J. No. 1001 (C.A.), the court stated that the qualified privilege defence exonerates the makers of what would otherwise be a defamatory statement provided certain conditions are met. The defence of qualified privilege applies "to the occasion when a defamatory statement is made, not to the statement itself." On an occasion of qualified privilege, a person may defame another without attracting liability. The law presumes that the defamatory statement was made honestly and in good faith. The rationale for the defence is that the interest sought to be protected by the statement is considered important enough to justify a limited immunity from an action for defamation. Immunity is limited because it extends only to statements that are germane and reasonably appropriate to the occasion, and that are made honestly and in good faith or without malice.

- [54] The defence of qualified privilege reflects a balancing of competing interests: the interest the maker of the statement seeks to serve and the interest in reputation that the defamed party seeks to protect. At the heart of the defence of qualified privilege is the notion of reciprocity or mutuality. A defendant must have some interest in making the statement and those to whom the statement is made must have some interest in receiving it. The context is important. The nature of the statement, the circumstances under which it was made, and by whom and to whom it was made are all relevant in determining whether the defence of qualified privilege applies. A person attacked by another may respond in kind, in the same way and to the same audience chosen by the person making the attack. In order to satisfy the burden a defendant must prove that there was an occasion of privilege, in that the publisher had an interest or duty, legal, social, moral or personal to publish the words and the person to whom it is published has a corresponding interest or duty to receive it. "Interest", however, should not be viewed technically or narrowly. [*RTC Engineering, para. 16*]
- [55] Qualified privilege defence is not absolute. It may be lost in one of two ways. First, it may be lost if the dominant motive for making the statement was malice. In this context, malice means not just ill will towards another but any ulterior motive that conflicts with the interest or duty created by the occasion. And it includes recklessness. Both dishonesty and a reckless disregard for the truth may amount to malice. Second, a privilege may be lost if the statement is not commensurate with the occasion, either because the statement is not germane and reasonably appropriate to the occasion or because the recipients of the statement have no interest in receiving it. Put differently, to maintain privilege a defendant must communicate appropriate information to appropriate people. [*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at paragraphs 143- 148].
- [56] In *Grant v. Torstar Corp.*, supra, the Supreme Court of Canada noted that the defence of qualified privilege has seldom assisted media organizations. One reason is that qualified privilege has traditionally been grounded in special relationships characterized by a "duty" to communicate the information and a reciprocal "interest" in receiving it. The press communicates information not to identified individuals with whom it has a personal relationship, but to the public at large. The court reviewed the jurisprudence around the world and noted that a new defence namely 'responsible communication' had developed and should apply in Canada and that such defence would allow publishers to escape liability if they can establish that they acted responsibly in attempting to verify the information on a matter of public interest. The court in *Grant* noted that in its opinion responsible communication is a new defence, leaving the traditional qualified privilege defence, which normally did not assist media organizations, intact.
- [57] I note that at trial the Defendants' lawyer specifically advised that the Defendants are not relying on the defence of responsible communication. I also note that the ICJ is not a Defendant in this Claim.

Did the Defendants Establish the Defence of Qualified Privilege?

- [58] The Defendants published the Impugned Statements in Articles 1 & 2 in the ICJ. Any potential social interest that the Defendants had to serve - i.e. setting the political debate 'correct' and 'stopping the Plaintiff' from communicating his opinions with respect to other political activists in this political environment (notably without naming their names explicitly) - must be balanced against the interest in reputation that the Plaintiff seeks to protect. The Defendants, who felt they were being attacked by the Plaintiff had a right to respond in kind, in the same way, and to the same audience chosen by the Plaintiff. I do not find that the Defendants responded in kind, in the same way or to the same audience. The Defendants specifically named the Plaintiff, have used direct defamatory statements against the Plaintiff and did not respond to the same audience – the Farsi reading audience of Shahrvand magazine – but rather to the English reading audience of the ICJ.
- [59] The defence of qualified privilege is not absolute. Even if I was to accept that the Defendants established the defence of qualified privilege, I find that the defence of qualified privilege was defeated because the Impugned Statements in Articles 1 & 2 did not commensurate with the occasion, as the Impugned Statements in Articles 1 & 2 were not germane and reasonably appropriate to the occasion. The context of the articles written by the Plaintiff was political in nature. However, in my opinion the Impugned Statements in Articles 1 & 2 exceeded what would be germane or reasonable within this political debate environment.
- [60] I agree with the sentiments expressed by Justice Nordheimer in *Lascares v. Bnai Brith* [2019 ONCA 163] that fair disagreements over policies and principles can be undertaken, indeed ought to be undertaken, through responsible discourse. Whatever disagreements there may be between the Plaintiff's views and the Defendants' views, those views could have been exchanged and debated without the need for personal attacks and without engaging statements which are defamatory.
- [61] Accordingly, I find that the Defendants have failed to establish the defence of qualified privilege. The Impugned Statement in Articles 1 & 2 were defamatory and in my opinion were not appropriate within the context of this political debate.

Fair Comment Defence

- [62] In *WIC Radio Ltd. v. Simpson*, [2008 SCC 40], the court set out the requirements to establish the defence of fair comment:
- (i) The comment must be on a matter of public interest;
 - (ii) The comment must be based on fact;
 - (iii) The comment, although it can include inferences of fact, must be recognizable as comment;
 - (iv) The comment must be one that any person could honestly make on the proved facts;
 - and (v) The comment was not actuated by express malice.
- [63] In its 2023 decision of *Hansman v. Neufeld* [2023 SCC 14] the Supreme Court of Canada stated that the fair comment defence is premised on the idea that citizens must be able to

openly declare their real opinions on matters of public interest without fear of reprisal in the form of actions for defamation. This democratic discourse is a defining feature of a free and open society. Thus, the defence aims to keep the equilibrium in defamation law between two competing values: the protection of individual reputation from unwarranted attack, on one hand, and the free debate “that is said to be the ‘very life blood of our freedom and free institutions’ on the other. The task of courts in interpreting the defence is to reconcile these two values, not to prefer one over the other.

- [64] *Hansman* involved a political debate on a matter of public policy between participants in the political process – a debate conducted in the media involving a union leader and an elected school board official. As the majority of the Supreme Court noted, the defendant’s expression in that case “focused on the views that [the plaintiff] expressed, and not who he is as a person”.
- [65] In *Hansman* the court held that assessing the availability of a fair comment defence requires a careful review of the impugned statement in the context of the publication in which it appeared to determine whether it is recognizable as a comment rather than as a statement of fact.
- [66] There is a difference between comment or criticism and allegations of fact. A defining feature of a comment is that it is generally incapable of being proven. Similarly, a comment must be clearly recognizable as such and not be so entangled with allegations of fact that inferences cannot be distinguished from facts. Any ambiguity in this regard must benefit the plaintiff. The inquiry is an objective one aimed at discerning the perception of the reasonable viewer or reader.
- [67] In *Volpe*, supra, the court stated that a comment made in the context of a public debate is to be assessed considering that when a plaintiff made such comment, that plaintiff has entered the fray and should reasonably expect a vigorous response.

Requirement # 1 – The comment must be on a matter of public interest

- [68] In determining whether a publication is a matter of public interest, the judge must consider the subject matter of the publication as a whole. The defamatory statement should not be scrutinized in isolation. To be of public interest, the subject matter must be shown to be one inviting public attention, or about which the public, or a segment of the public, has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached. Public interest is not confined to publications on government and political matters, nor is it necessary that the plaintiff be a “public figure”. [*Grant v. Torstar Corp.*, supra]

Did the Defendants Establish Requirement #1?

- [69] I find that the Defendants established requirement #1.

- [70] The Plaintiff and the Defendants are political activists. The issues raised in their articles (and publications) are clearly within the interest of their readers. In particular, the parties appear to be political rivals who attempt to denunciate each other particularly during election times for the ICC.
- [71] I note that the Plaintiff agreed at trial that the Defendants comments were made within the context of a debate on a matter of public interest to the Muslim community. However, this debate, the Plaintiff claimed, was not of interest to the English speaking community. I do not agree. There may be Muslims and Iranians who do not read Farsi, there may be Muslim and Iranians who read both Farsi and English, and the ICJ is geared toward them. I do not agree that because the ICJ is written in English the articles became not in the public interest as suggested by the Plaintiff's counsel.
- [72] Based on my reading of Articles 1 & 2 and the Plaintiff's articles to which they responded, I find that Articles 1 & 2 were on matters of public interest. They were made in the context of a public debate that was very adversarial on issues which were of interest to the Canadian-Iranian community.

Requirement #2 – The comment must be based on fact

- [73] To constitute fair comment, a factual basis for the impugned statement must be explicitly or implicitly indicated, at least in general terms, within the publication itself, or the facts must be “so notorious as to be already understood by the audience.” The defence is unavailable if “the factual foundation is unstated or unknown, or turns out to be false.” There is, however, no requirement that the facts support the comment, in the sense of confirming its truth. The expression must relate to the facts on which it is based, but the comment need not be a reasonable or proportionate response. The purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them “to make up their own minds” as to its merit. The relevant inquiry is not whether the underlying facts supported the truth of the statements. The question is merely whether the statement can be tethered to an adequate factual basis so the reader can be an informed judge. Challenged publications that either reproduce, link to, quoted from, or otherwise describe the Plaintiff's original statements or publications such that the Plaintiff views are available to readers within the four corners of the impugned publication either within the text itself or via hyperlinks to further articles and explanations satisfy this requirement. [WIC Radio, supra].

Did the Defendants Establish Requirement #2?

- [74] I find that the Defendants established requirement #2.
- [75] The challenged publications provided the link to, date of, or reference upon which, the statements in Articles 1 & 2 were made. I note that there is no requirement that the facts support the comment, in the sense of confirming its truth. I find that Articles 1 & 2 included enough information to allow the readers to make up their own mind as to the merits of the

Impugned Statements in Articles 1 & 2. Alternatively, I find that the general facts giving rise to the Impugned Statements in Article 1 & 2 were likely known to the audience and was referred to in the publications themselves.

Requirement #3 – The comment, although it can include inferences of fact, must be recognizable as comment

- [76] For expression to constitute fair comment, the statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact. A comment includes a “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof.” This is a low threshold; “the notion of ‘comment’ is generously interpreted.” The line between comment and fact can be difficult to draw, particularly “in an editorial context where loose, figurative or hyperbolic language is used . . . in the context of political debate, commentary, media campaigns and public discourse.” Opinions are expressed as facts more often than as personal views, such that statements that may seem to convey fact might be more properly construed as comment [*R. D. McConchie and D. A. Potts, Canadian Libel and Slander Actions* (2004), at p. 342]. Context is essential in distinguishing comment from fact.
- [77] In *Lascaris v. B’nai Brith, supra*, at para. 34, the court found that a reasonable trier might conclude that statements that the appellant supported terrorists were statements of fact, not opinion.
- [78] In *Hansman* the court held that Impugned statements which suggest concrete knowledge of past doing may be statements of fact. Generalized critiques are generally considered comments.
- [79] Canadian courts have determined that “loose, figurative or hyperbolic” labels, like homophobic, transphobic, bigoted, racist, or sexist are properly characterized as comment, not fact. [*WIC Radio*, at para. 26, followed in *Hansman*].
- [80] In *Awan v. Levant* 2016 ONCA 970 (CanLII) the Court of Appeal explained that an allegation of bias or prejudice is “a debatable assertion as to a state of mind” and will typically be classified as a comment. It is normally a conclusion or opinion based on the person’s conduct or statements.

Did the Defendants Establish Requirement # 3?

- [81] I find that the Defendants established requirement #3.
- [82] I find that the Defendants did not call the Plaintiff an Islamophob. They stated that his articles include Islamophobic comments and promote hatred and discrimination against Iranian etc. In the context of the political debate in which the Plaintiff and the Defendants wrote their articles, the Impugned Statements in Article 1 & 2, given together with the supporting references, would be understood by a reasonable reader as a comment rather

than as statements of fact. They are deductions, inferences, conclusions, criticisms, judgments, remarks and observation. They are generally incapable of proof, they are comments and would be interpreted as expressions of the opinion of the writers of the Articles.

- [83] I also note that the Defendants did not state in Article 1 & 2 that the Plaintiff belongs to a terrorist organization nor did they suggest concrete knowledge of past doing of the Plaintiff. They did indicate that one of the people who organized a meeting in which the Plaintiff was present was in the past active in an organization which was considered a terror organization. The Defendants defamed the Plaintiff by association. However, I find that Articles 1 & 2 in essence criticized the Plaintiff's writings, ideas and statements using loose, figurative or hyperbolic labels while asserting debatable positions as to the Plaintiff's state of mind. None of these assertions amount to statements of facts.

Requirement #4 – The defamatory comment must be one that any person could honestly make on the proved facts. This is an objective test.

- [84] The comment must be one that any person – however opinionated or prejudiced or obstinate in their views – could express based on the proven facts. The test is objective. It is not a high threshold. The test represents a balance between free expression on matters of public interest and the appropriate protection of reputation against damage that exceeds what is required to fulfill free expression requirements. In this context “fair” does not mean objectively reasonable. The defence protects obstinate, or foolish, or offensive statements of opinion, or inference, or judgment, provided certain conditions are satisfied. The word “fair” refers to limits to what any honest person, however opinionated or prejudiced, would express upon the basis of the relevant facts. Even the latitude allowed by the “objective” honest belief test may be exceeded. A comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective or attack. [*WIC Radio*, at paras. 49-51].
- [85] It is not hate literature but rather an opinion articles which must be protected as freedom of expression.
- [86] It is not required for the defendant to show that the facts “warranted” the comment or that the comment was a “reasonable and proportional response to the stated or understood facts”: [*WIC Radio*, at paras. 28, 39]. The comment has to be an opinion that “anyone could honestly have expressed” [paras. 49-51], which allows for robust debate. As Binnie J. put it, “[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones.” [*WIC Radio*, para. 4].
- [87] The key point is that the nature of the forum or the mode of expression is such that the audience can reasonably be expected to understand that, on the basis of the facts as stated or sufficiently indicated to them, or so generally notorious as to be understood by them, the comment is made tongue-in-cheek so as to lead them to discount its “sting” accordingly. “The objective limits of fairness [i.e. fair comment] are very wide.” [*WIC Radio*]

Did the Defendants establish requirement #4?

- [88] I find that the Defendants established requirement #4.
- [89] The Defendants' position was that the Plaintiff had made accusations against other Muslim individuals and, without naming names, also against some of the Defendants, and as such it was only fair that the Defendants should respond. The Defendants evidence was that Articles 1 & 2 were written in response to opinion articles written by the Plaintiff.
- [90] The Defendants must therefore establish that any person could have expressed the defamatory statements in Articles 1 & 2 after reading the Plaintiff's articles (i.e. the relevant facts).
- [91] The Plaintiff admitted to write politically charged articles. The Plaintiff, like the Defendants, used Islamophobic tropes in his articles to encourage his readers to vote at the ICC elections and to make their political choices relying on the opinion he (the Plaintiff) expressed in his articles. The Plaintiff's articles did include the statement "Sister observe your hijab" and did contain a warning that Sharia law may be introduced in Ontario should certain political candidates gain political power.
- [92] I find that the defamatory statements made by the Defendants could have been honestly expressed by any person reading the Plaintiff's articles however foolish, ridiculous and outrageous the Defendants' defamatory statements may be.
- [93] Accordingly, I find that the Defendants established a valid fair comment defence.

Fair comment and Counter speech

- [94] In *Hansman* it appears that the issue of counter-speech was considered where an expression was made to counter a perceived discriminatory and harmful expression towards transgender and other 2SLGBTQ+ youth — groups especially vulnerable to expression that reduces their worth and dignity in the eyes of society and questions their very identity. Mr. Hansman's counter-speech expression served a truth-seeking function, as he was contacted by the media to present an alternative perspective within a debate on a matter of public importance. In speaking out, he sought to counter expression that he and others perceived to undermine the equal worth and dignity of marginalized groups.
- [95] Articles 1 & 2 cannot be considered as counter-speech. Both the Plaintiff and the Defendants come from the same community. The Articles were not written as a response to the Muslim Iranian community being attacked by another more promoted community. The Muslim Iranian community is diverse in its political ideology and I do not find that the Defendants were providing an expression of counter-speech to protect a segment of this group.

Malice

- [96] A showing of malice defeats a valid fair comment defence.

- [97] “Malice is not limited to spite or ill will, although these are its most obvious instances. Malice includes any indirect motive or ulterior purpose, and will be established if the plaintiff can prove that the defendant was not acting honestly when he published the comment. This will depend on all the circumstances of the case. Where the defendant is the writer or commentator himself, proof that the comment is not the honest expression of his real opinion would be evidence of malice. If the defendant is not the writer or commentator himself, but a subsequent publisher, obviously this is an inappropriate test of malice. Other criteria will be relevant to determine whether he published the comment from spite or ill will, or from any other indirect and dishonest motive.” [*WIC Radio*, at para 101]
- [98] Malice must be the dominant motive for expressing an opinion in order to defeat fair comments. Arguments between ideologically-opposed participants in a public debate often breed bitterness, but such debate remains valuable and worthy of protection in a democratic society. However, while it is not appropriate to judge the objective fairness of an opinion, the protection of reputation may justify judging the motive for expressing it. After all, the purpose of the fair comment defence is to protect and encourage free debate on issues of public importance. Opinions published with the primary intention of injuring another person (for example), rather than furthering public debate, are sufficiently far removed from the type of speech the defence was intended to protect that they may justifiably be excluded from the scope of its protection. (*WIC Radio*, para. 106)
- [99] 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. It may involve inferences and evidentiary presumptions.” (*WIC Radio*, at para. 100).
- [100] The words used must be so violent, outrageous or disproportionate to the facts that it furnishes strong evidence of malice. [*Whitehead v. Sarachman*, 2012 ONSC 6641 (CanLII) at para. 37]
- [101] A finding of a subjective honest belief negates the possibility of finding malice; such finding can be based on the thrust of the defendant’s evidence, read as a whole.
- [102] Malice is commonly understood as spite or ill will toward someone. It is established ordinarily through truth on a balance of probabilities that the defendant: (a) knew the statements complained of were untrue; (b) was reckless with respect to their truth; (c) made the statement for dominant purpose of injuring the plaintiff because of spite or animosity; and/or (d) had some improper motive or dominant purpose. [*McVeigh v. Boeriu*, 2011 BCSC 400 CanLII]
- [103] An “improper purpose”, in this context, means some “bad, corrupt, dishonest, evil, guilty, illegitimate, improper, indirect, oblique, selfish, unjustifiable, ulterior, wicked, wrongful or even sinister purpose or motive.” [*Whitehead*, para. 54]

Did the Plaintiff Establish Malice?

[104] I have reviewed carefully the transcript of evidence and in particular the transcript of October 20, 2023 where the Plaintiff's lawyer specifically cross examined Mr. Ahmadi with respect to his intentions when writing the Impugned Statements in order to establish malice on the part of the Defendants.

[105] Mr. Ahmadi testified that he was concerned with addressing the lies and false accusation advanced against him and other members of the Iranian community by the Plaintiff. He testified that in the past he had written and spoken about his actions and position (for example about him objecting human rights violation in Iran) without specifically mentioning the Plaintiff in an effort to clarify his record as depicted by the Plaintiff. Mr. Ahmadi testified that such writing did not always result in clearing up what he considered false information about him and the ICJ or ICC members. Mr. Ahmadi testified that when his writings were of this nature, the Plaintiff did not stop making false accusations (such as that the Defendants are aligned with the Islamic Regime) against the Defendants. "He would just take it one notch higher and escalate" testified Ahmadi [Oct 20, 2023, transcript page 55].

[106] Mr. Ahmadi further testified:

"I was writing with cool head and very professionally. But still, that does not change the fact that those were serious accusations that required serious response, required facts and evidence to be provided to the public and those members of parliament so that they can understand that these accusations are false and that it's coming from the person who does not have the credibility that would make these accusations believable....I still think that the decision that we made was professional to provide all these facts in evidence." [Page 61 Oct 20, 2023 transcript]

"Our intention was to provide facts and evidence about the individuals who were making these long lists of accusations against us. These people have these questionable ties in the past, and we thought that it's important for our readers to know about these affiliations and these ties because honestly, that, that means something. That means that these people do not have the credibility to make these accusations and lies against us to this day. So, that's what we did.... I explained in the last court session as well that this piece responds to the accusations that he made and provide context and history of these individuals who made these accusations about us and their involvement in the Iranian Canadian community. And again, we thought that it serves our purpose and we thought that it is important for our readers to know these facts. We didn't make up anything, we stated facts and we provided sources and references for those facts that we mentioned." [Page 90-91 Oct 20, 2023, transcript]

[107] In response to questioning with respect to Article 1 Mr. Ahmadi testified:

"The, these accusations in that writing or in that meeting and in all the different platforms and forums that Mr. Tabe Mohammadi has repeated these false accusations, in my opinion, contributes significantly to discrimination and different

forms of discrimination, including Islamophobia, that our community has faced and may face in the future as well.” [Page 98 Oct 20, 2023 transcript].

- [108] The Plaintiff’s position was that there may have been other options of expression of the Defendants’ position, other options of disputing the alleged lies the Plaintiff allegedly wrote about the Defendants, and that, failure to use such other expressions to express the same sentiment is a marker of malice. I note however that Exhibit 33 is an article also published by the ICJ providing MP Laverdiere’s comments with respect to the Plaintiff’s article of November 29, 2018. This article would probably have been enough to answer the Defendants’ concerns with the Plaintiff November 29, 2018 article. However, in my opinion, although I agree that there may have been better ways to express the Defendants’ opinions, the fact that other way of expression existed and in fact was used, does not mean that Articles 1 & 2 were written with malicious intention.
- [109] I find that the Plaintiff failed to establish malice.
- [110] Malice is not established simply because a person uses strong language in a heated public debate over a political issue. It is necessary to establish subjective intent. Based on the evidence I heard at trial, (some of which is repeated above), I find that the Plaintiff did not establish that the dominant purpose of the Defendants in writing and publishing Articles 1 & 2 was malice.
- [111] The evidence establishes that it was the honest belief of the Defendants that the writings of the Plaintiff included extreme Islamophobic comments. Considering that the Defendants were intending, by writing their articles, to “stop” the Plaintiff from expressing his political opinions, as stated in the articles the Plaintiff wrote, because the Defendants considered those articles to be damaging to the Iranian community and Muslims at large, I find that the dominant motive for publishing the defamatory statements in Articles 1 & 2 was the Defendants’ honestly held opinion. A finding that the Defendants had a subjective honest belief that the Impugned Statements were correct, negates the possibility of finding malice.
- [112] The parties hold ideologically opposing opinions. The main purpose of writing Articles 1 & 2 was not to injure the Plaintiff, but rather to stop him from making the comments he was making. I find that the Impugned Statements in Articles 1 & 2 were not so violent, evil and ill spirited so as to stop further public debate. In fact, I was advised by the parties that the debates continue. One such example was Ex 23 – an article written by the Plaintiff on May 9, 2019 titled “Sympathizers of the Islamic Republic Are Nearing Their End”.
- [114] I want to stress that I am not providing an opinion as to whether the Defendants’ position with respect to the Plaintiff’s articles and their content is correct. Nor am I providing an opinion as to whether the Plaintiff’s articles contain defamatory statements with respect to the Defendants.

[115] Whatever disagreements there may be between the Plaintiff's views and the Defendants' views, I encourage the parties to exchange and debate those views without the need for further personal attacks and without engaging in speech that is arguably defamatory.

Conclusion:

[116] For the reasons stated above I find that:

- a. The Impugned Statements in Articles 1 & 2 were defamatory.
- b. The Defendants established the defence of fair comments which was not defeated by the allegation of malice.
- c. The Defendants failed to establish the defence of truth or justification and qualified privilege.

[117] Accordingly, the Plaintiff's claim is dismissed.

[118] If the parties cannot agree on costs they may each provide this Court with their position on costs in writing - limited to two (2) pages each. Costs submissions are to be provided no later than 20 days from the date of this Judgment.



Deputy Judge O. Kahane-Rappoport

Released: January 12, 2024

COURT FILE NO.: SC-19-4013

DATE: 20240112

**ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

BETWEEN:

SHAHRAM TABE MOHAMMADI
Plaintiff(s)

– and –

MOHSEN KHANIKI, BIJAN AHMADI,
MEHDI SAMADIAN, MEHRAN
HOSSEINY FARAZMAND
Defendant(s)

REASONS FOR JUDGMENT

Deputy Judge O. Kahane-Rapport

Released: January 12, 2024