COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Wilson v. Canwest Publishing Inc. /Publications Canwest Inc.*, 2018 BCCA 441

Date: 20181127
Docket: CA44713

Between:

Charles Blair Wilson

Respondent
Appellant on Cross Appeal
(Plaintiff by Counterclaim)

And

Canwest Publishing Inc./Publications Canwest Inc. and Elaine O'Connor

Appellants
Respondents on Cross Appeal
(Defendants by Counterclaim)

Before: The Honourable Madam Justice Saunders
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman

On appeal from: An order of the Supreme Court of British Columbia dated August 3, 2017 (*Lougheed Estate v. Wilson*, 2017 BCSC 1366, Vancouver Docket S081334)

Counsel for the Appellants/Respondents on Cross Appeal:	D.W. Burnett, Q.C.
Counsel for the Respondent/Appellant on Cross Appeal:	J.L. Straith
Place and Dates of Hearing:	Vancouver, British Columbia October 15 and 16, 2018
Place and Date of Judgment:	Vancouver, British Columbia November 27, 2018

Written Reasons by:
The Honourable Mr. Justice Tysoe

Concurred in by:
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Groberman

Summary:

The appellants published an article in the Province newspaper about the respondent, who was then a Member of Parliament, containing allegations of unpaid debts, improper campaign spending and unsuccessful business ventures. The trial judge concluded that the appellants were protected by the defence of responsible communication for all but one paragraph of the impugned article which related to a loan allegedly made to the respondent by his mother-in-law shortly before her death. The appellants appeal the order of damages for defamation, and the respondent appeals two unsuccessful aspects of his defamation claim. Held: Appeal allowed, cross appeal dismissed. The trial judge erred in applying the defence of responsible communication separately to different portions of the article, rather than to the article as a whole. When the article is considered as a whole, the appellants are entitled to succeed on the defence of responsible communication. On the cross appeal, the judge did not err in concluding that the publication of the article was in the public interest or in failing to consider all relevant factors in assessing the appellant's responsibility in publishing the article. The defamation claim is dismissed.

Reasons for Judgment of the Honourable Mr. Justice Tysoe:

Introduction

[1] The respondent, Charles Blair Wilson, was elected as a Member of Parliament for the riding of West Vancouver–Sunshine Coast–Sea to Sky Country in January 2006. He was appointed as the National Revenue Critic for the Liberal Party opposition in early October 2007.

[2] On October 28, 2007, the *Province* newspaper published an article about Mr. Wilson that contained allegations of unpaid debts, improper campaign spending and unsuccessful business ventures (the "Article"). It created a firestorm of controversy, and Mr. Wilson resigned from the Liberal Party caucus on the following day.

[3] In 2008, Mr. Wilson and his wife were sued by his wife's adoptive father, Mr. Lougheed, on behalf of himself, the estate of his deceased wife (Mrs. Wilson's mother) and a company owned by his deceased wife, for repayment of loans which had been one of the subject matters canvassed in the Article. Mr. Wilson

counterclaimed against Mr. Lougheed, as well as the appellants, who were the publisher and author of the Article, and four other parties.

[4] After a lengthy trial, the trial judge dismissed the debt claim against the Wilsons, allowed part of Mr. Wilson's defamation claim against the appellants, allowed a claim of harassment under s. 114(2) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 against the estate of Mr. Lougheed (who passed away mid-trial) and allowed a defamation claim against one of the other parties. The judge awarded damages of $125,000 against the appellants, $50,000 against Mr. Lougheed's estate and $15,000 against the other party.

[5] The appellants appeal the judge's order awarding damages against them for defamation, and Mr. Wilson cross appeals in respect of two aspects of the judge's ruling on his defamation claim in favour of the appellants. For the reasons that follow, I would allow the appeal and dismiss the cross appeal.

The Article

[6] The reporter, Ms. O'Connor, started working on the Article in September 2007. She had conversations and email communications with Mr. Lougheed and one of his daughters. She received a copy of an anonymous letter addressed to Elections Canada raising complaints about Mr. Wilson's campaign funding. She spoke to other people and conducted investigations. On October 25, 2007, three days prior to the publication of the Article, she had two telephone interviews with Mr. Wilson in which she told him about the allegations that would be contained in the Article. They arranged to have another telephone conversation for the following afternoon to give Mr. Wilson a further opportunity to refute the allegations, but Mr. Wilson did not phone the number the reporter had given him at the agreed upon time or at all.

[7] The trial judge attached a copy of the Article to her reasons for judgment (indexed as 2017 BCSC 1366), as well as copies of another article and a correction that are not relevant to this appeal and cross appeal. I will quote one portion of the Article that is central to the appeal, but it is otherwise sufficient to quote the meanings the judge found the impugned statements contained in the Article would have to a reasonable person:

> [223] I conclude that the impugned statements are capable of, and in fact have, the following meanings to a reasonable person:
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> (i) There were allegations of serious infractions of the *Canada Elections Act* during Mr. Wilson's 2006 campaign and those allegations were the subject of a complaint to Elections Canada. The substance of the allegations was that Mr. Wilson had willfully misled Elections Canada on his statement of electoral campaign expenses by intentionally failing to report numerous expenses and donations. The implication of the allegations was that Mr. Wilson's improper conduct may have provided him with an unfair advantage in the election.
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> (ii) Contrary to Mr. Wilson's public representations of fiscal responsibility, he and his wife had received and borrowed significant funds from [Mrs. Wilson's] parents and from various financial institutions. Although there were significant amounts owing to the Lougheeds, and without their knowledge, the Wilsons encumbered their real estate holdings with substantial bank mortgages. Further, and despite the fact that the Wilsons had an outstanding loan with the Lougheeds for the Whistler Property, the Wilsons did not inform Mr. Lougheed about the sale of the Whistler Property. The impugned statements convey a sense of deception of close family members.
>
> (iii) Mr. Wilson had exaggerated his business success and he had a history of controversial business affairs with some associated litigation.
>
> …

[8] Near the end of the Article were the following paragraphs that are relevant to the issues on the appeal:

> 94/ The final straw for Lougheed, he says, was when Wilson asked his mother-in-law for money on her deathbed. Lougheed has a copy of a cheque Norma wrote Blair for $22,840.82 on April 27, 2007, just a month before she died from cancer.

> 95/ "Thank you so, so much for your help with this. I appreciate all you and Bill have done for me", reads a note Wilson wrote to her that day.

The parties have referred to monies mentioned in this passage as the "deathbed loan".

[9] The judge found that this request for money "connotes a sense of exploitation and that Mr. Wilson was a callous person who lacked a sense of morality" (at para. 223). She found the essential thrust and overarching sting of the Article was that "Mr. Wilson was not the person he had represented himself to be during his political campaign and that he was unfit to serve as a Member of Parliament" (at para. 224).

Reasons of the Trial Judge

[10] After reviewing the facts, the judge canvassed the applicable law of defamation. She discussed at some length *Grant v. Torstar Corp.*, 2009 SCC 61, the decision of the Supreme Court of Canada that modified the law of defamation to provide greater protection for communications on matters of public interest in order to give appropriate weight to the freedom of expression guaranteed in s. 2(b) of the *Canadian Charter of Rights and Freedoms*. In doing so, the Court followed and expanded upon a similar change in defamation law in England brought about by the decision in *Reynolds v. Times Newspapers Ltd.*, [1999] 4 All E.R. 609 (H.L.), as clarified by *Jameel v. Wall Street Journal Europe Sprl*, [2006] UKHL 44, where the defence is expressed in terms of a qualified privilege. *Grant* created a new defence to the publication of defamatory statements, referred to as the defence of responsible communication, in cases where the statements were on matters of public interest and were responsibly made.

[11] The judge reviewed the factors suggested by *Grant* to be considered in determining whether the statements were responsibly made. One of the factors relates to the concept of "reportage", which are statements attributed to someone other than the publisher of the statements. The judge stated that the "repetition rule"

(which is that a person who repeats a defamatory statement made by another is just as liable as the maker of the statement) did not apply to reportage on a matter of public interest, provided that four prerequisites are satisfied: namely, the statement is attributed to a person, the report indicates its truth has not been verified, the report sets out both sides fairly, and the context of the statement is provided. She added that the ultimate question is whether the publication was responsible and that reportage "is not a distinct and independent defence" (at para. 189).

[12] The judge also reviewed the defences of fair comment and qualified privilege, including the topic of malice which defeats these defences.

[13] The judge then considered the issue of whether the impugned statements in the Article were defamatory and, in doing so, she made the findings referred to above. She concluded that the statements were defamatory (at para. 224), and she turned to the defence of responsible communication.

[14] The judge first concluded that the Article was in the public interest and she then considered the factors in determining whether the communication was responsibly made. In considering the factor relating to the status and reliability of the source, she reviewed the evidence relating to the statements and the reliability of the information relied upon by the reporter.

[15] The evidence at trial established that Mr. Wilson did not receive a cheque in the amount of $22,840.82 from his mother-in-law shortly before her death. Rather, the document in question was a copy of a bank draft payable to Mr. Wilson with the phrase "loan repayment" written on it. In addition to the thank-you note referred to in the Article, Mrs. Lougheed's papers also contained a copy of another bank draft in the amount of $16,840.82 payable to her. The evidence showed that Mrs. Lougheed had paid some campaign expenses for Mr. Wilson. Mr. Wilson received the $22,840.82 bank draft from his campaign fund after the election as a refund for these expenses and some other campaign expenses paid by him. The $22,840.82 bank draft did not represent a loan to Mr. Wilson, and the $16,840.82 bank draft was

a reimbursement by Mr. Wilson to Mrs. Lougheed for the campaign expenses she paid on his behalf.

[16] The judge held that the reporter should reasonably have been alerted to the fact that it was not a loan from Mrs. Lougheed to Mr. Wilson and that the allegation relating to it was not fairly or accurately presented to Mr. Wilson when the reporter interviewed him prior to the publication of the Article (at para. 300). As a result, the judge concluded that a reasonable person would not have considered the reporter's source as being reliable on this point (at para. 301).

[17] In considering the reportage factor set out in *Grant* in relation to the statement in the Article regarding the deathbed loan, the judge found the four prerequisites for reportage had been satisfied. She stated, however, that it remained to be considered whether the publication of the Article was protected as responsible communication more broadly (at para. 323).

[18] The judge concluded the appellants were entitled to succeed on the defence of responsible communication for the impugned statements in the Article with one exception. The exception was the statement with respect to the deathbed loan, which the judge considered to be "a distinct and separate subject in the story that was plainly untrue and was not investigated with sufficient diligence" (at para. 331). She assessed the damages in the amount of $125,000.

[19] I will very briefly summarize the judge's finding on the harassment claim against Mr. Lougheed's estate because it is relevant to the issues on the cross appeal. Section 114(1) of the *Business Practices and Consumer Protection Act* provides that a collector of debt must not communicate with a debtor in a manner that constitutes harassment. Section 114(2)(c) states that publishing a debtor's failure to pay constitutes harassment. The judge concluded that Mr. Lougheed contravened s. 114 because he was a collector of debt and he caused the information about Mr. Wilson's alleged failure to pay the debt to be made public through publication in the media (at para. 747).

Issues on Appeal

[20] The two grounds of appeal pursued by the appellants both relate to the trial judge's holding that they were not entitled to avail themselves of the defence of responsible communication in respect of the statement relating to the deathbed loan. First, they say the judge erred in failing to apply the defence to the Article as a whole, rather than applying it separately to different themes within the Article. Second, they maintain the judge erred in her conclusion that the reporter did not deal with the deathbed loan in a responsible fashion.

[21] At the hearing of the appeal, the appellants withdrew a third ground of appeal raised in their factum to the effect that the judge should have treated the issue of reportage as a separate defence and not simply as one of the factors to be considered when determining whether the defence of responsible communication has been made out. The appellants conceded at the hearing that this Court is bound by *Grant* in this regard despite the trend in England since *Grant* to treat reportage as a separate defence.

Discussion on Appeal

[22] In deciding to apply the defence of responsible communication to the theme of the deathbed loan, the trial judge referred to the decision of *Quan v. Cusson*, 2009 SCC 62, which was released contemporaneously with *Grant* and which was an appeal from the first Canadian appellate decision recognizing the defence of responsible communication (*Cusson v. Quan*, 2007 ONCA 771). She referred to the statement of the Supreme Court of Canada (at para. 30) that the broad thrust of the publication as a whole should be considered rather than "minutely parsing individual statements" (at para. 329). She then stated that she was not aware of any authority dealing with the defence where there was more than one theme in the publication and that the doctrinal underpinning of the defence dictated a consideration of the responsibility factors in relation to each individual theme (at para. 329).

[23] In my opinion, the judge's approach is contrary to the English authorities followed by the Supreme Court of Canada in *Grant*. In *Jameel*, three of the Lords commented on the need to consider the article as a whole, not only in determining whether the article was in the public interest, but also in considering the standard of responsibility exhibited by the author. Lord Bingham said the following:

> 34. … It is of course true that the defence of qualified privilege must be considered with reference to the particular publication complained of as defamatory, and where a whole article or story is complained of no difficulty arises. But difficulty can arise where the complaint relates to one particular ingredient of a composite story, since it is then open to a plaintiff to contend, as in the present case, that the article could have been published without inclusion of the particular ingredient complained of. This may, in some instances, be a valid point. But consideration should be given to the thrust of the article which the publisher has published. If the thrust of the article is true, and the public interest condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue.
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> [Emphasis added.]

[24] At para. 48, Lord Hoffmann emphasized the need to consider the article as a whole when considering the issue of public interest. Lord Hope commented on both aspects:

> 107. … The duty-interest test based on the public's right to know, which lies at the heart of the matter, maintains the essential element of objectivity. Was there an interest or duty to publish the information and a corresponding interest or duty to receive it, having regard to its particular subject matter? This provides the context within which, in any given case, the issue will be assessed. Context is important too when the standard is applied to each piece of information that the journalist wishes to publish. The question whether it has been satisfied will be assessed by looking to the story as a whole, not to each piece of information separated from its context.
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> [Emphasis added.]

[25] An example of the proper approach in considering the whole of the publication is *Charman v. Orion Group Publishing Group Ltd.*, [2007] EWCA Civ 972. The case involved a book about police corruption within the Metropolitan Police force. The plaintiff was mentioned in seven of the book's 16 chapters. The book also dealt with allegations of corruption against other police officers. The trial judge held

that the defendants had failed to show that they were acting responsibly in communicating the information about the plaintiff to the public.

[26] In allowing the appeal and holding that the author had demonstrated that he did not depart from the standards required of a responsible journalist, the Court of Appeal found that the trial judge erred in failing to consider the story about the plaintiff in the context of the whole story set out in the book. After referring to the above-mentioned remarks of Lords Hoffmann and Hope in *Jameel*, Lord Justice Ward said the following:

> 71. I turn, therefore, to the crucial question: did McLagan act with proper professional responsibility? …
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> 72. Secondly, and importantly, the emphasis is on considering the article as a whole as opposed to the spotlight focussing on isolated individual pieces of information. The criticism that can, therefore, be made of the judgment is that whereas the judge set out to consider whether McLagan struck a fair balance "in relation to Charman and the allegations levelled against him", he did not consider the Charman story in the context of the whole story of the book about *Bent Coppers*. Charman was one story within the larger story of corruption or alleged corruption within the Met. Even within the confines of the Charman story, the reputation of others was affected by the way that, in mounting his defence, Charman did not flinch from accusing the investigating officers of corrupt practice directed against him and Redgrave. In failing to look at the bigger picture, the judge erred.
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> [Emphasis added.]

[27] The book in *Charman* involved more than one "theme" but the Court of Appeal held that, in considering the issue of responsible communication, the trial judge erred in failing to consider the publication as a whole. Similarly, in the present case, the trial judge erred by focusing on one aspect of the Article and failing to consider it as a whole.

[28] The approach of the English courts has been adopted in Canada. In the decision of the Ontario Court of Appeal in *Cusson v. Quan*, Justice Sharpe followed *Jameel*. In making reference to the comments of Lord Bingham at para. 34 quoted above, Sharpe J.A. said the following:

> [98] … [Lord Bingham] … clarified that the appropriate locus or focus for the responsible journalism analysis related to the "thrust of the article" (at para. 34). That is, a publisher need not establish that it acted as a responsible journalist in relation to each defamatory statement if it can establish that it acted responsibly in relation to the story as a whole …

That case involved several "themes" in relation to an Ontario police constable who travelled to New York City following the September 11, 2001 attack on the World Trade Center to participate in the rescue operations (the "themes" are set out in para. 3 of the Court of Appeal's decision). The Court did not ultimately give effect to the defence of responsible communication because no evidence of responsibility was led at trial (the Supreme Court of Canada ordered a new trial so that such evidence could be led), but it can be inferred from the above passage that the Court would have considered the defence in the context of the article as a whole.

[29] I should not be taken as saying that there will never be a situation where it will be appropriate for the court to consider only a part of a publication when assessing whether the defence of responsible communication has been established. For example, a book could contain numerous chapters that, unlike in *Charman*, are unrelated to each other. Although less likely, an article in a publication could contain two unrelated stories. An argument could be made that it would be appropriate to consider one of the unrelated chapters or stories in isolation when determining whether the publication was responsibly made.

[30] Here, however, the "themes" referred to by the trial judge were not unrelated. At para. 224 of her reasons, the judge found that the essential thrust of the Article was that Mr. Wilson was not the person he represented himself to be and was unfit to serve as a Member of Parliament. The statement in the Article about the deathbed loan was part of that thrust. It was an example of how far Mr. Wilson would go in obtaining loans from his parents-in-law (although, of course, it was not true).

[31] Mr. Wilson says the judge's approach was supported by *Grant*. He relies on paras. 108 and 109 of *Grant*, which read as follows:

> [108] The question then arises whether the judge or the jury should decide whether the inclusion of a particular defamatory statement in a publication was necessary to communicating on the matter of public interest. Is this question merely a subset of determining generally whether the publication is in the public interest? Or is it better treated as a factor in the jury's assessment of responsibility? Lord Hoffmann in *Jameel* took the view that determining whether a defamatory statement was necessary to communicating on a matter of public interest is a question of law for the judge, conceding, however, that this may require the judge to second-guess editorial judgment, and must be approached in a deferential way (para. 51).
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> [109] In my view, if the publication, read broadly and as a whole, relates to a matter of public interest, the judge should leave the defence to the jury on the publication as a whole, and not editorially excise particular statements from the defence on the ground that they were not necessary to communicating on the matter of public interest. Deciding whether the inclusion of the impugned statement was justifiable involves a highly fact-based assessment of the context and details of the publication itself. Whereas a given subject matter either is or is not in law a matter of public interest, the justifiability of including a defamatory statement may admit of many shades of gray. It is intimately bound up in the overall determination of responsibility and should be left to the jury. It is for the jury to consider the need to include particular defamatory statements in determining whether the defendant acted responsibly in publishing what it did.

[32] In my view, these paragraphs do not assist Mr. Wilson in this regard. What Chief Justice McLachlin was discussing in these paragraphs was whether the judge or the jury should decide whether the inclusion of a particular statement was necessary to communicating on the matter of public interest. She concluded it should be the jury who decides, and the judge should not excise particular statements before leaving the matter to the jury. She was not discussing the issue of whether the jury should consider the defence of responsible communication with respect to particular statements. Indeed, in the first sentence of para. 109, McLachlin C.J.C. stated that the judge should leave the defence to the jury "on the publication as a whole".

[33] There is other support in *Grant* for the proposition that the publication as a whole should be considered when assessing whether the defence of responsible communication has been proven. As discussed by the trial judge at para. 323 of her reasons, one of the factors in considering responsibility is the topic of reportage,

which is an exception to the repetition rule. At para. 120 of *Grant*, McLachlin C.J.C. stated that a publisher should incur no liability if reporting on a matter of public interest and the allegations are fairly reported, provided that the four enumerated prerequisites are satisfied.

[34] At para. 121, McLachlin C.J.C. discussed when the judge should instruct the jury on the repetition rule and the reportage exception. She concluded with the following two sentences:

> [121] … If the jury is satisfied that the statements in question are reportage, it may conclude that publication was responsible, having regard to the four criteria set out above. As always, the ultimate question is whether publication was responsible in the circumstances.

[35] If the proper approach was to consider whether the defence of responsible communication applied to particular statements in the publication (as opposed to the publication as a whole), McLachlin C.J.C. would not have added the last sentence of para. 121. Chief Justice McLachlin stated at para. 120 that a publisher should incur no liability if the four prerequisites are satisfied. If the proper approach was to consider the statements in isolation, that would be the end of the matter. But McLachlin C.J.C. added the last sentence because, even if the reportage exception is made out for some statements in the publication, it is still necessary to determine whether the publication was responsible because the defence is to be applied to the publication as a whole.

[36] It may well have been that the trial judge misinterpreted the last sentence of para. 121, and that this contributed to her error. Having found that the criteria for the reportage exception to the repetition rule were satisfied with respect to the statement about the deathbed loan, the judge nevertheless applied the other *Grant* responsibility factors to the statement in isolation and concluded that the defence of responsible communication was not established. This approach gave no effect to the reportage exception because the judge gave precedence to the other factors with respect to the statement. This would not have occurred if the judge had properly

interpreted the last sentence of para. 121 to mean that it was the publication as a whole that is required to have been responsibly made.

[37] As a result of the judge's error, it is my opinion that the appeal should be allowed without the necessity of addressing the appellants' second ground of appeal. The question then becomes what ancillary orders should be made by the Court pursuant to s. 9(1) of the *Court of Appeal Act*, R.S.B.C. 1996, c. 77. The cross appeal potentially impacts on this question but, as I have concluded that the cross appeal should be dismissed, I will address the question now.

[38] In these types of circumstances, the appropriate order would generally be an order for a new trial. The assessment of whether the standard of responsible communication has been made out would normally involve findings of fact or, at a minimum, the weighing of evidence. These are matters for the trial court. However, in the present case, it is my view that the findings of fact made by the trial judge are adequate to enable this Court to reach a conclusion as a matter of law.

[39] The judge found that, except for the statement regarding the deathbed loan, the appellants were entitled to succeed on the defence of responsible communication in respect of the publication of the Article. She also found that the appellants met the four prerequisites for the reportage exception in respect of the deathbed loan statement as set out in para. 120 of *Grant*. As a publisher should incur no liability in respect of reportage if the four prerequisites are satisfied and as the standard of responsible communication was met in respect of the balance of the Article, it follows as a matter of law from the judge's findings of facts in these regards that the appellants are entitled to succeed on the defence when the Article is considered as a whole. Consequently, the appropriate order is for Mr. Wilson's claim against the appellants to be dismissed.

Issues on Cross Appeal

[40] Mr. Wilson raises two issues on the cross appeal. First, he says the trial judge erred in failing to consider that Mr. Lougheed has committed the statutory tort of harassment in determining whether the publication of the Article was in the public interest. Second, he asserts the judge erred in failing to consider the provisions of s. 23 of the *Land Title Act*, R.S.B.C. 1996, c. 250, s. 60 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, and ss. 114 and 115 of the *Business Practices and Consumer Protection Act* when assessing the responsibility of the appellants in publishing the Article.

Discussion on Cross Appeal

[41] The subject matter of the first ground of cross appeal was specifically addressed by the trial judge. She said the following:

> [238] In all the circumstances, I am not persuaded that the alleged breaches of confidence or fiduciary duties by Mr. Lougheed or, for that matter, his alleged breaches of the [*Business Practices and Consumer Protection Act*], would displace the public's interest in knowing the allegations that call into question Mr. Wilson's fitness for public office. I am not aware that such a proposition finds any coherent support in the authorities.

[42] I agree with the judge. The motivation of Mr. Lougheed or the fact that he may have committed a statutory tort does not make the Article any less in the public interest. The judge held that it was in the public interest for the community to know about the allegations of Mr. Wilson's lack of trustworthiness and lack of success as a businessman, and Mr. Lougheed's state of mind has no impact on that public interest. The judge found as a fact that there was no foundation in the evidence that the appellants participated in a breach of fiduciary duty or breach of confidence by Mr. Lougheed (at para. 237), and the same can be said in respect of Mr. Lougheed's breach of the *Business Practices and Consumer Protection Act*. I do not accept Mr. Wilson's argument that the appellants were parties to the offence of harassment committed by Mr. Lougheed.

[43] Similarly, I see no merit in Mr. Wilson's second ground of cross appeal. Section 23 of the *Land Title Act* provides that an indefeasible title is, subject to certain enumerated exceptions, conclusive evidence that the person named in the title as registered owner is entitled to an estate in fee simple to the land. Section 60 of the *Law and Equity Act* provides that a married person has a legal personality independent from that of his or her spouse. Mr. Wilson points to the fact that all of the properties mentioned in the Article were registered in the name of Mrs. Wilson, who is conclusively deemed to have been their owner independent of Mr. Wilson. He says the judge erred in finding the appellants acted responsibly when the Article published allegations of him owing monies to his parents-in-law in view of these statutory presumptions.

[44] At trial, Mr. Wilson relied on these statutory presumptions to submit that the publication of the Article was not in the public interest. The judge dealt with the submission in the following manner:

> [232] I do not find Mr. Wilson's submission persuasive. A reasonable reader would not interpret the allegations of indebtedness in a clinically legalistic manner and would instead view the Wilsons as an economic unit typical of many married couples. Mr. Wilson acknowledged that in fact, it was him, and not [Mrs. Wilson], that principally negotiated the various loans with [Mrs. Wilson's mother]. It is clear that he considered himself jointly responsible for the indebtedness and comported himself accordingly. He signed the cheque for the repayment on the Lawson property as well as some of the cheques for repayment of the loan for the Whistler property. Moreover and crucially, [Mrs. Wilson] pledged the subject properties to support the financing of Mr. Wilson's businesses. In short, Mr. Wilson's submissions on this point are misconceived and are not borne out on the evidence.

[45] In my view, these comments also address Mr. Wilson's submission that the statutory presumptions result in a conclusion that the appellants did not act responsibly in publishing the Article. Although only implicitly reflected in this passage, the Article did state that title to the Wilsons' current properties were in the name of Mrs. Wilson. As the judge pointed out in the above passage, even though Mr. Wilson was not legally responsible for the loans made by Mrs. Wilson's mother,

he considered himself jointly responsible for the indebtedness. Also, one of the true aspects of the Article was that the properties in the name of Mrs. Wilson were mortgaged as security for loans to Mr. Wilson's business. The fact that the appellants did not ignore the realities of a typical marriage unit and take a strictly legalistic approach to the Article does not undercut the finding that the appellants acted responsibly in publishing the Article.

[46] The second aspect of Mr. Wilson's second ground of cross appeal relates to the *Business Practices and Consumer Protection Act*. Although the ground of cross appeal mentions both s. 114 and s. 115 of the *Act*, Mr. Wilson's factum on this point focuses on s. 115. He says the appellants did not act responsibly in publishing the Article when they knew there had never been a written demand on Mr. Wilson as required by s. 115.

[47] In brief terms, s. 115 stipulates that a collector must not attempt to collect payment of a debt without first notifying the debtor in writing (or making a reasonable attempt to do so) of the name of the creditor, the details of the debt and the authority of the collector. Although Mr. Wilson did not plead a breach of s. 115 by Mr. Lougheed, he appears to have advanced it at trial. The trial judge dealt with the claim summarily at para. 718 of her reasons by pointing out that s. 115 did not apply to Mr. Lougheed because he was exempt from the provision by regulation on the basis that he was a creditor (see s. 2(2) of the *Debt Collection and Repayment Regulation,* B.C. Reg. 295/2004). Hence, there was no violation of s. 115.

[48] The fact that no demand had been made did not mean that the indebtedness may not have been owing. At para. 290 of her reasons, the judge found the reporter to have acted responsibly in relying on the sources with respect to the indebtedness and to have been reasonably diligent in her attempts to verify the debt allegations (including interviewing Mr. Wilson by telephone prior to the publication of the Article and putting to him the allegations regarding loans and indebtedness). Mr. Wilson has not shown the judge to have been in error in making these findings.

Conclusion

[49] It is for these reasons that I would allow the appeal and dismiss the cross appeal. I would set aside the paragraph of the order made by the trial judge awarding damages against the appellants and dismiss Mr. Wilson's claim against the appellants. I would also order that the appellants are entitled to their costs of the proceedings in the trial court and their costs of the appeal and the cross appeal.

"The Honourable Mr. Justice Tysoe"

I AGREE:

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Mr. Justice Groberman"