SUPREME COURT OF NOVA SCOTIA
Citation: *Fraser v. MacIntosh-Wiseman*, 2024 NSSC 115

Date: 20240418
Docket: 522092
Registry: Halifax

Between:

Donn Fraser and
DFL Law Practice Incorporated, a body corporate

Plaintiffs

v.

Sarah MacIntosh-Wiseman

Defendant

Decision

Judge:	The Honourable Justice John A. Keith
Written Submissions:	March 21, 2024 and April 3, 2024 from the Defendant March 28, 2024 from the Plaintiffs
Decision:	April 18, 2024
Counsel:	Donn Fraser, Self Represented DLF Law Practice Incorporated, on its own behalf by its officer Donn Fraser Peter Rogers, K.C. and Raylene Langor for the Defendant

By the Court:

[1] In the Statement of Claim originally issued on March 10, 2023, amended on June 14, 2023 and then amended again on March 8, 2024, the Plaintiffs Donn Fraser ("*Fraser*") and his professional corporation DLF Law Practice Incorporated ("*DLF Inc.*") sued Sarah MacIntosh-Wiseman ("*MacIntosh-Wiseman*").

[2] The action arises out of an email sent by MacIntosh-Wiseman to Fraser at 9:10 p.m. on March 9, 2021 (the "*March 9 Email*"). It states:

> Donn,
>
> Please note that I am sending this email from my personal account to keep it private, but I do not intend to engage in this discussion further. I wanted to acknowledge your recent invitation for a beer, and to explain to you why I am going to decline.
>
> I have recently learned that you told/implied to my former partners: 1) that you know my long term career intentions, and have for some time; 2) that we are on close social terms; and 3) that I backed away from managing partner duties in 2018 for reasons that were related to Julie. [In case you are wondering, no email exchanges have been provided to me, but the narrow fact that you made those communications to the partnership was shared with me.] Donn, none of those messages are accurate or truthful. Regardless, you have no right to speak on my behalf or to hold yourself out as knowing my mind.
>
> When you asked me to meet for a beer in the Fall, I explained my preference to let bygones be bygones. Not because I had any change of perspective on your emails from March/April 2019, but because I did not see any value in discussing the matter. I still consider your emails to have been one of the most unkind, uncollegial, unprofessional and inaccurate exchanges I have ever had with anyone, let alone someone I had considered a friend and partner.
>
> Let me be clear. The emails you sent at midnight the night before I started my partnership-supported leave were directly responsible for the fact that I walked away from not only a law practice that I loved and excelled at, but a partnership and firm that I considered family. The partnership and firm that my grandfather started; my father then led; and which I intended to practice with for the remainder of my career (excepting only my intended temporary two year leave). Your angry, late night email started the snowball rolling through which my partnership and planned future disappeared almost overnight. While I could have turned back to address the issue with you to its conclusion, I knew that the partnership had enough on its plate in dealing with the news of Gerald's health. His situation gave me enough perspective to realize the right thing to do was to walk quietly away and let the partnership deal with that more important issue.

> When you eventually reached out to speak with me around Christmas, almost two years later, the time for an apology had long since passed.
>
> That said, as a courtesy to you, and out of respect for what I had considered to be a long standing relationship of mutual respect, I agreed to meet. I do not wish to hold you any ill will. To the contrary,
>
> I have considered it a personal and professional loss that our relationship ended as it had. I had always held you and your opinion in high regard. I accepted your apology in January, notwithstanding the fact that you carefully apologized only for the timing of your emails, not the content.
>
> I now understand that you used that one courtesy meeting as a basis to suggest to my former partners that I have confided my long term career intentions to you. Donn, I want to be crystal clear - you do not have any right to speak on my behalf, nor to leave an impression that you know my mind. When you asked about my future plans, I gave you polite and evasive responses, as I had no desire to have a real discussion about my future plans with you. Nor did I see value in being blunt about the fact that I would never rejoin a partnership with you, given the disrespectful way you treated me.
>
> I have no idea what conversation you are referencing regarding my decision to step back from managing partner duties, but I can assure you that I discussed every aspect of that decision openly with Julie at the time, and in no way do I attribute my decision to anything negative related to Julie. Julie and I have remained in contact and friends through that period, and to this day. We do not always share a common approach to issues, but we have always been able to discuss any differences openly, and respectfully.
>
> While I do not know the details of what is occurring at the firm, I do know that things are complicated. But since you have reached out to ask to meet for another drink, I thought it best that I tell you that I know you have misrepresented our earlier discussions. I have no interest in debating my perspective with you, nor in holding grudges or ill will. Whatever is happening with the partnership in 2021 is not something that involves me. But I will not permit you to reference me in conversations that I am not part of, nor to give others the impression that you are informed to speak about my thoughts/plans, past or present.
>
> Donn, my statements that I hope you and Heather are well and that I miss the MMM crew were genuine. But I do not appreciate being used for strategic convenience in matters that are not related to me, nor in having anyone else purport to speak on my behalf. I am not sharing this email with the partnership, just as I had not communicated with them about our earlier meetings.
>
> Sarah

[3] In a nutshell, the individual Plaintiff Fraser alleges that the March 9 Email is defamatory and that the Defendant republished (or facilitated the republication) of it

to others. The Plaintiffs collectively allege the tort of placing the Plaintiffs in a false light. The corporate Plaintiff DLF Inc. (Fraser's professional corporation) also claims consequential losses caused by the alleged harm originally suffered by its "face" and sole source of income, Fraser.

[4] MacIntosh-Wiseman filed her Notice of Defence on May 31, 2023, amended on June 12, 2023 and then amended again on March 15, 2024.

[5] By Notice of Motion filed September 29, 2023, MacIntosh-Wiseman moved for summary judgment on evidence under *Civil Procedure Rule* 13.04. The Notice states that "The Plaintiffs' claims should be dismissed as the content of the impugned defamatory document is not defamatory, is justified, is subject to qualified privilege, is not malicious, and the Plaintiffs in any event consented to its publication to the limited group to whom it was circulated." These arguments echo certain defences already pleaded in her amended Statement of Defence.

[6] The motion for summary judgment is scheduled for April 29, 2024. In order to preserve the schedule as efficiently as reasonably possible, the parties agreed that any objections to affidavit evidence could be resolved in writing and in advance of the hearing.

[7] The following affidavits were filed:

1. The affidavit of Sarah MacIntosh-Wiseman sworn January 9, 2024 (the "***Original MacIntosh-Wiseman Affidavit***");
2. The responding affidavit of Donn Fraser sworn February 15, 2024 and then the so-called "correcting affidavit" of Donn Fraser sworn February 22, 2024 which:
   a. Includes certain brief additional evidence regarding certain records related to Bruce MacIntosh and, as well, the Defendant's decision to take a position with the Pictou County Regional Enterprise Network ("***Pictou REN***"); and
   b. Attaches a "cleaned up" version of his original affidavit but underlining and striking certain passages to correct several relatively minor errors.

   (collectively, the "***Corrected Fraser Affidavit***")

3. A rebuttal affidavit from Sarah MacIntosh-Wiseman sworn February 23, 2024 and a rebuttal affidavit from Julie MacPhee also sworn February 23, 2024 (collectively, the "***Rebuttal Affidavits***")

[8] Each party each raised numerous evidentiary objections against the evidence filed by the other. These reasons consolidate the objections raised by all parties in a single decision. I attach:

(a) Schedule "A" which is a table addressing the objections raised by the moving party (Defendant) against the Corrected Fraser Affidavit;

(b) Schedule "B" which is a table addressing the objections raised by the responding party (Plaintiff) against the Original MacIntosh-Wiseman Affidavit.

[9] The tables contain explanations for my various conclusions and reasons. I also refer to the following *Civil Procedure Rules* and related jurisprudence which provide the conceptual foundations for the following identified objections:

1. *Civil Procedure Rule* 22.15 "Rules of evidence on a motion";
2. *Civil Procedure Rule* 39 "Affidavit" and particularly subrule 39.02 "Affidavit is to provide evidence" and 39.04 "Striking part or all of affidavit";
3. Relevance: *McDonald v. Hue*, 2024 NSSC 24 at paras. 23 - 27;
4. Hearsay: *McDonald v. Hue*, 2024 NSSC 24 at paras. 33 - 37 and *Colbourne Chrysler Dodge Ram Limited v. MacDonald*, 2023 NSSC 309 at paras. 40 - 43;
5. Speculation and Lay Opinion: *McDonald v. Hue*, 2024 NSSC 24 at paras. 40 - 44 and *Colbourne Chrysler Dodge Ram Limited v. MacDonald*, 2023 NSSC 309 at paras. 44 - 48;
6. Argument: *McDonald v. Hue*, 2024 NSSC 24 at paras. 38 - 39; and

[10] As will be seen in the attached Schedules, the issue of prematurity arises in this case. I refer to *Colbourne Chrysler Dodge Ram Limited v. MacDonald*, 2023 NSSC 309 at paras. 33 – 37. The Court may decline to strike affidavit evidence in an interlocutory proceeding where, in effect, the Court is being required to prematurely determine a central legal issue at a point when the facts and legal arguments have yet to be fully developed. On this point, I note *Civil Procedure Rule* 13.04(6)(a) which recognizes the Court's discretion to decline answering an

issue of law in a motion for summary judgment even if there is no genuine dispute of material fact for trial. That same discretion exists with greater force where a party moves for summary judgment and then seeks to resolve an interconnected question of law as part of a preliminary motion to strike affidavit evidence – before the motion for summary judgment is heard.

[11] Note that the comments in the attached Schedules relate only to the specific objections raised by the parties in connection with the Original MacIntosh-Wiseman Affidavit and the responding Corrected Fraser Affidavit – but not the Rebuttal Affidavits filed by the Defendants. This is because the Plaintiffs' objection to the Rebuttal Affidavits was global in nature and related to the permissible scope of rebuttal evidence. The Plaintiffs argue that the Rebuttal Affidavits should be struck in their entirety because they stray beyond the permissible boundaries of proper rebuttal evidence.

[12] Rebuttal evidence is designed to ensure that a responding party is not deprived of the fair opportunity to file a fulsome response. Thus:

1. Rebuttal evidence is limited to "new" issues, as that concept is understood in the jurisprudence defining the proper scope of rebuttal evidence; and
2. Rebuttal evidence is limited to those issues which could not have been reasonably anticipated by the Defendant when filing their original evidence.

See, for example, *Warnell v Cumby*, 2016 NSSC 356 at paras. 22 – 23 and *Rudd* v *Hayward*, 2001 BCCA 454 at paras. 10 – 11.

[13] If the moving party fails to recognize these restrictions on rebuttal evidence, they are often accused of "splitting their case" – meaning that the moving party has improperly held back evidence and then seeks to file it under the guise of "rebuttal" after the responding party's right to present a fulsome response has passed. The mischief and prejudice to the responding party is clear.

[14] The importance of these restrictions on rebuttal evidence become particularly significant when considering the process by which affidavits are exchanged in advance of a motion is governed by the *Civil Procedure Rules*. Rule 23.11 creates specific deadlines for filing affidavits (among other things). And Rule 23.12(1) confirms that: "A party may only file an affidavit after a deadline in Rule 23.11 with the permission of a judge." In short and in very simple terms:

1. The moving party files the affidavit evidence they seek to rely upon in support of their motion before the specified deadline;
2. The responding party then files the affidavit evidence they seek to rely upon before the specified deadline; and
3. The moving party then has the opportunity to file rebuttal evidence before the specified deadlines.

[15] The ability to file affidavit evidence "as of right" ends there. A responding party is not permitted to file further surrebuttal affidavits unless the Court expressly grants permission to do so.

[16] On the one hand, the *Civil Procedure Rules* seek to maintain procedural order in advance of an interlocutory motion. They ensure that the parties do not simply presume the right to file reciprocating affidavits in a random, chaotic, and unending exchange of evidentiary blows. On the other hand, procedural order equally demands that the parties respect the law which limits the scope of rebuttal evidence. As indicated, a responding party cannot be unfairly denied the opportunity to file their response. The prejudice is particularly severe in the context of a motion for summary judgment because:

1. The moving party is asking the Court to summarily dismiss the Plaintiffs' action in its entirety;
2. The responding party is required by law to "put their best foot forward" when responding to a motion for summary judgment. Yet, they cannot do so if the moving party's rebuttal evidence strayed beyond its permitted limits.

[17] Having said all that, the affidavits filed by the Plaintiffs in response to the Defendant are extremely wide ranging and cover many years of an increasingly conflicted history involving the Plaintiffs, on the one hand, and certain former partners at a now defunct law firm (including the Defendant) on the other. While it is true that the Plaintiffs' lengthy statement of claim does generally raise many of the issues being addressed in the Rebuttal Affidavits, in my view, it was not reasonably possible to predict (or expect the Defendant to address in the Original MacIntosh-Wiseman Affidavit) the highly granular nature of the Plaintiffs' allegations around "context" or background which span a large expanse of time and subject matter. Similarly, it was not reasonably possible to predict the broad approach to evidence which the Plaintiffs maintain is relevant to the Defendant's

credibility - including allegations that the Plaintiffs say reflect upon the honesty, integrity and reliability of the persons who swore the Rebuttal Affidavits.

[18] As confirmed in the attached Schedule "A", I have determined that it would be unsafe and premature to strike much of the evidence raised by the Plaintiffs in respect of these issues ("context" and credibility). By the same token, I am equally convinced that it would be unsafe and wrong to hamstring the Defendant's ability to respond by way of rebuttal evidence and prematurely determine and/or accept as uncontested the Plaintiffs' assessment of the affiants without the possibility of rebuttal from Sarah MacIntosh-Wiseman and Julie MacPhee.

[19] It is clear that the Plaintiffs allege in their Statement of Claim that Ms. MacIntosh-Wiseman left private practise due to her own professional and personal failings. In written submissions dated March 28, 2024, the Plaintiffs globally define these criticisms as informing a broader "Failed Lawyer Issue" (at paragraph 28). It is also true that, broadly speaking, the Rebuttal Affidavits generally relate to Ms. MacIntosh-Wiseman's decision to leave the law firm where she and the individual Plaintiff (Mr. Fraser) were partners. However, in terms of assessing the admissibility of the Rebuttal Affidavits, that basic connection is overly narrow and simplistic.

[20] The Corrected Fraser Affidavit is the first time Mr. Fraser provided sworn testimony as to the details behind the allegations made in the Statement of Claim. More importantly for present purposes, the Corrected Fraser Affidavit contains a litany of very specific, personal, and extremely pointed criticisms of Sarah MacIntosh-Wiseman and her alleged personal and professional weakness – covering a number of years leading up to the March 9 Email. The global label ("Failed Lawyer Issue") does not fully capture the comprehensive and denunciatory nature of the evidence being marshalled against Ms. MacIntosh-Wiseman. The manner in which this evidence in support of the "Failed Lawyer Issue" is subsequently relied upon in written submissions is even more castigatory. For example, in written submissions filed March 28, 2024 filed in response to the Defendant's motion to strike evidence, the Plaintiffs submit that the "truth of the situation" is that Sarah MacIntosh-Wiseman was:

> …a failed lawyer (not one excelling), who did not have a sustainable practice, who could not or would not meet partnership expectations, who was not thriving and could not thrive or even meet basic expectations without her father carrying her own files, and who did not even get into the partnership based on merit, and who had no sustainable future with the Former Firm (had it survived) and who was effectively unable to "cut it" in the private practice of law, such that she "jumped"

> before she was "pushed" in the sense of taking an opportunity to depart the practice of law under the guise of a so-called "leave", rather than reaching a point where she would have been shoved out of the partnership, (particularly with her father's practice winding down and his retirement on the horizon and in light of her not having a sustainable practice without him carrying her)
>
> (at paragraph 14(b))

[21] I declined the Defendant's request to strike as irrelevant the numerous passages in the Corrected Fraser Affidavit detailing the "Failed Lawyer Issue". At the same time, and respectfully, I do not agree that Ms. MacIntosh-Wiseman could have fairly or reasonably have been expected to predict and pre-emptively address the specific, numerous and highly negative pieces of evidence tendered by the Plaintiffs.

[22] I also do not agree that the Rebuttal Affidavits constitute an attempt by the Defendant to "split her case" and am also satisfied that the Plaintiffs have had a sufficient opportunity to canvass the relevant issues as comprehensively addressed in their lengthy affidavits.

[23] Finally, I am satisfied that there is no prejudice of the sort that the jurisprudence against improper rebuttal is designed to avoid. I pause here to emphasize that improper rebuttal is not cleansed and admitted into evidence simply because the opposing party does not prove prejudice. If the rebuttal evidence could does not respond to a "new issue" and could have been reasonably anticipated in the circumstances, it is deemed prejudicial and excluded. However, the Plaintiffs make submissions as to prejudice and so it is necessary to address them.

[24] With respect to the affidavit sworn by Julie MacPhee, the Plaintiffs state that they have been deprived of the opportunity to demonstrate that Ms. MacPhee is: "…a scandalously immoral, unethical, dishonest, and integrity devoid individual, with admitted mental and personality problems and depravities who is extremely adverse to the Plaintiffs." (Written submissions dated March 21, 2024 at paragraph 28). They continue by arguing that:

> Julie MacPhee hates Donn Fraser, and has a proven track record of behavior which has included her engaging in scandalous, dishonest and unethical conduct against the Plaintiff Fraser. Any evidence that Ms. MacIntosh-Wiseman would look to offer through Julie MacPhee must be subject challenges to credibility and reliability, which in the context of the above dynamic concerning Julie MacPhee would include significant response evidence permitted by numerous exceptions to the

> collateral fact rule that allow attacks on Ms. MacPhee's credibility, as well as her reliability.
>
> (Written submissions dated March 21, 2024 at paragraph 28)

[25] Respectfully, the alleged inability to challenge Ms. MacPhee's credibility and reliability on the basis of these very serious, highly charged, and personal criticisms of Ms. MacPhee cannot simply be accepted at face value and deemed prejudicial without some basic modicum of evidence. Moreover, I note that the Plaintiffs do not seek to cross-examine Ms. MacPhee. They argue that cross-examination would "be a fruitless and pointless exercise on a summary judgement motion, as the Court cannot make credibility determinations on such a motion and will still be left with conflicting facts." (Written submissions dated March 21, 2024 at paragraph 28)

[26] The right of cross-examination does not excuse (or give an opposing party the right to present) improper rebuttal evidence. However, at the same time, the Court cannot accept rebuttal evidence as prejudicial based on the potential implications of a cross-examination that will not actually occur.

[27] With respect to Ms. MacIntosh-Wiseman, the Plaintiffs argue that they have been deprived of the opportunity to expose that her rebuttal affidavit contains:

1. Reference to a partnership agreement that does not apply;
2. Alleged misleading information around a request by the Defendant in April 2021; and
3. A "concocted" idea that Ms. MacIntosh-Wiseman resigned from her former law firm in 2019 when it was, according to the Plaintiffs, "a patent and known fact that the Defendant did not in fact tender her resignation until into 2020 … and that there were meetings discussing the parameters around that, all the while she was hoping to get to continue to work with the law firm."

(Written submissions dated March 21, 2024 at paragraphs 49 and 51)

[28] Respectfully, in my view, the alleged prejudice is mitigated by the fact that many of these concerns are addressed in the Corrected Fraser Affidavit (see, for example, paragraphs 115 – 125). Any residual concerns are, in my view, minor and can be addressed through the intended cross-examination of Ms. MacIntosh-Wiseman. In any event, for the reasons given, I do not agree that the alleged prejudice reveals improper rebuttal or an attempt by Ms. MacIntosh-Wiseman to "split her case".

[29] Submissions as to costs, if any, may be made after the Defendant's motion for summary judgment on evidence is concluded and determined.

Keith, J.

Schedule "A" Corrected Fraser Affidavit			
Paragraph #	**Defendant's Alleged Basis for Striking**	**Defendant's Reasoning for Striking**	**Decision**
3	Irrelevant, hearsay.	Any harassment complaint against Bruce MacIntosh is irrelevant to claims of defamation and publicly placing the Plaintiffs in a false light. Bruce MacIntosh is not a party. Mr. Fraser does not state the source of his belief in the truth of this statement beyond vaguely stating "records".	This paragraph shall not be struck. Bruce MacIntosh is the Defendant's father and her former law partner. He was also the Plaintiff's former law partner at the same, now defunct, law firm. Based on the evidence before me, to the extent the Plaintiff currently has a personal relationship with Mr. MacIntosh at all, it is marred by acrimony and legal controversy. While Mr. MacIntosh is not a party to this proceeding, the Plaintiff argues that his past and/or present connections with the parties to this proceeding form an integral part of the necessary factual background leading up to the March 9 Email. The relevance of interactions involving Mr. MacIntosh to this proceeding can be elusive – particularly where the events in question speak to the Plaintiff's deteriorating relationship with Mr. MacIntosh but have no obvious link to the Defendant. I make a similar comments with respect to: The background evidence regarding Mary Jane Saunders and other former law partners of the parties. That said, my more fundamental concern at this stage of the proceeding is prematurity and the risk of pre-determining legal issues under the guise of a preliminary dispute around relevance; The wide-ranging evidence which the Plaintiff says goes primarily to issues regarding the Defendant's credibility. It can be difficult to predict with certain the impact of deeming evidence irrelevant prior to the parties fully expounding on their legal arguments. Moreover, in this case, striking the impugned background evidence regarding Mr. MacIntosh in advance of the motion for summary judgment would require the Court to prematurely determine a central, contested legal issue in this motion for summary judgment: the "sting" of the March 9 Email and, in turn, the extent to which contextual evidence is necessary (or permissible, at law) to define that "sting". The same comments apply with equal force in terms of the background information regarding the Defendant's performance as a law partner and her career choices generally. The Defendant's written submissions effectively acknowledge the link between the ultimate legal issues and the current evidentiary complaints around relevancy when they

write: “The billable and non-billable performance content of the Fraser Affidavit is relevant to the motion only if Your Lordship concludes (1) that the impugned e-mail is arguably defamatory, (2) that its sharing was arguably not consented to, and (3) that justification is not a basis for the Defendant’s success on the motion.” (at para. 4) Note that the Defendant equally confirms that the word “arguably” is used as a proxy for the test on summary judgment. (Written submissions, footnote 1).

In my view, the Court should be cautious not use disputes over relevance as an occasion to prematurely resolve issues of law to be argued at the motion for summary judgment itself. I am not prepared to exercise my discretion and answer the underlying legal questions which this debate over relevance triggers and which will be raised again at the motion for summary judgment.

To be clear, I make no comment regarding the legal arguments to be made at the motion for summary judgment including:

1. The Plaintiff’s argument that this evidence (and other similar evidence comprising the so-called “Failed Lawyer Issue”) is necessary context and, at law, bears upon either the alleged defamation or the alleged tort of placing the Plaintiff in a false light as arising out of the March 9 Email; or

2. The Defendant’s argument that, at law, the Court must focus on the March 9 Email and that the Plaintiff’s broad approach to contextual evidence has no place in the legal analysis which governs the claims made.

3. More generally, whether there is a dispute of material fact requiring trial.

Again, these are issues properly debated at the motion for summary judgment itself. These reasons should not be interpreted otherwise.

Pausing here, the dispute over the relevancy of this evidence spreads throughout many of the Defendant’s submissions on admissibility. Very briefly, the Defendant states that the Plaintiff’s attempts to shroud the March 9 Email with years of acrimonious history culminating in the dissolution of the law firm where both the Plaintiff and Defendant were partners is irrelevant and risks distorting the proper interpretation (and legal ramifications, if any) of the March 9 Email. For the reasons given above, I am not prepared to determine this issue at this stage of the proceeding.

Any residual issues may go to weight.

			Beyond that, these issues may become a topic for further discussion after the Defendant's motion for summary judgment is finally decided on its merits. As a final cautionary note and given the parties' reciprocal requests for cross-examination, I am providing a degree of latitude reasonably necessary to allow the Plaintiffs to fully and fairly defend the motion to summarily dismiss the claim. Obviously, this is an important motion in terms of the Plaintiffs' claims. At that same time, the Court remains mindful of the need for efficient and proportionate proceedings. This is particularly (but not exclusively) pertinent to issue of credibility assessment. Parties to litigation are not permitted to engage in overbroad explorations into any and all alleged instances of "dishonesty" as a means of attacking credibility – regardless of how distantly connected they may be to the issues in the litigation. In the interests of brevity, I will use the shorthand phrase "**Decision Regarding Relevancy**" where the same reasoning applies to other objections. As to the alleged hearsay, Mr. Fraser has sufficient personal knowledge to satisfy the demands of hearsay (necessity and reliability). With respect to the hearsay complaint, there is sufficient necessity and, given the Plaintiff's direct and personal experiences, sufficient assurances of reliability to admit this evidence – particularly in so far as the statements in question are in the nature of a broad summary.
4	First half of sentence up to and including "could still not find a record confirming the exact date" is irrelevant.	Mr. Fraser's current ponderings about finding records are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall be struck. There may be circumstances when additional background information is relevant to fully understand the material facts. This is not such an occasion. I recognize that Mr. Fraser was motivated to explain the clarification but, in my view, a party's affidavit in these circumstances should be limited to those matters that are material to the issues before the Court.

12-22	Irrelevant and hearsay	Ms. MacIntosh-Wiseman's entry into the Partnership, any opposition thereto in 2014, and her performance as a lawyer is irrelevant and has nothing to do with whether her March 2021 E-mail was defamatory and/or publicly places the Plaintiffs in a false light. Mr. Fraser's entry into the Partnership and associated circumstances are irrelevant to the claims made in the herein action. Unrest and turmoil allegedly occurring at the Former Firm involving Bruce MacIntosh, Justice Van den Eynden, and the Former Firm's Partners between 2014-2020 are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Mr. Fraser fails to provide dates, or years, or specific sources of receiving certain information contained in paragraphs 12-21.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
23, 27	Irrelevant	Animosities and disputes not involving Ms. MacIntosh-Wiseman and occurring prior to her joining the Former Firm's Partnership are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Mr. Fraser's and Ms. MacIntosh-Wiseman's ability to attract clients in and around 2014, and the "chaotic" environment in which Ms. MacIntosh-Wiseman joined the Former Firm's partnership in and around 2014 are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

28, 29	Irrelevant	Ms. MacIntosh- Wiseman's performance as a lawyer is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
30	First half of sentence up to and including "relied upon to put work into actually implementing" is irrelevant	Ms. MacIntosh-Wiseman's performance as a lawyer and/or business development acumen is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
31, 32	Irrelevant, hearsay	Ms. MacIntosh-Wiseman's performance as a lawyer and associated practice choices is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Mr. Fraser fails to state the source of this information yet states the Defendant's wants and thoughts: "[the defendant] wanted to move into Wills and Estates work, and to develop purportedly new ideas and approaches…"	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies. With respect to the hearsay complaint, there is sufficient necessity and, given the Plaintiff's direct and personal experiences, sufficient assurances of reliability to admit this evidence – particularly in so far as the statements in question are in the nature of a broad summary.
33	Irrelevant	Ms. MacIntosh-Wiseman's performance as a lawyer and associated practice choices is irrelevant to the claims made in the herein action. Her work with Ms. MacPhee in Labour and Employment is further irrelevant.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
34, 35, 36	Irrelevant	The amount of labour, employment or HR related work at the Former Firm and who was engaged in doing same prior to 2020 is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. How Mary Jane Saunders came to join the Former Firm's partnership, references to Harry Munro's practice, and any oppositions to Mary Jane Saunders taking over same are also irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

37, 38	Irrelevant	Neither Ms. MacIntosh-Wiseman nor Julie MacPhee's performance as lawyers, or their associated clients or practice areas are relevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
39	Irrelevant	Ms. MacIntosh-Wiseman and Julie MacPhee's working relationship regarding their labour and employment practices, files, and clients is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
40, 41, 42, 43, 44	Irrelevant, hearsay	How Ms. MacIntosh-Wiseman approached practice management and responsibility for files in the Former Firm is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. In paragraph 40, Mr. Fraser does not state his source in his belief of the Defendant's "preference" regarding file responsibility yet purports to know her preference.	With the exception of paragraph 40, this evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies. Paragraph 40 shall be struck. The Defendant's work preferences are not within the Plaintiff's knowledge. In my view, these statements lack sufficient reliability to be safely admitted.
45, 46	Irrelevant	The locations where Ms. MacIntosh-Wiseman worked, or her general in-person availability at the Former Firm are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
47, 48, 49, 50, 51, 52, 53	Irrelevant	The Former Firm's billing targets, profit allocations, and Ms. MacIntosh-Wiseman's financial and hourly performance as a lawyer are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

54, 55, 56	Irrelevant	Ms. MacIntosh-Wiseman's performance and Mr. Fraser's behaviour towards Ms. MacIntosh-Wiseman during and following the Former Firm's profit allocation discussions is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Ms. MacIntosh-Wiseman's husband's opinion of Mr. Fraser's behaviour during the Former Firm's profit allocation process is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
57	Irrelevant	The Former Firm's profit allocation history, Ms. MacIntosh-Wiseman's performance as a lawyer, and Mr. Fraser's opinion as to whether or not Ms. MacIntosh-Wiseman "deserved" to be treated a certain way are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
58, 59	Irrelevant	Whether Mr. Fraser sought to "inflate" Ms. MacIntosh-Wiseman's billings at the Former Firm is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Mr. Fraser's discussions with Ms. MacIntosh-Wiseman's Father about same are further irrelevant.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
60, 61, 62, 63, 64, 65	Irrelevant	Ms. MacIntosh-Wiseman's billable and hourly performance as a lawyer, her work on File X, whether or not she could "handle" File X, and whether any conduct of Bruce MacIntosh in relation to work on File X was "embarrassing" is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

66	Irrelevant	Whether Bruce MacIntosh brought Ms. MacIntosh-Wiseman "in on a personal injury file" and how it was ultimately billed out by Mr. MacIntosh is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
67, 68, 69, 70	Irrelevant	Ms. MacIntosh-Wiseman's financial performance as a lawyer, whether or not her billings were "inflated", and her level of file responsibility are irrelevant to the claims of defamation and publicly placing the Plaintiffs in false light. Whether Ms. MacIntosh Wiseman spent time on matters of personal interest to her which did not relate to the Former Firm and whether or not she got "permission" to do so is further irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
71, 72	Irrelevant	How busy other lawyers in the Former Firm were in 2018 as compared to Ms. MacIntosh-Wiseman, and what associates thought of the location in which Ms. MacIntosh-Wiseman worked is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
80	Irrelevant	The normal expectations or billable hour targets at the Form Firm are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
81	Irrelevant	The reductions in hourly targets for Julie MacPhee and/or Gerald Green in and around 2018 and 2019 is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

91, 92, 93	Irrelevant	What the Former Firm's Partners thought about Ms. MacIntosh-Wiseman's intended leave of absence is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light, particularly given that the Defendant asserts at paragraph 93 that Ms. MacIntosh-Wiseman did not know how the Partner's felt.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
94, 95	Irrelevant	Whether Ms. MacIntosh-Wiseman breached partnership obligations, and how the Former Firm portrayed her leave of absence to the public is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
102	Irrelevant	Whether the Former Form's Partners discussed whether Ms. MacIntosh-Wiseman's practice was sustainable, whether she was underperforming, or whether she was being "propped up" by her father are irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
103	Irrelevant	Whether Ms. MacIntosh Wiseman was an underperforming lawyer is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
105, 106	Irrelevant	Whether the Former Firm's Partners "mocked" Ms. MacIntosh-Wiseman behind her back and the substance of the alleged mocking is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light. Whether Mary Jane Saunders was aware of the relationships among the partners is further irrelevant.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

117	Irrelevant up to and including "involvement in his files,"	Whether the Former Firm's Partners thought Ms. MacIntosh-Wiseman's practice was independently sustainable is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
135	Irrelevant	Any adversarial or confrontational relationship between Mr. Fraser and Bruce MacIntosh, whether Mr. MacIntosh attempted to have Mr. Fraser leave the Former Firm, and whether Mr. Fraser has sued Mr. MacIntosh resulting from same is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
143, 144	Irrelevant	Whether Mr. Fraser and Ms. MacIntosh-Wiseman's husband were involved with each other on the Lawton's Drug Store litigation and whether they were collegial and friendly at that time is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.
148	Irrelevant	Whether Ms. MacIntosh Wiseman or others made a complaint to the Nova Scotia Barristers' Society against Mr. Fraser in the Spring/Summer of 2023 is irrelevant to the claims of defamation and publicly placing the Plaintiffs in a false light.	This evidence shall not be struck. My Decision Regarding Relevancy, provided above, applies.

Schedule "B" Original MacIntosh-Wiseman Affidavit		
Paragraph #	**Plaintiffs' Argument**	**Decision**
32	Opinion, argument, submission and/or legal opinion, argument, submission. A more global summary of the Plaintiff's argument is found at para. 18 of its written submissions dated February 29, 2024: "That said, for the purpose of striking affidavit content, the key point is simply that the Defendant has no place making submissions, legal arguments or advancing her opinions within her sworn affidavit evidence. However, in this case, there is an added layer of impropriety in that the opinions of this Defendant are also completely and utterly irrelevant from the perspective that they do not even reflect any competent position as to the law. Whether she is muddled up on concepts relating to specific business opportunities, or simply spewing misplaced and legally unsound views from a broader perspective, it does not matter. Her legal commentary is improper affidavit content." This same submission applies to all of the paragraphs identified below.	The paragraph shall not be struck. The Plaintiffs generally challenges the key paragraphs listed in this Schedule "B" where the Defendant provides the material facts – including her belief and intentions surrounding the March 9 Email. In my view, the content of this paragraph does not constitute impermissible opinion, argument or submission – except as otherwise stated. In this particular paragraph, Ms. MacIntosh-Wiseman generally describes her intentions regarding the March 9 Email – including her intended interpretation. It is true that she describes this as "the feelings and opinions" which she intended to express through the March 9 Email. However, this comment attempts to describe the content of the email (i.e. it expresses her own feelings and opinions). It is not an admission that the content is disqualified as inadmissible in the context of a defamation case. At this stage in the proceeding and unless otherwise noted, I am not prepared to exercise my discretion and conclude that, as a legal matter, Ms. MacIntosh-Wiseman's beliefs and intentions regarding the March 9 Email To be clear, I make no comment regarding the weight, if any, which attaches to this evidence for the purposes of this motion including, for example, whether these paragraphs reveal a genuine issue of material fact. These are issues properly debated at the motion for summary judgment itself. These reasons should not be interpreted otherwise. Beyond that, these issues may become a topic for further discussion after the Defendant's motion for summary judgment is decided. As a final cautionary note and given the parties' reciprocal requests for cross-examination, I am providing a degree of latitude reasonably necessary to fully allow the Defendant to present her case for summary judgement. In the interests of brevity, I will generally use the shorthand phrase "**Decision Regarding Opinion, Argument and/or Submission"** where the same reasoning applies to other objections.

35	Opinion, argument, submission and/or legal opinion, argument, submission	The first sentence and the words "In particular" at the start of the second paragraph shall be struck. I agree with the Plaintiff that this particular passage is a condensed version of the Defendant's legal argument. The balance of the paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.
37	Opinion, argument, submission and/or legal opinion, argument, submission	The paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.
38	Opinion, argument, submission and/or legal opinion, argument, submission	The paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.
39	Opinion, argument, submission and/or legal opinion, argument, submission	The paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.
40	Opinion, argument, submission and/or legal opinion, argument, submission	The paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.

41	Opinion, argument, submission and/or legal opinion, argument, submission	The paragraph shall not be struck. See my Decision Regarding Opinion, Argument and/or Submission. I note that the phrase "feelings and opinions" referenced above regarding paragraph 32. However, the essential concern is the same in that Ms MacIntosh-Wiseman does refer to her feelings of being hurt or the wishes, beliefs or hopes that motivated (and, in her view, inform the meaning of) the March 9 Email.