SUPREME COURT OF NOVA SCOTIA
Citation: *Terris v. Meisner*, 2025 NSSC 84

Date: 20250304
Docket: Hfx No. 463235
Registry: Halifax

Between:

Kimberley Terris

Plaintiff

v.

Tracey Meisner

Respondent

Decision

Judge: The Honourable Justice Denise Boudreau

Heard: November 25, 26, 27, 28, December 2, 2024, in Halifax, Nova Scotia

Counsel: Laura H. Neilan, for the Plaintiff
Tracey Meisner, Self-Represented, Defendant

By the Court:

[1] The plaintiff brings this action in defamation against the defendant. The evidence that was put before me reveals a very sad tale indeed, for all involved.

[2] The defendant's son ("MM") is an intellectually disabled adult who, at all material times, resided at Emerald Hall, a unit within the Nova Scotia Hospital in Dartmouth, Nova Scotia. The plaintiff testified that she is a registered nurse and in 2016 was working as such (on a part-time basis) on this same unit. She described the staffing conditions in this unit at that time as "deplorable"; the staff were overworked and lacked support, while some of the patients were violent, and staff were routinely injured. According to the plaintiff, night shifts were particularly understaffed.

[3] The plaintiff noted that MM, in particular, was a challenging patient. He could be violent and unpredictable, striking or even biting others on occasion. He would also routinely bang his head against the wall. As a result, he wore a helmet at all times. MM also was known to defecate (at times, in places other than a toilet) and then smearing or throwing his feces.

[4] The plaintiff noted that the Emerald Hall unit had a "care plan" in place for MM, which provided suggested responses to some of MM's behaviour. However, she noted, most of the suggestions contained therein were only available during the day (when an appropriate number of staff were present). For example, the plan provided that if MM became agitated, he could be removed from his room and taken to various locations to calm him down; however, in order to do so safely, he was to have two male staff escort him at all times. This was not available during night shifts.

[5] On September 2/3, 2016, the plaintiff was working the overnight shift on the Emerald Hall unit. Although there were 15 patients in the unit at that time, there were only two staff working: herself and a developmental worker (Matt Steylen).

[6] At approximately 4:30 a.m., the plaintiff began to hear MM talking to himself in his room. She then heard him banging his toilet seat very aggressively. She noted that the noise was waking up some of the other residents, some of whom were also unpredictable and/or violent. The plaintiff testified that she went to MM's room with Mr. Steylen, and they tried to settle MM by speaking to him. This had little effect. She and Mr. Steylen entered the room, and Mr. Steylen guided MM back to his bed (the plaintiff noted that MM bit Mr. Steylen at that time). The plaintiff testified that she then locked MM's bathroom door to prevent a

reoccurrence of the toilet seat banging. She and Mr. Steylen left the room and started back up the hall.

[7] As they walked, the plaintiff testified that she heard a loud crack from MM's room. She assumed this was MM banging his head on the wall. The plaintiff then told Mr. Steylen to call a "Code White" (this Code summons security guards to the area). The plaintiff also went to get the "restraint chair", which was the required response when MM banged his head (to prevent any injury). This is a modified wheelchair with straps, which allows a person to be strapped in and essentially immobilized.

[8] When the plaintiff returned to MM's room, she noted that she could see blood on the door. She also noted that it appeared MM had reopened an old would on his forehead. MM was sitting on the floor of the room. She testified that MM then defecated on the floor, stood up, and threw the feces in the direction of the door where the plaintiff stood. The door was ajar and the feces struck the plaintiff in her hair and on the side of her face. The plaintiff was startled by this. MM then threw more fecal matter, this time missing the plaintiff and hitting the far wall behind her.

[9] The security personnel then attended and assisted with placing MM in the restraint chair. The plaintiff notes that MM was by this time "covered" in feces by his own doing. Mr. Steylen had to "swaddle" him in a blanket in order to guide him from the floor to the restraint chair.

[10] The plaintiff notes that the only "Personal Protective Equipment" ("PPE") she and Mr. Steylen had, at this time, were gloves. She noted that she was never provided with any other PPE at Emerald Hall, nor was she ever advised that any existed.

[11] The plaintiff testified that she assisted by placing the straps over MM's limbs, with the assistance of Mr. Steylen. At that point MM started spitting at them. The plaintiff checked that all straps were secure. She then left the room and went down the hall to obtain some medication for MM (which was prescribed for him when he became agitated). The plaintiff also took the opportunity to quickly clean herself.

[12] When the plaintiff returned to MM's room, she noted that Mr. Steylen had placed a towel in front of MM's face. She presumed this was done to prevent MM from further spitting on anyone.

[13] The plaintiff noted that she then went to MM and gave him his medication (in the form of pills along with water). She estimated that it was now 5:15 a.m. She then left the room again to obtain some supplies to clean MM's forehead wound. She returned and removed MM's helmet and cleaned and dressed his wound. She also continued to check on the chair straps, MM's circulation, and his vital signs.

[14] By 5:30 a.m. the plaintiff was "charting" in relation to the incident, i.e., making notes about the events to update the file and the daytime staff. She notes that she then read her chart note to Mr. Steylen, who said it seemed "fine".

[15] The plaintiff noted that, according to policy, the restraint chair must be "trialed" after one hour, i.e., one restraint from one limb is removed to determine if the person has sufficiently calmed. If they remain calm, then another restraint is removed, and so on. At 6:10 a.m. the plaintiff and Mr. Steylen "trialed" MM by removing a restraint on one of his arms. He immediately lashed out. The strap was then placed again, and MM remained in the chair.

[16] The plaintiff noted that by this time the daytime shift was soon to start. She was aware that MM had a good rapport with some of the day staff, who were usually able to calm him. The day staff began arriving by 6:30 a.m. and the plaintiff was permitted to leave the hospital at 6:40 a.m.

[17] The plaintiff notes that as she left, she saw the empty restraint chair outside MM's room and it had already been cleaned. The plaintiff therefore assumed that MM would have been out of the chair by approximately 6:30 a.m.

[18] The chart notes written by the plaintiff, in relation to the events, read as follows:

> Sept 3/16 0540 Client woke at 0430 with low level vocals. At 0440 client began banging toilet seat continuously. Writer and DW entered room. DW able to redirect back to bed. Client bit staff's left index finger but did not break the skin. Writer locked client's bathroom door. Writer and DW walked part way up the hall and heard client banging his head. Client found banging head on plexiglass of door. Attempted to verbally redirect and saw client squat on floor and defecate loose feces on floor. Writer went to call security for code white. Writer returned to clients room and was hit by feces client threw the gap in his window covering writer, hall chairs and opposite wall of hall. Security team arrived at 0500. Staff held blankets up and covered client to escort him to TOC. Placed in TOC at 0510. Client spitting at all staff so face had to be covered with a pillow case to clean and assess client. Client continued to yell. Given [medication] at 0515. Client offered needle or pills and was compliant to oral medication. Circulation assessed Q5 minutes until 0530, then Q15 minutes. Staff continued to use pillow case when entering room due to spitting. At 0540 client voided in chair. Client cleaned again. Client's bedroom cleaned for feces on floor, ceiling, walls and inside of door. Hall chairs and wall cleaned. All five staff covered in feces during incident. Client remains in chair. Will continue to monitor.
>
> Sept 3/16 0610 Client trialed for release from chair. Client spit and pinched staff. Reassessed TOC at 0610 and client resecured in chair until more staff arrive to assist.
>
> Sept 3/16 0530 Clients head wound found to be reopened when helmet removed upon placement in chair. Writer cleansed and dressed wound at 0530 with 2 2x2 gauze and normal saline. Bleeding had stopped upon completion of dressing. Will notify oncoming for the need of wound assessment.

[19] As can be seen in these notes the plaintiff had said that MM's "face had to be covered with a pillow case" to describe that part of the event. She was asked about this in her evidence.

[20] The plaintiff noted that she was not the person who had obtained the linen in question that morning; that was done by Mr. Steylen. She had simply seen a "rectangular piece of cloth" in place, in front of MM's face. She acknowledged having called the cloth a "pillow case" in her notes; however, it was later determined that the cloth was actually a towel. The plaintiff confirmed that, as far as she saw, at no time was MM's head or face "covered" by a pillowcase.

[21] The plaintiff testified that in the days and weeks following these events, she began hearing that the incident was being covered by the local media. She became aware of various news articles where the defendant was being interviewed about the incident, and that those articles were being posted to the defendant's Facebook page.

[22] In these articles the defendant was quoted as saying that Emerald Hall staff had "placed a pillow case over MM's head". While the plaintiff knew that this allegation was untrue, as a nurse she was forbidden from discussing the care of any patient with third parties. As a result, she was unable to publicly defend herself or

the unit. The plaintiff also became aware that the defendant was appearing on television news channels and repeating the same falsehoods.

[23] By October 2016, the plaintiff described experiencing panic attacks and migraines as a result of the continuing and untrue media coverage of the event. The plaintiff decided to leave her employment at Emerald Hall. She testified that she thought this might appease the defendant and cause her to stop spreading these false rumours.

[24] The plaintiff testified that on November 11, 2016, she was at home discussing the situation with her son. She went to her computer and brought up the defendant's Facebook page in order to show her son the types of articles that the defendant had been posting.

[25] The plaintiff then saw, for the first time, that the defendant had recently posted a clear close-up photograph of the plaintiff on her Facebook page. The photo was accompanied by captions from the defendant noting:

> "Pillow Case anyone?"
>
> "An abuser's face…Not someone that I suspected but never the less is that. Share this as she may be working with your loved ones. Like paedophiles we must be know who they are. We must protect our loved ones."
>
> "She said 'maybe his shit is retarded' and she put a pillowcase over M's head etc. Share her picture. We trusted her like we trusted many Emerald Hall personel. AND we should have not!!"

> "This is the face of abuse."
>
> "Please share."

[26] The Facebook page also included responses from others. They sought to know the plaintiff's name; they expressed outrage; they commiserated with the defendant and her son. In some examples, they even promoted actual violence against the plaintiff.

[27] The plaintiff was shocked upon seeing this posting. She became extremely upset and began crying as a result of seeing this.

[28] Following this, the plaintiff was advised that these posts had been seen by numerous people. Co-workers and family members contacted her to say they had seen the reports. She was repeatedly contacted by media for a response to the allegations. She felt threatened and scared by what was being said about her. She even contacted the police to try and get the defendant to stop.

[29] The plaintiff testified that formal investigations were done in relation to this incident by the Nova Scotia Health Authority (author Joanne Blight) and by the Nova Scotia College of Nurses. The plaintiff notes that she took great exception to the Nova Scotia Health Authority report as she found it unfair. She notes that the College of Nurses eventually cleared her of any wrongdoing in the matter.

[30] The plaintiff noted that in 2016 she was also working as a medical adjudicator with the federal government. She took a medical stress-related leave of absence from this job in November 2016 (after seeing the Facebook posts) for three months. She was scheduled to return and did return in February 2017. The plaintiff noted that upon her arrival on her first day, she was asked to meet with her manager. He told her that he was in possession of all the news articles and the Facebook posts about the incident at Emerald Hall, and he told her that the plaintiff's co-workers were "concerned" about it. He then sent her home. The plaintiff described this as a very upsetting incident.

[31] This manager was thereafter replaced and the new manager later contacted the plaintiff to apologize, noting that the College was investigating the incident and that the plaintiff was considered "innocent" until that was concluded. The plaintiff then returned to this employment, but described the workplace as unpleasant, with gossiping and bullying against her occurring regularly. She was advised that certain co-workers claimed to be "scared" of her. She further noted that two of the worst perpetrators are now gone from that workplace, but some of the staff are still aware of these reports.

[32] The plaintiff testified that at times when she was out in public, people would point her out as being "that nurse" or "that abusive nurse".

[33] She testified that these events have continued to impact her life in many negative ways. She noted that her mental health took an enormous toll in the wake of these events, even to the point of becoming suicidal, as she could not stop the defendant's unfair and untrue attacks on her.

[34] The plaintiff is a single parent of two twin boys, now 33 years of age. Her relationship with her sons suffered through this period as well. She noted that her son Michael had expressed anger about the circumstances and had told the plaintiff to simply "get over it". She noted that she has not spoken to Michael since 2022. She feels that the loss of this relationship was caused by the actions of the defendant.

[35] The plaintiff noted that she has been involved in a great deal of mental health therapy since these events. She noted having a diagnosis of severe PTSD as a specific result of the articles and posts 2016-2017 made/initiated by the defendant. The plaintiff noted that she had stopped all hobbies or recreational activities after these events but is now doing better. For example, she was a music teacher prior to September 2016 and, while she stopped this activity for a number of years, she has now recommenced (although she now only teaches adults, not children). She has, in fact, never returned to direct patient care since leaving Emerald Hall.

[36] The plaintiff also noted that in 2016 she was enrolled to begin a master's program through Athabasca University. Following the events of the fall of 2016, the plaintiff deferred her start of this program. She has never gone back.

[37] The Court heard from only one other witness who was present on September 3, 2016, at Emerald Hall: Matt Steylen. Mr. Steylen confirmed that he was a developmental worker at Emerald Hall in September 2016. He knew the plaintiff as a co-worker, but they are/were not friends. He does not know the defendant.

[38] Mr. Steylen confirmed that on September 2/3, 2016, he was working the night shift at Emerald Hall, which started at 11:00 p.m. He had a break at 4:00 a.m. At 4:45 a.m. he received a request from the plaintiff for assistance, as one of the clients was making noise and she wanted help to get him back into bed.

[39] Mr. Steylen testified that he attended MM's room and tried to verbally calm him down, which did not work. Mr. Steylen entered the room and touched MM, who immediately tried to bite him. MM then returned to his bed. Mr. Steylen noticed that the plaintiff then locked the bathroom door. He and the plaintiff both left.

[40] Mr. Steylen testified that he then heard more banging. He returned to the room and saw MM slamming his head against the door. He noted that the plaintiff

told him that the restraint chair would be needed and called a Code White (seeking the assistance of security personnel). Mr. Steylen noted that MM then defecated on the floor and threw the feces at the door.

[41] Mr. Steylen noted that there was no PPE available to staff at this unit, and that he was quite shocked to discover this. He then grabbed a piece of linen from "somewhere" to use as a shield. He testified that he and the two security guards entered the room, and he wrapped MM in a blanket. He noted that MM had spread fecal matter on himself and on the floor causing one of the guards to stumble and fall. The plaintiff then brought the restraint chair over. The men held MM while the plaintiff secured the straps on the chair to his limbs.

[42] During this time MM was continually spitting; Mr. Steylen noticed that his spit was reddish tinged. Mr. Steylen theorized that MM might have bitten his tongue or cheek during the events, causing blood in his mouth and spit. Mr. Steylen therefore placed the linen he possessed (which was, in fact, a hand towel) over the top of MM's helmet so that it draped over MM's face. He did this as a preventative measure to keep MM's spit from reaching him and/or the others. He noted that the towel did not touch MM's face but hung about three or four inches in front of his face. Mr. Steylen noted that once MM was secured in the chair, the towel was removed.

[43] Mr. Steylen noted that after one hour, the plaintiff told him that MM had to be “trialed”. With his assistance she removed a strap from one of MM’s arms. MM immediately tried to scratch them and so the strap was placed again.

[44] Mr. Steylen noted that by this point the day staff was starting to come in and MM was recognizing them, which appeared to settle him. Mr. Steylen noted that he left Emerald Hall to return home at about 6:20 a.m., and he noted that MM was still in the chair at that time.

[45] As noted by the plaintiff, this incident was the subject of two separate investigations. The first was initiated by way of a complaint filed with the Nova Scotia Department of Health, pursuant to the *Protection for Persons in Care Act.* An investigation was conducted by Investigation and Compliance Officer Joanne Blight, who provided two reports, a “Preliminary Report” (dated October 17, 2016) and a “Final Report” (dated January 20, 2017).

[46] The Preliminary Report reads as a basic introduction to the complaint; it simply notes a “Summary of Facts” in point form. Notably, although the document uses the word “facts”, much of what followed were not “facts”, but rather allegations.

[47] The list of these facts is notable for other reasons. While the document repeatedly references "witnesses" having given information (e.g., "a witness reports…", "there is evidence that…", "it was noted that…"), none of these purported "witnesses" or sources of information are identified. No document is referenced as being the source of any of the listed "facts" nor is there any reference to the reliability of any of these sources.

[48] Some of the "facts" are, it appears, errors. As a particular example, Ms. Blight noted at page 2:

> • There is evidence that the patient remained in the TOC chair from 05:10 to 07:05. …

[49] There is, at least in the material before me, no such evidence. The only reference to "7:05" is in a chart note written by "JKelly RN":

> Sept 3/16 1545 Client in restraint chair upon writer's arrival this morning. Calm at this time, BP 121/84 P 98 @ 0705. Helped out of TOC by staff. …

[50] The "0705" reference is clearly to a blood pressure reading, not to MM's release from the restraint chair.

[51] Ms. Blight also noted on page 2:

> • Two witnesses consistently reported that the person implicated commented "that little fucker" and "I wonder if his shit is retarded" within the patients' hearing distance.

> • One witness and the person implicated denied making comments about the patient.

[52] The plaintiff was asked about those purported comments in her evidence before this Court, and she denied making either of those statements. She noted that when she was headed up the hall, after having been struck by feces, she might have said "that little bugger", but that comment was not made within earshot of MM. She also agreed that she had said "I wonder if his shit is infected" after having been struck by feces; but again, that was not within earshot of MM.

[53] The Preliminary Report also referenced the formal written Policy in relation to the Restraint Chair, in force at that time. The Report states that the policy noted:

> 1. Use of the emergency restraint chair shall not exceed 1 hour
> 2. In the rare event the chair is required beyond one hour the patient must be assessed face to face by a physician
> 3. A physician's order is required to extend the use of the chair beyond one hour but never to exceed 2 hours.

[54] The plaintiff was also asked about this policy. She noted, as with the care plan, this policy was not realistic during the overnight hours as no physician was on site. She notes that even if staff attempted to contact a physician overnight because of the use of the restraint chair, none would come to the facility.

[55] The final report of Ms. Blight was produced in January 2017. It began by repeating the "Summary of Facts" noted hereinabove. Again, the witnesses / source

of the information is not identified. It does not appear, as far as I can tell, that any of these "facts" have been further investigated or challenged.

[56] The Report goes on to provide "additional" information from other sources: for example, from the defendant (who outlined her multiple complaints about Emerald Hall and indicated that she had contacted authorities, including the police about the incident). Ms. Blight does not explain why the defendant's "information" was useful to her investigation, given that the defendant was not present at the time of the event.

[57] Ms. Blight includes "additional information" from "the facility"; she does not identify who exactly this is referencing. Whomever this was noted to Ms. Blight that PPE *was* available to staff at Emerald Hall, and that a "care plan" for MM and a policy concerning the use of the restraint chair were in place, and that staff were expected to know both. Ms. Blight also obtained information from the "person implicated" (understood to be the plaintiff). It should be noted, as I will discuss later, that the plaintiff does not feel that Ms. Blight accurately and fairly presented this "information" in her report either.

[58] Ms. Blight's final report indicated a number of "Findings", including that MM's care plan had not been followed and that the restraint chair policy had not

been followed. She was entirely silent as to the suggestion that neither the care plan nor the restraint chair policy could have been followed during nighttime hours. Ms. Blight also noted that there was "inconclusive evidence" as to whether the towel was held in front of MM's face or laid on MM's face. I take that to mean there were conflicting reports, and Ms. Blight did not see it necessary to resolve the issue.

[59] Ms. Blight concluded that the complaint was "founded". In my reading of the report, this was for two reasons: 1) the restraint chair policy not being followed (i.e., no physician was contacted after one hour), and 2) the "derogatory" words attributed to the plaintiff and directed towards MM.

[60] Ms. Blight went on to issue a number of "directives", all of which were directed at "The Administrator" of the facility. The vast majority of these were directed at the facility generally (e.g., better training of staff, a formal review of the existing restraint chair policy). The only "directive" specifically directed at the plaintiff was the following:

> The person implicated does not deny saying derogatory comments about the affected patient, rather denies saying the comments in the patient's presence. There is corroborating evidence from witnesses that such comments were made. As such, the Administrator shall ensure that should the implicated person continue to be employed at the facility, education related to patient respect, sensitivity and communication is provided. …

[61] The plaintiff takes great exception to this report. She notes that Ms. Blight made many serious mistakes; for example, when she (the plaintiff) was questioned by Ms. Blight, she specifically denied making any derogatory comments on the evening in question. Ms. Blight's report suggests that the plaintiff acknowledged the comments, which was untrue.

[62] The plaintiff also was of the view that the manner in which Ms. Blight undertook this "investigation" lacked integrity, professional methodology, and procedural fairness.

[63] Ms. Blight testified before me in an effort to defend her report(s). In my estimation, Ms. Blight's evidence did not assist her in that regard; she had great difficulty justifying much of what was contained therein.

[64] Ms. Blight became quite defensive when she was asked pointed questions about her methodology and "findings". In fact, by the end of her testimony I would have to describe Ms. Blight as demonstrating unmistakable flashes of anger in response to the questioning. Perhaps she herself recognized, while being questioned, that her "report" was seriously lacking.

[65] All things considered, in fact, I must agree that the Blight "investigation" was not a fair one vis-à-vis the plaintiff. Ms. Blight seems to have simply accepted

as “fact” all information from any and all sources. None of those sources were identified, and so verification is impossible. The reliability of none of those sources was addressed (or perhaps even considered), so it is impossible to assess reliability in any objective fashion. Ms. Blight made no effort to reconcile conflicting reports. To make things worse, some of the information she noted as “fact” (and therefore some of the conclusions she came to) were wrong.

[66] Furthermore, Ms. Blight seems to have completely disregarded the evidence in relation to the circumstances facing the plaintiff at the time of the event (i.e., the nighttime shift, the lack of staff, the impossibility of MM’s care plan being implemented). Those factors are not addressed in her conclusions.

[67] Quite simply, this report does not contain a solid enough foundation of confirmed and/or reliable facts to lead to the conclusions that Ms. Blight made about the plaintiff.

[68] Having said that, I do want to add one point. To be fair to Ms. Blight, it may be that her intention in creating such a report was to identify “general” problems within this facility, and to suggest improvements or “best practices” going forward. Her conclusions and recommendations certainly seem to suggest that as a) they are all addressed to “the Administrator” of the facility, and b) they are (for the most

part) general in nature, e.g., related to future and additional staff training, education, and so on. To that extent, her report might be considered useful. Clearly Emerald Hall was a place in need of significant changes/improvements in a number of areas.

[69] However, while it is one thing to make general recommendations to improve a facility, it is quite another to make findings of "abuse" by one specific person against another specific person. While the former circumstance might allow an informal approach to an investigation, the latter certainly would not.

[70] The Blight Report, at least on its face, purports to address complaints made about a staff member at a health care facility. In that context, Ms. Blight's investigation needed to be carefully and comprehensively done, using some form of methodology appropriate to the circumstances, in keeping with the seriousness of the subject-matter, and its possibly devastating effects upon the "accused" staff member (in particular, their reputation and livelihood). It needed, in particular, to demonstrate fairness to the "accused" staff member, in both procedure and result.

[71] In my view, the Blight investigation and report did not meet this standard. As I have already noted, the report provided minimal (or even a total absence of) "fact-checking"; to be blunt, one wonders if some of the identified "facts" were

actually only rumours about the event. We will never know; it is impossible to know. No source individuals or materials were identified in the report; it contained no identified methodology which could be assessed; and it provided, in my view, little to no procedural fairness to the plaintiff.

[72] To conclude, in my view, the Blight Report is entirely inconclusive as it relates to formal complaints against the plaintiff about the events of September 3, 2016. It "proves" nothing about the incident. The report's only possible use would be to identify some areas within Emerald Hall, generally, needing improvement.

[73] This unfortunate and sad story, however, does not end here. In the aftermath of the Blight Report, the situation was made even worse. The report was provided to the defendant, who accepted its findings (as, perhaps, a layperson would) as legitimate and definitive. The defendant has, *to this day*, used the Blight Report as "proof" that the plaintiff was abusive to her son in September 2016 since the PPCA investigator "found" it to be so.

[74] I repeat, my review of the Blight Report makes it clear that it "proves" no such thing.

[75] As noted, the Nova Scotia College of Nurses also undertook an investigation of the plaintiff in relation to the events of September 3, 2016. The College

dismissed the complaints against the plaintiff as being unsubstantiated. While I do not have their entire report, I was provided with extracts as to their conclusions. I cite them in their entirety:

> *Failure to Follow Policy Regarding Use of ERC*
>
> The Committee was unable to resolve precisely which version of the ERC policy was in effect at the time of the incident. Furthermore, even if a particular version was established as the correct policy, it was unclear if the relevant information was communicated to Ms. Terris. The Committee noted that it took several requests from CRNNS, spanning almost a year, to obtain a copy of the "interim" policy cited by Mr. X in the letter of complaint. If NSHA had such difficulty in obtaining the document in question, it was feasible that it was not accessible to Ms. Terris. The Committee noted that the MM ERC protocol document, which Ms. Terris denied seeing prior to the investigation, was undated. It therefore provided little assistance to the Committee in establishing what the expected practice was at the time of the incident. Furthermore, Ms. Y supported Ms. Terris' interpretation of the policy at the relevant time, and Ms. Z expressed some doubt regarding what information had been conveyed in ERC training on the unit. The Committee received evidence that policies and practices at Emerald Hall were subject to frequent changes, which raised a doubt that staff members who were interviewed could accurately recall the accepted practice at the precise time of the incident. The Committee considered it unfortunate that there was not a clear, shared understanding of such an important policy among staff at the relevant time; however, the Committee was pleased to hear that following this incident, improvements were made in communicating the current best practice. In any event, it appeared to the Committee that Ms. Terris was following what she believed to be correct procedure at the time. Accordingly, this allegation was dismissed on the grounds that it was not substantiated.
>
> *Failure to Provide Adequate and Appropriate Care*
>
> Except with respect to the issue of failing to use PPE as discussed above, the Committee determined that the care provided by Ms. Terris to MM appeared to be reasonable, and her actions seemed consistent with the care plan that was in effect at the time. The Committee was satisfied that alternative interventions had been attempted prior to use of the ERC, including allowing MM time to self-soothe, and verbal redirection. Furthermore, the Committee agreed that it was unreasonable to expect that the alternative strategies available to day staff would have been attempted on the night shift, with only two staff available on the unit. In calling the code white, Ms. Terris took appropriate action to protect MM's safety when he began to bang his head. The care plan noted that the ERC was to be used "more regularly" in an attempt to keep MM safe, and there was a physician's order for the ERC. The evidence before the Committee was that Ms. Terris did a CSM check,

> and that MM was under constant observation. Ms. Terris appeared to clean and assess MM's head wound appropriately, and she administered PRN medication. While there was uncertainty regarding whether Ms. Terris checked MM's vitals, overall, the Committee was satisfied that the care provided to MM met the applicable *Standards*, and therefore, this allegation was dismissed on the grounds that it was not substantiated.
>
> *Failure to Follow Up Appropriately*
>
> As previously noted, the precise policy requirements at the time of the incident were unclear; therefore, it is unknown whether a SIMS report was technically required. Ms. Y stated that prior to the incident, she had never completed a SIMS report at Emerald Hall. In any case, a staff member that received report from Ms. Terris completed a SIMS report. Moreover, it appeared that Ms. Terris did conduct an "informal" debrief with the DW, who was the only other unit staff member present. Ms. Terris indicated that she reviewed her documentation with the DW and they discussed the incident and felt that they have done a good job. As noted, she did report the incident to oncoming staff. This allegation was dismissed because it was not substantiated.

[76] The Court heard evidence from Debbie Holmans, who was another RN working night shifts at Emerald Hall in 2016. Ms. Holmans has since retired from nursing. Ms. Holmans noted that she was let go from her job at Emerald Hall due to events that occurred following the September 3, 2016, incident. Notably, Ms. Holmans had made a statement in support of the plaintiff and, as a result, the defendant had complained to the College of Nurses that she (Ms. Holmans) had committed a breach of privacy. Ms. Holmans testified that she then lost her job, her income, and also lost the plaintiff as a friend. Ms. Holmans noted being "unhappy" to have been subpoenaed in this proceeding, and she did not want to be back on "the defendant's radar" because of everything she had gone through in the past.

[77] Ms. Holmans confirmed that the conditions for night staff at Emerald Hall at the time of these events were “deplorable”. At most there would be two staff working, one being a nurse, and the other perhaps an LPN, or a male DW if one was lucky. There were also security guards working at the facility, but they were completely untrained in relation to health care, or mental disability or illness. Ms Holmans noted that when she started at Emerald Hall, there were approximately 23 in-patients.

[78] Ms. Holmans was aware of MM as a patient at Emerald Hall. She agreed that MM could be very sweet at times, but then “turn on a dime” and be aggressive at other times. He would curse, slap, kick, spit, and even throw feces. She noted that MM also had a condition which caused him to repeat phrases that he heard. This caused her to doubt that the plaintiff had expressed the words attributed to her in Ms. Blight’s report, as she has never heard MM say those words back.

[79] Ms. Holmans noted that it was not uncommon for MM to injure himself. She notes that he would be placed in the restraint chair when he would hurt himself; while that did not occur every day, it occurred multiple times per week. She noted her understanding of the policy in relation to the chair, which was the same as that of the plaintiff. Ms. Holmans noted that she was aware that the formal policy referenced a requirement to contact a doctor after use of the chair for one hour;

however, she agreed that this was not normally done during the night shifts, as physicians would not even answer the phone. In Ms. Holman's understanding, during night shifts a patient in the restraint chair was to be "trialed" after one hour, and if he was not calm, the restraint would be re-applied for a maximum of another hour.

[80] Ms. Holmans was unaware of any PPE available at Emerald Hall. She notes that at times when MM was spitting, the staff would sometimes hold a towel in front of him to avoid being touched by bodily fluids.

[81] Ms. Holman was aware of what had occurred in the early morning hours of September 3, 2016, although she was not present. She noted that she was unsurprised upon hearing what had occurred given the lack of staff and the inability to enact any daytime protocols. She noted that at night, the staff would attempt to soothe MM by words, which was their only option. If MM tried to harm himself, he would be placed in the chair.

[82] Lee Mailman, who was the "interim" manager of Emerald Hall in the fall of 2016 also testified.

[83] Mr. Mailman was asked about the restraint chair policy. He noted that in September 2016, the formal policy on the unit in respect of the restraint chair was

that it could be used for one hour; after that hour the person needed to be released unless a psychiatrist physically came and assessed the patient and allowed the use of the chair for longer. Having said that, Mr. Mailman acknowledged that during the night hour the psychiatrists (who resided in Halifax) would not come to the hospital and that, as a result, the night staff's "hands were tied". Despite that, Mr. Mailman was of the view that on the night in question, the plaintiff should still have made attempts to locate a psychiatrist when MM had not settled after one hour. He noted that had she done so, the plaintiff "might" have been able to get a doctor to give a "verbal" agreement, over the phone, to longer use of the chair.

[84] Mr. Mailman also agreed that some of the "care plan" in place for MM was simply not possible during night hours due to shortage of staff.

[85] Mr. Mailman testified that there was, in fact, PPE available at Emerald Hall in September 2016. He thought that the staff were aware of this but could not be sure. In his view, staff should have been made aware of this during their training on the unit; if they were unaware, that was the fault of whomever had trained them.

[86] Mr. Mailman testified that upon attending work the day after the incident in question, he was advised by another staff person (Ms. Tapper) about it. He then contacted the defendant to advise her of what had occurred. Mr. Mailman was

unsure if, prior to doing so, he actually read the plaintiff's chart notes mentioned hereinabove.

[87] Mr. Mailman agreed that he told the defendant during this conversation that a "pillowcase had been placed over MM's head". This was his understanding from the staff person who had spoken to him. Mr. Mailman also told the defendant that he would be making a PPCA (*Protection for Persons in Care Act*) complaint.

[88] The defendant testified and noted that her son MM has been a resident at Emerald Hall since June 2004. In the fall of 2004, she was contacted by police to tell her that a male staff member of Emerald Hall was being charged with assault on MM. There were, in fact, two separate assaults that were the subject of criminal charges; two male staff members were found guilty at trial of assaults against MM. The defendant noted that during that time the hospital asked her to not go public with these events as it would upset other parents of the patients, and they promised her that things would "get better" for MM.

[89] In her view, things did not get better. She continued to have multiple concerns about MM's care at the unit: the use/increase of powerful drugs; the use of physical restraint(s) or physical force; the lack of stimulation or activity offered to him. The defendant at times thought she could see marks on MM which were

unexplained. The defendant made multiple formal complaints over the years about MM's care at the unit. Some complaints were determined to be founded, others were not.

[90] In September 2016, she confirmed that she received a call from Lee Mailman, the manager of the unit at that time, who told her that there had been an incident with MM overnight. She stated that Mr. Mailman told her that MM had been placed in the chair with a pillowcase put over his head. She asked who had done this, and he responded "Kimberley Terris". The defendant did not recognize the name. The defendant said that Mr. Mailman told her that he would be making a PPCA complaint to commence an investigation into the matter.

[91] The defendant attended the hospital and asked to see MM's chart, which she says she had done before. She obtained it and then saw the notation made indicating the use of the "pillowcase". This made her very upset.

[92] The defendant testified that at this point, after everything that had occurred including the most recent incident, she concluded that she had to "go public" with her complaints about Emerald Hall and its staff. She believed, through her experiences with the hospital as well as her participation in advocacy groups for family members of mentally challenged adults, that this was a continual problem at

this unit. She believed her only option was to expose these problems in a public manner. She therefore reached out to various media outlets along with the Provincial Minister of Health and her MLA.

[93] The defendant was taken through each of the statements alleged to be defamatory by the plaintiff, as contained in the media articles and the Facebook posts. The defendant agreed that she had made the impugned statements, although at times (in the case of the media articles) she could not be sure that the words were "exact" quotes.

[94] From that time until the present day, the defendant has maintained her belief that the plaintiff was "abusive" towards her son on September 3, 2016. She continued to maintain this belief before this Court, despite having heard the evidence in this proceeding from the plaintiff and from Mr. Steylen which is to the contrary.

[95] The defendant concluded by saying that while she "doesn't know the truth anymore", she continues to rely upon the notes in the chart and the report of Ms. Blight. She has made no apology to the plaintiff for her words/posts, nor does she intend to.

The claim

[96] The plaintiff puts forward 13 statements made by the defendant which the plaintiff claims are defamatory. They are:

1. On October 11, 2016, the defendant said to the Nova Scotia Advocate that her son was “spitting at somebody, and that’s when they put a pillowcase over his head”.
2. On that same date, the defendant said to the Nova Scotia Advocate “if you have to educate staff not to put a pillowcase over somebody’s head then you’re working with the wrong kind of staff”.
3. On November 2, 2016, the defendant told CBC that Emerald Hall had a “culture of abuse” where “staff act like thugs”.
4. On that same date, the defendant told CBC that “her son’s care plan was not followed by staff”.
5. On that same date, the defendant told the Chronicle Herald that Emerald Hall’s “culture of abuse is putting his life at risk” (referencing her son).
6. On that same date, the defendant told the Chronicle Herald that the staff member who “held the towel to her son’s face and put a

pillowcase over his head is a registered nurse and had been suspended".

7. On November 3, 2016, the defendant told CTV Atlantic News that "her son was mistreated and abused at the in-patient clinic where he lives".
8. On that same date, the defendant told CTV Atlantic News that a registered nurse had stated "that little fucker" and "I wonder if his shit is retarded" on the morning of September 3, 2016, within earshot of MM.
9. On that same date, the defendant told CTV Atlantic News that the restraint chair "wasn't used in the way it was supposed to be".
10. On November 11, 2016, the defendant posted a clear head shot of the plaintiff on Facebook with a caption "Pillow case anyone?". The defendant further commented that the woman in the photo had put a pillowcase over her son's head.
11. On November 11, 2016, the defendant posted again in relation to the plaintiff's photo, saying, "An abuser's face…Not someone that I suspected but never the less is that. Share this as she may

be working with your loved ones. Like paedophiles we must know who they are."

12. On November 12, 2016, the defendant again posted the plaintiff's photo on Facebook with the caption "This is the face of abuse", and encouraging others to share the image. Third parties respond angrily to the image and captions.

13. On February 3, 2017, the defendant posted to her Facebook page the link to the College of Registered Nurses Licence Status Check page stating, "I check this site everyday. After yet another investigation we expect to learn that this abuser will lose her licence period."

Defamation

[97] It is well recognized that in order to constitute defamation, statements must fulfill three criteria:

(a) they must have been "published";

(b) they must refer to the plaintiff;

(c) they must tend to lower the reputation of the plaintiff in the eyes of a reasonable person.

(*Grant v. Torstar Corp.*, 2009 SCC 61)

“publish”

[98] In the context of defamation law, the word “publish” has a particular meaning. In *Crookes v. Newton*, 2011 SCC 47, the Supreme Court noted:

> [16] To prove the publication act of defamation, a plaintiff must establish that the defendant has, *by any act*, conveyed defamatory meaning to a single third party who has received it (*McNichol v. Grandy*, 1931 CanLII 99 (SCC), [1931] S.C.R. 696, at p. 699). Traditionally, the form the defendant’s act takes and the manner in which it assists in causing the defamatory content to reach the third party are irrelevant:
>
> > There are no limitations on the manner in which defamatory matter may be published. Any act which has the effect of transferring the defamatory information to a third person constitutes a publication
> >
> > (*Stanley v. Shaw*, 2006 BCCA 467, 231 B.C.A.C. 186, at para. 5, citing Raymond E. Brown, The Law of Defamation in Canada (2nd ed.), vol 1 at No. 7.3.)

[99] The defendant does not deny that she uttered the words at issue here. They were made to media outlets who then, as was expected, printed them to be read by the public at large. Nor does the defendant deny posting the photo and captions to her Facebook page. The responses that show on the Facebook printouts clearly show that the messages were “conveyed” to others.

[100] There is no doubt that all the impugned statements here were “conveyed” to others. They therefore constitute “publication” as that term has been defined in defamation law.

“Refer to the plaintiff”

[101] In order to meet this second criteria, the plaintiff must show that an “ordinary sensible person, to whom the words were published, would understand them as referring to the plaintiff”. It is not necessary for the plaintiff to be referenced by name (*United Ventures Fitness Inc. v. Twist*, 2019 ONSC 3613; *Grant v. Cormier-Grant*, 2001 CanLII 3041 (ONCA)).

[102] In *Butler v. Southam Inc.*, 2001 NSCA 121, our Court of Appeal noted:

> [29] The plaintiff must prove at trial that the allegedly defamatory statements are ‘of or concerning the plaintiff’; the jury must be satisfied that the statements lead reasonable people, who know the plaintiff, to the conclusion that the statements refer to the plaintiff: see, for example, **Knupffer, supra** per Viscount Simon, L.C. at 118. Steele, J. in **Mouammar v. Bruner** (1978), 84 D.L.R. (3d) 121 (Ont. H.Ct.) at 123 adopted a passage from *Gatley on Libel and Slander*, 7th ed. (1974) to describe the approach:
>
> > The test of whether words that do not specifically name the plaintiff refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to? That does not assume that those persons who read the words know all the circumstances or all the relevant facts. But although the plaintiff is not named in words, he may, nevertheless, be described so as to be recognised; and whether that description takes the form of a word-picture of an individual or the form of a reference to a class of persons of which he is or is believed to be a member, or any other form, if in the circumstances the description is such that a person hearing or reading the alleged libel would reasonably believe that the plaintiff was referred to, that is a sufficient reference to him.
> >
> > (Emphasis added)
>
> …
>
> [39] The first is that statements which do not refer to the plaintiff by name will nonetheless meet the ‘of and concerning’ requirement if they may reasonably be found to refer to the plaintiff in light of the surrounding circumstances. **Sykes v.**

> **Fraser**, **supra**, is an example. The defamatory remarks in that case concerned the approach taken by the representatives of certain developers. These statements were found by a majority of the Supreme Court of Canada to refer to the plaintiff who was the developers' lawyer and who had made submissions on their behalf: see Ritchie, J. at 544. Further examples are given by Lawrence H. Eldredge in his text *The Law of Defamation* (1978) at p. 55:
>
> > ... [T]he general proposition [is] that a disgruntled individual may, without violating the law of defamation, vent his spleen and publish his extreme beliefs that all lawyers are sly and devious pick-pockets, all surgeons are drunken, bloodthirsty butchers, and all clergymen are sanctimonious, psalm-singing hypocrites. But if he makes this statement in a small town in which there is only one lawyer who had recently successfully sued him, and utters the words before the congregation of the town's only church who have been discussing some criticism of their minister, and quite visibly glares at the town's only surgeon who is seated nearby, may it not be said that this intemperate man has published defamatory statements which his audience will reasonably, and probably correctly, believe he is making about these three presumably leading citizens, and that each of them has been individually defamed? ...

[103] In *Melanson v. Sellars*, 2024 NBKB 223, the defendant had argued that his Facebook post had not specifically named the plaintiff, and therefore did not sufficiently identify the plaintiff for the purposes of a defamation action. The post read:

> **CAUTION WOMEN:** I called the police on Dawn Ann's husband who drugged and raped my 20-year-old girlfriend. … GIRLS that get dresses at this business, be aware of the male predator in the house.

[104] The Court had no difficulty finding that the plaintiff had been identified:

> [60] Since the statement above was posted on the Facebook page mentioning Ms. Killam and specifically refers to her husband, as well as to the male in the house, it, in my view, sufficiently identifies the plaintiff. A reasonable person, familiar with the plaintiff, reading the post would likely conclude that it refers to him. The reference to her husband, coupled with the mention of the male in the house and the context of the business, makes it clear that the plaintiff is the intended subject.

[105] In the case at bar, in my view, the first nine statements referenced by the plaintiff do not sufficiently identify the plaintiff to meet this requirement.

[106] The first two statements were made in an article entitled “Mother says Nova Scotia Hospital staff placed pillowcase over son’s head”:

1. MM was “spitting at somebody, and that’s when they put a pillowcase over his head”.

2. “… if you have to educate staff not to put a pillowcase over somebody’s head then you’re working with the wrong kind of staff …”.

[107] This article repeatedly uses the expression “staff”; the word “they” in the first impugned quote does not identify anyone.

[108] Although this article later references MM as residing at Emerald Hall, there are many staff who work at the Nova Scotia Hospital and at Emerald Hall, including multiple RNs. No ordinary reasonable person reading these articles would know who the employees of Emerald Hall were, much less who was being referenced by these statements. Even if one knew that the plaintiff was a nurse at that location, there is nothing identifying the plaintiff specifically as opposed to any other staff person or nurse at that location.

[109] It should also be noted that, within this article, the defendant also references the past incident when staff members had been convicted of abuse in relation to MM. The defendant was stating her opinion that MM was not being cared for appropriately at the facility.

[110] The next two statements are:

3. Emerald Hall had a “culture of abuse” where “staff act like thugs”.

4. MM’s “care plan was not followed by staff”.

[111] Again, the article where these quotes were found referenced “staff” at Emerald Hall at the Nova Scotia Hospital. The impugned quote was prefaced by the following: “Tracey Meisner received the report two weeks ago. She said she believes the person being investigated is a nurse …”

[112] In my view, the same comments apply as to the first article. There are many nurses who work at the Nova Scotia Hospital and Emerald Hall. I disagree that this identifies the plaintiff sufficiently for the purposes of defamation.

[113] The next statements are:

5. Emerald Hall’s “culture of abuse is putting his (MM’s) life at risk”.

6. The staff member who "held the towel to her son's face and put a pillowcase over his head is a registered nurse and had been suspended".
7. MM "was mistreated and abused at the in-patient clinic where he lives".
8. A registered nurse had stated "that little fucker" and "I wonder if his shit is retarded" on the morning of September 3, 2016, within earshot of MM.
9. The restraint chair "wasn't used in the way it was supposed to be".

[114] These statements admittedly contain a few more identifying features in that they identify a staff person involved as a "Registered Nurse". But again, there are many staff who work at this location, including RNs.

[115] In the final analysis, I am unconvinced that these first nine messages have sufficiently identified the plaintiff in order to constitute defamation.

[116] However, this is immaterial due to what happened next. Once the defendant started posting on Facebook, her liability became crystal clear, as the plaintiff was very clearly and obviously identified. The defendant posted a very clear head shot of the plaintiff, referenced the events of September 3, called the plaintiff an

"abuser", and akin to a "paedophile". While the defendant did not name the plaintiff in these posts, they leave no room for misunderstanding as to whom is being referenced. In my view, the Facebook messages clearly and solidly "identify" the plaintiff to the world at large.

"tend to lower plaintiff's reputation"

[117] In my view, this is a requirement that is easily met here, specifically in relation to the Facebook posts. To call a person an "abuser" or to liken them to a "paedophile" would clearly lower their reputation in the eyes of any reasonable person; all the more so in the case of a health care worker such as the plaintiff. The words "abuser" and "paedophile" cannot be interpreted in any other way; they clearly mean to convey that the plaintiff is a person who does/would hurt people entrusted to her care.

[118] The defendant testified that she truly and honestly felt that her son was not being properly cared for at Emerald Hall. The past convictions for abuse by other staff, along with other incidents that she had been advised of (including this one) caused her to believe that Emerald Hall was not a good place for him. She noted that she had tried other avenues to cause change to occur, but nothing else had worked.

[119] It appears that the defendant had valid concerns about Emerald Hall vis-à-vis her son. In fact, the plaintiff did not disagree with the defendant's view that Emerald Hall was not the best place for MM. The plaintiff agreed that, despite everyone's best efforts, MM was not properly stimulated or cared for at this location, given the chronic under-funding and under-staffing problems that existed.

[120] However, the plaintiff noted that these deficiencies were those of the facility itself and were not the fault of any individual staff member, including herself. She notes that the defendant's decision to single her out as an "abuser" was entirely untrue and unfair, and led to significant damage to her life and reputation.

[121] The defendant's "intent" does not afford her a defence. The caselaw is clear that innocent intent, or belief in the truth, on the part of a defendant does not prevent a finding of defamation. What is required is that the defendant acted intentionally (or negligently) in publishing the information. In *Vanderkooy v. Vanderkooy*, 2013 ONSC 4796, it is noted:

> [159] A defendant is liable for defamation whether or not he or she intended to make any statement or one which carried a defamatory imputation, or whether or not the defendant intended or reasonably believed it would not convey a false meaning, or refer to the plaintiff, or cause him any damage. The innocence, good faith, motive, belief, reasonableness or intention of the defendant is generally irrelevant to the question of liability.

Defence of Justification

[122] In order to establish the defence of justification, the defendant must establish on a balance of probabilities that the statement(s) made are, in fact, true.

[123] Clearly the defendant has failed to do so here. There is no evidence before me that a pillowcase was ever placed over MM's head. I accept the evidence of Mr. Steylen that, on the evening in question, he took a hand towel and placed it on MM's helmet so that it draped a few inches away from his face. I accept that this was done to protect staff from MM's bodily fluids, in circumstances where they had no other protective equipment.

[124] Furthermore, I have no evidence before me that the plaintiff is "an abuser" or that she is comparable to a "paedophile". I accept the plaintiff's evidence, along with the evidence of Mr. Steylen, as to the events of the evening in question; in my view, that evidence does not establish "abuse" on the part of the plaintiff vis-à-vis MM. As noted, the report of Ms. Blight is inconclusive as to any "abuse" having been perpetrated by anyone.

[125] The defence of justification is not available to the defendant here.

Fair comment

[126] This is another defence commonly raised in actions for defamation. In order for a posting to be considered “fair comment”, it must first be established that the posting is a “comment”, i.e., a statement of opinion rather than a statement of fact.

[127] The comments asserted by the defendant in the Facebook posts are not all “comment”. For example, where the defendant asserts that the plaintiff placed a pillowcase over her son’s head, such is a statement of fact. That statement is, at least on the basis of the evidence before me, untrue.

[128] Others of the Facebook postings could be seen as “comment” or opinion rather than fact. For example, the defendant likening the plaintiff to a “pedophile”. Still other comments are in a gray area: for example, when the defendant calls the plaintiff an “abuser”. Is this a statement of the defendant’s opinion, or a statement of a purported fact?

[129] Either way, in my view, the defence of fair comment cannot be applied to any of these postings. Firstly, the use of the word “paedophile” was entirely unwarranted, unfair, and inflammatory; this case had absolutely nothing to do with (and absolutely nothing in common with) the sexual abuse of children. Such a comment could not be described as “fair” by any standard.

[130] As to the assertion that the plaintiff was an "abuser", I accept the plaintiff's submission that when comments are based on untrue facts, they cannot be considered fair (see *WIC Radio Ltd. v. Simpson*, 2008 SCC 40). A belief in their truth on the part of the defendant, even if that belief is honestly held or even if it is reasonable, cannot represent a foundation to the defence of "fair comment". I note the following comment from *Taylor-Wright v. CHBC-TV*, 1999 CanLII 3634 (BS SC), affirmed at 2000 BCCA 629:

> [37] Unless the facts upon which the comment is based are true and undistorted, the comment cannot be "fair". The defendant must get his facts right in order to be afforded the protection of the defence: … It will not suffice that the defendant reasonably believed them to be true: ***Holt v. Sun Publishing Co.*** (1978), 1978 CanLII 2018 (BC SC), 83 D.L.R. (3d) 761 (B.C.S.C.).

[131] Again, and at the risk of repeating myself, we can all agree that the facts of this case are truly unfortunate. The events of September 3, 2016, at Emerald Hall were unpleasant and upsetting. Subsequently, the defendant was given incomplete and inaccurate information about the situation. Given what she was told, coupled with her other concerns, she was understandably upset.

[132] However, this is where my sympathy for the defendant ends. None of this gave the defendant licence to unfairly and harshly single out the plaintiff, identify her in a public forum, and undertake a campaign to destroy her reputation. The

defendant's Facebook postings were not, and could not, be described as "fair comment".

[133] It is truly unfortunate that the defendant has refused to accept that her earlier assumptions or beliefs about the events of September 3 may have been based on inaccurate or incomplete information. The defendant stubbornly clings to her belief that the plaintiff was abusive to her son, no matter what contrary evidence is presented to her.

[134] The defendant repeatedly cites the "report" of Ms. Blight as authority for her beliefs. I have already provided my assessment of that report, which I will not repeat here. In my view, the defendant's continued reliance on that report is entirely self-serving. She is deliberately choosing to ignore other evidence that does not support her beliefs. For example, she chooses to ignore the report of the College of Registered Nurses which exonerated the plaintiff. She even chooses to ignore the evidence heard at this trial, including the evidence of Mr. Steylen (an independent witness who was actually present), which showed no evidence of abuse on the part of the plaintiff towards MM. The defendant's mind was made up long ago and she refuses to entertain any other possibility, even when facts are presented to her.

[135] Most unfortunate of all, the defendant seems entirely unable to understand or acknowledge that her actions have been the cause of harm to the plaintiff.

[136] I find the defendant is liable in defamation in relation to her Facebook posts about the plaintiff in November 2016.

Damages

[137] Once defamation has been shown, general damages for loss of reputation are presumed (*Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 SCC).

[138] There is no cap on such an award. Quantum must be determined by assessing each case individually. I was provided with the following caselaw for review.

[139] In *Huff v. Zuk*, 2021 ABCA 60, the parties were both dentists; the defendant had a history of disputes with the provincial College, and the plaintiff was a member of a committee of the College. The defendant began a personal campaign against the plaintiff, suggesting that he had been inebriated and sexually inappropriate with third parties on various occasions; and also, that the College processes were “rigged”, specifically naming the plaintiff as part of that.

[140] The Alberta Court awarded the plaintiff $50,000, noting that the statements regarding the College processes attacked the plaintiff's integrity and professional ethics, and that the allegations regarding unwanted sexual touching were even more concerning as they represented serious allegations of a criminal nature, in addition to being inappropriate and unprofessional. As noted by the Court, there was no way of knowing who had seen or heard the defamatory comments, and no way of proving that anyone was affected by the comments, but that such proof was unnecessary in this context. Damage to reputation could be presumed on the basis of the publication of these untrue facts.

[141] In *Zall v. Zall*, 2016 BCSC 1730, a woman had made untrue statements about her father in order to gain advantage in a custody dispute over her child. She started a GoFundMe page saying that her child had told her that "some inappropriate things" … "were apparently happening to her at my dad's. Upon hearing that I removed her from the house with the company of the RCMP". She also noted that the child was going through "testing" and "counselling".

[142] The Court found that the posts a) identified the plaintiff; b) clearly labelled the plaintiff as a pedophile and a sexual predator; and c) were wholly untrue. The plaintiff was awarded $75,000 in general damages.

[143] In *Loh v. Yang*, 2006 BCSC 1131, the plaintiff was a lawyer who had declined the opportunity to represent the defendant. The defendant then created a website where she accused the plaintiff of taking her money, of promising to help her but doing nothing, and of charging exorbitant fees. None of this was proven in court. The Court held that the plaintiff's reputation had suffered; it was specifically noted that it was of increased seriousness that the defamation was aimed at the plaintiff's occupation. He was awarded $50,000 in general damages.

[144] Frankly, I do not see much of anything which distinguishes this case from those. The plaintiff is a nurse, she was defamed by the defendant and labelled an "abuser" of a vulnerable person in her care. There is no evidence before me that the plaintiff mistreated MM or anyone else. The suggestion that she did was untrue and unfair. These events caused harm to the plaintiff's reputation and caused her a great deal of upset, suffering and anguish. The defendant, even today, refuses to apologize or even acknowledge that her actions were unfair and harmed the plaintiff.

[145] The amounts awarded in the above-noted cases are, in my view, in alignment with an appropriate award here. In my view, adjusted for inflation, the amount of $60,000 is an appropriate award for general damages.

Loss of income

[146] As noted, the plaintiff was a part time employee at Emerald Hall. She voluntarily left this employ on October 25, 2016. She says she did so in the hopes that her leaving Emerald Hall would "appease" the defendant and cause the defendant to abandon her campaign against her in the media.

[147] In September 2016, Lee Mailman had initiated the complaint about the plaintiff to the Nova Scotia Department of Health (*Protection for Persons in Care Act*), which I have spoken about elsewhere. Mr. Mailman also initiated a complaint about the plaintiff to the College of Registered Nurses of Nova Scotia, again, on the basis of what he understood/was told about the incident involving MM. This complaint was filed on November 23, 2016. (When asked about the delay, Mr. Mailman offered that he had never done such a complaint before and wanted to be sure it was "right".)

[148] On December 2, 2016, the College issued a notice that the plaintiff was subject to interim restrictions on her licence to practice nursing (until a full investigation could be completed). This restriction prevented her from being engaged in "direct patient care"; it remained in effect from December 2016 until

their ultimate decision in April 2018, where she was cleared of wrongdoing and the restriction was lifted.

[149] Having said that, it does not appear that this restriction caused the plaintiff to lose any income. The Emerald Hall position was the only one where the plaintiff was involved in direct patient care in 2016, and she had already and voluntarily left that position (in October 2016). It is possible that, but for the restriction, the plaintiff would have sought and obtained other "direct care" nursing work, but that seems quite speculative particularly given her evidence as to her emotional state during this time.

[150] I also note that the complaint to the College of Nurses was initiated by Mr. Mailman and not the defendant.

[151] The plaintiff seeks damages for loss of income from her Emerald Hall position. Given that the plaintiff voluntarily left that position, I am unconvinced that the defendant should be found liable for those losses. It is clear that the plaintiff did not consider Emerald Hall to be a good working environment, even before September 3, 2016. I also note that her decision to leave Emerald Hall occurred before the defendant's Facebook postings in November.

[152] I can certainly appreciate that the plaintiff was facing unpleasant circumstances in the fall of 2016, but the fact remains that leaving Emerald Hall was a choice she made.

[153] The plaintiff notes that she also took unpaid sick leave from her job with the federal government in 2016/2017 and thereby lost further employment income. However, she is unwilling to share any further personal information with the defendant as she would need to do to advance this claim (relating to income and medical issues). That claim is waived.

[154] I should note that the plaintiff has provided her income tax returns from 2016 to 2018 in support of her claim(s). While the documents show a small decrease in income from 2016 to 2017 (perhaps due to the unpaid sick time at her federal government job), her income for 2018 is the highest of the three.

[155] All things considered, I am unpersuaded that the plaintiff should be granted damages for loss of income.

[156] I leave it to the parties to attempt to resolve the issue of costs. If it cannot be resolved, I will accept further submissions from the parties within 30 calendar days of this decision.

Boudreau, J.