

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Robbins v. Pacific Newspaper Group Inc. et al.***
2005 BCSC 1634

Date: 20051128
Docket: S013496
Registry: Vancouver

Between:

ANTHONY ROBBINS

PLAINTIFF

And

**PACIFIC NEWSPAPER GROUP INC., SOUTHAM PUBLICATIONS INC.
THE NATIONAL POST COMPANY, VICTORIA TIMES COLONIST
GROUP INC., NEIL REYNOLDS, JEFF LEE, CONRAD BLACK, KENNETH WHYTE, ALAN ALLNUTT,
MURDOCH DAVIS, JOHN
CHARLES LYNCH, GARY SIR JOHN CARLSEN, III (aka: GARY "SIR
JOHN" CARLSON, III), JOHN DOE, JANE DOE, RICHARD ROE, JANE
ROE, ALEX DOE, ALICE DOE, PETER McMARTIN, GLOBAL COMMUNICATIONS LIMITED, PAMELA MARTIN
and TED CHERNECKI**

DEFENDANTS

Before: The Honourable Mr. Justice Williamson

Reasons for Judgment

Counsel for the Plaintiff	Roger D. McConchie R. Alan McConchie
Counsel for the Defendants	Robert S. Anderson Scott A. Dawson Judy Jansen
Counsel for the Defendant John Lynch	David F. Sutherland Travis W. Brine
The Defendant Gary Sir John Carlsen, III	Appearing on his own behalf
Date and Place of Trial:	June 20 - July 28, 2005 Vancouver, B.C.

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[1] The plaintiff, Anthony Robbins, seeks damages for defamation arising from stories published and broadcast by the individual and corporate media defendants in June 2001. The two primary sources for those stories, John Lynch and Gary Sir John Carlsen, III, are also named as defendants, though the action was discontinued as against Mr. Lynch during trial. In these reasons, I will refer to the defendants, other than Mr. Carlsen, collectively as the "media defendants".

The Articles

[2] On June 6, 2001 Harold Munro, then assignment editor of the Vancouver Sun newspaper, sent an email to reporter Jeff Lee in effect assigning to him a story about Mr. Robbins. The information in the email had been sent to Mr. Munro by another Vancouver Sun reporter, Neal Hall. Either Mr. Hall or Mr. Munro wrote, in the subject line of the email, the words “you couldn’t make this stuff up...”. The words were prescient.

[3] The email went on to say:

Note from Neal Hall:

Self-help guru and motivational speaker Tony Robbins has apparently stolen the heart of a local man’s wife – Robbins and the woman are living together in his \$15-million Florida home, says Gary Sirjohn Carlson III of Abbotsford [telephone number], who is the legal agent for the dumped hubby, John Lynch [cell number pager number], who runs White Rock company, Instant Bedrooms (something to do with Murphy beds). Carlson says the former Bonnie Lynch, aka Sage Lynch and Bonnie Humphrey (her maiden name; she hates Mrs. Lynch) is pregnant with Robbins’ love child and wants a divorce.

The matter will be in divorce court in New West at 9:45 ayem Thursday, the one-year anniversary of the couple’s separation. Carlson says Bonnie went to hear motivational speaker Tony Robbins in Hawaii, began love affair with him and dumped her husband. Our file stories show that his ex-wife, who is vice-pres of his company, tried to get a restraining order to stop Tony from buying girlfriend lavish gifts, including a breast implant operation (don’t know if this was Bonnie or another squeeze at time). Carlson says he is planning on phoning Province about this. Suggest we assign a report to try to verify what this guy has told us. Carlson says he has a bunch of related stories from Star Magazine about Robbins.

The court file number is E010658. We can’t get access to divorce files without written consent of one of the parties.

[4] The evidence discloses this was the first Mr. Lee had heard of the matter. He spent the rest of the day trying “to verify” what had been told to Hall, and preparing a story. He contacted Carlsen and arranged to meet with him and the “dumped hubby”, Mr. Lynch, at Carlsen’s home in Abbotsford. There, Lee interviewed Lynch for approximately 45 minutes. He was given some documents by Carlsen. He then returned to Vancouver and made many phone calls in order to confirm or challenge things that had been told to him by Lynch. Among others, he talked to two representatives of the plaintiff, to a one time brother-in-law of Mr. Lynch, to Mrs. Lynch’s mother, and to Mr. Lynch’s one time lawyer in his pending divorce. As well, he reviewed documents from the divorce file in the New Westminster Supreme Court registry.

[5] By late afternoon when he had written his story, Lee knew that it would appear on page A1, the front page, of the Vancouver Sun. He also knew that it would appear in the National Post and would be sent out on the wire service of the then owners of the Vancouver Sun to other newspapers owned in the same “family”, as one witness put it.

[6] The story, after Lee filed it with the city desk, was somewhat altered by the managing editor (now editor-in-chief), Patricia Graham. She made these changes as a result of conversations she had with the Vancouver Sun’s lawyer, Barry Gibson, following receipt of a so-called “libel chill letter” from the plaintiff’s counsel in California.

[7] That evening, June 6, 2001, Global Communications Ltd., on a 6:00 p.m. television newscast then known as the BCTV Newshour, broadcast the following, narrated by Pamela Martin:

B.C. Supreme Court is about to begin hearing a divorce case that will without a doubt be making tabloid headlines around the world, and it will be in *The Vancouver Sun* tomorrow. It centers on celebrity self-help guru, Tony Robbins. He of the ubiquitous infomercials, perfectly coiffed hair and toothy smile, and accusations that he stole the wife of a lower mainland businessman. The husband and wife in question are Bonnie and John Lynch seen here in happier times [photo]. He is president of a company called “Instant Bedrooms” which specializes in Murphy Beds.

Bonnie Lynch went to Hawaii for one of Robbins’ motivational seminars [photo] and was apparently

motivated enough to leave her husband and move into Robbins' \$15 million dollar California mansion. She is now suing her husband for divorce, but he is fighting it saying he still loves her and doesn't want a divorce. You can read a full page report tomorrow in *The Vancouver Sun*.

[8] Essentially the same thing was later broadcast on the 11:00 p.m. newscast, read by a different newscaster, Ted Chernecki. According to Ms. Graham, these broadcasts were the result of an "arrangement" between the television station and the Vancouver Sun which provided, in effect, for the newscast to plug or boost the circulation of the following day's edition of the Vancouver Sun.

[9] The next morning, June 7, 2001, the story appeared in a prominent position on page A1 of the Vancouver Sun with a large picture of the plaintiff and Mrs. Lynch. The article commenced well "above the fold" which meant that it would appear prominently on newspapers in coin boxes on street corners in Vancouver and elsewhere. Ms. Graham testified that above the fold stories are so placed to attract readers and increase sales of the newspaper.

[10] I reproduce in full the article as it appeared on pages A1 and A3 of the Vancouver Sun on June 7, 2001:

Langley man's wife to wed Tony Robbins

Business man is battling her attempt to divorce him and marry self-help guru

By Jeff Lee

Langley resident John Lynch discovered in the pages of a supermarket tabloid that his wife had run off with self-help guru Tony Robbins. Now he's fighting her attempts to divorce him.

Lynch, whose Richmond company Instant Bedrooms manufactures Murphy beds, said he's still devoted to his wife Bonnie Lynch.

Bonnie met Robbins, described by his spokesman as a "performance lecturer" after taking one of his seminars.

Robbins, who counsels millions of people – including Hollywood stars and other celebrities – through motivational seminars, books and tapes on how to lead better lives, acknowledges through his office he's now engaged to marry Bonnie-Pearl Lynch, who prefers to be known as Sage Lynch.

In fact, Robbins, whose advice includes how to survive rocky marriages, but who is now divorced himself, even described his new relationship in a recent interview as a "midlife celebration" rather than a midlife crisis.

Robbins' wife Becky even alleged, when seeking a restraining order during their divorce, that her husband paid \$18,000 US for his new girlfriend's breast implants.

Lynch claims he bought his wife a pair of \$4,000 breast implants in 1998.

The crisis in the Lynch marriage began innocently enough, according to the husband, when his wife decided to attend a motivational seminar in Hawaii in 1999.

It was clear, he says, when Bonnie came back to town that something had changed in the relationship.

"After she came back from there she was really different," Lynch said. "The next month after she came back from Hawaii, she's phoning [Robbins] directly on his phone."

The Lynchs separated in the spring of 2000 after she went to another Robbins seminar in Florida with her sisters.

Lynch said he had no idea his wife and Robbins were romantically involved until he opened up *The Star* tabloid last September to discover her in his arms sharing a smooch.

The story, titled "Self-Help Guru Tony Robbins Helps Himself To Sexy Blonde," quoted the millionaire as saying he had been dating her for five or six months.

The Star story, published in September of 2000, said that even before Robbins' own divorce decree was final he was seen squiring Bonnie around New York City at posh hotels like Four Seasons and they were caught by paparazzi at Broadway shows and restaurants.

Robbins, who has been reported counselling stars like Martin Sheen, Arnold Schwarzenegger and Sylvester Stallone, is reportedly worth \$400 million. He's written several books, including the 1991 bestseller *Awaken The Giant Within*. In another book, *Giant Steps*, which he dedicated to his then-wife Becky, Robbins wrote:

"If you want a relationship to last, never threaten to leave. Instead, focus each day on making the relationship better."

Lynch, who said he's never spoken publicly about his marriage breakdown, said he tried to take Robbins' words to heart, and still wants to reconcile with his wife.

He says his wife's infatuation with the multi-millionaire led to a breakdown in their marriage of 10 years, constant depression and thoughts of suicide on his part, and a severe

(end of page A1, the story continued on page A3)

Wife was unhappy, mother-in-law says

Jilted husband accused of greed

From A1

strain on his Murphy bed business, Instant Bedrooms.

Today a New Westminster court is set to hear his wife's application for a divorce citing no possibility of reconciliation.

But Lynch says he doesn't want to call it quits.

"I don't want a divorce, I still love her very much," the jilted husband said. His wife has told him in the past that she is his "soul mate" and that she still loves him, he said.

After the Hawaii seminar, Lynch said his wife went to Florida with her sisters to attend another Robbins seminar. By then the marriage was in deep trouble, and she started travelling frequently on behalf of Robbins, he said.

In March 2000, she told Lynch she didn't want to live with him anymore, he said. In her statement of claim, she put the date of her departure as January.

"We had kind of lost interest in each other and she said her heart wasn't really in it anymore."

Lynch said his wife moved out, but he never realized she was involved with Robbins until his mother-in-law Sharon Humphrey called and told him to read *The Star*.

At the time, Robbins was going through a divorce with his wife of nearly 15 years, Becky.

She ultimately sought a restraining order against Robbins to prevent him from using their joint company's funds to buy lavish gifts for his new girlfriend, including breast implants.

Lynch said in the interview he was so devastated by the discovery that he tried to overdose on pills and slashed his wrist once. He says he's getting psychiatric counselling to keep himself together.

Neither Robbins nor Bonnie Lynch were available for comment. But Sam Georges, president and chief operating officer of Anthony Robbins International, confirmed his boss is engaged to Lynch's wife. He also said Robbins is now a divorced man. But he would not say more, and instead had Robbins' outside spokesman, Stephen Jaffe, handle all further questions.

Jaffe said Lynch is motivated by greed in attacking Robbins.

"I think (John Lynch) is a gold-digger," he said.

Sharon Humphrey, Bonnie Lynch's mother, says her son-in-law wasn't the best influence on her daughter and that he's just jealous she's done better.

"He's so full of crap. My daughter and him had problems long before this. He's just using this. It's got nothing to do with Tony Robbins. It's got everything to do with John Lynch."

Humphreys said she and her husband Bill counselled their daughter to stay in her marriage for a long time, even though it had its rocky moments. But ultimately, she said, her daughter needed to have a happier life, and she's found it with Robbins.

But another family member tells a different story.

Rick Zacklin, Lynch's brother-in-law, said Robbins has quietly flown into Abbotsford in his private jet on occasion to meet his new girlfriend's family. The last time was at Christmas, he said.

He said he met Robbins twice after his wife Chrissy – Bonnie Lynch's sister – also sued for divorce following the Florida seminar. The first time he met Robbins was at his home, he says. The last time was at Christmas when he dropped his children off to see their mother.

"John's been totally devastated over this. She wanted out because she had a hell of a lot better to go to," Zacklin said.

The bizarre case is not without other twists. John Lynch's lawyer Cathleen McClughan, is formally withdrawing from the case today, citing problems in getting money and information from her client.

He's now being represented by Gary Sir John Carlson III, a self-styled "legal adviser."

Carlson said he and Lynch are considering suing Robbins in a Hawaii court for "alienation of affection" for becoming involved with Lynch's wife while they are still married.

"This man's got no sense of direction of what's going on in his marriage." Carlson said of his client. "He's been totally wrecked over this."

[11] The same day slightly different versions of the story appeared under Mr. Lee's byline in the National Post and in the Victoria Times Colonist. I will return to the differences in these three versions later in these reasons.

[12] On June 9, 2001, the Vancouver Sun published a column by journalist Pete McMartin which appears to contrast various paragraphs in the June 7 article with excerpts from a book written by the plaintiff.

[13] The articles published in the Vancouver Sun and the Times Colonist, including the McMartin column, were also published on a pay-per-view subscription Internet database called "Infomart".

Legal Proceedings

[14] Some two weeks after the first publication by the Vancouver Sun, the plaintiff commenced this action against Pacific Newspaper Group Inc., a division of the defendant Southam Publications Inc., which has control of the Vancouver Sun, and the other defendants alleging that the original article by Lee was defamatory. In the amended Statement of Claim, the plaintiff says that the words contained in the article, considered as a whole:

...bear, were understood to bear, and were intended by the Vancouver Sun Defendants to bear, the following false, malicious and defamatory inferential meanings, which are the natural and ordinary meanings to the ordinary, reasonable reader:

1. the Plaintiff stole the wife of John Lynch;
2. John Lynch attempted suicide because the Plaintiff stole his wife;
3. the Plaintiff treacherously broke up a happy and stable marriage between Bonnie and John Lynch by having an adulterous affair with Bonnie Lynch, by inducing her to cease living as wife and husband with John Lynch, and by alienating her affection for John Lynch;
4. [withdrawn]
5. the Plaintiff is a hypocrite that does not practice what he preaches about husband wife relationships;
6. the Plaintiff wilfully and callously broke up a happy and stable marriage between Bonnie Lynch and John Lynch thereby ruining John Lynch's life and precipitating the onset of a severe depression which led John Lynch to attempt suicide on several occasions: and

7. the Plaintiff was guilty of such gross misconduct towards his ex-wife Becky that she was compelled to seek the protection of a court restraining order.

[15] The media defendants admit publication of the words as alleged, except that the Vancouver Sun (I will refer to the Vancouver Sun throughout, although it is actually Pacific Newspaper Group and Southam Publications which are the named defendants) denies it published the words to Global Communications Ltd. Further, the media defendants admit that the words published by them bear the meanings set out in (1), (2) and (5) above. That is to say, they admit that the natural and ordinary meanings of the words in the article are that:

1. the plaintiff stole the wife of John Lynch;
2. John Lynch attempted suicide because the plaintiff stole his wife; and
5. the plaintiff is a hypocrite that does not practice what he preaches about husband wife relationships.

[16] They submit that these admitted meanings are not defamatory. In the alternative, the media defendants say that if they are defamatory, the meanings are true or substantially true. They deny that the article can be said to have the remaining three meanings alleged by the plaintiff.

[17] Carlsen, who apologized in writing to the plaintiff on October 5, 2004, takes the position, if I understand it correctly, that if the statements are defamatory, any damages awarded against him should be nominal for two reasons. First, he relied upon the defendant John Lynch. Second, he apologized when he found Lynch was unreliable.

The Key Players

[18] Mr. Robbins is a "motivational speaker" who conducts self-help seminars around the world. Hundreds, if not thousands, of people attend these events. He is the author of several books on self-motivation, and sells video tapes on these themes. He also conducts one day motivational seminars for businesses and corporations. Apparently, he is very successful. There is no challenge to the statement in Lee's story that Robbins is reportedly worth \$400 million.

[19] At the time of these events, Mr. Lynch was a businessman who ran a company and retail store which manufactured and sold beds. He married Bonnie Lynch in 1993.

[20] Bonnie Lynch, now Sage Robbins, commenced an action for divorce against Mr. Lynch on January 30, 2001. The divorce was granted by Cole J. of this Court June 21, 2001. In an affidavit filed in support of that divorce, sworn March 21, 2001, Mrs. Lynch deposed that "I have lived separate and apart from the defendant spouse since about January of 2000". The court appears to have relied upon that affidavit.

[21] The couple had no children.

[22] It is not disputed that Mrs. Lynch, as she then was, met Robbins at one of his seminars in Hawaii in September of 1999. What is at issue in this case is whether her developing relationship with Robbins over the following eight months and the nature of her separation from Mr. Lynch support the imputation that Robbins "stole" her from her then husband.

[23] Mr. Lynch was initially a defendant. During the trial, his counsel read an apology on his behalf, which included admissions that what he had said to Lee on June 6, 2001 was not true. The plaintiff discontinued the action against Lynch. On July 5, 2005, I ruled that the statement read in court was not evidence against the media defendants.

[24] The other principal character in this story, at least according to him (he said he was the "main pivotal" actor), is the defendant Carlsen. Carlsen variously described himself as Lynch's "legal advisor" or "legal agent". He is not a lawyer. A mutual acquaintance brought Carlsen and Mr. Lynch together. After some discussion, they hatched a plan to sue Robbins in the State of Hawaii for alienation of affection. According to Carlsen, he thought they could then settle the lawsuit for some \$25 million. The scheme came to nought, however, for some five months later, on November 28, 2001, Carlsen and Lynch learned in a letter from a Hawaiian lawyer that any possible alienation of affection suit against Robbins was barred by the statute of limitations of that state. Not one to eschew hyperbole, Carlsen wrote across the face of that letter "the death of Gary Carlsen this day".

[25] It is apparent that Lynch and Carlsen subsequently had a falling out. On October 5, 2004, Carlsen executed a “voluntary statement”, portions of which read as follows:

Several years ago, acting on information I received from one John Charles Lynch of Vancouver, I assisted him in publicizing falsehoods about the relationship between Mr. Robbins and Lynch’s estranged wife, Bonnie.

This happened because John Lynch conned me – for a time – into the false belief that Mr. Tony Robbins had stolen his wife and broken up the marriage. Over time, I eventually assembled a reliable and comprehensive chronology of events in the life of Mr. Lynch and Bonnie. When I did so, it became absolutely clear that Bonnie (Sage) had separated from Lynch well before meeting Tony Robbins and that her marriage with Lynch had long been effectively terminated.

Among other things, I discovered that Mrs. Lynch was actually living somewhere separately from Mr. Lynch when she started going out with Mr. Robbins, that John Lynch had himself been conducting affairs with other women, and that Lynch had concealed these facts from me.

Regrettably, before I discovered the truth, the news media in Vancouver and elsewhere publicized in June 2001 the false accusations being made by John Lynch about Tony Robbins and Bonnie. I deeply regret the role I played in assisting Lynch in that regard.

When I realized that I had been lied to and manipulated by John Lynch, I terminated my relationship with him and refused to participate in his scheme to take unwarranted legal proceedings against Mr. Robbins in Hawaii to extract an unjustified settlement. Mr. Lynch, who spoke to me about pressuring MR. Robbins into paying him many millions of dollars, proposed in my presence to share the spoils with proposed witnesses by making million dollar payments to them.

In the interest of seeing the whole truth come out, I have exposed Mr. Lynch’s multimillion dollar scheme to the legal team acting to clear Mr. Robbin’s reputation of the false allegations. The public deserves to know the truth.

I deeply regret the embarrassment and distress caused to Mr. Robbins by the false accusations inspired by Mr. Lynch and I hope that MR. Robbins will accept my sincere apologies.

(capitalization as in original)

Issues

[26] There are four principal issues in this trial:

- a) are the admitted inferential meanings of the published words defamatory?
- b) do the published words bear the inferential meanings claimed by the plaintiff but not admitted by the defendants and, if so, are those meanings defamatory?
- c) are the inferential defamatory meanings true?
- d) if the words are defamatory and not true, what is the measure of damages?

[27] There is one other minor issue. Did the Vancouver Sun publish the words to Global Communications Ltd.? I conclude it did. As noted above, the then managing editor testified to an arrangement whereby information about pending stories would be forwarded to Global Communications Ltd. for its use and for the purpose of promoting the following day’s issue of the Vancouver Sun. This testimony is uncontradicted. I accept it. I find it amounts to republication.

Defamatory Statements

[28] A statement is defamatory if it tends to harm the reputation of another so as to lower him or her in the estimation of the community or to deter third parties from associating or dealing with him or her: *Gatley on Libel and Slander*, 9th edition, (London: Sweet and Maxwell, 1998) at p. 23. An article must be considered as a whole in determining whether it is defamatory: ***Charleston v. News Group Newspapers Ltd.***, [1995] 2 All E.R. 314, 2 A.C.

65 at 70 (H.L.), applied in *P.G. Restaurant Ltd. v. Northern Interior Regional Health Board* 38 B.C.L.R. (4th) 77 at para. 42, 2005 BCCA 210.

[29] I turn first to the admitted inferential meanings. An “inferential meaning” is the impression an ordinary, reasonable person would infer from the allegedly defamatory material.

Robbins Stole Lynch’s Wife

[30] The parties are agreed that the article, taken as a whole, bears the meaning that Robbins “stole” Lynch’s wife. This inferential meaning is so devoid of reason that I fail to see how it could possibly be defamatory. As I asked during the trial, how is it possible in a modern society such as Canada to steal another person’s spouse? Even if not taken literally, the notion implies a lack of independent will or consent on the part of the “stolen” spouse that is profoundly at odds with current attitudes towards relationships and marriage, as well as with legal treatment of them.

[31] I note, for example, that over three decades ago, in 1972, the Legislative Assembly of this province passed legislation stating that actions for “loss of consortium” and “restitution of conjugal rights” may no longer be maintained: *Family Relations Act*, S.B.C. 1972, c. 20, s. 61. Twenty years ago, in 1985, the Legislature abolished “enticement of a spouse” as a cause of action: *Family Law Reform Amendment Act*, S.B.C. 1985, c. 72, s. 36. These legislative changes are indicative of changing social attitudes.

[32] The media defendants attempted to downplay the literal meaning of the word “stole”, suggesting the real meaning to be inferred from the article is that Robbins wilfully broke up the Lynches’ marriage. However, that is to convert the first admitted inferential meaning from para. 14 above to the inferential meanings set out in (3) and (6) of that paragraph. The pleading would therefore be redundant.

[33] I also do not accept the defendants’ suggestion that the article taken as a whole simply means that Mrs. Lynch’s infatuation with Robbins was “a factor” in the demise of the Lynches’ marriage. That is not what the article states. It says that the “crisis in the Lynch marriage began” when Mrs. Lynch went to one of Robbin’s seminars in September of 1999. Further, I do not see how stealing a spouse, whatever its precise meaning, can be relegated to a mere “factor” in the break-up of a marriage. That the media defendants attempt this argument underscores the concept’s lack of substance.

[34] Moreover, such a meaning on the evidence in this case is factually problematic. The notion of stealing a spouse would seem to be predicated on the existing marriage being stable and untroubled. The evidence regarding the Lynches’ relationship does not support that proposition.

[35] It might have been supported if Mr. Lynch had been called as a witness. He was not. It might have been substantiated by Lee if he had not chosen to ignore Mrs. Lynch’s mother’s repeated statement that the Lynches had separated before she met Robbins. He disregarded those statements. Thus, there was no investigation to determine whether it was true the Lynches had separated on numerous occasions before Robbins came into Mrs. Lynch’s life.

[36] The media defendants went to great lengths to attempt to prove indirectly that the Lynches were in a happy and stable marriage until the end of 1999. They called evidence that the Lynches attended a dinner in early December of 1999 in Whistler and slept that night in the same bedroom. They called evidence to show they attended a family New Year’s Eve party together December 31, 1999. They called evidence to suggest the couple travelled to Mexico in the fall of 1999. Many of these things may be true. However, they tell us little, if anything, about the quality or nature of their relationship.

[37] Mrs. Lynch’s father, Bill Humphrey, testified that the marriage had been in difficulty for a long time, and that he and his wife had counselled Mrs. Lynch with respect to her marital difficulties. He testified that before she met Robbins, he had told Mrs. Lynch not to continue in a relationship with a man from Australia, as she would be “jumping from the frying pan into the fire”. Humphrey was challenged determinedly in cross-examination. He was shown to be wrong on some significant events, notably, whether Mr. Lynch was at the December 31, 1999 New Year’s Eve party. Humphrey said Lynch was not at the party but was in Hawaii. I find that Humphrey was mistaken in that regard. There is evidence, however, consistent with Mr. Lynch being in Hawaii a few days later.

[38] I do not conclude that the mistakes Humphrey made taint his entire testimony. I accept his evidence that

the Lynch marriage was troubled before Mrs. Lynch met Robbins. I also accept that the “crisis” in the Lynch marriage did not begin in September 1999.

[39] As one who has presided over dozens of divorce actions in this Court, I can say with confidence that marriages in trouble often go on for some time. To say that a couple attended a dinner, or a party, or took a vacation is hardly determinative of the nature of the relationship. For example, Mrs. Lynch’s brother-in-law, Rick Zacklan, testified that he and his wife continued to live in the same house for two and one-half months after they separated. Mrs. Lynch’s father testified that for a time Mrs. Lynch lived in a suite over the Lynches’ garage before she moved to new premises.

[40] Consequently, I conclude that the admitted inferential meaning that Robbins stole Mr. Lynch’s wife is not defamatory.

Lynch Attempted Suicide Because Robbins Stole his Wife

[41] The June 7 article stated that Mr. Lynch discovered that Mrs. Lynch and Robbins were romantically involved when “he opened up the Star tabloid” in September of 2000. This is inconsistent with the testimony of other family members (Mrs. Lynch’s father and her brother-in-law) that Mrs. Lynch introduced them to Robbins in the summer of 2000. I accept the latter evidence. I conclude that Mr. Lynch knew of Mrs. Lynch’s relationship with Robbins before he read the tabloid account in September of 2000.

[42] The June 7 article also stated that Lynch was so devastated when he discovered his wife was involved with Robbins that “he tried to overdose on pills and slashed his wrist once”. In formal particulars, which have not been withdrawn, the media defendants claim:

2. In reply to Paragraph 2(a) of the Plaintiff’s Demand for Further and Better Particulars dated October 24, 2001, these Defendants say that John Lynch’s first contemplation and attempt at suicide took place in or about October of 2000, at his residence, by way of a gun.

3. In reply to Paragraph 2(b) of the Plaintiff’s Demand for Further and Better Particulars dated October 24, 2001, these Defendants say that John Lynch’s second contemplation and attempt at suicide took place in or about November or December of 2000, at his residence, by way of slashing his wrists.

4. In reply to Paragraph 2(c) of the Plaintiff’s Demand for Further and Better Particulars dated October 24, 2001, these Defendants say that John Lynch’s third contemplation and attempt at suicide took place in or about May of 2001, at his residence, by way of an overdose of pills.

[43] The meaning conveyed is that Lynch attempted suicide during these three specific periods in these three specific ways because of the plaintiff’s theft of his wife.

[44] The parties agree that the meaning conveyed in the article is that “John Lynch attempted suicide because the plaintiff stole his wife”. As discussed above, I do not consider that latter aspect to be defamatory and, accordingly, the inference that Mr. Lynch’s suicide attempts were precipitated by that conduct is similarly not defamatory.

[45] Read as a whole, the article suggests that Robbins fell in love with Mrs. Lynch who was in a marriage that was already troubled. It is not unusual for people to fall in love with others who are married. It is also not unusual for the new lovers eventually to wed. Such things no longer carry the opprobrium they once did. That Mr. Lynch’s reported response to that relationship was to attempt suicide says more about him than it does Robbins. In the absence of anything in the article to suggest that Robbins wilfully acted with such callous disregard for Mr. Lynch’s well-being as to warrant that reaction, I conclude that this admitted meaning is not defamatory.

[46] I add here, as it may be something to consider with respect to the post-publication conduct of the media defendants, that had I found the allegation concerning suicide to be defamatory, I would have dismissed the defence of justification, that is to say the defence that these allegations were true. There is no credible evidence Lynch attempted suicide by any means let alone specifically by slashing his wrist, swallowing pills or by using a gun. There is some evidence Lynch was depressed around the time of the end of his marriage, and some evidence he sought counselling. One witness was troubled by some pills he saw in the glove box of Lynch’s

vehicle. But there is no evidence as to what they were, or whether they could be used to attempt suicide.

[47] There is also testimony from Carlsen on Examination for Discovery that he once intervened to prevent Lynch from killing himself by swallowing pills. He later told a similar story, he admitted, to a Globe & Mail reporter. Carlsen said he induced vomiting in Lynch by forcing mixture of water and dry mustard down Lynch's throat. I find this evidence unreliable. At trial Carlsen testified he was not sure how many pills Lynch took, or whether "it was a great acting role" on the part of Lynch.

[48] I add it would seem to be common sense that if one believes a person has attempted suicide and has had to induce vomiting, one would contact medical authorities or call 911. There was no suggestion of such action. In any case, I find Carlsen to be generally an unreliable witness.

[49] In the end, none of this comes close to proving as true upon a balance of probabilities the suicide attempts specified in the media defendants particulars.

Robbins is a Hypocrite

[50] The third admitted inferential meaning is that the plaintiff is a hypocrite who does not practice what he preaches about husband-wife relationships. This admitted meaning suggests that Robbins advocates the sanctity or preservation of marriage, and, having divorced his first wife and caused the break-up of the Lynches' marriage, is a hypocrite. I find that to call a person a hypocrite is defamatory. I am supported in this conclusion by **Bains v. Indo-Canadian Times Inc.** (1995), 38 C.P.C. (3d) 53, 57 B.C.C.A. 90, in which Donald J.A. held that the inferential meaning the plaintiff was a religious hypocrite was defamatory.

Justification/Truth

[51] I have found one of the three admitted inferential meanings to be defamatory. The media defendants submit that they have a defence because this defamatory admitted inferred meaning is true or substantially true. In law, justification of the defamatory expression on the basis that it is true is a complete defence: **Leenan v. Canadian Broadcasting Corp.** (2000), 48 O.R. (3d) 656 at para. 92, 50 C.C.L.T. (2d) 213 (S.C.J.), aff'd (2001) 54 O.R. (3d) 612, 5 C.C.L.T. (3d) 97 (C.A.).

[52] I am not persuaded upon a balance of probabilities that the admitted meaning that Robbins is a hypocrite is either true or substantially true. There is nothing disclosed in the evidence about Robbins' ending of his first marriage or his engagement and subsequent marriage to Mrs. Lynch which proves hypocrisy. The Examination for Discovery of columnist Pete McMartin by Mr. McConchie, counsel for the plaintiff, demonstrates that a major component of Robbins' "motivational message" is that if there are problems in one's life, that if one finds oneself in an unhappy situation, one should reach inside and find the inner strength to do something about it; to change. Not only that, the message is that one should do so "now", immediately upon recognizing the circumstance. It may be a trite message, little more than common sense. Nevertheless, it is one that undercuts the media claim that Robbins is a hypocrite.

[53] I conclude the media defendants have not met the onus of proving upon a balance of probabilities that the plaintiff is a hypocrite.

The "not admitted" Inferential Meanings

[54] I turn to the remaining three alleged inferential meanings which the media defendants do not admit. I will first deal with two of them together, for they are very similar, if not repetitive.

[55] The plaintiff claims that the published expressions bear, and were intended to bear, the meanings that:

3. the Plaintiff treacherously broke up a happy and stable marriage between Bonnie Lynch and John Lynch by having an adulterous affair with Bonnie Lynch, by inducing her to cease living as wife and husband with John Lynch, and by alienating her affection for John Lynch;

...

6. the plaintiff wilfully and callously broke up a happy and stable marriage between Bonnie

Lynch and John Lynch thereby ruining John Lynch's life and precipitating the onset of a severe depression which led John Lynch to attempt suicide on several occasions, ...

[56] I conclude, upon reading these expressions in the context of the June 7 article as a whole, that these alleged meanings are not sustained by a reasonable reading of the story. The article expresses the idea that Mr. Lynch was still, as of June 6, 2001, devoted to his wife. It states that the "crisis" began when Mrs. Lynch met Robbins. It suggests she kept her relationship with Robbins secret from Mr. Lynch by stating that he only "discovered" it in a tabloid article in September of 2000. It also states her infatuation with Robbins "led to a breakdown in their [the Lynches'] marriage".

[57] There is nothing in it to suggest Robbins "treacherously" directed anything at Mr. Lynch. The most that can be taken from it is that as the relationship between the plaintiff and Mrs. Lynch developed, the marriage, which "had problems long before", ended.

[58] The "wilfully and callously" aspect is also not sustained, for it suggests the plaintiff was out to harm Mr. Lynch rather than that he fell in love with Mrs. Lynch. In other words, the meanings alleged by the plaintiff accuse him of deliberately harming Mr. Lynch. That is to redirect Robbins actions or emotions. I do not take from the article that he set out to do anything to Mr. Lynch.

The Restraining Order Allegation

[59] This leaves the final alleged defamatory expression, that the plaintiff was guilty of such gross misconduct towards his ex-wife Becky that she was compelled to seek the protection of a court restraining order. To use the exact words, the article states Robbins' first wife sought a restraining order against him "to prevent him from using their joint company's funds to buy lavish gifts for his new girlfriend including breast implants".

[60] I find that to suggest a man's conduct is such that his wife needs the protection of a court restraining order is defamatory. The media defendants did not seek to justify this assertion. Had they, I would have rejected that submission. There is no evidence Robbins' ex-wife was compelled to seek such an order, that such an application was made, nor that a judge pronounced such an order as a result of an application.

Bane and Antidote

[61] Associated with the principle that a publication must be considered as a whole when determining if it is defamatory is the concept of "bane and antidote". It is the idea that the harm of something negative about the plaintiff may be cancelled or assuaged by the words in another part of the article or broadcast. Baron Alderson, in *Chalmers v. Payne* (1835), 2 C.M.& R. 156 at 159 wrote:

... if in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together.

[62] The media defendants say that if the inferential meaning of the first part of the article is that Robbins broke up a happy and stable marriage, the "antidote to that bane" is the second part. They refer to the comment of Stephen Jaffe, Robbins' spokesman, that Lynch is motivated by greed and is a "gold digger", and to Mrs. Humphrey's statement that:

He's [Lynch] so full of crap. My daughter and him had problems long before this. He's just using this. It's got nothing to do with Tony Robbins. It's got everything to do with John Lynch.

[63] I am not persuaded by this submission. Lee left out of the article a critical statement by Mrs. Humphrey, a statement she repeated to him three times. That was that Mr. and Mrs. Lynch had separated several times ("umpteen times") before she met Robbins. The heart of the article is that Robbins broke up a happy and stable marriage. The story would lose its punch if the marriage had broken up more than once previously. The most powerful "antidote to the bane" was omitted.

[64] This omission, coupled with the failure to take any steps to verify or reject Mrs. Humphrey's claim, undermines Lee's evidence that he did his best to present a balanced story. Rather, it is consistent with a blindness to the significance of previous separations in favour of a focus upon the admitted inferential meaning that Robbins stole Mrs. Lynch, and the impact that colourful idea might have upon a story and upon circulation of the

newspaper.

Carlsen

[65] There is no doubt that Carlsen defamed Robbins. As can be seen in his “voluntary statement” set out above, he has admitted that is so. He also confirmed it during his *viva voce* testimony. I find, if it need be said, that he did so. In effect, he set out upon a scheme with Lynch to use the courts of the State of Hawaii to extort money from the plaintiff. Not surprisingly, the scheme failed. Indeed, it never got off the ground. But before it failed, Carlsen was instrumental in using the Vancouver Sun, and indirectly the other defendants, to further his scheme to put pressure on Robbins. He said he was “pivotal” in the June 6 events. His apology goes to damages, not to whether he in fact defamed Robbins.

[66] Lee was adamant he paid little attention to Carlsen. The story, as he put it, “was Lynch”. But that evidence from Lee goes more to explaining why he did not respond to signs that Carlsen’s reliability was suspect than to minimizing Carlsen’s liability. In any case, Carlsen was a source. That he was, was admitted by the managing editor.

The Television Defendants

[67] Given the findings above, the claim against Global Communications Ltd. and its related personal defendants must be dismissed. A review of the words which they broadcast discloses no reference to hypocrisy, nor any reference to Robbins’ first wife being forced to seek a restraining order. The broadcast words may have been snide, but they are not defamatory.

Damages

[68] I have found the article defamatory. I have concluded that read as a whole the article defamed Robbins by leaving readers with the inference that Robbins is a hypocrite, and that he acted in such a way towards his first wife that she had to seek a restraining order from a court. I find the media defendants have failed to meet the onus upon them to prove upon a balance of probabilities that the first of these inferential meanings is true. They did not put forward a defence of justification with respect to the second.

[69] I turn now to damages. It is first necessary to distinguish between the various publications. I have considered the Vancouver Sun article in some detail, for it is the one which was the focus of the attention of the media defendants in this trial. I turn now to the other publications.

The National Post Article

[70] The National Post article contained substantially the same material as was published in the Vancouver Sun. However, there are a number of paragraphs in the original Sun article which were omitted in the Post version. The two paragraphs in the Sun article containing Mrs. Humphrey’s comments regarding Mr. Lynch beginning with the words “Sharon Humphrey, Bonnie Lynch’s mother, says her son-in-law wasn’t the best influence...”, including her comments “He’s so full of crap”, and ending with the words “It’s got everything to do with John Lynch.”, are not reproduced.

[71] This difference is significant. The media defendants placed considerable reliance upon these passages in the Vancouver Sun article to bolster their bane and antidote submission that the story was not one-sided when read as a whole.

[72] The references to Zacklan, including his comments about Robbins’ visits to British Columbia, beginning with the words “But another family member tells a different story” and ending with “...she had a hell of a lot better to go to” comment, were also omitted. The latter comment in the Vancouver Sun was relied upon by the media defendants as evidence that Lee wrote a ‘balanced’ article.

The Victoria Times Colonist

[73] This article is significantly shorter than the other two, omitting much of what is found in the original

Vancouver Sun article. The paragraph beginning with the words “He says his wife’s infatuation...”, which refers to Mrs. Lynch’s ‘infatuation’ with Robbins, is omitted. This does not assist the media defendants’ submission that the article, read as a whole, means Mrs. Lynch became infatuated with Robbins, rather than suggesting that Robbins “stole her away”.

[74] On the other hand, the Vancouver Sun paragraphs beginning with “After the Hawaii seminar...” and concluding with the reference to Becky Robbins obtaining a restraining order against Robbins to prevent him from lavishing gifts on his new girlfriend are omitted. This eliminates some of the alleged defamatory statements.

[75] The omission of the “antidote” paragraphs of the Vancouver Sun story, beginning with “Neither Robbins nor Bonnie Lynch were available for comment...” and concluding with Zacklan’s “she had a hell of a lot better to go to” comment, is significant, for it means all references to the plaintiff’s side of the story are missing. This undermines the media defendants’ assertions that the articles were balanced and not defamatory. The Times Colonist version preserves a reference to one of the more objectionable and prurient aspects of the original Lee article, that being to the breast implants.

Assessing Damages

[76] Damages in defamation cases are at large. In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at 1205, Cory J. wrote:

The assessment of damages in a libel case flows from a particular confluence of the following elements: the nature and circumstances of the publication of the libel, the nature and position of the victim of the libel, the possible effects of the libel statement upon the life of the plaintiff, and the actions and the motivations of the defendants.

[77] In *Leenen v. Canadian Broadcasting Corp.* (2000), 48 O.R. (3rd) 656 (S.C.J.), aff’d (2001) 54 O.R. 3rd 612 (C.A.), leave to appeal to SCC denied [2001] SCCA No. 432, the Court set out a number of factors which may be considered in assessing damages. They are:

- (a) the seriousness of the defamatory statement;
- (b) the identity of the accuser;
- (c) the breadth of the distribution of the publication of the libel;
- (d) republication of the libel;
- (e) the failure to give the audience both sides of the picture and not presenting a balanced view;
- (f) the desire to increase one’s professional reputation or to increase ratings of a particular program;
- (g) the conduct of the defendant and defendant’s counsel through to the end of trial;
- (h) the absence or refusal of any reconnection or apology; and
- (i) the failure to establish a plea of justification.

[78] The discussion of damages in the various cases that have been put before me usually include a review of the evidence of the plaintiff with respect to the damage caused to him by the defamatory publication. In this case, however, the plaintiff did not testify. This, I am satisfied, is a circumstance which I can take into account. It is, however, far from determinative of damages.

[79] I turn now to the list of factors set out in *Leenen*, as well as others I consider important in the circumstances of this case.

Seriousness of the Allegations

[80] The first is the seriousness of the defamatory statement. I have concluded above that, read as a whole, the article defamed Robbins by leaving readers with the inference that Robbins is a hypocrite, and that he acted in such a way towards his first wife that she had to seek a restraining order from a court.

[81] These allegations are serious. While not such that they connote evil or fiendish conduct, I find they do tend to harm the plaintiff's reputation, or lower him in the estimation of the community.

The Identity of the Accuser

[82] The accuser in this case is Mr. Lynch. He was, at the material time, the separated husband of Mrs. Lynch. While the Vancouver Sun article had some balance in that it reported the views of Mrs. Humphrey and Mr. Jaffe that Lynch was unreliable and "a gold digger", readers were not told of the report that the Lynches had separated previously.

[83] The media defendants take the position that anyone reading the story is made immediately aware that Lynch is the "jilted husband" and will read what he has to say with the term "sour grapes" in mind. Nevertheless, Lee reported, without any suggestion that it was not true, that "the crisis in the Lynch marriage began" when Mrs. Lynch went to Hawaii in September of 1999. He also reported that Mr. Lynch was claiming that Mrs. Lynch "is his soul mate and that she still loves him". I conclude the "sour grapes" submission does little to assist the defendants.

The Breadth of the Distribution of the Libel

[84] I am satisfied that the defamatory articles were widely distributed. The Vancouver Sun version was available in the lower mainland for subscribers and from sales in stores and newspaper boxes. It was available elsewhere in British Columbia in stores and by subscription. The National Post article was available across the country. The Times Columnist distribution included all of Vancouver Island. As well, the stories were published on the internet. Apparently, they are still available on the "Infomart" website.

Republication

[85] The Vancouver Sun republished the defamatory statements by forwarding them to the National Post and the Times Columnist. In addition, because of the arrangement with Global Communications Ltd., it republished the defamatory statements to Global.

[86] The plaintiff also claims there was a republication in a subsequent story June 16, 2001 by Vancouver Sun reporter Lori Culbert. I reject the submission that Ms. Culbert's article amounts to a republication. It was the result of initiatives not by the media defendants, but by the plaintiff's representatives who were demanding further information be published. To suggest, as does the plaintiff, that given the allegations about Carlsen and Lynch raised by the plaintiff's representatives, the Vancouver Sun's reporting of Carlsen's and Lynch's response to the allegations was a republication is, I find, an unconvincing submission.

The Balanced View

[87] I have dealt with this above. I am satisfied that the Vancouver Sun article went some way towards a balanced view, but the effect was blunted by the omission to include the allegation that the Lynches had separated several times before Robbins came on the scene. This is a critical omission. The story would have had a different character, and the inferential meanings would have been different, had readers understood that the Lynches had separated before Robbins met Mrs. Lynch. For example, it is less likely a reader would infer Robbins is a hypocrite.

Increased Circulation

[88] I am satisfied that the media defendants deliberately used this celebrity gossip story to increase circulation or sales. The managing editor testified at her Examination for Discovery that the selection of a front page story is an important daily decision. She agreed that in the June 7th edition, Robbins' face was "above the fold" so that it could be seen by potential purchasers looking at a coin box or a stack of newspapers in a store. She also agreed that what is put on the front page is something which the editors feel "will appeal to our customers" and "hopefully" cause them to purchase newspapers if they are not already subscribers.

Failure to Heed Warnings

[89] There are two aspects to this topic. First, the plaintiff submits that there were warning signs Lee should have observed when he visited Carlsen and Lynch on June 6, 2001. Second, the significance of the plaintiff's representatives' libel chill letter sent to the Vancouver Sun prior to the publication of the June 7 article.

[90] The evidence discloses there was much that should have made Lee sceptical on June 6, 2001. First, there were hints that Carlsen lives in a fantasy world. His name, Gary Sir John Carlsen, III, alone would raise one's curiosity. His description of himself as the "legal adviser" or "legal agent" of Lynch is surely suspect. His talk of the filing of an alienation of affection lawsuit in Hawaii suggests a financial motive. His assertions that Lynch was devastated by the relationship between Robbins and Mrs. Lynch and wished to reconcile with her is inconsistent with Carlsen's participation in pushing widespread publication of the most personal details about Mrs. Lynch. I conclude from this information that it should have been obvious to Lee that Carlsen was unreliable and his motive suspect.

[91] There were similar signs with respect to Mr. Lynch. His failure to pay or provide information to his counsel in the Lynch divorce in the face of his assertions that he was attempting to stop the divorce was suspect. The fact that he was playing golf on the afternoon before this dreaded event was to take place in court should have raised questions. His claim to desire reconciliation was questionable given his willingness to publish personal details about his wife and in light of his stated intention to sue Robbins in Hawaii.

[92] Lee clearly knew of the latter intention. In a taped conversation with Mr. Lynch's divorce lawyer, Lee questioned her about her decision to get off the file. His exact words, as reproduced in the transcript filed, were "... if it were to go the way these guys were hoping it would go, would be quite lucrative? Why get off it?"

[93] The "guys" to whom Lee was referring were Carlsen and Lynch. The lucrative suggestion referred to the hoped for settlement of the alienation of affection suit in Hawaii.

[94] The questions which should have been brought to mind were given added emphasis by the observations of Mrs. Humphrey and Robbins' California spokespeople.

[95] The libel chill letter received by the Vancouver Sun on the afternoon of June 6, before publication of the article, stated bluntly that Lynch "has demonstrated animosity towards Mr. Robbins, and is not a reliable source or credible witness concerning any information pertaining to Robbins". The media defendants, however, seized upon the concern raised in that letter about the word "adultery". The managing editor, after consulting with the Vancouver Sun's counsel, took that word out of the article. That step disregarded the actual wording of the letter which was:

...should you publish, in whole or in part, any false statements that Mr. Robbins has engaged in an adulterous affair, **or otherwise committed any type of wrongdoing**, you will be liable for libel...

[emphasis added]

[96] While the word "adultery" was expunged by the Vancouver Sun, the inferential meanings set out above suggested Robbins was guilty of other wrongdoing.

The Media Defendants' Conduct of the Case

[97] The media defendants have failed in the face of Carlsen's apology and of the unfolding evidence in the Examinations for Discovery to withdraw the allegation that Robbins is a hypocrite. Further, the media defendants sought at trial to blunt the inferential meaning that Robbins "stole" the wife of Lynch by saying that the relationship with Robbins was simply a factor in the demise of the Lynch marriage. This is similar to the tack taken in **Asper v. Lantos** (1999), 46 O.R. (3d) 328 (S.C.J.) at para. 20 where the Court said:

I have considerable difficulty in accepting that the meaning asserted by the defendants is sufficient to constitute defamation of the plaintiffs. That meaning is now so massaged and so anaemic in its thrust, that if the defendants' meaning is accepted, I am not satisfied that any jury properly instructed would find that such a meaning tended to lower or adversely affect the plaintiffs in the estimation of others.

[98] To attempt to convert the stealing of one's wife into a factor in the break-up of the marriage can be described as rendering the meaning of "stole", "massaged" and "anaemic".

Refusal to Retract or Print an Apology

[99] The evidence of the managing editor was that the Vancouver Sun would retract or apologize for a story if it had printed something wrong or if it needed to correct the record. It is the position of the media defendants that a June 16, 2001 article in the Vancouver Sun reporting that Carlsen and Lynch were trying to extort money from Robbins was sufficient in this regard. However, this does not deal with the failure to report on the subsequent apologies of both Carlsen and Lynch. The media defendants took the position that these statements were unreliable and, indeed, incorrect. It is odd that they initially printed the men's allegations, but then refused to report the men's apologies on the grounds that they were unreliable.

[100] The Vancouver Sun's counsel, Mr. Gibson, was clear as to why he would not recommend an apology be printed. On cross-examination, he testified that the "impasse" he had with Robbins' California counsel, Brian Wolf, was on the issue of:

...whether the health of the marriage or the stability of the marriage had anything to do with whether Tony's conduct was proper or improper...I thought that it had nothing to do with it. Marriage is marriage and clearly Mr. Wolf thought the contrary...so what I was saying is we can't apologize because your facts don't accord with facts as we know them, and, you know, your sense of morality doesn't really accord with our, or at least the way the newspaper sees this.

[101] Mr. Gibson also testified that he knew Mrs. Lynch was married, and that she did not separate from Lynch until March. This latter statement is wrong. Even the media defendants say the Lynches lived separate and apart from January of 2000.

[102] This evidence suggests that the refusal to apologize for suggesting Robbins stole another man's wife, or that his behaviour was a factor in the break-up of a happy and stable marriage, is based upon a moral belief that one cannot date or become engaged to a married woman regardless of the state of her marriage or whether she is separated from her husband. In effect, Mr. Gibson testified that Mrs. Lynch was married until Cole J.'s order, and that is the end of it. It is difficult to accept this as a reason to defend inferential meanings which are not true.

[103] There is a second issue concerning an apology or retraction. After Robbins' officials in California saw the June 7 Vancouver Sun story, Robbins' counsel, Mr. Wolf, wrote a second letter to the Sun, dated June 8, 2001, demanding that the newspaper "immediately agree to correct, retract and apologize for each and every defamatory statement" in the article. A series of telephone conversations between Mr. Wolf and Mr. Gibson followed.

[104] Both lawyers testified. They disagree on the result of those conversations. Mr. Wolf says Mr. Gibson agreed to publish a retraction that would be authored by Robbins' people. Mr. Gibson testified he did not so agree, and said that in any case he would not have had the authority to make such an agreement. He could only recommend.

[105] On this issue, I accept the evidence of Mr. Gibson. What Mr. Wolf forwarded to Mr. Gibson on June 14, 2001 after these conversations, although it included an apology, was a proposed news story setting out the alleged facts from Robbins' perspective and raising new allegations against Carlsen and Lynch. I accept that a newspaper's lawyer would not and could not agree or guarantee to publish in full such a document.

[106] Further, the accusations of serious wrongdoing on the part of Carlsen and Lynch are significant. The plaintiff complains that in the original story, Mrs. Lynch's side was not properly covered. Yet the plaintiff would have had the Vancouver Sun publish accusations against Carlsen and Lynch without comments from them. I accept that Mr. Gibson would not and did not agree to do so.

Justification/Truth

[107] The media defendants take the position that they did their best in the circumstances to establish the defence of justification, that is to say, that what they published is true. They note that until a few days into the trial, they understood that Mr. and Mrs. Robbins would be testifying. When this did not happen, they had to scramble to call other witnesses, such as those who attended the Whistler dinner and the former brother-in-law, in order to set

out testimony concerning the relationship of the Lynches in the fall and winter of 1999 and 2000. They also relied upon credit card records, telephone accounts, travel records and home videos. I have already said that the “snapshot” nature of these documents, and the minimal to non-existent probative value of many of them were such that the media defendants failed to meet the onus upon them to prove the truth of the inferential meanings which they admitted.

[108] I note, however, that it was open to the media defendants, as it was to the plaintiff, to call Mr. Lynch. None of the parties did. This is a more serious difficulty for the media defendants with respect to justification, as the onus to prove such justification upon a balance of probabilities rests with them.

Malice

[109] The plaintiff seeks aggravated damages. To succeed, he must prove upon a balance of probabilities that the defendants’ conduct was motivated by actual or express malice: *Hill* at 1206; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at paras. 94–97, 126 D.L.R. (4th) 609, 26 C.C.L.T. (2d) 109. This requires the drawing of inferences about a state of mind. A defendant may be found to have acted with malice where he published defamatory statements:

- (1) out of personal spite for some improper purpose;
- (2) with the knowledge the statements were false; or
- (3) with reckless indifference as to the truth of the statements: see *Leenen, supra*, at paras. 140-141.

[110] Where a defendant has been warned in advance of publication by the plaintiff that the publication contains defamatory statements, ignoring the warnings or neglecting to make further inquiries may indicate malice: *Snider v. Calgary Herald* (1985), 65 A.R. 99, 34 C.C.L.T. 27 (Q.B.).

[111] The threshold for proof of malice is high. For example, Esson J.A. in *Pressler v. Lethbridge* 86 B.C.L.R. (3d) 257, 2000 BCCA 639 observed at para. 111 that the desire of a media outlet to produce a sensational story does not constitute an improper purpose amounting to express malice unless the plaintiff demonstrates that the publication occurred with the knowledge that it was untrue or with reckless indifference to the truth:

I agree with the submission that the desire of persons employed in the media to enhance their reputations by producing interesting and lively programs is not in itself a basis for finding malice. In particular, I agree with the statement in the speech of Lord Diplock in *Horrocks v. Lowe*, [1974] 1 All E.R. 662, *supra*, that:

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity.

[112] Here, while it might be said of Lynch, had he remained a defendant, that he acted with the knowledge the statements were untrue, as far as the media defendants and Carlsen are concerned, the possible malice arises from their alleged reckless indifference to the truth of the publications.

Recklessness

[113] Recklessness is defined in Raymond E. Brown, *The Law of Defamation in Canada*, 2nd ed., looseleaf (Carswell, Scarborough, Ont.), (1999) vol. 2 at para. 16.3(5) as follows:

Speaking recklessly and in utter disregard of the consequences, or in knowing or reckless disregard for the truth, or with conscious disregard of the plaintiff’s rights, or at least speaking without caring whether what one says is true or false, is certainly strong, if not conclusive evidence of malice. Even a defendant who makes a defamatory assertion without any, or at least sufficient, knowledge to warrant it, or without having made reasonable inquiry where the means or sources were otherwise readily available to him, or who deliberately refrains from making any inquiry, may be guilty of reckless and, therefore, malicious conduct. "Mere reckless statements, or statements based on

nothing in the way of information, are not protected because they cannot be said to have been made in good faith."

[citations omitted]

[114] In **Botiuk**, Cory J. stated that the test is not one of carelessness, but rather of good faith and honest belief. At para. 96, he cited *Brown on Defamation* at para. 16.3(4) as follows:

... a defendant is not malicious merely because he relies solely on gossip and suspicion, or because he is irrational, impulsive, stupid, hasty, rash, improvident or credulous, foolish, unfair, pig-headed or obstinate, or because he was labouring under some misapprehension or imperfect recollection, although the presence of these factors may be some evidence of malice.

[citations omitted]

[115] In **Myers v. Canadian Broadcasting Corp.** (1999), 47 C.C.L.T. (2d) 272, 103 O.T.C. 81 (S.C.J.), var'd as to damages (2001), 54 O.R. (3d) 626, 6 C.C.L.T. (3d) 112 (C.A.), the court stated at para. 141:

Malice may be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. In the malice context, recklessness includes speaking in utter disregard for the consequences, without caring about truth or falsity, or without having made reasonable inquiry where the means or sources were readily available. Malice may also be found when the defendants are reckless in the sense that they deliberately refrained from making an inquiry

...

[116] In **Camporese v. Parton** (1983), 47 B.C.L.R 78, 150 D.L.R. (3d) 208 (S.C.), the court concluded that a newspaper columnist had hurriedly written an article defaming the plaintiff without doing adequate research. But Wallace J. found that publishing "with untimely haste" was not sufficient to demonstrate express malice. He concluded the defendant honestly believed that the statements which she published were true, and that she was not motivated by any improper purpose in publishing them.

[117] In the present case, I am not persuaded that Lee deliberately acted in a malicious manner given his attempts to verify the story, including his many telephone calls and his review of court documents. There are, however, a number of things that cause me concern:

- a) Lee failed to heed warning signs concerning the reliability of Carlsen and Lynch;
- b) Lee put a critical question to Lynch - "did Mrs. Lynch tell you she was having an affair?" However, he never followed up when Lynch evaded answering;
- c) Lee omitted from the article Mrs. Humphrey's statements regarding the Lynches' previous separations; and
- d) the Vancouver Sun erred in concluding the libel chill letter was preoccupied with adultery, rather than concerned about defamation generally.

[118] Nevertheless, I am not persuaded that the media defendants had no basis for believing the story was accurate and balanced. Among my reasons for so concluding are the facts that Lee reviewed the court documents concerning the Lynch divorce, he made serious efforts to provide the plaintiff with an opportunity to respond to Lynch's allegations, he included much of the information he received from Mrs. Humphrey and the Robbins spokespersons in the article, and the media defendants did respond in some respects to Mr. Wolf's letter.

[119] After listening to the testimony of Mr. Lee, Ms. Graham and Mr. Gibson, and reviewing the evidence, I find the words of Esson J.A. in **Pressler**, quoted above, apposite. The media defendants published the article with a possible belief that the story, or at least some of it, was accurate. But the desire to produce an "interesting and lively" celebrity story by a looming deadline prevailed over the need to check thoroughly the veracity of Carlsen's and Lynch's allegations. While some recklessness in this regard is evident, I conclude it is not of sufficient degree to warrant a finding of malice.

Liability of the Various Defendants

[120] Each publication or re-publication of a defamatory statement constitutes a separate actionable libel: **Weiss**

v. Sawyer (2002), 217 D.L.R. (4th) 129, 61 O.R. (3d) 526 (C.A.) at para. 28; **Chinese Cultural Centre of Vancouver v. Holt** (1978), 87 D.L.R. (3d) 744 (B.C.S.C.) at 747. In the case at bar, certain issues are common to all of the stories. Those issues include whether the words complained of are defamatory and whether the defence of justification has been made out. Nevertheless, it is appropriate to treat each of the publications separately for the purpose of awarding damages. Different considerations may apply to each, for as noted above, each expression does not share precisely the same content as the original Vancouver Sun article.

[121] The original publisher of the defamation is liable for the republication of the defamation by others where such publication is 'the natural and probable consequence' of the original publication: **Botiuk** at para. 77; **Pacific Coast Savings Insurance Services Ltd. v. Strong** (1996), 4 C.P.C. (4th) 37 (B.C.S.C.). Here, the republication by the Vancouver Sun was the natural and probable consequence of the publication to Lee by Carlsen and Lynch. The republication by the National Post and the Times Colonist was the natural and probable consequence of the common ownership of the three newspapers. Liability for general damages arising from each publication is joint and several among the defendants jointly responsible for each publication.

The Plaintiff's Failure to Testify

[122] The media defendants have conceded that the plaintiff's failure to testify does not prevent him from claiming damages. They acknowledge that the law presumes damages once defamation is made out. However, they contend that where the plaintiff fails to testify, the law will not presume substantial damages, since the action in defamation is based on defence of one's reputation. They submit the implication is that as the plaintiff appears unconcerned about defending his or her reputation in the witness box, any damage he may have suffered is only slight.

[123] They rely upon passages from *Gately* and *Brown* for the proposition that a plaintiff who fails to testify runs the risk that the trier of fact may award only nominal damages. I observe, however, that these authorities do not go so far as to suggest that damages must be reduced because of the plaintiff's failure to testify. Rather, they indicated the plaintiff 'runs a risk' that damages will be nominal.

[124] In the recent Canadian text Roger D. McConchie and David A. Potts, **Canadian Libel and Slander Actions** (Toronto: Irwin Law, 2004), the authors state at p. 753:

Although damages are presumed upon publication of a libel, a plaintiff who is seeking an award of substantial damages will normally call evidence of damages. A plaintiff is unlikely to obtain significant damages unless she takes the witness box and submits to cross-examination.

[125] Similarly, over one hundred years ago in **Vidal v. Temperley** (1899), 20 N.S.W.R. 223, Cohen J. observed at p. 227 that:

...dealing with the affairs of human life practically, and with our knowledge of human nature, we should not be astonished, where in an action of defamation a plaintiff abstains from going into the witness-box, so that the jury may judge, by his own testimony, of his reputation and how far, if at all, it has been injured by the alleged defamation that the jury, without weighing over nicely the question of libel of no libel, should determine not to give any damages for the alleged injury to that reputation.

[126] The plaintiff's failure to testify, while not fatal to a claim for damages, suggests that an award of substantial damages is not justified. The purpose of an action for defamation is the protection of one's reputation. While damages are presumed, the plaintiff's failure to take the witness stand and to testify about his feelings and the impact of the defamation upon his reputation leaves the court somewhat in the dark about these matters.

[127] In the case at bar, insofar as I am able to ascertain upon the evidence, it would appear that Robbins sustained little damage from the defamatory publications. One telling piece of evidence is the video tape of Robbins announcing at one of his seminars that he is planning to marry. The video shows an auditorium full of people attending the seminar. On hearing this news, they cheered, whistled and applauded. The event was post-publication. The participants hardly behaved as if Robbins' reputation had been lowered in their estimation because of his relationship with the former Mrs. Lynch.

[128] In the circumstances, I conclude a very modest award of damages is appropriate.

Apportioning the Award

[129] How should liability for such an award be divided among the defendants? I have observed that each publication is a separate libel, and that each of the publications here was somewhat different from the others. I have concluded, however, that in the particular circumstances of this case, that one joint and several award against all of the print media defendants is appropriate. Among my reasons for so deciding are the facts that they were all represented by the same counsel, they took the same positions and raised the same defences, and, although the published stories were somewhat different, their particular content sometimes assisted the plaintiff and other times assisted the relevant defendants.

[130] Carlsen, of course, must be considered individually. I conclude he defamed the plaintiff. However, I may consider his apology as a mitigation of damages: see *Fisher v. Richardson*, 2002 BCSC 653 at para. 30.

Award

[131] I award damages in the amount of \$20,000 jointly and severally against the print media defendants and their related individual defendants. The claim against Global Communications Limited and its related individual defendants is dismissed. Taking into account Carlsen's apology in October of 2004, I award damages against him in the amount of \$500.

[132] The plaintiff also seeks an order in the nature of an injunction requiring the media defendants to remove the relevant Vancouver Sun, National Post and Victoria Times Colonist articles, as well as the McMartin column, from the Infomart database. I think that appropriate and so order.

[133] The plaintiff seeks exemplary damages. His principal submission concerns the conduct of the litigation by the defendants. I find that the only aspect of this case that might attract exemplary damages is the persistent claim by the media defendants, particularized as I have set out above, concerning the alleged methods by which Lynch supposedly attempted suicide because of Robbins' actions. However, the claim underlying those particulars has been dismissed. In the circumstances, if this matter is to be addressed, I conclude it should be part of a submission on costs.

[134] The parties have liberty to make submissions with respect to costs.

[135] Order accordingly.

“L.P. Williamson, J.”
The Honourable Mr. Justice L.P. Williamson