

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Dixon v. Powell River (City)***,
2009 BCSC 406

Date: 20090326
Docket: S082905
Registry: Vancouver

Between:

**John Dixon and
British Columbia Civil Liberties Association**

Plaintiffs

And

The Corporation of the City of Powell River

Defendant

Before: The Honourable Madam Justice Garson

Reasons for Judgment

Counsel for the Plaintiffs:

R.D. Holmes

Counsel for the Ministry of Attorney General
of British Columbia:

R. Butler

No one appearing on behalf of The
Corporation of the City of Powell River

Date and Place of Hearing:

January 5, 2009, February 12, 2009
Vancouver, B.C.

INTRODUCTION

[1] The plaintiffs seek a declaratory order that the City of Powell River does not have the legal authority to institute civil proceedings or threaten to do so, for defamation of its reputation as a municipal government. Further, the plaintiffs seek an order that the defendant be restrained from making threats to commence defamation actions against individuals who have published letters critical of the defendant's conduct.

[2] This application is unopposed by the defendant. The Attorney General of British Columbia appears in response to service on it of a notice pursuant to the ***Constitutional Question Act***, R.S.B.C. 1996, c. 68.

[3] The application is brought as a summary trial pursuant to R. 18A of the ***Supreme Court Rules***, B.C. Reg. 221/90.

BACKGROUND FACTS

[4] The plaintiff, John Dixon, owns real property in the City of Powell River. He is an elector in the City of Powell River. He is also the secretary of the British Columbia Civil Liberties Association.

[5] The British Columbia Civil Liberties Association is a not-for-profit society incorporated in British Columbia. It has a special interest in, and is dedicated to, the protection and preservation of civil liberties in Canada, including rights of free expression.

[6] The Corporation of the City of Powell River is a body corporate of residents of Powell River under the provisions of the ***Community Charter***, S.B.C. 2003, c. 26, as amended, and the ***Local Government Act***, R.S.B.C. 1996, c. 323.

[7] The controversy that forms the background to this matter was a proposal by the City of Powell River to seek approval for funding in the amount of \$6.5 million for what was known as the North Harbour Project. Pursuant to s. 86 of the ***Community Charter***, the city council chose to use what has been called the "alternative elector approval process".

[8] As noted in the statement of claim, the steps taken by the City of Powell River in relation to the North Harbour Project led to public discussion as to the merits of the proposed local improvement, the method of obtaining the approval of the community, and the management of the affairs and finances of the City of Powell River by the mayor and council.

[9] Certain members of the community of Powell River expressed views in opposition to the steps being taken by the City of Powell River. One of those individuals was Mr. Noel Hopkins. He published a letter in an online community newspaper known as *Peak Online*, on February 14, 2008. That letter was sharply critical of the conduct of city council.

[10] Another individual, Win Brown, added an online comment, suggesting possible criminal behaviour by city council.

[11] One of the members of city council, Patricia Aldworth, also published an email expressing her opposition to the steps being taken by council. I will refer to these three individuals collectively as "the Objectors".

[12] In response the defendant, City of Powell River, retained legal counsel and delivered letters to the Objectors: Patricia Aldworth, Winslow Brown, and Noel Hopkins. The letters to the three Objectors were similar. The letter to Patricia Aldworth stated as follows, in part:

We are counsel for the City.

We have reviewed a copy of an e-mail you published and distributed over the internet on or about February 21, 2008 styled, "*North Harbour Vote Count*". The e-mail, over your signature as "president", was addressed to "*Dear Townsite Ratepayers*". Your e-mail contained the statement: "*Likely City Hall will be using the days between now next Tuesday trying to eliminate some of the forms*".

The City is a strong supporter of the right to engage in public debate about the conduct of government bodies and institutions. The City firmly supports individual rights to express ideas and to criticize the conduct and operation of civic institutions. However, as stated by the Honourable Mister Justice Wilson, "*freedom of speech is not a license to defame*".

Your statement conveys the false and defamatory imputation that the City will be conducting the present elector assent process in a corrupt fashion. That is false and injudicious. More fundamentally, it is defamatory of the City and actionable against you.

In all of the circumstances, we must put you unequivocally on notice that you are to refrain and desist from defamation of the City.

We are not, by this letter, seeking in any way to silence you or discourage you from participating in the public affairs of the City. We must, however, demand that you conduct yourself in a manner which does not wrongfully damage reputations and does not constitute tortious conduct prohibited by the common law.

A timely and unequivocal retraction of your statement, and a publication of an apology for this wrongful allegation, distributed to all

to whom you published your e-mail statement, can be expected to mitigate the damages you have caused, and to reduce the damages to which your defamatory publication has exposed you.

Please govern yourself accordingly.

[13] Following delivery of the defamation suit threat letters, Winslow Brown contacted the solicitor for the City of Powell River and told him that he could not afford a lawsuit and asked what he should do. The solicitor told Mr. Brown to contact the *Peak Online* and publish an apology and retraction there. The *Peak Online* publication declined, saying that what had been published was not defamatory. Mr. Brown contacted the city solicitor again and asked what to do. The solicitor told him "you had better do something", or words to that effect. Mr. Brown attended before a council meeting on March 11, 2008, and stated that he could not afford a lawsuit and he publicly retracted and apologized for the views he had expressed. He delivered a letter to that effect and asked if that satisfied the demands of the City of Powell River and whether "it was over", or words to that effect. The mayor declined to provide the assurance that the matter was "over", saying instead that the statement would be noted by the City clerk and communicated to the solicitors for the City of Powell River. According to the affidavit of Mr. Dixon, the mayor then stated words to the effect that defamatory comments about the City of Powell River would not be tolerated from anyone.

[14] The Corporation of the City of Powell River filed and then withdrew a statement of defence. It gave notice to counsel for the plaintiffs that it would not appear at this hearing. The application, as I said, is therefore unopposed.

ANALYSIS AND CONCLUSIONS

[15] The plaintiffs' application (as amended at the hearing) is for the following order, to which the Attorney General is not opposed:

1. The defendant City of Powell River lacks any legal basis or right to bring civil proceedings for defamation of its governing reputation, or bring other proceedings of similar purpose or effect, or to threaten to do so, including in the manner contained in the three letters dated March 6, 2008, sent by the solicitors of the defendant, City of Powell River, to Patricia Aldworth, Winslow Brown and Noel Hopkins, described above.
2. The defendant City of Powell River, its mayor, council, servants and agents, be and the same are hereby restrained from making threats that the City of Powell River will bring action and sue any person for defamation, or bring any other proceeding of similar purpose or effect, on any ground similar to that set out in the Defamation Suit Threat Letters.
3. The Defendant City of Powell River pay the costs of this proceeding to the plaintiffs after assessment thereof.

[16] Because the first issue is whether the plaintiffs have standing, it is necessary to examine the basis of the cause of action and the relief sought in the statement of claim. Paragraphs 24-26 of the statement of claim state:

24. The Plaintiffs are concerned that the actions of the City of Powell River described herein have had and will continue to have a serious and damaging effect on the right of all person in Canada under section 2(b) of the *Canadian Charter of Rights and Freedoms* to "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communications."

25. The Plaintiffs expressly refer to and rely upon section 24 of the *Canadian Charter of Rights and Freedoms*, section 39 of the *Law and Equity Act*, and the inherent jurisdiction of this Honourable Court.

26. Section 8(1) of the *Community Charter SBC 2003 c. 26* as amended is inconsistent with the *Canadian Charter of Rights and Freedoms* at least to the extent that it provides that a municipality "has the capacity, rights, powers and privileges of a natural person of full capacity ..." and may sue for defamation.

[17] The plaintiffs assert that both plaintiffs have standing to institute the within action for the declaratory order and injunction.

[18] In the notice of motion before me the plaintiffs seek the following relief:

1. A declaration and order that:
 - a. Government and public bodies, including municipal corporations such as the Defendant City of Powell River, lack the legal status and right and are not constitutionally permitted to be granted or to exercise "the capacity, rights, powers and privileges of a natural person of full capacity" to bring civil proceedings for defamation or any like cause of action or to threaten to do the same; and
 - b. Section 8(1) of the *Community Charter SBC 2003 c. 26* as amended is inconsistent with the *Canadian Charter of Rights and Freedoms* to the extent that it provides otherwise and to that extent is of no force or effect;
2. A declaration and order that the Defamation Suit Threat Letters were wrongful and unlawful;
3. An order restraining the City of Powell River, its Mayor, Council, servants and agents, from:

- a. Making threats that the City of Powell River will bring action and sue any person for defamation; or
 - b. Otherwise by words and deeds seeking to deny or infringe the rights of any person under section 2(b) of the *Canadian Charter of Rights and Freedoms*; and
4. Such further and other relief as to this Honourable Court may seem meet and just.

[19] The order sought is considerably narrower than the relief sought in the statement of claim, the notice of motion or in the notice under the constitutional question.

[20] The notice delivered pursuant to the ***Constitutional Question Act*** states, in part, as follows:

...

- 3) The law in question in this action is section 8(1) of the *Community Charter SBC 2003 c. 26* as amended, which provides that: "A municipality has the capacity, rights, powers and privileges of a natural person of full capacity";
- 4) The rights and freedoms protected pursuant to section 2(b) and 24 of the *Charter of Rights and Freedoms* are infringed and denied by the Defendant as described in the Amended Statement of Claim;
- 5) The federal and provincial governments and governmental and public agencies created by them, including municipal corporations such as the Defendant in this case:
 - a) Lack the legal status and right and are not constitutionally permitted to be granted or to exercise "the capacity, rights, powers and privileges of a natural person of full capacity" to bring civil proceedings for defamation or any like cause of action or to threaten to do the same; and
 - b) Section 8(1) of the *Community Charter SBC 2003 c. 26* as amended is inconsistent with the *Canadian Charter of*

Rights and Freedoms to the extent that it provides otherwise and to that extent is of no force or effect ...

[21] Mr. Dixon is no longer seeking an order that s. 8(1) of the **Community Charter** is inconsistent with the **Canadian Charter of Rights and Freedoms** ("**Charter**"). Rather he seeks a declaratory order that, at common law, the City lacks any legal basis or right to bring or threaten legal proceedings for defamation. It must be remembered that although the City did threaten to bring such proceedings, no such action was ever launched.

[22] As already noted, Mr. Dixon is a property owner and elector in the City of Powell River. The City of Powell River acknowledges that the cost for its solicitor's services in drawing the three letters referred to was \$906.36, presumably an indirect cost to the electors. Mr. Dixon asserts that he has standing to argue that his rights under s. 2(b) of the **Charter** were infringed by the letters sent to the three Objectors. At para. 24 of the statement of claim, Mr. Dixon asserts that he has the right to both make and receive communications such as those communications to which the City of Powell River objected.

[23] At para. 25 of the statement of claim, the plaintiffs rely on s. 24 of the **Charter**. Section 24(1) provides that:

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied, may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[24] Section 2 of the **Charter** provides that:

Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

...

[25] It is argued by the plaintiffs that Mr. Dixon has the right not only to speak but to be the recipient of information in the public debate concerning the conduct of government affairs, including local government affairs. It is argued that his right to receive such information was curtailed by the letters delivered to the Objectors. It is further argued that Mr. Dixon has standing to sue to enforce or protect his **Charter** rights. Although Mr. Dixon was not the recipient of a letter from the City of Powell River threatening to sue him for defamation, he says that his right to freedom of expression embraces his right to receive communication from his fellow electors regarding concerns about the conduct of their local government. He says that he has standing to sue to protect his right to free and unimpeded access to all opinions of his fellow electors.

[26] Does Mr. Dixon have standing to assert that his rights have been infringed?

[27] The personal rights approach to standing under s. 24(1) of the **Charter** means that a person would be unable to challenge violations of the rights of a third party unless his or her own rights have also been violated: **Benner v. Canada (Secretary of State)**, [1997] 1 S.C.R. 358, 143 D.L.R. (4th) 577 at 604, formal judgment [1997] 3 S.C.R. 389; **R. v. Hyatt**, 2003 BCCA 27, 171 C.C.C. (3d) 409. Both **Benner** and **Hyatt** held that **Charter** rights are personal rights and, further, the

right to challenge the legality of an alleged violation of a **Charter** right depends upon the plaintiff or the accused establishing that his or her personal rights have been violated.

[28] In the case of **Harper v. Canada (Attorney General)**, 2004 SCC 33, [2004] 1 S.C.R. 827, Mr. Harper brought an action for a declaration that certain sections of the **Canada Elections Act**, S.C. 2000, c. 9, were of no force or effect because they infringed ss. 2(b), 2(d), and 3 of the **Charter**. Those sections of the **Canada Elections Act** limited third party election advertising expenses to \$3,000 locally and \$150,000 nationally, and placed other limits on third party election spending. Mr. Holmes, counsel for the plaintiffs, cites this case as authority for the proposition that Mr. Dixon has standing to bring the within action.

[29] At para. 17 of **Harper**, Bastarache J. held:

Freedom of expression protects not only the individual who speaks the message, but also the recipient. Members of the public – as viewers, listeners and readers – have a right to information on public governance, absent which they cannot cast an informed vote...

[internal citations omitted]

[30] The plaintiffs and the Attorney General agree on this application that, with respect to both elements of the relief sought by Mr. Dixon under s. 24(1) of the **Charter**, the issue of public interest standing need not be decided because Mr. Dixon, as a resident and ratepayer of Powell River, has a personal interest sufficient to provide him with personal standing (as modified at the hearing). I agree with this submission and accept that Mr. Dixon does have personal standing.

[31] I now turn to the issue of whether a government (as distinct from individuals associated with the government) can be defamed with respect to its governing reputation.

[32] In *City of Prince George v. British Columbia Television System Ltd.*, 95 D.L.R. (3d) 577, [1975] B.C.J. No. 2071, the Court was asked to decide two questions of law under R. 34 of the *Supreme Court Rules*. The judgment does not disclose the underlying facts. The two questions were: whether the statement of claim disclosed a cause of action for actionable defamation; and whether the municipality could sue in its corporate capacity for the libel or defamation asserted. Bull J.A., in concurring reasons, relied on the *Interpretation Act*, 1974 (B.C.), c. 42, which defines "corporation" and delineates that an enactment establishing a corporation shall be construed to vest that corporation with power to sue in its corporate name. He held that every incorporated municipality has all the rights and liabilities of a corporation and because a corporation clearly has a right of action in defamation, a municipal corporation has the same right.

[33] In the same case, Aikins J.A. noted at para. 14 that:

... the power to sue for libel would unduly encroach upon the right of the public at large to speak freely concerning municipal affairs.

[34] At para. 32 he held:

... The short answer to counsel's submission, founded on freedom of speech, is simply that that right, under our law, must be exercised subject to the law of defamation which affords everyone protection against injury to reputation by untrue imputation. Moreover, as counsel for the respondent pointed out, in my view correctly, the law of

defamation makes adequate provision by the principle adopted in respect of fair comment to protect those who make legitimate critical comments on matters of public interest. In my view the appellant's argument founded on free speech is without merit.

[35] Aikins J.A. and Bull J.A. agreed in deciding that a municipal corporation's governing reputation could be defamed and that it could sue for defamation.

[36] In the case at bar, both counsel submit that **Prince George** is not binding authority on this Court because, although defamation is a common law cause of action, the Supreme Court of Canada has held that the law of defamation is informed by the principles of free speech enshrined in the **Charter**. In other words, common law defamation cases should be decided in ways that are consistent with the **Charter** principles of free speech. Because **Prince George** was decided before the **Charter** became Canadian law, counsel say it is not binding on this Court so as to compel me to find that a municipal government may maintain an action for defamation.

[37] In **Hill v. Church of Scientology of Toronto**, [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129, a prosecutor sued the Church of Scientology for alleged defamatory statements made by representatives of the defendant at a press conference. The defendant argued that the **Charter** rights of free speech protected the statements made by it about the prosecutor. The Supreme Court of Canada held, per Cory J., that the common law of defamation must be interpreted in a manner that is consistent with **Charter** principles. Although in **Hill** the Court found no reason to depart from the common law principles of defamation applicable to that case, the Court said at para. 85:

In *R. v. Salituro, supra*, the Crown called the accused's estranged wife as a witness. The common law rule prohibiting spouses from testifying against each other was found to be inconsistent with developing social values and with the values enshrined in the Charter. At page 670, Iacobucci J., writing for the Court, held:

Judges can and should adapt the common law to reflect the changing social, moral and economic fabric of the country. Judges should not be quick to perpetuate rules whose social foundation has long since disappeared. Nonetheless, there are significant constraints on the power of the judiciary to change the law. As McLachlin J. indicated in *Watkins, supra*, in a constitutional democracy such as ours it is the legislature and not the courts which has the major responsibility for law reform; and for any changes to the law which may have complex ramifications, however necessary or desirable such changes may be, they should be left to the legislature. The judiciary should confine itself to those incremental changes which are necessary to keep the common law in step with the dynamic and evolving fabric of our society.

Further, at p. 675 this Court held:

Where the principles underlying a common law rule are out of step with the values enshrined in the Charter, the courts should scrutinize the rule closely. If it is possible to change the common law rule so as to make it consistent with Charter values, without upsetting the proper balance between judicial and legislative action that I have referred to above, then the rule ought to be changed.

[38] In *Halton Hills (Town) v. Kerouac* (2006), 270 D.L.R. (4th) 479, 80 O.R. (3d)

577, an internet newspaper was sued by the Town of Halton Hills in defamation because the publication asserted the municipality was corrupt. The defendant argued that a government could not sue in defamation.

[39] Corbett J. declined to follow *Prince George*, noting that the case was decided before the *Charter*, and held at para. 62:

I conclude as follows:

- (1) Section 2(b) of the *Charter* guarantees freedom of expression;
- (2) expression about public affairs in general, and government in particular, lies at the core of freedom of expression;
- (3) any legal restriction on freedom of expression about public affairs has a chilling effect on freedom of expression generally, and infringes the Section 2(b) guarantee;
- (4) infringements of the Section 2(b) guarantee may be justified pursuant to Section 1 of the *Charter*. Laws against sedition, for example, may be justified, since society may guard against its own violent overthrow. Laws against hate speech may be justified to protect the victims of hate speech. The common law tort of defamation may be justified on the basis that private persons (including public servants) are entitled to protect their personal reputations;
- (5) there is no countervailing justification to permit governments to sue in defamation. Governments have other, better ways to protect their reputations;
- (6) any restriction on the freedom of expression about government must be in the form of laws or regulations enacted or authorized by the legislature; the common law position, in the absence of such legislation, is that absolute privilege attaches to statements made about government;
- (7) "Government" includes democratically elected local governments.

[40] In *Montague (Township) v. Page* (2006), 79 O.R. (3d) 515, 139 C.R.R. (2d) 82, the defendant and the Canadian Civil Liberties Association (as a friend of the Court) raised the question of whether it was consistent with s. 2(b) of the *Charter* for a government entity to sue a private citizen for defamation. The defendants were alleged to have defamed the municipal government in published letters critical of the government's conduct concerning a fatal fire. Pedlar J. held that the municipal government could not maintain an action in defamation. At para. 29 he held:

In a free and democratic system, every citizen must be guaranteed the right to freedom of expression about issues relating to government as an absolute privilege, without threat of a civil action for defamation being initiated against them by that government. It is the very essence of a democracy to engage many voices in the process, not just those who are positive and supportive. By its very nature, the democratic process is complex, cumbersome, difficult, messy and at times frustrating, but always worthwhile, with a broad based participation absolutely essential. A democracy cannot exist without freedom of expression, within the law, permeating all of its institutions. If governments were entitled to sue citizens who are critical, only those with the means to defend civil actions would be able to criticize government entities. As noted above, governments also have other means of protecting their reputations through the political process to respond to criticisms.

[41] **Cusson v. Quan**, 2007 ONCA 771, 286 D.L.R. (4th) 196, was a case concerning an Ontario police officer who had on his own initiative travelled to New York City following September 11, 2001, to assist in rescue efforts. His employer was criticized in the media for ordering Cusson to return to his duties. In the public controversy that followed, the defendant newspaper published articles critical of Cusson and suggested that his conduct was less than heroic – as had been claimed by some media. Cusson sued the newspaper in libel.

[42] The issue before the Ontario Court of Appeal concerned the question of qualified privilege and, in resolving that issue, it was necessary for the Court to grapple with the question of whether the law of defamation should be developed in a manner consistent with the **Charter** or whether the Courts were bound by pre-**Charter** common law defamation judgments. Sharpe J.A. held at para. 130 that the law of defamation was not "...frozen...in a permanent state of hostility to any and all change...." and at para. 133, he stated:

Our task, it seems to me, is to interpret and apply the earlier decisions in light of the *Charter* values at issue and in light of the evolving body of jurisprudence that is plainly moving steadily towards broadening common law defamation defences to give appropriate weight to the public interest in the free flow of information.

[43] Is **Prince George** binding and therefore determinative of the issue in this case?

[44] In the seminal case on *stare decisis*, **Re Hansard Spruce Mills Ltd.**, [1954] 4 D.L.R. 590, 13 W.W.R. 285, Wilson J. described the circumstances in which a trial judge may depart from what would otherwise be binding authority as follows at para. 4:

Therefore, to epitomize what I have already written in the *Cairney* case, I say this: I will only go against a judgment of another judge of this Court if:

- (a) Subsequent decisions have affected the validity of the impugned judgment;
- (b) It is demonstrated that some binding authority in case law, or some relevant statute was not considered;
- (c) The judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[45] In this case I conclude that I am not bound to follow the judgment in **Prince George** because a relevant statute, the **Canadian Charter of Rights and Freedoms**, came into force after the judgment in that case and the arguments concerning freedom of speech obviously did not consider that law. Given the authorities I have cited, I conclude that the rejection of the right to free speech argument by the Court in **Prince George** is inconsistent with the current law

enshrined in the **Charter** and therefore, as per **Spruce Mills** it follows that I do not consider **Prince George** to be binding on me.

[46] It seems clear to me on the basis of **Hill**, that common law causes of action must be applied in a manner that is consistent with the **Charter**. It is evident that the law of defamation and the constitutional law of freedom of speech ought not to develop in two separate streams incorporating different values. Rather, the two should accommodate each other. In this case, I agree with the judgments in the **Halton Hills** and **Montague** cases in which the justices decided that governments cannot sue for defamation for damage to their governing reputations. The **Charter** enshrined value of freedom of expression is paramount and local governments have resort to other means to protect their reputations from citizens who publish critical commentary about the government itself. In **Prince George**, Aikins J.A. considered and rejected the freedom of speech argument advanced by the plaintiffs, and held that a local government could sue for defamation on the same basis as any corporation. That reasoning cannot withstand **Charter** scrutiny. As Sharpe J.A. said in **Cusson** at para. 125:

It is hardly necessary to repeat here the importance of the rights protected by s. 2(b) of the **Charter**, namely "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication". These rights are an inherent aspect of our system of government and have been generously interpreted by the courts. Democracy depends upon the free and open debate of public issues and the freedom to criticize the rich, the powerful and those, such as police officers, who exercise power and authority in our society. Freedom of expression extends beyond political debate to embrace the "core values" of "self-fulfilment", "the communal exchange of ideas", "human dignity and the right to think and reflect freely on one's circumstances and condition": *R.W.D.S.U. v. Pepsi-Cola*, [2002] 1 S.C.R. 156 at para. 32. Debate on matters of public interest will

often be heated and criticism will often carry a sting and yet open discussion is the lifeblood of our democracy. This court recognized in *R. v. Kopyto* (1987), 62 O.R. (2d) 449 at 462 that "[i]f these exchanges are stifled, democratic government itself is threatened."

[47] The passage just quoted is equally applicable to this case. It is antithetical to the notion of freedom of speech and a citizen's rights to criticize his or her government concerning its governing functions, that such criticism should be chilled by the threat of a suit in defamation.

[48] I now return to the question of whether to grant relief under s. 24. I am satisfied that Mr. Dixon's right to receive communications concerning his local government were infringed by the defamation threat letters. That threat has not been withdrawn in a manner that removes the chilling effect it had on the electorates' freedom of speech.

[49] I would therefore grant the declaratory relief sought by the plaintiff Dixon in the terms set out above. The precise terms of the order sought, are as follows:

The defendant City of Powell River lacks any legal basis or right to bring civil proceedings for defamation of its governing reputation, or bring other proceedings of similar purpose or effect, or to threaten to do so, including in the manner contained in the three letters dated March 6, 2008, sent by the solicitors of the defendant, City of Powell River, to Patricia Aldworth, Winslow Brown and Noel Hopkins, described in the Amended Statement of Claim herein as the "Defamation Suit Threat Letters" copies of which are attached hereto.

[50] Is the plaintiff Dixon entitled to an injunction enjoining the defendant from repeating the conduct complained of?

[51] The order sought by the plaintiff Dixon is as follows:

The Defendant City of Powell River, its Mayor, Council, servants and agents, be and the same are hereby restrained from making threats that the City of Powell River will bring action and sue any person for defamation, or bring any other proceeding of similar purpose or effect, on any grounds similar to that set out in the Defamation Suit Threat Letters.

[52] The injunction sought is a permanent injunction. Although it is true, as submitted by the plaintiffs, that there is no evidence the City of Powell River has undertaken not to threaten or commence defamation proceedings against one of its citizens for publishing criticism of the local government in the future, I consider its withdrawal of its statement of defence and lack of opposition to this application as some recognition that its conduct was not lawful. I am reluctant to permanently restrain the defendant in such broad terms for future conduct that may involve different considerations and may not necessarily come within the reasons of this judgment. I also consider such an injunction unnecessary. The application for an injunction is dismissed.

[53] Does the British Columbia Civil Liberties Association have standing?

[54] There is no purpose or advantage, that I can perceive, in separately considering if the Civil Liberties Association has public interest standing to advance a claim for relief that I have already granted. Moreover, the Attorney General has requested leave to make further submissions on the question of the Civil Liberties Association's public interest standing, if I decide to consider this point. In my view the question at issue in this application is properly before the Court on Mr. Dixon's personal application. I therefore conclude that it is unnecessary for me to consider whether the Civil Liberties Association also has standing.

[55] The plaintiff Dixon has been successful on the main issue. Costs will follow the event. I make no award of costs in respect to his co-plaintiff, the British Columbia Civil Liberties Association.

"N. GARSON, J."