IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Alexis v. Drury,*
2017 BCSC 674

Date: 20170425
Docket: S16195
Registry: Smithers

Between:

Thomas Alexis

Plaintiff

And

**Gregg Drury, Joshua Hallman, Herbert Felix,
Ralph Pierre, Sebastian Anatole**

Defendants

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for the Plaintiff:	I. Lawson
Counsel for the Defendants:	J. Loeb
Place and Date of Trial/Hearing:	Smithers, B.C. October 25 - 28, 2016 October 31 - November 2, 2016
Place and Date of Judgment:	Smithers, B.C. April 25, 2017

[1] In this action, the plaintiff, Thomas Alexis, alleges that the defendant, Gregg Drury, defamed him by authoring and publishing a memorandum concerning the plaintiff. He also claims that Mr. Drury, in concert with the other four named defendants, conspired to wrongfully remove him from his office as the Chief of the Tl'azt'en First Nation.

[2] The defendants dispute the claims.

[3] For the reasons that follow, I dismiss the plaintiff's action.

Background Circumstances:

[4] The allegations at bar occur in the context of the political and administrative activities of the Tl'azt'en First Nation Band; they are alleged to have occurred in 2009.

[5] In these reasons, I will use the term 'Nation' and 'Band' interchangeably as, for the purposes at hand, they are substantially similar.

[6] The Tl'azt'en Nation is part of the Carrier Sekani Tribal Council. Its territory is in the area around Fort St. James.

[7] The Nation has a total of approximately 1700 members. There are three communities which make up the Nation: Tache, Binche and Middle River. As I understand it, many of the Nation's members live in these villages, but a good number also live at other locations, including Fort St. James and elsewhere.

[8] The Nation's governance is comprised of an elected chief and seven elected councillors. In the course of trial and in the exhibits which have been filed, reference is sometimes made to the "Council," and at other times to the "Chief and Council." For the discussion which follows, I will refer to that assembled body as the Council. The Council meets on a regular basis, generally monthly, and deals with the business of the Band in a manner which I understand to be not unlike a municipal council.

[9] To do its business, the Council appoints an Executive Director. The person in that position works in conjunction with the Council and, on the Council's direction, administers the working departments of the Band. There are a number of departments, including public works, education, health, housing and finance. Each of those has an appointed head as well as staff members.

[10] The parties to this litigation are all figures in that governance/administrative organization.

[11] The plaintiff is 63 years of age. At the relevant time, he was the Chief of the Nation. He has a long history of service in Band politics and governance, as well as active participation in a number of larger First Nations organizations. Mr. Alexis' father served as Chief of the Nation for 30 years. Mr. Alexis himself served one term as a councillor in the mid-1970s. Evidently, he lived away from the Band's traditional lands for many years, returning in 2002. That year, he was elected Chief for a two-year term. He was re-elected in 2004 and again in 2006. He held that position until November 30, 2009. At a Council meeting held on that date, a motion of non-confidence was initiated and passed by a majority of the councillors present. As a result, his appointment was terminated.

[12] That termination is a central issue in the case at bar.

[13] The position of Chief is considered full-time. The Chief is paid a salary and receives benefits.

[14] The first named defendant, Gregg Drury, was hired by the Tl'azt'en Nation in May 2009 to serve as Executive Director.

[15] The other four named defendants were, at the relevant time, all elected councillors. Their positions are not considered full-time. They attend council meetings and are compensated with an honorarium.

[16] The Executive Director was hired on the recommendation of a committee which conducted interviews and selected an appropriate candidate. The plaintiff was

not a member of that committee. In his testimony, he stated that, given his view that the Executive Director would be answering directly to him in the course of day-to-day operations, he did not believe it was appropriate for him to be part of the committee.

[17] Before providing a further description of the circumstances, it is appropriate to note that, not surprisingly, there is a substantial element of what I would characterize as personal politics present in the everyday life of the Nation. As an example, some of the councillors are employees of the Nation. Accordingly, they are in the somewhat curious position of having some oversight over their workplace supervisor.

[18] In the course of hearing the evidence adduced at trial, it became quite apparent that the politics of the Nation are significantly affected by the fact that there are families with many members, immediate and extended, who have their own particular interests and allegiances. In some instances, these relationships have resulted in ongoing frictions among members of the Band.

[19] One issue that was highlighted during the course of the trial was the substantial uncertainty and ambiguity that exists regarding the allocation of authority between the Chief and the councillors.

[20] Among the exhibits filed was a draft “Custom Election Code.” My understanding is that this document was prepared to provide a framework for the Nation’s elections.

[21] Apart from the fact that this is only a draft, the Code is a commendable effort in terms of providing a clear structure for the manner in which elections are to be held. It is also commendable in that it spells out the Code of Ethics which applies to both the Chief and the councillors quite clearly.

[22] The problem, in my view, is that the Code does not provide a clear delineation of the authority of the Chief and the councillors. That is not surprising – its stated

purpose is to provide a framework for the electoral process, not a general constitutional structure.

[23] In the course of the evidence called, a number of witnesses made reference to a workshop which is apparently conducted from time to time for the benefit of persons who have been newly elected to the Council. The witnesses spoke of seminars administered by an individual named ‘Mr. Sterrit.’ My understanding is that Mr. Sterrit is widely recognized as a leading authority on the constitution and the manner in which authority is intended to be exercised in First Nations governance.

[24] The problem is that, in this trial, no evidence was called regarding the Nation’s actual authority structure.

[25] I was left in a state of great uncertainty with respect to that issue. Unfortunately, it is apparent that my uncertainty is shared by others, including the Chief and the councillors. While they may have their own views of how authority is allocated, I am not convinced that any of their views are necessarily correct.

[26] Leaving aside that issue, the evidence was that the Chief and the councillors convene for a regular monthly meeting. At that time, they deal with the business of the Band.

[27] Generally, it seemed to be the view of both the Chief and the councillors that, other than that meeting, the elected councillors do not take an active role in the governance of the Nation.

[28] In contrast, the Chief has an ongoing active role. Although there was nothing in the evidence that clearly defined what those responsibilities were, it appeared to be generally accepted that he would concern himself with all matters that arose in the administration of the Nation’s business. That function is understood to entail the Chief working in concert with the Executive Director.

[29] The Executive Director is the manager of the Band's affairs. He oversees its employees and its activities. He reports to the Chief and Council. In fact, it is evident

that the general governance structure provides something of a “firewall” between, on the one hand, the Chief and the councillors and, on the other hand, the members of the Nation. This is because all operational matters answer to the Executive Director. To my mind, that structure reflects an intention to ensure that the Chief and the councillors are not involved with the day-to-day operations of the Nation. That said, it is also apparent that the councillors and the Chief make it their business to be aware of the community’s concerns in that each of them are members of the community and have daily interaction with the members. Indeed, the councillors are elected to provide specific representation of particular communities. However, it would seem that flagrant political activities in operational matters by those elected Council members on behalf of their constituents is not expected to occur. Instead, presumably, that input is reserved for Council meetings.

[30] It is also noteworthy that the Chief and councillors, as well as the Executive Director, all testified to the general effect that one of the Executive Director’s functions is to be the “eyes and ears” of the Chief and Council in the community.

[31] In the time leading up to the specific events at bar (which occurred between November 27 and November 30, 2009), a number of problem situations were simmering. By that term, I refer to situations in which the plaintiff and the defendant Mr. Drury were at odds or, more pointedly, the plaintiff disapproved of the manner in which Mr. Drury was operating in his capacity as Executive Director. Some of those were specific; some of them were more general. Apparently, the relevant problems were as follows:

- Mr. Drury was hired as Executive Director in May. In the months following, it would seem he was working to manage his numerous responsibilities and put his management model in place. In the course of that, he encountered differences with a number of persons.

- It is evident that, while the plaintiff may have been initially neutral with respect to Mr. Drury, as time progressed, the Chief became increasingly concerned

that Mr. Drury was not doing his job well and that he was creating problems. Several times during his testimony, the plaintiff disapprovingly referred to Mr. Drury's "micromanagement" style of governance.

- Mr. Drury had serious conflicts with some personnel in the health department, particularly the head of that department, Vincent Joseph. Ultimately, allegations were made by Mr. Drury that Mr. Joseph had conducted himself improperly and dishonestly. In the result, Mr. Joseph took a stress leave and was subsequently terminated by Mr. Drury. A grievance was filed by Mr. Joseph as a consequence of his termination, a matter which I will briefly address later in these reasons.

- There were also difficulties between Mr. Drury and another department head, Kenny Sam. Again, Mr. Sam went on stress leave and was terminated by Mr. Drury.

- Shortly after Mr. Drury's hiring, problems also arose between him and another member of the Nation, Danny Alexis. Mr. Alexis is a cousin of the plaintiff. He has for many years taken an active role in the affairs of the Nation, including serving as an elected councillor for some 24 years, and as Chief for one term. At the time of the events at bar, he was a Councillor. Differences developed between Danny Alexis and Mr. Drury. The issues included allegations that Danny Alexis had bullied Mr. Drury and that he had been confrontational towards Mr. Drury with respect to other matters. The situation with Danny Alexis came to a head at a Council meeting on September 9, 2009. At that time, the Council considered allegations of a number of breaches of the Code of Ethics. The allegation of bullying was one of a number of matters which formed the basis of the view that he should not continue as a Councillor. Ultimately, a motion was made and a vote was taken, removing Danny Alexis from his office as a Councillor.

I note that the plaintiff, Thomas Alexis, did not take part in the vote to terminate Danny Alexis, presumably because their family relationship was seen as a conflict of interest. I also infer that the plaintiff was not a supporter of the action that was taken against his cousin.

- In the fall of 2009, the sewage lagoon on the Nation's land was flooding. When that had occurred in previous years, the excess content of the lagoon was pumped into a lake. In 2009, Mr. Drury took the view that it would be inappropriate to pump the excess into the lake, and so he made the decision to pump the excess into the forest. That course of action resulted in a substantial expense being incurred in order to pay personnel to perform that task. The plaintiff disagreed with that decision.

- Georgina Alexis, the daughter of the plaintiff, was employed in the Nation's Education Department. In July 2009, the Director of the Education Department, Mr. Boehner, was relieved of his duties by Mr. Drury. After Mr. Boehner's termination, Georgina Alexis was provided an opportunity to take more responsibility in the department and was apparently considered for the position of acting or interim director. It is evident that Mr. Drury was not supportive of that course of action: he did not consider her suitable for the post and there were ongoing frictions between him and her. She was never formally appointed to that position.

  At some point, at the initiation of the plaintiff, there were discussions between the plaintiff and Mr. Drury. The details of those are not clear. Mr. Drury characterized the contact as the plaintiff exerting pressure upon him (Mr. Drury) to authorize compensating Georgina Alexis for acting as Interim Director. The plaintiff denies that he was actively intervening for the benefit of his daughter. He says it was simply a matter of wanting to ensure that standard policy was followed. He understood the policy to be that Georgina, in a circumstance such as occurred here, was entitled to additional compensation.

I note that the Code of Ethics, which all parties agree was applicable to their activities, makes reference to prohibiting the Chief and the Councillors, when acting in the role to which they have been elected, from doing anything for the benefit of members of their immediate family. There is a definition provided for that term; it includes a child of the office-holder.

- Mr. Drury took steps to advance the construction of a school at the Middle River community. In support of that, he indicated that there was a list of some 99 persons who were eligible to receive educational benefits there and who wanted to take advantage of those benefits. The plaintiff did not support the establishment of the school in Middle River and took the view that Mr. Drury had provided a falsified list of names to justify this undertaking. It is also to be noted that another one of the defendants, Henry Joseph, was the elected Councillor for Middle River.

- One of the defendant councillors, Ralph Pierre, had been seeking authorization for the renovation of his residence. Obtaining this authorization involves having the application considered along with those of others who are also requesting funding for improvements to their homes. At some point, authorization was granted to Mr. Pierre's application. The plaintiff alleges that Mr. Drury arranged for that to occur and that it was not done in accordance with proper priorities and procedures.

- The plaintiff alleges that Mr. Drury arranged for Band funds to be paid to another elected councillor, Herb Felix, who is also a defendant in this proceeding. Although the plaintiff did not claim to have the full details of the matter, he operated on the assumption that it was not a proper transaction. Consequently, he concluded that Mr. Drury had improperly arranged for the funds to issue.

- The plaintiff believes that Mr. Drury had used Band funds to purchase a truck for himself.

- The plaintiff also believes that Band funds had been used to pay for fuel and tires for motor vehicles owned by two of the defendant councillors, Mr. Joseph and Mr. Felix.

[32] A critical event occurred on November 27, 2009. On that date, at approximately 3:45 pm, the plaintiff met with Mr. Drury at the office of the Nation and presented him with a memorandum entitled “Termination of Employment.” The memorandum stated as follows:

> This Memorandum serves as your termination of employment with Tl’azt’en Nation for mismanagement of funding and falsifying reports to the Membership and Council.
>
> 1. Mismanagement of Funds
>
> You have expended in excess of $100,000 and still counting in 4 (four) areas: Public Works, Housing, Education and Administration. The funds you expanded was not mandated by the Council nor have you been given authority to implement the projects.
>
> 2. Falsified reports to the Community and Council members to justify your actions.
>
> In the organization's policies these activities are cause for immediate termination.
>
> I am your immediate supervisor and have deemed that these are dishonest activities and warrants your termination
>
> [Signed] Chief Thomas Alexis

[33] At the time of this meeting, the plaintiff indicated to Mr. Drury that he was taking this action with the authority of the Council and that they (the members of the Council) were aware of his actions.

[34] In fact, there is no evidence that the plaintiff had consulted with any of the other elected councillors. Of the councillors who testified at trial, each specifically stated that there had been no consultation with or notice to them, and I accept that evidence to be true. Indeed, in his testimony, the plaintiff did not suggest otherwise.

[35] In very short order, I find that other members of the Nation became aware of this termination. Active discussions ensued.

[36] Among those who were discussing this development were the four named defendants, each of whom were elected councillors: Joshua Hallman, Herbert Felix, Ralph Pierre and Sebastian Anatole.

[37] Upon learning of the termination, Mr. Hallman had a telephone conversation with Mr. Drury. Mr. Drury explained to Mr. Hallman what had occurred. Mr. Hallman was surprised to learn that Mr. Drury had been terminated. Mr. Hallman was also concerned that he and the other elected councillors had not been consulted or apprised of the decision to terminate Mr. Drury.

[38] Mr. Hallman indicated to Mr. Drury that the matter should be examined at the next meeting of the Chief and Council, which was scheduled to be held on Monday, November 30, that being just three days later. Mr. Hallman directed Mr. Drury to prepare a memorandum setting out all of the relevant details of his termination.

[39] During the course of that weekend, I am satisfied that Mr. Hallman continued to confer with his fellow councillors, and that they were supportive of him having told Mr. Drury to prepare a memorandum and to attend the meeting.

[40] On Monday, November 30, 2009, the Chief and the Council met at the Band office.

[41] Exactly what occurred at that meeting is unclear. I say that even though I have heard all the parties' evidence, each of whom was in attendance, and the fact that I have examined a copy of the meeting's minutes. As a result, the description I will now provide reflects my best effort to determine the facts.

[42] All of the councillors were in attendance, as was the plaintiff and Mr. Drury. It is clear that there was a sense of anticipation in the air. In addition to the parties, a number of Band members, many of them staff, were present.

[43] The councillors were in the meeting room. The plaintiff came in, apparently accompanied by a number of persons who were seemingly there to express their

support for him, including vocally. I gather there was some hostility expressed by some of those persons towards the councillors.

[44] In short, it seems that all present recognized that there was a confrontation about to occur. However, I am unable to discern either how they knew, or what exactly was said.

[45] What occurred generally is that the meeting promptly went into an *in camera* format. The plaintiff and the councillors were present. Copies of the Drury Memorandum of November 29 were provided to each of the councillors, as well as the plaintiff.

[46] The minutes record that Herbert Felix brought a non-confidence motion against the plaintiff. That motion was seconded by Joshua Hallman.

[47] For this motion, one councillor, a relative of the plaintiff, was excused due to conflict of interest concerns. As well, the plaintiff was excused. A vote was taken and the motion carried 5 to 1. Additionally, there was a motion to void Mr. Drury's termination which had been made on November 27 by the plaintiff. That motion was made by Joshua Hallman and seconded by Henry Joseph. It too carried by a vote of 5 to 1.

[48] It is to be noted that the evidence of the plaintiff is that this meeting, although it had been previously scheduled, was not a regular monthly meeting: he says its purpose was to review the budget.

[49] The plaintiff agrees that there were a number of persons there to support him. His testimony is that, given that he did not ask them to appear, he does not know how they knew to attend.

[50] As for the substance of the meeting, the plaintiff says that the meeting went *in camera*. The other persons present were asked to leave, and complied. The plaintiff testified that the Drury memorandum was then produced and, at that point or shortly after, he laughed. His evidence is that he did not return.

[51] Once the matter of the non-confidence vote on the Drury termination had been dealt with, the meeting appears to have moved out of its *in camera* format. The Council then appointed a member of the Band, Maurice Joseph, to serve as interim Chief.

[52] The meeting carried on. A number of other items of business were conducted.

[53] The memorandum of Mr. Drury, dated November 29, 2009, is 15 pages in length. It was filed as an exhibit at trial. The memorandum bears the notation on the first page "Confidential and Private," and was addressed to the Tl'azt'en Nation Chief and Council.

[54] The memorandum is 15 pages in length. It commences with a description of events of November 27. It then sets out a number of concerns that Mr. Drury has arising from that event and then providing an analysis of the situation leading to his termination. In it, he makes detailed reference to a number of specific matters that have occurred, and provides his own perspective on those matters. Moreover, he appended to the memorandum a list of projects and initiatives that have occurred during his tenure as Executive Director, and lists of those he considered to be challenging or low performance personnel, and those who were high-performing.

[55] The evidence satisfies me that copies of the memorandum were provided only to the plaintiff and the councillors in attendance at the November 30 meeting. I also conclude that all copies, except one, were collected at the conclusion of the meeting. There is no evidence that there was no further dissemination of it. The copy that was not recovered was that of the plaintiff.

[56] On November 30, 2009, a memorandum was prepared, directed to "All Community Members," from the Tl'azt'en Nation Council. It stated as follows:

> Subject: Non-confidence Vote on Chief Thomas Alexis
>
> Please be advised that a non-confidence vote was called on Chief Thomas Alexis at our duly convened Council meeting. Council discussed various issues with Chief Thomas Alexis during our In Camera session this morning and a motion was carried of Non-Confidence regarding the leadership of

> Chief Thomas Alexis. Therefore, effective immediately, Thomas Alexis no longer represents Tl'azt'en Nation as our Chief.
>
> The memorandum indicates it is from the Tl'azt'en Nation Council and was signed by five Councillors: Joshua Hallman, Herbert Felix, Ralph Pierre, Sebastian Anatole, and Henry Joseph.

[57] At some point in early December, there was an informal community meeting held. Those present evidently expressed their support for the plaintiff and encouraged his reinstatement.

[58] On December 10, 2009, the plaintiff authored a memorandum to the Tl'azt'en Membership. In it, he stated his view that the actions that had been taken to remove him as Chief were not legally binding and that decisions made after his removal as chair should also not be legally binding. He also made reference to the defendant Mr. Drury, describing him as "an American drifter who falsified his resume to meet the criteria set out in the employment ad." In addition, the plaintiff set out reasons for his conclusion that Mr. Drury was mismanaging the affairs of the Band. He noted that, when he brought the issues to the Council, they "just attacked me and supported Greg's actions." He also makes reference to Mr. Drury's memorandum, refuting certain allegations contained in it. He concluded by reiterating his view that Mr. Drury should be terminated.

[59] The plaintiff was not subsequently reinstated as Chief. Mr. Drury continued in his post as Executive Director until the end of his term in 2011.

Positions of the Parties:

The Plaintiff

[60] The plaintiff says that the memorandum authored by Mr. Drury contains a number of injurious false statements. Specifically, he says:

a. The statement concerning the plaintiff's efforts to arrange a retirement buyout for two staff members is an accusation of incompetence and a lack of leadership.

b. The statement referencing the plaintiff's efforts to resolve the dispute involving the Band and Vincent Joseph suggests he may have permitted himself to be improperly influenced, and implies that he has not acted in the best interests of the Nation. Specifically, the implication is that he may have allowed his own personal interests to inform his conduct of the Band's business.

c. The statement referring to a meeting between the plaintiff and Kenny Sam implies that the plaintiff has been cavalier and irresponsible in discharging his decision-making responsibilities on behalf of the Band.

d. The statement referring to the plaintiff's support for a buyout for Wayne Bulmer suggests that the plaintiff may be making deals on Band business on his own authority and without following the appropriate decision-making process. It clearly implies that the plaintiff is conducting himself improperly with regard to the affairs of the Band.

e. The statement referencing the cost implications of certain lump-sum payments supported by the plaintiff to resolve staff member claims against the Band implies that the plaintiff lacks financial sagacity and that his actions are leading the Band into financial difficulty.

f. The statement making reference to rumors in the community that the plaintiff has possible involvement with illegal drug dealing is a scurrilous statement about the character and probity of the plaintiff.

g. The statement concerning the plaintiff's compliance with the Band's travel policy and claims the plaintiff has made for travel expenses implies that he has disregarded relevant policies, that he has improperly benefitted from those claims, and that his actions have caused serious financial detriment to the Band. The obvious implication is that he has wrongfully taken advantage of his position for his own gain and has harmed the Band financially.

The plaintiff says that each of these statements is defamatory in that each and every one of them would tend to lower the plaintiff's reputation in the eyes of reasonable persons. He says as well that they were a material cause of his removal from office. In addition, he maintains that Mr. Drury had no reason to write these impugned statements other than to see that the plaintiff was removed from office in retaliation for having dismissed him as Executive Director.

[61] The plaintiff says that Mr. Drury cannot claim the defence of qualified privilege because, even if he was following the instruction of Council members, the contents of his memorandum were not relevant and pertinent to the discharge of any duty.

Furthermore, the plaintiff says that the dominant purpose of publishing these statements is actual or express malice and so Mr. Drury is disentitled to the defence of qualified privilege.

[62] With respect to the allegation of conspiracy, the theory of the case propounded by the plaintiff is that the defendant councillors were not innocently responding to, and acting on, the defamatory statements, nor innocently exercising their public duty at the November 30 meeting. He says that they combined with each other and with Mr. Drury to wrongfully remove him from office. He says they did so first by inviting Mr. Drury to level an attack on the plaintiff that would be used at the November 30 meeting and he says that they did so by having telephone discussions with Mr. Drury and among themselves about what was to happen at that meeting. The plaintiff says that the November 30 meeting was scheduled to be a budget meeting, but that the defendant councillors clearly planned go *in camera* so that they could terminate the plaintiff.

[63] The plaintiff includes Mr. Drury in the conspiracy as a matter of inference. He claims that Mr. Drury's purpose in writing the memorandum was to attack the plaintiff, conducting himself similarly to when he brought about the removal of Danny Alexis as a Councillor.

[64] The plaintiff says that Mr. Drury's role in the conspiracy is informed by the steps that he had taken to secure the allegiance of the defendant councillors in various ways. As examples, he cites Mr. Drury, in his role as Executive Director, coming to the financial assistance of Herbert Felix, ensuring that Ralph Pierre's home would be renovated, and taking steps to renovate the school site at Middle River. In the words of the plaintiff, "this gang was therefore loyal to Mr. Drury and, as it constituted a quorum of the Council, the gang reacted exactly as Mr. Drury hoped when he told them he had been fired by the Chief."

[65] The plaintiff takes the position that his removal from office on November 30 was clearly unlawful because the meeting had not been duly convened: it lacked a chair, no agenda had been adopted, and it had never been called to order. As well, the plaintiff disputes whether the Band Council could remove the Chief in light of the fact that he had been directly elected by the membership. Finally, he claims that the removal was not in fact based upon a breach of the Code of Ethics.

[66] Finally, the plaintiff says that even if this Court were to find that the meeting had been duly convened, that the Council had the authority to remove the plaintiff, and that the Code of Ethics was properly applied, the question of unlawfulness would still not preclude judgment for the plaintiff for the tort of conspiracy. This is because, he says, the evidence supports a finding that there was a common purpose to cause him harm, a purpose which can be inferred from the defendants' words and actions. In other words, even if their actions were lawful, the defendants' purpose was to cause harm to him, namely, to remove him from office, and that brings their actions into the realm of the tort of conspiracy.

The Defendants

[67] The defendant Mr. Drury relies upon the defence of qualified privilege.

[68] As I understand his submission, he maintains that the information which was included in the memorandum was an accurate recitation of the problems and concerns that were present in the administration at that time. He says that he did not

make up any of the information contained in the memorandum and that, where appropriate, he made it clear he was reporting information that had been given to him by other people.

[69] Mr. Drury says that he did not make any recommendations as to the termination of the Chief.

[70] In short, the defendant Mr. Drury says that the writing and publication of the memorandum fell within his expected duties as Executive Director and was prepared at the direction of elected Members of Council. He says as well that the memorandum was clearly marked ‘Private and Confidential’ and that no copies were provided to anyone other than the Chief and Council, who had a corresponding duty to receive the memorandum.

[71] Mr. Drury specifically denies that he wrote and published the memorandum with malice.

[72] With respect to conspiracy, the defendants say that the applicable standard of proof is proof by compelling evidence. They say that is higher than the balance of probabilities, akin to that of fraud, which lies between the balance of probabilities and beyond a reasonable doubt.

[73] They say that the plaintiff has not proven the requisite elements that are necessary to establish conspiracy.

[74] The defendants state that, in order to establish lawful conspiracy, the plaintiff must show that the defendants entered into, and acted on, an agreement to use lawful means for the predominant purpose of causing injury to the plaintiff. Again, they say that the standard of proof is high and that that standard has not been met in this case.

Legal Principles:

(i) Defamation

[75] During the course of submissions, the parties referred to a large number of cases. However, surprisingly, they did not refer to *Wilson v. Switlo,* 2011 BCSC 1287, a case with highly analogous facts to the case at bar. In that decision, this Court provided the following pithy and apposite overview of the tort of defamation at paras. 132-140:

> Defamation: Legal Principles
>
> Overview
>
> [132] The law of defamation concerns the civil wrongs of libel and slander. At common law, libel is defamatory expression in writing or some other permanent form while slander is an oral statement or some other form of transitory expression.
>
> [133] Generally, expression that tends to lower a person's reputation in the estimation of ordinary, reasonable members of society generally, or to expose a person to hatred, contempt or ridicule is defamatory (*Cherneskey v. Armadale Publishers Ltd*., [1979] 1 S.C.R. 1067 at 1079).
>
> [134] An allegation of defamation may rest on the literal meaning of a statement or on its inferential meaning, or on the claim that the statement constitutes a legal innuendo. In this case only the literal and inferential meanings of the impugned statements are in issue.
>
> [135] Where the literal meaning is in issue, it is unnecessary to go beyond the words themselves. A claim based on the inferential meaning relies on what the ordinary person will infer from the statement. That is, it is a matter of impression.
>
> [136] The elements of a defamation claim were recently set out by the court in *Grant v. Torstar Corp*., 2009 SCC 61 at para. 28:
>
> > A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, … (The only exception is that slander requires proof of special damages, unless the impugned words were slanderous *per se*: R. E. Brown, *The Law of Defamation in Canada* (2nd ed. (loose-leaf)), vol. 3, at pp. 25-2 and 25-3.) The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

> [137] Determining if a statement is defamatory involves a two step analysis. At the first stage, the court exercises a gatekeeper function to determine whether, as a matter of law, the statement is capable of carrying a defamatory meaning. At the second stage, the trier of fact determines whether the statement is defamatory in fact (*Laufer v. Bucklaschuk* (1999), 181 D.L.R. (4th) 83 at 93 (Man. C.A.)).
>
> [138] The test is an objective one and contemplates the meaning that a "reasonable and right-thinking person", rather than someone with an overly fragile sensibility, would have understood from the words. The possibility that some readers may understand the words in a defamatory sense while others may not does not justify deviating from the objective standard (*Color Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97 at 106 (C.A.), leave to appeal to the Supreme Court of Canada refused, [1998] S.C.C.A. No. 170; *Charleston v. News Group Newspapers Ltd.,* [1995] 2 All E.R. 313 at 317-318 (H.L.))
>
> [139] When there are, as in this case, multiple statements on a related subject and they are referable to one another, they should be read together in order to determine whether the words used are defamatory (R. E. Brown, *The Law of Defamation in Canada* 2nd ed. (loose-leaf updated 2011, release 1) at 5-95 ("*Brown*")); *Downey v. Armstrong* (1901), 1 O.L.R. 237 at 239 (C.A.)). In this case, the multiple statements do relate to one another and as a result I take into consideration the entire series of impugned expressions in determining if the words are defamatory.
>
> [140] If the plaintiffs prove the required elements (that the defendants published or are responsible for the publication of defamatory words referring to the plaintiffs), the onus shifts to the defendants to advance a defence in order to escape liability (*Grant* at para. 29). As is discussed further below, the plaintiffs may still defeat certain defences if they establish that the defendants were actuated by express malice.

[76] Subsequently, at para. 418, the Court referred to *Martin v. Lavigne*, 2011 BCCA 104 for the relevant principles on the defence of qualified privilege. On the issue of qualified privilege, the Court of Appeal said the following in *Martin* at paras. 33-35:

> (a) Was the defence of qualified privilege established?
>
> [33] The defence of qualified privilege arises at common law when the defamatory words are published in a manner and at a time that is "reasonably appropriate in the context of the circumstances existing on the occasion when that information was given": Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130 at para. 147. In Hill, the Supreme Court of Canada summarized the common law defence of qualified privilege as follows:
>
> > [143] Qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself. As Lord Atkinson explained in Adam v. Ward, [1917] A.C. 309 (H.L.), at p. 334:

> ... a privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

This passage was quoted with approval in McLoughlin v. Kutasy, [1979] 2 S.C.R. 311, at p. 321.

[144] The legal effect of the defence of qualified privilege is to rebut the inference, which normally arises from the publication of defamatory words, that they were spoken with malice. Where the occasion is shown to be privileged, the bona fides of the defendant is presumed and the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff.

[Emphasis added.]

[34] The Court went on to identify those circumstances in which the defence of qualified privilege may be defeated:

> [144] ...However, the privilege is not absolute and can be defeated if the dominant motive for publishing the statement is actual or express malice. See Horrocks v. Lowe, [1975] A.C. 135 (H.L.) at p. 149.
>
> [145] Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes, as Dickson J. (as he then was) pointed out in dissent in Cherneskey, supra, at p. 1099, "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. See, also, Taylor v. Despard, [1956] O.R. 963 (C.A.). Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. See McLoughlin, supra, at pp. 323-24, and Netupsky v. Craig, [1973] S.C.R. 55, at pp. 61-62.
>
> [146] Qualified privilege may also be defeated when the limits of the duty or interest have been exceeded. See The Law of Defamation in Canada, supra, at pp. 13-193 and 13-194; Salmond and Heuston on the Law of Torts (20th ed. 1992), at pp. 166-67. As Loreburn E. stated at p. 320-21 in Adam v. Ward, supra:
>
> ... the fact that an occasion is privileged does not necessarily protect all that is said or written on that occasion. Anything that is not relevant and pertinent to the discharge of the duty or the exercise of the right or the safeguarding of the interest which creates the privilege will not be protected.
>
> [Emphasis added.]

[35] In sum, the privilege attaches to the occasion and not to the defamatory words; absent an occasion of qualified privilege, the law will presume the defamatory words were communicated out of actual or express malice. However, where the occasion attracts a qualified privilege, the law will presume the defamatory words were made honestly and in good faith unless actual or express malice is proved.

(ii) Conspiracy

[77] In regards to the tort of conspiracy, I found the following comments in *Cannon v. Funds for Canada Foundation*, 2012 ONSC 399 at paras. 196-200 relevant and useful:

> [196] There are two different ways that the tort of conspiracy may be established:
>
> (a) by proof of "simple motive conspiracy," e.g. that the defendants had a purpose of injuring the plaintiff; or
>
> (b) by proof of "unlawful conduct conspiracy" or "unlawful means conspiracy" - that the defendants were engaging in unlawful conduct that they knew or ought to have known would injure the plaintiff.
>
> [197] In *Harris v. GlaxoSmithKline Inc.* (2010), 2010 ONSC 2326, 101 O.R. (3d) 665, [2010] O.J. No. 1710, Perell J. identified the elements of the tort of conspiracy and the two different ways in which a conspiracy may be committed, and therefore pleaded, at para. 74:
>
> > In Canada, the tort of conspiracy can be committed in two discrete ways that may arise on the same set of facts; namely, (1) by two or more persons using some means (lawful or unlawful) for the predominate purpose of injuring the plaintiff; and (2) by two or more persons using unlawful means with knowledge that their acts were aimed at the plaintiff and knowing or constructively knowing that their acts would result in injury to the plaintiff. The other elements of the tort of conspiracy are: (a) an agreement to injure between two or more persons; (b) acts in furtherance of the agreement to injure; and (c) the plaintiff suffering damages as a result of the defendants' conduct.
>
> [198] Perell J. referred to the leading Canadian case of *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452, in which the Supreme Court of Canada defined the tort of conspiracy as follows, at para. 33-34:
>
> > …[T]he law of torts does recognize a claim against [Defendants] in combination as the tort of conspiracy if:
> >
> > (1) whether the means used by the Defendants are lawful or unlawful, the predominant purpose of the Defendants' conduct is to cause injury to the Plaintiff; or
> >
> > (2) where the conduct of the Defendants is unlawful, the conduct is directed towards the Plaintiff (alone or together with others), and the Defendants should know in the circumstances that injury to the Plaintiff is likely to and does result.
> >
> > In situation (2) it is not necessary that the predominant purpose of the Defendants' conduct be to cause injury to the Plaintiff but, in the prevailing

> circumstances, it must be a constructive intent derived from the fact that the Defendants should have known that injury to the Plaintiff would ensure. In both situations, however, there must be actual damage suffered by the Plaintiff.

[199] In *Agribrands Purina Canada Inc. v. Kasamekas*, [2011] O.J. No. 2786, 2011 ONCA 460, the Court of Appeal identified the following elements of the tort of unlawful conduct conspiracy:

> (a) they act in combination, that is, in concert, by agreement or with a common design;
>
> (b) their conduct is unlawful;
>
> (c) their conduct is directed towards the respondents;
>
> (d) the appellants should know that, in the circumstances, injury to the respondents is likely to result; and
>
> (e) their conduct causes injury to the respondents.

[200] The Court of Appeal confirmed that the "unlawful conduct" component of this form of conspiracy may include conduct that is "wrong in law", but not necessarily actionable in private law. This could include, for example, breach of a criminal statute or breach of a statute that does not confer a civil cause of action. The Court of Appeal stated, at paras. 37-38:

> It is clear from that jurisprudence that quasi-criminal conduct, when undertaken in concert, is sufficient to constitute unlawful conduct for the purposes of the conspiracy tort, even though that conduct is not actionable in a private law sense by a third party. The seminal case of *Canada Cement LaFarge* is an example. So too is conduct that is in breach of the Criminal Code. These examples of "unlawful conduct" are not actionable in themselves, but they have been held to constitute conduct that is wrongful in law and therefore sufficient to be considered "unlawful conduct" within the meaning of civil conspiracy. There are also many examples of conduct found to be unlawful for the purposes of this tort simply because the conduct is actionable as a matter of private law. In Peter T. Burns & Joost Blom, *Economic Interests in Canadian Tort Law* (Markham: LexisNexis, 2009), the authors say this at p. 167-168:
>
> There are two distinct categories of conduct that can be described as comprising "unlawful means": conduct amounting to an independent tort or other actionable wrong, and conduct not actionable in itself.
>
> ...
>
> Examples of conspiracies involving tortious conduct include inducing breach of contract, wrongful interference with contractual rights, nuisance, intimidation, and defamation. Of course, a breach of contract itself will support an action in civil conspiracy and, as one Australian court has held, the categories of "unlawful means" are not closed.
>
> The second category of unlawful means is conduct comprising unlawful means not actionable in itself.
>
> ...
>
> The first class of unlawful means not actionable in themselves, but which nevertheless supports a conspiracy action, is breach of a statute which does

> not grant a private right of action, the very instance rejected in *Lonrho* (1981) by the House of Lords. A common case is a breach of labour relations legislation, and another is the breach of a criminal statute such as the Canadian *Criminal Code*.
>
> What is required, therefore, to meet the "unlawful conduct" element of the conspiracy tort is that the defendants engage, in concert, in acts that are wrong in law, whether actionable at private law or not. In the commercial world, even highly competitive activity, provided it is otherwise lawful, does not qualify as "unlawful conduct" for the purposes of this tort.

[78] In *Golden Capital Securities Limited v. Rempel et al*, 2004 BCCA 565, the BC Court of Appeal addressed both the evidentiary threshold in conspiracy cases, as well as the 'agreement' component of the tort. In this context, the Court stated the following at paras. 45-48:

> [45] The starting point for the law of civil conspiracy is the definition in *Mulcahy v. R.* (1868), L.R. 3 H.L. 306 at 307, quoted by Lord Wright in the *Crofter* case at 461:
>
> > A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means.
>
> [46] It has long been recognized that liability in conspiracy requires proof by compelling evidence. In *Sweeney v. Coote*, [1907] A.C. 221 at 222, the Lord Chancellor said:
>
> > In [an action for conspiracy] it is necessary for the plaintiff to prove a design, common to the defendant and to others, to damage the plaintiff, without just cause or excuse. That, at all events, it is necessary to prove. Now, a conclusion of that kind is not to be arrived at by a light conjecture; it must be plainly established. It may, like other conclusions, be established by inference from proven facts, but the point is not whether you can draw that particular inference, but whether the facts are such that they cannot fairly admit of any other inference being drawn from them.
>
> [47] Thus, to prove a case in conspiracy, it is first necessary to plainly establish, directly or by inference, that there was an agreement between the defendant and one or more others. That does not mean an agreement in the contractual sense. A defendant must be shown to have agreed in the sense of having combined or conspired with one or more others to carry out a common design or a means of achieving a common objective, which is then implemented with resulting injury to the plaintiff.
>
> [48] Where the means are unlawful, there must also be proof that the unlawful conduct was directed toward the plaintiff and that the likelihood of injury to the plaintiff was or should have been known to the defendant.

Analysis:

[79] To be clear, it is not the function of this Court to decide all the disputes which were referenced in the course of the trial. For example, the matter of the termination of Daniel Alexis as a councillor, the matter of Georgina Alexis' claim for compensation as acting head of the Education Department, and the Vincent Joseph grievance are all matters which were raised but which I have no intention of commenting upon. Moreover, it is not the purpose of this Court in these reasons to adjudicate the allegations made against the plaintiff (principally in the Drury memorandum), nor is it to pass judgment upon the manner in which Mr. Drury performed his duties as Executive Director.

[80] Specifically, in the course of trial, plaintiff's counsel sought to have the court take into consideration the decision of an adjudicator who conducted a proceeding to deal with Vincent Joseph's grievance as to how his termination was dealt with by the Band. In his decision, the adjudicator made certain findings including, presumably, findings of fault. I declined to consider that decision, on the basis that the conclusions of the adjudicator were based on the evidence he heard and his assessment of it. In my view, there are, in the circumstances good policy reasons why this court should not necessarily adopt the adjudicative findings and conclusions made by others in this case, particularly because there is simply no need to do so.

[81] However, I will make certain observations about the parties, as I consider that to be a necessary element of my decision. In addition, I believe that some commentary by this Court is appropriate in order to give context to the decision I have reached, including background for credibility findings that I have made.

[82] I will commence with the plaintiff Thomas Alexis.

[83] I found Mr. Alexis to be a sincere witness and a person who appears to be committed to doing the right thing. He has spent much of his time being involved in First Nation's issues, both locally and provincially. He appears to have considerable drive and determination in those pursuits.

[84] In terms of his credibility, I do not believe that he intended to be anything other than honest. At the same time, I make two observations. First, he was not a particularly reliable historian: he made mistakes in his recounting of events, but I do not believe those were intentional untruths made to deceive the Court. More relevantly, it is my conclusion that he very much sees events from his own particular perspective and has a high degree of confidence that his view is correct. He also has a rather autocratic view of the way the Nation's affairs should function. He sees the Chief's role as very much that of leader, with the councillors' roles being quite minor, relatively speaking. My sense is that he did not spend a great deal of time or effort attempting to maintain open communications with all the members of his Band and that he tended to see his own authority as being absolute. In that regard, it seems clear to me that some of the Band members, and certainly some of the Councillors, were not always in agreement with the manner in which he was discharging the duties of his office, but he paid little attention to those views.

[85] Although he appears not to have been aware of it, I am quite convinced that many of the decisions he made, and the manner in which he conducted himself as Chief, had a certain alienating effect upon some members of the Band.

[86] With regard to the defendant councillors, they are very much four separate individuals. They vary in age and attitude.

[87] Mr. Hallman, age 40, appears to bring a more "new generation" approach to Council rule. He seems to be progressive. My sense is that he had difficulty with the rather autocratic style that the plaintiff espoused. In terms of credibility, I found Mr. Hallman to be an honest and reliable witness. I accept his evidence that he was surprised by the manner in which the plaintiff terminated Mr. Drury and that he considered it to have been improper due to a lack of consultation with the councillors. It was in that spirit that Mr. Hallman appears to have requested that Mr. Drury provide the "other side of the story," a request which resulted in the relevant memorandum.

[88] The defendant Sebastian Anatole is 82 years of age. My impression of him is that he was an honest person and that he too was troubled by the rather unilateral measure that the plaintiff took to terminate Mr. Drury. I do not find myself inclined to believe that Mr. Anatole had any agenda in mind with respect to deposing the plaintiff.

[89] The defendant Herbert Felix did not impress me as a good witness. Based on the totality of the evidence, and particularly his testimony, it is my view that he was the most inclined of the defendant councillors to see the plaintiff terminated if reason presented itself. Whereas I believe that the other defendant Councillors, although they were quite concerned by the plaintiff's termination of Mr. Drury and the manner in which it was done, did not set out with a determination to see that the plaintiff was stripped of his office, my sense is that Mr. Felix was more ready to have the fight and see the plaintiff terminated. His approach and demeanour seemed to me to be less balanced and thoughtful than the other councillors.

[90] Ralph Pierre, age 45, is the fourth of the defendant councillors. His testimony is that he learned of the termination of Mr. Drury from Mr. Hallman and that he did not believe it was right. It was his view that there should have been a paper trail and that the Council should have been involved in the issue. His testimony is that he did not go to the November 30 meeting with a plan to oust the plaintiff. Generally, I found his evidence to be credible and plausible.

[91] Mr. Drury also testified. His evidence is somewhat difficult to assess in that he evidently has suffered a head injury which has adversely affected his memory. Accordingly, he claimed to have no clear recollection of many of the events in issue upon which he was questioned.

[92] I did not form any clear sense of Mr. Drury's credibility as a witness. I found nothing that would specifically cause me to doubt the veracity or reliability of what he said. At the same time, given his memory deficit, he did not impress me as a strong witness.

[93] Another matter upon which I wish to comment is the uncertainty of the constitutional structure relating to the Band's governance, an issue which I adverted to earlier in this decision. The issue, it seems to me, is neatly encapsulated by the apparent conviction of the plaintiff that he operated with a broad grant of authority, and that the councillors are really without any significant authority, other than at the monthly meeting. The best example of his approach to matters is the termination of Mr. Drury.

[94] The uncertainty of the constitutional structure, together with the fact that there were many issues of ongoing grievance on both sides (i.e. the plaintiff was unhappy with many things that Mr. Drury had done; tacit issues between the plaintiff and a number of the Councillors; the Councillors were displeased with many of the things the plaintiff had done or was seen to be doing etc.), provided a fertile ground for the regrettable events which have transpired, including this litigation.

[95] With all that said, I will deal first with the plaintiff's allegation that the defendant Mr. Drury defamed him by producing the November 29 memorandum for the Council.

[96] I am satisfied that the impugned contents satisfy the definition of defamation:

a. the impugned words were defamatory in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;

b. the words in fact referred to the plaintiff; and

c. the words were published, meaning they were communicated to at least one person other than the plaintiff.

These elements are established on a balance of probabilities. Accordingly, falsity and damages are presumed unless the defendant is able to advance a defence to avoid liability.

[97] In this case, the defendant Mr. Drury contends that he is properly entitled to the benefit of the defence of qualified privilege. Specifically, he submits that he made the statements in the context of a relationship where he had a duty which required the communication of the information. In addition, he notes that the intended recipients had a reciprocal interest in receiving it. In this case, he says that in his office as Executive Director, he answered to the Chief and Council. He prepared the memorandum at the specific request of a member of the Band Council: it was prepared in response to a Councillor's request that relevant information be provided so that the Council could exercise its legitimate role to assess the propriety of Mr. Drury's termination.

[98] Assessment of the merits of this defence is, to some extent, contingent upon this Court's assessment of the roles and responsibilities of the Council members.

[99] As I have indicated, the plaintiff's view of the matter is that the councillors' authority is limited. As a result, he argues that the councillors have a very limited authority that it certainly did not extend to a right to investigate the Drury termination, nor did they have a right to reverse that termination.

[100] In my respectful view, the most reasonable assessment of the role and authority of the councillors is more substantial than the plaintiff contends.

[101] On my review of the material which is before this Court with respect to the manner in which the Chief and Council act and exercise their authority, it is apparent that the members of the Council have a meaningful and significant role to play in the affairs of the Band and its governance. As an example, the evidence that the Executive Director is treated as an appointee of the Chief and Council reasonably implies a substantive role for the latter. Accordingly, when the plaintiff unilaterally terminated Mr. Drury without having consulted in any way with the councillors, it seems to me a reasonable conclusion that he acted beyond his authority. In my view, it is significant that, when he delivered the notice of termination, the plaintiff told Mr. Drury that he had consulted with the members of the Council. That suggests

to me that he recognized that such a consultation was a proper element of the decision-making process.

[102] At any rate, it is my finding that the members of the Council had a legitimate and lawful right to make proper inquiries into the circumstances of the termination. Here, that entailed requesting that Mr. Drury provide them with a memorandum setting out his side of the story. I cannot find that that was unreasonable. Accordingly, I conclude that Mr. Drury can properly be said to have prepared the memorandum pursuant to a duty to do so and that the Councillors had a reciprocal interest and duty to receive it.

[103] As a result, I find that the defence of qualified privilege has been made out.

[104] I also consider it relevant, although not determinative, that the memorandum was clearly marked private and confidential, and that its dissemination was carefully circumscribed. Ironically, the only copy of the memorandum that appears to have left the meeting, and possibly entered broader circulation, was that of the plaintiff.

[105] Of course, qualified privilege is not without limit. It cannot be maintained where the dominant motive for publishing the statement is actual or express malice. Similarly, it cannot be maintained if the limits of the duty or interest have been exceeded.

[106] In my view, the statements in memorandum were not motivated by malice.

[107] Certainly Mr. Drury was upset and probably angry at the manner in which he had been terminated. The memorandum accused him of serious misconduct: mismanagement of funds and making false reports. He had been summarily fired from his job without the usual type of process or notice and with no meaningful opportunity to answer the charges. As well, the history of dealings between Mr. Drury and the plaintiff had been a troubled one. However, it is my view that he was entitled to have what he considered to be his version of events made known to the

members of the Council, and that it was in pursuit of that goal that he prepared his memorandum.

[108] The argument could be made that the extensive nature of the information he provided, including references to suspected or rumoured misconduct, was excessive and thus malicious. Upon reflection, I decline to find that to be the case.

[109] The second basis upon which the qualified privilege defence may be defeated is where the impugned material exceeds the limits of the duty or interest to make the communication.

[110] Again, a similar argument to the one outlined above can be made here: that the extent of the information Mr. Drury provided, flavoured quite substantially as it was with an element of his own opinion, was excessive in the circumstances.

[111] My view remains the same. If one accepts that Mr. Drury had been invited to provide all relevant material, then the scope of his permitted speech was broad.

[112] I am unable to conclude that Mr. Drury’s memorandum exceeded the limits of the qualified privilege he was afforded in the circumstances and, accordingly, I conclude that the defence applies.

[113] In the result, the tort of defamation is not made out.

[114] I turn now to the second branch of the plaintiff's allegations, that of conspiracy.

[115] At its most basic level, in order for the claimant to succeed, it is necessary that I find it to be proven, to the standard required, and by compelling evidence, that two or more persons agreed to do an act, to take measures, to remove the plaintiff from his position as Chief.

[116] At this stage of the analysis, I will focus on that essential element, the agreement. I will not deal with the unlawful act/lawful act by unlawful means aspect. In my view, that is not necessary.

[117] As the authorities establish and common sense supports, proof of the agreement may be accomplished by direct evidence, showing clearly and cogently that there was a common intent or, in other words, a meeting of the minds. However, such clarity will often not be available. In those cases, the court may examine all of the relevant evidence and draw reasonable inferences in order to establish that there was an agreement.

[118] In the matter at bar, there is no reliable direct evidence that an agreement was reached. Instead, the plaintiff urges the Court to look at the totality of the evidence and conclude that the most reasonable inference to be drawn is that there was an agreement reached by the alleged conspirators to oust the plaintiff from his position as Chief.

[119] I am unable to accede to that submission. To my mind, subscribing to the plaintiff's view of events quite substantially requires accepting his interpretation of a number of events and relationships that are not satisfactorily established: there is a circularity to the analysis that is profoundly tenuous. It is based in part on the notion that each of the defendant counsellors had been drawn into circumstances where they were able to be manipulated at will by Mr. Drury. It is based on the proposition that each of the defendant counsellors were minded to depose the plaintiff and that they seized upon the Drury termination as the occasion to make that happen.

[120] The perspective which the plaintiff advocates is based very substantially upon a belief that the defendant counsellors were all plotting to bring about his demise and finally had their chance. The viewpoint that the plaintiff asks this Court to embrace has an element of paranoia that I am convinced is unjustified on a fair view of the facts.

[121] My assessment is that, although the plaintiff seems not to have appreciated it, some of the counsellors had concerns and reservations about how he was performing his role. It is a fact that he had other obligations in other areas of the province, such that he was absent for periods of time that were noticed by others. My sense is that he did not put a great deal of effort into working collaboratively with the elected counsellors. I also believe that the counsellors did not share his view that Mr. Drury was doing a bad job as Executive Director.

[122] Accordingly, when the counsellors learned that the plaintiff had unilaterally terminated Mr. Drury, it is by no means surprising that they decided to investigate the termination. That interpretation of events more reasonably accords with the totality of the evidence than the theory that they began, after hearing of the termination, a single-minded campaign to oust him as Chief. The councillors were simply trying to responsibly exercise their authority as Council members.

[123] In short, I find that the element of agreement has not been proven. In the result, the claim of conspiracy must fail.

Conclusion:

[124] The claims of defamation and conspiracy are dismissed.

[125] In closing these reasons, I feel obliged to make some comments regarding the tremendously regrettable circumstances which surround the case at bar.

[126] The plaintiff is, as best I can tell, a decent man who was working hard to serve his Nation and First Nation causes. I have no doubt that the political realities of administering governments in a relatively small Band in a way that fairly deals with all of its members is challenging. It seems to me that Mr. Alexis failed to appreciate the need to be responsive and respectful of the concerns of others, and he chose not to work in a sufficiently collaborative manner with the elected counsellors. In the result, fractures and dissension developed.

[127] Although it is not for this Court to formally pass judgment on his decision to terminate Mr. Drury as he did, it seems to me that, at a minimum, it could have been handled much more wisely. Similarly, the proceedings of the November 30 meeting of the counsellors, ousting the plaintiff from his office, could have benefited from a less confrontational and more thoughtful approach by all involved, and in that observation I most certainly include the Councillors. As matters played out, much harm was done, harm which I believe will have long-term implications.

[128] The Band deserved better.

[129] The successful parties are entitled to their costs. In this case, that requires the plaintiff to pay the costs of the defendants at Scale B.

[130] I will leave it to counsel to deal with the matter of costs if they are able to resolve the details. If necessary, arrangements may be made for submissions to be provided to the Court.

"J. Williams, J."