

Court File No.: CV-23-91584

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

PAUL APSIMON

Plaintiff/Defendant by Counterclaim
(Responding Party)

- and -

ELISA HATEGAN

Defendant/Plaintiff by Counterclaim
(Moving Party)

FACTUM OF THE RESPONDING PARTY, PAUL APSIMON
(Motion pursuant to s. 137.1 of the *Courts of Justice Act*)

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PART I – OVERVIEW

1. This is a motion brought by the Defendant, Elisa Hategan, pursuant to s. 137.1 of the *Courts of Justice Act*¹. The Plaintiff Paul ApSimon’s claim in defamation is based on serious criminal allegations made by Hategan, namely that he is a sexual predator, acted sexually inappropriately, grooms minors, and encourages students to engage in heavy drinking and sexual activities.

2. These allegations are, arguably, amongst the very worst of accusations that can be levelled against an individual, and are particularly damaging when made against a coach, such as Paul.

3. There is not a single shred of evidence that corroborates Hategan’s allegations against Paul. To the contrary, they have been directly refuted by one of the women said to have been targeted by him. Instead, Hategan’s claims are based on suspicion, speculation, conspiracies and fabricated facts, which is not a new practice to the defendant, who has engaged in similar frivolous and vexatious behaviour in other lawsuits, requiring this Court to order a permanent injunction to restrain her behaviour.²

4. Anti-SLAPP legislation was not enacted to dismiss actions such as this, where an individual’s reputation is severely damaged without any justification. Defendants cannot make serious, baseless allegations at the expense of a person’s reputation under the guise of speaking out in the public interest. Those harmed must have the opportunity to vindicate their reputation and clear their name.

PART II – FACTS

A. The Parties

5. Paul was a coach of the Canadian Olympic fencing teams at the 2000, 2012, 2016 and 2020 Summer Olympics. Prior to coaching, he was a fencing athlete who represented Canada at World

¹ *Courts of Justice Act*, RSO 1990, c C.43, [s. 137.1](#) (“CJA”).

² *Hategan v Farber*, 2021 ONSC 874 (“Hategan”), at [paras 65-66, 151](#).

and Commonwealth Championships. He is the recipient of the Queen Elizabeth II Diamond Jubilee Medal and was named Coach of the Year in 2017 by the Canadian Fencing Federation. He is the Head Coach, owner and operator of Ottawa Fencing, a fencing club in the City of Ottawa.³

6. Hategan has a significant following online. She is a former member of the Heritage Front, a white supremacist group, who later defected. She describes herself as a speaker on various social issues and is active online as a “writer, journalist, speaker and activist”.⁴

7. During her tenure at the University of Ottawa, in the mid to late 1990s, Hategan participated in fencing as a member of the Excalibur Fencing Club (the “**Club**”).⁵ She was never a member of the University of Ottawa Varsity Fencing Team (the “**Team**”).⁶ The distinction between the two is relevant to Hategan’s defamatory allegations.

8. Paul was not a coach of the Club. His coaching duties were limited to the Team fencers. In his capacity as Assistant Coach of the Team, he was mostly responsible for administrative functions.⁷ The Club Coach was the individual that led the technical coaching of both the fencing Team and the Club, who trained together at a shared facility on campus (even though members were a mix of students and external community).⁸ It is the Team Head Coach (not Paul) that selected the individuals that would be part of the Team.⁹

B. The Defamatory Posts

9. On February 21, 2023, Hategan posted an article on her website entitled: “*Truth is Stronger than a Sword - What the Canadian Fencing Federation Doesn’t Want You to Know will Shock You*”

³ Affidavit of Paul ApSimon, sworn February 19, 2023 (“Paul Affidavit”) at paras 2–5. [Motion Record, p. 57-58].

⁴ Affidavit of Elisa Hategan, sworn November 29, 2023 (“Hategan Affidavit”) at para 5.

⁵ Paul Affidavit at paras 12, 15 and 21. [Motion Record, p. 59-60].

⁶ Paul Affidavit at paras 12, 15. [Motion Record, p. 59]. Paul Affidavit at Exhibit A. [Motion Record, p. 73].

⁷ Paul Affidavit at paras 16–17 and 21. [Motion Record, p. 59-60].

⁸ Paul Affidavit at para 22. [Motion Record, p. 60].

⁹ Paul Affidavit at para 22. [Motion Record, p. 60].

(the “**Article**”).¹⁰ Hategan also utilized her public Twitter account to further disseminate the Article.¹¹

10. The twenty-one (21) page “article” contains a hodgepodge of allegations against several individuals, but the principal target is Paul. Hategan makes numerous allegations against him. Although the Article should be understood and read in its entirety, the following are some of the most harmful and scandalous expressions made by Hategan (our emphasis added throughout):

- a. ***The student athletes who Paul was sleeping with always got chosen for the University of Ottawa varsity team, even ahead of better, more experienced fencers. Deanna, for example, got on the varsity team despite being a beginner; [...] (Deanna had been Paul’s student when he was her high school gym teacher, [...])***
- b. ***[“Deanna” would] tell me all her stories about Paul – how they snuck around having sex on campus, her accidental pregnancy, and how they did it in the stairwell of the Sports Centre/Athletic Dept building.***
- c. ***Cottage parties at Paul’s cottage in the Gatineaus – everyone was encouraged to drink heavily. In winter, they got naked to do snow angels [...] There was no professionalism or inquiring if there were any underage people there, despite the fact that many of us were 1st year students.***
- d. ***Paul created an uncomfortable environment where this activity was part of our “teambuilding” training. I felt that I had to appear “cool” with this behaviour and couldn’t speak up or risk being viewed as not a “team player”, particularly since the “easy-going” girls who slept or got naked in front of him seemed to be rewarded with more lessons and personalized coaching.***
- e. ***The “easy-going” girls who skinny-dipped and got naked at the cottage were chosen for varsity team, along with his lovers (Maddy and Deanna).***
- f. ***Paul and Manuel created a self-fulfilling prophecy where they chose the girls they believed had the most aptitude (coincidentally, the ones who slept with Paul always seemed to be included) and gave them more training and free lessons, and then ignored and under-coached the ones they didn’t like or who they didn’t feel were as talented. [...]***
- g. ***Imagine yourself as a coach, and 2 out of the 3 girls you’re coaching for varsity (one being 18 yrs old, the other one about 20) are vying jealously among themselves for your attention. You have to juggle sexual commitments, while ensuring nobody complains to university administration and nobody catches you while you have a quickie with one of them in the***

¹⁰ Paul Affidavit at Exhibit B. [Motion Record, p. 111].

¹¹ Paul Affidavit at Exhibit C. [Motion Record, p. 134].

*stairwell of the Athletic Centre before practice. [...] only the "special" girls get invited to the Coach's house for free private lessons.*¹²

11. The defamatory sting of the expressions is clear: that Paul has committed acts of sexual impropriety and is a sexual predator who has groomed his “special girls” into sleeping with him in exchange for preferential treatment. The Article suggests that Paul favoured those who slept with him – and to get ahead on the team, one needed to sleep with Paul.

12. As will be outlined below, Hategan subsequently admitted in her own affidavit that the defamatory sting of the article was not true: “*I have never alleged that Paul was a deliberate sexual predator, nor do I think of him as being one.*”¹³ Her cryptic and deluded writing (both in the Article and her affidavit) speaks to the speculative, conspiratorial, wordsmithing and vexatious behaviour that has been criticized by this Court in other litigation.¹⁴

13. In the Article, Hategan also provides hyperlinks to two blog posts from 2008 and 2012 she says were written about Paul that repeated the same allegations of favoritism and preference for students who slept with the coaches. At the time those posts were originally made, she had not named him in those posts.¹⁵

C. Paul’s Response

14. The Article was brought to Paul’s attention by others.¹⁶ He was completely shocked by the allegations levelled by Hategan. He was also concerned by the fact that Hategan had made a veiled attempt at concealing the identity of the women she was referring to. Although Hategan says she “changed/redacted” the name of all female athletes involved, she replaced the name of Paul’s ex-wife, “Dina” by “Deena”. Dina figures prominently in Hategan’s allegations and provided an

¹² Paul Affidavit at Exhibit B. [Motion Record, p. 111].

¹³ Affidavit of Elisa Hategan, sworn July 7, 2024 (“Hategan Second Reply Affidavit”) at para 6.

¹⁴ Hategan at [paras 65-66, 151](#).

¹⁵ Paul Affidavit at Exhibit B. [Motion Record, p. 111].

¹⁶ Paul Affidavit at para 35. [Motion Record, p. 62].

affidavit in support of Paul's position on this motion.

15. On March 2, 2023, Paul responded to the allegations made against him by posting the following message to his modest following of 214 on his X (formerly Twitter) account:

*To my fencing family,
I have been made aware of a defamatory blog that was posted on Feb 21, 2023. The blog is littered with lies, defamatory comments and twisted truths. I feel terrible for all those named and targeted in this blog, no one should ever be treated like this. [...] It is unfortunate that the confidential report was posted as it has tarnished what was supposed to have been a safe investigatory process for all parties, including a minor at the time. This process is meant to be safe for all. I have retained legal counsel and we are pursuing this matter. Every lie and defamatory comment will be fully pursued. [...] I look forward to my day in court and having the truth behind all these defamatory allegations made public.¹⁷*

16. Hategan has counter-claimed against Paul, in part based on this expression responding to her defamatory Article, but also for other bizarre claims, including for Paul referring to a CanLII decision and a National Post article.¹⁸

D. Procedural History

17. Paul issued a Statement of Claim on March 9, 2023, under the Simplified Rules.¹⁹

18. Hategan filed a 120 paragraph Statement of Defence and Counterclaim on May 30, 2023, in which she, in what can only be described as a “rant”, improperly argues the case and appears to be trying to justify her own notoriety by, *inter alia*, citing from a 1994 judgment about her.²⁰ The pleading is replete with irrelevant and scandalous allegations, including that Paul is somehow responsible for encouraging a “harassment campaign”²¹, allegedly, “waged against” Hategan online²², interference with her economic relations²³, and “over a dozen 1-star ratings left on her

¹⁷ Paul Affidavit at para 64. [Motion Record, p. 68].

¹⁸ Statement of Defence and Counterclaim, served on May 30, 2023 at para 85. [Motion Record, p. 43].

¹⁹ Statement of Claim, issued on March 9, 2023. [Motion Record, p. 3].

²⁰ Statement of Defence and Counterclaim at paras 70–71. [Motion Record, p. 39].

²¹ Statement of Defence and Counterclaim at paras 95-97, 109, 114. [Motion Record, p. 46, 49 and 50].

²² Statement of Defence and Counterclaim at para 96. [Motion Record, p. 46].

²³ Statement of Defence and Counterclaim at para 109. [Motion Record, p. 49].

Amazon book page”²⁴.

19. Hategan then served a Notice of Motion on November 20, 2023.²⁵ In bringing this screening motion, Hategan has filed four (4) lengthy affidavits, dated November 29 and 30, 2023, March 11, and July 7, 2024. Hategan has presented numerous contradictory statements in her affidavits, attesting to her inconsistent narrative and unreliable memory regarding the events in question. When evidence came to light proving that what she had previously sworn in her affidavit to be incorrect, she attempted to wordsmith her way out of her contradictions. A summary of how some of Hategan’s allegations evolved in her affidavits is attached as Schedule C to this factum.

20. There have been no cross-examinations on the various affidavits filed by the parties. This is an action commenced under Rule 76 and cross-examination on affidavits are not generally allowed in such proceedings.²⁶

PART III – ISSUES

21. Paul concedes that the Article relates to a matter of public interest for the purposes of s. 137.1(3) and that this action arises from that expression. This is because the sole inquiry under s. 137.1(3) is with respect to subject-matter of the expression. Here, the Article’s subject-matter deals with allegations of abuse in competitive sports, which is validly a matter of public interest.

22. In Paul’s view the issues to be determined in this motion are therefore as follows:

- a. Should the Court limit the weight it gives to Hategan’s four affidavits?
- b. Are there grounds to believe that Paul’s claim in defamation has substantial merit?
- c. Are there grounds to believe that Hategan has no valid defence?
- d. Does the public interest favour allowing Paul’s simplified action to proceed so that he can vindicate his reputation?

²⁴ Statement of Defence and Counterclaim at para 119. [**Motion Record, p. 51**].

²⁵ Notice of Motion, served on November 30, 2023.

²⁶ *Rules of Civil Procedure*, RRO 1990, Reg 194, s [76.04](#).

23. The Plaintiff submits that the answers to these questions should be “yes”.

PART IV – ARGUMENT

A. Hategan’s Affidavits Contain Improper Evidence

24. Although it obvious from a plain reading of the various affidavits Hategan has tendered in this case, Paul submits that no weight (or limited weight) should be given by this Court to a significant portion of the “evidence” she provides.

25. The statements contained in the impugned paragraphs (listed in Schedule D to this affidavit) are legal argument, constitute improper opinion, or are simply irrelevant. It is trite law that it is for the trier of fact and not a witness to form opinions and draw inferences and conclusions.²⁷ The statements made in these paragraphs are often legal positions or arguments, which are improper for an affidavit.

B. The S. 137.1 Test

26. Once the public interest hurdle is proved (which is conceded in this case), the responding party has the burden to establish the following at the second step of the s. 137.1 analysis:

- a. There are grounds to believe that (i) the proceeding has substantial merit (ii) the moving party has no valid defence (referred to as the “**merits-based hurdle**”); and,
- b. The harm “likely to be suffered” by the respondent is sufficiently serious such that the public interest in allowing the proceeding to continue outweighs the public interest in protecting the expression (the “**weighing exercise**”).²⁸

C. Paul’s Claim Has Substantial Merit

27. At this stage of the examination under s. 137.1, a full adjudication of the claim is not to be completed and the Court should guard against conducting a summary judgement type analysis.²⁹

²⁷ *Ismail v Fleming*, 2018 ONSC 6780, at [para 19](#).

²⁸ *1704604 Ontario Ltd. v Pointes Protection Association*, [2020 SCC 22](#) (“*Pointes SCC*”) at [para 17](#).

²⁹ *Pointes SCC* at [paras 37, 52](#).

A plaintiff must instead merely satisfy the Court “*that there are grounds to believe that its underlying claim is legally **tenable** and supported by evidence that is reasonably capable of belief such that the claim can be said to have a **real prospect** of success*”.³⁰

28. A real prospect of success signifies that the outcome of the underlying proceeding tends to weigh more in favour of the plaintiff, while not amounting to a demonstration of likelihood of success.³¹ It is recognized that there is no guarantee that Paul will be ultimately successful, but that is not the test he must meet.

29. The Court must also consider that anti-SLAPP motions will often be heard at an early stage of litigation. Some leeway will need to be given to a plaintiff to recognize that they may not have all evidence that would reasonably be expected at that point in the proceeding.³² The Court of Appeal has urged that “*a motion judge should only engage in a limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep dive into the evidence to a later stage*”.³³

30. In this case, this motion was brought prior to any oral discoveries. Paul’s evidence must therefore be examined in light of the limited evidentiary record available at this stage. It bears emphasis that Paul has no obligation to put his best foot forward on this motion and must not be required to do so.

31. The test to establish a defamatory statement is easy to meet.³⁴ A defamatory statement is: *One which has the tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in this estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or dis-esteem*³⁵.

³⁰ *Pointes SCC* at [para 54](#). (Emphasis added)

³¹ *Pointes SCC* at [para 49](#).

³² *Hamlin v Kavanagh*, 2019 ONSC 5552, at [para 42](#).

³³ *Subway Franchise Systems of Canada, Inc. v Canadian Broadcasting Corporation*, 2021 ONCA 26 (“*Subway ONCA*”), at [paras. 55, 99](#).

³⁴ *Joanne St-Lewis v Denis Rancourt*, 2014 ONSC 3209 (“*Joanne St-Lewis*”) at [para 2](#).

³⁵ *WIC Radio Ltd. v Simpson*, 2008 SCC 40 (“*Simpson*”) at [paras 67-68](#).

32. The meaning of the words may be determined from the surrounding circumstances, as they would be understood by the ordinary, reasonable, and fair-minded viewer or reader.³⁶ However, it is not necessary that everyone understands the words in a defamatory sense; it suffices that a reasonable person to whom they were published would understand them in a defamatory sense.³⁷ This Court should not engage in the type of wordsmithing or parsing that is proposed by Hategan. Similarly, the test is objective, not subjective: it does not matter what Hategan meant, only what is understood by the reasonable person.³⁸

33. On the applicable burden, there are grounds to believe that Hategan's expressions state or suggest that Paul has acted inappropriately and abusively. At the very least, her expressions plainly state that he granted special advantages to athletes that slept with him. This does not even begin to cover the other statements relating to providing alcohol to underage students, encouraging students to use alcohol, psychologically abusing athletes that he coached, and that he held biases against people who identify as being homosexual.

34. The statements published by Hategan defame Paul's character, honesty, and integrity. There is no doubt that a reasonable person would tend to think less of Paul after reading the Article. The fact that this is not conceded by Hategan on this motion is remarkable.

D. Hategan Has No Valid Defence

35. At this stage of the analysis, the Court must find that the trial judge **could** reasonably reject the defenses raised.³⁹ The plaintiff does not have to show that the defence has no chance of success, but rather that it is possible that it will not succeed.⁴⁰ The Court of Appeal has confirmed that a

³⁶ *Botiuk v Toronto Free Press*, 1995 CanLII 60 (SCC), [1995] 3 SCR 3 (“*Botiuk*”) at [para 62](#).

³⁷ *Lawson v Baines*, 2012 BCCA 117 at [para 27](#); *Joanne St-Lewis* at [para 2](#).

³⁸ *Qiao v Owners, Strata Plan LMS 3863*, 2020 BCSC 818, at [para 149](#).

³⁹ *Pointes ONCA* at [paras 83-84](#); *Lascaris v B'nai Brith Canada*, 2019 ONCA 163 (“*Lascaris*”) at [para 23](#); *Di Franco v Bueckert*, 2020 ONSC 1954 (“*Di Franco*”), at [para 65](#).

⁴⁰ *Lascaris* at [para 33](#). See also *Di Franco* at [para 66](#).

plaintiff meets the threshold in this prong of the test if they show that the defence could “*go either way*”.⁴¹

36. Hategan raised several grounds in her Statement of Defence and her factum: justification, fair comment, responsible communication, and a limitations defence, which are addressed below.

i. There are grounds to believe the defence of justification will fail

37. The statements complained of are presumed to be false once a *prima facie* showing of defamation has been made.⁴² To successfully invoke the justification defence, Hategan has the burden of adducing evidence to show the substantial truth of her statement.⁴³ Even if Hategan proves that the publication only contains accurate facts (which is denied), if the sting of the libel is not shown to be true, the justification defence will fail.⁴⁴

38. As explained above, the most damaging expressions assert that Paul is a sexual predator, seeking sexual favours from young woman and girls to further their opportunities in fencing.

39. Hategan’s “careful research” into the matter solely comprises of her own interpretation and recollection of events, from her memory or her diaries, and from one unidentified athlete (who has not sworn an affidavit for this motion). Crucially, Hategan has not provided any sworn evidence from the individuals she claims to have consulted, rendering all of their evidence pure hearsay.

40. Hategan also claims to rely on a safe sport report from 2021 which does not confirm any of the allegations she has unjustly made towards Paul. That report deals with allegations into another coach (not Paul’s) coaching style and technique. This “evidence” adduced is insufficient to prove the sting of the libel: the Paul committed sexual impropriety.

41. It would not be the first time that Hategan relies on speculation and conspiracies in court

⁴¹ *Bondfield Construction Company Limited v The Globe and Mail Inc.*, 2019 ONCA 166 at [para 15](#).

⁴² *Bent v Platnick*, 2020 SCC 23, (“*Platnick*”) at [para 107](#), citing *Grant v Torstar Corp.*, 2009 SCC 61, (“*Grant*”) at [para 28](#).

⁴³ *Platnick*, at [para 107](#), citing *Grant*, at [para 28](#).

⁴⁴ *Platnick*, at [para 107](#), citing *Grant*, at [para 28](#).

proceedings, as was this Court's conclusion in *Hategan v Farber*.⁴⁵

42. Finally, both Paul's and Dina's sworn affidavits disprove the allegations brought forth in Hategan's Article. They have both denied the allegations of underage drinking⁴⁶, Paul seeking out students for sexual favours⁴⁷, and the scandalous allegation concerning Dina's pregnancy resulting in an abortion⁴⁸. Additionally, Paul did not host parties as fencing team bonding events, did not have a cottage in Québec, the cottage parties were not sexually charged, and was unaware of Hategan's sexual orientation⁴⁹.

43. Dina's affidavit on its own is a sufficient basis to find that there is a ground to believe that the defence of justification will fail.

ii. There are grounds to believe the defence of fair comment will fail

44. To successfully invoke the defence of fair comment, the defendant must prove that: a) the comment is on a matter of public interest; b) the comment is based on facts; c) the comment is recognizable as a comment; d) any honest person would express that opinion on the proved facts, and; e) the defendant was not subjectively motivated by express malice.⁵⁰

45. In her factum, Hategan simply suggests that the allegations of "bullying" and "improper behaviour" are comment.⁵¹ She does not address any of the more serious and specific allegations she made in the Article (because they are not capable of receiving protection from this defence).

46. There are grounds to believe that Hategan cannot avail herself of this defence, for the reasons outlined below.

47. **False factual basis:** as detailed above, there are various issues with the truthfulness of the

⁴⁵ *Hategan* at paras [135](#), [137](#). See also Paul Affidavit at Exhibit F. [**Motion Record**, p. 153].

⁴⁶ Affidavit of Dina Vitale, sworn on May 2024 ("Dina Affidavit") at para 41. [**Motion Record**, p. 178].

⁴⁷ Dina Affidavit at para 7. [**Motion Record**, p. 172].

⁴⁸ Dina Affidavit at para 36. [**Motion Record**, p. 177].

⁴⁹ Dina Affidavit at para 44. [**Motion Record**, p. 179].

⁵⁰ *Simpson* at [para 28](#).

⁵¹ *Hategan's Factum* at para 60.

“facts” alleged by Hategan. To invoke the defence of fair comment, the comment must be based on true facts, not upon invented or misstated ones. Invented facts, even if the defendant believes them, cannot be the basis of a fair comment. Moreover, if the factual foundation of the comment is false, the defence is not available.⁵²

48. Hategan has misstated and invented many facts that underpin her opinions, including: (a) that Paul was Head Coach and held a position of power including picking Team members; (b) Paul was Dina’s high school teacher; (c) Paul accidentally impregnated Dina; (d) Paul slept with student athletes, and these are the students that would be picked on the Team; (e) Paul hosted team initiation type parties at his cottage in Gatineau with heavy drinking and skinny-dipping; and (f) anyone who spoke out against him was kicked off the team.

49. There is no support for these allegations. They are contradicted by Paul and Dina. A comment cannot be fair if the factual foundation is false.⁵³

50. **Hategan’s Article is written as a statement of fact rather than a comment**⁵⁴: Hategan did not state what she thought or believed, based off her own observations, but rather describes everything as if they were facts that truly happened. For example, she stated in the Article that Paul did sleep with students and favoured them for the Varsity team, that he was Dina’s high school teacher, that he did impregnate her and that he did host sexually charged team-bonding parties, encouraging heavy drinking with underage students, which are blatantly false, as set out above.

51. **The objective honest-belief test is not met**: the test is whether anyone could honestly have expressed the defamatory comment on the proven facts, no matter how outrageous it may be.⁵⁵ If it were not for the Article, and Hategan’s erroneous manipulation and fabrication of the

⁵² *Simpson* at [para 31](#)

⁵³ *Simpson* at [para 31](#).

⁵⁴ *Ross v Beutel*, 2001 NBCA 62, at [para 56](#), affirmed in *Simpson* at [para 26](#).

⁵⁵ *Simpson* at [para 49](#).

facts, no one would have expressed the defamatory comment about Paul.

52. The proven facts are that (a) Paul was an assistant coach completing administrative duties and running some practices with no authoritative power, (b) had a consensual loving relationship with Dina as an adult when they met during her undergraduate studies (and after Dina was selected to be a part of the Team), (c) hosted personal parties at his parents' cottage with adult friends, and (d) provided additional coaching to competitive athlete as part of their training. Based on these facts, a reasonable person would not express the view that he is a sexual predator.

53. **Hategan acted with malice:** with regards to malice, this concept is described as being “*not limited to spite or ill will*”, but that it also includes “*any indirect motive or ulterior purpose.*”⁵⁶ Malice can be established by “*reckless disregard for the truth*”.⁵⁷

54. Hategan's actions are coloured by her malicious intent. While Hategan says that her expressions were meant to bring about change in the fencing community and to protect women, Hategan was instead motivated by a desire to gain notoriety at Paul's expense.

55. Hategan did so by making serious allegations against Paul and releasing confidential information about third parties. Similar behaviour by Hategan in another matter was criticized by this Court.⁵⁸

56. Hategan suggests in her article that she had changed or redacted the names of all female athletes involved in an apparent attempt to protect their identities. For example, Hategan refers to a “Deanna” in her Article and explains that Paul married “Deanna” after she graduated. “Deanna's” actual name is Dina Vitale. The utter failure to anonymize Ms. Vitale's name all while stating that she wants to protect the female victims is illustrative of her ulterior motives.

⁵⁶ *Cherneskey v Armadale Publishers Ltd.*, 1978 CanLII 20 (SCC), [1979] 1 SCR 1067 [at p. 1099](#).

⁵⁷ *Platnick* at [para 136](#); *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130 (“*Hill*”), at [para 145](#); *Botiuk* at [para 79](#).

⁵⁸ *Hategan* at paras [65-66](#).

57. Hategan's ulterior motives were further illustrated by her publication of a confidential report involving allegations made against an assistant coach of the fencing program (and not Paul). Despite the report being confidential to protect the complainants, Hategan published the report and provided a hyperlink to the report in the Article. The report remains accessible to anyone who has access to the internet. The report provides the names of the three complainants.

58. Hategan's sole purpose in making the defamatory allegations was to increase her own notoriety. She did not care about the impact of the article on Paul. She did not even care about the impact of the article on the supposed "victims". She did not care about revealing the complainants' identities in the safe sport investigation. Instead, she was only concerned about her own self-promotion.

59. Hategan has also included a picture of herself with two teammates, including Dina, without their permission, whose faces are completely visible.

60. In addition, Hategan exhibited a general disdain for Paul for not being chosen for the Varsity Team and receiving less attention as a lower caliber athlete. As such, her defamatory campaign against Paul is rooted in resentment.⁵⁹ She strongly aspired to become an Olympian and attributed her failure to the insufficient attention she received, as well as limited coaching time from her coaches, especially Paul.⁶⁰

61. In short, there are strong grounds to believe that the defence of fair comment will fail, particularly in light of the evidence of Hategan's malicious conduct.

iii. The are grounds to believe that the defence of responsible communication will fail

62. This defence essentially turns on the tortfeasor's efforts at verifying the accuracy of the information published. Traditionally, this is the defence relied upon by media outlets that may, in

⁵⁹ Dina Affidavit at para 32. [**Motion Record, p. 176**].

⁶⁰ Affidavit of Hategan, sworn March 11, 2024 ("Hategan First Reply Affidavit") at para 44; Dina Affidavit at para 19. [**Motion Record, p. 174**].

the heat of a fast-moving public interest story, publish information that may not turn out to be fully accurate with the benefit of time (or that they may not be able to prove in court).⁶¹

63. To determine whether a defamatory communication on a matter of public interest was responsibly made with the appropriate due diligence, the Court will look at several factors, including those outlined below.⁶²

64. **Whether the Plaintiff's side of the story was sought and reported:** Although she makes believe that her story is a piece of journalism, Hategan made no attempt to reach out to Paul for his perspective. In fact, she has sued Paul for responding to and denying the allegations made in her Article. This factor is described as the “core” of the defence of responsible journalism and is sufficient to dispose of the defence.

65. **Seriousness of the Allegation:** the more serious the sting of statement, the more the courts will expect that the tortfeasor is diligent. Here, despite the serious (and potentially criminal) sting, Hategan consulted with no one that was a part of the Club in the late 1990's. At best, she consulted **her own diaries**, which are of highly questionable veracity based on Dina's evidence.

66. **Whether inclusion of the statement was justifiable:** it was not necessary for Hategan to raise scandalous and untrue allegations about Paul if her objective was truly to spark conversation about the safe sports investigation and ongoing issues with fencing and coaching styles.

67. **The public importance and urgency of the matter:** not all matters of public interest are of equal importance. While it may have been relevant to publish an article on the safe sport process (that was relevant at the time), there was no urgent need to speak about the allegations from the late 1990's without first verifying the accuracy of the information.

⁶¹ Grant at [para 53](#).

⁶² Grant at [para 110](#).

68. **The status and reliability of the source:** the only source Hategan consulted was herself – she did not receive this inaccurate information from another person that a responsible journalist would trust. Her diaries contained fabricated or exaggerated stories. They were not a reliable record of the truth, as Dina’s evidence clearly illustrates.

iv. There are grounds to believe the limitation defence will fail

69. A plaintiff must file their claim (where there is no “broadcast” or “publication” as defined in the *Libel and Slander Act*), within two years of discovering the defamation.⁶³

70. Paul only became aware of the defamatory remarks from the 2008 and 2012 articles (in which Hategan does not use his name) when the Article was published on February 21, 2023, identifying him.⁶⁴ This evidence is unchallenged.

71. Even if the limitation defence were to succeed, it would be for the two other articles, not for the 2023 Article, which was the primary cause of the defamatory sting.

E. The Public Interest in Permitting the Proceeding to Continue Outweighs the Public Interest in Protecting the Expression

72. Section 137.1(4)(b) is at the heart of the s. 137.1 analysis. This Court must strike a proportionate balance between the public interest in allowing meritorious lawsuits to proceed and the public interest in protecting expressions on matters of public interest.⁶⁵ The “*open-ended nature of s. 137.1(4)(b) provides courts with ability to scrutinize what is really going on in the particular case before them*”.⁶⁶

i. Paul suffered significant reputational harm because of Hategan’s expression

73. At this step, the plaintiff must convince the motion judge that the harm caused by the defendant’s expression is sufficiently serious that it engages the public interest to allow the claim

⁶³ *Limitations Act, 2002*, SO 2002, c 24, Sch B., [s. 5](#).

⁶⁴ Paul Affidavit at para 41. [**Motion Record, p. 64**].

⁶⁵ Platnick at [para 76](#), citing *Pointes SCC* at [para 18](#).

⁶⁶ Platnick at [para 139](#), citing *Pointes SCC* at [para 81](#).

to continue. A plaintiff “*need not prove harm or causation, but simply provide evidence for the motion judge to draw an inference of likelihood in respect of the existence of the harm and the relevant causal link*”.⁶⁷

74. The reference here is to general harm and it is not limited to monetary harm, nor is it synonymous with damages.⁶⁸ The question relates to the existence of harm, and not its quantification. Therefore, a plaintiff is not expected to present a fully developed damages brief.⁶⁹

75. A plaintiff has an important interest in vindicating their reputation. The Supreme Court has recognized that reputational harm, even if it is not quantifiable at this stage of the s. 137.1 test, must be considered. Reputation is one of the most valuable assets a person can possess.⁷⁰ The close connection between an individual’s self-worth, dignity and their reputation commands protection as strong as that afforded to freedom of expression.⁷¹ The latter does not give the right to ruin one’s reputation in the name of freedom.⁷² Once a person’s reputation in his profession or calling is damaged, it is difficult to repair.⁷³

76. As a fencing coach to young athletes, the allegations suggesting that he is a sexual predator, provides alcohol to underage athletes, and fosters a sexually charged and drug-influenced environment are profoundly damaging. These unfounded allegations not only tarnish his reputation but also jeopardize the trust and respect essential for effective coaching. They cast doubt on his ability to provide a safe supportive environment for athletes’ development, compromising his role as a leader committed to the development and success of the competitive athletes under his guidance.

⁶⁷ *Pointes SCC* at [para 71](#).

⁶⁸ *Pointes SCC* at [para 69](#).

⁶⁹ *Pointes SCC* at [para 71](#).

⁷⁰ *Pointes SCC* at [para 69](#); *Platnick* at [para 146](#).

⁷¹ *Hill* at [para 107](#); *Platnick* at [para 146](#).

⁷² *Grant* at [para 57](#).

⁷³ *Botiuk* at [para 92](#).

77. In this case, the serious defamatory sting, sexual abuse, and its obvious effect on Paul's reputation is what justifies allowing the case to continue. Had Hategan's allegations only been about Paul's coaching style or technique, Paul concedes that his burden may not have been met. It could be argued that such harm, even if it were based on pure lies, may not be significant enough to justify allowing an action to continue under the s. 137.1 framework.

78. But the sting of the expressions is far more serious and concerns sexual abuse and manipulation, potentially against minors. It is the type of allegation that is difficult to shake off once made, no matter the overwhelming evidence to the contrary. The courts have recognized the considerable public interest in allowing individuals targeted by such allegations to defend their reputation publicly in court.⁷⁴

79. Paul's interest in vindicating his reputation is sufficient to allow this litigation to continue.

ii. The public interest in protecting Hategan's expression is low: The underlying proceeding has no indicia of a SLAPP

80. It is also useful, at this point, to consider whether the lawsuit in question has the classic hallmarks of a SLAPP.

81. There is no evidence that Paul has a prior history of using litigation or threat of litigation to silence critics, yet alone utilized litigation all together. Hategan's factum misrepresents the evidence by suggesting that Paul has admitted to using this litigation "to pre-empt further criticism of him".⁷⁵ This is plainly untrue. Paul states in his affidavit that he was concerned of the reputational harm that could be caused by Hategan and that her past behaviour (as described in previous decisions of this Court) suggested that she would continue to spread these allegations.⁷⁶

82. Paul does not benefit from a financial or power imbalance over Hategan. This action was

⁷⁴ *Rainbow Alliance Dryden et al. v. Webster*, 2023 ONSC 7050 (CanLII), at [para 65](#).

⁷⁵ Hategan's Factum at para 67.

⁷⁶ *Hategan* at para [151](#).

initiated under the Simplified Rules. Unlike a claim that is entirely disproportionate with the potential damages suffered⁷⁷, an action under the Simplified Rules to vindicate one's reputation is entirely appropriate. The thrust of Hategan's argument is that she is financially disadvantaged because she will need to travel to Ottawa from Toronto for the trial.⁷⁸ This is entirely insufficient to justify a financial or power imbalance.

83. Paul's claim is not motivated by a retributory purpose and instead seeks reputational vindication, which as set out above, is a valid pursuit and objective of a defamation proceeding.

84. Paul is not seeking to "chill the broader (...) discussions" surrounding safe sports.⁷⁹ This litigation is targeted on the scandalous and damaging allegations relating to sexual impropriety.

85. Finally, the reputational harm suffered by Paul is substantial rather than minimal. The allegations made against him are significant and not trivial or mere annoyances.

iii. The dismissal of the action would not cease the proceedings

86. In balancing the public interest, it is essential to consider the impact of allowing an anti-SLAPP motion on the ongoing litigation in light of the objectives underlining section 137.1. It has been stated that "*the objectives of s. 137.1 are not achieved if litigation on the subject matter of the expression will proceed, virtually unchanged, if the motion is granted.*"⁸⁰

87. Consequently, the Court must assess whether granting the anti-SLAPP motion would effectively terminate the proceedings relating to the facts in issue. If allowing the motion would not reduce the scope of factual inquiry or lead to significant cost savings, this consideration weighs heavily against granting the motion. In fact, in both *Park Lawn* and *Yates*, this consideration was

⁷⁷ *Contra Gill v. Maciver*, 2022 ONSC 1279, [at para 25](#).

⁷⁸ Hategan's Factum at para 7.

⁷⁹ It should be noted that the unfounded allegation that Paul retaliated against the complainant in the safe sport investigation is the epitome of hearsay: see para 69 of Hategan's factum. The fact that this was included in Hategan's factum as established "fact" is concerning.

⁸⁰ *Yates v Iron Horse Corporation and St. Martin*, 2023 ONSC 4195 ("*Yates*"), at [para 130](#); see also *Park Lawn Corporation v Kahu Capital Partners Ltd*, 2023 ONCA 129 ("*Park Lawn*") at [para 58](#).

enough to tip the balance into allowing the action to continue, regardless of the fact that the two prongs test under section 137.1 had been met.⁸¹

88. Allowing the anti-SLAPP motion to dismiss Paul's claim would not put a definite end to the proceedings, as Hategan's counterclaim would remain. This counterclaim necessitates factual determinations that are directly relevant to the original claims, specifically the veracity of Hategan's defamatory statements.

89. Allowing the anti-SLAPP would not serve the public interest as it would allow litigation on the same subject matter to continue almost unchanged.

PART V – ORDER SOUGHT

90. Paul requests that this Honourable Court dismiss Hategan's motions, with costs.

91. An award of costs in Paul's favour is appropriate in the circumstances, pursuant to s. 137.1(8), given the improper use of this section. In particular, Hategan's behaviour on this screening motion and in this claim, filing four (4) lengthy affidavits riddled with inadmissible, improper and scandalous allegations, justify an award of costs on against her.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of September 2024.



Caza Saikaley LLP
Jeff G. Saikaley / Albert Brunet

⁸¹ *Yates* at [para 131](#); see also *Park Lawn* at paras [21](#), [57-59](#).

SCHEDULE “A” – LIST OF AUTHORITIES

TAB	AUTHORITIES	PARA CITED
LEGISLATION		
1.	<i>Courts of Justice Act</i> , R.S.O. 1990, c. C.43	s 137.1
2.	<i>Limitations Act, 2002</i> , SO 2002, c 24, Sch B.	s 5
3.	<i>Rules of Civil Procedure</i> , R.R.O. 1990, Reg 194	s 76.04
CASELAW		
4.	<i>1704604 Ontario Ltd. v. Pointes Protection Association</i> , 2018 ONCA 685	83-84
5.	<i>1704604 Ontario Ltd. v. Pointes Protection Association</i> , 2020 SCC 22	17, 18, 37, 52, 54, 69, 71,81,
6.	<i>Bent v. Platnick</i> , 2020 SCC 23	76, 107, 136, 139, 146
7.	<i>Bondfield Construction Company Limited v. The Globe and Mail Inc.</i> , 2019 ONCA 166	15
8.	<i>Botiuk v. Toronto Free Press</i> , 1995 CanLII 60 (SCC) , [1995] 3 SCR 3	62, 79, 92
9.	<i>Cherneskey v Armadale Publishers Ltd.</i> , 1978 CanLII 20 (SCC) , [1979] 1 SCR 1067	1099
10.	<i>Di Franco v. Bueckert</i> , 2020 ONSC 1954	65, 66
11.	<i>Gill v Maciver</i> , 2022 ONSC 1279	25
12.	<i>Grant v Torstar Corp.</i> , 2009 SCC 61	28, 53, 57, 110
13.	<i>Hamlin v Kavanagh</i> , 2019 ONSC 5552	42
14.	<i>Hategan v. Farber</i> , 2021 ONSC 874	65, 66, 135, 137, 151
15.	<i>Hill v Church of Scientology of Toronto</i> , 1995 CanLII 59 (SCC) , [1995] 2 SCR 1130 (“Hill”)	107, 145
16.	<i>Ismail v Fleming</i> , 2018 ONSC 6780	19
17.	<i>Joanne St-Lewis v Denis Rancourt</i> , 2014 ONSC 3209	2
18.	<i>Lascaris v. B’nai Brith Canada</i> , 2019 ONCA 163	23, 33
19.	<i>Lawson c. Baines</i> , 2012 BCCA 117	27
20.	<i>Subway Franchise Systems of Canada, Inc. v Canadian Broadcasting Corporation</i> , 2021 ONCA 26	55, 99

21.	<i>Park Lawn Corporation v Kahu Capital Partners Ltd</i> , 2023 ONCA 129	21, 57-59
22.	<i>Qiao v Owners, Strata Plan LMS 3863</i> , 2020 BCSC 818	149
23.	<i>Rainbow Alliance Dryden et al. v. Webster</i> , 2023 ONSC 7050	65
24.	<i>Ross v Beutel</i> , 2001 NBCA 62	56
25.	<i>WIC Radio Ltd. v Simpson</i> , 2008 SCC 40	26, 28, 31, 49, 67-68
26.	<i>Yates v Iron Horse Corporation and St. Martin</i> , 2023 ONSC 4195	130, 131

SCHEDULE “B” – RELEVANT STATUTORY PROVISIONS

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate

Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

Definition, “expression”

(2) In this section,

“expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

Order to dismiss

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.

No dismissal

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

- (a) there are grounds to believe that,
 - (i) the proceeding has substantial merit, and
 - (ii) the moving party has no valid defence in the proceeding; and
- (b) the harm likely to be or have been suffered by the responding party as a result of the moving party’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

Costs on dismissal

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

Damages

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate

Limitations Act, 2002, [SO 2002, c 24, Sch B.](#)

Discovery

5 (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause

(1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. 2002, c. 24, Sched. B, s. 5 (2).

Demand obligations

(3) For the purposes of subclause (1) (a) (i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for the performance is made. 2008, c. 19, Sched. L, s. 1.

Same

(4) Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004

Rules of Civil Procedure, [R.R.O. 1990, Reg 194](#)

NO WRITTEN DISCOVERY, CROSS-EXAMINATION ON AN AFFIDAVIT OR EXAMINATION OF A WITNESS

76.04 (1) The following are not permitted in an action under this Rule:

1. Examination for discovery by written questions and answers under Rule 35.
2. Cross-examination of a deponent on an affidavit under rule 39.02.
3. Examination of a witness on a motion under rule 39.03. O. Reg. 438/08, s. 53.

Limitation on Oral Discovery

(2) Despite rule 31.05.1 (time limit on discovery), no party shall, in conducting oral examinations for discovery in relation to an action proceeding under this Rule, exceed a total of three hours of examination, regardless of the number of parties or other persons to be examined.

SCHEDULE “C” – COMPARISON OF EVIDENCE ON SELECTED ISSUES

Allegation Made in Defamatory Article	Hategan’s Statement in Original Affidavits	Evidence Provided by Paul ApSimon and/or Dina Vitale	Hategan’s Statement in Reply Affidavits
<p>“3 out of the 4 undergrad girls on that varsity team had been sexually exploited by our university’s Olympic coach”.⁸²</p> <p>The students Paul slept with were always chosen for the varsity team.⁸³</p> <p>Unlike others, Paul did not “come on to” Hategan sexually.⁸⁴</p> <p>Paul created a sexually charged atmosphere.⁸⁵</p>	<p>“Apsimon did capitalize on power imbalances to form sexual relationships with student athletes whom he coached in his employment as fencing coach at the university of Ottawa.”⁸⁶</p> <p>The coach-athlete or instructor-student relationship between ApSimon and Dina complicates the validity of their apparent mutual consent.⁸⁷</p>	<p>Paul’s primarily involvement with the Club was as a fencer and member.⁸⁸ His “assistant coach” functions were administrative in nature, and he did not pick the varsity team athletes.⁸⁹ He gave lessons, as did all more experienced or competitive fencers, to the younger or less experienced fencers.⁹⁰</p> <p>Dina confirms that Paul did not occupy any form of authoritative position over her. Their relationship started after she had joined the varsity Team and Paul had no input into the selection of the Team members during Dina’s tenure.⁹¹</p>	<p>Hategan claims to not have never meant to suggest that Paul was a deliberate sexual predator but that her article was about coaching favouritism more generally.⁹²</p>

⁸² Paul Affidavit at Exhibit B. [Motion Record, p. 123].

⁸³ Paul Affidavit at Exhibit B. [Motion Record, p. 115].

⁸⁴ Paul Affidavit at Exhibit B. [Motion Record, p. 116].

⁸⁵ Paul Affidavit at Exhibit B. [Motion Record, p. 119].

⁸⁶ Hategan Affidavit at para 60.

⁸⁷ Hategan First Reply Affidavit at para 11.

⁸⁸ Paul Affidavit at para 25. [Motion Record, p. 61].

⁸⁹ Paul Affidavit at para 21. [Motion Record, p. 60].

⁹⁰ Paul Affidavit at para 31. [Motion Record, p. 62].

⁹¹ Paul Affidavit at para 27. [Motion Record, p. 61].

⁹² Hategan Second Reply Affidavit at para 6.

Dina had been Paul's student when he was her high school gym teacher. ⁹³	Paul taught Dina when she was a high school student. ⁹⁴	Paul says that he was never Dina's high school teacher. ⁹⁵ Dina confirms that Paul was not her high school teacher and that he had never met him prior to joining the Club. ⁹⁶	Hategan admits that Paul was "not literally" Dina's high school teacher. ⁹⁷
Paul got Dina accidentally pregnant. ⁹⁸	Dina was pregnant with Paul's child. She may have chosen to end the pregnancy without telling him. ⁹⁹	Paul says that Dina never got pregnant during their relationship. ¹⁰⁰ Dina confirms that there was no pregnancy and no abortion and that she never would have said such a thing to Hategan. ¹⁰¹	Hategan does not respond to Dina's evidence, instead suggesting that "the things that actually matter to this lawsuit are those concerning my time in fencing". ¹⁰²
	Hategan was not invited to Paul and Dina's wedding. ¹⁰³	Dina confirmed that Hategan was not invited to her wedding. ¹⁰⁴	Hategan changed her narrative to victimize herself, and states she was in fact invited, but did not feel welcomed if she showed up. ¹⁰⁵

⁹³ Paul Affidavit at Exhibit B. [Motion Record, p. 115].

⁹⁴ Hategan First Reply Affidavit at para 9.

⁹⁵ Paul Affidavit at para 40. [Motion Record, p. 63].

⁹⁶ Dina Affidavit at para 35. [Motion Record, p. 177].

⁹⁷ Hategan Second Reply Affidavit at para 28.

⁹⁸ Paul Affidavit at Exhibit B. [Motion Record, p. 115].

⁹⁹ Hategan First Reply Affidavit at para 10.

¹⁰⁰ Paul Affidavit at para 40. [Motion Record, p. 63].

¹⁰¹ Dina Affidavit at para 36. [Motion Record, p. 177].

¹⁰² Hategan Second Reply Affidavit at para 29.

¹⁰³ Hategan Affidavit at para 13.

¹⁰⁴ Dina Affidavit at para 49. [Motion Record, p. 179].

¹⁰⁵ Hategan Second Reply Affidavit at para 22.

Hategan speaks of her “varsity fencing experiences” ¹⁰⁶ her teammates on the “varsity team” ¹⁰⁷ and her “varsity years” ¹⁰⁸		Paul says that Hategan was never a member of the varsity Team. ¹⁰⁹ Dina confirms that Hategan was not on the varsity Team. ¹¹⁰	Hategan subsequently confirmed she was never a varsity athlete. ¹¹¹
Hategan originally claimed that Paul was her Head Coach. ¹¹²	Hategan swears that Paul was Head Coach of the Excalibur Club and Varsity Team. ¹¹³	Paul says that he was an assistant coach at the relevant time and was responsible for administrative functions. ¹¹⁴	Hategan explains that Paul was the Assistant Coach. ¹¹⁵

¹⁰⁶ Paul Affidavit at Exhibit B. [Motion Record, p. 115].

¹⁰⁷ Paul Affidavit at Exhibit B. [Motion Record, p. 114].

¹⁰⁸ Paul Affidavit at Exhibit E. [Motion Record, p. 148].

¹⁰⁹ Paul Affidavit at paras 12, 15. [Motion Record, p. 59].

¹¹⁰ Dina Affidavit, para 8. [Motion Record, p. 173].

¹¹¹ Hategan First Reply Affidavit at para 27.

¹¹² Paul Affidavit at Exhibit B. [Motion Record, p. 114].

¹¹³ Hategan Affidavit at para 4.

¹¹⁴ Paul Affidavit at paras 10, 21. [Motion Record, p. 58 and 60].

¹¹⁵ Hategan First Reply Affidavit at para 14.

SCHEDULE “D” – IMPROPER PARAGRAPHS OF HATEGAN AFFIDAVITS

A. Affidavit of Elisa Hategan sworn November 29, 2023

- **Argument:** paras 2, 7 (last sentence), 43, 44 (first sentence), 49, 50, 54 (last sentence), 58, 59, 65, 66, 67, 68, 69, 70, 72, 73, 74, 76, 77, 79, 103.
- **Opinion:** 72, 73, 86, 87, 88, 89, 90, 91, 102, 104 (last sentence), 105.
- **Not relevant:** paras 5, 14, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.

B. Supplementary Affidavit of Elisa Hategan sworn November 30, 2023

- The entire affidavit is **hearsay**. Hategan was not involved with the investigation.

C. Reply Affidavit of Elisa Hategan sworn March 11, 2024

- **Argument:** 3, 6, 12 (“gratuitously insulting”), 43.
- **Opinion:** 12.
- **Not relevant:** paras 1, 2, 31, 33, 34, 35, 36, 37, 38, 41, 53, 54, 55, 56, 58.
- **Hearsay:** para 20, 21, 22, 23, 24.

D. Reply Affidavit of Elisa Hategan sworn July 7, 2024

- **Argument:** 1, 5, 13, 20, 21, 29.

PAUL APSIMON
Plaintiff

- and -

ELISA HATEGAN
Defendant

Court File No. CV-23-91584

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

FACTUM OF THE RESPONDING PARTY

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