

NEW WESTMINSTER

MAY 27 2019

CIVIL REGISTRY

No. S202460  
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SEANN LYNCASTER

PLAINTIFF

AND:

METRO VANCOUVER KINK SOCIETY, ADRIAN ESTERGAARD,  
BEVERLY GUNN, TERRA HUNTER, PAUL JONES, SARA KNAPPE,  
DAPHNE KOWALCZYK, ERIN KYLE, VICKY MONTERROSA,  
ANDREA PAINTER and VICTOR SALMON

DEFENDANTS

## NOTICE OF APPLICATION

Names of applicants: the defendants Metro Vancouver Kink Society, Adrian Estergaard, Beverly Gunn, Terra Hunter, Paul Jones, Sara Knappe, Daphne Kowalczyk, Erin Kyle, Vicky Monterrosa, Andrea Painter, and Victor Salmon

TO: the plaintiff, Sean Lyncaster

TAKE NOTICE that an application will be made by the applicants to the presiding judge or master at the courthouse at 651 Carnarvon Street, New Westminster, British Columbia on Thursday, the 18th day of July, 2019 at 10:00a.m. for the orders set out in Part 1 below.

### PART 1: ORDERS SOUGHT

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35814 202460

1. An order dismissing the action pursuant to the *Protection of Public Participation Act*, S.B.C. 2019, c. 3, s. 4;
2. Costs of the application and the action to be assessed on a full indemnity basis pursuant to the *Protection of Public Participation Act*, s. 7; and,
3. Such further and other relief as this Honourable Court may allow.



## **PART 2: FACTUAL BASIS**

### ***The Players***

1. The plaintiff is a member of the Vancouver kink community. The plaintiff has used his home, known as “Braven Manor”, to host kink events.

Affidavit #1 of Sara Knappe made May 17, 2019, para. 30

2. Masters and Slaves Together (“MAST”) is not a party to this action. MAST is an education, support and resource group for individuals involved in, or interested in, the Master/slave lifestyle. MAST currently has 121 active chapters worldwide. MAST and the defendant MVK Alternative Lifestyle Society (“MVK”) do not have a formal relationship; however, their members are drawn from the same community. In December 2016, the plaintiff was the head of the Vancouver Chapter of MAST.

Affidavit #1 of S. Knappe, paras. 4 – 5, and 48

3. The website Fetlife is not a party to this action. Fetlife is a social media platform that is colloquially known within the kink community as “kinky Facebook”. It is the main source of event promotion, community discussion, and networking for the kink community both locally and internationally.

Affidavit #1 of S. Knappe, para. 37

4. The defendant MVK is a society incorporated pursuant to the laws of British Columbia. The personal defendants were each volunteer directors of MVK at the material times.

Affidavit #1 of S. Knappe, paras. 4, 5, and 26

5. The purposes of MVK include educating and advocating for its members and for members of the broader Vancouver kink community. MVK adheres to and carries out several “Community Commitments”, including: support for all abilities; support for all genders and races; producing adult educational events for techniques and safety; and advocating for the legal and human rights of adults who practice consensual bondage and discipline, dominance and submission, and sadism and masochism (“BDSM”). MVK regularly hosts a variety of educational and social events for its members, and for members of the broader kink community.

Affidavit #1 of S. Knappe, paras. 16 – 21 and 24 – 25

6. MVK is a community driven organization: it strives to respond to the needs of the kink community as they arise. MVK takes its direction from the community it serves.

Affidavit #1 of S. Knappe, para. 22

7. Issues of consent and sexual assault are issues of particular importance in the kink community. Due to the traditional taboo associated with kink activities, participants are reticent to report sexual assaults to police out of a fear that they will not be believed or that they will be “outed” as participants in BDSM, which can have negative social consequences.

Affidavit #1 of S. Knappe, paras. 2 – 3, 43, and 74

8. Traditionally, the kink community was relatively small, and the community was able to use self-policing methods to attempt to regulate safety in the community. These methods included shunning, banning, and information sharing.

Affidavit #1 of S. Knappe, para. 42

9. In or about 2011, following the release of “50 Shades of Grey”, BDSM was somewhat normalized and became more mainstream. There was a rapid growth in the Vancouver kink community. One of the effects of this growth was that traditional methods of self-policing within the kink community were no longer an effective means of regulating safety in the community.

Affidavit #1 of S. Knappe, para. 42

10. More recently, the #metoo movement has shone a light on issues of consent and sexual assault.

Affidavit #1 of S. Knappe, para. 43

11. Kink communities across the world have been wrestling with how to manage issues of consent and sexual assault. As a leader and educator in the Vancouver kink community, MVK has considered ways to respond to assist in regulating safety in the community.

Affidavit #1 of S. Knappe, para. 42

12. There has been a focus on developing restorative justice systems within kink communities, so that communities can continue to regulate themselves and continue to avoid police involvement. In the past couple years, the kink communities have witnessed several successful restorative justice processes take place. There has also been a call for higher standards for those who stand in positions of leadership.

Affidavit of #1 of S. Knappe, para. 42 and 44

***The Events Leading to the Plaintiff's Litigation***

13. On December 2, 2016, a user named "RopeKittteh" posted on Fetlife, making allegations against the plaintiff that he had, *inter alia*, committed sexual assault, permitted sexual assault to occur at his home, and had engaged in kink "play" with a minor. This post eventually garnered more than 400 comments.

Affidavit #1 of S. Knapp, para. 37 and Exhibit B

14. At the time of the RopeKittteh posting, two members of MAsT were in Vancouver. MVK and the plaintiff were co-hosting the MAsT members – known as Ms. Rhonda and tomo – for a weekend of educational events. Upon learning of the post, Ms. Knappe, on behalf of MVK, contacted Ms. Rhonda and tomo. Ms. Rhonda and tomo recommended that if the allegations in the post were true, a complaint should be made to MAsT International.

Affidavit #1 of S. Knappe, paras. 35 and 38 - 39

15. The plaintiff set a meeting for December 4, 2016 at his house to address the accusations raised in the Initial Post. Hours before the meeting was to be held, the plaintiff posted a writing on Fetlife, addressing the allegations in RopeKittteh's post and suggesting alternative ways of handling such reports. This post eventually garnered more than 100 comments.

Affidavit #1 of S. Knappe, para. 40, Exhibit C

16. Notes about the December 4, 2016 meeting held at the plaintiff's house were posted on Fetlife by members of the kink community. These posts received 49 and 64 comments, respectively.

Affidavit #1 of S. Knappe, para. 41, Exhibits D and E

17. In response to these events, MVK, in accordance with its leadership role in the community, took several steps to address the way the Vancouver kink community handles matters of consent:

- (a) MVK hosted a Town Hall on December 14, 2016 to allow community members to gather and seek solutions. An invitation was posted on Facebook and Fetlife. The plaintiff and his slave attended the meeting, along with approximately 150 community members.

Affidavit #1 of S. Knappe, paras. 45 - 46

- (b) In January 2017, MVK sought a legal opinion regarding the implications of having a minor in spaces where BDSM activities are occurring.

Affidavit #1 of S. Knappe, para. 53, Exhibit N

- (a) Ms. Knappe enquired whether MAsT had a formal complaint process. On Ms. Rhonda's advice, Ms. Knappe on behalf of MVK wrote a letter to the International Board of MAsT respecting the allegations against the plaintiff.

Affidavit #1 of S. Knappe, paras. 48 – 49, Exhibits I and J

- (b) MVK created support groups, including a group for people aged 35 and below.

Affidavit #1 of S. Knappe, para. 54

- (c) MVK hosted a second Town Hall on August 24, 2017. Approximately 100 community members attended. MVK also invited a VPD Constable to attend.

Affidavit #1 of S. Knappe, para. 52, Exhibit M

18. On July 12, 2017, on behalf of the MVK board, Ms. Knappe posted an Open Letter on Facebook and Fetlife respecting the allegations made against the plaintiff and MVK's attempts to facilitate a restorative justice process with him. Ms. Knappe read this letter out loud at the second Town Hall on August 24, 2017. Minutes of this meeting were posted on Fetlife on August 24, 2017.

Affidavit #1 of S. Knappe, paras. 50 – 52, Exhibits K, L, and M

19. The defendants believed that all of the statements in the Open Letter were true.

Affidavit #1 of S. Knappe, para. 51

20. It is the content of the Open Letter that is the basis for the plaintiff's claims against the defendants in this action.

Notice of Civil Claim filed May 23, 2019, Part 1, paras. 16 - 20

21. In September 2017, MVK received a cease and desist letter from the plaintiff's lawyer, demanding that MVK, *inter alia*, issue a public apology and retraction for both the Open Letter as well as the letter to MAsT International.

Affidavit #1 of S. Knappe, Exhibit O

22. MVK refused on the basis that the content of Open Letter relates to a matter of public interest, was based on facts which were true, and the comments were fair.

Affidavit #1 of S. Knappe, Exhibit P

23. On September 29, 2017, plaintiff's counsel again wrote, enclosing a draft notice of civil claim and demanding an apology and retraction no later than October 6, 2017.

Affidavit #1 of S. Knapp, Exhibit Q

24. At the same time, the plaintiff continued to post about the events on Fetlife. On or about October 9, 2017, the plaintiff expressly threatened the defendants with public outing of their involvement in the kink community through the litigation process if they did not accede to his demands:

*[...] Each and every board member will be a co-defendant in this libel suit. What will be the ramifications for their kids, family, friends and careers? Do they realize that for the rest of their lives a Google search will show they were defendants [sic] in a libel suit with very distasteful aspects. Will future employers be ok with that? What about child custody issues? [...]*

Affidavit #1 of S. Knappe, Exhibit R, p. 375

***The Effect of the Plaintiff's Litigation***

25. In total, the plaintiff has brought claims against 15 individuals in the Vancouver kink community.

Notice of Civil Claim filed May 3, 2019  
Affidavit #1 of S. Knapp, Exhibits T and U

26. This litigation has seriously impacted MVK's ability to move forward and to continue its commitments to the community. The members of the board are afraid to continue their work with respect to education and community regulation about consent or other conduct affecting safety. They are afraid that continuing that work will result in further legal action. They feel forced to wait out this litigation before developing formal policies for dealing with such issues.

Affidavit #1 of S. Knappe, paras. 67 – 71

**PART 3: LEGAL BASIS**

1. The applicants/defendants rely on the provisions of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 (the "Act").
2. In particular Act, s. 4 provides:

Application to Court

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

- (a) the proceeding arises from an expression made by the applicant, and
- (b) the expression relates to a matter of public interest

4 (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

- (a) there are grounds to believe that,
  - (i) the proceeding has substantial merit, and
  - (ii) the applicant has no valid defence in the proceeding; and

- (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting the expression
3. The expressions in respect of which the plaintiff/respondent has claimed against the applicants/defendants relate to a matter of public interest within the kink community; namely, community safety and issues of sexual consent.
  4. The applicant/defendants have raised valid defences of qualified privilege, fair comment, and responsible communication.
  5. MVK's expression was of high quality: it was part of a good-faith attempt of MVK to address community concerns respecting issues of consent and community safety.
  6. The plaintiff has created a chill around such public discussions through his use of litigation, and his threats to out members of the community through that process.
  7. The respondent/plaintiff has suffered no harm; or, alternatively, any harm suffered by the respondent/plaintiff is not serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting expression related to issues of consent and community safety.

#### **PART 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Sara Knappe, made May 17, 2019;
2. The pleadings filed herein; and,
3. Such further and other materials as counsel may advise.

The applicants estimate that the application will take on day.


This matter is not within the jurisdiction of a master.



TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 27 May 2019

  
HARPER GREY LLP  
(Per: Bryan G. Baynham, Q.C.  
& Daniel J. Reid)  
Lawyers for the Defendants

Name and address of lawyer:

**HARPER GREY LLP**

Barristers & Solicitors

3200 – 650 West Georgia Street

Vancouver, BC V6B 4P7

Telephone: 604 687 0411

Fax: 604 669 9385

Attn: Bryan G. Baynham, Q.C./Daniel J. Reid/txr

File No.: 143542

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of

Part 1 of this notice of application

☐ with the following variations and additional terms:

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Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master

## APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matter concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☒ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts