

# **In the Court of Appeal of Alberta**

**Citation: MacNeil v Pankow, 2026 ABCA 257**

**Date:** 20260731  
**Docket:** 2501-0243AC  
**Registry:** Calgary

**Between:**

**Jacqueline MacNeil**

Respondent  
(Plaintiff)

- and -

**Julie Pankow**

Appellant  
(Defendant)

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**The Court:**

**The Honourable Justice Jolaine Antonio  
The Honourable Justice Bernette Ho  
The Honourable Justice Kevin Feth**

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## **Memorandum of Judgment**

Appeal from the Order by  
The Honourable Justice R.A. Neufeld  
Dated the 5th day of August, 2025  
Filed on the 23rd day of September, 2025  
(2025 ABKB 461, Docket: 2301-07097)

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## Memorandum of Judgment

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### The Court:

#### I. Introduction

[1] The respondent Jacqueline MacNeil commenced proceedings against the appellant Julie Pankow, claiming damages for malicious prosecution and defamation. The appellant applied for summary dismissal of those claims. The chambers judge granted the application in part, dismissing the claim for malicious prosecution, but allowing the claim in defamation to proceed. The appellant appeals the decision refusing to summarily dismiss the defamation claim, arguing the chambers judge erred in concluding there was a genuine issue requiring trial regarding malice and otherwise in treating the statements at issue as having defamatory meaning.

[2] For the reasons that follow, the appeal is dismissed.

#### II. Background

[3] On April 29, 2022, the appellant reported to the police she had received several messages from the respondent earlier in the month inquiring about her relationship with Sean Potts, the respondent's former partner. The appellant's relationship with Mr. Potts had ended that morning when he told her he was getting back together with the respondent. Although the respondent had not threatened the appellant, the appellant understood the respondent had harassed Mr. Potts' partners in the past. She said she feared the respondent and believed the respondent might be following her.

[4] On May 5, the appellant reported to the police that the respondent had driven by her home in Mr. Potts' truck. She said the respondent had slowed down and appeared to be trying to obtain her licence plate number. She feared for her safety. The police warned the respondent not to have contact with the appellant.

[5] On June 6, the appellant reported to the police that the respondent had again driven by her home, this time in a Jeep. She said the respondent slowed down in front of her home and waved at her with a small, dark coloured object in her hand. She feared it was a firearm. She sent the police photos of security footage showing what police described as a "greenish" Jeep outside the appellant's home. The police determined the respondent owned a "medium grey" Jeep.

[6] On June 8, the police arrested the respondent and charged her with criminal harassment. She was released on an undertaking with conditions not to have any further contact with the appellant. The charges were withdrawn on December 20, after Mr. Potts provided alibi evidence regarding the respondent's whereabouts on the evening of June 6.

[7] On December 23, the appellant obtained a restraining order against the respondent on an *ex parte* basis. On review, the restraining order was not continued.

[8] On May 31, 2023, the respondent commenced an action against the appellant for malicious prosecution and defamation. The respondent asserted the appellant had initiated unwarranted criminal and civil proceedings against her “with malice”. She also alleged the following statements made by the appellant to the police on June 6 were defamatory and made “with malice”:

- a. That the [respondent] drove to [the appellant’s] residence on June 6, 2022;
- b. That the [respondent] waved at [the appellant] from inside the [respondent’s] jeep as she drove passed [the appellant’s] residence and that the [respondent] was holding an object that looked like a weapon;
- c. That the [respondent] had driven by [the appellant’s] residence after contacting [the appellant] several times over Facebook and text messages;
- d. That [the appellant] is afraid for her safety and the safety of her children; and
- e. That [the appellant] wanted to charge the [respondent] for criminal harassment because Julie was really worried about what the [respondent] might do.

The respondent alleged she did not drive by and wave at the appellant on June 6, the Jeep captured on security footage was not her Jeep, and she had only sent the appellant friendly messages on one occasion in April inquiring as to whether Mr. Potts was in a relationship with her.

[9] On June 28, 2023, the appellant filed a statement of defence, denying she maliciously prosecuted or defamed the respondent. She asserted the statements she made to police on June 6 did not have a defamatory meaning, were true, were made in the interest of protecting herself and her children and were not made with malice. To the extent the statements were defamatory, the appellant alleged they were made on an occasion of qualified privilege.

[10] On April 12, 2024, the appellant filed an application for summary dismissal of the action against her, asserting the respondent’s claims were without merit and did not raise any genuine issue for trial.

### III. Decision below

[11] On August 5, 2025, the chambers judge dismissed the respondent's claim for malicious prosecution but allowed the defamation claim to continue: *MacNeil v Pankow*, 2025 ABKB 461 [*Chambers Decision*].

[12] He referenced the test for malicious prosecution set out in *Miazga v Kvello Estate*, 2009 SCC 51 at para 3 [*Miazga*] (*Chambers Decision* at para 17):

To succeed in an action for malicious prosecution, a plaintiff must prove that the prosecution was: (1) initiated by the defendant; (2) terminated in favour of the plaintiff; (3) undertaken without reasonable and probable cause; and (4) motivated by malice or a primary purpose other than that of carrying the law into effect.

[13] The chambers judge determined the “malice” requirement for malicious prosecution was not met, because the record established “Ms. Pankow’s reports to the RCMP were motivated by fear of Ms. MacNeil, not malice. While there were clearly bad feelings on the part of Ms. Pankow after her brief relationship with Cst. Potts ended; she had ample reason to be afraid of Ms. MacNeil based on the information provided to her by Cst. Potts and media reports of Ms. MacNeil’s history of harassing women who had become romantically involved with Cst. Potts”: *Chambers Decision* at paras 21, 24. The chambers judge was satisfied the appellant’s reports to the police were motivated by a purpose “directly related to the charge ultimately laid”: *Chambers Decision* at para 26. He was also satisfied the application for a civil restraining order was not made with malice: *Chambers Decision* at paras 30-34.

[14] As to the defamation claim, the chambers judge referenced the elements described in *Grant v Torstar Corp*, 2009 SCC 61 at para 28 (*Chambers Decision* at para 36):

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.

[15] The chambers judge accepted the June 6 statements were defamatory in the sense that they would tend to diminish the reputation of the respondent in the eyes of a reasonable person. Nevertheless, he noted the public interest gives rise to a qualified privilege that protects citizens who report crimes from liability in defamation. Therefore, he held, if the statements were false, they would only be actionable if they were made with “malice (as that term is generally used) or with knowledge that the statement was untrue or with recklessness as to its truth or falsity”. If the June 6 statements were untrue, he held it remained to be seen whether the appellant knew they were untrue or recklessly disregarded their truth: *Chambers Decision* at paras 37-39, 45.

[16] The chambers judge concluded the question of whether the statements were made dishonestly or recklessly would depend on consideration of the plausibility of the appellant's identification of the respondent as the driver, and an assessment of the credibility of the parties: *Chambers Decision* at para 46. Therefore, the defamation claim could not "be fairly decided on the evidence" before him: *Chambers Decision* at para 7.

#### IV. Grounds of appeal and standard of review

[17] The appellant appeals the chambers judge's refusal to dismiss the defamation claim. She argues the chambers judge erred in concluding there was a genuine issue requiring trial regarding malice and otherwise in treating the June 6 statements as having defamatory meaning.

[18] Decisions on summary dispositions are discretionary and, absent an error of law, are reviewed deferentially. Without palpable and overriding error, the chambers judge's assessment of the facts, the application of the law to those facts, and the ultimate determination as to whether summary judgment is appropriate are entitled to deference: *Calgary Co-operative Association Limited v Federated Co-operatives Limited*, 2025 ABCA 142 at para 16 [*Calgary Co-operative*]; *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 10 [*Weir-Jones*]; *Hryniak v Mauldin*, 2014 SCC 7 at paras 81-84.

#### V. Analysis

##### A. *Qualified privilege and malice*

[19] The appellant submits the chambers judge should have been satisfied the June 6 statements were protected by qualified privilege.

[20] The reporting of crime to police is a recognized occasion of qualified privilege: *Giesbrecht v Prpick*, 2024 ABKB 51 at para 152, aff'd 2025 ABCA 222 [*Giesbrecht*]; *Caron v A*, 2015 BCCA 47 at paras 37, 54; *Cusson v Quan*, 2007 ONCA 771 at para 39, rev'd on other grounds 2009 SCC 62. Where an occasion is shown to be privileged, the defendant is free to publish remarks that may be defamatory and untrue: *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para 144, 1995 CanLII 59 [*Hill*]. However, qualified privilege can be defeated "where the dominant motive behind the words was malice... or where the scope of the occasion of privilege was exceeded": *Bent v Platnick*, 2020 SCC 23 at para 121 [*Bent*]; *Elkow v Sana*, 2020 ABCA 350 at para 12. While malice is commonly understood as "spite or ill-will", in the defamation context it also includes "any indirect motive or ulterior purpose" and where a defendant speaks "dishonestly, or in knowing or reckless disregard for the truth": *Hill* at para 145.

[21] The appellant submits the chambers judge made two errors in assessing whether qualified privilege was defeated by malice.

[22] First, she argues that because the chambers judge found there was no malice for malicious prosecution, he should also have found there was no malice for defamation. In dismissing the malicious prosecution claim, the chambers judge found the appellant's reports to police were motivated by fear, not malice. By contrast, he denied summary dismissal of the defamation claim essentially because he found the presence or absence of malice in making the June 6 statements was a genuine issue requiring trial. The appellant asserts that in these circumstances, malice has the same meaning for the purposes of malicious prosecution and defamation, making the chambers judge's findings inconsistent. She submits the factual finding of lack of malice for malicious prosecution must also be applied to defamation, resulting in dismissal of the claim.

[23] However, the meaning of "malice" is not the same for defamation as it is for malicious prosecution.

[24] To prove "malice" in a case of malicious prosecution, a plaintiff must establish that the prosecution was "motivated by malice or a primary purpose other than that of carrying the law into effect": *Miazga* at para 3. The requirement for malice in this context has been treated as the equivalent of "improper purpose": *Nelles v Ontario*, [1989] 2 SCR 170 at 193, 1989 CanLII 77; Lewis Klar et al, *Remedies in Tort* (Toronto: Thomson Reuters Canada, 2026) at §15.10, online: (WL Can). Examples of improper purposes include securing a collateral benefit, coercing an individual to a desired course of conduct, or shifting blame onto an innocent person: Philip Osborne, *The Law of Torts*, 6th ed (Toronto: Irwin Law, 2020) at 278. Claims of malicious prosecution involving private defendants, as opposed to public prosecutors, often arise in the context of a pre-existing relationship. In such contexts, some courts have been prepared to infer malice after finding the defendant had initiated a complaint despite not believing it to be true or knowing it to be false: *Miazga* at para 87; *Remedies in Tort* at §15.10. While lack of belief in truth or knowledge of falsity may contribute to an inference of malice for malicious prosecution involving private defendants, they are not independent forms of malice and do not form part of the definition of malice.

[25] The meaning of "malice" in defamation is generally considered to be broader. As mentioned, it is defined to include concepts that cluster around improper purpose, akin to the definition used in malicious prosecution. But the definition in defamation also includes circumstances where a defendant publishes words "dishonestly, or in knowing or reckless disregard for the truth": *Hill* at para 145. The bulk of authorities in this area treat knowledge and reckless indifference as independent forms of malice, separate from spite, ill-will, or improper purpose: *Botiuk v Toronto Free Press Publications Ltd*, [1995] 3 SCR 3 at paras 96-103, 1995 CanLII 60; *Smith v Cross*, 2009 BCCA 529 at para 34; *Bent* at paras 121, 136; *Hansman v Neufeld*, 2023 SCC 14 at para 115; *Giesbrecht* at paras 158-165, 169-175; *Teneycke v McVety*, 2024 ONCA 927 at para 64; *Solmar Inc v Hall*, 2026 ONCA 367 at paras 82-84.

[26] In explaining his conclusion on defamation, the chambers judge repeated his conclusion that malicious prosecution had not been established, because, among other things, the appellant's

June 6 statements had not been motivated by malice. He repeated his finding that her motive was fear. In effect, he had ruled out the kind of improper purpose that would support “malice” for malicious prosecution or the purpose-related types of “malice” for defamation. He then turned his mind to the remaining types of “malice” for defamation.

[27] He concluded *viva voce* evidence would be needed to decide whether the June 6 statements had been made “dishonestly or with reckless disregard for [their] truth”. Though the objective truth of the statements was not directly at issue in determining the applicability of qualified privilege, the chambers judge noted that truth would be a complete defence to the allegation of defamation, and that determining the truth of the June 6 statements would also require *viva voce* evidence.

[28] The chambers judge’s findings on malice for malicious prosecution and defamation differed because the bases for finding malice differ. There is no legal inconsistency that would ground interference by this Court.

[29] Next, the appellant argues that the chambers judge failed to appreciate the onus to prove malice was on the respondent, and that there was “no evidence” she made the June 6 statements knowing they were untrue or with reckless disregard for their truth.

[30] It is true that the onus of proving malice for the purposes of defeating qualified privilege rests with the plaintiff: *Chohan v Cadsky*, 2009 ABCA 334 at para 90(b), leave to appeal to SCC denied, 33461 (22 April 2010) [*Chohan*]; *Hill* at para 144. However, nothing in his reasons suggests the chambers judge was unaware of that onus. It was open to him to find that malice, in the sense of dishonesty or reckless indifference to truth, was a genuine issue that could not be decided on the record before him.

[31] Whether a plaintiff has established malice to rebut qualified privilege is a question of mixed fact and law that is heavily dependent on the facts disclosed by the evidence adduced at trial: *Chohan* at para 87; *Foulidis v Baker*, 2014 ONCA 529 at para 59. The appellant has not identified any palpable and overriding error with the chambers judge’s conclusion that this question constituted a genuine issue requiring trial: *Calgary Co-operative* at para 16; *Weir-Jones* at paras 10, 47.

#### *B. Defamatory meaning*

[32] The appellant contests the chambers judge’s conclusion that the June 6 statements had defamatory meaning. In addition to some misplaced arguments about the form of the statement of claim, the appellant frames this as a legal error.

[33] Whether a statement is capable of defamatory meaning is a question of law reviewed for correctness: *Chohan* at para 85. Whether a statement is defamatory is a question of fact reviewed deferentially for palpable and overriding error: *Huff v Zuk*, 2021 ABCA 60 at para 23; *Kazakoff v Taft*, 2018 BCCA 241 at paras 21-29.

[34] The alleged June 6 statements, taken together, are capable of defamatory meaning. As noted by the chambers judge, “This is hardly surprising given that it was intended to be a report of a crime”: *Chambers Decision* at para 47. By their ordinary meaning, the statements communicated to police that in driving by the appellant’s home while waving and “holding an object that looked like a weapon”, the respondent had threatened the appellant’s “safety and the safety of her children” and should be charged with “criminal harassment”. Reports that assert “directly, or by clear implication, that the plaintiff has been involved in acts amounting to a criminal offence” are generally considered capable of defamatory meaning: *TPG Technology Consulting Ltd v Canada*, 2012 ONCA 87 at para 12.

[35] The chambers judge was satisfied for the purposes of the summary dismissal application that “the drive-by allegation” was defamatory “on its face”, since it would “clearly tend to diminish the reputation of [the respondent] in the eyes of a reasonable person”: *Chambers Decision* at para 37. The appellant has not identified any palpable and overriding error with this factual assessment. As such, there is no basis for us to interfere with it.

## **VI. Conclusion**

[36] For the foregoing reasons, the appeal is dismissed.

Appeal heard on April 13, 2026

Memorandum filed at Calgary, Alberta  
this 31st day of July, 2026

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Antonio J.A.

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Ho J.A.

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Feth J.A.



**Appearances:**

K.T.W. Shewchuk  
for the Respondent

G.S. Watson  
C. Hadzoglou  
for the Appellant