


Vander Zalm v. Times Publishers, 1980 CanLII 389 (BC C.A.)

Print:  [PDF Format](#)
Date: 1980-02-15
Docket: 12/79
Parallel citations: 109 D.L.R. (3d) 531 • [1980] 4 W.W.R. 259 • 18 B.C.L.R. 210
URL: <http://www.canlii.org/en/bc/bcca/doc/1980/1980canlii389/1980canlii389.html>
Noteup: [Search for decisions citing this decision](#)

[Reflex Record](#) (related decisions, legislation cited and decisions cited)

Court of Appeal for British Columbia

Vander Zalm v. Times Publishers

Date: 1980-02-15

D. A. Farquhar, for appellants.

R. J. E. Taylor, for respondent.

(Victoria No. 12/79)

[1] 15th February 1980. NEMETZ C.J.B.C.:— On 22nd June 1978 there appeared on the editorial page of the Victoria Times, one of the city of Victoria's leading daily newspapers, a cartoon depicting the plaintiff, William N. Vander Zalm, a cabinet minister then holding the office of Minister of Human Resources in the government of British Columbia. It was drawn by the defendant Robert Bierman, a freelance political cartoonist who had contributed cartoons to the newspaper for many years. Alongside the cartoon there appeared an actual photograph of the minister, as part of a reprinted editorial criticizing Mr. Vander Zalm's statements and policies. It is apparent that the cartoon exaggerated the facial features of the plaintiff. It depicted Mr. Vander Zalm smiling, seated at a table, and engaged in plucking the wings from a fly. Other flies, without wings, were shown moving on the table. On the plaintiff's lapel were inscribed the words "Human Resources".

[2] The minister sued for damages, claiming that the cartoon libelled him. He pleaded that the newspaper, its editor, its publisher and Mr. Bierman alleged by the cartoon that he was "a person of cruel and sadistic nature who enjoys inflicting suffering and torture on helpless beings who cannot protect themselves". The action was heard by Munroe J., sitting without a jury. The defendants pleaded that the cartoon was not defamatory, and that in any event it was fair comment. The learned trial judge rejected these contentions and found for the plaintiff, awarding damages of \$3,500 against the defendants. This is an appeal from that judgment [[reflex](#), [1979] 2 W.W.R. 673, 8 C.C.L.T. 144, 96 D.L.R. (3d) 172].

[3] Before addressing myself to the issues, I should like to make some prefatory observations as to political cartoons in general. Counsel were agreed that there was a paucity of decided cases concerning libel arising from political caricatures or cartoons — despite the fact that such cartoons have had a long history of publication in Canada as well as in most of the Western world. As a result, as noted by the learned editors of *Gatley on Libel and Slander*, 7th ed. (1974), p. 15, n. 23: "the limits of what is permissible in the way of cartoons... are undefined". I have examined definitions of the word "cartoon" in its modern use (coined, it is suggested, by the editors of *Punch*) and would adopt the one set out by the scholar Winslow Ames in the *Encyclopaedia Britannica* (1961):

"... a pictorial parody ... which by the devices of caricature, analogy and ludicrous juxtaposition sharpens the public view of a contemporary event, folkway, or political or social trend. It is normally

humorous but may be positively savage."

[4] Now the well-known test for whether a statement or allegation is defamatory is set out in Salmond on Torts, 17th ed. (1977), pp. 139 -40, from which I quote as follows:

"A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the 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 disesteem."

[5] I have placed these two quotations in juxtaposition because it becomes obvious that most political cartoons have, inherent in their satire, a tendency to lower their subject in the estimation of the public. Nevertheless, it has been said that persons accepting public office can expect attack and criticism on the grounds that "the public interest requires that a man's public conduct shall be open to the most searching criticism", per Bain J. in *Martin v. Man. Free Press Co.* (1892), 8 Man. R. 50 at 72. However, the question of what constitutes valid "searching criticism" and what constitutes libel must be examined in the context of all the surrounding circumstances.

[6] I turn now to the consideration of the cartoon. The defendants denied that the cartoon defamed the plaintiff and pleaded that in any event the cartoon was fair comment on a matter of public interest and that accordingly there was no libel. I have had the privilege of reading the reasons for judgment prepared by each of my brothers Seaton, Hinkson and Craig J.J.A., and agree with them that, even if the cartoon was prima facie defamatory, the defence of fair comment was available in the circumstances. However, I should like to advance my own view of why that defence was available here.

[7] The three elements of the defence of fair comment are well known. First, the matter must be recognizable to the ordinary reasonable man as a comment upon true facts, and not as a bare statement of fact. Secondly, the matter commented upon must be one of public interest. There must, in short, be a public nexus between the matter and the person caricatured. In a case such as this, the cartoonist may not intrude upon the private life of a public man, no matter how interesting such an intrusion may be to the public, nor may he expose a private person to unsought publicity. Finally, as explained by Diplock J. (as he then was) in *Silkin v. Beaverbrook Newspapers*, [1958] 1 W.L.R. 743 at 747, [1958] 2 All E.R. 516, and by the Supreme Court of Canada in *Cherneskey v. Armadale Publishers Ltd.*, 1978 CanLII 20 (S.C.C.), [1979] 1 S.C.R. 1067, 24 N.R. 271, the comment must be "fair" in that it must, to quote Martland J. in *Cherneskey* at p. 1073, "represent an honest expression of the real view of the person making the comment". At the trial of this action, the availability of the defence turned on this last element. Munroe J. specifically left open the question of whether the matter was comment or not, and did not find it necessary to consider the question of public interest. The learned judge held that the defence failed because the facts pleaded as the basis for the alleged comment "could not ... fairly lead to the imputation arising from the cartoon" (p. 675).

[8] I agree with my brother Hinkson that in making this finding the learned judge applied the wrong test. It is to be remembered that the questions of whether the matter complained of is fact or comment, and if it is comment whether it is "fair", are questions of fact: see *Jones v. Skelton*, [1963] 1 W.L.R. 1362, [1963] 3 All E.R. 952 (P.C.). Consequently in a libel action such as this, heard by a judge sitting without a jury, whether the defence of fair comment succeeds or not rests upon the trial judge drawing proper inferences from proven facts. The question of credibility does not necessarily arise. Certainly it did not arise in this case. Accordingly, an appellate tribunal is in as good a position as the trial judge to draw the proper inferences.

[9] Now as I have already noted, the act of putting oneself in the public arena tends to invite appraisal of one's public conduct. The evidence clearly shows that the minister was not unaware of the widespread publicity attending his public conduct over the period in question. The learned trial judge in his reasons for judgment put it succinctly and I quote him in part [p. 675]:

"During the 14 years that the plaintiff has been engaged in public life he has been a controversial figure, not adverse to expressing publicly his opinion upon contentious matters."

Sixteen instances of controversial statements and acts attributed to the minister were pleaded by the defendants as particulars of facts upon which the cartoon was said to comment. Each of them had received considerable publicity. These particulars are set out in the judgment of my brother Craig, and I note that only one, para, (h), was categorically denied by the plaintiff. All of the other 15 were either entirely acknowledged or substantially conceded after qualification. I refer by way of example only to those matters arising in paras, (a), (b), (e), (1), (m), (n) and (p):

"a. That the Plaintiff, within hours of being appointed Human Resources Minister in December, 1975, stated that he would develop ways of dealing with welfare recipients who refused to "pick up their shovels.

"b. That the Plaintiff, since assuming the role of Minister of Human Resources, has cut off funding for a number of community groups that had been providing valuable services for those in need....

"e. That in March, 1976, the Plaintiff tightened regulations so that fewer people in British Columbia would be classified as handicapped and so be eligible for handicapped benefits....

"1. That in October, 1977, the Plaintiff stated that young people should be denied assistance because they have more mobility to find jobs.

"m. That in January, 1978, the Plaintiff ordered that even emergency welfare aid be refused to persons in areas where the picking of hallucinogenic mushrooms is common.

"n. That in March, 1978, the Plaintiff suggested that the current level of unemployment insurance payments to single people should be reduced....

"p. That in June, 1978, the Plaintiff commented that native Indians in Vancouver should return to their reserves because there was 'more opportunity' there for them."

[10] Now, one can approve or disapprove of these ministerial concerns, but there is little doubt that these statements were provocative. It should not, therefore, have come to the minister as a surprise that these statements would become well known to the public and that someone would respond to them. One such person was the defendant cartoonist. In giving evidence at the trial, Mr. Bierman was questioned as to the meaning of the cartoon. I quote his testimony in part:

"MR. BIERMAN: This particular cartoon — I tried to say with it that the Minister of Human Resources had a cruel attitude to the underprivileged position and defenceless people under his ministry where, in particular, I was referring to the Indians.

"MR. FARQUHAR: NOW, could you describe, please, the significance of the various components of the cartoon?

"MR. BIERMAN: Oh, I could describe it by what I would say that I used the body which I labelled as Human Resources, the ministry, the head on it as a caricature of Mr. Vander Zalm who at that time was the Minister of Human Resources, and the fly depicts the helpless Indians that were in his words, 'Attracted to the big lights'. And what he is doing there, he is more or less clipping their wings. However, he is pulling them out which is different from clipping, but he's clipping their wings so they can't roam around any longer or fly around to the bright lights, not realizing the pain that he causes.

"MR. FARQUHAR: Was there any particular reason why you did that cartoon at that time?

"MR. BIERMAN: Yes, that was in relation to a statement that the Indians were attracted to the bright lights and excitement of the big city and, I take it, it was Vancouver and should return to their reserves if they still wanted to qualify for welfare. And that they had better opportunity there on the reserves.

"MR. FARQUHAR: Now, in addition to that statement by the minister, at the time that you prepared the cartoon, did you have in mind any other actions of the Minister of Human Resources?

"MR. BIERMAN: Yes sir."

[11] In my view, these statements and actions of the minister, including the statement concerning

Indians which was publicized only a few days before the publication of the cartoon, provided the necessary substratum of sufficiently publicized facts to enable the ordinary reader to recognize the nexus of the cartoon and the statements. Ordinary and reasonable persons in this country are well acquainted with the allegorical nature of political cartoons and, in my opinion, would have little difficulty in recognizing this cartoon as a comment upon such facts; a comment, indeed, of the very sort which Mr. Bierman testified he intended to make. Nor can it be doubted that the facts commented upon were matters of considerable public interest and concerned the minister in his public rather than his personal capacity.

[12] The next question that arises is whether the comment was "fair". In charging the jury in the *Silkin* case, supra, Lord Diplock explained the test in this way [p. 747]:

"I have been referring, and counsel in their speeches to you have been referring, to fair comment, because that is the technical name which is given to this defence, or, as I should prefer to say, which is given to the right of every citizen to comment on matters of public interest. But the expression 'fair comment' is a little misleading. It may give you the impression that you, the jury, have to decide whether you agree with the comment, whether you think it is fair. If that were the question you had to decide, you realize that the limits of freedom which the law allows would be greatly curtailed. People are entitled to hold and to express freely on matters of public interest strong views, views which some of you, or indeed all of you, may think are exaggerated, obstinate or prejudiced, provided — and this is the important thing — that they are views which they honestly hold. The basis of our public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury, and it would be a sad day for freedom of speech in this country if a jury were to apply the test of whether it agrees with the comment instead of applying the true test: was this an opinion, however exaggerated, obstinate or prejudiced, which was honestly held by the writer?"

The question, then, is this: Did the comment made by the cartoon represent the honest opinion of Mr. Bierman? At the end of the cartoonist's examination-in-chief, the following exchange took place:

"MR. FARQUHAR: NOW, you have testified as to what you intended the cartoon to say about the Minister of Human Resources, did that represent your honest opinion of the Minister of Human Resources at the time you prepared the cartoon? "MR. BIERMAN: Yes, sir."

[13] Now, as I have already stated, what the cartoonist intended the cartoon to say, as quoted above, coincides, in my opinion, with what the ordinary and reasonable person would take the cartoon as saying; namely, it is a comment of the nature Mr. Bierman described, concerned solely with the plaintiff in his ministerial capacity. I conclude from the whole of Mr. Bierman's testimony that that indeed represents an honest expression of his real view. No question arises as to credibility since it is obvious that the learned trial judge did not disbelieve the cartoonist, and no issue arose in this regard. Having these factors before us, is the defence of fair comment available? I think it is. As, in the circumstances of this case, it is my respectful view that the cartoon represents fair comment on a matter of public interest, I would, therefore, allow the appeal and dismiss the action.

[14] SEATON J.A.:—I have had the advantage of reading the reasons for judgment prepared by my brother Hinkson. I agree with him that the defence of fair comment is available to these appellants and should prevail. That is enough to dispose of the appeal, but I wish to express some views upon issues that are to be faced before the question of fair comment arises.

[15] I think it clear that a newspaper has no special rights in a case such as this: see *Truth (N.Z.) Ltd. v. Holloway*, [1960] N.Z.L.R. 69, affirmed [1961] N.Z.L.R. 22 (J.C.). The freedom of the press does not include, and need not include, the right to defame.

[16] Nor do cartoonists have special rights. The law is the same for them as it is for the rest of us. A cartoon is but a particular means of communicating and it is subject to the same law as other means. It does not follow that for the purposes of defamation cartoons are to be interpreted literally. That is not how they are seen by ordinary persons or by the law.

[17] The first question is whether the cartoon is defamatory, that is, has a tendency to injure the

reputation of the respondent. I accept this brief statement in Salmond on Torts, 17th ed. (1977), at pp. 139-40:

"A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the 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 disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one, and it is no defence to say that the statement was not intended to be defamatory, or uttered by way of a joke. A tendency to injure or lower the reputation of the plaintiff suffices, for 'If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation, and may even know that it is untrue.' Hence it is settled that a statement may be defamatory although no one believes it to be true."

The question of whether the cartoon is defamatory is one of fact suitable for a jury. It was posed to a judge but remains a question of fact and therefore a question upon which one can expect little guidance from the authorities.

[18] The trial judge found that the cartoon depicted the respondent as a cruel man [[reflex](#), [1979] 2 W.W.R. 673, 8 C.C.L.T. 144, 96 D.L.R. (3d) 172]. Salmond on Torts, at p. 143, cites *Le Fanu v. Malcomson*, [1848] 1 H.L.Cas. 637, 9 E.R. 910 (H.L.), for the proposition that to allege cruelty is defamatory. Whether or not this is true in a general sense, I am inclined to think that the material found to be defamatory in that case would be found to be defamatory in British Columbia in the 1970's. It would be so found not on the basis of old cases but because it tended to injure the reputation of the plaintiff. I think that previous cases, even recent ones in this jurisdiction, are of limited help.

[19] I agree with the trial judge that the cartoon in this case is not amusing. We have become accustomed to witty cartoons and this one is coarse. But a cartoon can be in bad taste and not be defamatory; mere insult or vulgar abuse have been held not to constitute defamation, and it is defamation that is the basis of the respondent's claim.

[20] During argument there was a struggle to translate the cartoon into words, then an analysis of the chosen words to see whether they were defamatory. That is an exercise of limited value and it contains within it a hazard. It tends to focus attention on the words that have been substituted for the cartoon rather than on the cartoon itself. If the translation from cartoon to words is not done completely accurately, the proper test might give an improper result because it is being applied to the wrong subject. Substituting words for the cartoon might be helpful but it cannot modify the essential question to be faced by the trier of fact.

[21] In the end, having considered all the circumstances and employed all the aids, the trier of fact must come back to the cartoon and ask himself whether it tends to lower the respondent in the estimation of ordinary right-thinking members of society. If this trial, held in Victoria in 1978, had taken place with a jury I am not at all sure that the cartoon would have been found to be defamatory. I am sure that whatever the verdict it could not have been successfully attacked on appeal.

[22] The trial judge went directly to the question of fair comment but in the course of his reasoning found that the cartoon was defamatory. I have said enough to indicate that I think the issue a difficult one. In view of my agreement on the defence of fair comment I need not go further.

[23] I would allow the appeal.

[24] HINKSON J.A.:— The appellant Times Publishers printed a cartoon in the issue of the Victoria Times daily newspaper published on 22nd June 1978.

[25] The respondent, who was then the Minister of Human Resources for the province of British Columbia, brought action against the appellants seeking damages for alleged libel as a result of the publication of the cartoon.

[26] The appellants raised two defences: (i) that the cartoon was not defamatory; (ii) fair comment.

[27] The learned trial judge held that the cartoon was defamatory of the respondent and concluded that the appellants had not established the plea of fair comment. In the result he awarded damages to the respondent [[reflex](#), [1979] 2 W.W.R. 673, 8 C.C.L.T. 144, 96 D.L.R. (3d) 172].

[28] In his reasons for judgment the learned trial judge said [p. 674]:

"The alleged libel is contained in a cartoon which caricatures the plaintiff gleefully pulling the wings from flies, with obvious enjoyment, with a tag reading 'Human Resources' upon his chest. There is no caption to the cartoon.

"Literally, upon its face, the cartoon depicts the plaintiff as a person with a love of cruelty, who enjoys causing suffering to defenceless creatures. That was a false misrepresentation of the character of the plaintiff, as a person or in his role as minister."

[29] In my view it was not intended that the cartoon be taken literally by the readers of the newspaper, nor do I believe that the average reader would do so. Political cartoons are familiar to readers of newspapers and are known to employ both caricature and symbolism to convey their message.

[30] The first matter to be considered is the defence raised by the appellants that the cartoon was not defamatory. In my view it is clear that because of the label "Human Resources" on the figure portrayed in the cartoon it was intended to refer to the public life of the respondent rather than his private life. He was being portrayed in his role as Minister of Human Resources. The respondent asserted that he was being portrayed as a person who discharged his duties in a cruel and sadistic manner while the appellants contended in the defence that the respondent was being portrayed as a person who discharged his duties in a cruel and thoughtless manner.

[31] On the hearing of the appeal counsel for the appellant dealt with the meaning of the word "sadistic". He referred to the definition in the Shorter Oxford English Dictionary where sadism is defined as "a form of sexual perversion marked by a love of cruelty". Counsel for the respondent did not press his contention, as advanced in the statement of claim, that sadism was part of the message conveyed by the cartoon.

[32] But it is common ground that the cartoon portrayed the respondent as discharging his duties in a cruel manner. The Shorter Oxford English Dictionary defines "cruel" as:

" 1. Disposed to inflict suffering; indifferent to or taking pleasure in another's pain; merciless, pitiless, hard-hearted. 2. Fierce, savage-1600. 3. Severe, vigorous-1670. 4. Painful; distressing; *colloq.* — hard ME. 5. as *adv.* Distressingly; hence = exceedingly 1573."

[33] On first looking at the cartoon it seems to me that the average reader would immediately conclude that the figure was being portrayed as being a cruel person. A moment's reflection, however, upon the label "Human Resources" on the figure would lead the reader to conclude the cartoon was not to be taken literally and that the message conveyed by the cartoon related to the public utterances and policies of the figure as Minister of Human Resources.

[34] Approached in that way the question to be determined is whether or not the message contained in the cartoon was defamatory of the respondent.

[35] The test to be applied is set forth in *Gatley on Libel and Slander*, 7th ed. (1974), pp. 4-5, para. 4, as follows:

"Any imputation which may intend 'to lower the plaintiff in the estimation of right-thinking members of society generally,' ... or 'to expose him to hatred, contempt or ridicule,' is defamatory of him."

[36] As Minister of Human Resources the respondent was charged with the responsibility of caring for the welfare of the aged, the incapacitated, the unemployed and many other segments of society which require assistance and support. It is a serious matter for a minister in that office, who has the care and responsibility of many persons in the province who are helpless and must look to his department for assistance, to be falsely characterized as carrying out his duties in a cruel manner, as inflicting suffering on helpless individuals.

[37] In dealing with the nature of a defamatory statement, the learned editor of *Salmond on Torts*, 17th

ed. (1977), says at p. 141:

"The test of the defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of other persons. The typical form of defamation is an attack upon the moral character of a plaintiff, attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, ingratitude, or cruelty."

[38] No authority is cited for that statement but the decision in *Le Fanu v. Malcomson*, [1848] 1 H.L.Cas. 637, 9 E.R. 910 (H.L.), does appear to lend some support to it. The facts in that case were that the plaintiffs, who were the owners of a factory in Ireland, charged that the defendant published of them a libel, imputing that " ' ' in some of the Irish factories" (meaning the plaintiffs' factory) 'cruelties were practised, though there was no allegation otherwise connecting the libel with the plaintiff' [p. 911]. The argument in the House of Lords dealt with the question of whether the jury was correct in concluding that the libel, which did not name anyone, was intended to apply to the plaintiffs. In the course of dealing with the matter the Lord Chancellor said at p. 921:

"Now the question is not whether the matter complained of is libellous, for about that no question can be raised. If it had been addressed to the plaintiffs by name, and it had been said that the plaintiffs had done so and so in their factory, no question could have been suggested but that that would have been libellous."

[39] Here the learned trial judge applied the proper test to this issue and concluded that the cartoon did adversely affect and lower the respondent's reputation and standing in the estimation of right-thinking members of society generally and that it exposed him to hatred, contempt or ridicule and disparaged him in his office as Minister of Human Resources.

[40] I am unable to say that the learned trial judge erred in coming to that conclusion.

[41] In these circumstances it is necessary then to turn to the other defence raised by the appellants, namely, fair comment. At trial the appellants relied upon the statements made and decisions taken by the respondent as minister as constituting the facts upon which the comment was made. The learned trial judge said in discussing this aspect of the matter [p. 675]:

"During the 14 years that the plaintiff has been engaged in public life he has been a controversial figure, not adverse to expressing publicly his opinion upon contentious matters. Nevertheless, upon the evidence I find that the controversial statements made by the plaintiff and relied upon by the defendants were such that he was entitled to hold and to express, and the decisions made by him as minister were made in good faith pursuant to his duty and responsibility as such minister, and could not fairly lead an ordinary person to conclude that the plaintiff acted in a cruel, sadistic or thoughtless manner when performing his duties. His statements and acts, as one would expect, were approved by some and disapproved by others, but could not in my opinion fairly lead to the imputation arising from the cartoon."

In my view the learned trial judge erred in disposing of the defence of fair comment in that way.

[42] In *Cherneskey v. Armadale Publishers Ltd.*, [1978 CanLII 20 \(S.C.C.\)](#), [1978] 6 W.W.R. 618, 7 C.C.L.T. 69, 90 D.L.R. (3d) 321, Martland J. at p. 636 said:

"A clear statement of the nature of the defence of fair comment is found in the summing up to the jury of Diplock J. (as he then was) in the case of *Silkin v. Beaverbrook Newspapers*, [1958] 1 W.L.R. 743 at 747, [1958] 2 All E.R. 516:

" 'I have been referring, and counsel in their speeches to you have been referring, to fair comment, because that is the technical name which is given to this defence, or, as I should prefer to say, which is given to the right of every citizen to comment on matters of public interest. But the expression 'fair comment' is a little misleading. I may give you the impression that you, the jury, have to decide whether you agree with the comment, whether you think it is fair. If that were the question you had to decide, you realize that the limits of freedom which the law allows would be greatly curtailed. People are entitled to hold and to express freely on matters of public interest strong views, views which some of you, or indeed all of you, may think are exaggerated, obstinate

or prejudiced, provided — and this is the important thing — that they are views which they honestly hold. The basis of our public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury, and it would be a sad day for freedom of speech in this country if a jury were to apply the test of whether it agrees with the comment instead of applying the true test: was this an opinion, however exaggerated, obstinate or prejudiced, which was honestly held by the writer?' "

[43] The Supreme Court of Canada decided in the *Cherneskey* case, in respect of the defence of fair comment, that it is dependent upon the fact that the words used must represent an honest expression of the real view of the person making the comment.

[44] In response to that proposition, counsel for the respondent advanced a number of submissions. First, he contended that the message in the cartoon was a statement of fact rather than an expression of opinion. In my view there is no merit in that submission. It is not contended by the respondent that the cartoon was to be interpreted literally and as I have already indicated, having regard to the fact that the respondent was well known in public life and that he was being described in his capacity as Minister of Human Resources, a moment's reflection by the reader of the newspaper would indicate that the cartoon referred to the statements and policies of the respondent as Minister of Human Resources and that the message in the cartoon was a comment on those statements and policies. Approached in that way it seems to me that there were facts before the reader which formed the basis for the comment.

[45] Second, it was contended that the appellant Bierman, who drew the cartoon, had no honest belief in the opinion being expressed. In giving his evidence in chief this witness testified:

"Q. And what, if anything, were you intending the cartoon to say? A. This particular cartoon I tried to say with it that the Minister of Human Resources had a cruel attitude to the underprivileged position and defenceless people under his ministry where, in particular, I was referring to the Indians."

At the conclusion of his evidence in chief the witness testified that the cartoon represented his honest opinion of the Minister of Human Resources at the time the cartoon was prepared.

[46] In cross-examination it was suggested that the witness had portrayed the respondent as a cruel and sadistic person. A discussion took place as to the meaning of sadistic at which point the trial judge intervened as follows:

"THE COURT: Let us assume for the purpose of this question that a person that pulls the wings off a fly is a sadistic person in the sense that he enjoys seeing other creatures suffering. It may be a poor definition, adopting that stand, you say your cartoon shows him as a sadistic person or otherwise?"

"THE WITNESS: Otherwise, sir.

"THE COURT: Why do you say that? A. Because it is an assumption that anybody that pulls wings off flies is a sadistic person and I don't agree with that. If a child pulls wings off of a fly, is the child sadistic or if a person that is evil-minded, is that person sadistic? Any person that doesn't know picking wings off flies causes pain and suffering and nevertheless does it —

"THE COURT: YOU don't suggest that the minister depicted in your cartoon is either a child nor evil-minded? A. In the cartoon, the minister is evil-minded in the cartoon.

"Q. You're not suggesting that you had an honest opinion at the time that you drew that cartoon that Mr. Vander Zalm was evil-minded? A. Not an honest opinion, I knew better, but in my cartoon I drew him as being a feeble-minded person, thoughtless and cruel."

In my view, the witness was adhering to his evidence in chief as to the opinion he had formed and that such was his honest belief.

[47] The defence also called Miss B.J. McLintock, the editor of the Victoria Times newspaper. She had seen the cartoon in the page proof on the morning of 22nd June 1978 and had permitted it to be published. Her evidence disclosed that she considered that the statements and policies of the respondent while he was Minister of Human Resources marked him as performing his duties in a cruel manner and that this was an opinion honestly held by her at the time that she approved the publication of the cartoon.

[48] The learned trial judge appeared to consider that the statements and policies of the respondent could not fairly lead an ordinary reasonable person to conclude that he acted in a cruel manner in performing his duties. But it seems to me that does not apply the proper test. If the appellants Bierman and McLintock honestly held that view then, because the subject matter was a matter of public interest, they were entitled to express that opinion without becoming liable to the respondent.

[49] I conclude that the defence of fair comment should prevail. In the result I would allow the appeal and dismiss the action.

[50] CRAIG J.A.:— The appellants appeal from a judgment awarding the respondent damages for libel [[reflex](#), [1979] 2 W.W.R. 673, 8 C.C.L.T. 144, 96 D.L.R. (3d) 172]. On 22nd June 1978 the Victoria Times, a daily newspaper, published a cartoon on the editorial page which had been drawn by the appellant Bierman. The cartoon caricatured the respondent who was then the Minister of Human Resources in the British Columbia government. The cartoon was uncaptioned. The only writing on the cartoon was the printed phrase "Human Resources". This appeared on a tag on the left lapel of the respondent's suit jacket. The cartoon shows the respondent with an evil grin on his face picking the wings from a fly. There are four flies lying on the table in front of him without wings and several wings are lying on the table.

[51] Following the refusal of the appellants to apologize, the respondent commenced an action claiming damages for defamation and alleging, in part, that:

"By the said cartoon and the said words the Defendants meant and were understood to mean that the Plaintiff is a person of cruel and sadistic nature who enjoys inflicting suffering and torture on helpless beings who cannot protect themselves."

[52] In their statement of defence, the appellants pleaded that:

"In answer to the Statement of Claim as a whole, the Defendants say that the cartoon was intended by the Defendant, Robert Bierman, to depict the Plaintiff as a person who, in his role as the Minister of Human Resources of the Government of British Columbia, acted on occasion in a cruel and thoughtless manner, and at those times performed the duties of his office in such a way as to inflict suffering on those who in some instances were unable to adequately protect their own interests. As such, the Defendants rely on the plea of fair comment and say that the basis for the cartoon is one of public interest.

"Particulars of the facts upon which the Defendants plead fair comment are:

"6. a. That the Plaintiff, within hours of being appointed Human Resources Minister in December, 1975, stated that he would develop ways of dealing with welfare recipients who refused to 'pick up their shovels'.

"b. That the Plaintiff, since assuming the role of Minister of Human Resources, has cut off funding for a number of community groups that had been providing valuable services for those in need.

"c. That the Plaintiff, in March 1976, made statements to a group of women to the effect that women make better homemakers than they do plumbers or electricians.

"d. That in March, 1976, the Plaintiff threatened to scrap all provincial day-care programs if unionized staff engaged in strikes or labour disturbances.

"e. That in March, 1976, the Plaintiff tightened regulations so that fewer people in British Columbia would be classified as handicapped and so be eligible for handicapped benefits.

"f. That in April, 1976, the Plaintiff tightened regulations so that persons refused jobs because of unsuitable grooming or attire could be cut off welfare.

"g. That in April, 1976, the Plaintiff changed welfare policies to make it much more difficult for persons waiting for unemployment cheques to receive welfare on the grounds that this change would encourage persons affected to complain to Unemployment Insurance Commission to improve their efficiency.

"h. That in May, 1976, the Plaintiff introduced an assets test for those receiving Mincome supplements, making Mincome a variation of welfare instead of a separate program for seniors.

"i. That in September, 1976, the Plaintiff stated he was looking into the problems caused by newly arrived immigrants to Canada going on welfare, Mincome and other programs.

"j. That in January, 1977, the Plaintiff stated that legal aid subsidies to help people getting divorces was 'garbage' and worked against goals of keeping families together.

"k. That in February, 1977, the Plaintiff deliberated for several days before deciding whether a man injured in a criminal attack would be allowed to keep the \$300.00 awarded him by the Criminal Injuries Compensation Board or whether it would be deducted from his welfare payments.

"l. That in October, 1977, the Plaintiff stated that young people should be denied assistance because they have more mobility to find jobs.

"m. That in January, 1978, the Plaintiff ordered that even emergency welfare aid be refused to persons in areas where the picking of hallucinogenic mushrooms is common.

"n. That in March, 1978, the Plaintiff suggested that the current level of unemployment insurance payments to single people should be reduced.

"o. That in May, 1978, the Ministry of Human Resources announced that it was considering a plan of requiring persons helped by counselling and social work through the Ministry to pay a fee for the service.

"p. That in June, 1978, the Plaintiff commented that native Indians in Vancouver should return to their reserves because there was 'more opportunity' there for them."

[53] In his examination-in-chief, the appellant Bierman was asked to describe the significance of the cartoon. He said:

"A. This particular cartoon — I tried to say with it that the Minister of Human Resources had a cruel attitude to the underprivileged position and defenceless people under his ministry where, in particular, I was referring to the Indians.

"Q. Now, could you describe please the significance of the various components of the cartoon? A. Oh, I could describe it by what I would say that I used the body which I labelled as Human Resources, the ministry, the head on it as a caricature of Mr. Vander Zalm who at that time was the Minister of Human Resources, and the fly depicts the helpless Indians that were in his words, 'Attracted to the big lights'. And what he is doing there, he is more or less clipping their wings. However, he is pulling them out which is different from clipping, but he's clipping their wings so they can't roam around any longer or fly around to the bright lights, not realizing the pain that he causes.

"Q. Was there any particular reason why you did that cartoon at that time? A. Yes, that was in relation to a statement that the Indians were attracted to the bright lights and excitement of the big city and, I take it, it was Vancouver and should return to their reserves if they still wanted to qualify for welfare. And that they had better opportunity there on the reserves.

"Q. Now, in addition to that statement by the minister, at the time that you prepared the cartoon, did you have in mind any other actions of the Minister of Human Resources? A. Yes, sir."

He then referred to the items set out in para. 6(a)-(p) of the statement of defence.

[54] During the trial, the following exchange took place between the trial judge and the appellant Bierman:

"THE COURT: YOU don't suggest that the Minister depicted in your cartoon is either a child nor evil-minded? A. In the cartoon, the Minister is evil-minded in the cartoon.

"Q. You're not suggesting that you had an honest opinion at the time that you drew that cartoon that Mr. Vander Zalm was evil-minded? A. Not an honest opinion, I knew better, but in my cartoon I drew him as being a feeble-minded person, thoughtless and cruel."

[55] In cross-examination, counsel for the respondent questioned him about another cartoon which he had drawn caricaturing the respondent.

"Q. I suggest to you, Mr. Bierman, that that cartoon is another instance of your depicting the plaintiff in this action as a cruel, sadistic and thoughtless person, isn't that true? A. It is true except for the word 'person'. It's again the cartoon shows the political Minister of Human Resources and it shows the Minister of Human Resources but does not deal with persons, I told you before I do not know Mr. Vander Zalm; I could not make a judgment as to whether he is a cruel and sadistic person.

"Q. Without knowing him, you feel that you have the licence to portray him in that way? A. His politics; his political approach and the way he conducts the Ministry of Human Resources but never and not the person."

[56] The appellant Barbara McLintock, the editor of the Victoria Times, also testified. The gist of her testimony was as follows:

"MR. FARQUHAR: Can you say when you first saw that cartoon? A. My Lord, to the best of my recollection I first saw that cartoon when it came up in the page proof on the morning of the 22nd of June, 1978. The page proof is a rough draft, so to speak, of exactly what the editorial page will look like for that day.

"Q. At the time that you saw that cartoon did you have the authority to prohibit the publication of it? A. Yes, I could have removed it from the paper at that point, but I chose not to do so.

"Q. And, of course, you did not. A. No, My Lord, I did not.

"Q. Now, what message, if any, did you think the cartoon was endeavouring to convey? A. When I saw the cartoon, the message that I thought Mr. Bierman, our cartoonist, was endeavouring to convey, was that Mr. Vander Zalm, the Minister of Human Resources, was particularly relating to the incident that has been mentioned about his statements about getting people from Vancouver to return to their homes in the North, particularly Indians to the reserves. I thought it related specifically to that, and I thought that the message was that Mr. Vander Zalm was being insensitive and was causing pain to a lot of people or would cause pain to a lot of people if he went ahead with that proposal without realizing what he was doing.

"Q. And what was your reaction on behalf of the paper to that message? A. I thought that was a fair comment; that was something that might be reasonably said about the policy that Mr. Vander Zalm had proposed and perhaps about other policies in the past as well.

"Q. Were there any other actions the minister that you have in mind at the time that you saw this cartoon that influenced your thinking concerning it? A. Yes, I would say that there was quite a number. I think perhaps a pattern of actions that had been built up in Mr. Vander Zalm's 2½ years in the portfolio."

[57] In giving judgment for the respondent, the trial judge said in part as follows [pp. 674-76]:

"Literally, upon its face, the cartoon depicts the plaintiff as a person with a love of cruelty, who enjoys causing suffering to defenceless creatures. That was a false misrepresentation of the character of the plaintiff, as a person or in his role as minister.

"Did the cartoon convey to the ordinary reasonable reader a statement of fact or a comment? If the cartoon alleges that the plaintiff has been guilty of disgraceful conduct, or has been actuated by corrupt or dishonourable motives and does not state what those disgraceful acts are or assign any grounds from which such motives can reasonably be inferred, it is an allegation of fact and not an expression of opinion, and the defence of fair comment does not arise: *Jones v. Bennett* (No. 2), 59 W.W.R. 449, reversed 63 W.W.R. 1, which was reversed [1968 CanLII 126 \(S.C.C.\)](#), [1969] S.C.R. 277, 66 W.W.R. 419, 2 D.L.R. (3d) 291. Here it is open to the suggestion, as submitted by counsel for the plaintiff, that the cartoon is a bald assertion of fact, a gratuitous defamatory observation delivered publicly and is not a comment but purely a personal insult or vilification, conveying imputations of an evil sort, unwarranted by the facts. Where, as here, there were no facts before the

reader, he submits that the cartoon stands in the same position as an allegation of fact and cannot be protected by a plea of fair comment. While I think there is merit in that submission, I do not find it necessary to adjudicate thereupon because for reasons hereinafter appearing I hold that the defence of fair comment fails in any event.

"The statement of defence pleads that the cartoon was intended to and did depict the plaintiff as a person who, in his role as minister, acted on occasion in a cruel and thoughtless manner, and at times performed the duties of his office in such a way as to inflict suffering on those who in some instances were unable to protect their own interests. As such, the defendants rely upon the plea of fair comment, made without malice, on a matter of public interest. The defence of fair comment cannot prevail if the facts on which comment is made are untrue and defamatory. No comment can be fair which is built upon facts which are invented or misstated....

"After consideration I have reached the conclusion that considered symbolically, allegorically or satirically, as it should be and would be by the viewing public, the cartoon was defamatory because, in the natural and ordinary meaning that viewers would attribute to it, it meant and would be understood to mean that the plaintiff is a person of a cruel and sadistic nature who enjoys inflicting suffering on helpless persons, said false pictorial representation adversely affecting and lowering his reputation and standing in the estimation of right-thinking members of society generally by exposing him to hatred, contempt or ridicule, and disparaging him in his office as Minister of Human Resources, and upon the evidence I find that the cartoon was not objectively a fair comment upon facts."

[58] In the case of *Sim v. Stretch*, [1936] 2 All E.R. 1237 at 1240 (H.L.), Lord Atkin stated that the test for determining whether words were defamatory was: "would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?"

[59] Would this cartoon tend to lower the respondent in the estimation of "right-thinking" members of society generally? Many newspaper readers would, probably, not even notice the cartoon. Many who noticed it would give it only a cursory glance. Some might be amused by it. Some might be angered by it. Some might consider that it reflected more on the judgment of the cartoonist than on the qualities of the respondent. Whatever the reaction, I am inclined to the view that the so-called "right-thinking members" of society generally would not change their estimation of the plaintiff merely because of the cartoon.

[60] Although this is my own reaction, I cannot say that the trial judge was clearly wrong in finding that the cartoon was defamatory, so I proceed on the premise that the cartoon is defamatory.

[61] This conclusion, therefore, requires a consideration of the defence of fair comment. What is "fair comment"? It must be "the expression of an opinion based on true facts, *i.e.*, facts admitted or proved to be true" — Gately on Libel and Slander, 6th ed. (1967), p. 325 — but the "true facts" need not be stated at the time of the expression of the opinion. They may be implied and specified as particulars in the defence: *Kemsley v. Foot*, [1952] A.C. 345, [1952] 1 All E.R. 501 (C.A.). If the commentator sets out the facts in the comment he may rely on the defence of fair comment only if he proves every fact to be true. On the other hand, if he merely implies the fact, or facts, in the comment and gives the facts in the form of particulars he need establish only the truth of one of the facts: see *Kemsley v. Foot*, *supra*.

[62] The word "fair" in the phrase "fair comment" is a misnomer because it conveys the concept that comment must be "reasonable". This is not the case as pointed out by Diplock J. in addressing the jury in *Silkin v. Beaverbrook Newspapers*, [1958] 1 W.L.R. 743, [1958] 2 All E.R. 516 at 520, when he said:

"So in considering this case, members of the jury, do not apply the test of whether you agree with it. If juries did that, freedom of speech, the right of the crank to say what he likes, would go. Would a fair-minded man holding strong views, obstinate views, prejudiced views, have been capable of making this comment? If the answer to that is yes, then your verdict in this case should be a verdict for the defendants. Such a verdict does not mean that you agree with the comment. All it means is that you think that a man might honestly hold those views on those facts."

[63] Counsel for the respondent submitted to the trial judge, and to this court, that the plea of "fair

comment" was unavailable because there were "no facts stated" at the time of the publication of the cartoon from which there could be an inference that the cartoon was a fair comment. He submitted that the cartoon was not a comment on a matter of public interest but, solely, a statement of fact vilifying the respondent. In a portion of the reasons of the trial judge which I have quoted, he said that while he thought there was "merit" in the submission he did not find it necessary to decide that issue because he felt that the defence of fair comment failed "in any event".

[64] The statement of defence contains a number of facts upon which the appellants rely in support of the defence of fair comment. In his cross-examination the respondent conceded, frankly, that he had said or done some of the things set out in the particulars in the statement of defence. The nature of the cartoon indicates that the cartoonist is commenting, unfavourably, on the conduct of the appellant as Minister of Human Resources. The nature of the conduct is set out in the particulars in the statement of defence. I think that the publisher could not be expected to accompany the cartoon with a statement of facts upon which the cartoon was based, nor could the cartoonist be expected to incorporate all these facts in the cartoon.

[65] In his reasons for judgment, the trial judge said [p. 674]: "The defence of fair comment cannot prevail if the facts on which comment is made are untrue and defamatory. No comment can be fair which is built upon facts which are invented or misstated". I infer from his judgment that he considered that the depiction of the respondent as a "cruel" man was false and that this was, therefore, an untrue allegation. However, that is not the fact upon which the appellants were relying. The facts upon which the cartoonist was relying to make his comment were set out in the particulars. The respondent conceded that some of the particulars, at least, were true. The test was, therefore — did the appellants honestly hold the views which they purported to express in the cartoon on the facts, or any of them, set out in the particulars?

[66] The tenor of Bierman's testimony and the appellant McLintock's testimony was that they honestly felt that in some of his actions as Minister of Human Resources the minister acted in a cruel and thoughtless way.

[67] I infer from the reasons for judgment that the trial judge did not disbelieve the testimony of the appellants, or find that they did not honestly hold the opinions which they expressed, but that rather the facts upon which they based the statement were untrue. Yet, as I have pointed out, some of the facts, at least, upon which the appellants relied in expressing their opinion were admitted by the respondent.

[68] Many would regard the cartoon as anything but "fair" comment. On the other hand, I think that there was a basis upon which the appellants could properly rely upon the defence of fair comment. I think that the trial judge applied the wrong test in rejecting it.

[69] The problem is, should the action be dismissed or should the appeal simply be allowed and a new trial directed? If the trial judge had disbelieved the testimony of the appellant Bierman and the appellant McLintock that they honestly held the view which was expressed by the cartoon the defence of fair comment would have failed. As I have already said, I think that the trial judge did not disbelieve the appellants' testimony and that, therefore, the appropriate disposition of the case would be to allow the appeal and to dismiss the action.

[70] AIKINS J.A.:—I have had the advantage of reading the several reasons for judgment prepared by my brothers, each of whom would allow this appeal. I agree that the appeal should be allowed.

[71] I need not set out the facts in great detail because they have been fully canvassed by my brothers. The corporate appellant is the owner of a daily newspaper called the Victoria Times, published at Victoria, British Columbia. The appellants McLintock and Underhill were respectively the editor and publisher of the paper. The appellant, Bierman, was a freelance cartoonist. On 22nd June 1978 the editorial page of the paper carried a cartoon drawn by Mr. Bierman. The cartoon depicted the respondent who was then, and had been for a considerable time, the Minister of Human Resources in the government of British Columbia. The cartoon was without caption. The only identification in the drawing is provided by a card carrying the words "Human Resources" attached to the left lapel of the respondent's coat. The cartoon shows the respondent seated at a table, having just plucked the wings from a fly shown falling from his hands. Four wingless flies are writhing on the table. The respondent's facial

expression shows that he is deriving pleasure from what he is doing. The cartoon speaks best for itself [cartoon omitted — Ed.].

[72] The respondent sued the appellants, alleging that he had been defamed by the cartoon. The respondent alleged, inter alia, that the cartoon and name tag "Human Resources" "meant and were understood to mean that the Plaintiff is a person of cruel and sadistic nature who enjoys inflicting suffering and torture on helpless beings who cannot protect themselves". The appellants denied that the cartoon was defamatory and also pleaded fair comment. The learned trial judge found for the respondent and awarded damages of \$3,500. The appeal is from that judgment [[reflex](#), [1979] 2 W.W.R. 673, 8 C.C.L.T. 144, 96 D.L.R. (3d) 172].

[73] In this court it was first argued that the trial judge erred in finding that the cartoon was defamatory and, secondly, that if he did not so err, then he erred in failing to give effect to the defence of fair comment.

[74] The defamation found by the learned trial judge is set out clearly in his reasons for judgment as follows [p. 676]:

"After consideration I have reached the conclusion that considered symbolically, allegorically or satirically, as it should be and would be by the viewing public, the cartoon was defamatory because, in the natural and ordinary meaning that viewers would attribute to it, it meant and would be understood to mean that the plaintiff is a person of a cruel and sadistic nature who enjoys inflicting suffering on helpless persons, said false pictorial representation adversely affecting and lowering his reputation and standing in the estimation of right-thinking members of society generally by exposing him to hatred, contempt or ridicule, and disparaging him in his office as Minister of Human Resources, and upon the evidence I find that the cartoon was not objectively a fair comment upon facts." (The italics are mine.)

[75] It is important to notice that the defamation found by the trial judge is of the respondent as a person, not of the respondent in his role as Minister of Human Resources. This appears clearly from the second group of words to which I have added emphasis in the passage that I have cited from the reasons for judgment. Moreover, the conclusion that the defamation found relates to the respondent's character or person — as distinct from his role as minister — is borne out by the last sentence of the paragraph preceding the passage I have cited from the reasons for judgment. That sentence reads [p. 676]: "Criticism of such decisions [referring to decisions of the respondent as minister] was, of course, perfectly proper but to reflect on his personal character is another matter". It is true that the learned trial judge mentioned the respondent's office as minister near the end of the passage I have reproduced from his reasons but he did so only to state the finding that the defamation, amongst other consequences, disparaged the respondent "in his office as Minister of Human Resources" [p. 676].

[76] The first issue in this appeal is whether the learned trial judge erred in finding that the cartoon was defamatory because it would be understood as "saying" (although not in words) that the respondent is "a person of a cruel and sadistic nature who enjoys inflicting suffering on helpless persons" [p. 676].

[77] In considering whether the cartoon was defamatory, the trial judge faced a two-fold task. The defamation here, if there be one, is in a cartoon, not in words. In the case of a written or spoken defamation the words used are to be construed in their natural and ordinary meaning. As to this, I adopt the following passage from para. 93, pp. 47-48, of Gately on Libel and Slander, 7th ed. (1974), as follows:

"Words are normally construed in their natural and ordinary meaning, *i.e.* in the meaning in which reasonable men of ordinary intelligence, with the ordinary man's general knowledge and experience of worldly affairs, would be likely to understand them. The natural and ordinary meaning may also 'include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words'."

[78] The words quoted by the learned editors of Gately are from the judgment delivered by Lord Morris in *Jones v. Skelton*, [1963] 1 W.L.R. 1362 at 1371, [1963] 3 All E.R. 952 (P.C.).

[79] In the present case the trial judge faced a more difficult problem than the construction of words. His first task, in my opinion, was to ascertain the meaning the cartoon would likely convey (applying the test stated by the learned editors of *Gatley*) to "reasonable men of ordinary intelligence, with the ordinary man's general knowledge and experience of worldly affairs". His second task, having ascertained the meaning conveyed by the cartoon, was to decide whether the meaning was defamatory of the respondent. If the trial judge was correct in finding the meaning he stated, then, in my judgment, he was right in finding the cartoon defamatory. Thus, the first issue narrows down to whether the trial judge erred in finding the meaning conveyed by the cartoon was that the respondent was "a person of a cruel and sadistic nature who enjoys inflicting suffering on helpless persons".

[80] With all due deference to the learned and experienced trial judge, who faced a particularly difficult issue of fact, I am of the opinion that he erred in finding that the cartoon would be understood as having the meaning he attributed to it.

[81] I wish to say, by way of preface to what follows, that, in my view, the ordinary rules of law relating to defamation apply to a cartoon as they do to other forms of communication. A cartoon does not raise any special issue which attracts the application of some principle outside the existing law. The particular difficulty in the present case, which may well apply to most cases involving cartoons, is to ascertain the meaning conveyed. It is in the nature of a cartoon not to speak directly. This needs little elaboration, but it is worth giving a definition. I borrow the definition of "cartoon" from the *Encyclopaedia Britannica* (1961), given in the reasons for judgment of the Chief Justice, as follows:

"... a pictorial parody ... which by the devices of caricature, analogy and ludicrous juxtaposition sharpens the public view of a contemporary event, folk way, or political or social trend. It is normally humorous but may be positively savage."

[82] The trial judge clearly recognized the difficulty of interpretation arising from the nature of a cartoon in the opening words of the passage I have reproduced from his reasons for judgment, to which I have added emphasis. His conclusion was that the cartoon should be considered "symbolically, allegorically or satirically, as it should be and would be by the viewing public" [p. 676]. I think the trial judge was right in reaching this conclusion. Every "reasonable man of ordinary intelligence" is familiar with cartoons, whether political or otherwise. They are published in an unending stream. The reasonable man of ordinary intelligence would clearly understand that political cartoons are rhetorical in the sense that the cartoonist makes his point indirectly by the use of symbolism, allegory, or satire and, I would add, exaggeration. The trial judge, having correctly concluded that the cartoon should be and would be considered symbolically, allegorically or satirically, then found that the cartoon's "natural and ordinary meaning", as understood by viewers, was that the plaintiff was "a person of a cruel and sadistic nature who enjoys inflicting suffering on helpless persons". No doubt, in doing so, the trial judge considered the meaning symbolically, allegorically or satirically. My difficulty with the finding is that the meaning found is in fact, in my respectful view, too close to the literal meaning that would be taken by a viewer who did not take into account the symbolism, allegory or satire and usual exaggeration to be found in cartoons, or the consideration that it was a political cartoon.

[83] The reasonable man of ordinary intelligence would not look at the cartoon in a vacuum. He would understand that it was a political cartoon — the label "Human Resources" on the figure shows this — in the context of his general knowledge of the respondent as a political figure.

[84] The learned trial judge made a finding of fact concerning the respondent being a controversial political figure. The trial judge said [p. 675]:

"Reliance is placed by the defendants upon statements made and decisions taken by the plaintiff as such minister. During the 14 years that the plaintiff has been engaged in public life he has been a controversial figure, not adverse to expressing publicly his opinion upon contentious matters."

[85] That finding of fact is amply supported by the evidence. The evidence shows that the respondent was a politician whose controversial policies as Minister of Human Resources had been well publicized and had been the subject of strong controversy because viewed by some as unduly harsh towards those who need help in various forms from society and, indeed, whose well-being depends on adequate help

being provided. As well, the minister undoubtedly made controversial statements — considered by some as harsh — concerning those dependent upon the benefits provided by his department. I note that 16 averments of statements and acts on the part of the minister were raised in the defence by the appellants as particulars of fact upon which the cartoon was said to be fair comment. The 16 averments are set out in the reasons for judgment of my brother Craig and I need not reproduce them again here. The Chief Justice, in his reasons for judgment, notes that only one of the particular averments (para. (h)) was categorically denied by the minister. I do not suggest that "the reasonable man of ordinary intelligence with the ordinary man's general knowledge and experience of worldly affairs" would carry in his mind a specific recollection of the 16 statements and acts. But, at least, general knowledge of the minister's acts and statements and the controversy aroused thereby may be imputed to such reasonable men. Thus, in my judgment, the reasonable man would view the cartoon in the context of his general knowledge of the minister as a controversial public figure.

[86] I think the reasonable man of ordinary intelligence, understanding that the cartoon was a political cartoon concerning the respondent in his capacity as Minister of Human Resources and in the context of his general knowledge of the minister as a controversial figure, and knowing that cartoons are not to be taken literally — but are to be considered as rhetorically making a point by symbolism, allegory, satire and exaggeration — would not take the cartoon as conveying the meaning attributed to it by the trial judge.

[87] This conclusion is fortified in my view by the consideration that in depicting the minister plucking wings from flies, Mr. Bierman reproduced in his drawing a quite well-known exaggerated way of attributing cruelty to a person by saying words to the effect, in some context or other: "This man is the sort of person who enjoys picking wings off flies". I think the viewer of the cartoon would recognize that Mr. Bierman had put that saying into his cartoon and, just as those spoken words would not generally be taken literally, would recognize that the cartoonist was making his point about the minister's statements and acts by rhetorical exaggeration.

[88] For these reasons I am respectfully of the view that the learned trial judge erred in finding the particular meaning he attributed to the cartoon. I am aware that in reaching this conclusion I am overruling the learned trial judge on an issue of fact. I also have in mind that the court should not overrule a trial judge's finding of fact unless satisfied the finding was clearly wrong; see *Stein v. The "Kathy K."*, 1975 CanLII 146 (S.C.C.), [1976] 2 S.C.R. 802, 62 D.L.R. (3d) 1, 6 N.R. 359, Ritchie J., speaking for the court, at pp. 806-807. I have done so here because the issue of fact with which I have been concerned is not one which depends in any way on the trial judge's assessment of the witnesses or of the evidence they gave. In this situation the trial judge did not have any special advantage, in respect of the finding, denied to this court. As I thought the finding clearly wrong, I have ventured to say so.

[89] In addition to pleading that the cartoon meant and would be understood to mean that the plaintiff was a person of cruel and sadistic nature, etc. (set out in these reasons above), the respondent alleged that the cartoon would be understood to mean "that the plaintiff was not a fit and proper person to be Minister of Human Resources... and that he discharged the duties of his office in a cruel and inhumane manner". As to what would be taken as the meaning of the cartoon by the reasonable man of ordinary intelligence, I agree with Hinkson J.A. that it would be understood to relate to the "public utterances and policies of the respondent as Minister of Human Resources". Assuming that it may be defamatory to assert that policies implemented and espoused by a minister of the Crown are cruel, I also agree with Hinkson J.A., for the reasons he has given, that the defence of fair comment has been made out.

[90] I would allow the appeal and dismiss the action.

Appeal allowed.