

# KEEPING CURRENT

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## Defamatory Facebook posts can be costly

By James R.G. Cook

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Courts have recognized that defamatory statements published on social media or other forms of internet communication may lead to higher general damages awards than for defamatory statements published in a different medium. Once something is made available on the internet it may be available forever. The internet provides world-wide instantaneous access to any statement that is published on a public platform and it is difficult to remove such statements from the internet or control how they are disseminated. In addition, it is difficult to determine how many people have viewed, downloaded, or shared a defamatory statement published on the internet.

In *Seafarers' International Union of Canada v. Mitchelitis*, [2023 ONSC 2456 \(CanLII\)](#), the Ontario Superior Court of Justice addressed the assessment of damages for defamatory Facebook postings.

The case arose out of the COVID-19 pandemic, when the Canadian government implemented various measures that included a requirement

for federally-regulated transportation sector employers to establish vaccination policies for their employees.

The plaintiff labour union, SIU, represents unlicensed Canadian sailors working aboard vessels on the Great Lakes, the St. Lawrence River, and the east and west coasts. The SIU works closely with government officials, agencies, and departments at the provincial and federal levels with respect to issues that involve the safety, security, and stability of Canadian sailors.

The defendant was a former member of the SIU.

The SIU conducted a survey of its members about their attitudes toward a mandatory vaccination policy, which was sent to 1,474 members who had provided a current email address. The survey was completed and returned by 363 members, the results of which favoured a mandatory vaccination policy.

On October 29, 2021, the SIU published a post on its Facebook account confirming

that the SIU had conducted a survey of its members and that the vast majority of its members approved of a mandatory vaccination policy.

The SIU Facebook account had a “public” setting and it was therefore accessible by anyone who had internet access. The defendant also had a Facebook account with a “public” setting, and therefore all posts to her account were accessible by anyone who had internet access.

On November 5, 2021, the defendant posted a statement to her Facebook account that included the following words: “I know that the union falsified their results with the survey. They asked 2,000 of 3,600 members...”.

Counsel for the SIU sent a libel notice to the defendant that, among other things, asked the defendant to remove the defamatory statement from her Facebook account. The defendant was not a member of the SIU on November 5, 2021, did not have access to the SIU membership lists, and was not part of the COVID survey.

In response, the defendant sent an email to SIU’s counsel stating that her Facebook post was made on her private account and that she had deactivated her account, neither of which were true. The offending statement was not removed from the defendant’s Facebook account.

On January 4, 2022, the defendant was personally served with a statement of claim by SIU for defamation. The next day, the defendant published a statement on the SIU Facebook account stating, among other things, that, “Not everyone got the survey”, “almost half the membership was not contacted”, and “they are using union dollars to sue me...”.

Notwithstanding being granted extensions of time to deliver a statement of defence, the defendant failed to do so. Instead, on November

24, 2022, the defendant published a further statement on her Facebook account that included the words: “They are spending hard earned union dues because I said they lied about a survey. I spoke the truth. ... Why are they spending so many of your dollars suing me?”

In December 2022, the court granted default judgment to the SIU against the defendant and ordered a hearing for an assessment of damages. A copy of the court’s endorsement was sent by SIU’s counsel to the defendant.

In response, the defendant sent a return email to SIU’s counsel in January 2023, that was lengthy, abusive, and insulting. Among other things, the defendant wrote: “I’ll slit my throat before your pig clients take my fucking welfare check and I will speak the truth for as long as I live.” She also claimed that the SIU’s action was in retaliation for a complaint about their practices to the Ontario Labour Board.

At the damages assessment hearing, there was no question that the SIU had proven the required elements for a defamation action, namely that the impugned words were published, referred to the plaintiff, and were defamatory in the sense that they would tend to lower the plaintiff’s reputation in the eyes of a reasonable person: *Grant v. Torstar Corp.*, [2009 SCC 61](#), at para. [28](#). The issue was what damages followed as a result.

General damages in a defamation case are presumed from the publication of the false statement as a plaintiff is not required to prove actual loss or injury: *Hill v. Church of Scientology of Toronto*, [1995 CanLII 59 \(SCC\)](#), [1995] 2 S.C.R. 1130 at para. [164](#), *Rutman v. Rabinowitz*, [2018 ONCA 80](#) at para. [62](#). General damages are intended to provide some consolation for the plaintiff’s distress, hurt and

humiliation, as well as compensation for the plaintiff's loss of reputation and vindication of the plaintiff's damaged reputation.

The factors that are considered by the courts in the assessment of general damages for defamation include the nature of the libel, the mode and extent of the publication, the absence or refusal of any retraction or apology, and the whole conduct of the defendant: *Hill v. Church of Scientology of Toronto*, at para. [182](#).

The court considered the defendant's use of Facebook as an internet-based social media account to publish the defamatory statements. In that regard, the defendant had 160 Facebook friends, 60 of whom were SIU members. The SIU Facebook page had 6,210 followers. The court inferred that most of the people who viewed the posts would have been the defendant's Facebook friends or the SIU's followers. The posts could have been viewed by an undetermined number of non-friends/followers. The defendant's use of an internet-based public platform to publish the defamatory statements was held to be an aggravating factor regarding general damages.

Further, the defendant's actions after the initial defamatory statement compounded the problem, since she did not apologize or withdraw the offending post but lied to SIU's counsel about deactivating her Facebook account and lied about the account's privacy settings.

The court reviewed the range of damages in cases of internet-based defamation and determined that \$50,000 was appropriate.

Aggravated damages were not awarded since they are intended to compensate a plaintiff for mental distress, humiliation, and anxiety. A labour union such as the SIU is not a person

and is incapable of suffering the type of mental distress giving rise to aggravated damages.

Punitive damages were awarded, however, since they are intended to denounce and deter conduct that is sufficiently reprehensible, oppressive, and high-handed such that it offends the court's sense of decency. The court found that the defendant had repeated her defamatory statements, rather than apologizing or withdrawing them and, after the action was started, the defendant sought to further undermine the integrity of the SIU by suggesting that the conduct of the SIU was in retaliation for her potential complaint to the Ontario Labour Board.

In the court's view, all of this conduct suggested that the defendant was shameless, unapologetic, and ungovernable. The court [awarded](#) punitive damages of \$25,000. The SIU was also awarded its costs of the proceeding on a substantial indemnity basis.

The decision shows how a few clicks of a Facebook post button can ultimately lead to a substantial damages award. Care should be taken before posting anything on the internet that may be false and damaging to the reputation of any individual or organization.

### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [James Cook](#), at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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