

# KEEPING CURRENT

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## Defamatory Online Postings and Cyber-Bullying Leads to One of the Highest Defamation Awards in Canada

By Isabel Yoo

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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Online defamatory statements have the potential to reach a global audience and maintain a perpetual existence. It is impossible to determine the number of individuals who view these statements or the reach and impact of such communications. Online defamatory statements may therefore lead to higher damages than “offline” statements.

In *Clancy v. Farid*, [2023 ONSC 2750](#), the Ontario Superior Court of Justice assessed damages for a claim for defamation brought by 53 plaintiffs. In a prior decision, Justice A.P. Ramsay awarded summary judgment to the plaintiffs and found the defendant liable for online defamation, leaving for determinations the assessment of damages and whether permanent and mandatory injunctive relief should be granted. The plaintiffs claimed \$5 million in general damages, ranging from \$50,000 to \$94,339.62 per plaintiff, as well as aggravated damages and punitive damages.

### Background

For over a decade, the defendant cyber-bullied, cyber-harassed, and defamed the plaintiffs by posting

comments about them on various websites. All but one of the plaintiffs worked as former or current executives or recruiters of tech companies, including Cisco, Amazon, and Dell. These plaintiffs argued that their only connection with the defendant was that he applied for positions for which they were recruiting, but he was not hired. The sole plaintiff who was not employed in the tech industry was a lawyer who had turned down the defendant's romantic advances.

In his online posts, the defendant referred to the plaintiffs individually as pedophiles, child molesters, registered sex offenders, rapists. The defendant also made comments that ranged from stating that the plaintiffs had sexually transmitted diseases, committed adultery, engaged in criminal acts, and were racist, xenophobic, homophobic, abusive, incompetent, ineffective, and/or cruel.

### General Damages

The ultimate goal of damages in defamation cases are to compensate the plaintiffs for the insult and injury to pride, reputation, and self-confidence and for any social and economic

damage. The court noted that while damages are difficult to assess, none of the plaintiffs could be awarded appropriately for the damage they actually suffered due to the defendant's defamatory conduct. The defendant's alleged impecuniosity was not a reason to limit any damages assessed, with some exceptions.

The Court applied the traditional factors as established by the Supreme Court of Canada in [Hill v. Church of Scientology of Toronto, 1995 CanLII 59 \(SCC\)](#), at [para. 185](#), but noted that it must also apply the factors for online defamation, as set out by the Court of Appeal for Ontario in [Rutman v. Rabinowitz, 2018 ONCA 80](#) at [paras. 67-68](#) and [Barrick Gold Corp. v. Lopehandia, 2004 CanLII 12938 \(ON CA\)](#) at [para. 31](#). Altogether, the factors considered by the *Clancy* Court were:

1. The conduct of the plaintiffs;
2. The plaintiffs' position and standing;
3. The nature and seriousness of the defamatory statements;
4. The mode and extent of publication;
5. The absence or refusal of any retraction or apology;
6. The conduct and motive of the defendant from publication to judgment; and
7. Any aggravating or mitigating factors.

The conduct of the plaintiffs was not a relevant factor, as most were strangers to the defendant. The plaintiffs' positions and standings as professionals was a significant factor. Each described the incalculable damage done to their reputation, personal lives, finances, and mental health. The nature and seriousness of the defamatory comments was also a significant factor as the defendant accused them of vile acts, ranging from sexual harassment in the work place, child molestation and pedophilia, racism and homophobia, and all manner of criminal and illegal acts. The Court characterized these

allegations as salacious, outrageous, malevolent, potentially career-ending, and ruinous.

Regarding the mode and extent of publication, the defendant admitted it would be difficult, if not impossible, to remove all of the content as the posts were reposted and multiplied by bots. This also justified a larger award.

Not only had the defendant refused or apologize or retract his statements, he also continued to deny his responsibility. This too supported a larger award. The Court further found his conduct and motives to be egregious. There was no excuse for his actions, and he continued to make light of the situation.

The court ultimately awarded \$4,245,000 in total general damages, with a range of \$50,000 to \$95,000 per plaintiff.

#### **Aggravated Damages**

The plaintiffs sought \$100,000 in aggravated damages, or \$1,886.60 per plaintiff. The Court awarded \$1,500 to 34 of the 53 plaintiffs, for a total of \$51,000.

The Court noted that aggravated damages were also intended to compensate the injured plaintiff for the harm caused by the defamation. Where the conduct is high-handed, malicious, oppressive, and increases humiliation and anxiety, aggravated damages are justified.

The Court noted, however, its obligation not to overcompensate by awarding both general and aggravated damages (see [Hill](#) at [para. 183](#)). No award for aggravated damages is justified if the factors relied upon are substantially the same ones used as the primary basis for establishing general damages ([Campbell v. Tremblay, 2010 NLCA 62](#)). For this reason, the Court declined to award aggravated damages to the other 19 plaintiffs.

#### **Punitive Damages**

The plaintiffs collectively sought \$500,000.00

in punitive or exemplary damages, or \$9,433.96 each. The Court ultimately awarded \$9,000 to each plaintiff for a total of \$477,000. It found that this was an appropriate case for awarding punitive damages, which are awarded to punish the defendant and to deter others from committing the same tort.

There are two principles that a Court considers when determining punitive damages: first, the award should only be made in situations where the combined general and aggravated damages award is insufficient to punish and deter the defendant; and second, the damage should be an amount no greater than necessary to accomplish the objectives of punitive damages (see *Hill* at [paras. 196, 201-203](#)).

The Court, citing *Barrick Gold*, noted that the Internet is one of the most powerful tools of communications, and a medium of virtually limitless international defamation. For the plaintiffs, their professions relied on their reputations including their online reputation. The defendant's conduct in calculating and carrying out his cyber defamation to ruin the reputation of the plaintiffs was so malicious and oppressive to offend the court's sense of decency.

#### **Permanent Injunctive or Mandatory Relief**

Lastly, the Court awarded a permanent injunction to enjoin the defendant from making further online defamatory comments about the plaintiffs. The granting of a permanent injunction in defamation actions is an exceptional and extraordinary remedy, made only in the clearest of cases, but it is not without precedent.

The Court expressed concern, given the defendant's implications of impecuniosity, that the plaintiffs would not receive compensation or that the award for damages would be unenforceable. Any order made therefore required clear and specific terms for the order so it was

clear when the order was breached and when further relief could be sought by the plaintiffs.

However, the Court declined to order a mandatory injunction requiring the defendant to assist the plaintiffs in removing the defamatory comments as such relief was too vague and too difficult to enforce.

#### **Conclusion**

This decision shows the unique considerations for online defamation, and the particular factors and findings made by a court when defamation involves particularly egregious allegations and dozens of injured plaintiffs. Of note, the defendant who was self-represented, did not seriously challenge the amounts claimed by the plaintiffs. Based on the clear-cut heinous nature of the defamation, the Court awarded one of the largest known damage awards for defamation in Canada and sent a clear message to deter others from engaging in similar acts. .

#### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [Isabel Yoo](mailto:isabel.yoo@grllp.com), at 416.865.6655 or [iyoo@grllp.com](mailto:isabel.yoo@grllp.com).

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