

# KEEPING CURRENT

August 2, 2023

## *Defamatory Facebook Posts Prove Costly – Part 2 (Robinson v. Niganobe)*

By James R.G. Cook

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.

**James R.G. Cook**  
Partner  
416.865.6628  
jcook@grllp.com

As we have [previously discussed](#), defamatory posts on Facebook and similar social media platforms can be costly. Posts written in acrimonious circumstances that make unfounded attacks on someone's reputation can lead to a substantial damage award if they are not promptly retracted or removed.

In *Robinson v. Niganobe*, [2023 ONSC 4281 \(CanLII\)](#), the plaintiff was a member of a First Nation in Ontario where he had a large family. He also owned a business, called "the Effin Jae's Smoke Shack."

In February 2017, the plaintiff entered into a personal relationship with the defendant. The defendant became pregnant a few months later and their daughter was born in April 2018. They remained a couple for two and a half years and operated the Smoke Shack together as partners.

The defendant acted as manager of the Smoke Shack and handled all the technological aspects of the business

as she was more "computer savvy." She was also actively involved in the social media accounts for the business and maintained its Facebook account. There were over two thousand followers on the Facebook account of the Smoke Shack.

By September 2020, the relationship between the plaintiff and defendant deteriorated and they separated. They became embroiled in family law proceedings, primarily concerning their daughter.

After the separation, the defendant posted messages on the Facebook account for the Smoke Shack about the plaintiff. The defendant depicted the plaintiff as someone who was abusive, had an addiction problem, and who had abandoned his family emotionally and financially.

In one Facebook post, the defendant stated that people should not support the Smoke Shack business, as people should "know that you are now supporting a business that feeds his [the

plaintiff's] drug habit and our local community drug dealers". Another Facebook post by the defendant claimed that the plaintiff abandoned his daughter

The defendant's Facebook posts were seen by individuals in the community as there were numerous responses posted, such as "praying for you and hope you can recover", and "I wont be going there anymore", and "I am so sorry this has happened to you. I am praying for you and your children dear. I hope you are able to heal from this. I will no longer support this business."

The plaintiff sued the defendant for defamation. As no defence was filed, the action proceeded to an uncontested trial at which the plaintiff and several relatives gave evidence.

The plaintiff testified that he was not a drug addict nor a consumer of illegal drugs, and that he was not supplying any drug dealers with drugs. He testified that he never abused the defendant in any way nor did he abandon his daughter. His evidence was that his inability to have ongoing contact with his daughter was due to allegations made by the defendant in family law proceedings, including child protection proceedings.

In those proceedings, the court had found that it was in the daughter's best interest to spend more supervised time with the plaintiff as he had done everything he can to be a good parent and to increase his parenting time with her.

The plaintiff's evidence was that the Smoke Shack had suffered financially after the Facebook posts made by the defendant. The summaries for sales reports from July 2019 to June 2023 indicated that in the summer of 2020, net sales were roughly \$230,000 for July and August, and \$219,933.80 for September 2020. There was a drop to \$194,436.63 in October 2020, and a steady decline from November 2020 to and including March 2021.

It appears from the records that sales have not reached the \$200,000 monthly mark since the Facebook posts were made by the defendant. The decline in sales was consistent with the plaintiff's observation of a decline in traffic in the store.

As a result of the Facebook entries posted by the defendant, the plaintiff attended men's group counselling and felt traumatized, which affected his dating relationships.

The plaintiff's relatives gave evidence supporting him and denying the allegations about the plaintiff in the defendant's Facebook posts.

In the court's view, there was no question that the plaintiff 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.

In a defamation action, general damages are presumed once the tort has been established. No proof of actual injury by the plaintiff is required. In assessing damages, the court referred to the factors outlined by the Court of Appeal in *Barrick Gold Corp. v. Lopehandia*, [2004 CanLII 12938 \(ON CA\)](#), referencing *Hill v. Church of Scientology of Toronto*, [1995 CanLII 59 \(SCC\)](#):

1. The plaintiff's position and standing;
2. The nature and seriousness of the defamatory statements;
3. The mode and extent of publication;
4. The absence or refusal of any retraction or apology;
5. The whole conduct and nature of the defendant from publication through judgment; and

6. Any evidence of aggravating and mitigating circumstances.

Social media platforms such as Facebook allow defamatory statements to be distributed broadly. The Smoke Shack had over two thousand Facebook followers. The defendant did not defend the action and had made no retraction or apology. Furthermore, the court noted that it was difficult not to believe that the defendant was using the Facebook posts to tarnish the reputation of the plaintiff to gain some advantage in the family law proceeding.

As for mitigation, the court noted that there were only two Facebook posts at issue and they were written close together in 2020. There was no evidence that the defendant had defamed the plaintiff since the Facebook posts in 2020, which was almost three years before the uncontested trial. General damages were assessed at \$50,000.

The plaintiff was awarded \$25,000 in aggravated damages as the court viewed the actions of the defendant as designed to paint the plaintiff in an unfavourable position to gain an advantage in the family law proceedings and to damage the relationship that the plaintiff had with his daughter. The portrayal of the plaintiff as a neglectful father undoubtedly increased the plaintiff's anxiety and mental distress resulting from the Facebook posts.

The court declined to order any injunctive relief as there was no evidence of recent defamatory statements and it therefore appeared unlikely that further statements would be made.

The decision offers a good example of when damages may be awarded for defamatory social media posts made in the context of a deteriorating personal relationship.

## 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).

*(This newsletter is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP.)*