

# KEEPING CURRENT

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## Defaming a professional can be costly

By Stephen Thiele

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The law of defamation is unique in that general damages are awarded at-large. There is no upper ceiling for an award and there is little value to be gained in attempting to compare damages awards between cases. However, case law demonstrates that where a professional is being defamed a damages award can be significant.

In [Huff v. Zuk, 2021 ABCA 60](#), the Alberta Court of Appeal was required to determine, among other things, whether a \$50,000 damages award granted to the plaintiff dentist (H) for defamation ought to be reduced in circumstances where there was no evidence that H had suffered any loss in reputation whatsoever in circumstances where the defamer was another dentist (Z).

The claim arose out of events involving a dispute over advertising guidelines imposed on dentists by the Alberta Dental Association and College. Z had started a campaign against the College because of the guidelines and their decision to pursue a complaint against him. During the campaign, Z made comments about H, which included

allegations of sexual impropriety and abuse of position as a member of the College's advertising committee.

The allegations of sexual of impropriety related to an incident at a Council of the College meeting that took place in Jasper in 2013 (the "Jasper Incident"). H had just been appointed to the newly created advertising committee. Z wanted to be on this committee, but H denied the request. Thereafter, Z began to inform others over the next few years that during a social event at the meeting a drunken H had tried to stuff party hats into the fly of another dentist (D) and to touch D's crotch. In a fax to the then College's President, Z described the incident as "an act of sexual bullying". In an email sent to the leader of the Alberta Liberal Party, Z described that the College was doing nothing about "sexually inappropriate conduct" by some specialist dentists. H was identified in the email.

Z then published statements about the Jasper Incident in a newsletter and on a website called the Alberta Dental Association Lobby. More specifically, Z

posted that he had reported H for “inappropriate fondling of another board member”.

As well, Z made more disparaging remarks about H on the website and in an e-book entitled “The Absolutely Insane Alberta Dental Association Marketing Bylaws”.

Z’s allegations about abuse of position involved claims of bias and special treatment for those with leadership positions at the College, including H. Z accused those who were against him as hypocrites and he questioned their skills and ethics. On this issue, the trial judge found that Z’s allegations in the e-book were “rude, crude and sarcastic”.

Z made further statements about H elsewhere.

The trial judge concluded that the Jasper Incident statements were defamatory. Although some of the statements were found to be made on an occasion of qualified privilege, the defence was defeated because of malice. Z had made the statements for ulterior motives. There was no qualified privilege in connection with Z’s communication to the leader of the provincial Liberal Party or the communications posted on the website or published in the e-book. As well, Z’s defence of responsible communication was rejected because not all of the elements of the defence were established and there was malice.

With respect to Z’s “Abuse of Position” statements, the trial judge found that Z was only liable under this category for comments made in the e-book about H. The comments impugned H’s integrity, ethics and professional competence. Other comments made by Z were either found to not be defamatory or contained in material that had not been pleaded. Defences of fair comment, qualified privilege and responsible communication were rejected.

The trial judge awarded H \$50,000 in general damages even though there was no evidence that anyone thought less of H because of the statements or that his career had been negatively impacted. The trial judge specifically said:

I am of the view that nominal damages are not appropriate. I find that the defamatory statements attacked Dr. [H’s] professional competence, his integrity and ethics with respect to the advertising guidelines, alleging that they were drafted for an improper purpose, including to ensure that dentists would be convicted of advertising violations. They were made part of Dr. [Z’s] campaign to defend the professional complaints against himself. The defamatory statements in the e-book and the allegation of “inappropriate fondling” were made to Dr. [H’s] peers through the internet. The allegations of inappropriate touching are particularly concerning as they not only imply unethical and unprofessional behaviour but also, potentially, criminal behaviour. The allegations of inappropriate touching is a serious allegation, particularly against a professional. It has the potential to do significant damage to a professional’s reputation and career. Like the plaintiff in [Hill](#), Dr. [H] has no way of knowing what those who read the defamatory statements might have thought of him.

The appellate court upheld the trial judge’s decision based on the applicable standards of review.

In a defamation case, whether a statement is capable of a defamatory meaning is reviewed on



standard of correctness: see [Chohan v. Cadsky, 2009 ABCA 334 at paragraph 85](#). Whether a statement is defamatory is a question of fact. Questions of fact are reviewed on a standard of palpable and overriding error: see [Rubin v. Ross, 2013 SKCA 21 at paragraph 33](#). The standard of palpable and overriding error also applies to an error involving the application of facts to the correct legal test and a judge's fact findings or inferences: see [Chapman v. L'Hirondelle, 2012 ABCA 25 at paragraph 10](#) and [Housen v. Nikolaisen, 2002 SCC 33, at paragraphs 10 and 25](#).

With respect to damages, Z argued that the trial judge had failed to consider relevant factors, and that the damages awarded were too high and should have only been \$5,000. Z also contended that the trial judge had failed to consider that the website and the e-book only had a limited audience.

The appellate court found that the trial judge's assessment of damages was not unreasonable and that it was entitled to deference. The court noted that the trial judge had relied on [Hill v. Church of Scientology of Toronto, 1995 CanLII 59 \(SCC\)](#), [Botiuk v. Toronto Free Press Publications Ltd., 1995 CanLII 60 \(SCC\)](#) and [Engel v. Edmonton Police Association, 2017 ABQB 495](#) in her consideration of assessing damages in a defamation action and explained that little was to be gained from a detailed comparison of awards. As well, the trial judge listed the factors to be considered in awarding damages for damages, including "the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retractor or apology, and the whole conduct of the defendant from the time when the libel was published down to the very moment of the verdict": see [Hill at paragraph 182](#).

This case shows that even though a person who is defamed may be unable to prove a loss of reputation or that he or she has been negatively impacted by the defamatory comments, a significant general damages award in such circumstances is not unreasonable. The assessment of the amount of damages to be awarded will be based on a consideration of a number of factors and will be made on a case-by-case basis. In cases involving professionals, it has been held that anything that leads to the tarnishing of a professional reputation can be disastrous. Accordingly, this case serves as a warning that in cases where a professional is defamed, the court can make a significant damages award.

### Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at [sthiele@grllp.com](mailto:sthiele@grllp.com).

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