CITATION: Clancy v. Farid, 2022 ONSC 947
COURT FILE NO.: CV-17-587516
DATE: 20220304

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
TRACY CLANCY, BRENT SCHRECKENGOST, MONICA PLATA, FAHRIN JAFFER, JAMAL RAZA, JACQUES CONAND, MOSFIQUR (MO) RAHMAN, MIRA MCDANIEL, TALIE DANG-LU, NICOLE CERANNA, PHILIP COOKSEY, MARIANNA GUROVICH, DANIEL CHRISTOPHER KOLOSKI, ALVIE BERT KRAATZ III, MICHAEL MONTGOMERY, NICOLE PALMER, MARY CELESTE (MC) DIDONE, DAVID LYNN, SURYA PANDITI, LAURA LEIGH SCHNEIDER, MARI SULLIVAN, MEERA GANESH, MICHAEL REMZA, JAVED KHAN, MARJORY REMY, CASSANDRA LONG, KIRSTEN HILL, RUBA BORNO, PAULA CAO, BOBBY NANDA, RUCHI ECHEVARRIA, MICHAEL GINN, FELICIA GLACE, ROBYN MATOS/HOLLAND, ANGELA BARNES COOLIDGE, COLIN KINCAID, MACIEJ KRANZ, MARC ALDRICH, KARTHIK SUBRAMANIAN, HEATHER VICKERS, STACIE TORELLO WILK, MARY CATHERINE HUDSON, CHAD ALAN TROUT, KATHLEEN NOONAN, SHAUNA DALY, KEVAN BLANCO, MIRIAM DRUMMOND, CHEYENNE DEVERNA, CHRISTINE FENG, DAN GROSSMAN, AENGUS LINEHAN, HILTON ROMANSKI, JAMES BRIAN DORAN	)	Maanit Zemel, for the Plaintiffs
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	)	Mark Stewart, for the Defendant
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Plaintiffs	)	
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– and –	)	
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TANVIR FARID a.k.a. TANVIR ISLAM	)	
	)	
Defendant	)	
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	)	**HEARD:** June 1, August 30, 31 and
	)	September 2, 2021, via videoconference

A. RAMSAY J.

Nature of the Motions

[1] The plaintiffs bring this motion for summary judgment under subrule 20.04 (2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("the *Rules*") on the basis that there is no genuine issue requiring a trial with respect to the plaintiffs' claim. The plaintiffs also seek an order finding the defendant in contempt under rule 60.11 of the *Rules* for *inter alia*, breaching an Anton Piller Order or, in the alternative, ask that the court make a finding of evidentiary or procedural spoliation. Relief is also sought by way of a permanent injunction or mandatory order in relation to defamatory postings involving the plaintiffs' lawyers, agents, and investigators, among others, involved with the action.

Overview

[2] Following an Anton Piller Order issued by this court, further mandatory injunctive relief, a forensic digital report, which has its genesis in the Anton Piller Order, a linguistic expert report, affidavits from all fifty-three plaintiffs, affidavits from the forensic investigator and a linguistic expert, an adjournment granted by me to permit the defendant to complete cross examinations, a record consisting of thousands of pages, and well into the fifth day of hearings, and in the midst of counsel for the plaintiffs laying out the evidence to support the plaintiffs' request for a finding of contempt, the defendant interrupted and directed his counsel to seek another adjournment to file new evidence to show that he had no internet when the Anton Piller Order was executed. The plaintiffs' motion for summary judgment having been outstanding since 2019, and with all that had gone before, I denied the defendant's request for a further adjournment.

[3] Fifty-three plaintiffs commenced this action against the defendant Tanvir Farid ("Mr. Farid") for online defamation. Unified, they claim that Mr. Farid is an internet troll who has waged a campaign of cyber harassment, cyber stalking, and cyber defamation, ultimately resulting in tens of thousands of postings about them on the internet depicting them as sexual predators, fraudsters,

and criminals among other things. The plaintiffs have been the subject of a targeted campaign with postings on websites for some ending up on websites devoted to posting salacious content.

[4] After the plaintiffs commenced this lawsuit and obtained an Anton Piller Order from this court, Mr. Farid commenced counterclaims against the plaintiffs' current lawyer and the forensic investigative firm as well as the investigators involved with the execution of the Anton Piller Order. The counterclaims have been struck without leave to amend.

The Parties

[5] The plaintiffs are individuals residing in Canada, the United States and Ireland. Aside from their affidavits, each of the fifty-three plaintiffs is listed in the six hundred and thirty-eight (638) pages table appended as Appendix A to the plaintiffs' factum.

[6] The defendant, Mr. Farid, is in his mid-forties and resides in Toronto.

Plaintiffs' Position

[7] The plaintiffs all contend that for over a decade, Mr. Farid has engaged in a malicious campaign to cyberbully, cyber-harass and defame them by the publication of salacious or defamatory postings on various webpages. The postings refer to the plaintiffs as prostitutes, escorts, pedophiles, child molesters, registered sex offenders, rapists, and adulteress escorts, and state that the plaintiffs have sexually assaulted or harassed others, have sexually transmitted diseases, commit adultery, are engaged in criminal activities, are sexually promiscuous, have engaged in fraud and/or misappropriation, and are racist, homophobic, and xenophobic.

[8] The plaintiffs reside all over North America and most are strangers to each other. All but one of the fifty-three plaintiffs are former or current executives or recruiters at companies in the information technology industry, including Cisco, Oracle, Amazon, Hewlett-Packard Enterprise, VMware and Dell, amongst others. All, except one, were engaged in the recruitment process for these companies. The sole plaintiff who is not a recruiter, Fahrin Jaffer ("Ms. Jaffer"), is a personal injury lawyer residing in Toronto.

[9] It is not disputed that aside from the plaintiff Mosqifur (Mo) Rahman, who had been Mr. Farid's boss in 2006 for a brief period, none of the plaintiffs have ever met Mr. Farid nor had any personal relationship with him. However, Mr. Farid deposes in his affidavit that he had filed a grievance against the plaintiff Robyn Matos, a recruiter, though he did not admit to ever meeting her or knowing her personally.

[10] The plaintiffs contend that their only connection to Mr. Farid was that he had applied for job positions for which they were recruiting candidates, but Mr. Farid did not receive any job offers.

[11] Counsel for the plaintiffs submit that the common denominator which unites all the plaintiffs is "rejection"; that is, each one of them had rejected Mr. Farid. In the case of fifty-two of the plaintiffs recruiting for jobs, each one of them had rejected his job application, and in the case of one of the plaintiffs, Ms. Jaffer, she had rejected Mr. Farid's romantic advances through an online dating site.

[12] The plaintiffs argue that it was not until they received an investigative report dated November 3, 2017, that they discovered that the identity of the person behind the impugned postings was Mr. Farid.

[13] The plaintiffs submit that the Anton Piller Order of Archibald J. in December 2017, which led to the seizure and copying of certain electronic devices owned by Mr. Farid, culminated in the discovery of digital and electronic evidence which prove on a balance of probability that Mr. Farid is the author of the impugned postings. The plaintiffs submit that Mr. Farid is in contempt of the Anton Piller Order by deleting digital evidence from his devices during its execution, refusing to provide access to his email accounts, refusing to deliver up all electronic devices in his power and control, and refusing to allow the search of this apartment to be completed, among other things.

[14] During oral submissions, counsel for the plaintiffs argued that there was "one document in the tens of thousands of pages" before the court, which is the proverbial "smoking gun", that is the forensic digital report of the investigator Ryan Duquette ("Mr. Duquette") dated May 23, 2019.

[15] The plaintiffs submit that the impugned postings have caused serious damage and irreparable harm to their personal and professional reputations, from which they may never recover.

[16] Since the commencement of the plaintiffs' action, salacious postings of the plaintiffs' lawyer, Maanit Zemel, have appeared on some of the websites where the impugned postings are hosted.

The Defendant, Mr. Farid's Position

[17] Mr. Farid argues that he is not the person responsible for disseminating the impugned postings on the internet. He has issued a blanket denial of all claims. He submits that he has no connection whatsoever to the plaintiffs, except for Mr. Rahman. He argues that there is no evidence of animus between him and the plaintiffs. He argues that he has never met with, communicated with, engaged with, interacted with, or even had any transactional relationship with the plaintiffs. He questions how he would have time to engage in posting the thousands of postings proliferating on the internet. He baldly submits that there is no evidence of him having any indirect or peripheral connection to the plaintiffs in any capacity whatsoever.

[18] Mr. Farid submits that there is not even one single defamatory post about the plaintiffs which can be connected to the defendant through any technical evidence whatsoever.

[19] As for Mr. Rahman, Mr. Farid contends that he had a brief interaction with him in 2006, resigned voluntarily, and on amicable terms, and has had no interaction with Mr. Rahman in over 15 years.

[20] In his affidavit sworn September 30, 2019, Mr. Farid admitted that he filed a grievance against the plaintiff Robyn Matos eight years previously.

[21] At paragraph 4 of his affidavit Mr. Farid deposes as follows:

> *I do not have any personal, business, transactional, or any other form of relationship with any of the Plaintiffs (almost all of them appear to be based in various foreign jurisdictions outside of Canada). I therefore state I have never disparaged, maligned, impugned, or espoused any opinion about the Plaintiffs – in any private or public forum.*

[22] At paragraph 5 of his affidavit, Mr. Farid deposes as follows:

> *I also note that most of the Plaintiffs appear to be senior corporate executives at public corporations. Individuals whom I do not have any interaction or any communication with.*

[23] Mr. Farid deposes that he does "own a computer and would be considered to be proficient at the use of digital technology" but provides a blanket denial of "ever participate (sic) in the allegedly defamatory claims that occupy this voluminous claim." He further deposes that "*I did not (directly or indirectly) author, publish, disseminate, or contribute to any of the allegedly defamatory postings about the Plaintiffs*."

[24] Mr. Farid does admit in his affidavit that he visited the websites where the postings were made but claims he did so only after the action against him was commenced. He submits that the plaintiffs' agents have attempted to 'manufacture' circumstantial evidence as opposed to obtaining evidence from reliable third-party entities.

[25] Mr. Farid argues that the claims of the plaintiffs are statute barred because the postings go back over twelve years. During the course of oral submissions, counsel for Mr. Farid submitted that there was a possibility that someone knew that there was a Canadian in mind, and knew they were going to move against the Canadian but decided to move when they had a larger amount of people.

[26] Counsel for Mr. Farid intimated that the summary judgment motion was premature as no affidavits of documents have been exchanged and oral examinations for discovery have not taken place.

[27] Counsel for Mr. Farid argues that there is an access to justice issue, fifty-three plaintiffs against one defendant, and suggested that the proceedings ought to have been a class action proceeding with a representative plaintiff. He submits that it would be onerous to conduct

examinations for discovery within the time limit imposed on oral discoveries and given the number of plaintiffs in the action.

Issues raised on the motion

[28] The following issues are raised on the summary judgment motion:

i. Did the plaintiffs establish, on the balance of probabilities, that Mr. Farid is the person responsible for authoring or publishing the impugned postings?

ii. Are the impugned postings defamatory?

iii. If the postings are defamatory, are there any defenses available to Mr. Farid?

iv. Are the claims of the plaintiffs barred by the limitation period in the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B?

v. Is there a genuine issue requiring a trial with respect to the plaintiffs' claims?

vi. Assuming issues one and two are answered in the affirmative, and issue three in the negative, what is the quantum of damages for each plaintiff?

vii. Is the defendant in contempt of orders of this court?

viii. What ancillary remedies are available to the plaintiffs?

Procedural History and Key Chronology

[29] On November 3, 20217, the investigating company, Hexigent, released a preliminary report in which it concluded that Mr. Farid was responsible for the impugned postings.

[30] On November 30, 2017, the plaintiffs (except for Aengus Linehan, Hilton Romanski and James Doran), commenced this action against Mr. Farid. The plaintiffs Linehan, Romanski and Doran were added to the action in April 2019.

[31] On December 4, 2017, Archibald J. granted an Anton Piller Order and an interim injunction against Mr. Farid on an *ex parte* motion. There were eleven (11) volumes of Motion Records. In granting the order, Archibald J. commented:

> *I am satisfied on the strong prima facie case test that [Farid] is the individual who has published the defamatory comments against the plaintiffs on the internet. … There is a strong prima facie case of defamation of the plaintiffs….; no discernable defence of fair comment, qualified privilege, truth or justification would appear to exist.*

[32] The Anton Piller Order authorized David Lipkus, the Independent Supervising Solicitor ("ISS") appointed by the Court and the persons accompanying him, to search and seize from Mr. Farid's apartment and vehicles, all evidence, and digital records, relevant to the action. The Anton Piller Order required that Mr. Farid was to provide access to the ISS "*all Evidence stored electronically on any computers, smartphones, tablets, discs, drives, databases, backup tapes, archives, CD-ROMs, external hard-drives, USB memory sticks, other digital media devices, and cloud-based storage….*"

[33] In addition, the Anton Piller Order prohibited the deletion of any evidence, stating:

> *[T]he Defendant and any person(s) served with this Order, shall not directly or indirectly, by any means whatsoever: (a) remove any Evidence from the Premises, erase or delete from any means of electronic storage, or transmit any of the Evidence from the Premises, or alter, deface, discard, conceal or destroy in any manner any of the Evidence…*

[34] The Anton Piller Order was executed at Mr. Farid's apartment the following day, December 5, 2017. The execution of the Anton Piller Order was overseen by Mr. Lipkus. The ISS was accompanied by Mr. Duquette, Jason Green ("Mr. Green"), all forensic investigators at Hexigent, as well as Detective Constable Clarke. The execution of the Anton Piller Order is detailed in Mr. Duquette's report. Portions of the execution are captured on video (which had been reviewed by Pattillo J. when he reviewed the Anton Piller Order). The materials served on December 5, 2017, included the Anton Piller Order, the statement of claim (first notice by Mr. Farid of the claim commenced against him), and 11 volumes of the plaintiffs' motion record, among other things. Mr. Duquette provided an affidavit in support of the plaintiffs' motion. His affidavit, which annexes his reports and exhibits, detailing, among other things, what was found on Mr. Farid's electronic devices which were copied pursuant to the Anton Piller Order, is eight hundred and sixty-two pages.

[35] On December 11, 2017, Archibald J. granted an interim injunction prohibiting Mr. Farid from publishing what he considered to be "outrageous", "defamatory" postings about the plaintiffs, their lawyers, investigators, witnesses and the ISS, and a mandatory order permitting the plaintiffs to request the removal of the defamatory postings from the internet by submitting the order to the website hosts, Internet Service Providers and search engines. In granting the order, Archibald J. commented:

> *All of the internet comments are outrageous, defamatory and must be removed. They accuse each of the plaintiffs of being prostitutes, or of sex trafficking or of having illicit escorts. All of them are salacious, outrageous, malevolent defamation and constitute horrible internet bullying.*

[36] In March 2018, Archibald J. made an injunctive order permitting the plaintiff to request the removal of the content from various search engines.

[37] On March 5, 2018, Archibald J. granted an interlocutory injunction prohibiting the posting of new defamatory postings as well as a final mandatory order permitting the removal of the defamatory postings. Mr. Farid was not ordered to co-operate as he denied responsibility for the postings. However, Mr. Farid was ordered not to make any further postings. In issuing these orders, Archibald J. again stated that the comments and postings "constitute horrible internet bullying" and he described them as "false, salacious, outrageous and malevolent defamation". He stated:

> *The removal of this salacious material is important and pressing. It is clearly defamatory; they accuse each of the plaintiffs of being prostitutes or of sex trafficking or having illicit escorts. There is no free speech issue here or possible defence to the making of the comments*. The identity of the maker is however in dispute between the parties. [Emphasis added.]

[38] Archibald J.'s December 11, 2017, and March 5, 2018, orders indicated that they were made without prejudice to Mr. Farid's right to allege that he was not the person responsible for the postings and, the orders did not require Mr. Farid to take any steps to remove the postings.

[39] In accordance with the Anton Piller Order, forensic copies of the devices obtained by the ISS from Mr. Farid's apartment were saved onto an external hard-drive and USB drive and placed in a sealed bag marked "ALLEGEDLY PRIVILIGED OR CONFIDENTIAL ELECTRONIC FILES" for the ISS. The sealed bag was securely held by the ISS until the Order of Justice Pattillo of December 21, 2018, which was subsequently amended on March 7, 2019. Mr. Farid delivered up a Polaroid Phone, an Acer Laptop, 11 USB Drives and 16 CD/DVDs which were forensically copied.

[40] On December 21, 2018, Pattillo J. extended the Anton Piller Order until the final disposition of the action. Pattillo J. was also asked, on that motion, to review the propriety of the Anton Piller Order as well as the propriety of its execution. He determined that there was no impropriety, and that the order was executed in accordance with its terms.

[41] Pattillo J. also struck the counterclaim against the plaintiffs' lawyer Maanit Zemel, the investigating firm, Hexigent, and the investigators, Mr. Duquette and Mr. Green, without leave to amend on the basis that it was frivolous, vexatious and an abuse of process of the court.

[42] Even though upon review of the Anton Piller Order and its execution (including viewing video of the execution in action), Pattillo J. found no impropriety, Mr. Farid's factum, on this motion, again challenged both the legitimacy of the Anton Piller Order and its execution.

[43] In addition, on this motion, in his factum, Mr. Farid sought an order reinstating the counterclaim against the plaintiffs' current lawyer, the investigating firm, Hexigent, and its investigators, despite Pattillo J. having previously struck that pleading with no leave to amend and no appeal having been taken of Pattillo J's order, no motion made to set it aside, and no formal motion before me with respect to the counterclaim.

[44] On March 7, 2019, Pattillo J. extended Archibald J.'s interlocutory orders to the final disposition of the action and permitted Mr. Farid and his counsel to review all copied files to identify privileged materials or personal unrelated materials. Pattillo J. also issued an order which detailed the steps for carrying out the forensic analysis. The ISS was also directed to provide all of the evidence forensically copied from the devices delivered up during the execution of the Anton Piller Order to a digital forensic specialist retained by the plaintiffs for the purpose of analysis and extraction of evidence relevant to the action, and the forensic specialist was directed to carry out the forensic searches which were enumerated in Schedule "A" to the order and was directed to prepare a forensic report listing all the records extracted.

[45] In accordance with Pattillo J.'s Order and the direction of the ISS, on March 3, 2019, Hexigent performed a forensic analysis and extraction of the devices delivered up by Mr. Farid and completed a Digital Forensic Report to the ISS on May 23, 2019 ("the Duquette Report"). The Duquette Report, or as counsel for the plaintiffs calls it, the "smoking gun", details the evidence found on Mr. Farid's electronic devices linking him to the plaintiffs and pointing to Mr. Farid being the person responsible for the impugned postings.

i. *Did the plaintiffs establish, on the balance of probabilities, that Mr. Farid is the person responsible for authoring or publishing the impugned postings?*

[46] The Duquette Report summarizes the forensic evidence found on the electronic devices which were seized by the ISS. The report concluded that Mr. Farid is the person who authored and published the impugned postings. The report also concluded that Mr. Farid deleted records from his devices while the Anton Piller Order was being executed.

[47] The Anton Piller Order was executed in Mr. Farid's apartment on December 6, 2017, and at that time the ISS obtained copies of several of Mr. Farid's electronic devices including an Acer laptop computer, eleven USB keys, 16 CD-ROMs, and a copy of a Polaroid phone.

[48] Mr. Duquette is a partner at RSM where he focuses on privacy, risk and cyber security. He has a Master of Science in Digital Forensic Management. He was the principal and founder of the digital and cyber forensic firm, Hexigent Consulting, which merged with RSM. He was formerly a police officer with the Peel Regional Police for fourteen years in the cybercrime unit. Mr. Duquette is a certified forensic computer examiner, a certified electronic evidence specialist, a certified fraud examiner and a licensed private investigator. Mr. Duquette has experience in digital forensic analysis, digital investigation and cybersecurity specializing in criminal and civil investigations. He has been qualified by this court as an expert. He is frequently sought as an instructor with various policing agencies, universities, and industry conferences.

[49] The forensic report authorized by Pattillo J.'s March 2019 order was supervised by the ISS. The Duquette Report, prepared at the direction of Pattillo J.'s order, summarizes the forensic

evidence found on each of Mr. Farid's electronic devices. He found only one user on the Acer laptop.

[50] On the Polaroid phone, no files were contained. Mr. Duquette found relevant files on three USB keys. He recovered a deleted Microsoft Word document, almost three thousand pages, which contained the names of many of the plaintiffs, postings, words used in the defamatory postings about the plaintiffs, and the names of the various websites of those defamatory postings.

[51] Mr. Duquette deposes that the electronic evidence obtained from Mr. Farid's devices confirmed his opinion that Mr. Farid was the person responsible for the defamatory postings. He based his conclusions on the electronic evidence extracted from Mr. Farid's devices which included the plaintiffs' names, photographs, particular words and phrases that appear in the postings, and internet-based activity related to vising the websites where the defamatory postings appear. In addition, the Acer laptop had been connected to IP addresses that were used to post some of the postings about the plaintiffs. The Acer laptop had been connected to public WiFi hotspots at various Starbucks and the Toronto Public Library, and many of the postings were posted from IP addresses associated with these locations.

[52] Aside from what was found on Mr. Farid's devices, the Duquette Report details what was deleted from his devices. The times the deletions occurred can be contrasted with events occurring the morning of the execution of the Anton Piller Order. The ISS attended at Farid's residence at 9:05 a.m. knocked on the door multiple times and identified themselves, but only gained access at approximately 11:45 a.m. On cross examination, Mr. Farid admitted that he had heard them knocking and ignored them. Digital evidence shows he deleted 9,521 digital files at 09:25:29. As well, while the ISS was in his apartment executing the Anton Piller Order, and he was presumably in his bedroom to consult with a lawyer, Mr. Farid googled "How to permanently delete records from my device?", then he proceeded to delete numerous records from his electronic devices.

[53] The Duquette Report also indicates that Mr. Farid had other electronic devices that he did not turn over to the ISS including an iPhone and iPod which had been connected to the Acer Laptop on December 4, 2017, one day before the execution of the Anton Piller Order. Mr. Farid refused to allow the ISS to continue with a search of his apartment, refused to deliver up electronic devices that were in plain view in his apartment, did not deliver up a black laptop, which surveillance saw him using at a Starbucks on November 14, 2017, and at the University of Toronto OISE building on November 28, 2017. Mr. Farid did not deny that he had had such a laptop, but testified on cross examination, that he sold the laptop to some unknown pawnshop for cash between November 14, 2017, and December 5, 2017.

[54] As for a Kia vehicle, on December 5, 2017, Mr. Duquette observed a black Kia Forte bearing the license plate set out in his report parked in the underground parking garage at Mr. Farid's apartment building. He took photos of the numerous boxes, CDs, CD-ROM cases and other items that he observed through the window. The statements in the Duquette Report attributable to Mr. Farid of course are hearsay, but an inference may be drawn from the photos taken, and the subsequent agreement by Mr. Farid to allow access to the vehicle which he has admitted in his

affidavit did belong to his family. He has provided no credible explanation as to why access to the vehicle was not granted on December 5, 2017, when it was initially sought by the ISS.

[55] Mr. Farid did not disclose to the ISS and Hexigent his email addresses and provide his password to his University of Toronto email address to permit access to that email account.

[56] Information from the Word document from Mr. Farid's electronic devices matches up with the impugned postings. Table 1 to the plaintiffs' Second Supplementary Factum (incorporated by reference) sets out the particulars of the evidence found on the electronic devices of Mr. Farid for various plaintiffs and matches it up with the content from postings. In some cases, there are accompanying photos, of the individual plaintiff at issue found on Mr. Farid's device. The Table is extensive and only excerpts of two plaintiffs are extracted for these reasons, but the information for the plaintiff Aengus Linehan shows the evidence found on Mr. Farid's Nextech USB Key with respect to Mr. Linehan as compared to the actual impugned posting and the URLs where the posting is found on the internet.

Plaintiff	**Location on Tanvir Farid's Devices**	**Examples of Evidence Found on Farid's Devices**	**Identical / Similar Defamatory Content and/or Photos**	**URLs**
Aengus Linehan California, USA Former Executive at Hewlett Packard Enterprise	Document (000018.doc) on Evidence 012 – Nextech USB Key See: Digital Forensic Report at CaseLines reference A7187	"Aengus Linehan – Hewlett-Packard – HP – Communications – Media – Telecom – Telco – aengus.linehan@ HYPERLINK "https://hp.com" \o "" hp.com Aengus Linehan is hands down an incompetent clod @ HP's Communciations and Media unit; Meg Whitman cleaned-up the place FIRING the former heads but it is unbelievable as to why Aengus Linehan has not been sacked (this inept dolt returned back to HP); Aengus Linehan's finger-prints are over many of HPQ's FAILED engagements; Aengus Linehan has created a toxic and poisonous culture inside HP's Telecom group given that he treats most staff with disrespect and contempt (almost everyone loathes him with a passion and he is racist bigot who routinely discriminates against minorities – this fool is not even a true American!); Aengus Linehan's boss is completely out to lunch and defers discretion to this inept clown (many at HP were ecstatic when he left… but this failure is back to torment us again); Aengus Linehan's laughable resume and career track speaks for itself – he has NEVER been involved in a single project that was even remotely successful; Aengus Linehan is also quite notorious for making sexual advances"	Aengus Linehan of HP Hewlett-Packard in the San Francisco Bay Area California is 76 years old, married thrice, a father of 5 kids and 7 grandchildren, yet he routinely blows money on escort services often seeking girls in their teens for personal sexual pleasure. Aengus Linehan is single highhandedly responsible for keeping Silicon Valley's call girl industry thriving! Haha! Aengus Linehan, who is a VP Vice-President at HP, also has had numerous affairs and flings with female staff that he is know to degrade and dehumanize with his bizarre sexual fetishes. Aengus Linehan is violent and has also been charged with sexual battery. Women everywhere need to be leery of this freak Aengus Linehan!	https://stdcarriersdatabase.com/aengus-linehan-hpe-numerous-stds-stis/ http://liarsandcheaters.com/aengus-linehan-of-hp-in-palo-alto-ca.html http://www.predatorswatch.com/california/aengus-linehan-of-hp-hewlett-packard/ http://www.cheatingreport.com/aengus-linehan-of-hp-in-palo-alto-ca.html http://scamlisting.com/aengus-linehan-of-hp-hewlett-packardof-california-is-on-scamlisting-com/

[57] A more striking example is that of the plaintiff Alvie Bert Kraatz, also found on his Nextech USB Key, (not all the URLs in the table have been included in this decision, due to the number of them) as follows:

Alvie Bert Kraatz III Katy, Texas, U.S.A. Principal Talent Advisor, Oracle	Document (000018.doc) on Evidence 012 – Nextech USB Key See: Digital Forensic Report	_____ – Recruiter – Oracle Corporation – _____ is, without a doubt, a terrible recruiter! If anyone ever has the misfortune of dealing with this patently inept and transparently incompetent recruiter, proceed at your peril; ___ recruitment and candidate selection practices are inherently discriminatory, biased and arbitrary; ___ continuously 'filters' candidates based on past experiences with the candidate (ie. if you were deemed unfit for a role previously, you will be denied further consideration for other opportunities); this goes against Oracle's own equality polices & guidelines given that: (i) – every opportunity is a different one; and (ii) – Oracle encourages candidates to reapply if a suitable opportunity doesn't transpire; ___ incredibly arrogant, disrespectful, snide and even arguably quite racist, xenophobic and homophobic towards candidates that ___ doesn't seem to have a liking for; ___ is immensely lacking in basic courtesy and general etiquette (ie. doesn't return calls/e-mails, fails to follow-up with feedback, gets annoyed when pushed for a status update, etc); ___ is a complete and utter disservice to not only to the hiring managers that ___ deals with but also to Oracle Corporation and its customers, partners and shareholders given that ___ is allowing ___ prejudiced views pass over candidates with genuine talent and potential instead opting to move forward candidates that ___ feels would be an appropriate fit; Think these invectives are from a disgruntled individual? Think again. Check out all the negative reviews about her on Glassdoor.com and various career sites dating back a while; If anyone doesn't want to initiate a formal complaint in fear of possible reprisal (eg. if applying for other opportunities, your complaints about this recruiter might impact your candidacy), then the best is to proceed with an anonymous complaint to the Oracle Board of Directors, Majority Shareholders, Customers and Executives; it would be completely pointless to raise this with the Head of HR or Recruiting (they will do nothing about this), but instead direct such grievances to the executive brass who will pass it down the chain for further investigation	"Bert Kraatz is, without a doubt, a terrible recruiter! If anyone ever has the misfortune of dealing with this patently inept and transparently incompetent recruiter, proceed at your peril;His recruitment and candidate selection practices are inherently discriminatory, biased and arbitrary; He continuously 'filters' candidates based on past experiences with the candidate (ie. if you were deemed unfit for a role previously, you will be denied further consideration for other opportunities); this goes against Oracle's own equality polices & guidelines given that: (i) – every opportunity is a different one; and (ii) – Oracle encourages candidates to reapply if a suitable opportunity doesn't transpire;He is incredibly arrogant, disrespectful, snide and even arguably quite racist, xenophobic and homophobic towards candidates that he doesn't seem to have a liking for;He is immensely lacking in basic courtesy and general etiquette (ie. doesn't return calls/e-mails, fails to follow-up with feedback, gets annoyed when pushed for a status update, etc);He is a complete and utter disservice to not only to the hiring managers that he deals with but also to Oracle Corporation and its customers, partners and shareholders given that he is allowing his prejudiced views pass over candidates with genuine talent and potential instead opting to move forward candidates that he feels would be an appropriate fit;Think these invectives are from a disgruntled individual? Think again. Check out all the negative reviews about him on Glassdoor, Vault, e-Boss Watch, Salary and various career sites dating back a while; Read more about this corrupt Bert Kraatz right here: https://thedirty.com/gossip/houston/bert-kraatz-is-a-sex-monster/ If anyone doesn't want to initiate a formal complaint in fear of possible reprisal (eg. if applying for other opportunities, your complaints about this recruiter might impact your candidacy), then the best is to proceed with an anonymous complaint to the Oracle Board of Directors, Majority Shareholders, Customers and Executives; it would be completely pointless to raise this with the Head of HR or Recruiting (they will do nothing about this), but instead direct such grievances to the executive brass who will pass it down the chain for further investigation:Larry Ellison (Chairman): larry.ellison@oralce.com Mark Hurd (co-CEO): mark.hurd@oracle.com Safra Catz (co-CEO): safra.catz@oracle.com"	http://bertkraatz.blogspot.com/ http://bertkraatz.blogspot.com/2016_03_01_archive.htmlhttp://bertkraatzoracle.blogspot.com/ http://bert-kraatz-recruiter.blogspot.com/ http://bert-kraatz-recruiter.blogspot.com/2016/03/fire-bert-kraatz-oracle-recruiter.html http://bert-kraatz-recruiter.blogspot.com/2016_03_01_archive.html http://fire-bert-kraatz.blogspot.com/ http://fire-bert-kraatz.blogspot.com/2016/04/fire-bert-kraatz-oracle-recruiter.html

[58] There is no adequate explanation by Mr. Farid before the court as to why the content of the information found on his Nextech USB Key, delivered up on December 5, 2017 and copied as a result of the Anton Piller Order, not only contains information about any of the plaintiffs, but, more troubling, contains eerily similar content, if not the same wording, as the content and wording found in the online posts that are at heart of this case. By his own admission, he had no personal connection with either Aengus Linehan or Alvie Bert Kraatz III, or the countless others in the comparative Table 1, incorporated into these reasons by reference due to the number of pages.

The Williams Linguistic Report

[59] The plaintiffs obtained an expert report of Dr. James D. Williams, dated May 1, 2018 (the "Williams Report"). Dr. Williams is a Professor of Rhetoric and Linguistics at the University of Southern California and has 40 years of experience in the field. He has taught, researched, lectured, and published on topics related to syntax, psycholinguistics, and language acquisition, among other things. The plaintiffs offered him up as an expert "to provide expert opinion evidence in these areas".

[60] The defendant, Mr. Farid, challenges the Williams Report on several fronts including the fact that Dr. Williams stated in his report that he could not conclusively confirm whether Mr. Farid had authored any of the impugned posts and could only make a conclusion on the basis of probability. In addition, Dr. Williams did not know how bots worked, conceded the posts could be the work of bots, had used a computer program to assist him, and had only used a handful of posts.

[61] The necessity of the Williams Report to the court is questionable given the Duquette Report which uncovered actual evidence on Mr. Farid's computer. However, given his education, training and experience, the Williams Report can be given some weight. His analysis involved looking at several known documents written by Mr. Farid and comparing them to the postings to identify rhetorical, lexical, syntactic, and orthographic features to assess the existence of shared patterns. He was aided by a Support Vector Machine ("SVM"), which is apparently a software used by experts in the field, to analyze and compare the impugned postings with Mr. Farid's writings. He concluded that:

> *The SVM model identified a significant portion of the Internet postings at the center of this case as being written by defendant on the basis of syntactic patterns. This finding was congruent with the initial assessment of identical lexical, syntactic, orthographic, and rhetorical patterns found in Step One. The probability that these numerous identical patterns could have been produced by different writers is statistically close [to] zero. They are idiosyncratic, unique. On the basis of these results, my conclusion is that defendant was the author of a significant portion, if not all, of the Internet postings under review in this case*.

ii. *Are the impugned postings defamatory*?

[62] During oral submissions, counsel for the plaintiffs urged the court to accept the "findings" of Archibald J. and Pattillo J. who characterized the postings as defamatory and suggested that on this summary judgment motion the only issue to be determined is whether there is a genuine issue requiring a trial regarding the identity of the individual who authored the posts. However, I am not bound by any findings made by Archibald J. and Pattillo J. on this summary judgment motion.

[63] As such, the court must also determine on this motion whether the postings meet the test for defamation. In determining whether the postings are defamatory, the court must examine the natural and ordinary meaning of the impugned words: *Mantini* v. *Smith Lyons LLP* (2003), 64 O.R. (3d) 516 (C.A.), at para. 10.

[64] In order to obtain a judgment in defamation, the plaintiffs have the onus of proving the following:

i. that the impugned words referred to the plaintiffs;

ii. that the impugned words were defamatory, in the sense that they would tend to lower the plaintiffs' reputation in the minds of a reasonable person; and

iii. that the impugned words were published, meaning that they were communicated to at least one person other than the Plaintiffs: *Grant* v. *Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28.

[65] If the plaintiffs can establish these elements on a balance of probabilities, falsity and damages are presumed. The plaintiffs are not required to show that the defendant intended to do harm or even that the defendant was careless. The tort of defamation is one of strict liability: *Grant* v. *Torstar*, at para. 28.

[66] In terms of the first element of the test, Appendix 1 to the plaintiffs' factum lists each plaintiff, their residence, their job title, and the URL where each impugned post appeared, the date of the post followed by the content of the post and the ordinary meaning. The posts, with the plaintiffs' photos, culled from their social media site, are often linked to their employment or company. Appendix 1 is over three hundred and fifty pages but is incorporated in these reasons by reference. The postings in Appendix 1, lifted from the websites, show that in most cases the plaintiff's full name, job title, and place of residence appeared at the very beginning of the post. Some of the posts include graphic and explicit sexual language and descriptions. Examples of some of the postings are:

> *Marjory Remy is without a doubt a terrible recruiter. If anyone ever had the misfortune of dealing with this patently inept and transparently incompetent recruiter, proceed at your peril. Her recruitment and candidate selection practices are inherently discriminator, biased and arbitrary….She is incredibly arrogant, disrespectful, snide and even arguably quite racist, xenophobic and homophobic towards candidates that she doesn't seem to have a liking for…. Think these invectives are from a disgruntled individual, think aga*in.

This posting was linked to another site with a more salacious post.

[67] Another example of such a post is with respect to the plaintiff James Doran, which read:

Fire James Doran of Sisco Systems. Sisco's shareholders, customers and employees demand that James Doran be fired ASAP because he is the epitome of a failure. James Doran treats his staff with disrespect, a lack of curtsey and is incredibly mean towards people he has a dislike for. James Doran should be reported to human resources and upper management, but people don't do it because of fear of reprisals…

James Doran is rude, arrogant and temperamental towards everyone who does not jive well with him. James Doran is the type of person who needs to be put on full blast especially given the series of inappropriate sexual relationships with his female coworkers.

[68] Excerpts from samples of some of the more "salacious" posts include:

i. **Tracy Clancy**: "Tracy Clancy is a cougar and a predator Sapient Nitro New"; "FIRE Tracy Clancy – Complaints – Racist Recruiter – Bigot – Lazy – Inept –"

ii. **Brent Schreckengost: "**Brent Schreckengost routinely solicits young boys and girls in need to sexual therapy through adverts placed on the internet and various local publications"; "Brent Schreckengost often drugs and abuses many of his "patients" under the guise of treatment".

iii. **Monica Plata:** "Monica Plata of GE Digital aborted our unborn child …. Monica Plata and I were engaged in a passionate and steamy sexual rendezvous that quickly escalated into a lengthy illicit affair."

iv. **Fahrin Jaffer:** "steals money from clients yet never gets any work done!!!.... Fahrin Jaffer was (or is still) a call girl and she still works occasionally as an escort."

v. **Jamal Raza**: "Jamal Raza is a Sexual Deviant and a Woman Abuser - Jamal Raza in Toronto of Fleet Complete is your textbook definition of a sex predator; Jamal Raza has also been charged many times by police for sexual assault, drunk driving and many other offenses for which he served lengthy jail sentences."

vi. **Jacques Conand**: "Jacques Conand is the epitome of a bigot; Jacques Conand is rude, arrogant and temperamental towards everyone that does not jive well with him; Jacques Conand is the type of person who needs to be put in blast; read more about this unsavoury freak Jacques Conand right here: http://datingcomplaints.com/jacques-conand-of-hp-of-a-child-molester-and-sexual-predator-in-san-francisco-bay-area-ca/"

vii. **Mosfiqur Rahman**: "… formerly EMC is the epitome of a dolt; he was FIRED from EMC for a series of sexual harassment complaints by various women and he was also charged for sexual assault by police and was convicted and served a lengthy jail sentence";

viii. **Mira McDaniel**: "…tested positive for HIV and has AIDS Mira McDaniel (nee Mira Berenshtein) in Seattle, WA used and abused me for physical intimacy!!!"

ix. **Talie Dang**: "uses Tinder to sell her body"

x. **Nicole Ceranna**: "… Bigot – Crook – HIV Positive - Nicole Ceranna is, without a doubt, a terrible recruiter! If anyone ever has the misfortune of dealing with this patently inept and transparently incompetent recruiter, proceed at your peril; Her recruitment and candidate selection practices are inherently discriminatory, biased and arbitrary…"

[69] Any reasonable person reading the posts with respect to each of the plaintiffs would know instantly who it was, detailed as it was, with the plaintiff's full name and an accompanying photo, and know that the post, for each of them, was referring to them.

[70] With respect to the second element of the test, the plaintiffs submit that each post is defamatory in its natural and ordinary meaning and/or by innuendo. Damage to one's reputation is assessed objectively, from the perspective of an ordinary person: *Bou Malhab* v. *Diffusion Métromédia CMR inc*., 2011 SCC 9, [2011] 1 S.C.R. 214, at para. 26; *Métromédia C.M.R. Montréal inc. v. Johnson*, 2006 QCCA 132, [2006] R.J.Q. 395, at para. 49. The ordinary meaning is summarized for each plaintiff with the accompanying post and set out in Appendix 1, and include such meanings as sex trafficker, sex offender, pedophile, sexual predator, escort, rapist, promiscuous, homophobic, xenophobic, frauds, criminal, among others. In my view, the impugned words would tend to lower each of the plaintiff's reputation in the minds of a reasonable person.

[71] As for the third element of the test, Appendix 1 to the plaintiff's factum identifies the websites where the postings were or are hosted. The plaintiffs argue that approximately 77% of the impugned postings were on the following ten host websites:

[72] The postings appeared on websites such as:

- Blogspot.com (hosted by Google Inc.)
- Wordpress.com (hosted by Automatic Inc.)
- TheDirty.com
- ReportMyEx.com
- DatingComplaints.com
- PredatorsWatch.com
- TheyGotBusted.com

- ShesAHomeWrecker.com
- STDCarriersdatabase.com
- PervertReport.com

[73] Mr. Farid himself deposes at paragraph 28 of his affidavit that "not even a shred of definitive evidence connects me to any of the alleged postings – not even one of the allegedly defamatory posts among the 360,000+ websites that still continue to disseminate exponentially." In his factum, Mr. Farid references the exponential publication of the postings. As noted by Baltman J. in *Vivo Canadian Inc.* v. *Geo TV*, 2021 ONSC 3402, at para. 32, publication occurs "when the impugned statements are read, downloaded and republished". On the extensive record before the court, the impugned statements were posted on third party websites, have been viewed, and republished countless times.

[74] The Ontario Court of Appeal has commented on the "the ubiquity, universality and utility of that medium", that is the internet and noted that: "*internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and corporations, by [...] its interactive nature, its potential for being taken at face value, and its absolute and immediate worldwide ubiquity and accessibility. The mode and extent of publication is therefore a particularly significant consideration in assessing damages in Internet defamation cases*.": see *Barrick Gold Corp.* v. *Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.), at para. 30; *Rutman* v. *Rabinowitz*, 2018 ONCA 80, 420 D.L.R. (4th) 310, at para. 69.

[75] Counsel for the plaintiffs argued that a search of any of the plaintiffs' names would result in the impugned posts ending up in the top search results. As recruiters for companies in the information technology industry, it is not a great leap to think that the recruiters are also being googled by prospective candidates. The impugned posts were therefore published as they appeared on the ubiquitous internet and were communicated to at least one person other than the plaintiffs.

[76] As the postings satisfied all three elements of the test for defamation, the tort of defamation being one of strict liability: *Grant* v. *Torstar*, at para. 28., the postings regarding all fifty-three plaintiffs are defamatory.

iii. *If the postings are defamatory, are there any defences available to Mr. Farid?*

[77] Having satisfied the court that the postings meet the three-part test for the tort of defamation, the onus shifts to the defendant to establish one or more of the affirmative defenses, such as justification (truth), fair comment, or qualified privilege.

[78] Mr. Farid has not pled any affirmative defences and therefore, he would not be able to introduce evidence in support of these defences at trial: Raymond E. Brown, *Brown on*

Defamation, loose-leaf, 2nd ed. (Toronto: Thomson Reuters, 2017), at 10-121, and *Govenlock* v. *London Free Press Co.* (1915), 26 D.L.R. 681 (Ont. C.A.), at p. 684.

iv. *Are the claims of the plaintiffs barred by the Limitations Act, 2002*?

[79] Mr. Farid pleads in his Amended Statement of Defence that the plaintiffs' claims are barred by the *Limitations Act, 2002*.

[80] The plaintiffs submit that before November 2017, the plaintiffs did not know who was responsible for the postings. The plaintiffs, who are in various countries, argue that Mr. Farid took steps to hide his identity, posting most often from public WiFi networks including the University of Toronto, the Library and various coffee shops. They submit that it was only after a private investigation completed by Hexigent/Mr. Duquette, that they were able to discover that Mr. Farid was the man behind the postings.

[81] The plaintiffs therefore rely on the date of Mr. Duquette's preliminary report, November 3, 2017, as the trigger date for when they knew or ought to have known the identity of the tortfeasor, that is, Mr. Farid. The plaintiffs point to Hexigent's subsequent digital investigation report on November 30, 2017, where Hexigent was confident in supporting its conclusion that Mr. Farid was the person responsible for the defamatory postings.

[82] Section 4 of the *Limitations Act, 2002* mandates that no proceeding shall be commenced after 2 years from which the claim was discovered. The presumption of a two-year limitation period is rebuttable.

[83] Subsection 5(1) of the *Limitations Act, 2002* codifies the discoverability principle and sets out when a claim is presumed to be discovered. The relevant sections provide as follows:

> 5(1) *A claim is discovered on the earlier of,*
>
> > *(a) the day on which the person with a claim first knew*
> >
> > > *(i) that the injury, loss or damage had occurred,*
> > > *(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,*
> > > *(iii) that the act or omission was that of the person against whom the claim is made, and*
> > > *(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it;*
> > > *and*

> *(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).*
>
> *(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.*

[84] The onus is on a party asserting a different date of discovery to rebut the presumption contained in s. 5(2).

[85] At common law, the Supreme Court of Canada has stated that a cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence: *Central Trust Co.* v. *Rafuse*, [1986] 2 S.C.R. 147.

[86] The discoverability rule has been held to be a rule of fairness which provides that a limitation period does not begin to run against a plaintiff until he or she knows, or ought reasonably to know by the exercise of due diligence, the fact, or facts, upon which his or her claim is based: *Peixeiro* v. *Haberman*, [1997] 3 S.C.R. 549; *Smyth* v. *Waterfall* (2000), 50 O.R. (3d) 481 (C.A.).

[87] In the case of *York Condominium Corp. No. 382* v. *Jay-M Holdings Ltd.*, 2007 ONCA 49, 84 O.R. (3d) 414, at para. 26, the Ontario Court of Appeal indicated that limitation periods "*should be liberally construed in favour of the individual whose right to sue for compensation is in question*."

[88] Even with the codification of the discoverability principle, there is still an element of discretion involved when the court is asked to determine when a litigant knew or ought to have known the material facts giving rise to a cause of action. The determination of whether a person has discovered a claim requires fact-based analysis: *Aguonie* v. *Galion Solid Waste Material Inc.* (1998), 38 OR (3d) 161 (C.A.), at p. 167, *Soper* v. *Southcott* (1998), 39 O.R. (3d) 737 (C.A.), and *McSween* v. *Louis* (2000), 132 O.R. (3d) 304 (C.A.).

[89] The case law also establishes that when a reasonable person with the abilities and in the circumstances of the person with the claim ought to have known of the matters giving rise to the claim is a question of fact: *Arcari* v. *Dawson*, 2016 ONCA 715, 134 O.R. (3d) 36, at para. 9, citing *Lima* v. *Moya*, 2015 ONSC 324, at para. 76, aff'd on appeal 2015 ONSC 3605 (Div. Ct.), at para. 19. In this case the plaintiffs are all professional individuals, most living outside of Ontario, confronted with cyber stalking and bullying on the ubiquitous internet.

[90] The determination of when the cause of action arose for the purpose of the commencement of the limitation period depends on mixed fact and law: *Aguonie*.

[91] Subsection 5(1)(a) of the *Limitations Act, 2002* is a subjective test which requires that the court determine when the plaintiffs had actual knowledge of the material facts constituting the

cause of action. Subsection 5(1)(b) is an objective test requiring a determination of when a reasonable person in the plaintiffs' position would have been alerted to the elements of the claim: *Ferrara* v. *Lorenzetti, Wolfe Barristers and Solicitors*, 2012 ONCA 851, 113 O.R. (3d) 401, at para. 33.

[92] The discoverability of a claim for relief involves the identification of the wrongdoer, and the discovery of his or her acts or omissions that constitute liability: *Aguonie*, at p. 167, and *Soper*.

[93] Justice Borins (ad hoc), writing on behalf of the court in *Aguonie*, stated, at p. 170, that: "The discovery of a tortfeasor involves more than the identity of one who may be liable. It involves the discovery of his or her acts, or omissions, which constitute liability." Borins J. went on to state:

> *"The starting point for the application of the discoverability rule . . . is the time when the appellants' cause of action arose. This will define the starting date of the limitation period. It is a question of fact when the cause of action arose and when the limitation period commenced. The application of the discoverability rule is premised on the finding of these facts: when the appellants learned they had a cause of action against the respondents; or, when, through the exercise of reasonable diligence, they ought to have learned they had a cause of action against the respondents* [Emphasis added.]

[94] On the record before the court, Mr. Farid used various public WiFi hot spots and went to great lengths to conceal his identity to publish the defamatory posts on the internet. Some plaintiffs had attempted, without success, to identify the individual behind the defamatory postings through subpoenas and Norwich Orders. Mr. Farid's identity was only discovered through a seasoned investigator with years of experience in cyber security and only after having access to Mr. Farid's electronic devices by virtue of an Anton Piller Order. The first indication any of the plaintiffs had of Mr. Farid's identity is with the completion of the Hexigent preliminary report dated November 3, 2017.

[95] A statement of claim was issued on November 30, 2017, within the two years of when the plaintiffs knew or ought to have known, with the exercise of reasonable diligence, the identity of the tortfeasor, that is, that it was Mr. Farid who was responsible for posting the defamatory content on the various websites.

[96] While the plaintiffs have also advanced the position that the majority of the defamatory postings were posted after December 2015, in my view, it was only until the November 2017 Duquette report that, in accordance with section 5(1)(iii) of the *Limitations Act, 2002*, the plaintiffs knew "that the act or omission was that of the person against whom the claims is made".

[97] Even Mr. Farid himself acknowledged at paragraph 102 of his factum, albeit in deflecting authorship, the difficulty in determining the identity of the author stating: "…. Not even a single one of the defamatory posts on over 900,000+ websites can be traced back to its rightful author. The author's true identity is unknown and not easily ascertainable" (emphasis added).

[98] While the plaintiffs have also advanced the argument that each publication gives rise to a new cause of action: *Shtaif* v. *Toronto Life Publishing* Co., 2013 ONCA 405, 366 D.L.R. (4th) 82, at paras. 27-40, I need not determine that issue as, in my view, the plaintiffs' statement of claim, issued within a month of receiving the forensic report identifying Mr. Farid as the author of the posts, was commenced within two years of when the plaintiffs knew or ought to have known they had a cause of action against an identified tortfeasor, Mr. Farid. The claims of the plaintiffs are therefore not statute barred.

v. *Is there a Genuine Issue Requiring a Trial With respect to the Plaintiffs' Claims*?

[99] Subrule 20.04(2)(a) provides that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence: *Hryniak* v. *Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 34.

[100] *Hryniak* set out a framework for the motion judge to undertake, urging the following analysis:

i. The court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial;

ii. On the basis of this record, the court decides whether it can make the necessary findings of fact, apply the law to the facts, and thereby achieve a fair and just adjudication of the case on the merits;

iii. If the court cannot grant judgment on the motion, the court should:

   a. Decide those issues that can be decided in accordance with the principles described in (ii), above;
   b. Identify the additional steps that will be required to complete the record to enable the court to decide any remaining issues;
   c. In the absence of compelling reasons to the contrary, the court should seize itself of the proceedings.

[101] On a motion for summary judgment, the court should first determine if there is a genuine issue requiring trial based only on the evidence before the court, without using the new fact-finding powers: *Hryniak*, at para. 66.

[102] Each party must "'put its best foot forward' with respect to the existence or non-existence of material facts that have to be tried": *Canada (Attorney General*) v. *Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11; *Goudie* v. *Ottawa (City)*, 2003 SCC 14, [2003] 1 S.C.R. 141, at para. 32.

[103] The evidence need not be equivalent to that to be advanced at trial but must be such that the judge is confident that he or she can fairly resolve the dispute: *Hryniak*, at para. 57.

[104] On the evidence before me, I can assume that the parties have put all the evidence that they would put before the court should the case proceed to trial.

[105] On the basis of the record before me, I am able to make the necessary findings of fact, apply the law to the facts, and thereby achieve a fair and just adjudication of the case on the merits.

[106] The plaintiffs have put forward forensic and digital evidence found on Mr. Farid's devices linking Mr. Farid to the plaintiffs and the postings. The Duquette Report was based on a digital analysis of the electronic devices delivered up by Mr. Farid in the execution of the Anton Piller Order and copied for review and analysis. Mr. Duquette's conclusion that Mr. Farid was the person responsible for the defamatory postings was based on, inter alia, the following findings:

i. There were several instances whereby the same IP address had been used for the defamatory postings and by Mr. Farid for job applications.

ii. There were instances whereby the same IP address at similar locations, e.g., the University of Toronto and coffee shops, had been used for both the defamatory postings and Mr. Farid's job applications.

iii. There was a strong connection between the wording and types of websites used in the postings and the defamatory postings indicating they were likely posted by the same person.

[107] Mr. Farid has not unequivocally denied that the digital information found on his electronic devices was there at the time they were seized. Instead, he claimed Mr. Duquette "unlawfully accessed police and government databases to obtain information that is not readily available in the public domain, yet not even a single digital forensic effort exhibits a conclusive match, which only further supports my position that I had absolutely nothing whatsoever to do with any of the post(s)." Further, he provides no explanation as to why the forensic investigation would have uncovered references to the plaintiffs, their photos, postings, which are similar to the impugned defamatory statements, and browser history results indicating that he had visited the websites (before the statement of claim was served). He has not explained why, if he has no personal relationship with 51 of the 53 plaintiffs, there was such an overwhelming amount of information recovered on his electronic devices relating to many of the plaintiffs.

[108] He claimed he "was unaware of said websites and their existence" until after the action was commenced. The only problem for Mr. Farid is the Anton Piller Order was served at the same time as the statement of claim, that is on December 5, 2017, the same day he was required to, and did, deliver up devices that were copied. There is no explanation therefore as to why the forensic digital analysis would uncover evidence from his browser and cache showing that he had in fact visited the very websites where the impugned statements were housed.

[109] Mr. Farid's response to the reports are as follows:

- "These Reports are a cocktail mix of plausible scenarios, possibilities, and innuendos that poorly surmises a conclusion that is not supported by any concrete evidence."

- "[T]he reports were tailored to portray a favorable perception of the Plaintiffs and an unflattering view of myself through incendiary hyperboles - yet it is entirely lacking in substance in terms of actual evidence."

- "The Forensic Reports are hocus pocus nonsense and a flagrant attempt to insult to the Court's intelligence."

[110] Mr. Farid has raised, without any evidence, the possibility of third parties proving whether he has any connection to the posts, but he himself has not put this evidence before the court. Moreover, he has not explained why the countless references to the plaintiffs, their photos, and the content that are similar, if not the same as the posts attached to some of the plaintiffs, were found on his electronic devices. His assertion that evidence was manufactured and tailored is baseless. The conclusion of the Duquette Report is unchallenged and uncontradicted by any countervailing opinion. Mr. Farid has only made a series of bald denials.

[111] I agree with the plaintiffs that the following evidence is uncontradicted:

i. there is direct unchallenged forensically discovered digital evidence retrieved from Mr. Farid's electronic devices delivered up as a result of the Anton Piller Order linking Mr. Farid to the impugned postings including, excerpts from the defamatory postings; the plaintiffs' names; the plaintiffs' photographs, many of which appear in the online impugned postings; browser history indicating Mr. Farid visited many of the impugned postings and the websites that host those postings;

ii. unchallenged forensic digital evidence showing Mr. Farid's electronic devices had connected to the internet from the same Internet connections (IP addresses) from which some of the impugned postings were posted online; and

[112] The evidence is uncontradicted: The forensic analysis of Mr. Farid's devices found evidence on Mr. Farid's computer linking him to the defamatory posts. The forensic analysis of Mr. Farid's devices found some of the same websites in his browser history where the defamatory postings are hosted, which proves, on a balance of probability, that Mr. Farid had accessed the sites prior to the commencement of this action. Mr. Farid claimed he was "was unaware of said websites and their existence" until after the action was commenced. He has not explained the timing issue as to why the evidence would be on his devices on December 5, 2017, the same day that he was served with the Anton Piller Order and the statement of claim, among other things, and the execution of the Anton Piller Order. Mr. Farid had the forensic and digital reports for years but

put forward no evidence to challenge the reports (aside from bald denials). The smoking gun, the Duquette Report, trumps bald denials.

[113] In fact, I find, more persuasive, the plaintiffs' argument that the style, format, use of language, structure and content of the impugned posts, including the unique words used (for example "dolt"), spelling and diction, all tend to establish common authorship as was the case in *Caplan* v. *Atas*, 2021 ONSC 670.

[114] It is well established that a plaintiff who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial": *Guarantee Co. of North America v. Gordon Capital Corp*., [1999] 3 S.C.R. 423, at para. 27. I am satisfied that a full appreciation of the record was possible, and the plaintiffs have established on a balance of probability that Mr. Farid was the author of the postings published on the various websites.

[115] The responding party also has an evidentiary burden. The defendant/responding party must "lead trump or risk losing": Rule 20.02(2); *Pizza Pizza Ltd.* v. *Gillespie* (1990), 75 O.R. (2d) 225 (Gen. Div.); *Irving Ungerman Ltd.* v. *Galanis* (1994), 4 O.R. (3d) 545 (C.A.), at p. 552; *High-tech Group Inc.* v. *Sears Canada Inc.* (2001), 52 O.R. (3d) 97 (C.A.). Mr. Farid has not led trump but has rather relied on blanket denials and bald statements. His explanation that he only visited the websites after the lawsuit started is not credible given the timing of the execution of the Anton Piller Order. He has not explained the photos of the plaintiffs, the hundreds of pages of the Word document found on his device, nor provided any credible explanation as to why any of this information would be on these personal devices especially as he had no personal connection to the plaintiffs. In short, Mr. Farid has offered no countervailing objective explanation to explain why there was information about the plaintiffs on his devices.

[116] I agree with the plaintiff that unlike the *Atas* case, which had circumstantial evidence, in this case there is direct evidence in the form of the "the smoking gun" as Ms. Zemel called it, the Duquette Report, which directly ties Mr. Farid to the defamatory postings, and to the plaintiffs.

[117] I also accept the plaintiffs' argument that Mr. Farid's failure to comply with the terms of the Anton Piller Order and deletion of records constitutes evidentiary spoliation. It is well established that spoliation of evidence raises a rebuttable evidentiary presumption that the evidence was unfavourable to the party that destroyed it: *St. Louis* v. *R.* (1896), 25 S.C.R. 649; *Endean* v. *Canadian Red Cross Society* (1998), 157 D.L.R. (4th) 465 (B.C.C.A.), *Robb Estate* v. *St. Joseph's Health Care Centre* (1998), 42 O.R. (3d) 379 (Div. Ct.), giving rise to an inference against interest. I agree that this court may infer that there was evidence on the undelivered devices, in undisclosed email accounts and in deleted files that further supports a finding that Mr. Farid is the person responsible for the impugned postings. The spoliation of evidence prevented the plaintiffs from uncovering even more evidence to support their claim that the defendant, Mr. Farid, was responsible for the cyberstalking, cyber harassing, and campaign of cyber defamation.

[118] In response to the overwhelming digital evidence linking him to the plaintiffs, Mr. Farid levelled several charges against counsel for the plaintiffs. He deposes at paragraph 48 of his affidavit:

> *I can state with certainty that Plaintiff Counsel Ms. Zemel till this very day continues* to publish on various websites that I am the person responsible for the allegedly *defamatory posts and that a Court had found me liable, an assertion and published statement that is plainly and obviously false. Justice Archibald had scolded Ms. Zemel for attributing the newer posts to me, and more importantly, His Honour had razed Ms. Zemel for submitting misleading comments to website hosts in stating that I was "getting around removal orders". Ms. Zemel continues to defy Justice Archibald's order and she still continues to defame me in a candid manner (this item is also the subject of the on-going Law Society investigation that is underway*).

[119] And, as if there needed to be more of a smoking gun, since the execution of the Anton Piller Order, salacious and malicious postings have also appeared on some of the very same websites that host the impugned postings about the plaintiffs' lawyer, Ms. Zemel. The only inference is that all roads lead back to Mr. Farid as being the author of these postings.

[120] I find that there is no genuine issue requiring a trial with respect to whether the postings were defamatory. There is no genuine issue requiring a trial with respect to who is the author of the posts. There is no genuine issue requiring a trial with respect to the defendant's limitation defence.

vi. *What is the quantum of damages for each plaintiff?*

[121] Each of the 53 plaintiff is seeking $96,000 for general and aggravated damages for a total of $5,100,000. Each plaintiff is also seeking punitive damages in the amount of $9,400 for exemplary or punitive damages, for a total of $500,000.

[122] Mr. Farid, who focused on denying that he was the author of impugned postings, has not seriously challenged the amounts claimed. Additionally, I am not satisfied with the method proposed by counsel for the plaintiffs in assessing damages for each of the plaintiffs, which, in the end, would amount to merely applying a "conventional" amount for each category of damages for each plaintiff.

[123] *Hryniak* has urged motions judge to determine if there is a genuine issue requiring a trial, whether a trial may be avoided by using the powers under Rules 20.04(2.1) and (2.2). In my view, the only genuine issue is the amount to be awarded to the plaintiffs.

vii. *Is the defendant in contempt of orders of this court?*

[124] The plaintiffs are asking the court to make a finding of civil contempt by Mr. Farid of the Anton Piller order of Archibald J., dated December 4, 2017, as confirmed, and continued by order of Pattillo J., December 21, 2018, pursuant to rule 60.11 of the *Rules*.

[125] In response to the plaintiffs' contempt motion, Mr. Farid submits that the issues have already been settled and decided by Archibald J. and this is an attempt to have these items re-litigated. His position is that he allowed the ISS to search his apartment. He claimed that he could not "deliver several items that did not belong to me". As for a Kia vehicle which he denied owning or having anything to do with, though this evidence was hearsay, he read the report and does not disagree with having made those statements. However, he now deposes that "In good faith, I did not have access to the vehicle given that the rightful owners - my parents - were out of the country." He points to the fact that there was a later search. As for deleting records, he denied that he could have done so deposing that it is a "*peculiar and strange assertion that there was any deletion of items, especially given that the Plaintiffs agents were watching me the entire time - even when I was speaking with legal counsel over the telephone, which was a clear breach of the APO*."

[126] The plaintiffs are asking this court to make a finding of civil contempt under rule 60.11 of the *Rules*, or in the alternative, find that there was evidentiary spoliation or draw an adverse inference under rule 60.12 or under the rules of evidence on the basis that Mr. Farid deleted records from his electronic devices, did not provide access to all his electronic devices and his refusal to permit the ISS to carry out a search of his apartment, the inference being that he had something to hide.

[127] The relevant provisions of rule 60.11 of the *Rule*s read as follows:

> *60.11 (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.*
> *(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.*
> *(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit*.

[128] In *Carey* v. *Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at paras. 33-35, the Supreme Court of Canada set out the three elements of civil contempt, all of which must be established beyond a reasonable doubt:

i. The order alleged to have been breached must state clearly and unequivocally what should and should not be done.

ii. The party alleged to have breached the order must have had actual knowledge of the order.

iii. The party must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[129] In order for this court to find Mr. Farid in contempt of the Anton Piller Order and the other injunctive orders, the plaintiffs must prove beyond a reasonable doubt, that what he did or failed to do was in breach of a court order(s) that meet the following criteria: (1) the order stated clearly and unequivocally what should and should not be done; (2) Mr. Farid had actual knowledge of the order(s); and (3) Mr. Farid intentionally did the act that the order prohibits or intentionally failed to do the act that the order compelled: *Carey*, at paras. 32-35; *Calvy* v. *Calvy*, 2015 NBCA 53, 389 D.L.R. (4th) 67, at para. 27.

[130] I agree with the plaintiffs that the terms of Archibald J.'s Anton Piller Order were clear and unequivocal. The language of the Anton Piller Order is borrowed from the standard language in the precedent Anton Piller Order in the Practice Direction of the Superior Court. Mr. Lipkus swore an affidavit in support of the motion for summary judgment with his report annexed. He executed the Anton Piller Order on December 5, 2017, between 11:45 a.m. to 3:29 p.m. at Mr. Farid's apartment. He initially knocked on Mr. Farid's apartment door at 9:05 and waited over an hour, knocking on several occasions. Mr. Farid eventually opened the door at 11:45 a.m. Mr. Lipkus explained the order to Mr. Farid.

[131] Mr. Farid was required to allow the ISS and the investigators to conduct a search of his apartment for any electronic devices, and I accept, based on the evidence before me, that Mr. Farid refused to allow the search to be completed, especially in his bedroom.

[132] Mr. Farid was required to deliver up to the ISS all of his electronic devices over which he had control, and I accept, based on the photos taken by the ISS of the electronic devices that were in plain sight, but were not delivered up by Mr. Farid, that he did not comply with this requirement.

[133] In addition, Mr. Farid was obliged to grant the ISS access to all his email accounts so that they could be searched for relevant evidence. On the evidence before me, and based on his own evidence on cross examination, wherein he admitted to having the Gmail account identified by the ISS, and also admitted that his University of Toronto email account required a password, but did not furnish that password, and to date has not done so, he is in breach of the Anton Piller Order.

[134] While Ms. Zemel stressed that this was not a criminal contempt proceeding, nonetheless, the jurisprudence in Ontario establishes that civil contempt proceedings governed by rule 60.11 of the *Rule*s are quasi-criminal in nature.

i. The order alleged to have been breached must state clearly and unequivocally what should and should not be done

[135] On his cross examination, Mr. Farid admitted that he understood that the APO required him to deliver to Mr. Lipkus all of the electronic and computer devices in his possession, control and power at the time. He also admitted on cross examination that he understood that he was to disclose to Mr. Lipkus all his email addresses and his user identifications and passwords that he was using or had access to in December 2017. In my view, the terms of the APO were clear and

unequivocal, and it was clear what Mr. Farid's obligations were to comply with the order. Mr. Farid is therefore in breach of the first part of the test.

ii. The party alleged to have breached the order must have had actual knowledge of the order

[136] The evidence before the court, also captured on videotape, is that Mr. Farid was served with the Order. Mr. Lipkus explained the Anton Piller Order to him, also captured on video, and uncontracted evidence from Mr. Lipkus. Mr. Farid also read the Appendix to the Anton Piller Order, again, evidence that is uncontradicted by Mr. Farid. In fact, Mr. Farid admitted on his cross examination of his affidavit in response to the motions, that he understood his obligations to deliver up the electronic devices in his possession and to disclose his email addresses and passwords. He partially complied with the former and failed to comply with the latter requirement.

iii. The party must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels

[137] The order prohibited Mr. Farid from altering or deleting electronic documents. The ISS initially knocked on the door at 9:05 a.m., and knocked three times at different times, but it was not until 11:45 a.m. that they were granted access. Any deletion therefore before the Anton Piller Order was served are not relevant for consideration.

[138] The evidence for consideration on this aspect of the test indicates that:

- Mr. Farid was permitted 2 hours to consult with a lawyer after he was served with the Anton Piller order, and it was explained to him by the ISS. He sequestered himself in his bedroom behind close doors. The digital forensic report by Mr. Duquette, prepared at the direction of the order of Pattillo J. has evidence on Mr. Farid's Acer laptop which indicates data being deleted during the day prior to or immediately following the execution of the Anton Piller Order and the user of the system researching how to delete data. The first deletion occurred at 9:25 a.m., and 9521 files deleted from a file named "Funky", and the deletions occurred while the ISS was at Mr. Farid's door attempting to gain entry. These deletions occurred before the APO was served on Mr. Farid or explained to him. Mr. Duquette was successful in partially recovering the content of the file, and many of the recovered files related to photographs of the plaintiffs. At 9:26 a.m., there was a large deletion from the Firefox cache folders (internet browsing history), and the content of the folder was partially recovered and contained many picture files and other website usage in relation to the plaintiffs.

- At 12:40 p.m., Mr. Farid was left in his bedroom, door closed. At 1:23 p.m., while he was in his bedroom to consult with a lawyer, Firefox profile and cache were deleted from the laptop. At 2:14 p.m., while still in his bedroom, Mr. Farid searched: "How to remove document history in Windows 10?", and "How to remove document history in Windows

7?" At 2:15 p.m., Mr. Farid deleted a host of files, and the meta data reveals the names of the files deleted. At 2:28 p.m., Microsoft Edge browser cache files and browser history were deleted.

- Mr. Farid admitted on cross examination that he has been using his Gmail account and U of T account continuously. Mr. Farid refused to provide access to the cloud storage associated with the Gmail account. On cross examination, he admitted he understood he had to provide the password, and up to the date of the motion, failed to provide access to either email account – he subsequently admitted to having the Gmail account. He refused to provide an undertaking to grant the ISS access. To date, Mr. Farid has not provided the password.

- Mr. Farid was required to deliver up all the computers and electronic devices in his possession and control. He did not deliver up all the electronic devices in plain sight. He did not deliver up the dark laptop, which he claimed he sold at a pawnshop, possibly as late as December 5, 2017, which is coincidentally the same date that the Anton Piller Order was executed. The Duquette Report also indicates that an Apple iPhone was connected the day before the execution to the Acer laptop and an Apple iPod was connected to the Acer laptop the day of the execution, but these electronic devices were not delivered up either.

- Mr. Farid was required to permit the ISS to search his apartment. He initially agreed, but then refused to permit the search to be completed. He challenges this and claims that the apartment was searched.

[139] In my view, the plaintiffs have established, beyond a reasonable doubt that Mr. Farid intentionally breached the APOs by deleting records, refusing to turn over devices, refusing to disclose information, and refusing to permit the search of his apartment to be completed. I agree with the plaintiffs that breaching the Anton Piller would render it meaningless given the intent of these orders is preservation of evidence.

[140] The contempt power of the court is discretionary: *Carey*, at para. 36; *MacDougall* v. *Boivin*, 2005 NBCA 62; *Chong* v. *Donnelly*, 2019 ONCA 799, 33 R.F.L. (8th) 19; *Moncur* v. *Plante*, 2021 ONCA 462, 57 R.F.L. (8th) 293. A finding of contempt is also an extraordinary remedy and should only be resorted to as a last resort: *Vidéotron ltée* v. *Industries Microlec produits électroniques inc*., [1992] 2 S.C.R. 1065, at p. 1078.

[141] Therefore, while I am satisfied that given the purpose of the Anton Piller Order is to preserve evidence, and it has been established beyond a reasonable doubt that Mr. Farid is in contempt of the Anton Piller Order by deleting records, after he was served with it, and also in breach for refusing to deliver up all electronic devices in his control or possession, refusing to

permit access to his email accounts, among other breaches, given the quasi-criminal nature of contempt proceedings, and the harsh sanctions for contempt (the plaintiffs are asking that Mr. Farid be imprisoned after a contempt hearing and have argued that he was already given opportunities to purge his contempt), I am concerned that he was never personally served with the motion for contempt. (Mr. Farid was personally served with the Notice of Motion on August 12, 2019). Moreover, given my determination on the summary motion, the contempt motion may be moot. However, if the plaintiffs wish to pursue the contempt relief, that aspect of the motion is being dismissed, without prejudice to them renewing their motion, upon proper service and, given the volume of materials, motion materials limited only to that relief.

[142] Although I am not prepared to make a finding of contempt at this time, I do accept the plaintiff's alternative argument that Mr. Farid's deletion of records constitutes evidentiary spoliation, giving rise to an inference against interest, and an adverse inference may be drawn from his failure to turn over electronic devices or allow access to his email accounts. I can only infer from all of this that there was evidence on the undelivered electronic devices, undisclosed email accounts, or in the deleted files that would show that Mr. Farid is the person responsible for the impugned postings.

viii. *What ancillary remedies are available to the plaintiffs*?

[143] The plaintiffs are seeking ancillary relief under rule 20.04(7) of the *Rules*, namely, a permanent injunction prohibiting Mr. Farid from publishing any defamatory words or statements against the lawyers, agents, investigators, experts and witnesses for the plaintiffs in this action.

[144] The plaintiffs are also seeking a mandatory order requiring Mr. Farid to assist the plaintiffs in obtaining the removal from the internet of any defamatory comments directed against the plaintiffs' lawyers, investigators, experts and/or witnesses, published because of this action.

[145] The subrule relied upon by the plaintiffs does not exist, but more importantly, the plaintiffs have not provided any authority for the position that the court may make such orders under rule 20 in respect to strangers to the action (i.e., non-parties).

Conclusion and Disposition

[146] The motion for summary judgment is granted on the following terms:

i. The impugned postings are defamatory against each of the plaintiffs.

ii. The defendant, Mr. Farid, is responsible for the defamatory postings on the internet.

iii. The plaintiffs' claims are not statute barred. The claims were commenced within two years of November 3, 2017, the date when the plaintiffs knew that Mr. Farid was the author of the postings.

iv. The only genuine issue requiring a trial is the question of the amount to which the plaintiffs are entitled, and, in the circumstances, a trial of that issue is directed pursuant to subrule 20.04(3). Given the number of plaintiffs and the thousands of pages of evidence, as directed by *Hyrniak*, I will remain seized. Counsel for the parties may contact Ms. Diamante to schedule a case conference to set a timetable.

[147] The relief sought by the plaintiffs in paragraphs 2 and 3 of the Notice of Motion are dismissed, without prejudice to the plaintiffs renewing a motion for contempt.

[148] The relief sought by the plaintiffs in paragraphs 4 and 5 is dismissed, without prejudice to the plaintiffs renewing the motion.

Costs

[149] Counsel for the parties may contact Ms. Diamante to schedule a time to speak to the issue of costs, and a date to determine the amount of the damages.

A. Ramsay J.

Released: March 4, 2022

CITATION: Clancy v. Farid, 2022 ONSC 947

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TRACY CLANCY, BRENT SCHRECKENGOST, MONICA PLATA, FAHRIN JAFFER, JAMAL RAZA, JACQUES CONAND, MOSFIQUR (MO) RAHMAN, MIRA MCDANIEL, TALIE DANG-LU, NICOLE CERANNA, PHILIP COOKSEY, MARIANNA GUROVICH, DANIEL CHRISTOPHER KOLOSKI, ALVIE BERT KRAATZ III, MICHAEL MONTGOMERY, NICOLE PALMER, MARY CELESTE (MC) DIDONE, DAVID LYNN, SURYA PANDITI, LAURA LEIGH SCHNEIDER, MARI SULLIVAN, MEERA GANESH, MICHAEL REMZA, JAVED KHAN, MARJORY REMY, CASSANDRA LONG, KIRSTEN HILL, RUBA BORNO, PAULA CAO, BOBBY NANDA, RUCHI ECHEVARRIA, MICHAEL GINN, FELICIA GLACE, ROBYN MATOS/HOLLAND, ANGELA BARNES COOLIDGE, COLIN KINCAID, MACIEJ KRANZ, MARC ALDRICH, KARTHIK SUBRAMANIAN, HEATHER VICKERS, STACIE TORELLO WILK, MARY CATHERINE HUDSON, CHAD ALAN TROUT, KATHLEEN NOONAN, SHAUNA DALY, KEVAN BLANCO, MIRIAM DRUMMOND, CHEYENNE DEVERNA, CHRISTINE FENG, DAN GROSSMAN, AENGUS LINEHAN, HILTON ROMANSKI, JAMES BRIAN DORAN

Plaintiffs

– and –

TANVIR FARID a.k.a. TANVIR ISLAM

Defendant

REASONS FOR JUDGMENT

A. Ramsay J.

Released: March 4, 2022