

Cyber Libel Updates

Canadian Internet Defamation Rulings

Defamation Damage Awards

Cases published to June 27, 2023

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2023 June 27

Clancy v. Farid, 2023 ONSC 2750

The Ontario Superior Court of Justice assessed defamation damages aggregating \$4,773,000 in a case involving claims by 53 plaintiffs against one individual defendant over a targeted campaign involving tens of thousands of postings on the internet. Each of the 53 plaintiffs was awarded general damages, in amounts ranging from a high of \$90,000 to a low of \$55,000 depending on their individual circumstances. The aggregate sum awarded for general damages amounted to \$4,245,000. Aggravated damages in the amount of \$1,500 were awarded to each of 34 of the plaintiffs, aggregating \$51,000. Punitive damages in the amount of \$9,000 were awarded to each of the 53 plaintiffs, aggregating \$477,000.

Citing the decision of the Supreme Court of Canada in *Andrews v Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, the Court held that the ability of the defendant to pay is not a relevant consideration in assessing general or aggravated damages. However, citing *Whiten v Pilot Insurance Co.*, [2022] 1 SCR 595, the Court held that the financial means of the defendant is relevant in the assessment of punitive damages, where the goals are retribution, denunciation and deterrence. An award of punitive damages that is too large may not achieve the goal if the defendant is poor.

The Court held that the defamatory publications at issue were salacious, outrageous and malevolent. “During his submissions, the defendant acknowledged that it would be difficult, if not impossible, to remove the content from the internet and submits that the posts are multiplied by bots. He pointed to a post for the plaintiff [C] which he submits has been replicated ‘word for word for word’ for six to seven years. He argued he could not accept responsibility for replication caused by bots. In this context, the Court stated: *“In my view, bots are a feature of the internet, being the mode of publication chosen by the defendant to disseminate the egregious and vile defamatory postings about the plaintiffs. It was therefore reasonably foreseeable that those postings would be replicated and multiplied on the Internet, such is the nature of the Internet.” “In this case, the defendant chose a medium which was borderless, had an audience that was global, with the click of a mouse, and an impact that is continually amplified, if his submissions are true, by the existence of bots. That is to say, the defamatory statements will perhaps always reside on the Internet.”*

In addition to the damage award, the Court enjoined the defendant from posting further defamatory statements or comments of the nature and kind which were the subject of this litigation.