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# How CPAs can handle bad reviews online

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CPAs and other professionals now have access to legal tools to help them push back against online harassment



*In recent years, Canadian courts have provided justice for plaintiffs in cases alleging online defamation (Getty Images/Morsa Images)*

*That accountant is rude! I brought my business records to her for corporate tax work and she laughed at my record-keeping! – Angry Businesswoman, Medicine Hat, AB*

Search engine results are often the first thing a potential client reads when deciding to hire you or your firm. A few clicks on unsavoury and false search results means that negative postings about you or your work can climb higher in search listings. Because of this, a single individual can create a vast web of lies, often aided by search platforms that can be slow to remove harmful content.

There are limited options for effectively halting these kinds of digital super spreaders. But, a recent Ontario court decision has expanded the toolbox for professionals seeking substantive legal means to stop online smears about them, their families, or their friends. This new tort—online harassment—bears consideration by any professional whose reputation is threatened due to web-based bullying.

Despite the internet's ubiquity, courts still wrestle with how to remedy internet-based harms, many of which straddle criminal and civil law. But, courts may be more willing to deploy novel remedies to curb complaints of online harassment when no internet regulations or legislation otherwise exist.

Internet bullying has far more potential for reputational harm than traditional defamation because of the internet's allowance for anonymity and the web's interactive nature. Because of this, Canadian courts have frequently provided justice for plaintiffs in cases alleging online defamation or the false online public portrayal of an individual.

Yet, litigation for such internet-based claims remains time consuming and costly. Consider the lengths gone to by 53 individuals in *Clancy v. Farid*, a case in which a Toronto man had waged an international web war on executives and recruiters for IT companies.

In *Clancy*, a case spanning five years, litigants had to hire an investigator to unearth the internet troll's identity, and then, obtain court orders for seizure and copying of the defendant's electronic devices so plaintiffs could obtain necessary evidence. After that, plaintiffs had to return to the court for a variety of other motions before the court could consider awarding damages to the executives. Success in *Clancy* took years of strategic litigation by plaintiffs.

A recent civil case involving a new tort, harassment in internet communications, evolved after an Ontario court considered decades of online slander and harassment by a Toronto woman against individuals across the globe. The defendant in *Caplan v. Atas*, had subjected more than 150 individuals—many of them licensed professionals such as lawyers and realtors—to a torrent of phony smear reviews and internet harassment campaigns. The extreme bullying dated to the 1990s and involved repeated posting of malicious falsehoods about the plaintiffs or their friends, family, and neighbours.

In *Caplan*, the court created a stringent test, which if met, means a plaintiff could obtain money damages, injunctive relief (stopping the harasser from further postings), and the legal right to demand that websites hosting the posts remove them. The last remedy is another novel means in which this claim differs from traditional defamation.

To succeed in an online harassment lawsuit a plaintiff must establish:

- A defendant maliciously or recklessly engaged in communications conduct “so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance”
- The defendant acted with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff; and,
- The complained of conduct harmed the plaintiff.

Proving this is not easy. But online harassment's unique characteristics mean that success with this claim can, and should, involve distinctively different elements from other civil actions commonly lodged against internet bullies.

It remains to be seen how courts outside of Ontario will treat online harassment claims. Since the Caplan case, only a handful of cases have referenced the decision and other provinces have neither embraced nor rejected the tort.

For those looking to end online smears, non-litigious options also exist. Many investigative firms provide online reputation management, engaging technicians who can reduce one's digital footprint or suppress certain search engine results. Reputable investigative firms also know how to properly engage sites such as Google and LinkedIn to have the websites remove phony profiles or malicious reviews.

Internet bullying and cyber harassment involve complexities that defy a one-size-fits-all solution. The decision to take legal action against someone weaponizing the web may only come after you have exhausted all other reasonable options. But if you decide to sue, you do so knowing that Canadian courts appear open to creative solutions for plaintiffs who can show true harm.

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## About the Author



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