

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
 SEYED MANSOUR HOSSEINI) *Mehrnaz Asad* for the Plaintiff
)
)
 Plaintiff)
)
 - and -)
)
 HAMID GHARAGOZLOO)
)
 Defendant) **HEARD:** In writing
)

PERELL, J.

REASONS FOR DECISION

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A. Introduction and Overview

[1] This is a motion by the Plaintiff **Seyed Mansour Hosseini** for a default judgment pursuant to Rule 19 of the *Rules of Civil Procedure*.¹ The motion for judgment is in a defamation action, and it follows an unsuccessful anti-SLAPP motion by the Defendant **Hamid Gharagozloo**.²

[2] By way of a summary and overview, the background to this default judgment motion is as follows.

[3] Mr. Gharagozloo is an American human rights political advocate with a prominent position with **IOPHR** (the “**International Organization to Preserve Human Rights**”). In a news reporter or news commentator way, Mr. Gharagozloo presented several videos that were published on the Internet. The videos allegedly defamed Mr. Hosseini, who is a Canadian citizen that fled Iran for the freedom of Canada.

[4] The main video presented by Mr. Gharagozloo temporarily came first, but it was labelled in the Statement of Claim as Video #2. It is a documentary. The documentary identifies **Dr. Reza Tabandeh**, who is a resident of Ontario, Canada, as one of seven main co-conspirators that plotted the house arrest and assassination of **Dr. Noor Ali Tabandeh**, the spiritual leader, which is known as a “Qutb,” of a minority Islamic religious group, known as the Gonabadi Sufis. The documentary describes the assassination of Dr. Noor Ali Tabandeh to have him replaced by a leader acceptable to the Iranian Government. In a span of approximately 4.0 seconds, Video #2 twice displays a photographic image of Dr. Reza Tabandeh, one of the alleged plotters, standing beside Mr. Hosseini.

[5] When he became aware of the video, Mr. Hosseini asked Mr. Gharagozloo for an apology and the removal of the videos or at least the obscuring of his photo. However, Mr. Gharagozloo double downed on the alleged defamation, and he double dared Mr. Hosseini to do something about it. Mr. Gharagozloo doubled down by participating in a series of more videos and online broadcasts on Dorr TV, an internet broadcaster. Mr. Gharagozloo double dared, by inviting Mr. Hosseini to sue him at risk of being exposed as a supporter or co-conspirator in the religious leader’s death.

[6] Mr. Hosseini picked up the gauntlet. He sued Mr. Gharagozloo. The double dare was a bluff. Mr. Gharagozloo has no evidence of anything other than Mr. Hosseini being acquainted with Dr. Reza Tabandeh, who is a Canadian resident. Mr. Gharagozloo did not defend the defamation action by delivering a Statement of Defence and he has no evidence to substantiate his allegations

¹ R.R.O. 1990, Reg. 194.

² *Hosseini v. Gharagozloo*, 2023 ONSC 2469.

against Mr. Hosseini. Instead of defending on the merits, Mr. Gharagozloo brought an anti-SLAPP motion. The anti-SLAPP motion was dismissed.

[7] With the dismissal of his anti-SLAPP motion, Mr. Gharagozloo was called on to deliver a defence to the defamation action. He did not do so. He dismissed his lawyers. He was asked to deliver a defence. When he did not do so, he was noted in default.

[8] Mr. Hosseini now moves for a default judgment of approximately \$450,000 with costs of approximately \$315,000. More specifically, he seeks: (a) \$250,000 in general damages; (b) \$100,000 in aggravated damages; (c) \$100,000 in punitive damages; (d) \$215,179.67 for the costs of the anti-SLAPP motion and this action; (e) \$100,000 in costs on a substantial indemnity basis for the default judgment motion; and (f) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*.³

[9] Mr. Hosseini also seeks injunctive relief; namely: (a) an Order that Mr. Gharagozloo shall permanently remove any and all social media posts regarding the Plaintiff, within 30 days; (b) an Order that Mr. Gharagozloo shall be permanently prohibited from publishing any defamatory, false, or disparaging statements about the Plaintiff, or encouraging any other person, whether a member of IOPHR or not, to publish such statements; and (c) an Order that Mr. Gharagozloo publish a retraction on Dorr TV's Telegram, YouTube, and Instagram accounts, acknowledging that his statements about Mr. Hosseini were false and defamatory and referring the audience, and where applicable providing them with a link, to the anti-SLAPP motion reasons for decision dated April 21, 2023 and the default judgment decision on CanLII.

[10] For the reasons that follow, I grant Mr. Hosseini a default judgment of \$400,000 with costs for the defamation action including all interlocutory motions of \$180,000 all inclusive. The awards are to bear postjudgment interest. I make no order as to injunctive relief. I leave it to Mr. Gharagozloo to post as he may be advised links to CanLII of the decisions in this defamation action.

B. Procedural Background

[11] On **August 10, 2022**, Mr. Hosseini learned about the alleged defamatory statements.

[12] He retained counsel, and on **August 12, 2022**, Mr. Hosseini's counsel wrote a cease and desist letter and demanded an apology.

[13] On **September 1, 2022**, Mr. Hosseini issued a libel notice under the *Libel and Slander Act*.⁴

[14] On **October 20, 2022**, Mr. Hosseini commenced his defamation action against Mr. Gharagozloo.

[15] On **December 23, 2022**, Mr. Gharagozloo brought his anti-SLAPP motion supported by his affidavits dated December 22, 2022 and January 31, 2023.

[16] Mr Hosseini resisted the motion with an affidavit dated January 20, 2023.

[17] On **February 7, 2023**, Mr. Hosseini and Mr. Gharagozloo were cross-examined.

³ R.S.O. 1990, c. C.43.

⁴ R.S.O. 1990, c. L.12.

[18] The parties delivered factums, and the anti-SLAPP motion was argued on **March 28, 2023**. I reserved judgment.

[19] On **April 21, 2023**, I dismissed Mr. Gharagozloo's anti-SLAPP motion.⁵ I ordered that Mr. Gharagozloo pay costs for the anti-SLAPP motion in any event of the cause.

[20] On **June 13, 2023**, Mr. Hosseini delivered an Amended Statement of Claim. For present purposes, the pertinent parts of his Statement of Claim are set out below.

CLAIM

1. The Plaintiff, Seyed Mansoor Hosseini (the "Plaintiff") claims against the Defendant, Hamid Gharagozloo (the "Defendant"):

(a) Damages in the amount of \$700,000.00 CAD with respect to a series of false and defamatory statements that the Defendant has made against the Plaintiff;

(b) Special damages in the amount to be determined;

[...]

(d) A mandatory injunction requiring the Defendant to remove or cause to be removed from Instagram accounts, YouTube accounts, Pearl TV's (a.k.a Dorr TV) and its Telegram and YouTube Channel, Twitter Account(s) or other locations on the Internet that all the defamatory statements concerning the Plaintiff the Defendant has posted or caused to be posted on those websites/accounts or other locations;

(e) A public apology from the Defendant for the publication of the defamatory allegations on the above-mentioned platforms;

[...]

False and Defamatory Statements

6. As described below, the Defendant has engaged in a vicious, carefully orchestrated and unlawful campaign of defamation against the Plaintiff. His campaign of defamation, which has been carried out on various online platforms, has been planned with malice, for the express purposes of publicly embarrassing the Plaintiff, harming his reputation in his community, both religious and residential, and tarnishing his career with the ultimate goal of ejecting him out of Gonabadi Sufi.

(a) VIDEO #1

7. On or about August 10, 2022, the Plaintiff discovered a video ("Video #1"), four minutes and thirty-eight seconds long, in which the Defendant appeared and narrated. In Video #1, the Defendant claimed that he was attending the Convening of a Coalition for International Religious Freedom (the "Summit") and was reporting from the same. The background in Video#1 also suggested that the video was recorded while the Defendant was in the Summit.

8. The Summit was apparently held for three days – both in person and virtually – between June 28 to June 30, 2022, in Washington D.C. The purpose of the Summit was to gather different religious groups and promote the freedom of religion.

9. An important constituency, both in size and in prominence, of people, including, *inter alia*, the United States Speaker of the House of Representatives, Nancy Pelosi, the Former United States Secretary of State, Michael Pompeo, dozens of American senators, congressmen and

⁵ *Hosseini v. Gharagozloo*, 2023 ONSC 2469.

congresswomen, such as Senator Marco Rubio and Congressman French Hill as well as members of Parliaments of the United Kingdom and Finland attended the Summit (the "Audience").

10. In Video #1, the Defendant admitted that he made a presentation at the Summit, during which he played a video ("Video #2"), for the Audience. The Defendant then claimed that during his presentation, he spoke about 43 years of the Islamic Regime of Iran's (the "Regime") brutal attack on the Gonabadi Sufis, the alleged assassination of three Gonabadi Sufi Masters, and the unlawful arrests of many Gonabadi Sufis in Iran.

11. In Video #1, the Defendant then proceeded to claim that during the Summit, he "unmasked" 7 agents of the Regime who allegedly played a key role in the above-mentioned brutal activities. During his narration, a picture of the Plaintiff, standing alongside two other individuals, was publicly displayed/shown (at 1:22), falsely implying that he was associated with the above-mentioned ruthless activities.

[...]

13. The Defendant then shared or allowed Video #1, which was made by him, to be shared online on the accounts that the Defendant owned, had control of, was associated with and/or was frequently represented or promoted by, including, *inter alia*, on Instagram (such as info.sufi, drdadrashfathi, afshin.sajedi, and etc), Twitter, YouTube, Pearl TV and Pearl TV's Instagram, Telegram and YouTube Channel.

[...]

(b) VIDEO #2

15. Upon the discovery of Video #1, the Plaintiff investigated the above-mentioned platforms and found Video #2, which, according to the Defendant's in Video #1, was shown to the Audience during his presentation at the Summit.

16. Video #2 was ten minutes and fifty-seven seconds long and narrated by an unknown female voice. While the narrator spoke, many pictures and clips that were supposedly related to the content of the video were displayed in the background.

17. In Video #2, the female narrator alleged that the Regime, and particularly, its head of state, the Supreme Leader of Iran, Ali Khamenei, has infiltrated and taken over the Gonabadi Sufis. The narrator further alleged that in or about February 2018, the Regime, through their infiltrated agents, including tens of thousands of besieges who pretended to be Gonabadi Sufis, put the then Master of the Gonabadi Sufi, Mr. Tabandeh, under house arrest, and eventually, after two years of repeatedly poisoning him, assassinated him.

18. During the period of time in which the female narrator advanced the above statements with respect to the besieges' cruel and violent activities, a picture of the Plaintiff (mentioned above) was intentionally shown (at 8:00) to imply that the Plaintiff was one of the alleged Iranian besieges who pretended to be a Gonabadi Sufis but committed terrorist activities against the members and the Master of the Gonabadi Sufi. The said picture reappeared during the conclusion of Video #2 (at 10:38). However, this time, there was a subtitle accompanying the image. The subtitle displayed on the top of the screen read, "Main Co-conspirators to murder the spiritual leader of the Gonabadi Sufis," while the name of an individual, Reza Tabandeh, was mentioned at the bottom.

19. Similar to Video #1, Video #2 did not provide any support for the defamatory and harmful statements against the Plaintiff. Nonetheless, Video #2 was likewise shared on various online accounts that the Defendant owned or had control of, was associated with, and/or was frequently represented or promoted by including, *inter alia*, on Instagram (such as info.sufi, drdadrashfathi, afshin.sajedi, and etc.), Twitter, YouTube, Pearl TV and Pearl TV's Instagram, Telegram and YouTube Channel.

20. In addition to the audience at the Summit, Video #1 had 80.8K views on Dorr TV's Telegram channel alone. Similarly, Video #2 had 89.2K views on Dorr TV's Telegram channel.

~~20~~21. Those online accounts on which the video was shared pertained, *inter alia*, Instagram, Twitter, YouTube, and various online platforms that Dorr TV broadcasts its programs ~~from~~. In other words, in addition to the Audience, Video #2 has reached and continues to reach at least hundreds of thousands of people, if not millions to date.

(c) VIDEO #3

~~24~~22. Subsequent to broadcasting Video #1 and Video #2 on Pearl TV multiple times, the Defendant was invited to Pearl TV continually for further comments and discussions about the Summit and the alleged unmasking of the Regime's agents and their identity, which included the identity of the Plaintiff (Video #3). In Video #3, the Defendant discusses the suppression of the Gonabadi Sufis with a lawyer from the IOPHR, Dorr TV's hostess and a member of IOPHR, Ms. Hafezi, and two other individuals. The Plaintiff's picture (mentioned above) was shown while the Defendant was making the following remarks:

"This year, we had the honour of speaking and presenting a film about the crimes committed against the Sufis and assassination of three Gonabadi Sufi Qutbs [...] [and] the actors of the crimes [against Sufis and Qutb] and those who betrayed Sufis within the Gonabadi Sufi Order, and worked with the Regime's Supreme Leader [...] and, of course, those crimes and conspiracies were exposed with our help [...]"

23. Video #3 was an hour, fifteen minutes, and seven seconds (1:15:07) long, and has had about 109.5K views so far on Dorr Tv's Telegram channel alone. In addition to Dorr Tv's Telegram channel, Video #3 was posted on Dorr TV's YouTube Channel as well. During their discussions, however, the Defendant did not offer any supporting evidence beyond his bald and baseless accusations.

Notice Of Defamation

~~22~~24. Smearing the Plaintiff with false allegations was not only harmful to the Plaintiff's career and reputation within his community, but also imposed a real and serious risk of harm to him and his family.

~~23~~25. In an effort to mitigate the damages caused by the Defendant, on or about August 12, 2022, the Plaintiff, served the Defendant in person with a notice of cease and desist with respect to the unlawful, malicious and destructive false allegations made by him against the Plaintiff pursuant to section 5 of the *Libel and Slander Act*, R.S.O. 1990, c. L. 12. In the said notice, the Plaintiff expressly notified the Defendant that his allegations were false and defamatory, and sought the immediate publication of an apology and retraction.

(d) VIDEO #4

~~24~~26. In response to the notice, on or about August 28, 2022, the Defendant posted another clip ("Video #4") on various online platforms, where he stated that he stood by his allegations, called the plaintiff's demand to remove his pictures "nonsense" and welcomed any lawsuits against himself. In the caption of the clip, the Defendant further defamed the Plaintiff and alleged that the Plaintiff played a key role in the house arrest of the previous Gonabadi Sufi Master. No apology and/or retraction was published by the Defendant.

27. Video #4, with a duration of five minutes and fifty seconds (5:50), was distributed across multiple online platforms, including, but not limited to, Dorr TV's Instagram account, Telegram channel, and Info.Sufi's Instagram accounts. Notably, Video #4 garnered a total of 86.6K views solely on Dorr TV's Telegram channel. Lastly, in Video #4 a reference was made to the letter issued by the IOPHR lawyer to the Plaintiff.

e) VIDEO #5

28. On or about September 22, 2022, the Plaintiff discovered another video ("Video #5") in which the Defendant appeared on Dorr TV to address the Plaintiff's cease and desist letter further. Alongside the Defendant, two other individuals were present in the video: Mr. Sajedi, the counsel for IOPHR, and Ms. Hafezi, the show's hostess. Video #5 was forty-one minutes and seventeen seconds long (41:17) and was posted on Dorr TV's Telegram and YouTube channels as well as their Instagram account. On Telegram alone, Video #5 has been viewed 102.5K times.

29. Video #5 commenced with an introduction by Ms. Hafezi, during which she made a reference to the content of Video #2 and the Summit and alleged that Video #2 displayed images of a group of individuals (including the Plaintiff) who were involved in the project related to the Sufi's former master's house arrest.

30. Subsequently, the Defendant started his speech by showing and promoting Video #2 and its content. He then discussed the Plaintiff's cease of desist letter at length and dismissed it as nonsense and an empty threat. Additionally, the Defendant raised doubts about the credibility and existence of the Plaintiff's legal counsel, alleging that no reputable lawyer who obtained their law degree from a respected law school and successfully passed the bar exam would involve themselves in the Plaintiff's case due to the potential severe repercussions on their legal license.

31. In Video #5, the panel engaged in ridicule towards the Plaintiff, using derogatory terms like "termite Dervish" and making insinuations about the Plaintiff's lawyer being connected to the Regime. Additionally, there were threats made that the Plaintiff's IP address could be obtained to establish the Plaintiff's alleged affiliation with the Regime. The video concluded by welcoming the Plaintiff's lawsuit.

Defendant's Response to the Cease-and-Desist Letter Triggered a Defamation Campaign Targeting the Plaintiff

32. Following the release of Video #5, a deliberate campaign to defame and assassinate the character of the Plaintiff was initiated through a series of offensive and insulting videos. These videos, totalling eight in number to the best knowledge of the Plaintiff, were circulated across various social media platforms such as YouTube, Telegram, and Instagram. This campaign was orchestrated in direct response to the Plaintiff's cease and desist letter and his denial of any association with the Regime.

33. The primary creator of these videos was Ms. Hafezi, the hostess of Dorr TV and a colleague of the Defendant at IOPHR. Specifically, Ms. Hafezi produced a four-part series titled "*Who is Seyed Mansour Hosseini?*", which were primarily focused on undermining the Plaintiff and accusing him of affiliation with the Regime. In another video, prompted by the Iranian Embassy attack in London, UK, Ms. Hafezi called upon her "freedom-loving" supporters, fans, and audience to "conquer" the Vali-Asr Islamic Centre in Markham, Ontario, similar to the embassy incident in the UK. Ms. Hafezi's call for violence was based on the assumption that since the Plaintiff had visited the premises, the Islamic Centre must also be affiliated with the Regime.

34. As a result of the call for violence targeting the Vali-Asr Islamic Centre, the Plaintiff felt compelled to fulfill his civic duty by informing both the Islamic Centre itself and the police. A police report was generated to document the incident. The Plaintiff was particularly embarrassed having to clarify to the Islamic Centre steward that his past attendance at the said centre prompted the call for violence.

35. In addition to the aforementioned videos, IOPHR issued a letter publicly in support of the Defendant. Similar to Video #4 and #5, the IOPHR's counsel disregarded the legal significance of the Plaintiff's cease and desist letter, dismissing it as a mere publicity stunt and lacking any legal implications. Additionally, the IOPHR issued a threat to the Plaintiff, warning that if legal action is initiated, they would unveil evidence of the Plaintiff's alleged collaboration with the Regime in order

to expose him. Furthermore, the letter contained personal attacks directed towards the Plaintiff's legal counsel, Mr. Joel Etienne, who was named in the cease-and-desist letter.

Libel, Defamation, And/Or Slander Causing Loss of Reputation

2536. The Plaintiff states that the accusations against him with respect to his association with the Regime and involvement in brutal and terroristic activities are completely false. The Plaintiff pleads that the Defendant defamed and slandered him and continues to do the same through the discussed, disclosed, conveyed, and/or disseminated false allegations, which were made and broadcast to hundreds of thousands of people, if not millions in Iran and abroad.

2637. As a result of the Defendant's defamatory statements, videos, and posts on various online platforms, the Plaintiff has suffered and continues to suffer harm and damage. The malicious and false allegations made by the Defendant against the Plaintiff were calculated to impugn the Plaintiff's reputation and integrity and thereby isolate him from his community and Gonabadi Sufis. The Defendant's vexatious campaign against the Plaintiff will inflict a long-lasting effect on the Plaintiff's reputation, career, and religious status among Gonabadi Sufis.

The Defamatory Statements Have Been Aggravated by the Sensitive Timing

2738. On or about September 16, 2022, a twenty-two-year-old Iranian woman, named Mahsa Amini (a.k.a Zhina Amini), was arrested in Iran by the "morality" police in Iran for allegedly not wearing her hijab in accordance with the Regime's guidelines. Mahsa Amini eventually died under mysterious circumstances in police custody. Her death has sparked criticism among Iranians and non-Iranians against the Regime and has prompted a boycott of the same.

[...]

2940. Accordingly, the effect of the Defendant's defamatory statements has been exacerbated by the sensitive timing of the accusations due to the death of Mahsa Amini as well as the small size of the close-knit Iranian-Canadians community in Toronto, which allows the word to spread quickly. Indeed, Iranian-Canadians form a small but very tight community in Toronto where they shop, gather, hold ceremonies, and attend religious observances and services together.

3041. Due to the fear of being recognized from the above-mentioned videos and harassed, the Plaintiff and his family have refrained from attending Iranian stores, restaurants, or religious centres for prayers. In other words, the Plaintiff has been unfairly and unjustifiably isolated from his community due to false and baseless allegations by the Defendant.

3142. Throughout the relevant period, the Defendant has acted in a callous, supremely arrogant, contumacious, and egregious manner for the purpose of profiting and gaining more audience at the direct expense of the Plaintiff's reputation and safety. The Plaintiff pleads that the Defendant has engaged in a conscious effort to intensify and perpetuate his attacks on him without any regard for the truth of his allegations.

3243. Even after having been served with the Plaintiff's notice, the Defendant has continued to maintain, update, and advertise their defamatory posts, and to publicize and disseminate his false and defamatory statements concerning the Plaintiff. His conduct is shocking and oppressive and offensive to the sense of decency.

3344. The Plaintiff's reputation, including his reputation among Iranians as well as the Gonabadi Sufi community, has been harmed due to the publication and re-publication of the Defendant's false and defamatory statements on various online platforms.

3445. The Plaintiff pleads that the Defendant is strictly liable for his misconduct in publishing the false and defamatory comments. The Plaintiff further pleads that the Defendant's malice is plain and obvious in light of the contents of the defamatory comments, and the videos.

[...].

[21] On **July 4, 2023**, Mr. Gharagozloo's counsel served a Notice that Mr. Gharagozloo intended to act in person.

[22] Mr. Gharagozloo was repeatedly asked to defend the action and when he failed to do so on **July 20, 2023**, he was noted in default.

[23] On **December 4, 2023**, Mr. Hosseini brought a motion for a default judgment. The motion was supported by Mr. Hosseini's affidavit dated December 4, 2023.

C. Facts

1. Historical Background

[24] In 1979, there was a revolution in the Imperial State of Iran. At that time, a monarchical government led by the Shah of Iran, Mohammed Reza Pahlavi, was overthrown and replaced by the theocratic government of Ruhollah Khomeini, a religious cleric. The rebels established the present day Islamic Republic of Iran.

[25] Within Iran, live the Nematollahi, a minority Islamic religious group, which has three main branches, the largest of which is the Gonabadi Sufis (also known as Gonabadi Dervishes). Since the revolution, the Iranian government has persecuted the Sufis. Their monasteries have been destroyed, and thousands of Sufis have been dismissed from employment, arrested, imprisoned, and tortured, and some have been executed.

2. Dramatis Personae

(a) Dr. Noor Ali Tabandeh

[26] In 2018, the spiritual leader, "Qutb" of the Gonabadi Sufi order was **Dr. Noor Ali Tabandeh**, who was then in his nineties. Dr. Noor Ali Tabandeh had succeeded his brother **Mahboub Ali-Shah** as Qutb. In February 2018, the Iranian Government placed Dr. Noor Ali Tabandeh under house arrest in the custody of Seyed Alireza Jazbi Tabatabaei. Almost two years later on December 24, 2019, at the age of 92, Dr. Noor Ali Tabandeh died while under house arrest.

[27] Mr. Gharagozloo believes that the death was caused by months of deprivation, poisoning, and medical malpractice, a practice employed by the Iranian Government to cover up the murders of religious activists. It is Mr. Gharagozloo's belief that during Dr. Noor Ali Tabandeh's house arrest, the Iranian Government interfered with Dr. Noor Ali Tabandeh's choice of successor and arranged that Seyed Alireza Jazbi Tabatabaei, who was loyal to the government, would be appointed as successor Qutb.

(b) Reza Tabandeh

[28] **Reza Tabandeh** is the son of the late Mahboub Ali-Shah, who was succeeded by his brother the late Dr. Noor Ali Tabandeh. Reza is thus the nephew of the late Dr. Noor Ali Tabandeh. Dr. Reza Tabandeh is a Canadian resident. He graduated from St. Xavier Catholic High School in Mississauga in 2002 and then obtained degrees in religious studies from York University, B.A.

(2005), University of Toronto, M.A. (2007), University of Exeter (Mississauga, Ontario, campus), Ph.D. (2008). He has been a teaching assistant at York University and the University of Toronto. He currently is a post-doctoral fellow at the University of Toronto (since 2014) and a researcher and sessional lecturer at Brock University (since 2018).

[29] Mr. Gharagozloo believes that Dr. Reza Tabandeh was one of the seven main co-conspirators who plotted and carried out the assassination of his uncle Dr. Noor Ali Tabandeh in furtherance of a plot to have him replaced with a spiritual leader satisfactory to the Iranian Government.

(c) Seyed Mansour Hosseini

[30] Mr. Hosseini was born in Iran, and he received a degree in chemical engineering from Shiraz University. In 2006, he and his ex-wife moved to Canada. They have a now teenage son. Mr. Hosseini is now divorced. He is a devout Gonabadi Sufi, which he became after he moved from Iran to Canada.

[31] After immigrating to Canada, he was hired as an engineer in the oil and gas industry, where he worked until 2016, when he was laid off. He then worked as an Uber driver, and he tried two business endeavours that were unsuccessful. In 2023, he was rehired as a piping lead engineer and resumed his career as an engineer. Mr. Hosseini does not support the Iranian Government's persecution of religious minorities and dissidents, and its violent attacks on the Gonabadi Sufis.

[32] Mr. Hosseini and Dr. Reza Tabandeh are acquaintances in the Sufi community in Canada. The contacts between Mr. Hosseini and Dr. Reza Tabandeh all occurred in Canada. There is no evidence that Mr. Hosseini had anything at all to do with the death of Dr. Reza Tabandeh's uncle in Iran. There is no evidence that Dr. Reza Tabandeh had any role in his uncle's death.

(d) Hamid Gharagozloo

[33] After the revolution in Iran, Mr. Gharagozloo's family left the country to live in exile in the United States. He now lives in Richmond, Virginia, USA. Mr. Gharagozloo has a B.Sc. and two M.Sc. in chemical and industrial engineering and in operations research and statistics. He is the president and founder of Nest, LLC, a commercial real estate investment and development company that manages large-scale construction and oversees property development.

[34] Mr. Gharagozloo became a human rights activist for the religious minorities and ethnic groups that have been persecuted by the Iranian government. Mr. Gharagozloo is a representative of the **International Organization to Preserve Human Rights** ("IOPHR"), which is a United Kingdom NGO that organizes conferences, lectures, and seminars about human rights issues. Mr. Gharagozloo is also the Chair of the Iran Working Group of the Office of International Religious Freedom ("IRF") Roundtable. The IRF is a policy lobby for U.S. foreign relations. At some time prior to the summer of 2022, Mr. Gharagozloo researched and the IOPHR produced an approximately eleven-minute documentary video, which Mr. Hosseini labels in his Statement of Claim "Video #2."

3. The Narrative

[35] At some time prior to the summer of 2022, Mr. Gharagozloo researched and the IOPHR

produced an approximately eleven-minute documentary video (“Video #2.”). The video is an English language documentary about the forty-three years of oppression of Sufis in Iran by the Iranian Government.

[36] Between **June 28 to June 30, 2022**, in Washington D.C., there was a meeting of the Coalition for International Religious Freedom (the “Summit”).

[37] On **June 29, 2022**, Mr. Gharagozloo made a speech at the Summit. During Mr. Gharagozloo’s speech, he showed Video #2. In his speech, Mr. Gharagozloo’s speech discussed the various covert and malicious activities carried out by the Iranian Government in the US, Canada, UK, EU, Iran, and elsewhere.

[38] In Video #2, the narrator, an unidentified woman, discusses covert efforts taken by seven co-conspirator agents of the Iranian Government to assassinate Dr. Ali Noor Tabandeh and to appoint a regime loyalist as his successor. Mr. Gharagozloo researched and confirmed the accuracy of all the information in the video and in his speech about the activities of the Iranian Government and the seven conspirators.

[39] In Video #2, the narrator describes the Iranian Government’s suppression of human rights and its persecution of religious minorities, such as the Gonabadi Sufis. She reports that there are tens of thousands of “*basijis*” who pretend to be Sufis to infiltrate the Gonabadi Sufis. She describes a campaign to isolate and harm Dr. Noor Ali Tabandeh and to replace him with a Qutb who is loyal to the Iranian Government. She identifies the seven “main” conspirators as: Gholam Reza Harsini, Mir Yunes Jafari, Ali Reza Jazbi, Hussein Ali Kahani, Shahram Pazuki, Mohammed Tabandeh (another nephew of Dr. Noor Ali Tabandeh), and Dr. Reza Tabandeh.



[40] During Video #2, there is a video clip of two seconds duration that is shown twice during the video. The video clip shows Dr. Reza Tabandeh standing by two individuals. In the photograph, standing to the left of Dr. Reza Tabandeh is Mr. Hosseini. The video does not name Mr. Hosseini nor the other individual in the photo, but all three men appear under the caption: “Main co-conspirators to murder, the spiritual leader of the Gonabadi Sufis – Reza TABANDEH.”

[41] The viewer of the video clip would not know that the video photograph was taken three years earlier at the memorial service for Dr. Noor Ali Tabandeh in 2019 at the Vali Asr Islamic Centre in Markham, Ontario, a service at which the Ontario Sufi community attended, including Dr. Reza Tabandeh and Mr. Hosseini. Mr. Hosseini says he and Dr. Reza Tabandeh were greeting attendees arriving at the memorial service for Dr. Reza Tabandeh’s uncle.

[42] On **June 29, 2022**, what is labelled Video #1 in Mr. Hosseini’s Statement of Claim is posted on the Internet. Video #1 is four minutes and thirty-eight seconds in length (4:38 minutes). Video #1 video is narrated by Mr. Gharagozloo and appears to be produced and published by the IOPHR. In Video #1, Mr. Gharagozloo speaks in Farsi. He reports from Washington on his attendance at the Summit. As was the case with Video #2, nothing is said about Mr. Hosseini in Video #1. However, within Video #1, Video #2 with its depiction of Mr. Hosseini is displayed on a large screen beside Mr. Gharagozloo. In Video #1, the video clip from Video #2 is displayed

once. A translation of Mr. Gharagozloo's narration of Video #1 follows:

With regards, I am Hamid Gharagozloo from the International Organisation to Preserve Human Rights on the second day of the international annual meeting of freedom of thought and religion in Washington.

Yesterday, a film by the International Organisation to Preserve Human Rights was broadcasted about the 43 years of crimes committed against the Nematollahi Gonabadi order and the Gonabadi dervishes, as well as the martyrdom of three sole masters of this order and a large number of dervishes who are still in prison and about the crucial part of seven persons, termites, [that] play a key role, led by Mohammad Tabandeh and Hossein Ali Kashani, who each played their own role to the house-arrest and imprisonment of Dr. Tabandeh and in his martyrdom.

Also, the role of people like [...] And most importantly about Shahram Pazouki and his sinister plans during the past few decades, in order to fix the academic credibility and character for Reza Tabandeh, who [Pazouki planned to] become the future Sufi master of the order. And the role of Reza Tabandeh himself in those issues, I discussed with the head of the Commission for Freedom of Opinions and Religions and two employees of the Ministry of Foreign Affairs about the nefarious plans that the regime has through Shahram Pazouki and Reza Tabandeh to make the order a governmental order and also to make the order ISIS-like order, the relationship between Reza Tabandeh and the so-called Islamic centers in Toronto and Europe and how Shahram Pazouki through the communications with the Ministry of Guidance [in Iran] and Haddad Adel [influential person in Iranian regime] and European universities were able to create a certificate for Reza Tabandeh and give academic credit and personality to this person [...] These people want to implement their racist, ISIS-like and terrorist thoughts all over the world through mysticism. [...].

[43] In late **June** and early **July 2022**, Video #2, along with what Mr. Hosseini labels Videos #1 and #3, are posted on Internet social media accounts. These videos are published online by the IOPHR, not Mr. Gharagozloo. Video #3 is broadcast on **August 8, 2022**. It is a video of an appearance by Mr. Gharagozloo on a Dorr TV broadcast hosted by Dorr TV's hostess, Ms. Hafezi.

[44] Dorr TV is a broadcast channel popular with the Farsi speaking public. On the broadcast, Mr. Gharagozloo appears with IOPHR's counsel, Mr. Sajedi. During the broadcast, Mr. Gharagozloo, speaking in Farsi, reports about his presentation at the Summit. While he is speaking, clips from Video #2 are played, and the photo of Mr. Hosseini standing by Dr. Reza Tabandeh is displayed while Mr. Gharagozloo speaks. A translation of the discussion between Ms. Hafezi and Mr. Gharagozloo on Video #3 follows:

Ms. Hafezi: Hello and Greetings, dear ones. The issue of violating the rights of Iranian citizens, especially the violation of the rights of religious and doctrinal diversities in Iran, has become one of the main problems of citizens in the country. What is solution to this crisis? In addition to we are witnessing unbridled general and continuous violation of human rights in all parts of the country. Truly, why are followers of different religions and beliefs the target of attacks and harassment organized by the government? To answer this question, we invited four human rights activists and had a conversation with them.

[...]

Ms. Hafezi: Not long ago, Mr. Gharagozloo held a cyber conference on the sidelines of the annual meeting of the International Organization for Freedom of Religions and Beliefs in the United States of America, the World Association for International Organisation to Preserve Human Rights, regarding the violation of the rights of religious minorities in Iran. As a representative of the International Organisation to Preserve Human Rights, you were the organizer of this meeting, which was held in three days. If possible explain to our audience about the way of holding this meeting and the results of it.

Mr. Gharagozloo: [...] And this year I had the honor of speaking and [presenting] a film about the crimes against the dervishes and martyrdom of the three sole masters of Nematullahi Gonabadi order and the reasons behind it, especially their enmity with Dr. Noor Ali Tabandeh and his creeds and ideals were discussed and who were those involved in those crimes inside the Gonabadi order and worked for Khomeini's regime, who are six people [who conspired from within the order] and after the imprisonment, house arrest and removal and consecutive poisonings of Dr. Noor Ali Tabandeh and his martyrdom, finally replacing selected person by Khomeini as the leader of the order. Of course, all these conspiracies and conspiracies were uncovered by continuous efforts of International Organisation to Preserve Human Rights.

[...]

[45] On **August 10, 2022**, a friend of Mr. Hosseini tells him about the posting of Video #1 and Mr. Hosseini views the videos. He immediately seeks legal advice.

[46] On **August 12, 2022**, Joel Etienne, Mr. Hosseini's legal counsel writes the following notice letter to Mr. Gharagozloo which was emailed to Mr. Gharagozloo and received by him on **August 17, 2022**:

We act for Mr. Seyed Mansour Hosseini [...].

[...] you attended the "Convening of a Coalition for International Religious Freedom Summit", [...] - between June 28 to June 30, 2022, in Washington D.C. (the "Summit"). [...]

During the Summit, you presented a video - ten minutes and fifty-seven seconds of length - to the Audience, which was narrated by an unknown female voice [...].

The female narrator alleged that the Islamic Regime of Iran (the "Regime"), particularly, Iran's Supreme Leader, Mr. Khomeini, has infiltrated and taken over the Gonabadi Sufis. The narrator further alleged that in or about February 2018, the Regime, through their infiltrated agents, including tens of thousands of besieges, who pretended to be Gonabadi Sufis, put the then Leader of the Gonabadi Sufi, Mr. Tabandeh, under house arrest, and eventually after a period of two years repeatedly poisoning him, assassinated him.

During the period of time where the female narrator advanced the above allegations, publicly, a picture of Mr. Hosseini was intentionally shown (at 8:00) to imply that our client is one of the alleged Iranian besieges who pretends to be a Gonabadi Sufis. The said video was further mass broadcasted and shared on social media, including [...]. In addition to the above, on or about June 29, 2022, you shared another video - four minutes and thirty-eight seconds long - of yourself where you reported about the Summit and admitted that you spoke about 43 years of the Regime's brutal attack on the Gonabadi Sufi, the alleged assassination of three Gonabadi Sufi leaders, and the unlawful arrests of many Sufis in Iran. You proceeded to allege that at the Summit, you unmasked 7 agents of the Regime who allegedly played a part in the above-mentioned activities. A picture of our client again was publicly displayed/shown (at 1:22), implying that he was associated with these ruthless activities ("Video #2"). Similar to the first video, video #2 was also shared on social media, including [...]

[...]

Further, our client demands forthwith, that you post a statement of retraction and apology on any and all communication platforms, specifically, on the Instagram accounts of [...]. Mr. Hosseini shall take steps to pursue all legal and proper remedies available to him should you fail to comply.

[...]

[47] On **August 17, 2022**, Mr. Hosseini posts on his Instagram account a copy of his lawyer's letter to Mr. Gharagozloo. The posting of this letter to Instagram is the first time that Mr. Hosseini's

name is publicly connected to Videos #1 and # 2 and to Mr. Gharagozloo.



[48]Mr. Gharagozloo does not respond to the cease and desist letter. Instead, he prepares Video #4, which is posted on social media and on Dorr TV on **August 28, 2022**. Video #4 shows Mr. Gharagozloo delivering a speech in Farsi. A translation of Mr. Gharagozloo's speech on Video #4 follows:

[...] Some time ago, a letter from a lawyer of a person named Mansour Hosseini addressed to me, Hamid Gharagozloo, was published in the cyberspace. In relation to the activities of the International Organisation to Preserve Human Rights, regarding my reports and speeches at the annual International Religious Freedom SUMMIT meeting, which was held in the city of Washington in the United States in June this year.

For you to be more familiar; this meeting is organized every year by Human right organizations from all over the world in relation to the violation of the rights of different religious and ideological groups under the management of the International Round Table on Freedom of Opinions and Religions, that I am also a member of its board of directors about Iran, that held this meeting. Every year the International Organisation to Preserve Human Rights publishes and present reports in the case of the crime[s] of the ruling regime in Iran for all ethnic groups, followers of different beliefs and religions, civil activists, political activists, environmental activists, Iranian women and all those who were oppressed in anyway by the ruling regime of Iran.

This year, the reports of the International Organisation to Preserve Human Rights included two parts: one part was about all the victims of the ruling regime in Iran, and the other part included reports and the presentation of documents, as well as an eleven minutes video briefly explaining the causes of Ali Khamenei's regime hostility with the Nehmetallah Gonabadi order and their crimes against this school led to the martyrdom of the three sole masters of this order, [...] and at the end the martyrdom of Dr. Noor Ali Tabandeh, [...] and also replacing Dr. Noor Ali Tabandeh with a person picked by Ali Khameini named Mohandes Jazbi as the sole master of the order was shown to the audience.

Now, Mr. Mansour Hosseini's lawyer is claiming that because his client is seen in a scene of this clip along with those involved in the conspiracy against Dr. Noor Ali Tabandeh, this clip has caused his client's disrepute and he can sue me. The lawyers of International Organisation to Preserve Human Rights, based on the laws and juridical standards and international laws, have given a very clear explanation of the absurdity of this claim and the destitution of these claimants and Mr. Mansour Hosseini. [...]

Mr. Mansour Hosseini's lawyer and himself probably committed a crime by publishing the address of my residence and republishing it by his colleagues, but in response to this letter, I was told by Mansour Hosseini's lawyer that legal actions and a legal complaint will be filed against me. I must say, I am eagerly waiting for your action, because this meeting was held in America, the international organization to Preserve human rights is in Europe, Mr. Mansour Hosseini is in Canada, and this crime and these crimes were executed in Iran, so it should be through the federal court of the United States of America, they should file this complaint and you come and file your complaint and present your documents and evidence, I will do the same with thousands of pages of documents written and verbal testimonies about the imprisonment and martyrdom of His holiness [...] Dr. Noor Ali Tabandeh.

Two years of investigation which validity of these documents was approved by the US Ministry of Foreign Affairs and the US government, and based on these documents, the US Ministry of State, the US Commission on International Religious Freedom, as well as the European Union, published reports on these crimes. [...] Now you raise your complaint, finally, with this cartoon, [referring to the lawyer's letter], you will cause these documents to be registered and approved by the American Federal Court and the American Judicial Organization, and each of these paves the way for the next

steps of Dr. Noor Ali Tabandeh's litigation for us. If God wills the enemy to be the cause of good, he knows this.

[49] When Video #4 appeared on Dorr TV, it identifies Mr. Hosseini as a resident of Canada and an attendee at the Islamic Center of the Islamic Republic of Iran in Toronto. The caption to the video, which is prepared by Dorr TV states that: “Mr. Hosseini was “an advisor to Reza Tabandeh, a family member of Dr. Noor-Ali Tabandeh, who played a significant role in the restrictions that led to the removal of Dr. Noor-Ali Tabandeh.” The caption states: “the complainant is a person named Seyed Mansour Hosseini, who lives in Canada and visits the Islamic Center of the Islamic Republic of Iran in Toronto.”

[50] On **September 2, 2022** Video #5 is published on the Internet. Video #5 is another segment of a Dorr TV broadcast. In the video, Ms. Hafezi speaks to Mr. Gharagozloo and Mr. Sajedi, IOPHR’s legal counsel. Mr. Sajedi states that Mr. Hosseini’s lawyer’s letter was a “laughable intimation” of a real letter and merely a show-off. Mr. Sajedi says that IOPHR has ample evidence to prove that Mr. Hosseini is a violator of human rights and participated in the house arrest and assassination of Dr. Noor-Ali Tabandeh. He repeats the invitation to Mr. Hosseini to commence a defamation lawsuit, otherwise, his letter would be considered a mere show of bravado. During Video #5, Mr. Gharagozloo states that:

Mansour Hosseini is devotee of Reza Tabandeh...and if you want to know who Reza Tabandeh is, you have to know Shahram Pazouki and the rest of the group of seven who were unmasked/introduced to the world [at the Summit] as the architects of Dr. Noor-Ali Tabandeh’s removal and house arrest and finally his martyrdom. [...] if it was not for these “hypocrites and termites”, Iranians and Sufis would have benefitted from Dr. Noor-Ali Tabandeh's teachings and millions would have followed.

[51] Dorr TV has 713,500 subscribers on the Telegram channel, 21,600 followers on Instagram, and 15,100 subscribers on YouTube. Video #1 has been viewed 80,800 times on Dorr TV’s Telegram channel. Video #2 has been viewed 89,200 times on Dorr TV’s Telegram channel. Video #3 has been viewed 109,500 times. Video #4 has been viewed 86,600 times, and Video #5 has been viewed 102,500 times.

[52] After Videos #1, #2, #3, #4, and #5, there are more videos, but none involve Mr. Gharagozloo. Ms. Hafezi and Dorr TV produce six more videos mentioning Mr. Hosseini including a four-part series called “Who is Seyed Mansour Hosseini?” The videos describe Mr. Hosseini’s alleged ties to the Iranian Government. In the videos, Ms. Hafezi states that Mr. Hosseini was one of the core people who were either aware of, benefited from, or participated in the house arrest of Dr. Noor Ali Tabandeh and that Mr. Hosseini had close ties to Dr. Reza Tabandeh. With the numeration used by Mr. Hosseini, the videos are published on: **August 30, 2022** (Video #6); **September 4, 2022**; (Video #7); **September 6, 2022** (Video #8); **September 7, 2022** (Videos #9 and #10); **September 25, 2022** (Video #12); **September 26, 2022** (Video #13), and **September 28, 2022** (Video #11).

[53] On **October 20, 2022**, Mr. Hosseini commenced his lawsuit against Mr. Gharagozloo.

D. Discussion and Analysis

1. Motions for a Default Judgment

[54] When a defendant has been noted in default, the plaintiff may make a motion for judgment.

[55] On a motion for a default judgment, the court undertakes a three-step inquiry; namely: (a) what deemed admissions of fact flow from the Statement of Claim? (b) do the deemed admissions of fact entitle the plaintiff as a matter of law to judgment? and (c) if the deemed admissions are insufficient for judgment, has the plaintiff adduced admissible evidence that when combined with the deemed admissions entitles it to judgment on the pleaded claim?⁶ Where the pleaded facts are not sufficient to establish liability, the court may consider the affidavit evidence to determine whether the plaintiff is entitled to judgment or whether the evidence disentitles the plaintiff to judgment.⁷

2. Defamation

[56] Defamation is a tort action to protect a person's reputation. Defamation occurs when the defendant makes a communication that tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt, or ridicule."⁸ The elements of a claim of defamation are: (1) the defendant makes a statement; (2) the words of the statement are defamatory, *i.e.*, the words would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (3) the statement refers to the plaintiff; and (4) the statement is published.⁹

[57] The defamatory communication may be made orally (slander), or in some written or printed form by way of a brochure, gesture, handbill, letter, photograph, placard, poster, sign, or cartoon *etc.* (libel).¹⁰ To determine whether an expression is defamatory, the court undertakes a twofold analysis of whether a reasonable person to whom the words were published would understand them in a defamatory sense by asking (a) whether, as a matter of law, the published words are capable of bearing the defamatory meanings alleged by the plaintiff; and (b) if so, whether a reasonable person would have understood the words in their defamatory sense.¹¹

[58] Statements are defamatory when they lower the plaintiff's reputation in the eyes of a reasonable person.¹² A court must consider both the plain and ordinary meaning of the words, as well as the surrounding circumstances known to the recipient, and which give defamatory meaning by way of innuendo. In determining the meaning to be taken from the words used by the defendant, their plain and ordinary meaning must be considered, and the context in which the words are used and any reasonable implications the words may bear; the audience, and the manner of expression

⁶ *Gillespie v. Fraser*, 2023 ONSC 537; *Kaur v Virk*, 2022 ONSC 6697; *Elekta Ltd. v Rodkin*, 2012 ONSC 2062.

⁷ *Martin v. Hurst*, 2023 ONSC 2606 (Div. Ct.); *Salimijazi v. Pakjou*, [2009] O.J. No. 1538.

⁸ *Thorpe v. Boakye*, 2022 ONSC 7176; *Kaur v. Virk*, 2022 ONSC 6697; *Foulidis v. Ford*, 2014 ONCA 530; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3.

⁹ *Konstan v. Berkovits*, 2023 ONSC 497; *Lavallee v. Isak*, 2022 ONCA 290; *Thorpe v. Boakye*, 2022 ONSC 7176; *Zoutman v. Graham*, 2020 ONCA 767; *Crookes v. Newton*, 2011 SCC 47; *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28; *Warman v. Grosvenor* (2008), 92 O.R. (3d) 663 at paras. 52-57 (S.C.J.); *Lysko v. Braley* (2006), 79 O.R. (3d) 721 (C.A.); *Mantini v. Smith Lyons LLP (No. 2)* (2003), 64 O.R. (3d) 516 (C.A.), leave to appeal to S.C.C. ref'd [2003] S.C.C.A. No. 344; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3.

¹⁰ *Crookes v. Newton*, 2011 SCC 47 at para. 19.

¹¹ *Kam v. CBC*, 2021 ONSC 1304, aff'd 2022 ONCA 13; *Bernstein v. Poon*, 2015 ONSC 155.

¹² *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. as Better Business Bureau Serving Eastern and Northern Ontario and Outaouais)*, 2018 ONCA 383 at para. 28; *Grant v. Torstar*, 2009 SCC 61 at para. 28.

are also relevant to determine meaning.¹³

[59] Under the second branch of the analysis, the reasonable person is someone who is “reasonably thoughtful and informed, rather than someone with an overly fragile sensibility. A degree of common sense must be attributed to those receiving the defamatory content.”¹⁴ Similarly, when determining innuendo or inferential meaning from a potentially defamatory statement, the test is a reasonable person’s assessment based on the entirety of the publication and in the context of all the circumstances.¹⁵

[60] The gravity of some statements, such as an attribution of the plaintiff being dishonest, immoral, a pedophile, a terrorist, a terrorist supporter, a racist, a human smuggler, a corrupt politician, a swindler, a racketeer, a gangster, a mobster, are defamatory and so obviously likely to cause serious harm to a person’s reputation that the likelihood of harm and general damages can be inferred.¹⁶

[61] In the immediate case, the alleged defamation in Videos #1 and #2 is by images. Images, including photographs or video representations, may be defamatory depending on the circumstances of the particular case.¹⁷

3. Analysis of Liability for Defamation

[62] In the immediate case, the above account of the facts establishes that all of the elements of the tort of defamation have been satisfied.

[63] The immediate case bears some similarity to the British Columbia case of *St. Pierre v. Pacific Newspaper Group Inc. and Skulsky*.¹⁸ In that case, *The Vancouver Sun* published a photo accompanying a news article with the headline “Charges of supporting Hezbollah were dropped against Burnaby’s Ali Adham Amhaz.” The accompanying photo, however, was a photo of Mr. Amhaz’s former legal counsel, David A. St. Pierre that had inadvertently been used by the newspaper. The newspaper apologized, but Mr. St. Pierre successfully brought a defamation suit. Justice Rice explained his reasoning for finding the publication of the photograph defamatory; in paragraphs 10 - 15 of his decision, he stated:

10. The fact that Mr. St Pierre’s name was not mentioned anywhere in the Article does not exonerate the defendants. They admit that the photograph identified Mr. St. Pierre as Mr. Amhaz. Therefore,

¹³ *Kam v. CBC*, 2021 ONSC 1304, aff’d 2022 ONCA 13; *Skafco Ltd. (c.o.b. Robbie’s Italian Restaurant) v. Abdalla*, 2020 ONSC 136; *Walsh Energy Inc. (c.o.b. The Energy Centre) v. Better Business Bureau of Ottawa-Hull Inc. (c.o.b. as Better Business Bureau Serving Eastern and Northern Ontario and Outaouais)*, 2018 ONCA 383; *Bernstein v. Poon*, 2015 ONSC 155; *Cusson v. Quan*, 2007 ONCA 771; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62.

¹⁴ *Color Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97 (C.A.); *Weaver v. Corcoran*, 2017 BCCA 160; *DeKoter v. McLeod*, 2019 ABCA 163.

¹⁵ *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2017 BCCA 431.

¹⁶ *Canadian Union of Postal Workers v. B’nai Brith Canada*, 2021 ONCA 529, aff’g 2020 ONSC 323; *Skafco Ltd. (c.o.b. Robbie’s Italian Restaurant) v. Abdalla*, 2020 ONSC 136 at para. 15; *Montour v. Beacon Publishing Inc. (c.o.b. Frontline Safety & Security)*, 2019 ONCA 246 at paras. 27-42; *Lascaris v. B’nai Brith Canada*, 2019 ONCA 163 at para. 40-41; *Awan v. Levant*, 2016 ONCA 970, aff’g 2014 ONSC 6890, leave to appeal to S.C.C. ref’d [2017] S.C.C.A. 71; *Cooke v. MGN Ltd.*, [2015] 2 All ER 622 at para. 43 (C.A.); *Grant v. Torstar Corp.*, 2009 SCC 61

¹⁷ *Tilbury v. Coulson*, 2023 BCSC 189; *St. Pierre v. Pacific Newspaper Group Inc. and Skulsky*, 2006 BCSC 241; *Chopra v. Hodson*, 2001 ABQB 380.

¹⁸ 2006 BCSC 241.

words in the Article referring to Mr. Amhaz in effect refer to Mr. St. Pierre, and the defendants are liable if those words are defamatory. [...]

11. The Article certainly does not expressly allege that Mr. Amhaz is or was a terrorist. It accurately describes him as an individual once indicted, but against whom the charges have been dropped. It also records his denial of the charges. The caption under Mr. St. Pierre's picture repeats the statement that charges were to be dropped against Mr. Amhaz. There is nothing else in the Article alleging explicitly that Mr. Amhaz is guilty of terrorist activity. Mr. Gibson, counsel for the defendants, argued that, therefore, the Article is not defamatory of Mr. Amhaz or of Mr. St. Pierre.

12. At law, a person must be presumed innocent until proven guilty. An indictment is not proof of guilt. However, it would be naïve to suppose that the fact of being indicted for a crime, especially a serious one, would not affect negatively a person's reputation. To report that a person has been indicted on charges of terrorism is enough, in my opinion, to injure his or her reputation. Terrorists are reviled by ordinary people. Little more than a bare accusation is needed to incite fear and loathing toward the person identified. The Article reported not only the indictment, but some of its inflammatory details too. The thrust of the Article as a whole was to alert the reader to a dangerous terrorist conspiracy with connections in Canada. It was likely to raise suspicions in people's minds against Mr. St. Pierre.

13. That Mr. St. Pierre is a person of colour identified by the name Ali Adham Amhaz, and shown in the picture with something of a frown on his face would lead some readers, I'm sure, to presume that he was of Middle Eastern origin and hostile. It would unfortunately tend to fortify those impressions that they gathered from what they read.

14. The fact that the Article also reported that the indictment was dropped and that Mr. Amhaz denied the charges might have reduced the negative impact, but not substantially in my opinion. People would naturally presume that the prosecutors had evidence to support their case, whether they chose to proceed with it or not.

15. The natural and ordinary meaning of the passages in the Article referring to Mr. Amhaz, in the context of the whole of the Article, is that the man in the picture was probably involved in terrorist activities. Thus, the Article was defamatory of Mr. St. Pierre.

[64] In the immediate case, the publication of the photos of Dr. Reza Tabandeh was defamatory. The photos connect Mr. Hosseini to a conspiracy to assassinate and replace a spiritual leader. Any reasonable person, especially those within the tightly knit Gonabadi Sufi circle, would understand from the video that Dr. Reza Tabandeh and the person standing beside him were implicated in Dr. Noor Ali Tabandeh's assassination. They would understand that Mr. Hosseini was a co-conspirator or a supporter of an assassination scheme orchestrated by Iranian government agents.

[65] If there were any lingering doubts in the minds of the audience about Mr. Hosseini's complicity in a successful conspiracy to murder a religious leader, Mr. Gharagozloo ended any doubts in Video #5. In that video, he reiterated his allegations and directly accused Mr. Hosseini of being involved in the house arrest and assassination of Dr. Noor Ali Tabandeh, and of depriving the Gonabadi Sufi community and all Iranians from the leadership and spiritual guidance of Dr. Noor Ali Tabandeh.

[66] The videos individually or taken together expressly stated or implied that Mr. Hosseini was (a) a racist and a terrorist involved in serious criminal activities; (b) a sympathizer and collaborator with an oppressive theocratic regime that was persecuting religious minorities; (c) complicit in the house arrest and assassination of the former Qutb; and (d) a traitor to the Gonabadi Sufi community.

[67] I arrive at my decision about the defamatory nature of Videos #1 and #2 independently of Videos #3, #4, and #5. Those videos have a defamatory expression which is expressed in words, not only in images like Videos #1 and #2 that implicate Mr. Hosseini in the death of Dr. Noor Ali Tabandeh and in the plot to have a pro-regime replacement installed as spiritual leader of the Gonabadi Sufis.

[68] Mr. Hosseini is named in Videos #3, #4, and #5 and the defamatory message that he is amongst the plotters to assassinate and replace Dr. Noor Ali Tabandeh is manifest. Any reasonable person would conclude that the words in Videos #3, #4, and #5 spoken by Mr. Gharagozloo without any photos are such that they would lower Mr. Hosseini's reputation in the eyes of a reasonable person.

[69] Standing alone Videos #1 and #2 are defamatory. The same is true about each of Videos #3, #4, and #5. Both as a matter of law and as a matter of the appreciation of a reasonable person, the expressions contained in these videos are defamatory.

[70] Having been noted in default, Mr. Gharagozloo has no defence to Mr. Hosseini's claim of defamation.

4. Remedies for Defamation

[71] In cases in which defamation is proven, the plaintiff's remedies may include: (a) general damages; (b) special or pecuniary damages that are causally connected to the defamatory statements; (c) aggravated damages; (d) punitive damages;¹⁹ and (e) injunctive relief. Damages for defamation are assessed as the amount necessary under all of the circumstances to restore the plaintiff's reputation in the community and his or her injury to feelings and to provide consolation and public vindication.²⁰

[72] General damages and aggravated damages are compensatory and there may be some overlap in granting both general and aggravated damages.²¹ Special damages for pecuniary loss are rarely claimed in defamation actions because they are exceedingly difficult to prove and the basis of recovery for loss of reputation usually lies in general damages, which are presumed from the publication of the libel.²² The reputation of a lawyer and other professionals such as accountants, medical practitioners, engineers, is paramount to his or her livelihood and statements attributing dishonesty, untrustworthiness, villainy, or immorality will cause serious harm to the professional's reputation and livelihood.²³

[73] The factors to consider in determining the quantum of damages for defamation include: (a) the plaintiff's position and standing; (b) the nature and seriousness of the defamatory statements; (c) the mode and extent of publication; (d) the absence or refusal of any retraction or

¹⁹ *Skafoo Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla*, 2020 ONSC 136 at para. 21.

²⁰ *Skafoo Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla*, 2020 ONSC 136 at para. 20; *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at paras. 168-173, 182-83.

²¹ *Awan v. Levant*, 2016 ONCA 970 at paras. 97-108, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 7.

²² *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 62-63, aff'g 2016 ONSC 5864; *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at paras. 167-172.

²³ *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 66-67, aff'g 2016 ONSC 5864; *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163 at para. 42-44; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at paras. 91-92; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 118.

apology; (e) the whole conduct and motive of the defendant from publication through judgment; and (f) any evidence of aggravating or mitigating circumstances.²⁴

[74] In contemporary times, where the mode of communication is the Internet this is a factor that intensifies the harm caused by the publication of the defamation because of the anonymous, interactive, and worldwide reach of an Internet communication and its insidious potential to persuade its audience of false information; defamation through the Internet is a particularly egregious type of defamation.²⁵

[75] In *Hill v. Church of Scientology of Toronto*,²⁶ the Supreme Court held that there is no cap placed on general damages in defamation cases as was done in the personal injury context.²⁷

[76] Aggravated damages compensate the plaintiff for the damages caused where the defendant's conduct has been particularly high-handed, insulting, spiteful, malicious or oppressive increasing the plaintiff's humiliation and anxiety caused by the defamation.²⁸ In *Hill v. Church of Scientology of Toronto*,²⁹ Justice Cory stated at paras. 190-91:

190. If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff. [...] The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. [...]

191. There are a number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of aggravated damages. The jury may also consider whether there was a repetition of the libel, conduct that was calculated to deter the plaintiff from proceeding with the libel action, a prolonged and hostile cross-examination of the plaintiff or a plea of justification which the defendant knew was bound to fail. The general manner in which the defendant presented its case is also relevant. Further, it is appropriate for a jury to consider the conduct of the defendant at the time of the publication of the libel. For example, was it clearly aimed at obtaining the widest possible publicity in circumstances that were the most adverse possible to the plaintiff?

[77] In defamation cases, punitive damages are only appropriate where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and

²⁴ *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.); *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130.

²⁵ *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 68-69, aff'g 2016 ONSC 5864; *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 at paras. 31-34 (C.A.).

²⁶ [1995] 2 S.C.R. 1130 at paras. 167-173.

²⁷ *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229; *Arnold v. Teno*, [1978] 2 S.C.R. 287, and *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, [1978] 2 S.C.R. 267.

²⁸ *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla* 2020 ONSC 136 at para. 21; *Paramount Fine Foods v. Johnston* 2019 ONSC 2910; *Awan v. Levant* 2016 ONCA 970 at para. 103, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 188-89; *Walker v. CFTO Ltd.*, [1987] O.J. No. 236 (C.A.).

²⁹ [1995] 2 S.C.R. 1130 at paras. 167-173. (Cory, J for La Forest, Gonthier, McLachlin, Iacobucci and Major JJ; L'Heureux-Dubé J. concurring.)

deterrence.³⁰

[78] Where the court finds that the defendant has defamed the plaintiff, a permanent injunction restraining the defendant from making further defamatory statements of the plaintiff may be ordered where either: (a) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or (b) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible.³¹

5. Analysis of Remedies

[79] I find as a fact that Mr. Gharagozloo acted with malice. He knew from the outset that it was a mistake to include an unobscured image of Mr. Hosseini in the documentary video. He had no idea who Mr. Hosseini was before he received or took notice of the letter from Mr. Hosseini's lawyer. At that juncture all Mr. Gharagozloo needed to do was apologize and obscure the image.

[80] However, Mr. Gharagozloo did not apologize. Filled with hubris and bravado, he reacted with threats and smeared a private citizen who was no supporter of the Iranian regime and indeed, like Mr. Gharagozloo himself, was a refugee from the oppressive regime.

[81] Video #5, with a duration of forty minutes and twenty seconds, was exclusively dedicated to defaming Mr. Hosseini and tarnishing his reputation.

[82] Nothing warranted this aggressive attack against Mr. Hosseini. Mr. Hosseini was not a public figure. He was just living his life in Toronto as best as he could with his own share of the normal joys and miseries of everyday living in this great country.

[83] Mr. Hosseini did know Dr. Reza Tabandeh as would everyone else in the small Gonabadi Sufi community. With no more than a photograph of Mr. Hosseini standing beside Dr. Reza Tabandeh, Mr. Gharagozloo audaciously, recklessly, and stupidly connected Mr. Hosseini to an alleged "avunculicide", the act of killing an uncle, in support of an oppressive regime that was persecuting the Sufi community in Iran. Instead of responding with an apology, Mr. Gharagozloo responded with malice.

[84] The defamatory statements were at the highest degree of harming a person's reputation both in the world at large and in a religious community. The defamatory videos have been published and reposted many times on the internet and remain there to this day. Mr. Hosseini's family, friends, and colleagues in Iran and abroad have seen the videos. The small religious community in which he is a part has seen the videos. His son or schoolmates may come across the videos and falsely believe in Mr. Hosseini's involvement in the most serious criminal activities.

[85] In the immediate case, I cannot differentiate Mr. Hosseini's general damages from his aggravated damages and this is one of those cases where they overlap. Having regard to the awards

³⁰ *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 90-97, aff'g 2016 ONSC 5864; *Pate Estate v. Galway-Cavendish and Harvey (Township)*, 2013 ONCA 669; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 199-200.

³¹ *Soliman v. Bordman*, 2021 ONSC 7023; *Paramount Fine Foods v. Johnston*, 2019 ONSC 2910; *St. Lewis v. Rancourt*, 2015 ONCA 513 at para. 13-16; *Astley v. Verdun*, 2011 ONSC 3651; *Ottawa-Carleton District School Board v. Scharf*, [2007] O.J. No. 3030 (S.C.J.) aff'd 2008 ONCA 154, leave to appeal refused, [2008] S.C.C.A. No. 285; *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 at para. 78 (C.A.)

in defamation cases including cases of internet defamation,³² in my opinion, the appropriate award in the immediate case is **\$400,000** plus costs of the defamation action including all interlocutory motions of **\$180,000** all inclusive. This award is sufficient to serve the purposes of a punitive damages award.

[86] I make no order as to injunctive relief. Dorr TV and IOPHR are not co-defendants and there was no evidence from the anti-SLAPP motion or on this default judgment motion as to the feasibility of ordering Mr. Gharagozloo to remove or to even attempt to have the internet postings removed or the photos in the documentary video blurred to obscure the identification of Mr. Hosseini.

[87] Mr. Hosseini may post this court's judgments or links to this court's judgments as he may be advised. Ordering an apology from a non-resident is a futile order and would be a futile and meaningless gesture by Mr. Gharagozloo.

E. Costs

[88] Given the egregious defamation and the taunting, and belligerent behaviour, I award Mr. Hosseini costs on a substantial indemnity scale, which I fix at \$180,000, all inclusive for the action including the anti-SLAPP motion and the default judgment motion. Costs, even costs on a substantial indemnity scale, must be reasonable and I regard the claim of approximately \$315,000 of costs for a \$400,000 judgement excessive.

F. Conclusion

[89] For the above reasons, I award Mr. Hosseini a judgment against Mr. Gharagozloo of \$400,000 with postjudgment interest plus costs of \$180,000 with postjudgment interest.

[90] Judgment according.

Perell, J.

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³² *Anson Advisors Inc. v. James Stafford*, 2023 ONSC 5537; *Sommer v. Goldi*, 2022 ONSC 3830; *Soliman v. Bordman*, 2021 ONSC 7023; *Emeny v. Tomaszewski*, 2019 ONSC 3298; *Paramount Fine Foods v. Johnston*, 2019 ONSC 2910; *Pathak v. Shapira*, 2019 MBQB 73; *Rutman v. Rabinowitz*, 2018 ONCA 80; *Magno v. Balita*, 2018 ONSC 3230; *Nazerali v. Mitchell*, 2018 BCCA 104; *Awan v. Levant* 2016 ONCA 970, aff'd 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *St. Lewis v. Rancourt* 2015 ONCA 513; *Hill v. Church of Scientology of Toronto* [1995] 2 S.C.R. 1130.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEYED MANSOUR HOSSEINI

Plaintiff

- and -

HAMID GHARAGOZLOO

Defendant

REASONS FOR DECISION

PERELL, J.

Released: February 22, 2024