

KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 206

Date: 2024 11 26
Docket: KBG-SA-01429-2023
Judicial Centre: Saskatoon

BETWEEN:

KANDACE MOEN, MARNIE WANDLER, ANITA LEPARD,
ANASTASIA GRAHAM, and BRENNAN DOLAN

Plaintiffs

- and -

LAURA MACKAY and HANNA'S HAVEN ANIMAL
RESCUE INC.

Defendants

Counsel:

Henry Oltman
no one appearing

for the plaintiffs
for the defendants

FIAT
November 26, 2024

SINCLAIR J.

Introduction

[1] This is an application in which the plaintiffs seek to assess damages against the defendants for defamatory posts published on Facebook. The defendants were earlier noted for default.

Facts

[2] The plaintiffs were volunteers with the corporate defendant, Hanna's Haven Animal Rescue Inc. [Hanna's Haven]. Hanna's Haven is an animal rescue operating in the City of Saskatoon and is a non-profit corporation. The plaintiffs assisted with Hanna's Haven during parts of 2022 and 2023. At all material times, the defendant, Laura Mackay [Ms. Mackay], was a director and the operator of Hanna's Haven.

[3] The relationship between the plaintiffs and defendants deteriorated, resulting in the plaintiffs ceasing to volunteer with Hanna's Haven in April 2023.

[4] Following the plaintiffs' withdrawal of their volunteer services, the defendant, Ms. Mackay, posted a number of comments about the plaintiffs on her personal and Hanna's Haven Facebook pages. The relevant parts of those posts read as follows:

- **April 20, 2023 post to Facebook page of Hanna's Haven and Ms. Mackay:**

We are saddened to have to make this post. Unfortunately, we gave some ladies our trust as volunteers to help with fosters and adoptions of our rescue dogs. We trusted them to represent us and ensure our dogs were placed in good homes. This has not happened.. these ladies were told they were no longer to be involved with our rescue as they tried to take over our rescue from under us and have now stolen 15 of our dogs. They have advised the fosters not to answer our calls and only to deal with them. Before they were let go we believe they also took down any access to our Website and email by changing the passwords which we could only access our fb page and have now gotten our email back. Thank you to our computer person We are letting everyone know that if they are contacted by any of these women or the fosters to immed let us know and do not deal with them as it is now a police investigation and charges will be laid. There will also be a class action lawsuit initiated . We are also asking any fosters that have our dogs to please contact us immed so you are not pulled into this. The person who has initiated this is Kandace Moen. Unfortunately she is very manipulative and convinced the others involved to

follow her. If you have put an application in to adopt one of our dogs we will be contacting you if the dog is one that has been stolen. The others involved are :

Marnie wandler

Anita Lepard

Stacey (Ana) Graham

Brenna Dolan. She ran our website etc. and unfortunately had our passwords and gave them to Kandace

[name redacted]

The [dog shelter] is also involved. It belongs to kandace's niece and we have seen some of our missing dogs posted on their site so has been hiding dogs there. These women are also changing the names of the dogs they took so I will post thir pictures along with their names .

Please any fosters that have any of the following dogs , contact us immed

[list of dogs redacted]

... Unfortunately these women had our password for fb too so I now have to post on my private account. I am posting this as I hope someone sees this before they take it down again, as they have control of the facebook page. This is what happens when people you trust don't feel they have to be accountable for their actions.

- **April 22, 2023 post to Facebook page of Hanna's Haven and Ms. Mackay:**

We have removed the last post in regards to our stolen dogs, because it is now a legal investigation. We would like to address the letter that these volunteers had sent us, as advised by our legal team. This letter written by the volunteers in question, demands that we turn over our ownership of these dogs to these volunteers. This letter is now being investigated as blackmail. Despite countless efforts to receive information on the whereabouts of these animals and their fosters, we were continuously ignored. However, now that this has become a legal and public investigation in regards to these dogs, we have received the names and information on MOST of our animals whereabouts, as of this MORNING.

...

Note: We still do NOT have full access to our Facebook and we have zero access to our website as they still refuse to provide us with the passwords and information they have changed. Please contact us directly at [redacted] Please leave a message if we do not answer and we will get back to you as soon as we can.

...

- **April 27, 2024 post to Facebook account of Hanna’s Haven:**

...

We currently have no access to our website ...

[5] In addition, Ms. Mackay, using the Facebook account of Hanna’s Haven, commented on posts made by others, repeating similar allegations.

[6] Although left unstated in the plaintiffs’ affidavits, it appears that the April 20, 2023 post was taken down on or about April 22, 2023. Counsel for the plaintiffs acknowledged in chambers that a reasonable inference is that the April 20, 2023 post was removed on or about April 22, 2023.

[7] The evidence filed by the plaintiffs demonstrates that the Hanna’s Haven Facebook page has about 10,000 followers. One exhibit filed by Kandace Moen [Ms. Moen] shows that there were eleven reactions, three comments and three shares of the April 20, 2023 Facebook post, though it is uncertain when the screen capture of the April 20, 2023 Facebook post was done. Those numbers may have increased following the screen capture. The exhibit relating to the April 22, 2023 Facebook post does not outline the number of reactions, comments or shares. The April 27, 2023 Facebook post shows that there were 98 reactions, nine comments and seven shares of the post. Again though, there is no evidence of when the screen capture was taken or whether the reactions, comments and shares increased after the screen capture was taken.

[8] Following the Facebook posts, the plaintiffs’ legal counsel wrote to the defendants on May 5, 2023 seeking a public apology and retraction. The evidence indicates that there was no response to the letter.

[9] The defendants were served with this action on December 15, 2023 and were subsequently noted for default.

[10] The plaintiffs brought an application without notice to assess damages on a default basis. On October 21, 2024, Justice Elson directed that this application be brought on notice to the defendants.

[11] On November 4, 2024, the plaintiffs served the application to determine damages on Brian Mackay [Mr. Mackay], who is Laura Mackay's husband and a director of Hanna's Haven. Efforts were made to also serve Ms. Mackay. A process server attended at Ms. Mackay's home on multiple occasions and left messages for Ms. Mackay. None of the messages were returned.

[12] The plaintiffs seek to proceed with the application, notwithstanding that Ms. Mackay has not been personally served. The plaintiffs brought an application for substitutional service (presumably *nunc pro tunc*, although that is unstated) and validating service of the application materials.

[13] The plaintiffs seek general damages of between \$50,000 to \$100,000 each, aggravated damages of \$50,000 and punitive damages of \$20,000. Brenna Dolan [Ms. Dolan] also seeks damages for economic losses of \$3,500, relating to the loss of an employment position.

Issues

[14] The issues on this application are as follows:

1. Should this matter proceed despite the lack of personal service on Ms. Mackay?
2. Is Hanna's Haven vicariously liable for the comments made by Ms. Mackay?
3. Have the defendants defamed the plaintiffs?

4. What are the appropriate damages?
 - a. What should each plaintiff receive for general damages?
 - b. Is Ms. Dolan entitled to special damages?
 - c. Are aggravated damages appropriate and, if so, in what amount?
 - d. Are punitive damages appropriate and, if so, in what amount?
5. Should an injunction be granted?

Analysis

1. Should this matter proceed despite the lack of personal service on Ms. Mackay?

[15] Pursuant to Rule 3-26 of *The King's Bench Rules*, the plaintiffs were entitled to apply for judgment without notice because the defendants had been noted for default. Justice Elson, given the significant amounts sought in the request for judgment, directed the plaintiffs to give notice of the application to the defendants. There was no direction given by Justice Elson on the manner of service on the defendants.

[16] The chief concern of Justice Elson was that the defendants know that this application was being brought before the Court.

[17] The corporate entity, Hanna's Haven, was properly served with the application by service on a director of the corporation, Brian Mackay: see s. 19-5(1)(b) of *The Non-profit Corporations Act, 2022*, SS 2022, c 25.

[18] Laura Mackay was not personally served with the application. That said, it is not clear from the Rules that personal service is required in these circumstances given that this application is not a commencement document and Justice Elson's

direction did not specifically require personal service.

[19] I am prepared to proceed with the application because I am confident that Ms. Mackay has notice of the application. I make that determination because:

- a. Ms. Mackay's husband, with whom she appears to reside based on the information sworn by the process server, was served with the application;
- b. the process server had multiple in-person interactions with Ms. Mackay's husband;
- c. Ms. Mackay's corporation was served with the application;
- d. messages were left with Mr. Mackay for Ms. Mackay to call the process server on October 27, October 30 and November 2, 2024;
- e. a text was sent and a voicemail left directly with Ms. Mackay to call the process server.

[20] Although the plaintiffs brought an application for substitutional service under Rule 12-10 and an application to validate service under Rule 12-1 relating to Ms. Mackay, I do not believe that such orders are necessary, because personal service is not required under the Rules or other enactments in this situation. Indeed, Rule 3-26 allows this type of application to be brought without notice.

[21] Justice Elson's decision indicated simply that notice be given to the defendants. I am satisfied that adequate notice was given to the defendants pursuant to Justice Elson's order.

[22] If I am incorrect and personal service was required, I would have been prepared to validate service pursuant to Rule 12-1 because I am satisfied that Ms.

Mackay has notice of the application given the text message and voicemail left with Ms. Mackay and the communications with Mr. Mackay.

2. Is Hanna’s Haven vicariously liable for the comments made by Ms. Mackay?

[23] The plaintiffs seek a declaration that Hanna’s Haven is vicariously liable for Ms. Mackay’s comments presumably based on the premise that a corporation cannot be held liable for an intentional tort.

[24] However, it is not uncommon for corporations or other entities to be responsible for defamatory material published by the corporation or entity: see, for example, *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 [*Hill SCC*]; *Canadian Broadcasting Corporation v Whatcott*, 2016 SKCA 17, 395 DLR (4th) 278 [*Whatcott*]; and *Rubin v Ross*, 2013 SKCA 21, [2013] 7 WWR 299 [*Rubin*].

[25] In this case, Hanna’s Haven published, on its corporate Facebook account, the statements that are subject of this claim. Given that Hanna’s Haven published the material, it is not necessary to assess issues of vicarious liability. Hanna’s Haven is responsible for the materials that the corporation published.

3. Have the defendants defamed the plaintiffs?

[26] The defendants have been noted in default. As a result, the defendants are deemed to have admitted the allegations in the statement of claim: see *Toronto-Dominion Bank v Tellez*, 2018 SKQB 285, 40 CPC (8th) 145, and *Canada Life Assurance Co. v Lima*, [1926] 4 DLR 48 (Sask KB).

[27] That said, I must still ensure that the deemed admitted facts in the claim constitute defamation. In making that assessment, I am guided by the Supreme Court of Canada’s comments in *Grant v Torstar Corp*, 2009 SCC 61, [2009] 3 SCR 640, in which Chief Justice McLachlin indicated:

[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[29] If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

[28] I find that the April 20, 2023 Facebook post is defamatory of the plaintiffs in that the publication would tend to lower the plaintiffs' reputation in the eyes of a reasonable person. I make this determination because:

- a. Each of the plaintiffs is clearly identifiable. They are individually named in the post.
- b. The plaintiffs, as a group, are alleged to have stolen dogs and acted criminally. The defendants went on to indicate that there was police involvement and charges would be laid.
- c. They are alleged to have attempted to take over the defendants' business through improper means.
- d. It was alleged that they had to be "let go" from their volunteer positions.
- e. The plaintiffs were alleged to have withheld information from the defendants, including electronic passwords.
- f. In addition to the allegations that there was imminent police involvement, the defendants alleged that civil proceedings were

being initiated.

- g. The plaintiffs were alleged to have acted in a manipulative fashion.

[29] The April 22, 2023 Facebook post is also defamatory of the plaintiffs as it would tend to lower the reputation of the plaintiffs in the minds of right-thinking individuals. In this regard, I note:

- a. The plaintiffs are not named in the April 22, 2023 Facebook post. However, given that the Facebook post of April 20, 2023 was posted on the same accounts, presumably to a similar readership, the readers would be able to discern that the two posts were about the same individuals. Indeed, the April 22, 2023 post references the April 20, 2023 post. I rely on the decision of *Wilson v Switlo*, 2011 BCSC 1287, in which Justice Punnnett indicated at paragraph 139 that multiple statements on a related subject and referable to one another should be read together in order to determine whether the words are defamatory.
- b. The defendants repeat allegations of criminality, adding blackmail.
- c. A reasonable inference is that the defendants allege that the plaintiffs continue to withhold full access to the Hanna's Haven Facebook account and website.

[30] The April 27, 2023 Facebook post does not appear to malign the plaintiffs at all. The defendants note that they do not have access to their website, but do not ascribe blame for that on the plaintiffs. In short, there is nothing in the April 27, 2023 Facebook post that would tend to lower the plaintiffs' reputations in the minds of reasonable people.

[31] As noted earlier, there is also an exhibit attached to Ms. Moen’s affidavit with undated comments on Facebook in which the defendants malign the plaintiffs. The words in those posts are not specifically pleaded in the statement of claim. As a result, I do not read the statement of claim as including those Facebook messages.

4. What are the appropriate damages?

[32] Having determined that the April 20 and April 22, 2023 Facebook posts are defamatory and considering that no defence is tendered, the next exercise is determining the appropriate damages.

a. What should each plaintiff receive for general damages?

[33] The principles governing general damages in defamation actions are set out in *Hill SCC*. The Supreme Court indicated:

[164] It has long been held that general damages in defamation cases are presumed from the very publication of the false statement and are awarded at large. See *Ley v. Hamilton* (1935), 153 L.T. 384 (H.L.), at p. 386. They are, as stated, peculiarly within the province of the jury. These are sound principles that should be followed.

[34] The Ontario Court of Appeal in *Rutman v Rabinowitz*, 2018 ONCA 80, 420 DLR (4th) 310, explained that a plaintiff does not need to establish actual damages:

[65] The inability to point to specific reputational harm is not an admission that such harm did not occur. To the contrary, the courts have accepted that, “[t]he consequences which flow from the publication of an injurious false statement are invidious” and that, “[a] defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime”: *Hill*, at paras. 168-169.

[35] Although general damages are presumed from defamatory publications, those damages are not necessarily presumed in significant amounts. For instance, in *Vellacott v Laliberte*, 2012 SKQB 23, 390 Sask R 120, the Court granted the plaintiff

general damages in the amount of \$5,000. In *Whatcott*, general damages were reduced to a nominal amount of \$1,000. In both of the aforementioned cases, the plaintiffs failed to lead evidence of the extent of publication.

[36] The Court in *Lavallee v Isak*, 2021 ONSC 6661 at para 74, outlined that the functions of general damages in defamation cases are: (i) to console the plaintiff for the distress suffered from the publication of the defamation; (ii) to repair the harm to the plaintiff's reputation; and (iii) to vindicate the plaintiff's reputation.

[37] In *Hill SCC*, the following factors were cited as relevant in determining the appropriate amount of general damages:

- (a) the conduct of the plaintiff;
- (b) the plaintiff's position and standing;
- (c) the nature of the defamation;
- (d) the mode and extent of publication;
- (e) the absence or refusal of any retraction or apology;
- (f) the conduct of the defendant from the time the libel was published until the conclusion of the case; and
- (g) evidence led in aggravation or mitigation of damages.

[38] Below, I have outlined the evidence in relation to each of the factors cited above to assess general damages.

- **Conduct of the plaintiffs**

[39] The plaintiffs' conduct is not at issue in this proceeding. The defendants have not defended the action. Based on the evidence before me, the plaintiffs did

nothing to warrant the defendants publishing the materials.

- **Plaintiffs' position and standing**

[40] As noted in *Hill SCC*, the plaintiffs' position and standing can impact general damages. In *Hill SCC*, the plaintiff was a lawyer, and the comments published by the defendants attacked his professional integrity. At paragraph 118, the Supreme Court noted:

[118] In the present case, consideration must be given to the particular significance reputation has for a lawyer. The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation. ...

[41] In *Houseman v Harrison*, 2020 SKQB 36 [*Houseman*], the Court cited various other decisions, including *Uppal v Diler*, 2012 CanLII 98399 (Ont Sup Ct) [*Uppal*]; *Rubin*; *Sagman v Bell Telephone Co. of Canada*, 2014 ONSC 4183, 121 OR (3d) 607 [*Sagman*]; *Zoutman v Graham*, 2019 ONSC 2834 [*Zoutman*]; and *Pathak v Shapira*, 2019 MBQB 73 [*Pathak*], relating to the professional reputations of various plaintiffs.

[42] In this case, the evidence is:

- a. Kandace Moen – Ms. Moen is a farmer and rancher. She has been involved in different capacities in the pursuit of animal welfare and care. Ms. Moen indicates that she is known in the animal welfare and rescue community.
- b. Anita Lepard – Ms. Lepard did not lead evidence on her position and standing in the community.

- c. Brenna Dolan – Ms. Dolan appears to have been a student at the University of Saskatchewan at the time of the remarks. She attests to having previously worked at a vet clinic in Rosetown and having been hired to develop a website for Hanna’s Haven. She was seeking admittance to the veterinary medicine program at the University of Saskatchewan but was not admitted after publication of the remarks. I am not convinced, based on the evidence filed, that Ms. Dolan was not admitted to the veterinary medicine program as a result of the publications.
- d. Marnie Wandler – Ms. Wandler does not attest to any professional standing or career. However, she notes her volunteer work with animal welfare organizations.
- e. Anastasia Graham – Ms. Graham attests to volunteering with animal welfare organizations. She further notes that she encounters Mr. Mackay at her workplace, although it is left unstated the nature of Ms. Graham’s work or career.

[43] Unlike cases such as *Hill SCC*, *Houseman*, *Uppal*, *Rubin*, *Sagman*, *Zoutman* and *Pathak*, there is no evidence that the plaintiffs’ professional reputations were or could have been harmed by the defamatory publications. That said, there is evidence that the plaintiffs’ reputations in the animal welfare community could have been harmed.

- **The nature of the defamation**

[44] This factor considers the seriousness of the allegations in the defamatory postings.

[45] The defendants’ false allegations against the plaintiffs include:

- a. theft of dogs;
- b. withholding of relevant information necessary for the defendants to continue their business;
- c. manipulative conduct, including an attempt to take over the business; and
- d. blackmail.

[46] These are reasonably serious allegations, particularly the allegations of criminal conduct.

- **The mode and extent of publication**

[47] A salient factor is that the defamatory material was published on the internet. The Ontario Court of Appeal in *Barrick Gold Corp. v Lopehandia* (2004), 239 DLR (4th) 577 (Ont CA) [*Barrick Gold*], commented on the particular significance of online defamation, noting that internet defamation is “instantaneous, seamless, interactive, blunt, borderless and far-reaching” (*Barrick Gold*, para. 31). Online publications allow a virtually limitless audience to read and share defamatory material.

[48] In relation to the extent of publication, a case such as *Hill SCC* involved allegations of contempt and professional misconduct. The allegations continued through various hearings (including an 11-day contempt hearing against Mr. Hill) and applications. Even following the dismissal of the allegations against Mr. Hill, the defendants repeated the same allegations to the commencement of the defamation trial. The Court of Appeal described the defendants’ conduct as an “unceasing and apparently unstoppable campaign to destroy Casey Hill and his reputation” (*Hill v Church of Scientology of Toronto* (1994), 114 DLR (4th) 1 (Ont CA)).

[49] In *Houseman*, the defendants repeatedly posted anonymous and

defamatory reviews on a ratings website and on Google Reviews, pretending to be patients of the plaintiff. The false allegations can be characterized as incompetence and poor behaviour. Again, the Court noted that there was a deliberate campaign to damage the plaintiff's professional reputation.

[50] This case does not involve a “campaign” of defamation described in *Hill SCC* or *Houseman*. The April 20, 2023 posting was the only one naming the plaintiffs. That posting was taken down on or before April 22, 2023. The allegations in the April 22, 2023 post are serious but are tempered by the fact that the plaintiffs are not named. Thus, the deliberate and repeated nature of the defamatory postings found in cases such as *Hill SCC* and *Houseman* are not present. The fact that the April 20, 2023 post was taken down within a period of two days is a relevant consideration.

[51] Also relevant is the follower count for the Hanna's Haven Facebook page. The account has a following 10,000 people. It is unknown how many of those individuals would have seen the defendants' postings, but it is fair to assume that the defamatory comments were seen by more than a nominal amount of people.

- **The absence or refusal of any retraction or apology**

[52] The defendants have not retracted their comments or apologized, either publicly or privately to the plaintiffs.

- **The conduct of the defendants from the time the libel was published until the conclusion of the case**

[53] The only evidence on this factor is that the April 20, 2023 post was deleted within approximately two days and that no apology or retraction has been offered by the defendants. There is no evidence that the allegations have been repeated or were part of a defamatory campaign in the manner described in *Hill SCC*.

- **Evidence led in aggravation or mitigation of damages**

[54] No evidence has been led in mitigation of damages.

[55] In terms of aggravation of damages, the plaintiffs each describe the impact that the publications have had on them as follows:

- a. Kandace Moen – Ms. Moen indicates that Ms. Mackay’s remarks spread quickly through the animal welfare community, in which she is well known. She received communications from individuals known to her who saw the remarks. Ms. Moen describes her embarrassment in having to defend herself. Further, she feels that there has been a difference in how certain people interact with her. She describes humiliation, anger, anxiety, loss of sleep and depression.
- b. Anita Lepard – Ms. Lepard notes that the April 20 post describes her foster dog as having been stolen. She is fearful that people in the community will recognize the dog’s name if she calls to him in public. She further describes being angry and anxious. She has lost sleep and feels that the comments caused depression.
- c. Brenna Dolan – Ms. Dolan was fearful that the postings could ruin her chances of admission to veterinary medicine at university. She describes embarrassment in discussing the issue with individuals who had seen the postings. She further describes humiliation, anger, anxiety, a loss of sleep and depression. She was fearful that she would be arrested. She feels that the stress associated with this ordeal affected her grades.
- d. Marnie Wandler – She describes having had communications from

people known to her who asked about the postings. She was embarrassed in having to defend herself. She also notes that she suffered from humiliation, anger, anxiety, a loss of sleep and depression. She notes that she had to provide explanations about the postings to act as a volunteer for an animal welfare organization. She was ultimately permitted to act as a volunteer.

- e. Anastasia Graham – Ms. Graham, like some of the other plaintiffs, describes individuals reaching out to her and feeling embarrassed in having to defend herself. She notes that she attempted to volunteer with an animal welfare organization but was dissuaded when the organization indicated that they did not want volunteers who were associated with Hanna’s Haven. She has not volunteered with an animal rescue since then. She continues to deal with Ms. Mackay’s husband at work, which causes her anxiety. She describes humiliation, anger, anxiety, a loss of sleep and depression.

[56] The facts are not akin to *Rubin*, where the plaintiff felt compelled to leave a prestigious job because of the humiliation and loss of reputation caused by the defamatory postings.

[57] That said, it should not be discounted the hurt that was caused by the defendants’ unnecessary and callous comments. Also, there is evidence that some people within the defendants’ communities knew about the postings.

- **Prior case law**

[58] There are numerous cases where general damages have been ordered related to online defamation. A few cases that have been recently decided include:

- a. *Pacific Granite Manufacturing Ltd. v Lee*, 2024 BCSC 1790 [*Pacific*

Granite] – The defendant in this matter was noted for default. The defendant posted a defamatory Google review (subsequently revised several times) about the corporate plaintiff, in which he alleged that the “bosses” at the business (the other plaintiffs) lied to cover up a hit-and-run accident involving one of the corporate plaintiff’s employees. The Court assessed general damages of \$1,000. The Court distinguished other cases with more significant general damages, including *Houseman*, by noting that those cases impugned the plaintiffs’ professional abilities (see paragraph 68).

- b. *Khan v Bujold*, 2023 ONSC 6618 – The defendant posted an online comment to a news story alleging that her neighbour (the plaintiff) was a “dirty cop”, which was linked to the defendant’s Facebook page. The comment was shared 59 times. It was eventually deleted by the defendant. Damages were assessed at \$10,000.
- c. *D’Alessio v Chowdhury*, 2023 ONSC 6075 – The defendant posted a Google review alleging that the plaintiffs, who were lawyers that had acted for the defendant, were incompetent, unprofessional and untrustworthy. The review remained online for approximately three months. General damages were awarded of \$20,000.
- d. *Carnegie v Descalchuk*, 2022 ABKB 720 – The defendant engaged in an online smear campaign alleging that the plaintiff was a drug user and/or dealer who was prostituting her young daughter. There were dozens of defamatory statements published on Facebook, YouTube and Tiktok. At paragraph 145, the Court outlines a number of authorities assessing general damages. The Court noted that the cases with significant general damages generally threatened a party’s

profession, career or livelihood. Given that the impact was largely related to personal distress, the Court awarded \$15,000 in general damages.

[59] The plaintiffs rely on the cases of *Houseman; Rubin; Graham v Purdy*, 2017 SKQB 42; and *Elkow v Sana*, 2020 ABCA 350, 452 DLR (4th) 694 [*Elkow*], in requesting damages of between \$50,000 to \$100,000.

[60] All of the cases relied on by the plaintiffs are distinguishable because they threatened or potentially impacted the livelihoods of the affected individuals. In addition, the same defamatory campaign that was found in *Houseman* and *Elkow* is not present in this case. There were two defamatory publications. One of those publications was deleted within days. No evidence was led as to whether the other publication has been removed.

[61] The defamatory postings are more serious than in *Pacific Granite* because the postings allege criminality.

[62] In the circumstances, I am not prepared to award significant general damages because the plaintiffs have largely experienced personal distress. There is no evidence that would warrant damages in line with the cases cited by the plaintiffs.

[63] Taking all of these factors into account, I award general damages of \$7,500 to Kandace Moen and \$5,000 to each of the other plaintiffs (Marnie Wandler, Anita Leopard, Anastasia Graham and Brenna Dolan). I am awarding an enhanced amount to Ms. Moen because the April 20, 2023 posting made the most serious allegations about her.

b. Is Ms. Dolan entitled to special damages?

[64] In the application to assess damages, Ms. Dolan claims lost income of

\$3,500. Ms. Dolan claims, but for the postings, she would have been hired by Ms. Moen earning \$10,000 to \$12,000 over four months. Instead, she only secured income of \$7,530.

[65] The claim for special damages was not pled in the statement of claim. Further, I am unable, based on the evidence before me, to understand how the defamatory words caused the loss of employment opportunity, particularly when the prospective employer knew the falsity of the allegations (given that she was also a victim of the defamatory postings).

[66] As a result, I cannot accept the claim for special damages.

c. Are aggravated damages appropriate and, if so, in what amount?

[67] The Supreme Court in *Hill SCC*, at paras 188-189, held that aggravated damages may be awarded where the defendant is guilty of insulting, high-handed, spiteful, malicious or oppressive conduct which increased a plaintiff's damages.

[68] In *Elkow*, the Court noted:

[31] Aggravated damages are a second category of compensatory damages. The award of general damages is intended to compensate the plaintiff for the injury to her reputation, and for other injuries she suffered. Aggravated damages, in order to be justified, must represent some greater injury to the plaintiff, not captured by the award of general damages. They are justified “where the defendants’ conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff’s humiliation and anxiety arising from the libellous statement” ...

...

[35] The main issue, however, with the award of aggravated damages is that there was no finding that the respondent’s injury was increased by the identified conduct, over and above the injury that was recognized in the award of general damages. The mere fact that there was a failure to apologize, more than one defamatory statement, etc., does not justify an award of aggravated damages. The mere identification of “aggravating factors” does not support an award of

aggravated damages, unless these aggravating factors were over and above the core findings with respect to the defamation, and resulted in damage not recognized in the general damage award.

[Emphasis in original]

[69] I do not find any evidence to establish that any of the plaintiffs' injuries were increased by the defendants' conduct beyond that already compensated through the award of general damages.

[70] As a result, I do not grant the plaintiffs aggravated damages.

d. Are punitive damages appropriate and, if so, in what amount?

[71] The Supreme Court in *Hill SCC* outlines the approach to punitive damages in defamation cases as follows:

[196] Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[197] Unlike compensatory damages, punitive damages are not at large. Consequently, courts have a much greater scope and discretion on appeal. The appellate review should be based upon the court's estimation as to whether the punitive damages serve a rational purpose. In other words, was the misconduct of the defendant so outrageous that punitive damages were rationally required to act as deterrence?

[72] I do not find that the defendants' conduct is so malicious, oppressive and high-handed that it offends the Court's sense of decency. The defendants clearly defamed the plaintiffs, but that has already been addressed by the award of general

damages. I am not convinced that additional deterrence is needed or warranted.

5. Should an injunction be granted?

[73] The statement of claim and the notice of application do not indicate that the plaintiffs were seeking injunctive relief. In some of the affidavits and in oral argument, the plaintiffs sought an injunction preventing the defendants from continuing to publish further defamatory comments about them.

[74] I am not prepared to grant an injunction when one was not requested in the claim or application.

[75] In addition, as noted by Justice Elson at paragraph 70 of *Houseman*, injunctive relief is typically available where: (1) it is likely that the defendant will continue to publish defamatory material; and (2) there is a reasonable possibility that the plaintiff will not receive any compensation from the defendants. I have no evidence that the defendants published anything about the plaintiffs after April 27, 2023. Thus, I am not persuaded on the first ground. I have no evidence about the likelihood of the plaintiffs collecting damages from the defendants under the second ground. Thus, the plaintiffs do not meet the test to obtain an injunction.

Conclusion

[76] I determine that each of the Plaintiffs are entitled to general damages of:

Kandace Moen	\$7,500
Marnie Wandler	\$5,000
Anita Lepard	\$5,000
Anastasia Graham	\$5,000
Brenna Dolan	\$5,000

[77] I dismiss the plaintiffs' requests for aggravated damages, special

damages, punitive damages and an injunction.

[78] The plaintiffs shall be entitled to pre-judgment interest on the assessed damages, calculated from December 7, 2023 in accordance with the provisions of *The Pre-Judgment Interest Act*, SS 1984-85-86, c P-22.2.

[79] The plaintiffs shall be entitled to one set of taxable costs in respect of this action, assessed under Column 2.

"S.M. Sinclair" J.
S.M. SINCLAIR