SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-17-093293-168

NOTE TO READER: The Court has ordered a temporary ban in this judgment under article 12 of the *Code of Civil Procedure*, prohibiting the disclosure, publication, or circulation of the name of the Plaintiff or any other information that would allow for him to be identified. See paragraph 639 below.

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PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-17-093293-168

DATE: 28 March 2023

BY THE HONOURABLE AZIMUDDIN HUSSAIN, J.S.C.

A. B.
Plaintiff
v.
GOOGLE LLC
Defendant

JUDGMENT
(Defamation, liability of internet intermediary)

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I. OVERVIEW

[1] Like Franz Kafka's character, Josef K. in *The Trial*, the Plaintiff woke up one day to find himself accused of a crime he did not commit. In the Plaintiff's case, he was accused of already having been convicted of the crime and a particularly heinous crime at that.

[2] In contrast with Josef K., the Plaintiff was not accused by the justice system but rather by an individual, who posted the defamatory accusation (**Defamatory Post**) on a website operated by another party.

[3] The Defamatory Post was then spread by an application operated by the Defendant Google LLC (**Google**) called **Google Search**, popularly known simply as the

search engine “Google”, which would provide the hyperlink to the Defamatory Post when the Plaintiff’s name was searched.

[4] Google Search is the dominant service provider in the world in the industry for internet searches.

[5] A prominent businessman originally from Town A with a long list of achievements both in Canada and in the United States over a productive adult life, the Plaintiff has been living a waking nightmare ever since the Defamatory Post, especially in light of the stigmatizing nature of the alleged crime.

[6] Google variously ignored the Plaintiff, told him it could do nothing, told him it could remove the hyperlink on the Canadian version of its search engine but not the U.S. one, but then allowed it to re-appear on the Canadian version after a 2011 judgment of the Supreme Court of Canada in an unrelated matter involving the publication of hyperlinks.

[7] Google finally settled on the position that the Canadian version of Google Search will remove the “**STC**”, i.e. snippet (short extract from the website), title of the website, and cache (stored snapshot of the website at issue) attached to the hyperlink for the Defamatory Post, but not the hyperlink itself.

[8] As for other country-specific versions of Google Search, including that of the U.S., the link and the STC would remain.

[9] The Plaintiff found himself helpless in a surreal and excruciating contemporary online ecosystem as he lived through a dark odyssey to have the Defamatory Post removed from public circulation.

[10] What followed the Defamatory Post against the Plaintiff was a devastating form of shunning from business and social circles such that the Plaintiff’s life spiralled from the pinnacle of the commercial real-estate brokerage world in Town B down to a level where he kept encountering obstacles in his business career even though previously he had known success, was compelled to borrow from friends to make ends meet, had to move back to Town A, and became socially isolated and anxiety-ridden about his relationships with family, friends, and business associates.

[11] This case raises unprecedented questions in Quebec law about the liability of a company like Google, which provides internet search-engine services, for making available to users of its search engine a defamatory internet post, made by a third party and appearing on the site of yet a different third party, despite being on notice that it is facilitating access to an illicit activity, namely defamatory content.

[12] More generally, the case raises important issues about the role of internet intermediaries like Google in the dissemination of information around the world, the law applicable to their search engines accessible in Quebec and the jurisdiction over them by

Quebec courts, and the contemporary reality of the permanence of information, however much false, on the internet.

[13] However, the conclusion of the Court in the present judgment finding liability on the part of Google does not open the floodgates to defamation litigation against it or other internet intermediaries.

[14] On the particular facts of the present case, which may be different from the facts of other cases, Google had already recognized that the Defamatory Post was illicit and had accordingly removed the hyperlink to it on the Canadian version of Google Search.

[15] It is only by virtue of its erroneous interpretation of the 2011 Supreme Court of Canada judgment in relation to the law of another province did Google unilaterally decide to restore the hyperlink to the Defamatory Post, to the anguish of the Plaintiff who was living in his home province of Quebec by then.

[16] The Plaintiff claims moral damages, punitive damages, and an injunction against Google.

[17] For the reasons below, the Court grants the Plaintiff's action in part: damages for moral injury in the amount of $500,000 and an injunction requiring the removal of the Defamatory Post on Google Search for users in Quebec.

II. BASIC CHRONOLOGY OF EVENTS

[18] The Court sets out a basic chronology of events below, but greater factual details relevant to the various legal issues are found in the analysis section that follows the present section.

A. BACKGROUND OF A PROMINENT [TOWN A PERSON]

[19] The Plaintiff, in his early 70s, is a prominent businessman who has led a lifetime of accomplishments in the public and private sectors.

[20] Born and raised in Town A, he graduated with honours from [University A] in economics and political science before commencing his studies at [University A]'s Faculty of Law.

[21] In 1973, while still studying at the Faculty of Law, the Plaintiff took the initiative to apply for a summer job in some kind of capacity in the U.S. Senate inquiry looking into […].

[22] Impressed with the young man in interview, I. J. (Senate committee lawyer at the time, later state attorney general for [State B]) hired the Plaintiff as part of the investigation team on the Committee A, which investigated the scandal surrounding President A.

[23] The Plaintiff's presence in the inquiry was covered by Canadian media given the young Canadian's success in making his way into this significant event in U.S. history.

[24] Following that position, in 1975-76, the Plaintiff served in the campaign team of K. L. (later, Prime Minister of Canada […]) during the latter's bid for leadership of the Party A.

[25] He cut short his law school career, wanting to be involved in the work world right away, and joined a real-estate brokerage in Town A, where he achieved extraordinary professional success.

[26] He eventually left that company and established his own, [Company A]. This company rose to the top of the Town A real-estate market by carving out a niche that had not existed before in the city: representation of tenants against major landlords in lease negotiations.

[27] It was the Plaintiff's business acumen and perspicacity that allowed him to identify tenants as an unserved segment of the real-estate market. Until his innovation, the real-estate services market was oriented to the needs of landlords.

[28] The Plaintiff's Company C did very well over the years but in 1991, it went through bankruptcy proceedings as he did personally. He attributed the collapse to the downturn in the real-estate market resulting from the stock market crash in 1987. The bankruptcy was covered in one of the local newspapers.

[29] His second marriage, the one that produced twin boys in 1988, broke down at this point, and he moved to [Region A] so that he could be close to his boys, whose mother had taken them to live in [State C].

[30] Around 1993, he moved to Town B to start a second career as a real-estate broker and developer. He achieved professional success in his adopted city.

[31] By 1999, the Plaintiff was advancing in a project he started called [Project A], which involved the lease of space in [building A] in order to then sub-lease it to restaurant entrepreneurs.

[32] The Plaintiff had seen an opportunity to provide food, beverage, and banquet services in the [building A] where no one, remarkably, had previously thought to fill the gap that apparently existed in the area of food services for the users of the buildings. Basically, there were no food courts in [building A].

[33] The establishments would be on […], and the Plaintiff owned 49% of the shares of the project company. The project was worth around $150 million.

[34] In a sale transaction to purchasers who intended on operating this company, he sold his shares and the sale agreement included a provision for him to receive 7% of all

future retail sales made by the company. He received a seven-figure deposit for the sale transaction.

[35] The transaction allowed him to retire in State D in 2000, where he had moved his boys so that they could train at an elite skiing facility. He was raising his boys as a single parent, and home-schooling them.

[36] The terrorist attacks […] put an end to the [Project A]. This obviously devastated the Plaintiff given the loss of life, including that of some people he knew, the destruction of the very buildings he was working in, and the end of his project. The end of the [Project A] changed his financial fortunes.

[37] The Plaintiff started the process of moving from State D back to Town B to re-start his real-estate brokerage practice. He moved his boys to boarding schools in State C while he tried to re-start his career.

B. TOWN B AFTER THE END OF THE [PROJECT A]

[38] In 2003, the Plaintiff became the chairman of [Company H], a company he started as an offshoot of the existing [Company I] residential real-estate brokerage in Town B.

[39] He obtained a licence from the latter and set about developing a commercial real-estate brokerage with E. F., a Town B broker who was involved in the [Project A] and who became friends with the Plaintiff.

[40] By this time, the Plaintiff considered himself to have more know-how than the typical real-estate broker in Town B. He pointed to the [Project A] and how no one in the city thought of the idea of a food court in the [building A], even though it was right under their noses, as he expressed it.

[41] In 2004, the Plaintiff was appointed to the advisory board of the prestigious Roosevelt Institute, an entity that administers the library of President Franklin D. Roosevelt and his wife, Eleanor.

[42] In 2006, the Plaintiff was mentioned in a book published by the prominent [State A] businessman […], G. H., referring to him as among the 100 people who gave [him] the best real-estate advice. The Plaintiff used that reference as a calling card, so to speak, in business introductions.

[43] Throughout this period, the Plaintiff worked hard to generate business for [Company H] and was achieving a certain momentum as he met with larger and larger potential clients.

C. 2007 DISCOVERY OF THE 2006 DEFAMATORY POST

[44] In April 2007, the Plaintiff discovered the Defamatory Post about him.

[45] He discovered this because he did an internet search of himself using Google Search, i.e. he "googled" himself, since he had no way to explain why meetings he was having with potential clients were not leading to mandates even though the meetings themselves seemed to go well.

[46] Potential clients would ask him to send a letter of engagement, but then they would not send a signed letter back and would make excuses about the lack of follow-up, or would say explicitly that they chose another firm. Women were also not returning his calls despite good initial dates.

[47] The Defamatory Post was published on 5 April 2006 on the website RipoffReport.com, under the category "Realtors", and stated the following (reproduced as is, but without the text containing the Company coordinates):

> [Company H] Con Artists, Unethical, Scammers, Frauds, Rip-offs, Pederasts [State A]
>
> [Company coordinates]
>
> [Company H] is a fraudulent company. It is run by two con artists, M. N. and A. B.. A. B. was convicted of child molestation in 1984. These two pederasts now run an elaborate scam pretending to be commercial real estate brokers.
>
> Do not work for this company! They are involved in numerous lawsuits for not paying former employers. They entice interns and recent college grads to work for them—promising large sums of money. These are lies. You will be fired when about to close your first deals.
>
> Do not hire this company! They change leases around to guarentee themselves more than double the common brokerage fee. These scammers are completely inept at what they are doing.
>
> R.
> [Town G], [State A]
> U.S.A.

[48] The founder of the website, Ed Magedson, and the author of the Defamatory Post, "R.", are different people.

[49] A plaintiff by the name of R. S., confirmed by the Plaintiff as a former employee of [Company H], filed on 24 July 2006 a lawsuit against the company as well as the following named defendants: [Company I], "John and Jane Does 1-10, unknown and fictitious individuals", and "XYZ corporations 1-10, unknown and fictitious individuals", in the U.S.

District Court for the Southern District of [State A], making various claims for relief that essentially seek unpaid commissions in the amount of $26,180 USD (**S. Lawsuit**).[1]

[50] The S. Lawsuit provided the address of Mr. S. as being in the state F. It alleged that he was hired, first as an intern and then as a salesman licensed to sell and lease commercial real estate, by the defendants he named in the lawsuit.

[51] More specifically, the S. Lawsuit alleged a workplace conflict with Messrs. A. B. and M. N. that resulted in his being deprived of commissions for nine months of work.

[52] The employment accusations made in the Defamatory Post are similar to the employment allegations made in the S. Lawsuit.

[53] Upon motion by the defendants in the S. Lawsuit, a judge of the U.S. District Court ordered the parties to comply with the arbitration clause in the contractual agreement at issue.

[54] However, Mr. S. did not pursue the matter and so, on 29 September 2009, the U.S. District Court dismissed the S. Lawsuit for failure to prosecute and failure to comply with a court order.

[55] The Plaintiff confirmed at trial in the present case that he did not raise the topic of the Defamatory Post with Mr. S. in the context of the S. Lawsuit.

[56] As for the possibility of suing the author of the Defamatory Post for defamation, the Plaintiff was advised by a lawyer in Town B that he was time-barred because, under [State A] law, the action must be brought within one year of its appearance, regardless of when the victim of the defamation sees the publication.[2]

[57] The content of [State A] law in this respect is uncontested by the parties.

[58] The same lawyer informed him of the immunity conferred on internet service providers by U.S. federal law, specifically section 230(c)(1) of the *Communications Decency Act* (**CDA**).[3]

[59] The content of U.S. federal law in this respect is uncontested by the parties.

D. MOBILIZING AGAINST THE DEFAMATORY POST

1 Civil action no. […].

2 In contrast, art 2929 of the *Civil Code of Québec* (**CCQ**) provides that under Quebec law, the prescription period of one year for defamation runs from the day on which the defamed person learned of the defamation.

3 *Communications Decency Act*, 47 USC § 230(c)(1) (1996).

[60] To rebut the Defamatory Post, the Plaintiff's lifelong friend, the novelist T. U., not only posted immediately on the RipOffReport.com site a detailed and unequivocal refutation of the Defamatory Post, but also tried to get Mr. Magedson to take down the Defamatory Post.

[61] The two corresponded by email and spoke on the phone.

[62] The email correspondence shows that Mr. Magedson asked Mr. T. U. to provide documentation from a police authority showing that the Plaintiff was never the subject of the kind of charges alleged in the Defamatory Post, a Kafkaesque reverse-burden demand to prove one's innocence.

[63] If that information were to be provided, Mr. Magedson stated that he would be willing to insert a statement that RipOffReport investigated and concluded that the post is not true. He said that the Defamatory Post would not be removed but certain words would be redacted.

[64] Mr. Magedson said he never takes down a report posted on his site. In his last email to Mr. T. U., he signed off ominously with the following sentence, "We will all be blogged – good or bad, right or wrong – WE WILL ALL BE BLOGGED" (reproduced as is).

[65] Mr. T. U. testified that he abandoned the correspondence with Mr. Magedson since he lost hope of obtaining satisfactory relief.[4]

E. INTERACTIONS WITH GOOGLE

[66] Between April and July 2007, Mr. T. U. engaged in a flurry of correspondence with Google.

[67] Google is incorporated under the laws of the state of Delaware and its shares are publicly traded on the NASDAQ exchange. Its head office is in [State D]. It refers to itself as "a global technology leader focused on improving the ways people connect with information."[5]

[68] Google describes its search engine as allowing "the public to conduct searches of content created and posted by webmasters on the internet".[6]

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4 The Plaintiff also filed in evidence, Exhibit P-9, the following article: Sarah Fenske, "The Real Rip-Off Report: Ed Magedson calls himself an advocate. His enemies call him an extortionist", *Phoenix New Times* (1 February 2007). For present purposes, the Court restricts its analysis to the Defamatory Post and makes no conclusion about the website in general or its founder.

5 Amended Defence at para 60.

6 *Ibid.*

[69] Mr. T. U.'s correspondence of 27 April 2007 was answered by Google on 29 May with a message that is essentially a standard form, much to the disappointment and frustration of Mr. T. U. and the Plaintiff:

> Google.com is a US site regulated by US law. Google provides access to publicly available webpages, but does not control the content of any of the billions of pages currently in the index. Given this fact, and pursuant to section 230(c) of the Communications Decency Act, Google does not remove allegedly defamatory material from our search results. You will need to work directly with the webmaster of the page in question to have this information removed or changed. If the webmaster grants your request, or if you pursue legal action against this site that results in the removal of the offending material, our search results will display this change after we next crawl the site. If the webmaster makes these changes and you need us to expedite the removal of the cached copy, please submit your request using our webpage removal request tool at http://www.google.com/webmasters/tools/removals.
>
> We are sorry that we cannot be of more immediate assistance in this matter.

[70] Google's tune changed, and was tailored more personally, in response to a letter from Mr. T. U. dated 1 May 2007 in which he said that Google's search result showing the title and snippet text of the Defamatory Post was now misleading of the site itself since the search result did not reflect the fact that Mr. T. U.'s rebuttal appeared right after the Defamatory Post.

[71] Google responded to this on 12 June 2007 and asked simply, "So that we may investigate the situation further, please confirm your client's citizenship and country of residence by reply to this email."

[72] On 13 June 2007, Mr. T. U. provided the information requested, and on 18 June, Google responded with reference to the 1 May letter by repeating the standard-form response reproduced above.

[73] Mr. T. U. sent a letter by courier to the co-founder and president of Google, Sergey Brin on 11 July 2007, but never received a response.

[74] The 2006-2007 was the watershed moment after which the Plaintiff's life changed, as he described it. By 2007, he had no income and therefore moved from Town C to the Town D in trying to make ends meet.

[75] He had fallen outside the mainstream of business life in the city. He was considering taking a job as a security guard. When his sons would come to visit during their summer holidays from university, they would stay elsewhere.

[76] Greater detail about his life after the Defamatory Post is given below, in the section on injury suffered by the Plaintiff.

[77] The Plaintiff decided to initiate a business venture outside the world of commercial real estate. He started planning a high-end jewellery retail business called [Company B].

[78] In light of the Defamatory Post, he adopted an approach of staying behind the scenes and invited to the board of directors his various prominent friends and acquaintances who were willing to help him recover in the face of the Defamatory Post.

[79] The business venture did not succeed. The Plaintiff acknowledged that the financial crisis that started in October 2008 may have contributed to the failure.

F. MOVING HOME TO TOWN A

[80] In 2009-2010, the Plaintiff moved back to Town A, hoping to rekindle business relationships in his hometown, with people who knew him from before the Defamatory Post. He also hoped to be protected by defamation law in Quebec, which he understood to be more protective of the victim of defamation.

[81] On 30 April 2009, from his Town A address, the Plaintiff sent a written request to Google to remove the Defamatory Post.

[82] On 8 May 2009, Google responded and confirmed that it had removed the RipOffReport.com link to the Defamatory Post from “Google.ca”.

[83] It made no such removal from Google.com, the American version of Google Search.

[84] On 13 November 2009, the Plaintiff wrote to Google again since the link to the Defamatory Post had re-appeared.

[85] The uniform resource locator (**URL**) for the link to the Defamatory Post had changed and so Google could not initially find the content of the site to which the Plaintiff was referring. A URL is created by the owner of a website.

[86] On 19 November 2009, Google eventually confirmed that it had removed the link to the Defamatory Post from Google.ca.

[87] In the 2010-2014 period, the Plaintiff worked at Town A companies.

[88] He was vice-chairman of the Quebec division of [Company C], a global commercial real-estate consulting firm, and then at [Company D], a real-estate development company in the Town A area.

[89] However, his stay at these companies was short, and according to the Plaintiff, his full potential there was undermined by the existence of the Defamatory Post.

[90] In the same period, the Plaintiff was also involved in the non-profit sector.

[91] He established [Company E], a non-profit organization that promoted the tourism industry and economic development in Town A. Prominent Canadians who are leaders in the Town A business and legal communities were also involved.

[92] On 29 July 2011, the Plaintiff again wrote to Google since he found a link to the Defamatory Post when he searched his name.

[93] On 2 August, Google responded by saying that it had previously removed the URL to the Defamatory Post from the Google.ca search index. It asked for more information if the Plaintiff had any additional concerns.

[94] On 3 August 2011, the Plaintiff responded by providing the new URL to the Defamatory Post.

[95] On 12 August, Google answered by saying that it was reviewing the request and that it reviews each request on a "URL by URL basis".

[96] Google stated that even if the new URL contains duplicate content on a previously removed page, a new request must be made to go through a separate investigation process.

[97] On 23 August 2011, Google followed up with the Plaintiff and confirmed that "[i]n compliance with the laws in force in your country of residence", the new URL to the Defamatory Post was removed from the Google.ca search index.

[98] In 2012, the Plaintiff established [Company F], of which he is the president. It specializes in leasing, marketing, buying, and selling of buildings.

G. GOOGLE'S CHANGE OF POSITION IN 2015

[99] On 7 July 2015, the Plaintiff wrote to Google to inform it that the link to the Defamatory Post had re-appeared.

[100] Google responded with an automated email that provided instructions on the forms to fill, etc.

[101] On 9 July 2015, the Plaintiff again demanded removal of the link and, this time, included the new URL that had appeared.

[102] This was the fourth iteration of the URL linking to the Defamatory Post. No one has the explanation for the mysterious shape-shifting nature of the URL for the Defamatory Post.

[103] The Court notes that the URL became more explicit over time, starting with the word “ripoff” and a set of numbers, and then in November 2009, containing the words “[Company I]-Intern” (among others), and then in 2011 the same words but without capital letters, to the iteration in 2015 containing (among others) the words “[Company H]”, “[Town B]”, “Con-Artists-Unethical-Scammers-Frauds-Rip-offs-Pederasts”.

[104] On 30 July 2015, Google responded to the Plaintiff’s email of 9 July by saying it could not locate the latest URL provided by the Plaintiff.

[105] On 12 September 2015, a search of “A. B.” yielded the link to the Defamatory Post, along with the STC, as the seventh entry on the first page of the results.

[106] The URL was http://www.ripoffreport.com/r/[...]-Con-Artists-Unethical-Scammers-Frauds-Rip-offs-Pederasts-185040.

[107] The title was “Ripoff Report | [Company H] Complaint …” (ellipses in the original) and the snippet read as follows: “Apr 16, 2009 – [Company H] is a fraudulent company. It is run by two con artists, M. N. and A. B.. A. B. was …” (ellipses in the original).

[108] On 8 December 2015, the Plaintiff wrote again to Google, this time through his lawyers in Town A, demanding that the link to the Defamatory Post be removed.

[109] On 21 December 2015, Google responded that in accordance with its policies concerning content removal, it was in the process of blocking the STC for the URL to the Defamatory Post on Google.ca.

[110] However, contrary to its responses in 2009 and 2011, Google in 2015 refused to remove the URL itself and therefore a user in Canada could arrive at the link through a word search and access the Defamatory Post, albeit without having the STC surrounding the link appearing on the page of the search result.

[111] The full text of Google’s response to the Plaintiff’s lawyer on 21 December 2015 reads as follows:

> Hello,
>
> Thanks for reaching out to us.
>
> Google aggregates and organizes information published on the web; we don’t control the content found in the pages you’ve specified. However, in accordance with Google Inc.’s policies concerning content removal, we are in the process of blocking the cache, title, and snippet for the following URLs on Google.ca:

> http://www.ripoffreport.com/r/[...]-Con-Artists-Unethical-Scammers-Frauds-Rip-offs-Pederasts-185040
>
> Visit https://support.google.com/websearch/answer/35891 for more information on what a cache, title, and snippet are.
>
> Regards,
>
> The Google Team

[112] As analyzed below, the difference in Google's position in 2015, as compared to previously when it removed even the link to the Defamatory Post, stems from its interpretation of the October 2011 judgment of the Supreme Court of Canada in *Crookes v Newton* (***Crookes***).[7]

[113] On 2 February 2016, a search with the words "A. B. [Company H]" on the Canadian version of Google Search yielded as the fourth result the link to the Defamatory Post on RipOffReport.com, without the STC.

[114] However, the tenth result was for the link to the Defamatory Post on the website usacomplaints.com, with the STC.

[115] The text of the latter STC read as follows: "[Company H] is just a fake business. It's run by two people, M. N. and A. B.. A. B. was convicted of child …" (ellipses in original).

[116] On 1 April 2016, the Plaintiff filed the originating application initiating the present proceedings.

[117] On 25 September 2017, the Plaintiff did a search with the words " 'A. B.' convictions", and the fifth result was the link and STC for the Defamatory Post on RipOffReport.com, with the text reading as follows: "It is run by two con artists, M.N. and A. B.. A. B. was convicted of child molestation in 1984. These two …" (ellipses in original).

[118] In the same search, the tenth result was the link and STC for the Defamatory Post on usacomplaints.com, with the same text as the one on 2 February 2016, quoted above.

[119] The first result was the link to the entry for A. B. in Wikipedia, with the text of the STC reading as follows: "A. B. (born […]) is a Canadian real estate professional and entrepreneur." The second line mentions "Contents", "Early life and education", and "Career".

[120] The second result was the link to a news item on the website of the Canadian Broadcasting Corporation (**CBC**) with the title "Kidnapper on trial – Canada – CBC News

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[7] *Crookes v Newton*, 2011 SCC 47.

– CBC.ca" mentioning a person by the name of A. B., who apparently was convicted of assault and attempted kidnapping in 1994.

[121] The third result was a link to the website www. A. B..com, presumably the Plaintiff's website, and had the title "[…]".

[122] The fourth result referred again to A. B., this time not on the CBC website but rather one concerning missing people, and began with the words "Dangerous sexual sadist" in the title.

[123] On 24 August 2022, the Plaintiff discovered that the keywords "A. B." on Google Search also yielded the URL link to the Defamatory Post, along with a STC, on the website usacomplaints.com, even though Google had blocked that link between January 2020 and May 2022.

[124] By 30 August 2022, Google had removed the STC for usacomplaints.com but not the link on the Canadian version of Google Search.

[125] During the trial in September 2022, the Defendant did live Google searches during examinations.

[126] A search with "A. B." did not yield a link to the Defamatory Post, nor did a search with the words "A. B. convictions", but the latter did yield as the top result a link to a news item on the website of CBC from August 2000 referring to a A. B. being convicted of assault and attempted kidnapping in 1994, presumably the same one mentioned above.

[127] It is only when a search was done with the words "A. B. pederast" that the top result was the link to the Defamatory Post on RipOffReport.com, but without any STC.

III. QUESTIONS AT ISSUE

[128] The following questions arise in the present case:

1) What is the applicable law and jurisdiction for the dispute?

2) Is the Plaintiff's lawsuit time-barred?

3) Is Google at fault for making the Defamatory Post available in its search results?

4) Has the Plaintiff suffered injury after the Defamatory Post?

5) Is Google's fault the cause of the Plaintiff's injury, and if so, to what extent?

6) Should an injunction be granted to the Plaintiff?

7) Should there be a ban in the present case requiring the Plaintiff to be anonymized in any public discussion of the present case?

IV. ANALYSIS

A. PRELIMINARY QUESTIONS OF APPLICABLE LAW AND JURISDICTION

[129] Google argues that U.S. federal law and [State A] state law apply in the present case, but to the extent that the Court might find Canadian laws to apply, their application should be restricted to the Canada-specific version of Google Search.

[130] More specifically for the present case, Google argues that the law of defamation in Quebec can only apply to the Canadian version of Google Search and it cannot apply to the U.S. version or any other country-specific version.

[131] As for jurisdiction, Google does not contest the Court's jurisdiction over the Plaintiff's claim for liability.

[132] Regarding the claim for a worldwide injunction, while Google acknowledges the relevance of the judgment of the Supreme Court in *Google Inc v Equustek Solutions Inc* (***Equustek***),[8] it argues that in the present case, the Superior Court should exercise its discretion and not issue an injunction that Google considers would be contrary to applicable U.S. law, namely the CDA, and would be a violation of international comity, lest the jurisdiction of national courts over the other country-specific versions be eclipsed.

[133] The issue of jurisdiction will be further analyzed in the section on the claim for a worldwide injunction, further below.

1. Technical aspect of Google Search and country-specific domains

[134] For both issues of applicable law and jurisdiction, a technical aspect of Google Search must be understood.

[135] The Canadian version of Google Search was known by the ".ca" domain name before October 2017, but both before and after that time, a user who is physically located in Canada is automatically directed to the Canadian version of Google Search even if a different domain name is typed.

[136] There are two ways for a user to override Google's automatic redirection of the Canadian user to the Canadian search engine: a user can change the location through the settings function on his/her Google search page[9] or have a virtual private network (**VPN**) tied to a different country.

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8 *Google Inc v Equustek Solutions Inc,* 2017 SCC 34.

9 Noted by the Supreme Court in *Equustek, ibid* at para 16.

[137] However, Google's geolocation system for Canada (as of November 2020) has an accuracy of 99.8%. In other words, Google can know that a user is in Canada with 99.8% accuracy.

[138] This geolocating system is connected to the search service developed for users for each country. For example, a search for "football" in the U.S. using Google Search will have very different results from a search with the same word in the U.K., given the different sports denoted by the same word.

[139] The geolocating system can also be converted by Google into a "geo-blocking" mechanism.

[140] Google itself represented to the British Columbia Supreme Court in *Equustek Solutions Inc v Jack* that website delisting can be effective for all users identified in a given geographical area, in that case it was Canada.[10]

[141] It also represented to the Commission nationale de l'information et des libertés (CNIL) in France that it would ensure that

> internet users would be prevented from accessing the results at issue from an IP (Internet Protocol) address deemed to be located in the State of residence of a data subject after conducting a search on the basis of that data subject's name, no matter which version of the search engine they used.[11]

[142] In other words, Google could override through geo-blocking any override of its automatic redirection that the user might do through a manual selection of a different country-specific search engine.

[143] To minimize the importance of the fact that users in Canada can manually choose to do searches on non-Canadian versions of Google Search, Google sought to adduce at trial the evidence that 0.11% of searches on Google Search in Canada were done on non-Canadian versions of Google Search in 2021.

[144] The Plaintiff objected to this evidence as inadmissible hearsay. For the reasons set out below, the Court maintains the objection of the Plaintiff.

[145] The rules of evidence prohibit hearsay statements, defined as statements made by a person who does not testify in the judicial proceeding at hand and where the statements are proffered in evidence for the truth of their contents.[12]

[146] The figure of 0.11% and what it means is part of a hearsay statement related by Anthony Nichols, the "Legal Removal Specialist" who testified for Google. As part of the

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10 *Equustek Solutions Inc v Jack*, 2018 BCSC 610 at paras 28-29.

11 *Google LLC v Commission nationale de l'informatique et des libertés (CNIL)*, C-507/17, [2019] ECR I-772 at para 32.

12 Art 2869 CCQ.

"Legal Removals Team", Mr. Nichols is one of Google's employees responsible for the filtering of content. The Legal Removals Team is part of the "Trust and Safety" organization at Google, which administers the latter's policy on objectionable content, including sexually explicit material and what is referred to as "revenge porn".

[147] Mr. Nichols provided a lot of useful technical information to the Court which it has relied on, but he was not involved in generating the figure of 0.11%, and he does not have the relevant knowledge for that exercise.

[148] Mr. Nichols asked David Price, Product Counsel for Google Search, for the information. Mr. Price, according to Mr. Nichols, likely obtained the statistic and its meaning from Evan Roseman, senior software engineer at Google.

[149] Mr. Nichols related to the Court what was told to him by Mr. Price, who in turn related to Mr. Nichols what was told to him by Mr. Roseman.

[150] Mr. Roseman did not testify but what he said is being presented for the truth of its contents, i.e. that it is in fact true that 0.11% searches in 2021 in Canada were done on non-Canadian versions of Google Search.

[151] The statement is therefore hearsay, and actually it is double hearsay[13] given the intermediary role of Mr. Price. The statement is therefore inadmissible. The Plaintiff had no opportunity to test the probative value of the evidence by cross-examining the witness who could provide the best evidence: Mr. Roseman.

[152] Furthermore, the exceptions to the hearsay rule do not apply. The statement related by Mr. Nichols does not meet the criteria of necessity and reliability.[14]

[153] As for the exception for documents generated in the ordinary course of business,[15] it does not apply. First, no document has been presented for the evidence of 0.11%. Second, the business-records exception cannot overcome the fact that the present case involves double hearsay.

[154] In any event, even if the statement were to be admitted into evidence, its probative value would be very low.

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13 Art 2872 para 2 CCQ; "Fascicule 16 : Preuve d'une déclaration extrajudiciaire" at nos 81-83, in Pierre-Claude Lafond, ed, JCQ *Preuve et prescription* (LN/QL).

14 Art 2870 CCQ.

15 Art 2870 para 3 CCQ; Catherine Piché, *La preuve civile*, 6th ed (Montréal: Éditions Yvon Blais, 2020) at para 756 (EYB2020PRC68 (La Référence)); Léo Ducharme, *Précis de la preuve*, 6th ed (Montréal : Wilson & Lafleur, 2005) at para 1369 (online: https://edoctrine.caij.qc.ca/wilson-et-lafleur-livres/7/756508662/#_Toc374698126).

[155] The fact that 0.11% of all searches in Canada in 2021 were done on non-Canadian versions of Google Search does not help in understanding how many such searches would have been done by people in the business world of the Plaintiff.

[156] The Plaintiff testified about his cross-border relationships and interactions. The above statistic of 0.11% may very well be different when taking into account, for example, foreign businesspeople visiting Canada and using a VPN tied to their home jurisdiction.

2. Applicable law

[157] The Plaintiff argues for the application of Quebec law to his cause of action, whereas Google argues that U.S. law applies.

[158] Both parties agree that Quebec law on defamation for the purposes of the present case is composed of the relevant provisions of the *Civil Code of Québec* (**CCQ**), principally article 1457 CCQ as the general provision on extra-contractual liability, as well as caselaw[16] and doctrine on the subject.

[159] Given the facts of the present case, the parties agree that Google is an "intermediary that provides technology-based documentary referral services" within the meaning of the Quebec statute, *Act to establish a legal framework for information technology* (**IT Framework Act**).[17]

[160] Therefore, this statute also governs Google's liability for defamation in Quebec, should Quebec law be applicable to the Plaintiff's cause of action.

[161] The key provision of the IT Framework Act which grounds the Plaintiff's action reads as follows (emphasis added):

22.	**22.**
Le prestataire de services qui agit à titre d'intermédiaire pour offrir des services de conservation de documents technologiques sur un réseau de communication n'est pas responsable des activités accomplies par l'utilisateur du service au moyen des documents remisés par ce dernier ou à la demande de celui-ci.	A service provider, acting as an intermediary, that provides document storage services on a communication network is not responsible for the activities engaged in by a service user with the use of documents stored by the service user or at the service user's request.
Cependant, il peut engager sa responsabilité, notamment s'il a de fait connaissance que les documents conservés	However, the service provider may incur responsibility, particularly if, upon becoming aware that the documents are being used for an illicit activity, or of circumstances that

16 The seminal judgment of the Supreme Court of Canada on the topic of defamation law in Quebec being *Prud'homme v Prud'homme*, 2002 SCC 85.

17 *Act to establish a legal framework for information technology*, CQLR c C-1.1.

servent à la réalisation d'une activité à caractère illicite ou s'il a connaissance de circonstances qui la rendent apparente et qu'il n'agit pas promptement pour rendre l'accès aux documents impossible ou pour autrement empêcher la poursuite de cette activité. De même, le prestataire qui agit à titre d'intermédiaire pour offrir des services de référence à des documents technologiques, dont un index, des hyperliens, des répertoires ou des outils de recherche, n'est pas responsable des activités accomplies au moyen de ces services. Toutefois, il peut engager sa responsabilité, notamment s'il a de fait connaissance que les services qu'il fournit servent à la réalisation d'une activité à caractère illicite et s'il ne cesse promptement de fournir ses services aux personnes qu'il sait être engagées dans cette activité.	make such a use apparent, the service provider does not act promptly to block access to the documents or otherwise prevent the pursuit of the activity. Similarly, an intermediary that provides technology-based documentary referral services, such as an index, hyperlinks, directories or search tools, is not responsible for activities engaged in by a user of such services. However, the service provider may incur responsibility, particularly if, upon becoming aware that the services are being used for an illicit activity, the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity.

[162] Search engines such as Google qualify as "intermediaries" under the Act,[18] and this is admitted by Google.

[163] Both parties also agree that the liability of Google for defamation in the U.S. is governed by the federal *Communications Decency Act*[19] and more specifically section 230(c)(1) CDA.

[164] That provision confers immunity on Google since it is considered to be a provider of an interactive computer service: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

[165] The parties also agree that [State A] law provides for a one-year limitation period running from date of publication to bring a suit for defamation.

[166] Google argues that U.S. federal law, specifically the CDA, and [State A] state law, apply to the Plaintiff's cause of action and therefore the Plaintiff is time-barred and, in any event, Google has immunity from this suit.

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18 Pierre Trudel, "Moteurs de recherche, déréférencement, oubli et vie privée en droit québécois" (2016) 21 *Lex Electronica* 89 at 94 & 98.

19 CDA, *supra* note 3.

[167] Google argues that even if Quebec law applies, it must be interpreted consistently with the CDA given Canada's obligations under the free-trade agreement known as the *Canada-United States-Mexico Agreement* (**CUSMA**),[20] and specifically under article 19.17.2:

Article 19.17: Services informatiques interactifs	**Article 19.17: Interactive Computer Services**
1. Les Parties reconnaissent l'importance vitale de la promotion des services informatiques interactifs, y compris pour les petites et moyennes entreprises, pour la croissance du commerce numérique.	1. The Parties recognize the importance of the promotion of interactive computer services, including for small and medium-sized enterprises, as vital to the growth of digital trade.
2. À cette fin, sous réserve du paragraphe 4, aucune des Parties n'adopte ou ne maintient des mesures qui traitent un fournisseur ou un utilisateur d'un service informatique interactif comme un fournisseur de contenu informatif pour déterminer la responsabilité en cas de préjudices liés aux renseignements stockés, traités, transmis, distribués ou mis à disposition par le service, sauf dans la mesure où le fournisseur ou l'utilisateur a, en tout ou partie, créé ou développé ce contenu. [notre soulignement; la note infrapaginale de cette disposition se lit comme suit : « Il est entendu qu'une Partie peut se conformer au présent article au moyen de ses lois, de ses règlements ou de l'application des doctrines telles qu'elles sont mises en œuvre par les décisions judiciaires. »]	2. To that end, other than as provided in paragraph 4, no Party shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information. [emphasis added; the footnote to this provision reads: "For greater certainty, a Party may comply with this Article through its laws, regulations, or application of existing legal doctrines as applied through judicial decisions."]

[20] *Canada-United States-Mexico Agreement*, 30 November 2018 (entered into force 1 July 2020), implemented by *Canada–United States–Mexico Agreement Implementation Act*, SC 2020, c 1.

3. Aucune Partie n'impose la responsabilité à un fournisseur ou à un utilisateur d'un service informatique interactif à l'égard, selon le cas : a) de toute mesure prise volontairement et de bonne foi par le fournisseur ou l'utilisateur pour restreindre l'accès ou la disponibilité de contenu qui est rendu accessible ou disponible au moyen de la fourniture ou de l'utilisation de ses services informatiques interactifs et que le fournisseur ou l'utilisateur considère comme nuisible ou inadmissible; b) de toute mesure prise pour permettre ou rendre disponible les moyens techniques permettant à un fournisseur de contenu informatif ou à d'autres personnes de restreindre l'accès au contenu qu'il juge nuisible ou inadmissible.	3. No Party shall impose liability on a supplier or user of an interactive computer service on account of: (a) any action voluntarily taken in good faith by the supplier or user to restrict access to or availability of material that is accessible or available through its supply or use of the interactive computer services and that the supplier or user considers to be harmful or objectionable; or (b) any action taken to enable or make available the technical means that enable an information content provider or other persons to restrict access to material that it considers to be harmful or objectionable.
4. Aucune disposition du présent article : a) ne s'applique à toute mesure d'une Partie ayant trait à la propriété intellectuelle, y compris les mesures portant sur la responsabilité pour atteinte à la propriété intellectuelle; b) ne peut être interprétée comme élargissant ou limitant la capacité d'une Partie de protéger ou de faire respecter un droit de propriété intellectuelle; c) ne peut être interprétée de manière à empêcher : i) une Partie d'appliquer une loi pénale, ii) un fournisseur ou un utilisateur d'un service informatique interactif de se conformer à une ordonnance spécifique et légitime d'un organisme d'application de la loi. [la note infrapaginale de cette disposition se lit comme suit :	4. Nothing in this Article shall: (a) apply to any measure of a Party pertaining to intellectual property, including measures addressing liability for intellectual property infringement; or (b) be construed to enlarge or diminish a Party's ability to protect or enforce an intellectual property right; or (c) be construed to prevent: (i) a Party from enforcing any criminal law, or (ii) a supplier or user of an interactive computer service from complying with a specific, lawful order of a law enforcement authority. [the footnote to this provision reads: "The Parties understand that measures referenced in paragraph 4(c)(ii) shall not be inconsistent with paragraph 2 in

Les Parties comprennent que les mesures visées au paragraphe 4 c)ii) ne sont pas incompatibles avec le paragraphe 2 dans les situations où ce dernier s'applique.]	situations where paragraph 2 is applicable."]
5. Le présent article est soumis à l'annexe 19-A.	This Article is subject to Annex 19-A.
ANNEXE 19-A […] 4. Il est entendu que l'article 19.17 (Services informatiques interactifs) est soumis à l'article 32.1 (Exceptions générales), lequel prévoit notamment que, pour l'application du chapitre 19, l'exception relative aux mesures nécessaires à la protection de la moralité publique figurant au paragraphe a) de l'article XIV de l'AGCS est intégrée au présent accord et en fait partie intégrante, avec les adaptations nécessaires. Les Parties conviennent que les mesures nécessaires pour assurer une protection contre le trafic sexuel en ligne, l'exploitation sexuelle des enfants et la prostitution, telles que la *Loi publique 115-164*, la *Loi de 2017 autorisant les États et les victimes à lutter contre le trafic sexuel en ligne* modifiant la *Loi de 1934 sur les communications*, et toutes les dispositions pertinentes de la *Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos delitos*, constituent des mesures nécessaires à la protection de la moralité publique.	**Annex 19-A** […] 4. For greater certainty, Article 19.17 (Interactive Computer Services) is subject to Article 32.1 (General Exceptions), which, among other things, provides that, for purposes of Chapter 19, the exception for measures necessary to protect public morals pursuant to paragraph (a) of Article XIV of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties agree that measures necessary to protect against online sex trafficking, sexual exploitation of children, and prostitution, such as Public Law 115-164, the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017," which amends the Communications Act of 1934, and any relevant provisions of *Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de estos delitos*, are measures necessary to protect public morals.

[168] Google argues that there is no conflict between Article 19.17.2 and section 22 of the IT Framework Act because both provisions can be applied by ensuring that section 22 not be interpreted to mean that search engines and other intermediaries are publishers of content, i.e. to attribute to them knowledge of the content or to make them responsible for the content in the same manner as a publisher.

[169] The Court agrees that there is no conflict between the two provisions but disagrees with Google's reasoning and end-position, for the following reasons.

[170] First and foremost, the best way to harmonize the interpretation of Article 19.17.2 CUSMA with section 22 of the IT Framework Act is to focus on the following sentence in the latter provision: "[…] an intermediary that provides technology-based documentary referral services, such as an index, hyperlinks, directories or search tools, is not responsible for activities engaged in by a user of such services."

[171] This sentence establishes the baseline legal position in Quebec law regarding the liability of internet intermediaries: they are not liable for the contents of the links to which they provide access through their search engines. Without any additional step of notifying the intermediary, a plaintiff has no cause of action against it for making defamatory links available.

[172] This baseline position is reiterated in the first paragraph of section 27 of the IT Framework Act from the angle of monitoring content:

27.	**27.**
Le prestataire de services qui agit à titre d'intermédiaire pour fournir des services sur un réseau de communication ou qui y conserve ou y transporte des documents technologiques n'est pas tenu d'en surveiller l'information, ni de rechercher des circonstances indiquant que les documents permettent la réalisation d'activités à caractère illicite.	A service provider, acting as an intermediary, that provides communication network services or who stores or transmits technology-based documents on a communication network is not required to monitor the information communicated on the network or contained in the documents or to identify circumstances indicating that the documents are used for illicit activities.
Toutefois, il ne doit prendre aucun moyen pour empêcher la personne responsable de l'accès aux documents d'exercer ses fonctions, notamment en ce qui a trait à la confidentialité, ou pour empêcher les autorités responsables d'exercer leurs fonctions, conformément à la loi, relativement à la sécurité publique ou à la prévention, à la détection, à la preuve ou à la poursuite d'infractions.	However, the service provider may not take measures to prevent the person responsible for access to documents from exercising his or her functions, in particular as regards confidentiality, or to prevent the competent authorities from exercising their functions, in accordance with the applicable legislative provisions, as regards public security or the prevention, detection, proof and prosecution of offences.

[173] In this respect, these provisions of the IT Framework Act are consistent with Article 19.17.2 CUSMA since they do not treat the supplier of an interactive computer service as an information content provider and remove any obligation to monitor content.

[174] The Superior Court of Quebec has already confirmed that a consistency between the two instruments exists, without stating that Article 19.17 serves as a conduit for the application of the immunity set out in section 230(c)(1) of the CDA.[21]

[175] Commenting on the scope of the effect of Article 19.17, the Court of Appeal for British Columbia concluded in a recent case that the provision cannot serve as a bar to a defamation action in that province being determined on the merits, although the defendant intermediary in that case would be free to argue on the merits that Article 19.17 is relevant to its defence.[22]

[176] The provisions of the IT Framework Act do not treat the intermediary as a content provider because, under Quebec law, the latter's responsibility would be engaged upon publication of defamatory content and the latter does have an obligation to monitor the information communicated by it.

[177] The fact that section 22 of the IT Framework Act contemplates a scenario of liability in the following sentence does not mean that it is inconsistent with Article 19.17 CUSMA:

> However, the service provider may incur responsibility, particularly if, upon becoming aware that the services are being used for an illicit activity, the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity.

[178] Defamation is considered illicit activity within the meaning of the above provision since it is something prohibited by law.[23] Google does not take the position that defamation is somehow not illicit activity.

[179] The above exception to the baseline position is exactly that, an exception, and it provides for liability for defamation where the intermediary has been given notice of the defamatory content of the link that it makes available and neglects to act promptly to remove the link.[24]

[180] The intermediary's potential liability under the IT Framework Act is not based on a fault the intermediary may have committed as an "information content provider" (article

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21 See *Lehouillier-Dumas c Facebook inc*, 2021 QCCS 2074 at paras 60-62 for the conclusion of Justice Sheehan that Article 19.17 of CUSMA is reflected in sections 22 and 27 of the IT Framework Act.

22 *Giustra v Twitter, Inc,* 2021 BCCA 466 at paras 134-136.

23 See *Lehouillier-Dumas, supra* note 21 at paras 63-81, 96 where Justice Sheehan applied the established test for defamation in order to determine whether there was illicit activity within the meaning of s 22 of the IT Framework Act; and see Trudel, *supra* note 18 at 97-98 on the meaning of "illicit" more generally.

24 The question of what constitutes adequate notice has been addressed in the caselaw and commentary, see *Lehouillier-Dumas, ibid* at paras 69-70, citing Pierre Trudel, "La responsabilité civile sur Internet selon la *Loi concernant le cadre juridique des technologies de l'information*" in Barreau du Québec, Service de la formation permanente, *Développements récents en droit de l'Internet (2001)*, vol 160 (Cowansville: Éditions Yvon Blais, 2001) at 13-14. See also *AB c Thaher*, 2022 QCCS 3541 at paras 25-48.

19.17.2 CUSMA), but rather for failure to adhere to its obligations as an "intermediary that provides technology-based documentary referral services" (section 22 of the Act).

[181] Thus, while an intermediary cannot be held liable for the behaviour of the content provider and has no positive obligation to monitor all of the content that its search engine refers to, it does have a potential liability "upon becoming aware that the services are being used for an illicit activity" (section 22 of the Act).

[182] Article 19.17.2 CUSMA does not require Canada to have an immunity provision that is identical to the expansiveness of the American provision, section 230(c)(1) CDA.

[183] A second point, not addressed by the parties, is that at Annex 19-A, paragraph 4 specifies that Article 19.17 is subject to measures necessary to protect public morals, and that the three signatories to CUSMA agree that measures necessary to protect against, among other things, "sexual exploitation of children", are measures necessary to protect public morals.

[184] Where the IT Framework Act is interpreted to require the removal of access to a website that contains a false accusation of child molestation, as in the present case with the Defamatory Post, this is a measure necessary to protect public morals since false accusations in such an area of criminal law risk diminishing vigilance about actual such crimes, an outcome that should not be countenanced as a matter of public morals.

[185] A third point bears mentioning, although this constitutional point was not argued by the parties and no notice of constitutional question was given to the attorneys general, and therefore the Court raises it *in obiter* only for the sake of completeness of the analysis.

[186] To the extent that the federal Parliament, in implementing CUSMA, intended for Article 19.17 to require Quebec law, or the law of any province, on defamation to essentially apply the wide-ranging immunity conferred on intermediaries by section 230(c)(1) CDA, an issue arises regarding the legislative division of powers between Parliament and the provincial legislatures.

[187] As a basic constitutional proposition, it is settled law that "there is no freestanding federal treaty implementation power and Parliament's jurisdiction to implement treaties signed by the federal government depends on the ordinary division of powers".[25]

[188] While Parliament has jurisdiction over telecommunications and the provinces have jurisdiction over defamation, and thus there is a double aspect to the subject matter of the liability of internet intermediaries,[26] the question that arises from Google's position is

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[25] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 149, citing the seminal Privy Council case on this issue, *Attorney-General for Canada v Attorney-General for Ontario*, 1937 CanLII 362 (UK JCPC), [1937] AC 326 (PC).

[26] See *References re Greenhouse Gas Pollution Pricing Act*, *ibid* at paras 125-131 for a recent discussion of the double-aspect doctrine; for a recent mention of the federal jurisdiction over telecommunications, see *Procureur général du Québec c Association canadienne des télécommunications sans fil*, 2021

whether the federal statute implementing CUSMA can be interpreted to displace provincial law on defamation as a matter of federal paramountcy, based on federal jurisdiction over telecommunications or, for that matter, the national-concern branch of the federal power over peace, order, and good government, or federal jurisdiction over trade and commerce.

[189] In a recent judgment, the Court of Appeal made the following *obiter* observation about the coexistence of provincial jurisdiction over defamation and federal jurisdiction over telecommunications in the context of the internet:

> La proposition de l'appelant que le rejet de l'appel dans la présente affaire signifierait l'interdiction de toute législation provinciale « sur l'Internet » manque de nuances. Il est possible en effet que la compétence exclusive du fédéral sur les télécommunications ne puisse faire échec à une loi provinciale validement adoptée qui réglementerait certaines opérations ou conduites ayant cours sur Internet, par exemple en vertu de la compétence des législatures sur la propriété et les droits civils. On peut ainsi penser à certains aspects de la teneur de contrats conclus en ligne, ou encore à la diffamation. Ce ne sont que des exemples.[27]

[190] The question of the legislative division of powers in relation to Article 19.17 CUSMA can be answered another day, but it is raised here to show that caution must be exercised before the provision is invoked and interpreted to import into provincial law on defamation the immunity provision of U.S. federal law by way of a Canadian federal statute implementing a treaty.

[191] The Court now returns to the rules on conflict of laws set out in the *Civil Code of Québec* to resolve the question of applicable law.

[192] According to article 3126 CCQ, the *lex loci delicti*—the place of the alleged wrongful act—determines the substantive law applicable to civil liability claims.

[193] However, the provision allows for an exception to the general rule if the injury appeared in another jurisdiction (Quebec, in this case) and the author of the injury should have foreseen that. In such a case, it is the law of that other jurisdiction that applies.

QCCA 730 at para 122, and also *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23 at para 42.

[27] *Procureur général du Québec, ibid* at para 122. For an analysis of the national-concern branch of the federal power over peace, order, and good government under s 91 *in limine* and federal jurisdiction over trade and commerce under s 91(2) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, see *References re Greenhouse Gas Pollution Pricing Act*, *ibid* at paras 89-166; see also Peter W. Hogg & Wade K. Wright, *Constitutional Law of Canada*, 5th ed supp, vol 1 (Toronto: Carswell, 2007) (loose-leaf updated 2022, release 1), at 11-20—11-22.

[194] The disagreement between the parties is not so much about the interpretation of article 3126 CCQ, but rather, characterization of the act at issue. Characterization is made according to Quebec law.[28]

[195] Do Google's search results producing the link and STC to the Defamatory Post constitute one continual act starting in the 2006-2007 period when the Plaintiff was in Town B, or a series of discrete, new acts, some of which occurred through the appearance of the Defamatory Post in search results in [State A] and some in Quebec?

[196] If the former characterization, then U.S. and [State A] law apply, if the latter characterization, then Quebec law applies in those instances where the appearance was in Quebec.

[197] Without arriving at a conclusion on whether the Plaintiff is correct to say that each new search on Google Search provides a new starting period for prescription given the dynamic nature of Google Search,[29] the Court agrees with the Plaintiff that there was a new act committed by Google when it reversed its own policy regarding the Defamatory Post after the 2011 *Crookes* judgment by the Supreme Court and decided to make the link to the Defamatory Post available again in Quebec (and Canada), which the Plaintiff discovered in 2015 while living in Quebec.

[198] Since the Plaintiff was domiciled in Quebec in 2015 and the alleged injury necessarily appeared there, and Google should have foreseen that when making the link to the Defamatory Post available anew on the Canadian version of Google Search, article 3126 CCQ calls for Quebec law to be applicable to the Plaintiff's claim.

[199] Quebec law applies on Québécois territory and therefore if a user here accesses Google Search, whether it is the Canadian version or any other national version of Google Search, Quebec law on defamation applies.

[200] Otherwise, it would be too easy for internet intermediaries to circumvent the law promulgated by legislatures for the territories they govern, and applied and enforced by the courts: intermediaries could continue to make a default version available to users in Quebec in ostensible compliance with local law but then allow for an option to users in Quebec to easily choose another country-specific version, as is the case currently, and avoid the effects of this jurisdiction's law.

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28 Art 3078 CCQ.

29 The Plaintiff cites *Dunkin' Brands Canada Ltd v Bertico inc*, 2015 QCCA 624 at para 143, where the Court of Appeal stated that "where wrongful conduct and the manifestation of damage is repeated, continuous, spread out in time and on-going, a plaintiff can take legal action for breach of an obligation notwithstanding the fact that the first manifestation of damage took place outside the prescription period." The Plaintiff also refers to *Syndicat des employées et employés de métiers d'Hydro-Québec, section locale 1500 (SCFP-FTQ) c Fontaine*, 2006 QCCA 1642 at para 68, where a new starting period for prescription was applied where the behaviour complained of was considered to be "une même conduit constamment renouvelée".

[201] Google acknowledges this general situation through its willingness to use its geo-blocking mechanism (mentioned further above), despite its legal position that Canadian law cannot apply to a website that is governed by U.S. law.[30]

[202] However, the Court is of the view that the latter legal position is unsustainable. Google itself gives its users in Canada the option to manually choose the Google Search version available in another state, say the U.S. version, and so it is specious to assert that Canadian law cannot apply to a website otherwise governed by U.S. law.

[203] Moreover, geo-blocking allows for Google to implement a different legal treatment to the same website, i.e. the same U.S. website can be treated one way under U.S. law when accessed on American territory, and it can be treated in a different way (as in compliance with provincial defamation law) under Quebec law when accessed by a user on Québécois territory.

[204] On a final note regarding the question of applicable law, the Court has considered in its analysis the concept of forum shopping or "libel tourism".[31] However, it is satisfied that the concept is not applicable in the present case.

[205] While the Plaintiff's understanding (as rudimentary as it must necessarily be given that he is not a lawyer, still less a lawyer specializing in defamation and comparative law) at the time of his move back to Town A was that Quebec law on defamation is more favourable to the victim than are [State A] law and U.S. federal law, the evidence does not support the conclusion that this was the primary motivating factor for his move.

[206] It was reasonable conduct, in fact it would be masochistic otherwise, for the Plaintiff to consider the level of protectiveness of the jurisdiction he was moving to given that he needed to rebuild his life in the ever-present shadow of the Defamatory Post.

[207] Even if the choice of Quebec law were among the primary factors for the Plaintiff, it should be seen from the angle of his wanting to mitigate the injury being caused by the Defamatory Post and the access facilitated by Google Search, and not as a strategic move to obtain a legal advantage against Google.

[208] The Plaintiff wanted to return home, where he was born and raised, and where he thrived in the first chapter of his illustrious career. His hope was that the return to Town A would allow him to work and socialize in a community where people knew him before the Defamatory Post.

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30 Citing *Giustra, supra* note 22 at para 119 in support, but that judgment was in relation to a preliminary application by the intermediary Twitter to dismiss the action for lack of jurisdiction, or to stay the action for *forum non conveniens*. It was not a judgment on the merits and there was no consideration of the geo-blocking mechanism.

31 *Éditions Écosociété Inc v Banro Corp*, 2012 SCC 18 at para 36; *Haaretz.com v Goldhar*, 2018 SCC 28 at para 1.

B. PRESCRIPTION

[209] Google argues that the Plaintiff's lawsuit is time-barred.

[210] The Plaintiff concedes that any damage suffered until 2015 is prescribed, but he argues that he learned in July 2015 of a new fault committed by Google when he searched his name on the Canadian-version website and the results yielded a link to the Defamatory Post.

[211] Prior to that, Google had informed the Plaintiff that the link had been removed. Therefore, the provision of the link in July 2015 constitutes a new fault.

[212] The Court concludes that prescription does not bar the Plaintiff's action, for the reasons set out above under the analysis to determine applicable law.

[213] More specifically, when Google changed its position in light of the *Crookes* judgment and made the link to the Defamatory Post available in Quebec after that judgment, this was a new act on its part and therefore the one-year prescription period started to run when the Plaintiff discovered the link in July 2015.[32] He filed his action within the year, on 1 April 2016.

C. FAULT

[214] The Plaintiff's allegation of fault essentially boils down to the following elements:

- it is unreasonable for Google to promote the Defamatory Post through links when it has knowledge of the URL;
- it is unreasonable for Google to publish the Defamatory Post through titles or snippets when it has knowledge of the URL;
- it is unreasonable for Google to delay in dealing with the Defamatory Post when it has knowledge of the URL; and
- it is unreasonable for Google to promote or publish the Defamatory Post even when it has not been given a specific URL.

[215] Given that Google had voluntarily stopped providing the link to the Defamatory Post on searches in Canada of the Plaintiff's name prior to the *Crookes* judgment (**Pre-Crookes Link Policy**), the Court reformulates the issue of fault in simpler and narrower terms: is it a fault for Google to make the link (and the STC, albeit by error) to the Defamatory Post available anew to users in Quebec after the *Crookes* decision (**Post-Crookes Link Policy**)?

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[32] Art 2929 CCQ.

[216] This is the narrow question of liability to be decided by the Court.

[217] The Court answers the question in the affirmative.

[218] Google's interpretation of *Crookes* is incorrect, and it is a fault under Quebec law on defamation for Google to make the link (and the STC) to the Defamatory Post available to users on the territory of the province of Quebec.

[219] This conclusion applies regardless of the country-specific version of Google Search accessed on this territory. Google has an obligation to apply its geo-blocking mechanism to prevent such access.

[220] The Court agrees with Google's own Pre-Crookes Link Policy as being consistent with Quebec law on defamation and the requirement under section 22 of the IT Framework Act that, upon notice, the intermediary cease providing access to the illicit content (along with the STC) of the Defamatory Post.

[221] Google's Post-Crookes Link policy is inconsistent with Quebec law.

1. Distinction with the *Crookes* case

[222] Google's interpretation of *Crookes* is incorrect for two reasons, one is factual and the other is legal.

[223] First, the factual context of *Crookes* was distinct from the present case. It did not deal with a search engine and the latter's liability as an intermediary service provider, but rather the liability of someone who authored a text that contained references in the form of hyperlinks.

[224] The issue in *Crookes* was whether there was liability in defamation for the owner and operator, Mr. Newton, of a website that contained commentary about various issues, including free speech and the internet.

[225] Mr. Crookes alleged that two of the hyperlinks on Mr. Newton's website connected to defamatory material about him, arguing that those articles represented a "smear campaign" against him and other members of the Green Party of Canada.[33] However, nothing Mr. Newton himself wrote was considered defamatory.

[226] More specifically, of the two hyperlinks that Mr. Newton included in his post, one was a "shallow" hyperlink, which takes the reader to a webpage where other articles are posted, and the other was a "deep" hyperlink, which takes the reader directly to an article. Both shallow and deep hyperlinks require the reader to click on the link in order to be taken to the content.[34]

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[33] *Crookes, supra* note 7 at paras 4-6.

[34] *Ibid* at para 6.

[227] The two hyperlinks (identified by underlining below) were in the following passage from Mr. Newton's article on his website:

> Under new developments, thanks to the lawsuit, I've just met Michael Pilling, who runs OpenPolitics.ca. Based in Toronto, he, too, is being sued for defamation. This time by politician Wayne Crookes.
>
> We've decided to pool some of our resources to focus more attention on the appalling state of Canada's ancient and decrepit defamation laws and tomorrow, p2pnet will run a post from Mike on his troubles. He and I will also be releasing a joint press statement in the very near future.[35]

[228] The shallow hyperlink was "OpenPolitics.ca", which was hyperlinked to the Open Politics website where several articles were posted and were said by Mr. Crookes to be defamatory. The deep hyperlink was "Wayne Crookes", which was hyperlinked to an allegedly defamatory article called "Wayne Crookes", published anonymously on the website www.USGovernetics.com.[36]

[229] The majority of the Supreme Court, speaking through Justice Abella, concluded as follows:

> Making reference to the existence and/or location of content by hyperlink or otherwise, without more, is not publication of that content. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be "published" by the hyperlinker. Such an approach promotes expression and respects the realities of the Internet, while creating little or no limitations to a plaintiff's ability to vindicate his or her reputation. While a mere reference to another source should not fall under the wide breadth of the traditional publication rule, the rule itself and the limits of the one writer/any act/one reader paradigm may deserve further scrutiny in the future.[37]

[230] Google's Post-Crookes Link Policy is based on this reasoning in that it argues that search results yielding the Defamatory Post merely constitute "reference to the existence and/or location of content by hyperlink".

[231] However, the Supreme Court in *Crookes* was dealing with a factual scenario where there was an author, and he wrote an article within which he made references to other sources, the hyperlinks being akin to footnotes.[38]

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35 *Ibid* at para 65.
36 *Ibid* at para 8.
37 *Ibid* at para 42.
38 *Ibid* at para 30: "Hyperlinks thus share the same relationship with the content to which they refer as do references. Both communicate that something exists, but do not, by themselves, communicate its content."

[232] By stating that reference to a hyperlink does not constitute publication of material, the Supreme Court made it clear that it is commenting on the liability of a content provider not with the liability of an intermediary.

[233] The analysis is different where the facts involve an intermediary service provider like a search engine, rather than an author.

[234] The intermediary search engine is in the business of providing hyperlinks, that is all it does. The author writing a larger text that happens to contain hyperlinks as references is not in the business of providing hyperlinks.

[235] Whereas the author of a text does not necessarily vouch for the truth of everything said in the links cited within the text, just as the author of a text does not necessarily vouch for the truth of everything said in a footnote, in contrast, Google does represent to the public that it provides trustworthy content and seeks to remove and reduce the spread of harmful misinformation. (The extent to which Google invites its users to trust the reliability of the information provided through its search results is reviewed below.)

[236] The factual difference between the *Crookes* case and the current case is mirrored by the different legal regimes governing each case. Intermediaries and authors are treated differently, at least in Quebec, given the application of the IT Framework Act and its explicit reference to the civil responsibility for intermediaries.

[237] This is the segue to the second point of distinction between *Crookes* and the present case, namely that the legal analysis in the present case is different from the one applied in *Crookes*.

[238] *Crookes* was a case from British Columbia and the applicable law was the common law on defamation and the *Libel and Slander Act* of B.C.[39]

[239] In addition to the fact that the *Libel and Slander Act* does not have an analogue to section 22 of Quebec's IT Framework Act, the relevance of the former statute in *Crookes* was limited to what it does not say rather than what it does say, given that it provides for no presumption of publication in respect of hyperlinks.[40]

[240] In *Crookes*, the key legal issue was whether, in the context of a larger article, the hyperlinks in it that connected to the allegedly defamatory material could be said to "publish" that material.[41]

[241] If the plaintiff in that case had convinced the Supreme Court that there was publication, as that term is understood in the common law on defamation and the *Libel and Slander Act* of B.C., there would then flow certain legal consequences within the

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39 *Libel and Slander Act*, RSBC 1996, c 263, s 2, as cited in *Crookes, ibid*.
40 *Crookes, supra* note 7 at paras 14 (Abella J) and 108 (Deschamps J).
41 *Ibid* at para 3.

internal logic of the law applicable in that case, namely presumptive liability of the defendant and then a burden shifted onto the defendant to rebut that liability through the invocation of defences specific to the common law of defamation.

[242] In contrast, the applicable law in the present case is Quebec's civil law on defamation and the IT Framework Act, which together provide for a different analytical approach to determine if defamation has taken place through the availability of hyperlinks by an internet intermediary.

[243] Quebec defamation law operates through the general provision on civil liability, article 1457 CCQ.[42] It does not have a tort of defamation *per se*, no presumptive liability based on fixed criteria, and no specific defences to rebut such *prima facie* liability, all of which are found in the common law.

[244] Accordingly, the analytical approach in Quebec law on defamation does not proceed through the application of the rules of strict liability, as the common law essentially does, but rather on the basis of the concept of fault.

[245] Justices L'Heureux-Dubé and LeBel, in the seminal Supreme Court case of *Prud'homme v Prud'homme* dealing with defamation under Quebec civil law, made this observation in their comparison of the common law with civil law in the area of defamation,[43] going as far as to say that "an action in defamation in civil law in a way proceeds in the opposite direction from an action for defamation in common law."[44]

[246] They reviewed[45] the civil law defamation test to be met by a plaintiff as follows:

- The plaintiff in a defamation action must establish, on a balance of probabilities, the existence of a wrongful act, an injury, and a causal connection between the two;

- The fault requirement imposes on the plaintiff the burden to establish that the defendant committed an objectively wrongful act such that a reasonable person would not have behaved that way, and did so either maliciously or negligently through one of the following situations:

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42 See *Prud'homme*, *supra* note 16 at para 32; *Gilles E. Néron Communication Marketing Inc v Chambre des notaires du Québec*, 2004 SCC 53 at para 56; *Bou Malhab v Diffusion Métromédia CMR inc*, 2011 SCC 9 at paras 22-24; *Lalli v Gravel*, 2021 QCCA 1549 at para 54. While s 4 of Quebec's *Charter of Human Rights and Freedoms*, RSQ c C-12 (**Quebec Charter**) guarantees the right to the safeguard of reputation, the statutory provision does not constitute an independent, autonomous system of civil liability: *Bou Malhab, ibid* at para 23.

43 *Prud'homme*, *ibid* at para 56.

44 *Ibid* at para 57.

45 *Ibid* at paras 32-38.

- A person “makes unpleasant remarks about a third party, knowing them to be false”;

- A person “spreads unpleasant things about someone else, when he or she should have known them to be false”;

- A “scandalmonger makes unfavourable but true statements about another person without any valid reason for doing so”;

- “In every case, determining fault is a contextual question of fact and circumstances. On this point, it is important to note that an action in defamation involves two fundamental values: freedom of expression and the right to reputation”;

- For the criterion of injury, the plaintiff must convince the judge that the impugned remarks were defamatory in that the remarks in question “cause someone to lose in estimation or consideration, or that prompt unfavourable or unpleasant feelings towards him or her”;

- An objective standard is applied to determine whether the remarks are defamatory: would an ordinary person believe that the remarks, when viewed as a whole, bring discredit on the reputation of another person.

[247] The above general test for defamation must be joined with the specific instrument of section 22 of the IT Framework Act, which makes responsibility of a search engine in Quebec law conditional on knowledge of the “illicit” nature of the content being linked.

[248] None of this analytical framework is addressed in *Crookes*, although Justice Deschamps, in her minority reasons in that case, which concur with the majority in the result but not in the reasoning, did mention wanting to outline a rule that is consistent “with the common law and the civil law of defamation” (emphasis added).[46] However, aside from that one mention of civil law, she did not return to it in the rest of her analysis.

[249] Commenting on the lack of fit between *Crookes* and Quebec civil law, Professor Marie Annik Grégoire has observed that “la notion de faute ne nécessitant pas, en droit québécois, un geste délibéré de son auteur, nous croyons que c’est plutôt l’évaluation contextuelle des circonstances qui doit prévaloir”.[47]

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[46] *Crookes*, *supra* note 7 at para 57. While some judgments of the Court of Appeal mention *Crookes*, they do not refer to it in a context similar to the present case, see e.g. *Therrien c Directeur général des élections du Québec*, 2022 QCCA 107 at note 36; *Parisien c Hôtel du Lac Tremblant inc*, 2018 QCCA 2217 at note 21; *Boyer c Loto-Québec*, 2017 QCCA 951 at para 26; *Lavoie c Vailles*, 2013 QCCA 1482 at para 8.

[47] “Fascicule 4 : Atteinte à la vie privée et à la réputation”, at no 6, in Pierre-Claude Lafond, ed, JCQ *Personnes et famille* (LN/QL).

[250] It is important for the judiciary to protect the integrity and internal logic of the law of defamation in Quebec civil law against any blurring of the conceptual lines that might occur through the consideration of caselaw decided under the common law and statutes of common law jurisdictions.

2. Standard of conduct of a reasonable internet intermediary

[251] The Court concludes that in the present case, Google is providing access to an illicit text, the Defamatory Post, despite having been notified by the Plaintiff under section 22 of the IT Framework Act about the illicit nature of the text. It is thereby committing a fault.[48]

[252] Its conduct in this regard departs from the standard of conduct of a reasonable person. A reasonable internet intermediary in the business of providing search results in response to keywords and website links for those search results does not knowingly spread false information.

[253] According to the language from the test set out in the *Prud'homme* case, quoted above, Google "spreads unpleasant things about someone else",[49] knowing those things to be false, when it makes the link to the Defamatory Post available to users.

[254] Neither the common law principles set out in *Crookes* nor any contextual factor negate the wrongfulness of providing access to the Defamatory Post.

[255] There is no public interest, let alone issue of the reasonable person's right to freedom of expression,[50] in Google communicating and the user learning that one R. S. from Town G has (falsely) stated that the Plaintiff is a pederast and was convicted of child molestation in 1984.

[256] That Google's provision of access to the Defamatory Post would be a fault under the test for defamation in Quebec, prior to *Crookes*, is recognized by Google itself by virtue of its Pre-Crookes Link Policy.

[257] It is uncontested that Google's Pre-Crookes Link Policy resulting in the removal of links and STC on the Canadian version of Google Search in connection with the Defamatory Post was based on its own assessment that it would be wrongful for it to make the link and STC available to users in Canada.

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48 For doctrinal commentary on the liability of internet intermediaries, see generally Jean-Louis Baudouin, Patrice Deslauriers & Benoît Moore, *La responsabilité civile*, 9th ed, vol 1 (Montreal: Édition Yvon Blais, 2020) (EYB2020RES33 (La référence)) at paras 1-299—1-300.2.

49 *Prud'homme*, *supra* note 16 at para 36.

50 *Bou Malhab*, *supra* note 42 at para 31.

[258] The Pre-Crookes Link Policy was an admission by Google, and a justified one at that given the evidence, that the Defamatory Post constituted illicit activity within the meaning of section 22 of the IT Framework Act.

[259] The analysis might be different where a complaining party is not in a position to satisfy Google that the content of a link to which Google Search refers is actually illicit.

3. Narrow nature of the issue in the present case

[260] To underscore the narrow nature of the issue at hand, and the fact that the litigation floodgates are not opened by the present judgment, the Court observes that where Google can reasonably take the position that it is unable to ascertain whether the activity complained of is illicit, then the obligation under section 22 of the IT Framework Act is not engaged and Google cannot be said to have participated in a defamatory communication.

[261] The language in section 22 does require a level of certainty as to the existence of illicit activity since liability may be incurred where, "upon becoming aware that the services are being used for an illicit activity, the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity" (emphasis added).

[262] There is no reasonable uncertainty in the present case given Google's own, and correct, acknowledgment of the illicit nature of the Defamatory Post.

[263] The Court gives weight to the testimony of Mr. Nichols, Google's "Legal Removal Specialist", who explained that Google processes legal removals from the Canadian version of Google Search for defamatory content according to its own policy and local law. That policy includes the approach of "notice and takedown", i.e. a user gives notice to Google regarding objectionable content and then Google takes down access to it if its policy or local law requires it.

[264] Since jurisdictions differ materially in their treatment of freedom of expression, Google's removal policy is adjusted according to the requirements of local law. Google states this publicly on its webpage entitled "When (and why) we remove content from Google search results":

> While we're committed to providing open access to information, we also have a strong commitment and responsibility to comply with the law and protect our users. When content is against local law, we remove it from being accessible in Google Search.[51]

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[51] Exhibit D-27, Webpage entitled "When (and why) we remove content from Google search results" (accessed: 11 August 2022), online: https://www.blog.google/products/search/when-and-why-we-remove-content-google-search-results/.

[265] Google also acknowledges that "[s]ome countries provide individuals with broad rights against alleged defamation, while others take a more limited view."[52]

[266] Mr. Nichols testified about the European concept of the right to be forgotten. This includes the right of an individual to demand that he or she not be perpetually associated with something in their past, for example the victim of a crime who does not want that unpleasant story from their past to keep defining them into the future.

[267] The concept, as presented, is slightly different from the issue at stake in the present matter. The Plaintiff does not want to be forgotten, far from it. He just wants to be remembered for the right things, not for defamatory things.

[268] In light of the above, it is clear to the Court that each of the Pre-Crookes Link Policy and the Post-Crookes Link Policy corresponded to Google's understanding of the state of Quebec law over time.

[269] Prior to *Crookes*, it had to accede to the Plaintiff's demand that the link to the Defamatory Post be removed, and then after *Crookes*, it thought it could return to providing access to the link, the way it did before the Plaintiff brought the issue to Google's attention, but simply remove the STC.

[270] This is the reason why the Court formulates the question of fault as a narrow one. Since provision of the link and STC to the Defamatory Post would be a fault prior to *Crookes*, the only question is whether *Crookes* somehow changes the fault analysis under Quebec law. The Court has concluded that it does not.

4. Defamatory nature of the post

[271] The Court states clearly that even though it was not his burden to prove a negative, the Plaintiff has established without a shadow of a doubt that there is no truth to the criminal allegation made against him in the Defamatory Post.

[272] The certificate of the Royal Canadian Mounted Police he filed in the record confirms that the Plaintiff has no criminal convictions.

[273] No one in his circle has any recollection of his having been convicted of child molestation in 1984, which obviously would have been something to the knowledge of at least some people in his circle of friends and family.

[274] For good measure, the psychiatrist and psychoanalyst Dr. Daniel Frank even confirmed in his expert report filed in the court record that the Plaintiff "does not fit the

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[52] Exhibit P-74, Google White Paper entitled "Information quality & content moderation", online: https://blog.google/documents/83/information_quality_content_moderation_white_paper.pdf/ at 6.

descriptions in the psychiatric literature concerning the behavioral, psychological or demographic characteristics of child molesters."[53]

[275] Google does not dispute the characterization of the post as defamatory.

5. Google's standard of conduct, in its own words

[276] Google's defence theory against a finding of fault is that it is in compliance with the principles of liability set out in *Crookes* in that it is not a publisher of the Defamatory Post, and that it is providing a service to users looking for information in the cacophonous world of the internet.

[277] There are two images that Google presents of itself which are in tension with each other: the neutral messenger of information versus the careful curator of information.

[278] As an example of its self-styled role as careful curator of information, Google has made the following public statements, both in the legislative realm and on its webpages:

- "Core to [Google's] mission is providing trustworthy content and opportunities for free expression across our platforms, while limiting the reach of harmful misinformation";[54]

- "We were able to act quickly and decisively because of the significant investments we have made over years, not only to make information useful and accessible, but also to remove and reduce the spread of harmful misinformation. Across all of this work, we strive to have clear and transparent policies and enforce them without regard to political party or point of view. We work to raise up authoritative sources, and reduce the spread of misinformation in recommendations and elsewhere. Teams across the company work in a variety of roles to help develop and enforce our policies, monitor our platforms for abuse, and protect users from everything from account hijackings and disinformation campaigns to misleading content and inauthentic activity. And we don't do this work alone; we work closely with experts to stay ahead of emerging threats";[55]

- "We continuously map the web and other sources to connect you to the most relevant, helpful information";[56]

- "People around the world turn to [Google] Search to find information, learn about topics of interest, and make important decisions. We know people will rely on us

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53 Expert report of Dr. Frank (25 May 2017) at 8.

54 Exhibit P-70, Sundar Pichai, "Written Testimony of Sundar Pichai, Chief Executive Officer, Alphabet, Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation", U.S. House Committee on Energy and Commerce (25 March 2021) at 2.

55 *Ibid* at 8.

56 Exhibit D-10, Webpage entitled "Overview" (accessed: 10 August 2022), online: https://www.google.com/search/howsearchworks/.

so our commitment will never waver. As technology evolves, we will continue to help everyone find the information they're looking for";[57]

- "[…] we use automated systems to get you the most relevant and reliable information we can find";[58]

- "To measure whether people continue to find our results relevant and reliable, we have a rigorous process that involves extensive testing and the use of quality raters who ensure our automated systems produce great results as a human would expect";[59]

- "Our goal is always to provide you with the most useful and relevant information. Any changes we make to Search are always to improve the usefulness of the results you see";[60]

- "For many people, Google Search is a place they go when they want information about a question, whether it's to learn about an issue, or fact check a friend quoting a stat about your favorite team. We get billions of queries every day, and one of the reasons people continue to come to Google is they know that they can often find relevant, reliable information that they can trust";[61]

- "First, we fundamentally design our ranking systems to identify information that people are likely to find useful and reliable";[62]

- "We're always evolving our approach against bad actors on the web and ensure Google continues to deliver high-quality, reliable information for everyone";[63]

- "Google ranking systems are designed to do just that: sort through hundreds of billions of webpages in our Search index to find the most relevant, useful results in a fraction of a second, and present them in a way that helps you find what you're looking for. […] To help ensure Search algorithms meet high standards of relevance and quality, we have a rigorous process";[64]

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57 Exhibit D-11, Webpage entitled "Our approach" (accessed: 10 August 2022), online: https://www.google.com/search/howsearchworks/our-approach/.

58 *Ibid.*

59 *Ibid.*

60 Exhibit D-17, Webpage entitled "Rigorous testing" (accessed: 10 August 2022), online: https://www.google.com/search/howsearchworks/how-search-works/rigorous-testing/.

61 Exhibit D-21, Webpage entitled "How Google delivers reliable information in Search" (accessed: 10 August 2022), online: https://blog.google/products/search/how-google-delivers-reliable-information-search/.

62 *Ibid.*

63 Exhibit D-27, "When (and why) we remove content from Google search results", *supra* note 51.

64 Exhibit P-58, Webpage entitled "How Search algorithms work" (accessed: 2019-09-04), online: https://www.google.com/search/howsearchworks/algorithms/.

- "From the beginning, our mission has been to organize the world's information and make it universally accessible and useful. Today, people around the world turn to Search to find information, learn about topics of interest, and make important decisions. We consider it a privilege to be able to help. As technology continues to evolve, our commitment will always be the same: helping everyone find the information they need";[65]

- "We feel a great responsibility to our users when they place their trust in us to deliver them trustworthy, helpful information that meets their needs";[66]

- "Our mission at Google is to organize this information and make it universally accessible and useful. Core to this mission is a focus on the relevance and quality of the information we present to users. In different ways across our different platforms, we strive to connect people with 'high-quality information'; the most useful, trustworthy, and helpful content at the moment a person needs it. At the same time, we work to prevent user and societal harm and limit the reach of 'low-quality information'; content that strays furthest from those qualities".[67]

[279] The Court's point in setting out above the policy statements made by Google is not to hoist it with its own petard, but rather because they are relevant to the fault analysis since they show that Google represents to the world that it is more than a neutral messenger of information.

[280] Google curates information and it is aware of the importance of not spreading defamatory information. The public accordingly holds it in esteem as a curator of information.

[281] In a 43-page paper describing its approach, Google explains that it has "four complementary levers to support information quality and moderate content". The very first of these levers is "removal", which is based on Google's own "responsible rules for each of our products and services" and its compliance with "legal obligations requiring the removal of content".[68]

[282] Google invites users to submit removal requests to be treated by its employees. These removal requests are generally premised on users identifying a specific URL that they want removed from search results. A removal request may or may not result in actual removal, depending on Google's discretion.

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65 Exhibit P-59, Webpage entitled "Our mission" (accessed: 2019-09-04), online: https://www.google.com/search/howsearchworks/mission/.

66 Exhibit P-74, *supra* note 52.

67 *Ibid.*

68 *Ibid* at 4.

[283] Pursuant to a removal request, Google may also decide to remove the STC associated with a search result, while still displaying the search result itself (i.e., the link to the website that Google identifies as relevant to a user's query).

[284] In the U.S., Google maintains that its discretion concerning removals is protected under section 230(c)(1) CDA, immunizing Google from liability when it decides what webpages to display or not display in its search results.

[285] Google applies what it refers to as the "least censorious" approach to search results. This is more consistent with the image of neutral messenger of information, a lower standard compared to the careful curator.

[286] As examples of its "least censorious" approach, or what one might call an approach of equal-opportunity offensiveness, Google put into evidence search results regarding Google co-founders Sergey Brin and Larry Page, which yield links to websites that might be considered defamatory towards those two.

[287] That being said, Google took the position in the proceedings that its policies on objectionable content are protected by lawyer-client privilege. Therefore, the Court did not have direct access to the policies.

[288] Generally, Mr. Nichols explained that where a complaint is received without evidence of a court ordering removal against the author of the content, Google will evaluate the URLs in question and, where the content violates Google's legal removals policies, it will redact the STC accompanying the search result in question. In such cases, Google does not remove the bare hyperlink.

[289] If, however, the complainant obtains a court order against the author of the content specifying the URL at issue and the court order is provided to Google, then Google will remove the hyperlink and STC from Google search results.

[290] With respect to the country-specific version for the U.S., Google does not remove content alleged to be defamatory under its legal removal policies.

[291] However, Google will remove the hyperlink and STC—i.e., the entirety of the search result—if a U.S. court order is obtained against the author and provided to Google.

[292] Removals made pursuant to Google's legal removals policies are carried out manually by the legal removals team within Google. The removal process does not remove the URL from Google's index, but rather prevents the appearance of associated content for a specific URL in its search results for the specific country-version where the complainant resides.

[293] Where removals do not require any contextual determination, Google removes certain content without being notified.

[294] Specifically, Google—working with the U.S. National Center for Missing and Exploited Children (**NCMEC**)—carries out removals of child sexual abuse imagery (known also by the acronym "CSAM") by using "hash-matching", i.e., the digital fingerprints associated with images in NCMEC's database.

[295] Google also uses hash-matching to identify and remove content that glorifies violence and terrorist acts.

[296] Mr. Nichols explained that these removals are fundamentally different from other types of removals, as they can be made on an automated basis because they do not require analysis of the context.

6. Google's argument regarding intensity of fault

[297] The Court now turns to a contextual point raised by Google regarding the question of the intensity of the fault in providing access to the Defamatory Post.

[298] Google points to the fact that there is a certain level of false and vexatious information on the internet, for example statements made about its own co-founders (as mentioned above), and so Google's general approach on a policy level must be analyzed, as opposed to an individualized approach.

[299] In that point about context, Google also points to the fact that the latest search, done at trial, yields the Defamatory Post only when the search includes the word "pederast" with "A. B.".

[300] Google argues that the fault is diminished if not reduced to zero given the high level of specificity required to arrive at the link to the Defamatory Post.

[301] The Court addresses this latter point first.

[302] It was established at trial that Google Search is a service based on a dynamic algorithmic electronic process whereby Google "crawls" the internet (through a program called "Googlebot") for websites, creates "indexes" for the websites it finds, and delivers results to users based on a variety of factors, including but not limited to the specific keywords that users search.

[303] Google then personalizes the search results based on, among other factors, a user's location and the timing of the user's request.

[304] Each search on Google Search is therefore an entirely fresh exercise, which delivers a new set of search results to the user in an instant.[69]

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[69] See also Abella J's acknowledgment of the "inherent and inexorable fluidity of evolving technologies" in *Crookes, supra* note 7 at para 43.

[305] Accordingly, the fact that on a given day during the trial in September 2022 in Town A, the user of Google Search needed to type more than just the Plaintiff's name to arrive at the Defamatory Post does not change the fault analysis.

[306] As the chronology within this very case shows, at other times between the statement of Google's current position on 21 December 2015 and August 2022, the Defamatory Post, and even the STC, appeared with a different combination of words.

[307] Therefore, the fault analysis cannot be tied to the vagaries of Google's algorithmic process, but rather, must rely on the factual record already established.

[308] The Court now addresses the point made by Google, in referring to internet statements made about its own co-founders, about there being a certain level of false and vexatious information on the internet and that therefore what must be examined is Google's approach on a policy level.

[309] The Court does not give weight to this point. Google's own policies show that it strives to remove defamatory content and comply with local law.

[310] Section 22 of the IT Framework Act is clear about the obligation of the intermediary upon being notified of illicit content.

[311] Quebec's law on defamation does not consider fault to be attenuated by the fact that the defamatory content in question is found in an environment where there is also defamatory content about other people. The victim of the defamation is not the victim of a lesser fault by virtue of the fact that there are other victims of other faults.

D. INJURY SUFFERED BY THE PLAINTIFF

[312] As part of his burden, the Plaintiff must prove fault, injury, and causation between the fault and injury.[70]

[313] The Court has concluded above that Google committed a fault when it changed its approach to the Defamatory Post from its Pre-Crookes Link Policy to its Post-Crookes Link Policy.

[314] The Court now examines the injury claimed by the Plaintiff.

1. Applicable principles to determine if injury has occurred

[315] Article 1607 CCQ sets out the general principle according to which a victim of a fault "is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence" of that fault.

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[70] Art 1457 CCQ.

[316] The caselaw on defamation makes a distinction between concluding that an injury has occurred and quantifying that injury. The former exercise calls for an objective assessment based on the "ordinary person" [71] where "we must ask whether an ordinary person would believe that the remarks made, when viewed as a whole, brought discredit on the reputation of another person."[72]

[317] As explained by Justice Deschamps in *Bou Malhab*, "The type of injury that defines defamation is damage to reputation", and there is a distinction between the test of the reasonable person under the fault analysis and the test of the ordinary person under the injury analysis:

> [30] […] The conduct of the reasonable person establishes a standard of conduct whose violation constitutes a fault. The ordinary person, by contrast, is the embodiment of the society that receives the impugned comments. Injury is therefore assessed through the eyes of this ordinary person who receives the impugned comments or gestures.
>
> [31] The judge responsible for assessing fault requires the person who uttered the words to behave the way that a reasonable person would have behaved in the circumstances. In defamation cases, the judge takes account of that person's right to freedom of expression, and will even accept, in some cases, that the person has expressed exaggerated opinions. In assessing injury, the judge also considers the fact that the ordinary person has accepted that freedom of expression is protected and that exaggerated comments can be made in certain circumstances. However, the judge must also ask whether there is a decrease in the esteem that the ordinary person has for the victim. As a result, even though the standard is an objective one in both cases, it is preferable to use two different terms — reasonable person and ordinary person — because they are concepts that relate to two distinct situations: assessing the conduct and assessing the effect of that conduct from society's perspective. The questions asked at these two stages are different.[73]

[318] In light of the objective nature of the assessment of damage to reputation, the Plaintiff is not required to make proof of the Defamatory Post having been read by anyone as of 1 April 2015, contrary to Google's argument that no witness came forward to prove that they had read the Defamatory Post through a Google search since that time.[74] This point is, however, relevant to the quantification of the injury, as analyzed further below.

[319] Damage to reputation, which is the injury that the Plaintiff must prove, was defined by Justice Deschamps in *Bou Malhab* as follows:

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71 *Bou Malhab, supra* note 42 at paras 26-41; *Lalli, supra* note 42 at para 96.
72 *Prud'homme, supra* note 16 at para 34.
73 *Bou Malhab*, *supra* note 42 at paras 26, 30-31.
74 *Lalli, supra* note 42 at para 97.

- "damage to reputation results in a decrease in the esteem and respect that other people have for the person about whom the comments are made";

- "A person is defamed where the image reflected back to the person by one or more other people is inferior not only to the person's self-image but above all to the image the person projected to "others" in the normal course of social interaction";

- "Defaming a person means damaging a reputation that has been legitimately earned";

- "The effect of defamation is therefore not so much to interfere with the dignity and equal treatment recognized to each person under the Charters as to reduce the esteem in which a person should be held as a result of his or her interactions with society".[75]

2. Applicable principles for quantification of injury

[320] Once the court seized with a defamation action arrives at the conclusion that the ordinary person would believe that the statements, when viewed as a whole, bring discredit on the reputation of the plaintiff, it must then quantify that injury. For this next step of the injury analysis, it must weigh subjective considerations to evaluate the impact of the injury actually suffered by the victim.[76]

[321] Article 1611 CCQ sets out the general principle for compensation in extracontractual matters: the victim has a right to be compensated for the amount of loss that he has sustained, and the damages are determined as a function of the consequences for the victim and not of the gravity of the fault.[77]

[322] Compensation for moral injury is an exercise for which "there is the clearest justification for moderation".[78] The Supreme Court has set out a three-part test involving a conceptual approach, a personal approach, and a functional approach to assess the quantum of non-pecuniary damages under Quebec law:

- "The conceptual approach measures loss based on an appreciation of the objective seriousness of the injury";

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75 *Bou Malhab, supra* note 42 at para 27. "Charters" is a reference to the Quebec Charter and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

76 *Lalli, supra* note 42 at para 98.

77 See *Lapierre c Sormany*, 2012 QCCS 4190 at para 115 for the application of this principle in the defamation context.

78 *Quebec (Public Curator) v Syndicat national des employés de l'hôpital St-Ferdinand,* [1996] 3 SCR 211 at para 57, quoting *Andrews v Grand & Toy Alberta Ltd,* [1978] 2 SCR 229 at 261.

- "The personal approach seeks to evaluate, from a subjective point of view, the pain and inconvenience resulting from the injuries suffered by the victim";

- "The functional approach seeks to calculate the cost of measures that could provide solace to the victim".[79]

[323] These three approaches are applied jointly by the courts so as to arrive at a personalized evaluation of non-pecuniary damages.[80] Courts must compare the case at hand with analogous cases in which non-pecuniary damages were awarded in an attempt to treat like cases alike.[81]

[324] The basic principle governing quantification in the realm of defamation is that the sum awarded must show to the community that the reputation of the defamed person has been restored.[82]

[325] The Court of Appeal in *Lalli c Gravel* recently set out the following guiding elements to assess the moral injury claimed by a victim of defamation:

- Seriousness of the defamatory statements;

- Extent of the dissemination of the statements;

- Duration of the defamation;

- Quality of the reputation of the victim before the defamation;

- Retraction or apology by the author of the defamation;

- Fact of the victim having to justify himself in light of the defamatory statement or to respond to questions to correct the facts;

- Identity of the author of the defamation, to the extent that the statement will be given more weight if the author is considered reliable;

- Impact on the emotions of the victim, notably the disdain, hate, or ridicule to which the victim was subjected;

- Absence of harm to the victim's psychological or physiological health is not an obstacle, and the sole testimony of the victim is sufficient to establish moral injury.[83]

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79 *Cinar Corporation v Robinson,* 2013 SCC 73 at para 105.
80 *Ibid* at para 105.
81 *Ibid* at para 106.
82 *Ibid* at para 116.
83 *Lalli, supra* note 42 at para 99.

3. Existence of an injury suffered by the Plaintiff

[326] In application of the principles governing the determination of an injury, the Court concludes that the ordinary person would believe that Google's provision of access to the Defamatory Post brings discredit on the reputation of the Plaintiff.

[327] By making the link to the Defamatory Post available, even without the STC but all the more so when the STC does appear, Google is perpetuating the injurious content of the Defamatory Post.

[328] While the ordinary person knows that Google is not the author of the Defamatory Post, he or she also knows that Google has publicly stated, for example to a U.S. legislative committee, that its mission is to provide "trustworthy content".[84]

[329] On its own webpages, as extensively quoted further above, Google seeks to burnish its image as a curator of "relevant, helpful information".[85]

[330] Google also recognizes the harm that it can cause when it makes false information available in its search results: "[W]e work to prevent user and societal harm and limit the reach of 'low-quality information'".[86]

[331] Accordingly, when Google Search provides users access to the Defamatory Post, this causes injury to the Plaintiff since the user can easily be led to the erroneous conclusion that, given the standards to which Google holds itself and given the grave nature of the crime being alleged, there is perhaps some validity to the statements made in the text of the Defamatory Post.

[332] This is especially so given that the accusation of child molestation, let alone the statement that a person has already been convicted of it, attracts a popular reaction of suspicion of the accused.

[333] In other words, the crime is so heinous that ordinary people do not think that the accusation, or a statement asserting the fact of a conviction, can be made without some truth to it. Where there is smoke, there is fire, so the (sometimes misguided) popular expression goes.

[334] This was confirmed by the expert testimony of the psychiatrist Dr. Manon Houle, called by the Plaintiff. She said that human psychology is such that an accusation so atrocious and pernicious as child molestation stains the public image of an individual, even when it is demonstrated to be unfounded. Individuals think of that exculpatory demonstration as "not P implies P".

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84 Exhibit P-70, *supra* note 54 at 2.
85 Exhibit D-10, *supra* note 56.
86 Exhibit P-74, *supra* note 52 at 1.

[335] The stigma of the accusation was also confirmed by the testimonies of the Honourable Bonnie Campbell and the Honourable Mr. J. (mentioned further above), two former state attorneys general from the U.S. who spoke of their friendship with the Plaintiff and the effect of the Defamatory Post on him (more on this in the next section), but also their professional experience as chief law enforcement officers in their respective jurisdictions.

[336] Notably, Ms. Campbell, former attorney general of Iowa between 1990-1994, did extensive work to develop a legal regime in Iowa to address violence against women and children.

[337] She started the Iowa sex-offender registry. In that context, she explained that the policy governing such registries needs to be nuanced when it comes to establishing the criteria for the registry. Sexual violence against children is horrendous, but precisely for that reason a false accusation can be very harmful.

[338] Ms. Campbell also worked at the U.S. federal level during the Clinton administration to direct a new office of the U.S. Department of Justice called Office on Violence against Women.

[339] In the same vein, a friend of the Plaintiff, C. D., who served in the U.S. military, the N.Y. police, and on the board of the International Centre for Missing and Exploited Children, explained that with his professional experience in criminal justice, he knows that even die-hard criminals like murderers consider the status of a pedophile to be “scum of the earth” and so the label, even when false, carries a major stigma.

[340] In the Supreme Court case of *Hill v Church of Scientology of Toronto*, the defamatory statement at issue was the allegation by one lawyer that the opposing lawyer had misled a judge and breached orders sealing certain documents. Justice Cory described the pernicious effect of a defamatory statement as follows:

> Every time that person goes to the convenience store, or shopping centre, he will imagine that the people around him still retain the erroneous impression that the false statement is correct. 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. Seldom does the defamed person have the opportunity of replying and correcting the record in a manner that will truly remedy the situation.[87]

[341] Google itself was cognizant of this injury when it applied its Pre-Crookes Link Policy.

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87 *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at para 166.

[342] The only element that changed is that Google thought the *Crookes* case shields it from liability, hence the Post-Crookes Link Policy. Remove *Crookes*, as the Court does, and Google's own assessment snaps back into place.

[343] Relying on the test of the ordinary person articulated by Justice Deschamps in *Bou Malhab*, Google argues that judges must consider "the fact that the ordinary person has accepted that freedom of expression is protected and that exaggerated comments can be made in certain circumstances".[88]

[344] In the present case, the Court has certainly taken into account the right to freedom of expression, but it does not consider that the issues here engage any aspect of that right.

[345] Google does not seriously consider that right to be engaged, otherwise it would not have applied its Pre-Crookes Link Policy.

[346] The Court concludes that the Plaintiff has proven injury.

4. Amount of damages claimed by the Plaintiff

[347] As for quantification of the injury, the Plaintiff claims $1 million in compensatory damages, all of it in the form of moral injury,[89] and $5 million in punitive damages.[90] In the original iteration of the claim, the Plaintiff was claiming $5 million in compensatory damages and $1 million in punitive damages.

[348] Given the one-year period for prescription of a defamation action, the Plaintiff admits that any injury suffered one year before the filing of the Originating Application on 1 April 2016, i.e. 1 April 2015, is time-barred, but argues that it can be taken into account in understanding how the injury was aggravated through the repetition of the defamation over time.[91]

[349] Therefore, the injury being asserted by the Plaintiff must be one that he has suffered as of 1 April 2015, caused by Google's fault. The Court analyzes causation in the section further below.

[350] In the next section, the Court analyzes the components of the moral injury claimed by the Plaintiff as part of its assessment of the damages amount to which the Plaintiff would have a right.

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88 *Bou Malhab, supra* note 42 at para 31.
89 Arts 1457 para 2, 1607 CCQ.
90 Art 1621 CCQ, Quebec Charter*, supra* note 42, ss 4, 5, 49.
91 *Blouin c Limoges*, 2010 QCCS 5319 at paras 43-44.

5. Moral injury: self-esteem, self-confidence, self-respect

[351] The Plaintiff claims that he has suffered moral injury spanning loss of self-esteem, loss of self-confidence, and loss of self-respect arising from Google's fault.

[352] Based on the criteria set out in the caselaw, the testimony of the Plaintiff, the testimony of his friends and family, and the expert evidence, the Court is satisfied that the Plaintiff has discharged his burden of establishing this head of damages.

[353] The Plaintiff testified to his recurring sense of shame of being associated with the Defamatory Post. He periodically had suicidal thoughts.

[354] In 2009, while still living in the U.S., he had active suicidal thoughts. In July 2014, the Plaintiff was taken by police to a Town A hospital for suicidal ideation. One of his sons had called them after a phone call he had with his father left him deeply concerned about his father's mental state.

[355] The Plaintiff's mental state is that he is hypervigilant in business transactions, expecting that the other side will find out about the Defamatory Post, with disastrous consequences. This is a continuous worry.

[356] The Plaintiff testified about losing belief in himself, about the recurring nature of the Defamatory Post no matter what he steps he takes. This has gone on for some 15 years.

[357] He spoke of the pain thinking that RipOffReport.com gets more advertising money the more "clicks" it gets, it gets more clicks from scandalous things like the Defamatory Post, and in turn, Google gets more clicks for the link to the Defamatory Post.

[358] Both Dr. Frank and Dr. Houle (mentioned above) were called to testify by the Plaintiff.

[359] The psychiatrist and psychoanalyst Dr. Louis Côté was called to testify by the Defendant.

[360] Their mandate, generally speaking, was to assess whether there was psychological and psychiatric injury suffered by the Plaintiff as a consequence of the Defamatory Post.

[361] The Court found all three reports to be useful and all three witnesses were informative in their testimony before the Court.

[362] The essential difference in the methodology adopted by Dr. Frank and Dr. Houle, on the one hand, and Dr. Côté, on the other hand, is described by Dr. Frank as the difference between the dimensional approach and the categorical approach.

[363] Dr. Frank applied the dimensional approach, which seeks to put the patient on a spectrum (low, medium, high) according to a “subjective” assessment of the patient, whereas the categorical approach of Dr. Côté involves the “objective” categorization of patients into “silos” (as described by Dr. Frank) according to certain inclusion and exclusion criteria.

[364] The various objective scales have a utility, but they do not take the professional through to the end of the analysis.

[365] Dr. Houle, who is an expert in psychometric tests, confirmed the general approach of Dr. Frank in that she pointed out that the objective test results obtained by the professional must be concordant with the observations of that professional for the results to be valid.

[366] The Court understands the qualifier “subjective” here to mean a holistic or multi-pronged approach where the professional applies his or her own expert judgment in assessing the patient, who remains at the centre of the exercise.

[367] Dr. Houle made the point that objective scales should not dominate the exercise such that the professional surrenders his or her own professional judgment based on observations made of the patient.

[368] The two different approaches lead to two different conclusions in the present case.

[369] In general, Dr. Côté concluded that the Plaintiff suffers from lesser mental impairment, whereas Dr. Frank and Dr. Houle concluded that his level of impairment is higher.

[370] Dr. Côté relied heavily on scales and tended to focus on the external indicators of a functioning business, social, and family life of the Plaintiff. He downplayed the inner turmoil of the Plaintiff precisely because of the external indicators.

[371] The Court prefers the approach of Dr. Frank and Dr. Houle, and accordingly gives greater weight to their conclusions as compared to the conclusions of Dr. Côté.

[372] Not only are their conclusions more concordant than those of Dr. Côté with the general testimonial evidence of the Plaintiff, his family, and his friends, but they are also more consistent with what their scientific field requires.

[373] In contrast to Dr. Côté, Drs. Frank and Houle pointed out not only that the Plaintiff has not known the same success since the Defamatory Post as he had known prior, but Dr. Frank made the subtle but important point that a person’s outward appearance and functioning is not always a reflection of their emotional state.

[374] In other words, a detective following the Plaintiff might note that he is working, interacting socially with friends and acquaintances, going out to suppers, laughing in conversations, etc.

[375] However, those observations would not contradict the fact that the Plaintiff is suffering inside. He can function in society while still suffering psychologically the consequences of the Defamatory Post. He may lose sleep, he may have a bad reaction like flying into a rage at the mention of the Defamatory Post, he may be tormented by the speculation of what the world thinks of him, and so on.

[376] Dr. Frank's view is that psychiatric phenomena are complex and that human beings have an ability to work and function in society, but that does not mean that they have overcome psychiatric and psychological disorders that they may be carrying with them.

[377] The Court subscribes to this view because Dr. Frank laid out what is essentially a more holistic approach to understanding psychological injury.

[378] Dr. Frank convincingly explained that psychiatry is not a hard science but rather a soft science that involves a certain amount of professional subjective judgment in the assessment of the patient.

[379] He characterized as naïve the attempt by segments of the psychiatric professional community to put human beings in categories, neatly stored in silos, when the approach to be preferred over the categorical approach is the dimensional one that sees phenomena along a spectrum.

[380] He mentioned in this regard that the manual that was considered the principal reference for psychiatrists, the *Diagnostic and Statistical Manual of Mental Disorders*, known in its current iteration as **DSM-5**, has "fallen apart" and that many psychiatrists have disavowed it. The DSM-5 has a categorical approach to mental disorders.

[381] Dr. Frank interacted with the Plaintiff five times: four in-person interviews and one telephone interview.

[382] Dr. Houle logged ten hours of clinical interviews with the Plaintiff and three hours of testing.

[383] In contrast, Dr. Côté interviewed the Plaintiff only once.

[384] Dr. Frank retained the assistance of Dr. Houle for the purposes of administering psychometric tests on the Plaintiff and analyzing their results. Dr. Frank was cognizant of his limitations since he is neither authorized nor competent to work with psychometric tests the way Dr. Houle is.

[385] The analysis above sets out the general difference between the experts.

[386] Dr. Côté considers outward signs of success to prevail over any inner psychological distress. In contrast, Dr. Frank and Dr. Houle consider that outward success, which in any event declined after the Defamatory Post, can co-exist with psychological distress.

[387] More technically, Dr. Frank concluded that the Plaintiff suffers from two inter-related psychiatric conditions caused by the Defamatory Post, namely an adjustment disorder with depressed and anxious mood, and a dysthymic disorder, which means a persistent depressive disorder.

[388] In contrast, Dr. Côté concluded that the Plaintiff is suffering from one psychiatric disorder as a consequence of the Defamatory Post, namely an adjustment disorder with mixed anxiety and depressed mood.

[389] Based on Dr. Frank's methodology and his greater exposure to the Plaintiff, the Court accepts his conclusions about the Plaintiff suffering from two disorders.

[390] As for Dr. Houle, she concluded based on her testing that the Plaintiff has a 1) high level of distress, 2) high level of anxiety, 3) high level of emotional dysregulation, and 4) normal narcissistic personality structure.

[391] The first two are largely self-explanatory, but the latter two require some explanation to the layperson.

[392] For the Plaintiff to have a high level of emotional dysregulation means that he has a poor regulation of emotional responses and the latter do not fall within the socially acceptable range of such responses.

[393] Dr. Houle concluded that the Plaintiff has a high level of emotional dysregulation because he reacted frantically at the prospect that she might check the Defamatory Post, showing a high level of distress on their first call.

[394] When Dr. Houle mentioned reading a newspaper article about the case which did not even mention the Plaintiff's name, his emotional dysregulation came out, thus disrupting the conversation. He felt the need to call back and explain himself.

[395] The third example is when Dr. Houle happened to say, "if you're not guilty of the accusation", without actually meaning that she thought he was guilty, the Plaintiff flew into a rage.

[396] Dr. Houle's characterization of the Plaintiff having a normal narcissistic personality structure means that he is someone who is focused on personal gratification and self-enhancement.

[397] She pointed out that it is important to know a patient's personality structure because it then allows for the analysis of the effect of the stressor on the patient.

[398] It is also important to distinguish a narcissistic personality structure from a narcissistic personality disorder. The latter is a pathology, the former is not.

[399] As an example of why Dr. Houle does not allow for outward success to eclipse inner turmoil, she referred to a transaction that the Plaintiff told her was about to close and he was mortified right to the end that someone in the deal would find out about the Defamatory Post and it would then collapse.

[400] In contrast to the factual premises relied upon by Drs. Frank and Houle, Dr. Côté relied on a factual assumption, shown to be incorrect, in which he thought Google had removed the link to the Defamatory Post in the period that he was evaluating the Plaintiff's condition.

[401] He also does not seem to have taken into account the Plaintiff's visceral reaction during his examination when he saw that the live Google search yielded the link to the Defamatory Post.

[402] The Court concludes that the Plaintiff has suffered moral injury spanning loss of self-esteem, loss of self-confidence, and loss of self-respect in connection with the Defamatory Post.

[403] The nature of these forms of moral injury and the nature of the communication, i.e. the ever-present possibility of the link to the Defamatory Post popping up in a search of the Plaintiff's name, are such that the intensity of the injury is not diminished by the absence of proof of third parties having read the Defamatory Post since 1 April 2015.

[404] What is important is that the Plaintiff is haunted by the wrongful nature of the contents of the Defamatory Post and he is terrified by Google's confirmation that it will forever make the link to it available to users.

6. Moral injury: loss of business opportunity and loss of reputation in business and public life

[405] The Plaintiff makes no claim for monetary business loss arising from Google's fault. Rather, he makes a claim for moral injury in connection with the loss of business opportunity and loss of reputation in business and public life.

[406] The Court concludes that there was insufficient evidence of loss of business opportunity as of 1 April 2015.

[407] As for loss of reputation in business and public life, the Plaintiff presented the following evidence.

[408] He was removed from the advisory board of the prestigious Roosevelt Institute, which manages the Franklin D. Roosevelt presidential library. Not only did the removal entail loss of reputation for the Plaintiff, but the manner of the removal also caused him

moral injury: he was not told when he was removed, he found out about it only when the lawyer for Google was conducting a discovery examination and asked why he was no longer on the board.

[409] When the Plaintiff called a representative of the Institute, he was told that the reason for the removal was the Defamatory Post available through Google. Given the hearsay objection made by Google to this piece of evidence and the Plaintiff's confirmation that the evidence is presented only for the fact that it was said and not for the truth of its contents, the Court retains the fact that this is what the Plaintiff was told as the reason for his removal, and if he was told this, then others can also be told this as the reason for his removal. The defamatory effect is accordingly perpetuated.

[410] The Court also considers that the manner of the removal, i.e. without any kind of notice (prior or otherwise) or discussion, is indicative of the stigma attached to the Plaintiff. Those who decided to remove him considered him so radioactive that they did not deign to call him to discuss the Defamatory Post, even though the relevant people considered him deserving of appointment in the first place.

[411] The Plaintiff's friend, Mr. C. D., is a native of Town B. He spent his career in law enforcement, security consulting, and corporate governance. As mentioned above, he served in the U.S. military, the N.Y. police, and on the board of the International Centre for Missing and Exploited Children, among many other positions and distinctions.

[412] He met the Plaintiff when both worked for the committee A investigating the […]. That was the beginning of a close working and personal relationship.

[413] Mr. C. D. is chief executive officer of [Company , a company offering assistance in security and crisis management worldwide.

[414] In the late 1980s and early 1990s, he brought the Plaintiff on as a partner for the Mexican office of the company and the Plaintiff distinguished himself in understanding the business quickly and formulating marketing ideas.

[415] However, when the Plaintiff approached Mr. C. D. about a position at [Company G] after the Defamatory Post, the latter found it impossible to be able to help his friend.

[416] He explained that the company grapples with complex security problems, often under duress, and therefore clients expect an unblemished record. He could not take a chance by hiring the Plaintiff, even though he confirmed that he did his own investigation and could find nothing impugning the Plaintiff.

[417] Mr. E. F. (mentioned further above) is another friend who testified at trial. He is both a Town B real estate lawyer and an investor in real estate projects. He has represented luminaries in U.S. real estate.

[418] Similar to Mr. C. D., Mr. E. F. found himself in a situation where he had to decline the Plaintiff's request for help in a career move.

[419] The Plaintiff wanted an introduction to one of Mr. E. F.'s clients who was a major real-estate developer and operator of shopping malls. While Mr. E. F. sincerely believes that the Plaintiff has a unique mind in the real-estate world, he felt that there was no point in making the introduction since the client would not follow through given the Defamatory Post.

[420] The refusals of Mr. C. D. and Mr. E. F. occurred before 1 April 2015 and therefore they do not constitute a compensable form of injury (let alone moral injury) in connection with the Defamatory Post and Google's provision of access to it.

[421] The Court cannot analyze the post-1 April 2015 period on the basis of speculation but rather actual harm.

[422] The Plaintiff testified about how the person hiring him at [Company D] in Town A, also prior to 1 April 2015, found the Defamatory Post and that, as a consequence, he obtained the position on less favourable terms.

[423] The Plaintiff currently runs [Company F], of which he is the president. It specializes in leasing, marketing, buying, and selling of buildings. There is no evidence that opportunities for the Plaintiff through this enterprise have been stymied because of the Defamatory Post.

[424] That being said, the nature of the Plaintiff's business and the nature of the ongoing defamation is such that proof of the injury can be difficult to make. If potential clients do not approach the Plaintiff precisely because they have looked him up through Google Search and saw the Defamatory Post, he may never learn of it, yet it would be an example of loss of reputation in business and public life.

[425] The Supreme Court was aware of this reality when it observed, as quoted more fully above, that the "unfortunate impression left by a libel may last a lifetime. Seldom does the defamed person have the opportunity of replying and correcting the record in a manner that will truly remedy the situation".[92]

[426] The Plaintiff has proven that it is common in his industry for parties in a transaction to do a Google Search on the actors involved. The worldwide phenomenon of individuals doing such searches on others is so generally known that it cannot be reasonably questioned as a matter of evidence, and so this Court can take judicial notice of it.[93]

[427] The Plaintiff stated that his business transactions often involve a cross-border element, for example a corporate officer from the U.S. who needs to approve the hiring

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92 *Hill, supra* note 87 at para 166.

93 Art 2808 CCQ.

of a real-estate broker in Town A, and so that person will search the Plaintiff using Google as part of the process to obtain approval to hire him.

[428] It is not speculative to think that in the ordinary course of the Plaintiff's business activities, new acquaintances will find the Defamatory Post through Google Search.

[429] The seriousness of the defamatory statements and the extent of their dissemination, which is ongoing, are criteria that may be taken into account in the quantification of the injury.[94]

[430] It is not speculative for the Court to conclude that the Plaintiff has suffered a loss of reputation in business and public life since 1 April 2015 in connection with the Defamatory Post and Google's ongoing provision of access to it.

[431] Given the absence of concrete incidents to the knowledge of the Plaintiff, the Court will weigh this in the balance in calculating the amount of damages to be awarded.

[432] An additional point made by the Plaintiff regarding reputation in public life relates to his retirement plans.

[433] He says that these are destroyed because if he settles in the U.S., for example [State B] and [State E] are places he was contemplating, then when he introduces himself, people will look him up and he will be subject to shunning. He is also concerned about his physical safety in such a context.

[434] The Court considers this aspect of the claimed injury to be subject to the time-bar under [State A] law and the immunity under section 230(c)(1) CDA.

[435] The Plaintiff confirmed that these retirement plans were made a long while ago. The Court infers that they were developed when the Plaintiff was still living in the U.S. and therefore the fact of a new fault committed by Google once the Plaintiff had moved back to Town A does not make the loss of his retirement plans in the U.S. into a fresh injury.

7. Moral injury: injury to relationships with family and friends

[436] The Plaintiff and the witnesses called by him testified about the injury to the Plaintiff's relationships with family and friends in connection with the Defamatory Post.

[437] The Plaintiff's relationship with his twin sons was harmed. Their life prior to the Defamatory Post was one of a very close bond between father and sons. At trial, they spoke of him as their hero, as someone who taught them about life, career, and public service.

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94 *Lalli, supra* note 42 at para 99.

[438] He would take them to his business meetings when they were children. He would get them to read the newspaper so that they could learn about politics and the value of public service. They are clearly his greatest source of pride and concern.

[439] After the Plaintiff's separation and divorce from his wife when the children were toddlers, he continued to play an active role in their lives. He visited them regularly on the weekends, through snowstorms and other impediments, even though the children were living in [State C] with their mother and the Plaintiff would have to travel from Town B to see them.

[440] Since the boys excelled at skiing and since the Plaintiff had recently closed the lease transaction for the [Project A] in Town B, the Plaintiff moved them to northern [State D] to attend a special training facility for competitive skiing. He home-schooled them there.

[441] At the ski facility, the Plaintiff would arrange for special events attended by the national ski teams of Canada and the U.S., including para-alpine skiing teams, so that the children could learn from them.

[442] After the terrorist attacks on 11 September 2001, the Plaintiff moved the children to boarding schools in [State C].

[443] There, he was known as the father all the students and their parents loved. His level of involvement was such that, at school fundraising auctions, he would offer as an auction item, attendance at "Chez A. B.", which were popular barbeque events at which the Plaintiff would cook for everyone.

[444] He also offered internships at [Company H] as an auction item, which were popular as well.

[445] One of the sons went on to [University B], among the most prestigious universities in the U.S., located in [State B]. The son's name was mentioned at the commencement address given by Maya Angelou, the renowned writer and civil rights activist, since he was one of the youngest delegates in […].

[446] Since the Plaintiff's name was also mentioned, students searched the name through Google and then raised with the son the fact that there was a post saying that his father was convicted of child molestation.

[447] Similarly, there was a profile of the son published by the local newspaper. Again, people searched his father's name, found the Defamatory Post, and raised it with him.

[448] In the son's final year at [University B], his girlfriend wanted the respective parents to meet. When the parents searched the Plaintiff's name, they declined to meet with him.

[449] The Plaintiff's other son is currently a very successful commercial real-estate broker in Town B.

[450] He described being the heir of an illustrious family where his father's family was involved in establishing and operating prominent businesses in Town A and also contributing to the advancement of medical technology, and his mother's family was prominent in mining in Ontario and in Town A municipal politics (his maternal grandfather having been the first francophone mayor of [Town E]).

[451] The Court understands the son's point to be that the family has an illustrious name that is put at risk by the Defamatory Post.

[452] In his own field of commercial real-estate brokerage, the son described a world of intense competition that is driven in large part by self-confidence, image, and reputation. He spoke of the top real-estate brokers in Town B being "sharks".

[453] Since clients have a lot of options to choose from as to who their real-estate broker should be, the slightest element that might present a reputational risk for a chief financial officer searching for a broker, such as having a father who is accused in an internet post of being convicted of child molestation, will result in that client looking for another broker.

[454] According to the son's testimony, among competing brokers, it is not unheard of for personal matters of other brokers, such as divorces, to be talked about as a way of besmirching competitors.

[455] Both sons spoke of a distinction between the Plaintiff as he was before the Defamatory Post and the Plaintiff as he became after the Defamatory Post.

[456] Before, he was an outsized personality, full of swagger and self-confidence.

[457] After, he became a shell of his former self, prone to anger, reclusiveness, heavy drinking, and suicidal thoughts. This affected the relationship between father and sons, although the Court notes that both sons continue to profess their deep love for their father.

[458] The Plaintiff feels humiliated and broken, not only because of the direct effect of the Defamatory Post on his relationship with his sons, but also because of the fact that the lack of business income caused him to seek loans from friends, which further diminished his sense of self-respect as a provider to his sons.

[459] The Plaintiff also feels a sense of guilt arising from his perception that his children are suffering due to the Defamatory Post.

[460] This is corroborated by the son who is a successful real-estate broker. He testified about how he tries to keep a distance from his father in his professional life, to the point where even his testimony in the present matter creates a reputational risk for him and so he asked that his name not be mentioned in connection with the proceedings.

[461] The Plaintiff himself avoided visiting Town B when the children moved there after university, out of embarrassment and wondering whether their friends recently asked about the Defamatory Post.

[462] The extended family was also put under stress by the existence of the Defamatory Post. The Plaintiff tried to keep the information from his mother so as not to cause her distress.

[463] The Plaintiff testified that he has a grandchild on the way. He will obviously want to babysit his grandchild. He wonders what the parents of friends of the grandchild will think about their own children being in his vicinity, should they have access to the Defamatory Post through Google Search.

[464] Various friends of the Plaintiff spoke of his good character, extraordinary personality, and the terrible effect the Defamatory Post has had on his life.

[465] The Plaintiff's lifelong friend, Mr. T. U., described the Plaintiff as a "prince" of Town A before he left for Town B, given all of his accomplishments in business and public life.

[466] When the Plaintiff returned after 2009, he came back to a city where he had no social life and was "crippled" socially, all because of the Defamatory Post.

[467] Mr. T. U. zealously and sedulously came to the Plaintiff's defence. He immediately posted a response to the Defamatory Post and continued to take up his friend's cause after that by repeatedly protesting to RipOffReport.com and Google, to no avail.

[468] Prominent Town A lawyers filed statements in the court record speaking to the personal and financial repercussions suffered by the Plaintiff after the Defamatory Post. The Plaintiff borrowed from one of them to make ends meet.

[469] The Plaintiff was so frightened of the Defamatory Post spreading, he held back from telling his friends. He did tell some of them that he was broke. Some sensed that there was something deeply wrong and asked what had changed in his life given that he was not his usual, gregarious self.

[470] Four of the Plaintiff's American friends and former business partners, all of them highly accomplished and prominent in their respective fields, testified about the stark contrast between the Plaintiff they knew before the Defamatory Post and the one they came to know afterwards.

[471] All of them described a man who loved being around people, loved life and work, and was a consummate entrepreneur. He faced periodic and serious challenges over the course of his business career, yet he was able to recover and succeed after every setback.

[472] The exception was life after the Defamatory Post. They described their friend as having been broken by this.

[473] Their friendship remains strong and they tried in their various capacities to help, including speaking to Google representatives directly, agreeing to sit on the board of [Company B], and even lending him thousands of dollars so that he could make ends meet.

[474] However, they described a general sense of failure in being able to help their friend in erasing the lasting effects of the Defamatory Post.

[475] Mr. E. F. met the Plaintiff in the context of the [Project A]. He was immediately impressed by how the Plaintiff got the attention of management of [building A], a very difficult accomplishment.

[476] After the end of the [Project A] with the terrorist attacks […], the Plaintiff proposed obtaining a licence from the [Company I] to establish [Company H] and take it into the commercial real-estate brokerage business, distinct from the former company's origins as a residential real-estate brokerage.

[477] Mr. E. F. considered it so worthy that he invested his own money in the project and worked for the Plaintiff. Mr. E. F. had high hopes that he would be able to move to the company once he retired from the practice of law.

[478] Just as described by the Plaintiff's son in the real-estate brokerage business, Mr. E. F. confirmed with his decades of experience in the industry that the business is labour-intensive with a lot of time spent working without remuneration, in the hopes that the transaction will close. Even when it closes, payment to the brokers can take months.

[479] Mr. E. F. described [Company H] as having had a growing momentum. The Plaintiff was succeeding in penetrating the real-estate market and getting increasingly important meetings with potential clients.

[480] However, the Plaintiff started noticing that there would be no follow-up after initial meetings. He brought the Defamatory Post to Mr. E. F.'s attention in mid-2007 and said that he thought this was the reason for the drop-off of interest after the initial meetings.

[481] Both were frustrated with the Defamatory Post and the effect they perceived on the business they were growing.

[482] However, Mr. E. F. recounted how the effect extended beyond the business and into the Plaintiff's entire personal life.

[483] As for [Company H], Mr. E. F. considered taking legal action in connection with the Defamatory Post, but he concluded that U.S. law was a challenge in this matter and that litigation in the U.S. is extraordinarily expensive.

[484] The company was not earning the cash that would be needed. Mr. E. F. explained that the company became dormant.

[485] Ms. Campbell came to know the Plaintiff through the [Company B] project in 2007. She was approached by Mr. J. to be on the board.

[486] When the Plaintiff told her about the Defamatory Post, he was distraught and felt his life in Town B was over and that his friends were treating him differently. Through tears, he told her about having to borrow from friends.

[487] From her experience running a prosecutor's office, she explained to him that if it can be proven that the Defamatory Post is not true, then surely Google would provide a remedy.

[488] The nature of the allegation was such that any human being would have a negative reaction, but she simply did not believe the allegation.

[489] Ms. Campbell's efforts to help the Plaintiff extended to approaching a representative of Google at a meeting of state attorneys general, around 2014, in order to explain the Plaintiff's situation and explore solutions.

[490] She was told that Google had no remedy, and she reported this to the Plaintiff. He was disappointed but not surprised, given his experience with Google to date.

[491] She tried again at a subsequent meeting of state attorneys general, only to be told the same thing. She again reported this to the Plaintiff.

[492] As for Mr. J. (mentioned above), he has a lifelong friendship with the Plaintiff that started when the former was essentially the chief operating officer of the [Committee A] investigating […] and, in that capacity, he hired the Plaintiff to do investigative work for the committee.

[493] Mr. J. was impressed with this young man from Canada who convinced him within 30 minutes of the interview that he could "move mountains" for the committee.

[494] Subsequent to the […] inquiry, Mr. J. served three terms as state attorney general, ending in 1992. He is now in private practice in Town F, [State B], specializing in government relations.

[495] He was at one of the meetings at which Ms. Campbell approached the Google representative and was party to the conversation with the latter, which resulted in no progress being made for their friend.

[496] Mr. J. was racked by the question of what the Plaintiff could possibly do to make the Defamatory Post go away. In his experience as a lawyer and attorney general, he never confronted a problem where he could not make some kind of headway.

[497] To help the Plaintiff, Mr. J. approached Ms. Campbell to sit on the board of [Company B]. He also lent money to the Plaintiff, which the latter paid back with interest.

[498] He recounted that the Plaintiff had told him that he would one day like to retire in [State B], but that now it would not be possible because he did not feel protected from the Defamatory Post.

[499] The Court makes a nuance about the question of injury to relationships with family and friends.

[500] There is no evidence of such a relationship ending because of the Defamatory Post. No one who already knew the Plaintiff was moved by the groundless allegation. To the contrary, some expressed an even more fierce devotion to the Plaintiff in reaction to the “atrocity”, as Mr. T. U. described it.

[501] That being said, the Court concludes that there was injury to these relationships because a negative dynamic was injected.

[502] Two friends recounted two instances when they felt compelled to reject the Plaintiff in work opportunities. Two other friends described lending to the Plaintiff, which they were happy to do, but it certainly does not make for a friendship on an equal footing.

[503] The relationship with his sons suffered, not that they loved him less or believed for a fraction of a second the lie told about him, but because the Plaintiff’s mood, behaviour, and sense of self changed due to the Defamatory Post and this affected the relationship.

[504] The Plaintiff was no longer confident about how his sons perceived him. They are careful in their public association with him.

[505] While the injury to relationships with friends and family occurred when the Plaintiff was living in the U.S., and therefore subject to the time-bar under [State A] law and the immunity conferred on Google by section 230(c)(1) CDA, the evidence is that the Plaintiff’s relationship with his sons continues to be overshadowed by the Defamatory Post and has been so afresh after the July 2015 discovery by the Plaintiff of the link while living in Town A.

[506] His sons are the source of his greatest pride and concern. The Court observed this from the testimony of all three, and Dr. Houle noted this as well in her assessment of the Plaintiff.

[507] The very fact that the son who is a real-estate broker in Town B expressed trepidation during testimony that any public association between him and his father has the potential to adversely affect his career evidences the current nature of the injury to the Plaintiff.

[508] Also, the Court gives some weight to the moral injury suffered by the Plaintiff in his relationship with friends, even if the initial injury occurred during the period subject to the time-bar. Google allowed for the Defamatory Post to come back in Quebec, as discovered by the Plaintiff in July 2015, and that revived for the Plaintiff the injury that he suffered in the previous period.

[509] That revived moral injury was a direct and immediate consequence of Google's fault in applying the Post-Crookes Link Policy.[95] The prior injury was thus aggravated, by the fact of the repetition of the contents of the Defamatory Post, within the period that is not subject to the time-bar.[96]

[510] While not counting all of the negative stories under this head of damages, the Court is satisfied that the Plaintiff has suffered injury in his personal relationships since 1 April 2015.

8. Moral injury: romantic relationships

[511] The Plaintiff testified to the challenges in his romantic relationships in Town B in connection with the Defamatory Post.

[512] He described his efforts to provide statements from reputable friends, like prominent lawyers in Town A, who would reassure the Town B women he was courting and their families, but to no avail.

[513] Mr. E. F. confirmed that the Plaintiff told him that he would meet interesting women but subsequently they would refuse to take his calls.

[514] One of his sons described walking into his father's room and finding him crying because the woman he was dressed up to see that evening had just cancelled because she had done a search on Google and found the Defamatory Post, and told him that she did not feel safe in his presence.

[515] That being said, the Plaintiff's current marriage started after the Defamatory Post, and so obviously it was not an obstacle to that relationship.

[516] The Court does not consider the moral injury of harm to romantic relationships to fall within the period starting on 1 April 2015.

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95 Art 1607 CCQ: "The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default."

96 *Blouin, supra* note 91 at para 43: "Le Tribunal doit donc apprécier la gravité de la faute en tenant compte de ce contexte de répétition, de même qu'il doit apprécier les dommages en tenant compte du fait qu'inlassablement, sur près de 26 mois, les défendeurs ont dû essuyer de multiples attaques, ce qui a naturellement eu un effet d'addition et d'aggravation de leurs dommages"; cited with approval in *Publications Léonardo ltée c Ville de St-Lambert*, 2019 QCCA 329 at paras 39-44.

E. CAUSATION

[517] The Court addresses in this section the issue of causation between fault and injury (the third element of the liability analysis), and whether other variables contributed to the Plaintiff's injury, such as his pre-existing hyperbolic personality and his failure to mitigate his injury.

1. Causation between fault and injury

[518] The Court concludes that the evidence overwhelmingly supports the finding that there is a causal link between the Defamatory Post and the moral injury proven by the Plaintiff.

[519] The expert psychiatric evidence, the Plaintiff's testimony, and the testimony of the Plaintiff's friends and family all speak to the stark transformation of the Plaintiff from a gregarious, larger-than-life personality into a shell of his former self as a result of the Defamatory Post.

[520] Google's contestation of the causal link between the Defamatory Post and the Plaintiff's injury takes the form of making arguments regarding the Plaintiff's special personality and failure to mitigate, which are addressed below.

[521] As for Google's role in the causal chain, the Court concludes in the affirmative.

[522] It is Google's dominant presence in the marketplace that gives it the distinction, sometimes dubious, of being the conduit for information, sometimes defamatory.

[523] According to third-party market data in the court record, Google had approximately 91% market share in Canada, 87% in the United States, and 91% internationally in July 2022.[97]

[524] In this case, the evidence establishes that the Plaintiff and third parties learned of the Defamatory Post through Google Search. The prescription date of 1 April 2015 has no effect on this fact: the Court can easily presume[98] that if third parties search the name of the Plaintiff, they will do so through Google Search, and not the search engines of other service providers.

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97 Exhibit P-2.2, Webpage entitled "Search Engine Market Share Canada / Statcounter Global Stats" (accessed: 30/08/2022), online: https://gs.statcounter.com/search-engine-market-share/all/canada.

98 Art 2849 CCQ: presumptions, as a means of proof, are left to the discretion of the court and the court takes only serious, precise, and concordant presumptions into consideration.

2. The issue of other causal factors

[525] In order to negate or reduce its liability, Google points to various other factors as being causal of the Plaintiff's injury: his pre-existing hyperbolic personality and his failure to mitigate his injury.

[526] Regarding the Plaintiff's personality, Google points to the expert evidence and a finding of fact made by this Court in a previous case involving the Plaintiff.

[527] As for the expert evidence, while it is true that Dr. Frank referred to the Plaintiff as having "suffered from a dysfunctional personality trait disturbance in the domain of narcissism"[99] and Dr. Houle testified about his "narcissistic personality structure", they explained that these are personality traits but not disorders.

[528] The description explains certain ways of being and behaving, for example Dr. Frank spoke of the Plaintiff having an exaggerated need for admiration and Dr. Houle spoke of a tenacious investment of cognitive and moral energy in things and then feeling angry at those who do not validate his reactions.

[529] However, Dr. Houle made a distinction between a personality structure and a personality disorder, the latter is a pathology but the former is not. She explained that everyone has a personality structure, which determines the defence mechanism to things like the Defamatory Post. She said that 16-20% of the population has a narcissistic personality structure.

[530] As an example of the distinction, Dr. Houle pointed to the fact that the Plaintiff was preoccupied with her reaction to the Defamatory Post. This is an indication of empathy of which the pathological narcissist is not capable. She said that the Plaintiff's relationship with his children is not that of a narcissist.

[531] The Court does not consider anything in the expert evidence to give weight to the suggestion that the Plaintiff's moral injury from the Defamatory Post and the availability of it on Google Search is a particular function of his own special personality. His reaction is within the range of that of the ordinary person.

[532] In the same vein of arguments relating to the Plaintiff's special personality, Google points to a finding of fact made by Justice Bachand (now a judge of the Court of Appeal) in *Schneiderman v 3025235 Nova Scotia* where he concluded that the Plaintiff "tended to exaggerate the moral injury he sustained".[100]

[533] Justice Bachand was careful not to make a general statement about the Plaintiff's personality but rather made a conclusion arrived at on the particular facts of the case he

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99 Expert report of Dr. Frank, *supra* note 53 at 7.

100 *Schneiderman v 3025235 Nova Scotia*, 2020 QCCS 310 at para 33, aff'd *Schneiderman c 3025235 Nova Scotia (Hôtel Omni Mont-Royal),* 2021 QCCA 1496.

presided. Accordingly, the Court is wary of defining the Plaintiff by a description specific to a very different factual context and therefore rejects Google's argument.

[534] Regarding the Plaintiff's obligation to mitigate his injury,[101] Google points to a pattern of omissions by the Plaintiff upon discovering the Defamatory Post. It argues that had the Plaintiff reacted diligently and directly against the author of the Defamatory Post and the owner of the website on which it was found, his injury would be less if not non-existent.

[535] The Defamatory Post was ostensibly written by "R.", yet the Plaintiff did not ask R., the former employee who sued [Company H], whether he was the same person who made the post. Google argues that the Plaintiff should have done this.

[536] When the Plaintiff discovered the Defamatory Post in April 2007, the court proceedings instituted by Mr. S. were still active and so it was possible to broach the issue with him. Yet, the Plaintiff did nothing.

[537] The Plaintiff's explanation for this omission vacillated from not being able to prove that it was one and the same person, to not knowing how to reach Mr. S. (despite the fact that he was represented by counsel), to not wanting to have anything to do with him, to being scared of him.

[538] The explanation leaves much to be desired but, as a matter of law, the Court does not consider the Plaintiff's omission to be relevant to the legal analysis at hand.

[539] It is important to remember that the analysis is focused on Google's fault in making the link (and sometimes the STC) to the Defamatory Post available in Quebec as discovered in July 2015. This was based on a new policy (Post-Crookes Link Policy), that reversed the old policy (Pre-Crookes Link Policy).

[540] The existence of the Defamation Post on the internet was a fact in July 2015, and its authorship can even be ignored for present purposes. The possibility that the Plaintiff might have successfully negotiated its removal during the court proceedings with Mr. S. in 2007 falls outside the purview of the legal analysis, in the same way that specific harms suffered by the Plaintiff before 1 April 2015 are time-barred from compensation.

[541] What is key is the fact that Google freshly decided after *Crookes* to make the link to the Defamation Post available in Quebec. That fault is the causal element of the Plaintiff's injury, without it there is very little dissemination of the defamation.

[542] For the same reasons, the Court rejects Google's argument about the Plaintiff's omissions with RipOffReport.com and usacomplaints.com. The Court adds that while it is true that the Plaintiff did not take up the option of arbitration, as offered on the website of

[101] Art 1479 CCQ: "A person who is bound to make reparation for an injury is not liable for any aggravation of the injury that the victim could have avoided."

RipOffReport.com, the Plaintiff never consented to be on the website in the first place and therefore had no obligation to pursue this mechanism of dispute resolution, all the more so since he was being subjected to a reverse burden.

F. QUANTIFICATION OF THE PLAINTIFF'S COMPENSATORY DAMAGES

[543] The Court must now quantify the damages owed to the Plaintiff for his moral injury caused by Google's defamatory fault.

[544] As mentioned further above, the applicable principles require the Court to review analogous cases where the plaintiffs were awarded moral damages for defamation. The parties referred to the following cases:

Cases	Summary of cases
Supreme Court of Canada	
Cinar Corporation v Robinson, 2013 SCC 73	$400,000 in moral damages. The defendants breached the plaintiffs' copyright. The psychological suffering of the author of the work was deemed analogous to injury from defamation.
Gilles E. Néron Communication Marketing Inc v Chambre des notaires du Québec, 2004 SCC 53, aff'g *Société Radio-Canada c Gilles E. Néron Communication Marketing Inc.,* 2002 CanLII 41249 (QC CA)	$300,000 in moral damages.[102] CBC broadcast its journalists' response, deemed to be malicious, to a letter from the plaintiff by focusing only on the two errors in that letter, even though the plaintiff asked that the letter not be aired before he verified the two errors.
Hill v Church of Scientology of Toronto, 1995 CanLII 59 (SCC)	$300,000 in general (non-pecuniary) damages.[103] Opposing party and its lawyer falsely accused Crown counsel at a press conference on the courthouse steps of having misled a judge and breached sealing orders.
Court of Appeal	
FTQ-Construction c Lepage, 2016 QCCA 1375	$40,000 in moral damages.

[102] Fish JA, as he then was, would have reduced the amount to $150,000.

[103] This case was from Ontario and therefore decided under common law principles, but the damages assessment is considered relevant in Quebec law.

	In press conferences and then a media interview, the defendants falsely accused the plaintiff of being personally responsible for a worker's death and other wrongs.
Canoë inc c Corriveau, 2012 QCCA 109, aff'g *Corriveau c Canoe inc*., 2010 QCCS 3396	$50,000 in moral damages. Defamatory comments posted on defendants' blog in April 2007 falsely alleged, among other things, that the plaintiff lawyer wins in court because she provides prostitutes to judges. The impugned comments were removed in late September and early October, some 5 months later.
Genex Communications inc c Association québécoise de l'industrie du disque, du spectacle et de la vidéo, 2009 QCCA 2201	$80,000 in moral damages (the highest amount among the various plaintiffs in this case). The defendants used a series of derogatory epithets in describing this plaintiff on the radio on three occasions. The radio station issued an apology around a month after the first incident but the radio host insulted her twice after that.

Superior Court	
Awada c Magnan, 2018 QCCS 3023	$50,000 in moral damages. The defendant produced and posted online videos and numerous articles and columns falsely attacking the plaintiff as being part of an alleged Muslim campaign of manipulation, disinformation, and infiltration of Quebec society. These were seen thousands of times.
Duplessis c Dallaire, 2017 QCCS 2053	$35,000 in moral damages. The defendants published an online article reporting on the defendant's acquittal of criminal charges by falsely presenting her as actually guilty of those charges.
Lapierre c Sormany, 2012 QCCS 4190	$22,000 in moral damages. The defendant journalist posted false comments on another journalist's Facebook page, accessible to the latter's "Facebook friends", and said that the plaintiff, a television host, was part of an intimidation campaign. The comments were deleted after 4 days.

Laforest c Collins, 2012 QCCS 3078	$30,000 in moral damages. The defendant's online comments falsely referred to the plaintiff as dishonest and as having committed financial irregularities, in relation to a matter that was in litigation in the past but settled out of court with a confidentiality clause. There were also comments regarding the plaintiff's romantic life, as well as posting of photos of him and his address. The texts and photos posted by the defendant appeared in the blogosphere around 5000 times between 2010 and 2012.
Wade c Diop, 2009 QCCS 350, aff'd *Diop c Wade*, 2010 QCCA 2281	$75,000 in moral damages. The defendant journalist falsely referred to the plaintiff son of the Senegalese president in online comments between July and November 2005 as having appropriated or embezzled public funds, committing crimes such as currency trafficking, making threats, attempting to assault people, including the defendant himself, etc.
Croix brisée du Québec c Réseau de télévision TVA, 2004 CanLII 8167 (QC CS)	$150,000 in moral damages. The defendants broadcast in several episodes of a public affairs program numerous falsehoods and innuendoes regarding alleged fraud by the plaintiff and his non-profit organization.
Bertrand c Proulx, 2002 CanLII 23756 (QC CS)	$64,500 in moral damages. The defendant radio host used various derogatory epithets to describe the plaintiff, a lawyer in a publicized case, on a show broadcast throughout Quebec.
Éditions HMX inc. c Le Clerc, 2000 CanLII 17732 (QC CS)	$27,000 in moral damages. In his published comments, the defendant stated that the plaintiff's victory in a trial some years ago against a journalist who had accused him of being a pedophile was simply a matter of linguistics.

[545] In reviewing the above cases, the Court notes that Supreme Court cases on non-pecuniary damages for defamation (or analogous to defamation), and those cases

involving either online comments or characterizations of a sexual nature, or both, have a greater relevance to the present case.

[546] The Court frames its analysis by applying the conceptual, personal, and functional approaches, as analyzed further above.[104] These involve looking at the objective seriousness of the injury, the pain and inconvenience resulting from the injuries suffered by the Plaintiff, and the cost of measures that could provide solace to the Plaintiff.

[547] Under the **conceptual approach**, the Court gives much weight to the nature of the defamatory comments being perpetuated by Google Search, given their intensely stigmatizing character and the popular tendency to think that if someone goes out of their way to say that another person is a pederast and has been convicted of child molestation (and giving a specific year of the conviction), then it must either be true in its entirety or have some aspect of truth to it.

[548] The application of the conceptual approach leads the Court to conclude that the injury caused by the Defamatory Post is objectively of the most serious kind.

[549] To be added to the objective seriousness of the injury is the length of time, from 2015 onwards, that the link to the Defamatory Post has been made available to users in Quebec by Google Search.

[550] Still within the context of the conceptual approach, the Court adds to the duration and ongoing nature of the defamation the fact that there is nothing redeeming in Google's insistence that the link be made available. There is no redeeming issue of freedom of expression in its various facets: fair comment, public debate, etc. If there were, Google would not have applied its Pre-Crookes Link Policy in the first place given its "least censorious" approach.

[551] Google's position essentially boils down to the assertion that it makes the link available because it can, and because the Supreme Court in *Crookes* says it can. Its interpretation of the judgment is incorrect and therefore it has no defence.

[552] Through the lens of the **personal approach**, the Court gives weight to the pain resulting from the moral injuries suffered by the Plaintiff. In its analysis further above, the Court did not retain the entirety of the claim for moral injury, but the Plaintiff has established on a balance of probabilities that he has suffered and continues to suffer great pain, both as a matter of his self-respect and in his relationships with others.

[553] There is no hyperbole in this since it can be objectively ascertained that any ordinary person would suffer this kind of pain from falsely being called a child molester and a pederast, and knowing that a search engine is facilitating access to the site containing the false statements.

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[104] *Cinar*, *supra* note 79 at para 105.

[554] While Google is correct to say that no evidence exists of a third party having read the Defamatory Post since 1 April 2015, the legal analysis must take into account the unprecedented technological reality of the internet intermediary.

[555] The harm in this particular case is in the fact that the link to the Defamatory Post is always lurking in cyberspace, waiting to be captured by Google Search's dynamic and kaleidoscopic algorithms (as applied by Googlebot), in order to inject its poison far and wide.

[556] Uncertainty itself can be experienced by human beings as a form of mental torment, and that is what the Plaintiff has vividly and emotionally described.

[557] Finally, the **functional approach** requires the Court to look at the cost of measures that could provide solace to the Plaintiff.

[558] He asks for $1 million in moral damages. The Court has accepted a substantial portion of the moral injury claimed, but the fact that a part of it is rejected must be reflected in the awarded amount.

[559] The Court must also be guided by the amounts awarded in the caselaw, especially the caselaw of the Supreme Court, all the while giving weight to the unprecedented nature of the facts of this case: the combination of the grave nature of the defamatory comments, the effect on the Plaintiff given the multiple facets of a highly accomplished life, and the super-spreading communications technology of an internet intermediary like Google which is incapable, due to its dynamic algorithmic Googlebot, of predicting the keywords that will yield the Defamatory Post for users at any given moment.

[560] In light of the above, the Court awards $500,000 in compensatory damages for moral injury.

G. PUNITIVE DAMAGES

[561] The Plaintiff claims $5 million in punitive damages under article 1621 CCQ and the Quebec Charter, also referred to as exemplary damages.[105] He argues that Google intentionally and grossly violated his right to the safeguard of his honour and reputation, and respect of his private life.

[562] To convince the Court of his right to punitive damages, the Plaintiff must prove that Google had an intention to violate his rights under the Quebec Charter.[106]

[563] The Court concludes that the Plaintiff has not discharged his burden for this head of damages.

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[105] Art 1621 CCQ; Quebec Charter, *supra* note 42, ss 4, 5, 49.

[106] *Quebec (Public Curator), supra* note 78 at paras 116-122; *de Montigny v Brossard (Succession)*, 2010 SCC 51 at paras 47-49; *Lalli, supra* note 42 at para 100; *Lapierre, supra* note 77 at paras 243-260.

[564] Google had a good-faith belief that the *Crookes* case justified the change from the Pre-Crookes Link Policy to the Post-Crookes Link Policy. In the Court's view, Google is legally incorrect in that belief, entailing liability in defamation, but that does not mean it is liable for punitive damages.

H. INJUNCTION

[565] The Plaintiff's request for an injunction seeks an order from this Court requiring Google to ensure that search results on Google Search not list any websites that contain the Plaintiff's name and use his name, either given name or surname, within 15 words of the words "child molestation", "child molester(s)", or "pederast(s)".

[566] The second branch of the Plaintiff's injunction request seeks an order from this Court requiring Google to cease displaying search results where the Plaintiff's name appears on webpages from www.ripoffreport.com or www.usacomplaints.com.

[567] The scope of the injunction requested by the Plaintiff would be worldwide. In other words, the desired effect of the injunction would be to prevent the above search results no matter where in the world the search is conducted.

[568] Google contests the request for an injunction. It argues that the injunction: (a) would constitute an impermissible duty to proactively monitor content on the internet; (b) would be too broad in its effects and would have a chilling effect on protected expression; and (c) is not justified in the circumstances in light of the Plaintiff's failure to act in a timely manner.

[569] For the reasons set out below, the Court will grant the application for an injunction but only in respect of the second branch of that application, and only in respect of users in Quebec.

[570] Regarding the first branch of the injunction application, the Court concludes that the requested injunction creates the risk that Google would be prohibited from showing search results with links to news reports on the present judgment, assuming that there is no publication ban on the Plaintiff's name in connection with this lawsuit (see analysis in the next section).

[571] Given this risk, the Court cannot issue the injunction. It would constitute a self-imposed interference with public access to the process of the Court.

[572] As for the second branch, the Court dismisses the arguments in defence raised by Google, except for the question of the geographical scope of the injunction.

[573] An injunction requiring Google to cease displaying search results where the Plaintiff's name appears on the above websites does not run afoul of section 27 of the IT Framework Act, which relieves intermediaries of the requirement to monitor the content of the links that they make available.

[574] Rather, that provision must be read in conjunction with section 22 of the IT Framework Act, and as a matter of logic, since the latter provides for the possibility of giving the intermediary notice of an illicit activity in the links to which it provides access, there must be remedies to enforce the "responsibility" of the intermediary referred to in section 22. One remedy is an award of damages, and another remedy is an order for an injunction.

[575] As for Google's second argument, the Court is not convinced that requiring Google to cease displaying search results where the Plaintiff's name appears in the above websites is too broad or would have a chilling effect on protected expression.

[576] Google filed a sworn statement from Arturo Ramirez, an analyst in the Trust and Safety team at Google. He was examined out of court by the Plaintiff.

[577] The Court does not give much weight to the evidence of Mr. Ramirez since he admitted that he does not work with Google Search, he has no professional experience with it, and he has no experience with removals in connection with it.

[578] He was not aware of the facts of the present litigation or the specific injunctions being requested. He did not engage in any research or investigation to determine if a tool to comply with an injunction in the present case could be easily developed.

[579] The live searches at trial conducted with Google's representative, Mr. Nichols, showed that a search with the Plaintiff's name and the above websites yielded nothing other than the Defamatory Post. An injunction prohibiting that link would not be overinclusive.

[580] The Court notes that in *Langlois c Google Canada inc,* Justice Davis issued a provisional injunction much wider than what is requested in the present case in that he ordered Google to delete all information associating the plaintiff in that case with another person with the same name who was a known terrorist, and he ordered Google to make a photo of the plaintiff appear in the right place with his own biographical description and in making the photo of the other person appear next to that other person's biographical description.[107]

[581] There is no issue of a chilling effect on protected expression. Defamation is not protected expression, and the act of making it available to users as an intermediary is not a protected right either.

[582] As for Google's argument on timeliness, the Court does not accept that the Plaintiff should lose a right to an injunctive remedy because he took until 1 April 2016 to file his Originating Application, almost ten years after discovering the Defamatory Post, and then took another three and a half years to amend in order to seek an injunction.

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[107] *Langlois c Google Canada inc.,* 2014 QCCS 6507 at para 6.

[583] It is uncontested that the filing of the Originating Application was within the prescriptive time limit after the Plaintiff discovered in July 2015 the re-appearance of the link to the Defamatory Post on the Canadian version of Google Search. Accordingly, it is irrelevant that the Plaintiff did not ask for an injunction earlier than that.

[584] As for the time taken to amend and add a request for injunctive relief, the Plaintiff already explained this in his *Application for Permission to Amend*, stating that the realization that there is a variability in the appearance of the link to the Defamatory Post pushed him to seek a definitive remedy in the form of injunctive relief.

[585] This explanation was accepted by Justice Courchesne by way of a judgment dated 27 August 2020, in which she concluded that "it is not a new cause of action for a plaintiff to plead an evolution of the factual situation over time, and it is not a new cause of action to attach juridical consequences to this evolution".[108]

[586] The Court now addresses the worldwide scope of the injunction requested by the Plaintiff. He cites as precedent the Supreme Court of Canada judgment in *Equustek*.[109]

[587] A distinction between that case and the present one is that *Equustek* involved an action by the plaintiff for passing off and theft of trade secrets by a distributor in British Columbia who then left the jurisdiction to avoid various interlocutory injunctions issued by the courts in that jurisdiction and continue the alleged violations by operating a website selling the goods in question from an undisclosed location.

[588] In *Equustek*, while Google agreed to de-index the defendant's webpages, the defendant moved the objectionable content to new pages within its websites, circumventing the court orders, and in any event, Google had limited the de-indexing to those searches that were conducted on google.ca. Google's provision of the website of the defendant on other country-specific versions of its search engine allowed for the continuation of the violation by the defendant in that case.

[589] There was an important issue of the Canadian courts protecting the effectiveness and integrity of their own process.[110]

[590] The contrast with the present case is that there is no issue of the Superior Court in the present case having to protect the effectiveness and integrity of its own process. There is no issue of a party avoiding the process of the Superior Court. The damages

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108 *AB v Google*, 2020 QCCS 2663 at para 29.

109 *Equustek, supra* note 8, see also *Equustek Solutions Inc v Jack*, *supra* note 10, where the Supreme Court of British Columbia refused to set aside or vary the worldwide injunction despite Google having obtained, subsequent to the Supreme Court of Canada judgment, an order from the U.S. District Court in [State D] stating that the Canadian injunction is unlawful under U.S. law and unenforceable in the U.S. The Plaintiff also cites judgments of the High Court of Delhi at New Delhi in support of his request for a worldwide injunction: *Ramdev v Facebook*, (2019) CS (OS) 27/2019; *X v Union of India*, (2021) WP (CRL) 1082/2020.

110 *Equustek, ibid* at para 38; *Equustek Solutions Inc v Jack*, *ibid* at para 22.

award is based on an application of Quebec law, in connection with a period during which the Plaintiff was in Quebec and suffered injury here. Therefore, the injunction that goes along with the damages award must also be restricted to Quebec.

[591] To hold otherwise risks creating a situation where the Court assists the Plaintiff in circumventing the legal effect of section 230(c)(1) CDA and the time-bar that applies under [State A] law while the Plaintiff was living there.

[592] The combined effect of state and federal law in the present case is that the Defamatory Post is available to users of Google Search in the U.S. This is certainly an unfortunate state of affairs for the Plaintiff, but it is the result of American legislative policy.

[593] In the Court's view, to restrict the scope of the injunction to the territory of the province of Quebec strikes the right balance between international comity and the jurisdiction of the Superior Court to provide effective relief to plaintiffs.

I. PUBLICATION BAN

[594] The Plaintiff seeks a publication ban with respect to his name and that of his two children, and any information that could identify them, as well as a corresponding order for the anonymization of his name and those of his family members. Google does not contest this.

[595] The Plaintiff obtained a somewhat similar order at the outset of the proceedings, but that order will expire upon issuance of the present judgment since the applications judge, Justice Granosik, left it to the judge on the merits to determine whether his interlocutory order should be maintained as part of the final judgment, in light of the full evidentiary record.[111]

[596] Justice Granosik ordered the anonymization of the name of the Plaintiff in any publication or circulation of his judgment, and the non-publication and non-circulation of the proceedings, exhibits, and testimony until the present judgment. Google did not contest that application. No media outlet intervened in the proceedings.

[597] The Court will review the applicable principles below but underscores at the outset of the analysis a curious aspect of the Plaintiff's application for a publication ban and anonymization of the proceedings.

[598] As Justice Granosik observed, "Curieusement, bien que l'information diffamatoire demeure publique, le demandeur désire garder confidentielle non seulement sa demande mais même la conclusion de sa démarche en justice".[112]

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111 *AB c Google inc*, 2016 QCCS 4913.
112 *Ibid* at para 15.

[599] He then elaborated on this point in multiple passages later in his judgment, emphasizing the peculiarity of the application:

> [43] En effet, tel que mentionné d'emblée, le cas de figure sous étude diffère de la trame factuelle sous-jacente aux autorités et précédents soumis. En l'espèce, il s'agit d'une situation inverse; en principe, et d'habitude, les recours en dommages pour diffamation ou atteinte à la réputation sont publicisés le plus possible, et ce, suivant les désirs mêmes de la partie demanderesse! Celle-ci a en effet tout intérêt à rectifier et voir corrigée une déclaration ou une information fausse ou inexacte et qui cause un dommage réel ou potentiel à sa réputation, sa dignité ou son honneur.
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> [44] De plus, le succès obtenu dans une telle démarche en justice constitue en soi un redressement en faveur de la partie demanderesse puisqu'elle retrouvera dans une décision favorable, la confirmation *urbi et orbi* de la justesse de sa position et du caractère inexact, faux et diffamatoire de l'information qu'elle attaque.
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> […]
>
> [48] Il serait tout de même paradoxal qu'une décision judiciaire reconnaissant et confirmant l'innocence du demandeur, ainsi que le caractère particulièrement abject du site web visé par le recours, demeure confidentielle alors que l'information sous jacente reste accessible sur la toile et puisse éventuellement réapparaitre et devenir disponible pour le commun des mortels.
>
> […]
>
> [65] […] mais le principe de la publicité des débats judiciaires apparaît mieux servi par la confirmation publique que le demandeur n'a jamais été trouvé coupable d'une quelconque infraction ni n'a jamais été mis en accusation même d'une quelconque infraction, et encore d'avantage du crime qu'on lui impute sur le site internet en question [113]

[600] The above point made by Justice Granosik led him to conclude that the honour, dignity, and reputation of the Plaintiff would actually be protected and promoted by the dissemination of a judgment that vindicates his claim in connection with the Defamatory Post.

[601] Where Justice Granosik saw the issue from the same perspective as the Plaintiff was in relation to the protection of the privacy and psychological well-being of the Plaintiff from the risk of harm caused by the "loupe grossissante" of the judicial process.[114]

[602] Justice Granosik reasoned that, given that the Plaintiff would have to make proof of his injury, he would have to recount unhappy and even traumatic experiences in

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[113] *Ibid* at paras 43-44, 48, 65.
[114] *Ibid* at para 51.

connection with the Defamatory Post.[115] The experiences would include his family, his friends, or his business associates. The Defamatory Post would unjustly benefit from free publicity to the detriment of the Plaintiff. Publicity of the proceedings would risk attracting the curious or, worse, the ill-intentioned.[116]

[603] Leaving the final decision to the trial judge, Justice Granosik concluded that it was necessary to avoid the aggravation of potential harm to the Plaintiff that might arise from the pre-trial and trial proceedings if there were to be publicity of his identity. He noted that it is not unusual for the courts to order anonymization of the names of parties in case of dissemination of a judgment, where the cases involve particularly sensitive personal information.

[604] Sharing Justice Granosik's assessment that the Plaintiff's position on publicity is the opposite of what the usual defamation plaintiff seeks, i.e. a public vindication of his reputation, which is by definition a concept defined in relation to the public, the Court now turns to the application of the test for publication bans.

[605] The test begins with the provisions of the *Code of Civil Procedure* (**CCP**) and the judgment of the Supreme Court of Canada in *Sherman Estate v Donovan*, which confirm that the constitutional principle of open courts is the rule and publications bans are the exception.[117]

[606] Articles 11 and 12 CCP respectively set out the rule and the exception:

11. La justice civile administrée par les tribunaux de l'ordre judiciaire est publique. Tous peuvent assister aux audiences des tribunaux où qu'elles se tiennent et prendre connaissance des dossiers et des inscriptions aux registres des tribunaux.	**11.** Civil justice administered by the courts is public. Anyone may attend court hearings wherever they are held, and have access to court records and entries in the registers of the courts.
Il est fait exception à ce principe lorsque la loi prévoit le huis clos ou restreint l'accès aux dossiers ou à certains documents versés à un dossier.	An exception to this principle applies if the law provides for in camera proceedings or restricts access to the court records or to certain documents filed in a court record.
Les exceptions à la règle de la publicité prévues au présent chapitre s'appliquent malgré l'article 23 de la Charte des droits et libertés de la personne (chapitre C-12).	Exceptions to the principle of open proceedings set out in this chapter apply despite section 23 of the Charter of human rights and freedoms (chapter C-12).

[115] *Ibid* at para 52.
[116] *Ibid* at para 51.
[117] Arts 11 and 12 CCP; *Sherman Estate v Donovan*, 2021 SCC 25, see also *MediaQMI inc. v Kamel*, 2021 SCC 23.

12. Le tribunal peut faire exception au principe de la publicité s'il considère que l'ordre public, notamment la protection de la dignité des personnes concernées par une demande, ou la protection d'intérêts légitimes importants exige que l'audience se tienne à huis clos, que soit interdit ou restreint l'accès à un document ou la divulgation ou la diffusion des renseignements et des documents qu'il indique ou que soit assuré l'anonymat des personnes concernées.	**12.** The court may make an exception to the principle of open proceedings if, in its opinion, public order, in particular the preservation of the dignity of the persons involved or the protection of substantial and legitimate interests, requires that the hearing be held in camera, that access to a document or the disclosure or circulation of information or documents specified by the court be prohibited or restricted, or that the anonymity of the persons involved be protected.

[607] In the present case, the Plaintiff relies on article 12 CCP to ask that "disclosure or circulation of information or documents specified by the court be prohibited or restricted, or that the anonymity of the persons involved be protected."

[608] The Plaintiff's burden is to establish that this is justified by considerations of public order, the preservation of his dignity and the dignity of those in his family and close circle, or the protection of substantial and legitimate interests.

[609] In *Sherman Estate*, the Supreme Court set out the following elements that a party must establish to convince a court to exercise discretion in a way that limits the open-court presumption:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.[118]

[610] The protection of dignity is an important public interest, but the Supreme Court in *Sherman Estate* set the bar high for the dignity interest to override the open-courts principle:

> For the purposes of the test for discretionary limits on court openness, this requires the applicant to show that the information in the court file is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an

[118] *Sherman Estate, ibid* at para 38. The test builds on the criteria set down in *Sierra Club of Canada v Canada (Minister of Finance),* 2002 SCC 41; *R v Mentuck*, 2001 SCC 76; *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835. For the criterion of the protection of dignity, see *Sherman Estate, ibid* at paras 66, 68. The Quebec Court of Appeal recently applied the test in *Sherman Estate* in *Dis Son Nom c Marquis*, 2022 QCCA 841.

> exceptional order, the affected individual will suffer an affront to their dignity. [emphasis added][119]
>
> […]
>
> An applicant will only be able to establish that the risk is sufficient to justify a limit on openness in exceptional cases, where the threatened loss of control over information about oneself is so fundamental that it strikes meaningfully at individual dignity. These circumstances engage "social values of superordinate importance" beyond the more ordinary intrusions inherent to participating in the judicial process […][120]

[611] In connection with the analysis of the dignity interest, it should be kept in mind that a party that seeks the assistance of the public judicial system waives privacy, at least in part.[121]

[612] In the specific context of a defamation suit, the Court of Appeal repeated the open-court principle and the necessary waiver of privacy by the plaintiff in such a suit:

> [29] Tout demandeur qui veut obtenir une réparation contre celui qui a tenu à son endroit des propos diffamants porte nécessairement son débat sur la place publique. Il accepte alors qu'une certaine publicité entoure son action et son procès. […]
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> [30] Je reconnais que l'élargissement du bassin des personnes informées de l'identité du personnage principal […] a un effet sur le préjudice et par conséquent, sur la qualité des dommages. Cela est cependant insuffisant pour mettre de côté la règle de la publicité des procédures judiciaires. En effet, les inconvénients réels subis et l'intérêt individuel à obtenir la mesure réclamée ne visent pas ni ne peuvent être assimilés à un intérêt public. Ce n'est pas la protection de la dignité et du droit à la vie privée [du demandeur] qui est en cause, car ces garanties constitutionnelles sont déjà violées par la diffamation si elle est démontrée; on en est maintenant au stade de la réparation de la faute commise.
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> [31] Il s'ensuit que le principe de la publicité du débat judiciaire doit ici primer puisque l'intérêt [du demandeur] « *se rapporte uniquement et spécifiquement* » à lui à titre de requérant, et « *ne peut se définir en termes d'intérêt public à la confidentialité* », pour reprendre les paroles mêmes du juge Iacobucci dans l'arrêt *Sierra Club.*[122]

[613] The latter passage was cited by Justice Sheehan in the recent case of *TM c Dis son nom*, where the plaintiff in that case was seeking an injunction and damages against the administrators of a website and pages of Facebook and Instagram that were set up

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119 *Sherman Estate, ibid* at para 35.
120 *Ibid* at para 84.
121 *Lac d'Amiante du Québec Ltée v 2858-0702 Québec Inc*, 2001 SCC 51 at para 42, cited in *Sherman Estate*, *ibid* at para 58.
122 *3834310 Canada Inc. c RC*, 2004 CanLII 4122 (QC CA) at paras 29-31 (italics in original).

to accuse alleged perpetrators of sexual offences, in the context of the "Me Too" movement.[123] The plaintiff applied for permission to use only his initials in all court proceedings.

[614] Justice Sheehan rejected the application, concluding that the requested order was not necessary to counter a serious risk to the administration of justice, and the beneficial effects of such an order did not outweigh the deleterious effects on the rights and interests of the public. There was no public interest in confidentiality that prevailed over the constitutional right to a public and transparent judicial process.[124]

[615] Justice Lussier also rejected such an application in *AB c Robillard*, a similar case where the plaintiff was suing in defamation and was asking for a publication ban on his identity.[125]

[616] Applying the test from *Sherman Estate*, Justice Lussier agreed with the plaintiff that his right to dignity touched on issues of public interest rather than those of a private nature.[126]

[617] Similarly, the Court in the present case is satisfied that "the information in the court file is sufficiently sensitive such that it can be said to strike at the biographical core of the individual".[127] It certainly strikes at the biographical core of the Plaintiff, by definition, that his life history does not include a criminal conviction for child molestation.

[618] However, the Court is not satisfied that publicity of the judicial proceedings poses a serious risk to that public interest in dignity. The first criterion in the three-part test in *Sherman Estate*, outlined above, is not met.

[619] The Court sets out the following points in support of its conclusion regarding the first criterion.

[620] The legislature has set out in articles 13, 15, and 16 CCP the specific cases in which there is restricted public access to the court file, either in the form of *in camera* hearings, access-restricted records, or publication bans on identity. The Plaintiff's case does not fall within those and therefore it is the general power of the Court at article 12 CCP, quoted above, upon which the Plaintiff calls.

[621] As Justice Lussier concluded in *AB c Robillard*, the proposition that there should be a publication ban requiring the anonymization of the plaintiff's name in a defamation

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123 *TM c Dis son nom*, 2020 QCCS 3938 at para 31.

124 The matter was decided before the Supreme Court's judgment in *Sherman Estate*, *supra* note 117 at paras 38, 43, which modified the test slightly by adding the threshold requirement that a serious risk to an important interest be demonstrated.

125 *AB c Robillard*, 2021 QCCS 2550.

126 *Ibid* at para 63.

127 *Sherman Estate*, *supra* note 117 at para 35.

case involving general legal principles of that area of the law amounts to adopting a general rule on restricted access to court proceedings in such cases.[128]

[622] The Court agrees with the point made by Justice Lussier[129] that filing a defamation action can entail many negative emotions as a function of the necessary steps of the judicial process:

- All defamation cases, by definition, involve disclosing statements that plaintiffs find offensive.
- Sometimes defending parties deny or justify the offensive nature of those statements.
- Plaintiffs relive unpleasant experiences when they testify at trial and they hear the testimony of others, notably that of defendants, which can upset them deeply.
- The trial itself is a culmination of a resuscitation process of an issue that may have been forgotten over the years.
- There is always a risk that the proceedings will attract more attention than the wrong at the origin of the proceedings.
- The proof of damages often involves evidence of psychological harm, requiring the waiver of professional secrecy.
- If the claimed injury includes harm to family relationships, family members may have to testify.
- If there is a claim for economic loss, plaintiffs have to disclose their financial situation, which can be a sensitive issue for many.
- While other causes of action might entail unpleasantness in the judicial process, which is normally public, defamation actions are guaranteed to do so.

[623] The above elements come together to negate the assertion that publicity in the present case poses a serious risk to the public interest in the maintenance of the Plaintiff's dignity.

[624] To the contrary, the proceedings seek to remedy the Plaintiff's situation precisely by publicly setting the record straight and telling all users who might happen upon the Defamatory Post through Google Search that this is false and defamatory. It is through a

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128 *AB c Robillard*, *supra* note 125 at para 54.
129 *Ibid* at para 55-58.

public identification of the Plaintiff that he will be able to achieve vindication of the right to his good name.

[625] In making this point, the Court circles back to the observation made by Justice Granosik in the present file, as quoted further above, namely that plaintiffs in defamation cases normally want a judicial process that is public in order to be able to show the public that they are doing something about countering the negative effects of the defamation they claim to have suffered.

[626] There are two facts in favour of the Plaintiff that the Court gave weight to in arriving at its conclusion.

[627] Dr. Houle testified that the publicity of the proceedings, even if the judgment is clear that the Plaintiff has been the victim of defamation, would be devastating for him.

[628] She said that even though there would be some benefit to the Plaintiff in being able to confirm to the outside world that he is innocent of the accusation in the Defamatory Post, if people can link the proceedings to him, they may fall back on the flawed thinking that where there is smoke, there is fire.

[629] She agrees that another person might be comforted by a publicized judgment that clears him of wrongdoing, but her professional opinion is that the Plaintiff will not be so comforted.

[630] The Court considers that aspect to be specific to the Plaintiff's distinctive personality, and it cannot be a factor in the Court's analysis of the public interest in dignity.

[631] The other fact that the Court has taken into account is the fear expressed by one of the Plaintiff's sons that if he is publicly associated with his father through media coverage of the present judgment, this could have a very harmful effect on his career as a real-estate broker in Town B. He described this particular world as replete with gossip, where a single negative thing said about a candidate, as irrelevant and unsubstantiated as it might be, is enough to exclude that person from consideration by potential clients.

[632] The Court empathizes with the son in the description of his situation but, again, this is not enough to constitute a harm to the public interest in dignity. The Court's process cannot be held hostage to the rumour-mongering that might be found in a particular industry. It is for that industry to reform itself, and not for this Court to be the enabler of its bad habits.

[633] In light of the above, the Court also concludes that the third criterion of the test in *Sherman Estate* is not met. Any beneficial effects of a publication ban on the identity of the Plaintiff are not outweighed by the harmful effects on the rights and interests of the public, constitutional in nature, in a public judicial process, an effective administration of justice, and freedom of expression.

[634] Given the issues at stake and the ubiquitous presence of Google in contemporary life, the Court is cognizant that the present judgment might attract public attention, as it did when Justice Granosik issued his judgment.[130] Accordingly, the Court will suspend its rejection of the requested publication ban and will order the ban for a period of 45 days, to allow for the Court of Appeal to pronounce on the matter, as the case may be.

J. ACKNOWLEDGMENTS

[635] The Court thanks the lawyers for both parties for the professional, comprehensive, and vigorous presentation of their clients' respective positions. This allowed the Court to understand and analyze the true issues at play in this matter.

FOR THESE REASONS, THE COURT:

[636] **GRANTS** in part the *Re-Amended Originating Application* dated 2 September 2022;

[637] **ORDERS** the Defendant Google LLC (**Google**) to pay the Plaintiff A. B. the amount of $500,000 in damages for moral injury, bearing interest at the legal rate, and the additional indemnity under article 1619 of the *Civil Code of Québec,* from the date of service, 7 April 2016, of the *Judicial Demand Originating a Proceeding in Damages*;

[638] **ORDERS** Google to ensure that its search results not list any webpages from the domains "ripoffreport.com", "www.ripoffreport.com", "www.usacomplaints.com", or "usacomplaints.com" containing the words "A. B.", this injunction being restricted in geographical scope to all users of the search service offered by Google, Google Search, located in the province of Quebec.

[639] **ORDERS** a ban on the publication, disclosure, or circulation of the name of the Plaintiff and any information that would allow for him to be identified, including the names of his family members, in connection with the present case and accordingly, **ORDERS** the anonymization of the name of the Plaintiff and the names of his family members in any publication, disclosure, or circulation of information in connection with the present case, but this ban is valid only for a period of 45 days after the date of the present judgment.

[640] **WITH** legal costs.

AZIMUDDIN HUSSAIN, J.S.C.

[130] Exhibit P-100, Philippe Teisceira-Lessard, "Accusé à tort de pédophilie, il réclame 6 millions à Google" *La Presse* (26 November 2016).

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Dates of hearing: 14, 15, 16, 19, 20, 21, 22 September 2022.