

CANADIAN DEFAMATION VERDICTS
SEPTEMBER 2022 to AUGUST 2023

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**AWARDS ALL HEADS OF DAMAGE – ALL PLAINTIFF CASES OVER \$200,000
to 31 August 2023**

Rank	Award Total (\$)	Case Name	Decision Date
1.	*4,773,000.00	<i>Clancy v Farid</i>	2023 06 27
2.	3,000,000.00	<i>Fennimore v. Skyservice Airlines Inc.***</i>	2008 02 29
3.	2,500,000.00	<i>Paramount v Kevin J Johnston, 2019 ONSC 2910</i>	2019 05 13
4.	1,600,000.00	<i>Hill v. Church of Scientology of Toronto</i>	1991 10 03
5.	*†1,500,000.00	<i>Malak v Hanna</i>	2023 08 02
6.	1,475,000.00	<i>Grant v. Torstar Corp.****</i>	2007 02 05
7.	*1,314,207.00	<i>Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec</i>	2000 06 20
8.	950,000.00	<i>Leenen v. Canadian Broadcasting Corp.</i>	2000 04 20
9.	905,000.00	<i>Nazerali v. Mitchell **</i>	2016 05 06
10.	875,000.00	<i>Southam Inc. v. Chelekis</i>	1998 04 15
11.	809,744.81	<i>Senft v Vigneau, Whitehorse Docket 17-A0120 – NEW TRIAL ORDERED 2020 03 27</i>	2019 02 13
12.	780,000.00	<i>Hodgson v. Canadian Newspapers Co.**</i>	1998 07 07
13.	705,000.00	<i>Amalgamated Transit Union v. Independent Canadian Transit Union</i>	1997 02 28
14.	700,000.00	<i>Rutman v. Rabiowitz</i>	2016 11 30
15.	650,000.00	<i>Astley v. Verdun</i>	2011 06 14
16.	*576,000.00	<i>Newman et al v. Halstead et al</i>	2006 01 11
17.	550,000.00	<i>Alberta Health Services v Johnston</i>	2023 04 12
18.	550,000.00	<i>Duke v. Puts</i>	2001 03 15
19.	500,000.00	<i>AB v Google</i>	2023 03 28
20.	500,000.00	<i>Groh v Quocksister</i>	2021 04 29
21.	500,000.00	<i>122164 Canada Limited v. C.M. Takacs Holdings Corp. et. al.*****</i>	2012 11 07
22.	*500,000.00	<i>Simpson v. Ontario</i>	2010 08 31
23.	500,000.00	<i>Second Cup Ltd. v. Eftoda</i>	2006 07 18
24.	475,665.00	<i>Fiola v. LeBrun</i>	2002 12 12

25.	465,000.00	<i>Botiuk v. Toronto Free Press Publications Ltd.</i>	1991 06 11
26.	456,088.00	<i>Pathak v Shapira, 2019 MBQB 73</i>	2019 05 14
27.	*†435,000.00	<i>Theralase Technologies Inc. v Lanter</i>	2021 01 13
28.	433,200.00	<i>Publisystème inc. c. Québec (Procureur général)</i>	1999 02 25
29.	*425,000.00	<i>Trout Point Lodge Ltd. v. Handshoe</i>	2012 02 01
30.	*425,000.00	<i>Hunter Dickinson Inc. v. Butler</i>	2010 03 30
31.	410,000.00	<i>Élomari c. Agence spatiale canadienne</i>	2004 10 13
32.	410,000.00	<i>Magno v Balita</i>	2018 05 23
33.	400,000.00	<i>Reichmann v. Berlin</i>	2002 07 09
34.	385,000.00	<i>Salpeter v. 153986 Canada Inc.</i>	2001 03 26
35.	*350,000.00	<i>Sagman v. Politi</i>	2014 07 10
36.	350,000.00	<i>Myers v. Canadian Broadcasting Corp.**</i>	1999 11 19
37.	*344,520.75	<i>Port Alberni Shelter Society v Literacy Alberni Society</i>	2021 07 20
38.	336,100.00	<i>André c. Québec (Procureur général)</i>	1999 09 15
39.	320,000.00	<i>Johnson c. Arcand**</i>	2002 10 01
40.	300,000.00	<i>Chiasson c. Fillion**</i>	2005 04 11
41.	*300,000.00	<i>Gouin v. White</i>	2013 06 13
42.	300,000.00	<i>Hiltz and Seamone Co. v. Nova Scotia (Attorney General)</i>	1997 12 31
43.	285,000.00	<i>Clark v. East Sooke Rural Association et al</i>	2004 08 23
44.	284,681.00	<i>La Croix brisée du Québec c. Le Réseau de télévision T.V.A.</i>	2004 02 20
45.	275,000.00	<i>McKerron v. Marshall</i>	1999 08 11
46.	*257,500.00	<i>WeGo Kayaking Ltd. et al v. Sewid, et al</i>	2007 01 11
47.	250,000.00	<i>Mirzadegan v Mahdizadeh</i>	2022 10 27
48.	250,000.00	<i>Senator Tobias Enverga Jr. v. Balita Newspaper et al.</i>	2016 07 13
49.	250,000.00	<i>Leblanc c. Turpin</i>	2001 06 29
50.	*245,000.00	<i>Trout Point Lodge Ltd v. Handshoe</i>	2014 02 14
51.	*240,000.00	<i>Houseman v Harrison</i>	2020 02 11

52.	*230,000.00	<i>John v. Kim</i>	2007 08 15
53.	229,870.00	<i>Rooke v Halcrow</i>	2019 09 25
54.	220,000.00	<i>Association des médecins traitant l'obésité c. Breton</i>	2003 06 04
55.	*212,500.00	<i>Ferguson et al v. Ferstay et al</i>	2000 08 02
56.	210,000.00	<i>Sauck v Carr</i>	2022 11 08
57.	*210,000.00	<i>Curlett and Cleantek v Bhanji</i>	2021 11 18
58.	*210,000.00	<i>Manno v. Henry</i>	2008 06 10
59.	*208,000.00	<i>British Columbia Recreation and Parks Association v. Zakharia</i>	2015 09 14
60.	200,000.00	<i>Hategan v Farber</i>	2021 02 03
61.	200,000.00	<i>Kent v. Martin</i>	2016 06 08
62.	200,000.00	<i>Manson v. John Doe</i>	2013 02 06
63.	200,000.00	<i>Alleslev-Krofchak v. Valcom Ltd. et al.</i>	2009 05 25
64.	200,000.00	<i>Ager v. Canjex Publishing Ltd.**</i>	2003 06 06
65.	*200,000.00	<i>Parizeau c. Lafferty, Harwood & Partners**</i>	2003 10 24
66.	200,000.00	<i>Perron c. Québec (Procureur général)</i>	2000 09 28
67.	200,000.00	<i>Barrière c. Fillion</i>	1999 03 10
68.	200,000.00	<i>Norman v. Westcomm International Sharing Corp.</i>	1997 11 27
69.	**150,000.00	<i>Elkow v Sana</i> , 2018 ABQB 1001 Reduced 2020 ABCA 350	2018 12 10

* Award to multiple plaintiffs.

** Award increased or reduced on appeal. Amount shown in table represents reduced award after appeal.

*** Unreported jury award. Appeal to Ontario Court of Appeal was never heard, as matter was settled and appeal dismissed by consent. No details on the settlement agreement are available.

**** Trial award overturned by Ontario Court of Appeal, and a new trial ordered. Further appeal to the Supreme Court of Canada resulted in a December 2009 order that the entire matter be sent back to the trial level for complete rehearing. The new trial has not been argued. The damages award is now only an academic curiosity.

***** Default judgment set aside by Ontario Superior Court of Justice to allow the defendants to file a statement of defence.

† Awarded against multiple defendants

INTRODUCTION

This summary is focused on quantum of damages, and may assist readers in identifying notable changes in defamation damages awards.

Social media continues to be a common form of publication for defamatory statements in the cases this year. It appears that the privacy level of a social media platform may influence of the quantum of damages in defamation cases. Where the defendant has posted on an open platform, such as Instagram, or has a large number of followers, the publication has been deemed to be widespread. In such a situation, courts have deemed the damage to be greater because of the unlimited and indeterminate audience size. However, even where the publication is made to a limited group, the courts have made it clear that parties cannot defame someone casually without repercussions.

The courts emphasized the point that general damages are presumed where defamation has been found. Plaintiffs need not quantify extensive reputational harm to be awarded damages. Significant damages were awarded this year in several cases that involved egregious comments made against professionals.

DECISIONS RENDERED IN THE PAST 12 MONTHS

DATE	CASE NAME
<p>2022 10 27</p> <ul style="list-style-type: none">• \$200,000 in general damages• \$50,000 in aggravated damages	<p><i>Mirzadegan v Mahdizadeh, 2022 ONSC 6082</i></p> <p>The plaintiff was an immigration consultant who was operating an immigration service company and was retained by the defendants. The plaintiff became concerned with the accuracy of some of the defendants' documents and decided to terminate the retainer. Following the termination, the defendants began posting weekly, and sometimes daily, a series of negative reviews that made mention of the plaintiff or his company. The defendants posted over 60 reviews, in addition to numerous other comments and responses, and the posts ended up cross-posted to multiple sites on the internet.</p> <p>While assessing the damage award, the court made reference to the importance of the plaintiff's professional reputation, the volume of posts made by the defendants, the reach of the posts made by the defendants, and the fact that the defendants did not retract their comments or apologise for them. As a result, the court awarded the plaintiff \$200,000 in general damages and \$50,000 in aggravated damages. The court further awarded a permanent injunction and ordered to have the posts removed.</p>

<p>2022 11 08</p> <ul style="list-style-type: none"> • \$125,000 in general damages • \$75,000 in aggravated damages • \$10,000 in punitive damages • <u>Note</u>: There were also awards for trespassing 	<p><i>Sauck v Carr, 2022 BCSC 1949</i></p> <p>The defendant began a lengthy and malicious campaign of persecution against the plaintiff for no known reason. The campaign involved various defamatory remarks posted to the internet, alleging that the plaintiff: is a criminal, is involved with Hells Angels, has committed illegal business practices, has committed sexual assault against minors, is a user of illegal substances, and is under investigation by police. The plaintiff pled that all of these allegations were patently false.</p> <p>When considering the damage award, the court took note of the potential reach and insidious nature of online posts, as well as the fact that the defendant had not apologised at the time of trial, and more importantly, had increased the frequency of defamatory posts since the proceeding began. As a result, the court awarded the plaintiff \$125,000 in general damages, \$75,000 in aggravated damages, and \$10,000 in punitive damages.</p>
<p>2023 03 28</p> <ul style="list-style-type: none"> • \$500,000 in compensatory damages 	<p><i>AB v Google, 2023 QCCS 1167</i></p> <p>The plaintiff was falsely accused by another individual of having been convicted of a particularly heinous crime that he did not commit. The accusation was posted to a website that was then spread by the defendant, Google Search, via a hyperlink. The plaintiff made several attempts to have the defendant remove the links, none of which were entirely successful.</p> <p>The court made it clear that the defendant cannot be held liable for the behaviour of the other content providers, nor is there a positive obligation for them to monitor all of the content that its search engine refers to. However, the defendant was liable as an intermediary after becoming aware of the fact that their services were being used for an illicit activity (<i>i.e.</i>, defamatory posts) and choosing not to delist the content.</p> <p>Ultimately, the court awarded the plaintiff \$500,000 in compensatory damages for moral injury plus an injunction requiring the defendant to ensure that its search results will not list certain webpages from particular domains that hosted the defamatory posts.</p>

<p>2023 04 12</p> <ul style="list-style-type: none"> • \$300,000 in general damages and \$250,000 in aggravated damages • <u>Note</u>: also \$100,000 in general damages for harassment 	<p><i>Alberta Health Services v Johnston, 2023 ABKB 209</i></p> <p>The defendant engaged in persistent harassment of AHS employees that were enforcing public health orders during the COVID-19 pandemic. During his mayoralty campaign, the defendant posted online statements and spoke on talk shows where he expressed his intention to prosecute AHS employees for alleged “crimes” and expressed a desire to cause them financial harm. The defendant also stated that the AHS employees deserved violence to be visited upon them. Lastly, the defendant specifically targeted one of the plaintiffs, identifying her by name, sharing pictures of her and her family, and making derogatory comments towards them. The defendant blamed this individual plaintiff for causing direct harm to the people of Calgary by working for AHS and compared her actions to terrorism.</p> <p>Before considering whether the defendants actions amounted to defamation, the court first concluded that AHS is a government actor, and as such, cannot sue in defamation.</p> <p>The court went on to assess the damage award for each individual plaintiff, and awarded the individually targeted plaintiff general damages of \$300,000 to compensate her for injury to her reputation, and an additional \$250,000 in aggravated damages to address the additional harm caused to the plaintiffs by the defendant’s malicious conduct.</p>
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<p>2023 06 27</p> <ul style="list-style-type: none"> • \$4,245,000 in general damages combined for all plaintiffs • \$51,000 in aggravated damages combined for all plaintiffs • \$477,000 in punitive damages combined for all plaintiffs 	<p><i>Clancy v Farid, 2023 ONSC 2750</i></p> <p>This case arose from a claim that was brought by 53 plaintiffs. All (except one) of the plaintiffs worked as former or current executives or recruiters for tech companies, and their only connection with the defendant stemmed from the fact that the defendant applied for a position for which they were recruiting, but he was not hired. For over a decade, the defendant cyber-bullied, cyber-harassed, and defamed the plaintiffs by posting comments about them on various websites. The defendant referred to the plaintiffs individually as: pedophiles, child molesters, registered sex offenders, and rapists. The defendant also made comments that the plaintiffs had sexually transmitted diseases, committed adultery, engaged in criminal acts, and were racist, xenophobic, homophobic, abusive, incompetent, ineffective, and cruel.</p> <p>The Court took note of the fact that plaintiffs were professionals and, as such, characterized the defendant’s allegations as salacious, outrageous, malevolent, potentially career-ending, and ruinous. The court also noted that the defendant admitted that it would be difficult, if not impossible, to remove all of the comments, and this too supported a large award. Lastly, the court found that the defendant continued to deny his responsibility and refused to apologise, and ultimately deemed the defendant’s conduct and motives to be egregious – all of which justified a large award.</p> <p>In brief, the court emphasized the global nature and perpetual existence of “online” defamatory statements, and ultimately awarded one of the largest known damage awards for defamation in Canadian history (totalling \$4,773,000). The total award was made up of \$4,245,000 in general damages (ranging from \$50,000 to \$95,000 per plaintiff), \$51,000 in aggravated damages (\$1,500 to 34 of the 53 plaintiffs), and \$477,000 in punitive damages (\$9,000 to each plaintiff).</p>
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<p>2023 08 02</p> <ul style="list-style-type: none"> • \$500,000 in general damages for the individual plaintiff and \$300,000 for the plaintiff companies. • \$200,000 in aggravated damages for the individual plaintiff • \$500,000 in punitive damages for both the individual and the plaintiff companies. 	<p><i>Malak v Hanna, 2023 BCSC 1337</i></p> <p>The plaintiff companies and the defendant were competitors in a request for proposals involving a multi-year contract to provide traffic control services to BC Hydro. The defendant company launched a campaign of defamation against the plaintiff companies, and ultimately received the BC Hydro contract. The defamatory publications were posted to various internet sites and targeted the individual plaintiff (who controlled the plaintiff companies) by suggesting that he engaged in money laundering, received kickbacks, and was involved in bribery and other criminal activity. The publications also impugned the plaintiff companies.</p> <p>The court made note of the fact that the most broadly circulated publications were made on websites and blogs, and as such, defamation carried out over the Internet may be more damaging to reputation than defamation carried out by other means because of the possibility that the publications will be seen by a broader audience. The court assessed the damage awards for the personal plaintiff and the plaintiff companies separately.</p> <p>In assessing damages for the individual plaintiff, the court awarded him \$500,000 in general damages, recognizing the significant impact of the defamatory campaign on his reputation, self-esteem and social life. The court further awarded the individual plaintiff \$200,000 in aggravated damages to reflect the spiteful, malicious conduct of the defendants and the distress and humiliation the defamation caused. Lastly, the court awarded \$500,000 in punitive damages for both the plaintiff and the plaintiff companies.</p> <p>In assessing damages for the plaintiff companies, the court awarded \$300,000 in general damages to reflect the reputational impact, inferred business losses, and likely impact on their ability to operate in the flagging industry.</p>
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