



Damage Awards in Internet Defamation Cases

November 28, 2010 by Bob Tarantino

Matthew Nied has written a very interesting and well-researched article (published by the Alberta Law Review Supplement) (hat tip: slaw) calling for a reassessment of how Canadian courts treat damage awards for online defamation: "Damage Awards in Internet Defamation Cases: Reassessing Assumptions About the Credibility of Online Speech". The abstract:

There is a recent trend toward substantially higher damage awards in internet defamation cases than those involving traditional media. Higher awards are attributable to the instantaneous nature of the internet and the potential for limitless replication, as well as questionable assumptions about the credibility of internet speech when it is anonymous, presented in a style that is hyperbolic and unreasoned, or posted in a dubious setting. Because there is a reduced likelihood that readers will believe internet libel in these circumstances, plaintiffs are likely to suffer less reputational harm. Courts should mitigate damages to avoid assessing higher awards than are warranted by the gravity of the defamation.

As the article notes, Canadian courts have traditionally taken into account the character or "credibility" of the "source" of a defamatory statement in the context of *printed* statements. The Ontario Court of Appeal in Barrick Gold Corp. v. Lopehandia ((2004), 71 O.R. (3d) 416) took the view that, in the absence of countervailing evidence, the permanence of internet statements (ie the fact that the statements are effectively able to be retrieved in perpetuity) militated in favour of enhanced damages for online statements. In his post at slaw (Reconsidering Online Defamation Damages), which is well-worth reading, Omar Ha-Redeye muses that a "rebuttal presumption of higher damages for online defamation" seems appropriate. While not disagreeing entirely with his position, I'll take a slightly different tack: the internet's heterodox nature means that presumptions (rebuttable or not) should be avoided in favour of highly contextual assessments of the nature of the statement, the identity of the speaker and the subject (ie the purportedly defamed individual), and the nature of the forum in which the statement is made.

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