Across borders and behind screens: Fighting defamation in the internet age

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"Words! Mere words! How terrible they were! How clear, and vivid, and cruel! One could not escape from them. And yet what a subtle magic there was in them! … Mere words! Was there anything so real as words?"

– Oscar Wilde, The Picture of Dorian Gray

Words matter.

The law appreciates the power of words when it seeks to protect two fundamental values: freedom of expression and reputation.

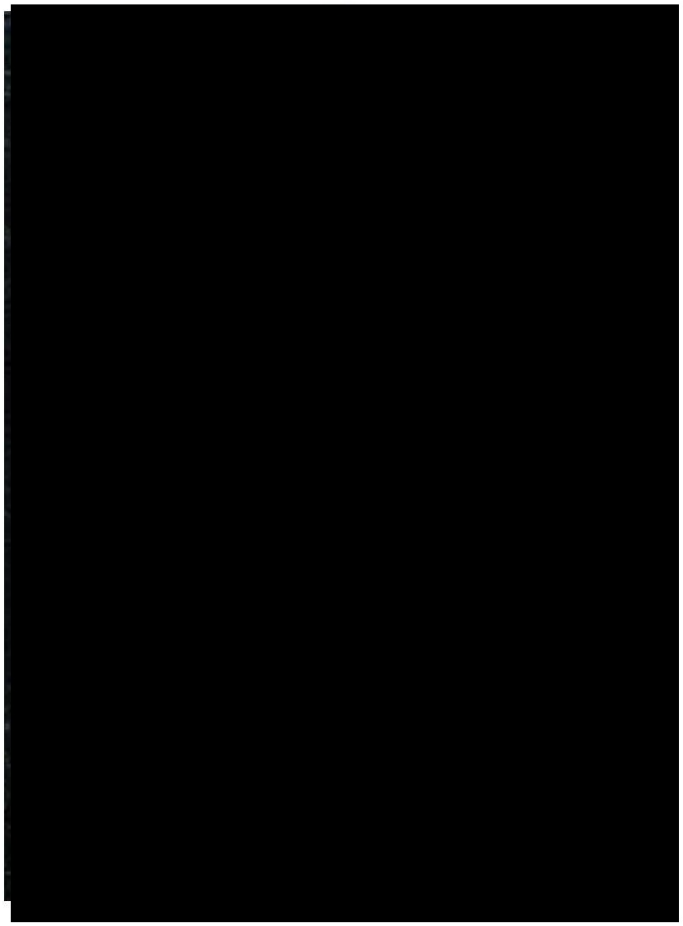
Freedom of expression is a fundamental right and a *Charter* value. But the right is not absolute. It is subject to reasonable limits. Speakers must choose their words carefully.[1]

Defamation law exists because reputation is one of the most valuable assets a person can possess.[2] "A good reputation … is an attribute that must, just as much as freedom of expression, be protected by society's laws."[3] The ability to defend it through a lawsuit is a fundamental value in a democracy.[4]

The balance between protecting freedom of expression and vindicating a meritorious defamation claim is a delicate one about which courts, legislatures, and the bar have long puzzled.

Over the past three decades, the context for expression has shifted. Defamation used to be, primarily, "a local issue driven by local community standards."[5] With the internet, people who once stood on local street corners now stand on global ones, shattering the temporal and geographic limits of speech.

As words cross borders, the internet provides practical challenges with respect to enforcement, anonymity, and general litigation strategy. This article addresses three questions that arise in internet cases: (1) jurisdiction and enforcement; (2) proceedings against anonymous defendants; and (3) the risks and realities of litigating in an internet age.



Jurisdiction and enforcement in practice

Defamation requires publication. In the case of internet defamation, the publication occurs where the statements are read, accessed, or downloaded by a third party.[6] Internet defamation can be accessed almost anywhere, a possibility that can create jurisdictional problems.

Canadian courts have jurisdiction where there is a real and substantial connection between the forum and the dispute. The place of writing is not determinative of jurisdiction, but the

place of readership and harm may be.

Even when a Canadian court has jurisdiction, it must consider whether it is the more appropriate forum. Courts will consider the location of the parties, the location of witnesses and evidence, the governing law, recognition and enforcement issues, and fairness to the parties to determine whether another forum is clearly more appropriate. Where a foreign-based defendant has deliberately targeted Canadian readers or a Canadian plaintiff's market, Canadian courts are likely to take jurisdiction and apply Canadian law.

Enforcing a Canadian defamation judgment abroad can be complex. The most prominent practical constraint for Canadians is enforcement in the United States, where speech-protection statutes make it difficult to enforce foreign defamation judgments that do not meet their constitutional standards. Practically, this means that a plaintiff who sues in Canada against a US-based publisher should plan an enforcement strategy at the outset: identify assets in Canada or in more recognition-friendly jurisdictions; consider settlement leverage; and, where appropriate, seek remedies that do not rely on foreign recognition, such as injunctions directed at conduct or intermediaries operating in or responsive to Canadian courts.

A leading example of the promise and peril of cross-border enforcement is *Google Inc. v Equustek Solutions Inc.* The Supreme Court of Canada upheld a worldwide de-indexing injunction against Google, a non-party intermediary with a presence in Canada, concluding that such relief was necessary to make the underlying orders effective.[7] The injunction required Google to remove content from search results globally because geographically limited orders can be easily circumvented online.

However, shortly thereafter, a US District Court granted an order preventing enforcement of the Canadian injunction in the United States, reasoning that US law (including statutory immunity for online intermediaries and free-speech policy) barred such enforcement.[8]

Equustek thus demonstrates a practical reality for Canadian plaintiffs: Canadian courts may grant worldwide orders against intermediaries subject to their jurisdiction, but recognition and enforcement abroad can be difficult. Effective strategy often pairs Canadian injunctive relief with asset-focused enforcement planning and targeted, platform-specific compliance mechanisms.

Finally, practicality matters. Internet defamation cases can be expensive, technically intensive, and procedurally hard-fought. Plaintiffs should budget for litigation costs that include the investigative work of identifying defendants, preserving evidence, engaging with platforms, and enforcing judgments.

The applicant must show a bona fide claim, that the third party is somehow involved in the wrongful act (typically as the conduit of communications), that the third party is the only practicable source of the information, and that the interests of justice favour disclosure.

Anonymous speakers, intermediaries, and Norwich orders

Anonymity does not confer immunity. Canadian courts regularly grant claims against anonymous, "J. Doe" defendants.[9]

Canadian courts also permit pre-action discovery tools to unmask anonymous speakers when the interests of justice require it. The Norwich order compels a third party (often a platform, website host, email provider, or internet service provider) to disclose limited identifying information about an alleged wrongdoer.

Courts apply a structured analysis when considering whether to grant a Norwich order. The applicant must show a bona fide claim, that the third party is somehow involved in the wrongful act (typically as the conduit of communications), that the third party is the only practicable source of the information, and that the interests of justice favour disclosure.[10] A court may also require the moving plaintiff to indemnify the third party for costs of compliance with the order. Privacy is considered, but it is not a shield for wrongdoing. Courts will confine production to what is necessary to identify the poster, often under protective terms and with undertakings limiting use of the data.[11]

Furthermore, timing is critical. Many intermediaries retain IP logs and other data for limited periods. Early preservation letters and, if needed, prompt motions for interim preservation orders can prevent the loss of identifying data. In terms of court materials, specificity is key. Clear URLs, timestamps, handles, and platform identifiers make applications more efficient and more likely to succeed.

Anonymity poses some challenges. But this obstacle is usually easier to overcome than the jurisdictional and enforcement issues where the wrongdoer is not in Canada.

Taking on an online defendant: risks and strategy

Recalcitrant defendants often frame litigation as an attack on free speech and escalate matters with new posts or digital pile-ons – a form of online harassment where multiple people target a person with relentless criticism or insults.

Plaintiffs should think carefully about the legal and practical risks of commencing (or even threatening) litigation.

The first risk is procedural: Anti-SLAPP (Strategic Lawsuits Against Public Participation) regimes in two provinces enable early motions to dismiss claims that unduly limit expression that relates to a matter of public interest. Plaintiffs with strong claims still succeed, particularly where the statements allege criminality, professional misconduct, or other inherently serious harms. But the motion frontloads costs, delays discovery, and can invert the typical sequencing of proof. A pre-suit assessment should candidly weigh the public interest value of the impugned speech and the seriousness of the harm.

The second risk is practical enforceability. In addition to the jurisdictional enforcement issues discussed above, a determined defendant may be impecunious or recalcitrant. Where the real objective is removal, correction, or containment, counsel might consider whether platform-reporting channels, demand letters, or negotiated retractions can achieve results faster and at a lower cost.

The third risk is amplification. Litigation can draw attention to statements that might otherwise fade. The likelihood of amplification depends on the defendant's audience, media interest, the plaintiff's public profile, and the framing of the dispute. Plaintiffs should develop a communications plan aligned with their objectives. Parallel engagement with employers, regulators, or clients may be necessary to mitigate collateral harm while the case proceeds.

There are also personal and organizational costs. Online harassment often escalates once a claim is filed. Thorough evidence preservation (such as screenshots, URL captures, and use of archival services) may be important. Plaintiffs should avoid engaging with the antagonist online. Even measured replies can be reframed and can compromise a plaintiff's position in the litigation.

Despite these risks, there are instances where defending one's reputation through a lawsuit is warranted. Some statements are so likely to cause serious harm to a person's reputation that the likelihood of harm can be inferred.[12]

Serious harm may arise when false statements do, or are likely to,

- attack the core of a person's identity, self-worth, and dignity;[13]
- allege professional misconduct or undermine one's professional integrity;[14]
- accuse individuals of criminal conduct;[15]
- constitute vicious personal attacks that have no public interest value;[16]
- influence decision makers on deciding important personal, professional, or business issues;[17] or
- invite third parties to harass or obstruct a plaintiff's free expression.[18]

Courts have recognized that repeated, targeted online defamation can be serious and compensable, and they have granted remedies, including general and aggravated damages, takedown and de-indexing orders, and costs.

Canadian law protects robust debate, fair comment, and truthful statements, but it does not protect knowingly false statements or reckless allegations that unjustly destroy reputation. Plaintiffs who ground their case in demonstrable falsehoods, serious harm, and carefully circumscribed remedies are well positioned to succeed in achieving their litigation objectives.

The practical advice is to begin with the end in mind. Define success concretely: removal, correction, damages, deterrence, or a formal vindication. Map the route with jurisdiction, assets, intermediaries, and timelines before commencing the litigation. Be disciplined about scope: Plead with precision; pursue defendants who matter; and calibrate remedies to the harm.

Conclusion

Words have incredible power. The internet changes the medium but not the principle. As the law continues to develop in the internet age, it will be with an appreciation for the fact that our words matter.

Notes

1. *Hansman v Neufeld*, 2023 SCC 14 at para 92.
2. *Bent v Platnick*, 2020 SCC 23 (*Bent*) at para 146.
3. *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 (*Hill*) at para 107.
4. *1704604 Ontario Ltd. v Pointes Protection Association*, 2020 SCC 22 (*Pointes*) at para 81; *Bent, supra* note 2 at para 4.
5. Law Commission of Ontario, *Defamation Law in the Internet Age* (Final Report, March 2020) at p 3.
6. *Haaretz.com v Goldhar*, 2018 SCC 28 at para 36.
7. *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34.
8. *Google LLC v Equustek Solutions Inc.*, 2017 WL 5000834 (US Dist Ct).
9. *Hamer v Jane Doe*, 2024 ONCA 721; *Theralase Technologies Inc. v Lanter*, 2020 ONSC 205.
10. *Lesser v Meta Platforms Inc. Et Al*, 2025 ONSC 2105.
11. *Ibid* at paras 46–47.
12. *Lascaris v B'nai Brith Canada*, 2019 ONCA 163 (*Lascaris*) at para 41; see also *Levant v Day*, 2019 ONCA 244 (*Levant*) at paras 19–21.
13. *Kielburger v Canadaland Inc.*, 2024 ONSC 2622 at para 80.
14. *Hill, supra* note 3 at paras 38, 118.
15. *Lascaris, supra* note 12 at para 41; *Levant, supra* note 12 at paras 19–21; *Rooney v Galloway*, 2024 BCCA 8 at paras 441–44.
16. *Benchwood Builders, Inc. v Prescott*, 2025 ONCA 171 at para 64. Leave to appeal to the Supreme Court of Canada granted.
17. *Marcellin v London (Police Services Board)*, 2024 ONCA 468.
18. *40 Days for Life v Dietrich*, 2024 ONCA 599.