

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner
Madam Justice Lori T. Spivak

BETWEEN:

<i>OUMER KINNARATH</i>	)	<i>I. Qureshi and</i>
	)	<i>M. MacLeod</i>
<i>(Plaintiff) Appellant</i>	)	<i>for the Appellant</i>
	)	
<i>- and -</i>	)	<i>J. E. Smith</i>
	)	<i>for the Respondent</i>
<i>MONIQUE CHOISELAT and PEOPLE’S</i>	)	<i>M. Choiselat</i>
<i>PARTY OF CANADA</i>	)	
<i>(Defendants) Respondents</i>	)	<i>R. Tapper, K.C.</i>
	)	<i>for the Respondent</i>
<i>- and -</i>	)	<i>People’s Party of Canada</i>
	)	
<i>YOGI HENDERSON, STEVEN FLETCHER,</i>	)	<i>Appeal heard:</i>
<i>TODD McDOUGALL, DEREK STORIE,</i>	)	<i>March 24, 2026 and</i>
<i>JOHN DOE, JANE DOE and ABC INC.</i>	)	<i>June 16, 2026</i>
	)	
<i>(Defendants)</i>	)	<i>Judgment delivered:</i>
	)	<i>September 28, 2026</i>

On appeal from *Kinnarath v Choiselat et al*, 2025 MBKB 34 [*Kinnarath*]

PFUETZNER JA

Introduction

[1] The trial judge allowed the plaintiff’s defamation action against the defendant, Monique Choiselat (Choiselat), and assessed general damages of \$5,000 and aggravated damages of \$5,000. However, the trial judge

dismissed the plaintiff's defamation action against the defendant, the People's Party of Canada (the PPC), and declined to recognize a new tort of malicious publication of personal identifying information (referred to as doxxing). The plaintiff appeals the assessment of damages, the dismissal of his claim against the PPC and the dismissal of his claim for damages for doxxing.

Background

[2] In 2019, Choiselat was a member of the PPC and the chief executive officer (CEO) of the PPC's Winnipeg Centre Electoral District Association (the EDA). This was an unpaid position. In July 2019, the EDA organized an event at a local art gallery in order to introduce its candidate for the 2019 federal election. The plaintiff describes himself as a "[s]ocial [j]ustice [a]dvocate" and was a critic of the PPC. He organized opposition to the PPC event and contacted the gallery owner to persuade her to cancel it, which she did—not wanting to be dragged into a political dispute.

[3] After the cancellation, on July 22, 2019, Choiselat posted several defamatory statements to her personal Facebook account, describing the plaintiff (who is a visible minority and is Muslim) as a "terrorist" and accusing the plaintiff of threatening arson to the gallery owner. One of the posts included a colour photograph of the plaintiff with a definition of terrorist, stated "THIS [sic] THE TERRORIST'S DETAILS:" and listed his name, home address (which was out of date), telephone number and email address (the original post).

[4] The defamatory statements were initially made solely on Choiselat's personal Facebook account. The defamatory statements were removed by Facebook on July 23, 2019, at the plaintiff's request.

[5] Also on July 23, 2019, Choiselat published the original post on the EDA's Twitter (now X) account with the added words "Terrorism is not Free Speech. Just saying..." (the Twitter Post). Twitter removed the Twitter Post later that day.

[6] Once executives in the national PPC office became aware of Choiselat's actions, the PPC investigated and, by August 21, 2019, it had removed her from the position of CEO of the EDA.

[7] For his part, the plaintiff took steps that brought attention to the defamatory statements. On July 25, 2019, he posted a screenshot of the Twitter Post to his personal Instagram account with his own commentary. On September 17, 2019, he again republished a screenshot of the Twitter Post to his personal Twitter account, indicating his intention to sue the defendants and others for defamation. Finally, on February 11, 2024, the plaintiff posted to his Instagram and Twitter accounts an image of a poster found in a Winnipeg bar containing his photo used in the Twitter Post and the caption "BEWARE OF FALSE PROPHETS[.] OMAR" (the 2024 Poster). The plaintiff commented:

I still can't get over the fact that someone spent hours to create this and post them all over the city. To whoever it is, thank you for believing in me, making me look sexy and bad ass and believing in my prophetic ability your attempts to hate crime a brother are really cringe, Weak and pathetic. Always and forever. It's #fuckzionism #freepalestine[.]

Found in the Bar Italia bathroom. At least they're confident in my abilities. Just think about the time and effort it took to make this. There are some bored and disturbed people out there. But that room I live in, rent free in their head is comfortable.

[8] The trial judge indicated that these comments appeared to contradict the plaintiff's evidence that he was upset by the discovery of the 2024 Poster.

[9] The plaintiff testified that, after the events of 2019, he was named the University of Winnipeg social activist of the year in 2023. He also ran for a position on the Winnipeg City Council. The trial judge noted that news media coverage at that time focussed on the plaintiff's past social media activity, which included what the trial judge described as "reprehensible posts" containing "what are clearly anti-Semitic comments and misogynist comments" (*Kinnarath* at para 64), rather than focussing on the dispute between the plaintiff, Choiselat and the PPC.

Issues and Decision

[10] The plaintiff raises three issues. First, he argues that the trial judge should have found the PPC directly liable for the Twitter Post and vicariously liable for the defamatory statements to Choiselat's personal Facebook account. He submits that the trial judge failed to consider direct liability at all and misapplied the legal test for determining vicarious liability.

[11] Next, the plaintiff asserts that the trial judge's assessment of general and aggravated damages was too low and arose from errors in principle.

[12] Finally, the plaintiff submits that the trial judge should have recognized a principled incremental tort of doxxing.

[13] As will be explained, on the application of the proper legal test, the PPC is vicariously liable for defamation for the Twitter Post, but not for the defamatory statements made by Choiselat to her personal Facebook account.

There is no basis to intervene with the quantum of damages assessed by the trial judge, nor did the trial judge err in the circumstances of this case by declining to recognize a new tort of doxxing.

Analysis

Direct and Vicarious Liability of the PPC

The Law

[14] The plaintiff claims that the PPC (a corporation) is directly or vicariously liable for Choiselat's defamatory statements. The law relating to the direct and vicarious liability of corporations for torts will be discussed in turn.

[15] As the term implies, direct liability means that the corporation itself committed the tort. The first way that direct liability will be imposed is if an employee is specifically authorized by a corporation to take the actions constituting the tort. This route to direct liability is not at issue in the present case.

[16] Direct liability is also engaged where the individual committing the tort or directing its commission is more than a mere employee but is the "directing mind and will" of the corporation (J Anthony VanDuzer, *The Law of Partnerships and Corporations*, 5th ed (Toronto: University of Toronto Press, 2026) at 250).

[17] The legal principles applicable to the determination of direct liability of a corporation for torts are essentially the same as those used to determine corporate criminal liability at common law. In *Canadian Dredge*

& *Dock Co v The Queen*, 1985 CanLII 32 (SCC), Estey J wrote, “the act in question must be done by the directing force of the company when carrying out his assigned function in the corporation” (at para 21). Later, he phrased the requirement as, “[a]cts of the *ego* of a corporation taken within the assigned managerial area” (*ibid*) [emphasis in original]. To summarize, for a corporation to be directly liable for a tort committed by an individual, that person must be the directing mind, directing force or *ego* of the corporation and acting on behalf of the corporation.

[18] The route to find vicarious liability of a corporation for the commission of a tort is different. Vicarious liability has been described as “a species of strict liability because it requires no proof of personal wrongdoing on the part of the person who is subject to it” (671122 *Ontario Ltd v Sagaz Industries Canada Inc*, 2001 SCC 59 at para 26 [*Sagaz*]).

[19] The leading case in Canada is *Bazley v Curry*, 1999 CanLII 692 (SCC) [*Bazley*], which established a two-stage test for “determining whether an employer is vicariously liable for an employee’s unauthorized, intentional wrong” (at para 41).

[20] First, a court should determine whether there are precedents that unambiguously determine whether the case is one of vicarious liability or no liability. If prior cases do not assist, the second stage of the test “is to determine whether vicarious liability should be imposed in light of the broader policy rationales behind strict liability” (*ibid* at para 15). The present case engages this second stage, as there is no precedential jurisprudence on point.

[21] In assessing whether the second stage of the test is met, courts are directed to “openly confront the question of whether liability should lie

against the employer, rather than obscuring the decision beneath semantic discussions of ‘scope of employment’ and ‘mode of conduct’” (*ibid* at para 41(1)).

[22] Justice McLachlin wrote: “The fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability. Vicarious liability is generally appropriate where there is a significant connection between the creation or enhancement of a risk and the wrong that accrues therefrom, even if unrelated to the employer’s desires” (*ibid* at para 41(2)) [emphasis in original]. In *EB v Order of the Oblates of Mary Immaculate in the Province of British Columbia*, 2005 SCC 60, Binnie J indicated that this focus on the strength of the connection between the tortfeasor’s employment and the tort “shows why vicarious liability can be imposed on an employer for an intentional tort carried out by an employee in defiance of an employer’s specific prohibition” (at para 26).

[23] This part of the analysis involves the determination of the sufficiency of the connection between the employer’s creation or enhancement of the risk and the wrong complained of. Trial judges are directed “to investigate the employee’s specific duties and determine whether they gave rise to special opportunities for wrongdoing” (*Bazley* at para 46). *Bazley* at para 41(3) sets out a non-exhaustive list of factors to consider in determining the connection between the employment and the tort, which include:

- (a) the opportunity that the enterprise afforded the employee to abuse his or her power;

(b) the extent to which the wrongful act may have furthered the employer's aims (and hence be more likely to have been committed by the employee);

(c) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise;

(d) the extent of power conferred on the employee in relation to the victim;

(e) the vulnerability of potential victims to wrongful exercise of the employee's power.

[24] As explained by McLachlin J, for these general factors to result in the imposition of vicarious liability (*ibid* at para 42)

there must be a strong connection between what the employer was asking the employee to do (the risk created by the employer's enterprise) and the wrongful act. It must be possible to say that the employer significantly increased the risk of the harm by putting the employee in his or her position and requiring him to perform the assigned tasks.

[emphasis in original]

[25] The policy considerations that underly the *Bazley* analysis involve determining "who should bear the loss of wrongdoing and how best to deter it" (at para 26). In this regard, McLachlin J wrote: "The idea that the person who introduces a risk incurs a duty to those who may be injured lies at the heart of tort law This principle of fairness applies to the employment enterprise and hence to the issue of vicarious liability" (*ibid* at para 30). However, vicarious liability must also be fair and only impose liability on the corporation or enterprise where "it is right and just" (*ibid* at para 31). See also *Sagaz* at para 31.

[26] The policy objective of the deterrence of future harm also underlies vicarious liability. Justice McLachlin describes this proposition as follows (*Bazley* at para 33):

Beyond the narrow band of employer conduct that attracts direct liability in negligence lies a vast area where imaginative and efficient administration and supervision can reduce the risk that the employer has introduced into the community. Holding the employer vicariously liable for the wrongs of its employee may encourage the employer to take such steps, and hence, reduce the risk of future harm.

See also *Sagaz* at para 32.

[27] However, ultimately it must be fair for vicarious liability to be visited upon the enterprise. This is why “[a] wrong that is only coincidentally linked to the activity of the employer and duties of the employee cannot justify the imposition of vicarious liability on the employer” (*Bazley* at para 36).

[28] In *Sagaz*, Major J observed that vicarious liability is more often imposed in an employer-employee relationship than in an employer-independent contractor relationship. The distinction arises because, in most cases of independent contractors, the “employer does not control the activities of the worker” such that “the policy justifications underlying vicarious liability will not be satisfied” (*ibid* at para 34). However, the categories of relationship that could give rise to vicarious liability are not closed.

Positions of the Parties

[29] The plaintiff submits that the trial judge failed to consider whether the PPC was directly liable for the Twitter Post despite this issue being squarely before him. The plaintiff asserts that it is a question of fact as to

whether the PPC made the Twitter Post. He asks that this Court conduct the required analysis and find the PPC directly liable for the Twitter Post, as it was made on the official EDA Twitter account by Choiselat, the CEO of the EDA, who had authority to post to that account.

[30] Second, the plaintiff argues that the PPC should be found vicariously liable for the defamatory statements that Choiselat made to her personal Facebook account. He asserts that she was an agent of the PPC in Winnipeg for certain purposes and that she had ostensible authority for the PPC, which was apparent from the Facebook posts themselves, which purported to be on behalf of the PPC. The plaintiff further argues that the trial judge did not undertake the analysis required under *Bazley* and rejected vicarious liability simply because he found that “Choiselat exceeded her authority and acted without apparent authority” (*Kinnarath* at para 48), which is not the correct test.

[31] The PPC’s position on direct and vicarious liability is contained primarily in its factum. The original hearing date for the appeal was adjourned after this Court heard oral submissions from the PPC. Between the original hearing date and the subsequent hearing date, the PPC purported to file an addendum to its factum (the addendum). The addendum was not accepted for filing; however, counsel for the plaintiff was given an opportunity to address it in reply. While I have considered the addendum, in my view, it essentially repeats the arguments contained in the factum.

[32] The PPC argues that it did nothing to harm the plaintiff. It asserts that it had policies in place to prevent the harm that occurred, but that these were deliberately contravened by Choiselat who acted without authority. The

PPC also submits that it would be “unfair in the extreme” to impose vicarious liability, as Choiselat was one of thousands of volunteers for the PPC, it knew nothing of her actions at the time and, once it was informed, it took immediate steps to remove Choiselat from her position.

Decision

[33] The trial judge did not address the issue of direct liability of the PPC in his reasons at all, despite the issue being placed before him. In my view, this was a legal error subject to the standard of review of correctness, as it was “a failure to consider a required element of a legal test” (*Housen v Nikolaisen*, 2002 SCC 33 at para 36). Indeed, it was a complete failure to apply the test. As a result, the analysis must now be undertaken by this Court.

[34] The PPC can only be directly liable for publication of the Twitter Post if it specifically authorized the publication, or if Choiselat was a directing mind of the PPC. The evidence is clear that the PPC did not specifically authorize publication of the Twitter Post.

[35] In my view, the evidence also does not support a finding that Choiselat was a directing mind of the PPC. While she had authority to act on behalf of the EDA—including to open the EDA Twitter account and to post to it—she was in a position of authority in only one of the (at that time) 338 electoral districts across Canada. As described in the PPC’s Electoral District Association Handbook (the Handbook): “An Electoral District Association (EDA) is an organization of party members residing in a certain electoral district that act as the party infrastructure at the local level” [emphasis in original]. Choiselat’s role with the EDA was not such that she could be considered an alter ego of the PPC.

[36] Turning to the question of vicarious liability, I agree with the plaintiff that the trial judge did not apply the test set out in *Bazley*, as he was required to do, which is an error in law. As a result, I will do so now. I will consider first whether the PPC is vicariously liable for the publication of the Twitter Post and, second, whether it is vicariously liable for the defamatory statements made by Choiselat on her personal Facebook account.

[37] As I have indicated, this ground of appeal will be resolved under the second stage of the *Bazley* test. While most of the jurisprudence in this area involves employment relationships, the category of relationships that will attract vicarious liability is not closed. The important question in the present case is whether the wrongful act is sufficiently related to conduct authorized by the PPC as to justify the imposition of vicarious liability. Answering this will require a review of the five factors described in *Bazley*.

[38] Turning to the first *Bazley* factor, I find that the PPC provided Choiselat an opportunity to abuse her power. The evidence was that form EC 20380 was filed with Elections Canada in 2019 to register the EDA. It was signed by Choiselat as CEO of the EDA. In addition, Maxime Bernier, the leader of the PPC, signed the form to certify that the EDA was an electoral district association of the PPC. As CEO of the EDA, Choiselat was effectively the PPC's primary representative in the Winnipeg Centre electoral district. Amongst other responsibilities, she was tasked with creating and posting to a Twitter account for the EDA. She had the password to the account and was authorized to use it.

[39] As for the second *Bazley* factor, it does not seem to me that the wrongful act of publishing the Twitter Post furthered the PPC's aims. The

Handbook provided detailed guidelines regarding the use of electoral district association social media accounts to promote the PPC, its leader and the platform in general. Defaming a critic of the PPC does not reasonably further these aims. Choiselat confirmed that she had received the Handbook and had “read it cover to cover.” This included the part of the Handbook explaining that electoral district association executives must “realize that they are viewed both by the media and the [PPC] as representatives of the [PPC] and not simply individuals” and that “[t]his means there are reasonable limitations on the freedom of expression of these official representatives.” Moreover, the Handbook stated that the various electoral district associations’ social media accounts “will be viewed by the public and the media as official [PPC] accounts/spokespeople . . . and therefore the managers of these accounts must be very careful with how they engage with the public.” The Handbook directs that electoral district association social media accounts “should NOT be used for posting . . . content that may be construed as racist, anti-Semitic, homophobic, intolerant, etc. . . . [or] content with personal attacks or that violates the privacy of any person”.

[40] The third *Bazley* factor looks at the extent to which the wrongful act was related to “friction, confrontation or intimacy” (at para 41(3)(c)) inherent in the PPC’s enterprise. At the time that the Twitter Post was made, the PPC was a recently formed political party running candidates in a federal election for the first time. It is safe to say that members of the public were engaged in learning about the PPC, the views of its leader and its platform. It is also the case that discussions between individuals with opposing political views can cause friction and devolve to confrontation. That is what occurred in the present case. In my view, the Twitter Post that was made about an outspoken

detractor of the PPC was related to the potential for friction and confrontation inherent in the PPC's enterprise.

[41] The fourth *Bazley* factor is the extent of the power conferred on Choiselat in relation to the plaintiff, which was, in my view, not insignificant. As CEO of the EDA and in accordance with the Handbook, Choiselat was responsible for creating social media accounts for the EDA and posting to them. Choiselat's evidence was that she had the password to the EDA's Twitter account and was able to post to it without prior approval from anyone else involved in the EDA or the PPC.

[42] Finally, the last *Bazley* factor is the vulnerability of potential victims to the wrongful exercise of Choiselat's power. While the plaintiff would not have specifically been on the PPC's radar, it was clear that the PPC contemplated the possibility of members of the public being the subject or target of harmful social media posts by the individuals running the electoral district associations. This is apparent from the directions in the Handbook that electoral district associations' social media accounts should not be used for personal attacks or for posting content that may be construed as racist or intolerant. Regrettably, this is precisely what came to pass.

[43] Taking into account all of these factors, I am persuaded on balance that there is a strong connection between the authority that the PPC gave to Choiselat as the CEO of the EDA and her action of making the Twitter Post. In my view, the PPC significantly increased the risk of harm to members of the public, such as the plaintiff, by putting Choiselat in her position and requiring her to manage the EDA's Twitter account. It is therefore right and just in the circumstances to allocate the risk of harm (as between the plaintiff

and the PPC) to the PPC. Accordingly, I would find the PPC vicariously liable for defamation for the Twitter Post.

[44] I turn now to the question of whether the PPC is vicariously liable for the defamatory statements made by Choiselat to her personal Facebook account. In my view, the connection between the authority given by the PPC to Choiselat and the harm caused by the posts to her personal Facebook account is not sufficiently strong to justify vicarious liability on the part of the PPC.

[45] I say this primarily because Choiselat's ability to use her personal Facebook account to defame the plaintiff was unconnected to any power conferred on her by the PPC. The first, fourth and fifth *Bazley* factors previously discussed all contemplate power that has been conferred on the tortfeasor by the enterprise in relation to the victim. As I will explain, in the circumstances of the present case, these factors are lacking.

[46] I acknowledge that there is some connection between Choiselat's personal Facebook posts and the aims, friction, confrontation or intimacy inherent in the PPC's enterprise. Her posts were motivated by her objection to the plaintiff having successfully pressured the gallery owner to cancel the EDA's planned political event. However, any individual supporter of the PPC, whether a party member or not, could have used a personal social media account to defame the plaintiff in the same manner. While Choiselat's position as CEO of the EDA created a stronger connection to the PPC, I reject the plaintiff's argument that Choiselat's posts to her personal Facebook account purported to be made on behalf of the PPC.

[47] Balancing the five factors, I am not persuaded that it is right and just to allocate the risk of harm from Choiselat's personal Facebook posts to the PPC. Although he did not apply the *Bazley* factors in his analysis, I would not interfere with the trial judge's ultimate decision in this regard.

[48] To conclude, Choiselat remains personally liable for defamation, as found by the trial judge. The PPC is vicariously liable for defamation for the Twitter Post, but not for the posts to Choiselat's personal Facebook account. I now turn to the issue of damages.

Assessment of Damages for Defamation

[49] The standard of review for an award of damages for defamation made by a jury is highly deferential. In *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) [*Hill*], the Supreme Court of Canada endorsed the statement of Robins JA in *Walker v CFTO Ltd*, 1987 CanLII 126 (ONCA), that a jury's damages award should not be interfered with on appeal unless it "is so exorbitant or so grossly out of proportion to the libel as to shock the court's conscience and sense of justice" (*Hill* at para 159).

[50] The standard of review generally applicable to a civil damage award made by a judge was described by this Court in *Dansereau v The City of Winnipeg*, 2014 MBCA 18 at para 6. In addition to an award that is inordinately high or low, an appellate court should only intervene where the damages award was arrived at through an error in law or principle, or was the result of a palpable and overriding error in the assessment of the evidence or proportioning of damages. In my view, this standard of review applies to the present case where the trial judge, sitting without a jury, assessed damages for defamation.

[51] The factors that are relevant to the assessment of general damages for defamation were identified in *Hill* and summarized by this Court in *Chartier v Bibeau*, 2022 MBCA 5 at para 41:

(1) the plaintiff's conduct, (2) their position and standing, (3) the nature of the defamatory statement, (4) the mode and extent of publication, (5) the absence or refusal of any retraction or apology, and (6) the conduct of the defendant "from the time when the libel was published down to the very moment of [the jury's] verdict" ([*Hill*] at para 182). The jury is also required to "take into account the evidence led in aggravation or mitigation of the damages" (*ibid*).

[52] In *Hill*, the Supreme Court stated that aggravated damages for defamation "may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety" (at para 188).

[53] In the present case, the trial judge considered the *Hill* factors and awarded what he described as "nominal general damages in the amount of \$5,000" (*Kinnarath* at para 73). In doing so, he found that there was no evidence of reputational harm to the plaintiff, that his status as a "social activist" (*ibid* at para 63) was not impacted and that "[h]is activism continued unabated" (*ibid* at para 72). The trial judge also considered that the plaintiff had previously posted "what are clearly anti-Semitic comments and misogynist comments" (*ibid* at para 64) to his social media, while noting the plaintiff's acknowledgement that those posts did not reflect his current views. Finally, the trial judge took into account the plaintiff's social media posts in response to the discovery of the 2024 Poster.

[54] As for aggravated damages, the trial judge identified the refusal of Choiselat to issue an apology, even up to the time of the trial, as an aggravating factor. She also “refused to withdraw her defamatory words other than the references to arson” (*ibid* at para 76). As a result, he awarded the plaintiff aggravated damages of \$5,000. He declined to award punitive damages, finding that the threshold to do so was not met.

[55] The plaintiff seeks general damages of \$25,000 to \$50,000, increased aggravated damages and an award of punitive damages. He argues that the trial judge made errors in principle that resulted in an inordinately low assessment of damages. While conceding that the plaintiff’s standing in the community and his comments and actions post-defamation are relevant, he submits that they are only two of a number of factors from *Hill* and were overemphasized by the trial judge. He also asserts that the trial judge placed the onus on the plaintiff to prove damages, when at law they are presumed. The plaintiff seeks general (but not aggravated or punitive) damages from the PPC.

[56] Choiselat’s position is that the trial judge properly considered the plaintiff’s conduct, position and standing in the community. She concedes that damages are presumed but points out that the quantum is not. Choiselat argues that it was appropriate for the trial judge to have considered the plaintiff’s “blemished history” of “reprehensible posts”, as this is directly relevant to determining his prior reputation. She also asserts that the plaintiff’s act of republishing the Twitter Post for his own purposes is a proper consideration in the assessment of damages. The PPC does not directly address the quantum of damages other than to point to the deferential standard of review.

[57] While the award in the present case is perhaps low, the range of damages for social media defamation is wide and awards are highly fact-driven (see *DeLuca v Foodbenders*, 2023 ONSC 6465; *Lu v Shen*, 2021 BCCA 95; *Skafco Limited v Abdalla*, 2020 ONSC 136; *Zed v White et al*, 2019 NBCA 86; *Kazakoff v Taft*, 2018 BCCA 241; *Hall v Razutis*, 2018 BCSC 841, aff'd 2019 BCCA 341). Moreover, the trial judge is entitled to significant deference in his determination of an appropriate award.

[58] In addition to the factors considered by the trial judge, in my view, a significant fact that weighs in favour of a nominal damages award is the plaintiff's decision to repost the Twitter Post. By doing so, he republished the defamatory material—potentially widening its dissemination.

[59] There is dated jurisprudential support for such an action resulting in mitigation of damages. In *Hearst v New Yorker Staats Zeitung*, 129 NYS 1089, 71 Misc Rep 7 (NY Sup Ct (Special Term) 1911) [*Hearst*], aff'd 129 NYS 1126 (NY Sup Ct App Div (1st Dept) 1911), the defendant published a speech given by the mayor of New York City accusing the plaintiff of fraud and forgery and claimed he should be in prison for his crimes (see *Hearst* at 1091-92). The speech was subsequently published by two newspapers that were controlled by the plaintiff (see *ibid* at 1095). The plaintiff also caused a corporation he owned to sell the speech to other newspapers for publishing (see *ibid*). The Court found that these actions were mitigating factors in assessing damages (*ibid* at 1095-96):

The republication of the article in plaintiff's newspapers and its sale to others may it seems to me be a matter for the consideration of the jury in determining the extent of the shame, mortification, and disgrace suffered by the plaintiff. The jury might properly infer from these facts that the plaintiff did not regard the

publication as reflecting seriously upon his reputation or of such a nature as to discredit him in the eyes of the community, and in this respect these facts may bear directly upon and tend to mitigate some of the elements that would enter into the determination of the amount of damages to which he may be entitled.

[60] In the result, I would not interfere with the trial judge's award of general or aggravated damages. In addition, there is no basis to intervene in the trial judge's decision not to award punitive damages. He applied the correct legal principles and made no palpable and overriding error in his assessment of the evidence.

[61] The last issue relating to damages is to determine the appropriate general damages award for the PPC's liability for defamation for the Twitter Post. For the reasons set out above, I would not depart from the trial judge's assessment of nominal general damages in the amount of \$5,000. To be clear, the award against the PPC is not in addition to the award against Choiselat. Choiselat and the PPC are jointly and severally liable to the plaintiff in the amount of \$5,000 in general damages for defamation.

Doxxing

[62] The final ground of appeal is whether the trial judge should have recognized a new tort of doxxing. In *Ahluwalia v Ahluwalia*, 2026 SCC 16 [*Ahluwalia*], the Supreme Court described a principled framework for the recognition of a new tort. Justice Kasirer, for the majority, stated that judges should "proceed with caution" (*ibid* at para 65) in recognizing a new tort and the idea "that the facts must cry out for a remedy serves as a reminder" of that (*ibid*). After thoroughly examining the jurisprudence and refining the test for

recognition of a new tort, Kasirer J provided the following summary of the principles (*ibid* at para 95):

The jurisprudence of this Court and the appellate courts, along with scholarship, point to three cumulative requirements that must be satisfied to justify the recognition of a new tort: the facts must disclose a wrongful act that offends a recognized legal interest; existing remedies must be inadequate; and the novel tort must be a proper response, in light of the role of the courts in the development of tort law.

[63] In his reasons for judgment, the trial judge declined to “create a new tort of doxxing” for the reason that “there is a legislative enacted tort to address violations of privacy” (*Kinnarath* at para 56). He made specific reference to *The Privacy Act*, CCSM c P125 [the *Privacy Act*], section 2(1), which states: “A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.” The trial judge did not have the benefit of *Ahluwalia*, which was released after his decision was delivered.

[64] The plaintiff argues that the trial judge should have recognized a new “narrow tort addressing the malicious publication of personal identifiers . . . to fill a gap where the injury is not only reputational but involves safety, security and intimidation harms.”

[65] Choiselat submits that the trial judge did not err in finding that a new tort was not required, as there was an adequate alternative remedy in the *Privacy Act*. Moreover, she asserts that the facts do not cry out for a further remedy. She points out that all of the personal identifiers she used were supplied by the plaintiff and that some were out of date. In addition, she suggests that the plaintiff’s position is incongruous, as he himself used his

social media platform “encourag[ing] his followers to contact the Gallery owner with their complaints yet criticizes Choiselat for similarly asking her followers to contact [the plaintiff] regarding his role in shutting down the rally.”

[66] I turn to the application of the *Ahluwalia* test in the present case. As to the first requirement—whether the facts disclose a wrongful act that offends a recognized legal interest—the inquiry must be constrained “to the facts and the impugned conduct before” this Court (*ibid* at para 84). In my view, the relevant facts include that the details of the plaintiff’s home address, telephone number and email address were taken by Choiselat from the plaintiff’s email signature. This was not intentionally private information—the plaintiff supplied it to anyone he corresponded with by email. Moreover, the plaintiff’s home address was out of date and there was no evidence of physical harm resulting from Choiselat’s actions.

[67] It is also relevant that the dissemination of the plaintiff’s information occurred at the same time as, and as part of, the making of the defamatory statements. This was not a stand-alone action of doxxing. While I would certainly not condone Choiselat’s act of publishing the plaintiff’s information along with her defamatory statements, the primary wrongfulness of her actions arose from the defamation. In the particular circumstances of this case, I am not persuaded that there is a wrongful act that offends a recognized legal interest, nor do the facts cry out for a remedy.

[68] In my view, existing remedies are adequate and there is no “gap” here. Indeed, the plaintiff’s arguments in support of an increased award of aggravated damages for defamation reflect that defamation was the principal

wrong. He submitted that “doxxing with personal identifiers” is a “classic aggravating [factor]” relevant to the determination of damages. I agree. However, the extent of the aggravation is limited, as the information was voluntarily supplied by the plaintiff and was only partly accurate. In the circumstances—where the doxxing occurred as part of the defamation and resulted in marginal additional harm—I am not persuaded that the second requirement of the *Ahluwalia* test (that existing remedies are inadequate) is met.

[69] In light of my conclusions on the first two requirements, there is no need to address the third requirement of the *Ahluwalia* test. I would also leave for another day the trial judge’s finding that the *Privacy Act* provides an adequate remedy for doxxing.

Conclusion

[70] I would allow the plaintiff’s appeal in part. The PPC is jointly and severally liable with Choiselat for the award of general damages in the amount of \$5,000.

[71] Trial costs were awarded to the PPC against the plaintiff. I would vacate this award in light of the plaintiff’s success against the PPC on appeal. Moreover, he is entitled to trial costs against the PPC. As trial costs were also awarded to the plaintiff against Choiselat, the plaintiff is entitled to one set of trial costs against Choiselat and the PPC, jointly and severally.

[72] In addition, I would award to the plaintiff one set of costs of the appeal against the PPC. As the plaintiff’s grounds of appeal relating to

Choiselat have failed, she is entitled to one set of costs of the appeal against the plaintiff.

Pfuetzner JA

I agree: Mainella JA

I agree: Spivak JA