

DISPARAGEMENT DENOUNCED BY DAMNING DAMAGES DECISION—VALLEY TRAFFIC SYSTEMS INC V MALAK, 2024 BCCA 370

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There are several measures businesses can take to address unfair and inaccurate online reviews; however, these are often time-consuming and expensive. One option is an action for defamation, which may be particularly appropriate where the party making the defamatory statements is a business competitor hoping to undermine the targeted business by posting unflattering comments about its business practices. Such was the case in the Ansan Traffic v Valley Traffic litigation, the subject of this comment. Ultimately, the plaintiffs were awarded a total of \$1.5 million for general, aggravated, and punitive damages, including \$300,000 to the Ansan group of companies. Although this latter \$300,000 general damages award was reportedly “the largest sum ever made to a corporation in B.C. for defamation [with] previous awards rang[ing] from \$25,000—\$150,000,” it may have been too low to be an effective deterrent.

Les entreprises disposent de plusieurs mesures contre les sondages en ligne inexacts et injustes, mais celles-ci coûtent souvent cher en temps et en argent. L'action en diffamation offre une solution particulièrement intéressante quand la diffamation vient d'une entreprise concurrente espérant nuire à sa rivale en publiant des commentaires peu flatteurs au sujet de ses pratiques commerciales. Tel était le cas dans l'affaire Ansan Traffic v Valley Traffic, qui fait l'objet du présent commentaire. Au bout du compte, les plaignants ont obtenu 1,5 million de dollars en dommages-intérêts généraux, majorés et punitifs, dont 300 000 \$ pour le groupe de sociétés Ansan. Bien que ces 300 000 \$ en dommages-intérêts généraux soient manifestement [TRADUCTION] « la plus grosse somme jamais accordée à une société britanno-colombienne dans une action en diffamation, les règlements précédents oscillant entre 25 000 et 150 000 \$ », il se pourrait bien que cette somme reste trop faible pour constituer un élément dissuasif efficace.

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I. Introduction

Social media can be a mixed bag for businesses. Social media enables businesses to extend their reach to existing and potential customers relatively inexpensively compared to traditional customer communication channels (especially for smaller firms).² However, social media also provides an outlet for (often anonymous) critics to voice displeasure with a business, and without any vetting of the underlying merits of the critique.³

There are some measures that a business can take to address unfair and inaccurate reviews; however, they are often time-consuming and expensive.⁴ While a firm can sue a person who posts defamatory online statements about its business, the author of the post may be hard to identify (because they post using a pseudonym). Even if identified, the online poster may have limited resources to pay a judgment and, of

² See e.g. Lea Dolega, Francisco Rowe & Emma Branagan, “[Going digital? The impact of social media marketing on retail website traffic, orders and sales](#)” (2021) 60 *J Retailing & Consumer Services* 1, online: <doi.org/10.1016/j.jretconser.2021.102501>; Fangfang Li, Jorma Larimo & Leonidas C Leonidou, “[Social media in marketing research: Theoretical bases, methodological aspects, and thematic focus](#)” (2023) 40(1) *Psychology & Marketing* 124, online: <doi.org/10.1002/mar.21746>; Georgia Liadeli, Francesca Sotgiu & Peeter W J Verlegh, “[A meta-analysis of the effects of brands’ owned social media on social media engagement and sales](#)” (2023) 87(3) *J Marketing* 406, online: <doi.org/10.1177/00222429221123250>.

³ Some online business review sites allow the subject of the review to post a response, but that is not a universal practice, and many unfairly critical comments are posted on internet on sites that are not, strictly speaking, dedicated customer review sites.

⁴ In the case at hand, the plaintiffs undertook extensive, and undoubtedly costly, efforts to have the defamatory publications taken down, including filing a complaint with the World Intellectual Property Organization (see [Malak v Hanna](#), 2023 BCSC 1337 at paras 200–05 [*Malak v Hanna No 2*]).

course, the business is responsible for all the transaction costs associated with litigating the matter and collecting any resulting judgment.⁵

Occasionally, the “critics” are not customers at all. Rather, they are competitors hoping to undermine a business with anonymous, unflattering, and even untrue portrayals of their competitors’ business practices. Such was the case in the *Ansan Traffic v Valley Traffic* litigation which involved two separate trials, two separate appeals, and multiple reported interlocutory applications. Ultimately, the plaintiffs were awarded a total of \$1.5 million for general, aggravated, and punitive damages, including \$300,000 to the Ansan group of companies. This latter \$300,000 general damages award was reportedly “the largest sum ever made to a corporation in B.C. for defamation [with] previous awards rang[ing] from \$25,000–\$150,000.”⁶

II. The Factual Background

The plaintiffs⁷ (whom I shall separately identify as the “Ansan Group”, referring to the Ansan corporations, and “Mr. Malak”, who was the “public face” of the business and the controlling principal of the various corporations) brought a defamation action against the defendants⁸ (whom I shall collectively identify as “Valley Traffic”) seeking general, aggravated, and punitive damages, as well as a disgorgement of profits order and a permanent injunction.

⁵ A November 2025 CanLII search using the terms “defamation” and “internet” produced a list of nearly 1,300 judicial decisions. In many cases, the defendant never attended the trial and the judgments were rather modest. In one of the better-known cases, [Barrick Gold Corp v Lopehandia](#), 2004 CanLII 12938 (ONCA), 71 OR (3d) 416, the Court of Appeal for Ontario increased the damages awarded at trial from \$15,000 to \$75,000, and also awarded \$50,000 in punitive damages (the trial judge refused to make an award on this account). The defendant did not participate in the litigation, and it is not clear if Barrick, an economically substantial litigant, ever successfully enforced the judgment. Most small businesses do not have the resources to pursue what might well prove to be a [Pyrrhic victory](#) (August Samie, “[Pyrrhic victory](#)”, online: <tinyurl.com/795xnefk> [perma.cc/L9ZL-68XA]).

⁶ [Valley Traffic Systems Inc v Malak](#), 2024 BCCA 370 at para 47 [*Valley Traffic BCCA*].

⁷ Raoul Malak, Ansan Traffic Group Ltd, Ansan Industries Ltd dba Ansan Traffic Control, Lanetec Traffic Control Inc, Western Traffic Ltd dba Flaggirls Traffic Control, and Island Traffic Services Ltd.

⁸ Remon Hanna, Philip Keith Jackman, Trevor Paine, and Valley Traffic Systems Inc. As noted in [Valley Traffic BCCA](#), *supra* note 6 at para 10: “Mr. Hanna did not attend the second trial, although he was notified of the requirement to attend [and consequently] the judge admitted parts of Mr. Hanna’s evidence from his examination for discovery.”

The individual defendants were Philip Jackman, Valley Traffic's president and controlling principal; Trevor Paine, Valley Traffic's vice-president; and "Remon Hanna ... [who] previously worked for the Ansan Group [but] left on bad terms [and later] worked with [Valley Traffic] in preparing a response to the [BC Hydro request for proposals] and later in its traffic control services business."⁹

The following summary of the events that precipitated the litigation is based on the judge's findings in the second trial, which principally dealt with remedies (the first trial addressed the liability issues). "This case concerns a campaign of defamation carried out by one of the largest traffic control services companies in British Columbia against its main competitor."¹⁰ The Ansan Group and Valley Traffic "were competitors in a request for proposals involving a lucrative multi-year contract to provide traffic control services to BC Hydro."¹¹ On February 27, 2013, BC Hydro awarded this contract to Valley Traffic.

Presumably hoping to thwart the Ansan Group from obtaining a renewal of its Telus traffic control contract, the defendants posted a highly disparaging message on the Telus "ethics line" accusing Mr. Malak of being involved with organized crime, engaging in money laundering, and in "kickback schemes." Presumably hoping to have the Ansan Group disqualified from the BC Hydro contract bidding process, the defendants posted other defamatory statements about the plaintiffs on various internet sites. In addition, the defendants e-mailed a letter (purportedly from a "whistleblower") to the BC premier and to the minister responsible for BC Hydro regarding the pending BC Hydro tendering process, accusing the plaintiffs of being involved in organized crime and engaging in several nefarious schemes. Valley Traffic estimated that the BC Hydro contract would have generated between \$7 million and \$9 million in annual revenues.¹²

These various defamatory statements and communications, posted by Mr. Hanna (using a pseudonym), were widely distributed on "various internet sites, on YouTube, on Telus' ethics complaint line, and set out in correspondence sent to then [BC] Premier Christy Clark and Rich Coleman, the minister responsible for BC Hydro."¹³ The Ansan Group learned about these disparaging third-party statements relating to its business affairs in June through to December 2012.

⁹ [Malak v Hanna No 2](#), *supra* note 4 at para 3.

¹⁰ *Ibid* at para 1 (supplementary reasons were subsequently issued regarding pre-judgment interest: [Malak v Hanna](#), 2023 BCSC 2036).

¹¹ [Malak v Hanna No 2](#), *supra* note 4 at para 2.

¹² [Malak v Hanna](#), 2017 BCSC 1739 at para 36 [*Malak v Hanna No 1*].

¹³ [Malak v Hanna No 2](#), *supra* note 4 at para 5.

During the period from 2013 to 2018, Valley Traffic paid Mr. Hanna approximately \$2.4 million, a sum the plaintiffs claimed was wholly disproportionate to the work Mr. Hanna apparently undertook. The plaintiffs alleged that, in fact, the payments made to Mr. Hanna were in furtherance of “common design”¹⁴ among the defendants to defame the plaintiffs. Following the second trial, Supreme Court of British Columbia Justice Mayer found that Messrs. Jackman, Paine, and Hanna engaged in a “common design” to defame the plaintiffs and, by so doing, diminish the plaintiffs’ prospects of obtaining the BC Hydro contract. The defendants never apologized for their behaviour,¹⁵ nor did they make any effort to retract any of the defamatory statements.¹⁶ The plaintiffs were not the only persons harmed by these statements—Mr. Malak’s partner was adversely affected,¹⁷ as was a Telus manager responsible for managing contractors (he was specifically named in the ethics hotline posting).¹⁸

Apart from the potential Telus and BC Hydro contracts, as noted by Justice Mayer in the second trial decision, “ninety percent of the Ansan Group’s work was contractual pursuant to bidding process and involved long-term commitments [and thus] losing a contract could have significant long-term consequences.”¹⁹ Valley Traffic, through its defamatory conduct, may have hoped to effectively eradicate the Ansan Group from being considered in future calls for tenders and to damage its relationships with its subcontractors.²⁰

According to a November 7, 2024 [news report](#), “[n]either Valley Traffic Systems nor Ansan still exists as an independent company [and] in 2020, Ansan was bought by Universal Group, and three months later, the same firm acquired Valley Traffic Systems.”²¹ Thus, in an odd twist, both

¹⁴ See [Botiuk v Toronto Free Press Publications Ltd](#), 1995 CanLII 60 (SCC), [1995] 3 SCR 3; [Fulowka v Pinkerton’s of Canada Ltd](#), 2010 SCC 5.

¹⁵ Justice Mayer held that the defendants’ failure to apologize did not justify an increase in the damages that would otherwise have been payable since “[i]t is not surprising that given the ongoing litigation, and the legal position taken by Mr. Jackman, Mr. Paine and [Valley Traffic] that they were not part of a common design to defame the plaintiffs, that they did not issue a retraction or apology.” ([Malak v Hanna No 2](#), *supra* note 4 at para 221). However, the defendants *could* have apologized without compromising their legal position (see [Apology Act](#), SBC 2006, c 19, s 2, a provision that the judge never referenced in his reasons).

¹⁶ [Malak v Hanna No 2](#), *supra* note 4 at para 247.

¹⁷ *Ibid* at para 214.

¹⁸ *Ibid* at para 218.

¹⁹ *Ibid* at para 197.

²⁰ See *ibid* at paras 198–99.

²¹ Matthew Claxton, “[Appeal court upholds \\$1.5 million defamation suit against Langley firm](#)”, *Langley Advance Times* (7 November 2024), online: <tinyurl.com/3s79m6k7> [perma.cc/B9LW-962V].

the plaintiff and the defendant firms now fall under a [common corporate umbrella](#).²²

III. The Trial Decision

The plaintiffs' action originally proceeded to trial in 2016 on the liability issue. The plaintiffs obtained judgment against the defendants on a joint and several basis.²³ The defendants appealed and were partially successful with a new trial being ordered.²⁴

Following the second trial, held in early 2023, Supreme Court of British Columbia Justice Mayer concluded that the defamation campaign was “designed to impact Mr. Malak and the Ansan Group companies’ reputations with the object of improving the chances of [Valley Traffic] of [*sic*] obtaining traffic control services work previously done, or potentially obtained in the future, by the Ansan Group companies.”²⁵ However, he also found that there was no evidence that the Ansan Group failed to obtain the BC Hydro contract, or that Valley Traffic obtained the contract, due to Valley Traffic’s defamation campaign.²⁶ As will be seen, I consider that finding to be problematic. As recounted in the decision following the first trial (dealing with liability),²⁷ the defendants’ misinformation campaign had two objectives. First, Valley Traffic was hoping to secure a traffic control contract with Telus, then held by the Ansan Group, which was coming up for renewal. Second, Valley Traffic hoped to secure a new traffic control contract that BC Hydro was tendering. Indeed, Valley Traffic may have had a third objective, namely, to foment the demise of the Ansan Group as a competitor.

Justice Mayer held that the impugned statements were defamatory and that the defendant’s conduct was “malicious” and “spiteful.”²⁸ Justice Mayer also determined that the defamatory statements caused Mr. Malak “distress, humiliation, indignation and anxiety.”²⁹

Given these findings, Justice Mayer issued the following damages awards:

²² See “[Universal Group](#)” website, online: <tinyurl.com/csuvb3b7> [perma.cc/YNH4-CT8L].

²³ [Malak v Hanna No 1](#), *supra* note 12.

²⁴ [Malak v Hanna](#), 2019 BCCA 106.

²⁵ [Malak v Hanna No 2](#), *supra* note 4 at para 304.

²⁶ *Ibid* at paras 288–95, 305, 311.

²⁷ [Malak v Hanna No 1](#), *supra* note 12.

²⁸ [Malak v Hanna No 2](#), *supra* note 4 at para 250.

²⁹ *Ibid*.

- Mr. Malak: \$500,000 in general damages and \$200,000 in aggravated damages;
- The Ansan Group: \$300,000 in general damages; and
- \$500,000 in punitive damages to the plaintiffs “collectively” against the defendants on a joint and several basis.³⁰

Justice Mayer also held that Valley Traffic was vicariously liable for the misconduct of the other defendants, and that all defendants were jointly and severally liable for the plaintiffs’ damages.³¹ He refused the plaintiffs’ application for a permanent injunction because there had not been any further defamatory publications since February 2013.³²

IV. The Appeal

The defendants (other than Mr. Hanna, who did not attend the second trial) appealed Justice Mayer’s decision on the grounds that he: (i) erred in finding that the defendants had a “common design” to defame the plaintiffs; (ii) otherwise made factfinding errors; (iii) made an inordinately high general damages award; (iv) erred in awarding aggravated damages without proof of actual malice; (v) erred in issuing an aggravated damages award that duplicated the general damages award; (vi) erred in awarding punitive damages; and (vii) erred in finding that the defendants were jointly and severally liable for the plaintiffs’ damages.

A three-justice panel of the British Columbia Court of Appeal unanimously dismissed the appeal, albeit with a cautionary observation regarding whether aggravated damages should be recoverable as a separate head of damages in a defamation case.³³

The appeal court held, among other things, that the “common design” among Messrs. Hanna, Jackman, and Paine was demonstrated by Valley Traffic’s \$2.4 million payment to Mr. Hanna, a payment not justified by any *bona fide* work Mr. Hanna purportedly did for Valley Traffic. This \$2.4 million payment included \$1.5 million paid to Mr. Hanna after the first trial in which the latter was identified as having authored the impugned defamatory communications.

³⁰ *Ibid* at paras 335, 337.

³¹ *Ibid* at para 336.

³² *Ibid* at para 338.

³³ [Valley Traffic BCCA](#), *supra* note 6.

As for the damages awarded, the appeal court noted that “[t]he Ansan Group did not establish actual economic loss, and in particular did not prove that they lost the BC Hydro contract due to the defamation campaign.”³⁴ Despite this finding, the appeal court affirmed the \$300,000 general damages awarded to the five “Ansan Group” corporations collectively, although also noting that the award “was high.”³⁵ The appeal court rejected the appellants’ position that Mr. Malak’s \$500,000 general damages award was inordinately high. The appeal court also rejected the appellants’ position that Mr. Malak’s \$200,000 aggravated damages award replicated, at least to a degree, his general damages award.

With respect to aggravated damages, it is axiomatic that these damages are *compensatory* in nature even though they may flow from the same conduct that results in a *punitive* damages award (which are designed to *punish and deter*, rather than *compensate for loss*).³⁶ In *Hill v Church of Scientology of Toronto* (a defamation case), the Supreme Court of Canada (“SCC”) observed that aggravated damages “may be awarded in circumstances where the defendants’ conduct has been particularly highhanded or oppressive, thereby increasing the plaintiff’s humiliation and anxiety arising from the libellous statement.”³⁷ However, before aggravated damages can be awarded in a defamation case, “there must be a finding that *the defendant was motivated by actual malice*, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff.”³⁸

In the *Valley Traffic v Malak* appeal decision, the court expressed concern about the possibility of overlapping awards as between general damages, which can properly compensate the plaintiff for their intangible losses (such as anxiety, distress, and emotional suffering), and aggravated damages which compensate for intangible losses flowing from the *malicious nature* of the defamatory comments. The appeal court considered that there was a “real risk” of double compensation when aggravated damages are awarded over and above general damages. The court continued, “... it may be time to reconsider the use of aggravated damages in defamation cases [and the court] would go so far as to encourage trial judges to [use

³⁴ *Ibid* at para 47.

³⁵ *Valley Traffic BCCA*, *supra* note 6 at para 51.

³⁶ *Vorvis v Insurance Corporation of British Columbia*, [1989] 1 SCR 1085, 1989 CanLII 93 (SCC).

³⁷ [1995] 2 SCR 1130 at para 188, 1995 CanLII 59 (SCC) [*Hill*].

³⁸ *Ibid* at para 190 [emphasis added].

general damages to compensate the plaintiff fully for the defendant's conduct to avoid] any prospect of double-counting.”³⁹

The court upheld the \$500,000 in punitive damages awarded to the plaintiffs collectively, observing that the defendants had to be punished for “expect[ing] to gain from a competitor’s reputational downfall.”⁴⁰ Finally, the appeal court affirmed Justice Mayer’s order that the damages should be payable by the defendants jointly and severally since “the conduct of all of the defendants was equally worthy of rebuke.”⁴¹

V. Defamation Doesn’t Pay ... Or Does It?

The concept of “efficient breach”, originally developed by economists, posits that the law should not discourage a party from breaching a contract if it is economically rational to do so (i.e., where the likely damages for breach are less than the costs of performing the contractual obligation). The SCC has observed that “[e]fficient breach should not be discouraged by the courts.”⁴² Although the Ansan Group’s claim was advanced under tort, not contract, law, the court’s damages awards—generous though they may be—may not necessarily disincentivize similar wrongful tortious conduct from occurring in the future. This is especially so if the estimated damages payable for the tortious conduct fall well short of the expected gains from committing the tort (for example, in this case, the present and future gains flowing from neutralizing a competitor). In other words, in some cases it may be economically “efficient” to commit a tort.

As previously noted, Valley Traffic was the successful bidder for the BC Hydro contract, which was anticipated to generate between \$7 million and \$9 million annually. Assuming a profit margin range of 10% to 20%,⁴³ the BC Hydro contract represented an annual pre-tax profit for Valley

³⁹ [Valley Traffic BCCA](#), *supra* note 6 at para 70. Despite the court’s unease, it considered itself bound by *stare decisis* to uphold the aggravated damages award (see *ibid* at para 71). However, the appeal court’s recommended methodology was applied in [David v Song](#), 2025 BCSC 231.

⁴⁰ [Valley Traffic BCCA](#), *supra* note 6 at para 76.

⁴¹ *Ibid* at para 80.

⁴² [Bank of America Canada v Mutual Trust Co](#), 2002 SCC 43 at para 31. However, whether the notion of “efficient breach” (i.e., a deliberate refusal to perform) squares with “the duty of good faith and honest performance” (see [Bhasin v Hrynew](#), 2014 SCC 71) is an open question.

⁴³ See “[General Contractor’s Guide to Average Profit Margins in the Construction Industry](#)”, online: <<https://tinyurl.com/493sjxp2>> [perma.cc/6LZU-CNYK]. See also [Zen v Readhead](#), 2011 BCSC 190 (15% profit margin accepted), online: <canlii.ca/t/2fs2k>; [Mori v Area 21](#), 2023 PAABBC 20232511 (range = 10%–25%; 15% applied), online: <tinyurl.com/mry7pw3v> [perma.cc/HVT5-UJKK].

Traffic of between \$700,000 and \$1.8 million, or about \$2.1 million to \$5.4 million over the life of a three-year contract (by way of illustration, Ansan's Telus contract was for two years plus a third option year). The total damages award was \$1.5 million, a figure less than the low end of the estimated profit range and substantially below the upper end of the range. Of course, if Valley Traffic had never been caught, not only would it have earned a substantial profit, but it may also have decimated a key competitor into the bargain.

A) Disgorgement

Disgorgement is a remedy available where the defendant has obtained a "gain" by wrongful means.⁴⁴ Unlike "restitution", the defendant's "gain" does not have to reflect a corresponding loss to the plaintiff.⁴⁵ In this case, the plaintiffs claimed "disgorgement" of Valley Traffic's profit on the BC Hydro contract, but Justice Mayer refused to issue a disgorgement remedy. Justice Mayer acknowledged that "the remedy of disgorgement of profits may be appropriate in defamation cases where the defamatory publication was made with the object of obtaining a financial gain."⁴⁶ Clearly, the defendants' defamatory campaign was solely predicated on neutralizing a competitor so that the defendants' prospects for securing valuable traffic control contracts—particularly, contracts with Telus and BC Hydro—were enhanced. The British Columbia Court of Appeal specifically recognized this malign objective, observing that the defendant had expected to gain from the Ansan Group's reputational downfall.⁴⁷

⁴⁴ [Atlantic Lottery Corp Inc v Babstock](#), 2020 SCC 19 at para 23 [*Atlantic Lottery*].

⁴⁵ *Ibid* at para 24.

⁴⁶ [Malak v Hanna No 2](#), *supra* note 4 at para 268. Justice Mayer, noting that "the plaintiffs appear to be seeking disgorgement as a means of obviating the requirement to prove special damages" (*ibid* at para 286), held that his approach was foreclosed by *Atlantic Lottery*, *supra* note 42. However, the SCC's comment Justice Mayer relied on was made in the context of an "unexceptional" *breach of contract* claim. As Justice Branch observed in [Krishnan v Jamieson Laboratories Inc](#), 2021 BCSC 1396 at para 177: "In *Atlantic Lottery*, the court did not resolve the issue of whether disgorgement is available as an alternative remedy for *tortious* conduct" [emphasis added]. An appeal of Justice Branch's decision was dismissed (see [WN Pharmaceuticals Ltd v Krishnan](#), 2023 BCCA 72), and a subsequent application to the SCC for leave to appeal was also dismissed (see [Jamieson Laboratories Ltd v Uttra Kumari Krishnan](#), 2023 CanLII 103771 (SCC), [2023] SCCA No 152). In the instant case, disgorgement would have been appropriate to ensure that the defendants did not profit from their egregious *tortious* conduct and to deter the defendants and other like-minded parties from engaging in similar conduct in the future (see e.g. [Tietz v Bridgemark Financial Corp](#), 2024 BCSC 1166). Indeed, the defendants' behaviour may well have constituted a crime under section 300 of the [Criminal Code](#), RSC 1985, c C-46.

⁴⁷ [Valley Traffic BCCA](#), *supra* note 6 at para 76; see also [Malak v Hanna No 2](#), *supra* note 4 at para 249 where Justice Mayer stated: "... the defamatory publications were made with the unjustifiable intention of damaging the reputation of Mr. Malak and the

Justice Mayer held that the plaintiffs could have obtained an equivalent monetary remedy by claiming special damages (a remedy they never sought).⁴⁸ Special damages could have been awarded, but only if the Ansan Group could have proven, on a balance of probabilities, that they would have been awarded the BC Hydro contract but for the defendants' wrongful campaign of false disparaging statements. Justice Mayer held that the plaintiffs "failed to show a sufficient causal connection between the defendants' campaign of defamation and [Valley Traffic's] success in obtaining the BC Hydro contract."⁴⁹ However, by seeking disgorgement, the plaintiffs avoided the legal obligation to prove actual loss, since they only needed to prove the defendants profited through unlawful means. I maintain this is precisely what the defendants achieved in this case.

Two key BC Hydro employees involved in awarding the flagging contract were aware of the defamatory publications prior to awarding the contract, but both considered the statements to lack credibility.⁵⁰ It should also be noted that Valley Traffic's bid price was lower than the Ansan Group's bid, a primary factor guiding the decision to award the contract to Valley Traffic.⁵¹ Nevertheless, one of the BC Hydro employees responsible for awarding the flagging contract testified "that he wanted to find out who had sent defamatory publications to BC Hydro *so that he could disqualify them from the procurement process.*"⁵² Although BC Hydro never discovered that the defendants were responsible for the defamatory statements prior to awarding the contract to Valley Traffic, the evidence suggests that if such a discovery *had occurred*, Valley Traffic would have been disqualified from the bidding process. Valley Traffic went to great lengths to preserve its anonymity, thereby preventing BC Hydro from taking the very action it would have taken (i.e., disqualification) had it known that Valley Traffic was the source of the defamatory statements. Valley Traffic was never disqualified—which would have occurred had its identity become known—and thus benefited from its subterfuge. I consider Justice Mayer's finding that there was "no causal link between the campaign of defamation and the profits earned by [Valley Traffic] or Mr. Hanna from the BC Hydro contract"⁵³ to be an overreach. However, the plaintiffs did not appeal Justice Mayer's decision and therefore the appeal court never reviewed this latter finding.

Ansan Group, thereby providing VTS with an opportunity to obtain more traffic control services work in the province. This intention was inherently malicious and clearly aimed at adversely impacting Mr. Malak."

⁴⁸ *Malak v Hanna No 2*, *supra* note 4 at para 286.

⁴⁹ *Ibid* at para 288; see also *ibid* at para 290.

⁵⁰ *Ibid* at para 291.

⁵¹ *Ibid* at para 294.

⁵² *Ibid* at para 292 [emphasis added].

⁵³ *Ibid* at para 295.

B) Aggravated Damages

Mr. Malak was awarded \$200,000 for aggravated damages, an award that was challenged on appeal because the award allegedly duplicated Mr. Malak's \$500,000 general damages award. Although the British Columbia Court of Appeal upheld the aggravated damages award, it did so with obvious reservations: "There is an extremely fine line between awarding general damages for personal hurt, stress, embarrassment, humiliation, and mental and emotional distress, and awarding aggravated damages for hurt and upset caused by the malicious nature of the defamation."⁵⁴

I agree with the court's observation that an award of general damages for defamation can, and should, account for any additional injury the plaintiff suffered due to the malicious nature of the defendant's conduct.⁵⁵ Both general and aggravated damages are compensatory in nature. In my view, it is exceedingly difficult to isolate the hurt flowing from the defamatory comments *per se*, and the additional hurt suffered due to the malicious nature of the comments. There is no principled reason why the plaintiff's entire injury cannot be assessed globally through a general damages award. Where there is a further need to "punish and deter", that should be satisfied by an award of punitive damages. However, given the decision in [Hill](#),⁵⁶ only the SCC can clarify this matter.

C) General Damages for Corporate Plaintiffs

The trial judge made separate general damages awards to Mr. Malak (\$500,000) and the Ansan Group (\$300,000) on the basis that the damage to the former's "personal and professional reputation ... is distinct from the reputational harm caused to the Ansan Group."⁵⁷ The award in favour of the Ansan Group was predicated on the reputational harm it presumably suffered and its "inferred business losses," but did not include any accounting for the loss of the BC Hydro contract.⁵⁸ This award, although characterized as "high," was upheld on appeal because the Ansan Group's existing and potential customers would likely have been reluctant to trade with a firm accused of various forms of criminality. Although aggravated damages cannot be awarded to a corporation (since a corporation, being a legal construct, cannot suffer humiliation, anxiety,

⁵⁴ [Valley Traffic BCCA](#), *supra* note 6 at para 67 [emphasis in original].

⁵⁵ *Ibid* at para 70.

⁵⁶ *Hill*, *supra* note 37.

⁵⁷ [Malak v Hanna No 2](#), *supra* note 4 at para 171.

⁵⁸ *Ibid* at para 239.

and “hurt feelings”),⁵⁹ some have argued that corporations should not be entitled to recover *general* damages for defamation.⁶⁰

I do not endorse this view. Most Canadian businesses are quite small enterprises, often essentially incorporated partnerships, with only a few employees.⁶¹ Defamatory statements about a business and its principals (who are frequently viewed as one and the same in the public’s eyes) can cause economic harm to *both*, and can result in the business suffering reputational harm, lost sales, and ultimately, a decline in the market value of the business. These adverse effects are particularly concerning in an environment where internet “trolling” of a business can have permanent and far-reaching adverse financial consequences. In *Hill* (a decision issued before the internet attained widespread use), the SCC emphasized that “[f]alse allegations can so very quickly and completely destroy a good reputation,”⁶² an observation that is even more salient in the internet age. It would be a retrograde step to deny businesses, especially small local businesses, the right to seek redress through court action for defamatory comments that cause them reputational harm. Businesses that overreach their right to sue—by filing unmeritorious defamation actions hoping to squelch adverse public criticism—can be adequately reined in through the application of provincial anti-SLAPP statutes.⁶³

In my view, the existing legal framework, which emphasizes that general damages awarded to a corporation must reflect likely reputational and economic harm, combined with an inability to recover aggravated damages, is not in need of reform.

⁵⁹ *Walker v CFTO Ltd*, 59 OR (2d) 104, 1987 CanLII 126 (ONCA); *Pinewood Recording Studios Ltd v City Tower Development Corp*, 1998 CanLII 6485 (BCCA), 61 BCLR (3d) 110; and *WeGo Kayaking Ltd v Sewid*, 2007 BCSC 49.

⁶⁰ See e.g. Hilary Young, “[Rethinking Canadian Defamation Law as Applied to Corporate Plaintiffs](#)” (2013) 46-2 UBC L Rev 529, 2013 CanLIIDocs 889, online: <canlii.ca/t/7n6hq>. Ms. Young’s principal position is that corporations should not be permitted to file defamation claims.

⁶¹ The most recent Statistics Canada data show that in 2024, there were approximately 1.1 million Canadian businesses with at least one employee. Of these businesses, 59.2% had four or fewer employees; 95.6% had fewer than fifty employees (see Government of Canada, Innovation, Science and Economic Development Canada, “[Key Small Business Statistics 2024](#)”, online: <tinyurl.com/2uymcbus>).

⁶² *Hill*, *supra* note 37 at para 108.

⁶³ See e.g. *Protection of Public Participation Act*, 2015, SO 2015, c 23 and *Protection of Public Participation Act*, SBC 2019, c 3. Further, the civil rules of court in all jurisdictions allow judges to summarily dismiss claims filed for an improper purpose or that are otherwise an abuse of process.

VI. A Final Word

As previously noted, had a disgorgement remedy been granted, the plaintiffs would have likely recovered somewhere between \$2.1 million and \$5.4 million and, additionally, could have also recovered punitive damages.⁶⁴ Even including the punitive damages award, the plaintiffs recovered less than the low end of a likely “disgorgement” range and substantially less than the upper end of the range. Although the plaintiffs ultimately prevailed, one could argue—strictly from an economic point of view—that the defendants’ misconduct ultimately proved profitable and was well worth the risk (and it would have been even more profitable if their conduct had never been uncovered). And that, in my view, is a peculiar result.

⁶⁴ See e.g. *Indutech Canada Limited v Gibbs Pipe Distributors Ltd*, 2013 ABCA 111; *Cinar Corporation v Robinson*, 2013 SCC 73; *Webb v Genaille*, 2023 BCCA 443; and *Equustek Solutions Inc v Jack*, 2024 BCCA 104.