

# Damage Awards in Internet Defamation Cases: Reassessing Assumptions About the Credibility of Online Speech

By Matthew Nied

October, 2010 —

## I. Introduction

Recent years have witnessed a trend toward substantially higher damage awards in internet defamation cases than those involving traditional media. These higher awards are largely due to the recognition that the internet's "instantaneous," "borderless," and "far-reaching"<sup>[1]</sup> mode and extent of publication has "tremendous power to harm reputation."<sup>[2]</sup> Once a message enters cyberspace, it is available to millions of people worldwide. Messages can then be instantly republished at the push of a button, leading to potentially limitless replication.

Higher awards are also attributable to questionable assumptions about the credibility of internet speech. Although the internet enables authors to disseminate their message to a wider audience, readers must still assess the believability of the message. Today, most writing on the internet is viewed with at least some skepticism, particularly in unmoderated forums where anonymous posters have free reign. While courts acknowledge that widely disseminated internet speech may not attract high damages if readers are unlikely to give it credence,<sup>[3]</sup> courts have declined to apply theories about how credibility is evaluated in traditional media defamation cases to the internet defamation context. Instead, courts have assumed that readers are unlikely to discount the credibility of internet speech even where it is anonymous, rife with hyperbole and grammatical errors, or posted in forums, chat rooms, or on blogs of questionable authority. This assumption is at odds with traditional conceptions of credibility that associate the influence of libel with its tenor, quality of writing, and its author's identity.

The following discussion questions this assumption and argues that although courts must remain cognizant of the internet's unique mode of communication, traditional conceptions of credibility should still influence damage award assessments in the internet defamation context. This is necessary to ensure that courts do not award damages in excess of actual reputational harm, which risks encouraging excessive litigation, over-penalizing defendants, and unduly curtailing freedom of expression on the internet.<sup>[4]</sup>

## II. Credibility in Traditional Defamation Cases

To assess damages in defamation cases, courts consider the nature of the statements and their impact on readers.<sup>[5]</sup> The context in which a statement is made is an important factor in this determination. Where a statement is published in a manner that appears to enhance its credibility, there is a greater likelihood that the plaintiff will suffer reputational harm.<sup>[6]</sup> This principle was recognized by the Supreme Court of Canada in *Hill* where it found that the context in which the statements were made - during a press conference on the steps of Osgoode Hall by a lawyer dressed in robes - gave the statements an instant aura of credibility and significance that justified higher damages.<sup>[7]</sup> Conversely, where a statement is published in circumstances that undermine its credibility, there is a reduced likelihood that readers will believe it.<sup>[8]</sup> This lowers the reputational harm suffered by the plaintiff and, consequently, the appropriate quantum of damages.<sup>[9]</sup> In *McElroy v. Cowper-Smith and Woodman*, the Supreme Court of Canada concluded that the defendant's mental instability and habit of making unreasoned and extravagant statements should have been taken into account by the trial court as a circumstance discounting damages because "no reasonable businessman would be likely to be affected in his dealings with [the plaintiffs] by statements coming from [that] source."<sup>[10]</sup> Since "reasonable businessmen" constituted the "most important source of potential clientele" for the plaintiffs, "their exclusion from the persons likely to be affected by" the defamation was "a mitigating circumstance" in the assessment of damages.<sup>[11]</sup>

Following on *McElroy* and *Hill*, lower courts have frequently discounted damages where statements were published in circumstances that undermined their credibility. In *Randall v. Weich*, the British Columbia Supreme Court held that "considerations which militate in favour of a moderate award" include the fact that "[t]he [defamatory] allegations ... are so lacking in substance and detail that most people would be inclined to dismiss them as the outpourings of a malcontent."<sup>[12]</sup> Likewise, in *Derrickson v. Tomat*, the British Columbia Court of Appeal set aside a large damage award because "restraint [should] be exercised when assessing damages" for statements made in the context of a political debate "replete with extravagant hyperbole, partisan viewpoints and inaccuracy [because] any libel which occurs in such a context is likely to be taken for what it is, and thus to a considerable extent deprived of what would otherwise be its sting."<sup>[13]</sup> Similarly, in *Benko v. Scott*, the Saskatchewan Court of Queen's Bench awarded lower damages because the statements were contained in "letters [that] were sent anonymously and were clearly petty, gossipy ... [and] certainly lacked the 'aura of credibility' found in *Hill*."<sup>[14]</sup>

## III. Credibility in Internet Defamation Cases

Given the frequency with which courts discount damages for printed statements published in circumstances that undermine their credibility, one might have expected the same treatment with respect to internet speech, which often tends towards the inaccurate, unreasoned, and sensationalistic. As one commentator notes, "participants in online discussions place a premium on speed ... [which] takes precedence over all other values, including not just accuracy but even grammar, spelling, and punctuation."<sup>[15]</sup> On the internet,

"[h]yperbole and exaggeration are common and 'venting' is at least as common as careful and considered argumentation."<sup>[16]</sup>

Nevertheless, in the leading case of *Barrick*,<sup>[17]</sup> a divided Ontario Court of Appeal overturned a default judgment that limited compensatory damages to \$15,000. That default judgment was based partly on the conclusion that "the emotional and unreasoned tenor of [the defendant's] messages" were such that "no reasonable business person or investor would take him seriously."<sup>[18]</sup> In that case, the defendant posted hundreds of statements on unmoderated internet message boards accusing the plaintiff of fraud, tax evasion, money laundering, and genocide. The postings were unreasoned, filled with spelling and grammatical errors, presented in an irregular combination of upper and lower case letters, and "emotional, often incoherent, and rambling."<sup>[19]</sup>

In considering the nature of the statements and their impact on readers, the trial court found that they had not caused any serious damage to the plaintiff's business reputation because they "[came] across as a diatribe or a rant" and did not "leave a reader with the impression that the writer has a credible case against [the plaintiff]."<sup>[20]</sup> While a minority of the Court of Appeal agreed with this finding, the majority disagreed and increased compensatory damages to \$75,000, holding that while the defendant's "Internet dialogue style" might not "be taken seriously in a traditional medium such as a newspaper," there was potential for the messages to be taken at face value on the internet.<sup>[21]</sup> The Court concluded that it was inappropriate to discount the credibility of internet speech because the internet is a medium with a "nature and manner of presentation [that is] evolving."<sup>[22]</sup>

The majority also held that the anonymity of the statements increased the risk that they would be believed, endorsing the decision of the Alberta Court of Queen's Bench in *Vaquero Energy Ltd. v. Weir*.<sup>[23]</sup> In that case, an anonymous posting referred to the plaintiff's chief executive officer as "insane" and "equated his conduct to that of Hitler, Saddam Hussein and Osama bin Laden."<sup>[24]</sup> The Court awarded damages of \$75,000. As Kent J. explained, "if a defamatory article is published about someone in a newspaper with a well-known political bias, a reader can take that into account."<sup>[25]</sup> However, because an anonymous statement lacks an identifiable bias, readers are "not readily able to discount [the defamatory] comments," thereby increasing the risk that they will be believed.<sup>[26]</sup> The assumption is that readers will take defamatory internet speech at face value in the absence of cues about the author's bias. This is in stark contrast with the traditional view that anonymous libel attracts lower damages because the influence of libel is tied to its author's credentials. Nevertheless, *Barrick* and *Vaquero* continue to guide damage award assessments in internet defamation cases.<sup>[27]</sup>

#### IV. Reassessing Credibility in Internet Defamation Cases

If courts have recognized that damages should be discounted in cases where traditional speech is anonymous,<sup>[28]</sup> printed in questionable publications,<sup>[29]</sup> or "so lacking in substance and detail that most people would be inclined to dismiss [it],"<sup>[30]</sup> why should courts decline to do the same with internet speech that is anonymous, profuse with hyperbole, and posted in dubious places on the web? Is it valid to assume that readers are likely to take internet speech at face value when stamped with these hallmarks of unreliability?

According to American and English courts, the answer is a resounding "no." In the leading case of *John Doe No. 1 v. Cahill*, the Supreme Court of Delaware remarked that statements in blogs and chat rooms are "by their very nature ... not a source of facts or data upon which a reasonable person would rely" and that "[r]anked in terms of reliability, there is a spectrum of sources on the internet" with "chat rooms and blogs" being "generally not as reliable as the *Wall Street Journal Online*."<sup>[31]</sup> The Court also noted that while "a reasonable person reading a newspaper in print or online ... can assume that the statements are factually based and researched," this "is not the case when the statements are made on blogs or in chat rooms."<sup>[32]</sup> Similarly, in *Highfields Capital Management L.P. v. Doe*, a California District Court remarked of the online message board where the statements were posted that "[t]here [was] so much irreverence and jocularly in the venue, so much mockery, so much venting, so much indecency and play, that no even remotely rational investor would take messages posted [t]here at face value or base investment decisions on them."<sup>[33]</sup> Likewise, in *Rocker Management LLC v. John Does 1 Through 20*, a California District Court concluded that "readers [were] unlikely to view messages posted anonymously as assertions of fact" in a context where they were "replete with grammar and spelling errors[,] most posters [did] not ... use capital letters ... [and] [m]any of the messages [were] vulgar and offensive, and [were] filled with hyperbole."<sup>[34]</sup> Also, in *SPX Corp. v. John Doe*, an Ohio District Court remarked that statements on the internet may be less credible because on the internet any one of "millions of people" can post information, "no one exerts control over the content," and "[p]seudonym screen names are the norm."<sup>[35]</sup>

English courts have reached similar conclusions. In *Smith v. ADVFN PLC*, the English High Court noted that internet bulletin board posts are unlikely to be taken seriously because they are "uninhibited, casual and ill thought-out," and "it is often obvious to causal observers that people are just saying the first thing that comes into their heads and reacting in the heat of the moment."<sup>[36]</sup>

These and other cases<sup>[37]</sup> recognize that while traditional information sources are subject to oversight, editorial review, and professional pressures to provide accurate and unbiased information, thereby giving readers an instant sense that the information is credible, the internet is different.<sup>[38]</sup> On the web, nearly anyone can be an author. The flow of information is free, unregulated, and inexpensive. Most information is rarely reviewed, edited, checked for accuracy, or branded with a mark of authority.<sup>[39]</sup> Readers are aware of these limitations,<sup>[40]</sup> and they know that the task of distinguishing credible from questionable internet speech lies almost entirely with them.<sup>[41]</sup> It is not unreasonable to conclude that readers will carry out this task in the same way that they have with print media: by evaluating the context in which the statements were made and discounting those that are anonymous, extravagant, unreasoned, or published in a questionable setting. As one commentator notes, the internet "has not introduced an entirely new epistemological framework for parsing credibility. The traditional notions that credibility turns on such factors

as the identifiability of the speaker, the speaker's authority and experience, other writings by the speaker, and any bias still hold true on the Internet as they did for print media."[\[42\]](#)

This conclusion is supported by several internet credibility studies. In one of the largest of these studies, a research team from Stanford University found that the average person judged statements on the internet to be significantly less credible when they were sensationalistic, unreasoned, or poorly written.[\[43\]](#) As participants noted, "slang or poor language harms credibility ... [and] [c]redible people tend to understate."[\[44\]](#) Studies have also demonstrated that institutional websites are perceived as being more credible than blogs or personal websites;[\[45\]](#) minor spelling, grammatical, and punctuation errors can have large negative effects on online credibility;[\[46\]](#) and internet speech posted anonymously is perceived as being less credible or, at best, no more credible, than information posted by identifiable authors.[\[47\]](#)

## V. Conclusion

In summary, there is some doubt about whether courts can validly assume that traditional conceptions of credibility are inapplicable to the internet defamation context. As one commentator notes, "[t]echnology may widely expand who can be heard but it does not necessarily follow that it should widely expand what is believed."[\[48\]](#) Even though the internet enables authors to disseminate their message to a wider audience, readers must still assess the believability of the message. While there is no dispute that internet speech has the potential to cause tremendous reputational harm, the realities of an unregulated internet imply that readers will discount 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. To do otherwise may result in an interference with freedom of expression beyond that which is necessary for the protection of the plaintiff's reputation.

## About the Author:

Matthew Nied, B. Comm. (Alberta), LL.B. (Victoria) is currently clerking at the Supreme Court of British Columbia. He will commence articles in Vancouver in September 2011. The views expressed in this article are his personal opinions and not those of the judiciary.

---

[\[1\]](#) *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 at paras. 31, 33 (C.A.) [*Barrick* (C.A.)].

[\[2\]](#) *Ibid.* at para. 32, citing Lyrrisa Barnett Lidsky, "Silencing John Doe: Defamation & Discourse in Cyberspace" (2000) 49 Duke L.J. 855 at 863.

[\[3\]](#) As Doherty J.A. of the Ontario Court of Appeal noted in his dissent in *Barrick* (C.A.), *ibid.* at para. 95, the internet's capacity to cause "instantaneous irreparable damage to the business reputation of an individual or corporation," as indicated by the majority decision of Blair J.A. (at para. 44), only arises "if the information being disseminated on the Internet is reasonably capable of belief." The British Columbia Supreme Court also recognized this point in *Griffin v. Sullivan*, 2008 BCSC 827, [2008] B.C.J. No. 1333 at para. 105 (Ql) where Halfyard J. noted that "[a]lthough the defamatory statements were published on the internet," the fact that "it [was] impossible to say ... whether anyone actually believed [them]" could have a "substantial mitigating effect" in respect of damages. This dicta was quoted with approval by Kelleher J. of the British Columbia Supreme Court in *Crookes v. Wikimedia Foundation Inc.*, 2008 BCSC 1424, [2009] 1 W.W.R. 482 at para. 21. See also Raymond E. Brown, *The Law of Defamation in Canada*, 2d ed. (Scarborough: Carswell, 1994) vol. 3 at 25-170 to 25-171.

[\[4\]](#) As stated by May L.J. in *Nail v. News Group Newspapers Ltd.*, [2004] EWCA Civ 1708, [2005] All E.R. 1040 at para. 39, "the level of damages should not be so disproportionately high that freedom of expression is unduly curtailed." Similarly, as the United States Supreme Court recognized in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 at 349, allowing plaintiffs to secure "gratuitous awards of money damages far in excess of any actual injury" undermines freedom of expression on matters of public interest. A similar point was recognized in *Jameel v. Dow Jones & Co.*, [2005] EWCA Civ 75, [2005] QB 946 at para. 40, where the English Court of Appeal noted that granting claimants substantial damages even though their reputation has not been substantially affected "may constitute an interference with freedom of expression that is not necessary for the protection of the claimant's reputation." See also Brown, *supra* note 3 at 25-27 to 25-35.

[\[5\]](#) *Hill v. Church of Scientology of Ontario*, [1995] 2 S.C.R. 1130 at paras. 182, 187 [*Hill*].

[\[6\]](#) See e.g. *Dinyer-Fraser v. Laurentian Bank of Canada*, 2005 BCSC 225, 40 B.C.L.R. (4th) 39 at para. 243, where Ballance J. stated that "[t]he [statement] coming as it did from an established national financial institution and subsidiary of a large Canadian bank, gave the message an instant aura of credibility." See also *Advocate Co. Ltd. Husbands* (1969), 5 Barb. L.R. 113 at 124 (C.A.), where Williams J. stated that "the more elevated and respected the position of the originator, the more ready attention will there be to his words and the greater the chance of real damage to the plaintiff's reputation." See also *Sclar v. Resnick*, 185 N.W. 273 at 277 (Iowa Sup. Ct. 1921), where Faville J. stated that "[t]here is no question that evidence of the general standing of a defendant in a slander suit as a man of reputation and influence in the community is admissible as bearing on the extent that the plaintiff might be damaged by the utterances of such a person rather than by one obscure, inconspicuous, and unknown."

[\[7\]](#) *Hill*, *supra* note 5 at para. 168.

[\[8\]](#) See e.g. *Kohuch v. Wilson*, 71 Sask. R. 33 at para. 151 (Q.B.), where McLellan J stated that

in assessing [the plaintiffs' reputational] loss I am satisfied that many people who were acquainted with the plaintiffs and the defendant were cognizant of the fact that the defendant was prone to making unreasoned and even ridiculous statements concerning the plaintiffs. Most of her statements were such that they would not be taken seriously by the most reasonable minded people.

See also *Vogel v. Canadian Broadcasting Corp.*, [1982] 3 W.W.R. 97 at 178 (B.C.S.C.) [*Vogel*] where, in assessing damages, Esson J. stated that

[t]he identity of the accuser is an important factor. The accusation might have been made by some nasty little tabloid scandal sheet and have done no harm. Strident scandal-mongering is the stock in trade of certain publications and, because it is, they have little or no effect upon the opinions of anyone whose good opinion matters. To their ugly accusations, it is a sufficient response to say: 'Regard the source.'

See also *Hodgson v. Canadian Newspapers Co.* (1998), 39 O.R. (3d) 235 at 403 (Ct. J. (Gen. Div.)), where Lane J. stated that "[t]he impact of the libels was no doubt increased by their source: one of this country's most prestigious and influential newspapers, with a reputation itself for integrity, a substantial circulation in the greater Toronto area and a national circulation as well." Moreover, the Court went on to note that "[t]he placement of the first article, at the top of the front page complete with bold headline and sub-headline, presented it as a major story and no doubt attracted thereby the attention of many who would have passed it by if it had been less prominent" (at 403).

[9] The credibility of an allegedly defamation statement is also relevant to the question of whether the statement is defamatory. If a statement is not believable, it will not be defamatory because it will not lower the plaintiff's reputation in the estimation of ordinary, reasonable members of society: see *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067 at 1079. However, even if a statement is found credible enough to be defamatory, it may subsequently be found not credible enough to warrant significant damages.

[10] [1967] S.C.R. 425 at 427 [*McElroy*].

[11] *Ibid.*

[12] [1982] B.C.J. No. 862 at para. 22 (S.C.) (QL) [*Randall*]. Justice Esson continued: "as a consequence, [the defendant's] credibility was not great. If the accuser lacks credibility, his accusations against persons of good character and reputation for integrity are likely to do little harm" (at para. 24).

[13] [1992] W.W.R. 724 at para. 59 (B.C.C.A.); a similar position was taken in *Masters v. Fox* (1978), 85 D.L.R. (3d) 64 at 76 (B.C.S.C.) [*Masters*], where MacFarlane J. recognized that the defamatory statements at issue would not have been taken very seriously because "[t]he author ... was known to be extremely partisan ... regularly wrote in strong terms ... and [t]he [defamatory statements] [were] published in a corner of the newspaper nicknamed by local residents as 'Kooks' Corner."

[14] 2007 SKQB 176, 295 Sask. R. 202 at para. 29 [*Benko*].

[15] Lyrissa Barnett Lidsky, "Silencing John Doe: Defamation & Discourse in Cyberspace" (2000) 49 Duke L.J. 855 at 862-63.

[16] *Ibid.* at 863.

[17] *Barrick* (C.A.), *supra* note 1.

[18] [2003] O.J. No. 5837 at para. 49 (Sup. Ct. J.) (QL) [*Barrick* (Sup. Ct. J.)].

[19] *Barrick* (C.A.), *supra* note 1 at para. 16. The following, from *Barrick* (Sup. Ct. J.), *ibid.* at para. 8, is a representative example:

That is 118 million reasons to MISTRUST 100% of Barrick's financials WORLDWIDE >>> ... Whoever is the ROYALTY OWNER ... will be our JAIL TARGET! ... Barrick can buy a Space Shuttle for the crownies to FLY-RUN away ... But neither Barrick nor Minerva Nevada S.A. ... own "Pascua Lama" in Chile ... NEVER DID since 1996 ... All the "TAXABLE EXPENSES" of ABX in Chile since 1997 to date are a FICTIONAL FABRICATION to MONEY LAUNDER and to PAUNDER shareholders MONEY! ... We just feel SORRY for the Pension Funds, Pension Plans, Banks, Institutional Investors and shareholders at large, that believed this CRIMINAL GANG, when they purported to be ... BUILT TO LAST ... More like BUILT on CRIME, THEFT, GENOCIDE, and cheating on taxes worldwide. This Stock - Barrick et al ... are a FRAUD!!!!!!!!!!!!!!!

[20] *Barrick* (Sup. Ct. J.), *ibid.* at para. 38.

[21] *Barrick* (C.A.), *supra* note 1 at para. 38.

[22] *Ibid.*

[23] 2004 ABQB 68, 352 A.R. 191 [*Vaquero*].

[24] *Ibid.* at para. 26.

[25] *Ibid.* at para. 17.

[26] *Ibid.* This assumption was accepted in *Barrick* (C.A.), *supra* note 1 at para. 31: "the anonymous nature of [internet] communications may itself create a greater risk that the defamatory remarks are believed."

[27] See e.g. *Ross v. Holley*, [2004] O.J. No. 4643 at paras. 7, 13 (Sup. Ct. J.) (QL), where Low J. said that her assessment of general damages was guided by *Barrick* (C.A.), *ibid.* See also *Warman v. Grosvenor* (2008), 92 O.R. (3d) 663 at para. 86; *Hay v. Partridge*, 2004 NUCJ 3, [2004] Nu.J. No. 9 at para. 30 (QL); *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939, B.C.J. No. 1332 at paras. 50-57 (QL).

[28] See *Benko*, *supra* note 14 at para. 29. Although some courts have awarded higher damages where a defamatory statement was made anonymously, these cases merely recognize that aggravated damages may be appropriate where the fact of anonymity has a harmful emotional or psychological effect on the plaintiff: see *Fast v. Cowling*, [1996] 10 W.W.R. 73 at paras. 45, 50 (B.C.S.C.), where Harvey J. noted that the defendant's "attempt to use the cloak of anonymity" caused the plaintiff to be "for some appreciable time unable to determine with any sense of certainty the author(s) of the defamatory words. In this regard, a sense of helplessness and uncertainty was allowed to affect her in her daily living and the pursuit of her profession ... [by being] for some considerable period unable to respond and confront the author(s) of the words." See also *Piske v. Vossberg*, [1999] B.C.J. No. 38 at para. 16 (S.C.) (QL), where Harvey J. stated that "damages here are aggravated by the particular circumstances because ... there was an element of anonymity in the manner of publication of the libel." Besides *Vaquero*, *Barrick*, and the cases that have followed them, this author is aware of no Canadian case that has recognized that the fact of anonymity in and of itself increases the likelihood that defamatory statements will be believed. A possible reason, as suggested in David A. Potts & Roger D. McConchie, *Canadian Libel and Slander Actions* (Toronto: Irwin Law, 2004) at 920, is that anonymity "tends to provoke uninhibited speech and increase the likelihood that the content of communications will be deliberately or negligently false."

[29] *Vogel*, *supra* note 8 at 178.

[30] *Randall*, *supra* note 12 at para. 24.

[31] 884 A.2d 451 at para. 22 (Del. Sup. Ct. 2005).

[32] *Ibid.*

[33] 385 F. Supp.2d 969 at 978-79 (N.D. Cal. 2004).

[34] 2003 WL 22149380 at 2 (N.D. Cal. 2003) (WLeC).

[35] 253 F. Supp.2d 974 at 980 (N.D. Ohio 2003); see also *Global Telemedia International v. Doe 1*, 132 F. Supp.2d 1261 at 1267 (N.D. Cal. 2001).

[36] All E.R.(D) 335 at paras. 14-17 (Q.B.D.) [Smith]. This case was considered with favour by the Alberta Court of Queen's Bench in *McQuaig v. Harbour Financial*, 2009 ABQB 678, [2009] A.J. No. 1347 at para. 101 (QL).

[37] The sentiment in *Smith, ibid.*, was echoed in *Sheffield Wednesday Football Club Ltd. v. Hargreaves*, [2007] EWHC 2375 at para. 17 (Q.B.D.), when the Court concluded that allegedly defamatory comments posted on an internet forum were a "trivial attack" that was "unlikely to be taken seriously."

[38] The notion that information published in traditional media is given an instant aura of credibility was recognized in *Vogel, supra* note 8. In that case, the plaintiff sued the Canadian Broadcasting Corporation (CBC), a media company created and maintained by Parliament to inform the Canadian public. The Court found that the CBC had "an enormous capacity to cause damage" because "people tend to think that [if the allegedly defamatory statement was] on the C.B.C. news, ... it must be so" (at 178). A similar position was adopted by the British Columbia Supreme Court in *Kerr v. Conlogue*, [1992] 4 W.W.R. 258 at para. 122 (B.C.S.C.) where Prowse J. recognized that "most, if not all of the witnesses were of the view that if it was in the *Globe and Mail* [a major Canadian newspaper], it was true."

[39] Thomas J. Johnson & Barbara K. Kaye, "Cruising is Believing?: Comparing Internet and Traditional Sources on Media Credibility Measures" (1998) 75 *Journalism & Mass Communication Quarterly* 325.

[40] In *Smith, supra* note 36 at paras. 15-16, Eady J. stated that it is "nowadays a matter of general knowledge" that internet bulletin board communications are "rather like contributions to a casual conversation" that "are often uninhibited, causal and ill thought-out" with "participants in these exchanges mostly using pseudonyms," which "is no doubt a disinhibiting factor affecting what people are prepared to say in this special environment."

[41] As one commentator states, "the Internet has made the need to critically evaluate information more important than ever before while ... shift[ing] the burden of credibility assessment off of professional gatekeepers and onto individual information seekers": Miriam J. Metzger, "Understanding How Internet Users Make Sense of Credibility: A Review of the State of Our Knowledge and Recommendations for Theory, Policy, and Practice" (Paper presented to the Symposium on Internet Credibility and the User, 2005) at 2-3, online: University of Washington <<http://projects.ischool.washington.edu/credibility/Metzger%20skills.pdf>>.

[42] Elizabeth F. Judge, "Cybertorts in Canada: Trends and Themes in Cyber-Libel and Other Online Torts" in Todd Archibald & Michael G. Cochrane, eds., *Annual Review Of Civil Litigation* (Toronto: Carswell, 2005) 149 at 157.

[43] B. J. Fogg *et al.*, "How Do Users Evaluate the Credibility of Web Sites? A Study With Over 2,500 Participants" in *Designing For User Experiences: Proceedings of the 2003 Conference on Designing for User Experiences, San Francisco, California - 6-7 June 2003* (New York: ACM Press, 2003).

[44] *Ibid.* at 8. This sentiment was reflected by comments from other participants. For example, while one participant noted that one website "uses lower English and lowers its credibility" another remarked that a different website "[s]eemed less sensationalistic, more dry, and therefore more credible."

[45] Soo Young Rieh & Nicholas J. Belkin, "Understanding Judgment Of Information Quality And Cognitive Authority in the Web" (1998) 53 *Journal of the American Society for Information Science and Technology* 145.

[46] Thomas Chesney & Daniel K.S. Su, "The impact of anonymity on weblog credibility," International Centre for Behavioral Business Research (ICBBR) Working Paper No. 2009\_02, online: ICBBR <<http://ideas.repec.org/s/bbr/workpa.html>>. See also B.J. Fogg *et al.*, "Elements that Affect Web Credibility: Early Results from a Self-Report Study" in *Proceedings of ACM CHI 2000 Conference on Human Factors in Computing Systems* (New York: ACM Press, 2000).

[47] Chesney & Su, *ibid.* See also Stephen A. Rains, "The impact of Anonymity on Perceptions of Source Credibility and Influence in Computer-Mediated Group Communication: A Test of Two Competing Hypotheses" (2007) 34 *Communication Research* 100.

[48] Judge, *supra* note 42 at 157.