

Parliament who was running for re-election. The question insinuated that the plaintiff had been charged with sexually assaulting his secretary and was resultantly removed from North Park Church. There was no basis for asking such a question because the underlying premise for posing such a question was “absolutely fictitious”.

[28] As a result of the defamatory statement, the plaintiff lost sleep, experienced more stress, and was concerned that he would be less likely to win the 2006 election because of the loss of reputation.

[29] The plaintiff has a “wife and children” and has past training and employment specific to Christian ministry.

[30] Significantly, there is no evidence respecting the extent of the audience that may have heard the defamatory statement. How many persons were technically able to pick up the broadcast? How many persons were likely watching that broadcast? What time did it air? Was it rebroadcast? It is difficult to know, without evidence on the point, how many people were likely to have heard the remarks. Presumably some people were watching. But how many? Fifty, five hundred, fifty thousand?

[31] Damages will be increased where it is proven that the defamatory comments were widely broadcast. See *Hill v. Church of Scientology of Toronto, supra*, at para. 184. Here, the evidence is that the defamatory words were spoken on a local cable television program with an unknown audience. The lack of evidence respecting the size of the audience is significant and directly contributes to a damage award that is considerably less than might otherwise be the case should it have been proven that the broadcast audience was extensive. It is safe to assume that some people would have been watching – but how many is unknown. However, although it may have been helpful to

have more evidence in certain areas, the case must be decided upon the evidence that is before the Court and not on what is absent. There is sufficient evidence upon which to make a damage assessment.

[32] I find that the defamatory statement was significant. Falsely accusing someone of being charged with sexual assault is reprehensible. This is especially so when the person being maligned is a member of Parliament who is in the process of seeking re-election. The circumstances are further aggravated by the fact that the plaintiff is married, with children, and has past ties and future aspirations within the Christian ministry.

[33] Based upon the evidence before me, scant as it is, I find that an appropriate award of general damages for the defamatory comment is \$5,000. The damages could have been potentially much higher if more evidence had been presented, especially respecting the size of the audience that was likely to have heard the comment.

ii) Aggravated damages

[34] In order to find that the plaintiff is entitled to aggravated damages, the plaintiff must prove that the defendant was motivated by actual malice that increased the injury to the plaintiff.

[35] The plaintiff must prove his case. While one might suspect that the defendant may have been motivated by malice when making statements alleging sexual misconduct against a member of Parliament, with a religious background, on the eve of an election, there is no proof that the defendant was so motivated.

[36] Accordingly, even if it is appropriate to award aggravated damages apart from general damages, I find that the plaintiff has failed to establish the basis for the award of aggravated damages.

iii) Punitive damages

[37] The plaintiff seeks punitive damages on the basis that the defendant's misconduct was so malicious, oppressive and highhanded that it offends the Court's sense of decency. There is no doubt that the circumstances approach the point where punitive damages ought to be considered.

[38] Punitive damages are intended to specifically deter the defendant from similar conduct and to generally deter others from such conduct. Here, I find that the \$5,000 award of general damages is large enough so as to have a significant punitive effect upon the defendant and ought to deter others. After all, being held liable to pay \$5,000 for one comment made on a cable television program ought to be sufficient to achieve the goal of punishment and deterrence.

[39] Accordingly, I decline to assess punitive damages against the defendant.

VI. COSTS AND CONCLUSION

[40] The defendant has wrongfully defamed the plaintiff by directing a question to him on live cable television on January 17, 2006. The plaintiff is entitled to general damages in the amount of \$5,000, together with pre-judgment interest on this judgment

for damages, pursuant to s. 5(1) of *The Pre-judgment Interest Act*, S.S. 1984-85-86, c. P-22.2. Additionally, the plaintiff is entitled to taxable costs.

C.J.Q.B.
M.D. POPESCU