<u>SUPREME COURT OF NOVA SCOTIA</u>
Citation: *Doucette v. Nova Scotia*, 2016 NSSC 25

Date: 20160122
Docket: Hfx No. 412065
Registry: Halifax

Between:

Laura Doucette

Plaintiff

v.

Her Majesty in Right of the Province of Nova Scotia and David Grimes

Defendants

Judge: The Honourable Justice Denise M. Boudreau

Heard: November 23, 24, 25, 26 and 30, 2015, in Halifax, Nova Scotia

Counsel: David G. Coles, Q.C. and Meghan E. Russell, for the Plaintiff
Duane Eddy, for the Defendants

By the Court:

[1] The plaintiff has brought this action in defamation and breach of privacy. The defendants have admitted liability for these torts; the defendant Grimes as the principal actor, and the defendant Province being vicariously liable for his actions as his employer. Having said that, there remained disagreement as to some of the facts alleged by both parties and the court heard extensive evidence about these facts.

[2] The court has been asked to render a decision as to the appropriate measure of damages which should be awarded the plaintiff.

[3] I first note the pleadings in this matter. The Notice of Intended Action against the Crown was filed December 4, 2012. The Notice of Action and Statement of Claim was filed February 8, 2013. The original defence was filed April 10, 2013. The defences of denial and, in the alternative, justification, were put forward. The defendants filed an amended defence dated October 28, 2015, wherein they admitted liability "for the torts of defamation and breach of privacy".

Evidence

[4] The plaintiff testified that she is 31 years of age. Her life has taken some unfortunate and difficult turns. In 2002 she left high school (at age 17, in Grade 11), to care for her father, who had suffered an aneurism and required care. For the next few years the plaintiff "job-jumped" a lot; she described being "angry" during this period and would not have been the best employee. She worked at a few Tim Hortons coffee shops, as well as a cleaning job.

[5] Eventually the plaintiff decided to make some changes in her life. She enrolled in and was successful in obtaining her GED, while still working part-time at a Dollarama store, and while still caring for her father. She next applied to and was accepted at Success College, in the Corrections and Policing Foundations program. The plaintiff chose this program as she felt this would be an excellent career, and she felt she had a lot to offer. The program cost over $17,000, which she paid with a student loan.

[6] The plaintiff started the Success College program in September 2011. It involved about a year of classroom work, followed by an "On The Job training" (OJT) component. The plaintiff completed the classroom component in August 2012, and did very well. By all accounts the plaintiff was an excellent student,

motivated, hard-working, and got good marks. Things appeared to be going very well for her and she was optimistic for the future.

[7] In 2011, the plaintiff had also applied for a firearms license with the Province of Nova Scotia. The application form required the plaintiff to disclose certain personal information. In 2012, the plaintiff was contacted by Mr. David Grimes. He indicated to her that he was a firearms investigator with the province, and that he was in receipt of her application. He wanted to set up a meeting.

[8] The plaintiff and Mr. Grimes met in the parking lot of a local Tim Hortons. Mr. Grimes invited her to have the meeting in his car. During this meeting they discussed the plaintiff's past employment, as well as her past involvement with the law. The plaintiff stated that Mr. Grimes often cut her off during the conversation. They discussed her past cleaning job; the plaintiff clarified to Mr. Grimes that she had quit that job, she had not been fired. They discussed the Tim Hortons job; the plaintiff explained to Mr. Grimes that there had been a misunderstanding at that job. The manager thought there had been a theft, but that was untrue.

[9] The plaintiff also discussed with him events from 2009 when, due to a fight with her ex-husband, she had been charged with assault, and was later granted a conditional discharge. She also disclosed a shoplifting charge she faced as a

teenager, for which she had also received a discharge. At the end of their meeting, Mr. Grimes said he would be in touch.

[10] Returning to September of 2012, having completed the classroom portion of her training with Success College, the plaintiff was set to complete the 360 hour OJT component. She was paired (by the college) with Dalhousie Security.

[11] The plaintiff attended a shift with Dalhousie Security, but testified that she did not have a good experience there. She felt that the supervisor did not have time for her. She also noted a great deal of tension and fighting among the employees. At the end of her shift, the supervisor would not sign her OJT documents, saying he was too busy.

[12] The plaintiff was concerned, and sent an email about her concerns on September 10, 2012, to her OJT supervisor at Success College, Mr. Jim Harvey. Mr. Harvey responded, and told her he would look into it. Mr. Harvey later contacted her, and asked her to meet him at the college. The plaintiff assumed this meeting was to discuss a new OJT placement.

[13] When she arrived and met Mr. Harvey, she noticed that he was not as kind to her as he had always been. He told her they had to discuss things. He then told her

that the college had had a visitor, a firearms investigator, who had given them information that the plaintiff was a suspect in an armed robbery.

[14] The plaintiff testified that she was shocked, as she had never been a suspect in an armed robbery. She told Mr. Harvey that this information was incorrect; that an armed robbery had taken place while she was working at a Tim Hortons, in approximately 2009. She was a victim, not a suspect. Mr. Harvey accused her of lying; he told her that he could no longer place her for OJT because of this, and that the school could not risk its reputation. The plaintiff testified that Mr. Harvey seemed angry with her; he said she had "fooled" the school.

[15] The plaintiff understood from this conversation with Mr. Harvey that she was "kicked out" of school, although she cannot remember the exact words used. She was crying and upset during the meeting.

[16] After leaving the college, the plaintiff contacted the lawyer who represented her on the assault charge, who wrote to the college, confirming her discharge. The plaintiff then sought further legal advice, as she believed she was "kicked out" of the program. A letter was sent from her counsel to the college, threatening a possible lawsuit. The college did, later, help her find an alternate OJT. They first suggested a placement, in late October or November 2012, with Northeastern

Security. However, the plaintiff needed a private guard licence for this placement, which she did not have (she explained that she had applied, but it had been denied because it required a full three years following the granting of a discharge).

[17] In January 2013, the plaintiff was granted the private guard license. Another placement was then found with the Elizabeth Frye Society, where she completed her OJT in April 2013. She received her diploma April 25, 2013.

[18] The plaintiff notes that during that intervening period, September 2012 to January 2013, she experienced a loss of income. In preparation for her OJT with Dalhousie in September, she had left her employment with Dollarama. After she lost the Dalhousie placement, she spoke to Dollarama but she could no longer obtain full-time hours. She could only work ten hours per week through September to December 2012. This is the subject of her claim for special damages, which I shall return to.

[19] The plaintiff spoke only once more to Mr. Grimes, by telephone, after he had concluded his investigation. Mr. Grimes informed her that her application for the firearms license had been denied. He confirmed that he had spoken to the college and to her employers, and that she was being denied because of the issues brought forward. Mr. Grimes also told the plaintiff that he understood she may

have wanted this license, “like a truck or furniture”. This was very concerning to the plaintiff as she had recently been shopping for new furniture and a new vehicle; it led her to believe that Mr. Grimes was following her.

[20] The events I have described had profound effects on the plaintiff’s mental health. The plaintiff testified that she has struggled with mental health issues and depression for most of her life, at least since her teens. She had a serious mental health emergency at age 17 and, since then, has taken medication which stabilized her. The plaintiff testified that prior to the events described herein, she was doing well and had been considering asking her doctor about a reduction in her medication.

[21] When these events happened, the plaintiff’s depression seriously worsened. She believed she was ejected from school, and that all of her efforts to better her life had been for naught. She suffered weight gain, night terrors, and irrational fears as a result of these events. She felt bullied by Mr. Grimes, and ashamed of her past. The plaintiff was quite tearful as she testified about these subject-matters.

[22] I was provided with documentation, by consent of the parties, with medical information about the plaintiff. A letter from her family doctor, Dr. Smith, outlines her status in the fall of 2012:

> … I first met with Laura 11 January 2012. Her former family physician suddenly and unexpectedly left her practice in December 2011. She was one of the very many patients I took on to deal with the sudden change in our office. From the first note, which involved a cursory review of her file, revealed that she had suffered from Mental Health (MH) issues since her teen years and had been chronically medicated and had a history many stressors in her personal and work life.
>
> I subsequently saw Laura several times for non-MH general medical matters. It wasn't until 22 October 2012 that I saw her for a MH matter. She demonstrated a setback in her condition (Major Depressive Disorder / MDD with Anxiety). It was in this interview that Laura shared some of her past experiences with respect to legal matters (having an assault charge in August 2009), home issues (having to care for her Traumatically Brain Injured ailing father), financial issues (debt), employment issues (working far below her potential and abilities at Dollarama), and academic issues (cognitive challenges associated with her medical condition confounded with her stressors). In addition she shared that her stress had adversely affected her physical health with irregular menses and hair loss, along with sleep difficulties. Her difficulties appeared related to the significant stress in attempting to acquire a career. She felt paranoid that she was being unfairly treated. She also began to lose any life pleasurable interests and became withdrawn, as I recall….

[23] Dr. Smith, in addition to other recommendations relating to therapy, relaxation techniques, and so on, increased the plaintiff's medication dosage, and added an "as needed" medication for anxiety.

[24] Dr. Smith goes on:

> … The next time we met was 08 November 2012. At this time Laura revealed that she had become proactive in dealing with her career and academic difficulties by seeking legal advice. She demonstrated improvement with the medicine dosage change in addition to adopting a healthy routine. She did however report feeling heightened anxiety as a result of her decision to litigate…
>
> The next time we met regarding her MH issues was 16 January 2013. It appeared to be a shorter meet in which I refill her medication and got a brief update of her legal proceedings. It was revealed to me that she was able to engage in formal CBT through her partner's insurance so I encouraged her to do so.

> According to the clinic notes, the last time we met was 13 May 2013. At that time it was clear that Laura was quite distressed. Her condition appeared to have worsened in many areas. She felt strongly that she was being stalked by Justice Department employee where she had been employed and having legal issues. I offered supportive listening and encouraged her once again. I added a new drug to help her with her heightened anxiety and offered to see her again in 2 weeks. We never met again. I closed my Family Practice at the Ravines Medical Center in December 2013…

[25] After the completion of her program, in April 2013, the plaintiff worked for Securitas doing parking ticket enforcement for a few months. She was then off work for one and a half months due to her wedding. In August 2013, she started working at a group home; she has since left that home, and is now working at another. Her job entails caring for the residents, their medications, their hygiene, their meals, etc.

[26] The plaintiff stated that she does not want to seek work within the law enforcement/corrections field. She has no trust in the "justice department", she is afraid of "opening up this door" again. In particular, she is afraid that the untrue "armed robbery" accusations will be raised again. The plaintiff states that she had applied at a few places, using the name "Laura Marsen" following her 2013 marriage, but she was never called back for an interview. The plaintiff believes that when a potential employer finds out she is, in fact, "Laura Doucette", she is rejected. She gave the example of the IWK; she believes they are connected to Dalhousie and Mike Burns (security director).

[27] The plaintiff also noted that she has now obtained her firearms licence, after applying again in 2014. It was reviewed by Mr. Grimes' boss, and approved. It should be noted that this 2014 application contains additional medical information from the plaintiff. The information strongly suggests that her mental health difficulties have again stabilized.

[28] The court also heard evidence from Andrew Marsen, the plaintiff's husband. Mr. Marsen has known the plaintiff since 2009, and they were married in August of 2014. Mr. Marsen testified that, before these events happened, the plaintiff had been doing very well. She was working to change her life in positive ways, she had left an abusive relationship, she had obtained her GED, and her confidence was growing. She was interested and motivated in a career in law enforcement. She was going to the gym, to work on physical fitness.

[29] After these events occurred, the plaintiff changed significantly. While she always had struggled with depression, now she "bottomed out". She would sleep 16 hours per day; she was moody, teary; she became sedentary; she would not leave the house. She would lash out about everything.

[30] The court next heard evidence from Jim Harvey. He is a retired RCMP officer who has been an instructor at Success College since 2009, responsible for

the “policing” module of the Corrections and Policing Foundations course and OJT placements.

[31] Mr. Harvey confirmed that the plaintiff was one of his students, who was placed with Dalhousie Security in September 2012. Mr. Harvey described receiving the September 10th email from the plaintiff. Mr. Harvey contacted Peter Brown, his contact at Dalhousie, and asked him to look into the matter.

[32] Mr. Brown responded in a few days. He told Mr. Harvey that he had looked into the matter, and discovered that the plaintiff had not gotten along well during her shift at Dalhousie. Mr. Brown did not think the plaintiff “fit in”. Given these difficulties, Mr. Brown told Mr. Harvey that the plaintiff should not return to Dalhousie. Mr. Harvey accepted that decision.

[33] Following this conversation, Mr. Harvey was told by Paul Olmstead (another college instructor) that someone had been in from “firearms”, regarding the plaintiff, and had given information that she was involved as a suspect in a crime. Mr. Harvey was surprised by this, as it did not fit with his positive impression of the plaintiff.

[34] Mr. Harvey then described his meeting with the plaintiff. He told her about the termination of Dalhousie placement. He told her because of that, “and because

of Paul", it would be hard to find another placement. He told her that she could find a new placement on her own and the school would support it. He raised with her the Tim Hortons' armed robbery allegation; the plaintiff denied any involvement with that crime. Mr. Harvey testified that he believed her.

[35] To be more precise, Mr. Harvey agreed with this statement of facts (taken from the defendants' amended defence):

> Mr. Harvey met with Ms. Doucette on September 19, 2012 and informed her that she was not to go back to Dalhousie security and that they would need to find another O.J.T. placement for her. He also advised Ms. Doucette during the meeting that he learned of an accusation that she was involved in an armed robbery. Mr. Harvey stated that Ms. Doucette was shocked when he told her about the accusation.
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> Mr. Harvey also told Ms. Doucette during their meeting on September 19, 2012, that it would be difficult for him to find her another placement in light of the information he received from Mr. Olmstead. He advised Ms. Doucette that Success College could not risk its image by placing someone who was a suspect in what would be considered a serious crime in the security and law enforcement field. Ms. Doucette admitted to Mr. Harvey that she had some issues with her ex-boyfriend in the past but said the accusation that she was a suspect in an armed robbery was not true.
>
> In September 2012, Mr. Harvey believed that Ms. Doucette had not been honest with the college about her past. Approximately one month after Mr. Harvey's meeting with Ms. Doucette he learned that the accusation that Ms. Doucette was a suspect in an armed robbery wasn't true.

[36] Mr. Harvey told the plaintiff that she could not be in law enforcement, or go to any other OJT placement, because of this accusation, since he would have to tell any other possible placement about the allegations. Mr. Harvey told the plaintiff the allegations needed to be "cleared up".

[37] Mr. Harvey confirmed in his evidence that he did not tell the plaintiff that she was being dismissed from the school, only from the Dalhousie OJT.

[38] Mr. Harvey confirmed that, in his view, the plaintiff was a good student, smart and hard-working. Mr. Harvey confirmed that he would still give the plaintiff a good reference; he believes that the Dalhousie placement was just a "wrong fit" for her.

[39] On cross-examination, Mr. Harvey was referred to an email he sent to Peter Brown of Dalhousie on September 28, 2012:

> Good Morning Peter;
>
> I just left you a phone message with regard to this matter. We have just received a letter from Laura DOUCETTES lawyer indicating a law suit against the college for her dismissal from our course. This is not the case, however <u>to make a proper response I would like to have a piece of correspondence from you stating the details of the info received from the DOJ investigator and that was the basis for terminating her OJT</u>. There is a page in her OJT package that would suffice what we need, with your comments. I believe Gerry would have that booklet if not I will drop a copy off to you today. Sorry for the inconvenience. (underlining is mine)

[40] Mr. Harvey also sent Peter Brown a document, for his signature, entitled "Student Evaluation". Mr. Harvey filled out this document himself, and asked Mr. Brown to add additional comments as he wished. The document Mr. Harvey filled out and sent, states the following at question 3:

> 3. In general were you satisfied with the placement from your point of view? (Mr. Harvey checked off "no")

> if no please state why:
>
> (Mr. Harvey wrote): Information from Dept. of Justice revealed information on suspected criminal activity.

[41] In his testimony, Mr. Harvey could not explain why he wrote this in both the email and the evaluation form. He disagreed that this was the reason for the dismissal from Dalhousie. The reason was "failure to cohese", and the unfounded complaints the plaintiff had made. Having said this, Mr. Harvey agreed that it is unlikely that Dalhousie would have kept the plaintiff in light of the information about the suspected criminal activity.

[42] Mr. Harvey was asked if he knows, for certain, whether the information provided by Mr. Grimes about the plaintiff is true. Mr. Harvey responded that he did not know; he has never seen anything official, or any apology. However, given that it is the subject of litigation, he assumes it is not true.

[43] Paul Olmstead testified that he was teaching a class at Success College in approximately mid-September 2012. He was told that a visitor "from the government" wanted to talk to him; he took a break from class and met the person.

[44] That visitor was David Grimes, who told Mr. Olmstead that he was with the Justice Department, and that he investigated firearms applications. He was following up on an application from the plaintiff. Mr. Olmstead took Mr. Grimes

to a private room; he noted that Mr. Grimes had papers in a file folder which looked like printouts. These were left open during their conversation.

[45] Both men were former police officers, and chatted about that. Mr. Grimes then told Mr. Olmstead that the plaintiff had had some issues with the law in the past. Mr. Olmstead did not know this, and could not believe it, as he knew the plaintiff. Mr. Grimes then showed him a picture of the plaintiff, allowing him to confirm that it was the same person.

[46] Mr. Olmstead agreed with the following statement of fact (again taken from the amended defence):

> During the conversation between Mr. Grimes and Mr. Olmstead, it is admitted that Mr. Grimes stated words to the effect:
>
> Ms. Doucette had been working a shift as an employee at Tim Hortons when a robbery took place. He stated that Ms. Doucette's boyfriend was with her during her shift helping her roll pennies. Her boyfriend left the Tim Hortons and shortly thereafter, two masked robbers entered the Tim Hortons and specifically demanded the roll of pennies.
>
> He further stated that Ms. Doucette did not appear to be victimized by the robbery. He expressed that the whole thing was suspicious and if he had been the investigating officer, he would've investigated Ms. Doucette further. Mr. Grimes did not disclose how he knew this information.
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> Ms. Doucette had left three (3) previous jobs disgruntled and feeling unhappy towards her employers. He stated that she also had a criminal discharge in relation to a minor domestic dispute.

[47] Mr. Olmstead initially felt this was all hearsay and, therefore, had no belief that it was true. It did not affect how he thought of the plaintiff; he knew her as an

excellent student, dedicated, and respectful. However, he was shocked by both the content of the information, and by the fact that Mr. Grimes would disclose these things. While he assumed Mr. Grimes would have collected this information from justice websites, he found it very hard to believe, and still does.

[48] Mr. Olmstead then decided that he wanted someone else to hear this information. He asked Greg McCammon to join them. Mr. Olmstead agreed with the following statement of fact (again taken from the admissions of the defendants):

> …. Mr. Olmstead asked a fellow instructor, Mr. Gregory Robert Edgar McCammon to join him and Mr. Grimes. During this meeting between Mr. McCammon, Mr. Grimes, and Mr. Olmstead, Mr. Grimes stated words to the effect that:
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> He was suspicious of "fishy" behavior by Ms. Doucette at a robbery of a Tim Hortons where she was working. He said that she was working a night shift when the location was robbed and that during the shift she was rolling pennies. Her boyfriend was also there with her until her shift ended. Shortly after her boyfriend left, two masked robbers entered and asked specifically for the same number of pennies that were rolled. Mr. Grimes did not disclose how he knew this information.
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> Ms. Doucette had a poor employment record. Mr. Grimes stated she had been fired from several previous jobs and her previous employers were nervous of her because Ms. Doucette supposedly would sit in her car and glare at her former bosses as they exited their respective work places. Mr. Grimes did not disclose how he knew this information.
>
> He was going to Dalhousie to speak with Ms. Doucette's placement supervisors.

[49] After Mr. Grimes left, Mr. Olmstead told Janice Currie, an administrator of the college, about the visit. He also told Jim Harvey to follow up on it. This was his last involvement.

[50] Janice Currie testified. She is now CEO of Success College; in 2012, she was the director of operations and planning. As such she was a top decision-maker at the institution. Ms. Currie knew the plaintiff was a student in 2012.

[51] Ms. Currie confirmed being told by Paul Olmstead that a DOJ employee had come to the school. The person had given information about the plaintiff, that she was either a "suspect" or "subject" in an armed robbery and assault. Ms. Currie testified that her reaction to that information was indifference; in her view, Mr. Olmstead was simply reporting an incident. Ms. Currie understood that any involvement by the plaintiff in an armed robbery would have been in the past.

[52] Ms. Currie then received correspondence from the plaintiff's lawyer on September 25, 2012, advising his understanding that the plaintiff had been dismissed/removed from her program due to "previous involvement with the criminal justice system". Ms. Currie responded to this in writing; her first sentence reads "In response to your letter dated September 25, 2012, Laura Doucette has not been dismissed from Success College." Ms. Currie testified that this was accurate.

[53] However, in this same letter, Ms. Currie stated that the plaintiff had been released from her job placement with Dalhousie Security, and the reason was “the information from the Department of Justice”. In her testimony before me, Ms. Currie stated that this was incorrect. At the time she wrote the letter, she had assumed that that was the reason, because of her conversation with Mr. Olmstead. She wrote the letter without checking on the accuracy of that statement. She was later told by Mr. Harvey that the plaintiff had had arguments with her supervisor at Dalhousie, and that was the true reason for the dismissal.

[54] Peter Brown testified that is the Dalhousie Security contact person for Success College, for their OJT students. His contact at the college is Jim Harvey.

[55] Mr. Brown confirmed the telephone call from Jim Harvey in September 2012, regarding a complaint made by the plaintiff about her placement. Mr. Brown was unaware of any problems, so he told Mr. Harvey that he would investigate.

[56] Mr. Brown spoke to the supervisor, and all members of the plaintiff’s shift. He determined that the plaintiff’s complaints were unfounded. He reported back to Mr. Harvey, and asked that the plaintiff be dismissed from the OJT program with Dalhousie Security, as he felt she was not a good fit. Mr. Harvey agreed that the

plaintiff would be removed from Dalhousie. Mr. Brown believes this occurred on September 19.

[57] Mr. Brown stated that during his investigation of this complaint, he got a call from Mike Burns, his supervisor. Mr. Burns asked Mr. Brown if the plaintiff was placed at Dalhousie as a student. Mr. Brown told Mr. Burns that yes, the plaintiff was placed at Dalhousie, but that she had made a complaint, and that he was investigating. Mr. Burns told Mr. Brown that he been contacted by DOJ about a firearms application made by the plaintiff, and asked Mr. Brown if Success College did a criminal records check on their students. Mr. Brown answered that he did not know.

[58] About a week after the plaintiff was already gone from Dalhousie, Mr. Brown was told by Mr. Burns that the plaintiff was being investigated for "criminal behavior".

[59] Mr. Brown recalled the evaluation form provided by Mr. Harvey. Mr. Brown saw the answer given by Mr. Harvey to question 3 and noted it was incorrect. He sent the form to Dalhousie legal department.

[60] Mr. Brown agreed that he recommended that the plaintiff be dismissed from Dalhousie Security because of her unfounded complaint against them. It was not

because of the DOJ/Grimes information, since he only learned of that later. However, Mr. Brown agreed that, had he known of the DOJ information, that would likely have been a reason to dismiss her as well.

[61] Mr. Brown agreed that, while he thought less of the plaintiff when he heard these allegations, he now knows they are false. His opinion is now changed. He confirmed that the plaintiff has not applied for a position with Dalhousie Security, but would be a viable candidate. Mr. Brown also confirmed that Dalhousie has no affiliation with the IWK.

[62] Mike Burns is the Dalhousie Security director. He recalled receiving a phone call from Mr. Grimes in September 2012 about the plaintiff, seeking a reference check for a firearms application. Mr. Burns told Mr. Grimes he could not give a reference as he did not know the plaintiff. Mr. Grimes then told Mr. Burns that the plaintiff was the "subject of criminal investigation".

[63] Mr. Burns confirmed the telephone call to Peter Brown, to ask him if Dalhousie did a criminal records check on OJT students. He recalled Mr. Brown saying he thought Success College did that, but Dalhousie did not. Mr. Burns did not tell Mr. Brown the information he had received from Mr. Grimes; he thought it was information he should not have.

[64] Mr. Burns also recalled Mr. Brown telling him that he had an email from the plaintiff, making complaints about her placement at Dalhousie, and that he (Brown) was investigating. Hearing this, Mr. Burns was concerned; he noted that he has never received a complaint from an OJT student before.

[65] Mr. Burns testified that Mr. Brown later confirmed to him that the complaint was unfounded, and he was recommending dismissal of the plaintiff. Both agreed that this was an “awkward” placement, and should be discontinued. Mr. Burns confirmed that this was his decision to make.

[66] Mr. Burns acknowledged that the information from Mr. Grimes was in his mind, and contributed to the decision, but that the plaintiff was being dismissed regardless. Given that she was only a student and not an actual employee, and given that she was not alleging any serious discriminatory issues, Mr. Burns did not give the matter much thought and simply agreed with Mr. Brown’s recommendation.

[67] Mr. Burns also acknowledged that, even if the plaintiff’s complaints had been justified, he would still have wanted her dismissed.

[68] Mr. Burns agreed that if information from Mr. Grimes was true, he would not want the plaintiff working in his organization. He had learned, two weeks prior to trial, that it was not true.

[69] Karen Forsyth is a manager at DOJ NS. Her office handles private guard applications. Ms. Forsyth confirmed receiving an application from the plaintiff in 2009 for such a licence. It was denied, as some of the plaintiff's declarations on the application were deemed to be false. The plaintiff was asked about having any criminal history, and had answered "no"; this was not consistent with the information they had.

[70] The plaintiff applied again in November 2012 for a private guard license. This is significant because, as I have noted, this private guard license was required for the plaintiff to undertake the new OJT placement that had been found. Unfortunately for the plaintiff, once again her application was flagged and she was not approved. Ms. Forsyth identified the same problems as in 2009, i.e., the previous offenses, along with the additional difficulty of the previous "false" application. None of the reasons for the refusal of this license in 2012 had anything to do with Mr. Grimes.

[71] The plaintiff requested the opportunity to be heard by the Director of Policing Services, as is permitted, and gave further information. The review was held on January 17, 2013, and the private guard license was granted on or about January 21, 2013, with conditions.

[72] John Parkin is the chief firearms officer for DOJ NS, and has been since August 2013. As such he is now Mr. Grimes' direct supervisor.

[73] Mr. Parkin discussed the legislation dealing with applications for firearms licenses. Such an assessment requires a consideration of whether the applicant, within the previous five years, has been convicted of, or discharged from, an offense involving violence, a firearms offense, criminal harassment, or certain CDSA charges; whether the person has been treated for mental illness, that was associated with violence, actual, threatened or attempted; and whether the person has a history of behaviour that includes violence, actual, threatened, or attempted. A criminal record is obviously relevant; however, discharges, and even acquittals, are also relevant. Mr. Parkin confirmed that the plaintiff's application in 2011, which included information relevant to these questions, would have appropriately caused a further review.

[74] Mr. Parkin was asked whether any discipline had been meted out to Mr. Grimes, so far, for his actions in this matter. Mr. Parkin stated that he only became aware at the time of the discoveries held in this matter (February 2014), that Mr. Grimes was admitting having made the statements to Success College and Dalhousie. He notes that until Mr. Grimes admitted, or until a court found, that he had done something wrong, Mr. Grimes was presumed innocent and could not be disciplined.

[75] Mr. Parkin further confirmed that discipline is outside his scope. This is the exclusive purview of the Human Resources Department (HR). Mr. Parkin has written a letter to HR, in September 2015, about this. It is now in their hands.

[76] Mr. Parkin noted that since these events, changes have been made in his office. Mr. Parkin drafted interim directives on May 1, 2014, with updated policies, regarding confidentiality and FOIPOP. He then specifically discussed these issues at a staff meeting. Also, in March 2015, he led a number of training days for staff, and one of the sessions was specifically about confidentiality.

[77] Mr. Parkin also confirmed having taken the plaintiff's new firearms application in June 2014. Some of her responses again prompted a review, which

Mr. Parkin did himself. The license was ultimately approved. Mr. Parkin confirmed that his office has no connection with CBSA, HRP, or Corrections.

[78] Lastly, David Grimes testified. He explained that he was first employed by the Department of Justice as a firearms officer in 2012. He remains in that employ. As such he conducts background checks on persons wanting a firearm license, as well as other duties relating to firearms and ranges. He gives recommendation on applications to his supervisor, who makes the ultimate decision.

[79] Prior to his present employment, Mr. Grimes had other jobs, including as a police officer for 12 years. In his present job he has access to multiple databases including CPIC (criminal history and involvement), within which he looks for violence related matters within five years; Versadex (HRP database), where he seeks patterns of behaviour; JEIN database (court documents); and firearms databases.

[80] Mr. Grimes states that he was given no specific training on how to do investigations when he started his job in 2012. He was immediately given 350 files to deal with. He got the plaintiff's file in April 2012, and started working on it in September 2012. He first looked at databases and collected information. He next spoke to the plaintiff's former employers; he went to Tim Hortons and spoke to the

managers. He next learned of the plaintiff's dismissal from a cleaning company. Mr. Grimes claims he was told that the plaintiff had "lashed out" in the past.

[81] Mr. Grimes agreed that he went to Success College on September 12, 2012, and met with Mr. Olmstead, as described. Mr. Grimes knew Mr. Olmstead was/had been in law enforcement and felt a rapport with him; as a result, he was very open and candid with Mr. Olmstead. Mr. Grimes testified that he thought their discussion was "confidential"; he now realizes that was a mistake and he should not have spoken so freely.

[82] Mr. Grimes was asked to confirm the following as correct (taken from the amended Statement of Defence):

> During the conversation between Mr. Grimes and Mr. Olmstead, it is admitted that Mr. Grimes stated words to the effect:
>
> Ms. Doucette had been working a shift as an employee at Tim Hortons when a robbery took place. He stated that Ms. Doucette's boyfriend was with her during her shift helping her roll pennies. Her boyfriend left the Tim Hortons and shortly thereafter, two masked robbers entered the Tim Hortons and specifically demanded the roll of pennies.
>
> He further stated that Ms. Doucette did not appear to be victimized by the robbery. He expressed that the whole thing was suspicious and if he had been the investigating officer, he would have investigated Ms. Doucette further. Mr. Grimes did not disclose how he knew this information.
>
> Ms. Doucette had left three (3) previous jobs disgruntled and feeling unhappy towards her employers. He stated that she also had a criminal discharge in relation to a minor domestic dispute.

[83] Mr. Grimes answered, "Yes, words to that effect."

[84] Mr. Grimes was asked to confirm the following as correct (again, from the amended defence):

> …. Mr. Olmstead asked a fellow instructor, Mr. Gregory Robert Edgar McCammon to join him and Mr. Grimes. During this meeting between Mr. McCammon, Mr. Grimes, and Mr. Olmstead, Mr. Grimes stated words to the effect that:
>
> He was suspicious of "fishy" behavior by Ms. Doucette at a robbery of a Tim Hortons where she was working. He said that she was working a night shift when the location was robbed and that during the shift she was rolling pennies. Her boyfriend was also there with her until her shift ended. Shortly after her boyfriend left, two masked robbers entered and asked specifically for the same number of pennies that were rolled. Mr. Grimes did not disclose how he knew this information.
>
> Ms. Doucette had a poor employment record. Mr. Grimes stated she had been fired from several previous jobs and her previous employers were nervous of her because Ms. Doucette supposedly would sit in her car and glare at her former bosses as they exited their respective work places. Mr. Grimes did not disclose how he knew this information.
>
> He was going to Dalhousie to speak with Ms. Doucette's placement supervisors.

[85] Mr. Grimes responded, "That's what they understood, so I accept I said words to that effect."

[86] Mr. Grimes agrees that he laid out his documents on a low table, during this meeting, so that they were visible to Mr. Olmstead and Mr. McCammon. He agrees that this was another mistake on his part.

[87] Mr. Grimes denies saying the plaintiff was a "suspect". He insists that they "heard it that way"; that they "misunderstood". He accepts that he is "responsible

for that misunderstanding". He states that this was not his belief, but he accepts their understanding of it.

[88] Mr. Grimes, in his testimony, agreed that the plaintiff did not commit any robbery. Rather, from the description he was given during his investigation, Mr. Grimes saw elements of suspicion. In relation to the comment of "fishy behaviour", Mr. Grimes stated, again, that he did not think the plaintiff was involved in a robbery, Rather he was concerned about her well-being, possibly PTSD issues, having been the victim of a robbery. Mr. Grimes agreed that he was only speculating. He later said he did not think plaintiff was a suspect, only that the robbery was suspicious, not the plaintiff. Mr. Grimes does confirm that he called Mike Burns of Dalhousie and told him that the plaintiff was a "suspect in criminal activity".

[89] Mr. Grimes states that he never followed the plaintiff, and never mentioned "a new truck or furniture" in his discussions with her.

[90] Mr. Grimes agreed that he met with the plaintiff on September 17, 2012, at Tim Hortons' parking lot in Lower Sackville, in his car. This meeting took place after he had already visited Success College and Dalhousie, and after he had done website searches; although he did not tell the plaintiff this.

[91] During the meeting, Mr. Grimes asked questions of the plaintiff and took short notes. He believed the plaintiff was dishonest in her answers, since they were not consistent with what he already knew. Mr. Grimes did not raise with the plaintiff any of the discrepancies he noted, or accusations that he had heard. Mr. Grimes does acknowledge that if he had asked the plaintiff (or her then boyfriend) about the allegations, the answers received would have been included in his report.

[92] Mr. Grimes acknowledged that in making these statements about the plaintiff to Success College and to Dalhousie, he was wrong. He accepted responsibility for these errors in judgment. He testified that, when first confronted with the plaintiff's legal claim, he did not recall saying these things, but, after the discovery, when he read the testimony of the witnesses, he realized the errors he had made. He realized "that he had allowed this to happen".

[93] Mr. Grimes further offered that he has learned from this experience, and that he no longer speaks candidly. He has also had training sessions about these issues.

[94] Mr. Grimes was asked if he agreed with paragraph 49 of his own amended Statement of Defence:

> 49 The defendants further admit that a right-thinking person hearing the statements made by David Grimes to Paul Olmsted and Gregory McCammon, regarding the Tim Hortons' robbery would interpret the statements made by

> David Grimes, in their natural and ordinary meaning, and by implication, that Ms. Doucette was complicit in a robbery at Tim Hortons.

[95] Mr. Grimes seemed to have difficulty with this, even though it was his own formal admission. While Mr. Grimes somewhat agreed, he continued to insist that the information was “misconstrued”. He could not explain further. When pressed about paragraph 49, he responded that he did not know what the word “complicit” means.

[96] Mr. Grimes repeated that his real interest/concern was whether the plaintiff might be suffering from any PTSD, as a victim of an armed robbery. There is no mention of that issue in any of his reports, nor do any of the witnesses mention that being raised by Mr. Grimes. He states that he did not explicitly mention it because the application was failing in any event.

[97] In August 2015, Mr. Grimes wrote an apology to the plaintiff; it is written on letterhead of the “Nova Scotia / Department of Justice / Public Safety Division / David Grimes, Area Firearms Officer, Halifax Region”. It reads as follows:

> Date: August 28th 2015
>
> Laura DOUCETTE
>
> Since the issue of your suit commenced, I often wondered if it was appropriate or even permissible to respond to you. After recently being advised that writing a letter was in fact appropriate - I decided it might be fair to at least send a note and some articulation regarding the investigation work and the manner in which things unfolded. I, as the assigned investigator had a responsibility to collect information about your background - Whether good and or bad, and make

> recommendation(s) as to your suitability to acquire a firearms license. It was my responsibility to protect this information and utilize it for the sole purpose of making the suitability assessment. During the course of this investigation information regarding your background was in one way or other disclosed. In that regard, I appear to have failed and wish to offer my sincerest apologies as a result.

[98] Mr. Grimes testified that he started with a first draft of this apology, which was four pages long. He then did another draft, then ended with this one. He decided to cut out most of what he had written, because of plaintiff counsel's "demeanor" at the discovery. Mr. Grimes figured it would be "torn apart" by him.

Facts in dispute

[99] Most of the evidence I heard was consistent among the witnesses. Most importantly, the defamatory words uttered by Mr. Grimes, (and the persons to whom he said them), are the subject of formal admissions.

[100] I note three areas of dispute:

1) was the plaintiff dismissed from Success College due to Mr. Grimes' actions;

2) was the plaintiff dismissed from Dalhousie Security because of Mr. Grimes' actions; and,

3) were any losses incurred by the plaintiff from September 2012 to January 2013, during which the plaintiff was unable to complete her OJT, due to the actions of Mr. Grimes.

[101] In relation to 1), I find that the plaintiff was not ever dismissed from Success College. She was dismissed from Dalhousie Security. In relation to 2), all witnesses agreed in their evidence that the plaintiff was dismissed from Dalhousie because of her unfounded complaint, and not because of Mr. Grimes. However, at least three documents state otherwise (Mr. Currie's letter, Mr. Harvey's email and evaluation form). While Ms. Currie's letter appears to be simple carelessness, I can find no explanation for the others. The Grimes information was obviously at the forefront of Mr. Harvey's mind.

[102] Mr. Burns of Dalhousie confirmed that while the complaint was the reason, the information from Mr. Grimes was a factor. I find that the Grimes information was, while not the first reason for the Dalhousie dismissal, a significantly contributing reason.

[103] However, as to 3), I accept that the plaintiff did not accept another OJT in October/November 2012 because of factors unrelated to David Grimes. Had those factors not existed, the plaintiff's OJT would have recommenced within one to two

months, not four months. While the evidence does not provide me with an exact date when this new OJT would have started, I find on the whole of the evidence that, at the latest, it would have been mid-November 2012.

Damages generally

[104] I should first note that generally speaking, even where statements are defamatory, courts have historically found that slander (as opposed to libel) requires proof of actual damages. Exceptions are made in the case of very serious slander, one example of which is where the words impute criminal activity (*Neuls v. Toffoli* [2011] S.J. No. 75). The parties have agreed that such is the case here.

Special damages

[105] The plaintiff seeks special damages for loss of income due to her delay in obtaining her OJT hours and, consequently, her diploma. The special damages are in the nature of lost income from Dollarama during the fall of 2012. The OJT could not be recommenced until January 2013, and she could only obtain part-time hours at Dollarama.

[106] As I have indicated, I am only prepared to allow a claim for the loss from mid-September 2012 until mid-November 2012 (8 weeks).

[107] The plaintiff testified that she could only get ten hours per week at $11 per hour. This would equal $880 (10 hours x $11 x 8 weeks). Had she worked fulltime, she would have made $3,520 (40 hours x $11 x 8 weeks).

[108] I therefore find that the loss to her, attributable to the defendants, was $2,640. This amount I award as special damages.

General damages

[109] Damages for defamation are deemed "at large". They are not susceptible to exact calculation, nor are they restricted to actual loss suffered by the plaintiff (*Musgrave v. Levesque Securities* [2000] N.S.J. No. 109; *Neuls v. Toffoli* (*supra*)). They are meant to compensate for injury to reputation but also insult to reputation.

[110] I have canvassed the caselaw provided to me by counsel in assessing the appropriate level of damages to be awarded in this case. What follows are the cases I found most helpful.

[111] In *Musgrave v. Levesque Securities* [2000] N.S.J. No. 109, the plaintiff was dismissed from employment with the defendant. The company thereafter made defamatory statements to former customers and potential employers. General damages were granted in the amount of $20,000 (adjusted for 2015 $26,500).

[112] In *Lapointe v. Summach* [2003] B.C.J. No. 3033, the court held that, in assessing damages for defamation, a court must consider: the conduct of the plaintiff; his position and standing; the nature of the libel; the extent of the publication; the absence or refusal of retraction or apology and the conduct of the defendant from the date of libel to verdict. The plaintiff was a contractor; the defence told others that he was insolvent, and that he had unlawfully removed items from his home. The court awarded $40,000 general damages plus $10,000 aggravated damages for maliciousness.

[113] *Trout Point Lodge v. Handshoe* [2012] N.S.J. No. 427 was another action in defamation. The action related to statements made on the internet, alleging that certain associates of the plaintiff company were involved in political corruption and scandal. Individual plaintiffs were also defamed, called dishonest and "con men". The defendant refused to retract or apologize; in fact, he appeared to be continuing the dissemination at the time of trial. The court awarded $75,000 general damages to the plaintiff company, due to the wide-ranging extent of the defamation and its effect on the business. $100,000 was awarded to each individual plaintiff for the effects of "these unfounded statements about the character, business dealings and financial acumen of these businessmen".

[114] In my view, while the case of *Trout Point* is helpful, it is to be distinguished on its facts. It involved internet dissemination, which by its very nature is widespread and anonymous, with unknown results.

[115] *Hiltz and Seamone Co. v. AGNS* [1999] N.S.J. No. 47. The trial court awarded general damages of $200,000 in circumstances where a professional organization was defamed; this award was not disturbed by the Court of Appeal. The trial court judge noted that:

> Professional organizations survive on the confidence and trust generated in those that deal with them and the integrity and the character of the work they provide to their clients. Defamatory statements, such as in the present case, strike at the foundation of the reputation and erode the confidence of the public in the defamed party, no less when it's a corporation than when it's an individual.

[116] In *Barltrop v. CBC* [1978] N.S.J. No. 514, the plaintiff was a physician and paediatric specialist. The defendant, in a broadcast relating to the emittance of lead from Toronto area companies, made certain statements which directly and indirectly accused the plaintiff of giving false and misleading evidence about the health risks. The program was broadcast to the Atlantic provinces and, in a different form, in other time zones in North America. It was noted that the plaintiff was a professional of significant esteem in his field; there was no attempt to apologize or retract the statements; and they had been widely distributed to

unknown numbers of people by a broadcaster of good reputation. The Court ordered general damages in the amount of $20,000.

[117] In *Neuls v. Toffoli* (*supra*), the defendant alleged that the plaintiff, her brother, had molested her. The court held that the statements were defamatory as they imputed very serious criminal acts on the part of the plaintiff, which the court could not find were true. The statements had been made orally to four individuals. The plaintiff had suffered emotionally from the allegations and had sought counselling. The court awarded $15,000 in general damages.

[118] *Pressler v. Lethbridge* [2001] B.C.J. No. 1080. Defendants found jointly liable for defamatory statements made against the plaintiff. At trial, the individual defendant was ordered to pay $15,000 general damages; the corporate defendant in the amount of $60,000. The appeal court increased the damages against the individual defendant to $25,500.

[119] In *McCaslin v. Biden*, 2002 SKQB 525, the allegations were of addictions, cheating, and lying about identity of a father to the defendant’s son. The plaintiff was said to be unfit for employment, and having committed fraud of the welfare system. General damages awarded $25,000.

[120] In *Ayangma v. NAV Canada* [2000] P.E.I.J. 65, the plaintiff had applied for a position as an air traffic controller. He scored perfectly on the written test but failed the oral test twice. During a subsequent Human Rights complaint investigation, an employee of the defendant speculated that the plaintiff might have seen the written test prior to taking it. The statement was found to be defamatory. In relation to damages, the court found that the statements had been made to two persons only, the investigator, and subsequently her supervisor. The plaintiff's failure to become an air traffic controller was his own, not caused by the statements. The court awarded general damages in the amount of $1,500.

[121] The case of *Elgert v. Home Hardware* [2010] A.J. No. 139 involved allegations of criminal behaviour, i.e., that the plaintiff employee had committed sexual assaults against female employees. It was unclear the extent to which the statements had been disseminated. The court stated:

> 34 In considering the range of damages, the triers of fact must judge the seriousness of the defamatory statements as alleged and proven; how widely the statements were published; the extent of the demonstrable damage cause to Mr. Elgert; and the malice, if any, on the part of Ms. Bernier or Stengle. Mr. Elgert is entitled to be compensated for damage to his reputation, and any subsequent damage or injury to his feelings and health which was reasonably foreseeable by Ms. Bernier or Ms. Stengle when they made the statement(s).
>
> 35 In addition to the indignity, mental suffering, disgrace, humiliation and loss of social status experienced by Mr. Elgert as a result of the publication or spreading of the defamatory statement(s) from the evidence, I must also note that defamation damages are inherently relatively low for ordinary individuals in the community.

> 36 Having said that, alleged sexual assault on female employees in the work place represents a significant social stigma in a small community such as Wetaskiwin.
>
> 37 I conclude that the range of damages to be submitted to the jury will be between $5000 to $60,000. (underlining is mine)

[122] This would need to be adjusted to 2015 levels, at $5,500 to $65,000.

[123] In *Gouin v. White* [2013] A.J. No. 633 (C.Q.B.) the defendant had published accounts suggesting that the plaintiffs were involved in hiding money in offshore bank accounts. The statements were published in a newspaper and on the internet. The plaintiffs were local business people in the Edmonton area and had their reputation greatly affected. The court held:

> 46. The circumstances of this case, specifically, the gravity of the defamatory statements, the repetition of the defamatory statements, period of time over which the statements have been repeated, and the breadth of the publication and republication, warrant an award of general damages, in favor of each of the Applicants, at the high end of the general damages spectrum for defamation.
>
> 47. Furthermore as demonstrated by website extracts attached to Roger's Affidavit, the Defendants maintain, publicly and apparently even from police custody, the accuracy of the Defamatory Statements. Publication on this website which not only repeats the defamation but broadens the audience to which it was published.

[124] Awards of general damages in the amount of $100,000 for each plaintiff were granted.

[125] In the case at bar, the defendant Grimes' statements were clearly defamatory. His actions were offensive and inexplicable. His task was an investigation of the plaintiff's application for a firearms license; by no measure did

he appropriately accomplish his task. Rather, he used the opportunities presented by his position to cause havoc in the life of the plaintiff. He attended the plaintiff's school and reported rumours and allegations of serious criminal and other inappropriate conduct to her instructors. He reported rumours to her training placement. He did this in complete ignorance of whether the allegations were true, and with a complete lack of diligence in determining their truth. He even presented his own ill-founded speculations and accusations.

[126] He did all of this wearing the cloak of a provincial DOJ investigator, with all of the credibility such a title would bring. He attended at the plaintiff's school where he knew she was training for a law enforcement career, and where he knew allegations of criminal activity would have to be of enormous concern. And all of this he did in cavalier fashion, with entirely callous disregard for the results his words would have. The Province is vicariously liable for actions committed by the defendant Grimes in the execution of his employ.

[127] There was a significant effect on the plaintiff's mental health. I accept that the plaintiff has a long-standing history of mental health difficulties, and I accept that the plaintiff was a particularly vulnerable individual. I also have no doubt that the events described in this decision had a significant negative effect upon her mental health, which had stabilized prior to the events. Although the letter from her

family doctor does not specifically reference these events as reasons for the relapse in October 2012, in my view it is reasonable to accept that the actions of Mr. Grimes, and vicariously the Province of Nova Scotia, were a significant cause. It is truly unfortunate that she suffered this setback, just as her life appeared to be moving in positive directions. This is Mr. Grimes' fault.

[128] On the other hand, it would appear that her health situation has stabilized again, within a relatively short period. The information provided in support of her 2014 firearms application indicates that the plaintiff describes no current symptoms, and that matters are presently well controlled with a stable dose of antidepressant medication. I am not persuaded that these events will cause a permanent setback for her.

[129] Nor am I persuaded that these events have completely removed any future opportunities for the plaintiff in the field of law enforcement. The impugned information here was disclosed to a finite number of people, many of whom have testified and stated that their positive opinion of the plaintiff is not changed. This is not a situation where the information was printed in a newspaper or on the internet where the number of people having viewed it would be infinite, and impossible to capture or set right. While I appreciate the plaintiff's subjective fears about seeking this kind of employment, there is not enough evidence before me to establish that

she is prevented from pursuing these career goals. It is truly unfortunate that the plaintiff experienced this significant setback in her plans, but it was a setback, not a permanent situation.

[130] In relation to quantum, the plaintiff raises the issue of the number of re-publications of the libellous statements. A defendant may be held liable for each publication, and re-publication, of the defamatory statement (*Breeden v. Black* [2012] 1 S.C.R. 666). In a case such as the one at bar, according to the plaintiff, the court should therefore multiply the award to the plaintiff, by the number of times the statements were repeated.

[131] I disagree with that approach. The caselaw is clear that the extent of the publication is an important factor: to whom it was made, and how many times. Having said that, I know of no authority where a damage award was arrived at by applying a mathematical calculation, where the court granted an amount per publication, and multiplied it by the number of publications.

[132] The defamatory statement about the plaintiff's involvement in "criminal activity" was made directly to three people, and indirectly to two more. The defamatory statements relating to her employment history were made to two people. I simply take that factor into account, along with all the other factors here.

It does not rise to the level of those cases where the dissemination was in a public forum, such as the media or the internet. I also note that the plaintiff is an "ordinary" member of the community; in keeping with the caselaw, awards for such plaintiffs are never excessive.

[133] Having regard to all of the relevant factors here, I find that the plaintiff's general damage award should fall in the mid-range of the awards found in caselaw. It should be more substantial than the awards in *Ayangma* or even *Neuls*, but does not reach the level of damages in *Gouin* or *Trout Point.* I also make adjustments in the awards for 2015. I find that the appropriate amount of general damages here is $35,000.

Aggravated damages

[134] Aggravated damages, when ordered, are compensatory in nature to take into account the additional harm caused to the plaintiff by the defendant's malicious conduct.

[135] In *Hill v. Church of Scientology*, [1995] 2 SCR 1130, the Supreme Court held that aggravated damages depend on a finding of malicious conduct (including recklessness), that has the effect of increasing the injury suffered by the plaintiff,

by "spreading further afield" or "increasing the mental distress and humiliation".

The court noted:

> [190] If aggravated damages are to be awarded, 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. See, for example, *Walker v. CFTO, supra*, at p. 111; *Vogel, supra*, at p. 178; *Kerr v. Conlogue* (1992) 65 BCLR (2d) 70 (SC), at p. 93; and *Cassell & Co. v. Broome, supra*, at p. 825-26. The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances, which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. See *Taylor v. Despard, supra*, at p. 975.

[136] Justice Cory then further discussed some of the factors that might result in such an award:

> [191] There are number of factors that a jury may properly take into account in assessing aggravated damages. For example, was there a withdrawal of the libellous statement made by the defendants and an apology tendered? If there was, this may go far to establishing that there was no malicious conduct on the part of the defendant warranting an award of aggravated damages. The jury may also consider whether there was repetition of the libel, conduct that was calculated to deter the plaintiff from proceeding with the libel action, a prolonged and hostile cross-examination of the plaintiff or a plea of justification which the defendant knew was bound to fail. The general manner in which the defendant presented its case is also relevant. Further, it is appropriate for a jury to consider the conduct of the defendant at the time of the publication of the libel. For example, was it clearly aimed at obtaining the widest possible publicity in circumstances that were the most adverse possible to the plaintiff?

[137] *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 SCR 3, the Supreme Court clarified the behaviour which could amount to malice:

> 96. A distinction in law exists between "carelessness" with regard to the truth, which does not amount to actual malice, and "recklessness", which does. In *The*

> *Law of Defamation in Canada, supra*, R.E. Brown refers to the distinction in this way (at pp. 16-29 to 16-30):
>
> > … a defendant is not malicious merely because he relies solely on gossip and suspicion, or because he is irrational, impulsive, stupid, hasty, rash, improvident or credulous, foolish, unfair, pig-headed or obstinate, or because he was labouring under some misapprehension or imperfect recollection, although the presence of these factors may be some evidence of malice.
>
> 97. The author then puts forward the reasons of Lord Diplock in *Horrocks v. Lowe* [1975] A.C. 135 (H.L.), as representative (though not definitively) of the Canadian position. In that case Lord Diplock wrote at p. 150:
>
> > … what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, "honest belief". If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true… But despite the imperfection of the mental process by which the belief is arrived at it may still be "honest", that is, a positive belief that the conclusions they have reached are true. The law demands no more.
>
> 98. This proposition does indeed seem to be generally representative of the Canadian position on the matter…

[138] In the *Botiuk* case, a number of the defendants, being lawyers, had signed a declaration confirming that they had "familiarized" themselves with a certain report, and that it "correctly and accurately" reflected a state of affairs. In fact, several of them had not even read it. They had taken no steps to ensure that the document contained accurate information. The court held that such recklessness amounted to malice:

> 102. The appellants must have, or at the very least should have, realize that the endorsement of eight prominent lawyers would have a devastating effect on Botiuk's reputation. The evidence indicates that after the publication of the

> Lawyers' Declaration, public opinion in the community swung decisively against Botiuk. Witnesses testified that they became convinced that the rumors might actually be true after they had read the document.
>
> 103. Taking into account the appellants' status as lawyers and influential persons in the community, and the effect of their concerted action in signing the Lawyers' Declaration, I'm satisfied that their conduct in signing the document without undertaking a reasonable investigation as to the correctness of the document, which they were duty-bound to do, was reckless. This same conclusion can be reached from their failure to place any restriction or qualification upon the use that could be made of it. The legal consequence of their recklessness is that their actions must be found to be malicious.

[139] Damages in the amount of $140,000 was awarded, for general damages, aggravated damages, and present value of future pecuniary loss.

[140] I have not been persuaded that Mr. Grimes pursued this course of action in an intentionally malicious way. For example, I do not find that he intentionally targeted the plaintiff for harm, or that he completely invented untrue and defamatory stories with a view to disrupting the plaintiff's life. I also do not find that he ever followed her, as she alleges, as there is no evidence to support this conclusion.

[141] However, I do find that Mr. Grimes showed a completely reckless, I would say appalling, disregard for the plaintiff's reputation and dignity. As a firearms investigator, he was privy to certain statements made by third parties. Mr. Grimes did <u>absolutely nothing</u> to verify the correctness of the information he received.

[142] For reasons I cannot fathom, Mr. Grimes then chose to go about, to the plaintiff's school and training placement, spreading and discussing this information. They were lies. Mr. Grimes embellished upon the information, with his own outrageous and ill-founded speculations.

[143] The statements he made were not in relation to innocuous or inconsequential behaviour; they clearly suggested criminal behaviour on the part of the plaintiff. Coming from a person in Mr. Grimes' position, such information would be considered to have great weight and be enormously serious.

[144] At trial, Mr. Grimes tried to explain his behaviour by saying that his concern was for PTSD on the part of the plaintiff. I specifically reject that evidence from him. It is completely at odds with all of the other evidence before me, in particular, the statements he actually made to Success College and Dalhousie. Mr. Grimes wrote two reports in relation to the plaintiff: the first being his recommendation for refusal to the chief firearms officer; the second being an additional report he created specifically for the plaintiff. Both reports repeatedly document Mr. Grimes' stated concerns regarding the plaintiff's dishonesty, anger issues, criminal code charges, employment history, and that those were the reasons for his having refused the license. At no time did Mr. Grimes express the plaintiff's possible PTSD as a motivation for his disclosures, until now.

[145] There was an apology tendered by Mr. Grimes, and I take that into account. Having said that, the apology was quite limited. There was no acknowledgment of the significant harm caused to the plaintiff. There was very little, if any, acknowledgment of what Mr. Grimes thinks he did wrong. The letter reads, "During the course of this investigation information regarding your background was <u>in one way or other</u> disclosed." (underlining is mine)

[146] In fact, the information was disclosed in only one way, by Mr. Grimes himself disclosing it. The words used in the letter demonstrate Mr. Grimes' difficulty in acknowledging that he, and only he, was the cause of the problem. I am further troubled by his testimony that his apology was originally four pages long, and that he feared it being "torn apart" by counsel. I agree that Mr. Grimes, under the guise of an apology, originally meant to explain away his actions. He abandoned that only when he realized that he would face further unpleasant questioning.

[147] Mr. Grimes, repeatedly during his testimony, had difficulty acknowledging what he actually did. On more than one occasion, he "did not mean what was understood", or even "he did not say exactly that", or he said might have said words "to that effect". He explained that the college officials had misunderstood him, and that he "took responsibility" for that. What is clear to me is that, even as

late as this trial, Mr. Grimes continues to seek ways to minimize, or explain away, his destructive actions.

[148] As a result of these facts, and despite the apology tendered by Mr. Grimes, I find it very hard to conclude that he is truly remorseful for his actions.

[149] In relation to the conduct of the case, the defendants here filed a defence in 2013, denying that any defamatory statements were made; and in the alternative, pleading justification. Mr. Grimes, of course, would or should have known all along what he had said to the College and to Dalhousie. Even if he honestly could not remember, by the very latest at the conclusion of discoveries (February 2014) he would have been specifically reminded of his words.

[150] The pleas of denial and justification were not amended until October 2015. Obviously, parties to litigation are to be encouraged in the withdrawal of unsupportable claims and/or defences at any time. It was certainly a benefit to the plaintiff that liability was admitted. However, it must be noted that the plaintiff faced an original defence pleading for two years, wherein the defendants claimed that the statements were never made, or were justified and/or true.

[151] I note from Canadian Libel and Slander Actions, McConchie and Potts (Toronto: Irwin Law, 2004) at p. 501:

> A decision to plead justification should not be made lightly. An unsuccessful plea of justification may be taken into account by the court when assessing damages. Depending on the circumstance, a failed plea of truth may aggravate the plaintiff's damages or underpin an award of exemplary damages. It may also lead to a more substantial award of costs against the defendant.

[152] A similar statement was made by Duncan and Hoolahan, in Guide to Defamation Practice, 2nd ed. (1958) p. 50:

> A plea of justification should never be put upon the record unless counsel is satisfied that clear and sufficient evidence of the truth of the allegation is available to the defendant. It is, by its nature, a very dangerous plea, since it is calculated seriously to aggravate damages awarded if it should fail. The jury are entitled to take into consideration in assessing damages the conduct of the defendant right up to the time of the verdict, and for a defendant to persist unsuccessfully and unreasonably in the truth of the charges he has made is a sure way of doing further damage to the plaintiff.

[153] Also in Brown on Defamation (Carswell, 2nd ed, 1999), at Volume 3, p. 10-125:

> The filing of the plea of justification is considered to be a republication of the original defamation, and an aggravation of the injury. It is, therefore, strong, circumstantial evidence of malice on the part of the defendant… Persistence in such a plea throughout the trial will have the effect of aggravating the damages suffered by the plaintiff, and any award may be enhanced accordingly. This is certainly true if such evidence is offered unsuccessfully in support of the plea and it may be true even if no evidence is offered at all.

[154] The defendants here did not persist in their plea of justification to trial; they withdrew it shortly before the trial commenced. That is clearly worth something. However, it appears on the facts before me that they should have withdrawn it earlier, and perhaps they should never have made it at all.

[155] Given the callous and reckless disregard which the defendant Grimes had for the plaintiff's reputation, and the totality of the manner in which these events unfolded, I have no difficulty finding the existence of malice as defined in *Botiuk*.

[156] I agree that aggravated damages are appropriate.

[157] In relation to quantum for aggravated damages, I have considered: *Lapointe v. Summach* [2003] BCJ No. 3033 ($10,000 aggravated damages awarded); *McCaslin v. Biden* [2002] S.J. No. 763 ($10,000 aggravated damages awarded); *Neuls v. Toffoli (supra)* ($5,000 aggravated damages awarded).

[158] I find that the appropriate amount for aggravated damages in this case is $15,000.

Punitive/Exemplary

[159] In *Hill (supra)* the court stated:

> 196. Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the **jury** or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[160] In *Whiten v. Pilot Insurance* [2002] S.C.J. No. 19, the Supreme Court of Canada made the following helpful comments in relation to the adequacy of a jury charge as to punitive damages:

> 94 … it would be helpful if the trial judge's charge to the jury included words to convey an understanding of the following points, even at the risk of some repetition for emphasis. (1) Punitive damages are very much the exception rather than the rule, (2) imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question. (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation. (6) Their purpose is not to compensate the plaintiff, but (7) to give a defendant his or her just desert (retribution), and to mark the community's collective condemnation (denunciation) of what has happened. (8) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose. (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages. (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[161] In *Gouin v. White* [2013] A.J. No. 633, the defamatory comments made were of fraud and criminal behaviour; they continued to the trial. The court considered the reckless and malicious manner of the making of the statements, their severity, the contempt displayed by the defendant, and the length of time the statements were sustained. Punitive damages of $50,000 were awarded.

[162] In *Hiltz and Seamone v. AGNS* [1999] N.S.J. No. 47, $100,000 punitive damages were awarded (undisturbed by Court of Appeal).

[163] In *Trout Point Lodge v. Handshoe* [2012] N.S.J. No. 427:

> 97 As the Supreme Court of Canada said in *Hill,* punitive damages are not compensatory in nature but are meant to punish the defendant. There must be a rational purpose in awarding punitive damages. In *Hill*, the Supreme Court of Canada considered the actions of the Church of Scientology and its officers during the course of the litigation and focused on its oppressive and high-handed conduct in the malice with which it acted throughout.
>
> 98 The defendant in this case continued his defamation after the newspaper printed a retraction of its story lining Trout Point Lodge, Mr. Leary and Mr. Parret with Aaron Broussard and the serious criminal allegations against him. He redoubled his efforts after being sued and continued his defamation after judgment had been entered against him. He repeated the original defamatory statements. Just prior to the hearing about damages, there were further defamatory statements.
>
> 99 Mr. Handshoe has stated that because of legislation in the United States it will be impossible for the plaintiffs to recover judgment against him. This is a factor in awarding punitive damages. I conclude there is in this case a rational reason for awarding punitive damages for the defendant's egregious misconduct, which offends the Court's sense of decency. It is to act as a deterrent, not only to Mr. Handshoe, but also to others who might be inclined to defame someone in this fashion.

[164] While the court found that the original defamation award was enough in relation to the corporate plaintiff, it found that there was a need for additional punishment in the case of the individual plaintiffs. An additional award of $25,000 for each individual plaintiff was granted as punitive damages.

[165] Having considered all of the appropriate factors, I do not think that an award of punitive damages is warranted here. While the defendant Grimes' conduct has

been appalling, as I have described, I do not find that it rises to the "highly reprehensible" degree as can be seen in the cases where such awards are made. The harm caused to the plaintiff was substantial, but short-lived. The degree of the misconduct was certainly high in some aspects, but did not rise to the level that we see in punitive damage caselaw, e.g., widespread dissemination on the internet, or continued dissemination of the information, even up to and during the trial.

[166] There was no advantage or profit gained by the defendant. I do not know what other penalties, if any, will be suffered by the defendant for his actions, but proceedings have been instituted. He says he has learned from his mistakes, and he will never repeat them, which I accept. I also know that the defendant province has instituted training with a view to preventing such events in the future.

[167] In my view, the compensatory awards I have already made will adequately achieve the objective of deterrence and denunciation. No additional amount is required.

Breach of Privacy/Intrusion upon seclusion

[168] The plaintiff further claims damages for the tort of "breach of privacy". The amended Notice of Defence provides, at para. 5, that the defendants admit liability for both defamation and breach of privacy.

[169] The recognition of this tort in Ontario can be found in the case of *Jones v. Tsige* [2012] O.J.No. 148 (Ont. C.A.). In that case, the defendant used her work computer at BMO to repeatedly access the personal banking information of the plaintiff, for a period of four years. After much discussion, the court agreed that there existed, in Ontario, the tort of invasion of privacy, or intrusion upon seclusion. As to its elements, it held:

> 70 I would essentially adopt as the elements of the action for intrusion upon seclusion the *Restatement (Second) of Torts* (2010) formulation which, for the sake of convenience, I repeat here:
>
> > One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be highly offensive to a reasonable person.
>
> 71 The key features of this cause of action are, first, that the defendant's conduct must be intentional, within which I would include reckless; second that the defendant must have invaded, without lawful justification, the plaintiff's private affairs or concerns; and third, that a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish. However, proof of harm to a recognized economic interest is not an element of the cause of action. I return below to the question of damages, but state here that I believe it is important to emphasize that given the intangible nature of the interest protected, damages for intrusion upon seclusion will ordinarily be measured by a modest conventional sum.
>
> 72 These statements make it clear that recognizing this cause of action will not open the floodgates. A claim for intrusion upon seclusion will arise only for deliberate and significant invasions of personal privacy. Claims from individuals who are sensitive or unusually concerned about their privacy are excluded: it is only exclusions into matters such as one's financial or health records, sexual practices and orientation, employment, diary or private correspondence that, viewed objectively on the reasonable person standard, can be described as highly offensive.

[170] The court went on to state that damages in such cases, where the plaintiff had suffered no provable pecuniary loss, would fall within the category of "symbolic" or "moral" damages. In determining quantum the court noted the following:

> 87 In my view, damages for intrusion upon seclusion in cases where the plaintiff has suffered no pecuniary loss should be modest but sufficient to mark the wrong that has been done. I would fix the range as up to $20,000. The factors identified in the Manitoba *Privacy Act*, which, for convenience, I summarize again here, have also emerged from the decided cases and provide a useful guide to assist in determining where in the range the case falls:
>
> 1. the nature, incidence and occasion of the defendant's wrongful act;
>
> 2. the effect of the wrong on the plaintiff's health, welfare, social, business or financial position;
>
> 3. any relationship, whether domestic or otherwise, between the parties;
>
> 4. any distress, annoyance or embarrassment suffered by the plaintiff arising from the wrong; and
>
> 5. the conduct of the parties, both before and after the wrong, including any apology or offer of amends made by the defendant.

[171] Ms. Jones was awarded $10,000 in this case.

[172] It has been recognized that, in an appropriate case, a Nova Scotia court could award damages for the tort of invasion of privacy or "intrusion upon seclusion" (*Trout Point v. Handshoe*, *supra*).

[173] In the case at bar, the action complained of, in the context of the "invasion of privacy" claim, is Mr. Grimes' attendance at Success College and at Dalhousie

Security, and his interference with the plaintiff's right to those private relationships.

[174] Frankly, and despite the defendant's acceptance of responsibility for this claim, I am not entirely persuaded that the facts here fit the elements of the tort as defined by *Jones*, *supra*.

[175] Having said that, I do not need to undertake that analysis. The actions complained of under this heading are, essentially, the same actions underpinning the defamation claim, for which I have already awarded complete damages. The factors noted in par. 87 of *Jones* have already been considered in that award. It would be inappropriate to make further awards. I agree with and echo the conclusions of the Court in *Trout Point v. Handshoe*, *supra*, at paragraph 80:

> Because this is also a defamation claim, I conclude that this is a further reason to leave the issue of a cause of action for intrusion upon seclusion for another day in another proceeding.

[176] The defendants are jointly and severally liable for all awards I have made.

[177] As to the issue of costs, I have already heard submissions from both counsel. However, having now rendered this decision as to damages, I will allow them to provide me with additional written submissions as to the issue of costs, should they

choose to do so, within 20 days of this decision. A further decision on costs will be forthcoming.

Boudreau, J.