

# Brief poll

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# ***Caplan v. Atas***

The new tort of harassment  
in internet communications

BY VICTORIA FLAHERTY

# Presentation outline

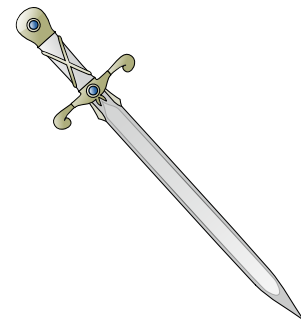
1. Context: The historical, legislative and jurisprudential landscape *Caplan v. Atas* arose in
2. The case: Procedural history, facts, analysis, precedent
3. Comments: Analysis and implications
4. Discussion

Defamation “protects a person’s reputation from unjustified assault. The law of defamation does not forbid people from expressing themselves. It merely provides that if a person defames another, that person may be required to pay damages to the other for the harm caused to the other’s reputation. However, if the defences available to a publisher are too narrowly defined, the result may be “libel chill”, undermining freedom of expression and of the press.”

–*Grant v Tortstar Corporation*, 2009 SCC 61 at para 2



# The common law history of defamation



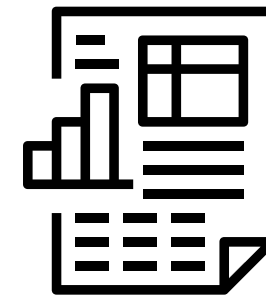
1,000 years ago: Defamation, libel, and “foul words” punishable by fines of several shillings or bodily injury



Modern iterations of defamation law: Created for professional media corporations and print media

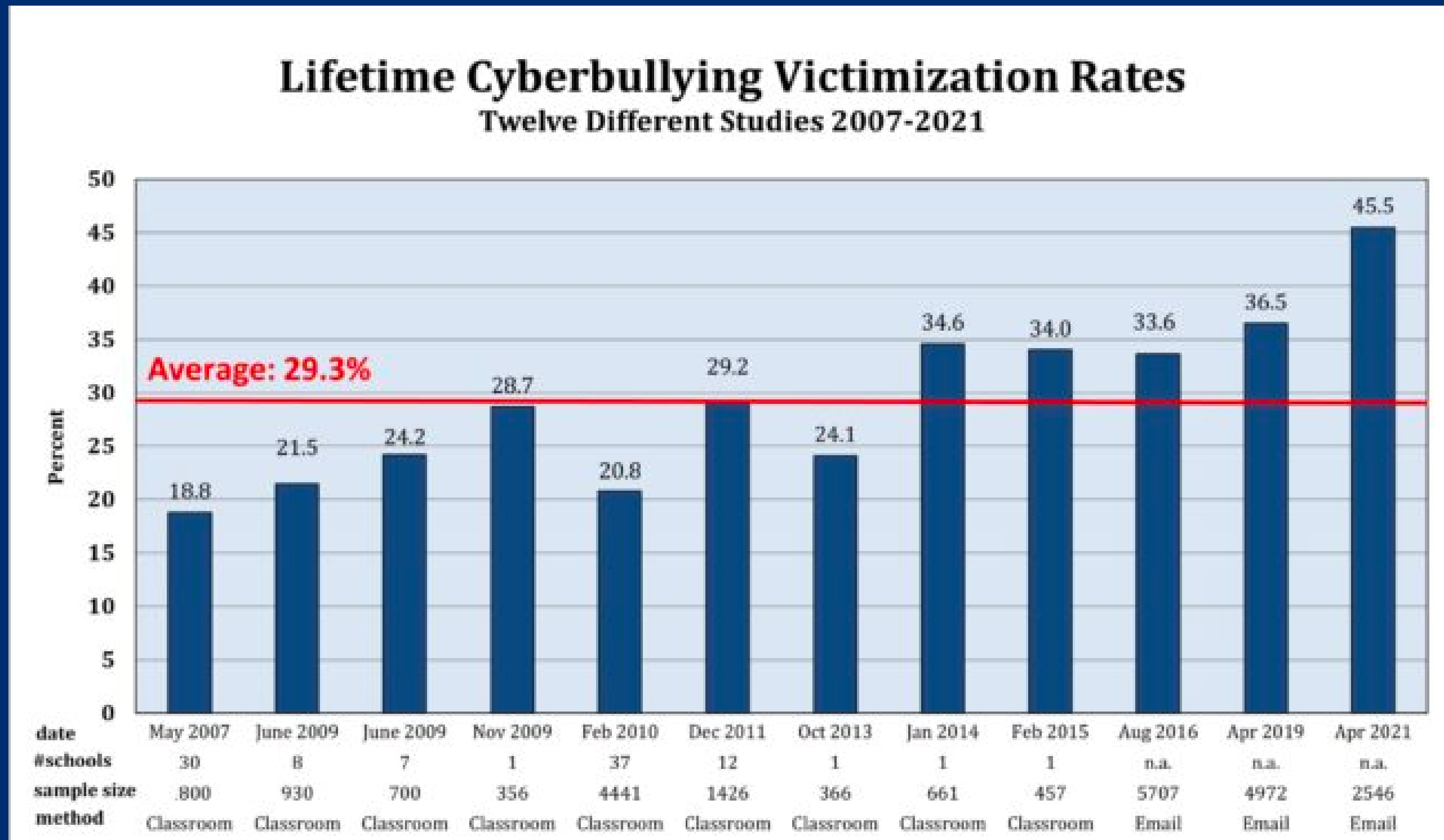


Defamation law is about balancing freedom of expression and the right to reputation



Rise of the internet as a tool to defame and harass: 2020 report by the LCO addressed this trend

# The Internet: The new frontier of harassment



# *Caplan v. Atas:* *A tort is born*





# Facts

- Nadire Atas made defamatory statements about as many as 150 victims over several decades (From the 1990s to the present) that amounted to a “vile campaign of cyberstalking”
- Atas utilized Reddit, Pinterest, Facebook, Lawyerratingz, Blogspot, and other platforms to harass her victims
- Atas was engaged in a revenge mission. According to Corbett J., her “lack of empathy is sociopathic”



# “Vicious Falsehoods”

Go ahead and Google his name for yourself to see what the married father of two children and local small business owner is up against.

First to pop up are posts on websites like [thecheatalert.com](http://thecheatalert.com), [adulterers.org](http://adulterers.org) and [catfished.net](http://catfished.net) with his name, business and local communities screaming across the screen in bright big letters: “Pedophile...Beware of this monster.” Look a little further down the list of Internet search suggestions and there’s even a Wordpress story with his name and photo inserted in an actual pedophile ring article.

“Hopefully people don’t believe everything they read on the Internet these days but I’d like to get it clear that I am not associated with it at all,” Alkins said.

**Source:** Dave Dale, “Travis Alkins among 150 Internet harassment victims in ground-breaking court case,” March 2021, Toronto Star, available online at: <[www.thestar.com/news/canada/travis-alkins-among-150-internet-harassment-victims-in-ground-breaking-court-case/article\\_09024813-231c-5c7e-b100-5bcc553dbf53.html](http://www.thestar.com/news/canada/travis-alkins-among-150-internet-harassment-victims-in-ground-breaking-court-case/article_09024813-231c-5c7e-b100-5bcc553dbf53.html)>

# Procedural History

- Atas was a vexatious litigant (received fee waivers)
- Undeterrable (interlocutory injunctions, 74 days in jail, contempt of court)
- Impecunious (bankrupt)
- Self-represented
- This case: 3 motions for summary judgement, 1 for default all pertaining to Atas' harassment and defamation of others

The New York Times

## ***Woman Accused of Defaming Dozens Online Is Arrested***

Nadire Atas trashed the reputations of people she saw as enemies, and their relatives. On Tuesday, she was charged by the Toronto police with harassment and other offenses.

 Share full article



Nadire Atas in Toronto in 2019. Last month, a judge ordered Ms. Atas to stop her online attacks against 45 people who had sued her for defamation. The New York Times



# Justice Corbett's perspective

“...the law needs better tools, greater inter-jurisdictional cooperation, and greater regulation of the electronic “marketplace” of “ideas” in a world with near universal access to the means of mass communication.” (para 6)



# Justice Corbett's analysis

## **Evolving jurisprudence**

Case law in Manitoba and the US (tort of harassment in internet communications)

## **Academic research**

Social science research which confirmed that online harassment is rapidly growing in prevalence and has a negative impact on its victims

## **Gap in Ontario legislation**

Other provinces (NS, MAN) and other CML jurisdictions (NZ, UK) had legislation to combat online harassment





# Test for online harassment

“Where the defendant maliciously or recklessly engages in communications conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm.” (para 171)

# The inadequacy of other torts

Corbett J. argued that other avenues of finding Atas delictually liable, such as through the use of the tort of defamation, the tort of intentional infliction of mental suffering, or the tort of intrusion on seclusion, were inadequate given the nature of Atas' conduct and the nature of online harassment.



# Practical remedies

- “Damages and apologies would be ineffective in this case”
- Corbett J. ordered an apology, for Atas to remove the statements, a permanent injunction on her posting about her victims on the internet, and a transfer of title of the posts to an independent supervising solicitor or expert if Atas does not comply

**For furthur  
learning....**







# Since 2021



## Alberta courts

Considered in a family law case to award damages, *ES v Shillington*, 2021 ABQB 739, but not used. Considered when defining harassment in *Alberta Health Services v Johnston*, 2023 ABKB 209.

## Manitoba courts

“in light of modern realities, there may be good reason to recognize and provide redress relating to harassment online”  
–*M.S. v. T.V.*, 2022 MBKB 211, paras 45-47

## British Columbia courts

*Caplan v. Atas*’ finding that “Internet defamation and harassment has been recognized as pervasive and a scourge on our daily lives” was a consideration in a penalty determination for contempt of court in *APEGA v Drover*, 2021 BCSC 1643/  
Was not used in *Skutnik v British Columbia (Attorney General)*, 2021 BCSC 2408

## Nova Scotia courts

“in *Fraser v. Crossman*, 2022 NSSC 8, the test for cyberbullying actions was established.



# *Commentary*



# 1. Anonymity: The bathroom wall of the internet



chris pollard

Scammer / Guy Sanderson Babcock

Oxford masquerading as an IT consult

ISLINGTON, LONDON, ENGLAND, N1

operating as QUARTERMAIN & COMF

of his age if you ever meet this idiot.

Rip Off / Quartermain & Company Ltd



# 1. Anonymity: The bathroom wall of the internet (cont'd)

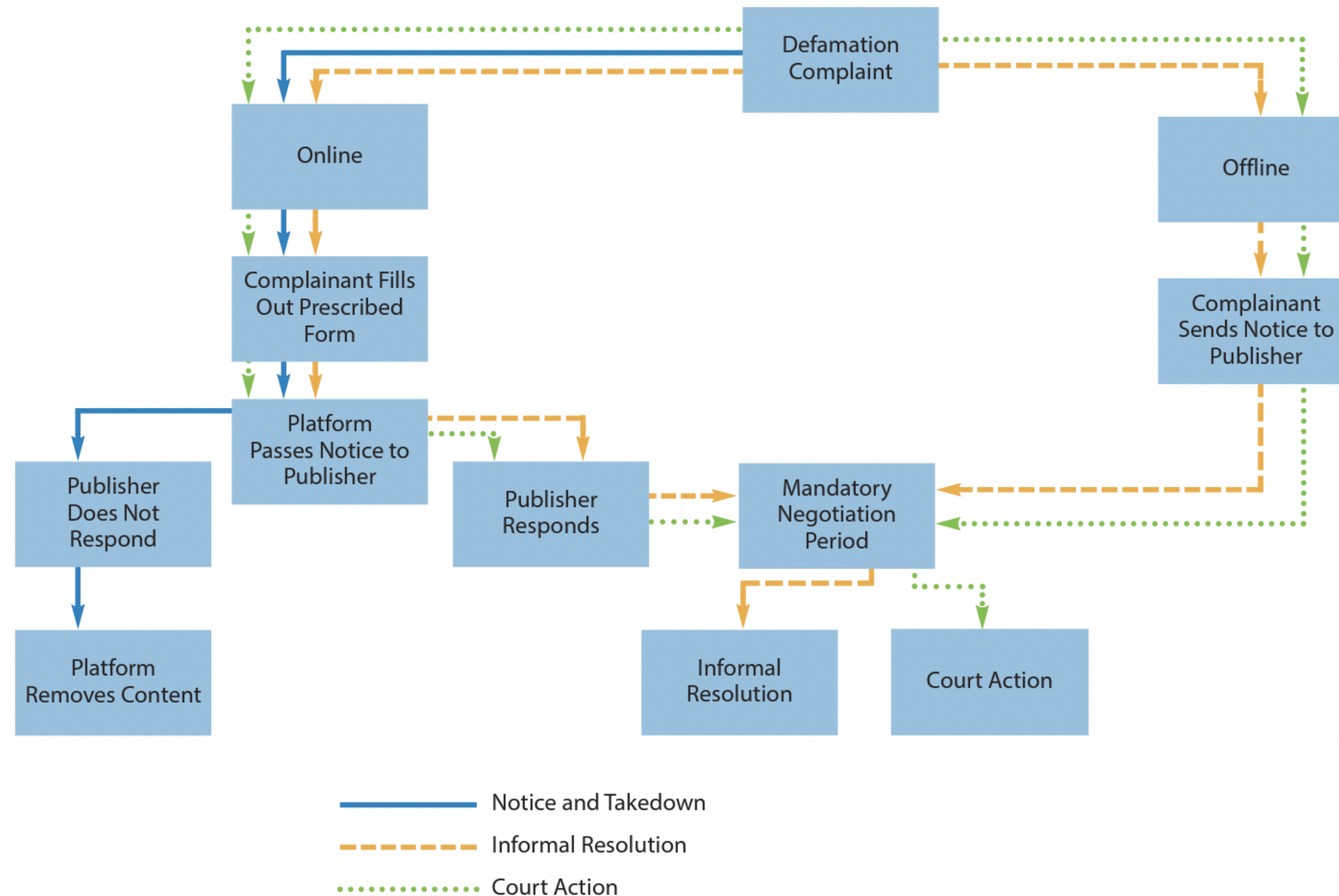
- In *Caplan v. Atas*, the balance of probability standard used
- “Opting to use pseudonyms reveals an intention to remain anonymous but does not create a reasonable expectation in that result.” –*Warman v. Wilkins-Fournier* (2010), 261 O.A.C. 245 (DC) at para 23.



## 2. Third party liability: “Gatekeeping” online harassment?

- The LCO recommended quite a significant role for social media platforms in Ontario’s online defamation legal process. What role do social media platforms and websites have to play in the proliferation of online harassment?
- Other jurisdictions:
  - American senate committee submissions
  - *Canoe inc c. Corriveau*, 2012 QCCA 109

# The Law Commission of Ontario's recommendations (2020)



### 3. Sexual harassment

In “Common Law Actions for Sexual Harassment: The Jurisdiction Question Revisited,” published in the Queen’s University Law Journal, Gillian Demeyere argues that courts should recognize a new tort of sexual harassment on the basis that the harm caused is more than just a form of sex-based discrimination



# 4. Transsystemic considerations: Contrasting the common law and civil law approaches

- Article 1457, Civil Code of Quebec
- Quebec Charter
- *Prud'homme v. Prud'homme*, 2002 SCC 85





# Discussion questions

1. Do you think existing torts could have adequately addressed this case, or do you agree with Corbett J.'s assessment of the special character of internet harassment, warranting a new tort? What are your thoughts on this approach in contrast to Quebec's?
2. What do you make of separating the legal classifications of internet harassment, cyberbullying, and sexual harassment? How might the common law develop in this respect? How should it?
3. How do you think third-party liability may be impacted by the remedies in this case, namely the transfer of title of posts? Do you agree with the LCO's approach?
4. How might the tort of online harassment be applied to corporate reputations? Is this desirable?



# Citations

## Cases

*Caplan v. Atas*, 2021 ONSC 670

*Corriveau c. Canoe inc.*, 2010 QCCS 3396

*Fraser v. Crossman*, 2022 NSSC 8

*Grant v. Torstar Corp.*, [2009] 3 S.C.R. 640, 2009 SCC 61

*Jones v. Tsige*, 2012 ONCA 32

*Merrifield v. Canada (Attorney General)*, 2019 ONCA 205

*Prud'homme v. Prud'homme*, 2002 SCC 85

*Warman v. Wilkins-Fournier* (2010), 261 O.A.C. 245 (DC)



# Citations cont'd

## Legislation

*Harmful Digital Communications Act 2015 No 63 (as at 09 March 2022), Public Act – New Zealand Legislation*

*Intimate Images and Cyber-Protection Act (the "Cyber-Protection Act"), Nova Scotia – Chapter 7 of the Acts of 2015*

*The Intimate Image Protection Act, 4th Session, 40th Legislature, Manitoba, 2016*

*The Cyberbullying Prevention Act, Manitoba, 2nd Session, 40th Legislature, 2013*



# Citations cont'd

## News sources

Dave Dale, "Travis Alkins among 150 Internet harassment victims in ground-breaking court case" Toronto Star (2021) Available at:  
[https://www.thestar.com/news/canada/travis-alkins-among-150-internet-harassment-victims-in-ground-breaking-court-case/article\\_09024813-231c-5c7e-b100-5bcc553dbf53.html](https://www.thestar.com/news/canada/travis-alkins-among-150-internet-harassment-victims-in-ground-breaking-court-case/article_09024813-231c-5c7e-b100-5bcc553dbf53.html)

A vast web of vengeance, New York Times (2021), at:  
<https://www.nytimes.com/2021/01/30/technology/change-my-google-results.html>

## Reports

Law Commission of Ontario, "Defamation in the Internet Age," March 2020, available at: [www.lco-cdo.org/wp-content/uploads/2020/03/Defamation-Executive-Summary-Eng-FINAL.pdf](http://www.lco-cdo.org/wp-content/uploads/2020/03/Defamation-Executive-Summary-Eng-FINAL.pdf)



# Citations cont'd

## Academic articles

Gillian Demeyere, "Common Law Actions for Sexual Harassment: The Jurisdiction Question Revisited" (2005), 8 Queen's Law Journal 637.

David Potts, "Cyberlibel: Information Warfare in the 21st Century?" (2011)

Van Vechten Veeder, "The History and Theory of the Law of Defamation. II," Columbia LR, Vol. 4, No. 1 (Jan., 1904), pp. 33-56

## Blog posts

Kevin O'Brien, Karin Sachar, Swetha Popuri, "Ontario Superior Court recognizes new cause of action addressing internet harassment" Osler (2021) Available at: <https://www.osler.com/en/resources/critical-situations/2021/ontario-superior-court-recognizes-new-cause-of-action-addressing-internet-harassment>





**Thank you for  
listening!**