COURT OF APPEAL

2026 QCCA 157 (CanLII)

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No.: 500-09-030526-230
(500-17-093293-168)

DATE: February 11, 2026

CORAM: THE HONOURABLE MANON SAVARD, C.J.Q
BENOÎT MOORE, J.A.
JUDITH HARVIE, J.A.

A.B.
APPELLANT/INCIDENTAL RESPONDENT – Plaintiff
v.

GOOGLE LLC
RESPONDENT/INCIDENTAL APPELLANT – Defendant

JUDGMENT

<u>WARNING:</u> On May 10, 2023, a judge of the Court (the Honourable Christine Baudouin) ordered a ban under article 12 of the *Code of Civil Procedure* (“*C.C.P.*”) prohibiting the disclosure, publication or circulation of the name of the appellant or any other information that would allow for him to be identified, to remain in effect until the Court's final judgment on the merits of this appeal. The Court renews this prohibition, in accordance with paragraph [6] of this judgment.

[1] The appellant appeals from a judgment rendered on March 28, 2023 by the Superior Court, District of Montreal (the Honourable Azimuddin Hussain), granting in part his civil liability claim against Google LLC.

[2] For the reasons of Moore, J.A., with which Savard, C.J.Q. and Harvie, J.A. concur,
THE COURT:

[3] **ALLOWS** in part the principal appeal, without legal costs;

[4] **ALLOWS** in part the incidental appeal, without legal costs;

[5] **QUASHES** the trial judgment for the sole purpose of:

i) **AMENDING** paragraph [637] of the judgment in first to substitute the amount of $25,000 for the amount of $500,000;

ii) **ADDING** paragraph [637(b)], which reads as follows:

[637b)] **CONDEMNS** Google LLC to pay to A.B. the sum of $1,500,000 in punitive damages with interest at the legal rate and the additional indemnity mentioned in article 1619 *C.C.Q.* as of the date of this judgment;

[6] **RENEWS** the publication ban ordered at paragraph [639] until the expiry of the time limit to file an application for leave to appeal to the Supreme Court or, in the event that such an application is filed, until the judgment dismissing the application or until the Supreme Court renders judgment on the merits of the appeal;

MANON SAVARD, C.J.Q.

BENOÎT MOORE, J.A.

JUDITH HARVIE, J.A.

Mtre Douglas Mitchell
Mtre David Grossman
IMK
For the Appellant/Incidental Respondent

Mtre Nick Rodrigo
Mtre Faiz Munir Lalani
Mtre Natalia Koper
DAVIES WARD PHILLIPS & VINEBERG
For the Respondent/Incidental Appellant

Date of hearing: October 29, 2024

English translation of the judgment of the Court

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MOTIFS DU JUGE MOORE, J.A.

[7] A.B. (hereinafter, "**the appellant**") appeals from a judgment rendered on March 28, 2023 by the Superior Court (the Honourable Azimuddin Hussain),[1] granting in part his civil liability claim against the respondent, Google LLC ("**Google**"), because of the fact that, since December 21, 2015, the latter refuses to de-index a URL link (hereinafter, "URL link", "link" or "hyperlink") allowing access to a post falsely claiming that he was convicted of child molestation.

[8] In first instance, Google denied all liability. Although it had previously decided to de-index the URL link in question, it explained that its change of position resulted from its policy of complying with applicable domestic law, which was purportedly amended by *Crookes v. Newton*[2] in which the Supreme Court held that a URL link is not defamatory in and of itself, unless it repeats the problematic content. That is why, as of December 21, 2015, Google decided to maintain the indexing of the URL link, without anything accompanying it however, a form of indexing commonly known as a "bare link". Google therefore does not associate to that link any title, which generally appears above the link, nor any excerpt – also known as a "snippet" – which generally appears under the URL link. Moreover, Google removed any cache that constitutes a stored snapshot of the webpage to which the URL link refers to ensure faster loading. Those measures make searching the indexed page very arduous, given that the appellant's name and certain specific words have to be included in the user's query in order to access them.

[9] The trial judge concluded that maintaining the bare URL link at issue constituted a fault under Quebec law, on the basis of both article 1457 of the *Civil Code of Québec* ("***C.C.Q.***") and an *Act to establish a legal framework for information technology* ("***IT Framework Act***").[3] He therefore ordered that Google pay $500,000 in moral damages, but, finding that the interference was unintentional under section 49 of the *Charter of Human Rights and Freedoms* ("***Charter***"),[4] he declined to award punitive damages. Similarly, the judge granted in part the injunction requests as follows:

> [638] ORDERS Google to ensure that its search results not list any webpages from the domains "ripoffreport.com", "www.ripoffreport.com", "www.usacomplaints.com", or "usacomplaints.com" containing the words "A. B.",

1 *A.B. c. Google*, 2023 QCCS 1167 [judgment under appeal].

2 2011 CSC 47 [*Crookes*]. That decision, to which we will return, determined that a blogger's mere reference to a page containing defamatory material, without otherwise reproducing or otherwise repeating the content, did not satisfy the "publication' requirement specific to the tort of defamation.

3 CQLR, c. C-1.1, ss. 22 and 27 [*IT Framework Act*].

4 CQLR, c. C-12 [*Charter*].

> this injunction being restricted in geographical scope to all users of the search service offered by Google, Google Search, located in the province of Quebec.

[10] Finally, the judge declined to issue a permanent publication ban, but did extend the interlocutory order for a period of 45 days:

> [639] ORDERS a ban on the publication, disclosure, or circulation of the name of the Plaintiff and any information that would allow for him to be identified, including the names of his family members, in connection with the present case and accordingly, ORDERS the anonymization of the name of the Plaintiff and the names of his family members in any publication, disclosure, or circulation of information in connection with the present case, but this ban is valid only for a period of 45 days after the date of the present judgment.

[11] The appellant appeals from the judge's refusal to award him punitive damages and asks the Court to extend the geographical scope of the injunction granted to the entire world and to issue a permanent publication ban with respect to his name and any information that would allow for him to be identified as well as another injunction to prevent his name from being associated with unfounded allegations of pedophilia and pederasty.

[12] For its part, Google filed an incidental appeal and claims that the judge erred in finding its civil liability, on the grounds of absence of fault, causal link and injury. For the same reasons, it appeals from the injunction granted but does not however take position on the issue of the publication ban.

[13] This case raises, for the first time before the Court, the issue of the liability of an intermediary whose search engine indexes a link leading to undisputedly false and defamatory information, without however being the author of the post and not reproducing its contents in any way. It simply ensures the indexing of the URL link of content found on the internet, nothing more.

[14] On a systemic level, this case raises the issue of the role and interaction of s. 22 of the *IT Framework Act* and art. 1457 *C.C.Q.* as well as that of the application of the Supreme Court's teachings in *Crookes*, which Google relies upon in refusing, since 2015, to remove the URL link central to the dispute.

[15] Before turning to the issues raised in both the principal appeal and the incidental appeal, we pause to the describe the general context of the case which, essentially, is undisputed.

GENERAL CONTEXT

[16] The appellant is a businessman working in the real-estate industry. From 1970 to 1993, he headed a highly successful company. In 1993, the appellant moved to New York

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and pursued his career as a real-estate developer there. In 2003, he became chairman of a real-estate brokerage firm.

[17] On April 5, 2006, the following text was posted on ripoffreport.com (the "**Impugned Post**"):[5]

> **[Company H] Con Artists, Unethical, Scammers, Frauds, Rip-offs, Pederasts New York New York**
>
> […]
>
> **[Company H]** is a fraudulent company. It is run by two con artists, M.N. and A.B. A.B. was convicted of child molestation in 1984. These two pederasts now run an elaborate scam pretending to be commercial real estate brokers.
>
> Do not work for this company! They are involved in numerous lawsuits for not paying former employers. They entice interns and recent college grads to work for them—promising large sums of money. These are lies. You will be fired when about to close your first deals.
>
> Do not hire this company! They change leases around to guarentee [*sic*] themselves more than double the common brokerage fee. These scammers are completely inept at what they are doing.
>
> R.
> Brooklyn, New York
> U.S.A.

[18] The post was written by an ex-employee who was in dispute with the real-estate firm following his dismissal. In April 2007, the appellant discovered the Impugned Post by "googling" his name.

[19] On April 26, 2007, T.U., a close friend of appellant, posted a complete refutation of the allegations in a comment under the Impugned Post. He also wrote to the content's editor, asking him to remove the post, without success.

[20] Meanwhile, T.U. wrote to Google asking that the Impugned Post be removed. On May 29, 2007, Google replied by stating that it did not control the content of the billions of pages that it indexes, it invoked its immunity under s. 230(c) of the *Communications Decency Act*[6] ("***CDA***") and consequently refused to remove the Impugned Post's URL link.

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5 Judgment under appeal, para. 47; Exhibit P-10, A.B., conf. vol. 2, p. 1390.

6 U.S. federal statute enacted in 1996: *Communications Decency Act*, 47 USC § 230(c)(1) (1996). That provision reads as follows:
(c) Protection for "Good Samaritan" blocking and screening of offensive material
(1) Treatment of publisher or speaker

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[21] On August 10, 2007, the appellant consulted a New York lawyer for the purpose of commencing defamation proceedings. On November 16, 2007, the lawyer informed him that any action against the author of the content was time-barred because, under New York law, it had to be brought within one year of the appearance of the post, i.e., no later than April 5, 2007. As for any proceedings against Google, they were barred by the immunity conferred by s. 230(c)(1) *CDA*. The appellant therefore did not commence any proceedings against the editor nor against the Impugned Post in the United States.

[22] On April 30, 2009, the Royal Canadian Mounted Police certified that the appellant had not been convicted of any criminal offence. That same day, the latter once again asked Google to de-index ripoffreport.com's URL, alleging a violation of Canadian and Quebec laws. On May 8, 2009, Google informed the appellant that it had removed the reference to the URL link on its Canadian platform only. The reference to the URL link reappeared in 2009 and 2011 and Google proceeded each time to its removal at the appellant's request.

[23] In 2010, the appellant moved back to the Province of Quebec.

[24] On October 19, 2011, the Supreme Court of Canada rendered its decision in *Crookes.* On December 9, 2015, the appellant's lawyers contacted Google to inform it that the URL link had reappeared and asked it to remove it once again. On December 21, 2015, Google replied that in accordance with its policies – and, presumably, in accordance with its understanding of the state of the law following *Crookes* – it agreed to remove the cache, the title and the snippet surrounding the URL link, but was no longer de-indexing the link itself (i.e., the bare link) to the Impugned Post.

[25] On March 31, 2016, the appellant filed a Judicial Demand Originating a Proceeding in Damages which would be amended a number of times. In the iteration that led to the judgment under appeal, the appellant claimed $1,000,000 in compensatory damages and $5,000,000 in punitive damages, and sought permanent injunctions requiring Google to refrain from indexing the URL links leading to the Impugned Post (the "**Websites Injunction**") and to ensure that no result of its search engine include his name within a certain proximity of the terms "child molestation" or "pederast" (the "**Keywords Injunction**").

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

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[26] On October 12, 2016, the Honourable Lukasz Granosik of the Superior Court ordered the anonymization of the appellant's name and a publication ban of the proceedings, exhibits and testimony until judgment on the merits, but declined to seal the file.[7]

[27] On March 28, 2023, the judgment under appeal was rendered, granting in part the appellant's claims. As I noted earlier, it thus ordered that Google pay him $500,000 in moral damages, dismissed the claim in punitive damages, granted in part the injunction sought and declined to order a permanent publication ban. Each party appeals.

[28] On May 10, 2023, my colleague Justice Christine Baudouin ordered the non-publication of the appellant's name and any information that would allow for him or any member of his family to be identified, until judgment of the Court on the merits.[8]

ISSUES ON APPEAL

[29] Although the principal appeal and the incidental appeal both deal with some of the remedies sought, the latter also raises the issue of Google's liability. For the purposes of the following reasons, it is appropriate to address the issues in the following order:

1) Did the judge err in finding that Google had committed a fault (incidental appeal)?

2) Did the judge err in finding that that fault had caused moral injury to the appellant and assessing damages at $500,000 (incidental appeal)?

3) Did the judge err in declining to award punitive damages (principal appeal)?

4) Did the judge err in declining to grant a permanent publication ban on the appellant's name (principal appeal)?

5) Did the judge err in granting an injunction (incidental appeal) or in determining its substantive and geographical scope (principal appeal)?

ANALYSIS

1) Did the judge err in finding that Google had committed a fault (incidental appeal)?

[30] Considering that Google had voluntarily agreed to de-index the Impugned Post's URL link up until the Supreme Court's decision in *Crookes*,[9] the judge framed the issue to be decided as follows: was Google committing fault since 2015 by leaving in its search

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7 *A.B. c. Google inc.*, 2016 QCCS 4913.

8 *A.B. c. Google*, 2023 QCCA 630.

9 The judge acknowledged that that such conduct was entirely blameless: judgment under appeal, para. 220.

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engine the Impugned Post' bare link – what the judge referred to as the "Post-*Crookes* Link Policy"?[10] He answered that question in the affirmative. Essentially, here are the reasons behind his conclusion.

[31] First, the judge held that *Crookes* was inapplicable, for both factual and legal reasons. Regarding the factual aspect, *Crookes* involved an online article that referred to defamatory material by hyperlink, without reproducing the content of that material or commenting on its veracity, whereas in the case at bar, Google, which publicly presents itself as a provider of reliable sources of information, indexes, and therefore, gives access to, a bare link to the Impugned Post. *Crookes* thus involved the liability of the content's author, whereas this case involves that of an intermediary.[11]

[32] Regarding the legal aspect, the judge recalled that under Quebec law, an action in defamation – as he characterized it – is governed by the general principles of fault-based civil liability. The question, therefore, is whether Google acted as a reasonable person placed in the same circumstances, considering section 22 *IT Framework Act*. These elements being obviously absent in *Crookes*, in which were applied the common law principles inherent to the tort of defamation under that system, that decision cannot apply.[12]

[33] Applying those principles, the judge concluded that Google's refusal to de-index from its search engine the URL link of content that it knew to be defamatory – and therefore illicit – without further public interest reasons, constituted a fault under both section 22 *IT Framework Act* and article 1457 *C.C.Q.* In fact, he added, Google's conduct prior to *Crookes*, whereas it had voluntarily agreed to de-index the URL link, constituted an admission of the illicit nature of the Impugned Post under section 22 *IT Framework Act* and of the indexing's wrongfulness.[13]

[34] The judge underscored the limited scope of his conclusion. He noted that the wording of section 22 of the *IT Framework Act* itself required a certain level of certainty as to the illicit – in this case defamatory – nature of the information. Google could therefore submit, under that section, the de-indexing to the demonstration of the content's illicit nature with regard to the applicable law or its policies. In the case at bar, however, the illicitness of the Impugned Post, by reason of its defamatory nature, leaves room for no doubt and is moreover not disputed by Google.[14]

[35] The judge then drew a connection between that state of affairs, the standard of conduct incumbent upon Google and the role that it claimed to assume. On that point, he noted that while Google sometimes represented itself to be a mere neutral messenger

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10 Judgment under appeal, para. 215.
11 Judgment under appeal, para. 223.
12 Judgment under appeal, paras. 236-250.
13 Judgment under appeal, paras. 251-258.
14 Judgment under appeal, paras. 260-275.

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making available all the information on the Internet, it also claimed, somewhat contradictorily, to assumes the role of curator of helpful, credible and quality information by limiting harmful disinformation and illegal publications. The judge referred to several statements by Google to that effect and to the existence of internal policies that it nevertheless declined to communicate.[15]

[36] In light of those reasons, Google argues in its incidental appeal that a bare link cannot be defamatory since it merely constitutes a series of letters or numbers and conveys no content. It also claims that the judge erred in holding that the reasoning in *Crookes* does not apply in Quebec law. In its view, although the civil law and common law each apply their own analytical frameworks, they both share the considerations and values that underpin *Crookes*, including the protection of freedom of expression and the development of the Internet.

[37] Google is also of the view that it cannot be wrong for an Internet intermediary to give access to defamatory content, since it is not illegal for the user to read it. The fault is limited to the *publication* of such material and does not extend to the fact of simply giving access to it: otherwise, a library or bookstore could be held liable for the illicit content that it keeps. Lastly, regarding section 22 *IT Framework Act,* Google submits that it does not create a duty or standard of behaviour for an intermediary but, rather, grants it partial immunity where the plaintiff has established the existence of a fault under article 1457 *C.C.Q.* Finally, Google argues that the judge erred in relying on its assertions about information quality to oust the immunity provided under section 22 *IT Framework Act*.

[38] For his part, the appellant argues that the judge did not err in holding that *Crookes* was inapplicable, both on account of factual reasons and the different applicable legal principles. Also, he is of the view that the judge's finding as to fault respects the intent of the Quebec legislature, which is concerned with the harm that hyperlinks are liable to cause to individuals, as reflected in section 22 *IT Framework Act* as well as in new section 28.1 of the *Act respecting the protection of personal information in the private sector*.[16] Finally, the appellant submits that the scope of section 22 *IT Framework Act* is not determinative in this case, because the judge also found a fault under article 1457 *C.C.Q.*, applying the principles set out in *Prud'homme v. Prud'homme*.[17]

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15 Judgment under appeal, paras. 276-296.
16 CQLR c. P-39.1.
17 *Prud'homme v. Prud'homme*, 2002 SCC 85 [*Prud'homme*].

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[39] The determination of whether a fault exists is a question of mixed fact and law.[18] Therefore, the Court will only intervene if there is a palpable and overriding error.[19] For the following reasons, I am of the view that the judge did not make such an error in finding that a fault existed under s. 22 *IT Framework Act*. To explain why, I will first address the issue of the application of *Crookes* in Quebec law [a)], and then turn to the applicable standard in determining fault in this case [b)].

a) Does the principle established in *Crookes* apply in Quebec law?

[40] The debate on whether a fault existed focussed largely on *Crookes'* impact in Quebec law, Google's position being that it aligned its de-indexing policy with what the Supreme Court's had purportedly determined in that decision, i.e., that the communication of a link did, not in and of itself, constitute a fault.

[41] The background of that case is as follows. Jon Newton posted on his blog an article on free speech in Canada. In that article, he mentioned that Wayne Crookes had sued Michael Piling, another blogger, for defamation on account of an article that he alleged to be defamatory. In his posting, Newton included two hyperlinks, one leading to Piling's site and the other directly to the article at issue in the action,[20] without however repeating or otherwise commenting on its content. While admitting that Newton's article was not defamatory, Crookes sued the latter for defamation, alleging that he was the "publisher" of Piling's defamation.[21]

[42] The Supreme Court justices unanimously affirmed the trial judgment and that of the Court of Appeal for British Columbia and concluded that Newton had not "published" the defamatory comments written by Piling, an essential condition for the tort of defamation in common law. The justices parted ways, however, as to their reasons. In Abella J.'s view, on behalf of the majority, a hyperlink, by itself, should never be seen as 'publication' of the content to which it refers[22] since the hyperlink merely mentions the existence of information, without exerting any control over it.[23] While it is true that that reference facilitates the transmission of information "[…] it is equally clear that when a person follows a link they are leaving one source and moving to another»[24] as is the case with a footnote.[25] This principled solution, in Abella J.'s view, is that which best aligns with the necessary weighing of an individual's interest in protecting their reputation and that of

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18 *Salomon v. Matte-Thompson*, 2019 CSC 14, para. 32 [*Salomon*]; *Cormier c. Ville de Montréal*, 2023 QCCA 462, para. 57.

19 *Salomon v. Matte-Thompson*, 2019 CSC 14, para. 32-33; *Costco Wholesale c. Pominville*, 2021 QCCA 1753, para. 13.

20 Abella, J. distinguishes between two types of links, i.e., what she terms "shallow" links and "deep" links: *Crookes*, para. 6.

21 *Crookes,* paras. 4-10.

22 *Crookes*, para. 14.

23 *Crookes*, para. 26.

24 *Crookes*, para. 29.

25 *Crookes*, para. 30.

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the public in freedom of expression[26] as well as with the fact that the use of hyperlinks is an indispensable element in the development of the Internet.[27] Abella J. qualifies that principle, however, by noting that if the form or the content of the reference conveys in itself defamatory meaning – by incorporating the defamatory content in the link, for example – the author's liability could be engaged.[28] Finally, she added that, in the future, distinctions may need to be drawn between various types of links.[29]

[43] In concurring reasons, McLachlin C.J. and Fish J. added a qualification to Abella J.'s reasons by specifying that "[…] a hyperlink should constitute publication if, read contextually, the text that includes the hyperlink constitutes adoption or endorsement of the specific content it links to."[30] For her part, in her own concurring reasons, Deschamps J. rejected the creation of an exception excluding the possibility that a hyperlink could constitute an act of publication[31] and advocated a flexible approach that is compatible with both common law and civil law principles.[32] In her view, therefore, a reference can give rise to a person's liability if that person deliberately "[…] makes the defamatory information *readily available* to a third party in a comprehensible form."[33]

[44] One need only read the various reasons in that decision, except perhaps those of Deschamps J., to be convinced that the debate in *Crookes* was informed by the general scheme and analytical approach of the common law of torts, where a claim must satisfy the conditions applicable to the cause of action. As our Court has consistently noted, civil liability in civil law systems, which includes Quebec law, is based, rather, on a general liability clause and is rooted in the standard of fault, understood as behaviour that departs from that of a reasonable person placed in the same circumstances.[34]

[45] Accordingly, one must be cautious before adopting common law reasoning. While the solution under the two systems may the same,[35] it must be arrived at under the

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26 *Crookes*, para. 31.
27 *Crookes*, paras. 34-36.
28 *Crookes*, para. 40.
29 *Crookes*, para. 43.
30 *Crookes*, para. 50.
31 *Crookes*, para. 58.
32 *Crookes*, para. 57.
33 *Crookes*, para. 59. See also *Crookes* paras. 92-95.
34 See *Marcheterre c. Fédération (la), compagnie d'assurances du Canada*, 2014 QCCA 1026, para. 35; *Droit de la famille – 24915,* 2024 QCCA 767, paras. 45-48; *Royer c. Capital One Bank (Canada Branch)*, 2025 QCCA 217, paras. 18-21.
35 It is indeed quite possible that, applying the rules of Quebec law and the concept of fault, the solution to a case analogous to *Crookes* would be the same. We need not determine that issue, however, since the liability sought in the case at bar is not that of the author using a hyperlink, but that of an intermediary. We note, however, some trial decisions that, in circumstances similar to those which gave rise to *Crookes*, arrive at the same result. Indeed, those decisions cite, and even apply, *Crookes*: *Laforest c. Collins*, 2012 QCCS 3078; *Rosenberg c. Lacerte*, 2013 QCCS 6286, para. 156; *Chayer c. Vaillancourt*, 2012 QCCQ 1354, paras. 51 and ff. The Court has also referred to *Crookes*, but in a general way and in different circumstances. See, *inter alia*: *Boyer c. Loto-Québec*, 2017 QCCA 951,

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respective logics and approaches of each. In defamation cases, the mechanics of the common law system differ significantly from that of the civil law. It is a regime of strict liability that is based on the concept of publishing defamatory information,[36] a concept which was the focus of the *Crookes* decision. Once the various elements of the cause of action – including publication – are demonstrated, the author has the burden of establishing that one of the available defences to an action in defamation, notably fair and honest comment, applies.[37]

[46] In Quebec law, defamation actions are based on the principles of civil liability and the concept of fault as described in the foundational case of *Prud'homme*.[38] The analysis of that concept in the civil law is eminently circumstantial and incorporates within it, *inter alia*, the defences available at common law with respect to the tort of defamation. That is why the *ratio* of the majority in *Crookes*, which focussed on the recognition of a general and principled exception to the concept of publication in the case of hyperlinks, cannot be directly transposed to the civil law system where the approach is necessarily contextual.[39] Academic commentary on the subject tends to share that opinion, even if it is nuanced.[40]

[47] This is not to suggest, however, as Google rightly points out, that the considerations underlying *Crookes*, whether they be elements of public policy or the values that come into play – the protection of reputation, freedom of expression or the development of the Internet – are of no use. Legal systems must face the same

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para. 26; *Parisien c. Hôtel du Lac Tremblant inc.*, 2018 QCCA 2217, para. 14 [*Parisien*]; *Therrien c. Directeur général des élections du Québec inc.*, 2022 QCCA 1070, para. 71.

36 *Grant v. Torstar Corp*., 2009 SCC 61, para. 28. See also: Denis Boivin and Louise Bélanger Hardy, *La responsabilité délictuelle en common law*, 2nd ed., Montral, Yvon Blais, 2023, p. 1004.

37 Louis Bélanger-Hardy, "Droit des délits" in Yan Campagnolo, Louise Bélanger-Hardy and Aline Grenon (eds.), *Éléments de* common law *canadienne – Comparaison avec le droit civil québécois*, 2nd ed., Montréal, Yvon Blais, 2024, p. 435 and ff.; Marie Annik Grégoire, "Éléments des atteintes à la réputation et à la vie privée", in *JurisClasseur Québec*, vol. "Personnes et famille", Montréal, Lexis Nexis, updated to April 15, 2021, no. 6.

38 *Prud'homme v. Prud'homme,* 2002 SCC 85, para. 36.

39 As Deschamps J. pointed out in her reasons (*Crookes*, para. 57) and, to a lesser extent, McLachlin C.J. and Fish J. (*Crookes*, para. 50).

40 See: Marie Annik Grégoire, "Éléments des atteintes à la réputation et à la vie privée", in *JurisClasseur Québec*, vol. "Personnes et famille", Montreal, Lexis Nexis, updated to April 15, 2021, no. 6; Nicolas W. Vermeys, *Droit codifié et nouvelles technologies : le Code civil*, Montréal, Yvon Blais, 2015, pp. 126 and 143-144 (in a more nuanced way); Serge Kablan and Arthur Oulaï, "Vers une responsabilisation accrue ? A. B. contre Google et l'avenir de la régulation des services en ligne", (2024) 36 : 1- 2 *Les Cahiers de propriété intellectuelle* 127, p. 148. *A contrario*: Barry Gamache, "La diffamation en ligne : Ce qu'il ne faut pas mettre sur un blogue", in Barreau du Québec, Service de la formation continue (ed.), *Développements récents en droit de la propriété intellectuelle*, vol. 375, 2013. In the case of an intermediary such as Google, this issue is often blurred by that of the interpretation of s. 22 *IT Framework Act* which I will address below. See: Pierre Trudel, *Introduction à la Loi concernant le cadre juridique des technologies de l'information*, Montréal, Yvon Blais, 2012, p. 215 (which notes that hyperlinks do not constitute, in and of themselves, publication according to *Crookes*); Pierre Trudel, "Moteurs de recherche, déréférencement, oubli et vie privée en droit québécois", (2016) 21 *Lex Electronica* 89, p. 102.

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challenges and deal with the same environment and the same tensions. [41] These various elements can be thus by considered by the courts in determining whether a fault exists, or by the legislature in the development of an eventual specific rule, which is indeed the case here, as will be seen in the following section.

[48] I would add in closing that I also agree with the trial judge that there is an important factual difference between *Crookes* and the case at bar. In *Crookes*, the issue was finding the liability of a content creator, who had, in one of his articles, included a hyperlink. Here, the issue is rather whether an intermediary, in this case Google, who refuses to de-index a URL link that it knows to lead to defamatory content, thus allowing it to appear in the results of its search engine, can be held liable. This difference is in fact reflected in certain statutes that deal with the liability of internet service providers and intermediaries differently that that of authors of content, as is the case, in the United States, of s. 230 (c) (1) *CDA* cited above, or in Quebec, as will be seen in the following section.

[49] I am not suggesting that the solution would be necessarily different at common law in such a case. Indeed, Google argues that courts have applied the *Crookes* principle in cases involving it.[42] It is sufficient to note that the case can be distinguished. The contextual analysis is not the same and the solution is therefore not at all obvious.

b) What is the applicable standard in determining fault in this case?

[50] In civil law, fault is, in principle, the basis and the condition of liability.[43] It consists in a violation of the duty not to cause harm to others[44] and is based on the abstract standard of the behaviour of a reasonable person placed in the same circumstances. The approach is pragmatic, its assessment, contextual. As provided in article 1457 *C.C.Q.*, while all the circumstances must be considered, usage, but also the law, may assist in determining the standard of expected conduct. Thus, the legislature can establish a specific duty whose violation constitutes a fault, generally characterized as a “statutory fault” or “regulatory fault”. The question of whether the legislature intervened in this case to establish such a specific duty, a question that the judge answered in the affirmative, is indeed at the heart of the debate between the parties.

[51] In 2001, the Quebec legislature enacted the *IT Framwork Act* whose section 22, unchanged since, reads as follows:

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41 See *Desbiens c. Standish*, 2024 QCCA 725, para. 92.

42 *Niemela v. Malamas*, 2015 BCSC 1024, paras. 56-60. See also High Court of Australia: *Google LLC v. Defteros*, [2022] HCA 27. In Quebec law, *Crookes* was used by the Superior Court in a case involving Facebook after having made a finding of non-liability pursuant to s. 22 *IT Framework Act*, however: *Lehouillier-Dumas c. Facebook inc.*, 2021 QCCS 3524, paras. 103-104 [*Lehouillier-Dumas*].

43 Mariève Lacroix, “Le fait générateur de responsabilité civile extracontractuelle personnelle : continuum de l’illicéité à la faute simple au regard de l’article 1457 *C.c.Q.*”, (2012) 46 *R.J.T.* 25, p. 31.

44 Art. 1457 *C.C.Q.*

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22. A service provider, acting as an intermediary, that provides document storage services on a communication network is not responsible for the activities engaged in by a service user with the use of documents stored by the service user or at the service user's request.	**22.** Le prestataire de services qui agit à titre d'intermédiaire pour offrir des services de conservation de documents technologiques sur un réseau de communication n'est pas responsable des activités accomplies par l'utilisateur du service au moyen des documents remisés par ce dernier ou à la demande de celui-ci.
However, the service provider may incur responsibility, particularly if, upon becoming aware that the documents are being used for an illicit activity, or of circumstances that make such a use apparent, the service provider does not act promptly to block access to the documents or otherwise prevent the pursuit of the activity.	Cependant, il peut engager sa responsabilité, notamment s'il a de fait connaissance que les documents conservés servent à la réalisation d'une activité à caractère illicite ou s'il a connaissance de circonstances qui la rendent apparente et qu'il n'agit pas promptement pour rendre l'accès aux documents impossible ou pour autrement empêcher la poursuite de cette activité.
Similarly, an intermediary that provides technology-based documentary referral services, such as an index, hyperlinks, directories or search tools, is not responsible for activities engaged in by a user of such services. However, the service provider may incur responsibility, particularly if, upon becoming aware that the services are being used for an illicit activity, the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity.	De même, le prestataire qui agit à titre d'intermédiaire pour offrir des services de référence à des documents technologiques, dont un index, des hyperliens, des répertoires ou des outils de recherche, n'est pas responsable des activités accomplies au moyen de ces services. Toutefois, il peut engager sa responsabilité, notamment s'il a de fait connaissance que les services qu'il fournit servent à la réalisation d'une activité à caractère illicite et s'il ne cesse promptement de fournir ses services aux personnes qu'il sait être engagées dans cette activité.

[Emphasis added]

[52] This provision does not apply to content creators – as in *Crookes* – but rather to the various service providers, notably, in paragraph 3, those who provide referral

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services.[45] There is no dispute that this paragraph applies to Google, but the parties do not agree on what it provides. In fairness to them, we note that interpreting the wording of section 22 is somewhat challenging.

[53] According to Google, this provision, read jointly with section 27 of the same Act,[46] does not impose any specific duty or standard of behaviour on it, but, on the contrary, grants it immunity, thus shielding it from liability, even if it committed a fault under article 1457 *C.C.Q.* Google's reasoning is as follows: because the publication of a bare link is not wrongful – application of the principle developed in *Crookes* – it cannot be liable and section 22 para. 3 *IT Framework Act* is not engaged. Should it be held that it did commit a fault under article 1457 *C.C.Q.*, the immunity under section 22 para. 3 *IT Framework Act* would then apply. Still according to Google, that section, moreover, does not require the de-indexing of the link for that immunity to be maintained, since other means could be sufficient, including the removal of any defamatory text surrounding that link (title and snippet), which is precisely what it did in this case by only displaying the bare link in the results.

[54] As for the appellant, he argues that section 22 para. 3 *IT Framework Act* imposes on Google a duty to remove a link leading to illicit content as soon as it becomes aware

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[45] For its part, paragraph 2 applies to the provider of storage services. In the case at bar, Google is essentially acting as a referral services intermediary (para. 3). If one takes the view that para. 2 also applies to it – which was not the subject of submissions –, the content of the duty provided therein is, in substance, the same.

[46] Section 27 of the *IT Framework Act* reads as follows:

27. A service provider, acting as an intermediary, that provides communication network services or who stores or transmits technology-based documents on a communication network is not required to monitor the information communicated on the network or contained in the documents or to identify circumstances indicating that the documents are used for illicit activities.	**27.** Le prestataire de services qui agit à titre d'intermédiaire pour fournir des services sur un réseau de communication ou qui y conserve ou y transporte des documents technologiques n'est pas tenu d'en surveiller l'information, ni de rechercher des circonstances indiquant que les documents permettent la réalisation d'activités à caractère illicite.
However, the service provider may not take measures to prevent the person responsible for access to documents from exercising his or her functions, in particular as regards confidentiality, or to prevent the competent authorities from exercising their functions, in accordance with the applicable legislative provisions, as regards public security or the prevention, detection, proof and prosecution of offences.	Toutefois, il ne doit prendre aucun moyen pour empêcher la personne responsable de l'accès aux documents d'exercer ses fonctions, notamment en ce qui a trait à la confidentialité, ou pour empêcher les autorités responsables d'exercer leurs fonctions, conformément à la loi, relativement à la sécurité publique ou à la prévention, à la détection, à la preuve ou à la poursuite d'infractions.

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of it, a duty which, if it is not discharged, automatically constitutes a civil fault. In this case, because the defamatory content is illicit, the failure to de-index constituted a fault.

[55] The judge, in essence, accepted the interpretation suggested by the appellant. I believe he is right, for the following reasons.

[56] It is true, as Google argues, that the first paragraph of section 22 *IT Framework Act* establishes a principle of non-liability of the intermediary providing referral services for activities carried out by means of its services. This first part of the section therefore implicates an immunity[47] and is consistent with section 27 *IT Framework Act*, which provides that the intermediary is not required to monitor the information conveyed by its services nor identify circumstances that could indicate the existence of an illicit activity. In other words, the intermediary is not duty-bound to investigate or verify the content for which it provides its services.

[57] However, that is not all that section provides. It goes on to specify, in paragraph 3 – regarding the referral intermediary – that the latter "may incur responsibility, particularly if, upon becoming aware that the services are being used for an illicit activity, the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity"[48] [Emphasis added]. A plain reading of this sentence satisfies us that the legislature thereby provided the standard of behaviour expected of the intermediary: While the latter is not bound to proactively monitor the lawfulness of the activities that its services allow, it is duty-bound to act upon becoming aware of an illicit activity.

[58] In my view, this is the balance that the legislature has chosen to strike between, on the one hand, considerations related to freedom of expression and the development of the Internet, and, on the other hand, a degree of accountability on the part of service intermediaries. Such balance differs from that which may have been chosen by other jurisdictions,[49] for example, the United States, which grants greater immunity to

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47 See, in this regard: *Prud'homme c. Rawdon (Municipalité de)*, 2010 QCCA 584, at note 24 [*Rawdon*].

48 *IT Framewok Act*, s. 22 para. 3.

49 In their remarkable report on an eventual reform of the *IT Framework Act*, professors Vincent Gautrais, Pierre Trudel and Nicolas Vermeys wrote: "Lorsque les lois répartissant la responsabilité pour les activités se déroulant sur Internet ont été mises en place dans les années 1990, les législateurs européens et américains souhaitaient un cadre légal qui renforcerait la liberté de chaque individu de s'exprimer. Pour cette raison, on a évité d'imposer aux intermédiaires (à l'époque, il s'agissait surtout des sites qui hébergeaient des blogues) une responsabilité trop lourde pour les propos ou les images émanant de tiers. Aux États-Unis, dans les années 1990, le Congrès a adopté une loi qui exonère presque totalement les plateformes de toute responsabilité pour propos et comportements délictueux émanant de tiers qui utilisent leurs sites pour mettre des contenus en ligne. En Europe et au Québec, on a opté pour des règles prescrivant que les intermédiaires ne sont responsables qu'à compter du moment où ils ont connaissance du caractère illicite des propos ou des activités menées sur leur plateforme": *LCCJTI+ : perspectives de mise à jour de la Loi concernant le cadre juridique des technologies de l'information (RLRQ c. C-1.1)*, Rapport final – 28 novembre 2023, Centre de recherche en droit public, pp. 71-72.

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intermediaries in s. 230(c)(1) *CDA*, but it does express the balance that the Quebec legislature wished to ensure between the various values in tension.[50]

[59] Having established that section 22 *IT Framework Act* indeed imposes a specific duty on the intermediary, it remains to determine its conditions of application and its content.

[60] First, the conditions. Section 22 *IT Framwork Act* provides that the intermediary may incur responsibility upon becoming aware of an illicit activity.[51] On the point of knowledge *per se*, this case does not present any difficulties. Google is aware of the false nature of the Impugned Post since 2009 when the RCMP certified that the appellant had not been convicted of any sex crime. This is an either/or situation that engages no debate: the appellant has or has not been convicted of a sexual crime. No discussion is possible.

[61] On this point, I find it useful to note that I fully agree with the trial judge's opinion that the condition related to awareness requires a reasonable level of certainty.[52] Just as an intermediary is under no general obligation to monitor content, it cannot determine whether an activity is illicit on mere suspicions or allegations. Here again, this goes to striking a proper balance between monitoring and freedom. Google rightly insists on this issue, stating, notably during examination of its representative, that it is not for it to determine whether or not content is defamatory. An intermediary can therefore, as Google did in this case, require a certain degree of proof as to illicitness of the activity – in this case, the message's content – in the absence of which it cannot incur responsibility. This will obviously be a question of circumstances, and, in some cases, an intermediary will be justified to take action only following a judgment recognizing the existence of defamation.

[62] As to the question of whether the publication of a defamatory post is an "illicit activity", I have no difficulty in answering this in the affirmative. Google claims that this is not the case because nothing prohibits a user from reading a defamatory post. This argument is not persuasive. Section 22 *IT Framework Act* does not refer to illegal activities, but rather to illicit activities. While it is true that it is not against the law to read a defamatory comment, the fact remains that the person who makes it or publishes it commits a fault for which they may be incur responsibility. The act of posting defamatory

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50 See: National Assembly, Committee on Labour and the Economy, *Journal des débats (Hansard)*, 36th Leg., 2nd sess., Vol 37., No. 20, May 22, 2001, p. 55 (D. Lemieux).

51 Use of the term "particularly" suggests that becoming aware of an illicit activity is not the only situation in which an intermediary could incur responsibility. Insofar as that is the situation that concerns us, I will confine myself to that.

52 Judgment under appeal, paras. 260-262. On this question, see: Pierre Trudel, "Moteurs de recherche, déréférencement, oubli et vie privée en droit québécois", (2016) 21 *Lex Electronica* 89, pp. 98-102; Serge Kablan and Arthur Oulaï, "Vers une responsabilisation accrue ? A. B. contre Google et l'avenir de la régulation des services en ligne", (2024) 36 : 1- 2 *Les Cahiers de propriété intellectuelle* 127, pp. 149 and ff.; *Lehouillier-Dumas c. Facebook inc.,* 2021 QCCS 3524, paras. 67 and ff.

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content on the Internet therefore, seems to me to constitute an illicit activity.[53] That is indeed what the Minister responsible for the enactment of the Act suggested in the debate at the committee stage:

> Le prestataire est responsable dans la mesure où il prend connaissance que des documents qu'il conserve sous sa gouverne [sont à caractère illicite].
>
> […]
>
> On est dans des activités illicites, là. Je pense que c'est un usage usuel. Évidemment, au fil des années, la jurisprudence va se développer de plus en plus, parce que ce sont des nouveaux modes, souvent, de communication. Mais, par exemple, atteinte à la réputation, droit à l'image, ce sont des choses qui sont [convenues].[54]
>
> [Emphasis added]

[63] The conditions being therefore in place to trigger the duty to act provided in section 22 *IT Framework Act*, it remains to determine what this duty required of Google to avoid incurring responsibility. On this point, Google argues that section 22 *IT Framework Act* does not provide that an intermediary must proceed to de-index a link, especially when it is "bare", since it does not in and of itself constitute defamation under *Crookes*.

[64] It is true that the terms "if […] the service provider does not act promptly to cease providing services to the persons known by the service provider to be engaging in such an activity"[55] leave something to be desired in terms of clarity. In a very interesting article,[56] written a few years following the enactment of the *IT Framework Act*, professor Vermeys noted several ambiguities arising from that wording. For instance, who are the persons engaged in the activity – the content's creator or the Internet user who makes the search query? Or, what does ceasing to provide services extend to – the de-indexing of the whole site or of the specific URL link? Here again, the solution can vary according to circumstances, but it seems to me that in this case, the appropriate remedy would be the de-indexing of the link leading to the Impugned Post so that the search engine will no longer provide the hypertext link allowing it to be accessed.[57] I would add that this solution

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53 See, on this issue, with greater nuance: Pierre Trudel, "Moteurs de recherche, déréférencement, oubli et vie privée en droit québécois", (2016) 21 *Lex Electronica* 89, 98 and ff.

54 National Assembly, Committee on Labour and the Economy, *Journal des débats (Hansard)*, 36th Leg., 2nd sess., Vol 37., No. 20, May 22, 2001, p. 56 (D. Lemieux).

55 *IT Framework Act*, s. 22 para. 3.

56 Nicolas W. Vermeys, "La responsabilité civile des prestateurs de moteurs de recherches et des fournisseurs d'hyperliens en droit québécois", (2005) 10:1 *Lex Electronica* 1. See also: Nicolas W. Vermeys, *Droit codifié et nouvelles technologies : le Code civil*, Montréal, Yvon Blais, 2015, p. 131 at note 726.

57 Academic commentary is generally of the view, in various degrees, that once the conditions are met, section 22 *IT Framework Act* requires the intermediary to de-index the illicit content: Pierre Trudel, "Moteurs de recherche, déréférencement, oubli et vie privée en droit québécois", (2016) 21 *Lex*

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is further echoed in recent section 28.1 of an *Act respecting the protection of personal information in the private sector*. [58]

[65] As to the argument resting on the fact that section 22 *IT Framework Act* cannot capture a bare URL link because the latter is not in and of itself defamatory, this amounts to rearguing the general common law principle established in *Crookes* for the content creator. As we have seen, however, that principle cannot be directly applied in Quebec law and the analysis must be based upon the concept of fault. But there is more.

[66] The issue in this case is not whether the transmission of a bare URL link is, upstream and irrespective of section 22 *IT Framework Act*, a civil fault under article 1457 *C.C.Q.* The issue is rather to determine whether the mere breach of the standard provided under section 22 *IT Framework Act*,– i.e., Google's failure to cease to provide its services to the person engaged on an illicit activity by refusing to de-index a URL link leading to defamatory content – automatically amounts to a civil fault or whether it should rather be shown that the breach of that standard is, in this case, wrongful.

[67] This issue of equating a so-called "statutory or regulatory" fault with a civil fault is not new and has been the subject of case law and academic commentary for many years. The Supreme Court, in *Morin v. Blais*,[59] held that where a legal duty corresponds to an elementary standard of care, a breach thereof constituted a civil fault. That decision has been interpreted in various way,[60] with some reading into it a direct equation, whereas others read it rather as a presumption of fault that could be displaced by proof of diligence.

Electronica 89, pp. 102-103; Nicolas W. Vermeys, *Droit codifié et nouvelles technologies : le Code civil*, Montréal, Yvon Blais, 2015, pp. 131-132.

58 CQLR, c. P-39.1. That provision is more limited, since it refers to a contravention of the law or a court order only, and not to any illicit act. It reads as follows:

28.1. The person to whom personal information relates may require any person carrying on an enterprise to cease disseminating that information or to de-index any hyperlink attached to his name that provides access to the information by a technological means, if the dissemination of the information contravenes the law or a court order.	**28.1.** La personne concernée par un renseignement personnel peut exiger d'une personne qui exploite une entreprise qu'elle cesse la diffusion de ce renseignement ou que soit désindexé tout hyperlien rattaché à son nom permettant d'accéder à ce renseignement par un moyen technologique, lorsque la diffusion de ce renseignement contrevient à la loi ou à une ordonnance judiciaire.

59 [1977] 1 R.C.S. 570.

60 On this whole issue: Pierre-Gabriel Jobin, "La violation d'une loi ou d'un règlement entraîne-t-elle la responsabilité civile?", (1984) 44 :1 *R. du B.* 222; Nathalie Vézina, "Du phénomène de pollution lumineuse appliqué à l'observation des astres jurisprudentiels : responsabilité objective, responsabilité subjective et l'arrêt *Ciment du Saint-Laurent*" in Générosa Bras Miranda and Benoît Moore (eds.), *Mélanges Adrian Popovici – Les couleurs du droit*, Montreal, Thémis, 2010, 357, pp. 381 and ff.; Nathalie Vézina, "La faute : exercice jurilinguistique autour d'une notion classique du droit civil", in Benoît Moore (ed.), *Les grands classiques du droit civil – Les grandes notions*, Montreal, Thémis, 2015, 133, pp. 183 and ff.

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Then, in *St. Lawrence Cement Inc. v. Barrette,*[61] the Supreme Court seems to have decided the issue in favour of this second position, stating that " […] the violation of a legislative standard does not in itself constitute civil fault"[62] and that the existence of a fault should be determined by considering, *inter alia*, the legislative standard and the standard of care and diligence.[63]

[68] Interesting as this debate may be, I am of the view, as the appellant suggests, that it is unnecessary to resolve it to decide this case, for at least two reasons.

[69] First, the wording of section 22 *IT Framework Act* itself allows us to identify the contextual elements necessary to target only the intermediary's wrongful behaviour, in the traditional sense of the term. These are found both in the determination of the reasonable degree of certainty as to the existence of an illicit activity, and the means deployed by the intermediary to make be sure of this, and in the technical limitations that the intermediary could invoke in justifying its failure to de-index or in explaining that the Impugned Post could be indexed again.[64] These defences available to the intermediary allow its diligence to be taken into account. However, in the case at bar, none of these apply because, as we have seen, awareness of the illicit activity and the post's defamatory nature are not disputed[65] and de-indexing was possible, since it had been already done in the past.[66]

[70] Next, the only proof of diligence tendered by Google in this case is the fact that it purportedly complied with applicable law by satisfying the standard established in *Crookes.* This argument cannot suffice. There is no evidence to support the veracity of

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61 2008 SCC 64 [*St. Lawrence Cement*].

62 *St. Lawrence Cement v. Barrette*, 2008 SCC 64, para. 34. By stating this, the Court said that it was reiterating the principle established in *Morin v. Blais*: Nathalie Vézina, "Du phénomène de pollution lumineuse appliqué à l'observation des astres jurisprudentiels : responsabilité objective, responsabilité subjective et l'arrêt *Ciment du Saint-Laurent*" in Générosa Bras Miranda and Benoît Moore, (eds.), *Mélanges Adrian Popovici – Les couleurs du droit*, Montreal, Thémis, 2010, 357, pp. 374 and ff. See also: *Kosoian c. Société de Transport de Montréal*, 2019 CSC 59, paras. 48-49 [*Kosoian*].

63 For professor Vézina, the Court departed here from *Morin c. Blais*: Nathalie Vézina, "Du phénomène de pollution lumineuse appliqué à l'observation des astres jurisprudentiels : responsabilité objective, responsabilité subjective et l'arrêt *Ciment du Saint-Laurent*" in Générosa Bras Miranda and Benoît Moore, (eds.), *Mélanges Adrian Popovici – Les couleurs du droit*, Montreal, Thémis, 2010, 357, p. 374. However, according to this same author, that is not to say that the Court wished to "defeat/battre en brèche" the principle established in *Morin v. Blais*, both because it was *obiter* and because it is not certain that the regulatory provision in *St. Lawrence Cement* established an elementary standard of care within the meaning of *Morin v. Blais*: Nathalie Vézina, "La faute : exercice jurilinguistique autour d'une notion classique du droit civil", in Benoît Moore, (ed.), *Les grands classiques du droit civil – Les grandes notions*, Montréal, Thémis, 2015, 133, pp. 188-189.

64 As this case shows, since the URL link reappeared on several occasions.

65 Google is thus not invoking any public interest reason that could negate the illicit nature of the activity under section 22 *IT Framework Act*.

66 It is true that indexing returned on a number of occasions, but Google, until 2015, removed it every time. This is an example of a case where technical limitations could be invoked by an intermediary to avoid incurring responsibility for the only reason that the hyperlink is regularly indexed yet again.

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that claim, Google having refused to disclose its policy in the matter. Of course, Google did not have the burden of showing absence of fault on its part. Still, it cannot simply claim a sincere belief that it was observing applicable law to justify its failure to comply with section 22 *IT Framework Act*. Moreover, it is established that in civil law, the mere fact of satisfying a standard – in this case judicially developed – is not necessarily sufficient to rule out the possibility of a civil fault.[67] The same is true, *a fortiori*, of a defence that consists in relying on one's own interpretation of applicable law, which turns out to be insufficiently nuanced and, ultimately, erroneous.

[71] To conclude on the issue of fault, the judge found that even disregarding the duty provided for in section 22 *IT Framework Act* and relying only on general law of civil liability principles, Google's refusal to de-index a URL link leading to a post of which it had proof that it was defamatory, and that it had agreed to de-index for several years, constituted a fault under article 1457 *C.C.Q.*[68] Given my conclusion as to section 22 *IT Framework Act,* I need not examine that issue.

[72] For all these reasons, this ground must fail.

2) Did the judge err in finding that that fault had caused moral injury to the appellant and assessing damages at $500,000 (incidental appeal)?

[73] The judge began his injury analysis by outlining the legal framework applicable in determining the existence of an injury and its quantification in defamation cases. Under the first step, i.e., determining the existence of an injury, the plaintiff must show that an ordinary person "[…] would believe that the remarks made, when viewed as a whole, brought discredit on the reputation of another person."[69] Referring to *Lalli c. Gravel*,[70] the judge added that it was not necessary to prove that the post was in fact read by anyone. He concluded that existence of an injury had been established, notably because Google holds itself out to be a trustworthy source of information[71] and the expert evidence according to which the allegation of pedophilia, even when proven to be false, is especially serious and damaging.[72] The judge noted that Google itself recognized the injurious nature of the Impugned Post prior to *Crookes*.[73]

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67 See: *Kosoian v. Société de Transport de Montréal*, 2019 SCC 59, para. 51. By analogy to the duty to inform regarding a dangerous product: *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la* santé, 2019 QCCA 358, paras. 484 and ff. [*Imperial Tobacco*]; *Brousseau c. Laboratoires Abbott limitée,* 2019 QCCA 801, para. 160; ***Bélanger c. Fédération, cie d'assurance du Canada***, [1999] R.R.A. 8 (C.A. Qc). The same is true of the mere fact of following with a common professional practice: *Roberge v. Bolduc*, [1991] 1 S.C.R. 374, p. 437.

68 Judgment under appeal, paras. 251-252.

69 Judgment under appeal*,* para. 316 citing ***Prud'homme v. Prud'homme***, 2002 SCC 85, para. 34.

70 2021 QCCA 1549, para. 97 [*Lalli*].

71 Judgment under appeal, paras. 326-331.

72 Judgment under appeal, paras. 332-334.

73 Judgment under appeal, paras. 341-342.

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[74] Under the second step, i.e., quantifying the injury, this must be done by applying the conceptual, functional and personal approaches, based on all the relevant circumstances enumerated, *inter alia*, in *Lalli*. For the purposes of that analysis, the judge began by noting that he would only consider facts that occurred after April 1, 2015, given the one-year period for prescription in defamation cases.[74] He then considered each of the heads of damages claimed. Ultimately, he preferred the expert reports filed by the appellant – those of Dr. Franck and Dr. Houle – to that of Dr. Côté, filed by Google, and concluded that the plaintiff had suffered personal psychological injury independent of any reading of the Impugned Post by third parties.[75] He also found, based on the testimony of the appellant's children and expert witness Dr. Houle, that the plaintiff had suffered a moral injury due to a deterioration of relationships with family and friends, having been "revived" in July 2015.[76] The judge excluded however any injury to the appellant's love life, the facts having occurred before April 1, 2015[77] as well as, for the same reason, any moral injury relating to loss of business opportunity and loss of reputation in public life.[78] On that point, however, he acknowledged that it is usual in the appellant's circle to "google" business partners and concluded that it is not speculative to think that the Impugned Post caused, and causes still, a loss of reputation in business and public life, which he would take into account in the assessment of quantum.[79]

[75] On the issue of causation, the judge concluded that the evidence overwhelmingly supported the finding that there was a causal link between the Impugned Post and the moral injury suffered by the appellant, given Google's market share in Canada[80] and the fact that, had Google not indexed the link, dissemination of the Impugned Post would have been minimal.[81] The judge then rejected the submission that the appellant's personality had purportedly broken the causal link.[82] Finally, the judge concluded that the appellant had not failed to meet his obligation to mitigate his injury by not acting directly against the post's author or the ripoffreport.com et usacomplaints.com sites, since the fault found was the fact that Google had ceased, in 2015, to de-index the link.[83]

[76] The judge then proceeded to quantify the injury, applying the different approaches. Under the conceptual approach, he accepted the seriousness of the allegations, their duration and the absence of any freedom of expression considerations. On that point, the judge noted that had freedom of expression truly been at stake, Google would not have agreed to de-index the link prior to *Crookes*.[84] Under the personal approach, the judge

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74 Judgment under appeal, paras. 347-350.
75 Judgment under appeal, paras. 351-404, more specifically para. 403.
76 Judgment under appeal, paras. 436-510, more specifically paras. 505-510.
77 Judgment under appeal, paras. 511-516.
78 Judgment under appeal, paras. 405-435.
79 Judgment under appeal, paras. 430-431.
80 Judgment under appeal, paras. 517-524.
81 Judgment under appeal, paras. 541.
82 Judgment under appeal, paras. 525-533.
83 Judgment under appeal, paras. 534-542.
84 Judgment under appeal, paras. 547-551.

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accepted that the appellant had greatly suffered.[85] Finally, under the functional approach, the judge considered the sums awarded in similar cases, the fact that he rejected certain heads of damages as well as the unique nature of this case, notably on account of the appellant's highly accomplished life and the effect of Google's "super-spreading communications technology".[86] For all those reasons, the judge awarded the appellant $500,000 in compensatory damages.[87]

* * *

[77] On this issue, it is not an exaggeration to say that Google is leaving no stone unturned. It begins by claiming that no monetary loss has been made out, the judge merely acknowledging moral damages for loss of reputation. Here again, however, Google argues that there is no evidence showing that, since 2015, anyone was able to access the Impugned Post via the link. Without evidence of this, which the judge could not presume,[88] the injury could only rest on the presence of the Impugned Post on the Internet, over which Google had no control, thereby breaking any causal link.

[78] Regarding the 2015 time-based limit, Google submits that the judge, despite his claim to the contrary, relied on facts that predated that limit, and were therefore time-barred but, especially, that the judge himself accepted that Google's pre-*Crookes* policy complied with Quebec law and was therefore not wrongful.[89] It was thus not open to the judge to find that the post-2015 fault, if it existed at all, revived and aggravated the prior injury by repeated wrongful conduct.

[79] Finally, Google criticizes the judge for taking into account hearsay statements by the appellant, and for determining the quantum of moral damages on the basis of the appellant's purely subjective assessment, thus departing from the principles applicable in such cases and from the sums awarded in similar cases.

[80] For his part, the appellant first submits that the Court must show great deference towards the judge's assessment of damages, especially when it comes to moral damages. In his view, Google is wrong in limiting the compensable injury in defamation to loss of consideration in the eyes of third parties having had access to the Impugned Post. However, courts frequently compensate psychological harm such as that established in this case by experts, including Google's. As to facts that occurred prior to 2015, the judge explicitly excluded them. Nor did he accept facts introduced by hearsay but simply stated that the appellant had mentioned them. Finally, as to the importance given to the appellant's one million dollar assessment of his own injury, the appellant notes that the judge wrote more than 200 paragraphs in his injury analysis showing that

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85 Judgment under appeal, paras. 552-556.
86 Judgment under appeal, paras. 557-559.
87 Judgment under appeal, para. 560.
88 Google therefore submits that the judge erred in paragraph 554 of the judgment under appeal.
89 Judgment under appeal, paras. 215 and 220.

he based his assessment, rather, on the evidence as a whole, whether it be the expert evidence, testimony or the exhibits on file, to a arrive at a fair quantum.

* * *

[81] It is trite law that the assessment of injury is part of the trial judge's exercise of their discretion in such matters.[90] This is all the more true with respect to non-pecuniary losses, the quantification of which « […] relève plus d'un exercice philosophique que d'un calcul rigoureux »,[91] especially since that exercise is not capable of mathematical precision, given that what is to be compensated is, by nature, qualitative and irreparable.[92] The Court must therefore show deference and intervene only when the amount awarded is patently disproportionate or unreasonable, and not simply substitute its opinion to that of the trial judge.[93] The same is true when assessing the existence of a causal link, a ground incidentally raised by Google, which is also a question of fact which is owed appellate deference.[94] Let us begin by examining injury.

[82] Google submits that injury was not shown to exist because no evidence was adduced indicating that anyone accessed the Impugned Post via Google's search services since 2015. Since the concept of reputation rests on a consideration of "others"[95], the absence of such evidence negates any injury.

[83] It is true that the Supreme Court bases the existence of injury in defamation cases on the objective standard of whether an "[…] ordinary person would believe that the remarks made, when viewed as a whole, brought discredit on the reputation of another person."[96] This goes to the balance sought between the protection of reputation, on the one hand, and freedom of expression, on the other. It thus established for defamation an objective threshold that extends beyond the purely subjective – but no less real – feeling

90 *Séminaire de Québec c. Morency,* 2021 QCCA 370, para. 80; *Lemieux c. Aon Parizeau inc.*, 2018 QCCA 1346, para. 133.

91 *Procureur général du Canada c. Manoukian*, 2020 QCCA 1486, para. 107 [*Manoukian*], citing *Godin c. Quintal*, [2002] R.J.Q. 2925 (C.A.), para. 152. Dickson J., writing for the Court in *Andrews v. Grand Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, observed: "There is no medium of exchange for happiness. There is no market for expectation of life. The monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one" (p. 261).

92 *M.F. c. S.F.*, 2021 QCCA 1067, para. 52 citing *The Gazette c. Valiquette*, [1997] RJQ 30 (C.A.).

93 *Beauchemin c. Wart*, 2020 QCCA 945, para. 104, citing *Hôpital Maisonneuve-Rosemont c. Buesco Construction Inc.*, 2016 QCCA 739, para. 196 and *Birdair inc. c. Danny's Construction Company Inc.*, 2013 QCCA 580, para. 144.

94 *Benhaim v. St-Germain*, 2016 SCC 48, para. 36.

95 *Ibid.*

96 *Prud'homme v. Prud'homme*, 2002 SCC 85, para. 34.

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of being "humiliated, sad or frustrated"[97] which necessarily varies according to one's sensibility.

[84] Clearly, under the objective ordinary person standard, there is no doubt that the impugned comments could harm reputation. No one disputes, including Google for that matter, that the comments in the Impugned Post satisfy that threshold. Rather, the issue raised by Google is whether proof of reputational damage has been made out in circumstances where it has not been shown that anyone accessed the Post via Google's search engine during the period that was not time-barred. On this latter point, Google submits that the judge distorted the Court's teachings in *Lalli*. While the objective ordinary person standard does not require specific proof, the fact that the article was actually communicated to persons does require such proof, given that an article that no one has presumably read could not have harmed the reputation of the person concerned in the eyes of "others".

[85] That submission raises the issue of the true nature of the appellant's claim. While the judge did adopt the framework of a defamation action, and while, in large measure, that framework was the focus of the debate between the parties, this case can in fact be framed in simpler terms. As noted above, Google's alleged fault is its failure, contrary to section 22 *IT Framework Act*, to de-index the Impugned Post. The Post's defamatory nature, which is undisputed, is not in itself the source of Google's liability. Rather, it triggered, via the concept of "illicit activity", the duty under section 22 *IT Framework Act*. It is therefore unnecessary here, as we have seen, to refer to the analytical framework for defamation to recognize the existence of a fault, even though the judge did so in the alternative.

[86] The same is true of injury. The possibility that, at any time, the Impugned Post could be suggested by Google's algorithm constitutes in and of itself the injury suffered by the appellant. This point seems important to me. Indeed, the trial judge did not so much indemnify reputational damage – i.e., an injury resulting from loss of esteem in the eyes of others – but rather psychological harm – or interference with integrity – recognized by the expert assessments of Dr. Franck and Dr. Houle, which is independent of whether third parties actually accessed the Impugned Post. Here is what the judge wrote:[98]

> [402] The Court concludes that the Plaintiff has suffered moral injury spanning loss of self-esteem, loss of self-confidence, and loss of self-respect in connection with the Defamatory Post.
>
> [403] The nature of these forms of moral injury and the nature of the communication, i.e. the ever-present possibility of the link to the Defamatory Post

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97 *Bou Malhab v. Diffusion Métromédia CMR*, 2011 SCC 9, para. 28. See: Marie Annik Grégoire, "Éléments des atteintes à la réputation et à la vie privée", in *JurisClasseur Québec*, vol. "Personnes et famille", Montreal, Lexis Nexis, updated April 15, 2021, no. 7.

98 Judgment under appeal, paras. 402-404 and 555-556.

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> popping up in a search of the Plaintiff's name, are such that the intensity of the injury is not diminished by the absence of proof of third parties having read the Defamatory Post since 1 April 2015.
>
> [404] What is important is that the Plaintiff is haunted by the wrongful nature of the contents of the Defamatory Post and he is terrified by Google's confirmation that it will forever make the link to it available to users.
>
> […]
>
> [555] The harm in this particular case is in the fact that the link to the Defamatory Post is always lurking in cyberspace, waiting to be captured by Google Search's dynamic and kaleidoscopic algorithms (as applied by Googlebot), in order to inject its poison far and wide.
>
> [556] Uncertainty itself can be experienced by human beings as a form of mental torment, and that is what the Plaintiff has vividly and emotionally described.

[87] In the circumstances of this case, and considering the unique reality of the Internet environment, which, through the power of search engines, including Google's, allows information, even dated, to be constantly referred to, that injury then, if it is established as is the case here, is real and distinct from that of loss of reputation. Indeed, it is because of this reality that the legislature intervened by enacting section 22 *IT Framework Act*. What is sanctioned here is the interference with the appellant's psychological integrity, despite the absence of proof of loss of reputation during the period that is not time-barred.

[88] This characterization of the injury also seals the fate Google's main argument with respect to causation. Google submits that the absence of proof that anyone, since 2015, accessed the Impugned Post thought its services implies that the appellant's injury resulted solely from the presence of that post on the Internet, which cannot be attributed to Google, but rather to the author of the Impugned Post or to whoever operated the site on which it is found. However, the judge concluded, relying notably on Google's market domination[99] and on the testimony of the appellant and third parties who learned of the existence of the Impugned Post via Google, that the latter's fault,[100] through the power of its technology,[101] contributed to the appellant's injury. In the determination of the latter's true nature, as I have just described it, I find no reviewable error.

[89] Finally, still on the issue of causation, I do not find any reviewable error in the judge's decision on Google's arguments that any causal link would have been broken by

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99 Judgment under appeal, para. 523; Exhibit P-2.2, Statistics on market share compiled by StateCounter, dated July 2022, *en liasse*, A.B. vol. 1, pp. 345-347.

100 Judgment under appeal, para. 524.

101 The judge spoke of "super-spreading communications technology", *Id.*, para. 559.

the appellant's personality or the failure to mitigate damages stemming from his inaction against the Impugned Post's author and the sites that hosted it.[102]

[90] Causation and injury being established, the only remaining question is its assessment.

[91] On this point, despite the difficulty of the operation and the trial judge's broad discretion in the matter, I am of the view that intervention is warranted.

[92] Far be it from me to want to minimize the situation in which the appellant found himself and the injury that he has suffered since the Impugned Post appeared on the Internet. The seriousness of the comments is not in doubt and certainly falls on the higher end of the spectrum. The impact of those comments on the appellant's feelings, but even more so on his psychological health, is amply shown by the appellant's testimony and that of people close to him and experts, including Google's. The fact that the link leading to the Impugned Post is constantly capable of being captured by Google's algorithm and indexed creates a permanent state of uncertainty that is in and of itself the indemnified injury.[103] Despite all of these considerations, I am of the view that the judge made three errors that had an impact on the determination of the quantum.

[93] First, although he repeatedly asserted the opposite, the judge did not limit himself to injury resulting from the only fault capable of being compensated here. Google is not the author of the Impugned Post and it does not have any control over its presence on the Internet. The only fault at issue here is the failure to de-index the Impugned Post's bare link as of 2015. The claim for the injury sustained prior to that date is therefore impossible because, according to what the judge found, Google had committed no fault until 2015. However, upon my reading of the judge's reasons, of the importance that he attached in his narrative to considerations prior to that time limit and, especially, of paragraph 509 of his judgment where he claimed that the prior injury was aggravated by the post-*Crookes* policy, he did not limit himself to the pre-2015 period. While the absence of proof that anyone knew about the Impugned Post via Google did not rule out the existence of personal injury caused to the appellant, that factor is undeniably important in the quantification of that injury, especially given that the evidence showed that any search capable of leading to such a result had to be very precise.

[94] The second error was the fact that the judge, *in fine*, assessed the damages backwards by starting from the purely subjective estimate proposed by the appellant and by simply deducting therefrom a correlative portion of the heads of damages that he

[102] *Id.*, paras. 525-542.
[103] Judgment under appeal, paras. 555-556.

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disallowed.[104] This approach is to be avoided because it risks being an additional incentive for parties to overestimate their claims.

[95] Finally, although the judge provided a list of precedents – as is required for the awarding of non-pecuniary damages which must not become a sort of lottery[105] – it seems to me that he departed therefrom and awarded an amount that largely exceeded those awarded in the vast majority of the cases cited, without really explaining why. Taking into account the totality of the circumstances, and particularly the scope of the liability limited to the publication of the bare link after 2015, as well as the true nature of the injury found, as we have seen, that result, respectfully, seems unreasonable to me. Considering the totality of the circumstances, I would reduce compensatory damages to $25,000.

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3) Did the judge err in declining to award punitive damages (principal appeal)?

[96] The judge dismissed the appellant's claim in punitive damages.[106] In his view, Google, having in good faith amended its de-indexing policy based on what it believed to be the applicable law in Quebec following *Crookes*, had no intention of breaching the appellant's *Charter* rights. On appeal, the appellant submits that the judge erred both in law and in fact.

[97] As a matter of law, the appellant argues that the judge departed from the intentional interference test articulated by the Supreme Court in *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*.[107] In his view, when the Supreme Court, in that decision, referred to "intent to cause the consequences of his or her wrongful conduct, or [the fact of acting] with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause"[108] it was not referring to interference with the right, but rather to the tangible consequences thereof.[109] In the case at bar, Google knew that its conduct, which was both deliberate and intentional, was causing serious injury to the appellant, but remained indifferent to it,[110] which is sufficient to meet the intentionality requirement.[111] The appellant adds that the defense of error concerning the applicable law and the fact that Google believed that it

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104 Indeed, I note that the appellant's initial claim was for $5,000,000 in compensatory damages and for $1,000,000 in punitive damages before amending his originating application to reverse those figures.

105 *Genex Communications inc. c. Association québécoise de l'industrie du disque, du spectacle et de la vidéo*, 2009 QCCA 2201, para. 69 [*Genex Communications inc.*]. Of course, the use of precedents is not absolute, each case being case-specific: *Ville de Sainte-Marthe-sur-le-Lac c. Experts-conseils RB inc.*, 2017 QCCA 381, para. 51 [*Ville de Sainte-Marthe-sur-le-Lac*].

106 Judgment under appeal, paras. 561-564.

107 [1996] 3 S.C.R. 211 [*St-Ferdinand*].

108 *Id.*, para. 121.

109 According to the appellant, the judge's error is to be found precisely at para. 562 of the judgment under appeal.

110 A.A., paras. 12-15.

111 *Procureur général du Canada c. Manoukian*, 2020 QCCA 1486.

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was complying with the teachings of *Crookes* did not suffice to rule out the intentional nature of the interference.

[98] Alternatively, even if such a defence was available to Google, the appellant submits that the judge erred in fact by finding that Google believed in good faith that it was acting legally. The appellant argues that because Google refused to adduce evidence of its de-indexing policies, as well as the legal analyses conducted as to the consequences of *Crookes* and its application in Quebec law, the judge could not make such a finding.

[99] As to quantum, the appellant stresses the importance of denouncing Google's practice of refusing to de-index to the very detriment of the protection of individuals' rights and of encouraging it to review its priorities and align its practices with its own public representations to the effect that it is fighting disinformation and harmful content. Considering the partly deterrent function of punitive damages and Google's financial situation, the appellant claims the sum of $5,000,000 under that head.

[100] Google, for its part, recalls that in civil law, the awarding of punitive damages is exceptional and constitutes the exercise of the trial judge's discretion, to which the Court owes great deference. It submits that the judge did not err in finding that it had acted in good faith, thus precluding any intentionality of the interference. Its interpretation of *Crookes* and its application in Quebec law was reasonable and shared by scholarly opinion and case law. Consequently, since that decision established that a bare URL link was not defamatory, Google could not have intended to cause interference to the appellant nor have known that this would occur.

[101] Google adds that the facts do not justify the awarding of punitive damages. The appellant admits that Google was not targeting him specifically, that there is no evidence that anyone had accessed the Impugned Post using the search engine, that Google is not the post's author, but a mere intermediary and that it always intended to obey the law.

* * *

[102] The awarding of punitive damages, as well as their assessment, are matters within the trial judge's discretion, which is owed deference. Our Court will therefore intervene only in the presence "d'une erreur de principe ou d'une erreur sérieuse d'évaluation."[112] Respectfully, I am of the view that this is such a case.

[103] As an illustration of the mixed nature of its legal system, Quebec law allows the awarding of punitive damages – recognized in common law traditions but not in those of the civil law – only when they are provided for by law.[113] In the case at bar, this claim is

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[112] *Schneiderman c. 3025235 Nova Scotia (Hôtel Omni Mont-Royal)*, 2021 QCCA 1496, para. 14; *Allard c. Allard*, 2020 QCCA 322, para. 17.

[113] Art. 1621 *C.C.Q.*

based on the *Quebec Charter*. The criteria for awarding such damages are provided in the second paragraph of section 49 thereof, which reads as follows:

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.	**49.** Une atteinte illicite à un droit ou à une liberté reconnu par la présente Charte confère à la victime le droit d'obtenir la cessation de cette atteinte et la réparation du préjudice moral ou matériel qui en résulte.
In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.	En cas d'atteinte illicite et intentionnelle, le tribunal peut en outre condamner son auteur à des dommages-intérêts punitifs.

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[104] The two criteria that the interference must satisfy to justify the award of damages are therefore unlawfulness and intentionality. An interference's unlawfulness refers to its wrongfulness,[114] as opposed to an interference allowed by law or to which the person concerned consented. Because I have already found that Google committed a fault in refusing since 2015 to de-index the Impugned Post's URL link and awarded compensation for the injury defined above, recognizing an interference with the appellant's psychological integrity,[115] this first criteria is met. The debate therefore centres on whether the interference was intentional.

[105] The Supreme Court established the meaning to be given to that criterion in *St-Ferdinand*. The relevant portion of that decision, since then consistently upheld by case law, reads as follows:

> [121] Consequently, there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the *Charter* when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence. Thus, an individual's recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test.[116]

[106] On reading this passage, we see that two states of mind can correspond to the intent requirement set forth in section 49 of the *Charter*: 1) the desire or intent to cause the consequences of his or her wrongful conduct; or 2) knowledge of the immediate and

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[114] *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, paras. 109 and 116.

[115] *Quebec Charter, s. 1.*

[116] *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, para. 121.

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natural or at least extremely probable consequences that this wrongful conduct will cause.[117] This interpretation of the intentionality requirement is informed by the principle of large and liberal interpretation of legislation aimed at protecting fundamental rights.[118]

[107] I agree with the appellant that the judge erred in the application of that requirement, but I will express the reason in a slightly different way. In my view, the judge's error was that he applied the intentionality requirement to the fault – the unlawfulness of the interference – rather than to the interference itself or its consequences. However, both the Supreme Court and our Court recall that intentionality must not relate to the behaviour, but rather to its result.[119] It is not necessary to show that the fault, i.e., the unlawfulness of the interference, is in and of itself voluntary. As L'Heureux-Dubé J. noted in *St-Ferdinand*:

> From this perspective, in interpreting the expression "unlawful and intentional interference", it is important not to confuse the intent to commit a wrongful act with the intent to cause the consequences of that act. In this regard, the second paragraph of s. 49 of the *Charter* could not be any clearer: it is the unlawful interference -- and not merely the fault -- that must be intentional.[120]

[108] Google knew the information to be false. It knew, having received several emails and letters on the subject since 2007, that the appellant was suffering serious injury related to the indexing. Not only did it know this, but it is reasonable to assume that it acknowledged this to be the case, because it agreed to de-index that link until December 2015 despite the importance it claims to attach to freedom of expression and its stated policy of limiting the circulation of information as little as possible.

[109] Yet, Google maintained its position and refused to proceed with the de-indexing, even during the proceedings and after having read the expert reports, including that of its own expert, certifying the interference with the appellant's psychological integrity, and this, always for the same reason: according to its interpretation of Quebec law, it was not duty-bound to de-index the bare link, because it did not constitute defamation.

[110] On this point, it is reasonable to assume that Google's explanation whereas its policy was to comply with applicable law is not sufficient to displace the element of intentionality in this context. Google never claimed that it felt obliged to maintain indexing

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117 *Procureur général du Canada c. Manoukian*, 2020 QCCA 1486, para. 130.

118 *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, para. 120.

119 *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, para. 118; *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé,* 2019 QCCA 358, para. 1000. Our Court has recently recalled, in *Lambert c. Commission des droits de la personne et des droits de la jeunesse (Nkamba)*, 2025 QCCA 955 that the result is the interference with the *Charter*-protected right rather than the actual consequences thereof (paras. 66-67).

120 *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, para. 118.

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of the link nor to defend legitimate expression. As the judge observed, alongside this minimal de-indexing policy to comply with applicable law, Google publicly claimed to be a reliable source of information and aimed to combat disinformation or otherwise harmful content.[121] Why, then, re-index a link that is known to be both? In his testimony, Anthony Nichols, "Legal Removal Specialist" at Google, claimed that the latter has a voluntary de-indexing policy when a court declares content to be defamatory and orders its author to remove it even when no injunction is directed at Google.[122] He also stated that Google voluntarily de-indexes other undesirable content.[123] What Google does not want, and this is easily understandable, is to have to assess whether information is defamatory. It will therefore de-index carefully, based on the circumstances and type of content.

[111] But, once again, that difficulty does not arise here. Google refused to once more de-index the link leading to the Impugned Post, knowing that its content was false and aware of the consequences that its conduct had on the appellant's integrity. These were not extremely probable future consequences, but, rather, consequences that had already occurred and that were ongoing. Indeed, not only was the post evidently defamatory on its face given the seriousness and falsity of the information reported, but Google had been expressly informed since 2007 of the consequences of the indexing of the Contentious Link on the appellant, which in fact led to its decision to de-index the link until 2015. Thus, in his letter dated April 27, 2007, a friend of the appellant informed Google that "[g]iven Google's pre-eminence in Internet search, this represents a crippling and permanent blow to [A.B.]'s name, reputation and business."[124] Therefore, in 2015, when Google refused to de-index the Impugned Post, consequently committing a civil fault, it was acting with full knowledge of the interference caused to the appellant who informed it: "I cannot overstate the injury that this label is doing to me as an individual and as a business person."[125]

[112] All this suggests that Google acted for years, knowingly and with premeditation, deliberation and repetition, which are all "*des indicateurs d'une atteinte illicite et intentionnelle*"[126] thus demonstrating a clear indifference towards the appellant's right to integrity and, therefore, satisfying the intentionality requirement. Punitive damages should, accordingly, be awarded. It remains to quantify them, the appellant claiming $5,000,000 under that head.

[113] As for the determination of their quantum, article 1621 *C.C.Q.* provides:

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[121] Judgment under appeal, paras. 233-236 and 278-279. See: Serge Kablan and Arthur Oulaï, "Vers une responsabilisation accrue ? A. B. contre Google et l'avenir de la régulation des services en ligne", (2024) 36 : 1- 2 *Les Cahiers de propriété intellectuelle* 127, p. 147.

[122] Exhibit P-12, A.B., conf. vol. 2, pp. 1400-140.

[123] Exhibit P-33, email sent by A.B. to the Defendant on July 9, 2015, A.B., conf. vol. 2, p. 1458.

[124] Exhibit P-12, Letter sent by T.U. to Kent Walker and others on April 27, A.B., conf. vol. 2, pp. 1400-1401.

[125] Exhibit P-33, Email sent by A.B. to the Defendant on July 9, 2015, A.B., conf. vol. 2, p. 1458.

[126] *Lalli c. Gravel*, 2021 QCCA 1549, para. 143.

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1621. Where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfil their preventive purpose therefrom.	**1621.** Lorsque la loi prévoit l'attribution de dommages-intérêts punitifs, ceux-ci ne peuvent excéder, en valeur, ce qui est suffisant pour assurer leur fonction préventive.
Punitive damages are assessed in the light of all the appropriate circumstances, in particular the gravity of the debtor's fault, his patrimonial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the reparatory damages is wholly or partly assumed by a third person.	Ils s'apprécient en tenant compte de toutes les circonstances appropriées, notamment de la gravité de la faute du débiteur, de sa situation patrimoniale ou de l'étendue de la réparation à laquelle il est déjà tenu envers le créancier, ainsi que, le cas échéant, du fait que la prise en charge du paiement réparateur est, en tout ou en partie, assumée par un tiers.

[114] As use of the term "in particular" suggests, these criteria for the assessment of punitive damages are not exhaustive[127] and the court may consider all relevant circumstances.[128] Though called "punitive", punishment is not the sole objective of these damages. In *de Montigny v. Brossard (Succession)* the Supreme Court added to that objective those of deterrence and denunciation.[129] Moreover, deterrence operates at two levels. Not only is it intended to deter the wrongdoer specifically, it also acts as a "dissuasion générale ou sociétale, c'est-à-dire […] la dissuasion des industries qui se retrouveraient […] devant un dilemme moral de la même nature."[130]

[115] While quantifying punitive damages is always a delicate exercise, it is particularly so in this case on account of Google's unique patrimonial -- i.e., financial -- situation, considering that the net quarterly income of its parent company, Alphabet, was in excess of $16,000,000,000 in 2022.[131]

[116] This singularity somewhat upends the role played by the debtor's patrimonial situation criterion, which is usually of paramount importance[132] in that it allows both the punitive aspect and the specific deterrent aspect of punitive damages to be calibrated. Indeed, while the Supreme Court recalled in *Richard* that « […] the larger the debtor's patrimony, the higher the award of punitive damages must be to ensure that the general objectives of such damages are achieved and to discourage any repetition," it remains

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127 *Richard v. Time Inc.*, 2012 SCC 8, para. 204 [*Richard*]; *Genex Communications inc. c. Association québécoise de l'industrie du disque, du spectacle et de la vidéo*, 2009 QCCA 2201, para. 99.

128 *Meubles Léon ltée c. Option consommateurs*, 2020 QCCA 44, para. 122.

129 de Montigny c. Brossard (Succession), 2010 SCC 51, paras. 49-53

130 *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, para. 1112.

131 Exhibit P-55.1, A.B., vol. 2, p. 699.

132 *Fillion c. Chiasson*, 2007 QCCA 570, para. 107.

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that "[…]even where an offender is extremely wealthy, the amount of the award must still be rationally connected with the purposes for which punitive damages are awarded in a particular case."[133] While still taking into account this particular aspect of the case, it therefore seems preferable to me to focus, rather, on the objectives of general deterrence and denunciation.

[117] As for the properly punitive aspect, Google's fault, but especially its steadfastness, even stubbornness, in maintaining its position in the face of a serious and persistent interference seem to me to be an aggravating factor. The effectiveness of Google's technology is proportional to its dangerousness and to the accountability that it demands. For these reasons, I am of the view that the sum of $1,500,000 in punitive damages is reasonable.

4) Did the judge err in declining to grant a permanent publication ban on the appellant's name (principal appeal)?

[118] In a judgment rendered on October 12, 2016 by Justice Granosik,[134] the appellant obtained an anonymization order as well as an order enjoining the non-circulation of proceedings, exhibits and testimony pending judgment on the merits. The judgment under appeal dismissed the application for a permanent order enjoining the non-disclosure of the appellant's name and that of members of his family, as well as information that could identify them. The appellant appeals that decision. As was the case at trial, Google submits no argument on this issue. It is also worth noting that no media, after having been impleaded, has intervened in the debate.[135]

[119] Like Justice Granosik, the trial judge began by noting the somewhat paradoxical nature of the appellant's application, in that he wishes to keep his identity confidential in a judgment that would essentially condemn the circulation of the Impugned Post, which still remains available on the Internet, and publicly establish its falseness.[136]

[120] Following this preliminary comment, which appears to be decisive in his reasoning, the judge outlined the analytical framework articulated by the Supreme Court in *Sherman Estate v. Donovan*.[137] Although, pursuant thereto, dignity can be an important public interest justifying limitation of the open-court principle, the judge recalled that the threshold remains high, given that anyone requesting intervention of the justice system waives, in part at least, their right to privacy.[138] While the judge agreed that the

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133 *Richard v. Time inc.*, 2012 CSC 8, para. 201.
134 *A.B. c. Google inc.*, 2016 QCCS 4913.
135 See: *A.B. c. Google inc.*, 2016 QCCS 4913, para. 9.
136 Judgment under appeal, paras. 597-604.
137 2021 SCC 25 [*Sherman*].
138 Judgment under appeal, paras. 610-611.

information in the case strikes at the appellant's biographical core, he nevertheless found that there was no serious risk to that public interest in dignity.[139]

[121] In support of that finding, the judge began by noting that defamation is not one of the exceptions to the open-court principle provided in articles 13, 15 and 16 *C.C.P.* Although a defamation claim generally involves the disclosure of private and sensitive information, it is not open to the courts to create a new general exception to the rule. In the case at bar, the judge was of the view that the judgment will assist in "setting the record straight" and that it is through the appellant's identification that his name and reputation can be rehabilitated.[140]

[122] The judge then specifically turned his attention to two factual elements of the case. First, he referred to the opinion of Dr. Houle, who explained that, because of his personality, the appellant would be devasted by the publicity of proceedings disclosing his identity, whereas others would be comforted by it. The judge found that this was an element specific to the appellant that cannot be a relevant factor in analyzing whether the interference with dignity in this case met the required threshold that justified restricting court openness.[141] Further, the judge considered that the same held true of the fears expressed by one of the appellant's sons as to the very harmful effect on his career that gossip surrounding the case could have.[142]

[123] Finally, the judge held that the third criterion of the test in *Sherman*, that of the balancing of effects, was not met. In his view, the beneficial effects of the publication ban did not outweigh its harmful effects on the rights and interests of the public in a public judicial process, an effective administration of justice, and the protection of freedom of expression, rights and interests that he held to be constitutional in nature.[143]

* * *

[124] On appeal, the appellant submits that the Impugned Post has ruined his life and that only a publication ban can alleviate the paralysing fear that is gripping him and protect him from further harm. He argues that the protection of human dignity is of public interest and is aimed at countering the stigmas that can lead to injurious impacts on a person. He also raises the risk that fear of the magnifying effect of a publicized lawsuit in such cases could affect access to justice.

[125] The appellant also argues that public interest does not at all require that his name be associated with false allegations of pedophilia and that it would not be adversely affected by not doing so. He adds that, in this case, and unlike other precedents invoked

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139 Judgment under appeal, paras. 617-618, applying *Sherman*, para. 35.
140 *Id.*, paras. 619-625.
141 *Id.*, paras. 626-630.
142 *Id.*, paras. 631-632.
143 *Id.*, para. 633.

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that were rendered at the interlocutory stage, the injury to his psychological health arising from the Impugned Post was established by expert evidence. He alleges that the judge thus conflated the *effect* of the violation of dignity on the appellant with the general objective of protecting dignity as a matter of public interest.

* * *

[126] The decision on an application for a confidentiality order amounts to the exercise of the trial judge's discretion. As is the case in such matters, our Court's standard for intervention is "celle de l'erreur manifeste et déterminante dans l'appréciation des faits, ou celle de la décision correcte lorsqu'il y a erreur de droit."[144] In this case, the judge correctly articulated the applicable legal framework established by Kasirer J. on behalf a a unanimous Supreme Court in *Sherman*.[145] In that decision, the Court established an analytical framework resting on three cumulative prerequisites to overturn the strong presumption in favour of court openness:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.[146]

[127] The Supreme Court moreover articulated several teachings useful to the interpretation and application of that framework. First, it recalled that "limits on openness in service of other public interests have been recognized, but sparingly and always with an eye to preserving a strong presumption that justice should proceed in public view."[147]

[128] Next, as to the first prerequisite, the Supreme Court declined to consider the mere protection of privacy as a public interest sufficient to justify a limitation of the open-court principle. Such a criterion would be too permissive, since it is acknowledged that some degree of privacy loss is inherent in any court proceeding.[148] Thus, "[…] neither individual sensibilities nor mere personal discomfort associated with participating in judicial proceedings are likely to justify the exclusion of the public from court."[149]

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144 *Association étudiante de l'Université McGill c. X.*, 2025 QCCA 475, para. 28; Si also *Dis Son Nom c. Marquis*, 2022 QCCA 841, para. 62, citing *L.B. c. J.S.*, 2021 QCCA 1593, para. 6.

145 *Sherman Estate v. Donovan*, *2021 SCC 25*, paras. 1-3.

146 *Id.*, para. 38.

147 *Id.*, para. 30. See also: *Édifice 500 Grande-Allée Est inc. c. Procureur général du Québec*, 2024 QCCA 1287, para. 65.

148 *Sherman Estate v. Donovan*, *2021 SCC 25*, paras. 31, 56-60 and 74.

149 *Id.*, para. 31.

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[129] The Supreme Court went on however to note that the intrusion on privacy may reach such a bar that it constitutes a public interest sufficient to overturn the strong presumption in favour of court openness. That threshold is embodied by the concept of dignity of the person – the term used by the legislature in article 12 *C.C.P.* – and is articulated by Kasirer J. as follows:

> This public interest will only be seriously at risk where the information in question strikes at what is sometimes said to be the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings.[150]

[130] Applicants cannot however content themselves with an unsubstantiated claim that this public interest in dignity is compromised. They must demonstrate that the information "[…] is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an exceptional order, the affected individual will suffer an affront to their dignity."[151]

[131] Determining whether there exists a sufficient public interest on one hand and whether there exists a serious risk facing the applicant on the other hand, are two distinct operations, the first resting on general principles that extend beyond the parties, the second being rather a factual finding inherent to the specific context of each case.[152]

[132] We must all be sensitive, and I am, to the appellant's personal circumstances and to the significant psychological consequences that he is experiencing because of the Impugned Post. In this age where information, even false, circulates at high speed, reaches the masses, strikes collective imaginations and crystallizes individual opinions, we can agree that the appellant's only fully effective remedy would be for the dissemination of those false allegations to stop, were that possible. But, in the case at bar, I cannot accept that such a remedy necessarily involves a publication ban on the appellant's name.

[133] It is true, as we have seen, that the appellant has tendered, notably by way of Dr. Houle's report, evidence of the existence of psychological injury purportedly resulting from the publicity of the judgment. It is also true that Kasirer J. recalls that courts must be responsive to the harm to the physical well-being or psychological distress that the openness of court proceedings could cause.[153] It remains that determining the existence of a serious risk to a person's dignity is a question of fact. However, the judge did not make any palpable and overriding error in finding that no such serious risk exists.

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150 *Id.*, para. 34.
151 *Id.*, para. 35; See also *Id.*, paras. 63 and 71-73.
152 *Id.*, paragr. 42 et 79.
153 *Id.*, paras. 72-73.

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[134] In the case at bar, the only information that can be said to "strike at the biographical core of the individual"[154] is that the appellant *was not* convicted of child molestation and therefore that the public assertion involving him is false. Like the trial judge, and like Justice Granosik before him, I cannot accept that such information can create a serious risk that the appellant will suffer an affront to his dignity. What is an affront to his dignity is the Impugned Post that is already in the public domain. While it is true that the Supreme Court does not exclude that the additional dissemination of already public information may constitute a sufficient public interest, it remains that it will be difficult to meet that bar where "court openness will simply make available what is already broadly and easily accessible."[155] But there is more. What the judgment would publicize would simply be an uncompromising confirmation of the falsity of already public information. Indeed, the judgment contains – and this is what distinguishes this case from many others – no other sensitive information concerning the appellant's privacy, whether it be financial information, or intimate information about his health, his sexual orientation or habits, or a stigmatizing event that he may have suffered, such as a sexual assault,[156] to give but a few examples.[157]

[135] Also, and contrary to what is generally the case,[158] the court was not called upon here to determine, at the merits stage, whether the potentially defamatory allegations were true or not. In the case at bar, these allegations are, as a matter of public knowledge, false and the judgment simply found that that it is undisputed that the appellant was never convicted of a sexual crime, or of any other crime for that matter.

[136] The appellant argues that these considerations should, rather, weigh in favour of a publication ban and that the burden for obtaining it is less demanding at the merits stage, when the case is made out, than it is at the interlocutory stage. This argument is not persuasive and is, in fact, impracticable: indeed, if a publication ban is denied at the interlocutory stage, there is nothing that the trial judge can do about it. The precautionary principle requires, rather, consideration of the impacts of the decision and the fact that

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154 And that was considered as such by the judge: Judgment under appeal, para. 617.

155 *Sherman Estate v. Donovan*, *2021 SCC 25,* para. 81. Aggravation of the injury was sufficient to justify an order in *J.C. c. Douville*, 2022 QCCA 958, para. 55 [*Douville*].

156 Such as in *J.C. c. Douville*, 2022 QCCA 958. See also: *J.I.B. c. Vallée*, [1996] R.J.Q. 2480 (C.A.); *S. c. Lamontagne*, 2020 QCCA 663. The absence of such information was a criterion justifying the denial of a publication ban: *Dis Son Nom c. Marquis*, 2022 QCCA 841 (although the appellant alleged having been a victim pf sexual assault, that was not relevant to the case) [*Dis Son Nom*]; *A.B. c. Robillard*, 2022 QCCA 959, paras. 30-31 [*Robillard*].

157 *Sherman Estate v. Donovan*, *2021 SCC 25*, para. 77.

158 See, for example: *Maison des femmes sourdes de Montréal c. Communauté des sœurs de Charité de la Providence*, 2022 QCCS 489 [*Maison des femmes sourdes de Montréal*]; *A.B. c. Frères de Saint-Gabriel du Canada*, 2021 QCCS 2018 [*Frères de Saint-Gabriel du Canada*].

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the case is at the interlocutory stage, especially since the trial judge is not bound by that decision.[159]

[137] The appellant adds that the judge erred in his assessment of Dr. Houle's testimony. In his view, Dr. Houle did not claim that his distinctive personality justified a publication ban, but rather that the context in which he finds himself was unique, since members of the public, who are unaware of the Impugned Post, could become aware of it because of the publication of the judgment and could always consider that there's no smoke without fire.

[138] Respectfully, I do not see that the judge erred here, and I add that this argument is not only speculative but constitutes a slippery slope that we should not venture upon. Suspicion reasoning can be adopted in any case involving defamatory information as well as in many other matters, notably in any criminal case where the accused was acquitted. Accepting this logic would end up completely eroding the open-court principle and, as the trial judge noted, it would create, in defamation cases, a judge-made general exception to that principle.[160] This would run contrary not only to the intent of the legislature that did not create such an exception, but also to the Supreme Court's teachings in *Sherman*. In such matters, each case must be assessed on its own facts[161] and, as our Court recalled in *Robillard*, in which, like in the case at bar, a plaintiff in a civil liability claim for defamation sought a publication ban on his identity, it is "[…] imprudent to lay down generalities and attempt to categorize legal proceedings in advance by asserting that in some of them, the openness principle can be overcome and that in others, it cannot."[162]

[139] For these reasons, this ground of appeal must fail. I am however of the view that the publication ban granted by my colleague Baudouin J.A. should be extended during the appeal proceedings until the expiry of the applicable time limit to file an application for leave to appeal to the Supreme Court or, if such leave is requested, until the judgement dismissing it or until the judgment of the Supreme Court on the merits so that any application on that issue becomes moot.

5) Did the judge err in granting an injunction (incidental appeal) or in determining its substantive and geographical scope (principal appeal)?

[140] The judge granted in part the appellant's application for a permanent injunction by limiting both (a) its substantive and (b) geographical scope. The parties both appeal various aspects of those conclusions. I will examine each in turn.

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159 *J.C. c. Douville*, 2022 QCCA 958, para. 47; *Maison des femmes sourdes de Montréal* c. Communauté des sœurs de Charité de la Providence, 2022 QCCS 489, para. 14; *A.B. c. Frères de Saint-Gabriel du Canada*, 2021 QCCS 2018, para. 56.

160 See, to the same effect: *A.B. c. Robillard*, 2022 QCCA 959, para. 35.

161 *J.C. c. Douville*, 2022 QCCA 958, para. 37.

162 *A.B. c. Robillard*, 2022 QCCA 959, para. 24.

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a) Substantive scope of the injunction

[141] I recall that the injunctive relief sought by the appellant included two separate branches. Under the first, the appellant requested that the court order Google to withdraw any link referring to any page containing his name within 15 words of the terms “child molestation”, “child molester” and “pederast” (the “keywords injunction”). Under the second, the appellant requested that the court order Google to ensure that no link leading to pages of the “ripoffreport.com” and “usacomplaints.com” sites containing his name appear in the search results (the “websites injunction”). The judgment under appeal dismissed the first branch, which the appellant is challenging in his principal appeal, and allowed the second, which Google is challenging in in its incidental appeal.

[142] I shall consider each of these two branches in turn, by first recalling that granting a permanent injunction is a matter of discretion on the part of the trial judge. Thus, judge must not simply determine whether the applicant is strictly entitled to one. The judge must also determine whether it is necessary and advisable in the circumstances of the case.[163] That is why our Court will intervene only when it considers that the decision to grant or not to grant an injunction is “[…] abusive, déraisonnable ou non judiciaire, c’est-à-dire fondée sur des considérations erronées.”[164]

[143] Regarding the first branch, i.e., the keywords injunction, the judge based his refusal primarily on the grounds that, since he was also refusing the permanent publication ban on the appellant’s identity, such an injunction risked causing the non-indexing of articles pertaining to the present judgment. It would thus limit public access to the judicial process and would indirectly constitute a publication ban.[165]

[144] On appeal, the appellant submits that, even were his appeal regarding the publication ban on his identity to be dismissed, the keywords injunction should be granted in that it does not aim to limit court openness nor even access to the judgment under appeal, but rather the association of his identity with defamatory and unfounded allegations. He adds that media coverage of a judgment is not part of the judicial process and that because that coverage is liable to exacerbate his injury by giving greater visibility to the allegations, he has a legitimate interest in the injunction.

[145] This is not persuasive. The Supreme Court has recently recalled the importance of the media’s role in the “social and democratic functions of the open court principle”[166] and I fail to see how media coverage or, more generally, the publicity given to a judgment, should be excluded therefrom or otherwise see its importance reduced. In that sense, the

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163 *I.A.T.S.E., Stage Local 56 v. Société de la Place des Arts de Montréal,* 2004 SCC 2, paras. 13-14; *Vandal c. Municipalité de Boileau*, 2020 QCCA 777, para. 34.

164 *Ensyn Technologies inc. c. IMTT Québec inc.*, 2023 QCCA 1369, para. 25; See also *2949-4747 Québec inc. c. Zodiac of North America Inc.*, 2015 QCCA 1751, para. 23.

165 Judgment under appeal, paras. 570-571.

166 *Canadian Broadcasting Corp. v. Named Person*, 2024 SCC 21, para. 31.

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judge was correct in finding that the keywords injunction would amount to, at least in part, indirectly granting to the appellant the publication ban that he had denied him otherwise.

[146] But there is more. Irrespective of that aspect, Google rightly submits that the utility of such an injunction has not been established. Not only is there nothing in the record that leads to believe that the Impugned Post is to be found elsewhere than on the pages covered by the second branch of the injunction, but, rather, when searches were done, only the URL link leading to those same pages came out as a result.[167] Finally, and perhaps most importantly, such an injunction would in this case have an excessive scope that is difficult to quantify and which would therefore unduly limit freedom of expression by risking the de-indexing of certain content without just cause. While it is true that the judge did not express such a finding to justify his decision, the appellant is wrong to submit that he found otherwise, since the judge's comments on freedom of expression concern rather the second branch of the injunction, to which we now turn.[168]

[147] The judge granted the second branch of the injunction – that dealing with the websites – in the following terms:

> [638] **ORDERS** Google to ensure that its search results not list any webpages from the domains "ripoffreport.com", "www.ripoffreport.com", "www.usacomplaints.com", or "usacomplaints.com" containing the words "A. B.", this injunction being restricted in geographical scope to all users of the search service offered by Google, Google Search, located in the province of Quebec.

[148] The judge held that such an order naturally flowed from the wording of section 22 *IT Framework Act* without otherwise running afoul of section 27 of that same Act. He also found that its scope was not overbroad, the evidence showing that the searches returned only the link leading to the Impugned Post. Consequently, the websites injunction did not unduly impinge upon freedom of expression and could have no chilling effect on it given that, according to the judge, "defamation is not protected expression, and the act of making it available to users as an intermediary is not a protected right either."[169]

[149] On appeal, Google argues that the websites injunction is not necessary, since the evidence shows that it has always removed illegal content and that it will continue to do so should the Court determine that that is the case here. It further submits that the injunction is unduly overbroad in that it is not aimed at specific URLs of the Impugned Post, but rather at the ripoffreport.com or usacomplaints.com sites, thus risking censorship of other publications that are not illicit.

[150] These two submissions, addressing the injunction's necessity and scope, are essentially based on findings of fact by the trial judge, which are owed deference.

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167 See Exhibits P-92 and P-93, A.B. conf. vol. 2, p. 1565.
168 Judgment under appeal, paras. 575-579.
169 *Id.*, para. 581.

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However, I am of the view that Google has not succeeded in showing that the judge made a palpable and overriding error and thus exercised his discretion unreasonably.

[151] It is true that courts sometimes refuse to grant an injunction on the basis that it is not necessary where, for example, no past breach of the applicable legal duty has been shown[170] or where the judge finds that the facts reveal no risk of recidivism.[171] I note that such reservations, without necessarily being limitative, generally present themselves when the order merely aims at enjoining the defendant, generally, to obey the law or immediately cease any defamation against the applicant.

[152] But such is not the case here. While it is true that Google claims to obey the law applicable in a given jurisdiction, what that law requires must still be clearly established. This is best illustrated by the parties' disagreement as to the scope of an eventual injunction, which we will address below. Absent any injunction, there could therefore be an ongoing debate as to the sufficiency of Google's actions, a debate that can be avoided by an injunction order that will specifically target what Google is minimally required to do or not to do. In such a context, it was open to the judge to find that the websites injunction was necessary, even though he was confident that Google would comply with it.[172]

[153] Regarding the injunction's scope, it is true that great caution is required where the order's subject matter limits freedom of expression.[173] That is why, as we have just seen, courts may be reluctant to render a very general, or even generic, order, in this area. It remains, however, that such a remedy is available to the court when it appears justified.[174]

[154] In the case at bar, the judge made no reviewable error as to the injunction's scope. The evidence in the record shows that the link leading to the Impugned Post changed several times in the past, which obliged Google to proceed to successive de-indexings,[175] This state of affairs could justify the judge's framing of the order based on the site hosting the post, rather than on the specific link. Also, as the judge found, searches done at the hearing or in preparation thereof clearly showed that only the link of the Impugned Post was returned when the words covered by the order were used in the query. The scope of the injunction as ordered therefore appears to be precise, limited and proportional and

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170 *Roberge c. Sherbrooke (Ville de)*, [2004] J.Q. no 9499 (C.A.), para. 60.

171 *Bacon St-Onge c. Conseil des Innus de Pessamit*, 2021 QCCA 1765, para. 15; *Enerkem inc. c. Constructions EDB inc.*, 2022 QCCS 371, paras. 123-125; *Gestion immobilière Lafrance & Mathieu inc. c. Matt et Jaff inc.,* 2018 QCCS 5149, paras. 110-111.

172 See: *Ferme Loumi c. Archambault*, 2023 QCCA 315, para. 32.

173 Case law recalss this necessary caution, particularly in the context of an interlocutory injunction: *Champagne c. Collège d'enseignement général et professionnel de Jonquière,* [1997] RJQ 2395 (C.A.); *Takefman c. Bier*, 2010 QCCA 486, paras. 19-25; *Prud'homme c. Rawdon (Municipalité de),* 2010 QCCA 584, paras. 57-63.

174 *Petkov c. Saputo inc.*, 2012 QCCA 369, para. 3.

175 See, for example, Exhibits P-28, A.B., conf. vol. 2, pp. 1452-1453; P-29, A.B., conf. vol. 2, pp. 1454; and P-30, A.B., conf. vol. 2, p. 1455.

the risks alleged by Google of undue impingement of third parties' freedom of expression remain purely speculative.

b) Geographical scope of the websites injunction

[155] While the judge did grant the websites injunction, he refused to give it the world-wide reach sought by the appellant. In support of his decision, the judge distinguished this case from *Google Inc. v. Equustek Solutions Inc.*,[176] upon which the appellant relied, because that case, which involved the infringement of intellectual property, raised an important issue of protecting the effectiveness and integrity of the Canadian judicial process, an issue that is not found here. The judge determined that the websites injunction should be limited to Quebec, since it was ordered to remedy an injury sustained in Quebec. Finally, regarding the ineffectiveness of the remedy with respect to searches done in the United States, the judge concluded that it is the result of American legislative policy, embodied by s. 230(c)(1) *CDA*, which should not be permitted to be circumvented, as a matter of international comity.[177]

[156] On appeal, the appellant argues that the Superior Court has jurisdiction to order a world-wide injunction and that the sole criterion that should guide the Court here is the necessity of such a measure in ensuring the remedy's effectiveness. However, he argues, because the injury he is sustaining comes from the search results generated by Google throughout the world, an injunction limited to Quebec would maintain him in a permanent state of fear, thus allowing the injury to continue. Regarding the principle of international comity, the appellant argues that the judge misapprehended *Equutstek*, given that in this case, the injunctions sought would not place Google in a position where it would have to violate U.S. laws to comply with the injunction. As proof of this, Anthony Nichols, Google's representative, testified that Google would voluntarily de-index the link if a court found that the content it referenced was defamatory.

[157] For its part, Google argues that the effectiveness test articulated in *Equustek* means that a world-wide injunction is justified only where there exists a risk that a defendant will avoid its application by circumventing the court's territorial jurisdiction, which is not the case here. Most importantly, however, Google points out that *Equustek* involved the protection of intellectual property which, again, is not the case here. While the infringement of intellectual property rights is illegal throughout the world, the balancing between freedom of expression and the removal of defamatory posts varies according to nation-specific values. In such a case, it is important to ensure that national laws, in this case, s. 230 (c)(1) *CDA*, are not circumvented by seeking the court most likely to grant the order sought. In that sense, the principle of international comity must be taken into account, as did the judge, where the order sought is unavailable under foreign law, which is the case here, to avoid giving an extraterritorial effect to the *IT Framework Act*. Finally,

[176] *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 [*Equustek*].
[177] Judgment under appeal, paras. 572-593.

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Google submits that because of the relativism of values and the protection of freedom of expression, the idea of a world-wide injunction in such matters creates a real danger that Google would have to de-index, at the request of courts in non-democratic countries, political or otherwise prohibited content in those countries.

[158] The issue is certainly not simple and implies a difficult arbitration between what is required to fully repair the appellant's injury, on the one hand, and a consideration of the danger properly raised by Google, on the other.[178] That assessment is a matter of discretion on the part of the trier of fact and the Court should only intervene in the event of a palpable and overriding error, which is not the case here. In the case at bar, the judge had good reasons to reach a conclusion that differed from that in *Equustek*. Considering its importance for the debate, it is helpful to recall the context and the majority reasons of the Supreme Court in that decision.

[159] *Equustek*, a British Columbia technology company, sued Datalink, a former distributor of its products, to prevent the latter from manufacturing and selling products developed through the use of confidential information and illegally acquired trade secrets. Following the breach of an interlocutory injunction, Datalink abandoned the proceedings and left the province to pursue its activities elsewhere, reaching its clients via the Internet. After various intermediate steps, *Equustek* finally obtained from Supreme Court of British Columbia an injunction enjoining Google to de-index any part of the Datalink websites worldwide. That decision was based on the judge's finding that 1) Datalink's ability to sell its product was, in large part, contingent on customers being able to locate the company's link via Google and 2) to be effective, even in Canada, the injunction had to be world-wide.[179] After the Court of Appeal upheld that decision, the Supreme Court did likewise in a majority decision.

[160] The majority of the Supreme Court recognized that a court can grant an injunction enjoining that person's conduct anywhere in the world when it has *in personam* jurisdiction over that person, and where it is necessary to ensure the injunction's effectiveness.[180]

[161] As is the case here, the Court's *in personam* jurisdiction was not in dispute in *Equustek* and the debate focussed entirely on the necessity of a world-wide injunction and the consideration of international comity. Here is what Abella J. wrote on behalf of the majority on these points:

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[178] A danger that is indeed noted in some academic commentary. See: Gabriel Ernesto Melian Perez, "Global or Local? Freedom of Speech and Some Extraterritorial Court Decisions on the Internet", (2022) 3 *Queen Mary Law Journal* 70, p. 85; Matthew Marinett, "The Race to the Bottom: Comity and Cooperation in Global Internet Takedown Orders", (2020) 53:2 *UBC L. Rev.* 463.

[179] *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, paras. 18-19. On the issue of jurisdiction, see also: *Impulsora Turistica Occidente, S.A. de C.V. v. Transat Tours Canada Inc.,* 2007 SCC 20, para. 6.

[180] *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, para. 38.

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[40] Fenlon J. explained why Equustek's request that the order have worldwide effect was necessary as follows:

> The majority of GW1000 sales occur outside Canada. Thus, quite apart from the practical problem of endless website iterations, the option Google proposes is not equivalent to the order now sought which would compel Google to remove the [Datalink] websites from all search results generated by any of Google's websites worldwide. I therefore conclude that [Equustek does] not have an out-of-court remedy available to [it].
>
> . . .
>
> . . . to be effective, even within Canada, Google must block search results on all of its websites.

As a result, to ensure that Google did not facilitate Datalink's breach of court orders whose purposes were to prevent irreparable harm to Equustek, she concluded that the injunction had to have worldwide effect.

[41] I agree. The problem in this case is occurring online and globally. The Internet has no borders — its natural habitat is global. The only way to ensure that the interlocutory injunction attained its objective was to have it apply where Google operates — globally. As Fenlon J. found, the majority of Datalink's sales take place outside Canada. If the injunction were restricted to Canada alone or to google.ca, as Google suggests it should have been, the remedy would be deprived of its intended ability to prevent irreparable harm. Purchasers outside Canada could easily continue purchasing from Datalink's websites, and Canadian purchasers could easily find Datalink's websites even if those websites were de-indexed on google.ca. Google would still be facilitating Datalink's breach of the court's order which had prohibited it from carrying on business on the Internet. There is no equity in ordering an interlocutory injunction which has no realistic prospect of preventing irreparable harm.

[42] The interlocutory injunction in this case is necessary to prevent the irreparable harm that flows from Datalink carrying on business on the Internet, a business which would be commercially impossible without Google's facilitation. The order targets Datalink's websites — the list of which has been updated as Datalink has sought to thwart the injunction — and prevents them from being displayed where they do the most harm: on Google's global search results.

[…]

[44] Google's argument that a global injunction violates international comity because it is possible that the order could not have been obtained in a foreign jurisdiction, or that to comply with it would result in Google violating the laws of that jurisdiction is, with respect, theoretical. As Fenlon J. noted, "Google acknowledges that most countries will likely recognize intellectual property rights and view the selling of pirated products as a legal wrong".

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> [45] And while it is always important to pay respectful attention to freedom of expression concerns, particularly when dealing with the core values of another country, I do not see freedom of expression issues being engaged in any way that tips the balance of convenience towards Google in this case. As Groberman J.A. concluded:
>
> > In the case before us, there is no realistic assertion that the judge's order will offend the sensibilities of any other nation. It has not been suggested that the order prohibiting the defendants from advertising wares that violate the intellectual property rights of the plaintiffs offends the core values of any nation. The order made against Google is a very limited ancillary order designed to ensure that the plaintiffs' core rights are respected.
> >
> > . . . the order in this case is an interlocutory one, and one that can be varied by the court. In the unlikely event that any jurisdiction finds the order offensive to its core values, an application could be made to the court to modify the order so as to avoid the problem.
>
> […]
>
> [47] In the absence of an evidentiary foundation, and given Google's right to seek a rectifying order, it hardly seems equitable to deny Equustek the extraterritorial scope it needs to make the remedy effective, or even to put the onus on it to demonstrate, country by country, where such an order is legally permissible. We are dealing with the Internet after all, and the balance of convenience test has to take full account of its inevitable extraterritorial reach when injunctive relief is being sought against an entity like Google.
>
> [48] This is not an order to remove speech that, on its face, engages freedom of expression values, it is an order to de-index websites that are in violation of several court orders. We have not, to date, accepted that freedom of expression requires the facilitation of the unlawful sale of goods.
>
> [References omitted]

[162] The present case differs significantly from *Equustek* in a number of respects. First, it involves a permanent injunction, as opposed to an interlocutory injunction, which can always be amended.[181]

[163] Next, and this is Google's principal argument before the Court, the majority noted that the order was aimed at countering illegal sales contrary to intellectual property rules, without engaging the values related to the protection of freedom of expression. Not only was the advisability of the injunction easier to establish, but international comity appeared to be rather theoretical, in the words of the Supreme Court. However, it must be noted that this is not the case here, where the weighing of the fundamental values between

[181] *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, para. 46.

protecting freedom of expression, on the one hand, and neutralizing defamatory posts, on the other, differs from country to country as can be seen, for example, in the comparison between ss. 22 *IT Framework Act* and 230 (c)(1) *CDA*.

[164] Finally, at the time *Equustek* was decided, Google users were redirected to the American search engine as soon as they used the google.com address, even if the search was done in Canada. That reality explained why the effectiveness of the injunction, even in Canada, as well as the protection of the judicial process, required that the injunction be world-wide. However, according to Google's defence allegations[182] and the testimony of its representative,[183] since 2017, a search done in Canada is automatically redirected to the Canadian engine, even if the user requests another.

[165] These distinctions allowed the judge to conclude that both the necessity test and the international comity test justified restricting the injunction within the boundaries of Quebec, thus yielding a result similar to that which existed from 2009 to 2015. In the absence of any palpable and overriding error, the Court should not intervene on this point.

CONCLUSION

[166] For all these reasons, I propose that the Court allow in part the principal appeal to condemn the respondent to pay the sum of $1,500,000 in punitive damages. I also propose that it allow in part the incidental appeal to reduce the sum that the respondent was condemned to pay in compensatory damages to $25,000. Finally, I propose that it extend the publication ban until the expiry of the time limit to file an application for leave to appeal to the Supreme Court or, if such an application is filed, until the judgement dismissing it or until the judgment of the Supreme Court on the merits of the appeal. The whole without legal costs, given the mitigated result of the principal appeal and the incidental appeal.

BENOÎT MOORE, J.A.

[182] Amended Defence, November 2027, A.B. conf. vol.1, p. 1107, para. 3.1.
[183] Examination-in-chief of Anthony Nichols, A.B., conf. vol. 5, pp. 2488 and ff.

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