

# No hurt feelings: to recover substantial damages for defamation, corporate defendants must lead evidence of business harm

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In *James Bay Resources Limited v. Mak Mera Nigeria Limited*<sup>1</sup>, the Court of Appeal for Ontario set aside a \$200,000 substantial damages award for defamation of a corporate plaintiff, replacing it with an award of nominal damages of \$1,000. The decision demonstrates that corporate defamation plaintiffs must adduce evidence of actual business harm caused by the defamation to recover substantial damages. The decision also underscores the importance of apologies in assessing ongoing damages to defamed corporations.

## What you need to know

- **Corporations do not experience “hurt feelings”, only “injured pockets”.** Unlike individuals, corporations have no feelings. While individual defamation plaintiffs may recover general damages for injured feelings without proof of specific loss, corporations cannot.
- **A pyrrhic victory for corporate plaintiffs who do not prove business harm.** To recover substantial damages, a corporate defamation plaintiff must adduce evidence of business harm (e.g., financial or reputational). Otherwise, the corporate plaintiff will be limited to nominal damages.
- **Lack of apology cannot ground aggravated damages for corporate plaintiffs, but the absence of an apology is still relevant to assessing damage done to a corporation’s reputation.** Because aggravated damages compensate for hurt feelings, corporate plaintiffs cannot point to the absence of an apology to obtain aggravated damages for defamation. Nevertheless, whether a defendant has apologized for its defamation remains relevant because an apology can vindicate a corporation’s reputation. On the other hand, not apologizing allows the harm caused by the defamation to continue unchecked, which can support a substantial award of damages.

## Background: a defamatory letter is sent, and a business deal goes south

In 2011, James Bay Resources (James Bay), an Ontario oil and gas company, partnered with a Nigerian consulting company, Mak Mera Nigeria (Mak Mera), to pursue business in Nigeria’s oil and gas industry. In July 2014, after James Bay and Mak Mera’s relationship deteriorated, Mak Mera sent a letter to the Nigerian Department of Petroleum Resources (DPR), a Nigerian oil and gas regulator, and Shell, a potential business partner of James Bay.

The letter accused James Bay of breaching its contractual obligations and asked the DPR to refuse to approve an oil mining deal between James Bay and Shell. The DPR did not approve the deal and James Bay abandoned its efforts in Nigeria.

James Bay commenced an action against Mak Mera in Ontario for defamation flowing from Mak Mera's July 2014 letter. At trial, the judge found Mak Mera's letter had defamed James Bay by insinuating that James Bay "violated an Indigenous Nigerian company by using its assistance and then cutting them out unilaterally after reaping benefits from [Mak Mera's] work". The trial judge concluded that James Bay was entitled to substantial damages of \$200,000 because, aside from Mak Mera's defamatory statements, there was "no other explanation" for the DPR's non-approval of the oil mining deal between James Bay and Shell, and James Bay's withdrawal from the Nigerian oil market. The harm experienced by James Bay was aggravated by Mak Mera's refusal to issue an apology.

## Court of Appeal: corporate plaintiffs must prove business harm to merit substantial damages for defamation

Mak Mera appealed the award of substantial damages for defamation. Mak Mera conceded that it had defamed James Bay but argued that James Bay was only entitled to nominal damages. The Court of Appeal agreed, allowing Mak Mera's appeal and reducing James Bay's damages to \$1,000.

The Court of Appeal observed that although the law presumes damages if a plaintiff establishes defamation, there is no presumption as to the impact or amount of those damages. For a corporation, which "cannot be injured in its feelings", "only in its pocket", substantial awards for defamation are unlikely without proof of at least a general loss of business or an impact on the corporation's reputation or goodwill.

James Bay had not led any admissible evidence showing that Mak Mera's letter had caused it reputational harm or economic loss, or that it impacted its business. The trial judge's conclusion that the letter led to the DPR's non-approval of the Shell deal was speculative. No one from the DPR, Shell, or others in the oil and gas field were called as witnesses at trial. Indeed, the evidence showed that James Bay left Nigeria for other reasons: the Nigerian oil and gas market was risky, requiring large amounts of capital with no guaranteed return.

## The lack of an apology can support substantial damages if the defamation continues unchecked

For individual defamation plaintiffs, the absence of an apology by a defendant can give rise to aggravated damages for defamation. This is intended to recognize the additional harm caused to the plaintiff's feelings by the defendant's conduct. But because a corporation's feelings cannot be hurt, the Court of Appeal held that the absence of an apology cannot serve to aggravate a corporation's damages.

However, the Court of Appeal was clear that its conclusion on aggravated damages did not mean the lack of an apology is irrelevant for corporate defendants. The Court of Appeal confirmed that apologies remain a relevant factor for corporate plaintiffs, but their significance is different. For a corporate defendant, an apology impacts the seriousness and degree of ongoing damages. An unqualified and timely apology can vindicate a corporate plaintiff's good name. Without an apology, the harm caused by the defamation continues and can become more widespread and destructive. It is the unchecked extent of these factors, and not the mere absence of an apology, that can support a substantial award of damages for corporate plaintiffs.

## Implications

Following *James Bay*, the fact that a defamation occurred cannot, on its own, support an award of substantial damages to a corporation. A corporate plaintiff that does not adduce evidence of how the defamation harmed its reputation or its bottom line risks a pyrrhic victory. The link between a defamation and the business harm must be

more than speculative, especially where the evidence suggests the harm could have been caused by other factors.

While a corporation cannot point to the lack of an apology to obtain aggravated damages for defamation, it can still be an aggravating factor meriting a larger damages award. Where a corporation has shown that a defamation damaged its business, the lack of an apology can play a role in proving the extent of those damages. If a defendant does not issue a timely and unqualified apology to a corporate plaintiff, a court can take that into account in assessing the extent of ongoing business harm caused by the defamation.

## FOOTNOTES

[1. 2025 ONCA 448.](#)

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