[9] Rule 492 is clear and unambiguous. Disposing of the action at the summary judgment stage is mandatory unless the presiding judge is unable to decide the issues in the absence of cross-examination or it is otherwise unjust to do so. Here, the evidence before the Court is clear and uncontradicted. In fact there does not appear to be any dispute on what happened or what was said. The real question to be decided involves determining whether the undisputed facts make out the tort of defamation and, if so, what quantum of damages has been proved. I am able to decide the legal questions raised in the absence of cross-examination of the plaintiff on his affidavit. Cases such as this, where the facts are not in dispute and the Court is called upon to make a decision based upon a legal analysis, is exactly the type of case contemplated by the summary judgment provisions of the simplified procedure. Further, neither party has advanced any compelling reason to support the conclusion that it would be unjust to decide the case on a summary basis.

[10] It is true, as pointed out by counsel for the defendant, that if the matter was set down for trial and if the defendant compelled the plaintiff to be cross-examined on his affidavit there would be "more" evidence before the Court. However, I cannot see how adding to the evidence by cross-examining the plaintiff would help the defendant's case. If there are deficiencies in the plaintiff's case, as suggested by the defendant, that would be the plaintiff's problem. The defendant will gain no advantage by adding to the evidence and potentially curing those deficiencies.

[11] Accordingly, I conclude that this case can be decided on a summary basis and that a summary trial is not required.

IV. THE LAW

[12] In order for a plaintiff to successfully establish the tort of defamation, it is necessary for him to establish three elements:

1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
2) that the words in fact refer to the plaintiff; and
3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

See *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28, per McLachlin C.J.C.

[13] Once these elements are proven, the law presumes that the words are false, that they were malicious, and that the plaintiff has suffered general damages. The onus then shifts to the defendant to advance a defence in order to escape liability. See *Grant v. Torstar Corp., supra*, at para. 29.

[14] Where liability is established, general damages are awarded in an amount appropriate in the circumstances to compensate the plaintiff for loss of reputation and injury to the plaintiff's feelings, to console the plaintiff and to vindicate the plaintiff so that the plaintiff's reputation may be re-established. See *Walker v. CFTO Ltd.* (1987), 37 D.L.R. (4th) 224, 59 O.R. (2d) 104 (C.A.), at 111, per Robins, J.A.

[15] In cases of defamation, unlike negligence, damages need not be proven in order to perfect the cause of action. General damages are presumed. In the leading case of *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129 at para. 164, the Supreme Court of Canada, confirmed this principle as follows:

> 164 It has long been held that general damages in defamation cases are presumed from the very publication of the false statement and are awarded at large. ... They are, as stated, peculiarly within the province of the jury. ...

[16] Damages at large consist of non-economic loss and exemplary damages. Calculations of these types of damages are more a matter of judicial discretion than exact measurement. The term "at large" was explained in *Manno v. Henry*, 2008 BCSC 738, [2008] B.C.J. No. 1057 (QL), citing *Cassell & Co. Ltd. v. Broome*, [1972] 1 All E.R. 801 at 824 (H.L):

> ... Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matter complained of, or the malice of the defendant. ... What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being at large.

[17] Despite the highly discretionary nature of general damages in defamation cases, the Supreme Court of Canada provided guidance where, in *Hill*, the Court set forth the factors that should be taken into account in assessing general damages in defamation cases at para. 182:

> 182 The factors which should be taken into account in assessing general damages are clearly and concisely set out in *Gatley on Libel and Slander* (8th ed.) [London: Sweet & Maxwell, 1981)], at pp. 592-3, in these words:
>
> SECTION 1. ASSESSMENT OF DAMAGES
>
> **1451. Province of the Jury**. In an action of libel "the assessment of damages does not depend on any legal rule". The amount of damages is "peculiarly the province of the jury", who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of