Court File No. COA-24-CV-0004

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROCCO GALATI

Appellant
(Plaintiff)

- and -

DONNA TOEWS (AKA "DAWNA TOEWS"), KIPLING WARNER, CANADIAN SOCIETY FOR THE ADVANCEMENT OF SCIENCE AND PUBLIC POLICY ("CSAPP"), DEE GANDHI, JANES AND JOHNS DOE

Respondents
(Defendants)

RESPONDENTS' FACTUM

May 31, 2024

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Self-represented appellant

I. OVERVIEW

1. The appellant appeals from an order of Justice Chalmers dismissing his action under section 137.1 of the *Courts of Justice Act* and seeks leave to appeal from the related costs order. The respondents ask that this Court dismiss the appeal. There are no errors in the decision below warranting appellate intervention.

II. FACTS

The parties

2. The respondent disagrees with the appellant's summary of the facts.

3. The appellant is a lawyer who is licensed to practice law in Ontario. He acts for, *inter alia*, the advocacy groups Vaccine Choice Canada ("VCC") and Action4Canada ("A4C"). He is the principal of the Constitutional Rights Centre, a corporation that raises funding for COVID-19-restriction-related litigation. The Constitutional Rights Centre is not a party to this action.[1]

4. The respondent the Canadian Society for the Advancement of Science in Public Policy (the "Society") is a volunteer-run non-profit society that is pursuing litigation against the government of British Columbia concerning its pandemic response. The respondent Kipling Warner is the Executive Director of the Society. The respondent Dee Gandhi is its Treasurer.[2]

5. The respondent Donna Toews is a member of the public who has donated funds to VCC and A4C.[3]

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[1] *Galati v Toews et al*, 2023 ONSC 7508 ["**motion judge reasons**"] at ¶5.

[2] Motion judge reasons at ¶6.

[3] Motion judge reasons at ¶6.

The Ontario action

6. On July 6, 2020, the appellant commenced an action in Ontario on behalf of VCC and eight individuals. The statement of claim was 187 pages long. It contains claims of a conspiracy dating back to 2000 involving Bill Gates, Justin Trudeau, the World Economic Forum, the World Health Organization, and Chief Public Health Officer Theresa Tam. The claim alleges that the defendants in that action, including Canadian government and public health officials, are involved in a conspiracy relating to "video surveillance satellites" that will "blanket the Earth". The alleged conspiracy is a "massive and concentrated push for mandatory vaccines of every human on the planet" with vaccine chips and other devices to allow for electronic surveillance. The pleading further alleges that those defendants knowingly propagated a groundless and false pandemic to assist in creating a "New (Economic) World Order".[4]

7. At a news conference in July 2020, the appellant announced that he had commenced the VCC action and that he intended to seek an injunction with respect to vaccine and masking measures. In September 2020, the appellant conducted an interview in which he stated that he was "hoping the injunction would be heard before the Christmas holidays". The appellant never moved for injunctive relief in the VCC action.[5]

The British Columbia actions

8. A4C is based in British Columbia. It raised money to be used to fund a civil proceeding with respect to public health restrictions related to COVID-19. In fall 2020, A4C retained the appellant to commence the action, and announced this on its website. By January 2021, the

[4] Motion judge reasons at ¶7.

[5] Motion judge reasons at ¶8.

plaintiff had not commenced an action in British Columbia.[6]

9. On January 26, 2021, the Society commenced a proposed class proceeding in British Columbia, against the provincial government and its provincial health officer, for damages caused by government restrictions in response to the pandemic.[7]

10. On August 17, 2021, the appellant commenced an action in British Columbia on behalf of A4C and several individual plaintiffs. His co-counsel on the A4C action is an immigration lawyer named Lawrence Wong. The notice of civil claim in the action is 379 pages long, and makes allegations similar to those in the VCC statement of claim. It alleges that there is a "declared agenda to impose global mandatory vaccination, ID chipping, testing and immunity certification on all citizens" that "has been in the works for decades". It alleges that the pandemic was created as a cover and pretext to, *inter alia*, effect a massive bank and stock market bail-out and establish a "New World Order" with a "concurrent neutering of the Democratic and Judicial institutions and an increase and dominance of the police state" and a "massive and concentrated push for mandatory vaccines of every human on the planet earth with concurrent electronic surveillance by using […] vaccine chips [...]".

Striking of the A4C claim

11. On August 29, 2022, Justice Ross of the British Columbia Supreme Court struck out A4C's notice of civil claim with leave to amend and ordered costs against all the plaintiffs in that action. His Honour commented in striking the pleading:

> On the first issue, whether the NOCC is prolix, I agree with the defendants'

[6] Motion judge reasons at ¶9.

[7] Motion judge reasons at ¶10.

> submission: the NOCC, in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".[8]

Mr. Warner's research concerning the appellant

12. Beginning in early 2021, the Society's executive team and volunteers received inquiries as to whether the Society was affiliated with A4C, VCC, and others. The Society was asked why it was not working with these organizations and the appellant. By this time, there was also commentary in the media with respect to the quality of the pleadings in the actions that the appellant had commenced for VCC and A4C.[9]

13. Mr. Warner conducted research concerning the appellant, and learned the following:[10]

a. The appellant was not licensed to practice law in British Columbia for any extended period.

b. The appellant was primarily a tax lawyer.

c. In *Sivak v Canada*, 2012 FC 272, the Federal Court had struck portions of a claim the appellant had commenced on the basis that it was "scandalous and vexatious".

d. In *Galati v Harper*, 2014 FC 1088, the Federal Court had held that the appellant's bill of costs was "excessive and unwarranted". The Federal Court of Appeal, in dismissing an appeal by the appellant from the order of the Federal Court, noted that the appellant had

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[8] *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 at ¶45.

[9] Motion judge reasons at ¶13.

[10] Motion judge reasons at ¶14.

alleged that the courts had colluded with the government. The Federal Court of Appeal stated that this argument does not serve the administration of justice and deserved to be "condemned without reservation".

e. In *Da Silva Campos v Canada (Citizenship and Immigration)*, 2015 FC 884, the Federal Court struck the appellant's client's claim as being "close to incomprehensible".

f. In *Committee for Monetary and Economic Reform v Canada*, 2016 FC 147, the Federal Court struck the appellant's client's claim for a second time, without leave to amend, as disclosing no reasonable cause of action and having no prospect of success.

g. In *Al Oman v Canada,* 2017 FC 786, the Federal Court commented that it did not see a "scintilla of a cause of action" and struck the appellant's client's claim without leave to amend.

14. The Society, including Mr. Warner and Mr. Gandhi, were of the view that the VCC statement of claim was improperly drafted, and that the public should be informed about the appellant's approach to litigation. They were also of the view that it would be prudent to clarify to the public that there was no relationship between the Society, the appellant, and the organizations he represented such as VCC and A4C.[11]

The impugned expression

A. Mr. Gandhi's January 29, 2021 email

15. On January 29, 2021, Mr. Gandhi sent an email to Dan Dicks of the web publication Press

[11] Motion judge reasons at ¶15.

for Truth. The following is the entirety of that email:

> Hey Dan,
>
> Hope you are doing well. I just wanted to update you on the fact that the Canadian Society for the Advancement of Science in Public Policy (CSASPP) has filed their pleadings against the Crown and Bonnie Henry (Provincial Health Minister) as of Jan 26th, 2021. Please see link:
> https://www.scribd.com/document/492237670/Notice-of-Civil-Claim
>
> You are welcome to share this with anyone and everyone.
>
> This is our certificate of Incorporation:
> https://www.scribd.com/document/492256545/CSACPP-Certificate-of-Incorporation
>
> Now that we have started the litigation process we are still in need of Funding. Action 4 Canada has still not filed with Rocco. Legally at this point Rocco can't really file in BC anymore. The case law is that for class actions, it's the first to the court house that generally has carriage of the file. If you would be so kind to share with everyone so to help the cause.
>
> https://www.gofundme.com/f/bc-supreme-court-covid19-constitutional-challenge
>
> This might interest you further.
>
> Here are some talking about regarding Action 4 Canada and Rocco
>
> (1) Rocco isn't licensed to practice here in BC. He can always be retained in Ontario and in turn retain counsel in BC. But then you are paying for two law firms. You can verify that he is not licensed to practice here in BC at this page.
>
> <https://www.lawsociety.bc.ca/lsbc/apps/lkup/mbr-search.cfm>
>
> (2) The lawyer Rocco wishes to retain here in BC is named Lawrence Wong. He specializes in immigration law. He was sanctioned in 2010 for his conduct by a Federal Court judge and fined. See for yourself:
>
> <http://canlii.ca/t/2bz73>
>
> (2) A Federal Court judge wrote in his judgment a few years ago that Rocco was found to have excessively billed for his time:
>
> <http://canlii.ca/t/gfl0p#par7>
>
> (4) The same judgment questioned Rocco's competency in constitutional law:

<http://canlii.ca/t/gfl0p#par9>

(5) Rocco is not a "constitutional law" lawyer. There is no such professional designation in Canada, nor in particular in BC. That's not to say, however, that a lawyer cannot have an area of expertise like personal injury, strata, mergers and acquisitions, class actions, and the liked. But in Rocco's case his area of expertise is tax law.

<https://tgam.ca/3n8Zuyo>

(6) Every lawyer I know that has reviewed Rocco's Ontario pleadings said it was very poorly drafted. It will most likely get struck and never make it to trial to be heard on its merits. The reason being is he brings in all kinds of other topics that aren't necessary (Gates, 5G, vaccines, etc.) to obtain the order that he wants. This is how it likely would be struck:

http://canlii.ca/t/8lld#sec9_5

(6) Rocco wants far too much money to get started. This seems in line with (2);

(7) Nothing has been accomplished in Ontario since Rocco filed around six months ago. The defendants haven't even filed replies, despite the option to apply for a default judgment being available for the majority of that time;

(8) Even if he won in Ontario, it wouldn't have any direct bearing on us here in BC because health care is under a provincial mandate under s 92(13) of the constitution. In other words the Ontario Superior Court of Justice has no jurisdiction over what cabinet ministers do in BC. See:

<https://bit.ly/2Li6Baw>

(9) We are (CSASPP) a non-profit, non-partisan, and secular society. We are legally required to have a certain level of accounting controls and transparency;

Thank you Dan, and I look forward to your response and your help.

To your best,[12]

B. The Society's FAQ

16. In June 2021, the Society published on a "frequently asked questions" section of its

[12] Motion judge reasons at ¶16.

webpage the following (the "FAQ"):

> **Rocco Galati & Related:**
>
> **Are you affiliated with Rocco Galati? If not, why?**
>
> We receive communications regularly from Mr. Galati's past donors with concerns. We are asked what became of the substantial funds that the community raised for him or his third-party fundraising arms. We do not have any information, were not involved in raising funds for either, nor did we ever seek to retain Mr. Galati. If you have concerns about his conduct, any member of the general public can submit an electronic complaint to the Ontario Law Society to initiate a formal investigation.
>
> We are not affiliated with Mr. Galati. There are many reasons.
>
> Mr. Galati is not licensed to practise law in British Columbia for any extended period of time. He can always be retained in Ontario, and in turn retain counsel in British Columbia. This is not unusual. However, then you are paying for two law firms. Anyone can verify whether a lawyer is licensed to practise law in British Columbia here.
>
> We were advised directly by Mr. Galati himself that the lawyer he wished to retain in British Columbia is Lawrence Wong. Mr. Wong was personally sanctioned in 2010 for his conduct by a Federal Court judge with a fine.
>
> A Federal Court judge noted in his reasons for judgment that some of Mr. Galati's billings were "excessive and unwarranted" in a separate proceeding. The same judge declined to award the full amount sought by Mr. Galati for his legal fees in that constitutional proceeding. The outcome has been discussed by other lawyers.
>
> Mr. Galati is sometimes described by his followers as our nation's "top constitutional law" lawyer, yet there is no such professional designation in Canada, nor in particular in British Columbia. That is not to say that a lawyer cannot have an area of expertise like personal injury, strata, mergers and acquisitions, class actions, and the like. According to Mr. Galati, he studied tax litigation at Osgoode Hall. The Globe and Mail reported Mr. Galati "makes his money from doing tax law, not constitutional cases."
>
> Mr. Galati filed a COVID-19 related civil proceeding in the Superior Court of Justice in Ontario on 6 July, 2020. To the best of our knowledge, as of 30 October, 2021, none of the twenty-one named defendants have filed replies, despite the plaintiff being at liberty to apply for a default judgment for the majority of that time. In an interview published 2 September, 2020, Mr. Galati claimed he intended to do his best to have an interlocutory mask injunction application heard before the Christmas holidays of 2020. As of 11 June, 2021, we are not aware of

any scheduled hearings and no orders appear to have been made.[13]

17. Both Mr. Gandhi's email and the FAQ contained hyperlinks to the cases and publications that formed the basis for the statements made in them, and those hyperlinks are reproduced in this factum.

C. Ms. Toews' complaint to the Law Society of Ontario

18. Ms. Toews had donated $1,000.00 to each of VCC and A4C. When she donated to VCC, VCC advised her that her donation would go directly toward the legal fees for the upcoming constitutional challenge. She then heard nothing further. When she followed up on December 20, 2021, VCC told her that the lawyer who was working on the matter, the appellant, did not want to disclose what he was doing, because it might advantage the opposition.[14]

19. Ms. Toews was concerned that her donation had not been put to its intended use. She raised these concerns with the Society. The Society referred her to a lawyer and a former Treasurer of the Law Society of Ontario, Gavin MacKenzie. Mr. MacKenzie prepared Ms. Toews' complaint to the Law Society. Ms. Toews' evidence, in her affidavit and on cross-examination, was that she submitted the complaint in good faith, believing the Law Society would investigate her concerns. Ms. Toews complaint to the Law Society reads as follows:

> On June 19, 2020, I donated $1000 in my husband's name to Vaccine Choice Canada with specific instructions to give the donation to the Legal Fund headed by Mr. Galati, who was preparing a claim seeking relief on behalf of Canadians wronged by the actions of government officials and others because of Covid-19. I also donated $100 to Action4Canbada, which was soliciting donations to fund a similar lawsuit in British Columbia. I understand that Vaccine Choice Canada, Action4Canada, and a third organization in Quebec have raised approximately

[13] Motion judge reasons at ¶19.

[14] Motion judge reasons at ¶20.

> $3,500,000 to finance litigation in Ontario, British Columbia and Quebec. Vaccine Choice Canada confirmed that my donation had gone to its Legal Fund to support its legal fees for the constitutional challenge to be brought by Mr. Galati. As VCC suggested, I "added a membership to my file" so that I would be invited to members only meetings with Mr. Galati. (This email exchange is attached. I have redacted my name and other information that may identify me). Mr. Galati commenced the action on behalf of Vaccine Choice Canada and other plaintiffs on July 6, 2020. Mr. Galati stated during a media interview that he would be sure that an interim hearing would be held before December 2020. I received no information about the progress of the litigation until almost 18 months later. I was not invited to any members only meetings with Mr. Galati in the meantime. No interim hearing has been held, and no Statements of Defence have been delivered as far as I can determine. No default proceedings have been taken. In fact, I do not know whether the defendants have even been served with the Statement of Claim. I wrote to Vaccine Choice Canada on December 20, 2021, to ask whether anything had come of the lawsuit and whether the Court had seen it yet. Vaccine Choice Canada replied on January 2, 2022, that, "our case filed in the summer of 2020 has not had a hearing yet. The lawyer is working backstage, but he does not want to tell anything of what he is doing so he does not give an opportunity to the enemy." (This email exchange is attached. I have redacted my name and other information that may identify me). I do not know the relationship between Vaccine Choice Canada, or Action4Canada, and Mr. Galati, other than that Mr. Galati is representing them in the litigation. No financial statements of VCC have been filed with Corporations Canada as of December 22, 2021. I do not know much of the funds raised by these organizations have been turned over to Mr. Galati in trust, how much he has been paid, or what he expects to result from the claim he has started (but, evidently neglected to pursue).[15]

20. On May 19, 2022, the Law Society provided the appellant with Ms. Toews' complaint and asked him for his response to the regulatory issues it raised. The appellant commenced this action on June 28, 2022. He provided his response to Ms. Toews' complaint to the Law Society on June 29, 2022. He enclosed a copy of the statement of claim in this action with his response. In September 2022, the Law Society advised Ms. Toews that it would not take further steps because the appellant had commenced this action.[16]

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[15] Motion judge reasons at ¶21.

[16] Motion judge reasons at ¶22.

The motion and decision below

21. The respondents moved for an order dismissing this action pursuant to section 137.1 of the *Courts of Justice Act*. The parties exchanged a significant volume of materials on the motion, and conducted seven cross-examinations on affidavits. Justice Chalmers heard the motion on September 12, 2023 and, on December 11, 2023, granted it.[17] On February 3, 2023, Justice Chalmers awarded the respondents their full indemnity costs, with a reduction in quantum.[18]

III. ISSUES RAISED BY THE APPELLANT

22. The appellant has identified no errors in the decision below warranting this court's intervention.

A. The motion judge understood and correctly applied the legal framework under section 137.1 in respect of the defamation claim

23. There is no error in the motion judge's articulation and application of the legal test under section 137.1 of the *Courts of Justice Act*.

24. The appellant appears to attempt to entirely re-argue the motions below in this appeal without reference to the standard of review. Paragraphs 34 through 54 of his factum on this appeal are nearly identical to paragraphs 28 through 42 of his factum on the motion, with one section moved up. Paragraphs 57 through 62 of his factum on this appeal are nearly identical to paragraphs 53 to 58 of his factum on the motion.

25. The respondents addressed these submissions in their factums on the motion, which the

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[17] Motion judge reasons at ¶100.

[18] *Galati v Toews et al,* 2024 ONSC 935 at ¶¶15, 22, 24.

appellant has included in the appeal book and compendium,[19] and Justice Chalmers considered them in deciding the motion.

1. The motion judge did not err in assessing the evidence

26. Justice Chalmers did not err in the manner in which he approached the evidence and law on the motion.

27. The appellant does not elaborate on his submission that Justice Chalmers did "not apply" this Court's decision in *Mondal v Kirkconnell* ("*Mondal*") "to the facts and evidence before him" and "completely ignored it, and thus erred in law".[20]

28. Setting aside that the appellant did not reference *Mondal* in his factum on the motion,[21] and that, at the outset of his analysis under section 137.1, Justice Chalmers quoted a passage from a decision from this Court that cited and embedded a passage from *Mondal*,[22] it would in any event not be an error for a judge to not refer to every decision containing principles that apply to the matter before the court.

29. The appellant has similarly failed to specify in what part(s) of His Honour's reasons for decision the appellant asserts His Honour:

> […] exceeded jurisdiction by making **final** factual and legal determinations, on heavily contested factual issues much of them hinging on credibility, as well as

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[19] Factum of the moving party defendants dated July 28, 2023 ["**defendants' factum**"], ABC, Tab 11, pp 4097–4139; reply factum of the moving party defendants dated September 5, 2023, ABC, Tab 13, pp 4177–4208.

[20] Appellant's factum dated March 1, 2024 ["**appellant's factum**"] at ¶31, pp 12–13.

[21] Responding plaintiff's factum dated August 15, 2023 ["**plaintiff's factum**"], appeal book and compendium dated April 2, 2024 ["**ABC**"], Tab 12, pp 4141–4175.

[22] Motion judge reasons at ¶36.

> questions of law, contrary to the statutory test under s.137.1, as well as the binding jurisprudence from the Supreme Court of Canada and Ontario Court of Appeal, which test Justice Chalmers clearly misapplied in disregard to the facts and evidence.[23]

30. The appellant's assertions are bald and non-specific. The appellant must identify the error based on which he seeks that this Court intervene.

31. In any event, the appellant cites no authority for the proposition that a motion judge exceeds their jurisdiction by making "factual and legal determinations" on a motion under section 137.1.

32. In *Mazhar v Farooqi*, this Court noted that the motion judge on the section 137.1 motion below had made findings of fact that "were fully supported by the record" and that this Court "does not revisit the findings of fact made by the court below absent palpable and overriding error". This Court was clear that it is permissible for a motion judge to make findings of fact on a motion under section 137.1. There is nothing in *Mondal* that assists the appellant in this regard.

2021 ONCA 355 at ¶10

33. The suggestion that the motion judge exceeded his jurisdiction by making final legal determinations on a motion to dismiss an action is without merit.

2. The motion judge did not err in his determination under section 137.1(3)

34. Justice Chalmers did not err in making his determination under section 137.1(3) that this proceeding arose from expression that relates to a matter of public interest.

Courts of Justice Act, RSO 1990, c C43, s 137.1(3)

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[23] Appellant's factum at ¶32, p 13 [emphasis in original].

35. The appellant's submissions with respect to this branch of the test, at paragraphs 34 and 37 of his factum on this appeal,[24] are identical to paragraphs 27 and 30 of his factum on the motion.[25]

36. Justice Chalmers considered (and, indeed, quoted) the appellant's submissions on this point and conducted a thorough analysis in rejecting them at paragraphs 41 through 47 of his reasons for decision.[26]

37. The appellant has not attempted to identify an error in His Honour's reasoning, instead simply repeating his submissions on the motion in his factum in this Court.[27]

38. There is no error in Justice Chalmers' reasoning warranting this Court's intervention. His Honour applied the principles that this Court and the Supreme Court have directed the courts to apply, and determined that the impugned expression related to several matters of public interest, including the pandemic and governments' response to it, the use of funds donated toward litigation challenging governments' response to the pandemic, and the quality of the legal representation toward which publicly raised funds were being used.[28] It is well established that criticism of an individual who advertises services to the public is a matter of public interest. The appellant's notorious campaigns and fundraising around vaccine-related litigation clearly fall within this category.

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[24] Appellant's factum at ¶¶34, 37, pp 13, 14.

[25] Plaintiff's factum at ¶¶27, 30, ABC, Tab 12, pp 4150, 4151.

[26] Motion judge reasons at ¶¶41–47.

[27] Appellant's factum at ¶34, p 13.

[28] Motion judge reasons at ¶¶44–47.

3. The motion judge did not err in his determination under section 137.1(4)(a)

(1) The relevant publications

39. The appellant attempts on this appeal, as he attempted on the motion below, to establish that there are grounds to believe the proceeding has substantial merit, and that the respondents have no valid defence, based on alleged statements that he did not plead and fabricated quotations.[29]

Courts of Justice Act, RSO 1990, c C43, s 137.1(4)(a)

40. While the appellant places quotation marks around the phrase "take too much money" and the term "greedy" in his factum, there is no publication that he has pleaded or entered into evidence that includes those words.[30]

41. The appellant did not plead the communications that he alleges occurred between the respondent Mr. Warner and a lawyer named Lee Turner,[31] and he did not plead the communications he alleges occurred between Mr. Warner and an individual named Alicia Johnson with any particularity.[32] The latter are, in any event, inadmissible because they were covered by a confidentiality agreement giving rise to a privilege.[33]

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[29] Appellant's factum at ¶¶36, 39.

[30] Appellant's factum at ¶36.

[31] Appellant's factum at ¶36; statement of claim issued June 28, 2022 ["**statement of claim**"], ABC, Tab 6(1), pp 1679–1703.

[32] Statement of claim at ¶45.

[33] Motion judge reasons at ¶34.

(2) Justification

42. With respect to the defence of justification, the appellant quotes at length from the Supreme Court's decision in *Bent v Platnick* ("*Bent*") and baldly states that this matter is analogous to *Bent* without attempting to specify what content in the publications he has pleaded is untrue.[34]

43. It is not sufficient to simply assert, as the appellant has, that:

> [i]n the within case there is "grounds to believe", and "reasonably capable of belief", that the Plaintiff can succeed on at least one of the "stings", which he clearly can based on the statements, and law. **Again, Justice Chalmers ignored the binding Supreme Court of Canada jurisprudence.** Justice Chalmers finding that the assertions were backed up by hyperlinks, makes a final determination that they are "true". They are not. They are not even "partial truths" and Justice Chalmers does not deal with the Plaintiffs evidence in this respect.[35]

44. The appellant does not explain what evidence he asserts Justice Chalmers failed to consider, and in respect of what content in which impugned publication.

45. The appellant could not do so in any event: Justice Chalmers considered the impugned publications and the voluminous record and, as was available to him on the record, determined there were grounds to believe that the respondents had the defence of truth.[36]

(3) Qualified privilege

46. With respect to the defence of qualified privilege, the appellant's submissions appear to address the application of that defence in relation to the FAQ, despite the fact that Justice Chalmers did not hold that the respondents had the defence of qualified privilege in respect of the FAQ. Justice Chalmers held only there were grounds to believe that the respondent Mr. Warner had this

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[34] Appellant's factum at ¶¶41–43, pp 16–18.

[35] Appellant's factum at ¶42, p 17 [emphasis in original].

[36] Motion judge reasons at ¶¶73–76.

defence in respect of the communications that the appellant alleges he had with Ms. Johnson.[37]

47. Contrary to the appellant's assertions,[38] Justice Chalmers addressed his submissions with respect to malice, at paragraph 71 of His Honour's reasons for decision.[39] Justice Chalmers correctly recognized that an individual speaking negatively about, intensely disliking, or harbouring ill will toward another individual about whom they have made comments does not equate to the kind of malice that defeats defences like qualified privilege.

48. In his submissions with respect to malice, the appellant takes the 1999 decision of the Nova Scotia Court of Appeal in *Hiltz and Seamone Co. Ltd. v Nova Scotia (Attorney General) et al* out of context. As is clear from the decision, and even the passage that the appellant excerpted, the issue the Court was considering was whether the plaintiff in that case should have specifically pleaded malice for the trial judge to consider whether malice defeated the defences of fair comment and qualified privilege. That decision does not stand for the proposition that a court may imply express malice defeating qualified privilege from the mere publication of a defamatory remark.

1999 NSCA 22

49. The appellant has misstated the law in respect of the approach courts are to take in considering malice in the context of the defences to defamation. The common law presumes malice once a plaintiff establishes *prima facie* defamation. However, in establishing the elements of fair comment or qualified privilege, a defendant rebuts the presumption of malice, and it is replaced with a presumption of good faith. Accordingly, it fell on the appellant to establish that

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[37] Appellant's factum at ¶44; motion judge reasons at ¶72.

[38] Appellant's factum at ¶¶44–46.

[39] Appellant's factum at ¶71.

the respondents acted in bad faith or had malicious intent.

> *Whitehead v Sarachman*, 2012 ONSC 6641 (Div Ct) at ¶34 ["***Whitehead***"], quoting *Prud'homme v Prud'homme*, 2002 SCC 85 at ¶57
> *Senft v Vigneau*, 2020 YKCA 8 at ¶¶60, 63, 77–79, 82 ["***Senft***"], leave to appeal to SCC ref'd 2020 CanLII 68953 (SCC), citing *Creative Salmon Company Ltd. v Staniford*, 2009 BCCA 61 at ¶32 ["***Creative Salmon***"], leave to appeal to SCC ref'd 2009 CanLII 34733 (SCC)

50. "Malice" requires that in publishing the words at issue a defendant had as their "dominant motive" an improper purpose. A plaintiff must prove "actual" or "express" malice which "goes beyond the malice ordinarily presumed upon the mere publication of libelous words". A plaintiff's onus in proving malice, "as is reflected in a legion of cases, '[…] is not a burden that is easily satisfied'".

> *Creative Salmon* at ¶34
> *Whitehead* at ¶¶36, 45, 57

51. A lack of honest belief in the truth of the impugned words can be indicative of malice, but does not necessarily establish it, as the ultimate question is still whether a defendant had an improper motive: "[…] knowledge of or recklessness as to falsity is not a separate head of malice [but rather] simply a way [o]f establishing that the defendant was acting from an improper motive".

> *Senft* at ¶90, quoting *Creative Salmon* at ¶¶32–34

52. Here, in any event, Justice Chalmers found that the publications are substantially true. It follows from this that there was no basis for a finding that there were grounds to believe that the respondents acted with knowledge of or recklessness as to the falsity of the impugned publications. The impugned publications were not false.

53. There is, further, no other basis on which a trial judge might find malice.

54. The appellant appears to allege malice on the basis that the respondents "could have simply stated that there was no connection between them and the [appellant] and left it there".[40] That would not have met the purposes for which the respondents published the statements. These purposes included informing the public of the reasons for which the Society was pursuing overlapping goals separately from the organizations on whose behalf the appellant had commenced proceedings. In the context of the movement having finite resources, and considering the matters at issue to be urgent, the respondents sought to relay their views to those who had donated money toward what was, in their view, substandard, ineffective, and counterproductive legal work in pursuit of a cause that the Society endorsed.[41]

55. Importantly, even if the respondents had, as the appellant alleged and the respondents denied, attempted to have the appellant's clients terminate their retainers for his services, to have the appellant's professional regulator investigate him, or to have the appellant charged with civil fraud, none of these purposes would be "improper" in the sense required to defeat the defamation defences. Even if the purpose for the respondents' expression was to persuade donors to donate to them rather than to the organizations that the appellant represents, that, similarly, would not be an improper purpose giving rise to a finding of express malice.

56. As Justice Chalmers observed, the Divisional Court has explained (in a case in which malice was alleged to defeat fair comment):

> […] A person must be entitled to express one's opinions about an individual that the speaker may dislike, perhaps intensely, and even wish that people will think less of that person as a result of what they say, but so long as the ill will is not the dominant motive the honest opinion defence protects the speaker. To be deprived

[40] Motion judge reasons at ¶17.

[41] Motion judge reasons at ¶15.

> of the defence simply due to the existence of ill-will or dislike of a person, would undermine the breadth of the "honest opinion" element, and inappropriately infringe the right of free speech: see, *e.g.*, *Whitehead v. Sarachman*, […] at paras. 54-57.
>
> 2012 ONSC 6641 (Div Ct) at ¶58
> See also: *Whitehead* at ¶¶54–58

57. Even if the appellant adduced admissible and persuasive evidence at trial that the respondents do not believe that he should be practicing law and believe that he should be charged with fraud for the way he is using publicly raised funds, this would not constitute an ulterior motive. It would simply follow from the reasonable assessment, based on publicly available and indisputable information, that the appellant is not being forthright with his clients and is overcharging them and donors significantly for legal work that falls far below any reasonable standard, and that the appellant should know, at least as early as when he commenced the A4C claim, is seriously deficient.

58. The appellant may disagree with this assessment of what he is doing, or his motivations for his conduct, but what matters is that there is nothing so extraordinary about the respondents holding these opinions, in light of the appellant's conduct, that it could give rise to an inference that the respondents have an ulterior motive for their comments.

59. Finally, with respect to the appellant's assertion that a trier may infer malice from the words of the impugned publications themselves, the respondents' words do not rise to nearly the level of ferocity necessary for such an inference.

60. In *Whitehead v Sarachman*, the Divisional Court ordered a new trial and commented that "the learned trial judge would have benefitted from a detailed review [by counsel] of the case law" that considered whether to infer malice from the words of the publication themselves. The panel

observed that the defendant's references to the plaintiff in that case as "a destructive mean spirited liar that does not deserve the time of day", which the trial judge had found to be a "direct attack on the integrity and reputation" of that plaintiff and to be "malicious and demeaning" were, in fact, "rather mild compared to other cases where courts have rejected a finding of intrinsic malice". The court explained, quoting from *Brown on Defamation*:

> In respect to intrinsic malice,
>
> > [i]solated expressions should not be examined hypercritically. A court should not too readily draw an inference of malice from mere exaggeration or extravagance in the use of language. Any warmth or force of expression may properly be attributed by the jury to an earnest endeavor on the part of the defendant to honestly achieve his or her purpose. The language must be extreme before an inference of malice will be drawn.
>
> *Whitehead* at ¶¶39–41

(4) Fair comment and responsible communication

61. The appellant's submissions with respect to fair comment and responsible communication on matters of public interest, at paragraphs 47 through 49 of his appeal factum,[42] are identical to his submissions on these defences at paragraphs 43 to 45 of his factum on the motion.[43]

62. The respondents did not rely on,[44] and the motion judge did not consider whether there were grounds to believe that they had,[45] the defence of responsible communication on matters of public interest.

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[42] Appellant's factum at ¶¶47–49, pp 21–22.

[43] Plaintiff's factum at ¶¶43–45, pp 19–20.

[44] Defendants' factum, ABC, Tab 11, pp 4087–4139.

[45] Motion judge reasons at ¶¶68–80.

63. With respect to fair comment, the appellant baldly asserts:

> It is submitted that this defence cannot be made, and that there is grounds to believe that it cannot succeed, when due regard is had to the following facts and evidence: (a)The evidence of malice; (b) Lack of factual basis for the comments; and (c) presence of "reckless regard for the truth, and improper investigation and lack of responsible due diligence.[46]

64. As set out above, the appellant does not identify the basis on which he asks this Court to intervene: it is insufficient to simply assert that there is a "[l]ack of factual basis for the comments". The appellant has not identified what comments he asserts lack a factual basis, why, and why it was not open to Justice Chalmers to find that there were grounds to believe there was a basis in fact for them.

65. The appellant takes this approach in the context of Justice Chalmers having been specific, in respect of those portions of the publications that His Honour determined were properly characterized as comment rather than fact, as to what His Honour found to be the factual basis for the comment:

> Mr. Gandhi makes the comment that the Plaintiff wanted "far too much money to get started" and that "nothing much had been accomplished in Ontario" since the claim had been issued. The Plaintiff's clients have allegedly paid $400,000 with respect to the A4C action. By January 2021, six months after the delivery of the VCC action in Ontario, no Statements of Defence had been filed, and the action had not proceeded to the discovery phase. No injunction motion had been brought. The Defendants argue that a person could honestly express the opinion that $400,000 was too much money to start the A4C action and that not much had been accomplished in the Ontario action. I agree.[47]

66. With respect to the allegations concerning malice and a reckless disregard for the truth, the

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[46] Appellant's factum at ¶48, p 22.

[47] Motion judge reasons at ¶79.

respondents rely on their submissions at paragraph 47 through 60 above.

4. The motion judge did not err in his determination under section 137.1(4)(b)

(1) Harm

67. Justice Chalmers also thoroughly addressed the submissions that the appellant makes regarding harm at paragraph 50 of in his factum on appeal,[48] which are nearly identical to the submissions at paragraph 40 of the factum before Justice Chalmers,[49] at paragraphs 82 through 85 of his reasons for decision.[50]

Courts of Justice Act, RSO 1990, c C43, s 137.1(4)(b)

68. Justice Chalmers correctly observed that:

a. the appellant could not claim damages suffered by a corporation and had in any event not adduced evidence as to the amounts he had received from that corporation and was now receiving from that corporation;

b. the appellant had adduced no evidence as to clients or income he had lost because of the impugned expression, and in fact those who support him, including witnesses on the motion, appear to continue to be blindly devoted to him; and

c. there were many potential alternative causes for any harm to the appellant's

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[48] Appellant's factum at ¶50, pp 22–23.

[49] Plaintiff's factum at ¶40, ABC, Tab 12, pp 16–18.

[50] Motion judge reasons at ¶¶82–85.

reputation.[51]

69. These determinations were more than available to Justice Chalmers on the record before him, and there is no basis for this Court's intervention with respect to them.

(2) Weighing

70. The motion judge did not err in conducting the weighing exercise under section 137.1(4)(b).

Courts of Justice Act, RSO 1990, c C43, s 137.1(4)(b)

71. As this provision requires, Justice Chalmers considered the public interest in permitting the proceeding to continue, and the public interest in protecting the expression, and determined that the latter outweighed the former in this case.[52]

72. As described above, Justice Chalmers had ample basis for finding that the harm that the appellant has suffered or is likely to suffer as a result of the expression is low.

73. Justice Chalmers correctly held that there is a strong public interest in the public's freedom to evaluate a lawyer's services, especially where that lawyer conducts litigation that is funded through public donations. His Honour agreed that the stifling of reasonable public debate as to the value of a lawyer's services or their tactics or approach to litigation negatively affects public confidence in the legal system, as does a lawyer's being allowed to drag those who question the value of their services through expensive litigation.[53]

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[51] Motion judge reasons at ¶¶82–85.

[52] Motion judge reasons at ¶¶81–95.

[53] Motion judge reasons at ¶86.

74. His Honour further correctly held that there is a strong public interest in protecting the right of members of the public to make complaints to quasi-judicial bodies such as the Law Society of Ontario, because the specter of being subjected to expensive litigation for making a complaint would impair the Law Society's ability to regulate the profession.[54]

75. Justice Chalmers correctly ascertained that what was "really going on" in this matter was that the appellant was trying to stifle public criticism about the improper and bizarre manner in which he was litigating claims funded by public donations.[55]

76. The motion judge correctly determined, based on a thorough analysis of the relevant evidence and principles, that the appellant had not met his burden under section 137.1(4)(b).

B. The motion judge did not err in addressing the conspiracy claim

77. The motion judge correctly held that the statement of claim did not properly plead the elements of conspiracy: the appellant did not identify the conduct that constitutes the alleged conspiracy or identify any agreement to do anything that was unlawful or for the primary purpose of harming the appellant.[56]

C. The motion judge did not err in his disposition of the motion to strike evidence

78. The motion judge did not err in addressing the respondents' motion to strike portions of the

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[54] Motion judge reasons at ¶94.

[55] Motion judge reasons at ¶88.

[56] Motion judge reasons at ¶58; statement of claim at ¶58, ABC, Tab 6, p 1699.

affidavit evidence the appellant had delivered.

79. With respect to Mr. Turner, the appellant's submissions appear to assume that the motion judge found that there was a solicitor-and-client relationship between Mr. Turner and the appellant.[57] This is not the case. His Honour determined that he did not need to resolve whether Mr. Turner and certain of the respondents had been in a solicitor-and-client relationship because the appellant had not sued on those communications.[58]

80. With respect to Ms. Johnson, His Honour considered the test for the establishment of a privilege against the disclosure of communications and found, as was available on the evidence before him, that communications between Ms. Johnson and Mr. Warner were subject to privilege.[59]

81. His Honour held that, in any event, the statements that she alleged that Mr. Warner made to her were comment and protected by qualified privilege.[60] As set out above, the motion judge was correct in determining that these defences were reasonably available in the circumstances.

D. There is no issue of "different treatment of the evidence and law"

82. The motion judge made no improper temporal distinctions in his consideration of the parties' evidence.

83. It was appropriate for the motion judge to decline to take into account statements that the appellant had not pleaded in the action. The pleadings determine what is in issue in an action and

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[57] Appellant's factum at ¶¶59, 62, pp 26–28.

[58] Motion judge reasons at ¶¶28–29.

[59] Motion judge reasons at ¶¶32–34.

[60] Motion judge reasons at ¶35.

on a motion to dismiss an action.

84. It was also entirely proper for the motion judge to consider evidence that post-dated the claim that the respondents adduced in relation to the truth of the publications. It is appropriate in certain circumstances for a court to consider evidence of events and circumstances which occurred subsequent to the publication in determining whether the remarks are true. It was clearly appropriate in these circumstances, in which, for example, some of the respondents commented on the issues with a pleading that the court later struck in its entirety. The post-publication evidence, including the various prolix and improper pleadings the appellant has delivered, was relevant to the respondents' comments on the value for services that the appellant provides to his clients.

Jones v Barton, 2014 NBQB 42 at ¶74

E. This Court should not grant leave to appeal costs

85. The motion judge did not err in principle nor was he plainly wrong with respect to the appropriate awards of costs.

86. The test for leave to appeal from a costs order is stringent: an appellant must show "strong grounds upon which an appellate court could find that the trial judge erred in the exercise of his or her discretion". An appellate court will not set aside a costs order unless the trial judge made an error in principle or that the costs award was plainly wrong.

Feinstein v Freedman, 2021 ONSC 1493 at ¶113

87. The appellant's argument regarding costs ignores the presumption under section 137.1(7) that the respondents were entitled to their full indemnity costs.

Courts of Justice Act, RSO 1990, c C43, s 137.1(7)

88. This Court has explained, in reversing a motion judge's decision to grant only partial indemnity costs to the successful party:

> When an action is dismissed under s. 137.1, the statutory presumption is that the successful moving party will be awarded costs on a full indemnity basis, unless the judge determines that such an award is not "appropriate". […]
>
> […] The issue then becomes what features will distinguish a case where an award of full indemnity costs is not appropriate as opposed to one where it is.
>
> In my view, merely concluding that there are countervailing determinations on the factors that are required to be considered under s. 137.1 is an insufficient basis to make a finding that it is not appropriate to award full indemnity costs. If that was all that was required, most cases would not draw a full indemnity costs award since, as the existing case law under s. 137.1 amply demonstrates, there are countervailing determinations in many cases. To adopt that as the distinguishing feature would result in the presumptive costs award not being presumptive at all.
>
> The genesis for a presumptive award of full indemnity costs can be found in the Anti-SLAPP Advisory Panel, *Report to the Attorney General* […]
>
> > It is important that the special procedure provide for full indemnification of the successful defendant's costs to reduce the adverse impact on constitutional values of unmeritorious litigation, and to deter the commencement of such actions.
>
> *Levant v DeMelle*, 2022 ONCA 79 at ¶¶75–78

89. This Court has, subsequent to its decision in *Park Lawn Corporation v Kahu Capital Partners Ltd.,* rejected the submission that there should be a cap on costs, or that the statutory presumption should be disregarded. In *Boyer v Callidus Capital Corporation*, the Court of Appeal upheld an award of costs on a full indemnity basis in the amount of $273,111.22.

2023 ONCA 311

90. There was no reason that awarding full indemnity costs was not appropriate, and the determination as to whether it was appropriate was well within the motion judge's discretion. An important consideration is that the appellant sued Ms. Toews for making a complaint to the Law Society of Ontario, despite the privilege attaching to her statements. Full indemnity costs were

appropriate.

IV. ADDITIONAL ISSUES RAISED BY THE RESPONDENT

A. The standard of review

91. This Court described the applicable standard of review on a section 137.1 motion as follows in *Park Lawn Corporation v Kahu Capital Partners Ltd.*:

> Lastly, it bears repeating that a motion judge's determination on a s. 137.1 motion will be entitled to deference on appeal absent an error in law or palpable and overriding error: *Bent*, at para. 77; *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529, 460 D.L.R. (4th) 245, at para. 21 ("*CUPW*"). This is especially so with respect to a motion judge's weighing of the public interest: *Bangash v. Patel*, 2022 ONCA 763, at para. 12. Parties should be mindful of this standard of review when seeking to appeal an order in anti-SLAPP proceedings. As mentioned, this court has seen a proliferation of anti-SLAPP appeals.
>
> 2023 ONCA 129 at ¶42

92. This Court has noted with respect to the analysis under section 137.1(3) in particular:

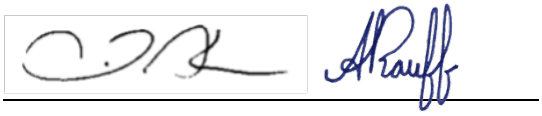
> Whether expression relates to a matter of public interest involves a question of mixed fact and law that attracts a deferential standard of review. Provided that the motion judge made no extricable errors of law and no palpable and overriding errors of fact, the decision is entitled to deference.
>
> 2022 ONCA 391 at ¶6

V. ORDER SOUGHT

93. The respondent seek an order dismissing this appeal and their full indemnity costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 31, 2024



Tim Gleason and Amani Rauff
Dewart Gleason LLP

VI. CERTIFICATE

94. An order under subrule 61.09(2) is not required.

95. I estimate that I will require one hour for oral argument.

96. This factum complies with subrule 61.12(5.1).

97. There are 8791 words in Parts I to V of this factum.

98. I am satisfied as to the authenticity of every authority listed in Schedule A.

May 31, 2024

Tim Gleason
Dewart Gleason LLP

SCHEDULE A

LIST OF AUTHORITIES

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1. *Mazhar v Farooqi*, 2021 ONCA 355
2. *Hiltz and Seamone Co. Ltd. v Nova Scotia (Attorney General) et al*, 1999 NSCA 22
3. *Whitehead v Sarachman*, 2012 ONSC 6641 (Div Ct)
4. *Prud'homme v Prud'homme*, 2002 SCC 85
5. *Senft v Vigneau*, 2020 YKCA 8, leave to appeal to SCC ref'd 2020 CanLII 68953 (SCC)
6. *Creative Salmon Company Ltd. v Staniford*, 2009 BCCA 61, leave to appeal to SCC ref'd 2009 CanLII 34733 (SCC)
7. *Chopak v Patrick*, 2020 ONSC 5431
8. *Jones v Barton*, 2014 NBQB 42
9. *Feinstein v Freedman*, 2021 ONSC 1493
10. *Levant v DeMelle*, 2022 ONCA 79
11. *Boyer v Callidus Capital Corporation*, 2023 ONCA 311
12. *Park Lawn Corporation v Kahu Capital Partners Ltd.*, 2023 ONCA 129
13. *Echelon Environmental Inc. v Glassdoor Inc.*, 2022 ONCA 391

SCHEDULE B

RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS

Courts of Justice Act, RSO 1990, c C43

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate
Purposes
137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

(a) to encourage individuals to express themselves on matters of public interest;

(b) to promote broad participation in debates on matters of public interest;

(c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and

(d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

Definition, "expression"
(2) In this section,

"expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

Order to dismiss
(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.

No dismissal
(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the moving party has no valid defence in the proceeding; and

(b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

No further steps in proceeding
(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

No amendment to pleadings
(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

Costs on dismissal
(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.
Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

Damages
(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate. 2015, c. 23, s. 3.

Procedural matters
Commencement
137.2 (1) A motion to dismiss a proceeding under section 137.1 shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced. 2015, c. 23, s. 3.

Motion to be heard within 60 days
(2) A motion under section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court. 2015, c. 23, s. 3.

Hearing date to be obtained in advance
(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served. 2015, c. 23, s. 3.

Limit on cross-examinations
(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall not exceed a total of seven hours for all plaintiffs in the proceeding and seven hours for all defendants. 2015, c. 23, s. 3.

Same, extension of time
(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice. 2015, c. 23, s. 3.

Appeal to be heard as soon as practicable
137.3 An appeal of an order under section 137.1 shall be heard as soon as practicable after the appellant perfects the appeal. 2015, c. 23, s. 3.

Stay of related tribunal proceeding
137.4 (1) If the responding party has begun a proceeding before a tribunal, within the meaning of the Statutory Powers Procedure Act, and the moving party believes that the proceeding relates to the same matter of public interest that the moving party alleges is the basis of the proceeding that is the subject of his or her motion under section 137.1, the moving party may file with the tribunal a copy of the notice of the motion that was filed with the court and, on its filing, the tribunal proceeding is deemed to have been stayed by the tribunal. 2015, c. 23, s. 3.

Notice
(2) The tribunal shall give to each party to a tribunal proceeding stayed under subsection (1),

(a) notice of the stay; and

(b) a copy of the notice of motion that was filed with the tribunal. 2015, c. 23, s. 3.

Duration
(3) A stay of a tribunal proceeding under subsection (1) remains in effect until the motion, including any appeal of the motion, has been finally disposed of, subject to subsection (4). 2015, c. 23, s. 3.

Stay may be lifted
(4) A judge may, on motion, order that the stay is lifted at an earlier time if, in his or her opinion,

(a) the stay is causing or would likely cause undue hardship to a party to the tribunal proceeding; or

(b) the proceeding that is the subject of the motion under section 137.1 and the tribunal proceeding that was stayed under subsection (1) are not sufficiently related to warrant the stay. 2015, c. 23, s. 3.

Same

(5) A motion under subsection (4) shall be brought before a judge of the Superior Court of Justice or, if the decision made on the motion under section 137.1 is under appeal, a judge of the Court of Appeal. 2015, c. 23, s. 3.

Statutory Powers Procedure Act

(6) This section applies despite anything to the contrary in the *Statutory Powers Procedure Act*. 2015, c. 23, s. 3.

Application

137.5 Sections 137.1 to 137.4 apply in respect of proceedings commenced on or after the day the Protection of Public Participation Act, 2015 received first reading. 2015, c. 23, s. 3.

***Libel and Slander Act*, RSO 1990, c L12**

LIBEL AND SLANDER

[…]

Justification

22 In an action for libel or slander for words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1990, c. L.12, s. 22.

Fair comment

23 In an action for libel or slander for words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1990, c. L.12, s. 23.

Fair comment

24 Where the defendant published defamatory matter that is an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. R.S.O. 1990, c. L.12, s. 24

GALATI Appellant	- and -	**TOEWS et al.** Respondents	Court of Appeal File No. COA-24-CV-0004

COURT OF APPEAL FOR ONTARIO

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