Court File No. CV-22-683322

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROCCO GALATI

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

Defendants

FACTUM OF THE MOVING PARTY DEFENDANTS

(motions pursuant to section 137.1 of the *Courts of Justice Act* and to strike evidence returnable September 12, 2023)

July 28, 2023

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I. OVERVIEW

1. The defendants seek the dismissal of this action under section 137.1 of the *Courts of Justice Act* on the basis that it unduly limits their freedom of expression on matters of public interest.

II. FACTS

The parties

2. The plaintiff is a lawyer licensed to practice law in Ontario.[1] He has commenced litigation against various parties on behalf of advocacy organizations, including Vaccine Choice Canada ("VCC") and Action4Canada ("A4C"), in relation to COVID-19-related government action.[2]

3. The defendant Canadian Society for the Advancement of Science in Public Policy (the "Society") is a volunteer-run non-profit society in British Columbia that is pursuing litigation against that province's government, also in relation to COVID-19-related measures.[3]

4. The defendant Kipling, or Kip, Warner is the executive director of the Society.[4]

5. The defendant Deepankar, or Dee, Gandhi is the treasurer for the Society.[5]

6. The defendant Donna, or Dawna, Toews has donated funds to VCC and A4C.[6]

The plaintiff's claims

7. The plaintiff claims against the defendants in libel, slander, "irresponsible publication",

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[1] Statement of claim issued June 26, 2022 ["**SOC**"] at ¶2, supplementary motion record of the moving party defendants dated May 30, 2023 ["**moving record #4**"] (containing the plaintiff's responding record), tab 1, p 14.
[2] Statement of claim in court file no. CV-20-643451 issued July 6, 2020 ["**VCC SOC**"], motion record of the moving party defendants dated January 31, 2023 ["**moving record #1**"], tab 2, exhibit PP, pp 371–561; notice of civil claim in court file no. VLC-S-S-217586 dated August 16, 2021 ["**A4C NOCC**"], moving record #1, tab 2, exhibit BBB, pp 833–1223.
[3] Affidavit of Kipling Warner affirmed January 26, 2023 ["**Warner affidavit #1**"] at ¶¶2–42, moving record #1, tab 2, pp 8–17; constitution of the Canadian Society for the Advancement of Science in Public Policy filed October 12, 2021, moving record #1, tab 2, exhibit A, p 50; amended notice of civil claim dated September 15, 2021 ["**CSASPP NOCC**"], moving record #1, tab 2, exhibit B, pp 52–76.
[4] Warner affidavit #1 at ¶1, moving record #1, tab 2, p 8.
[5] Affidavit of Deepankar Gandhi affirmed January 27, 2023 ["**Gandhi affidavit**"] at ¶1, moving record #1, tab 3, p 1568.
[6] Affidavit of Donna Toews affirmed January 25, 2023 ["**Toews affidavit**"] at ¶¶3–4, moving record #1, tab 4, pp 1601–1602.

conspiracy "to undermine [his] solicitor-client relationships", "interference with economic interests", intentional infliction of mental anguish and distress, harassment and abuse of process.[7]

8. His claims in defamation appear to be in respect of an email that Mr. Gandhi sent to an individual named Dan Dicks on January 27, 2021 and a series of questions and answers that the Society published on a 'frequently asked questions' page ("FAQ") of its website around June 2021.[8]

9. The plaintiff's abuse of process claim concerns a complaint that Ms. Toews made to the Law Society of Ontario in January 2022.[9]

10. The plaintiff's claims in conspiracy and "interference with economic interests" appear to relate to allegations, which are denied, that the defendants sought to persuade A4C, VCC and similar organizations to terminate their retainers of the plaintiff's services.[10]

The events leading up to the impugned expression

11. The defendants in this action and certain of the plaintiff's clients, including VCC and A4C, have been advocating against government-imposed COVID-19 restrictions in Ontario and British Columbia, or supporting such advocacy, since around spring 2020.[11]

12. On July 6, 2020, the plaintiff commenced an action in Ontario on behalf of VCC and eight personal plaintiffs (the "VCC action") by 187-page statement of claim. The claim describes, *inter alia*, a conspiracy dating back to 2000 involving Bill Gates, Prime Minister Justin Trudeau, the World Economic Forum, the World Health Organization and Chief Public Health Officer Theresa Tam. It raises concerns with "video surveillance satellites" "that will blanket Earth" and "a massive and concentrated push for mandatory vaccines of every human on the planet earth with concurrent

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[7] SOC at ¶1, moving record #4, tab 1, p 3.
[8] SOC at ¶¶47–48, moving record #4, tab 1, p 24.
[9] SOC at ¶¶31, 35, 56–57, moving record #4, tab 1, pp 19, 20, 30–31.
[10] SOC at ¶58, moving record #4, tab 1, p 32.
[11] Warner affidavit #1 at ¶¶4–7, moving record #1, tab 2, p 9; Toews affidavit at ¶¶2–4, moving record #1, tab 4, pp 1601–1602; affidavit of Tanya Gaw sworn March 11, 2023 at ¶2, moving record #4, tab 1, p 940; affidavit of Ted Kuntz sworn March 13, 2023 at ¶2, moving record #4, tab 1, p 967.

electronic surveillance by means of proposed: (i) Vaccine 'chips', bracelets', and 'immunity passports'; (ii) Contract- tracing via cell-phones; [and] (iii) Surveillance with the increased 5G capacity [*sic*]". It alleges that those defendants "knowingly" "propagate[d] a groundless and falsely-declared 'pandemic'" to assist in creating a "New (Economic) World Order".[12]

13. At a press conference in July 2020, the plaintiff announced that he had commenced the VCC action and intended to seek an injunction in relation to vaccination and masking measures.[13]

14. In the meantime, A4C, which is based in British Columbia, began raising money purportedly to be used to fund a proceeding in that province.

15. At an A4C rally in the summer of 2020, its founder, Tanya Gaw, announced to a crowd:

> […] [W]e're gonna need your help. Because this has to be a constitutional challenge […]. It's a very costly undertaking, and we can't do this on our own, so […] we're reaching out to you today. […] We set up a donation page on Action4Canada. […] We contacted a top constitutional lawyer who has agreed to take this case on, and we're excited to get that going in the very near future. […].

A promotional video depicts members of the crowd donating thousands of dollars in cash to A4C.[14]

16. A4C retained the plaintiff's services in or before fall 2020.[15]

17. On September 25, 2020, A4C published, *inter alia*, the following on its website:

> […]. In reality, according to experts, and also stated by lawyer Rocco Galati, "the virus to date has not been scientifically isolated nor identified using accepted scientific method." To learn more about Rocco Galati and the legal action which has already commenced in Ontario, please view the following interview. […]. A constitutional challenge is the only way forward at this point. But legal action cannot commence until we raise the funds.[16]

18. That month, during an interview with Rebel News, the plaintiff said that he was "hoping

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[12] VCC SOC, moving record #1, tab 2, exhibit PP, pp 371–561.
[13] Transcript of the cross-examination of Rocco Galati on May 26, 2023 ["**Galati transcript**"] at q 62, transcript brief of the moving party defendants dated July 25, 2023 ["**transcript brief**"], tab 5, p 166.
[14] Warner affidavit #1 at ¶46, motion record #1, tab 2, p 17; Laura-Lynn Thompson, "Crowd spontaneously donates $14,000 cash to Vaccine Choice Canada and Action4Canada to sue BC government" (September 16, 2020) at 00h:00m:43s–00h:02m:05s, 00h:03m:00s–00h:4m:53s, 00h11m:55s–00h12m:44s.
[15] Galati transcript at qq 19–20, transcript brief, tab 5, pp 155–156.
[16] Action4Canada, "Legal Action Against the BC Government: The Fight of our Lives!" (23 September 2020), transcript of the cross-examination of Tanya Gaw on May 26, 2023 ["**Gaw transcript**"], exhibit 2, transcript brief, tab 6, pp 443–447.

that the injunction will get heard before the Christmas holidays" and that, even though "courts, even at the best of times, are not known as being Speedy Gonzales", the plaintiff was "going to do [his] best to get the initial injunction for masks heard".[17]

19. In October 2020, A4C announced, *inter alia*, its retainer of the plaintiff on its website.[18]

20. Mr. Warner and others were also publicly organizing in 2020 around British Columbia's declaration of an emergency and associated restrictions. On January 26, 2021, the Society commenced a proposed class action against British Columbia and its health officer.[19]

21. By January 2021, Mr. Warner and Mr. Gandhi had determined that it would be prudent to clarify to the public, and especially donors, that there was no relationship between the Society and the plaintiff and organizations he represented like VCC and A4C, for the following reasons.[20]

22. They were aware that A4C had raised significant funds to pay the plaintiff's legal fees,[21] although A4C had stopped publicly posting the precise amount of the funds it had collected. Ms. Gaw has since made public statements in which she has confirmed that she paid the plaintiff's law firm half of a flat fee he required by the end of 2020 and strongly implied that that flat fee was $400,000.[22] A4C's corporate filings reflect that it paid the plaintiff's law firm $200,000 by cheque on April 29, 2022, describing the expense as "[r]emainder of retainer".[23]

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[17] Warner affidavit #1 at ¶59; moving record #1, tab 2, p 28; Rebel News, "Rocco Galati's lockdown lawsuit: Ezra Levant interviews lawyer suing Trudeau, Dr. Tam and more!" (September 2, 2020) at 00h:44m:38s–00h:45m:30s.
[18] Action4Canada, "October 13, 2020", Gaw transcript, exhibit 1, transcript brief, tab 6, pp 435–442.
[19] CSASPP NOCC, moving record #1, tab 2, exhibit B, pp 52–76.
[20] Warner affidavit #1 at ¶50, moving record #1, tab 2, p 18; Gandhi affidavit at ¶¶5–24, moving record #1, tab 3, pp 1569–1576.
[21] Warner affidavit #1 at ¶¶44–49, moving record #1, tab 2, pp 17–18; Gandhi affidavit, *ibid*.
[22] The Freedom Organization, "The Freedom For Truth Conference: Canada's Largest & ONLY online Resistance" (2 July2021)at 00h:39m:55s–00h:44m:42s; 'librti.com', interview between Odessa Orlewicz and Tanya Gaw (4 September 2022) at 00h:05m37s–00h:07m28s, 00h:11m:30s–00:14m:02s, 00h:29m:55s–00:32:20s; Canadian Rights Watch, interview with Tanya Gaw (5 September 2022) at 00h:11m:20s–00h:12m:25s; Warner affidavit #1 at ¶¶48–49, moving record #1, tab 2, pp 17–18; supplementary affidavit of Kipling Warner affirmed March 29, 2023 ["**Warner affidavit #2**"] at ¶43(b), supplementary motion record of the moving party defendants ["**moving record #2**"], tab 1, pp 15–16.
[23] Warner affidavit #2 at ¶43(c), moving record #2, tab 1, p 16; Action4Canada general ledger for August 16, 2021 to August 15, 2022, moving record #2, tab 1, exhibit M, p 158.

23. Mr. Warner and Mr. Gandhi were aware that, by January 2021, the plaintiff had neither commenced the action in British Columbia that A4C had advertised nor taken any steps to move the VCC action forward (including seeking injunctive relief as he had promised).[24]

24. The CBC had reported the opinion of an assistant professor at Western University that the references in the VCC action's statement of claim to "the Chinese military, 5G networks, international vaccine programs and the Rockefeller Foundation […] without […] supporting scientific evidence could ultimately be what gets the suit dismissed before it goes to trial".[25]

25. There has since been significant news coverage and online commentary on accountability for donations to A4C and the quality of pleadings the plaintiff has prepared in various actions.[26]

26. Beginning in early 2021, the Society's executive team and volunteers were receiving regular inquiries as to: whether the Society was affiliated with A4C, VCC and others; why the Society was not working with these organizations and the plaintiff; and whether the Society knew what had become of the funds that those groups had raised for litigation.[27]

27. Both Mr. Warner and Mr. Gandhi, in reviewing the statement of claim in the VCC action, were of the view that it was improperly drafted. It further appeared to them that the plaintiff sought far more in funding than was necessary to draft and deliver a pleading.[28]

28. Mr. Warner conducted further research into the plaintiff,[29] and found, *inter alia*, that:

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

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[24] Warner affidavit #1 at ¶¶57, 59, moving record #1, tab 2, p 28; Gandhi affidavit at ¶7, moving record #1, tab 3, p 1569.
[25] Colin Butler, "Details emerge of Vaccine Choice Canada lawsuit over coronavirus response," *CBC News* (13 August 2020), moving record #1, tab 2, exhibit T, pp 213–220.
[26] Warner affidavit #1 at ¶51, moving record #1, pp 18–27; see: Warner affidavit #1, moving record #1, tab 2, exhibits U–NN, pp 222–366.
[27] Warner affidavit #1 at ¶¶52–56, moving record #1, tab 2, pp 27–28.
[28] Warner affidavit #1 at ¶¶58, 60, moving record #1, tab 2, pp 28–29; Gandhi affidavit at ¶¶21(l) and (m), moving record #1, tab 3, p 1575.
[29] Warner affidavit #1 at ¶61, moving record #1, tab 2, pp 29–35.

of time.[30]

b. While the plaintiff's supporters describe him as a "constitutional law" lawyer, this did not appear to be a professional designation in Canada. The Globe and Mail had printed an interview with the plaintiff which suggested that "[h]e makes his money from doing tax law, not constitutional cases."[31]

c. In *Sivak v Canada*, the Federal Court had struck portions of, and parties to, a claim advanced by the plaintiff, calling it scandalous and vexatious.[32]

d. In *Galati v Harper*, the Federal Court held that the plaintiff's bill of costs was "excessive and unwarranted".[33] The plaintiff appealed from the costs portion of the order. The Federal Court of Appeal dismissed the appeal, commenting:

> The first point to be disposed of is the hourly rate used by Mr. Galati and the CRC in their respective claims for costs. Their claim to be entitled to the substantial indemnity rate of $800 which apparently would apply to these counsel under the Ontario *Rules of Civil Procedure* is puzzling. Mr. Galati and Mr. Slansky are both experienced counsel who presumably know that the costs of litigation conducted in the Federal Courts are awarded in accordance with the *Federal Courts Rules*. They would also presumably know that the *Federal Courts Rules* do not provide for an hourly rate benchmark (other than an amount per unit of service as described in the Tariff) such as the *Rules of Civil Procedure* apparently do. Given this knowledge, it is surprising that Mr. Galati would seek an order of costs in excess of what he would have billed a client for the same services. […]
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> […] It is important to understand what is being said here. Mr. Galati and the CRC state as a fact that a Court which, having agreed that certain government action was inconsistent with the Constitution and having therefore set it aside, will nonetheless be seen to be, and will in fact be, "in bed" with the government if it fails to award the successful applicant its solicitor client costs. The tie-in to the Constitution is that this collusion deprives the affected litigant of its constitutionally protected right to a fair and independent judiciary.
>
> To be "in bed" with someone is to collude with that person. I do not understand how one could hope to protect the right to a fair and independent judiciary by accusing courts of colluding with the government if they don't give the applicant its solicitor client costs. The entire Court system, it seems, must be alleged to be actually or potentially acting in bad faith in order to instill public confidence in the fairness and independence of the judiciary. This is reminiscent of the gonzo logic of the Vietnam War era in which entire villages had to be destroyed in order to save them from the enemy. The fact that this argument is made in support of an unjustified monetary claim leads to the question "Whose interest is being served here?" Certainly not the administration of justice's. This argument deserves to be condemned without reservation.[34]

e. In *Da Silva Campos v Canada (Citizenship and Immigration)*, the Federal Court had

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[30] Screenshot of Law Society of British Columbia Lawyer Directory dated December 21, 2022, moving record #1, tab 2, exhibit RR, pp 565–566.
[31] Sean Fine, "The lawyer who challenged the Harper government and won" *Globe and Mail* (22 August 2014), moving record #1, tab 2, exhibit SS, p 571.
[32] 2012 FC 272 at ¶¶4–9, 40–52, 55–58, 62–72, 76–80; 82–85; 94–95.
[33] 2014 FC 1088 at ¶7.
[34] 2016 FCA 39 at ¶¶20–36.

struck the plaintiff's clients' claim as "close to being incomprehensible".[35]

f. In *Committee for Monetary and Economic Reform ("COMER") v Canada* ("***COMER***"), the Federal Court struck the plaintiff's client's amended claim, for a second time, without leave to amend as disclosing no reasonable cause of action and having no prospect of success.[36]

g. In *Al Omani v Canada*, the Federal Court commented:

> […]. I see no scintilla of an argument and am striking this claim without leave to amend. […] The Plaintiffs throw up in the air an accusation with nothing to support it. There is nothing to amend. Actually, the Plaintiffs did not even attempt to specify how the claim could be amended […]. It is not so much that there are deficiencies which may be cured by amendment. There is no cause of action pleaded. […] They are bare assertions that are unfounded; not only they do not disclose a reasonable cause of action [;] they could be struck as frivolous or vexatious […].[37]

29. Accordingly, the Society, including Mr. Warner and Mr. Gandhi, believed it was important to clarify that they were not affiliated with the plaintiff or his clients, and that the public be informed about the merits of the plaintiff's approach before donating their time and funds to organizations affiliated with him.[38]

The impugned expression

30. On January 29, 2021, Mr. Gandhi emailed Mr. Dicks of the web publication Press for Truth outlining the Society's concerns and reasons for not affiliating with the plaintiff and A4C.[39]

31. Mr. Gandhi's purpose in sending the email was to convey to the public that the Society had commenced its proposed class proceeding, and to clarify to those interested in this cause that the Society was different from and intended to take a different approach to A4C and the plaintiff.[40] Mr. Gandhi's unchallenged[41] evidence is that he sent this email in good faith and for the purposes

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[35] *Da Silva Campos v Canada (Citizenship and Immigration)*, 2015 FC 884 at ¶¶1–2, 8, 10–14.
[36] 2016 FC 147 at ¶147, aff'd 2016 FCA 312, leave to appeal to SCC ref'd 2017 CanLII 25790 (SCC).
[37] 2017 FC 786 at ¶¶26–28, 30–31, 39, 45, 54, 64, 69, 71, 73–75, 77, 79–80, 83, 88–95, 104–111, 117, 122–123, 124–127; see also: *Wang v Canada*, 2016 FC 1052 at ¶¶20–22, 30–32; *Almacén v Canada*, 2016 FC 300 at ¶¶46–47, 49–50, 52–57, aff'd 2016 FCA 296, leave to appeal to SCC ref'd 2017 CanLII 20397 (SCC).
[38] Warner affidavit #1 at ¶¶78–80, moving record #1, tab 2, p 40; Warner affidavit #2 at ¶¶3–5, moving record #2, tab 1, p 3; Gandhi affidavit at ¶¶5–24, moving record #1, tab 3, pp 1569–1576.
[39] Email correspondence from Deepankar Gandhi to Dan Dicks dated January 29, 2021 ["**Gandhi email**"], moving record #1, tab 3, exhibit A, pp 1578–1581. A copy of this email, with its original clickable hyperlinks, is at schedule "C" to this factum.
[40] Gandhi affidavit at ¶15, moving record #1, tab 3, pp 1570–1571.
[41] Transcript of the cross-examination of Deepankar Gandhi on May 23, 2023, transcript brief, tab 1.

described above. He had no prior relationship with nor ill will toward the plaintiff.[42]

32. Mr. Gandhi understood that Press for Truth's readership included particularly those concerned with COVID-19-related restrictions. He believed them to have an interest in knowing (a) the status of a proposed class proceeding within the class definition of which they might fall; (b) the relative chances of success of the Society's proceeding as compared to proceedings on overlapping issues; and (c) the Society's position with respect to how best to litigate these challenges. He believed that the Society had a duty to convey this information to this segment of the public so they could make informed decisions as to how to direct finite resources and time.[43]

33. In June 2021, the Society published in its FAQ the question "Are you affiliated with Rocco Galati? If not, why?" and its answer that it was not, with accompanying reasons.[44]

Action4Canada's proceeding

34. The plaintiff commenced an action on behalf of A4C on August 17, 2021 by a notice of civil claim that was 379 pages long.[45]

35. The plaintiff's co-counsel was Lawrence Wong, an immigration lawyer.[46] The Federal Court had twice awarded costs personally against Mr. Wong, including for conduct that the Court described as "an attack upon the integrity of the Court".[47]

36. On August 29, 2022, Justice Ross struck out A4C's claim with leave to amend and ordered costs against the personal plaintiffs in that action, holding:

> […] [T]he [notice of civil claim] […] describes wide-ranging global conspiracies that may, or may

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[42] Gandhi affidavit at ¶¶22–24, moving record #1, tab 3, p 1576.
[43] Gandhi affidavit at ¶¶16–18, moving record #1, tab 3, pp 1571–1572.
[44] Canadian Society for the Advancement of Science in Public Policy, "Frequently Asked Questions" (16 August 2022 version) ["**FAQ**"], moving record #1, tab 2, exhibit "OOO", pp 1451–1462. A copy of the content of this webpage that is at issue, with its original clickable hyperlinks, is at schedule "D" to this factum.
[45] A4CC NOCC, moving record #1, tab 2, exhibit BBB, pp 833–1223.
[46] Warner affidavit #1 at ¶¶67–68, moving record #1, tab 2, p 37; printout of CanLII search results for "Lawrence Wong" dated December 20, 2022, moving record #1, tab 2, exhibit GGG, pp 1249–1282.
[47] *Tai v Canada (Citizenship and Immigration)*, 2010 FC 788; *Liang v Canada (Citizenship and Immigration)*, 2016 FC 569.

> 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".[48]

Other proceedings that the plaintiff has commenced

37. In February 2022, an Ontario court dismissed a claim pursuant to section 137.1 of the *Courts of Justice Act* that the plaintiff had commenced for two doctors against over 20 defendants. It awarded the defendants' full indemnity costs, of over $1,000,000, less certain reductions.[49]

38. In February 2023, the Federal Court struck a claim that the plaintiff had issued for over 600 federal or federally regulated employees as "bad beyond argument".[50] Each of that action's 600 plaintiffs appear to have paid $1,000 to Mr. Galati to participate in the proceeding, and were asked to pay Mr. Galati a further $1,000 each for an appeal from the order striking the claim.[51]

Ms. Toews' complaint to the Law Society of Ontario

39. Ms. Toews is a VCC and A4C donor. She donated $1,000 to each. At the time that she donated to VCC, in June 2020, she sought and received confirmation that her funds were "going directly toward [its] legal fees for [its] upcoming Constitutional Challenge", *i.e.*, the VCC action.[52]

40. Ms. Toews then heard nothing from VCC about the proceeding until December 20, 2021, when she emailed it to ask for an update on the proceeding. VCC responded, *inter alia*, that the lawyer working on the matter did not want to disclose what he was doing.[53]

41. Ms. Toews had concerns as to whether her funds had been put to their intended use.[54] She

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[48] *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 at ¶¶20–21, 24–26, 45–59, 70–76.
[49] 2022 ONSC 1279; 2022 ONSC 6169.
[50] 2023 FC 252 at ¶¶2, 4, 25, 36, 37–38, 45–48, 51–57, 59.
[51] Warner affidavit #1 at ¶75, moving record #1, tab 2, p 39; retainer agreement 'RE: Federal Employees Action against coercive vaccine mandate, as well as challenge to the proposed Federal "Vaccine Passports" with the possibility of certifying as a class action proceeding', undated, moving record #1, tab 2, exhibit LLL, p 1400; email correspondence from 'Federal Employee Lawsuit' dated February 24, 2023, moving record #2, tab 1, exhibit K, pp 58–62.
[52] Toews affidavit at ¶¶3–4, moving record #1, tab 4, pp 1601–1602; email correspondence between Donna Toews and Vaccine Choice Canada dated June 19 to June 22, 2020, moving record #1, tab 4, exhibit A, pp 1607–1608.
[53] Toews affidavit at ¶¶6–8, moving record #1, tab 4, p 1602; email correspondence from Vaccine Choice Canada to Donna Toews dated December 20, 2021, moving record #1, tab 4, exhibit A, p 1606.
[54] Toews affidavit at ¶9, moving record #1, tab 4, pp 1602–1603.

expressed these concerns to Mr. Warner and asked to be connected with a lawyer.[55]

42. The Society retained lawyer and former Law Society Treasurer Gavin MacKenzie to assist Ms. Toews. None of the other defendants were involved in drafting Ms. Toews' complaint, which Mr. MacKenzie prepared, and the decision to submit it was exclusively Ms. Toews'.[56]

43. Ms. Toews' unequivocal evidence in her affidavit, and on cross-examination, is that she submitted the complaint in good faith, believing that the Law Society could investigate her concerns. She does not know the plaintiff outside this context. The purpose of her complaint was to seek accountability for her donated funds. She took no other steps in relation to the plaintiff.[57]

44. Similarly, Mr. Warner's unequivocal evidence, which the plaintiff did not challenge on cross-examination, is that his and the Society's purpose in engaging a lawyer to assist Ms. Toews was to help her obtain transparency as to what had happened to funds that she had donated toward goals similar to those the Society was pursuing, and not to injure the plaintiff.[58]

45. The Law Society provided the plaintiff with Ms. Toews' complaint on May 19, 2022 and directed that he provide his response to the regulatory issues it considered the complaint to raise.[59] The plaintiff commenced this action on June 28, 2022, one day before he provided the Law Society with his response, enclosing with his response a copy of the statement of claim.[60]

46. In September 2022, the Law Society advised Ms. Toews that it would not take further steps, because the plaintiff had commenced this action, and that it "will often defer an investigation that

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[55] Warner affidavit #2 at ¶¶6, 33 moving record #2, tab 1, pp 3–5, 12; transcript of the cross-examination of Kipling Warner on May 23, 2023 ["**Warner transcript**"], q 157, 175–177, transcript brief, tab 4, pp 34–35, 38–39.
[56] Warner affidavit, *ibid*; Warner transcript, *ibid*, and qq 208–214, transcript brief, tab 4, pp 46–47.
[57] Toews affidavit at ¶¶11–16, moving record #1, tab 4, pp 1603–1604; transcript of the cross-examination of Donna Toews on May 23, 2023 at qq 28–42, 79–92, 137–143, 181, transcript brief, tab 2, pp 41–44, 52–55, 64–65, 74.
[58] Warner affidavit #2 at ¶¶6, moving record #2, tab 1, pp 3–5.
[59] Galati affidavit at ¶37, moving record #4, tab 1, p 45; letter correspondence from Sharon Greene to Rocco Galati dated May 19, 2022, moving record #4, tab 1, pp 221–242.
[60] Letter from Rocco Galati to Sharon Greene dated June 29, 2022, moving record #4, tab 1, pp 244–259.

raises substantially the same/similar issues that are currently before another body or tribunal".[61] As a former bencher for the Law Society, the plaintiff was aware of this practice.[62]

The plaintiff's evidence of damages

47. The plaintiff's only evidence on pecuniary damages is that an organization that he founded and of which he is executive director, the Constitutional Rights Centre (the "CRC"), "has had its donations virtually obliterated" because of, *inter alia*, the defendants in this action.[63]

48. The plaintiff describes the CRC as "an advocacy and support centre, which […] assists with all constitutional matters […] [which] in turn supports, financially, other lawyers who are on record for clients who need support including, but not exclusively, [the plaintiff's] law firm".[64]

49. On cross-examination, the plaintiff confirmed that his allegation is that the CRC's receipt of reduced donations caused his law firm financial loss, but refused to answer how much the CRC paid him or his law firm during the relevant period, claiming solicitor-client privilege.[65]

50. The timeline during which the plaintiff asserts a decrease in donations to the CRC corresponds to the timeline during which (a) public discontent with respect to COVID-19-related restrictions declined because governments had loosened them; (b) the plaintiff's COVID-19-related litigation began to produce negative results; and (c) the plaintiff suffered a lengthy illness.[66]

The plaintiff's public statements about this action

51. The plaintiff and his clients have made, *inter alia*, the following comments publicly:

> Rocco Galati: I've also had to sue Kip Warner out in B.C. for his vicious interference with the Action4Canada and his nonsense in instigating a complaint to the Law Society of Ontario. […]

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[61] Letter from Miko Dubiansky to Donna Toews dated September 12, 2022, moving record #4, tab 1, pp 262–263.
[62] Galati transcript at qq 529–530, transcript brief, tab 5, pp 265–266.
[63] Galati affidavit at ¶¶46–47, 124–125, moving record #4, tab 1, pp 54, 91–92.
[64] Galati affidavit at ¶52, responding record #1, tab 2, pp 57–58 [emphasis added].
[65] Galati transcript at qq 116–131, transcript brief, tab 5, pp 177–180.
[66] Warner affidavit #2 at ¶¶40–41, moving record #2, p 14.

> Ted Kuntz (founder of VCC): What it tells me, Rocco, is they're afraid of crossing you in court.[67]
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>
> Ms. Gaw: Rocco just filed another suit about a month ago against Kipling Warner who, for a year and a half, has also been using defamatory and libelous statements just a vendetta to go after Rocco, um, and in that claim, it was because Kipling Warner as well as somebody from the law society in Ontario were coaching an individual on how to lay a complaint against Rocco, um, and again, frivolous and libelous. And so Rocco finally got fed up and as a result […][68]
>
> ---
>
> Ms. Gaw: [T]here are other things that have been going on. We're being attacked profusely. There are people who are trying to take Rocco out. He's told some of his story. When he got sick in December 2021, they tried to do him in. And he survived it. He had to learn how to walk again, talk again, and he's out there fighting. And we've got individuals that—you know—are going on social media and making disparaging comments about him, defamatory comments, and one of them is Kip Warner and he has filed a libel suit against him. We've got emails where he's getting members that he's egging on to get Rocco disbarred. This is a very serious war we're in and we're up against very serious criminals. And so we're going about it a little different, we're not rushing into the courts, because we've got a strategy. That 391-page statement of claim was *intended* to be 391 pages, because Rocco and I said it's not a B.C. case, it's not a Canadian case, it's global.[69]

III. ISSUES AND THE LAW

52. The primary issues on this motion are:

a. whether the defendants have established that this proceeding arises from expression that they made that relates to a matter of public interest; and

b. if so, whether the plaintiff has established that:

   i. there are grounds to believe that the proceeding has substantial merit;

   ii. there are grounds to believe that the defendants have no valid defence in the proceeding; and

   iii. the harm that the plaintiff is likely to or has suffered because of the expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression.

Courts of Justice Act, RSO 1990, c C43, ss 137.1(3)–137.1(4) ["***CJA***"], schedule B

53. There is also a preliminary issue concerning the plaintiff's evidence on the motion.

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[67] Warner affidavit #1 at ¶98, moving record #1, pp 44–45; Canuck Law, "Procedural Updates, Quote from July 13, 2022 VCC Stream" (1 September 2022) at 00h:22m:50s–00h:25m:10s.
[68] Canadian Rights Watch, interview of Tanya Gaw (5 September 2022) at 00h:49:07s–00h:53m:20s.
[69] Warner affidavit #2 at ¶44, moving record #2, pp 16–17; Rod Taylor, "Tanya Gaw Skeena AGM" (25 March 2023) at 00h:16m:40s–00h:18m:10s.

A. The Court should strike portions of the evidence the plaintiff has adduced

54. The plaintiff has adduced evidence that references alleged communications that, if they occurred, were protected by solicitor-client privilege or a qualified privilege arising from a confidentiality agreement.[70] Specifically, the communications are between Mr. Warner and (a) a lawyer with whom the Society consulted, and (b) a former member of the Society, who executed a confidentiality agreement in favour of the Society.[71] This evidence is inadmissible.

> Adam M Dodek, *Solicitor-Client Privilege* (Toronto: LexisNexis Canada, 2014) at 31–37, abbreviated book of authorities of the moving party dated July 25, 2023 ["**BOA**"], tab 1, pp 2–8
> *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at ¶¶14–18
> *Slavutych v Baker et al*, [1976] 1 SCR 254 at 260–263
> *Union Carbide Canada Inc. v Bombardier Inc.*, 2014 SCC 35 at ¶¶43–44
> *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 155 at ¶¶6–13

B. This action arises from expression that relates to a matter of public interest

55. The defendants have discharged their only burden on this motion, which is to establish that the proceeding arises from expression that relates to a matter of public interest. The general public, and certainly at least "a segment of the community", has a genuine interest in receiving information on the subject of the quality of the plaintiff's services, not least because the proceedings he has commenced are class proceedings, or otherwise constitutional challenges to legislation affecting the entire public. He and his clients have publicly fundraised to support such litigation, and the public has donated hundreds of thousands of dollars to it.

> *1704604 Ontario Ltd. v Pointes Protection Association*, [2020] 2 SCR 587 at ¶27 ["***Pointes* SCC**"]

56. Courts have recognized the following as relating to a matter of public interest:

a. sarcastic social media posts about a real estate development business in which the defendant predicted that the Ontario Securities Commission would "sla[m the] door on

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[70] The evidence at issue is listed in the defendants' notice of motion dated April 12, 2023, motion record of the moving party defendants dated April 12, 2023 ["**moving record #3**"], tab 1, pp 2–3.
[71] Affidavit of Kipling Warner affirmed April 12, 2023 ["**Warner affidavit #3**"] at ¶¶10–30, moving record #3, tab 2, pp 7–10; confidentiality and non-competition agreement among Canadian Society for the Advancement of Science in Public Policy and Alicia Johnson executed September 2, 2021, moving record #3, tab 2, exhibit E, pp 19–23.

shadier operators", "assuming these guys don't blow themselves up before that […]";

Fortress Real Developments Inc. v Rabidoux, 2018 ONCA 686 at ¶¶24–25, 40

b. a reference to Rebel News' Ezra Levant as a "disgraced neo-Nazi sympathizer";

Levant v Demelle, 2021 ONSC 1074 at ¶¶15–16, 32 ["***Levant* ONSC**"], aff'd 2022 ONCA 79 ["***Levant* ONCA**"]

c. references to union officials as "corrupt", "despicable" and a "vicious pit of snakes";

Labourers' International Union of North America, Local 183 v Castellano, 2019 ONSC 506 at ¶¶10, 38–40, rev'd in part on other grounds 2020 ONCA 71
See also: *Nanda v McEwan*, 2020 ONCA 431 at ¶¶34–47

d. negative online reviews of a retailer and installer of windows, of a laser surgery clinic, and of a plumbing store (Justice Myers held that "discussion among the consuming public of the quality of […] goods and services is a matter of public interest" and Justice Harris found that personal attacks, invective and malice did not take criticism of a plumbing store outside of being a matter of public interest); and

Canadian Thermo Windows Inc. v Seangio, 2021 ONSC 6555 at ¶¶5, 10, 30–33, 89–91 ["***Seangio***"]
New Dermamed Inc. v Sulaiman, 2018 ONSC 2517 at ¶¶7, 5–14, 25–27, aff'd 2019 ONCA 141 ["***New Dermamed***"]
910938 Ontario Inc v Moore, 2020 ONSC 4553 at ¶¶9, 19–22 ["***Moore***"]

e. social media posts describing a travel agency as not caring about customers and treating employees badly.

Bradford Travel and Cruises Ltd. v Viveiros, 2019 ONSC 4587 at ¶¶15, 31–33

57. The defendants easily satisfy the threshold for whether the expression relates to a matter of public interest, which is non-onerous by design. The public has a "genuine interest in receiving information on the subject of" the competence and value offered by private practice lawyers. The segment of the community to whom the defendants' expression was aimed—those who supported and donated funds for challenges to COVID-19-related restrictions—had a special interest in the quality of the services offered by this lawyer, who represents himself to be an expert in constitutional challenges and who engaged in public campaigns and fundraising for high profile litigation for which at least hundreds of thousands of dollars were crowd-funded from the public.

Pointes SCC, *supra*, at ¶¶27–28

C. There are no grounds to believe that the non-defamation claims have substantial merit

58. The words "grounds to believe" require the existence of a basis for reaching a belief that the criteria for liability are met. That basis must be legally tenable and reasonably capable of belief. To have "substantial merit", a proceeding must have more than "technical validity": a court must be satisfied that there is a basis for concluding that the claim has a real prospect of success.

Bent v Platnick, 2020 SCC 23 at ¶36 ["***Bent***"]
Pointes SCC, *supra*, at ¶¶16, 44–54
DEI Films Ltd. v Tiwari, 2018 ONSC 4423 at ¶44 ["***Tiwari***"]

59. The plaintiff "pleads" the test for various torts, but fails to plead, or adduce evidence that could prove, facts which disclose a cause of action.

60. There is no merit to the abuse of process claim, which concerns the Law Society complaint. Absolute privilege protects "any person who makes a complaint to a quasi-judicial regulatory authority", including the Law Society. Justice Shaw struck a claim without leave to amend on the basis that "regardless of the allegations […] with respect to the defendants' motives for the complaints to the LSO (such as intimidation), the defence of absolute privilege applies".

Hamalengwa v Duncan, 2005 CanLII 33575 (ON CA) at ¶¶7–8
Isaac v Mesiano-Crookston et al., 2019 ONSC 6973 at ¶¶39–61
Dooley v CN Weber Ltd., 1994 CanLII 7512 (ON SC) at ¶¶13–36
FK v White, 2000 CarswellOnt 856 (Sup Ct J) at ¶¶35–36, BOA, tab 2, pp 14–15 (retrieved July 24, 2023), rev'd on other grounds 2001 CanLII 24020 (ON CA)
Pahl v Steve Scherer Pontiac Buick GMC Ltd., 2005 CanLII 63775 (ON SCDC) at ¶¶3–6, 10–11

61. There is no merit to the civil conspiracy claim. The statement of claim does not identify the conduct that constituted the alleged conspiracy. If the conspiracy is with respect to the Law Society complaint, absolute privilege bars the claim and, if it is regarding the defendants' expression to others about the value of the plaintiff's legal services, it is simply a dressed-up defamation claim. The plaintiff has failed to plead any basis on which a court could find that he suffered actual damages, which is a necessary element of the tort.

Agribrands Purina Canada Inc. v Kasamekas, 2011 ONCA 460 at ¶24

62. There is no merit to the unlawful means claim. This is "available in three-party situations in which the defendant commits an unlawful act against a third party and that act intentionally causes economic harm to the plaintiff." The plaintiff has not identified an act the defendants have committed against a third party that caused him harm. The pleading is fatally defective.

A.I. Enterprises Ltd. v Bram Enterprises Ltd., 2014 SCC 12 at ¶5

63. There is no merit to the intentional infliction of mental suffering claim, which requires the plaintiff to establish conduct that is (a) flagrant and outrageous, (b) calculated to produce harm and (c) which results in visible and provable illness. The plaintiff has not adduced evidence that could establish (a) or (b) and has not even asserted that (c) is met.

Merrifield v Canada (Attorney General), 2019 ONCA 205 at ¶¶44–45

64. There is no merit to the harassment claim. The courts developed this tort to address extreme, serial internet-based harassment. None of the defendants' expression can be reasonably characterized as falling within its scope, which requires that the communication "go beyond all possible bounds of decency and tolerance" in character, duration and degree. Any reasonable observer would conclude that the defendants' statements and conduct were circumspect.

Caplan v Atas, 2021 ONSC 670 at ¶¶1–6, 36, 57, 61, 168–174

D. There are no grounds to believe that the defendants have no valid defence

65. The defendants have the defences of absolute privilege, justification, fair comment, and qualified privilege.

66. The question for the motion judge is whether it would be reasonably available to a trier, based on the motion record, to conclude that none of the defences tend to weigh more in favour of the moving defendants, *i.e.*, have a reasonable chance of success. The word *no* is absolute: if there

is *any* defence that is valid, then the motion judge must dismiss the proceeding.

> *Pointes* SCC, *supra*, at ¶¶58, 84
> *Bent*, *supra*, at ¶103
> *Bernier v Kinsella et al*, 2021 ONSC 7451 at ¶65

1. Absolute privilege protects the Law Society complaint

67. Absolute privilege, as described at paragraph 60 above, is a complete answer to claims in relation to Ms. Toews' complaint to the Law Society, including the claims that Mr. Warner or others conspired in the complaint.

2. The defendants have the defence of justification

68. The defence of justification weighs in favour of the defendants. The publications in this case were substantially and unambiguously true. The defendants supported them by hyperlinks to public documents which demonstrated that they were true.

69. A defendant will have proven the truth of a defamatory imputation if the justification meets the "sting", or main thrust, of the charge, and the publication is ‘substantially’ true in the words' natural and ordinary meaning. A defendant need not show the literal truth of the precise statement they made, and slight inaccuracies in details are immaterial. The question is whether the words would have a different effect on the reader's mind than that which the truth would have produced.

> Raymond E Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed (Toronto: Thomson Reuters, 2016) ["**Brown**"] at 10-44–10-61, BOA, tab 3, pp 19–55
> *Tiwari*, *supra*, at ¶30
> *Libel and Slander Act*, RSO 1990, c L12, s 22, schedule B

70. Where the defamatory accusation imputes a general aspersion on a plaintiff's character, the facts upon which a defendant seeks to justify their remarks need not exist at the time the publication took place. A defendant may give evidence of events and circumstances post-dating the publication to show that the accusation was true.

> Brown, *supra*, at 10-82, BOA, tab 3, p 52

71. A plaintiff's characterization of the meaning of a publication is not determinative, particularly where that plaintiff indulges in conspiracy theories that the words of the publication cannot reasonably support. It is open to the defendant to establish a lesser defamatory meaning and demonstrate that it is true:

> In cases where the plaintiff selects words from a publication, pleads that in their natural and ordinary meaning the words are defamatory of him and pleads the meanings which he asserts they bear by way of false innuendo, the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different to that alleged by the plaintiff.
>
> *Pizza Pizza Ltd. v Toronto Star Newspapers Ltd.*, 1998 CanLII 18866 (ON CA)

(1) The plaintiff's alleged defamatory meanings

72. The plaintiff alleges defamatory meanings that do not flow from the publications. The following chart sets out the meanings he has pleaded and the defendants' response.[72] The lesser defamatory meaning of all the impugned expression, that the plaintiff's legal services were of poor quality and questionable value for his clients' money, is discussed in the next section.

pleaded meaning	**defendants' response**
The plaintiff is violating the rules of conduct of his profession.	None of the publications allege breaches of Ontario's *Rules of Professional Conduct* or any other province's equivalent to those rules. As explained at paragraphs 73 to 84 below, the plaintiff has likely engaged in professional misconduct by bringing this action and in his COVID-19-related litigation, but the publications do not allege this.
The plaintiff is being immoral.	None of the publications refer to the plaintiff's morality. A challenge to the value for money of a professional's services is not an attack on their morality in general.
The plaintiff is misappropriating donors' funds intended for the legal proceeding.	The defendants only described having received inquiries about the funds. They were clear that they did not have information concerning the funds, much less evidence of misappropriation.[73]

[72] SOC at ¶51, moving record #4, tab 1, pp 28–29.
[73] FAQ, moving record #1, tab 2, exhibit OOO, p 1455 (see schedule "D" for version with clickable links).

The plaintiff is not […] licensed to practice law [in British Columbia], and therefore charging twice (charging for a British Columbia law firms legal fees as well as his own) [*sic*].	The defendants did not allege that the plaintiff was "charging twice" but rather that a client who hires an out-of-province lawyer who in turn hires an in-province lawyer is "paying for two law firms".[74] This is a material distinction: while the plaintiff may dispute whether he was "charging twice", it is the case that a client in this situation is paying for two law firms, whether or not one discounts its fees for its involvement in the matter. There is no defamatory meaning in a statement that a lawyer is not licensed in a particular jurisdiction. The plaintiff was not licensed to practice in British Columbia.
The plaintiff is [engaging in] [e]xcessive and unwarranted billing.	Mr. Gandhi's only words on this issue were: "Rocco wants far too much money to get started".[75] Mr. Gandhi's meaning was specific and clear in the context of his email: the plaintiff was requiring A4C to pay too large of a fee to commence the action. The FAQ only describes, and hyperlinks to, a finding of the Federal Court that the plaintiff's bill of costs was "excessive and unwarranted".[76]
"Other lawyers" did not hold [the plaintiff] in high esteem.	The defendants did not make a general statement that other lawyers do not hold the plaintiff in high esteem. Mr. Gandhi's only words on this issue were: "Every lawyer I know that has reviewed Rocco's Ontario pleadings said it was very poorly drafted."[77] Mr. Gandhi was specific: lawyers who had considered the claim in the VCC action considered it to be poorly drafted. The FAQ simply hyperlinks to a lawyer's commentary on *Galati v Harper*.[78]
The plaintiff is making his money in other areas of law and therefore not being a constitutional lawyer.	There is no defamatory meaning to this statement other than the lesser defamatory meaning advanced by the defendants, discussed below, that the plaintiff's work in this area of law was not sufficiently valuable.
The plaintiff is purposely delaying the legal proceedings or purposely	The defendants have not published any statement about the plaintiff's intentions or motivation. The defendants

[74] FAQ, moving record #1, tab 2, exhibit OOO, p 1455 (see schedule "D").
[75] Gandhi email, moving record #1, tab 3, exhibit A, pp 1578–1581 (see schedule "C").
[76] FAQ, moving record #1, tab 2, exhibit OOO, p 1455 (see schedule "D").
[77] Gandhi email, moving record #1, tab 3, exhibit A, pp 1578–1581 (see schedule "C").
[78] FAQ, moving record #1, tab 2, exhibit OOO, p 1455 (see schedule "D").

delaying taking further steps in the legal proceeding. / The plaintiff is intentionally failing to advance the COVID-19 cases on which he has been retained.	only stated that the proceedings commenced by the plaintiff did not proceed in a timely manner.[79]
The plaintiff is conning innocent people/clients out of their money.	None of the publications pleaded allege that the plaintiff acted dishonestly or conned anyone.
The plaintiff is representing his client for subversive motives and not for the public good.	There is no reasonable reading of the defendants' publications, in whole or in particular, that implies a "subversive motive" on the part of the plaintiff. The plaintiff does not explain what this means in his statement of claim, but such meaning cannot be found in the statements made by the defendants. The defendants did not make any statements about the plaintiff's motives.

(2) The lesser defamatory meaning

73. There is ample evidence before the Court to establish the defence of justification for the defendants' expression.

74. The defendants' statement that other lawyers and courts had been critical of the plaintiff's work is true. The publication identified public statements by lawyers[80] and judges condemning the plaintiff. The evidence on this motion includes judicial statements about the plaintiff and his work, including that they are "scandalous and vexations",[81] "gonzo" and deserving to be "condemned without reservation",[82] "neither complete nor intelligible",[83] "frivolous, vexatious and an abuse of process of the court", "unintelligible",[84] "so defective that they cannot be cured by simple amendment" and having "no scintilla of a cause of action to be cured".[85]

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[79] Gandhi email, moving record #1, tab 3, exhibit A, pp 1578–1581 (see schedule "C"); FAQ, moving record #1, tab 2, exhibit OOO, p 1455 (see schedule "D").
[80] Georgialee Lang, "Supreme Court of Canada Refuses to Hear Appeal Where Counsel Argue 'Gonzo Logic'" (12 September 2017), hyperlinked in FAQ, *ibid.*
[81] *Sivak v Canada*, 2012 FC 272 at ¶55.
[82] *Galati v Harper*, 2016 FCA 39 at ¶35.
[83] *Da Silva Campos v Canada (Citizenship and Immigration)*, 2015 FC 884 at ¶12.
[84] *Wang v Canada*, 2016 FC 1052 at ¶31.
[85] *Al Omani v Canada*, 2017 FC 786 at ¶¶94–95.

75. The defendants accurately described the findings and comments of judges of the Federal Court and the Federal Court of Appeal in *Galati v Harper*.[86] The actual publications by the defendants were considerably more restrained than the facts found by the Courts.

76. The overall lesser defamatory meaning of the remainder of the defendants' publications, that the plaintiff's legal services were not sufficiently valuable, is true.

77. Courts have described the plaintiff's work in COVID-19 related proceedings as "bad beyond argument". The statement of claim in the VCC action is described in the defendants' publications as poorly drafted and likely to get struck in part because it engages unnecessary topics such as Bill Gates, 5G, vaccines, *etc*.[87] That pleading is 187 pages long, and primarily concerns conspiracy theories that the pandemic was pre-planned and executed by the WHO, Bill Gates, the World Economic Forum, and unnamed billionaires and oligarchs. This is a basis upon which this Court can objectively find that the plaintiff's legal services were of questionable or no value.

78. The notice of civil claim in the A4C action,[88] and the statement of claim in the federal employee action,[89] are prolix and unintelligible. They plead similar conspiracy theories involving Bill Gates and the World Economic Forum, microchips in vaccines, and other bizarre fantasies. The pleadings rely on inapplicable or non-existent statutes, including the *War Crimes Against Humanity Act*, the *Magna Carta*, and the *Criminal Code.*

79. The pleadings prepared by the plaintiff in this action, and in evidence before the Court, are improper. They disregard the rules against pleading argument and evidence, are prolix and inflammatory, and contain bizarre and irrelevant conspiracy theories that are incapable of proof. They are not merely technically deficient. They are an abuse of the court's process.

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[86] 2014 FC 1088 at ¶7; 2016 FCA 39 at ¶¶20–36.
[87] VCC SOC, moving record #1, tab 2, exhibit PP, pp 371–561.
[88] A4CC NOCC, moving record #1, tab 2, exhibit BBB, pp 833–1223.
[89] Statement of claim in Court File No. T-1089-22, moving record #1, tab 2, exhibit KKK, pp 1349–1398.

80. The plaintiff has an established record of ill-advised reliance on pseudo-law. In *Galati v Canada (Governor General)*, the Federal Court criticized him for invoking the *Magna Carta*:

> Secondly, the Magna Carta is not a constitutional instrument. While its seminal place in the development of our constitutional and legal principles is well known, its terms may be, and have been displaced by the legislation of Westminster and Parliament. As Professor Hogg writes, the Magna Carta is simply a statute "amenable to ordinary legislative change" […]. It "has no independent legal significance or legislative weight in the scheme of current Canadian legislation": *Harper v. Atchison* […].[90]

81. Despite this instruction, the plaintiff continued the practice in a claim in *COMER*, which the Court struck twice as disclosing no cause of action.[91]

82. These are hallmarks of bad lawyering. Advancing frivolous and bizarre claims and conspiracy theories incapable of proof and relying on pseudo-legal concepts are contrary to a lawyer's duties to their client and to the Court. It is no answer to say that the client wants a lawyer to say such things. A lawyer must never allow themselves to become a mere mouthpiece of their client.

> *Stewart v Canadian Broadcasting Corp.*, 1997 CanLII 12318 (ON SC) at ¶169

83. In *Meads v Meads*, Associate Chief Justice Rooke of the then-Court of Queen's Bench of Alberta described the menace that pseudo-legal concepts, including the invocation of imaginary, inapplicable or obsolete authorities such as the *Magna Carta* in litigation, pose to the justice system. He outlined the obligations of lawyers not to participate in such conduct:

> […] [A] lawyer who represents the target of an OPCA litigant faces a difficult task. However, as an officer of the court each lawyer has certain duties not only to the client, but also to the justice system as a whole.
>
> One duty is to not participate in or facilitate OPCA schemes. […] I reviewed a large number of OPCA litigation files in our Court. I was very disturbed and profoundly disappointed to see the number of occasions where an OPCA document was notarized by a practicing lawyer. […]
>
> This Court has […] drawn to the attention of the Law Society of Alberta that this kind of action is

[90] 2015 FC 91 at ¶74.
[91] 2016 FC 147 at ¶144.

> inappropriate for an officer of the court. It assists implementation of vexatious litigation strategies. In my view, a lawyer has a positive duty not to engage in a step that would 'formalize' (though typically in a legally irrelevant manner) an OPCA document. […]
>
> A second duty of lawyers in OPCA litigation is […] that a litigant has an obligation "... to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense ...". OPCA litigants mask their potential real disputes in a bog of cryptic documentation, spurious argument, irrelevant legal maxims, and stereotyped and caricatured court conduct. […]
>
> *Meads v Meads*, 2012 ABQB 571 at ¶¶642–646

84. The same court held that participation in pseudo-legal litigation is professional misconduct:

> […] Pseudolaw makes things worse, it aggravates the interface and interactions between stressed, criminal, and anti-social individuals and groups, and "mainstream" institutions like banks, police, government, and courts: Donald J Netolitzky, "A Revolting Itch: Pseudolaw as a Social Adjuvant" (2021) 22:2 Politics, Religion, and Ideology 164. Lawyers have been warned not to contribute to and facilitate that. Sadly, the message simply just does not appear to have been received. I hope this Decision will finally communicate to lawyers in Alberta that there will be consequences when they contribute to and facilitate pseudolaw schemes by notarizing or otherwise formalizing OPCA documents.
>
> Ms. Akpan clearly breached both her duties as a lawyer and as a notary. She has obviously and clearly disregarded a direction of this Court: Rule 10.49(1)(a). The fact that Ms. Akpan formalized a document that purports to cancel or terminate an Arrest Warrant of this Court obviously interferes with "... the proper or efficient administration of justice.": *Rule* 10.49(1)(b).
>
> *R v Ayyazi*, 2022 ABKB 836 at ¶¶60–61

85. A recent paper in the Alberta Law Review recognized the plaintiff's COVID-19-related litigation as an example of an emerging COVID-19-related variation of pseudo-legal litigation:

> Accredited lawyers are also engaged in questionable COVID-19-related litigation, for example […] Rocco Galati (*Action4Canada v British Columbia (Attorney General)*, […] *Vaccine Choice Canada v Justin Trudeau* […] *MA v De Villa*, 2021 ONSC 3828; *Gill v Maciver*, 2022 ONSC 1279).
>
> Donald J Netolitzky, The Dead Sleep Quiet: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada – Part II (2023) 60:3 Alta L Rev 795 at 817

86. The Law Society of Ontario has recognized that a lawyer has a professional obligation to decline instructions to advance conspiracy theories like those advanced by the plaintiff:

> It is clear from the evidence before us that the Lawyer has acted as counsel in a number of legal proceedings in which he has raised a series of bizarre, irrational and unsupportable arguments. These seem be focused on a belief in elaborate historical conspiracies involving the Vatican, the Queen, international banks, the Chinese government, drug companies and many others.

> During the course of this proceeding the Lawyer argued that some of the positions he had advanced had been at the direction of clients, the suggestion being that he did not accept or agree with some of them. We observe that at no point in his communications with other counsel does the Lawyer make such a distinction or in any way qualify or filter his positions.
>
> Even assuming this to be the case, at the end of the day, it makes no practical difference. A lawyer has a duty as an officer of the court not to advance arguments that are out of touch with reality, no matter what a client might wish.
>
> *Law Society of Upper Canada v Bogue*, 2017 ONLSTH 215 at ¶¶35–37

87. In this action, the plaintiff sues Ms. Toews for doing nothing more than making a complaint to the Law Society. The Law Society Tribunal has disbarred a lawyer who did so, finding that "this conduct was contrary to Rule 2.1 in compromising his duty to act with integrity and tended to bring discredit upon the legal profession."

> *Law Society of Ontario v Isaac*, 2022 ONLSTH 60 at ¶¶2, 138–173
> *Law Society of Ontario v Isaac*, 2022 ONLSTH 139 at ¶¶59, 97

88. While the plaintiff may debate the relative merits of government responses to the COVID-19 pandemic, vaccines, or other measures, the question of whether his legal services were valuable or appropriate in response to them is not controversial. They were not.

89. For the purposes of this motion, the plaintiff must show that there are grounds to believe that the defendants do not have a defence of justification. He has not done so. The lesser defamatory meaning of the defendants' publications is that the plaintiff's legal services are not sufficiently valuable for the defendants' purposes. This is unquestionably true.

3. The defendants have the defence of fair comment

90. The statements made on the Society's frequently asked questions page in respect of the plaintiff are factual and are not comment, as is most of Mr. Gandhi's email to Mr. Dicks. Three of the statements in Mr. Gandhi's email may be considered to be inferences from facts, and therefore comment: the assertions that, now that the Society had commenced a proposed class proceeding, it was likely to have carriage of a class proceeding in respect of COVID-19-related measures in

British Columbia, that the plaintiff "want[ed] far too much money to get started" and that "nothing ha[d] been accomplished in Ontario since [the plaintiff had] filed around [six months prior to January 2021]". These attract the defence of fair comment.

91. This defence requires that the comment (a) be on a matter of public interest; (b) be based on fact; (c) be recognizable as comment; and (d) be an opinion any (as opposed to a fair-minded) person could honestly express on the proven facts. A plaintiff may defeat the defence by showing that the defendant was actuated by express malice in making the comment.

> *Grant v Torstar Corp.*, 2009 SCC 61 at ¶31 [emphasis added]

92. Mr. Gandhi relies on the submissions at paragraphs 55 through 57 above with respect to the public interest, and at paragraphs 73 through 88 above with respect to their factual basis. The 'recognizable as comment' requirement will necessarily be met if the Court rejects that the expression at issue constitutes statements of fact.

93. With respect to the honest opinion requirement, the facts set out above provide ample basis for the opinions.

94. With respect to the issue of whether the plaintiff could fruitfully commence a class proceeding in British Columbia after the Society did, leaving aside whether this can even be characterized as defamatory, a person could honestly express that opinion based on jurisprudence considering the timing of the commencement of actions as a factor in carriage disputes.[92]

95. The plaintiff's clients have strongly implied that they have paid him $400,000 in respect of the A4C action, and A4C's corporate filings show a transfer of $200,000 to the plaintiff characterized as the "remainder" of the retainer. A person could honestly express the view that the plaintiff did not need A4C to pay him hundreds of thousands of dollars to commence that action.

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[92] See, *e.g.*, *Strohmaier v KS*, 2019 BCCA 388 at ¶39.

96. By January 2021, six months after the plaintiff delivered a claim in the VCC action, none of the defendants had filed statements of defence. A person could honestly express the opinion that "nothing ha[d] been accomplished" in the VCC action by January 2021.

97. Finally, there is no evidence that could support a finding of malice on Mr. Gandhi's part.

4. The defendants have the defence of qualified privilege

98. The defendants' publications were made on occasions of qualified privilege: the defendants had an interest or social and moral duty to publish the information at issue to the persons to whom they published it and the recipients had a corresponding interest or duty to receive it.

> *Bent*, *supra*, at ¶121

99. Mr. Gandhi and Mr. Warner had moral and social duties to publish the information they had concerning the quality of the plaintiff's services to the audience toward which those publications were aimed: those who sought to expend time and money, fruitfully, on challenges to COVID-19-related measures. That audience had an interest in receiving the information.

100. This privilege is defeated only where the dominant motive behind the words was malice or the scope of the occasion of the privilege was exceeded. Neither factor exists here.

101. With respect to malice, Professor Brown notes:

> It is the defendant's primary or predominant motive in publishing the defamatory remark that is determinative. [That] the defendant knows in advance that the statement will injure the plaintiff does not destroy the privilege if the occasion is being used for a proper purpose. […] "Common law malice does not refer to the defendant's general feelings about the plaintiff". […] [That] a defendant is annoyed, or despise and dislikes the plaintiff, or is even contemptuous of him, and takes special delight in offending or embarrassing him, and pleasure in the effect of the publication, or that he was angry and rude, […] and welcomed the opportunity to expose him, and was willing or inclined to injure him, will not defeat a privilege if it is otherwise exercised primarily for a proper purpose. […]. The motives which move a person […] are often missed and, therefore, judges […] should be slow to draw [an] inference that a defendant was actuated by improper motives. Passion is to be distinguished from malice.
>
> Brown, *supra*, at 16-46–16-54, BOA, tab 3, pp 57–73 [citations omitted]

102. There is no evidence on which the Court could find that Mr. Gandhi's purpose, much less

predominant purpose, in sending his email was express malice toward the plaintiff.

103. The plaintiff has not adduced any credible evidence with respect to Mr. Warner having a motive for the Society's publications other than to ensure that those who shared goals with the Society did not waste their resources on what he viewed as poor lawyering. That is a proper purpose, even if it negatively affects the plaintiff.

104. The defendants did not exceed the scope of the privileged occasion. Their communications were careful and tailored, and provided hyperlinks to the sources for the information.

E. The public interest in permitting the proceeding to continue does not outweigh the public interest in protecting the expression

1. The plaintiff has not demonstrated adequate harm

105. The plaintiff has not satisfied the prerequisites to the weighing exercise that the statute requires him to demonstrate: (i) the existence of harm and (ii) causation—that such harm was suffered because of the expression at issue. This case therefore does not even trigger the weighing exercise.

Pointes SCC, *supra*, at ¶68
Levant ONSC, *supra*, at ¶¶68–70, aff'd *Levant* ONCA, *supra*

106. Bald assertions of harm are insufficient. General damages in the nominal sense will ordinarily not be sufficient in assessing whether the harm is sufficiently serious to outweigh the public interest in protecting the expression. The statement of claim will not be taken at face value. Plaintiffs must provide a basis on which the judge can make some assessment of harm or likely harm. While this will not require a "fully developed damages brief", it will "almost inevitably include material providing some quantification of the monetary damages".

Pointes SCC, *supra*, at ¶71, 115
Bent, *supra*, at ¶144
1704604 Ontario Ltd. v Pointes Protection Association, 2018 ONCA 685 at ¶90, aff'd *Pointes* SCC, *supra*

107. A plaintiff must provide evidence for the motion judge to infer the existence of the harm and the relevant causal link, especially where sources other than the defendant's expression may have caused the plaintiff harm.

> *Pointes* SCC, *supra*, at ¶¶71–72
> *Rebel News v Al Jazeera Media*, 2021 ONSC 1035 at ¶73 ["***Rebel News***"]
> *BW (Brad) Blair v Premier Doug Ford*, 2020 ONSC 7100 at ¶¶64–67, aff'd 2021 ONCA 841
> *Bullard v Rogers Media Inc.*, 2020 ONSC 3084 at ¶¶94–102

108. Where a plaintiff has not led any specific evidence that they suffered any specific harm because of the publications, the motion judge must dismiss the action.

> *Levant* ONSC, *supra*, at ¶¶68–72
> *Rebel News*, *supra*, at ¶¶74–75

109. Here, the plaintiff has led no evidence of harm or likely harm to himself. He has referred only to a drop in the donations to a third party that is not a plaintiff in this action, the CRC. While deposing that his law firm (which is also not named in this action) is not the only recipient of CRC funding, he has refused to disclose what amounts he has received from the CRC (or from anyone). These refusals disentitle the plaintiff from relying on alleged damages.

110. Further, even if the CRC was a party, it would have no real likelihood of establishing that the defendants' expression with respect to the plaintiff and A4C affected it and that any drop in donations to the CRC was not simply the result of waning interest in COVID-19-related litigation after the measures had been lifted, of his failure to move actions forward, or significantly, of his failure to properly plead in his clients' actions.

2. In the alternative, the public interest in permitting the proceeding to continue does not outweigh the public interest in protecting the expression

111. To the extent that the plaintiff has suffered or is likely to suffer any harm because of the defendants' expression, the public interest in protecting this expression outweighs such harm.

112. The balancing exercise is the "crux of the analysis". In enacting section 137.1, the

legislature acknowledged that permitting a wronged party to seek vindication through litigation sometimes comes at too high a cost to freedom of expression. The legislation "serves as a robust backstop for motion judges to dismiss even technically meritorious claims if the public interest in protecting the expression that gives rise to the proceeding outweighs the public interest in allowing the proceeding to continue". It recognizes that "not every foot over the defamatory foul line warrants dragging the offender through the litigation process".

Pointes SCC, *supra*, at ¶¶61–62
Armstrong v Corus Entertainment Inc., 2018 ONCA 689 at ¶90

113. The public interest in protecting this expression lies at the high end of the spectrum.

114. There is a strong public interest in the public's freedom to evaluate lawyers' services and warn against incompetent lawyering. Courts have recognized the importance of reviews of products and other services. This debate is especially valuable in respect of professional services, where it can be difficult to appraise the quality of the service without specific training.

Seangio, *supra*, at ¶¶5, 10, 30–33, 89–91
New Dermamed, *supra*, at ¶¶7, 5–14, 25–27, aff'd 2019 ONCA 141
Moore, *supra*, at ¶¶9, 19–22

115. Here, the plaintiff conducts public interest litigation in respect of contentious issues about which large swaths of the public are passionate, and to which they are willing to collectively devote significant resources.

116. The stifling of reasonable public debate as to the value of a lawyer's services, tactics or approach through litigation may negatively affect public confidence in the legal system. It would bring the legal system into disrepute if a lawyer could drag those who question the value of their services through expensive litigation, at negligible cost to the lawyer, with impunity.

117. The open-ended nature of the weighing exercise provides a motion judge with the opportunity to scrutinize "what is really going on in the particular case before them". What is

really going on in this case is that the plaintiff is seeking to immunize himself from reasonable criticism for a litigation approach that is misguided, ineffective and arguably an abuse of process, and using the action to buttress what remains of the public's misplaced confidence in him. Section 137.1 is meant to screen out this kind of use of the court's and litigants' resources.

Pointes SCC, *supra*, at ¶80

F. The Court should award the defendants damages

118. The defendants seek $40,000 in damages, pursuant to section 137.1(9) of the Act, on the basis that the plaintiff commenced this proceeding for an improper purpose. The plaintiff commenced this action one day before he submitted a response to Ms. Toews' complaint. He did so despite not having suffered any real harm from the defendants' publications, and over a year after they were made. He and his clients have been making reference to this action to maintain confidence in his improper litigation approach. This is sufficient to establish that this action is a classic strategic lawsuit against public participation, in relation to which courts have found "a damages award is contemplated by the statute and reasonable".

United Soils Management Ltd. v Barclay, 2018 ONSC 1372 at ¶¶119–137, aff'd 2019 ONCA 128
Mazhar v Farooqi, 2020 ONSC 3490 at ¶¶90–99, aff'd 2021 ONCA 355
Seangio, *supra*, at ¶148

IV. ORDER SOUGHT

119. The defendants seek an order dismissing this action and awarding them $40,000.00 in damages and their full indemnity costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 28, 2023

Tim Gleason and Amani Rauff
Dewart Gleason LLP

SCHEDULE A

LIST OF AUTHORITIES

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1. Adam M Dodek, *Solicitor-Client Privilege* (Toronto: LexisNexis Canada, 2014)
2. *Pritchard v Ontario (Human Rights Commission*, 2004 SCC 31
3. *Slavutych v Baker et al*, [1976] 1 SCR 254
4. *Union Carbide Canada Inc. v Bombardier Inc.*, 2014 SCC 35
5. *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 155
6. *1704604 Ontario Ltd. v Pointes Protection Association*, 2020 SCC 22
7. *Fortress Real Developments Inc. v Rabidoux*, 2018 ONCA 686
8. *Levant v Demelle*, 2021 ONSC 1074
9. *Labourers' International Union of North America, Local 183 v Castellano*, 2019 ONSC 506
10. *Nanda v McEwan*, 2020 ONCA 431
11. *Canadian Thermo Windows Inc. v Seangio*, 2021 ONSC 6555
12. *New Dermamed Inc. v Sulaiman*, 2018 ONSC 2517
13. *910938 Ontario Inc v Moore*, 2020 ONSC 4553
14. *Bradford Travel and Cruises Ltd. v Viveiros*, 2019 ONSC 4587
15. *Bent v Platnick*, 2020 SCC 23
16. *DEI Films Ltd. v Tiwari*, 2018 ONSC 4423
17. *Hamalengwa v Duncan*, 2005 CanLII 33575 (ON CA)
18. *Isaac v Mesiano-Crookston et al.*, 2019 ONSC 6973
19. *Dooley v CN Weber Ltd.*, 1994 CanLII 7512 (ON SC)
20. *FK v White*, 2000 CarswellOnt 856 (Sup Ct J)
21. *Pahl v Steve Scherer Pontiac Buick GMC Ltd.*, 2005 CanLII 63775 (ON SCDC)
22. *Agribrands Purina Canada Inc. v Kasamekas*, 2011 ONCA 460

23. *A.I. Enterprises Ltd. v Bram Enterprises Ltd.*, 2014 SCC 12

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

25. *Caplan v Atas*, 2021 ONSC 670

26. *Bernier v Kinsella et al*, 2021 ONSC 7451

27. Raymond E Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed

28. *Pizza Pizza Ltd. v Toronto Star Newspapers Ltd.*, 1998 CanLII 18866 (ON CA)

29. *Stewart v Canadian Broadcasting Corp.*, 1997 CanLII 12318 (ON SC)

30. *Meads v Meads*, 2012 ABQB 571

31. Donald J Netolitzky, The Dead Sleep Quiet: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada – Part II (2023) 60:3 Alta L Rev 795

32. *Law Society of Upper Canada v Bogue*, 2017 ONLSTH 215

33. *Law Society of Ontario v Isaac*, 2022 ONLSTH 60

34. *Law Society of Ontario v Isaac*, 2022 ONLSTH 139

35. *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685

36. *Rebel News v Al Jazeera Media*, 2021 ONSC 1035

37. *BW (Brad) Blair v Premier Doug Ford*, 2020 ONSC 7100

38. *Bullard v Rogers Media Inc.*, 2020 ONSC 3084

39. *Armstrong v Corus Entertainment Inc.*, 2018 ONCA 689

40. *United Soils Management Ltd. v Barclay*, 2018 ONSC 1372

41. *Mazhar v Farooqi*, 2020 ONSC 3490

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

SCHEDULE C

EMAIL CORRESPONDENCE
FROM DEEPANKAR GANDHI TO DAN DICKS
DATED JANUARY 29, 2021
WITH CLICKABLE LINKS

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 January 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,

SCHEDULE D

EXCERPT OF
CANADIAN SOCIETY FOR THE ADVANCEMENT OF SCIENCE IN PUBLIC POLICY
'FREQUENTLY ASKED QUESTIONS' WEBPAGE
AS OF AUGUST 16, 2022
WITH CLICKABLE LINKS

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.

GALATI	- and -	**TOEWS et al.**	Court File No.: CV-22-683322
Plaintiff		Defendants	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

FACTUM OF THE MOVING PARTY DEFENDANTS

(motions pursuant to
section 137.1 of the *Courts of Justice Act*
and to strike evidence)

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