CITATION: Galati v. Toews et al, 2023 ONSC Number
COURT FILE NO.: CV-22-00683322-0000
DATE: 20231211

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

BEFORE: Justice Chalmers

COUNSEL: *R. Galati,* for the Plaintiff

T. Gleason, for the Defendants

HEARD: September 12, 2023, orally by videoconference

REASONS FOR DECISION

OVERVIEW

[1] The Defendants move under s. 137.1 of the *Courts of Justice Act*, R.S.O. c. C.43 (the *Act*) to dismiss the action on the basis that it unduly limits their freedom of expression on matters in the public interest.

[2] The Plaintiff is a lawyer who commenced litigation on behalf of advocacy organizations in relation to COVID-19-related government mandates. He alleges that the Defendants made defamatory comments about him which have affected his reputation and interfered with his relationship with his clients.

[3] The Defendants argue that the impugned expression was with respect to the way the Plaintiff was conducting litigation regarding the government-imposed restrictions which were enacted in response to the COVID-19 pandemic. The Defendants state that the harm likely to have been suffered by the Plaintiff does not outweigh the public interest in protecting the expression.

[4] For the reasons that follow, I am satisfied that the Defendants are entitled to the relief sought. I dismiss the Plaintiff’s action.

FACTUAL BACKGROUND

The Parties

[5] The Plaintiff, Rocco Galati, is a lawyer licensed to practice law in Ontario. Vaccine Choice Canada (VCC) and Action4Canada (A4C) are advocacy groups and have been the Plaintiff's clients since 2015 and 2020 respectively. The Plaintiff is the principal of Canadian Rights Centre Inc. (CRC) which is a corporation which receives funding for COVID-19 litigation. CRC is not a party to this action.

[6] The Defendant, the Canadian Society for the Advancement of Science in Public Policy (Society) is a volunteer-run, non-profit society that is pursuing litigation against the British Columbia government with respect to the government's response to the pandemic. The Defendant, Kipling Warner is the executive director of the Society, and the Defendant, Dee Gandhi is the treasurer of the Society. The Defendant, Donna Toews has donated funds to the VCC and A4C.

The Ontario Action

[7] On July 6, 2020, the Plaintiff commenced an action in Ontario on behalf of VCC and eight individuals. The Statement of Claim consists of 187 pages. In that action, the Plaintiffs make claims of a conspiracy dating back to 2000 involving Bill Gates, Justice Trudeau, the World Economic Forum, the World Health Organization and Chief Public Health Officer, Theresa Tam. The claim alleges that the defendants are involved in a conspiracy to have "video surveillance satellites" that will "blanket the Earth". The alleged conspiracy is a "massive and concentrated push for mandatory vaccines of very human on the planet" with vaccine chips and other devices to allow for electronic surveillance. It is further alleged in the claim that the defendants knowingly propagated a groundless and false pandemic to assist in creating a "New (Economic) World Order".

[8] The Plaintiff held a news conference in July 2020. He announced that he had commenced the VCC action and that he intends to seek an injunction with respect to vaccines and masking measures. In September 2020, the Plaintiff conducted an interview in which he stated that he was "hoping the injunction would be heard before the Christmas holidays". The Plaintiff did not move for injunctive relief in the VCC action.

The British Columbia Actions

[9] A4C is an organization based in British Columbia. It began raising money to be used to fund a proposed class action with respect to government-mandated Covid-19 restrictions, in that province. In the fall of 2020, A4C retained the Plaintiff to bring the action. The retainer was announced on its website in October 2020. By January 2021, the Plaintiff had not commenced an action in British Columbia.

[10] On January 26, 2021, a proposed class action was commenced by the Society in British Columbia. The Defendants were The Queen in Right of the Province of British Columbia and Dr. Bonnie Henry in her capacity as the Provincial Health Officer. The proposed class action consisted of all persons residing in British Columbia who suffered personal injury and other damages caused by the government restrictions in response to the pandemic.

[11] On August 17, 2021, the Plaintiff commenced a proposed class action in British Columbia on behalf of A4C. The claim is 379 pages long. The Plaintiff's co-counsel in British Columbia was Lawrence Wong, an immigration lawyer. The A4C claim makes similar allegations to those in the VCC Ontario claim. In the A4C claim it is alleged that there is a "declared agenda to impose global mandatory vaccination, ID chipping, testing and immunity certification on all citizens. This global agenda has been in the works for decades". It is also alleged that the pandemic was created as a cover and pretext to, among other things, effect a massive bank and stock market bail-out, and to 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 [….]".

[12] On August 29, 2022, Justice Ross struck out the A4C Claim, with leave to amend. He ordered costs against the personal plaintiffs in that action. In striking the claim, Justice Ross stated as follows:

> [….] [T]he [notice of civil claim] [….] 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".

Mr. Warner's Research into the Plaintiff

[13] Beginning in early 2021, the Society's executive team and volunteers were receiving enquiries 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 Plaintiff. Also, by this time there was commentary in the media with respect to the quality of the allegations in the actions commenced by the Plaintiff on behalf of VCC and A4C.

[14] Mr. Warner conducted research into the Plaintiff, and learned of the following:

a. that the Plaintiff was not licensed to practice law in British Columbia for any extended period of time;

b. that he was primarily a tax lawyer;

c. in *Sivak v. Canada*, 2012 FC 272, the Federal Court struck portions of a claim advanced by the Plaintiff, calling it "scandalous and vexatious";

d. in *Galati v Harper*, 2014 FC 1088, the Federal Court held that the Plaintiff's bill of costs was "excessive and unwarranted". The appeal was dismissed by the Federal Court of Appeal. The Court noted that the Plaintiff had alleged that the courts had colluded with the government. The Court stated that this argument does not serve the administration of justice and deserves to be "condemned without reservation";

e. in *Da Silva Campos v. Canada (Citizenship and Immigration)*, 2015 FC 884, the Federal Court struck the Plaintiff'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 Plaintiff'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; and

g. in *Al Oman v. Canada*, 2017 FC 786, the Federal Court commented that it did not see a "scintilla of an argument" and the claim was struck without leave to amend.

[15] The Society, including Mr. Warner and Mr. Gandhi were of the view that the VCC Claim was improperly drafted, and that the public should be informed about the Plaintiff's approach. 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 Plaintiff and the organizations he represented such as VCC and A4C.

The Impugned Expressions

i) E-mail to Journalist Dicks January 29, 2021

[16] On January 29, 2021, Mr. Gandhi e-mailed Mr. Dicks of the web publication, Press for Truth. He outlined the Society's concerns and the reasons for not affiliating with the Plaintiff and A4C. The e-mail includes hyperlinks supporting each statement. The e-mail in its entirety reads as follows:

> 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, its the first to the courthouse 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 practise 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 practise 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 like. 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

[17] Mr. Gandhi stated that the purpose in sending the e-mail was to advise the public that the Society had commenced a separate proposed class action in British Columbia, and that the Society was different from A4C and intended to take a different approach. Mr. Gandhi stated that he believed the public ought to be informed about the Plaintiff's approach before donating their time and funds to organizations affiliated with him. He believed the readership of the Press for Truth publication had an interest in knowing the status of the proposed class proceedings, the relative chance of success of the action brought by the Society and the Society's position on how to best litigate the issues. He deposed that he sent the e-mail in good faith.

[18] The Plaintiff argues that the purpose of the e-mail was not the public interest but instead was to interfere in the relationship between a lawyer and his clients.

ii) Society's Frequently Asked Questions

[19] In June 2021, the Society published in its Frequently Asked Questions (FAQ) section of its website the question, "Are you affiliated with Rocco Galati? If not, why not? The Society stated that it was not affiliated with the Plaintiff and provided its reasons. Each statement is footnoted and supported by hyperlinks. The FAQ in its entirety reads as follows:

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.

iii) Ms. Toews Complaint to the LSO

[20] Ms. Toews is a VCC and A4C donor. She donated $1,000 to each organization. When she donated to VCC, she was advised that the funds were going directly towards the legal fees for the upcoming constitutional challenge. She heard nothing further. When she followed up on December 20, 2021, she was told that the lawyer working on the matter did not want to disclose what he was doing, so as to give any advantage to the opposition.

[21] 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 lawyer and former Treasurer of the LSO, Gavin MacKenzie. He prepared Ms. Toews' complaint to the LSO. Ms. Towes, in her affidavit and cross-examination, stated that she submitted the complaint in good faith believing the LSO would investigate her concerns. Ms. Toews complaint to the LSO 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 $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).

[22] The LSO provided the Plaintiff with Ms. Toews' complaint on May 19, 2022. The Plaintiff was asked for his response to the regulatory issues raised by Ms. Toews. The Plaintiff commenced this action on June 28, 2022. He provided his response to Ms. Toews' complaint to the LSO on June 29, 2022. He enclosed a copy of the Statement of Claim with his response. In September

2022, the LSO advised Ms. Toews that it would not take further steps because the Plaintiff had commenced the action.

iv) Oral Communication Between Mr. Warner and an Unidentified Person

[23] The Plaintiff alleges in the Claim that Mr. Warner had orally communicated to a person who does not want to be identified, that he wants "to see to it that Rocco Galati is disbarred and charged with Fraud." It is also alleged that at an unidentified time Mr. Warner stated to VCC President Ted Kuntz that because the Society "filed first" that the A4C action had to be withdrawn and all donations to A4C returned.

THE ISSUES

[24] The following issues will be addressed in this endorsement:

> Issue #1 – Preliminary evidentiary issue – Is the evidence advanced by the Plaintiff with respect to communications with Lee Turner and Alicia Johnson protected by a solicitor-client privilege or arise from a confidentiality agreement;
>
> Issue # 2 - Have the Defendants established that this proceeding arises from an expression that relates to a matter in the public interest?
>
> Issue # 3 – If so, has the Plaintiff established:
>
> 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 to the proceedings;
> 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.
>
> Issue # 4 – Are the Defendants Entitled to Damages?

ANALYSIS and DISCUSSION

Issue #1 – Does the evidence advanced by the Plaintiff allege communications that are protected by a solicitor-client privilege or arise from a confidentiality agreement?

Lee Turner

[25] The Plaintiff relies on a text message exchange between Mr. Turner and Mr. Warner in March 2023 to support his claim in defamation. The Plaintiff states that Mr. Warner made malicious and defamatory statements about the Plaintiff in the text message to Mr. Turner. The Defendants argue that the evidence of the communications between Mr. Warner and Lee Turner is protected by solicitor-client privilege and is inadmissible.

[26] Mr. Warner, in his affidavit affirmed April 12, 2023, states that as the Society's executive director he regularly consults with and retains lawyers. Mr. Turner is a lawyer licenced by the Law Society of British Columbia. According to Mr. Warner, Mr. Turner had approached him on more than one occasion to provide legal advice concerning the Society's work and litigation strategy. Mr. Warner states that he understood his discussions with Mr. Turner were confidential and protected by solicitor-client privilege.

[27] The Plaintiff filed an affidavit of Mr. Turner sworn June 23, 2023. Mr. Turner confirmed that he had a text message exchange with Mr. Warner. He states that he has never been on record for Mr. Warner or the Society. He states that he has never been retained by Mr. Warner or the Society. He denies that there was any suggestion by Mr. Warner that their communications were confidential. He states that if there was a suggestion of a solicitor-client relationship, he would not have disclosed the content of the text exchange to the Plaintiff.

[28] There is a disagreement between Mr. Warner and Mr. Turner as to whether there was a solicitor-client relationship. I am of the view that it is not necessary for me to resolve the issue for the purposes of this motion. I am required to determine whether the Claim is to be dismissed under s. 137.1 of the *Act*.

[29] There is nothing in the Statement of Claim that alleges a text communication between Mr. Warner and Mr. Turner. The Plaintiff has not sued on these statements, and they do not form part of the allegations made against the Defendants. I find that the text message communication between Mr. Turner and Mr. Warner is not relevant for the purpose of this motion.

Alicia Johnson

[30] The Plaintiff also filed an affidavit sworn by Alicia Johnson on March 11, 2023. She deposed that on August 30, 2021, Mr. Warner had reached out to her on the Signal App, which was used to communicate with those that supported the Society's legal action. According to Mr. Warner, Ms. Johnson executed a Non-Disclosure Agreement (NDA) to allow her to stay in the Signal App group.

[31] Ms. Johnson deposes that Mr. Warner told her that he would like Tanya Gaw and Ted Kuntz of A4C "file a formal complaint against Rocco Galati to the Law Society and pursue having him disbarred, and further, to have criminal charges laid against him for financial fraud." Ms. Johnson was cross-examined on her affidavit. She testified that she believed that Mr. Warner believed all the things he said to her to be true.

[32] Mr. Warner filed an affidavit affirmed April 12, 2023. He states that Ms. Johnson was bound by the NDA to not disclose the content of any discussion among persons who are members or directors of the Society. He understood that all communications he had with Ms. Johnson on August 30, 2021, were protected by confidentiality under the NDA. The Plaintiff argues that if the NDA was breached by Ms. Johnson, the remedy is against Ms. Johnson and does not affect the admissibility of the evidence.

[33] There are four fundamental conditions for the establishment of a privilege against the disclosure of communications; (1) the communication must originate in a confidence that the communication will not be disclosed; (2) the element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; (3) the relation must be one which in the opinion of the community ought to be sedulously fostered; (4) the injury that would inure to the relation by the disclosure of the communications must be greater than the benefit gained or the correct disposal of litigation: *Slavutych v. Baker*, [1976] 1 SCR 254, at p. 260-263.

[34] I am of the view that the four fundamental conditions are met in this case. There was an NDA that applied to communications about the Society. The nature of the communication falls within the broad scope of concerning the Society. The purpose of the NDA was to foster an open exchange with respect to Society matters. The parties to the NDA agreed to the desirability of the preservation of the confidential nature of the communication. It is my view that the communication between Mr. Warner and Ms. Johnson were subject to privilege, and her evidence with respect to the statements attributed to Mr. Warner is not admissible on this motion.

[35] If I am wrong with respect to the issue of privilege, I am of the view that the statements she alleges that Mr. Warner made to her, were comment and were protected by qualified privilege. The defences of fair comment and qualified privilege are addressed later in these reasons.

Issue # 2 –The Threshold Burden

Have the Defendants established that the Action arises from an expression that relates to a matter of public interest?

The Legal Principles

[36] The Court of Appeal described the purpose of Section 137.1 of the *Act* as follows:

> Section 137.1 seeks to prevent an abuse of process known as "strategic lawsuits against public participation" (SLAPPS): the practice of initiating lawsuits not to vindicate *bona fide* claims, but rather to deter a party from expressing a position on a matter of public interest or otherwise participating in public affairs. As this court recently explained in *Mondal v. Kirkconnell*, 2023 ONCA 523, at para. 29. "s. 137.1 is designed to allow defendants to have strategic or abusive actions – typically defamation proceedings – dismissed at an early stage in order to protect the public interest in freedom of expression": *Volpe v. Wong-Tam*, 2023 ONCA 680, at para. 2.

[37] The Supreme Court of Canada described a "SLAPP" action as follows:

> A SLAPP is a tactical action that seeks to suppress expression on matters of public interest. The goal of a SLAPP is not necessarily a legal victory, but a political one: to intimidate and suppress critics with the threat of costly litigation. [….] A key feature of a SLAPP is thus the strategic use of the legal system to silence contrary viewpoints; *Hansman v. Neufeld*, 2023 SCC 14, (*Hansman*), at para. 46

[38] On a motion brought pursuant to s.137.1, the defendant has the onus to establish that the expression is one in the public interest. An expression will be found to be a matter of public interest if "some segment of the community" has a genuine interest in receiving the information on the subject. In determining whether the expression is on matters of public interest, the court is to apply a "broad and liberal interpretation".

[39] The first step in the analysis is to determine what the impugned expression was about, or what it pertained to. The determination of the "public interest" must be informed by the purpose of the legislation which is to safeguard the value that is public participation in democracy. The enquiry is contextual in nature: *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730 (*Sokoloff*), at para. 19. There is no quantitative assessment of the expression at this stage of the analysis: *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at para. 84. "Motive, merit and manner are irrelevant" in determining whether the expression relates to a matter of public interest: *Sokoloff*, at para. 25.

[40] As noted in *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020] 2 SCR 587 (*Pointes Protection*), at para. 28:

> This is important, as it is not legally relevant whether the expression is desirable or deleterious, valuable or vexatious, or whether if helps or hampers the public interest – there is no qualitative assessment of the expression at this stage. The question is only whether the expression pertains to any matter of public interest, defined broadly. The legislative background confirms that this burden is purposefully not an onerous one.

What Were the Impugned Expressions About?

[41] The Plaintiff argues that the statements made by the Defendants are "fortuitous and personal attacks". The Plaintiff also argues that there is no "public interest" in "stand-alone defamatory, malicious, fortuitous and unnecessary personal attacks, and perpetual personal attacks on professionalism and false allegations of fraud targeting the private practice of a private lawyer".

[42] The Plaintiff relies on *Sokoloff*. In that case, the defendant, Tru-Path was carrying signs in front of the plaintiffs' offices because it was concerned that the law firm was not paying what was owed to Tru-Path. The defendants argued that the public has an interest in knowing whether a lawyer complies with their undertakings to pay its service providers. However, as noted by the Court of Appeal, not every lawyer's transaction is a matter of public interest. The court stated that what the expression was really about was a private commercial dispute between the parties that did not rise to the level of a matter of public interest.

[43] The Defendants argue that in this case, the impugned expression is not a private dispute with a law firm but instead is a matter of public interest. The Plaintiff commenced a proposed class action in British Columbia. The Defendants state that the potential members of the class is a segment of society that would have an interest in the expression. The class actions are constitutional challenges to legislation which affects the entire public. The members of the public who have donated money to support the litigation would also have an interest in the expression.

[44] In *Gill v. McIver*, 2022 ONSC 1279 (*Gill*), the Plaintiff was acting on behalf of two doctors. He brought an action against more than 20 defendants for defamation and other purported causes of action. Dr. Gill was an outspoken critic of prevailing public health advice on how to prevent or slow COVID-19 infection. Dr. McIver had criticized Dr. Gill for taking inflammatory positions with respect to the pandemic. The court found that the communications made by Dr. McIver pertain to the public debate about the pandemic and was a matter of public interest: at paras. 66, 67.

[45] The pandemic and the governments' response affected virtually all Canadians. The actions commenced by A4C, and the Society are proposed class actions. I am of the view that segments of the public have a genuine interest in receiving information about a lawyer who is acting for plaintiffs in a proposed class action that challenges the government's response to the pandemic.

[46] The expression relates to the differences between the actions commenced by the Plaintiff on behalf of VCC and A4C, and the action commenced by the Society. The expression also relates to the use of funds donated to be used in the litigation to challenge the government's response to the pandemic. Those members of the public who donated money for the litigation would have a genuine interest about the quality of legal representation and how their donations are being used.

[47] I am satisfied that the Defendants have met their onus to establish that the expression relates to a matter in public interest. Having found that the expression relates to a matter in the public interest, I now turn to the merits-based hurdle.

Issue # 3 – Merits-Based Hurdle

[48] If the defendant establishes that the expression relates to a matter in the public interest, the action is to be dismissed unless the plaintiff satisfies the court that (1) there are grounds to believe that the proceeding has substantial merit, (2) there are grounds to believe that the defendant has no valid defence and (3) the harm suffered by the plaintiff is sufficiently serious such that the public interest in allowing the proceeding to continue outweighs the public interest in protecting that expression.

[49] With respect to a plaintiff's onus to meet the merits-based hurdle, the Supreme Court stated in *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645 (*Bent*):

> [87] In *Pointes Protection*, this Court clarifies the fact that unlike s. 137.1(3), which requires a showing on a balance of probabilities, s. 137.1(4)(a) expressly contemplates a "grounds to believe" standard instead: para. 35. This requires a basis in the record and the law — taking into account the stage of the litigation — for finding that the underlying proceeding has substantial merit and that there is no valid defence: para. 39.
>
> [88] I elaborate here that, in effect, this means that *any* basis in the record and the law will be sufficient. By definition, "*a* basis" will exist if there is a single basis in the record and the law to support a finding of substantial merit and the absence of a valid defence. That basis must of course be legally tenable and reasonably

> capable of belief. But the "crux of the inquiry" is found, after all, in s. 137.1(4)(b), which also serves as a "robust backstop" for protecting freedom of expression: *Pointes Protection*, at paras. 48 and 53.

Part 1 - Has the Plaintiff Established That There are Grounds to Believe that the Proceeding has Substantial Merit

[50] The Plaintiff must establish that there are grounds to believe the proceeding has substantial merit. The "grounds to believe" standard requires that the claims are legally tenable and reasonably capable of belief. To have "substantial merit" a proceeding must have a "real prosect of success". This requires that the claim be legally tenable and supported by evidence that is reasonably capable of belief: *Pointes Protection*, at paras. 48, 49. The Plaintiff is not required to demonstrate a likelihood of success, but success must tend to weigh more in favour of the Plaintiff: *Bent*, at para. 90.

Defamation Claims

[51] Here, the Plaintiff states that the defamation claims have a reasonable likelihood of success. He states that there is no dispute that the Defendants published and uttered the comments. He argues that the words used are defamatory and explicitly or by innuendo tend to lower the Plaintiff's reputation in the eyes of a reasonable person.

[52] To succeed in an action in defamation, the expression must be false. Here, the expression set out in the e-mail to Mr. Dicks and the FAQ on the Society's website include hyperlinks which provides the factual foundation for each statement. The hyperlinks include judicial decisions in which judges criticized the Plaintiff and his legal work. The expressions do not refer to fraud, dishonesty, or professional misconduct. In reading the e-mail to Mr. Dicks and the FAQ as a whole, I am unable to conclude that the expression is a reckless disregard for the truth. On the contrary, it is my view that in the e-mail to Mr. Dicks and the FAQs on the Society website, stuck to known and provable facts and did not venture into defamatory speech.

[53] In the Statement of Claim, the Plaintiff alleges that Mr. Warner, at an unidentified time made defamatory statements to an unidentified person. I am of the view that the Plaintiff has not pleaded the statements with the particularity required by the *Libel and Slander Act*, R.S.O. c. L.12. Although the Claim does not plead the statements with sufficient particularity, it appears that the statement was made to Ms. Johnson. In her affidavit she deposed that Mr. Warner said he would like to see the Plaintiff disbarred and charged with fraud.

[54] As noted earlier in these reasons, it is my view that the statement attributed to Mr. Warner was a confidential statement and is inadmissible. However, if I am wrong about the admissibility of the statement, it is my view that the statement is not defamatory. This is Mr. Warner's opinion. It is in the nature of comment as opposed to a defamatory statement.

[55] The Plaintiff also alleges that Mr. Warner said to Mr. Kuntz that because the Society "filed first" that the A4C action had to be withdrawn and all donation to A4C be returned. There is no reference to the Plaintiff in the statement attributed to Mr. Warner and no reference to fraud,

dishonesty, or professional misconduct. I am of the view that this statement is comment, and not defamatory. A person could honestly express this opinion on the proven fact that the Society was the first to file, and on caselaw that the timing of the commencement of action is a factor in a dispute about who has to carriage of the class action: *Strohmaier v. KS*, 2019 BCCA 388, at para. 39.

Abuse of Process Claims

[56] The action against Ms. Toews is with respect to her complaint to the LSO. The complaint to the LSO was prepared by experienced counsel. The complaint is entirely factual and does not make reference to fraud or dishonesty. I am of the view that the complaint to the LSO is not defamatory.

[57] The Plaintiff pleads that the complaint was an abuse of process. Absolute privilege protects any person who makes a complaint to a quasi-judicial regulatory authority regardless of the defendants' motives: *Isaac v. Mesiano-Crookston,* 2019 ONSC 6973, at paras. 41-61. This issue was addressed by the Court of Appeal in *Hedary Hamilton PC v. Dil Muhammad*, 2013 ONSC 4938 (*Hedary Hamilton*):

> In *Hamalengwa v. Duncan*, 2005 CanLII 33575 (ON CA), […] the Court of Appeal made it clear that a letter that initiates a Law Society investigation and/or hearing is not actionable as defamation or as any other cause of action. Cronk J.A. stated the point as pointedly as possible (at para. 8): "The respondent's letter was sent to the Law Society, the quasi-judicial body that is statutorily responsible for investigating and disciplining lawyers in Ontario, and so is protected by absolute privilege": at para. 50.

Civil Conspiracy Claims

[58] The Plaintiff claims that the Defendants are liable for civil conspiracy. To properly plead a civil conspiracy, a Statement of Claim must allege; (1) the parties to the conspiracy and the relationship of one to the other; (2) the agreement between or amongst the defendants to conspire, including particulars as to the time, place and mode of agreement, (3) the precise purpose or object of the conspiracy; (4) the overt acts alleged to have been done by each of the alleged conspirators in pursuance and furtherance of the conspiracy, including the time and place and nature of the acts; and (5) the injury and damage cause to the plaintiff as a result of the conspiracy: *Ontario Consumers Home Services v. Enercare Inc*., 2014 ONSC 4154, at para. 24.

[59] It is my view that the Plaintiff's pleading does not properly allege conspiracy. The Statement of Claim does not identify the conduct that constitutes the alleged conspiracy. There is no allegation or evidence of any agreement to do anything that was unlawful or for the primary purpose of harming the Plaintiff.

[60] It is alleged that Ms. Toews participated in a conspiracy by filing the LSO complaint. It is alleged that Mr. Warner referred Ms. Toews to Mr. MacKenzie who assisted her in submitting the

complaint. The filing of an LSO complaint is not an unlawful act and is protected by absolute privilege: *Dooley v. CN Weber*, 1994 CanLII 7300, and *Hedary Hamilton*, at para. 50.

[61] It is also my view that the conspiracy claim is derivative of the defamation claim. I am satisfied that there are no grounds to believe that the conspiracy claim has merit.

Unlawful Means Claim

[62] The Plaintiff brings an 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: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd*., 2014 SCC 12, at para. 5. The Plaintiff has not identified an act the Defendants committed against a third-party that caused the Plaintiff harm.

Intentional Infliction of Mental Suffering

[63] The Plaintiff has also brought a claim for intentional infliction of mental suffering. The Plaintiff must establish conduct that is (a) flagrant and outrageous, (b) calculated to produce harm and (c) which results in visible and provable illness: *Merrifield v. Canada (Attorney-General)*, 2019 ONCA 205, at paras. 44-45. The Plaintiff has not adduced evidence or asserted allegations that the Defendants' conduct caused an illness or suffering. I am of the view that the Plaintiff had not pleaded the elements of this cause of action. In addition, the claim for intentional infliction of mental suffering is entirely derivative of the defamation claim.

Harassment

[64] The Plaintiff also brought a claim in harassment. This tort relates to extreme serial harassment: *Caplan v. Atas*, 2021 ONSC 670, at paras. 1-6. The Statement of Claim alleges four fairly discrete expressions. The Defendants did not directly communicate with the Plaintiff. I am of the view that the Defendants' expression does not fall within the scope of ongoing indecent communication. In addition, the harassment claim is entirely derivative of the defamation claim.

[65] I conclude that none of the causes of action alleged by the Plaintiff have a real prospect of success. I find that the Plaintiff has not satisfied his burden to establish that that are grounds to believe that the proceeding has substantial merit.

Part 2 - Has the Plaintiff Established that There are Grounds to Believe that the Defendants have No Valid Defence?

[66] The Plaintiff has the onus to establish that the Defendants do not have a valid defence to the action. If there is any valid defence, the Plaintiff has not met its burden. As stated by the Supreme Court in *Points Protection*:

> The word *no* is absolute, and the corollary is that if there is *any* defence that is valid, then the plaintiff has not met its burden and the underlying claim should be dismissed. As with the substantial merit prong, the motion judge here must make a

> determination of validity on a limited record at an early stage in the litigation process — accordingly, this context should be taken into account in assessing whether a defence is valid. The motion judge must therefore be able to engage in a limited assessment of the evidence in determining the validity of the defence: at para. 58.

[67] It is not necessary for the court to conclude that the defences will succeed. It is only necessary to determine whether the defences have a reasonable chance of success: *Bernier v. Kinsella*, 2021 ONSC 7475, at para. 65.

Absolute and Qualified Privilege

[68] The Defendants raise the defence of absolute privilege with respect to the claim arising out of Ms. Toews' complaint to the LSO. The only facts pleaded as against Ms. Toews is that she made a complaint to the LSO. Absolute privilege protects any person who makes a complaint to a quasi-judicial body, including the LSO: *Hedary Hamilton,* at para. 50. I am satisfied that absolute privilege is a complete answer to the claim brought against Ms. Toews.

[69] The Defendants also raise the defence of qualified privilege. Qualified privilege applies if the person making a communication has an interest or duty to publish the information to the person to whom it is published, and the recipient has a corresponding interest or duty to receive it. The defence of qualified privilege can be defeated by a finding of malice; *Bent,* at para. 121.

[70] The Defendants state that they had an interest or social and moral duty to publish the information at issue to the persons to whom it was published, and the recipients had a corresponding duty to receive the information. Mr, Gandhi and Mr. Warner state that they felt obligated to provide information about the Plaintiff's services to the persons who had donated funds to the COVID-19 legal challenges.

[71] The defence of qualified privilege can be defeated by a finding of express malice. The Plaintiff must show that the Defendants' dominant motive was improper. Malice in this context means not just ill will but any ulterior motive which conflicts with the interest or duty created. As stated in *Chopak v. Patrick*, 2020 ONSC 5431 (Div. Ct.) at para. 58:

> […] 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 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*, 2012 ONSC 6641 (Div. Ct.), at paras. 54-57.

[72] In the case of Ms. Johnson, she was a member of the Society and had joined the Signal App and executed the NDA for the purpose of receiving communication about the Society. Mr. Warner was the president of the Society and communicated to Ms. Johnson about Society

business. I am of the view that in these circumstances that the defence of qualified privilege with respect to the communications with Ms. Johnson has a reasonable chance of success.

Justification

[73] The Defendants raise the defence of justification. To establish this defence, a defendant need not show the literal truth of the statements made, and slight inaccuracies in details are not material. The defence is made out if the publication is "substantially" true in the words' natural and ordinary meaning. The issue is whether the words have a different effect on the reader than that which the truth would have produced: *DEI Films Ltd. v. Tiwari*, 2018 ONSC 4423, at para. 30.

[74] In the e-mail to Mr. Dicks dated January 29, 2022, Mr. Gandhi supported the statement with hyperlinks to support the statements. The statements made in the FAQ are also supported by hyperlinks that provides that factual support for the statements. The statements made in the e-mail to Mr. Dicks and in the FAQ, that the Plaintiff has been criticized by the courts in other cases, is supported by the following decisions: *Sivak v. Canada*, at para. 55, *Galati v. Harper*, at para. 35, *Da Silva Campos v. Canada*, at para. 12, *Wang v. Canada*, 2016 FC 1052, at para. 31, and *Al Omani v. Canada* 2017 FC 786, at para. 94-95.

[75] In the e-mail to Mr. Dicks, Mr. Gandhi states that lawyers who reviewed the Ontario claim, "said it was very poorly drafted" and "will most likely get struck". I am of the view that there is justification for this comment. The Ontario pleading is prolix and argumentative. The claim advances pseudo-legal concepts and conspiracy theories that the pandemic was pre-planned and executed by the WHO, Bill Gates, the World Economic Forum and unnamed billionaires and oligarchs. The similarly drafted A4C claim was struck by Justice Ross. In doing so, he described the pleading as "bad beyond argument".

[76] I find that the Plaintiff failed to show that there are grounds to believe that the Defendants' defence of justification is not a valid defence and has no reasonable prospect of success.

Fair Comment

[77] The Defendants also assert the defence of fair comment. The statements made in the email and on the FAQ are primarily factual. However, some of the comments expressed are the opinion of Mr. Gandhi and the Society. The defence of fair comment, "is premised on the idea that citizens must be able to openly declare their real opinions on matters of public interest without fear of reprisal in the form of actions for defamation": *Hansman*, at para. 95.

[78] The defence of fair comment requires the comment to be (a) on a matter of public interest, (b) be based on fact, (c) be recognizable as comment, and (d) be an opinion any person could honestly express on the proven facts. The defence may be defeated by a finding that the defendant was acting with express malice in making the comment: *Grant v. Torstar Corp*., 2009 SCC 61, at para. 31.

[79] 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.

[80] I conclude that the Plaintiff failed to show that there are grounds to believe that the defence of fair comment is not a valid defence and has no reasonable prospect of success.

Part 3 – The Public Interest Hurdle - Does the Public Interest in Permitting the Proceeding to Continue Outweigh the Public Interest in Protecting the Expression?

[81] The crux of the analysis is the public interest hurdle. The plaintiff must satisfy the motion judge that the harm suffered by the plaintiff because of the defendant's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression: *Gill*, at para. 15. Proportionality is the paramount consideration in determining whether the lawsuit should be dismissed. "Weighing the public interest in freedom of expression and public participation against the public interest in vindicating a meritorious claim is a theme that runs through the entire legislative history": *Pointes Protection*, at para. 63.

Public Interest in Permitting the Proceeding to Continue

[82] The first part of the analysis is to determine the nature and extent of the harm to the plaintiff caused by the defendant's expression. The plaintiff must demonstrate the existence of harm and causation. This does not require a "fully developed damages brief" but it generally requires some evidence with respect to the quantification of the damages claim: *Bent*, at para. 144. General damages are presumed in defamation action. This alone is sufficient to constitute harm. However, the plaintiff must establish that the harm is of a magnitude to outweigh the public interest in protecting the defendants' expression *Hansman*, at para. 67, and *Bent*, at para. 59.

[83] Here, the Plaintiff alleges that because of the actions of the Defendants, his organization, the Constitutional Rights Centre (CRC) has had its donations "virtually obliterated". CRC is not a party to this action. The Plaintiff is unable to claim damages suffered by a corporation*: Hercules Managements Ltd. v. Ernst & Young*, 1997 CanLII 345, and *Meditrust Healthcare Inc. v. Shoppers Drug Mart*, 2002, CanLII 41710 (ONCA), at para. 30. In any event, there is no evidence with respect to the amounts the Plaintiff may have received from CRC or how the amounts may have changed because of the Defendants' actions.

[84] Ms. Johnson testified that Mr. Warner's comments to her about the Plaintiff did not affect her opinion about the Plaintiff's reputation. She testified that she relayed Mr. Warner's comments to three other individuals. One of those individuals was Tanya Gaw. In her affidavit, Ms. Gaw deposed that they have "every confidence in Mr. Galati's expertise, competence and integrity".

The statements made by Mr. Warner to Ms. Johnson that were relayed to Ms. Gaw did not affect the Plaintiff's reputation to her. The Plaintiff did not file affidavits from the other individuals Ms. Johnson spoke with. There is no evidence that the Plaintiff lost any clients or income because of the impugned expression. He continues to represent VCC and A4C in the pandemic-related litigation.

[85] The Defendants argue that even if the Plaintiff had established serious harm, there is an issue of causation. The Plaintiff has been subject to criticism from other groups and the courts. One group that was critical of the Plaintiff was Canuck Law. Although Canuck Law is not a Defendant in this action, the Plaintiff references the group extensively in the material filed on this motion. In articles posted on the Canuck website, the Plaintiff was the subject of disparaging and racist comments. In addition, negative comments were made about the Plaintiff by judges in various court decisions. There is no evidence that if there was any damage to the Plaintiff's reputation, the damage was caused by the Defendants and not from the other sources.

Public Interest in Protecting the Expression

[86] I am of the view that there is a strong public interest in the public's freedom to evaluate a lawyer's services. This is particularly important for a lawyer who conducts public interest class action litigation that may affect many people. There is also a strong public interest in evaluating a lawyer's services where the public has made donations to pay for the litigation. Members of the public who are considering joining a class action or in making donations toward the legal costs to prosecute a class action, have a right to know about the lawyer acting for the plaintiffs.

[87] The comment with respect to the quality of the Plaintiff's legal services is analogous to reviews of other products and services. Courts have recognized that discussion among the consuming public of the quality of services is a matter of public interest: *Canadian Thermo Windows Inc. v. Seangio*, 2021 ONSC 6555, at para. 5. The Defendants argue that the stifling of reasonable public debate as to the value of a lawyer's services, tactics or approach to litigation negatively affects public confidence in the legal system. The Defendants also argue that it would bring the legal system into disrepute if a lawyer could drag those who question the value of his or her services through expensive litigation. I agree.

[88] Here, the action commenced in Ontario by the Plaintiff is prolix and contains bizarre conspiracy theories. The action he commenced in British Columbia is similar. I am of the view that "what is really going on" in this case is an attempt by the Plaintiff to stifle public criticism about a class action claim that is not properly pleaded and improperly asserts bizarre conspiracy theories that are ineffective and have little or no chance of success.

[89] With respect to the claim against Ms. Toews, I am of the view that "what is really going on" is an attempt to intimidate members of the public who may be considering making a complaint about the Plaintiff to the LSO. The effect of the action against Ms. Toews would be to obstruct the regulatory process. The harm this would cause in the LSO's ability to receive and process complaints about lawyers is, in my view significant.

Weighing Exercise

[90] At this stage of the analysis, I am required to consider the harm to the Plaintiff if the action is struck, along with the harm to the public in limiting expression with respect to a matter in the public interest. Here, I am satisfied that the public interest in protecting the expression outweighs the public interest in allowing the action to continue.

[91] I find that the Plaintiff has not established that he suffered any, much less serious, harm because of the expression. The only identifiable harm was with respect to the donations to CRC. CRC is a corporation and is not a plaintiff in this action. The Plaintiff cannot advance a claim for any loss of donations that may have been suffered by CRC. In any event, the Plaintiff did not provide any detail with respect to the donations made to CRC before and after the impugned expression.

[92] In addition, there is no evidence that the Plaintiff's reputation was adversely affected by the expression. In fact, the evidence is to the contrary. Ms. Johnson's evidence was that her opinion of the Plaintiff was not affected by what Mr. Warner said to her. Ms. Gaw stated that she has every confidence in the Plaintiff's expertise, competence, and integrity.

[93] On the other side of the ledger, I find that there is a strong public interest in protecting the expression. The Plaintiff is advancing a public interest class action with respect to the government's restrictions in response to the pandemic. Members of the class, and persons who have donated to the litigation have a right to information about the lawyer retained to prosecute the claims.

[94] I also find 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 LSO. If the public could be subject to expensive litigation for making a complaint, this would impair the ability of the LSO to regulate the profession. I find that this harm outweighs any harm that may have been suffered by the Plaintiff because of the LSO complaint.

[95] I conclude that the harm to the public in limiting expression with respect to a matter in the public interest, outweighs any harm that may be suffered by the Plaintiff if the action is not permitted to continue. I find that the Defendants are entitled to the relief sought and I dismiss the Plaintiff's action.

Issue # 4 - Are the Defendants entitled to damages pursuant to s.137.1(9)

[96] Section 137.1(9) provides that if the proceeding is dismissed under this section and 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. The Defendants seek damages in the amount of $40,000.

[97] The damages awarded under s. 137.1(9) are intended to compensate the defendant for harm suffered. This does not necessarily require proof of actual harm in assessing the appropriate award

of damages: *United Soils Management Ltd. v. Barclay*, 2018 ONSC 1372, at para. 123. However, the defendant must prove bad faith or improper purpose to make the damages claim.

[98] For the reasons set out above, I find that the Plaintiff brought this action for the improper purpose of stifling debate with respect to his handling of a proposed class action that is being funded by public donations. I also note that the Claim was brought one day before the Plaintiff submitted a response to the LSO with respect to Ms. Toews complaint. I find that the Claim was brought for the improper purpose of limiting the LSO investigation, and to intimidate others from making any LSO complaints about him.

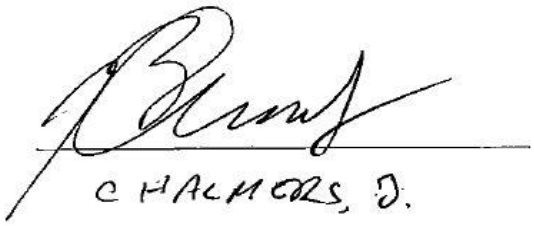
[99] Although I find that the action was brought for an improper purpose, there is no evidence that the Defendants suffered any harm to their health, any financial insecurity or public humiliation. In the circumstances of this case, I decline to exercise my discretion to award damages to the Defendants under s. 137.1(9) of the *Act.*

DISPOSITION

[100] The motion brought by the Defendants pursuant to s. 137.1 of the *Act* is granted. I dismiss the Plaintiff's action in its entirety.

[101] The Defendants are presumptively entitled to their costs of the action. Section 137.1(7) provides that if a proceeding is dismissed under this section, the moving party is entitled to costs of 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.

[102] If the parties are unable to agree on costs, the Defendants may deliver written costs submissions of no more than five pages in length excluding the Bill of Costs and caselaw, within 20 days of the date of this endorsement. The Plaintiff may file his costs submissions in response, on the same basis, within 20 days of receiving the Defendants' submissions.



DATE: December 11, 2023