

Court File No. CV-24-00715344-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DR. KULVINDER GILL

Plaintiff

and

ROCCO GALATI and ROCCO GALATI LAW FIRM PROFESSIONAL  
CORPORATION

Defendants

**STATEMENT OF DEFENCE**

1. The Defendants, Rocco Galati and Rocco Galati Law Firm Professional Corporation admit the allegations contained in paragraphs 2, 3, 4, 5, 16, and 89 of the Statement of Claim, except that, in response to paragraphs 4 and 5, the Defendants deny that they hold themselves out as experts in defamation or civil litigation.

2. The Defendants have no knowledge in respect of the allegations contained in paragraph 7, 8, 81, 83, 84, 85, 99 of the Statement of Claim.

3. The Defendants deny all remaining allegations contained in the Statement of Claim, except as expressly admitted herein. The Defendants deny that the plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim, or any relief at all.

**Overview**

4. Dr. Gill is a medical doctor who, along with Dr. Lamba, was outspoken in her opposition to government policies surrounding COVID-19.

- 2 -

5. Dr. Gill retained the Defendants, whom she trusted and had an existing professional relationship, to advance a claim in defamation against two doctors. She directed the Defendants to bring her claims alongside claims being brought by Dr. Lamba.

6. Both Dr. Gill and Dr. Lamba are sophisticated professionals who took public stances respecting COVID-19 policies.

7. Dr. Gill was involved in the advancement of her claims and in resisting the Anti-SLAPP motions in respect of which she was ultimately unsuccessful. The allegations that she was unaware of how her claim was proceeding and/or of the risks associated with her defamation action are false. Notably, when Mr. Galati became ill and unable to represent Dr. Gill, she resisted his motion to be removed as counsel of record.

8. The lawyer who took over Dr. Gill's representation in the defamation action did not argue on the appeal that Dr. Gill had lost because she was negligently represented before Justice Stewart.

9. Dr. Gill now alleges, for the first time, after being represented by the Defendants for years, that she lost the anti-SLAPP motion because the Defendants were negligent. This belated allegation is without merit and the action should be dismissed.

10. As a matter of policy, the Court should disincentivize clients suing their lawyers because they are dissatisfied with the result.

11. As the Statement of Claim contains repetitive allegations, the Defendants will not plead a paragraph-by-paragraph response to each paragraph of the Statement of Claim.

The Defendants state that they acted at all times in accordance with their professional obligations.

### **Dr. Gill Retains the Defendants**

12. In or around Fall 2020, Dr. Gill retained the Defendants with respect to a contemplated defamation action and College of Physician and Surgeons of Ontario (“**CPSO**”) matters. The Defendants did not hold themselves out as having experience dealing with defamation matters and disciplinary issues involving the CPSO.

13. Dr. Gill and Dr. Lamba retained the Defendants pursuant to a co-retainer to bring the defamation action on their joint behalf.

14. Dr. Gill and Dr. Lamba had separate retainers regarding their respective individualized College of Physician and Surgeons of Ontario (“**CPSO**”) matters. Dr. Gill entered into the CPSO retainer agreement orally in Fall 2020. The terms of the CPSO retainer agreement were reduced to writing in or around March 2021.

15. Dr. Gill reviewed and agreed to the terms and scope of both retainer agreements. At all material times, Dr. Gill received invoices in accordance with the retainer agreements.

### **The Defendants’ Representation of Dr. Gill**

16. During the course of the retainers, Dr. Gill was kept fully apprised of all proceedings in a timely manner. Dr. Gill was advised of and/or provided with all documents prepared and received during all proceedings. This includes, but is not limited to:

- 4 -

- (a) Drafts and final copies of materials submitted on behalf of Dr. Gill;
- (b) Correspondence between the Defendants and opposing parties, including threats to bring motions to dismiss the defamation action pursuant to section 137.1 of the *Courts of Justice Act* (the “**Anti-SLAPP Motions**”);
- (c) Copies of materials delivered by opposing parties;
- (d) Offers to settle and settlement materials.

17. Dr. Gill reviewed and approved all materials prepared and submitted on her behalf.

#### The Defamation Action

18. Dr. Gill instructed the Defendants regarding who she wanted to sue and which statements to include in the defamation action. Furthermore, Dr. Gill instructed the Defendants to send Notices of Libel to all potential defendants she identified to preserve her rights to sue each defendant.

19. During the course of the proceedings, the Defendants advised Dr. Gill of threatened Anti-SLAPP Motions, including her strength and weaknesses in responding to the motions, and the legal and cost consequences if she was ultimately unsuccessful in responding to the Anti-SLAPP Motions. Dr. Gill decided to proceed against all named defendants in the defamation matter.

20. In or around December 2020, the Defendants prepared a draft statement of claim for the defamation matter. Dr. Gill reviewed the draft statement of claim and approved its contents, including but not limited to the quantum of damages.

- 5 -

21. In response to paragraph 28 of the Statement of Claim, Dr. Gill has not particularized the alleged deficiencies in the draft statement of claim.

22. In April 2021, the defamation defendants filed the Anti-SLAPP Motions. Dr. Gill instructed the Defendants to proceed and respond to the Anti-SLAPP Motions.

23. Dr. Gill reviewed and approved the content of her affidavit filed in response to the Anti-SLAPP Motions. Dr. Gill refused to adduce evidence of financial or professional harm because she did not wish to produce financial records or to have her finances subject to scrutiny in the litigation. Furthermore, the Defendants state that Dr. Gill did not adduce evidence of harm because she had no evidence of financial harm arising from the statements complained of.

24. Following cross-examinations, Dr. Gill instructed the Defendants to settle with Radio-Canada and the Hamilton Spector, two of the defamation defendants. The Defendants operated on Dr. Gill's instructions in finalizing settlement agreements with Radio-Canada and the Hamilton Spector.

25. Some of the remaining defamation defendants made offers to settle the proceedings. Dr. Gill instructed the Defendants to reject the offers and proceed with responding to the Anti-SLAPP Motions.

26. In September 2021, one of the defamation defendants filed an affidavit accusing Dr. Gill of having third-party funding for the litigation. Dr. Gill was advised of this affidavit and instructed the Defendants to submit an affidavit on her behalf to refute the allegations of third-party funding.

- 6 -

27. Between September 27 and 29, 2021, the Anti-SLAPP Motions were heard by Justice Stewart. Dr. Gill physically attended the Defendants' office for the motion dates. Dr. Gill, Mr. Galati, and his staff attended the motions by Zoom from the Defendants' office.

28. The Defendants specifically deny the false and vexatious allegation contained at paragraph 56 of the Statement of Claim. Mr. Galati did not consume alcohol prior to or during the hearings.

#### The Attaran Action

29. In or around December 2020, Dr. Gill also instructed the Defendants to issue a claim against Amir Attaran. Dr. Gill reviewed and approved the statement of claim in the Attaran matter.

30. Furthermore, after Dr. Gill retained new counsel to represent her in the defamation action, and her CPSO matters (described below), she refused to retain new counsel on the Attaran matter. Dr. Gill refused to participate in the Defendants' motions to be removed from the record on the Attaran matter, resulting in increased cost and delay in those motions.

#### CPSO Proceedings

31. In or around March 2021, Dr. Gill directed the Defendants to apply for review of the CPSO proceedings. Dr. Gill was fully apprised and involved with the judicial review proceedings.

- 7 -

32. With respect to paragraph 61 of the Statement of Claim, the Defendants deny its contents and state that Dr. Gill was aware of the costs agreement which was made to minimize the cost consequences if Dr. Gill was unsuccessful.

33. With respect to paragraphs 63 and 64 of the Statement of Claim, the Defendants state that Dr. Gill provided the cheque to be attributed towards Dr. Gill's outstanding legal costs pursuant to the CPSO retainer. In any event, the provided cheque amounted to less than the costs award of \$3,500.

### **Response to Allegations Regarding Defendants' Self-Interest**

34. After delivering the Statement of Claim, Dr. Gill requested that Wholehearted Media broadcast the panel discussion. Furthermore, Dr. Gill requested that Mr. Galati tweet about her defamation claim using the CRC Twitter (now X) handle. Dr. Gill also asked the Defendants to post about the CPSO proceedings in a newsletter circulated by the Constitutional Rights Centre (the "**CRC**") to its permanent subscribers and on its website.

35. The Defendants deny that they personally profited from the panel discussion and publication of the case. The Defendants further deny that the CRC posting regarding Dr. Gill's CPSO proceedings solicited donations. At all times, the Defendants acted in accordance with their professional and fiduciary obligations.

36. With respect to the allegations contained at paragraphs 49, 57, and 59 of the Statement of Claim that Mr. Galati had a banner of the CRC in his background, Dr. Gill

- 8 -

instructed that Mr. Galati attend virtual proceedings from the conference room at his office with the banner in the background.

37. With respect to paragraph 60 of the Statement of Claim, the Defendants deny its contents and state that Dr. Gill promoted the hearing by publishing the hearing link on her social media pages. The hearing was open to the public. The Defendants did not invite members of the public to attend the hearing.

38. With respect to paragraph 62 of the Statement of Claim, the Defendants deny its contents and state that Amina Sherazee did not fundraise for Dr. Gill, nor receive any money on her behalf.

### **Mr. Galati Falls Ill; The Defendants are Removed as Counsel of Record**

39. In or around December 2021, Mr. Galati fell severely ill. Mr. Galati was hospitalized on January 2nd, 2022, and subsequently fell into a 12-day coma. On January 22, 2022, Mr. Galati was transferred out of the hospital to an alternate facility to recover and rehabilitate from his illness and coma.

40. On February 24, 2022, Justice Stewart granted the Anti-SLAPP Motions and dismissed Dr. Gill and Dr. Lamba's defamation action. The Defendants forwarded Justice Stewart's decision to Dr. Gill and Dr. Lamba on February 25, 2022.

41. Following the decision, the Defendants prepared cost submissions for the Anti-SLAPP Motions. Dr. Gill was notified of cost submissions and advised of the nature of the submissions.



- 9 -

42. Dr. Gill and Dr. Lamba instructed the Defendants to file an appeal of Justice Stewart's decision. Mr. Galati indicated that his office, would file a Notice of Appeal to preserve their legal rights but that Dr. Gill and Lamba would have to find alternative counsel as Mr. Galati was physically incapable of continuing to represent them. The Defendants offered to assist finding alternative counsel.

43. The Defendants were thereafter required to stop acting for Dr. Gill due to Mr. Galati's serious medical condition. Mr. Galati's juniors, and associates, did not feel sufficiently competent to take over Dr. Gill's case without Mr. Galati on the file. In the face of Mr. Galati's illness, lawyers at his office communicated with Dr. Gill several times about options for alternative counsel, including introducing her to a lawyer who was willing to take on her defamation case. Dr. Gill elected to retain counsel other than counsel recommended by the Defendants, but was by no means "abandoned" as alleged in the Statement of Claim.

44. Additionally, Mr. Galati advised the CPSO that he would no longer be acting for Dr. Gill due to his serious medical condition.

45. In response to paragraph 72 of the Statement of Claim, the Defendants state that during his treatment, Mr. Galati's office covered some of his practice as circumstances dictated. Aside from one instance where Mr. Galati was required to make an appearance before the British Columbia Supreme Court, he did not continue to practice law following his hospitalization.

46. With respect to paragraph 70 of the Statement of Claim, the Defendants deny that the entire balance of their outstanding account was paid.

- 10 -

47. On May 11th, 2022, Galati was removed from the record in the Court of Appeal.

48. As part of removing himself as counsel of record, Mr. Galati requested that the Court of Appeal grant Dr. Gill a 90-day extension, from May 11th, 2022, to seek and obtain new counsel. The Court of Appeal granted the request.

49. With respect to paragraph 74 of the Statement of Claim, the Defendants deny its contents and state that neither they nor their associates, agents, or representatives provided any misleading, inaccurate, nor untrue evidence in the motion to remove Mr. Galati as counsel of record. Dr. Gill has not particularized what evidence she alleges is misleading, inaccurate, or untrue.

50. Dr. Gill subsequently retained new counsel with respect to the defamation and CPSO proceedings. Dr. Gill's new counsel submitted a revised Notice of Appeal and fresh cost submissions in the defamation proceeding. The revised Notice of Appeal did not allege incompetent counsel as a ground of appeal.

51. In response to paragraph 80, Mr. Galati did not oppose Dr. Gill's request to make fresh cost submissions. Mr. Galati objected to the inclusion of certain inaccurate facts in the fresh costs submission. In any event, Dr. Gill obtained leave to make fresh submissions as to costs.

### **No Liability**

52. The Defendants deny any liability to Dr. Gill.

- 11 -

53. The Defendants deny that they have breached any professional or fiduciary duty owed to Dr. Gill.

54. The Defendants plead that they acted, throughout, in accordance with the duty of care required of reasonably competent and diligent lawyers in the circumstances. In this regard, the Defendants specifically deny the allegations contained in paragraphs 94(a)-(x) in the Statement of Claim and state:

- (a) They did not commence an improper claim and further, commenced the claim on instruction by Dr. Gill;
- (b) That Dr. Gill was clearly advised of the cost consequences of an action, and in particular a defamation suit, and further of the consequences of an anti-SLAPP motion under s. 137.1 of the *Courts of Justice Act*;
- (c) The Defendants attempted to pursue settlement, but there were no settlement options that involved payment of damages to Dr. Gill;
- (d) The Defendants advised Dr. Gill regarding the legal and cost consequences of (i) initiating an action, (ii) continuing the action, (iii) settling the action against various parties, and (iv) properly responding to the Anti-SLAPP Motions;
- (e) The Defendants competently articulated, advanced, and argued the claim, as reflected by the pleadings, the motion materials, including cross examinations on affidavits, the transcripts, the factums before the Court, as well as the arguments as reflected in the transcripts;

- 12 -

- (f) The Defendants staffed their files appropriately;
- (g) The Defendants deny that Mr. Galati held himself out as an expert in defamation;
- (h) The Defendants provided competent advice and representation;
- (i) The Defendants communicated with Dr. Gill in a regular, open, transparent and clear manner;
- (j) The Defendants provided Dr. Gill with sufficient notice of deadlines in her legal proceedings;
- (k) The Defendants did not miss or fail to advise Dr. Gill that they had missed critical deadlines in CPSO matters;
- (l) The Defendants took instructions and solicited informed consent from Dr. Gill on important steps in the litigation;
- (m) The Defendants did not put their own “interests”, “beliefs” and/or “ideology” above Dr. Gill’s;
- (n) The Defendants were not in any conflict of interest due to their own interests, political or otherwise;
- (o) The Defendants committed no breach of the *Rules of Professional Conduct*, which is the jurisdiction of the Law Society of Ontario and not this Court in an action for negligence;

- 13 -

- (p) The Defendants did not provide and file a deficient pleading;
- (q) The Defendants did not commit numerous errors and breaches in representing Dr. Gill;
- (r) The Defendants did not prepare and deliver deficient responding material in the Anti-SLAPP Motions;
- (s) The Defendants did not fail to provide Dr. Gill with a copy of the motion decision in a timely manner;
- (t) The Defendants did not deliver deficient cost submissions;
- (u) The Defendants did not deliver a deficient Notice of Appeal;
- (v) The Defendants did not “abandon” Dr. Gill, but:
  - (i) Procured an extension of time of 90 days from the court order from the Ontario Court of Appeal on the motion to remove Mr. Galati from the record, which was granted; and
  - (ii) Searched for, procured, and referred alternate counsel which Dr. Gill refused; and
- (w) The Defendants were not incompetent counsel.

55. At all material times, the Defendants formed their professional views based on information provided to them by Dr. Gill, and informed themselves of all relevant matters to provide advice and direction on how to proceed in Dr. Gill’s best interests.

- 14 -

56. With respect to paragraph 95, the Defendants state that the terms of the retainer were not breached.

### **Damages**

57. The Defendants deny that Dr. Gill has suffered any damages as alleged or at all.

58. In addition and the alternative, if Dr. Gill has suffered any damages, which is denied, the damage arises due to her own conduct.

59. In addition and the alternative, if Dr. Gill has suffered damages, which is denied, the damages claimed are excessive, exaggerated, remote, unavailable at law, unmitigated, and unconnected with any alleged act or omission on the part of the defendants.

60. In addition and the alternative, if Dr. Gill has suffered damages, which is denied, Dr. Gill fully mitigated any damages via reimbursement by X and fundraising.

61. The Defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

### **Relief Sought**

62. The Defendants ask that this action be dismissed with costs.

- 15 -

August 30, 2024

**DMG ADVOCATES LLP**

155 University Avenue, Suite 1230  
Toronto ON M5H 3B7

**Ryder Gilliland** LSO# 45662C

rgilliland@dmgadvocates.com

Tel: 416-238-7537

**Michael Robson** LSO# 84984P

mrobson@dmgadvocates.com

Tel: 437-781-5967

Lawyers for the Defendants, Rocco Galati  
and Rocco Galati Law Firm Professional  
Corporation

TO:

**CAZA SAIKALEY**

1420- 220 Laurier Ave West  
Ottawa ON K1P 5Z9

**Jeff G. Saikaley** LSO# 46406H

jsaikaley@plaideurs.ca

**Albert Brunet** LSO# 74233U

abrunet@plaideurs.ca

Tel: 613-565-2292

Fax: 613-565-2087

Lawyers for the Plaintiff,  
Dr. Kulvinder Gill

DR. KULVINDER GILL  
Plaintiff

-and- ROCCO GALATI et al.  
Defendants

Court File No. CV-24-00715344-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF DEFENCE**

**DMG ADVOCATES LLP**

155 University Avenue, Suite 1230  
Toronto ON M5H 3B7

**Ryder Gilliland** LSO# 45662C  
rgilliland@dmgadvocates.com  
Tel: 416-238-7537

**Michael Robson** LSO# 84984P  
mrobson@dmgadvocates.com  
Tel: 437-781-5967

Lawyers for the Defendants, Rocco Galati and Rocco Galati  
Law Firm Professional Corporation