

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

DR. KULVINDER KAUR GILL and DR. ASHVINDER KAUR LAMBA

Plaintiffs/Appellants

and

DR. ANGUS MACIVER, DR. NADIA ALAM, ANDRE PICARD, DR. MICHELLE COHEN, DR. ALEX NATAROS, DR. ILAN SCHWARTZ, DR. ANDREW FRASER, DR. MARCO PRADO, TIMOTHY CAULFIELD, DR. SAJJAD FAZEL, ALHELI PICAZO, BRUCE ARTHUR, DR. TERRY POLEVOY, DR. JOHN VAN AERDE, DR. ANDREW BOOZARY, DR. ABDU SHARKAWY, DR. DAVID JACOBS, TRISTAN BRONCA, CARLY WEEKS, THE POINTER, THE HAMILTON SPECTATOR, SOCIÉTÉ RADIO-CANADA, THE MEDICAL POST

Defendants/Respondents

**AMENDED NOTICE OF MOTION**

The respondent, The Pointer Group Incorporated (“**The Pointer**”), incorrectly named as “The Pointer” in the style of cause, will make a motion to a Judge of the Court of Appeal for Ontario on October 4~~2~~26, 2023, at 10:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) An order requiring the appellant, Dr. Kulvinder Kaur Gill (“**Dr. Gill**”), to post security for:

- (i) Costs of this appeal in the amount of \$20,000;
- (ii) Costs of the action in Court File No. CV-20-00652918-0000 (the “**Action**”), including the SLAPP Motion, as defined below, in the amount of \$64,170.15,

within 30 days, failing which, her appeal will be dismissed;

- (b) Costs of this motion, plus applicable taxes; and
- (c) Such further and other relief as counsel may request and to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The plaintiffs, Dr. Gill and Dr. Ashvinder Kaur Lamba (“**Dr. Lamba**” and together with Dr. Gill, the “**Appellants**”), commenced the Action on December 11, 2020, by statement of claim against 23 defendants, including The Pointer;
- (b) The Pointer publishes a digital newspaper called “The Pointer”;
- (c) Although Dr. Lamba pleaded no factual allegations against The Pointer in the statement of claim, she sought damages against The Pointer;
- (d) Dr. Gill’s claim against The Pointer alleged that an article published by The Pointer on August 13, 2020 (the “**Article**”), contained defamatory remarks concerning Gill;

- (e) The Pointer has no relation to the other defendants and or to the claims against the other defendants;
- (f) On February 24, 2022, as a result of the defendants' motions (collectively, the "**SLAPP Motion**"), Justice Stewart made an order (the "**Dismissal Order**") dismissing the Action against all of the defendants pursuant to section 137.1 of the *Courts of Justice Act* ("**CJA**");
- (g) On March 22, 2022, the Appellants commenced this appeal of the Dismissal Order by serving a notice of appeal, through their then counsel, Rocco Galati ("**Galati**");
- (h) On March 28, 2022, the defendants served their cost submissions for the SLAPP Motion;
- (i) On March 28, 2022, the Appellants, through Galati, served their responding cost submissions for the SLAPP Motion;
- (j) On April 19, 2022, Galati served a motion record seeking to remove him and his firm as counsel of record for the Appellants;
- (k) On May 9, 2022, the Office of the Registrar of the Court of Appeal for Ontario delivered a notice of intention to dismiss the appeal for delay;
- (l) On May 11, 2022, the Court of Appeal for Ontario made an order removing Galati as counsel of record for the Appellants and extended the deadline to perfect the appeal to 90 days from May 11, 2022;

- (m) On July 15, 2022, Jeff Saikaley advised counsel for the defendants and Justice Stewart that he had been appointed as counsel for Dr. Gill;
- (n) Dr. Gill was granted leave to file supplementary cost submissions;
- (o) Despite commencing the appeal on March 22, 2022, the appeal was not perfected until September 8, 2022;
- (p) On October 31, 2022, Justice Stewart released her decision on costs, and awarded the defendants' their full indemnity costs of the SLAPP Motion subject to reduction for any costs of "additional legal counsel, clerks or students who may have been present at any of the proceedings but did not take an active role";
- (q) Justice Stewart held that Dr. Lamba was only responsible for the costs of the defendants, Dr. MacIver and Dr. Alam, on a joint and several basis with Dr. Gill;
- (r) Pursuant to Justice Stewart's cost order dated October 31, 2022 (the "**Costs Order**"):
  - (i) Dr. Gill is severally liable to pay costs of \$947,864.85, of which \$64,170.15 is payable to The Pointer; and
  - (ii) Dr. Gill is jointly and severally liable to pay costs of \$1,109,288.80;
- (s) Dr. Gill appeals the Dismissal Order and seeks leave to appeal the Costs Order;

- (t) Leave to appeal cost awards is rarely granted and only in cases where the decision is plainly wrong or tainted by error;
- (u) Since commencing the appeal,
  - (i) Dr. Gill has abandoned her appeal against 11 of the 22 respondents to her appeal;
  - (ii) Dr. Lamba has abandoned the appeal as against all of the respondents, except Dr. Angus MacIver and Dr. Nadia Alam;
- (v) There is good reason to believe that the appeal is frivolous and vexatious and that Dr. Gill has insufficient assets in Ontario to pay the costs of the appeal as well as Costs Order;
- (w) Dr. Gill has not identified any reviewable error for which this Court could possibly intervene in respect of the appeal against The Pointer. Indeed, Dr. Gill makes only two nominal references to The Pointer in her appeal factum and does not substantively address her appeal in respect The Pointer;
- (x) It is apparent that Dr. Gill launched this appeal for an improper purpose of obtaining leverage in negotiations to avoid paying some or most of the Costs Order, and did so because she does not have the means to pay the full Costs Order;
- (y) It is apparent that Dr. Gill has succeeded in her objective as she has now abandoned the appeal against 11 of the 22 respondents;

- (z) Dr. Gill has not responded to The Pointer's request for evidence that she has sufficient assets to satisfy the cost awards against her or costs of her appeal;
- (aa) Given the small size of The Pointer, with no external funding, The Pointer has suffered financial hardship as a result of the Action and Dr. Gill's appeal;
- (bb) Failing to order security for costs will jeopardize The Pointer's ability to continue reporting on issues that are a matter of public interest, and will have the effect of silencing The Pointer. Such result directly undermines the objectives of section 137.1 of the *CJA* and must be avoided;
- (cc) Dr. Gill's use of the appeal to avoid paying some or all of the Costs Order to protect against the adverse costs consequences of section 137.1 of the *CJA* is improper, should not be permitted and constitutes good other reason to order Dr. Gill to post security for costs of the appeal and the Action;
- (dd) The Pointer estimates that its moving submissions will take 20 minutes;
- (ee) Rules 1.04, 2.01, 3.02, 37, 39, 39.03, 61.06(1), 61.06(1)(b), 61.06(1)(c) and 61.16 of the *Rules of Civil Procedure*;
- (ff) Section 12 of the *Libel and Slander Act*;
- (gg) Section 137.1 of the *CJA*; and
- (hh) Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion

- (a) The affidavit of San Grewal sworn August 28, 2023; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

August 28, 2023

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**TO: SERVICE LIST**

**DR. KULVINDER KAUR GILL, et al.**

Plaintiffs/Appellants

**-and- DR. ANGUS MACIVER, et al**

Defendants/Respondents

Court of Appeal File No. C70498

Court of Appeal Motion No. M●

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**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT TORONTO

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**AMENDED NOTICE OF MOTION**

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