

Court File No.:

COURT OF APPEAL FOR ONTARIO

BETWEEN:

Dr. Kulvinder Kaur Gill and Dr. Ashvinder Kaur Lamba

Appellants
(Plaintiffs)

- 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 Medical Post

Respondents
(Defendants)**NOTICE OF APPEAL
(Rule 61.04; Form 61A)**

THE APPELLANTS, Dr. Kulvinder Kaur **GILL** and Dr. Ashvinder **LAMBA**, APPEAL to the Court of Appeal from the judgment of The Honourable Justice Elizabeth Stewart, dated February 24th, 2022, made at Toronto, in Superior Court Docket No. CV-20-652918-0000, which **dismissed the Appellants' action**, pursuant to, inter alia, s.137.1 of the *Courts of Justice Act*.

THE APPELLANT ASKS that the judgment be set aside and judgment be granted as follows:

1. That the judgment be set aside, and the Superior Court action proceed to trial.
2. Costs of the motion in Superior Court and the within appeal.
3. Such further and other relief as counsel for the Appellant may advance and this Honourable Court accept.

THE GROUNDS OF APPEAL are as follows:

1. The Court erred, in law, in misapplying the test and jurisprudence on an anti-SLAPP motion, with respect to striking the tort of defamation;
2. The Court erred, in law, by exceeding jurisdiction, on an anti-SLAPP motion, and usurping the function and jurisdiction of the trial judge, by **de facto** trying the case, with respect to the determinations made on the motion, rather than applying the test under s.137.1 of the *Courts of Justice Act*, as delineated by the Supreme Court of Canada;
3. The Court erred in applying the test for defamation and the defences to the facts;
4. The Court erred, in law, in finding the defamatory remarks to be a matter of public interest, therefore raising (a reasonable apprehension of) bias towards the Plaintiff;
5. The Court erred, in law, in making palpable errors, in making findings of fact, without evidence and making findings of fact in total disregard to the record;
6. The Court erred, in law, in qualifying the Defendants as “experts,” on the issue(s), of COVID-19, when in fact numerous Defendants have no scientific qualifications, nor medical training, whatsoever, and were not tendered as expert affiants in accordance with the Rules and jurisprudence;

7. The Court erred, in law, in using different and asymmetrical standards in assessing the evidence of the Defendants as opposed to the Plaintiff contrary to the jurisprudence of the Supreme Court of Canada and the Ontario Court of Appeal in, **inter alia**, **R. v. Anwar [2017] 1 SCR 83** and **R. v. Phan (2013) ONCA 787**;
8. The Court erred, in law, in baldly determining, without articulated nor cogent reason(s) that the damages caused by the defamatory statement(s) were “nominal”;
9. The Court erred, in law, in ruling that damages **above** and beyond the defamatory comments, needed to be proven before the matter could be tried;
10. The Court erred, in law, in ruling that there was not “a single basis upon which the matter could proceed to trial,” contrary to the Supreme Court of Canada as the test on this type of motion;
11. The Court erred, in law, in ruling that defences were made out, and completely ignored the clear appellate jurisprudence ruling that any of those defences were undercut by malice, and the test for malice applicable to the within the case;
12. The Court erred, in law, in accepting the bald, orbiting, anti-Semitic and malicious postulations of the Defendant Polevoy contrary to the cogent evidence negating those unfounded assertions;
13. The Court erred, in law, in exuding a clear and palpable (reasonable apprehension of) bias, on the face of the reasons for judgment, against the Plaintiffs, particularly, but not restricted to, completely downplaying and ignoring Dr. Gill’s experience and expertise on the issue(s), by reducing her professional standing and experience to a “controversial” doctor, and in the asymmetrical language the Court uses to differentiate the Plaintiffs as opposed to the Defendants;

14. Such further or other grounds as counsel may advance, and this Honourable Court accept.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The Judgement made on February 24th, 2022, in Superior Court Docket No. CV-20-652918-0000 was a final judgment of Justice Stewart, a Judge of the Superior Court of Justice in Toronto, dismissing the Appellants' Claim, with respect to the tort of defamation, with prejudice, pursuant to s.137.1 of the *Courts of Justice Act*.
2. Pursuant to s. 6(1)(b) and (d) of the *Courts of Justice Act*, an appeal lies to the Court of Appeal from a final order of a Judge of the Superior Court of Justice under s.6(1)(b) and a judgment under s.137.1 of the *Courts of Justice Act* pursuant to s.6(1)(d); and
3. There is no requirement of leave to appeal under the *Courts of Justice Act* or the Rules.

The Appellants request that this appeal be heard at Toronto.

Dated at Toronto, this 22nd day of March, 2022.



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Court File:

DR. KULVINDER KAUR GILL And DR. ASHVINDER KAUR LAMBA -AND- DR. ANGUS MCIVER ET AL.

Appellants Respondents

COURT OF APPEAL FOR
ONTARIO

Proceeding commenced at Toronto

NOTICE OF APPEAL

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Dr. Kulvinder Kaur Gill and Dr. Ashvinder Kaur Lamba

Appellants
(Plaintiffs)

- 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 Medical Post

Respondents
(Defendants)

**APPELLANTS' CERTIFICATE
(Rule 61.05(1); Form 61C)**

The Appellant certifies that the following evidence is required for the appeal, in the Appellant's opinion:

1. Motion Record of the Defendant (Respondent in the within appeal), Dr. David Jacobs, that was before Stewart J.
2. Motion Record of the Defendant (Respondent in the within appeal), Dr. Michelle Cohen and Dr. Alex Nataros, that was before Stewart J.
3. Motion Record of the Defendant (Respondent in the within appeal), Dr. Abdu Sharkawy, that was before Stewart J.

4. Motion Record of the Defendant (Respondent in the within appeal), Dr. Andrew Boozary, that was before Stewart J.
5. Motion Record of the Defendant (Respondent in the within appeal), Dr. Terry Polevoy, that was before Stewart J.
6. Motion Record of the Defendant (Respondent in the within appeal), Dr. Nadia Alam, that was before Stewart J.
7. Motion Record of the Defendant (Respondent in the within appeal), Dr. Angus Maciver, that was before Stewart J.
8. Motion Record of the Defendant (Respondent in the within appeal), Tristan Bronca and the Medical Post, that was before Stewart J.
9. Motion Record of the Defendant (Respondent in the within appeal), Andre Picard and Carly Weeks, that was before Stewart J.
10. Motion Record of the Defendant (Respondent in the within appeal), Dr. Andrew Fraser, that was before Stewart J.
11. Motion Record of the Defendant (Respondent in the within appeal), The Pointer Group Incorporated, that was before Stewart J.
12. Motion Record of the Defendant (Respondent in the within appeal), Timothy Caulfield, Dr. Sajjad Fazel, Dr. Ilan Schwartz and Dr. Marco Prado, that was before Stewart J.
13. Motion Record of the Defendant (Respondent in the within appeal), Dr. Bruce Arthur, that was before Stewart J.
14. Motion Record of the Defendant (Respondent in the within appeal), Dr. John Van Aerde, that was before Stewart J.

15. Motion Record of the Defendant (Respondent in the within appeal), Dr. Alheli Picazo, that was before Stewart J.
16. Responding Motion Record of the Plaintiff (Appellant in the within appeal), Dr. Kulvinder Kaur Gill and Dr. Ashvinder Kaur Lamba that was before Stewart J.
17. Responding Motion Record of the Defendant (Respondent in the within appeal), Dr. Michelle Cohen and Dr. Alex Nataros, that was before Stewart J.
18. Supplementary (Reply) Motion Record of the Defendant (Respondent in the withing appeal), Dr. John Van Aerde, that was before Stewart J.
19. Supplementary Motion Record of the Defendant (Respondent in the within appeal), Dr. Nadia Alam, that was before Stewart J.
20. Supplementary Motion Record of the Defendant (Respondent in the within appeal), Dr. Angus Maciver, that was before Stewart J.
21. Supplementary Motion Record of the Defendant (Respondent in the within appeal), Dr. Andrew Fraser, that was before Stewart J.
22. Factum of the Defendant (Respondent in the within appeal), Dr. David Jacobs, that was before Stewart J.
23. Factum of the Defendant (Respondent in the within appeal), Dr. Michelle Cohen and Dr. Alex Nataros, that was before Stewart J.
24. Factum of the Defendant (Respondent in the within appeal), Dr. Abdu Sharkawy, that was before Stewart J.
25. Factum of the Defendant (Respondent in the within appeal), Dr. Andrew Boozary, that was before Stewart J.
26. Factum of the Defendant (Respondent in the within appeal), Dr. Terry Polevoy, that was before Stewart J.

27. Factum of the Defendant (Respondent in the within appeal), Dr. Nadia Alam, that was before Stewart J.
28. Factum of the Defendant (Respondent in the within appeal), Dr. Angus Maciver, that was before Stewart J.
29. Factum of the Defendant (Respondent in the within appeal), Tristan Bronca and the Medical Post, that was before Stewart J.
30. Factum of the Defendant (Respondent in the within appeal), Andre Picard and Carly Weeks, that was before Stewart J.
31. Factum of the Defendant (Respondent in the within appeal), Dr. Andrew Fraser, that was before Stewart J.
32. Factum of the Defendant (Respondent in the within appeal), The Pointer Group Incorporated, that was before Stewart J.
33. Factum of the Defendant (Respondent in the within appeal), Timothy Caulfield, Dr. Sajjad Fazel, Dr. Ilan Schwartz and Dr. Marco Prado, that was before Stewart J.
34. Factum of the Defendant (Respondent in the within appeal), Dr. Bruce Arthur, that was before Stewart J.
35. Factum of the Defendant (Respondent in the within appeal), Dr. John Van Aerde, that was before Stewart J.
36. Factum of the Defendant (Respondent in the within appeal), Dr. Alheli Picazo, that was before Stewart J.
37. Factum of the Plaintiff (Appellant in the within appeal), Dr. Kulvinder Kaur Gill and Dr. Ashvinder Kaur Lamba that was before Stewart J.

38. Supplementary Affidavits of Terry Polevoy.
39. Responding Affidavit of Ted Kuntz.
40. Affidavit of Rosie Rumpal.
41. Transcripts of Examinations and Cross-Examinations
42. Compendium of Evidence of the Plaintiff Volumes 1 to 3 (Appellant in the within appeal), Dr. Kulvinder Kaur Gill and Dr. Ashvinder Kaur Lamba that was before Stewart J.
43. Transcript of the September 27th – 29th Motion.
44. Joint Reply Submissions Brief of the Moving Parties (Respondents in the within appeal).
45. Plaintiff's (Appellant in the within appeal) Response to the Defendants' (Respondent in the within appeal) Submissions.
46. Reasons of the Stewart J. dated February 24th, 2022.



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