COURT OF APPEAL FOR ONTARIO

CITATION: Galati v. Toews, 2025 ONCA 568
DATE: 20250731
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Harvison Young, Zarnett and Favreau JJ.A.

BETWEEN

Rocco Galati

Plaintiff (Appellant)

and

Donna Toews (Aka “Dawna Toews”)*, Kipling Warner*, Canadian Society for the Advancement of Science and Public Policy*, Dee Gandhi*, Janes and Johns Doe

Defendants (Respondents*)

Paul Slansky, for the appellant

Tim Gleason and Amani Rauff, for the respondents

Heard: January 13, 2025

On appeal from the judgment of Justice William S. Chalmers of the Superior Court of Justice, dated December 11, 2023, with reasons reported at 2023 ONSC 7508 and from the costs endorsement reported at 2024 ONSC 935.

Zarnett J.A.:

I. Introduction

[1] The parties to this appeal were, in different ways, interested in litigation against governments and government officials challenging officially imposed COVID-19 mandates and restrictions.

[2] The appellant, a well-known lawyer, acted as counsel in two actions that challenged COVID-19 measures. In July 2020, he started an action in Ontario on behalf of Vaccine Choice Canada ("VCC") and others (the "VCC Action"), and in August 2021, he started a second action in British Columbia on behalf of Action4Canada ("A4C") and others (the "A4C Action").[1]

[3] The respondent, Canadian Society for the Advancement of Science and Public Policy ("CSASPP"), and its officers – the respondents Kipling Warner ("Warner") and Dee Gandhi ("Gandhi") – were not parties to the VCC Action or A4C Action, nor did they have any professional relationship with the appellant. Represented by different lawyers, CSASPP commenced a proposed class proceeding in British Columbia in January 2021, challenging COVID-19 measures in that province.

[4] CSASPP received various enquiries as to whether it was involved with the appellant or the organizations he represented. In January 2021, after CSASPP had commenced its action, Gandhi sent an email to a journalist, and in June 2021 CSASPP made statements on its website. Both made extensive reference to the appellant, stressed the lack of any connection between CSASPP and its lawsuit on the one hand, and the appellant on the other, pointed out criticisms that had

[1] There were other plaintiffs named in both actions. None of the plaintiffs in these actions were the respondents.

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been made of the appellant, and commented negatively on the way the VCC Action was pleaded and its lack of progress.

[5] The respondent, Donna Toews ("Toews"), was also not a party to either the VCC Action or the A4C Action; however, she was interested in those actions because she made financial donations to each of VCC and A4C to assist them in their efforts.

[6] In January 2022, Toews submitted a complaint to the Law Society of Ontario ("LSO") raising questions about the lack of transparency concerning the use of donations made to fund the VCC Action and the A4C Action and the apparent lack progress of the actions.

[7] In June 2022, the appellant commenced an action against the respondents alleging that their statements caused him harm and that the respondents were liable to him on several bases, including defamation, conspiracy, unlawful means, intentional infliction of mental suffering and harassment.

[8] The motion judge dismissed the appellant's action under the anti-SLAPP provisions in s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*"). He held that the respondents' expressions related to a matter in the public interest, and that the appellant had failed to establish that there were grounds to believe that (i) his proceeding had substantial merit, (ii) the respondents had no valid defence, and (iii) the public interest in permitting the action to continue outweighed

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the public interest in protecting the respondents' expressions. He awarded costs to the respondents.

[9] The appellant challenges both the dismissal of his action and the costs award. He argues that the motion judge's analysis was flawed at each step of the required analysis of a motion to dismiss under s. 137.1, and that the costs award was excessive.

[10] For the reasons that follow, I would dismiss the appeal. The appellant has not established a reversible error in either the dismissal decision or the costs decision that would justify appellate interference.

II. Factual Context

[11] The appellant is an experienced lawyer, licenced in Ontario, with an extensive national profile. He was named, in 2014 and 2015, by Canadian Lawyer Magazine as one of the top 25 influential lawyers in Canada. He served for about four years as a bencher of the LSO. He has conducted litigation in provincial and federal courts in Canada, including the Supreme Court of Canada. Although his practice includes tax law, his litigation experience extends beyond that area and includes constitutional cases. In 2004, he founded the Constitutional Rights Centre Inc. ("CRC"), a corporation which raises public donations to participate and assist in various constitutional challenges.

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The VCC Action

[12] VCC is an advocacy group that had been a client of the appellant since 2015.

[13] In July 2020, the appellant commenced the VCC Action in the Ontario Superior Court of Justice on behalf of VCC and eight individuals. It names, among other defendants, the Prime Minister and the Chief Public Health Officer of Canada, the Premier and the Chief Medical Officer of Ontario, the Mayor and the Chief Medical Officer of Toronto, the Chief Medical Officers of Windsor Essex and Wellington-Dufferin-Guelph counties, the provincial Crown and the Canadian Broadcasting Corporation.

[14] The VCC Action alleges that the defendants knowingly propagated a false and groundless pandemic. It traces this allegedly false narrative to activities of non-parties, including Bill Gates and the World Health Organization, who are allegedly involved in a “massive and concentrated push for mandatory vaccines” with an intention to use vaccine chips and other devices to allow for electronic surveillance in furtherance of establishing a new economic order.

[15] The VCC Action seeks declarations that COVID-19 measures enacted or taken at federal, provincial and municipal levels, including those mandating closing of businesses, limits on gatherings, compulsory use of face masks, and social distancing, as well as any vaccine mandates, are constitutionally invalid; it also seeks significant damages.

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[16] The appellant held a news conference shortly after the VCC Action was commenced, indicating that he would apply for an injunction with respect to vaccines and masking measures. He subsequently announced a hope that the injunction would be heard before Christmas 2020.

[17] By the time the motion below was heard, no injunction motion had been brought in the VCC Action.

Announcement of the Intended A4C Action

[18] In October 2020, A4C, a British Columbia based advocacy organization, announced that it had retained the appellant to bring an action in British Columbia with respect to government mandated COVID-19 measures.

The CSASPP Action

[19] In January 2021, CSASPP, a non-profit society, represented by British Columbia lawyers, commenced a proposed class action in the Supreme Court of British Columbia, suing the provincial Crown and the Provincial Health Officer for damages caused by government restrictions imposed in response to the pandemic (the “CSASPP Action”). The proposed class consists of residents of British Columbia. The appellant was not involved in the CSASPP Action.

The Gandhi Email and the FAQ

[20] The motion judge found that in early 2021, CSASPP was receiving enquiries as to whether it was affiliated with VCC or A4C, and why it was not working with

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them and the appellant. He found that, after conducting some research, CSASPP, its executive director Warner, and its treasurer Gandhi, "were of the view that the VCC Claim was improperly drafted, and that the public should be informed about the [appellant's] approach. They were also of the view that it would be prudent to clarify to the public that there was no relationship between [CSASPP], [the appellant] and the organizations he represented".

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[21] On January 29, 2021, Gandhi sent an email to a journalist with the "Press for Truth" publication (the "Gandhi email"). According to Gandhi, the purpose of this email was to inform the public that CSASPP had commenced a separate proposed class action in British Columbia, that it disagreed with the appellant's approach, and that it disclaimed any affiliation to him.

[22] The Gandhi email 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: [A link is provided to a PDF copy of the Notice of Claim for the CSASPP Action.]
>
> You are welcome to share this with anyone and everyone.
>
> This is our certificate of Incorporation: [A link is provided to the CSASPP Certificate of Incorporation.]

Now that we have started the litigation process we are still in need of Funding. Action 4 Canada has still not filed with Rocco. Legally at this point Rocco can't really file in BC anymore. The case law is that for class actions, it's the first to the court house that generally has carriage of the file. If you would be so kind to share with everyone so to help the cause. [A link is provided to a GoFundMe page for “BC Supreme Court COVID-19 Constitutional Challenge” led by the CSASPP.]

This might interest you further.

Here are some talking about regarding Action 4 Canada and Rocco

(1) Rocco isn't licensed to practice here in BC. He can always be retained in Ontario and in turn retain counsel in BC. But then you are paying for two law firms. You can verify that he is not licensed to practice here in BC at this page. [A link is provided to the Law Society of British Columbia Lawyer Directory.]

(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: [A link is provided to *Tai v. Canada (Citizenship and Immigration)*, 2010 FC 788, on CanLII.]

(2) A Federal Court judge wrote in his judgment a few years ago that Rocco was found to have excessively billed for his time: [A link is provided to *Galati v. Harper,* 2014 FC 1088, at para. 7, on CanLII.]

(4) The same judgment questioned Rocco's competency in constitutional law: [A link is provided to *Galati v. Harper*, 2014 FC 1088, at para. 9, on CanLII.]

(5) Rocco is not a "constitutional law" lawyer. There is no such professional designation in Canada, nor in

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particular in BC. That's not to say, however, that a lawyer cannot have an area of expertise like personal injury, strata, mergers and acquisitions, class actions, and the liked. But in Rocco's case his area of expertise is tax law. [A link is provided to an article from the Globe and Mail.]

(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: [A link is provided to Rule 9-5 of the *Supreme Court Civil Rules*, B.C. Reg 168/2009 on CanLII.]

(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: [A link is provided to the *Constitution Act, 1867*.]

(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.

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[23] In June 2021, CSASPP added to the frequently asked questions ("FAQ") page on its website, the following: "Are you affiliated with Rocco Galati? If not, why not?", together with a response that disclaimed any affiliation to the appellant for substantially the same reasons as outlined in the Gandhi email. According to the motion judge, each reason was "footnoted and hyperlinked". The FAQ 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. [A link is provided to a page on the Law Society of Ontario website.]
>
> 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. [A link is provided to a page on the Law Society of British Columbia website.]

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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 link is provided to *Tai v. Canada (Citizenship and Immigration)*, 2010 FC 788, on CanLII.]

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. [Multiple links are provided to the case *Galati v. Harper*, 2014 FC 1088, and a summary of the case on CanLII.]

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." [A link is provided to a Youtube video from Rebel News of an interview with the appellant about his “lockdown lawsuit”, and another link is provided to a Globe and Mail article.]

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

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> been made. [A link is provided to the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and another link is provided of a Youtube video from Rebel News of an interview with the appellant about his "lockdown lawsuit".]

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The A4C Action

[24] On August 17, 2021, the appellant, with a British Columbia lawyer as co-counsel, commenced the A4C Action in the Supreme Court of British Columbia on behalf of A4C and others.[2] On a similar basis to that in the VCC Action, it makes claims against the federal and provincial Crown, federal and provincial Ministers and Public Health Officers, and various Crown agencies and employees, seeking orders setting aside, and obtaining damages for federal and provincial government measures related to the COVID-19 pandemic, which it alleges were beyond the authority of the governments that enacted them, were not based on science, and breached the *Charter*.

[25] In August 2022, about a year after it was issued, the notice of claim in A4C Action was struck by Ross J. of the Supreme Court of British Columbia, with leave to amend: *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507.

[26] Justice Ross noted the presence in the claim of "wide-ranging and unconstrained" allegations "about the acts and motivations of many non-parties"

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[2] The motion judge refers to this action as a class proceeding, although it is not denominated as such. Neither party made an issue about this on the appeal.

and that “many of the allegations … do not accord with, and specifically challenge, the mainstream understanding of the science underlying both the existence of, and the government’s responses to the COVID-19 pandemic”: at paras. 26-27. He found the claim to be so prolix that it was not possible for the defendants to respond to it. As he stated, the claim “describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including of criminal conduct and ‘crimes against humanity’. In my opinion, it is ‘bad beyond argument’”: at para. 45.

[27] However, Ross J. refused to finally strike the claim. He stated that although the A4C Action contained improper allegations, “individuals have standing to question whether state actions infringe their *Charter*-protected rights. Hence, in this case, there is a prospect that the plaintiffs could put forward a valid claim that certain of the COVID-based health restrictions instituted by the Federal or Provincial governments infringed their *Charter* rights. In addition, it is possible that other valid claims may exist”: at para. 71. He therefore struck the claim with leave to amend.

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The Toews Complaint to the LSO

[28] In January 2022, Toews made a written complaint to the LSO about the appellant. Before doing so, she obtained advice from a former LSO Treasurer who assisted in composing the complaint.

[29] In the complaint, Toews explained that she had made a donation (in her husband's name) of $1,000 to VCC with instructions that the donation be given to a "Legal Fund headed by [the appellant], who was preparing a claim seeking relief on behalf of Canadians wronged by actions of government officials and others because of Covid-19" and had also made a $100 donation to A4C which was soliciting donations to fund a similar lawsuit in British Columbia. She went on to say that she understood that about $3.5 million had been raised by VCC, A4C and a third group in Quebec to finance such litigation. Toews stated in her complaint that as far as she knew there was no progress in the litigation, nor had she received any meaningful updates. She concluded: "I do not know [how] much of the funds raised by these organizations have been turned over to [the appellant] 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)".

The Appellant's Action Against the Respondents

[30] On June 28, 2022, the appellant commenced this action, suing CSASPP, Warner and Gandhi for defamation and harassment, and all the respondents for

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conspiracy to undermine his professional relationships, intentional infliction of mental suffering and intentional interference with economic relationships. In the statement of claim, the appellant refers to the expressions in the Gandhi email, the FAQ, and Toews' complaint to the LSO, and one other expression. The alleged additional expression is that Warner had also "orally communicated to a person, who does not want to be identified" that "[Warner] want[s] to see to it that [the appellant] is disbarred and charged with Fraud".

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III. Decision Below

[31] The respondents moved under s. 137.1 of the *CJA* for an order dismissing the appellant's action against them.

[32] As a preliminary issue, the motion judge considered whether the expressions in issue went beyond those referred to in the statement of claim. In this regard, he ruled that the statements made in 2023 by Warner to a British Columbia lawyer were irrelevant, as they post-dated the statement of claim.[3] He also ruled inadmissible, on the grounds of privilege, evidence of a statement that Warner allegedly made to Alicia Johnson ("Johnson"), a member of a group that supported CSASPP's action, as she had signed a Non-Disclosure

[3] The motion judge declined to decide whether the statements were subject to lawyer-client privilege, as Warner maintained, and the lawyer denied.

Agreement (NDA) not to disclose the content of any discussions with respect to CSASPP matters.[4]

[33] Turning to the threshold issue under s. 137.1(3), the motion judge found that the respondents had established that their expressions related to a matter of public interest. The public had a genuine interest in receiving information about a lawyer acting in litigation that challenged the government's response to the pandemic. The respondents' expressions related to the quality of legal representation and the use of donated funds. Members of the public who donated money had a genuine interest in those matters.

[34] The motion judge then considered the merits-based hurdle under s. 137.1(4)(a).

[35] First, he found that none of the causes of action advanced by the appellant had a real prospect of success. In his view, as far as defamation was concerned, the impugned expressions in the Gandhi email and the FAQ "stuck to known and provable facts" and the complaint to the LSO "is entirely factual and does not make reference to fraud or dishonesty". The additional expression referred to in the statement of claim made by Warner to an anonymous person was not sufficiently pleaded to be actionable. As for the other causes of action, the motion judge held

[4] The motion judge went on to say, in the alternative, that he would have found the alleged statements to be protected by the defences of fair comment and qualified privilege.

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that: (i) the conspiracy claim was improperly pleaded, lacked evidentiary support for a required element, and in any event was “derivative of the defamation claim”; (ii) the unlawful means claim was flawed as the appellant had not identified an act the respondents committed against a third party that caused harm to the appellant; (iv) the intentional infliction of mental suffering claim was flawed because the appellant had “not adduced evidence or asserted allegations that [the respondents] caused an illness or suffering”; and (v) the harassment claim was flawed as the cause of action required “extreme serial harassment” and the discrete expressions complained of did not amount to that and the claim was also “entirely derivative of the defamation claim”.

[36] Second, the motion judge found that the respondents had a reasonable chance of success on various defences. He held that absolute privilege was a complete answer to the claim about the LSO complaint, and defences of justification and fair comment had a reasonable prosect of success with respect to the statements in the Gandhi email and in the FAQ.

[37] In the latter regard, the motion judge noted that the Gandhi email and FAQ provided hyperlinks that “provid[ed] factual support for the statements”, for example, that the appellant had been criticized by a court in another case; moreover, the motion judge was of the view that the assertion that the claim in the VCC Action was “very poorly drafted” was justified because the pleading was “prolix and argumentative”. With respect to the statement that the appellant wanted

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"far too much money to get started" and "nothing much has been accomplished in Ontario" since the VCC Action was commenced, the defence of fair comment had a reasonable chance of success as these were opinions one could honestly express based on proven facts. And on the assumption that the additional expression referred to in the statement of claim was meant to refer to what Warner said to Johnson, qualified privilege had a reasonable chance of success if evidence about that statement was admissible.

[38] The motion judge also found, under s. 137.1(4)(b), that the public interest in protecting the challenged expressions outweighed the public interest in allowing the appellant's claim to proceed. He was not satisfied that the appellant had suffered any, much less serious, harm because of the expressions. On the other hand, he found there was a strong public interest in protecting (i) expressions about a lawyer retained to litigate an action challenging pandemic restrictions, and (ii) the right of members of the public to make complaints to quasi-judicial bodies like the LSO without the fear of reprisal by litigation.

[39] In a subsequent endorsement on costs, the motion judge found no reason to depart from the presumption in s. 137.1(7) that a successful moving party is entitled to costs on a full indemnity basis. After reducing the respondents' counsel fee by the amount he considered excessive, he awarded the all-inclusive amount of $132,268.17.

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IV. Analysis

A. The Challenge to the Dismissal of the Action

The Statutory Framework

[40] Section 137.1 of the *CJA* provides, in relevant part, as follows:

> (1) The purposes of this section ... are,
>
> > (a) to encourage individuals to express themselves on matters of public interest;
> >
> > (b) to promote broad participation in debates on matters of public interest;
> >
> > (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
> >
> > (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.
>
> (2) In this section,
>
> > "expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.
>
> (3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.
>
> (4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,
>
> > (a) there are grounds to believe that,

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> (i) the proceeding has substantial merit, and
>
> (ii) the moving party has no valid defence in the proceeding; and
>
> (b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

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Issues Raised by the Appellant

[41] I group the issues raised by the appellant, for analytical purposes, into the following categories:

1. The Threshold Requirement Issue: According to the appellant, the motion judge ought not to have found that his action against the respondents arose from expressions made by them that relate to a matter of public interest.
2. The Merits Hurdle Issues: According to the appellant, the motion judge erred in his evaluation of the merits hurdle under ss. 137.1(4)(a)(i) and (ii) – he should have concluded that there were grounds to believe the action had substantial merit and the respondents had no valid defence.
3. The Weighing of Interests Issue: According to the appellant, the motion judge erred in conducting the weighing exercise required by s. 137.1(4)(b) – he should have concluded that there were grounds to believe that the harm likely to be, or that had been, suffered by the appellant as a result of

> the respondents' expressions was sufficiently serious that the public interest in permitting his proceeding to continue outweighs the public interest in protecting that expression.

[42] Because of the structure of s. 137.1, success by the appellant on the threshold requirement issue would require that the appeal be allowed, because if the motion judge did not properly determine that the threshold in s. 137.1(3) was met, there was no basis to dismiss the action under s. 137.1 at all. Section 137.1(3) is "a threshold burden, which means that it is necessary for the moving party to meet this burden in order to even proceed to s. 137.1(4) for the ultimate determination of whether the proceeding should be dismissed": *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, 449 D.L.R. (4th) 1, at para. 21; *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation*, 2021 ONCA 25, at para. 31.

[43] If, however, the appellant fails in showing an error in the motion judge's finding that the threshold requirement was met, the appellant must show that the motion judge erred on both the merits hurdle issue and the weighing of interests issue in a manner that justifies appellate intervention. That is because to avoid dismissal of an action that meets the threshold requirement, a plaintiff must satisfy both the merits hurdle under s. 137.1(4)(a)(i) and (ii) and the weighing of interests requirement under s. 137.1(4)(b): *Pointes*, at para. 33.

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The Standard of Review

[44] A motion judge's determination on a s. 137.1 motion is entitled to deference on appeal, absent an error of law or a palpable and overriding error of fact or mixed fact and law: *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at para. 77.

[45] Deference is "particularly appropriate in respect of the motion judge's weighing exercise under s. 137.1(4)(b), which is open-ended and highly discretionary. Only if the motion judge commits a reversible error in conducting that exercise may an appellate court consider the matter afresh": *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811, at para. 47.

The Threshold Requirement Issue

[46] There are two components of the test that must be met by a moving party seeking to establish that a proceeding arises from an expression that relates to a matter of public interest under s. 137.1(3).

[47] First, the proceeding must arise from an expression made by the moving party. This will be the case, regardless of the cause of action asserted or descriptive tag attached to it, if "[t]he expression is causally connected to the claim; there is a nexus between them; the expression grounds the claim; and the claim targets the expression": *Subway*, at para. 41. As Côté J. explained in *Pointes*, at

para. 24, the threshold requirement may be satisfied for claims beyond those asserting (or only asserting) defamation:

> [W]hat does "arises from" require? By definition, "arises from" implies an element of causality. In other words, if a proceeding "arises from" an expression, this must mean that the expression is somehow causally related to the proceeding. What is crucial is that many different types of proceedings can arise from an expression, and the legislative background of s. 137.1 indicates that a broad and liberal interpretation is warranted at the s. 137.1(3) stage of the framework. This means that proceedings arising from an expression are not limited to those directly concerned with expression, such as defamation suits. A good example of a type of proceeding that is not a defamation suit, but that nonetheless arises from an expression and falls within the ambit of s. 137.1(3), is the underlying proceeding here, which is a breach of contract claim premised on an expression made by the defendant [Footnote omitted.]

[48] Although this component of the test was not separately addressed by the motion judge, it is clearly met in this case. Although the appellant's proceeding asserts causes of action in addition to defamation, they are premised on and target the respondents' expressions. Indeed, the motion judge characterized most of those causes of action (albeit when discussing the merits hurdle) as "derivative" of the defamation claim, underscoring their close connection to the expressions that are at the heart of the entire claim.

[49] The second component of the test is that the expressions that give rise to the proceeding must relate to a matter of public interest. In *Pointes*, at para. 28,

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Côté J. explained that the burden of showing this is not onerous and that the public interest is defined broadly:

> The statutory language used in s. 137.1(3) confirms that "public interest" ought to be given a broad interpretation. Indeed, "public interest" is preceded by the modifier "a *matter* of". This is important, as it is not legally relevant whether the expression is desirable or deleterious, valuable or vexatious, or whether it 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.

[50] The motion judge noted that the pandemic and the government's response "affected virtually all Canadians". He concluded that segments of the public had a genuine interest in information about a lawyer acting in litigation that challenges the government's response to the pandemic. He considered that the challenged expressions related "to the differences between the actions commenced by [the appellant] … and the [proposed class] action commenced by [CSASPP]" and "the use of funds donated to be used in the litigation", and that members of the public who donated funds had a genuine interest in the quality of legal representation and how the funds were used.

[51] These conclusions are entitled to deference. The motion judge was not required to view this matter as akin to the situation in *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730, 153 O.R. (3d) 20, where a person claiming to be owed money by a lawyer placed a sign outside the lawyer's

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office complaining about the non-payment. The statements on the sign were not considered expressions that related to a matter in the public interest, but to a private dispute: at paras. 15-16. Although the appellant seeks to characterize the Gandhi email and FAQ expressions as relating to CSASPP's desire to have priority in leading litigation in British Columbia, doing so would not undermine the motion judge's conclusion. CSASPP's action was a proposed class proceeding about COVID-19 measures – why those leading it chose not to involve a high-profile lawyer who was representing clients in similar kinds of claims falls within the broad conception of a matter relating to the public interest, not a private dispute.

[52] Similarly, Toews' complaint is an expression made in relation to a matter in the public interest. The LSO governs the legal profession in the public interest: *Law Society Act*, R.S.O. 1990. c. L.8, s. 4.2. Toews' complaint went beyond her private interest in her donations to raise questions about whether donations had been remitted to the appellant and about the progress of litigation for which, she asserted, substantial funds had been solicited from the public.

[53] The motion judge's conclusion that the respondents had satisfied the threshold requirement under s. 137.1(3) was free of reversible error. I therefore reject this ground of appeal.

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The Merits Hurdle Issue

[54] To satisfy the merits-based hurdle in s. 137.1(4)(a), a responding party must establish grounds to believe that the proceeding has substantial merit and that the moving party had no valid defence. The "grounds to believe" standard is lower than a balance of probabilities. It requires there to be some basis in the evidentiary record and the law, taking into account the stage of the proceeding, for the required conclusions. This is not a high bar: *Bent*, at paras. 87-88, *Marcellin v. London (Police Services Board)*, 2024 ONCA 468, 498 D.L.R. (4th) 438, at paras. 10-11.

[55] As noted above, to be successful on the appeal, the appellant must show a reversible error in the way the motion judge disposed of the merits hurdle issue and the way he decided the weighing of interests issue. The latter decision, being open ended and discretionary, attracts substantial appellate deference. Accordingly, although the appellant raises numerous arguments about the motion judge's decision regarding the merits-based hurdle, I concentrate on those which, if accepted, would also have the prospect of influencing the result of the weighing of interests.

[56] The motion judge referred to the guiding principles as to how to make the determinations required under s. 137.1(4)(a), citing *Bent* and *Pointes*. The appellant does not take issue with the articulation of the principles, but with the way the motion judge applied them.

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[57] First, he argues that the motion judge did not properly approach this as an evidentiary review and instead treated it as a pleadings motion. For example, the motion judge stated, with respect to the intentional infliction of mental suffering claim, that the appellant "has not pleaded the elements of this cause of action". With respect to the conspiracy claim, he stated that the statement of claim did not properly allege conspiracy because it did not identify the conduct that constituted the conspiracy.

[58] I do not accept this argument. The motion judge clearly instructed himself on the record he was to assess and made reference to it throughout. He stated that for a proceeding to have substantial merit the claim must be "legally tenable and supported by evidence that is reasonably capable of belief" (emphasis added). His statement about the lack of a proper pleading went to the legal tenability of the claims. Moreover, in each case he went beyond the pleading deficiency to ground his conclusion in the evidentiary record. Regarding the intentional infliction of mental suffering claim, he reached an evidentiary conclusion: "The [appellant] has not adduced evidence or asserted allegations that the [respondents'] conduct caused an illness or suffering" (emphasis added). Similarly, his analysis of the conspiracy allegation also included the evidentiary conclusion that "[t]here is no allegation or evidence of any agreement to do anything that was unlawful or for the primary purpose of harming the [appellant]" (emphasis added).

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[59] Additionally, there is no reason to disturb the motion judge's finding that there were no reasonable grounds to believe that the claim based on a statement by Warner to an anonymous individual had substantial merit. There was no evidence to support that allegation. Although the motion judge addressed it on the hypothesis that the appellant's statement of claim might have been referring to the statement made to Johnson (evidence about which he ruled inadmissible) the appellant confirmed in oral argument that the statement to Johnson is not referred to in the statement of claim. The appellant contends it is relevant for other purposes, which I address below.

[60] Second, the appellant argues that the motion judge failed, in respect of the Gandhi email, the FAQ, and the LSO complaint, to separate whether the claim had substantial merit (under s. 137.1(4)(a)(i)) from the question of valid defences (under s. 137.1(4)(a)(ii)). As one example, the appellant points to the motion judge's analysis of whether the Gandhi email or the FAQ were defamatory in para. 52 of his reasons, which started from the premise that "[t]o succeed in an action for defamation, the expression must be false" and concluded that the statements were not defamatory because they were not made with a "reckless disregard for the truth" but "stuck to known and provable facts". According to the appellant, the motion judge thus impermissibly jumped over the question of whether the statement was defamatory to the question of whether the maker of the statement had a defence because the statement was true.

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[61] In my view, the motion judge did, in some respects, make this error. In a defamation action, the plaintiff's burden is to make a *prima facie* case of defamation, that is, that the words spoken are such that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person: *Bent*, at paras. 92, 102. If the plaintiff does so, the words spoken are presumed to have been false and the burden shifts to the defendant to show a defence, such as justification (the words spoken were substantially true), fair comment, or absolute or qualified privilege. The substantial merit question under s. 137.1(4)(a)(i) asks whether the plaintiff could meet its initial burden. The valid defence question under s. 137.1(4)(a)(ii) asks whether there are grounds to believe the defence could meet its burden if called upon to do so: *Bent*, at paras. 101-102, 107. The motion judge did not always consider whether the statements were defamatory in this sense before proceeding to consider whether there was a defence.

[62] However, reading the reasons as a whole, the error is not germane. Subsections (i) and (ii) of s. 137.1(4)(a) must both be met before the merits hurdle is cleared. As long as the analysis respects the respective burdens of proof applicable to the claim and any defence, a finding of grounds to believe that the respondents have a valid defence still means the merits hurdle was not cleared, even if it was not preceded by a proper finding that, absent such a defence, there are grounds to believe the action has substantial merit. Here, the motion judge

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found the appellant had failed to show an absence of grounds to believe the respondents had valid defences.

[63] Third, the appellant argues that the motion judge made specific errors in relation to whether there were grounds to believe the respondents had no valid defence.

[64] The appellant argues that the motion judge erred in finding that absolute privilege was a valid defence to any claim based on the LSO complaint. Toews was not sued for defamation, but for conspiracy. He argues that absolute privilege does not apply to causes of action other than defamation, adding that the LSO complaint was alleged to be an abuse of process.

[65] I do not accept this submission. In *Hamalengwa v. Duncan* (2005), 202 O.A.C. 233, 135 C.R.R. (2d) 251 (C.A.), at para. 8, leave to appeal to S.C.C. refused, [2006] S.C.C.A. No. 508, this court held that a letter of complaint about a lawyer sent to the LSO is “protected by the absolute privilege given to any person who makes a complaint to a quasi-judicial regulatory authority”. This holding was arrived at in connection with an action that alleged not only defamation but other causes of action. In *Heydary Hamilton PC v. Muhammad*, 2013 ONSC 4938, 116 O.R. (3d) 776, at para. 50, Morgan J. relied on *Hamalengwa* for the proposition that “a letter that initiates a Law Society investigation and/or hearing is not actionable as defamation or as any other cause of action”: at para. 50.

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[66] In any event, “[a] defamation [claim] cannot be ‘dressed up’ as another claim to evade the defences available in a defamation action": *Byrne v. Maas*, [2007] O.J. No. 4457 (S.C.), at para. 9; *Kanak v. Riggin*, 2017 ONSC 2837, at para. 64, aff’d 2018 ONCA 345, leave to appeal to S.C.C. refused, 2019 (January 17, 2019). The motion judge found the conspiracy claim to be derivative of the defamation claim. A defence of absolute privilege that would defeat a defamation claim cannot be avoided by asserting a conspiracy claim derivative of defamation: *Guergis v. Novak*, 2013 ONCA 449, 364 D.L.R. (4th) 70, at paras. 84, 93.

[67] Accordingly, there is no error in the finding that the appellant failed to show that there were reasonable grounds to believe that the respondents had no valid defence to a claim based on the LSO complaint.

[68] The appellant also argues that the motion judge erred in finding that the defence of justification had a reasonable prospect of success in relation to the statements in the Gandhi email and FAQ because they were accompanied by hyperlinks, without properly examining whether the hyperlinked documents actually showed that the sting of the defamatory statements was substantially true. Much of this argument turns on the appellant’s characterization of the sting of the statements. He submits that the motion judge made a palpable and overriding error in stating that the “expressions do not refer to fraud, dishonesty, or professional misconduct” when, according to the appellant, that is exactly their sting or innuendo.

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[69] In my view, it was open to the motion judge to interpret the Gandhi email and the FAQ as not referring to fraud, dishonesty, or professional misconduct by the appellant. None of the specific statements in either document, individually or taken together, make such an assertion.

[70] The FAQ, for example, referred to enquiries CSASPP had received from persons who claimed to have donated funds for litigation the appellant was undertaking, but did not comment on or allege any impropriety in raising or dealing with funds. It disclaimed having any such information, stated that CSASPP was not affiliated with the appellant and went on to say that if any donor had concerns, they could contact the regulator (the LSO) who could investigate.

[71] Both the FAQ and the email explain why CSASPP had commenced separate litigation and was not affiliated with the appellant. The motion judge was entitled to interpret the statements in the Gandhi email and the FAQ in light of that purpose. The statement that in one case, the appellant's work and claim for costs had been questioned and criticized by a judge of the Federal Court, was supported by the case citation provided. The statement was not rendered untrue because it did not also refer to the appellant's litigation successes or describe the sum of the appellant's work over his full career. The reasonable reader of the statement was provided with the case citation and could determine the context and extent of the Federal Court judge's remarks. Similarly, the motion judge was entitled to find that the statements that the pleading in the VCC Action was improperly drafted were

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justified. He was in a position to examine that pleading and conclude that it was "prolix and argumentative… [advancing] … conspiracy theories that the pandemic was pre-planned and executed by [various non-parties including] the [World Health Organization], Bill Gates, the World Economic Forum and unnamed billionaires and oligarchs". His conclusion was supported by the result of the motion in the A4C Action striking (with leave to amend) a similar pleading for similar reasons.

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[72] The appellant also criticizes the motion judge's conclusion that the defence of fair comment had a reasonable chance of success with respect to the statement in the Gandhi email that the appellant wanted "far too much money to get started" and that "nothing much had been accomplished in Ontario" since the VCC Action was started.

[73] The motion judge referred to the test for this defence in *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 SCR 640, at para. 31:

> [A] defendant claiming fair comment must satisfy the following test: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment, though it can include inferences of fact, must be recognisable as comment; (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?; and (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.

[74] The motion judge also referred to the fact that $400,000 had been paid for the A4C Action, and that there had essentially been no progress in the VCC Action

in the six months between when it was started and the Gandhi email. He concluded 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 Ontario."

[75] I see no error in the motion judge's conclusion. The appellant argues that the $400,000 was an amount to fund the entire A4C Action, not to just start it. This does not detract from the motion judge's conclusion that in light of the lack of progress in Ontario, a person could honestly believe that $400,000 was too much for another proceeding which might follow a similar path.

[76] The appellant also argues that express malice makes the fair comment defence unavailable. The motion judge adverted to this. He also referred to the requirements for a finding of express malice (when he discussed qualified privilege). His finding that fair comment had a reasonable chance of success must be taken to have accounted for the fact that the defence would have been vitiated if there were reasonable grounds to find express malice.

[77] The motion judge's reasons make it clear there were no reasonable grounds to believe that fair comment would be defeated by express malice on the part of Gandhi. He did not find any grounds to believe the statement was made knowing it was false, with reckless indifference as to its truth, to injure the appellant out of spite or animosity, or for some improper purpose, which are the usual routes to a

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finding of express malice: *Hansman v. Neufeld*, 2023 SCC 14, 481 D.L.R. (4th) 218, at para. 115. On the contrary, the motion judge was “unable to conclude” that the Gandhi email was sent “with a reckless disregard for the truth” and instead considered that it “stuck to known and provable facts”.

[78] The appellant argues that the motion judge failed to address other facts that relate to malice and relies primarily on the evidence that was ruled inadmissible or irrelevant by the motion judge. I do not accept this argument.

[79] With respect to the first category, as noted above, the motion judge ruled that, in light of the NDA, evidence about a statement that Warner allegedly made to Johnson about the appellant was inadmissible. The appellant challenges the factual basis for the finding – that Johnson was party to an NDA which required all matters discussed among the group supporting the CSASPP to be kept confidential – and his contractual interpretation that Warner’s alleged communication to Johnson was covered by the NDA. The appellant does not challenge the legal basis for the motion judge’s conclusion that the evidence was inadmissible because the circumstances made the communication privileged in accordance with *Slavutych v. Baker et al.*, [1976] 1 S.C.R. 254, 55 D.L.R. (3d) 224, other than to make the unsupported statement that such a conclusion is contrary to public policy.

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[80] The factual finding and contractual interpretation arrived at by the motion judge are entitled to deference. He found Johnson was a member of CSASPP and executed the NDA; he found that the purpose of the NDA was to allow members to receive communication from CSASPP on a confidential basis in order to foster an open exchange of ideas with respect to CSASPP matters. He found that comments about the appellant fell within the broad scope of the NDA, and that the parties to the NDA agreed to preserve the confidential nature of those communications. The appellant has not established a basis for interference with these conclusions of fact and mixed fact and law. Although he argues that the motion judge failed to specifically refer to Johnson's evidence that she initially signed the NDA but withdrew from it before the conversation in issue, the motion judge was not required to refer to each item of evidence in reaching his conclusion. It is clear from his conclusion on this issue that he considered the NDA to bind Johnson with respect to this communication.

[81] As for the evidence that the motion judge ruled irrelevant – being statements allegedly made by Warner to a lawyer about the appellant in 2023 – I see no basis on which such evidence could reasonably inform the question of whether Gandhi was motivated by express malice in making the comment in the Gandhi email in January 2021.

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[82] In my view, the appellant has not shown any reversible error in the finding of the motion judge that the appellant did not clear the merits-based hurdle that could have had any impact on the weighing of interests.

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The Weighing of Interests Issue

[83] Under s. 137.1(4)(b), the plaintiff has the burden to show that the harm likely to be suffered as a result of the defendant's expression is sufficiently serious that the public interest in permitting their proceeding to continue outweighs the public interest in protecting the expression. The weighing of interests under s. 137.1(4)(b) "is the core of s. 137.1": *Pointes*, at para. 62. The court in *Pointes* went on, at para. 62, to explain:

> While s. 137.1(4)(a) directs a judge's specific attention to the merit of the proceeding and the existence of a valid defence in order to ensure that the proceeding is meritorious, s. 137.1(4)(b) open-endedly engages with the overarching concern that this statute, and anti-SLAPP legislation generally, seek to address by assessing the public interest and public participation implications. In this way, s. 137.1(4)(b) is the key portion of the s. 137.1 analysis, as it serves as a robust backstop for motion judges to dismiss even technically meritorious claims if the public interest in protecting the expression that gives rise to the proceeding outweighs the public interest in allowing the proceeding to continue.

[84] As *Pointes* makes clear, it is necessary under s. 137.1(4)(b) for the plaintiff to show both the existence of harm and causation, namely that the harm was suffered as a result of the defendant's expressions: at para. 68.

[85] The motion judge considered the nature and extent of the harm to the appellant caused by the respondents' expression. He considered whether the appellant had shown harm, so caused, of a magnitude that would outweigh the public interest in protecting the respondents' expression: *Bent*, at para. 144. He found that the appellant had failed to show this.

[86] In the words of the motion judge, the appellant "has not established he suffered any, much less serious, harm because of the expression[s]". He found that there was no evidence that the appellant's reputation was adversely affected. He referred to evidence of persons who said they were unaffected by the respondents' statements and who continued to have confidence in the appellant's expertise, competence and integrity, and the absence of evidence of anyone who said their view of the appellant was affected by the expressions. He noted that there was no evidence that the appellant lost any clients or income, and the fact that he continued to act in the VCC and A4C Actions. Although the appellant referred to a loss of donations to CRC, the motion judge observed that it was not a party to the action, the appellant could not claim for harm to a separate entity, and the evidence was insufficient to show how any change in the amount of donations resulted in an effect on what the appellant himself received from CRC. Finally, because of evidence in the appellant's own materials of other extremely vitriolic and sustained criticisms of him by others, including the publication "Canuck

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Law", he found that if there was damage to the appellant's reputation, it was not shown to have been caused by the respondents, as opposed to other sources.

[87] The motion judge found a strong public interest in the evaluation of a lawyer's services in the context of class action litigation that may affect the public, especially where public donations to support the litigation have been solicited. There was also a public interest in protecting the right of persons like Toews to make complaints to the LSO. In light of the timing of the appellant's action (commenced the day before his response to the Toews' complaint was due), he found that "what was really going on" was an attempt to intimidate members of the public who may be considering complaining to the LSO about the appellant, which in turn would harm the ability of the LSO to regulate the legal profession.

[88] The appellant argues that the motion judge underemphasized the importance of reputational harm. Citing this court's decision in *Teneycke v. McVety*, 2024 ONCA 927, the appellant submits that proof of harm is not required where professional misconduct is alleged because serious harm is inferred. I do not accept that argument. *Teneycke* does not say that an allegation of harm to reputation means that the plaintiff will always prevail in the weighing exercise even if there is no evidence of actual harm suffered. In *Teneycke*, the nature of the allegations provided an indicia of serious harm, but the lack of evidence of actual harm attenuated the harm for the purpose of the weighing exercise, and may have pulled in favour of the defendants on the weighing exercise if the defendants had

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established a public interest in protecting their expression: at paras. 83-84. The plaintiff in *Teneycke* prevailed at the weighing of interests stage because there was a "low public interest in protecting the [defendants'] expression", which had been motivated by malice and an ulterior purpose: at paras. 88-89.

[89] The motion judge referred to the presumed harm to reputation resulting from defamation. But he noted that, in the weighing exercise, the magnitude of the harm is important: *Pointes*, at para. 70; *Bent*, at para. 144. In the language of *Teneycke*, the motion judge properly considered that the absence of evidence of actual harm attenuated it for the purpose of the weighing exercise.

[90] The appellant also submits that the motion judge gave too limited consideration to the loss of CRC donations and its impact on him, and to his evidence of threats to which he has been subjected. In his affidavit, the appellant deposed that the CRC no longer posts about its activities in order to shield lawyers who work with the CRC and their clients from attacks.

[91] The difficulty with the appellant's submission is the motion judge's causation finding. The motion judge referred to the evidence from the appellant of a concerted campaign against him by a group known as "Canuck Law" who was not a party to his action. The motion judge stated: "the [appellant] references the group extensively in the material filed on this motion. In articles posted on the Canuck website, the [appellant] was the subject of disparaging and racist comments".

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Referring to that and some judicial criticism, he concluded that there was no evidence that any damage to the appellant's reputation was caused by the respondents, as opposed to other sources.

[92] The appellant also argues that the value of the expressions of the respondents was reduced given the circumstances under which they were made, including what he says was the respondents' malice toward him. However, the motion judge made no finding of malice, and no error in that conclusion has been shown.

[93] The motion judge made no reversible error in the weighing exercise under s. 137.1(4)(b) in concluding that the harm to the public in limiting expression outweighed any harm that the appellant would suffer if the action was not permitted to continue. I would not interfere with his exercise of discretion.

B. The Costs Appeal

[94] Section 137.1 of the *CJA* provides that:

> **Costs on dismissal**
>
> (7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

[95] The appellant submits that full indemnity costs were not warranted in this case regardless of the outcome of the motion due to the nature of the defamatory

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comments and the fact that the costs were excessive, citing *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, 165 O.R. (3d) 753, at para. 39.

[96] As this court explained in *Park Lawn* at para. 39, costs of a s. 137.1 motion should not generally exceed $50,000 on a full indemnity basis, but "there will be exceptions and motion judges always have the power to award less, more or nothing as they see fit in the circumstances in each case." The motion judge noted this direction explicitly and other relevant governing principles, including the general presumption in the *CJA* that the moving party is entitled to costs of the motion and proceeding on a full indemnity basis and the need to consider the fairness and reasonableness of the costs award. In coming to his conclusion, the motion judge noted that the respondents' costs claim was, in part, excessive and reduced the costs awarded accordingly.

[97] An award of costs is a discretionary decision that is entitled to deference on appeal: *Burjoski*, at para. 109. In my view, there is no error in the motion judge's discretionary exercise of his jurisdiction over costs that would justify appellate interference. I would grant leave to appeal the costs award but dismiss the costs appeal.

V. Disposition

[98] I would dismiss the appeal.

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[99] In accordance with the agreement of the parties, I would award $10,000 in costs to the respondents, inclusive of disbursements and applicable taxes.

Released: July 31, 2025 “A.H.Y.”

“B. Zarnett J.A.”
“I agree. A. Harvison Young J.A.”
“I agree. L. Favreau J.A.”

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