

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Manuel v. Astakeesic*,  
2024 BCSC 1327

Date: 20240724  
Docket: S62200  
Registry: Kamloops

Between:

**Daniel Manuel, Susan Manuel, Collette Sunday, Diana Boston, Kayla Boston,  
Fred Holmes, Dennis MacDonald, Brian Holmes, Craig Shintah, Kevin Ned, Eva  
Marie Tom, Ira Tom and Jeremy Tom**

Plaintiffs

And

**Zachary Astakeesic and Yvonne Ned**

Defendants

Before: The Honourable Justice Hori

## **Reasons for Judgment on Costs**

Counsel for the Plaintiffs:

J.J. Kidston  
J.T.G. Fenton

Counsel for Defendants:

D.J. McNamee

Place and Date of Hearing:

Kamloops, B.C.  
November 16, 2023 and  
March 27 & 28, 2024

Written submissions of the Defendants on  
Costs Received:

June 24, 2024

Place and Date of Judgment:

Kamloops, B.C.  
July 24, 2024

**Introduction**

[1] The plaintiffs commenced this action against the defendants for damages and an injunction based on defamation. The plaintiffs are the chief, councillors and administrators of the Upper Nicola Band (the “Band”). The plaintiffs filed an application for an interim injunction to require the defendants to remove and retract defamatory statements from the internet.

[2] The defendants resisted the plaintiffs’ injunction application and brought their own application for an order dismissing the plaintiffs’ action pursuant to the provisions of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [*PPPA*].

[3] In reasons for judgment reported at 2024 BCSC 991, and published on June 7, 2024, I denied the plaintiffs’ injunction application. I also dismissed the plaintiffs’ action pursuant to s. 4 of the *PPPA*.

[4] At the conclusion of the reasons for judgment, I granted leave to file written submissions on costs. I directed the defendants to file their costs submissions within 14 days. I allowed the plaintiffs 14 days from receiving the defendants’ submissions to file their response submissions.

[5] The defendants have filed their submissions on costs but the plaintiffs have not. The time in which the plaintiffs were to file their submissions has expired without any request to extend the time. Therefore, I am proceeding with these reasons on the issue of costs without the benefit of submissions on behalf of the plaintiffs.

**Costs Under the PPPA**

[6] The *PPPA* includes a provision dealing specifically with costs related to dismissal applications pursuant to s. 4 of the *PPPA*. Section 7 of the *PPPA* provides:

**Costs**

7 (1) If the court makes a dismissal order under section 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances.

(2) If, on an application for a dismissal order under section 4, the court does not dismiss the proceeding, the respondent is not entitled to costs on that application unless the court considers it appropriate in the circumstances.

[7] The most recent appellate consideration of s. 7 of the *PPPA* in British Columbia is *Mawhinney v. Stewart*, 2023 BCCA 484. In *Mawhinney*, the unsuccessful plaintiff argued that when deciding whether to award costs on a full indemnity basis under s. 7(1) of the *PPPA*, the court must consider a continuum of circumstances ranging from lawsuits that have strong indicia of a strategic lawsuit against public participation (“SLAPP”) to those that do not. The suggestion was that an award of costs on a full indemnity basis was the appropriate starting point where there are strong indicia of a SLAPP but that it may not be fair and reasonable to award full indemnity costs when the proceeding has little resemblance to a SLAPP.

[8] The Court of Appeal in *Mawhinney* endorsed a more open consideration of all of the circumstances of the case but emphasized that an award of costs on a full indemnity basis was the default position. At para. 49, Justice Dewitt-Van Oosten held:

[49] The text of s. 7(1) does not restrict full indemnity costs to actions of a certain type or ones that have been judicially determined to constitute or closely resemble a SLAPP. Nor does the provision indicate that the legislature explicitly contemplated this sort of a threshold before full indemnity can arise. To the contrary, the provision directs that when an action has been dismissed under the *PPPA*, the defendant is entitled to costs assessed on a full indemnity basis unless an order to that effect would be “inappropriate in the circumstances”. Full indemnity is the default position. Section 7(1) is broadly worded and on its face, invites an open-ended enquiry in deciding whether a different order is warranted. As part of that enquiry, a court may elect to consider the hallmark indicia of a SLAPP. However, it is not mandated to do so and there are other factors relevant to the enquiry the court is obliged to undertake that may legitimately come into play, including the conduct of the parties in the litigation.

[9] The Supreme Court of Canada in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, cited four recognized indicia of a SLAPP action referred to by the Ontario Court of Appeal in *Platnick v. Bent*, 2018 ONCA 687. Those recognized indicia are:

- a) a history of the plaintiff using litigation or the threat of litigation to silence critics;
- b) a financial power imbalance that strongly favours the plaintiff;
- c) a punitive or retributory purpose animating the plaintiff's bringing of the claim; and
- d) minimal or nominal damages suffered by the plaintiff.

[10] In this case, there is no history of the plaintiffs using the litigation process to intimidate or silence critics.

[11] There is no evidence from which I can reasonably infer that there is a strong financial imbalance between the plaintiffs and the defendants. I rejected the defence position that the plaintiffs' action was, in reality, an action brought by the Band. There is no evidence of the financial circumstance of any of the plaintiffs or the defendants.

[12] The defendants submit that there may have been a punitive or retributory purpose for the plaintiffs' action in that they continued to pursue the action and the interim injunction application after the defendants deleted the impugned posts from the internet. In my view, such a connection is weak in that the plaintiffs may have been continuing the action in order to prevent future posts of an objectionable nature.

[13] The one criteria of a SLAPP that is present in this action is the absence of damages. The plaintiffs presented no evidence of damages. They made bare assertions of harm with no details that would raise the seriousness of the harm above the level presumed in a defamation action.

[14] As a result of the absence of submissions from the plaintiffs, I have no basis upon which to find that it would be inappropriate in the circumstances to award full indemnity costs to the defendants. I am bound by the pronouncement of the Court of Appeal in *Mawhinney*, that costs on a full indemnity basis is the default position.

[15] Section 7 of the *PPPA* provides that the defendants are entitled to their costs of the application to dismiss and their costs in the proceedings. Accordingly, I will award costs to the defendants on a full indemnity basis for:

- a) their application to dismiss the action;
- b) the plaintiffs' application for an interim injunction; and
- c) these proceedings.

“D.K. Hori J.”

HORI J.