

Court of Appeal upholds decision to dismiss defamation action of dog-sled business (Windrift Adventures Inc. v. CTV-Bell Media Inc.)

Defamation | Litigation | Litigation & Dispute Resolution | SLAPP | Torts

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One of the purposes of section 137.1 of the *Courts of Justice Act* (“CJA”) is to discourage the use of litigation as a means of unduly limiting expression on a matters of public interest. The phrase “public interest” has been broadly defined, and therefore a defendant who feels that their expression about a plaintiff falls within this broad definition can bring a motion at an early stage of a legal proceeding to have a plaintiff’s action dismissed. Under the CJA, where the plaintiff’s action is about a matter of public interest, the plaintiff bears a burden of demonstrating that their action has substantial merit and that the defendant has no valid defence, and that the interest in permitting the action to proceed outweighs the public interest in protecting the defendant’s expression. For a business that believes it has been defamed, it can be difficult to satisfy these burdens.

Windrift Adventures Inc. v. CTV-Bell Media Inc., 2025 ONCA 346 provides an example of a case where a business featured in an episode broadcasted on national media was unable to prevent its action for defamation from being dismissed on an anti-SLAPP motion.

The plaintiff operated a dog-sledding and horse-riding business that had become embroiled in proceedings related to the removal of its dogs by animal welfare authorities. The Ontario Animal Care Review Board had found that the plaintiff’s dogs were animals in distress within the meaning of the *Provincial Animal Welfare Services Act, 2019*. A total of 229 dogs had been removed from two of the plaintiff’s properties and remained in the care of Animal Welfare Services.

Subsequently, the defendant broadcasted an episode entitled “Dogs in Distress” that reported on the public debate, controversy and calls for reform surrounding the dog sledding industry in Canada and the conditions endured by sled dogs.

The plaintiff was profiled in the episode.

Along with the airing of the episode on television, the defendant published a tweet on its Twitter (now “X”) account and made a post on Facebook page, which both included a 30-second video promoting the episode.

The plaintiff contended that the episode and the social media posts were defamatory.

More specifically, the plaintiff contended that references to it in the episode were capable of meaning that it had been guilty of a criminal offence related to animal cruelty and that viewers familiar with the plaintiff’s dogs would recognize that certain images of them used in the program belonged to the plaintiff.

In the episode, the words “Dogs in Distress” had been imposed below the images.

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The defendant defended the plaintiff's action on the grounds of justification, fair comment and responsible communication, and moved for a dismissal of the action under [section 137.1](#) of the CJA.

The motion judge granted the motion (see [2023 ONSC 6488](#)). The motion judge found that the social media posts did not refer to the plaintiff by name, that a reasonable person viewing the episode would understand that the plaintiff was involved in ongoing proceedings and that the plaintiff disagreed with the standards and objects to the animal care orders that had been made against it.

The motion judge accepted that the plaintiff had been allowed to tell its side of the story through one of its principals and lawyer and had simply reported on the news. Providing a subject with the opportunity to respond to allegations before they are broadcast is a key component to the defence of responsible communication.

The motion judge also concluded that the defendant neither made any comments about the plaintiff nor demonstrate any malice, and that the defendant would satisfy the elements of the defences of justification, fair comment and responsible communication.

Lastly, the motion judge found that under [section 137.1\(4\)\(b\)](#) of the CJA, the harm suffered by the plaintiff as a result of the defendant's episode and social media posts was not sufficiently serious that the public interest in permitting the defamation action to continue outweighed the public interest in protecting the defendant's expressions.

The Court of Appeal for Ontario [upheld](#) the dismissal of the plaintiff's action. The plaintiff was unable to demonstrate any reversible legal error.

On the issue of substantial merit of its claim, the plaintiff was required to satisfy the motion judge that (1) the words complained of were published to at least one person other than the plaintiff; (2) the words complained of referred to the plaintiff; and (3) the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person.

The Court of Appeal agreed with the motion judge that the plaintiff did not satisfy these three elements because the social media posts did not identify the plaintiff, and the plaintiff's reputation had already been "tarnished" by the animal welfare charges that had been laid against it and the removal of the plaintiff's dogs.

Furthermore, the Court of Appeal accepted that the motion judge had implicitly rejected that references to the plaintiff in the episode were capable of meaning that the plaintiff had been guilty of the criminal offence of animal cruelty. Rather, the program fairly reported on the plaintiff's dispute with animal welfare authorities.

With respect to the defendant's defences, the Court of Appeal simply found that the motion judge made no error.

Lastly, with respect to the motion judge's weighing of the competing public interests under [section 137.1\(4\)\(b\)](#) of the CJA, the Court of Appeal upheld the motion judge's finding that the evidence of a causal link between the defendant's expressions and alleged harm suffered by the plaintiff was weak and "questionable".

While the plaintiff argued that one of the principals and employees of its business had suffered serious harm that prevented her from working because of the expressions, the motion judge noted that this individual was not a plaintiff.

The Court of Appeal also rejected the plaintiff's argument, based on *Burjoski v. Waterloo Region District School Board*, [2024 ONCA 811](#), that it was mandatory for the motion judge to have determined that its action was "abusive" in order to grant the dismissal under [section 137.1](#).

The appellate court reasoned that *Burjoski* had not changed the law for two reasons. First, a decision of the Court of Appeal could not change the law on anti-SLAPP motions as pronounced by the Supreme Court of Canada in *1704604 Ontario Ltd. v. Pointes Protection Assoc.*, [2020 SCC 22](#). Second, the decision in *Burjoski* used the term "abusive" merely as a shorthand description for actions that sought to unduly limit expression on matters of a public interest.

There are three key takeaways from this decision. First, the case shows that that it can be difficult to overturn a motion judge's finding to dismiss an action under [section 137.1](#) of the CJA. Second, the case shows that there is no requirement that an action must be found to be "abusive" in order to be dismissed under [section 137.1](#). Third, the case shows that a plaintiff corporation cannot satisfy the test under [section 137.1\(4\)\(b\)](#) by attempting to demonstrate that a key employee or principal of the business may have suffered harm as a result of a defendant's expression. The individual must be a party to the action.

At this time, it is unknown whether the plaintiff will be seeking leave to appeal the decision of the Court of Appeal to the Supreme Court of Canada. A PDF version is available to download [here](#).

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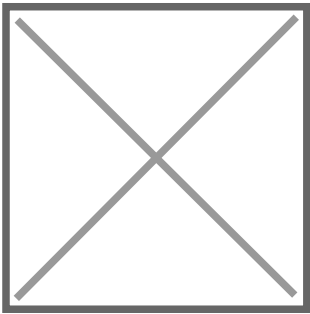
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[Stephen Thiele is the co-author of *A Practical Guide to the Law of Defamation*, (Lexis-Nexis, 2024). His co-authors are his colleagues Gavin J. Tighe, K.C. and James Cook.]

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