

Defamation action brought by Freedom Convoy protestors against Canadian Anti-Hate Network dismissed (Cornell v. Trudeau)

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The recent decision of *Cornell v. Trudeau*, 2024 ONSC 5343 highlights the importance of providing sufficient details and particulars in a claim for defamation. A plaintiff's failure to particularize the alleged defamatory statements and the harm suffered as a result of those statements may be fatal.

In this matter, the plaintiffs brought an action against government actors, agencies, police members, financial institutions and the Canadian Anti-Hate Network ("CAHN") in relation to the invocation of the *Emergencies Act*. The Act was invoked to break up the Freedom Convoy protest in Ottawa which took place in early 2022. The plaintiff protestors argued that this action deprived them of their rights under the *Canadian Charter of Rights and Freedoms*.

CAHN is a non-profit organization whose mandate is to "monitor, research and counter hate groups by providing education and information to the public, the media, researchers, courts, law enforcement, and community groups" (at paragraph 10).

Against CAHN specifically, the plaintiffs claimed defamation and civil conspiracy, arguing that members of CAHN provided false information to the other defendants and to media organizations in an attempt to harm the plaintiffs and provided false or highly exaggerated information to various Crown defendants and police defendants to support the invocation of the *Emergencies Act*.

In response, CAHN brought an anti-SLAPP motion under section 137.1 of the *Courts of Justice Act* seeking the dismissal of the claim against it. CAHN submitted that this was a "classic" strategic lawsuit against public participation and that any expressions it made related to a matter of public interest, namely the Freedom Convoy protest.

CAHN further argued that the claim brought by the plaintiffs was devoid of particulars, as the plaintiffs failed to include any alleged defamatory statements made by CAHN, and that the civil conspiracy claim was, in essence, an impermissible dressed-up defamation claim.

In defending the motion, the plaintiff submitted an affidavit, which CAHN contended was improper because it was full of inferences, conclusions, and arguments. While the court did not strike the entire affidavit, it held that the affidavit was not an opportunity for the plaintiffs to elaborate on, particularize, or reframe the allegations against CAHN so as to allow the plaintiffs to effectively amend their claim. Accordingly, the improper parts of the affidavit were not considered.

With respect to substantive requirements of an anti-SLAPP motion, the court explained that under section 137.1, the defendant was first required to show that the proceeding arose from an expression relating to a matter of public interest. Once this threshold was satisfied, the burden shifted to the plaintiff to satisfy the court that:

a. there are grounds to believe that,

(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.

First, regarding the “public interest” threshold, the plaintiffs argued that CAHN brought the motion prematurely because it failed to seek particulars from the plaintiffs as to the alleged defamatory statements. The plaintiffs argued that if CAHN did not know which of its statements were defamatory, it could not satisfy the court that the public interest threshold was met. Thus, CAHN should have first brought a pleadings motion or served a demand for particulars.

The court disagreed and found that the “public interest” threshold was satisfied.

The court explained that the plaintiffs could not rely on their own failure to plead particulars of alleged defamatory statements to argue that CAHN had not met the “public interest” threshold. To accept the plaintiffs’ argument would have permitted them to circumvent [section 137.1\(6\)](#), which expressly prohibited further amendments to a claim in order to avoid a [section 137.1](#) motion: see *Thatcher-Crain v. Clearview (Township)*, 2023 ONCA 96, at paragraphs 52 and 53.

The court further held that the “public interest” concept was to be given a broad and liberal interpretation. On this question, a court is required to ask whether “some segment of the community would have a genuine interest in receiving information on the subject”: see *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, at paragraph 27.

In this case, the court held that on review of the Statement of Claim, it was evident that the impugned statements, particularized or not, were alleged to have been made by CAHN about individuals participating in the Freedom Convoy protests. In *Li v. Barber*, 2024 ONSC 775, the Superior Court found that these protests were expressions of matters of public interests. Accordingly, it followed that expressions about the protest, including an individual who participated in them, would also be matters of public interest. Similarly, decisions regarding the invocation of the *Emergencies Act* would be matters of public interest.

This finding shifted the burden to the plaintiffs to meet the substantial merits threshold and public interest threshold under [section 137.1\(4\)](#).

To establish defamation, a plaintiff must prove that (1) the impugned words were defamatory in the sense that they would lower the plaintiff's reputation in the eyes of a reasonable person; (2) the words referred to the plaintiff; and (3) the words were published.

The court held that the plaintiffs had not satisfied these elements.

In the Statement of Claim, the plaintiffs argued that the CAHN's alleged defamatory statements referred to participants in the Freedom Convoy protest and because the plaintiffs participated in these protests, they were defamed by CAHN's expressions. However, where a plaintiff alleges harm as a member of a group, words aimed at defaming a group are only actionable by members of the group if they are singled out: see *Hudspeth v. Whatcott*, 2017 ONSC 1708, at para. 193.

Here, none of the plaintiffs, except for one, were singled out. Thus, their group claim could not succeed.

Further, CAHN had multiple valid defences to the claim, including the defences of fair comment, qualified privilege, responsible communication, and section 6 of the *Libel and Slander Act*.

[Section 5](#) of the *Libel and Slander Act* requires a plaintiff in a defamation claim relating to a newspaper or broadcast to provide notice in writing to defendants within 6 weeks of the libel coming to the plaintiff's knowledge. [Section 6](#) of the *Act* requires that the plaintiff then commence his or her claim within 3 months of learning of the defamatory statements. Failure to comply with these provisions are absolute bars to litigation.

Here, the plaintiffs did not provide a notice of libel and did not commence their action within 3 months of becoming aware of the expressions.

Finally, the claim was likely not commenced within the applicable two-year limitation period. The *Emergencies Act* was invoked on February 14, 2022, meaning that the alleged defamation would have been made prior to this date. The two-year limitation period would have expired by February 14, 2024, when the notice of action was issued.



With respect to the public interest threshold, the court did not find that the plaintiffs' harm suffered as a result of CAHN's expressions were sufficiently serious that the public interest in permitting the proceeding to continue outweighed the public interest in protecting the expression.

The court found that the plaintiffs failed to establish (1) the existence of harm and (2) causation.

Only one of the plaintiffs provided evidence, albeit vague and unparticularized, of harm suffered from the freezing of his bank accounts (as a result of the *Emergencies Act*) and from a strained relationship with his son. There was no evidence, however, that CAHN's alleged defamation or actions caused either.

The court further held that there was a public interest in not deterring non-profit organizations from participating in public affairs and that this claim was "precisely the type of claim that section 137.1 is intended to weed out" (at paragraph 63). Accordingly, the defamation claim was struck.

The court also dismissed the claim for civil conspiracy for two reasons. First, civil conspiracy requires alleged conspirators to act in concert with a common design. Although the plaintiffs pled that CAHN members "ultimately assisted one another", this was insufficient to demonstrate that the members acted in concert with one another.

Second, the plaintiffs failed to set out the particular acts of each co-conspirator so that each defendant knew what the other defendant was alleged to have done. While conspiracy is a tort committed by a group, the liability of each defendant arises because they individually participated as a member of that group. The plaintiffs failed to sufficiently particularize their allegations against each member of CAHN. The civil conspiracy claim was, therefore, also struck.

This decision highlights the importance of sufficiently particularizing the defamatory statements that are the basis of a defamation claim. A plaintiff intending to bring such a claim should ensure that the Statement of Claim outlines, at the very least, (1) the defamatory statements and (2) the harm suffered due to those statements. A plaintiff who fails to do so may be prevented from amending his or her claim in the event of an anti-SLAPP motion.

Additionally, if the defamation claim relates to a newspaper or broadcast, a plaintiff should carefully review the provisions of the *Libel and Slander Act* and meet all of the required timelines therein. A failure to do so will be fatal to the claim. A PDF version is available to download [here](#).

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