

Developer hit with \$25,000 damages award on anti-SLAPP motion (Sheridan Retail Inc. v. Roy)

Anti-SLAPP Motion | Defamation | Litigation | Litigation & Dispute Resolution | Torts

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The anti-SLAPP provisions of the *Courts of Justice Act* (“CJA”) are powerful. If a motion succeeds in dismissing a plaintiff’s action on the basis that the action was merely meant to gag the free expression of a defendant on a matter of public interest, the court is presumptively directed to award the defendant full indemnity costs. In addition, the provisions permit the court to award damages against the unsuccessful plaintiff.

In *Sheridan Retail Inc. v. Roy*, 2025 ONSC 2866, the court utilized its powers under the CJA’s anti-SLAPP provisions to award the 24-year-old defendant, who was a university student, full indemnity costs and \$25,000 in damages on a successful anti-SLAPP motion to dismiss a \$300,000 action that was brought against him by the plaintiff developer.

The developer had commenced its action against the student for defamation, intentional interference with economic relations, inducing breach of contract and trespass on the same day that its redevelopment proposal for a shopping mall was rejected by local government.

Prior to the local government’s rejection of the redevelopment proposal, the student had visited the mall and taken photographs of the work that the developer had been undertaking, attended public consultation meetings, and made repeated complaints to the local government about environmental, social and safety issues.

The local government investigated the complaints and found that the developer had breached the *Building Code Act, 1992* and the *Planning Act*.

While the developer demanded that the student cease and desist from making complaints about the shopping mall and to stop trespassing on mall property, the student continued to voice his concerns about the redevelopment project, which included the building of two 15-storey residential condominium towers.

At a public consultation meeting, the student expressed concerns about the lack of affordable housing and green space.

In response, a lawyer for the developer told the public attendees that the student had been found “rooting through garbage” and had been asked to not trespass in the mall.

The mall, however, was open to the public, and the areas which the student visited were not locked or demarcated as being off limits.

The developer painted the student as a costly obstacle in its redevelopment plans, and in responding to the student’s motion to dismiss its action stated that it brought the lawsuit to stop the student’s tortious conduct so that it could proceed to revitalize the mall.

Section 137.1 of the CJA was designed, in general, to stop a powerful plaintiff from silencing a weaker defendant through strategic, meritless litigation that would undermine and intimidate public expression and debate.

On a motion to dismiss an action covered by [section 137.1](#), the moving party must first establish that the plaintiff's proceeding arises from an expression related to a public interest. The term "public interest" is broadly construed and accordingly the moving party's burden is low.

If the moving party satisfies this threshold, the burden shifts to the plaintiff to prove that there are reasonable grounds to believe that their claim has substantial merit and will not be defeated by a valid defence, and that the harm suffered by the plaintiff is sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting the defendant's expression.

In this case, the developer conceded that the student was engaged in public expression, that its defamation claim lacked substantial merit, and that its economic loss could not be particularized.

Accordingly, the developer wanted to amend its pleading to restrict its claim to only trespass.

Under [section 137.1\(6\)](#) of the *CJA*, a plaintiff is not permitted to amend its pleadings as a substantive response to an anti-SLAPP motion without leave of the court.

However, the court rejected the developer's request to prune its claim on the grounds that this represented an obvious and disingenuous attempt to recast the action.

Although the court accepted that the student had entered the mall, took pictures and submitted those pictures to the city to support his complaints, the developer's allegation of trespass was inextricably linked to the defamation claim.

The developer also conceded that the student's alleged trespass was for the primary purpose of collecting information to substantiate his complaints.

The evidence also showed that the developer did not hire additional security guards or incur any other expenses to keep the public or the student out of the mall.

The developer's admissions, abandonment of most of its causes of action and inability to prove that the student trespassed on the mall amounted to a lack of substantial merit to its action, which was sufficient to dismiss the claim.

Nevertheless, the court further considered whether the developer established that the harm it had or would suffer from the student's expressions outweighed the public interest in protecting the student's expression such that its action should continue.

Under this balancing test, the court was satisfied that there was a very high public interest in the student's public expression. While the developer characterized the student's conduct about the redevelopment project as being "obsessive", the court found that the student was merely "engaged" in a local issue that was of concern to residents. The facts disclosed that the student had actually met with the developer and simply written emails outlining his concerns and made complaints to the local government, which were duly investigated.

In contrast, any harm to the developer was found not to be directly linked to the student's expression.

Accordingly, the developer had not met its burden under [section 137.1\(4\)\(b\)](#) of the *CJA*, and the court dismissed the developer's action.

Under [section 137.1\(9\)](#) of the *CJA*, the court awarded \$25,000 in damages to the student. The court accepted that the student had suffered stress and anxiety because of the developer's lawsuit. The evidence also established that the developer had belittled the student and his family during the public consultation process, intimidated the student by threatening legal action against him prior to the local government's vote, and engaged in overly aggressive litigation tactics.

The court also found that the developer's action had put a chill on the student's public expression and caused the student not to engage in the appeals process before the Ontario Land Tribunal ("**OLT**"). The developer had appealed the decision of the local government to the OLT.

The developer's action may be seen as the archetypical SLAPP lawsuit in which a more powerful party with vast economic resources seeks to silence a weaker party, with access to fewer funds, from engaging in public advocacy. Although there is a public good in redeveloping old commercial malls and encouraging the building of more residential living space, developers should appreciate that established residents often are concerned about the impacts of any redevelopment on their local communities. In this case, a key takeaway is that a powerful plaintiff who seeks to intimidate a defendant through the court system will attract monetary sanction from the courts under [section 137.1\(9\)](#) of the *CJA*. Accordingly, plaintiffs who seek to weaponize the court as a means to silence a defendant should tread carefully.

At the time of this writing, the costs that might be awarded against the developer are unknown.



As well, the developer's appeal to the OLT about its redevelopment plans is outstanding, and it is unknown if the developer will appeal the dismissal of its action against the student. A PDF version is available to download [here](#).

For more information please contact: **Stephen Thiele**

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

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