

KEEPING CURRENT

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A review of the test for anti-SLAPP motions (*Yates v. Iron Horse Corporation and St. Martin*)

By Isabel Yoo

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The acronym “SLAPP” is short for “strategic lawsuits against public participation”. These are tools used to intimidate or silence criticism by engaging the critic with expensive, drawn-out legislation. Anti-SLAPP laws are intended to prevent the use of such lawsuits. In Ontario, the court’s authority to hear and determine an anti-SLAPP motion is housed under [section 137.1](#) of the [Courts of Justice Act](#). The purpose of the section is to encourage individuals to express themselves on matters of public interest, and to discourage the use of litigation as a means to limit expression on such matters. [Section 137.1\(3\)](#) empowers a judge to dismiss a “SLAPP” proceeding, and [section 137.1\(4\)](#) provides for the circumstances where a proceeding may continue.

In [Yates v. Iron Horse Corporation and St. Martin, 2023 ONSC 4195](#), Gomery J. provides a helpful overview of the law and test for anti-SLAPP motions, defenses to defamation claims, and important reminders for litigators and parties involved in such matters.

Background

The plaintiff previously worked for the individual defendant, who owned and operated Iron Horse Corporation, a private investigations firm in Ottawa. The relationship between the plaintiff and defendant broke down after an unsuccessful business venture. The plaintiff alleged that the defendant began to harass her via email and text messages, in addition to publishing her phone number on online ads for escort and sexual services, causing her to receive unwanted sexually explicit messages from strangers. She alleged that the defendant forged a promissory note and used it as a basis for a Small Claims Court action against her. The defendant was charged with criminal harassment, two counts of forgery, and obstruction of justice. He ultimately pled guilty to forgery, and the three other charges were withdrawn.

These criminal proceedings, and the actions of the individual defendant, were the subject of a CBC article for which the plaintiff and her father were

interviewed. The plaintiff reposted the article on her LinkedIn profile as well as on Reddit. She also posted a review of Iron Horse on Glassdoor. She then commenced the action against the defendants for harassment, fraud, and violations of the *Human Rights Code*. The defendants commenced a counterclaim and a separate action against the plaintiff and her father for defamation and malicious prosecution. The plaintiff moved to have the counterclaim and separate action dismissed under the anti-SLAPP legislation.

The test on an anti-SLAPP motion

There are two stages to an anti-SLAPP motion:

First, the moving party bears the onus to show the matter is one of public interest. If this is successful, then we move onto the second stage, that is, the responding party must show that there are grounds to conclude that:

- a. The lawsuit has substantial merit;
- b. The defendant has no valid defence to the lawsuit; and
- c. The public interest in permitting the lawsuit to continue outweighs the public interest in protecting the expression.

If the respondent cannot prove all three elements under stage two, then the anti-SLAPP motion will be granted. The balancing exercise in the third element of stage two is the crux of the analysis – the motion judge must consider what is really going on in the case before them. They must balance the rights of individuals to vindicate their rights through a lawsuit with the freedom of expression and its influence on public discourse.

In the decision, the court made an important reminder that the motion is not another form of summary judgment. Following the Court of Appeal's comments in [Park Lawn Corporations](#)

[v. Kahu Capital Partners Ltd., 2023 ONCA 129](#), the court affirmed that an anti-SLAPP motion is a screening procedure, not a “trial in a box”. Such motions are to be efficient and economical, focused on the purposes set out in [section 137.1](#).

A decision on an anti-SLAPP motion is also not a determination of the merits of a claim. Its purpose is restricted to assessing whether, for the sake of protecting debate on matters of public interest, a hearing on the merits of some cases should not take place.

Application of the test

The plaintiff succeeded in proving that the matter was one of public interest. It is a matter of public interest to speak out against the predatory, abusive, and criminal behavior of prominent persons in society, particularly when they abuse women. Gender-based harassment, sexual harassment, and workplace harassment are all legitimate areas of public concern.

However, the mere fact that an expression relates to sexual or workplace harassment, on its own, is insufficient. A contextual approach must be taken. In this matter, the alleged comments were made by an individual defendant, who was the CEO of a large investigations firm, with over 1,800 employees. The potential abuse of power and resources could give rise to public safety concerns and was thus, a matter of public importance. The plaintiff's review of the workplace on Glassdoor was also held to be a matter of public importance. For this determination, the court considered the size of the workplace, the number of current and prospective employees, and the members of the public who would interact with the company.

The defendants failed to prove there was substantial merit to their claims of malicious prosecution and defamation. For the latter claim, the court found that the pleadings were lacking. The statement of claim did not clearly refer to

the allegedly defamatory statements made by the plaintiff and her father. It was not clear which statements were alleged to be defamatory. On an anti-SLAPP motion, the motion judge must take care to consider only the defamatory statements set out in the pleadings, and no other expression. The motion judge cannot read in other statements, and effectively allow the respondents to amend their claim (see [Thatcher-Craig v. Clearview \(Township\), 2023 ONCA 96](#)).

The defendants also failed to prove that public interest favoured the continuation of their claims. There was evidence before the court that the defendants were advancing a civil claim strategically in response to the plaintiff's action. The court held that a lawsuit will not automatically be dismissed on a [section 137.1](#) motion just because it appears to be strategic. However, at the balancing stage, it is a relevant consideration. The defendants were essentially seeking the same redress and quantum of damages in two separate actions. As such, their counterclaim and separate action were dismissed.

This decision provides a helpful overview of the test under [section 137.1\(3\)](#) and each element under the test. It also provides some helpful reminders to litigators and parties contemplating or responding to such motions.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [Isabel Yoo](#), at 416.865.6655 or iyoo@grllp.com.

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