

KEEPING CURRENT

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Defamation action arising out of relationship breakdown allowed to proceed, but no costs ordered (*Brown v. Landriault*)

By Stephen Thiele

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The breakdown of intimate relationships can lead to a war of highly charged words that are published to third persons on social media. If the words are considered to be defamatory, the person harmed by the words can commence an action to seek damages. In turn, for actions commenced in the Ontario Superior Court of Justice, the publisher of the words can bring an anti-SLAPP motion under [section 137.1](#) of the *Courts of Justice Act* (the "CJA") to have the action dismissed.

However, as seen in [Brown v. Landriault, 2024 ONSC 7027](#), where the impugned words involve serious allegations of criminal conduct, an anti-SLAPP motion is unlikely to be successful.

In this case, the plaintiff and the defendant, who had been involved in a short, two-month relationship, got entangled in a very bitter separation. The separation involved multiple complaints to the Ottawa Police Service and various allegations of sexual abuse and harassment against the other.

The defendant, as well, made allegations against the plaintiff on social media,

including X and a local gaming community platform called "Super Smash Bros" or Ottawa Smash. The plaintiff was an administrator and moderator of Ottawa Smash.

The defendant had 1,660 followers on X, while Ottawa Smash had approximately 1,000 members.

After being banned from entering Ottawa Smash events, the defendant also made allegations against the plaintiff regarding sexual assault and child grooming on another platform called the Global Ban Database, which was a group that blacklisted global gaming community members from participating in events. In general, members of local Smash communities followed this database.

The plaintiff learned of the allegations that the defendant had made on X and the Ottawa Smash gaming platform, and sued her.

In response, the defendant sought to have the plaintiff's action dismissed on the grounds that it represented strategic litigation against public participation. The defendant contended that she was

a victim of sexual abuse and that, as a victim of intimate partner violence, she was entitled to speak publicly about her experiences with the plaintiff. In addition, she relied on the defence of justification to defeat the plaintiff's claim.

An anti-SLAPP motion is comprised of shifting burdens of proof. At the first stage, the defendant must establish that the impugned expressions relate to a matter of public interest. The threshold at this stage is relatively low and the defendant is only required to show that some segment of the public has a genuine interest in knowing about the impugned expressions.

Here, the defendant's statements about being a victim of sexual abuse and that the plaintiff was an alleged sexual predator were matters of public interest. Accordingly, the defendant had met her burden.

This shifted the onus to the plaintiff to establish that his claim had substantial merit and that there was a sufficient public interest in seeing his claim proceed.

With respect to the merits of the plaintiff's action, the defendant conceded that his claim contained the necessary elements for a successful defamation action. Furthermore, the defendant conceded that the plaintiff had demonstrated grounds to defeat her defence of justification.

With respect to the public interest in permitting the plaintiff's action to continue versus the public interest in protecting the defendant's expression, the court found that the action did not have the classic hallmarks of a SLAPP lawsuit.

As set out in [Bent v. Platnick, 2020 SCC 23](#), the classic hallmarks of a SLAPP lawsuit are:

- a. The plaintiff has a history of using litigation or the threat of litigation to silence critics;
- b. The difference between the parties' resources, both financial and otherwise,

give rise to a power imbalance favouring the plaintiff;

- c. By bringing the claim, the plaintiff seeks to punish or obtain revenge against the defendant; and
- d. The plaintiff has suffered minimal or nominal damages as a result of the defendant's conduct.

Among other things, the court found that the parties had not been engaged in previous litigation, the plaintiff had a right to vindicate his reputation and clear his name, and there was no pattern that the plaintiff was using the legal system to serve his own means.

The court also found that the plaintiff's damages were more than nominal.

Although the plaintiff was not required to present a complete damages brief in response to the defendant's motion, the court was satisfied that the plaintiff had shown that the defendant's statements had caused him to suffer humiliation and embarrassment which impacted his overall general mental health. The plaintiff outlined that he suffered a sense of guilt and a loss of reputation due to a loss of business opportunities, and that he incurred therapy expenses.

In contrast, while the defendant argued that if the plaintiff's action was allowed to proceed it would have a chilling effect on survivors of intimate partner violence from coming forward to speak about their experiences, the court found her statements to be offensive and degrading. Such statements were not worthy of protecting.

For example, in one impugned X post, the defendant alleged: "I love how many fucking predators hang out in smash, even our local team has a child groomer on staff, just amazing this whole culture".

In another impugned X post, the defendant wrote: "I was sexually assaulted by a staff member in my scene & was banned locally for proving he



lied about me. Yet, our scene continued to harass me over this and support him. He was banned globally. I can't write about this every time they do something new".

Overall, the court found that the purpose of the anti-SLAPP legislation was not to dismiss legitimate claims for the vindication of a plaintiff's reputation, and that the public interest weighed in favour of the plaintiff's action proceeding.

However, no costs were awarded against the defendant for her unsuccessful motion. Indeed, under the [CJA](#), where a proceeding is not dismissed, a plaintiff is not entitled to costs on the motion, unless the court determines otherwise.

The court concluded that there was no reason to depart from this presumption because the defendant's motion was not frivolous and intimate partner violence was a serious matter such that the motion had some basis.

The key takeaways from this decision are that actions for damages arising out of a defendant's serious allegations of criminal conduct, particularly sexual assault or sexual predatory behaviour, will not easily be prevented from proceeding on an anti-SLAPP motion, but that a defendant may nevertheless be protected against a costs award if the motion is unsuccessful.

Perhaps the key lesson of this case is that individuals involved in the tumultuous breakdown of a relationship should refrain from using social media platforms and other forms of communication to disparage the reputation of a former partner, especially where the allegations are not substantially true. Complaints about sexual assault and sexual abuse should be made to law enforcement.

Contact us

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

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

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