

Plaintiff's defamation claim against siblings survives Anti- SLAPP motion (The Estate of Colombe Quesnel v. G. Quesnel)

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

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Family feuds can be bitter and nasty. Siblings may wish to raise serious allegations against each other over treatment of other family members and financial affairs. Parties should be aware that statements made outside of the litigation context may be subject to defamation claims.

The Estate of Colombe Quesnel v. G. Quesnel v. N. Quesnel, 2025 ONSC 1352, involved a dispute between the plaintiff and his six siblings. Shortly after their father's death, the plaintiff's siblings accused him of psychologically and financially abusing their parents, among other allegations. Some of the impugned statements were made verbally, while others were made in writing.

There was some ambiguity about which siblings were alleged to have made certain statements. However, there was no dispute that one or more of the siblings made the statements to the police, the Children's Aid Society (CAS), the parents' lawyer, the nurse conducting a capacity assessment of the mother, and well over a hundred friends, family members, and members of the extended community. One email accusing the plaintiff of abusing the parents was sent to more than 100 people.

The plaintiff commenced a defamation claim against his siblings.

Three of the siblings then brought a motion to dismiss the action under section 137.1 of the Ontario *Courts of Justice Act* (CJA), on the basis that the action was a strategic lawsuit against public participation.

Section 137.1 of the CJA, commonly known as the "anti-SLAPP" provision, is designed to weed out lawsuits that are intended to deter, intimidate, or undermine someone from expressing a position on a matter of public interest: *Marcellin v. London (Police Services Board)*, 2024 ONCA 468. The court is to engage in only limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep dive into the evidence to a later stage, where judicial powers of inquiry are broader and pleadings are more fully developed: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at paragraph 52.

The moving party has an initial burden in an anti-SLAPP motion to show that the proceeding arises from an expression relating to a matter of public interest. To meet this threshold, the plaintiff's siblings argued that the statements at issue were about the exploitation, mistreatment, and abuse of elderly people and that the public had a genuine interest in receiving information about elder and other forms of abuse. In response, the plaintiff argued that the statements were about a private family dispute.

The motion judge divided the expressions at issue into three categories: (i) statements to professionals (the estate's lawyer, the funeral director, and the nurse assessing the mother's capacity); (ii) statements to friends, family, and members of the community; and (iii) statements to authorities (the police and CAS).

The motion judge found that the siblings had met the initial burden relating to their statements to the authorities about abuse and theft concerns. There is an obvious public interest in members of the public feeling free to report conduct of concern to the police and children's aid authorities. The motion judge also

concluded that there is a public interest in members of the public being able to inform professionals and service providers about concerns over theft and abuse.

Conversely, the communications directed to friends, family, and the extended community did not relate to matters of public interest and were instead fundamentally about a private family dispute. Accordingly, only two of the three categories of expression met the initial burden.

The next stage of the motion test shifted the burden to the plaintiff to show that there were grounds to believe that (a) the proceeding had substantial merit; and (b) the moving parties had no valid defence.

To establish substantial merit, a plaintiff must satisfy the motion judge that there are grounds to believe that its underlying claim is legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success: *Pointes Protection*, at paragraph 54.

A tenable claim in defamation requires a plaintiff to prove three things: (1) that 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; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff: *Grant v. Torstar Corp.*, [2009] 3 SCR 640, at paragraph 28.

The plaintiff supported his claim with affidavit evidence about the reputational harm he suffered, particularly from the mass email, which he claimed resulted in him being shunned by many family members, professional contacts, and members of his community. He claimed to have suffered a decline in consulting opportunities after the email.

Based on this evidence, the motion judge was satisfied that there was a likelihood of reputational harm from the siblings' allegations. There were grounds to believe that the comments were defamatory and would lower the plaintiff's reputation in the eyes of a reasonable person. The comments specifically referred to the plaintiff and there was no dispute that they were conveyed to at least one person other than him. All three elements of the tort of defamation were therefore supported by evidence that was "reasonably capable of belief".

The siblings' main position was that there was no real prospect of success since they had valid defences of justification, qualified privilege and responsible communications on a matter of public interest.

The motion judge found that all three defences might fail.

The defence of justification requires the moving parties to adduce evidence showing that the statement was substantially true: *Bent v. Platnick*, [2020] 2 SCR 645, at paragraph 107. However, this does not rest on whether the person making the statement *believed* the statement was true. For the purposes of the motion based on the limited evidentiary record, the motion judge was satisfied that there were grounds to believe that the statements of abuse and theft regarding the plaintiff were not substantially true.

The defence of qualified privilege requires that (a) a person making a communication has an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published; and (b) the recipient has a corresponding interest or duty to receive it: *Bent v. Platnick*, [2020] 2 SCR 645, at paragraph 121. However, "qualified" means that the privilege can be defeated where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken, or where the information is communicated to an inappropriate or excessive number of people.

In the case at hand, the motion judge reasoned that there were grounds to believe that the defence of qualified privilege would not succeed since the information was communicated to an excessive and inappropriate number of people and were motivated by malice.

Lastly, the defence of responsible communication requires that a defendant show that (i) the publication was on a matter of public interest; and (ii) publication was responsible, in that he or she was diligent in trying to verify the allegation(s), having regard to all the relevant circumstances: *Grant v. Torstar Corp.*, 2009 SCC 61, at paragraph 98. In the case at hand, the motion judge was concerned about the reliability of the source of the siblings' information. They did not seek the plaintiff's side of the story and did not make inquiries at their parents' financial institutions. Accordingly, the motion judge was not satisfied that the defence would be valid.

The final stage of the anti-SLAPP motion puts the onus on the plaintiff to show, on a balance of probabilities, that they likely have suffered or will suffer harm as a result of the expression and that the corresponding public interest in allowing the underlying proceeding to continue outweighs the deleterious effects on expression and public participation.



The motion judge was satisfied that the plaintiff met his burden at this stage as the harm that he was likely to suffer as a result of the moving parties' expression was sufficiently serious such that the public interest in permitting the claim to proceed outweighed the public interest in protecting the expression at issue. The claim was a proportionate response to the siblings' conduct and was not an improper attempt through litigation to suppress expression that was in the public interest. Rather, it was about trying to remedy legitimate harm to the plaintiff's reputation.

The motion to dismiss the action was therefore dismissed and the plaintiff's claim against his siblings will continue in the ordinary course. The decision demonstrates that statements made during a family dispute may be amenable to a defamation claim even if they involve communications to public authorities or professionals involved in the family's affairs. A PDF version is available for download [here](#).

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