

Public protest against trucking company not a matter of public interest

Courts of Justice Act | Litigation | Litigation & Dispute Resolution

31 March 2022

Not all public protests are necessarily created equal. While most public protests will be viewed as having a public interest component, some might be viewed as either being advanced for purely personal interests or harmful to the public interest. Under section 137.1 of the *Courts of Justice Act*, the distinction between a matter that is in relation to the public interest and a matter that is in relation to a private interest is important because the section does not apply to expressions involving private interests.

In *2110120 Ontario Inc. v. Buttar*, 2022 ONSC 1766, this distinction was important to a motion to dismiss the plaintiffs' \$17 million action for, among other things, defamation, trespass and harassment.

The plaintiffs were a cargo company and its principals. The cargo company was involved in a wage dispute with some of its former drivers. These drivers claimed that they were employees of the cargo company for the purposes of the *Canada Labour Code* (the "CLC") and that three of them had filed complaints under the CLC for various forms of relief, such as unpaid wages, unauthorized deductions, vacation and overtime.

Final decisions had not been rendered in connection with the CLC complaints when the defendant drivers, supported by two non-profit organizations, embarked on a campaign against the cargo company that started with a rally at the personal home of the company's principals. 250 people attended this rally.

A few weeks later, the rally was followed by an informational picket outside the company's business.

Additional rallies were then held for a second time at the personal home of the company's principals and then at the company's premises.

During these protests, signs and banners were carried and various statements were made about the plaintiffs. One of the company's principals was called a "thief" and a banner read "Chor Alert" or "thief alert". Other statements accused this principal of having committed "theft" or that the defendants' wages had been "stolen". These messages were also posted on multiple social media platforms. As a result of these expressions, the plaintiffs contended that they had suffered serious harm, including a loss of business, difficulties recruiting new drivers, an employee resignation, and mental and emotional distress.

The defendants sought to dismiss the plaintiffs' action under section 137.1 of the CJA.

Section 137.1 of the CJA permits a defendant to move for a dismissal of an action that limits public debate. Under section 137.1(3), the defendant is required to satisfy the court that the proceeding arises from an expression made by the defendant that relates to a matter of public interest. This is a threshold requirement that the defendant must establish on a balance of probabilities.

Although the motion judge recognized that the words "relates to a matter of public interest" was to be interpreted in a "generous and expansive fashion" and that private disputes could involve matters of public interest, the public did not have a genuine interest in expressions that related strictly to a private dispute.

In the motion judge's view, a dispute involving wages between a former employer and an employee was strictly a private dispute.

The motion judge noted that as stated in *Grist v. TruGrp Inc.*, 2021 ONCA 309 (CanLII) at paragraph 19:

Public protest against trucking company not a matter of public interest

There is, after all, a public interest in maintaining peaceful relations between persons in society and in drawing attention to acts of injustice. But the resolution of purely private disputes between more or less equals – disputes that have no immediate bearing on the rights or obligations of others – can seldom be a matter of public interest.

The dispute in this case revolved around money and the legal process which the defendants had already engaged in order to seek relief. The motion judge explained that the primary thrust of the defendants' expressions and their actions was:

- a) to circumvent the ongoing legal process by threats or public exposure; and
- b) to publicly make false, misleading, defamatory expressions and take improper actions designed to force the company to capitulate by paying their alleged claims, when the threats failed to achieve their desired results.

In the circumstances, this did not amount, in the motion judge's view, to a public interest for the purposes of [section 137.1](#), even though the defendants baldly argued that their actions were in the public interest.

However, the Supreme Court of Canada in [1704604 Ontario Ltd. v. Pointes Protection, 2020 SCC 22 \(CanLII\)](#) has observed that just making "reference to something of public interest" does not make it "relate" to a matter of public interest.

Indeed, during the protests the defendants carried placards which stated "pay them now". The motion judge held that expressed evidence was a blatant attempt on the part of the defendants to circumvent the legal proceedings which the defendants had started under the CLC.

The following facts also influenced the motion judge in holding that the defendants failed to prove that the plaintiffs' action involved a matter of public interest:

- the case was not about a large employer using its size and financial power over employees to deprive them of payments;
- the motivation for making the expressions against the plaintiffs were not designed to bring to the public's attention matters of public interest, but were designed solely to deal with a private collection dispute;
- the expressions were not intended to be informational to existing or future drivers;
- the expression were not intended to inform the public about the cargo company's practices; and
- the plaintiffs' action was not brought to silence the defendants from bringing their cause to the public.

In the result, the motion judge was satisfied that the expressions were strictly related to a matter private interest.

This case demonstrates that there can be a very fine line between expressions made that are related to matters of a public interest and expressions made that are related to matters of a private interest. Although the defendants' protests were easily observable by the public, the pith and substance of the protests and expressions served a collateral private purpose. When viewed through this lens, the case was nothing more than a private dispute over unpaid wages and was outside the scope of [section 137.1 of the CJA](#).

Given the fine line between a public and a private interest, it is curious whether the defendants will appeal. However if they do appeal and are successful in persuading an appellate court that their expressions were related to a matter of public interest, their motion under [section 137.1 of the CJA](#) might still fail because considering the facts set out above and in the case overall, it appears strongly arguable, in my view, that under [section 137.1\(4\)\(b\)](#) the plaintiffs' harm suffered by the defendants' expressions was sufficiently serious that the public interest in permitting their action to continue will outweigh the public interest in protecting that expression. [Section 137.1\(4\)\(b\)](#) is the core of [section 137.1](#) and the ultimate outcome of an appeal might rest on this provision.

If you require any litigation assistance, our [Dispute Resolution Group](#) lawyers are available to assist you. Please contact [Stephen Thiele](#) at 416.865.6651.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com