

Thunder Bay Police Officer's Defamation Claim against Law Student Dismissed (Gibson v. Cunningham)

Claim | Defamation | Dismissed | Litigation | Litigation & Dispute Resolution

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A defamation claim against a law student brought by a Thunder Bay police officer was dismissed under Ontario's "anti-SLAPP" legislation: *Gibson v. Cunningham*, 2025 ONSC 5504 [not yet on CanLII].

The decision arose in the context of years of well-publicized issues over the state of policing in Thunder Bay and the Thunder Bay Police Service (TBPS), involving high profile incidents with intense public and media scrutiny, and public investigations. Concerns ranged from police misconduct to systemic racism and cultural issues within the TBPS. Numerous applications had been filed with the Human Rights Tribunal of Ontario (HRTO), at least two of which involved the plaintiff police officer.

In 2022, the CBC published a news article entitled "9 human rights complaints allege Thunder Bay, Ont. police on leave called 'broken toys' in toxic workplace". The article referred to a whiteboard at police headquarters which listed officers on mental health leave. Senior officers referred to the listed officers as "broken toys" who had taken "sad leave".

In April 2024, an Ontario criminal lawyer posted a link on X (formerly Twitter) to the CBC article which had remained online since 2022, and quoted from it verbatim:

According to five of the complaints, a whiteboard at police headquarters lists officers on mental health leave. The complaints say senior officers are known to refer to these members as "broken toys" who've taken "sad leave".

The defendant law student then posted the following in response to or as a comment to the X post:

The Inspector that had this written on their whiteboard has, since the senior leadership came under investigation by OPP for a laundry list of issues, gone off on stress leave and is now seconded to NAPS as a Superintendent.

At the time, the plaintiff police officer was on secondment to the Nishnawbe Aski Police Service (NAPS). Shortly after the posts on X, the NAPS terminated the plaintiff's secondment position. The termination letter enclosed the X post and stated that it contained concerning allegations that had come to its attention. The letter stated that even though the officer had not been found guilty of misconduct, the process at the NAPS would be to put the officer on administrative leave while an investigation was undertaken. The NAPS stated that it could not continue with the secondment in the circumstances.

The plaintiff then sued the law student for defamation, seeking damages of \$975,000. The plaintiff alleged that the post was meant to identify him as an irresponsible Superintendent and to link him to complaints made in an earlier post by the criminal lawyer. The plaintiff alleged that the post resulted in the termination of his NAPS position, lost wages and opportunities, and reputational damage.

The defendant law student brought a motion to strike the claim under section 137.1 of the Ontario *Courts of Justice Act* (CJA), on the basis that the police officer's claim was a strategic lawsuit against public participation. Among other things, the law student argued that her X post merely repeated information that was generally available in the CBC article and HRTO filings. She said that she did not identify the plaintiff by name and that he was only one of several officers holding the rank of Inspector. Further, she argued that it was not her X post that resulted in the termination of the plaintiff's position but the fact that he failed to advise the NAPS of the complaints.

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.

The plaintiff conceded that the expression at issue was a matter of public interest. The motion judge noted that the applications and other documents in the HRTO proceedings were public records.

The second stage of the motion shifts the burden to the plaintiff to show that there are grounds to conclude that (i) the proceeding had substantial merit; (ii) the moving party had no valid defence; and (iii) the harm likely to be or which has been suffered by the plaintiff as a result of the defendant's expression "is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression": *Pointes Protection*, at paragraphs 17-18.

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 motion judge found that the X post did refer to the plaintiff even though he was not named, and that it was possible for people to identify him. Further, and notwithstanding that it was not the words of the defendant's X post that caused the plaintiff harm but the fact that he had complaints against him at the HRTO, the words in the X post met the low threshold of potentially lowering the plaintiff's reputation.

The decision turned on the defences raised by the law student of truth (or justification) and the public interest criteria.

The defence of truth/justification requires a defendant to adduce evidence showing that the statement was substantially true: *Bent v. Platnick*, [2020] 2 SCR 645, at paragraph 107. The defendant must prove the substantial truth of the "sting" or main thrust of the defence.

In the motion judge's view, the defendant's X post referenced the TBPS investigation as a fact and the post as a whole offered context to the series of events that occurred, based on the CBC article, HRTO complaints and other sources. The defendant therefore had a valid defence in justification.

Further, the motion judge found that any harm suffered by the plaintiff as a result of the X post was minimal. The evidence was that the defendant had no history of malicious conduct involving the plaintiff or meaningful interaction with him until the events precipitating the action. The plaintiff had no reliable evidence of the defendant's motivation, or his own personal feelings. While his termination by the NAPS was a source of embarrassment, that was a consequence of the NAPS finding out that there were undisclosed outstanding HRTO complaints against him. Conversely, the defendant was involved in the justice sector and had a continued interest in the public dialogue of issues surrounding the TBPS.

In the motion judge's view, what was "really going on" was that the plaintiff was upset that the X post brought the undisclosed HRTO complaints to the attention of the NAPS and that his position and job prospects with them were affected. The public interest in protecting the defendant's expression outweighed the reputational harm that the plaintiff had suffered or will suffer as a result.

The motion was therefore granted and the action was dismissed. The motion judge stated that the defendant will be entitled to costs in an amount to be determined.

The decision illustrates the hurdles that a plaintiff may face in pursuing a defamation claim, particularly where the expressions at issue largely repeat what has already been stated in other publicly available sources. A PDF version is available for download [here](#).



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Author



James R.G. Cook

Partner

416.865.6628

jcook@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