

Anti-SLAPP decision clarifies line between 'public' and 'private' expression

By **James R.G. Cook**

Law360 Canada (May 5, 2026, 12:50 PM EDT) -- Ontario courts continue to refine the boundaries of the province's anti-SLAPP regime, particularly at the threshold stage where a defendant must show that a proceeding arises from an expression relating to a matter of public interest. While the test is designed to be a modest one, recent decisions demonstrate that its application can still present difficulties where the line between "public" and "private" expression is blurred.

In *Rajic v. MacDonald*, 2026 ONCA 288, the Court of Appeal for Ontario addressed this initial threshold and clarified the key point that an expression may relate to a matter of public interest even where it is made privately and to a limited audience. The Court of Appeal overturned a motion judge's refusal to dismiss a defamation action arising from a complaint to church authorities, emphasizing that courts must focus on the substance of the expression rather than the size or public nature of its audience.



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The motion involved a defamation action brought by a Serbian Orthodox priest against a defendant who had complained about the priest's involvement in her family law dispute.

After the priest swore an affidavit in support of the other party in a family law proceeding, the defendant made a complaint to the Serbian Orthodox Church ecclesiastical authorities. She questioned whether it was appropriate for the priest to act as a witness for one side in private litigation without church approval and suggested that such conduct could damage the Church's reputation. Following the complaint, Church authorities investigated and imposed disciplinary measures on the priest.

The priest then commenced the defamation action against the defendant about her complaint. In response to the action, the defendant brought an anti-SLAPP motion under s. 137.1 of the *Courts of Justice Act*, seeking early dismissal of the defamation claim.

To succeed on an anti-SLAPP motion, the moving party must first show that the proceeding involves an expression relating to a matter of public interest. The motion judge concluded that the defendant had failed to do so and dismissed her motion.

On appeal, the Court of Appeal acknowledged that decisions on anti-SLAPP motions are generally entitled to deference. However, legal errors in applying the governing framework are reviewable on a correctness standard. In this case, the motion judge had committed reviewable legal errors in his analysis.

The first error was based upon a misapplication of the Court of Appeal's decision in *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA 171, which the motion judge had stated "put to rest" the consensus of lower court judges' ruling about the low public interest threshold. The issue in *Benchwood Builders*, however, was whether online consumer reviews of businesses or professionals should automatically be treated as expressions that relate to a matter of public interest. While this seemed to be a consensus view of motion judges, the Court of Appeal did not agree with it or suggest that this raised the threshold burden under s. 137.1(3).

Further, since the action brought by the priest did not involve an online review, it was not apparent to the Court of Appeal why the comments in *Benchwood Builders* were significant for the defendant's anti-SLAPP motion.

In *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, paragraph 28, the Supreme Court of Canada affirmed that the question of whether an expression "relates to a matter of public interest" does not involve a qualitative assessment about the value of the expression and the burden to be met by the moving party is purposefully not an onerous one.

The second, more significant, error involved the motion judge's repeated emphasis on the *private* nature of the defendant's complaint about the priest, as there was no evidence that she had intended her complaint to be disseminated to others. The Court of Appeal held that this approach misunderstood the nature of the public interest inquiry.

With reference to *Pointes Protection*, the Court of Appeal explained that whether an expression relates to a matter of public interest depends on what the expression is really about and not how widely it was shared. While the nature of the audience can be a relevant factor, it is not determinative since the subject matter of an expression made to even a very small number of people can nevertheless relate to a matter of public interest. Other examples in which private complaints to institutional or regulatory bodies were held to meet the s. 137.1(3) threshold included complaints to volunteer organizations and professional regulators.

Although the defendant's complaint arose from a personal dispute, it raised broader concerns, including whether clergy should involve themselves in private litigation between congregants; whether priests should seek institutional authorization before participating as witnesses; and the potential reputational and legal risks to the Church relating to such conduct. These issues went beyond the appellant's private grievance and were capable of engaging the genuine interest of the wider church community.

In the Court of Appeal's view, the motion judge erred by focusing on the size of the audience of the expression, while paying little or no regard to the content thereof.

Based on these principles, the Court of Appeal was satisfied that the motion judge erroneously raised the threshold under s. 137.1(3) in dismissing the motion at the initial stage.

The Court of Appeal declined to decide the balance of the anti-SLAPP issues since the motion judge had not conducted the rest of the analysis and appellate courts typically do not undertake that fact-intensive exercise as courts of first instance. The entire matter was remitted to the lower court to be reheard by a different motion judge. The successful appellant was awarded partial indemnity costs of \$30,000 for the appeal.

The Court of Appeal's decision reinforces the intentionally low threshold at the first stage of Ontario's anti-SLAPP analysis and cautions against conflating "public interest" with public dissemination.

Expressions conveyed privately may still engage broader community or institutional concerns sufficient to attract anti-SLAPP protection, particularly those made to bodies with oversight or disciplinary authority.

The ruling underscores the importance of anchoring the public interest inquiry in the content of the expression rather than its audience or the personal context in which it arose.

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