

# Ontario Court of Appeal Provides Guidance on the Interpretation of Anti-SLAPP Legislation

August 31, 2018

In six decisions released simultaneously, the Court of Appeal for the first time interprets Ontario's Anti-SLAPP legislation. (s. 137.1 of the Courts of Justice Act). While the analysis is applied to the specific issues raised in the appeals, the decision in 1704604 Ontario Ltd. v. Pointes Protection Association, penned by Justice Doherty, provides the Court's interpretation of and guidance on s. 137.1, under which a defendant can bring a motion, even before they have filed a defence, to dismiss a purported defamation proceeding.

The Court notes in its decision that the purpose of the Anti-SLAPP legislation is "crystal clear": expression on matters of public interest is to be encouraged, and litigation of doubtful merit that unduly discourages and seeks to restrict free and open expression on matters of public interest should not be allowed to proceed beyond a preliminary stage.

The first requirement is that the expression made by the person relates to "a matter of public interest". The Court of Appeal provides the following guidance with respect to the meaning of a "matter of public interest":

When deciding whether an expression relates to a matter of "public interest", the motion judge is to apply the legal principles enunciated in *Grant v. Torstar Corp.* to the relevant circumstances of the case.

"Public interest" does not turn on the size of the audience, particularly in today's world: communications on private matters can be spread to large audiences, just as statements between two people can relate to matters with a strong public interest component.

The concept of "public interest" is a broad one that does not take into account the merits or matter of the expression, nor the motive of the author - even if the language used is harmful to the public interest – such as a statement that is demonstrably false – it can nonetheless be an expression relating to a matter of public interest.

Once the defendant has established the communication related to a matter of public interest, the burden shifts to the plaintiff to demonstrate there are "grounds to believe" that:

the proceeding has substantial merit; and the moving party has no valid defence in the proceeding "Grounds to believe" must be reasonable grounds: The Court notes that while the subsection of the legislation does not explicitly mention "reasonable" grounds to believe, the fact that the grounds must be reasonable is implicit. This is meant to provide a judicial screening or "triage device" designed to eliminate unmeritorious claims at an early stage. But the Court cautioned that motion judges should not allow Anti-SLAPP motions to slide into de facto summary judgment motions.

"Substantial Merit": The word "substantial" signals that the plaintiff must do more than simply show there is some chance of success: the claim must be shown to be legally tenable and supported by evidence, which could lead a reasonable trier of fact to conclude the claim has a real chance of success.

"No valid defence": The Court clarifies that the section contemplates an evidentiary burden on the defendant to advance any proposed valid defence, valid meaning "successful", in the pleadings or motion material. If the plaintiff cannot meet its burden under either the merit requirement or the "no valid defence" requirement, their claim will be dismissed – the motion judge has no obligation to address both.

The heart of Ontario's Anti-SLAPP legislation: On a motion, the judge must consider whether the harm suffered as a result of the expression is sufficiently serious that the public interest in permitting the proceeding to continue outweigh the public interest in protecting that expression, a section which Justice Doherty calls "the heart of Ontario's Anti-SLAPP legislation". The plaintiff at this stage must both quantify the damages, and provide material to establish the causal link between the expression and the damages claimed. The Court notes that unlike the "matter of public interest" inquiry at the first stage, both the quality of the expression and the motivation of the speaker play an important role at this stage in measuring the extent to which there is a public interest in protecting that expression. This evaluation is not formulaic or mathematical, but rather is a qualitative and to some extent, subjective assessment.

Anti-SLAPP legislation is most commonly associated with defamation cases, but the Court of Appeal notes that there are other types of cases, such as where claims turn on the interpretation of language in a contract (as was the case in *Pointes Protection*), which do not fit neatly into the s. 137.1 analysis. For example, the Court notes there would be little public interest in protecting a defendant's right to make certain statements if the defendant bargained those rights away in a contract, and the merits analysis would focus largely on the allegation that the defendant breached the contract.

The clarification of the scope of Anti-SLAPP legislation by Ontario's highest court is an important step in triaging unmeritorious defamation cases moving forward.

By

[Ashley Thomassen](#)

Expertise

[Disputes, Appellate Advocacy](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.