

Ontario Court of Appeal allows social media defamation claim to proceed and awards costs against anti-SLAPP applicant

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Development projects often attract vigorous public debate, particularly in smaller communities where land use decisions can become intensely contested. However, *Solmar Inc. v. Hall*, [2026 ONCA 367](#) is a reminder that even heated social media debate has limits.

The Court of Appeal for Ontario upheld the dismissal of an anti-SLAPP motion brought by a Facebook user who accused a developer of corrupt business practices and suggested municipal officials may have received improper benefits. Although the posts related to a matter of public interest, the Court of Appeal held that the defamation action could proceed and confirmed that an unsuccessful anti-SLAPP applicant may face an adverse costs award where the impugned expression may have been motivated by malice.

The decision provides important guidance on social media defamation claims, anti-SLAPP motions, and the limits of online criticism where allegations of corruption and misconduct are advanced.

Understanding anti-SLAPP legislation and motions: What you need to know

- Anti-SLAPP legislation exists to protect expression on matters of public interest, and to address the concern that the cost and burden of litigation may discourage participation in public debate.
- The Supreme Court of Canada has recognized that strategic lawsuits against public participation (SLAPPs) are tactical proceedings brought to suppress expression on issues of public interest.¹
- To address this, some provinces (including British Columbia and Ontario) have enacted anti-SLAPP legislation, thereby creating a pre-trial mechanism to screen proceedings arising from expression on matters of public interest and “weed out” SLAPPs.²

- In British Columbia and Ontario, a defendant to an alleged SLAPP may apply to the court to have the lawsuit summarily dismissed if the defendant can satisfy the judge that it arises from an expression made by the defendant that relates to a matter of public interest.
- In order to defeat an anti-SLAPP motion, the plaintiff to the action must satisfy the judge that there are grounds to believe that: (1) the proceeding has substantial merit; (2) the defendant has no valid defence in the proceeding; and (3) the harm suffered by the plaintiff as a result of the expression is sufficiently serious that the public interest in allowing the proceeding to continue outweighs the public interest in protecting the expression.
- If an anti-SLAPP motion is successful, the default rule is for the defendant to receive its costs on a full indemnity basis. A plaintiff who successfully defends against an anti-SLAPP motion is not presumptively entitled to costs. In both instances, the motion judge retains discretion to make a different costs award.
- Anti-SLAPP legislation does not provide blanket immunity for defamatory statements. Rather, it requires courts to balance the public interest in protecting freedom of expression against the public interest in permitting potentially meritorious claims, including claims seeking to vindicate reputation, to proceed.

Background of the dispute

The plaintiffs were a real estate developer, Benny Marotta, and Solmar Inc. (Solmar), who were involved in a controversial proposal to build a luxury hotel in Niagara-on-the-Lake, Ontario, a town of approximately 19,000 residents. The proposal was approved by municipal council in a close 5-4 vote.

The next day, Stewart Hall, a retiree who lived in Niagara-on-the-Lake, posted in a local Facebook group with approximately 3,100 members, accusing Mr. Marotta (and Solmar) of “corrupt and aggressive” business tactics, and questioning whether town staff or councillors who supported the project had received undisclosed cash or gifts.

In a follow-up comment, he wrote that everything in his post was “in the public record with some opinions thrown in,” while also stating that he had “no proof” that anyone other than one councillor had been offered cash.

Mr. Marotta and Solmar sued for defamation. Mr. Hall brought an anti-SLAPP motion under s. 137.1 of Ontario’s *Courts of Justice Act*, relying on the defence of fair comment. The motion judge dismissed the anti-SLAPP motion and allowed the claim to proceed (*Solmar Inc. v. Hall*, [2025 ONSC 1703](#)), and ordered Mr. Hall to pay the plaintiffs’ costs on a substantial indemnity basis in the amount of \$89,000 (*Solmar Inc. v. Hall*, [2025 ONSC 2578](#)).

In dismissing the anti-SLAPP motion, the motion judge concluded that although the expression concerned a matter of public interest, there were grounds to believe that the proceeding had substantial merit and that Mr. Hall had no valid defence. In finding that there were no grounds to believe that Mr. Hall had a valid defence of fair comment, the motion judge concluded that Mr. Hall had acted with malice by showing a reckless disregard for the truth, an ulterior motive, and a desire to harm the plaintiffs by undermining the development approval.

Ultimately, the motion judge found that the weighing of harms to each of the parties favoured allowing the lawsuit to proceed, and dismissed Mr. Hall's motion.

Mr. Hall appealed the dismissal of his anti-SLAPP motion and the costs award. The Court of Appeal dismissed the appeal and upheld the order permitting the defamation action to continue, although it reduced the costs award.

Analysis

Interpreting the meaning of the expression in social media posts

The Court of Appeal's reasons are notable for their treatment of social media expression. Mr. Hall argued that, in assessing the meaning of the expression, the motion judge failed to account for the conversational nature of Facebook, which he claimed is a place for casual exchanges where expression is not always measured or precise.

The Court of Appeal rejected that argument. It found that the motion judge had correctly avoided parsing the posts "phrase by phrase," had considered the social media setting throughout his analysis, and had appropriately recognized that rhetorical questions may reasonably be understood as veiled accusations. There was no basis to interfere with the motion judge's assessment of the meaning of the expression.

Social media and the fair comment defence

The Court of Appeal also revisited the analysis of the fair comment defence. Although it held that the motion judge erred by assessing the "fairness" of Mr. Hall's statements rather than asking whether they could honestly be held on the proved facts, the error did not affect the outcome.

Considering the issue afresh, the Court of Appeal concluded that there were grounds to believe the defence would fail because a reasonable trier could regard the allegations of corruption and bribery as assertions of fact, namely that Mr. Marotta and Solmar had engaged in actual corruption and bribery, rather than merely expressing an opinion. The Court of Appeal noted that the posts referred to gifts of cash, "perks," and "corrupt" conduct, and that Mr. Hall represented that his allegations were grounded in matters of public record.

In that context, a reasonable reader could understand the posts as conveying factual allegations of misconduct. Since the fair comment defence protects opinions, not disguised assertions of fact, there were grounds to believe the defence would not succeed. As the Court of Appeal observed, allegations of criminal conduct may, depending on the context, fall outside the protection of fair comment.

The malice analysis is also noteworthy. The Court of Appeal upheld the motion judge's conclusion that there were grounds to believe that Mr. Hall had acted with malice. While the Court of Appeal did not endorse every aspect of the motion judge's reasoning, it agreed that the record supported findings of recklessness and a desire to injure the plaintiffs.

In particular, the allegations of bribery were not supported by the source materials on which Mr. Hall purported to rely, and the content and timing of the posts supported an inference that they were intended to harm Mr. Marotta's reputation rather than advance public debate.

Serious harm and anti-SLAPP applications

The Court of Appeal's decision also provides useful guidance on the serious harm requirement of the test for dismissal.

Plaintiffs need not prove actual economic loss at the anti-SLAPP stage. Rather, the question is whether the record permits an inference of likely serious harm. On the facts, the Court of Appeal upheld the motion judge's inference that the posts could affect Mr. Marotta and Solmar's reputation and future dealings with municipal decision-makers, particularly in a small community where the development proposal remained subject to future approvals and public scrutiny.

Costs consequences for unsuccessful anti-SLAPP applicants

The costs ruling is a commercially significant part of the decision. At s. 137.1(8), Ontario's anti-SLAPP legislation presumes that a successful plaintiff respondent is not entitled to costs unless the judge determines that an award is appropriate in the circumstances. The motion judge exercised his discretion and awarded \$89,000 in substantial indemnity costs.

The Court of Appeal held that the findings supporting malice were sufficient to rebut the no-costs presumption, but reduced the award to \$40,000 on a partial indemnity basis because substantial indemnity costs require reprehensible, scandalous, or outrageous conduct, and the motion judge had not justified that higher scale. The Court of Appeal also ordered Mr. Hall to pay \$12,500 in appeal costs.

The costs point has significance beyond Ontario. British Columbia's *Protection of Public Participation Act* contains a similar asymmetrical costs regime: a successful applicant is presumptively entitled to full indemnity costs where the proceeding is dismissed, while a successful respondent is not entitled to costs unless the court considers such an award appropriate in the circumstances. The result in *Solmar Inc. v. Hall* is therefore a useful reminder for litigants in both Ontario and British Columbia that anti-SLAPP costs rules are designed to discourage abusive litigation, but they do not give unsuccessful moving parties a free pass where the impugned expression may have been motivated by malice, for example, on the basis of recklessness or a desire to harm.

Key takeaways

- *Solmar Inc. v. Hall* confirms that public criticism and debate on development projects, corporate conduct, and municipal approvals remain protected by anti-SLAPP legislation, but where expression moves beyond criticism of the merits (for example, of a project) and into serious, unsupported allegations of corruption, bribery, or other criminal misconduct, a defamation claim may be permitted to proceed.

- Courts will assess social media posts from the perspective of a reasonable reader. Rhetorical questions and social media informality will not necessarily shield a speaker from a defamation claim if the overall message would reasonably be understood as veiled accusations designed to lower the plaintiff's reputation in the eyes of the reasonable reader.
- Depending on the context, allegations of criminality may be viewed as allegations of fact, rather than protected comment.
- A plaintiff opposing an anti-SLAPP motion need not prove actual economic loss. Evidence supporting an inference of likely serious reputational or business harm may be sufficient to satisfy the public-interest balancing analysis.
- For defendants considering an anti-SLAPP motion, *Solmar Inc. v. Hall* underscores that unsuccessful applicants face real costs exposure. Although successful respondents are not presumptively entitled to costs, courts may depart from that presumption where there are grounds to believe the impugned expression was malicious, reckless, or motivated by an improper desire to injure the plaintiff.

BLG can assist

If you have questions about business defamation claims or anti-SLAPP applications, please reach out to any of the key contacts below.

Footnotes

¹ *Hansman v. Neufeld*, [2023 SCC 14](#) at para. 46.

² *Hansman v. Neufeld*, [2023 SCC 14](#) at para. 49.

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