

CITATION: Gibson v. Cunningham, 2025 ONSC 5504
COURT FILE NO.: CV-24-235-00
DATE: 2025-09-26

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Ryan Gibson	)	
	)	<i>R. Larson</i> , for the Plaintiff/Responding Party
Plaintiff/Responding Party	)	
	)	
– and –	)	
	)	
Jaimie Cunningham	)	<i>D. Judson</i> , for the Defendant/Moving Party
	)	
Defendant/Moving Party	)	
	)	
	)	
	)	HEARD: June 24, 2025, at Thunder Bay, Ontario

The Honourable Madam Justice C.M. Brochu

Decision on Anti-SLAPP Motion

Overview

[1] The defendant, Jamie Cunningham, brings this motion to dismiss the defamation action commenced against her by the Plaintiff, Ryan Gibson, based on s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C 43, (“CJA”) commonly referenced as an anti-SLAPP motion.

[2] The Defendant is also requesting that portions of the Plaintiff’s affidavit filed in response to this motion be struck.

[3] The Plaintiff is a police officer. He holds the rank of Inspector within the Thunder Bay Police Service (the “TBPS”).

[4] The Defendant is a resident of the City of Thunder Bay. She is a law student, enrolled in the JD program at the Bora Laskin Faculty of Law at Lakehead University. She has previously worked in various capacities in the justice sector, including for Legal Aid Ontario, the John Howard Society, Evolv Consulting, and in a civilian role in the records department of the TBPS.

[5] There is no dispute that the state of policing in Thunder Bay has been the subject of intense scrutiny and concern, attracting public and national media interest.

[6] The action was commenced based on a post made by the Defendant on X, formerly Twitter, (the “X post”).

[7] The Plaintiff alleged that the X post was defamatory, that it was meant to identify the Plaintiff as an irresponsible Superintendent and link him to the complaints made in the initial post. It is alleged that the post resulted in the termination of the Plaintiff’s secondment with Nishnawbe Aski Police Service (“NAPS”), causing him lost wages and opportunities, as well as permanently damaging his reputation at the TBPS.

Factual Background

The X Post dated April 9, 2024

[8] The Defendant’s post on X, which is the subject of this action, is dated April 9, 2024, and reads as follows:

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.

[9] To understand this X post, it is necessary to provide some context and information on the lead up to the X post.

TBPS Under Scrutiny and HRTO Complaints

[10] As stated above, it is widely known that the state of policing in Thunder Bay has been the subject of intense scrutiny and has attracted public and national media attention.

[11] It is not my intent to get into the minutia of the scrutiny the TBPS has found itself in, nor into great details on the concerns highlighted and many processes undertaken as a result. In my view, such an analysis is not necessary for the purpose of these reasons. The Plaintiff has conceded that the expression in this matter is of public interest.

[12] Briefly, those concerns, as specifically highlighted by the Defendant, have ranged from police misconduct, to abuse within the TBPS, to institutional and systemic racism in policing and police investigations, to cultural issues within the TBPS work environment. High-profile incidents have underscored the public and media interest.

[13] The Defendant mentions the following reports flowing from processes undertaken as a result of these concerns, which include the October 2016 recommendations of the Ontario Human Rights Commission, the November 2018 investigative report of Senator Murray Sinclair, the December 2018 “Broken Trust” report prepared by Gerry McNeilly for the Office of the Independent Police Review Director, the April 2023 report of the Independent Expert Panel appointed by the TBPS board, and the August 2022 and April 2024 reports of Malcolm Mercer, the provincial administrator appointed to oversee the TBPS board.

[14] Furthermore, and of particular interest in this matter, in early 2022, numerous applications were filed with the Human Rights Tribunal of Ontario (“HRTO”) by TBPS officers which made allegations about their treatment while on or pursuing mental health-related leave or accommodations. These applications allege that the respondents, which in at least two cases include the Plaintiff, have violated the *Human Rights Code*.

[15] These applications and other documents in the HRTO proceedings are public records, pursuant to the “open court” principle and the *Tribunal Adjudicative Records Act, 2019*.

CBC News Article and the X posts

[16] On February 10, 2022, the CBC published a news article by Logan Turner entitled “9 human rights complaints allege Thunder Bay, Ont. police on leave called ‘broken toys’ in toxic workplace” (the “News Article”).

[17] The News Article was about the HRTO proceedings noted above and other involving the TBPS. The News Article remains online today. It contains the following statements:

According to five of the complaints, a white board 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”.

[18] On April 9, 2024, Alison Craig, a lawyer who uses the X account @lawandchocolate, posted a link to the News Article (over two years after the News Article was initially published). This post (the “Craig post”) included the following, quoted verbatim from the News Article:

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.”

[19] The defendant’s X post was posted in response or as a comment to the Craig post.

The Plaintiff's Secondment

[20] On February 26, 2024, the Plaintiff was seconded to NAPS to the position of Acting Superintendent. The secondment was for a fixed term ending on May 3, 2024, at which point the Plaintiff would return to the TBPS. It should be noted that it is the Plaintiff's position that he had potential future opportunities with NAPS.

[21] On April 16, 2024, NAPS terminated the Plaintiff's secondment. The termination letter stated the following:

The enclosed social media post, which contains allegations against A/Supt. Gibson regarding his conduct prior to being seconded to Nishnawbe Aski Police Service ("NAPS"), has come to our attention. To say we are concerned about these allegations against A/Supt. Gibson would be an understatement.

[...]

While we understand that the information contained in the social media post are only allegations, and that A/Supt. Gibson has not been found guilty of misconduct, in the normal course at NAPS, should such allegations be made against a member of our service, an investigation would be immediately undertaken, and the officer placed on paid administrative leave.

While we understand that TBPS is responsible for the discipline of A/Supt. Gibson, to protect the integrity of the relationship between NAPS and its employees and given the mounting public pressure from Indigenous leadership regarding the state of the TBPS, in the circumstances, we can not continue with the secondment agreement for A/Supt. Gibson.

[22] It is acknowledged that the social media post referenced in the termination letter is the Craig post and the Defendant's X post.

The Notice and Defamation Action

[23] On May 17, 2024, the Plaintiff served the Defendant with a Defamation Notice. On July 8, 2024, he commenced this action against the Defendant, seeking \$975,000.00 in damages plus costs.

[24] The Statement of Claim alleges that the X post was false, defamatory and malicious. That it was meant to identify him as an irresponsible Superintendent and to link him to the five complaints mentioned in the Craig post. This is alleged to be a deliberate attack on the Plaintiff's character and meant to damage and lower his reputation.

[25] The Plaintiff claims that he suffered immediate loss of wages, loss of opportunities for advancement within NAPS up to and including Chief of Police for NAPS, permanent damage to his reputation and loss of opportunity at the TBPS where he returned to work as Inspector.

Defendant's Motion to Strike

[26] I will first address the Defendant's motion to strike portions of the Plaintiff's affidavit. The Defendant relies on r. 39.01(4) of the *Rules of Civil Procedure*, R.S.O. 1990, c. C.43.

[27] The Defendant's position is that numerous statements in the Plaintiff's affidavit are inadmissible legal conclusions, unqualified expert evidence, speculation (including as to the motives of others), impermissible evidence as to the state of mind of others, and factual assertions with no basis as to belief is offered. It is argued that other statements are plainly argumentative, vexatious, or consist of conjecture attacking the Defendant's character. The Defendant provided a schedule attached to her factum summarizing her objections.

[28] I note that this is not a relief requested in the Defendant's Amended Notice of Motion. It is raised in the Defendant's factum. The Plaintiff did not address this issue in his factum. Very brief submissions were made on this issue at the hearing of the motion.

[29] I will likewise address this issue briefly.

[30] The Court dealt with a similar motion in *Di Franco v. Bueckert*, 2020 ONSC 1954, wherein it was held that the general rule is that preliminary motions to strike affidavits should be discouraged and only granted for special reasons. It was determined that the request to strike should be considered together with the arguments on the merits of the motion for which it was produced: see *Di Franco*, at para. 19.

[31] Having considered the Plaintiff's affidavit, reviewed the written objections and heard submissions, I would dismiss the Defendant's motion to strike. In my view, the issues raised, in the context of this motion, go to weight, and not to its admissibility.

[32] I would classify most of the evidence earmarked as "the Plaintiff not being able to comment on the state of mind of another", "argumentative", and "speculative", as being an expression of the Plaintiff's views. Some of this evidence is relevant in relation to the Plaintiff's allegation that the Defendant was acting in malice. At the end of the day, his views and this evidence is a matter of what weight can be attributed to it, this includes in large part his comments and assumptions.

[33] In my view, it is evident that substantial portions of the Plaintiff's evidence, is based on his views and his opinions. Again, this does have some bearing on the allegations of why he believes the Defendant acted maliciously, and it should be admitted.

[34] I agree with the Court in *Di Franco* that it is not my role, on an anti-SLAPP motion, to make final determinations on the merits of this litigation. The evidence of the Plaintiff with respect to the basis for his belief is relevant to the second stage of the analysis I must make on a s. 137.1 motion: see para. 30.

[35] In sum, as it will become apparent in reading these reasons, little weight was given to the evidence outlined by the Defendant as being problematic.

Position of the Parties

Defendant's position

[36] The Defendant submits that her comments in the X post merely repeated information already generally available in the News Article and numerous filings before the HRTO. It is advanced that neither her X Post, nor any person's interactions with the X Post or the Craig post, identified the Plaintiff by name. It is also indicated that the Plaintiff is one of several officers in the community holding the rank of Inspector across various police forces.

[37] The Defendant lists the HRTO proceedings, the News Article, her communications with TBPS Constable Londyn Bilbrough and HRTO applicants, as the source of her information for making the X post, including her information about the whiteboard and its location in the Plaintiff's office at some point in time.

[38] It is acknowledged that the termination of the Plaintiff's secondment is based on NAPS gaining knowledge of the Human Rights Code allegations made against the Plaintiff in the HRTO proceedings. It is advanced that it is not the X post itself, but rather the fact that the Plaintiff failed to advise NAPS of these complaints, that resulted in the termination of his secondment.

[39] The Defendant advances that the expression relates to a matter of public interest. This is conceded by the Plaintiff.

[40] It is also advanced that there is no basis to conclude that the Plaintiff's claim has substantial merit and there are grounds to believe that the Defendant has valid defenses, and that the public interest in protecting the Defendant's expression outweighs the public interest in permitting the action to continue.

[41] The Defendant maintains that the action bears the hallmarks of a classic SLAPP, whereby a powerful and authoritative Plaintiff is seeking to silence and chill public commentary by a weaker Defendant on matters of broad social and community concern.

Plaintiff's Position

[42] The Plaintiff, on the other hand, argues that the Defendant has failed to satisfy the elements necessary to succeed in an anti-SLAPP motion. It is his position that he brings a defamation claim for the *bona fide* purpose of vindicating a genuine loss and not to strategically silence the Defendant for a collateral purpose.

[43] He advances that the proceedings have substantial merit, and that the Defendant does not have a valid defence. In this regard, it is advanced that the Defendant's X post was a malicious act, that she has an axe to grind with the Plaintiff and an interest in injuring his reputation.

[44] The Plaintiff acknowledges that the conduct of the TBPS, and how leadership within that organization handles the mental health of their officers is a matter of public concern and should be discussed and debated. However, the Plaintiff urges the court to find that the Defendant's

expression does not meaningfully engage with this discourse, but rather engages in false narratives which have harmed his reputation.

The Law and Analysis

Legal Framework:

[45] Section 137.1 of the *CJA* sets out the framework for anti-SLAPP motions.

[46] The relevant portion of s. 137.1 states as follows:

Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

Definition, “expression”

(2) In this section,

“expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

Order to dismiss

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.

No dismissal

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the moving party has no valid defence in the proceeding; and

(b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

[47] The purposes of the anti-SLAPP provisions are set out in s. 137.1(1). In *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 ("*Pointes Protection (ONCA)*"), Doherty J.A., at para. 2, described the rationale for the anti-SLAPP legislation as being enacted to prevent litigation from being used as a weapon to silence, intimidate and punish those who have spoken out on matters of public interest.

[48] The legal framework for an anti-SLAPP motion proceeds in two stages.

[49] Firstly, s. 137.1(3) provides that the defendant must satisfy the judge that the action "arises from an expression made by the person that relates to a matter of public interest". If the defendant fails to meet this threshold, then the motion must be dismissed.

[50] Secondly, if the defendant meets the first threshold, the onus shifts to the plaintiff to persuade the judge that there are grounds to conclude that the proceeding has substantial merit, the defendant has no valid defence, and 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": see *17046204 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587 ("*Pointes Protection (SCC)*"), at paras. 17-18.

[51] All three parts of this test must be met for the plaintiff to be permitted to proceed with the action. If the plaintiff cannot meet the onus on the first two parts of this test, then there is no need for the court to address the third part of the test. Although, it should be noted that this approach was criticized in *Mondal v. Kirkconnell*, 2023 ONCA 523, at para. 67, wherein it was indicated that “the prudent course is to make alternative findings on the public interest hurdle, otherwise it may be necessary to remit a matter for further proceedings under s. 137.1 following a successful appeal”.

[52] Anti-SLAPP motions are intended to operate as an efficient, preliminary screen to filter out abusive claims. The burden under the merits-based hurdle is low and not to descend to the depths of a summary judgment motion. The analysis must remain focused on the statutory criteria and not devolve into a disguised adjudication on the merits: See *40 Days for Life v. Dietrich*, 2024 ONCA 599, at paras. 43 and 45, leave to appeal to S.C.C. refused, 41477 (February 27, 2025); *Mondal*, at para. 30.

[53] The Court of Appeal for Ontario, recently, in *Li v. Barber*, 2025 ONCA 169, at para. 19, provided a useful point form summary of the scope and limits of a judge when considering a s. 137.1 motion:

19 In understanding the scope and limits of what judges do when considering a s. 137.1 motion, the following points must be recalled:

* The Supreme Court has emphasized that a s. 137.1 motion is "unequivocally not a determinative adjudication" of the merits of the underlying claim or a conclusive determination of the existence of a defence: *Pointes Protection*, at paras. 37, 50, 52 and 71; *Bent*, at para. 4;

* A s. 137.1 motion is one of several procedural tools available under Ontario civil procedure to dispose of public interest expression cases before they reach trial or some other final hearing on the merits. For such types of cases, a s. 137.1 motion occupies a position that falls somewhere between a motion to strike out a claim as

disclosing no reasonable cause of action or defence (which does not involve the consideration of any evidence) and a summary judgment motion that considers whether there is any genuine issue requiring a trial (which requires a deep dive into the evidence): *Pointes Protection*, at paras. 38, 52;

* Section 137.1 functions "as a mechanism to screen out lawsuits that unduly limit expression on matters of public interest through the identification and pre-trial dismissal of such actions." In deciding such motions, a judge uses a "limited record" and "should 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 more fully developed": *Pointes Protection*, at paras. 16, 37, and 52. As recently put by this court in *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811, at para. 6, the section "is intended to shut down plaintiffs who file abusive claims that have the effect of silencing opposing views, rather than to vindicate an apparently legitimate claim";

* A judge must recognize the limited nature of the record that is placed before the court on a s. 137.1 motion and the possibility of future evidence later in the litigation: *Pointes Protection*, at para. 37;

* As well, any determination on the admissibility or exclusion of evidence on a s. 137.1 motion does not bear on the evidence's ultimate admissibility at trial: as suggested in *Bent*, at para. 48;

* All of which is to say, a s. 137.1 motion is nothing like a trial. It does not reach a determinative adjudication of the merits of a claim or defence. The standard of proof to satisfy the elements of s. 137.1 is not as rigorous as the standard required to establish a claim at trial on a balance of probabilities. The section merely acts as a special pre-trial screening mechanism that enables a certain type of proceeding - those arising from public interest expression - to move along to a trial if it survives scrutiny under the s. 137.1 test;

* The heart or core of a judge's task in deciding a s. 137.1 motion is the weighing of competing interests and effects: a judge must weigh the public interest in vindicating legitimate claims through the courts against the resulting potential for quelling expression that relates to a matter of public interest. The weighing exercise directed by s. 137.1(4)(b) "allows motion judges to assess how allowing individuals or organizations to vindicate their rights through a lawsuit ... affects, in turn, freedom of expression and its corresponding influence on public discourse and participation in a pluralistic democracy": *Pointes Protection*, at paras. 33, 62 and 81.

[...]

Analysis

Expression related to a matter of public interest – Section 137.1(3)

[54] The Plaintiff acknowledged that the expression relates to a matter of public interest.

[55] Considering the foregoing concession, the onus now shifts to the Plaintiff to satisfy the court that the proceeding should be saved on the merits-based analysis and weighing exercise required by s. 137.1(4).

Merits-Based Hurdle – Section 137.1(4)(a)

[56] The Plaintiff must satisfy the Court that there are grounds to believe that his claim has substantial merit, and the defendant has no valid defence.

[57] To meet his burden, the Plaintiff must show that his defamation action has a “real prospect of success”. In context with “grounds to believe”, this means that the motion judge needs to be satisfied that there is a basis in the record and the law, taking into account the stage of the proceeding, for drawing such a conclusion. This requires that the claim be “legally tenable and supported by evidence that is reasonably capable of belief”. A claim with merely some chance of success is not sufficient to prevail: see *Pointes Protection (SCC)*, at paras. 39, 49, 50 and 54; *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at paras. 86-88.

Substantial Merit – Section 137.1(4)(a)(i)

[58] The Plaintiff’s claim against the Defendant is framed in defamation. As set out in *Bent*, at para. 92, a plaintiff must establish three elements to succeed in defamation:

- a. The words complained of were published, meaning that they were communicated to at least one person other than the plaintiff;

b. The words complained of referred to the plaintiff; and

c. 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 (*Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28)

[59] The first element has been met. The words complained of were published on X, they were published in response to the Craig post. There is therefore at least one other person that saw it.

[60] I note on this point that there was no evidence adduced by the Plaintiff on the extent of the publication of the X post. I can infer from the evidence presented that the author of the Craig post and an individual at NAPS and/or an individual that reported the X post to NAPS, have seen it. Also, the X post attached as an exhibit to the Plaintiff's motion record shows one additional post to the thread of comments to the initial Craig post. However, there are no posts made directly to the Defendant's X post. If there was, that was not tendered in evidence for this motion.

[61] The Defendant states that the Plaintiff's evidentiary response to the motion fails to satisfy the second element of the defamation test in that the words complained of refer to him. It is indicated that the Defendant's post does not name the Plaintiff, nor has the Plaintiff entered any evidence that at least one other person understood the Defendant's post as referring to him.

[62] While it is true that the X post does not name the Plaintiff, it was nonetheless the X post that led NAPS to identify the Plaintiff as one of the individuals that was subject of some of the HRT0 complaints. In cross-examination, the Defendant agreed that she was in effect referring to the Plaintiff in her X post.

[63] In cross-examination the Plaintiff indicated that, at the time, he was the only Inspector at the TBPS on secondment at NAPS. He also specified that there is only one Superintendent at NAPS, and he was the Acting Superintendent.

[64] Consequently, the words did not refer in name to the Plaintiff but made it possible for some individuals to determine who it was referencing. This would of course be limited to only the individuals that had this special knowledge. The Plaintiff did not adduce any evidence of any online comment and/or any other communicated comments confirming that someone had recognized the Defendant's words to be a reference to the Plaintiff—apart from NAPS.

[65] Lastly, is the issue of harm to the Plaintiff and his reputation.

[66] The Defendant argues that the Plaintiff's claim is not even a technical one as he has not established the elements of his cause of action in pleadings or evidence. And even if he had, he has not produced any evidence of "actual harm" arising from the Defendant's X post.

[67] It is advanced that the Plaintiff has returned to his employment with the TBPS. And the reasons for the termination of his secondment appears to turn on a contractual provision concerning NAPS policy on an alleged breach of the *HRC*, and not a consequence of the Defendant's X post.

[68] On the other hand, the Plaintiff advanced that the X post resulted in his secondment being terminated by NAPS and his reputation tarnished.

[69] The problem with the Plaintiff's submission is that the only causal link between the X post and the termination of the NAPS secondment, is that the X post brought to light for NAPS that the Plaintiff had complaints against him at the HRTTO.

[70] This is not a matter wherein the Defendant made some public comments insinuating bad behaviour and corruption, leading to his character being defamed. All that was said by the Defendant, is that one of these officers named in the News Article, that had a HRTTO complaint

against him, was now seconded to NAPS. It is also clear from the context of these posts and the News Article that these allegations have not been proven.

[71] It is not the words of the Defendant in this case that caused the harm to the Plaintiff. It is the fact that he has complaints against him in the HRTO.

[72] The damages being claimed by the Plaintiff are mainly for loss of income and employment opportunity. The evidence relied upon by the Plaintiff to substantiate his loss, is based on his own assumptions, and speculation that he would have obtained a higher position within NAPS. In my view, it amounts in the circumstances to bald and self-serving assertions and assumptions being advanced by the Plaintiff. There is no evidence adduced by the Plaintiff other than his own. For example, there is no affidavit or any letters, offers, or any other form of evidence to substantiate his own belief and that would indicate that he in fact had prospective opportunities with NAPS.

[73] Having said this, aside from the allegation of harm to the Plaintiff's professional aspirations, there remains the issue of harm to reputation.

[74] The threshold is low at this stage. It is not even necessary at this stage to establish actual reputational damage. It has been established that "actual harm to reputation is not required to establish defamation"; instead, there must be "a realistic threat that the statement, in its full context, would reduce a reasonable person's opinion of the plaintiff": see *Bent*, at para. 96, citing *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at para. 78.

[75] Consequently, although weak given the circumstances, the third criteria for making out a claim for defamation is met. In my view, the words posted would tend to lower the Plaintiff's reputation in the eyes of a reasonable person. It is even weaker in the circumstances, as someone

would have to be part of the special group that can identify the Plaintiff as the subject of the X post.

No Valid Defence - Section 137.1(4)(a)(ii)

[76] Once the Defendant has put a defence in play, the onus is back on the Plaintiff to demonstrate that there are grounds to believe that there is “no valid defence”. As a result, if there is any defence that is valid, the Plaintiff has not met its burden, and the underlying claim should be dismissed. As with the substantial merit analysis, the motion judge must make a determination of validity on a limited record and engage in a limited assessment of the evidence in determining the validity of the defence: see *Pointes Protection (SCC)*, at paras. 56-58.

[77] In this case, the Defendant raised the defence of truth (or justification) and fair comment.

Justification

[78] To succeed on the defence of justification, “a defendant must adduce evidence showing that the statement was substantially true”: see *Bent*, at para. 107. The substantial truth of the “sting” or main thrust of the defamatory statement must be proven by the defence.

[79] The Defendant states that the defamatory “sting” of the statement, if any, as the officer is not specifically named, is the allegation that the Plaintiff may be responsible for the discriminatory mistreatment of the applicants in the HRTO proceedings.

[80] The Plaintiff advances that the “sting” is also related to the officer being on “stress leave”. Consequently, it is advanced that the “sting” of the defamatory post is that the Plaintiff is

responsible for the mistreatment of TBPS officers as the author/director of the subject whiteboard and has hypocritically gone on “stress leave”.

[81] The Defendant disagrees that such is the case. It is advanced that even a false allegation that someone is on a stress leave is not defamatory.

[82] The justifiable comments in this matter are the following: the Inspector that had this written on their whiteboard is now seconded to NAPS as a Superintendent, and that the senior leadership came under investigation by OPP for a laundry list of issues. What is not justifiable or true is that the Plaintiff had “gone off on stress leave”.

[83] We know from the record that the Plaintiff had been diagnosed with PTSD prior to this post. He also eventually went on stress leave. However, the PTSD diagnostic was not known by the Defendant at the time of her X post, and the Plaintiff was not on stress leave at that time either.

[84] The Defendant has provided sufficient evidence to substantiate this defence. This includes the HRT0 complaints naming the Plaintiff, the News Article and the evidence of Constable Bilbrough. Some of the HRT0 complaints specifically named the Plaintiff, the News Article allegations that the officers subject to the complaints had white boards with discriminatory inscriptions, and Constable Bilbrough provided a sworn affidavit that he recalls seeing a whiteboard in the Plaintiff’s office with the heading “Broken Toys”. It is noted that the evidence of Constable Bilbrough was not challenged, apart from being denied by the Plaintiff, he was not cross-examined on his affidavit.

[85] I find that the reference to the Plaintiff being on stress leave is not defamatory, and therefore does not form part of the “sting”.

[86] It was also advanced that the comment that “senior leadership came under investigation by OPP for a laundry list of issues”, was false. The Plaintiff stated that he was never under investigation by the OPP. This must be viewed in the context of the entire post on X. The initial Craig post included a link to the News Article, which was premised with a photograph of former TBPS Chief Hauth. It is a well-known fact that investigation by the OPP into the TPBS has resulted in several criminal proceedings, of notarial mention, amongst others, are the proceedings that are making their way through the courts for the former Chief of TBPS, Hauth, and former TBPS counsel, Walbourne.

[87] Viewed in its context, the X post referenced the OPP investigation as a fact, and which investigation brought into scrutiny and raised concerns which involved senior leadership at TBPS. When reviewed as a whole, with the Craig post and the News Article, this is not defamatory to the Plaintiff, it offers context into the series of events that occurred.

[88] Consequently, I find that the Plaintiff has failed to establish that there are grounds to believe that the Defendant has no valid defence. In my view, the Defendant has a valid defence in justification.

[89] If I am wrong in finding that the reference to the Plaintiff being on “stress leave” is not defamatory, I will address below in my reasons on public interest, why I would come to the same end result.

Fair Comment

[90] The Defendant also raised the defence of fair comment. Given my findings on a valid defence of justification, I will only briefly address the defence of fair comment.

[91] I find that the defence of fair comment would fail.

[92] This defence was summarized and analysed in *Hansman*, at paras. 94-119. It contains five elements, outlined in para. 96, as follows:

- a. First, the comment must be on a matter of public interest;
- b. Second, it must be based on fact;
- c. Third, though it can include inferences of fact, it must be recognisable as comment;
- d. Fourth, it must satisfy an objective test: “could any person honestly express that opinion on the proved facts?”;
- e. Fifth, even if the above elements are met, “the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice”.

[93] I recognize that it is a low threshold to meet for an expression to constitute a fair comment. In order to do so, the statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact. A comment is noted to include a “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof”: see: *Hansman*, at para. 108.

[94] I find that the X post is more aligned with a statement of facts than a comment. The above analysis dealing with the defence of justification illustrates that the facts stated can be proven as true. As such, this defence would not be available to the Plaintiff.

[95] I also feel the need to address the fifth element of this defence, as the Defendant relied heavily on malice to negate this defence. As stated below in my analysis on the public interest. I am not satisfied that the X post was motivated by malice.

Public Interest Hurdle - Section 137.1(4)(b)

[96] The final step in the analysis under s. 137.1 as been described as the crux of the analysis: see *Pointes Protection SCC*, at paras. 61-62, *Bent*, at para. 139.

[97] At this stage, the Plaintiff is required to show that “the harm likely to be or have 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.” See: *Bent*, at para. 140.

[98] I have already found that any harm suffered by the Plaintiff would be minimal at best and, if any, it is related to reputational harm. I do not discount and recognize that one’s reputation is a valuable asset. However, in the circumstances of this case, and for the purpose of deciding this s. 137.1 motion, I am satisfied that there are reasonable grounds to doubt the strength of the Plaintiff’s case on liability and damages.

[99] The Plaintiff relied heavily on the decision in *40 Days for Life*. In that case, the court found that the purpose of the videos was to disrupt 40 Days’ operations, to impair 40 Days’ practical ability to carry out its vigils or to harm 40 Days’ reputation: see para. 74.

[100] This is not the case here. I am not satisfied by the record before me that the Defendant set out to harm the Plaintiff or as any type of retaliation as alleged by the Plaintiff. The evidence of the Defendant was that she had no meaningful interaction with the Plaintiff until the events that precipitating this action. There is no evidence adduced by the Plaintiff establishing or suggesting a history of malicious conduct or exchange between the Plaintiff and Defendant.

[101] The only evidence adduced by the Plaintiff is based, once again, on self-serving allegations and assumptions of what he believes may have motivated the Defendant to retaliate against him. This is denied by the Plaintiff.

[102] The Plaintiff has not adduced any concrete and reliable evidence of having suffered humiliation, shame, disgrace, and/or embarrassment. The examples provided by the Plaintiff are of scenarios wherein he believed that individuals would have been privy to negative comments made by the Defendant about him. These are his suspicions. There is no evidence of anyone approaching him and telling him that the Defendant made disparaging comments in his regard.

[103] Of course, he alludes to the embarrassment of being terminated by NAPS and then having to return to the TBPS and being assigned to the courthouse security. That, however, is a function of NAPS finding out that there were undisclosed outstanding HRTO complaints against him. Whether it was the Plaintiff or the TBPS that should have made this information available to NAPS prior to his secondment is besides the point. When NAPS acquired this knowledge, they acted in accordance with their policies.

[104] On the other hand, the Defendant has adduced evidence relating to her involvement in the justice sector, and her unique perspective given her previous roles and her continued interest in the

law, in providing and contributing meaningfully to the public dialogue on the issues surrounding the TBPS.

[105] The Defendant responded to the Craig post, which highlighted a previous News Article regarding the allegations that high ranked officers at the TBPS had a white board referring to “broken toys” who’ve taken “sad leave”. The X post does not specifically name the Plaintiff and is not derogatory in any way. The X post conveys the message that despite these HRT0 complaints, one of these officers continues to be employed in another high-ranking position with NAPS.

[106] When considering the X post as a whole and in the bigger context, it is to inform the public that despite all the ink that has been spilled in the above noted reports and concerns expressed in the public forum, officers that were the subject of the News Article and HRT0 complaints continue to be employed in high-ranking positions. It puts into question and continues the ongoing debate of what is being done to address the perceived injustices and concerns.

[107] It is in the public interest to be aware of these matters and to be informed of how complaints and matters are being handled. This is a hot topic in the community at large that has also garnered national interest. These high-ranking or senior roles come with benefits, but also the harsh reality of being open to public critic.

[108] The open-ended nature of s. 137.1(4)(b) allows courts to “scrutinize what is really going on in the particular case before them”: see *Pointes Protection (SCC)*, at para.81; *Bent*, at para. 172.

[109] The HRT0 complaints were brought to the attention of NAPS by the X post, however, it is the content of the News Article that also shed concern over the subject. In my view, this is a

case where the Plaintiff is upset that it was brought to the attention of NAPS that there were undisclosed complaints, and as a result his secondment with NAPS was terminated and he also believes that his future prospects with NAPS and other advancements have been affected.

[110] At best, the Plaintiff's claim is one that has "merely some chance of success", which as we know, is not sufficient to prevail: see *Pointes Protection (SCC)* and *Bent, supra*.

[111] I conclude that the public interest in protection the expression of the Defendant outweighs any harm that the Plaintiff likely has suffered or will suffer as a result of the expression.

CONCLUSION

[112] The Plaintiff was successful in establishing grounds to believe that the Defendant's fair comment defence would not succeed. However, the Plaintiff has failed to establish that there are grounds to believe that the Defendant does not have any defence, as the defence of justification is available.

[113] Lastly, the Plaintiff has not cleared the public hurdle interest under s. 317.1(4)(b).

[114] The Defendant's s.137.1 motion is therefore granted. This is a matter in which the Plaintiff is unable to demonstrate that the weighing of the public interest favours permitting the proceeding to continue.

[115] Consequently, the Plaintiff's underlying action in defamation is dismissed.

[116] In addressing costs, the legislature expressly contemplated a costs regime for s. 137.1: s.137.1(7) sets out an award of costs as the default rule if a s. 137.1 motion is granted, unless a judge determines that "such an award is not appropriate in the circumstances."

[117] That would not be the case here. I would therefore award costs to the Defendant.

[118] If the parties cannot agree on costs, the Defendant shall serve and file written submission within 14 days of the release of these reasons. The Plaintiff's responding submissions shall be served and filed within 14 days of the receipt of the materials served by the Defendant. Any reply submissions shall be served and filed within 7 days of the receipt of the responding submissions. All costs submissions shall be limited to five pages, plus a bill of costs and other relevant enclosures, such as offers to settle.

A handwritten signature in blue ink, appearing to be 'C. M. Brochu', is located in the lower right quadrant of the page.

The Hon. Madam Justice C. M. Brochu

Released: September 26, 2025

CITATION: Gibson v. Cunningham, 2025 ONSC 5504
COURT FILE NO.: CV-24-235-00
DATE: 2025-09-26

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Ryan Gibson

Plaintiff/Responding Party

– and –

Jaimie Cunningham

Defendant/Moving Party

DECISION ON ANTI-SLAPP MOTION

Brochu J.

Released: September 26, 2025