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OUR DEFAMATION & MEDIA EXPERTISE

Lenczner Slaght has decades of litigation experience in defamation and related media matters. We regularly act as litigation or advisory counsel in libel issues arising across all print, broadcast and digital media channels. We have represented both plaintiffs and defendants through libel trials and appeals. We don't just practice libel law: we shape it. Our lawyers have argued some of the leading defamation law cases before the Supreme Court of Canada.

YEAR IN REVIEW

Defamation

“In reported decisions, Ontario courts ultimately dismissed over two-thirds of anti-SLAPP motions in 2024.”

What were the most interesting developments of 2024, and why?

There were at least three interesting developments in the law of defamation in 2024.

First, courts were more reluctant to grant motions to dismiss defamation actions pursuant to provincial anti-SLAPP legislation.

Anti-SLAPP legislation in Ontario and British Columbia allows defendants to seek the early dismissal of lawsuits that unduly limit expressions related to a matter of public interest.

In reported decisions, Ontario courts ultimately dismissed over two-thirds of anti-SLAPP motions in 2024. The Court of Appeal for Ontario allowed two appeals from anti-SLAPP judgments. In both, the Court reversed decisions that had granted the anti-SLAPP motions ([Marcellin v London \(Police Services Board\)](#) and [Hamer v Jane Doe](#)), allowing the defamation actions to proceed.

Similarly, in the high-profile case of Steven Galloway in [Rooney v Galloway](#), the Court of Appeal for British Columbia affirmed a lower court decision dismissing the anti-SLAPP motion, allowing Mr. Galloway's action to proceed. In doing so, the Court even reinstated certain aspects of Mr. Galloway's claim that had been dismissed.

When expressing their reluctance to dismiss defamation actions in 2024, courts repeatedly noted that anti-SLAPP motions are intended as a simple screening mechanism. We expect this trend to continue.

Second, courts affirmed the significance of the presumption of general damages in defamation law on an anti-SLAPP motion.

Canadian anti-SLAPP precedents require plaintiffs to show credible evidence of harm that outweighs the public interest in the speech at issue. In 2024, courts confirmed that the presumption of general damages is evidence of harm and may be sufficient to outweigh the public interest value in the impugned expression. In affirming the significance of this long-standing presumption, the Court in [Kielburger v Canadaland Inc](#), a case in which Lenczner Slaght acted as counsel, concluded that the plaintiff's subjective feelings of injury outweighed the public interest value of the impugned expressions.

Third, in 2024, courts were much more inclined to grant successful claimants their costs of an anti-SLAPP motion.

Anti-SLAPP legislation altered the usual "loser pays" rule in Canadian civil litigation, meaning that plaintiffs who successfully defend against these motions face a rebuttable presumption that they are not entitled to their costs. However, in 2024, courts were more likely

than before to award costs to successful plaintiffs.

Our analysis of 2024 Ontario anti-SLAPP motion decisions shows that more than three-quarters of such decisions, which dismissed the motion and addressed costs, did so by awarding costs to the plaintiffs. Those costs awards ranged from \$10,000 to \$110,000.

What's the primary takeaway for businesses from the past year?

Previously, defendants frequently used anti-SLAPP motions due to high standards for plaintiffs and lower risks of adverse costs. However, decisions in 2024 show that these conditions have changed. Moving forward, businesses and media outlets facing defamation risks must now be more strategic in using anti-SLAPP motions. They are no longer always the best initial defense.

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