
Derek Knoke
416-865-3018
dknoke@litigate.com


Jennah Khaled
416-798-5951
jkhaled@litigate.com

March 17, 2025

Ontario Court of Appeal Rules on Defamation and Online Reviews

In *Benchwood Builders Inc v Prescott*, the Court of Appeal for Ontario provided further guidance on the interpretation of section 137.1 of the *Courts of Justice Act,* commonly known as anti-SLAPP legislation. This legislation provides a quick screening mechanism to dismiss lawsuits that unduly limit expressions related to a matter of public interest – often referred to as Strategic Lawsuits Against Public Participation (SLAPP).

Justice Lauwers, for a unanimous panel, made several instructive comments that provide insight for defamation litigants.

Background and Discussion

A couple contracted with Benchwood Builders Inc to carry out renovations to their home. The relationship ended badly. Approximately a month later, the couple noticed that Benchwood had posted photographs of their home online to attract new customers.

The couple made several posts on Facebook claiming that Benchwood was misrepresenting their project as a success story. They called Benchwood and its owner “dishonest,” “a miserable con artist,” a “dirtbag,” and accused the owner of threatening women.

Benchwood sued the couple, both to recover unpaid bills and for defamation. The couple brought an anti-SLAPP motion to dismiss the action.

The motion judge granted the motion and dismissed the action, concluding that:

- The couple’s statements in their online reviews related to a matter of public interest;
- Benchwood failed to show that the defence of justification had no real prospect of success; and
- Benchwood failed to establish serious harm arising from the couple’s statements because there were other factors that may have affected Benchwood’s reputation.

The Court of Appeal allowed the appeal with costs to Benchwood.

Prior to applying the legal test, Justice Lauwers set out the governing principles of statutory interpretation. He considered the text, purpose, and general context of the anti-SLAPP legislation. In doing so, Justice Lauwers noted that section 137.1 has led to much litigation, which he called ironic, given the purpose of the legislation.

The Statements Were Not Related to a Matter of Public Interest

Justice Lauwers acknowledged that several Superior Court decisions have classified online reviews as related to a matter of public interest. However, he said that the Court of Appeal is of a different view. "Online reviews are not automatically matters of public interest" (emphasis in original).

While some cases involving online reviews rise above the purely private, the ones in this case reflected "no more than an especially bitter private dispute." It is not enough that "some members of the public might find it interesting". For an expression to relate to a matter of public interest, it should engage some broader societal concern.

A Nuanced Approach to the "No Valid Defence" Analysis is Required

The Court of Appeal held that the motion judge misapplied the Supreme Court of Canada's guidance in *Bent v Platnick*. A motion judge should engage in a nuanced approach to section 137.1(4)(a)(ii), which assesses whether the moving party has "no valid defence" to the lawsuit.

Justice Lauwers said that he would "distinguish" one sentence in paragraph 58 of *1704604 Ontario Ltd v Pointes Protection Association*. He expressed concern with too much reliance on the following sentence: "The word *no* is absolute, and the corollary is that if there is *any* defence that is valid, then the plaintiff has not met its burden and the underlying claim should be dismissed."

In Justice Lauwers' view, the "no valid defence" analysis must allow for more nuance. Indeed, nuance is implicit in the balance of paragraph 58 of *Pointes* and the Supreme Court's companion decision in *Platnick*.

The Court of Appeal said that a more nuanced, less "categorical" approach, is appropriate for several reasons:

- **First**, there are a plethora of possible defences and, in some cases (like this one), several allegedly defamatory statements at issue. The analysis should consider the relevant defences and statements;

- **Second**, a defamatory statement might be true at some level, but substantial truth is judged by the "sting" of the words. Also, the analysis becomes more nuanced when there is evidence of malice; and
- **Third**, a categorical approach "raises the stakes" and encourages parties to file enormous evidentiary records that explore defences at length. This is inconsistent with the screening purpose of these motions.

While explaining the need for more nuance, the Court of Appeal ultimately affirmed the Supreme Court's guidance in *Platnick* – the responding party only needs to show grounds to believe that the defences do not tend to weigh more in favour of the moving party.

The Weighing Exercise: Personal Attacks Have No Public Interest Value

The Court of Appeal agreed with the motion judge in that "one key problem for Benchwood" is the presence of other factors that may have affected Benchwood's reputation. However, the Court of Appeal held that the couple's statements were not worthy of protection because they involved personal attacks and there was evidence of malice. Even if the couple's motive was to warn other customers, this was not their only motive. In this case, the tension between reputation and free speech should give priority to Benchwood's reputation.

The Court of Appeal ultimately held that the "straight logic of a private dispute should apply." This was not an appropriate case to grant an anti-SLAPP motion.

The Court of Appeal granted Benchwood their costs of the appeal and invited submissions on the quantum of costs of the underlying motion.

Takeaways

In this decision, the Court of Appeal emphasizes the narrow circumstances in which anti-SLAPP motions are likely to succeed, and it affirms the trend of awarding successful plaintiffs their costs. As set out in our *2024 Snapshot*, prospective litigants and counsel will need to think carefully before bringing these motions.