

CANADA / JUDGMENT

Rajic v. MacDonald

2026 ONCA 288

COURT

Court of Appeal for Ontario

DECIDED

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Rajic v. MacDonald

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Paciocco, David M.; Copeland, Jill M.; Dawe, Jonathan

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Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Rajic v. MacDonald, 2026 ONCA 288

DATE: 20260421

DOCKET: COA-25-CV-1080

Paciocco, Copeland and Dawe JJ.A.

BETWEEN

Ljubomir Rajic

Plaintiff (Respondent)

and

Rebecca MacDonald also known as Ubavka MacDonald

Defendant (Appellant)

Robert Macdonald, Teodora Obradovic and Ronald Davis, for the appellant

Joshua Samac, Thomas Mathews, Nicolas Lagore and Manak Mann for the respondent

Heard: April 10, 2026

On appeal from the order of Justice R. Lee Akazaki of the Superior Court of Justice, dated July 29, 2025.

REASONS FOR DECISION

- [1] The respondent, Fr. Ljubomir Rajic, is a Serbian Orthodox priest. In March 2022 he swore an affidavit in support of the applicant in family law proceedings in which the appellant, Rebecca MacDonald, was the respondent. In September 2022, Ms. MacDonald made a complaint about Fr. Rajic to the Serbian Orthodox Church ecclesiastical authorities. Based on her complaint, the church authorities took disciplinary action against Fr. Rajic.
- [2] Fr. Rajic subsequently commenced a defamation action against Ms. MacDonald, who brought an “anti-SLAPP” motion under s. 137.1 of the Courts of Justice Act, R.S.O. 1990, c. C.43 (the “CJA”), seeking to have the action dismissed. The motion judge dismissed Ms. MacDonald’s motion on the basis that she had not met the threshold requirement in s. 137.1(3), which required her to establish that her complaint against Fr. Rajic “relate[d] to a matter of public interest”. Ms. MacDonald appeals to this court pursuant to s. 6(1)(d) of the CJA.
- [3] “A motion judge’s determination on a s. 137.1 motion will typically be entitled to deference upon appeal, absent reviewable error”: *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at para. 77. In this case, we agree with the appellant that the motion judge’s reasons reveal legal errors in his s. 137.1(3) analysis that are reviewable on a standard of correctness. We will focus on two of these errors.
- [4] First, the motion judge misstated this court’s holding in *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA 171, leave to appeal granted [2025] S.C.C.A. No. 169, stating:

The most recent Ontario Court of Appeal guidance on the meaning of the phrase “expression made by the person that relates to a matter of public interest” is *Benchwood Builders Inc. v. Prescott*, at para. 33. Lauwers J.A. put to rest the consensus of lower court judges’ ruling about the low public interest threshold.

- [5] In reality, Benchwood Builders does not hold or suggest that lower courts had been incorrectly treating the “public interest” threshold in s. 137.1(3) as unduly “low”. Rather, the issue Lauwers J.A. addressed at para. 33 was whether online consumer reviews of businesses or professionals should automatically be treated as expression that “relates to a matter of public interest”. He noted that although “[t]his seems to be a consensus view of Superior Court judges”, he did not agree with it: Benchwood Builders, at paras. 33, 40. However, Lauwers J.A. did not suggest that this raised the threshold burden under s. 137.1(3).
- [6] In 1704604 Ontario Ltd. V. Pointes Protection Association, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 23-28, Côté J. explained that while s.137.1(3) requires the moving party to meet its burden on a balance of probabilities, the question of whether expression “relates to a matter of public interest” does not involve any qualitative assessment about the value of the expression. As a result, the “burden is purposefully not an onerous one”: Pointes Protection, at para. 28. This court’s decisions have echoed this point: see e.g., Zeppa v. Rea, 2023 ONCA 668, 168 O.R. (3d) 481, at para. 27; Thorman v. McGraw, 2022 ONCA 851, 476 D.L.R. (4th) 577, at para. 15.
- [7] Since the case at bar does not involve an online review, it is not apparent why the motion judge considered para. 33 of Benchwood Builders to be significant. We acknowledge that it is also not entirely clear what conclusion he took from the cited paragraph, but we can discern no possible meaning that would be consistent with the test he was obliged to apply. We are therefore satisfied on a balance of probabilities that he erroneously raised the threshold under s. 137.1(3).
- [8] The trial judge’s second error was to repeatedly suggest that Ms. MacDonald’s expression could not relate to a matter of public interest because her expression was not itself public. For instance, he stated:

Ms. MacDonald’s complaints stemmed from a private grievance about Fr. Rajic agreeing to insert himself in a specific family law dispute. No issue arising from this entered the public market square of ideas and opinions. [Emphasis added.]

Later in his reasons, he added:

There was no evidence that Ms. MacDonald intended her complaint to reach a public forum of congregants or parish officials ...There was no evidence, or pleaded complaint by Fr. Rajic, that Ms. MacDonald disseminated the church court’s resolution to the wider parish or national church community. [Emphasis added.]

- [9] The motion judge concluded:

In summary, there is no reason to believe Ms. MacDonald's complainants against Fr. Rajic concern matters of public interest. The expressions do not even reach the level of public interest in online reviews, because the only persons or parties interested in hearing or reading them are those charged with the duty to receive them within the church institution. [Emphasis added.]

[10] The motion judge's apparent belief that only expression that is widely disseminated can be "expression ...that relates to a matter of public interest" is inconsistent with the governing authorities. As Côté J. noted in *Pointes Protection*, at para. 30, "[u]ltimately, the inquiry is a contextual one that is fundamentally asking what the expression is really about." The nature of the audience can be a relevant factor when conducting this contextual inquiry, but it is not determinative, since the subject-matter of expression made to even a very small number of people can nevertheless relate to a matter of public interest. In *Pointes Protection*, the Supreme Court of Canada upheld this court's decision: *1704604 Ontario Ltd. V. Pointes Protection Association*, 2018 ONCA 685, 142 O.R. (3d) 161 ("*Pointes Protection (ONCA)*"). As Doherty J.A. observed in his reasons for this court at paras. 62-63:

It is enough that some segment of the community would have a genuine interest in the subject matter of the expression: *Grant v. Torstar Corp.*, [2009 SCC 61, [2009] 3 S.C.R. 640], at paras. 102 and 105.

Public interest does not turn on the size of the audience. Especially in today's world, communications on private matters can find very large audiences quickly. On the other hand, statements between two people can relate to matters that have a strong public interest component.

[11] This point is confirmed by this court's subsequent decisions. For instance, in *Mazhar v. Farooqi*, 2021 ONCA 355, this court upheld the motion judge's finding that a confidential complaint to the board of a volunteer organization met the s. 137.1(3) threshold, on the grounds that "[t]he making of a complaint of harassment to those in charge of the environment in which it has allegedly occurred is a matter of public interest": *Mazhar*, at para. 18. More recently, in *Galati v. Toews*, 2025 ONCA 568, at para. 52, this court held that a complaint to the Law Society of Ontario about the conduct of a lawyer was "an expression made in relation to a matter in the public interest" because the "complaint went beyond [the complainant's] private interest", in that it raised questions about the lawyer's use of money that had been solicited from the public.

[12] In our view, the motion judge erred by focusing on the size of Ms. MacDonald's audience, while paying little or no regard to the content of her expression. Ms. MacDonald's complaint was based in part on her claim that Fr. Rajic's affidavit in her family law proceeding had contained falsehoods and/or inaccuracies. However, she also expressed her view that it was not appropriate for a priest to act as a witness for one side in a private legal dispute rather than "remain[ing] neutral", particularly without first seeking permission from the church authorities. Ms. MacDonald also stated her concern that Fr. Rajic's actions might tarnish the church's reputation and expose the church to litigation.

- [13] It is important to emphasize that “there is no qualitative assessment of the expression at this stage” of the s. 137.1 analysis: *Points Protection*, at para. 28. It is thus irrelevant whether Ms. MacDonald was raising these concerns in good faith, or whether her opinions about the propriety of Fr. Rajic’s conduct were correct. Rather, all that matters is whether the concerns she raised were “matters of public interest”, in the sense of being issues about which “some segment of the community would have a genuine interest”: *Grant v. Torstar Corp.*, at para. 102.
- [14] In our view, these aspects of Ms. MacDonald’s complaint to the church authorities were capable of clearing the low threshold under s. 137.1(3). While the motion judge was not incorrect to observe that Ms. MacDonald’s complaint to the church authorities “stemmed from a private grievance”, he failed to take into account that it also raised issues about the propriety of priests becoming involved in private litigation between church members, and about the risk this might pose to the Serbian Orthodox Church as an institution. These can be seen as matters of genuine interest to the community of church parishioners. It did not matter that Ms. MacDonald was not expressing her views directly to this community, but was instead communicating with the church authorities. By raising these broader concerns to the church authorities, Ms. MacDonald’s “complaint went beyond her private interest”: *Galati v. Toews*, at para. 52.
- [15] We recognize that Ms. MacDonald’s complaint also made other allegations against Fr. Rajic. For instance, she accused him of corruptly receiving payment to swear a false affidavit, of using drugs, and of committing tax fraud. She also acknowledged that some of these allegations were speculative. However, as we have noted, it is irrelevant at the s. 137.1(3) threshold stage of the analysis whether these allegations were true, or whether they were made in good faith. They touched on Fr. Rajic’s suitability to carry out the duties of a priest, and were made in the context of a complaint to the ecclesiastical authorities. As such, they arguably also “relate[d] to a matter of public interest” within the church community. In any event, expression may relate to more than one matter, and if at least one of those matters is a “matter of public interest”, the defendant will have met its onus under s. 137.1(3): *Pointes Protection (ONCA)*, at para. 65. We are satisfied that when Ms. MacDonald’s complaint is read as a whole, it qualifies as an expression that relates to matters of public interest.
- [16] We accordingly agree with the appellant that the motion judge made reversible legal errors in his s. 137.1(3) analysis, and that his order dismissing Ms. MacDonald’s s. 137.1(3) motion must be set aside.
- [17] Ms. MacDonald argues that rather than remitting her motion to be reheard by a different judge of the Superior Court, we should decide it ourselves, rule in her favour, and dismiss Fr. Rajic’s action.
- [18] We decline this invitation. Since the motion judge found that Ms. MacDonald’s motion failed at the threshold s. 137.1(3) stage, he did not go on to conduct the second-stage analysis required by s. 137.1(4). The appellant could not point to any previous case where this court

has conducted the multi-stage s. 137.1(4) analysis as a court of first instance, without the benefit of reasons and findings of fact by the court below. We are not persuaded that the motion judge's obiter comments expressing his opinion that Fr. Rajic's defamation action lacked merit, and that Ms. MacDonald's defences were strong, can properly serve as an adequate substitute for a full s. 137.1(4) analysis.

- [19] Accordingly, we allow the appeal and remit Ms. MacDonald's s. 137.1 motion to the Superior Court of Justice, to be heard by a different judge. This makes it unnecessary to consider Fr. Rajic's motion for leave to cross-appeal the motion judge's decision not to award him costs, which was contingent on Ms. MacDonald's appeal being dismissed.
- [20] Relying on s. 137.1(7) of the Courts of Justice Act, Ms. MacDonald argued that she should be awarded her costs of the appeal on an elevated basis. However, this court has held that s. 137.1(7) does not apply on appeal, and that the normal principles governing costs on appeal should be employed: see e.g., *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2023 ONCA 533, at para. 9; *UM Financial Inc. v. Butler*, 2025 ONCA 844, at para. 7. We are not persuaded that elevated costs are justified in this case. We therefore order costs be paid by Fr. Rajic to Ms. MacDonald on a partial indemnity basis, fixed at \$30,000 all inclusive. The question of whether either party should receive their costs of the motion is left to be decided by the judge that rehears the motion.

"David M. Paciocco J.A."

"J. Copeland J.A."

"J. Dawe J.A."

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