

CANADA / JUDGMENT

Yates v. Iron Horse Corporation

2026 ONCA 38

COURT

Court of Appeal for Ontario

DECIDED

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Yates v. Iron Horse Corporation

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Simmons, Janet M.; Rouleau, Paul S.; Pepall, Sarah E.

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COURT OF APPEAL FOR ONTARIO

CITATION: Yates v. Iron Horse Corporation, 2026 ONCA 38

DATE: 20260123

DOCKET: COA-24-CV-0360

Simmons, Rouleau and Pepall JJ.A.

BETWEEN

Robin Yates

Plaintiff

(Appellant)

and

Iron Horse Corporation and Robin St. Martin

Defendants

(Respondents)

Robin Yates, acting in person

Christopher P. Morris and Blake Bochinski, for the respondents

Heard: June 19, 2025

On appeal from the order of Justice Sally A. Gomery of the Superior Court of Justice, dated December 23, 2023, with reasons reported at 2023 ONSC 4195, 94 C.C.L.T. (4th) 254.

Pepall J.A.:

- [1] This appeal focuses on the need for a responding party to an anti-SLAPP[1] motion to provide evidence of an inference of harm or the likelihood of harm and of a causal link between the harm and the moving party's expression for the purpose of the weighing exercise under s. 137.1(4)(b) of the Courts of Justice Act, R.S.O. 1990, c.C.43 (the "CJA").
- [2] The respondent, Robin St. Martin, or his company, the respondent, Iron Horse Corporation ("Iron Horse"), have sued the appellant three times, one of which is a counterclaim. The appellant, Robin Yates, brought an anti-SLAPP motion seeking a dismissal of two of those claims including the counterclaim. The third claim is the subject of a Small Claims Court action that is not in issue in this appeal. The motion judge dismissed the respondents' action against the appellant and her then 73-year-old father, Larry Yates, for damages for defamation and malicious prosecution, but refused to dismiss the respondents' counterclaim against the appellant for \$2.5 million for damages for defamation. The appellant appeals from that refusal. For the reasons that follow, I would allow her appeal.

Background Facts[2]

- [3] Mr. St. Martin owns and operates Iron Horse, a security and investigations company. At the relevant time, he also owned and operated 7692455 Canada Inc., which was known as Capital City Painters ("Capital City"). Both companies carried on business out of the same offices in Ottawa.

- [4] In July 2015, the appellant began working as a sales representative for Capital City although her record of employment was from Iron Horse. Mr. St. Martin admits that he was the appellant's boss and that there was a significant power imbalance between them. She was in her mid-twenties and he was considerably older.
- [5] Mr. St. Martin started to send text messages to the appellant. He told her that he loved her, that she should not be ashamed of her love for him, and that she was on a list of girls he wanted to date. He asked if he could take her bra off while he was kissing her. For her part, the appellant maintained that she played along with the messages because she feared what Mr. St. Martin might do if she did not. She alleged that he bragged about starting baseless or exaggerated lawsuits against former employees and customers and had fired an employee for tracking snow into the office.
- [6] On November 29, 2016, the appellant incorporated 2547510 Ontario Inc. ("254") to purchase the assets of Capital City. The purchase price was \$75,000 payable in equal monthly instalments of \$3,305 over 24 months commencing on the date of closing, January 1, 2017. After the closing, the appellant continued to work from the office premises.
- [7] According to the appellant, 254 had cash flow issues and failed to make the first payments due under the asset purchase agreement. Mr. St. Martin sent a letter to a 254 customer threatening both to sue for payment of \$300,000 and to register a lien on his house unless he paid \$4,000 within five days. The letterhead represented that it was from "The Legal Offices of St. Martin and Associates" and was signed by "R.A. Martin, Senior Litigator, St. Martin and Associates". There is no such firm and Mr. St. Martin is not a lawyer. Mr. St. Martin admitted that he sent this letter pretending to be a senior litigator. He produced a message from the appellant asking him to send the letter and thanking him for having done so.
- [8] On July 7, 2017, Mr. St. Martin sent an email to the appellant asking her to pay the arrears due under the agreement and suggesting she might wish to obtain a loan so she could pay the entire purchase price at once. She declined to do so and stated that she thought he had misrepresented Capital City's revenues to her.
- [9] Mr. St. Martin responded with a series of emails on July 10, 2017. He accused the appellant of stealing from him and destroying Capital City's business. He called her a scam artist, a bully, and a monster and said he would not hesitate to make an example out of her. He served her with an eviction notice and threatened to have her prosecuted criminally if she came on to the property without his permission. He accused her of misappropriating cash payments from customers and threatened to charge her with theft and to sue her. He wrote her again on July 16, 2017, making some of the same sort of assertions. He advised that he would have her arrested if she came onto the property and stated that she could pick up 254's property from the premises on July 18, 2017 at 3:00 p.m. He also proposed mediation or arbitration.

- [10] On July 18, 2017, the appellant picked up 254's property at the proposed time. Afterwards, she was parked outside the premises and Mr. St. Martin called the police however, she left before the police arrived. He subsequently sent her an email accusing her of threatening behaviour, served her with a trespass notice, and stated that she would have to pay the cost of having the building locks changed.
- [11] Throughout July and August 2017, Mr. St. Martin sent the appellant emails disparaging her and describing her as being "like a sequel to Dumb and Dumber" and a "complete fucked up failure and a thief". Mr. St. Martin said that he could garnish her wages for the rest of her life, that he would be entitled to a piece of every asset she owned, and that, as a result, they would have a "lifelong relationship". In one email, he said that he might hire her back to work for him as he could use "a sturdy, hefty and ruggedly built workhorse" like her. He suggested that "if you cleaned yourself up a bit, hit the gym etc., you could probably make a few [pornos] yourself and pay off your debt to me in a timely manner. If you do go that route, send me the links, all the people you have fired in the past year would like to see it."
- [12] In separate emails, the appellant wrote to Mr. St. Martin on July 17, July 19 and July 23, 2017, asking him to stop communicating with her. He did not do so.
- [13] The appellant states that on July 23, 2017, she began to receive hundreds of disturbing, sexually explicit phone calls and text messages from unidentified callers and senders. Many messages contained obscene photographs of male genitalia. Someone had posted advertisements in her name on websites that feature ads for escort and sexual services. The advertisements included pictures of the appellant, taken from her social media accounts, with the message that she was "looking for someone to fill my day and me up" and that she was "horny and available" and "nothing is off limits". The message invited readers to "text me a dick pic without your face and I will reply immediately" and ended with the appellant's personal phone number.
- [14] The appellant subsequently received a sexually explicit text containing her first name and the street where she lived. Another mentioned her father. She believes Mr. St. Martin was responsible, but he denies this.
- [15] On July 25, 2017, Mr. St. Martin sent the appellant an email attaching an email he later admitted he had fabricated. The fabricated attachment was stated to be from the appellant and insinuated that if he did not back off his debt collection, he would suffer physical harm as she knew where he lived. He then threatened to report the appellant to the police based on this fabricated email.
- [16] In September 2017, after the appellant applied for a serving job at a Keg restaurant, Mr. St. Martin wrote to her saying: "Hey sweet pea, can you put a table aside for me in your section. Some of the boys want to come in and say hello. We'll pop in for your next shift. Thanks, xo." Mr. St. Martin admits sending this but denies that he was tracking her. He said he heard of her job application through a friend.

- [17] The appellant first reported the emails she received from Mr. St. Martin to the Ottawa Police Services (the “OPS”) in early July 2017 and gave the OPS additional information later in the summer. Her father, Larry Yates, also sought their assistance and complained about their investigation. The OPS viewed the matter as a civil dispute and was of the view that there was insufficient evidence for a criminal prosecution. The OPS closed its file in early November 2017.
- [18] On December 18, 2017, Mr. St. Martin commenced a Small Claims Court action against the appellant in which, relying on a promissory note purported to be signed by her, he claimed the balance of the purchase price for the sale of Capital City to 254. He did not sue 254. The promissory note was attached to the Statement of Claim. He forged the promissory note.
- [19] On December 20, 2017, the appellant sought what the motion judge described as a restraining order[3] against Mr. St. Martin. The appellant communicated with the Crown Attorney’s office advising that he had forged documents and making various allegations of threats and harassment including that he had sexually harassed her while she worked for him and that he had told her of illegal acts he had committed against third parties. Her father also wrote to the Crown Attorney indicating that the appellant had told him about Mr. St. Martin’s harassing and threatening behaviour and dubious money dealings.
- [20] On February 12, 2018, the appellant advised the OPS that the promissory note filed in the Small Claims Court action was a forgery. The OPS reopened its file.
- [21] On July 5, 2018, Mr. St. Martin was charged with criminal harassment, two counts of forgery, and obstruction of justice. The forgery charges were based on Mr. St. Martin’s fabrication of the letter from “The Legal Offices of St. Martin and Associates” and the promissory note. The obstruction of justice charge was based on his filing of the promissory note in the Small Claims Court action. The criminal harassment charge was based on communications Mr. St. Martin sent to the appellant between July 1 and September 30, 2017. After the criminal charges were laid, the appellant abandoned her peace bond application.
- [22] On January 13, 2020, a guilty plea to uttering a forged document was entered on Mr. St. Martin’s behalf in connection with the forged promissory note. The other three charges were withdrawn. An agreed statement of facts was filed by Mr. St. Martin and the Crown Attorney. [4] Mr. St. Martin was given a conditional discharge on serving 12 months of probation. He was to perform 60 hours of community service and was prohibited from contacting the appellant and coming within 200 metres of her home or workplace. The sentencing judge accepted the defence submission that this sentence was appropriate because otherwise Mr. St. Martin would lose his private investigator’s licence and this would potentially imperil the jobs of 1,800 employees. In his affidavit filed on the anti-SLAPP motion, Mr. St. Martin stated that he regretted his actions.

- [23] The motion judge stated that the appellant only learned of the outcome of the criminal case after the fact whereas Mr. St. Martin alleged that she was told the Crown would not pursue the harassment charge.
- [24] On October 13, 2020, the Canadian Broadcasting Corporation (the “CBC”) published an article about Mr. St. Martin on its website. The headline stated: “Head of private security firm pleads guilty to submitting forged \$25K promissory note[5] to court”. Among other things, the CBC quoted from: “a string of abusive emails” that the appellant had shared; the agreed statement of facts from the criminal proceedings including Mr. St. Martin’s admission that he had forged the promissory note and had posed as a senior litigator in a demand note sent to a Capital City client; and his plea of guilty to uttering a forgery. The article referenced the appellant’s disappointment and frustration that three charges had been dropped by the Crown and that Mr. St. Martin had received a conditional discharge. She also explained why she believed he was responsible for the sexually explicit texts and calls she received in July and August 2017 although the article noted that she had no direct evidence to support this belief. For his part, Mr. St. Martin admitted that he was “responsible for the words [he] used” and said he was “embarrassed and apologize[d] for lashing out in an inappropriate way”, which he described as a “momentary lapse in judgment”. He accused the appellant of making “many outlandish and completely unsubstantiated harassment complaints”, stating that this led him to plead guilty to the forgery charge so he could move on with his life.
- [25] Subsequently, the appellant posted a hyperlink to the CBC article on her LinkedIn profile and on Reddit with comments and also replied to comments posted in response. In addition, she posted a review of Iron Horse on Glass Door, an internet site for job searches and commentary on employers. She noted that Mr. St. Martin had bragged about legal actions against former employees and that he had fired another employee for a trivial offence.
- [26] On March 23, 2022, the appellant sued the respondents seeking over \$2 million in damages for harassment, fraud, and violations of the Human Rights Code, R.S.O. 1990, c. H.19. The respondents responded with a statement of defence and a \$2.5 million counterclaim for defamation. Among other assertions, the appellant pleaded that Mr. St. Martin sexually harassed her, posted fake ads with her name and image soliciting sexual encounters, sent forged emails, and filed a forged promissory note to support his Small Claims Court action against her personally. The respondents deny these allegations and assert that the action is statute barred, and in their counterclaim, claim general and special damages for defamation in the amount of \$1.5 million, and aggravated and punitive damages of \$1 million. The motion judge described the statements that are the subject matter of the counterclaim at paras. 69 to 73 of her reasons.
- [27] The counterclaim asserts that the appellant made the following statements in connection with the CBC article:
- Mr. St. Martin forged a document in the Small Claims Court action;

- Mr. St. Martin sent the appellant abusive emails;
- Mr. St. Martin had fraudulently assumed the identity of a senior litigator;
- Mr. St. Martin had harassed and sexually harassed the appellant; and
- Mr. St. Martin published sexual advertisements involving the appellant online.

[28] The specific statements that the appellant allegedly posted on LinkedIn were that:

- “Owner of Iron Horse Security in Ottawa sued me with a forged document”;
- “He served me with the fraudulent lawsuit 2 weeks before Christmas following a montage of relentless harassment”;
- “He was able to shrink 4 charges to 1 through plea bargaining”;
- “I received email after email of ranting psychotic communications that St. Martin sent over the course of months”; and
- “He was tracking my movements”.

[29] The specific defamatory and untrue statements that the appellant allegedly made on Reddit were that:

- “Those employees [of Iron Horse] will be so much better off when their SIN numbers, DOB and parents’ information are not in the hands of this psycho”;
- “It would be easy for this man to sell the company if he had any shred of decency... Unless it’s in financial trouble. Which might explain the desperate attempt to get money suing and frauding”;
- “Not to mention Private Investigations are involved in court cases. Wonder how many times evidence may have been fabricated before”;
- “Private investigators and security guards alike are often relied upon for court evidence, and the guy at the top will use fake documents to get money. The guy is 50 he is not going to change, he will be more careful”;
- “Imagine this guy losing someone access to their children based on forged documents or evidence. There is good reason criminals shouldn’t be put in that position. I wonder if he’ll just be more careful now, continue with his crimes but ensure there is less evidence in the future”; and
- “A large number of innocent employees = a large number of potential victims left under his authority, completely vulnerable to him”.

[30] On the Iron Horse page on the Glass Door website, the respondents allege that the appellant made the following false and defamatory statements:

- “The CEO bragged about lawsuits against two former employees and how the lawsuits were made long simply to ensure they were expensive to defend. He would talk about wanting to destroy their lives”;
 - “Fired an employee for trekking in salt with his boots during the winter and sent an email to everyone in the office about it”; and
 - “Not a healthy work environment”.
- [31] The counterclaim also alleges that the appellant filed false complaints against Mr. St. Martin with the OPS and instigated an audit of Iron Horse by the Canada Revenue Agency (the “CRA”). The counterclaim does not contain allegations about the specific statements that the appellant allegedly made in her complaints to the OPS. It simply alleges that she communicated that St. Martin harassed and sexually harassed her, “among other things”. The counterclaim likewise does not contain any allegations about the nature of the untrue and defamatory complaint that the appellant allegedly made to the CRA against Iron Horse.
- [32] As mentioned, in addition to the counterclaim, on June 3, 2022, the respondents also sued the appellant and her father in a separate action claiming over \$2 million in damages not only for defamation but also for malicious prosecution. The respondents have not appealed the motion judge’s dismissal of this action pursuant to s. 137.1 of the CJA.

Reasons of the Motion Judge

- [33] The motion judge commenced her analysis by setting out the purposes of s. 137.1 of the CJA, its rationale, the statutory criteria for granting an anti-SLAPP motion, and some of the jurisprudence on the subject.

Appellant’s Onus

- [34] She then asked herself whether the appellant as the moving party had established that the comments and communications that were the subject matter of the counterclaim related to a matter of public interest as required by s. 137.1(3) of the CJA. She concluded that the appellant had done so. The CBC article focused on the justice system’s response to gendered harassment and the appellant’s comments and communications were made in that context. The impugned statements on Reddit and LinkedIn similarly concerned the outcome of the criminal case. The allegations of harassment were a matter of public interest given Mr. St. Martin’s position as a private investigator and controller of a successful security and investigation company. The Glass Door review also related to a matter of public interest. Iron Horse offered a range of services to the public, and a CEO’s abuse of authority would be relevant to the public and to prospective employees. She concluded that the appellant had therefore satisfied the first stage of the s. 137.1 test. No one takes issue with the motion judge’s findings and conclusion in this regard.

Respondents' Onus

- [35] The motion judge then turned to the second stage of the s. 137.1 analysis. She asked whether Mr. St. Martin and Iron Horse had shown that: (i) the counterclaim had substantial merit; (ii) the appellant had no valid defence to the counterclaim; and (iii) the public interest in permitting the counterclaim to continue outweighed the public interest in protecting that expression.
- (i) Substantial Merit [36] The motion judge noted that the respondents did not plead that the appellant defamed them by talking to the CBC journalist but did imply that she is liable because she republished the CBC article on LinkedIn and Reddit. The motion judge concluded that, through the comments the appellant made alongside the hyperlinks, she had endorsed and adopted the CBC article's comments and repeated some of the statements attributed to her in the CBC article. The appellant admitted that the statements attributed to her had a "defamatory overtone". Based on these facts, the motion judge concluded that the respondents had shown that their counterclaim had substantial merit.
- (ii) No Valid Defence [37] On the second prong of the test, the motion judge considered whether the appellant's defences to the counterclaim could realistically fail. She did not consider the Supreme Court of Canada's decision in *Hansman v. Neufeld*, 2023 SCC 14, 73 B.C.L.R. (6th) 173, which was released on May 19, 2023. Submissions before the motion judge had taken place in March 2023.
- [38] The motion judge first addressed the limitations defence. She reasoned that she could not make the necessary factual findings on the record before her to determine whether the CBC article and social media postings in issue fell within the ambit of ss. 5(1) and 6 of the Libel and Slander Act, R.S.O. 1990, c. L.12, which would require the respondents to serve notice within six weeks and to take action within three months of learning of the alleged libel. In addition, the law in the area was unsettled. She nonetheless concluded that the appellant's limitations defence could realistically fail.
- [39] As for the appellant's defences of justification, fair comment and qualified privilege, the motion judge explained that she would not address all 19 impugned statements but would simply show why some of the defences could realistically fail. For example, there was no direct evidence that Mr. St. Martin published sexual advertisements about the appellant who inferred that he must have done so given the personal details in texts she received from him, his suggestion that she act in " pornos " to earn money and then send him the links, and the timing of the posting of the advertisements. Although this inference was plausible, the motion judge decided that in the absence of a full evidentiary record, she could not fairly assess whether the justification and fair comment defences would prevail. These would depend on an assessment of credibility. While she was of the view that the defence of qualified privilege was likely valid with respect to the appellant's communications to the OPS and the CBC, it may not prevail with respect to the Glass Door review.

[40] The motion judge was of the view that some of the defences of justification, fair comment, and qualified privilege would succeed, some were incapable of assessment, and others could realistically fail. As such, she concluded that the appellant's defences to some elements could realistically fail and the respondents had therefore met their onus with respect to the no valid defence prong of the test.

(iii) Weighing of Harm and Public Interest [41] The motion judge then turned to the weighing exercise. She asked herself whether Mr. St. Martin and Iron Horse had shown that the harm caused or likely to be caused by the expression was outweighed by the public interest in protecting the appellant's expression? She noted that this stage of the exercise was at the heart of the anti-SLAPP analysis and was the opportunity to assess "what is really going on" in the litigation. She stated, at paras. 119-20, that there is a strong public interest in protecting expression about online sexual harassment and highlighted the significant power imbalance between the appellant and Mr. St. Martin:

There is a strong public interest in protecting expression and debate on the topic of harassment and in not discouraging victims from speaking up. This interest is heightened when harassment is gendered or sexual, and when it takes the form of online communications. The latter is increasingly prevalent. Targets of online harassment may feel frightened, demeaned, and exhausted, particularly when a campaign involves the receipt of unwanted sexual propositions or innuendo or it implies that the sender knows the target's personal information and habits. Victims of harassment should not be inhibited from disclosing what they have experienced because they fear being sued for defamation. It is legitimate to infer that allowing the lawsuit to proceed could prevent such victims from coming forward.

There is and was a significant power imbalance between Ms. Yates, a young woman who has been on sick leave since June 2022, and Mr. St. Martin, a successful middle-aged businessman. When Ms. Yates worked for Mr. St. Martin, he had the ability to fire her. He no longer had this power after January 1st, 2017, but he had a huge financial and social advantage. He acknowledges that his company, Iron Horse, generates millions of dollars in annual revenue. Ms. Yates has limited means and social capital.

[42] The motion judge found that the counterclaim had the hallmarks of a SLAPP[6] and that Mr. St. Martin and Iron Horse had a history of using litigation, and threats of litigation, for strategic purposes.

[43] She observed that there was no direct evidence that public debate had been or would be chilled if the counterclaim proceeded. She said, "Ms. Yates does not seem to have hesitated to disclose her allegations on social media because she feared being sued" and noted that the appellant had sued the respondents "putting at issue the parties' entire history." Citing the statement in *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 58[7], that the right to free expression did not confer a licence to ruin reputations, she noted that there was a public interest in permitting the counterclaim to proceed.

[44] As for damages, Mr. St. Martin stated that the defamatory statements had harmed the respondents' reputation and that Iron Horse had suffered a decline in revenue from \$9.7 million in 2018 to \$7.6 million in 2021, and that he had paid over \$110,000 in fees to public relations agencies. However, the motion judge was skeptical of the respondents' ability to prove the damages they claimed. They had not filed any evidence substantiating a causal link between the company's declining revenue or increased expenses and the impugned statements. They would have to persuade a judge that the losses were caused by the statements, as opposed to the disclosure of the criminal charges against Mr. St. Martin, the suspension of his private investigator's licence for six months, and economic factors such as the COVID-19 pandemic.

[45] The motion judge reasoned, at paras. 126-27:

It is implicit in my discussion of the validity of Ms. Yates' defenses, in which I focused on a few that might not succeed, that I am of the view that she will realistically prevail with respect to many if not most of the impugned statements. In light of this and the absence of any real evidence of the link between her statements and any losses suffered by the respondents, they may only be entitled to modest general damages.

Based on the foregoing considerations alone, I would be inclined to dismiss the counterclaim. The respondents have a real interest in seeking redress for any damages to their reputation. In my view, however, there is a strong strategic element in their decision to begin a multi-million dollar counterclaim many months after the allegedly defamatory statements were made. This has a strong impact on my conclusion about what is really going on in this case. [Emphasis added.]

[46] However, she then turned to one additional consideration that tipped the balance in favour of permitting the counterclaim to proceed. She wrote at paras. 129-30:

The Court of Appeal has indicated that an anti-SLAPP motion may theoretically succeed with respect to an action asserted by way of a counterclaim: [Park Lawn v. Kahu Capital Partners Ltd., 2023 ONCA 129, 165 O.R. (3d) 753, at para. 58]. In the case at bar, however, the dismissal of the counterclaim in this case will not meaningfully reduce the scope of the factual inquiry or spare the moving party meaningful costs. Most if not all of Ms. Yates' entire history with Mr. St. Martin and Iron Horse will be relevant either way.

In these circumstances, it is questionable whether granting the motion with respect to the counterclaim will serve any public interest. In my view, the objectives of s. 137.1 are not achieved if litigation on the subject matter of the expression will proceed, virtually unchanged, if the motion is granted. There may be circumstances where the moving party can show that the dismissal would have a significant impact on them, or on other similarly situated parties, beyond the spectre of a possible damages award. But no such evidence is before me in this case. [Emphasis added.]

[47] With that, the motion judge dismissed the anti-SLAPP motion with respect to the counterclaim.

[48] The motion judge went on to grant the appellant and her father's anti-SLAPP motion in the respondents' action against them. As such, she dismissed the respondents' second action. I do not propose to engage in a detailed discussion of her reasons in that regard save to reproduce the motion judge's commentary on the respondents' ready use of litigation for strategic purposes. At para. 172, the motion judge wrote that the targeting of Mr. Yates was consistent with the evidence that:

Mr. St. Martin and Iron Horse have a history of using litigation and threats of litigation as leverage. The Small Claims Court action against Ms. Yates, based on a forged promissory note, is an example. So is the fabricated lawyer's letter, in which Mr. St. Martin threatened to sue the recipient for hundreds of thousands of dollars and to put a lien [on] his house, if he did not pay a few thousand he owed within the next few hours. The record also includes texts from Mr. St. Martin in which he boasts about his willingness to start lawsuits for strategic reasons. According to the CBC article, court records show that Mr. St. Martin and Iron Horse have filed almost two dozen lawsuits over the last twenty years, including a lawsuit taking two former employees for more than \$700,000. The respondents' approach to the current litigation echoes Mr. St. Martin's threats to Ms. Yates, in the summer of 2017, about going to war with her if she crossed him.

Issues

[49] The appeal raises the following issues:

- (i) Did the motion judge err in the weighing exercise set out in s. 137.1(4)(b) of the CJA by failing to dismiss the counterclaim? More particularly, having in essence found no harm and no causal connection, did the motion judge err in anchoring her refusal to grant the motion on the existence of a counterclaim?
- (ii) Did the motion judge err in applying an incorrect legal standard to her assessment of the 'no valid defence' prong of s. 137.1(4)(a)(ii) of the CJA and in her analysis of the defences of justification and fair comment?
- (iii) If the counterclaim is dismissed, is the appellant entitled to statutory damages under s. 137.1(9) of the CJA?
- (iv) If the counterclaim is dismissed, is the appellant entitled to full indemnity costs under s. 137.1(7) of the CJA?

Analysis

[50] Three Supreme Court of Canada decisions have addressed anti-SLAPP cases: 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22, [2020] 2 S.C.R. 587, Bent v. Platnick, 2020 SCC 23, [2020] 2 S.C.R. 645, and Hansman. The Supreme Court first analyzed and developed the law on anti-SLAPP cases in the companion cases of Pointes and Bent. The court's most recent guidance emanates from Hansman.[8] That decision instructs "courts to dismiss even meritorious claims" where the public interest weighing exercise favours

protection of freedom of expression: Hansman, at para. 5. In that case, Karakatsanis J., writing for the majority, described the defining feature of a SLAPP action: “the proceeding acts to silence the defendant, and more broadly, to suppress debate on matters of public interest, rather than to remedy serious harm suffered by the plaintiff”: at para. 48.

- [51] Section 137.1 of the CJA is the governing statutory authority for anti-SLAPP motions in Ontario. In simple terms, the steps as set out in that provision and applied to this case were as follows:
- (a) The appellant commenced an action against the respondents who counterclaimed against the appellant.
 - (b) The appellant brought a motion to dismiss the counterclaim under s. 137.1(3) of the CJA.
 - (c) The appellant had to satisfy the motion judge that the counterclaim arose from an expression made by the appellant that related to a matter of public interest: CJA, s. 137.1(3).
 - (d) If the appellant did so, the onus shifted to the respondents to satisfy the motion judge that there were reasonable grounds to believe that: (i) the counterclaim had substantial merit; and (ii) the defences raised by the appellant were not valid, “in that they can be said to have no real prospect of success”: Hansman, at para. 53. A failure to meet either or both of (i) and (ii) would result in a dismissal of the counterclaim.
 - (e) On the other hand, if the respondents were able to meet (i) and (ii), they also had to satisfy the court that the harm they have or were likely to suffer as a result of the appellant’s expression was sufficiently serious that the public interest in permitting the proceeding to continue outweighed the public interest in protecting that expression: CJA, s. 137.1(4)(b). If the respondents failed to do so, the judge would dismiss the proceeding. As directed by Hansman, at para. 53, the order of addressing the elements in (d) and (e) is in the discretion of the motion judge.
- [52] It is important to be mindful of the purposes of s. 137.1 of the CJA, listed in subsection (1). They are to: (a) encourage individuals to express themselves on matters of public interest; (b) promote broad participation in debates on matters of public interest; (c) discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and (d) reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.
- [53] The public interest weighing exercise and the no valid defence requirement were at issue in Hansman as they are in this appeal. That decision introduced some new dimensions to those two issues.
- [54] Citing *Pointes*, at para. 80, Karakatsanis J. emphasized that the factors that may be of assistance in the weighing exercise had to be tethered to the text of the statutory provision: Hansman, at para. 60. In that regard, she listed the factors given as examples in *Pointes* including the potential chilling effect on future expression by a party. However, she

determined that this was an improper consideration in the harm analysis component of the weighing exercise. She stated that “the factor to be considered in favour of the public interest in continuing the proceeding is the likely harm to the plaintiff as a result of the defendant’s expression”: Hansman, at para. 63.

- [55] She held that to succeed on the weighing exercise, a plaintiff must provide evidence that enables the judge “to draw an inference of likelihood” of harm of a magnitude sufficient to outweigh the public interest in protecting the defendant’s expression: Hansman, at para. 67, citing Pointes, at para. 71, and Bent, at para. 154. Presumed general damages are insufficient for this purpose as are bare assertions of harm: Hansman, at para. 67. Additionally, there must be evidence that enables a judge to infer a causal link between a defendant’s, in this case the appellant’s[9], expression and the harm suffered: Hansman, at para. 68.
- [56] Thus, in the weighing exercise, the analysis must be tethered to the statutory text. First, this requires that there be evidence of harm or evidence that permits a judge to draw an inference of the likelihood of harm. Second, the harm or likely harm must be of a sufficient magnitude to outweigh the public interest in protecting the appellant’s expression. Third, presumed general damages are insufficient. Fourth, bare assertions of harm are also insufficient. Fifth, there must be evidence that supports an inference of a causal link between the harm suffered by the respondents and the appellant’s expression.[10]
- [57] As for the applicable standard of review, absent reviewable error, a motion judge’s determination on a s. 137.1 motion is entitled to deference: Bent, at para. 77, citing Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 36; Hansman, at para. 56. I am satisfied that there was reviewable error in this case. As mentioned, the motion judge was not referred to the Supreme Court’s decision in Hansman. Once the reasoning in that decision is applied, the result in this appeal cannot be sustained. This is why.
- [58] To start, as already explained, the Supreme Court in Hansman, at para. 68, stated that that there must be some evidence that enables the motion judge to infer a causal link between the appellant’s expression and the harm suffered. However, the motion judge found that there was an absence of any evidence of a link between the appellant’s statements and any losses suffered by the respondents. Additionally, she did not draw an inference of a causal link. She was also of the view that the appellant would realistically prevail with respect to many if not most of the impugned statements and there was no link between the appellant’s statements and any losses suffered. Thus, there was nothing to ground a finding of a causal link.
- [59] Second, the motion judge stated that she was skeptical about the respondents’ ability to prove the damages they claimed. As directed by Hansman, at para. 67, presumed general damages are insufficient as are bare assertions of harm. The damages claim advanced by the respondents suffered from these deficiencies as found by the motion judge. To repeat, Hansman directs that “the likely harm to the plaintiff as a result of the defendant’s expression” is “the factor to be considered in favour of the public interest in continuing the

proceeding”: at para. 63 (emphasis added). Having concluded that, in essence, the respondents had not met their onus with respect to causation or harm, the motion judge erroneously determined that the weighing exercise favoured the respondents. In light of her findings and the dictates of *Hansman*, this conclusion was not available to her.

- [60] Third, she acknowledged that given her findings, and based on these considerations, she would be inclined to dismiss the counterclaim. Although the respondents had a real interest in seeking redress for any damages to their reputation, she found that there was a strong strategic element in their decision to begin a multi-million dollar counterclaim many months after the allegedly defamatory statements were made. This, she said, had a strong impact on her conclusion about what was really going on in the case.
- [61] She acknowledged that this court in *Park Lawn* had indicated that an anti-SLAPP motion could succeed with respect to a counterclaim. There is nothing in the legislation that would suggest otherwise. However, she questioned whether the public interest would be served by granting the motion in this case. This was because the subject matter of the litigation would proceed in any event. This consideration tipped the balance in favour of permitting the counterclaim to proceed. As the motion judge said in her damages and costs reasons, “the public interest supported [the counterclaim’s] continuation because dismissing it would not reduce the factual inquiry at trial nor even necessarily reduce [the appellant’s] litigation costs in a meaningful way”: *Yates v. Iron Horse Corporation and St. Martin*, 2023 ONSC 7232, at para. 56.
- [62] In *Hansman*, *Karakatsanis J.* held that the Court of Appeal for British Columbia had erred in considering that an anti-SLAPP dismissal may have a chilling effect on future expression by the plaintiff and others similarly situated. She criticized that court’s reasoning as being untethered to the statutory text. The B.C. statutory provision on the weighing exercise, like Ontario’s, defined the public interest in continuing the proceeding with reference to “the harm likely to have been or to be suffered by the respondent as a result of the [appellant’s] expression”: *Hansman*, at para. 74.[11] *Karakatsanis J.* further explained: “The harm relevant to the public interest weighing exercise is harm to [the respondent] caused by the [appellant’s] statements, not by [the respondent’s] inability to sue. The loss of a right to sue was a possible outcome of the public interest weighing exercise, not an input.”: at para. 74. The chilling effect on public debate has only been considered by courts under the weighing exercise as a reason to protect the moving party’s expression, not as a reason to allow the proceeding to continue: *Hansman*, at para. 76. The consideration of the public interest in continuing the proceeding had to be grounded in harm to the respondent that was caused by the expression of the appellant.
- [63] Thus, the first side of the weighing exercise in this case evaluates the harm to the respondents caused by the appellant’s expression. Absent likely harm and causation, the weighing exercise cannot benefit the respondents.

- [64] Turning to the other side of the weighing exercise, and again tethering the analysis to the statutory text, Karakatsanis J. stated: “The other side of the weighing exercise evaluates the public interest in protecting the [appellant’s] expression”: Hansman, at para. 79. Thus, in this part of the weighing exercise, the level of protection to be afforded to the moving party’s speech is considered. Factors such as a respondent’s inability to sue are not. To consider factors outside of the public interest in protecting the appellant’s expression on this “other side of the weighing exercise” would be to impermissibly go beyond the text of the statute.
- [65] It follows from Hansman that the motion judge’s reliance on the respondents’ interest in seeking redress absent evidence of harm and causation of harm and on the overlap between the claim and the counterclaim was misplaced. The former ignored the statutory text of the harm analysis. The latter was both unrelated to the harm analysis and to the public interest in protecting the appellant’s expression. Standing alone, absent evidence of likely harm and causation, the overlap could not anchor a refusal to dismiss the counterclaim. Indeed, the motion judge’s findings, including her determination that the counterclaim had the hallmarks of a SLAPP and that the respondents had a history of using litigation and threats of litigation for strategic purposes, all pointed to a dismissal of the counterclaim. Moreover, discouraging this kind of litigation is expressly contemplated by the purposes enumerated in s. 137.1(1) of the CJA. The mere presence of a counterclaim does not alter that analysis. I would also observe that, as noted by the motion judge, the litigation on the subject matter of the expression will proceed in any event. The respondents will have their day in court; they simply will be unable to pursue the counterclaim for what was found to be a strategic purpose.
- [66] The motion judge found that there was no causal link between the respondents’ likely harm and the appellant’s expression; the hallmarks of a SLAPP were present in the counterclaim; and there was a strong public interest in protecting the kind of expressions made by the appellant. Considered together, these findings compel the dismissal of the counterclaim, as the motion judge herself suggested at para. 127.
- [67] For these reasons, I would allow the appeal on the weighing exercise ground. In light of my conclusion, there is no need to address the remaining grounds of appeal relating to the defence analysis. This leaves the issues of damages and costs to address.

Damages

- [68] The appellant asks this court to assess damages in her favour pursuant to s. 137.1(9) of the CJA. That provision provides:

If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate.

[69] This court considered the interpretation to be given s. 137.1(9) in *United Soils Management Ltd. v. Mohammed*, 2019 ONCA 128, 53 C.C.L.T. (4th) 1, at paras. 34-35, leave to appeal refused, [2019] S.C.C.A. No. 121 (Mohammed), and [2019] S.C.C.A. No. 153 (Barclay):

The wording of s. 137.1(9) is somewhat problematic. On one view, the wording of s. 137.1(9) would seem redundant, as a finding that an action has been commenced for the purpose of unduly limiting expression on matters of public interest would seem to qualify as one that has been brought for an improper purpose. On another view, the wording of s. 137.1(9) could be seen as an effort to separate out a subset of SLAPP cases which go beyond simply reflecting an effort to limit expression and include active efforts to intimidate or to inflict harm on the defendant.

A review of the “Anti-SLAPP Advisory Panel Report to the Attorney General”, dated October 28, 2010, supports the latter interpretation. In that report, the Advisory Panel recommended, at para. 46:

[T]he court should not be required to make findings as to bad faith or improper motive on the part of the plaintiff in deciding a motion under the special procedure. If in a particular case, however, the court is satisfied on the record before it that an action has been brought in bad faith or for an improper motive, such as punishing, silencing or intimidating the defendant rather than any legitimate pursuit of a legal remedy, an additional remedy should be available for this improper conduct. In such circumstances, the court should have the power to award damages to the defendant in such amount as is just. [Emphasis added].

[70] The appellant has led evidence to show that Mr. St. Martin’s actions “go beyond simply reflecting an effort to limit expression and include active efforts to intimidate or to inflict harm” on the appellant. In his communications with the appellant, Mr. St. Martin admitted to using litigation for strategic purposes, and did so in an intimidating fashion. One compelling example of this is a series of text messages:

Hey Dead beat, just a warning. If I hear from another person that I sold you a biz with debt I will be suing you for defamation. We both know it was an asset sale with no debt. I will be showing everyone our agreement so the more you pin your failures on me, the more you look like a fool. And I will sue. We know how much I like to do that. So smarten up asshole. First you steal a biz from me, then you tell people your failure was my fault?? Your ego is next level. I'm glad you signed that personal guarantee - that's for sure. I will be moving forward on the conversion charges. Enjoy, we are just getting started. You are a fucking loser. A complete fucked up failure and a thief. A great big, fat, sloppy loser. Bankrupt before you are 30. Something to be proud of. This whole city is laughing at you Vice President. I guess hanging out with coke head hookers 24/7 rubbed off on you. I'm guessing most of my money went up your nose, the rest on hamburgers. Robin Yates, Vice President of failures and bankruptcy. What a joke you are.

Just a side note, ken is still in biz and thriving so you aren't even close to being as smart as ken. The guy YOU thought was stupid has just ran circles around you with his eyes closed. He started with nothing compared to you and yet he is doing well and you are a broke thief. Guess that puts your IQ into perspective. I'm just so happy you signed that personal guarantee on the loan. Wow.

[71] In these texts, Mr. St. Martin threatened twice that he would sue the appellant, used abrasive language, and made claims that he has now admitted are false. In the course of these intimidating statements, he wrote, in reference to suing, “We know how much I like to do that.” As well, at para. 34 of her damages and costs decision, the motion judge found that Mr. St. Martin and Iron Horse are “parties with money who are familiar with the legal system and who have used litigation in the past to intimidate others.”

[72] As for proof of damages, in *United Soils*, this court stated, at para. 36:

We would make two observations regarding the approach taken by the motion judges in these cases with respect to this issue. First, we do not view it as necessary for a defendant to adduce medical evidence in order to support a claim for damages. While medical evidence might be of assistance in determining the proper quantum of damages to be awarded, in certain cases, such as the ones here, it may be presumed that damages will arise from the use of a SLAPP lawsuit. Both of the respondents were individuals inexperienced in litigation, who would understandably suffer the stress and anxiety associated with being the subject of a proceeding of this type. This is especially true given the intimidating nature of the conduct of the appellant.

[73] The motion judge found in her damages and costs reasons, “I think it likely that some of the strain described by [the appellant] was due to the counterclaim in the Yates Action and the stress and costs of bringing an anti-SLAPP motion against parties who use hardball litigation tactics”: at para. 43. The motion judge specifically reduced her award of damages under s. 137.1(9) in the motion dismissing Mr. St. Martin’s action for defamation and malicious prosecution because some of the appellant’s stress and anxiety was attributable to this action instead: at para. 45. Moreover, as stated in *United Soils*, at para. 38, s.137.1(9) is limited to harm suffered specifically as a result of the proceeding that was not permitted to continue. The appellant’s success or lack thereof in pursuing her claim has no bearing on whether the counterclaim was used to intimidate and harass her. As such, if she is successful with her action, there is no risk of a duplication in damages.

[74] In her damages and costs reasons, the motion judge noted that Mr. Yates sought general damages of \$50,000 and the appellant sought general damages of \$50,000 plus special damages of \$183,535.14 for lost employment income. The motion judge awarded the appellant’s father \$25,000 in damages and the appellant \$20,000 in the action for defamation and malicious prosecution which the motion judge had dismissed under s. 137.1 of the CJA. It is implicit from her reasons that, for the most part, the motion judge valued the stress and anxiety that the appellant experienced as a result of the counterclaim at \$5,000. Turning to the lost income claim, the motion judge was unable to reach a conclusion at this stage of the proceedings based on the record before her. She therefore ordered that the lost income

claim be addressed as part of the determination of the action. I see no reason to interfere with the motion judge's assessment in that regard. Accordingly, I would award the appellant \$5,000 in s. 137.1(9) damages in relation to the dismissal of the counterclaim and refer the lost income claim to the Superior Court of Justice to be determined or resolved as part of the appellant's action.

Costs

[75] Lastly, the appellant claims costs of the motion under s. 137.1(7) of the CJA. It states:

If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

She also seeks costs of the appeal.

[76] Dealing first with the costs of the appeal, the appellant seeks \$13,675.99, consisting of \$12,750 in fees and \$925.99 in disbursements.

[77] The appellant was self-represented on this appeal and did a commendable job. Fees should only be awarded to those self-represented lay litigants who can demonstrate that they: (a) devoted time and effort to do the work ordinarily done by a lawyer retained to conduct the litigation; and (b) as a result, incurred an opportunity cost by foregoing remunerative activity: *Girao v. Cunningham*, 2021 ONCA 18, 13 C.C.L.I. (6th) 1, at para. 9, citing *Benarroch v. Fred Tayar & Associates P.C.*, 2019 ONCA 228, 433 D.L.R. (4th) 112, at paras. 19, 27, and *Fong v. Chan* (1999), 46 O.R. (3d) 330 (C.A.), at para. 26.

[78] Based on the evidence before me including her affidavit, the appellant has satisfied both of these requirements. The respondents conceded in their cost materials that the case was relatively complex and the issues important to the parties. In my view, a fair and reasonable costs award in favour of the appellant is \$10,000 inclusive of disbursements and applicable tax and I would so order.

[79] As for the costs of the motion, I see no basis on which to deny the appellant full indemnity costs of the motion to which she is presumptively entitled. As she requests, I would refer the assessment of those costs to be assessed by the Ottawa assessment officer. This is comparable to the order on costs made by the motion judge in favour of the appellant and her father.

Disposition [80] In summary, I would allow the appeal and dismiss the counterclaim. I would award the appellant \$5,000 in s. 137.1(9) damages and \$10,000 in costs of the appeal. I would refer the assessment of the costs of the motion to be assessed by an assessment officer in Ottawa.

Released: January 23, 2026 "J.S."

"S.E. Pepall J.A."

“I agree. Janet Simmons J.A.”

“I agree. Paul Rouleau J.A.”

- [1] Strategic lawsuits against public participation.
- [2] The facts set out in this section are largely drawn from the motion judge’s reasons.
- [3] Although the appellant referred to both a restraining order and a peace bond in her materials filed before the motion judge, the request was likely for a peace bond.
- [4] The Agreed Statement of Facts filed in Mr. St. Martin’s criminal proceeding was not in the record filed on this appeal.
- [5] The motion judge used the term promissory note; the actual wording of the headline was IOU.
- [6] The motion judge used the term anti-SLAPP but it is clear from her reasons that she was referring to the counterclaim having the hallmarks of a SLAPP.
- [7] The motion judge erroneously cited para. 57 rather than 58.
- [8] Although Hansman involved British Columbia’s anti-SLAPP statute, it is substantially similar to s. 137.1 of the CJA, the governing statutory authority in Ontario.
- [9] For ease of reference, in the remainder of my reasons, I have described the parties as they appear on this appeal.
- [10] Evidence relating to harm and causation may also assist in undermining any suggestion of a strategic objective. Conversely, absence of such evidence may propel such a conclusion.
- [11] Section 137.1(4)(b) of the CJA refers to “the harm likely to be or have been suffered by the responding party as a result of the moving party’s expression”.

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