

**COURT OF APPEAL FOR
ONTARIO**

BETWEEN:

B.W. (Brad) Blair

Plaintiff
(Appellant)

- and -

PREMIER DOUG FORD

Defendant
(Respondent)

FACTUM OF PLAINTIFF/APPELLANT B.W. (BRAD) BLAIR

**(re Appeal of s. 137.1 *Courts of Justice Act* Decision of December 15, 2020
and related decisions of November 23 & 30, 2020)**

March 19, 2021

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PART I: OVERVIEW OF PARTIES AND DECISIONS UNDER APPEAL

A. The Appellant

1. The Appellant/Plaintiff, B.W. (Brad) Blair (“Mr. Blair”), is a former interim Commissioner and a former Deputy Commissioner of the Ontario Provincial Police (“OPP”). He was the plaintiff in a defamation claim brought against the Respondent/Defendant the Honourable Premier Doug Ford (“Premier Ford” or “the Premier”) in relation to three separate unequivocal public statements made by Premier Ford that Mr. Blair had breached the *Police Services Act* (“PSA”). The Premier made the impugned statements on December 18, 2018 and on two occasions on January 14, 2019.

B. Decisions Under Appeal

2. Premier Ford successfully brought a motion to dismiss Mr. Blair’s defamation claim pursuant to section 137.1(3) of the *Courts of Justice Act* (“CJA”, “the anti-SLAPP motion”). Justice Edward P. Belobaba of the Superior Court of Justice (“the Motion Judge”) heard the motion on December 4, 2020, via Zoom, and rendered his decision on December 15, 2020.

3. In advance of the hearing on the merits of the anti-SLAPP motion, Mr. Blair unsuccessfully pursued two preliminary motions. The first was a motion regarding productions, refusals and striking of the Defendant’s reply affidavits, heard on November 20, 2020 and decided on November 23, 2020 (“preliminary matters motion”). The second was a motion to compel Premier Ford to re-attend to conclude his cross-examination, heard in writing and decided on November 30, 2020. Both preliminary motions were dismissed by the Motion Judge in their entirety.

4. Finally, on February 1, 2021, the Motion Judge issued a costs decision. The decision awarded global costs to the Defendant for the s. 137.1 *Courts of Justice Act* motion, the underlying defamation action and the two preliminary motions fixed at \$130,000 all-inclusive and payable by

the Plaintiff as follows: \$65,000 forthwith and \$65,000 when the Plaintiff's separate wrongful dismissal action is settled or finally adjudicated.

5. Mr. Blair appeals: (1) the dismissal of his libel action pursuant to the Court's December 15, 2020 decision; (2) the preliminary matters motion, only with respect to the Motion Judge's decision denying the Plaintiff's productions request that the Defendant produce all documents pertaining to legal advice received by Premier Ford regarding the lawfulness of Mr. Blair's conduct from December 11, 2018 to March 4, 2019; and (3) the decision denying the Plaintiff's motion to compel Premier Ford's reattendance to conclude his cross-examination. Should Mr. Blair prevail in his appeal of the s. 137.1 motion such that Mr. Blair's defamation action is reinstated, Mr. Blair is seeking his costs in the s. 137.1 motion and this herein appeal.

PART II: NATURE OF CASE & SUMMARY OF ISSUES

A. Nature of Case

6. On September 5, 2018, then OPP Commissioner Vince Hawkes announced his retirement effective November 2, 2018. On October 22, 2018, a job competition was publicly posted seeking applications from police officers with the following criteria: "experienced executive with a background in policing" with a "track record and demonstrated ability to provide executive leadership in a complex policing organization at the rank of Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service."¹ [emphasis added]

7. Two days later, on October 24, 2018, the job competition was amended removing the minimum rank requirement: applicants with ranks lower than a Deputy Police Chief or Assistant Commissioner in a major police service could now apply. This amendment opened the door to the

¹ Blair Letter to Ombudsman, December 11, 2018 ("Ombudsman Complaint"): Blair Affidavit, Exhibit B, top of p. 3 [Appeal Book and Compendium ("ABCO"), Vol II, PDF p. 345 (ABCO p. 566)]

candidacy of the Premier’s family friend, Superintendent Ron Taverner (“Supt. Taverner”). On November 29, 2018, Premier Ford’s government announced that Supt. Taverner would be the next OPP Commissioner. This announcement sparked immediate widespread public controversy about the threat to OPP independence posed by an OPP Commissioner who is a friend of the Premier.

8. In his then capacity as Interim OPP Commissioner and in his personal capacity, Mr. Blair filed a complaint with the Provincial Ombudsman on December 11, 2018 and released this complaint to the public. The complaint raised concerns about the flawed OPP Commissioner hiring process which Mr. Blair was privy to as a candidate. It also addressed a requisition to the OPP by Premier Ford’s then Chief of Staff, Dean French, for a specialized van – essentially a mobile office – to be used by the Premier. Mr. Blair was advised that the vehicle requisition was to be kept “off the books.” Mr. Blair testified that he felt he was uniquely positioned and indeed obligated to raise concerns about interference with the OPP as the then interim Commissioner of the OPP.²

9. Within two weeks of the announcement that Supt. Taverner had been appointed, and prior to Mr. Blair’s December 11, 2018 Ombudsman complaint, several editorials and opinion pieces publicly raised alarm over the Premier’s close friendship with Supt. Taverner.³ Ultimately, these widespread concerns were confirmed months later in a March 2019 report by Integrity Commissioner Wake⁴ who determined that the OPP hiring process was indeed flawed and designed to ensure Supt. Taverner’s success – in a word, rigged.⁵ Integrity Commissioner Wake

² Transcript of the Examination of Brad Blair, October 26, 2020 (“**Blair Transcript Oct 26**”) at p. 148, lines 7-23 [ABCO, Vol. II, Tab 28, PDF p. 272].

³ Affidavit of Brad Blair, Oct 7, 2020, paras 114-119 (“**Blair Oct 7th Affidavit**”) [ABCO, Vol. III, Tab 45, PDF pp. 211-212]; Also see media articles attached as Exhibits C, D, and T-U of the Blair Oct 7th Affidavit [ABCO, Vol. II, Tabs 33-34 & 38, PDF pp. 352-361, 389-392 AND Vol. III, Tab 39, PDF pp. 9-11].

⁴ Report of Integrity Commissioner Wake, March 20, 2019 (“**Integrity Commissioner Report**”): Exhibit A to Affidavit of Premier Ford, Sept 8, 2020 (“**Ford Sept 8th Affidavit**”) [ABCO, Vol. III, Tab 40, PDF pp. 19-120].

⁵ Blair Oct 7th Affidavit, *supra* note 3, para 110-113 [ABCO, Vol. III, Tab 45, PDF pp. 209-210]; of Integrity Commissioner Report, *ibid*, at paras 239-242 [ABCO, Vol. III, Tab 40, PDF pp. 81-82].

stated that “[i]n fact, the process was not independent,”⁶ that “there were some troubling aspects to the process that may have led, perhaps unintentionally, to a preference being given to one candidate,”⁷ and that anyone examining some text messages between Premier Ford’s then Secretary of Cabinet Steve Orsini and then Chief of Staff Dean French “would have serious doubts as to the fairness of the process to the other candidates.”⁸ In conclusion, Integrity Commissioner Wake stated that “[a]fter considering all of the evidence immediately above I find that I have a reasonable apprehension that the recruitment process was flawed.”⁹

10. Regarding the “off the books” vehicle requisition, an internal OPP investigation and subsequent examination of OPP Chief Superintendent Marty Kearns confirmed that the phrase “off the books” did not originate with Mr. Blair¹⁰ and that two - if not three - officers have a recollection of the phrase “off the books” being used at the time.¹¹ Chief Superintendent Kearns also confirmed that Mr. French denied using the phrase “off the books” but that Mr. French acknowledged that he may have used the phrase “no paper trail”.¹² An OPP officer advising Mr. Blair thought that this was synonymous with “off the books”¹³ – in a phrase, a ‘distinction without a difference’. In either case, senior OPP officers understood that the vehicle requisition was to be kept quiet with no official procurement process.¹⁴ Both Chief Superintendent Kearns and Mr. Blair testified that the

⁶ Integrity Commissioner Report, *supra* note 4, at para 239 [ABCO, Vol. III, Tab 40, PDF p. 81].

⁷ *Ibid.*, at para 240 [ABCO, Vol. III, Tab 40, PDF pp. 81-82].

⁸ *Ibid.*, at para 241 [ABCO, Vol. III, Tab 40, PDF p. 82].

⁹ *Ibid.*, at para 242 [ABCO, Vol. III, Tab 40, PDF p. 82].

¹⁰ Transcript of Examination of Marty Kearns – October 27, 2020 (“Kearns Transcript”), p. 35, Lines 10-15 [ABCO, Vol. II, Tab 30, PDF p. 298].

¹¹ Kearns Transcript, *ibid.*, p. 35, Line 19 – p. 36, Line 2 [ABCO, Vol. II, Tab 30, PDF pp. 298-299].

¹² Kearns Transcript, *ibid.*, p. 137, Line 24 – pg. 139, Line 14 [ABCO, Vol. II, Tab 30, PDF pp. 312-314].

¹³ Kearns Transcript, *ibid.*, p. 111, Line 9 – Pg. 113, Line 1 [ABCO, Vol. II, Tab 30, PDF pp. 307-309].

¹⁴ Kearns Transcript, *ibid.*, p. 137, Line 24 – pg. 139, Line 14 [ABCO, Vol. II, Tab 30, PDF pp. 312-314].

government's 'off the books/no paper trail' request and the proposed vehicle vendor represented a serious divergence from OPP procurement policies.¹⁵

11. It was possible for Premier Ford and/or representatives of his government to respond to the public controversy regarding potential interference with the OPP without defaming Mr. Blair.¹⁶ But Premier Ford chose a different tactic: he publicly slandered Mr. Blair. On December 18, 2018 and on two occasions on January 14, 2019, Premier Ford unequivocally stated to the media that Mr. Blair, a sworn police officer, was a law breaker. Premier Ford later voluntarily produced legal advice from the Ministry of the Attorney General ("the MAG Briefing Note") to justify his impugned remarks. The Appellant submits that the MAG Briefing Note does not support the Premier's impugned statements.

12. To this day, Mr. Blair has never faced a *PSA* charge or proceeding of any kind. Notwithstanding, on March 4, 2019, Mr. Blair was terminated from his position as Deputy Commissioner of the OPP, bringing to an end a nearly 33-year cherished career with the OPP. Mr. Blair was terminated under the *Public Service of Ontario Act*, not under the *Police Services Act*, without any due process: no notice, no investigation, no assessment of evidence, and no opportunity to respond to any allegations. The lack of grounds for termination and lack of due process are the subject of a separate wrongful termination proceeding by Mr. Blair.

13. On January 23 and 25, 2019, Mr. Blair issued notices of libel. His statement of claim was issued and served on March 15, 2019. This claim focuses solely on the Premier's three unequivocal

¹⁵ Kearns Transcript, *supra* note 10, p. 69, Line 1- p. 71, Line 15 [ABC0, Vol. II, Tab 30, PDF pp. 302-304]; and Transcript of Cross-Examination of Brad Blair, Oct 27, 2020 ("Blair Transcript Oct 27"), pg. 308, Line 17 – pg. 309, line. 19 [ABC0, Vol. II, Tab 29, PDF pp. 288-289].

¹⁶Statements in media articles (4) and Hansard transcripts (9), Feb-May 2019: Exhibit CC to Affidavit of Shelby Percival, November 9, 2020 [ABC0, Vol. III, Tab 42, PDF pp. 128-172].

statements that Mr. Blair breached the *PSA*. The Premier served a statement of defence in the defamation proceedings on April 26, 2019. Mr. Blair served a reply on May 7, 2019. Affidavits of documents were exchanged and a discovery plan created. In November 2019, the Premier advised he intended to bring an anti-SLAPP motion and no further steps were taken in the action.

14. Premier Ford filed his anti-SLAPP motion record on September 16, 2020. In his motion, Premier Ford relies on the defences of justification,¹⁷ fair comment,¹⁸ and qualified privilege;¹⁹ however, the defendant withdrew the defence of justification at the 11th hour, after conducting cross-examination on the s. 137.1 motion and after the filing of the defendant's factum. A hearing on the Defendant's s. 137.1 motion was conducted on December 4, 2020. The focus of the hearing was the remaining defences of fair comment and qualified privilege, in addition to the weighing of the two public interests: harm to the plaintiff versus infringements to the Premier's speech.

B. Summary of Motion Judge's Decisions

15. On November 23, 2020, the Motion Judge dismissed the Plaintiff's preliminary motion seeking production of various legal files pertaining to legal advice about the legality of Mr. Blair's conduct. The plaintiff sought these productions based on an explicit waiver of solicitor-client privilege by the Premier. The Motion Judge found that the Premier had only relied on the disclosed MAG Briefing Note and that the sought productions were not relevant to the s. 137.1 motion.²⁰ Subsequently, on the s. 137.1 motion, the Motion Judge found that there was no evidence of malice by the Premier²¹ and that the weighing of the public interests weighed in Premier Ford's favour.²²

¹⁷ Statement of Defence of Premier Ford, April 26, 2019 ("**Statement of Defence**"), paras 93-108 [**ABCO, Vol. 1, Tab 14, PDF pp. 157-160**].

¹⁸ *Ibid.*, paras 115-117 [**ABCO, Vol. 1, Tab 14, PDF p. 161**].

¹⁹ *Ibid.*, paras 109-114 [**ABCO, Vol. 1, Tab 14, PDF pp. 160-161**].

²⁰ Preliminary Matters Decision ("**Prelim Matters Decision**"), p. 1 [**ABCO, Vol. 1, Tab 8, PDF p. 54**].

²¹ Anti-SLAPP Decision ("**Anti-SLAPP Decision**"), at paras. 46-47 [**ABCO, Vol. 1, Tab 7, PDF pp. 45-46**].

²² *Ibid.*, at paras. 62-74 [**ABCO, Vol. 1, Tab 7, PDF pp. 48-50**].

On November 30, 2020, the Motion Judge dismissed the Plaintiff’s continued cross-examination motion, stating that there was no reason for the Premier’s reattendance since the Motion Judge had previously dismissed the Plaintiff’s previous Preliminary Matters motion.²³

16. On the s. 137.1 motion, the Motion Judge found that the Plaintiff’s defamation action did not have the hallmarks of a SLAPP (“Strategic Lawsuit Against Public Participation”) suit:

As I explain below, the plaintiff’s defamation action is not, strictly speaking, a SLAPP suit. The plaintiff is not a large and powerful entity that is using litigation to intimidate a smaller and more vulnerable opponent and silence their public expression. Nonetheless, because the impugned public statements relate to a matter of public interest, the analysis in s. 137.1 of the CJA is engaged.

[5] For the reasons set out below, the s. 137.1 analysis favours the defendant and, as a result, the plaintiff’s defamation action must be dismissed.

[6] I hasten to add that this decision does not extinguish the plaintiff’s core allegation that his reputation was damaged because of the impugned public statements. The decision to dismiss the defamation action is based solely on this court’s application of the statutory analysis set out in s. 137.1 of the CJA.

...

[20] So it is that Mr. Blair’s defamation action falls within the reach of s. 137.1 of the CJA. Mr. Blair is not a powerful entity that is suing the Premier to gag his public expression but a genuinely aggrieved individual trying to vindicate what he reasonably believes is a bona fide defamation claim. Nonetheless, because the impugned public statements made by the defendant relate to a matter of public interest, the s. 137.1 analysis is engaged.²⁴

17. The Plaintiff has the burden of establishing there are grounds to believe that the defences have no real prospect of success. The Motion Judge interpreted this threshold as “follows:

[28] The Supreme Court explained that a “real prospect of success” is less than a “likelihood of success” but more than merely “some chance of success” or even “a reasonable prospect of success.”²⁵ In my view, the addition of the word “real” suggests a *solid* prospect of success – more than just a chance or even a reasonable chance, but less than probability. Again, if the court concludes that even one of the defences has a real prospect of success, that is enough to dismiss the plaintiff’s action.²⁶

²³ Continued Cross-Examination Decision, (“**Cross Decision**”) [ABCO, Vol. 1, Tab 9, PDF p. 57].

²⁴ Anti-SLAPP Decision, *supra* note 21, at paras. 4-6 & 20 [ABCO, Vol. 1, Tab 7, PDF pp. 37, 41].

²⁵ *Ibid.*, at para. 50 [ABCO, Vol. 1, Tab 7, PDF p. 46].

²⁶ *Ibid.*, at para. 28 [ABCO, Vol. 1, Tab 7, PDF p. 43].

18. Under this improperly raised threshold, the Motion Judge determined that the Premier's impugned remarks were recognizable as comment²⁷ and that the Premier held an honest belief in his impugned statements on the basis of the MAG Briefing Note.²⁸ He found that the existence of a public complaint to the Office of the Independent Police Review Director ("OIPRD") was evidence that someone else held the same view as the Premier that Mr. Blair broke the *PSA*.²⁹

19. The Motion Judge found no evidence of malice by the Premier.³⁰ The Motion Judge determined that there was no evidence of harm to Mr. Blair flowing from the Premier's remarks and that any harm flowed only from Mr. Blair's termination.³¹ Accordingly, the Motion Judge further determined that Mr. Blair's "day in court" would be via separate wrongful termination proceedings.³² Finally, the Motion Judge determined that weighing the public interests favoured the Premier's expression over vindicating harm to Mr. Blair. He agreed with the Premier that the Premier's comments about Mr. Blair's Ombudsman complaint "and its allegations of impropriety and political interference in the appointment of the Commissioner of the OPP....are matters of considerable public interest that justify fulsome expression and debate in the public forum."³³

C. Summary of Issues

20. The Appellant submits that the Motion Judge's s. 137.1 decision, in concert with the decisions dismissing the Plaintiff's preliminary motions, raise the following issues on appeal: (1) the policy rationale for s. 137.1 motions when the Plaintiff's claim does not have any indicia of being a SLAPP suit; (2) the denial of the Plaintiff's refusals motion regarding waiver of legal

²⁷ Anti-SLAPP Decision, *supra* note 21, at para.40 [ABCO, Vol. 1, Tab 7, PDF pp. 44-45].

²⁸ *Ibid*, at para. 43 [ABCO, Vol. 1, Tab 7, PDF p. 45].

²⁹ *Ibid*, at paras. 44-45 (references omitted) [ABCO, Vol. 1, Tab 7, PDF p. 45].

³⁰ *Ibid*, at paras. 46-56 [ABCO, Vol. 1, Tab 7, PDF p. 45-47].

³¹ *Ibid*, at paras. 66-68 [ABCO, Vol. 1, Tab 7, PDF pp. 48-49].

³² *Ibid*, at paras. 69-70 [ABCO, Vol. 1, Tab 7, PDF p. 49].

³³ *Ibid*, at para. 71 [ABCO, Vol. 1, Tab 7, PDF p. 49].

advice provided to the Premier and the impact on the issue of malice and the weighing of the public interests; (3) the curtailment of the Plaintiff's rights of cross-examination of the Defendant; (4) the threshold for the Plaintiff to demonstrate 'no valid defences' on a s. 137.1 motion; (5) the characterization of the Premier's impugned words as "fair comment"; (6) the threshold for demonstrating harm from defamation on a s. 137.1 motion and the relevance of separate wrongful termination proceedings; and (7) the purported infringements to the Premier's speech versus the harm caused to Mr. Blair.

PART III - FACTS

A. Premier Ford waived legal advice from Ministry of the Attorney General regarding legality of Mr. Blair's conduct

21. Premier Ford expressly relied on a December 12, 2018 MAG Briefing Note containing solicitor-client privileged legal advice regarding the legality of Mr. Blair's actions in releasing his letter to the Ombudsman on December 11, 2018.³⁴ The MAG Briefing Note is dated December 12, 2018, which is the day after Mr. Blair's Ombudsman complaint. Premier Ford had the benefit of this legal advice prior to making his impugned remarks (made on December 18, 2018 and January 14, 2019).

22. Premier Ford's pleadings disclosed the existence of this legal opinion and further indicated Premier Ford's reliance on this legal advice as the basis for his impugned remarks.³⁵ The MAG Briefing Note was listed in Premier Ford's affidavit of documents, produced as an exhibit to

³⁴ Solicitor-Client Memo from the Ministry of the Attorney General, Dec 12, 2018 ("MAG Briefing Note"): Exhibit E to Ford Sept 8th Affidavit [ABC0, Vol. III, Tab 41, PDF pp. 121-126].

³⁵ Statement of Defence, *supra* note 17, at paras. 99-102 [ABC0, Vol. 1, Tab 14, PDF pp. 158-159].

Premier Ford’s affidavit on the s. 137.1 motion,³⁶ and attached as an exhibit to the affidavit of Mr. Stephen Thiele, legal counsel at Gardiner Roberts LLP and member of Premier Ford’s legal team.³⁷

23. During the examination of the Honourable Premier Ford on October 28, 2020, foundation questions were asked in respect of the waiver of solicitor-client and litigation privilege. Premier Ford testified that he relied on the disclosed legal advice to justify his statements that Mr. Blair had breached the *Police Services Act*.³⁸ The Plaintiff then sought an undertaking from the Premier:

“to produce any and all files, electronic or otherwise, in your possession, control or power, which contain legal advice pertaining to the lawfulness of Brad Blair’s conduct while serving as interim Commissioner and then Deputy Commissioner of the OPP in the period of December 11, 2019, to March 4, 2020. Without restricting the generality of the foregoing, in particular, any and all files containing legal advice as described aforesaid that are situated with the Premier’s Office, the Treasury Board Secretary, the Ministry of the Attorney General, the Ministry of the Solicitor General, and Gardiner Roberts.”³⁹

24. The listed locations of the sought files reflect the authors and disclosing parties of the MAG Briefing Note.⁴⁰ Premier Ford refused the sought undertaking and the Motion Judge dismissed Mr. Blair’s motion for productions.

B. Plaintiff’s cross-examination of Premier Ford was curtailed

25. Premier Ford was cross-examined on October 28, 2020. The Premier’s availability was limited by his schedule and in particular by the ongoing pandemic. During cross-examination, Plaintiff’s counsel advised the Premier and his counsel that more cross-examination time would be required, given the limitations on the Premier’s time.⁴¹ At the conclusion of the cross-

³⁶ Ford Sept 8th Affidavit, at paras 32, 34, 38, 41 [ABCO, Vol. III, Tab 43, PDF pp. 175-179].

³⁷ Affidavit of Stephen Thiele, Sept 10, 2020, at para 46 [ABCO, Vol. III, Tab 44, PDF p. 184].

³⁸ Transcript of Cross-Examination of Premier Ford, Oct 28, 2020 (“Ford Transcript Oct 28”), p. 86, ln 10 to p. 88, ln 1 [ABCO, Vol. II, Tab 31, PDF pp. 320-322].

³⁹ *Ibid*, p. 101, lns 11-25 [ABCO, Vol. II, Tab 31, PDF p. 329].

⁴⁰ MAG Briefing Note, *supra* note 34, last page [ABCO, Vol. III, Tab 41, PDF p. 126].

⁴¹ Affidavit of Akosua Matthews, sworn November 25, 2020 [“Matthews Affidavit”], at para. 15 [ABCO, Vol. III, Tab 47, PDF pp. 222-223].

examination, Plaintiff's counsel reiterated the need for additional time.⁴² Plaintiff's counsel again raised the need to finish the Premier's examination in written correspondence on November 4, 2020, in advance of a case management appearance on November 6, 2020.⁴³

26. The Plaintiff served a motion record in support of a Preliminary Matters motion, containing a November 9, 2020 affidavit which addressed the need to complete the Premier's examination.⁴⁴ Plaintiff's counsel again raised this issue during the November 20, 2020 hearing on the Plaintiff's Preliminary Matters motion in the context of scheduling the anti-SLAPP motion, stating that the issue of continued cross-examination was independent of the issues in the Preliminary Matters motion.⁴⁵ The Motion Judge's November 23, 2020 decision on the Plaintiff's Preliminary Matters was silent on the issue of continued cross-examination of the Premier.⁴⁶ Plaintiff's counsel raised the issue again in written correspondence on the same day.⁴⁷ At the Motion Judge's direction, the Plaintiff pursued a motion seeking to complete the cross-examination of Premier Ford, heard in writing. The Plaintiff filed uncontested affidavit evidence clearly identifying all times in which the Plaintiff advised the defendant and the Court of the need and underlying justification for continued cross-examination.⁴⁸ The Motion Judge dismissed the motion.

C. The Premier's Impugned Statements

I. Content and timing of the impugned statements

27. Mr. Blair claimed damages in relation to three separate public statements by Premier Ford that Mr. Blair had breached the *Police Services Act*.⁴⁹ One of these statements was made on

⁴² Matthews Affidavit, *supra* note 41, at para 16 [ABCO, Vol. III, Tab 47, PDF p. 223].

⁴³ *Ibid*, at para. 17 [ABCO, Vol. III, Tab 47, PDF pp. 223-224].

⁴⁴ *Ibid*, at para 18 [ABCO, Vol. III, Tab 47, PDF p. 224].

⁴⁵ *Ibid*, at para. 19 [ABCO, Vol. III, Tab 47, PDF p. 224].

⁴⁶ *Ibid*, at para. 20 [ABCO, Vol. III, Tab 47, PDF pp. 224-225].

⁴⁷ *Ibid*.

⁴⁸ Matthews Affidavit, *supra* note 41, [ABCO, Vol. III, Tab 47, PDF pp. 220-226].

⁴⁹ Statement of Claim issued March 15, 2019 [ABCO, Vol. I, Tab 13, PDF pp. 70-137].

December 18, 2018, and two were made on separate occasions on January 14, 2019. All three were widely reported on by the media.

28. On December 18, 2018, the Premier stated:

“There’s a lot of misinformation going out there. He [i.e. Dean French] never sat on the board. Ron Taverner was accused of coming to my office, he never showed up so that’s not accurate.”

“I could sit here and give you all the items that weren’t accurate in that letter and there’s endless ones. I could give you a list of all the Police Act that was broken throughout that whole letter, but none of you want to report on that.”

“So what I’m going to do is take the high road and I’m going to let the review go through.”

“We’re looking forward to Ron Taverner becoming the OPP Commissioner.”

“Let’s get through the review and see what happens.”

“Brad Blair, first he put in his retirement papers in, then he pulled them back again. I get it, not a problem. I get it that he’s upset he didn’t win a fair process. I understand. Did he step over the line on a lot of things? I’m going to let the media decide that and I wish you would look into that.”⁵⁰

29. On January 14, 2019, while being interviewed by Global TV, the Premier stated:

Interviewer:... Ron Taverner story in the Globe today – what are the optics like of those photographs of you and Mr. Taverner just before his appointment?

DF: well I am not surprised that Global has asked me at an automotive show like this. But anyways run through the proper process and Ron Taverner was the person they choose, and I was thoroughly disappointment with uh- Brad Blair uh you know the way he has been going on. Breaking the Police Act numerous times is disturbing to say the least.⁵¹

30. Also on January 14, 2019, while being interviewed by CP24 News, the Premier stated:

Interviewer: ... You probably heard the motion got dismissed today to get that ombudsman process expedited. What's your reaction today to today's decision in court?

⁵⁰ Blair Oct 7th Affidavit, *supra* note 3, at para 18 [ABCO, Vol. III, Tab 45, PDF p. 192-193].

⁵¹ *Ibid*, at para 20 [ABCO, Vol. III, Tab 45, PDF p. 193].

DF: It's unfortunate that one person has sour grapes, and it is very disappointing actually, and reacting the way he's been reacting and breaking the Police Act numerous times. Someone needs to hold him accountable, I can assure you that.⁵²

II. MAG Briefing Note does not support Premier's impugned remarks

31. The Premier consistently mischaracterized the MAG Briefing Note, claiming that it confirmed that Mr. Blair breached the *PSA*.⁵³ In fact, the MAG Briefing Note is an equivocal legal opinion about *potential* breaches and the process by which Mr. Blair's conduct *could* be assessed, on the basis of further and necessary evidence, specifically in respect of Mr. Blair's *motives* in raising the issues addressed in his December 11, 2018 complaint to the Ombudsman.

32. Regarding the existence of an OIPRD complaint, Mr. Blair testified that he was never served with notice of this complaint.⁵⁴ Under the *PSA*, a member of the public may make a complaint to the Independent Police Review Director ("Director") about the conduct of a police officer.⁵⁵ The Director reviews such complaints⁵⁶ and may decide not to deal with a complaint⁵⁷ where certain criteria are met,⁵⁸ such as if a complaint is frivolous, vexatious or made in bad faith, or if addressing the complaint is not in the public interest. Mr. Blair presumes that such grounds were met to screen out this OIPRD complaint as Mr. Blair was never served with notice of it.

D. Harms suffered by Mr. Blair resulting from Premier's impugned statements

33. Mr. Blair swore affidavit evidence of harm caused to him by the Premier's impugned remarks: namely emotional and psychological harm, harm to reputation and loss of professional

⁵² Blair Oct 7th Affidavit, *supra* note 3, at para 21 [ABC0, Vol. III, Tab 45, PDF p. 193-194].

⁵³ Statement of Defence, *supra* note 17, at para. 100 [ABC0, Vol. 1, Tab 14, PDF p. 158]; Ford Transcript Oct 28, *supra* note 38, p. 95, ln. 21 – pg. 96, ln. 10 [ABC0, Vol. II, Tab 31, PDF pp. 325-326].

⁵⁴ Blair Transcript Oct 26, *supra* note 2, pg. 169, line 8 – pg. 172, line. 3 [ABC0, Vol. II, Tab 28, PDF pp. 276-277].

⁵⁵ *Police Services Act*, RSO 1990, c P.15 [PSA], s. 58(1)(b).

⁵⁶ *Ibid*, s. 59(1).

⁵⁷ *Ibid*, s. 60(1)

⁵⁸ *Ibid*, s. 60(4)

opportunities.⁵⁹ Given the stage of the proceedings, Mr. Blair did not produce a detailed damages brief of the harm he has suffered.

34. Mr. Blair transparently disclosed the existence of the wrongful termination proceedings in his affidavit.⁶⁰ At the Motion Judge's request, a copy of Mr. Blair's not-yet-issued statement of claim was produced in supplementary submissions filed after the s. 137.1 motion was heard.⁶¹

E. Premier's expression was not infringed

35. The Premier claimed that Mr. Blair's defamation action prevented him from responding to the issues raised in Mr. Blair's complaint to the Ombudsman. In cross-examination, the Premier responded "yes" when asked if he felt gagged by Mr. Blair's defamation proceeding.⁶² When asked if he felt freer to speak prior to the libel notices, the Premier responded "No, I'm always cautious on, you know, what I say in regards to anyone not mentioning the OPP commissioner."⁶³

36. This represents the sum total of evidence from the Premier as to how the defamation proceeding limited his freedom of expression. Furthermore, there was evidence before the Motion Judge of Premier Ford and/or his representatives speaking to the media about the issues raised in Mr. Blair's Ombudsman complaint between January 30, 2019 and May 2019 (i.e. after service of the notices of libel and the defamation claim), demonstrating that the Premier was not gagged.⁶⁴

⁵⁹ Blair Oct 7th Affidavit, *supra* note 3, at paras. 31-52 [ABCO, Vol. III, Tab 45, PDF pp. 196-202]; Blair Transcript Oct 26, *supra* note 2, at pg. 10, ln. 4 – pg. 12, ln. 14 [ABCO, Vol. II, Tab 28, PDF pp. 267-269]

⁶⁰ Blair Oct 7th Affidavit, *supra* note 3, at paras. 136-138 [ABCO, Vol. III, Tab 45, PDF p. 215].

⁶¹ Wrongful Termination Statement of Claim (not yet issued) [ABCO, Vol. III, Tab 48, PDF p. 227-274].

⁶² Ford Transcript Oct 28, *supra* note 38, p. 105, ln 4-16 [ABCO, Vol. II, Tab 31, PDF p. 332].

⁶³ *Ibid*, Pg. 105, Ln. 17-pg. 106, Ln.3 [ABCO, Vol. II, Tab 31, PDF pp. 332-333].

⁶⁴ Blair Oct 7th Affidavit, *supra* note 3, at para. 75 [ABCO, Vol. III, Tab 45, PDF p. 206]; along with transcript and media articles attached as Exhibit "P" to Mr. Blair's Oct 7th Affidavit [ABCO, Vol. II, Tab 37, PDF pp. 369-388]; Affidavit of Shelby Percival, Nov 9, 2020, at para 30 [ABCO, Vol. III, Tab 46, PDF p. 219] and Exhibit "CC" thereto (Motion Record of the Plaintiff dated November 10, 2020 [ABCO, Vol. III, Tab 42, PDF pp. 128-172].

PART IV – LAW AND ARGUMENT

A. The policy rationale for s. 137.1 motions when the Plaintiff’s claim does not have any indicia of being a SLAPP suit

37. The Appellant submits that the Motion Judge’s finding that the Plaintiff’s claim did not have any indicia of being a SLAPP suit is inconsistent with the remainder of the Motion Judge’s s. 137.1 decision. The Appellant further submits that the Motion Judge erred in failing to consider the underlying policy rationale behind s. 137.1 of the *CJA* and implications for application of the section to cases that do not have the indicia of a SLAPP suit.

38. The best evidence of the policy rationale behind s. 137.1 *CJA* proceedings is the October 28, 2010 Anti-SLAPP Advisory Panel Report to the Attorney General.⁶⁵ Anti-SLAPP motions are a tool to dismiss meritless defamation claims that are brought by typically powerful plaintiffs for the dominant purpose of stifling the public expression of powerless defendants.⁶⁶ The Motion Judge determined that the “plaintiff is not a large and powerful entity that is using litigation to intimidate a smaller and more vulnerable opponent and silence their public expression”⁶⁷ and that Mr. Blair was a “a genuinely aggrieved individual trying to vindicate what he reasonably believes is a *bona fide* defamation claim”. Nevertheless, the Motion Judge granted the powerful party, the Premier of Ontario, the right to deny Mr. Blair’s access to the courts to defend his reputation.

39. The Motion Judge acknowledged that Mr. Blair’s claim did not contain any indicia of a SLAPP suit, but failed to give meaning to this finding throughout the application of the s. 137.1 test. If Mr. Blair was not using his claim to silence the Premier’s expression, how can it be that the Motion Judge determined that the Premier’s expression was infringed? If Mr. Blair was pursuing

⁶⁵ [Anti-SLAPP Advisory Panel Report to the Attorney General](#), October 28, 2010 (“Anti-SLAPP Report”) [AOA, **Tab 1**].

⁶⁶ *Ibid*, e.g. paras 51, 60 [AOA, **Tab 1**]

⁶⁷ Anti-SLAPP Decision, *supra* note 21, at para. 4 [ABCO, Vol. 1, **Tab 7, PDF p. 37**].

a *bona fide* defamation claim as a genuinely aggrieved individual, how can it be that the Motion Judge found that there was no evidence of harm to Mr. Blair's reputation? The herein case was a novel use of the Anti-SLAPP mechanism by the undoubtedly powerful Premier of Ontario and the Appellant submits that this required the Motion Judge to carefully assess each element of the anti-SLAPP test with this reversed power dynamic in mind.

B. The Premier's waiver of legal advice and the impact on the issue of malice and weighing of public interests

I. Motion judge improperly denied refusals motion regarding Premier's waiver of legal advice

40. The Motion Judge erred in law by refusing to order the production of relevant documents, based on the waiver of privilege by the Premier over solicitor-client privileged legal advice regarding the lawfulness of Mr. Blair's conduct, and which were in the Premier's possession, control or power⁶⁸. The Plaintiff argued that the MAG Briefing Note and *any other legal advice* provided to the Premier regarding the legality of Mr. Blair's conduct was relevant not only to the Premier's justification defence (later withdrawn) but also to the issue of malice and the weighing of the public interests, specifically whether the Premier's speech was worthy of protection.

41. The Premier attached privileged material in an affidavit of documents, which constitutes an explicit waiver of privilege over the MAG Briefing Note.⁶⁹ The fact that the legal advice came from Ministry of the Attorney General lawyers did not change its essential characteristic as solicitor-client communications.⁷⁰ Where a party files affidavit evidence and explicitly relies on legal advice in the course of the affidavit, the opposing party is entitled to the production of all

⁶⁸ *Henry v. British Columbia*, [2014 BCSC 1018](#) (CanLII), at paras 21-24 [AOA, Tab 2]

⁶⁹ *Western Assurance Co. v. Canada Life Assurance Co.*, [1987 CarswellOnt 535](#), [23 C.P.C. \(2d\) 207](#), paras 5-7 [AOA, Tab 3] (citing *Re Briamore Manufacturing Ltd.*, [1986] 1 W.L.R. 1429, at p. 1431).

⁷⁰ *R. v. Campbell*, [\[1999\] 1 S.C.R. 565](#) [AOA, Tab 4]

documents relating to the advice and is entitled to cross-examine the deponent on the documents.⁷¹

Mr. Blair proposed that the materials could be provided to the court for a review by the Motion Judge to determine which documents should be produced.⁷²

42. The Motion Judge accepted the Premier's statement that the MAG Briefing Note was the only legal advice he relied on. The Appellant submits that he was entitled to test the confines of this legal advice placed in issue by the Premier because the Premier was using the MAG Briefing Note to bolster his claim that he made the impugned remarks in good faith.⁷³

II. *Denied refusals motion regarding Premier's waiver of legal advice impacted finding of no malice and weighing of the public interest*

43. To successfully defeat a s. 137.1 motion, the Plaintiff has the burden of demonstrating that the Defendant has no valid defence.⁷⁴ The defences of fair comment and qualified privilege can be defeated by demonstrating that the defendant made the impugned remarks with malice.⁷⁵ The Appellant submits that the MAG Briefing Note and the sought productions were material to the issue of malice by showing (or having the potential of showing) that (a) the Premier made the impugned statements knowing they were not true or with reckless indifference to their truth, and (b) there was no public interest in the Premier's expression such that it was worthy of protection.

⁷¹This is true even where the affiant is legal counsel: *Dramel Ltd. v. Multani*, [2020 ONSC 4440](#) [AOA, Tab 5]; see also *Kennedy v. Diversified Mining Interests (Can.) Ltd.*, [\[1948\] O.W.N. 798](#) (H.C.J.) [AOA, Tab 6]

⁷²*Mintz v Mintz*, [1983 CanLII 1870 \(ON SC\)](#) [AOA, Tab 7]; *Carey v Ontario*, [1986 CanLII 7 \(SCC\)](#), [\[1986\] 2 SCR 637](#) [AOA, Tab 8]; *Lieber v Johnston & Daniel* (1998), [26 C.P.C. \(4th\) 194 \(Ont. Master\)](#) [AOA, Tab 9]; *Pineau v. Merovitz Potechin*, [2014 ONSC 4248](#) at para 2 [AOA, Tab 10]; *Mintz v Mintz*, [1983 CarswellOnt 509](#) [AOA, Tab 7]

⁷³*Skafco Limited v Abdalla*, [2020 ONSC 136](#) at para 18, 57 [AOA, Tab 11]

⁷⁴*Courts of Justice Act*, R.S.O. 1990, c. C.43, ss.137.1(3), 137.1(4); *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020 SCC 22](#) [AOA, Tab 12]

⁷⁵*Niu v Cao*, [2020 ONSC 5407](#) at para 104-106 [AOA, Tab 13]; see also *Brown on Defamation*, Vol. 4, Chapter 13, pp.13-24 to 13-29

44. *Oniel v. Toronto (Metropolitan) Police Force*⁷⁶ stands for the proposition that malice may be proven indirectly, that it “may also be inferred from the conduct of the defendant outside of the four corners of the publication itself”.⁷⁷ Quoting passages from *Nelles v. Ontario*, [1989] 2 S.C.R. 170 (S.C.C.) this honourable Court stated that malice is the equivalent of improper purpose, which has a “wider meaning than spite, ill-will or a spirit of vengeance, and includes any other improper purpose, such as to gain a **private collateral advantage**” [emphasis added].⁷⁸

45. The Supreme Court of Canada’s decision *R. v. Campbell*,⁷⁹ cited with approval in *Blank v. Canada (Justice)*, 2016 FCA 189 (CanLII) involved a similar use of legal advice to the herein case. In the *Campbell* case, the Supreme Court determined that the plain (but unstated) purpose of the RCMP’s invocation of legal advice was to convey to the Court that the RCMP sought and acted in accordance with legal advice.⁸⁰ The Supreme Court stated, “Because the RCMP made a live issue of the legal advice it received from the Department of Justice, the appellants were and are entitled to get to the bottom of it.”⁸¹

46. There is plentiful judicial recognition for the principle that once a litigant has put its state of mind in issue and has further claimed that legal advice has influenced that state of mind, this will lead to the production of all legal advice received on the general issue.⁸² Further, “where a

⁷⁶*Oniel v. Toronto (Metropolitan) Police Force* (2001), [195 DLR \(4th\) 59](#) (ONCA) at paras. 54-56 [AOA, Tab 14]

⁷⁷*CUPW v. B’nai Brith Canada et. al*, 2020 ONSC 323 (CanLII), at [para 31](#) [AOA, Tab 15]

⁷⁸*Oniel v. Toronto (Metropolitan) Police Force* (2001), [195 DLR \(4th\) 59](#) (ONCA) at paras. 47-48 [AOA, Tab 14]

⁷⁹*R. v. Campbell*, [\[1999\] 1 S.C.R. 565](#) [*Campbell*] [AOA, Tab 4]

⁸⁰*Ibid.* at [para. 46](#) [AOA, Tab 4]

⁸¹*Ibid.* at [para 73](#) [AOA, Tab 4]

⁸²See *Samoila v. Prudential of America General Insurance Co. (Canada)*, [2000 CanLII 22690 \(ON SC\)](#), where the defendant insurer was ordered to produce legal opinions relating to its denial of coverage. Solicitor-client privilege had been waived with regard to those opinions because the defendant had put its state of mind in issue and had received legal advice in forming that state of mind [AOA, Tab 16]; See also: *Lieber v. Johnston & Daniel* (1998), [26 C.P.C. \(4th\) 194 \(Ont. Master\)](#) [AOA, Tab 9]; See also: *Nowak v. Sanyshayn* (1979), [23 O.R. \(2d\) 797 \(H.C.\)](#) [AOA, Tab 17]; See also: *Leadbeater v. Ontario* (2004), 70 O.R. (3d) 224 (S.C.J.) (i.e. *S.C.L. v. Ontario*, [2004 CanLII 14107 \(ON SC\)](#)) where the court held the plaintiff had voluntarily waived solicitor-and-client privilege by producing privileged documents and that other solicitor-and-client communications should therefore also be

party refers in a limited context to communications with their solicitor, but claims solicitor-client privilege over their other communications generally, they are using the confidentiality afforded by privilege as a sword, and not a shield; the use of privilege as a sword is inconsistent with the fundamental principles of solicitor-client privilege.”⁸³ In this case, the Appellant submits that the Premier disclosed “otherwise privileged information for [his] own benefit in litigation while protecting the full content of that information from discovery by the other side.”⁸⁴

47. The Appellant submits that the dismissal of the Plaintiff’s productions motion had a material impact on the issue of malice, and therefore had a material impact on the Plaintiff’s ability to demonstrate ‘no valid defences.’ Further, this dismissal impacted the weighing of the public interests in the Premier’s impugned speech versus the harm caused to Mr. Blair.

C. The curtailment of the Plaintiff’s rights of cross-examination of the Defendant

48. The Appellant submits that the Motion Judge erred by not permitting the Plaintiff to conclude the cross-examination of Premier Ford, whose availability was circumscribed by the demands of his office in general and the demands of responding to the global pandemic in particular. The Appellant submits that the Motion Judge made this mistake by erroneously tying the sought continuation of the Premier’s cross-examination to the Plaintiff’s motion regarding waiver over legal advice. The Motion Judge ignored submissions by Plaintiff’s counsel that the two issues were independent of one another.⁸⁵

disclosed [AOA, Tab 18]; See also: *Brown v. Clark Wilson LLP*, [2014 BCCA 185](#), 2014 CarswellBC 1340 where Mr. Ali impliedly put his knowledge or 'state of mind' at issue in the underlying proceeding, and by doing so waived privilege in this general area [AOA, Tab 19].

⁸³ *Biehl v. Strang*, [2011 BCSC 213 \(CanLII\)](#), at para. 44 [AOA, Tab 20].

⁸⁴ *Ibid.*, at para. 55 [AOA, Tab 20].

⁸⁵ Matthews Affidavit, *supra* note 41, at para. 19 [ABCO, Vol. III, Tab 47, PDF p. 224].

49. The Motion Judge disregarded uncontested affidavit evidence to demonstrate that Plaintiff's counsel had made it clear, on numerous occasions, of the need to finish the Premier's examination and failed to take into account the time limits set for cross-examinations on s. 137.1 motions.⁸⁶ This uncontested evidence was not referenced at all in the Motion Judge's decision. The Motion Judge cited one statement by Plaintiff's counsel that he would "wrap up in the next five minutes".⁸⁷ The Motion Judge did not reference the following statement by Plaintiff's counsel to the Premier that the cross examination would need to continue.⁸⁸ This was not a case where the Plaintiff had exhausted its cross-examination rights. The Appellant submits that the Motion Judge failed to take account of the time limits set for cross examinations on s. 137.1 motions.

D. The threshold for the Plaintiff to demonstrate 'no valid defences' on a s. 137.1 motion

50. The Motion Judge erred in law by raising the threshold burden for the Plaintiff to demonstrate 'no valid defences' in an Anti-SLAPP Motion. The Motion Judge erred in interpreting a 'real prospect of success' to mean "a *solid* prospect of success – more than just a chance or even a reasonable chance, but less than probability".⁸⁹ The Motion Judge erred in law by disregarding recent case law from this honourable Court stating that a respondent would meet the onus if it showed that a reasonable trier could reject all of the various defences; further, that a determination that a defence "could go either way" is a finding that a reasonable trier could reject the defence.⁹⁰

⁸⁶ Under ss. [137.2\(4\), \(5\)](#) of the *CJA*, up to seven hours of cross-examination is permitted and a judge may order additional time.

⁸⁷ Found at Ford Transcript Oct 28, *supra* note 38, pg. 123, ln.2-3 [**ABCO, Vol. II, Tab 31, PDF p. 336**].

⁸⁸ *Ibid.*, pg. 129, ln. 6-18 [**ABCO, Vol. II, Tab 31, PDF p. 339**].

⁸⁹ Anti-SLAPP Decision, *supra* note 21, at para. 28 [**ABCO, Vol. 1, Tab 7, PDF p. 43**].

⁹⁰ *Bondfield Construction Company Limited v. The Globe and Mail Inc.*, 2019 ONCA 166, at [para 15](#) [*Bondfield*] [**AOA, Tab 21**].

Bondfield is consistent with recent Supreme Court jurisprudence⁹¹ and was further affirmed in a more recent decision by this honourable Court on anti-SLAPP proceedings.⁹²

51. In other words, Mr. Blair is not required to show that Premier Ford *definitively* has no valid defence in order to discharge his burden under s. 137.1(4)(a)(ii) of the *CJA*; rather, Mr. Blair is only required to establish that a reasonable trier could reject the defences advanced by Premier Ford.⁹³ Had the Motion Judge applied the appropriate threshold, the Appellant submits that he met his burden in respect of the ‘no valid defences’ portion of the test under s. 137.1 of the *CJA*.

52. Because s. 137.1 motions occur at an early stage in the proceedings and are intended “to weed out clearly defective claims”, the motion judge is required to engage in only a limited assessment of the evidence. “If the motion record raises serious credibility issues or inferences to be drawn from competing primary facts, the motion judge must avoid taking a ‘deep dive’ into the ultimate merits and instead, engage in a much more limited analysis.”⁹⁴

53. This honourable Court recently granted an appeal of a lower court decision dismissing a defamation action pursuant to s. 137.1 of the *CJA*.⁹⁵ This honourable Court found in part that the lower court judge erred in finding that the plaintiff (Subway) had not met its onus of establishing there were grounds to believe the defendant (CBC) had no valid defence. The motion judge erred by placing an onus on the plaintiff that was higher than the standard established by the Supreme Court’s recent jurisprudence. This honourable Court found that the plaintiff had discharged its

⁹¹ *Bent v. Platnick*, 2020 SCC 23 (CanLII), at [para 103](#) [AOA, Tab 22] and *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 (CanLII), at [para 60](#) [Pointes] [AOA, Tab 12].

⁹² *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation*, 2021 ONCA 26 (CanLII), at [para. 56](#) [Subway] [AOA, Tab 23].

⁹³ *Bondfield* *supra* note 90, at [para 15](#) [AOA, Tab 21].

⁹⁴ *Subway*, *supra* note 92, at [para 55](#), citing to *Pointes*, *supra* note 91, at [para 78](#) [AOA, Tab 23].

⁹⁵ *Subway*, *supra* note 92 [AOA, Tab 23].

onus by establishing there was “a basis in the record” to support a finding that the defendant’s defence of reasonable communication did not weigh *more* in the defendant’s favour than the plaintiff’s.⁹⁶ This honourable Court highlighted the evidence in the record that established this basis.⁹⁷ The Appellant will address evidence from the record in the following sections on ‘fair comment’ and the balancing of harms that similarly establishes he met his onus of establishing “no valid defence”.

E. The characterization of the Premier’s impugned words as “fair comment”

54. To be defensible as fair comment, a statement must be: (1) on a matter of public interest; (ii) based on fact; (iii) recognizable as comment (although it can include inferences of fact); and (iv) be a comment that a person could honestly believe on the proved facts.⁹⁸ The Appellant submits that the third and fourth part of the test are at issue in this appeal.

I. Impugned statements were not recognizable as comment

55. The Motion Judge determined that the Premier’s impugned remarks were recognizable as comment on the basis that “no reasonable journalist or member of the public would have taken the defendant’s statements that the plaintiff “broke the Police Act” as meaning that in actual fact the plaintiff had already been tried and convicted of breaking this particular law.”⁹⁹

56. The Appellant submits that the Premier’s impugned remarks conveyed to the media and to the public that Mr. Blair had been tried and convicted of breaking the *PSA*. This was precisely the concern and the reason that Mr. Blair commenced defamation proceedings. The Premier did not clarify or equivocate in his statements. The Premier did not carefully lay out what he was referring

⁹⁶ *Subway*, *supra* note 92, at [paras 65-67](#) [AOA, Tab 23].

⁹⁷ *Ibid*, at [para 68](#) [AOA, Tab 23].

⁹⁸ *WIC Radio*, at [para 28](#) [AOA, Tab 24].

⁹⁹ Anti-SLAPP Decision, *supra* note 21, at paras. 34, 40 [ABCO, Vol. I, Tab 7, PDF pp. 43, 44-45].

to when he claimed that Mr. Blair broke the law. To assume that the public would be able to connect the dots between the impugned statements and Mr. Blair's complaint to the Ombudsman while simultaneously understanding that Mr. Blair had never been charged with a *PSA* breach or faced any *PSA* proceeding is to assume a sophisticated public – one that is familiar with *PSA* proceedings and intimately familiar with the numerous details in this case. Mr. Blair's concern was and is that the general public would clearly hear the repeated unequivocal statements by the Premier of Ontario that Mr. Blair, then a police officer, broke the law, and believe this to be a fact. This concern is particularly justified given the reversed power-imbalance in these proceedings: when the Premier of Ontario states that a police officer broke the law, the public is very likely to believe this as a fact. The weight of the Premier's office lent credence to the impugned remarks.

57. In the alternative, the Appellant submits that this portion of the test could have gone either way, such that the Plaintiff has met the *Bondfield*¹⁰⁰ analysis for demonstrating 'no valid defences', consistent with *Subway*.¹⁰¹ In *Bondfield*, this honourable Court declined to determine whether the statements were fact or comment, stating that a reasonable trier of fact could find either way, depending on the characterization of the statements.

58. The Appellant submits that the Motion Judge erred in two ways. First, by raising the threshold for the Plaintiff to demonstrate 'no valid defences', making the same error as identified by this honourable Court in *Subway*. Second, by failing to consider that the characterization of the impugned statements could go either way, such that Mr. Blair meets the threshold for s. 137.1(4)(a)(ii) of the *CJA*.¹⁰²

¹⁰⁰ *Bondfield*, *supra* note 90, at para. 17 [AOA, Tab 21].

¹⁰¹ *Subway*, *supra* note 92, at paras 56, 65-67 [AOA, Tab 23].

¹⁰² *Bondfield*, at para. 17 [AOA, Tab 21]; *Subway*, *supra* note 92, at paras 65-67 [AOA, Tab 23].

II. *Impugned statements were false, made with a reckless disregard for the truth, demonstrative of malice*

59. The Appellant submits that the Motion Judge erred by (a) not applying the finding that Mr. Blair’s claim was not a SLAPP proceeding and (b) failing to consider that the more powerful party, the Premier, gained a “private collateral advantage” from his statements by redirecting public criticism from the Premier and his government to Mr. Blair, thus indicating malice.¹⁰³ The Appellant states that the Motion Judge made these errors in a case where the impugned statements were false, made with a reckless indifference to the truth, and contrary to legal advice the Premier received via the MAG Briefing Note.

60. The Appellant submits that the Motion Judge erred by mischaracterizing the essential nature of the MAG Briefing Note. In essence, the MAG Briefing Note advised that a breach of the *PSA* could not be made out absent evidence that Mr. Blair was not acting in good faith and absent evidence that Mr. Blair did not have the proper authority to make the December 11, 2018 Ombudsman complaint public. Regarding ‘breach of confidence’, the Motion Judge did not give weight to the fact that the MAG Briefing Note stated that “[t]hese disclosures *could be* constructed as a breach of section 2(1)(e) (i.e. breaches of confidence) *if they were not made with the proper authority.*”¹⁰⁴ The Motion Judge disregarded the fact that the issue of ‘proper authority’ was arguable and not determined. The Motion Judge further ignored evidence by Mr. Blair that he had the authority to disclose the Ombudsman complaint¹⁰⁵ and ignored Mr. Blair’s evidence about his reasons for making this complaint public.¹⁰⁶ The Appellant submits that the MAG Briefing Note

¹⁰³ *Oniel v. Toronto (Metropolitan) Police Force* (2001), [195 DLR \(4th\) 59](#) (ONCA) at paras. 47-48 [AOA, Tab 14].

¹⁰⁴ MAG Briefing Note, *supra* note 34, pg. 2, at the third bullet (emphasis added) [ABCO, Vol. III, Tab 41, PDF p. 123].

¹⁰⁵ Blair Oct 7th Affidavit, *supra* note 3, at para. 69 [ABCO, Vol. III, Tab 45, PDF p. 205].

¹⁰⁶ Blair Transcript Oct 27, *supra* note 15, at pg. 318, ln. 1 – pg. 219, ln.1 [ABCO, Vol. II, Tab 29, PDF pp. 292-293].

was evidence of malice in that the Premier was advised, prior to making the impugned statements, that he did not have the grounds to state that Mr. Blair broke the *PSA*.

61. Finally, the Appellant submits that the OIPRD complaint cited by the Motion Judge as evidence that another person could honestly believe the impugned statements made by the Premier was not credible evidence, nor was this evidence tested. This is another portion of the test where the Motion Judge failed to take into consideration the reversed power imbalance of the parties. The Premier had a powerful platform which could be used to induce complaints from members of the public. The Motion Judge ignored the date of this complaint (December 22, 2018), made after the Premier's initial widespread public remarks on December 18, 2018. The Motion Judge did not consider whether this was a *bona fide* complaint.¹⁰⁷ The Motion Judge erred by placing disproportionate weight on a screened-out complaint while ignoring that this complaint was the likely result of a Premier using his powerful platform to make false statements about Mr. Blair, to his own "private collateral advantage".¹⁰⁸

F. The threshold for demonstrating harm from defamation on a s. 137.1 motion and the relevance of separate wrongful termination proceedings

62. The Appellant submits that the Motion Judge erred in determining that there was no evidence of harm to Mr. Blair flowing from the Premier's remarks and that any harm flowed only from Mr. Blair's termination.¹⁰⁹ Mr. Blair did submit affidavit evidence of harm caused to him by the Premier's impugned remarks and testified to these harms: namely emotional and psychological harm, damage to his reputation and loss of professional opportunities.¹¹⁰ The Motion Judge ignored this first-hand account of harm.

¹⁰⁷ Blair Oct 7th Affidavit, *supra* note 3, at para. 22 [ABCO, Vol. III, Tab 45, PDF p. 194].

¹⁰⁸ *Oniel v. Toronto (Metropolitan) Police Force* (2001), [195 DLR \(4th\) 59](#) (ONCA) at paras. 47-48 [AOA, Tab 14].

¹⁰⁹ Anti-SLAPP Decision, *supra* note 21, at paras. 66-68 [ABCO, Vol. I, Tab 7, PDF pp. 48-49].

¹¹⁰ Blair Oct 7th Affidavit, *supra* note 3, at paras. 31-52 [ABCO, Vol. III, Tab 45, PDF pp. 196-202]; Blair Transcript Oct 26, *supra* note 2, at pg. 10, ln. 4 – pg. 12, lin. 14 [ABCO, Vol. II, Tab 28, PDF pp. 267-269]

63. A first-hand account by the plaintiff on how the defamatory statements negatively affected them is sufficient to establish harm in a defamation proceeding.¹¹¹ This honourable Court recently emphasized, “Harm is not synonymous with the damages alleged.”¹¹² Both monetary and non-monetary harm are relevant.¹¹³ General damages are presumed from the fact of defamation.¹¹⁴ Côté J, writing for a unanimous Supreme Court, explained the following:

I am in agreement with the Attorney General of Ontario at the time the legislation was debated, who recognized at second reading “that reputation is one of the most valuable assets a person or a business can possess” (Legislative Assembly of Ontario (2014), at p. 1971 (Hon. Madeleine Meilleur)). Accordingly, harm is not limited to monetary harm, and neither type of harm is more important than the other. Nor is harm synonymous with the damages alleged. The text of the provision does not depend on a particular kind of harm, but expressly refers only to harm in general.¹¹⁵

64. The Motion Judge made a palpable and overriding error in finding that there is “nothing in the record that supports the plaintiff’s bald assertions of emotional or psychological harm”.¹¹⁶ Additionally, inferences of harm can establish harm for purposes of this stage of a s. 137.1 motion analysis,¹¹⁷ something which the Motion Judge did not consider.

65. This honourable Court recently overturned a lower court decision¹¹⁸ in which a motion judge had found that the defendant who brought a s. 137.1 motion had failed to establish harm. The motion judge erred by failing to appreciate the reputational harm, the likelihood of serious financial harm, and that the proceeding did not bear any indicia of a SLAPP suit.¹¹⁹ The Appellant submits that the same factors are in play in this herein case. The Appellant further submits that the

¹¹¹ *Hill v. Church of Scientology of Toronto*, [1995 CanLII 59 \(SCC\)](#), [1995] 2 SCR 1130 [*Hill*] [AOA, Tab 25].

¹¹² *Subway*, *supra* note 92, at [para 85](#) [AOA, Tab 23].

¹¹³ *Ibid.*, at [para 83](#) [AOA, Tab 23]; *Pointes*, *supra* note 91, at [para 69](#) [AOA, Tab 12].

¹¹⁴ *Murphy v. Alexander*, 2004 CanLII 15493 (ON CA), [para 29](#) [AOA, Tab 26].

¹¹⁵ *Pointes*, *supra* note 91, at [para 69](#) [AOA, Tab 12].

¹¹⁶ Anti-SLAPP Decision, December 15, 2020, at para. 66 [ABCO, Vol. I. Tab 7, PDF p. 48].

¹¹⁷ *Subway*, *supra* note 92, at [para 100](#) [AOA, Tab 23].

¹¹⁸ *Ibid.*, at [paras 96-99](#) [AOA, Tab 23].

¹¹⁹ *Ibid.*

finding that Mr. Blair's proceeding was not a SLAPP suit should have been applied in the Motion Judge's assessment of the harms caused to Mr. Blair – specifically, that Mr. Blair is the less powerful party and that the Premier's statements carried weight to the degree that such statements would be taken as fact, causing reputational harm to Mr. Blair.

66. The Motion Judge also erred in holding that the harm suffered by Mr. Blair was in respect of the wrongful termination and not the defamatory comments made by Premier Ford. The intended wrongful termination proceeding is about the illegality of terminating a sworn police officer without a *PSA* proceeding. The defamation claim is about the Premier's false statements of fact that Mr. Blair breached the *PSA* while he was a sworn police officer. The Appellant recognizes that at paras 45 and 119 of the intended wrongful termination proceedings, the defamatory comments of the Premier are highlighted as it is pleaded that they were used as an *ex post facto* pretence for Mr. Blair's termination. Essentially, the Appellant has pleaded that the defamatory words used by the Premier tarnished the reputation of Mr. Blair and that stain on his reputation motivated the actions of the other defendant bureaucrats to terminate Mr. Blair.

67. Wrongful termination damages are not the same as defamation damages. Damages in wrongful termination cases are generally limited to an employer's failure to give proper notice, and do not encompass damage for the hurt of having been terminated.¹²⁰ Damages in defamation cases, on the other hand, target harm to an individual's reputation, which is of “fundamental

¹²⁰ *Honda Canada Inc. v. Keays*, [2008 SCC 39 \(CanLII\)](#), [2008] 2 S.C.R. 362, at para. 50 [AOA, Tab 27]; *Wallace v. United Grain Growers Ltd.*, [1997 CanLII 332 \(SCC\)](#), [1997] 3 SCR 701, at para 115 [AOA, Tab 28]. Where an employer has acted in bad faith during the course of termination, moral damages can be awarded for reasonably foreseeable harm caused by the bad faith. This can include damages for statements made attacking the plaintiff's reputation *in the course of termination*. However, in the case of Mr. Blair's firing, the impugned statements were not made in the course of his termination; they pre-dated the termination by weeks to months and clearly give rise to an independent and distinct cause of action. Furthermore, the harm from the defamation is not materially changed by what might have occurred afterwards: it does not matter that Mr. Blair might have been promoted, head-hunted by the RCMP or fired from the OPP (as did occur) subsequent to the Premier's impugned remarks: *Hill*, *supra* note 111, at [para 177](#) [AOA, Tab 25].

importance.”¹²¹ This damage to reputation, which is “central” to a defamation action, “cannot be considered in [a] wrongful dismissal action.”¹²²

68. Indeed, it used to be that an action in defamation was prohibited from being joined with an action for wrongful termination in this province.¹²³ While these distinct causes of action targeting distinct damages *may* now be joined in a single claim,¹²⁴ their distinct damages must not be conflated. The Motions Judge erred in law by finding that the damages claimed by Mr. Blair in this present defamation action are capable of being awarded in the separate wrongful termination claim. In a case involving a claim for defamation pleaded alongside a claim for wrongful termination, this honourable Court found that the trial judge erred by failing to address the defamation claim.¹²⁵ The Motion Judge’s error in this case is analogous: he has suggested it is fine to ignore the defamation claim and address only the wrongful termination claim.

G. Purported infringements on Premier’s speech do not outweigh harm to Mr. Blair

69. The Appellant submits that the Motion judge erred in finding that the Premier’s speech was infringed. The Motion Judge defined this expression as the Premier’s ability to make “comments about the Letter [i.e. the Ombudsman complaint] and its allegations of impropriety and political interference in the appointment of the Commissioner of the OPP.”¹²⁶ The Motion Judge ignored material evidence that the Premier, and/or his representatives, spoke to the media about the issues raised in Mr. Blair’s Ombudsman complaint between January 30, 2019 and May 2019 (i.e. after the notices of libel). The Motion Judge placed too much weight on the Premier’s bald claim that

¹²¹ *Hill*, *supra* note 111, at [para 116](#) [AOA, Tab 25].

¹²² *Kelly v. American Airlines Inc. et al.*, [1981 CanLII 1651 \(ON SC\)](#) [AOA, Tab 29].

¹²³ *Ibid* [AOA, Tab 29].

¹²⁴ *Foley v. Signtech Inc. (Ont. H.C.J.)*, [1988 CanLII 4780 \(ON SC\)](#) [AOA, Tab 30]; *Richmond v. North American Life Assurance Co.*, [1998 CanLII 14654 \(ON SC\)](#) [AOA, Tab 31].

¹²⁵ *Gholami v. The Hospital of Sick Children*, 2018 ONCA 783 (CanLII), at paras [74-76](#) [AOA, Tab 32].

¹²⁶ Anti-SLAPP Decision, *supra* note 21, at para. 71 [ABCO, Vol. I, Tab 7, PDF p. 49].

he was gagged.¹²⁷ There was no substantive evidence from the Premier on the issue of how the defamation proceedings infringed his expression.

70. The Appellant submits that this is yet another issue wherein the Motion Judge failed to apply the finding that Mr. Blair's proceeding was not a SLAPP suit designed to limit the Premier's expression. The Motion Judge also ignored the fact that the Premier (and members of his government) enjoy immunity for remarks made on the legislative floor and that this privilege was used on occasion by the Premier and his representatives. This privilege accorded the Premier a great deal of power to address any and all issues raised by the Plaintiff in his Ombudsman complaint. Far from protecting the Premier's general ability to express himself, the Motion Judge erred by granting the Premier the *specific right to unequivocally express false facts about Mr. Blair that would lower Mr. Blair's reputation in the eyes of reasonable people*, contrary to the legal advice the Premier received.¹²⁸ The Motion Judge granted the Premier this right in a case where the Premier was seeking to redirect widespread criticism of his government by publicly undermining Mr. Blair.

71. The promulgation of false and injurious statements does not promote the societally valued freedom of expression. On the contrary, "[t]hey are inimical to the search for truth. False and injurious statements cannot enhance self-development. Nor can it ever be said that they lead to healthy participation in the affairs of the community. Indeed, they are detrimental to the advancement of these values and harmful to the interests of a free and democratic society".¹²⁹ The

¹²⁷ Ford Transcript Oct 28, *supra* note 38, pg. 105, ln 4.- 16 [ABCO, Vol. II, Tab 31, PDF p. 332]; Ford Transcript Oct 28, *supra* note 38, Pg. 105, Ln. 17-pg. 106, Ln.3 [ABCO, Vol. II, Tab 31, PDF pp. 332-333]

¹²⁸ i.e. in the MAG Briefing Note, *supra* note 34 [ABCO, Vol. III, Tab 41, PDF pp. 121-126].

¹²⁹ *Hill*, *supra* note 111, at [para 106](#) [AOA, Tab 25].

Appellant submits that the Motion Judge made a palpable and overriding error by finding that the Premier's unaffected right to express himself was worth more than the harms caused to Mr. Blair.

PART V- REQUESTED ORDER

72. The Appellant seeks the following relief: (1) reinstatement of Mr. Blair's libel action; and (2) granting of Mr. Blair's sought productions, specifically that Premier Ford produce all documents pertaining to legal advice received regarding the lawfulness of Mr. Blair's conduct from December 11, 2018 to March 4, 2019. Should the Appellant prevail on the reinstatement of his libel action, the Appellant will then seek his costs in the s. 137.1 motion and this herein appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, this 19th day of March 2021.



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Schedule “A”

Case Law

1704604 Ontario Ltd. v. Pointes Protection Association, [2020 SCC 22](#)

Bent v. Platnick, [2020 SCC 23](#)

Biehl v. Strang, [2011 BCSC 213](#)

Bondfield Construction Company Limited v. The Globe and Mail Inc., [2019 ONCA 166](#)

Brown v. Clark Wilson LLP, [2014 BCCA 185](#), [2014 CarswellBC 1340](#)

Carey v. Ontario, [1986 CanLII 7 \(SCC\)](#), [\[1986\] 2 SCR 637](#)

CUPW v. B'nai Brith Canada et. al., [2020 ONSC 323](#)

Dramel Ltd. v. Multani, [2020 ONSC 4440](#)

Foley v. Signtech Inc. (Ont. H.C.J.), [1988 CanLII 4780 \(ON SC\)](#)

Gholami v. The Hospital of Sick Children, [2018 ONCA 783 \(CanLII\)](#)

Henry v. British Columbia, [2014 BCSC 1018](#)

Hill v. Church of Scientology of Toronto, [1995 CanLII 59 \(SCC\)](#), [\[1995\] 2 SCR 1130](#)

Honda Canada Inc. v. Keays, [2008 SCC 39 \(CanLII\)](#), [\[2008\] 2 S.C.R. 362](#)

Kelly v. American Airlines Inc. et al., [1981 CanLII 1651 \(ON SC\)](#)

Kennedy v. Diversified Mining Interests (Can.) Ltd., [\[1948\] O.W.N. 798 \(H.C.J.\)](#)

Leadbeater v. Ontario (2004), [70 O.R. \(3d\) 224 \(S.C.J.\)](#)

Lieber v. Johnston & Daniel (1998), [26 C.P.C. \(4th\) 194 \(Ont. Master\)](#)

Mintz v. Mintz, [1983 CanLII 1870 \(ON SC\)](#)

Murphy v. Alexander, [2004 CanLII 15493 \(ON CA\)](#)

Niu v. Cao, [2020 ONSC 5407](#)

Nowak v. Sanyshayn (1979), [23 O.R. \(2d\) 797 \(H.C.\)](#)

Oniel v. Toronto (Metropolitan) Police Force (2001), [195 DLR \(4th\) 59 \(ONCA\)](#)

Pineau v. Merovitz Potechin, [2014 ONSC 4248](#)

R v. Campbell, [\[1999\] 1 S.C.R. 565](#)

Richmond v. North American Life Assurance Co., [1998 CanLII 14654 \(ON SC\)](#)

Samoila v. Prudential of America General Insurance Co. (Canada), [2000 CanLII 22690 \(ON SC\)](#)

Skaftco Limited v. Abdalla, [2020 ONSC 136](#)

Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation, [2021 ONCA 26](#)

Wallace v. United Grain Growers Ltd., [1997 CanLII 332 \(SCC\)](#), [1997] 3 SCR 701

Western Assurance Co. v. Canada Life Assurance Co., [1987 CarswellOnt 535](#), 23 C.P.C. (2d) 207

WIC Radio Ltd. v. Simpson, [2008 SCC 40](#)

Reports

Anti-SLAPP Advisory Panel Report to the Attorney General, October 28, 2010

https://www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/anti_slapp_final_report_en.html.

Schedule “B”

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate

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.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

Costs on dismissal

(7) 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. 2015, c. 23, s. 3.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

Damages

(9) 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. 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

Procedural matters

Commencement

137.2 (1) A motion to dismiss a proceeding under section 137.1 shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced. 2015, c. 23, s. 3.

Motion to be heard within 60 days

(2) A motion under section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court. 2015, c. 23, s. 3.

Hearing date to be obtained in advance

(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served. 2015, c. 23, s. 3.

Limit on cross-examinations

(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall not exceed a total of seven hours for all plaintiffs in the proceeding and seven hours for all defendants. 2015, c. 23, s. 3.

Same, extension of time

(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice. 2015, c. 23, s. 3.

Police Services Act, [RSO 1990, c P.15](#)

**PART V
COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

PUBLIC COMPLAINTS MADE TO THE INDEPENDENT POLICE REVIEW DIRECTOR

Complaint may be made to Independent Police Review Director

58 (1) Any member of the public may make a complaint under this Part to the Independent Police Review Director about,

- (a) the policies of or services provided by a police force; or
- (b) the conduct of a police officer. 2007, c. 5, s. 10.

Independent Police Review Director to review complaints

59 (1) The Independent Police Review Director shall review every complaint made to him or her by a member of the public under this Part, and shall determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer. 2007, c. 5, s. 10.

Power of Independent Police Review Director to refuse

60 (1) The Independent Police Review Director may, in accordance with this section, decide not to deal with a complaint made to him or her by a member of the public under this Part. 2007, c. 5, s. 10.

Frivolous, vexatious, etc.

(4) The Independent Police Review Director may decide not to deal with a complaint made by a member of the public if, in his or her opinion, one of the following applies:

1. The complaint is frivolous or vexatious or made in bad faith.
2. The complaint could be more appropriately dealt with, in whole or in part, under another Act or other law.
3. Having regard to all the circumstances, dealing with the complaint is not in the public interest. 2007, c. 5, s. 10.

B.W. (Brad) Blair

Plaintiff / Appellant

-and- PREMIER DOUG FORD

Defendant/ Respondent

Court File No.

***COURT OF APPEAL FOR
ONTARIO***

Proceedings commenced in TORONTO

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