COURT OF APPEAL FOR ONTARIO

CITATION: Sheridan Retail Inc. v. Roy, 2026 ONCA 347
DATE: 20260515
DOCKET: COA-25-CV-0719

Simmons, Paciocco and Osborne JJ.A.

BETWEEN

Sheridan Retail Inc.

Plaintiff/Respondent
(Appellant)

and

Pierre Roy

Defendant/Moving Party
(Respondent)

Luke Johnston and Giouzelin Mutlu, for the appellant

Kaley Pulfer and Michael Robson, for the respondent

Heard: February 24, 2026

On appeal from the order of Justice Renu J. Mandhane of the Superior Court of Justice, dated May 13, 2025, with reasons reported at 2025 ONSC 2866 and reasons for costs reported at 2025 ONSC 4759.

Paciocco J.A.:

A. OVERVIEW

[1] This appeal arises from a successful motion by the respondent, Mr. Pierre Roy, to have a lawsuit brought against him by the appellant, Sheridan Retail Inc.

("SRI"), dismissed as a strategic lawsuit against public participation (a "SLAPP"), pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (the "*CJA*"). A SLAPP is a lawsuit initiated "not to vindicate *bona fide* claims, but rather to deter a party from expressing a position on a matter of public interest or otherwise participating in public affairs": *Volpe v. Wong-Tam*, 2023 ONCA 680, 487 D.L.R. (4th) 158, at para. 2, leave to appeal refused, [2023] S.C.C.A. No. 516.

[2] Mr. Roy was highly critical of SRI's plans to redevelop an aging mall in his neighbourhood and voiced these concerns at various public meetings. He also complained to the City of Mississauga (the "City") that SRI was pursuing the project in an unsafe and legally non-compliant manner. To substantiate these claims, he entered onto SRI property and took photographs of the allegedly deficient work. In response, SRI sued Mr. Roy for $300,000, alleging defamation, intentional interference with economic relations and inducing breach of contract (the "economic torts"), as well as trespass. Mr. Roy countered by bringing his anti-SLAPP motion. This led to SRI abandoning its defamation claim and focusing its submissions before the motion judge on Mr. Roy's alleged trespasses, which it cast as the "crux" of the action.

[3] The motion judge granted the anti-SLAPP motion. She found that Mr. Roy's expression on matters of public interest to be inextricably linked to his alleged trespasses. She also held that SRI's action lacked substantial merit and that any minimal harm SRI suffered due to Mr. Roy's expression was vastly outweighed by

the public's interest in protecting that expression. SRI alleges various errors at each stage of the motion judge's analysis. It also claims she erred in awarding Mr. Roy damages and full indemnity costs.

[4] For the following reasons, I would dismiss the appeal of the substantive aspects of the anti-SLAPP order. I would grant leave to appeal costs and reduce the costs award to $75,000.

B. MATERIAL FACTS

[5] SRI is a single-purpose corporation and a subsidiary of Dunpar Developments Inc., a large property developer. SRI was incorporated to redevelop the Sheridan Mall, an indoor mall in the Sherwood Forest neighbourhood of Mississauga (the "mall"[1]). This project included renovation of the existing storefronts and a proposal to build two 15-storey condominiums.

[6] Pierre Roy was an engineering student who lived in the neighbourhood and was active in the Sherwood Forest Residents Association as a "Development Liaison". He took an intense interest in the redevelopment project, having concerns about the proposal to build the new condominiums and the way the renovation work was being carried out. In particular, he was concerned that the project was not being pursued sustainably, that the proposed condominiums lacked enough affordable housing units, and that the renovation work was being conducted in an

[1] I use the term "mall" in the balance of this decision to reference Sheridan Mall buildings and not external areas of the property.

unlawful and unsafe manner. He initially approached SRI with some of those concerns, but between May and December 2023, he initiated numerous complaints to the City against SRI relating to bylaw breaches and breaches of the *Building Code Act, 1992*, S.O. 1992, c. 23, and the *Planning Act*, R.S.O. 1990, c. P.13. Mr. Roy supported complaints he made with photographs of the deficiencies that he perceived. Complaints he presented resulted in multiple visits from City inspectors. Those inspections typically led to remedial orders being issued against SRI, which SRI complied with. Mr. Roy also spoke in opposition to the redevelopment project during public consultations.

[7] On March 29, 2022, Mr. Roy was observed inside a vacant retail space formerly occupied by Target, an anchor tenant, and was approached by SRI personnel. After he shared concerns with them about the state of the mall, including concerns about waste management and the unauthorized industrial use of office space formerly occupied by RSA Insurance, they undertook to investigate the matter. Mr. Roy received email correspondence the next day from a Dunpar representative, who was following up with the concerns he had expressed.

[8] On April 4, 2023, Mr. Roy attended a community meeting where SRI presented its plans for the redevelopment project to residents of Sherwood Forest. There, he raised further questions for SRI legal counsel about the sustainability strategies it planned to implement in the redevelopment.

[9] Then, on May 2, 2023, Mr. Roy noticed what he believed to be significant, unpermitted demolition work occurring in the vacant former RSA space. He thought this work posed a fire hazard. Shortly before May 10, 2023, he noticed similar work occurring inside an unfinished restaurant. He took pictures inside both of these spaces and submitted complaints to the City, informing it of what he had seen.

[10] On May 24, 2023, SRI personnel again observed Mr. Roy inside the mall and asked him to leave, following him off the property to make sure he did so. On May 25, 2023, SRI issued him a “Notice of Pending Legal Action and Trespass” (the “Trespass Notice”). The Trespass Notice told Mr. Roy to cease his “ongoing trespasses” and threatened him with a civil suit if he made “any further erroneous and defamatory statements about SRI to City of Mississauga bureaucrats and other members of the public”. Notably, it did not threaten civil action for trespass.

[11] Subsequently, Mr. Roy submitted six further complaints of note to the City, each accompanied by photographs depicting the subjects of concern. During the motion, SRI contended that he trespassed to take these photos, ignoring the Trespass Notice. Mr. Roy denied entering the “off-limits” parts of the mall to take photographs but acknowledged entering its “public” areas a handful of times to conduct everyday activities such as banking. He presented evidence that the photograph of a non-public interior room on the P2 level of the parking garage that accompanied one of the complaints was secured from the internet, and that his father took an additional photograph inside the P3 level that accompanied another.

He asserted that he took the photos relating to the other four complaints from outside the mall, with three of them taken within external parking lots after making observations from outside of the property.

[12] On November 27, 2023, Mr. Roy spoke at a City planning and development meeting in opposition to aspects of the project. At this meeting, SRI's legal representative responded to his comments by ridiculing him and announcing that he had been trespassing and "rooting through garbage" at the mall.

[13] The City ultimately rejected SRI's project. Shortly thereafter, on December 29, 2023, SRI issued the Statement of Claim that became the subject of the anti-SLAPP motion.

[14] Mr. Roy took the position that SRI's claim was a SLAPP brought to silence his objections to the redevelopment project. Accordingly, on May 8, 2024, he brought a motion pursuant to s. 137.1 of the *CJA*, seeking to have the proceeding dismissed.

C. THE ANTI-SLAPP REGIME

[15] The purposes of Ontario's anti-SLAPP regime are stated comprehensively in s. 137.1(1). In short, the scheme "is meant to function as a mechanism to screen out lawsuits that unduly limit expression on matters of public interest through the identification and pre-trial dismissal of such actions": *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 16.

Accordingly, s. 137.1 requires a motion judge to undertake a four-step inquiry in deciding whether to grant an anti-SLAPP motion, consisting of two threshold requirements that must be met by the moving party, and if those threshold requirements are met, two requirements that must be met by the responding party if it wishes to have the action continue.

[16] Section 137.1(3) sets out the two threshold requirements that the moving party must meet. Specifically, the moving party must prove on a balance of probabilities that the proceeding: (1) “arises from an expression made by the [moving party]”, and (2) that this expression “relates to a matter of public interest”: *CJA*, s. 137.1(3); see also *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA 171, at para. 25, leave to appeal granted, [2025] S.C.C.A. No. 169.

[17] The term “expression” in the first threshold criterion is defined expansively to mean “any communication” made by a person: *CJA*, s. 137.1(2). A “proceeding arises from an expression” within the meaning of s. 137.1(3) if it is causally related to that expression: *Pointes*, at para. 24.

[18] “[R]elates to a matter of public interest”, the second threshold criterion, is not defined by the statute. However, it is also interpreted broadly and liberally and will be satisfied so long as “some segment of the community would have a genuine interest in receiving information on the subject”: *Pointes*, at para. 27, citing *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at paras. 101-2. The inquiry

is ultimately a contextual one that is "asking what the expression is really about": *Pointes*, at para. 30.

[19] Despite this interpretive generosity, there are limits to the kinds of expression that engage s. 137.1(3). As this court noted in *Sokoloff v. Tru-Path Occupational Therapy Services Ltd*., 2020 ONCA 730, 153 O.R. (3d) 20, at para. 19: "[I]t is not enough if expression simply makes reference to something that is of public interest, or to something that arouses the public's curiosity." As *Pointes*, at para. 30, makes clear, the expression itself must "really be about" a matter of public interest. Similarly, "the resolution of purely private disputes between more or less equals—disputes that have no immediate bearing on the rights or obligations of others—can seldom be a matter of public interest": *Grist v. TruGrp Inc.*, 2021 ONCA 309, 156 O.R. (3d) 171, at para. 19.

[20] If a moving party has satisfied the two threshold requirements identified in s. 137.1(3), the onus shifts to the responding party — the party that brought the action — to resist the motion by satisfying the cumulative elements in s. 137.1(4): *Pointes*, at para. 33. Section 137.1(4), provides:

> (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.

[21] The hurdle imposed by s. 137.1(4)(a), generally referred to as the "Merits-Based Hurdle", imposes a "grounds to believe" burden that requires the responding party to satisfy the motion judge subjectively, as a matter of their discretion, that in their assessment of the limited evidentiary record that would be available at this stage, there is a basis "for finding that the underlying proceeding has substantial merit and that there is no valid defence": *Pointes*, at paras. 36-37, 39, and 41-42. As Côté J. explained in *Pointes*, at para. 59, the "'substantial merit' and 'no valid defence' [inquiries] should be seen as constituent parts of an overall assessment of the prospect of success of the underlying claim."

[22] A proceeding will have "substantial merit" if "its underlying claim is legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success": *Pointes*, at para. 54. I will elaborate more on how substantial merit is to be assessed below.

[23] To satisfy the "no valid defence" component, the responding party must show that "the defence, or defences, put in play are not legally tenable or supported by evidence that is reasonably capable of belief such that they can be said to have no real prospect of success": *Pointes*, at para. 59.

[24] The hurdle imposed by s. 137.1(4)(b), generally called the “Public Interest Hurdle”, requires the responding party to provide evidence establishing “on a balance of probabilities that it likely has suffered or will suffer harm, that such harm is *a result* of [the moving party’s expression], and that the corresponding public interest in allowing the underlying proceeding to continue *outweighs* the deleterious effects on expression and public participation”: *Hansman v. Neufeld,* 2023 SCC 14, [2023] 1 S.C.R. 519, at para. 67; *Pointes*, at para. 82 (emphasis in original).

[25] In *Yates v. Iron Horse Corporation,* 2026 ONCA 38, at para. 56, this court elaborated on the evidence of harm that is required, commenting that “the harm or likely harm must be of a sufficient magnitude to outweigh the public interest in protecting the appellant’s expression”, and noting that “presumed general damages are insufficient” and “bare assertions of harm are also insufficient”.

[26] Côté J. described this weighing exercise as the “crux” of the inquiry: *Pointes,* at para. 82. Since “the focus at this stage is ‘what is really going on’ in the case [when engaged in the weighing exercise]… it is necessary to assess the quality of the expression, including the motivation behind it, the medium through which it was expressed, and its subject matter”, including the proximity of the expression to “any of the fundamental values of s. 2(b) of the *Charter*”: *Benchwood Builders*, at paras. 63-64.

[27] Section 137.1(6), which is also relevant to this appeal, provides in relevant part:

> (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 …

[28] If the moving party succeeds in obtaining a dismissal of the proceeding using the anti-SLAPP regime, s. 137.1(7) provides that they are entitled to their costs on a full indemnity basis, "unless the judge determines that such an award is not appropriate in the circumstances." In addition, a successful moving party may be awarded "such damages as the judge considers appropriate" if the motion judge finds that the responding party "brought the proceeding in bad faith or for an improper purpose": *CJA*, s. 137.1(9).

D. THE MOTION AND THE JUDGE'S REASONING

[29] On August 21, 2024, shortly after cross-examinations on the motion were conducted, SRI sent written confirmation to Mr. Roy that it was abandoning its defamation claim, but that it was still pursuing the rest of the claims. SRI did not seek leave to amend its pleadings pursuant to s. 137.1(6).

[30] During the motion hearing, SRI submitted that the proceeding it commenced did not arise "from an expression made by [a] person that relates to a matter of public interest" and therefore did not fall within s. 137.1: *CJA*, s. 137.1(3). SRI argued that the claim focused on Mr. Roy's acts of trespass, which it claimed

caused it substantial harm. In support of this position, SRI sought to rely on its notice of abandonment of the defamation cause of action.

[31] As proof of the damage it suffered, SRI offered an affidavit from Mr. Matt Hopps, Dunpar's Vice President of Property Management, asserting that SRI had incurred additional security, employee, consultant, management, and insurance costs as the result of Mr. Roy's trespasses, as well as costs to respond to the City's remedial orders arising from his complaints. It also claimed that delays arising from undertaking remedial measures resulted in lost rent, caused its failure to meet a lease closing obligation, and contributed to the loss of a tenant, hence the economic torts claims. Mr. Hopps did not furnish any particulars or proof of these asserted costs. Similarly, his claims relating to lost rent and associated lease delays lacked specificity, as did his allegation that SRI lost a tenant because of Mr. Roy's alleged trespasses.

1. MERITS REASONS (2025 ONSC 2866)

[32] The motion judge was persuaded that Mr. Roy satisfied the threshold requirements under s. 137.1(3). She found that SRI's action arose from Mr. Roy's acts of expression, namely, the complaints and public submissions he made relating to safety, environmental, and social concerns. She reasoned that based on the events leading up to the action and the focus of SRI's claim, the proceeding was about Mr. Roy's acts of expression, and the acts of trespass that SRI was alleging were inextricably linked to his expression. Given this linkage, she declined

SRI's invitation to consider its trespass claim separately from the defamation and economic torts claims. Or as she put it, she refused to give SRI "leave to 'prune' its claim to only plead trespass".

[33] She also found that SRI failed to produce evidence that the risks and harm it claimed to have arisen from the alleged trespasses ever materialized. She observed, "The developer [SRI] could not point to any harms that were independent of the speech", and concluded, "[b]ut for [Mr. Roy's] public expression (*i.e.,* his complaints to the city), I find that the developer would not have brought a claim for trespass." She therefore found that "the case arises from [Mr. Roy's] public expression."

[34] The motion judge then concluded that by bringing the $300,000 lawsuit, SRI "sought to leverage its economic power to overwhelm and intimidate [Mr. Roy] into disengaging from the land use development process and stopping his complaints to the city."

[35] Having found the threshold requirements met, she then considered whether SRI had resisted the motion by satisfying the twin requirements of s. 137.1(4). She found that SRI had not met its burden.

[36] With respect to the "Merits-Based Hurdle" under s. 137.1(4)(a), she concluded that SRI's claim lacked "substantial merit", when assessed as a whole. In arriving at this conclusion, she noted that it would be an "uphill battle" for SRI to

prove the trespass claim, given that the mall was open to the public and the areas Mr. Roy visited were neither locked nor clearly demarcated as being off limits. Additionally, the motion judge found that SRI had abandoned its defamation and economic torts claims, thereby conceding that they lacked merit. In any event, the motion judge found that SRI had failed to particularize the losses allegedly arising from the economic torts.

[37] She concluded that even if she was wrong in finding that the action lacked "serious merit", SRI failed to satisfy the "Public Interest Hurdle". She held that when one steps back and looks at what is really going on, the harm that would be caused by Mr. Roy's public expression was not sufficiently serious to outweigh the public interest in protecting that expression. She remarked, "any harm to the developer associated with trespass is not directly linked to [Mr. Roy's] expression at all", and she judged the public interest in his expression to be "very high". This latter finding was grounded in the motion judge's view that Mr. Roy's complaints and submissions at public meetings related to safety, environmental, and public development concerns, which are "social issues that are immensely important … and clearly worthy of serious public debate."

[38] She therefore allowed Mr. Roy's motion and dismissed SRI's proceeding. The motion judge then concluded that Mr. Roy was entitled to $25,000 in damages, pursuant to s. 137.1(9). Finally, she ordered costs payable to Mr. Roy on a full indemnity basis and sought submissions from the parties with respect to quantum.

2. COSTS REASONS (2025 ONSC 4759)

[39] Mr. Roy sought $156,394.54 in full indemnity costs arising from the motion. During costs submissions, SRI conceded that full indemnity costs were appropriate, but as indicated, by the time that concession was made, the motion judge had already decided to award costs on that scale. SRI focused instead on the amount sought by Mr. Roy, arguing that it was not fair and reasonable, and that costs should be capped at $100,000. The motion judge rejected the submission, finding Mr. Roy's proposed costs award to be fair and reasonable. She ordered payment of the entire amount claimed, $156,394.54.

[40] She explained her decision by noting that: 1) Mr. Roy made reasonable offers to settle prior to bringing the anti-SLAPP motion; 2) Mr. Roy repeatedly warned SRI he would be seeking full indemnity costs; 3) SRI filed expansive materials, including a record of more than 2000 pages, and expanded the scope of the motion; and 4) the motion required multiple scheduling appearances and preparation of lengthy reply materials. In addition, while the motion judge recognized that this court said in *Park Lawn Corporation v. Kahu Capital Partners Ltd*., 2023 ONCA 129, 165 O.R. (3d) 753, at para. 39, leave to appeal refused, 2023 CanLII 100618 (SCC), that costs on anti-SLAPP motions generally should not exceed $50,000, she reasoned that there are subsequent cases where courts have awarded full indemnity costs in the range that was sought by Mr. Roy.

E. ISSUES

[41] A motion judge's decision whether to allow a s. 137.1 anti-SLAPP motion is entitled to deference on appeal, absent an error of law or a palpable and overriding factual error: *2110120 Ontario Inc. v. Buttar*, 2023 ONCA 539, 485 D.L.R. (4th) 551, at para. 35, leave to appeal refused, [2023] S.C.C.A. No. 432. Deference applies to all the issues of mixed fact and law. This court emphasized in *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811, 174 O.R. (3d) 21, at para. 47(j.), that "[s]uch deference is particularly appropriate in respect of the motion judge's weighing exercise under s. 137.1(4)(b), which is open-ended and highly discretionary."

[42] SRI raises several grounds of appeal, some of which are multi-pronged, that can be described and organized as follows:

(1) Did the motion judge err in finding that the proceeding arose "from an expression" made by Mr. Roy "that relates to a matter of public interest"?

(2) Did the motion judge err in deciding that SRI failed to satisfy the "Merits-Based Hurdle"?

(3) Did the motion judge commit palpable and overriding errors when weighing the competing interests engaged by the "Public Interest Hurdle"?

(4) Did the motion judge err by awarding damages?

(5) Should leave to appeal the costs award be granted, and if so, did the motion judge act in a procedurally unfair manner in deciding to award full indemnity costs?

F. ANALYSIS

1. DID THE MOTION JUDGE ERR IN FINDING THAT THE PROCEEDING AROSE "FROM AN EXPRESSION" MADE BY MR. ROY "THAT RELATES TO A MATTER OF PUBLIC INTEREST"?

[43] SRI argues that the motion judge erred in resolving both threshold issues by characterizing the proceeding as arising from expression and failing to recognize that the trespass action was a private dispute.

[44] Specifically, SRI submits that she erred by misapprehending SRI's position as conceding that Mr. Roy was engaged in public expression with respect to its claims of trespass, and in concluding that SRI had sought leave to "prune" its claim to only plead trespass and that it had abandoned its economic torts claims.

[45] SRI also argues that Mr. Roy's alleged acts of trespass are the "core" or "crux" of the dispute, and those acts are "'non-statement conduct" involving a "private" matter, unrelated to a matter of public interest. Relatedly, SRI submits that the motion judge erred in finding that the trespass claim was "inextricably linked" to the defamation claim, since trespass addresses a different type of conduct than defamatory comments do, and gives rise to separate harms.

[46] I would not give effect to this ground of appeal. I will deal first with the misapprehension submissions.

[47] I do not read the motion judge as having found that SRI conceded that Mr. Roy was engaged in public expression with respect to its claim of trespass. In the impugned passage[2] she was simply making the general observation that SRI "conceded that [Mr. Roy] was engaged in public expression". She was referring to his communications, not the trespass claim, and her observation was correct. SRI had repeatedly conceded that Mr. Roy's communications related to matters of public interest.

[48] The motion judge perhaps did overstate things when she said that SRI "seeks leave to prune its claims to only plead trespass", and by stating that SRI had abandoned its economic torts claims. But assuming those to be mischaracterizations, they were harmless and perhaps not surprising. SRI's position was unclear. Although it acknowledged at points that the motion judge had to consider the whole claim, SRI's counsel encouraged her to focus on the trespass claim in isolation, as if it was the only claim for consideration, an objective that would have required leave to amend pursuant to s. 137.1(6).

[49] Without question SRI sought to isolate the trespass claim by minimizing the other causes of actions it had brought. As indicated, it attempted to abandon its

[2] In paragraph 19 of her reasons.

defamation claims and did not pursue them. SRI's counsel also downplayed its economic torts and contractual claims by alerting the motion judge that he would not be spending much time on the "contractual claims" and acknowledging that the motion judge "may find that the inducing breach of contract and interference to the economical relation[s] claims lack the factual record that you will see for some [other claims], perhaps the trespass."

[50] Instead of featuring these causes of action, SRI's counsel focused resolutely during the motion hearing on the trespass claim alone, after alerting the motion judge of his intention to do so, including by telling her that the "predominant issue was trespass related".

[51] As I say, even if the motion judge did overstate things, her misunderstanding that SRI was seeking "leave to prune its claim to only plead trespass" is understandable against this backdrop.

[52] More importantly, any such mischaracterizations of SRI's positions would have made no difference in the motion judge's threshold evaluation now under consideration.[3] SRI did not contest the obvious proposition that its defamation claim arose from expression, and SRI conceded in its motion factum that its economic torts claims did as well.

[3] I will also address the impact of the economic torts on SRI's attempt to meet its burden of resisting the anti-SLAPP motion by overcoming the "Merits-Based Hurdle" and the "Public Interest Hurdle".

[53] Moreover, assuming a misperception occurred, it related to SRI's tactical approach, not the substance of its attempt to directly focus on the trespass claim. As I will explain now, in determining whether the proceeding as a whole arose from expression relating to a matter of public interest, the motion judge fully and correctly considered whether the trespass claim did so as well.

[54] Whether a proceeding "arises from" expression within the meaning of s. 137.1(3) does not turn on either the nature of the acts that support the alleged cause of action, or the kinds of damage those acts may generate. It turns on whether "the expression is somehow causally related to the proceeding": *Pointes*, at para. 24. Therefore, a cause of action "does not have to be *directly* concerned with expression, such as [in the case of] defamation suits" to arise from expression: *Pointes*, at para. 24 (emphasis in original). As SRI appears to accept, a proceeding that is "precipitated" by a statement arises from expression and thereby satisfies the first threshold requirement in s. 137.1(3): *Buttar*, at para. 41; *Galati v. Toews*, 2025 ONCA 568, at paras. 47-48; *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation,* 2021 ONCA 25, at para. 41, leave to appeal refused, [2021] S.C.C.A. No. 92.

[55] Although this court was speaking in the context of the "Merits Based Hurdle" in *40 Days for Life v. Dietrich*, 2024 ONCA 599, at para. 45, leave to appeal refused, [2024] S.C.C.A. No. 396, its comment pertains generally to s. 137.1

motions, and speaks to the need to consider the proceeding as a whole when considering s. 137.1(3):

> [A] s. 137.1 motion is brought with respect to a proceeding as a whole against a party, and not with respect to the particular causes of action that are advanced in a proceeding …. Either the proceeding as a whole against a party is an abuse of process or it is not. If the motion succeeds, the entire action falls. [Citations omitted.]

[56] The motion judge characterized the proceeding as a whole and she found that at its core, "[i]t was always focused on [Mr. Roy's] public expression and not on trespass into the mall." She concluded that, "But for [Mr. Roy's] public expression (*i.e.,* his complaints to the city) … the developer would not have brought a claim for trespass." This finding was available to the motion judge on the record, and I would defer to her decision. She had strong reason to reject SRI's submission that Mr. Roy's alleged trespasses were the crux of the claim.

[57] First, although the Trespass Notice warned Mr. Roy that the police would be called should he enter SRI property again, as the motion judge noted, the civil action and damages that the Trespass Notice threatened were not for trespass but for making further public statements at consultation meetings and complaints to the City. This is strong evidence that Mr. Roy's communications were the driving force behind the proceeding.

[58] Second, the Statement of Claim that was subsequently filed included the trespass claim and described the alleged acts of trespass in some detail, but it prominently featured Mr. Roy's communications. Its focus on Mr. Roy's

communications reinforces the importance of those communications to the overall action.

[59] Third, SRI sought to show that Mr. Roy was not on mall property for a permissible purpose by particularizing how his acts of alleged trespass were linked to complaints that Mr. Roy ultimately made to the City. This submission provides ample support for the motion judge's finding that "[t]he developer concedes that [Mr. Roy] 'trespassed' for the primary purpose of collecting information to substantiate his safety concerns and complaints to the city". It also both explains and validates her conclusion that the trespass claim was inextricably linked to the defamation claim.

[60] Fourth, the motion judge was entitled to find that the damage claims before her were linked to Mr. Roy's communications. She found that SRI had not presented evidence that the risks it claimed to arise from the alleged trespasses materialized or resulted in increased costs, and that it "could not point to any harms that were independent of the speech." Yet SRI claimed $300,000 in damages, leading the motion judge to find that this extravagant claim was intended to intimidate Mr. Roy into silence.

[61] Fifth, during submissions SRI's motion counsel conceded that, "One motivation [for the claim] is, and you know Mr. Hopps testified to this, he wants to stop the complaints." This is an admission that the complaints were the goal of the

proceeding, which, in context, the motion judge was entitled to conclude to be the core or “crux” of the claim.

[62] It was therefore open to the motion judge to find that the expression was causally related to the proceeding. Not only did she make this finding based on the entire proceeding, but it is evident from the foregoing that even an examination of the trespass claim in isolation, which SRI sought to achieve, shows that the trespass claim was causally linked to Mr. Roy’s communications. The motion judge’s decision warrants deference.

[63] By arguing that the trespass claim was a private dispute, SRI also takes issue with the second threshold criterion, namely, Mr. Roy’s burden of showing that his expression “relates to a matter of public interest”. The submission is misplaced. The second threshold criterion is not concerned with whether, by its nature, an action vindicates private property interests but whether the expression itself “relates to a matter of public interest”. The expression that the motion judge found to be related to the proceeding was Mr. Roy’s communications about the redevelopment project. As noted above, the motion judge concluded, and SRI conceded, that Mr. Roy’s complaints and his public submissions did relate to a matter of public interest within the meaning of s. 137.1(3). The complaints focused on compliance with public regulatory requirements, and the public submissions focused on environmental and social concerns associated with a large-scale development — matters the motion judge noted were at the forefront of public

discourse. Each of these issues can be fairly defined as ones about which some segment of the public would have a genuine interest in receiving information*:* *Pointes*, at para. 27.

[64] Given the motion judge's conclusion that SRI's trespass claim was intimately and inextricably related to this public interest expression, her conclusion that the threshold requirements in s. 137.1(3) were met was inescapable. The trespasses allegedly committed by Mr. Roy engaged interests well beyond the parties' private rights and cannot be said to form the subject matter of a purely private dispute, as SRI asserts: *Toews*, at para. 52; *Benchwood Builders*, at para. 41.

[65] I would not give effect to this ground of appeal.

2. DID THE MOTION JUDGE ERR IN DECIDING THAT SRI FAILED TO SATISFY THE "MERITS-BASED HURDLE"?

[66] As I have explained, SRI's claims fall into three categories: defamation, the economic torts, and trespass. It argued below, and appears to be arguing before us, that although a motion judge is obliged under s. 137.1(4) to consider the proceeding as a whole, each of the claims made are to be assessed individually, and if any one of those claims passes the "Merits-Based Hurdle", it is met for the proceeding as a whole, such that all the claims go forward. It concedes that the abandonment of its defamation claim is an acknowledgment that the defamation claim lacked substantial merit but argues that the motion judge erred in failing to find that it satisfied its burden of showing grounds to believe that its economic torts

and trespass claims had substantial merit. Although not in this order, SRI argues that the motion judge misapplied the legal standard applicable to the "Merits-Based Hurdle", erred by failing to apply that standard to its economic torts, erred in concluding that its grounds for the trespass claim lacked substantial merit, and erred by failing to inquire whether SRI could show that Mr. Roy had no valid defences to its claim.

[67] I need not address SRI's claim that if one cause of action has substantial merit and the moving party lacks any valid defence to it, the "Merits-Based Hurdle" is satisfied for the proceeding as a whole. As I will explain, the motion judge found that none of its causes of action satisfied the substantial merit standard. If those findings stand up, the proceeding fails the "Merits-Based Hurdle", both on SRI's conception of its application and on an examination of the merits of the underlying proceeding as a whole.

[68] Before turning to the alleged errors SRI relies upon, I will describe the applicable legal principles. In *Toews*, at para. 54, Zarnett J.A. explained:

> To satisfy the merits-based hurdle in s. 137.1(4)(a), a responding party must establish grounds to believe that the proceeding has substantial merit and that the moving party had no valid defence. The "grounds to believe" standard is lower than a balance of probabilities. It requires there to be some basis in the evidentiary record and the law, taking into account the stage of the proceeding, for the required conclusions. This is not a high bar. [Emphasis in original.]

[69] In *Pointes*, at para. 52, Côté J. explained that in assessing the merits of the underlying claim, a motion judge may engage in a limited weighing of the evidence. Although a motion judge should defer ultimate credibility findings, "[t]his is not to say that the motion judge should take the motion evidence at face value or that bald allegations are sufficient", and she may make "a preliminary assessment of credibility": *Pointes*, at para. 52.

[70] Also in *Pointes*, at para. 47, Côté J. addressed what the "substantial merit" inquiry requires. She explained that "'merit' refers fundamentally to the strength of the underlying claim, as a stronger claim corresponds with a weaker justification to dismiss the underlying proceeding." She went on, at para. 49, to note that the inquiry into whether there are "grounds to believe" that an underlying proceeding has "substantial merit" is an examination of whether there is a real prospect of success that "tends to weigh more in favour of the plaintiff." Significantly, she made clear that "substantial merit" must go beyond "technical validity": *Pointes*, at paras. 16, 47. The "no valid defence" component under s. 137.1(4)(a)(ii), in turn, "asks whether there are grounds to believe the defence could meet its burden if called upon to do so": *Toews*, at para. 61.

[71] With that overview of the legal standards that apply, I turn to the alleged errors SRI relies upon.

[72] SRI submits that the motion judge erred by elevating the applicable standard of proof imposed by s. 137.1(4)(a). To show that the motion judge deviated from the applicable "grounds to believe" standard, SRI relies on the fact that the motion judge commented that it had "an uphill battle to prove that [Mr. Roy] was trespassing" and said that the "lawsuit lacks serious merit". I would not accept these submissions. As SRI concedes, in her reasons, "the Motion Judge accurately refers to the 'grounds to believe' standard as the requisite standard". The language the motion judge used in her decision must be understood in this context, in the context of the decision as a whole, and in light of the presumption that judges understand the standard of proof that applies: *R. v. Edwards*, 2024 ONCA 135, 434 C.C.C. (3d) 225, at para. 52. When the reasons are read in this way, as they must be, it is apparent that the motion judge was not subjectively satisfied that SRI presented grounds to believe that any of its causes of action had substantial merit.

[73] First, it is obvious that she found that there were no such grounds for the defamation claim. As I have noted, SRI admitted as much by not proceeding with that claim. The motion judge then went on to find that SRI "could not particularize its economic losses" arising from the alleged economic torts. This undercuts any claim that she could have found grounds to believe that the economic torts claims had substantial merit if she applied the correct standard (which she did). And she noted that SRI had based its trespass claims on Mr. Roy's access to areas of a public mall that "were not locked and were not clearly demarcated as being off

limits". She was identifying a serious weakness she perceived in the trespass claim relating to the privacy of the property entered.

[74] In this context, I would not find that the motion judge used the expressions SRI relies upon to describe the legal standard she was applying. I see the "uphill battle" reference as an observation arising from the absence of reasonable grounds supporting the trespass claim, and the "serious merit" comment as an innocuous alternative informal way of describing "substantial merit". I would not accept SRI's submission that the motion judge deviated from the applicable standard of proof, and I would reject this ground of appeal.

[75] SRI also takes further issue with the motion judge's treatment of its economic torts claims, arguing that given her erroneous belief that these claims had been abandoned, she failed to consider them, and hence the whole of the proceeding, as she was required to do under s. 137.1(4)(a). In fact, as I have explained, despite her belief that the economic torts claims had been abandoned, the motion judge addressed them explicitly when considering the "Merits-Based Hurdle" and found that they lacked merit, given that SRI "could not particularize its economic losses". This is in keeping with her view that she was obliged to consider the entire Statement of Claim during the motion, absent leave to amend.

[76] I would also note that in submissions before the motion judge, SRI acknowledged that she may question the factual basis for the economic torts

claims. This concession by SRI makes it difficult for it to argue now that the motion judge should have found that it had shown grounds to believe that these claims had substantial merit.

[77] SRI claims that the motion judge erred in several respects in her assessment of the threshold requirement relating to its trespass claims. I will begin with its submission that the motion judge misapprehended the law of trespass by failing to recognize that a person who enters a public mall for an unauthorized purpose, such as theft, can be a trespasser: see e.g., *Hudson's Bay Co. v. White*, [1997] O.J. No. 307 (Gen. Div.), at para. 9, rev'd in part on other grounds, [1998] O.J. No. 2383 (Div. Ct.). It argues by analogy that Mr. Roy's entrance for the purpose of undertaking unauthorized investigations, as it alleges, is comparable.

[78] I take no issue with the legal proposition that SRI relies upon, but I do not accept that the motion judge failed to consider it. She recognized that Mr. Roy entered areas of the mall "for the primary purpose of collecting information to substantiate his safety concerns and complaints to the city." As I will explain, what she found, in substance, was that the trespass cause of action did not have substantial merit because SRI failed to provide a foundation showing that the alleged acts of trespass produced real damage, and were therefore incapable, in the circumstances of this case, of overriding the right to expression that SRI was trying to suppress.

[79] SRI argues, in this regard, that the motion judge committed palpable and overriding errors in finding that its claims produced no real damage. It argues that the motion judge erred by ignoring the evidence Mr. Hopps provided in his affidavit as grounds to believe that the alleged trespasses caused the damage he claimed, including “additional security costs to patrol the Mall”, “additional property management costs to manage the Mall”, “additional insurance costs for SRI to protect itself from Roy’s trespass”, “additional costs to respond to the City’s notice[s], orders, and inspections”, and “lost opportunity costs.” In my view, the motion judge did not ignore the affidavit. Instead, she did not credit it. She concluded explicitly that “the developer did not hire additional security guards or incur any other such expenses to keep the public or [Mr. Roy] out of the mall or even certain areas.”

[80] In my view, she was entitled as the motion judge to come to this conclusion. As she observed, while SRI described risks that could materialize during a trespass, no evidence was provided that such risks had materialized. Moreover, SRI did not particularize its alleged economic loss, either in Mr. Hopps’s affidavit or through other evidence. I accept that SRI was not required at the motion stage to prove the damage it sustained: *Pointes*, at para. 71. However, it rested content with the bald claims that Mr. Hopps made, which were entirely bereft of detail or meaningful specifics, when it would not have been a difficult matter to provide an evidentiary basis, if it was available, to overcome the preliminary assessment the

motion judge was entitled to undertake. I would not interfere with the motion judge's finding, which is entitled to deference.

[81] I now return to SRI's reliance on *White*. Even if Mr. Roy was a trespasser because he entered mall property to conduct "unauthorized investigations", in the absence of SRI demonstrating grounds to believe it suffered the damages it pleaded, his acts of trespass would only be actionable *per se*. The problem that this presents is that a trespass that produces no actual harm is a mere technical case that will not have the substantial merit needed to outweigh the protected right to expression, despite entitling the claimant to nominal damages to vindicate their property rights: see e.g., *Deluca v. Paul Guiho Trucking & Construction Ltd.* (1984), 10 D.L.R. (4th) 267 (Ont. C.A.), at p. 274*; Insurance Corporation of British Columbia v. Ari,* 2025 BCCA 131, 8 B.C.L.R. (7th) 266, at paras. 35-39; and see *Pointes,* at para. 47. The motion judge was entitled to conclude in this case that the alleged trespasses claims did not have substantial merit that could outweigh the protected right to expression.

[82] SRI also challenges as a palpable and overriding error the motion judge's related conclusion that the alleged trespass events occurred in areas within the mall that were not locked off or marked as non-public. It argues that she failed to consider the hundreds of photographs allegedly showing the areas Mr. Roy entered were clearly not open to the public. I would not accept this submission. There is no basis for inferring that the motion judge failed to consider this evidence.

In my view, while those photographs do show that these vacant areas were not operating as retail space, they do not palpably undermine the motion judge's conclusions that the areas entered were "not locked" or were not "clearly demarcated as being off limits".

[83] I would therefore reject SRI's ground of appeal that the motion judge erred in finding that SRI failed to show reasonable grounds that its trespass claim had substantial merit.

[84] Finally, SRI argues that the motion judge erred by failing to inquire whether SRI could show that Mr. Roy had no valid defences to its claim. It bases this alleged error on a passage in *Hamer v. Jane Doe*, 2024 ONCA 721, 501 D.L.R. (4th) 136, at para. 50, where it was observed that the criteria under s. 137.1(4)(a)(i) that "the proceeding has substantial merit", and under s. 137.1(4)(a)(ii) that "the moving party has no valid defence in the proceeding" should "not be considered in isolation" because "they inform each other." SRI interprets this passage as a direction that even where the underlying claim has not been shown to be tenable, a motion judge must always address the "no valid defences" issue before finding that a proceeding lacks substantial merit, which the motion judge did not do in this case.

[85] With respect, SRI's submission makes no sense. The word "and" connects s. 137.1(4)(a)(i) and s. 137.1(4)(a)(ii). They are cumulative requirements. To meet

its burden under s. 137.1(4)(a), a respondent must therefore satisfy the judge that there are grounds to believe both elements (i) and (ii) are met: *Toews*, at para. 62. Not surprisingly, Côté J. describes those requirements sequentially in *Pointes*, at para. 59:

> [T]he motion judge must first determine whether the plaintiff's underlying claim is legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success, and must then determine whether the plaintiff has shown that the defence, or defences, put in play are not legally tenable or supported by evidence that is reasonably capable of belief such that they can be said to have no real prospect of success. [Emphasis added.]

[86] If a motion judge determines that they are not satisfied that there are grounds to believe that the underlying proceeding has substantial merit, the responding party fails. There is no practical need to go on and consider whether the moving party would have had a valid defence to the responding party's claim. Clearly, *Hamer* does not stand for the proposition SRI claims. *Hamer* was a case in which the motion judge approached related issues in a piecemeal fashion: see paras. 58, 62-64. That is not this case.

[87] In summary, I see no error in the motion judge's finding that SRI did not satisfy her on the "Merits-Based Hurdle". I would deny this ground of appeal.

3. DID THE MOTION JUDGE COMMIT PALPABLE AND OVERRIDING ERRORS WHEN WEIGHING THE COMPETING INTERESTS ENGAGED BY THE "PUBLIC INTEREST HURDLE"?

[88] What I have said above is enough to deny the appeal of the motion judge's decision to dismiss SRI's action. I will address SRI's challenges to her decision on the "Public Interest Hurdle" for completeness.

[89] SRI's general submission is that the motion judge erred in her s. 137.1(4)(b) reasoning by undervaluing the harm to SRI and overvaluing Mr. Roy's expression. In my view, SRI's supporting submissions in this regard rest in large measure on its disagreement with the motion judge's evaluation and on SRI's thesis that the proceeding was about trespass, not communication. Put otherwise, SRI is inviting a reweighing of the relevant factors, contrary to the strong deference afforded to judges in the weighing exercise. I am not persuaded by the alleged errors that SRI relies on to show that the motion judge erred in her evaluation.

[90] First, the motion judge was entitled to find that the public interest in protecting the appellant's expression was high and outweighed any harm to SRI, given the important social issues engaged, regardless of whether the appellant may have technically trespassed in service of this expression. I see no basis for questioning that assessment.

[91] Second, SRI has not demonstrated any palpable and overriding errors in the motion judge's evaluation of the harm it suffered as a result of Mr. Roy's expression.

[92] I have already explained why I would not accept SRI's submission that the motion judge ignored the harm described in Mr. Hopps's affidavit and I need not say more about why she was entitled to be unimpressed by SRI's claims of harm.

[93] I would reject SRI's submission that the motion judge erred in law by stating that, "[h]ere, any harm to the developer associated with trespass is not directly linked to [Mr. Roy's] public expression at all." I do not interpret this passage as reflecting an erroneous belief on the motion judge's part that SRI had to "prove" harm or causation, as SRI suggests. Nowhere in the passage does the motion judge say that SRI must affirmatively establish harm linked to Mr. Roy's public expression. The passage is entirely consistent with the motion judge requiring no more than what the law demands, namely that the inference of harm SRI was relying upon be supported by evidence that is reasonably capable of belief: see *Marcellin v. London (Police Services Board)*, 2024 ONCA 468, 498 D.L.R. (4th) 438, at para. 11, leave to appeal refused, [2024] S.C.C.A. No. 350; *Hansman*, at para. 67.

[94] I would also reject the submission that the motion judge erred in law when she said that the harm SRI suffered must be "directly linked" to Mr. Roy's

expression. This is a correct legal statement. The harm suffered by a respondent that is to be balanced under s. 137.1(4)(b) is "the harm likely to be or have been suffered by the responding party as a result of the moving party's expression" (emphasis added). Inferences of harm and causation are therefore both required for SRI to succeed on the "Public Interest Hurdle": *Hansman*, at paras. 67-68, 74. The only harm to SRI the motion judge was entitled to throw into the balance under s. 137.1(4)(b) was the harm caused by Mr. Roy's expression as grounded in the record, and for the reasons I have described, she found there to be none.

[95] SRI raises two further complaints with the passage "[h]ere, any harm to the developer associated with trespass is not directly linked to [Mr. Roy's] public expression at all."

[96] First, it argues that the motion judge's finding that there was no direct link between Mr. Roy's expression and any harm it suffered due to Mr. Roy's alleged trespasses is inconsistent with her comment at the threshold stage that SRI's trespass claim was "inextricably linked to the defamation claim". I do not agree. By saying that there was an inextricable link between the defamation claim and Mr. Roy's alleged trespasses, all the motion judge was saying was that the trespasses played a role in Mr. Roy's communications. This is not inconsistent with her finding that the likely damage arising from these communications had nothing to do with any harm suffered due to the alleged trespasses.

[97] Second, SRI argues that the finding that "any harm to the developer associated with trespass is not directly linked to [Mr. Roy's] public expression at all" is inconsistent with the motion judge's earlier finding that SRI "could not point to any harms that were independent of [Mr. Roy's] speech." Once again, I see no inconsistency. When the motion judge said, "any harm to the developer associated with trespass is not directly linked to [Mr. Roy's] public expression at all", she was speaking of the harm that SRI associated with the trespass (i.e. its increased costs). When she said that SRI "could not point to any harms that were independent of [Mr. Roy's] speech", she was addressing the harm that SRI succeeded in providing grounds to believe occurred, such as increased costs in responding to the City's remedial orders, all of which was linked to Mr. Roy's complaints or speech, and none of which was linked to his alleged trespasses.

[98] I would deny this ground of appeal.

4. DID THE MOTION JUDGE ERR BY AWARDING DAMAGES?

[99] Section 137.1(9) permits motion judges to award damages on the following limited terms:

> (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.

[100] Requiring "bad faith" or "an improper purpose" means that damages are appropriate only in the subset of SLAPP cases that "go beyond simply reflecting

an effort to limit expression and include active efforts to intimidate or to inflict harm on the defendant": *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). Damages may be presumed to arise "from the use of a SLAPP lawsuit" and medical evidence is not necessary to support a claim for damages: *United Soils*, at para. 36.

[101] The motion judge awarded $25,000 in damages after correctly cautioning herself to do so only to compensate Mr. Roy, not to punish or sanction SRI: see *United Soils*, at para. 38. She concluded that the "significant damages" award she identified was appropriate given:

(1) The stress and anxiety Mr. Roy suffered from SRI's treatment and the lawsuit;

(2) SRI belittled and ridiculed Mr. Roy and his family during the public consultation process;

(3) SRI intimidated Mr. Roy by threatening legal action in the lead up to City Council's vote on the redevelopment project;

(4) SRI engaged in overly aggressive litigation tactics, including by suing for $300,000, filing an irrelevant 1600-page expert report, and seeking to prune its claim on the eve of the motion; and

(5) SRI imposed a chill on Mr. Roy's public expression such that he chose not to engage in SRI's appeal of City Council's decision.

[102] SRI argues that the motion judge erred by applying an incorrect test for awarding damages and by making palpable and overriding errors in arriving at each of the findings that she relied upon. I would not give effect to this ground of appeal.

[103] I see no basis for concluding that the motion judge misapplied the test. She did not ground her damages award in the mere fact, inherent in all successful anti-SLAPP motions, that the proceeding sought to suppress expression. She found that SRI used the lawsuit, with its extravagant damages claim and the massive opinion it secured, to intimidate Mr. Roy, and that SRI conducted itself in what she clearly considered to be a bullying fashion to stop his public participation. These findings satisfy both the "bad faith" and "improper purpose" prerequisites.

[104] I have also considered each of the challenges SRI makes to the reasonableness of the motion judge's factual findings and I am unpersuaded that they demonstrate palpable errors, let alone overriding ones.

[105] Ultimately, the decision to award damages was a discretionary one that we must defer to, whether we would have imposed damages or not: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685, 142 O.R. (3d) 161, at

para. 47, aff'd 2020 SCC 22, [2020] 2 S.C.R. 587. I would not interfere and would deny this ground of appeal.

5. SHOULD LEAVE TO APPEAL THE COSTS AWARD BE GRANTED, AND IF SO, DID THE MOTION JUDGE ACT IN A PROCEDURALLY UNFAIR MANNER IN DECIDING TO AWARD FULL INDEMNITY COSTS?

[106] After a recess during the submissions of SRI's motion counsel, the motion judge announced that she would be reserving her decision and would "deal with costs … at a different point." When she released her decision on the merits of the motion prior to receiving costs submissions, she ruled that she was granting costs in an amount to be determined later, on a full indemnity basis. When the motion judge ultimately awarded costs, she did so on a full indemnity basis in the amount of $156,394.57.

[107] Pursuant to s. 137.1(7), costs are presumptively to be awarded on a full indemnity scale, but this is subject to judicial discretion: see *Levant v. DeMelle*, 2022 ONCA 79, 82 C.C.L.T., at para. 76, leave to appeal refused, [2022] S.C.C.A. No. 87 (*Al Jazeera Media Network*), and [2022] S.C.C.A. No. 88 (*DeMelle*). Determining that costs would be awarded on a full indemnity scale before inviting submissions is procedurally unfair: *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, at para. 109, motion to reconsider refused, 2025 ONCA 464, leave to appeal to S.C.C. refused, 41833 (December 11, 2025). This remains true, in my view, even where full indemnity costs are the presumptive scale.

[108] I would therefore grant leave to appeal the costs award. I would allow that appeal and set aside the costs order. After considering the relevant principles and the submissions made, I would award costs in the proceedings below on a full indemnity basis, consistent with the presumption in s. 137.1(7), but substitute an award in the amount of $75,000. This court noted in *Park Lawn Corporation*, at para. 39, that costs on anti-SLAPP motions generally should not exceed $50,000 on a full indemnity basis. This case warrants a higher than usual cost award given the factual findings made by the motion judge in her costs decision and when awarding damages, but the costs award that was ordered below, of $156,394.54, is three times the general full indemnity limit encouraged in *Park Lawn Corporation*. Anti-SLAPP motions are meant to provide a summary and less expensive method of preventing abusive actions. They should not be conducted like trials and accumulate trial-level fees. I understand that during cost submissions below, SRI asked the motion judge to reduce her full indemnity cost award to $100,000, but in light of *Park Lawn Corporation*, I find that even that amount to be excessive in this case.

G. CONCLUSION

[109] I would dismiss the substantive appeal, affirming both the decision to dismiss the proceedings and the damages award of $25,000.

[110] I would grant SRI leave to appeal the costs award, allow the appeal, set aside the costs award, and substitute a costs award of $75,000, inclusive of applicable taxes and disbursements.

[111] Mr. Roy seeks costs of this appeal on a full indemnity basis. The presumption of full indemnity costs in s. 137.1(7) does not apply on appeals of anti-SLAPP motions; costs are in the discretion of the court: *The Catalyst Capital Group Inc. v. West Face Capital Inc*., 2023 ONCA 533, at para. 9; *UM Financial Inc. v. Butler*, 2025 ONCA 844, at para. 7. Mr. Roy's claimed costs almost doubled the costs incurred by SRI. In the circumstances of this case, I would award costs of the appeal to Mr. Roy in the amount of $20,000, inclusive of applicable taxes and disbursements.

Released: May 15, 2026 "J.S."

"David M. Paciocco J.A."
"I agree. Janet Simmons J.A."
"I agree. P.J. Osborne J.A."