CITATION: *Gulzar v. Pioneer Mews Inc. et al*, 2026 ONSC 6049
COURT FILE NO.: CV-25-100766
DATE: 2026/10/26

2026 ONSC 6049 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Farah Gulzar, Plaintiff

-and-

Pioneer Mews Inc. and Annette Uetrecht-Bain and Jacqueline Boyd (McCague Borlack LLP), Defendants

BEFORE: Justice A. Doyle

COUNSEL: Self-Represented Plaintiff

Maxwell Gill for the Defendants

HEARD: October 15, 2026 at Ottawa

REASONS FOR DECISION

The defendant, Pioneer Mews Inc. (Pioneer), has brought a motion requesting that the court dismiss the action as against it pursuant to Rule 21.01(a) (b) (d) and Rule 25.06 alleging that the action is frivolous, vexatious and an abuse of the process of the court.

On January 12, 2026, Justice R. Smith dismissed the action as against the lawyer defendants, Annette Uetrecht-Bain, Jacqueline Boyd and McCague Borlack LLP, on the basis that these defendants were protected under absolute privilege.

On this motion, Pioneer submits that the same order should be made in relation to it.

The plaintiff objects to the motion, indicating that this issue has already been decided and that the claims as against Pioneer differ from claims against the lawyer defendants.

For the reasons that follow, the court grants Pioneer's motion.

Background

The plaintiff brought an action in Barrie for personal injury against Pioneer (Barrie action).

The plaintiff then brought an action against Pioneer and the lawyer defendants in Ottawa for intentional torts, fraudulent misrepresentation, fabrication of evidence, abuse of process and discrimination arising from the defendants' conduct during the litigation in the Barrie action. She also alleges *Charter* violations, human rights violations and discrimination under the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005. The plaintiff alleges that the lawyer defendants "fabricated email communications" filed in a motion record in the Barrie action.

The plaintiff brought a motion for default judgment in the Ottawa action and for an order striking the statement of defence on the basis that the defendants had been noted in default. The court dismissed that motion as the defendants had not been noted in default.

The lawyer defendants brought a cross-motion requesting a dismissal of the plaintiff's action on the basis that the allegations as against the lawyer defendants stem from statements that they allegedly published on behalf of their client, Pioneer, in the Barrie action and are subject to absolute privilege.

The plaintiff opposed the motion indicating that fraud vitiates this defence and the lawyer defendants' conduct constitutes an abuse of process and was undertaken in bad faith.

Ms. Uetrecht-Bain and McCague Borlack LLP were Pioneer's lawyers, and Ms. Boyd was the legal assistant employed by them.

In his decision dated January 12, 2026, Justice R. Smith considered the leading case of *Salasel v. Cuthbertson* 2015 ONCA 115 in which the Ontario Court of Appeal held that absolute privilege attaches to all actions taken, words spoken and documents delivered by a lawyer in a legal proceeding. At para. 38, the Court of Appeal stated that absolute privilege bars any action in tort and is not restricted to defamation claims. See also *Rahman v. Elia Associates* 2025 ONCA 16.

In *Royal Bank of Canada v. Tehrani* 2009 CanLII 39055, the Superior Court Justice stated that the privilege was absolute and could not be defeated by evidence of malice or any wrongdoing.

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In conclusion, Justice R. Smith dismissed the plaintiff's claim against the defendant lawyers on the basis that the alleged actions and statements made by them were protected by absolute privilege.

Pioneer sought clarification from the court on its alleged cross-motion to dismiss the plaintiff's claim based on rule 2.1 alleging that the Ottawa claim was the same as the claim in the Barrie action.

In his endorsement dated April 23, 2026, Justice R. Smith clarified that his ruling did not address or rule on whether the plaintiff's Ottawa claim against Pioneer should be dismissed based on Rule 2.1 or on the basis that Pioneer could rely on the defence of privilege, as its lawyers could.

Justice R. Smith held that Pioneer did not file a cross-motion that had sought to dismiss the Ottawa action based on rule 2.1. Also, the plaintiff did not respond to this aspect of the relief sought nor was it argued in any detail before him.

Justice Smith ordered that the issue of Pioneer's request for a dismissal pursuant to rule 2.1 or on the basis that it should also benefit from the defence of privilege should be decided on a motion. He set a timeline for the same.

The matter then came before Justice Kaufman, before whom the defendant requested an order staying or dismissing this action under rule 2.1.01 on the basis that it is a duplication of the Barrie proceeding.

Justice Kaufman noted that the Barrie action is a slip-and-fall claim whereas the Ottawa action is a claim for intentional torts, fraudulent misrepresentation, fabrication of evidence, abuse of process and discrimination arising from the defendants' conduct during the litigation in the Barrie action.

Justice Kaufman confirmed that the law under rule 2.1 permits the court to stay or dismiss a proceeding only where it is plain and obvious on the face of the pleading that the action is frivolous, vexatious, or an abuse of process. It should apply only in the clearest of cases.

Justice Kaufman held that the two proceedings are for different claims, difference causes of actions and different time periods and different legal duties.

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He held that the Ottawa action does not attempt to re-litigate any issues raised in the Barrie action.

With respect to the issue of whether the claim against Pioneer should be dismissed on the basis of privilege, the court held that this would be decided on a motion not under rule 2.1.

The plaintiff has appealed Justice R. Smith's order and the hearing is set to be heard at the Ontario Court of Appeal on January 14, 2027.

Discussion

Issue Estoppel

Given that the plaintiff has raised issue estoppel, it is important to outline the differences between a motion under rule 2.1.01, which was decided by Justice Kaufman, and this motion, which is based on rule 21.01 of the Rules of Civil Procedure.

Rule 2.1.01 permits the court to stay or dismiss a proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process.

It is designed to eliminate proceedings that are obviously abusive and is reserved for the clearest of cases. The court looks primarily at the face of the pleading and asks whether the proceeding is obviously frivolous, vexatious, or abusive.

Rule 21.01 allows a party to bring a motion on specified legal grounds before trial. These include:

- determination of a question of law,
- no reasonable cause of action or defence,
- lack of jurisdiction,
- lack of capacity,
- another proceeding pending, or
- an abuse of process.

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Specifically, rule 21.01(3)(d) permits a defendant to move to stay or dismiss an action on the ground that "the action is frivolous or vexatious or is otherwise an abuse of the process of the court". Any action for which there is clearly no merit may qualify for classification as frivolous, vexatious or an abuse of process, with a common example being the situation where a plaintiff seeks to relitigate a cause which has already been decided by a court of competent jurisdiction. A court only invokes its authority under rule 21.01(3)(d) or pursuant to its inherent jurisdiction to dismiss or stay an action in the clearest of cases: *Currie v. Halton (Region) Police Services Board*, 2003 CanLII 7815 (ON CA), [2003] O.J. No. 4516, 233 D.L.R. (4th) 657 (C.A.), at paras. 17 and 18.

The rule requires "a hard look at the factual background, and especially the position and conduct of the parties".

No evidence is admissible on a motion under R. 21.01(1)(b) without leave of the Court.

In order to strike out a pleading on the ground that it discloses no reasonable cause of action, the court must be satisfied that it is plain, obvious and beyond a doubt that the claim cannot succeed: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959 (S.C.C.).

Therefore, the issue of whether Pioneer can raise the defence of absolute privilege has not yet been determined by a court.

Absolute Privilege

In *Sauvé v. Merovitz*, 2006 CanLII 35986 (ON SC), affirmed by the Court of Appeal in 2008 ONCA 70, Justice R. Smith summarized the case law explaining the reasoning behind absolute privilege:

> [32] In *Dooley v. C.N. Weber Ltd.* (1994) 1994 CanLII 7300 (ON CTGD), 19 O.R. (3d) 779 (Gen.Div.), Reilly J. reviewed the relevant jurisprudence on absolute privilege as it related to pleadings, and concluded that absolute privilege attached to pleadings and statements contained in pleadings and held that they may not be used as the basis for a cause of action, even for abuse of process.

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[33] In *Dooley*, *supra*, the Court referred to the 1883 English Court of Appeal decision of *Munster v. Lamb* (1883), 11 Q.B.D. 588, 52 L.J.Q.B. 726 (C.A.), where the Court assumed that the words uttered by the solicitor were uttered maliciously without justification or excuse, and from the indirect motive of personal ill will or anger towards the prosecutor arising out of some previous existing cause, and stated as follows:

… nevertheless, inasmuch as the words were uttered with reference to, and in the course of, the judicial inquiry…no action will lie against the defendant, however improper his behaviour may have been.

And at page 600-01, stated that

Certain persons can claim the benefit of privilege which arises related to everything said or written in the course of an inquiry as to the administration of the law, and without making an exhaustive enumeration I may say that those persons are judges, advocates, parties and witnesses.

[34] The *Munster* decision, *supra*, further outlines the importance of allowing a lawyer representing a party to argue for his or her client's position to the best of his or her ability without fear of being sued for any statement which may be made during submissions. If counsel were not protected by an absolute privilege for what they say in submissions, pleadings or in affidavits and factums, then it would make it extremely difficult for counsel to properly perform their role on behalf of their clients in a judicial proceeding, as they would be in constant fear of being sued by the opposing party.

[35] The English Court of Appeal in *Munster* also quoted from the text, Gatley on Libel and Slander, 8th ed. (1974), at page 160, which referred to *Razzell v. Edmonton Mint Ltd.*, 1981 CanLII 1198 (AB QB), [1981] 4 W.W.R. 5 (Alta. Q.B.), where Dea J. stated that public policy and convenience require that in the following circumstances a man should be free from responsibility for publication of defamatory words and that an absolute privilege attaches to the following statements:

1. Statements made in the course of judicial proceedings;

2. Statements made in the course of quasi-judicial proceedings;

3. Statements contained in documents made in judicial or quasi-judicial proceedings.

I agree and find that absolute privilege attaches in the above three circumstances.

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[36] Similar conclusions were reached in Ontario in the cases of *Web Offset Publications Ltd v. Vickery* (1998) 1998 CanLII 14858 (ON CTGD), 40 O.R. (3d) 526 (Gen.Div.); aff'd 1999 CanLII 4462 (ON CA), 43 O.R. (3d) 802*n* (C.A.) and in *Hall v. Baxter* (1922), 22 O.W.N. 207 (H.C.J.), where Order J. made the following statement:

No action will lie for defamatory statements made or sworn in the course of a judicial proceeding before any Court of competent jurisdiction:" Odgers on Libel and Slander, 5th ed., p. 233. This defence of absolute privilege applies to statements in the writ, in the pleadings, and in affidavits, as well as to statements by the Judge, counsel, and witnesses in open Court. And the privilege is extended to statements though made falsely and maliciously.

[37] In the Law of Defamation, second edition, Volume I, by Raymond E. Brown, Carswell Thompson professional publisher, at page 1-34, the author states:

There is also an absolute privilege for all those communications made in the course of, or incidental to, the processing of and furtherance of judicial and quasi-judicial proceedings.

[38] Mr. Sauvé argues that a claim for absolute privilege is defeated by malice, but I find that this is clearly not the case for statements made by counsel at a motion or in affidavits or in facta filed with the court based on the case law cited above.

[39] In the case of *Marrinan v. Vibart,* [1963] Q.B. 528, [1962] 3 All E.R. 380, the Court stated that it did not draw a distinction between actions framed in libel and slander or actions framed in defamation or conspiracy to defame. Sellers J.J. made the following statement at p. 535:

It has been sought in this case to draw a difference between the action of libel and slander, the action of defamation, and that which is set up in this case, one of conspiracy. I can see no difference in the principles of the matter at all. Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the Court and in the preparation of the evidence which is to be so given.

I find that same principles apply to the statements, made orally by a solicitor for a party in a courtroom or in documents filed in the course of a judicial proceeding, and any alleged conspiracy between the solicitor and his own client or other party for defamation based on the solicitor's

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> statements would also have no chance of success, as the solicitor's statements are protected by absolute privilege.
>
> [40] In *Dooley, supra,* the Court also stated:
>
> In my view, the same principles apply to the case at bar. It matters not whether the action is framed in libel or slander, in defamation, intentional infliction of mental suffering, intentional interference with economic interest, or abuse of process. To the extent that any action is based upon statements in a pleading, the claim will disclose no reasonable cause of action. Otherwise expressed, the action has no reasonable chance of success in law, and to permit it to continue would constitute an abuse of the process of the Court.

In *Rasouli v. Cuthbertson,* 2014 ONSC 3071, at para. 39, affirmed on appeal in *Salasel Cuthbertson* 2015 ONCA 115, the court stated:

> [39] What is true for the case against counsel is true for the party on whose behalf he writes the document. "The evidence of all witnesses or parties speaking with reference to the matter before the court is privileged, whether oral or written, relevant or irrelevant, malicious or not": *Samuel Manu-Tech Inc.,* at [page300] para. 19. It is an abuse of process to bring a proceeding that is in violation of the doctrine of absolute immunity.

In *Samuel Manu-Tech Inc. v. Redipac Recycling Corporation*, 1999 CanLII 3776 (ON CA), the appellant, a former equity owner and president and CEO of Redipac, was removed from his position following allegations of financial misconduct. The respondent, Samuel Manu-Tech, a public company with a significant equity investment in Redipac, obtained court orders appointing a receiver and removing the appellant from the premises. These orders were based on affidavits from two individuals associated with the respondents, which the appellant later alleged were false and misleading. The appellant initiated a counterclaim for damages, asserting malicious prosecution and intentional interference with contractual relations.

The motions judge struck out the appellant's counterclaims for intentional interference with contractual relations, holding that the affidavits relied upon were protected by absolute privilege. However, the judge dismissed a summary judgment motion by Samuel Manu-Tech regarding the malicious prosecution claim, finding a genuine issue for trial.

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The Court of Appeal affirmed that affidavits filed in legal proceedings are protected by absolute privilege, which extends to all evidence, whether oral or written, relevant or irrelevant, malicious or not. This privilege precludes any action, including claims for intentional interference with contractual relations, based on such evidence.

Conclusion

I assume that the factual allegations made by the plaintiff in the Ottawa action are true.

The plaintiff has made numerous claims against Pioneer and the lawyer defendants on the basis that they provided false information to the court in the Barrie action.

Her statement of claim alleges several causes of action based on this false information: fraud, fabrication of evidence, obstruction of justice, systemic discrimination and *Charter*, human rights violation by the defendants.

She further articulates in her statement of claim that the defendants sent false information to the Barrie court in a motion to dismiss dated March 19, 2025, and that they relied on this fabricated email evidence which violated the *Rules* and obstructed the plaintiff's legal process through abuse of procedures and fraudulent representations.

Specifically, the plaintiff alleges at para. 1:

> The defendants knowingly used fabricated email communications as evidence in support of a Motion to dismiss, which was filed under false pretenses. The motion was granted without proper notice of service to the plaintiff in violation of procedural fairness.
>
> The defendants' conduct constitutes both civil and criminal wrongdoing, including misrepresentation and abuse of court process, which caused severe harm t to the plaintiff.

She makes specific allegations against the lawyer defendants founded on the allegation that they submitted fraudulent emails and fabricated evidence in support of a motion to dismiss.

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She reserves the right to pursue the matter through the criminal process and alleges obstruction of justice, fabrication of evidence, perjury, public mischief, and seeks a penalty through the criminal process for *Criminal Code* violations.

Regarding the civil grounds (para. 2), she makes allegations against), lawyer defendants and then again repeats fraudulent misrepresentation, abuse of process, violation of natural justice and of the Rules, human and *Charter* violations and human rights code violations. And *Accessibility for Ontarians with Disabilities Act* and then claims damages.

Justice Smith found that the allegations contained in the statement of claim relate to statements made by Pioneer's counsel in the Barrie action that are protected by absolute privilege and are not actionable.

Based on the above case law, the defence of absolute privilege also extends to the client of the lawyer defendants, Pioneer.

I therefore order that the plaintiff's claim against Pioneer shall be struck out as being frivolous, vexatious and an abuse of the process of the court.

Costs

As the successful party, Pioneer is presumptively entitled to costs. They are requesting costs on a partial indemnity basis for the costs of the action in the amount of $15,930.66 and $5,632.60 for the costs of the motion.

I note that the cost of the action includes motions before Justice Smith, requesting clarification from Justice Smith and a failed motion before Justice Kaufman. The plaintiff should not be responsible for those costs.

The court will restrict ordering costs for this motion only. I note that the plaintiff indicates that she is on ODSP and has a disability and is of limited means.

An appropriate figure should take into account the factors set out in Rule 57. I award the costs of $3,000 to Pioneer.

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Justice A. Doyle

Date: October 26, 2026

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Pioneer Mews Inc. and Annette Uetrecht-Bain and Jacqueline Boyd (McCague Borlack LLP), Defendants

COUNSEL: Self-Represented Plaintiff

Maxwell Gill for the Defendants

REASONS FOR DECISION

DOYLE J.

Released: October 26, 2026

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