

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** MANDIE EDDIE., Plaintiff

**AND:**

ROBERT LEPP (aka BOB LEPP), Defendant

**BEFORE:** Sossin J.

**COUNSEL:** Gwendolyn Adrian, Counsel for the Plaintiff

Robert Lepp, for himself

**HEARD:** November 15, 2019

**REASONS FOR JUDGMENT**

**OVERVIEW**

[1] The plaintiff, Mandie Eddie (“Eddie”), is suing the defendant, Robert Lepp (“Lepp”), for defamation.

[2] Eddie was Manager of By-Law Enforcement for Aurora between April, 2015 and February, 2018. After that contract, she then worked as a Municipal By-Law and Property Standards Officer for the town of Erin between April and October, 2018.

[3] Lepp is a resident of Aurora, who publishes a blog.

[4] The litigation arises from a chance meeting between the parties at the Sheppard’s Bush park in Aurora on June 3, 2017. Lepp’s two dogs were running loose in the park, and their trailing leashes wrapped around Eddie. After discovering that the dogs belonged to Lepp, she told him that she could give him a ticket. Eventually, after an exchange of comments between them, Eddie cited Lepp with a ticket for allowing a “dog to run at large.”

[5] Lepp did not dispute that his dog was loose, but did object to the fine and to the conduct of Eddie.

[6] Lepp responded with a number of posts about the incident, and a series of communications about Eddie.

[7] Eddie issued a statement of claim against Lepp on November 9, 2018, seeking \$850,000 as general damages for defamation, \$50,000 in aggravated damages, \$50,000 in punitive damages, and special damages to be determined at trial.

[8] Lepp served a statement of defence on November 28, 2018, denying all of the allegations of defamation, as well as denying that Eddie suffered any damages.

[9] Lepp states that he has been arrested several times at the instigation of Eddie, and each time either no charges were pursued or the charges were stayed. For example, on July 14, 2017, he states that he was arrested on charges of harassment against Eddie, which were stayed on November 3, 2017.

[10] Lepp brings this motion to strike the action under s.137.1 of the *Courts of Justice Act* (“CJA”) known as a provision relating to strategic lawsuits against public participation (“SLAPP”).

[11] For the reasons that follow, this motion is dismissed.

### **ANALYSIS**

[12] Section 137.1 of the CJA provides:

137.1(1) The purposes of this section and sections 137.2 to 137.5 are,

137.2 (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.

[13] The key issues to be determined in a SLAPP motion are:

- a. first, whether the impugned expression was made in the public interest within the meaning of s.137 of the CJA;
- b. second, if the expression was made in the public interest, whether the plaintiff's case has substantial merit and whether the defence may fail; and
- c. third, whether the public interest in permitting the suit to continue in order to prevent harm to the plaintiff outweighs the public interest in the defendant's freedom of expression.

[14] The purpose of this legislative reform should also be borne in mind when applying the test set out in the CJA. In *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 ("*Pointes*"), Doherty J.A. referred to the Anti-SLAPP Advisory Panel Report and the goals of the Anti-SLAPP provision in the CJA in the following terms (at paras. 28-29):

[28] The pertinent history of Ontario's Anti-SLAPP legislation begins with the 2010 Report of the Anti-SLAPP Advisory Panel to the Attorney General. Many of the Panel's recommendations ultimately found their way into the legislation.

[29] In the Report, the Panel recognized the need to protect and foster a broad spectrum of expression relating to matters of public interest. The Panel proposed a pretrial procedure designed to quickly and inexpensively identify and dismiss those unmeritorious claims that unduly entrenched on an individual's right to freedom of expression on matters of public interest. The Panel observed, at para. 18 of its Report:

The legislation should therefore state that the purpose of the statute is to expand the democratic benefits of broad participation in public affairs and to reduce the risk that such participation will be unduly hampered by fear of legal action. It would seek to accomplish these purposes by encouraging the responsible exercise of free expression by members of the public on matters of public interest and by discouraging litigation and related legal conduct that interferes unduly with such expression.

[15] With this context in mind, I consider the threshold issue of whether the impugned communications in this case constituted expression related to the public interest.

**1) Were Lepp’s Communications about Eddie expression relating to the public interest within the meaning of the CJA?**

[16] Under s.137.1 of the CJA, a defendant bears the onus of proving that the litigation arises out of the defendant’s expression about a matter of public interest. The phrase “public interest” will take its meaning from the circumstances of the specific case. The question I must address is: what is the communication impugned in the lawsuit about? (*Veneruzzo v. Storey*, 2018 ONCA 688, at para. 24)

[17] In order to determine whether the communications relate to the public interest it is necessary to consider the communications as a whole, just as defamatory remarks generally should not be considered in isolation; *Grant v. Torstar*, 2009 SCC 61 at para. 101 (“*Grant*”).

[18] The allegedly defamatory communications from Lepp include those sent by email from three different accounts to various, multiple recipients, and through blog posts.

[19] Lepp argues that his communications were expressions about the public interest. He emphasizes that Eddie held a position of public authority at the time of his communications, and that his communications were intended as criticism of her work in that role. He asserts that as soon as she no longer had a public position either in Aurora or Erin, his posts about her ceased.

[20] Eddie argues that Lepp’s posts may have mentioned her position, but taken as a whole, the communications amount to criticisms of Eddie as a private individual. As Eddie states in her factum, “For Lepp, this was not public or policy: this was personal and this was war.” (at para. 54).

[21] In *Pointes*, Doherty J.A. highlights that the phrase “public interest” in s. 137.1(3) of the CJA is not qualified in any way. In other words, the expression need not actually further the public interest nor are distinctions among expressions based on the quality, merits, or manner of the expression appropriate in this analysis. Whether or not the expression is true also plays no role at this stage of the analysis. Indeed, Doherty J.A. adds that, “An expression that relates to a matter of public interest remains so if the language used is intemperate or even harmful to the public interest.” (para. 55)

[22] Eddie raises the following impugned communications as demonstrative that Lepp’s communications related to her as a person and not to her public activities:

- a. On July 27, 2017, Lepp posted a blog, in which he wrote, “Mandie Eddie, as a private citizen, lied and swore out criminal complaints of uttering threats and harassment by telephone against me and I was arrested.” (Emphasis added.)
- b. On December 15, 2017, Lepp posted a blog, in which he wrote, “Her resume was faked to get the Manager job in Aurora after being just a volunteer fireman in the Rockies.” (Emphasis added.)
- c. On January 8, 2018, Lepp posted a blog, in which he wrote, “She is someone who lied 42 times to two courts to have me arrested...” (Emphasis added.)

- d. On March 31, 2018, Lepp posted a blog, in which he wrote, “Mandy no longer has a job. See, she lied to police about me harassing her by emails and after threatening to call her police buddies to arrest me, July 14, she lied to police and I was arrested...” (Emphasis added.)
- e. On April 21, 2018, Lepp posted a blog, in which he wrote, “Mandie Eddie is gone in disgrace ... She got caught up in her lies.” (Emphasis added.)
- f. On August 19, 2018, Lepp wrote an email to the Mayor of Aurora and all the town’s councilors, stating Mandie Eddie “has been admonished twice in Erin for soliciting bribes in the form of giving work to her boyfriend to avoid pool fence tickets.” (Emphasis added.)

[23] These various communications, taken in context, had the effect of portraying Eddie as someone who is a liar, and corrupt, and who acted improperly, particularly in causing Lepp to be arrested. Those arrests were initiated by complaints by Eddie acting in her capacity as a private individual, and had no connection to any actions by Eddie in relation to her public duties.

[24] I find that the complaints about Eddie’s honesty and integrity and actions in relation to the criminal charges against Lepp do not relate to matters of public interest within the meaning of s.137.1 of the CJA.

[25] A number of other communications by Lepp alleged to be defamatory relate to Eddie’s mental health status. For example, in an email sent to a number of individuals including Aurora’s mayor, councillors and others, with the subject line, “Evidence from YRP versus Bob Lepp, August 22, 2017 Mandy CRAWFORD/Eddie, sexually abused, lifelong depression,” Lepp stated:

I look forward to the police dropping charges against me by a woman with a very troubled past ... She recently underwent a name change. It likely bothered her and her sleep and social drinking habits ... Depressives on medication are not to consume ANY alcohol ... She as certainly not in a normal state when she assaulted me in Sheppard’s Bush June 3 ... Her lifelong depression (treated??) and teenage sexual abuse make her what she is today. That affects her attitudes toward men and emails from men. They cause her to react “differently” to men who email her simple social media posts back to her. That was me. ... She feared that I had started to discover her depression, her failed police career, becoming a “professional closet organizer” when she quit the force due to depression.

[26] Lepp contends that the basis for these communications were disclosures by Eddie about her own mental health on her blog and posts. At this stage of the analysis, however, the question is whether such communications relate to the public interest, not whether they are true or caused harm. I do not see how there is any public interest dimension in the mental health of a town employee. By contrast, these communications, whether defamatory or not, illustrate the way in which Lepp’s communications focused on Eddie as a person rather than as an official exercising public authority.

[27] In *Pointes*, Doherty J.A. addressed the possibility that communications relate to more than one matter (at para. 65):

The determination of whether an expression relates to a matter of public interest must be made objectively, having regard to the context in which the expression was made and the entirety of the relevant communication. An expression may relate to more than one matter. If one of those matters is a “matter of public interest”, the defendant will have met its onus under s. 137.1(3).

[28] While Lepp first encountered Eddie through her public role as a by-law enforcement officer for Aurora, his communications about Eddie herself were primarily personal. As Justice Doherty stated in *Pointes* (at para. 61), “Public people are entitled to private lives.” In other words, communications about private matters are not converted into matters relating to the public interest where those expressions happen to concern individuals in public positions or who attract the public’s attention.

[29] In reaching my conclusion, I am also guided by Doherty J.A.’s comments in a companion case to *Pointes*, *Veneruzzo v. Storey*, 2018 ONCA 688, which focused on whether the communications at issue were expressions about matters relating to the public interest. In that case, the Court considered whether the fact that some communications appeared unrelated to the private dispute between the parties could lead to the conclusion that the communications as a whole were directed to the public interest. Doherty J.A. concluded (at para. 20):

A defendant who makes statements about a purely private matter cannot gain the protection of s. 137.1(3) by interspersing references to some other topic that may relate to a matter of public interest.

[30] While Lepp’s interest in Eddie may have begun with a concern about her exercise of public by-law duties, and the ticket he received in the park, his communications expanded to topics about Eddie that were private matters, such as her honesty and integrity and her mental health status, and it is these communications about Eddie that form the basis of this defamation suit. Considering the impugned communications as a whole, I find that they do not relate to matters of public interest.

[31] For these reasons, I find that Lepp has not established that the communications alleged to be defamatory in this suit fall under the purview of s.137.1 of the CJA.

[32] Under s.137.1 of the CJA, where a defendant establishes that the communications at issue relate to public interest, the plaintiff then bears the onus of establishing that the defamation suit has substantial merit, and supported by evidence that could lead a reasonable trier of fact to conclude the claims has a real chance of success.

[33] Since I have found that the communications, as a whole, do not constitute expression made by the defendant that relates to a matter of public interest, it is not necessary to consider whether Eddie can establish that her defamation suit has “substantial merit” or that Lepp’s defences to this action are likely to fail.

[34] Additionally, it is not necessary that I balance the public interest in permitting the suit to continue in order to prevent harm to the plaintiff against the public interest in the defendant's freedom of expression.

[35] I add, to the extent it is relevant, that this litigation does not have the hallmarks of SLAPP litigation. The parties are not in significant different positions financially or with respect to their vulnerability. Each pleads that they have been targeted by the other in legal actions. This litigation has all the hallmarks of a private dispute about alleged, private wrongs.

### **CONCLUSION AND COSTS**

[36] For the reasons above, Lepp's motion to dismiss Eddie's claim under s.137.1 of the CJA is dismissed.

[37] There is a presumption against costs when defendants bring anti-SLAPP motions under s.137.1 of the CJA.

[38] Eddie argues that notwithstanding this presumption, she should be entitled to costs on a substantial indemnity basis.

[39] In *Storey*, Doherty J.A. considered an appeal against a costs order in favour of a plaintiff in circumstances where a defendant was unsuccessful in an anti-SLAPP motion. He upheld the trial judge's exercise of discretion:

[38] The motion judge's reasons for ordering costs in favour of the respondents are consistent with the rationale for the costs provisions in s. 137.1. Those sections are designed to encourage defendants, who have been sued over expressions on matters of public interest, to bring s. 137.1 motions for an early dismissal of those claims. The costs provisions ease the financial burden and risk placed on the defendant who seeks an early termination of what it claims is a SLAPP: *Accruent LLC v. Mishimagi*, 2016 ONSC 6924 (CanLII), 9 C.P.C. (8th) 136, at para. 4.

[39] The purpose underlying the costs provisions in s. 137.1 disappears when the lawsuit has none of the characteristics of a SLAPP, and the impugned expression is unrelated to a matter of public interest. In those circumstances, it is not the initial lawsuit challenging the expression that represents a potential misuse of the litigation process, but rather the s. 137.1 motion. A costs order denying a successful respondent its costs on a s. 137.1 motion, even though the lawsuit was not brought for an improper motive and the claim did not relate to a matter of public interest, could be seen as encouraging defendants to bring meritless s. 137.1 motions. (Emphasis added.)

[40] While I acknowledge that costs may be awarded in cases where a defendant has been unable to establish that the communications at issue related to the public interest, this is not a case where an anti-SLAPP motion "represents a potential misuse of the litigation process."

[41] Lepp initiated his criticisms of Eddie in relation to a by-law infraction, and some of those criticisms are interspersed with criticisms of the towns of Aurora and Erin which employed her and the lack of oversight over her in her roles with those towns. While I have found that, taken as

a whole, the communications at issue in this defamation suit do not relate to the public interest within the meaning of the CJA, Lepp's arguments to the contrary were not without merit.

[42] For these reasons, I do not find this an appropriate case for costs to be awarded against Lepp. Rather, I find this an appropriate case for the general presumption against costs under Rule 137.1 of the CJA to apply. Therefore, there shall be no order for costs.

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Sossin J.

**Released:** December 10, 2019