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Is Now the Time to Consider Anti-SLAPP Legislation in Alberta? A Reflection on *Pointes Protection*

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Case Commented On: [1704604 Ontario Limited v. Pointes Protection Association, et al;](#)
1704604 Ontario Ltd. v Pointes Protection Association, [2018 ONCA 685 \(CanLII\)](#)

In November of last year, the Supreme Court of Canada (SCC) heard a case between *1704604 Ontario Limited* and the *Pointes Protection Association* involving Ontario's attempt at curbing Strategic Lawsuits Against Public Participation (SLAPPs). As we expect a decision from the SCC soon, it is an appropriate time to reflect on how the *Pointes Protection* case has the potential to impact implementation of anti-SLAPP legislation in Alberta. At the center of the case was a recent revision to Ontario's Rules of Court, which has been commonly referred to as an 'anti-SLAPP' provision.

Strategic Lawsuits Against Public Participation (SLAPPs) are lawsuits intended to intimidate or overwhelm a defendant by forcing them into a legal battle aimed at exploiting their time, energy and resources, in order to prevent them from focusing their efforts on their original cause (see Byron Sheldrick, *Blocking Public Participation: The Use of Strategic Litigation to Silence Political Expression* (Waterloo, ON: Wilfrid Laurier University Press, 2014) at 1-2). For the purposes of this post, we consider any action brought by a large, financially stable entity such as a corporation or government against individuals or organizations for the primary or substantial purpose of ending public criticism to be a SLAPP lawsuit. SLAPP defendants—such as journalists, activist organizations or outspoken individuals—tend not to be wealthy, and often cannot sustain both their political activism and their legal battles against the SLAPP plaintiffs. Hence, SLAPP lawsuits have a problematic dimension of silencing public participation in a broad sense because of the fear some activists may have of getting 'SLAPP'ed by lawsuits by 'deep-pocket' corporations, governments and similar entities.

Anti-SLAPP legislation works to combat these types of lawsuits in order to protect public participation as well as to prevent an abuse of court processes, which in the past has been utilized as a strategy by government agencies and corporations in an effort to overwhelm and silence their critics. Currently, only three provinces in Canada have enacted anti-SLAPP legislation – [Quebec](#), Ontario, and [British Columbia](#). Ontario's anti-SLAPP provision, section 137.1 of the *Courts of Justice Act*, [RSO 1990, c C.43](#) – titled "Dismissal of proceeding that limits debate" – was at the heart of the *Pointes Protection* case.

As we await the SCC's decision in *Pointes Protection*, this post will discuss why Alberta needs anti-SLAPP legislation as well as the background to the enactment of Ontario's anti-SLAPP legislation. We will then compare the main issues discussed in the factums of the appellant,

respondent, and the intervenors in *Pointes Protection* regarding section 137.1 and how it should be interpreted. We argue that *Pointes Protection* can provide an adequate framework for introducing anti-SLAPP legislation in Alberta, should the SCC interpret section 137.1 broadly.

Why Does Alberta Require Anti-SLAPP Legislation?

Alberta currently does not have any anti-SLAPP legislation in place. While our Rules of Court allow for a motion or filing to be set aside if it is found to be an [abuse of process](#) or brought for an [improper purpose](#), the lack of specific anti-SLAPP legislation leaves individuals and organizations in Alberta vulnerable to frivolous litigation. The term ‘strategic’ is key here – SLAPP suits are brought by groups and counsel who know enough about the Rules of Court to ensure their suits appear legitimate. The purpose of these lawsuits is not to waste the courts’ time; rather, to pressure their opponent into spending time and resources in order to silence their expression.

Some will argue that this is simply how our court systems were designed to work – the civil system has loopholes and rules which force lawyers to be creative. However, while these tactics may be commonplace in the private sphere, it is our opinion that strategic litigation has no place in the public sphere. Public participation is highly valued because it enhances our democracy. Rather than suppressing or chilling citizen engagement, our systems should work to encourage it. Published in 2010, [Ontario’s Anti-SLAPP Advisory Panel Report to the Attorney General](#) (Advisory Panel Report) speaks directly to this point, holding that it “is also important that the public resources of the court system not be expended on litigation that is not of substantial merit and is contrary to the public interest” (at para 10).

The Advisory Panel Report also found that the safeguards already in place, such as those mentioned above, do not offer the necessary support to individuals threatened by SLAPP suits. Rather, the Panel found “in practice, these remedies are not effective. Courts are often reluctant to dismiss cases on preliminary motions based on affidavit evidence and oral argument” (at para 11). Further, the Panel found that although some rules exist that can limit SLAPP suits, in order to directly target and impede potential SLAPP suits, it is important to create new legislation that explicitly addresses this specific type of litigation abuse (at para 14).

Alberta has its share of legal disputes over public commentary, and either of these two recent examples could have triggered the operation of anti-SLAPP procedure. In 2014, Calgary Mayor Naheed Nenshi was sued for 6 million dollars in a [defamation suit](#) over a comment he made regarding a local developer. During the course of these proceedings, Mayor Nenshi was estimated to have spent just under [\\$300,000 in legal fees](#). Recently, Progress Alberta was [allegedly threatened to be ‘SLAPPED’](#) with a lawsuit from Rebel Media. [Progress Alberta](#) is an advocacy group that focuses on political and community organizing. While we do not have enough information, here, to conclude that either of these matters is a SLAPP, each demonstrate the relevance anti-SLAPP legislation would have in Alberta.

The Importance of Anti-SLAPP Legislation (Ontario Context)

Before examining *Pointes Protection*, it is useful to look at why anti-SLAPP legislation was introduced in Ontario.

Anti-SLAPP legislation was deemed necessary, and in the public interest, due to the negative effect SLAPP lawsuits have had both on members of the community and on public participation in Ontario. As set out in the Advisory Panel Report, “it will always be important to recognize and protect [public participation], but more than ever it seems crucial to encourage public participation [in Canadian society] as voter turnouts decline, [and] society’s needs become ever more complex and individuals feel increasingly powerless to effect meaningful change” (at para 4). SLAPP lawsuits, or even the threat thereof, deter significant numbers of people from participating in public issues. This is widely perceived as an issue that threatens the very cornerstone of democracy. When community members and civil society organizations are discouraged from expression, it can create a chilling effect on citizen engagement in public discussions (at para 4). Due to the important work civil society organizations undertake, the Advisory Panel Report recommended that the Ontario government take active steps to protect and promote this work by enacting targeted anti-SLAPP legislation (at para 16). The resulting measure was the addition of sections 137.1 to 137.5 to Ontario’s *Courts of Justice Act*.

Ontario’s Anti-SLAPP Legislation

Section 137.1’s explicit purpose is the “Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest”, and it conforms to the recommendations set out by the Advisory Panel Report. Section 137.1 provides a preliminary, pretrial procedure for a defendant to seek dismissal of a lawsuit that arises out of a defendant’s expression on matters related to public interest and against the plaintiff.

Section 137.1(1) lists four further purposes: (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 limiting expression on matters of public interest; (d) and to reduce the risk that participation in public forums related to matters of public interest will be hampered by the fear of legal action . Despite not explicitly mentioning the term “SLAPP”, section 137.1(1)(c) is aimed at discouraging litigation that unduly limits expression on matters of public interest.

Furthermore, the term “expression” is defined quite broadly in section 137.1(2): ““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.” The ‘spirit’ of anti-SLAPP legislation can also be found in section 137.1(3), which states that if a proceeding arises from an expression made by the defendant related to a matter of public interest, and the expression in question is the main reason for the suit, the judge can dismiss the proceedings. While not using this language explicitly, the purpose of section 137.1(3) is to identify whether an action is a SLAPP suit. The onus is on the defendant to raise section 137.1 and demonstrate that it applies to the proceedings in order to throw out the suit against them.

Finally, section 137.1(4) sets out the test which determines whether or not a lawsuit can be dismissed under section 137.1(3). At this point, the provision shifts the onus onto the plaintiff. Once the defendant has raised enough evidence that section 137.1 applies to the proceeding, the plaintiff must prove that: (a) the proceeding has substantial merit, (b) the defendant has no valid defence, and (c) the harm caused to the plaintiff by the expression in the public interest is sufficiently serious and outweighs the importance put on protecting the expression.

With this overview of the legislation, we will now discuss the *Pointes Protection* case, beginning with a brief summary of the case and the lower court decisions.

Factual Background to the *Pointes Protection* case

In September 2015, 1704604 Ontario Limited – a development company – brought a breach of contract suit against the Pointed Protection Association (PPA), a local community group in the Pointe Louise area of Sault Ste. Marie, Ontario. 1704604 Ontario Limited sought to develop a 91-lot subdivision (the Development) within land designated as coastal wetlands. As the proposed Development was to be built on a wetland, the project required the approval of Sault Ste. Marie Region Conservation Authority (SSMRCA). After the SSMRCA initially approved 1704604 Ontario’s Limited’s development proposal, the PPA filed an application for judicial review of this decision due to their concerns that “the Development would destroy a substantial portion of the wetland, interfere with hydrologic function of the wetland, and degrade surface and ground-water” ([1704604 Ontario Limited SCC Factum](#), at para 24).

PPA’s judicial review application was eventually settled by way of Minutes of Settlement (the Minutes) dated September 17, 2013 (1704604 Ontario Limited, at para 30). The Minutes agreed that: the dismissal of PPA’s judicial review application would be on a “with prejudice” basis; the PPA could not seek the same or similar relief in further proceedings, that no untrue comments or statements would be made by the PPA regarding the settlement; and that the PPA would not claim the decision made by the SSMRCA was illegal, invalid or contrary to relevant legislation (1704604 Ontario Limited, at para 31; [PPA SCC Factum](#) , at para 20). However, one of the reasons the PPA entered into the Minutes of Settlement was on the basis that 1704604 Ontario Limited would not oppose the PPA from being added as a party to the Ontario Municipal Board (OMB) appeal regarding the approval status of the Development (PPA SCC Factum, at para 19).

The PPA, now a party at the OMB hearing, gave evidence regarding the impact of the Development on the wetland. This testimony was one of the factors that resulted in the OMB dismissing 1704604 Ontario Limited’s appeal for the approval of the Development (PPA SCC Factum, at para 25).

1704604 Ontario Limited subsequently filed a breach of contract suit against the PPA, alleging that the PPA had testified against the Development, contrary to the agreed settlement. 1704604 Ontario Limited claimed that the PPA had contracted out of its right to express any concerns regarding the Development when they agreed to the Minutes. The PPA, on the other hand, argued there was no merit in 1704604 Ontario Limited’s claim because at the OMB hearing, the PPA had not alleged that the SSMRCA decision was illegal or improper, rather that the Development itself “did not comply with the provisions of the Sault Ste. Marie Planning Act regarding wetland development” (PPA SCC, at para 83). Further, the PPA argued that the suit

brought against them was a typical SLAPP lawsuit: a developer with deep pockets making a “frivolous claim alleging damages in millions of dollars, against a group of citizens who expressed their opposition to its development.” (PPA SCC Factum, at para 79)

Pointes Protection in the Lower Courts

PPA brought a motion for an order dismissing 1704604 Ontario Limited’s lawsuit. Justice Gareau of the Ontario Superior Court of Justice found that although PPA had met its burden under section 137.1(3), 1704604 Ontario Limited had also met its burden under section 137.1(4), and the application to dismiss the suit was rejected (see *1704604 Ontario Ltd. v Pointes Protection Association et al.*, [2016 ONSC 2884 \(CanLII\)](#)).

PPA appealed to the Ontario Court of Appeal (ONCA), and Justice David H. Doherty delivered judgement on behalf of the bench. In his decision, Justice Doherty stated:

The purpose of section 137.1 is crystal clear. Expression on matters of public interest is to be encouraged. Litigation of doubtful merit that unduly discourages and seeks to restrict free and open expression on matters of public interest should not be allowed to proceed beyond a preliminary stage. Plaintiffs who commence a claim alleging to have been wronged by a defendant’s expression on a matter of public interest must be prepared from the commencement of the lawsuit to address the merits of the claims and demonstrate that the public interest in vindicating that the claim outweighs the public interest in protecting the defendant’s freedom of expression. (*1704604 Ontario Ltd. v Pointes Protection Association*, [2018 ONCA 685 \(CanLII\)](#) at para 45)

Justice Doherty further noted that section 137.1 “assesses the potential merits of the claim and the effects of permitting the claim to proceed on competing components of the public interest” (at para 47).

Justice Doherty considered the different parts of section 137.1: The Threshold Requirement in section 137.1(3); The Merit Based Hurdle in section 137.1(4)(a); and the Public Interest Hurdle in section 137.1(4)(b).

He found that the Threshold Requirement in section 137.1(3) “puts the onus on the defendant (moving party) to satisfy the motion judge that: (i) the proceedings arise from an expression made by the defendant, and (ii) the expression relates to a matter of public interest.” Moreover, use of the word “satisfies” “indicates that the defendant must establish both criteria on the balance of probabilities” (at para 51).

Section 137.1(4)(a), or the Merits Based Hurdle, places the onus on the plaintiff (responding party) using the balance of probabilities as the applicable standard of proof. For Justice Doherty, the more difficult question was: “what is it that the plaintiff must prove on the balance of probabilities?” (at para 68). He found that “the motion judge must decide whether a trier could reasonably conclude that the plaintiff’s claim has “substantial merit”, and that the defendant has “no valid defence”. If the motion judge decides that both fall within the range of conclusions reasonably available on the motion records, the plaintiff has met the onus under s. 137.1(4)(a). If the plaintiff does not meet that onus, its claim will be dismissed.” (at para 75).

The last part of Justice Doherty’s analysis was the Public Interest Hurdle. He began by stating that 137.1(4)(b) is at the heart of Ontario’s anti-SLAPP legislation, as this hurdle represents “the legislature’s determination that the success of some claims that target expression on matters of public interest comes at too great a cost to the public interest in promoting and protecting freedom of expression” (at para 86). Here, “the plaintiff must satisfy the motion judge that the harm caused to it by the defendant’s expression is “sufficiently serious” that the public interest engaged in allowing the plaintiff to proceed with the claim outweighs the public interest in protecting the defendant’s freedom of expression” (at para 87). The harm suffered or likely to be suffered by the plaintiff can be measured both through monetary damages, or harm suffered to a party’s reputation (at para 88).

Applying this analysis of section 137.1 to the appeal, Justice Doherty established that 1704604 did not challenge the motion judge’s findings that the expression made by the PPA was expression relating to a matter of public interest, therefore meeting the 137.1(3) requirement (at para 105). Justice Doherty went on to hold that 1704604 Ontario Limited had not sufficiently met the onus required under 137.1(4)(a)(i), and the PPA was entitled to have the claim dismissed (at para 117). The motion judge had wrongly put the onus on the PPA to satisfy the court that they had a ‘valid defence’ (at para 119). Finally, turning to the Public Interest Hurdle, the court found that the motion judge had focused almost exclusively on the harm caused to 1704604 Ontario Ltd by the loss of their expectation that litigation with PPA over the development had finished (at para 120). Yet, Justice Doherty pointed out that even accepting that inference about the finality of litigation, there was no evidence of any other harm to 1704604 Ontario Ltd - in particular, no evidence of any damages suffered, or likely to be suffered, due to the alleged breach of the agreement (at para 121). The Court held that the claim of harm caused by the PPA was thus too weak to succeed (at para 123).

The analysis set out in the dispute between 1704604 Ontario Limited and Pointes Protection was to then be used in five other appeals where the primary issue was the interpretation of various aspects of section 137.1 (at paras 12-13; see the other cases in note 1 of the ONCA decision).

The ONCA decision was appealed by 1704604 Ontario Limited to the SCC, asking the Court to determine whether the ONCA correctly interpreted section 137.1.

The Appeal to the Supreme Court of Canada

The ‘Essential Character’ Test

At the SCC, 1704604 Ontario Limited, as the Appellant, claimed the ONCA interpreted section 137.1 of Ontario’s *Courts of Justice Act* as being “overly broad and unfettered in its scope and application” ([1704604 Ontario Limited SCC Factum](#), at para 5). According to 1704604 Ontario Limited, the ONCA’s interpretation set too high a bar for plaintiffs with valid claims and made it easier for defendants to invoke anti-SLAPP provisions (1704604 Ontario Limited Factum, at para 10). 1704604 Ontario Limited cited concerns about misuse of the legislation by defendants who wanted to throw out potentially valid lawsuits against them (1704604 Ontario Limited Factum, at para 10).

1704604 Ontario Limited argued that section 137.1 should not be invoked in situations where contractual obligations already limit the defendant’s freedom of expression, stating that the “[ONCA’s] interpretation of section 137.1 severely undermines the principles of freedom of contract, finality of settlements and access to justice.” (1704604 Ontario Limited Factum, at para 71). The Appellant, therefore, proposed that the SCC should adopt an essential character test, rather than the broad interpretation adopted by the ONCA (1704604 Ontario Limited Factum, at para 70).

According to 1704604 Ontario Limited, in determining a dispute’s ‘essential character’, the decision-maker should focus on all the surrounding facts and the relationship of the proceeding to the parties’ settlement agreement (1704604 Ontario Limited Factum, at para 86). 1704604 Ontario Limited argued that because its proceedings arose from an alleged breach of contract, the suit could not possibly be a SLAPP suit and instead had substantial merit and should be heard, stating that “the essential character of [this proceeding] was not the expression, but the contract limiting the expression.” (1704604 Ontario Limited Factum, at para 89)

1704604 Ontario Limited focused on the ONCA’s allegedly overbroad interpretation of the words “arises from” in section 137.1(3). For them, “the interpretation by [the ONCA] failed to consider that the legislation required the court to embark upon an analysis as to whether the proceeding ‘arises from’ the expression.” (1704604 Ontario Limited Factum, at para 91) Since 1704604 Ontario Limited’s view was that the essential character of the claim arose out of an alleged breach of contract, they argued that the proceeding therefore had substantial merit and that the defendant had no valid defence, which is why the defendant invoked the anti-SLAPP provision.

Furthermore, 1704604 Ontario Limited claimed that the ONCA erred by focusing on monetary harm caused to the plaintiff when assessing harm caused under the balancing of harms test in section 137.1(4)(b): “The harm suffered or to be suffered by the responding party, the plaintiff, may be financial or non-financial in nature.” (1704604 Ontario Limited Factum, at para 125)

The Broad Interpretation Test

The PPA (and the other respondents from the appeals considered by the ONCA) argued that the ONCA’s interpretation of section 137.1 was correct and that it adhered to the suggestions made by the Advisory Panel Report, which had recommended a broad scope of protection for public interest participation. Expression was also meant to be defined broadly, as per the Advisory Panel Report, and section 137.1(3) abided by defining expression as including “both verbal and non-verbal communications, public or private communications, and [not requiring] that the communications be directed at any particular person or entity” ([PPA SCC Factum](#), para 45).

According to the PPA, 1704604 Ontario Limited’s focus on narrowing the interpretation of “arises from” in section 137.1(3) would open loopholes for plaintiffs of SLAPP proceedings, allowing them to completely avoid the effect of section 137.1. PPA argued that this is why the Advisory Panel Report suggested that lawsuits alleged to be SLAPP proceedings should be judged by their effect, not their purpose or the motive of the plaintiff (Advisory Panel Report, para 22). Otherwise, it would be easy for those initiating SLAPPs to use other means, such as contractual obligations, as in this case, to threaten, or outright stop, public participation by

community or activist groups (PPA SCC Factum, at para 53). Furthermore, the language of section 137.1 “makes no reference to the form of action in determining whether the section applies” (PPA SCC Factum, at para 49) in various scenarios. The PPA argued that this wording was intentional – in order to determine whether the proceeding can be dismissed, the courts must look at the effect of a proceeding rather than its purpose.

The PPA rejected the essential character test proposed by 1704604 Ontario Limited, and suggested the proper test for whether a claim should be dismissed under section 137.1 is whether the claim meets the criteria expressly set out in section 137.1 (PPA SCC Factum, at para 54). This suggested test adheres to the requirements set out by the Advisory Panel Report and is meant to provide an expedited way of determining whether a proceeding can be dismissed as a SLAPP lawsuit. In contrast, the narrow focus of the essential character test would ultimately protect plaintiffs more than defendants from SLAPP proceedings and render section 137.1 ineffective in practice.

As for section 137.1(4)(b) – the balancing of harms provision – PPA emphasized that courts should not consider the plaintiff’s motives, as to do so would undermine the purpose of section 137.1 (PPA SCC Factum, at para 71). Rather, the court should again focus on the effect of the plaintiff’s suit on the defendant (PPA SCC Factum, at para 71). The PPA argued that it was inappropriate for the ONCA to consider the plaintiff’s motives when attempting to balance the harms, which ignored the spirit of section 137.1. However, the PPA supported the ONCA’s approach of primarily measuring harm caused to the plaintiff by the expression in monetary terms.

Intervenors in Support of Pointes Protection

The SCC allowed [eight groups](#) to intervene in *Pointes Protection*, each focusing on a specific issue related to the consequences of SLAPP suits. A common theme across several of the intervenors was the necessity of specialized anti-SLAPP legislation. Many of the interventions, including [Ecojustice](#), [Greenpeace](#), [West Coast LEAF](#), and the [Media Coalition](#), submitted that anti-SLAPP legislation should be interpreted broadly and robustly. Whether they focused on protecting victims of gender-based violence (West Coast LEAF), advocating on behalf of the environment (Ecojustice and Greenpeace), or upholding the importance of freedom of expression and public participation in Canada (the Media Coalition), the intervenors expressed the belief that robust anti-SLAPP legislation has an important place in protecting the public interest. We will describe each of these interventions briefly.

As mentioned above, West Coast LEAF examined the impact that anti-SLAPP legislation has on survivors of gender-based violence. West Coast LEAF submitted that in order for our legal system and society to better support those who experience gender based violence, “anti-SLAPP legislation [must] be read in a manner that empowers survivors to report, disclose and seek support related to gender based violence without fear of being sued or otherwise silenced by the legal system” (West Coast LEAF Factum, at para 3). Survivors of gender-based violence should be able to report their experiences without the concern that they will experience backlash or be targeted for speaking out (West Coast Leaf Factum, at para 7). In their view, survivors who are sued for reporting and disclosing properly fall into the category of SLAPP suits (West Coast LEAF Factum, at para 4). If anti-SLAPP legislation is to actively protect those who speak out

against their attackers, “survivors who invoke the legislation’s protection need to feel confident that courts will apply a test that does not ... prefer the plaintiff over the defendant-survivor” (West Coast LEAF Factum, at para 4).

Ecojustice’s submissions focused on how section 137.1 should be interpreted and argued that ‘public interest’ should be construed broadly (Ecojustice Factum, at para 3(a)(b)). Similarly, Greenpeace proposed a purposive approach to the anti-SLAPP statute (Greenpeace Factum, at para 7). Each of these factums demonstrated the need for a robust test that works to uphold public participation, in order to ensure that those engaged in activism have the opportunity to do so unencumbered by the threat of lawsuits. Before the *Pointes Protection* case, Ecojustice published a study titled “[Breaking the Silence: The urgent need for anti-SLAPP legislation in Ontario](#)”. This study demonstrated why anti-SLAPP legislation was needed in Ontario, particularly in the context of environmental activism, and noted the effect SLAPPS have on environmental monitoring and enforcement. Although not cited in their factum, we imagine that this background study informed Ecojustice’s intervention in *Pointes Protection*.

Finally, we turn to the issue of freedom of expression, a common concern when discussing SLAPP suits. This was the main focus of the Media Coalition’s intervention, which argued that:

fear of being dragged into protracted, expensive litigation can create a ‘chill’ on expression that is detrimental to public debate. As newsrooms shrink, the media themselves may become more susceptible to this chilling effect of real or potential lawsuits, even if those lawsuits have little to no chance of success”. (Media Coalition Factum, at para 5)

Due to this concern, the Coalition suggested that the “standard for a plaintiff to clear the ‘merits-based hurdle’ in section 137.1(4)(a) ... must be meaningful and should be higher than the standard established by the Ontario Court of Appeal in the appeals before this Court and other cases decided by the Court of Appeal” (Media Coalition Factum, at para 8). They too argued that for anti-SLAPP legislation to be effective, it needs to be interpreted robustly, to ensure that the legislation can be utilized by those engaged in issues of public interest. The concern the Coalition expressed was not just for media and journalists, but for Canadians as a whole. For them, “freedom of expression is fundamental to the flourishing of ideas, and comments that are offensive or off-colour should not compromise this central tenet of Canadian society” (Media Coalition Factum, at para 6). In order for our press and media outlets to continue to report and investigate, it is crucial that those engaged in creating public conversation do not feel intimidated through lawsuits.

Conclusion

If the Supreme Court of Canada adheres to the test set out by the ONCA decision, as built upon by the arguments of the PPA and intervenors, we believe the Ontario legislation could provide the framework for Alberta’s own anti-SLAPP legislation. The respondent and many of the intervenors in the *Pointes Protection* case advocated for a broad interpretation of anti-SLAPP legislation given that SLAPP suits can be hard to identify – most plaintiffs bringing a SLAPP suit against individuals or organizations already know how to make the suit look legitimate on

the surface. It is this aspect of the *Pointes Protection* case that we believe could provide the start of a conversation regarding what anti-SLAPP legislation could look like in Alberta – specifically, that it should place the onus on those who bring SLAPP-like suits to defend their actions on the merits, and should take a broad approach to protecting the public interest. If we give judges the proper tools to consider whether the case that stands before them is legitimate, our system would be better equipped to support public participation without the fear of being SLAPped.

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