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Anti-SLAPP Legislation in Ontario Developing into a Procedural Framework Post-*Pointes Protection*

By: Shaun Fluker

Case Commented On: *Dent-X Canada v Houde*, 2022 ONCA 414 (CanLII)

This very short post has a simple purpose: to make the point that Alberta is falling behind Ontario (and British Columbia) in the development of anti-SLAPP procedures. Anti-SLAPP legislation provides a procedural mechanism for persons to seek and obtain summary dismissal of litigation solely intended to strategically suppress expression on matters related to the public interest. In 2020, the Supreme Court of Canada issued its leading decision in *1704604 Ontario Ltd v Pointes Protection Association*, 2020 SCC 22 (CanLII), which provides an interpretation of anti-SLAPP legislation in Ontario. Daniella Marchand followed the *Pointes Protection* litigation for ABlawg with two posts: Is Now the Time to Consider Anti-SLAPP Legislation in Alberta? A Reflection on Pointes Protection and Furthering Expression in the Public Interest: SCC Provides Interpretation of Ontario's Anti-SLAPP Legislation. Those posts give a full explanation of the purpose served by anti-SLAPP legislation, highlighting the Ontario provisions in particular, and readers interested in that background will find it there. Since the issuance of *Pointes Protection* by the Supreme Court, Ontario courts have interpreted and applied Ontario's anti-SLAPP provisions in dozens of cases (I counted about 40 decisions on a quick search of canlii.org).

Dent-X Canada is a recent example of this Ontario jurisprudence. As explained in Furthering Expression in the Public Interest: SCC Provides Interpretation of Ontario's Anti-SLAPP Legislation, an applicant seeking dismissal of a defamation action under anti-SLAPP provisions bears the initial onus of establishing the impugned expression relates to a matter of public interest. In *Dent-X Canada*, the applicants failed to convince the Court that the impugned Facebook post related to a matter of public interest (as per the language in section 137.1(3) of the *Courts of Justice Act*, RSO 1990, c C.43, which requires that the expression in question "relates to a matter of public interest"). The Ontario Court of Appeal makes an important distinction in *Dent-X Canada* between 'referring to' and 'relating to' – it's not enough for an applicant to merely refer to a public interest concern:

> The appellants' submission confuses an expression referring to a matter of public interest with an expression relating to a matter of public interest. *Pointes* holds that the concept of whether particular expression relates to a matter of public interest must be broadly interpreted, and assessed by looking at the expression as a whole. However, *Pointes* also makes clear that merely referring to something of public interest is not the same as relating to a matter of public interest: *Pointes* at para. 29; see also *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730, 153 O.R. (3d) 20, at paras. 19, 26-35. (at para 10)

Since the applicants did not meet their onus in this first step of the framework, their application to dismiss the defamation action was unsuccessful.

While the *Alberta Rules of Court*, Alta Reg 124/2010, contain provisions which provide for summary dismissal of frivolous claims (e.g. section 7.3), these provisions were never intended to address litigation strategically commenced to appear legitimate but really only directed at silencing others. It is time for Alberta to catch up with Ontario and British Columbia by enacting anti-SLAPP legislation. This is a project which JD students will be working on at the Faculty's Public Interest Law Clinic in 2022/23.

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