SCC Court File No. 41794

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

CYNTHIA PRESCOTT and DAVID GREEN

APPELLANTS

(Applicants)

- and -

BENCHWOOD BUILDERS INC. and MICHAEL SLAVEN

RESPONDENTS

(Respondents)

and -

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PART I - OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns the protection of online speech from the chilling effects of strategic litigation. Its disposition will materially affect individuals and organizations who speak up against environmentally harmful corporate practices.

2. Ecojustice Canada Society ("**Ecojustice**") is an environmental law charity. Its mission is to use the law to defend nature, combat climate change, and fight for a healthy environment. In that work, Ecojustice and its clients regularly communicate on environmental issues that could become the target of strategic lawsuits against public participation ("**SLAPPs**").

3. Ecojustice intervenes to protect the ability of the organization, its clients, and the public to speak freely online about corporate practices and products without fear of reprisal. The approaches advanced by the Court of Appeal and the respondents undermine the protections afforded through Ontario's anti-SLAPP regime and impede public participation in environmental discourse.

4. The Court of Appeal adopted a narrowed interpretation of the public interest threshold under s. 137.1(3) of the *Courts of Justice Act*,[1] requiring expression arising from ostensibly private disputes to engage a "broader societal concern." This heightened threshold will exclude a wide range of expression that the legislation was designed to protect. It should be rejected by this Court.

5. The respondents go further, urging upon this Court a novel two-step test that will introduce additional barriers at this threshold stage. This proposal fails on its own terms. Bifurcating the threshold stage will *increase* the complexity of motions, while restricting the range of expression protected by anti-SLAPP legislation. It will also frustrate the law's aim to reduce the "risk" that individuals speaking out on matters of public interest will be stifled by fear of legal action.

6. Both approaches reflect a misdirected dissatisfaction with the operation of the anti-SLAPP regime in practice. Each amounts to a judicial rewriting of s. 137.1. Most concerningly, both introduce confusion and invite value-laden judgments at the public interest threshold stage. These changes render the test more onerous for defendants and will chill expression on matters of public interest – all in the name of purportedly simplifying anti-SLAPP motion practice.

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[1] R.S.O. 1990, c. C.43 ("*CJA*").

7. Disputes that arise from commercial contexts are not inherently private. Corporate practices can and do cause irreparable damage to local communities and ecosystems. Regular people, communities, and advocates play an essential role in corporate accountability in our country, especially by communicating about corporate transgressions in online space – the modern commons. That role depends on their ability to express themselves without fear of retaliatory litigation. This Court should reject any attempt to read down Ontario's anti-SLAPP regime.

PART II - STATEMENT OF ISSUES

8. Ecojustice respectfully submits that this Court should reaffirm a broad and liberal interpretation of the public interest threshold of s. 137.1 consistent with its legislative intent, and:

(i) reject the requirement imposed by the Court of Appeal that online expression "engage a broader societal concern" to satisfy the public interest threshold.

(ii) reject the respondents' proposed two-part test for the public interest stage, which is inconsistent with the text, context, and purpose of the anti-SLAPP regime.

9. Ecojustice takes no position on the disposition of this appeal.

PART III - STATEMENT OF ARGUMENT

A. The Court of Appeal's "Broader Societal Concern" Standard Should Not Be Adopted

10. This Court held in *Pointes* that "the words 'relates to a matter of public interest' at the threshold stage should be given a broad and liberal interpretation, consistent with the legislative purpose of s. 137.1(3)."[2] The Court emphasized that "a 'broader [public interest] test will ensure that the full scope of legitimate participation in public matters is made subject to the special procedure" and that therefore a "broad scope of protection" is preferable.[3]

11. The decision below departs from this precedent. In doing so, it exposes vulnerable parties to strategic litigation by well-resourced corporations. The Appeal Decision narrows the public interest threshold in the context of online speech, holding that only those online consumer reviews

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[2] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, ("***Pointes***"), at para. 26.
[3] *Pointes*, at para. 26, citing Ministry of the Attorney General (Ont.), *Anti-Slapp Advisory Panel: Report to the Attorney General* (Toronto, 2010), at paras. 29, 31.

that "engage some broader societal concerns" will satisfy the test.[4] This heightened burden runs contrary to this Court's guidance that the moving party's threshold burden is not onerous.[5]

12. This Court's task is to arrive at the correct interpretation of s. 137.1, with regard to its precedents and the modern approach to statutory interpretation.[6] Even if the provision is "poorly drafted," as the Appeal Decision complains, this exercise must be grounded in the law as enacted.

13. Section 137.1 does not protect only expression that engages a *broader* societal concern. Quite the opposite: encouraging "wide-ranging public debate" requires protecting expression that only "*some segment* of the community" has an interest in.[7] It is essential that s. 137.1(3) continues to capture a wide range of expression, especially in the ubiquitous online space.

14. This is particularly important in the context of online consumer expression connected to environmental concerns. While some forms of expression – such as those explicitly framed in terms of "climate change", as the Court of Appeal explains[8] – may satisfy the Court of Appeal's narrowed threshold, the protection under s. 137.1 cannot turn on the invocation of buzzwords. A person voicing concerns about "greenwashing" (misleading the public that products and policies are environmentally friendly) speaks to the same public interest even without using the terms "climate change" or "pollution" – or even by simply complaining about misleading advertising.

15. This concern is particularly acute for those who communicate about local environmental harms associated with corporate products or practices. Disputes that may appear "private" at first – such as a contractor's use of certain chemicals or a neighbour's plans to develop a farm[9] – can nonetheless form a valuable part of a broader body of environmental discourse. Consider a consumer raising concerns online about the environmental impacts and regulatory non-compliance of a fish farm. Or a First Nation community member using online forums to describe harms associated with nearby petrochemical operations. Environmental concerns often arise from

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[4] *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA 171 ("**Appeal Decision**"), at paras. 42-43.
[5] *Pointes*, at para. 28.
[6] *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, at para. 21*; Piekut v. Canada (National Revenue),* 2025 SCC 13.
[7] *Grant v. Torstar Corp.*, 2009 SCC 61, at paras. 102, 106; *Pointes*, at para. 27. Emphasis added.
[8] Appeal Decision, at para. 42.
[9] See *Scory v. Krannitz*, 2011 BCSC 1344.

consumer experiences that do not fit neatly within a category of "broader societal concern," yet these individual accounts play an important role in initiating and informing public discussion.

16. Courts should not finely parse the content or quality of expression about corporate practices at the public interest threshold. Consumer commentary is an integral part of public discourse. It need not appear in national media, nor be framed with precision, to qualify as expression on a matter of public interest. Organizations like Ecojustice depend on individuals reporting discrete, ostensibly "private" concerns to identify patterns of corporate conduct that warrant scrutiny. Online complaints and reviews are often voiced by individuals who lack the expertise, sophistication, or resources to situate their concerns within a broader "debate." Yet taken together, these contributions constitute that very discourse.

B. The Respondents' Proposed Two-Part Test Should Be Rejected

17. The respondents ask the Court to read in an additional requirement at the public interest threshold: that the defendant demonstrate a "functional relationship" between their speech and a "public conversation about some matter of public interest" such that the expression "contribute[s] to the debate." This approach suffers from the same frailties as the Appeal Decision. In substance, it asks this Court to rewrite Ontario's anti-SLAPP regime – introducing a constraint that may *appear* to simplify adjudication, but that ultimately deprives the legislation of its intended force.

18. Anti-SLAPP regimes are both protective and preventative.[10] They seek to prevent the chilling effect of potential legal action by discouraging the initiation of these proceedings through a legal barrier – the anti-SLAPP motion. Ideally, this undesirable litigation is deterred before it begins. But when it does, the anti-SLAPP motion is a protection mechanism. That protection is broad because the legislation *intends* to encourage expression on matters of public interest.[11] To accomplish this purpose, s. 137.1 casts a wide protective net over any expression that "relates" to a matter of public interest. The respondents turn this policy choice on its head.

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[10] See *Pointes*, at para. 12, citing Legislative Assembly of Ontario, *Official Report of Debates (Hansard)*, No. 41A, 1st Sess., 41st Parl., December 10, 2014, at p. 1975 ("… this law is about preventing strategic lawsuits"). See also, Hilary Young, "Canadian Anti-SLAPP Laws in Action" (2022) 100 Canadian Bar Rev 188, at p. 208.
[11] *CJA*, s. 137.1(1)(b).

19. The respondents' test destabilizes the structure of s. 137.1 by shifting the qualitative scrutiny of the expression from the weighing analysis ("the backstop" of the analysis)[12] to the threshold stage. The contextual factors identified by the respondents – such as whether the expression provides explanatory background, its audience and location, and the identity of the speaker – necessarily require a normative assessment of the expression's value and quality.[13] This runs expressly contrary to this Court's prior jurisprudence by infusing the threshold stage with the "moralistic taste test" reserved for the final weighing exercise under s. 137.1(4)(b).[14]

20. In practice, this test's harmful consequences will be absorbed by individuals and communities that do not have the knowledge, sophistication, or resources required to express themselves in the "right" way at the "right" time in the "right" place. Shifting the burden and level of scrutiny forward to the threshold stage will allow corporations with weak or unmeritorious claims, and who have suffered no harm, to proceed with harmful strategic litigation.

21. The respondents complain that s. 137.1 is not "operating as intended" in Ontario courts.[15] Many of the concerns they raise – such as the time or cost required for an anti-SLAPP motion – reflect broader challenges in the civil justice system, rather than with the legislative scheme. In any event, these purported practical concerns cannot support a judicial rewriting of the statute.

22. Nor will the respondents' test simplify anti-SLAPP motions. Diligent respondents, faced with the risk of dismissal, will still marshal evidence addressing the merits and the weighing stages. Indeed, courts have noted that the complexity of anti-SLAPP proceedings is concentrated at these stages of the analysis.[16] The respondents' modified test introduces additional complexity at the threshold stage, where the defendant bears the burden. It will also ensure that fewer anti-SLAPP motions succeed or are brought – and that strategic and meritless litigation proceeds. That result emboldens precisely the conduct the legislation was enacted to deter.

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[12] *Pointes*, at para. 62.
[13] Respondents' Factum, para. 80.
[14] *Pointes*, at para. 76.
[15] Respondents' Factum, at para. 39.
[16] Appeal Decision, at para. 44. See also *Tamming v. Paterson*, 2021 ONSC 8306, at para. 7.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of April, 2026.

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PART IV - TABLE OF AUTHORITIES

STATUTORY PROVISIONS	Referenced at paras.
Courts of Justice Act, R.S.O. 1990, c C.43, s. 137.1. *Tribunaux Judiciaires (Loi sur les)*, L.R.O. 1990, chap. C.43, art. 137.1.	4, 6, 10, 12, 13, 14, 18, 19, 21

CASES	Referenced at paras.
1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22	2, 5, 18, 19
Benchwood Builders, Inc. v. Prescott, 2025 ONCA 171	4, 8, 16
Grant v. Torstar Corp., 2009 SCC 61	13
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SECONDARY SOURCES	Referenced at paras.
Hilary Young, “Canadian Anti-SLAPP Laws in Action” (2022) 100 Canadian Bar Rev 188	18

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