

CITATION: Dong v. Global News, 2024 ONSC 3532
COURT FILE NO.: CV-23-00698271-0000
DATE: 20240619

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
 HAN DONG)
 Plaintiff) *Mark Polley, Emily Young, and Jeffrey Wang*
 - and -) for the Plaintiff
)
 GLOBAL NEWS, a division of CORUS)
 ENTERTAINMENT INC., CORUS) *Brendan Hughes* for the Defendants
 ENTERTAINMENT INC., SAM)
 COOPER, CRAIG OFFMAN, SONIA)
 VERMA, MACKENZIE GRAY, FARAH)
 NASSER, ANTONY ROBART, and)
 DAWNA FRIESEN)
 Defendants) **HEARD:** May 2, 2024
)

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] **Global News**, which is a division of the multinational media and entertainment conglomerate Corus Entertainment Inc. (collectively, Global News) published and broadcast a series of news stories that were of the highest order as matters of public interest. The stories were about foreign interference in Canada’s elections. Within the series of broadcasts about foreign government interference with Canadian democracy and sovereignty was a bombshell headline story about a telephone conversation between the Chinese Consul General in Toronto and **Han Dong**, a Chinese Canadian citizen and a Member of Parliament for the governing Liberal Party.

[2] The Global News story of the phone conversation was used as an example of foreign government interference. The news article revealed that in the phone conversation, Dong had advised a senior Chinese diplomat about delaying the release of Michael Kovrig and Michael Spavor, the “Two Michaels” as they were then known. In 2018, the Two Michaels had been imprisoned by the Chinese government in trumped up espionage charges. It was believed that the charges were in retaliation for Canada having arrested for the purposes of extradition to the United States Meng Wanzhou, the CFO of Huawei, a Chinese communications technology company. The Global News story of the conversation between Dong and the Chinese Consul General intimated

that Dong was a traitor to Canada, and a betrayer of the Two Michaels.

[3] As a consequence of the broadcast of the story about the phone conversation, Dong's reputation and his career in politics were destroyed. Although Dong admitted that he had discussed the Two Michaels with the Chinese diplomat, he said he did so to advocate for their release and not to betray them. Dong's denials availed him not, and he was ousted from the Liberal caucus and from the several Parliamentary committees of which he was a member.

[4] To restore his reputation and his career in politics, Dong sued:

- a. **Global News**;
- b. **Sonia Verma**, who is Global News' Editor-in-Chief;
- c. **Craig Offman**, who is a managing editor of the investigative division of Global News;
- d. **Sam Cooper**, who was the investigative journalist who had authored the series of stories about foreign government interference in Canadian affairs and the bombshell story about the conversation about the Two Michaels;
- e. **Mackenzie Gray**, who is a broadcast journalist who appeared in the broadcasts about Dong and the Chinese diplomat;
- f. **Antony Robart**, who is the anchor of Global News Morning Toronto and who appeared in the broadcasts about Dong and the Chinese diplomat;
- g. **Farah Nasser** who is an anchor of Global National and who appeared in the broadcasts about Dong and the Chinese diplomat; and,
- h. **Dawna Friesen**, who is the chief anchor and executive editor of Global National and who appeared in the broadcasts about Dong and the Chinese diplomat.

[5] Pursuant to s. 137.1 of the *Courts of Justice Act*,¹ the Defendants move to have Dong's action dismissed. For the reasons that follow, the Defendants' motion is dismissed.

B. Law

1. Section 137.1 of the Courts of Justice Act

[6] Sections 137.1 of the *Courts of Justice Act* states:

Dismissal of proceeding that limits debate

Purposes

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

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;

¹ R.S.O. 1990, c. 43.

(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.

Definition, “expression”

(2) In this section,

“expression” means any communication, regardless of whether it is made verbally or nonverbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

Order to dismiss

137.1 (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.

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.

[7] Section 137.1(3) of the *Courts of Justice Act* places a threshold burden on the moving party to show on a balance of probabilities that: (a) the underlying proceeding is somehow causally related to the moving party’s expression; and (b) the expression relates to a matter of public interest.² The threshold burden is purposefully not a heavy onus, and what is a matter of public interest is viewed expansively, liberally, and generously.³

[8] Once the showing of an expression on a matter of public interest is made, the burden shifts to the plaintiff in the underlying lawsuit to satisfy the motion judge that there are grounds to believe the proceeding has substantial merit and the moving party has no valid defence, and that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression. If the plaintiff in the underlying lawsuit cannot satisfy the motion judge that it has met its burden, then the motion will be granted, and the underlying proceeding will be dismissed.⁴

[9] A s. 137.1 motion is not an adjudication of the merits of the underlying claim or a

² *Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2021 ONSC 7957 at para. 63; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at paras. 20-31.

³ *Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2021 ONSC 7957 at para. 63; *Canadian Thermo Windows Inc v. Seangio*, 2021 ONSC 6555 at para. 87; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at paras. 28-30.

⁴ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22.

conclusive determination of the existence of a defence. A motion judge deciding a s. 137.1 motion should engage in only limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep analysis into the evidence to a later stage, where judicial powers of inquiry are broader, and pleadings more fully developed.⁵

[10] In determining whether there exist grounds to believe that the claim can be said to have a real prospect of success, courts must be aware of the limited record, the timing of the motion in the litigation process, and the potentiality of future evidence emerging.⁶

[11] Taking into account the stage of litigation at which the motion is brought, the court must be satisfied that there is a basis in the record and in the law for finding that the underlying proceeding has substantial merit and that there is no valid defence, which is to say that while the plaintiff in the underlying proceeding need not definitively demonstrate that its claim is more likely than not to succeed, the claim must nonetheless be sufficiently strong that it has a real prospect of success; this requires the motion judge taking into account the stage of the proceeding, and be satisfied that the claim be legally tenable and supported by evidence that is reasonably capable of belief.⁷ A real prospect of success means that the plaintiff's success is more than a possibility and more than an arguable case.⁸

[12] The no valid defence prong of the test on the motion requires the plaintiff to show that there are grounds to believe that all the defences that have been put into play by the defendant to the underlying proceeding do not have a real prospect of success, which is to say that the defences could be found to be not legally tenable or not supported by evidence that is reasonably capable of belief.⁹

[13] On a s. 137.1 motion, there is an evidentiary burden on the party who is making the motion to put into play a defence, and then the persuasive burden moves to the plaintiff to show on a balance of probabilities that there are reasonable grounds to believe that the defence is not valid, which is to say not a successful defence.¹⁰ The question, however, is not whether there is no merit to the defence; rather, the question is whether a trier of fact could reasonably conclude that among the range of possible outcomes was the outcome that there was no defence.¹¹

[14] Thus, if the defendant meets the evidentiary burden of putting the defence in play, the plaintiff bears the onus of persuading the motion judge that a reasonable trier examining the record could, but not necessarily would, reject the defence(s).¹² In other words, the plaintiff does not have to show that there was no possibility that the defence could succeed but, rather, the plaintiff need show just that it was reasonably possible that a trier could conclude that the defence would not

⁵ 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at para. 52.

⁶ 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at para. 37.

⁷ 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at paras. 32-54.

⁸ 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at para. 50.

⁹ 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at para. 51-60.

¹⁰ 1704604 Ontario Ltd. v. Pointes Protection Association, 2018 ONCA 685 at paras. 83–84, leave to appeal granted [2018] S.C.C.A. No. 467, affd 2020 SCC 22 (S.C.C.).

¹¹ Levant v. Day, 2019 ONCA 244 at para. 14, affg 2017 ONSC 5956, leave to appeal refused [2019] S.C.C.A. No. 194 (S.C.C.); Bondfield Construction Co. v. Globe and Mail Inc., 2019 ONCA 166 at para. 14; Amorosi v. Barker, 2019 ONSC 4717.

¹² Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corp., 2021 ONCA 26; Bondfield Construction Co. v. Globe and Mail Inc., 2019 ONCA 166 at para. 15, rev'g 2018 ONSC 3347.

succeed; a determination that a reasonable trier could decide either way on the defence satisfies the onus.¹³

[15] Weighing the public interest in freedom of expression and public participation against the public interest in vindicating a meritorious claim is the critical aspect of the s. 137.1 motion analysis, and the critical determination is whether the harm (be it monetary or non-monetary harm such as an injured reputation) caused by the defendant's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

[16] On an anti-SLAPP motion, the party seeking to have his or her action continue must demonstrate the existence of harm that is sufficiently serious that it outweighs the public interest in protecting his or her opponent's expression on a matter of public interest. However, the party resisting the anti-SLAPP motion is not required to fully particularize or quantify the harm; rather, he or she must only demonstrate the existence of serious harm caused by the opponent's statements.¹⁴ There is no threshold of seriousness, and harm is not limited to monetary harm.¹⁵ General damages for harm to reputation are presumed from the publication of a libel or slander,¹⁶ and the gravity of some statements, such as an attribution of the plaintiff being dishonest, immoral, a pedophile, a terrorist, a terrorist supporter, a racist, a human smuggler, a corrupt politician, a swindler, a racketeer, a gangster, a mobster, are so obviously likely to cause serious harm to a person's reputation that the likelihood of harm and general damages can be inferred, even if the party defamed does not lead evidence to show actual harm.¹⁷

[17] Once harm has been established and shown to have been caused by the defendant's expression, it is necessary to assess whether the quality of the expression and the motivation behind the expression justifies its protection from civil lawsuit. The level of protection afforded to expression depends on the nature of the expression, and the court may inquire into, among other things, the core values underlying freedom of expression, such as the search for truth, participation in political decision making, and diversity in forms of self-fulfillment and human flourishing.¹⁸

[18] The court may also consider: the importance of the expression; the history of litigation between the parties; broader or collateral effects on other expressions on matters of public interest; the potential chilling effect on future expression either by a party or by others; the defendant's history of activism or advocacy in the public interest; any disproportion between the resources being used in the lawsuit and the harm caused or the expected damages award; and the possibility that the expression or the claim might provoke hostility against an identifiably vulnerable group

¹³ *Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corp.*, 2021 ONCA 26; *New Dermamed Inc. v. Sulaiman*, 2019 ONCA 141 at para. 12.

¹⁴ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at paras. 69-71.

¹⁵ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at paras. 69-71.

¹⁶ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at para. 44; *Magno v. Balita*, 2018 ONSC 3230 at para. 36; *Rutman v. Rabinowitz*, 2018 ONCA 80 at paras. 62-63, aff'g 2016 ONSC 5864; *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at paras. 167-172.

¹⁷ *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529, aff'g 2020 ONSC 323; *Skafco Ltd. (c.o.b. Robbie's Italian Restaurant) v. Abdalla*, 2020 ONSC 136 at para. 15; *Montour v. Beacon Publishing Inc. (c.o.b. Frontline Safety & Security)*, 2019 ONCA 246 at paras. 27-42; *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163 at para. 40-41; *Awan v. Levant*, 2016 ONCA 970, aff'g 2014 ONSC 6890, leave to appeal to S.C.C. ref'd [2017] S.C.C.A. 71; *Cooke v. MGN Limited*, [2015] 2 All ER 622 at para. 43 (C.A.); *Grant v. Torstar Corp.*, 2009 SCC 61.

¹⁸ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at para. 61-82.

or a group protected under human rights legislation or under s. 15 of the *Canadian Charter of Rights and Freedoms*.¹⁹

[19] The culminating step of the s. 137.1 analysis is the crux of the matter. In *1704604 Ontario Ltd. v. Pointes Protection Association*,²⁰ Justice Coté stated at paragraphs 81-82:

81. Fundamentally, the open-ended nature of s. 137.1(4)(b) provides courts with the ability to scrutinize what is really going on in the particular case before them: s. 137.1(4)(b) effectively allows motion judges to assess how allowing individuals or organizations to vindicate their rights through a lawsuit -- a fundamental value in its own right in a democracy -- affects, in turn, freedom of expression and its corresponding influence on public discourse and participation in a pluralistic democracy.

82. In conclusion, under s. 137.1(4)(b), the burden is on the plaintiff -- i.e. the responding party -- to show on a balance of probabilities that it likely has suffered or will suffer harm, that such harm is a result of the expression established under s. 137.1(3), and that the corresponding public interest in allowing the underlying proceeding to continue outweighs the deleterious effects on expression and public participation. This weighing exercise is the crux or core of the s. 137.1 analysis, as it captures the overarching concern of the legislation, as evidenced by the legislative history. It accordingly should be given due importance by the motion judge in assessing a s. 137.1 motion.

[20] Section 137.1 of the *Courts of Justice Act* is a legal riddle. The word “riddle” comes from an old English word that meant “coarse sieve.” Synonyms are sieve, filter, separate, screen, and strain. In a separate derivation the word “riddle” comes from an old English word “to read” which has the meaning “to interpret”. As a noun, a “riddle” is a statement, question or phrase that is a puzzle having a meaning to be solved. Synonyms are enigma, mystery, problem, and brain teaser. A section 137.1 motion partakes of both meanings of the noun riddle. The motion separates or screens actions that may be prosecuted from those that should be stopped because they are strategic and inimical to the values of freedom of expression. The purpose of s. 137.1 is to “ensure abusive litigation is stopped, but legitimate action can continue”;²¹ however, that presents a legal puzzle in which the court must assess “what is really going on.”

2. The Truth or Justification Defence

[21] To rebuff liability for a defamatory statement, the defendant has the defence of demonstrating that the sting or main thrust of the statement was substantially true.²²

3. The Responsible Communication Defence

[22] The defence of responsible communication, which was recognized by the Supreme Court of Canada in *Grant v. Torstar Corp.*,²³ provides a defence when the truth of a statement may be difficult or impossible to establish.

¹⁹ *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at para. 61-82.

²⁰ 2020 SCC 22.

²¹ *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129 at paras. 35-38, leave to appeal to SCC ref'd [2023] S.C.C.A. No. 172, aff'g 2022 ONSC 4451; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at para 12.

²² *Grant v. Torstar Corp.*, 2009 SCC 61; *Libel and Slander Act*, R.S.O. 1990, c. L. 12, s. 22.

²³ 2009 SCC 61.

[23] The defence of responsible communication requires that the defendant establish that: (a) the impugned statement is a matter of public interest; and (b) the publication of the statement was responsible in that: (i) reasonable steps were taken to ensure the overall accuracy of any factual assertions and (ii) reasonable steps were taken to ensure the fairness of the publication of the statements.²⁴

[24] In determining whether the publication of the statement was responsible, the following non-exhaustive circumstances are relevant: the public importance of the matter; the urgency of the matter; the seriousness of the allegation; whether the public interest lay in the fact that the statement was made rather than in the statement's truth; the status and reliability of the source; and whether the plaintiff's side of the story was sought and accurately reported.²⁵ Confidential sources play an important role in bringing critically important stories to the public and it is not unreasonable for a journalist to rely on confidential sources.²⁶

[25] The degree of diligence required in verifying the allegation should increase in proportion to the seriousness of its potential effects on the person defamed."²⁷

C. Procedural Background

[26] On **March 31, 2023**, Dong issued a Notice of Libel pursuant to the *Libel and Slander Act*.²⁸

[27] On **April 20, 2023**, Dong commenced this action by Statement of Claim.

[28] On **June 5, 2023**, the Defendants delivered their Statement of Defence.

[29] On **November 29, 2023**, Dong delivered his Affidavit of Documents.

[30] The Defendants have yet to deliver their Affidavit of Documents, and they did not agree to proceed to examinations for discovery despite Dong's efforts to schedule examinations.

[31] On **March 12, 2024**, the Defendants brought an anti-SLAPP motion. The motion was supported by an affidavit dated **March 28, 2024** from Cooper.

[32] On **April 9, 2024**, Dong responded to the Defendants' motion with an affidavit dated April 9, 2024.

[33] On **April 18, 2024**, Dong was cross-examined.

[34] On **April 19, 2024**, Cooper was cross-examined.

[35] On **May 1, 2024**, the anti-SLAPP motion was argued. Judgment was reserved.

²⁴ *Soliman v. Bordman*, 2021 ONSC 7023; *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529 at para. 27, aff'g 2020 ONSC 323; *Bondfield Construction Co. v. Globe*, 2019 ONCA 166 at para. 18, aff'g 2018 ONSC 1880; *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689; *Grant v. Torstar*, 2009 SCC 61 at para. 98.

²⁵ *Kam v. C.B.C.*, 2021 ONSC 1304; *Rebel News Network Ltd. v. Al Jazeera Media*, 2021 ONSC 1035; *Armstrong v. Corus Entertainment Inc.*, 2018 ONCA 689; *Grant v. Torstar*, 2009 SCC 61; *Jameel v. Wall Street Journal Europe SPRL*,

²⁶ *Simán v. Eisenbrandt*, 2023 BCSC 379; *R. v. National Post*, 2010 SCC 16; *Grant v. Torstar*, 2009 SCC 61; *Jameel v. Wall Street Journal Europe SPRL*, [2006] UKHL 44.

²⁷ *Grant v. Torstar*, 2009 SCC 61 at para. 111.

²⁸ R.S.O. 1990, c. L-12.

D. Han Dong

[36] Dong was born in China in 1977. He is fluent in Mandarin, Cantonese, and English. In 1990, at the age of thirteen, he immigrated to Canada. In 2001, he became a Canadian citizen. At the age of eighteen, he became a member of the Liberal Party.

[37] As a Liberal Party candidate, in 2014, Dong was elected to the Legislative Assembly of Ontario as the member for the Trinity-Spadina riding. He served until the 2018 provincial election, where he ran for office, but was not re-elected.

[38] As a Liberal Party candidate, in 2019, Dong successfully ran for election to Parliament for the Don Valley North riding which had a high proportion of Chinese Canadian constituents.

[39] Dong successfully ran for re-election in 2021.

[40] As a Member of Parliament, Dong has served as a member of the Human Resources, Skills and Social Development and the Status of Persons with Disabilities Committee; the Access to Information, Privacy, and Ethics Committee; the Public Accounts Committee; and the Industry and Technology Committee. Dong has also served as a member of the Canadian Group of the Inter-Parliamentary Union, the Canada-United States Inter-Parliamentary Group, the Canadian NATO Parliamentary Association, the Canada-Japan Inter-Parliamentary Group, the Canada-Europe Parliamentary Association, and the Canada-Italy Inter-Parliamentary Group. Dong co-chairs the Canada-Armenia Parliamentary Friendship Group and is a director of the Canada-Ukraine Parliamentary Friendship Group. He co-chairs the Canada-China Legislative Association, which provides a forum for Canadian parliamentarians, Chinese diplomats, and government representatives to discuss issues facing the two countries and the Asia-Pacific region.

E. Facts

[41] Cooper is an investigative journalist. Among other things, he spent fourteen years investigating matters of national security, including foreign government interference in Canadian affairs. Through his investigations, Cooper has developed relationships with senior confidential sources within Canadian Security Intelligence Service (CSIS) and with members of the intelligence community.

[42] Cooper started investigating potential foreign threats to Canada in or around 2010 and began reporting on Chinese interference in 2014. He learned that CSIS and the Royal Canadian Mounted Police (RCMP) were investigating foreign government interference. Cooper learned that the security community believed that the Chinese Communist Party and other groups connected with China's government were interfering with election activities in Canada. He learned that members of the security community were concerned that the federal government was not doing enough to protect Canada from foreign government interference.

[43] In **2020**, Confidential Source One, a CSIS officer, told Cooper about CSIS's knowledge of Chinese interference and about CSIS's concern that the Canadian public knew far too little about the threat posed by foreign interference to Canadian democracy.

[44] In **June 2022**, Confidential Source Two, another CSIS officer, provided Cooper with confidential information about Dong's election and his relationship with Chinese officials in Canada.

[45] In **August of 2022**, Confidential Source Three, a senior Canadian intelligence officer with knowledge of the activities of the Privy Council Office told Cooper that CSIS had reported to the Privy Council Office very serious foreign interference from China. Confidential Source Three was concerned about the absence of a response to the threat to Canadian sovereignty as well as to the threat to Canada's standing as a "Five Eyes" partner. The Five Eyes is the nickname of the intelligence sharing partnership of Australia, Canada, New Zealand, the United Kingdom, and the United States. Confidential Source Three showed Cooper classified secret documents about Chinese interference in the electoral affairs in the Don Valley North riding where Dong was the Member of Parliament. These classified documents included security reports from the Privy Council Office, CSIS, the National Security and Intelligence Committee of Parliamentarians, the Intelligence Assessment Secretariat and from Daniel Jean, former National Security and Intelligence Advisor to Prime Minister Justin Trudeau.

[46] From Confidential Source Two and from Confidential Source Three, Cooper was told that CSIS had intercepted a telephone conversation between Dong and the Chinese Consul General in Toronto. Dong and the Chinese Consul General spoke Mandarin. An English language transcript or summary was made of the conversation in Mandarin.

[47] Pausing here in the narrative, it should be noted that on this anti-SLAPP motion, it is unknown how Confidential Sources Two and Three, which are independent sources, each came to know about the intercepted, translated, and transcribed or summarized telephone conversation between Dong and the Chinese Consul General.

[48] Confidential Sources Two and Three told Cooper that in the telephone conversation, Dong had suggested that delaying the release of the Two Michaels would benefit the Liberal Party. These Confidential Sources told Cooper that on **February 21, 2021**, Dong had telephoned the Chinese Consul General in Toronto and discussed how China should interpret political matters in Canada. The sources said that Dong brought up the matter of the Two Michaels and advised that China should show some progression in the trial of the espionage charges. However, Dong advised that for China to release Kovrig and Spavor this would only help the Conservative Party of Canada, because it would affirm the political stance the Conservatives were taking, which position was different than the Liberal Party which was seeking the discontinuance of the extradition proceedings to facilitate the release of the Two Michaels.

[49] In **September 2022**, Confidential Source Four, another intelligence community operative, told Cooper about the irregularities in Dong's riding and that CSIS's opinion was that Dong was a witting affiliate in the Chinese attempts at election interference.

[50] Confidential Sources One, Two, Three, and Four worked in different offices, in different departments, some in different cities, and none of them worked directly together. Cooper felt that their information was independent, consistent, corroborative, and credible intelligence.

[51] Cooper also met Chinese diaspora sources, sources in the RCMP, and he believed that these sources confirmed aspects of the information received from Confidential Sources One, Two, Three, and Four.

[52] Cooper deposed that it was necessary for his sources to have confidentiality because the security sources feared prosecution or the termination of their employment if they were identified and the diaspora sources feared for their personal safety.

[53] Cooper, however, admitted that none of the documents he reviewed named Dong and that

none of the documents state that Dong had advocated for the continued detention of the Two Michaels on the telephone call with the Chinese Consul General. Cooper did not keep all his notes and the retained notes of his contacts with his sources do not contain a reference to Dong having advised a Chinese diplomat to “delay” and “hold off” freeing the Two Michaels.

[54] Cooper’s Confidential Sources refused to show him the translated transcript or summary of Dong’s intercepted telephone conversation with the Chinese Consul General.

[55] Other journalists who had received tips about this conversation between Dong and the Chinese Consul General declined to report it because they had not seen a transcript.²⁹

[56] Based on his investigations, Cooper worked with editors at Global News to prepare a series of articles about foreign government interference.

[57] The first article about Dong was published on Globalnews.ca on **February 25, 2023** with the headline “**Liberals ignored CSIS warning on 2019 candidate accused in Chinese interference probe: sources**”. The article reported that Dong knowingly allowed Chinese government agents to interfere in his nomination as the Liberal Party candidate for the Don Valley North riding. The article stated that Chinese international students with fake addresses were bussed to the riding nomination and coerced to vote for Dong’s nomination in 2019. The article stated that CSIS had urged Prime Minister Trudeau to rescind Dong’s candidacy.

[58] Eight hours before the publication of the February article, Cooper sent an email to Dong. The email message told Dong about some of what Cooper had learned from his sources. The email asked Dong to respond to a long list of allegations concerning Dong’s relationship with Chinese-Canadian businesspeople and politicians, his relationship with the Chinese Consulate, and about the transportation of riding constituents to his 2019 nomination meeting. Dong responded that Cooper’s information was seriously inaccurate. The email did not reference the matter of delaying the release of the Two Michaels.

[59] The second of the stories about Dong was published on Globalnews.ca on **March 22, 2023** with the headline “**Liberal MP Han Dong Secretly advised Chinese diplomat in 2021 to delay freeing of Two Michaels: sources**”. This article reported that Dong privately advised a senior Chinese diplomat in February 2021 that China should hold off freeing Michael Kovrig and Michael Spavor. The article repeated the allegations from the February 25, 2023 article that Dong was a witting affiliate in Chinese foreign interference.

[60] One day before the March article was published, Cooper sent an email to Dong. Cooper requested Dong to comment about the telephone call with the Chinese Consul General. Although the March 22, 2023 article reported that Dong advised the Chinese Consul General to “hold off” and “delay freeing” the Two Michaels, Cooper did not put this allegation to Dong in his March 21, 2023 email. Those words do not appear in the email message.

[61] The February and March articles specify that Dong was not named in the intelligence Reports to Privy Council but that confidential sources within CSIS alleged that Dong was the subject of parts of the Reports. The articles indicate that the allegations against Dong were unproven allegations from CSIS sources that Global News had not been able to independently confirm. The articles include Dong’s denials and the position of the Canadian government.

²⁹ The *Globe and Mail* declined to publish the same allegations brought to it by a confidential source because it had not obtained a transcript or tape recording to authenticate what transpired on the call.

[62] The content of the February and March articles were repeated in broadcasts in which the Defendants appeared as journalists. The Defendants repeated the content of the articles on their respective social media accounts, which have millions of views on the Internet. International media outlets repeated the Defendants' allegations. To this day, all of these publications remain publicly accessible, without any editorial notes, changes, or retractions.

[63] The impact of the publication of the Global News stories about foreign government interference was enormous. Dong received numerous hateful, racist, and violent messages, which refer to him as a traitor and a person who is unfit to hold elected office. Some of the messages threatened Dong. Some of the messages threatened Dong's family.

[64] As a result of the publication of the article about the Two Michaels, Dong was forced to leave the Liberal caucus. He resigned the day after publication of the March Article. He sits in Parliament as an independent member.

[65] In response to the Global News article, which began as a scoop but became a widely reported major news matter, Prime Minister Trudeau ordered the National Security Committee of Parliament to investigate allegations of Chinese interference.

[66] In response to the foreign government interference political controversy, the government appointed David Johnston, a former Governor General and legal scholar as a Special Rapporteur to report to Parliament.

[67] On **May 23, 2023** Mr. Johnston released his first report. He commented on the Global News stories. Mr. Johnston made the following comments concerning Dong and about the alleged interference in the Don Valley North riding:

Irregularities were observed with Mr. Dong's nomination in 2019, and there is well-grounded suspicion that the irregularities were tied to the PRC [Peoples Republic of China] Consulate in Toronto, with whom Mr. Dong maintains relationships. In reviewing the intelligence, I did not find evidence that Mr. Dong was aware of the irregularities or the PRC Consulate's potential involvement in his nomination.

[68] With respect to the Two Michaels, Mr. Johnston indicated that he had reviewed the intelligence report that was provided to the Prime Minister about this matter and based on that review, while the Two Michaels were discussed, the allegation that Dong suggested their delayed release was false.

[69] On **June 6, 2023**, Mr. Johnston appeared before a parliamentary committee, and he was asked about his comment that the "two Michaels" reporting was false. He stated:

The reference, I think, that Global News had was to an early draft of an understanding of what transpired in a conversation between a member of the PRC consulate and Mr. Dong. That was subsequently superseded by another interview, which indicated that the suggestion in the first one that he had suggested the two Michaels be further detained was simply a wrong interpretation. It was just a misinterpretation.

[70] Mr. Johnston's report was followed in **September 2023** by the establishment of the Foreign Interference Commission which is currently holding a public inquiry in the matter of foreign government interference. As this judgment is being written, Parliament is debating legislation to address the issue.

[71] In the course of the public inquiry, CSIS released a summary of its intelligence about Dong's conversation with the Chinese Consul General. The summary stated that Dong had stated

that even if the Chinese government released the “Two Michaels” at that moment, the opposition parties would view the release as an affirmation of the effectiveness of a hardline approach to Sino-Canada relations. The summary stated that Dong had stressed that any transparency provided by the Chinese Government in relation to the “Two Michaels”, such as a court hearing or a court date, would help to placate Canadian public opinion and provide some valuable talking points to his own political party against the opposition.

[72] On **April 2, 2024**, Dong appeared and testified at the public inquiry.

[73] After the publication of the articles, the Defendants continued to report on issues and information relating to the Dong stories. Global News reported Dong’s speech in the House of Commons denying the allegations. The Defendants reported Dong’s legal action against Global News. The Defendants reported Mr. Johnston’s Report.

[74] The Defendants and all news outlets continue to report about the ongoing Foreign Interference Public Inquiry.

F. Discussion and Analysis

[75] As noted above, pursuant to s. 137.1 of the *Courts of Justice Act*, on an anti-SLAPP motion, the Defendants must first show that Dong’s defamation action is connected to the Defendants’ expression on a matter of public interest. Once the showing of an expression on a matter of public interest is made, the burden shifts to Dong to demonstrate that: (a) his lawsuit has substantial merit; (b) the Defendants have no valid defence; and (c) the public interest in permitting the proceeding to continue outweighs the public interest in protecting the Defendants’ expression. The precise details of these burdens placed on Dong to successfully resist an anti-SLAPP motion are set out above.

[76] In the immediate case, Dong’s defamation action is concerned: (a) about his alleged willing or knowing involvement in foreign government interference in Canadian elections; and (b) in particular, about the damning Global News article about Dong’s telephone conversation with a Chinese diplomat and Dong’s alleged betrayal of the Two Michaels. It is about those expressions on matters indisputably in the public interest that the tests of s. 137.1 of the *Courts of Justice Act* are to be applied.

[77] However, for present purposes, it is necessary to examine only the matter of Dong’s telephone conversation, which is the matter which most disgraces his morality, his character, his reputation, and his livelihood. In other words, for the purposes of the anti-SLAPP motion in the immediate case, it can be assumed that Global News would succeed in its motion for dismissal of Dong’s defamation action if Dong’s action was only about foreign government interference without the particulars of his disreputable and traitorous communications with the Chinese diplomat. However, the correctness and the righteousness of the Global News story about foreign government interference is not a defence to the matter of Global News’ story about Dong and the Two Michaels.

[78] To be clear, solely for the purposes of deciding the Defendants’ anti-SLAPP motion, I will focus on the damning and slanderous allegations concerning Dong’s conversation about the Two Michaels. For the purposes of the anti-SLAPP motion, it is not contested that the Defendants’ expression about (a) foreign government interference; and (b) Dong’s alleged betrayal of the Two Michaels, were matters of considerable public interest that slandered Dong. I shall assume that the

Defendants have a valid defence to the matter of foreign government interference, which ends the discussion of that topic save as to how it relates to the matter of the betrayal of the Two Michaels.

[79] There is no dispute, and indeed, it is indisputable that the Defendants' stories about: (a) foreign government interference in Canadian political affairs; and (b) Dong and his communications with the Chinese diplomat are matters of public interest of the highest magnitude of importance.

[80] There is no dispute, and indeed, it is indisputable that the Defendants' reports slandered Dong.

[81] There is no dispute, and indeed, it is indisputable that the Defendants' reports caused immense damage to Dong, his reputation, and to his career prospects.

[82] What is disputable is whether the anti-SLAPP provisions of the *Courts of Justice Act* should be employed in the immediate case to end Dong's opportunity to repair the damage to his reputation.

[83] In addressing how to apply the anti-SLAPP provisions to the immediate case, it should immediately be noted that Dong's defamation action is a pure defamation action. Dong's defamation action has no ulterior strategic purposes, and his action exposes him to considerable litigation and reputational risk. It should immediately be noted that his defamation action is **not Strategic Litigation Against Public Participation**. His defamation action has no strategic purpose beyond restoring Dong's reputation.

[84] However, although Dong's defamation action does not have the indicia of an action to suppress public participation, it is litigation that limits freedom of expression on matters of public interest, and his litigation comes within the purview and scrutiny of the anti-SLAPP provisions of s. 137.1 of the *Courts of Justice Act*.

[85] The Defendants have put into play two defences: (a) truth or justification; and (b) responsible communication.

[86] Applying s. 137.1 of the *Courts of Justice Act* to the news article that focused on Dong's communications with the Chinese diplomat and having regard to the two defences pled by the Defendants as already noted above, it is not disputed that Dong has demonstrated that his defamation action meets the Act's test for what counts for a case with substantial merit.

[87] Applying s. 137.1 of the *Courts of Justice Act*, the contested issues for the court to determine are whether Dong has demonstrated that the Defendants have no valid defence, which is to say no more than it is conceivable that a judge could or might reasonably dismiss the defences of (a) truth or justification and (b) responsible communication.

[88] It is quite conceivable that the Defendants' truth and justification defence is not valid.

[89] In advancing this defence, the Defendants do not argue that it is true that Dong told the Chinese Consul General to delay releasing the Two Michaels. The Defendants do not purport to submit that the headline "**Liberal MP Han Dong Secretly advised Chinese diplomat in 2021 to delay freeing of Two Michaels: sources**" means that it is true that Dong secretly told the Chinese Consul General to delay freeing the Two Michaels. Rather, the Defendants submit that the meaning of this headline and the article is that it is true that sources [i.e. Confidential Sources Two and Three] told the Defendants that Dong secretly told the Chinese Consul General to delay freeing the Two Michaels.

[90] It is conceivable that a court would regard this extraction of this meaning from the headline as pure sophistry. The sting of the news article is not that some CSIS sources think that Dong is a villainous traitor and betrayer of the Two Michaels. The sting of the article is that Dong is indeed a villainous traitor and betrayer of the Two Michaels. Proving what Cooper was told is not what the defamation action is about and provides no valid defence to the Defendants.

[91] Further, it is conceivable that a court would regard the extraction of this metaphysical meaning (about what some CSIS agents think) to amount to a violation of the repetition rule. The reputation rule negates the truth or justification defence. The repetition rule of defamation law posits that a defendant in a defamation action cannot escape liability by saying that he or she is simply repeating a defamatory statement first made by someone else.³⁰ As the Supreme Court said in *Douglas v. Tucker*:³¹

The sting of the words complained of being that the respondent is **alleged** to have acted fraudulently and to have deprived persons of their property by fraud they could be justified only by pleading and proving that he did in fact act fraudulently and did in fact deprive persons of their property by fraud. It is of no avail to plead that some person or persons other than the appellant had in fact made such allegations.³²

[92] Thus, focusing on the Defendants' expression about Dong and the Two Michaels, there is no valid defence based on truth or justification. Turning to the responsible communication defence, the allegations against Dong are of the highest seriousness in substance and in effect. They compel the highest level of diligence called for in reliance on this defence.

[93] In the immediate case, the Defendants have no tangible and no documentary corroboration of the information derived from the confidential sources about the conversation between Dong and the Chinese Consul General. The confidential information itself was provided by sources who at some indeterminate degree of hearsay relayed what they had read or what someone else had told them they had read in a transcript or a summary of a clandestinely intercepted phone conversation that had been spoken in Mandarin and translated into English. Cooper was not shown the transcript. His retained notes of the conversation do not reflect what he was told by Confidential Sources Two and Three.

[94] The fact that other pieces of information from the confidential informants have been confirmed by subsequent CSIS disclosures or disclosures to the Special Rapporteur or at the public inquiry are irrelevant to whether the confidential information about the Dong and Chinese Consul General conversation is credible or reliable.

[95] Apart from the fact that Cooper may not have accurately reported what he was told, the circumstances that there is corroborative evidence that Chinese agents coerced Chinese students to pad the voting at Dong's riding election does not establish that the Confidential Sources were correct and truthful about what they related to Cooper.

[96] That the Confidential Sources One, Two, Three, and Four were corroborated about the matter of foreign interference does not make them credible about multi-degree hearsay of a translated phone conversation.

[97] While confidential sources and whistleblowers play an important role in bringing critically

³⁰ *Fontaine-Rish Medical Group Ltd v. Global TV News Inc.*, [2006] O.J. No. 1051 (Master).

³¹ *Grant v. Torstar Corp.*, 2009 SCC 61; *Douglas v. Tucker*, [1952] 1 S.C.R. 275.

³² *Douglas v. Tucker*, [1952] 1 S.C.R. 275 at p. 285.

important stories to the public attention and while it is not unreasonable for a journalist to rely on confidential sources, nevertheless, depending on the seriousness of the allegations and the particular circumstances of the case, it may be unreasonable to rely on a confidential source.

[98] In the immediate case, it is conceivable that a court might decide that the Defendants ought to have forgone the explosive March 2023 article about Dong's alleged advice to the Chinese Consul General until the Defendants had something more than the hearsay revelations of the Confidential Sources. That Cooper may be assumed to have done adequate due diligence about his revelations of foreign government interference does not provide an answer whether the Defendants – all of them – exercised the appropriate level of investigation before dropping a cluster bomb on Dong's reputation.

[99] Thus, it is quite conceivable that the Defendants' responsible communication defence is not valid.

[100] In the immediate case, this brings the analysis of s. 137.1 of the *Courts of Justice Act* to its culmination. Dong has demonstrated that his defamation action has substantial merit and that the Defendants may have no valid defence. Finally, Dong must demonstrate that the public interest in permitting his defamation action to continue outweighs the public interest in protecting freedom of expression and the Defendants' expression of a matter in the public interest.

[101] The analysis of the culminating stage may begin by noting that it was no mere editorial decision to use Dong's telephone conversation with the Chinese Consul General as an example of foreign government interference in Canadian sovereignty and democracy. This was a bombshell free-standing story of its own. Visualize, if there was no story about Chinese interfering with elections, this was a story of a Canadian politician's serious misfeasance in the performance of his responsibilities. The Defendants used this story as an example of foreign government interference, but Dong's conversation with the Chinese Consul General was a free-standing story about Canadian treachery. This is a story the truth or fiction of which needs and is worthy of being determined independent of the story about foreign government interference.

[102] There is no doubt that Dong suffered a substantial harm by the Defendants' expression of the story of the conversation between Dong and the Chinese Consul General.

[103] In the immediate case, in my opinion, there is little public interest in protecting the Defendants' expression from the scrutiny of a defamation trial. In the immediate case, freedom of expression on a matter of public interest is advanced not curtailed by allowing Dong's defamation action to proceed in order to test the righteousness of Global News' revelations about Dong's communications with the Chinese.

[104] It is a matter of considerable public interest that there be a defamation trial. If it is true that Dong assisted the Chinese government and thereby betrayed the electorate and the Two Michaels, then he should be disgraced.

[105] If it is not true, that Dong disgraced himself, then it is of considerable public interest that he vindicate himself because the Canadian public is not in favour of baseless character and career assassination and irresponsible news reporting.

[106] Dong may be a villain, or he may be an innocent. The Defendants may have outed a villain and be lauded for it, or they may have wrongfully accused an innocent man, and if so, they should be embarrassed, and they should pay reparations. One side or the other will be vindicated, and it is in the public interest to have that determined and not decided on technical grounds pursuant to

s. 137.1 of the *Courts of Justice Act*.

[107] Ironically, Global News' anti-SLAPP motion is itself strategic litigation against public participation. The matter of Mr. Dong's communications with the Chinese is worthy of the freedom of expression of an open court system. It remains for the public to decide whether Dong was justifiably disgraced.

G. Costs

[108] Section 137.1(8) creates a presumption against awarding costs to the responding party if an anti-SLAPP motion is dismissed; this presumption will be rebutted where the underlying action bears little resemblance to strategic litigation.³³ As noted above, Dong's action is not strategic litigation. The Defendants' motion, on the other hand, resembles an abusive anti-SLAPP. In these circumstances, the s. 137.1(8) presumption has been rebutted and costs should be ordered against the Defendants.

H. Conclusion

[109] For the above reasons, the Defendants' motion is dismissed. If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with Dong's submissions within fifteen days of the release of these Reasons for decision followed by the Defendants' submissions within a further fifteen days.

Perell, J.

Released: June 19, 2024

³³ *Volpe v. Wong-Tam*, 2023 ONCA 680; *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2023 ONCA 381, leave to appeal to SCC ref'd [2023] S.C.C.A. 337 & 338; *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, leave to appeal to SCC ref'd [2023] S.C.C.A. No. 172; *Veneruzzo v. Storey*, 2018 ONCA 688.

CITATION: Dong v. Global News, 2024 ONSC 3532
COURT FILE NO.: CV-23-00698271-0000
DATE: 20240619

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HAN DONG

Plaintiff

- and -

**GLOBAL NEWS, a division of CORUS
ENTERTAINMENT INC., CORUS
ENTERTAINMENT INC., SAM COOPER, CRAIG
OFFMAN, SONIA VERMA, MACKENZIE GRAY,
FARAH NASSER, ANTONY ROBART, and
DAWNA FRIESEN**

Defendants

REASONS FOR DECISION

PERELL J.

Released: June 19, 2024