

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROGER ANTHONY PAUL, DANIELLE MARIE PAUL and MADVALLEY  
MEDIA

Plaintiffs/Responding Parties

and

THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY,  
KIM LOVE, CARL BROMWICH, ERNEST PEPLINSKI, DAVID SHULIST and  
MARK WILLMER

Defendants/Moving Parties

**COST SUBMISSIONS BRIEF OF THE PLAINTIFFS/RESPONDING PARTIES**

October 12, 2021

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## INDEX

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE NO.</b>
A.	Responding Parties' Submissions on Costs	1-15
1.	Offer to Settle dated March 9, 2020	16-17
2.	Offer to Settle dated March 30, 2021 including letter from August 28, 2019	18-23
3.	Offer to Settle dated May 12, 2021	24
4.	Letter from R. Howe to P. Cassan dated October 2, 2019	25-28
5.	Email from R. Howe to P. Cassan dated November 19, 2019	29
6.	Letter from R. Paul to P. Cassan dated May 11, 2020	30
7.	Email from R. Paul to P. Cassan and T. Harmar dated June 2, 2020	31
8.	Email from P. Cassan to R. Howe dated November 21, 2019	32-33
9.	Endorsement of Justice Gomery dated August 11, 2020	34
10.	Amended Endorsement of Justice Doyle dated March 24, 2021	35-37
11.	Order of Justice Doyle dated March 9, 2021	38-39
12.	Letter from R. Paul to Justice Doyle dated March 29, 2021	40
13.	Cost Submissions of the Plaintiffs dated April 23, 2021	41-46
14.	Endorsement of Justice Gomery dated October 23, 2020	47-48
15.	Endorsement of Master Kaufman dated September 10, 2020	49-51
16.	Orkin on the Law of Costs, 2 <sup>nd</sup> Edition (excerpts)	52-53
17.	Email from R. Paul to P. Cassan and T. Harmar dated August 20, 2021	54
18.	Letter from R. Paul to P. Cassan and counsel dated September 1, 2021	55-56
19.	Bill of Costs of the Plaintiffs on anti-SLAPP motion	57-62

Superior Court File No. CV-21-00000002-0000

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**RESPONDING PARTIES' SUBMISSIONS ON COSTS**

October 12, 2021

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## I. OVERVIEW

1. After dismissing the Defendants’ anti-SLAPP motion, this Court directed the Defendants to file a “2-page costs submission along with offers to settle and bill of costs”.<sup>1</sup> Instead of abiding by this direction, the Defendants have filed *eight different sets* of two-page cost submissions, totalling 16 mostly single-spaced pages. They seek to recover a total of nearly \$250,000<sup>2</sup> — a figure covering the costs for virtually every case conference, written request and other step leading up to, and including, the anti-SLAPP motion that the Defendants ultimately lost. Unfortunately, given the Defendants’ lengthy arguments and the crippling amount they seek to recover in costs, the Plaintiffs have no choice but to respond with detailed submissions of their own.

2. Just as the Defendants’ costs submissions ignore this Court’s direction in terms of length, so too do they ignore well-established legal principles regarding a party’s entitlement to costs and what constitutes a reasonable quantum of costs. They also ignore the fact that awarding the Defendants costs in this case would be a significant injustice. The Defendants have appealed this Court’s ruling on the anti-SLAPP motion. The Plaintiffs, who were self-represented throughout this proceeding, have stretched their resources in order to retain counsel to respond to the appeal. They ought not be put to the additional burden of paying the unsuccessful Defendants, which appear to have virtually limitless resources to spend on this litigation.

3. In the circumstances of this case, it is the successful Plaintiffs — and not the Defendants — that are entitled to their costs of the anti-SLAPP motion, in the amount of approximately \$30,000.

## II. DEFENDANTS ARE NOT ENTITLED TO COSTS

### A. Costs of the anti-SLAPP motion

4. The Defendants seek over \$140,000 in costs in respect of the anti-SLAPP motion that they lost.<sup>3</sup> As the losing party, the Defendants are presumptively disentitled from recovering any costs; indeed, the Plaintiffs are not aware of *any* decision awarding an unsuccessful moving party its costs on an anti-SLAPP motion. There is no good reason to depart from that presumption here.

#### 1. Defendants were not successful

5. The Defendants raise two arguments for why they should receive costs despite losing the motion. Their first argument is essentially an attempt to paint the Defendants as being at least partially successful. They argue that this Court “made numerous findings supporting the Defendants’ position on the issues”, relying specifically on the Court’s disposition of the request to admit issue, and on four different purported “findings” made by the Court in its reasons.

6. Even taking the Defendants’ arguments at face value, none of it changes the fact that the Defendants were unsuccessful on the motion. The Court of Appeal has repeatedly held that it is an error to focus on “success” on certain individual issues when determining costs of the ultimate

<sup>1</sup> Anti-SLAPP motion decision at [para. 222](#).

<sup>2</sup> The exact total is \$246,254.41, broken down as follows: \$4,070.54 (Cost Submission No. 1), Cost; \$3,365.17 (Cost Submission No. 2); \$1,681.44 (Cost Submission No. 3); \$24,928.09 (Cost Submission No. 4); \$9,628.79 (Cost Submission No. 5); \$1,534.54 (Cost Submission No. 6); \$59,634.39 (Cost Submission No. 7); \$141,411.45 (Cost Submission No. 8).

<sup>3</sup> Defendants’ Cost Submission No. 8

motion. Success is measured by the “overall success achieved by a party” in a proceeding.<sup>4</sup> Here, there is no ambiguity: the Defendants’ anti-SLAPP motion was dismissed in its entirety.

7. Moreover, the Court’s decision on the request to admit issue was an “exercise of discretion” as a result of the Defendants’ “oversight”<sup>5</sup>, and not a clear application black-letter law. The Defendants should not be rewarded for their own avoidable errors or inadvertence by way of a costs award in the larger substantive motion. There is no authority for such an approach. In fact, in contested motions where courts grant counsel an “indulgence” as a result of inadvertence or errors, they normally require the party that made those errors to bear the costs of that motion.<sup>6</sup>

8. The Defendants’ reliance on four cherry-picked statements from this Court’s reasons to suggest that this Court “made... findings that affirmed the Defendants’ position” is similarly misplaced.<sup>7</sup> In many cases, the statements were not conclusive “findings” at all, but comments made within the limited merits assessment required by an anti-SLAPP motion.<sup>8</sup> In all cases, the “findings” relate to issues where this Court *ultimately found in favour of the Plaintiffs*.<sup>9</sup>

## 2. No basis to depart from rule that losing parties do not receive costs

9. The Defendants also argue they should be awarded the costs of the anti-SLAPP motion because the Plaintiffs’ conduct before and during the litigation is “worthy of cost sanction”.<sup>10</sup> A high bar must be met to justify a departure from the presumptive rule that an unsuccessful party does not recover its costs. Such cost orders are only appropriate in “rare”<sup>11</sup>, “drastic”<sup>12</sup> and “exceptional”<sup>13</sup> cases, such as where there is “misconduct on the part of the successful party”<sup>14</sup>. For example, costs in favour of an unsuccessful party have been awarded where a successful party brings the administration of justice into disrepute by misleading the Court.<sup>15</sup>

10. Nothing about this case puts it in the rare and exceptional category of cases where unsuccessful parties are awarded their costs. The Defendants vague allusion to the Plaintiffs’

<sup>4</sup> *Fram Elgin Mills 90 Inc. v. Romandale Farms Ltd.*, 2021 ONCA 381 at [para. 10](#). See also: *Wesbell Networks Inc. v. Bell Canada*, 2015 ONCA 33 at [para. 21](#).

<sup>5</sup> Anti-SLAPP motion decision at [para. 35](#).

<sup>6</sup> For example, see *Business Development Bank of Canada v. I Inc.*, 2013 ONSC 1749, at [para. 37](#); *Koepcke v. Webster*, 2012 ONSC 357, at [para. 43](#).

<sup>7</sup> Defendants’ Cost Submission No. 8 at para. 11.

<sup>8</sup> For example, see Anti-SLAPP motion decision at [para. 114](#) (noting that certain words were “certainly insulting but not necessarily defamatory”) and [para. 148](#) (noting that statements in a letter “could be considered true”).

<sup>9</sup> In particular, the Defendants ignore this Court’s determinations that: (i) the Plaintiffs’ defamation lawsuit “has a prospect of success” in respect of the impugned words ([para. 120](#)); (ii) the defence of justification “cannot be considered to weigh more in favour of the Defendants” ([para. 154](#)); (iii) the Plaintiffs’ misfeasance claim “has a real prospect of success that tends to weigh more in favour of the Plaintiff” ([para. 131](#)); and (iv) “the harm that has been suffered by the Plaintiffs as a result of the above-noted expressions is sufficiently serious that the public interest in permitting this action to proceed to a hearing on the merits outweighs the public interest in protecting the municipality’s expressions.” ([para. 178](#)).

<sup>10</sup> Defendants’ Cost Submission No. 8 at para. 13.

<sup>11</sup> *Isaac v. Law Society of Upper Canada*, 2015 ONSC 1635 at [para. 22](#); *Ogoki Frontier Inc. v. All A.I.R. Ltd.*, 2005 CanLII 614 (ON S.C.) at [para. 8](#).

<sup>12</sup> *Celanese Canada Inc. v. Murray Demolition Corp.*, 2003 CanLII 25748 (ON S.C.) at [para. 4](#).

<sup>13</sup> *David Polowin Real Estate Ltd v. Dominion of Canada General Insurance Co.*, 2008 ONCA 703 at [para. 32](#).

<sup>14</sup> *Ibid.*

<sup>15</sup> See, for example, *Royal Bank of Canada v. Azkia et al.*, 2019 ONSC 5894 at [para. 82](#).

conduct “before filing their claim” falls well short of the mark.<sup>16</sup> The same is true for 218 emails the Defendants claim that the Plaintiffs sent to the Wishart firm; in fact, as this Court properly found, “these emails are not relevant” to this proceeding.<sup>17</sup> And while the Plaintiffs deny the Defendants’ bald and unparticularized assertions that they “repeatedly submitt[ed] improper materials” or were “improperly writing to the Court at various times”, such conduct — even if true — would, at best, be a basis upon which to reduce the quantum of costs to be awarded to a successful party. It is not conduct that would warrant awarding an unsuccessful party its costs.

11. In the end, there is simply no basis for this Court to be the very first to award the Defendants costs in respect of their unsuccessful anti-SLAPP motion.

**3. Additional considerations: access to justice, offers to settle, refusal to engage in ADR and Defendants’ conduct**

12. Far from advancing the access to justice rationale of the anti-SLAPP costs regime, awarding the unsuccessful Defendants their costs in this case would *undermine* access to justice. This is not a typical anti-SLAPP scenario. Here, it is the Defendants that enjoy virtually limitless public resources — having apparently spent some \$360,000 to date in order to defend a \$125,000 claim — while the self-represented Plaintiffs have limited resources and are now being put through the considerable expense of retaining counsel to respond to an appeal, as well as the Defendants’ eight sets of costs submissions.

13. As this Court recognized, “[t]he financial or power imbalance strongly favours the Defendants rather than the Plaintiffs” in this case.<sup>18</sup> This significant imbalance should not be exacerbated by departing from the ordinary rules to award the unsuccessful Defendants their costs.

14. In addition, the Plaintiffs made three separate, reasonable offers to settle the action and/or the anti-SLAPP motion, as follows:

- (a) A March 9, 2020 offer to settle the action in exchange for clarifying the record as to Mr. Paul’s former status as a licensed lawyer in Ontario, a direction that Mr. Paul’s future correspondence to Council be dealt with in the ordinary course, \$5,000 in damages and payment of legal fees.<sup>19</sup> This offer was never retracted.
- (b) A March 30, 2021 offer to settle the action on the same terms as the March 9<sup>th</sup> offer, but instead of damages, requiring an apology to Mr. Paul and a donation of \$500 to a local charity. This offer was time limited and expired on April 13, 2021.<sup>20</sup>
- (c) A May 12, 2021 offer to settle the motion if the Defendants paid 50% of the Plaintiffs’ costs, to be assessed if not agreed. This offer expired on May 18, 2021.<sup>21</sup>

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<sup>16</sup> Most of the Defendants’ dockets during this period appear to be related to the Plaintiffs’ initial correspondence regarding their defamation concerns, and the Plaintiff Danielle Paul’s freedom of information request.

<sup>17</sup> Anti-SLAPP motion decision at [para. 152](#). Indeed, most of the emails do not relate to this proceeding at all.

<sup>18</sup> Anti-SLAPP motion decision at [para. 181](#), subparagraph 2.

<sup>19</sup> March 9, 2020 Offer to Settle, [Tab 1](#) of these submissions.

<sup>20</sup> March 30, 2021 Offer to Settle, [Tab 2](#) of these submissions.

<sup>21</sup> May 12, 2021 Offer to Settle, [Tab 3](#) of these submissions.



15. The Plaintiffs also made an offer directly to Ms. Klatt to avoid litigation altogether, in exchange for essentially the same terms as the March 30<sup>th</sup> offer.<sup>22</sup>

16. The Defendants failed to engage with the Plaintiffs on any of these offers.

17. Rule 49.13 allows this Court to take into account the Plaintiffs' genuine offers to settle, even where they do not meet the formal requirements of a "rule 49" offer.<sup>23</sup> Given that the Plaintiffs made repeated offers to settle and were eventually successful on the anti-SLAPP motion, that militates squarely in favour of a costs award in their favour — and not any costs award in favour of the unsuccessful Defendants.<sup>24</sup>

18. On a similar note, the Plaintiffs have repeatedly offered to engage in a mediation process with the Defendants, making offers to do so in writing on no less than four occasions throughout 2019 and 2020.<sup>25</sup> The Defendants either refused to engage in mediation, or failed to respond at all.<sup>26</sup> This Court has held that where "reasonable opportunities to mediate are spurned, that can be a relevant factor when fixing costs", particularly where one side's position is not strong enough to justify reasonably declining an offer to mediate.<sup>27</sup> As the outcome of the anti-SLAPP motion demonstrates, there was no reasonable basis for the Defendants to refuse mediation in this case.

19. Finally, even if there were some legal basis for the Defendants' being awarded costs of a motion they lost (which there is not), this Court should exercise its discretion not to award costs, in light of the Defendants' conduct that unnecessarily lengthened and complicated these proceedings. Two examples stand out. The Defendants failed to produce a single document at Ms. Klatt's original attendance for cross-examination, despite the Plaintiffs' Notice of Examination that outlined several requests for documents. This, in turn, necessitated further court attendances and a re-examination of Ms. Klatt.<sup>28</sup> The Defendants also failed to move the motion forward at a reasonable pace<sup>29</sup>; instead, it was the Plaintiffs that consistently had to press matters ahead in order to have the motion resolved. This again resulted in higher costs and lengthier proceedings.

#### 4. In the alternative, quantum sought is unfair and unreasonable

20. In the alternative, if any costs award is made in favour of the Defendants on the anti-SLAPP motion, it should be for only a fraction of the more than \$140,000 they are seeking. A key consideration in determining costs is the amount that an unsuccessful party could reasonably

<sup>22</sup> See letter from August 28, 2019 letter from R. Paul to S. Klatt, included as part of [Tab 2](#) of these submissions.

<sup>23</sup> *König v Hobza et al*, 2015 ONCA 885 at [para 35](#).

<sup>24</sup> *Facchini (cob First Porter Consultancy) v Canada (Attorney General)*, 2019 ONSC 6559 at [para 9](#).

<sup>25</sup> See October 2, 2019 letter from R. Howe to P. Cassan, [Tab 4](#) of these submissions; November 19, 2019 email from R. Howe to P. Cassan, [Tab 5](#) of these submissions; May 11, 2020 letter from R. Paul to P. Cassan, [Tab 6](#) of these submissions; June 1, 2020 email from R. Paul to P. Cassan, [Tab 7](#) of these submissions

<sup>26</sup> See November 21, 2019 email from P. Cassan to R. Howe, [Tab 8](#) of these submissions.

<sup>27</sup> See, for example, *Canfield v. Brockville Ontario Speedway*, 2018 ONSC 3288 at [paras. 55-56](#).

<sup>28</sup> March 9, 2021 decision on Plaintiffs' motion at [paras. 61 and 68](#).

<sup>29</sup> See, for example, the comments made by Gomery J. in her August 11, 2020 endorsement at paras. 2 and 5, [Tab 9](#) to these submissions ("The defendants have not sought another hearing date even though a remote hearing would now be possible... The plaintiffs do have an interest in knowing whether the defendants intend to proceed with the anti-SLAPP motion. I therefore direct that a case conference be scheduled for the purpose of ascertaining the parties' intentions and, if necessary, setting a new timetable for the motion.")

expect to pay.<sup>30</sup> It could not be within the reasonable expectations of the parties to pay anything approaching \$140,000 for over 500 hours of counsel time spent a preliminary motion<sup>31</sup> — especially one that is not particularly complex, which is not intended to delve deeply into the merits of the underlying action, and which is brought in a simplified proceeding action where the total liability exposure for the Defendants is \$125,000. In the circumstances, one would be hard pressed to argue that \$140,000 would be a reasonable quantum for the trial of this *entire action*.

21. By contrast, the Plaintiffs are only claiming approximately \$20,000 in costs based on 143 hours spent on the motion — less than 30% of the hours claimed by the Defendants.

22. Three factors contribute to the excessive quantum of costs sought by the Defendants. First, the Defendants are claiming costs for four time-keepers on this relatively simple proceeding — including two senior counsel (each with well over 20 years of experience). While the Defendants are free to staff the file as they see fit, the costs of this unnecessary and unreasonably expensive staffing decision should not be borne by the Plaintiffs.<sup>32</sup> Second, the Defendants are claiming for all manner of time that is unrelated to the anti-SLAPP proceeding, including hours of time spent on Ms. Paul’s MFIPPA request<sup>33</sup>, on reviewing local media articles or responding to freelance journalist James Di Fiore<sup>34</sup> and on other unrelated legal issues.<sup>35</sup> Finally, the Defendants have calculated their partial indemnity rates as between 73-75% of actual fees — well in excess of the 60% “rule of thumb” and even the 66% “outer marker” used when fixing costs.<sup>36</sup>

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<sup>30</sup> Rule 57.01(0.b)

<sup>31</sup> Defendants’ Cost Submission No. 8 at p. 37.

<sup>32</sup> *Ziskos v Miksche*, [2007] OJ No 4276, 161 ACWS (3d) 651, 2007 CarswellOnt 7162 at [paras 184-196](#); *Shibish v Honda of Canada Inc*, 2011 ONSC 2989, at [para 62](#).

<sup>33</sup> See, for example, dockets from Cost Submission No. 8 on March 17 (“1.0 – To receipt and review of correspondence from S. Klatt re FOI and information disclosed to R. Paul...”), March 26 (“2.5 – To receipt and review of R. Paul correspondence re MFIPPA... research into relevant IPC decisions”), March 30 (“0.8 – Emails and advice regarding MFOIPPA and response to Mr. Paul in interim and during crisis. Emails Sue and responses.”), March 31 (“0.4 – Letter from Mr. Paul. Draft response regarding MFOIPPA”), April 6 (“0.2 – To correspondence with P. Cassan and B. Hodgkinson regarding offer and letter response re MFIPPA”), May 5 (“0.4 – To review of correspondence from R. Paul and K. Love regarding MFIPPA request and telephone call with P. Cassan regarding same”), June 1 (“1.7 - To review of correspondence from R. Paul regarding MFIPPA and story published by the Mad Valley Current regarding CAO and advertising issue; telephone call with S. Klatt regarding same and proposed response”, June 2 (“3.3 – To review of correspondence; drafting email memorandum regarding MFIPPA response to S. Klatt...”), June 24 (“1.0 – Reviewing correspondence from Mr. Paul and preparation of strategy for response to latest (fourth) request for information sought using MFOIPPA”); July 6 (“3.5 – To review of correspondence sent by R. Paul regarding MFIPPA response...”); July 16 (“1.0 – FOI response; review MFIPPA draft response, call w/ Sue Klatt); July 17 (“0.5 – To drafting FOI response for Sue”)

<sup>34</sup> See, for example, dockets from Cost Submission No. 8 on June 1 (“1.7 – To review of correspondence from R. Paul re MFIPPA and story published by the Mad Valley Current regarding CAO and advertising issue; telephone call with S. Klatt regarding same and proposed response”), July 17 (“2.0 – To review of J. Di Fiore correspondence to S. Klatt; review of same with N. Kenny regarding strategy; drafting scripted response for S. Klatt; telephone calls with S. Klatt re same”), October 29 (“4.5 - ...drafting response to J. Di Fiore proposed article on FOI and R. Paul”), November 2 (“4.0 – To telephone call with S. Klatt re Di Fiore responding letter and prepare for cross-examinations as well as telephone call with P. Cassan...”), November 12 (“1.2 - ...review of article discussed with S. Klatt published by MV Current regarding FOI request for documents relevant to litigation”)

<sup>35</sup> See, for example, dockets from Cost Submission No. 8 on January 3 (“1.0 - ...[D]iscussion of motion under 137.1 first then, if not successful, motions per s. 448 of the *Municipal Act* and motion for summary judgment”), October 20 (“1.4 – Meeting with O. Rosa re threats about LSO against me and against him – Mr. Paul trying to get us removed – no motion or complaint yet”), April 12/21 (“0.65 – Call re potential claim of intimidation...”)

<sup>36</sup> *James v. Chedli*, 2020 ONSC 4199 at [para 14](#).

23. Again, there is no basis for the unsuccessful Defendants to receive any costs at all. But if they are to receive any amount, the Plaintiffs submit that in light of the factors outlined above and the extremely limited degree of “success” achieved by the Defendants (if they experienced any at all), the quantum of costs should not exceed \$10,000.

### **B. Costs of the motion to strike**

24. The Defendants are not entitled to any of the nearly \$60,000 in costs they seek in respect of the motion to strike.<sup>37</sup> Their success on the motion was, at best, a partial one: of the 117 paragraphs the Defendants sought to strike as part of the motion<sup>38</sup>, only 70 paragraphs were ordered struck<sup>39</sup>, with this Court dismissing the motion as it related to the remaining nearly 50 paragraphs. In similar circumstances of ‘mixed success’ on motions to strike affidavit evidence or pleadings, courts have repeatedly held that both sides should bear their own costs.<sup>40</sup> The same result should follow here.

25. A further reason for a ‘no costs’ order in respect of the motion to strike is that the material that was struck did not prejudice the Plaintiffs. With very few exceptions, the impugned paragraphs were struck because this Court concluded that they were “argument” that belonged “in a factum”.<sup>41</sup> Courts have recognized that “more often than not”, no prejudice will arise from argumentative statements in an affidavit<sup>42</sup> and that true legal arguments in an affidavit will eventually come to the Court’s attention in any event through a factum or oral argument.<sup>43</sup> Consistent with this reality, the struck paragraphs did not contribute in any material way to lengthening the Defendants’ cross-examination of the Plaintiffs (which were, in any event, extremely short), or to the Defendants having to file additional material (indeed, they did not even file material in response to the supplemental affidavits of Mr. Paul and Mrs. Paul).

26. In the alternative, if any costs award is made in favour of the Defendants on the motion to strike, it should be for only a fraction of the nearly \$60,000 they are seeking, bearing in mind the following rule 57.01 factors:

- (a) *Amount of costs an unsuccessful party could reasonably expect to pay.* No party could reasonably expect to pay \$60,000 based on a simple, straightforward motion to strike affidavit evidence — one that required the Defendants to adduce no evidentiary record of their own, and which consisted almost entirely of a single ground for striking the affidavits (*i.e.* legal argument). Even in more complex motions to strike affidavit evidence where a party experienced total success, cost awards have been for only a fraction of this amount;<sup>44</sup>

<sup>37</sup> Defendants’ Cost Submission No. 7

<sup>38</sup> Anti-SLAPP motion decision at [para. 59](#).

<sup>39</sup> Anti-SLAPP motion decision at [para. 70](#).

<sup>40</sup> See, for example, *Private Equity Management Co. v. Vianet Technologies Inc.*, 2000 CanLII 22363 (ONSC) at [para. 41](#); *Verma v. Di Salvo*, 2020 ONSC 850 at [para. 92](#); *Markovic v. Abbott*, 2010 ONSC 2682 at [para. 12](#); *Jordan v Canada (Attorney General)*, 2016 ONSC 3831 at [para 19](#).

<sup>41</sup> Anti-SLAPP motion decision at [para. 70](#).

<sup>42</sup> *Coldwater Indian Band et al. v. AG Canada et al.*, 2019 FCA 292 at [para. 21](#).

<sup>43</sup> See, for example, *Armstrong v. Canada*, 2005 FC 1013 at [para. 42](#).

<sup>44</sup> See, for example, *Burton Brothers v Remington Homes*, 2004 CanLII 35083 (ON S.C.) at [para. 25](#) (costs of \$5,000 in total on a motion seeking four orders: to strike two affidavits, a further and better affidavit of documents

- (b) *Complexity and importance of the issues.* The motion to strike was not complex; it was routine fare for civil litigation and revolved mainly around a single issue concerning whether certain paragraphs in the Plaintiffs’ affidavits were legal argument. The Defendants’ materials relating to striking the affidavits were unsurprisingly sparse.<sup>45</sup> As set out above, these issues were not particularly important given that having legal argument in an affidavit — rather than in a factum or presented in oral argument — does not result in any real prejudice;
- (c) *No improper conduct by the Plaintiffs.* The Defendants’ assertions that the Plaintiffs’ responding factum on the motion “was a tactical document designed to vex the Defendants” has no basis in fact. While the Court found the Plaintiffs’ factum included discussion on some irrelevant matters, this Court made no findings as to the improper motives for that factum, nor would such findings be justified in this case. Indeed, the Defendants expressly argued that the reply factum was an “abuse of process” and this Court declined to make any findings in that regard.

27. The Defendants’ \$60,000 costs claim also reflects the same three problems outlined earlier in respect of their claim for costs on the anti-SLAPP motion. First, it reflects a situation of “over-lawyering”, with three time-keepers staffed to bring forward a simple motion.<sup>46</sup> Second, the Defendants are claiming for time that is not properly recoverable as part of the motion to strike, including time spent in relation to other motions<sup>47</sup> and on the issue of how to deal with self-represented litigants.<sup>48</sup> Third, the Defendants are using “partial indemnity” rates calculated at or near 75% of actual rates — 15% higher than the figure the jurisprudence requires.

28. Again, there is no basis for the unsuccessful Defendants to receive any costs of the motion to strike at all. But if they are to receive any amount, the Plaintiffs submit that in light of the factors outlined above and the limited degree of “success” achieved by the Defendants on the motion, the quantum of costs should not exceed \$5,000.

### C. Costs of the abandoned ‘false light’ motion

29. The Defendants seek approximately \$1,500 in costs in respect of the Plaintiffs’ abandoned motion to amend their statement of claim to add the ‘false light’ tort.<sup>49</sup> As the Court was advised during argument, the Plaintiffs’ concession was motivated, in part, by a concern that the ‘false

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and security for costs. The parties had filed 4 motion records, had two attendances at an examiner's office, had a previous court appearance); *Gutierrez v Watchtower Bible and Tract Society of Canada*, 2019 ONSC 3880 at [para. 9](#) (costs of \$15,252.12 on a successful motion to strike three affidavits in their entirety).

<sup>45</sup> The Defendants’ moving factum on the motion was only four pages. The Defendants’ reply factum on the motion devoted a further four pages to issues relating to the motion to strike.

<sup>46</sup> Defendants’ Cost Submission No. 7, Schedule B (Bill of Costs) at p. 10.

<sup>47</sup> See, for example, dockets from Defendants’ Cost Submission No. 7 for May 4 (“4.8 – ...participation in closed session of Council to discuss status and R. Paul motion to amend claim”), May 6 (“5.7 - ...review of bill of costs for R. Paul motion before Justice Doyle... and R. Paul motion to amend Statement of Claim”), May 7 (“0.2 – To review of Facta for various motions” and “0.15 – To review of Factum re motion to strike and motion to amend Statement of Claim”).

<sup>48</sup> See, for example, dockets from Defendants’ Cost Submission No. 7 for May 16 (“2.5 – To telephone call with P. Cassan re leniency with respect to self-representation and how that changes when self-representation starts to mislead or lie to the court...”)

<sup>49</sup> Defendants’ Cost Submission No. 6

light’ issue would encroach on the hearing time for the anti-SLAPP motion (which the Plaintiffs wanted to ensure was heard as scheduled).

30. The Plaintiffs accept that the Defendants are presumptively entitled to costs in respect of the abandoned motion. However, the Plaintiffs do not accept that \$1,500 is a reasonable figure. The Defendants’ Bill of Costs claims costs associated with three time-keepers in respect of this simple issue (including two senior counsel, with years of call in 1997 and 1991), claims costs for several tasks that have nothing to do with the abandoned motion<sup>50</sup> and again uses an elevated percentage when calculating partial indemnity rates. The Plaintiffs submit that an award of costs in the amount of \$500 is appropriate in the circumstances.

#### **D. Costs of the ‘list of documents’ case conference (held on March 24, 2021)**

31. The Defendants seek nearly \$10,000 in costs for a case conference where rulings were made in respect of a list of documents accompanying Ms. Klatt’s Notice of Examination.<sup>51</sup>

32. Awarding costs in respect of case conferences should be “rare”. As this Court explained:

The important goal of enhancing access to civil justice is best facilitated by encouraging parties to make use of Case Conferences, Civil Practice Court, Chambers Appointments, and the other light touch case management processes that are being implemented to enhance efficiency and affordability of civil litigation. Removing the costs risk from informal appearances in the ordinary case encourages parties to bring matters before the court earlier and less formally. This will help move cases forward more efficiently and affordably and thereby save more than the limited costs incurred by the informal attendances.<sup>52</sup>

33. Courts have been willing to depart from the normal practice and award costs of case conferences in extreme cases, such as where parties have knowingly breached timetables and jeopardized hearing schedules in a way that was “clearly foreseeable”.<sup>53</sup>

34. No such circumstances arise in this case. Indeed, the Defendants cannot even be characterized as the “successful parties” at the March 24<sup>th</sup> case conference. As this Court’s Amended Endorsement makes clear, most of the rulings from that case conference confirm and require that the Defendants must abide by the document requests made by the Plaintiffs<sup>54</sup>, while in other cases the rulings were resolved on the basis that the Defendants simply had no documents (or no further documents) in their possession.<sup>55</sup> This result does not even provide the basis for a costs request in a normal contested motion — let alone meet the high bar for costs at a case conference.

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<sup>50</sup> See, for example, dockets from Defendants’ Cost Submission No. 6 for April 27 (“0.75 – To review of transcript of re-examination of S. Klatt”), May 7 (“0.20 – “To review of Facta for various motions”), May 7 (“1.9 – To finalize drafting of factum, notice of motion and supporting affidavit re motion to strike affidavits...”)

<sup>51</sup> Defendants’ Cost Submission No. 5

<sup>52</sup> *2287913 Ontario Inc. v. Blue Falls Manufacturing Ltd.*, 2016 ONSC 1714 at [para. 2](#); *Zuppinger and Yan v. TSCC No. 2139 et al.*, 2017 ONSC 6771 at [para. 19](#).

<sup>53</sup> *Zuppinger and Yan v. TSCC No. 2139 et al.*, 2017 ONSC 6771 at [para. 20](#).

<sup>54</sup> Amended Endorsement dated March 24, 2021 at paras. 8, 10, 13 and 15, [Tab 10](#) of these submissions.

<sup>55</sup> Amended Endorsement dated March 24, 2021 at paras. 12 and 14, [Tab 10](#) of these submissions.

35. In the alternative, only a fraction of the nearly \$10,000 claimed by the Defendants would be a fair and reasonable quantum for costs. Again, the Defendants have claimed for three time-keepers (including two senior counsel) in respect of a simple issue where they experienced (at best) partial success, and have improperly calculated partial indemnity rates using figures that are at or near 75% of actual rates. The Defendants have also claimed for all manner of tasks that have no connection to preparing for argument on the disputed ‘list of documents’ issue<sup>56</sup> — including more than 14 hours spent *after* the case conference mainly complying with this Court’s directions.<sup>57</sup> If any costs award is made in respect of the conference, it should not exceed \$500.

**E. Costs of the Plaintiffs’ motion (heard March 4, 2021, decided March 9, 2021)**

36. The Defendants seek nearly \$25,000 in costs in respect of a motion brought by the Plaintiffs, which was heard on March 4, 2021 and decided by this Court on March 9, 2021.<sup>58</sup>

37. The Defendants’ claim is built upon the false premise that they enjoyed success on the motion. They did not. In fact, they sought leave to appeal this Court’s decision on the motion to the Divisional Court (before ultimately abandoning that effort). While the Plaintiffs were not successful in having the Defendants’ claim dismissed, they were successful in obtaining an order to have Ms. Klatt re-attend for further cross-examination; an order to make best efforts to have Ms. Klatt provide answers to undertakings prior to that further cross-examination; and an order that the Defendants should comply with documentary disclosure obligations and produce relevant documents not protected by privilege. Other issues on the motion were either adjourned (the rule 39.03 examination of Mr. Bromwich) or the parties were urged to try and resolve the matter amongst themselves (the request for documents relating to instructions given to Mr. Cassan).<sup>59</sup> This is not a picture of “success” for the Defendants; at best, success on the motion was mixed.

38. Moreover, the Defendants failed to abide by this Court’s directions in relation to the costs of the motion. This Court set a timetable for costs submissions, which required the Plaintiffs to file two-page costs submissions by March 30<sup>th</sup>, with responding submissions by April 13<sup>th</sup> and any reply by April 27<sup>th</sup>.<sup>60</sup> In light of the Defendants’ pending motion for leave to appeal, the Plaintiffs wrote to this Court on March 29<sup>th</sup> and proposed that their cost submissions be deferred until after the motion for leave was resolved.<sup>61</sup> On April 13<sup>th</sup> — after the Defendants’ motion for leave to appeal was abandoned — the Plaintiffs filed their costs submissions, which are enclosed here for convenience and which the Plaintiffs still rely upon today.<sup>62</sup>

39. By contrast, the Defendants never responded to the Plaintiffs’ submissions, sought an extension of time, or filed any costs submissions in respect of the March 4<sup>th</sup> motion until September 3, 2021 — more than five months after receiving the Plaintiffs’ materials. The

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<sup>56</sup> See, for example, dockets from Cost Submission No. 5 on March 18 (“1.5 – To meeting with P. Cassan and N. Kenny regarding update to litigation budget...”) and March 19 (“2.0 – Begin preparing motion for leave to Divisional Court”)

<sup>57</sup> See dockets from Cost Submission No. 5 starting on March 25, 2021 (the day after the case conference), which relate to work required to comply with the document requests upheld by the Court.

<sup>58</sup> Defendants’ Cost Submission No. 4.

<sup>59</sup> Order of Doyle J. dated March 9, 2021 at paras. 2-6, [Tab 11](#) of these submissions.

<sup>60</sup> Order of Doyle J. dated March 9, 2021 at para. 7, [Tab 11](#) of these submissions.

<sup>61</sup> Letter to Doyle J. dated March 29, 2021, [Tab 12](#) of these submissions.

<sup>62</sup> Plaintiffs’ Costs Submission on March 9<sup>th</sup> Motion, [Tab 13](#) of these submissions.

Defendants should not be rewarded for their failure to abide by this Court's direction by receiving a significant costs award in respect of a motion where they were not the successful party.

40. In the alternative, if any costs award is made in favour of the Defendants on the March 4<sup>th</sup> motion, it should be for only a fraction of the nearly \$25,000 they are seeking. Again, the Defendants seek compensation for three time-keepers, including two senior counsel, for a straightforward motion that does not warrant such heavy staffing. The resulting number of hours claimed up to and including the date of the motion (73.3 hours) is excessive and unreasonable. By contrast, the Plaintiffs' costs claim is for less than 19 hours. And, again, the Defendants seek to be compensated for almost 9 hours *after* the motion was argued that is not properly claimed as part of the costs of the motion — including time spent advancing compliance with the order and, remarkably, time considering whether to appeal the order (despite those efforts ultimately being abandoned).<sup>63</sup> Taking these factors in combination with the (at best) mixed success on the motion, the Plaintiffs submit that any costs award in favour of the Defendants should not exceed \$1,500.

**F. Costs of request for a hearing to remove Defendants' counsel (October 23, 2020);  
Costs of case conference with Master Kaufman (September 10, 2020);  
Costs of request for hearing of motion to strike (August 11, 2020)**

41. The Defendants seek approximately \$1,600 in costs in respect of an entirely written process where Gomery J. denied the Plaintiffs' request for an urgent motion<sup>64</sup>; \$3,300 in costs for a case conference before Master Kaufman, where he set a timetable and certain directions for the anti-SLAPP motion<sup>65</sup>; and \$4,000 in costs in respect of an entirely written process where Gomery J. denied the Plaintiffs' request to schedule a motion to strike.<sup>66</sup> None of the endorsements in question speak to the issue of costs or reserve them for a later date.<sup>67</sup>

42. The Defendants' request for costs cannot succeed for at least two reasons. First, the law is clear that when a matter is disposed of "with no mention of costs, it is as though the judge had said that he saw fit to make no order as to costs."<sup>68</sup> The three endorsements in question — all of which are silent on the matter of costs — fall squarely within this principle. Second, as Strathy J. (as he then was) recognized, a motion judge has "no jurisdiction to award costs in respect of previous motions" — at least in the absence of an express order providing otherwise (and none exists in this case).<sup>69</sup> That same rationale applies here.

43. With respect to the Defendants' request for costs for the case conference before Master Kaufman, that request should also be denied for the reasons outlined above in Part II.D.

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<sup>63</sup> See, for example, dockets from Defendants' Cost Submission No. 4 for March 9 ("3.00 – To review of Justice Doyle's decision, review rules re clarification, consider appeal options... look at undertakings, review possible documents for undertakings")

<sup>64</sup> Defendants' Cost Submission No. 3.

<sup>65</sup> Defendants' Cost Submission No. 2.

<sup>66</sup> Defendants' Cost Submission No. 1.

<sup>67</sup> Endorsement of Gomery J. dated October 23, 2020, [Tab 14](#) of these submissions; Endorsement of Master Kaufman dated September 10, 2020, [Tab 15](#) of these submissions; Endorsement of Gomery J. dated August 11, 2020, [Tab 9](#) of these submissions.

<sup>68</sup> Orkin on Costs at s. 1:15, [Tab 16](#) of these submissions.

<sup>69</sup> *Trahan v. ING Insurance*, 2009 CanLII 45847 (ON S.C.) at [para. 4](#). See also *Celanese Canada Inc. v. Murray Demolition Corp.*, 2003 CanLII 25748 (ON S.C.) at [para. 3](#).

### G. Timing of any costs order

44. For the reasons set out above, the Plaintiffs’ submit that the Defendants are not entitled to any costs awards, apart from \$500 in respect of the abandoned ‘false light’ motion. But if this Court determines otherwise, the Plaintiffs submit that it should exercise its discretion under rule 57.03(1)(b) to order that any costs be payable only at the conclusion of the trial of this action, or upon dismissal of the action (in the event the appeal is successful). Courts have made similar orders where access to justice considerations so require.<sup>70</sup> This is such a case. The Defendants have unsuccessfully sought to deprive the Plaintiffs of their day in court through this anti-SLAPP motion. They should not be able to use a costs award “payable forthwith” to threaten the Plaintiffs’ ability to effectively defend this Court’s determination by retaining counsel on appeal.

### III. PLAINTIFFS ARE ENTITLED TO COSTS OF THE ANTI-SLAPP MOTION

45. Under s. 137.1(8) of the *Courts of Justice Act*, motion judges have the discretion to award costs to responding parties that successfully resist an anti-SLAPP motion if “such an award is appropriate in the circumstances.” This discretion can be exercised in cases even if the expression at issue has been found to be on a matter of public interest, depending on the facts of a given case.<sup>71</sup> Here, three key features militate in favour of awarding the Plaintiffs their costs.

46. First, the entire anti-SLAPP motion was disproportionate and unnecessary. The Plaintiffs’ 27-paragraph claim is a simple one, for a modest amount, brought under the simplified procedure regime. It is an action that likely could have been tried on the merits by now — and adjudicated for well under the nearly \$250,000 the Defendants seek to recover in costs. The Court of Appeal has justified awarding costs to successful respondents where anti-SLAPP motions were brought too late in a particular proceeding, reasoning that it undermines the purpose of anti-SLAPP motions.<sup>72</sup> It is similarly antithetical to the goals of the anti-SLAPP regime for a set of well-resourced defendants to pursue an expensive anti-SLAPP motion process, rather than have a straightforward matter efficiently heard and determined on its merits by way of simplified procedure.

47. Second, the Plaintiffs’ claim does not have any of the characteristics or “indicia” of a classic SLAPP<sup>73</sup>: there is no history of the Plaintiffs using litigation to silence critics; there is no financial or power imbalance that favours the Plaintiffs (quite the opposite, as this Court found<sup>74</sup>); the Plaintiff’s claim was not animated by a punitive, retributory or improper purpose<sup>75</sup>; and the Plaintiff did not suffer merely minimal or nominal damages.<sup>76</sup> Courts have considered that the lack of any SLAPP indicia suggests a “potential misuse” of the anti-SLAPP motion process by moving parties, and that insulating unsuccessful moving parties from costs in such circumstances “could be seen as encouraging defendants to bring meritless s. 137.1 motions.”<sup>77</sup> These concerns are particularly acute in this case, given the readily available — and more appropriate —

<sup>70</sup> See, for example, *Stevens v. RBC*, 2007 CanLII 38581 (ON S.C.) at [para. 17](#).

<sup>71</sup> *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730 at [para. 45](#).

<sup>72</sup> *Levant v. Day*, 2019 ONCA 244 at [para. 29](#).

<sup>73</sup> *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730 at [para. 46](#).

<sup>74</sup> Anti-SLAPP motion decision at [para. 181\(2\)](#).

<sup>75</sup> Anti-SLAPP motion decision at [para. 181\(3\)](#).

<sup>76</sup> Anti-SLAPP motion decision at [para. 182](#).

<sup>77</sup> See, for example, *Veneruzzo v. Story*, 2018 ONCA 688 at [paras. 39-40](#).



alternative of the Defendants moving ahead so that the Plaintiffs' modest simplified procedure claim could be tried on its merits, rather than the Defendants spending well in excess of the total amount claimed on a lengthy, ill-advised and ultimately unsuccessful preliminary motion.

48. Third, the Plaintiffs not only made multiple offers to settle the underlying action on reasonable terms and to engage in a mediation process (as outlined above), but also expressly advised the Defendants that they would be seeking costs if the offers were not accepted and the anti-SLAPP motion was dismissed.<sup>78</sup> The Defendants' decision to forge ahead with the anti-SLAPP motion — despite the Plaintiffs' reasonable offers to resolve the underlying issues, without engaging with the Plaintiffs in any meaningful settlement discussions, and after being put on notice that the Plaintiffs would be seeking their costs of the anti-SLAPP motion — further supports an award of costs in favour of the Plaintiffs.

49. In short, the Defendants' decision to pursue an anti-SLAPP motion in the circumstances of this case is exactly the type of tactical decision by a well-resourced party that courts should strongly discourage by way of an adverse costs award.

50. With respect to the quantum of costs sought by the Plaintiffs, successful self-represented litigants are generally entitled to costs for the time that would otherwise have been spent by a lawyer, with cases compensating such litigants in the range of \$100-150/hr.<sup>79</sup> In the unusual circumstances of this case, the Plaintiffs also request the costs incurred in retaining counsel to respond to the Defendants' multiple sets of costs submissions — most of which were unsolicited by this Court — totalling the unreasonable and excessive sum of nearly \$250,000. The Defendants also failed to respond to the Plaintiffs' multiple attempts to discuss resolving the issue of costs<sup>80</sup>, notwithstanding this Court's suggestion that the parties at least attempt to resolve that issue.<sup>81</sup>

51. Based on the hourly rate of \$125/hr for the Plaintiffs' own time, and based on partial indemnity rates for the time of counsel retained for these costs submissions, the Plaintiffs respectfully request their costs of the anti-SLAPP motion in the amount of \$30,197.92, as detailed in the attached Bill of Costs.<sup>82</sup>

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of October, 2021




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**STOCKWOODS LLP**

Justin Safayeni / Karen Bernofsky

*Lawyers for the Plaintiffs/Responding Parties*

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<sup>78</sup> Plaintiffs' May 12, 2021 Offer to Settle, [Tab 3](#) of these submissions

<sup>79</sup> See, for example, *McMurter v. McMurter*, 2017 ONSC 725 at [paras. 20-23](#) (and the cases cited therein); *Rubner v. Waddington McLean & Co. Ltd.*, 2020 ONSC 692 (Div Ct) at [para. 35](#).

<sup>80</sup> August 20, 2021 email from Plaintiffs to Defendants' counsel, [Tab 17](#) of these submissions; September 1, 2021 letter from Plaintiffs to Defendants' counsel, [Tab 18](#) of these submissions.

<sup>81</sup> Anti-SLAPP motion decision at [para. 222](#).

<sup>82</sup> Plaintiffs' Bill of Costs for anti-SLAPP motion, [Tab 19](#) of these submissions.

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**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

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**COSTS SUBMISSIONS**

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**STOCKWOODS LLP**

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Lawyers for the Plaintiffs/Respondents

Email for parties served:  
J. Paul R. Cassan: pcassan@wishartlaw.com

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ROGER ANTHONY PAUL, DANIELLE MARIE PAUL AND MADVALLEY MEDIA**

Plaintiffs

-and-

**THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL BROMWICH,  
ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER**

Defendants

## Offer to Settle

The Plaintiffs offer to settle this proceeding on the following terms:

1. The Defendants will at the first regular Council meeting following acceptance of this offer, cause a Resolution to be passed revoking that part of Resolution No. 2019-025-0827 which includes the following wording:

**“and THAT Council directs the CAO/Clerk to forward all future correspondence from Mr. Roger Paul to Council for Consideration at a Regular Council so council can decide what public resources will be allocated to Mr. Paul.”**


2. In conjunction with the passing of the aforesaid Resolution, the Mayor or other presiding officer at the meeting, will read a statement, in wording to be agreed, which will state the following:

- i. That members of Council, and the municipality through its CAO, apologizes to the Plaintiffs for the treatment of them, and public statements that are the basis for this proceeding made during the Council meeting held on August 27<sup>th</sup> 2019;

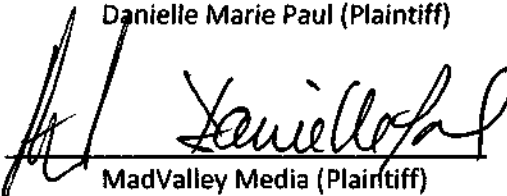
- ii. The Defendants accept, and retract any inference to the contrary, that the Plaintiff Roger A. Paul did formerly hold a licence to practise law in the Province of Ontario;
- iii. The Defendants accept that Roger Paul’s letter to the Township dated August 18<sup>th</sup> 2019 concerning the potential of recovering legal fees, was written in good faith and in the interests of the taxpayers of Madawaska Valley.
- iv. The Defendants accept that Roger and Danielle Paul did not engage in any conduct that requires them to apologize to, and compensate, the taxpayers of Madawaska Valley.

- 3. The Defendants agree to pay to the Plaintiffs the sum of \$5,000 as damages.
- 4. The Defendants agree to pay the Plaintiffs’ costs.
- 5. Upon acceptance of this offer, the Plaintiffs will consent to an Order dismissing their action.

DATED at Barry’s Bay, Ontario this 9<sup>th</sup> day of March 2020.

  
 \_\_\_\_\_  
 Roger Anthony Paul (Plaintiff)

  
 \_\_\_\_\_  
 Danielle Marie Paul (Plaintiff)

  
 \_\_\_\_\_  
 MadValley Media (Plaintiff)

ROGER ANTHONY PAUL, DANIELLE MARIE PAUL, MADVALLEY MEDIA  
 (Plaintiffs, all of whom are self-represented)  
 351 Matcheski Road, PO Box 1097  
 Barry’s Bay ON K0J 1B0  
 Tel: 613.518.1094

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ROGER ANTHONY PAUL, DANIELLE MARIE PAUL AND MADVALLEY MEDIA**

Plaintiffs

-and-

**THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL BROMWICH,  
ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER**

Defendants

## Offer to Settle


The Plaintiffs offer to settle this proceeding on the following terms which are available for acceptance until 4:00 p.m. on April 13 2021:

1. Compliance with the requests contained in the letter from the Plaintiff Roger Paul to the Defendants and their counsel dated August 28 2019, a copy of which is attached hereto.
2. The Defendants will, at the first regular Council meeting following acceptance of this offer, cause a Resolution to be passed revoking that part of Resolution No. 2019-025-0827 which includes the following wording:

**“and THAT Council directs the CAO/Clerk to forward all future correspondence from Mr. Roger Paul to Council for Consideration at a Regular Council so council can decide what public resources will be allocated to Mr. Paul.”**

3. The Defendants will pay the Plaintiffs' costs in respect of this proceeding, to be assessed by the Court if not agreed.
4. Upon acceptance of this offer, the Plaintiffs will consent to an Order dismissing their action.

DATED at Barry's Bay, Ontario this 30th day of March 2021.

  
 \_\_\_\_\_  
 Roger Anthony Paul (Plaintiff)

  
 \_\_\_\_\_  
 Danielle Marie Paul (Plaintiff)

  
 \_\_\_\_\_  
 MadValley Media (Plaintiff)

**ROGER ANTHONY PAUL, DANIELLE  
 MARIE PAUL, MADVALLEY MEDIA**  
 (Plaintiffs, all of whom are self-  
 represented)  
 351 Matcheski Road, PO Box 1097  
 Barry's Bay, ON K0J 1B0  
 Contact: Roger Paul  
 Email: rodani75@gmail.com  
 Tel: 613.518.1094

**TO: THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL  
 BROMWICH, ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER (Defendants)**

Wishart Law Firm LLP  
 Barristers and Solicitors  
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 Sault Ste Marie ON P6A 1X2  
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 Tel: 705.949.6700  
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 Lawyers for the Defendants

Roger Paul, J.D.

351 Matcheski Road  
PO Box 1097  
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matcheski@yahoo.ca

**URGENT**

CAO/Clerk Suzanne Klatt  
Township of Madawaska Valley  
**Via email to: cao@madawaskavalley.ca**

28 August 2019

Dear CAO Klatt

**Re: False imputations about my professional qualifications**

At yesterday's Council meeting you placed in the public domain, after being directed by Council to do so, a letter from Mr. Casson of Wishart Law dated August 27.

The letter contains the following statement:

**"I have read Mr. Paul's claim that he was a lawyer in the UK. I have not been successful in finding Mr. Paul was ever called to the Bar or practised law in any province or territory in Canada."**

This statement is now circulating in the public domain because you have released it to the media. Mr. Casson's insinuation is a serious one as it disputes statements I have put in the public domain myself over many years. These include, but are not limited to, my public profile when I was a Director of St. Francis Memorial Hospital, also in my position as a Director of Renfrew Legal Clinic. In addition, *The Madawaska Valley Current's* About Us section currently contains the following statement:

**"Roger is publisher of *The Madawaska Valley Current*. He practiced law in both Ontario and the UK before his retirement in 2010 when he and Danielle moved into the Valley house they had built."**

For your, and Mr. Casson's, information please note the following.

I graduated from the Faculty of Law, University of Toronto in 1977 and was called to the Bar of Ontario in 1978. I articulated to the late Mr. Ian W. Outerbridge Q.C., who was one of Canada's leading litigation lawyers, a Bencher of the Law Society of Upper Canada and also the first Canadian lawyer to be given a special Call to argue a case in the United States Supreme Court. Following my Call to the Bar, I practised in association with Mr. Outerbridge on Bay Street in Toronto, as well as with other senior litigation lawyers including Morris Manning Q.C. and Warren Mueller Q.C.

In 1987 I voluntarily surrendered my Law Society of Ontario licence when I returned to the UK, where I was originally from. That same year I was admitted to the Supreme Court of England and Wales as a

solicitor, my Ontario qualifications being recognized for that purpose, and practised there until my retirement. At the time of my retirement, I was Head of Litigation of a major, 300-year-old UK regional firm. I was also a Fellow of the Institute of Chartered Arbitrators and an accredited Mediator.

Below are copies of my certificates as a solicitor of the Supreme Court of Ontario and my Call to the Bar of the Law Society of Upper Canada.

All of this information was available to you for your inspection had you asked me. It is also the case that Mr. Casson had my contact particulars as I have recently been corresponding with him about the Madawaska Valley Code of Conduct and Integrity Commissioner Protocol. Mr. Casson's failure to confirm my professional history before communicating with you, and now the public at large, is inexcusable and, I believe, actionable.

The direction to release this false imputation on my character follows the at times vitriolic and contrived attack on me during the Council meeting. This creates a strong presumption that it was activated by malice towards me.

Therefore, by no later than 4 p.m. this Friday August 30 2019, I require you to do the following forthwith:

1. Distribute to the same recipients as the Wishart letter, in a form satisfactory to me, a retraction of Mr. Casson's libelous imputations.
2. Provide an apology from you, all members of Council and Mr. Casson, again in a wording satisfactory to me, for this conduct.
3. Make a donation in my name in the sum of \$500 to the St. Francis Valley Healthcare Foundation.

I suggest you give consideration to forwarding this letter to your respective insurance representatives.

Yours truly,

Roger Paul

Enc.

Copies via email to:

Paul Casson, Wishart Law [pcassan@wishartlaw.com](mailto:pcassan@wishartlaw.com)

Mayor Kim Love [mayor@madawaskavalley.ca](mailto:mayor@madawaskavalley.ca)

Councillor Carl Bromwich [councillor.bromwich@madawaskavalley.ca](mailto:councillor.bromwich@madawaskavalley.ca)

Councillor Ernie Peplinski [councillor.peplinski@madawaskavalley.ca](mailto:councillor.peplinski@madawaskavalley.ca)

Councillor David Shulist [councillor.shulist@madawaskavalley.ca](mailto:councillor.shulist@madawaskavalley.ca)

Councillor Mark Willmer [councillor.willmer@madawaskavalley.ca](mailto:councillor.willmer@madawaskavalley.ca)





THE LAW SOCIETY



OF UPPER CANADA

Be it Remembered that

*Roger Anthony Paul*

HAVING BEEN ENROLLED IN AND ADMITTED TO

*The Law Society of Upper Canada*

AS A STUDENT OF THE LAWS AND HAVING SUCCESSFULLY COMPLETED THE

Bar Admission Course

and having conformed to the Rules of the Society was this day duly Called to the Degree of Barrister-at-Law and was admitted to practice at the Bar of Her Majesty's Courts in Ontario by the Benchers of The Law Society of Upper Canada, in Convocation, pursuant to the Statute and the Rules of the Society in that behalf;

IN TESTIMONY WHEREOF the Treasurer of The Law Society of Upper Canada has hereto affixed the Seal of the said Society this *24th* day of *April* in the year of our Lord One Thousand Nine Hundred and *Seventy-nine* and in the *twenty-eighth* year of the reign of Her Majesty Queen Elizabeth II

*Michael Brown* Secretary *St D Paul* Treasurer



**Roger & Danielle Paul**

351 Matcheski Road  
PO Box 1097  
Barry's Bay ON K0J 1B0  
Tel: 613 518 1094 | Cell: 613 806 4459  
rodani75@gmail.com

Wishart Law Firm LLP  
390 Bay Street, Suite 500  
Sault Ste. Marie, ON P6A 1X2  
Attn: Mr. J. Paul R. Cassan  
**Sent via email to pcassan@wishartlaw.com**  
**And to tharmar@wishartlaw.com**  
**And to bhodgkinson@wishartlaw.com**

12 May 2021

Dear Sirs

**RE CV-21-00000002-0000 Paul et al v Madawaska Valley et al**

Dear Sirs,

In the event that the Plaintiffs are successful in defeating the Defendants' S.137 motion, they will be seeking costs against them. This is despite the provision in S.137(8). In support, they will make submissions, and provide corroborating evidence, demonstrating that the conduct of the Defendants including, but by no means limited to, refusing several offers of mediation is inconsistent and contradictory of the position of Defendants who have asked the Court to accept that at all material times their conduct was altruistic and not based on malice. We will also include submissions relating to procedural and unprofessional conduct; including but not limited to advising your client to breach its statutory obligations by refusing to provide the statutory response to a request made under the *Municipal Freedom and Protection of Privacy Act (MFIPPA)*.

In light of these matters we suggest that there is a strong likelihood that the Judge will exercise his/her discretion under S.137(8) and will order that your clients pay the Plaintiffs' costs.

Despite this we are prepared to allow your clients to abandon their motion in return for which the Plaintiffs will limit their costs to 50% of what they eventually may be assessed at if not agreed. However, please be advised that this is only open for acceptance until 12 p.m. on May 18, at which time it should be considered as having been withdrawn.

Yours truly,



Roger Paul and Danielle Paul

**Howe & Bradley**  
Professional Corporation  
Lawyers

**Robert B. Howe J.D.**  
robert@howebradley.com

**Matthew J. Bradley B.A.H., LL.L., LL.B.**  
matt@howebradley.com

**Courtney A. Burnett J.D.**  
courtney@howebradley.com

October 2, 2019

J. Paul R. Cassan, Esq.  
Wishart Law Firm LLP  
390 Bay Street, Suite 500  
Sault Ste. Marie, ON P6A 1X2

Dear Sir:

**RE: Township of Madawaska Valley and Paul  
My File: 24378**

Thank you for your letter of 13 September which I have now had an opportunity to review with my clients.

Thank you for answering some of the questions in my letter. So far as your answer to question 2 is concerned, I submit that from my letter it was clear that I was not accusing you of “name calling”, but rather was pointing out that the consequences of the Resolution would be to lead many people to believe that Mr. Paul is a “crackpot” and/or a “chronic complainer” whose communications are not deserving of serious consideration. Surely this is a reasonable inference that is likely to be drawn from the wording of the Resolution? In any event I think it may be constrictive for me to record in detail the facts founding my clients’ legal claims against the Township.

**The questioning of Mr. Paul’s legal qualifications:**

Pending compliance with the freedom of information request that is pending, the following facts are beyond dispute:

1. Your client and members of Council were aware that, for a number of eight years, Mr. Paul has publicly stated that he once practised law in Ontario, in particular in his capacity as one of a Director of both the local hospital and the Renfrew County Legal Clinic. (You are presumed to know the consequences of encouraging public circulation of your professional opinion challenging the truth of that statement).
2. You had had recent dialogue with Mr. Paul in his capacity as publisher of *The Madawaska Valley Current* concerning what he perceived to be anomalies in the new Code of Conduct and Integrity Commissioner Protocol adopted on your

recommendation by the Township of Madawaska Valley. Anybody reading that correspondence could draw the conclusion that there was an element of pique implicit in your responses.

3. Before sending your letter dated August 27, 2019 to your client, you clearly did not address your mind to possible explanations concerning the lack of current records of Mr. Paul's previous membership in the Law Society of Upper Canada.
4. Despite the potential damage to Mr. Paul's reputation and standing in the community, you nonetheless did not contact him first advising him of your fruitless search for a record of his being licensed to practise law anywhere in Canada, and inviting an explanation.
5. In his letter of September 1 to you, to which he has not received a reply, Mr. Paul mentioned a previous occasion when a supporter of the Mayor and Councillor Peplinski challenged him on his professional history. Unlike yourself, this person did in fact write to him giving him an opportunity to respond.
6. Neither did the Township's CAO nor any member of Council see fit to contact Mr. Paul as a precaution before authorizing the disclosure of the content of your letter to members of the public.

#### **Previous history:**

My file reveals a pattern of behaviour strongly suggesting that the Pauls have been targeted with what I would characterize as "reprisal conduct" for some time. These include, but are not limited to, the following examples:

- a. In May, 2016 while Danielle Paul was still an employee of the Township, Council wrongly interfered in a Human Rights investigation process by preventing the Township from complying with both its own Human Rights Policy and the Human Rights Tribunal guidelines and upholding her complaint against Councillor Peplinski.
- b. During the previous month, also in contravention of HRTA guidelines, your client denied Danielle Paul's request that her husband be permitted to represent her in the Human Rights investigation process because she herself was receiving treatment for stress arising from the same event. This request was rejected even though the guidelines say that a complainant is entitled to have a representative of her choice.
- c. In July, 2017 when the Human Rights proceeding was pending, a key witness, her former superior Mr. Paul Nopper, acknowledged that he had been forbidden to have any contact-even social contact-with the Paul's on pain of losing his job.
- d. Mr. Nopper had also been advised to convey the same instructions to Mrs. Paul's friend and former colleague who was still employed by the Township at the time.
- e. Upon Mr. Paul confirming to Mr. Nopper by letter exactly what he had been told about the reason for his being unable to meet with Mr. Paul (concerning the tennis club), my clients were met with what turned out to be the first of several "communication bans".

- f. In October, 2017 after the HRTO settlement, Danielle Paul asked Councillor Peplinski's the apology to her be read at a Council meeting or that she be allowed to read it. This request was refused. The reason given by the Township's then solicitor for its refusal was that it would be in breach of the terms of settlement, a ridiculous statement as its very terms made it explicitly clear that the apology was to be public!
- g. In January, 2018 when my clients started *The Madawaska Valley Current*, one of the first things they did was to write a courtesy letter to the then CAO notifying him that they would be attending Council and Committee meetings as representatives of a new local online and print newspaper. This provoked an immediate response from the Township's then solicitor imposing another communication ban.
- h. In April, 2018 an independent body of citizens entered into negotiations with the Township to re-open the Barry's Bay Railway Station as a museum and cultural centre, where Mrs. Paul had previously worked. However, one of the conditions imposed upon the negotiations by the Mayor was that this body must not hire Mrs. Paul in any capacity.

### **Conclusion and Proposal:**

The clear conclusion to be drawn from this history is that the Pauls have been and still are targets of reprisals because:

- (a) Mrs. Paul brought a Human Rights claim against the Township and a member of Council; and
- (b) they are the owners of a newspaper which from time to time publishes articles critical of the Council and members of Council.

The foregoing actions coupled with the recent defamatory conduct collectively demonstrate an abuse of power and provide grounds for claims by the Paul's for damages and injunctive relief which they are fully prepared to pursue.

Your letter dated August 27, 2019 clearly defames Roger Paul, as does the resolution passed by the Council and published.

The history of reprisals constitutes an abuse of the Township's power exerted from malicious motives and is actionable as such with respect to both the Pauls and *The Madawaska Valley Current*.

The history set out above is available to rebut any submission that the actors were acting in good faith for purposes of Section 448 of the *Municipal Act*, 2001 (Ontario). The facts also are such as to give rise to awards of exemplary and/or punitive damages.

Conceivably the Council could be the subject of a mandatory injunction to rescind the offending resolution.

In light of the foregoing, I write to propose that, instead of incurring legal fees possibly running into many thousands of dollars (as was the consequence of the Township's rejecting the proposal for mediation put forward by Danielle Paul before the Township had incurred any legal expenses in connection with her complaint against Councillor Peplinski) the Township in this case instruct you to engage "without prejudice" in some form of alternative dispute resolution.

The Pauls would consider foregoing the monetary damages which I am confident they are in a position to recover if through mediation or a similar process, "normal relations" could be established between the Township and two of its ratepayers, and *The Madawaska Valley Current*.

If this proposal is not accepted and litigation ensues, the Pauls reserve the right to tender this letter on the issue of costs.

Yours truly,

Robert B. Howe  
RBH/kb

cc. The Mayor  
cc. Members of Council

**RE: Paul v. Township of Madawaska Valley et al. - My File: 25467**

robert howebradley.com

TAB 5

Tue 11/19/2019 1:05 PM

To: Paul Cassan <pcassan@wishartlaw.com>

 1 attachments (94 KB)

25467-Paul.Twp.Statement of Claim.pdf

**Hello, Mr. Cassan:**

I recall our telephone conversation on November 15, 2019.

Attached as discussed is a draft Statement of Claim which is ready for issue.

We discussed that you would seek instructions and advise:

1. Whether the Municipality in the person of its councillors is willing to participate in some form of mediation with a view to establishing a mutually respectful working relationship between the Paul's, *The Current* and the Municipality; or, if not
2. Whether you have instructions to accept service of the Statement of Claim once issued on behalf of any or all of the Defendants.

As discussed, the Statement of Claim will not be issued until I hear back from you, but, given that undertaking, I would request to hear from you no later than November 28, 2019.

Robert B. Howe

Howe and Bradley Professional Corporation  
Barristers and Solicitors  
46 Murray Park Street  
P.O. Box 790  
Barry's Bay, ON  
K0J 1B0  
Tel.: 613-756-2087  
Fax: 613-756-5818



**Roger & Danielle Paul**

*351 Matcheski Road  
PO Box 1097  
Barry's Bay ON K0J 1B0  
Tel: 613 518 1094  
[rodani75@gmail.com](mailto:rodani75@gmail.com)*

Wishart Law Firm LLP  
390 Bay Street, Suite 500  
Sault Ste. Marie, ON P6A 1X2  
Attention: Mr. J. Paul R. Cassan

**Via email to [pcassan@wishartlaw.com](mailto:pcassan@wishartlaw.com)  
And to [bhodgkinson@wishartlaw.com](mailto:bhodgkinson@wishartlaw.com)**

11 May 2020

Dear Sirs

**Re Paul et al v. Madawaska Valley et al CV-19-00082269-0000**

Prior to the commencement of these proceedings, the Plaintiffs invited your clients to participate in mediation but they refused. However, we understand that in a recent Notice to the Profession, the Chief Justice of Ontario called "upon the cooperation of counsel and parties to engage in every effort to resolve matters." This is in response to the growing logjam of cases adjourned because of the pandemic.

The Plaintiffs reiterate that they remain ready, willing and able to participate in alternative dispute resolution and therefore suggest that, if you have not already done so, you take fresh instructions from your clients. If they remain opposed to taking this step, perhaps we can turn to considering a new timetable in preparation for your motion being re-listed.

Is it the Defendants' intention to file further evidence as, if so, the Plaintiffs will defer a decision on scheduling cross-examinations until such evidence is received. Is it the Defendants' intention to cross-examine any of the Plaintiffs' witnesses and, following from our recent exchanges on this subject, are you content to do so remotely?

Yours truly,

Roger Paul and Danielle Paul



Roger & Danielle Paul <rodani75@gmail.com>

---

**Paul v Madawaska Valley et al.**

1 message

---

**Roger & Danielle Paul** <rodani75@gmail.com>

Mon, Jun 1, 2020 at 2:15 PM

To: Paul Cassan <pcassan@wishartlaw.com>

Cc: Tim Harmar <tharmar@wishartlaw.com>, Brittany Hodgkinson <bhodgkinson@wishartlaw.com>

Dear Sirs,

Please accept this as notice that the Plaintiffs' Offer to Settle dated the 9th March 2020 is hereby withdrawn. I assume you have by now received the instructions you said you were seeking concerning mediation. Please advise what those instructions are as the Plaintiffs intend to retain counsel to represent them going forward but will hold off doing so until mediation has taken place if that turns out to be the case. Mr Howe has agreed to represent us at a mediation.

Yours truly,

--

**Roger & Danielle Paul**

TAB 8



Roger &amp; Danielle Paul &lt;rodani75@gmail.com&gt;

---

**Fw: [EXTERNAL] RE: Paul v. Township of Madawaska Valley et al. - My File: 25467**

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robert howebradley.com <robert@howebradley.com>  
To: Roger & Danielle Paul <rodani75@gmail.com>

Fri, Nov 22, 2019 at 12:07 AM



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**From:** Paul Cassan <pcassan@wishartlaw.com>  
**Sent:** Thursday, November 21, 2019 5:31 PM  
**To:** robert howebradley.com <robert@howebradley.com>  
**Cc:** Linda Hurdle <LHurdle@wishartlaw.com>; Nuala Kenny <NKenny@wishartlaw.com>; Tim Harmar <THarmar@wishartlaw.com>  
**Subject:** RE: [EXTERNAL] RE: Paul v. Township of Madawaska Valley et al. - My File: 25467

Good evening Mr. Howe.

I have been instructed that Council does not agree to the proposed mediation.

I am further instructed that I may accept service of the statement of claim on behalf of all named defendants. It would of course be the Municipality's intention to vigorously defend the action and seek costs of doing so.

I am content to receive service of the issued claim by email, please copy my assistant Linda Hurdle with that email. Once Ms. Hurdle and I have received the claim by email, I expect to give you authority to endorse service accepted as my agent. I look forward to having this claim dealt with expeditiously.

**Paul Cassan**

a c



Wishart Law Firm LLP

Phone: (705) 949-6700 ext. 230 | Cell: (705) 542-4747 | Fax: (705) 949-2465

[www.wishartlaw.com](http://www.wishartlaw.com) | 390 Bay St., Suite 500 Sault Ste. Marie, Ontario P6A 1X2

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**From:** robert howebradley.com <robert@howebradley.com>  
**Sent:** November 19, 2019 1:05 PM  
**To:** Paul Cassan <pcassan@wishartlaw.com>  
**Subject:** [EXTERNAL] RE: Paul v. Township of Madawaska Valley et al. - My File: 25467

Hello, Mr. Cassan:

I recall our telephone conversation on November 15, 2019.

Attached as discussed is a draft Statement of Claim which is ready for issue.

We discussed that you would seek instructions and advise:

1. Whether the Municipality in the person of its councillors is willing to participate in some form of mediation with a view to establishing a mutually respectful working relationship between the Paul's, *The Current* and the Municipality; or, if not
2. Whether you have instructions to accept service of the Statement of Claim once issued on behalf of any or all of the Defendants.

As discussed, the Statement of Claim will not be issued until I hear back from you, but, given that undertaking, I would request to hear from you no later than November 28, 2019.

Robert B. Howe

Howe and Bradley Professional Corporation

Barristers and Solicitors  
[46 Murray Park Street](#)  
P.O. Box 790  
Barry's Bay, ON  
K0J 1B0  
Tel.: 613-756-2087  
Fax: 613-756-5818

**Paul v. Madwaska Valley, Court file no. CV-19-82269**  
**Endorsement on request for hearing of contested motion**

Per triage judge S. Gomery, August 11, 2020

1. The plaintiffs have submitted a request for hearing of a contested motion. They propose that the motion be heard in writing. In the motion, they seek the following relief:
  - (i) Dismissal of the defendants' anti-SLAPP motion;
  - (ii) A timetable order requiring the defendants to serve statements of defence within 14 days;
  - (iii) Costs of the anti-SLAPP motion payable by the defendants personally rather than from public funds;
  - (iv) Leave to amend their statement of claim; and
  - (v) Such other relief that the court deems appropriate.
2. The defendants' anti-SLAPP motion was originally scheduled to be heard on March 12, 2020, but was adjourned on the consent of all parties to May 15, 2020. It was not heard on that date due to the suspension of hearings resulting from the COVID-19 pandemic. The defendants have not sought another hearing date even though a remote hearing would now be possible.
4. I decline to grant the plaintiffs' request for hearing of their motion to strike. In my view, it is improper for the plaintiffs to seek to bring a motion seeking to strike another pending motion. The relief claimed at (ii) and (iii) above flows from the proposed motion to strike. Amendments to the statement of claim may similarly be affected by the outcome of the anti-SLAPP motion.
5. The plaintiffs do have an interest in knowing whether the defendants intend to proceed with the anti-SLAPP motion. I therefore direct that a case conference be scheduled for the purpose of ascertaining the parties' intentions and, if necessary, setting a new timetable for the motion. The case conference should be set by the case management office after conferring with the parties. It shall be presided by a master and proceed by teleconference or videoconference.
6. This endorsement has been signed electronically and is effective absent any further formality.



Justice Sally Gomery

**COURT FILE NO.:** CV-21-00000002-0000

**DATE:** 2021/03/24

**SUPERIOR COURT OF JUSTICE**

**RE:** Roger Anthony Paul, Danielle Marie Paul and Madvalley Media

Plaintiffs

**AND**

The Corporation of the Township of Madawaska Valley, Kim Love, Carl Bromwich, Ernest Peplinski, David Shulist and Mark Willmer

Defendants

**BEFORE:** Justice A. Doyle

**COUNSEL:** Plaintiffs: Self represented

Nuala M. Kenny and Tim J. Harmar, Counsel for the Defendants

**DATE:** March 24, 2021 via Teleconference

**AMENDED ENDORSEMENT**

[1] This endorsement follows a case conference held today by teleconference. The procedural context follows.

[2] On March 9, 2021, I released my endorsement dealing with motions brought by both parties and held, among other things, the following:

- The Plaintiffs' motion to strike the Defendants' s. 137 of the *Courts of Justice Act* motion to strike the Plaintiffs' Claim was dismissed;
- Ms. Suzanne Klatt would have to re-attend cross-examinations; and
- The Defendants would revise their list of documents accompanying the Notice of Examination of Ms. Klatt.

[3] In my endorsement, I found that the original list of documents was “broad, general and lack specificity such as timelines”. (*Paul v. Madawaska* 2021 ONSC 1689, para. 62)

[4] The parties requested this case conference as the Defendants allege that the revised list of documents does not comply with my direction.

### **Discussion**

[5] As I indicated in my previous endorsement, the disclosure process is not a fishing expedition. Secondly, the Defendants are entitled to redact any portion of a document that is protected by privilege. Thirdly, I am mindful that these requested documents are in support of a s. 137 motion which is meant to be an expedient process and this is not an examination for discovery.

[6] The revised list of documents prepared by the Plaintiffs does not differ greatly from the original list but rather adds an explanatory note to explain the basis for the request.

[7] I now turn to each of the documents requested in the list attached to the Defendants’ submissions and provide my ruling:

*#1 – Records to support that there were multiple complaints and repetitive requests from the Plaintiffs*

[8] If the Defendants have any other documents to support this allegation other than the emails forwarded by the Plaintiffs to the Defendants, they will produce the same.

*#2 – Records to support the allegation that Mr. Paul “strained the limited resources of the township and its staff”*

[9] I agree that this request is broad. I understand that the Defendants are relying on the evidence of Ms. Klatt regarding the amount of time she spent dealing with the Plaintiffs’ correspondence. If the Defendants intend to rely on any other documentation that would support this allegation then they will produce the same.

*#3 Records regarding the apportionment of legal costs attributed to Mr. Roger Paul*

[10] The Defendants will provide the documents regarding this issue subject to redaction for

any information as it relates to solicitor and client privilege.

*#4 – Notes of meetings and records of any reactions regarding the Plaintiffs*

[11] I agree that this request is broad and amounts to a fishing expedition. Nothing further is required to be produced.

*#5 Communications to support the allegation that the Plaintiffs are revisiting issues that were already dealt with by the Human Rights Tribunal of Ontario and Municipal Freedom of Information and Protection of Privacy Act applications and Integrity commissioner.*

[12] The Defendants indicate that they have nothing further other than what the Plaintiffs have in their possession regarding these aforementioned proceedings. Nothing further is required to be produced.

*#6 Records of communications with the Integrity commissioner following Mr. Paul's complaint*

[13] The Defendants have no independent recollection that any exist but will look at the correspondence between the commissioner and municipality and will produce documents if they exist.

*#7 Records of discussion regarding articles published by the Current*

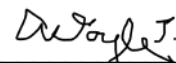
[14] The Defendants indicate that they have already been produced and there are no further documents. Nothing further is required to be produced.

*# 8 and 9 relate to any documents that the Defendants intend to rely on for their s. 137 motion*

[15] The Defendants will provide documents that they intend to rely on in support of their motion.

[16] If the parties are not able to resolve the issue of implied waiver of the solicitor client privilege arising out of the Cassan letter, then the parties may request a date before me.

[17] Costs of today's hearing reserved to the motion Judge.



---

Justice A. Doyle

**Date:** March 24, 2021



Court File No.: CV-21-00000002-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE

Justice A. Doyle

Tuesday, 9 March 2021

**ROGER ANTHONY PAUL, DANIELLE MARIE PAUL  
AND MADVALLEY MEDIA**

Plaintiffs

- and -

**THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE,  
CARL BROMWICH, ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER**

Defendants

**ORDER**

THIS MOTION, heard on March 4, 2021 by video conference, was made by Plaintiffs for an order:

1. Dismissing the Defendants' application under S.137(3) of the Courts of Justice Act.
2. In the alternative,
  - a. Striking out the Affidavits of Suzanne Klatt herein; or in the alternative,
  - b. Requiring Suzanne Klatt to re-attend for cross-examination on her Affidavits at her own expense; and,
    - i. Produce the documents enumerated in the Notice of Appointment dated September 28 2020;
    - ii. Be required to answer questions she refused to answer on her cross-examination including questions on the contents of the Plaintiffs' Affidavits; and,
    - iii. Prior to any such re-attendance that she answer the undertakings she gave during her cross-examination held on November 4, 2020.
  - c. That the Defendant Carl Bromwich attend for examination as a witness in a pending motion pursuant to Rule 39.03;
  - d. An Order pursuant to Rule 30.04(5) requiring the Defendants to produce all documents relating to instructions given to, and generated by, Paul Cassan which resulted in his letter to the Defendants dated August 27 2019;

e. An Order that the Defendants comply with the Notice to Inspect Documents dated 30<sup>th</sup> December 2020;

f. An Order that the Defendants pay the costs of this motion.

3. Such further or other relief as to this Honourable Court seems just.

ON READING the Motion Records and Factums filed by both parties, and on hearing the submissions of the Plaintiffs in person and the lawyers for the Defendants.

1. THIS COURT ORDERS that Suzanne Klatt re-attend for cross-examination on the date and at the time the parties have already agreed and the issue of who will be ultimately responsible for the costs will be reserved to the Trial Judge.

2. THIS COURT ORDERS that the Defendants will use best efforts to ensure that the undertakings to the previous cross-examinations be produced to the Plaintiffs before the resumption of cross-examinations.

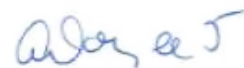
3. THIS COURT ORDERS that, at least 14 days before the examination, the Plaintiffs provide a revised list of documents to be attached to the Notice of Examination that complies with the directions given in my Decision dated March 9, 2021.

4. THIS COURT ORDERS that the Defendants should comply with document disclosure and produce relevant documents that are not protected by privilege.

5. THIS COURT ORDERS that the request for an Order that Carl Bromwich be examined pursuant to Rule 39.03 shall be adjourned and be revisited once the S.137.1 motion has been determined.

6. THIS COURT ORDERS that the Plaintiffs' request that the Defendants produce all documents relating to instructions given to and generated by Paul Cassan which resulted in his letter to the Defendants dated August 27, 2019 should be subject to attempts by the parties to resolve the issue, failing which the parties can return to the motion judge for determination of it.

7. THIS COURT ORDERS that the Plaintiffs may file their two-page costs submissions along with their Bill of Costs and any offers to settle by March 30, 2021. The Defendants may file their two-page costs submissions along with their bill of costs and any offers to settle by April 13, 2021 and the Plaintiffs may file a one-page reply by April 27, 2021.



---

(Signature of judge, officer or registrar)

**Roger Paul, J.D.**

*351 Matcheski Road  
PO Box 1097  
Barry's Bay ON K0J 1B0  
Tel: 613 518 1094  
[rodani75@gmail.com](mailto:rodani75@gmail.com)*

For the attention of Madam Justice Doyle

**Sent via email to: [Constance.Ferguson@ontario.ca](mailto:Constance.Ferguson@ontario.ca)**

29 March 2021

Dear Madam Justice Doyle

**Re CV21-00000002-0000 Paul et al v. Madawaska Valley et al**

In your endorsement dated March 9 2021 which followed the motion argued before you on March 4, you stated that if the parties wish to make submissions about costs, the Plaintiffs should do so by March 30.

However, following the Case Conference you presided over on March 24, later that day the Plaintiffs were served with a Notice of Motion for Leave to Appeal your Order of March 9. They then advised us that they would not be producing Ms. Klatt for continued cross-examination at the scheduled appointment which was this morning at 10 a.m. We were not served with any Order staying your Order pending disposition of the Motion for Leave Order and Ms. Klatt did not attend this morning.

Under these circumstances, we respectfully request that you advise the parties whether you still wish to entertain submissions for costs at this time. If you do, we would appreciate a short extension of time following your reply to this letter in order to do so. Alternatively, we respectfully suggest that you may wish to consider deferring the issue of costs to the Motion Judge as you did with the costs of the Case Conference.

Yours respectfully,



Roger Paul, Plaintiff

cc: Mr. P. Cassan, Defendants' counsel

Court File No.: CV-21-00000002-0000

ONTARIO  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ROGER ANTHONY PAUL, DANIELLE MARIE PAUL AND MADVALLEY MEDIA**

Plaintiffs

-and-

**THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL BROMWICH,  
ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER**

Defendants

**SUBMISSIONS BY THE PLAINTIFFS ON COSTS PURSUANT TO  
THE ORDER OF MADAM JUSTICE DOYLE DATED MARCH 9 2021**

1. Given the relief claimed in the Notice of Motion and what the Plaintiffs succeeded in obtaining, they respectfully submit that costs should be awarded as following the event.
2. The Plaintiffs brought their motion under Rule 34.15 through the failure of the Defendants' witness, Suzanne Klatt, to comply with the terms of the Notice of Appointment served on her for her cross-examination. This alleged non-compliance constituted a breach of her obligation under Rule 34.10. In addition, the Plaintiffs sought compliance by Ms. Klatt with undertakings she had given some four months before the hearing.
3. Rule 34.15 provides the judge with several options arising from such default including striking out the proceeding. As the Plaintiffs conceded in their Factum, that would only be ordered in exceptional circumstances. However because the Court notionally had that jurisdiction under Rule 34.15, the Plaintiffs as they stated in their Factum requested that the Court also take into consideration the Plaintiffs' assertion that because of an alleged technical defect in the S.137.1 *CJA* Notice of Motion, grounds existed to strike out that Notice of Motion entirely based on its inherent jurisdiction.
4. Your Honour found, however, that the Plaintiffs were estopped from raising that strike out issue because of the previous Decision of Madam Justice Gomery as triage judge who held that the Court does not have the power to entertain a motion to strike out a motion.
5. The Plaintiffs also respectfully request Your Honour to take into account the fact that they provided the Defendants an opportunity to raise any issues they had with the categories of documents

included in the Notice of Appointment served on Ms. Klatt. This is because, when serving it, the Plaintiffs wrote to the Defendants' solicitors inviting them to agree to prior production of relevant documents "in the interests of minimizing the length of the examination." Thus, the Defendants were given this early opportunity to dispute what they ended up disputing both on the return of this motion and the subsequent case conference they called before Your Honour on March 24. This invitation was a perfect opportunity for the parties to attempt to narrow down the number of relevant documents and their scope to their mutual satisfaction. No response was received to this invitation and, indeed, no issue was taken with the form of the Appointment up to, and including, the cross-examination itself.

6. Given that the Plaintiffs are self-represented, they respectfully request that Your Honour take into consideration recent decisions on appropriate hourly rates. In *McMurter v. McMurter* (2017 ONSC 725 Canlii), the self-represented litigant was successful in a fifteen-day trial of a matrimonial dispute. She requested costs calculated on an hourly rate of \$35 for her time. Her husband argued that her costs should be reimbursed at just \$18.32 per hour which is what she would otherwise have earned at her regular job. Madam Justice MacLeod-Beliveau disagreed saying "She did the work of a lawyer in addition to the work expected of her as a litigant." The Court held that the work done by the self-represented litigant in that case could be likened to that of a junior lawyer or that of an experienced law clerk. She therefore awarded costs at the rate of \$100 an hour; i.e. more than triple what had been requested. The rate used in another recent case (*Witter v. Gong* (2016 ONSC 6333 Canlii)) was \$150 per hour. Accordingly the Plaintiffs have based their hourly rate on the median figure allowed in those decisions; i.e. \$125 an hour.

All of which is respectfully submitted.

DATED April 23, 2021

ROGER ANTHONY PAUL, DANIELLE MARIE PAUL, MADVALLEY  
 MEDIA (Plaintiffs, all of whom are self-represented)  
 351 Matcheski Road, PO Box 1097  
 Barry's Bay, ON K0J 1B0  
 Contact: Roger Paul Email: rodani75@gmail.com  
 Tel: 613.518.1094 (no fax)

TO: This Honourable Court

AND TO: Wishart Law, Defendants' solicitors

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**ROGER ANTHONY PAUL, DANIELLE MARIE PAUL AND MADVALLEY MEDIA**

Plaintiffs

-and-

**THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL BROMWICH,  
ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER**

Defendants

**PLAINTIFFS' BILL OF COSTS submitted pursuant to the Order of Madam  
Justice Doyle dated March 9 2021**

**AMOUNTS CLAIMED FOR FEES AND DISBURSEMENTS**

ITEM (covering period Jan.28 2021 to Apr.19 2021)	HOURS	AMOUNT CLAIMED <i>(based on hourly rate of \$125.00)</i>
Obtaining motion date, preparation of Notice of Motion		
Roger Paul	1.5	187.50
Danielle Paul	0.5	62.50
Serving Motion, preparing Affidavit of Service & Attending to swear same; thereafter filing Motion		
Danielle Paul	1.5	187.50
Research of issues raised relevant to Court's powers under Rules 34.10, 34.15		
Roger Paul	0.75	93.75
Preparing Plaintiffs' (Moving Parties) Motion Record		
Roger Paul	0.5	62.50
Danielle Paul	2	250.00
Preparing Plaintiffs' Factum (including legal research)		
Roger Paul	3.5	437.50
Preparing Plaintiffs' Supplementary Motion Record arising from need to correct statement made in Defendants' Factum		
Danielle Paul	0.5	62.50

<b>ITEM (continued)</b>	<b>HOURS</b>	<b>AMOUNT CLAIMED</b>
Preparing for hearing of motion (including review of Defendants' Factum and Authorities)		
Roger Paul	4	500.00
Attending to argue motion March 4 2021		
Roger Paul	1	125.00
Danielle Paul	1	125.00
Reviewing Decision dated March 9 2021		
Roger Paul	0.4	50.00
Danielle Paul	0.4	50.00
Preparing draft Order, obtaining Defendants' approval and arranging to have Order issued and entered		
Danielle Paul	0.75	93.75
Correspondence between the parties (6 items)	0.6	75.00
<b>TOTAL FEES</b>	<b>18.9 hrs</b>	<b>2,362.50</b>
<b>DISBURSEMENTS</b>		
PAID to issue Notice of Motion (receipt attached)		320.00
<b>TOTAL FEES &amp; DISBURSEMENTS</b>		<b>2,682.50</b>

DATED: April 23 2021

ROGER ANTHONY PAUL, DANIELLE MARIE PAUL, MADVALLEY MEDIA  
(Plaintiffs, all of whom are self-represented)  
351 Matcheski Road, PO Box 1097  
Barry's Bay, ON K0J 1B0  
Contact: Roger Paul Email: rodani75@gmail.com  
Tel: 613.518.1094 (no fax)

TO: THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY, KIM LOVE, CARL BROMWICH,  
ERNEST PEPLINSKI, DAVID SHULIST AND MARK WILLMER (Defendants)

Wishart Law Firm LLP  
Barristers and Solicitors  
390 Bay Street, 5th Floor  
Sault Ste Marie ON P6A 1X2  
J. Paul R. Cassan  
Tel: 705.949.6700  
Email: pcassan@wishartlaw.com  
Lawyers for the Defendants

## Confirmation

Thank you for submitting document(s) to the Registrar of the Superior Court of Justice to request filing and/or issuance in your civil court proceeding.

You will be notified by the court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within five business days**.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice or a court order and the timeline is 5 business days or less away, your request may not be processed in time. You should file your documents through an alternative method.

Please contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff).

**Court file number**

CV-21-00000002-0000

**Submitted to the Superior Court of Justice in**

Pembroke

**Confirmation number**

104491

**Document(s) submitted**

Form 37A: Notice of Motion

Form 16B: Affidavit of Service

**Payment confirmation number**

20404829

**Payment method**

MasterCard

**Payment status**

Approved

**Date and time**

13-Jan-2021 03:19 PM

**Total fee paid**

\$320.00

Case specific related questions should be directed to the court office where your documents were submitted.



Please contact the court if you have any questions about your submission. You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

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**SCHEDULE "B"****Paul v. Madwaska Valley, Court file no. CV-19-82269**  
**Endorsement on request for urgent hearing of motion to remove counsel**

Per LAJ Gomery J., October 23, 2020

1. The plaintiffs seek an urgent hearing of their proposed motion to remove Wishart Law LLP as the law firm of record for the defendants, and to prohibit Paul Cassan, a partner of that firm, from conducting the cross-examinations of the plaintiffs on November 3 and 4, 2020. The plaintiffs contend that Mr. Cassan is a “quasi-party” to this action, and that both he and Wishart Law LLP have a conflict of interest. The defendants oppose the scheduling of an urgent hearing and argue that the plaintiffs are attempting to delay the proceeding and drive up the costs of the litigation.
2. In my capacity as LAJ Ottawa, I decline to grant an urgent hearing date for the plaintiffs’ motion. There are two reasons for this.
3. First, based on the history of this proceeding, the motion is not genuinely urgent.
  - In their notice of motion, the plaintiffs assert that they raised the issue of a potential conflict of interest in a letter sent to the defendants in November 2019.
  - The defendants served an anti-SLAPP motion, which was set to be heard in early March 2020. There is no indication that the plaintiffs sought to disqualify defence counsel prior to the hearing date.
  - In August 2020, the plaintiffs asked the court to schedule a motion to dismiss the defendants’ anti-SLAPP motion. They did not raise the issue of a potential conflict in making that request.
  - The parties attended a case conference before Master Kaufman on September 10, 2020. There is no indication in his endorsement that the plaintiffs raised the issue of a potential conflict during the case conference.
  - As a result of the timetable order issued by Master Kaufman at that conference, the plaintiffs have known since early September that cross-examinations would take place during the week of November 2. Despite this, they waited six weeks before seeking to schedule the conflicts motion.

In short, the plaintiffs’ conduct since November 2019 belies their contention that this motion is now so urgent that it must be heard within the next few days.

4. Second, the plaintiffs’ request for an order prohibiting Mr. Cassan from conducting cross-examinations does not appear to have any merit. Mr. Cassan is not a defendant to this action, nor has he sworn an affidavit in support of the anti-SLAPP motion. As a result, the facts here are distinguishable from those in *GMAC Leaseco Ltd. v. 1348259 Ontario Inc.* (2004), 46 C.P.C. (5th) 390 (Master).

5. I am attaching a copy of my August 11, 2020 endorsement in this matter, as the version attached to the defendants' correspondence to the court is incomplete.

A handwritten signature in black ink, appearing to read "Sally Gomery JCS". The signature is written in a cursive style with some capital letters.

Justice Sally Gomery

**SCHEDULE "B"****COURT FILE NO.: 19-82269****DATE: September 10, 2020****SUPERIOR COURT OF JUSTICE - ONTARIO****RE:** Paul et al v. The Corporation of the Township of Madawaska Valley et al**BEFORE:** Master Kaufman**COUNSEL:**

<b>Name of lawyer: Nom de l'avocat(e)</b>	<b>Phone &amp; email : Téléphone &amp; courriel :</b>	<b>Name of party: Nom de la partie:</b>
J. Paul R. Cassan	(705) 542-4747 <a href="mailto:pcassan@wishartlaw.com">pcassan@wishartlaw.com</a>	The Corporation of the Township of Madawaska Valley, Kim Love, Carl Bromwich, Ernest Peplinski, David Shulist and Mark Willmer (the " <b>Defendants</b> ")
Tim J. Harmar	(705) 949-6700 ext 233 <a href="mailto:THarmar@wishartlaw.com">THarmar@wishartlaw.com</a>	
Nuala M. Kenny	(705) 949-6700 ext 240 <a href="mailto:NKenny@wishartlaw.com">NKenny@wishartlaw.com</a>	
Roger A. Paul (Self-represented)	(613) 518-1094 Roger <a href="mailto:rodani75@gmail.com">rodani75@gmail.com</a>	Roger Anthony Paul, Danielle Marie Paul and Madvalley Media (the " <b>Plaintiffs</b> ")

**HEARD: September 10, 2020****CASE CONFERENCE ENDORSEMENT**

- [1] This case conference concerns this action and its purpose was to set a timetable. The defendants brought a motion under s. 137.1 of the *Courts of Justice Act* (CJA) which was adjourned once to May 15, 2020 and had to be adjourned once more because of COVID.
- [2] The plaintiff wishes to bring a motion to strike the defendants' motion but Justice Gomery has already declined to grant the plaintiff a hearing and I will not revisit this issue.
- [3] The defendants wish to bring a separate motion to strike portions of the plaintiffs' responding affidavits on the basis that they contain hearsay, argument and opinion evidence. I decline to schedule this motion as well because the defendants' concerns can be addressed at the hearing of

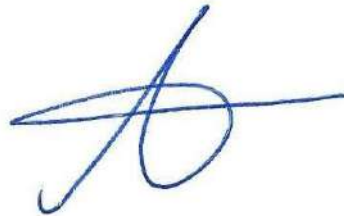
the s. 137.1 motion and because scheduling another interlocutory motion would add further delay. Motions brought under s. 137.1 of the CJA are meant to proceed expeditiously, as evidenced by the legislated timeline for these motions (see s. 137.2(2) of the CJA).

- [4] While the plaintiffs wish to cross-examine the defendants' deponents, Mr. Paul raised the issue of the availability of cross-examination because this action is brought under the simplified rules. The defendants argue that s. 137.2 of the CJA provides that motions to dismiss under s. 137.1 are made in accordance with the Rules, but subject to the rules set out in that section. Section 137.2 provides for cross-examinations, which are limited to 7 hours for all plaintiffs and 7 hours for all defendants. I agree with the defendants' interpretation, but even if I were wrong, Rule 2.03 provides that the Court may dispense with compliance with any rule if it is necessary in the interests of justice. Both parties wish to cross-examine because they challenge the veracity of the other's assertions. In these circumstances, and where the defendants' motion could have the effect of summarily dismissing the plaintiffs' action, I find that it is in the interests of justice for the parties to have the opportunity to cross-examine.

**This court orders as follows:**

- 1 The defendants' motion to dismiss under s. 137.1 of the CJA shall be scheduled for one day, to be heard by a judge on December , 2020 by Zoom.  
The defendants' reply affidavit shall be served by October 23, 2020;  
Cross-examinations shall be held the week of November 2-6, 2020;
- 4 The defendants' factum shall be served on November 19, 2020;
- 5 The plaintiff's factum shall be served on November 25, 2020;  
All material shall be filed with the court by November 30, 2020;  
The parties shall comply with the Rules of Civil Procedure unless varied by this order. The parties shall file a motion confirmation form at least three days before the hearing.
- 8 Any motion record filed by the parties must be continuously paginated and in a searchable pdf format. Every separate document must be either electronically bookmarked or hyperlinked to the table of contents.
- 9 Written argument on behalf of any party shall not be longer than 15 pages in length, double spaced.

- 10- No books of authority may be filed. A party may refer to caselaw and other authorities by providing a list of authorities with hyperlinks to electronically posted materials. If a party wishes to refer to authorities that are not electronically published, they may attach a pdf version to their materials.
- 11- Notwithstanding r. 4.05.02 of the Rules of Civil Procedure, all materials shall be filed electronically by email to [ottawa.scj.courts@ontario.ca](mailto:ottawa.scj.courts@ontario.ca)
- 12- This order can be varied by parties on consent (except for Rule 48) or by order of a master.
- 13- This order is effective without further formality. It constitutes a timetable within the meaning of Rules 1.03 (1) and 3.04 and is also an order made under the authority of Rules 50.13 and 77.



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Master Kaufman

27 SEP 2021

## Orkin On The Law Of Costs, 2nd Edition

Orkin On The Law Of Costs, Second Edition

Chapter 1. Classification of Costs

III. Directions as to Costs

§ 1:15. No Order as to Costs

### 1 Orkin On The Law Of Costs, Second Edition § 1:15

Orkin On The Law Of Costs, Second Edition

Mark M. Orkin, Robert G. Schipper

Chapter 1. Classification of Costs

III. Directions as to Costs

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## § 1:15. No Order as to Costs

### Legal Topics

A statement by the court or endorsement on the record to the effect of “no order as to costs” is, of course, an order as to costs, and means that neither party shall pay any costs to the other.<sup>1</sup> Similarly, if judgment is given for a party without any order being made as to costs, no costs can be assessed by either party;<sup>2</sup> so that when a matter is disposed of on a motion or at trial with no mention of costs, it is as though the judge had said that he “saw fit to make no order as to costs”.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Coniagas Reduction Co. v. Hydro-Electric Power Com'n, \[1932\] 3 D.L.R. 360 \(Ont. C.A.\); McCune v. Botsford and Macquillan \(1902\), 9 B.C.R. 129 \(S.C.\).](#)

- 2 Re Great Western Advertising Co. v. Rainer (1883), 9 P.R. (Ont.) 494.
- 3 [Delrina Corp. v. Triolet Systems Inc. \(2002\), 165 O.A.C. 160 \(C.A.\)](#). See, however, [Rajah v. Holmes \(2000\), 278 A.R. 397 \(Q.B.\)](#) (Alberta Rule 601(3) provides that where no order is made, the costs follow the event); Re [Primeau and Russell Separate School Trustees, \[1928\] 1 D.L.R. 293 \(Ont. S.C.\)](#). As to the English rule see [Re Hodgkinson, \[1895\] 2 Ch. 190 \(C.A.\)](#); [Mentors, Ltd. v. Evans, \[1912\] 3 K.B. 174 \(C.A.\)](#), at p. 179; [Friis v. Paramount Bagwash Co., Ltd. \(No. 2\), \[1940\] 2 K.B. 654 \(C.A.\)](#); [Mitchell v. Jackman \(2017\), 284 A.C.W.S. \(3d\) 523 \(N.L. T.D.\)](#), affirmed [Powers v. Mitchell \(2019\), 304 A.C.W.S. \(3d\) 236 \(N.L. C.A.\)](#) (in Newfoundland where no order as to costs is made costs follow the event).

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**End of  
Document**



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**Paul v Madawaska Valley et al.**

1 message

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**Roger & Danielle Paul** <rodani75@gmail.com> Fri, Aug 20, 2021 at 11:42 AM  
To: Paul Cassan <pcassan@wishartlaw.com>, Tim Harmar <tharmar@wishartlaw.com>

Dear Sirs,

In her judgment Justice Doyle directed that the parties attempt to "agree on the issue of costs of these motions and the previous court attendances before me."

The plaintiffs propose that resort be had to alternative dispute resolution in an attempt to resolve all remaining issues in this litigation.

Yours truly,

--

**Roger & Danielle Paul**

**Roger & Danielle Paul**

*351 Matcheski Road  
PO Box 1097  
Barry's Bay ON K0J 1B0  
Tel: 613 518 1094  
rodani75@gmail.com*

Wishart Law LLP

Sent via email to: [pcassan@wishartlaw.com](mailto:pcassan@wishartlaw.com)

And to: [tharmar@wishartlaw.com](mailto:tharmar@wishartlaw.com)

And to: [bhodgkinson@wishartlaw.com](mailto:bhodgkinson@wishartlaw.com)

1 September 2021

Dear Sirs

**Re Paul v. Madawaska Valley CV21-00000002-0000**

As we have not received a reply to our email of August 20, 2021, we proceed on the assumption that your clients continue to refuse to participate in any attempt to settle this litigation, including through the utilization of alternative dispute resolution.

Accordingly, this letter will deal with matters that the Plaintiffs intend to raise with Justice Doyle in her consideration of appropriate orders for costs, and in the spirit of her suggestion that the parties confer with a view to avoiding her having to make such decisions.

So far as your clients' Anti-SLAPP motion is concerned, the Plaintiffs, having been successful, will argue that costs should follow the event. In addition, we will argue that she should take into consideration conduct that falls within the factors enumerated in Rule 57.01(1). Some of these will come as no surprise as we have identified them to you as they occurred in correspondence, and they will include conduct that predated the commencement of proceedings including your clients' attempt to intimidate Robert Howe. In addition, we will refer to the several improper paragraphs in your Factums which contain scurrilous requests and accusations unsupported by any evidence, some of which we referred to in argument on May 19.

We will urge Her Honour to take into account that the Defendants are public servants and as such must be especially cognizant of unnecessary drains upon the public purse. Further, their conduct ought to be viewed on the basis that they came to Court claiming that the actions that brought them there were altruistically motivated as being in the "public interest." Thus their conduct during the proceedings themselves should also be examined in the light of what we submit is a lack of adherence to that principle.

Also of significance are the offers to settle that the Plaintiffs submitted as well as invitations to mediate including, and especially, when the action was proceeding in Ottawa.

We therefore invite you to consider your clients' position in the light of this and we remain willing to discuss an agreed Order in respect of these matters, either personally or through an intermediary.

Finally, so far as the other motions before Justice Doyle are concerned, we have already made costs submissions to her, with which you were served, following her Order of March 8<sup>th</sup>, but have yet to receive any response from you in respect of those.

Yours truly,

A handwritten signature in blue ink, appearing to read "Roger Paul and Danielle Paul". The signature is written in a cursive, flowing style.

Roger Paul and Danielle Paul

Court File No. CV-21-00000002-0000

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROGER ANTHONY PAUL, DANIELLE MARIE PAUL and MADVALLEY  
MEDIA

Plaintiffs/Responding Parties

and

THE CORPORATION OF THE TOWNSHIP OF MADAWASKA VALLEY,  
KIM LOVE, CARL BROMWICH, ERNEST PEPLINSKI, DAVID SHULIST  
and MARK WILLMER

Defendants/Moving Parties

**BILL OF COSTS**

**AMOUNTS CLAIMED FOR FEES AND DISBURSEMENTS BY THE  
PLAINTIFFS/RESPONDING PARTIES ON ANTI-SLAPP MOTION**

*(Following the items set out in Tariff A, itemize the claim for fees and disbursements. Indicate the names of the lawyers, students-at-law and law clerks who provided services in connection with each item. In support of the claim for fees, attach copies of the dockets or other evidence. In support of the claim for disbursements, attach copies of invoices or other evidence.)*

<b>DESCRIPTION</b>	<b>PERSON</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>FEES</b>
To reviewing defendants' motion; to reviewing affidavit of Suzanne Klatt; to reviewing motion record; to researching and reviewing law; to correspondence between the parties; to discussions re new motion date	Roger Paul (Self-Represented)	76.1	\$125.00	\$9,512.50
	Danielle Paul (Self Represented)	46.6	\$125.00	\$5,825.00

-2-

<p>and consent to adjournment; to reviewing correspondence between plaintiffs and defendant; to preparing affidavit of Roger Paul sworn February 13, 2020; to preparing affidavit of Danielle Paul sworn February 13, 2020; to preparing affidavit of Robert Howe sworn February 13, 2020; to reviewing supplementary affidavit of Suzanne Klatt dated March 3, 2020; to preparing and serving offer to settle; to preparing supplementary affidavit of Danielle Paul sworn April 6, 2020; to reviewing August 11, 2020 endorsement of Gomery J.; to preparing for and attending case management teleconference on September 10, 2020 with Master Kaufman; to reviewing endorsement and amended endorsement of Master Kaufman; to attempting to schedule cross-examinations; to preparing and serving appointment to cross-examine Suzanne Klatt; to preparing plaintiffs' schedule of damages; to preparing for and attending cross-examination of Roger Paul on November 3, 2020; to preparing for and attending cross-examination of Danielle Paul on November 3, 2020; to preparing for and attending cross-examination of Suzanne Klatt on November 4, 2020; to providing plaintiffs' undertakings; to preparing chart of defendant's refusals and undertakings; to communications with SCJ Ottawa and SCJ Pembroke re file transfer; to preparing notices to admit facts; to preparing for and attending</p>				
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-3-

teleconference before James J. on January 26, 2021; to reviewing cross-examination transcript of S. Klatt; to reviewing defendants' amended notice of motion and factum; to attending at S. Klatt continued cross-examination on March 29, 2021, and obtaining certificate of non-attendance; to reviewing defendants' documents and preparing analysis; to preparing for and attending cross-examination of S. Klatt on April 21, 2021; to reviewing S. Klatt cross-examination transcript; to preparing plaintiffs' factum and authorities; to preparing motion record; to reviewing defendants' further supplementary motion record; and to reviewing defendants' second further supplementary motion record.				
<b>FEES SUBTOTAL</b>				<b>\$15,337.50</b>

<b>DESCRIPTION</b>	<b>PERSON</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>FEES</b>
<b><u>Preparing and attending motion:</u></b>	Roger Paul (Self-Represented)	11.5	\$125.00	\$1,437.50
To preparing for and attending s.137 motion on May 19, 2021	Danielle Paul (Self Represented)	11.5	\$125.00	\$1,437.50
<b>FEES SUBTOTAL</b>				<b>\$2,875.00</b>

<b>DESCRIPTION</b>	<b>PERSON</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>FEES</b>
<b><u>Reviewing Decision:</u></b>	Roger Paul (Self-Represented)	0.8	\$125.00	\$100.00
To reviewing decision of Doyle J.	Danielle Paul (Self Represented)	0.8	\$125.00	\$100.00
<b>FEES SUBTOTAL</b>				<b>\$200.00</b>

-4-

<b>DESCRIPTION</b>	<b>PERSON</b>	<b>HOURS</b>	<b>PARTIAL INDEMNITY RATE</b>	<b>ACTUAL RATE</b>
<b><u>Costs submissions</u></b> To reviewing and responding to Defendants' eight sets of costs submissions; to review of relevant endorsements, directions and decisions; to review of filings and documents regarding history of proceedings; to legal research on issues relating to costs	Justin Safayeni (2010 year of call)	25.6	\$235.00 (\$6,016.00)	\$395.00 (\$10,112.00)
	Karen Bernofsky (2017 year of call)	12.6	\$180.00 (\$2,268.00)	\$300.00 (\$3,780.00)
<b>FEES SUBTOTAL</b>			<b>\$8,284.00</b>	<b>\$13,892.00</b>

<b>DISBURSEMENTS</b>	
Paid to Taylor Reporting	\$2,424.43
<b>TOTAL DISBURSEMENTS</b>	<b>\$2,424.43</b>

<b>SUMMARY OF FEES &amp; DISBURSEMENTS</b>	
Fees (self-represented stage)	\$18,412.50
Fees (for counsel)	\$8,284.00
HST on fees	\$1,076.92
Disbursements	\$2,424.50
<b>TOTAL BILL OF COSTS</b>	<b>\$30,197.92</b>

-5-

October 12, 2021

**STOCKWOODS LLP**  
Barristers  
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TD North Tower, Box 140  
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pcassan@wishartlaw.com

Tel: 705-949-6700  
Fax: 705-949-2465

Lawyers for the Defendants/Moving Parties



ROGER ANTHONY PAUL et al.

and

THE CORPORATION OF THE  
TOWNSHIP OF MADAWASKA  
VALLEY et al.

Plaintiffs/Responding Parties

Defendants/Moving Parties

Court File No. CV-21-00000002-0000

---

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

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**BILL OF COSTS**

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**STOCKWOODS LLP**

Barristers

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77 King Street West, Suite 4130

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Fax: 416-593-9345

justins@stockwoods.ca

Lawyers for the Plaintiffs

Email for parties served:

J. Paul R. Cassan: pcassan@wishartlaw.com

ROGER ANTHONY PAUL et al.

and THE CORPORATION OF THE  
TOWNSHIP OF MADAWASKA  
VALLEY et al.

Court File No. CV-21-00000002-0000

Plaintiffs (Responding Parties)

Defendants (Moving Parties)

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**COST SUBMISSION BRIEF OF THE PLAINTIFFS**

**STOCKWOODS LLP**

Barristers

Toronto-Dominion Centre  
TD North Tower, Box 140  
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Karen Bernofsky (72135A)

Tel: 416-593-2486 (Direct)

[karenb@stockwoods.ca](mailto:karenb@stockwoods.ca)

Lawyers for the Plaintiffs/Respondents