

Courts of Justice Act, RSO 1990, c. C-43

NOTICE OF APPEAL TO AN APPELLATE COURT

B E T W E E N:

SEAN BRUYEA

Appellant (Plaintiff)

-and-

SEAMUS O'REGAN and ATTORNEY GENERAL OF CANADA

Respondents (Defendants)

NOTICE OF APPEAL

THE APPELLANT APPEALS to the Court of Appeal from the judgment of Deputy Judge David Dwoskin of the Small Claims Court of Ontario dated August 28, 2018, made at Ottawa, Ontario.

THE APPELLANT ASKS that the judgement be set aside and a judgment granted as follows:

- (a) The Respondents (Defendants) motion to dismiss the action under section 137.1 of the *Courts of Justice Act* is dismissed and the action can proceed before the Small Claims Court; and
- (b) The partial indemnity costs of this appeal.

THE GROUNDS OF APPEAL are as follows:

- (a) The Deputy Judge erred in law with respect to his analysis of ss. 137.1(3) of the Courts of Justice Act and what constitutes “a matter of public interest”;
- (b) The Deputy Judge erred in law by applying the wrong legal test and the standard of “credible and compelling evidence” as to whether the proceeding has substantial merit in accordance with ss. 137.1(4)(a)(i) of the *Courts of Justice Act*;
- (c) The Deputy Judge erred in law by misapplying the test for what constitutes defamation and whether the published statements by the Respondent O'Regan describing the

Appellant as “stating mistruths” to “suit his own personal agenda” could be construed by a reasonable trier as defamatory;

- (d) The Deputy Judge erred in law by failing to analyze or consider what was meant by the Defendant O’Regan, or compare the alternate interpretations of what was meant, in the impugned statements, in determining whether there was a reasonable basis to find they were defamatory;
- (e) The Deputy Judge erred in law by applying the wrong legal test and the standard of “credible, compelling evidence” as to whether the Defendants had no valid defence in accordance with ss. 137.1(4)(a)(ii) of the *Courts of Justice Act*;
- (f) The Deputy Judge erred in law in his analysis of the defence of fair comment by failing to consider how referring to the Plaintiff as acting to “suit his own personal agenda” can be “inferred” from the surrounding facts;
- (g) The Deputy Judge erred in law in his articulation and application of the defence of qualified privilege;
- (h) The Deputy Judge erred in his analysis of the “responsible communication” defence” by failing to mention or consider objective evidence that was before him regarding the accuracy of the Plaintiff’s own statements and the lack of due diligence by the Defendants in following up or considering that information, or fairly presenting the Plaintiff’s side in light of that evidence;
- (i) The Deputy Judge erred in law by applying the wrong legal test in deciding whether or not the Plaintiff had advanced a reasonable basis for pleading that the Defendants were motivated by malice in accordance with ss. 137.1(4)(a)(ii) of the *Courts of Justice Act*;
- (j) The Deputy Judge erred by failing to analyze or consider the objective evidence that the Defendants have a motivation to bear ill will towards the Plaintiff, or the evidence that the Plaintiff was treated differently from other critics of the “Pension for Life Plan”;
- (k) The Deputy Judge erred in law by ignoring or failing to have regard for the evidence led by the Plaintiff concerning the psychological distress suffered by him as a result of the Defendants’ statements as it pertained to the analysis under ss. 137.1(4)(b) of the *Courts of Justice Act*; and
- (l) The Deputy Judge erred in law by failing to consider whether the Defendants’ impugned statements caused sufficient reputational harm to the Plaintiff under ss. 137.1(4)(b) of the *Courts of Justice Act* as the comments related to the Plaintiff’s profession as a freelance journalist and emanated from a Minister of the Crown with responsibility for veterans, the Plaintiff’s area of expertise.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (i) *Courts of Justice Act*, RSO 1990, c. C-43, subsection 6(1)(d).
- (ii) The order appealed from is final; and
- (iii) Leave to appeal is not required.

Dated September 28, 2018

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Court File No.

SEAN BRUYEA

-and-

**SEAMUS O'REGAN and
ATTORNEY GENERAL OF CANADA**
Respondents

Appellant

ONTARIO
COURT OF APPEAL

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