

CITATION: Codina v. The CBC, 2019 ONSC 6019
COURT FILE NO.: CV-18-598676
DATE: 20191017

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Angelina Codina, Plaintiff/Respondent

AND:

The Canadian Broadcasting Corporation (CBC/Radio-Canada), CBC News, CBC Radio, ICI Radio-Canada, Michelle Cheung, Leva Lucs, Jean-Philippe Nadeau, Defendants/Moving Parties

BEFORE: Mr. Justice Chalmers

COUNSEL: *A. Codina, Acting in Person*, for the Plaintiff/Respondent

J. Lefebvre, for the Defendants/Moving Parties

HEARD: August 30, 2019

ENDORSEMENT

OVERVIEW

[1] The Defendants bring this motion to dismiss the Plaintiff's action pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. This is a pretrial procedure, referred to as Anti-SLAPP (Strategic Lawsuits Against Public Participation), which allows defendants to move at an early stage in the litigation for an order dismissing claims arising out of expressions on matters of public interest: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685, 142 O.R. (3d) 161, at para. 6, leave to appeal to SCC granted, 38376 (25 April 2019).

[2] This action is brought by Angelina Codina. She claims damages of \$150,000,000 from the Canadian Broadcasting Corporation (CBC/Radio-Canada), CBC News, CBC Radio, ICI Radio-Canada ("CBC") and the CBC reporters, Michelle Cheung, Leva Lucs and Jean-Phillipe Nadeau. The Plaintiff claims damages for defamation with respect to several news articles and broadcasts which were published by the CBC between May 2014 and February 2018.

[3] The news articles and broadcasts reported on charges of fraud and breaches of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") brought against Ms. Codina in May 2014, and the progress of those charges in the justice system to her conviction and sentencing. The articles also report on civil proceedings which had been brought against Ms. Codina in the Small Claims Court.

[4] The Defendants seek an order dismissing the action on the basis that the action lacks substantial merit and the Defendants have strong defences to the claims in defamation. The Defendants argue that the public interest in protecting the Defendants' freedom of expression

outweighs the public interest in permitting the action to continue. Ms. Codina argues that the Defendants acted with malice and that the harm she suffered as a result of the reports is sufficiently serious that it is in the public interest that her claim be permitted to continue.

[5] For the reasons that follow, I grant the Defendants' motion and dismiss the action.

BACKGROUND FACTS

Ms. Codina's Involvement with the Justice System

[6] Ms. Codina is a disbarred lawyer. She completed her law degree in 1981 and was called to the Bar of Ontario in 1983.

[7] In January 1998, Ms. Codina was convicted of defrauding Legal Aid. She was sentenced to 6 months' imprisonment. Her appeal to the Court of Appeal and her request for leave to the Supreme Court of Canada were dismissed. As a result of the conviction, she was disbarred by the Law Society of Upper Canada in 2002.

[8] In 1996, Ms. Codina opened a law office in New York, called Codina Partners International to handle immigration matters. She has not been a member of the New York bar. The New York Attorney General commenced an investigation which resulted in Ms. Codina being criminally charged. She was convicted following a trial by jury of grand larceny, scheme to defraud and the unlicensed practice of law between January 1996 and February 1999. She was sentenced to an aggregate term of incarceration of 9 1/3 to 28 years.

[9] The convictions were overturned on appeal and a new trial was ordered. In June 2004, Ms. Codina was again convicted by a jury of scheme to defraud, multiple counts of larceny by false pretenses and practicing or appearing as an attorney without being admitted and registered. She was sentenced to a prison term of 5 to 15 years. Her appeal was dismissed. After serving 5 years in custody, she was deported to Canada.

[10] After returning to Canada, Ms. Codina incorporated two companies in 2009 and 2012 which carried on business as "Codina International". She continued to provide immigration advice.

[11] On May 8, 2014, Ms. Codina was arrested by officers from the Canada Border Services Agency and charged with breaching s. 91(1) and s. 126 of the *IRPA*. On May 16, 2014, she was charged with an additional seven counts of fraud. Ms. Codina was released on bail on July 15, 2014. On September 18, 2015, she was charged with breach of her recognizance pursuant to s. 145 of the *Criminal Code* and a further breach of s. 91(1) of the *IRPA*. Ms. Codina remained in pretrial custody from September 17, 2015 to February 28, 2017.

[12] On December 8, 2016, the Crown preferred a direct indictment with respect to the charges under the *IRPA*. On January 5, 2017, various charges including the charges related to the breach of bail provisions were stayed. On February 28, 2017, Ms. Codina was released on her own recognizance.

[13] The trial on the *IRPA* charges began on September 11, 2017. On November 22, 2017, following a 44-day jury trial, Ms. Codina was convicted on all five *IRPA* offences. On May 29, 2018, she was sentenced to seven years' imprisonment. After applying a credit of two years for time served, the remainder of the sentence is five years. It was a term of the sentence that Ms. Codina pay restitution. Ms. Codina appealed her conviction and sentence and is currently on bail pending appeal.

[14] A number of Ms. Codina's clients commenced proceedings against her in Small Claims Court. A court file search revealed 30 separate actions had been brought against Ms. Codina or her companies.

[15] A former client, Golrokh Amirpour Dolatshahi, obtained a judgment in Small Claims Court against Ms. Codina on July 21, 2015 for civil fraud. In finding in favour of Ms. Amirpour, Deputy Judge Buie found that Ms. Codina had "devised a scheme to deceive not only the applicants and Ms. Amirpour, but also the Province of Saskatchewan and the Government of Canada".

News Reports and Broadcasts

[16] Ms. Codina claims that she was defamed in five reports published by the CBC between May 2014 and February 2018.

May 9, 2014 Report

[17] The CBC report was first broadcast on May 9, 2014 following Ms. Codina's arrest on *IRPA* charges on May 7, 2014. The reporter was Michelle Cheung. A news article was posted on the CBC website reporting the same information as the broadcast. Although there was no further broadcast of the article, the online version of the broadcast and the article remained on the CBC website.

[18] In researching the article, Ms. Cheung met with two former clients of Ms. Codina, Mohammad Khadempour and Azar Salem. She also reviewed court documents in the Small Claims Court with respect to the actions commenced by Mr. Khadempour. She obtained a copy of a *Globe and Mail* article from July 26, 2000 reporting on Ms. Codina's conviction and sentencing in New York, as well as a copy of the decision of the New York Appeals Court in *People v. Codina*. Ms. Cheung confirmed that Ms. Codina had been previously convicted of defrauding Legal Aid and was disbarred by the Law Society of Upper Canada in 2002.

May 29, 2014 Report

[19] On May 29, 2014, the CBC reported that Ms. Codina had been arrested on seven new criminal charges of fraud over \$5,000, in addition to the existing charges under the *IRPA*. Ms. Cheung was the reporter. The news clip was posted on the CBC website along with a news article reporting the same information.

[20] Prior to the May 29, 2014 report, the Toronto Police Services ("TPS") had issued a news release which stated as follows:

Fraudulent Immigration Consulting Investigation, Arrest Made in Project 'False Angel', Angelina Codina, 56, faces numerous charges, Police believe there may be other victims.

[21] In researching the story, Ms. Cheung interviewed a former client of Ms. Codina, Mehrdad Dostmohammadi and obtained documentation. She interviewed an immigration lawyer, Robin Seligman, about the regulatory control for individuals who are neither lawyers nor certified immigration consultants.

January 23, 2017 Report

[22] On January 23, 2017, the CBC posted a news report with respect to the difficulty of enforcing Small Claims Court judgments. The report covered the attempts of Ms. Amirpour to recover on the judgment she obtained against Ms. Codina for civil fraud dated July 21, 2015.

[23] For the January 23, 2017 report, Ms. Cheung interviewed Dougall Grange who is a retired paralegal who had worked on Small Claims Court matters. He reported that it is common to do business with people who are judgment proof and that collecting from these people can be "extremely difficult". The news story addressed the business run by Mr. Grange to "name and shame" people who do not pay their civil judgments.

February 26, 2018 Report

[24] Following Ms. Codina's conviction on November 22, 2017, the CBC covered Ms. Codina's sentencing hearing. Both Jean-Philippe Nadeau and Leva Lucs attended court on February 26, 2018 to hear the submissions of counsel.

[25] On February 26, 2018, the CBC broadcast a French language program. ICI Radio Canada also published a news report; "La Couronne reclame 11 ans de prison contre la pseudo-conseillere en immigration Angelina Codina."

February 27, 2018 Report

[26] On February 27, 2018, CBC posted a news report on its website by Ms. Lucs entitled "Crown pushing for 11-year jail term, \$100K fine for disgraced immigration consultant". The report quotes from submissions made by counsel on the sentencing hearing. In addition, Ms. Lucs contacted Ms. Codina's lawyer, Joseph Irving, for comment and he is quoted in the report.

The Action

[27] Ms. Codina commenced the action on May 18, 2018. She is seeking \$50 Million in damages for slander and defamation, \$50 Million in special damages and \$50 Million in punitive, aggravated and exemplary damages.

[28] At paragraph 47 of the Claim, Ms. Codina set out the words that she alleges are defamatory. She does not identify the report or broadcast where the words appear. The words complained of are as follows:

- *Pseudo-conseillere,*

- *Disgraced immigration consultant,*
- *In 2000, she was convicted of grand larceny in New York State and sentenced to a minimum of nine years in prison,*
- *A sophisticated and well-planned scheme,*
- *[Codina] operated a sophisticated and well-planned scheme that attracted and exploited vulnerable [people],*
- *Throughout the earlier proceedings, the Crown laid out how Codina had employed a language consultant who would meet with potential clients, "in order to gain trust",*
- *A Toronto woman accused of bilking immigration clients,*
- *A Toronto woman whose clients claim she bilked them out of tens of thousands of dollars – on the promise she'd help their relative immigrate to Canada – has been arrested,*
- *"It was clear she was doing nothing," Khadampour told CBC News,*
- *"And then after, I didn't hear anything," said Azar Salem,*
- *Codina has bilked clients in the past. She was convicted of grand larceny in New York in 2000 and sentenced to a minimum of nine years in prison,*
- *Immigration fraudster,*
- *Angela Codina was originally charged earlier this month under investigation under the Immigration and Refugee Protection Act by Canadian Border Services Agency for representing clients without being a lawyer or certified immigration consultant. She was denied bail and is awaiting trial,*
- *CBC News has learned dozens of Codina's clients have taken her to small claims court and won, though she has not paid up,*
- *A Toronto woman whose clients claim she bilked them out of tens of thousands of dollars,*
- *Immigration fraudster,*
- *Accused of scamming multiple people out of tens of thousands of dollars,*
- *Toronto woman accused of bilking immigration clients,*
- *She told us, 'we will bring him here between eight to ten months,' and now it's more than 14 months later and she hasn't done anything," he said,*
- *Victims of Codina's ongoing fraud in multiple countries,*

- *Codina has also been sued dozens of times in small claims court by former clients, but has never paid the money she owes, CBC News learned,*
- *Fraudsters like Codina,*
- *“They can tell people what they want to hear and have them fill in applications under their own names, meanwhile they’re behind the scenes giving them legal advice and they are not allowed to be doing that,*
- *But failed to deliver any services,*
- *CBC News had previously reported that Codina had been sued by dozens of clients in small claims court but has never paid back the money she owes,*
- *“But you get a real SOB in the mix who’s prepared to lie and cheat and the system can’t deal with it”,*
- *59 year -old Angelina Codina has been in custody since May 2014. [Emphasis as set out in the Statement of Claim.]*

[29] The Plaintiff alleges that the statements were false and malicious with the intent to injure and defame her. She alleges that the words complained of negatively impacted her character and resulted in a loss to her personal and professional reputation.

ANALYSIS

The Anti-SLAPP Legislation

[30] The Defendants move to strike the action pursuant to the anti-SLAPP provisions set out at s. 137.1 of the *Courts of Justice Act*. The Act states that the purpose of the provisions is as follows:

- (a) to encourage persons to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action: *Courts of Justice Act*, s. 137.1(1).

[31] The Court of Appeal made the following comments with respect to the purpose of the anti-SLAPP provisions:

The purpose of s. 137.1 is crystal clear. Expression on matters of public interest is to be encouraged. Litigation of doubtful merit that unduly discourages and seeks to restrict free and open expression

on matters of public interest should not be allowed to proceed beyond a preliminary stage. Plaintiffs who commence a claim alleging to have been wronged by a defendant's expression on a matter of public interest must be prepared from the commencement of the lawsuit to address the merits of the claim and demonstrate that the public interest in vindicating that claim outweighs the public interest in protecting the defendant's freedom of expression: *Pointes*, at para. 45.

Test for the Dismissal of an Action Pursuant to Section 137.1

[32] Sections 137.1(3) and (4) of the *Courts of Justice Act* set out a two-part test. The first part of the test places the onus on the moving party to satisfy the judge that:

- (a) The proceedings arise from an expression made by the defendant; and
- (b) The expression relates to a matter of public interest.

[33] If the moving party satisfies the first part of the test, the action is to be dismissed unless the responding party satisfies the judge that:

- (a) There are grounds to believe,
 - (i) The proceeding has substantial merit;
 - (ii) The moving party has no valid defence in the proceeding; and,
- (b) The harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

1. The Expression Relates to a Matter of Public Interest

[34] There is no dispute that the action arises from an expression made by the Defendants. At issue is whether the expression was made in the public interest.

[35] The determination of whether the expression is made in the public interest must be made objectively:

In summary, the concept of "public interest" as it is used in s. 137.1(3) is a broad one that does not take into account the merits or manner of the expression, nor the motive of the author. The determination of whether an expression relates to a matter of public interest must be made objectively, having regard to the context in which the expression was made and the entirety of the relevant communication. An expression may relate to more than one matter. If one of those matters is a "matter of public interest", the defendant will have met its onus under s. 137.1(3): *Pointes*, at paras. 60, 65.

[36] The Defendants argue that the reports provided information with respect to the operation of the court and immigration systems involving Ms. Codina, and therefore were made in the public interest. It is also argued that the reports gave notice to the public of Ms. Codina's conduct to prevent others from becoming victims.

[37] The operation of the court system is considered to be an issue which is within the public interest. The role the press plays in reporting on court proceedings is recognized as an important one. The Supreme Court of Canada made the following comments:

The press must be free to comment upon court proceedings to ensure that the courts are, in fact, seen by all to operate openly in the penetrating light of public scrutiny.

...

Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media: *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at pp. 1339-40.

[38] The news reports at the time of Ms. Codina's arrest include reference to the TPS news release which advised the public of the arrest and the fact that the police believe there may be other victims. The Defendants argue that this report satisfied the public interest in bringing this issue to the attention of others who may have dealt with Ms. Codina in the past, or who may deal with her in the future. Also, reporting on her individual situation engages the public interest in the justice system's ability to denounce the conduct of Ms. Codina and to deter others.

[39] Ms. Codina argues that the civil proceedings brought against her were purely private matters between individuals, and therefore the Defendants' reports on these proceedings were not in the public interest. She argues that the expression, when placed in context, is devoted to a private dispute and is not an expression relating to a matter of public interest. Ms. Codina also argues that the CBC reports consist of deliberate falsehoods, gratuitous personal attacks, or vulgar and offensive language, which is not expression in the public interest.

[40] I am of the view that, when looked at objectively, the news reports were expressions made in the public interest. The reports deal with the operation of the court and immigration systems, which is a matter in the public interest. The reporting of Ms. Codina's individual situation satisfied the public interest in advising the public of her conduct to bring this to the attention of other possible victims and potential users of her services. I am of the view that the language used by the Defendants in their reports is not objectionable and does not take away from the fact the subject matter of the expressions is in the public interest.

[41] I find that the Defendants have satisfied the initial onus of establishing that the reports were expressions made in the public interest. The onus now shifts to the Plaintiff to satisfy the second part of the test.

2. *The Merits-Based Hurdle*

[42] The onus is on the plaintiff to satisfy the court on a balance of probabilities that there are grounds to believe that the proceeding has substantial merit and the moving party has no valid defences. This is known as the Merits-Based Hurdle.

[43] The Merits-Based Hurdle has been described by the Court of Appeal as follows:

[T]he motion judge must decide whether a trier could reasonably conclude that the plaintiff's claim has "substantial merit", and that the defendant has "no valid defence". If the motion judge decides that both fall within the range of conclusions reasonably available on the motion record, the plaintiff has met the onus under s. 137.1(4)(a). If the plaintiff does not meet that onus, its claim will be dismissed: *Pointes*, at para. 75.

[44] The legislation included the term "substantial" to qualify merit. Therefore, the Plaintiff must do more than show there is some chance of success. The Plaintiff must show that the claim is legally tenable and supported by evidence which could lead a trier of fact to conclude the claim has a real chance of success: *Pointes*, at para. 80.

[45] In order to establish defamation, the Plaintiff must prove the following elements:

- (a) The Defendants made a defamatory statement which would tend to lower the Plaintiff's reputation in the eyes of a reasonable person;
- (b) The words relate to the Plaintiff; and
- (c) The words were communicated to at least one person other than the Plaintiff: *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28.

[46] If the elements are established, falsity and damage are presumed.

[47] The Defendants argue that the following defences apply: (1) justification, (2) fair comment, (3) responsible communication, (4) absolute privilege and statutory privilege, and (5) the action is statute barred for failure to comply with the *Libel and Slander Act*, R.S.O. 1990, c. L.12.

[48] The onus is on the plaintiff to satisfy the judge that there are reasonable grounds to believe that the defendant has "no valid defence" to the plaintiff's claim. Once the defendant has put a defence in play, the onus shifts to the plaintiff to establish that there are reasonable grounds to believe that none of the defences put in play are valid: *Pointes*, at para. 83.

Defences Relied on by the Defendants

i) Justification

[49] The defence of justification applies if the words complained of are substantially true. Truth is a complete defence: *Health Genetic Center Corp. o/a Health Genetics Center v. New Scientist Magazine*, 2018 ONSC 7224, 54 C.C.L.T. (4th) 267, at para. 51.

[50] In this case, the news reports relate to the various criminal and civil proceedings involving Ms. Codina. The criminal proceedings are part of the public record. She was convicted for defrauding Legal Aid in Ontario and for scheme to defraud, larceny by false pretenses and practicing law without being admitted to the bar in New York. She was also convicted of offences pursuant to the *IRPA*.

[51] Ms. Codina argues that the convictions pursuant to the *IRPA* are not fraud convictions. She also complains of the use of the terms “fraudster” and “fraud artist”, and argues that these terms are not supported by the facts.

[52] I find that the news reports which set out the nature of Ms. Codina’s conduct and the impression that she is a “fraud artist”, are, in fact, true. She was convicted of various fraud charges and she engaged in fraudulent and dishonest conduct for several years. Although the *IRPA* convictions may not be convictions in criminal fraud, the comments made by Justice Molloy in sentencing Ms. Codina, support a conclusion of fraudulent conduct:

[70] Ms. Codina bears sole responsibility for the crimes of which she has been convicted. She was not held responsible for the wrongdoing of others within her control, but only for her own conduct. **This was deliberate and planned conduct.** Contrary to what one sometime finds in immigration cases, there was no altruistic motive here. These crimes were committed for financial gain.

...

[73] However, it is apparent to me from Ms. Codina’s past crimes and her conduct at the heart of these most recent convictions, that she is a person who preys on vulnerable people. She is a forceful personality, vehement about the righteousness of her own cause, and a person who can rarely, if ever, admit her mistakes. She is not a person who learns from experience and she has no respect for authority. It is clear from her history, as well as these offences, that **she is fundamentally dishonest**: *R. v. Codina #8*, 2018 ONSC 2180. [Emphasis added.]

ii) Fair Comment

[53] To establish the defence of fair comment, the Defendants must prove the following elements:

- (a) The comment is on a matter in the public interest;
- (b) The comment is based on fact;
- (c) The comment, although based on fact, is recognizable as comment; and
- (d) Any person could honestly express the opinion based on proved facts: *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420, at paras 26, 28, 31 and 34.

[54] Earlier in these reasons, I concluded that the reports were made in the public interest and were based on the fact of the criminal and civil proceedings involving Ms. Codina.

[55] The comments complained of by Ms. Codina include the choice of the words: “pseudo-conseillere”, “disgraced immigration consultant”, “bilking”, “scamming”, “fraudster” and “immigration fraudster”. Ms. Codina was disbarred and convicted for fraud. She was also convicted of the *IRPA* charges and found liable in the Small Claims Court proceedings. Based on the judicial proceedings involving Ms. Codina and the findings made in those proceedings, I am satisfied that any person could honestly express these comments and opinion based on proved facts.

[56] The defence of fair comment may be defeated if the Defendant acted with malicious intent. There is no evidence of malice in this case.

iii) Responsible Communication

[57] The defence of responsible communication is available if the statement is with respect to a matter of public interest and the defendant published the statement responsibly: *Grant v. Torstar Corp.*, at paras. 98-122.

[58] Earlier in these reasons, I found that the news reports were with respect to matters in the public interest. At issue is whether the Defendants published the reports responsibly.

[59] The news reports were made following investigations by the reporters. The reporters reported on the public court proceedings involving Ms. Codina. The reporters obtained the press release issued by the TPS. Former clients of Ms. Codina were interviewed. Court documents were obtained. The reporters attended court to hear submissions with respect to sentencing. I am of the view that the Defendants exercised diligence in researching and verifying the information which was set out in the reports.

[60] The Defendants did not contact Ms. Codina for the purposes of commenting on every report. I note that Mr. Nadeau attempted to speak with Ms. Codina in court on February 26, 2018, at which time she did not provide a comment and instead stated that she may sue CBC for libel. Ms. Lucs contacted Mr. Irving, Ms. Codina’s lawyer, for comment before publishing the February 27, 2018 news report. He spoke to Ms. Lucs and his comments are included in the report.

[61] I am of the view that the Defendants were not required to provide Ms. Codina with an opportunity to comment for every report. The reports are balanced and fair and based on reliable sources of information.

iv) Absolute and Statutory Privilege

[62] Reports of judicial and administrative proceedings are protected by privilege.

[63] Section 4 of the *Libel and Slander Act* provides privilege for fair and accurate contemporaneous reports of proceedings publicly heard before a court of justice. The reports of February 26 and 27, 2018 contemporaneously report on the submissions made by counsel on the sentencing hearing. Based on the sentencing reasons of Justice Molloy, I am satisfied that the reports were fair and accurate.

[64] Section 3(1) of the *Libel and Slander Act* provides privilege for non-malicious reports of proceedings that are open to the public of any administrative body. The CBC reports are based on public proceedings, a police press release and information available through public court records. There is no evidence of malice.

v) ***Notice and Limitation Defence***

[65] The *Libel and Slander Act* includes the following notice and limitation provisions:

Notice of action

5(1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

Limitation of action

6 An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action.

[66] Ms. Codina pleads at paragraph 53 of the Statement of Claim that she contacted Ms. Cheung in July 2014 with respect to the reports of May 9 and 29, 2014. Ms. Codina did not serve a notice or commence an action with respect to those news reports within the time limits set out in the *Libel and Slander Act*.

[67] Ms. Codina pleads at paragraph 56 of the Statement of Claim that she advised Mr. Nadeau on February 26, 2018 of the defamatory and libelous nature of the earlier reports. Ms. Codina did not serve a notice within the time limit set out in the *Libel and Slander Act*. The claim was issued more than three months following her conversation with Mr. Nadeau.

Summary

[68] The Plaintiff has failed to satisfy her onus that there are reasonable grounds to believe the Defendants have "no valid defence" to the claim. On the contrary, based on the record before me, I am of the view that there is validity to each of the defences put forward by the Defendants.

3. *The Public Interest Hurdle*

[69] Even if Ms. Codina had satisfied the Merits-Based Hurdle (which she failed to do), she must also establish that the harm caused to her by the expression is "sufficiently serious" that the public interest in allowing the action to proceed outweighs the public interest in protecting the Defendants' freedom of expression: *Courts of Justice Act*, s. 137.1(4)(b). This is known as the Public Interest Hurdle.

[70] The Public Interest Hurdle has been described as the “heart” of the anti-SLAAP legislation:

The “public interest” hurdle reflects the legislature’s determination that the success of some claims that target expression on matters of public interest comes at too great a cost to the public interest in promoting and protecting freedom of expression. As explained by the Anti-SLAPP Advisory Panel, at para. 37 of its Report:

If an action against expression on a matter of public interest is based on a technically valid cause of action but seeks a remedy for only insignificant harm to reputation, business or personal interests, the action’s negative impact on freedom of expression may be clearly disproportionate to any valid purpose the litigation might serve. The value of public participation would make any remedy granted to the plaintiff an unwarranted incursion into the domain of protected expression. In such circumstances, the action may also be properly regarded as seeking an inappropriate expenditure of the public resources of the court system. Where these considerations clearly apply, the court should have the power to dismiss the action on this basis: *Pointes*, at paras. 85-88, 90-92.

[71] Ms. Codina has the onus of proving that the harm caused to her was “sufficiently serious”. At paragraphs 66 and 67 of the Statement of Claim, Ms. Codina alleges that she suffered a loss of her public and professional reputation. She has not put forward any evidence to support her allegations of harm.

[72] Before the CBC reports were published, Ms. Codina had been convicted of defrauding Legal Aid, disbarred by the Law Society of Upper Canada, and convicted of scheme to defraud, larceny by false pretenses and practicing or appearing as an attorney without being admitted or registered in New York. She served prison sentences in both Ontario and New York. I am satisfied that the Plaintiff’s reputation was established by her prior conduct and involvement in the criminal justice systems of Ontario and New York, and the CBC reports did not result in a “serious” worsening of that reputation.

[73] The public interest equation requires the plaintiff to establish that the harm to her is “sufficiently serious” that the public interest in allowing her action to proceed outweighs the public interest in protecting the Defendants’ right of expression.

[74] As I have stated earlier in this endorsement, the right of the news media to report on matters involving criminal and civil legal proceedings is in the public interest. Society has an interest in protecting the right of journalists to report on matters in the public interest without the fear and cost of a lawsuit. In this case, the public interest is also served by bringing Ms. Codina’s conduct to the attention of other possible victims and potential users of her services.

[75] Ms. Codina failed to establish that the harm to her was “sufficiently serious” that the public interest in this action continuing outweighs the public interest in protecting the Defendants’ expression. The Plaintiff’s damages, if any, are inconsequential and cannot outweigh the public interest of protecting freedom of the press.

[76] I conclude that the Plaintiff has not satisfied the Public Interest Hurdle. The litigation is of “doubtful merit” that seeks to restrict expression on matters of public interest and therefore must be dismissed.

CONCLUSIONS

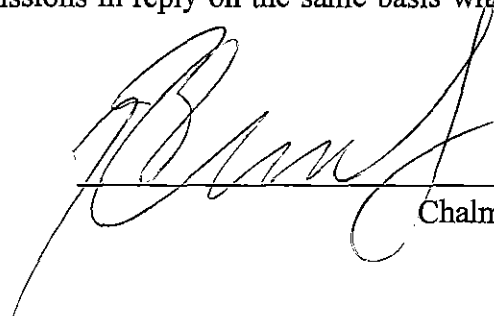
[77] For the reasons set out above, I conclude as follows:

- The Defendants have satisfied the onus of establishing that the reports were expressions made in the public interest;
- The Plaintiff has the onus with respect to the Merits-Based Hurdle. She must satisfy the court that the action has substantial merit and there are no valid defences;
- The Plaintiff failed to satisfy the Merits-Based Hurdle. The defences put in play by the Defendants of justification, fair comment, responsible communication, privilege and limitations all are valid in the circumstances of this case;
- The Plaintiff has the onus with respect to the Public Interest Hurdle. She must show that the harm suffered is “sufficiently serious” that the public interest in allowing the action to proceed outweighs the public interest in protecting the Defendants’ expression; and
- The Plaintiff failed to satisfy the Public Interest Hurdle. Her damages, if any, are not significant and do not outweigh the public interest in protecting the Defendants’ right of expression.

DISPOSITION

[78] I grant the Defendants’ motion and dismiss the Plaintiff’s action.

[79] The Defendants are presumptively entitled to their costs. If the parties are unable to agree with respect to the issue of costs, the Defendants may make written submissions of no more than 3 pages in length (excluding case law and costs outline) within 21 days of the date of this endorsement. The Plaintiff may make written submissions in reply on the same basis within 21 days of receiving the Defendants’ submissions.


Chalmers, J.

Date: October 17, 2019