SCC File No. 38376

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

1704604 ONTARIO LTD.

Applicant
(Respondent)

- and -

POINTES PROTECTION ASSOCIATION, PETER GAGNON, LOU SIMIONETTI, PATRICIA GRATTAN, GAY GARTSHORE, RICK GARTSHORE and GLEN STORTINI

Respondents
(Appellants)

RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL (POINTES PROTECTION ASSOCIATION, PETER GAGNON, LOU SIMIONETTI, PATRICIA GRATTAN, GAY GARTSHORE, RICK GARTSHORE and GLEN STORTINI, RESPONDENTS)

(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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Agents for the Respondents

PART I – STATEMENT OF FACTS

1. This application for leave to appeal does not raise any matters of public importance and should be dismissed. The Court of Appeal's dismissal of this case was due to its lack of merit on its specific factual matrix. The Applicant is, in essence, seeking to reargue the facts of the case.

2. The Applicant's entire case rests on an assertion that the written settlement agreement between the parties contains an unwritten provision prohibiting the Respondents from giving factual evidence of environmental harm at an Ontario Municipal Board hearing. This proposed contractual interpretation has now been rejected in two separate cases, with the Court of Appeal finding in the present case that the claim had no reasonable prospect of success.

3. Unless the Applicant can overcome all of the previous judicial and quasi-judicial rejections of its contractual interpretation, this appeal is academic. There is no public importance in the narrowly framed issues proposed by the Applicant, and no underlying conflict in the law that requires this Court's consideration.

The Developer Sues a Group of Local Citizens for Giving Evidence at the OMB

4. The Court of Appeal accurately understood and set out the facts giving rise to this matter in paragraphs 14 to 26 of its decision.[1] In summary:

a) 1704604 Ontario Ltd. (the "Developer") sought to develop a 91-lot subdivision in Sault Ste. Marie. It obtained an approval for the proposed development from the

[1] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 21

Sault Ste. Marie Region Conservation Authority (the "SSMRCA"), which was one of multiple approvals required for the proposed development.

b) The Pointes Protection Association is a not-for-profit corporation incorporated by some of the residents in the area. It sought judicial review of the SSMRCA approval.

c) While the judicial review application was pending, Sault Ste. Marie City Council voted to reject the proposed development. The Developer appealed to the OMB.

d) As both the judicial review application and the OMB appeal were pending, the parties settled the judicial review application by way of minutes of settlement. The settlement provided that the judicial review application would be withdrawn on a without costs basis.

e) The Pointes Protection Association opposed the proposed development during the OMB appeal, and Peter Gagnon gave evidence on behalf of the Pointes Protection Association that the proposed development would result in a significant loss of coastal wetlands. The OMB dismissed the Developer's appeal, finding that it did not "have appropriate regard for the effective development on matters of provincial interest" and that it was "not in the public interest as it relates to the loss of coastal wetland".

f) The Developer then brought this action against all of the signatories of the minutes of settlement, alleging that they breached the minutes of settlement when Mr. Gagnon gave evidence at the OMB. At the time the Developer brought this

action, it was also seeking leave to appeal the decision of the OMB in a separate proceeding. The leave to appeal application was subsequently dismissed.

5. At issue in the current proceeding is paragraph 6 of the settlement agreement. The agreement, as summarized by the Court of Appeal, provided that the Pointes Protection Association and its members "would not advance the position that the SSMRCA resolutions were illegal, invalid, or contrary to the relevant environmental legislation", and that they would not "advance any claim that the SSMRCA had exceeded its jurisdiction".[2]

6. The Developer does not allege that the defendants breached the explicit language of this agreement. Rather the Developer's position is that the defendants breached an additional implied obligation that prohibited the Pointes Protection Association and its members from giving any evidence at the OMB regarding the negative impact and environmental consequences of the proposed development on the wetlands.[3]

The Developer's Alleged Implied Agreement Has Been Rejected by Multiple Courts

7. The Developer's allegation of an implied contractual term has been raised in multiple proceedings by the Developer and has been repeatedly rejected.

8. The Developer raised the minutes of settlement at the OMB hearing, including arguing that Mr. Gagnon's evidence should be restricted due to the minutes of settlement. The OMB nevertheless heard Mr. Gagnon's evidence and relied on it in deciding the matter.

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[2] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 21

[3] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 24

9. The Developer sought leave to appeal the OMB decision to the Divisional Court. In that application for leave to appeal, the Developer alleged that the OMB had erred in permitting Mr. Gagnon's evidence because it was, among other things, precluded by an implied term in the minutes of settlement.

10. Justice Ellies of the Divisional Court rejected the Developer's interpretation of the agreement, stating:

> [112] **I do not accept the developers' argument that Gagnon's evidence constituted a breach of the minutes of settlement.** In my view, because they restricted the PPA's right to challenge the merits of the developers' application, the minutes of settlement must be strictly construed. I agree with the submissions made on behalf of the PPA that the minutes dealt specifically with the SSMRCA's approval under the Conservation Authorities Act and its regulations. **The minutes did not restrict the PPA from advancing issues relating to the Planning Act and the PPS.**
>
> [113] The developers' argument sounds alarmingly like an argument that the SSMRCA had somehow "occupied the field" regarding the loss of wetlands, preventing Gagnon from saying anything about it before the Board. On the contrary, while the Board was obliged to consider the SSMRCA's decision, it was also obliged to arrive at its own conclusion regarding possible negative impacts under the Act. Gagnon's evidence about the extent of the loss of wetlands was relevant to that issue. The fact that the loss of wetlands was also a consideration relevant to the SSMRCA's decision does not mean that Gagnon was adopting a position that the SSMRCA's decision was illegal. **His evidence related to Planning Act matters, not to the Conservation Authorities Act or its regulations** [emphasis added].[4]

[4] *Avery v. Pointes Protection Association*, 2016 ONSC 6463 (Div. Ct.) at paras 112-113

11. The Court of Appeal in this proceeding also rejected the Developer's proposed interpretation of the minutes of settlement, dismissing the claim under s. 137.1 of the *Courts of Justice Act*. In doing so, the Court of Appeal reached the following conclusions[5]:

a) That "there is no reasonable prospect that [the Developer] could convince a reasonable trier that there was substantial merit to its claim that the Agreement foreclosed Mr. Gagnon's testimony before the OMB"[6]; and

b) That "there is no evidence of any damages suffered or likely to be suffered by [the Developer] as a result of the alleged breach of the Agreement"[7], and "[h]aving reviewed the materials several times, I remain uncertain as to [the Developer's] damages theory"[8].

12. As the matter was dismissed on the contractual interpretation argument, it was not necessary for the Court of Appeal to address other defences raised by the Pointes Protection Association, including that this proceeding was a collateral attack on the OMB decision, and that evidence given before the OMB was protected by absolute privilege.

PART II –QUESTIONS IN ISSUE

13. The Developer raises three issues in its materials:

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[5] The motion judge below, due to his incorrect interpretation of s. 137.1, failed to make any real factual findings. Instead he largely accepted the facts as pleaded by the Developer without consideration of the underlying evidence.

[6] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 116

[7] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 121

[8] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 122

a) The first issue raised by the Applicant (does the "anti-SLAPP legislation apply in cases of breach of contract") is a narrow issue which has no support in the plain language of the statute or in any jurisprudence. There is no conflicting case law suggesting that there is any arguable issue of public importance.

b) The second issue raised by the Applicant (whether "the case at bar meets both the merits-based threshold and public interest threshold as set out by the Court of Appeal") is, by its own terms, a question restricted to the facts of this case.

c) The third issue raised by the Applicant ("what consequences will ensue for other breach of contract cases") is simply a restatement of the first issue.

PART III – STATEMENT OF ARGUMENT

14. The Respondents' position is that there is no public importance in the Applicant's proposed appeal. The proposed appeal would not materially advance the law regarding anti-SLAPP motions, but instead is an error correcting appeal whose interest would be limited to the parties to this proceeding. There are no conflicting appellate decisions, and there is no uncertainty regarding the legal principles in issue.

The Applicant's Previous Position Was That This Is Not a Matter of Public Interest

15. Until it brought this application for leave to appeal, the Developer consistently took the position that this proceeding, and issues in it, were not of public interest.

16. At first instance, the Developer relied on a sworn affidavit stating that this proceeding was not a matter of public interest:

> 87) This proceeding is not a matter of public interest. It is not about the Pointe Estates development or the on-site wetland. In fact, issues pertaining to the integrity of the wetland were thoroughly canvassed at the OMB appeal hearing by Klaas Oswald absent our comparable objection.
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> 88) The issue of PPA's breach of the Minutes of Settlement is a personal matter between the parties...[9]

17. The Developer repeated its position when it opposed an application by a third party to intervene at the Court of Appeal. The Developer stated in its factum on that motion:

> [8] The Court's decision in this appeal will not transcend the interests of the immediate parties. This matter is about a breach of contract and the appeal of Justice Gareau's decision concerns issues of contractual interpretation.[10]

18. The nature of the dispute and the issues raised in it have not changed since the Applicant took this position that there is no public interest in the issues on this appeal.[11] Its current assertions to the contrary are purely self-serving.

The anti-SLAPP Law Undoubtedly Applies to Cases of Breach of Contract

19. The first proposed issue raised by the Applicant Developer is that the anti-SLAPP legislation should not apply to cases of breach of contract. There is simply no support for this position in the language of the statute or in any authorities that have considered s. 137.1.

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[9] Affidavit of Patricia Avery, paras 87-88 [Application Record, Part 5, Vol. II, Tab B]

[10] Factum of Developer on motion for leave to intervene, dated November 11, 2016 at para 8 [Respondents' Documents, Tab 1 at 6]. The motion to intervene was dismissed by Justice Strathy.

[11] The only issue of public interest was the before the OMB when assessing whether the development should proceed. That case is no longer outstanding.

20. Section 137.1 of the *Courts of Justice Act* applies where a "proceeding arises from an expression made by the person that relates to a matter of public interest".[12] The motion judge found that this case satisfied the requirement that the proceeding arose from an expression (Mr. Gagnon's testimony) that relates to a matter of public interest (the environmental impact of the proposed development). There was no appeal or cross-appeal of this finding to the Court of Appeal.[13]

21. Once a proceeding satisfies this threshold requirement, there is no additional requirement in the statute that expressly or implicitly limits its application to certain causes of action. As the Court of Appeal succinctly stated:

> However, nothing in the language of s. 137.1 limits the provision to claims, normally defamation actions, that fit squarely within the traditional notion of a SLAPP. 170 Ontario's claim against Pointes clearly targets expression as defined in s. 137.1(2).[14]

22. The drafters of s. 137.1 could have easily drafted the legislation to exclude certain types of actions. Instead, the limiting factor chosen for s. 137.1 was its application to proceedings arising from expressions on "a matter of public interest". The drafters chose to look at the substance of an action over its form to determine whether s. 137.1 applies. This is a policy decision that is expressed clearly in the statute.

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[12] The motion judge found that Mr. Gagnon's "expression" before the OMB was on a matter of public interest. The Developer did not cross-appeal at the Court of Appeal to review this determination.

[13] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 105

[14] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 103

23. There are no conflicting decisions in any court suggesting any potential merit to this argument. Two other Superior Court decisions prior to the Court of Appeal's decision in this matter have dismissed breach of contract claims under s. 137.1.[15] Neither of these cases even raises the Developer's proposed categorical approach. Instead, they follow the plain language of the statute in determining whether s. 137.1 applies.

24. The Developer further argues that the court should consider the "goal" of a claim in determining whether s. 137.1 should apply.[16] This approach of determining the goal or purpose of an action was deliberately excluded from the statute. As stated by the Anti-SLAPP Advisory Panel whose report was relied upon in drafting s. 137.1:

> The Panel does not believe that the special procedure it recommends should focus on the purpose of the litigation. Judging the motive of a plaintiff is likely to be difficult, and often impossible, in an expedited proceeding. In the Panel's view, a finding of bad faith or improper motive should not be necessary to dismiss an action without substantive merit brought against expression on a matter of public interest. In addition, the need for expedited review of such actions has led the Panel to recommend (in the next section of this Report) that the review be conducted on the basis of a paper record and oral argument. In the Panel's view, a focus upon the presence or absence of bad faith or an improper motive, in addition to being unnecessary, is not well suited to expedited adjudication.[17]

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[15] *Progressive Conservative Party of Ontario v. Karahlios*, 2017 ONSC 7696; *Fortress Real Developments Inc. v. Rabidoux*, 2017 ONSC 167, aff'd 2018 ONCA 686

[16] The bad faith "goal" of a plaintiff who sues a group of citizens $5 million for speaking out on matters of environmental damage while the proposed development is being litigated (as the application was brought while the Divisional Court proceeding was outstanding) can be readily inferred. Whether it was to punish the defendants for having spoken out, intimidate them into not opposing the Divisional Court appeal, or simply silence them in any future development application is irrelevant to the issues on a s. 137.1 motion.

[17] Anti-Slapp Advisory Panel Report to the Attorney General at para 34; see also *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 47

25. Just as the Developer's underlying case relies on reading an unwritten clause into a written settlement agreement, the Developer seeks to read restrictions into s. 137.1 that have not been recognized by any court. Consideration of whether such unwritten provisions should be read into s. 137.1, notwithstanding the clear language of the statute, is not a matter of public importance.

The Merits of the Developer's Claim (or lack thereof) Is Not a Matter of Public Importance

26. The second issue on which the Developer seeks leave to appeal is whether "the case at bar meets both the merits-based threshold and the public interest threshold as set out by the Court of Appeal".

27. The lack of public importance on this issue is inherent in the Developer's own framing of the issue. It is an issue limited to the merits of the "case at bar". It is a proposed error-correcting appeal, which is of interest only to the parties to the litigation.

28. The Developer's bald assertion that the proposed development would have been beneficial to Sault Ste. Marie (notwithstanding City Council's rejection of the proposed development) does not make this case a matter of public importance. The claim here, even if successful, would not result in the proposed development being approved. That issue has been resolved against the Developer in the OMB proceeding. This claim would, at most, result in an award of damages against a group of concerned citizens. As the Developer's own witness stated on the motion "[t]his proceeding is not a matter of public interest. It is not about the Pointe Estates development or the on-site wetland."[18]

[18] Affidavit of Patricia Avery, paras 87-88 [Application Record, Part 5, Vol. II, Tab B]

29. In addition to lacking any public importance, there is no merit to the Developer's claim. The Developer's contractual interpretation argument was rejected by the Court of Appeal as it had "no reasonable prospect" of success.[19] It was rejected by the OMB and by the Divisional Court.[20] It is also in line with the Developer's own position when negotiating the settlement agreement, where the Developer's lawyer stated:

> If you consent to a dismissal of [the judicial review application] then I will agree that no costs will be sought. Your client can then make its pitch before the OMB. I do not understand why there are two proceedings which effectively address the same issue.[21] [emphasis added]

and

> I will not agree to the insertion of any paragraph in the minutes which address the OMB appeal or its process. Your client can move to be added as a party as is its right under that process and avail itself of the OMB rules. The Divisional Court ought not to fetter the rights of either party in the OMB process.[22] [emphasis added]

30. Even if there were merit to the underlying claim, the Court of Appeal further found not only that there was no evidence of harm to the Developer from the alleged breach of contract, but also that the Developer was not able to articulate any discernable theory of damages.[23] Without any evidence of harm, the Developer cannot satisfy the harm test under s. 137.1(4)(b).

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[19] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 116

[20] *Avery v. Pointes Protection Association*, 2016 ONSC 6463 (Div. Ct.) at paras 112-113

[21] August 1, 2013 Email from Orlando Rosa [Application Record, Part 5, Vol. III, Tab H.1]

[22] September 4, 2013 Email from Orlando Rosa [Application Record, Part 5, Vol. III, Tab H.19]

[23] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685 at para 122

31. The Developer's claim was dismissed based on simple principles of contractual interpretation. These principles do not raise any matter of public importance, and do not justify granting the Developer another opportunity to pursue its meritless contractual interpretation argument.

The Developer's "Slippery Slope" Argument Has no Merit

32. Finally, the Developer seeks leave on the issue of "what consequences will ensue for other breach of contract cases and particularly ones with confidentiality clauses".

33. This case does not deal with a confidentiality clause, in either form or substance. The clause in issue here is a provision identifying what issues were resolved as part of the settlement.

34. If there is any public importance in determining the impact of s. 137.1 on confidentiality clauses, that is better dealt with in a case that actually involves a confidentiality clause.

35. In any event, the Developer's statement that "virtually every severance agreement, insurance settlement, and medical malpractice waiver are in jeopardy" is hyperbole. First, those agreements will, in the normal course, involve purely personal issues, rather than expressions on matters of public interest which engage s. 137.1. Second, even where s. 137.1 applies, the test established by the Court of Appeal (which the Developer does not appear to dispute in its argument) would permit those actions to proceed if there is reason to believe they have merit.

36. There is no slippery slope when the plain language of a statute is applied to dismiss clearly meritless cases.

PART IV – SUBMISSIONS ON COSTS

37. The Respondents seek their costs of this application.

PART V – ORDER SOUGHT

38. The Respondents seek an order dismissing this application for leave to appeal.

Dated at Toronto this 30th day of November, 2018

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Mark Wiffen
Counsel for the Respondents

PART VI – TABLE OF AUTHORITIES

	Case	***Paragraph***
1.	*Progressive Conservative Party of Ontario v. Karahlios*, 2017 ONSC 7696	23
2.	*Fortress Real Developments Inc. v. Rabidoux*, 2017 ONSC 167	23
3.	*Fortress Real Developments Inc. v. Rabidoux*, 2018 ONCA 686	23
4.	*Avery v. Pointes Protection Association*, 2016 ONSC 6463 (Div. Ct.)	29

PART VII – STATUTES AND REGULATIONS

Courts of Justice Act	**Loi sur les tribunaux judiciaires**
R.S.O. 1990, CHAPTER C.43	L.R.O. 1990, chapitre c.43
Consolidation Period: From July 1, 2018 to the e-Laws currency date.	**Période de codification :** du 1er juillet 2018 à la date à laquelle Lois-en-ligne est à jour.
Last amendment: 2018, c. 8, Sched. 15, s.8.	Dernière modification : 2018, chap. 8, annexe 15, art.8.
[…]	[…]
Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)	**Prévention des instances limitant la liberté d'expression sur des affaires d'intérêt public (poursuites-bâillons)**
Dismissal of proceeding that limits debate	**Rejet d'une instance limitant les débats**
Purposes	**Objets**
137.1 (1) The purposes of this section and sections 137.2 to 137.5 are, (a) to encourage individuals to express themselves on matters of public interest; (b) to promote broad participation in debates on matters of public interest; (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. 2015, c. 23, s. 3.	**137.1** (1) Les objets du présent article et des articles 137.2 à 137.5 sont les suivants : a) encourager les particuliers à s'exprimer sur des affaires d'intérêt public; b) favoriser une forte participation aux débats sur des affaires d'intérêt public; c) décourager le recours aux tribunaux comme moyen de limiter indûment l'expression sur des affaires d'intérêt public; d) réduire le risque que la participation du public aux débats sur des affaires d'intérêt public ne soit entravée par crainte d'une action en justice. 2015, chap. 23, art. 3.
Definition, "expression"	**Définition du terme «expression»**
(2) In this section, "expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.	(2) La définition qui suit s'applique au présent article. «expression» Toute communication, que celle-ci soit faite verbalement ou non, qu'elle soit faite en public ou en privé et qu'elle s'adresse ou non à une personne ou à une entité. 2015, chap. 23, art. 3.
Order to dismiss	**Ordonnance de rejet**
(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.	(3) Sur motion d'une personne contre qui une instance est introduite, un juge, sous réserve du paragraphe (4), rejette l'instance si la personne le convainc que l'instance découle du fait de l'expression de la personne relativement à une affaire d'intérêt public. 2015, chap. 23, art. 3.

No dismissal	**Absence de rejet**
(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that, (a) there are grounds to believe that, (i) the proceeding has substantial merit, and (ii) the moving party has no valid defence in the proceeding; and (b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.	(4) Un juge ne doit pas rejeter une instance en application du paragraphe (3) si la partie intimée le convainc de ce qui suit : a) il existe des motifs de croire : (i) d'une part, que le bien-fondé de l'instance est substantiel, (ii) d'autre part, que l'auteur de la motion n'a pas de défense valable dans l'instance; b) le préjudice que la partie intimée subit ou a subi vraisemblablement du fait de l'expression de l'auteur de la motion est suffisamment grave pour que l'intérêt public à permettre la poursuite de l'instance l'emporte sur l'intérêt public à protéger cette expression. 2015, chap. 23, art. 3.
No further steps in proceeding	**Suspension des autres étapes de l'instance**
(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.	(5) Une fois qu'une motion est présentée en vertu du présent article, aucune autre étape ne peut être commencée dans l'instance par l'une ou l'autre partie tant qu'il n'a pas été statué de façon définitive sur la motion, y compris tout appel de celle-ci. 2015, chap. 23, art. 3.
No amendment to pleadings	**Aucune modification des actes de procedure**
(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding, (a) in order to prevent or avoid an order under this section dismissing the proceeding; or (b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.	(6) Sauf ordonnance contraire d'un juge, la partie intimée ne doit pas être autorisée à modifier ses actes de procédure dans l'instance : a) soit afin d'empêcher ou d'éviter qu'une ordonnance rejetant l'instance ne soit rendue en application du présent article; b) soit, si l'instance est rejetée en application du présent article, afin de poursuivre l'instance. 2015, chap. 23, art. 3.
Costs on dismissal	**Dépens en cas de rejet**
(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.	(7) Si un juge rejette une instance en vertu du présent article, l'auteur de la motion a droit aux dépens afférents à la motion et à l'instance sur une base d'indemnisation intégrale, sauf si le juge décide que l'adjudication de ces dépens n'est pas appropriée dans les circonstances. 2015, chap. 23, art. 3.
Costs if motion to dismiss denied	**Dépens en cas de refus de la motion en rejet**
(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an	(8) Si un juge ne rejette pas une instance en application du présent article, la partie intimée n'a pas droit aux dépens afférents à la motion, sauf si le juge décide que

award is appropriate in the circumstances. 2015, c. 23, s. 3.	l'adjudication de ces dépens est appropriée dans les circonstances. 2015, chap. 23, art. 3.
Damages	**Dommages-intérêts**
(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate. 2015, c. 23, s. 3.	(9) Lorsqu'il rejette une instance en application du présent article, le juge qui conclut que la partie intimée a introduit l'instance de mauvaise foi ou à une fin illégitime peut accorder à l'auteur de la motion les dommages-intérêts qu'il estime appropriés. 2015, chap. 23, art. 3.