SUPREME COURT OF CANADA

disponible en français

Case in Brief: *Bent v. Platnick*

Judgment of September 10, 2020 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2020 SCC 23

A doctor's defamation lawsuit against a lawyer wasn't meant to silence anyone, and could go forward, the Supreme Court has ruled.

Freedom of expression is important to democracy, but it has limits. One limit is defamation. Defamation law protects a person's reputation from unfair harm.

Ms. Bent was a lawyer. She had been elected as president of the Ontario Trial Lawyers Association (OTLA), whose members represented people hurt in car accidents.

Dr. Platnick was a doctor. He was hired by insurance companies to look at reports written by other medical professionals. He would write final reports giving medical opinions on how badly people were hurt.

In 2014, Ms. Bent sent an email to the OTLA mailing list. She said that Dr. Platnick had misrepresented and changed other doctors' reports to make her clients' injuries look less serious. This meant the people who were hurt would get fewer insurance benefits.

Emails sent to the OTLA list were supposed to be confidential, but someone shared the message about Dr. Platnick. An insurance industry magazine published the full email in an article.

Dr. Platnick said Ms. Bent was wrong. He explained that in one case he clearly made his own conclusions based on information from other doctors who didn't know Ontario's accident benefits law. In another case, a doctor made a mistake in a report and later fixed it.

Dr. Platnick asked Ms. Bent to apologize. She didn't, so he sued her and her law firm for defamation (that is, for harming his reputation). He asked for over $16 million in damages and lost income.

Ms. Bent said this was a "strategic lawsuit against public participation," or "SLAPP." SLAPPs are lawsuits used to stop people from speaking out on something that's important to the public. SLAPPs aren't about genuine legal claims. They are about intimidating and silencing critics with the threat of costing them time and money to defend the lawsuit. Like some other provinces, Ontario has a law to stop SLAPPs before they ever go to trial.

The motion judge agreed with Ms. Bent that the defamation suit was a SLAPP and should be stopped. The Court of Appeal said it *wasn't* a SLAPP and could go forward.

The majority of judges at the Supreme Court said that Dr. Platnick's lawsuit wasn't a SLAPP and should be allowed to continue.

For his lawsuit to go forward, Dr. Platnick had to show three things. First, that he had a likely chance of winning. Second, that Ms. Bent had no valid defence. Third, he had to show that it was more important to the public that his lawsuit be allowed to go forward than it was to protect Ms. Bent's expression.

The majority of judges said Dr. Platnick showed these three things. They said that the motion judge made mistakes applying the law on SLAPPs, about defamation law, and about the evidence. They said Dr. Platnick had a likely chance of winning. This was because Ms. Bent's email was sent to 670 OTLA members and talked about Dr. Platnick by name. It was also because Dr. Platnick showed he lost about $600,000 in income because of the damage to his reputation. Dr. Platnick also showed at this stage that there was a basis in fact to find that Ms. Bent had no valid defence. The evidence showed that Dr. Platnick may not have changed the doctor's report. What Ms. Bent said wasn't necessarily true. Her comments also weren't necessary because she didn't have to mention Dr. Platnick by name. Even if Ms. Bent thought the email list was confidential, she talked to the magazine about it and let them publish it. The majority of judges said that the email was a personal attack and that Ms. Bent didn't confront Dr. Platnick about anything before she sent it. They said the harm to Dr. Platnick was more important to the public than protecting Ms. Bent's freedom of expression in this situation.

The majority said that just because a court says a lawsuit isn't a SLAPP and can go forward doesn't mean it will succeed. This just means the person deserves to have their day in court. In a trial, the court will hear much more evidence and argument, and will have much more to base a decision on.

1704604 Ontario Ltd. v. Pointes Protection Association was another case about SLAPPs. The Court used its decision in that case and applied it to this one. The Court heard the cases on the same day.

…cont'd

Breakdown of the decision: ***Majority:*** Justice Suzanne Côté allowed the motion to admit fresh evidence in part and dismissed the appeals (Chief Justice Wagner and Justices Moldaver, Brown, and Rowe agreed) | ***Dissenting:*** Justice Rosalie Silberman Abella would have allowed the appeals, saying this was exactly the kind of lawsuit that anti-SLAPP laws were meant to prevent, and that the defence of qualified privilege applied to Ms. Bent (Justices Karakatsanis, Martin, and Kasirer agreed)

More information (case # 38374): Decision | Case information | Webcast of hearing

Lower court rulings: decision on motion to dismiss (Ontario Superior Court of Justice) | appeal (Court of Appeal for Ontario)