

[Home](#) > [Civil Litigation](#)

Civil Litigation



Author wins day in court for defamation action after prevailing on ‘anti-SLAPP’ motion

Friday, December 10, 2021 @ 11:03 AM | By [Ian Burns](#)

Research Pod

Case(s):

[Galloway v. A.B. 2021 BCSC 2344](#)

A well-known Canadian writer has been given the go-ahead for his defamation lawsuit against a number of people he claims have unfairly accused him of sexual and physical assault, despite an attempt to have the case dismissed under B.C.’s legislation which is intended to screen out so-called strategic lawsuits against public participation, or SLAPPs.

Steven Galloway, who was fired from his job as head of the creative writing program at the University of British Columbia in 2016, says his career has been destroyed, and his work has become unpublishable, due to accusations he raped, sexually assaulted and physically assaulted a former student, who is identified only as A.B. He denies the allegations.

But A.B. applied to have the suit dismissed under B.C.’s *Protection of Public Participation Act (PPPA)*, which allows a person who has been sued over comments they made to apply to have the action dismissed if the expression relates to a matter of public interest. The Act, which came into effect in 2018, is meant to safeguard people from strategic lawsuits against public participation, also known as SLAPPs, where powerful parties use the courts to punish people who speak out on matters of public interest.

For her part, A.B. argued that a dismissal of Galloway’s lawsuit would “expressly acknowledge the value

in protecting the rights of victims to report sexualized violence” and would encourage, rather than discourage, reporting. But B.C. Supreme Court Justice Elaine Adair held that Galloway should be given his day in court, while dismissing the lawsuit against some defendants (*Galloway v. A.B.* 2021 BCSC 2344).

“I am not making any final determination of whether any statement alleged by Mr. Galloway to be defamatory is, in fact, defamatory. However, I must assess whether, in respect of a particular statement, Mr. Galloway has met his burden to show that there are grounds to believe there is substantial merit to his claim,” she wrote. “Mr. Galloway may succeed in persuading a trial judge that, in respect of a particular claim, he is entitled to a remedy (which could be significant or miniscule), or his claim may be dismissed on the merits. Mr. Galloway may be successful against one defendant, but fail as against another or all of the others. The ultimate outcome will be up to the trial judge.”

Galloway’s counsel, Daniel Burnett of Owen Bird Law Corporation, said when a person of falsely accused of crimes which destroy a promising career “it is not like you have a choice about clearing your name.”

“He has chosen not to sue over all manner of extremely hurtful and unfair statements which have been expressed, but he has drawn the line at accusations of crime,” he said. “[A.B.’s argument] boils down the absurd proposition that one cannot participate in the discussion or engage in advocacy or support people without calling Steven Galloway a criminal. The judge didn’t buy that, and properly so.”

But A.B.’s counsel, David Wotherspoon of Dentons LLP, noted that sexual assault is the most under-reported crime in Canada and that the PPPA legislation “intends that some cases with merit will be dismissed.”

“That is the price we pay in a democracy for protecting expression,” he said. “And the expression at issue in this case from A.B.’s perspective is a report on a sexual assault, and our position is that that is the kind of expression that the legislation intends to protect.”



Howard Winkler, Winkler Law

Howard Winkler of Winkler Law, who specializes in media and defamation law, said the case was one of the most difficult he had seen in terms of weighing competing interests under anti-SLAPP legislation.

“We are dealing with two interests which are at the high end of deserving protection,” he said. “There are allegations of a serious nature and the harm caused, or likely to have been caused, by the statements is very high, and there is a strong public interest associated with that. But on the other hand, you have got the public interest in the reporting and free expression of allegations of sexual assault and sexual misconduct, and that lies at the high end of the public interest spectrum as well.”

The decision means Galloway has “bought himself a ticket” to the litigation of his claim, but it is not a vindication of his reputation or a rejection of the accusations against him, said Winkler.

“What one might be able to conclude from this case is that where you have a serious allegation made such as criminality, and the plaintiff can provide evidence of harm or likelihood of harm, you would have to predict that kind of action is going to be permitted to proceed,” he said. “So, if this case’s reasoning is followed, I would tend to say that the application of the legislation is tending to prefer the protection of reputation where there has been serious harm over the public interest in any given expression.”

If you have any information, story ideas or news tips for [The Lawyer’s Daily](#) please contact Ian Burns at Ian.Burns@lexisnexis.ca or call 905-415-5906.

Related Articles

[Judge failed to consider ‘chilling effect’ of dismissing defamation case, B.C. Court of Appeal says](#)

[New legislation aimed at SLAPP lawsuits met with wide support in B.C.](#)

[Appeal court ruling contains a 'lot of lessons' for legal profession: lawyer](#)

[‘Sea change’ wave crashing on Robin Camp](#)

[The Friday Brief](#)