

Court of Appeal rejects defamation claims related to workplace investigation

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In *Safavi-Naini v. Rubin Thomlinson LLP*¹ the Ontario Court of Appeal unanimously upheld a decision of the Superior Court, where the motion judge granted an anti-SLAPP motion to dismiss a defamation action brought by the complainant in an investigation against the investigator.

What you need to know

- The Court upheld the motion judge’s application of qualified privilege—a complete defence to defamation—to statements made by the investigator in summaries of the workplace and sexual harassment investigation report.
- The Court also offered guidance on when workplace investigations may be matters of public interest, passing the threshold test for anti-SLAPP protection under Ontario’s *Courts of Justice Act*. This may be the case where the allegations arise at a public institution, garner media attention and raise public safety concerns.

Background

In 2018, Dr. Anahita Safavi-Naini, a medical resident at the Northern Ontario School of Medicine (NOSM), brought complaints of workplace and sexual harassment against two faculty doctors. NOSM retained Rubin Thomlinson LLP, a law firm specializing in sexual violence and harassment investigations, to investigate Dr. Safavi-Naini’s complaints². The investigation was mandated under Ontario’s *Occupational Health and Safety Act* (OHSA)³.

Before the investigation was commenced, Dr. Safavi-Naini hired a publicist and issued a press release about her allegations, attracting media coverage from national, provincial and local news outlets⁴. Dr. Safavi-Naini’s evidence was that she had hired this publicist to “shame NOSM into conducting a workplace investigation into her allegations”⁵.

The investigator completed her report, along with two executive summaries, in March 2019. The summaries included the investigator’s finding that Dr. Safavi-Naini was not a credible or reliable witness and concluded that the accused doctors had not engaged in workplace or sexual harassment⁶.

While they were not publicly disseminated, the summaries were provided to the accused doctors and NOSM’s lawyer and were ultimately filed with the Human Rights Tribunal of Ontario as part of one of the accused doctor’s defence to Dr. Safavi-Naini application to that Tribunal⁷.

The motion judge's decision

In March 2021, Dr. Safavi-Naini sued the investigator and the law firm, alleging that the summaries were defamatory. In response, the defendants moved to dismiss Dr. Safavi-Naini's action under section 137.1 of Ontario's *Courts of Justice Act*. Under section 137.1, courts must dismiss proceedings that arise from a matter of public interest, unless the responding party establishes that (a) there are grounds to believe that the proceeding has substantial merit and the moving party has no valid defence and (b) the public interest in permitting the proceeding to continue outweighs the public interest in protecting the impugned expression⁸.

The motion judge granted the defendants' section 137.1 motion and dismissed Dr. Safavi-Naini's action, holding that: (1) the summaries related to a matter of public interest; (2) the allegedly defamatory statements in the summaries were made on an occasion of qualified privilege; (3) the investigator did not act with malice (which would have defeated her qualified privilege defence); and (4) the public interest weighing exercise favoured protecting the summaries⁹. Dr. Safavi-Naini appealed all four conclusions.

The Court of Appeal's decision

A unanimous Court of Appeal dismissed all of Dr. Safavi-Naini's appeals. The Court's decision brings further clarity to two important issues related to the law of workplace and sexual harassment investigations.

First, the decision confirms that statements made in legally mandated workplace or sexual harassment investigations can be protected by qualified privilege, which applies where a person has a legal, social, moral or personal duty to publish information and the recipient has a corresponding interest or duty to receive it¹⁰.

In this case, the investigator had a duty to complete the investigation, which was mandated by OHSA, and to provide her findings to the complainant, the accused doctors and NOSM, who had a corresponding interest or duty to receive them. The allegedly defamatory summaries therefore fell "squarely within" the scope of qualified privilege¹¹.

Second, the decision offers guidance on the contextual factors that can bring workplace or sexual harassment allegations into the public interest for the purpose of dismissal anti-SLAPP motions. The mere fact that an expression relates to a workplace or sexual harassment investigation does not mean it arises from a matter public interest. However, in Dr. Safavi-Naini's case, the nature of NOSM as an educational institution, the media attention garnered by the allegations and the resulting public safety concerns for patients brought the investigation into the public interest¹².

Key takeaways

The Court of Appeal's decision provides comfort to parties conducting internal investigations that they will have defences available to any resulting allegations of defamation, including that their investigative activities, interviews, fact finding and work product are covered by qualified privilege.

As the investigation in this case was mandated by statute, it was clear that the investigator was operating under a legal duty to publish the results of their investigation (and the allegedly defamatory statements). While a strong argument can be made that this privilege would extend to all good-faith internal investigations, it is an open question as to whether courts will extend this privilege to other investigations not specifically required by statute.

FOOTNOTES

¹. 2023 ONCA 86.

². *Safavi-Naini v. Rubin Thomlinson LLP*, [2023 ONCA 86](#), paras. 1-4 ("*Safavi-Naini*").

[3.](#) Occupational Health and Safety Act, [R.S.O. 1990, c. O.1](#); Safavi-Naini, para. 5.

[4.](#) Safavi-Naini, paras. 8, 23.

[5.](#) Safavi-Naini, para. 22.

[6.](#) Safavi-Naini, paras. 6-7.

[7.](#) Safavi-Naini, para. 8.

[8.](#) Courts of Justice Act, [R.S.O. 1990, c. C.43](#), s. 137.1.

[9.](#) Safavi-Naini, para. 13.

[10.](#) Safavi-Naini, para. 27, citing *Bent v. Platnick*, [2020 SCC 23](#), para. 121.

[11.](#) Safavi-Naini, paras. 26-27.

[12.](#) Safavi-Naini, para. 8.

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