

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LONDON DISTRICT CATHOLIC SCHOOL BOARD

Applicant/Responding Party

- and -

MYRIAM MICHAIL

Respondent/Moving Party

**FACTUM OF THE APPLICANT/RESPONDING PARTY
RE: VEXATIOUS LITIGANT APPLICATION & SLAPP-MOTION
(returnable July 10, 2020)**

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PART I - OVERVIEW

1. In this Application, the London District Catholic School Board (“LDCSB”) seeks an Order declaring the Respondent, Myriam Michail (“Ms. Michail”), to be a vexatious litigant pursuant to s. 140 of the *Courts of Justice Act* (“CJA”). The history of litigation in this matter demonstrates that Ms. Michail will continue to initiate vexatious proceedings against the LDCSB unless the Court issues an Order under s. 140 of the *CJA*.
2. The LDCSB does not seek to prevent Ms. Michail from accessing justice. Rather, the LDCSB seeks judicial oversight of Ms. Michail’s proceedings with the goal of averting vexatious proceedings while allowing justiciable claims to proceed on the merits.
3. Ms. Michail has not filed responding materials in the Application. Instead, Ms. Michail filed a motion (the “SLAPP motion”) seeking a dismissal of the

Application pursuant to s. 137.1 of the *CJA* ("s. 137.1") on the basis that the Application is allegedly a strategic lawsuit against public participation (a "SLAPP").

4. The Application is not a SLAPP. It does not arise from one or more protected "expressions" made by Ms. Michail but rather from the vexatious proceedings she has initiated and continued, and her vexatious conduct in such proceedings. The SLAPP motion is meritless and is another example of a vexatious proceeding/step in a proceeding brought by Ms. Michail. As such, the motion should be dismissed with costs to the LDCSB.
5. The allegations in the Application, on the other hand, are supported by the evidence. It is clear that Ms. Michail is a vexatious litigant because she has persistently and without reasonable grounds initiated vexatious proceedings, and/or conducted proceedings, in a vexatious manner. As such, the Application should be allowed.

PART II - THE FACTS

6. The facts relevant to the Application and the SLAPP Motion are fully set out in the Affidavit of James Vair, sworn November 25, 2019, and the Supplemental Affidavit of James Vair, sworn May 28, 2020. For the sake of brevity, we will not repeat all relevant facts in full here but will instead summarize only the critical background.

Reference: Affidavit of James Vair, sworn November 25, 2019, Application Record of the Applicant, tab 2 [Vair Affidavit].

Supplemental Affidavit of James Vair, sworn May 28, 2020, Supplemental Application Record of the Applicant, tab 1 [Supplemental Affidavit].

A. Vexatious proceedings

7. Ms. Michail was employed with the LDCSB as a high school teacher from 1990 until October 29, 2014, at which time the LDCSB took the position that her employment contract had been frustrated for reasons related to her medical condition. During her employment, Ms. Michail was a member of the Ontario English Catholic Teachers Association (“OECTA”), and subject to to a collective agreement between OECTA and the LDCSB.

Reference: Vair Affidavit, *supra* para 6 at para 3.

8. Since 2011, Ms. Michail has instituted the proceedings listed at Tab “A” of the Vair Affidavit.

Reference: Vair Affidavit, *supra* para 6 at para 5 and Exhibit “A” attached thereto.

9. This Application arises primarily from Ms. Michail’s conduct in a judicial review application that she initiated in March 2017 (the “JR Application”). At the same time she filed the JR Application, she brought a motion for leave to have it heard by a single judge of the Superior Court, alleging urgency, rather than a panel of the Divisional Court as generally required by the *Judicial Review Procedure Act*. The motion was denied in June 2017 (the “Urgency Order”). Instead of proceeding with the JR Application at the Divisional Court in the normal course, Ms. Michail has spent the last three years pursuing appeals of the Urgency Order, filing new motions for new remedies, and appealing all or substantially all adverse decisions

issued against her, all the way to the Supreme Court of Canada. All her appeals and motions have been dismissed.

B. Vexatious conduct

10. Not only has Ms. Michail pursued voluminous and meritless proceedings, but her conduct in such proceedings has persistently and without reasonable grounds been vexatious.

11. First, Ms. Michail has repeatedly made extreme and unsubstantiated allegations against the LDCSB's counsel, administrative tribunals, and Superior Court judges.

Reference: Vair Affidavit, *supra* para 6 at paras 33, 34, 35, 42, 43, 45, 47, 52, 57, 59, 66, 67, 73, 77, 79 and exhibits attached thereto.

12. For example:

(a) In materials filed by Ms. Michail, she alleged that the LDCSB and OECTA acted in partnership to commit fraud, deceit and defamation against her and participated in a "sham and tainted investigation" with respect to her employment.

(b) In a formal complaint about the Honourable Madam Justice Leitch and the Honourable Mr. Justice Grace sent to, among others, the Attorney General of Canada, Ms. Michail alleged that Madam Justice Leitch was "biased" against her, engaged in "deceit", and conspiring with LDCSB and OECTA to "obstruct justice". She accused Mr. Justice Grace of "obstruction of justice", "breaching the law", concealing evidence, and "confiscating" her court documents.

(c) In the "Notice of Constitutional Question" filed by Ms. Michail in the JR Application, she alleged that the Ontario Labour Relations Board is "not an

independent and impartial decision making forum” and that the legal system allows OECTA’s counsel to “get away with fraud, deceit, betrayals and any and all illegal conduct”;

(d) In several letters to the Regional Senior Judge for the Central South Region dated May 1, 2019, Ms. Michail has accused Mr. Justice Grace of opening a “forged application”, accused the LDCSB’s counsel of deceiving the court, and accused various parties, including Mr. Justice Grace, of “concealing evidence”.

Reference: Vair Affidavit, *supra* para 6 at paras 52c, 52e, 52g, 73 and 74 and exhibits attached thereto.

13. Second, Ms. Michail has persistently and without reasonable grounds sent vexatious *ex parte* correspondence to several Superior Court judges until they directed her to stop such communication.

Reference: Vair Affidavit, *supra* para 6 at paras 35, 37, and 45.

14. Third, Ms. Michail has persistently and without reasonable grounds advanced frivolous motions and appeals, thereby wasting judicial resources and imposing significant expenses on the LDCSB.

Reference: Vair Affidavit, *supra* para 6 at paras 19, 22, 24, 25, 26, 36, 48, 54, 58, 61, 63, 72, 74, 79 and exhibits attached thereto.

Supplemental Vair Affidavit, *supra* para 6 at paras 5 and 6.

15. Fourth, Ms. Michail’s approach to her litigation confirms that, to her, “[t]his matter is not just a case, it is a cause”. The litigation began as a straightforward grievance arbitration in a unionized workplace, but Ms. Michail has turned it into an attack on the court system, several Superior Court judges, counsel for both OECTA and

the LDCSB, courthouse administrative staff, the *Courts of Justice Act*, the *Labour Relations Act, 1995*, and various interlocutory procedural orders against her.

Reference: Vair Affidavit, *supra* para 6 at para 77 and Exhibit “UU” attached thereto.

16. Fifth, Ms. Michail has failed to satisfy an outstanding costs award.

Reference: Supplemental Vair Affidavit, *supra* para 6 at para 6 and Exhibit “A” attached thereto.

C. SLAPP Motion

17. LDCSB has never attempted to silence Ms. Michail’s private and/or public expressions, including on her website, to the media, on social media, or otherwise.

Reference: Supplemental Vair Affidavit, *supra* para 6 at paras 9 – 11.

18. Ms. Michail alleges in paragraph 9 of her motion materials that her protected “expressions” include court submissions about the constitutionality of certain provisions of the *Labour Relations Act, 1995* and the need for an “open justice system” (i.e. recordings in the courtroom). However, LDCSB has never taken a position on such issues and does not intend to do so in the future.

Reference: Supplemental Vair Affidavit, *supra* para 6 at paras 9 -11.

PART III - ISSUES AND THE LAW – VEXATIOUS LITIGANT APPLICATION

A. Vexatious proceedings under the CJA

19. Section 140 of the *Courts of Justice Act* (“CJA”) provides:

Vexatious proceedings

140 (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,

(a) instituted vexatious proceedings in any court; or

(b) conducted a proceeding in any court in a vexatious manner,

the judge may order that,

(c) no further proceeding be instituted by the person in any court; or

(d) a proceeding previously instituted by the person in any court not be continued,

except by leave of a judge of the Superior Court of Justice.

Reference: Courts of Justice Act, RSO 1990, c C.43, s 140.

20. The purpose of s. 140 is to “protect honest citizens and litigants and the overall integrity of the justice system against those who continually abuse the court process by engaging in frivolous and vexatious litigation.”

Reference: *Dobson v Green*, 2012 ONSC 4432 at para 8, the LDCSB’s Book of Authorities (“Authorities”) tab 1.

21. As quoted by Mr. Justice D.L. Corbett:

Enough is enough. This Court has limited resources and must, therefore, attempt to deal with the work before it in a fashion that is fair to all users of the court. While a person’s access to justice is a fundamental right, the court must be diligent to ensure that its processes are not abused by any particular litigant to the detriment, not only to those directly involved in the litigation, but, as well, to the system at large.

Reference: *Peoples Trust Company v Atas*, 2018 ONSC 58, introduction, Authorities, tab 2.

22. Vexatious litigants often share common characteristics:

They advance claims that are often manifestly without merit. They tend to ignore adverse rulings and procedural setbacks, such as costs orders against them. They may resort to multiple, repetitive proceedings, often against the same adversary. They will sometimes similarly engage others who present themselves as an obstacle in their path. They often launch court proceedings as if unconcerned about the financial resources invariably consumed by such actions. They tend to be litigants who, with persistence, abuse the court process for their own selfish and single-minded goals. They are typically self-represented litigants who seem intent, through a series of persistent and fruitless proceedings, on wearing down their opponents through an ongoing battle of attrition.

Reference: *Dobson v Green*, 2012 ONSC 4432 at para 7, Authorities, tab 1.

23. Vexatious litigants or proceedings may have the following characteristics:
- (a) Re-litigating issues that have already been determined;
 - (b) Proceedings that obviously cannot succeed or would lead to no possible good;
 - (c) Proceedings containing issues that have been rolled forward from previous litigation;
 - (d) Proceedings and complaints against the lawyers who have acted for or against the litigant in earlier proceedings;
 - (e) Proceedings brought for an improper purpose; and
 - (f) Persistent unsuccessful appeals from decisions.

Reference: *Metropolitan Toronto Condominium Corporation No. 932 v Lahrkamp*, 2018 ONSC 286 at para 39, Authorities, tab 3.

24. Further, a “hallmark” of vexatious litigants is that they will often accuse a judge of impropriety because the vexatious litigant disagrees with the judge’s decision.

Reference: *Lochner v Ontario Civilian Police Commission*, 2019 ONSC 3048 at para 13, Authorities, tab 4.

25. There is no “threshold” number of proceedings that must have been commenced in order to engage the application of s. 140. Rather, the litigant must be shown to have either (a) “persistently” and “without reasonable grounds” instituted vexatious proceedings, or (b) conducted any proceeding in a vexatious manner.

Reference: *Diler v Heath*, 2012 ONSC 3017 at para 31, Authorities, tab 5.

26. Further, in assessing whether the respondent has instituted vexatious proceedings, the court may consider both judicial proceedings and non-judicial proceedings, such as proceedings before administrative tribunals. In *Bishop v Bishop*, the Court of Appeal for Ontario confirmed that:

... the institution of non-judicial proceedings can, depending on the circumstances, constitute evidence from which a court may infer that court proceedings commenced by the litigant are not bona fide but the product of someone who is unreasonably obsessed with a cause and likely to pursue vexatious court proceedings on an indefinite basis unless stopped.

Reference: *Bishop v Bishop*, 2011 ONCA 211 at para 9, leave to appeal ref'd 2011 CarswellOnt 10865 (SCC), Authorities, tab 6.

27. Section 140 allows the Court to issue a vexatious litigant order on terms which are just and tailored to the circumstances. The Court may, for example, declare a person a vexatious litigant generally while allowing him/her to continue with a proceeding which is not vexatious on appropriate terms.

B. Ms. Michail's vexatious proceedings

28. The judicial and administrative proceedings initiated by Ms. Michail have all the characteristics of vexatious proceedings. She has:
- (a) repeatedly attempted to re-litigate the same issues;
 - (b) persistently and unsuccessfully appealed all adverse decisions, including procedural decisions of little or no consequence to the issues between the parties;
 - (c) initiated multiple concurrent proceedings against the LDCSB (and in some cases, others) for essentially the same subject matter, including arbitral proceedings, human rights applications, a WSIB claim, and the judicial review application;
 - (d) filed a judicial complaint about two decision makers in her proceedings; and
 - (e) failed to promptly pay outstanding costs awards.
29. Ms. Michail's response to this Application is further evidence of her predisposition to vexatious proceedings. Instead of filing responding materials, she launched a counter-offensive in the form of a cross-motion, alleging without factual or legal basis that the Application is a SLAPP. Her motion materials again request that the

Court consider the legality of the *Labour Relations Act, 1995* and the *Courts of Justice Act* which are not issues raised by the Application.

C. Ms. Michail's vexatious conduct of proceedings

30. In all her proceedings against the LDCSB, Ms. Michail repeatedly raised her unsupported belief that the LDCSB, OECTA, Superior Court judges, court staff, etc. are engaging in a fraudulent and criminal conspiracy against her. Her conduct has been like that of the vexatious litigant described in *Peoples Trust Company v Atas, 2018 ONSC 58*: "obsessive, unbridled, and consistent with a certain type of vexatious litigant who will not rest until a perceived historic injustice is remedied".
31. Ms. Michail's voluminous and repetitive pleadings contain allegations which are extreme and meritless, but which nonetheless threaten the reputation of the Superior Court justices and the administration of justice generally, as well as the LDCSB, OECTA and counsel for both of them.
32. Ms. Michail's conduct has demonstrated an irrational approach. In March 2017, Ms. Michail alleged that the JR Application was urgent and brought a motion for leave to have it adjudicated by a single judge of the Superior Court on that basis. The motion was dismissed. Instead of proceeding promptly in the Divisional Court, Ms. Michail has spent three years appealing various interlocutory orders all the way up to the Supreme Court of Canada, raising new constitutional challenges along the way. The result is that her JR Application still has not been perfected, much less heard.

33. Ms. Michail cannot or will not accept that any of her claims are without merit. Unless and until her vexatious conduct is restrained by this Honourable Court, she will continue to bring new proceedings, have them dismissed and then appeal unfavorable decisions, to the detriment of our overburdened courts and administrative tribunals and at great expense to the LDCSB.

D. A vexatious litigant Order will promote the administration of justice

34. The Order sought by the LDCSB will not prevent Ms. Michail's access to the courts – it would simply “establish a first step by which the court will have an opportunity to vet the *bona fides* and merits of a proposed proceeding before permitting it to proceed.” Thus, the Court would not be depriving her access to justice. It would deprive her only of the ability to initiate or continue vexatious proceedings.

Reference: *Diler v Heath*, 2012 ONSC 3017 at para 34, Authorities, tab 5.

PART IV - ISSUES AND THE LAW – SLAPP MOTION

35. The issue in the SLAPP motion is whether the Application should be dismissed on the basis that it arises from an expression by Ms. Michail relating to a matter of public interest for the purposes of s. 137.1.
36. This motion should be dismissed because:
- (a) the Application does not arise from an “expression” made by Ms. Michail relating to a matter of public interest; and/or alternatively;

(b) the elements of s. 137.1(4) are satisfied: (a) there are grounds to believe the Application has substantial merit and that Ms. Michail has no valid defence in the Application; and (b) the harm to LDCSB as a result of Ms. Michail's vexatious proceedings is sufficiently serious that the public interest in allowing them to continue outweighs the public interest in protecting them.

A. Anti-SLAPP Proceedings under the CJA

37. Section 137.1 provides:

Dismissal of proceeding that limits debate

Purposes

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.

Definition, "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.

Order to dismiss

(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.

No dismissal

(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.

Reference: *Courts of Justice Act*, RSO 1990, c C.43, s 137.1 ("s. 137.1").

38. The majority of case law interpreting s. 137.1 (including whether an expression relates to a matter of "public interest") arises in the context of defamation claims. There do not appear to be any reported decisions involving the application of s. 137.1 to a vexatious litigant application.
39. The legal framework for adjudicating motions under s. 137.1 was established by the Ontario Court of Appeal in *1704604 Ontario Ltd. v Pointes Protection Association*:

Stripped to its essentials, s. 137.1 allows a defendant to move any time after a claim is commenced for an order dismissing that claim. The defendant must demonstrate that the litigation arises out of the defendant's expression on a matter relating to the public interest. If the defendant meets that onus, the onus shifts to the plaintiff to demonstrate that its lawsuit clears the merits-based hurdle in s. 137.1(4)(a) and the public interest hurdle in s. 137.1(4)(b).

Reference: *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685, leave to appeal granted and appeal heard and reserved November 12, 2019, [2018] S.C.C.A. No. 467, Authorities, tab 7.

40. In the words of Justice Edward P. Belobaba, s. 137.1 of the *CJA*:

"has an important but limited rationale: the early dismissal of purely strategic litigation that is brought primarily to discourage or derail expression on matters of public interest. The "aggrieved" plaintiff is typically a powerful entity that hasn't sustained any real damage but brings a defamation claim to intimidate a much weaker defendant and stop any further discussion of a matter of public interest. The anti-SLAPP legislation is not intended to preclude legitimate defamation claims. But it is also designed to encourage challenges to lawsuits that may well be SLAPP suits."

Reference: *Ferreira v Da Costa*, 2019 ONSC 2990 at para 4, Authorities, tab 8.

41. A legal proceeding arises from an expression if that expression grounds the plaintiff's claim in the litigation. Only those claims are subject to s. 137.1.

Reference: *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685 at para 52, leave to appeal granted and appeal heard and reserved November 12, 2019, [2018] S.C.C.A. No. 467, Authorities, tab 7.

B. The Application does not arise from a protected "expression"

42. The Application arises from Ms. Michail's litigation history and her conduct during that litigation. It does not arise from the fact or content of any expressions made by Ms. Michail, including her submissions in court regarding the constitutionality of the *Labour Relations Act, 1995* and/or the *Courts of Justice Act*.
43. Ms. Michail has an active website related to her legal arguments. She has spoken to journalists about her legal disputes. She comments on social media articles. LDSCSB has made no efforts to prevent or reduce those expressions.

44. The goal of the Application is not to limit Ms. Michail's ability to express her views. The Application is intended to introduce a judicial gatekeeper to ensure that any future litigation instituted or continued by Ms. Michail is not an abuse of process and has a reasonable basis, ultimately to ensure the appropriate usage of scarce judicial resources and prevent unnecessary and wasteful litigation.
45. Section 137.1 was intended to protect legitimate public expression from "gag" litigation, primarily in the form of defamation lawsuits, intended to silence or intimidate the originators of such expression. Section 137.1 was not intended to shield vexatious proceedings and/or vexatious behaviour in judicial or administrative litigation from defensive procedural mechanisms available to defendants, including vexatious litigant applications under s. 140 of the *CJA*.

Reference: *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685 at para 3, leave to appeal granted and appeal heard and reserved November 12, 2019, [2018] S.C.C.A. No. 467, Authorities, tab 7.

46. The Application does not satisfy the usual characteristics of a SLAPP proceeding. As a result, the Application does not, on a balance of probabilities, meet the threshold criteria for the application of s. 137.1.
- C. Alternatively, the motion should be dismissed because the criteria in s. 137.1(4) are satisfied**
47. Even if this Honourable Court concludes that the Application arises from an expression made by Ms. Michail relating to a matter of public interest, this motion should nonetheless be dismissed pursuant to s. 137.1(4).

48. First, there are grounds to conclude that the Application has substantial merit. The Affidavit of James Vair filed in the Application describes several years' worth of vexatious proceedings, and vexatious conduct in such proceedings, initiated by Ms. Michail against LDCSB, its counsel, and various judicial and administrative decision makers and bodies.
49. Second, there are grounds to conclude that Ms. Michail has no valid defence to the Application. She has not filed any responding materials and she has not raised any proposed defences in her motion materials. As stated by the Court of Appeal for Ontario in *1704604 Ontario Ltd. v Pointes Protection Association*, s. 137.1(4)(a)(ii) "contemplates an evidentiary burden on [Ms. Michail] to advance any proposed "valid defence" in the pleadings, and/or in the material filed on the s. 137.1 motion. That material should be sufficiently detailed to allow the motion judge to clearly identify the legal and factual components of the defences advanced. Once [Ms. Michail] has put a defence in play, the persuasive burden moves to [LDCSB] to satisfy the motion judge that there are reasonable grounds to believe that none of the defences put in play are valid." Ms. Michail has not satisfied her burden.
- Reference:** *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685 at para 83, leave to appeal granted and appeal heard and reserved November 12, 2019, [2018] S.C.C.A. No. 467, Authorities, tab 7.
50. Third, given that the LDCSB is a publicly funded body and Ms. Michail's alleged expressions relate to the justice system as a whole rather than a private issue between her and the LDCSB, the public interest in allowing the Application to

continue outweighs the public interest in protecting Ms. Michail's alleged expression in the context of civil litigation between her and the LDCSB.

51. At the outset, it should be noted that the Order sought by the LDCSB in the Application will not prevent Ms. Michail from expressing herself. As discussed in Part IV below, it will only introduce a judicial gatekeeper to perform a preliminary review of her proposed proceedings to prevent her from initiating or continuing vexatious litigation.
52. The LDCSB is a tax-funded public body that has been compelled to spend over \$100,000.00 dollars defending and participating in meritless proceedings initiated and continued by Ms. Michail. In these proceedings, Ms. Michail has attempted to broaden the subject matter of the proceedings to involve the constitutionality of provincial legislation, the "open courts" principle, and other issues which do not directly concern the LDCSB. Allowing Ms. Michail's relentless and unfocused litigation to continue without judicial intervention will mean the waste of further judicial resources and public funds.

PART V - COSTS IN THE SLAPP MOTION

53. Notwithstanding s. 137.1(8) of the *CJA*, LDCSB should be awarded its costs in the SLAPP Motion on a substantial indemnity basis.
54. Pursuant to s. 137.1(8) of the *CJA*, the responding party to a s. 137.1(8) motion is not entitled to costs unless the judge determines that a costs award is "appropriate in the circumstances".

55. In *Veneruzzo v Storey*, the Court of Appeal for Ontario confirmed that the presumption in s. 137.1(8) that costs should generally not be awarded against a party that initiates a motion under s. 137.1 does not apply if the underlying proceeding is not a SLAPP proceeding:

The purpose underlying the costs provisions in s. 137.1 disappears when the lawsuit has none of the characteristics of a SLAPP, and the impugned expression is unrelated to a matter of public interest. In those circumstances, it is not the initial lawsuit challenging the expression that represents a potential misuse of the litigation process, but rather the s. 137.1 motion. A costs order denying a successful respondent its costs on a s. 137.1 motion, even though the lawsuit was not brought for an improper motive and the claim did not relate to a matter of public interest, could be seen as encouraging defendants to bring meritless s. 137.1 motions.

Reference: *Veneruzzo v Storey*, 2018 ONCA 688 at para 39, Authorities, tab 9.

56. The underlying Application has none of the usual features of a SLAPP and does not relate to an expression made by Ms. Michail. This motion had no reasonable prospect of success and further evidences Ms. Michail's predisposition to initiate meritless, vexatious proceedings.
57. Further, in her motion materials, Ms. Michail has inappropriately attempted to re-litigate matters already decided in previous judicial decisions and has purported to bring a *de novo* constitutional challenge to various legislation.
58. As such, Ms. Michail is not entitled to the protection of s. 137.1(8) and LDCSB should be awarded its costs of this motion.

PART VI - ORDER REQUESTED

59. LDCSB requests that the SLAPP motion be dismissed with costs.
60. LDCSB further requests:
- (a) an Order that no further proceeding against the LDCSB be instituted or continued by Ms. Michail in any court except by leave of a judge of the Superior Court of Justice;
 - (b) an Order requiring Ms. Michail to deliver a copy of the vexatious litigant order and any written decision arising from this Application to any person or body with whom she initiates or continues any complaint against the LDCSB, including, without limitation, any court, administrative body, regulatory body, the police and the Crown;
 - (c) costs of this Application on a substantial indemnity basis; and
 - (d) such other relief as this Honourable Court deems just in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of July, 2020.

Elizabeth M. Traynor
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Board

**SCHEDULE “A”
LIST OF AUTHORITIES**

VEXATIOUS LITIGANT

<i>Dobson v Green</i> , 2012 ONSC 4432.....	1
<i>Peoples Trust Company v Atas</i> , 2018 ONSC 58.....	2
<i>Metropolitan Toronto Condominium Corporation No. 932 v Lahrkamp</i> , 2018 ONSC 286	3
<i>Lochner v Ontario Civilian Police Commission</i> , 2019 ONSC 3048	4
<i>Diler v Heath</i> , 2012 ONSC 3017	5
<i>Bishop v Bishop</i> , 2011 ONCA 211	6

SLAPP

<i>1704604 Ontario Ltd. v Pointes Protection Association</i> , 2018 ONCA 685	7
<i>Ferreira v Da Costa</i> , 2019 ONSC 2990	8
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SCHEDULE "B"
RELEVANT STATUTES

Courts of Justice Act, RSO 1990, c C.43

Dismissal of proceeding that limits debate

Purposes

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.

Definition, "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.

Order to dismiss

(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.

No dismissal

(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

(5) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground. R.S.O. 1990, c. C.43, s. 140 (4, 5).

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Personal & Confidential

Delivered By Personal Delivery

July 6, 2020

Ms. Myriam Michail
744 Wonderland Road, Unit 1103
London, ON N6K 4K3

Dear Ms. Michail:

**Re: LDCSB v. Myriam Michail
Vexatious Litigant Application**

Please find enclosed the following documents:

1. Consolidated Application Record and Responding Motion Record Volume 1 and 2 (the "Consolidated Record");
2. Brief of Authorities; and
3. Responding Factum.

An administrative error was made in the original Application Record such that Tab VV included a duplicate document. Therefore, please disregard the original Application Record, as we will be relying exclusively on the Consolidated Record in any appearances before the Court.

Yours very truly,

Siskinds LLP

Per: *E. Traynor* [electronic signature]

Elizabeth M. Traynor

Enclosures (3)

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