

COURT OF APPEAL FOR ONTARIO

CITATION: Zeppa v. Rea, 2026 ONCA 338

DATE: 20260508

DOCKET: COA-25-CV-0884

Miller, Favreau and Rahman JJ.A.

BETWEEN

Christopher Zeppa

Plaintiff/Respondent
(Appellant)

and

Karen Rea

Defendant/Moving Party
(Respondent)

Emilio Bisceglia and Adriana Di Biase, for the appellant

Carlo Di Carlo and Sarah Fooks, for the respondent

Heard: May 1, 2026

On appeal from the order of Justice Lisa Brownstone of the Superior Court of Justice, dated June 2, 2025, with reasons reported at 2025 ONSC 3253 and from the costs order dated July 2, 2025.

REASONS FOR DECISION

[1] The appellant is the principal of a property developer. The respondent is a municipal councillor. The two have an acrimonious history, stemming from the respondent's opposition to a property development proposal led by the appellant's

corporation. The respondent was ultimately unsuccessful in her efforts to prevent the property from being rezoned.

[2] Shortly after the respondent was re-elected to Markham City Council, the parties unexpectedly ran into each other at a restaurant. They exchanged unpleasantries.

[3] The respondent made a complaint to the police that the appellant had threatened her at the restaurant. The police took her statement. They also interviewed the appellant and a few witnesses. They concluded the conduct she described did not amount to criminal behaviour and advised her that the investigation would be closed. No charges were brought against the appellant, and the complaint was not made public.

[4] The appellant later made a complaint to the Office of the Integrity Commissioner for the City of Markham about the respondent's behaviour, and the Commissioner found that her conduct breached Markham's Code of Conduct, although the City Council declined to sanction her.

[5] The appellant subsequently brought this action, seeking over \$1,000,000 in damages for various causes of action, including defamation. The appellant alleged in the statement of claim that the respondent defamed him by reporting the incident at the restaurant to the police. He claimed that the respondent made a false statement. Two years later, the appellant amended the statement of claim to add

four causes of action: breach of fiduciary duty, interference with economic relations, misfeasance in public office, and champerty, all relating to the respondent's opposition to his corporation's development project. He also increased the claim to \$11,000,000.

[6] The motion judge dismissed the appellant's action under r. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA").¹ The central focus of this appeal is a challenge to the motion judge's findings that the appellant had not established that there were grounds to believe (i) the claim had substantial merit, (ii) the respondent had no valid defence, and (iii) the appellant had suffered sufficiently serious harm that the public interest in permitting the action to proceed outweighed the public interest in protecting the respondent's expression.

[7] After hearing oral submissions, the appeal was dismissed with reasons to follow. These are those reasons.

[8] The motion judge did not make a reviewable error. The action, as framed, could not surmount the initial hurdle: to establish grounds to believe that the claim had sufficient merit. The motion judge did not, as the appellant argued, conduct an inappropriately deep dive into the record. Even on the "grounds to believe" standard, the action was hopeless. This was not a case where a person's

¹ The Superior Court had originally dismissed the respondent's motion under s. 137.1 of the *CJA* on the basis that the expression at issue did not relate to a matter of public interest: *Zeppa v. Rea*, 2022 ONSC 6914. This court allowed an appeal from that decision, finding that the expression related to a matter of public interest and remitting the other issues arising under s. 137.1 of the *CJA* to a different judge of the Superior Court: *Zeppa v. Rea*, 2023 ONCA 668.

reputation was smeared by false accusations that were later publicized. The police investigated a complaint, found that the conduct complained of did not amount to uttering threats, and closed the investigation. The appellant argued that the fact of making a complaint to the police can, without more, constitute defamation. We were not taken to any case law that would support such a proposition.

[9] That is sufficient to dispose of the appeal and it is not necessary to consider the remaining branches of the test. Accordingly, the argument that there were grounds to believe that the defence of qualified privilege could have been defeated by malice is unavailing.

[10] Finally, even if the argument could have proceeded to the final step, there is a strong public policy reason not to discourage parties from reporting to police what they believe to be criminal acts, even if it turns out that they are mistaken as to the facts or the law or both. The public interest in protecting this expression is very strong, and the appellant did not meet his onus of establishing that he was harmed in any way exceeding minor inconvenience and embarrassment.

[11] The appellant also challenges the costs award made by the motion judge. The appellant was required to seek leave to appeal the costs award, which he did not do: *CJA*, s. 133; *McFlow Capital Corp. v. James*, 2021 ONCA 753, at para. 50. Even if leave to appeal had been sought, however, this court can only intervene where a costs award is plainly wrong or where there is an error in principle. The

appellant's argument that the motion judge erred in characterizing the lawsuit as strategic – a factual finding that was open to her to make – does not rise to this threshold.

DISPOSITION

[12] The appeal is dismissed. The respondent is awarded costs of the appeal in the agreed upon amount of \$20,000, all inclusive.

“B.W. Miller J.A.”
“L. Favreau J.A.”
“M. Rahman J.A.”