

The Dentons logo is a white arrow pointing to the right, containing the word "DENTONS" in a bold, sans-serif font. The background of the slide is a purple gradient with a mountain range silhouette and a teal-to-orange gradient on the right side.

DENTONS

Defamation:

Navigating the legal landscape in Canada

April 25, 2024

Grow | Protect | Operate | Finance

Speakers:



Morgan Camley
Partner, Vancouver, Canada
+1 604 648 6545
morgan.camley@dentons.com



Meredith Bacal
Partner, Toronto, Canada
+1 416 863 4395
meredith.bacal@dentons.com



Jasmine Der
Associate, Vancouver / Calgary, Canada
+1 604 629 4998
jasmine.der@dentons.com

A scenic mountain landscape with a purple overlay. The background shows a range of jagged, rocky mountains under a clear sky. The foreground features a rocky ridge with some sparse vegetation. A large, semi-transparent purple shape covers the left and center of the image, containing the title and author's name.

Defamation 101

Morgan Camley

Tips and tricks

1. Document preservation and collection
2. When to involve litigation counsel
3. Considerations when litigating against self-represented litigants

Document preservation and collection

- Libel (written statements) vs. slander (oral statements).
 - Different considerations due to different nature of statements.
- Take screenshots.
 - Goal is to preserve evidence early and thoroughly.
- Consider litigation holds.
 - What are they and how do they pay off?

When to involve litigation counsel?

- Involve us early.
 - Strategy and PR perspectives.
- We can help before a claim is filed.
 - Demand letters, litigation holds, and guiding document collection.

Self-represented litigants

- Self-represented litigants are becoming increasingly common.
 - Accessibility of social media is a factor.
 - Both plaintiff and defendant side.
- Addressing the power dynamic between large organization with counsel vs. individual.
 - Managing the narrative before the Court.
 - Tips for difficult litigants.
- Don't be afraid to engage counsel.

Intersection with employment law

- Employers have a duty to ensure health and safety of work environment.
- BC *Workers Compensation Act* (and see similar provisions in other provinces):

General duties of employers

21 (1) Every employer must

- (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
- (b) comply with the OHS provisions, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

- (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
- (b) ensure that the employer's workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
 - (ii) comply with the OHS provisions, the regulations and any applicable orders, and
 - (iii) are made aware of their rights and duties under the OHS provisions and the regulations,
- (c) establish occupational health and safety policies and programs in accordance with the regulations,
- (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,
- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
- (f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
- (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
- (h) cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS provisions or the regulations.

A scenic mountain landscape with a purple overlay. The background shows a range of jagged, snow-capped mountains under a clear sky. The foreground features a rocky, snow-dusted ridge. A large, semi-transparent purple shape with a rounded right edge is overlaid on the left and center of the image, containing the text.

Quick thinking: Limitation periods

Meredith Bacal

Limitation periods

Depends on the context and the province/territory

- If run of the mill defamation, regular limitation period often applies
- If in a “**broadcast**” or “**newspaper**”, may be **extraordinarily short** limitation period.
 - In some cases, need to take certain action within **days** or **weeks**.

Limitation periods in Canadian legislation

Prescribed limitation periods – Ontario

No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within **six weeks** after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

An action for a libel in a newspaper or in a broadcast shall be commenced within **three months** after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action.

Limitation periods in Canadian legislation

Prescribed limitation periods – other provinces and territories

Provinces	Limitation Periods & Notice Requirements
Alberta	<p>13 (1) No action lies unless the plaintiff has, within 3 months after the publication of the defamatory matter has come to the plaintiff's notice or knowledge, given to the defendant, in the case of a daily newspaper, 7, and in the case of any other newspaper or when the defamatory matter was broadcast, 14 days' notice in writing of the plaintiff's intention to bring an action, specifying the defamatory matter complained of.</p> <p>18 If a person, by registered letter containing the person's address and addressed to a broadcasting station,</p> <ul style="list-style-type: none"> a) alleges that defamation against that person has been broadcast from the station, and b) requests the name and address of the owner or the operator of the station or the names and addresses of the owner and the operator of the station, <p>sections 13 and 16 do not apply with respect to an action by that person against the owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person or mails it by registered letter addressed to him or her within 10 days from the date on which the first mentioned registered letter is received at the broadcasting station.</p>
Manitoba	<p>14 (1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, 14 days' notice in writing of his intention to bring an action, specifying the defamatory matter complained of.</p>
Saskatchewan	<p>15 No action shall lie for a libel contained in a newspaper unless the plaintiff has given to the defendant, in the case of a daily newspaper, five, and in the case of a weekly newspaper, fourteen, clear days' notice in writing of his intention to bring the action, such notice to distinctly specify the language complained of.</p>

Limitation periods in Canadian legislation

Prescribed limitation periods – other provinces and territories (continued)

Provinces	Limitation Periods & Notice Requirements
New Brunswick and British Columbia	<i>No prescribed limitation periods/notice requirements in legislation.</i>
Nova Scotia	<p>18 (1) No action shall lie unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days notice in writing of his intention to bring action, specifying the defamatory matter complained of.</p> <p>19 Notwithstanding the <i>Limitation of Actions Act</i>, an action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or any officer, servant or employee of such newspaper or broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed, but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action.</p>
Prince Edward Island	<p>14 (1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, five, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days notice in writing of his intention to bring an action, specifying the language complained of.</p> <p>15 An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action.</p>

Limitation periods in Canadian legislation

Prescribed limitation periods – other provinces and territories (continued)

Provinces	Limitation Periods & Notice Requirements
Newfoundland & Labrador	<p>16 (1) No action lies unless the plaintiff has, within 3 months after the publication of the defamatory matter has come to his or her notice or knowledge, given to the defendant, in the case of a daily newspaper, 7, and in the case of another newspaper or where the defamatory matter was broadcast, 14 days' notice in writing of his or her intention to bring an action, specifying the defamatory matter complained of.</p> <p>17 (1) An action against</p> <ul style="list-style-type: none"> (a) the proprietor or publisher of a newspaper; (b) the owner or operator of a broadcasting station; or (c) an officer, servant or employee of the newspaper or broadcasting station, <p>for defamation contained in the newspaper or broadcast from the station shall be started within 4 months after the publication of the defamatory matter came to the notice or knowledge of the person defamed.</p> <p>(2) An action brought and maintainable for defamation published within the period referred to in subsection (1) may include a claim for another defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of 1 year before the start of the action.</p>
Quebec	<p>2929 An action for defamation is prescribed by one year from the day on which the defamed person learned of the defamation.</p>

Limitation periods in Canadian legislation

Prescribed limitation periods – other provinces and territories (continued)

Territories	Limitation Periods & Notice Requirements
Yukon	<p>14 (1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to the plaintiff's notice or knowledge, given to the defendant 14 days notice in writing of the plaintiff's intention to bring an action.</p> <p>15 (1) An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or an officer, servant or employee of the newspaper or broadcasting station for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed.</p> <p>(2) An action commenced within the period prescribed in subsection (1) may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same broadcasting station within a period of one year before the commencement of the action.</p>
Northwest Territories and Nunavut	<p>15 (1) No action lies unless, within three months after the publication of the defamatory matter has come to the notice or knowledge of the plaintiff, the plaintiff gives the defendant 14 days written notice of his or her intention to bring an action.</p> <p>16 (1) An action may not be commenced more than six months after the time when the publication of the defamatory matter has come to the notice or knowledge of the person defamed.</p> <p>(2) An action commenced within the period specified in subsection (1) may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same broadcasting station within one year before the commencement of the action.</p>

A scenic mountain landscape with a purple overlay. The background shows a range of jagged, rocky mountains under a clear sky. The foreground features a rocky ridge with some sparse vegetation. A large, semi-transparent purple shape with a rounded right edge is overlaid on the left side of the image, containing the text.

Alternatives to litigation: Using social media platform policies

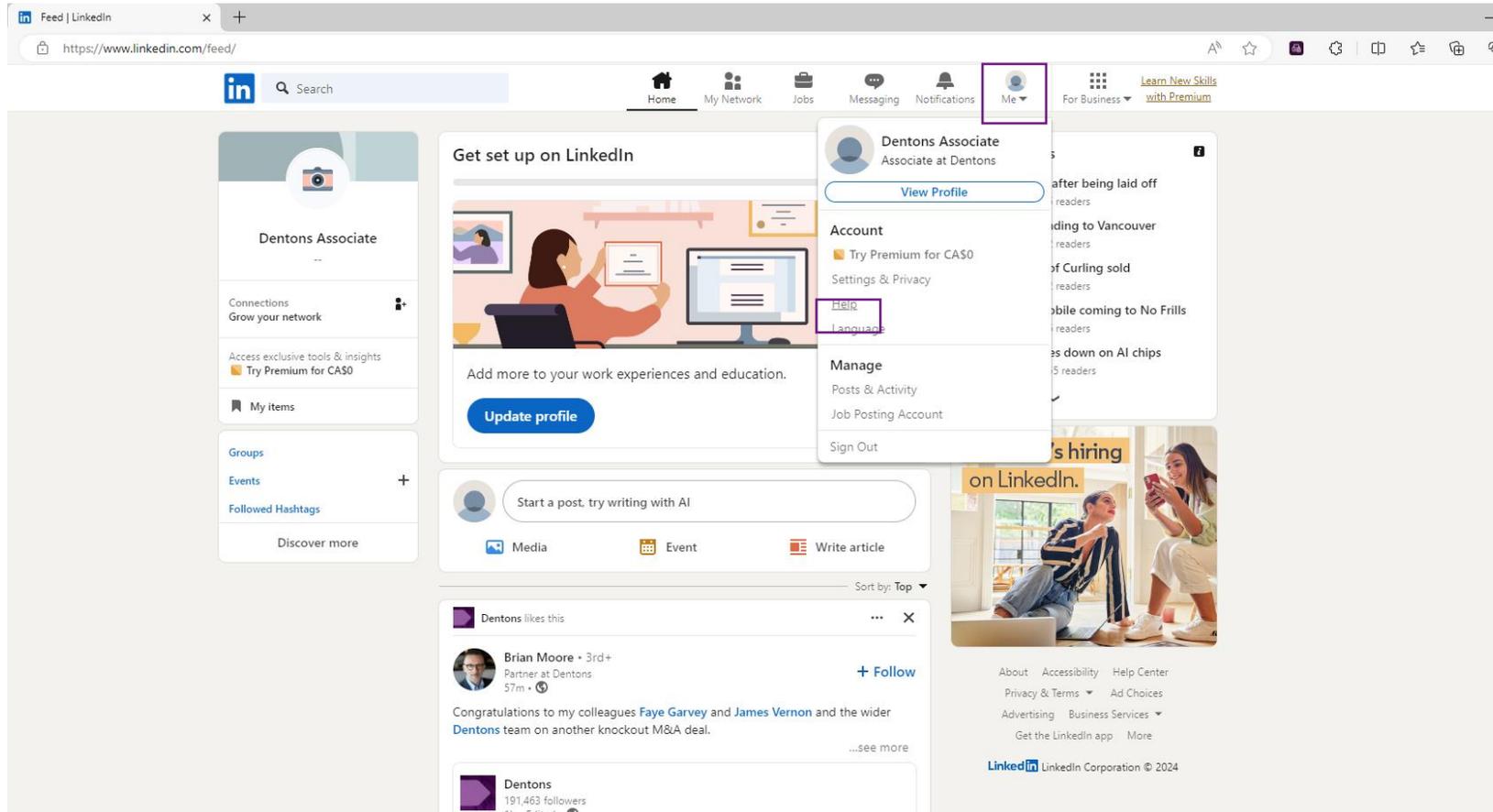
Meredith Bacal

Defamation policies on social media platforms

The social media platforms for discussion

- Consider where the statements are made and whether they run afoul of the platform's policies.
- There may be a straight-forward and user-friendly mechanism to report the problematic content.

For example:



Feed | LinkedIn
 https://www.linkedin.com/feed/

Home My Network Jobs Messaging Notifications Me For Business [Learn New Skills with Premium](#)

Search

Dentons Associate

Connections
Grow your network

Access exclusive tools & insights
[Try Premium for CASO](#)

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Groups
Events
Followed Hashtags

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Get set up on LinkedIn 0/3 complete

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+ Follow

Congratulations to my colleagues [Faye Garvey](#) and [James Vernon](#) and the wider [Dentons](#) team on another knockout M&A deal.

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Contact LinkedIn support

Defamation Claim Form

First Name *

Last Name *

Email *

Country of Residence *

Instructions

This Notice should be used if you in good faith believe that someone has posted a false statement on LinkedIn with the specific intent of harming your reputation.

LinkedIn relies on the integrity of its members in providing true and accurate information in their profiles, and does not control or vet user-generated content for accuracy. Unsupported claims of defamatory content will not necessarily result in the removal of the content or profile. LinkedIn will use this Notice, including your contact information, to investigate your report.

Instructions for Reporting Other Matters

If you are not reporting defamation, please see the following below for additional assistance:

To report Fake Profiles, please click [here](#)

To report Inaccurate Information on another member's profile such as employment or education, please click [here](#)

To report inappropriate or offensive content in your LinkedIn Feed, please click [here](#)

To report a LinkedIn Page for inappropriate activities or behavior such as spam, harassment, scams, and misinformation, please click [here](#)

More contact options

Please sign in so we can provide the best support possible.

Sign in

Contact Name:

Contact Email Address:

Please note if requested, we may provide your email address, name and the nature of your report to the person who posted the content you are reporting. You may wish to provide a valid business or professional email address for this reason.

What information is defamatory?

Link to the defamatory content: *

Copy and paste all the URLs - there is no limit to the amount of URLs - of the content from your browser. You may also attach applicable screenshots or other documentation.

Please explain in detail why you believe this content to be defamatory under the laws of your country: *

Report something else (optional)

Add reports

Required Statements

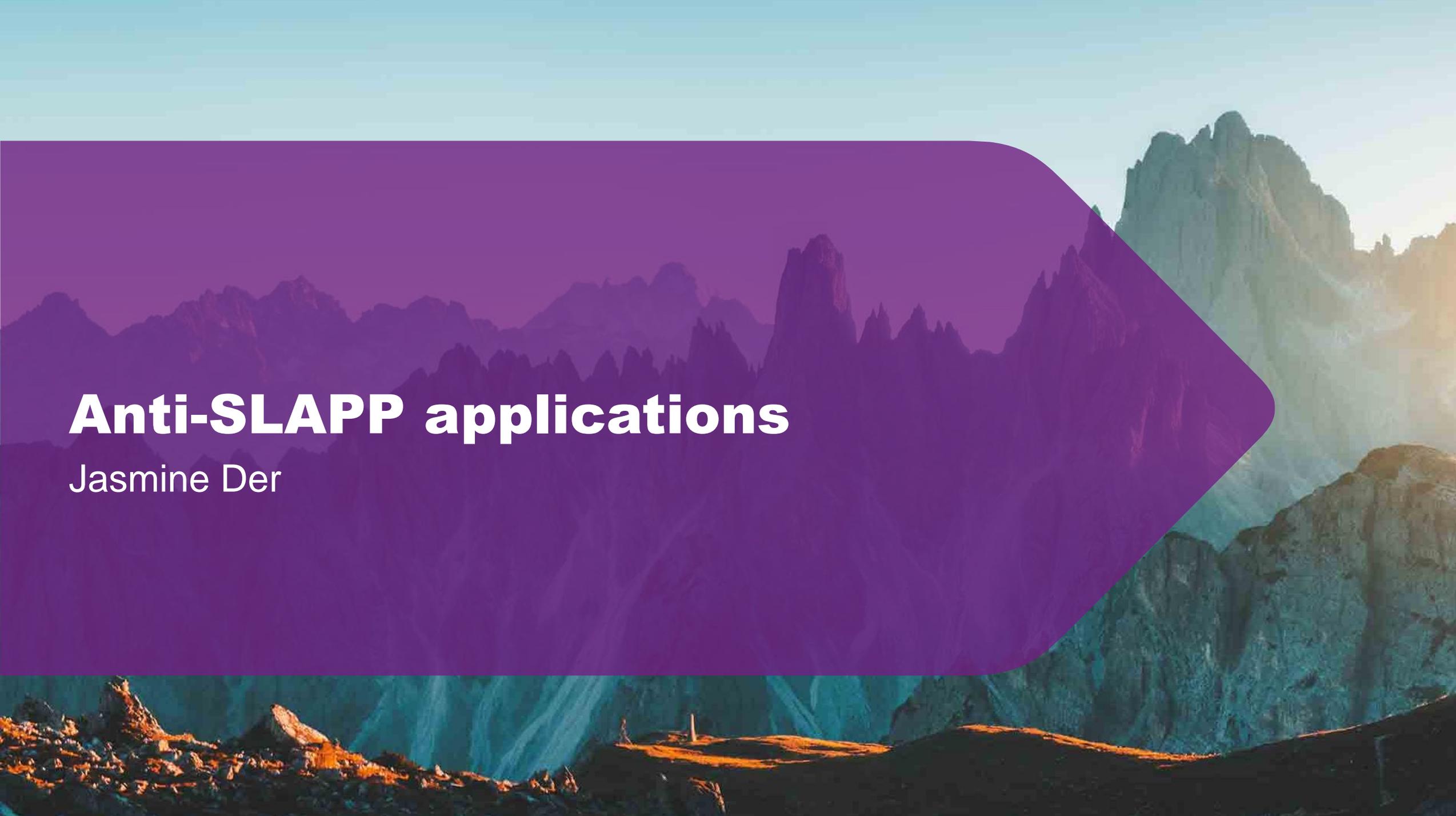
By clicking the box, I declare UNDER PENALTY OF PERJURY that the information in this Notice is true and correct and that I am authorized to report this alleged violation. *

By clicking the box, I acknowledge that LinkedIn may make a good faith attempt to forward this written notification, including your contact information, to the member who posted the content and/or take other reasonable steps to notify the member that LinkedIn has received notice of an alleged defamation violation. *

Defamation policies on social media platforms

Reporting tools (generally)

- Look to the “Help” or “Help Centre” link to report posts of concern.
- On these Social Media Platforms, users can usually report posts directly on the post itself, profile itself, or through submitting a reporting form.
- Consider alternative legal theories – can this also fall under an intellectual property infringement claim?
 - Do you have trademark protection, and is the goodwill in that **trademark** being **depreciated**?

A scenic mountain landscape with a purple overlay. The background shows a range of jagged, rocky mountains under a clear sky. The foreground is a rocky, uneven terrain. A large, semi-transparent purple shape covers the left and center of the image, containing the title and author's name. The sun is visible on the right side, creating a warm glow.

Anti-SLAPP applications

Jasmine Der

What are SLAPPs?

Strategic lawsuits against public participation

- Litigation claims, often defamation claims, designed to reduce public participation or silence individuals.
- *Protection of Public Participation Act*, 2015, S.O. 2015, c. 23.
- *Protection of Public Participation Act*, S.B.C. 2019, c. 3.

Dismissal under the *PPPA*

- Key dismissal sections – **s. 137.1(3)** of the Ontario Act and **s. 4** of the BC Act:

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.

- An important tool to consider if there is a “**public interest**” component to a defamation claim against you.
 - Public discussion or debate.

The exception

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.

Recent guidance from *PPPA* Case Law

- Handful of appeals to the BC Court of Appeal in the last year:
- ***Rooney v. Galloway, 2024 BCCA 8***: Claim dismissed under s. 4 of the *PPPA* and dismissal upheld by the BC Court of Appeal.
- ***Pereira v. Klonarakis, 2024 BCCA 75***: “the law is clear that there is no single archetypical SLAPP lawsuit. The aim of anti-SLAPP legislation is to protect expression on matters of public interest in the face of efforts to silence criticism.”
- ***Christman v. Lee-Sheriff, 2023 BCCA 363***: “It is illogical for an individual to claim the defamation suit against them is a silencing attempt, while purporting never to have uttered the expression in the first place.”

Thank you



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Partner, Vancouver, Canada
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morgan.camley@dentons.com



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Partner, Toronto, Canada
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meredith.bacal@dentons.com



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Associate, Vancouver / Calgary, Canada
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