ONTARIO

SUPERIOR COURT OF JUSTICE

Court File No.: CV-26-102709

IN THE MATTER OF:

Allan Douglas Wilson, Plaintiff

– and –

Ottawa Police Service Board, Anne Tardif, and Gowling WLG (Canada) LLP, Defendants

PLAINTIFF'S REQUEST FOR RECONSIDERATION OF RULE 2.1 DISMISSAL

(Endorsement Issued April 29, 2026 by Justice Roger)

TO: THE HONOURABLE JUSTICE ROGER
AND TO THE DEFENDANTS AND THEIR COUNSEL

The Plaintiff, Allan Douglas Wilson, self-represented, respectfully submits this Request for Reconsideration of the Endorsement dated April 29, 2026, dismissing Court File No. CV-26-102709 under Rule 2.1.01 of the *Rules of Civil Procedure*. The Plaintiff submits that the Endorsement contains reversible legal errors, relies upon inapplicable jurisprudence, and departs from the stringent standard required to invoke Rule 2.1.01. The Plaintiff requests that the dismissal be set aside and the proceeding permitted to continue in the ordinary course.

I. BACKGROUND

This action arises from defamatory statements made by the Defendants in their written document entitled "Response of the Ottawa Police Service Board to the Applicant's Rule 2.1.01 Submissions" filed in Divisional Court proceeding DC-25-2976 on November 5, 2025. The

Plaintiff alleges those statements falsely accused him of attacking a judicial officer, were made with malice, were adopted by Justice Labrosse in an endorsement adverse to the Plaintiff, and caused severe and continuing reputational harm. The Plaintiff further alleges the statements were not germane to the subject matter of the DC-25-2976 proceedings and therefore fall outside the protection of absolute privilege.

On February 17, 2026, Defendants Tardif and Gowling WLG made a Rule 2.1 request. By Endorsement and Notice dated April 9, 2026, the Court initiated the Rule 2.1 process. The Defendants filed no responding submissions. The Plaintiff filed written submissions. Justice Roger dismissed the action on April 29, 2026 by Endorsement (the "Endorsement").

II. GOVERNING LEGAL STANDARD FOR RULE 2.1

Rule 2.1 is "limited to the clearest of cases where the abusive nature of the proceeding is apparent on its face": *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, at para. 8. The rule's purpose is to address proceedings that are '"on their face" frivolous, vexatious, or an abuse of process. However, the rule is not intended or designed to supplant the established procedural mechanism of bringing a motion to quash an appeal for want of jurisdiction or for want of merit': *Simpson v. The Chartered Professional Accountants of Ontario*, 2016 ONCA 806, at para. 43. The standard is disjunctive, meaning one of those precise hallmarks must be present and must be "plain and obvious" on the face of the pleadings. A motion judge invoking Rule 2.1 must identify with specificity which hallmark is present. Summary dismissal is inappropriate where the legal issues require a full factual record to resolve.

III. GROUND ONE: THE ENDORSEMENT MISCHARACTERIZES THE ACTION AS "REPETITIVE" RATHER THAN "DUPLICATIVE"

At paragraph 8, Justice Roger characterizes this action as "a repetitive and related action against the OPSB." However, Rule 2.1 addresses proceedings that are duplicative, i.e., relitigating the same cause of action already determined. The present action is not duplicative. It is a fresh claim for defamation arising from the November 5, 2025 submissions in DC-25-2976. The tortious conduct complained of postdates the earlier proceedings. The mere fact that the same institutional defendant appears does not render an action duplicative or an abuse of process. To hold otherwise would immunize institutional defendants from all tort liability arising from their litigation conduct in relation to a plaintiff, regardless of the nature of the wrong.

Furthermore, the two appeals noted at paragraph 8 are pending before a higher court. The Endorsement proceeds as though those prior dismissals are final and conclusive. Where the foundational rulings underpinning a characterization of "repetitive" litigation are themselves under appeal and unresolved, it is premature and legally erroneous to use them as a basis for summary dismissal of a related but distinct cause of action.

IV. GROUND TWO: ABSOLUTE PRIVILEGE IS NOT DETERMINABLE AT THE PLEADINGS STAGE AND IS FACT-DEPENDENT

Privilege is not a question for Rule 2.1 determinations, yet it is the sole operative basis for the Endorsement. At paragraph 9, Justice Roger finds the impugned statements "are privileged, and no action lies," citing solely Samuel Manu-Tech Inc. v. Redipac Recycling Corp. et al. (1999), 124 O.A.C. 125, at para. 19, which itself traces to the 1922 decision in Hall v. Baxter, [1922] O.J. No. 525 (H.C.). Reliance on a single line of authority rooted in century-old jurisprudence, without engagement with the substantial body of modern appellate law governing the scope and limits of absolute privilege, does not constitute the kind of clear and unequivocal legal basis that Rule 2.1 requires before a claim may be disregarded.

The Ontario Court of Appeal has held that where an immunity defence is not "plain and obvious," it is inappropriate to resolve it at the pleadings stage. In *Reynolds v. Kingston (Police Services Board)*, 2007 ONCA 166, at para. 21, the Court held that dismissal on pleadings is inappropriate where immunity is not plain and obvious, and at para. 24 it held that such questions should be determined at trial on a complete factual record. In the present matter, the privilege question is anything but plain and obvious given: (a) the defamatory statements relate to alleged conduct entirely foreign to the subject matter of DC-25-2976; (b) the Defendants made no submissions in response to the Plaintiff's Rule 2.1 reply; and (c) the question of whether malice defeats any claimed privilege requires evidentiary findings.

Importantly, the Ontario Court of Appeal's decision in *Curtis v. McCague Borlack LLP*, 2024 ONCA 729, at paras. 15–16, confirms that even absolute privilege does not bar all claims arising from litigation conduct. The Court there held that a claim for malicious prosecution may survive despite the doctrine of absolute privilege where a lawyer has engaged in deliberate misconduct. The present Statement of Claim pleads not only defamation but also civil conspiracy and conduct that may constitute the criminal offence of attempting to pervert the course of justice, torts for which no immunity applies.

V. GROUND THREE: ABSOLUTE PRIVILEGE DOES NOT PROTECT STATEMENTS "UTTERLY FOREIGN" TO THE PROCEEDINGS

The doctrine of absolute privilege applies to "statements made within the context of a legal proceeding" where those statements are relevant to, and made for the purposes of, that proceeding. In *Salasel v. Cuthbertson*, 2015 ONCA 115, at paras. 35–36, the Court of Appeal confirmed that privilege extends only to communications *directly concerned with actual or contemplated proceedings* and that are *intimately connected with* those proceedings. A statement

is not protected where it is "only remotely connected" or foreign to the subject matter of the litigation.

The Plaintiff's defamation claim turns on the allegation that the Defendants introduced statements accusing him of "attacking judicial officers" into the DC-25-2976 submissions, which concerned an unrelated administrative law dispute. An accusation of violence against a judicial officer is not germane to an application for judicial review of a prior procedural ruling. Such statements serve no proper forensic purpose. Accordingly, under the *Salasel* framework, the determining privilege at the pleadings stage is premature and requires contextual analysis of the nature and purpose of the statements. The Endorsement fails to engage in any aspect of that analysis.

The scope of absolute privilege is not unlimited. Courts have recognized that statements bearing no reasonable connection to the subject matter of a proceeding fall outside its protection, as the privilege exists to promote truth-seeking in litigation rather than to shield gratuitous or irrelevant statements made under cover of court filings. Statements that are only remotely connected, or wholly foreign to the subject matter of a proceeding receive no such protection.

VI. GROUND FOUR: QUALIFIED PRIVILEGE AND MALICE

Even if absolute privilege were inapplicable, the Endorsement fails to address the Plaintiff's pleaded allegation that the statements were made with malice, which defeats any qualified privilege. The Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130, held that qualified privilege is defeated by malice, including an improper purpose or reckless disregard for truth. The Statement of Claim expressly alleges malice. Where malice is properly pleaded, privilege cannot be determined summarily at the Rule 2.1 stage without a trial

on the complete factual record. The Endorsement ignores this pleaded element, which renders it incomplete as a matter of law.

VII. GROUND FIVE: THE ENDORSEMENT ERRONEOUSLY EXCLUDES LAWYER LIABILITY TO NON-CLIENTS

At paragraph 9, Justice Roger states: "The lawyers for the OPSB owed none of the alleged duties to the plaintiff." This is a misdirection on the law. While the general rule is that a solicitor's duties run to their client, Ontario courts recognize well-established exceptions.

In *World Financial Solutions Inc. v. 2573138 Ontario Ltd., 2024 ONSC 1748 (CanLII)* at para. 36 (and related authorities), the courts have confirmed that a lawyer can be liable to a non-client adverse party where: (a) the lawyer commits an independent tortious act causing foreseeable injury; (b) the lawyer is implicated in intentional torts including fraud, malicious prosecution, abuse of process, or civil conspiracy; or (c) the lawyer employs "improper means" in the execution of their retainer. The courts have expressly stated that "a lawyer must carry out their retainer by proper means and owes a duty to a non-client not to use improper means such as intentional tortious conduct." It is the "lawyer's election to use improper means that takes the lawyer outside the scope of the retainer and makes the lawyer liable."

The Statement of Claim pleads intentional torts, civil conspiracy, and malice which are precisely the categories under which lawyer liability to non-clients is established. The Endorsement's dismissal of duty on the pleadings is therefore legally incorrect and requires reconsideration.

VIII. GROUND SIX: THE ENDORSEMENT IMPROPERLY IMMUNIZES POTENTIALLY CRIMINAL CONDUCT

The Statement of Claim alleges that the Defendants' conduct "may constitute the criminal offence of attempting to pervert the course of justice." The Endorsement avoids addressing this allegation entirely which is a material omission. A Rule 2.1 dismissal that immunizes conduct which is, on its face, capable of constituting a criminal offence is vulnerable to being rendered a nullity should the underlying conduct later be found to be criminal in nature. A court cannot, through a procedural mechanism, extinguish a plaintiff's civil remedies in respect of conduct that may constitute intimidation (Criminal Code, s. 423) or obstruction of justice (Criminal Code, s. 139). The Endorsement's failure to address the resulting civil consequences is a reversible error.

IX. GROUND SEVEN: THE ENDORSEMENT FAILS THE DISJUNCTIVE TEST FOR RULE 2.1

The Rule 2.1 disjunctive test requires the proceeding to be (a) frivolous, (b) vexatious, or (c) an abuse of process. The Endorsement, at paragraph 3, asserts all three labels but articulates supporting reasoning only with respect to privilege which effectively reduces the dismissal to a single ground. The Endorsement does not independently identify the "hallmarks of vexatious litigation" required by *Gao v. Ontario WSIB*, 2014 ONSC 6497. Characterizing a claim as "repetitive" is not equivalent to finding it vexatious. Characterizing a defendant's lawyer as the target of a related action is not, where no other relevant grounds exist, an abuse of process. The Endorsement does not demonstrate the "clearest of cases" threshold required to invoke Rule 2.1.

X. RELIEF REQUESTED

The Plaintiff respectfully requests that the Court:

(a) Reconsider and set aside the Endorsement dated April 29, 2026 dismissing Court File No. CV-26-102709;

(b) Order that the action be permitted to proceed in the ordinary course, including the filing and service of a Statement of Defence by the Defendants;

(c) In the alternative, order that the matter be set down for a hearing at which the privilege issue and the sufficiency of the pleadings may be addressed in the interest of justice; and

(d) Such further and other relief as this Court deems just.

Rule 2.1 exists as a procedural filter for only the clearest cases of abuse and not as a mechanism by which institutional defendants may avoid civil consequences of defamatory and criminal conduct by filing a procedural motion in place of a Statement of Defence. The Defendants have never answered the allegations, and those allegations therefore remain uncontested.

What the Endorsement effectively establishes is the proposition that police may falsely accuse a plaintiff of assaulting a judicial officer, cause severe and lasting damage to that plaintiff's reputation, and face no legal consequence regardless of the severity of harm. This outcome is irreconcilable with the foundational principle that parties to legal proceedings stand as equals before the court. A plaintiff who has been defamed by police litigation conduct is entitled to the same access to justice as any other litigant.

The present action raises legitimate and serious legal questions regarding the scope of absolute privilege, lawyer liability to non-clients, the effect of pleaded malice, and the potential criminality of the Defendants' conduct, none of which were meaningfully engaged by the Endorsement, and none of which meet the threshold for summary dismissal under Rule 2.1. These issues deserve to be heard and determined on their merits.

XI. CERTIFICATION

The Plaintiff certifies that this Request for Reconsideration is made in good faith and not for purposes of delay.

Dated this 30th day of April, 2026 at Balamban, Philippines.

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Plaintiff, Self-Represented
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SCHEDULE A — TABLE OF AUTHORITIES

1. *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, at para. 8
2. *Simpson v. The Chartered Professional Accountants of Ontario*, 2016 ONCA 806, at para. 43
3. *Reynolds v. Kingston (Police Services Board)*, 2007 ONCA 166, at paras. 21, 24
4. *Salasel v. Cuthbertson*, 2015 ONCA 115, at paras. 35–36
5. *Curtis v. McCague Borlack LLP*, 2024 ONCA 729, at paras. 15–16
6. *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130
7. *Samuel Manu-Tech Inc. v. Redipac Recycling Corp. et al.* (1999), 124 O.A.C. 125, at para. 19
8. *Gao v. Ontario WSIB*, 2014 ONSC 6497, at para. 9, 15
9. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 2.1.01
10. *Criminal Code of Canada*, R.S.C. 1985, c. C-46, ss. 139, 423