

***PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS
OF PUBLIC INTEREST (GAG PROCEEDINGS)***

COURTS OF JUSTICE ACT SECTION 137 CanLII

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC
INTEREST (GAG PROCEEDINGS)

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.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

Costs on dismissal

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

Damages

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate. 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 23, s. 3 - 03/11/2015

Procedural matters Commencement

137.2 (1) A motion to dismiss a proceeding under [section 137.1](#) shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced. 2015, c. 23, s. 3.

Motion to be heard within 60 days

(2) A motion under [section 137.1](#) shall be heard no later than 60 days after notice of the motion is filed with the court. 2015, c. 23, s. 3.

Hearing date to be obtained in advance

(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served. 2015, c. 23, s. 3.

Limit on cross-examinations

(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall not exceed a total of seven hours for all plaintiffs in the proceeding and seven hours for all defendants. 2015, c. 23, s. 3.

Same, extension of time

(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice. 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 23, s. 3 - 03/11/2015

Appeal to be heard as soon as practicable

137.3 An appeal of an order under [section 137.1](#) shall be heard as soon as practicable after the appellant perfects the appeal. 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 23, s. 3 - 03/11/2015

Stay of related tribunal proceeding

137.4 (1) If the responding party has begun a proceeding before a tribunal, within the meaning of the [Statutory Powers Procedure Act](#), and the moving party believes that the proceeding relates to the same matter of public interest that the moving party alleges is the basis of the proceeding that is the subject of his or her motion under [section 137.1](#), the moving party may file with the tribunal a copy of the notice of the motion that was filed with the court and, on its filing, the tribunal proceeding is deemed to have been stayed by the tribunal. 2015, c. 23, s. 3.

Notice

(2) The tribunal shall give to each party to a tribunal proceeding stayed under subsection (1),

- (a) notice of the stay; and
- (b) a copy of the notice of motion that was filed with the tribunal. 2015, c. 23, s. 3.

Duration

(3) A stay of a tribunal proceeding under subsection (1) remains in effect until the motion, including any appeal of the motion, has been finally disposed of, subject to subsection (4). 2015, c. 23, s. 3.

Stay may be lifted

(4) A judge may, on motion, order that the stay is lifted at an earlier time if, in his or her opinion,

- (a) the stay is causing or would likely cause undue hardship to a party to the tribunal proceeding; or
- (b) the proceeding that is the subject of the motion under [section 137.1](#) and the tribunal proceeding that was stayed under subsection (1) are not sufficiently related to warrant the stay. 2015, c. 23, s. 3.

Same

(5) A motion under subsection (4) shall be brought before a judge of the Superior Court of Justice or, if the decision made on the motion under [section 137.1](#) is under appeal, a judge of the Court of Appeal. 2015, c. 23, s. 3.

Statutory Powers Procedure Act

(6) This section applies despite anything to the contrary in the [Statutory Powers Procedure Act](#). 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 23, s. 3 - 03/11/2015

Application

137.5 Sections 137.1 to 137.4 apply in respect of proceedings commenced on or after the day the *Protection of Public Participation Act, 2015* received first reading. 2015, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2015, c. 23, s. 3 - 03/11/2015