

# Responding to a consumer crisis and managing your reputation: Your legal options

Defining a “consumer crisis” – Scenarios that might give rise to litigation

- Disparaging and untrue stories about your business are published online, in a newspaper, etc.
- Competitor makes untrue claims about your business in order to gain a competitive advantage
- Protests or blockades at your place of business or work site

## Your legal options

### Defamation



#### 3 elements to a defamation claim

- Defamatory statement; *i.e.*, one that tends to lower the plaintiff's reputation in the eyes of a reasonable person
- Statement refers to the plaintiff
- Statement was published; *i.e.*, it was communicated to at least one person other than the plaintiff



#### Defences to consumer defamation claims responses

- Justification/truth
- Privilege (absolute/qualified)
- Fair comment
- Responsible communication on a matter of public interest/Anti-SLAPP
- Reportage
- Consent



#### Key considerations

- Are damages available to a corporate plaintiff?



### Anti-Strategic Lawsuits Against Public Participation (Anti-SLAPP) Legislation (Ontario)

- Enacted in November 2015 (s. 137.1 of the *Courts of Justice Act*)
- Enables a defendant to bring a motion to dismiss a defamation claim if it “arises from an expression made by the person that relates to a matter of public interest”
- To defeat an Anti-SLAPP motion, the plaintiff must demonstrate that there are grounds to believe that:
  - the proceeding has substantial merit
  - the moving party has no valid defence
  - the likely harm to be suffered is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression

## Injunction



### 3-part test to obtain an injunction

- Serious issue to be tried
- Plaintiff will suffer irreparable harm if an injunction is not granted
- Balance of convenience favours the plaintiff



### Consumer responses

#### Defences

- Consumers will most likely defend an injunction on the basis that you have failed to demonstrate “irreparable harm” to your business
- This is the biggest hurdle in an injunction



### Key considerations/challenges

- Timing issues
- Undertakings as to damages
- Injunctions in defamation context



### Irreparable harm

Harm that cannot be corrected with money or conditions cannot be returned to the way they were.



## Strategic considerations: When should you initiate legal proceedings to protect your company's reputation in the face of a consumer crisis?

### OBTAIN LEGAL ADVICE EARLY

Assess the merits of your claim and the likelihood of success

### POTENTIAL BACKLASH

Consider whether filing a claim will simply draw more attention to the problem

### COSTS RECOVERY

Consider whether you will be able to recover costs from the defendant at the end of any proceeding

### CONSIDER THE OPTIONS

Are there other ways to resolve the matter without resorting to litigation?