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Ontario must ban SLAPP suits to protect free speech

It's time for Ontario to ban SLAPPs - lawsuits brought by big companies to silence resource-poor defendants and chill free speech.



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Ontario NDP leader Andrea Horwath was the first to table a bill aimed at banning SLAPPs, dubious lawsuits often brought by deep-pocketed companies with the specific aim of silencing resource-poor defendants.

By: Peter Jacobsen Toby Mendel Shane Moffatt Cara Faith Zwibel Published on Fri Nov 08 2013

Freedom of expression and democracy are being undermined in Ontario. A panel of experts convened by the Ontario government in 2010 found that the threat of abusive lawsuits claiming massive damages, especially for defamation, is deterring “significant numbers” of Ontarians from speaking out on issues of important public interest.

However, there is now hope that action will be taken to address this problem, as the province’s political parties find themselves in rare agreement that it is high time to deal with this threat through strong legislation.

Known as SLAPPs (Strategic Litigation Against Public Participation), these dubious lawsuits are often brought by deep-pocketed companies with the specific aim of silencing resource-poor defendants. And they are very effective. The defendants, usually ordinary citizens or public interest groups, naturally feel threatened by the prospect of massive legal fees, disruption of their activities and the possibility of large damage awards. Even when the lawsuits have no merit whatsoever, they often result in a chill on free speech.

Comments on a wide range of public interest issues have attracted SLAPP suits in the past. These include reporting on environmental violations by large companies, exposing corruption and other forms of wrongdoing, and criticizing the behaviour of powerful individuals. In other words, SLAPPs are an attack on democracy. They undermine the ability of civil society and private individuals to act as watchdogs over the powerful.

Unfortunately, the threat of facing a SLAPP suit in Ontario is very real today. Greenpeace Canada is currently fighting a \$7-million lawsuit brought by logging giant Resolute Forest Products. Dylan Powell, founder of small environmental NGO Marineland Animal Defence, currently faces a \$1.5-million SLAPP from Marineland. The issue of SLAPPs first gained prominence in Ontario when [Big Bay Point residents were hit with multimillion-dollar lawsuits by developers](#).

We need legislative protection from these chilling lawsuits. Anti-SLAPP legislation may affirm a legal presumption in favour of the protection of speech on matters that are of public interest, or engage public participation. If the defendant can demonstrate that his or her statements fall within the scope of this presumption, the burden then shifts to the plaintiff who must show that the case has substantial merit, that it is unlikely that any defence would succeed and that, on balance, the harm it has suffered outweighs the harm that would be done to the public interest if the case were to proceed.

Anti-SLAPP legislation has already been adopted in Quebec and most U.S. states. It's now time for Ontario to follow suit. Important steps have been taken in this regard, specifically in the form of Bill 83, submitted by the Attorney General to the Ontario legislature in May 2013 – the [first government-sponsored anti-SLAPP bill in Ontario](#).

This follows the first ever Ontarian anti-SLAPP bill, put forward by Andrea Horwath of the NDP as a private member's bill in 2008. The Progressive Conservatives have also voiced support for this type of legislation, noting that abusive lawsuits represent a serious waste of taxpayer dollars.

Despite these positive steps forward, we are concerned about whether there is sufficient political will to see this through. The parties must not delay in adopting legislation that will champion the human rights of ordinary Ontarians, allow for robust debate on matters of public interest, save taxpayer money and uphold confidence in our legal system and our democracy.

Our organizations, along with more than 150 environmental organizations, free speech groups and unions, call on the Ontario legislature to pass anti-SLAPP legislation as a matter of priority. No less than 64 municipalities and the Ontario Bar Association have also supported anti-SLAPP legislation. It is time to protect Ontarians' right to free expression.

Peter Jacobsen is Chair of the Canadian Issues Committee of Canadian Journalists for Free Expression.

Toby Mendel is Executive Director of the Centre for Law and Democracy.

Shane Moffatt is Forest Campaigner for Greenpeace Canada.

Cara Faith Zwibel is Director of the Fundamental Freedoms Program of the Canadian Civil Liberties Association.

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