

Anti-SLAPP Legislation: A Backgrounder

What is a SLAPP suit?

Strategic Lawsuits Against Public Participation (SLAPPs) are lawsuits used by wealthy individuals and corporations to intimidate and silence public critics by forcing them into legal battles they cannot afford until they cease their criticism or opposition. The goal was not to obtain justice; it was to exhaust, defeat, and intimidate the defendant into staying quiet. An example is when a major corporation launches a multi-million dollar defamation lawsuit against a community environmental group that criticizes the corporation's conduct.

What does anti-SLAPP legislation do?

Anti-SLAPP laws are designed to allow individuals to have the lawsuit against them dismissed at a very early stage if that lawsuit qualifies as a "SLAPP." The idea is that defendants should not be put through the time and expense of defending a case at trial if that case is brought for abusive purposes (*e.g.* to silence or intimidate a defendant) as opposed to an honest attempt by a plaintiff to try to vindicate their rights or protect their reputation. Among the best anti-SLAPP laws in North America is that of Ontario, the [Protection of Public Participation Act, 2015](#).

How does the Ontario anti-SLAPP legislation work?

1. Motion to dismiss

Under the *Act*, a defendant can bring a motion to dismiss a SLAPP at the earliest stages of the litigation process. The idea is a simple one: to offer defendants relief from the crushing burden of dubious multi-million dollar claims brought by well-resourced plaintiffs.

To have the proceeding dismissed, the defendant must first "[satisfy] the judge that the proceeding arises from an expression made by the [defendant] that relates to a matter of public interest."

If it does relate to a matter of public interest, the original action against the defendant must be dismissed unless the plaintiff can show:

- (a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the defendant has no valid defence in the proceeding; and

(b) the harm likely to be or that has been suffered by the plaintiff as a result of the defendant's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

A failure by the plaintiff to clear both hurdles will lead to a dismissal of its original lawsuit.

2. Costs

If a judge dismisses the plaintiff's original lawsuit, the defendant is eligible for full recovery of their legal costs (the normal rule in litigation would be only 50-60% recovery). If the defendant is unsuccessful in having the lawsuit dismissed, they do not need to pay any portion of the plaintiff's legal costs.

If, in dismissing the lawsuit, the judge finds that the plaintiff in the original lawsuit had brought the lawsuit in bad faith or for an improper purpose, the judge may award the defendant in that lawsuit, in addition of costs on a full indemnity basis, such damages as the judge considers appropriate.

3. Further Protections for the Defendant in the Original Proceeding (SLAPP suit)

Finally, to further its aims, the anti-SLAPP legislation provides that, unless a judge orders otherwise, the plaintiff in the original proceeding shall not be permitted to amend their pleadings in the proceeding, (a) in order to prevent or avoid an order dismissing the proceeding; or (b) if the proceeding is dismissed, in order to continue the proceeding.

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