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## ANTI-SLAPP LEGISLATION PROPOSED

### ONTARIO BILL 83 SEEKS TO PROTECT FREEDOM OF SPEECH

**By Stephen Thiele**

On June 4, 2013, the Hon. John Gerretsen, Minister of the Attorney General, introduced into the Ontario legislature proposed legislation which would protect the freedom of expression in matters of public interest.

Bill 83 seeks to amend the *Courts of Justice Act*, the *Libel and Slander Act* and the *Statutory Powers Procedure Act* so as to, among other things, provide persons who speak out on matters of public interest protection against potential claims for defamation. In October 2010, a 26-page report was provided to the Attorney General setting out reasons why Ontario should adopt "anti-SLAPP" legislation.

SLAPP is an acronym which stands for Strategic Litigation Against Public Participation. In essence, this kind of an action is commenced by a party for the sole purpose of intimidating opponents and to eventually reduce their ability to participate in public debate. The fear or threat of facing legal action is also seen as deterring others from participating in discussions on matters of public interest and thereby reduces democratic discourse on such matters.

Most strategic lawsuits are based on allegations of defamation and are often brought against vocal ratepayers' groups who might be opposed to a development in their neighbourhood or a political opponent who is trying to hold a politician to account. In many instances, the allegations of defamation are without merit and the action never proceeds to trial. However, once the lawsuit has been initiated the opponent is silenced.

Recently, the Ontario Courts have heard submissions in two cases on the issue of strategic litigation. In *Morris v. Johnson*, political opponents were sued shortly before the 2010 municipal election for critical comments made against the now former Mayor of Aurora. The action was then discontinued a year later, and the defendants sought costs on the grounds that the plaintiff's action was SLAPP lawsuit. The Court agreed and awarded the defendants costs of over \$21,000.

In *Foulidis v. Ford*, Mayor Ford was accused of defaming an individual for comments made during the 2010 municipal election campaign about a controversial sole-source contract which was awarded to a corporation operating

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If you believe that you have been defamed or are a defendant in a defamation action, please do not hesitate to contact the following:

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Messrs. Tighe and Thiele defended Mayor Ford in *Foulidis v. Ford*.



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a restaurant business in the Eastern Beaches of Toronto. In defending the action, Mayor Ford pleaded that the plaintiff's action was motivated for the sole purposes of preventing Mr. Ford from making any further public comment about the nature of the sole-source deal. Mayor Ford successfully defended the defamation action, but at time of this writing, a costs award in the case is still pending.

Under the proposed legislation, a defendant who believes that an action has been commenced against him or her solely for strategic purposes will have the opportunity to have the action dismissed. The defendant will be required to satisfy a judge that the action arises from an expression made by the defendant that relates to a matter of public interest. If this threshold is met, the onus will then shift to the plaintiff to convince the court under a two-part test that the

action has substantial merit and the defendant has no valid defence to the action, and that the harm suffered by the plaintiff as a result of the defendant's expression is sufficiently serious that the public interest in allowing the action to continue outweighs the public interest in protecting the defendant's expression.

If the motion to dismiss the action is successful costs of the defendant can be recovered on a full indemnity basis. The Court will also have discretion to award a defendant damages in circumstances where there is a finding that the action was brought in bad faith. The proposed legislation also contains provisions which will fast-track a motion to dismiss an action that is brought for strategic purposes.

Bill 83 must now receive second and third reading.

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