

February 7, 2018

The Honourable David Eby
Attorney General
Government of British Columbia
PO Box 9044 STN PROV GOVT
Victoria BC
V8W 9E2
Canada

RE: The need for effective anti-SLAPP legislation in British Columbia

Dear Minister Eby,

Public confidence in the administration of justice is critically important. The justice system is currently experiencing many challenges, notably the insufficiency of legal aid and the prevalence of delay. The continuing presence of abusive lawsuits in the civil justice system is another issue which threatens confidence in the justice system, and which can result in a significant waste of public and judicial resources.

Plaintiffs in strategic lawsuits against public participation, or “SLAPPs”, as they are known, unfairly target individuals or groups with strategic lawsuits with the effect of deterring them from speaking out on matters of public interest. Defendants of SLAPPs are exposed to onerous financial and emotional costs incurred in a process that attacks their individual right to speak on matters of public interest and chills citizen engagement more broadly.

Many jurisdictions have recognized that abusive litigation violates rights of free expression and public participation and undermines public confidence in the administration of justice. British Columbia needs to safeguard the administration of justice by enacting effective anti-SLAPP legislation.

Excellent models for anti-SLAPP legislation

Ontario created an expert advisory panel to make recommendations on anti-SLAPP legislation that would effectively increase access to justice and safeguard rights to public participation while protecting reputation and economic interests. In 2015, after years of expert review and stakeholder consultation, Ontario passed the *Protection of Public Participation Act*. This legislation should be the model for legislation in British Columbia.

Ontario’s legislation remedies the principal defects of BC’s short-lived previous anti-SLAPP legislation, which required defendants who attempted to use the mechanism to demonstrate an improper motive on the part of the plaintiff. As motive is very difficult to prove in civil suits such as the ones at issue, this threshold would generally be insurmountable and was avoided in the Ontario legislation. It is not necessary to have a motive requirement in place to ensure that meritorious claims can proceed while allowing SLAPPs to be dismissed at an early stage. Ontario’s legislation supports the proper operation of the court system in providing an expeditious vetting of abusive suits and proper protection for meritorious suits.

Making the justice system stronger and more efficient

The signatories to this letter have long experience and deep investment in the administration of justice in British Columbia and wish to see our system of justice safeguarded from abuses and made stronger. The justice system must be duly resourced and there is no question that it is costly. The remedy we are urging here is not costly, and indeed, is likely to bring cost savings in properly preserving limited judicial resources.

For all these reasons, we urge the government of British Columbia to introduce anti-SLAPP legislation modeled on Ontario's *Protection of Public Participation Act*.

Signed:

Ian Binnie, C.C., Q.C., Former Justice of the Supreme Court of Canada

Frank Iacobucci, C.C., Q.C., Former Justice of the Supreme Court of Canada

Wally Oppal, O.B.C., Q.C., Former Attorney General of British Columbia, Former Justice of the Supreme Court of British Columbia, Former Justice of the British Columbia Court of Appeal

Honourable Ujjal Dosanjh, P.C., Q.C., Former Premier of British Columbia, Former Attorney General of British Columbia

Carol Baird Ellan, Former Chief Judge of the Provincial Court of British Columbia

Lynn Smith, Q.C., Former Justice of the Supreme Court of British Columbia

Catherine Dauvergne, Dean and Professor, Peter A. Allard School of Law, University of British Columbia

Joel Bakan, Professor, Peter A. Allard School of Law, University of British Columbia

John Borrows, Professor, Faculty of Law, University of Victoria

Nicole Schabus, Professor, Faculty of Law, Thompson Rivers University

Chris Tollefson, Professor, Faculty of Law, University of Victoria

David Boyd, Associate Professor of Law, Policy and Sustainability, University of British Columbia

Val Napoleon, Associate Professor, Faculty of Law, University of Victoria

Joseph Arvay, O.C., O.B.C., Q.C.

William Deverell, Former Lawyer and Novelist