

Ontario's Anti-SLAPP Law

*Bill 52, Protection of
Public Participation Act, 2014*

Presentation to CELA Board

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Canadian
Environmental Law
Association
EQUITY. JUSTICE. HEALTH.

BACKGROUND

- SLAPPs are legal proceedings that are intended to silence public discussion on matters of public interest
- SLAPPs, until 20 years ago, were largely an American phenomena
- Tollefson, Chris. “Strategic Lawsuits Against Public Participation: Developing a Canadian Response” (1994) 7:3 Canadian Bar Review 201.
- Uniform Law Conference of Canada 2008 Report - SLAPPs are an “observable reality [which] constitute a serious threat to the participation by citizens and groups in public debate

BACKGROUND (cont'd)

- CELA called for an enactment of anti-SLAPP legislation twenty-two years ago (Intervenor: Volume 19, Issue 4 July/August 1994)
- *Durashield v. Debbie Brown*
- CELA requested funding from Law for Future Fund
- Big Bay Point case
- Joint Letter to AG from CELA and Ecojustice re: Urgent Need for Anti-SLAPP legislation in Ontario (Oct. 24, 2008)
- AG response “government will ‘closely monitor’ developments in this area with a view to considering if Ontario needs more legal support to prevent frivolous law suits”

Commencement of CELA's Anti-SLAPP Campaign

- Researched whether Rules of Civil Procedure were adequate and how other jurisdictions were dealing with this issue. Prepared briefing memo that SLAPPs were a growing problem in Ontario
- Began attending numerous meetings with senior officials at AG's office, Premier's office, AG opposition critics, Cabinet Ministers and MPPs
- Law Society of Upper Canada event on SLAPPs
- Proposal to organize a conference on SLAPPs, with conference papers to be prepared by academics
- RECIEL - "Failure of Defamation Law to Safeguard Against SLAPPs"

Anti-SLAPP Advisory Panel

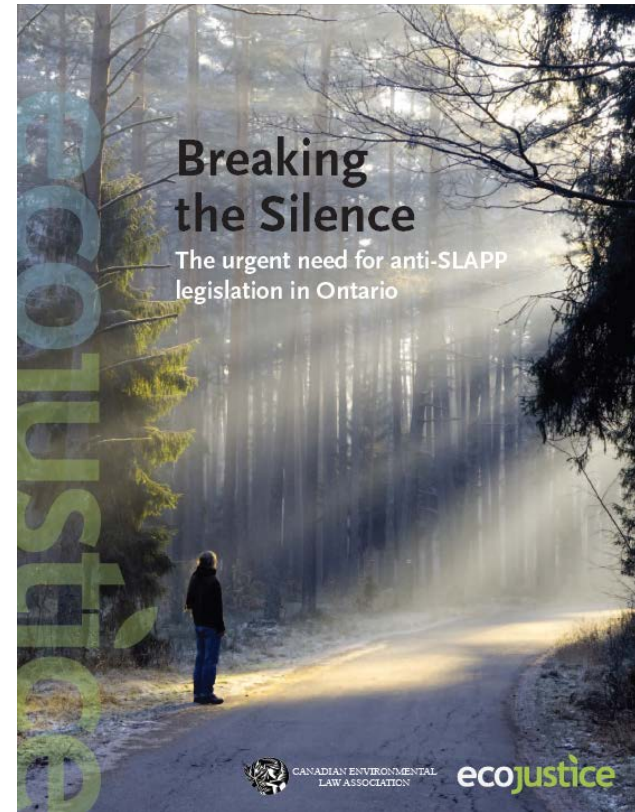
- May 10, 2010 - Anti-SLAPP Advisory Panel established to provide advice to Ontario Government on content of Anti-SLAPP legislation
- Panel members included Mayo Moran, Dean of the Faculty of Law at the University of Toronto, Brian MacLeod Rogers and Peter Downard
- https://www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/ - Background information on SLAPP suits

Anti-SLAPP Advisory Panel (cont'd)

- Breaking the Silence: The Urgent Need for Anti-SLAPP Legislation in Ontario

The Report discussed the need for Anti-SLAPP legislation in Ontario, examined why the existing laws were inadequate to safeguard against SLAPPs and set out the key components of an effective Anti-SLAPP law.

The report also included an Annex which provided an inter-jurisdictional review of Anti-SLAPP legislation in the US, Canada and Australia.



Anti-SLAPP Advisory Panel (cont'd)

- CELA and Ecojustice testified before the Anti-SLAPP Advisory Panel and filed a joint written submission
- 25 organizations including the Ontario Bar Association, Ontario Trial Lawyers Association and the Canadian Civil Liberties Association filed submissions

Anti-SLAPP Advisory Panel (cont'd)

- Anti-SLAPP Advisory Report released on December 21, 2010
- CELA prepares Model Bill

Ministry of the Attorney General

Anti-Slapp Advisory Panel Report To The Attorney General

Report to the Attorney General

October 28, 2010



Private Members Bill and More Lobbying

- CELA/Ecojustice worked closely with MPP Yasir Naqvi to introduce a private member Anti-SLAPP bill
- Private Members Bill introduced on October 15, 2012. Premier McGuinty resigns and prorogues Provincial Legislature the same day. Bill 83 dies on Order paper
- October 18, 2012 - Letter from retired Judges

Bill 83, *Protection of Public Participation Act*

- February 11, 2013 - Kathleen Wynne sworn in as Premier
- Within two weeks, CELA and Ecojustice sent a letter to Andrew Bevan, Principal Secretary to the Premier requesting a meeting on SLAPPs
- June 4, 2013 - Attorney General John Gerretsen introduced Bill 83 in the legislature
- Reference in Hansard to Letter from Judiciary

Continuation of Lobbying Efforts

- November 29, 2013 - Letter from Groups (CELA, Ecojustice, Greenpeace, Ontario Clean Air Alliance, Environmental Defence, the Council of Canadians, Wildlands League, Canadian Journalists for Free Expression, David Suzuki Foundation, Sierra Club of Ontario, Registered Nurses Association of Ontario and Ontario Nature) requesting AG take all necessary steps to have Bill referred to Committee
- March 6, 2014 - OBA sends letter to AG and opposition critics stating Bill has received “good amount of debate” and requests Bill proceed to Committee
- March 7, 2014 - Joint Statement on Bill 83 to all MPPs and Premier from ENGOs and public interest groups

Introduction of Bill

- June 12, 2014 - Election results in Liberal Majority
- September 26, 2014 - CELA drafts another letter on behalf of groups asking AG Madeline Meilleur to expeditiously reintroduce the Anti-SLAPP bill
- AG responds by stating that Premier's mandate letter requires re-introduction of SLAPP legislation

Bill 52, Protection of Public Participation Act, 2014

- December 1, 2014 - Government introduces Bill 52. The Bill is virtually identical to Bill 83
- CELA prepared an in-depth analysis of Bill 52 and compared it to the Panel's report
- October 1, 2015 - CELA counsel and Ecojustice counsel testified about the Bill before the Standing Committee on Justice Policy
- October 28, 2015 - Bill 52 is enacted

Lessons Learned

- Establish contacts with broader civil society and groups beyond ENGOs
- Maintain close working relationship with Premier's office and lead government ministry
- Meet frequently with government officials and politicians, Cabinet ministers
- Set up a coalition group to discuss strategy and send out joint media releases
- Try and obtain support from individuals/groups with public profiles/credibility

Lessons Learned (cont'd)

“Never, never, never give up.”

Winston Churchill

The screenshot shows a web browser window displaying the homepage of the Canadian Environmental Law Association (CELA). The browser's address bar shows the URL <http://www.cela.ca/>. The page features the CELA logo, which consists of four stylized icons: a red maple leaf with a white 'C', a yellow sun with a white 'e', a green house with a white 'L', and a blue water drop with a white 'a'. To the right of the logo, the text reads "Canadian Environmental Law Association" in a large, bold, brown font, with the tagline "EQUITY. JUSTICE. HEALTH." in a smaller, brown font below it. A search bar is located in the top right corner, and a "Subscribe to our mailing list" form is positioned below it. The navigation menu includes links for "HOME", "ABOUT CELA", "E-BULLETIN", "FRANÇAIS", "LIBRARY", and "CONTACT US". The main content area is divided into three columns. The left column lists "News", "Publications", "Our Services", "Frequently Asked Questions", "CELA in the Courts", and "Access to Environmental Justice". The middle column contains a paragraph about CELA's mission: "CELA works to protect human health and our environment by seeking justice for those harmed by pollution and by working to change policies to prevent such problems in the first place. For 40 years, CELA has used legal tools to increase environmental protection and safeguard communities. As a **Legal Aid Clinic**, our top priority is to represent low income individuals and communities and to speak out for those with less influence and who receive less of a say in decision-making." Below this is another paragraph: "Through **landmark legal cases** CELA has helped shape government and industry approaches to pollution and other environmental threats and has forced polluters to clean up their act. CELA has also been part of shaping **innovative collaborations** to improve sustainability and human health including the Low Income Energy Network, the". The right column features a logo for the "Michelle's Prize Scholarship Fund in Honour of Michelle Swenarchuk" and a section titled "CELA's Lawyer Referral List" with a sub-section for "News and Events" listing a "Sep 18 2012 Bi-national Great Lakes Citizen Coalition Calls on US Agency Not to Remove Niagara-area Hazardous Waste Site From Superfund". The browser window also shows several open tabs, including "CELA Powerpoint Te...", "Windows Screen Sho...", and "Featured Items a...". The browser's address bar and search bar are visible at the top, and the browser's status bar at the bottom shows a zoom level of 125%.