



Bill 52, *Protection of Public Participation Act, 2015*

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Submitted to: Standing Committee on Justice
Policy

Submitted by: The Ontario Bar Association



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A Branch of the
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Contents

Introduction.....	2
The OBA.....	2
Comments.....	2
Conclusion.....	3



Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to make this submission to the Standing Committee on Justice Policy (the “Committee”) in respect of Bill 52, *Protection of Public Participation Act*, 2015.

The OBA

Founded in 1907, the OBA is the largest legal advocacy organization in the province, representing approximately 17,000 lawyers, judges, law professors and students. OBA members are on the frontlines of our justice system in no fewer than 37 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists legislators with many policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission and the earlier advocacy work of the OBA on strategic litigation against public participation (“SLAPPs”) has been developed by the OBA’s Environmental Law, Civil Litigation and Municipal Law sections, whose members would count among their clients every stakeholder on anti-SLAPP issues, including public interest groups, corporations, municipalities, and other government agencies.

Comments

The OBA believes that citizens should have some measure of protection from civil liability for engaging in public participation, and we have long called for legislation to discourage litigation that is brought for the purpose of stifling public debate.

In 2010, the OBA provided a submission to the Ministry of the Attorney General’s Advisory Panel on Anti-SLAPP Legislation. Upon its release, the OBA took the position that the Panel’s report was both thorough and balanced. Since then, we have strongly supported the Legislature taking specific action to deal with SLAPPs.

We now urge the Committee to move forward with Bill 52, which closely reflects the key recommendations the OBA has made on this issue.

Bill 52 recognizes that effective anti-SLAPP legislation depends on quick, inexpensive and predictable judicial intervention that is triggered by threshold evidence that the case involves protected public interest communications.



Early dismissal is a necessary remedy if anti-SLAPP legislation is to be effective.

The Bill reflects the OBA's earlier advice that the test for identifying a SLAPP should not require proving abuse of process, and that evidence of improper motive should be admissible and probative, but not necessary. On the latter point, it is our view that evidence demonstrating an anti-public participation motive for bringing an alleged SLAPP lawsuit would rarely be available, and would be time consuming and expensive to obtain. Requiring such evidence would vitiate most of the benefit of anti-SLAPP legislation.

Conclusion

In summary, the OBA continues to support the legislation as a way to achieve the objectives of protecting legitimate legal rights while avoiding the chill on public participation and drain on resources that SLAPPs can exact, and we again urge the Committee to move forward with Bill 52.