File number: 35676

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

DENIS RANCOURT

Applicant
(Defendant)

– and –

JOANNE ST. LEWIS

Respondent
(Plaintiff)

– and –

UNIVERSITY OF OTTAWA

Respondent
(Intervening Party)

MOTION FOR LEAVE TO INTERVENE OF
ONTARIO CIVIL LIBERTIES ASSOCIATION (OCLA)

Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*

JOSEPH HICKEY

Ontario Civil Liberties Association (OCLA)
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Tel: (613) 252-6148
Email: joseph.hickey@ocla.ca

Proposed Intervener

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NOTICE OF MOTION FOR LEAVE TO INTERVENE OF ONTARIO CIVIL LIBERTIES ASSOCIATION (OCLA)

Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*

TAKE NOTICE that the Ontario Civil Liberties Association ("OCLA") hereby applies to a judge of the Court pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada* for an Order:

1. granting OCLA leave to intervene in this application for leave to appeal;

2. permitting OCLA to file a factum not exceeding 20 pages;

3. any further or other order that the judge may deem appropriate.

AND FURTHER TAKE NOTICE that the following documentary evidence will be relied upon in support of this motion to intervene:

1. the affidavit of Joseph Hickey, Executive Director of OCLA;

2. such further and other material as the Proposed Intervener may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that this motion shall be made on the following grounds:

1. ***The Proposed Intervener*.** Formed in September 2012, OCLA is a nascent provincial organization that promotes the observance of fundamental human rights and civil liberties. In addition to these core values, OCLA promotes a broad interpretation of the freedom of thought, belief, expression, and the press.

2. ***OCLA seeks leave to intervene in this application for leave to appeal.*** The application for leave to appeal raises a fundamental question with regards to the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged. Furthermore, this application raises the issue of whether an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

3. ***OCLA has an interest***. OCLA is interested in this application for leave to appeal because OCLA is engaged in the ongoing societal and legislative debate surrounding the non-party funding in defamation lawsuits in which the *Charter* right to free expression is engaged, and because the issues raised in this application have significant implications for defendants in defamation lawsuits in which the plaintiff is funded by a publicly-funded institution or another non-party, and in which full disclosure about propriety of the funding may be frustrated by decisions tainted with positive bias towards the funder.

4. ***OCLA has a unique perspective.*** OCLA will bring a useful and distinct perspective to this application for leave to appeal. At its core, this leave to appeal concerns the propriety of non-party funding in a defamation lawsuit, in which the *Charter* right to free expression is engaged. OCLA would bring the much needed broader perspective,

representing the interests of Ontario litigants in general, and in particular, regarding the *Charter* free expression rights of defendants in defamation lawsuits in which the private plaintiff's fees are financed by publicly-funded non-parties.

5. ***Position and proposed submissions***. OCLA wishes to intervene to address the national importance of the issue of the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged and, in particular, the national importance of this issue in a case in which an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

6. The proposed intervention will not cause a delay in the hearing of this application for leave to appeal nor prejudice the parties to this application.

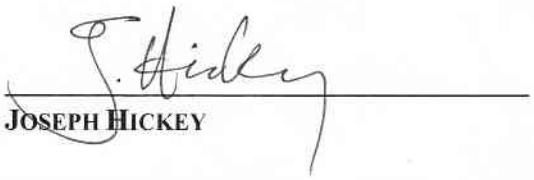
7. OCLA will not seek costs and asks that costs not be awarded against it in this motion and in the leave to appeal if leave to intervene is granted.

8. Rules 47 and 55 of the *Rules of the Supreme Court of Canada*.

9. Such further and other grounds as the Proposed Intervener may advise and this Honourable Court may permit.

DATED at Ottawa, Ontario, this 10th day of February, 2014.

SIGNED BY



JOSEPH HICKEY

Ontario Civil Liberties Association (OCLA)
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Tel: (613) 252-6148
Email: joseph.hickey@ocla.ca

Proposed Intervener

File number: 35676

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UNIVERSITY OF OTTAWA

Respondent
(Intervening Party)

AFFIDAVIT OF JOSEPH HICKEY

I, **JOSEPH HICKEY**, of the City of Ottawa, in the Province of Ontario, AFFIRM AS FOLLOWS:

INTRODUCTION

1. I am the Executive Director of the Ontario Civil Liberties Association (OCLA), and have held this position since the founding of OCLA in September 2012. As such, I have personal knowledge of the matters deposed of in this Affidavit.

2. This Affidavit is sworn in support of the motion of OCLA for leave to intervene in the leave to appeal application of Dr. Denis Rancourt (Court File No. 35676).

THE ONTARIO CIVIL LIBERTIES ASSOCIATION (OCLA)

3. Formed in September 2012, OCLA is a nascent provincial organization that promotes the observance of fundamental human rights and civil liberties. In addition to these core values, OCLA promotes a broad interpretation of the freedom of thought, belief, opinion, expression, and the press. A copy of OCLA's founding principles is attached and marked as Exhibit "A".

4. OCLA draws on the experience of its Advisory Board in carrying out its activities. A list of OCLA's Advisory Board members is attached and marked as Exhibit "B".

5. OCLA has been endorsed by several prominent civil liberties leaders, including John Carpay, President of the Justice Centre for Constitutional Freedoms, and Noam Chomsky, Institute Professor (Emeritus) at MIT, the renowned linguist and political scientist.

6. Since its public launch event in January 2013, OCLA has publicly addressed a number of civil liberties matters, including:

    a. use of tasers by Ontario police forces;
    b. deportation proceedings against an individual born and raised in Ontario;
    c. use of body-worn cameras by police forces in Ontario;
    d. Bill C-475, *An act to amend the Personal Information Protection and Electronic Documents Act (order-making power);*
    e. Bill 83, *Protection of Public Participation Act, 2013*;
    f. door-to-door information gathering by police in residential neighbourhoods;
    g. seizure of cell phones for traffic violations by police forces;
    h. interference by university administration with freedom of thought, expression, and association of students at an Ontario university;
    i. use of public funds for silencing a public critic of an Ontario university;
    j. access of self-represented litigants to the Supreme Court of Canada;
    k. civil liberties of Canadian airline passengers in the case of *Thibodeau et al. v. Air Canada et al.*

7. OCLA's work includes making submissions to institutions, officials, and politicians regarding civil liberties matters, including, for example:

    a. OCLA's public campaign about York University's removal of a student group's status (letters from this campaign are attached and marked as Exhibit "C");
    b. OCLA's public campaign about the deportation proceedings against Deepan Budlakoti (letters from this campaign are attached and marked as Exhibit "D")

8. OCLA maintains a Facebook group for its general membership (attached and marked as Exhibit "E") and a separate Facebook group for its Self-represented litigants working group (attached and marked as Exhibit "F").

OCLA'S UNIQUE EXPERIENCE IN LEGISLATIVE DEBATE SURROUNDING DEFAMATION LAW AND FREEDOM OF EXPRESSION

9. OCLA is engaged in the present legislative debate in Ontario concerning the interaction of freedom of expression and protection of reputation. In particular, OCLA has made the following contributions in this area:

    a. OCLA's public campaign "Public Money is Not for Silencing Critics" opposes the use of public money to fund defamation lawsuits because such funding is in violation of individuals' *Charter* rights to freedom of expression (the web page for this campaign is attached and marked as Exhibit "G"; letters exchanged with the President of the University of Ottawa, Allan Rock as part of this campaign are attached and marked as Exhibit "H");
    b. OCLA's article "Quebec Court of Appeal rewrites law on SLAPP actions" (attached and marked as Exhibit "I");
    c. OCLA's letter to Attorney General of Ontario John Gerretsen of December 5, 2013 re: Bill 83, *Protection of Public Participation Act, 2013* (attached and marked as Exhibit "J");
    d. Letter from MPP John O'Toole to OCLA in response to OCLA's December 5, 2013 letter (attached and marked as Exhibit "K");

e. OCLA's position paper on Ontario's Bill 83, *Protection of Public Participation Act, 2013* of January 2014 (attached and marked as Exhibit "L"); and
f. Email from the office of MPP Jack MacLaren in response to OCLA's January 2014 position paper on Bill 83 (attached and marked as Exhibit "M");

10. OCLA is a signatory to the Greenpeace Canada petition, in which 140 public interest groups have called for action on Ontario's Bill 83 (attached and marked as Exhibit "N").

OCLA'S INTEREST IN THIS LEAVE TO APPEAL

11. This application for leave to appeal raises the issue of the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged. Furthermore, this application raises the issue of whether an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

12. These matters falls squarely within OCLA's mandate and past activities.

POSITION AND PROPOSED SUBMISSIONS

13. If granted leave to intervene, OCLA would focus its submissions on the national importance of the issue of the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged and, in particular, the national importance of this issue in a case in which an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

14. OCLA will expand on these submissions if granted leave to intervene.

15. I believe that OCLA's submissions will be of assistance to the court in deciding the important issues in this application for leave to appeal. These submissions will be unique in that they will represent the broad interests of citizens and not the particular interests of the present parties to the application.

16. OCLA's proposed intervention will not cause a delay in the hearing of this application nor prejudice the parties to this application.

17. OCLA will not seek costs and asks that it not have costs awarded against it in the event that leave to intervene is granted.

AFFIRMED before me at the City of Ottawa
in the Province of Ontario
this 5th day of February, 2014

L Bergau

L Bergau

J. Hickey

JOSEPH HICKEY

This is **Exhibit "A"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Ontario Civil Liberties Association

* * *

Founding Principles

There is a crying need in Ontario for a civil liberties association that stands for civil liberties.

We distinguish an individual's societal influence by expression from an individual's actuated power that derives from his/her institutional hierarchical position.

We hold that the individual's societal influence by expression, not structurally derived from the institutional and organizational hierarchy, is an absolute right, irrespective of race, gender, orientation, etc.

We believe that societal health depends on the individual's absolute right to free expression.

We defend all individual expression as an absolute right no matter how unacceptable it may appear to others.

We support individual free expression regardless of its form or content.

We oppose all state and corporate censorship, including employer gag orders on employees.

We oppose all forms of societal mobbing that have the effect of censorship.

* * *

Regarding controversial issues of the day, we support the right to:

- all individual expression critical of any state, including Israel and Iran;
- all individual expression critical of any religion or culture, including Judaism, Islam, and Christianity;
- all individual expression critical of any sexual orientation, including straight and queer;
- all individual expression critical of both sides of the abortion conflict, including pro-life and pro-choice;
- all individual expression critical of any public policy or law, including liberal or conservative;
- all individual expression of emotions, including hate and love;
- all individual expression about criminal behaviour, including expression about child pornography, genocide, war, slavery, and serial murder;
- all individual expression critical of any person, including public figures, neighbours, and colleagues.

Sept. 18, 2012
Ottawa, Ontario

This is **Exhibit "B"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Advisory Board of the Ontario Civil Liberties Association

Dr. Benoit Awazi Mbambi Kungua
Président
Centre de recherches pluridisciplinaires sur les Communautés d'Afrique noire et des diasporas (CERCLECAD)
Ottawa, Ontario

David Burton
Civil Liberties Activist
Former Director (Charter of Rights, Police, and Security Issues) of the National Capital Region Civil Liberties Association
Ottawa, Ontario

Colia Clark
Veteran of the American Civil Rights Movement
2010 & 2012 U.S. Senate Candidate, Green Party
New York, New York

Dr. Arthur Jutan
Professor (Emeritus), Dept. of Engineering
University of Western Ontario
London, Ontario

Dr. Mark Mercer
Professor, Dept. of Philosophy
Saint Mary's University
Halifax, Nova Scotia

Dr. Michel Seymour
Professeur, Département de philosophie
Université de Montréal
Montréal, Québec

Cindy Sheehan
Anti-War Activist
2012 U.S.A. Vice-Presidential Nominee, Peace and Freedom Party
Vacaville, California

Truther Girl Sonia
Vlogger – The Truther Girls – YouTube
Civil liberties web activist

Tyler Willis
Editor at *The Puritan* literary magazine
Toronto, Ontario

This is **Exhibit "C"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

OCLA
Ontario
Civil Liberties
Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

"I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies."
—Noam Chomsky,
Institute Professor, MIT

"Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom."
—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

June 17, 2013

By mail and email

Dr. Mamdouh Shoukri, President, York University
1050 Kaneff Tower
4700 Keele Street
Toronto, Ontario
M3J 1P3

Dear President Shoukri:

I am writing on behalf of the Ontario Civil Liberties Association (OCLA) to express our deep concern over reports we have received that York University recently cancelled student group status for the campus group Students Against Israeli Apartheid (SAIA).

SAIA is said by the University to have "disrupted academic activity" during protests at Vari Hall which took place in March 2013. A specific charge of "using a loudspeaker" formed part of the University's reasons for the serious sanction of cancelling SAIA's student group status. In addition, Hammam Farah, an alumnus who participated in the protests, was trespassed from campus until April 2014.

York University's mission statement describes the University as "a community of faculty, students, staff, alumni and volunteers committed to academic freedom, social justice, accessible education, and collegial self-governance [which] makes innovation its tradition".

York's decision to cancel a group's status following demonstrations on campus is incompatible with the University's mission: students have academic freedom and a guaranteed place in the collegial governance of the institution. Public protest through congregation and expression is an essential component of democratic participation, and academic freedom permits students to formulate criticisms from any point of view, without restriction.

More than incompatible with the Canadian principle of academic freedom, York's heavy-handed suppression of this student group is an unjustified political intervention which abuses the power invested in the University by a provincial statute. This sort of administrative action puts all Canadian universities in disrepute in the global environment of free thought and expression on university campuses.

It is cynical, disproportionate, and absurd to use "disruption" at a campus event as a pretext to definitively suppress a political student group and its members, where that "disruption" involves voice amplification in the main large assembly venue on

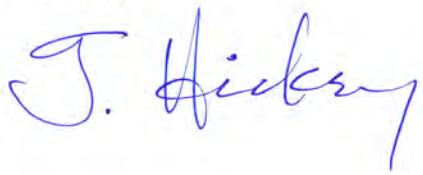
the campus, a venue clearly designed for free and open assembly and communication, and a venue known in the broad society as the symbolic nexus of debate on the York University campus.

These developments of suppression of political views and of political expression on a Canadian campus, at York University, are profoundly disturbing and create a general chill on expression and debate, irrespective of the views and criticisms being advanced.

In light of York's responsibility to protect and advance the freedom of association and freedom of expression of its community members, we urge you to immediately restore SAIA's student group status and revoke the trespass order against Mr. Farah, as well as make a public statement to students and alumni that they will not face discipline for organizing protests expressing controversial political views at Vari Hall or elsewhere on campus.

Thank you for your attention.

Sincerely,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

Cc: SAIA York (by email: saiayork@riseup.net)

YORK
UNIVERSITÉ
UNIVERSITY

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July 18, 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
180 Metcalfe St, Ste 204
Ottawa, ON K2P 1P5

Dear Mr. Hickey:

I have received your letter of June 17, and apologize for the delay in responding. Mid to late June is the convocation time and wrap up of our governance year, and it takes some time to catch up with all correspondence.

I was sorry to read your letter, which in my view unfairly and inappropriately characterizes York's actions with respect to the events of March 27 last as "cynical, disproportionate and absurd" and "heavy handed suppression" of a student group.

While you have correctly referenced York's statements of commitment to civil and human rights, you have made a number of incorrect assumptions about the university, the facts that underlie the actions taken in this instance, and the consequences for the SAIA student group.

As you will know, the university is bound to enforce the policies promulgated by its governing bodies. I believe that the policies are fair and equitable, and support the basic tenets to which your organization subscribes. More to the point, I believe the policies sustain the goals of the university: to allow students to study and learn without disruption.

Maintaining a balance between competing rights is always a challenge, and engagement of the parties in open and reasoned debate is always our goal. It is only in rare instances, and usually after attempts to mediate and balance these competing rights have failed, that incidents which breach policy occur and some action is taken.

So that you will understand both the context of the university's actions in this instance, and the consequences of the suspension of SAIA's student group status, I have asked the Vice Provost Students, Dr. Janet Morrison to write to you under separate cover elaborating on these issues.

Yours truly,

Mamdouh Shoukri
President and Vice Chancellor

:hl

Cc: Janet Morrison, Vice-Provost Students, York University

YORK
UNIVERSITÉ
UNIVERSITY

Office of the
Vice-Provost Students

N303 BENNETT CENTRE
FOR STUDENT SERVICES
4700 KEELE ST.
TORONTO ON
CANADA M3J 1P3
T 416 736 5955
F 416 736 5990

By email and mail

July 19, 2013

Joseph Hickey
Executive Director
Ontario Civil Liberties Association
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Dear Mr. Hickey:

I am writing at the request of President Shoukri to clarify some misconceptions contained in your June 17, 2013 letter to him regarding the context of the university's actions in suspending the student group status of SAIA and the consequences of the suspension.

To begin, the York University Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations prohibits a disturbance that disrupts any academic activity organized by the university or its units. In the case of the March 27, 2013 SAIA rally in Vari Hall, complaints regarding noise and disruption of classes were received from members of our community who were in classes proximate to the Vari Hall Rotunda. For further clarity of what the Policy provides, I enclose a copy.

I also want to make clear to you the consequences of the suspension of SAIA's student group status: student group status is established pursuant to an agreement, a copy of which is enclosed. The agreement clearly spells out that breach of applicable regulations of the university may result in the withdrawal of official recognition and associated privileges. The privileges of student group status include:

- The support of the university comprehensive Student Leadership and Community Development unit with knowledgeable staff members to encourage, assist and support student groups with matters like student group organization and events (such as tabling and rallies); and
- Access to the YUConnect online student group support system, including promotion of events and communication with current and prospective members, creation of student group specific pages that link and push to social media, and a "one stop shop" for student organization processes and membership management.

The action taken against SAIA followed repeated warnings and attempts to work with the student group to create an event which would provide a full opportunity for it to promulgate its views without disruption of academic activity. These efforts proved fruitless. Many attempts at dialogue with members of this group have been made and we remain ready and willing to continue such dialogue in the context of balancing the many individual and group rights which are asserted in the course of participation as members of our learning community.

The consequences of the suspension of student group privileges therefore means in practical terms that SAIA is not entitled to the support of university resources for its activities. It does not mean that individuals cannot continue to express their views within the university as long as they respect university rules.

I hope this letter assists your understanding of our position.

Sincerely,

Janet K. Morrison, Ph.D.
Vice-Provost, Students
Division of Students

Enclosures Senate Policy on Disruptive and/or Harassing Behaviour in Academic Situations;
Copy of Club Registration Form

Ontario
Civil Liberties
Association

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—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

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—Noam Chomsky,
Institute Professor, MIT

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—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

October 29, 2013 By email

Dr. Mamdouh Shoukri, President, York University
president@yorku.ca

Dear President Shoukri,

We have received your and Dr. Morrison's letters of July 18 and 19, 2013. We have also received additional information from Students Against Israeli Apartheid at York University (SAIA) regarding developments in this matter during the summer and since the beginning of the Fall term.

We find it astonishing that York continues to maintain SAIA's ban from official student group status, on grounds of undisclosed evidence of an alleged "academic disturbance" caused by noise from a rally in Vari Hall that took place in March 2013. That venue is the symbolic nexus of debate on your campus, yet your administration has decided to stifle debate by stripping a student political group of its ability to book rooms and access university resources. Moreover, you have trespassed an alumnus and SAIA member, Mr. Hammam Farah from campus for the same reasons.

We are aware of letters sent to your office by the Canadian Civil Liberties Association (CCLA) and the Canadian Association of University Teachers (CAUT), protesting your administration's removal of SAIA's group status and indicating disturbing aspects of university policies and the student code that threaten fundamental freedoms on your campus. We support the positions of the CCLA and CAUT, and we reiterate our request to you to immediately restore SAIA's group status and revoke the trespass ban against Mr. Farah.

We also urge you to release the evidence supporting York's allegation of academic disturbance in order to allow open and reasoned debate of your administration's actions in this matter within the York community and the broader society. In this regard, since York has visibly and expressly violated freedoms of individuals and continues to apply harsh sanctions, it has an onus beyond a vague allegation of "academic disturbance."

We look forward to your response,

Yours sincerely,

J. Hickey

Joseph Hickey
Executive Director

Cc: SAIA York, CAUT, CCLA

This is **Exhibit "D"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

OCLA
Ontario
Civil Liberties
Association

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—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

August 22, 2013

By mail and email

The Honourable Chris Alexander, P.C., M.P.
Minister of Citizenship and Immigration
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

The Ontario Civil Liberties Association (OCLA) is an organization formed to defend civil liberties at a time when fundamental freedoms are subjected to a real and palpable systemic erosion in all spheres of social life. We oppose institutional decisions that remove from the individual his or her personal liberty or exclude the individual from participation in the democratic functions of society.

We are writing to express our deep concerns about the potential deportation of Mr. Deepan Budlakoti and the serious violation of his civil liberties this would entail.

Mr. Budlakoti was born in Ottawa, Canada, has lived his entire life in Canada, and his entire family are Canadian citizens and reside in Canada. Nonetheless, he faces deportation to India, a country he has never lived in.

While serving a sentence for a criminal conviction, Mr. Budlakoti was told that his Canadian passport was issued in error due to his parents' employment at the time of his birth, pursuant to section 3(2) of the *Citizenship Act*. Although Mr. Budlakoti's parents and siblings are all Canadian citizens, the process to have him deported was initiated upon cancellation of his passport. Because India has refused to accept Mr. Budlakoti if he is deported, the removal of his passport has made him a stateless person.

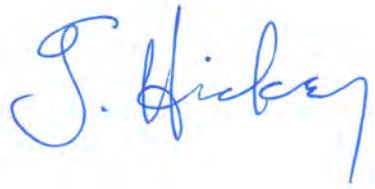
The Ministry of Immigration's decision to subject a born and raised Canadian to detention, strict bail conditions, house arrest, and an arduous legal appeals process which could result in deportation to a foreign country is extremely disturbing. Canada's laws are not meant to be instruments used to single out, persecute, and exile Canadians who have received criminal convictions. Rather, the civil liberties of all members of a free and democratic society must be upheld if civil liberties are to mean anything at all.

We support Mr. Budlakoti's application to remain in Canada on humanitarian and compassionate considerations, and we urge you to immediately restore Mr.

Budlakoti's passport and see to reparations for his damage suffered as a result of the deportation process thus far.

Furthermore, we urge you to introduce legislation and/or binding directives in order to prevent such an egregious violation of a Canadian's civil liberties from occurring in the future, and we ask that you make a strong and informative public statement confirming your actions to correct the injustices against Mr. Budlakoti.

Yours sincerely,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

Cc: Justice for Deepan Budlakoti support committee (by email: justicefordeepan@gmail.com)
Cc: Members of Parliament (by email)

Joseph Hickey - OCLA

From: CIC - Ministerial Enquiries Division/CIC - Service de renseignements ministériels [Ministerial.Enquiries.Division@cic.gc.ca]
Sent: September 17, 2013 3:39 PM
To: 'joseph.hickey@ocla.ca'
Subject: Citizenship and Immigration Canada - reply to your correspondence of August 22, 2013

Dear Mr. Hickey:

This is in reply to your correspondence dated August 22, 2013, 2013, addressed to Mr. Chris Alexander, Minister of Citizenship and Immigration, concerning the situation of Mr. Deepan Budlakoti. I apologize for the delay in responding.

The *Privacy Act* prohibits the release of information on our clients without their written consent. This legislation was designed to protect a person's right to privacy when dealing with Canadian government institutions.

I have noted your support for Mr.Budlakoti. Although I cannot discuss the details of his case, I would like to assure you that his circumstances have been fully considered by officials.

Thank you for writing and expressing your concerns.

S. Charbonneau
Ministerial Enquiries Division

This electronic address is not available for reply.

Minister of Public Safety Ministre de la Sécurité publique

Ottawa, Canada K1A 0P6

OCT 2 3 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
joseph.hickey@ocla.ca

Dear Mr. Hickey:

Thank you for providing me with a copy of your correspondence of August 22, 2013, to the Honourable Chris Alexander, Minister of Citizenship and Immigration, concerning Mr. Deepan Budlakoti.

The *Privacy Act* prohibits me from commenting on this case or acknowledging whether or not information exists without the written authorization of Mr. Budlakoti. I am, however, able to provide you with the following general information.

The Canada Border Services Agency (CBSA), as specified in the *Immigration and Refugee Protection Act*, has a statutory obligation to remove, as soon as possible, any foreign national who is inadmissible to Canada and has been issued a removal order that has come into force.

The ability to remove people is essential to maintaining the integrity of the immigration program and ensuring fairness for those who come to this country lawfully. Everyone ordered removed from Canada is entitled to due process before the law and has access to various levels of appeal, including judicial review. However, once a removal order becomes enforceable, individuals are expected to obey the law and leave Canada as directed.

I can assure you that the Government of Canada and the CBSA are committed to the fair and equitable application of Canada's immigration laws.

Thank you again for writing.

Steven Blaney, P.C., M.P.
Minister of Public Safety and Emergency Preparedness

This is **Exhibit "E"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits


Ontario Civil Liberties Association
Home 4
Joseph
Joseph Hickey
Edit Profile
FAVORITES
News Feed
Messages 58
Events 1
Photos
Browse
GROUPS
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We want Canada to... 5
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University of Ottawa 20+
Ottawa, Ontario Area 20+
APPS
Games
Games Feed 20+
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OCLA
Ontario Civil Liberties Association
Members
Events
Photos
Files
Notifications
+ Create Group
Write Post
Add Photo / Video
Ask Question
Add File
Write something...
Chris Carter
reading today and came across a legal principle which wasn't in the legal dictionary that i use:
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http://en.wikipedia.org/wiki/Sua_sponte.....
See More
Sua sponte - Wikipedia, the free encyclopedia
About
552 members
Open Group
Website: http://www.ocla.ca/
Founding Principles of the Ontario Civil Liberties Association
* ... See More
552 members (4 new) · Invite by Email
+ Add People to Group
What is this group about?
Set tags
Suggested Groups
See All
Chat (13)

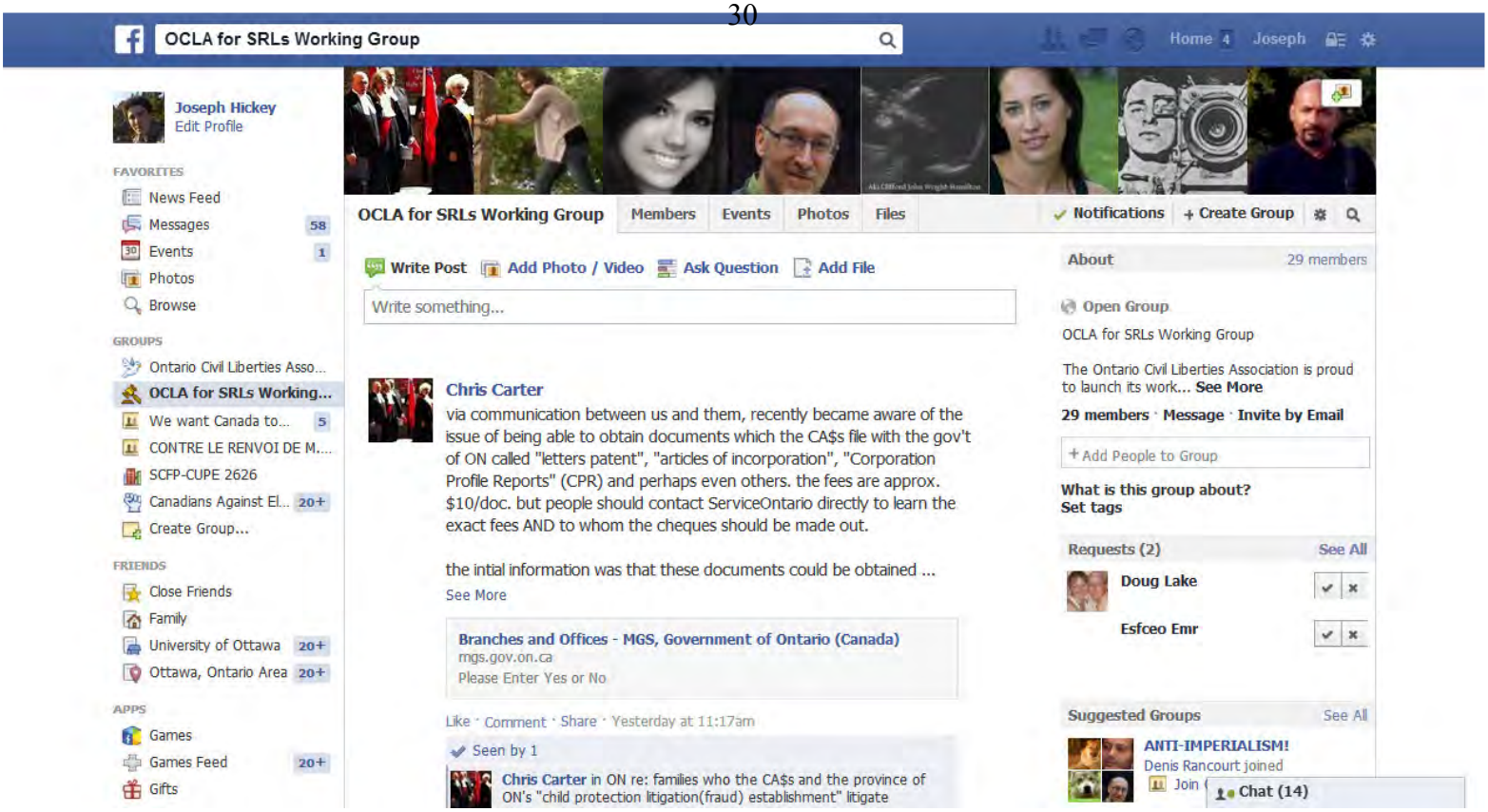
This is **Exhibit "F"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits


OCLA for SRLs Working Group
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Canadians Against El... 20+
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FRIENDS
Close Friends
Family
University of Ottawa 20+
Ottawa, Ontario Area 20+
APPS
Games
Games Feed 20+
Gifts
OCLA for SRLs Working Group
Members
Events
Photos
Files
Notifications
+ Create Group
Write Post
Add Photo / Video
Ask Question
Add File
Write something...
Chris Carter
via communication between us and them, recently became aware of the issue of being able to obtain documents which the CA$s file with the gov't of ON called "letters patent", "articles of incorporation", "Corporation Profile Reports" (CPR) and perhaps even others. the fees are approx. $10/doc. but people should contact ServiceOntario directly to learn the exact fees AND to whom the cheques should be made out.
the intial information was that these documents could be obtained ...
See More
Branches and Offices - MGS, Government of Ontario (Canada)
mgs.gov.on.ca
Please Enter Yes or No
Like · Comment · Share · Yesterday at 11:17am
Seen by 1
Chris Carter in ON re: families who the CA$s and the province of ON's "child protection litigation(fraud) establishment" litigate
About
29 members
Open Group
OCLA for SRLs Working Group
The Ontario Civil Liberties Association is proud to launch its work... See More
29 members · Message · Invite by Email
+ Add People to Group
What is this group about?
Set tags
Requests (2)
See All
Doug Lake
Esfceo Emr
Suggested Groups
See All
ANTI-IMPERIALISM!
Denis Rancourt joined
Join
Chat (14)

This is **Exhibit "G"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

OCLA

Ontario Civil Liberties Association

Public Money is Not for Silencing Critics

University of Ottawa must end its financing of a private defamation lawsuit

(*Ottawa, August 2013*) — The Ontario Civil Liberties Association (OCLA) is demanding that the University of Ottawa stop financing a private defamation lawsuit against its long-time and outspoken critic Denis Rancourt.

The lawsuit is about a blog article on "U of O Watch" in which Rancourt concluded (correctly, it turned out) that the president had asked a black professor to criticize a student report that accused the university of racial discrimination.

Rancourt has published his "U of O Watch" blog since 2007, and is a former professor of the university. The private action was initiated in 2011, and has been widely reported in the media. The Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014. A pre-trial hearing will be held on December 19, 2013.

The University of Ottawa is using public funds to finance the lawsuit. University president Allan Rock admitted under cross-examination that he approved the financing without a spending limit (with "no cap") from the university's operating budget.

Based on court submissions for legal costs, OCLA estimates that the university has spent over $1 million to date pursuing Rancourt, who was fired by the university in 2009, and who is self-represented in the civil action.

OCLA believes that the university's funding is wrong because:
1. It violates Rancourt's right of freedom of expression and the public's right to hear all points of view; and
2. It is antithetical to academic freedom, which the university is bound to protect.

It is against the law in Canada for the government to sue an individual for defamation because that would violate the individual's *Charter* right to free expression, yet here the government is financing such a lawsuit about a matter of public interest — racial discrimination at a major public institution.

Key Documents

Video by Hazel Gashoka (former student, University of Ottawa):

Recent Work

Jan. 18, 2014: OCLA position paper on Bill 83

Jan. 14, 2014: Press release: Bias allegations against judge go to Supreme Court

Jan. 14, 2014: Communiqué de presse : Allégations de partialité contre un juge présentées à la Cour suprême

Dec. 5, 2013: Letter to Attorney General re: OCLA's position on Ontario's anti-SLAPP bill

Nov. 8, 2013: Inaugural OCLA Civil Liberties Award presentation to Harry Kopyto

Nov. 1, 2013: The Work and Legacy of David F. Noble public event and film screening

Oct. 20, 2013: Video from Wealth Inequality and Civil Liberties event

Oct. 3, 2013: Post: "Quebec Court of Appeal rewrites law on SLAPP actions"

Aug. 28, 2013: Opinion statement on new tasers permission

Aug. 28, 2013: Public Money is Not for Silencing Critics

Aug. 22, 2013: Justice for Deepan: Letter to Minister of Citizenship and Immigration

Jul. 25, 2013: Endorsement of public event: Deepan Speaks!

Expert opinion of Cynthia McKinney (former U.S.A. Congresswoman from Georgia)

Expert report of Professor Adèle Mercier (Philosophy, Queen's University)

Letters from this campaign

- September 11, 2013 – Letter from President Rock to OCLA. Download September 11, 2013 letter
- August 28, 2013 – Letter from OCLA to Allan Rock, President of the University of Ottawa. Download August 28, 2013 letter
- August 28, 2013 – Letter from OCLA to Nathalie Des Rosiers, Dean of Common Law at the University of Ottawa. Download August 28, 2013 letter

Media Coverage

Oct. 21, 2013: « Affaire Rancourt : L'ancien professeur condamné à payer 100 000 $ d'indemnités » *La Rotonde*

Oct. 23 2013: "Cops' doorstep visits with students under fire" *London Free Press*

Oct. 20, 2013: "London's tough stance on student rowdyism" *London Free Press*

Oct. 6, 2013: "SAIA protests outside Board of Governor's meeting" *The Excalibur*

Sep. 4, 2013: "U of O urged not to sue" *The Fulcrum*

Aug. 22, 2013: "Ontario Civil Liberties Assoc" *Talking Stress with Claude Laurin, CKCU FM Ottawa*

Jul. 31, 2013: "Should police take cameras to the streets?" *The Bill Good Show, CKNW AM Vancouver*

Jul. 25, 2013: "OCLA and Deepan Budlokati" *Talking Stress with Claude Larin, CKCU FM Ottawa*

This is **Exhibit "H"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Ontario
Civil Liberties
Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

"I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies."
—Noam Chomsky,
Institute Professor, MIT

"Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom."
—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

August 28, 2013

By Fax and Email

Mr. Allan Rock, President, University of Ottawa
Office of the President
Tabaret Hall
550 Cumberland, Room 212
Ottawa, ON
K1N 6N5
Fax: (613) 562-5103

Re: The university's funding of a private defamation lawsuit against Denis Rancourt

Dear President Rock:

I am writing on behalf of the Ontario Civil Liberties Association (OCLA) to express our deep concern that you have authorized and continue to authorize university financing of a private defamation lawsuit against long-time and outspoken critic of the university Denis Rancourt.

As you know, the lawsuit is about a blog article on Mr. Rancourt's "U of O Watch" blog in which Mr. Rancourt concluded (correctly, it turned out) that you had asked a black professor to criticize a student report that accused the university of racial discrimination.

Based on court submissions for legal costs, OCLA estimates that the university has spent over $1 million to date pursuing Rancourt, using public money from the university's operating budget. The lawsuit is on-going, and the Ontario Superior Court recently scheduled the matter for a three-week trial starting May 12, 2014.

Following your instructions, the University of Ottawa is using public funds to finance the lawsuit without a spending limit, with "no cap", as you have testified under cross-examination. OCLA believes that the university's funding of this private defamation lawsuit is wrong.

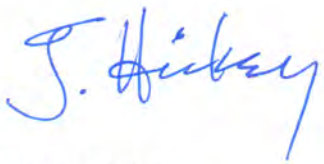
OCLA is also concerned that you appear to justify your decision with accusations of racism against Mr. Rancourt, and that you have done this by using a prominent lawyer to voice your accusations, rather than voice them yourself.

Furthermore, we note that the university appears to have done nothing to address the original student complaint of racial discrimination, which has been at the center

of the matter since the complaint was reported by the Student Federation in November 2008.

We ask you to stop using public funds to finance this private lawsuit against one of your critics, to consider spending the resources instead on addressing the reported problems of institutional racism, and to make a public statement that the university will refrain in the future from funding private defamation lawsuits against its critics.

Yours truly,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

uOttawa

Université d'Ottawa
Cabinet du recteur

University of Ottawa
Office of the President

September 11, 2013

Mr. Joseph Hickey
Executive Director
Ontario Civil Liberties Association
180 Metcalfe Street, Suite 204
Ottawa, ON K2P 1P5

Dear Mr. Hickey,

I am writing in response to your letter dated August 28, 2013 regarding the University of Ottawa's funding of the private defamation suit *St. Lewis v. Rancourt.*

We take note of the concerns outlined by the Ontario Civil Liberties Association and thank you for your input.

Sincerely,

Allan Rock

Allan Rock
President and Vice-Chancellor

613-562-5809
613-562-5103

550 Cumberland (212)
Ottawa ON K1N 6N5 Canada
www.uOttawa.ca

This is **Exhibit "I"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A commissioner for taking affidavits

OCLA

Ontario Civil Liberties Association

Quebec Court of Appeal rewrites law on SLAPP actions

Posted on October 3, 2013 by admin

OCLA believes that strong anti-SLAPP legislation is sorely needed in Ontario, and has signed on in support of Greenpeace's Anti-SLAPP campaign to pass Ontario's Bill 83, Protection of Public Participation Act, 2013.

In this context, it is interesting to observe how SLAPPs are adjudicated in Quebec, the only province that has anti-SLAPP legislation. In 2009, the Quebec Code of Civil Procedure was amended to allow courts to summarily throw out SLAPP actions (Art. 54.1-54.5 C.C.P.).

The present post reports an important recent decision of the Quebec Court of Appeal, issued September 26, that rewrites the law with respect to appeals from interlocutory judgments refusing to dismiss an action pursuant to these provisions, and opens the door for such appeals.

When a party (typically, a vulnerable defendant) brings a motion pursuant to Art. 54.1-54.5 to dismiss an action as "improper," there can be several outcomes: the motion is granted in full and the action is dismissed, the motion is dismissed in full, or the court may craft a unique remedy to address the imbalance of power between the parties. While Art. 26(4.1) provides appeal, with leave, from judgments dismissing an action as being improper, there is no specific provision that would permit an appeal, even with leave, from a judgment dismissing a motion to dismiss an action as improper, brought under Art. 54.1-54.5.

In the past, as a general rule, the Quebec Court of Appeal held that leave to appeal could not be granted from an interlocutory motion dismissing a motion brought under Art. 54.1, because such judgments were held to fall outside the cases listed in Art. 29 (see decisions surveyed in Cooperstock c. United Air Lines Inc., 2013 QCCA 526). In the present case, however, St-Pierre, J.A., who heard the motion for leave to appeal, referred the matter to a three-judge panel.

In this landmark decision, the three-judge panel ruled that interlocutory judgments dismissing a motion brought under Art. 54.1 are of the type that "cannot be remedied by final judgment," fall within the scope of Art. 29(2), and as such, they are appealable with leave:

[13] Notons d'abord qu'il y a appel, sur permission d'un « jugement qui prononce sur la requête en annulation de saisie avant jugement » (art. 26, al. 2 (2)) et en matière d'injonction, suivant la règle générale de 29 (2).	[13] First, we note that there is an appeal, with leave "from any judgment ruling on a motion to quash a seizure before judgment" (art. 26, para. 2 (2)) and in the case of injunctions, following the general rule of 29 (2).
[14] Il doit en être de même de la mesure provisionnelle de 54.1, s'il y	[14] It must be equally true of the provisional measure of 54.1, if

a apparence d'abus.	there is appearance of abuse.
[15] Le législateur a voulu l'intervention du tribunal dès le début de l'instance afin de remédier à l'injustice alors existante, due à l'inégalité des forces respectives des parties en présence. Il a constaté que cette inégalité faussait le processus judiciaire en ce que les frais de défense à encourir et la menace, même peu probable, d'une condamnation à une somme élevée, avait l'effet nocif de faire taire les défendeurs et d'empêcher la participation citoyenne au débat public, essentielle entre autres à la protection de l'environnement.	[15] The legislature intended the court to intervene early in the proceedings to address the then existing injustice due to the imbalance of strengths of the respective parties involved. It noted that this imbalance distorts the judicial process in that the costs incurred by the defense and the threat, even if unlikely, of an award of a high amount of damages, had the adverse effect of silencing defendants and preventing citizen participation in public debate, essential among other reasons for the protection of the environment.
[16] Le seul fait d'intenter une poursuite-bâillon atteint pleinement cet objectif nocif, peu importe le maintien ou le rejet de l'action à la fin du procès, alors que deux ou trois années se seront écoulées.	[16] The mere fact of bringing a SLAPP fully achieves this harmful goal, regardless of the retention or dismissal of the action at the end of the trial, while two or three years have passed.
[17] En ce sens, le jugement final ne pourra remédier à l'effet bâillon créé au départ. D'où la nouvelle législation pour une intervention immédiate du tribunal.	[17] In this sense, the final judgment cannot remedy the original effect of the gag created from the start. Hence, the new legislation for an immediate intervention of the court.

(Unofficial French to English translation)

The September 26, 2013 decision of the Quebec Court of Appeal in Cooperstock c. United Air Lines Inc., 2013 QCCA 1670 is available at: http://canlii.ca/t/g0rbg

The full history of the case, including all pleadings, motions, and decisions, is available online at: http://untied.com/SLAPP/documents.shtml

This entry was posted in anti-SLAPP. Bookmark the permalink.

OCLA

This is **Exhibit "J"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

L Bergau .

A Commissioner for taking affidavits

OCLA
Ontario
Civil Liberties
Association

"The OCLA takes a vigorous and highly principled approach to defending free speech rights, which is an approach that is sorely needed in Canada today."
—John Carpay,
President,
Justice Centre for
Constitutional Freedoms

"I am very pleased to learn of the Ontario Civil Liberties Association, and wish it the greatest success in its work, which could not be more timely and urgent as elementary civil rights, including freedom of speech, are under attack in much of the world, not excluding the more free and democratic societies."
—Noam Chomsky,
Institute Professor, MIT

"Freedom of expression is our most fundamental and most precious freedom. It has been under attack in Canada for years. The Ontario Civil Liberties Association has taken a position on freedom of expression that is both courageous and principled. The OCLA now stands alone and its position should be supported by all Canadians who cherish democracy and freedom."
—Robert Martin,
Professor of Law,
Emeritus,
Western University

ocla.ca

December 5, 2013 By email

The Honourable John Gerretsen
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto ON M7A 2S9

Dear Attorney General,

Re: Bill 83, *Protection of Public Participation Act, 2013*

I am writing to you on behalf of the Ontario Civil Liberties Association (OCLA) in relation to Bill 83, *Protection of Public Participation Act 2013*, also known informally as the "anti-SLAPP bill."

Freedom of expression is one of OCLA's core concerns; our founding principles hold that an individual's societal influence by expression, not structurally derived from the institutional and organizational hierarchy, is an absolute right, irrespective of any personal characteristics such as race, gender, sexual orientation, and social status.

OCLA's position regarding Bill 83, as expressed in this letter, can be summarized as follows:

a) Defamation law in Ontario is fundamentally flawed, beyond what can be fixed by anti-SLAPP legislation;
b) Defamation law in Ontario needs to be transformed or abolished, not legitimized by anti-SLAPP legislation; and
c) Immediate safeguards are needed regarding non-party funding of plaintiffs in defamation suits.

Defamation law in Ontario is fundamentally flawed

The common law of defamation, as it has developed and been implemented in Ontario, is by its nature an affront to freedom of expression because damages are *assumed,* and because damage to society from suppressing free expression is not equitably considered.

This problem was raised by the M.P.P. for Scarborough Southwest, Lorenzo Berardinetti on September 25 in legislative debate on Bill 83 as follows:

"[T]he current law simply presumes that a plaintiff who is defamed suffers harm. What this means is that the plaintiff doesn't need to demonstrate any actual or expected damage as a result of public expression."

Our province's approach to defamation pales when compared with the principles enshrined in the Civil Code of Québec, in which damages must be demonstrated before there is a cause of action, and with U.S. law, in which a plaintiff must prove the falsehood of impugned statements which are made on a subject of public interest, and which gives absolute immunity to statements of opinion [1]. Instead, our defamation laws contain a "reverse onus" that forces the defendant to prove his innocence, an onus which, according to legal researchers, is unreasonably inconsistent with the *Charter* right of free expression [2].

The assumption of general damages to the plaintiff, and the associated assumption of malice on the part of the defendant, have made defamation law in Ontario an instrument that is used to silence spirited public expression and debate; to cut off the "lifeblood of democracy." This is particularly true in our adversarial legal system which allows anonymous funding of litigations, and where judges and juries are human and are thus subject to the dictates of political correctness and societal taboos.

Defamation law in Ontario needs to be transformed or abolished

It is our view that the common law of defamation and its limiting statutes must be reexamined at the most fundamental level, if not abolished as:

(i) superfluous beside existing legal mechanisms to deal with actual damages related to reputation such as the torts of injurious falsehood and conspiracy to do harm; and
(ii) ineffective compared to the individual's most powerful means to defend reputation – that of free expression, comment, and rational and evidence-based response to criticism [3].

The ability to respond to criticism is now more accessible and more democratized than ever before, with the advent of the internet, and the possibility to freely publish blogs and web sites searchable by the public.

We welcome the anti-SLAPP legislation of Bill 83 in that it allows for an up-front evaluation of damages incurred by the plaintiff in a defamation lawsuit, as well as the substance of the plaintiff's complaint and validity of the defendant's defence, within a time limit designed to reduce the pain of litigation for vulnerable parties.

However, it is OCLA's position that Bill 83 is definitively not enough. By their nature, defamation actions allowed in Ontario condone suppression (of expression) practiced by those most inclined to litigate, are fertile grounds for strengthening opinion bias and enshrining the exclusion of taboo language and subjects, and are frontal assaults against the basic human right of freedom of expression and uncensored criticism in society.

Conclusion

We urge you and all Members of Provincial Parliament to not stop at applying the inadequate patch to existing defamation law that Bill 83 represents. Such a patch will legitimize the defamation cause of action rather than move towards its necessary removal. Instead, we urge

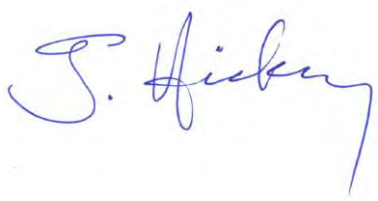
all Ontario lawmakers to use this bill as an opportunity to proceed to a public examination of defamation law at its root in view of making fundamental changes to the law, including removing libel and slander as causes of action in Ontario. It is time for the presumptions of damage and malice in critical expression to be removed from court exercises in our province. There are sufficient torts in the common law which address attacks to reputation without the presumptions of damages and malice.

Immediate safeguards are needed against non-party funding of plaintiffs in defamation lawsuits

Furthermore, Bill 83 does not appear to contain any safeguards against the funding of private defamation lawsuits by government institutions and/or corporations. At the very least, there should be a requirement that a plaintiff disclose his/her non-party sources of funding of the litigation, in order to permit identifying SLAPPs that are advanced by proxy. Bill 83 needs to have a legal test for "SLAPPs by proxy," and needs to identify and include such lawsuits.

Finally, *in all cases* where plaintiffs in defamation lawsuits have non-party funding, any anti-SLAPP legislation should prescribe that the plaintiffs cannot recover costs at any step in the litigation from the defendants, irrespective of any outcome at trial.

Yours sincerely,



Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

Cc: Members of Provincial Parliament
Cc: Canadian Civil Liberties Association

References:

[1] "Canada should reform its antiquated libel laws" by Dan Burnett, available at: http://www.lawyersweekly.ca/index.php?section=article&articleid=371

[2] "Re-thinking the common law of defamation: striking a new balance between freedom of expression and the protection of the individual's reputation" by Carolin Anne Bayer (LL.M. thesis), available at: https://circle.ubc.ca/handle/2429/11633

[3] "Keeping Criticism Honest and Civil" by Professor Mark Mercer, available at: http://www.ccepa.ca/blog/?p=386

This is **Exhibit "K"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Ontario
LEGISLATIVE ASSEMBLY

JOHN R. O'TOOLE, M.P.P.
Durham

Queen's Park Office:
Rm. 320
Main Bldg.
Toronto, Ontario
M7A 1A8
Tel. (416) 325-6745
Fax (416) 325-6255

Constituency Office:
75 King St. E.
Bowmanville, Ontario
L1C 1N4
Tel. 1-800-661-2433
(905) 697-1501
Fax (905) 697-1506

E-mail: john.otooleco@pc.ola.org
www.johnotoolempp.com

December 11, 2013

Joseph Hickey, Executive Director
Ontario Civil Liberties Association
180 Metcalfe Street, Suite 204
Ottawa, Ontario
Canada K2P 1P5

Dear Mr. Hickey:

Thank you for copying me on your letter to the Attorney General, the Hon. John Gerretsen, regarding Bill 83, Protection of Public Participation Act, 2013. I appreciate the added detail you provided on behalf of the Ontario Civil Liberties Association.

You note that the OCA's position is that defamation law in Ontario needs to be transformed or abolished, and not legitimized by anti-SLAPP legislation. In addition, the OCA's position is that immediate safeguards are needed regarding non-party funding of plaintiffs in defamation suits.

Please be assured that your comments will be kept in mind as Bill 83 is further discussed in the Ontario Legislature and among my colleagues in our PC Official Opposition Caucus.

Again, thank you for keeping me informed.

OToole

John R. O'Toole, MPP
Durham

This is **Exhibit "L"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

OCLA

Ontario Civil Liberties Association

OCLA position paper on Bill 83

The tort of defamation must be abolished in Ontario [1]

Bill 83, Protection of Public Participation Act, 2013, is Ontario's proposed legislation to address strategic lawsuits against public participation (SLAPPs). The stated purpose of this bill is to foster free expression by discouraging the use of litigation as a means of silencing expression. Bill 83 is currently before the Ontario Legislature.

OCLA is an organization that vigorously advocates for authentic and unqualified freedom of expression in Ontario, in accordance with the right to free expression enshrined in the Canadian Charter of Rights and Freedoms. OCLA's position, as expressed in our letter to Attorney General John Gerretsen of December 5, 2013, is that Bill 83 is based on faulty common law principles underlying defamation law—principles which, if left intact in the form of the present defamation cause of action, threaten freedom of expression at the most fundamental level.

In the following, we elaborate on the two main problems with Bill 83: it maintains defamation law and it will not protect free expression.

1: Bill 83 does not abolish defamation as a cause of action in Ontario

The common law of defamation has survived from criminal statutes of a past era that were designed to protect nobility from criticism. It is the only common law tort (or cause of action) where damages—actual damage to reputation—and malice (malice of defamation) are assumed, and need not be proven in court. The result is a presumption of guilt—regarding falsity of the expression, malice of the defendant, and damages to the plaintiff—that can only be overturned if the defendant can prove one of the available defences, which are strictly limited and codified.

As such, and given the further explanations below, the tort of defamation (libel and slander) is incompatible with the right to free expression enshrined in the Canadian Charter of Rights and Freedoms and should not have standing in Canada in modern times. Here, OCLA stands with legal scholars who have argued that the presumptions of falsity, malice, and damages should be abolished [2].

Defamation law is structured such that if a complained of criticism, comment, or opinion is ruled by the court to have the tendency to reduce the social reputation of the plaintiff, in the mind of a fictitious "reasonable person", then damage to reputation is assumed and a financial award for damages is due, even in a total absence of evidence of actual damage to reputation (such as: lost fans of an artist, lost

clients of a service provider, lost social connections, loss of employment, fewer invitations to social or business functions, etc.). The criticism complained of is all that is needed to obtain damages. Guilt is automatic, and the only possible defences are strictly limited and codified, carrying the names of “truth”, “privilege”, “fair comment”, and “responsible reporting”. The presumed-guilty party has the onus to prove an allowed defence.

Likewise, with the tort of defamation, a complete absence of actual malice (communication made for an improper purpose other than freedom of expression) on the part of the defendant is irrelevant. The cause of action of defamation holds in the absence of actual malice, which need not be proven by the plaintiff for damages to be due. Again, the only requirement is that the court finds that the comment complained of has the tendency to reduce the social reputation of the plaintiff, in the mind of a fictitious “reasonable person”, in the absence of any evidence other than the words complained of.

These presumptions particular to defamation law have repugnant consequences for freedom of expression. For example, they support the intrinsically fallacious and hypocritical legal exercise that, on the one hand, insults are not by themselves defamation, form is irrelevant before content, and honest vehement opinions are as protected as moderate ones, while on the other hand, language (form) can be evidence for actual malice, which, if proven, defeats all the allowed defences against the tort of defamation.

All of this is exacerbated by the fact that there is no practical need for the tort of defamation because there are other common law torts that sufficiently protect against unjustified attacks to personal reputation, and which correctly require proof of harm and of malice. These include the torts of: malicious falsehood, intentional infliction of mental suffering, conspiracy to harm, and so on.

Furthermore, defamation law is critically flawed by being heavily and structurally biased in favour of those with money and power, both individuals and corporations, including individuals supported by powerful institutions. The most obvious source of bias is that rich individuals are most able to afford litigation, using the most successful lawyers. (A defamation lawsuit can cost $1 million to litigate.) In addition, damages are awarded in proportion to the “value” of the plaintiff’s reputation, as perceived by the judge; rich and powerful individuals are judicially determined to have reputations of high monetary values needing large reparations when found to be damaged.

While Bill 83 superficially acknowledges the structural bias toward powerful parties in that the proposed legislation implicitly acknowledges that SLAPP suits are a problem in Ontario, it does not address the underlying systemic problems with defamation law, and does not take us in the necessary direction toward the removal of the tort of defamation as a cause of action.

There should be no room whatsoever for the tort of defamation in a free and democratic modern society. With such a malleable tool in the hands of human judges and juries, most trials turn out to be exercises in punishing the insolent, protecting the powerful, cooling the mark out, removing the politically incorrect, reinforcing society’s taboos, and gauging establishment postures on the controversies of the day. And those are just the cases that go to trial, and/or are selected for appeals, not the great majority of cases in which the defendants are pressured and intimidated into settlements.

If personal freedom is to have meaning, then communication cannot be suppressed by allowing a legal apparatus—available to anyone with significant financial means—that presumes guilt and punishment of

the communicator. This is especially true with the advent of the internet, which democratizes information and discourse, and greatly facilitates responding to any criticism with rational arguments and evidence.

2: Bill 83 does not protect the societal critics most in need of protection

In addition to condoning the tort of defamation, Bill 83 will not protect the societal critics most in need of protection. The Bill is largely window dressing, showing admirable intentions but without protecting the speech most likely to disturb the status quo.

This can be seen, in the version for second reading, in the two core sections of the proposed legislation, which are the "Order to dismiss" and the "No dismissal" sections (emphasis added):

> Order to dismiss
>
> (3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.
>
> No dismissal
>
> (4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,
>
> (a) there are grounds to believe that,
>
> (i) the proceeding has substantial merit, and
> (ii) the moving party has no valid defence in the proceeding; and
>
> (b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

We see that the statute prevents a defamation lawsuit for expressing an opinion solely if the opinion is deemed by the judge (as a question of law) to "[relate] to a matter of public interest". The judge has discretion to decide the line between "public interest" and "personal interest" deemed to affect solely the parties.

Thus one remains at the mercy of an unframed judicial discretion, where no general and objective test for "public interest" has been devised [3]. For example, it is not considered a matter of public interest a priori that an individual can be sued for his/her honest opinion, that, when sued, he/she is assumed guilty of causing damage to reputation on the sole basis of the expressed opinion, and that he/she has no recourse to any defence if the opinion is not deemed to "relate to a matter of public interest".

The said judicial discretion to allow defamation lawsuits against honest opinions on matters judged to not be of public interest is fundamentally problematic in a free and democratic society that alleges to uphold a supreme law (Canadian Charter of Rights and Freedoms) expressly containing the guaranteed personal freedoms of thought, belief, opinion and expression, as:

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

Continuing, the Bill does appear to propose to dismiss all defamation actions for expressions that relate to matters of public interest, such as criticisms of the banking system, or a CEO's decisions affecting people, or McDonald's greasy food, and so on.

However, the plaintiff can challenge the dismissal by satisfying the conditions outlined in the "No dismissal" section of the Bill. The three conditions in the "No dismissal" section that must be satisfied, in the judge's mind, are:

Condition 1: "The proceeding has substantial merit". For this to be satisfied, the judge need only see a large damage to an important person's reputation—precisely the kind of damage resulting from an effective criticism of an individual with high social status in society. The more the criticism stings and has real impact, the more the "proceeding has substantial merit". How else does one measure merit of a defamation claim?

Indeed, the first condition is best satisfied for exactly those public interest criticisms that most need protection, in terms of their public contribution to challenge the status quo.

Condition 2: "The moving party has no valid defence in the proceeding". Now wait a minute. Normally, the whole idea of anti-SLAPP legislation is supposed to be that you don't need to rely on the codified common law defences of "truth", "privilege", "fair comment", and "responsible journalism", because it is recognized that asymmetry of resources in lawsuits against public expression is simply unacceptable. But Bill 83 expressly does not recognize this principle, by virtue of its section "(4)(a)(ii)" (Condition 2).

Only the onus to establish an allowed defence has been shifted. In the common law of defamation the defendant must make his defence, whereas, under Bill 83, the plaintiff must prove that the defendant has no defence. But, in the mind of a judge, either the defence is legally valid or it is not, so the distinction regarding onus is somewhat academic.

Furthermore, in many (most) cases of compelling and ardent criticism, even the onus to secure an allowed limited defence has not in practice been shifted in Bill 83 compared to the common law. This is because one general way to invalidate any defamation defence is to prove actual malice, but, in attempting to establish such a proof of actual malice in the common law, it is always the plaintiff that has the onus to prove actual malice sufficient to dismiss an allowed defence against defamation [4].

Therefore, in practice, the second condition amounts to having the full defamation trial, virtually under the same common law tests as usual, except for the moderate advantage that the moving party (defendant) chooses when to bring the motion to dismiss, which can provide a tactical advantage, such as

regarding available evidence at the time of the motion, and so on.

Overall, however, in the motion to dismiss contemplated in Bill 83, the judge will use the same judgement as he would under the common law regime. Those criticisms most in need of protection, which have the greatest impact in challenging the authority of the status quo—of the dominant establishment views—will be most likely to be found to have "no valid defence". Malice is most easily perceived by a judge's mind when it comes to challenging the established order of ideas, attitudes, and power. There is no lack of sociological studies establishing the role of the courts in conservatively protecting the status quo. In one of the most deplorable and self-serving features of the common law of defamation, the defamatory criticism itself can be used as evidence for express malice, a malice which negates all defences.

Condition 3: "The harm … suffered … is sufficiently serious that … outweighs the public interest in protecting that expression." This, unfortunately, is exactly the kind of legal gymnastics that already opposes (i.e., "balances") the expressly guaranteed Charter freedom of expression, and the "right", in the common law of defamation, to protect one's reputation without having to prove damage to reputation. Unfortunately, the battle ("balance") between the fundamental freedom of expression and the protection of the individual's reputation is being lost in Canada; for example, with a Supreme Court decision that aspects of the common law of defamation already strike the correct balance, despite the advent of the Charter of Rights and Freedoms [5]. Thus, the incompatible inconsistency between the common law of defamation and the guaranteed Charter freedom of expression would best be redressed by corrective statute that goes to the heart of the issue, unlike Bill 83, which preserves and relies on the deleterious characteristics of the common law of defamation.

Any new statute, such as Bill 83, should move towards adopting the Charter guarantee of freedom of expression as an actual guaranteed freedom, rather than acquiescing to Supreme Court decisions that preserve the common law of defamation in the post-Charter era. We already know how Canadian judges too often deal with the said "balance": the greater the perceived harm to the important person's (corporation's) reputation, the more that perceived harm "outweighs the public interest in protecting that expression". Thus, exactly the speech that most needs protection in a democratic society is the speech that is suppressed and punished.

Bill 83, judging from this draft for second reading, will not protect the speech most in need of protection, but it will offer up a bonanza for defamation lawyers, who will have an entire new and expensive legal process before settlement or trial. There could well be increased costs in judicial resources, not savings, and as many high-profile defamation cases that go to trial as ever.

Conclusion

Bill 83 is a statutory re-mix of the common law of defamation that fails to eliminate legal mechanisms that unjustly suppress free expression. It does not introduce a test for SLAPPs. It does not protect the most effective communicators from the common law of defamation. It does not address asymmetry of arms in defamation litigation. It does not bring transparency and accountability to non-party funding of defamation lawsuits. It does not provide a stronger recognition of the express guaranteed freedom of opinion and expression contained in the Canadian Charter of Rights and Freedoms.

The recent "Noir Canada" saga is a well-documented example of what will happen, in cases most in need of protection. The case spurred the rapid development of actual anti-SLAPP legislation in Quebec. The

defendants then won a SLAPP determination, but the stress of litigation caused them to collapse nonetheless—the book was retracted and cannot be published.

OCLA urges Ontario legislators not to further enshrine the common law of defamation—which is antithetical to a free and democratic society of equal citizens—but to instead take the opportunity of the widespread interest in Bill 83 to conduct a thorough public examination of defamation law, its pernicious impact on freedom of expression, and its deleterious impact on our society.

Endnotes

[1] Requested by OCLA, based on research and a first draft report prepared by Dr. Denis G. Rancourt for OCLA. January 2014.

[2] Bayer proposes that the plaintiff should be required to prove that the words complained of are false, did indeed cause damage to reputation, and that the defendant acted with actual malice or negligence: Carolin Anne Bayer, Re-thinking the common law of defamation: Striking a new balance between freedom of expression and the protection of the individual's reputation, thesis, Master of Laws, University of British Columbia, 2001. See also: Hilary Young, "But names don't necessarily hurt me: Considering the effect of disparaging statements on reputation", Queen's Law Journal, 37:1, 2011.

[3] Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 SCR 640, at para. 103

[4] Note: Defamatory malice is assumed, actual malice to defeat a limited defence must be proven; such is one of many illogical contortions in the common law of defamation, which by original design assumes guilt of inflicting damage to reputation.

[5] Hill v. Church of Scientology of Toronto, 1995 CanLII 59 (SCC), [1995] 2 SCR 1130, at para. 208.

This is **Exhibit "M"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Joseph Hickey - OCLA

From: MacLaren, Jack [jack.maclaren@pc.ola.org]
Sent: January 22, 2014 8:56 AM
To: 'joseph.hickey@ocla.ca'
Subject: RE: OCLA's repot on Bill 83, Protection of Public Participation Act, 2013

Good morning Mr. Hickey,

Thank you for providing us with OCLA's excellent analysis, including your previous letter to the Attorney General, dated December 5, 2013 with respect to Bill 83. MPP MacLaren is very interested in this issue, particularly the absence of safeguards against non-party funding of plaintiffs in defamation lawsuits.

Your position paper has clarified the issues with Bill 83 very elegantly.

Yours in liberty,

Jessica

Jessica Lauren Annis, BURPl, MCIP, RPP
Executive Assistant
Office of Jack MacLaren
MPP Carleton-Mississippi Mills
PC Critic for Democratic & Senate Reform
Room 421, Queen's Park
Phone: (416) 314-7900
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Web: www.jackmaclarenmpp.com

From: Joseph Hickey - OCLA [mailto:joseph.hickey@ocla.ca]
Sent: Tuesday, January 21, 2014 5:58 PM
To: lalbanese.mpp@liberal.ola.org; tarmstrong-qp@ndp.on.ca; Arnott, Ted; Bailey, Bob; bbalkissoon.mpp@liberal.ola.org; Barrett, Toby; rbartolucci.mpp@liberal.ola.org; lberardinetti.mpp@liberal.ola.org; gbisson-qp@ndp.on.ca; jbradley.mpp@liberal.ola.org; scampbell-qp@ndp.on.ca; dcansfield.mpp@liberal.ola.org; mchan.mpp@liberal.ola.org; bob@bobchiarelli.com; Chudleigh, Ted; Clark, Steve; mcolle.mpp@liberal.ola.org; mcoteau.mpp@liberal.ola.org; gcrack.mpp@liberal.ola.org; ddamerla.mpp@liberal.ola.org; bdelaney.mpp@liberal.ola.org; sdelduca.mpp.co@liberal.ola.org; vdhillon.mpp.co@liberal.ola.org; jdickson.mpp.co@liberal.ola.org; dinovoc-qp@ndp.on.ca; bduguid.mpp@liberal.ola.org; Dunlop, Garfield; Elliott, Christine; Fedeli, Vic; catherinefife@on.ndp.ca; kflynn.mpp@liberal.ola.org; cforster-qp@ndp.on.ca; jfraser.mpp.co@liberal.ola.org; fgelinas-qp@ndp.on.ca; jgerretsen.mpp@liberal.ola.org; mgravelle.mpp@liberal.ola.org; Hardeman, Ernie; Harris, Michael; phatfield-qp@ndp.on.ca; Hillier-co, Randy; Holyday, Doug; ahorwath-qp@ndp.on.ca; ehoskins.mpp.qp@liberal.ola.org; tim.hudakqp@pc.ola.org; Jackson, Rod; hjaczek.mpp@liberal.ola.org; ljeffrey.mpp.qp@liberal.ola.org; Jones, Sylvia; Klees, Frank; mkwinter.mpp@liberal.ola.org; jleal.mpp.qp@liberal.ola.org; Leone, Rob; dlevac.mpp@liberal.ola.org; tmaccharles.mpp.qp@liberal.ola.org; MacLaren, Jack; MacLeod, Lisa; amangat.mpp.co@liberal.ola.org; mmantha-qp@ndp.on.ca; rmarchese-qp@ndp.on.ca; dmatthews.mpp@liberal.ola.org; bmauro.mpp.co@liberal.ola.org; McDonell, Jim; McKenna, Jane; tmcmeekin.mpp@liberal.ola.org; McNaughton, Monte; pmcneely.mpp@liberal.ola.org; mmeilleur.mpp.co@liberal.ola.org; Miller, Norm; pmiller-co@ndp.on.ca; Milligan, Rob; jmilloy.mpp.co@liberal.ola.org; rmoridi.mpp@liberal.ola.org; Munro, Julia; gmurray.mpp.co@liberal.ola.org; ynaqvi.mpp.co@liberal.ola.org; tnatyshak-qp@ndp.on.ca; Nicholls, Rick; dorazietti.mpp@liberal.ola.org; O'Toole-CO, John; Ouellette, Jerry; Pettapiece, Randy; tpiruzza.mpp.co@liberal.ola.org; mprue-qp@ndp.on.ca; sqaadri.mpp.co@liberal.ola.org; lsandals.mpp@liberal.ola.org; psattler-qp@ndp.on.ca; jschein-qp@ndp.on.ca; Scott, Laurie; msergio.mpp@liberal.ola.org; peter.shurman@pc.ola.org;

jsingh-qp@ndp.on.ca; Smith, Todd; csousa.mpp@liberal.ola.org; tabunsp-qp@ndp.on.ca; htakhar.mpp@liberal.ola.org; mtaylor-qp@ndp.on.ca; Thompson, Lisa; jvanthof-qp@ndp.on.ca; Walker, Bill; Wilson-CO, Jim; kwynne.mpp@liberal.ola.org; Yakabuski, John; Yurek, Jeff; dzimmer.mpp@liberal.ola.org
Subject: OCLA's repot on Bill 83, Protection of Public Participation Act, 2013

Dear Member of Provincial Parliament,

Further to OCLA's letter to the Attorney General of Ontario of December 5, 2013, please find OCLA's position paper on Bill 83, *Protection of Public Participation Act, 2013* at the following link: http://ocla.ca/report-bill-83/

We argue that Bill 83 is a statutory re-mix of the common law of defamation that fails to eliminate legal mechanisms that unjustly suppress free expression, does not introduce a test for SLAPPs, does not protect the most effective communicators from the common law of defamation, does not address asymmetry of arms in defamation litigation, does not bring transparency and accountability to non-party funding of defamation lawsuits, and does not provide a stronger recognition of the express guaranteed freedom of opinion and expression contained in the *Canadian Charter of Rights and Freedoms*.

We urge Ontario legislators not to further enshrine defamation law by passing Bill 83, but rather to take the opportunity of the widespread interest in this bill to conduct a thorough public examination of defamation law, its pernicious impact on freedom of expression, and its deleterious impact on our society.

Yours truly,

Joseph Hickey
Executive Director
Ontario Civil Liberties Association (OCLA) http://www.ocla.ca
613-252-6148 (c)
joseph.hickey@ocla.ca

This is **Exhibit "N"**

to the Affidavit of Joseph Hickey,

affirmed before me at the City of Ottawa this

5 day of February, 2014

A Commissioner for taking affidavits

Stand up for freedom of expression and environmental advocacy

Please express your support and the call for nationwide anti-SLAPP legislation by signing onto this statement.

"We believe in the right of organizations and activists to participate publicly and to engage in public advocacy without fear of legal harassment. We believe that corporations and governments should not abuse the courts with the aim of limiting criticism of their operations.

Strategic Lawsuits against Public Participation (SLAPPs) are lawsuits, often for defamation, with the main objective of silencing individuals and citizen groups. SLAPPs are generally meritless lawsuits with the aim of burdening citizens and organizations with large litigation costs and stress, while distracting them from their primary work. As a result, these citizens and organizations are often coerced into curtailing their engagement in public advocacy.

These types of lawsuits threaten the public ability to participate in free democratic processes. Activities that attract SLAPPs include citizens reporting of environmental violations, filing complaints with government agencies, contacting the media, speaking at public meetings, participating at hearings before administrative tribunals or engaging in public campaigns. We believe, this legal tactic is a growing threat to meaningful citizen participation.

Due to the fear of facing a SLAPP, other individuals and organizations are also likely to be deterred from participating on the same or other issues of public interest, resulting in a chilling effect. A majority (28) of U.S. States and the province of Quebec have already acted with legislation to address this threat.

We denounce any attempt by corporations to bring abusive lawsuits with the aim of limiting freedom of expression, as well as environmental and other forms of advocacy.

We urge the Ontario government, and other provincial and federal governments in Canada, to swiftly enact legislation that would prevent SLAPPs from being used to limit freedom of expression and public participation."

List of supporting organizations:

117. Ontario Civil Liberties Association
118. Ontario No Kill Advocates for Companion Animals
119. Organisme de récupération anti pauvreté de l'Érable
120. Partenariat jeunesse pour le développement durable
121. PEN Canada
122. PIPE UP Network
123. Polaris Institute
124. Projet ÉCOSPHÈRE
125. Protec-Terre
126. Rainforest Action Network
127. Regenerative Education Action & Leadership Cooperative (REAL)
128. Regina Public Interest Research Group
129. Regroupement national des

How will this statement be used?

On 18 September 2013, a letter with the list of supporting organizations was submitted to all Ontario government MPPs. We will continue to periodically blog and highlight the number and names of organizations that are supporting Greenpeace's right to publicly participate and express its opinion on forest issues in Canada without fear of a lawsuit.

Take action: Ask Premier Wynne to keep her promise to protect free speech in Ontario!

Learn what a SLAPP suit is and how it's used to silence enviornmentalists :

MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER, ONTARIO CIVIL LIBERTIES ASSOCIATION (OCLA)

Part I – Statement of Facts

A. Overview

1. The application for leave to appeal of Dr. Denis Rancourt (Court File No. 35676) raises the issue of the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged. Furthermore, this application raises the issue of whether an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

2. The question of the propriety of non-party funding in a defamation lawsuit is at the heart of societal and legislative debate in Canada regarding the interaction of the *Charter* right to free expression and protection of reputation.

3. OCLA wishes to intervene, in order to contribute its unique experience as an active participant in the said societal debate, to assist the Court in making its determination whether or not to grant leave to appeal.

B. The Proposed Intervener: OCLA

4. Formed in September 2012, OCLA is a nascent provincial organization that promotes the observance of fundamental human rights and civil liberties. In addition to these core values, OCLA promotes a broad interpretation of the freedom of thought, belief, opinion, expression, and the press.[1]

5. OCLA is engaged in the present legislative debate in Ontario concerning the interaction of freedom of expression and protection of reputation, including via correspondence with Official Opposition members of Ontario's provincial parliament regarding Ontario's Bill 83, *Protection of Public Participation Act, 2013*.[2]

[1] Hickey Affidavit, ¶¶3-8.
[2] Hickey Affidavit, ¶¶9-10.

PART II – Question in Issue

6. Should OCLA be granted leave to intervene in the application for leave to appeal?

PART III – Argument

A. The Test for Leave to Intervene

7. A prospective intervener must demonstrate: (i) a real interest; and (ii) useful submissions that will be argued from different perspectives than the other parties.[3] Under this test, this Court has welcomed interveners in constitutional cases, which "affect people far beyond the immediate dispute," allowing interveners to play "an important role in presenting the court with the perspectives it needs in order to make fully-informed decisions."[4]

B. OCLA is Interested in this Application for Leave to Appeal

8. The standard for "interest" is flexible. Any interest in an appeal is sufficient, subject always to the Court's discretion.[5]

9. OCLA is interested in this application for leave to appeal because OCLA is engaged in the ongoing societal and legislative debate surrounding the non-party funding in defamation lawsuits in which the *Charter* right to free expression is engaged, and because the issues raised in this application have significant implications for defendants in defamation lawsuits in which the plaintiff is funded by a publicly-funded institution or another non-party, and in which full disclosure about propriety of the funding may be frustrated by decisions tainted with positive bias towards the funder.

---

[3] *Reference re Workers' Compensation Act, 1983 (Nfld.)*, [1989] 2 S.C.R. 335 ¶8, Sopinka J.
[4] John Sopinka and Mark A. Gelowitz, *The Conduct of an Appeal* (2nd ed., 2000), p. 255.
[5] *Reference re Workers' Compensation Act, 1983 (Nfld.)*, [1989] 2 S.C.R. 335 ¶¶ 10-11, Sopinka J.; *R v. Finta*, [1993] 1 S.C.R. 1138, ¶5, McLachlin, J. (as she was then).

C. OCLA Brings a Useful and Different Perspective to this Application for Leave to Appeal

(i) A Fresh Perspective

10. Intervener status is granted when an applicant can "present argument from a different perspective with respect to some of the issues" raised.[6] An intervention is "welcomed if the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue."[7]

11. OCLA will bring a useful and distinct perspective to this application for leave to appeal. At its core, this leave to appeal concerns the propriety of non-party funding in a defamation lawsuit, in which the *Charter* right to free expression is engaged. OCLA would bring the much needed broader perspective, representing the interests of Ontario litigants in general, and in particular, regarding the *Charter* free expression rights of defendants in defamation lawsuits in which the private plaintiff's fees are financed by publicly-funded non-parties.

(ii) History of Involvement

12. The criterion of useful submissions is "easily satisfied by an applicant who has a history of involvement in the issue giving the applicant an expertise which can shed a fresh light or provide new information on the matter."[8]

13. OCLA was founded in September 2012, and since its public launch event in January 2013, it has publicly addressed a number of freedom of expression and civil liberties matters.[9]

14. OCLA has a record of engagement in the societal and legislative debate surrounding the interaction of freedom of expression and protection of reputation, in particular in the issue of non-party funding of defamation lawsuits.[10]

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[6] *Norberg v. Wynrib*, [1992] 2 S.C.R. 224, ¶3, Sopinka J.
[7] *Reference re Workers' Compensation Act, 1983 (Nfld.)*, [1989] 2 S.C.R. 335, ¶12, Sopinka J.
[8] *Id.*
[9] Hickey Affidavit, ¶¶3-8.
[10] Hickey Affidavit, ¶¶9-10.

D. An Outline of the Proposed Submissions of OCLA

15. OCLA proposes to address the national importance of the issue of the propriety of non-party funding by a public institution in a defamation lawsuit, where the *Charter* right to free expression is engaged and, in particular, the national importance of this issue in a case in which an appearance of judicial bias prevented full disclosure of evidence about the non-party funding.

16. There currently exists in Canada active societal and legislative debate surrounding the interaction of freedom of expression and protection of reputation. For example:

    a. Legislation preventing Strategic Lawsuits Against Public Participation ("SLAPPs") has been implemented or proposed in British Columbia, Quebec, and Ontario;

    b. Ontario's Bill 83, *Protection of Public Participation Act, 2013*, currently before the Legislative Assembly of Ontario, aims to foster free expression by discouraging the use of litigation as a means of silencing expression on issues of public interest;[11]

    c. As part of a campaign initiated by Greenpeace Canada, 140 advocacy groups have called on the Legislative Assembly of Ontario to implement Bill 83. OCLA is a signatory to the Greenpeace petition.[12]

17. The propriety of non-party funding of the plaintiff's legal fees in a defamation lawsuit is an integral issue in the ongoing legislative debate in Ontario, as is indicated by the letter received by OCLA from Mr. John O'Toole, Official Opposition member of Ontario's provincial parliament,[13] and by the email received by OCLA from the office of Mr. Jack MacLaren, also a member of Ontario's Official Opposition.[14]

18. The issue of the propriety of non-party funding in a defamation lawsuit is of national importance because it is an integral issue in legislative debate in Ontario surrounding

[11] Bill 83, *Protection of Public Participation Act, 2013*, (see part VII).
[12] Hickey Affidavit, Tab 2-N.
[13] Hickey Affidavit, Tab 2-K.
[14] Hickey Affidavit, Tab 2-M.

anti-SLAPP legislation, which is a matter of major importance in Canada's three largest provinces: Ontario, Quebec, and British Columbia.

19. Leave to appeal should be granted in the instant application because the issue of the propriety of non-party funding in a defamation lawsuit, which is of national importance, could not be properly determined by the Court of Appeal for Ontario in the instant case. This is because a judge's appearance of bias tainted decisions at the lower court that denied full disclosure of evidence regarding the non-party funding to the defendant.

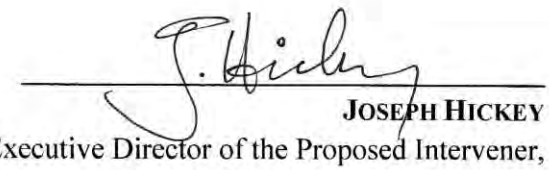
PART IV – Costs

20. OCLA will not seek costs in this matter and asks that costs not be awarded against it in this motion or in the leave to appeal application if leave to intervene is granted.

PART V – Order Sought

21. OCLA respectfully seeks an order granting it leave to intervene in this leave to appeal application and file a factum not exceeding 20 pages.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 10th day of February, 2014.



JOSEPH HICKEY
Executive Director of the Proposed Intervener,
Ontario Civil Liberties Association

Part VI – Table of Authorities

Cases	**Para. No.**
Norberg v. Wynrib, [1992] 2 S.C.R. 224	10
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Part VII – Proposed Legislation

Bill 83, *Protection of Public Participation Act, 2013*

2ND SESSION, 40TH LEGISLATURE, ONTARIO
62 ELIZABETH II, 2013

Bill 83

An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest

The Hon. J. Gerretsen
Attorney General

Government Bill

1st Reading	June 4, 2013
2nd Reading	
3rd Reading	
Royal Assent	

Printed by the Legislative Assembly of Ontario

2e SESSION, 40e LÉGISLATURE, ONTARIO
62 ELIZABETH II, 2013

Projet de loi 83

Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public

L'honorable J. Gerretsen
Procureur général

Projet de loi du gouvernement

1re lecture	4 juin 2013
2e lecture	
3e lecture	
Sanction royale	

Imprimé par l'Assemblée législative de l'Ontario

EXPLANATORY NOTE

The Bill amends the *Courts of Justice Act* to add sections 137.1 to 137.5, which create a process for getting a proceeding against a person dismissed if it is shown that the proceeding arises from an expression made by the person that relates to a matter of public interest (section 2 of the Bill). Subsection 137.1 (1) sets out the purposes of the new sections.

Under subsection 137.1 (3), a person against whom a proceeding is brought may bring a motion to get the proceeding dismissed on the basis that the proceeding arises from an expression made by the person that relates to a matter of public interest (subsection 137.1 (2) defines "expression" for the purposes of section 137.1). If the judge hearing the motion is satisfied of this, he or she must dismiss the proceeding unless the party who brought the proceeding satisfies the judge that the proceeding should not be dismissed because the conditions in subsection 137.1 (4) are met. These conditions include that there are grounds to believe that the proceeding has substantial merit and that the person against whom the proceeding was brought has no valid defence in the proceeding. Once a motion under section 137.1 is brought, no further steps may be taken in the proceeding until the motion is finally disposed of (subsection 137.1 (5)). Section 137.1 also sets out restrictions on amending pleadings in the proceeding (subsection (6)) and sets out rules for awards of costs and damages on the motion to dismiss (subsections (7), (8) and (9)).

Section 137.2 deals with various procedural aspects of the motion to dismiss under section 137.1. These include that the motion may be brought at any time after the proceeding to which it relates has commenced (subsection (1)); that the motion must be heard within 60 days (subsection (2)); and that cross-examination on documentary evidence is limited to one day for each party, unless a judge orders otherwise (subsections (4) and (5)).

An appeal of a motion under section 137.1 must be heard as soon as practicable (section 137.3). Section 1 of the Bill re-enacts clause 19 (1) (a) of the Act to provide for appeals of motions made under section 137.1 to be heard by the Court of Appeal.

Section 137.4 creates a process by which a person who brought a motion under section 137.1 can have a tribunal proceeding automatically stayed if he or she believes that the tribunal proceeding is related to the same matter of public interest that he or she alleges is the basis of the proceeding that is the subject of his or her motion under section 137.1. The stay remains in effect until the motion under section 137.1 is finally disposed of (subsection (3)); however, a judge may, on motion, order that it be lifted earlier if one of the conditions in subsection 137.4 (4) is met.

Section 137.5 specifies that sections 137.1 to 137.4 apply to a proceeding even if it was commenced before the day that section 2 of the Bill comes into force.

The Bill also amends the *Libel and Slander Act* to add section 25, which states that any qualified privilege that applies in respect of an oral or written communication on a matter of public interest between two or more persons who have a direct interest in the matter applies regardless of whether the communication is witnessed or reported on by media representatives or other persons (section 3 of the Bill).

Finally, the Bill amends section 17.1 of the *Statutory Powers Procedure Act* to provide that submissions for a costs order in a proceeding must be made in writing, unless a tribunal deter-

NOTE EXPLICATIVE

Le projet de loi modifie la *Loi sur les tribunaux judiciaires* pour ajouter les articles 137.1 à 137.5, lesquels créent une procédure pour obtenir le rejet d'une instance introduite contre une personne s'il est démontré que l'instance découle du fait de l'expression de la personne relativement à une affaire d'intérêt public (article 2 du projet de loi). Le paragraphe 137.1 (1) énonce les objets de ces nouveaux articles.

Le nouveau paragraphe 137.1 (3) prévoit que la personne contre qui une instance est introduite peut présenter une motion pour faire rejeter l'instance pour le motif que celle-ci découle de l'expression de la personne relativement à une affaire d'intérêt public (le paragraphe 137.1 (2) définit «expression» pour l'application de l'article 137.1). Si le juge qui entend la motion est convaincu du motif invoqué, il doit rejeter l'instance, sauf si la partie qui l'a introduite le convainc que celle-ci ne devrait pas être rejetée du fait que les conditions du paragraphe 137.1 (4) sont remplies. Ces conditions comprennent notamment le fait qu'il existe des motifs de croire que le bien-fondé de l'instance est substantiel et que la personne contre qui celle-ci a été introduite n'a pas de défense valable dans l'instance. Une fois qu'une motion a été présentée en vertu de l'article 137.1, aucune autre étape ne peut être commencée dans l'instance tant qu'il n'a pas été statué de façon définitive sur la motion (paragraphe 137.1 (5)). De plus, l'article 137.1 énonce les restrictions relatives à la modification des actes de procédure (paragraphe (6)) et les règles applicables à l'adjudication des dépens et des dommages-intérêts afférents à la motion en rejet (paragraphes (7), (8) et (9)).

L'article 137.2 porte sur divers aspects de la procédure applicable à la motion en rejet prévue à l'article 137.1. Ces aspects comprennent, entre autres, le fait que la motion peut être présentée à n'importe quel moment après l'introduction de l'instance à laquelle elle se rapporte (paragraphe (1)); que l'audience sur la motion doit être tenue dans les 60 jours (paragraphe (2)); enfin, que le contre-interrogatoire sur tout élément de preuve documentaire est limité à une journée pour chaque partie, sauf ordonnance contraire d'un juge (paragraphes (4) et (5)).

L'appel d'une motion prévue à l'article 137.1 doit être entendu dès qu'il est matériellement possible de le faire (article 137.3). L'article 1 du projet de loi réédicte l'alinéa 19 (1) a) de la Loi pour prévoir que les appels des motions présentées en vertu de l'article 137.1 sont interjetés devant la Cour d'appel.

L'article 137.4 crée une procédure permettant à la personne qui a présenté une motion en vertu de l'article 137.1 d'obtenir la suspension automatique d'une instance devant un tribunal administratif si elle croit que celle-ci se rapporte à la même affaire d'intérêt public qui, selon elle, serait le fondement de l'instance faisant l'objet de sa motion visée à l'article 137.1. La suspension demeure en vigueur tant qu'il n'a pas été statué de façon définitive sur la motion visée à l'article 137.1 (paragraphe (3)); cependant, un juge peut, sur motion, ordonner la levée de la suspension à une date antérieure si une des conditions visées au paragraphe 137.4 (4) est remplie.

L'article 137.5 précise que les articles 137.1 à 137.4 s'appliquent à une instance, même si celle-ci a été introduite avant le jour de l'entrée en vigueur de l'article 2 du projet de loi.

Le projet de loi modifie aussi la *Loi sur la diffamation* pour ajouter l'article 25, lequel énonce que l'immunité relative qui s'applique à l'égard d'une communication verbale ou écrite portant sur une affaire d'intérêt public entre deux personnes ou plus qui ont un intérêt direct dans l'affaire s'applique, que des représentants des médias ou d'autres personnes soient témoins de la communication ou en fassent état (article 3 du projet de loi).

Enfin, le projet de loi modifie l'article 17.1 de la *Loi sur l'exercice des compétences légales* pour prévoir que les observations relatives à une ordonnance d'adjudication des dépens de-

mines that to do so is likely to cause a party to the proceeding significant prejudice. In addition, three spent subsections in that section are repealed (section 4 of the Bill).

vant être rendue dans une instance doivent être présentées par écrit, sauf si un tribunal administratif décide que cela causera vraisemblablement un préjudice considérable à une partie à l'instance. De plus, trois paragraphes périmés de cet article sont abrogés (article 4 du projet de loi).

Bill 83 **2013**

An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see the Table of Consolidated Public Statutes – Detailed Legislative History at www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

COURTS OF JUSTICE ACT

1. Clause 19 (1) (a) of the *Courts of Justice Act* is repealed and the following substituted:

(a) a final order of a judge of the Superior Court of Justice that is described in subsection (1.1) or (1.2), other than an order made under section 137.1;

2. The Act is amended by adding the following sections:

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate

Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

(a) to encourage individuals to express themselves on matters of public interest;

(b) to promote broad participation in debates on matters of public interest;

(c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and

(d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

Definition, "expression"

(2) In this section,

Projet de loi 83 **2013**

Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public

Remarque : La présente loi modifie ou abroge plus d'une loi. L'historique législatif de ces lois figure aux pages pertinentes de l'Historique législatif détaillé des lois d'intérêt public codifiées sur le site www.lois-en-ligne.gouv.on.ca.

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

LOI SUR LES TRIBUNAUX JUDICIAIRES

1. L'alinéa 19 (1) a) de la *Loi sur les tribunaux judiciaires* est abrogé et remplacé par ce qui suit :

a) d'une ordonnance définitive d'un juge de la Cour supérieure de justice qui est visée au paragraphe (1.1) ou (1.2), à l'exclusion d'une ordonnance rendue au titre de l'article 137.1;

2. La Loi est modifiée par adjonction des articles suivants :

PRÉVENTION DES INSTANCES LIMITANT LA LIBERTÉ D'EXPRESSION SUR DES AFFAIRES D'INTÉRÊT PUBLIC (POURSUITES-BÂILLONS)

Rejet d'une instance limitant les débats

Objets

137.1 (1) Les objets du présent article et des articles 137.2 à 137.5 sont les suivants :

a) encourager les particuliers à s'exprimer sur des affaires d'intérêt public;

b) favoriser une forte participation aux débats sur des affaires d'intérêt public;

c) décourager le recours aux tribunaux comme moyen de limiter indûment l'expression sur des affaires d'intérêt public;

d) réduire le risque que la participation du public aux débats sur des affaires d'intérêt public ne soit entravée par crainte d'une action en justice.

Définition du terme «expression»

(2) La définition qui suit s'applique au présent article.

"expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

«expression» Toute communication, que celle-ci soit faite verbalement ou non, qu'elle soit faite en public ou en privé et qu'elle s'adresse ou non à une personne ou à une entité.

Order to dismiss

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

Ordonnance de rejet

(3) Sur motion d'une personne contre qui une instance est introduite, un juge, sous réserve du paragraphe (4), rejette l'instance si la personne le convainc que l'instance découle du fait de l'expression de la personne relativement à une affaire d'intérêt public.

No dismissal

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

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

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

Absence de rejet

(4) Un juge ne doit pas rejeter une instance en application du paragraphe (3) si la partie intimée le convainc de ce qui suit :

a) il existe des motifs de croire :

(i) d'une part, que le bien-fondé de l'instance est substantiel,

(ii) d'autre part, que l'auteur de la motion n'a pas de défense valable dans l'instance;

b) le préjudice que la partie intimée subit ou a subi vraisemblablement du fait de l'expression de l'auteur de la motion est suffisamment grave pour que l'intérêt public à permettre la poursuite de l'instance l'emporte sur l'intérêt public à protéger cette expression.

No further steps in proceeding

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of.

Suspension des autres étapes de l'instance

(5) Une fois qu'une motion est présentée en vertu du présent article, aucune autre étape ne peut être commencée dans l'instance par l'une ou l'autre partie tant qu'il n'a pas été statué de façon définitive sur la motion, y compris tout appel de celle-ci.

No amendment to pleadings

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding.

Aucune modification des actes de procédure

(6) Sauf ordonnance contraire d'un juge, la partie intimée ne doit pas être autorisée à modifier ses actes de procédure dans l'instance :

a) soit afin d'empêcher ou d'éviter qu'une ordonnance rejetant l'instance ne soit rendue en application du présent article;

b) soit, si l'instance est rejetée en application du présent article, afin de poursuivre l'instance.

Costs on dismissal

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

Dépens en cas de rejet

(7) Si un juge rejette une instance en vertu du présent article, l'auteur de la motion a droit aux dépens afférents à la motion et à l'instance sur une base d'indemnisation intégrale, sauf si le juge décide que l'adjudication de ces dépens n'est pas appropriée dans les circonstances.

Costs if motion to dismiss denied

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

Dépens en cas de refus de la motion en rejet

(8) Si un juge ne rejette pas une instance en application du présent article, la partie intimée n'a pas droit aux dépens afférents à la motion, sauf si le juge décide que l'adjudication de ces dépens est appropriée dans les circonstances.

Damages

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate.

Procedural matters

Commencement

137.2 (1) A motion to dismiss a proceeding under section 137.1 shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced.

Motion to be heard within 60 days

(2) A motion under section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court.

Hearing date to be obtained in advance

(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served.

Limit on cross-examinations

(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall be limited to one day for each party.

Same, extension of time

(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice.

Appeal to be heard as soon as practicable

137.3 An appeal of an order under section 137.1 shall be heard as soon as practicable after the appellant perfects the appeal.

Stay of related tribunal proceeding

137.4 (1) If the responding party has begun a proceeding before a tribunal, within the meaning of the *Statutory Powers Procedure Act*, and the moving party believes that the proceeding relates to the same matter of public interest that the moving party alleges is the basis of the proceeding that is the subject of his or her motion under section 137.1, the moving party may file with the tribunal a copy of the notice of the motion that was filed with the court and, on its filing, the tribunal proceeding is deemed to have been stayed by the tribunal.

Notice

(2) The tribunal shall give to each party to a tribunal proceeding stayed under subsection (1),

(a) notice of the stay; and

(b) a copy of the notice of motion that was filed with the tribunal.

Dommages-intérêts

(9) Lorsqu'il rejette une instance en application du présent article, le juge qui conclut que la partie intimée a introduit l'instance de mauvaise foi ou à une fin illégitime peut accorder à l'auteur de la motion les dommages-intérêts qu'il estime appropriés.

Questions procédurales

Introduction

137.2 (1) Une motion en rejet d'une instance visée à l'article 137.1 est présentée conformément aux règles de pratique, sous réserve des règles énoncées au présent article. Sa présentation peut se faire à n'importe quel moment après l'introduction de l'instance.

Motion entendue dans les 60 jours

(2) Une motion visée à l'article 137.1 est entendue au plus tard 60 jours après le dépôt de l'avis de motion auprès du tribunal.

Obtention préalable de la date d'audience

(3) L'auteur de la motion obtient du tribunal la date d'audience sur la motion avant la signification de l'avis de motion.

Limitation des contre-interrogatoires

(4) Sous réserve du paragraphe (5), le contre-interrogatoire sur tout élément de preuve documentaire déposé par les parties est limité à une journée pour chaque partie.

Idem : prolongation

(5) Un juge peut prolonger la durée accordée pour le contre-interrogatoire sur tout élément de preuve documentaire si cette prolongation est nécessaire dans l'intérêt de la justice.

Appel entendu dès que matériellement possible

137.3 L'appel d'une ordonnance visée à l'article 137.1 est entendu dès que matériellement possible après que l'appelant a mis l'appel en état.

Suspension d'une instance connexe devant un tribunal administratif

137.4 (1) Si la partie intimée a introduit une instance devant un tribunal administratif au sens que la *Loi sur l'exercice des compétences légales* donne à «tribunal» et que l'auteur de la motion croit que l'instance se rapporte à la même affaire d'intérêt public qui, selon lui, serait le fondement de l'instance faisant l'objet de sa motion visée à l'article 137.1, ce dernier peut déposer auprès du tribunal administratif une copie de l'avis de motion qui a été déposé auprès du tribunal judiciaire et, une fois celle-ci déposée, l'instance devant le tribunal administratif est réputée avoir été suspendue par celui-ci.

Avis

(2) Le tribunal administratif remet les documents suivants à chaque partie à l'instance dont il est saisi et qui est suspendue en vertu du paragraphe (1) :

a) un avis de la suspension;

b) une copie de l'avis de motion qui a été déposée auprès du tribunal administratif.

Duration

(3) A stay of a tribunal proceeding under subsection (1) remains in effect until the motion, including any appeal of the motion, has been finally disposed of, subject to subsection (4).

Stay may be lifted

(4) A judge may, on motion, order that the stay is lifted at an earlier time if, in his or her opinion,

(a) the stay is causing or would likely cause undue hardship to a party to the tribunal proceeding; or

(b) the proceeding that is the subject of the motion under section 137.1 and the tribunal proceeding that was stayed under subsection (1) are not sufficiently related to warrant the stay.

Same

(5) A motion under subsection (4) shall be brought before a judge of the court hearing the motion under section 137.1 or, if the motion is under appeal, its appeal.

Statutory Powers Procedure Act

(6) This section applies despite anything to the contrary in the *Statutory Powers Procedure Act*.

Application to commenced proceedings

137.5 For greater certainty, sections 137.1 to 137.4 apply in respect of proceedings commenced before the day section 2 of the *Protection of Public Participation Act, 2013* came into force.

Durée

(3) La suspension d'une instance devant le tribunal administratif visé au paragraphe (1) demeure en vigueur tant qu'il n'a pas été statué de façon définitive sur la motion, y compris tout appel de celle-ci, sous réserve du paragraphe (4).

Levée de la suspension

(4) Un juge peut, sur motion, ordonner que la suspension soit levée à une date antérieure s'il est d'avis :

a) soit que la suspension cause ou causerait vraisemblablement un préjudice injustifié à une partie à l'instance devant le tribunal administratif;

b) soit que l'instance qui fait l'objet de la motion visée à l'article 137.1 et l'instance devant le tribunal administratif qui a été suspendue aux termes du paragraphe (1) ne sont pas suffisamment connexes pour justifier la suspension.

Idem

(5) Une motion visée au paragraphe (4) est présentée devant un juge du tribunal judiciaire qui entend la motion au titre de l'article 137.1 ou, s'il est interjeté appel de celle-ci, son appel.

Loi sur l'exercice des compétences légales

(6) Le présent article s'applique malgré toute disposition contraire de la *Loi sur l'exercice des compétences légales*.

Application aux instances introduites

137.5 Il est entendu que les articles 137.1 à 137.4 s'appliquent à l'égard des instances introduites avant le jour de l'entrée en vigueur de l'article 2 de la *Loi de 2013 sur la protection du droit à la participation aux affaires publiques*.

LIBEL AND SLANDER ACT

3. The *Libel and Slander Act* is amended by adding the following section:

COMMUNICATIONS ON PUBLIC INTEREST MATTERS

Application of qualified privilege

25. Any qualified privilege that applies in respect of an oral or written communication on a matter of public interest between two or more persons who have a direct interest in the matter applies regardless of whether the communication is witnessed or reported on by media representatives or other persons.

STATUTORY POWERS PROCEDURE ACT

4. Subsections 17.1 (7), (8), and (9) of the *Statutory Powers Procedure Act* are repealed and the following substituted:

Submissions must be in writing

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party

LOI SUR LA DIFFAMATION

3. La *Loi sur la diffamation* est modifiée par adjonction de l'article suivant :

COMMUNICATIONS SUR DES AFFAIRES D'INTÉRÊT PUBLIC

Application de l'immunité relative

25. L'immunité relative qui s'applique à l'égard d'une communication verbale ou écrite portant sur une affaire d'intérêt public entre deux personnes ou plus qui ont un intérêt direct dans l'affaire s'applique, que des représentants des médias ou d'autres personnes soient témoins de la communication ou en fassent état.

LOI SUR L'EXERCICE DES COMPÉTENCES LÉGALES

4. Les paragraphes 17.1 (7), (8) et (9) de la *Loi sur l'exercice des compétences légales* sont abrogés et remplacés par ce qui suit :

Obligation de présenter les observations par écrit

(7) Malgré les articles 5.1, 5.2 et 5.2.1, les observations relatives à une ordonnance d'adjudication des dépens qui sera rendue soit en application du paragraphe (1) soit en vertu d'un pouvoir mentionné au paragraphe (6), sont

satisfies the tribunal that to do so is likely to cause the party significant prejudice.

COMMENCEMENT AND SHORT TITLE

Commencement

5. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

6. The short title of this Act is the *Protection of Public Participation Act, 2013*.

présentées sous forme de documents écrits ou électroniques, sauf si une partie convainc le tribunal que cela lui causera vraisemblablement un préjudice considérable.

ENTRÉE EN VIGUEUR ET TITRE ABRÉGÉ

Entrée en vigueur

5. La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Titre abrégé

6. Le titre abrégé de la présente loi est *Loi de 2013 sur la protection du droit à la participation aux affaires publiques*.