ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 41st Parliament

Assemblée législative de l'Ontario

Première session, 41e législature

Official Report of Debates (Hansard)

Thursday 24 September 2015

Journal des débats (Hansard)

Jeudi 24 septembre 2015

Standing Committee on Justice Policy

Comité permanent de la justice

Protection of Public Participation Act, 2015

Loi de 2015 sur la protection du droit à la participation aux affaires publiques

Chair: Shafiq Qaadri
Clerk: Tamara Pomanski

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Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 24 September 2015

Jeudi 24 septembre 2015

The committee met at 0900 in committee room 1.

PROTECTION OF PUBLIC PARTICIPATION ACT, 2015

LOI DE 2015 SUR LA PROTECTION DU DROIT À LA PARTICIPATION AUX AFFAIRES PUBLIQUES

Consideration of the following bill:

Bill 52, 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 / Projet de loi 52, 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.

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Welcome, colleagues, and welcome to members of the public. As you know, we're convened here as justice policy to consider Bill 52, 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.

We have a number of presenters—a very full day.

TEDDINGTON PARK RESIDENTS ASSOCIATION INC.

The Chair (Mr. Shafiq Qaadri): I'd invite our first presenter to please come forward: Eileen Denny, president of the Teddington Park Residents Association. Please have a seat. Ms. Denny, for you and for subsequent colleagues who will be presenting, you'll have five minutes in which to make your opening address, followed by three minutes for each party in rotation, and this will be enforced with military precision.

I invite you to please begin now.

Ms. Eileen Denny: Thank you for giving Teddington Park Residents Association Inc. this opportunity to provide our perspective on Bill 52 concerning the amendments to 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.

My name is Eileen Denny and I'm the president of Teddington Park Residents Association. We are an active, independent, not-for-profit incorporated association that presents the concerns of residents in north Toronto located within the former city of Toronto limits.

Our association would like to thank Dr. Mayo Moran, panel chair, and the other panel members, Mr. Peter Downard and Mr. Brian Rogers, for their contributions in facilitating, considering and listening to our submissions. It was an enlightening process to be participating among experts and concerned citizens to ensure that our voices and future voices are not silenced by lawsuits that are without merit.

Why the House should support the passage of Bill 52: The Protection of Public Participation Act will put a stop to the growing use of lawsuits used to silence and dissuade individuals from freely expressing and broadly participating in matters of public interest. The act is clear and comprehensive. It provides a defined purpose and a quick review process for identifying and dismissing lawsuits via motion. The act also proposes cost consequences that discourage strategic lawsuits from starting. For these reasons, our association fully supports the passage of the act. However, our association would like to address our concerns that quasi-tribunals such as the Ontario Municipal Board may also lend themselves to proceedings that have the effect of suppressing public participation.

TPRA, our association, regularly participates on a local level, on a city-wide and provincial basis to keep up to date on planning matters. Our association believes it is at the individual level where the most significant damage occurs. If individuals are prevented from speaking on local and surrounding neighbourhood issues, what would be the likelihood of their participation on larger and more egregious issues that may be of greater public interest? It is from this perspective that we would like to address the "purpose" segment of the legislation, section 137.1(1), "(a) to encourage individuals to express themselves on matters of public interest," and "(b) to promote broad participation in debates on matters of public interest," as they apply to the OMB.

Our focus is on three broad areas: the costs of participating at the board, the structure of the board, and the tactics.

The costs of participating at the OMB: When a developer appeals a land use decision to the OMB, the developer will and can afford to spend significant amounts of money to retain legal representation and planning expertise to present and argue their case. To even out the

playing field, our association must seek donations from our residents, and the donations are comprised of after-tax dollars. In many cases, residents contribute what they can. I can remember an elderly resident who made a donation from her coffee tin: a tight fist of bills that was pressed into our board secretary's hand as she told us, "Please take this. It's all I can give but it's important that you have it."

Even when there are funds, we are at a disadvantage. Lawyers and planners aren't eager to represent our side of the case, which generally calls for vigorously arguing to support law and policy. When we don't raise sufficient funds, seeking party status and self-representation requires a huge commitment of time. Not having enough time or money are deterrents to effectively voice concerns of public interest that matter. The lack of funds to hire necessary expertise and legal representation to defend or argue a position effectively discourages public participation.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Eileen Denny: I beg your pardon?

The Chair (Mr. Shafiq Qaadri): You have 30 seconds left.

Ms. Eileen Denny: Oh, I'm sorry. My dialogue is much longer than that.

My request in passing this bill is that at the same time, concurrently, within the set time—let's say four weeks—from the passage of this act, the OMB take a mandatory first step to provide transcripts for its proceedings to encourage individuals to express themselves and to provide broad participation—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Denny. We'll now offer the floor to Mr. Hillier of the PC Party—three minutes.

Mr. Randy Hillier: It is unfortunate that we have such little time that has been allotted by the motion for presentations—five minutes—on such an important bill.

It certainly appears to me that you're addressing problems mostly with the OMB, which is not really what this bill is targeting. This is targeting, more often than not, defamation and other actions, in a broad spirit, in our court system, from preventing the public from participating in discourse.

I do know that there are a number of things being talked about in the House regarding amendments and whatnot to the OMB, but I don't believe that that is really what Bill 52 is trying to address. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To you, Mr. Vanthof.

Mr. John Vanthof: Thank you very much for coming. From what I understand, your concerns with Anti-SLAPP legislation are—basically, you feel persecuted under the way the OMB runs. If you've come a long way to speak about this, if you would use the rest of my time to continue your presentation, I'd be happy.

Ms. Daiene Vernile: That's three minutes.

Ms. Eileen Denny: I beg your pardon?

Mr. John Vanthof: You can use my time to continue your presentation, if you would like to.

Ms. Eileen Denny: I have encountered numerous tactics to stifle our association's participation. This includes threats involving lawsuits; threats for costs; attempts to prevent us from speaking by legal counsel for the developers and by presiding board members during proceedings; intimidation; interruptions when speaking; attempts to discredit character, credibility and standing, both verbally and in writing; and persistent, dogged cross-examination by proponents' solicitors that at times are hostile, sarcastic and far from civil.

For example, following a rather difficult cross-examination during a hearing, the other residents who were asked to speak next independently declined, after what they witnessed. Just before closing arguments, I lost my composure and I asked the board member to step down, to take a few minutes to allow me to breathe and refocus.

Participation and free expression are never easy at the board. Only the people in the room bear witness. Many of these tactics would be curtailed if the board maintained an independent, publicly accessible record—transcripts of all of its proceedings.

It is 2015, and the OMB proceedings are conducted without transcript or independent recording. There are no independent verbatim minutes, transcripts, audio or video recordings detailing the proceedings from start to end. This does not encourage broad, robust participation and expression when transcripts are not available to support a written decision or how the proceedings were conducted.

Under the purpose of this act: It is called the protection of public participation. How could the public be sure that the government-appointed board members would hold fair hearings and stay within their administrative powers, both procedurally and substantively?

We also believe that an independent, accessible quasi-judicial body is needed for all who have cause or reason to have a decision reconsidered. Democratic processes require fair and impartial adjudications. That is our one request.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Chair, and thank you, Ms. Denny, for coming. I'm very familiar with your association. I used to work for Anne Johnston, who was a city councillor and Metro councillor. I know it's a tremendous area that you live in, and I appreciate very much you coming here.

0910

If I pick up on Mr. Hillier's remarks, your comments really are about how complicated the OMB can be and how difficult it is to participate. Although I get, in the act, it seems to imply—this specifically is about slander issues and other ways of intimidating through the courts. I'm aware that one of the big first cases here actually involved OMB proceedings, but the issue that we're trying to address is the slander that comes outside of the OMB process. But I wanted you to know that we do have bills in place that are looking to reform how the OMB works and to address those issues in another forum.

I'll give you a sec, but you mentioned one recommendation about restructuring the OMB. Do you have one or two more recommendations you want to get on the record, and we'll go from there?

Ms. Eileen Denny: I just believe there should be an adjudicative body. I think that right now, if we were to structure the OMB today, it would not be the institution it has become. I'm here as a positive force despite how difficult it is. I think there's room for us to move that pendulum back to centre. I just think it's stuck.

One of the very first steps that I believe would help is to have transcripts for all proceedings. Toronto has about 300 proceedings, and there is not a single transcript. So if I or a resident was not treated properly or we did not receive natural justice at the board, we couldn't go to another level to have that reviewed because they would need backing. There would be only witnesses.

From that standpoint, I believe the protection of public participation, the broad purpose points, capture this, and that is why we also were participants at the consultations. We were actually invited by the panel to discuss, because they were interested in our concerns. I understand that when the report came out, the tribunals were not captured in that. But I was trying to capture the board from a public participation perspective, not from a slander perspective, because I think it's adequate. We have no concerns with how this legislation is actually structured.

Mr. Arthur Potts: Great. And as I say, there is a private member's bill by my colleague Peter Milczyn which is looking to address some of those inequities in the OMB.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thank you, Ms. Denny, for your deputation on behalf of Teddington Park Residents Association.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. From the Ontario Forest Industries Association is Jamie Lim, president, and Christine Leduc, director of policy. Welcome.

Ms. Jamie Lim: Hi. Thanks.

The Chair (Mr. Shafiq Qaadri): Please begin now.

Ms. Jamie Lim: The renewable forest products sector is Ontario's second-largest industrial sector, supporting 170,000 hard-working Ontario families in 260 communities. Forestry can be Ontario's greatest renewable opportunity, and working together to protect this sector's global reputation, we can grow Ontario's natural advantage.

Before discussing why you should support amendments to Bill 52, I'd like to share forestry facts with you, because knowing the truth is always important.

The world wants wood. Architects are building taller wood buildings, and smart consumers, concerned with climate change, are choosing forest products because they know trees grow.

Ontario has approximately 85 billion trees, and only 0.5%—0.5%—of Ontario's trees are harvested annually. For every tree harvested, three take root.

All Ontario forestry companies must operate under the Crown Forest Sustainability Act. Under this act, forests are regenerated after harvest, and the long-term health of the forest must be maintained. It's the law.

But professional environmental groups want the public to think that harvesting destroys forests and causes deforestation. This is just not true. Deforestation is the permanent removal of forests for an alternative social need like farming or the creation of communities. Toronto was once a forest.

Ontario's forest sector is not in the business of destroying forests. We are in the business of managing Ontario's renewable resource responsibly and supporting hard-working individuals for generations. Yet, if passed as drafted, Bill 52 will protect professional radical environmental groups whose misinformation campaigns target our customers, allowing these groups to raise funds through a business model built on harassment and fear-mongering.

Bill 52 should not make defamation profitable for groups like Greenpeace. The appendix I've included outlines Greenpeace's recent misinformation campaigns and includes an email Greenpeace sent to their cyber-activists asking them to write false product reviews. If I ever in my life asked a group of stakeholders to write something false, I'll tell you something, my board would hold me accountable. Greenpeace should be held accountable.

Bill 52 should not provide professional environmental groups with a licence to defame. The government has always told us that SLAPP is about the little guy, and we get that; protecting the individual's right to express themselves, absolutely. But Greenpeace is not the little guy. It has offices in 55 countries, annual global revenues of $300 million and, in Canada in 2012, $20 million in annual revenue.

Greenpeace publicly supports Bill 52—no surprise. They were even thanked on the floor of the Legislature for their advocacy for this very important bill.

Job creators must be able to protect their reputation.

At July's Canadian Council of Forest Ministers meeting in Thunder Bay, ministers recognized the significant economic implications of misinformation, and they committed to taking direct action to ensure customers recognize Canadian forest products as the environmentally preferable option. Minister Mauro stated, "We are going directly to [customers] to ensure that they understand ... that here in Ontario, [we harvest] our fibre in a very, very sustainable way."

By amending Bill 52 to stop defamation at the source and hold professional environmental groups accountable, government can help Minister Mauro set the record straight. We've all seen well-meaning legislation have unintended consequences in Ontario before. The ESA is a perfect example of an act that has proven to be unimplementable and problematic. In 2006, OFIA asked government to edit 50 words because, as written, the

ESA made it nearly impossible for job creators and government to implement. OFIA provided sound constructive advice then, and we're doing the same today.

Favouring professional environmental groups with legislation that assures that they will not be held accountable for their deceitful falsehoods is nothing short of a declaration to forestry that their efforts to grow Ontario's renewable economy do not matter.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Lim, for your opening remarks. I now offer the floor to Mr. Vanthof of the NDP.

Mr. John Vanthof: I'd like to start by thanking you, Jamie, for coming, and for your organization's advocacy for the forestry industry, because the forestry industry is very important to my part of the world and very important to the province. It is one of the few truly renewable industries.

What I'd like to focus on is: You mentioned an amendment to try and make this act better. Could you elaborate on how you would see making this act the best it could be?

Ms. Jamie Lim: For sure. Mr. Vanthof, do you mind if I just finish four paragraphs? It'll take a minute.

Mr. John Vanthof: It's your choice.

Ms. Jamie Lim: Okay.

This would be a terrible unintended consequence. Without amendments, the actual effects of Bill 52 will be harmful. Instead of protecting legitimate free speech, Bill 52 will enable misinformation. Instead of curbing frivolous lawsuits, Bill 52 will extinguish lawsuits of merit.

Amend Bill 52. Make Bill 52 fairer. Work with us to protect forestry's reputation from these destructive defamation campaigns. Hard-working families are counting on you.

Again, Bill 52 should not provide large, well-financed professional environmental groups a licence to defame our province's job creators. Forestry's reputation does matter.

Mr. Vanthof, we've recommended three very, very tiny amendments to the whole act. I'm just trying to find them. They're in my long version. We have suggested that the bill—you received a recommendation from the Federation of Northern Ontario Municipalities, FONOM. FONOM suggested that if Bill 52 really is about the little guy and encouraging individuals to participate without fear of a lawsuit, then this amendment should limit the application for Bill 52 to individuals or groups with operating revenues under $100,000, and that's before they get started. We recognize that they may need to raise funds and stuff. That's once they get going. But we're saying: When they start, what are their revenues?

0920

Secondly, we suggest that the term "public interest" that's in 137.1 would allow legitimate lawsuits to be extinguished, and it should be replaced because it's too broad. It's sort of like the term "overall benefit" in the ESA, which the Liberal government tried to remove. Your lawyers tried to remove it in a budget bill a couple of years ago because those two words make the ESA unimplementable. Here we are again, with Bill 52, with two words that are undefined.

So instead of "public interest," we believe that Bill 52 should incorporate a bad-faith-based test. If something is brought forward in bad faith, it will be extinguished. "Bad faith" is a term that has legally been defined, so it would scope down Bill 52.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Vanthof. To the government side: Mr. Berardinetti, for three minutes.

Mr. Lorenzo Berardinetti: Thank you for your presentation this morning. When the legislation was drawn up, before the government did that, they struck an expert advisory panel to go through various parts and decide on the right balances between protection of public participation and protection of reputation and economic interests. I see what you're trying to say. I guess you disagree with what the expert panel says, from what I'm getting, in that you want to make some changes to it.

Ms. Jamie Lim: If you were just going to take what the expert panel said and write your bill on that, then you wouldn't need a hearing and you wouldn't need consultation with stakeholders. We're your second-largest job creator in the province of Ontario. We're not asking you not to pass Bill 52. We are for freedom of individuals' rights to speech. We think that's Canadian. That's motherhood, for God's sake.

We are against a bill that will give a free licence to groups that are professional and that make their livelihood from doing what they do to defame. I've included an appendix in my submission that has slides that are sent—and they harass. You talk about individuals being harassed. The forest sector in Canada right now is being harassed. When we don't have customers, we close down mills. We can't make products; we can't make the products for the tall wood buildings that we've passed building code changes for. Those products won't be made in Ontario. We'll be shipping them in from other jurisdictions. If we don't have customers, we won't make products. That's business.

We're asking for two tiny amendments. One is to scope it down, to say that revenues for these individuals and groups, when they get started, should be less than $100,000. Then a group like Greenpeace, for example, that has $3 million in assets just here in Toronto, may be excluded and have to do what others have to do in the courts of law. They would be held accountable for their defamation. They can still say what they want, but they would be held accountable. We think that's fairer.

Mr. Lorenzo Berardinetti: Okay, thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To Mr. Miller, on the PC side.

Mr. Norm Miller: Thank you, Jamie, for coming in and speaking. It's a shame that the government, in its wisdom, decided to only give five minutes per presentation. I'd certainly like to get on the record that the PC Party appreciates your industry and what it does for communities particularly in northern Ontario.

You've provided an appendix with information about some of Greenpeace's actions to do with the forestry industry. Can you go over that a little bit, about what they're doing and how it's affecting jobs in Ontario?

Ms. Jamie Lim: Sure. If Bill 52 is about slander and about rights, we just think that when you have professional environmental groups whose business model is based on fear-mongering and harassment—I mean, they go down and they target a US customer, and then they harass them until they change their buying practices.

In the appendix, I've given you a few examples. Last December 1, Greenpeace sent out a cyber-activist alert, "Happy Cyber Monday." If you go to the last page, they gave their cyber-activists five tasks for December. The fourth task was, "Write a false product review on Best Buy's website. Be creative and make sure to weave in the campaign issues." I'll tell you, if I ever sent an email like that to my stakeholders, to mayors in northern Ontario, I wouldn't have a job. I'd be held accountable. So we don't think that should be protected by Bill 52.

If you go to appendix 2, you can go to a print screen of their website. Here they show a recently harvested area. Trees grow. If you went to an area where farmers had just harvested their wheat in the fall—John, you would know this—the land base doesn't look too great, but the good thing is that your crops grow. Our crops grow. But Greenpeace sensationalizes forestry because, as you can see on that page, it's all about donations. It's take action, donate, and give $25 monthly.

If you go to the next slide, #StandForForests: "Canada's boreal forest is where the world's highest forest degradation takes place." That's just not true, but this is what they're showing to customers in the United States and getting them not to buy Canadian forest products.

If you go the next slide, "Destruction of Canada's boreal forest in northern Ontario," that one: "Only 8% of Canada's boreal forest is protected from logging." At first they're talking about northern Ontario—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Lim, for your presentation on behalf of the Ontario Forest Industries Association.

Ms. Jamie Lim: Thank you.

THE ADVOCATES' SOCIETY

The Chair (Mr. Shafiq Qaadri): We'll now invite our next presenters. We're going to be skipping one. We're awaiting the arrival of one of our presenters.

I'll invite Mr. Brian Gover and Dave Mollica of the Advocates' Society. Please come forward. You've seen the protocol. You have five minutes in which to make your opening address, three minutes for question rotation. Please begin now.

Mr. Brian Gover: Thank you very much, Mr. Chair. My name is Brian Gover. I am a director of the Advocates' Society and chair of the society's Bill 52 task force. Joining me is Dave Mollica, the society's director of policy and practice.

Thank you for the opportunity to make oral submissions to the standing committee today. The society has provided each of you with a written outline to complement today's presentation. I see Ms. Pomanski has distributed that.

The Advocates' Society is a national association of over 5,000 litigators, most of whom practise in Ontario. Our members represent a wide variety of parties in litigation, from individuals to multinational corporations. We act for plaintiffs; we act for defendants. We practise on Main Street; we practise on Bay Street. We practise in rural and urban Ontario. The submissions I make today reflect the diverse and considered views of the litigation bar.

The society has followed the evolution of this bill with great interest. Let me start by stressing that the society is supportive of the laudable goal of Bill 52 in ensuring that public discourse on matters of importance are not silenced by the looming threat of litigation. That said, sometimes the law of unintended consequences is the most important law of all. I ask the committee to consider what may be the unintended consequences of certain provisions in Bill 52.

In my submissions, I'll focus on three such unintended consequences which pose concern to the society: first, the imposition of an unduly high burden on a plaintiff to bring a claim to which there can be absolutely no defence; secondly, the failure to consider the plaintiff's access to justice rights in the balancing of interests at stake; and thirdly, changes to the substantive law of defamation that are contrary to the common law.

The proposed section 137.1(4)(a) of the Courts of Justice Act provides that, once it is shown that a suit arises from an expression related to a matter of public interest, the action will be dismissed unless the plaintiff demonstrates both that the suit has "substantial merit" and that the defendant has "no valid defence." It is appropriate to require that the plaintiff establish that its suit has substantial merit. However, simultaneously requiring the plaintiff to show the defendant has no valid defence would impose a burden on the plaintiff to demonstrate in a summary proceeding that its claim is certain to succeed, failing which the plaintiff's case would be dismissed without a trial. This raises a serious question of access to justice.

0930

Of course, Canadian judges and legislators have traditionally refused to deny plaintiffs access to courts except where it is clearly shown by a defendant that the plaintiff cannot succeed. The requirement that the plaintiff show that there is no valid defence would turn this important concept completely on its head. In the society's view, the requirement to show no valid defence is unnecessary and unwarranted.

The second point, balancing interests at stake: The public interest in protecting the defendant's expression should certainly enter into the equation, as provided for by section 137.1(4)(b). However, rather than balancing this against the public interest in permitting the proceeding to continue, as proposed in Bill 52, the society takes the view that the importance of the plaintiff's access to

justice rights, and in particular the public value associated with access to justice where serious reputational interests are at stake, should be considered.

The fundamental value of access to justice is compromised when a lawsuit is peremptorily dismissed for the sake of protecting freedom of expression. The legislation should reflect this compromise and make it clear to the parties and to the presiding judge precisely what competing values are at stake.

I'll be brief with the third point. It relates to substantive changes to the law of defamation in two respects. First, Bill 52 proposes to amend the Libel and Slander Act to extend the defence of qualified privilege to persons with a direct interest in a matter of public interest communicating to others with a direct interest, even if media are present and report on it.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Brian Gover: We say that's inconsistent with recent jurisprudence from the Supreme Court of Canada.

Bill 52 also proposes to require that the plaintiff demonstrate the seriousness of the harm suffered or likely to be suffered by a plaintiff as a result of the expression of the defendant. It's a basic principle of defamation law that harm from a defamatory statement can be presumed, because our courts have recognized for many years that it's frequently impossible to ascertain who has heard the defamatory comment.

We say this isn't the place to modify the substantive law—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gover. To the government side, to Mrs. Martins.

Mrs. Cristina Martins: First of all, thank you very much for your deputation here today and for your presentation. I guess, as we all know, the intention of this bill was to protect people's freedom of speech and their right to have their opinions heard while ensuring that they do not have a licence to slander. In your opinion, does this bill accomplish that goal?

Mr. Brian Gover: We think that you could recalibrate the balance. That was the point of the first two points of my submission today. We say that overall, as I've said, there is a laudable public goal behind this legislation, but here we need to think about denial of access to justice to plaintiffs and we need to recalibrate somewhat by recognizing the public interest and the ability to access the courts.

Mrs. Cristina Martins: And do you think that this bill would level the playing field between groups but not guarantee that freedom of expression will always win over potential slander reputation?

Mr. Brian Gover: We think that, with the relatively minor revisions that we are advocating, the bill could do that, yes.

Mrs. Cristina Martins: Okay. No further questions at this time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Martins. To the PC side, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. It was a pleasure reading over your previous submissions back since 2010 regarding the process of this bill. If you could reiterate—you're suggesting that the bill would achieve its goals of allowing freedom of expression without denying access to justice if the no-valid-defence clause was struck out?

Mr. Brian Gover: That's right.

Mr. Randy Hillier: As well as striking out the clause for extending qualified privilege?

Mr. Brian Gover: We think that's important as well, yes.

Mr. Randy Hillier: And the third one, if you could reiterate for me?

Mr. Brian Gover: Well, the second point had to do with the balance in interests at stake. There, we think that because of the great concern that legislators in court have always had about denying access to courts, we ought to change that so that you balance, in terms of the public interest, also the plaintiff's ability to access the court as part of the public interest equation, if I can put it that way.

Mr. Randy Hillier: Okay. It would be very difficult in a piece of legislation to describe that. Have you got to how to balance those competing—

Mr. Brian Gover: Thank you for the question. We do think that in relation to Section 137.1(4)(b), where the balancing has to do with "the public interest in permitting the proceeding to continue" that part of the consideration there should be: "the public value associated with access to justice where serious reputational interests are at stake."

Hearing the previous deposition makes me think of a concrete example where you could see where there could be some very valid interest in respecting and protecting reputational interests. We say that can be accounted for in that public interest calculation.

Mr. Randy Hillier: What about a clause or an addition in there about incorporating the "bad faith" into the discussion of the public interest and also "bad faith." Would that be another way to achieve that?

Mr. Brian Gover: In my view, that would be another way to achieve that, and here we're really concerned—the nub of this concern on the part of the Legislature, we recognize, is abuse of lawsuits being brought and striking the right balance, recognizing that both plaintiffs and defendants can abuse the process of the court.

Mr. Randy Hillier: And is "bad faith" a phrase in the legal world that is readily understood, easily defined and has broad acceptance?

Mr. Brian Gover: The law is replete with examples where courts—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you very much, sir. You can finish the answer to that question, if you like.

Mr. Brian Gover: Yes. Mr. Hillier's question had to do with whether building "bad faith" into the calculus of the balancing interests here would provide a means that would have legally established metrics that we could call upon.

I work in a profession where we are always looking for some prior example that we call a precedent, and the answer to the question is that in fact the phrase "bad faith" has abundant meaning in our law and our legal tradition.

Mr. Jagmeet Singh: There has been a great deal of jurisprudence where judges have looked at cases, and at the conclusion of the case have determined in their decision that this was clearly an example of a lawsuit that was frivolous in nature. Some of those decisions were, I think, some of the impetus behind why this sort of legislation was brought forward; that there are numerous accounts of people bringing forward frivolous lawsuits just to silence someone.

One of the major concerns that you brought is that common law has established a certain test, and it seems to be completely reversed in this. If you could just explain that a bit more and how that is being reversed.

Mr. Brian Gover: Yes, and that had to do with my first point about imposing an unduly high burden on plaintiffs to show that the claim was—as we say in the handout—indefensible, that there could not possibly be a valid defence to the claim. We have said that that simply goes too far.

Although, as you have pointed out, there have been abundant examples of courts saying that a lawsuit was brought for an improper purpose, at a preliminary stage, where we're talking about pre-emptively dismissing a lawsuit that may have some validity, we say that it simply goes too far to require a showing of both substantial merit in the suit and also no valid defence because that simply sets the bar so high that we end up denying access to courts. That's what I meant when I said that it takes the approach that courts and legislators have traditionally taken and puts it on its head.

Mr. Jagmeet Singh: Thank you for that.

One of the key components, and I think one of the most important components of the bill—something that will offer a great deal of protection—is the pre-emptory mechanism of dismissing actions when it can be shown early on that this is something that is being brought in an abusive manner. I think that is the key ingredient that allows for the protection of public participation.

Do you have an alternative suggestion, in that mechanism, in that process of being able to dismiss a claim early so that it doesn't deal with—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Mr. Gover, and to your colleague for your deputation on behalf of the Advocates' Society.

0940

NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION
TOWN OF ATIKOKAN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Dennis Brown, mayor of the town of Atikokan. Your Worship, welcome.

Mr. Dennis Brown: Thank you.

The Chair (Mr. Shafiq Qaadri): You've seen the protocol: five minutes, and then three minutes by rotation. I invite you to please begin now.

Mr. Dennis Brown: Thanks for giving me the opportunity to meet with you today to provide input on Bill 52, which, if passed in its present form, will have a devastating effect on not only Atikokan, the community I come from, but also on many similar communities right across northern Ontario.

As the cover of my presentation indicates, I'm here today speaking not only on behalf of the town of Atikokan but on behalf of the Northwestern Ontario Municipal Association, NOMA, which represents the interests of 37 municipalities, from Kenora and Rainy River in the west to Hornepayne and White River in the east.

NOMA's mission is to provide leadership in advocating regional interests to all orders of government and other organizations. I have had the privilege of serving as the president of NOMA on three different occasions—1985-86, 2004-05, and part of 2010-11—and since our president, David Canfield, is involved in a regional NOMA conference today in Thunder Bay, I am speaking on his behalf and that of the entire NOMA board.

I should also add that both NOMA and the town of Atikokan have worked closely with our area First Nations over the years. They too want jobs in northern Ontario, and I'm happy to say that I have the former chief of Fort William First Nation, Georjann Morriseau, here with me today. She's sitting at the back. She is presently working on aboriginal affairs for Resolute.

As the mayor of the town of Atikokan, I attended a meeting in February of this year—along with Mayor David Canfield, president of NOMA, as well as Mayor Alan Spacek, president of FONOM, and other business and municipal representatives—with the Honourable Madeleine Meilleur, Attorney General, in order to try to convince her and her staff that Bill 52 in its present form is a direct attack on those who create jobs in this province and the 170,000 Ontario citizens who work directly and indirectly for Ontario's renewable natural forest products.

The forest industry has been the backbone of the economy in northwestern Ontario, including Atikokan, for many years. Wood and paper industry jobs contribute greatly to our standard of living. There is no doubt that the industry has had its challenges in the last few years, but it is now poised for growth.

The next two paragraphs contain a story about our town. We were once a town of 7,000 people; now we're 3,000 people. We've had two major upsets in the last 30 years or so: In 1980, the two mines closed and 1,100 people lost their jobs, and in 2008, with the downturn of the forest industry, two mills in town closed.

Now, things are on the rebound. The community is very excited and thrilled that Resolute Forest Products has built a new mill in town, a $50-million investment to

provide 90 direct jobs in the community and the sawmill and to sustain and grow employment in the woodlands operations, most notably in harvesting and hauling. Altogether it's probably 200 jobs when you look at the things that take place.

However, Resolute is the target of ongoing campaigning by a major proponent of Bill 52: Greenpeace. This radical group made numerous claims about the company that were found to be totally false. In 2013, they even retracted their incorrect statements, but the damage was already done. The effect of slick market campaigns like theirs has been to discourage customers of forest products from Ontario and to threaten Ontario jobs. That is happening right now. Companies from Ontario are going to Tennessee, and you'll see this later on in one of my handouts.

Since apologizing, Greenpeace has continued with further fabrications, as well as outrageous demands on the forest industry. It is important to note that their demands, if enacted, would put thousands of jobs and entire communities at risk.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Dennis Brown: Okay. So I won't say too much more. We're asking for about 50 words, on page 7, in amendments to the bill. We would like you to have the bill only apply to those groups that have an operating budget of $100,000 or less. That's one thing. The present lawsuits that are taking place should still be able to take place whether this bill passes or not; and, on page 8, public interest—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Brown. I now offer the floor to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Your Worship, welcome to Queen's Park. Because they only gave you five minutes to speak, I would like to give you my three minutes to continue, Mayor Brown, with where you were. Please use my three minutes.

Mr. Dennis Brown: Okay. I've talked about the situation that's going on in the forest industry with Greenpeace, targeting customers of Resolute. Resolute is losing business. Greenpeace is also targeting the boreal forest that goes right across Canada. We know that the federal and provincial governments are doing everything they can. We attend the meetings in Ottawa. The federal government is putting out this brochure here that's going to all the embassies across the world, talking about how the federal government is supporting the forest companies and how we're trying to keep the jobs in Canada. The provincial government has this nice brochure, Quick Facts about Ontario Forestry—I think you've all probably seen it—so the provincial and federal governments are helping. We just can't understand why we would want to consider a bill like this at this time. The timing is certainly not right.

If you look at pages 9 and 10 in my handout, it's a summary of some of the things I've said. If you go to page 11, you will see that there is information there from Resolute and from Georjann Morriseau, who is with me. "First Nations and aboriginal peoples"—the middle paragraph—"among others have expressed great frustration with the actions and tactics of Greenpeace and other like-minded activists." Greenpeace is only one; there are whole other groups, as most of you know, that are creating lots of problems.

At the very top of the page: "very deep cuts to the supply of wood to companies that could well lead to the closure of many additional sawmills and pulp and paper mills, impacting hundreds if not thousands of Ontario jobs."

On page 12, you have a resolution that the NOMA organization passed in April of this year, and I have highlighted one part: "Further that the aforementioned organizations cease and desist all campaigns targeting consumers of renewable forest products sustainably harvested from Ontario's boreal forest region as trees are the only renewable building product."

Mr. Victor Fedeli: Mayor Brown, on page 9 you talk about the fact that Bill 52 undermines the forestry sector. Am I hearing from you that you are in favour of the bill, in general, to protect what we would call "the little guy," but not so much—is that why your amendment is for the $100,000 budget or larger?

Mr. Dennis Brown: That's right. We think there may be certain cases where the average citizen may have something to talk about, and that's fair enough, but when we know what's happening now—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now goes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you. I guess your concern is that larger groups that are activists or express their concerns about a particular project or particular issue might be overly protected by this bill. Is that your concern?

Mr. Dennis Brown: That's the way we see it, yes. As we know, Greenpeace isn't a small organization. I have it in there about the over $3-million investment and so on, and they're worldwide. They're looking for a cause. We just think that for them to pick on northern Ontario is just not right. I think that all of you people here want jobs in our province. The forest industry is turning around now. We have a golden opportunity, so we have to work together and keep the jobs coming to Ontario, especially northern Ontario. We depend on industry like forestry.

Mr. Jagmeet Singh: In general, though, the idea of protecting people's right to participate is something that you support, and the idea that they might get additional protection because they don't have the same resources makes sense to you. You're just concerned about who this bill should apply to and who it shouldn't apply to.

Mr. Dennis Brown: Yes. We think there's merit for the small person, the person who's making less than $100,000 a year. Maybe there are some cases where they could come forward when they have something to say, but just to say it so that you can disturb the economy in northern Ontario doesn't make sense.

0950

Mr. Jagmeet Singh: Are you aware of the actual impact in terms of the economy? Is there something that

you know from your city or something you know from Resolute that provides some evidence to say that there is an economic impact based on protests?

Mr. Dennis Brown: Yes. In Atikokan, we have about 1,800 jobs. I'd say probably 600 of them are related to forestry. So it's very important.

Mr. Jagmeet Singh: No, I certainly understand that forestry is important, but do you know if people who express their opinion, if that's negatively impacted employment? Do you have any evidence to suggest that, or are you just thinking that might happen?

Mr. Dennis Brown: No, it's happening now. If you go to some of these pages here, you'll see—page 25, for example.

Another company, ForestEthics, has been able to take jobs away because of Victoria's Secret; the customers don't want Victoria's Secret to use any wood products from the boreal forest. So they go to other restrictions where the rules and laws aren't the same. Ontario is already set up with the strictest sustainable regime in forestry around, so that has taken care of most things. We don't really think that there's a need—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Thibeault.

Mr. Glenn Thibeault: Thank you, Your Worship, for being here. Being a proud northerner from Sudbury, and I know my colleagues from across the way, from North Bay and Parry Sound, we are all pretty proud of calling ourselves northerners, until you get to Atikokan and realize that we're quite south. You really are up there in the north.

A couple of questions relating to your presentation: You used the words "present form" quite a bit. From my understanding, are you in favour of the bill with the amendments that you were talking about? Is that what you would like to see, moving forward?

Mr. Dennis Brown: I think our first preference would be to just scrap the bill, but I think it's probably too late for that. We don't think the bill is necessary. The situation is already in place to cover all these different situations. But if you're going to go ahead with the bill, we really hope that you'll make those—

Mr. Glenn Thibeault: Because your amendment is talking about using something that was also brought forward by the forestry industry, which is talking about operating budgets that are less than $100,000. There are concerns, though, Your Worship, that having that legislation apply to only certain groups with smaller financial backing would really restrict free speech. So would you be able to give me your thoughts on that piece? If we're only allowing it to be smaller groups, do you feel that we're restricting free speech by doing so?

Mr. Dennis Brown: I think in most cases the smaller groups will co-operate and work with us to create jobs, but when we have large organizations, like Greenpeace, they have to find a cause and they go out and do things to create a cause, and therefore it's hurting the economy in northern Ontario and it's hurting the economy in Quebec. We know that. We think somehow that has to be corrected.

Mr. Glenn Thibeault: So what you're saying is that free speech needs to be corrected? Can you clarify that for me?

Mr. Dennis Brown: No, I think there's a way for any group, if they have a problem, to go to the court system now, but for the average person making less than $100,000, if they have a specific cause, then I think they should be given an opportunity. But groups that are financially secure and have lots of assets can go through the court system to do what they have to do.

Mr. Glenn Thibeault: Great. Thank you, Your Worship.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mayor Brown, from the town of Atikokan, for your presence and your deputation.

MS. MARILOU McPHEDRAN

The Chair (Mr. Shafiq Qaadri): Our final presenter of the morning is from the University of Winnipeg, Professor Marilou McPhedran. We invite you to please come forward.

Welcome. You have five minutes to make your opening address, and rotation of questions by each party afterward. Please begin now.

Ms. Marilou McPhedran: Could you wait until I sit down, please, before you start the time?

The Chair (Mr. Shafiq Qaadri): The time has started, thank you. We've actually waited for you. You were to be here, in fact, at 9:30, and we've waited for you since then. Thank you.

Ms. Marilou McPhedran: Which I very much appreciate, and I'd be happy to explain when the timer's not running.

Members of the Standing Committee on Justice Policy, thank you for this opportunity to brief you on a particular type of SLAPP suit, of which I have extensive personal knowledge. I will table my full CV.

The two pins on my suit reflect contributions as a human rights advocate: the Order of Canada in 1985 for co-leadership in strengthening equality guarantees in the Canadian Charter of Rights and Freedoms, and the Persons Case medal.

On the plane last night, I was reflecting on why I left Ontario after more than 30 years. This SLAPP suit contributed significantly. In June 2001, considerable media attention was given to the release of the independent report of the Special Task Force on Sexual Abuse of Patients. In September, the Ontario Medical Association sued me for my opinion, featured on the editorial page of the Globe and Mail, summarizing the findings of the independent task force that I was appointed to by the then Minister of Health in Ontario to chair.

The OMA did not sue the Globe; only me. Over the years that this SLAPP suit dragged on, over 100 doctors—in various ways, in various fora—urged the OMA to stop. As a single mother, I faced my sons asking

for years if we were going to lose the house, and my honest answer was, "Yes, if the OMA wins."

Five minutes cannot convey the extent of the silencing effect that this SLAPP suit had on awareness and accountability for sexual abuse of patients, estimated in 2000 to be affecting over 200,000 patients of regulated health professionals in Ontario. But a cursory review of media coverage in those years would seem to indicate libel chill. I was silenced for five years, and other potential spokespeople told me they were silent because of the SLAPP against me.

Early in the case, my lawyers at the time called to tell me that they had walked out of a meeting with the other side because the OMA lawyer referred to me as "that bitch." Drawing from the official transcript of a portion of examination for discovery on January 8, 2003, by the OMA lawyer, journalist Patrick Watson produced a script, without changing any of the words spoken, for public readings done by actors, including Sonja Smits, at events for raising awareness and funds for my defence.

The SLAPP suit ended in a draw the night before the public trial was to commence in October 2006. I still carry a mortgage as a result of this SLAPP suit, even though many people donated to my defence fund, and my lawyer donated many hours of his expertise, working for more than two years before being paid for his services.

You have before you the article—I will table the article in question—and yes, I know that I stand the risk of being sued again for speaking here today. That is one reason why our democracy needs this law. Our democracy is strong enough to allow for dissent, different points of view and to protect freedom of expression for those who have money and those who do not have money.

This case ran from 1998 to 2004, when the Ontario Court of Appeal ruled against the doctor and the OMA, and the Ontario Nurses' Association, which had joined the OMA in the appeal. The CPSO decision—contested—stated in part: "The practice of medicine in Ontario is a privilege which brings with it certain obligations both to their patients (to refrain from sexual relations), the public, and to fellow members of the profession."

By contrast, from a factum filed by the OMA: "The OMA submits that the freedom of the individual to enter into consensual sexual relationships as he or she desires is protected by section 2(d) of the charter. By restricting physicians' freedom to enter into personal relationships of this kind, the mandatory revocation provisions violate section 2(d)."

My last sentence: The standard of zero tolerance of sexual abuse referenced in the OMA decision, referenced in numerous speeches by the current Minister of Health, is the policy of the RCMP, the Vatican and UN peacekeeping forces—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. McPhedran. We'll now offer the floor to the government side, to Ms. Vernile.

Ms. Marilou McPhedran: —and is now a global standard, first set out by the 1991 independent task force—

The Chair (Mr. Shafiq Qaadri): Thank you.

Please, go ahead.

Ms. Daiene Vernile: Ms. McPhedran, thank you very much for coming and speaking to us. You and I have three minutes to chat. How much more time do you have in your delivery there? Perhaps we can give that to you to finish.

Ms. Marilou McPhedran: Thank you. I very much appreciate your courtesy, and I also appreciate the work you've done on the committee on sexual violence and harassment.

Ms. Daiene Vernile: If we have time, we'll talk about that, but go ahead and finish.

1000

Ms. Marilou McPhedran: The standard of zero tolerance of sexual abuse is now a global standard, first set out in the 1991 independent task force I chaired, commissioned by the CPSO. In January of this year, the Honourable Dr. Eric Hoskins appointed me to co-chair and then chair his minister's task force on the prevention of the sexual abuse of patients and the RHPA. My remarks today relate to the 2015 task force only insofar as they refer to the public record. The report of this independent task force is under embargo.

I had hoped for enough time to read an excerpt from the examination for discovery in this SLAPP suit, but the time you have allotted does not allow.

Thank you. I welcome your questions.

Ms. Daiene Vernile: We've got two minutes left for you and I to chat. I just want to ask you a little bit more about your case for the record, for people who may not be familiar with it. Just explain to us what happened to you.

Ms. Marilou McPhedran: Over the course of the five years, every time I was called to comment on cases related to the sexual abuse of patients, I had to decline. I was told by reporters, and I was also told by individuals who could be spokespeople, that they decided not to respond. Often, the coverage did not occur in a full way because nobody would go on the record, because of the chilling effect of what had been directed at me.

Ms. Daiene Vernile: You referenced the Select Committee on Sexual Violence and Harassment. I'm honoured to be chairing that committee. This issue has come up a number of times, by the way.

The intention of this bill that we are presenting is to protect people's freedom of speech. Do you believe that it does that?

Ms. Marilou McPhedran: I believe it's an essential component to doing that, yes, and I also believe that it's a reform of law that is over 100 years old. It's all pre-charter, and indeed, it's essential for freedom of expression. What's not often understood is the difference in resources. If you look at the pattern in SLAPP suits, it's the deep pockets that use the legal system to try and silence, often, those who do not have deep pockets.

Ms. Daiene Vernile: We're going to be tabling our final report in December of this year, so I hope that you get a chance to read it, and we'd be happy to hear your feedback on that. Thank you very much.

Ms. Marilou McPhedran: Thank you for your interest.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Vernile. To Mr. Hillier, of the PC side.

Mr. Randy Hillier: Thank you very much, Marilou, for being here and for making that presentation. Unfortunately, under this government programming motion, everybody only has five minutes to make presentations.

Ms. Marilou McPhedran: I understand.

Mr. Randy Hillier: However, it is an important bill. I'm not sure if you were here when an earlier presenter from the Advocates' Society was discussing the "no valid defence" component and bad faith. The assertion and the argument that was put forward was that the bar was being set too high under the present bill, and the "no valid defence"—I think we can probably say in any activity, you can always find some lawyer who can find some defence. We want to balance freedom of speech and expression, but also access to justice. We don't want to see cases that have merit be summarily dismissed. The comment that we were hearing was that the bar would be set too high under the present clauses, and that cases with merit would be dismissed. I'd just like to have your comments, seeing that you are a lawyer.

Maybe also some of the discussion had been centred around incorporating a clause that included bad faith—public discourse, or in the public interest, but also with bad faith. If you could expand on that.

Ms. Marilou McPhedran: Any piece of legislation puts a great deal of trust in the expertise of judges. The notion of trying to determine bad faith in advance probably is not workable at all. It's the evidence, case by case, that can be presented.

I think that the critical component here is to remember that libel and slander, the notion, is about reputation. The idea that there cannot be an open discussion in our society that is moderated by rules of fairness that are modernized—moderated and modernized rules of fairness. What's important is that the multiple points of view, perspectives and concerns find a place—

Mr. Randy Hillier: No, I get that. We're all for free speech, but we do know that legislation—the words in it are powerful, and judges have to make their determinations based on the legislation that we've crafted here. My question is: Do you consider that the threshold is—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh.

Mr. Jagmeet Singh: Thank you for being here, and sorry about the short time. I echo my colleague's concern that because of the government programming motion, we're limited, so I'll quickly get to the question.

Building on my colleague's question, I absolutely think that we need Bill 52 as well, and you've made those comments. I think it modernizes the law in a lot of ways. Certainly there has been an imbalance. People with deep pockets are able to sue people who don't have deep pockets, and I think that's unfair.

The question that I think my colleague is bringing up, and I think it's an important question, is that there's one component that says the plaintiff—so if I'm bringing a libel suit against someone, I have to show that the person who is defaming me has no valid defence whatsoever for bringing that up. I guess a concern is that—if someone is legitimately going out there and smearing my name and they can come up with some defence, then I can't bring the libel against them. Does that set it too high, do you think, that one component?

Ms. Marilou McPhedran: No, I don't, because once again, I think there's a determination of what that actually means: "in bad faith." We've already entrusted the judicial system to make those kinds of determinations.

I do want to also observe that we're really not talking, in most cases, of people suing people; we're talking about corporations suing people.

Mr. Jagmeet Singh: This is true. That's a good distinction. It's rare that it's between people—

Ms. Marilou McPhedran: And when it is people suing people, it's rich people suing other people who don't usually have the capacity to defend.

Mr. Jagmeet Singh: I think there's definitely an equity issue, and I think that's why it's so important for us to have this bill. So thank you for that.

Any other concerns that you would like to bring up in your 60 seconds left?

Ms. Marilou McPhedran: I wanted to make the presentation in this personal way this morning because so often, once a SLAPP suit commences, the silencing kicks in immediately and there are very few ways to know what's really going on. For something like this to drag on for five years and the fact that it's borne on an individual basis or, in the case of non-profit organizations, this notion of the public interest is a critical component of our democracy. Whether the criticism that's being directed against the corporations or the rich and powerful individuals is something that is held sincerely on an individual basis or more collectively through civil society, nevertheless we are talking about critical components of freedom of expression in our democracy.

Mr. Jagmeet Singh: Thank you very much. Instead of getting rudely cut off, I think we'll just wrap it up there, then. Thank you so much.

Ms. Marilou McPhedran: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Ms. McPhedran.

I should also just mention that we are trying to track down—you mentioned that you had submitted the original article. I don't think we have it as a committee, so you're welcome to resubmit it, at least electronically.

Ms. Marilou McPhedran: I'd be happy to.

The Chair (Mr. Shafiq Qaadri): In any case, thank you for your presence.

The committee is now in recess till this afternoon at 2 p.m.

The committee recessed from 1008 to 1400.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy to order. As you know, we're here for an afternoon session on presentations on Bill 52, 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.

We have a number of presenters, carrying us, probably, right till 6 p.m. Each presenter will be offered five minutes in which to make their opening address, to be followed by three minutes from each party in rotation—questions and answers.

MR. RICHARD JOHNSON

The Chair (Mr. Shafiq Qaadri): Our first presenter is Mr. Richard Johnson. Welcome, Mr. Johnson. I invite you to please begin, officially, now.

Mr. Richard Johnson: Thank you very much. I would like to thank the blue-ribbon panel that wrote the 2010 anti-SLAPP report; their report rings true. The case that I was involved with is proof that many of their suggestions actually are accurate. I'd like to thank the CCLA for their continued efforts to expand the definition of what constitutes acceptable public speech, as well as the Attorney General's office and this standing committee for your efforts to protect free speech.

I was sued by the former mayor of Aurora in 2010 for $6 million. I was not sued for defamation, but rather, I was caught up in a legal web. She initially thought, I suppose, that I was the moderator of a political blog, without any evidence. When she realized that there was no evidence, she changed the accusation against me to suggest that I had encouraged others to defame her. What happened was that some anonymous people had made comments that she found unacceptable; therefore, she and her supporters on council agreed to sue three named people because of the comments of three unnamed people, as well as a software company, for $6 million, with the use of town funds.

I don't want to concentrate on it too much because of the time constraints here. I want to focus on a very, very important point that I think this bill is missing. What that point is that governments cannot sue, according to the Charter of Rights. What I have witnessed in a number of cases is that there are local government that are, apparently, intentionally circumventing the spirit and the intent of the Charter of Rights. I prepared a report that I hope will be reviewed by the appropriate people and that the key pieces of information will be shared with this committee.

I will very quickly summarize what I provided to you. In Georgina, Mayor Grossi and his council sued a former town employee for commenting on matters of public importance. I have provided the press release in which they stated that the lawsuit in question "was never a personal suit between Mayor Grossi and Mr. McLean." It had to be personal, by definition, because the law does not allow governments to sue. So what the town did is, they said, "We will fund a third-party lawsuit, fronted by the mayor." This is, for all intents and purposes, a government action that is being reshaped to look like a private lawsuit, which it wasn't.

The same thing happened in our case. Master Hawkins, in a discontinuance cost ruling in our case, ruled that Mayor Morris had conducted a SLAPP. The summary of his reasoning is in a report here. The interesting thing about our case is that when we tried to have our case discontinued at a motion to strike, Mayor Morris, through her lawyer, argued that this was, at all times, a private lawsuit. She also removed the words "acting in her capacity as mayor" from the statement of claim.

So she, Phyllis Morris, was suing, with the use of the town's lawyer who signed the only affidavit, with the use of the town's money, with the use of a council resolution, and saying that it was a private lawsuit. She was suing her political rivals, including myself. I helped her get elected and I made the mistake of trying to hold her accountable. She didn't appreciate that.

Further, when the town cut funding of her private lawsuit—the new council cut funding—she sued the town for $250,000 and claimed that, at all times, this was a government action, that her lawsuit was a government action, so she had the completely opposite argument. In another legal case that she was involved with, she also stated that it was a government action. So she's trying to have it both ways. Is it a private lawsuit or is it a government action?

The most important case that I would ask that you read and concentrate on is the Dixon v. Powell River case in BC. In that case, the judge ruled that the defendant city of Powell River lacked any legal basis or right to bring civil proceedings for defamation—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Richard Johnson: I would ask that you concentrate on the Dixon v. Powell River case. In there, it says that a government cannot sue for defamation or bring other proceedings of similar purpose or effect or threaten to do so. We need to clarify the law so that governments cannot sue for defamation by funding third-party lawsuits against concerned citizens who are speaking about matters of public importance.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Johnson. The floor now goes to the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you, Mr. Johnson. In your particular case, the suit was eventually dismissed, and I believe that you were ordered—

Mr. Richard Johnson: It was discontinued by Phyllis Morris—

Mr. Randy Hillier: It was discontinued.

Mr. Richard Johnson: —because she lost the Norwich motion, which she was trying to compel us to—

Mr. Randy Hillier: And you were awarded costs?

Mr. Richard Johnson: Enhanced costs, and we still recovered approximately half of the $100,000 that we spent.

Mr. Randy Hillier: Right. The purpose of this bill is to prevent abuses; by and large, to prevent people abusing the courts and the justice system to further an end that otherwise would not be appropriate or lawful. But I think, unfortunately, things can always be abused.

You're suggesting that this bill is lacking in that it doesn't specifically state your assertion that governments can't sue for defamation?

Mr. Richard Johnson: I noted in the blue-ribbon panel recommendations from 2010 that they specifically stated that they did not recommend a ban on governments being able to fund third-party lawsuits. I believe it was words to that effect. That, I think, is a critical error because there's no mention of the Charter of Rights and there's no mention of—there's a quote here, as I just mentioned, from Dixon v. Powell River from a judge that says that not only can governments not sue, but they can't "bring other proceedings of similar purpose or effect."

There's another case called Montague township, and there are some critical quotes on pages 15 and 16.

Mr. Randy Hillier: I was in the courtroom at Montague. I was assisting Donald Page in the action by the township against him.

Mr. Richard Johnson: So you'll appreciate what the intent was.

Mr. Randy Hillier: I do appreciate it, and I do appreciate that many of these SLAPP suits are initiated by municipal governments or to silence criticism. The bar is set a little bit higher presently for governments, such as in the Montague case. The judge—

Mr. Richard Johnson: Absolutely. It's patently anti-democratic for governments to be silencing people. Even if statements are made that are harsh or may be slightly factually wrong: If they're not done in malice, a government cannot sue.

Mr. Randy Hillier: One of the things that we're looking at is making this freedom of expression and having this change—are we going to open it up for abuse from the other side, such as what we heard this morning, from well-funded environmental groups and whatnot being able to say anything they want with impunity and other companies or other individuals not having the ability to defend themselves?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thanks for being here. I just want to touch on this matter. So I think your specific concern, as my colleague just stated earlier, is around closing this gap that you think exists with the current legislation. The gap allows for what—your understanding of the charter is—governments are not allowed to do?

Mr. Richard Johnson: Governments are not allowed to sue for defamation. What they are doing is a shell game.

Mr. Jagmeet Singh: It's going through a third party. I understand what you're saying. They're going through a third party. In your example that you provided, on one hand the argument was that this was a private case, but on the other hand the funding was all raised in a public manner.

Mr. Richard Johnson: Yes. There are legal precedents that have already been stated in courts that not only can't governments sue, but they can't cause a similar action, and governments include locally elected municipal governments. They cannot sue for defamation.

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On top of that, the code of conduct says that public office cannot be used for personal gain. So whether they argue that it was a private lawsuit or a public lawsuit, either way they should not be launching these lawsuits.

Mr. Jagmeet Singh: Are there any jurisdictions where you've seen this issue specifically dealt with, where there is perhaps other anti-SLAPP legislation where this particular area has been addressed?

Mr. Richard Johnson: I don't know if this particular issue has been addressed, but it has clearly been raised in the cases that I've presented and I don't think—I'm not sure if it has been addressed as of yet.

Mr. Jagmeet Singh: In your research, did you come across perhaps any language that you would like to see in the legislation that would cover this particular exception or experience?

Mr. Richard Johnson: I think I'd leave the language to the lawyers and possibly the blue ribbon panel. Peter Downard is very distinguished, and he's a specialist in this area. All I would ask is that the specialists look at the cases that I've provided and the logic behind them. They are all similar cases of people trying to be involved in the democratic process and being absolutely crushed by their local governments.

Mr. Jagmeet Singh: I see. Okay. No further questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you very much, Mr. Johnson, for being here and detailing some of the experiences you've had. The purpose, I believe, of what we're trying to do here is to suppress people using economic muscle to silence critics, whether it's frivolous or where there's no harm in what was happening.

Would you say, regardless of where the lawsuits are coming from, whether it's municipalities, other governments or other entities—developers—do you see the mechanisms in this act which would have protected you had it been in place when you started?

Mr. Richard Johnson: I think that the act, on my reading of it, is definitely a step in the right direction. I think you definitely have to address the imbalance when people are trying to participate concerning matters of public importance and when other people want to shut them up using their position of power and resources.

Mr. Arthur Potts: I think the objective is a 60-day window, an expedited process—

Mr. Richard Johnson: Absolutely.

Mr. Arthur Potts: —so you won't be raising hundreds of thousands of dollars of defence costs against something that is frivolous.

Mr. Richard Johnson: Absolutely. The estimate of our case was $250,000 to get to court, and, quite frankly, I could have easily been bankrupted. I was innocent; I had never done anything. False accusations were being made against me. I was sued without warning. I could

have been bankrupted, despite my innocence, just in my defence.

Mr. Arthur Potts: Yes. So you don't really know in detail whether this would have covered you or not, but you believe it's going in the right direction, but no language you'd want us to—

Mr. Richard Johnson: What I know is that the more tools that the court has, the better it is for the defendants. The judges in two of our rulings slammed Phyllis Morris for the way she was using the courts. This ruling is just the tip of the iceberg; the Carole Brown ruling before it, the Norwich motion, is equally as damning.

I could tell you more about this story, but we don't have the time here. It's incredible how a public official treated people who—I actually helped get her elected. I made the mistake of trying to hold her accountable.

Mr. Arthur Potts: I believe that we're expected to have a much thicker skin, so even if things, as you say, are said in the heat of the moment and they may not be absolutely true, to be able to use the muscle of your tax dollar against you strikes me as—

Mr. Richard Johnson: And as the court says, governments have other means to address issues that they disagree with, and litigation should not be the first option. Mayor Morris issued a mayoral proclamation after suing me, and the proclamation called for the community to use restorative justice. Two weeks after suing me without warning for $6 million for something I didn't do, she's calling on the community to avoid litigation by all means possible. She refused to not only use restorative justice but any reasonable attempt to terminate this case—then she sued the town for $250,000 to recover costs that they did not cover, and then later, a year after she launched that lawsuit, she said, "Oh, it's come to light that it's only $27,800." That lawsuit is continuing, and she's saying that it was at all times a government action.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Johnson, for your deputation and your written submission.

MS. ESTHER WRIGHTMAN

The Chair (Mr. Shafiq Qaadri): I will now move to our next presenter. Ms. Wrightman, are you there by teleconference?

Ms. Esther Wrightman: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Thank you. You have 10 members of provincial Parliament listening to you. You have five minutes in which to make your opening address, to be followed by questions in rotation. By the way, where are you calling from?

Ms. Esther Wrightman: Saint Andrews, New Brunswick.

The Chair (Mr. Shafiq Qaadri): Thank you. That's what we were trying to figure out. Welcome, from New Brunswick. Your five minutes begin now.

Ms. Esther Wrightman: Thank you for allowing me to speak. As someone facing a SLAPP suit, I am relieved to see Bill 52 finally reach this stage in enactment. Even so, I'm frustrated that it provides no protection for those presently facing lawsuits. I ask that this body strike the amendment made last December, which removed the retroactive clause, so the bill honours the statement made by former Attorney General John Gerretsen to MPP McNaughton in 2013. "If Bill 83 is passed," wrote Mr. Gerretsen, "the rule will apply to suits brought before the bill comes into force...."

Commenting on the amendment that contradicts and guts the bill, Gerretsen had this to say: "Obviously the bill is weaker than the one we originally introduced," while adding, "I have no specific comment as to why the retroactive protection is gone except for it probably shouldn't be gone." I agree completely: It shouldn't be gone.

To say I'm a married mother of two, formerly from rural Ontario until over 200 wind turbines arrived—saying this doesn't offend anyone. Notice I deliberately left out my opinion and anything that might stir emotion and judgment in others. However, when I say, "The wind energy company NextEra dominated my homeland, destroyed wildlife in its habitat, struck anger, fear and terror in my community so much so that residents called them 'next terror' in daily conversation," people begin to say, "Esther, you can't use that word, 'terror.'" "Why?" I ask. The answer I get is "Because that's pushing it." "Use something less controversial," I'm told. NextEra sued me for using the word "terror" in an image posted on the website I manage, Ontario Wind Resistance, and on videos of this wind developer destroying an active bald eagle's nest in Haldimand county.

After being served, I asked others what they would do in my position. Almost everyone agreed that I was in the right, but nearly all of them said that they would stop using the word in the image made of "next terror" because they wouldn't want to risk everything they had and years of their life wasted in a court battle, all over a single word.

NextEra had thought this through. They realized there was a 99% chance I would stop using this term in a parodied image because that's usually what happens when they lay a letter on an opponent of theirs. SLAPP suits are cheap and effective, and as long as the person SLAPPed is scared or humiliated, the corporation doesn't even risk bad publicity. It takes a certain amount of nerve to be the 1% who refuses to accede to their demands, but that doesn't mean that the stress, the burden and the impact of a SLAPP doesn't hit the defendant just as hard. That 1% would no doubt be higher if there was someone to back them up—a judge to say, "This lawsuit has no merit," thus allowing the defendant to walk away unscathed, with their free speech intact.

There's really no logical reason why the lawsuit against me and other current SLAPP victims are denied legal protection under Bill 52. Ms. Wynne's office told a Canadaland reporter that it was for fairness to litigants already before the court and to avoid distraction from the important public interest purpose of legislation. Both of these reasons are weak, simplistic and lack a true

understanding of what it means to protect all speech and expression.

When we're trying to stop harm from occurring, we don't say that we'll only help those who were hurt after September 24, or those who are under 45 years old, or those who live in the 905 area code. No, we help all and we protect all. Nor should protection be denied in order for the government to be fair to the instigator of the toxic SLAPP suit. Right now, the system is set up to be unreasonably accommodating and compliant to corporations like NextEra while providing zero recourse for their victims. That's what Bill 52 is supposed to fix.

As for current litigants being distracting to debate, this is nonsense. Debate is the bedrock of any healthy democracy. To silence voices, especially voices of experience, is rank censorship. What kind of law is changed to deny a person access to justice because their case is distracting to a debate? The present regime should not be deciding whether I'm good enough or sued currently enough to have access to justice. This is the job of a judge. The court asks specific legal questions, and from that, it determines whether or not to throw a case out.

This amendment to Bill 52 is effectively telling citizens, "We believe in free speech, but only after the bill receives royal assent. We believe in free speech, but only if it's fair to the plaintiff of the SLAPP suit. We believe in free speech, but only if your SLAPP suit hasn't been distracting to our debate." As others before me have said, the moment you limit free speech, it's not free speech.

I know, for my family, this lawsuit minus any SLAPP protection will continue to harm us until 2018 or beyond. As a mother and the sole provider for my family—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Esther Wrightman: —do I risk buying a home? Do I risk taking over the family plant nursery? If not, how employable is a person where a quick Google search shows there's a huge lawsuit directed against her? Do I risk opening my mouth again?

I'm forced to wrestle with these questions daily. Thank you for allowing me to speak freely.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wrightman, not only for your deputation but your precision timing.

The floor now passes to Mr. Singh of the NDP for three minutes.

Mr. Jagmeet Singh: Thank you for adding your voice to this discussion from New Brunswick. Your primary concern is around the retroactive protection. I actually agree with you. I think that retroactive protection should apply. There's a number of people who are facing SLAPPs who won't be protected by this legislation. Although the legislation does provide some significant protections, it's fairly meaningless to those who have already been SLAPPed and cannot benefit from the protections available.

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Do you know of any examples of people in Ontario who are currently facing SLAPPs who would otherwise not see any of the protection apply?

Ms. Esther Wrightman: I'm not sure how far along most of these cases are. I would think probably the Marineland one. There aren't too many. In what I've looked up, there didn't seem to be that many SLAPP suits in general that are staying active, but that doesn't mean to say—I don't know of them all.

Mr. Jagmeet Singh: Okay. In terms of your experience in New Brunswick, has there been any discussion around SLAPP legislation in New Brunswick?

Ms. Esther Wrightman: I believe there was some, a long time ago, but they haven't done anything since. I'll try and change that.

Mr. Jagmeet Singh: Good. In terms of your personal experience, how much of a chilling effect has the fact that you've been SLAPPed had on other people who have similar concerns to what you have?

Ms. Esther Wrightman: Yes, it's not good, because the first thing it does is, people don't talk to you or they're afraid to say anything to the media. The media is afraid to even talk about your issue, for fear that they might get SLAPPed. It really did damage the community. Even though they stood behind me, I could sense the chill, that they weren't willing to do as much as they used to, because they were afraid that they would get hit like I did.

Mr. Jagmeet Singh: Okay. Thank you very much. Thank you for your comments, and thank you for your contribution.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. We pass now to the governing side: Madame Naidoo-Harris—three minutes.

Ms. Indira Naidoo-Harris: Thank you so much for your comments, Ms. Wrightman. I want to start out by saying that I understand your concerns regarding the retroactivity aspect of this bill. So I have to ask you: In your opinion, how would you decide how far back to go, when it comes to retroactivity? How far back would we have to reach?

Ms. Esther Wrightman: Anybody who is in the position where they have to go to court should be allowed to use the legislation, as far as I'm concerned. You want to do the right thing. You don't want to do what's easy and efficient for the courts only. You want to make sure you do the right thing.

In my case, the court case hasn't even progressed. I was served, and I filed a defence, and that was it. So I'm just sitting in limbo until about 2018, waiting for them to either pursue or drop or do nothing. In my case, I'm not allowed to have the legislation work for me. It would definitely help, in my case; maybe for a case that's further along, maybe not so much. I don't know exactly how courts work. But I realize that in my case, it definitely would help.

Ms. Indira Naidoo-Harris: Thank you very much for that. Ms. Wrightman, I don't know how much time we have, but just very quickly, what would you say to those people who may believe it's unfair to have started litigation and then have the rules changed mid-process?

Ms. Esther Wrightman: Those people are usually the ones who are starting the SLAPP suits. They're the instigators. Those are the toxic SLAPP suits. They're the ones that should not be getting the free rein of it. They're the ones that you want to say no to, or at least to put the brakes on and let a judge decide whether they should go forward or back or stop.

I believe that if it was the other way around—the person who puts the SLAPP suit forward is doing it to silence the opposition. It's not the other way around. It only makes sense that you should be protecting the victim, not the instigator.

Ms. Indira Naidoo-Harris: Thank you very much for your comments.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. We now pass to the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for joining us from Saint Andrews By-the-Sea. I'm sure it's a beautiful sunny day down in New Brunswick.

I want to just make a comment on this retroactivity. Through the debates, we've not heard any particularly valid or good reasons offered as to why the retroactivity has been removed from this version of the bill. I hope that maybe this committee will have an opportunity to discuss and debate and look at possibly reintroducing the retroactivity component. But we'll have to wait and see what gets referred back to the House.

The only thing else I would have to say is that I commend you on your imagination and creativity in your NextEra—or "Next Terror"—ads and communications. NextEra also has a few wind turbine developments in my area which many people are very, very upset with.

Thank you for all your efforts and all your work. It's unfortunate that you're facing this suit. I would just add that the retroactivity, I believe, could be incorporated for any suit that has not been dispensed with by the time this bill receives royal assent. We're not going to go back and capture suits that have already been dealt with by the courts and are finished, but any that are still in process, I think, could be captured by this anti-SLAPP legislation.

Ms. Esther Wrightman: Yes, I agree with that.

Mr. Randy Hillier: Thank you.

Ms. Esther Wrightman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Wrightman, for your deputation via teleconference.

CONCERNED RESIDENTS ASSOCIATION OF NORTH DUMFRIES

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, Ms. Temara Brown, executive director of Concerned Residents Association of North Dumfries. Welcome. You've seen the protocol. I invite you to please begin now.

Ms. Temara Brown: Thank you so much, and I thank Esther, if she can still hear us, for touching on the retroactive clause.

CRAND, as well as our friends from the Oxford Environmental Action Committee—who have attached a sheet I passed around for you guys—both agree that there are four amendments that could really strengthen Bill 52, the first being the retroactive clause, and also:

—that the bill fully incorporate suggestions from the Anti-SLAPP Advisory Panel that were delivered to the Ontario Attorney General in 2010;

—that the bill include more potent deterrents to deter the initiation of SLAPPs; and

—for any party previously found to be using SLAPPs, to further dissuade them as well.

It's important, I think, when we're discussing stressful deliberations, to just remember to breathe. It's a very important thing to remember, so what I really want to ask you guys to do is to fill your lungs up—it's a bit of an interactive moment—and hold your breath, and for the rest of the five minutes only breathe with the little bit of lung space that you have on top. The reason will be explained soon.

I am delegating on behalf of the Concerned Residents Association of North Dumfries. Our community volunteer not-for-profit has been advocating on many interests affecting citizens and the environment in our township.

Five years ago, our community was struck with an application for a development that we believed would put our health at risk, among many other issues, and we couldn't understand how any reasonable, conscientious person could possibly believe that this would be good planning.

I want to ask again if you guys are remembering to keep breathing.

The Chair (Mr. Shafiq Qaadri): We're all holding our breath till October 19, so go ahead.

Ms. Temara Brown: Oh, I know. But there's a point to it, because we were told by our municipality that there was nothing they would do. They were too afraid of the financial repercussions that would ensue and the processes that would follow if they were to say no to this development, which would be the Ontario Municipal Board process, so they approved the application without question. Thoroughly disgruntled, we incorporated and we appealed, ourselves, to the Ontario Municipal Board, noting that in doing so we were seeking a shred of justice.

Preparing for an appeal is no simple task, and I don't have a clue how we ever managed to fundraise the tens of thousands of dollars we needed to fundraise just to participate, for our lawyers and experts. After reviewing the application, the experts did confirm that there were indeed substantial health risks

Keep breathing. I can see some people not. It's important.

Now, the proponents of this development knew what our experts were saying, and they weren't pleased, so what did they do? Leading up to and throughout the hearing, they were consistently reminding us that there was a cost risk—sometimes subtly, and sometimes not so

much, but outwardly saying, "You're risking having to pay over $200,000," on top of the $150,000 we had to pay just to participate.

There were many frivolous acts to intimidate us or to drive up our costs, making this already financially prohibitive process even more inaccessible, and the many hours required to participate meant that I actually had to terminate my business. Retaining work is a concern, because you never know when the next hurdle is going to come. What's more important than your health, though? This is where it came down.

In January 2014, we were shocked when the OMB adjudicator ruled to prohibit our key witness, ultimately preventing us from putting any of the case forward that we had been so painstakingly compiling. Later—we had accused this OMB adjudicator of bias—she rules in favour of the application, and the evidence acknowledging risks to our health yet again goes unheeded.

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Our reward for our participation was a motion for costs seeking over $220,000 against CRAND, but also the individual members, including myself. That was nearly 16 months ago. My family, neighbours and I have lived with the stress of this decision hanging over our heads with absolutely no explanation for the delay from the Ontario Municipal Board, including the adjudicator we accused of bias.

Now what's worse is that we are witnessing the chill over our community as citizens are too afraid to speak out; they're afraid of losing their homes. It's something, I think, that many of us feel even in speaking to you here today, when we weren't sure if were protected from other SLAPPs in speaking to you.

I want to quickly explain the breathing activity—I hope you guys were continuing.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Temara Brown: Five minutes may have been a challenge, but for us, it has been five years. With somebody with a limited lung capacity, like my father, this is everyday life. There's a stress of witnessing somebody preventing us from advocating for our health and, ultimately, preventing us from ever finding that shred of justice. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Brown. We'll go to the government side. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: I just want to let the deputant know that she was speaking to a certified doctor who understands breathing very well. Hopefully, you'll pass on whatever we need to know about breathing. That was meant in a light way.

Thank you for coming here. I've read your whole submission and I understand the position you're in. I understand the retroactivity that you're seeking. How far do you think it should go back? There are people who are going through the litigation process right now that don't have this bill in front of them.

Ms. Temara Brown: I'm glad you asked this because CRAND won't be protected from this bill, but there is comfort in knowing that, even if it did pass without it—although, there really is no excuse not to put the retroactive clause—no one else has to suffer this.

I don't think there is any reason to have a date on when it goes back. Part of the problem with SLAPPs is that they drag them out, and that prevents you from being able to carry on with your life. If something is before the court and it's taking that long, why should we discriminate?

Mr. Lorenzo Berardinetti: Oh, I see. You want people who would benefit from this bill.

Ms. Temara Brown: Such as myself.

Mr. Lorenzo Berardinetti: Okay. Thank you very much. That's all the questions I have, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. To the PC side: Mr. Hillier.

Mr. Randy Hillier: I've read over your documents. I also read over the OMB decision. Just for clarification for the committee and myself: I understand that it was not a suit that you faced; it was a process of challenging an OMB decision, and then the OMB awarded costs out of that decision. There wasn't a suit against it; it was just the awarding of costs.

Ms. Temara Brown: It's a bit more complicated than that. There are actually more parts in this than I have five minutes to explain, of course. It was motion for costs through the OMB, yes, after the hearing, but there is no decision on it yet—almost 16 months and no decision.

Mr. Randy Hillier: Okay. But there wasn't a suit initiated, a defamation suit or any other sort of suit; this was a motion for costs out of the tribunal's decision.

Ms. Temara Brown: Which we argued to be completely without merit—used to intimidate us. The fact that they even went after us as individuals, when the individuals were not there participating—it was to really intimidate us and prevent us from continuing forward when we had the evidence that we had.

Mr. Randy Hillier: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Now to the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Have you heard any rationale that provides any reason that it would make sense to limit the retroactivity to one year, two years or three years? Have you been provided with any rationale for that? Have you heard any reason that would make any sense to do that?

Ms. Temara Brown: I love the question, because I've honestly been trying to find out some sort of explanation for so long that could positively justify it. It is so wrong.

Mr. Jagmeet Singh: I agree. In terms of removing it: Do you see any reason that people should be denied this protection, removing the retroactive clause that did exist initially? Have you and your association come across any reason that would make any sense?

Ms. Temara Brown: No, and I really want to find an answer.

Mr. Jagmeet Singh: Just an additional point that you brought up in addition to the importance of having the retroactive clause and that there should be no limitation

and that anyone who has got a claim in court now that meets the definition of a SLAPP should benefit from the protection: You've raised an additional issue of the use of motions for costs as, perhaps, another technique or another strategy to silence people. Maybe you can talk about that as something separate, perhaps, from SLAPPs, but this idea of awarding costs in motions where people want to participate., citizens want to participate—maybe that's also an additional form of silencing.

Ms. Temara Brown: Almost the entire OMB process feels like a form of strategic litigation, because it is so cost-prohibitive and threatening and overwhelming, and there's no hope that it's ever enforced. Anyway, there were many actions that were taken to either drive up our costs, so that we couldn't afford to participate, or to really make it financially impossible or really the emotional stress.

What I wanted to get across today, because you're going to hear a lot of policy talk, is just how much of a nightmare it is to go through this, and that nobody should. That's really why the retroactive clause needs to come back. This bill needs to be passed right away. Nobody should have to suffer this. Make sure everybody is as protected as we can. It's really awful. We're trying to protect our health, and we're being silenced on it. I don't know how to tell you guys—every day I spend watching my dad suffer, we're living in a dustbowl and I don't know what to do to protect him, and I'm sued for it—or being threatened, anyway. It should fall through.

Mr. Jagmeet Singh: Thank you very much for sharing.

CPAWS WILDLANDS LEAGUE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Anna Baggio of the CPAWS Wildlands League. Welcome. You've seen the protocol: five minutes in which to make your presentation. I invite you to please begin now.

Ms. Anna Baggio: Thank you for allowing me to appear before you today on this very important bill. My name is Anna Baggio. I'm the director of conservation planning for CPAWS Wildlands League. We are a not-for-profit charity that has been working in the public interest to protect lands and resources in Ontario since 1968, beginning with a campaign to protect Algonquin Park from industrial development.

We have extensive knowledge of land use in Ontario, and a history of working with provincial, federal, aboriginal and municipal governments; communities; scientists; the public; and resource industries on progressive conservation initiatives. We have specific experience with the impacts of industrial development on boreal forests and wildlife that depends on them, as well as dedicated protected areas establishment and management expertise.

We believe that strategic litigation against public participation, or SLAPPs, is a growing problem in Ontario. It is a critical core function of our work that we are able to create solutions that are in the public interest, and are able to communicate them freely to the media, industry, First Nations, governments and the public without fear of being sued and bankrupted. This is getting harder and harder in today's climate.

It is our view, and we share it with the Canadian Environmental Law Association and many other groups, that by stifling the public's willingness to engage in public participation, SLAPPs fundamentally threaten our democratic process. We also know that this matters to individual members of the public, because they tell us, and call us, looking for help. We have some direct experiences we'd like to briefly highlight.

After we participated in public consultations regarding a new mine in northern Ontario and communicated to our members and the public, our organization received a threatening legal letter from the company. Thankfully, the company did not follow through, but threat of legal action now seems to be the go-to response of some members of that industry. Currently, there has been a flurry of legal cases surrounding forestry.

With lawsuits, there are only winners and losers. Moreover, lawsuits require retreat into legal corners and stifle opportunities for open dialogue and creative solutions. We have also seen politicians voting to censure public voices, including our own, on issues related to forestry. This is having the effect of creating an atmosphere where it becomes acceptable to seek to quiet science-based voices and not encourage their participation.

While we have been threatened with legal action, we have not yet had to face a lawsuit. One of our employees, however, has had first-hand experience, as he is a member of KI, a small First Nation located 600 kilometres northwest of Thunder Bay. We have worked with KI for years, and were appalled to witness Platinex, a mining exploration company, bringing a lawsuit against them. I asked John Cutfeet to share with me some of his thoughts so that I could relay them to you today. This is from John:

"In 2006, Kitchenuhmaykoosib Inninuwug"—I said that kind of okay, I guess—"was sued for $10 billion"—billion, with a B—"which was designed to intimidate, silence and financially cripple KI for speaking out against a drilling program, where the company was provided 'quiet access' to the land, without the knowledge or consent of the people. The company asked the court to rule that any monies coming into KI be set aside to pay for the damages for which they were suing Kitchenuhmaykoosib Inninuwug, an impoverished ... community."

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I'd also like to clear up some confusion that may exist about Bill 52. "It has been suggested that Bill 52 would prevent individuals and corporations from protecting themselves against an unfair and untrue 'smear campaign.' This is not accurate. The proposed legislation does not change the law on defamation, it only creates a new procedure to help ensure the court's resources and powers are not being used to shut down legitimate public debate and discussion."

We support this bill and encourage the Legislature to enact it. We agree that the core feature of the bill, which sets out the test for dismissal, seeks to carefully balance the need to protect and promote freedom of expression in matters of public interest with the need to safeguard a person's reputational, business or personal interests. We would not support any amendment to the test which would weaken it and undermine the objectives of the bill.

We understand that the bill, if passed, will apply retroactively to the date of first reading. We recommend that the bill be amended to apply retroactively to an earlier date, perhaps to the date of the Anti-SLAPP Advisory Panel report, October 28, 2010.

Thank you for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. Baggio. We'll begin the first line of questioning with the PCs: Mr. Hillier.

Mr. Randy Hillier: You like the bill just the way it is, and you think that they got it right on the balance of protecting freedom of speech and preventing mistruths or misleading or false statements from being said that may harm people or their reputations or businesses, correct?

Ms. Anna Baggio: A lot of work went into the thought around the test for dismissal, and I think the test for dismissal does its job very well, yes.

Mr. Randy Hillier: The committee has heard from other significant and prominent legal professionals who find that the threshold is not well balanced and too broadly worded, that it would allow suits that have merit where there have been misleading or falsehoods stated—that those actions against those mistruths would also be thrown away. Are you concerned at all about the harm and reputations of people or companies not being able to defend themselves with this legislation?

Ms. Anna Baggio: No, because the test for dismissal is very clear: You have to demonstrate you've got merit, and if you can demonstrate that, then it goes forward. I think they've done a very careful job; I think that the experts they brought forward on the panel—some of the experts in the field on both sides of that issue—crafted something quite carefully. I've consulted other legal experts, and they support it. So I'm comfortable with the balance that has been struck there.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you for being here. A couple of quick questions: One is, is there any rationale that you can think of for why the retroactive clause has been removed? Is there any justification for that in your mind?

Ms. Anna Baggio: I haven't heard one.

Mr. Jagmeet Singh: I agree with you. In addition, in terms of how far back to go, how does your organization feel about—that any existing SLAPP, any existing lawsuit that meets the definition of a SLAPP, should be entitled to the protection of this legislation?

Ms. Anna Baggio: I believe the advisory panel said it best when they said that anyone should have this tool available to them that is under civil litigation. I support that.

Mr. Jagmeet Singh: Okay. Just specifically, two issues were raised. I think you can respond to this one quite well. An issue was raised about different-sized organizations receiving protection and not receiving protection. I would say that at the end of the day, there is still an imbalance of power, no matter how big the community organization and the not-for-profit organization, and the other side being a much larger corporation. Maybe you could speak about that.

Ms. Anna Baggio: A lot of us are always going to be on the underdog side of that equation. Again, I thought the advisory panel did a very good job on that point. They thought about it, and they said, "You know what? It doesn't matter who you are—rich or poor, black or white, green or yellow. Anyone should be able to use this tool." So for me, they weighed in on it and they said that no one should be excluded automatically from the protection of this legislation, and I agree. It should be available to everybody.

Mr. Jagmeet Singh: Excellent. Finally, in my last seconds, the Advocates' Society talked about the one threshold, the "no valid defence" component: that that was too high of a burden, that the plaintiff had to show that there was no valid defence. Do you have any comments on that specific issue?

Ms. Anna Baggio: I'm not a lawyer, so I don't really know what they mean on that one.

Mr. Jagmeet Singh: No worries; no worries. I'll just bring it up with future deputations.

Those are all of my questions. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh and thanks to you, Ms. Baggio.

Actually, we have the Liberal side as well. Mr. Delaney, please go ahead. You have three minutes.

Mr. Bob Delaney: Thank you very much, Chair. Some of my points have been covered. I have just a couple of quick questions. Do you believe that the bill preserves or enhances people's freedom of speech?

Ms. Anna Baggio: I think it brings in place a procedure to make sure that, yes, freedom of speech will be protected, or enhanced.

Mr. Bob Delaney: Does the bill as drafted enhance people's right to have their opinions heard?

Ms. Anna Baggio: "Enhance"? I'm not sure. But certainly it brings in a procedure that, in the case of conflict, if somebody should bring litigation against someone, they can at least know that they can take it to the court and this special procedure will be available to them. In that respect, they'll at least have a little bit more to arm themselves with than without it.

Mr. Bob Delaney: Would the bill, if passed in something like the form that it's in now, have, in your opinion, any unintended consequence such as giving people a licence to slander?

Ms. Anna Baggio: Not at all.

Mr. Bob Delaney: Okay. Thank you very much, Chair. Those are my questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Ms. Baggio, for your deputation.

MR. PAUL BEARANCE

The Chair (Mr. Shafiq Qaadri): We now go via teleconference to Mr. Bearance. Are you there, Mr. Bearance?

Mr. Paul Bearance: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Thank you. Just let us know where you're calling from, by the way.

Mr. Paul Bearance: I'm calling from Kingston, Ontario.

The Chair (Mr. Shafiq Qaadri): That's great. You have 10 MPPs listening to you right now and you have five minutes in which to make your address, to be followed by questions in rotation. Please begin now.

Mr. Paul Bearance: Thank you very much for allowing me to present. The members of the committee should have in their possession a scientific report, prepared by Peter Barton, the head engineer of Emissions Research and Measurement Division of Environment Canada, a key publication. Can you confirm that is so?

The Chair (Mr. Shafiq Qaadri): Yes, we have all of your written submissions. Please go ahead.

Mr. Paul Bearance: Thank you very much.

The report has been described on SEDAR as "without merit," and I think that the question must be asked: Why would a provincial government agency condone such language, as to describe it thus? The question would be as well: Why did this happen? Why, after more than 10 years, does the language remain unaddressed? Does a fiduciary duty—is it attached to the stated mandate of that particular agency?

Now, this may seem a little bit off topic, but I think that it's valid. The Supreme Court of Canada in Bhasin v. Hrynew recognized "that good faith contractual performance is a general organizing principle of" Canadian "common law." So how does this pertain to Bill 52? I suppose I feel that a duty exists on me—whether that duty be real or merely perceived—to bring this to your attention, and if there's room for improvement, then I believe that a duty exists to do just exactly that.

I would also suggest that whether or not it still remains, the top three issues in the upcoming federal election were, at one point in time at least, the economy, the environment and governance—I personally do not know how one can separate the three. It is my opinion as well that policies need to be driven using the scientific method, and to do otherwise will eventually lead to consequences most unwanted.

By definition, science is "knowledge or a system of knowledge covering general truths or the operation of general laws especially as obtained and tested through scientific method."

Now, the stated purpose of Bill 52 is to allow me or anyone else to voice such opinions without fear of reprisal, and it also offers the possibility of an expeditious avenue. I support expediency, but never at the expense of justice.

1450

Another question would perhaps be raised: What happens to the issue that gave rise to the SLAPP action to begin with? Clearly the courts are overburdened, and I feel that SLAPP actions are perhaps a larger, nastier version of those that might be called merely vexatious or frivolous. But they both contribute to clogging up the system. So in my opinion, if you wish to mitigate this undesirable effect, you must make the practice unattractive, and not just for the plaintiffs, but for law firms that choose to engage in such practices knowing full well that there is no reasonable possibility of success at trial.

This is a quote: "Being able to access justice is fundamental to the rule of law. If people decide that they can't get justice, they will have less respect for the law. They will tend not to support the rule of law ... which is so fundamental to our democratic society, as central and important." That came from Chief Justice Beverley McLachlin.

That is essentially my presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bearance. We'll now move to questions, starting with the NDP: Mr. Singh. You have three minutes.

Mr. Jagmeet Singh: Thank you. As the bill is written, do you have any specific concerns about the way it is? Are there any changes that you'd like to see, or do you like the way it is as it stands?

Mr. Paul Bearance: I like the principle behind it, but unfortunately—and I heard briefly about the, shall we say, balance of power, and that really goes to money. Typically, those who engage in SLAPP actions do have the money and they go after those who are, shall we say, less able to defend themselves.

If there's any way that there can be amendments to the bill that would make it unattractive to engage in such things—I understand why one wants to be very aware of the devastating impacts of being slandered or libelled or defamed. At the same time, if the defendant is actually merely speaking the truth, if you don't have money, you will have a very difficult time retaining legal representation.

Mr. Jagmeet Singh: Thank you, sir. And one quick question: How do you feel about the retroactive clause? Before the bill was crafted, there was retroactive protection so people who were facing lawsuits before this law was enacted would get protection. That's been removed now. Do you have any comments on that?

Mr. Paul Bearance: I believe that it should be included.

Mr. Jagmeet Singh: Okay.

Mr. Paul Bearance: Absolutely.

Mr. Jagmeet Singh: Do you have any comments around how far back this should go or how much protection should be extended?

Mr. Paul Bearance: Well, I suppose I might suggest that I would like it to go all the way back to the date when I was SLAPPed, and then five and a half years

later—and I offer this by way of evidence that there was a SLAPP—the plaintiff simply walked away, which is what they can do.

Mr. Jagmeet Singh: And what happened with your case?

Mr. Paul Bearance: I was sued for defamation. I retained legal counsel that produced a statement of defence and counterclaim, which was eventually—the counterclaim was dismissed at the Divisional Court level. I was a self-represented litigant at that point because I'd been essentially rendered into an impecunious state.

If I may, as well, I found that it was rather dehumanizing to have the Divisional Court suggest that, "Yes, the fraud was discovered when you had your mitts on the report. Give the plaintiffs more money."

Mr. Jagmeet Singh: Okay. Thank you very much. I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. We'll now move to the government side, to Madame Indira Naidoo-Harris. Please go ahead: three minutes.

Ms. Indira Naidoo-Harris: Thank you, Mr. Bearance, for your comments. I just want to get back to a couple of things you said. You talked about SLAPP actions being frivolous. Using intimidation tactics to silence one's opponents is a misuse of our court system, and, if passed, this legislation would allow courts to quickly identify and deal with strategic lawsuits, minimizing the emotional and financial strain on defendants as well as the waste of court resources.

I have to ask you—this is really an attempt to accomplish this goal. Would you say we're on the right track with this?

Mr. Paul Bearance: Oh, absolutely, but I would also say, please do not just let this go. Continue debating. What I read in Hansard transcripts historically was part of it, yes. Let's make this yet a stronger bill.

In terms of intimidation, the chilling effect of even being threatened with a lawsuit: Try actually being sued. Add the multipliers.

I would also suggest that that's just step two in what seems to be off-the-shelf standard operational procedure. The first one is isolation. Then comes intimidation. Then marginalization, objectification, vilification, stigmatization. Unfortunately, I couldn't send the actual statement of claim because it was too large a file to arrive. Nevertheless, that is very true. These are the things that people go through.

I also sent you some information on victims of fraud circa 2009. It is very true. When you're visited by fraud, it does affect three generations of a family. Now throw a SLAPP suit on top of that—and it's all because of speaking the truth about science, in my particular circumstances.

Ms. Indira Naidoo-Harris: Thank you very much for sharing your experiences and your comments with us, Mr. Bearance.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side: Mr. Hillier?

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you. They have ceded the time.

Mr. Bearance, I thank you for joining us from Kingston via teleconference and for your written deputations.

TOWN OF COCHRANE

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Peter Politis, the mayor, and the corporation of the town of Cochrane. Welcome. Your time begins now.

Mr. Peter Politis: Good afternoon and thank you for this opportunity to present on what is obviously, potentially, a very profound bill that will be coming forward, with a lot of different emotional attachments to it.

One of the ideologies I'd like to put on the table for people to consider here is that while there are many people presenting today who speak to the personal difficulties they've had with SLAPP suits, there are many other larger issues, such as an entire race of people and a region in this province in northern Ontario who are facing a lot of the counter-influences, if you will, that are a reason why this bill may be risky.

We don't disagree with the bill. We support the premise of the bill, obviously, and we support the premise of supporting the little guy, the public interest, and providing an opportunity to ensure that the legal system doesn't preclude that everybody finds justice. Unfortunately, what we find in the bill, as it is currently drafted, is that it will also provide the big guy, the well-funded organizations, even some of the radical organizations, if you will, who are very well pronounced, very well established and don't really need any government protection on top of what they have, and who can afford to go through the legal process and allow the current justice system to determine the outcome—it will provide them an opportunity, a backdoor way, as we see it, to take advantage of a loophole or a technicality in the law and with what we think is an expedited approach to their agenda. That's concerning to us.

In northern Ontario, one of the single biggest threats we face right now is in fact the pressures that are coming from large environmental extremist groups who are portraying the industry in our region and our way of life in a wrong way, and the misinformation that comes along from that. Clearly we are facing depopulation because of the threats that are coming from these groups and the approach that they're taking, which is to misinform, to calculate and to threaten the industry, and to push their agenda. While I have no issue with them having entitlement to an agenda and their position, I'm here to speak as a politician to other politicians who, quite frankly, I believe are bestowed with the responsibility of being the extension of the people.

We seriously have an issue here with the bill as it is crafted, and there are amendments that we are proposing that we hope the committee will seriously consider to ensure that the premise and the original intention for the

bill is met without creating another backdoor opportunity for large, well-funded organizations to drive their agendas, which unfortunately, in our view, is coming at the expense of northern Ontarians.

1500

Currently, I have three suggested amendments. We provided you with a package; I encourage you to read the package, because the context that you're missing in my five-minute presentation is laid out in the package. That context clearly identifies the serious threat, as I said earlier, to an entire way of life and a race of people who have now learned to become very balanced and work harmoniously with the environment, and are suffering the consequences of the groups that we were speaking to. I'd hate to see us, in haste as a government, pass legislation that would jeopardize that.

We have three proposals for the committee to consider. Legal action resulting from public participation would need to be reviewed by a judicial officer or other provincially appointed expert prior to being filed to ensure that no one is forced to defend themselves against a baseless charge that amounts to a SLAPP suit in the first place.

The second is to target the bill specifically to apply to volunteers and small community organizations with annual budgets of less than $100,000 and who have no pecuniary affiliation or tie to larger groups or organizations.

The third and final is that public interest—the test that was spoken to earlier as dependent on public interest, in section 137.1(4), which allows legitimate lawsuits to be extinguished, should be removed and replaced with a bad faith-based test, such that only lawsuits brought in bad faith can be extinguished. Unlike the vague concept of public interest, which can mean almost anything, courts have given definite meaning to the term "bad faith," such that a bad faith-based test will lead to more predictable and just decisions by the court.

These are very practical amendments that we're suggesting the committee seriously consider that would not only maintain the original premise of the bill, which we think is a solid premise, but would also ensure that other Ontarians—Ontarians who are drawn away from the public eye, if you will, and whose scenario may not be as well known here, where the Legislature is making these decisions—are not put at risk.

Certainly, I'm putting our faith—our town of Cochrane is putting our faith—in this committee to come together as politicians and as an extension of the people that they're here to protect to ensure that we very closely look at these dynamics and we ensure that we're not making decisions in haste.

I'm happy to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mayor Politis. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Your Worship. Thank you for coming down here to share your views. We heard earlier from other northern communities. I don't think we've had the chance to put on the record how important the government knows that forestry is in Ontario, and the jobs. It's our sincere hope that whatever this legislation—that one of the unintended consequences is not to permit people to make defamatory statements and get away with it, no matter how small or large the organization is.

With that caveat, you do know that senior justices in the province—McMurtry and Iacobucci and Osborne—came forward and said that the balance that we're striking in this act was the right level of balance. It still allows a quick, expedited route to determining whether it's frivolous and whether it's meant as a SLAPP as opposed to a legitimate concern. Do you take issue with their assessment as senior jurists?

Mr. Peter Politis: I wouldn't take any issue with somebody who is an expert in a field that I'm not in. I take that to heart.

I guess the question I would ask is a practical one. The practical question is, when we're looking at parameters in the test that I referenced, in section 137.1(4), being public interest—"public interest" isn't defined by law, but "bad faith" is. My question would be, considering the potential consequences that exist and considering the very real threat that exists to us as a people and our way of life in the whole region, would we not be more responsible in looking at defined terms as opposed to undefined terms?

Our experience with these larger groups—and I'm not speaking to the average environmentalists, because I see ourselves as being those, but to extremists and radical groups—is that they become very good, almost surgical, at how they misinform, and this would be a loophole that would worry me quite a bit in terms of not being closed. For the simplicity of just changing it and addressing that dynamic, we would hope that would be considered.

Mr. Arthur Potts: Yes, and we might argue that the extremist groups, as you term them, might be having a very public campaign against cutting down wood. We have a very good balance, I believe, in the province where we try to regulate what gets cut, where and how, and that it's sustainable.

They may continue those operations regardless of whether they're using lies and slander to do it, and it just becomes a public relations exercise. But we believe that this is balanced.

If you're willing to accept the fact that these senior justices believe that the public interest is going to be respected on both sides of the equation, I think your fears will be allayed.

Mr. Peter Politis: That's a fair assessment. I'm not sure I'm as comfortable with it as you are. I would just very politely offer something else to consider, which is that the current justice system is still run by those same justices. Why don't we have the same faith in them now, before the anti-lawsuit, to be able to address the issues up front in the process?

Mr. Arthur Potts: We're giving them the tools.

Mr. Peter Politis: You're giving tools to others for other things as well.

Mr. Arthur Potts: That's all.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. I appreciate the opportunity. Welcome, Your Worship.

Mr. Peter Politis: Thank you.

Mr. Victor Fedeli: We have had other deputations, and I just want to go over some of the information and maybe make a counterpoint to the earlier comment that we heard from the Liberal MPP.

In the last dozen years, we have seen 63 forestry operations close in Ontario, primarily northern Ontario. Eight out of 10, 80%, of all the mills are closed, and I would have to suggest, in all due respect, that the recent closings of the mill in Iroquois Falls and the mill in Fort Frances were not simply a public relations exercise. I would think the 1,000 people in Fort Frances would consider that to be insulting to them and their families, who are now out of work over what was the result of a very devastating campaign.

I notice, Your Worship, that you are also supported by NOMA, the Northern Ontario Municipal Association. I see their letters here that were handed in in earlier deputations. The northern Ontario association of chambers of commerce and yourself, along with Mayor Roger Sigouin of Hearst and the United Steelworkers, headed south to make a presentation. I also note that you are joined by Chief Earl Klyne of the Seine River First Nation.

In your deputation, you made a comment from Chief Sara Mainville of Couchiching First Nation, where she says, "The Greenpeace campaign is ill-informed, unfair and unworthy of government protection," followed by former Fort William First Nation chief Georjann Morriseau, who says, "Bill 52 will undermine community autonomy, treaty rights and territorial jurisdiction." She goes on to say, "Bill 52 represents a clear and unequivocal danger to First Nations and aboriginal people."

We heard another comment earlier, and this is my question to you: Do you agree that the purpose of this bill is to allow professional environmental groups the right to defame?

Mr. Peter Politis: Yes. I agree with the presumption that it provides them an opportunity, or a tool, if you will, to expedite their agenda, yes. That's the fear we have.

What we're proposing to the committee isn't, again, stopping the bill or what have you. We're proposing that the committee simply step back, take a breath and, amidst all the emotion, recognize that there are some real consequences to this bill that we can modify with some very simple language—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you very much. Welcome, Your Worship. Just a couple of quick questions.

I want to give you a scenario. You indicated perhaps putting in a cap on the size of the budget of the organization, and whether this protection should apply to that organization or not. If I give you a scenario, I think that there are a great number of flaws to that solution.

One is that if an organization perhaps has a budget of over $100,000—say it's an organization that provides or helps Ontarians with clean water and advocates clean water and provides pumps to different rural communities, and they have an over $300,000 budget, but they spend $300,000 on providing those pumps to people, and they say that the water is going to be polluted by a particular project. They wouldn't get the protection under your proposal.

I could come up with countless examples where simply putting in a budget and having that budget requirement could preclude a number of very good organizations that do great work. They would be unfairly undermined by this type of amendment. I think that what the committee had suggested was that everyone should be entitled to protection against a lawsuit that is not of merit.

Does that make sense to you?

Mr. Peter Politis: Your understanding of it makes sense to me, but I'll offer you a counter-thought to consider, as well: Wouldn't it stand to reason that the large organizations would have the resources to go through with a normal court process, which affords them the protection of the law if they in fact are telling the truth? At the same time, while you're using a budget of $300,000, I'm not sure how many of the prominent organizations which affect policy the way it has been affected in the past 10 years have $300,000 budgets.

What about the larger organizations with $300-million budgets, who have an agenda and who are driving the process? Would we potentially be giving them a backdoor way of driving that agenda, which, as I've explained to you here, has a very profound impact on a million people in Ontario who have a completely different way of life and a very balanced way of life that is world-renowned?

1510

Mr. Jagmeet Singh: And what about the argument that whether it's a $300-million organization or a $1 organization, if their lawsuit satisfies a test that it's not of merit, then they should be protected by the bill?

Mr. Peter Politis: Yes. What I'm saying to you is, it's just that test. We need to look at the test a little more thoroughly. That's what we've suggested: that if we don't use public interest, that we use terms like "bad faith," then we're in support of the premise of the bill and what you're trying to accomplish. We're very clearly trying to identify for you a real consequence here, saying that we have to be careful with—and the test itself is going to be at the crux of everything. So let's make sure the test is right and let's use terms that are legally defined now as opposed to terms that aren't legally defined, that can only—

Mr. Jagmeet Singh: One question you brought up was the entire way of life and the race of people that would be affected. What did you mean by "race of people"?

Mr. Peter Politis: Northern Ontarians have our own culture. It's quite different from what exists down here. Ontario is a big province. We have a dialect in language.

We have a completely different view on a lot of different items in life, so we look at ourselves as a race of people. We're defined by those terms. It doesn't make us any better or worse, and anyone else who is not part of the race that we consider ourselves, you should not be offended by that. It's just that we have a distinctive way of life that needs to be protected.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mayor Politis, for your deputation on behalf of the town of Cochrane.

MS. VALERIE BURKE

MS. ERIN SHAPERO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Burke and Ms. Shapero. Welcome. Please be seated. You've seen the protocol: five minutes for an opening address with questions to be followed in rotation. Please begin now.

Ms. Valerie Burke: Good afternoon, Mr. Chair and committee members. Thank you very much for your time today. My name is Councillor Valerie Burke and I would like to introduce Erin Shapero. We are very strongly in favour of Bill 52 and will tell you our story as succinctly as possible.

In early 2010, the town of Markham council was faced with a crucial decision: Either expand its urban boundary north of Major Mackenzie Drive into prime agricultural land or keep the boundary at the current location. The town was required to decide how it would accommodate the province's Places to Grow population targets to 2031.

Councillor Erin Shapero and I proposed that the urban boundary remain the same and that the town intensify sustainably to 2031. We advocated protecting the agricultural land north of the town's urban boundary—roughly 5,000 acres—by creating a permanent "food belt" for agriculture. Markham, like many other GTA communities, has seen a rapid loss of Canada's last remaining class 1 agricultural land to low-density development. This is a trend that worried us, residents and food security and sustainability experts alike.

The food belt proposal was well supported by residents and sparked the interest of the media. Councillor Shapero and I were interviewed by various national media in front of the rolling green hills of the Beckett Farm, one of Markham's most beautiful and iconic farms facing the bulldozer. This location helped illustrate the impact of council's pending decision.

In April, just weeks before a crucial Markham council vote, a letter from Upper Unionville Inc.'s lawyers was hand-delivered to Councillor Shapero and me threatening strong legal action. We were accused of trespassing on the Beckett Farm property. Copies of the letter were also emailed to all members and the mayor of Markham council, filled with threatening, false and misleading information stating that we were open to criminal charges for our behaviour. Upper Unionville Inc., owned by Silvio DeGasperis and partners, had purchased the farm and were speculating on other lands council was considering as part of the urban expansion debate.

A considerable amount of time and energy was spent by us and our lawyers on this potential legal action. At the same time, other councillors were being verbally threatened for even thinking about supporting the food belt proposal. The chill was starting to take its desired effect.

Ms. Erin Shapero: In the end, the very contentious vote came to a head with Markham council voting 7 to 6 to expand the town's urban boundary.

Keep in mind that November 2010 was also an election year, and with it on the horizon the message from developers to councillors was clear: "Cross us and you'll face lawsuits and loss of financial support for your upcoming election campaigns."

Upper Unionville Inc. did make good on its threats to sue us both. The SLAPP suit legal proceedings continued into 2011. Councillor Burke and I were very fortunate to have excellent lawyers, lots of public support, and were able to successfully defend ourselves. But not everyone is so lucky.

In January 2011, Justice James Spence ruled so strongly in favour of our position in this classic SLAPP suit, his decision called the lawsuit an "abuse of the court's process and an attempt to intimidate the councillors." He said further: "In pursuing this claim against the defendants ... Upper Unionville Inc. and its principals have sent a warning to Markham town council. The implicit message is that those elected municipal officials who choose to vote or otherwise represent their constituents in a manner that may conflict with the financial interests of the developers ... (in particular, Mr. DeGasperis) may find themselves forced to defend against frivolous lawsuits and baseless allegations."

He continued, "The [statement of claim] can only fairly be regarded as having been prompted, not by a desire to advance the cause of justice, but in order to intermeddle or the collateral reason of advancing the political interests of the plaintiff by harassing and intimidating the defendants."

Despite our huge victory in court, the time and energy needed to defend ourselves is something we can never get back, and the chill on our council became a deep freeze—precisely the aim of the SLAPP suit, which wasted and abused the courts' time, never mind the cost to taxpayers.

Whether you disagree or agree with the issue we were fighting for, we were elected to represent our residents, and that's exactly what we did. Ultimately, it's the public voice that was being threatened—not just our own—and that's really the disturbing truth behind these SLAPP suits.

Today, thankfully, you have the power to protect and safeguard the public's voice: our right to express opinions and what's important in our respective communities. We look to you to protect the foundation of our democracy.

The Chair (Mr. Shafiq Qaadri): Thank you, Councillors Burke and Shapero. We'll now move to our first line of questioning with Mr. Hillier.

Mr. Randy Hillier: In your comments here, you were facing a suit, and the courts did dismiss it. So it appears that there was adequate protection to dismiss that suit.

I believe that there are abusive suits that are brought forward, and I've seen it first-hand. But I think your story maybe goes to speak that all is not ill—or not every part of our legal system is ill.

If you can maybe just share with the committee: How long did it take to dismiss that suit and how much did it cost you?

Ms. Valerie Burke: It was approximately about six months, I believe. Fortunately, we did not have to pay the costs. We were sued for our annual salary, which at that time was $60,000. We were each sued for $60,000, and fortunately, we did not have to. The developer had to pay that.

Mr. Randy Hillier: So you were awarded costs in your defence?

Ms. Erin Shapero: We were. However, it did not cover the full costs of the suit, which is one thing that we do recommend the committee look at. It should be full-cost recovery for defendants who have to go through this process.

To your point, member, I think you could point to our case and say, "Well, the courts did their job." However, this case was a clear SLAPP from the outset. It's something that both Councillor Burke and I should never have had to go through.

I think if we can safeguard members of the public who are clearly advocating in the public interest in future from having to go through this very costly and time-consuming process, then we should do all we can to do that, because at the end of the day, there was no base; the court was very clear. The judge said that it was a very clear abuse of process meant solely to intimidate us and that, at the end of the day, it was really to advance not the cause of justice, but other financially motivated reasons.

Mr. Randy Hillier: I understand that. If everybody acted completely perfectly and reasonably in life, nobody would have any hardship, but that's not the way of human nature. Our courts are there to find a remedy when there are people acting in an unreasonable fashion or in an abusive fashion or whatever.

Do you have any comments about—one of the things here in this bill is 60 days. If this bill was in place, would you have been able to mount an effective defence within 60 days to demonstrate that?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: I'll just take up from there. I think one of the key factors is that you had to wait six months with this hanging over your head when this lawsuit was so clearly and obviously strictly to silence you. Having an early dismissal mechanism that could dismiss it within 60 days would have given you a lot of peace of mind. Like you said earlier, this wasn't simply a matter of your voices being heard, but the public's voice, because you were speaking on behalf of the public.

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I think your story absolutely shows how important it is to have an early dismissal process. Having a $120,000 potential end cost weighing over your head is no minor thing. You had the wherewithal to be able to mount a defence. Imagine people who don't have that wherewithal. I think your story is very telling and does show why we absolutely need this type of protection, so thank you for sharing that.

The early dismissal process would have been that within 60 days a judge would have been able to look at this case and say, "Well, this is clearly a SLAPP and we want to dismiss it." Would that have benefited you?

Ms. Erin Shapero: Most definitely. Councillor Burke—

Ms. Valerie Burke: At the time we had nothing, so it would definitely be better.

Mr. Jagmeet Singh: Of course.

Ms. Erin Shapero: And just in terms of your previous comment, if we had been subject to that 60 days, I think it also would have made a large impact on the rest of our council, who at the time were making some very important decisions. Clearly the emails that were sent to all of council, threatening Councillor Burke and I, did have an effect on the other council members. Actually, prior to going into that vote where we were deciding on the future of the town's urban boundary, we knew we had the votes to carry that vote, and there was one vote that changed.

We knew that other councillors were being threatened. So if that 60 days had come into play I think we may have seen a different decision in Markham.

Mr. Jagmeet Singh: Of course. That's a very powerful example. Thank you for sharing that.

Ms. Valerie Burke: It was a 7-6 vote.

Mr. Jagmeet Singh: Yes, I know. That's very telling. That 60 days would have not only helped you, but it also would have changed, perhaps, the course of history for your entire city.

Ms. Valerie Burke: Yes.

Mr. Jagmeet Singh: That's very powerful in terms of an example.

Do you see any reason not to have retroactivity apply? It used to exist. In the previous iteration of the bill there was retroactivity; now it has been removed. Do you see any reason for that to be removed? Does it make any sense for you to have taken it out?

Ms. Valerie Burke: I think there should be retroactivity, yes.

Ms. Erin Shapero: Most definitely.

Mr. Jagmeet Singh: There should be, I agree. In terms of the time limit on it, do you think there should be any time limit on that retroactivity?

Ms. Erin Shapero: I don't, and I think this bill should have been passed many, many years ago. I think that anyone who's dealing with this issue should have the benefit of this bill.

Mr. Jagmeet Singh: The protection?

Ms. Erin Shapero: Yes.

Mr. Jagmeet Singh: I agree with you as well on that. Do you think there should be any differentiation between the size of the organization or the income of the individual that's being involved in that? You might have heard some people mention that issue. Do you think that should play any factor in terms of who gets the protection and who doesn't?

Ms. Valerie Burke: Everybody should be fairly protected in this country.

Ms. Erin Shapero: Yes, I don't think it matters. I think at the end of the day a judge is going to look at the facts and is going to weigh them. That's what's important. I think everyone should be entitled.

Mr. Jagmeet Singh: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. I pass the floor now to Signor Berardinetti.

Mr. Lorenzo Berardinetti: I wanted to thank you both for your presentation today, Valerie and Erin.

I was a city councillor for Scarborough for nine years and then on the city of Toronto for six years, so a long time there. I never actually saw one of these SLAPP cases happen in my time there, so your presentation was very interesting. I'm glad you presented today. We have people here from the ministry taking notes. I just want to thank you for your presentation. It was very, very interesting. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Thanks to you, Councillors Burke and Shapero. Please take our greetings back to Mayor Scarpitti as well.

GREENPEACE CANADA

The Chair (Mr. Shafiq Qaadri): Our next presenter, please come forward: Mr. Moffatt of Greenpeace Canada. Welcome. Please be seated and please begin.

Mr. Shane Moffatt: Good afternoon, committee members, and thank you all for your time today. My name is Shane Moffatt and I work on sustainable forestry with Greenpeace Canada. I'm here to describe my experience being hit with a SLAPP suit by a multinational corporation called Resolute Forest Products, and to support this urgently needed legislation.

Greenpeace has long supported anti-SLAPP legislation, going back to our submission to the Attorney General's in 2010, which laid the basis for the legislation before us today. When I gave our submission to the panel all those years ago, the issue of SLAPP suits was more hypothetical to me at that time. Well, the issue is very real for me now.

Because these SLAPP suits are anything but hypothetical: As the panel concluded, significant numbers of Ontarians are being silenced from speaking out on issues that matter most to us.

Members of the committee, I am being personally sued for $7 million by this multi-billion-dollar corporation, which might just be one of the largest SLAPP lawsuits this province has ever seen. My colleague with a mortgage, a wife and a two-year-old son is also being sued, along with Greenpeace, an organization founded here in Canada over 40 years ago and supported by hundreds of thousands of Canadians.

This lawsuit has had serious negative impacts on my life. It has affected my physical health, strained personal and professional relationships and required constant self-censorship.

Our legal advice is that this lawsuit is wholly without merit, but that hasn't made it go away for me, for my colleagues or for our loved ones. They too have borne the brunt of this lawsuit.

And Greenpeace is not alone in being sued by Resolute, which would next sue its own auditor, the internationally respected Rainforest Alliance, and two individual auditors again personally, after an unfavourable audit found non-compliance with responsible forestry standards. Rather than spend hundreds of thousands of dollars, Rainforest Alliance decided to settle, and this audit of a crown forest is now forever sealed from public scrutiny as a result.

Members of the committee, these actions by Resolute will not help make Ontario a more attractive destination for businesses looking to invest. Greenpeace has extended an open offer to Resolute to assist recovering their terminated Forest Stewardship Council certificates that assure the public our forests are being responsibly managed and which are so vital for accessing international markets. Greenpeace has enjoyed working collaboratively with forestry companies for over two decades, resulting in world-leading forestry practices and models for conservation and economic certainty.

Resolute's SLAPP lawsuits have had a chilling effect on others who would speak out about their forest practices. People I talk with are either afraid to speak or looking over their shoulders to see if they are next when they do speak out. In other words, public debate in Ontario—the foundation of our democracy—is being trampled on.

You will notice that a range of voices have been heard here today, and I welcome them all, but what about Resolute? Ontario's lobbyists registry lists six individuals hired by Resolute to fight this legislation and its predecessor, Bill 83. For a company that denies involvement in SLAPP suits, it has invested enormous sums in fighting and lobbying against anti-SLAPP legislation.

Three of these lobbyists are associated with the Edelman group, better known for TransCanada severing its ties with the firm here in Canada for its controversial astroturfing. Resolute's Edelman lobbyists scripted submissions for other groups that cast doubt on the need for anti-SLAPP law and included such wild claims as "the cost of new housing will increase" should the legislation be passed.

Another lobbyist hired by Resolute submitted that this free speech legislation would result in the "disintegration of the marketplace of ideas." I cannot understand what this means, but I fear that these back-channel scare tactics do our democracy a grave disservice.

Before the last election was called, this bill's predecessor was on the verge of passing when it ran into

this wall of corporate lobbyists. After it was reintroduced as Bill 52, the only substantive change was a clause closing its application to ongoing cases. Asked about this in the media, former Attorney General John Gerretsen stated: "Obviously Bill 52 is weaker than the one we originally introduced"—in short, a victory for Resolute and a victory for its lobbyists.

I am here to say that Ontarians do not deserve this weaker version of the bill, and I urge you all to pass it as originally intended to uphold public confidence in our legal system and ensure that future generations of Ontarians can enjoy the robust public debate that is the foundation of our democracy. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Moffatt. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: A couple of quick points: You believe that the retroactive clause should be included in this bill, yes?

Mr. Shane Moffatt: Yes.

Mr. Jagmeet Singh: And that there is no reason to have removed it?

Mr. Shane Moffatt: I see no good reason.

Mr. Jagmeet Singh: And there is no rationale, one, to remove it; and, secondly, do you see any reason to limit how far back the retroactive clause applies?

Mr. Shane Moffatt: I have heard no reason.

Mr. Jagmeet Singh: Thank you. In terms of some of the arguments that we've heard earlier, there's been an issue raised that different-sized organizations should receive differential treatment. Do you have any response to that?

Mr. Shane Moffatt: I think that's a great question, and I would advise the panel to consider seriously the impact that such a measure would have on media and journalists. Canadian Journalists for Free Expression, for example, have been outspoken in support for this legislation. Gutting the legislation in such a way would effectively remove an entire category of individuals: journalists, who are uniquely important to transparency and democratic discourse. The Attorney General's panel fully rejected such an approach with a fulsome analysis in their report.

Mr. Jagmeet Singh: So you would, again, just to reiterate, support equal protection for all participants; if a lawsuit meets the definition of a SLAPP, then it should be entitled—the victims should be entitled to protection under Bill 52?

Mr. Shane Moffatt: Absolutely, yes.

Mr. Jagmeet Singh: Are you in a position to speak about one of the concerns that has been raised around the "no valid defence" clause, and whether or not that's too high of a burden?

1530

Mr. Shane Moffatt: I'm probably not well equipped legally to deal with the specific—

Mr. Jagmeet Singh: No problem. Thank you. I have no further questions, then.

The Chair (Mr. Shafiq Qaadri): To Ms. Naidoo-Harris on the government side.

Ms. Indira Naidoo-Harris: I want to thank you, Mr. Moffatt, for your presentation today. Thanks, also, for sharing your personal experiences when it comes to having to deal with a personal lawsuit and the impact that that can have on an individual and their family.

I want to talk to you a little bit about the importance of this proposed act and its use—to ensure that we have the tools in place to bring into use when people are trying to silence their opponents. What I want to ask you about specifically has to do with some comments that were made in the committee earlier today. As you can imagine, we heard a lot of different people present today. We heard from the Ontario Forest Industries Association, and I would just like to get your position on a couple of things, because there were comments made about groups being out there and defaming companies. There were comments also being made about companies not necessarily being the little guy when they move forward with some of their activist activities. So I want to ask you: In your opinion, do you believe that this legislation strikes the right balance between protecting public participation and protecting the reputation and economic interests of the stakeholders involved?

Mr. Shane Moffatt: I think the Attorney General's panel was weighted to adequately address those issues, and they did a fantastic job. I'd also say that this government has been very deliberative and patient in trying to get this right, and I commend the job that your colleagues have done in that regard as well.

It's worth noting that this legislation attracted all-party support originally, for a variety of reasons. The waste of taxpayer dollars involved from some of the Progressive Conservatives was appropriately raised as an issue in these lawsuits. I'm aware that Andrea Horwath first submitted an anti-SLAPP legislation proposal as far back as 2008. So I think it has been thoroughly debated, and very patiently so, and that a clear consensus has been reached.

Ms. Indira Naidoo-Harris: Just to clarify: This is about striking the right balance, and it's about freedom of expression, protecting people's rights and their ability to speak up when something happens, yet at the same time ensuring that we're not defaming a company and so on. You feel that this act strikes that balance?

Mr. Shane Moffatt: I do.

Ms. Indira Naidoo-Harris: Thank you.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: So if I'm understanding this, you believe Bill 52 is good the way it is—maybe improve the retroactivity—and that this would be of benefit to you and Greenpeace in its action right now with Resolute?

Mr. Shane Moffatt: I think this bill would be to the benefit of all Ontarians, yes.

Mr. Randy Hillier: But would you and Greenpeace also benefit from this bill?

Mr. Shane Moffatt: That's not clear to me.

Mr. Randy Hillier: That's not clear to you.

In the presentation this morning, we received some documentation—and we've also heard from our northern municipalities, we've heard statements from our First Nations and from forestry that they have concerns about this bill. I want to draw your attention to an email that was sent out by Greenpeace in December 2014 specifically targeting Resolute Forest Products' major customer Best Buy. In that email to tens of thousands or hundreds of thousands of supporters, Greenpeace asked them to write a false product review on Best Buy's website: "Be creative and make sure to weave in the campaign issue." That was signed by Aspa Tzaras, Greenpeace Canada volunteer program coordinator.

Do you believe that public debate should also include misleading, false or dishonest statements?

Mr. Shane Moffatt: Absolutely not. As an organization, we encourage public participation on issues that matter to people—

Mr. Randy Hillier: It seems that you're also encouraging people to provide false product reviews targeting one of Resolute's main customers.

Mr. Shane Moffatt: As a bilingual organization, things may occasionally be expressed inartfully, as you can appreciate, I'm sure.

Mr. Randy Hillier: You're saying that that was an error in translation: "Write a false product review...."?

Mr. Shane Moffatt: Absolutely not. I didn't say that.

Mr. Randy Hillier: Pardon?

Mr. Shane Moffatt: Could you repeat the question?

Mr. Randy Hillier: Here it is: You've communicated with tens of thousands of people, asking them to engage in deceitful practices against Resolute's customer. How do you warrant that? How do you justify that, and justify it under a public debate when you're engaging in falsehoods purposely?

Mr. Shane Moffatt: You have stated that we're engaging purposely in falsehoods. I would not accept that premise. I would also say that we have got clear legal advice that the lawsuit against us is without merit, and so whether this legislation will apply to us or not, we will be vigorously defending ourselves on the basis that it has no legal merit according to our legal advice.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thank you, Mr. Moffatt, for your deputation on behalf of Greenpeace Canada.

MR. JEFF MOLE

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Mole. Mr. Mole, to you and to others, I would just remind you respectfully that we are here as a committee, the justice policy committee, to consider Bill 52, 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.

You've seen the protocol: five minutes. Please begin now.

Mr. Jeff Mole: May I have your permission to videotape my submission?

The Chair (Mr. Shafiq Qaadri): Is it the will of the committee to videotape this submission?

Interjections.

The Chair (Mr. Shafiq Qaadri): I'm sorry. I do not have unanimous consent, so consent is denied. Please continue, Mr. Mole.

Mr. Jeff Mole: Good afternoon. My name is Jeff Mole. I'm here today to speak in support of Bill 52, the Protection of Public Participation Act.

I'd like to share some of my story of public participation with the committee in the hopes that this bill will be amended to improve our system of environmental approvals and provide a mechanism for intervener funding. Two of the purposes of this act are to encourage individuals to express themselves on matters of public interest to promote broad public participation in debates on matters of public interest, and the act proposes measures to discourage proponents from using the courts as a tool for gagging opposition to undertakings that have significant negative impacts on the public interest.

I'm from the community of Bala, Ontario. Ten years ago, I was the president of our property owners' association when a corporation gained control of crown land at Bala Falls with a proposal to develop a hydroelectric generating station. There had been a tiny hydroelectric generating station at the site which was torn down in the 1960s because it was not commercially or economically viable. Since then, Bala Falls has become an increasingly popular destination for its other values such as tourism and recreation.

The proposed facility would create new unmitigated dangers to the public. Any energy produced would be wastefully expensive as well as not needed since the facility would not have enough water to run at capacity in the summer when we need the energy. Furthermore, any energy produced in the spring and fall may be dumped as it would likely be surplus.

That being said, I took a neutral position on development of the opportunity and undertook the research necessary to inform and represent the public interest. After looking at the various options, impacts and potential benefits, I'm satisfied that there is a safer and less destructive alternative. Unfortunately, the community is up against a very hostile developer that refuses to change the proposal in a manner that balances the tourism and recreational values with the energy values. And so began our 10-year battle to protect the public interest in Bala and Bala's most important economic, cultural and environmental assets.

In his report, in Environmental Assessment: A Vision Lost, the former Environmental Commissioner of Ontario states that "Ontario has been long burdened with an EA system where the hard questions are not being asked, and the most important decisions aren't being made—or at least are not being made in a transparent, integrated way. The province has increasingly stepped away from some key EA decision-making responsibilities, and the

Ministry of the Environment (MOE) is not adequately meeting its vital procedural oversight role. As a result, the EA process retains little credibility with those members of the public who have had to tangle with its complexities."

In 2008, the Commissioner's Message: Getting to K(no)w stated: "There have been many occasions where affected people have dedicated tremendous time and effort to the consultation process, in the sincere belief that their rational arguments could change or stop the proposed undertaking, only to have their expectations dashed when the project was approved unchanged. Despite all their work—participating in a process that will hear, but still ignore, their arguments—they discover that it can be impossible to get a 'no' outcome. This is very damaging to the credibility of environmental approval processes. It alienates the people in society who can speak for the integrity of our decision-making systems. It encourages those who reject participatory processes and endorse less constructive and more costly strategies, such as litigation or civil disobedience, as a mechanism of public decision-making."

1540

He states, "To be legitimate"—I'm going to skip what he says because I think I'm going to run out of time.

Bala is a poster child for issues that the former commissioner referred to. I'm just one of many people who have dedicated tremendous time and effort to the consultation process. Regrettably, since this report in 2008, little has improved—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Jeff Mole: —and, in fact, some measures of the Green Energy Act have probably made matters worse.

I'm just going to skip to the end: Concerned members of the public should not have to go through what we have gone through. Accordingly, I would suggest that this bill be amended to address the real cost of public participation, or in the alternate, I ask members to bring forward new bills for an intervener act and for amendments to the Environmental Assessment Act.

Members of the public must have adequate tools to do the job that government has abdicated. This is a conversation that is long overdue. I look forward to your questions and hearing motions to amend the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mole. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. The government has no questions for this witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Fedeli.

Mr. Victor Fedeli: Pass.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Singh.

Mr. Jagmeet Singh: As the bill stands, are there any specific issues you have with the bill that need to be amended?

Mr. Jeff Mole: Yes. If you go back to the purposes of the act: The purposes of the act are "to encourage individuals to express themselves" and "to promote broad participation." It's great that there are matters that this public participation act refers to—the Courts of Justice Act and what have you—but there's a whole lot more to public participation than what is shown in the bill. Public participation is about giving people who have a real interest in making Ontario a better place the tools.

Mr. Jagmeet Singh: But specifically, is there a component of the bill that you would like to see modified?

Mr. Jeff Mole: Not per se. I think there are issues in there. You're hearing from other members of the public about how to fix the nuts and bolts of the bill, but there are things missing.

Mr. Jagmeet Singh: Sure. There's a clause, initially, that would allow for retroactive protection, so people would be protected before this law came into effect. Do you think that this law should apply to those folks, or should the retroactive clause, which has been removed—do you think that was the right decision?

Mr. Jeff Mole: I would tend to think that if Ontarians are being harassed in this manner, and there's a way to go back and rectify the situation, then we ought to do our best to rectify the situation. If it's not possible, we'll have to see what happens.

Mr. Jagmeet Singh: Should there be a limitation on how far back we go? Some people have stated that there should be no limitation, that anyone who's got an active lawsuit that meets the definition of a SLAPP should be entitled to the protection. Do you agree with that or do you think there should be a limitation?

Mr. Jeff Mole: So the Limitations Act in Ontario would be two years for commencing a claim of any sort, for the most part, except for certain—so if two years had passed, is there not an opportunity for—you'll have to explain it a little bit more as to how that works.

Mr. Jagmeet Singh: What I mean is that there might be a claim that was launched five years ago—

Mr. Jeff Mole: A proponent's SLAPP claim launched five years ago?

Mr. Jagmeet Singh: Right, someone could have been SLAPPed five years ago or 10 years ago—

Mr. Jeff Mole: And it hasn't been disposed of yet?

Mr. Jagmeet Singh: And it could still be ongoing, for example—

Mr. Jeff Mole: If it's still ongoing, then, yes, absolutely. It's still an ongoing matter, so there's no limitation period. Once the action has commenced, the limitation period stops. It's now an action, just like if you sue somebody 20 years ago and get a judgment, you can still garnishee their wages 20 years later. That doesn't extinguish the action.

Mr. Jagmeet Singh: Sure. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Mr. Mole, for your deputation.

MR. MURRAY KLIPPENSTEIN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Murray

Klippenstein. Welcome. Please be seated. Your five minutes begin now.

Mr. Murray Klippenstein: Thank you, Mr. Chair. My name is Murray Klippenstein. I'm a lawyer and the principal of a firm called Klippensteins.

I'm here because my firm does, or attempt to do, quite a bit of what we consider to be public interest work. Sometimes that involves members of the community who want to speak out on public issues, and sometimes they have to be careful about being sued by large corporations or other interests who use the legal process as a way of strategically reducing their effectiveness. I have, in fact, represented a number of such clients, including Ms. Shapero and Ms. Burke who spoke earlier today.

My points are one or two, and I speak from the point of view of a lawyer or law firm, so from that side of this particular picture. First of all, overall, I think that this is a good bill: good for Ontario and good for freedom of expression. It's well written. I have, of course, read the bill and the paper and some comments. I would recommend that it be passed. I'm going to suggest a couple of changes, but I think it's a good thing.

Secondly, I also want to bring my particular perspective and say, from the legal point of view, the experience of people who are sued by, let's say, companies strategically with lawsuits that are not really well founded—and that happens and I've seen it. I assisted Ms. Shapero and Ms. Burke in more than a year's legal proceedings on a case that was done for intimidation, based on a technicality, to silence and intimidate them. For someone in that position, it is very hard, first of all, to find a lawyer who has the qualifications to defend those kinds of lawsuits, who's willing to and who's willing to deal with the financial issues. So finding a lawyer—and then the financial issues are enormous. The cases can be very complicated, very tricky and go on for years. For a large corporation with lots of lawyers on tap and money and tax-deductible rights for these cases, it's not that a big of a deal.

Then there's the personal stress. You are on the hook personally for a huge amount, going through a huge amount of legal proceedings with unknown results. It is personally devastating. Those are all things I see from the lawyer's side that are an enormous burden for someone who is trying to do the right thing for the public interest of Ontario.

This bill balances an enormous, unfair, tilted scale in the ordinary rules of justice, so I think it's a good thing. Those would be my respectful suggestions and submissions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Klippenstein. We'll begin with the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I want to focus on one element in this bill, and that is that a motion to dismiss under the provisions has to be heard within 60 days. It seems to me inconceivable. We don't get much accomplished in any fashion in our courts in 60 days. Can you speak to the practicality of that? The concept is one that I agree with, but the practicality—how will our courts deal with that?

Mr. Murray Klippenstein: I think that's a good point. I looked at the 60 days and thought about it. Not much happens in 60 days, and a court already has a bit of a packed schedule.

Mr. Randy Hillier: I would think most courts are well scheduled long past 60 days, as it is.

Mr. Murray Klippenstein: That is often the case, although often there will be cancellations and so forth. This would require some special effort by the court administration to accommodate it. It's probably possible. I think the goal is to avoid this sword hanging over people's heads for a long time. I would think an extension to 90 days might be a good thing. I don't have a hard opinion on that. But I think that the goal is to get it over with. For example, part of the procedures, I think, are to limit cross-examinations on affidavits to one day per party, so that helps that kind of thing.

Mr. Randy Hillier: I agree. The concept is good. But I'm going to ask you: If this legislation was the law today and somebody brought a motion to dismiss under it and it couldn't be heard in 60 days, what would be the status of the motion then, in your learned opinion?

Mr. Murray Klippenstein: Well, I have two opinions, one learned and one unlearned. But no, I think that that is an issue. There are ways to deal with it. The rules or the wording could be stated so that it must be held in 60 days, subject to the direction of a judge, or something like that.

1550

Honestly, as a lawyer too, I talked about how, from the lawyers' side, having suddenly been hit by the case that is supposed to be going through all the procedures and then be solved in 60 days is a burden on the lawyer and therefore, indirectly, on the person—

Mr. Randy Hillier: Well, that was the other part. Your ability to prepare in that period of time, in 60 days: Is that even practical? It would only be large legal firms that would possibly have the resources to be able to do that.

Mr. Murray Klipperstein: Smaller firms can do that, but it can be an extra burden. I wouldn't want it to be stretched out too long, because then it defeats the whole point. But I think 60 days could be done; maybe 90 days would be all right.

Mr. Randy Hillier: If not done in 60 days, would there be the ability to bring a motion to strike the motion because it wasn't heard within that period of time?

Mr. Murray Klipperstein: I don't think that's a big issue. The legislation, I think, should be worded so that that doesn't happen. The real answer is to—

Mr. Randy Hillier: It doesn't appear to me—the legislation, the way it's written, is 60 days.

Mr. Murray Klipperstein: I read the legislation fairly carefully. I can't remember the exact wording of the 60-day thing—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Mr. Singh, now, the NDP.

Mr. Jagmeet Singh: Thank you, sir. I used to practise criminal defence law and I just want to give an analogy. I think this might apply.

I had scheduled a number of trials, and it would take a year, maybe eight months, to get my trial date. If I was offered an opportunity to have the charges withdrawn, it would actually free up my schedule; it would be a lot easier.

An early dismissal mechanism essentially would free up a lot of court time. Instead of clogging up the courts with long trials, it would be a mechanism to hear the case. If, on its merits, it's very easy to establish that this is clearly a SLAPP, and under a SLAPP, the judge can quickly make a determination that this should be dismissed and it would allow for an early dismissal, I would argue that, in fact, it would actually free up a lot of court time instead of clogging it up with matters that are frivolous, that would be dismissed anyway once a judge hears all the evidence. But it provides the judge, or a master, perhaps, with an easier mechanism to dismiss cases that really have no merit.

Would that make sense to you, that it would actually free up more court time and use that court time for more meaningful or appropriate litigious cases?

Mr. Murray Klipperstein: Yes, that's true pretty much by definition. If you have a case that is non-meritorious and you wrap it up in 60 days or thereabouts instead of it dragging on for one or two or three years, you have freed up some court time. You wouldn't have quite as major hearings because the legal test is pretty clear and focused, so yes, it would help somewhat, I think, with court efficiency.

Mr. Jagmeet Singh: The other question in terms of functionality: I know in both civil matters and in criminal matters, there are courts assigned—motion court—to hearing quick matters, matters that come up as they come up. Those courts, perhaps, might be the best place to hear these types of motions that are dismissal motions. They wouldn't necessarily take up a trial date or be scheduled in that manner. I think that would alleviate that concern as well. Do you think that sounds reasonable?

Mr. Murray Klipperstein: The court system has various mechanisms for dealing with different types of motions. I think, if I recall correctly, the study paper says that some of these things should be left up to the court administration and the discretion of the judges to handle.

Mr. Jagmeet Singh: That makes sense.

There's been an issue around different-sized organizations receiving different protection. Do you support that notion, or do you think that every organization should be entitled to the same protection under Bill 52?

Mr. Murray Klipperstein: I think the principles, as stated now, are fair and can apply to any organization. I think that makes sense.

Mr. Jagmeet Singh: And there's a retroactive clause that was removed. It would allow protection to flow to other individuals who are facing a strategic lawsuit. That's been removed. Is it your position that it should be added back in, or do you support its removal?

Mr. Murray Klipperstein: Well, the basic principle of the whole legislation is that these are non-meritorious lawsuits. They shouldn't be happening. So if they're in the system now, the test that the Legislature would now adopt would apply—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side. Mr. Potts.

Mr. Arthur Potts: Thank you, Mr. Klipperstein. Thank you for coming by as a lawyer expert specializing in this field. We are delighted with your almost unqualified support for the legislation as it exists. Hopefully that 60 days is enough; we use it for ex parte injunctive proceedings and in other ways, and somehow the courts seem to make that work.

We have heard a lot of testimony about the level at which the courts would dismiss a case and whether the public interest is the right test, or bad faith. The question to you specifically: Would this bill give licence to a detractor of a project to slander a proponent?

Mr. Murray Klippenstein: No. The legislation doesn't use a bad-faith test. The study group very carefully considered that and said, "We're about protecting public expression," so you don't actually have to prove bad faith, which I think is a smart strategy. It sometimes overlaps.

Does it give proper protection? Yes. You can still sue for defamation. If you have a valid defamation lawsuit, it will go through as before. There is such a thing as a trumped-up defamation lawsuit, and those happen, and this allows that to be defeated.

Mr. Arthur Potts: There was some evidence earlier about one environmental organization, who testified a little earlier, who were counselling persons to write a false product review in order to, I guess, tarnish the reputation of an organization so that they would stop using a certain product.

Would the counselling of someone to write a false product review be a protected action, do you think, under a public interest?

Mr. Murray Klippenstein: The answer is possibly yes, but there are a lot of safeguards in there. The study group said—when we looked at this test—again, we want to focus on allowing legitimate public-interest expression, allowing lawsuits, but we don't want to say that this act only applies for thoroughly legal stuff. In one case I was involved in, there was technically a trespass. Somebody stepped onto somebody's property by a couple of metres, and then—boom—the hammer came down big time. That was the tiniest of on-paper, technical, legal breaks. If you speed by going 101, should you be hauled off into court? Look at the 401. We don't live that way.

The study group said to let the judges use good sense. If somebody does something a little bit wrong, you don't have to hit them with a legal sledgehammer.

Mr. Arthur Potts: Had this legislation been in place, you would have—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts, and thanks to you, Mr. Klippenstein, for your deputation today.

We just have a couple of things. Because this meeting is being so ably chaired, we are 33 minutes ahead of

schedule. I understand there will be a vote in the interim. In any case, I respectfully invite our colleagues to reconvene here at 4:30 today. We are in recess until then.

The committee recessed from 1558 to 1630.

SUSTAINABLE VAUGHAN

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We reconvene justice policy. We're considering Bill 52, as you know.

Our next presenter, from Sustainable Vaughan, is Mr. Satinder Rai. I invite you to begin. You have five minutes, and, in rotation by party, three minutes of questions. Please begin.

Mr. Satinder Rai: Thank you for the opportunity to speak. Sustainable Vaughan is a member of the Greenbelt Alliance, and our work is largely related to fighting sprawl and promoting public transit development in York region. We are not an anti-development organization; we encourage density and density-stimulating transit investment. I work for an architectural firm designing high-density residential developments for many prominent developers in Toronto. I respect the important contribution of the development industry in our region. What we object to is the expansion of urban boundaries within the white belt lands, with an ultimate objective of protecting the greenbelt.

What motivated me to come speak today before the committee is not just the need for this legislation; to us in environmental activism, it is a long time coming. I'd also like to provide insight to the province's poor oversight of its growth policies that often lead to conflicts between developers and citizen-led environmental organizations.

Our group was created in 2010 during the creation of Vaughan's official plan. At that time, York region and the city of Vaughan called on the expansion of Vaughan's existing urban boundary into designated white belt lands. Because of my background in land use planning, I, along with former Sustainable Vaughan co-director Deb Schulte, were able to show that to meet its provincially mandated growth targets, Vaughan did not need to expand its urban boundary. Growth within the existing boundary due to investments in public transit infrastructure would in fact exceed targets.

Our motivation? No different than the province's: Deter the creation of car-dependent communities at the outer edges of the region that contribute to traffic congestion while protecting the great natural assets such as the river valleys and headwaters that exist in northern Vaughan; and also promote vibrant, denser, walkable communities where residents aren't socially isolated from one another.

After numerous meetings with staff at the Ministry of Municipal Affairs and Housing, showing our research and findings, we were told that the region was in fact compliant with what the province had mandated and that they would not intervene. The only recourse left was to appeal the region's decision at the OMB, placing us in an adversarial position against the largest developers in the GTA and their lawyers.

Most of the large subdivision developers in the GTA reside in Vaughan. For decades, they faced little to no opposition to their plans to sprawl, particularly within their own backyards.

At the same time as we used numbers and facts in our fight, then-Markham Councillor Erin Shapero and current Markham Councillor Valerie Burke were promoting the idea of creating a permanent food belt out of the white belt lands in Markham. York region was also proposing to expand the urban boundary in Markham.

Much has changed post the Places to Grow Act and the creation of the greenbelt. There is an agreement that we need to curb sprawl, and there's a realization that traffic congestion is an enormous cost to our economy and health and that we don't have unlimited land to develop on in this province.

With the creation of the greenbelt and the Places to Grow policy, we're in a new era of growth management that also requires new legislative protections for the activist community. When the province created the greenbelt and enacted Places to Grow, it did not create an oversight mechanism to review municipal growth plans, as we did, to prove growth is needed. The task to protect the province's own legislation has been forced on residents' groups who have neither the experience nor the resources to fight large developers.

Without that mechanism, what's the recourse? The OMB. Lawyers are expensive, and the OMB process long. Time delays and expenses can cost developers millions of dollars. Developers have an incentive to try to avoid this process, and this often takes the form of intimidation, both subtle and not-so-subtle.

In March of this year the OMB blocked the expansion of Niagara Falls' urban boundary that included a proposal for nearly 1,400 residential units. In its decision, the board found that the city and the region have not demonstrated that there is a need for urban boundary expansion. This case validated for me that the Ministry of Municipal Affairs and Housing were wrong in not considering our claims.

During the time of our appeal at the OMB, Councillors Erin Shapero and Valerie Burke were sued for $60,000 by Upper Unionville Inc., a farm in the Markham white belt expansion area where they posed for a photo op. Upper Unionville Inc. is associated with developers Carlo Baldassarra, Silvio DeGasperis and Jack Eisenberger. This sent a chill through our group and its supporters. These developers were sending a message to anyone willing to oppose their plans. I have written extensively in the Vaughan paper, worried that, without a lawyer reviewing my opinion pieces, was I exposing myself to a lawsuit?

During our time attempting to raise funds for our appeal, we held numerous community meetings to help inform residents that there was a better way to grow the city, through incremental increases in density within the existing urban boundary, mainly through the development of townhomes.

I began to realize that those meetings were being attended by planning lawyers, working for developers

that I recognized from city meetings related to the official plan. I was also told by residents that developers were sending representatives to those meetings. Although not outwardly intimidating, the message was clear: "We're keeping an eye out for you."

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Satinder Rai: Another Sustainable Vaughan director, Steven Roberts, started suffering from anxiety and nosebleeds and became uncomfortable with our ongoing OMB appeal. Fearing a similar lawsuit, Stephen always feared losing his house. Stephen had taken a developer to the OMB to protect a wood lot in Vaughan and was threatened by the developer that they would come after him for costs if they won. The stakes are much higher this time, and I was definitely nervous and started questioning if this was worth it.

While working for my former employer, one of our clients, SmartCentres, forwarded a request from developers, TACC, that my office should fire me. This was payback for daring to—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rai. The floor now passes to Mr. Singh of the NDP—three minutes.

Mr. Jagmeet Singh: Sure, thank you. Mr. Rai, are there any other points that you'd like to cover that you were unable to complete in the time allotted?

Mr. Satinder Rai: Yes, what I wanted to promote is the idea that this legislation provides a good starting point to ensure public participation in how we shape our cities, but we need to go further because what this doesn't do is—it's kind of phase 1—deal with the costly OMB appeals that shut community members from participation.

So there's a threat to participation and then, within the OMB appeal, there's the cost-prohibitive ability to participate. I think both of those issues are part of creating a more democratic process, where community members feel that they can both not be threatened and not be costed out of participating.

Mr. Jagmeet Singh: Okay; interesting. While this bill will protect against the strategic lawsuits that would otherwise deter people from participating in public discussion and public participation, broadly speaking, the cost barrier that's imposed by certain processes—for example, the OMB—is also discouraging public participation.

Mr. Satinder Rai: Yes. I think that in terms of the first phase—I call it phase 1 and phase 2. Phase 1 is this bill, Bill 52, which deals with just being able to speak out, just being able to participate by speaking out. I think the activism side, which is the OMB side, is the second phase, which is the cost-prohibitive—this really relates to post the growing-the-greenbelt legislation. This isn't someone being angry at a developer because there's a condo going up down the street; these are large tracts of land that are worth hundreds of millions of dollars. So the stakes are incredibly high, both to the environment and to the potential cost to the developers.

This is kind of like the second phase. This one is long overdue, and I think that alleviating the threat will at least allow people to participate at the kind of level that they want to do, which is usually speaking out.

Mr. Jagmeet Singh: Any thoughts around any ways to improve the bill or to amend the bill? Any components that you think are missing or need to be strengthened?

Mr. Satinder Rai: No. I think that, in terms of my reading for the work that I do in terms of participation and engagement, the bill will alleviate that threat that you always feel when you're in a place like Vaughan, in which there are not a lot of community activists for this very reason.

Mr. Jagmeet Singh: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Thank you so much, Mr. Rai, for your comments and for taking us through your particular experience with all of this. We very much appreciated hearing your insights into this.

I want to ask you just a couple of things. First off, the intention of this bill was to protect people's freedom of speech and their right to have their opinions heard, while ensuring that they do not have licence to slander. In your opinion, does this bill accomplish that goal?

Mr. Satinder Rai: Yes. From my reading—I'm not someone who's in the legal world; I'm in land use planning—I believe it would help to alleviate that threat. It's really the threat. It's not the lawsuit itself; it's the threat of a lawsuit. Any ability that you can get rid of that threat would really help to improve people's roles.

People really want to engage in Vaughan, but people don't have a lot of means to fight a lawsuit. The fear of losing someone's house, which is what my co-director faced, is very real. That kind of fear limits anyone's ability to participate.

Ms. Indira Naidoo-Harris: Do you believe this bill will actually level the playing field between groups and larger companies?

Mr. Satinder Rai: Yes. I wouldn't call it levelling the playing field; I think it's just alleviating the threat. There is still a long way to go before people feel that they're allowed to participate, and second, it's cost-prohibitive, which is the OMB and having to go through that expensive route in order to really challenge and protect the environment.

1640

Ms. Indira Naidoo-Harris: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. To the PC side. Mr. Hillier.

Mr. Randy Hillier: Thank you for coming today. In your comments—we've been hearing this theme from a few deputations today—the OMB has come up. I just want to see if you can expand on this a little bit. You've brought up the OMB, and this bill is not addressing the OMB.

Mr. Satinder Rai: No.

Mr. Randy Hillier: However, you raise the point of access to justice through the OMB. I'm wondering if you could just maybe provide to this committee—what do

you see as a greater impediment to public discourse: the cost, the expense, the time and the complications going through a tribunal like the OMB, or the threat of a SLAPP suit?

Mr. Satinder Rai: The threat, because most people aren't going to be able to comprehend issues like the Places to Grow Act or land use planning, but they really want to be able to participate, to be able to come give deputations, to speak out, to write articles for papers. People's levels of engagement are going to vary. For the most part, that engagement is going to be just speaking out. The first phase of protection is going to protect more people, which is Bill 52—

Mr. Randy Hillier: Well, I remember the Markham arena—I think it was over at the convention centre, the discussions on the white belt—and there were hundreds and hundreds, if not over thousands, of people who were there. The meeting went on well past midnight and there were people speaking on all sides of the subject. There was no shortage of discourse there at all. There was not agreement or consensus by any means.

But I want to just go back to you. Although OMB has been raised by many deputations today, really that's not a problem, the costs and time of using the tribunal?

Mr. Satinder Rai: I think I'd just rather speak to Bill 52, which is what we're here for today. As a separate—

Mr. Randy Hillier: Sure, yes, but you raised the OMB and it has been raised a number of times today, so I'm just—

Mr. Satinder Rai: I don't understand the question. Can you repeat that?

Mr. Randy Hillier: Is that an impediment to public discourse, the OMB?

Mr. Satinder Rai: No. I think the impediment to the discourse is threat. The impediment to action is the OMB. So the threat of taking a developer to the OMB, which is that potential action, is what instigates the type of coercion and threats that communities feel. It's cheaper to sue someone to shut up than to go through an OMB appeal for a developer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Mr. Rai, for your presentation on behalf of Sustainable Vaughan.

MS. PATRICIA FREEMAN MARSHALL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. Ms. Patricia Marshall, welcome. You've been very patient all day, I know. Please be seated, and your intro for five minutes begins now.

Ms. Patricia Freeman Marshall: Thank you for the opportunity to speak to you today. As a social justice advocate supporting women's equality and safety over a number of decades, law reform has been a significant focus of my work. I know one has to be patient with legislative initiatives. I've worked on eight criminal code amendments and a lot of provincial statutes, but this legislation is certainly no exception. I commend the Premier, the Attorneys General and everybody who has brought us here today.

I helped convene the first anti-SLAPP legislation round table on June 4, 2007, in Ontario. Now, eight years later, I'm here today to urge passage of Bill 52.

Speech that should be protected has been silenced for far too long, and the drafters of this legislation have been so well served by the expert panel's work—their thorough foundational work gave a direction that is excellent. I believe that we've got a wonderful, fair balance between public participation and the protection of reputation and economic interests.

In advocating against violence over the years, I had no worry about defamation laws impacting me personally because I was so confident that my speech was so careful and so responsible. I was naming publicly, whenever I could, responses to violence that were inadequate, ineffective or inappropriate. For many years, especially in the 1980s and 1990s, I spoke out frequently, speaking truth to power, whether it was to judges from many countries speaking about judicial misunderstanding of sexual assault, or naming Canada for human rights violations in its inadequate responses to violence against women.

Then I witnessed a SLAPP in action: the one that Marilou McPhedran spoke about this morning. We had both worked on several task forces; we had been colleagues for some time. You heard about the personal costs. From involvement in her fundraising, I know that her legal costs exceeded $300,000. If Bill 52 had been in place, that suit would surely have been shut down very early.

I came to appreciate, from that, that my own careful responses would be no defence against such a use of the current law, and with my own health compromised by decades of heartbreaking work with thousands of abuse survivors, I decided to stop speaking publicly. I cut out my advocate's tongue. This libel chill that is invisible to most does have faces, and one of them is mine. It's been agonizingly real for me, as I know it has been for others.

Two levels of courts ultimately vigorously denounced the positions taken by the Ontario Medical Association. I wish I had time to read from those decisions today, because they were so educative. With many of us silenced, these excellent decisions did not receive publicity at all.

It is not in any of our interest to silence speech that would promote safety of the public or protection of the environment. You have an opportunity now to close down a practice that does not serve us well. I urge you to support this bill. I thank those of you in advance who will champion this urgently needed legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Marshall. To the government side: Ms. Naidoo-Harris, three minutes.

Ms. Indira Naidoo-Harris: Thank you very much for coming in, Ms. Freeman Marshall. I want to start by congratulating you. I understand you were a winner of the Order of Ontario in the past.

Ms. Patricia Freeman Marshall: Yes, I was, 12 years ago, for social justice work. Thank you.

Ms. Indira Naidoo-Harris: It's pretty clear to me that you feel strongly about this bill and are in support of it. If you don't mind me asking, can you tell me what it is about this bill that you like?

Ms. Patricia Freeman Marshall: I think the idea of having this early time, within 60 days, to look at and decide the merits and to see if the action is frivolous or not. The awarding of costs: I think the committee did an excellent job in saying that one shouldn't look at motive; that that is not going to take us in the right direction.

I think there is faith in the judicial discretion that is there, and having been involved—I've been an invited member of the society for the reform of criminal law in common law jurisdictions, so I've been doing a lot of law reform work. Really, to see the kind of preparation that went into this, you can imagine from that first round table, that the expert panel's work was so excellent. I think we in Ontario are all so well served by that—and the decision to support their recommendations.

Ms. Indira Naidoo-Harris: Thank you very much. Just one final quick question: This is about making sure we prevent the misuse of our court system. Do you feel this bill has been successful in addressing this issue?

Ms. Patricia Freeman Marshall: I do. The deep pockets, the cost of doing business that corporations have set out and the unfairness of some of the actions I have seen—I think there has been a large legal loophole, and this bill goes a long way to closing that in a very specific way.

Ms. Indira Naidoo-Harris: Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today. I want to just ask you: We've heard from a number of people who are either generally supportive or very supportive of this bill that there still is potential abuse that may happen. We all want to have an early mechanism to dismiss cases that don't have merit, and we also want it to be done timely and cost-effectively. However, there have been those statements that the tests that are incorporated in this bill may not be substantial enough, that some cases that have been demonstrated today, where people or organizations have engaged in where people or organizations that have engaged in misleading words and activities, deception or falsehoods, may be allowed to continue to engage in those sorts of activities of promoting misleading statements and falsehoods—do you have any concern that, in our desire to promote greater public discourse, the door is being opened a little bit for defamation to happen without any penalties or consequences?

1650

Ms. Patricia Freeman Marshall: Well, in the past, I have often been very critical about judicial understanding of issues like sexual assault, and I've studied this very carefully. I've promoted the judicial education programs that are now in place, but I also have confidence in judicial discretion, and I think if there's a dishonest practice that comes before one of our officers of the court, that will be picked up quite readily.

Mr. Randy Hillier: When there is discretion, but if there is legislation that provides the actual test that the courts have to abide by, then the discretion is limited.

Ms. Patricia Freeman Marshall: Yes, there are limits on the discretion, but I think, with the example that you are giving now, that one, the officer of the court—the judge—would be able to—

Mr. Randy Hillier: You don't think the test should be strengthened, then, to prevent undue or misleading, false and dishonest statements?

Ms. Patricia Freeman Marshall: Well, I think that would be presented. That is what the process is, and evidence will be presented.

Mr. Randy Hillier: Yes. We've heard from other people in the legal professions that this present legislation, the way it's worded, could possibly allow those activities to go on and the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The floor now passes to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Thank you very much, Ms. Marshall, for being here today. I just wanted to take this opportunity to ask you: You had mentioned that there were some excerpts, perhaps, of the judgment that you might want to share with us. Perhaps you could share some that would provide some insight into how the case was determined or some of the context of how—

Ms. Patricia Freeman Marshall: Yes, both Marilou McPhedran and I felt that some of the decisions of the Ontario Medical Association needed to be publicly commented upon, and we did that. In fact, Justice Ed Then noticed that the cases the OMA argued for both arise in the context of labour relations and deal with the right to bargain collectively. He said they don't support the argument that section 2(d) of the charter extends to the right to have sexual relations. The kind of stretching that there was in the case—Justice Blair of the Court of Appeal supported the zero-tolerance policy prohibiting sexual relations between health professionals. That's legislation that we had recommended in our first task force report, and he talks about the fact that in the context of a regulated health profession, the liberty and interest cannot extend to the point of a doctor's right to decide to have sex with a current patient. This is the kind of argument that was going on, and, as a result of the lawsuit, the discussion of that, which I think would have been in the public domain and been useful to have in the public domain, was shut down for all of us.

Mr. Jagmeet Singh: What was the impact to you personally of being faced with this, or having a close friend faced with this?

Ms. Patricia Freeman Marshall: It was devastating, because I had felt my work was on the side of the angels, and I was fearless and felt fearless for a number of decades. That was shut down. The cost to myself and to my family, I felt—I literally wouldn't have survived it, physically, and so I made that decision to cut my advocate's tongue out.

Mr. Jagmeet Singh: Thank you very much for sharing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you, Ms. Marshall, for your deputation.

MR. PHILIP DEMERS

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenter to please come forward: Mr. Philip Demers. Welcome. Please be seated. You've seen the protocol. Your five minutes begin now.

Mr. Philip Demers: Thank you. My name is Philip Demers and I am a former employee of Marineland Canada. In 2012, shortly after leaving my employer of 12 years, I received a call from an investigative journalist who asked for comment with regard to my experience.

After much introspection and many sleepless nights, I obliged. In total, 15 whistle-blowers would step forward, most anonymously for fear of legal reprisal, to take part in an exposé that would trigger large-scale political debate and international conversation largely centred on the lack of laws, regulations and standards of care for marine mammals in Ontario.

Today I sit here proud to say that after delivering a petition with over 110,000 signatures and working diligently with those involved in the process, this government is poised to enact the very laws we sought back in 2012. In an effort to stifle our advocacy, Marineland began to launch what can only be described as frivolous and erroneous lawsuits targeting myself, former orca trainer Christine Santos and animal care supervisor Jim Hammond. They have also sued activists, media and have threatened countless more.

Consequently, I'm defending against a $1.5-million lawsuit for plotting to steal a walrus—a spurious claim, to say the least. We, like most Ontarians, were of the belief that you could not be sued in defamation, as long as you told the truth; and the truth we told. But that doesn't deter someone from filing lawsuits, as we have come to learn.

Thus far, in over three years, not a single one of the lawsuits has even so much as gone to discovery, and in all likeliness, none will. On May 1, 2013, I launched a countersuit against Marineland that they, to this day, have not defended.

All of the lawsuits are being strategically drawn out through an expensive and emotionally taxing process with the sole intention of crushing our fiscal sovereignty, and it's working. My latest round of legal bills totalled more than I will earn in 2015 and all said thus far, in excess of $100,000. This isn't a process seeking justice; this is revenge.

Every day this drags further is marred with anxiety. Back too are the sleepless nights. My girlfriend and I had plans and endeavours to fulfill. Those opportunities are vanishing. We struggle to plan for the future without our dreams being clouded over by the constant struggle to defend against a process that inherently punishes, despite its glaring frivolity.

Despite not wanting Marineland to know the details of our suffering, I will say that these lawsuits are ruining our lives. For all intents and purposes, their objective has already been met, yet they intend on imposing many more years of this revenge.

The natures of our lawsuits are the very reason why anti-SLAPP legislation has been tabled: We have done nothing wrong, we have not broken laws and we are not criminals, though this feels like imprisonment.

It's unbearable to think that this historic bill, as currently written, will not apply to the very people who have largely inspired it. I cannot fathom a process where we arbitrarily have to defend against what will soon be considered illegal lawsuits, on the basis of procedural fairness to the people who are already proceeding with unfair cases. If a lawsuit is frivolous and vexatious, then it does not have a place in our judicial system to begin with.

We need to have a piece of legislation that allows a judge to decide our fate, not a poorly written bill, because if this bill passes as it stands, then our fate is largely determined. Passing this bill without it applying to us is a monumental mistake, as it empowers and rewards bullies and abusers—something Ontarians should and would be ashamed of. So it is imperative to make this bill retroactive.

Marineland's lawsuits are an abuse of process that has already cost Ontarians hundreds of thousands of dollars. Furthermore, we don't deserve this prolonged and arduous assault. We did the right thing by Ontarians, and now it's time for Ontario to do the right thing for us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Demers. I will begin with the PC side. Mr. Hillier.

Mr. Randy Hillier: I agree with you. I think the retroactivity—if there is an abuse of process in a suit without merit—to leave people to deal with that is unfair and unjust. I will say that I do believe that in law, what's good for the goose should be what's good for the gander here as well.

I believe that we need to have a little bit more of an impartial test to ensure that there is bad faith, so that we don't get the case of—in your case, your employer or anybody else defaming you or slandering you and you not having the ability to defend yourself against that.

1700

We haven't heard any good arguments yet why retroactivity has not been included—why it was withdrawn. Hopefully, through these committee hearings, we will get to that nub and find out if we can get an amendment on it.

Mr. Philip Demers: That would be a dream come true. That would be essentially our last chance. That's where we're at.

Mr. Randy Hillier: If it doesn't happen, then you are forever in that purgatory. There is no defined end to what can happen or how long it will happen, but your ability to seek a remedy afterward will not be available to you.

Mr. Philip Demers: It will ruin our lives.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To the NDP: Mr. Singh.

Mr. Jagmeet Singh: You've done it already, but could you explain what it feels like having this out-

standing lawsuit, and how important it is for you to be able to know that there will be some resolution? How difficult is it living with this unresolved lawsuit? You talked a bit about it—it impacts you; it impacts your family plans—but use this as an opportunity to tell a little bit more about how negatively it impacts you.

Mr. Philip Demers: I summarize it as feeling like imprisonment. We feel like we are in a prison. We're shackled, and there is no moving—

Mr. Jagmeet Singh: Sorry, what do you mean by that? How do you feel that you're being imprisoned?

Mr. Philip Demers: Well, you're no longer able to make any plans for life. You can't make any financial decisions. You can't foresee any type of end to this.

We get calls from our lawyers, and some of the numbers they are throwing at us—these are absurd numbers. Again, I stress that my last bill was more than I will make in 2015. It's inconceivable for us to continue this process, at which point Marineland wins. I don't know how it ends exactly; I suppose bankruptcy is our only option.

Mr. Jagmeet Singh: What type of effect do you think this has on other people who now see you and see what you're going through for having raised your voice? You fought a very valiant battle, but beyond that, what do you think the impact is brought on society?

Mr. Philip Demers: We've been isolated from many people, of course. People, media especially, have shied away from speaking about Marineland in any way, shape or form. And of course it has affected our family and everything else, because they want to support us, but it's inconceivable for them. Even within our network of people, we couldn't put together a cumulated net worth to come up with the funds to fight this.

We're in excess of $100,000, three years in, and my lawyers are telling us that we have four or five years ahead at best, and we haven't even scratched the surface with the motions that are being put forward. Everything that is being done is a means to delay and increase the costs, and there's no way out. There's just no backing out. There's nothing for us to rely on to have a judge look at it and determine the legitimacy of it all.

Mr. Jagmeet Singh: You know that this bill would propose a 60-day mechanism to dismiss actions that are frivolous. How would that impact you?

Mr. Philip Demers: It would be a dream come true.

Mr. Jagmeet Singh: Thank you. Mr. Chair, no further questions.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Delaney.

Mr. Bob Delaney: I believe that all the questions I was going to ask the witness have already been asked and answered.

The Chair (Mr. Shafiq Qaadri): That is quite fortunate, Mr. Delaney.

Thank you very much, Mr. Demers, for your presentation and deputation.

ENVIRONMENTAL DEFENCE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Mr. David Donnelly, legal counsel for Environmental Defence. Welcome. Please be seated. You've seen the protocol. Your five minutes officially begin now.

Mr. David Donnelly: Thank you, Mr. Chair and committee members. My name is David Donnelly, representing Environmental Defence.

Environmental Defence is one of Canada's leading non-profit charitable environmental organizations. One of the features of our work is that we partner with community groups in defence of the environment against urban sprawl, unnecessary infrastructure and the destruction of our prime agricultural land. Over the past 30 years, we have worked with over 100 citizens' groups in this capacity, providing funding and legal and scientific expertise. In those endeavours, we have worked with and supported a number of groups that have been the targets of SLAPPs, so we are very familiar with this process.

Really, the drive to create SLAPP legislation starts and ends with the Big Bay Point mega-marina up on Lake Simcoe, which I'll be turning to later in my remarks. You have heard from others, about this bill, that it has substantial merit, and it does. In particular, Environmental Defence supports other groups in their submissions that the definition of "protected activity" be sufficiently broad, that the test for early dismissal of SLAPPs is clearly set out, and we support that the remedies that are offered will act as a deterrent.

Conversely, it is our position that Bill 52 has several significant limitations. First, as you have heard, there is no public policy reason to not make this bill retroactive. Free speech is eternal; it doesn't have a deadline. Any litigation that is before the courts is subject to any motion at any time. Applying this legislation is fair and just to any cases, not just those contemplated in the future, provided those cases are frivolous.

Second, the remedies that are available to court could and should be broadened to include targeting directors directly who bring these suits.

Finally—this will be the focus of my remarks—the bill should further restrict parties from bringing adverse cost awards as punitive proceedings before administrative tribunals, specifically the Ontario Municipal Board. The expert task force recommended that the Ontario Municipal Board and other tribunals be limited in terms of their cost proceedings to written submissions only.

The primary reason for doing so is that the viva voce hearings, when everybody gets dressed up in their gowns and they show up with lawyers, can drag on for weeks and months. In my case, when I was the target of a $3.2-million SLAPP suit and adverse costs were considered as an award, that proceeding dragged on for 17 and a half days that lasted over 14 months. The actual hearing on the costs was almost as long as the hearing on the application for a billion-dollar marina development on the shore of Lake Simcoe.

Just to add a little bit of colour, I have provided an excerpt from the Globe and Mail to give you a picture of the Dickensian scene when you happen into a hearing room where your entire life savings are at issue over a frivolous claim. In my case, it was the claim that I had conducted myself in bad faith and had tried to lose the hearing. John Barber wrote in the Globe and Mail at the scene, "All the other appurtenances of official solemnity are in place, including no fewer than 15 lawyers crowded into dishevelled ranks amid a slum of cardboard boxes, lava-flows of thick tabulated binders covering every surface and much of the floor, the leftover spaces occupied by little chromed trolleys in a state of apparent exhaustion, bungees slack and tangled."

That scene of 15-plus lawyers was something that I lived through, and it sounds funny when you see it written there, but the consequences of being caught up in that suit were these: First, I lost approximately 14 years of my life, tangled up in motions and hearings. Second, the Gilbert's law firm, where I worked, closed its environmental practice and I found myself out of a job as the entire firm and the principal were also the target of this $3.2-million SLAPP suit launched against me and Tim Gilbert personally. I had to take a trip to my lawyer's office to put all my assets, including our house, into my wife's name for fear, if the case was successful, we would lose everything. Finally, I had to explain to my children, who were then aged one, five and seven, why daddy would often be found crying at night: because my entire career as an environmental advocate was on the line, because if the finding had been made against me, I might have lost my licence.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. David Donnelly: I didn't deserve that; nobody deserves that.

This bill has been stripped of the provision taking away the power of developers to tie up people at the Ontario Municipal Board, and it shouldn't. We should have an explanation of why that has been removed. It hasn't been removed for a good public policy reason.

These cases before the Ontario Municipal Board are dragging on. In the case of Preston Sand and Gravel, a $220,000 adverse cost award stays outstanding and has been for 15 months. That hearing lasted three days, and yet the proponent is seeking a quarter-million dollars—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Donnelly. I pass the floor now to Mr. Singh of the NDP.

Mr. Jagmeet Singh: Sir, please take the time to finish what you were saying.

Mr. David Donnelly: Thank you.

The Ontario Municipal Board has failed to issue a decision in that case. It has been 15 months since May 26, when Preston Sand and Gravel sought this extraordinary $220,000 claim.

There are many people who wished to appear before this committee here who contacted Environmental Defence to voice their support, but said that they would not be attending for fear (1) of violating a settlement agreement that they had with the proponent in a SLAPP suit, or (2) that anything they might say here might be used by a developer in the future to sue them all over again, and they didn't want to live through that nightmare.

There's one last area that is not covered by the bill that I think the committee should consider, and that is that at this very moment, there are a number of mayors and councillors in small-town Ontario who are fighting urban sprawl who have been threatened by developers. They are afraid to go to public meetings. They are afraid to speak out at council. They have been threatened with hundreds of millions of dollars in lawsuits.

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Each year, each election cycle, the province of Ontario, through the Ministry of Municipal Affairs and Housing and the Attorney General, issues a municipal councillor's guide that outlines for councillors and mayors what they can expect and how they should conduct themselves. The Attorney General should endorse our recommendation that a circular be sent that explains to municipal councillors and mayors that they have been elected for the explicit purpose of speaking their mind and speaking out against development. The Supreme Court of Canada has issued a number of decisions that say it is not only their right but their duty to speak out against development, and that they should be further protected from these kinds of SLAPP suits, which this bill will do, but that information needs to get out.

So with that, those are my submissions.

Mr. Jagmeet Singh: Thank you, sir. Can you just touch on the clause that you indicated was removed with respect to the OMB? Can you flesh that out a bit more?

Mr. David Donnelly: At the end of an Ontario Municipal Board hearing, any party has a right to seek costs against any other party. Almost inevitably, the developers will either threaten costs or bring a motion for costs against the party that spoke out against the development.

It is the practice of the Ontario Municipal Board to take most of these claims in a hearing format. You have to file submissions first that are written, and then you will have oral arguments. Sometimes the argument is short; sometimes it drags on for days. Every day that you have lawyers gowned up, making submissions, costs anywhere from $10,000 to $15,000. If you have a three-day hearing on a cost motion, it can cost between $50,000 and $100,000 just to hear the claim on the merits. Most of these claims are dismissed. In my own case, the claim was for $3.2 million. It included claims for such things as ice, a bucket, the legal fees and a $5.99 piece of chocolate cake from Boston Pizza in Barrie, Ontario. The cost of defending that suit was enormous because of the time that it took. If that hearing had been done in writing, it would have cost far less.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Potts.

Mr. Arthur Potts: Thank you, Mr. Donnelly. It's delightful to see you here. Chair, as a matter of conflict, David is a good friend.

I would be delighted to hear you continue on the OMB issue. We've heard many deputants today who are very concerned about the issue around cost to the OMB, but it's the threat of excessive cost that acts as a chill for them. How would that be addressed in this bill, or would it be?

Mr. David Donnelly: Thank you, Mr. Potts. The first thing is that the Statutory Powers Procedure Act should be amended to require that hearing costs at the Ontario Municipal Board or any other tribunal be conducted in writing only—by and large the way the courts do it—and it will effect justice.

Second, in terms of the reform of the OMB process, the claim for costs should be vetted at the outset of a hearing. It shouldn't last 15 months, 14 months. At the close of a hearing, if anyone has a claim for costs, they should be required to state the claim, and the board should make an initial ruling so that these things don't drag on through applications and so on.

Finally, the Attorney General should establish capacity so that when these frivolous claims are made, the Attorney General can intervene in the cases and defend people who are being unfairly SLAPPed and, in fact, carry the case.

Mr. Arthur Potts: We've had a lot of testimony about the difference between a public interest test and a bad faith test. The public interest test may be too narrow, that some claims or slanders would be dismissed rather than moving forward. Do you think that this bill, under the public interest test, would provide a licence to slander to opponents of projects?

Mr. David Donnelly: I'm glad you asked me that question. The history of Ontario and public advocacy in Ontario has a few examples where people have genuinely slandered or defamed developers. In those cases, courts have hundreds of years of common law to establish what is, in fact, defamation or libel. I have never seen a case—and I've been involved in hundreds—where a citizen who was truly speaking their mind has ever said something that could truly be considered defamatory. You just have to look at the case law. How many judgments have there been for defamation, libel or slander against citizens' groups? There are almost none.

I think anything that protects the public and speech is good. Any definition that makes it extremely difficult to bring a frivolous or unmeritorious case is good. For anything that tramples on the legitimate or long-standing tradition that we have of holding people accountable for libel and slander, the law is already in place and has been for 300 or 400 years, to deal with it.

Mr. Arthur Potts: So as the legislation is now written, it meets that test satisfactorily to you? Would you just keep those tests as they are?

Mr. David Donnelly: Yes.

Mr. Arthur Potts: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. To the PC side: Mr. McNaughton.

Mr. Monte McNaughton: Just one quick question, I think. What other jurisdictions have anti-SLAPP legislation in Canada?

Mr. David Donnelly: British Columbia had a bill that was rescinded. Quebec has a bill, I think, that has a lot of merit to it. There are, at last count that I saw, 28 states in the United States that have a similar—usually it's some kind of libel shield.

Mr. Monte McNaughton: Why was BC's rescinded?

Mr. David Donnelly: My understanding is that the politics, or the political party, had changed, and with it went the bill.

Mr. Monte McNaughton: And concerns—economic loss and things too, I understand. Thank you very much. No further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McNaughton. Thanks to you, Mr. Donnelly, for your presentation and deputation today.

RURAL BURLINGTON GREENBELT COALITION

The Chair (Mr. Shafiq Qaadri): I'll invite our next presenters, who include a PowerPoint: Mr. Dennis and Ms. Warren. Please come forward. Your time officially begins now.

Ms. Vanessa Warren: Thank you. I hope the volume is loud enough.

Video presentation.

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Ms. Vanessa Warren: Community advocates are the small percentage of affected people who stand up and speak out on a matter of public interest.

Mr. Monte Dennis: SLAPP suits are directly intended to knock them down, silence those they represent, and discourage anyone from standing beside them or taking their place.

Ms. Vanessa Warren: Monte and I volunteered in our community for all the right reasons, and we engaged in all the right ways with the media and the appropriate levels of government. We were careful to balance our passion with reason and fact-based information. But none of that matters, and it won't matter until months from now, when we stand up in front of a judge, because SLAPP suits favour the plaintiff.

Mr. Monte Dennis: We are guilty until proven innocent. Now our time and resources, emotional and financial, are being exhausted, and dialogue on a critical environmental matter in our community has been suppressed, exactly as intended by the corporation that SLAPPed us.

Ms. Vanessa Warren: Corporations don't have feelings, and they don't have to prove financial harm. They can hire PR firms and lobbyists and marketing companies, and they can even write off their legal fees. Should a corporation's interests ever trump free expression and dialogue on a matter of public interest?

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Monte Dennis: Help us. We were SLAPPed in April 2014, and we still have months of legal work and legal bills ahead of us before we are out from under this

yoke. Please reintroduce the retroactivity clause so that Vanessa and I can get before a judge as soon as possible.

Ms. Vanessa Warren: Please make Monte and I the last SLAPP victims in Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you, and thanks for your precision timing. We'll go to the government side to begin with. Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: I want to start off by thanking you, Mr. Dennis and Ms. Warren, for coming in today and letting us know about your situation. I'm familiar with the case, but I do appreciate you coming in and sharing that video with us.

I'm going to go straight to the retroactive questions, because I think that what you were pointing out is key to some of the points you want to make here today.

Since this legislation is about fairness and balance, I want to know your thoughts on the retroactivity aspect of things. Do you believe this would be a fair approach for individuals and groups who have ongoing litigation?

Ms. Vanessa Warren: Yes, I think it's absolutely necessary. The protections are very, very important. In either case, it's critical moving forward.

But I think the idea that Bill 52 could be enacted and Monte and I could still be months and months away—something no one has addressed today so far, that I've heard, is not just the chill but the idea that people who don't understand SLAPP and libel and defamation law—a lot of people in the community think, when they hear this, or just sort of glance through it, that we actually have defamed someone or committed some crime. If we're left out and left behind by this act, I think that might just help create that sort of false perception even more, that we actually did do something wrong, and we did not. We simply acted in good conscience on a matter of public interest.

Mr. Monte Dennis: I don't think that you can pick an actual date, how far back you go for retroactivity. I think you have to cast a broader net. Anybody who has a case that hasn't been settled should fall under the retroactivity. Because when you set a date, if you miss that date by one day, it's a problem.

Ms. Indira Naidoo-Harris: The intention of this bill is to protect people's freedom of speech and their right to have their opinions heard, while ensuring that there isn't slander going on. Please tell me: How important is this bill, do you think?

Ms. Vanessa Warren: I think it's incredibly important, and I think it's going to become more and more important as the tension between rural-urban boundaries increases as we grow and as developers become more—I think this is only going to become a greater problem. I think that this will solve the issue, to a large part. I think the OMB is also critical. We've heard about some reform that has to happen there. But I think it's absolutely critical.

I will not be able to participate again in my democracy if it doesn't pass. I can't. I didn't know the risk existed, and it's enormous. You heard from Philip Demers. Certainly, the cost to me is not going to be as large, potentially, but it's enormously draining. You can't build a business; you can't build a life; you can't participate in your democracy. It's absolutely devastating, that you cannot participate in a democracy.

Ms. Indira Naidoo-Harris: Can I ask you—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Naidoo-Harris. The floor now passes to Mr. McNaughton, on the PC side.

Mr. Monte McNaughton: Thank you very much for presenting today. We don't have any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McNaughton. To you, Mr. Singh, of the NDP.

Mr. Jagmeet Singh: Wonderful presentation. Thank you so much for that. It really drove the point home very well. Thank you.

Just a couple of quick points: On the retroactive element, can you just give your comments on that? It has been removed in this bill. Do you feel like it should have been removed? Or do you feel like it—

Ms. Vanessa Warren: No, again—sorry, Monte. Do you want to answer that?

Mr. Monte Dennis: No, it should be reintroduced. We should have retroactivity. There is no question about that.

Mr. Jagmeet Singh: And in terms of limitation, is there a limit on how far back we should go, or should anyone who is facing a strategic lawsuit in Ontario be protected by Bill 52?

Ms. Vanessa Warren: The further back it goes, the more they need the protection of this bill. So much of this tactic is about heel-dragging. There has to be a 60-day solution for anyone.

Mr. Jagmeet Singh: Excellent. And are there any other specific amendments to this bill that you would like to see?

Mr. Monte Dennis: Not offhand. I can't think of any.

Mr. Jagmeet Singh: No problem.

Ms. Vanessa Warren: I would like to never see an amendment that said that an organization that passed some tipping point in funding would not receive the same kind of freedom-of-expression defence.

Mr. Jagmeet Singh: Good. I was going to ask you about that. There was discussion around certain organizations, based on their size, being afforded the protection or not afforded the protection. Your opinion is that everyone should be afforded the protection?

Ms. Vanessa Warren: Well, I would suggest that if a group is well funded, more people believe in its right to express itself, and therefore you're really infringing upon a democratic process.

Mr. Jagmeet Singh: Nice. And—what was my other question? No, I think that covers everything. Thank you so much for your comments. I appreciate it.

Ms. Vanessa Warren: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Dennis and Ms. Warren, for your deputation on behalf of the Rural Burlington Greenbelt Coalition.

Mr. Monte Dennis: Thank you.

Ms. Vanessa Warren: Thank you.

OXFORD COALITION FOR SOCIAL JUSTICE

The Chair (Mr. Shafiq Qaadri): I invite forward our final presenter of the day: Mr. Bryan Smith, chair of the Oxford Coalition for Social Justice. Welcome. You are our final presenter of the day. I invite you to please begin now.

Mr. Bryan Smith: The Oxford Coalition for Social Justice is a community group in Oxford, Ontario, whose mission is to address issues which affect the quality of life of residents of our county, the province and the country, as well as international issues where our voice may bring positive social change. While environmental issues are at the top of our agenda currently, our active participation in health care, popular education, social justice, aggregate regulation, multi-faceted sustainability and other issues continues to make us SLAPPable.

As a small community organization, we are volunteers drawn from all ages and many sectors. Some members also represent other groups.

The Oxford Coalition for Social Justice believes that our voice is important for our local community and that our work in good faith there and in broader contexts is for the good of all. It is in that vein that we respectfully submit this commentary to the proposed Protection of Public Participation Act, with thanks to the committee for organizing these hearings.

The Oxford Coalition for Social Justice believes that it is in the public interest for individuals and groups to participate actively, frequently and without fear in public discussion. That is why we applaud the opening statement of purpose of the proposed legislation. In fact, matters of public interest naturally lend themselves to public comment, which in a democracy needs to be free, ongoing and wide-ranging.

Further, the intent of the act, "to discourage the use of litigation as a means of unduly limiting expression," is necessary in cases where an individual person or a person as a representative of a community group may find herself to be pitted against another interest which under Canadian law may have the status of a person but in fact be a large corporation with financial and other means to bring tremendous pressure to bear not only on public opinion but on that individual. There is no balance between small community groups and often larger corporate interests without protection for those individuals. Although it appears to be outside this act as currently written, it would be a good thing for the establishment of intervener funds for individuals and groups who seek knowledge and try to inform others around community issues by "communication, regardless of whether it is made verbally or non-verbally."

As a community group with an interest in environmental issues, as chair of the Oxford Coalition for Social Justice, I was a participant in consultations run by this same Parliament around the use of neonicotinoids and their effects on pollinators and other species. I am aware that the European Union was sued by the makers of these chemical pesticides. Either side of that lawsuit has financial means beyond my own $1.49, beyond the coalition, and indeed beyond the groups with whom our coalition is allied and possibly beyond those of the province. How far or whether engaging in good faith in those consultations, in conversation and publication puts me at personal risk is an assessment that in a free and open democracy should not be a consideration. So far, I've not been threatened unduly.

Parliamentary democracies are made possible by the right of individuals to speak for themselves and for the public, so that in the Legislature there can be full and open debate on subjects of importance. Providing members of the provincial Parliament with levels of immunity for statements they make in the public interest and to give voice to the public's wishes is a requisite part of democracy. How could MPPs speak of the public's wishes if there were an impediment to the public expression of those wishes?

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It follows that the public must also have some immunity to the threat of harm if a person or group speaks up on an issue in their community. Otherwise, that would mean that the work of the Legislature would be hampered and your only motivation in an extreme case would then be personal interest, which is unthinkable, or avoidance of a whip or mace, either literal or figurative. The excessive use of either of these is obviously undesirable.

It's a challenge for community groups to organize in order to research an issue, to analyze the research, to select the key arguments and then get them in the ear of the public, the media and decision-makers. This morning, at a picnic with cows on the lawn of the Legislature—for that to happen, a lot of work and planning was done, including liaison with some officers of the law. For many individuals, even that would constitute a barrier to expression.

So SLAPP suits are not the only limit of the public's expression; cost awards in the OMB would be another.

Sometimes I wonder if the reason why people are so happy to have me speak for them is because they want to mitigate their risk. If that's the case, then the current law does prevent some level of public participation: theirs.

I'm skipping to the next page.

Further, the notion that a report of a statement or other communication by a witness or media can lead to an individual being pursued for vast sums of money by deep-pocketed corporations has layers of problems. Media are omnipresent in the age of hand-held devices which can capture every word—

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Bryan Smith: —so even a supposedly private remark can be published instantaneously. Something spoken in jest, haste, anger or frustration could be taken as a considered view. Witness multiple federal representatives.

The Oxford Coalition for Social Justice has little experience with the court system and hopes to keep it that way. Our group, however, has much experience from over two decades of popular education. We hope to

continue to do that and be allowed to do that because there will be retroactivity and because there will be intervener funds that will protect us and other groups in this democracy.

I thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Smith.

To the PC side: Mr. McNaughton; three minutes.

Mr. Monte McNaughton: I have no questions. Thank you.

The Chair (Mr. Shafiq Qaadri): To Mr. Singh; three minutes.

Mr. Jagmeet Singh: You mentioned that you're concerned about the retroactivity that doesn't exist in this bill, so you'd like to see that be reintroduced.

Mr. Bryan Smith: Absolutely.

Mr. Jagmeet Singh: And in terms of any other amendments you'd like to see, specifically—

Mr. Bryan Smith: I would like to see that this bill or some other bill would introduce intervener funds for community groups so that they are somewhat more able to bring together the legal, media and other means that major corporations do when they want to influence the public.

Mr. Jagmeet Singh: In terms of different-sized organizations, do you think that the size of the organization should reflect the amount of protection that organization gets or does not get?

Mr. Bryan Smith: The first thing I would argue is the principle of being equal in front of the law. That would be an argument on principle, I think, that would be a strong one.

I would also suggest, as previously said, that a large organization gets its funds from a large number of people, so it's a sort of financial democracy in a sense. Those organizations to which I send $20 and other people send $20—that means lots of people send in $20, if they have a large budget.

The last thing I would say on that is that a budget of an organization—for instance, ours—would be significantly larger were we sued because then the value of the lawsuit would be the value of our budget. So if some company sues me or our organization for $17 million, suddenly I'm a $17-million organization, or bankrupt.

Mr. Jagmeet Singh: Interesting. Thank you very much for that. I appreciate it.

Is there anything else you'd like to add in the last minute or two?

Mr. Bryan Smith: I would just suggest, as well, that we've had a lot of discussion about misleading statements, and I would really hope that we continue to have the right to make statements and even to err in good faith, because we are still human. So maybe at some point someone would say, "I really wonder about what's going on with those diesel motors in those Volkswagens"—or some other sign.

Mr. Jagmeet Singh: Good one.

The Chair (Mr. Shafiq Qaadri): To the government side.

Mr. Arthur Potts: No questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Smith, for your deputation on behalf of the Oxford Coalition for Social Justice.

Mr. Bryan Smith: Thanks to the panel.

The Chair (Mr. Shafiq Qaadri): The committee is now adjourned till 9 a.m. on Thursday, October 1, for round two of Bill 52.

The committee adjourned at 1735.

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