

# LAND USE COUNCIL

*“advocating social, economic and environmental balance in government legislation affecting land”*

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April 30, 2010

The Honorable Dalton McGuinty, Premier  
Province of Ontario  
Room 281, Main Legislative Building  
Toronto, ON., M7A 1A4

## **REGISTERED MAIL**

Premier: **Re: Strategic Lawsuits Against Public Participation (SLAPP)**

As previously introduced to you, the Land Use Council (LUC) is an Ontario consortium of private sector associations mandated to track government policies affecting privately owned land as well as activities of Environmental Non-Government Organizations (ENGOS) relating to or influencing such policies.

In that context, we have carefully examined a written appeal, directed to you on February 11<sup>th</sup> last, for provincial legislation that would exempt activist groups from legal accountability. That petition, initiated by Environmental Defense and endorsed by a number of like-minded organizations, lists four core objectives which informed Ontario taxpayers might, in our view, consider questionable at best or self-serving at worst. These anti-SLAPP objectives, repeated verbatim below, prompts summarized LUC comment as follows:

***1. Provide immunity from civil liability for persons engaging in public participation.***

Comment: “Persons” so engaged independently are surely obliged to ascertain civil liability risks in advance and ensure their submissions are composed accordingly. Conversely, persons and/or citizen groups induced to engage in public participation by powerful ENGOS are wise to first evaluate the potential cost of answering for transplanted opinions of professional lobbyists in open court. Special interests like Environmental Defense, whose American namesake is reported to initiate environmental legal proceedings in pursuit of “new strategies to influence the political system”, should not have and do not deserve legislated protection from civil litigation.

***2. Provide for early review and an expeditious process for resolving SLAPP suits.***

Comment: While a seemingly rational argument to lower costs for individuals and/or independent citizen groups that engage in public participation, this provision would presumably extend equal benefit to large, exceedingly wealthy ENGOS operating as tax exempt charities but determined to impose their view of the world on Ontario taxpayers, if necessary by aggressive lawsuits of their own invention. Moreover, faster SLAPP review and processing would also decrease opportunities for closer public scrutiny of background connections that guide, if not initiate and thereafter direct, some so-called “public” participation.

***3. Reverse the onus on the initiator of the SLAPP suit to show the action of the defendant was not public participation.***

Comment: This convoluted proposal appears to relieve the SLAPP “defendant” from any requirement to prove his “action” doesn’t violate the definition or rules of public participation. If that translation is correct, the Ontario electorate is entitled to wonder why the provincial Species at Risk Act, a statute invented by a cartel of ENGOS now supporting the petition for anti-SLAPP legislation, holds an alleged offender to “strict liability”. Which, stripped of soothing assurances to the contrary, means guilt is assumed until innocence of commission or omission is proved by the “defendant” in a court of law at his own, possibly stratospheric, expense.

**4. *Provide strong and effective disincentives (financial and otherwise) to dissuade potential SLAPP plaintiffs from initiating a meritless claim.***

Comment: Expressed in the dialect of veiled threats once favored by the jack-booted agents of a national government convicted of monstrous crimes against humanity 65 years ago, this statement implies ENGOS are the best judges of what constitutes merit of SLAPP claims. Indeed, we understand one of them, a leading member of the Species at Risk inventor team, has recently established judge-and-jury credentials by publicly stating that deniers of environmental dogma should be jailed. Until the current authors of such threatening rhetoric and/or the Queen's Park bureaucracies in which they seem so firmly entrenched comment further, most Ontario citizens can be expected to view this proposal with the repugnance it deserves. Meanwhile, we suggest, with respect, that "dissuading by effective disincentives (financial or otherwise)" projects a scenario and a mindset usually associated with Mafia extortionists. In that context, "otherwise" is their most fearful lever.

Lobbying for statutory exemption from legal consequences arising from their own activities and/or those of enlisted surrogates is prudent strategy for special interest groups that routinely manipulate the Ontario economy in the name of environmental cleansing. If thus rendered protected from civil law these professional interveners, with or without government support, could, for example, initiate litigation to enforce compliance of their self-made species habitat regulations any time, anywhere and against any Ontario citizen, municipality or corporation.

The effect on Ontario's economy at large of an unrestrained license to sterilize vast acreages of private property at ENGO whim or impulse must await the judgment of less biased social engineers than those now requesting immunity from civil law. Meanwhile, LUC is absolutely opposed to any statutory device that would provide such exemption and, further, in accordance with its founding mandate, if indicated or necessary our consortium would seek support for that position in the court of public opinion.

Please note a copy of this letter has been forwarded to Ontario's Attorney General who, in November 2008, was also asked by ENGOS to support anti-SLAPP legislation. Additional copies have been distributed to provincial Ministers involved in land use planning as well as to a number of private sector Associations and municipalities.

Your comments in this matter, Premier McGuinty, are requested and will be appreciated.

Sincerely

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c.c. Honorable Chris Bentley, Attorney General  
Honorable Linda Jeffrey, Minister of Natural Resources  
Honorable James Bradley, Minister of Municipal Affairs and Housing  
Honorable John Gerretsen, Minister of the Environment

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***The Land Use Council is a public service consortium sponsored by the combined memberships of:***

*Food Chain / Halton Region Federation of Agriculture / Ontario Landowners Association  
Ontario Property and Environmental Rights Alliance / Peel District Federation of Agriculture*

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