**Subject:** OFIA - STOP BILL 83

Dear Municipal Leaders,

On Monday, the attached OFIA letter was sent to the Premier and cc'd to the Leaders of the NDP and PC parties. After receiving a technical briefing from government staff, the OFIA and its members had even greater concerns which we outline in the attached letter.

The email below with the attached documents was sent to the following MPPs this morning:

**PC Party:**

- Laurie Scott
- Vic Fedeli
- John Yakabuski
- Monte McNaughton
- Norm Miller
- Jerry Ouellette
- Todd Smith

**NDP Party:**

- Gilles Bisson
- Mike Mantha
- Sarah Campbell
- John Van Thof

**Liberal Party:**

- David Orazietti
- Bill Mauro
- Michael Gravelle

If you have any questions, please don't hesitate to call us at your convenience.

Thanks,

J

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**From:** Jamie Lim [mailto:jlim@ofia.com]
**Sent:** Wednesday, March 26, 2014 11:33 AM
**To:** 'Bisson, Gilles'; gbisson-qp@ndp.on.ca; mmantha-qp@ndp.on.ca; scampbell-qp@ndp.on.ca; jvanthof-qp@ndp.on.ca
**Cc:** Jamie Lim; 'Christine Leduc'
**Subject:** OFIA - STOP BILL 83 - PLEASE

**RE: Bill 83 – Freedom to Slander for Special Interest Groups – Bill 83 is NOT about the "little guy" – please stand up for jobs and Ontario's economy.**

Dear Sarah, Gilles, John and Mike

Please find attached the OFIA's second letter to the Premier explaining why Bill 83 should NOT go to Committee or Third Reading. As well, I have attached a joint media release (NOMA, FONOM and OFIA) which clearly explains that Bill 83 is a solution in search of a problem and a 5 page briefing note explaining why Bill 83 is not needed.

At OFIA's technical briefing with government on this, when asked to define and quantify the "Ontario problem" that Bill 83 was urgently needed to address, staff from the Premier's and Attorney General's offices acknowledged that SLAPPs are not prevalent in Ontario. Furthermore, after Bill 83 was drafted in the fall, a recent ruling from the Supreme Court of Canada (Hryniack v. Mauldin) proves that the Court system cannot be used to suppress legitimate expressions of dissent. Ontario judges already have the tools required to throw out cases that they consider as SLAPP. Bill 83 is not needed. We make the following point in the attached letter to the Premier:

The supposed belief that so called SLAPP (Strategic Lawsuit Against Public Participation) is a prevalent issue in Ontario is not borne out by the facts. During the meeting, government representatives confirmed this, acknowledging that SLAPP is not common in our province which, again, makes our members question the urgency of Bill 83.

Also, **it is worth noting that all the same special interest groups that pushed for the ESA have joined forces to push for the passing of Bill 83**. And we all know the negative impact that the ENGOs 2007 ESA has had on Ontario's economy and hardworking families who are just trying to make a living. These special interest groups have once again convinced some politicians into accepting two myths about Bill 83.

- **FIRST MYTH:** Bill 83 is needed urgently because there is a huge problem in Ontario. Government staff has acknowledged that SLAPP is not prevalent.
- **SECOND MYTH:** Bill 83 about protecting the "little guy's right to freedom of speech". The "little guy" who truly is expressing legitimate communication is already protected. The truth is that Bill 83 will provide a cost-free shield for these groups and their destructive campaigns of misinformation.

As we point out in the attached letter, Greenpeace should never be considered the "little guy".

To take just one example, in Canada, Greenpeace reports that as of the end of 2012 it had net assets of $3.12 million and had net revenues in that year of over $11 million.

Bill 83 will cost Ontario jobs. Bill 83 will allow special interest to sully the reputations of Ontario's job creators without fear of being held to the truth.

Nowhere in Bill 83 is there any regard whatsoever for the truth of the expression, or the effect of untrue, reckless or damaging forms of expression on companies, their officers, directors, employees and contractors. Worse, these entities and peoples – Canada's employers, makers, doers, exporters – are precluded by this bill from remedies.

As noted in the letter,

investors and consumers tend to stay away from investments and products that attract controversy, however ill-founded the controversy.

And, without investment and consumers, products do not sell, manufacturing facilities close, hard working families lose their jobs and communities and our economy suffer.

Bill 83 is not necessary and, therefore, should not go to Committee or to Third Reading.

If you have any questions, OFIA and its members would be pleased to meet with you at your convenience.

All the best,

j

**Jamie Lim**
**President & CEO**
**Ontario Forest Industries Association**
**416-368-6188**
**www.ofia.com**

ONTARIO FOREST INDUSTRIES ASSOCIATION
Home of CLA Grading and Inspection

Growing a stronger, greener Ontario

March 24, 2014

Hon Kathleen Wynne
**Premier of Ontario**
Room 281, Main Legislative Building,
**Queen's Park**
Toronto, Ontario
M7A 1A1

**RE: BILL 83 is unconstitutional, not necessary and will jeopardize Ontario jobs.**

Dear Premier Wynne,

We would like to thank Kirsten Mercer and the team from the Attorney General's office for providing the OFIA with a Bill 83 technical briefing on Thursday, March 13, 2014. As a result of this technical briefing, we wish to draw to your attention the following critical concerns with Bill 83.

The supposed belief that so called SLAPP (Strategic Lawsuit Against Public Participation) is a prevalent issue in Ontario is not borne out by the facts. During the meeting, government representatives confirmed this, acknowledging that SLAPP is not common in our province which, again, makes our members question the urgency of Bill 83.

### *Flawed economic assumptions*

Therefore, Bill 83 can only be an economic measure, designed to make it less costly for special interest organizations to defend expressions if they are sued.

The assumption appears to be along the lines that an entity such as an environmental organization (which is often opposed to industrial activity) is at risk if it expresses an opinion, and a company sues because the environmental organization got its facts wrong and wins by reason of the company's greater resources. This is a fundamentally flawed premise.

To take just one example, in Canada, Greenpeace reports that as of the end of 2012 it had net assets of $3.12 million and had net revenues in that year of over $11 million.

By contrast, many of our members are small, family owned businesses with a tiny fraction of those assets and revenues. Like farmers, many members of the OFIA have been working on the same land base for generations – supporting families and communities. Even our more substantial members experienced years of losses during the economic downturn and their assets are in many cases subject to debt and other obligations such as pensions.

Simply put, it should not be assumed in a dispute between a purely interest based organization and a company that the company is in a better position to litigate. Often the reverse is true.

There is also disequilibrium in the effects of disputes and litigation on purely interest based organizations like Greenpeace for example, on the one hand, and companies, particularly publically traded companies. Even if they are wrong in their facts – as often they are – purely interest based organizations can look good in a dispute because donors may view their actions as tough and hard hitting. On the other hand, investors and consumers tend to stay away from investments and products that attract controversy, however ill-founded the controversy.

And, without investment and consumers, products do not sell, manufacturing facilities close, hard working families lose their jobs and communities and our economy suffer. Bill 83 will provide a cost-free shield for these groups and their destructive campaigns of misinformation. The costs will be borne by others.

If passed, Bill 83 will dissuade companies from coming to Ontario and it will dissuade companies that already are here from staying. It has just been reported that Ontario's bonded debt is $267 billion, almost twice as large as that of California. Almost 10% of Ontario's tax revenue goes to debt interest payments. Without industry and jobs, one wonders just how that debt will get paid and how the current level of services can be maintained.

***Denial of natural justice***

We are also concerned that the bill denies natural justice. The right to have recourse to due process, the courts, and legal remedies is a hallmark of natural justice. So important is this right that the Charter expressly provides that "Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances." Our social, governmental, regulatory and justice systems all hold at their core the principle that wrongs attract at the very least due process, and at the ideal, a remedy that is not hollow or illusory.

Bill 83 strips away this fundamental right to natural justice. A judge is told that he or she shall dismiss a proceeding if the expression made by the person relates to a matter of public interest. Not may, shall. The responding party can not even take the usual measure of amending pleadings to avoid such a result since Bill 83 strips this away too.

***Freedom to Slander***

Nowhere in Bill 83 is there any regard whatsoever for the truth of the expression, or the effect of untrue, reckless or damaging forms of expression on companies, their officers, directors, employees and contractors. Worse, these entities and peoples – Canada's employers, makers, doers, exporters – are precluded by this bill from remedies.

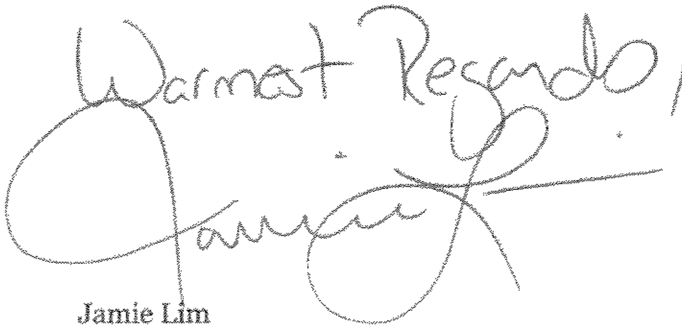
Bill 83 will permit interest groups to sully the reputations of Ontario's job creators without fear of being held to the truth.

As noted on the government's own website, Ontario is a world leader in forest management practises. Like all of us, interest groups must be held accountable for what they say and do. **Ontario should not become a safe harbour for slander, mistruth and innuendo.**
Not necessary – Judges already have the tools to deal with SLAPP

Lastly, Bill 83 is not necessary in order to protect freedom of expression. Ontario already has a balanced Libel and Slander Act. In addition, the Canadian Charter of Rights and Freedoms guarantees, among other fundamental values, freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication, freedom of peaceful assembly, and freedom of association. As noted above, SLAPP actions are scant. As noted in earlier correspondence, the Hyrniak decision from the Supreme Court of Canada has now created the conditions, under existing rules of civil procedure, under which a litigant who believes a law suit is a SLAPP, or otherwise an abuse of process can move at an early stage of the proceeding to obtain summary judgment. All the necessary tools and protections are in place.

Bill 83 is not necessary and, therefore, should not go to Committee or to Third Reading.

We look forward to your response on this matter.




Jamie Lim
President & CEO
**Ontario Forest Industries Association**
**Home of CLA Grading and Inspection**

cc. Ms. Andrea Horwath, Leader of the Ontario New Democratic Party
Mr. Tim Hudak, Leader of the Ontario PC Party
Ministers and MPPs
Municipal Stakeholders
OFIA Board of Directors

**Media Release** March 12, 2014 **(English/French Versions)**

**CALL TO ACTION: Speak out for Green Renewable Jobs in Ontario**
**NOMA, FONOM, and OFIA do not support Bill 83- Freedom to Slander**

The Northwestern Ontario Municipal Association (NOMA), the Federation of Northern Ontario Municipalities (FONOM), and the Ontario Forest Industries Association (OFIA) are concerned about Bill 83, Protection of Public Participation Act, 2014 and its potential impacts to Ontario's sustainable forestry sector, which employs 150,000 people in this province. The sector has overcome enormous challenges and now in 2014 is showing positive signs of rebound. This is not the time to allow radical special interest groups a shield to hide behind as they spread false information about the job creators in Ontario.

Ontario Nature released an action alert entitled -*Your Right to Speak up for a Healthy Environment is in Jeopardy*. Ontario Nature and others are fear mongering – they are creating a crisis where none exists. According to the Ministry of Natural Resources, Ontario is a world leader in sustainable forestry and is committed to balancing environmental protection with sustainable forest management.

David Canfield, Mayor of Kenora and President of NOMA stated, "There is no clear evidence that legitimate expression is being impaired in this province. Our current justice system provides ample protection to individuals expressing legitimate freedom of speech as well as to individuals and companies who rely on the law to protect their reputations against slander."

A recent Supreme Court ruling proves that lawsuits cannot be used to suppress legitimate expressions. There is no need for Bill 83. There is however, evidence of Greenpeace previously misleading the public and making false claims against a forestry company operating in Ontario. It is not surprising that Greenpeace also strongly supports this bill.

Alan Spacek, Mayor of Kapuskasing and President of FONOM said, "We believe that this legislation will create a climate in which radical activist groups can make false claims about a range of industries on which our communities depend upon, while enjoying protection from any legal opposition."

Jamie Lim, President and CEO of the OFIA commented, "The OFIA will always support freedom of speech. We do not, however, support freedom to slander with no accountability. Forestry, a renewable resource, is an important aspect of Northern and rural Ontario and we must stand up to protect green jobs. Bill 83 threatens the livelihood of hardworking Ontarians."

If you care about healthy communities and Ontario's economy, here is your call to action. The most effective action you could take would be to phone or write to your MPP to let them know that this issue matters to you.

**For further information, media representatives may contact:**

**Alan Spacek, Mayor of Kapuskasing and President of FONOM – Phone: 705-335-0001**
**David Canfield, Mayor of Kenora and President of NOMA – Phone: 807-467-2018**
**Jamie Lim, President & CEO - OFIA - Phone: 416-368-6188**
**Christine Leduc, Director of Policy & Communications – OFIA - Phone: 416-368-6188**

### ***Overview and Executive Summary***

Bill 83, entitled the *Protection of Public Participation Act, 2013*, (long title: *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*) upsets the existing balance between free speech and a private actor's right to protect its reputation against defamation.

The current regime provides equal protection, on one hand, to individuals and groups that wish to engage in legitimate expression, and on the other hand, to individuals and businesses that rely on the law to protect their reputation against defamation. The latter group consists of a wide range of interest, including job creators. When these entities choose to do business and invest in Ontario, they do so in reliance on the existing regime, which affords them a right to defend their reputation.

Bill 83 upsets the balance achieved by the status quo, giving enormous priority to a litigant's right to <u>any</u> speech (no matter the content) over another litigant's right to protect its reputation against defamation. This reprioritization of rights favours a select group of niche litigants, who do not believe there should be any governance on speech, over those job-creating businesses that contribute to Ontario's socio-economic success and rely on the current regime to protect their reputation.

Not only does Bill 83 upset the existing and appropriate balance of rights, but it is entirely unnecessary to protect the type of legitimate expression which is intended to be protected under Canada's *Charter of Rights and Freedoms*. In Ontario, there is already a robust procedure available to address frivolous lawsuits that would impair legitimate expression. The Supreme Court of Canada's recent decision in *Hryniack v. Mauldin* greatly expanded the scope of summary judgment in Ontario, confirming that the Courts have and should use the procedural tools to dispose of litigation where there is no "genuine issue for trial". Improper and tactical lawsuits that are designed to impair legitimate expression can already be summarily dealt with through this procedure.

With the Supreme Court of Canada's decision in *Hryniack v. Mauldin*, there is no need for additional legislation to address so-called "SLAPP litigation". Bill 83 completely overshoots the mark, effectively legalizing defamation at the expense of the reputations of victims.

Bill 83 will negatively affect businesses and individuals that value their reputation and depend on the ability to defend that reputation. In the current economic climate, Ontario cannot afford to lose business because its government has taken steps to intervene in a civil system (which already aggressively protects legitimate speech) and significantly favours those who seek to engage in irresponsible communication.

***Content of Bill 83***

In its presently proposed form, Bill 83 would modify the *Courts of Justice Act* ("***CJA***") with drastic consequences to corporations and job creators who are defamed by so-called public interest groups.

Specifically, proposed section 137.1(3) of the *CJA* would allow a defendant to bring a motion to dismiss a claim "if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest." Given the very broad definition that can be ascribed to "public interest", this section appears to capture virtually any topic of expression. In the result, in first instance, a defendant who engages in defamation will have an immediate opportunity to dismiss the claim against them.

It is also noteworthy that in such a motion, the actual content of the expression becomes irrelevant. The Court's only focus is limited to the subject-matter of the comment.

The only limitation on the defendant's ability to dismiss a lawsuit is found in proposed section 137.1(4) of the *CJA*. This section places the onus on the *plaintiff*, the victim of the defamation, to prove that:

a) there are grounds to believe:

i) the proceeding has substantial merit; *and*
ii) the moving party has no valid defence in the proceeding; *and*

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

As a result, the plaintiff, who is the victim of the defamation, bears the incredibly heavy burden of proving that a) the defendant has, essentially, no chance of success *and* b) that the harm suffered by the plaintiff outweighs the public interest.

Applying this test, it is possible that even when a defendant has no chance of success (that is, the defendant did defame the plaintiff), the defamer can still argue that the public interest in the subject matter of the defamation outweighs the harm. This proposed change effectively legalizes defamation, provided the topic of the defamation has sufficient public interest.

In addition, the new costs regime proposed by Bill 83 unduly favour defendants over plaintiffs. Proposed section 137.1(7) of the *CJA* states that if the proceeding is dismissed on the basis that it is a SLAPP, costs be granted to the defendant on a full indemnity basis unless the judge determines that such an award is not appropriate in

the circumstances. Conversely, if the action is not found to be SLAPP, the plaintiff is not entitled to costs on the motion unless the judge determines that such an award is appropriate in the circumstances. Although the judge retains some discretion, in first instance, the proposed costs regime immunizes defamers from costs sanctions while placing enormous risk on the victim of the defamation. In the result, it is foreseeable that every plaintiff in a defamation action will be faced with a SLAPP motion brought by the defendant, as there is little or no disincentive to bringing such a motion.

The draconian effects of Bill 83 do not accord with its purposes, which are set out in proposed section **137.1** (1) of the *CJA*:

> The purposes of this section and sections 137.2 to 137.5 are,
>
> (a) to encourage individuals to express themselves on matters of public interest;
>
> (b) to promote broad participation in debates on matters of public interest;
>
> (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
>
> (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.

Bill 83's purposes, as expressed in this section, do not include promoting defamation or irresponsible communication. This unintended and unfortunate practical effect of Bill 83 undermines the bill's true purpose of promoting *legitimate* expression. As discussed below, legitimate expression is already sufficiently protected in Ontario.

***Legitimate expression is already protected***

Separate and apart from the drafting of Bill 83, and its practical implications, it is apparent that Ontario does not have a need for this type of legislative intervention at all.

First, Ontario's *Rules of Civil Procedure* and the common law which has developed under them already provides adequate remedies for any litigant who wishes to challenge a proceeding as an abuse of process or otherwise worthy of summary disposition.

The Supreme Court of Canada's recent decision in *Hryniak v. Mauldin* signalled that, in light of the increasing complexity and expense associated with civil trials, a shift in culture was necessary to allow more cases to be determined by motion for summary judgment. This shift is intended to reflect the "modern reality" of civil litigation and entails "simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case." This expanded, more robust summary judgment procedure allows for meritless claims to be determined at an early stage. A frivolous lawsuit designed to impair legitimate expression is precisely the type of claim that a motion for summary judgment has the power to address.

Prior to the Supreme Court of Canada's decision in *Hryniak v. Mauldin*, the utility of summary judgment had been drastically curtailed by Ontario's senior appellate Court. The Civil Rules Committee determined that it was appropriate to provide the Court with broad new powers to assist in determining whether summary judgment should be granted. These powers, under *Rules* 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*, include the power to weigh evidence, evaluate credibility, draw reasonable inferences from the evidence or call oral evidence if necessary. In *Hryniak v. Mauldin*, the Supreme Court of Canada confirmed that these are effective tools and that the Courts should give them full effect through the summary judgment procedure.

Armed with these tools, judges in Ontario already have the ability to dispose of meritless litigation at an early stage. Not only does Bill 83 have the unintended effect of upsetting the balance between interests, but it is wholly unnecessary to protect legitimate expression from frivolous litigation.

***No empirical evidence that expression is being curtailed***

Besides the questionable assertion, made by proponents of Bill 83, that tactical lawsuits to silence legitimate speech are rampant, there is no empirical data suggesting the groups, entities or individuals seeking to express rights of freedom of expression are being harassed by frivolous law suits directed at impairing those rights. To the contrary, common law and Charter jurisprudence is trending in the opposite direction, where claims of expression are receiving a generous interpretation by the courts. Canada is consistently rated in the highest category of freedom in the World Press Freedom Index.

Without clear evidence that legitimate expression is being impaired, there is no need to pass Bill 83 in any form.

***Conclusion: An appropriate balancing of interests is necessary***

Bill 83 appears to be an intentional move to favour individuals or entities who do not believe that there should be any governance on speech, and therefore, that no discipline is required of the communicator, no matter how irresponsible the communication. Legislative intervention that so drastically favours such communications, and deprives job-creating businesses and responsible communicators in the marketplace of ideas of any remedies is simply out of step with Ontario's socio-economic needs.

Bill 83, by the test set out and described above, eradicates the rights of individuals and entities who presently are entitled to require that communications directed at them are responsible and fact-based. The current regime, without the artificial safe haven for irresponsible communicators that Bill 83 proposes to create, actually has allowed the marketplace of ideas to flourish. Detailed debate and sharing of information and ideas, no matter how unpopular or counter to the status quo, has never been so robust. But

the current regime also sets the boundaries at precisely the right balance. Bill 83 will have unintended consequences, including a disintegration of the marketplace of ideas.

# Bill 83, Protection of Public Participation Act, 2014

Meilleur, Hon Madeleine *Attorney General*

## Current Status: Second Reading Debate

## View the Bill

Bill 83 2013

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

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

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

Courts of Justice Act

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

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

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

Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)

Dismissal of proceeding that limits debate

Purposes

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

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

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

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

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

Definition, "expression"

(2) In this section,

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

Order to dismiss

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

No dismissal

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

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

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

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

No further steps in proceeding

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

No amendment to pleadings

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

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

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

Costs on dismissal

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

Costs if motion to dismiss denied

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

Damages

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

Procedural matters

Commencement

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

Motion to be heard within 60 days

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

Hearing date to be obtained in advance

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

Limit on cross-examinations

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

Same, extension of time

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

Appeal to be heard as soon as practicable

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

Stay of related tribunal proceeding

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

Notice

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

(a) notice of the stay; and

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

Duration

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

Stay may be lifted

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

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

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

Same

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

Statutory Powers Procedure Act

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

Application to commenced proceedings

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

Libel and Slander Act

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

Communications on Public Interest Matters

Application of qualified privilege

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

Statutory Powers Procedure Act

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

Submissions must be in writing

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice.

Commencement and Short Title

Commencement

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

Short title

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

EXPLANATORY NOTE

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

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

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

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

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

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

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

Finally, the Bill amends section 17.1 of the Statutory Powers Procedure Act to provide that submissions for a costs order in a proceeding must be made in writing, unless a tribunal determines that to do so is likely to cause a party to the proceeding significant prejudice. In addition, three spent subsections in that section are repealed (section 4 of the Bill).