

# Strategic lawsuit against public participation

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(Redirected from SLAPP)

A **Strategic Lawsuit Against Public Participation** ("SLAPP") is a lawsuit that is intended to intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Winning the lawsuit is not necessarily the intent of the person filing the SLAPP. The plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A SLAPP may also intimidate others from participating in the debate.

According to New York Supreme Court Judge J. Nicholas Colabella, "**Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.**" A number of jurisdictions have made such suits illegal, provided that the appropriate standards of journalistic responsibility have been met by the critic.

The acronym was coined in the 1980s by University of Denver professors Penelope Canan and George W. Pring. The term was originally defined as "a lawsuit involving communications made to influence a governmental action or outcome, which resulted in a civil complaint or counterclaim filed against nongovernment individuals or organizations on a substantive issue of some public interest or social significance."<sup>[1]</sup> It has since been defined more broadly to include suits about speech on any public issue.<sup>[2]</sup>

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## Jurisdictional variations and history

### Canada

One of the first cases in Canada to deal with a SLAPP was *Fraser v. Saanich* (see [1999] B.C.J. No. 3100 (B.C. S.C.)) (QL), where the British Columbia Supreme Court struck out the claim of a hospital director against the District of Saanich, holding that it was a meritless action designed to silence or intimidate the

residents who were opposed to the plaintiff's plan to redevelop the hospital facilities.

Following the decision in *Fraser v. Saanich*, the *Protection of Public Participation Act* went into effect in British Columbia in April, 2001. It was repealed in August, 2001.

The first case to discuss and apply the PPPA was *Home Equity Development v. Crow*, (see [2002] B.C.J. No. 1805 (B.C. S.C.)) (QL). The defendants application to dismiss the action against them was dismissed. The defendants failed to meet the burden of proof required by the PPPA, that the plaintiffs had no reasonable prospect of success. Many felt that the plaintiffs did not bring their action for an improper purpose, and the suit did not inhibit the defendants in their public criticism of the particular project.

In Ontario, the decision in *Daishowa v. Friends of the Lubicon* (see [1996] O.J. No. 3855 Ont. Ct. Gen. Div.) (QL) was also instructive on SLAPP's. A motion brought by the corporate plaintiff Daishowa to impose conditions on the defendant Friends of the Lubicon Indian Band that they would not represent Daishowa's action as a SLAPP was dismissed.

Québec's Justice Minister, Jacques Dupuis, has proposed an anti-SLAPP bill on June 13. The proposal will be voted on during the Fall 2008 sitting of the National Assembly[1] (<http://www.canada.com/montrealgazette/news/story.html?id=b1b092c8-4b5b-418d-a23b-21166d0dd4ad>)

Some political libel and forum shopping incidents, both common in Canada, have been called SLAPP suits, because such suits load defendants with costs of responding in unfamiliar jurisdictions or at times (typically elections) when they're extremely busy and short of funds. Both types of suits are almost unique to Canada, so there is little concern nor examination of whether political subject matter or remote forums are a clear indicator of SLAPP.

## United States

The U.S. state of California enacted Code of Civil Procedure § 425.16 (<http://casp.net/statutes/cal425.html>) in 1992, a statute intended to prevent the misuse of litigation in SLAPP suits. It provides for a special motion which a defendant can file at the outset of a lawsuit to strike a complaint where the complaint arises from conduct that falls within the rights of petition or free speech. The statute expressly applies to any writing or speech made in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, but there is no requirement that the writing or speech be promulgated directly to the official body. It also applies to speech in a public forum about an issue of public interest and to any other petition or speech conduct about an issue of public interest.

To win an anti-SLAPP motion, the defendant must first show that the lawsuit is based on constitutionally protected activity. Then, the burden shifts to the plaintiff, to affirmatively present evidence to show that they have a reasonable probability of prevailing on the action. The filing of an anti-SLAPP motion stays all discovery. This feature acts to greatly reduce the cost of litigation to the anti-SLAPP defendant, and can make beating the motion extremely difficult for the plaintiff, because they effectively must prove their case, without the benefit of discovery.

If the special motion is denied, the order denying the motion is immediately appealable. Defendants prevailing on an anti-SLAPP motion (including any subsequent appeal) are entitled to a mandatory award of reasonable

attorney's fees. After an anti-SLAPP motion has been filed, a plaintiff cannot escape this mandatory fee award by amending their complaint. More than 200 published court opinions (<http://www.casp.net/cases/calcases.html>) have interpreted and applied California's anti-SLAPP law.

California's **Code of Civil Procedure § 425.17** (<http://casp.net/statutes/cal425-3.html>) corrects abuse of the anti-SLAPP statute (**CCP § 425.16** (<http://casp.net/statutes/cal425.html>)). Signed into law on September 6, 2003, this statute prohibits anti-SLAPP motions in response to certain public interest lawsuits and class actions, and actions that arise from commercial statements or conduct. **Section 425.18** (<http://casp.net/statutes/cal425-4.html>), signed into law on October 6, 2005, was enacted to facilitate SLAPP victims in recovering their damages through a SLAPPback (malicious prosecution action) against the SLAPP filers and their attorneys after the underlying SLAPP has been dismissed.

At least 25 other states and one territory (<http://www.casp.net/statutes/menstate.html>) have also enacted statutory protections against SLAPPs. These are Arkansas, Arizona, Delaware, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington. In Colorado and West Virginia, the courts have adopted protections against SLAPPs.

There is no direct equivalent of a SLAPP statute in U.S. federal law; the closest available remedy is the *Noerr-Pennington* doctrine in federal antitrust law. According to Canan and Pring, this situation is probably because of differences in pleading requirements between federal and state civil procedure.

California operates under a "code pleading" regime, in which a complaint must be quite specific as to the underlying factual contentions. Thus, there is less of a risk that an anti-SLAPP motion will kick out legitimate cases, because the burden is *already* on the plaintiff to research the factual foundation of their complaint before filing suit. In contrast, federal civil procedure operates under a more recent "notice pleading" regime, in which a complaint need only include a "short and plain" notice of the claims to be asserted. This system offers plaintiffs the advantage of suing first and discovering the underlying facts later without having to worry about statutes of limitations (which is still a major problem with code pleading). But notice pleading also has a severe disadvantage in that allowing the use of an anti-SLAPP motion would result in the dismissal of many legitimate cases.

However, the U.S. Court of Appeals for the Ninth Circuit has allowed California litigants (<http://casp.net/cases/newsham1.html>) to use their state's special motion in federal district courts located in California, in cases where the court is hearing at least one California state law claim through the doctrine of supplemental jurisdiction.

## Notable anti-SLAPP cases

### Europe

- In February 2005 the European Court of Human Rights found that Helen Steel and David Morris did not receive a fair trial while defending a libel action brought by McDonald's in the United Kingdom. In what became known as the McLibel case, the two had been found guilty in 1994 of libelling the company in a leaflet. The court ruled that, because legal aid is not available to libel defendants, their

right to freedom of expression under the European Convention on Human Rights had been violated. They were awarded £24,000 damages, plus costs.

## US

- Barbra Streisand, as plaintiff, lost an anti-SLAPP motion after she sued an aerial photographer involved in the California Coastal Records Project. *Streisand v. Adelman et al, in California Superior Court; Case SC077257* <sup>[3][4]</sup> See Streisand effect
- Kim Shewalter and other neighborhood activists, as defendants, won an anti-SLAPP motion against apartment building owners because of the defendants' protest activities. *Coltrain v. Shewalter* (<http://www.casp.net/cases/coltrain1.html>)
- Barry King and another Internet poster, as defendants, won an anti-SLAPP motion against corporate plaintiffs based on critical posts on an Internet financial message board. *Global Telemedia v. Does* (<http://www.casp.net/cases/busted.html>)
- Kathi Mills won an anti-SLAPP motion against the Atlanta Humane Society, *Atlanta Humane Society v. Mills, in Gwinnett County (Georgia) Superior Court; case 01-A-13269-1* <sup>[5]</sup>
- Karen Winner, the author of "Divorced From Justice," published in 1996 by ReganBooks/Harper Collins, is recognized as "[the] catalyst for the changes that we adopted," said Leo Milonas, a retired justice with the Appellate Division of the New York state courts who chaired a special commission that recommended the changes adopted by Chief Judge Judith Kaye.<sup>[6]</sup> But in 1999, Winner, along with a psychologist/whistleblower, and several citizens were SLAPPED for criticizing the GAL system and a former judge in South Carolina. Winner's report, "Findings on Judicial Practices & Court-appointed Personnel In The Family Courts In Dorchester, Charleston & Berkeley Counties, South Carolina" and citizen demonstrations led to the very first laws in South Carolina to establish minimum standards and licensing requirements for GALS -- who represent the interests of children in court cases.<sup>[7]</sup> The retaliatory SLAPP suits have been dragging on for nearly 10 years, with judgments totaling more than \$11 million against the co-defendants collectively. Reflecting the retaliatory nature of these suits, at least one of the co-defendants is still waiting to find out from the judges, which particular statements if any he made were actually false.<sup>[8]</sup>

## See also

- Spamigation
- Barratry
- Chilling effect
- Cease and desist
- McDonald's Restaurants v Morris & Steel
- Scientology and the legal system
- Varian v. Delfino
- Vexatious litigation
- Media transparency
- Lawfare
- Public participation

## External links

- George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Temple University Press, 1996). ISBN 1-56639-369-8
- Michelangelo Delfino and Mary E. Day, *Be careful who you SLAPP* (MoBeta Pub, 2002). ISBN 0-9725141-0-4
- Ralph Nader and Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America* (Random House, 1998). ISBN 0-375-75258-7
- Survival Guide for SLAPP Victims (<http://www.casp.net/slapps/survival.html>) from the California Anti-SLAPP Project (<http://www.casp.net/>)
- Activist SLAPPs Back [2] (<http://www.fortbendnow.com/news/activist-slaps-back-in-countersuit-against-sienna-developer/>) from Texas [3] (<http://www.fortbendnow.com/news/activist-slaps-back-in-countersuit-against-sienna-developer/>)
- Tenants Sound Off; Landlord Files Suit (<http://query.nytimes.com/gst/fullpage.html?res=9E0CE0D8143EF933A25757C0A9639C8B63>)
- Anti-SLAPP Law in Massachusetts (<http://www.lawlib.state.ma.us/slapp.html>)
- PDF materials for California suits (<http://www.courtinfo.ca.gov/cgi-bin/slapp.cgi>)
- SLAPP Telstra (<http://www.slapptelstra.com/>) — A Telstra (Australian) SLAPP case.
- Varian v. Delfino (<http://www.horvitzlevy.com/rewivari.html>) — A California SLAPP case.
- SLAPPs—Strategic Lawsuits Against Public Participation: Coming to a Controversy Near You (<http://www.uow.edu.au/arts/sts/sbeder/SLAPPS.html>) — Australian article, includes history of SLAPPs
- 'McLibel' pair win legal aid case ([http://news.bbc.co.uk/2/hi/uk\\_news/4266209.stm](http://news.bbc.co.uk/2/hi/uk_news/4266209.stm)) on BBC news website
- U.S. judge fines major law firm for filing frivolous SLAPP suit ([http://reclaimdemocracy.org/articles\\_2005/fine\\_frivolous\\_lawsuit.php](http://reclaimdemocracy.org/articles_2005/fine_frivolous_lawsuit.php)) (news story, Aug 2005).
- SLAPP suit in Minnesota against a photographer who spoke up about copyright violation by a corporation (<http://www.phototour.minneapolis.mn.us/essays/vilana.html>)
- [4] (<http://www.slapps.org>) SLAPP Resource Center
- Florida SLAPP Suit, (Veranda Partners v. Larry Giles) – **Orlando Sentinel** Mar 2007 – *Resident: Suit filed to silence criticism* (<http://www.orlandosentinel.com/news/local/orange/orl-mgiles2807mar28.0,2382483.story?coll=orl-home-headlines>)
- Oklahoma SLAPP Suit, (Omega World Travel v. MummaGraphics, Inc.) – **SLAPPSUIT.com** Apr 2007 – *Documentary Film*. (<http://www.slappsuit.com>)

## References

1. ^ George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out*, (1996), 8-9.
2. ^ See, e.g., Cal. Code of Civil Procedure § 425.16 (e) (3) and (e) (4) (<http://www.casp.net/statutes/calstats.html>) .
3. ^ Streisand Sues to Suppress Free Speech Protection (<http://www.californiacoastline.org/streisand/lawsuit.html>)
4. ^ Streisand's Lawsuit to Silence Coastal Website Dismissed (<http://www.mindfully.org/Reform/2003/Barbra-Streisand-Coastal3dec03.htm>)
5. ^ Atlanta Humane Society settles lawsuit ([http://www.gwinnettdaily.com/index.php?s=&url\\_channel\\_id=32&url\\_article\\_id=2823&url\\_subchannel\\_id=&change\\_well\\_id=2](http://www.gwinnettdaily.com/index.php?s=&url_channel_id=32&url_article_id=2823&url_subchannel_id=&change_well_id=2))
6. ^ Guy Ashley, Marin Independent Journal story, "The Spark Behind The Firestorm" reprinted at <http://www.geocities.com/promanowsky/firestorm.html>
7. ^ William J. Cook, Final Reply Brief of Appellant/Respondent Ernie Weaver in the Charleston County case, 2001-CP-10-2967.
8. ^ Final Reply Brief of Appellant/Respondent Ernie Weaver in the Charleston County case, 2001-CP-10-2967.

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