

## Factsheet

### Strategic Lawsuits Against Public Participation (SLAPPs)

This Factsheet is meant to complement our Special Collection paper [How are courts responding to SLAPPs? Analysis of selected court decisions from across the globe](#), by focusing on the judicial interpretations of SLAPPs in different regions. While the jurisprudence included here is not comprehensive, it represents the most important judgments contained in the Columbia Global Freedom of Expression Case Law database. For a complete access to all our SLAPP case analysis, readers can click [here](#) and learn more about how SLAPPs are manifesting around the world.

The use of SLAPPs by politicians, public figures, and big companies to stifle public debate and harass journalists, NGOs and environmental and human rights defenders is increasing. To prevent a chilling effect on those critical of powerful actors, new legislation and appropriate judicial remedies are needed. While there are many cases that can be classified as a SLAPP, even if courts do not always recognize them as such, this Factsheet features how judges are understanding them. In particular, the Factsheet focuses on the definitions of SLAPP, and on four of its main components: Power Imbalance, Public Interest Matters, Remedies claimed, and Litigation costs and reparations.

### What are SLAPPs?

#### **1704604 Ontario Ltd. v. Pointes Protection Association** (Supreme Court of Canada)<sup>1</sup>

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[2] Strategic lawsuits against public participation (“SLAPPs”) are a phenomenon used to describe exactly what the acronym refers to: lawsuits initiated against individuals or organizations that speak out or take a position on an issue of public interest. SLAPPs are generally initiated by plaintiffs who engage the court process and use litigation not as a direct tool to vindicate a *bona fide* claim, but as an indirect tool to limit the expression of others. In a SLAPP, the claim is merely a *façade* for the plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party’s speech and deter that party, or other potential interested parties, from participating in public affairs.

#### **Mineral Sands Resources (Pty) Ltd v. Reddell** (High Court of South Africa, Cape Town)<sup>2</sup>

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<sup>1</sup> The case was initiated by a lawsuit against a non-profit corporation, Pointes Protection, because its president had testified before the Ontario Municipal Board against a company’s development plan, due to its negative impact. The Court held that the proceedings lacked substantial merit with no real prospect of success and highlighted that the expression of Pointes Protection related to matters of public interest and deserved protection.

<sup>2</sup> In this case, two Australian mining companies brought defamation suits against environmental defenders in South Africa. The Court rejected the claims and affirmed that public debate and participation on issues like environmental protection needs to be both protected and encouraged.

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[40] The signature element of SLAPP cases is the use of the legal system, usually disguised as an ordinary civil claim, designed to discourage others from speaking on issues of public importance and exploiting the inequality of finances and human resources available to large corporations compared to the targets. These lawsuits are notoriously, long drawn out, and extremely expensive legal battles, which consume vast amounts of time, energy, money and resources. In essence, SLAPPs are designed to turn the justice system into a weapon to intimidate people who are exercising their constitutional rights, restrain public interest in advocacy and activism; and convert matters of public interest into technical private law disputes.

[66] It is trite that legal process is abused when it is used for a purpose other than that for what it has been intended or designed for. Corporations should not be allowed to weaponize our legal system against the ordinary citizen and activists in order to intimidate and silence them. It appears that the defamation suit is not genuine and *bona fide*, but merely a pretext with the only purpose to silence its opponents and critics. Litigation that is not aimed at vindicating legitimate rights, but is part of a broad and purposeful strategy to intimidate, distract and silence public criticism, constitutes an improper use of the judicial process and is vexatious. The improper use and abuse of the judicial process interferes with due administration of justice and undermines fundamental notions of justice and the integrity of our judicial process. SLAPP suits constitute an abuse of process, and is inconsistent with our constitutional values and scheme.

### **Palacio Urrutia v. Ecuador** (Inter-American Court of Human Rights)<sup>3</sup>

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[95] The recurrence of public officials resorting to judicial channels to file lawsuits for crimes of slander or insult, not with the objective of obtaining a rectification but to silence the criticisms made regarding their actions in the public sphere, constitutes a threat to freedom of expression. These types of proceedings, known as “SLAPP” (strategic lawsuit against public participation), constitute an abusive use of judicial mechanisms that deserve regulation and control by the States, in order to protect the effective exercise of freedom of expression.

### **M/S. Crop Care Federation of India v. Rajasthan Patrika LTD** (High Court of India, Delhi)<sup>4</sup>

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[23] A strategic lawsuit against public participation (SLAPP) is a lawsuit intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

## **Power Imbalance**

### **Mineral Sands Resources (Pty) Ltd v. Reddell** (High Court of South Africa, Cape Town)

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[41] The person instituting the SLAPP generally have more resources to sustain litigation against their targets. The plaintiff is generally aware of its advantage, and may seek to protect business or economic interest. Targets are typically individuals, local community groups, activists or non-profit organisations who are advancing a social interest of some significance. Many targets often act without any personal profit or commercial advantage.

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<sup>3</sup> The case involved criminal convictions and civil sanctions against journalists who were accused of defamation against former president Rafael Correa. The Court held that the use of criminal defamation lawsuits by public officials, with the purpose of silencing criticism on matters of public interest, violated article 13 of the American Convention on Human Rights.

<sup>4</sup> In this case, a company involved in the business of insecticides filed a lawsuit against a newspaper and its editors for publishing articles that highlighted the harmful effects of pesticides on human health. The Court rejected the lawsuit as it considered that the company attempted to stifle debate about the use of pesticides and insecticides, a matter of public concern.

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**Guerra v. Ruiz-Navarro** (Constitutional Court of Colombia)<sup>5</sup>

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[427] There is an evident imbalance of power between the parties, the Court has already referred to *Ciro Alfonso Guerra Picón* as a public person who has an important social and media reputation in Colombia and internationally, related to his work as a film director. In addition, he has vast economic resources that has allowed him to cover the costs of the different legal proceedings he has initiated. The plaintiff has resorted to extrajudicial and judicial actions to request important compensations that, in principle, would be impossible to pay for a nascent media outlet, with a team of few women (four people, according to its website).

**Steel and Morris v. United Kingdom** (European Court of Human Rights)<sup>6</sup>

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[69] The disparity between the respective levels of legal assistance enjoyed by the applicants and McDonald's was of such a degree that it could not have failed, in this exceptionally demanding case, to have given rise to unfairness, despite the best efforts of the judges at first instance and on appeal.

[71] The Court finds that the denial of legal aid to the applicants deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's. There has, therefore, been a violation of Article 6.1 of the Convention.

## Public Interest Matters

**Herring Networks v. Maddow** (United States District Court, Southern California)<sup>7</sup>

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[6] The "public interest" requirement is construed broadly to include any issue in which the public is interested. Plaintiff agrees that Maddow was exercising her constitutional right of free speech and her statements concerned a public issue. Thus, Plaintiff does not contest that the first prong of the anti-SLAPP statute is met.

**Palin v. The New York Times** (United States District Court, Southern New York)<sup>8</sup>

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[3] The law further directs that the term "public interest" is to be construed broadly, and shall mean any subject other than a purely private matter.

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<sup>5</sup> The case was triggered by the publication of an article in which eight women accused Mr. Guerra of sexual harassment and sexual abuse. The applicant initiated several proceedings against the journalists claiming his rights to honor, good name, and presumption of innocence were breached. The Court ruled in favor of the defendants and held that there were elements of judicial harassment against the journalists.

<sup>6</sup> Two individuals had handed out partially libelous leaflets critical of McDonald's and had to pay a fine. The Court affirmed that there was a vast inequality between Steel and Morris and McDonald's, and that by denying legal aid to the Applicants, the UK deprived them of their ability to present the case effectively, violating the European Convention on Human Rights. The Court also noted the strong public interest in the opinions of non-mainstream groups regarding the environment and health.

<sup>7</sup> A media organization filed a defamation claim against the host of a TV show, because she had commented about the links between a network, Donald Trump and Russian propaganda. The Court found that the comments were protected by the constitutional right to exercise free speech concerning a public issue and, consequently, dismissed the complaint with prejudice.

<sup>8</sup> Plaintiff filed a defamation claim against The New York Times after the publication of an editorial regarding gun control. The Court granted the defendant's motion and held that public figures, like the plaintiff, needed to prove actual malice by clear and convincing evidence to succeed in these claims.

[355] The speech that is based on feminist and gender claims is especially protected, in particular when it involves complaints about harassment, abuse and sexual violence. This is not only of public interest, but is also essential for understanding structural discrimination.

**Tata Sons Limited v. Greenpeace International** (High Court of India, Delhi)<sup>9</sup>

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[43] The Courts, the world over, have set a great value to free speech and its salutary catalyzing effect on public debate and discussion on issues that concern people at large. The issue, which the defendant's game seeks to address, is also one of public concern. Granting an injunction would freeze the entire public debate on the effect of the port project on the Olive Ridley turtles' habitat. That, plainly would not be in public interest; it would most certainly be contrary to established principles.

## Remedies claimed

**Mineral Sands Resources (Pty) Ltd v. Reddell** (Constitutional Court of South Africa)

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[41] The plaintiffs have not brought a defamation claim for a reasonable amount, likely to be recovered in order to compensate them for injury to dignity. Instead, they have brought a series of claims for amounts which they know they will not recover, in order to intimidate their critics, the environmentalists, into silence.

**Steel and Morris v. United Kingdom** (European Court of Human Rights)

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[63] McDonald's claimed damages up of to GBP 100,000 and the awards actually made, even after reduction by the Court of Appeal, were high when compared to the applicants' low incomes: GBP 36,000 for the first applicant, who was, at the time of the trial, a bar worker earning approximately GBP 65 a week, and GBP 40,000 for the second applicant, an unwaged single parent. McDonald's have not, to date, attempted to enforce payment of the awards, but this was not an outcome which the applicants could have foreseen or relied upon.

**Gazeta do Povo v. Baptista et. al.** (Supreme Federal Court of Brazil)<sup>10</sup>

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[70] There has been a dysfunctional - and illegitimate - exercise of the right of action against the plaintiffs, used for the purpose of intimidating the press. In other words, the filing of dozens of standardized lawsuits, in a short space of time, with the same argumentative repertoire - identical reasoning, case law, request - with the aim of retaliating or imposing a veiled gag on the publication of news about the benefits received by public officials above the

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<sup>9</sup> One of India's largest companies filed a claim against Greenpeace for unauthorized use of trademark and damage to reputation. Defendants had opposed the industrial activities of the plaintiff in Dhamra port because it had an adverse impact on the breeding of the endangered species, Olive Ridley Sea Turtles. To create awareness, Greenpeace launched a game based on Pacman, titled 'Turtles v. Tata', where the turtles were portrayed as escaping the Tata logo. The Court held that accepting the plaintiff's claim would be an unreasonable restriction on freedom of speech.

<sup>10</sup> After a Brazilian newspaper published articles on the salaries of judges and prosecutors in the State of Paraná, which exceeded the legal limits, public officials initiated multiple identical compensation lawsuits against the media. The Supreme Court ruled that these actions constituted an abuse of rights and affirmed that the freedom of the press encompasses the right to criticize public authorities. It also emphasized the need to prevent legal tactics that could impede public discourse.

constitutional limits, subverts the ethical principles inherent in the legal process and, strictly speaking, denotes an abuse of the fundamental right to access to justice.

## Litigation costs and reparations

### **NSE v. Moneywise Media Private Limited** (High Court of India, Bombay)<sup>11</sup>

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[29] There will be an order of costs in the amount of Rs. 1.5 lakhs each in favour of Ms. Dalal and Ms. Basu separately. In addition, the Plaintiff will pay an amount of Rs. 47 lakhs in punitive and exemplary costs payable not to the Defendants but to public causes, viz., in equal parts to the Tata Memorial Hospital and the Masina Hospital, it being made clear that these amounts are to be used only for the free treatment of the indigent.

### **Resolute Forest v. Greenpeace International** (United States District Court, Northern California)<sup>12</sup>

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[2] Prevailing defendants on an anti-SLAPP motion are entitled to recover attorney's fees and costs.

[5] Anti-SLAPP Fee awards include services for all proceedings directly related to the special motion to strike, as well as fees addressing matters with factual or legal issues that are inextricably intertwined with those issues raised in an anti-SLAPP motion. Work performed on federal claims is not compensable. When the briefing involves overlapping issues of law and fact and there is a substantial anti-SLAPP fee request, courts reduce the total fee.

[7] The Greenpeace Defendants' motion for attorney's fees and costs is GRANTED and Greenpeace Fund's motion is GRANTED IN PART. Resolute shall reimburse the Greenpeace Defendants \$545,572.36 in attorneys' fees and \$20,687.18 in costs. Resolute shall reimburse GP Fund \$249,296.26 in fees and \$368.95 in costs.

### **Palacio Urrutia v. Ecuador** (Inter-American Court of Human Rights)

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[182] The State must adopt legislative measures to ensure the full effectiveness of the exercise of freedom of expression and to prevent public officials from bringing libel and slander suits in order to silence criticism of their actions in the public sphere.

### **Palin v. The New York Times** (United States District Court, Southern New York)

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[2] On November 10, 2020, New York amended its "anti-strategic litigation against public participation" ("anti-SLAPP") law to expressly require that public figures prove actual malice by clear and convincing evidence.

[3] So-called remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose. Remedial statutes are those designed to correct imperfections in prior law, by generally giving relief to the aggrieved

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<sup>11</sup> NSE, one of the premier stock exchanges in India, filed a case against Ms. Dalal and Mr. Basu, who worked for Moneylife, an online news website, for publishing articles accusing them of permitting illicit trading advantages to certain clients. The Court ruled that the defamation suit was filed to suppress criticism and ordered the plaintiff to pay more than 60,000 USD.

<sup>12</sup> A company in the forest products industry filed several actions against Greenpeace, accusing the organization of racketeering, conspiracy, defamation, tortious interference with prospective business relations, and trademark dilution. The Court found that Greenpeace International's campaigns were not carried out with actual malice and, thus, deserved First Amendment protection. It also granted Greenpeace's anti-SLAPP application for attorney fees and compensation.



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party. It is clear that § 76-a is a remedial statute that should be given retroactive effect. The legislative history demonstrates that the amendments were intended to correct the narrow scope of New York's prior anti-SLAPP law.

[6] Defendants' motion is granted. The Court holds that N.Y. Civil Rights Law § 76-a, as amended on November 10, 2020, applies to this action and requires plaintiff, as a matter of state law, to prove by clear and convincing evidence what she had already been tasked with establishing under the federal Constitution: that defendants made the allegedly defamatory statements in the Editorial with knowledge of their falsity or with reckless disregard of whether they were false -- that is, with actual malice.

*For more information, please refer to additional SLAPP resources such as:*

- **Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member states on countering the use of SLAPPs (Council of Europe)**
- **SLAPPED but not silenced (Business and Human Rights Resource Center)**
- **SLAPPs against journalists across Europe (Article 19)**
- **Protecting activists from abusive litigation: SLAPPs in the Global South and how to respond (International Center for Not-for-Profit Law)**
- **SLAPP research: Provisional conclusions (University of Amsterdam/Greenpeace International)**