

Citizen Participation and Public Petitions Committee
Wednesday 17 April 2024
6th Meeting, 2023 (Session 6)

PE1975: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Introduction

Petitioner Roger Mullin

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of Strategic Lawsuits Against Public Participation

Webpage <https://petitions.parliament.scot/petitions/PE1975>

1. [The Committee last considered this petition at its meeting on 4 October 2023](#). At that meeting, the Committee agreed to take evidence from the petitioner, the Anti-SLAPP Research Hub, the Law Society of Scotland, Graeme Johnston and the Minister for Community Safety at future meetings.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from Newsbrands, the petitioner, and Michelle Thomson MSP which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial position on 6 October 2022](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 132 signatures have been received on this petition.
8. At today's meeting the Committee will hear evidence from:
 - Professor Justin Borg-Barthet, Convenor, Anti-SLAPP Research Hub
 - Graeme Johnston, Scotland Anti-SLAPP sub-working group, UK Anti-SLAPP Coalition
 - Roger Mullin, Petitioner
 - Ashan Mustafa, Civil Justice Committee, Law Society of Scotland

Action

9. The Committee is invited to consider what action it wishes to take.

CPPP/S6/24/6/2

**Clerks to the Committee
April 2024**

Annexe A: Summary of petition

PE1975: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Petitioner

Roger Mullin

Date Lodged

22 September 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of Strategic Lawsuits Against Public Participation.

Previous action

I wrote to the Scottish Government on 29 April 2022 detailing my concerns and asking what plans exist to review the law in relation to SLAPPs. I received a letter in reply on 5 May, the opening of which read.

"Dear Roger,

At this time, the Scottish Government does not plan to undertake a review of SLAPPs." It went on to show some awareness of actions at EU and UK level, but made no commitment to act.

I have also discussed the situation of SLAPPs with Michelle Thomson MSP.

Background information

There is an increasing use or threatened use of legal action involving SLAPPs.

SLAPPs are abusive defamation or privacy cases, often initiated by mega-rich individuals with the intention to intimidate and harass individuals and publishers, and prevent them from publishing information of wide public interest.

Those particularly at risk are investigative journalists and their news outlets. Given the cost of defending actions, the mere threat of action can prevent publication.

Such has been the growth in SLAPPs, the UK government launched a consultation on 17 March 2022 (closed 19 May) with a view to reforming the law in England and Wales. On 27 April 2022 the European Union published a draft directive to deal with SLAPPs across all 27 member states. Other countries have previously acted.

Scotland should act too. If we do not, it is likely we will become the chosen destination for defamation and privacy SLAPPs, providing succor to oligarchs.

Annexe B: Extract from Official Report of last consideration of PE1975 on 4 October 2023

The Convener: Our next petition, PE1975, which was lodged by Roger Mullin, calls on the Scottish Parliament to urge the Scottish Government to review and amend the law to prevent the use of strategic lawsuits against public participation, which have the unfortunate acronym of SLAPPs.

We previously considered the petition at our meeting on 18 January, when the committee agreed to write to the Scottish Law Commission, the Law Society of Scotland, the National Union of Journalists, the Scottish Newspaper Society and the Scottish Government.

The Scottish Law Commission has confirmed that it does not have any current work in its programme of law reform that is relevant to the petition.

The Minister for Community Safety's written submission noted that, although defamation is not the only type of proceeding that is used for this purpose, it "is the most common route to silence or intimidate."

The submission details enhanced legal protections that have been brought about by the Defamation and Malicious Publication (Scotland) Act 2021, particularly the ability for unfounded proceedings to be dismissed at an early procedural hearing in relevant circumstances.

The Law Society of Scotland points out that, between 2013 and 2021, when the threshold to bring defamation action was lower in Scotland than it was in England and Wales, there was not a significant increase in the number of cases brought in Scotland. It highlights work that is being undertaken by the Council of Europe to develop a draft recommendation on SLAPPs, with the working group concluding its work by December 2023.

The National Union of Journalists states that threats of legal action often act as an effective deterrent and go unreported, which means that the true scale of the issue "cannot easily be captured." The NUJ argues that the statutory definition of SLAPPs must be broad in order to cover the wide range of tactics deployed.

The anti-SLAPP research hub's written submission points to the UK Government's consultation, which observed that protection through a serious harm test or public interest defence in defamation cases comes too late in proceedings to deter abusive litigation.

The petitioner's written submission describes the Scottish Government's response as "complacent" and states that "SLAPPs cannot be judged solely on the basis of those cases that come to court."

His most recent submission highlights some of the on-going work that is being done to increase engagement on the call for Scottish anti-SLAPP legislation.

After that rather extended summary, do members have any comments or suggestions for action?

Fergus Ewing: We should take evidence from the petitioner, the anti-SLAPP research hub, the Law Society of Scotland and the Minister for Victims and Community Safety. In addition, we should hear from Mr Graeme Johnston, who has provided a detailed, forensic and closely argued submission. I make that suggestion because, from what the National Union of Journalists, Mr Johnston, the anti-SLAPP research hub and others have said, it appears that Scotland is at risk of becoming the jurisdiction of choice for people such as oligarchs to abuse the court system, throw their weight around and, by taking SLAPP actions, prevent freedom of speech. Surely, freedom of speech is something that we are here to preserve and fight for.

In particular, I was struck by the point that high-profile SLAPP cases are simply the tip of the iceberg. The NUJ submission states that they “do not reflect the volume of threatening letters and interference that takes place pre-publication.”

In other words, we have no idea how many threats of legal action are made that we never hear about because the person from, for example, a small publisher or small newspaper thinks, “I havenae got the money to take on this guy,” so that is the end of it—David, no sling, no action; another victory chalked up to Goliath.

I have absolutely no doubt that we need to get the evidence and to learn more from the various points that have been challenged in relation to the Government’s response, which—I am sorry to say—I found a bit on the complacent side.

The Convener: The petitioner, Roger Mullin, is with us in the public gallery today. We will seek to take evidence from him, the anti-SLAPP research hub, the Law Society of Scotland and the Minister for Victims and Community Safety at future meetings. Are there any other organisations that we would like to include? Fergus Ewing has suggested that we speak to Mr Graeme Johnston, too.

Are we content to proceed on that basis?

Members *indicated agreement.*

The Convener: We will keep the petition open and seek to hold an evidence session at a subsequent committee meeting, as agreed.

Annexe C: Written submissions

Newsbrands Scotland submission of 19 October 2023

PE1975/R: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

Newsbrands Scotland (formerly the Scottish Newspaper Society) is the trade association which represents the news publishing sector in Scotland, and I write in support of a petition about Strategic Lawsuits Against Public Participation (SLAPP) currently before your committee.

The Defamation and Malicious Publication (Scotland) Act (DMPA) of 2021 successfully introduced some key principles into Scots law, not least of which is the serious harm test, and its very success means those wishing use the law to limit freedom of expression in Scotland must find other avenues.

That such avenues exist is not a failing of what was exemplary legislation, and the potential use of SLAPPs should not be regarded as exploiting loopholes, but determined individuals finding new ways to achieve their goals unrelated to personal or corporate reputation. Similarly, the lack of cases in Scotland, which was used by some to argue that defamation reform was unnecessary, is not a reason for inaction in this regard.

The UK government is in the process of tightening restrictions on the use of SLAPPs, and with progress in the Council of Europe and the European Union there is therefore a danger that without parallel legislation here, the Scottish courts could become a favoured jurisdiction for vexatious litigants seeking to limit others' freedom of expression, including public interest reporting.

SLAPPs are an abuse of the litigation process, but as it stands there is no means in Scots law to dismiss SLAPP threats at an early stage, reduce costs for targets, or increase costs for pursuers to dissuade future abuse. Such changes would give editors and journalists more comfort that they can continue to report in the public interest.

News publishers, editors and journalists depend on a legal system which protects against systemic threats to public interest reporting, but dealing with SLAPPs can drain financial, editorial and personal resources at a time when all parts of the sector, from freelancers and small independent publishers to large corporations, remain under considerable commercial pressure, and even just threatened SLAPP action can therefore chill reporting.

Like the DMPA, any anti-SLAPP legislation should clearly enshrine the right of journalists to publish information in the public interest, which would be a significant advance in protecting public interest journalism, something I know you fully understand is essential for a functioning modern democracy.

Petitioner submission of 11 March 2024

PE1975/S: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

This update arises out of the Scottish Anti-SLAPP Summit, held at the University of Glasgow on Monday 26 February 2024. The all day summit involved over 20 platform speakers plus other contributors.

SLAPP Targets

While most targets of SLAPPs are not known, due to the majority of SLAPPs never making it to court, the summit heard presentations from a number of individuals who have been targeted with threats that bear the hallmarks of SLAPPs.

The 4 “Scottish” SLAPPs discussed, allowed those attending to hear at first hand of the considerable harassment, both legal and psychological, involved. Those targeted included a retired academic, a woman acting as an advocate for victims of a financial scam, an environmental campaigner, and a journalist and former MSP. The laws being deployed to harass were varied.

A number of the journalists and media workers present also highlighted the legal threats they have faced as a result of their public interest reporting.

Legal Issues

In an early response to my petition, the Scottish Government implied Scotland’s recently updated defamation laws would be sufficient. While this would only cover SLAPPs brought through defamation, academics at the University of Glasgow Law School have analysed the impact of the serious harm threshold established in the 2013 reform of defamation law in England and Wales. The research found “the serious harm test post-Lachaux has knocked out a significant number of cases. It certainly does act as an important filter for spurious cases.” However, the research shows that it is not operating as an early dismissal mechanism as “serious harm cannot normally be considered at an early stage in proceedings. It often goes to full trial.” Full trials require significant and costly legal resources to defend. **The same threshold was established in the defamation and malicious publications (Scotland) Act 2021 and so there is no certainty as to whether it will ensure defamation actions are dismissed before legal costs have accrued.**

Moves in other Jurisdictions

When I presented my petition, there was already early consideration of moves to address SLAPPs in England and Wales and also in European institutions. The Summit heard of further progress including the recent passage of anti-SLAPP provisions in the Economic Crime and Corporate Transparency Act 2021, which protected reporting on economic crimes. Further to this, an anti-SLAPP Private Members’ Bill passed its 2nd reading in the UK Parliament on 23 February. Both would only establish limited protections in England and Wales. Both Northern Ireland and the Republic of Ireland have also included questions about SLAPPs in ongoing

consultations as to their respective defamation laws, with a view to potential reform in the near future.

On 27 February, the European Parliament approved the EU Anti-SLAPP Directive, which will set the minimum standards for protecting public watchdogs against SLAPPs in EU member states. The Council of Europe has also established a draft recommendation on countering SLAPPs to outline further steps for member states (including the UK) to take to protect against SLAPPs, which is expected to be formally adopted in the coming months. Anti-SLAPPs laws are already in place in a number of different Canadian provinces and 34 US states.

SLAPP Tourism

There was agreement within the Summit that progress in other jurisdictions, including within EU member states, and England and Wales, could leave Scotland the jurisdiction of choice for SLAPP pursuers. Without robust protections against forum shopping and at a time of increased cross-border publication, especially through online platforms, SLAPP pursuers will seek to identify a jurisdiction that will enable them to threaten their critics and draw out costly legal threats. **With fewer protections than neighbouring jurisdictions, Scotland would face serious risks.**

Don't wait

It was argued that Scotland must establish robust anti-SLAPP laws to ensure it does not fall behind other nations in Europe and across the globe. It also should not wait to see what others do before it responds to threats to free expression. The summit highlighted the presence of relevant expertise willing to assist, including the University of Aberdeen anti-SLAPP hub, Index on Censorship and the Scottish Anti-SLAPP Working Group who are already working on the development of an anti-SLAPP law for Scotland.

Michelle Thomson MSP submission of 28 March 2024

PE1975/T: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

I have previously written in support of Petition PE1975 submitted by Roger Mullin and have been following its progress via the Petitions Committee with interest.

I thank the committee for offering me the chance to contribute to the session planned for 17/04/2024 but I will be attending another committee of the Parliament on that date.

However, I offer some further information which I hope the committee will factor into their deliberations.

On a recent trip to Malta, I was able to meet with Katherine Ward LVO OBE who is the British High Commissioner.

Part of our discussions were into the case of an investigative Maltese anti-corruption journalist called Daphne Caruana Galizia. She was murdered in 2017 and, at the time of her death, it was estimated she had forty-eight SLAPPs against her.

As you can appreciate, the circumstances of her death, whilst tragic, also brought renewed global interest in measures to stop the use of SLAPPs.

Work is still underway in Malta, but Ms Ward was able to confirm that the Maltese Government is watching with interest measures being brought forward in the UK and the European Union.

The “Strategic Litigation Against Public Participation Bill”, brought forward by Wayne David MP passed its 2nd reading in the UK Parliament on 23 February 2024 with UK government support. It builds on the Economic Crime and Corporate Transparency Act 2023, which included new laws to stop wealthy elites using SLAPPs on issues around economic crime, including corruption and embezzlement, by extending its scope beyond financial crime. It seeks to block SLAPPs across all other types of litigation, including sexual harassment.

These initiatives, however, only cover England and Wales.

On 27 February, the European Parliament approved the EU Anti-SLAPP Directive (Daphne’s Law).

Anti-SLAPPs laws are already in place elsewhere, including in a number of Canadian provinces and thirty-four US states.

Scotland has fallen behind such moves in other jurisdictions, and if urgent moves are not made, we will likely become the destination of choice for so-called “forum shoppers” intent on pursuing SLAPPs – not least because we live in a world of online publications which allowing for a publication based anywhere in the world to face a SLAPP in Scotland because the publication is accessible in Scotland.

I know that some doubt we will become a destination of choice. But I point to an example where we have significant evidence that Scotland has become a destination of choice for criminal behaviour. I supported the petitioner when we were MPs together, as he sought to persuade the UK government to reform Scottish Limited Partnerships. He did so, as SLPs had become commonly used by international financial criminals and others to hide their assets and illegal earnings behind their very opaque structure. This therefore is another example of “forum shopping” where criminals in places ranging from Russia to the USA, Israel to the Baltic states were able to choose Scottish Limited Partnerships as their vehicle. Forum shopping is not new to Scotland.

It would be naïve in the extreme to believe Scotland would not become an increasing destination for SLAPPs. As other countries act so must Scotland.

I stand firm in my support for this petition.