Alternatives North

DELIVERED VIA EMAIL

June 24, 2026

Julian Morse, MLA Frame Lake
Chair of the Standing Committee on Government Operations
Legislative Assembly of the Northwest Territories
Box 1320
Yellowknife NT X1A 2L9

Re: Submission on Bill 46 — *Prevention of Proceedings That Hamper Expression on Matters of Public Interest Act*

We are Alternatives North, a social justice coalition focused on social, environmental and economic justice in the Northwest Territories ("NWT"). We are writing to express our strong support for Bill 46, the *Prevention of Proceedings that Hamper Expression on Matters of Public Interest Act*. The Bill is closely modelled on the anti-SLAPP laws in British Columbia[1] ("BC"), Ontario[2] and Manitoba[3], and meets most of the criteria for evaluating anti-SLAPP laws developed by the Centre for Free Expression at Toronto Metropolitan University (the "Centre").[4]

This submission was supported by policy advice from Heather McLeod-Kilmurray, a Professor and former Co-Director at the Centre for Environmental Law and Global Sustainability at University of Ottawa, and the work of lawyers and students at AEL Advocacy[5], Krystal-Anne Roussel and Lisa Tran. Professor McLeod-Kilmurray also assisted Alternatives North and Ecology North with detailed comments on the proposed Statement of Environmental Values with several of the recommendations incorporated into the final version.[6]

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[1] *Protection of Public Participation Act*, SBC 2019, c 3.
[2] *Protection of Public Participation Act, 2015*, SO 2015, c 23.
[3] *The Public Interest Expression Defence Act*, SM 2025, c 45.
[4] Evan Brander, James L. Turk, "Global Anti-SLAPP Ratings: Assessing the strength of anti-SLAPP laws" (March 23, 2023) Centre for Free Expression, Toronto Metropolitan University, https://cfe.torontomu.ca/sites/default/files/2023-03/2023_03_03%20Anti-SLAPP%20Evaluations_FINAL.pdf.
[5] https://www.aeladvocacy.ca/.
[6] See: https://www.ntlegislativeassembly.ca/sites/default/files/legacy/td_564-192.pdf.

A. Why Anti-SLAPP Legislation Matters in the Northwest Territories

A Strategic Lawsuit Against Public Participation (SLAPP) is a lawsuit intended to censor, intimidate or silence critics by burdening them with the cost and stress of a legal battle.[7] SLAPPs often target activists, advocates, journalists, and ordinary citizens who speak out on matters of public interest.[8] They typically arise where there is a significant imbalance of power and resources between the parties.[9]

Anti-SLAPP legislation allows the courts to identify and dismiss such a claim at an early stage, before the defendant is worn down by the time, expense and effort of defending it.[10] This legislation is key to *protecting expression* on matters of public interest from undue interference, and to *promoting the freedom* to participate in public debate.

It is important to consider Bill 46 within this broader context. The public hearings before the Standing Committee on Government Operations demonstrated many of the concerns the Bill seeks to address.[11] The Bill was largely discussed in relation to the rights of residential school survivors to share their experiences, criticize their Indigenous governments, and advocate for human rights. There was also a threat made against Ecology North by DeBeers over the public showing of a documentary on the diamond industry back in 1994 just as diamond mining was beginning. (see Member's Statements and questions by Jim Antoine and Brian Lewis made on March 16-17, 1994: https://hansard.opennwt.ca/search/?q_al=De+Beers&q_ex=&q_an=&q_no=&q_pid=&q_sec=&q_df=1994-01-01&q_dt=1995-01-01&q_as=&q_t=). Alternatives North supports the efforts of the MLA who introduced this Private Member's Bill and the constituent who brought forward these concerns and supports adopting the strongest possible protections to preserve freedom of expression and enable residents to participate fully in democratic processes.

These protections are particularly important in the NWT. Popular action on Indigenous rights, institutional misconduct, residential-school experiences, and governmental and administrative matters are all susceptible to SLAPP litigation. Many residents, including Elders and community members, do not have the resources to defend a lawsuit brought to silence them. Bill 46 would give them meaningful protection. For these reasons, Alternatives North strongly supports the Bill and urges its adoption.

B. Evaluation of Bill 46 Against the Centre for Free Expression Criteria

The Centre identifies nine criteria for evaluating anti-SLAPP statutes:

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[7] https://cfe.torontomu.ca/guidesadvice/anti-slapp-legislation-backgrounder
[8] https://ecojustice.ca/news/anti-slapp-legislation/
[9] https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf at p 2.
[10] https://cfe.torontomu.ca/guidesadvice/anti-slapp-legislation-backgrounder
[11] See: https://www.youtube.com/watch?v=StaZLpYG83g

(1) the scope of the law;
(2) the minimum burden of proof required by the defendant;
(3) the shifted burden of proof required of the plaintiff;
(4) a stay of proceedings;
(5) the defendant's presumptive entitlement to costs;
(6) expedited hearings of anti-SLAPP motions;
(7) a right to immediate appeal and its timeline;
(8) a damages provision; and
(9) instruction for statutory interpretation.

Bill 46 is strong in several aspects. It is very broad in scope, applying to all proceedings that are concerns of public interest. Under section 4(1), it imposes a minimal burden on the defendant, who need only satisfy the court that the proceeding arises from an expression they made in respect of a matter of public interest. Under section 4(2), the onus then shifts to the plaintiff to justify continuation of the proceeding. The Bill also allows for expedited treatment of motions and for appeals (section 11).

However, Bill 46 is comparatively weak on several of the Centre's criteria. For example, it does not provide for an automatic stay of related administrative proceedings. The costs available to a successful defendant are limited (an "enhanced costs" rather than a "full indemnity" standard) and the defendant is not insulated from adverse costs.

Hearings are not set within a defined timeline (the Bill uses "as soon as practicable"). Finally, the Bill does not contain an instruction to interpret the law liberally or broadly. While we support the Bill and applaud the NWT government for this initiative, we propose several amendments to further strengthen the Bill:

1. Add an express provision directing courts to construe the Act broadly and liberally to achieve its purposes.
2. Add "or entity" to the definition of "expression" so the Act covers expressions directed at a person or entity.
3. Introduce an automatic stay of related administrative and tribunal proceedings once a dismissal motion is brought.
4. Replace the "enhanced costs basis" with a "full indemnity basis" for costs, matching BC, Ontario and Manitoba.
5. Adopt the broader Ontario-style qualified privilege defence, with the corresponding amendment to the *Defamation Act*.
6. Use "relates to a matter of public interest" rather than "in respect of" in the section 4 dismissal test.
7. Adopt a defined statutory timeline for hearing the motion (for example, 60 days, as in Ontario), subject to judicial discretion to extend.
8. Adopt minor wording changes to harmonize the Bill with the other jurisdictions.

C. Detailed Analysis and Recommendations

1. Instruction for Expansive Statutory Interpretation

The Centre considers statutes that direct judges to read the anti-SLAPP law broadly or liberally to be stronger than those that do not. Many statutes include such an instruction. For example, several U.S. anti-SLAPP statutes direct that the law "shall be construed broadly" or "liberally" to effectuate its purposes:

- **California**: In the purposes section, the statute states "To this end, this section shall be construed broadly."[12]
- **Georgia**: Right after the purposes section, the statute states "To accomplish the declarations provided for under this subsection, this Code section shall be construed broadly."[13]
- **Illinois**: Section 110/30 provides that the Act should be "construed liberally to effectuate its purposes and intent fully."[14]
- **New York:** The Act requires that "public interest" be construed liberally.[15]
- **Texas**: Under section 27.011, the statute states "This chapter shall be construed liberally to effectuate its purpose and intent fully."[16]
- **Utah:** Section 78B-25-111 indicates that "This chapter shall be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Utah Constitution."[17]

A broad or liberal interpretation ensures more flexible and robust protection of expression. A broad reading of "public interest," for example, can capture consumer reviews, community issues, and environmental advocacy; a broad reading of "expression" can extend to defamation (libel and slander), contract disputes, and regulatory complaints. Such instruction expands the scope of the legislation, allowing it to be more robust.

Recommendation No. 1: Add an interpretive provision directing that the Act be construed broadly and liberally to fully effectuate its purpose of protecting expression on matters of public interest.

2. "Person or Entity" in the Definition of Expression (Section 1(1))

The Ontario, BC and Manitoba Acts define expression as a communication "whether or not it is directed at a person or entity." The Supreme Court of Canada confirmed in

[12] https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-425-16/
[13] https://law.justia.com/codes/georgia/2020/title-9/chapter-11/article-3/section-9-11-11-1/
[14] https://www.ilga.gov/Legislation/ILCS/Articles?ActID=2937&ChapterID=56
[15] https://www.nysenate.gov/legislation/laws/CVR/70-A
[16] https://statutes.capitol.texas.gov/?tab=1&code=CP&chapter=CP.27&artSec=27.001
[17] https://le.utah.gov/xcode/Title78B/Chapter25/C78B-25_2023050320230503.pdf

1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 that this definition is to be read expansively.[18] Limiting the NWT definition to a "person" would narrow the Bill, because the party criticized in public-interest expression can be a corporation, government body or other entity. "Person" is defined in the *Interpretation Act*[19] Schedule as including "a corporation and the heirs, executors, administrators or other legal representatives of a person." This likely provides additional rationale for use of "entity" and an expansive definition for same in the Bill. It may also be helpful to define "entity" in the Bill to include registered societies under GNWT legislation (*Societies Act*).

Recommendation No. 2: Add "or entity" to the definition of "expression" so it reads "directed at a person or entity," matching the comparator statutes.

3. Automatic Stay of Related Proceedings

Ontario, BC and Manitoba all provide for an automatic stay of related administrative and tribunal proceedings once a dismissal motion is brought. A stay prevents a plaintiff from continuing to impose litigation costs and from using parallel proceedings as a tactical pressure point while the motion is pending. It reduces cost, delay and effort for everyone in the system, and the Centre places high value on a stay of proceedings.

Recommendation No. 3: Add provisions enforcing an automatic stay of related administrative and tribunal proceedings upon the bringing of a dismissal motion, similar to Ontario's legislation s. 137.4; the Manitoba Act ss. 10-11; and the BC Act s. 11.

4. Full Indemnity Rather Than "Enhanced Costs" (Section 7)

The BC, Ontario and Manitoba Acts each place costs and damages in separate sections, while Bill 46 combines them in section 7. The more important difference is the cost standard. Bill 46 proposes that a successful applicant recover costs "on an enhanced costs basis," whereas BC, Ontario and Manitoba all provide for costs "on a full indemnity basis."

Full indemnity is the standard precisely because of its deterrent function. Under Ontario's section 137.1(7), a successful moving party is presumptively entitled to full indemnity costs. The Ontario Court of Appeal in *Levant v. DeMelle*, 2022 ONCA 79 explained that this presumption serves two purposes: to reduce the adverse impact of unmeritorious litigation on constitutional values, and to deter the commencement of SLAPP actions in the first place.[20]

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[18] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 at para 25.
[19] https://www.justice.gov.nt.ca/en/files/legislation/interpretation/interpretation.a.pdf
[20] *Levant v. DeMelle*, 2022 ONCA 79 at para 79.

The presumptive full-indemnity award is a powerful deterrent against weak or tactical claims, and it also encourages counsel to take on the defence of public-interest expression even where the defendant may be unable to pay.

Full indemnity is a better deterrent than enhanced costs because it requires the plaintiff to bear effectively all of the defendant's reasonable defence costs, leaving meritless claims with no cost advantage. We note that the presumption is not unlimited. In *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, the Court of Appeal indicated that anti-SLAPP costs should not generally exceed $50,000 even on a full-indemnity basis, to keep the procedure proportionate[21], but this guideline operates within, and does not displace, the full-indemnity standard. Adopting the same "full indemnity" language would harmonize the NWT law with the other provinces and better serve the Bill's deterrent purpose.

Recommendation No. 4: Amend section 7 to provide that a successful moving party is presumptively entitled to costs on a full indemnity basis, and consider separating the costs and damages provisions as the other jurisdictions do.

5. Qualified Privilege (Section 3)

Bill 46 adopts the language of the BC Act on qualified privilege. The BC approach, as the Bill's own Plain Language Summary[22] notes, extends qualified privilege only to communications already protected at common law. Ontario took a broader approach. Through the *Protection of Public Participation Act, 2015*[23], it amended the *Libel and Slander Act*[24] so that qualified privilege applies to communications on a matter of public interest between persons with a direct interest in the matter, regardless of whether the communication is witnessed or reported by the media, thereby protecting certain public communications, such as a social media post on a public issue, that the common law might not protect. Manitoba did not address qualified privilege in its statute at all, leaving the matter to the common law and the responsible-communication defence recognized in *Grant v. Torstar Corp.*, 2009 SCC 61.[25]

Because the broader Ontario formulation provides stronger protection for public-interest expression (the central object of the Bill), Alternatives North favours it.

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[21] *Park Lawn Corporation v. Kahu Capital Partners Ltd*., 2023 ONCA 129 at para 39.
[22] https://www.ntlegislativeassembly.ca/tabled-documents/plain-language-summary-bill-no-46-201-prevention-proceedings-hamper-expression.
[23] *Protection of Public Participation Act, 2015*, SO 2015, c 23.
[24] *Libel and Slander Act*, RSO 1990, c L.12, s 25..
[25] *Grant v. Torstar Corp.*, 2009 SCC 61.

Recommendation No. 5: Adopt the broader Ontario-style qualified privilege defence by framing the consequential amendment to the *Defamation Act* accordingly (see s. 4 of the Ontario *Act to Amend the Courts of Justice Act* which amends the *Libel and Slander Act* of Ontario by adding s. 25.)

6. Order to Dismiss (Section 4)

Section 4 of the Bill sets the test for dismissing a SLAPP. In the BC, Ontario and Manitoba Acts, the first branch of the test asks whether the expression "relates to" a matter of public interest. Bill 46 instead uses "in respect of" a matter of public interest. The phrase "relates to a matter of public interest" is the exact language the Supreme Court of Canada authoritatively interpreted in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, drawing on *Grant v. Torstar*, 2009 SCC 61.[26] The Court held that the defendant's threshold burden is deliberately undemanding and involves no assessment of the value of the expression[27] and that "public interest" is to be construed broadly and contextually (e.g. it is not confined to political matters, does not require a public-figure plaintiff, and is assessed by looking at the subject matter of the expression as a whole.[28] Adopting the identical phrase imports this settled, expression-protective body of jurisprudence directly into NWT law.

Although "in respect of" is itself capable of a broad reading, it has not been interpreted in the anti-SLAPP context. Using different language invites needless argument over whether the NWT test is meant to differ from the harmonized national standard, which would undermine the predictability and the quick, inexpensive resolution the Bill is designed to achieve, and would forfeit the benefit of persuasive precedent from BC, Ontario and Manitoba.

Recommendation No. 6: Amend section 4 to use "relates to a matter of public interest," consistent with the other Canadian statutes and the Supreme Court of Canada's framework.

7. Timeline for Hearing a Motion (Section 9.3)

Bill 46, like the BC and Manitoba Acts, requires the motion to be heard "as soon as practicable." Ontario instead requires the motion to be heard no later than 60 days after it is filed. There are arguments both ways. A defined timeline promotes transparency and predictability and reflects the statutory urgency of unburdening defendants from meritless lawsuits quickly, a point to which the Centre attaches importance. On the

[26] *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22.
[27] *Ibid* at para 28.
[28] *Grant v. Torstar Corp.* at paras 105-106, 109.

other hand, a fixed deadline is more demanding on a smaller court system, and “as soon as practicable” affords flexibility to account for available resources and operational realities in the NWT.

On balance, because prompt resolution is central to the Bill’s protective purpose, Alternatives North recommends a defined outer timeline, with discretion to extend where the interests of justice require. This captures the benefits of predictability while preserving the flexibility the NWT courts may need.

Recommendation No. 7: Adopt a defined statutory timeline for hearing the motion (for example, within 60 days, as in Ontario), subject to the court’s discretion to extend for good reason.

8. Minor Wording Changes to Harmonize with Other Jurisdictions

Several smaller changes would improve consistency and avoid divergent interpretation:

- **Use the word “and” rather than “or” in the definition of “expression” (s. 1(1)):** The Ontario, BC and Manitoba Acts use “and” in the definition of “expression.” While the difference is minor, “and” is more inclusive than “or,” and consistency across the statutes promotes harmonious interpretation.
- **Damages (s. 7):** The BC and Manitoba Acts allow the court to award damages “on their own initiative or on motion by the moving party.” Adding this wording confirms the court may award damages without a separate motion.
- **Cross-examination on documentary evidence (s. 10):** Section 10(1) refers to cross-examination, while section 10(2) refers to cross-examination on documentary evidence; the Ontario Act refers to documentary evidence in both. Aligning the two subsections keeps the motion efficient and limited in scope, consistent with its screening purpose.
- **Appeals (s. 11):** The Ontario Act provides for an appeal of an order “to dismiss or not to dismiss.” Adopting this language ensures that both parties have a right of appeal from the disposition of the motion.

Recommendation No. 8: Adopt the wording changes in section 5.8 to harmonize Bill 46 with the BC, Ontario and Manitoba statutes.

D. Conclusion

Alternatives North strongly supports Bill 46 and urges its passage. The Bill is a significant and welcome step toward protecting the freedom of NWT residents to participate in public debate without fear of being silenced by litigation. The amendments proposed in this submission would strengthen the Bill, align it more closely with the

leading Canadian anti-SLAPP statutes, and ensure that its protections are as robust and predictable as possible.

We thank the Committee for the opportunity to contribute and would welcome the chance to provide any further information that would assist its review.

Sincerely,



Kevin O'Reilly

cc. George Nerysoo, MLA Mackenzie Delta and Sponsor of Bill 46