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LAWYERS DISPUTE FORD CLAIM THAT 'ACTIVISTS' CLOGGING UP ONTARIO COURTS

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Lawyers dispute Ford claim that 'activists' clogging up Ontario courts

 29.04.2019  Jack Hauen  0

To justify his government's move to [make itself much harder to sue](#), Premier **Doug Ford** said earlier this month that the goal was to free up the courts from "activists that are out there suing continuously."

But as courts can already toss lawsuits they deem frivolous, lawyers and opposition MPPs say the government's proposed legislation would only serve to make it harder for those wronged by the government to see justice served, and could increase the burden on defendants in tort cases.

Those concerns were raised following the premier making significant claims about the state of affairs in Ontario's justice system.

"The courts have never seen so many lawsuits ever against the provincial government. You even look sideways and some special interest group's out there trying to sue you," Ford said at an April 16 press availability. "I want to clear up the courts until real lawsuits can go through for real people, for things that really matter."

Legal experts say that the premier's rhetoric does not reflect the reality of the province's legal system.

York University law professor **Dayna Scott** said via email that Ontario has had issues with the powerful abusing the ordinary, not the other way around. The government passed a law in 2015 to curb the use of "SLAPP" lawsuits – strategic litigation against public participation – "by powerful corporations against ordinary residents."

Scott gave the example of the [class-action lawsuit](#) filed against the province on behalf of juvenile inmates in solitary confinement.

"These are definitely not 'activists' out there looking to repeatedly sue government; they are people of Ontario harmed by the government's failure to take reasonable care in the discharge of its duties," Scott said. "They should have recourse."

University of Windsor law professor **Jasminka Kalajdzic** said she'd like to hear what kind of cases Ford is referring to, since in her experience, that characterization isn't correct.

Ford's office did not respond to a request for comment.

Attorney General **Caroline Mulroney** has [previously stated](#) that the legislation simply codifies existing case law.

Kalajdzic said Mulroney's comments were "disingenuous."

Case law states that policy decisions by the government are not subject to lawsuits, which the legislation would codify – but the proposal also protects the crown from suits based on how the government implements policy. That's an expansion of protections "beyond anything that I've ever seen," Kalajdzic said, calling the proposal "draconian."

For example, from a Supreme Court of Canada [decision](#), budgetary allotments to the Department of Highways are policy decisions, but the quality of highway maintenance is subject to potential lawsuits, Kalajdzic said.

"That brings us back over 50 years to the time when governments were immune from lawsuits," she said. "It would mean that anything the government does in relation to, for example, hospitals, residential facilities, the way it oversees prisons, schools – anything that happens on government property is now potentially immune from suits."

Kalajdzic said she's "not sure" how much the change has to do with the government trying to free up the courts.

"If I had to guess, it has more to do with trying to shield the government from having to pay multimillion-dollar damages and settlements in cases involving crown liability for historical wrongs," she said.

The new legislation isn't just worrying for potential complainants, Kalajdzic said. Under tort law, when multiple defendants are found responsible for damages, the plaintiff can go after a single one of them for the entire amount.

If the province is unable to be found responsible in cases like these, the remaining private entities could find themselves on the hook for much more than they have been in the past – including damages that were the fault of the government, Kalajdzic said.

Liberal MPP **Nathalie Des Rosiers**, a lawyer, brought up the change again in question period Monday, asking Mulroney whether the government was trying to prevent lawsuits from survivors of the Sixties Scoop or those [experiencing flooding](#) right now.

"It is important for now and for the future that we protect the ability of Ontarians to sue their government when indeed they have been wronged," she said.

Mulroney said Ontarians have "many ways" to sue the government.

"The measures that we have brought forward are to ensure that those who bring suits against the crown are able to do so in a way that's transparent and that also makes sure that those who have claims that need speedy access are able to access that justice in a faster way," she said.

The Canadian Civil Liberties Association said it plans to challenge the Act in court, should it pass.



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