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May 15, 2008

Re: Warman v. National Post et al. SCJ File No. 08-CV-352197SR

Dear Sir or Madam,

Please find enclosed the Statement of Defence of Mark and Constance Fournier in the above-noted action which is being served on you pursuant to the *Rules of Civil Procedure*.

Yours truly,

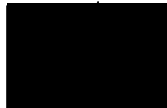


Barbara Kulaszka

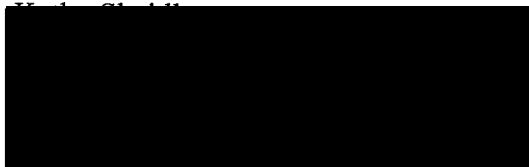
To:
THE NATIONAL POST COMPANY
AND JONATHAN KAY
300-1450 Don Mills Road,
Don Mills, Ontario
M3B 3R5

To:
EZRA LEVANT,
c/o Robin Camp,
May, Jensen, Shawa Solomon LLP,
Barristers,
The Lancaster Building,
800, 304-8 Avenue SW,
Calgary, AB
T2P 1C2

To:
SMALLDEADANIMALS.COM and
CATHERINE MCMILLAN,



To:
KATHY SHADLE,
FIVEFEETOFFURY.COM



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Between:

RICHARD WARMAN

Plaintiff

And

THE NATIONAL POST COMPANY, JONATHAN KAY, EZRA LEVANT, KATHY SHADLE, FIVEFEETOFFURY.COM, SMALDEADANIMALS.COM, CATHERINE MCMILLAN, MARK FOURNIER, FREEDOMINION.CA, CONSTANCE WILKINS-FOURNIER

Defendants

STATEMENT OF DEFENCE

Of Mark Fournier and Constance Wilkins-Fournier

1. The defendants Mark Fournier and Constance Wilkins-Fournier (hereinafter referred to as “Constance Fournier”) admit the allegations contained in paragraph 9 to the extent that they are individuals who reside in the City of Kingston.
2. The defendants admit the allegations contained in paragraph 10 to the extent that the plaintiff has over the past 8 years filed and successfully co-litigated 13 complaints under the Internet hate message provisions of the *Canadian Human Rights Act* (“CHRA”).
3. The defendants admit the allegations contained in paragraph 12 to the extent that the plaintiff filed a federal human rights complaint against Marc Lemire and Craig Harrison in November of 2003.
4. The defendants admit the allegations contained in paragraph 13 of the statement of claim.

5. The defendants admit the allegations contained in paragraph 14 to the extent that the Canadian Human Rights Tribunal (“CHRT”) case against Mr. Lemre is ongoing as at the time of the issuance of the statement of claim.
6. The defendants deny the allegations, not specifically admitted to above, contained in paragraphs numbered 9, 10, 14, 15, 17, 19-23, 25, 26, 59-63 of the statement of claim.
7. The defendants have no knowledge in respect of the allegations contained in paragraphs numbered 2-8, 11, 12, 16, 27-57 of the statement of claim, excepting those parts admitted to above.

FreeDominion

8. “FreeDominion.ca” (hereinafter referred to as “FreeDominion”) is a non-legal entity. It is a URL, or Internet address, for a message board.
9. FreeDominion message board is accessible free of charge to any member of the public. The forum pages are open and free to anyone who wants to read the posts. Membership is also free and entitles the members to post their own opinions directly to the board once they open an account.
10. Almost all posters do so anonymously using pseudonyms. The identity of posters is unknown, unless posters open an account and post using their real names.
11. FreeDominion is the longest-existing, well-established, high-traffic message board in Canada. It has over one million posts and is visited daily by over 3,000 visitors.
12. Members of FreeDominion discuss political issues from a conservative viewpoint and generally believe in fewer powers for government, individual freedom and personal responsibility, lower taxes, support for the family unit and with respect to Canada’s foreign policy, support for Israel, a friendly relationship with the United States, support for the military, support for the war on terror, and support for activities and concepts that advance freedom and liberty globally.

13. The defendants deny that FreeDominion is or ever has been “an extreme right wing discussion forum” as alleged by the plaintiff in paragraph 17.
14. During the material time period, the defendants acted as moderators for FreeDominion. As moderators, the defendants had the ability to delete posts from the message board but did so only rarely. The ethos of the message board and its members was that open discussion was better than deletion and that deletion was only to be a measure of last resort, for such things as hard-core pornography or trolls.
15. FreeDominion is part of the blogosphere, which can be defined as a collective term for the set of all weblogs on the Internet and their interconnections. It is perceived as a social community or series of social communities on the Internet.
16. The blogosphere is an increasingly important source of original news and investigative reporting on issues which the print or broadcast media either ignore or do not find profitable to report.
17. Individuals have the power to refute anything said against them in the blogosphere either at a particular location or to a similar audience. The refutation may be made immediately and will instantaneously be spread through the blogosphere where an issue is current and controversial. The culture and capabilities of the blogosphere allow and demand that statements must be refuted by facts and explanations.
18. The culture of the blogosphere, including FreeDominion, includes the use of language which amounts to hyperbole and may be caustic or strong. This culture of language is understood and accepted by users of message boards.
19. It is also understood that opinions or facts set out in messages or blogs are subject to rapid revision, correction and refutation by other posters or bloggers. The state of opinion on topics can change hourly or daily where many individuals are offering different facts or opinion on controversial subjects.

The Plaintiff

20. The plaintiff is a former employee of the Canadian Human Rights Commission (“CHRC”), working there from 2002 to 2004. While in its employ and continuing afterward, the plaintiff laid numerous complaints against various individuals under section 13 of the *Canadian Human Rights Act* (“CHRA”), alleging that such individuals had communicated “hate messages” on various message boards and websites in Canada and the United States.
21. Section 13(1) provides that it “is a discriminatory practice for a person or a group of persons...to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”
22. Section 13 was amended in 2001 to extend to the Internet.
23. Persons found to have discriminated under section 13 are subject to permanent lifetime cease and desist orders. They are also liable for up to \$10,000.00 (ten thousand) in penalties and up to \$20,000.00 (twenty thousand) for compensation for any victim specifically identified in the communication.
24. The plaintiff has filed almost all of the section 13 cases heard by the Canadian Human Rights Tribunal (“CHRT”) since 2001. Every case against individuals has been successful. Except for two cases, the respondents were not represented by legal counsel. The plaintiff has also been awarded tens of thousands of dollars in compensation by the CHRT for retaliation complaints and/or special compensation.
25. As a result of his section 13 complaints, the plaintiff has become a public figure, featured in newspaper articles and broadcast media in Canada as a fighter of racism and hate.

26. The plaintiff has publically stated that he has worked for years to fight back against hate groups and neo-Nazism and that he believes that hate propaganda must be stopped to protect minorities.
27. Many of the complaints laid by the plaintiff under section 13 were for postings made by individuals on the American based websites, Stormfront.org (“Stormfront”) and Vanguard News Network Forum (“VNN”). The plaintiff has testified he believes these message boards to be white supremacist and neo-Nazi.
28. The individuals the plaintiff complained against for postings on Stormfront or VNN were Peter Kouba (posting under the pseudonym “proud18”), Terry Tremaine (posting under the pseudonym “Mathdoktor99”), Jessica Beaumont (posting under the pseudonym “Jessy Destruction”), Ciaran Donnelly (posting under the pseudonym “Der Totenkopf”), Tom Winnicki (posting as “Thexter3D ” and his own name), Marc Lemire (posting under his own name), and Bobby Wilkinson (posting as “MeinStruggle”).
29. The plaintiff himself secretly registered as a member of Stormfront from September of 2003 and as a member of VNN from May of 2004. On Stormfront, the plaintiff used the pseudonym “Pogue Mahone.” On VNN, he used the pseudonym “Axetogrind.”
30. Using pseudonyms, he posted multiple posts on such message boards for a number of years. Some of these posts were racist and homophobic, calling homosexuals “sexual deviants” who were a “Cancer to our movement” and at times urging other posters to support neo-Nazi groups in the United States or to start new ones in Canada. His posts were supportive of neo-Nazism and white supremacy and wearing military-type Nazi uniforms. He wrote that if White Nationalists spent more time building each other up, “we’d be dangerous.” He used the number “88” meaning “Heil Hitler” to sign off.
31. The plaintiff, using his pseudonyms, expressed strong support for Ernst Zundel and Adrian Arcand. He thanked people who went to a demonstration in support of Zundel. He thought Adrien Arcand was the greatest Canadian.
32. The plaintiff in his public life called Ernst Zundel a Holocaust denier and hate-monger and neo-Nazi and attended demonstrations against Zundel in the 1990’s.

33. The plaintiff, using a pseudonym, criticized the Scott Brockie human rights decision in Ontario, which concerned Brockie's refusal to provide printing services to a homosexual group. The plaintiff asked in the message how he could make a donation to him and saying there was a limit to how much could be stuffed down people's throats.
34. The plaintiff in his public life is a member of EGALE, an advocacy group for homosexual rights and he has publicly and financially supported homosexual projects such as the book "Pink Blood: Homophobic Violence in Canada." He ran as a candidate several times for the Green Party, the first federal party to embrace a platform supporting same-sex marriage.
35. Using his false identities, mainly as a female, he interacted or attempted to interact on message boards with persons he had already complained about under section 13 or was targeting as a possible person to complain about under the legislation. One of the respondents the plaintiff attempted to engage most was Marc Lemire, whom he tried to entrap by asking Lemire who Richard Warman was. If Lemire had answered by attacking the plaintiff, the plaintiff would have been able to lay a retaliation complaint against Lemire or ask for compensation under the legislation.
36. The plaintiff laid a complaint against one Glenn Bahr and the group Western Canada for Us ("WCFU"). In a thread asking where someone could download Hitler's *Mein Kampf*, the plaintiff directed people to Bahr's WCFU for download. In the complaint laid by the plaintiff against WCFU he complained that books were available for download that contravened the provision.
37. The plaintiff encouraged SS-88 (Respondent Glenn Bahr) to organize a protest in Vancouver to support Ernst Zundel, urging him to keep it up and enthusing how good it was to see organizing in the West continuing. He expressed sympathy to Bahr when Bahr posted on Stormfront the video of the police raid on his home.
38. Publically, plaintiff talked about Bahr and his group WCFU and how the group conducted pro-Zundel demonstrations and how he strongly supported the police in laying criminal charges against Bahr.

39. Under his false identity “Axetogrind”, he wrote a post in reply to one of the people he had laid a complaint against, wishing him luck in the case and asking him to let them know how it went.
40. The plaintiff praised a neo-Nazi in the United States named Commander Schoep for building the National Socialist Movement. He urged a poster named Rob to pick up the torch in Canada and assured him there would be many ready to carry it with him. In public, the plaintiff warned of the dangers of neo-Nazism and that neo-Nazi activity had to be monitored and stopped.
41. He also used a false identity, again as a female named Mary Dufford, to contact a respondent, Eldon Warman, by email, posing as a supporter. The purpose of the email contact was to obtain proof that the respondent had received notice of the CHRT hearing dates. He admitted before the CHRT that he used deception in order to obtain information from the respondent.
42. Under the false identity “Axetogrind”, the plaintiff posted in 2004 a copy of a confidential letter sent to the CHRC by a young woman, Elizabeth Lampman in settlement of a complaint the plaintiff had made against her and in which she expressed her shame and denounced her previous beliefs. The plaintiff posted the letter on the neo-Nazi VNN with the preface: “With friends like these....” He did so without any regard for her safety or consequences she might suffer.
43. The plaintiff was forced to abandon two of his personas, that of “AxetoGrind” and “Pogue Mahone”, after his true identity was exposed in CHRT hearings and he admitted under affirmation to using them. He testified he had used the personas to obtain information that he could not using his real name.
44. After his secret identities were revealed, a complaint was laid under section 13 of the CHRA against the plaintiff by one of his former respondents, Alex Kulbashian, concerning the plaintiff’s posts on VNN and Stormfront. The CHRC investigator concluded that the plaintiff’s posts amounted to communicating hate messages. The complaint was dismissed, however, on the grounds that it was vexatious.

45. After filing complaints under section 13 of the CHRA, the plaintiff often provided police units with the same information, requesting that investigations be taken under s. 319 of the *Criminal Code* regarding “hate propaganda”. In several instances, police raided the homes of respondents and seized their computers and other papers. Testimony of police officers was called in several of the plaintiff’s section 13 complaints to prove the complaint. In almost all cases where the respondent was also charged criminally, the charges were later dropped or stayed.

Terry Tremaine

46. The plaintiff laid a complaint in 2004 against an individual who had posted on Stormfront under the pseudonym “Mathdokter99”. The plaintiff was able to find out that the individual was Terry Tremaine, a lecturer with the Department of Mathematics at the University of Saskatchewan. He sent a copy of the complaint to the university with the result Tremaine lost his employment. Tremaine was financially ruined and suffered such psychological distress he entered a psychiatric facility for a time.
47. Tremaine was ordered to pay a penalty of \$4,000.00 by the CHRT on February 2, 2007 and was placed under a permanent life-time cease and desist order. The CHRT refused to award the plaintiff compensation of \$10,000.00 that he wanted even though he knew Tremaine worked at a minimum wage job.
48. The plaintiff laid a criminal complaint with the police against Tremaine in 2006 and in 2007 Tremaine’s residence was raided by police and his computer seized. No charges were laid at that time.

Plaintiff’s Strategy

49. The plaintiff’s complaints against various respondents were e-mailed to a list of contacts he maintained and some were ultimately posted on the Internet prior to any hearing or

determination of the complaints before the CHRT. Respondent Marc Lemire suffered harassment as a result of this.

50. The plaintiff publicly called his strategy that of “maximum disruption.” In a speech to the violent group, Anti-Racist Action (“ARA”), the plaintiff stated he believed in hitting neo-Nazis on as many fronts as possible, if he felt it would be helpful or even if he felt it would be the most fun, including using complaints under section 13 of the *CHRA*, because it kept them off balance and forced them to spend their time defending themselves. The plaintiff said he moved people up the list to be hit with a section 13 complaint if he found them to be particularly annoying.
51. The plaintiff threatened to sue public libraries in British Columbia unless they removed a book from their shelves which he alleged was defamatory of him and regarding which he had commenced a defamation action in Ontario against British author David Icke. As a result of the plaintiff’s actions, British Columbia enacted in 2005 amendments to the *Libel and Slander Act* [RSBC 1996, c. 263, s. 6.2] to protect libraries and their personnel from defamation actions.
52. The plaintiff brought an *ex parte* application before the Canadian Radio-television and Telecommunication Commission in 2006 to allow Canadian carriers to block the content of two websites from Canada on the grounds the plaintiff’s personal safety was endangered. The application was denied but generated public comment about the use of the legislation to affect censorship of websites to Canada by *ex parte* means.
53. The plaintiff has communicated with Internet Service Providers to try to pressure them to remove websites. He did so against Bell Canada to remove the website of Tom Winnicki.
54. The plaintiff over the years has communicated with hotels and other venues to cancel contracts with individuals or groups who had contracted for meeting space to hear speakers the plaintiff disapproved of. Such speakers included David Icke and Tom Kennedy.
55. ARA several times harassed and attacked Marc Lemire after the plaintiff laid his complaint against him. The group also demonstrated outside the home of Paul Fromm,

who has acted as an agent for many of the respondents against whom the plaintiff laid complaints. The ARA called for Fromm's house to be burned down and held up a sign thanking the plaintiff for the bus fare to get to Fromm's house.

56. The plaintiff was featured in a documentary of a speaking tour of Canada by British author David Icke. In the film, the plaintiff is seen planning an assault on Icke with a pie during a planned book signing by Icke at a bookstore. The plaintiff did not attend the bookstore but others did and threw a pie at Icke, missing Icke but damaging bookstore inventory.

The "Anne Cools" Post

57. Anne Cools is a member of the Canadian Senate. She is known for her conservative views on marriage, divorce and father's rights. In August of 2003, various newspaper articles reported Senator Anne Cools was going to intervene, as a member of the Senate, in the Reference to the Supreme Court of Canada regarding same-sex marriage (*Reference by the Governor in Council concerning the Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes*, as set out in Order in Council P.C. 2003-1055, dated the 16 day of July 2003). Senator Cools' position was strongly against same-sex marriage.
58. On September 5, 2003, a message was posted on Marc Lemire's [Freedomsite.org](http://freedomsite.org) message board entitled "Anne Cools don't belong in our Senate." The posting read as follows:

Topic: Cools don't belong in our Senate (1 of 1)

Page 1 of 1

Post | Reply | Reply/Quote | Email Reply | Delete | Edit | Move
 Previous | Next | Previous Topic | Next Topic | Entire Topic

(312)

Topic: Cools don't belong in our Senate (1 of 1), Read 24 times **NEW**

Conf: Canadian Heritage Alliance

From: 90sAREover rob_m_simpson@hotmail.com\

Date: Friday, September 05, 2003 07:56 PM ..

Not only is Canadian Senator Anne Cools a Negro, she is also an immigrant! And she is also one helluva preachy c***.

She does NOT belong in my Canada. My Anglo-Germanic people were here before there was a Canada and her kind have jumped in, polluted our race, and forced their bullshit down our throats.

Time to go back to when the women nigger imports knew their place...

and that place was NOT in public!

Post New Topic | Reply to: "Cools don't belong in our Senate "

59. On November 24, 2003, the plaintiff laid a complaint against Marc Lemire, the owner and webmaster of Freedomsite.org under section 13 of the CHRA. The complaint attempts, *inter alia*, to hold Lemire liable as the webmaster of a message board for anonymous postings which he did not write and whose authors he did not know or have means of knowing. The complaint did not include any words which Lemire himself wrote.
60. The "Anne Cools" post was part of the complaint which went to the hearing before the CHRT as the plaintiff, in response to a demand for particulars from Lemire and an order from the CHRT in 2006, stated that the entire message board was being relied upon in support of his complaint. The CHRC joined in this position.
61. Prior to the commencement of the hearing of the plaintiff's complaint, Lemire brought a motion in August of 2006 to have the plaintiff added as a co-respondent on the grounds that the plaintiff has posted the "Anne Cools" message on Lemire's message board. The motion was supported by the affidavit of computer and Internet expert Bernard Klatt sworn August 22, 1006, in which Klatt stated his expert opinion that the plaintiff was the poster of the "Anne Cools" message.

62. The plaintiff denied writing the post but did not cross-examine Klatt on the affidavit. Nor did he provide any expert evidence to refute Klatt's conclusions.
63. The motion to add the plaintiff as a co-respondent was denied on the grounds that Lemire should bring a separate complaint against the plaintiff if he believed the plaintiff had written the "Anne Cools" posting. No ruling was made on the authorship of the posting.
64. At the commencement of the hearing of the plaintiff's complaint before the CHRT, Lemire successfully brought a motion on January 29, 2007 to subpoena Rogers Cable for the subscriber information relating to the poster of the "Anne Cools" post.
65. The subscriber information would have exonerated the plaintiff if he was innocent of posting the message. Instead of supporting the motion, however, the plaintiff vigorously opposed it. The plaintiff's actions were inconsistent with a person who was innocent of writing the message.
66. On February 1, 2007, the plaintiff informed the CHRT he would only be relying on the material filed at the hearing with respect to the message board. This did not include the "Anne Cools" posting. The CHRC agreed with the plaintiff's position.
67. The plaintiff and the CHRC brought a motion on February 6, 2007 to quash the subpoena to Rogers Cable and for an order that Lemire be prevented from leading any evidence through a Rogers representative, Bernard Klatt, or any other witness in regard to the "Anne Cools" posting.
68. The motion to quash was dismissed on February 7, 2007 on the grounds that the possibility that a complainant can himself post a discriminatory message on a web page, on the basis of which its webmaster may be held liable under Section 13, brings into question the constitutional validity of this provision. It could also constitute an attempt to "entrap" or induce others to make similar postings on the web, which would also have some bearing on the constitutional validity of the provision.

69. Lemire subpoenaed Rogers Cable, but was informed by Rogers that the Network Security Department had conducted a search to retrieve the customer account information and found that the information was no longer available.
70. At the Lemire hearing on February 7, 2007, a copy of an affidavit from Rogers Cable was disclosed to the plaintiff by Lemire's counsel in the hearing room. It had not been entered into evidence. After reading the affidavit, the plaintiff stood up and without giving notice or asking permission, read into the record the paragraph from the affidavit which stated that the records were no longer available.
71. The plaintiff did not object to the CHRT's qualification of Klatt as an expert in the Internet and computers on February 7, 2007 at the hearing.
72. The plaintiff did not cross-examine Klatt on his expert testimony, including his testimony on the "Anne Cools" post. Klatt testified in that in his expert opinion, the plaintiff had posted the "Anne Cools" message and his affidavit sworn on August 22, 2006 was entered into evidence.
73. The plaintiff did not call any expert testimony at the CHRT hearing in rebuttal to that of Klatt with respect to the "Anne Cools" post.
74. The plaintiff admitted in his testimony that he had signed up a user account on the FreedomSite message board using the name "lucy" in the fall of 2003.
75. Bernard Klatt has been accepted and qualified as an expert in computers and the Internet in several cases before the CHRT: Ernst Zundel, Western Canada for Us, Glenn Bahr, Marc Lemire and BCWhitePride.
76. On January 15, 2008, the CHRC admitted in proceedings before the Federal Court in an application brought by Lemire that it had used pseudonyms and anonymous emails to post on message boards and interact with respondents and others. It specifically admitted that an investigator named Dean Steacy had signed up the Stormfront user account "Jadewarr" using the email jadewarr@yahoo.ca as part of his duties.

77. Investigator Dean Steacy also signed up to FreeDominion on April 5, 2006 with the “Jadewarr” yahoo.ca account. Two weeks after Steacy signed onto FreeDominion, another member posted a message which became the subject of a complaint under section 13 in September of 2006. The complaint was withdrawn in August of 2007.

Words Complained of in Paragraph 18 of the Statement of Claim

78. The defendant Mark Fournier admits writing and publishing on FreeDominon the words complained of in paragraph 18 of the Statement of Claim.
79. The defendant Constance Fournier denies writing or publishing the words complained of in paragraph 18 of the Statement of Claim. In the alternative, she joins in and relies upon the pleas made in paragraphs 80 to 88.
80. The defendants deny the complained of words were defamatory as alleged in paragraph 19 of the Statement of Claim and deny the alleged defamatory meanings or innuendoes in paragraph 21 of the Statement of Claim.
81. In the alternative, in so far as the words complained of consist of statements of fact the words were true, and in so far as the words consist of expressions of opinion, they were fair comment made honestly, in good faith and without malice on a matter of public interest.
82. In further particular, the words consisted of the following expressions of opinion:
- (a) That the plaintiff posted the Anne Cools post on September 5, 2003 on the Freedomsite forum using the screen name “90sAREover”;
 - (b) That it was not likely a coincidence that the plaintiff laid a complaint against the owner and operator of the Freedomsite forum shortly after his investigation began there;
 - (c) That the Anne Cools post is a racist screed;

- (d) That the Anne Cools post would be a slam dunk in a real court of law in a case about hate messages;
 - (e) That the plaintiff miscalculated the computer expertise of Lemire;
 - (f) That the posting of the Anne Cools post was a setup operation by the plaintiff;
 - (g) That the question must be raised why the CHRC dropped the Anne Cools post from the case before the CHRT;
 - (h) That the story is far from over and is far from being completely told;
 - (i) That the truth is coming out and it is not pretty.
83. These expressions of opinion were made on the basis of the following facts, which were true or substantially true:
- (a) That a message concerning Senator Anne Cools was posted on the FreedomSite forum on September 5, 2003 under the screen name "90sAREover";
 - (b) That the plaintiff was an employee of the CHRC in 2003 as an investigator;
 - (c) That the plaintiff laid a complaint against Marc Lemire, the owner and operator of the FreedomSite forum, under section 13 of the *CHRA* on November 24, 2003, alleging the communication of "hate messages" on the forum;
 - (d) That Dean Steacy, investigator for the CHRC, used the screen name "Jadewarr" and the email jadewarr@yahoo.ca to sign up an account on the Stormfront.org forum and make postings as part of his duties.
 - (e) That the plaintiff signed up a user account on the FreedomSite forum on November 15, 2003 under the screen name "lucy" using the email address "lucyaubrack@yahoo.ca";
 - (f) That the plaintiff admitted signing up the user account on the FreedomSite forum under the screen name "lucy" in testimony before the CHRT in the hearing of his complaint against Marc Lemire, which hearing commenced on January 29, 2007;

(g) That Marc Lemire is an experienced webmaster;

(h) That Bernard Klatt is an expert in computers, the Internet and functions associated with running an Internet Service Provider business, and has been qualified to give expert testimony on these subjects before the CHRT in several hearings under section 13 of the *CHRA*, including the plaintiff's case against Marc Lemire;

(i) That as part of his expert testimony, Bernard Klatt prepared and filed as evidence before the CHRT in the plaintiff's case against Marc Lemire, a document entitled "Matching Characteristics" on February 8, 2007. The document compared various characteristics between the plaintiff's known data as the user "lucy" and the data of the user "90sAREover" who posted the Anne Cools post;

(j) That Bernard Klatt filed an affidavit in support of his expert testimony in which he stated his expert opinion that the Freedomsite message board user accounts "90sAREover" and "lucy" were both those of the plaintiff and that the plaintiff was the poster of the message headed "Cools don't belong in our Senate" posted on September 5, 2003;

(k) That the Anne Cools posting was part of the complaint by the plaintiff against Lemire when it went to hearing before the CHRT;

(l) That at the hearing of the plaintiff's complaint, Lemire obtained a subpoena on January 29, 2007 from the CHRT to Rogers Cable, the Internet Service Provider of the user who posted the Anne Cools post, for the subscriber information relating to the Anne Cools post;

(m) That on February 1, 2007, the plaintiff and the CHRC withdrew from the complaint all messages except those filed as exhibits before the CHRT as part of the hearing. This did not include the Anne Cools post;

(n) That the plaintiff is an Anglo-German.

84. The public have a real and *bona fide* interest in the activities of the CHRC and the plaintiff in the investigation and prosecution of cases under section 13 and the possible

corruption of the enforcement of section 13 by the planting of racist messages on message boards for the purposes of entrapment. This is especially so when the plaintiff and the CHRC take the position that a message board webmaster or blog host should be liable for messages written and posted anonymously by others unknown to the webmaster and the effect of such on freedom of opinion and expression.

85. In the alternative, the defendants deny that the words complained of bore or were reasonably capable of bearing the meanings alleged by the plaintiff in paragraph 21.

86. The defendant pleads that the words complained of meant that:

(a) the plaintiff posted the “Anne Cools” message on the Freedomsite Forum but not because he is a racist or bigot;

(b) the plaintiff posted the message and then laid a complaint against Marc Lemire under section 13, including the post in the complaint;

(c) the plaintiff did not think he would be found out because he failed to realize that Lemire was a computer nerd;

(d) the posting was a set up operation;

(e) the expert testimony of Bernard Klatt concluded that the plaintiff posted the message;

(f) the CHRC dropped the message from the evidence in support of the complaint against Marc Lemire even though it was clearly a racist screed and the issue is why did it do so;

(h) the plaintiff may have been acting using a strategy set by the CHRC, his employer, because the CHRC itself is posting on message boards using personas such as “Jadewarr;”

(i) the story has not been completely told and the attacks on Lemire by the CHRC continue as well as on many other people.

87. If the words complained of should bear the meanings alleged in paragraph 21 of the Statement of Claim, or any of them, and that meaning is defamatory, which is not admitted but denied, then the words are true.
88. In the alternative, if the complained of words or parts thereof are statements of fact, they are in substance true based on the facts particularized herein.

Words Complained of in Paragraph 24(c) of the Statement of Claim

89. The defendant Constance Fournier admits writing and publishing the complained of words set out in paragraph 24 (c) of the Statement of Claim.
90. The defendant Mark Fournier denies writing or publishing the complained of words set out in paragraph 24 (c) of the Statement of Claim. In the alternative, the defendant Mark Fournier joins in and relies on the pleas of the defendant Constance Fournier in paragraphs 91 to 101.
91. The complained of words were published in a post written by the defendant Constance Fournier entitled “Destroying a man’s career and life” posted on FreeDominion on January 22, 2008.
92. The defendants deny the complained of words were defamatory and deny the alleged defamatory meanings or innuendoes in paragraph 25 of the Statement of Claim.
93. In the alternative, in so far as the words complained of consist of statements of fact the words were true, and in so far as the words consist of expressions of opinion, they were fair comment made honestly, in good faith and without malice on a matter of public interest.
94. In further particular, the words consisted of the following expressions of opinion:
- (a) That the plea of Warren Kinsella for the plaintiff’s ‘life and career’ falls flat with the defendant Constance Fournier;

(b) That the plaintiff is an unprincipled jackal;

(c) That the plaintiff seems to get his jollies out of ruining people's lives.

95. These expressions of opinion were made on the basis of the following facts, which were true or substantially true:

(a) That the plaintiff has filed numerous complaints against persons under section 13 of the *CHRA*;

(b) That the plaintiff has used the complaints to shut people's websites down and have lifetime cease and desist orders made against them, making them liable to contempt charges for the rest of their lives and possible jail time;

(c) That the plaintiff has attempted to have people's assets seized;

(d) That the plaintiff found out that a poster on Stormfront.org using the username "Mathdokter" was a man named Terry Tremaine, a lecturer at the Mathematics Department at the University of Saskatchewan;

(e) That the plaintiff filed a complaint under section 13 of the *CHRA* against Tremaine for communicating hate messages;

(f) That the plaintiff sent a copy of the complaint to Tremaine's employer, the University of Saskatchewan;

(g) That Tremaine was fired from his position as a result;

(h) That Tremaine is 56 years old;

(i) That after losing his job, Tremaine began drinking, considered suicide and checked himself into a psychiatric hospital to be treated for depression;

(j) That Tremaine found work at a minimum wage job;

(k) That Tremaine was ordered on February 2, 2007 to pay \$4,000.00 in fines and ordered to abide by a lifetime cease and desist order after being found liable under the plaintiff's complaint before the CHRT;

(l) That the CHRT did not award the plaintiff the \$10,000.00 he had requested for himself in special compensation under the *CHRA*;

(m) That subsequently the police raided Tremaine's residence after the plaintiff laid a police complaint and seized his computer and his books but no charges were laid;

(n) That the plaintiff has called his filing of complaints under section 13 to be fun.

96. The public has a real and *bona fide* interest in the use by the plaintiff of complaints under section 13 of the *CHRA* to cause respondents to lose their employment and to claim thousands of dollars in compensation knowing that the respondent is financially destitute and working at a minimum wage job. The public has an interest in knowing the dangers section 13 of the Act poses because of its potential to be used as the plaintiff is using it, thereby endangering the rights of all citizens to speak freely and express political opinion without fear of having their lives destroyed.

97. In the alternative, the defendants deny that the words complained of bore or were reasonably capable of bearing the meanings alleged by the plaintiff in paragraph 25.

98. The defendants plead that the words complained of meant that the defendants strongly disapproved of the plaintiff's relentless and harsh use of various laws to pursue individuals until their lives were ruined for nothing more than something a person wrote in an anonymous forum.

99. The complained of words on paragraph 24(c) were part of an informal, on-going, free-wheeling and highly animated exchange of opinion between the defendant and blogger Warren Kinsella and others about the activities of the plaintiff using section 13 of the *CHRA* and freedom of speech in Canada and would have been understood by readers as such.

100. In the alternative, if the complained of words or parts thereof are statements of fact, they are in substance true based on the facts particularized herein.

101. If the words complained of should bear the meanings alleged in paragraph 25 of the Statement of Claim, or any of them, and that meaning is defamatory, which is not admitted but denied, then the words are true.

Words Complained of in Paragraph 24 (a), (b), (d) and (e)

102. Both defendants deny writing or publishing the complained of words set out in paragraphs 24 (a), (b), (d) and (e).

103. In the alternative, the defendants deny the complained of words were defamatory and deny the alleged defamatory meanings or innuendoes in paragraph 25 of the Statement of Claim.

104. In the alternative, the defendants plead that the complained of words in paragraph 24 (a) and (b) constitute expressions of opinion, made honestly, in good faith, on a matter of public interest and are based on the facts set out in paragraph 83 on the matters of public interest set out in paragraph 84. In the further alternative, if the complained of words or parts thereof are statements of fact, they are in substance true based on the particularized facts.

105. In the alternative, the defendants plead that the complained of words in paragraph 24 (d) and (e) constitute expressions of opinion, made honestly, in good faith, on a matter of public interest and are based on the facts set out in paragraph 95 on the matters of public interest set out in paragraph 96. In the further alternative, if the complained of words or parts thereof are statements of fact, they are in substance true based on the particularized facts.

106. The complained of words in paragraph 24 (a), (b), (d) and (e) are informal and hyperbolic opinion, made in an ongoing, free-wheeling, animated discussion on FreeDominion and the Canadian blogosphere about the activities of the plaintiff and the

CHRC under section 13 of the *CHRA* and the effect of such on freedom of expression in Canada. The complained of words were made in a manner that is customary and usual on message boards and is so understood by readers as being opinion.

107. The words meant and were understood to mean that the posters strongly disapproved of the plaintiff's actions using section 13 of the *CHRA*, particularly with respect to the Anne Cools post and Terry Tremaine, and believed his actions and that of the CHRC should be investigated and stopped because they were so damaging to people's lives and to society.
108. If the words complained of in paragraph 24 (a), (b), (d) and (e) should bear the meanings alleged in paragraph 25 of the Statement of Claim, or any of them, and that meaning is defamatory, which is not admitted but denied, then the words are true.

General Pleas

109. As to the whole of the Statement of Claim, the conduct of the plaintiff and the CHRC in the prosecution of cases under section 13 of the *CHRA* concerning posts on message boards and websites is of vital public interest to the blogosphere, including members of FreeDominion, and to the public at large as it concerns freedom of expression and thought on the Internet. The words complained of were published in good faith and without malice on a privileged occasion, in that the defendants had a legitimate interest and duty to publish the words to the public and the public had a corresponding interest in receiving that information. This was especially so given the failure of print or broadcast media to report on the case of Marc Lemire, particularly the evidence with the respect to the "Anne Cools" post and the activities of the CHRC using "Jadewarr" and the implications for users and readers of message boards and blogs.
110. The defendants deny the plaintiff's claim in paragraphs 22 and 23 with respect to Marc Lemire and Bernard Klatt. Bernard Klatt has been accepted and qualified as an expert in computers and the Internet in several cases before the CHRT, including cases in

which the plaintiff was the complainant. Marc Lemire is an experienced and competent webmaster.

111. The defendants deny that they regard the plaintiff's activities as a threat to their political beliefs.
112. The defendants say that this action constitutes a strategic lawsuit against public participation whose design and purpose is to intimidate and silence the defendants on matters of public interest.
113. The plaintiff's complaints under section 13 of the *CHRA* are essentially public interest ones in that it is the harm to the community as a whole of the alleged hate messages that he is allegedly seeking to target as opposed to messages which directly target him personally. As such, the plaintiff's actions constitute public interest advocacy and are subject to criticism and scrutiny by the public.
114. The defendants specifically deny that they were actuated by malice in publishing the words complained of.

Application of Defamation to Message Boards and Blogs

115. The defendants plead in law that message boards and blogs should not be subject to defamation actions and judgments. The interactive and instantaneous nature of the medium is utterly unlike the print media or controlled broadcast media in which the law of defamation developed. In those media, an allegedly defamed person had no means of answering back, refuting false information or providing further facts which might shed a different light on the matter in controversy.
116. The harm to reputation can be remedied almost instantaneously in the blogosphere by the provision by the victim of the true facts, rational explanations and evidence of the malice of the accuser. In contrast, the cost and burden of defamation actions on the ordinary people who blog or use message boards, the poor man's

communication medium, is disproportionate to the remedy obtained by the plaintiff and the cost to freedom of expression of defamation actions.

117. The use of the tort of defamation in such an environment becomes a grave tool of oppression and intimidation that violates rights to freedom of expression contrary to the *Canadian Charter of Rights and Freedoms* and destroys the essential benefits of those rights to a functioning democracy.

118. If the tort of defamation is allowed to extend in the manner the plaintiff is attempting with this action, it would have the effect of shutting down all message boards and comment boxes on blogs. It would end the practice of linking. It would destroy the interactivity and fluidity of the Internet, the very features which makes it one of the greatest means at arriving at truth and knowledge for the individual and which allows the average individual to participate in this search for truth.

Damages

119. The defendants deny that the words complained of lowered the plaintiff's reputation or that the plaintiff has suffered damages as alleged or at all and put him to the strict proof thereof. Any damage to the plaintiff's reputation is a direct result of his own conduct or matters not connected to any act of the defendants.

120. The plaintiff's reputation has been harmed by the matters set out in paragraphs 29 to 74 and such further and other facts as may be particularized prior to trial.

121. In the alternative and in mitigation of damages, the defendants state that they acted in good faith and published material thought to be accurate.

122. In the alternative, the plaintiff never took advantage of the message board of FreeDominion to make a reasonable statement of explanation or contradiction of the words complained of, nor did he do so on the comment boards of any bloggers discussing the words complained of. Because of the plaintiff's extensive experience in posting on

message boards, he had the knowledge and ability to do so. He thereby failed to mitigate or minimize any damages, which is denied, in an environment which gave him instant access and ability to refute the complained of words.

123. The defendants specifically deny that their conduct was such that punitive or exemplary damages ought to be awarded to the plaintiff.

Statutory Law

124. The defendants plead and rely upon ss. 23 and 24 of the *Libel and Slander Act*, R.S.O. 1990, c. L.12.

125. The defendants plead and rely upon s. 2 (a) and (b) of the *Canadian Charter of Rights and Freedoms*.

Order Requested

126. The defendants accordingly submit that this action be dismissed with costs on a substantial indemnity basis.

DATED this 7th day of May, 2008.

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Warman v. National Post et al.

Court File No. 08-CV-352197SR

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Statement of Defence

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