

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**WARREN KINSELLA**

Plaintiff

-and-

**EZRA LEVANT**

Defendant

**STATEMENT OF DEFENCE**

1. The Defendant admits paragraphs 2, 3 (save that the Defendant does not reside in Toronto), 4 and 5 (save that the words complained of are not defamatory) of the Statement of Claim.
2. The Defendant has no knowledge of paragraph 6 of the Statement of Claim.
3. The Defendant denies paragraphs 7, 8, 9, 10 and 11 of the Statement of Claim (save that the Defendant admits that he refused to apologize or withdraw the posting, which is admitted).
4. In addition to being a lawyer who resides in Toronto as pleaded in paragraph 2 of the Statement of Claim, the Plaintiff is also (a) an author who has written the book “Kicking Ass in Canadian Politics” and “The War Room”; (b) a blogger who has publicly called the Defendant a “fraud”, stated that the Defendant is “full of crap”; and has accused the Defendant of various crimes, and continues to do so on a continuous basis (c) a self confessed “censor”; (d) a Liberal Party “spin doctor”; and (e) has been cited for misconduct and unethical behaviour by Justice John Gomery presiding over the Commission of Inquiry into the Sponsorship Program and Advertising Activities.

The Limitations Defence

5. As stated in paragraph 6 of the Statement of Claim, the Plaintiff became aware of the words complained of on June 16, 2008. Pursuant to section 6 of the *Libel and Slander Act*, R.S.O. Chapter 237, as amended (“LSA”) this action ought to have been commenced on or before September 15, 2008. This action is therefore statute barred by reason of the issuance of the Statement of Claim herein on September 16, 2008.

#### The Justification Defence

6. The words complained of that refer to the Plaintiff namely:

Warren Kinsella, has provided political and media advice to the CIC’s young bigots-in training, the ‘sock puppets’.

Kinsella – on the CJC’s legal affairs committee – actually rolls up his sleeve and helps the anti-Semites out a bit.

are true in substance and the Defendant pleads justification in respect of these words.

7. Particulars of the plea of justification are as follows:
- a) CJC is the acronym for the Canadian Jewish Congress;
  - b) The Plaintiff is on the Canadian Jewish Congress’ legal affairs committee;
  - c) CIC is the acronym for the Canadian Islamic Congress;
  - d) The CIC maintains a website [www.canadianislamiccongress.com](http://www.canadianislamiccongress.com) which contains anti-Semitic writings;
  - e) Dr. Mohamed Elmasry is the President of the CIC. He has publicly made anti-Semitic statements;
  - f) Dr. Elmasry and other members of the CIC, including a group of law school students (the “sock puppets”), filed and prosecuted human rights complaints against Maclean’s magazine in connection with an article written by Mark Steyn titled “The Future Belongs To Islam”;

- g) Legal counsel of the CIC, Faisal Joseph, assisted by said “sock puppets”, represented some or all of the complainants in the British Columbia Human Rights Tribunal hearing of a complaint against Maclean’s magazine in respect of the Mark Steyn article;
- h) The Plaintiff has met and given advice to the “sock puppets” in respect of their complaints against Maclean’s magazine;
- i) The Plaintiff has publicly and privately assisted the “sock puppets” by giving them media and strategic advice and help; and
- j) Providing such advice and help is the Plaintiff’s business.

8. The Defendant therefore states that it is true that the Plaintiff has “rolled up his sleeve” and assisted anti-Semites.

#### Fair Comment Defence

- 9. The words “[h]ow repulsive” constitutes an expression of opinion.
- 10. The expression of opinion referred to above was expressed on a matter of public interest, namely the conduct of the Plaintiff in providing assistance in respect of the human rights complaint against Maclean’s magazine. The opinion was made in good faith, based on facts set forth above and publicly known by readers of the words complained of. The Defendant honestly held the opinion that the conduct referred to was repulsive and the opinion could have been honestly held by another person.
- 11. In the alternative, if the words complained of as set forth in paragraph 5 above are not statements of fact then they constitute an expression of opinion and the Defendant pleads fair comment in expressing the opinion that the Plaintiff was assisting anti-Semites. This opinion was made in good faith, based on facts set forth above and publicly known by readers of the words complained of. The Defendant honestly held the opinion that the Plaintiff was providing assistance to anti-Semites and the opinion could have been honestly held by another person.

## Charter of Rights and Freedoms

12. The Defendant pleads and relies on section 2(b) of the *Canadian Charter of Rights and Freedoms* and section 52(1) of the *Constitution Act 1982* which guarantees freedom of thought, belief, opinion and expression including freedom of the press and pleads he is not liable to the Plaintiff for publishing the words complained of in that they are a fair and accurate account of matters of and in the public interest and constitute political speech in that they are part of an on-going political debate concerning the human rights complaints filed against Maclean's magazine and free speech.

## The Words Complained of Do Not Lower The Plaintiff's Reputation

13. The Defendant denies that the words complained of are defamatory. The words complained of did not lower the Plaintiff's reputation.
14. The Defendant denies that the Plaintiff's reputation has been lowered or that the Plaintiff has suffered any damages as alleged in the Claim with respect to the words complained of. If the Plaintiff's reputation has been lowered or the Plaintiff has suffered any damages, all of which is expressly denied, such lowering of reputation or damages was not due to any publication of the words complained of and attributed to the Defendant, but rather (a) the result of the Plaintiff's own conduct as set out above and (b) the result of other publications made of and concerning the Plaintiff in respect of which the Plaintiff has not taken any action.
15. In the alternative, if the Plaintiff's reputation has been lowered or he has suffered any damages, all of which is expressly denied, the damages sought are excessive and too remote or both, and the Plaintiff has taken no or inadequate steps to mitigate any alleged damages.
16. In the further alternative, if the words complained of were defamatory, which is not admitted but expressly denied, and the Plaintiff suffered damages as a result thereof, which is not admitted but expressly denied, and the defences pleaded herein

are unsuccessful, the Defendant pleads in mitigation of damages that he acted in good faith and with no malice and that:

- a) he believed that what he wrote as facts were true;
- b) he acted reasonably in believing that what he stated as facts were true; and
- c) he acted reasonably in expressing the opinions he expressed.

17. Further, the Defendant denies that he has acted in a manner which would attract aggravated or punitive damages or costs on a substantial indemnity scale, and puts the Plaintiff to the strict proof thereof.

18. The Plaintiff has commenced this action for an improper purpose. The Plaintiff is a friend of and a supporter of Richard Warman, an individual who actively supports the use of section 13 of the Canada Human Rights Act to censor speech. The Defendant actively supports the repeal of section 13 of the Canada Human Rights Act and has been critical of Richard Warman's conduct in filing numerous section 13 complaints and other legal actions to censor political ideas he opposes. As a result of this criticism, Richard Warman has sued the Defendant for defamation in another action. The Defendant submits that this action has been commenced with the vexatious intent of attempting to put pressure on the Defendant to cease his criticism of Richard Warman and that this is a strategic lawsuit, along with two complaints made by the Plaintiff to the Law Society of Alberta concerning the Defendant, intended to interfere with the Defendant's freedom of expression.

19. The Defendant therefore requests that this action against him be dismissed with costs on a substantial indemnity basis such that the Defendant is completely indemnified for the costs of defending this action.

DATE: October 6, 2008.

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TO: