

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

GIACOMO VIGNA

Plaintiff

-and-

EZRA ISAAC LEVANT

Defendant

STATEMENT OF DEFENCE

1. Because the Plaintiff has elected to draft the Statement of Claim (the “Claim”) in the French language and because the Defendant is not fluent in the French language and there may be nuances in the use of specific words of which the Defendant is incapable of understanding, the Defendant is unable to admit any of the allegations contained in the Claim save as may be expressly set forth below.
2. Except as set forth below, the Defendant therefore denies all of the allegations in the Claim.

The Defendant

3. Mr. Levant resides in the Province of Alberta. He is a lawyer in good standing with the Law Society of Alberta.
4. Mr. Levant has been actively involved in the political process for more than 15 years. He has held various offices including Parliamentary Assistant to the Leader of the Opposition, Poll Captain to the Premier of Alberta, and Campaign Manager for a provincial election campaign.
5. Mr. Levant is an active and activist journalist and political commentator. Over the past fifteen years, he has written for a wide range of Canadian newspapers

including the National Post, the Globe and Mail, the Calgary Sun, the Edmonton Sun, the Winnipeg Sun, the Edmonton Journal, the Calgary Herald, the Fredericton Daily Gleaner and others. From 1999 to 2001, he served on the editorial board of the National Post in Toronto.

6. Mr. Levant has also written for various Canadian magazines, including the Literary Review of Canada, and he is a regular columnist for Canadian Lawyer magazine. He was the co-founder and publisher of the Western Standard magazine.
7. Mr. Levant is a frequent and long-time political commentator on the radio. He provides commentary for radio stations across the country, including many in Ontario, including Toronto's CFRB and CFTR, Hamilton's CHML, Ottawa's CFRA, and various CBC radio stations. For three years, Mr. Levant co-hosted a weekly radio show in Calgary on CKMX. He has also appeared on various U.S. radio shows.
8. Mr. Levant is also a frequent and long-time political commentator on television, appearing on stations across the country, including CTV, CTV Newsworld, Global TV, CBC, CBC Newsworld, Crossroads TV, Omni TV, Shaw Cable, MTV Canada and others. He has also appeared on U.S. talk shows, including on CNN. Mr. Levant has been an election-night commentator with both CTV and Global TV.
9. Mr. Levant is the author of several best-selling books of political commentary, namely Fight Kyoto, The War on Fun and Youthquake.
10. Mr. Levant has been commissioned by McClelland & Stewart to write a book detailing the problems with Canada's human rights commissions, and Mr. Levant's proposals for reforming them.
11. Mr. Levant is one of Canada's premier advocates of free speech and free expression. He is frequently asked to speak about these matters, and travels across the country and internationally to do so.

12. Mr. Levant has been consulted by Members of Parliament, Cabinet Ministers and the Prime Minister's Office concerning human rights commissions and free speech. He has provided a briefing to the U.S. Congress as an expert witness on civil liberties and the threats posed to them by the abusive use of Canada's human rights commissions and through nuisance defamation lawsuits, such as the within action.
13. Mr. Levant's public campaign to ensure that Canada's human rights commissions respect our constitutional freedoms and norms of natural justice, has been approved, and in some cases, actively supported by various Non-Governmental Organizations such as PEN Canada, the Canadian Association of Journalists, and the Canadian Civil Liberties Association.
14. Mr. Levant's proposals to review and overhaul Canada's human rights commissions have been publicly supported by Members of Parliament from different political parties.
15. Mr. Levant's journalistic and political efforts for reform of Canada's human rights commissions have led indirectly, and in some cases, directly, to political and legal initiatives to reform these commissions. They have also, in part, led to official investigations into the conduct of these commissions, including an RCMP investigation, a Privacy Commissioner's investigation, a Parliamentary investigation and even an investigation convened by the Canadian Human Rights Commission (the "CHRC") itself.
16. Mr. Levant maintains his own Internet website, styled as a blog, through which he publishes some of his journalism and personal commentary. Its Internet address is <http://www.ezrlevant.com>. Mr. Levant's blog is updated and added to on a regular basis. In his blog, Mr. Levant expresses his opinions on various matters and comments on various issues of public interest. Mr. Levant's blog also allows readers to post their own comments with respect to each posting. Those comments, made by members of the public, are published on a different website, owned and operated by a United States based business called Haloscan. Mr.

Levant does not edit the public comments, and most comments, in keeping with the etiquette of the Internet, and blogs in particular, are written by members of the public anonymously, using aliases. These public comments are both supportive and critical of Mr. Levant's positions.

The Plaintiff

17. The Plaintiff is an individual and a lawyer who at all material times was employed by the CHRC and acted as counsel for the CHRC at section 13 Canadian Human Rights Act ("CHRA") hearings before the Canadian Human Rights Tribunal ("CHRT").

18. The Plaintiff has unsuccessfully run for public office three times. The information currently available to the Defendant is as follows:

- a) He ran for public office on the Ottawa City Council in the 1991 election in Dalhousie Ward;
- b) He ran for public office on the St. Leonard Municipal Council in the 1994 election; and
- c) He ran for public office on the Ottawa City Council in the 2003 Ottawa municipal election. He ran in Ward 12 (Rideau – Vanier) and was fourth out of six candidates achieving 582 votes, or 6.66% of the votes cast.

19. Section 13 of the CHRA provides:

- (1) It is a discriminatory practice for a person or a group of persons acting in concert 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.
- (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is

communicated in whole or in part by means of the facilities of a broadcasting undertaking.

20. As counsel for the CHRC at CHRT hearings, the Plaintiff was aware that CHRC employees and a complainant, Richard Warman, in numerous section 13 CHRA complaints, had engaged in inappropriate, unethical and illegal activities in connection with the prosecution of such complaints. In particular, CHRC employees and/or Mr. Warman (a) used false names to join neo-Nazi Internet groups, (b) posted bigoted messages on various Internet sites using false personas, (c) aided and abetted racists, and (d) participated in some of these activities by logging on to neo-Nazi sites through the illegal use of a private citizen's Internet account and connection.

21. The Plaintiff was counsel for the CHRC before the CHRT hearing in a section 13 CHRA complaint initiated by Richard Warman against Marc Lemire. In the course of that hearing, on May 11, 2007, with counsel for Mr. Lemire and other intervenors having travelled from as far away as Victoria to Ottawa to attend the hearing and cross-examine a CHRC witness, the Plaintiff requested an adjournment. In the course of his submissions to the CHRT the Plaintiff stated:

“I don't have the flu but I don't feel in a serene state of mind to proceed with the file today”;

“I am not dying, Mr. Chair, I don't have the flu, but I am not mentally capable of proceeding”;

“I really don't feel primarily mentally able to proceed, and physically too”; and

“I have to have a state of mind that will allow me to think properly.”

22. Opposing counsel challenged the request for an adjournment calling the explanation “frivolous” and stated, “to say I am not feeling well, but sit here and talk about it is inconsistent. There is no medical certificate, and I heard very faintly Mr. Vigna say ‘I'm not physically sick, I don't have a serene state of

mind'. Very few of us in the difficulties we face always have a serene state of mind. ... To say I just don't feel like doing it today is insulting."

23. The Plaintiff gave an undertaking to provide a medical certificate to the CHRT. The CHRT granted the adjournment and stated that it required that a medical certificate be provided to it. The CHRC was required to pay for the costs thrown away in connection with the aborted May 11, 2007 hearing date.
24. The Lemire hearing continued on June 25, 2007 but by that date the Plaintiff had been taken off the Lemire case by the CHRC, and he did not file the required medical certificate with the CHRT.
25. In addition to the Lemire hearing, the Plaintiff was also counsel for the CHRC in the CHRT hearing of a complaint brought by Richard Warman against Jessica Beaumont. During the course of that hearing the CHRT Chair questioned the difference between two printouts of the same page from the same neo-Nazi website. One of the documents had the words "Welcome, Jadewarr" on it while the other did not. There were also other substantive differences between the two documents. The reference to "Jadewarr" indicated that a CHRC employee and/or complainant had signed up to a neo-Nazi website using a false persona and had posted messages to that website using that false persona.
26. As counsel for the CHRC at CHRT hearings the Plaintiff participated in the printing out of that "Welcome, Jadewarr" message from a neo-Nazi Internet site when he knew that the message had been written by a CHRC employee and/or a complainant. He did not disclose that information to the CHRT. He also participated in removing one document from evidence before the CHRT and replacing it with the other, but did not disclose to the CHRT the substantive difference between the two, despite the Chair of the CHRT specifically asking about the differences.
27. It was in the context of the above request for an adjournment, the submissions concerning the Jadewarr document as well as other procedural matters and

evidence heard in the course of the Lemire and Beaumont hearings that the Defendant wrote and published the words set forth in paragraphs 12, 14, 15, 16, and 17 of the Claim.

28. The Defendant wrote and published the words set forth in paragraphs 12, 14, 15, 16 and 17 of the Claim as part of an on-going political debate concerning free speech, the repeal of section 13 of the CHRA, and the reform of human rights commissions in Canada.

29. In writing and publishing the words set forth in paragraphs 12, 14, 15, 16 and 17 of the Claim the Defendant was exercising his freedom of speech to expose the malfeasance being undertaken by CHRC employees as set forth in paragraphs 20, 25 and 26 above and to further his goal of reforming the CHRC and having section 13 of the CHRA repealed.

30. Following the publication of the words complained of in the blog posts referred to above and quoted in paragraphs 12, 14, 15, 16 and 17 of the Claim the Plaintiff attempted to serve the Defendant with a libel notice complaining of the said blogs. The libel notice came to the Defendant's attention even though it was never served in accordance with the requirements of section 5(1) of the *Libel and Slander Act*, R.S.O. Chapter 237, as amended ("LSA"). In response to the libel notice the Defendant published the words complained of in paragraph 23 of the Claim.

31. The additional postings on the Defendant's blog to which the Plaintiff quotes in paragraphs 28, 29, 32 and 34 of the Claim are additional commentaries written and published by the Defendant as part of an on-going political debate concerning free speech, the repeal of section 13 of the CHRA, and the reform of human rights commissions in Canada.

The January 16, 2008 Blog Post

32. The January 16, 2008 blog post with the words set out in paragraph 7 of the Claim was written and published by the Defendant. None of the words in this blog entry are of and concerning the Plaintiff.

The March 20, 2008 Blog Post

33. The March 20, 2008 blog post with the words set out in paragraph 12 of the Claim was written and published by the Defendant.
34. For the most part the words complained of in paragraph 12 of the Claim are not of and concerning the Plaintiff. The words complained of that are of and concerning the Plaintiff consist of (a) accurate quotes from the transcript of the proceedings in the Lemire hearing, (b) accurate statements of fact concerning the proceedings in the Lemire hearing, and (c) an expression of opinion concerning the Plaintiff's request for an adjournment in the Lemire hearing on the basis of his apparent lack of serenity. Insofar as the words complained of consist of accurate quotes from the transcript of the proceedings in the Lemire hearing and accurate statements of fact concerning the proceedings in the Lemire hearing, the Defendant pleads justification. Insofar as the words complained of consist of expressions of opinion the Defendant pleads fair comment as elaborated on below in paragraph 49.

The March 21, 2008 Blog Post

35. The March 21, 2008 blog post with the words set out in paragraph 14 of the Claim was written and published by the Defendant. The words complained of in paragraph 14 of the Claim consist of an expression of opinion concerning the Plaintiff's request for an adjournment in the Lemire hearing on the basis of his lack of serenity. The Defendant compared the Plaintiff's lack of serenity during the May 11, 2007 Lemire hearing to a well-known episode of the TV comedy *Seinfeld* where the character of George Costanza's father exclaimed "serenity now!" every time he became agitated. The Defendant pleads fair comment as elaborated on below in paragraph 49.

The March 26, 2008 Blog Post

36. The March 26, 2008 blog post with the words set out in paragraph 15 of the Claim was written and published by the Defendant. For the most part the words complained of in paragraph 15 of the Claim are not of and concerning the Plaintiff. The words complained of that are of and concerning the Plaintiff consist of (a) accurate statements of fact concerning the proceedings in the Lemire hearing, and (b) an expression of opinion concerning the Plaintiff's request for an adjournment in the Lemire hearing on the basis of his apparent lack of serenity. Insofar as the words complained of consist of accurate statements of fact concerning the proceedings in the Lemire hearing the Defendant pleads justification. Insofar as the words complained of consist of expressions of opinion the Defendant pleads fair comment as elaborated on below in paragraph 49.

The April 5, 2008 Blog Post

37. The April 5, 2008 blog post with the words set out in paragraph 16 of the Claim was written and published by the Defendant. The only words in this blog, which takes up 7 pages in the Claim that refer to the Plaintiff, are a reference to the Plaintiff's "public meltdown". Those words are an accurate description of the Plaintiff's request for an adjournment by reason of his lack of serenity in the Lemire hearing or, in the alternative, is an expression of opinion concerning the same request for an adjournment. The Defendant therefore pleads justification and in the alternative fair comment. The defence of fair comment is elaborated on below in paragraph 49.

The April 21, 2008 Blog Post

38. The April 21, 2008 blog post with the words set out in paragraph 17 of the Claim was written and published by the Defendant. Most of the words complained of are not of and concerning the Plaintiff. The words complained of that are of and concerning the Plaintiff relate to an exchange that took place during the Beaumont hearing when the CHRT questioned the difference between two printouts of the

same page from the same neo-Nazi website. As set forth above in paragraphs 25 and 26, one of the documents had the words “Welcome, Jadewarr” on it while the other did not; there were also other substantive differences between the two documents. The reference to “Jadewarr” indicated that a CHRC employee and/or complainant had signed up to a neo-Nazi website using a false persona.

39. The Defendant pleads justification in respect of the words complained of in the April 21, 2008 blog post insofar as (a) the words consist of an accurate description of and transcript of proceedings during the Beaumont hearing, (b) the words mean that the Plaintiff was aware of the difference between the two documents but did not disclose the difference to the CHRT. The Defendant further pleads that his conclusion that the Plaintiff’s conduct was unethical is an expression of opinion. The Defendant therefore pleads fair comment. The defence of fair comment is elaborated on below in paragraph 49.

The First April 28, 2008 Blog Post

40. The April 28, 2008 blog post with the words set out in paragraph 23 of the Claim was written and published by the Defendant. The words complained of consist of (a) an accurate statement of fact concerning the libel notice drafted by the Plaintiff as referred to in paragraph 29 above, (b) accurate statements of fact concerning the proceedings in the Lemire hearing, and (c) expressions of opinion concerning the above and the Plaintiff’s request for an adjournment in the Lemire hearing on the basis of his apparent lack of serenity. Insofar as the words complained of consist of accurate statements of fact concerning the libel notice and the proceedings in the Lemire hearing, the Defendant pleads justification. Insofar as the words complained of consist of expressions of opinion the Defendant pleads fair comment as elaborated on below in paragraph 49.

The Second April 28, 2008 Blog Post

41. The April 28, 2008 blog post with the words set out in paragraph 26 of the Claim was written and published by the Defendant. All of the words in this blog post

consist of expressions of opinion concerning the Plaintiff's serenity adjournment request referred to above and the Defendant pleads fair comment as elaborated on below in paragraph 49.

The May 4, 2008 Blog Post

42. The May 4, 2008 blog post with the words set out in paragraph 28 of the Claim was written and published by the Defendant. All of the words in this blog post that are of and concerning the Plaintiff consist of expressions of opinion concerning the Plaintiff's serenity adjournment request referred to above and the Defendant pleads fair comment as elaborated on below in paragraph 49.

The May 8, 2008 Blog Post

43. The May 8, 2008 blog post with the words set out in paragraph 29 of the Claim was written and published by the Defendant. Most of the words complained of are not of and concerning the Plaintiff. The Defendant pleads justification insofar as the words state that the Plaintiff "ran a failed campaign for public office", as set forth in paragraph 18 above. The balance of the words complained of that are of and concerning the Plaintiff, namely those words that refer to the Plaintiff as a political hack, is an expression of opinion and the Defendant pleads fair comment as elaborated on below in paragraph 49.

The May 18, 2008 Blog Post

44. The May 18, 2008 blog post with the words set out in paragraph 32 of the Claim was written and published by the Defendant. The words complained of consist of (a) accurate statements of fact concerning an article published in the National Post on May 10, 2008, (b) accurate statements of fact concerning a correction published in the National Post on May 17, 2008, (c) accurate statements of fact concerning the libel notice referred to in paragraph 30 above, (d) accurate statements of fact concerning the Plaintiff's request for an adjournment in the Lemire hearing on the basis of his lack of serenity, (e) an accurate statement concerning the failure of the Plaintiff to file the medical certificate required by the

CHRT in the Lemire hearing, and (f) expressions of opinion concerning (a) to (e) above. Insofar as the words complained of consist of accurate statements of fact as set forth in (a) to (e) above the Defendant pleads justification. Insofar as the words complained of consist of expressions of opinion the Defendant pleads fair comment as elaborated on below in paragraph 49.

The May 21, 2008 Blog Post

45. The May 21, 2008 blog post with the words set out in paragraph 34(a) of the Claim was written and published by the Defendant. The words complained of consist of an accurate statement of fact that the Plaintiff was fired from the Lemire case in 2007 and the Defendant pleads justification.

The May 26, 2008 Blog Post

46. The May 26, 2008 blog post with the words set out in paragraph 34(b) of the Claim was written and published by the Defendant. The words complained of consist of accurate statements of fact concerning a Royal Canadian Mounted Police investigation of the CHRC, and poses a question concerning whether the RCMP have interviewed people such as the Plaintiff. None of the words complained of in the post are defamatory, or of and concerning the Plaintiff.

The May 27, 2008 Blog Post

47. The May 27, 2008 blog post with the words set out in paragraph 34(c) of the Claim was written and published by the Defendant. The words complained of consist of (a) an accurate statement of fact that the Plaintiff tried to shut down questioning of Richard Warman in the Lemire hearing when Warman was being cross-examined in connection with postings Warman had made to a white supremacist site concerning Elizabeth Lampman, (b) accurate statements concerning the proceedings in the Lemire hearing, and (c) expressions of opinion concerning (a) and (b) above. Insofar as the words complained of consist of accurate statements of fact as set forth in (a) and (b) above the Defendant pleads

justification. Insofar as the words complained of consist of expressions of opinion the Defendant pleads fair comment as elaborated on below in paragraph 49.

48. The Defendant is not responsible for the words published by either Mark Steyn, as set forth in paragraph 25 of the Claim, or any other person whose words were published as set forth in paragraphs 13, 18, 27, 30, 31 and 33 of the Claim. In the alternative, the words published in paragraphs 13, 18, 27, 30, 31 and 33 consist of expressions of opinion and the Defendant pleads fair comment as elaborated on below in paragraph 49.

Fair Comment Defence

49. All The expressions of opinion referred to above were expressed on matters of public interest, namely the conduct of an employee or agent of the CHRC, the Plaintiff, in prosecuting section 13 CHRA complaints and the workings of the CHRC in prosecuting section 13 CHRA complaints before the CHRT. The public has an interest in and is entitled to know how section 13 CHRA complaints are being prosecuted and how the Plaintiff conducted himself in prosecuting such complaints. The opinions were made in good faith, based on facts contained within the various posts referred to herein and other facts publicly known by readers of the posts, all as set forth herein, are recognizable as comment, and the Defendant honestly held all such opinions attributed to him. In the alternative, if the words complained of bear any meaning that consists of any expression of opinion that the Defendant did not honestly hold, then such opinions could have been honestly held by another person.

50. In the alternative, the Defendant pleads that the words complained of were published on an occasion of qualified privilege, on the basis that they were published in good faith and in the honest belief that the words complained of were fair and accurate and related to matters in the public interest regarding the workings of the CHRC and the conduct of the Plaintiff. The words complained of were part of an on-going political debate concerning free speech, the repeal of section 13 of the CHRA, and the reform of human rights commissions in Canada.

As such, the Defendant states that he had a duty to communicate the words complained of to the Canadian public who had a corresponding interest in receiving the information contained in the words complained of.

51. 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 free speech, the repeal of section 13 of the CHRA, and the reform of human rights commissions in Canada.
52. The Defendant denies that the words complained of are defamatory, or of and concerning the Plaintiff.
53. 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 in the Defendant's blog postings. 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.
54. 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.
55. In the further alternative, if the Defendant's postings 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.

56. The Defendant pleads section 5(1) of the LSA and states that (a) the libel notice purported to have been served by the Plaintiff was not served in the manner required by section 5(1) of the LSA and (b) the notice purported to have been served did not refer to any of the postings dated April 5, May 4, May 8, May 18, May 21 or May 27.

57. Insofar as may be necessary the Defendant pleads sections 23, 24 and 25 of the LSA.

58. 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.

59. The Defendant submits that this action has been commenced with the vexatious intent of attempting to cause the Defendant to stop criticizing the Plaintiff and the CHRC and that this is a strategic lawsuit, along with seven complaints made by the Plaintiff to the Law Society of Alberta concerning the Defendant's actions as a journalist – and not as a lawyer - intended to interfere with the Defendant's freedom of expression. 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: August 1, 2008.

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