

08-CV-352197SR

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**RICHARD WARMAN**

Plaintiff

- and -

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

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.


If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: April 7, 2008

Issued by:

  
(Mr. Brenton)  
Local Registrar

Address of court office:  
393 University Avenue  
10th Floor  
Toronto ON M5G 1E6

**THE NATIONAL POST COMPANY  
and JONATHAN KAY**  
300-1450 Don Mills Road  
Don Mills, Ontario  
M3B 3R5

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

**SMALLDEADANIMALS.COM and  
CATHERINE MCMILLAN**

**MARK FOURNIER,  
FREEDOMINION.CA and  
CONSTANCE WILKINS-FOURNIER**

**KATHY SHAILDE  
FIVEFEETOFFURRY.COM**  
Kathy Shaidle

**THIS PROCEEDING HAS BEEN COMMENCED AGAINSTS YOU UNDER THE SIMPLIFIED PROCEDURE (RULE 76 OF THE RULES OF CIVIL PROCEDURE)**

1. The plaintiff claims as against the defendants joint and severally:
  - (a) Damages for libel, together with punitive and aggravated damages in the sum of \$50,000;
  - (b) A full and unqualified apology and retraction of the defamatory statements made by the defendants as set out in this statement of claim;
  - (c) Pre-judgment pursuant to the *Courts of Justice Act*;
  - (d) post-judgment interest pursuant to the *Courts of Justice Act*
  - (e) His costs of this proceeding on a substantial indemnity scale together with applicable taxes thereon; and
  - (f) Such further relief as this Honourable Court deems just.

**The Parties**

2. The plaintiff is a lawyer and a member in good standing of the Law Society of Upper Canada.
3. The defendant The National Post Company (“The National Post”) is a corporation incorporated in accordance with the laws of Canada and publishes a national daily newspaper circulated throughout Canada known as the National Post. The National Post also publishes its daily newspaper on the World Wide Web at the Uniform Resource Locator (URL) [www.nationalpost.com](http://www.nationalpost.com).
4. The National Post also publishes a web log at a site it calls Full Comment located at the URL [www.network.nationalpost.com/np/blogs/fullcomment](http://www.network.nationalpost.com/np/blogs/fullcomment).

5. The defendant Jonathan Kay is employed by the National Post as a journalist and at all times material to this action was an editor of Full Comment.

6. The defendant Ezra Levant is an individual and lawyer who resides in the City of Calgary, in the Province of Alberta. Mr. Levant has his own web log that is located at the URL [www.ezralevant.com](http://www.ezralevant.com).

7. Kathy Shaidle is an individual who resides in the City of Toronto. Ms. Shaidle owns her own web log that is located at the URL [www.fivefeetoffury.com](http://www.fivefeetoffury.com).

8. Catherine McMillan is an individual who resides in the City of Delisle, in the Province of Saskatchewan. Ms. McMillan has her own web log located at the URL [www.smalldeadanimals.com](http://www.smalldeadanimals.com).

9. Mark Fournier and Constance Wilkins-Fournier are individuals who reside in the City of Kingston. The Fourniers have their own website forum located at the URL [www.freedominion.ca](http://www.freedominion.ca) (the "Fournier Defendants").

**False Allegation that Mr. Warman authored and published a racist and bigoted internet posting**

10. Mr. Warman is a human rights lawyer who has monitored the activities of the white supremacist and neo-Nazi movements for the past 20 years. More recently, using his own time and money over the past 8 years he has drafted, filed, and successfully co-litigated 13 complaints under the Internet hate messaging provision of the *Canadian Human Rights Act*. As a result of Mr. Warman's work, in 2005 he received a certificate of appreciation from the Law Society of Upper Canada for his "tireless efforts to counter hate and discrimination in Canada" and in 2007 he received the Saul Hayes Human Dignity Award.

11. As a result of his human rights work, Mr. Warman has endured extensive efforts by white supremacists and neo-Nazis at retaliation including repeated death threats and virtually anything else that they can think up including using the internet to defame him and attempt to undermine his credibility.

12. In November of 2003, Mr. Warman filed a federal human rights complaint against Marc Lemire and Craig Harrison with regard to material on Mr. Lemire's website that included extensive calls for genocide.

13. Mr. Harrison has since been found by the Canadian Human Rights Tribunal ("CHRT") to have violated the hate messaging provision of the *Canadian Human Rights Act* in relation to postings he authored on Mr. Lemire's website. A permanent cease and desist order was issued against him by the CHRT.

14. The CHRT case against Mr. Lemire is ongoing as at the time of the issuance of this statement of claim. In the course of those proceedings, Mr. Lemire invented a story that Mr. Warman is responsible for a posting on Mr. Lemire's website with regard to Senator Anne Cools (the "Cools Posting").

15. It is a matter of public record that Mr. Warman has denied under oath on three occasions having made the Cools Posting or having had anything to do with it.

16. Mr. Lemire and his direct associates had always been cautious enough never to spread the allegation outside of the Canadian Human Rights Tribunal hearing. Indeed, one of Mr. Lemire's closest associates indicated in an Internet posting that they had legal advice not to do so (presumably knowing they would be sued for libel).

## **Libels by Mark and Constance Wilkins-Fournier and Freedomion.ca**

17. The Fournier Defendants operate Freedomion.ca as an extreme right-wing discussion forum and they regard Mr. Warman's human rights work as a threat to their political beliefs and they seek to destroy his reputation. Accordingly, all of their conduct towards Mr. Warman is actuated by malice.

18. In furtherance of their desire to destroy the reputation of Mr. Warman, on January 18, 2008 the Fournier Defendants wrote and published the following on Freedomion.ca (hereinafter referred to as the "Freedomion Post"):

Mark Fournier  
Free Dominion  
January 18, 2008

"Time to go back to when the women nigger imports knew their place...  
And that place was NOT in public!"

- Richard Warman referring to Sen. Anne Cools -

Is Richard Warman a racist bigot, or was he "just following orders" issued by his masters at the Canadian Human Rights Commission when he posted the headlined message above on a Freedomion forum on September 5, 2003? Whatever the answer, the same CHRC that has ruled Bible verses to be hate speech doesn't seem to consider these words to be a problem.

But they are a big problem, for both Richard Warman and the CHRC, and the rest of what he wrote only makes matters worse.

*"Not only is Canadian Senator Anne Cools is a Negro, she is also an immigrant!*

*And she is also one helluva preachy c\*nt.*

*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!*

It may be mere coincidence that Richard Warman is in fact an Anglo-German, but it is not likely a coincidence at all that the owner of the website where Richard Warman posted this racist screed against Sen. Anne Cools came under attack by the CHRC shortly after Richard Warman began his complaint-less investigation there.

Complaint-less investigations by the CHRC have been in the news lately because information has surfaced concerning CHRC operative Dean Steacy and his official exploits as 'Jadewarr'. But compared to his colleague Richard Warman, Dean Steacy is a piker. Richard Warman enters a forum swinging as '90sAREover'.

In testimony beginning January 29, 2007 Richard Warman admitted under oath in *Canadian Human Rights Tribunal* hearing (Case T1073/5405) that he was, in fact, the poster named 'lucy' who had registered on the

Freedomsite (and other) forums. What he neglected to add was that 'lucy' was not his first Freedomsite screen name. He failed to mention that his complaint-less investigation of Freedomsite actually began two months before 'lucy' hit the scene, it began when he registered on the Freedomsite under the screen name '90sAREover'.

Another miscalculation by Richard Warman was the technical expertise of the target of this particular setup operation. Marc Lemire is a techie, a networking nerd, so it was not much of a problem for him to find information on both 'lucy' and '90sAREover' in the Freedomsite database.

The table reproduced below shows information found in the Freedomsite database comparing Richard Warman's admitted 'lucy' identity (left column) to information about '90sAREover' (right column). This table information was gathered by expert technology witness Bernard Klatt and submitted as evidence to a Canadian Human Rights Tribunal on February 8, 2007.

Admitted Richard Warman/lucy info	90sAREover info
IP address = 66.185.84.204	IP address = 66.185.84.204
ISP = Rogers Cable	ISP = Rogers Cable
OS = Windows 98	OS = Windows 98
Browser = Mozilla 4.0 compatible MSIE 6.0	Browser = Mozilla 4.0 compatible MSIE 6.0
ID = lucy (lucyabrack@yahoo.ca)	ID = 90sAREover (rob_m_simpson@hotmail.com)
setup using anonymous email account	setup using anonymous email account
on obscure message limited-interest board	on obscure message limited-interest board
logged onto message board only twice	logged onto message board only twice
very short usage time (120 min)	very short usage time (14 min)
no optional info supplied	no optional info supplied
created for single purpose	created for single purpose
used Nov. 11, 15, 23, 2003	used Sep. 5, 2003

Mr. Klatt concludes in Paragraph 71 of his affidavit:

*"Based on the information provided in this affidavit, in my expert opinion, I concluded that the Freedomite message board user accounts "90sAREover" and "lucy" are those of Richard Warman and that Richard Warman was the poster of the message headed "Cools don't belong in our Senate" posted September 5, 2003."*

There is also no doubt that the CHRC was aware of this internet posting by 90sAREover because it was a part of the original complaint filed by Richard Warman, when referred to tribunal. But this posting is no longer a part of the CHRC complaint against Lemire, the CHRC dropped it from the complaint the day after Mr. Lemire won a decision to subpoena Rogers' internet records.

This posting by 90sAREover would be a slam dunk in a real court of law, so why did the CHRC drop it from the complaint?

This story is far from over because the attacks on Marc Lemire by the CHRC are ongoing and with no end in sight, as are the attacks on many other Canadians by this government agency. This story is also far from being completely told. More ugly twists and turns will be revealed as those at the center of it all give us leave to report the details.

Slowly but surely the truth is coming out.

And it isn't pretty.

19. The Freedominon Post is defamatory of Mr. Warman in its entirety and was falsely and maliciously published and circulated.
20. Mr. Warman states that he did not author, nor did he post any of the words attributed to him as contained in the Freedominon Post. Mr. Warman has never used the name "90sAREover" to post any words on any web site.
21. The Freedominon Post in its natural and ordinary meaning and/or by way of its innuendo was falsely and maliciously published and was meant and understood to mean that Mr. Warman:
  - (a) Is a racist and a bigot;
  - (b) Abuses the Canadian Human Rights Commission (CHRC) in the pursuit of his personal vendettas;
  - (c) Plants evidence on those against whom he files human rights complaints;
  - (d) Spreads hatred in the name of human rights;

- (e) Wrote many of the hateful words contained in the human rights complaints filed by him;
- (f) Called Senator Anne Cools a “nigger” and a “cunt” and then filed a complaint about it to the CHRC; and
- (g) Planted evidence pursuant to his complaints and that this was done in collusion with his former colleagues at the CHRC.

22. The allegation that Mr. Warman authored the Cools Posting is a fiction of Mr. Lemire and Mr. Klatt, (and possibly others not known to Mr. Warman) who are known neo-Nazis who have a tremendous amount of animus towards Mr. Warman.

23. The plaintiff pleads that the Fournier Defendants either knew or should have known that the allegations of Mr. Lemire and Mr. Klatt were false but they published their allegations nonetheless without any qualification and with the sole purpose of destroying Mr. Warman’s reputation.

24. To compound the damage inflicted upon Mr. Warman, the Fournier Defendants published comments by visitors to Freedomion. The particulars of those postings are as follows (the “Fournier Comments”):

- (a) on January 20, 2008 at 1:22 a.m. the Fournier Defendants published “And if Warman’s comments are argued to have not been sincere – my second question is: Since when did PROFESSIONAL LAWYERS conduct themselves in a manner that puts ends ahead of means? Especially when it involves the Apparatus of the State?”
- (b) on January 22, 2008 at 2:53 a.m. the Fournier Defendants published the words “Warman manufactures ‘evidence’ and the HRC knowingly continues to use the ‘evidence’ until they are exposed. This is far beyond entrapment. It is a criminal use [sic] the levers of state to tyrannize people. Warman and the HRC should be sued for this deceit and the whole lot of them jailed.”
- (c) on January 22, 2008 under the heading “Destroying a man’s career and life” where Connie Fournier is quoted as saying “I’m sorry, Warren, but your plea

for Richard Warman's 'life and career' fall [sic] flat with me. He is an unprincipled jackal who seems to get his jollies out of ruining people's lives."

- (d) on January 22, 2008 at 9:27 p.m. where the Fournier Defendants published the words "Warman's career is evil. It should be destroyed." and the words "His is the career of a disturbed rabid animal."
- (e) on January 22, 2008 at 10:29 p.m. where the Fournier Defendants published the words "Here's a man that has hidden a host of personal demons and antisocial vengefulness under the guise of 'human rights activism' this is now a metaphor for witch hunter ... and it carries with it all the compromised morality of that occupation." And further on in the same post, the Fournier Defendants published the words "at least he does not conduct a [sic] innuendo campaign through an Inquisition by subverting a quasi legal government commission with tainted evidence to destroy political enemies and people who disagree with him. Warman is a very very very small man".

25. Mr. Warman pleads that the Fournier Comments in their natural and ordinary meaning and/or by way of their innuendo were falsely and maliciously meant and understood to mean that Mr. Warman:

- (a) Is an unethical lawyer;
- (b) Has acted criminally;
- (c) Is unprincipled and a predator;
- (d) Is mentally ill; and
- (e) Is immoral, antisocial and subversive.

26. Mr. Warman states that it was reasonably foreseeable that the Freedomion Post would be linked to and copied by numerous neo-Nazis and other individuals with animus towards him. The Fournier Defendants are accordingly liable to Mr. Warman for all republications of the Freedomion Post.

**Republication and further libels by Defendants Catherine McMillan and Smalldeadanimals.com**

27. Catherine McMillan owns the website Smalldeadanimals.com (“SDA”).

28. In furtherance of her desire to destroy the reputation of Mr. Warman, on January 20, 2008 Ms. McMillan permitted the defendant Shaidle to access SDA and post the Cools Posting along with the allegation that Mr. Warman was responsible for it and a link to the Freedominion Post. Mr. Warman pleads that in law the creation of a link to a defamatory publication is a republication of the libel and that Ms. McMillan and SDA are liable to Mr. Warman for repeating the libel of the Fournier Defendants.

29. Aggravating the damages is the fact that Ms. McMillan subsequently permitted the material posted by the defendant Shaidle including the link to the Freedominion Post to remain on SDA despite the acknowledged concern over the veracity of its contents. In this regard, she did not purport to publish a fair and balanced report of the Freedominion Post. Instead, she published the Freedominion Post to assert the truth of the facts contained therein but took no steps at all to independently determine whether the allegations by Mr. Lemire and Mr. Klatt were true.

30. To compound matters, Ms. McMillan accepted comments at SDA from visitors to her site and published those comments (the “McMillan Comments”). The McMillan Comments are false and defamatory and were maliciously published. The particulars of the false and defamatory McMillan Comments are contained in a Notice of Libel dated February 24, 2008 and served upon Ms. McMillan and SDA on February 28, 2008.

31. Mr. Warman pleads that the McMillan Comments either refer to him or are capable of referring to him and that each and every one of those comments were understood to mean that Mr. Warman is a person of ill-repute, has acted criminally, should be disciplined by the Law Society of Upper Canada, and is unsavoury. The McMillan Comments also state in fact, or by their innuendo that Mr. Warman authored and published the Cools Posting.

**Republication of the Freedomion Post and further libels by the defendants Kathy Shaidle and Fivefeetoffury.com**

32. Kathy Shaidle owns a web site called Fivefeetoffury.com (collectively, the “Shaidle Defendants”).

33. In furtherance of their desire to destroy the reputation of Mr. Warman, on January 20, 2008, the Shaidle Defendants published an article entitled “Richard Warman: not a racist -- he just plays one on the internet.” They then quote entirely from the Freedomion Post in that article.

34. Mr. Warman pleads that in law the creation of a link to a defamatory publication is a republication of the libel and the Shaidle Defendants are liable to Mr. Warman for repeating the libel of the Fournier Defendants. Mr. Warman further pleads that the Shaidle Defendants published the following additional words on SDA (the “Shaidle Postings”):

- (a) on January 20, 2008: “be sure to read the whole thing, and, please tell your MP what you think of this use of your tax dollars -- funding employees and ex-employees of the HRC in these dubious ‘undercover activities’.”
- (b) On January 20, 2008 : “will the Canadian Jewish Congress regret giving Richard Warman an award last year?”
- (c) On January 20, 2008: “more Richard Warman: “can a sock puppet be a bigot?” Mr. Warman states that the entire posting under that heading is defamatory of him.

- (d) On January 30, 2008: “there is an affidavit on file with the commission that says at least one of them, Warman, posted some pretty violent racist stuff to various websites that were, or were soon to be, under CHRC investigation.
- (e) On January 30, 2008: republished words of Ezra Levant under an article entitled “Ezra Levant: “what an embarrassment the [Canadian Jewish Congress] has become” as follows: “Richard Warman, the serial human rights complainant and foul-mouthed, anti-black, misogynist bigot?”
- (f) On January 30, 2008: “Richard Warman: one complaint to the Law Society of Upper Canada.” Mr. Warman relies on the entire article and states that the entire article is defamatory of him.
- (g) on January 30, 2008: “and, somehow, both posters chose to go to the same site to make racist remarks. That just happened, completely by coincidence, to make racist remarks on the same site, months apart, on the day when that wandering IP addy happened to be set to their computer.”

35. Mr. Warman states that the Shaidle Postings were maliciously published and that they are false and defamatory of him. The Shaidle Postings were meant or understood to mean in their ordinary meaning or by their innuendo that Mr. Warman:

- (a) has acted inappropriately and illegally in his actions to bring human rights complaints against Neo-Nazis and that Mr. Warman published the Cools Posting;
- (b) was not deserving of an award from the Canadian Jewish Congress because he is unsavoury;
- (c) wrote the Cools Posting, should be investigated for his improper behaviour, is a bigot and has acted criminally;
- (d) posted violent and racist publications on the internet;
- (e) is a bigot and a racist;
- (f) has violated the Rules of Professional Conduct of the Law Society of Upper Canada by committing the offence of “Conduct Unbecoming a barrister or solicitor”;
- (g) authored the Cools Posting.

36. Mr. Warman pleads that the Shaidle Postings either refer to him or are capable of referring to him and that they were meant and understood to mean that Mr. Warman is a person of ill-repute, has acted criminally and is unsavoury.

**Republication of the Freedomion Post and further libels by the defendant Ezra Levant**

37. On January 20, 2008 the defendant Ezra Levant published a posting at ezrlevant.com under the heading "Questions for Rob Nichols" (the "January 20 Posting").

Mr. Warman pleads that the following words in the January 20 Posting are false and defamatory concerning him:

- (a) " the commissions themselves have become corrupted. They have been turned into tax-funded machines for the personal vendettas of some very angry men, who now resort to planting "evidence" of racism on suspects. It's not entrapment; it's positively framing people."
- (b) "thought crimes cases. But the personal corruption of the commissions makes them a disgrace, even on their own terms."
- (c) "Mr. Speaker, my question is for the Justice Minister. One of his staff, Dean Steacy of the Canadian Human Rights Commission, has admitted under oath that, as part of his job, he joined a neo-Nazi website called the "Stormfront", and posted racist remarks there. Can the Minister please explain why taxpayers' dollars are paying someone in his department to join neo-Nazi groups to spread bigotry? Mr. Speaker, can the Minister tell us: was this a rogue act by a single hate-monger who infiltrated the human rights commission? Or did others at the commission approve of this race-baiting strategy, too? Did the minister himself know? Or did he turn a blind eye to state-sponsored bigotry in his own department? Mr. Speaker, it's not just Dean Steacy who spreads hate in the name of human rights, using taxpayers' money. Richard Warman does it, too. He used to work *for* the CHRC, but then he left to work *with* them, filing dozens of complaints at the CHRC about hateful words. But now it turns out that Warman himself writes many of those hateful words, including calling Senator Anne Cools a "n\*gger" and a "c\*nt", and then complaining about it. Will the Minister immediately intervene to stay all of Richard Warman's complaints, and launch an internal investigation to see whether the evidence he planted was done with the collusion of his old friends at the CHRC?"

- (d) “It might also be the sort of question that someone should put to the far-left Canadian Jewish Congress, which awarded Warman a human rights award last year. Did they know that Warman called Canada's first Black, female Senator a c\*nt and a n\*gger? Now that they do know it, will they rescind their award? Or -- and this is my unhappy guess -- are they part of this whole scam?”

38. Mr. Warman pleads that the words complained of above from the January 20 Posting are defamatory of him in their plain and ordinary meaning or, in the alternative, they are defamatory of him by their innuendo. The particulars of the defamatory meanings in the January 20 Posting are that Mr. Warman:

- (a) Has abused the Canadian Human Rights Commission in the pursuit of his personal vendettas;
- (b) Is a very angry man who plants evidence on those he files human rights complaints against and that this goes beyond entrapment into framing those complained against;
- (c) Filed federal human rights complaints based on “thought crimes” as opposed to legitimate violations of the *Canadian Human Rights Act*;
- (d) Has spread hatred in the name of human rights;
- (e) Has abused taxpayers’ money;
- (f) Has written many of the hateful words contained in the human rights complaints filed by him;
- (g) called Senator Anne Cools a “nigger” and a “cunt” and filed a complaint about it to the CHRC;
- (h) Has engaged in misconduct and that the Minister of Justice should immediately stay all of his federal human rights complaint;
- (i) Planted evidence pursuant to his complaints and that this was done in collusion with his former colleagues at the CHRC;
- (j) Planted racist and sexist remarks and that such actions may extend to his previous 12 successful federal human rights complaints;
- (k) Should have his Saul Human Dignity Award rescinded by the Canadian Jewish Congress because of racist and sexist comments by him; and

- (l) Acted in collusion with the Canadian Jewish Congress in the planting of false evidence and that this conduct constitutes a legal fraud and a scam.

39. On January 23, 2008 Mr. Levant published the following words under the heading “Odds and Ends” (the “January 23 Posting”):

What an embarrassment the CJC has become. Essentially they are pleading for Steyn and I as special cases. Is it because I'm a Jew and Steyn sounds like he might be, too? Is it because we're being sued by Muslim fanatics? Or is it because the CJC is taking some political heat for their support of these illiberal, anti-intellectual commissions, and the CJC's alliance with Richard Warman, the serial human rights complainant and *foul-mouthed, anti-Black, misogynist bigot?* [emphasis added]

40. Mr. Warman states that the January 23 Posting in its natural and ordinary meaning is defamatory of him because it falsely states by fact or by innuendo that Mr. Warman is a racist, bigot and a vexatious litigant. Mr. Warman will rely on the entire posting under the title “Odds and ends” at the trial of this action.

41. Further, when the reader clicks on the words “foul-mouthed, anti-black, misogynist bigot” in the January 23 Posting they are immediately directed to the web site [www.freedominion.ca](http://www.freedominion.ca) and specifically directed to the Freedominion Post. Mr. Warman pleads that in law the creation of a link to a defamatory publication is a republication of the libel and that Mr. Levant is liable to Mr. Warman for repeating the libel of the Fournier Defendants.

42. Mr. Warman pleads that Mr. Levant has specifically stated that Mr. Warman authored the Cools Posting when Mr. Levant could not establish as a fact that he had done so. Mr. Levant acted in a reckless and malicious manner and his conduct should attract the censure of the court.

43. On January 28, 2008 Mr. Levant published a posting under the heading “Warman strikes again” where he states in part:

... Their [the Canadian Jewish Congress] decision to stand by Warman, despite recent revelations of his own-anti-Black, anti-women bigotry, has only hastened their spiral into irrelevance.

44. Mr. Warman states that the “Warman strikes again” posting in its natural and ordinary meaning is defamatory of him because it falsely states by fact or by innuendo that Mr. Warman is a racist, misogynist and a bigot.

45. When the reader clicks on “recent revelations of his own-anti-Black, anti-women bigotry” they are again directed to the Freedominon Post. Mr. Warman states that Mr. Levant has aggravated the damage to Mr. Warman by repeatedly publishing the Freedominon Post.

46. The basis for the allegation that Mr. Levant was actuated by malice is that he maintains a personal vendetta against human rights commissions as the result of a complaint filed against him in a matter wholly unrelated to Mr. Warman. Mr. Levant is of the view that Mr. Warman is a person who seeks to limit his right to free speech and he therefore seeks to destroy Mr. Warman’s credibility at every turn. In fact, when Mr. Levant was served with the Libel Notice in relation to the within proceeding, he published the said notice thus repeating the libel again and further aggravating the damage he has caused. Mr. Levant went on to publish that he stood behind each and every one of his libellous statements.

**Libel of the National Post and Jonathan Kay**

47. On February 19, 2008 the National Post published an article containing false allegations and statements about Mr. Warman on FreeComments. The article is entitled “Jonathan Kay on Richard Warman and Canada’s phony-racism industry” (the “Article”).

48. The defendant Jonathan Kay wrote the Article and published it on, *inter alia*, FreeComments.

49. The Article contains false allegations and statements concerning Mr. Warman. Mr. Warman will rely on the entire Article at the trial of the this action.

50. The Article is defamatory of Mr. Warman in its entirety, was falsely and maliciously printed, published and circulated and refers directly to Mr. Warman. The Article contained the following words which are defamatory of Mr. Warman:

- (a) The headline of the article reads “Jonathan Kay on Richard Warman and Canada’s phony-racism industry”.
- (b) The words in the first paragraph “Canadians now know the precise moment when radical anti-racism became a more powerful sociological toxin than racism itself: 7:55pm EST on Sept. 5, 2003.”
- (c) The second paragraph where the text of the Cools Note is reproduced.
- (d) The third paragraph where it is stated “Horrible, shocking stuff. But even more shocking is the identity of the fellow whose electronic fingerprints were all over the message: famed Canadian human-rights lawyer Richard Warman.”
- (e) The fourth paragraph where it is stated “But during proceedings surrounding one of Warman’s 2003-era complaints against freedomsite, the respondents turned the tables. A computer expert named Bernard Klatt did some digging under freedomsite’s back office, and determined that the Cools posting had been made from a computer bearing the IP address 66.185.84.204, the very same address from which Warman had admitted to visiting freedomsite using a different alias.”

- (f) The fifth paragraph where it is stated “Other technical details – such as the operating system and Web browser being used – also provided an exact match to Warman. Based on this evidence, Klatt concluded in a recently publicized affidavit, “Richard Warman was the poster of the message headed ‘Cools don’t belong in our Senate.’
- (g) The entire sixth paragraph.
- (h) The entire eighth paragraph.
- (i) The entire eleventh paragraph.

51. Mr. Warman states that the Article in its natural and ordinary meaning or by its innuendo is defamatory of him because it falsely states that:

- (a) Mr. Warman fabricates racist conduct;
- (b) Mr. Warman authored the Cools Posting;
- (c) Mr. Warman published the Cools Posting;
- (d) Mr. Warman authored and published the Cools Posting;
- (e) Bernard Klatt is a credible witness and his evidence is true;
- (f) Mr. Warman fabricates hate messages and publishes them and that he does so to make money;
- (g) Mr. Warman fabricates allegations of racism to create bigots where there are none; and
- (h) Mr. Warman creates hate speech.

52. Neither The National Post Company nor Mr. Kay took any independent steps or did any investigation whatsoever to verify the veracity of the allegation that Mr. Warman was the author of the Cools Posting.

53. Mr. Kay had written various other articles concerning human rights commissions and Mr. Warman prior to the Article and had available to him all of the necessary

information to question the allegations of Mr. Lemire and Mr. Klatt. Despite this, Mr. Kay published the Article.

54. Shortly after publishing the Article, Mr. Kay learned, apparently, for the first time that Mr. Klatt is associated with the neo-Nazi movement. At some point, Mr. Kay removed the Article from FullComments. By that time, however, the Article had been republished in numerous sources across the World Wide Web including on notorious neo-Nazi web sites such as those of David Duke, David Irving and Stormfront. Further, Mr. Levant, and possibly others, captured the image of the Article immediately after it was posted and created a link to the Article for his readers. Mr. Levant's link was copied by numerous other web sites. As at the date of this pleading, the Article has been published on dozens, if not hundreds of web sites around the world.

55. On February 20, 2008, upon the demand of Mr. Warman, the National Post published the following on Freecomments:

Retraction

Posted: February 20, 2008, 8:05 PM by Chris Boutet

On Monday, the National Post posted on its FullComment.com web blog a column by Jonathan Kay that repeated allegations made by Bernard Klatt in a 2006 sworn affidavit against lawyer and Canadian human rights activist Richard Warman. Mr. Klatt has alleged that a racist posting on FreedomSite about Senator Anne Cools was made by Mr. Warman in 2003. The National Post has no evidence to support Mr. Klatt's allegation against Mr. Warman and it hereby retracts any suggestion that Mr. Warman manufactured any statement about Senator Cools. The National Post apologizes for any embarrassment this has caused Mr. Warman.

56. Mr. Warman relies on the entirety of the Article, including its content, context and tone in support of his claim. Mr. Warman further pleads that the Article was understood to refer to and was capable of referring to him. When the National Post and Mr. Kay published the Article, they were reckless as to whether the words complained of and the innuendoes contained therein were true or false.

57. Mr. Warman states that the Article has been republished in numerous print and internet media and that the National Post and Mr. Kay are liable to him for such republication as they knew or ought to have known that the Article would be copied and linked to by numerous neo-Nazi and white supremacist groups who have shown a tremendous amount of animus towards Mr. Warman.

**Further allegation as against all defendants**

58. Full particulars of all republications by the defendants or republications for which the defendants are liable will be provided to the defendants prior to the trial of the within action.

59. Mr. Warman states that the defendants are liable to him for all damages flowing from the libellous words as set out herein.

60. Mr. Warman states that by the publication of the words as set out herein, his reputation has been seriously prejudiced and his integrity has been impugned. Mr. Warman has been held up to ridicule and contempt as a result of the actions of the defendants as set out in this statement of claim.

61. The defendants other than the National Post and Jonathan Kay have acted maliciously by continuing to post defamatory materials of and concerning Mr. Warman on their web sites. They have also refused to remove any of the alleged defamatory statements despite service of Notices of Libel upon them and have refused to retract or apologize for any of their postings.

62. Mr. Warman claims general damages accordingly.

63. Mr. Warman further states that the conduct of the defendants in their failure to properly, or at all, ascertain correct information prior to publication of the libels set out in this statement of claim acted in a callous and high-handed matter and that their conduct should attract the censure of the court. Mr. Warman therefore seeks punitive damages.

**Notice of Libel**

64. Mr. Warman delivered Notice of Libel pursuant to the *Libel and Slander Act*, R.S.O. 1990, c. L.12 to each defendant on the following dates:

National Post and Jonathan Kay	February 20, 2008
The Fournier Defendants	February 28, 2008
SDA and Catherin MacMillan	February 28, 2008
Fivefeetoffury and Kathy Shaidle	February 26, 2008
Ezra Levant	February 22, 2008

65. The plaintiff submits that this action should be tried at Toronto.

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April 7, 2008

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