

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

RICHARD WARMAN

PLAINTIFF(S)

and

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

DEFENDANT(S)

**STATEMENT OF DEFENCE OF THE DEFENDANTS
KATHY SHADLE, FIVEFEETOFFURY.COM,
SMALLDEADANIMALS.COM and CATHERINE McMILLAN**

1. These defendants admit paragraphs 3, 4, 5, 6, 7, 8, 27 and 32 of the Statement of claim.
2. These defendants deny paragraph 28, 29, 30, 31, 33, 34, 35, 36, and 58 to 64 inclusive of the Statement of Claim.
3. These defendants have no knowledge of paragraphs 2, 9 to 26 inclusive and 37

to 57 inclusive of the Statement of Claim.

4. These defendants deny that fivefeetoffury.com and smalldeadanimals.com are legal entities and are thus capable of being defendants in this action.

5. The defendant Catherine McMillan admits that she created the private Internet blog website known as smalldeadanimals.com.

6. The defendant Kathy Shaidle admits that she created the private Internet blog website known as fivefeetoffury.com.

7. These blog websites permit the owner and approved guest authors to write content for the main pages, and for readers to write comments and opinions in response to that comment. Reader comments often take the form of a conversation or debate. They provide an opportunity for readers to correct or challenge assertions made by the author of the original post, any material that is quoted from other sources or to add information that expands the discussion.

8. These defendants say that opinions or facts set out in blogs are subject to revision, correction and refutation by other posters or bloggers.

9. Kathy Shaidle admits that she was a guest author on the blog website smalldeadanimals.com on January 20, 2008. Catherine McMillan took no part in writing

or

posting the words complained of in this action.

10. The blog posted by Kathy Shaidle was posted for a short period of time and was subsequently updated on January 22, 2008.

11. Kathy Shaidle admits she published the words alleged in paragraph 34(a) (b) and (c) of the Statement of Claim but denies publishing the words in paragraph 34 (d) (e) (f) and (g) of the Statement of Claim save as may be admitted hereafter.

12. With respect to paragraph 34 (d) of the Statement of Claim, the defendant Kathy Shaidle admits that she posted the words complained of on her website but denies that she was the author of these words, or that they were posted on January 30, 2008.

13. With respect to paragraph 34 (e) of the Statement of Claim, the defendant Kathy Shaidle denies that she authored these words, but admits that she republished these words, but not on January 30, 2008.

14. With respect to paragraph 34 (f) of the Statement of Claim , Kathy Shaidle admits she wrote and posted the headline “Richard Warman: 1 complaint to the Law Society of Upper Canada” based on words written by someone in a comment section, but not on January 30, 2008.

15. With respect to paragraph 34(g) of the Statement of Claim, Kathy Shaidle denies that she was the author or publisher of these words, but admits she published a link to these words contained in a comment section, but says these words were not published on January 30th, 2008.

16. These defendants admit that the blogs posted contained a link to the web site of freedomion.ca. These defendants deny that publishing a link amounts to a publication or republication as alleged or at all.

17. These defendants deny the words complained of were defamatory, as alleged, and deny the alleged defamatory meanings or innuendos as alleged or at all.

18. In the alternative, the words complained of in paragraph 34 of the Statement of Claim were fair comment based on true facts, namely the proceedings before the Canadian Human Rights Tribunal, the conduct of an investigator employed by the Canadian Human Rights Commission and complainants posting racist comments on websites and expressions of opinion on the same matters of public interest.

19. In the alternative, if the words complained of are defamatory, which is not admitted but is denied, then these defendants state that the words complained of taken in their full context and in their plain and ordinary meaning were understood by a

reasonable reader to mean the following:

- (a) An allegation was made in a proceeding before the Canadian Human Rights Tribunal that the plaintiff posted a message on a website using an alias;
- (b) The plaintiff may have been using a strategy devised by the Canadian Human Rights Commission to post messages on websites using an alias;
- (c) That posting fictitious messages on websites or blogs is not an appropriate use of taxpayers monies;
- (d) That posting fictitious messages on websites or blogs raises questions concerning the extent to which allegedly racist material posted on the Internet is authentic.

20. In the alternative, insofar as the words complained of consist of expressions of opinion they were fair comment made honestly in good faith and without malice on a matter of public interest.

21. The words complained of were part of an ongoing exchange of opinion among bloggers concerning the activities of the Canadian Human Rights Commission, and the issue of freedom of speech in Canada.

22. These defendants say that the words were published in good faith without malice on

an occasion of qualified privilege 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.

23. These defendants state that the words complained of were published as an incident of the Freedom of Expression guaranteed by Sections 1 and 2 of the Charter of Rights and Freedoms. To the extent that the defamation laws enforced in the Province of Ontario limit the right of these defendants to publish the words complained of, such laws are inconsistent with the Constitution of Canada and are of no force or effect pursuant to sub-section 52 (1) of the Charter of Rights and Freedoms.

24. These defendants deny that the plaintiff has been injured or suffered any loss or damages as alleged, and puts the plaintiff to the strict proof thereof. If the plaintiff has suffered any loss or damage it is the result of the actions of the plaintiff in posting various racist comments, full details of which are known to the plaintiff and not to these defendants.

25. These defendants deny they were served with Notices of Libel as alleged.

26. These defendants plead and rely upon Sections 23 and 24 of the Libel and Slander Act, R.S.O. 1990 c.L.12.

27. These defendants submit that this action be dismissed with costs on a substantial indemnity basis.

Date: June 6, 2008

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RICHARD

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DEFENDANT(S)

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(Short title of proceeding)

Court file no. 08-CV-352197SR

SUPERRIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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