



No. S078309
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CANWEST MEDIALWORKS PUBLICATIONS INC.

PLAINTIFF

AND:

HORIZON PUBLICATIONS LTD., GARTH LEDDY, MORDECAI BRIEMBERG, GORDON
MURRAY, CAREL MOSEIWITSCH, JOHN DOE #2, JOHN DOE #3, JANE DOE #2 and
JANE DOE #3

DEFENDANTS

STATEMENT OF DEFENCE

1. The plaintiff is a media corporation that owns the Vancouver Sun newspaper published in Vancouver, British Columbia. The plaintiff corporation is part of the Canwest group of companies, which describes itself as Canada's leading international media company with diversified holdings that include conventional television networks Global Television and the entertainment channel E! and 26 specialty networks, as well as several online properties under the canada.com network.

2. Canwest is Canada's largest newspaper chain reaching 4.8 million readers on a weekly basis. It owns and operates the following newspapers, which together comprise approximately 84% of the daily paid newspaper circulation in British Columbia: the Vancouver Sun, the Vancouver Province; the Victoria Times-Colonist; the Vancouver Courier; the New Westminster Record; Surrey News; Richmond News; North Shore News; the Abbotsford/Mission Times; Burnaby Now; Chilliwack Times; Coquitlam Now; Delta Optimist; Langley Advance; Maple Ridge/Pitt Meadows Times; Nanaimo Daily News; Nanaimo Harbour City Star; Port Alberni Times; Cowichan Valley and

Duncan's Cowichan Valley Times; Parksville/Qualicum Beach Oceanside Star; Courtney/Comox Comox Valley Echo; Campbell River's Courier Islander; Tofino/Ucluelet Westerly; Port Alberni Pennyworth; Alberni Valley Times; and the National Post. Canwest describes itself as the dominant news organization in British Columbia.

3. Canwest newspapers and other Canwest media properties have a strong pro-Israel bias, particularly in their coverage of the Israeli occupation of the West Bank and the Gaza Strip. In Canwest publications, Israelis are usually portrayed as innocent victims and Palestinians as inhuman terrorists. Israeli casualties and deaths are disproportionately reported and sympathetically described while Palestinian deaths are relatively underreported and unsympathetically described. Canwest takes the position that Israel is blameless and described the Palestinian people in one editorial as a single collective suicide bomber.

4. The bias exhibited by individual Canwest papers and media properties is the product of a centralized editorial policy that emanates from Canwest's headquarters and its senior directors and principal shareholders. This centralized policy took hold at the Vancouver Sun shortly after Canwest purchased the print media and newspaper holdings of Southam Inc. in November of 2000. One express purpose of the centralized editorial policy is to insulate Israel from criticism for its violations of international law and to influence Canadian public opinion and foreign policy. The editorial policy limits and restricts the freedom of Canwest reporters and editors, including those employed by the Vancouver Sun, to publish facts and opinions after their own fashion. Canwest enforces its editorial policy by threatening to terminate the employment of newspaper reporters and editors who are publicly critical of the policy, which is a threat carrying significant weight given the extent of Canwest newspaper ownership.

5. The defendant Gordon Murray admits to publishing the parody of the Vancouver Sun (the "Parody") that is the subject of this lawsuit. The Parody was dated "Occupation day, 2007". In place of the usual "Seriously Westcoast since 1912" appears "Seriously Zionist since 2001", which was the first full year of Canwest ownership of the Vancouver Sun. The Parody's lead article is written by "P. Rupa Ghandi" and is entitled "Celebrating 40 years of Civilizing The West Bank". Another article by "Cyn Sorsheep" is entitled "Study Shows Truth Biased Against Israel". In these and other articles, including mock ads, there are criticisms of Israeli policies in the Occupied

Palestinian Territories and a critique of Canwest's news bias. The Parody expressly stated that it was published by the Palestinian Media Collective.

6. The Parody was intended to criticize and satirize the Vancouver Sun and the entire Canwest media group, raise awareness about the Canwest bias, and foster debate about Canada's role in the Middle East. The Parody calls attention to the hypocrisy of the Canwest media group, which uses courts and media to vigorously promote its right to freedom of the press, while using its ownership rights to limit public debate and chill its reporters into silent submission. The primary purpose of the Parody was not to cause economic harm to the plaintiff; its purpose was to satirize the bias of the plaintiff by means of its own sanctimonious public image.

7. The defendant, Gordon Murray, says that his use of the rhetorical mode of parodic imitation offered a unique opportunity for expression. The Parody mocked Canwest by revealing Canwest's use of concentrated media power behind the Vancouver Sun's mask of public-spirited respectability. The defendant says that his use of parody and satire conveyed expressive content that would not be available through other rhetorical modes.

8. The defendant, Gordon Murray, says that the Parody, considered as a whole, cannot be confused with the Vancouver Sun. The Parody can be distinguished by its editorial content, the names of the reporters, the number of pages of the paper, the quality of reproduction, the overt satiric style, a bald statement to the effect that Canwest is not the publisher, and so forth. Any reasonable person can see the Parody for what it is. The notion that the Parody constituted a violation of the Trade-marks Act or the tort of passing-off is contrived and strains credulity.

9. There is nothing false, misleading or dishonest about the Parody. It contains true facts and honestly held opinion regarding the editorial policies of Canwest and the Vancouver Sun, as well as valid opinion regarding Israel and its treatment of the Palestinian people. The defendant says that the common law and statutory torts relied on by the plaintiff do not abridge his right to publish the Parody or to give interviews, and must be interpreted to comport with his right to free expression as guaranteed by s.2(b) of the Canadian Charter of Rights and Freedoms.

10. In the alternative, the defendant says that if s.8 of the Trade-marks Act operates to prohibit him from publishing the Parody, then the section is inconsistent with his right to free expression and is of no force and effect pursuant to s.52 of the Canadian Charter of Rights and Freedoms. The

defendant says that non-parodic modes of expression do not carry the same expressive content or rhetorical force as parody, and that restrictions on parodic expressions are restrictions of expressive content, and are not minimally impairing as legislated exemptions for parodic expression are found in trademarks legislation in many other parts of the world.


11. The defendant denies that Canwest suffered any loss of circulation or revenue as a result of the parody. The defendant says that this lawsuit is not intended to compensate Canwest for any losses. This lawsuit is intended to restrict publication and circulation of the Parody, to inflict economic and emotional harm on the defendants for the pro-Palestinian activities listed in paragraphs 10, 11 and 12 of the Statement of Claim, and to generally deter publication of the opinions expressed by the Parody. This purpose and effect of this lawsuit are inimical to the common law and to the Charter of Rights and Freedoms. This lawsuit represents a perversion of civil justice and an abuse of process and is contrary to Rule 19(24) of the Supreme Court Rules.

12. The defendant, Gordon Murray, confirms that the defendant, Mordecai Briemberg had nothing to do with the publication of the Parody.

13. The balance of the facts alleged in the Statement of Claim are denied in their entirety and the plaintiff is put to the strict proof thereof.

14. WHEREFORE the defendant, Gordon Murray, seeks an order that the plaintiff's claim against him be dismissed with costs awarded against the plaintiff, and seeks an order for special costs of a punitive and exhortatory nature to reflect the status of this suit as a Strategic Lawsuit Against Public Participation.

Dated at Vancouver this 14th day of August, 2008



Jason Gratl
Solicitor for the Defendant

This Statement of Defence is filed by the law firm of Gratl & Company with an office and address for service at 660-220 Cambie Street, Vancouver, British Columbia V6B 2M9 Tel: 604-694-1919 Fax: 604-608-1919

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DEFENDANTS

DEMAND FOR DISCOVERY OF DOCUMENTS

TAKE NOTICE that the defendant, Gordon Murray, demands that you make discovery of all documents which are or have been in your possession or control relating to any matter in question in this action within 21 days from the delivery of this demand.

Dated at Vancouver, British Columbia, this 14th day of August, 2008.



Defendant's Solicitor

TO: The Plaintiff

AND TO: Its Solicitor

THIS DEMAND FOR DISCOVERY OF DOCUMENTS is delivered by Gratl & Company, Barristers and Solicitors, whose place of business and address for delivery and service is 660-220 Cambie Street, Vancouver, British Columbia V6B 2M9 (telephone: 604-694-1919 facsimile: 604-608-1919)