

September 9, 2016

WITHOUT PREJUDICE

**SENT VIA ORDINARY MAIL AND
EMAIL TO: charles@lugosi-law.com**

R. Douglas Elliott
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Dr. Charles Lugosi
Lugosi Law Firm
107 Wellington Street
Brantford, ON N3T 2M1

Dear Dr. Lugosi:

Re: Hudspeth and Smitherman v Whatcott et al.
Court File No.: CV-16-558424-00CP
Our File No.: 1602326

Although I have addressed the issue of striking paragraphs in our claim in another letter, I did so in response to our telephone conversation. I have reviewed my email inbox and I do not see any letter from you objecting to our pleading. Would you kindly send it to us once more?

I write in reference to your letter of August 19, a letter that was received by me.

I have addressed your questions regarding clarification of the objectionable portions of the material in a separate letter.

With respect to your specific requests, I respond as follows:

1. Pride Toronto (PT) is a putative class member. PT is not a plaintiff. We are not retained by PT and have no production obligations regarding them. In this context, their control of documents is more analogous to a third party in a normal lawsuit. We cannot be expected to produce documents from hundreds of thousands of class members, most of whom would be impossible to identify. However, we have asked for this specific information from PT. As discussed, PT is going through a difficult phase in its existence. The Executive Director recently resigned, and in the interim the organization is being run by two young and inexperienced co-chairs. I doubt that they have any experience of litigation. I

have reached out to a Board member who is more experienced for help, but she is a volunteer and has a full time job. She also has limited control over the organization. We will also make the request from the City of Toronto. However, we would point out that you are equally at liberty to make that request to the City, and we have no more control over the City of Toronto than you do.

2. Your request is irrelevant to these proceedings and plainly disproportionate. Photographic, film and video images of the Parade would have been created by hundreds of thousands of persons, professional and amateur. We only have two plaintiffs and we will ask them if they have any such images in their possession. You are as entitled to seek these images from third parties as us. However, we will ask PT if they have any images of the Parade. We will also ask PT if they received any complaints of illegal activity at the Parade by anyone other than your client and his co-conspirators. As discussed, the Board of PT has concluded that your client and his group violated the Parade rules, and they will not be knowingly permitted to participate in PT's activities in future. Dealing specifically with the inflammatory suggestion that there may have been hate literature distributed targeting Christians, I can advise you that self-identified Christians (including the undersigned) of various denominations have marched in the Toronto Pride Parade for many years; I am unaware of any such activity, ever.
3. Once again, this information can be obtained by you as readily as it can by us. We do not control the various levels of government. To the best of my knowledge, PT does receive financial assistance from the City of Toronto and from the Province of Ontario. I do not believe that they receive federal funding. We have asked PT for confirmation and details.
4. All literature that is distributed at the Parade is supposed to be submitted to PT for approval in advance. We do not know if PT keeps copies, but we will ask PT. However, we note that your client unlawfully failed to submit his pamphlets for approval, so we cannot ensure that any response would be complete.
5. There is a parade permit issued by the City to PT. There is no permit issued to any individual within the Pride Parade. Anyone can apply to march in the Pride Parade if they agree to abide by its rules. Everyone marching in the Pride Parade is subject to the same rules that applied to your client and were supplied to him when he applied to participate under a false name.

6. Members of the Liberal Party of Canada and the Liberal Party of Ontario marched in the Pride Parade. So did members of the Progressive Conservative Party of Ontario with their leader Patrick Brown. A number of other political parties marched, as did the Mayor who is a former leader of the Progressive Conservative party. PT allows any political party that commits to supporting the aims of PT to march without discrimination. There is no special relationship between PT and the Liberals.
7. This question is irrelevant. Moreover, we do not act for the Toronto Police and they are not under our control. If your client believes the law was violated, he is entitled to file a report with the Toronto Police, just like any other person. We have not impeded him from doing so.
8. We do not understand this question. No one is supposed to be in the Pride Parade unless they have agreed to the Rules, or the organization with which they are marching with has agreed to the Rules on their behalf.
9. There is no “SLAPP” law *per se* in Ontario. The Ontario legislature amended the *Rules of Civil Procedure* and the *Libel and Slander Act* to facilitate weeding out frivolous lawsuits that unduly restrict freedom of speech. The Rules and the *Libel and Slander Act* apply to this lawsuit. You are paid to advise your client, and we are paid to advise our client. Your client has already been to the Supreme Court on the issue of what constitutes prohibited hate speech against the LGBT community. In a unanimous ruling, that Court has defined the limits that apply to his anti-gay expression. He has chosen to characterize that decision as “rubbish”, a decision made by “a bunch of socialists” and one that he intends to ignore. Accordingly, our lawsuit is neither frivolous nor an attempt to restrain legitimate free speech. Rather, your client is a self-confessed scofflaw. Our suit is not aimed at stifling free speech, but rather at protecting it. LGBT persons are exposed to hate speech every day, and in many spaces. The one space, once a year, where they are meant to be free to express themselves and to be free from the threat of anti-gay hate speech is at the Pride Parade. As the Supreme Court noted, hate speech tends to intimidate marginalized communities and thereby restrict their freedom of speech. Your client violated our class members’ freedom of speech in a very profound and deceitful manner. Unfortunately, your client appears to believe that he is above the law, not to mention the Ninth Commandment.

With respect, a certification hearing is not a trial. All that is required is “some evidence” on certain matters. Legal issues are subject to the same test as exists under Rule 21. The underlying merits are to be left to a summary judgment motion or trial.

We will endeavour to cooperate in providing what is readily available to us, but we are not going to undertake an unduly burdensome investigation. Your client is free to conduct whatever investigation he sees fit to undertake.

Yours very truly,

CAMBRIDGE LLP

Per:

A handwritten signature in black ink, appearing to read 'R. Douglas Elliott', written in a cursive style.

R. DOUGLAS ELLIOTT LSM

Signed electronically on the writer's behalf

cc: Stefan Jetchick