

CV 16 558424 0007

Court File No. CV

**ONTARIO
SUPERIOR COURT OF JUSTICE**



CHRISTOPHER HUDSPETH and GEORGE SMITHERMAN

Plaintiffs

and

WILLIAM WHATCOTT, JONI WHATCOTT, ADAM ZOMBIE, BRIAN ZOMBIE, CHRISTOPHER ZOMBIE, DOUGLAS ZOMBIE, EDWARD ZOMBIE, FRANK ZOMBIE, XYZ CORPORATION, JANE DOES and JOHN DOES

Defendants

PROCEEDING UNDER THE CLASS PROCEEDING ACT, 1992

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date August 11, 2016 Issued by 
Local Registrar

Address of
court office: 393 University Avenue
Toronto, Ontario
M5G 1E6

TO: William Whatcott
C/o Bill Whatcott
3181 Kitchener St
Vancouver, BC, Canada
V5K 3E9

CLAIM

1. The plaintiffs Christopher Hudspeth (“Hudspeth”) and George Smitherman (“Smitherman”) claim:

- (a) An order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), certifying this action as a class proceeding and appointing Hudspeth as representative plaintiff for the two classes, and appointing Smitherman as representative plaintiff for the subclass described below;
- (b) An interim and permanent injunction, or an interim or permanent order in the nature of an injunction prohibiting and restraining the defendants and anyone acting in concert with the defendants from:
 - (i) participating in future Pride Parades in Canada or attending within a 3 block radius of future Pride Parades in Canada, or in the alternative;
 - (ii) participating in future Toronto Pride Parades and or attending within a 3 block radius of Toronto Pride Parades;
- (c) An interim and a permanent mandatory injunction, or an order pursuant to the CPA in the nature of an interim and mandatory injunction restraining the defendants from further distribution of the pamphlets distributed by them at the Toronto Pride Parade (hereinafter described as the “offending literature”) by any means whatsoever, including an order removing them

from the website apparently operated by the defendant William Whatcott (“Whatcott”) and known as www.freenorthamerica.ca;

- (d) An Order compelling the putative class member Pride Toronto Inc. (“Pride Toronto”) to produce to the Plaintiffs, the names and last known addresses of the unnamed defendants, and any other information regarding the defendants in their possession;
- (e) General and aggravated damages for civil conspiracy for the Marcher Class (defined below) in the sum of \$50,000,000;
- (f) General and aggravated damages for intentional infliction of mental suffering for the Recipient Class (defined below) in the sum of \$18,000,000;
- (g) General and aggravated damages for defamation in the amount of \$10,000,000;
- (h) Punitive and exemplary damages in the sum of \$25,000,000;
- (i) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

- (l) such further and other Relief as to this Honourable Court may seem just.

THE PARTIES

2. The Plaintiff, Hudspeth, is a gay man residing in the City of Toronto, in the province of Ontario. Hudspeth has been a long-time activist for the rights of Toronto's lesbian, gay, bisexual, trans, queer, Two Spirit and intersex communities ("LGTBTQ2SI"). He was the executor of the estate of George Hislop, Toronto's most renowned pioneer gay activist. Hudspeth has participated in Pride Parades for many years. Hudspeth marched in the 2016 Pride Parade, but did not do so as part of the contingent identified with the Liberal party.

3. The plaintiff, Smitherman, is a gay man and father of two residing in the City of Toronto in the Province of Ontario. He has participated in every Toronto Pride Parade since 1986. Smitherman has been active in the Liberal Party both federally and provincially all of his adult life. He worked as a party organizer and an assistant to various elected officials before running for office himself. In 1999 he became the first openly gay member of the provincial legislature when he was elected as the Member for Toronto Centre-Rosedale. On October 23, 2003, Smitherman was named Minister of Health and Long Term Care in the Liberal Government, the first openly gay provincial cabinet minister. He was later granted the title of Deputy Premier. On January 5, 2010 he resigned as an MLA to run for mayor of Toronto coming second to eventual winner Rob Ford. He is the best known gay male Liberal in Toronto. He marched in the 2016 Toronto Pride Parade as part of the Grand Marshal's party.

4. The defendant, William Whatcott ("Whatcott"), is a Canadian citizen and resident of Western Canada. Whatcott was and is, at all relevant times, an administrator of the website www.freenorthamerica.ca and the leader of an organization he calls "Christian Truth Activists." He is one of the members of the so-called 'Gay Zombies Cannabis Consumers Association' (hereinafter referred to as "Gay Zombies"). Whatcott once resided in Saskatchewan. According to his Facebook page, he resides in Vancouver, British Columbia, which is home to his father William Whatcott Senior. His website shows him as based in Edmonton, Alberta. His phone number uses a Saskatchewan area code.

5. The defendant, Joni Whatcott ("Ms. Whatcott") is the wife of Whatcott, having married him some time prior to 2014. She is a native of the Philippines. Ms. Whatcott was also a member of the Gay Zombies. She is identified as the female Zombie who marched in the Toronto Pride Parade 2016 wearing a green body suit and rainbow coloured boxer shorts.

6. The defendant Adam Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a green body suit with a rainbow coloured 'tutu,' rainbow coloured flag around his neck and grey and black running shoes. Adam Zombie may be one and the same as Whatcott.

7. The defendant Brian Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a green body suit, a rainbow coloured mask, bow tie and briefs and white running shoes.

8. The defendant Christopher Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a green body suit and a rainbow coloured hat, bow tie and boxers, with black sunglasses.

9. The defendant Edward Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a green bodysuit, a rainbow coloured 'tutu', black goggles and black running shoes.

10. The defendant Frank Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a green bodysuit and rainbow coloured mask, bowtie and briefs and black running shoes.

11. The defendant Douglas Zombie is identified as a member of the Gay Zombies who marched at the Toronto Pride Parade 2016 wearing a rainbow coloured hat, a green tee-shirt, blue jeans, glasses and black shoes.

12. The defendant XYZ Corporation is a corporation that provided funding or other types of assistance to Whatcott and/or the Gay Zombies.

13. The defendants Jane Does and John Does are individuals who provided funding or other types of assistance to Whatcott and/or the Gay Zombies, knowing they would be engaging in the kind of tortious conduct complained of in this action.

THE CLASSES

14. The Plaintiffs bring this action under the *Class Proceedings Act, 1992* on their own behalf and on behalf of:

- (a) **Class 1- “The Marchers”:**Pride Toronto, all persons who contracted with Pride Toronto to participate in the 2016 Toronto Pride Parade, and all persons who marched as part of groups that contracted with Pride Toronto to take part in the 2016 Toronto Pride Parade, save and except for the defendants and any persons who are members of groups who contracted to march, but were participating in some other capacity, such as security guards and police officers. The estimated size of this class is approximately 500,000 people.
- (b) **Class 2 – “The Recipients”:**All persons present, whether as participants or spectators, at the Toronto Pride Parade 2016 that took place on July 3, 2016 who received or otherwise observed a pamphlet described by Whatcott as a “Zombie Safe Sex package”, headlined with the phrase “Gay Zombies want you to practice safe sex!”, a pamphlet distributed by the Gay Zombies during the 2016 Toronto Pride Parade (the pamphlet is hereinafter described as the “offensive literature”). The estimated size of this class is approximately 9,000 people.

(c) **The Liberal Subclass:**

This subclass consists of the following class members:

- (i) Justin Trudeau and marchers who were at the time of the 2016 Toronto Pride Parade members of the Liberal Party of Ontario and/or the Liberal Party of Canada;

- (ii) Marchers who previously held elected office as Liberals;
- (iii) Persons such as those who marched in the 2016 Toronto Pride Parade who self-identified as Liberals by marching with the Liberal contingent at the Toronto Pride Parade 2016.

The estimated size of the subclass is 500 people.

HISTORICAL IMPORTANCE OF TORONTO PRIDE PARADE

Before Pierre Elliott Trudeau

15. Canada's LGBTQ2SI communities have been historically the target of discrimination, ranging from hate speech to violence and murder. Although conditions have improved in Canada, hate crimes based on sexual orientation are the second most frequent in Canada and the most likely to involve acts of personal violence.

16. Canada's indigenous people accepted gender and sexual diversity and considered "two spirit" persons a blessing to their communities.

17. The arrival of Europeans in the 16th century introduced Christianity to North America both through missionaries, social attitudes, and laws that reflected traditional Christian morality, including sexual morality.

18. Canada was colonized in part by the French, who endorsed the Roman Catholic Church as the official state church. Canada was also colonized by Great Britain, with the Protestant Church of England as that kingdom's established Church or official state religion.

19. Buggery, as it was then called, was also a felony under English law in addition to being a sin in the eyes of the Church of England. The crime of buggery endures as section 159 of the Criminal Code, although it was struck down as unconstitutional by this province's Court of Appeal in 1995.

20. European colonizers engaged in a project of cultural genocide against indigenous people, including killing two spirit people or suppressing acceptance of their sexual and gender variant behaviour.

21. At Confederation, Canada enacted its own criminal code and continued to prohibit buggery as a crime. Members of the LGBTQ2SI communities were unfairly characterized as sinners, criminal and diseased, and as threats to society in general and to children in particular. From Confederation to 1969, Canada pursued an increasingly harsh and repressive social agenda aimed at systematically suppressing the LGBTQ2SI population.

22. This policy of state sponsored persecution reached a zenith with the Supreme Court's 1967 ruling in *Klippert v The Queen*. A divided court held that it was legally acceptable to designate a gay man who had consensual sex with other adult men as a dangerous sexual psychopath, and to sentence him to an indeterminate period of preventive detention.

Trudeau, Decriminalization, Stonewall: Progress and Backlash

23. The *Klippert* case provoked a scandal that prompted then Justice Minister Pierre Elliott Trudeau to make his famous remark that "*the state has no place in the bedroom of*

the nation." Pierre Trudeau initiated a significant reform that was completed after he had become Prime Minister in 1969, creating an exception to the buggery law for two consenting adults who were married to each other or who were both over 21 years of age, and who engaged in the act in private. That definition of a crime subject to a broad exception remains in place today, although the age of consent for this sexual act has been officially if non-constitutionally lowered to 18.

24. 1969 was also the year that events took place in the USA that have achieved international significance in the modern social movement struggle for LGBTQ2SI rights. A series of spontaneous violent demonstrations by members of the LGBTQ2SI community in New York City began in the early hours of June 28, 1969. The demonstrations were provoked by the latest in a series of corrupt and repressive police raids on a popular gay bar called the Stonewall Inn. These events have come to be known as the Stonewall Riots. Many historians and others have come to view these demonstrations as a turning point in what was known in those days as the "gay liberation movement".

25. On June 28, 1970, the New York LGBTQ2SI community organized Christopher Street Liberation Day to recognize the first anniversary of the Stonewall Riots. Parades were also held in Chicago and Los Angeles. In 1971, the commemorative parades took on an international aspect with the American events being joined by parades in London, Paris, West Berlin (as it then was) and Stockholm.

26. Commemorative events were held in Toronto as well, such as a Gay Picnic at Hanlan's Point. However, by 1980 Toronto was no longer holding Pride events.

27. The LGBTQ2SI community in Toronto was increasingly experiencing a backlash in the 1970's and into the early 1980's. These negative events included:

- (a) The high profile firing in 1975 of racing steward John Damien for being gay, a case that underlined that lack of protection for gays and lesbian under the Ontario Human Rights Code, a reform that did not take place until after the *Charter of Rights and Freedoms* was enacted;
- (b) The high profile murder of a 12 year old shoeshine boy by a sadistic sexual psychopath, that led to calls for a "clean up" of Yonge Street and renewed conflation of homosexuality with pedophilia and criminality;
- (c) The anti-gay campaigns of fundamentalist Christian Rev. Ken Campbell and his group Renaissance Canada, who invited anti-gay activist Anita Bryant to Canada in 1978 to promote her "Save Our Children" campaign and its thesis that homosexuals recruited vulnerable children to the "homosexual lifestyle."
- (d) A January 1978 raid on the offices of the LGBTQ2SI newspaper, "The Body Politic", because of an article by Gerald Hannon entitled "Men loving boys loving men"; the subscription list was seized, and charges under section 159 and 164 of the Criminal Code were laid that resulted in costly trials and appeals that went on for 5 years but ended in acquittals;
- (e) Glad Day Bookstore, today the world's oldest surviving LGBTQ2SI bookstore, was repeatedly harassed by police and Customs Canada,

including a high profile and unsuccessful prosecution for obscenity for selling the book "The Joy of Gay Sex";

- (f) Following the emergence of the AIDS epidemic, AIDS was characterized as the "gay plague" and God's punishment on the "homosexual lifestyle" by prominent homophobes such as Stew Newton and his group Positive Parents of Canada; gay men were labelled as a threat to the health and safety of the general public;
- (g) The Barracks bath house was raided and prominent local gay activist George Hislop was charged as a keeper of a common bawdy house.

28. February 5, 1981, Toronto experienced its own turning point in LGBTQ2SI history. That night in a police action dubbed "Operation Soap," hundreds of police officers descended on three large Toronto gay bath houses. The operation resulted in the largest peacetime arrests to that point in Toronto's history. It was also an initiative marked by humiliating and homophobic treatment of detainees, and deliberate destructive vandalism by police officers. One bath house was so severely damaged by police officers armed with crow bars and other instruments that it was forced to close permanently.

29. The official police excuse for the raid that was given at the time was that the police had received reports of acts of prostitution being committed, and that drug dealers were using the premises. In fact, despite the many persons arrested, the police laid no charges related to either prostitution or drugs. All of the persons who were charged were charged with being an inmate of a common bawdy house, also known as a "found-in", or

being a keeper of a common bawdy house. Although a few persons pleaded guilty, the vast majority of the charges resulted in acquittals.

30. This massive act of police oppression provoked an immediate series of large spontaneous demonstrations against the police. The police action galvanized Toronto's LGBTQ2SI community.

31. As a direct consequence, Toronto began holding an annual Pride Parade beginning in June of 1981. In the early years, the events had no official approval and consisted of a small festival and a small and unauthorized protest march in the streets of Toronto. There were no rules regarding participation. Homophobic persons often protested the event, insulting and spitting on participants. Bomb threats occurred.

32. Beginning in 1984, the event moved to Cawthra Square, since renamed Barbara Hall Square, and has been centred on Church Street since that time. The section of Church Street near Cawthra Square has become known as the Church Street Village, home to Canada's largest and most vibrant LGBTQ2SI community.

33. Pride Day and the Pride Parade grew and flourished. They were increasingly complex and costly to mount as well. For many years, the Pride Parade has been organized by a not for profit corporation known as Pride Toronto Inc. (hereinafter Pride Toronto).

34. Thanks to the leadership of Councillor Jack Layton, in 1991 Pride Day was finally officially recognized by Toronto City Council.

35. By 1993, the Parade was attracting over 100,000 persons and had become a landmark event for the LGBTQ2SI community in Toronto. It was the one day every year, and the one place every year, where one could be out, proud and safe as a member of the LGBTQ2SI community in Toronto.

36. In 1995, Barbara Hall became the first sitting Mayor of Toronto to march in the Pride Parade.

37. In 1998, Mayor Mel Lastman declared Pride Week for the first time and participated in the Parade on the back of a City fire truck. The Parade drew larger and larger crowds.

Pride Toronto in Crisis

38. In 2009, prominent Christian Conservative opponent of LGBTQ2SI rights, Dr. Charles McVety, denounced federal government financial support for what he called the "sex parade." In doing so, he improperly conflated homosexuality with pedophilia. As a result of lobbying by McVety and like-minded persons, the Conservative Harper Government cancelled a \$400,000 annual grant to Pride Toronto under the Marquee Tourism program, despite a favourable review by the program itself. A Conservative MP made it clear that this was intended to reassure what he called the "pro-life and pro-family community", namely anti-gay Christian fundamentalists.

39. The impact of this funding cut caused a severe financial crisis for Pride Toronto that threatened its continued existence.

40. Pride's problems were compounded when Rob Ford was elected mayor of Toronto in 2010. Ford was a social conservative whose antipathy to Pride Toronto was manifested in his refusal to participate in any Pride Toronto activities including the Pride Parade, his refusal to participate in raising the rainbow flag at City Hall and his refusal to personally read Council's proclamation of Pride Week as his predecessors had done.

41. Pride Toronto was also accused of violating the City of Toronto's human rights policy by permitting a group to march called "Queers against Israeli Apartheid" ("Quaia"). The debate about Quaia and its participation in the Pride Parade caused great controversy and political divisions both within the LGBTQ2SI communities and externally. Critics of Quaia mounted a sustained campaign against Pride Toronto to cripple it financially by persuading the City to withdraw its financial support and lobbying major sponsors such as TD Bank to end their financial assistance.

42. In addition to these external threats, Pride Toronto's leadership became embroiled in controversies with the trans community, the black community and other groups within the LGBTQ2SI communities. The then Executive Director became a lightning rod for controversy and the Board of Directors lost community support

Community Advisory Panel: Stability and New Rules

43. As a result of these controversies, the Board of Directors agreed to the creation of a group of community leaders or "elders" who would consult with stakeholders, investigate the issues and provide advice for the new directions for Pride Toronto to ensure its survival as a vital LGBTQ2SI institution. The Community Advisory Panel ("CAP") was chaired by Rev. Dr. Brent Hawkes.

44. In 2011, CAP delivered its report including 133 recommendations for change to revitalize Pride Toronto, restore community harmony and ensure Pride's survival. In particular, CAP recommended an enduring solution to the issue of compliance with City's anti-discrimination policy that Pride Toronto embraced. In the result, the efforts by critics to end City funding for Pride Toronto foundered. The CAP Report continues to guide Pride Toronto's strategic plan.

45. Central to the new system for the Pride Parade that was established as foundational principles was a new set of clear, enforceable and binding rules for all participants that included a requirement that all participants comply with the City's anti-discrimination policy.

46. A central principle is that the parade is to operate by Pride Toronto for the benefit of the diverse LGBT2SI community. It is not a public forum in which everyone has the right to participate and deliver whatever message they choose. Pride Toronto itself has a right to freedom of expression, and to control access to the event. While the Parade has traditionally placed a high value on diversity and freedom of expression, and welcomes people with widely diverging political and religious views for example, Pride Toronto has a right to ensure that the messages delivered by participants are in harmony with the overall message of Pride Toronto.

47. In order to give effect to this principle, new rules were promulgated that were very clear. Pride Toronto reserved the right to refuse access to the parade to anyone. All participants had to agree to identify themselves and provide an address for service. The names of proposed participants are published well in advance of the Parade, and there

is a mechanism for any person to object to a proposed participant on the grounds that they are unlikely to comply with the rules based on their past conduct. In addition, this mechanism may be used to complain about conduct by participants that in fact violated the rules. All decisions are made by independent arbitrators.

48. The new system has worked well and has helped restore harmony and stability to Pride Toronto.

49. The election of John Tory as Mayor of Toronto and the election of Justin Trudeau as Prime Minister of Canada were both positive developments for Pride Toronto. Both men are straight, but they had enthusiastically marched in the Toronto Pride Parade before being elected to their respective offices as proud allies of the LGBTQ2SI communities.

Whatcott and his Homophobic “Jihad”

50. Whatcott was born in Toronto on October 16, 1967. He grew up in a series of foster homes and has claimed to have been abused in those homes.

51. Whatcott has also reported living on the street beginning at age 14 and becoming a drug addict. He has also reported that he provided sexual services to a male drug dealer in exchange for drugs, and that he was raped.

52. Whatcott has reported that he found God at the age of 18. He is now a well-known social conservative Christian, propounding an American-style fundamentalist belief system that places strong emphasis on opposition to abortion and homosexuality.

His reviews do not reflect mainstream Christianity in Canada. He has compared his campaigning in one Calgary riding to a jihad.

53. In 1991, Whatcott graduated from Humber College with a diploma in practical nursing. Efforts to expel him from his profession have so far been unsuccessful.

54. Whatcott later moved to Saskatchewan where he has spent most of his adult life.

55. Whatcott's campaigning has mainly consisted of distributing pamphlets conveying his offensive anti-gay opinions. His preferred technique initially was to hand out the pamphlets on university campuses, or to stuff them in residential mailboxes or doors. In 2015 he told the Huffington Post that he had distributed over 500,000 pamphlets between 2002 to 2013.

56. In 2000 and 2001, Whatcott distributed four different offensively anti-gay pamphlets in Regina and Saskatoon. He was prosecuted by the Saskatchewan Human Rights Commission with violating the hate speech provisions of the Saskatchewan Human Rights Act. He was found guilty, ordered to pay compensation to the four complainants and ordered to refrain from distributing the flyers or any similar material promoting hatred because of sexual orientation.

57. The case was eventually heard by the Supreme Court of Canada. In a unanimous ruling released in 2013, the Supreme Court found that the tribunal had erred in respect of two of the pamphlets, but upheld the ruling and damages in respect of two of the pamphlets. The Court also upheld the order restraining future distribution of the same or similar pamphlets.

58. According to the Huffington Post, as soon as the Supreme Court's ruling was rendered, Whatcott announced that he would ignore the ruling that he violated human rights. He claimed that "God has called me to speak on these moral issues." In the same interview, he referred to the justices as "socialists"... "who've butchered our law, or our tradition and free speech." He went on to say, according to the same article, "I'm not going to pay a lot of attention to it. I view this ruling as rubbish and I think that our seven Supreme Court justices are a disgrace."

59. True to his word, In 2014 Whatcott deceitfully entered the Vancouver Pride Parade as the Calgary Church of the Flying Spaghetti Monster. He and his supporters handed out 2,500 hate speech pamphlets disguised as free condoms. Whatcott has bragged about his dishonest and unlawful behaviour, justifying it as God's work.

The Unlawful Acts of the Defendants at the 2016 Toronto Pride Parade

60. Pride Toronto publicly announced that 2016 would be an historic year for them. For the first time, the celebration would be officially extended to an entire month to be known as Pride Month. For the first time, a sitting Prime Minister of Canada would join Toronto Mayor John Tory and openly lesbian Ontario Premier Kathleen Wynne in marching in the Pride Parade. Prime Minister Justin Trudeau marked the milestone in advance by raising the rainbow flag on Parliament Hill for the first time.

61. Due to the unprecedented presence of the Prime Minister, the Liberal Premier Kathleen Wynne and Mayor John Tory, they were joined by a significant number of Liberal cabinet ministers at the federal and provincial level, including the Attorney General of Canada. There were also several Liberal Members of Parliament and

Members of the Legislative Assembly, including openly gay Member of Parliament Randy Boissonault. There was a Liberal float, and a contingent of Liberal supporters who marched dressed in red, the colour associated with the Liberal party. They had been encouraged by the Liberal party to dress in red in order to make them recognizable as Liberals in the Parade.

62. Whatcott had learned from his two prior experiences that distributing his pamphlets during Pride Parades was far more efficient than doing so in his usual manner. Instead of hundreds of pamphlets, he was able to quickly distribute thousands of pamphlets. The Toronto Parade with its million plus attendees presented a golden opportunity to attack Canada's largest LGBTQ2SI community at its very heart and at the same time to defame the Liberals, and especially Prime Minister Trudeau, whom Whatcott despises for their support of the LGBTQ2SI community.

63. With the financial and other assistance of his co-defendants, Whatcott conceived and executed a plan to deceitfully gain access to the Parade in order to distribute pamphlets containing hate speech and defamatory statements regarding the Prime Minister and the other Liberals marching in the Parade.

64. Whatcott falsely posed as "Robert Clinton" in his application to Pride Toronto, knowing that if he used his real name he would be barred from participation. Rather than disclosing that his group was the infamous "Christian Truth Activists", he falsely represented that they were the "Gay Zombies Cannabis Consumers Association".

65. The \$100 fee was paid to Pride Toronto by means of Paypal in order to disguise the true source of the funds.

66. In order to gain registration to participate in the Toronto Pride Parade, the Gay Zombies fraudulently misrepresented themselves as supporters of the LGBTQ2SI community and of the mission and theme of the Pride Parade.

67. By registering to take part in the Toronto Pride Parade, the defendants deceitfully and in bad faith entered into a contract with Pride Toronto and deceitfully and in bad faith undertook to abide by the terms and conditions of Pride Toronto, which include an agreement to abide by the City of Toronto's anti-discrimination policy and to refrain from presenting any image or messages that would promote hatred, degradation or negative stereotyping of any person or groups.

68. In addition, all registrants were required to submit all promotional material they intended to distribute related to the Pride Parade to Pride Toronto in advance. In breach of their contractual obligation and in bad faith, the defendants deceitfully withheld the offensive literature, knowing it would never be approved by Pride Toronto.

69. On July 3, 2016 Whatcott and the other Gay Zombies attended the Toronto Pride Parade. They wore green costumes that covered their faces and obscured their identities.

70. The Gay Zombies distributed over 3,000 pieces of the offensive literature. Since each pamphlet would be viewed by more than one person, the total number of people estimated to have read the offensive literature is approximately 9,000. In deliberate breach of their contract, the defendants communicated hate speech directed at members of the LGBTQ2SI community and defamed the Liberals who were marching in the parade with them.

71. The offensive literature showed graphic images of diseases which the defendants alleged are associated with the LGBTQ2SI community, and particularly gay men, including oral and anal genital warts and AIDS.

72. The offensive literature made statements including; "...homosexuality is incompatible with human nature. Disease, death and confusion are the sad and sordid realities of the homosexual lifestyle." The offensive literature exposed people to hatred and vilification based on their sexual orientation, contrary to the Criminal Code of Canada, the City of Toronto anti-discrimination policy, and the contractually binding rules of the Pride Parade.

73. In addition, the offensive literature contained defamatory statements about the Liberal subclass, expressly naming Prime Minister Justin Trudeau and Liberal Premier Kathleen Wynne. As he has often done in the past, Whatcott conflated homosexuality with pedophilia. He falsely accused Prime Minister Trudeau, Premier Wynne and other members of the Liberal subclass of supporting and actively participating in child sexual abuse.

74. Whatcott himself has called the statements in the offensive literature a "challenge" to the Supreme Court of Canada's decision against him.

75. Following the parade, the defendant Whatcott continued to promulgate hateful, derogatory and deceitful messages and pamphlets on a website that he manages on the World Wide Web known as www.freenorthamerica.ca. He also arranged for a link to his site and the pamphlets to be placed in an article posted on LifeSite news, a website operated by a fundamentalist Christian organization called Campaign Life Coalition.

TORT OF CIVIL CONSPIRACY

Class 1: The Marchers

76. The defendants committed unlawful acts directed at the Marcher class, which unlawful acts the defendants knew, or ought to have known, in the circumstances would likely cause injury to the class and, as such, the defendants are each jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the acts was to injure the Marcher class and the defendants are jointly and severally liable for the tort of civil conspiracy.

Conspire to Injure

77. The defendants conspired to injure the Marcher class.

78. All the defendants led by Whatcott through unlawful means acted in concert, by agreement or with a common design to injure, embarrass, intimidate and promote hatred against the plaintiffs and the Marcher class.

79. The defendants' conduct was unlawful in that, *inter alia*, they breached their Pride Parade participation contract by distributing hateful messages in direct contravention of the Toronto Pride terms, the City of Toronto anti-discrimination policy and hate speech provisions of the Criminal Code.

80. The defendants fraudulently misrepresented themselves as supporters of the LGBTQ2SI community in order to gain registration as participants of the Toronto Pride Parade, but later distributed the offensive literature containing derogatory and hateful

statements directed against the Marchers. In direct breach of their contract with Pride Toronto, the defendants intentionally failed to submit samples of the offensive literature to Pride Toronto upon registration.

81. By agreeing to provide funds for, assemble and distribute the offensive literature that contained falsehoods and hateful messages, which included, associating the plaintiffs and members of the Marcher class with diseases like AIDS, the defendants collectively agreed to injure the Marcher class.

82. The defendants knew or ought to have known that their conduct was unlawful and the contents of the offensive literature would cause harm and did cause harm to the Marcher class.

TORT OF INTENTIONAL INFLICTION OF MENTAL DISTRESS

Class 2: The Recipients

83. The Recipient class pleads that the defendants took part in flagrant or outrageous conduct that was calculated to produce harm; resulting in provable mental illness or distress.

84. The funding, assembly and distribution of the offensive literature containing hateful messages against Recipients during the Pride Parade, a forum of celebration of the identity and achievements of the LGBT community, was extremely offensive and outrageous. The conduct amounted to reckless and wanton disregard for the health of the Recipients. In this context, the defendants' behaviour amounted to flagrant and outrageous behaviour that was intended to harm the Recipient class.

85. The defendants desired to produce harm to the Recipients, or in the alternative, the consequences were known by the defendants to be substantially certain to follow.

86. The defendants knew, or ought to have known, that the Recipients would be harmed by the defendants' hateful messages contained in the offensive literature. The offensive literature showed a derogatory photo of a same-sex couple, associated homosexuality with diseases like AIDS, HPV and genital warts, and conflated homosexuality with pedophilia. Further, the offensive literature stated that homosexuality is incompatible with human nature and that "disease, death and confusion are the sad and sordid realities of the homosexual lifestyle". The defendants knew, or ought to have known, that these messages would cause mental distress to the Recipients.

87. In fact, the defendants, in direct breach of their contract with Toronto Pride, intentionally concealed the pamphlets from the organizers of Pride Toronto prior to registration because they knew or ought to have known that the messages contained therein would be harmful to the recipients.

DEFAMATION

Liberal Subclass

88. On or about July 3, 2016, the defendants assembled and distributed over 3,000 pieces of offensive literature at the Pride Toronto Parade. The offensive literature was widely distributed among participants and spectators of the Parade.

89. Marchers associated with or publicly identifying themselves as members of a wide variety of political parties participated in the Pride Parade. However, the defendants

chose to restrict their attacks to Prime Minister Trudeau, Premier Wynne and the other Liberals who marched.

90. The offensive literature contained a number of defamatory statements that were calculated to cause damage to members of the Liberal subclass.

91. Specifically, the defendants falsely and maliciously published the following defamatory words:

“Justin (Trudeau) is a chronic attendee of homosexual pride parades and is the leader of a party with a long and sordid history of homosexual activism and both enabling and actively participating in child sexual abuse.”

“Former Liberal Defense Minister Bill Graham sodomized a 15 year old male prostitute by the name of Lawrence Metherel.”

“Lesbian Liberal Premier Kathleen and her buddy (who sat beside her at the Toronto homosexual pride parade) former Deputy Education Minister, now convicted child pornographer with an incest fetish, Benjamin Levin. Notwithstanding Liberal denials, Benjamin’s paw prints are all over Ontario’s perverted sex education curriculum telling impressionable 6 year olds they can switch their gender and 13 year olds they can make decisions when to have anal sex. Wynne is ramming this perverted propaganda down parent’s and children’s throats even though thousands have taken to the streets protesting it.”

92. The plaintiffs rely on the natural and ordinary meaning of the words which are *prima facie* defamatory and false.

93. In addition, the pamphlets contained images that by innuendo tend to lead the reader to believe that Justin Trudeau has, will, or could contract oral warts from engaging in public acts of oral sex during the Pride Parade.

94. The plaintiffs state that these defamatory and libellous statements go far beyond fair comment and are malicious and designed specifically to impugn the character of the members of the Liberal subclass.

95. The plaintiffs state that the defamatory words have brought members of the subclass into ridicule and that they have suffered damage as a result.

96. The defendants acted with malice when publishing the defamatory statements, which entitles the subclass members to punitive and aggravated damages.

STATUTES

97. The plaintiffs plead and rely upon the following statutes and regulations:

- (a) The *Class Proceedings Act 1992*, S.O. 1992 c. 6
- (b) The *Courts of Justice Act*, R.S.O. 1990, c C.43.

SERVICE OUTSIDE ONTARIO

98. Service of process outside of Ontario upon the defendant is made as the proceeding against the Defendant consists of claims:

- (a) In respect of a contract where, the contract was made in Ontario (Rule 17.02(f); and

- (b) In respect of a tort committed in Ontario (Rule 17.02(g), and;
- (c) for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario;

99. The plaintiff proposes that this action be tried in the City of Toronto.

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Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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