

September 9, 2016

WITHOUT PREJUDICE

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

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Dr. Charles Lugosi
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Dear Dr. Lugosi:

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

As discussed during our recent conversation, we wish to identify matters that can be resolved on consent in advance of next week's case management meeting.

As discussed, our view is that the injunction regarding participation in future parades is not urgent as the parade season has ended. I understand that the local police addressed the issues that arose at Quebec Pride to the satisfaction of the organizers. To my knowledge, only one man showed up. I assume that was Mr. Jetchick and not your client.

Ordinarily in class proceedings, the certification motion should proceed first. However, in our view two preliminary matters need to be addressed.

Ceasing Distribution of the Offensive Literature on an Interim Basis

It is a matter of some urgency that what has been described as the offensive literature cease to be distributed on the internet. Your client has not voluntarily taken down the PDF versions of the offensive literature. There is a link on the fundamentalist website LifeSite News to these pamphlets, and this site attracts a significant amount of traffic.

We will be arguing that the offensive literature constitutes hate speech and is defamatory.

Hate speech as a legally justified limit on free speech was identified by the Supreme Court of Canada in the landmark case involving your client and his anti-gay tracts, *Whatcott v Saskatchewan*. Your client has publicly stated that his impugned actions were intended to be a protest against that ruling, so it is not surprising that the offensive literature clearly offends the Supreme Court's guidelines.

As indicated in that ruling, the pamphlets must be taken as a whole and the fact that they contain inoffensive portions such as Bible quotes does not save them.

In particular, we draw your attention to the following:

1. On the first page, the first two boxes and accompanying photographs falsely suggest that all gay men are disease carriers and a threat to the health of others. The pamphlet goes on to associate homosexuality with disease and death.
2. On the same page, the pamphlet asserts that gays and lesbians are sub-humans by saying that "homosexuality is incompatible with human nature."
3. On the second page, the theme of gay men as disease carriers and threats to public health continue with the image of the oral venereal warts and the assertions in the first paragraph about public oral sex.
4. The first paragraph of the second page conflates homosexuality with pedophilia, something your client has repeatedly done in the past; he equates participating in pride parades with "enabling and actively participating in child sexual abuse."
5. The same paragraph referenced in 4 above also asserts that gay men are criminals, by saying that oral sex is performed in public at parades. This is linked to the theme of disease.
6. The paragraph dealing with Kathleen Wynne and Benjamin Levin again conflates pedophilia with homosexuality. Benjamin Levin is a convicted child pornographer, not a gay man. This paragraph asserts that the LGBT community is bent on promoting pedophilia in schools, another recurring theme of your client. This paragraph defames Ms. Wynne by innuendo, falsely implying that she knew of or participated in the crimes committed by Levin. Levin was not at the parade this year or last year for certain, as he has been incarcerated since early 2015. We know of no evidence that Levin has ever attended a Pride parade. However, if he had, that would establish nothing. The fact that your client attended this year's Pride Parade does not mean that all participants share the same sexual interests as your client, whatever those might be, or that the other participants were his "buddies."
7. The fourth paragraph from the bottom openly asserts that the LGBT community is a threat to society, pursuing an agenda of "anarchy" and "oppression. It concludes by noting that "no good will come from it."

Regarding defamation, the second page contains statements that are clearly defamatory of our subclass of Liberals, and in particular of class members Justin Trudeau and Kathleen Wynne. Without limiting the generality of the forgoing,

- a. The images at the top of the second page, when read with the paragraph that follows, falsely infer that Justin Trudeau has been engaging in public acts of oral sex on other men at pride parades, that he has contracted oral venereal warts as a result and that he is spreading them to others.
- b. The first paragraph directly asserts that Mr. Trudeau (a father), Ms. Wynne (a mother) and the other Liberals enable and actively participate in child sexual abuse.
- c. The third paragraph falsely asserts that Ms. Wynne attended the Pride Parade with convicted child pornographer Benjamin Levin. It falsely asserts that they are “buddies.” It also defames Ms. Wynne by asserting that she had Levin’s assistance in pursuing a goal of promoting sexual behavior by children in Ontario’s schools. This assertion conflates lesbians with pedophiles and defames Ms. Wynne in her occupation and office.

In our earlier communication, you indicated you would speak to your client about voluntarily removing the offensive literature from his website. If he does this and does not post it elsewhere or reproduce it on his website in another form, it will avoid the necessity of a motion.

In this regard, we would ask that you draw to your client’s attention that the class proceeding case management judge has the right to control communications by defendants during class proceedings, in order to protect the integrity of the process and to avoid intimidation of class members. Justice Perell himself canvassed the law in this area in his recent ruling in *Lundy v Via Rail*. It is not difficult to predict how His Honour would react to the news that our clients and our team have been publicly characterized by your client as “homofascists.”

We hope that this can be resolved prior to the case management meeting. If not, we will be asking for an early date for a hearing of a motion. If a motion becomes necessary, we will be seeking substantial indemnity costs payable forthwith.

Identity of the Zombies

Your client has publicly stated that he will not disclose the identity of the other zombies. Mr. Jetchick has identified himself as the man named as “Edward Zombie.” Mr. Jetchick has stated that he is unable to identify the other zombies by name, apart from your client.

We would be asking for the identities of the zombies on cross-examination of your client on the certification motion. It is a relevant question and must be answered.

Under the CPA, the Court has a broad discretion to make orders that will improve the efficiency of the proceeding. We are of the view that it is more efficient and just to obtain the names of the zombies now for two principle reasons.

First, as a matter of procedural fairness to them, the zombies are entitled to know what is happening in this proceeding and to defend themselves either through counsel or in person. If their identities are revealed later, there could be delay and the plaintiffs could face arguments of prejudice from the absent defendants.

Second, the plaintiffs and the Court are entitled to the evidence of the co-defendants.

We hope that this can be resolved prior to the case management meeting. If not, we will be asking for an early date for a hearing of a motion. If a motion becomes necessary, we will be seeking substantial indemnity costs payable forthwith.

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