Court File No. C59810

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KHURRUM AWAN

Plaintiff
(Respondent)

and

EZRA LEVANT

Defendant
(Appellant)

FACTUM OF THE DEFENDANT (APPELLANT), EZRA LEVANT

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PART I - NATURE OF APPEAL

1. The Appellant, Ezra Levant ("Mr. Levant"), appeals from the decision of Madam Justice Matheson of the Superior Court of Justice (the "Trial Judge"), which found Mr. Levant liable for defamation (the "Judgment"). The Trial Judge awarded the Respondent, Khurrum Awan ("Mr. Awan") general damages in the amount of $50,000.00, plus aggravated damages in the amount of $30,000.00, and also found malice against Mr. Levant.

2. Mr. Levant appeals both the findings of liability and damages by the Trial Judge.

3. This case is about nine blog posts published by Mr. Levant on his personal blog found online at www.ezralevant.com, in relation to a hearing before the British Columbia Human Rights Tribunal (the "BCHRT") in June, 2008. The hearing was to determine whether an article titled "Why the Future Belongs to Islam" and published in Maclean's magazine exposed Muslims in B.C. to hatred and contempt, on the basis of their religion.

PART II - OVERVIEW

4. This appeal concerns serious issues of free speech and freedom of expression in Canada beyond the specific blog posts of Mr. Levant. If the Judgment is permitted to stand, it will impose unjustified restrictions on free speech and the ability of individuals to speak out against racism.

5. The judgment will have the effect of chilling discussion on important matters of public interest, including political speech, and undermine the important principles governing the defence of fair comment, set out by the Supreme Court of Canada (the "SCC") in *WIC Radio Ltd. v. Simpson* (*"WIC Radio"*). Defamation law cannot be used to intimidate public opinion or restrict freedom of thought.

6. In reviewing the Judgment below, it is critical for this Honourable Court to heed the warning of the SCC in *WIC Radio*, that courts should avoid "an overly solicitous regard for personal reputation" to avoid the risk of chilling "freewheeling debate on matters of public interest":

> When controversies erupt, statements of claim often follow as night follows day, not only in serious claims (as here) but in actions launched simply for the purpose of intimidation. Of course "chilling" false and defamatory speech is not a bad thing in itself, but chilling debate on matters of *legitimate* public interest raises issues of inappropriate censorship and self-censorship. Public controversy can be a rough trade, and the law needs to accommodate its requirements.[1]

7. On October 23, 2006, Maclean's magazine published an article titled, "The Future Belongs to Islam," which was an excerpt from a book by Mark Steyn (the "Article"). The Respondent, Mr. Awan, was part of a group of four law students who objected to the portrayal of Muslims in the Article. As a result, the students arranged to meet with senior editors at Maclean's on March 30, 2007. At the meeting, the students requested that Maclean's make a substantial donation to a

[1] *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, 2008 SCC 40 (CanLII) at para. 2, http://canlii.ca/t/1z46d, Appellant's Book of Authorities ("BOA"), Tab 1

charity related to race relations, and publish a rebuttal article of equal prominence and length as the original Article. The editor of Maclean's told them that Maclean's had already published numerous letters regarding the Article and that he would rather go bankrupt than publish an article by an author of their choice.

8. Three weeks after the meeting, the students filed a complaint with the Ontario Human Rights Commission, alleging that the Article defamed and discriminated against Muslims. Virtually identical complaints were filed shortly after with the Canadian Human Rights Commission and the BCHRT, by Dr. Mohamed Elmasry, who was the president of the Canadian Islamic Congress ("CIC"). The CIC and Dr. Elmasry were known for espousing anti-Semitic views.[2] Mr. Awan had also been president of the Youth Chapter of the CIC in 2006/07 and testified on behalf of the CIC at parliamentary and senate committees on anti-terrorism laws.

9. On December 5, 2007, in response to a press conference and press release by the CIC, Maclean's editor-in-chief Ken Whyte issued a statement indicating that when he met with the law students in March, they asked for a five-page article by an author of their choice. On December 7, 2007, the CIC responded by issuing a press release stating that the law students had asked Maclean's to publish a "balanced response from a mutually acceptable author" and that Mr. Whyte's account of what they requested was "a complete fabrication." The press release stated that the four law students were "individual complainants and the driving force behind human rights complaints that have been submitted to the British Columbia, Canadian, and Ontario Human Rights Commissions." Mr. Awan was also listed as the person to contact at the CIC regarding the press release.

[2] See articles and press release by Dr. Elmasry, Appeal Book and Compendium ("Appeal Book"), Tab 6; Exhibit Book, Tabs 6, 8, 9, and 116

10. Shortly after, the law students started writing a number of press releases, letters-to-the-editor, and op-ed pieces for newspapers that repeatedly stated that they only filed human rights complaints against Maclean's after the magazine refused to publish a rebuttal article by a *mutually agreeable author*, which was proposed by the students at the meeting with the Maclean's editors. The authors of the media articles and letters were all four students. Mr. Awan testified that the initial drafts of the articles and letters were prepared by whichever student had the time and then circulated to the others for review. Mr. Awan testified that when his name was on an article or letter to the editor, his practice was to review it.[3]

11. The only human rights complaint to proceed to a hearing was the B.C. complaint. Although Dr. Elmasry was one of the complainants, he did not testify. Despite not living in B.C., Mr. Awan testified at the BCHRT hearing as the only non-expert witness for Dr. Elmasry's complaint. He testified about the Maclean's meeting and the impact the Article had on him as a Muslim and Muslims generally.

12. Like the Article itself, the human rights complaints and BCHRT hearing garnered significant media attention, were highly controversial, and were criticized as an attempt to stifle free speech.

13. Mr. Levant attended the BCHRT hearing to watch and "live blog" the hearing by reporting on the proceedings and injecting his own running commentary and colourful analysis into his blog posts. The nine blog posts in question at trial written by Mr. Levant, along with dozens of others he posted over the two days he attended the hearing (almost 100 in total), included numerous opinions and commentary by Mr. Levant about what he witnessed in the courtroom, in

[3] Cross-examination of Khurrum Awan, Appeal Book, Tab 7; Transcript of Proceedings, Vol. 1, p. 272

addition to other events related to the human rights complaints. Mr. Levant is known as an outspoken political commentator with strong and sometimes controversial views.[4]

14. During Mr. Awan's testimony at the BCHRT hearing on June 3, 2008, he directly contradicted the version of events of what occurred at the Maclean's meeting that he and the other law students had been proclaiming in their press releases, letters, and op-ed pieces over the previous six months. Under cross-examination at the BCHRT hearing, Mr. Awan acknowledged that the law students never made an offer of a "mutually agreeable author" at the Maclean's meeting.[5] This was a complete reversal of what Mr. Awan and the other students had been stating publicly about the meeting for six months – that they had requested Maclean's publish a rebuttal to the Article by a "mutually agreeable author."

15. Mr. Levant was astonished to hear this testimony. Since he was aware of the various letters and op-ed pieces written by Mr. Awan and the other law students that explicitly stated that a mutually agreeable author had been offered by them at the Maclean's meeting, Mr. Levant concluded that Mr. Awan must have been lying about what was offered at the Maclean's meeting when he co-wrote those letters and op-ed pieces. It was a logical and reasonable inference to make under the circumstances. As a result, he called Mr. Awan a liar in his blog posts.

16. He also referred to Mr. Awan as an anti-Semite due to his close affiliation with Dr. Elmasry and the CIC, who had released anti-Semitic statements in the past. Mr. Levant also suggested that Mr. Awan was in a conflict of interest at the BCHRT hearing, on the basis that he saw Mr. Awan sitting at the counsel table assisting the complainants' counsel at the beginning of the hearing.

[4] Examination-in-chief of Ezra Levant, Appeal Book, Tab 8; Transcript of Proceedings, Vol. 2, pp. 600-605
[5] Testimony of Khurrum Awan at BCHRT hearing, Appeal Book, Tab 9; Transcript of BCHRT hearing, Exhibit Book, Tab 41, pp. 331-332

17. The Trial Judge found that the sting of the blog posts were understood by ordinary right-thinking members of society to mean that Mr. Awan was a liar, dishonest, anti-Semitic, and was in a conflict of interest at the BCHRT hearing because he was assisting as co-counsel and was a witness. The Trial Judge found that the first three meanings (liar, dishonest, anti-Semitic) arose from statements of fact by Mr. Levant, as opposed to opinion, and the last meaning (conflict of interest) was opinion. The Trial Judge further found that Mr. Levant did not prove the truth of those factual statements and also did not prove the truth of the facts on which the comment about conflict of interest was based.

18. The Appellant respectfully submits that the Trial Judge erred in her application of the fair comment defence. The Trial Judge erred in finding that the comments by Mr. Levant that Mr. Awan had lied and was anti-Semitic were statements of fact, and not opinion. They were honestly held opinions of Mr. Levant, based on facts that were either well known in the community or described in Mr. Levant's blog posts.

19. The Appellant also submits that there was a factual basis for Mr. Levant to conclude that Mr. Awan was in a conflict of interest, which was supported by the evidence of two other witnesses at trial – counsel for Maclean's and a reporter covering the BCHRT hearing for the National Post – who also testified at trial that they saw Mr. Awan sitting at the counsel table and assisting complainants' counsel like an articling student.

20. Mr. Levant is an outspoken and strong advocate for free speech. He has strong opinions on a variety of topics. He sometimes uses colourful language or even a derisive tone. Some may consider him to be offensive or rude in his comments and opinions. But his right to express those opinions and comments, however wrong-headed, outrageous, or extreme they may be must

be protected under defamation law. Freedom of expression under the *Charter* must encompass a broad spectrum of opinions.

21. The SCC stated in *WIC* Radio, "we live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones." Professor Brown notes in his text:

> The basis of our public life is that the crank, the enthusiast, may say what he or she honestly thinks as much as the reasonable person who sits on a jury. A comment may be framed in the strongest terms. A story teller may add a little touch of the piquant pen. He or she may resort to ridicule, sarcasm, and invective. There is no cause to complain merely because the commentator is foolish, obstinate, biased, prejudiced, or wrong, or the comment are vitriolic, vehement, rude, severe, pungent, extravagant, extreme, embarrassing, exaggerated, or even fantastic, or they are expressed in colourful language, or the tone is cynical, or unnecessarily discourteous. A court generally will not consider whether the commentary is well founded or reasonable . . . The opinion expressed may be considered completely wrong headed by every other person acquainted with the facts and circumstances.[6]

22. Or as Justice Binnie put it in *WIC Radio,* "w[e] live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones."[7]

23. In *Slim v. Daily Telegraph Ltd.*, Lord Denning M.R. stated: "[T]he right of fair comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain this right intact. It must not be whittled down by legal refinements."[8]

24. In the same decision, Lord Diplock noted:

> It would be an evil day for free speech in this country if this kind of controversy on a matter of public though local interest were discouraged by the fear that every word written to be read in haste should be subjected in a court of law to minute

[6] *Brown on Defamation*, Ch. 15, pp 15-75 to 77, BOA, Tab 2
[7] *WIC Radio*, supra at para. 4, BOA, Tab 1
[8] *Slim v. Daily Telegraph Ltd.*, [1968] 2 Q.B. 157 at 170 (C.A.), BOA, Tab 3

> linguistic analysis of the kind to which these letters have been subjected on this appeal.[9]

25. Similarly, it would be an evil day for free speech in Canada if individuals like Mr. Levant are not allowed to express their honestly held opinions about controversial issues of significant public interest, but instead are subjected to minute linguistic analysis like Mr. Levant has been subjected to in this action.

26. Mr. Awan inserted himself into a hotly debated public discussion about human rights complaints in three jurisdictions, making his views and statements fair game for criticism and commentary. Mr Awan and the other students actively sought public attention and engaged in public discussion about the Article. Then at the BCHRT hearing, Mr. Awan directly contradicted the version of events about the Maclean's meeting that he and the other students had been telling for six months. Although Justice Binnie's warns in *WIC Radio* that a person's reputation is not to be treated as unavoidable road kill on the highway of public controversy, when someone steps into the middle of that highway and waves a red flag, debate and commentary on those matters of public interest must be granted wide latitude.

PART III - FACTS

27. The Appellant generally agrees with the background facts as set out in the Judgment at paragraphs 5 to 75, excluding any findings of law or conclusions of fact by the Trial Judge.

28. It is respectfully submitted, however, that the Trial Judge omitted important facts from the Judgment, which are outlined below.

[9] *Slim, supra* at 179

Students' Campaign About Mutually Agreeable Author

29. Mr. Awan and the other law students authored a number of letters, press releases, and op-ed pieces between December, 2007 and May, 2008, in which they asserted that their proposal at the Maclean's meeting was for a mutually agreeable author. A summary of them are listed in the table below:

Dec. 7, 2007	CIC issues a press release disputing Whyte's version of events and claims that the students requested an article by a "mutually acceptable author." Awan is quoted as saying that Whyte's claim that the students wanted an author of their choice was a "complete fabrication." Awan is listed as one of the students who are the driving force behind all three human rights complaints. Awan is also listed as the contact person on the CIC press release for further inquiries. [*Appeal Book, Tab 10, Exhibit Book, Tab 24*]
Dec. 8, 2007	Awan co-authors a letter published in the Globe and Mail that states when the students met with Maclean's, they asked for a rebuttal article by a "mutually acceptable author." The letter states that the human rights complaints were a result of Maclean's response that it would rather go bankrupt than publish any response. [*Appeal Book, Tab 11, Exhibit Book, Tab 25*]
Dec. 20, 2007	Awan co-authors op-ed article in National Post that states the law students met with Maclean's and proposed a "mutually acceptable source," which Maclean's rejected. [*Appeal Book, Tab 12, Exhibit Book, Tab 28*]
Dec. 21, 2007	Awan co-authors op-ed article in Ottawa Citizen that states the law students' decision to seek a remedy through human rights commissions was only in response to Maclean's refusal to publish a response form a "mutually acceptable author." [*Appeal Book, Tab 13, Exhibit Book, Tab 29]*
Feb. 24, 2008	Awan co-authors an op-ed article in the Montreal Gazette stating that he and the other authors/students filed complaints against Maclean's because it refused to publish a "mutually acceptable counter-article". [*Appeal Book, Tab 14, Exhibit Book, Tab 33]*
Apr. 18, 2008	Awan co-authors an op-ed article or letter in the Waterloo Record which states the law students proposed a "mutually acceptable response of adequate length," when they met with Maclean's and Maclean's rejected that offer. [*Appeal Book, Tab 15, Exhibit Book, Tab 34*]

Apr. 30, 2008	The law students and Joseph hold a press conference and issue a press release to offer that if Maclean's publishes a mutually acceptable response to the Steyn article from an agreed upon author, they would be prepared to settle this matter. [*Appeal Book, Tab 16, Exhibit Book, Tab 36*]
May 10, 2008	Awan co-authors a letter published in the National Post criticizing a Post editorial and states, "Our demands have always been the same: run a mutually acceptable response of adequate length from an agreed upon author." [*Appeal Book, Tab 17, Exhibit Book, Tab 39*]

30. There was also a significant amount of media coverage and commentary about the law students and the BCHR hearing itself. Most of the media coverage and commentary was critical of Mr. Awan and the other students. One of Canada's leading criminal defence lawyers, the late Edward Greenspan, wrote in an op-ed piece in the Toronto Sun that he was "embarrassed" by his fellow Osgoode Hall alumni, who launched the complaints against Maclean's. A columnist in the National Post referred to the plaintiff as the "boy extortionist of Osgoode Hall." Numerous editorials denounced the complaints as wrong-headed and an affront to freedom of expression.[10]

PART IV - STATEMENT OF ISSUES AND LAW

31. This appeal gives rise to the following issues:

(a) Whether the Trial Judge erred in finding that the appellant's comments that the respondent was a "liar" in blog posts 1 through 8 were statements of fact and not opinion;

(b) Whether the Trial Judge erred in finding that even if the references to Mr. Awan as a "liar" were opinion, that Mr. Levant was required to prove as a fact that Mr.

[10] See various media articles and editorials, Appeal Book, Tabs 18-25; Exhibit Book, Tabs 89,79, 40, 81,83, 35, 82, 100

Awan had deliberately made incorrect statements on previous occasions with an intention to deceive, when he and the other students made public statements about offering a "mutually acceptable author" at the Maclean's meeting;

(c) Whether the Trial Judge erred in finding that the eighth blog post referring to "the anti-Semites at the Canadian Islamic Congress" is a factual statement that requires proof that the respondent is, in fact, anti-Semitic;

(d) Whether the Trial Judge erred by finding that there were insufficient factual underpinnings that were true to support the appellant's opinion that the respondent was in a conflict of interest;

(e) Whether the Trial Judge erred in finding that the appellant was actuated by malice in publishing the blog posts and his dominant motive was ill will. In particular, the Trial Judge erred in fact and law in finding malice based on the appellant's animosity and ill will toward Dr. Elmasry, who is a third party and was not a party to the proceedings;

(f) Whether the Trial Judge erred in finding there was a basis for an award of aggravated damages.

(g) Whether the Trial Judge erred in her calculation of general damages.

32. The standard of review from a trial judgment of a Superior Court Justice is correctness as to questions of law, and palpable and overriding error as to questions of fact. Mixed questions of

fact and law are reviewable on a continuum between these two standards of review, depending on the extent to which the contested question is legal or factual in nature.[11]

33. However, it is respectfully submitted that when a Charter right such as freedom of expression is at stake, an appeal court's deference to the Trial Judge on questions of fact should be reduced in order to ensure that defamation law is interpreted in accordance with Charter values.

34. In *Grant v. Torstar*, the SCC commented on the guarantee of free expression in s. 2(b) of the *Charter*. At paragraphs 47-51 the Court noted:

> The guarantee of free expression in s. 2(b) of the *Charter* has three core rationales, or purposes: (1) democratic discourse; (2) truth-finding; and (3) self-fulfillment: *Irwin Toy Ltd. c. Québec (Procureur general)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927 (S.C.C.), at p.976. These purposes inform the content of s. 2(b) and assist in determining what limits on free expression can be justified under s. 1.
>
> First and foremost, free expression is essential to the proper functioning of democratic governance. As Rand J. put it, "government by the free public opinion of an open society … demands the condition of a virtually unobstructed access to and diffusion of ideas": *Switzman*, at p. 306.
>
> Second, the free exchange of ideas is an "essential precondition of the search for truth": *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697 (S.C.C.), at p. 803, *per* McLachlin J. This rationale, sometimes known as the "marketplace of ideas", extends beyond the political domain to any area of debate where truth is sought through the exchange of information and ideas. Information is disseminated and propositions debated. In the course of debate, misconceptions and errors are exposed. What withstands testing emerges as truth.
>
> Third, free expression has intrinsic value as an aspect of self-realization for both speakers and listeners. As the majority observed in *Irwin Toy*, at p. 976, "the diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed".

[11] *Housen v. Nikolaisan*, 2002 SCC 33 (CanLII), [2002] 2 S.C.R. 235, at paras. 8, 10 and 36, http://canlii.ca/t/51tl, BOA Tab 4

> Of the three rationales for the constitutional protection of free expression, only the third, self-fulfillment, is of dubious relevance to defamatory communications on matters of public interest. This is because the plaintiff's interest in reputation may be just as worthy of protection as the defendant's interest in self-realization through unfettered expression. We are not talking here about a direct *prohibition* of expression by the state, in which the self-fulfillment potential of even malicious and deceptive expression can be relevant (*R. v. Zundel* 1992 CanLII 75 (SCC), [1992] 2 S.C.R. 731 (S.C.C.)), but rather a means by which individuals can hold one another civilly accountable for what they say. *Charter* principles do not provide a licence to damage another person's reputation simply to fulfill one's atavistic desire to express oneself.[12]

Fair Comment Defence

35. In *WIC Radio*, the SCC outlined the following elements of the defence of fair comment:

(a) the comment must be on a matter of public interest;

(b) the comment must be based on fact: " '[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made.' Brown, vol. 2, p. 15-36, and *Gatley on Libel and Slander* (10th ed. 2004), at para. 12.12. What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of Mair's editorial comment."

(c) the comment, though it can include inferences of fact, must be recognizable as comment;

(d) the comment must satisfy the following objective test: could any one person honestly express that opinion on the proved facts?

(e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was subjectively actuated by express malice.

36. With respect to the second element (letter (b) above), it is not necessary that all the facts be stated, or included in the publication, if enough information is made known to sufficiently identify the basis upon which the comment is being made. The facts which must be correctly stated must go to the "pith and substance of the matter." If the facts are in the public arena and well known or easily ascertainable, they do not have to be state so long as they are clearly indicated.

[12] *Grant v. Torstar Corp*., [2009] 3 SCR 640, 2009 SCC 61 (CanLII), http://canlii.ca/t/27430, BOA Tab 5

Fact vs. Comment

37. With respect to the third element of the defence (letter (c) above), a court must first determine whether a statement is presented as fact or as comment. A court must examine the totality of the circumstances and the context in which the remarks were made., including the language used, the medium in which it was circulated, and cautionary terms that were used, and the audience to whom it was published.[13]

38. The SCC made the following comments in *WIC* Radio with respect to distinguishing fact from comment:

> In *Ross v. New Brunswick Teachers' Assn.* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para. 56, the New Brunswick Court of Appeal correctly took the view that "comment" includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof". Brown's *The Law of Defamation in Canada* (2nd ed. (loose-leaf)) cites ample authority for the proposition that words that may appear to be statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used (Brown, vol. 4, at p. 27-317) in the context of political debate, commentary, media campaigns and public discourse.[14]

39. Merely because an opinion appears in the form of a factual statement may not be critical if it is made clear from the context and understood by those to whom it was spoken, that it was meant only as a comment on facts already stated or known. An explicit allegation of fact may be treated as comment if it would be understood by readers, not as an independent imputation, but as an inference from other facts stated or otherwise known by readers.[15]

40. Professor Brown's text states the following on the issue of inferences of fact qualifying as comments:

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[13] *WIC Radio, supra,* and *Brown*, at ch. 15, pps. 15-38, 15-40 and 15-87. BOA Tab 6
[14] *Supra* footnote 1, BOA Tab 1, at para. 26
[15] *Channel Seven Adelaide Pty Ltd v Manock* [2007] HCA 60, at paras. 35-36, BOA Tab 7

> Under these circumstances, the comments which are protected by the defence include not only expressions of opinion evaluating the facts upon which the comment is made, but also any deductions or conclusions in the guise of an assertion of fact which reasonably may be inferred. Inferences of fact drawn from factual material set out in the body of an article may be treated as a matter of opinion and protected by the defence of fair comment.[16]

Comments Can Be Harsh

41. In the U.K. case of *Branson v. Bowe,* Justice Eady noted that debates on matters of public should not be hobbled by the constraints of conventional good manners:

> In a modern democracy all those who venture into public life, in whatever capacity, must expect to have their motives subjected to scrutiny and discussed. Nor is it realistic today to demand that such debate should be hobbled by the constraints of conventional good manners - still less of deference. The law of fair comment must allow for healthy scepticism.
>
> It is well settled that a defendant does not have to persuade the court, whether judge or jury, to agree with his opinions (although the remarks of Fletcher-Moulton L.J. in Hunt v. Star Newspaper might be taken as suggesting the contrary); nor yet should he have to demonstrate that honestly expressed opinions fall within some elusive and nebulous margin of what is 'reasonable' or 'fair'. Freedom of speech is not a game to played according to an umpire's subjective assessment of what constitutes fair play. Moreover, one could hardly fail to notice that, if there ever was within this jurisdiction a generally agreed set of standards as to what was 'reasonable' behaviour, it has not survived intact into the less homogeneous society of today. [17]

42. Professor Brown notes that opinions can be couched in language that vividly reflects a writer's emotions no matter how caustic, severe, vehement, vitriolic, or even extravagant and farfetched the comments may be. A writer may attack or denounce ideas expressed by another with sarcasm, ridicule, and invective. Neither severity nor vigour in expression are to be confused with a malicious motive. A writer's style may be flippant, the expression harsh, cynical, biting, rude, offensive, intemperate and exaggerated, prejudiced, biased, racially

[16] *Brown*, ch. 15, pp. 15-43 to 44, BOA Tab 7
[17] *Branson v. Bower*, [2001] EWHC QB 460 at para. 25, dismissed on appeal, [2001] EWCA Civ 791, BOA, Tab 8

insensitive, and the defence of fair comment will prevail if any one person could honestly hold that opinion. Even opinions that offend, shock, or disturb should be protected.[18]

43. In *Grant v. Torstar*, the SCC stated:

> It is simply beyond debate that the limited defences available to press-related defendants may have the effect of inhibiting political discourse and debate on matters of public importance, and impeding the cut and thrust of discussion necessary to discovery of the truth.
> . . .
> People who enter public life cannot reasonably expect to be immune from criticism, some of it harsh and undeserved.[19]

44. An example of this type of criticism can be found in the case of *Christie v. Westcom Radio.* The plaintiff sued for defamation regarding comments by a radio host after a discussion of the trial of Ernst Zundel, who was convicted criminally of "spreading false news" concerning the Jewish people. The plaintiff Christie was counsel for Zundel at that trial. The B.C. Court of appeal upheld a finding at trial that the following comments by the radio host about Christie constituted fair comment:

> I would also urge those of you who have toyed with the idea of the Western Canada Concept to see who the lawyer of Ernst Zundel is, Doug Christie. He is on this program many times. Mr. Christie will defend himself saying everybody has the right to a defence. That doesn't wash in my view. Everybody does have the right to a defence. Doug Christie has aligned himself so many times with these perverted monsters that he has to be viewed as one himself, in my view. He has aligned himself constantly with causes that are just beyond imagination. They are so close to racism that it is very hard to understand his motive. Ernst Zundel - I couldn't care less who he is. I regret that it ever came to Court. The last thing in the world you want to do is make these people famous. They are idiots, public menaces, they don't understand history. They can do an enormous disservice, but by overreacting to them what you will end up doing is making the problem worse because of course they become heroes among the demented souls of the world.
>
> *Christie v. Westcom Radio Group Ltd.*, 1990 CanLII 776 (BC CA)

[18] *Brown*, ch. 15, pp. 15-113 to 118, BOA Tab 9. See also: *Gardiner v. John Fairfax & Sons Pty. Ltd*. (1942), 42 S.R. (NSW) 171 at 174, BOA Tab 10
[19] *Supra, Grant* at paras. 57-58, BOA Tab 4

"Liar" Comments Were Opinion Not Fact

45. A critical issue in this appeal is the Trial Judge's finding that the repeated statements by Mr. Levant that Mr. Awan was a liar were statements of fact. The Appellant respectfully submits that such a finding is clearly wrong when the Blog Posts are reviewed in their entire context. Reasonable readers of Mr. Levant's Blog Posts understood his comment that Mr. Awan lied was a conclusory opinion or inference, particularly in light of what Mr. Awan and the other students had been saying about the Maclean's meeting in the media for months leading up to the BCHRT hearing. It was a value judgment about Mr. Awan's contradictory versions of events. The basis for Mr. Levant's deduction and opinion was clear to readers who had been following the hotly debated issues regarding the Article – Mr. Awan changed his story about offering a "mutually agreeable author" when he took the stand.

46. The Trial Judge also erred in finding that Mr. Levant's failure to use words such as "in my view" or "I come to the conclusion" would have helped communicate that Mr. Levant's statements in the blog posts were opinions instead of facts. Adding the words "in my view" before the comments that Mr. Awan lied would be redundant. The comment was a deduction based on the fact that Mr. Awan and the other students had been publicly proclaiming for six months prior to the BCHRT hearing that they offered a mutually agreeably author at the Maclean's meeting. Then Mr. Awan did an about face under oath in his testimomy at the BCHRT hearing. For the first time, Mr. Awan stated that no such offer was ever made at the Maclean's meeting. Mr. Levant described it in his testimony as a "bombshell."

47. The Trial Judge found that Mr. Levant needed to prove at trial that Mr. Awan intended to deceive when he and the other students made statements about the mutually agreeable author. However, the actual mindset or intentions of Mr. Awan in making the inconsistent statements are

irrelevant for purposes of the fair comment defence. The question is whether any one person could honestly hold the opinion that the respondent intended to deceive people (i.e. lie), based on the facts leading up to the BCHRT hearing, not whether he actually deliberately deceived people. Mr. Levant honestly held that opinion based on the undisputed fact that Mr. Awan changed his story on the stand, after writing numerous media articles stating that the students had requested a "mutually agreeable author."

48. A number of cases have found that comments, inferences, or conclusions similar to Mr. Levant's assessment that Mr. Awan lied, have been held to be comment. In a High Court of Justice decision in England, the Court addressed a situation in which the defendant accused the plaintiff of lying (as well as other critical comments). The Court held that:

> an author's inference as to someone's state of mind, or motivation, is capable of being comment and defended accordingly . . . That does not, however, address the undoubted principle that the law of fair comment permits people to hold different opinions about human motives. In *Branson v. Bower*, for example, it was contemplated that a journalist could express the opinion that Mr Branson was deluding himself if he believed that his second lottery bid was prompted solely by altruistic and saintly considerations. . . . If Mr Price were asserting that, in the context of defamation, one must adopt the proposition in Edgington v. Fitzmaurice (1885) 29 Ch.D. 459 that "the state of a man's mind is as much a fact as the state of his digestion", then he would plainly be wrong. . . Where a journalist draws such an inference about a state of mind which she cannot, in the nature of things, verify, then it will generally be clear to any reasonable reader that it does not purport to be an objective statement of fact capable of verification. It was clear in this case, and anyone who was to classify the defamatory imputations as factual, and as requiring objective verification, would indeed be perverse. Anyone who chooses to enter the public arena invites comment and often this will include scrutiny of and comment about motives. Such persons cannot expect as of right to be taken at face value. It is sufficient protection in such circumstances for personal reputation that any adverse comments should be made in good faith, and that the words should be subjected, at the appropriate stage, to the objective test of whether the inferences or deductions *could* be drawn by an honest person with knowledge of the facts.[20]

[20] *Keays v Guardian Newspapers Ltd. & Ors* [2003] EWHC 1565 (QB), BOA Tab 10. See also: *British Chiropractic Association v Singh* [2010] EWCA Civ 350, BOA Tab 11; *Vellacott v Saskatoon Starphoenix Group*

49. When Mr. Awan changed his story about the Maclean's meeting during his testimony at the BCHRT, it was appropriate and well within the bounds of fair comment for Mr. Levant to deduce that Mr. Awan had been lying about the Maclean's meeting, prior to the hearing, whether or not Mr. Awan was lying or not.

Reference to "anti-Semites at the Canadian Islamic Congress"

50. The Trial Judge erred in finding that the eighth blog post referring to "the anti-Semites at the Canadian Islamic Congress" is a factual statement that requires proof that the respondent is, in fact, anti-Semitic. Such a finding is unreasonably restrictive, clearly wrong, and would unduly limit freedom of expression rights under the *Charter*.

51. The Trial Judge failed to fully consider the blog post in its entirety, the previous blog posts by Mr. Levant, and the trial evidence about the close connections Mr. Awan had at the time with the CIC and Dr. Elmasry. The reference to "anti-Semites at the Canadian Islamic Congress" was the appellant's opinion, based on the publicly-known statements of Dr. Elmasry and the CIC, such as his comment that all adult Israelis are legitimate targets of violence and that terrorist organizations Hezbollah and Hamas should be legitimized by the Canadian government.[21]

52. By its very nature, referring to someone as "anti-Semitic" is an opinion that is incapable of factual proof because it is an inference about an individual's beliefs, based on their statements, actions, affiliations with certain groups. A reasonable reader of Mr. Levant's blog would clearly understand such a statement to be a conclusory opinion or comment. In these circumstances, readers would understand that such an opinion was based on previous public statements by the CIC and its president, and Mr. Awan's close affiliation with the CIC.

Inc, 2012 SKQB 359 (CanLII) http://canlii.ca/t/fssrf, BOA Tab 12; *Mitchell v Sprott* [2001] NZCA 343, BOA Tab 13

[21] *Supra*, footnote 2, Appeal Book, Tab 6; Exhibit Book, Tabs 6, 8, 9, and 116

53. With respect to Mr. Awan's close connections to Dr. Elmasry and the CIC, although the Trial Judge acknowledged there were connections between Mr. Awan and Dr. Elmasry and the CIC[22], she failed to properly take into account the significance of the following evidence at trial :

(a) Mr. Awan received a scholarship from the CIC and performed 150 hours of community service for the CIC;

(b) Mr. Awan published a paper on the CIC's website in 2004;

(c) Mr. Awan received a youth community award from the CIC in 2005;

(d) Mr. Awan was the Youth Chapter President for 9-12 months in 2006 and 2007;

(e) Mr. Awan testified for the CIC in parliament, the senate, and the UK House of Lords committees on anti-terrorism laws in 2005 and 2006. He also testified for the CIC against a proposed same-sex marriage bill in 2005;

(f) Mr. Awan prepared reports as part of his CIC community service;

(g) Mr. Awan coordinated with the CIC and Elmasry in preparation for the Maclean's meeting;[23]

(h) Mr. Awan reported to Elmasry after the Maclean's meeting about the meeting and agreed it was important to report back to Mr. Elmasry;[24]

(i) Mr. Awan was part of a "delegation working" with the CIC with respect to the Maclean's meeting;[25]

[22] Trial Judgment, Appeal Book, Tab 3, at para. 53
[23] Cross-examination of Khurrum Awan, Appeal Book, Tab 26, p. 134, Transcript of Proceedings, vol. 1, p. 134, lines 1-23
[24] Cross-examination of Khurrum Awan, Appeal Book, Tab 26, p. 199, lines 9-30; Transcript of Proceedings, p. 199, lines 9-30
[25] *ibid*

(j) The CIC regularly reviewed and provided input on the press releases issued by the students;

(k) Mr. Awan and the other students were a driving force behind all three complaints;[26]

(l) Mr. Awan testified at the BCHR hearing on what parts of the Maclean's article were offensive and the meaning of the article to Muslims generally. He explained how it exposed Muslims to hatred and contempt;

(m) Dr. Elmasry told a reporter from the National Post that the law students were always acting upon his instructions. Dr. Elmasry only corrected that statement after the plaintiff asked him to do so. However, the correction letter states that the students were part of a "dedicated legal team "which argued the case for Dr. Elmasry at the BCHR hearing;[27]

(n) Mr. Awan introduced Dr. Elmasry in June, 2009 at a presentation for Dr. Elmasry's magazine, the "Canadian Charger" in glowing terms[28];

(o) Mr. Awan was asked to join the editorial board of the Canadian Charger.[29]

54. In *Shavluk v. Green Party of Canada*, the plaintiff sued for defamation over a press release that announced the plaintiff would not be Green Party candidate, "following revelations that he made comments in 2006 in an online discussion forum that could be construed as anti-Semitic." In finding that the statement in the press release was opinion, the Court made the following comments:

[26] Appeal Book, Tab 10, Exhibit Book, Tab 24
[27] Appeal Book, Tab 27; Exhibit Book, Tabs 102 and 104
[28] Re-examination of Ezra Levant and cross-examination of Khurrum Awan, Appeal Book, Tab 28; Transcript of Proceedings, pp. 930-958, line 16 and pp. 958-60, lines 1-32
[29] Cross-examination of Khurrum Awan, Appeal Book, Tab 29; Transcript of Proceedings, pp. 940-41, line 27

> As noted in Grant at paras. 137-139, some statements could legitimately be construed as either fact or opinion. In this case, with respect to the issue of distinguishing fact and comment, that a person has published a statement is a matter of fact. That such statements and views are anti-Semitic, or unacceptable, hate-filled can be viewed as a matter of opinion.
>
> Further, in my view, those comments satisfy the objective test. That is, with respect to the press release, a person could honestly express the views that the 2006 post is anti-Semitic and that a person who would publish such a statement holds anti-Semitic views. With respect to the September 16 conference call, a person could honestly express the view that the 2006 post was unacceptable and hate-filled.[30]

Mr. Awan's Role at BCHRT

55. With respect to Mr. Awan's role at the BCHRT as a legal assistant or articling student, the following evidence was introduced at trial and not contradicted:

(a) Mr. Awan admitted that he helped the other two students staple documents before court at counsel table.[31]

(b) Mr. Levant testified that he saw Mr. Awan at the counsel table doing articling student duties like making copies and organizing documents.[32]

(c) Brian Hutchinson, a columnist and reporter, wrote in the National Post that Mr. Awan sat at the counsel table on the first day of the hearing. Mr. Hutchinson is the only witness at trial who made a contemporaneous note of this fact in his story. He also has no vested interest in that issue.[33]

(d) Mr. Porter testified that Mr. Awan was assisting Mr. Joseph like the other students. He recalled that Mr. Awan sat next to Mr. Joseph at the start of hearing, along with someone else. The Trial Judge found that Mr. Porter was a "credible

[30] *Shavluk v. Green Party of Canada*, 2010 BCSC 804 (CanLII), http://canlii.ca/t/2b2bf, BOA Tab 14
[31] Trial Judgment, Appeal Book, Tab 3 at para. 62
[32] Examination-in-chief of Ezra Levant, Appeal Book, Tab 30; Transcript of Proceedings, vol 2, pp. 659-666
[33] National Post articles, Appeal book, Tab 31; Exhibit Book, Tabs 76 and 78

witness" yet failed to put any weight on his evidence about where Mr. Awan sat in the courtroom.[34]

(e) Mr. Elmasry's correction letter to the National Post states that the students were part of a dedicated legal team at the BCHR hearing. The plaintiff claims that he never saw this correction letter, which is simply not credible. The law students had Google alerts set up when the case was mentioned in the media and he made the effort to ask Mr. Elmasry to write the correction letter. It is impossible to believe that Mr. Awan never bothered to read the correction letter. The fact that he never contacted Mr. Elmasry again to correct the statement about him being part of the legal team at the BCHR hearing suggests he had no issue with that statement.

56. The above evidence entered at trial supports Mr. Levant's recollection that Mr. Awan was sitting at the counsel table. The Trial Judge found that Mr. Awan was briefly at the counsel table. The fact that Mr. Awan, who was also a witness, spent any time at the counsel table was a fact on which Mr. Levant could reasonably base his opinion that Mr. Awan was in a conflict of interest.

57. There is little doubt that it would be considered a conflict of interest for a law student to sit at the counsel table and assist the complainants' counsel at a hearing, while also testifying as a witness at the same hearing. The fact that two credible impartial witnesses – Mr. Porter and Mr. Hutchinson – also supported Mr. Levant's recollection that Mr. Awan sat at the counsel table bolsters Mr. Levant's opinion and suggests that the Trial Judge was clearly wrong on this issue, despite the testimony of Mr. Awan's witnesses at trial.

[34] Examination-in-chief of Julian Porter, Appeal book, Tab 32; Transcript of Proceedings, vol. 1, pp. 471-72

Malice

58. The Trial Judge erred in finding malice based on Mr. Levant's animosity and ill will toward Dr. Elmasry, who is a third party and was not a party to the proceedings. Furthermore, the respondent never pleaded malice based on animosity or ill by the appellant toward Dr. Elmasry or any other third party and should not be permitted to recover damages on that basis.

59. The Trial Judge ignored Mr. Levant's testimony that he did not know Mr. Awan and never had any contact with him prior to writing his blog posts. The only evidence of express malice cited by the Trial Judge was Mr. Levant's ill will toward Dr. Elmasry, which is not sufficient to make a finding that Mr. Levant acted with an improper motive to injure Mr. Awan. It was an error to transpose any ill will or animosity Mr. Levant may have against Dr. Elmasry onto Mr. Awan.

60. The Trial Judge further erred by ignoring Mr. Levant's own testimony regarding his motive and purpose in publishing his blog posts about the BCHRT hearing, which was to provide a unique perspective on the hearing in light of his past history with human rights commissions.

61. The Trial Judge further erred in finding malice based on Mr. Levant's failure to correct errors and properly check facts in his blog posts. Any failure by Mr. Levant to check facts or correct errors did not rise to the level of malice, which goes to Mr. Levant's state of mind or motivation. A finding of not correcting errors or checking facts cannot constitute malice pursuant to the common law.

62. Professor Brown notes in his text that, "carelessness or negligence is not malice." The mere fact that there is no reasonable basis for the belief, or that the assertion is groundless, or that there was an error of judgment, carelessness, negligence, or even gross negligence in forming

one's belief, is not sufficient to establish express malice, if the defendant otherwise had an honest belief. As one appellate judge observed, in reversing a lower court decision on this point, "a mere mistake innocently made through excusable inadvertence cannot in any case be evidence of malice." In *Camporese v. Parton*, the fact that a newspaper columnist wrote an article defaming the plaintiff without doing adequate research and "with untimely haste" was not sufficient to demonstrate express malice.[35]

Damages:

63. The onus is on the plaintiff to lead evidence of loss of reputation, mental pain, suffering or distress. If the plaintiff's reputation has not been seriously affected, damages may be nominal.[36]

64. The Trial Judge erred in her calculation of general damages by taking into account the effect the blog posts had on Mr. Awan's job prospects. There was no evidence at trial, other than pure speculation by Mr. Awan, that the blog posts negatively affected his job search. The Trial Judge failed to acknowledge Mr. Awan's own testimony that he attempted to find a legal position in Toronto in a difficult and competitive job market. The Trial Judge also failed to acknowledge that Mr. Awan only took six months to find a full-time position after completing his articles.

65. The Trial Judge erred in fact in finding that a Google search by prospective employers would have "brought up the many defamatory headlines at issue here and links to other defamatory statements by the defendant." The trial evidence established that only one of Mr. Levant's blog posts showed up on the first 10 pages of Google search results.[37]

[35] *Supra*, *Brown*, Ch. 16.3(4), BOA Tab 15
[36] *Supra*, *Browm*, Ch. 25.2, BOA Tab 16
[37] Exhibit Book, Tabs 136-37

66. The Trial Judge further erred in finding, without any evidentiary foundation, that the fact the blog posts were published on the internet increased "the likely readership of at least the headlines if not also the blog posts."

67. The Trial Judge erred in her calculation of general damages by failing to put sufficient weight on the effect of Mr. Awan's own actions as a driving force behind the human rights complaints against Maclean's. The Trial Judge erred in not taking sufficient account of the other negative publicity about Mr. Awan in connection with the human rights complaints.[38]

68. In light of the evidence at trial that Mr. Awan continues to have an excellent reputation in the community, both legal and non-legal, the general damages are out of all proportion to any reasonable award. When assessing general damages, the Trial Judge failed to acknowledge that Mr. Awan won a provincial "Future 40" in 2013, which recognizes "up-and-comers" in various fields.

69. The Trial Judge erred in finding there was a basis for an award of aggravated damages. Aggravated damages are not appropriate as a separate head of damages because the trial judge's award of general damages already took into account the conduct and motive of Mr. Levant, as well as aggravating circumstances. As a result, the award of aggravated damages resulted in "double counting" by the Trial Judge and double recovery by Mr. Awan. The Trial Judge failed to identity any specific evidence of increased mental distress or anxiety suffered by Mr. Awan to justify an award of aggravated damages.

70. Professor Brown makes the following comments about aggravated damages in defamation actions:

[38] *Supra*, footnote 10

> It must be shown that the conduct of the defendant increased the injury to the reputation and feelings of the plaintiff and that the defendant acted improperly, unjustifiably and in bad faith. The conduct warranting an award of aggravated damages must reach the level of recklessness; ordinary negligence will not suffice . . aggravated damages are appropriate only where there is some emotional effect on the plaintiff caused by the defamatory publication . . Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. . . . These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct.[39]

71. There was no evidence at trial to establish that Mr. Levant's conduct increased the injury to the reputation or feelings of Mr. Awan. Mr. Awan did not provide any medical records at trial or any evidence regarding emotional effects caused by the Blog Posts.

72. The Ontario Law Reform Commission has recommended that aggravated damages be abolished, as Professor Brown notes:

> The Ontario Law Reform Commission, while not specifically referring to the law of defamation, has recommended the abolition of a separate award of aggravated damages. This recommendation should also be followed in actions for defamation, particularly in those jurisdictions which place no limitations on the award of punitive damage. A separate award of aggravated damages is a pernicious development in the law; it is absurd in theory and mischievous in practice. The award and decision of the Supreme Court in Hill v. Church of Scientology of Toronto provides the strongest possible argument in favour of the Commission's recommendations. Almost every criteria identified by the court in justification of the separate award of aggravated damages are precisely the same criteria identified by courts generally as the basis upon which a jury may make an award of general compensatory damages. In fact, in reviewing these criteria and upholding the $300,000 award of general damages, the court listed in Hill almost precisely the same factors that led it to approve the award of aggravated damages.[40]

73. Alternatively, the award of aggravated damages is so unreasonable and out of all proportion to the conduct of Mr. Levant that it must be set aside.

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[39] *Supra*, *Brown* Ch. 25.3(1.1), BOA Tab 17
[40] *Ibid*, BOA Tab 17

74. If permitted to stand, the award of general and aggravated damages will have a serious and detrimental impact on individuals who comment on matters of public interest and freedom of expression generally.

75. Sentiments of Anti-Semitism in Canada and Muslim extremism have been on the rise in Canada. The Trial Judgment will have a chilling effect on those who wish to speak out against anti-Semitism or Muslim extremism. If individuals could be subject to legal action every time they accuse someone of anti-Semitism, or even Islamaphobia, as Mr. Awan labelled Mr. Levant in the Toronto Star, without phrasing it to the letter of the law, the courts will be clogged with frivolous lawsuits designed to muzzle public participation and free speech.

76. The Ontario Court of Appeal made the following comments when reviewing a damages award by a judge:

> In my view -- even though the bywords remain "caution" and "restraint" -- an appellate court has more flexibility in reviewing an award of damages for defamation made by a judge alone than in the case of one made by a jury. When Hill was before this court, the court acknowledged the general rule in England "that an appellate court might more readily overturn an award by a judge sitting alone than an award by a jury: see Blackshaw v. Lord, [1984] Q.B. 1 at p. 27, [1983] 2 All E.R. 311".[41]

77. Therefore, if this Honourable Court finds that the Trial Judge erred in any of her findings, it would be appropriate to review the damages award.

PART V - ORDER REQUESTED

78. The Appellant asks that the Judgment be set aside and Judgment be granted as follows:

[41] *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), http://canlii.ca/t/1h7nd, BOA Tab 18

(a) The Respondent's action be dismissed and costs of the action be awarded to the Appellant;

(b) In the alternative, the Trial Judge's findings as to general and aggravated damages be set aside and damages be assessed by the Court of Appeal;

(c) Costs of this Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January 2016.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, 2008 SCC 40 (CanLII)
2. Raymond E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed., looseleaf (Toronto: Carswell, 2011)
3. *Slim v. Daily Telegraph Ltd.*, [1968] 2 Q.B. 157 at 170 (C.A.)
4. *Housen v. Nikolaisan*, 2002 SCC 33 (CanLII), [2002] 2 S.C.R. 23
5. *Grant v. Torstar Corp*., [2009] 3 SCR 640, 2009 SCC 61 (CanLII)
6. *Channel Seven Adelaide Pty Ltd v Manock* [2007] HCA 60
7. *Branson v. Bower*, [2001] EWHC QB 460
8. *Gardiner v. John Fairfax & Sons Pty. Ltd*. (1942), 42 S.R. (NSW)
9. *Keays v Guardian Newspapers Ltd. & Ors* [2003] EWHC 1565 (QB)
10. *British Chiropractic Association v Singh* [2010] EWCA Civ 350
11. *Vellacott v Saskatoon Starphoenix Group Inc*, 2012 SKQB 359 (CanLII)
12. *Mitchell v Sprott* [2001] NZCA 343
13. *Shavluk v. Green Party of Canada*, 2010 BCSC 804 (CanLII)
14. *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA)

KHURRUM AWAN
Plaintiff
(Respondent)

-and-

EZRA LEVANT
Defendant
(Appellant)

Court File No. C59810

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