



Warman v. Wilkins-Fournier, 2011 ONSC 3023 (CanLII)

Date: 2011-05-30

Docket: 07-CV-39927SR

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CITATION: Warman v. Wilkins-Fournier, 2011 ONSC 3023
COURT FILE NO.: 07-CV-39927SR

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: RICHARD WARMAN v. CONSTANCE WILKINS-FOURNIER, MARK FOURNIER, ANDREW SPENCER (a.k.a. Droid 1963), ROGER SMITH (a.k.a. Peter O'Donnell), JASON BERTUCCI (a.k.a. Faramir), DAN LEPAGE (a.k.a. SaskBigPicture), DANIEL MARTIN (a.k.a. Padraigh), JON F. KLAUS (a.k.a. Klinxx) and JOHN DOES 1-2 (a.k.a. conscience and HR-101)

BEFORE: Madam Justice J.A. Blishen

COUNSEL: James O. Katz, for the Plaintiff

Barbara Kulaszka, for the Respondents, Mark Fournier, and Constance Wilkins-Fournier

DATE HEARD: December 7, 2010

ENDORSEMENT

Introduction

[1] The Plaintiff, Richard Warman, commenced a defamation action under the simplified procedure outlined under *r. 76* of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194* against Mark Fournier and Constance Wilkins-Fournier (“the Fournier Defendants”) and eight John Doe Defendants, with respect to messages posted on an Internet site, *freedominion.ca* and its mirror site, *freedominion.com.pa* (“Freedominion”), owned and operated by the Fournier Defendants.

[2] This motion, brought by the Plaintiff, requests an order compelling the Fournier Defendants to disclose relevant documents in their possession and control related to the true identities of three of the John Doe Defendants: “conscience,” “HR-101” and “Padraigh.”

[3] The documents include:

- (a) e-mail addresses and personal subscriber information used and submitted to Freedomion by the John Doe Defendants to register their access accounts, and/or profiles on the Freedomion forum;
- (b) the IP addresses of the computers used to establish the accounts; and,
- (c) the IP addresses used by the John Doe Defendants when making the specific postings identified in the Plaintiff’s Amended Amended Statement of Claim.

[4] The original motion seeking this disclosure, pursuant to [r. 30.06](#) and [r. 76.03](#) of the *Rules of Civil Procedure* was brought on January 22, 2009. On March 23, 2009, Kershman J. ordered the Fournier Defendants to disclose the documents with respect to all eight John Doe Defendants. He found the documents relevant and not protected by privilege.

[5] The Fournier Defendants appealed to the Divisional Court. On May 3, 2010, the appeal was allowed and the court ordered the matter remitted to a different motion judge for reconsideration based on principles outlined in the decision.

[6] There is no dispute that the IP addresses and e-mail addresses of the John Doe Defendants constitute “documents” for the purposes of [r. 30.06](#). Further, it is not disputed that those documents are relevant and that most of the information is in the possession of the Fournier Defendants. The Divisional Court found the IP addresses of the computers used to establish the accounts in question, were not captured when a new user account was created. However, the Internet message board records and stores the IP addresses for each message posted, including those of the John Doe Defendants. Therefore, as noted by the Divisional Court, “with the IP addresses of each message and the time of the message...the respondent can, at a minimum, seek the identity of the subscriber who was assigned the particular IP address at the time of the message from the relevant ISP” (Internet Service Provider): [2010 ONSC 2126 \(CanLII\)](#), [2010] O.J. No. 1846 at para. 5.

[7] The Divisional Court held that the *Rules of Civil Procedure*, including the rules regarding disclosure, must be interpreted in a manner consistent with the rights and values under the *Charter (Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (“Charter”))*. The Court established a four-part test to be met before the ordering of disclosure. The motion judge is required to consider:

- (1) whether the unknown alleged wrongdoer could have a reasonable expectation of anonymity in the particular circumstances;
- (2) whether the respondent has established a *prima facie* case against the unknown alleged wrongdoer and is acting in good faith;
- (3) whether the respondent has taken reasonable steps to identify the anonymous party and has been unable to do so; and
- (4) whether the public interests favouring disclosure outweigh the legitimate interests of freedom of expression and right to privacy of the persons sought to be identified if the disclosure is ordered.

Background Facts

[8] The Fournier Defendants created, own, operate and moderate Freedomion, which is a message board allowing registered users to post messages on political and social topics. The Fournier Defendants depose, and it is not contested, that there are over nine thousand registered users and about three thousand visitors daily to the board or one million, ninety five thousand visitors annually. Approximately 71 percent of the visitors come from Canada and the rest from the United States and various other countries. This message board is widely used all over the world.

[9] In November 2007, the Plaintiff commenced a defamation action against the Fournier Defendants and eight unknown John Doe Defendants who allegedly posted allegedly defamatory comments on the Freedomion message board using pseudonyms. Since that time, using various investigative techniques, the Plaintiff has been able to successfully identify five of the John Doe Defendants, who have been added as party defendants to the action. Prior to the arguing of this motion, it was acknowledged that a sixth John Doe Defendant, “Padraigh,” was Daniel Martin. The action has been settled with respect to Mr. Martin’s involvement.

[10] The Plaintiff has been unable to identify the two remaining John Doe Defendants, “conscience” and “HR-101,” by using the same investigative techniques. He deposes that the only remaining way to identify the remaining two John Doe Defendants requires disclosure of the documents sought from the Fournier Defendants. As noted above, the relevance of those documents is not disputed and the Fournier Defendants admit they have most of the documents requested, with the exception of the IP addresses of the computers used to establish the accounts.

[11] The allegedly defamatory postings made by conscience and HR-101 are as follows:

1. “conscience”

September 18, 2007 – 10:31 p.m.:

OC wrote:

Richard Warman wrote:

1. Accuses me of being the “Censorship Champion”.

...

The poster is of the opinion that Richard Warman is a felching fecalphiliac.

September 20, 2007 – 2:22 p.m.:

I’ve added by two cents to my sig.

...

The poster is of the opinion that Richard Warman is a felching fecalphiliac.

September 20, 2007 – 1:59 p.m.:

This poster is of the opinion that Richard Warman is a felching fecalphiliac.

2. “HR-101”

September 23, 2007 – 4:16 a.m.:

Richard Warman is no more than a cheap-jack, cyber-bullying pseudo Nazi...the anti-Semites, Neo-Nazis, and white supremacists he has pursued are soft targets – only kooks and moonbats support crazies like that.

All this “legend in his own (simply retarded) mind” is doing here is attempting to censor and suppress what he disagrees with.

If you never believe another word I write, believe this, and believe it well:

If he is allowed to get away with this travesty, it will not stop here. Others will be silenced, one by one...

...until no-one is left to speak, but jackals like himself.

All he needs is a broken cross (Swastika) on an armband to complete his image...

(And a brown shirt...

...and a skull, with lightning bolts- do you all remember that the SS was called “protection services?”)

Right? A Nazi hunter who turned Nazi himself. Adopting their tactics and using them against everyone in sight that doesn't agree with him.

October 19, 2007 – 7:13 p.m.:

Warman is absolutely insane. I said it before and I'll say it again, who the hell does he think he is to abuse by lawsuit anyone who would dare to critique him.

Even God is up for critique, warman you idiot!.

I went to the link and he IS acting exactly what he's complaining about others pointing out

And going to sue just because someone is pointing it out to him.

He IS acting exactly like A dictatorial tyrant. An Nazi SS thug, a Stalin thug, a commie thug, and Iranian thug.

And no one here is responsible for the labels he's collected.

He is the one who is solely responsible for those labels by his very own actions.

That warman has a mind of a squawking tantrum throwing little infantile 10 years old.

He has the mind of an infant in a adult body.

That jerk badly needs a couple hundred visits to a shrink!

He is one sick person.!

Law and Analysis

[12] As noted above, in *Warman v. Wilkins-Fournier*, [2010 ONSC 2126 \(CanLII\)](#), [2010] O.J. No. 1846, the Divisional Court outlined four considerations for the motion judge in determining whether

to order the Fournier Defendants to disclose the requested documents, as follows:

- 34 ... (1) whether the unknown alleged wrongdoer could have a reasonable expectation of anonymity in the particular circumstances; (2) whether the Respondent has established a *prima facie* case against the unknown alleged wrongdoer and is acting in good faith; (3) whether the Respondent has taken reasonable steps to identify the anonymous party and has been unable to do so; and (4) whether the public interests favouring disclosure outweigh the legitimate interests of freedom of expression and right to privacy of the persons sought to be identified if the disclosure is ordered.

[13] The factors listed by the Divisional Court should not be considered individually but together. The first three factors must be weighed and balanced in the context of the fourth factor; whether the public interests favouring disclosure outweigh the legitimate interests of freedom of expression and right to privacy of the persons sought to be identified. The test remains a threshold test to determine whether an order for disclosure should be made for the purposes of service. What defences might be available to the Defendants and the strength of those defences are not to be determined at this stage of the proceeding.

1. Reasonable Steps to Identify the Anonymous Party

[14] It is not contested that the Plaintiff has taken reasonable steps to identify the remaining two John Doe Defendants and has been unable to do so. Mr. Warman was able to identify the other John Does by: examining their postings for any verifiable personal information that they may contain; cross-referencing their pseudonyms with other online identities using the same names or other names which could be attributed to the same person; and by using private investigation firms. Despite his ability to identify six of the John Does, he has been unable to identify the remaining Defendants using the same investigative techniques.

[15] I find that all reasonable steps have been taken. The only remaining investigative avenue requires the disclosure of the documents sought from the Fournier Defendants.

[16] As noted by the Divisional Court, even if Mr. Warman obtains the information, there remains a question as to whether he will be able to identify the John Doe Defendants without a further motion to compel the ISP associated with the IP addresses to provide the names of their customers. Nevertheless, the documents are relevant and could potentially, on their own, reveal the identity of the remaining Defendants.

2. Reasonable Expectation of Anonymity

[17] Did the remaining two John Doe Defendants have a reasonable expectation that their identities would remain anonymous in the particular circumstances?

[18] The terms of membership in Freedomion include:

As outlined in the agreement for registration, Free Dominion will not be responsible for any illegal content that a member posts. Your FC alias is no protection. You can be called to account for what you publish. Free Dominion will not protect you. "Over-the-top" posts about public figures that test legal limits are unwelcome. If you post libelous or defamatory material, you are on your own. We take no responsibility for problems posters may cause for themselves.

[19] In *York University v. Bell Canada Enterprises* (2009), 2009 CanLII 46447 (ON SC), 99 O.R. (3d) 695, the applicant successfully sought an order requiring the respondent Internet Service Provider to disclose identity revealing information related to Internet users who had allegedly posted defamatory messages.

[20] The President of York University had issued a press release announcing the appointment of a new dean and highlighted the new dean's academic experience. In response, an anonymous group identifying themselves as "York Faculty Concerned about the Future of Your University" broadcast an e-mail alleging that the President had fraudulently embellished the new dean's academic credentials. The e-mail stated that the President had "perpetrated an outrageous fraud" and that his "fraudulent promotion" of the new dean was "a scandal and a disgrace to the academic profession." The group called for the President's resignation.

[21] The motion judge began by highlighting the extraordinary accessibility and power of the Internet and its potential to be used anonymously to spread "libelous electronic graffiti in cyberspace." Strathy J. then went on to acknowledge the requirement to balance the benefit to the applicant against the prejudice to the alleged wrongdoer. He considered the nature of the information sought, the degree of confidentiality accorded to the information and the degree to which the requested order curtailed the use to which the information could be put.

[22] When considering the above factors, Strathy J. noted the respondent's privacy policies indicating that customers' privacy rights were not absolute. In addition, customers had consented to service agreements which limited their expectations of privacy.

[23] In this case, the Fournier Defendants argue the use of pseudonyms is indicative of a reasonable expectation of anonymity. I do not agree. Opting to use pseudonyms reveals an intention to remain anonymous but does not create a reasonable expectation in that result. The terms for the use of the Freedomion site were agreed to by the John Doe Defendants prior to their registration for access to that Internet site. They can, therefore, reasonably contemplate that their identities or the documents that could lead to the discovery of their identities may be disclosed to a third party complainant, if they publish postings that are *prima facie* defamatory.

3. Prima Facie Case of Defamation

[24] Has the Plaintiff established a *prima facie* case of defamation?

[25] The current law with respect to defamation in Canada is outlined by the Supreme Court of Canada in *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII), [2009] 3 S.C.R. 640. The Court states:

28 A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than a plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed, though this rule has been subject to strong criticism... The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[26] In order to establish *prima facie* defamation, the Court must determine that the comments are capable of being defamatory as a question of law. Whether or not they are in fact defamatory, is a

question of fact and is to be left to the trier of fact.

[27] In *York University, supra*, the motion judge noted that the tort of defamation involves the publication of a statement that tends to lower the reputation of the person to whom it refers and notes:

25...in the classic language, to cause him or her to be regarded with feelings of hatred, ridicule, contempt, fear or dislike: see *Colour Your World Corp. v. Canadian Broadcasting Corp.* (1998), 1998 CanLII 1983 (ON CA), 38 O.R. (3d) 97, [1998] O.J. No. 510 (C.A.). As in the case of *Irwin Toy Ltd. v. Doe*, the words used in the e-mail and website posting are capable of being found by a reasonably charged jury to be defamatory of York and President Shoukri. York has demonstrated a *prima facie* case of actionable defamation.

[28] In arguing that the postings by the remaining two John Doe Defendants are not *prima facie* defamatory, the Defendants rely heavily on *obiter* comments by LeBel J. in the Supreme Court of Canada's decision, *WIC Radio Ltd. v. Simpson*, [2008] S.C.R. 420.

[29] That case dealt with the defence of fair comment. The Court noted that the defence of fair comment must be developed in a manner consistent with the values underlying the *Canadian Charter of Rights and Freedoms* including freedom of expression, as well as the values underlying the worth and dignity of each individual, including reputation. It was noted that a court's task is not to prefer one set of values over the other, but rather, to attempt reconciliation (para. 2). Ultimately, the Court modified the test and broadened the defence of fair comment.

[30] What the Court did not do was deviate from the traditional analysis of defamation; the relative burdens placed on the parties remained unchanged. In addition, with the exception of *obiter* comments of LeBel J., the Court did not modify the threshold of what is considered defamatory in Canadian law nor make any changes to the Plaintiff's burden in demonstrating a *prima facie* case. Instead, the Court acknowledged the importance of freedom of expression and *Charter* values, through broadening the availability of the defence of fair comment.

[31] In *WIC Radio Ltd, supra*, the issue of whether the comments outlined in the trial decision were defamatory was not raised before the Supreme Court of Canada. The trial judge found the comments "clearly defamatory" and the majority of the Supreme Court of Canada, although not dealing directly with this issue, characterized the trial judge's finding as "plainly correct" and noted that the editorial, which was the subject of the defamation action "clearly defamed" the Respondent, Ms. Simpson.

[32] LeBel J. disagreed with the majority's conclusions on the issue of defamation. He noted that:

69 The test is not whether the words impute negative qualities to the plaintiff, but whether, in the factual circumstances of the case, the public would think less of the plaintiff as a result of the comment. Relevant factors to be considered in assessing whether a statement is defamatory include: whether the impugned speech is a statement of opinion rather than of fact; how much is publicly known about the plaintiff; the nature of the audience; and the context of the comment.

[33] The Defendants argue the factors outlined by LeBel J. should be considered in assessing whether the threshold test of *prima facie* defamation has been met. It is argued that there should be a higher threshold of defamation for public figures such as Mr. Warman; that the postings were clearly

statements of opinion rather than of fact; and that, in the context of postings on an Internet message board, the impugned postings are not *prima facie* defamatory.

[34] It must be emphasized, that on this motion, the question is whether the postings are capable of being defamatory or capable of tending to lower the Plaintiff's reputation in the eyes of a reasonable person, not whether they are in fact defamatory. The purpose of the motion is to obtain disclosure of the identities of the remaining two John Doe Defendants in order to serve them with the application. The decision at the end of the day as to whether or not the postings are, in fact, defamatory and whether there are any defences available to the Defendants are issues for the trier of fact at trial.

[35] Although it is arguable that Mr. Warman is somewhat of a public figure, I do not find that a higher threshold of defamation ought to apply to him on that basis. In *WIC Radio, supra*, LeBel J. noted that what may harm the reputation of a private citizen may not necessarily cause the same damage to a public figure, largely because the public has more information about the latter. However, the test itself remains the same.

[36] The Defendants further argue that the online Internet context must be considered in determining whether the threshold of *prima facie* defamation has been met. It is argued that, given the vast amount of hyperbole and exaggeration online, a reasonable person would not tend to take the postings of "conscience" and "HR-101" seriously.

[37] In *Barrick Gold Corporation v. Jorge Lopehandia and Chile Mineral Fields Canada Ltd.*, (2004), 71 O.R. 3d 416 (C.A.), the Ontario Court of Appeal considered the Internet context in an appeal regarding damages that may be awarded in Internet defamation cases. R.A. Blair J.A. begins the appeal judgment by quoting from Matthew Collins, *The Law of Defamation and the Internet* (Oxford University Press, 2001) at para. 24.02 as follows:

The Internet represents a communications revolution. It makes instantaneous global communication available cheaply to anyone with a computer and an Internet connection. It enables individuals, institutions and companies to communicate with a potentially vast global audience. It is a medium which does not respect geographical boundaries. Concomitant with the utopian possibility of creating virtual communities, enabling aspects of identity to be explored, and heralding a new and global age of free speech and democracy, *the Internet is also potentially a medium of virtually limitless international defamation* [emphasis added].

[38] At para. 31, Blair J.A. finds that:

Communication via the Internet is instantaneous, seamless, inter-active, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed: see *Vacquero Energy Ltd. v. Weir*, 2002 ABQB 82 (CanLII), [2002] A.J. No. 84 (Alta. Q.B.) at para. 17.

[39] He goes on to quote from an article by Lyrissa Barnett Lidsky entitled "*Silencing John Doe: Defamation and Discourse in Cyberspace*" (2000) 49 Duke L.J. 855 at pp. 862-865:

Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a

message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. *The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that “the truth rarely catches up with a lie”.* The problem for libel law, then, is how to protect reputation without squelching the potential of the Internet as a medium of public discourse [emphasis added].

[40] Blair J.A. notes, “These characteristics differentiate the publication of defamatory material on the Internet from publication in the more traditional forms of media, in my opinion.” (para. 33).

[41] I agree with Blair J.A.’s comments. I do not find the Defendants’ argument that no fair minded person would take the comments posted by “conscience” and “HR-101” at face value due to the standard use of hyperbole and exaggeration on an Internet message board, to be persuasive.

Specific Postings

“conscience”

[42] The impugned postings made by conscience suggested that the Plaintiff was a “censorship champion” and a “felching fecalphiliac.”

[43] The Defendants argue “conscience” was clear that the posting was an opinion and the words “felching fecalphiliac,” although rude, were analogous to words such as “asshole” and “douche bag,” which are regularly used throughout the Internet. It is further argued that the appearance of the term on the signature line is relevant in that almost no one reads the signature lines and no one would take these words to seriously mean that the Plaintiff is a sexual deviant.

[44] Once again, given the all pervasive nature of the Internet and its capacity to replicate defamatory messages, I do not find this argument persuasive. Whether or not the use of rude terms is common, does not speak to whether the term “felching fecalphiliac” would be capable of lowering the Plaintiff’s reputation in the eyes of a reasonable person. This term implies that Mr. Warman is a sexual deviant and it is capable of lowering his reputation in the eyes of fair minded individuals. Given the low threshold set for establishing *prima facie* defamation, I find the Plaintiff has met his burden with respect to that statement, which is repeated on three different postings.

“HR-101”

[45] The allegations in September and October of 2007 that the Plaintiff is a “cyber-bullying pseudo Nazi,” “Idiot” and a “Nazi SS thug,” I find, at the very least, capable of lowering the Plaintiff’s reputation in the eyes of a reasonable person. Whether they are in fact, defamatory, is not the applicable test at this stage.

4. Balancing of Interests

[46] Do the public interests favoring disclosure, in this case, outweigh the interests of freedom of expression and right to privacy of the two Defendants sought to be identified?

[47] In *WIC Radio Ltd.*, *supra*, and *Grant*, *supra*, the Supreme Court of Canada recognized the importance of freedom of expression under the *Charter*. Both cases dealt with defamation defences.

Notably, the Supreme Court of Canada did not deviate from the traditional model of defamation and, with the exception of the *obiter* comments of LeBel J. in *WIC Radio, supra*, the Court did not modify the threshold of what is considered defamatory in Canadian law.

[48] Although the Defendants are correct that these two recent Supreme Court of Canada judgments place renewed emphasis on freedom of expression, the Court also continued to acknowledge the importance of reputation. In *WIC Radio, supra*, Binnie J. commented as follows:

2 ... However, the worth and dignity of each individual, including reputation, is an important value underlying the *Charter* and is to be weighed in the balance with freedom of expression, including freedom of the media. The Court's task is not to prefer one over the other by ordering a "hierarchy" of rights (*Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835), but to attempt a reconciliation. An individual's reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to "chill" freewheeling debate on matters of public interest. ...

[49] The Divisional Court in *Warman v. Wilkins-Fournier, supra* noted the following at para 42:

42 ... In the circumstances of a website promoting political discussion, the possibility of a defence of fair comment reinforces the need to establish the elements of defamation on a *prima facie* basis in order to have due consideration to the interest in freedom of expression. On the other hand, there is no compelling public interest in allowing someone to libel and destroy the reputation of another, while hiding behind a cloak of anonymity. The requirement to demonstrate a *prima facie* case of defamation furthers the objective of establishing an appropriate balance between the public interest in favour of disclosure and legitimate interests of privacy and freedom of expression.

[50] The requirement to establish the elements of defamation on a *prima facie* basis, provides due consideration to the *Charter* value of freedom of expression.

[51] This was the approach followed by Strathy J. in *York University, supra*. Strathy J. notes at para. 30:

30 The court is required to balance the benefit to the applicant of revealing the desired information against the prejudice to the alleged wrongdoer in releasing the information. At this stage, the court may consider the nature of the information sought, the degree of confidentiality accorded to the information by the party against whom the order is sought, and the degree to which the requested order curtails the use to which the information can be put: *Isofoton S.A. v. Toronto Dominion Bank*, above.

[52] The Court goes on to follow the suggestion outlined by Professor George S. Takach in his text, *Computer Law*, 2d ed. (Toronto: Irwin Law, 2003) wherein it is noted that, "the requirement to establish a *prima facie* case against the customer before obtaining a court order is a reasonable balance between protecting freedom of speech and protection from libel."

[53] In this case, Mr. Warman has taken all reasonable steps to identify the remaining two John Doe Defendants. Those Defendants could not have had a reasonable expectation of anonymity, in the particular circumstances. Therefore, given that the Plaintiff has established a *prima facie* case of defamation and met the other considerations outlined by the Divisional Court in *Warman v. Wilkins-*

Fournier, supra, I find due consideration has been given to the interests of freedom of expression and the right to privacy of the two remaining John Doe Defendants.

[54] The only information sought in this case is the identity of the John Doe Defendants in order to serve them with Mr. Warman's application. Disclosure has been sought under r. 30 of the *Rules of Civil Procedure* and, therefore, pursuant to r. 30.1.01(3), the parties and their lawyers are deemed to undertake not to use the information obtained for any purposes other than those of the proceeding in which the information was obtained. In this case, the sole purpose for the disclosure of the information shall be to identify the parties in order to effect the service.

Conclusion

[55] In summary, I have found:

1. The Plaintiff has taken all reasonable steps to identify the two remaining anonymous parties;
2. The remaining two John Doe Defendants could reasonably contemplate that their identities or documents that could lead to the discovery of their identities may be disclosed to a third party complainant, if they published postings that were *prima facie* defamatory;
3. Without the information sought, the Plaintiff would be without a remedy;
4. The disclosure of the documents requested is for the limited purpose of enabling the Plaintiff to effect service; and
5. Most importantly, the claim appears to be made in good faith and the Plaintiff has established a *prima facie* case of defamation. There has been an appropriate balancing of the *Charter* values and rights afforded to both the John Doe Defendants and the Plaintiff. Due consideration has been paid to the remaining Defendants interests of freedom of expression and right to privacy.

[56] Therefore, the Defendants, Mark Fournier and Constance Wilkins-Fournier, are to disclose all relevant documents in their care and control related to the true identities of the remaining John Doe Defendants, "conscience" and "HR-101" including:

- (a) E-mail addresses and all personal information used and submitted to Freedomion by the Joe Defendants in order to register their access accounts and/or profiles of the Freedomion forum; and,
- (b) The Internet protocol addresses used by the John Doe Defendants when making these specific posting identified in the Plaintiff's Amended Amended Statement of Claim.

Costs

[57] If the parties are not able to agree on costs, a date for a motion on that issue may be set by the trial coordinator.

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Blishen J.

RELEASED: May 30, 2011

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ENDORSEMENT

Blishen J.

RELEASED: May 30, 2011

By **lexum** for the law societies members of the  Federation of Law Societies of Canada