

Court File No.: CV-24-00095074-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

EDWARD CORNELL, VINCENT GIRCYS, LINDSAY MILNER, SHAUN ZIMMER, ANDREW MILLER, JONKER TRUCKING INC., ANDREW FERA, WAYNE NARVEY, CLAYTON MCALLISTER, KATHLEEN MARKO, NICOLA FORTIN, ARIELLE FORTIN, THOMAS QUIGGIN, TIMOTHY TIESSEN O’JAY LAIDLEY, ERIC BUECKERT, PETER TERRANOVA, NANCY TERRANOVA, RICHARD OCELAK, and KERRI-ANN HAINES

Plaintiffs

-and-

JUSTIN TRUDEAU, CHRYSTIA FREELAND, DAVID LAMETTI, DOMINIC LEBLANC, BILL BLAIR, MARCO MENDICINO, ATTORNEY GENERAL OF CANADA, JODY THOMAS, ROYAL CANADIAN MOUNTED POLICE, DENIS BEAUDOIN, BRENDA LUCKI, STEVE BELL, ROBERT BERNIER, OTTAWA POLICE SERVICES BOARD, OTTAWA POLICE SERVICE, THE TORONTO-DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE, BANK OF MONTRÉAL, NATIONAL BANK OF CANADA, ROYAL BANK OF CANADA, BANK OF NOVA SCOTIA (SCOTIABANK), CANADIAN TIRE SERVICES LTD. doing business as CANADIAN TIRE BANK, MERIDIAN CREDIT UNION, ASSINIBOINE CREDIT UNION, GULF & FRASER CREDIT UNION, STRIDE CREDIT UNION, SIMPLII FINANCIAL, CANADIAN ANTI-HATE NETWORK, BERNIE FARBER, JOHN DOE, and ABC CORP.

Defendants

NOTICE OF MOTION

The defendants, Canadian Anti-Hate Network (“CAHN”) and Bernie Farber (“**Mr. Farber**”), will make a motion to a Judge, on Friday, July 5, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard at 161 Elgin Avenue, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard in-person.

THE MOTION IS FOR:

1. An Order dismissing the action against the Defendants CAHN and Mr. Farber, pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
2. Costs of the motion and the action on a full indemnity basis pursuant to s. 137.1(7) of the *Courts of Justice Act*;
3. Damages against the Plaintiffs, on a joint and several basis, in the amount of \$20,000 for Mr. Farber and \$10,000 for CAHN, pursuant to s. 137.1(9) of the *Courts of Justice Act*;
4. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On February 14, 2024, the Plaintiffs commenced a claim by way of Notice of Action (Court File No. CV-24-00094733-0000) against 31 defendants for \$44,000,000.00 arising from alleged damages supposedly related to the implementation of the *Emergencies Act* on February 14, 2022.
2. On March 15, 2024, in a manner contrary to the *Rules of Civil Procedure*, the Plaintiffs purported to issue a Statement of Claim following a Notice of Action, but instead issued a new Statement of Claim bearing Court File No. CV-24-00095074-0000.
3. The Plaintiffs are alleged to be individuals and/or business that purport to have suffered losses because of their involvement in protests that occurred in the City of Ottawa in January and February 2022 (the “**Ottawa Protests**”), which culminated with the Government of Canada’s invocation of the *Emergencies Act*.
4. The Defendant, CAHN, is an independent, nonprofit organization with its business address in Toronto. It is comprised of a diverse membership of experts and researchers on issues related to hate groups and hate crimes. It has a mandate of monitoring, researching, and countering hate

groups by providing education and information on hate groups to the public, media, researchers, courts, law enforcement, and community groups.

5. The Defendant, Bernie Farber, is an individual and the founding chair emeritus of CAHN.

6. The action, as against CAHN and Mr. Farber, is a strategic lawsuit against public participation.

7. As a result of the unusual way the Statement of Claim is drafted, which is itself an indication that this is a strategic lawsuit against public participation, the specific allegations against CAHN and Mr. Farber are vague and unclear, contrary to the rules applicable to pleadings.

8. It appears that the claim against CAHN and Mr. Farber principally relates to allegations that they would have “provided false information”, either directly or through “proxies” about the Ottawa Protests and those involved with those protests (which the Plaintiffs appear to admit includes them), which defamed them and caused the Government of Canada to invoke the *Emergencies Act*. The Statement of Claim alleges that these actions were taken to advance “the political agenda” of CAHN and Mr. Farber.

9. The Statement of Claim advances conspiracy theories involving CAHN.

10. Any impugned expression made by CAHN or Mr. Farber involving the Ottawa Protests, which are not particularized in the Statement of Claim, were necessarily concerning a matter of public interest.

11. Any claim based on impugned expression made by CAHN or Mr. Farber around the time of the Ottawa Protests is outside of the applicable limitation period, either as a result of the provisions of the *Libel and Slander Act* or as a result of the provisions of the *Limitations Act, 2002*.

12. No actual statements or expressions are attributed to CAHN and/or Mr. Farber in the claim. There are no details surrounding these supposed impugned expressions, including what was said,

to whom it was said, and the defamatory meaning that arose out of these supposed impugned expressions.

13. There are no reasonable grounds to believe that the proceeding has substantial merit.

14. CAHN and Mr. Farber have valid defences to the proceeding because, *inter alia*:

- a. With respect to the claim in defamation, any impugned expression (which have not been pleaded nor particularized), would, in any event, not be defamatory, and likely attract the defence of justification and/or fair comment and/or qualified privilege and/or responsible communication on a matter of public interest.
- b. With respect to the claim in negligence, CAHN and Mr. Farber owed no duty of care to the Plaintiffs.
- c. With respect to the claim in civil conspiracy, CAHN and Mr. Farber did not engage in any unlawful conduct, nor did they act in concert, by agreement or with a common design or intention with any of the other named Defendants.

15. There is no causal link between the unspecified impugned expressions (or any other conduct alleged to have been taken by CAHN and Mr. Farber) and the damages the Plaintiffs claim to have suffered.

16. The public interest in protecting CAHN and Mr. Farber's expression outweighs the public interest in permitting the proceeding to continue.

17. The Plaintiffs' claim advances a request for declaratory relief on unusual, spurious, scandalous and vexatious grounds, including that the Defendants "acted in panic, political spite and with the intention of punishing and intimidating citizens of Canada" and that they are to pay "for damage and costs pleaded herein and that the citizens of Canada not be required to pay".

18. The Plaintiffs claim damages against CAHN and Mr. Farber for *Charter* breaches, negligence, breach of contract, interference with economic relations, inducing breach of contract, unlawful interference, misfeasance of public office, trespass to chattels, civil conspiracy, abuse of process, injurious falsehoods, defamation, assault, battery, harassment and intimidation.

19. The Statement of Claim discloses no reasonable cause of action against CAHN and Mr. Farber.

20. The claim pleaded constitutes numerous unrelated claims against unrelated defendants and is effectively an abuse of process.

21. There is no basis to join CAHN and Mr. Farber in, what appears to be, at its core, a constitutional challenge against various government entities.

22. Based solely on the way the claim is drafted and advanced, including the exorbitant claim for \$44,000,000 on a joint and several basis, it is apparent that the purpose of the litigation is to silence perceived political opponents of the Plaintiffs and stifle debate about a matter of significant public interest.

23. The claim appears to be a politically motivated action and not a *bona fide* legal claim.

24. The Plaintiffs brought this proceeding against CAHN and Mr. Farber in bad faith and for an improper purpose. As such, damages should be awarded against the Plaintiffs pursuant to s.

137.1(9) of the *Courts of Justice Act*.

25. The *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B

26. The *Libel and Slander Act*, R.S.O. 1990, c. L.12.

27. Rule 37 of the *Rules of Civil Procedure*.

28. Section 137.1 of the *Courts of Justice Act*; and,

29. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The affidavit of Bernie Farber, to be sworn;
2. The affidavit of Richard Warman, to be sworn; and,
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 29, 2024

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EDWARD CORNELL et al.
Plaintiffs

-and-

JUSTIN TRUDEAU et al.
Defendants

Court File No.: CV-24-94733

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Proceeding commenced at Ottawa

NOTICE OF MOTION

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