



**SUPERIOR COURT OF JUSTICE                      COUR SUPÉRIEURE DE JUSTICE**  
**COURT HOUSE / PALAIS DE JUSTICE**  
**161 ELGIN STREET / 161, RUE ELGIN**  
**OTTAWA, ONTARIO**  
**K2P 2K1**

**Tel / Tél: 613.239.1399**

**Fax / Télécopieur: 613.239.1507**

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**DATE:** Le 18 novembre 2010  
 November 18, 2010

**TO / RÉCIPIENDAIRE:**

Giacomo Vigna  
 Christopher Ashby

**FAX / TÉLÉCOPIEUR:**

1.514.448.7362  
 1.416.368.4424

**FROM / EXPÉDITEUR:**

Louise Tardif, adjointe judiciaire du juge Smith  
 Judicial Assistant for Justice Smith

**SUBJECT / OBJET:** Vigna c. Levant - Numéro de dossier du greffe : 08-CV-41703SR  
 Vigna v. Levant - Court File No: 08-CV-41703SR

**NUMBER OF PAGES (INCLUDING COVER SHEET): 38**

**NOMBRE DE PAGES (INCLUANT BORDEREAU DE TÉLÉCOPIE): 38**

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Please find enclosed Justice Smith's decision regarding the above-mentioned matter. Please note that the decision is in English and that a French translation has been ordered. We will send you the decision in French once our office receives it.

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CITATION: Vigna v. Levant, 2010 ONSC 6308

COURT FILE NO.: 08-CV-41703SR

DATE: 2010/11/18

## ONTARIO

## SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
GIACOMO VIGNA	)	
	)	Plaintiff was self-represented
	)	Plaintiff
	)	
- and -	)	
	)	
EZRA ISAAC LEVANT	)	Christopher Ashby, for the Defendant
	)	
	)	Defendant
	)	
	)	HEARD: March 15, 16, 17, 18, 19, and
	)	June 24, 2010

REASONS FOR JUDGMENTR. SMITH J.Overview

[1] Giacomo Vigna ("Vigna"), a lawyer for the Canadian Human Rights Commission (the "Commission" or "CHRC") has sued Ezra Levant ("Levant") for libel based on several allegedly defamatory statements published on his internet website blog. Vigna submits that Levant's statements were defamatory and tended to injure his reputation in the estimation of reasonable persons and he seeks damages for his loss. He argues that while the *Charter* guarantees freedom of expression, the right of free speech does not allow Levant to use his voice as a weapon of individual abuse.

[2] In his blogs, Levant alleged that Vigna was "fibbing" to the Canadian Human Rights Tribunal (the "CHRT" or "Tribunal") while acting as counsel about his mental state when he requested an adjournment. Levant also stated that Vigna had failed to honour his undertaking to

the Tribunal and stated that Vigna acted unethically when he had switched evidence at a previous hearing without disclosing the difference to the Tribunal. In addition, he repeatedly mocked Vigna and alleged he was a clown and a buffoon.

[3] Levant is a journalist, political commentator and a lawyer. Since early in 2008, he has been engaged in a public campaign to abolish the prohibition against hate speech toward an identifiable group, as set out in section 13 of the *Canadian Human Rights Act*. As part of this campaign he has sought to denormalize the CHRC and other provincial Human Rights Commissions across the country.

[4] Unfortunately, Vigna became part of Levant's campaign to denormalize the Human Rights Commissions when he sought an adjournment of a hearing on the grounds that he was not feeling well stating he was not in a "serene state of mind". Vigna did not advise the Tribunal that the reason he was not feeling in a "serene state of mind" was because he had been threatened the previous evening, had received notice that Mr. Lemire had filed a complaint with the Barreau du Québec alleging he acted unethically, and had learned that the two security personnel at the hearing had been followed to their homes, and as a result he had not slept the previous night.

[5] Levant submits that he was exercising his right of free expression as guaranteed by section 2(b) of the *Canadian Charter of Human Rights and Freedoms* when he published the statements. He further submits that his statements are protected by the defences of responsible communication on a matter of public interest; fair comment; justification; and qualified privilege.

### Issues

**Issue #1** *Are the following statements published by Levant defamatory?*

- (a) that Vigna was fibbing when he advised the Chair of CHRT that he was not feeling well, was dizzy and was not in a serene state of mind;
- (b) that Vigna had not complied with his undertaking to the Chair of the CHRT a year later;

- (c) that Vigna acted unethically by switching a key piece of evidence at a hearing without disclosing the difference to the Tribunal; and
- (d) the balance of the statements mocking Vigna for "beclowning himself", that he was a bit of a buffoon, that he acted as a bully, the mocking lyrics, the repeated publishing of Vigna's request for an adjournment because he was not in a serene state of mind, that he was fired by CHRC, unfavourably comparing his performance to My Cousin Vinny, as more particularly set out in the tabs attached to Vigna's amended statement of claim.

**Issue #2** *If any of the above statements are defamatory, can Levant rely on the following defences:*

- (a) **justification**, insofar as the words complained of consist of accurate quotes from transcripts;
- (b) **fair comment**, insofar as they consist of expressions of opinion on matters of public interest;
- (c) **qualified privilege**, on the basis that the words were published in good faith and in the honest belief that the words complained of were fair and accurate and related to matters of public interest and constitute a political debate concerning free speech;
- (d) **responsible communication on a matter of public interest**, as recently established by the Supreme Court of Canada in *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII);
- (e) the guarantee of freedom of thought, belief, opinion and expression as set out in section 2(b) of the *Canadian Charter of Rights and Freedoms*.

**Issue #3** *What damages has Vigna suffered?*

- (i) Did Levant act maliciously or in good faith and without malice?
- (ii) Should punitive damages be awarded?

### **Admissions**

[6] The parties agreed to the Statement of Facts attached hereto as Schedule A.

### **Background Facts**

[7] Levant is a lawyer as well as a journalist, political commentator and activist. He regularly publishes a blog in which he writes about various issues. Levant was interrogated by

the Alberta Human Rights Commission in January of 2008 for publishing cartoons of an important Islamic religious figure in his Western Standard Magazine. As a result of his interrogation, Levant started a campaign to "denormalize" the Human Rights Commissions across Canada by writing articles on his blog starting in January of 2008. As part of his campaign Levant wrote a number of articles commencing with the blog published on March 20, 2008 about Vigna's request for an adjournment of the Lemire hearing before the Tribunal which had taken place 11 months earlier.

[8] Levant asserted that Human Rights Commissions should not be involved with prohibiting the publishing of words or ideas. A number of media organizations support this view.

#### Vigna's Request for an Adjournment

[9] On May 11, 2007, at the commencement of the fourth day of the Lemire hearing before the CHRT, Mr. Fine, the Director General of the Commission, requested an adjournment of the hearing on the grounds that firstly, Vigna and his co-counsel were ill and secondly, because of an issue involving the security of individuals who were employed by the Commission and who "come to this hearing room".

[10] Vigna stated that while he did not have the flu he did not feel in a serene state of mind to proceed with the file that day. He stated, "I don't feel very well. I feel dizzy. I feel anxiety and I am not in a serene state of mind."

[11] Vigna also advised the Tribunal that:

I have a lot of things worrying me right now and I don't want to elaborate, but my colleague said, Mr. Fine, there are some certain incidents that have occurred which I don't feel at liberty to elaborate right now, which have had an impact on my ability to proceed in a professional way on this file, at least for today, because I wouldn't be rendering the Commission a just service by proceeding in this condition.

[12] An adjournment was ultimately granted and the Commission paid the expenses incurred by other parties and their legal counsel as a result of spending an extra night in Ottawa.

[13] At trial, Vigna testified that he asked for the adjournment because, at the end of the third day of the hearing, (1) he received a threat on his voice mail after he returned to his office,

(2) he was advised that the two security officers working at the Lemire hearing had been followed to their homes the previous evening, and (3) he received notice that Lemire had filed a complaint to the Barreau du Québec accusing him of unethical behaviour.

[14] As a result of the above incidents, Vigna was so worried that he was unable to sleep and as a result did not feel well enough to proceed with the hearing the next morning. He did not advise the Tribunal of the threat he had received or that the Commission's security officers had been followed to their homes because he did not want to contaminate the proceedings before the Human Rights Tribunal. Levant was unaware of Vigna's reason for not feeling well enough to proceed with the hearing on May 11, 2007 until Vigna gave the above explanation when he testified at trial.

**Undertaking Given by Vigna and Ruling by the Chair on May 11, 2007**

[15] As part of the adjournment request discussion on May 11, 2007, Vigna undertook to provide a medical certificate, stating: "Mr. Chair I will provide a medical certificate".

[16] However, as indicated at pages 4898 and 4899 of the transcript, the Chair also refused to grant an order sought by Mr. Christie to allow him to see Vigna's medical certificate. The Chair stated: "I am expecting the information to come to me. You should be satisfied and the Tribunal will be satisfied and leave it at that". [Emphasis added] The Chair refused to make an order that Vigna's medical certificate be disclosed to Mr. Christie, who was counsel to one of the other parties involved in the Lemire hearing.

[17] I accept Vigna's evidence that he attended a medical clinic and forwarded a medical certificate to the Chair of the CHRT within three days stating that he was ill on May 11, 2007. However, when Vigna sent the medical certificate to the Chair of the CHRT he attached a condition that the contents of his medical certificate were to remain confidential. The Chair of the CHRT returned the medical certificate because he did not agree to be bound by the confidentiality condition.

**Reattendance on June 25, 2007 Before the Tribunal and Compliance with Undertaking**

[18] On June 25, 2007 Margot Blight replaced Vigna as counsel for the Commission and attended for the continuation of the Lemire hearing. Discussions were held concerning the

reasons for the adjournment namely whether the hearing had been adjourned because of counsel's illness or because of the security concerns raised. The Chair stated:

The reason I adjourned it is because legal counsel asked me to ... they told me they could not proceed ... on their oath of office, they could not proceed that day.

... I did not issue an order or a ruling or anything of that sort that they provide medical certificates... I asked, requested that they provide them to me...

[19] The Chair continued at page 4912:

... That being said, Commission counsel on their oath of office said they wanted an adjournment, and they also undertook to provide something to me at my request. And they did not provide it.

[20] At page 4912 Ms. Blight replied stating "It was provided Mr. Chairman" to which the Chair replied "with conditions I did not accept. So that being said, it remains outstanding".

[21] Ms. Blight returned to the issue of the medical certificates once again at page 4923. "The Commission's understanding was that your ruling with respect to the medical certificates had been very explicitly made that the certificates were to be provided for the eyes of the Tribunal only." The Chair did not respond to this comment.

[22] The medical certificates had been sent to the CHRT by letter dated May 14, 2007, however, contained the following paragraph:

Given the sensitive and personal nature of this information, we require that these certificates be kept confidential and that they not be shared with the parties.

[23] On September 10, 2007, before the Lemire hearing resumed, a further letter was sent to the CHRT Chair enclosing the medical certificates for Mr. Vigna and Mr. Dufresne without conditions. The certificates were provided to the Chair without prejudice to the position of Mr. Vigna that his undertaking had previously been fulfilled and stated that the Commission agreed to provide copies of Vigna's medical certificate to all parties if ordered to do so by the Tribunal. The Commission also submitted that the certificates contained personal and confidential information and were not relevant to any issue in the proceeding.

[24] The Chair did not make any further comment or ruling concerning Vigna's undertaking when the hearing reconvened in September 2007.

[25] Based on the evidence I have referred to in the transcripts and the two letters sent to the CHRT enclosing Vigna's medical certificate, I find that Vigna had complied with his undertaking fully by September 10, 2007 when the medical certificates were sent to the Tribunal without conditions. I also find that Vigna complied with his undertaking by sending a copy of his medical certificate on May 14, 2007, three days after the adjournment was granted, albeit with the condition which was ultimately followed namely that his medical certificate was only to be viewed by the Tribunal Chair. This confidentiality condition was consistent with the Chair's ruling, where he had refused Mr. Christie's request to view Vigna's medical certificate when he said "I am expecting the information to come to me. You should be satisfied and the Tribunal will be satisfied and leave it at that."

#### **Alleged Defamatory Publications**

[26] Vigna submits that all of Levant's blogs attached as Tabs A to W to his amended Statement of Claim, and attached to this decision as Tabs A to W, contain defamatory and libellous statements. The three main allegations of defamation are the following:

- (i) In Tab B, published in his blog dated March 20, 2008 on page 2 of 3, Levant stated "Now that kind of acting, that plain old brazening out, that looking someone right in the eye and fibbing that fanaticism, takes a lot of chutzpah. But Vigna did it without blushing ..."
- (ii) In Tab N, published in his blog dated May 18, 2008 on page 2, Levant stated that Vigna had not complied with his undertaking to the Chair of the CHRT a year later, and stated that at no time had Vigna substantiated his fantastic claim that he really was sick; and
- (iii) In Tab F, published in Levant's blog dated April 21, 2008 on page 1 and Tab G on April 28, 2008 also on page 1, Levant stated that Vigna acted unethically by switching a key piece of evidence during the Beaumont hearing without disclosing the difference between the two documents to the Tribunal. The statements imply that Vigna knowingly misled the Tribunal and behaved unethically.

[27] The remaining allegations of libel are contained in several other blogs published by Levant which are related to the three main allegations of libel outlined above and include



statements: that Vigna “beclowned himself” and was a bit of a buffoon, comparing Vigna unfavourably to My Cousin Vinny, publishing mocking lyrics referring to Vigna, alleging that Vigna was a bully who sent goons to harass Levant’s elderly parents when attempting to serve his notice of libel, that Vigna was a failure as a municipal politician, that Vigna was fired by the CHRC, and mocking and repeatedly publishing Vigna’s request for an adjournment because he was not in a serene state of mind. Levant also allowed mocking statements of a similar nature to be published as commentaries to his blogs.

### **Applicable Law**

#### **Defamation**

[28] The existing law of defamation was summarized by Chief Justice McLachlin in *Grant v. Torstar Corp.*, *supra*, at page 13. She stated that in order to succeed in a defamation action a plaintiff must prove (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 referred to the plaintiff; and (3) that the words were published.

[29] Levant does not dispute that the statements contained in articles written by him in his blog were published by him or that they referred to the plaintiff Vigna in this case. As a result, elements (2) and (3) of the test are made out.

[30] If the elements required to prove defamation are made out on a balance of probabilities then “falsity and damage” are presumed and the onus shifts to the defendant to advance a defence in order to escape liability. (*Grant v. Torstar*, *supra*, paragraphs 28 and 29)

#### **Applicability to Blogs**

[31] At paragraphs 96 and 97 of the *Grant v. Torstar*, *supra*, decision, the Supreme Court held that the new defence of responsible communication on matters of public interest was applicable to blog postings and other online media.

[32] The Supreme Court agreed with Lord Hoffman in *Jameel v. Wall Street Journal Europe SPRL*, [2005] EWCA Civ 74, [2005] 4 All E.R. 356 at paragraph [54] who held that the new defence was “available to anyone who publishes material of public interest in any medium.”

[33] I therefore find that the laws of defamation including the defence of responsible communication on matters of public interest apply to the articles written by Levant and posted on his internet blog.

#### **Requirement to Give Notice of Libel when Published in a Blog**

[34] The issue of whether timely notice of libel was properly served on Levant or whether notice of libel must be given when the publication is a blog posting on the internet was not argued before me. Levant did ultimately receive notice of Vigna's allegations of libel. I therefore find that adequate notice of the alleged libel was given by Vigna as this issue was not raised at trial, and Levant received notice from Vigna advising him that he considered his blog publication to be libellous and defamatory.

#### **Defences**

##### **a) Defence of Justification**

[35] On matters of statements of fact, proof that the statement was substantially true, constitutes a defence. This defence may apply to a number of the allegedly defamatory statements in this case.

##### **b) Defence of Fair Comment**

[36] Statements of opinion, which include any "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof" may attract the defence of fair comment. (*Grant v. Torstar, supra*, paragraph 31)

[37] In *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 (CanLII), the Supreme Court of Canada stated that a defendant who claims fair comment must satisfy the following five criteria:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it may contain inference of fact, must be recognizable as comment;

- (d) the comment must satisfy the following objective test: could any person honestly express the opinion on the proved facts?; and
- (e) even though the comment satisfies the objective fact, the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.

[38] Proof of actual malice will defeat the defence of fair comment.

[39] This defence is available to Levant on some of the defamatory publications.

**c) Defence of Qualified Privilege**

[40] In her analysis of qualified privilege in *Grant v. Torstar*, *supra*, paragraph 34, Chief Justice McLachlin stated that “qualified privilege has traditionally been grounded in special relationships characterized by a “duty” to communicate the information and a reciprocal “interest” in receiving it.” The press communicates to the public at large and not to individuals with whom it has a special relationship. In the *Torstar* case, the Supreme Court of Canada refused to grant the media any special status which might have granted them greater access to the privilege.

[41] In the *Grant v. Torstar* decision, *supra*, the Supreme Court stated that a number of cases have held that the defence of qualified privilege is available to the media where the defendant media corporation had a “social and moral duty” to publish the article in question and there is a corresponding public interest in receiving it. The Chief Justice concluded that the threshold remained high and the criteria to establish a reciprocal duty and interest were unclear, and she stated “it remains uncertain when, if ever, a media outlet can avail itself of the defence of qualified privilege”.

[42] In the case before me I find that Levant has not proven that he had a special relationship with his readers such that he had a “social and moral duty” to publish articles in his blogs related to Vigna’s request for an adjournment before the CHRT, nor has he proven that the readers of his blogs had a reciprocal “interest” in receiving this information. I therefore find that the defence of qualified privilege is not available to Levant on the facts of this case.

**d) Defence of Responsible Communication on Matters of Public Interest**

[43] In *Grant v. Torstar, supra*, the Supreme Court modified the law of defamation to establish the defence of responsible communication on a matter of public interest. The required elements to establish the defence of responsible communication are set out in the *Torstar* decision at paragraph 126 and are as follows:

- A. The publication is on a matter of public interest, and
- B. The publisher was diligent in trying to verify the allegation, having regard to:
  - (a) the seriousness of the allegation;
  - (b) the public importance of the matter;
  - (c) the urgency of the matter;
  - (d) the status and reliability of the source;
  - (e) whether the plaintiff's side of the story was sought and accurately reported;
  - (f) whether the inclusion of the defamatory statement was justifiable;
  - (g) whether the defamatory statement's public interest lay in the fact that it was made rather than its truth ("reportage"); and
  - (h) any other relevant circumstances.

[44] The defence of "responsible communication" on matters of public interest established by the Supreme Court of Canada in *Torstar* must be considered in these circumstances as I find there is a public interest aspect in a situation where the Commission paid costs as a result of obtaining an adjournment of a CHRT hearing.

**e) Defence of Freedom of Expression Guaranteed Under Section 2(b) of the Charter of Rights and Freedoms**

[45] In *Grant v. Torstar, supra*, the Supreme Court of Canada considered section 2(b) of the *Canadian Charter of Rights and Freedoms*, which states that everyone has the fundamental "... freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication", in relation to the law of defamation. At paragraph 44, the Supreme Court stated:

The constitutional status of freedom of expression under the *Charter* means that all Canadian laws must conform to it. The common law, though not directly

subject to *Charter* scrutiny where disputes between private parties are concerned, may be modified to bring it into harmony with the *Charter*.

[46] The Supreme Court struck a balance between two values vital to Canadian society – freedom of expression on the one hand and the protection of individuals' reputations on the other. In *Torstar, supra*, the Supreme Court held that the two rationales for free expression under section 2(b) of the *Charter* relevant to defamatory communication on matter of public interest, were (1) to promote proper functioning of democratic discourse and (2) to promote truth finding. The Supreme Court then balanced these core values against the competing value of protection of reputation and the protection of personal privacy and held at paragraph 58 that "Canadian law recognizes that the right to free expression does not confer a licence to ruin reputations."

[47] The Supreme Court of Canada created the new defence of responsible communications on matters of public interest to bring the common law of libel into harmony with section 2(b) of the *Charter* by adopting a balanced approach. As this issue has been decided by the Supreme Court of Canada in *Torstar*, I will only consider the applicability of the defence of responsible communications on matters of public interest with respect to each alleged defamatory statement.

### Analysis

*Tabs referred to herein containing the alleged libellous statements are attached to the plaintiff's Statement of Claim as Tabs A to W.*

#### A. Levant's March 20, 2008 Blog Regarding "He Buffaloed" the Tribunal (Tab B)

[48] Vigna has marked parts of Levant's March 20, 2008 blog that he considers defamatory with a black marker. I do not find that the following statements made by Levant were defamatory:

- (a) On page 1, the statement that "[t]he CHRC's lawyer buffaloed the tribunal into censoring the hearing ..." I find this statement would not lower Vigna's reputation in the mind of a reasonable person and it is not clear that Vigna was the CHRC's lawyer that was being referred to;
- (b) The statement that Vigna's request for an adjournment was a "bizarre exchange" and a reference to the transcripts are not defamatory. I also find that this statement is substantially true and the defence of justification therefore applies;

**B. Levant's Fibbing Allegations in March 20, 2008 Blog (Tab B)**

- (a) On page 2, Levant stated "the way he ground the hearing to a halt reminds me of a student pulling the fire alarm to get out of writing an exam. ... it's a farce, not a drama ..." This statement must be considered as part of the following statement on page 2 of the March 20, 2008 blog namely that Vigna was fibbing to the tribunal.
- (b) At the bottom of page 2 of the March 20, 2008 blog, Levant stated as follows:

Now that kind of acting, that plain old brazening it out, that looking someone right in the eye and fibbing, that fanaticism, takes a lot of chutzpah. But Vigna did it without blushing ...

[49] Levant testified that he deliberately alleged that Vigna was "fibbing" instead of "lying" because a fib is defined in the Concise Oxford Dictionary as an "inconsequential lie." The Chambers Pocket Thesaurus at p. 222 includes "lie" as a synonym for "fib". The Thesaurus also lists "concoction, evasion, falsehood, fantasy, fiction, invention, misrepresentation, prevarication, story, tale, untruth, white lie, whopper and yarn" as synonyms for fib.

[50] I find that Levant's statement that Vigna was fibbing when combined with the context and other words with which it was said, "... that plain old brazening it out, that looking someone right in the eye and fibbing," would lead a reasonable person to infer that Vigna was being untruthful with the Tribunal when he told the Tribunal Chair that he was dizzy, anxious and not in a mental state to proceed with the hearing on May 11, 2007.

[51] I also find that there is no such thing as an "inconsequential lie" for a lawyer to make to a tribunal or a court. A lawyer's integrity before the tribunals and courts is one of the most important aspects of a lawyer's professional reputation. Lawyers also have an ethical duty as officers of the court to be truthful and forthright in statements that they make to tribunals and courts. I find that a statement alleging that a lawyer has breached his ethical duties and obligations to the tribunal is a very serious allegation.

[52] As a result, for the above reasons I find that Levant's statement that Vigna fibbed to the Tribunal when he advised the Chair that he was dizzy, anxious and not in a serene state of mind to be able to proceed with the hearing on May 11, 2007, was defamatory as it would lower Vigna's reputation in the eyes of a reasonable person.

**C. Levant's March 21, 2008 Blog Regarding Gambit and "Serenity Now" (Tab C)**

[53] I do not find that Levant's statements in his March 21, 2008 blog relating to the "I'm not serene", gambit or comparing Vigna's statements to the mantra shouted by George Costanza's dad on Seinfeld "Serenity now" were defamatory as I find they would not lower Vigna's reputation in the eyes of a reasonable person and Vigna used those words as part of his reason for seeking an adjournment.

**D. Levant's Boldfaced Contempt Allegation in March 26, 2008 Blog (Tab D)**

[54] I find that the reference to Giacomo "Serenity Now" Vigna, and the reference to "with Vigna leading him on" and the statement that they "didn't pull a Vigna this time", on page 1 of Levant's March 26, 2008 blog, while mocking in nature are not defamatory. If they were considered defamatory, I find the defence of fair comment would apply to these statements as they are recognized as comment and as a statement of opinion. The opinion is also one that someone could honestly express based on the proven facts.

[55] The statement on page 3 of Levant's March 26, 2008 blog is as follows:

There was no sanction to that bold faced contempt. One wonders why Vigna went to such a song and dance last year.

[56] I find Levant's statement that Vigna acted with "bold faced contempt" to the Tribunal, when he sought the adjournment of the Lemire hearing, would lower Vigna's reputation in the mind of a reasonable person and is therefore defamatory. The allegation that a lawyer acted with bold faced contempt to a Tribunal is a serious allegation which would have a very negative effect on a lawyer's reputation.

**E. Levant's Allegation of Failing to Comply with an Undertaking in the May 18, 2008 Blog (Tab N)**

[57] In his May 18, 2008 blog on page 2, Levant states "On the day of his, uh, troubles, Vigna gave his lawyer's undertaking – a professional promise – to file a medical certificate. But Vigna still hasn't done so a year later." – and – "At no time, according to the transcript, did Vigna state he wanted only a day off; at no time, despite his professional undertaking to do so, has Vigna substantiated his fantastic claim that he really was sick." – and – "Like a school boy making

excuses for not having done his homework, he uttered the first thing that came to mind, and ran out of class – never to return again, certainly not with the required note from his mom.”

[58] The transcripts of the June 25, 2007 hearing contain statements that Vigna had sent the medical certificate to the Tribunal Chair on May 14, 2007, within three days of his request for an adjournment. Vigna sent his medical certificate to the Tribunal again in September 2007, without any condition of confidentiality. Levant's statements that Vigna had not complied with his undertaking were not true because the transcripts show that Vigna had complied with his undertaking.

[59] I also find that a statement that a lawyer had failed to comply with his professional undertaking to a Tribunal for over one year would lower Vigna's reputation in the mind of a reasonable person and was therefore defamatory.

#### **Defences to the Above Defamatory Statements**

##### **a) Defence of Justification**

[60] The defence of justification does not apply to Levant's statements that Vigna was fibbing to the Tribunal or that he acted with "bold faced contempt" because Vigna had provided a medical certificate confirming that he was unable to proceed with the hearing for valid medical reasons. A copy of the medical certificate was sent to the CHRT Chair by letter dated May 14, 2007 and again in September of 2007 this time without any condition of confidentiality. Levant's statements that Vigna was fibbing to the Tribunal, acted with bold faced contempt and failed to honour his undertaking were therefore untrue and therefore the defence of justification is not available.

##### **b) Defence of Fair Comment**

[61] The statement that Vigna acted with bold faced contempt in the face of the CHRT and was "fibbing" when he sought an adjournment are statements of fact and not merely Levant's comment or opinion. Whether Vigna was unwell was capable of proof by visiting a doctor and obtaining expert medical evidence as to Vigna's state of health when the adjournment was requested. Levant has no special medical expertise and had not obtained or relied on any medical evidence whatsoever on which to base his false statements. Levant's statements are



confirmed to be untrue because Vigna did obtain a medical certificate stating that he was too ill to proceed with the hearing on May 11, 2007. I find that Levant's statements outlined above would not be recognized as his opinion or comment and as such are not protected by the defence of fair comment.

[62] Also, Levant did not identify his statements as one of opinion or comment. He did not say that in his opinion Levant was fibbing to the Tribunal rather he stated that this was a fact.

[63] When Vigna and the Commission obtained an adjournment on grounds that both Commission counsel were too ill to proceed with the hearing on May 11, 2007 and paid costs for the expenses incurred by the other seven or eight parties to the hearing, it became a matter of public interest. How tax payers' dollars are spent by public institutions is a matter of public interest.

[64] I also find on the proven facts, that "no one could honestly have expressed the opinion" that Vigna was not feeling anxious, dizzy and unwell, that Vigna was fibbing to the Tribunal about his mental state, or that Vigna was acting with bold faced contempt to the Tribunal. The proven facts based on the medical certificate obtained by Vigna confirm that Vigna was unable to proceed with the hearing on May 11, 2007 for valid medical reasons. The defence of fair comment therefore does not apply.

**c) Defence of Responsible Communications on a Matter of Public Interest**

***Public Interest***

[65] In *London Artists Ltd. v. Littler* [1969] 2 All E.R. 193 (C.A.), Lord Denning discussed the public interest in regard to the defence of fair comments. He stated:

Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment.

I find that publishing information about a situation where the Commission, a publicly funded body, pays costs to other parties as a result of obtaining an adjournment, involves the spending of

to the Tribunal then I find there would be a public interest in ensuring that he was appropriately disciplined for such conduct to deter him from misleading other Tribunals in the future and to protect members of the public from such unethical conduct. Here the evidence from the medical certificate was unequivocal that Vigna was ill on May 11, 2007 as he had advised the Tribunal. In these circumstances I find there was not a large public importance in the state of Vigna's health.

[70] The same comments apply to the statements that Vigna had failed to comply with his undertaking and had acted with bold faced contempt to the Tribunal.

**(iii) Urgency of the Matter**

[71] The matter was not urgent as Levant was writing his blog in March of 2008 almost a year (11 months) after the adjournment request was made on May 11, 2007. Vigna had provided his medical certificate confirming that he was ill by letter dated May 14, 2007 and again by a second letter sent in September 2007.

[72] The Barreau du Québec had also dismissed a claim by Lemire that Vigna had breached the Code of Ethics on November 22, 2007. As a result, I find there was no urgency to publish the defamatory communications in this case and that a diligent effort to verify the truth of the allegation should have been made by Levant before publishing the defamatory statements.

**(iv) Status and Reliability of the Source**

[73] Levant testified he relied on the transcripts of the proceeding before the Tribunal both on May 11, 2007 and again on June 25, 2007. The May 11, 2007 transcripts do not assist Levant in determining whether or not Vigna was too ill to proceed with the hearing on May 11, 2007 or whether he acted with bold faced contempt. They also do not assist Levant to verify whether Levant had complied with his undertaking as this was the date when he gave his undertaking.

***The Transcripts of the June 25, 2007 Hearing***

[74] A diligent reading of the June 25, 2007 transcript would have given Levant notice that Vigna had obtained a medical certificate and provided a copy to the Tribunal, however, with the condition that it remain confidential. There was some confusion because of the Chair's

statement at page 4912 where he stated, "they undertook to provide something to me at my request ... and they did not provide it." However this statement must be considered in context with the rest of the exchange and by reading the other parts of the transcript where the issue was discussed.

[75] On the same page 4912 Ms. Blight, who was then acting as Commission counsel, responded: "It was provided, Mr. Chairman." Then the Chairperson said, "With conditions I did not accept. So that being said, it remains outstanding. It wasn't provided the way it was asked for ..." From the above exchange it is clear that Vigna had provided a medical certificate to the Tribunal, but not as the Chair had asked for it.

[76] Again at page 4922 of the transcript Ms. Blight repeated her understanding that the Tribunal had ruled that the medical certificates were to be "provided for the eyes of the Tribunal only ... and commission counsel's correspondence enclosing the medical certificate, which were then returned ..."

[77] At page 5287 of the transcript of proceedings of June 26, 2007, the matter of Vigna providing the medical certificate was raised again. At page 5389 commission counsel stated:

And more specifically, that the certificate at this point had been provided to you, in my words, for your eyes only.

At page 5391 at line 20 the Chairperson responded and stated:

I have taken a view of the documents. They were enclosed in the letter that was sent to the Tribunal. So I have taken a view. They are medical certificates ...

[78] The June 25, 2007 transcripts confirm that Vigna's medical certificate had been provided to the Chair of the Tribunal by letter of May 14, 2007 with the condition that the medical certificate be kept confidential and not shared with the parties. The Chair did not accept the condition of confidentiality. When the transcript is read diligently it shows that there was no clear breach by Vigna of any of the undertakings given by him to the Tribunal. In September 2007 Vigna's undertaking was fulfilled by returning the same medical certificate without any conditions, but with the request that the contents of the certificate remain confidential.

[79] The June 25, 2007 transcripts do not provide support for Levant's statements that Vigna was fibbing and acting with bold faced contempt when he advised the CHRT that he was too ill to proceed with the hearing on May 11, 2007. The transcripts confirm that Vigna had provided a medical certificate to the Chair but had added a condition that they be for "the eyes of the Tribunal only".

[80] While the transcripts are a reliable source, Levant did not read the June 25, 2007 transcripts in a diligent manner, but rather chose to extract only one part of the exchange which was taken out of context.

(v) **Was the Plaintiff's Side of the Story Sought?**

[81] Vigna testified that Levant never contacted him to get his side of the story before publishing the above blogs. Levant acknowledged that he never contacted Vigna but testified he tried to contact Vigna by calling the Commission. Levant has not pleaded that he attempted to contact Vigna before publishing his blogs and produced no telephone records or any other evidence to corroborate any attempt to speak with Vigna to verify if he had provided a medical certificate to the Tribunal. Levant's evidence in this regard was very general and non specific. I do not accept his evidence in this regard and find that he did not make a serious effort or take reasonable steps to contact or communicate with Vigna to get his side of the story. Levant did not leave a voice message for Vigna, and did not send a letter, fax or e-mail to Vigna to obtain his side of the story. Given the total lack of urgency, Levant should have sought Vigna's side of the story before publishing the defamatory statements.

[82] I find that Levant did not contact Vigna to obtain his side of the story because he wanted to use Vigna's unusual words in requesting an adjournment as part of his campaign to discredit and denormalize the Commission. He did not want to check the facts as a responsible journalist would have done because this would interfere with his opportunity to ridicule the Human Rights Commission.

[83] If he had contacted Vigna to inquire if he had fulfilled his undertaking to the Tribunal, Vigna would have confirmed that he had complied by providing a medical certificate. This would have confirmed that Vigna was telling the truth when he told the Tribunal he was too ill to

proceed on May 11, 2007. Contacting Vigna would have been the fair thing to do in the circumstances especially given the seriousness of the allegations and the complete lack of urgency as 11 months had already gone by.

(vi) **Whether Including the Defamatory Statement was Justifiable**

[84] I find that Levant's defamatory statements were not justifiable because Vigna provided a medical certificate to the Tribunal confirming that he was too ill to proceed on May 11, 2007. As a result, Vigna did comply with his undertaking and did not act with "bold faced contempt" towards the Tribunal.

[85] A written request could also have been sent to the Tribunal Chair, the Commission, as well as to Vigna to inquire if a medical certificate had been provided to the Chair as indicated in the transcripts. Without such reasonable inquiry, I find Levant's statements were not justifiable. Levant did not act as a responsible or diligent journalist because he did not check to see if Vigna had obtained a medical certificate and filed it with the Tribunal.

(vii) **The Issue of Reportage**

[86] This issue is not applicable to Levant's published defamatory statements.

***Disposition on Blogs Published on March 20, 2008, March 26, 2008 and May 18, 2008***

[87] For the above reasons, I find that Levant's statements in his blog dated March 20, 2008 that "Vigna was plain old brazening out and looking someone right in the eye and fibbing" (to the Tribunal), the statement in his blog dated March 26, 2008 that Vigna acted with "bold faced contempt" and his statement in his blog dated May 18, 2008 that "Vigna gave his lawyer's undertaking – a professional promise to file a medical certificate. But Vigna still hasn't done so a year later", were defamatory. I also find that the above statements dealt with a matter of public interest, but were untrue and were not protected by the defence of justification, the defence of fair comment, or the defence of responsible communication on a matter of public interest.

**F. Levant's Blog of April 5, 2008 (Tab E)**

[88] I find that the following statement made by Levant on page 2 of the above blog is not defamatory. Levant stated "is there anyone who works at the CHRC who doesn't have any

conversation like a Dr. Phil episode ... or would that violate a fan's 'serenity'." I find that these statements would not lessen Vigna's reputation in the minds of a reasonable person.

**G. Levant's Blog of April 21 and April 28, 2008 re "Jadewarr" and Unethically Switching Evidence (Tabs F and G)**

[89] During a different CHRT hearing against Jessica Beaumont, Vigna exchanged a copy of the website printout from the Stormfront website, which had already been filed with the Tribunal which contained the additional words "Welcome Jadewarr" on the printout. "Jadewarr" was an on-line identity used by certain employees of the Commission to visit websites which promoted hatred against identifiable groups.

[90] In his April 21, 2008 blog, Levant stated that Vigna did not disclose to the Tribunal the difference between the documents that were switched as evidence, other than when they were each printed from the same website. In his April 28, 2008 blog, Levant stated:

Last week I blogged about the revelation uncovered by John Pacheco showing that Vigna... switched a key piece of evidence at a tribunal hearing and didn't tell the tribunal chairman that they were doing it. I called that unethical, and I stand by it. It's a lawyer's duty to tell a tribunal the whole truth - to bring even damaging information to the tribunal's attention, especially when asked. Vigna was asked by the chairman why he was switching a piece of evidence, and he didn't explain the real reason why. He led the chairman to believe there was no substantive reason, when there was. That's unethical.

[91] I agree with Levant's comments that lawyers have an ethical obligation not to mislead a Tribunal and to be truthful with the Tribunal. I find that Levant's statement that Vigna acted unethically by switching a key piece of evidence without explaining the real reason he was doing so to the Tribunal, to be defamatory as such a statement would lower Vigna's reputation in the mind of a reasonable person.

[92] The onus of proof then shifts to Levant to prove on a balance of probabilities that Vigna switched one website printout of the site operated by Jessica Beaumont for another printout of the same website knowing that there was a significant difference between the two documents. The original website printout contained the words "Welcome Jadewarr" while their replacement printout did not; otherwise the printouts were identical. Levant has the onus of proving that Vigna knew that "Jadewarr" was an identity used by some other Commission employees to visit

websites that promoted hatred against identifiable groups. Vigna testified that he was not aware of the significance, if any, of the words "Welcome Jadewarr" on the first printout. I accept his evidence.

[93] Levant did not call any evidence to prove that Vigna was aware of any material difference between the two printouts. He asked the court to draw an inference that Vigna knew the significance of the words "Welcome Jadewarr" based on a transcript of evidence given by individuals in another hearing who testified that Vigna was in the same room when the printout containing the words "Welcome Jadewarr" was printed. I am unable to draw any inference from this evidence as being in the same room is a long way from proving knowledge that someone accessed a website using the name 'Jadewarr' from a computer terminal.

[94] The transcripts of other proceedings are hearsay evidence and were not adopted or agreed with by Vigna when he was cross-examined during the trial. Levant was not present at any relevant time and, as such, had no evidence to offer on the issue. Levant also did not call any witness to prove that Vigna had any knowledge of "Jadewarr". More particularly, Levant did not call any witness who was present when the printout containing the words "Jadewarr" was made. Vigna was not the individual who accessed the website and printed a copy of the website. As a result, I find that Levant has not proven that Vigna had any knowledge of the significance of "Jadewarr".

#### **Justification**

[95] For the above reasons, I find that the defence of justification fails as the allegation was not proven to be true.

#### **Defence of Fair Comment**

[96] The matter has a public interest element because if a lawyer deliberately misleads a tribunal then this would be a breach of the lawyer's ethical obligations and he or she should be subject to sanctions.

[97] However, Levant's comments are not opinions that are capable of proof. Levant's statements are conclusions he drew from the fact that Vigna switched a copy of a website

printout during the Beaumont hearing. Levant jumped to the conclusion Vigna was aware of the significance of the word "Jadewarr" on the first printout. However, Levant had no evidence that Vigna was aware of any significant difference between the two printouts or that Vigna was aware that other employees of the Commission had used "Jadewarr" as an internet identity to access the Stormfront website operated by Beaumont.

[98] I find Levant's statements in his April 21<sup>st</sup> and 28, 2008 blogs are statements of fact and are not statements of opinion based on a fact situation that was not disputed. Vigna disputed the truth of Levant's statement of fact that he was aware of the significance of "Jadewarr". The last part of the test for fair comment is not applicable because on the proven facts, there is no proof that Vigna knew there was any material difference between the two documents or that he knew that "Jadewarr" was the name used by some other commission employees to access internet websites promoting hatred against identifiable groups.

[99] I, therefore, conclude that the defence of fair comment does not apply.

#### **Defence of Responsible Communication**

[100] I also find the defence of responsible communication on a matter of public interest does not apply to the above statements for the following reasons.

- (a) If a lawyer misleads the tribunal in a material way by switching evidence, then it would be a matter of public interest to ensure the lawyer involved respected the applicable ethical codes of the profession.
- (b) Such an allegation is serious and, if true, would be devastating to Vigna's reputation and as such would require a very diligent investigation of the alleged facts before such a statement was published.
- (c) While there is a public interest, it relates more directly to ensuring that an individual lawyer complies with his professional and ethical obligations and is not of broad interest to the general public.
- (d) The matter was not urgent as the Beaumont hearing occurred in December 2006 approximately a year and a half before Levant's blog publications in April 2008.
- (e) The source of Levant's statement was a transcript in which an employee of the Commission stated that the second copy of the Stormfront website was printed off when Vigna was present. The evidence did not specifically state that Vigna was aware of any difference between the two documents, did not specify where Vigna



was located in the room at the time, or describe Vigna's involvement, if any, or knowledge, if any, that the witness was accessing the website. Vigna did not print off the website copy or access the Stormfront website using the code name Jadewarr. I therefore conclude that Levant should have made a diligent inquiry from the persons present about whether Vigna had any knowledge, of Jadewarr and he should have also made inquiries about details of Vigna's involvement, if any, with Jadewarr. The transcript while reliable in itself does not provide reliable evidence that Vigna had any knowledge of Jadewarr or its significance.

- (f) Levant did not contact Vigna to obtain his side of the story although he generally testified he tried to contact Vigna by calling the Commission. He did not send a letter, a fax or an e-mail or, as I have found, make any diligent effort to speak with Vigna or any other witness that would have confirmed whether Vigna had any knowledge about the significance of Jadewarr or any difference between the two printouts.
- (g) The other factors related to the defence of responsible communication in a matter of public interest in the *Torstar, supra*, decision are not applicable.

**Disposition on Blogs Published on April 21, 2008 and April 28, 2008 Regarding Switching Evidence and "Jadewarr"**

[101] For the above reasons, I conclude that the defence of responsible communication on a matter of public interest is not available to Levant for statements he published stating that Vigna acted unethically by switching evidence without advising the Tribunal of the true reason. I find that Levant did not act as a responsible journalist or act diligently given the seriousness of the allegations he was making against Vigna. I therefore find that the allegations referred to were defamatory and not protected by any defence.

**H. Levant's Blog of April 28, 2008 Alleging "Beclowning" (Tab F)**

[102] In this blog Vigna repeated a number of statements he previously made about Vigna. Levant ridiculed Vigna for representing himself in the lawsuit and threatening to sue Levant for libel stating:

Don't. Aim. The. Gun. At. Your. Own. Foot.

Vigna moves from beclowning himself to ...  
Vigna's threatened lawsuit is laughable.

[103] I find that the above statements in Levant's April 28, 2008 blog, other than his allegation of unethical conduct, are not defamatory as they would not lower Vigna's reputation in the mind

of a reasonable person and are also expressions of Levant's opinion which would be protected by the defence of fair comment.

**I. April 28, 2008 Levant's April 28, 2008 Blog Titled "Serener Than Thou" (Tab H); and Comment Published on Levant's Blog (Tab I)**

[104] Levant testified that he approved all comments before they were published and attached to his blog site. I find the lyrics of a song published by SteynOnline, titled "Serener than thou" while mocking and satirical, are not defamatory as they would not lower Vigna's reputation in the mind of a reasonable person and are based on words actually used by Vigna to obtain the adjournment.

**J. May 4, 2008 Blog Regarding "Serenity Now" (Tab J)**

[105] I find that the mention of "Serenity Now" which refers back to the transcripts where Vigna sought an adjournment is not defamatory as it would not lower Vigna's reputation in the mind of a reasonable person. In the event that the statement was defamatory then it would be covered by the defence of justification because it is a transcript of what was said in order to obtain the adjournment.

**K. Levant's May 8, 2008 Blog Regarding Failed Electoral Campaigns (Tab K)**

[106] I find that Levant's reference to Vigna's failed campaigns for public office is not defamatory and would be covered by the defence of justification in any event, because it was true. Vigna admitted that he did run unsuccessfully for public office on several occasions.

**L. National Post Article Dated Saturday, May 10, 2008 (Tabs L and M)**

[107] I do not find that this article or the correction published by the National Post constitutes defamation by Levant because it was not published by Levant. The National Post published corrections to its article which had said that Vigna had refused to testify "because he was not in a serene state of mind." Vigna never refused to testify but sought an adjournment of the Tribunal hearing.

**M. Levant's May 18, 2008 Blog Regarding My Cousin Vinny (Tab N)**

[108] In this blog, Levant referred to the National Post article and its correction, Levant again published the transcript of Vigna's request for an adjournment on May 11, 2007. Levant compared Vigna, who is of Italian descent, unfavourably to the film character in the movie "My Cousin Vinny".

[109] While not flattering, I do not find that these statements are defamatory other than the statements that Vigna failed to comply with his undertaking which I discussed previously. I do not find that Vigna's reputation would be lowered in the minds of a reasonable person by the humorous comments. The comment does ridicule Vigna's performance as a lawyer but I find the comments would be recognized as an opinion and is an opinion that someone could honestly express, which would be protected by the defence of fair comment.

**N. Blog of May 21, 2008 Stating Vigna was Fired by CHRC (Tab O)**

[110] I find that Levant's statement that Vigna was fired is defamatory as it would lower his reputation in the minds of a reasonable person. When considered in context with other previous blogs a reasonable person would infer that Vigna was fired for just cause based on Levant's previous blogs alleging dishonesty and lack of integrity, which I have found to be untrue and defamatory. The statement is not protected by the defence of justification as Vigna was not dismissed by the Commission even though Vigna did not continue with the Lemire hearing after the adjournment.

[111] Levant's statement that Vigna was fired is a statement of fact and not one of opinion and therefore the defence of fair comment does not apply. I find that Levant should have made inquiries from the Commission and contacted Vigna to confirm if Vigna had been dismissed by the Commission before publishing these statements. The public interest in this matter is minimal and there was no urgency to the matter. I find the defence of reasonable communications in the public interest is not available to Levant for the above reasons. The statement is defamatory and not covered by any of the defences.

**O. Levant's Blog of June 11, 2008 Regarding Harassing Levant's Parents (Tab P)**

[112] Levant stated that Vigna was a "buffoon" and repeated the reference to the transcript of June 25, 2007. He also stated that his parents "tell me that Vigna has been harassing them at their home" by sending a private investigator to his parents' house again and again. "Giacomo "Serenity Now" Vigna isn't just a clown. He's a bully who sends private investigators to harass his opponents' families."

[113] I find that these comments are defamatory and would lower Vigna's reputation in the eyes of a reasonable person. Vigna did engage a process server to attempt to serve Levant at his parents' home in Calgary with the notice of libel and possibly also with the Statement of Claim. Levant testified that he had not lived at his parents' address for some 20 years. I accept his evidence.

[114] Levant's statements have some element of fact as Vigna did send a process server to attempt to serve Levant at his parents' address. I find Levant's statements that he considered Vigna a buffoon, clown and a bully are statements of opinion. There is a minimal public interest element as the statements concern Vigna's attempts to serve his notice of libel on Levant by serving Levant's elderly parents albeit as a lawyer employed by the Commission. Levant expressed derogatory opinions about Vigna's conduct as it related to serving his parents with documents.

[115] I find that Levant's statements are opinions that "someone could have honestly held". These comments would not have met the previous test that required that a "fair minded person" could have expressed the opinions. These were not fair minded comments but I find they met the lower standard of opinions that someone could honestly have held and which are therefore protected by the doctrine of fair comment.

**P. Levant's Blog of July 22, 2008 Regarding Threatening Him with Another Lawsuit (Tab Q)**

[116] I do not find in Levant's statements that Vigna was threatening him with another lawsuit, the statement that Vigna stopped a hearing because he was not feeling serene, or that Vigna threatened to sue Levant in the French language or that Vigna ought to get a lawyer, are defamatory. However, Levant's statement that Vigna was one of the CHRC staffers who knew

about their secret memberships in Neo-Nazi groups. "Vigna even knew passwords and account details for such neo-Nazi memberships, including one called Jadewarr". I find this statement to be defamatory and it is not protected by any defence for the same reasons given with regards to Levant's April 21 and 28, 2008 blogs discussed at sub-title "G." above.

**Q. August 1, 2008 Blog Regarding "Beclowned Himself" (Tab R)**

[117] I find that Levant's statement that Vigna beclowned himself is defamatory. Levant used each subsequent blog publication as another opportunity to repeat Vigna's request for an adjournment using the words that he "was not in a serene state of mind" in circumstances where it was clear from a fair and diligent reading of the transcript, that Vigna was stating that he is not mentally well enough to proceed with the hearing. Vigna used some unfortunate language when requesting the adjournment on May 11, 2007 which Levant has used to ridicule him and in many of his subsequent blogs.

[118] However, I find that the transcripts represent the actual words used by Vigna and the defence of justification applies. Alleging that someone beclowned himself is a derogatory comment but I find is protected by the doctrine of fair comment as it is recognizable as an opinion and it is an opinion that "someone could honestly have held" based on the proven facts.

**R. Levant's Blog on August 20, 2008 on Page 4 Regarding the Lawsuit by Vigna (Tab S) and November 24, 2008 on Page 4 (Tab T)**

[119] In both the above blogs, Levant stated that he had been sued by Vigna for criticizing his work as a Commission lawyer. I do not find these statements to be defamatory and if they were, would be protected by justification as Vigna did sue Levant for defamation.

**S. Levant's Blog of March 18, 2009 Stating the CHRC was a Dumping Ground for Extremist Politicians (Tab U)**

[120] Levant published an interview with Kathy Shaidle about his new book "Shakedown". Levant stated that "Vigna was a three time election loser" which was true. I do not find this comment to be defamatory and it is a true statement and protected by the defence of justification. Levant does state that his objective in writing his blogs was to mock Vigna and others. The fact that he alleged Vigna was an extremist politician is moderately defamatory however, I find is

protected by the defence of fair comment as it is an opinion that someone could honestly hold, albeit not an opinion that a fair minded person could hold.

**T. Levant's Blog of June 19, 2009 at Page 5 Regarding Ridiculing Vigna's Performance Before the Tribunal (Tab W)**

[121] Levant made a statement that Giacomo Vigna was suing him for ridiculing Vigna's bizarre and embarrassing performance before a tribunal. While I find the statement to be defamatory, it is recognizable as an expression of opinion and protected by the defence of fair comment as it constitutes an opinion that someone could honestly have held.

**Summary of Dispositions on Defamatory Statements by Levant**

[122] For the above reasons, I find that the defendant Levant published defamatory statements on his blogs dated March 20, 2008, March 26, 2008, May 18, 2008, April 21, 2008, April 28, 2008, and May 21, 2008, where he stated that Vigna had brazenly bold faced fibbed to the Tribunal, that Vigna had acted with bold faced contempt that Vigna had failed to honour his undertaking to the Tribunal for over one year, and had acted unethically and misled the Tribunal by switching two pieces of evidence when he knew about "Jadewan", and that Vigna had been fired by the CHRC. I have also found that these defamatory statements by Levant are not protected by any defence.

**Damages**

[123] Damages are presumed once the plaintiff has proven that the published statements were defamatory. I have found that a number of Levant's statements were defamatory and were not protected by any defence for the reasons given above.

[124] Levant's defamatory statements attacked Vigna's integrity as a practising lawyer and sought to ridicule and mock him. Vigna was falsely accused of fibbing to the Tribunal, acting with bold faced contempt, failing to comply with his professional undertaking for over one year, acting unethically by switching evidence before a Tribunal without disclosing the difference between the documents, and being fired by the Commission.

[125] On January 18, 2010, almost one year and a half after the blogs were published, Levant did publish a correction with regards to the allegation that Vigna had not complied with his undertaking for over one year.

[126] The correction stated:

Six weeks later, on June 25, 2007, Mr. Vigna had still not complied with that undertaking, even though the CHRC insisted that he did. You can read the Transcript [here](#).

Mr. Vigna never appeared in that case again and based on that, I assumed that Mr. Vigna had never actually submitted his medical certificate.

Just this week I learned from Mr. Vigna that he eventually did provide a doctor's note to the Tribunal, some four months after promising to do so.

[127] The defamatory statements were published in an electronic blog and so were widely dispersed and cannot be retracted. A number of comments were also published on Levant's blog site related to Levant's defamatory comments about Vigna, which indicate that individuals were reading Levant's blog, and were affected to such an extent that they were motivated to publish a comment. Parts of Levant's blog were republished in Australia indicating that the defamatory information about Vigna was disseminated worldwide.

### Malice

[128] Actual malice will defeat a defence of fair comment. In this case, Levant stated that his objective was to denormalize Human Rights Commissions. In this regard, he was motivated by a political objective to change the mandate of Human Rights Commissions to prevent them from prosecuting hate crimes that were committed against identifiable groups.

[129] Levant also stated in his blog dated March 18, 2009 that his objective in writing the blogs was to mock Vigna and other employees of the CHRC.

[130] Malice was described by Cory J. in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at p. 1189, as follows:

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes [...] any indirect motive or ulterior purpose that conflicts with the sense of duty or the mutual interest which the occasion created.

Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth.

[131] I find that Levant did not know that the statements he published about Vigna were false, and his dominant purpose was not to injure Vigna. His dominant purpose was to denormalize Human Rights Commissions and the method he used was to attack Vigna's conduct in seeking an adjournment of the Tribunal hearing. Seeking to reform sections of the Human Rights Legislation is not an improper purpose as the issue is one of political debate, but I find that Levant had an ulterior purpose in publishing defamatory statements about Vigna, which was to denormalize Human Rights Commissions.

[132] I also find that Levant acted with reckless indifference as to whether his statements about Vigna were true or false, because he obtained no independent medical evidence, did not write, e-mail, fax or speak with Vigna, the Tribunal or the Commission to verify his allegations that Vigna had fibbed to the Tribunal, or had failed to comply with his undertaking. I also find that Levant was reckless in the manner that he read the transcripts as they confirm that Vigna did send medical certificates to the Tribunal within three days but on the condition they remain confidential.

[133] I therefore find that Levant spoke in reckless disregard of the truth and for an ulterior purpose of denormalizing the Human Rights Commission across Canada which makes his statements malicious in that sense.

#### **Punitive and Exemplary Damages**

[134] Vigna did not testify as to any specific damages he had suffered and the maximum allowed under the simplified rules was \$50,000 at the time. Vigna also seeks an award of punitive damages. Vigna pleaded that his personal and professional life have suffered as a result of the defamatory publications, however he did not provide any evidence of any effect that they have had on his life. He seeks \$50,000 in punitive and exemplary damages.

[135] I find that Levant's conduct while defamatory was not so egregious as to justify an award of punitive or exemplary damages mainly because his intent was not to harm Vigna but to denormalize the Human Rights Commissions.



**Amount of Damages**

[136] Damages in a libel action are presumed after defamation has been made out for publications where no defence applies. In *Myers v. Canadian Broadcasting Corp.*, [1999] O.J. No. 4380, Bellamy J. stated at p. 40:

The damages reflect what the law presumes to be the natural or probable consequences of the defendants' conduct and the harm which normally results from such defamation.

[137] In *Myers, supra*, Bellamy J. went on to state that damages should reflect both the size and nature of the audience. In this case, the audience for Levant's blogs in unknown but publications on the internet can have a worldwide audience. Levant's audience is confirmed as he had a number of comments published on his blog website. I also find that given Levant's stated public campaign of attacking Human Rights Commissions to denormalize them, much of his potential audience, including anyone working with Human Rights Commissions would not give any credence to most of his remarks. However, Levant is a well known journalist and political activist and has published articles in well respected newspapers including the National Post and as a result, his statements would also be given credence by a substantial number of individuals.

[138] Vigna has an unblemished reputation and in *McElroy v. Cowper-Smith*, [1967] S.C.R. 425, the Supreme Court held that the defamation of a professional person is a very serious matter which ordinarily warrants substantial damages.

[139] I did not hear evidence of any personal suffering or personal problems Vigna suffered as a result of Levant's defamatory comments. If such evidence existed, it would have increased the amount of damages.

[140] The fact that Levant is a lawyer is an aggravating factor as he either knew or should have known that continued ridiculing of another lawyer using the internet, and accusing another lawyer of fibbing to the Tribunal, of acting with contempt and acting unethically before a Tribunal, without making a diligent inquiry to verify that his facts were accurate and true, and when he used the manner in which Vigna requested an adjournment in order to further his objective of denormalizing Human Rights Commissions was defamatory conduct. He also

continued to republish the same inaccurate statements after he was given notice they were considered defamatory and he was asked to stop.

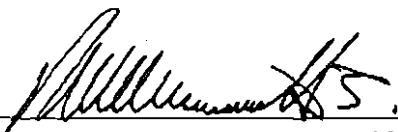
[141] Having considered all of the above factors, including that Levant published a correction and stated that Vigna had complied with his undertaking, that Levant continued to make defamatory statements about Vigna for a larger political aim of denormalizing and discrediting Human Rights Commissions generally, that he did not follow responsible journalistic practices or act diligently by checking with a reliable source, by failing to give Vigna a chance to respond to the allegations and clarify that he had complied with his undertaking and had provided a medical certificate confirming that he was ill on May 11, 2007 and was being truthful with the Tribunal, I fix damages at \$25,000.

**Disposition**

[142] In considering all of the above factors, I order Levant to pay Vigna damages assessed at \$25,000. I further order Levant to remove all defamatory blogs referring to Vigna from his website within fifteen (15) days.

**Costs and Post Judgement Interest**

[143] Vigna shall have 15 days to make submissions on costs and post judgment interest. Levant shall have 15 days to respond, and Vigna shall have 10 days to reply.

  
\_\_\_\_\_  
R. Smith J.

**Released:** November 18, 2010

**SCHEDULE A****Agreed Statement of Facts**

1. The plaintiff, Giacomo Vigna, acted as counsel for the Canadian Human Rights Commission at the hearings before the Canadian Human Rights Tribunal.
2. The plaintiff appeared as counsel for the Canadian Human Rights Commission in a hearing involving a complaint initiated by Richard Warman against Marc Lemire.
3. The complaint against Mr. Lemire involved an allegation that he had breached Section 13 of the *Canadian Human Rights Act*.
4. That on May 11, 2007, the hearing against Mr. Lemire was scheduled to continue.
5. During the course of submissions made to the Chair of the Tribunal, the Plaintiff made statements as set out in the transcripts of May 11, 2007 in the *Warman v. Lemire* case.
6. That the transcript of the proceedings accurately sets out what occurred on May 11, 2007 and June 25-26, 2007 in the *Warman v. Lemire* hearing. These transcripts and other were easily publicly available on the internet at the same website: [www.richardwarman.com](http://www.richardwarman.com).
7. The plaintiff was counsel for the Commission in a hearing of a complaint brought by Richard Warman against Jessica Beaumont.
8. The Tribunal was hearing a complaint involving Section 13 of the *Canadian Human Rights Act*.
9. During the course of the hearing in *Warman v. Beaumont*, the Chair questioned the difference between two printouts of the same page from a neo-Nazi website.
10. That the transcripts of the hearing in *Warman v. Beaumont* accurately reflect what occurred in this hearing on December 12, 2006. These transcripts and other were easily publicly available on the Internet at the same website: [www.richardwarman.com](http://www.richardwarman.com).
11. The Defendant, Mr. Ezra Isaac Levant, was not present at either of the Lemire or Beaumont hearings.
12. The Defendant is a lawyer, member of the Law Society of Alberta since the year 2000 and he makes mention of the fact he is a lawyer on his blog.
13. The Defendant has a website at: [www.ezralevant.com](http://www.ezralevant.com) which is easily accessible by any member of the public and is available on the World Wide Web. He is the sole owner and administrator of this website where he regularly writes blogs.
14. Mr. Levant is the author and the publisher of blogs on the internet on his blog: <http://ezralevant.com> attached to the amended claim as Tabs A to H, I to L, N to U, the extracts of his book Shakedown at Tab V of the claim and W of his blog.

15. The Defendant admits the authenticity of documents found at Plaintiffs Book of Documents at Volume 1A-Tabs 1(a), (b), (c), (d), (e), (f-blog only), 2(a), 3(a), 4(a), 5, 6(a), 7(a), 9(a), 10, 11, 14(a), 15(a), (b), (c), (d), (e), (g), (h), (k), (n), (p), (r), (s), (t), (u), (v), (w), (y-blog only), 16, 17, 19 (the blogs only), 27, 28 and 39 (blog only) to the extent they were authored by the defendant.
16. The Defendant authored on July 15, 2009 in the daily newspaper *National Post* entitled '*Neo Nazi Hate-Courtesy of the CHRC*'.

**CITATION:** Vigna v. Levant, 2010 ONSC 6308  
**COURT FILE NO.:** 08-CV-41703SR  
**DATE:** 2010/11/18

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

GIACOMO VIGNA

Plaintiff

- and -

EZRA ISAAC LEVANT

Defendant

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**REASONS FOR JUDGMENT**

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R. Smith J.

Released: November 18, 2010