

Court File No. CV-20-82717

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MAXIME BERNIER

Plaintiff

- and -

**WARREN KINSELLA, DAISY CONSULTING GROUP INC.
and DAISY STRATEGY GROUP LTD.**

Defendants

STATEMENT OF DEFENCE

1. The defendants admit the allegations in paragraphs 2, 3, 7, 9 and 22 of the Amended Statement of Defence.
2. The defendants deny the allegations in paragraphs 1, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46 of the Amended Statement of Defence.
3. The defendants have no knowledge of the allegations in paragraphs 10 and 21 of the Amended Statement of Defence.

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Mr. Kinsella, Daisy and DSGI

4. The defendant, Warren Kinsella ("Mr. Kinsella") is an individual working in the province of Ontario and across Canada. Mr. Kinsella has been involved in Canadian politics for over 30 years, including as a known political commentator on a variety of Canadian political issues at the federal, provincial and municipal levels. Mr. Kinsella has advised the Canadian Jewish Congress, government groups and other groups on organized racism, Anti-Semitism and hate in Canada, the United States and Israel. Mr. Kinsella has written 5 books on racism.

5. The defendant, Daisy Consulting Group Inc. ("Daisy") is a corporation carrying on business in Toronto and across Canada in the fields of public relations and government relations.

6. The defendant, Daisy Strategy Group Ltd. ("DSGI") is a corporation associated with Daisy.

Mr. Bernier and the PPC

7. The plaintiff, Maxime Bernier ("Mr. Bernier") is an individual from Beauce, Quebec. He was a member of the Progressive Conservative Party of Canada ("CPC") and elected to the House of Commons in 2006, taking over the seat held by his father. He became Minister of Industry in February 2006 in the Harper

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government. In August, 2007, he was moved from the Ministry of Industry to Minister of Foreign Affairs. Mr. Bernier resigned as Minister of Foreign Affairs in May, 2008 after it became public that he had left a confidential briefing book at his girlfriend's home.

8. In 2011, Mr. Bernier was appointed as Minister of State in the Harper government. In November, 2015, Mr. Bernier was appointed as critic for Economic Development and Innovation. In April, 2016, he resigned in order to pursue the leadership of the CPC. Mr. Bernier was unsuccessful in his leadership bid and was re-appointed critic for Innovation, Science and Economic Development Canada by CPC leader Andrew Scheer in August 2017. Mr. Bernier was dismissed from this position in June 2018.

9. In August, 2018, Mr. Bernier announced he was leaving the CPC to found a new political party, ultimately founded in September, 2018 called the People's Party of Canada (the "PPC"), because he considered the CPC to be "too intellectually and morally corrupt to be reformed".

10. The PPC's founding membership list submitted to Elections Canada included: (i) Shaun Walker, who once led the National Alliance, a group generally recognized as condoning and promoting the use of violence to achieve racial

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separatism, (ii) Janice Bultje, who was at the time active in Pegida Canada, a group the Canadian Anti-Hate Network describes as an anti-Muslim group, and (iii) Justin Smith, formerly active in the Soldiers of Odin, an anti-immigrant and white supremacist group founded in Finland, which has been recognized as a hate group.

11. The PPC ran in the 2019 federal election, with Mr. Bernier running in his Beauce riding and 314 other PPC candidates running in ridings across Canada. Mr. Bernier was defeated in his own riding, garnering 28.4% of the vote, with no other PPC candidate winning more than 4% of the vote in his or her riding.

Mr. Bernier's extreme, intolerant and obstinate views

12. At least since forming the PPC in 2018, Mr. Bernier has expressed extreme, intolerant and obstinate views, including the following:

- (a) In August, 2018, Mr. Bernier criticized Prime Minister Trudeau's "diversity is our strength" comments as "radical multiculturalism, stating:
 - (i) Having people live among us who reject basic western values such as freedom, equality, tolerance, and openness doesn't make us strong. People who refuse to integrate into our society and want to live apart in their ghetto don't make our society strong;
 - (ii) Trudeau's extreme multiculturalism and cult of diversity will divide us into little tribes that have less and less in common, apart from their

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dependence on government in Ottawa. These tribes become political clienteles to be bought with taxpayers \$ and special privileges; and

- (iii) Cultural balkanization brings distrust, social conflict, and potentially violence, as we are seeing everywhere. It's time we reverse this trend before the situation gets worse. More diversity will not be our strength, it will destroy what has made us such a great country.

- (b) That Canada should have a "values test" to screen out potential immigrants who share the "barbarian ideology" of radical Islam because the multicultural left refuses to recognize that all cultures and values are NOT equal (Twitter, October 15, 2019);

- (c) That immigrants are making Canadian cities like Toronto and Vancouver expensive to live in, Canadians are subsidizing 74% of current immigrants, immigrants earn less than Canadian-born workers and pay lower amounts of tax but consume as many government services as everyone else;

- (d) That Greta Thunberg, a 16 year old Swedish climate change activist was "clearly mentally unstable. Not only autistic, but obsessive-compulsive, eating disorder, depression and lethargy, and she lives in a constant state of fear" (Twitter September 2, 2019);

- (e) That the other party leaders in the 2019 federal election were "globalists", a term which has been embraced in alt-right circles and is considered to be an anti-Semitic slur;

- (f) That the CPC was too morally and intellectually corrupt to be reformed (August 24, 2020 statement on PPC website);

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- (g) That Canada should build a fence on part of its southern border to block asylum seekers from entering Canada; and
- (h) That there is no scientific consensus that human activity has caused or is causing climate change and that climate change “alarmism” is based on flawed models (PPC platform).

13. In March, 2019, Daniel Joseph resigned as president of the PPC Kelowna-Lake country riding association citing that the PPC allowing racist, xenophobic, homophobic and hateful influences into positions of authority and influence within the party.

14. In July, 2019, the entire PPC board in a Winnipeg riding resigned, claiming that the PPC was being taken over by racists, anti-Semites and conspiracy theorists.

15. In October, 2019, PPC candidate Sybil Hogg posted on Twitter and Facebook that “Islam is pure evil. Islam has no place in Canadian Society”. Neither Mr. Bernier nor the PPC took any action against Ms Hogg after learning of the above statement.

16. In October, 2019, PPC candidate Mark Friesen shared a cartoon photograph on Twitter depicting Jagmeet Singh wearing a turban with a bomb on it. Neither

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Mr. Bernier nor the PPC took any action against Mr. Friesen after learning of the above cartoon.

Mr. Kinsella authored and published the statements by broadcast

17. The defendants admit that Mr. Kinsella authored and published by broadcast the twitter posts referred to in paragraphs 17 c., e., g., h., i., j., k. and l. of the Amended Statement of Claim.

18. The defendants admit that Mr. Kinsella authored and published by broadcast the blog posts referred to in paragraphs 17 a., b., d., f., m., n. and o. of the Amended Statement of Claim.

Mr. Bernier is out of time to pursue these claims

19. Each of the statements complained of referred to in paragraph 17 of the Amended Statement of Claim was a broadcast within the meaning of the *Libel and Slander Act*. Other than with respect to the statements complained of referred to in paragraph 17o. of the Amended Statement of Claim, Mr. Bernier did not give the defendants notice in writing specifying the matters complained of within 6 weeks after the statements came to Mr. Bernier's attention. The defendants plead that no action lies against them with respect to the statements complained of referred to in

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paragraphs 17a. through n. of the Amended Statement of Claim. The defendants plead and rely upon section 5 (1) of the *Libel and Slander Act* in this regard.

20. In addition to the pleading in the preceding paragraph, the statement complained of referred to in paragraph 17o. of the Amended Statement of Claim was a broadcast on Mr. Kinsella's blog. The statements complained of referred to in paragraphs 17c., e., g., h., i., j., k. and l. of the Amended Statement of Claim were not broadcast on Mr. Kinsella's blog. Accordingly, with respect to these broadcasts, Mr. Bernier did not commence an action within 3 months after the statements came to his attention and any claims with respect to these broadcasts is statute-barred. The defendants plead and rely upon section 6 of the *Libel and Slander Act* in this regard.

Statements in paragraphs 17a. and 17d. of the Amended Statement of Claim are not defamatory of the plaintiff.

21. The defendants deny that the statements at paragraphs 17a. and 17d. of the Amended Statement of Claim are defamatory of the plaintiff.

All statements in paragraph 17 of the Amended Statement of Claim are true

22. The defendants plead and rely upon the defence of justification in respect of all of the statements at paragraph 17 of the Amended Statement of Claim. This

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pleading is made in the alternative to the above pleading with respect to paragraphs 17a. and 17d. of the Amended Statement of Claim.

All statements in paragraph 17 of the Amended Statement of Claim are fair comment

23. To the extent that the words complained of referred to in paragraph 17 of the Amended Statement of Claim are expressions of opinion: (i) they were expressed on matters of public interest, being the positions and policies of candidates running for public office, something of utmost importance to Canadian voters deciding who should represent them in the House of Commons, (ii) they were made in good faith based on facts known about Mr. Bernier and the PPC, (iii) a person could honestly express those opinions based on the facts known about Mr. Bernier and the PPC, and (iv) the comments were not actuated by malice.

Statements made on matters of public interest

24. The words complained of referred to in paragraph 17 of the Amended Statement of Claim were expressed on matters of public interest, being the positions and policies of candidates running for public office, something of utmost importance to Canadian voters deciding who should represent them in the House of Commons and Mr. Kinsella exercised reasonable diligence and acted responsibly in broadcasting the statements.

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25. The defendants plead and rely on section 2(b) of the *Canadian Charter of Rights and Freedoms* which guarantees freedom of thought, belief, opinion and expression including freedom of the press. The defendants are not liable to Mr. Bernier for Mr. Kinsella's broadcast of the words complained of referred to in paragraph 17 of the Amended Statement of Claim as the statements are an accurate and fair account of matters of great public interest and constitute political speech being statements regarding the positions and policies of candidates running for public office, something of utmost importance to Canadian voters deciding who should represent them in the House of Commons.

26. The defendants deny that the words complained of referred to in paragraph 17 of the Amended Statement of Claim had the meanings or were understood to mean the meanings pleaded in paragraph 18 of the Amended Statement of Claim.

Statements did not place Mr. Bernier in a false light

27. Mr. Bernier deliberately and knowingly placed himself in full public view by running for public office, holding public office, forming the PPC and running for office in the 2019 federal election. He had no privacy right to protect and the tort of invasion of privacy does not apply in the circumstances.

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28. In any event, Mr. Kinsella denies that he knowingly or with the intention to cause harm placed Mr. Bernier in a false light publicly by broadcasting the words complained of referred to in paragraph 17 of the Amended Statement of Claim.

29. In any event, Mr. Kinsella denies that the statement regarding Mr. Bernier's association with Paul Fromm, an infamous neo-Nazi, was deliberately misleading or a public misrepresentation of the context of the photograph or Mr. Bernier's beliefs.

30. In any event, Mr. Kinsella denies that he knew the words complained of referred to in paragraph 17 of the Amended Statement of Claim were false or that he acted in reckless disregard for the falsity of the statements or that he knew or should have known that the effect would be to place Mr. Bernier in a false light.

Daisy and DSGI not liable

31. Neither Daisy nor DSGI published or broadcast any of the words complained of referred to in paragraph 17 of the Amended Statement of Claim, nor are either of them vicariously liable for the acts of omissions of Mr. Kinsella and accordingly, neither of them is liable in law for any of the statements made by Mr. Kinsella.

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Any damages suffered result from Mr. Bernier's extreme, intolerant and obstinate views or are excessive and remote

32. The defendants deny that Mr. Bernier's reputation has been lowered or that he has suffered any damages because of the words complained of referred to in paragraph 17 of the Amended Statement of Claim. Any lowering of Mr. Bernier's reputation and any damages suffered by him result from: (i) the extreme, intolerant and obstinate views he holds and has expressed publicly, and (ii) other statements published about Mr. Bernier by third parties.

33. In the alternative, if Mr. Bernier's reputation has been lowered or he has suffered any damages, which is not admitted but is expressly denied, the damages sought are excessive and too remote and Mr. Bernier has taken no or inadequate steps to mitigate the alleged damages.

34. In the further alternative, if words complained of referred to in paragraph 17 of the Amended Statement of Claim were defamatory, which is not admitted but is expressly denied, and Mr. Bernier suffered damages as a result thereof, which is not admitted but is expressly denied, and the defences pleaded are unsuccessful, the defendants plead in mitigation of damages that Mr. Kinsella acted in good faith and with no malice and that: (i) he believed the statements he made were true, (ii) he acted reasonably in believing that the statements he made were true, and (iii) he acted reasonably in expressing the opinions he expressed.

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35. The defendants deny that they have acted in any manner which attracts an award of punitive or aggravated damages.

36. The defendants submit, therefore, that the action be dismissed with costs on a substantial indemnity basis.

September 15, 2020

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STATEMENT OF DEFENCE

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