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TO: Douglas H. Christie (Fax 250-479-3294)  
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FROM: Debbie O'Neil

MESSAGE: Judgment attached from Justice Metivier

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ONTARIO

SUPERIOR COURT OF JUSTICE

**BETWEEN:**

IAN VERNER MACDONALD

Plaintiff

- and -

CANADIAN BROADCASTING CORPORATION and KINSELLA

Defendants

)  
)  
) Douglas H. Christie, for the Plaintiff  
)  
)  
)  
)  
)

) Scott C. Hutchison and Brennagh Smith, for  
) the Defendants  
)  
)  
)  
)

) **HEARD:** January 12-16, 19-21, 2009

**MÉTIVIER J.**

**JUDGMENT**

[1] The plaintiff, (Macdonald) sues for defamation arising out of a television program broadcast on CBC Newsworld's edition of Coast to Coast on April 19, 1996. The defendant, Warren Kinsella (Kinsella), appeared as a guest on that program and took questions from callers.

[2] The program aired on the first anniversary of the Oklahoma bombing on a special edition of CBC's program, Newsworld, and was called "Remembering the Terror." Two introductory segments showed disturbing scenes of the bombed federal building in ruins, injured people, including a small child, and related scenes of the destruction and mayhem of that incident. The first segment was approximately twelve seconds in length, and the second was approximately fifteen seconds.

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[3] The audio accompanying those opening scenes says:

One year ago today, a homemade bomb blew up a U.S. federal government building. The blast killed 168 people. It was the worst act of domestic terrorism in U.S. history...

It's the worst terrorist attack in U.S. history. One year ago today, a homemade bomb tore apart a U.S. federal building in Oklahoma City. 168 people lost their lives – many of them children. Hundreds of others were injured.

[4] The program consisted of a general question which was put to the audience, "What do we need to know about right wing militia groups?" Various members of the public then called in with their specific questions or comments.

[5] Kinsella was a guest on the program, and discussed callers' comments or answered their questions.

[6] Some callers asked about the political motivations of these groups, others about whether the groups are over-publicized, how much of a threat they pose, and if and how the groups should be prosecuted. Then came the question and answer that form the basis of this lawsuit:

CALLER: I think what we need to know is the financial support. I'm wondering, Warren, [are] there elements in the moderate right that would actually funnel money through the extreme right?

KINSELLA: Yes, there are, and I talk about that in the "Web of Hate." \*

[\* Kinsella, *Web of Hate: Inside Canada's Far-Right Network*, Toronto: HarperCollins, 1994]

For example, there is a very wealthy landowner in Ottawa, a former high-ranking diplomat by the name of Ian Macdonald, who for many years provided rhetorical and material support to the Canadian Knights of the Ku Klux Klan.

And then interestingly enough, just to continue to cite that example, Macdonald provided connections between KKK leaders and the government of Libya, that he was doing some business with.

So the Libyan government actually has – it has been demonstrated by records obtained from the FBI – provided funding to far-right groups in Canada to carry out illegal acts.

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So to answer your question, the funding issue is a very important one.

If we can choke off the sources of funding for these extreme organizations, then we can put them out of business.

[7] At the end of the plaintiff's case at the trial, the defendant moved for an order dismissing the plaintiff's suit on the basis that, as stated in the notice of motion, "there is no evidence that Ian Verner Macdonald provided notice and commenced this action within the time period prescribed by the *Libel and Slander Act*, R.S.O. 1990, c. L-12, and that the evidence which is available indicates that the plaintiff failed to provide notice and initiate proceedings in compliance with the Act."

[8] The defendants submit that, since the plaintiff provided no sworn affidavit on the limitations issue and former counsel would not produce the plaintiff for examination on that issue, they could not bring this as a motion for summary judgment ahead of the trial, so they brought the motion at the close of the plaintiff's case.

[9] I heard the motion and reserved my decision until after the trial. It is set out below.

#### **DECISION ON PROCEDURAL MOTION**

[10] Subsection 5(1) of the *Libel and Slander Act* provides:

##### **Notice of action**

No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

36. Section 6 of the *Libel and Slander Act* provides:

##### **Limitation of action**

An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a

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claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action.

[11] The time line of events is of critical importance on the issue of the plaintiff's alleged failure to meet the above requirements:

- The show was broadcast once on April 19, 1996.
- The plaintiff is unable to remember any particular dates but believes that in approximately mid-May he was advised that Kinsella had spoken of him on the program and that he "may have said that the plaintiff was a financial backer of the KKK."
- During the rest of May and June, the plaintiff did nothing further. He did nothing in the first two weeks of July either.
- On July 17, the plaintiff "ordered" a tape of the program from the CBC by fax and was told, by way of a message left on his phone, that the order could not be filled, since they no longer had a copy of the tape. The same day, he wrote to the CRTC, requesting that it intervene and assist him in obtaining a tape.
- The plaintiff then attempted to obtain a copy of the tape from another source, which he was told would usually have such copies, but they could not provide it.
- On August 14, the CRTC responded that it could not assist, and, in any case, broadcasters were only required to retain tapes for twenty-eight days.
- Towards the end of August, the plaintiff received a copy of the tape from Paul Fromm, the same person who had originally alerted him to the program.
- The plaintiff engaged a lawyer (twenty-one weeks and five days after the program aired), and on September 16, 1996, a Libel and Slander Notice under s. 5 was served on the CBC. This, the CBC says, was the first time they heard about any potential legal action, or even that defamation was alleged to have occurred.
- On October 2, 1996, the Libel and Slander Notice was served on Kinsella. There is no evidence as to any reason for this delay since Kinsella was at his home and in the public eye during this period.
- On November 5, 1996, a Statement of Claim was issued and served on the CBC.

- On February 21, 1997, Kinsella was served with the plaintiff's Statement of Claim. There is no explanation for this delay either.

[12] The plaintiff bears the onus of establishing that he complied with the limitation period. See *Findlay v. Holmes* (1998), 111 O.A.C. 319 (C.A.); Raymond E. Brown, *The Law of Defamation in Canada* (Toronto: Thomson Canada Ltd., 1999), at 17-149; *MacNeil Estate v. Canada (Department of Indian and Northern Affairs)*, [2004] 3 F.C.R. 3 (C.A.).

[13] The notice requirement of Section 5(1) is very basic. It does not set out a required form of notice. Courts have interpreted the section as requiring only that the notice "identify the plaintiff and fairly bring home to the publisher the matter complained of" (see *Grossman v. CFTO-T.V. Ltd. et al.*, [1982] O.J. No. 3538 at para. 33 (C.A.)).

[14] The plaintiff submits he could have had no reason to believe a libel had occurred until he actually saw the tape. Counsel for the plaintiff submits that the word "knowledge" as used in the s. 5(1) can only mean "actual" knowledge, which the plaintiff did not have until approximately the end of August.

[15] According to this view, the notice provided was thus in time and complies with the Notice requirements of the *Act*.

[16] In *Bhaduria v. Persaud*, [1998] O.J. No. 1943 (Gen.Div.), at paras. 12, 16, 18, 19, 23, & 27, Justice Ferrier held that the test in such a case is whether the plaintiff could reasonably have had knowledge of the impugned statements. "It is sufficient that the plaintiff could reasonably have known of the libel; it is not necessary that actual knowledge of the plaintiff be demonstrated." Justice Nordheimer in *James v. Stonehocker*, [2002] O.J. No. 3204 (Sup. Ct.) agreed with this statement, as do I.

[17] The evidence strongly supports the view that Macdonald was, could, and should have been, reasonably clear about what Kinsella probably said about him in the context reported. The history of their relationship was one of courteous but firm opposition to each other's well-known and public views on such issues.

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[18] Kinsella had written repeatedly of what he considered the plaintiff's far right, anti-Semitic, and racist views as well of Macdonald's association with James Alexander McQuirter, Grand Wizard of the Knights of the Ku Klux Klan (KKK).

[19] Macdonald's opinion, which he shared publicly, in letters to the editors of various publications and elsewhere, was that Kinsella was often very wrong in his conclusions of what the plaintiff himself considered fact and history, and after an article by Kinsella in The Ottawa Magazine in 1989, Macdonald responded to various allegations, including that he had promoted white supremacy and anti-Semitism, by stating, among other things, that he was proud to be in the company of those people ( Zundel, Keegstra, and Ross) who are known for espousing those opinions.

[20] In this case, once knowing of the broadcast, Macdonald was under a duty to act diligently and speedily to ascertain the relevant facts.

[21] There is no evidence that he advised the CBC as to his legal concerns about the possibly defamatory content of the broadcast. According to the evidence from the CBC, such a complaint would have triggered a response from management. Instead, he merely "ordered" a tape. And that he did approximately two months after he heard of the association of his name as "financial backer of the KKK".

[22] There is no evidence that the person, who ultimately provided him with the tape, could not have given it to him much earlier. Macdonald testified that he had other preoccupations that summer, but that cannot serve to excuse him from his obligation to act diligently, and within the timeliness. He had been the plaintiff in another defamation action and presumably he would have been aware that these existed.

### **CONCLUSION**

[23] The evidence is clear, and the plaintiff has admitted many facts demonstrating that, in the context of the opinion he knew Kinsella had of him, the plaintiff would know that any

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comments Kinsella made about him and the KKK would most likely include the opinion that he supported this group.

[24] Seen through the prism of their past relationship, and Mr. Macdonald's certain knowledge of Kinsella's view of him, the initial comment to the plaintiff in May should have immediately set off alarm bells.

[25] He was not diligent and the court may make adverse inferences as to the reason he was not. The vagueness of his evidence with respect to when he learned about the program and when he reviewed it emphasizes that lack of diligence and raises issues of credibility. The dilatory conduct of Macdonald after receiving this information has put him out of time insofar as the requirements of the *Libel and Slander Act*.

[26] The plaintiff's claim is dismissed on this basis.

### **Defamation Per Se**

[27] In the event I am in error on the procedural point set out above, and because I heard evidence from both parties at trial, I have proceeded to the analysis of that evidence and the application of the law to it.

### **The Law of Defamation**

[28] To succeed in an action for defamation, the plaintiff must prove:

- (a) That the words complained of were broadcast;
- (b) That the words complained of refer to the plaintiff; and
- (c) That the words complained of, in their natural and ordinary meaning, or in some pleaded extended meaning, are defamatory of the plaintiff.

*See Assesmed Inc. v. Canadian Broadcasting Corp.*, [2004] O.J. No. 802 at para. 100 (Sup. Ct.), aff'd [2006] O.J. No. 2226 (C.A.), leave to appeal to S.C.C. refused [2006] S.C.C.A. No. 341.



[29] The defendants do not dispute that the alleged words were broadcast. As to the issue of whether the words referred to the plaintiff, the defendants set out the objective test from *Grant v. Cormier-Grant* (2001), 56 O.R. (3d) 215 (C.A.), which is whether an ordinary sensible person to whom the words were published understands them as referring to the plaintiff. I am satisfied that this test has been met with respect to some but not all of the statements made in answer to a specific question from a caller.

[30] Finally, I must consider whether the words complained of, in their natural and ordinary meaning, or in some pleaded extended meaning, are defamatory of the plaintiff.

[31] To determine whether the statements complained of are defamatory, the court must apply a two-step test:

1. Is the statement capable of supporting the defamatory meanings pleaded?
2. If yes, was the statement in fact understood according to these meanings?

[32] The standard of a reasonable right-thinking person is to be applied. Meanings which arise from speculation or are the result of strained or forced analysis or of unreasonable interpretation cannot stand.

[33] Because the words complained of were in a broadcast, the audio-visual context must be considered but unless those distort the content of the words, the words are the predominant consideration, see *Colour Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97 at 107 (C.A.).

[34] In the case at bar, the audio-visual aspect, apart from a few clips of the Oklahoma bombing, was one of talking heads and telephone questions. While the plaintiff alleged that the gravamen of this defamation is the violence and terrorism depicted in the visual scenes of the Oklahoma bombing, I find that, in the context of the program, these two short clips (27 seconds of a one-hour program) can best be described as a method to attract viewers, and to make use of the anniversary date of that event. They had little to do with the question under discussion.

[35] The pleadings allege malice and falsehood on the part of the defendants. *Paragraph 10 of the Statement of Claim:*

*The aforesaid words were spoken maliciously and falsely of the Plaintiff and were defamatory in their ordinary and natural meaning in that the words meant and were understood to mean that:*

- (a) the Plaintiff provided actual and significant support to the KKK, whether by way of money or other material means;*
- (b) the Plaintiff provided actual support to the KKK by way of written or spoken material;*
- (c) the Plaintiff was an actual supporter of the KKK;*
- (d) the Plaintiff was a member or supporter of a particular abhorrent group, namely the KKK or the Government of Libya and therefore he himself was an abhorrent person;*
- (e) the Plaintiff knowingly and actually acted as a conduit or agent for the purpose of assisting the KKK and the government of Libya combine for the gain of each of those entities;*
- (f) the Plaintiff participated in or was involved with the provision of money to particular persons or groups, name the KKK and the Government of Libya, which carried out illegal and criminal acts in Canada or which supported the accomplishment of illegal and criminal acts in Canada.*
- (g) the Plaintiff aided and abetted persons to carry out illegal and criminal acts in Canada;*
- (h) the Plaintiff provided money to particular persons or groups, namely the KKK and the Government of Libya, who carried out illegal and criminal acts in Canada or which supported the accomplishment of illegal and criminal acts in Canada;*
- (i) the Plaintiff was not worthy of owning assets or property;*
- (j) the Plaintiff was not worthy of enjoying a fundamental freedom of a citizen of Canada, namely to earn an income or to own property and assets or to receive credit and to expend that income or use the assets in a free or legal fashion;*
- (k) the Plaintiff was a participant in activities which endangered the safety or security of Canada or endangered the safety or security of persons living in Canada;*
- (l) the Plaintiff was not a fit and proper person to be a landowner or to earn an income as a landowner;*

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*(m) The Plaintiff is a person who actively and in a significant material way assisted particular persons or groups that are abhorrent, namely the KKK or the Government of Libya, and therefore he himself is an abhorrent person.*

[36] The next paragraph in the Statement of Claim repeats many of the same allegations, changing some words, and adding references to terrorism to some of the sub-paragraphs. These latter are simply not borne out. No suggestion of terrorism arose during the program. It is not reasonable to ignore the actual question put to the audience. The topic was right wing militia groups and the answer complained of dealt with **the moderate right**.

[37] The defendant Kinsella answered a specific question about whether the moderate right supported far right groups. His answer was in that context of identifying the plaintiff as a person in the moderate right who provided material and rhetorical support to the extreme right and provided connections between that extreme right and the government of Libya.

[38] Are the Kinsella statements capable of supporting the defamatory meaning pleaded? The statements have been divided into 4 segments for examination.

1) *A very wealthy landowner in Ottawa, a former high-ranking diplomat by the name of Ian Macdonald....*

[39] The plaintiff admits in his own evidence that he was a high-ranking diplomat. The plaintiff also testified that after 1984 he started purchasing many properties and renting them out. He testified that at one point he likely owned in the range of twenty properties in Ottawa, many of them heritage homes. Kinsella testified that at the time of the broadcast, he was operating on the basis of this same information, which had been given to him by the plaintiff in the course of their interviews in the past.

[40] Plaintiff's counsel, Mr. Christie, described Kinsella's comments as being made in an effort to "vilify and demonize Macdonald."

[41] He referred to the negative impact of repeating that Macdonald was a "wealthy" man, while the plaintiff's evidence was that he had lost his money and property.

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[42] The plaintiff testified he was in financial difficulty around the time of the program, and he was in litigation to recover property that he stated was fraudulently taken from him. Kinsella testified he knew nothing of this situation. All Kinsella knew was that Macdonald had earlier told him of twenty-four buildings and properties he had purchased in the Ottawa area. Counsel for the plaintiff submitted that the words were meant to communicate danger, were false and known to be false. While it may not have been true that Macdonald was "very wealthy" at the date of the program, no evidence substantiating that has been presented, and there is no way that Kinsella would have known of a change in his financial position.

[43] The description of Macdonald as "very wealthy" cannot reasonably carry the meaning ascribed to it by plaintiff's counsel who also says it carries a "clear inference that Macdonald is a source of funds for extreme organizations like the Oklahoma City bombing, the Montana Freemen, other extremists, and nebulous, strange dark forces in this world".

[44] A reasonable, right-minded person would not understand these words in the strained manner urged on the court by the plaintiff. Nor would that person understand that the plaintiff was not worthy of owning assets, of being a landowner or earning income as a landowner, all innuendo claimed by the plaintiff.

[45] Those words in their ordinary meaning do not support any defamatory meaning and were substantially true, or believed to be true at the time they were spoken. No evidence was led as to what the precise financial situation of Macdonald was at the time of the program.

***2. The Plaintiff for many years provided rhetorical and material support to the Canadian Knights of the KKK.***

[46] Kinsella said on the program *Coast to Coast* that Macdonald had provided rhetorical and material support for the KKK. In September 1989, Kinsella had written an article for the *Ottawa Magazine* called "The Somewhat Right of Centre Views of Ian Verner Macdonald." The interview with Macdonald, on which the article was based, had been taped and a transcript of that interview was submitted as an exhibit at trial. The material from this interview formed the basis for a chapter (5) in *Unholy Alliances*, a book later written by Kinsella.

[47] In 1992, Kinsella, before submitting chapter 5 to his publisher, sent it to Macdonald, asking him to review it, correct errors or suggest changes.

[48] Macdonald's comments are instructive, as are his lack of changes or corrections to the draft chapter submitted to him.

[49] The transcript of the interview and the chapter in the book show that the plaintiff publicly expressed his sympathy with the KKK and expressed admiration for some of its members. Macdonald commented on the KKK and its Grand Wizard, James Alexander McQuirter:

"Sympathetic? In a way... I was with the Klan in the sense that they were a minority and they are discriminated against. They are harassed to a certain extent and I think they should be allowed to have freedom of expression."

[50] The plaintiff testified that he agreed with McQuirter in respect of "certain parts of his policy." Specifically, he agreed they shared the same views on immigration policy.

[51] When asked what the plaintiff meant when he corrected Kinsella's draft manuscript that he "discussed policy," rather than acting as a "policy advisor" to McQuirter, the plaintiff answered that most of the conversations he had with McQuirter were anecdotal as opposed to as a policy advisor. The plaintiff said that he would discuss McQuirter's activities with him: "we discussed what he would do in respect of different issues and to some extent that would be a policy matter for him to decide." The plaintiff testified that such discussions would have taken place in the period of 1979 to 1982, while he was a federal executive.

[52] The plaintiff acknowledged in his evidence that when McQuirter would attend Ottawa for Klan business (such as radio show appearances), Macdonald would provide him with accommodation. Macdonald did not charge McQuirter for the lodging, though he once received a thank you gift – an SS sword. (The plaintiff was aware of the monetary value of providing accommodations – as exemplified in a voicemail message from Ernst Zundel inquiring as to how much he owes the plaintiff for the Macdonald accommodations used while in Ottawa.)

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[53] The plaintiff stated in cross-examination that he had a "fatherly" relationship with McQuirter and that he thought McQuirter trusted him. They discussed a planned coup in Dominica. As the small Caribbean island at the time had a right wing premier, Patrick John, McQuirter and others planned to dispose of the country's prime minister, restoring power to John, and thus establish a Neo-Nazi government. The plaintiff said he did not discourage McQuirter from participating in the plot; although he says he dismissed it from serious consideration because it was ill-conceived.

[54] Later, while McQuirter was incarcerated for counseling to commit murder and for his involvement in the conspiracy to overthrow the government of Dominica, the plaintiff and he exchanged correspondence. Some of the letters from McQuirter contained a code for "Heil Hitler". As well, the plaintiff offered McQuirter the promise of lodging and employment if he was granted parole. He confirmed this formally by way of a letter to the Parole Board, thus offering his support in a very tangible way. The plaintiff also sent some items to McQuirter and some materials to another person at McQuirter's request. There is no evidence that the plaintiff was reimbursed for any of his expenses in this regard.

[55] Macdonald did not quietly accept what Kinsella said about him. His defense of his own position sometimes underscored his beliefs. In a letter dated April 12, 1994, the plaintiff wrote HarperCollins, the publisher of *Web of Hate*.

Dear Sir:

"Web of Hate"

Kinsella's "Web of Hate" contains several inaccuracies with regard to Ian Verner Macdonald, as follows:

Page 163 - "...white supremacist rallies...Metcalf, Ontario in July, 1990 hosted by former Canadian Knights of the KKK advisor Ian Verner Macdonald"

This reference is misleading and inaccurate. I am not a former advisor to the KKK nor was I host to the skinhead rally near Metcalfe, my only connection with the event being that it took place on a derelict country property which I happened to own. I did not attend the rally nor did I play any part in its planning or staging. The rally broke no laws, as far as I know, nor did it create any form of public

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nuisance. As for the political implications of the event, I performed a commendable public service I think by providing the organizers and their visitors with a forum to express their views on contemporary society in a private rural setting, thus avoiding possible offense to sensitive minorities.

Page 265 - "...two prominent local anti-Semites, Ian Verner Macdonald and Ingrid Beisner".

If "anti-Semite" is defined as a person with an irrational dislike of Jews, the above reference is untrue and insulting, if not defamatory. To make reference to the fact that some Jews are unscrupulous liars, thieves, traitors and others sadistic murderers does not denote a hatred of Jews in general but rather an expression of concern for their victims. In the case of "Holocaust Denial", surely the production of evidence that Six Million Jews did not die, far from engendering hate, is a cause for rejoicing (at least among Jews) not venomous recrimination. To suggest, as do many Jews, that the notion of large numbers of Jews surviving is tantamount to hate, is in itself hateful, in my opinion, and perverse.

Page 323 - "Macdonald ... was a committed white supremacist and anti-Semite who prospered despite his extremist reviews". "He stated that blacks are inferior to whites".

I have never described myself as a "white supremacist" although it is beyond dispute that whites have made a disproportionate contribution to the welfare of mankind and continue to do so. They have also caused much misery - chiefly to their own kind. I do not hold "extremist" views but adhere strictly to traditional Christian values and to the preservation of individual freedom, particularly freedom of expression, and to the preservation of Canadian sovereignty. Obviously, those who undermine traditional Canadian society through corruption of its institutions (including the media) are the true "extremists", not those who attempt to expose them. I did not say "blacks are inferior to whites". I merely quoted, in the context of the U.S. Civil Rights controversy, several prominent U.S. scholars who claimed this to be the case.

"Web of Hate" is an entertaining book but in the above particulars and in its pervasive implication of malevolence and bias on the part of authentic Canadian patriots, it is far off the mark.

As mentioned in my recent letter to the Ottawa Citizen, copy attached, the left-wing Zionist coalition offers much more fertile ground for an examination of subversion in Canada, if this is your goal.

Yours sincerely,  
Ian Macdonald

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[56] Kinsella was not the first to publicly associate Ian Macdonald with the KKK. In 1983, Professor Julian Sher described him as a “wealthy Klan backer” (Julian Sher, *White Hoods: Canada’s KKK* (Toronto: New Star Books, 1983 at 117-118).

Another wealthy Klan backer was Ian V. Macdonald, a senior civil servant in the construction and consulting services branch of the federal department of Industry, Trade and Commerce. McQuirter, who made frequent trips to Ottawa, boasted of his acquaintance with Macdonald, who admits his Klan sympathies but says he is not a member. “Sympathetic? In a way,” Macdonald said in an interview. “I was with the Klan in the sense that they were a minority and they are discriminated against. They are harassed to a certain extent and I think they should be allowed to have freedom of expression.” He shares the Klan’s views on immigration. “Some people just get off the boat and they are more or less calling the tune in our country for those of us who have been here for generations. If you define racism as having a preference for your own kind, I’m a racist, though I have no antipathy to other races,” he said. At one point Klan treasurer Siksna wrote that Macdonald “has given money” to the Klan. But in a later letter – apparently written after consulting with McQuirter – Siksna recanted, insisting that “I have never issued any receipts in his name, nor have I any knowledge of him ever contributing anything to our organization.” For his part Macdonald stated he had made “no financial contributions” to the KKK. “I provided only hospitality to McQuirter,” he said without elaborating. “Some of his points of view have merit. The Klan tends to clear the air; it puts things right out in public.” [Footnotes omitted.]

[57] The Kinsella statement on “material and rhetorical support” does not comment upon the level or degree of support (material referring to the form of support as opposed to the level of support). It does not refer to violence or associate the plaintiff with any violence. It does not ascribe any criminality to the plaintiff.

[58] While the defendants have acknowledged that the KKK is generally regarded as an abhorrent group because of its white supremacist, anti-Semitic, racist views and policies, there is no meaning that can be derived from the words spoken that would lead to a meaning that the plaintiff was himself abhorrent.

[59] I find the words complained of cannot support the defamatory meanings ascribed to them, either in their plain meaning or by way of innuendo. I do not believe any reasonable right-thinking person would understand them in the manner alleged by the pleadings that the words



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mean that the plaintiff was an abhorrent person, or an actual member of the KKK or the Government of Libya.

[60] Further, I find that the words Kinsella used were, in their ordinary meaning, true statements. Macdonald did provide material and rhetorical support to the KKK.

***3. The Plaintiff provided connections between KKK leaders and the Government of Libya.***

[61] Macdonald had business dealings with a man named Mousa Hawamda, a Palestinian-American in the U.S. He had asked Macdonald to select and organize a Canadian delegation to a 'Peace Conference' that was to occur in Tripoli, Libya in 1987. It was to commemorate the bombing of Tripoli by the U.S. the preceding year. The plaintiff stated that he was approached for the task because of his ties with the Libyan government. At the time of the conference, Libya was regarded as a terrorist/renegade government, known to be violently opposed to western democratic governments such as Canada and the United States and on which the UN later imposed sanctions. President Reagan in 1986 prohibited American citizens traveling to Libya.

[62] While editing the chapter in *Unholy Alliance* as described above, Macdonald had chosen to leave almost unchanged the following statement:

Part of Macdonald's fascination with the place [Libya] may be explained by the business links he has forged with the Libyan establishment. The trade expert [Macdonald] has negotiated deals with Libyan government representatives "quite a few times" – more than a dozen times, he said. Usually [Macdonald changed this to 'occasionally'] the Libyans traveled to Ottawa, to meet with him; almost as often [Macdonald changed this to 'or'] Macdonald jets down to New York State to discuss ventures with the Libyans.

[63] The plaintiff testified in this court that he was prepared to involve himself with the Tripoli "Peace Conference" in order to "curry favour" with the Libyan authorities "to endorse commercial transactions with Libya". The next day in his continued cross-examination, Macdonald denied this.

[64] The delegates to the Peace Conference who Macdonald recruited included people from far-right groups, including a woman who had done fundraising for Ernst Zundel, the Toronto

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publisher of anti-Semitic and holocaust-denying materials, and Anne Ladas, director of the Nationalist Party of Canada, a white supremacist group. Macdonald testified he also contacted left-wing groups. The only requirement was that the participants be anti-Zionist. Kinsella quoted Macdonald at page 113 of *Unholy Alliances* as saying that the conference was "anti-American ...and I guess you could say it was anti-Israel." There was at least one KKK official present there.

[65] At the time of the Peace Conferences it was illegal under U.S. law to travel to, send or receive money to or from Libya and to trade with Libya. According to court documents of U.S. proceedings against numerous individuals (including Hawamda), it was illegal for Libyan government funds to have been used to pay for plane tickets used by non-Libyans to travel to the conferences.

[66] The plaintiff knew that tickets to be purchased for the delegates' flight to Libya were to be paid for by that government. The logistics were accomplished with the co-operation of his business partner in Washington, Mr. Mousa Hawamda, who operated a travel agency.

[67] Mr. Hawamda was ultimately arrested, along with several others, for conspiracy to kill Oliver North, to launder money for Libya, and other charges dealing with contraventions of various American laws prohibiting transactions with Libya. Mr. Hawamda escaped custody, and no determination of his guilt has been made. The others arrested pled guilty. The FBI documents proving this have nothing to do with this lawsuit. These are the documents referred to by Kinsella during the program.

[68] One member of the 1987 delegation was Jacob Prinz, who had served as Grand Dragon of the Invisible Empire of the KKK. The plaintiff has not denied that Prinz was part of the delegation that travelled to Libya nor offered any evidence that Prinz was not a Klan leader, only that he did not know at the time of Prinz' ties to the KKK. Kinsella testified that he and other persons at Southam News were easily able to ascertain Mr. Prinz' Klan leader status by looking at numerous available public sources. Kinsella has identified Mr. Prinz in print as a Klan member and Mr. Prinz has never refuted the fact. It strains credulity to accept that the plaintiff did not know of Mr. Prinz and who he was.

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[69] He seemed to have knowledge of the KKK in some detail. During his testimony at this trial, Macdonald stated with some disdain, that of 12 members in a particular Klan group, seven were actually undercover police officers. He did not say how he came to have that information.

[70] Wolfgang Droege was identified as Klan lieutenant in Kinsella's draft manuscript and the plaintiff did not correct this fact. Mr. Droege attended the 1989 Peace Conference, although not the 1987 one. While the plaintiff was not involved directly in that conference, the 1989 delegation was coordinated by Ms. Ladas, who would not have been involved in any way, had it not been for the Plaintiff initially recruiting her.

[71] The phrase complained of in the program says, in the plain ordinary meaning of the words, that the plaintiff "provided connections". Macdonald admits doing this.

[72] Kinsella does not make any statement as to the purpose of such connections. No fair-minded viewer would understand that the plaintiff acted as conduit or agent for the purpose of assisting the KKK and the Government of Libya combine for the gain of each of these entities, as alleged in the claim.

[73] These words do not support a defamatory meaning.

***4. The Libyan government provided funding to far right groups in Canada to carry out illegal acts.***

[74] The far right groups referred to by Kinsella are those groups who had representation in the Canadian delegation to the Peace Conferences including the KKK, the Nationalist Party of Canada (Ann Ladas); and the Western Guard (Jerry Neumann). Kinsella indicated in his testimony that he was also referring to Don Andrews, leader of the Nationalist Party of Canada, who had not attended the 1987 Conference but who had admitted to receiving money from the Libyan government to help fund the propagation of his literature. Mr. Andrews was prosecuted and convicted under Canada's hate laws (intentionally communicating hatred in violation of the *Criminal Code*). This fact was not disputed by the plaintiff.

[75] I find these words do not refer to the plaintiff at all. The innuendo complained of in the pleadings that these words referred to the Plaintiff aiding and abetting persons "to carry out

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illegal and criminal acts in Canada” is simply devoid of merit. There is no support for defamation in these words.

***5. If we can choke off the sources of funding for these extreme organizations, then we can put them out of business.***

[76] This statement refers to extreme right organizations, not the plaintiff. No defamatory meaning can be found in this portion of the statement and all meanings and innuendo that are pled in relation thereof have no merit. Further, this statement is a fair expression of opinion and as such, even if it did refer to the plaintiff, it would be captured by the defence of fair comment. However, I find that these words do not apply to the plaintiff.

[77] The defendant testified that Macdonald stayed away from those who advocate change with guns or bombs and Macdonald said he never advocated or condoned violence. I accept this. None of the violence, destruction and damage shown in the opening seconds of “Coast to Coast” attributes any such tendencies to the plaintiff. Indeed the pertinent question referred to “moderate”.

[78] No reasonable, right-minded person would understand that the question and answer were meant to suggest the attribution to Macdonald of the violence and carnage depicted in the 27 seconds of a one hour program.

#### **CREDIBILITY**

[79] To arrive at the conclusions set out above, I have made findings of credibility which have assisted in the analysis undertaken.

[80] Mr. Grant Bristow, a former CSIS undercover agent tasked with investigating the radical right, white supremacist movement in Canada, gave evidence that, while in his role as a Lieutenant in one such group, the Heritage Front, he was present at a meeting between Mr. Droege, the leader of the group, and Macdonald at the latter’s home.

[81] The purpose of the meeting, according to Mr. Bristow, was to consult Macdonald to see if any Arab nations would be interested in participating in a plot to disrupt the ecology of

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North America; in effect, an act of ecological terrorism. Mr. Droegc had been approached by U.S. members of a radical far right group based in Idaho and given a thirty-page document outlining this alleged plot. The Canadian group was asked to find out how to sell it to Iraq.

[82] Mr. Bristow testified that he, Mr. Droege, and one other person drove to Ottawa, and attended at the plaintiff's home, where a rough overview of the so-called plot was given. His evidence was that Macdonald told them that the amount of money the proponents of the plot were looking for (\$250,000) was unrealistic and that he had contacts only with the Libyans not with the Iraqis. They were eventually told that there was no contact domiciled in Canada but that there was a Libyan in charge of the UN delegation in New York.

[83] In the meanwhile, Mr. Bristow had had the "plot" document copied and given to his handlers at CSIS for analysis. They indicated to him it was "unsound gobbledeygook". Mr. Bristow described it as not even "half-baked".

[84] A great deal of time was spent cross-examining this witness for purposes which in the end proved completely irrelevant to the case.

[85] I was urged by counsel for the plaintiff to discount any evidence of this meeting with Macdonald since this witness was a professional liar and an effective deceiver by virtue of his past work. The lengthy cross-examination of this witness did not persuade me of a lack of credibility on the part of this witness however.

[86] Macdonald categorically denied any such meeting took place.

[87] Mr. Bristow's evidence as well as Macdonald's public statements about his political connections to Libya, leads me to conclude that in the eyes of Mr. Droege, Macdonald might well have been thought to be able to provide connections to a country interested in the "plan". Further, the evidence as to the comments by Macdonald as to price is realistic and credible.

[88] The fact that Mr. Bristow had been a secret agent in the past and engaged in many activities in that role, did not mean that he would lie about the matter before the court. His

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evidence was to the point, with no elaboration and no internal inconsistency. I accept his evidence about a meeting at Macdonald's house.

[89] While that fact alone is not decisive or significant in this case, it heightens my concern about Macdonald's overall credibility. His usual apparent forthrightness seemed to leave him on occasion in areas where vagueness could better serve his purposes (the exact date when he heard of the program; the exact date when he viewed the tape he eventually received, what the expression skinhead meant, etc.) I reluctantly came to the conclusion that his evidence was not entirely reliable.

### Reputation & Damages

[90] Counsel for the plaintiff relied on the case of Pressler v. Lethbridge, 2000 B.C.C.A. 639, where a woman who was known to hold right wing, extremist, anti-Semitic, and racist views but who was not violent was nevertheless successful in her defamation action. I do not find that this case assists in our present case.

[91] Macdonald testified that he was dismissed from the Trade Commissioner Service in 1970 because he was labeled as an anti-Semite.

[92] He categorically states that the Holocaust never happened and that there is irrefutable evidence that it could not have taken place. In a letter to the Editor of *The Globe and Mail* dated May 11, 1996, the plaintiff wrote the following:

A typical timely resurrection of the Holocaust appeared in the *Globe & Mail* May 8 where you claim that the Germans "slaughtered... millions of Jews". (Normally you state that Six Million had perished, a figure said by its proponents to be the "most documented statistic in history"). There is indeed evidence that large numbers of Jews were rounded up and held in concentration camps where some were murdered by fellow inmates but there is no evidence of Jews having been put to death in "gas chambers", as claimed by propagandists. On the contrary, the credible evidence points to relatively benevolent treatment of Jewish detainees, certainly compared with that meted out by our Glorious Russian Ally to her targeted minorities. Many Jews may have died towards the end of World War II of disease and malnutrition but if so their fate is attributable to the Allied bombing of transport facilities not to German brutality.

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[93] While he denied recent association with Ernst Zundel, a promoter of this same theory, he was content to let some of his writings be published on the Zundel website "Zundelsite" as he was anxious to have his views disseminated. He contributed numerous letters to the site, many of which focused primarily on Holocaust denial. He stated at discovery that he had no idea how his letters ended up on Zundel's web site and that he had no contact with him, but a tape of Mr. Zundel leaving a voice mail message contradicted both these statements under oath.

[94] Other letters he posted to the Zundelsite, including a letter dated July 16, 1989, were critical of Canada's immigration policies, specifically that groups such as "Nigerians, Sikhs, Ghanians [*sic*], Haitians, Vietnamese, Iranians, Ugandans, Chileans, Turks, Jews, Portuguesc, Lankans [*sic*], Guatemalans, Somalis, Palestinians, South Africans" were being granted admission to Canada in greater numbers than British and European immigrants.

[95] In a letter to the Editor of *Ottawa Magazine* responding to Kinsella's September 1989 article "The Somewhat Right of Centre Views of Ian Verner Macdonald," the plaintiff wrote that he was be proud to be "in the company of such prophetic outcasts as Zundel, Kccgstra and Ross," all known for their extreme right wing and racist views.

[96] He admitted to discussing the activities and views of Mr. McQuirter with him, and assuming a helpful role to this Grand Wizard of the KKK, with whom he agreed on certain issues, as outlined earlier.

[97] Macdonald's reputation was well-established before the broadcast. It is clear from the evidence that Macdonald was known for his anti-Semitic, racist views and friends, and for being at least an admirer of the KKK. Nothing that Kinsella said affected that reputation. Nothing said alluded to any criminality.

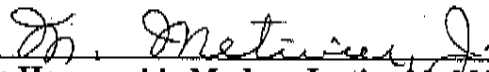
## CONCLUSION

[98] In considering the totality of the evidence, I find that the plaintiff has not made out his claim of defamation. If he had, I would have awarded merely nominal damages, given his already impaired reputation.

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[99] There is one outstanding issue the plaintiff raised. During the plaintiff's counsel's final submissions, he referred to the "concealment" by the CBC of the tape of the program. He led no evidence on the subject and it had not been pleaded. Accordingly, this issue is not before the court and I decline to deal with it.

[100] If they are unable to agree, the parties may provide me with brief written submissions on costs, (maximum 3 pages).

  
The Honourable Madam Justice M. Métivier

Released: June 25, 2009



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**COURT FILE NO.:** 103886/96

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

IAN VERNER MACDONALD

Plaintiff

- and -

CANADIAN BROADCASTING  
CORPORATION and KINSELLA

Defendants

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**JUDGMENT**

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**Métivier J.**

**DATE RELEASED:** June 25, 2009