

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

VICTOR FEDELI

Plaintiff

- and -

PATRICK BROWN, OPTIMUM PUBLISHING INTERNATIONAL,  
JF MOORE LITHOGRAPHERS INC. and DEAN BAXENDALE

Defendants

REPLY

1. All paragraphs set out hereinafter refer to both the Statement of Defence of Patrick Brown and the Statement of Defence of the Optimum Defendants (as defined in the Statement of Claim) (collectively the "Statements of Defence") unless expressly stated otherwise. All defined terms used herein have the same meaning as they have in the Statement of Claim or the Statements of Defence, except where stated otherwise
2. The Plaintiff admits the allegations contained in paragraph 37(a) of the Statements of Defence.
3. The Plaintiff denies each and every other allegation set out in the Statements of Defence and puts the Defendants to the strict proof thereof.
4. The Statements of Defence make assertions of fact that the Defendants know, or ought to know, are false. In addition, they advance defences that have no merit on the true facts or applicable law. While they now attempt to justify their misconduct claiming they have acted in the "public interest", the Defendants have pursued solely personal interests in publishing their vindictive attack on Fedeli's character.

5. In light of the foregoing, Fedeli pleads and relies on the Statements of Defence as further evidence of the Defendants' malice and in support of his claim for a substantial award of punitive and aggravated damages.

**No Sexual Harassment by Fedeli and No Notice of Any Such Complaint by Brown**

6. Fedeli expressly denies the allegations set out at paragraph 19 of the Statements of Defence that he engaged in workplace sexual harassment. As set out below, the Complainant (as so named in the Statements of Defence) was an employee in the Office of the Leader of the Opposition ("OLO"). She made a false complaint of sexual harassment and misconduct against Fedeli after her employment was terminated, together with a demand for payment of money. Fedeli did not make the recommendation to terminate her employment. Further, at no time before her employment was terminated was Fedeli informed that any such complaint had been made against him. The complaint was investigated by a third party investigator retained by PC Caucus Services, who Fedeli understands found no evidence to support the complaint. Fedeli did not direct PC Caucus Services' response to or the resolution of the termination of the Complainant's employment, or the investigation conducted.

7. In response to the allegations set out at paragraph 19 of the Statements of Defence, Fedeli pleads the following true facts.

***Brown Never Informed Fedeli of an Alleged Complaint of Sexual Harassment***

8. To Fedeli's knowledge, the Complainant never made any complaint, formal or otherwise, about any aspect of Fedeli's conduct at any time while Brown was leader of the PCPO. To the contrary, during the time that Brown was leader of the PCPO, Fedeli and the Complainant had a limited, but cordial and professional, relationship.

9. At no time during Brown's tenure as leader of the PCPO did Brown, or anyone else, ever communicate in any way to Fedeli that the Complainant had made a complaint of "inappropriate behaviour" against Fedeli. Nor was Fedeli advised by Brown, or anyone else, that he was not to contact or be around the Complainant as pleaded at paragraph 19 of the Statements of Defence and as set out at pp. 170-71 of *Takedown*. In response to Fedeli's request to produce the handwritten complaint Brown claims to have received from the Complainant, Brown has advised through his

counsel that the complaint is no longer in Brown's possession, control, or power. Fedeli denies that the Complainant made any such complaint while Brown was leader of the PCPO, and puts the Defendants to the strict proof thereof.

10. Fedeli denies the assertion at p. 171 of *Takedown* that Brown opted not to further pursue the alleged complaint at the express request of the Complainant. At the time that he was leader, Brown was, or ought to have been, well aware that allegations of "inappropriate behaviour", if in fact made, required investigation, and that it would have been incumbent on a leader, having become aware of such allegations, to take steps to have the matter investigated. It is beyond belief that if Brown had in fact received such a complaint, he would have done nothing about it as he now claims.

*Fedeli Did Not Direct the Termination of the Complainant's Employment*

11. Contrary to the false allegation in *Takedown* (and repeated in the Statements of Defence) that Fedeli terminated the employment of the Complainant because she had made a complaint, the true facts demonstrate that:

- (a) Fedeli did not make the recommendation to terminate the Complainant's employment; and
- (b) at the time the Complainant's employment was terminated, the Complainant had not made any complaint against Fedeli to his knowledge.

12. When Fedeli became interim leader of the PCPO in January 2018, he was informed by senior employees in the OLO that money was being unnecessarily spent from the PC Caucus Services budget under Brown's tenure, that the office had been left in serious financial difficulty, and that it would be necessary to significantly reduce spending. Senior employees in the OLO identified to Fedeli a number of paid positions in the OLO that should be eliminated in order to realize these savings.

13. The Complainant's position was one of those on the list. The Complainant was employed by the OLO. Fedeli had no input into the composition of the list of positions to be eliminated (including that of the Complainant), but took the advice of the OLO senior official on this, including advice that the position of the Complainant should be eliminated.

14. Fedeli was thereafter informed of the following facts. The Complainant was called in late January 2018 and told that her employment would be terminated without cause and that she would be entitled to a termination package. The Complainant became distraught and ended the call abruptly.

15. The Complainant was called again on or about February 6, 2018, for a further discussion about the terms of termination of her employment. She was told what her termination package would be and how it had been calculated. It was only then that the Complainant alleged, for the first time to Fedeli's knowledge, that Fedeli had engaged in improper conduct of a sexual nature toward her. She claimed that she was entitled to more money than was being offered as part of her termination package, and that her lawyer was going to initiate a claim for wrongful dismissal, which would include a claim of sexual harassment. The Complainant did not assert that Fedeli had acted inappropriately until after her proposed termination package was explained to her, nor did she say that she had previously made that allegation about Fedeli to Brown or to anyone else.

16. After the conversation with the Complainant, Fedeli was informed about her complaint on or about February 6, 2018. Fedeli considered the Complainant's allegations to be without merit and an attempt by her to get more money than she would otherwise be entitled to receive on the termination of her employment. In addition, he suspected that the Complainant was supportive of Brown as she (and others close to her) was associated with his supporters. Because he was the subject of the complaint, Fedeli believed that he should not direct the party's handling of it. He therefore instructed legal counsel be retained to deal with the matter.

*No Media Reporting of Complaint, as Alleged*

17. On February 18, 2018, a Twitter user named James Di Fiore who describes himself as a "freelance scribbler, documentary film producer & pundit" posted on his Twitter page an email purportedly dated January 30, 2018, addressed to a recipient whose name was blacked out, as well as a draft press release. Both documents appeared to be from the office of the Complainant's counsel. The documents referred to allegations of sexual misconduct against Fedeli. The email appeared to be addressed to an individual at a news organization, since it referred to "your news director".

18. Fedeli understands that legal counsel to PC Caucus Services contacted the Complainant's counsel after the posting of February 18, 2018, who expressly denied that it had been released by her office, and stated that she was "in the process of preparing a formal response" to the post. To Fedeli's knowledge, no such response was ever delivered.

19. In view of the Complainant's counsel's denial that it had been released by her office, Fedeli expressly denies the allegations set out in subparagraphs 19(g) through (l) of the Statements of Defence and puts the Defendants to the strict proof thereof. In particular, Fedeli denies the Defendants' allegation that on January 30, 2018, the Complainant's legal counsel wrote an email to a member of a news media organization attaching the news release, as described in subparagraph 19(g) and (h), and puts the Defendants to the strict proof thereof. Further, and contrary to the implications in paragraphs 19(i) and (k) of the Statements of Defence, to Fedeli's knowledge, there was no "mainstream" media reporting on the Complainant's allegations at any time in January 2018, or before February 18, 2018.

20. Fedeli understands that while the legal counsel retained by PC Caucus Services advised the Complainant's counsel that she would accept service of a statement of claim by the Complainant, no such claim was ever issued and PC Caucus Services' legal counsel heard nothing further from the Complainant's counsel until June, 2018, as described below.

*Fedeli's Decision Not to Run for PCPO Leadership Was Unrelated to the Complaint*

21. Contrary to the assertion in *Takedown* (and repeated in the Statements of Defence at paragraphs 19(l)) that Fedeli's decision not to run for the leadership of the PCPO was "impacted" by the Complainant's complaint, Fedeli had no knowledge of the complaint at the time he announced he was not going to run for the leadership. Fedeli made that announcement on January 30, 2018. As pleaded above, he did not become aware that a complaint had been made until February 6, 2018.

*The April 2018 Independent Investigation*

22. In April 2018, after Doug Ford became leader of the PCPO, Fedeli told Ford about the allegations that had been made by the Complainant after her termination. Ford directed PC Caucus Services to arrange for an independent third-party investigation of the allegations.

23. An independent professional investigator was hired to conduct the investigation. Fedeli fully co-operated with the investigation, including being interviewed and providing any documents he had that reflected his dealings with the Complainant. Fedeli now understands that the investigator also interviewed the OLO senior official who had informed the Complainant of her termination, and the investigator repeatedly but unsuccessfully attempted to arrange an interview of the Complainant, who failed to respond.

24. Fedeli understands that the investigator issued a report that found there was no evidence to support the allegations of the Complainant.

#### *Settlement of the Complainant's Claims*

25. Fedeli did not direct the PCPO response to the Complainant's complaints concerning the termination of her employment but understands the following to be the true facts. On June 6, 2018, the day before the 2018 Ontario provincial election, the Complainant's counsel, months after last communicating with PC Caucus Services' legal counsel, contacted PC Caucus Services legal counsel and proposed a settlement of all complaints. Communications among counsel ensued. The Complainant agreed to settle all of her claims in full and no proceeding was ever commenced. While Fedeli was not involved in the settlement, Fedeli believes that no amount was paid to the Complainant on account of her unfounded allegation of sexual harassment.

#### **Brown Resigned as PCPO Leader and Was Not "Removed"**

26. Contrary to the pleading at paragraph 8 of the Optimum Defendants' Statement of Defence and paragraph 7 of Brown's Statement of Defence (and repeated throughout the Statements of Defence thereafter), Brown did not lose his position as leader of the PCPO as a result of a "forced removal". He resigned.

#### **Other Allegations**

27. With respect to the allegations set out at subparagraph 33(a), Fedeli denies those allegations and puts the Defendants to the strict proof thereof.

28. With respect to the allegations set out at subparagraph 33(c), Fedeli admits that he may have made the second statement quoted therein, but denies making the other two statements and puts the Defendants to the strict proof thereof.

29. With respect to the allegations set out at subparagraphs 33(i), the decision to appoint Fedeli as interim leader was a unanimous decision of caucus.
30. With respect to the allegations set out at subparagraph 33(j), Fedeli denies the allegation and puts the Defendants to the strict proof thereof. No such promise was made.
31. With respect to the allegations set out at subparagraph 33(k), Fedeli denies the allegations and puts the Defendants to the strict proof thereof. As set out above, Fedeli announced that he would not be a candidate for the PCPO leadership on January 30, 2018, only four days after having been appointed interim leader.
32. With respect to the allegations set out at subparagraph 33(n), Fedeli denies the allegations and puts the Defendants to the strict proof thereof. Fedeli had no involvement in the circumstance leading to Rick Dykstra's resignation.
33. With respect to the allegations set out at subparagraph 33(o), Fedeli denies the allegations and puts the Defendants to the strict proof thereof. Fedeli has no knowledge of any such statement.
34. With respect to the allegations set out at subparagraph 33(q), Fedeli denies the allegations and puts the Defendants to the strict proof thereof. As set out above, Fedeli declared he would not be a candidate for the leadership shortly after being appointed interim leader.
35. With respect to the allegations set out at subparagraph 33(r), Fedeli denies the allegations and puts the Defendants to the strict proof thereof. As set out above, Fedeli declared on January 30, 2018 that he would not be a candidate for the leadership. He did not learn of the Complainant's complaint until on or about February 6, 2018. That complaint was not disclosed publicly until February 18, 2018, when it was posted on Di Fiore's Twitter page, and the Complainant's counsel denied having released it, all as set out above.
36. With respect to the allegations set out at subparagraph 33(t), in fact, Brown did run for the leadership.
37. With respect to the allegations set out at subparagraph 33(w), Fedeli admits that he raised the issue of Great Canadian Gaming during Question Period when Brown was still leader of the PCPO. Contrary to the innuendo in the Statements of Defence that he stopped raising the subject

at Alykhan Velshi's request, Fedeli stopped doing so because the questions were not getting any traction in the Legislature and minimal attention in the news media, and in his judgment, no further purpose would have been served by continuing to ask them.

### **Statements of Defence are Further Evidence of Defendants' Malice**

38. Fedeli denies the assertions in paragraph 15 of the Statements of Defence. He has brought and is pursuing this action with the intention of correcting the Defendants' false, defamatory, and malicious statements about him, and to seek to restore his reputation, which has been grievously harmed by those statements. The Defendants' assertions that Fedeli has brought his claim for improper purposes is further evidence of their malice.

39. In addition, the aggressive and inapplicable defences advanced in the Statements of Defence, which seek to justify and excuse the numerous defamatory statements of the Defendants, are themselves further evidence of the Defendants' malice and have caused further harm to Fedeli's reputation. The Defendants have persisted maliciously with the false narrative about Fedeli they published in *Takedown*, knowing and with the intention that the defamation would be repeated widely.

40. While the defendants' seek to justify their misconduct in the name of the "public interest" there is no public interest in any of the matters complained of in the Statement of Claim. The false and defamatory allegations against Fedeli in *Takedown* do not address any matters of political debate or controversy. Rather, Brown published his deeply personal and vindictive attack on Fedeli and his character for the improper and malicious purpose of publicly embarrassing Fedeli, whom Brown wrongly holds responsible for Brown's failed ambitions. Any interest in Brown's personal attacks on Fedeli in *Takedown*, and in the related comments about it by Brown and the Optimum defendants, is strictly prurient.

41. In addition, since Fedeli served his claim, the Optimum Defendants have continued to republish the false and defamatory allegations against Fedeli, including online, to further damage his reputation.

### **The Defences Pleaded Are Not Applicable**

42. Fedeli denies that the defences pleaded by the Defendants are applicable.



43. With respect to the defence of justification as pleaded throughout the Statements of Defence, Fedeli puts the Defendants to their obligation to prove the truth of each and every statement they allege in the Statements of Defence to be true.

44. Fedeli denies that the Defendants are entitled to the defence of fair comment. As set out above, none of the matters complained of in the Statement of Claim related to matters in the public interest. Further, the statements complained of are statements of fact, not comment. In any event, the defence of fair comment is defeated by the Defendants' malice, as set out above.

45. Fedeli denies that any of the statements complained of in the Statement of Claim constitute responsible communication in the public interest. As set out above, there is no public interest in any of the statements complained of. In addition, the Defendants failed to take any of the steps a defendant must take to avail himself of the defence of responsible communication. Most significantly, and without limiting the foregoing, the Defendants made no effort to seek out Fedeli's side of the story and report it accurately, despite the fact that there was no urgency whatsoever in publishing the defamatory statements about Fedeli complained of in the Statement of Claim.

46. Fedeli denies that any of the defamatory statements in the statement of claim were published on an occasion of qualified privilege. The Defendants were under no duty to publish those statements, and there were no readers with a corresponding interest in receiving them. In any event, the defence of qualified privilege is defeated by the Defendants' malice, as set out above.

Date: March 20, 2019

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VICTOR FEDELI  
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v.

PATRICK BROWN et al.  
Defendants

Court File No.: CV-19-00613488-0000

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REPLY

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