

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN :

**EZRA LEVANT**

Plaintiff  
(Responding Party)

- and -

**ROBERT P.J. DAY**

Defendant  
(Moving Party)

**NOTICE OF MOTION**

The Defendant/Moving Party, Robert P.J. Day, will make a motion to the Court on  
May 8, 2017 at 10:00 a.m. or as soon after that time as the motion can be  
heard, at 393 University Avenue, 10<sup>th</sup> Floor, Toronto, Ontario M5G 1E6.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1(1) ;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

1. An Order seeking dismissal of the Plaintiff’s proceedings pursuant to section 137.1 of the *Courts of Justice Act* as it relates to a claim for defamation which arises from an expression by the Defendant in the public interest;

2. An Order for costs on the motion and in the proceeding on a full indemnity basis;
3. An Order for damages against the Plaintiff pursuant to section 137.1(9) of the *Courts of Justice Act*; and
4. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Defendant / Moving Party, Robert P.J. Day ("Mr. Day") is the subject of a defamation action by the Plaintiff Ezra Levant for communications he made on Twitter.
2. The statements complained of are an expression in the public interest as they relate to the widely publicized events during the Fort McMurray Fire and the efforts to raise funds for those affected by the fire.
3. Mr. Day is a well-known regular participant on social media for over a decade, beginning with a blog named "Canadian Cynic", and now publishing almost exclusively on Twitter under the handle "canadiancynic". Mr. Day's political views can best be described as liberal, progressive and left-wing, with occasional forays into salty language and profanity. Currently, Mr. Day has over 11,000 followers on Twitter, which includes a number of prominent scientists, educators, politicians and journalists.
4. The Plaintiff, Ezra Levant, is a well-known media pundit, commentator and gadfly, who has openly bragged of his reputation as a "noisy troublemaker." He is the principal of the online, "alt-right" media outlet Rebel Media (also called

"Rebel News"), which is right-wing in its leanings. The Plaintiff has been involved in numerous defamation cases as both Plaintiff and Defendant. The Plaintiff is adamant that he is not an actual "journalist".

5. On May 1, 2016, a wildfire began southwest of Fort McMurray, Alberta, Canada. On May 3, it swept through the community, forcing the largest wildfire evacuation in Alberta's history. After sweeping through Fort McMurray, the wildfire destroyed approximately 2,400 homes and buildings, making it the costliest disaster in Canadian history.
6. In response, the Canadian Red Cross ("Red Cross") set up an online donation web page, specifically to raise funds for the victims of the Fort McMurray fire.
7. On or around May 6, 2016, the federal government announced a "matching" program for donations to the Red Cross, such that all individual donations would be matched dollar for dollar by the federal government. Alberta's provincial government announced a similar matching program such that, for every dollar donated, the Red Cross would now receive three dollars.
8. On or about May 3, 2016, the Plaintiff Ezra Levant, using the name of his online media outlet "TheRebel.Media", registered a completely distinct Indiegogo online fundraising page (the "Fundraiser"), unrelated to the Red Cross in any way, ostensibly for the purpose of collecting donations for the Red Cross.
9. Indiegogo is a commercial online platform for creating fundraising ventures, which means that the Plaintiff, rather than openly encouraging people to donate directly to the Red Cross, insisted on registering what was effectively a competing

fundraising page, with the assurance that all funds raised would eventually be turned over to the Red Cross. This raised a number of serious issues related to the public interest, which many people pointed out immediately.

10. The Plaintiff's Indiegogo fundraising campaign was the subject of significant debate and discussion on social media, including Twitter.
11. Mr. Day, and several others, made critical comments on Twitter about the mechanics of the fundraising campaign. Of particular concern was the risk that the campaign would not allow every dollar raised to be matched by both levels of government, which would reduce the funds available to the victims of the fire. In addition, Mr. Day raised concerns about the promise by the Plaintiff to issue tax receipts to the donors to his Indiegogo fundraiser. These, and other concerns raised by Mr. Day, were matters of significant public interest.
12. The Plaintiff was aware of Mr. Day's tweets on Twitter and, in June, 2016 when the fundraising campaign was nearing its end, engaged him by tweeting back at Mr. Day on a few occasions in short succession.
13. In the midst of their exchanges on Twitter, and soon after the Indiegogo campaign ended, the Plaintiff initiated this defamation action in June, 2016 against Mr. Day.
14. The defamation action is a strategic lawsuit against public participation (SLAPP suit) that is intended to censor, intimidate, and silence Mr. Day, as a critic of Mr. Levant, by burdening him with the cost of a legal defense.
15. The proceeding arises from an expression made by Mr. Day that relates to a matter of public interest.

16. The proceeding does not have substantial merit and Mr. Day has a valid defence to the action.
17. The harm likely suffered by Mr. Levant as a result of Mr. Day's expression does not outweigh the public interest in protecting that expression.
18. Mr. Levant brought the proceeding in bad faith or for an improper purpose and, as such, Mr. Day is entitled to such damages as the Court considers appropriate.
19. Rule 37 of the *Rules of Civil Procedure*, RRO 1990, O Reg 194, as amended;
20. Sections 137.1 to 137.5 of the *Courts of Justice Act*, RSP 1990, c C.43; and
21. Such further and other grounds as counsel may advise and as this Court may permit.

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

1. Affidavit of Robert P.J. Day, to be sworn;
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: March 22, 2017