

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CHRISTOPHER HUDSPETH and GEORGE SMITHERMAN

Plaintiffs

and

WILLIAM WHATCOTT, JONI WHATCOTT, ADAM ZOMBIE, BRIAN
ZOMBIE, CHRISTOPHER ZOMBIE, DOUGLAS ZOMBIE, EDWARD
ZOMBIE, FRANK ZOMBIE, XYZ CORPORATION, JANE DOES and
JOHN DOES

Defendants

PROCEEDING UNDER the *Class Proceedings Act, 1992*

**SUPPLEMENTARY RESPONDING PARTY'S FACTUM
[TO PLAINTIFFS' MOTION FOR DISCLOSURE]**

PART I INTRODUCTION

1. On November 7, 2016 the Plaintiffs filed a motion for an order compelling the defendant, William Whatcott (Whatcott) to reveal the identities of all the Gay Zombies of the Gay Zombies Cannabis Consumers Association as well as the identifies of the Jane and Joe Does and XYZ Corporation that provided or other types of assistance to Whatcott, Stefan Jetchick and/or the Gay Zombies.

2. In anticipation of the Plaintiffs' motion for disclosure, on November 3, 2016 Whatcott filed a motion to strike out all of the Plaintiff's claims as an abuse of process and alternatively to strike as much of the Plaintiff's claims as possible, including substantial portions of the Statement of Claim (Claim), in reliance upon Rules 2.1.01(1), 21.01(a)(b), 21.01(3)(d) and 25.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, under the *Courts of Justice Act* R.S.O. 1990, c. C. 43.

PART II ADDITIONAL FACTS

3. Whatcott repeats and incorporates by reference the facts set out in his blended Factum dated November 1, 2016 that was filed in support of his motion to strike and in his response to the anticipated motion for disclosure.

4. Despite the assertion made by the Plaintiffs in their Factum and in their Motion Record, that they have no other means of identifying the unknown defendants than to obtain such information from Whatcott, counsel for the Plaintiffs in fact had knowledge of a Jane Doe defendant who self identified.

5. Plaintiffs' counsel were contacted by Kari Simpson, a journalist who disclosed that she supported Whatcott, requested to be added as a party, and was available to be asked questions. Ms. Simpson invitation was declined.

Affidavit of Kari Simpson, Responding Party's Motion Record, Tab 1

PART III THE ISSUES

6. In addition to the issues stated in Whatcott's Factum in support of his motion to strike and the Plaintiffs' Factum in support of the motion for disclosure, a question is: Does Rule 30.06 compel Whatcott to disclose at this point in the litigation?

PART IV THE LAW

7. Whatcott repeats, relies, and incorporates by reference the arguments, the law and the authorities contained in his Factum and Book of Authorities dated November 1, 2016, filed in support of his motion to strike and in his response to the application to disclose.

8. Whatcott agrees that the court has discretion under s. 12 of the *Class Proceedings Act*.

9. Whatcott agrees and relies upon s. 35 of the *Class Proceedings Act* which stipulates that the rules of the court apply to class proceedings.

10. Whatcott submits that the application of Rule 30.06 is premature and does not apply at this stage in the proceeding.

11. Whatcott has not filed a Statement of Defence nor has he been requested to do so by the Plaintiffs or the Court.

12. The rules with respect to document and oral disclosure, including Rule 30.06, is intended to apply only after the close of pleadings and when the parties have worked out a discovery plan.

Rule 29.1 of the Rules of Civil Procedure

13. It is submitted that the principles of judicial economy and natural justice demand that the issues with respect to the propriety of the pleadings, specifically the *bona fides* of the causes of action contained in the Claim, first be determined before considerations of discovery.

14. The relevance of the discovery demand can only be in reference to a properly founded cause of action contained in the Claim.

PART V CONCLUSION

15. The defendant, Whatcott, requests that the Plaintiffs' motion for disclosure be dismissed with cost on a substantial indemnity basis.

Dated this 9th of November, 2016

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Charles I. M. Lugosi 20691L
Counsel for the Defendant, Bill Whatcott

John Findlay
Co-Counsel for the Defendant, Bill Whatcott