

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NEXTERA ENERGY CANADA, ULC

Plaintiff

and

ESTHER WRIGHTMAN

Defendant

STATEMENT OF DEFENCE

1. The Defendant Esther Wrightman (“Wrightman”) admits the allegations contained in Paragraphs 2, 4, 10, 19 of the statement of claim.
2. Wrightman denies the allegations contained in Paragraphs 1, 7, 8, 11, 12, 14, 17, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 (a, b, c, d), 53, 54, 55, 56, 57, 58, 60, 61 of the statement of claim and puts the Plaintiff to the strict proof thereof.
3. The Defendant has no knowledge in respect of the allegations contained in Paragraphs 3, 5, 6, 9, 13, 15, 16, 18, 23, 28, 32, 40, 42, 59 of the statement of Claim.
4. In regards to Para 1 (g), the Defendant rejects an injunction restraining her from fair comment on what she sees happening in her neighbourhood, by NextEra.
5. Wrightman denies that the NexTerror and NextError “Parodied Images” were used to discredit the business, wares and services of the Plaintiff. The Plaintiff has been operating in the rural

areas of Ontario since at least 2008, and through it's own means, discredited its own business in the ways and means it dealt with the public, and earned the name "NextError" and NexTerror" through these actions. These include:

6. **Error:** the definition from Merriam Webster: <http://www.merriam-webster.com/dictionary/error>

I. *a* : an act or condition of ignorant or imprudent deviation from a code of behavior

b : an act involving an unintentional deviation from truth or accuracy <made an *error* in adding up the bill>

c : an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done <an *error* in judgment>: as (1) : a defensive misplay other than a wild pitch or passed ball made by a baseball player when normal play would have resulted in an out or prevented an advance by a base runner (2) : the failure of a player (as in tennis) to make a successful return of a ball during play

d : a mistake in the proceedings of a court of record in matters of law or of fact

II. *a* : the quality or state of erring <the map is in *error*>

b Christian Science : illusion about the nature of reality that is the cause of human suffering : the contradiction of truth

c : an instance of false belief

III. something produced by mistake <a typographical *error*>; *especially* : a postage stamp exhibiting a consistent flaw (as a wrong color) in its manufacture

IV. *a* : the difference between an observed or calculated value and a true value; *specifically* : variation in measurements, calculations, or observations of a quantity due to mistakes or to

uncontrollable factors

b : the amount of deviation from a standard or specification

V. a deficiency or imperfection in structure or function <an *error* of metabolism>

7. Local residents referred to NextEra as “NextError” before the first graphic was ever posted on the Wrightman’s websites. Some of the reasons for this are as follows:
8. NextEra became notorious for making ‘booking errors’ in mid 2012. ¹ They advertised and booked the Adelaide Wind Energy Centre meeting in a school that was closed for the summer; then advertise and booked it in a township office that was too small. This meeting moved five times before it was finally held and the mess-ups were written about and published in local newspapers². The Plaintiff then advertised, but forgot to book a community centre in Ailsa Craig in the summer of 2012 for the Bornish Wind Energy Centre³, and again in February 2013 for the Jericho Wind Energy Centre⁴. The confusion this caused in the community pointed again to the “Errors” this company makes, regularly. These facts were published and NextEra became notorious for making booking errors.
9. The Plaintiff’s final Renewable Energy Assessment (“REA”) documents were not fully available on the NextEra’s website until October 18th, 2012. The comment period had been initiated on October 9th, 2012. With only 30 days potentially available to comment, the documents were lacking from the proponent for the public for 9 of these 30 days. This left the public with blank pages to review for one third of the comment period.⁵
10. An ad in the London Free Press from NextEra was posted on the documents of the Bornish Wind Project stating: “Project Description Report; Design and Operations Report; Wind Turbine Specifications Report; Natural Heritage Assessment Report; Water Assessment and Water Body

Report; Stage 1 and 2 Archaeological Assessment Reports; Heritage Assessment Reports; and Noise Study Report. These documents will be available for review starting on **October 18, 2012** on our website.” Until October 15, 2012 the Bornish Wind “Appendix F Noise Impact Assessment” was still unavailable. This document was not available at any of the Plaintiff’s public Open House meetings (as mandated); it was submitted on September 21st, 2012 and the final Open House had already been held on August 15th, 2012. Members of the public had no way of reviewing this document until it was posted 9 days into the public comment period on October 16th. For a very technical and extremely important document, the public felt this error was unacceptable and unfair as it takes much time to review such difficult material. The “Addendum Consultation Report”, dated August 29, 2012, was also unavailable on the proponent NextEra’s website, yet was available at the Ministry of Environment office in London.

11. The articles noting these errors have been published. The Plaintiff is referred to as NextError in our community because of the above notoriety they have established. This demonstrates why the defendant believes it is “fair comment” for the public, and the defendant to refer to NextEra as “NextError”.
12. Local residents referred to NextEra as “NextTerror” before the second “Parodied Image” was ever posted on the Defendants websites. Some of the reasoning for this is as follows:
13. Terror: the definition from Merriam Webster: <http://www.merriam-webster.com/dictionary/terror>
 - I. a state of intense fear;
 - II. a : one that inspires fear : scourge
b : a frightening aspect <the terrors of invasion>

c : a cause of anxiety : worry

d : an appalling person or thing; especially : brat

III. reign of terror

IV. violent or destructive acts (as bombing) committed by groups in order to intimidate a population or government into granting their demands <insurrection and revolutionary terror>

V. Origin of the word Terror: “Middle English, from Anglo-French *terroure*, from Latin *terror*, from *terrēre* **to frighten**; akin to Greek *trein* **to be afraid, flee**, *tremein* **to tremble**”

14. The Defendant submits NextEra has brought a state of fear, terror of invasion, worry, anxiety, and destruction to her community, its residents’ health and wildlife, with their wind turbine developments and their methods of implementation. People have fled their homes before and after their homes have been surrounded by the Plaintiff’s wind developments. This is due to the negative effects to their family’s health, their animal’s health, quality of life and their property. They have no other recourse but to flee.

15. NextEra has been excessively aggressive with forcing people and municipalities to sign agreements and easements.

I. If landowners refuse to sign easements, NextEra has threatened to “take legal action”⁶ on them. Expropriation is a very real concern of the public, as the Plaintiff has indicated it will go that route if the land is needed for their projects.⁷

II. The landmen (autonomous, land acquisition agents) are unregulated, and therefore with their arrival at residents’ doors, badgering them to sign the legal papers, threatening to put

transmission lines in less favourable places (directly in front of houses, over barns), becomes a form of terror in the communities the Plaintiff operates in.

16. Heritage buildings are threatened by transmission lines to be hung over them by the Plaintiff.⁸
The defendant argues that Para 7 is incorrect in stating that “the impact of a proposed project on cultural and heritage resources... is carefully considered at this stage.”
17. Destruction of farm land and tiles, as well as natural areas (river valleys) is a constant threat felt by the public, due to the Plaintiffs activities and proposals.⁹
18. Contrary to what the Plaintiff states in Para 7, NextEra does not make good use of consultation with Townships and Counties.¹⁰ If the local governments do not entirely agree with the Plaintiff’s proposals, the Plaintiff bypasses consultation and moves onto the Ontario Energy Board hearings. The unwillingness for the Plaintiff to work with local governments worries the members of the public.¹¹
19. The Plaintiff is proposing to double the number of transmission poles on County and Township road Right of Ways. The elevated risk this poses to those who travel these roads regularly (accidents resulting from vehicles that leave the road) is yet another concern that weighs heavily on the public’s mind.
20. NextEra has donated funds to key local agencies, who could be potentially silenced in their objection to the projects in the local area. These include Conservation Authorities and a local Mental Health Centre. Conservation Authorities play a part in the Renewable Energy Approval process for the Plaintiffs projects, and the donation of funds to these organization compromises the Conservation Authority’s third party status. Mental Health Centres are considered hospitals to local residents in need, and for those affected by wind turbine noise they now have the

relationship compromised by money flowing from the wind developer to the Mental Health Centre.¹²

21. NextEra was not transparent about its activity in signing up an alternative route for its 115kV transmission lines, through hard maple wood lots. This led to much concern in the community, as information was being withheld as land was being signed up by the Plaintiff's landmen.¹³
22. The Wind Energy Sector, including NextEra, has hired a large portion of the consultants that municipalities would like to have access to in order to have a third party review of wind project documents. This has led to a lessened accessibility of unbiased review of company documents in our communities - putting the accountability of the wind developers in doubt.¹⁴
23. NextEra has been extremely forceful with their legal actions and threats on municipalities, and now individuals. Municipal council members are also individually threatened with legal action if they pass unfavourable bylaws for the Plaintiff.¹⁵ Without being placed on the council meeting Agenda, NextEra lawyers have been known to show up and use the public's question period to threaten council with legal action. This can also be viewed as a form of terror towards the council, whether that is the purpose of the Plaintiff or not.¹⁶
24. NextEra's wind turbines could cause conflict with the Exeter meteorological radar station and how it will affect the station's ability to forecast severe weather. Local councils say it is "critically concerned" about the situation. The threat to a very important safety instrument in our community being compromised by NextEra's machines is another source of fear for the public.¹⁷
25. NextEra ignores the health and safety concerns of the communities they occupy. The threat of hundreds of turbines coming to Wrightman's community and possibly destroying her health, her kid's health, her extended family's health, her neighbour's health, and the health of others who

cannot live with wind turbines too close, most definitely terrorizes her, and many others in her community.

26. The issues involving the Health and Safety of residents in NextEra wind projects have not been satisfactorily addressed by the Plaintiffs. Families fear how these projects will affect their health to the extent they are begging their local councils to oppose the Green Energy Act in any way they can. This is a result of their perception of true terror.¹⁸
27. The risk of tower collapse, blade throw, ice throw and turbine fire is a threat to all communities with wind turbines. The protocol in place for such situations does not protect the public, or the land. The setback to neighbouring properties and roads are far from sufficient to prevent damages or harm.¹⁹
28. Issues of stray current have not been thoroughly addressed by the Plaintiff in many of their wind developments.²⁰ This causes stress and fear in the community, when dairy farms do not receive answers to their concerns, or schools do not know if playgrounds will be as close as 1 meter from the Plaintiff's collector transmission lines or not.²¹ The lack of detail and transparency on the Plaintiffs transmission routes and potential impacts on livestock and human health is of great concern to the public impacted by NextEra's projects.²² Even Hydro One refuses to co-locate their transmission lines with NextEra's lines due to safety concerns including "Temporary Over Voltage" and "Increased Neutral to Earth Voltage."²³ The fact that NextEra's first choice was to co-locate their 115kV lines with Hydro One in the Bornish/Adelaide/Jericho wind projects, with no concern for the safety issues, is a frightening aspect to the Defendant.
29. The Plaintiff's wind developments have and will continue to cast shadow flicker on homes, farms and roads, causing immense disturbance for those who inhabit and use them. The Plaintiff provides no protection to the public from this strobing light, and although the technology is there

to estimate where and how much flicker there is, NextEra does not use this knowledge to avoid creating such hazards. In some cases they try to have the people affected sign agreements to not complain of the flicker.²⁴ With no way to avoid this intrusion, many residents are subject to this type of torment with no relief .

30. NextEra excessively uses security and police protection while in the communities it plans to develop. The use of over 4 security guards, plus Ontario Provincial Police at open houses, while taking down an eagle's nest, while surveying roads, is excessive and disturbing in a community that rarely sees police and security presence in a normal day.²⁵ Security is very strict at public meeting, where individuals with information or signs are forced to remain outside, in some cases escorted out, or material removed and objecting individuals are publicly berated.²⁶ In at least one case the Plaintiff hired a videographer to film those who object to the wind project at an open house. The videographer taunted and filmed residents, until police told him to leave the grounds. Hiring a person to goad the public, and film their reaction, appeared to be a form of unnecessary intimidation by the Plaintiff.²⁷
31. Although NextEra claims in Para 11 that it ensures that it has “a complete understanding of the local environment – including wildlife,” the Defendant notes that NextEra has missed at least two active Bald Eagle nests in its assessments in the past year alone in Ontario, and that if NextEra had a “complete understanding” of the local environment, this would not have happened.
32. The “First Video” of the Defendants clearly shows the destruction of an eagles nest. ²⁸
33. The “Second Video” shows Tom Bird of NextEra saying, “The authorization we got from the Ministry of Natural Resources was to **destroy this nest**”. ²⁹ And indeed, the nest was destroyed, not “moved”, as stated in Para 20.³⁰

34. The public was counting on the Plaintiff and the Ministry of Natural Resources to protect the active eagle nest.³¹ Residents believed that the development of wind turbines would remain at least the required 800m away from the eagle's nest. But without any consultation³², the eagle nest was cut down by the Plaintiff. Clearly this is terrorizing the eagles and community when 18 men with chainsaws, cranes and bulldozers descend on, and proceed to cut down an active eagles nest.³³
35. NextEra ignored advice from an expert eagle biologist who "recommended strongly that the nest needed to be left alone, the turbine needed to be moved and a buffer had to be created."³⁴ The fact that this advice was ignored only adds more distrust and fear in a community that looks to rely on the Plaintiff to take the best advice possible, from the experts. Contrary to what NextEra states in Para 12, NexEra did not work to "ensure that its project fit with the interests and priorities of the community".
36. The act of cutting down an American Bald Eagle nest would usually be illegal in Ontario.³⁵ But NextEra Energy obtained a special exemption.³⁶ The public watched in horror as the Plaintiff performed what was usually deemed an illegal activity.³⁷ This instills terror, as there is no protection for the residents and the wildlife.^{38 39}
37. The outrage from the community and across the province over the removal of the Bald Eagle nest was strong enough that over 1200 letters were sent to the Ministry of Natural Resources denouncing this action. Polls in the newspapers showed 88%-92%⁴⁰ of the readers were against the nest removal. Yet no action has been taken to ensure this will not happen again. The possibility that more nests could be cut is a threat that instills further fear in the public.
38. NextEra admits that harm could come to eagles if their nests remain too close to wind turbines. The Plaintiff's solution is to remove the nests. They did not take the option of moving the

placement of the wind turbines. This showed the public that the Plaintiffs project construction comes before the protection of the wildlife. A renowned eagle specialist from the Haldimand area said, “There are a lot of people really unhappy with this. People have a lot of questions, and so do I.”⁴¹

39. The Plaintiff and other wind developers continue to receive exemptions allowing them to destroy other important habitats for endangered species and species at risk.⁴² This pattern of destruction is threatening and apparently unstoppable, which causes fear in the public.⁴³
40. Currently a second active Bald Eagle nest 20 km north of Wrightman’s residence has been discovered in NextEra’s Bornish Wind Project, which received approval on May 14, 2013 from the Ministry of Environment. The Plaintiff’s initial studies did not note this nest in its Natural Heritage report. An addendum was added to the report *after* all public consultation had taken place. This nest has 2 wind turbines proposed within 800m of it and a massive substation, that will service 221 wind turbines, within a mere 187m of the nest. The community fears that the same fate will come to this nest as did to the one in Haldimand on January 5th. They also fear that if the nest is left, the Eagles’ habitat will be unlivable/deadly due to the 221+ wind turbines in their hunting and feeding area proposed by the Plaintiff and other wind developers.
41. Wrightman has a special concern for the local elementary schools that will be surrounded by NextEra’s wind developments in her community. Whereas NextEra states in Para 11 that it has a “complete understanding” of the “human landscape: the locations of homes, businesses, schools...”, Wrightman disagrees. For 4 years she has been trying to find out what the cumulative noise and shadow flicker will be at her children’s school in the Adelaide Wind project, and NextEra has not provided this information. At the Jericho Final Public Meeting the local school

was not even marked on the map. The lack of information and concern about the health and safety of her children and others in the community is especially disturbing to her.

42. NextEra Energy Pubnico Point project in Nova Scotia is located as close to 400m from Daniel d'Entremont's family home, which they have since abandoned. The health impacts this family experienced forced them to leave. In a letter they state, "We are devastated. We are broken because we have lost the home we built with our own hands, and we have lost the land which has been in the family for generations." Knowing that the Plaintiff did nothing to help this family is a cause of anxiety and fear for those who are already suffering, and those who are watching the NextEra's projects advance into their communities.⁴⁴

43. NextEra Energy also owns and operates a project in DeKalb, IL. A family that was suffering from the noise and shadow flicker from the 145 wind turbines around their home said to an audience, "It's kind of like bullying"; "It's very wearing...it's very stressful actually" and "I can't live like this".⁴⁵ This family had a blog that documented the noise and flicker from day to day. This blog⁴⁶ suddenly disappeared after a settlement was reached⁴⁷ with the family and the Plaintiff. All the YouTube videos⁴⁸ of the flicker and noise that the family took and posted also were disabled, and the family went silent. The gag clauses placed on those who are desperate to leave their home, by the wind developers, tramples Freedom of Speech, an extremely important part of being in a free society. People are intimidated by threats of legal action if these gag clauses are broken. Contrary to Para11, NextEra did not have a complete understanding of the "human landscape: the location of homes, businesses" before they built their wind project, if it felt they should settle and gag these residents how resided in their functioning wind project.

44. Wrightman considers the lawsuit against her by the Plaintiff to be a form of intimidation, to instill fear in her and those who object to NextEra's projects, and suppress her opposition as well as the opposition of others.
45. All wind projects have received approval in Ontario. The government has never rejected a proposal, no matter how flawed. The lack of effective, independent oversight on wind projects is most definitely a source of fear for the public. ⁴⁹
46. Nothing the Defendant has said, published or printed is defamatory to NextEra.
47. The facts that Wrightman bases her Defence on are true.
48. The reason Wrightman refers to NextEra as "Nexterror", is that she feels it is "fair comment" considering this company's actions and behaviour in the past and present.
49. Over the past 4+ years numerous articles have been published on the errors and terrors NextEra has inflicted on the communities it chooses to operate in. Therefore NextEra is referred to as NexTerror and NextError in her community because of the above notoriety they have established. This demonstrates why Wrightman believes it is "fair comment" to refer to NextEra as "NexTerror" and "NextError".
50. At the same time, Wrightman has published these facts on her blogs: Ontario Wind Resistance ("OWR") www.ontario-wind-resistance.org and Middlesex-Lambton Wind Action Group ("MLWAG") www.mlwindaction.org
51. Wrightman disagrees with the Plaintiff's assertion that the Plaintiff's copyrights have been infringed upon. The image created by the Defendant is a parody on the actions and behaviour of the Plaintiff that she and others in her community witnessed happening when NextEra arrived.

The image was created using words that were already being shared and used in the neighbourhood by residents upset with the errors and terrors this company was creating.

52. THE “BUSINESS” OF ESTHER WRIGHTMAN

Wrightman is a married, low-income mother of two young children. She works at her family’s plant nursery across the road from where she lives. Wrightman owns and operates the OWR and MLWAG blogs with the spare time she has in life. She receives \$0.00 for operating her blogs. She continues to operate these blogs in order to help communities stay informed and involved in an issue that gravely affects and concerns them. Wrightman has nothing else to fight with but her own voice and other forms of expression.

53. The Defendant does not have any business interests that could possibly profit from the demise of NextEra. As for Para 1 a.(ii), Wrightman denies she is a competitor with the large corporation, NextEra Energy Canada ULC based in Florida, USA.

54. Contrary to what Para 1(d) states, The Defendant has not referred to NextEra as a “terrorist organization”.

55. The Defendant is in no way profiting from the NextError and NexTerror images.

56. Para 7 states that NextEra is enhancing the quality of life for residents. The Defendant respectfully denies this is the truth for many who reside in the Plaintiff’s developments or other wind developments.⁵⁰

57. In regards to Paragraphs 26 & 27, Wrightman denies that her images are used to generate opposition to NextEra’s projects and other wind developments – the opposition already exists, the images are just used in parody. As for using the images, “to increase the amounts of donations obtained through the websites”, Wrightman must deny this allegation as the images

didn't even exist when the Zephyr Wind Project in Watford was being appealed to the Environmental Review Tribunal in January, 2012. As for the Haldimand ERT appeal, the OWR website did not collect money for it.

58. Para 31 – the item mentioned is not just a ‘post’ on the website, it is the Defendant’s response to NextEra’s cease and desist letter. It was sent to NextEra’s Lawyer Awanish Sinha on March 22, 2012.
59. Para 34 states that the Parodied Image “depicts NextEra as a terrorist organization”. This is a very extended assumption made by the Plaintiff. The Defendant never stated that NextEra was a “terrorist organization”. The words “terror” and “error” were used in a literal sense – straight out of the dictionary. The Defendant does believe that NextEra is terrorizing people – she knows this first hand. Put it this way: if the defendant watched 18 men chainsaw down an eagle nest without a special exemption, she or the eagles would have been witnessing an illegal activity. The MNR giving a permit to a developer does not make this act any less traumatic to those who are witnessing it - a destroyed nest is a destroyed nest, by any means, sanctioned or not.
60. Contrary to what Para 34 states, the Defendant has never been contacted by NextEra for “cooperative discussions” prior to the issue being discussed here.
61. In regards to Para 35, the Plaintiff must understand that in the Defendant’s world, the word ‘terror’ is not reserved solely for organizations with extreme and violent aims. In her world the word ‘terror’ can be used to describe how people feel when they can no longer sleep or live in their homes, the frightening aspect that her family may be negatively affected by the constant repetitive noise and flicker, the fear that strikes people when they realize they cannot even sell their home to escape, or the horrendous realization that there is no governmental organization that will protect them or their family from the harm caused by Industrial Wind Turbines. As well,

the perspective from the wildlife's point of view may be that of terror when there appears to be no protection for animals and wildlife from habitat destruction or death from Industrial Wind Turbines. That is how the Plaintiff uses the word 'terror' in her world.

62. In Para 37 the Plaintiff states that Wrightman has caused 'pecuniary damage' to NextEra and its projects in Ontario, but fails to state the amount of damage done.
63. In regards to Para 38, the Defendant does not have a 'business', and therefore is not in competition with NextEra. She is not building or supporting any other energy project, wind or otherwise.
64. Paragraph 39 states that NextEra has only ever demanded she "cease distorting, mutilating or otherwise modifying NextEra's corporate name and logo's". The Cease and Desist letter sent from NextEra on March 20th demanded that the Defendant remove both the first ("Wind turbine company NextEra & MNR destroy Bald Eagle Nest & Habitat in Haldimand Cty, ON") and second video ("Nextera Energy in damage control mode on Eagle Nest removal"), even though the second video did not use the parodied images at all, or even use the word Nexterror. It also demanded Wrightman remove both images with Nexterror AND the use of the word, Nexterror. Wrightman feels that this was clearly a strike at her freedom of speech and expression, as well as a form of intimidation to make her less outspoken and dampen her opposition; and, frighten others and diminish their protests.
65. The plural use of the words "requests" and "service providers" leads the Defendant to believe that the Plaintiff tried, or is trying, to have the Eagle nest movies removed from YouTube as well. Wrightman believes that removal of these videos would most definitely impact her speech rights.

66. In regards to Para 43, the Defendant denies that she “deliberately and with malice” sought to destroy NextEra’s reputation, and whatever goodwill they imagined they had in her community. She is not a competitor with NextEra and certainly does not ‘seek donations in order to divert business from NextEra to other energy-producing businesses in Ontario’. The Defendant has no interest in, nor received any financial benefit from any other energy producing interests in Ontario.
67. Wrightman did not “cause confusion” in the minds of members of the public with her Parodied Images, as stated in Para 44 – quite simply the public was already using the terms “NextError” and “NexTerror” long before the images were ever created. The “confusion” that the public was having with NextEra’s missing documents and mixed up meeting locations were the reasons the name “NextError” ever evolved in the language of the public in the first place. NexEra’s destruction of human and wildlife habitat and it’s threatening tactics with landowners and township councils encouraged the name NexTerror to develop in the community’s vocabulary. NextEra is engaged in projects that are of considerable interest to the public and therefore subject to public comment.
68. Para 45 claims the Defendant contravened the Copyright Act with the parodied images she created. The Copyright Act also allows for satire and parody to be used. Wrightman has no commercial interest in the image – it is public comment only.
69. Contrary to the Plaintiff’s statement in Para 46, the Defendant did not create and use the image out of ‘actual malice’. The image is utilized because NextEra’s terrors and errors in her community are of interest to the public. The many articles published in newspapers and online exposed these concerns, and because of this the defendant believes her use of the Parodied Images is fair comment.

70. Although NextEra states Wrightman has caused “special damages” in Para 46 and 47, no monetary value is ever provided.
71. The Defendant completely denies that she ever portrayed NextEra as a “terrorist organization” such as Islamic Jihad. To Plaintiff falsely claims that she did so. Wrightman did not use the parodied images to ‘raise funds’ for any perceived ‘business’ as stated in Para 48.
72. Contrary to what is said in Para 49 and 50 the defendant has not committed the common-law tort of trade libel with use of the Parodied Images. The images were not false and misleading representations- they were fair comment on matters of public interest occurring in her community.
73. In regards to Para 51, Wrightman believes that the internet is one of the many places where speech and thoughts are shared and public discussion take place. To stifle this is a strike at her freedom of speech and expression.
74. Wrightman denies all claims made in Para 52.
75. Para 53 states that the Defendant has “infringed the copyrights of NextEra”. The Defendant believes that ss.29 of the *Copyright Act* allows for “**Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.**”⁵¹ Wrightman’s images were used for education, and in the manner of satire and parody.
76. Para 57 states, “the Defendant’s conduct has been malicious and wilful.” Wrightman denies this accusation. As well, the counter-notice filed with Wordpress was not false and misleading - it was her objection to the removal to the images from her blogs, in the format that was needed to proceed. NextEra has not stated the actual “serious and immediate irreparable harm and damage to NextEra” in monetary amounts, which leaves one to question whether there is actual harm

being done. Wrightman believes there is no harm done and her continued use of the Parodied Image should not be restrained.

77. Para 58 states Wrightman has been “unjustly enriched and has earned direct and indirect profits and benefits”. The Defendant questions what benefits she has received as she has no knowledge of receiving or benefiting from and type of protest on NextEra. Nothing. In addition NextEra has never made any offer to ‘buy out’ their alleged competitor that operates “OWR” & “MLWAG”, if she is indeed a “competitor”.
78. The Defendant denies NextEra’s assertion that she created and used the Parodied Images with “malice”. Wrightman created and used the Images to express her opinion that was based on the facts she was witnessing and that were being published. In a Supreme Court Ruling: *Mair v. Simpson* [WIC Radio Ltd. v. Simpson, 2008 SCC 40] Para 4, it states: “We live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones.”
79. Wrightman designed the Parodied Images whilst making use of the factual evidence (the errors and terrors) that were happening, being prolifically reported on, and published in her community. These facts were well known to the public. From *Mair v. Simpson*: Para [31]: “What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of Mair’s editorial comment.”
80. In regards to the Plaintiff’s accusation that Wrightman’s use of the Parodied Images has damaged NextEra’s reputation and goodwill in the community, the Defendant would point to Para [73] of *Mair v. Simpson*: “It would quite simply be wrong to assume that the public always takes statements of opinion at face value. Rather, members of the public must be presumed to

evaluate comments in accordance with their own knowledge and opinions about the speaker and the subject of the comments.”

81. The Defendant considers her use of the Parodied Images as “fair comment” when put to the test as described in Para [99] from *Mair v. Simpson*:, “In my opinion, therefore, the defence of fair comment should simply require the defendant to prove (a) that the statement constituted comment, (b) that it had a basis in true facts and (c) that it concerned a matter of public interest.
82. The Defendant requests that the trial take place in London Ontario, in the County of Middlesex where the Defendant resides and carries out her activities. The Plaintiff suggested Toronto, where none of the activities took place, and indeed is very far away from the Defendant’s residence. Toronto is practically inaccessible to her due to the fact that the Defendant is low income, has two young children to care for, and the time and transportation would be difficult to accommodate and arrange.
83. Wrightman denies that the Plaintiff suffered any damages as a result of any act or omission on the part of Wrightman.
84. In the alternative only, Wrightman states that such damages as alleged are excessive, exaggerated, and remote in law.
85. Wrightman states that the Plaintiff has failed to take any reasonable steps to mitigate its damages, if any.
86. Wrightman, therefore, respectfully submits that the Plaintiff’s claim should be dismissed, as against him, with costs on a substantial indemnity basis and applicable H.S.T. thereon.

May 27, 2013

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Solicitor for the Plaintiff

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