

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

ALANNAH MYLES

PLAINTIFF

- and -

**SOUTHAM INC., THE NATIONAL POST COMPANY,
FINBARR O'REILLY, DONALD BABICK and
KENNETH WHYTE**

DEFENDANT

REPLY

1. The plaintiff denies the allegations contained in paragraphs 4 through 21 of the Statement of Defence.

2. The provisions of section 5(2) of the *Libel and Slander Act*, R.S.O. 1990 c.L-12, have no application to the within action in that:
 - (a) The libel was not published in good faith;
 - (b) From December 22, 1998 onwards, the defendants continued to publish the defamatory words on the internet website of the National Post;
 - (c) The libel involved a criminal charge and/or the imputation of a criminal charge, namely, possession of a controlled substance contrary to the provisions of the *Controlled Drugs and Substances Act* S.C. 1996, c.19;

- (d) The libel was not published in mistake or misapprehension of the facts but rather maliciously;
- (e) The defendants failed to publish a full and fair retraction of the words complained of;
- (f) The "clarification" published by the defendants was not a full and fair retraction in that the "clarification" continues to associate the plaintiff with rumours of cocaine use;
- (g) The defendants published a false and erroneous statement in the "clarification" that "Ms. Myles said people had started rumours about her taking cocaine";
- (h) In the alternative, the defendants failed to broadcast the "clarification" as conspicuously as the alleged libel; and
- (i) In the further alternative, the defendants failed to broadcast the "clarification" on the internet website.

3. The defendants have acted with malice towards the plaintiff the particulars of which, without restricting the generality of the foregoing, include the following:

- (a) From December 22, 1998, the defendants have continued to publish the defamatory words on the internet website of the National Post at www.nationalpost.com.
- (b) The defendants have pleaded that certain of the words complained of are true and justified;

- (c) The defendants have pleaded the defence of fair comment in relation to certain of the words complained of in circumstances where the words do not relate to the worth and character of the plaintiff's artistic work but rather constitute attacks and invective on the personal character of the plaintiff herself;
- (d) They published words which they knew to be false;
- (e) They published words calculated to create a false impression;
- (f) They engaged in the publication of knowing misrepresentations of fact by omission;
- (g) They knowingly and recklessly published a falsity by stating that "...it's apparent that Myles has no concrete goals apart from finding a husband and having a baby" in circumstances where they were aware, and the plaintiff had advised them, of at least seven concrete goals;
- (h) The plain meaning of the words themselves;
- (i) They failed to publish a full and fair retraction of the words complained of;
- (j) They failed to provide a complete or unqualified apology;
- (k) In the alternative, they published an inadequate apology;
- (l) They published a "clarification" which constitutes a repetition of the libel in that it continues to associate the plaintiff with rumours of illegal cocaine use;

- (m) They knowingly and recklessly published a false and erroneous statement in the "clarification" that "Ms. Myles said people had started rumours about her taking cocaine.";
- (n) In the alternative, they continued to publish the words complained of on the internet website without a "clarification"; and
- (o) They failed to investigate or make appropriate inquiries regarding the accuracy of the published remarks.

4. The continued publication of the defamatory words on the internet has greatly injured the character, credit and reputation of the plaintiff throughout the world and has held her up to public scandal, ridicule and contempt.

5. Further, the defendants conduct has caused the plaintiff great distress, embarrassment, loss of reputation, humiliation, financial loss and loss of economic opportunity.

6. The above-described conduct of the defendants is such to entitle the plaintiff to awards of punitive, exemplary and aggravated damages.

Dated: April 6, 1999

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