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Defamation battle from the fringes of the Web ends in split decision

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The case pitted left-wing blogger John Baglow – known by his online persona Dr. Dawg – against right-wing blogger Roger Smith. Smith's co-defendants were the Fourniers, a couple who moderate the message board "Free Dominion", described as a venue for the expression of conservative viewpoints. In Baglow's view, Smith crossed a line with a post on Free Dominion headlined "Hey yokels with pitchforks" in which he equated Baglow's comments about Omar Khadr to his support for the Taliban. Baglow sued for defamation.

The Court found that the comment was defamatory. Just because the world of partisan blogs may be "rough and tumble", Justice Polowin held, that did not negate the possibility that a comment in such a blog post could lower a person's reputation in the eyes of a reasonable reader.

Justice Polowin also rejected the Fourniers' argument that, as operators of Free Dominion, they were not publishers. She distinguished the context of a message board from the Supreme Court's finding in *Crookes v. Newton* that hyperlinks were not publications. A message board, in contrast to a hyperlink, was not content neutral:

> A message board or forum is set up precisely to provide content to its readers. Its whole purpose is to provide content.
>
> The Fourniers are the moderators and administrators of Free Dominion… The Fourniers are not mere passive bystanders. They make posts themselves and participate in threads.

Ultimately, however, the defendants successfully asserted the defence of fair comment. The Court accepted that the post was

commentary, and that it was Smith's honestly held belief that support for Omar Khadr amounted to support for the Taliban.

The decision underlines, as Justice Polowin warned at the outset of her reasons, that wading into the blogosphere is not for the faint of heart.