

COURT OF APPEAL

ON APPEAL FROM: The Supreme Court of British Columbia, from the order of the Honourable Madam Justice Adair pronounced the 28th day of September, 2012

BETWEEN:

MAINSTREAM CANADA, A DIVISION OF EWOS CANADA LTD.

APPELLANT
(PLAINTIFF)

AND:

DON STANIFORD, and the said DON STANIFORD carrying on business as THE GLOBAL ALLIANCE AGAINST INDUSTRIAL AQUACULTURE

RESPONDENTS
(DEFENDANTS)

FACTUM OF THE APPELLANT, MAINSTREAM CANADA, A DIVISION OF EWOS CANADA LTD.

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CHRONOLOGY OF DATES RELEVANT TO THE APPEAL

January 31, 2011	Mr. Staniford launches his “Salmon Farming Kills” campaign, distributing a press release to various media outlets.
January 31, 2011	Mr. Staniford posts the “Salmon Farming Kills” campaign on his website (the “Website”).
January-March 2011	Mr. Staniford republishes the “Salmon Farming Kills” campaign on other websites and social media outlets.
March 1, 2011	Mr. Staniford posts his “Smoke on the Water, Cancer on the Coast” campaign on the Website.
March 18, 2011	Counsel for Mainstream writes to Mr. Staniford and his Internet service providers, demanding that the defamatory statements on the Website be removed, and that Mr. Staniford issue an apology and retraction. The Internet service provider complies with this demand.
March 23, 2011	Mr. Staniford responds to the letter from counsel with an e-mail containing one of the cigarette packages used in his campaign, with a picture of a fist with a raised middle finger.
March 23, 2011	Mainstream commences this action by filing a Notice of Civil Claim.
May 10, 2011	The Defendants file a Response to Civil Claim, raising, <i>inter alia</i> , the defences of justification and fair comment.
July 15, 2011	Mainstream files Amended Notice of Civil Claim and Reply.
August 29, 2011	Mainstream issues a demand for particulars.
September 22, 2011	The Defendants provide further and better particulars.
January 16, 2012	The trial commences before Adair J., and continues for 20 days.
	During the trial, Mr. Staniford relaunches the Website using a service provider outside of Canada. Mr. Staniford testifies that he would not be stopped by any injunction pronounced in the action.
	Mr. Staniford maintains a regular blog about the trial,

(ii)

providing his version of what he calls a “kangaroo court”.

January 18, 2012

The trial judge denies the Defendants’ application to amend their Response to Civil Claim to plead “lesser included” or alternative meanings (2012 BCSC 1691).

January 19, 2012

The trial judge dismisses the Defendants’ application to compel responses to outstanding discovery requests (2012 BCSC 1599).

January 25-26, 2012

In Internet postings during trial, Mr. Staniford demeans and mocks Mainstream’s witnesses. The trial judge instructs the parties that victimizing witnesses is contempt (2012 BCSC 1609). Mr. Staniford then repeats his comments for an interview published on YouTube.

September 28, 2012

Adair J. issues reasons for judgment dismissing Mainstream’s action.

OPENING STATEMENT

The Respondent (Defendant) Don Staniford has campaigned against salmon farming for years. In 2011, he launched a campaign via press releases and postings on the Internet, showing mock cigarette packages bearing statements such as “Salmon Farming Kills”. The trial judge found that the impugned publications referred to the Appellant (Plaintiff) Mainstream Canada (“Mainstream”) and were defamatory. Her Ladyship found as a fact that the meaning of the defamatory words was that Mainstream was a “killer” that was “knowingly selling products that were toxic, poison, and harmful to human health”, and that Mainstream was a liar, “knowingly acting in a way that causes illness and death.”

Mr. Staniford pleaded and the trial judge found no facts to support these meanings. Mr. Staniford conceded he was unaware of any person who had contracted cancer from consuming farmed salmon and he “did not know whether farmed salmon sold by Mainstream in B.C. is toxic to humans”. Despite finding that Mr. Staniford lacked credibility, was “akin to a zealot”, and would “say almost anything to further his agenda”, the trial judge ruled that Mr. Staniford “honestly believes the opinions he has expressed” and was entitled to invoke the defence of fair comment. The trial judge also ruled that the publications were actuated by Mr. Staniford’s express malice toward Mainstream but this was not his “dominant” purpose.

In light of her own findings of fact, the trial judge erred in law in finding that the defence of fair comment was made out. Among other things, the trial judge lost sight of the defamatory meanings she had found: that Mainstream was a killer and a liar. There was no basis in the trial judge’s own findings to support a conclusion that any person could honestly believe these defamatory statements. There was no factual foundation for these defamatory statements. The trial judge erred in her analysis of the issues of fair comment and malice and erred in exonerating Mr. Staniford for his false and malicious statements.

PART 1: STATEMENT OF FACTS

1. The facts relevant to the issues addressed in this factum are largely undisputed. Mainstream relies upon the trial judge's findings of fact.

Mainstream and salmon farming in British Columbia

2. Salmon farming in B.C. is dominated by three companies: Mainstream, Marine Harvest, and Grieg Seafood. All three have corporate ties to Norway, but Mainstream is the only one with a significant government ownership interest. Mainstream is an indirect wholly-owned subsidiary of Cermaq ASA, a Norwegian company and a world leader in salmon production. Cermaq is 43.5% owned by the Norwegian government.

Reasons for Judgment ("Reasons"), paras. 3-4, Appeal Record ("AR"), p. 127

3. Mainstream's head office is located in Campbell River, B.C. It has 27 fish farm sites located on the east and west coasts of Vancouver Island, of which 20 or so are active at any one time. Some of these farms are located in Clayoquot Sound, the traditional territory of the Ahousaht First Nation. Mainstream has received formal certification from the Ahousaht First Nation that it is abiding by the principles of sustainable aquaculture. Mainstream has also been certified by the Global Aquaculture Alliance as meeting audit and facility requirements for best aquaculture practice standards.

Reasons, paras. 16-19, AR p. 130

4. The trial judge recounted voluminous evidence concerning Mainstream's compliance with voluntary and government standards concerning health, safety and sustainability, and its transparency in disclosing and reporting information to the public. She concluded that Mainstream and its parent "model the behaviour of a responsible corporate citizen. They recognize that they are in the business of (ultimately) producing food for human consumption, and they are conscious of the need to operate the business in a manner consistent with producing a product that is safe to consume

and contributes to a healthy and nutritious diet.” This conclusion was amply supported in the evidence.

Reasons, paragraphs 20-28, AR pp. 130-133

See, e.g., Examination in Chief of Richard Finch, Vol. 4, pp. 584-88, 591-92; Examination in Chief of Jason Mann, Vol. 3, pp. 452-53; Examination in Chief of Lise Bergan, Vol. 2, pp. 191-200

Mr. Staniford and GAAIA

5. Mr. Staniford is an activist and environmental campaigner. For many years, he has been involved in organizing groups and movements to attack the salmon farming industry, and he has campaigned against salmon farming around the world. Mr. Staniford arrived in British Columbia in November 2004 and began targeting Mainstream shortly thereafter.

Reasons, paras. 2, 41, 43, AR pp. 128, 136-7

6. In 2007, Mr. Staniford was found liable for defaming another British Columbia salmon farming company, Creative Salmon Company Ltd. Mr. Staniford left the jurisdiction during this litigation. The trial judge’s finding that Mr. Staniford had defamed Creative Salmon was not challenged on appeal, but a new trial was ordered on the basis of an intervening change in the law concerning the defence of fair comment. In considering whether the action should be dismissed, this Court expressed the view that, on the basis of the evidence before the trial judge, it would be open to a trier of fact to make a finding of malice against Mr. Staniford. A new trial was ordered, but has not been held.

Reasons, para. 45, AR p. 137; *Creative Salmon Company Ltd. v. Staniford*, 2009 BCCA 61

7. Mr. Staniford returned to British Columbia in 2010 and began to set up websites including one for the Respondent (Defendant) Global Alliance Against Industrial Aquaculture (“GAAIA”). The GAAIA website (the “Website”) was formally launched in October of 2010.

Reasons, paras. 52-53, AR p. 141

The Defamatory Campaign

8. The genesis and subject matter of these proceedings is found in the “Salmon Farming Kills Campaign”, initiated by Mr. Staniford on January 31, 2011, through publications on the Website, as well as associated press releases and postings on other Internet locations.

Reasons, paras. 53, 56, AR pp. 141-2

9. Mr. Staniford’s campaign employed graphic imagery which linked Mainstream to tobacco manufacturers and cigarettes. The publications compared Mainstream, and its products, on the one hand, with cigarettes, and “Big Tobacco”, on the other. As the trial judge observed, “the use of cigarette package imagery to carry Mr. Staniford’s message is pervasive”. The publications are replete with tobacco-related words and imagery, using mock cigarette packages with slogans such as “Salmon Farming Kills Like Smoking”. The graphic images incorporated the Norwegian flag and coat of arms and statements such as “92% Norwegian Owned”. For example, the following image appeared in association with words and slogans such as “Do you still fail to see though the smokescreen of Big Aquaculture?”:



Reasons, paras. 56-66 and Appendices “A”-“C”, AR pp. 142-146 and 184-195; Amended Notice of Civil Claim, paragraph 20, AR p. 7; see also Schedule “A”, AR pp. 14-48

10. In a letter dated March 18, 2011, Mainstream's lawyers wrote to Mr. Staniford and his Internet service provider, asserting that statements on the Website were defamatory of Mainstream. The same day, Mr. Staniford's Internet service provider took down the Website. Mr. Staniford's response to Mainstream's lawyers was to send back a copy of one of the cigarette packages, with a picture of a fist with a raised middle finger.

Reasons, para. 67, AR p. 146

11. Mr. Staniford and GAAIA admitted publication of the words and images sued upon.

Reasons, para. 100, AR p. 154

Pleadings and procedural history

12. Mainstream commenced an action on March 23, 2011, and filed an Amended Notice of Civil Claim on July 15, 2011.

Amended Notice of Civil Claim, AR pp. 1-62

13. Among other things, Mainstream pleaded that the natural and ordinary meaning of the defamatory publications was that "Mainstream's business and products kill people", "Mainstream has actively misled, deceived and lied to the public", "Mainstream is knowingly marketing a carcinogenic product that causes illness, death, and harm" and "Mainstream engages in corrupt and immoral behaviour." In other words, the defamatory "sting" sued upon by Mainstream was that by comparing Mainstream and its products to "Big Tobacco", the words and images sued upon meant that Mainstream's farmed salmon kills like tobacco products do, and Mainstream is as dishonest as the tobacco industry.

Amended Notice of Civil Claim, paras. 22 and 23, AR pp. 7-8

14. The Defendants filed a Response to Civil Claim on May 10, 2011, raising two defences: fair comment and justification. The Defendants did not plead that the

defamatory comments had any alternative meanings. The Defendants pleaded that the particulars of the facts supporting the defence of fair comment were those set out in the Response to Civil Claim “or so many of those facts as were known or apparent or known to be an allegation or issue in the minds of the readers or viewers who actually saw the words and images sued upon”. The Response to Civil Claim included “Additional Facts” relating primarily to mortality of fish and other animals, but referred generally to “peer-reviewed scientific papers” and other materials that allegedly related to cancer-causing contaminants in farmed salmon.

Response to Civil Claim, AR pp. 63-72, esp. paras. 23-25, AR p. 68

15. On August 29, 2011, Mainstream issued a demand for particulars. The Defendants provided a response on September 22, 2011. As with the Response to Civil Claim, most of the particulars related to matters that were not in issue on the pleadings, including workplace accidents, mammal and fish mortality, and alleged environmental impacts associated with salmon farming. Neither the particulars nor the Response to Civil Claim referenced facts relating to any person contracting cancer or dying as a result of consuming farmed salmon, or facts relating to Mainstream lying, deceiving, or otherwise covering up such matters.

Response to Demand for Particulars, AR pp. 84-104

16. The action proceeded to trial for twenty days, commencing on January 16, 2012.

17. Early in the trial, on January 18 and 19, 2012, the trial judge made two interlocutory rulings, one concerning the Defendant’s application to amend the Response to Civil Claim to plead “lesser included” or alternative meanings to those particularized in the Amended Notice of Civil Claim, and one concerning requests left outstanding at the examination for discovery of a representative of the Plaintiff. The trial judge dismissed both of the Defendants’ applications, confirming that the defence of fair comment “must be directed to the complaint that is made by the plaintiff in the action” and noting that Mr. Staniford had not pleaded any alternative meaning or

“sting” for the defamatory words. She ruled that most of the particulars pleaded by the Defendants were irrelevant as they sought to “to justify something different, and I will say quite different, from that about which the plaintiff complains in this action”. Her Ladyship added:

.... I am going to repeat once again that Mainstream has made this claim about one thing, and one thing only: the sting arising from the link between the plaintiff and its products, on the one hand, and cancer, cigarettes and manufacturers who knowingly create a lethal product, on the other.

The trial judge later awarded Mainstream costs of these “pointless and unnecessary” applications.

Reasons dismissing Defendants’ application to amend, 2012 BCSC 1691, AR pp. 106-113; Reasons dismissing application to compel responses, 2012 BCSC 1599, AR pp. 114-120, esp. para. 23, AR p. 119; Supplementary Reasons for Judgment on Costs, Dec. 19, 2012, 2012 BCSC 1923, paras. 25-28, 35

18. On January 19, the third day of trial, the Defendants abandoned the defence of justification. As a result, the Defendants no longer sought to prove that the defamatory statements were substantially true. A number of the particulars originally pleaded by the Defendants were also abandoned. The only remaining defence was fair comment.

Reasons, para. 98, AR p. 154

Mr. Staniford’s conduct post-publication and during trial

19. During the trial, Mr. Staniford relaunched the Website, this time using a service provider outside of Canada. He proclaimed that he would not be stopped by an injunction pronounced in the action. He compared the trial to a kangaroo court.

Reasons, paras. 89, 92, AR p. 152

20. Shortly before the trial, and after the witness lists had been exchanged, Mr. Staniford accused the Ahousaht First Nation of accepting “blood money” in one of his Facebook postings. In Internet postings during the trial, Mr. Staniford demeaned and mocked the physical appearance of three of Mainstream’s witnesses, making

references to “fat bottomed girls”. The matter was discussed in court and was framed as an issue of Mr. Staniford victimizing Mainstream’s witnesses. The trial judge instructed the parties that victimizing witnesses was contempt. Despite that, Mr. Staniford repeated his comments outside court for an interview that was published on YouTube.

Reasons, paras. 90-91, AR p. 152; Supplementary Reasons for Judgment on Costs, paras. 9, 11-18, 44

Trial judge’s findings about Mr. Staniford’s credibility

21. The trial judge found many problems with Mr. Staniford’s credibility and concluded she would not accept his version of disputed facts unless “firmly corroborated”:

[185] There are many problems with Mr. Staniford’s credibility.... Mr. Staniford will twist facts to conform to his own personal view. Unless firmly corroborated by other reliable sources, I would not accept Mr. Staniford’s version of disputed facts, since his closed-mindedness and deep prejudices make him an unreliable reporter of facts. I have concluded that he will say almost anything to further his own agenda.

[186] I have concluded that Mr. Staniford is akin to a zealot. Virtually anything that conflicts with his view and vision is wrong, bad, disgraceful and worse....Neutral facts (for example, that at one time the BCSFA used the public relations firm Hill & Knowlton to do some work for it) will lead him to jump to irrational conclusions....

[187] Mr. Staniford seems incapable of conceding he might be wrong on some things. He is devoted to a cause where salmon farming is thoroughly bad, with no possibility of redemption, and must be eradicated. To concede that salmon farming might have some value would mean that Mr. Staniford has wasted a good part of his adult life. He believes his own press, even when contradicted by other, contemporaneous documents.

Reasons, paras. 185-187, AR p. 178

The trial judge's findings and conclusions: Mainstream establishes the elements of defamation

22. The Defendants admitted publication of the impugned words and images. The trial judge found that the publications in fact referred to Mainstream. The remaining element to be established by Mainstream was that the impugned words and images were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person. Mainstream submitted that the "sting" of the publications was that farmed salmon causes cancer, akin to smoking, and that Mainstream is as odious and dishonest as the tobacco industry. The trial judge found as a fact that the words and images were defamatory: their natural and ordinary meaning was that Mainstream's products kill humans and that Mainstream corruptly and knowingly sells a product which causes death, while lying and deceiving the public.

Reasons, paras. 99-122, 132, AR pp. 154-60, 162

23. There was no contest at trial about the odiousness of "Big Tobacco," and Mr. Staniford admitted that tobacco products are notoriously harmful to human health. The trial judge found that cigarette companies are held in low regard and are considered by the vast majority of the general public to be dishonest. The trial judge accepted that the damage to human health caused by smoking and the discreditable conduct of "Big Tobacco" were notorious facts, which would be known to the "ordinary man".

Reasons, paras. 104-109, AR pp. 156-57

24. The trial judge rejected Mr. Staniford's contention that the publications sued upon meant that there are grounds to "suspect" or "investigate" whether Mainstream's salmon farming is hazardous, or that the publications did not refer to killing humans and damaging human health. Her Ladyship was satisfied that the meaning of the words and images used was that Mainstream knowingly sold products which kill humans, and that Mainstream actively misled and lied to the public:

[116] In my opinion, the pervasive linking between smoking and salmon farming, coupled with the use of the mock cigarette packages to illustrate Mr. Staniford's point, would lead an ordinary reader/viewer of the publications to infer that when Mr. Staniford is talking about killing, and unless he specifies otherwise, he is talking (at the very least) about killing humans and damaging human health. It is now accepted that that is what smoking cigarettes does. Mr. Staniford admits that tobacco products are notoriously harmful to human health.

[117] Calling someone a killer, and asserting that it was knowingly selling products that were toxic, poison and harmful to human health, would tend to lower that person in the eyes of a reasonable person and is clearly defamatory.

...

[120]Labelling someone as a liar, and asserting the person is knowingly acting in a way that causes illness and death, and otherwise is engaging in corrupt and immoral behaviour, is defamatory.

[Underlining added]

Reasons, paras. 113-122, AR pp. 158-160

Evidence and findings: scientific debate

25. In his defence, Mr. Staniford relied on "a decade or so of peer-reviewed scientific research" that he claimed supported his statements about the presence of cancer-causing chemicals in farmed salmon. The trial judge observed:

[68] Critical to Mr. Staniford's defence of fair comment is what Mr. Staniford describes as "peer-reviewed science," and "peer-reviewed scientific evidence," beginning in about 2001 or 2002, showing the presence of cancer-causing chemicals in farmed salmon. In Mr. Staniford's opinion, "based on peer-reviewed science," farmed salmon contains cancer-causing contaminants and consumption of farmed salmon has elevated risks of cancer. However, when asked to explain "elevated compared to what," Mr. Staniford said he did not know. Moreover, he was not aware of any research showing that anyone had developed cancer as a result of consuming farmed salmon.

[Underlining added]

Reasons, paras. 12, 68, 173, 177-8, AR pp. 129, 146, 174-75

26. As will be developed in Part 3 of this factum, an opinion that there was an “elevated risk of cancer”, or that “farmed salmon contains cancer-causing contaminants” was not the “sting” of the defamatory comments as found by the trial judge, *i.e.*, that Mainstream was a “killer” that knowingly sold products that were toxic, poison and harmful to human health, and lied to the public about this fact.

27. There was no dispute at trial that potentially carcinogenic chemicals such as PCBs and dioxins are present in both farmed and wild salmon. The evidence indicated that PCBs and dioxins are present in many other foods, including butter, cheese, milk, pork, and beef.

Reasons, paragraph 173, AR p. 174; Evidence in Chief of Jason Mann, Vol. 3, pp. 447-448; Expert Report of Dr. Michael Gallo, Appeal Book (“AB”) Vol. 3, p. 415; Cross-Examination of Ruth Salmon, Vol. 3, p. 332; Cross-Examination of Mary Ellen Walling, Vol. 3, p. 394; Cross-Examination of Mr. Staniford, Vol. 7, pp. 1016-1017

28. A toxicologist called as an expert by Mainstream, Dr. Michael Gallo, opined that “[t]here is no merit to the allegations put forth [by Mr. Staniford] regarding the adverse effects of consumption of farmed salmon.” Dr. Gallo agreed with a report published by the Food and Agriculture Organization of the United Nations (“FAO”) and the World Health Organization (“WHO”). The executive summary of the FAO/WHO report stated:

Among the general adult population, consumption of fish, particularly fatty fish, lowers the risk of mortality from coronary heart disease. There is an absence of probable or convincing evidence of risk of coronary heart disease associated with methylmercury. Potential cancer risks associated with dioxins are well below established coronary heart disease benefits from fish consumption.

Reasons, paras. 80-83, AR pp. 149-150; Expert Report of Dr. Michael Gallo, AB Vol. 3, p. 416

29. The evidence established a debate among scientists as to whether a model created by the Environmental Protection Agency ought to govern the assessment of risks of consumption of fish, or whether a model created by the WHO was authoritative. Dr. Gallo favoured the WHO approach. Mr. Staniford was aware of the

FAO/WHO report at the time he published his defamatory statements, but was “completely dismissive” of the WHO. As the trial judge observed, “[v]irtually anything that conflicts with his view and vision is wrong, bad, disgraceful and worse...”. The trial judge said she would have no hesitation accepting Dr. Gallo’s opinions and conclusions over those of Mr. Staniford’s, if that were the contest before her.

Reasons, paras. 84, 170, 172, 186, AR pp. 150-1, 173,174, 178

30. The trial judge concluded there was a “scientific controversy about the effect on, and the benefits to, human health from consumption of farmed salmon.” As explained in Part III, this controversy did not relate to the meaning of the defamatory statements as found by the trial judge: that farmed salmon causes cancer in humans, and Mainstream has knowingly covered up this fact and lied to the public.

Reasons, para. 171, AR p. 173

31. Indeed, the evidence concerning the link between farmed salmon and cancer was to the contrary:

- (a) Mr. Staniford confessed that he knew of no evidence to suggest that even one person had developed cancer as a result of consuming farmed salmon (Reasons, para. 68, AR p. 146; Supplemental Transcript pg. 72, l. 2-22, pg. 74, l. 14-25, pp. 75-76, l. 16-47, 1-3).
- (b) When asked what he meant by his opinion that “farmed salmon had elevated risks of cancer”, Mr. Staniford said he did not know (Reasons, para. 68, AR p. 146).
- (c) Mr. Staniford admitted that he did not know whether chemicals were actually used on Mainstream’s salmon farms (Reasons, para. 85, AR p. 151).
- (d) Mr. Staniford said “that he did not know whether farmed salmon sold by Mainstream in B.C. is toxic to humans”, and that “he had not seen current data tests of contaminant levels in Mainstream’s farmed salmon, and so could not express an opinion” (Reasons, para. 86, AR p. 151).
- (e) Mr. Staniford admitted he had no knowledge of the level of contaminants in Mainstream’s farmed salmon (Supplemental Transcript, pg. 29, l. 4-42).

32. Mr. Staniford further admitted that, in his own mind, the comparison between farmed salmon and “Big Tobacco” was inapt, and akin to comparing “apples with oranges”.

Supplemental Transcript, pg. 78, l. 5-33

33. The Defendants led no evidence that Mainstream had lied about health risks, actively misled and deceived the public, or knowingly sold a carcinogenic product. As noted earlier, the Defendants had not pleaded any such misconduct.

The trial judge’s findings and conclusions: factual foundation for defamatory comments

34. The trial judge accepted that a defendant relying on the defence of fair comment must establish the comment is “based on a sufficient substratum of facts to anchor it” and that the factual foundation must be “properly disclosed or sufficiently indicated (or so notorious as to be already understood by the audience)”.

Reasons, para. 175, AR p. 175

35. The trial judge found that the following were the “facts” established in the evidence that went to the “pith and substance of the opinions expressed by Mr. Staniford”:

- (a) Tobacco products are notoriously harmful to human health, and smoking tobacco products causes cancer and death;
- (b) In Canada, tobacco products require government-mandated health warnings;
- (c) “Big Tobacco” has a very poor corporate reputation. The general public has come to distrust tobacco companies and to view them as dishonest;
- (d) Since 2000, scientists have tested farmed and wild salmon and found in the flesh of the fish contaminants that are capable of causing cancer;
- (e) Since 2000, scientists have researched the presence of those contaminants in farmed and wild salmon, and they have published the results of that research and their conclusions based on that research in peer-reviewed journals such as **Science**. These facts are true. However,

the conclusions stated by the scientists concerning consumption of wild and farmed salmon are not facts. They are opinions;

- (f) Otto Langer made the following statement in the documentary “Farmed Salmon Exposed”: “If the fish farmers want to play the same game as the cigarette manufacturers did for many years and live in denial they’re welcome to it but it’s not going to give rise to any solutions”;
- (g) Dr. David Suzuki made the following statement in the Toronto Star: “I would never feed a child farmed salmon. It’s poison”; and
- (h) In January 2011, the BCSFA launched a media campaign, which included the statement that “Farmed salmon is natural, nutritious and free of contaminants.”

Reasons, paras. 180-1, AR pp. 176-77

36. The trial judge’s findings of “true facts” did not include any facts that related to the defamatory meanings she had found: that Mainstream knowingly sold products that cause cancer and death in humans and that it actively lied, misled, and deceived the public.

37. The trial judge found that some of the “peer-reviewed scientific evidence” relied on by Mr. Staniford was cited in documents hyperlinked from the GAAIA Website. There was no finding that the text of this “evidence” was accessible, only that some citations were included in footnotes in a document posted on a webpage separate from the defamatory statements. The trial judge concluded it would take a “determined reader” to locate the “facts” on which Mr. Staniford’s comments were made. Nonetheless, the trial judge concluded that “the facts are sufficiently stated, or otherwise known to readers (in the case of what I have called “notorious” facts), so that readers can make up their own minds about the merits of what Mr. Staniford has to say.”

Reasons, paras. 182-3, AR p. 177

The trial judge's findings and conclusions: honest belief

38. The trial judge next asked whether “any person [could] honestly express Mr. Staniford’s opinions based on the proven facts”. The trial judge decided that the answer was yes: “Mr. Staniford (at least) believes what he says”. The trial judge concluded:

[189] I have no doubt that Mr. Staniford is severely prejudiced when it comes to salmon farming. His views are exaggerated and obstinate. I express no opinion on whether this makes him an effective campaigner: that is for others to judge. However, I have concluded that he honestly believes the opinions he has expressed.

Reasons, paras. 184-189, AR pp. 178-79

39. The trial judge did not explain how she came to this conclusion in light of the “many problems with Mr. Staniford’s credibility.”

The trial judge's findings and conclusions: malice

40. The trial judge agreed that the defence of fair comment fails if the plaintiff proves that the defendant was actuated by express malice. The trial judge found that the evidence that Mr. Staniford was actuated by malice was “overwhelming”. Her Ladyship concluded, however, that Mr. Staniford honestly believed there was a scientific controversy about the effect on, and the benefits to, human health from the consumption of farmed salmon. On this basis, she declined to find that malice defeated the defence of fair comment.

Reasons, paras. 190-201, AR pp. 179-83

The trial judge's ruling on costs

41. The trial judge ruled that due to Mr. Staniford’s misconduct during trial, it was appropriate to depart from the usual rule that costs follow the event. Her Ladyship concluded that Mr. Staniford’s “disrespect for witnesses and his disdain for the court and the judicial process” deserved a “clear rebuke”. The trial judge agreed that “Mr. Staniford’s misconduct was not fleeting; rather, it permeated the proceedings and was

flagrant.” She accordingly ordered that the Defendants recover 25% of the costs and disbursements to which they would otherwise have been entitled. She also granted Mainstream lump sum costs in respect of the Defendants’ pointless and unsuccessful applications at trial and unnecessarily prolonged cross-examination of Dr. Gallo.

Supplementary Reasons for Judgment on Costs, paras. 9, 15-18, 35, 44-45

PART 2: ERRORS IN JUDGMENT

42. It is respectfully submitted that the learned trial judge erred in law:
- (a) in holding that Mr. Staniford had established the defence of fair comment; and
 - (b) in holding that Mr. Staniford's malice did not defeat the defence of fair comment.

PART 3: ARGUMENT

Overview

43. The Supreme Court of Canada has confirmed that the protection of reputation has “quasi-constitutional status” in Canadian law. The law respects the importance of preserving reputations by providing victims of unjustified assaults recourse by way of the action in defamation.

Éditions Écosociété Inc. v. Banro Corp., 2012 SCC 18, *per* LeBel J. for the Court at para. 57; *Grant v. Torstar Corp.*, 2009 SCC 61, *per* McLachlin J. for the majority at para. 2

44. The Supreme Court of Canada’s approach to defamation recognizes that the value of free speech does not encompass lies, and that public attention can be focused on issues without intentionally inflicting harm on reputations through the publication of falsehoods. Defamatory lies are inimical to the search for truth and do not lead to healthy participation in the affairs of the community. Indeed, “they are detrimental to the advancement of these values and harmful to the interests of a free and democratic society”.

R. v. Lucas, [1998] 1 S.C.R. 439, *per* Cory J. for the majority at paras. 92-94, and *per* McLachlin J. (as she then was) at para. 121 (dissenting in part but not on this point)

45. These principles underpin the defence of fair comment, which can only be established where, among other things, (i) the comment is based upon and relates to a substratum of facts that are proven to be substantially true; and, (ii) objectively viewed, an honest person (however prejudiced) could express and believe the meaning of the comment made on the basis of those proven facts. A comment divorced from any factual substratum cannot enjoy the defence of fair comment.

WIC Radio v. Simpson, 2008 SCC 40, *per* Binnie J. for the majority at paras. 49, 51, 59

46. The trial judge failed to apply these fundamental principles. In light of the trial judge's findings, and on a proper application of the law, there was no reasoned basis for concluding that the defence of fair comment was available to the Defendants. First, the trial judge erred in law in failing to relate the factual foundation relied on by Mr. Staniford to the defamatory meanings she had found. Second, the trial judge erred in law in applying a subjective test rather than the objective honest belief test established by the Supreme Court of Canada. Third, the trial judge erred in concluding that Mr. Staniford believed what he said given her own findings about Mr. Staniford's lack of credibility.

47. Finally, the trial judge found that there was no doubt about the spite, ill-will and contempt Mr. Staniford holds for Mainstream. The trial judge erred in rejecting the conclusion that flowed from these findings: that Mr. Staniford was actuated by malice and this malice vitiated the fair comment defence.

Standard of review

48. Mainstream does not challenge the trial judge's findings of fact. In Mainstream's submission, the trial judge erred in law in her analysis of the defence of fair comment and in concluding that Mr. Staniford's express malice did not defeat any fair comment defence. Where findings of fact are not contested and the issue is whether those facts satisfy legal tests, the question is one of law reviewable on a standard of correctness.

Housen v. Nikolaisen, 2002 SCC 33, *per* Iacobucci and Major JJ. for the majority at paras. 27, 31, 33

The defamatory meanings

49. In considering whether a defence of fair comment is available for a defamatory publication, the defamatory meaning of the publication as found by the court is at the heart of the analysis. That meaning must be considered in determining whether the comment is based on facts which are true and in determining whether any person could honestly believe the defamatory proposition.

WIC Radio at paras. 31, 40, 45, 49, 60; *Lowe v. Associated Newspaper Ltd.*, [2006] EWHC 320, [2007] 2 W.L.R. 595, at para. 15

50. The trial judge found as a fact that the publications conveyed the defamatory meanings that Mainstream's products kill people and Mainstream has knowingly deceived the public about this. The trial judge found that the defamatory meanings, while "extreme", were the "natural and ordinary meaning" of the words used. The trial judge specifically rejected defence submissions that she should consider "proposed lesser included meanings", such as that there were grounds for suspicion about Mainstream's salmon farming (Reasons, paras. 113, 118, 120, AR pp. 158-160; see also the trial judge's rulings on pleadings motions, AR pp. 100-113).

51. Having found that the defamatory meaning of the publications was that Mainstream's products kill people and that Mainstream knowingly deceived the public about this, the trial judge was required to assess the availability of the defence of fair comment as it related to those meanings. In Mainstream's submission, the trial judge failed to do so. First, Her Ladyship failed to recognize that Mr. Staniford had not proved, or even pleaded, any facts that related to those meanings. Second, Her Ladyship misapprehended the test for honest belief and failed to consider whether any person, objectively, could honestly express those defamatory meanings on the proved facts.

The trial judge erred in law in holding the defamatory statements were fair comment

52. The defence of fair comment was recently considered and refined by the Supreme Court of Canada in *WIC Radio v. Simpson*, *supra*. The Court confirmed that a defendant must satisfy the following elements in order to invoke the defence of fair comment:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognizable as comment; and

- (d) the comment must satisfy the following objective test: could any person honestly express the defamatory comment on the proved facts?

WIC Radio, paras. 28, 49-53, 60

53. The majority of the Supreme Court rejected the proposition that the test was one of subjective honest belief, confirming that the test is an objective one: could anyone honestly express the defamatory opinion on the proved facts? It is not enough to find that a defendant subjectively believed what he said.

54. Mainstream submits that the trial judge erred in her analysis of the factual basis for the defamatory comments, and her application of the objective “honest belief” test.

No factual foundation for the defamatory meanings as found

55. The facts upon which Mr. Staniford purported to base his comments did not relate to the defamatory meanings of the publications as found by the judge.

56. A factual foundation is an important objective limit to the fair comment defence. An essential element of the fair comment defence is that the facts on which a defendant relies must be substantially true in relation to the defamatory meanings as found by the trial judge. The defendant bears the burden of proving that the underlying facts are true. If the factual foundation “turns out to be false, the fair comment defence is not available”.

WIC Radio, supra, at paras. 31, 34; *Makow v. Winnipeg Sun*, 2004 MBCA 41

57. The commentator may not omit important or material facts that would falsify or alter the complexion of the facts stated in the commentary. If the omitted facts undermine the accuracy of the facts expressed in the commentary, the defence is not available.

Creative Salmon Company Ltd. v. Staniford, 2009 BCCA 61 at para. 61

58. The “facts” relating to a defamatory comment must be facts, not the opinions of others: “comment based on matters of opinion only, which may or may not be true, equally affords no defence”.

Gatley on Libel and Slander, 11th ed. (2008) at 12.14, p. 350; *Galloway v. The Telegraph Group Ltd.*, [2004] EWHC 2786 at para. 44, aff’d [2006] EWCA Civ 17 at para. 88

59. The facts relied upon by a defendant must relate to the meaning of the defamatory comment as found by the trial judge. Here, the meaning found by the trial judge was that Mainstream knowingly sells a carcinogenic product that kills humans, and it lies, deceives, and covers up this fact, akin to “Big Tobacco”. Mr. Staniford failed to prove, or even plead, any facts that relate to those meanings.

Cruise v. Express Newspapers plc, [1999] Q.B. 931 (C.A.), at pp. 948, 954-5; *McDonald’s Corp. v. Steel*, [1999] E.W.J. No. 2173 (C.A.), cited by the trial judge in her ruling at 2012 BCSC 1691, AR pp. 107-108

60. There was no evidence before the court below (and, as Mr. Staniford admitted, none in his mind) to establish a link between the consumption of farmed salmon and a single case of cancer occurring in a human being. Mr. Staniford pointed to no evidence to support the pith and substance of the comparison of the adverse health effects of eating farmed salmon with those of smoking cigarettes

61. Further, Mr. Staniford did not particularize, or prove, any factual foundation for the defamatory comment that Mainstream had actively misled, deceived, or lied to the public, or that it knowingly marketed a carcinogenic product that causes illness, death and harm, and engages in corrupt and immoral behaviour as did “Big Tobacco” to which he compared Mainstream.

62. Mr. Staniford also concealed contrary facts. As the learned trial judge found, Mr. Staniford “believes his own press, even when contradicted by other, contemporaneous documents”. He was aware, when he published the defamatory comments, of contrary information in the FAO/WHO report.

63. Of the facts found by the trial judge to have been established, some relate to the notorious dishonesty and harmfulness of tobacco manufacturers and their products, some concern the level of contaminants in the flesh of farmed and wild salmon, and some express opinions (not facts) expressed by others. None of these “facts”, alone or in conjunction, provides a factual foundation for the meaning of the words and images sued upon as found by the trial judge.

64. In summary, the facts on which Mr. Staniford relied did not relate to the defamatory meanings found by the trial judge. He failed to establish an essential element of the defence of fair comment. The trial judge erred in law in failing to recognize that the factual foundation relied on by Mr. Staniford did not relate to the defamatory meanings that Mainstream is a killer and a liar.

Trial judge applied the wrong test in assessing whether facts truly stated

65. The trial judge also erred in deciding that any factual foundation would have been known to a “determined reader”. To rely on the defence of fair comment, the comment must be based on facts that are sufficiently stated so that the audience is able to make up their own minds as to the merit of the comment. The factual foundation must be “properly disclosed or sufficiently indicated (or so notorious as to be already understood by the audience)”.

WIC Radio, at paras. 26-27, 31, 34; *Ager v. Canjex Publishing d.b.a. Canada Stockwatch*, 2003 BCSC 891 at para. 53, aff’d 2005 BCCA 467 at paras. 43-45

66. In this case, the factual foundation was neither properly disclosed, sufficiently indicated, or notorious. At best, buried in documents hyperlinked from the defamatory publications were footnotes (without hyperlinks or full text) referencing two of the “peer-reviewed scientific articles” upon which Mr. Staniford based his fair comment defence at trial. Even then, the linked documents did not relate to the allegation that Mainstream lies, deceives, and kills like “Big Tobacco”.

Reasons, paras. 65-66, AR pp. 145-46

67. The trial judge concluded that “it would take a determined reader to locate in the publications the facts on which Mr. Staniford’s comments are being made.” The trial judge erred in law in creating a new test for deciding whether the factual foundation was “sufficiently indicated”. It is not enough that a “determined reader” could, through diligent research, locate some material that might relate to the defamatory comment. The burden is on the Defendant to disclose the factual foundation. That burden was not met.

Reasons, para. 183, AR p. 177

No person could honestly express Mr. Staniford’s opinion on the facts

68. The objective test established by the majority of the Supreme Court of Canada in *WIC Radio* was intended to provide “some boundary to the extent to which private reputations can be trashed in public discourse”. The objective honesty test represents “a balance between free expression on matters of public interest and the appropriate protection of reputation”. The majority in *WIC Radio* thus held that the objective honesty requirement requires more than that the comment simply relate to the underlying facts (the separate inquiry discussed above). The objective honesty test requires an assessment on an objective basis whether a defamatory statement has been spoken “with integrity”. The defamatory statement is not to be “a cloak for mere invective”.

WIC Radio, at paras. 47, 49, 39, 51

69. The trial judge erred by concluding that Mr. Staniford had satisfied the objective honesty test. The trial judge found that “Mr. Staniford (at least) believes what he says” (para. 184). In Mainstream’s submission, the trial judge erred in four respects in analyzing the elements of honest belief.

70. First, the trial judge did not address the central question whether, on an objective basis, any person could honestly express on the proved facts the defamatory meanings as found, that Mainstream’s products kill people and Mainstream has

knowingly deceived the public about this. The trial judge made no finding that a person could honestly express the opinion that Mainstream's products kill people or that Mainstream has knowingly deceived the public about this.

71. Second, the trial judge erred in holding that the objective honesty requirement was satisfied by her finding that "Mr. Staniford (at least) believes what he says". This is a subjective, rather than an objective test of honest belief, in direct contradiction to the majority judgment in *WIC Radio*. The trial judge did not find that any person, on an objective basis, could honestly believe that Mainstream's product kills people and Mainstream has knowingly deceived the public about this.

72. Third, the trial judge's findings of fact are incapable of supporting a finding, on an objective basis, that a person could honestly and with integrity comment that Mainstream's products kill people and Mainstream has knowingly deceived the public about this. Mr. Staniford was unable to refer to any facts relating to any person contracting cancer or dying as a result of consuming farmed salmon. Mr. Staniford was unable to identify any evidence that farmed salmon sold by Mainstream was toxic to humans. Mr. Staniford was unable to identify any evidence whatsoever that Mainstream had lied and knowingly deceived the public. Even Mr. Staniford, whom the trial judge found to be "severely prejudiced..., exaggerated and obstinate", did not claim an honest belief in the assertion that Mainstream knowingly kills and harms humans and deceives and covers-up this fact. Instead, he admitted that he knew of no evidence or reason to believe this to be the case.

WIC Radio at paras. 40, 49-51; *McQuaig v. Harbour Financial Inc.*, 2009 ABQB 678, at paras. 115-117

73. Fourth, the trial judge's conclusion that "Mr. Staniford (at least) believes what he says", while insufficient as a basis for concluding that Staniford had met his burden to satisfy the objective honesty test, was unsustainable having regard to her own findings of fact. The trial judge specifically found that unless "firmly corroborated by other reliable sources, I would not accept Mr. Staniford's version of disputed facts". Whether

Staniford honestly “believes what he says” was a fact in dispute at trial. Staniford’s belief in what he said was not corroborated by any other reliable source. The trial judge’s conclusion that Staniford honestly “believes what he says” was unsound on her own analysis.

74. The proposition that Staniford “believes what he says” was also inconsistent with the trial judge’s findings that (1) Staniford’s testimony about his conduct during the trial was “laughable and entirely unbelievable”; (2) generally, he “will twist facts to conform to his own personal view”; (3) generally, he “will say almost anything to further his own agenda”; and (4) in the course of the trial Staniford clearly misrepresented to the public events that had occurred at the trial. Such a person is obviously incapable of establishing his own integrity and honesty on the simple basis of words out of his own mouth.

75. This conclusion is reinforced by the trial judge’s findings, in relation to malice, that the evidence is “overwhelming” that Staniford published the material in issue with “spite, ill-will and contempt”, that what he says repeatedly is “insulting”, “demeaning” and “cruel”, and that he ignores peer-reviewed science which does not tell him what he wants to hear. Such a person cannot reasonably be considered to speak with honesty and integrity.

76. The trial judge’s decision that Staniford satisfied the objective honesty test can only be sustained if the law protects a defendant’s utter fanaticism at the expense of a plaintiff’s reputation. This approach to the objective honesty test does not represent the appropriate balance between reputation and free expression that the Supreme Court sought to protect in *WIC Radio*.

The trial judge erred in concluding that malice did not defeat fair comment defence

77. Malice defeats the defence of fair comment. A defendant is actuated by malice if he or she publishes the comment (i) knowing it was false; (ii) with reckless indifference to whether it is true or false; (iii) for the dominant purpose of injuring the

plaintiff because of spite or animosity; or, (iv) for some other dominant purpose which is improper or indirect. The presence of any one of these independent grounds of malice will defeat the defence of fair comment.

Smith v. Cross, 2009 BCCA 529 *per* Kirkpatrick J.A. at para. 34; *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 79; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 145; *Horrocks v. Lowe*, [1975] A.C. 135 (H.L.) *per* Lord Diplock at p. 150

78. The trial judge found that Mr. Staniford was actuated by express malice towards Mainstream and did nothing to hide his ill-will and spite toward it. She found, however, that malice was not made out at law because Mr. Staniford honestly believed what he said, and his dominant purpose was not to injure Mainstream because of spite or animosity.

79. Again, the trial judge's conclusion on the issue of malice was premised on her earlier finding that Staniford "believes what he says". That finding was unsound for the reasons stated above. A finding that malice was not Mr. Staniford's "dominant" motive is irreconcilable with the trial judge's damning findings about Mr. Staniford's credibility and lack of intellectual honesty and integrity. The trial judge's findings confirmed that Mr. Staniford's dominant purpose was to injure Mainstream out of spite and animosity. The trial judge specifically found (at para. 198) "that Mr. Staniford does not in fact do anything to conceal the spite, ill-will and contempt he holds for industrial aquaculture and salmon farming in general, and Mainstream and Cermaq in particular", and that "the evidence is overwhelming in this regard". Combined with the findings about Mr. Staniford's utter lack of credibility, the trial judge's conclusion that Mr. Staniford was not actuated by malice cannot be sustained.

80. In addition, the trial judge's findings establish that Mr. Staniford published the defamatory comments knowing they were false or with reckless indifference to their truth or falsity. Reckless indifference to truth is as blameworthy as deliberately stating falsehoods. Lord Diplock gave a helpful description of recklessness in the present field when he spoke of someone who publishes defamatory material "without considering or

caring" whether it was true or false. On his own evidence, Mr. Staniford had no basis for believing that Mainstream marketed a product that causes illness and death and lied to the public about this, and on the trial judge's findings, it is abundantly clear that he did not care about whether or not his statements were true - he will and did "say almost anything to further his own agenda".

Horrocks v. Lowe, supra, at p. 150

81. In any event, for the reasons stated above the trial judge erred in holding that Staniford had met the test of objective honesty prescribed by the majority in *WIC Radio*. As a result, the question of malice does not arise.

Policy considerations

82. Mainstream accepts that people hold different views about salmon farming. As the trial judge found, Mainstream respects that people are entitled to hold and express views critical of salmon farming, and works co-operatively with environmental organizations in spite of their differing views. What Mainstream opposes is the notion that in balancing the right to the integrity of one's reputation on the one hand, and freedom of speech on the other hand, any zealot with an agenda has an unfettered right to vitriolic speech as long as he or she claims an honest belief in a defamatory comment, even if what is said is deluded and motivated by spite and ill-will.

83. As Justice Binnie observed in *WIC*, a zealot cannot use the technicalities of defamation law "as a cloak for mere invective". Mr. Staniford's statements are nothing more than invective. As the Supreme Court of Canada has repeatedly held, such invective is harmful to the interests of a free and democratic society.

84. The decision in the court below appears to provide a complete defence to any zealot with an agenda. The law of defamation, properly analyzed, does not support this result.

Remedy

85. This Court may grant any order the trial judge should have made. In its opening at trial, Mainstream sought general damages of \$25,000 and punitive damages of \$100,000, premised in large measure on the widespread Internet publication and republication of baseless and malicious statements. On the basis of the trial judge's findings, reinforced by her scathing criticism of Mr. Staniford in the costs ruling, more substantial awards are necessary. Mr. Staniford's continued attacks and misconduct, his blatant disregard for the legitimate interests of other individuals, and the publicity associated with Mr. Staniford's behaviour have exacerbated the damage to Mainstream's reputation. Punitive damages are necessary to express this Court's disapproval of Mr. Staniford's contempt for the rule of law and the court below and as a deterrent to others. Mainstream also asks this Court to grant an injunction in the terms set out in its Amended Notice of Civil Claim to restrain Mr. Staniford from spreading further false statements of and concerning Mainstream.

Barrick Gold Corp. v. Lopehandia (2004), 71 O.R. (3d) 416 (C.A.); *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Hunter Dickinson Inc. v. Butler*, 2010 BCSC 939; *Second Cup Ltd. v. Eftoda*, 2006 CanLII 26174 (Ont. S.C.); *The Gleaner Co. Ltd. v. Abrahams*, [2004] 1 A.C. 628 (J.C.P.C.); *Nail v. News Group Newspapers Ltd.*, [2005] 1 All E.R. 1040 (C.A.)

86. The damage Mr. Staniford has caused to Mainstream and to the proper administration of justice is substantial. As the learned trial judge found, Mr. Staniford demonstrated "disdain for the court and the judicial process", and "seemed to see the trial and the courtroom as simply different venues in his continuing public relations war against industrial aquaculture... since the trial was simply a different venue, there was therefore no need to modify his behaviour in any way. Mr. Staniford was wrong." He took pleasure in advising the Court he "wouldn't pay a cent" or obey its orders, and in observing that his campaign had severely impacted the plaintiff, having hit "slap bang in the target". Mainstream asks this Court to grant an order which sends a strong message to Mr. Staniford and others of like mind.

Supplemental Reasons on Costs, paras. 9, 17; Cross-Examination of Donald Staniford, Tr. Vol. 7, pp. 1042-43

PART 4: NATURE OF ORDER SOUGHT

87. The Appellant seeks the following orders:

- (a) An order allowing the appeal and setting aside the order dismissing the Appellant's action;
- (b) An order allowing the Appellant's action against the Defendants;
- (c) An order for a permanent injunction in the terms set out in the Appellant's Amended Notice of Civil Claim (AR p. 11);
- (d) General and punitive damages; and
- (e) Costs of the appeal and of proceedings in the court below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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Canada Ltd.

Dated: January 14, 2012

PART 5
LIST OF AUTHORITIES

		PARA(s)
1.	<i>Ager v. Canjex Publishing d.b.a. Canada Stockwatch</i> , 2003 BCSC 891, aff'd 2005 BCCA 467	65
2.	<i>Barrick Gold Corp. v. Lopehandia</i> (2004), 71 O.R. (3d) 416 (C.A.)	86
3.	<i>Botiuk v. Toronto Free Press Publications Ltd.</i> , [1995] 3 S.C.R. 3	77
4.	<i>Creative Salmon Company Ltd. v. Staniford</i> , 2009 BCCA 61	6, 57
5.	<i>Cruise v. Express Newspapers plc.</i> , [1999] Q.B. 931, [1999] 2 W.L.R. 327 (C.A.)	59
6.	<i>Éditions Écosociété Inc. v. Banro Corp.</i> , 2012 SCC 18	43
7.	<i>Galloway v. The Telegraph Group Ltd.</i> , [2004] EWHC 2786, aff'd [2006] EWCA Civ 17	58
8.	<i>Grant v. Torstar Corp.</i> , 2009 SCC 61	43
9.	<i>Hill v. Church of Scientology of Toronto</i> , [1995] 2 S.C.R. 1130	77, 85
10.	<i>Hunter Dickinson Inc. v. Butler</i> , 2010 BCSC 939	85
11.	<i>Horrocks v. Lowe</i> , [1975] A.C. 135	77, 80
12.	<i>Housen v. Nikolaisen</i> , 2002 SCC 33	48
13.	<i>Lowe v. Associated Newspaper Ltd.</i> , [2006] EWHC 320, [2007] 2 W.L.R. 595	49
14.	<i>Makow v. Winnipeg Sun</i> , 2004 MBCA 41	56
15.	<i>McDonald's Corp. v. Steel</i> , [1999] E.W.J. No. 2173 (C.A.),	59
16.	<i>McQuaig v. Harbour Financial Inc.</i> , 2009 ABQB 678	72
17.	<i>Nail v. News Group Newspapers Ltd.</i> , [2005] 1 All E.R. 1040 (C.A.)	85

18.	<i>R. v. Lucas</i> , [1998] 1 S.C.R. 439	44
19.	<i>Second Cup Ltd. v. Eftoda</i> , 2006 CanLII 26174 (Ont. S.C.)	85
20.	<i>Smith v. Cross</i> , 2009 BCCA 529	77
21.	<i>The Gleaner Co. Ltd. v. Abrahams</i> , [2004] 1 A.C. 628 (J.C.P.C.)	86
22.	<i>WIC Radio v. Simpson</i> , 2008 SCC 40	45, 49, 52, 56, 65, 68, 72, 84

Secondary Sources

23.	<i>Gatley on Libel and Slander</i> , 11th ed. (2008) at pg. 350	58
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