

Form 10 (Rules 22(1) (a) and 36 (4) )

Court of Appeal File No: CA040316

COURT OF APPEAL

ON APPEAL FROM: The Supreme Court of British Columbia, from the order of the Honourable Madam Justice Adair pronounced the 28<sup>th</sup> 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

Respondent  
(Defendant)

RESPONDENT'S FACTUM

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## CHRONOLOGY OF DATES RELEVANT TO THE APPEAL

The chronology should be a brief, point-form list of only the critical events that are relevant to an issue on appeal.

- |                    |  |
|--------------------|--|
| January 6, 2011    | B.C. Salmon Farmers' Association launches "B.C. Salmon Facts" campaign asserting salmon are "free of contaminants."  |
| January 31, 2011   | Mr. Staniford launches his "Salmon Farming Kills" campaign on his website.   |
| March 1, 2011      | Mr. Staniford posts his "Smoke on the Water, Cancer on the Coast" campaign on his website.   |
| March 18, 2011     | Counsel for the Plaintiff 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     | The Plaintiff commences this action by filing a Notice of Civil Claim.   |
| May 10, 2011       | The Defendant files a Response to Civil Claim, raising, <i>inter alia</i> , the defence of fair comment.   |
| July 15, 2011      | The Plaintiff files Amended Notice of Civil Claim and Reply.   |
| August 29, 2011    | The Plaintiff issues a demand for particulars.   |
| September 22, 2011 | The Defendant provides further and better particulars.   |
| January 16, 2012   | The trial commences before Adair J., and continues for 20 days.  |
| January 18, 2012   | The Plaintiff withdraws the environmental meaning "Mainstream's business and products kill the environment" and the meaning is struck.   |
| September 28, 2012 | Reasons for Judgment.  |
| December 19, 2012  | Supplementary Reasons – Costs.   |

## OPENING STATEMENT

This appeal arises out of competing public relations campaigns launched at the time of an international seafood summit. The B.C. Salmon Farmers Association launched a campaign, "BC Salmon Facts" and the Respondent followed closely with a campaign, "Salmon Farming Kills" which included mock-cigarette packages bearing a variety of warnings which are sued upon.

Early in the Trial, the Plaintiff withdrew and the Court struck the complaint of a defamatory meaning that "Mainstream's business and products kill the environment" and the meanings complained of were limited to human health and the analogy to the dishonesty of "Big Tobacco."

Early in the Trial, Defendant applied to amend the Response to plead lesser included meanings and, upon the application being denied, the Defendant abandoned the defence of justification and relied on the remaining defences:

1. That the publications were not "of and concerning" the Plaintiff, but rather, the whole industry;
2. That those referred to were too numerous to claim in defamation;
3. That the publications were not defamatory; and
4. Fair Comment;

The trial Judge ruled in favour of all aspects of the Plaintiff's case except Fair Comment. The appeal is from the ruling that the defence of Fair Comment was made out and not vitiated by malice.

Key issues are the findings respecting meanings, that the publications were comment and understood to be so, based upon true fact, and that malice was not the dominant motive for publication.

The Trial Judge adopted the decision of the English Court of Appeal in *Singh v. British Chiropractic Association* as consistent with Canadian law of Fair Comment in *WIC Radio Ltd. v. Simpson* [2008] 2 S.C.R. 420.

## PART 1- STATEMENT OF FACTS

1. In respect of the facts stated at paragraph 9 of the Appellant's Factum, Don Staniford's campaign "followed closely" on the B.C. Salmon Farmers' Association campaign, "B.C. Salmon Facts", which included four separate full page advertisements. One of the advertisements included the statement that the salmon was "free of contaminants".

Reasons for Judgment ("Reasons"), para. 54, Appeal Record ("AR") pg. 142

2. The four advertisements were on the Defendant's website, juxtaposed with the mock cigarette packages sued upon, and that whole combination is pleaded by the Plaintiff Appellant in the Amended Notice of Civil Claim.

Amended Notice of Civil Claim, Schedule "A", THE DEFAMATORY WORDS, pg. 9;  
AR pg. 22

3. Those advertisements were also appended as Appendix "C" to the Reasons for Judgment.

Reasons, Appendix "C" pg. 68; AR pg. 192

### **Pleadings and Procedural History**

4. Respecting paragraph 13 of the facts set out by the Appellant, the meanings pleaded to arise from the pages of Schedule "A", THE DEFAMATORY WORDS included the meaning, "(h) Mainstream's Business and Products Kill the Environment" until that meaning was withdrawn by counsel for the Plaintiff and struck on the third day of trial.

Reasons on motion, para. 12; AR pg. 110

5. Respecting paragraph 15 of the facts set out by the Appellant, the statement "[n]either 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..." is misleading because:

- (a) Paragraphs 23-25, Division 3 of the Response to Civil Claim read as follows:

“23. In 1999, the World Health Organization raised food safety concerns over fish farming (including salmon farming) warning that this growing practice posed risks to public health.

24. Peer-reviewed scientific papers, health reports, Government monitoring programmes and other studies have documented the presence of cancer causing contaminants, poisons and toxic chemicals in farmed salmon and salmon feed.

25. A paper published in *Science* in 2004 found cancer-causing and other health-related contaminants in farmed salmon, including PCBs, dioxins, dieldrin, toxaphene, chlordane, lindane and DDT.”

Response to Civil Claim, paras. 23-25; AR pg. 68

- (b) Particulars supporting those allegations in response to Mainstream’s Demand at paras. 18 and 20 of the Demand (AR pg. 80) included numerous pleaded peer-reviewed academic papers, including the *Hites* paper published in January 2004 in the journal *Science*. There were a little more than two full pages of listed particulars.

Defendant’s Response to Demand for Further and Better Particulars, paras. 18-20;  
AR pp. 97-100

- (c) The *Hites* paper was peer-reviewed and involved consumption advisories that indicate an elevated risk of cancer arises from contaminants if more than between 0.4 and 1 meal of farmed salmon from North and South America is consumed per month as indicated in the paper abstract quoted by the Court.

Reasons, para. 74; AR pg. 148

- (d) According to the executive director of the B.C. Salmon Farmers’ Association, publication of the *Hites* paper was a very significant event

for the industry, with the effect of dropping the market for farmed salmon by 60% in respect of a market with annual sales of \$430-450 million.

Cross-examination of Mary Ellen Walling, transcript, vol. 3, pp. 381-382

6. Respecting para. 17 of the facts set out in the Appellant's Factum, the quote of Her Ladyship as follows:

"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."

which concerned an application to compel answers to unanswered questions. Those reasons were given on the fourth day of trial, one day after the meaning in para. 22(h) "Mainstream's business and products kill the environment" had been struck.

Reasons on motion for answers to unanswered questions, para. 23; AR pg. 119

7. Respecting para. 22 of the facts in the Appellant's Factum, toward the end of that paragraph, the Appellant states, "The trial judge found as a fact the words and images...their natural and ordinary meaning was that Mainstream products kill humans and that Mainstream corruptly and knowingly sells a product which causes death while lying and deceiving the public." The Appellant cites 24 paragraphs of the Reasons. It is submitted that the Learned Trial Judge did not find that meaning as a fact. Rather, the Learned Trial Judge repeatedly ruled that the words and images were "capable" of the pleaded meanings set out in para. 22 of the Amended Notice of Civil Claim, i.e. the question of law which trial judges perform before the jury determines the meaning, as a fact.

Reasons, paras. 118-120 and 122; AR pp. 159-160

8. Respecting para. 24 of the Appellant's account of the facts, the Appellant quotes three paragraphs of the Reasons, the first of which, para. 116, might be a finding of meaning to be inferred by an ordinary reader/viewer – that when

Mr. Staniford is talking about killing and damaging, unless he specifies otherwise, he is talking about killing humans and damaging human health. However, the other two paragraphs, para. 117 and 120, are not concerned with finding meaning as a fact, but, rather, with whether the pleaded meanings (of which the words and images are capable) are defamatory.

Reasons, paras. 113-122; AR pg. 158-160

### **Evidence and Findings – Scientific Debate**

9. Respecting para. 32 of the Appellant's account of the facts, it is submitted that it is not a fair and accurate summary of Mr. Staniford's discovery evidence in the passage referred to, or overall, to say he "admitted that comparison between farmed salmon and Big Tobacco was inapt".

Supplemental Transcript, pg. 78, line 5-33

10. Respecting para. 33 of the Appellant's account of the facts, the trial judge found that Don Staniford found the quoted section of the B.C. Salmon Farmers' Association advertisement to be "blatant lies" and "extremely misleading".

Reasons, paras. 54-55; AR pg. 142

11. The quoted section of the B.C. Salmon Farmer's Association advertisement was on Mr. Staniford's website in the "Salmon Farming Kills" campaign juxtaposed with the mock cigarette packages sued upon, and was set out on page 9 of Schedule "A" – THE DEFAMATORY WORDS, schedule to the Amended Notice of Civil Claim.

Amended Notice of Civil Claim, Schedule "A", pg. 9; AR pg. 22

12. The "Salmon Farming Kills" campaign was expressly "hot on the heels" of a \$1.5 million "B.C. Salmon Facts" campaign said to have been "launched" 6<sup>th</sup> January 2011 by the B.C. Salmon Farmer's Association.

Reasons, paras. 5; AR pg. 127; Amended Notice of Civil Claim, Schedule "A", pg. 9;  
AR pg. 22

13. The B.C. Salmon Farmers' Association was spokesperson for the industry, including the Appellant, for the following reasons:

- (a) Mainstream had 27 fish farm sites (20 active at any one time) and it is a member of the B.C. Salmon Farmers' Association;

Reasons, para. 16; AR pg. 130

- (b) Mainstream is a division of EWOS Canada Ltd., which produces feed for salmon. Among its customers for feed are Mainstream's two competitors in B.C., Marine Harvest and Greig Seafood;

Reasons, para. 15; AR pg. 129

- (c) B.C. Salmon Farmers' Association is spokesperson for the industry and is a single point of contact for media, government and other stakeholders looking for information about salmon farming. The association does quite a lot of community engagement, has an active communications committee, has a dialogue with the general public on its website and for two years at the time of trial (January 2012) had undertaken a project, "B.C. Salmon Facts," over the past two years comprising the four print advertisements in the pleadings, but also a "very active" website, television advertisements, Twitter, Facebook and other tools.

Evidence in chief of Mary Ellen Walling, transcript, Vol. 3, pg. 351 line 128–  
pg. 352, line 18

- (d) The trial judge found that the "PR campaigns and advertising by the salmon farming industry" referred to in the "Salmon Farming Kills" pages is a reference to the B.C. Salmon Farmers' Association campaign, which Mr. Staniford found so offensive. This campaign is directly connected with Mainstream, the second largest producer in B.C., and Mainstream is a member of B.C.S.F.

Reasons, para. 135; AR pg. 163

14. Respecting para. 36 of the Appellant's account of the facts, the trial judge found that the Plaintiff, EWOS, was aware of PCB and dioxin contamination and its Director of Purchasing and Nutrition, Jason Mann, testified to efforts over the past decade to reduce cancer causing contaminants discussed in the *Hites* report.

Reasons, paras. 25-27; AR pg. 132-133

### **Additional Facts**

15. Both sides of this case agreed that tobacco is notoriously harmful to health.

Reasons, para. 9; AR pg. 128

16. The existence in the flesh of farmed (and wild) salmon of contaminants that can cause cancer was accepted by the trial judge as "verified fact."

Reasons, para. 173; AR pg. 174

17. The consequences to human health of consumption of salmon was found by the court to be the subject of debate.

Reasons, para. 173; AR pg. 174

18. The debate turns on which of two models are applied to the data respecting contaminants; on the one hand, the Environmental Protection Agency ("EPA") model employed by the *Hites* papers, or, on the other hand, the World Health Organization model employed by Dr. Michael Gallo and report #978.

Reasons, paras. 82, 172, 173; AR pp. 50, 174

**PART 2 - ISSUES ON APPEAL**

19. It is respectfully submitted that the Learned Trial Judge correctly ruled:
- (a) that Mr. Staniford had established the defence of fair comment; and
  - (b) that the defence of fair comment was not defeated by malice.

## PART 3 - ARGUMENT

### Overview

20. As noted by the Learned Trial Judge, defamation law involves a tension. As expressed by Deschamps, J., "the concept of defamation requires that the right to the protection of reputation be reconciled with the right to freedom of expression, since that which belongs to the former is generally taken away from the latter."

*Bou Malhab v. Diffusion Metromedia CMR inc.*, [2011] 1 S.C.R. 24 at para. 16;  
Reasons, para. 148; AR pg. 167

And see *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 100 per Cory, J.

21. The Learned Trial Judge accurately set out the elements of the defence of fair comment.

Reasons, para. 144; AR pg. 165;  
*Grant v. Torstar Corp. et al*, [2009] 3 S.C.R. 640 at para. 31

22. Those elements are:

- (a) the comments 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;
- (d) the comment must satisfy the following objective test; could any person honestly express that opinion on the proved facts?; and
- (e) even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves the defendant was actuated by express malice;

*Grant v. Torstar Corp. et al*, [2009] 3 S.C.R. 640 at para. 31

23. The Appellant admits that the statements at issue concern a matter of public interest.

Reasons, para. 150; AR pg. 167

24. In respect of the requirement that the comment must be based on fact, the Learned Trial Judge found facts and for each subparagraph of fact, that Mr. Staniford was aware of it, and that each went "to the pith and substance of the opinion [he] expressed".

Reasons, paras. 180-181; AR pp. 176-177

25. Those facts:

- (a) tobacco products are notoriously harmful to human health, and smoking tobacco products causes cancer and death. These are now accepted as facts, and have ceased to be a matter of scientific controversy;
- (b) In Canada, tobacco products require government-mandated health warnings. This is also a notorious fact;
- (c) "Big Tobacco" has a very poor corporate reputation. As Mr. LeGresley says in his report, "[T]he general public has come to distrust tobacco companies and to view them as dishonest." I conclude that this is a notorious fact;
- (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. The existence of the contaminants has been established to be true. Dr. Gallo, for example, accepted and did not disagree with the data used for the *Hites Papers*;
- (e) since 2000, scientists have researched the presence of those contaminants in farmed and wild salmon, and they have published (e.g., in the *Hites Papers*) 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." I find this fact – that the statement was made – to be true;

(g) Dr. David Suzuki made the following statement in the Toronto Star: "I would never feed a child farmed salmon. It's poison." I find this fact – that the statement was made – to be true;

(h) In January 2011, the BCSFA launched a media campaign, which included the statement that "Farmed salmon is natural, nutritious and free of contaminants." I find these facts to be true.

26. In respect of each of the first three of those facts, the trial judge ruled they are notorious and would be accepted by the reader/viewer. With respect to the remaining five facts, the Learned Trial Judge found them to be true, to the extent they are factual and to the extent they are not opinions.

27. It is submitted that the second criterion, that comment must be based on fact, is met in this case.

28. The next criteria, that the comment, though it can include inferences of fact, must be recognizable as comment, was found by the Trial Judge to be a criterion met on the facts of the case. The Trial Judge said:

"However I have concluded that the statements are comment, not fact. They reflect Mr. Staniford's value judgments, as prejudiced, exaggerated and obstinate as they are – based on what he has read in the literature and how he has interpreted that literature. They are just as much value judgment as are Dr. Gallo's opinions and conclusions. I would have no hesitation accepting Dr. Gallo's opinions and conclusions over Mr. Staniford's if that were the contest. However, it is not. The issue is whether Mr. Staniford's statements are statements of fact or statements of opinion."

Reasons, para. 170; AR pg. 173

29. The discussion in *British Chiropractic Association v. Singh*, [2010] EWCA Civ. 350, [2011] 1 WLR 133 ("Singh"), is a particularly useful analysis, it is respectfully submitted respecting the question of whether a comment be recognizable as comment.

30. The Learned Trial Judge recounted the decision of the trial judge Eady, J. in the *Singh* case, classifying the relevant imputation as a factual assertion, rather than an expression of opinion and the trial judge in our case noted “this is essentially the argument advanced by Mainstream, that Mr. Staniford’s statements are verifiable and capable of proof and therefore must be found to be statements of fact”.

Reasons, paras. 165-166; AR pg. 171

31. The Court of Appeal of England and Wales reversed Eady, J. on that point and the Learned Trial Judge in our case quoted extensively from the English Court of Appeal.

Reasons, paras. 159-167; AR pp. 169-172

32. Among the paragraphs quoted by the trial judge from *Singh* are the following portions:

[22] ...it is one thing to defame somebody in terms which can only be defended by proving their truth, even if this ineluctably casts the court in the role of historian or investigative journalist. It is another thing to evaluate published material as giving no evidential support to a claim and, on the basis of this evaluation, to denounce as irresponsible those who make the claim. Recent years have seen a small number of high-profile libel cases in which the courts, however reluctantly, have had to discharge the first of these functions. But these have been precisely cases in which the defendant has made a clear assertion of highly damaging fact, and must prove its truth or lose.

[23] The present case is not in this class: the material words, however one represents or paraphrases their meaning, are in our judgment expressions of opinion. ...

...

[26] What “evidence” signifies depends heavily on context. To a literalist, any primary fact – for example, that following chiropractic intervention a patient’s condition improved – may be evidence of a secondary fact, here that chiropractic works. To anyone (and not only a scientist) concerned with the establishment of dependable generalisations about cause and effect, such primary information is as worthless as evidence of the secondary fact as its converse would be. The same may equally well be true of data considerably more complex than in the facile example we have given: whether it is or not is what

scientific opinion is there to debate. If in the course of the debate the view is expressed that there is not a lot of evidence for one deduction or another, the natural meaning is that there is no worthwhile or reliable evidence for it. That is as much a value judgment as a contrary viewpoint would be."

Reasons, para. 167; AR pg. 172

33. In addition, after recounting that Mr. Staniford's statements on the mock cigarette packages are declarative; "Salmon Farming Kills", "Salmon Farming Kills Like Smoking", and so on, the Learned Trial Judge observes that this, not surprisingly, has lead Mainstream to argue that Mr. Staniford's statements are statements of fact, pure and simple.

Reasons, para. 169; AR pg. 173

34. After that, the Learned Trial Judge makes a finding that the statements are comments and not fact in the following words:

"...I have concluded that the statements are comment, not fact. They reflect Mr. Staniford's value judgments – as prejudiced, exaggerated and obstinate as they are – based on what he has read in the literature and how he has interpreted that literature."

Reasons, para. 170; AR pg. 173

35. The Court also states:

"...although they look like statements of fact, they can only be – and must be found to be – statements of opinion. The unexpressed – or not completely expressed – premise is: 'Based on this peer-reviewed scientific evidence'"

Reasons, para. 171; AR pg. 173

36. The trial judge explicitly appreciated that the question to be decided is whether a reasonable reader would understand that Mr. Staniford's statements are comments and not fact. The court explicitly addresses this point in the following terms:

"I have concluded that, in the cartoon-like context in which Mr. Staniford's statements are presented, accompanied by the sometimes juvenile and over-the-top prose and blog postings, but also with hyperlinks where a reader can go for more background information, a reasonable reader would understand that Mr. Staniford's statements are comment, not fact." [emphasis added]

Reasons, para. 174; AR pg. 174

37. It is submitted that the cartoon-like conceit of a mock cigarette package with a health warning is a reference to a context of tobacco in which the health effects gradually emerge from the realm of uncertainty to the stage where the Surgeon General's warning was attributed to him, and eventually to the categorical statement appearing now on Canadian cigarette packages. That conceit, is coupled with footnote references in support. It is the trial judge's conclusion that the reasonable reader would find that the statements are comment. The trial judge was clear that the test to be met is whether the ordinary reasonable person would recognize the words as comment upon true facts and not as a bare statement of fact. The Learned Trial Judge states:

"In order for Mr. Staniford to succeed in his defence of fair comment, it must be shown, with reasonable clarity, that the words are comment and not statement of fact. The test is whether the matter would be recognizable to the ordinary reasonable person as a comment upon true facts, and not as a bare statement of fact; see *Ross* at para. 58, quoting from Brown, *The Law of Defamation in Canada*"

In other words the comment, although it can include inferences of fact, must be recognizable as comment.

Reasons, para. 168; AR pg. 172-173

38. The last criteria for fair comment is that the comment satisfy the following objective test: could any person honestly express that opinion on the proved facts?

39. This is a relatively new criteria, arising with the decision of the Supreme Court of Canada in *WIC Radio Ltd. v. Simpson* [2008] 2 S.C.R. 420.

40. It is submitted that the Learned Trial Judge not only found that a person could form the opinion on the proven facts, but also that Mr. Staniford actually did form that opinion.

41. It is respectfully submitted that the criterion for fair comment, as formulated in the decision in *Grant* interpreting the decision in *WIC* have been met in the circumstances of the present case.

42. In effect, this criterion, setting an objective, not a subjective test, requires that the proven facts have sufficient connection to the opinion expressed that there be a nexus, a "foundation" or an "anchor". It is submitted that the Learned Trial Judge turned her mind to that issue in the process of ruling that the defence of fair comment had been made out.

Reasons, para. 175; AR pg. 175

43. Respecting the second issue, whether the defence of fair comment is vitiated by express malice, the Learned Trial Judge has expressed numerous findings of fact in respect of Mr. Staniford's objectives, motives and obsessions. Words used by the trial judge include:

"defensive, aggressively, argumentative, insulting, passive aggressive, ridicule, humiliate, severely prejudiced, exaggerated, obstinate etc."

Reasons, para. 188-9; AR pg. 178-9

44. As observed in the decision of *Horrocks v. Lowe*, [1975] AC 135, evidence supporting a finding of malice can be of two types: intrinsic evidence of malice, based on the interpretation of the publication at issue, and extrinsic malice, being expression and conduct outside the publication at issue. The Learned Trial Judge quoted the appropriate test at length.

Reasons, para. 192-3; AR pgs. 179-81

45. It is submitted that the Learned Trial Judge has canvassed in detail the text sued upon and the conduct of Mr. Staniford as exemplified in the evidence and his conduct at trial.

46. It is submitted that the trial judge is in a unique position to determine if the dominant purpose was malicious and has decided it was not, as a matter of fact on the appropriate test.

47. Respecting costs, the Learned Trial Judge set out principles, authority and reasons.

*Mainstream Canada v. Staniford*, 2012 BCSC 1923

48. It is respectfully submitted that the Learned Trial Judge was within jurisdiction to censure some of the conduct of the Defendant.

49. However, it is submitted that the Learned Trial Judge took too narrow a view of the context, failing to consider that the litigation was only one theatre, battleground and aspect of what had been, at the time, a long-standing and very strenuous contest of principle, public relations, science, with many, many other aspects beyond litigation.

50. It is submitted that the Learned Trial Judge erred in considering conduct that was not "in the litigation" and effectively used costs to sanction a party whose evidence and conduct was "exaggerated" or "in error," contrary to the authority relied upon.

*LeClair v. Mibrella Inc.* 2011 BCSC 533 para 10 and 11

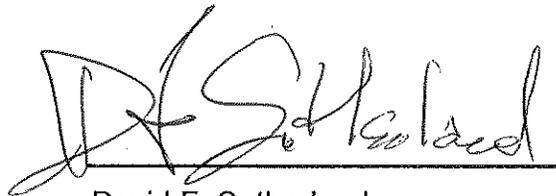
51. In any event, the Respondent respectfully submits that the denial of 75% of costs and 75% of disbursements is disproportionate in all the circumstances, which includes the fact that the Respondent's "life work" was under attack.

**PART 4 - NATURE OF ORDER SOUGHT**

52. The Respondent seeks the following orders:

- (a) An order dismissing the Appeal;
- (b) An order granting costs of the Appeal and in the proceedings below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "D F Sutherland", written over a horizontal line.

David F. Sutherland  
Counsel for the Respondent

## LIST OF AUTHORITIES

### Cases

<i>Bou Malhab v. Diffusion Metromedia CMR inc.</i> , [2011] 1 S.C.R. 24 .....	8
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<i>Mainstream Canada v. Staniford</i> , 2012 BCSC 1923 .....	15
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