

VANCOUVER

APR 9 0 2013 **COURT OF APPEAL**

COURT OF APPEAL

REGISTRY

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)

APPELLANT'S REPLY

SOLICITOR FOR THE APPELLANT:

FASKEN MARTINEAU DuMOULIN LLP
2900 – 550 Burrard Street
Vancouver, B.C. V6C 0A3
Telephone: 604-631-3277
Facsimile: 604-631-3232

DAVID WOTHERSPOON
GAVIN R. CAMERON
Counsel for the Appellant

SOLICITOR FOR THE RESPONDENTS:

DAVID F. SUTHERLAND & ASSOCIATES
2000 Ontario Street
Vancouver, B.C. V5T 2W7
Telephone: 604-737-8711
Facsimile: 604-737-8655

DAVID F. SUTHERLAND
Counsel for the Respondents

APPELLANT'S REPLY

1. In reply to the Respondent's factum as a whole, this case involves defamatory statements made by a "severely prejudiced" individual, who aimed to "ridicule and humiliate". These statements were divorced from any factual foundation for the meaning the trial judge found them to bear. They flowed from the "spite, ill-will and contempt [Mr. Staniford] holds" for the Appellant. As a matter of law, these findings disentitle the Respondents from the defence of fair comment.
 2. As found by the trial judge, this case, and Mr. Staniford's publications, were not about a "scientific controversy". There is no science or commentary involved in making serious (and admittedly untrue) allegations of misconduct, which labelled Mainstream as a dishonest and knowing killer of humans.
 3. The common law of defamation grants individuals wide latitude to express honest opinions. However, it does not allow an individual licence to make damaging and untrue statements, divorced from any factual foundation. Mainstream submits that on a proper application of the law, there is no basis to exonerate Mr. Staniford for his false and malicious statements.
- I. The Trial Judge's Findings on Meaning**
4. As the Respondents observe in their overview, the trial judge's factual findings on meaning are key to the legal issues raised on this appeal. 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.

5. Paragraphs 7-9 of the Respondents' factum suggest the learned trial judge did not find the meanings relied upon by Mainstream, though the Respondents concede that at least one paragraph of the reasons "might be" such a finding.
6. In Mainstream's submission, the trial judge's reasons on this point are clear and unequivocal. Her Ladyship expressly rejected the Respondents' submissions on the meaning of the words and images sued upon, and accepted they were defamatory as a matter of fact, observing that "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."

Reasons, paras. 113-114, 117, AR pp. 158-159

II. **Absence of a Factual Foundation**

7. Contrary to paragraph 37 of the Respondents' factum, Mr. Staniford's "conceit" was not accompanied by references to footnotes or proven facts which would support his defamatory characterization of Mainstream. The trial judge's findings of "true facts" did not include any facts that related to the defamatory meanings she had found as a fact: that Mainstream knowingly sold products that cause cancer and death in humans and that it actively lied, misled, and deceived the public.
8. Instead, the trial judge found that Mainstream "model[s] the behaviour of a responsible corporate citizen".

Reasons, para. 28, AR pg. 133

9. The defence of fair comment ought to fail on this basis alone.

III. **"Scientific Debate"**

10. Paragraphs 15-18 of the Respondents' factum reference a "scientific debate" as to whether the existence of contaminants in the flesh of wild and farmed salmon

should be measured through a model created by the Environmental Protection Agency or the model employed by the World Health Organization.

11. This issue has no relationship to the statements sued upon. Mr. Staniford was not a participant in a scientific debate. The publications sued upon make no reference to such a debate, nor do they participate or advance any scientific endeavour. As the trial judge found, Mr. Staniford has no interest in science or debate. Rather, "he ignores and disdainfully dismisses peer-reviewed science (such as Report No. 978) when the conclusions conflict with his own views", and though claiming "to be a champion of free-speech, he cruelly and publicly mocks people who have a different point of view".

Reasons, paras. 188, 198, AR pp. 178-79, 182

IV. **The Application of *Singh***

12. The Respondents emphasize "scientific debate" in an attempt to analogize this case with the decision in *Singh*.
13. This case is not *Singh*, which concerned an article in the Guardian newspaper's 'Comment and Debate' page by a respected scientist, Dr. Simon Singh, that there was not a "jot of evidence" to support assertions as to the health benefits of certain chiropractic treatments. The Court of Appeal for England and Wales found that this statement was a "value judgment" on a matter of legitimate scientific controversy, and thereby was an opinion capable of attracting the defence of fair comment at law.
14. The meaning of Mr. Staniford's statements, as found by the trial judge, were not "value laden" judgements or opinions on a matter of scientific debate. Rather, they were bald allegations of fact, imputing corrupt motives to the Appellant. Having abandoned justification, Mr. Staniford had no defence once the issue of meaning was determined against him at trial.

15. In any event, *Singh* did not establish that merely because something is written in a perceived scientific debate it is immune from suit or incapable of bearing a defamatory meaning. As Sharp J. held, "such an argument risks conflating the issues of the meaning of what is said, whether what is said is defamatory, and the defences which are or ought to be available for saying it".

Bowker v. The Royal Society for the Protection of Birds, [2011] EWHC 737 at paras. 37-40

16. While *Singh* has no application to the facts of this case, and cannot be used to defend Mr. Staniford's untrue allegations of fact, it bears mention that the United Kingdom Supreme Court has approached *Singh* with caution.

Spiller v. Joseph, [2010] UKSC 53 at para. 114, [2011] 1 A.C. 852

V. **There is No Basis to Interfere with the Denial of Costs**

17. At paragraphs 47-48 of their factum, the Respondents observe that, with respect to costs, the trial judge "set out principles, authorities, and reasons... [and] was within jurisdiction to censure some of the conduct of the Defendant." In other words, the learned trial judge made no error of law in the exercise of her discretion over costs.
18. The Respondents' complaint is with the manner in which the trial judge exercised her discretion. As this Honourable Court has frequently observed, an award of costs involves the exercise of discretion, and is subject to limited appellate review. An award of costs will not be interfered with unless the trial judge misdirected herself on a matter of legal principle or it is so clearly wrong as to amount to an injustice.

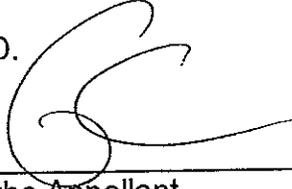
Bradshaw v. Stenner, 2012 BCCA 481 (Ch.), application to review dismissed 2013 BCCA 61

19. The trial judge made no error of law or principle in concluding 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 found that "Mr. Staniford's misconduct was not fleeting; rather, it permeated the proceedings and was flagrant."

20. Nor did her Ladyship's exercise of discretion result in an injustice to the Respondents. The trial judge's decision to grant the Respondents any costs at all was a favourable award given her findings. As Voith J. observed at paragraph 29 of *LeClair v. Mibrella Inc.* 2011 BCSC 533, the authority relied upon by the Respondents, the general rule where a party's litigation conduct warrants rebuke is an order depriving that party of the entirety of the costs to which it would otherwise be entitled.
21. Indeed, on the trial judge's findings, an order denying all costs would have been appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Counsel for the Appellant

Dated: April 29, 2013

LIST OF AUTHORITIES

	PAGE(S)
Case Law	
24. <i>Bowker v. The Royal Society for the Protection of Birds</i> , [2011] EWHC 737	4
25. <i>Bradshaw v. Stenner</i> , 2012 BCCA 481 (Ch.), application to review dismissed 2013 BCCA 61	5
26. <i>British Chiropractic Association v. Singh</i> , [2010] EWCA Civ. 350, [2011] 1 W.L.R. 133	3, 4
27. <i>LeClair v. Mibrella Inc.</i> , 2011 BCSC 533	5
28. <i>Spiller v. Joseph</i> , [2010] UKSC 53, [2011] 1 A.C. 852	4