

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mainstream Canada v. Staniford*,
2012 BCSC 1433

Date: 20120928
Docket: S111908
Registry: Vancouver

Between:

Mainstream Canada, a division of EWOS Canada Ltd.

Plaintiff

And:

**Don Staniford, and the said Don Staniford carrying on business as The Global
Alliance Against Industrial Aquaculture**

Defendants

Before: The Honourable Madam Justice Adair

Reasons for Judgment

Counsel for the Plaintiff:

David Wotherspoon, Kevin
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Counsel for the Defendants:

David F. Sutherland

Place and Date of Trial:

Vancouver, B.C.
January 16-20, 23-27, 30 and 31,
February 1-3, 6-10, 2012

Place and Date of Judgment:

Vancouver, B.C.
September 28, 2012

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Introduction

[1] In late January 2011, Vancouver hosted the “Seafood Summit,” an annual gathering of members of the seafood industry and members of non-government organizations (“NGOs”), including conservation groups. The Seafood Summit is international in scope and, in addition to Vancouver, Seafood Summits have been held in Paris and Barcelona in recent years. The defendant, Don Staniford, regularly attends these events.

[2] Mr. Staniford is an activist, author and environmental campaigner. For many years, he has been involved in organizing groups and campaigns to attack the salmon farming industry, and he has campaigned against salmon farming around the world. At trial, Mr. Staniford described this as his lifetime's work, and a career that he is extremely proud of.

[3] The plaintiff, who I will refer to as "Mainstream," is the second largest producer of farmed salmon in B.C. Mainstream is an indirect wholly-owned subsidiary of Cermaq ASA ("Cermaq"), a Norwegian company and a world leader in salmon production. Cermaq is 43.5% owned by the Norwegian government.

[4] Salmon farming in B.C. is dominated by three companies: Marine Harvest (the largest producer), Mainstream and Grieg Seafood. All three have corporate ties to Norway, although Mainstream is the only one with a significant government ownership interest.

[5] On January 31, 2011, Mr. Staniford, under the name of the "Global Alliance Against Industrial Aquaculture" or "GAAIA," launched a campaign attacking salmon farming. The launch coincided with the Vancouver Seafood Summit, which Mr. Staniford described as "apposite timing." It also followed closely the publication of advertisements by the B.C. Salmon Farmers Association (the "BCSFA"). These advertisements describe in positive terms aspects of salmon farming in B.C. and the benefits of consumption of farmed salmon.

[6] As part of the GAAIA campaign, Mr. Staniford issued a press release on January 31, 2011, publishing it on the GAAIA website. The press release reads in part (hyperlinks underlined):

Salmon Farming Kills – Global Health Warning Issued on Farmed Salmon
Vancouver, British Columbia – The newly formed Global Alliance Against Industrial Aquaculture (GAAIA) this week launched a smoking hot international campaign against Big Aquaculture. 'Salmon Farming Kills' employs similar graphic imagery to the 'Smoking Kills' campaigns against Big Tobacco and warns of the dangers of salmon farming. . . .

[7] The copy of the press release sent to the media includes four mock cigarette packages, all modelled after the packaging for Marlboro brand cigarettes. A copy of this press release, which is one of the publications in issue, is found at Appendix “A”. The packages contain the following statements: “Salmon Farming Kills,” “Salmon Farming is Poison,” “Salmon Farming is Toxic” and “Salmon Farming Seriously Damages Health.” The web-version of the press release had a total of twelve cigarette packages.

[8] Scrolling through the GAAIA website brought up more mock cigarette packages. Many of the mock packages stated “Norwegian Owned,” although others stated “92% Norwegian Owned.” All included a replica of the Norwegian flag and coat of arms.

[9] Mainstream asserts that statements and the visual images published on these pages are about Mainstream. Mainstream says that tobacco products are notoriously harmful to human health, a fact that Mr. Staniford admits. Mainstream says that Mr. Staniford’s GAAIA campaign employs words (e.g., “Salmon Farming Kills”) and graphic imagery (the mock cigarette packages) that links Mainstream to tobacco manufacturers and cigarettes, and it is defamatory.

[10] Mainstream claims that, in their natural and ordinary meaning, Mr. Staniford’s statements, in context, meant and were understood to mean that Mainstream’s business and products kill people, and that Mainstream is knowingly marketing a carcinogenic product that causes illness, death and harm. Mainstream says that the “sting” arising from Mr. Staniford’s publications is that farmed salmon – like smoking – causes cancer, and that the salmon farming industry is as odious and dishonest as the tobacco industry.

[11] Mainstream seeks substantial damages, including punitive damages, against Mr. Staniford. It also seeks a permanent injunction restraining Mr. Staniford from publishing what it says are the defamatory words and images at issue in this action.

[12] Mr. Staniford admits the fact of publication of the words and images about which Mainstream complains. However, he denies that the words and images are defamatory, and he denies that they in fact referred to Mainstream. Mr. Staniford does not seek to justify his statements, which he says are not statements of fact at all. Rather, he says that the statements are and would be understood as comment or opinion on matters of public interest. Thus, Mr. Staniford relies on the defence of fair comment. He asserts that there is a decade or so of peer-reviewed scientific research that supports his statements.

[13] In response, Mainstream says that, even if Mr. Staniford were able to make out the elements of the defence of fair comment, his defence must fail because, in publishing the words and images sued upon, Mr. Staniford was actuated by express malice against Mainstream.

[14] I must first determine whether Mr. Staniford's statements are defamatory, and whether they in fact referred to Mainstream. If I find for Mainstream on these two points, I must next consider whether Mr. Staniford has made out the elements of the defence of fair comment, and, if so, whether Mainstream has proven malice, which will defeat the defence. If Mr. Staniford's fair comment defence fails, he is liable to Mainstream, and I must then determine the appropriate remedies.

Background Facts

(a) Mainstream

[15] Mainstream is not in fact a separate corporate entity. Rather, it is a division – namely, the division carrying on salmon farming operations – of EWOS Canada Ltd. (“EWOS”). EWOS is one of the largest producers of fish feed, and the fish feed part of the business is carried on under the “EWOS” name. EWOS produces feed for salmon, as well as other fish species. Among its customers are Mainstream's two competitors in B.C., Marine Harvest and Grieg Seafood, in addition to Mainstream itself.

[16] 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 about 20 or so are active at any one time. It is a member of the BCSFA, an industry organization that was started in about 1984, and whose members include the salmon farming companies in B.C., the feed companies and processing plants.

[17] Mainstream's fish farms include sites in Clayoquot Sound, a UNESCO-protected biosphere and the traditional territory of the Ahousaht First Nation. Two members of the Ahousaht First Nation testified at trial: Mr. Wally Samuel, who is a member of the Ahousaht Nation Fish Farm Committee and the Aboriginal Aquaculture Committee; and Mr. George Frank, who (since 2007) has been employed by Mainstream as a best management practices inspector and First Nations liaison.

[18] Both Mr. Samuel and Mr. Frank described protests by the Ahousaht and a blockade of fish-farming operations in the Ahousaht territory in the mid-1990s. The Ahousaht had raised concerns about potential environmental impacts of fish farms and the lack of consultation by government concerning the placement of the farms. In about 2002, Mainstream reached a protocol agreement with the Ahousaht First Nation that (among other things) provided significant employment opportunities for many members of the Ahousaht First Nation, provided that the Ahousaht First Nation would have a say in whether any Mainstream sites were expanded or relocated and, generally, fostered a much improved relationship between the Ahousaht First Nation and Mainstream and Cermaq. A new protocol was signed in 2010.

[19] Mainstream has received formal certification from the Ahousaht First Nation that it is abiding by the principles of sustainable aquaculture in the Ahousaht territory. Mainstream's Brent Island site has also been certified by the Global Aquaculture Alliance as meeting all audit and facility requirements for "BAP Certification" for best aquaculture practice standards for salmon.

[20] Mainstream's operations are also governed by a number of government and third party regulations. Some of these were described at trial by Mr. Frank and by

Brock Thomson. Mr. Thomson is Mainstream's Campbell River area manager and special projects manager. He is responsible for production at Mainstream's three main sites, where he oversees the day-to-day operations. According to Mr. Thomson, Mainstream's sites are regularly audited by government representatives, to ensure that Mainstream is abiding by the conditions of its licences, and the representatives conduct their own audits on Mainstream's biosecurity protocols and its fish health management plan.

[21] I also heard evidence from Lise Bergan concerning Cermaq's corporate philosophy, some of the regulations under which it operates, and how, generally speaking, it carries on business.

[22] Ms. Bergan is Cermaq's director of corporate affairs, and as such, she has general responsibility for the reputation of the company. This includes responsibility for: Cermaq's annual reports and sustainability reports; the content of the corporate website; reporting to the stock exchange; and dealing and communicating with internal and external stakeholders, including NGOs.

[23] Ms. Bergan testified concerning the information available publically (either in print or on the corporate website) about Cermaq and Mainstream's operations. Based on Ms. Bergan's description, the volume of information (particularly on the website) is substantial and the scope is broad. Among other things, Cermaq has published the principles governing its sustainability program and reported on the company's performance, using the standards set by the Global Reporting Initiative ("GRI") for sustainability reporting. Since 2010, the sustainability reporting is also subject to review by KPMG's sustainability team. Ms. Bergan explained further that, if Cermaq deviates from the indicators that are part of the GRI, Cermaq must disclose the manner in which it has done so. This manner of reporting, using the GRI standards, applies to both Cermaq and Mainstream, according to Ms. Bergan.

[24] Ms. Bergan also described her dealings with individuals and organizations concerning the salmon farming industry, including critics of the industry. She has met Mr. Staniford at international conferences on the salmon industry, and at

Cermaq annual general meetings. She indicated that Cermaq endeavours to learn from its various stakeholders (including NGOs), and that, for example, it received input from an NGO about its sustainability report being externally reviewed (which it now is). Ms. Bergan said that with the World Wildlife Organization, for example, they do not always agree but Cermaq is still able to have a good and direct dialogue. Ms. Bergan described her dealings with Mr. Staniford as less productive than with other NGOs, and indicated that Cermaq prioritized directing its time and energy toward those who seek improvements in the industry in a constructive way.

[25] Jason Mann, the Director of Purchasing and Nutrition for EWOS, also testified at trial, with a focus on the fish feed side of the business. Mr. Mann has a Bachelor of Science in animal agriculture, and a Master of Science in nutrition, both from the University of British Columbia. He began working at EWOS in 1988, after he completed his Master's.

[26] Mr. Mann described some of the certifications under which EWOS operates. He explained that, on a voluntary basis, EWOS chose to target standards set by the International Standards Organization or "ISO". The certifications include: ISO 18000, concerning occupational health and safety; ISO 22000, concerning feed safety; ISO 9001, which is the highest level, for quality aspects; and ISO 14000, concerning environmental standards. Mr. Mann confirmed that third party agencies are responsible for doing audits and inspections to verify compliance with standards. Mr. Mann testified that there is a very strong focus on feed safety and food safety, since, at the end of the day, it is food products that are being grown. According to Mr. Mann, representatives of government agencies such as the Canada Food Inspection Agency and the U.S. Food and Drug Administration inspect EWOS's facilities on a regular basis and do random testing.

[27] Mr. Mann described some of the important changes that have taken place in the feed industry over the past decade to reduce environmental contaminants (including PCBs and dioxins) in feed products. Mr. Mann was aware of the research done by the group of scientists who authored the Hites Papers (which I discuss in

more detail below), discussing the presence of those contaminants in farmed and wild salmon. According to Mr. Mann, this research made clear that the issue needed to be given priority. As Mr. Mann explained, fish oil used in feed is potentially a significant contributor of contaminants, and one of the steps EWOS took was to approach suppliers to institute a program to “clean” the oil. According to Mr. Mann, use of the fish oil cleaning technology has reduced dioxins in the oil by about 90% and reduced PCBs by about half. EWOS has also pursued obtaining fish oil from sources located geographically in areas where contaminant levels are either low or lower, and is also using more vegetable oil in manufacturing feed.

[28] Based on the evidence at trial, I conclude that EWOS (including Mainstream) and Cermaq, 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.

(b) Mr. Staniford

[29] Mr. Staniford is now in his early 40s. As of trial, he had been living and working in B.C. since about mid-2010. However, during the trial, he indicated that he was about to be “deported” at the end of February 2012, and was about to start work for the “Green Warriors” of Norway.

[30] Mr. Staniford received a B.A. in Geography in 1992 from the University of Birmingham, England. He then studied ecological and environmental science at Lancaster University, and received a Master of Science degree in 1993. His thesis topic was the environmental impact of shellfish farming. In 1993, Mr. Staniford was awarded a scholarship to pursue doctoral studies at the School of Environmental Sciences at the University of East Anglia. Mr. Staniford continued as a graduate student for about four or five years, and worked on an environmental impact assessment of Scottish salmon farming. However, he never completed his Ph.D.

Instead, Mr. Staniford became a campaigner against industrial aquaculture in general and salmon farming in particular.

[31] According to Mr. Staniford, he has been involved with salmon farming issues exclusively, working with a variety of organizations, since 1993. In 1997, he met Alexandra Morton and other environmental activists at the World Aquaculture Society conference in Seattle. According to Mr. Staniford, he became very interested in environmental activism and campaigning, and he decided that he preferred being a campaigner to being an academic. Soon after that, Mr. Staniford began doing volunteer work as a researcher with Friends of the Earth Scotland. He remained with that organization for about three years, beginning in 1998.

[32] According to Mr. Staniford, part of his responsibilities at Friends of the Earth Scotland was to deal with the media. He described attending a public meeting in Scotland where his statements claiming chemicals were being used illegally in fish farming led to a very hostile crowd. However, according to Mr. Staniford, when he returned to his office, he received a phone call from a salmon farmer claiming he had evidence of the illegal use of chemicals. Mr. Staniford testified that he broke a major news story – what he called “a big scandal of the Scottish salmon farms” – that ended up on the front page of a major U.K. newspaper and was picked up by the BBC.

[33] In 2000, while still associated with Friends of the Earth Scotland, Mr. Staniford was involved with media issues concerning a documentary entitled “Warnings from the Wild,” which was a joint production of the BBC and CBC. The program was broadcast in January 2001. In his evidence, Mr. Staniford described the program as “prime time Sunday night television,” which, according to Mr. Staniford, discussed the issues of contaminants in farmed salmon. It appears that it was in connection with this documentary that Mr. Staniford became acquainted with the work of Dr. Miriam Jacobs and Dr. Michael Easton. They are two of the authors of what Mr. Staniford describes as the peer-reviewed scientific research papers on which he relies for his fair comment defence.

[34] Mr. Staniford left Friends of the Earth Scotland in 2001, when a salmon farmer threatened to sue him personally in connection with a letter to a newspaper in Scotland.

[35] According to Mr. Staniford, some time in late 2003, he was approached by Harbour Publishing, a B.C. publisher, to contribute a chapter to a book that was published in 2004 under the title “A Stain upon the Sea.” Mr. Staniford was one of several authors (including Ms. Morton and Otto Langer) who contributed chapters to the book. Mr. Staniford’s chapter was entitled “Silent Spring of the Sea.” Much of the underlying information that Mr. Staniford used to write the paper came to him as a result of productions following freedom of information requests made in Scotland. Mr. Staniford described his chapter as focussed on “these poisons, these toxic chemicals that they used on salmon farms, as well as the artificial colourings that they put in the feed.” Mr. Staniford said that he wrote his book chapter probably in February 2004, “very much in the aftermath of the Hites paper.”

[36] The “Hites paper” was a paper entitled “Global Assessment of Organic Contaminants in Farmed Salmon” authored by a number of scientists, including Dr. Ronald Hites (a professor at the School of Public and Environmental Affairs at Indiana University in Bloomington), and published in the January 9, 2004 issue of the journal **Science**. I will refer to this paper as the “January 2004 **Science** Paper.” There is no dispute that **Science** is one of the top peer-reviewed scientific journals.

[37] The January 2004 **Science** Paper is the first in an important series of papers authored (for the most part) by the same group of scientists and published over the next year or two in various scientific journals, in which the authors discuss and interpret the data that formed the basis for the January 2004 **Science** Paper. I will refer to this series of papers, collectively, as the “Hites Papers.”

[38] The abstract for the January 2004 **Science** paper reads in part:

[T]he potential human health risks of farmed salmon consumption have not been examined rigorously. Having analyzed over 2 metric tons of farmed and wild salmon from around the world for organochlorine contaminants, we show

that concentrations of these contaminants are significantly higher in farmed salmon than in wild. European-raised salmon have significantly greater contaminant loads than those raised in North and South America . . . Risk analysis indicates that consumption of farmed Atlantic salmon may pose health risks that detract from the beneficial effects of fish consumption.

[39] The prior studies of Dr. Jacobs and Dr. Easton are cited in the January 2004 **Science** Paper.

[40] I will return to this and other Hites Papers in the section “Peer-reviewed scientific evidence” below.

[41] Mr. Staniford arrived in B.C. around early November 2004, to take up an offer of paid employment with the group Friends of Clayoquot Sound. His job was to campaign against salmon farming in Clayoquot Sound, where both Mainstream and Creative Salmon Company Ltd. had operations. The book ***A Stain upon the Sea*** was published at about the same time, and, in connection with the book launch, Mr. Staniford did some media interviews, together with Otto Langer (one of the other chapter authors).

[42] Mr. Staniford described his job for Friends of Clayoquot Sound as to oppose the organic certification of salmon farming (which Creative Salmon was seeking) and generally to raise public awareness. His job plan was specified through an umbrella organization, the Coastal Alliance for Aquaculture Reform or “CAAR.” Mr. Staniford described CAAR as a coalition of NGOs working on salmon aquaculture, to campaign against farmed salmon and campaign against salmon farming as an industry.

[43] According to Mr. Staniford, in December 2004, Friends of Clayoquot Sound publicly criticized Mainstream’s operations, in connection with the release of a report from the group “Raincoast Research.” The report was entitled “Diminishing Returns.” At trial, Mr. Staniford described the report as a “huge exposé” on what were then five multi-nationals (including Mainstream) operating salmon farms in the area, and a “damaging exposé of the industry.” From Mr. Staniford’s perspective, the report arrived at a very opportune time, shortly after he had begun working for

Friends of Clayoquot Sound. In December, the “Friends” issued a press release in connection with the report in which Mr. Staniford was quoted. The press release was titled “Cermaq: Clean up or clear out of Clayoquot Sound.”

[44] Mr. Staniford worked for Friends of Clayoquot Sound for about a year. While there, he was sued for defamation by Creative Salmon. Mr. Staniford referred disdainfully to that lawsuit as a “SLAPP suit,” just as he refers to this litigation as a SLAPP suit. The term “SLAPP suit” has been coined to describe what are perceived (at least by those being sued) to be “strategic litigation against public participation.” Mr. Staniford also viewed the lawsuit threatened against him in Scotland, which brought an end to his association with Friends of the Earth Scotland, as a SLAPP suit.

[45] The details of the Creative Salmon lawsuit are found in ***Creative Salmon Company Ltd. v. Staniford***, 2007 BCSC 62 and ***Creative Salmon Company Ltd. v. Staniford***, 2009 BCCA 61, 90 B.C.L.R. (4th) 328 (“***Creative Salmon***”). The trial judge awarded Creative Salmon general and aggravated damages for defamatory comments made by Mr. Staniford about it in two press releases issued in June 2005. The trial judge found that the press releases defamed Creative Salmon and the defence of fair comment was not available to Mr. Staniford. However, after the release of the reasons for judgment, the Supreme Court of Canada, in ***WIC Radio Ltd. v. Simpson***, 2008 SCC 40, [2008] 2 S.C.R. 420 (“***WIC***”), modified the test for the defence of fair comment. In the result, the Court of Appeal ordered a new trial. The trial judge’s finding that Mr. Staniford had defamed Creative Salmon was not challenged on appeal. In considering whether the action should be dismissed, Tysoe J.A. (writing for the Court) expressed the view (at para. 45) 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. Since actual or express malice would defeat a fair comment defence, Tysoe J.A. concluded that it would not be appropriate to dismiss Creative Salmon’s claim, although that had been the order sought by Mr. Staniford if his appeal was allowed. No new trial has been held.

[46] Mr. Staniford left Canada, and in about November 2005 he began working (through the U.S. National Environmental Trust) for an advocacy organization, headquartered in Washington, D.C., called the “Pure Salmon Campaign.” Mr. Staniford was its European co-ordinator, and later its global co-ordinator. As European co-ordinator, Mr. Staniford spent most of his time in Europe. He worked with the Pure Salmon Campaign until May or June 2010, around the time he returned to B.C.

[47] According to Mr. Staniford, the Pure Salmon Campaign and the National Environmental Trust were shareholders in a number of Norwegian-owned salmon farming companies, including Cermaq. He explained that, as shareholders, they had the right to attend annual general meetings, which they did, and that, in advance of a meeting, they would file shareholder resolutions to be discussed and voted on at the meeting. Mr. Staniford testified that he personally attended Cermaq annual general meetings. Further, as Mr. Staniford described it, part of his job involved setting up meetings with representatives of the Norwegian government and other “stakeholders” and “powerbrokers” in the salmon farming industry. He would also set up meetings with members of the media.

[48] Mr. Staniford testified during his examination-in-chief concerning his attendance at the Cermaq annual general meeting in May 2006 (the “May 2006 Meeting”) and the resolution presented by the National Environmental Trust. He said:

We presented a shareholder resolution. We filed a shareholder resolution, which allowed us a platform to speak. And it was a basic plea to Cermaq to adopt higher standards, do an environmental review. It cited escapes, feed issues, maybe sea lice, and the resolution was unanimously approved, so Cermaq agreed with us and agreed to our demands to do better in terms of environmental review.

[49] During his cross-examination, Mr. Staniford was asked about what happened at this meeting with the National Environmental Trust resolution:

Q I would like to turn to the issue of the Cermaq shareholder resolution. In your direct evidence you said twice that: A shareholder resolution

put forward by the Pure Salmon Campaign in 2006 was passed unanimously by the board of directors of Cermaq. Do you recall giving that evidence?

A Yes. And I was reading directly from a press release or news report. If you would like to put that document to me I could talk about it more.

Q What I'll do, Mr. Staniford, is put to you the minutes of evidence -- sorry, minutes of the annual general meeting. And I'm going to suggest to you that what you said in court here isn't accurate. What I'll suggest to you is that the minutes do not say the resolutions were passed unanimously. Do you agree with me that -- with that?

A If you show me some minutes that I have never seen and we have never seen in evidence, in any of their list of documents, then I might be able to help you.

Q Well, you are the one, Mr. Staniford, that said in your direct evidence that you can go online and find these things.

A As far as I am aware, minutes of Cermaq AGMs were never posted online. But if they are I am sure you will show me a copy and point to a place where they are posted online.

Q You see that at the top, it says: Minutes of the annual general meeting of Cermaq ASA, May 3rd, 2006. Do you see that?

A Yeah, is this online anywhere? Is there a hyperlink for this?

Q Mr. Staniford, please answer my questions.

A You just suggested that I could find things online and I am just asking you if this is available online.

Q Please answer my questions. Will you agree with me that at the top of this document it says: Minutes of the annual general meeting of Cermaq ASA, May 3rd, 2006.

A Yes.

Q All right. And down the page you'll see about three-quarters of the way down it says "the AGM." Do you see that?

A Yes.

Q "The AGM chair pointed out that a shareholder, National Environmental Trust Fund, had tabled a proposal to the AGM after the board had discussed the meeting's agenda. The proposal was sent to shareholders as supplement to the invitation to attend the AGM. The AGM chair proposed that the issue be taken as the last item of the agenda." Do you see that?

A Yes.

Q And that's your shareholder's resolution that's being referenced; correct?

A That's the shareholder resolution of the National Environmental Trust who I was in Norway with with the Pure Salmon Campaign.

Q And if you could turn to the last page -- the last page which is page 5. See that item 9/06 entitled "Proposal for the Protection of the Environment"? And that's a reference to the resolution that you and Mr. Naylor explained; correct?

A Yes. And it says it was passed by unanimous vote which is exactly what I said. I said it was passed unanimously.

Q No.

A It says it there in the third sentence: "The AGM passed the following resolution by unanimous vote."

Q Right. Exactly. And what does the resolution say? Could you read that?

A It's not here. The text of the shareholder resolution is not written down.

Q Could you read that last indented paragraph, please, the one that's in italics?

A That's not the resolution.

Q Exactly. Could you read it, please?

A I'll read the sentence, but I put it to you that that's not the resolution. So what you are asking me to read is not the resolution.

Q I am asking you to read from the minutes of the board meeting.

A Okay. It says here: "The AGM passed the following resolution by unanimous vote." And then in italics it says: The proposal by the National Environmental Trust Fund is referred to the board without substantive discussion."

Q Right. So it did not pass a resolution. It said that the board would consider it; correct?

A No, as the sentence says: "The AGM passed the following resolution by unanimous vote." It passed the resolution unanimously as the press report which I read from earlier states.

Q No.

A I am not sure if maybe you just can't read.

Q I'm going to suggest to you that -- well, to put it in your terms, Mr. Staniford, you can't read. The only resolution that was passed was to refer your resolution to the board for consideration. Your resolution was not passed, contrary to what you told this court.

A I disagree. I was reporting and reading from a document that says the AGM passed a resolution unanimously. And that's exactly what the sentence says.

MR. WOTHERSPOON: My Lady, can we have -- mark that --

THE WITNESS: And I was there in the AGM; you weren't. Lise Bergan wasn't there. So -- and you haven't called any witnesses to testify otherwise. Geir Isaksen is not here. So I really find your suggestion distasteful.

[50] The document that Mr. Staniford was reading from to give his evidence-in-chief about what happened at the May 2006 Meeting was a report in the publication "Intrafish." Mr. Staniford appears to be the source for the story.

[51] At trial, during his examination-in-chief, Mr. Staniford described a wide variety of advocacy activities while he was with the Pure Salmon Campaign. Among many other things, he testified that he worked with Damien Gillis, a B.C. documentary film maker who produced two films, one called "Dear Norway: Please help save Canada's wild salmon," and "Farmed Salmon Exposed: The global reach of the Norwegian salmon farming industry." According to Mr. Staniford, these went "viral on the Internet." He organized a screening of "Farmed Salmon Exposed," to which Cermaq and Marine Harvest were invited, at the 2010 Seafood Summit in Paris. According to Mr. Staniford, the screening was "a real highlight" of the Seafood Summit. When the King of Norway was attending the 2010 Olympics, Mr. Staniford (along with some colleagues) attempted to deliver a letter to him in which they were asking the King of Norway to "stop the killing of wild salmon in British Columbia by Norwegian-owned companies." This, of course, included Mainstream.

[52] Mr. Staniford moved back to B.C. after the funding for the Pure Salmon Campaign ran out in about June 2010. Mr. Staniford said that, in April 2010, he began developing a number of websites: "Wild Salmon First," "Superheroes 4 Salmon" and GAAIA. With respect to the GAAIA website, Mr. Staniford instructed his web-designer to "ape" or copy the style of the website of the Global Aquaculture Alliance, an organization antithetical to Mr. Staniford's views. According to Mr. Staniford, the design of the GAAIA website was intended as a "spoof" of the Global Aquaculture Alliance site, and to mock it. Mr. Staniford proclaims himself to be a big fan of spoofs, parodies and what he views as humour, and he indicated that he likes to incorporate them in his publications where he can.

[53] The GAAIA website was formally launched in October 2010. The "Salmon Farming Kills" campaign, with the associated press releases and other publications, was launched in January 2011.

[54] As I noted above, in January 2011, the BCSFA published a series of advertisements, describing salmon farming in positive terms and describing some of the benefits of consuming farmed salmon. One of the advertisements was headlined “Salmon Farmers would never add chemicals to their salmon.” Some of the text of the advertisement reads:

Just like you, salmon farmers want their food natural, nutritious, and free of contaminants. That’s why there are no growth hormones added to BC farmed salmon. Nor are there any dyes – both farmed and wild salmon get their colour from the pigments they ingest as part of their diet. Antibiotics and medical treatments are used rarely and only on the advice of a veterinarian. And just for the record, there are no genetically engineered or modified fish in BC farms. At the end of the day the only real difference between farmed and wild salmon is that the farmed ones know where their next meal is coming from.

. . .

Farmed salmon is natural, nutritious, and free of contaminants.

[55] Mr. Staniford found these statements particularly offensive, based on his reading and research, including his familiarity with the January 2004 **Science** Paper and other materials he had referenced in his article “Silent Spring of the Sea.” He called the BCSFA’s statements “blatant lies” and “extremely misleading.”

(c) The publications in issue

[56] The publications that Mainstream says are defamatory are reproduced as Schedule “A” (the “Defamatory Words”) and Schedule “B” (the “Gallery”) to the amended notice of civil claim (the “Amended Claim”), and total 48 pages. Mr. Staniford admitted that these are printouts from the GAAIA website. The use of cigarette package imagery to carry Mr. Staniford’s message is pervasive. However, the whole context is important.

[57] Mainstream pleads over fifty particulars of defamatory words contained in the publications. These include the following, many of which appear on mock-cigarette packages (page references indicate the page(s) in the Schedules to the Amended Claim):

- (a) from the “Salmon Farming Kills” campaign: “Salmon Farming Kills” (p. 1); “Salmon Farming Seriously Damages Health” (p. 1, p. 27); “Salmon Farming Licenced to Kill” (p. 3); “Salmon Farming Kills Around the World and Should Carry a Global Health Warning” (p. 7); “Salmon Farming Seriously Damages Human Health, the Health of our Global Ocean, and the Health of Wild Fish” (p. 7); “Salmon Farming is Toxic and Poison” (p. 3); “Salmon Farming is Toxic” (p. 4); “Fish Farmers are playing ‘the same game as the cigarette manufacturers did for many years’” (p. 1);
- (b) from the “Silent Spring of the Sea” campaign: “Don Staniford Analyzes the Chemical Stew that Farmed Fish are Raised in and the Health Risks this Poses to Humans” (p. 24); “Salmon Farming Killing With Chemicals” (p. 24);
- (c) from the “Smoke on the Water, Cancer on the Coast” campaign: “Smoke on the Water, Cancer on the Coast” (p. 1, p. 26); “Smoke on the Water, Salmon Farming Kills” (p. 26); “Do you still not believe that the salmon farming industry is blowing smoke up your ass? Do you still fail to see though the smokescreen of Big Aquaculture? Then you need help navigating through the smoke and mirrors of the global salmon farming industry. Put a copy of ‘Smoke on the Water, Cancer in the Coast’ in your pipe and smoke it” (p. 26); “Salmon Farming Kills Like Smoking” (p. 27); “Salmon Farming . . . If That’s my Future I Might as Well Just Smoke Too” (p. 27); “Salmon Farming??? Better to Smoke ‘em Than Eat ‘em!!” (p. 27).

[58] From the GAAIA homepage, a reader could click on the link “Salmon Farming Kills.” This would take the reader to the pages a copy of which is found at Appendix “B”. Mr. Staniford wrote, under “Salmon Farming Kills” (hyperlink underlined):

Put this in your pipe and smoke it.

Are you sick and tired of Big Aquaculture blowing smoke on the health and safety of salmon farming? Do you think the PR campaigns and advertising by the salmon farming industry is all smoke and mirrors? Do you want the salmon farming industry to quit killing wild fish and polluting our global ocean?

“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” (Canadian biologist Otto Langer in “Farmed Salmon Exposed”)

[59] The “Salmon Farming Kills” pages contained several mock cigarette packages with the statement “92% Norwegian Owned.”

[60] Under the heading “Salmon Farming is Toxic and Poison”, Mr. Staniford repeats a quote from an article in the *Toronto Star* (hyperlink underlined):

“I would never feed a child farmed salmon,” said Canadian scientist David Suzuki (as quoted in *The Toronto Star*). “It’s poison!”

The underlying article, in which Dr. Suzuki was quoted, was apparently published in September 2004. The same quote is repeated in the GAAIA January 31 press release.

[61] The press release itself (see Appendix “A”) said (apparently quoting Kurt Oddekalv): “Salmon farmers are shooting themselves in the foot by denying peer-reviewed scientific evidence detailing human health and environment risks.” The press release repeated the references to Otto Langer and “Farmed Salmon Exposed” found in the “Salmon Farming Kills” pages.

[62] In the “Photos” section of the GAAIA website, under a couple of mock-cigarette packages (including one that says “92% Norwegian Owned” and “Salmon Farming Kills”), are the words: “Norway – Get Out of British Columbia.”

[63] The GAAIA homepage also had links to blog postings, including one entitled “GAAIA launches ‘Salmon Farming Kills’ campaign.” Clicking on the link took the reader to the pages a copy of which is found at Appendix “C”. Here, Mr. Staniford said that (hyperlink underlined): “‘Salmon Farming Kills’ comes hot on the heels of a

\$1.5 million 'BC Salmon Facts' campaign launched on 6th January 2011 by the BC Salmon Farmers' Association." Mr. Staniford reproduced the four BCSFA advertisements, which he had concluded contained "blatant lies." Mr. Staniford wrote (hyperlink underlined):

If you think the salmon farming industry is just blowing smoke then please watch "Farmed Salmon Exposed" – a documentary by Canadian film-maker Damien Gillis. The film includes the following statement from Otto Langer:

"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."

[64] Readers could also find the following text in this blog posting:

Thank You For Salmon Farming

Unconfirmed reports suggest Marine Harvest is in negotiation with director Jason Reitman for a follow up to "Thank you for Smoking". The new film – "Thank you for Salmon Farming" – could star 'the Marine Harvest-Man' and 'Mainstream-Man' vying for the role made famous by 'the Marlboro Man'. The salmon farmers would be welcomed by the tobacco, alcohol and firearms industries as new members of the 'MOD Squad' (Merchants of Death).

[65] Another page at the GAAIA website was headed "Silent Spring of the Sea," and said (hyperlink underlined):

Don Staniford analyzes the chemical stew that farmed fish are raised in and the health risk this poses to humans.

Click here to read "Silent Spring of the Sea".

Clicking on the link took a reader to a copy of "Silent Spring of the Sea." However, the references in the chapter were not available on the website. Despite that, there were links at the website to two other papers Mr. Staniford had authored in 2002 ("A Big Fish in a Small Pond" and "Sea Cage Fish Farming"), which include voluminous references, including two papers by Dr. Jacobs and Dr. Easton.

[66] The GAAIA website also contained a section entitled "Smoke on the Water." More mock cigarette packages were displayed here, including ones that said "Salmon Farming Kills Like Smoking," "Salmon Farming Seriously Damages Health," and "Salmon Farming Kills." A number of pages at the website also mention that a

“new report from GAAIA” is “coming in March 2011,” entitled “Smoke on the Water, Cancer on the Coast.” From the web-pages, there appears to be a hyperlink. However, as of March 18, 2011, when the website was taken down, there was in fact no link to the publication, because nothing had been published as yet. As of March 2011, Mr. Staniford had been working on various parts of his manuscript “Smoke on the Water, Cancer on the Coast” for about a decade, and it represented a detailed record and compendium (with many footnotes) of Mr. Staniford’s personal thesis concerning the many problems with the salmon farming industry and his perceptions of the connections that could be drawn between “Big Tobacco” and “Big Aquaculture.”

[67] In a letter dated March 18, 2011, Mainstream’s lawyers wrote to Mr. Staniford, asserting that statements on GAAIA’s website were defamatory of Mainstream. The letter demanded that all defamatory statements be removed and that Mr. Staniford formally apologize. The same day, the website was taken down by Mr. Staniford’s Internet service providers, over Mr. Staniford’s very strenuous objections. Mr. Staniford’s own response to the letter from 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. In other words, Mr. Staniford’s response was to give Mainstream and its lawyers “the finger.”

(d) “Peer-reviewed scientific evidence”

[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.

[69] To counter and answer the claims made by Mr. Staniford about the adverse health effects associated with the consumption of farmed salmon, Mainstream tendered a report from Dr. Michael Gallo. Dr. Gallo also testified at trial.

[70] Dr. Gallo is a toxicologist with over 40 years of experience. He is Professor of Toxicology at the Department of Environmental and Occupational Medicine, Robert Wood Johnson Medical School (formerly Rutgers Medical School), and Professor of Public Health, School of Public Health, both at the University of Medicine and Dentistry of New Jersey at Piscataway, New Jersey. Dr. Gallo's work, research and teaching have centred on environmentally-related toxicity, primarily cancers of hormonal origin. Among other things, Dr. Gallo has served as chair and a member of a number of public health and environmental science bodies, both at the state and national level in the U.S., and internationally. For many years, he has taught undergraduate and post-graduate courses in the fields of toxicology and public health. Dr. Gallo has also published peer-reviewed research articles and book chapters, many dealing with contaminants such as dioxins and PCBs.

[71] Dr. Gallo was qualified as an expert in the science of identifying hazards to human health, understanding the modes of action of toxins, elucidating the doses and target organs at which toxicity occurs, and, using this information coupled with other data, estimating the risk a given substance poses to individual humans and populations. Mainstream tendered Dr. Gallo's report with a view to assisting the Court in determining the validity of the allegations in Mr. Staniford's publications concerning the adverse health effects associated with the consumption of farmed salmon, including that farmed salmon is a carcinogenic product and that consuming farmed salmon "kills like smoking."

[72] Some of the "peer-reviewed science" is noted and referred to by Mr. Staniford in his "Silent Spring of the Sea" chapter, discussed above, and it includes the January 2004 **Science** Paper.

[73] In August 2005, another of the Hites Papers, entitled "Consumption advisories for salmon based on risk of cancer and noncancer health effects" (the

“Consumption Advisories Paper”) was published in the journal **Environmental Research**. This is also a respected peer-reviewed journal, although in Dr. Gallo’s opinion, it is not at the same level as **Science**, which he identified as one of the top three.

[74] The abstract for the Consumption Advisories Paper reads in part:

The levels of dioxins/furans, polychlorinated biphenyls (PCBs), and chlorinated pesticides were determined in farmed salmon for eight regions in Europe, North America, and South America, in salmon fillets purchased in 16 cities in Europe and North America, and in five species of wild Pacific salmon. Upon application of US Environmental Protection Agency (USEPA) methods for developing fish consumption advisories for cancer from mixtures of all of these substance [sic] for which USEPA has reported a cancer slope factor, the most stringent recommendation, for farmed salmon from Northern Europe, was for consumption of at most one meal every 5 months in order to not exceed an elevated risk of cancer of more than 1 in 100,000. Farmed salmon from North and South America triggered advisories of between 0.4 and one meal per month. . . . Upon consideration of all of these organochlorine compounds as a mixture, even wild Pacific salmon triggered advisories of between one and less than five meals per month. . . .

[75] During his direct examination, Mr. Staniford described this paper as a “key paper,” that went beyond the January 2004 **Science** Paper and came to the conclusion that consumption of farmed salmon carries an elevated risk of cancer. He testified that it was “at the top of my mind in terms of statements on the [GAAIA] website and the cigarette packets in relation to cancer.” He described this paper as “integral to the link between salmon farming and cancer risks and the whole notion of linking salmon farming with cancer.”

[76] During his cross-examination, Mr. Staniford was asked about another of the Hites Papers, published in August 2005 in the American Society for Nutrition’s **Journal of Nutrition**. The co-authors of this paper included five of the co-authors of the January 2004 **Science** Paper and the Consumption Advisories Paper. The abstract of the **Journal of Nutrition** paper reads in part:

Contaminants in farmed Atlantic and wild Pacific salmon raise important questions about the competing health benefits and risks of fish consumption. A benefit-risk analysis was conducted to compare quantitatively the cancer and noncancer risks of exposure to organic

contaminants in salmon with the (n-3) fatty acid-associated health benefits of salmon consumption. . . . This analysis suggests that risk of exposure to contaminants in farmed and wild salmon is partially offset by the fatty acid-associated health benefits. . . .

[77] In the “Discussion” section of the paper, the authors refer to two of their earlier papers (including the January 2004 **Science** Paper) and say:

Our previous analyses [noting the earlier papers] indicated that the feed of farmed salmon is the probable source of most contaminants in these fish, and we have recommended that the salmon farming industry take steps to reduce contaminants in feed.

[78] During his cross-examination, Mr. Staniford conceded that this paper was based on the same sampling of salmon used for the other Hites Papers, and that he was familiar with the paper. However, Mr. Staniford dismissed the conclusions stated in the paper, on the basis that farmed salmon was not the only source of fatty acid-associated health benefits.

[79] Dr. Gallo was well-acquainted with the research published in the Hites Papers. He and Dr. David Carpenter (one of the authors) had discussed the issues publically. Dr. Gallo had no disagreement with the data used in the Hites Papers, or with the factual findings. However, he disagreed with the authors’ interpretation of the data and facts, and with the use by the authors of the EPA model to reach conclusions about acceptable levels of consumption of farmed salmon. Dr. Gallo said:

I don't think any reasonable scientist will argue with data. You only argue with interpretation. And I think the overwhelming -- the weight of the evidence from risk assessors throughout the world is that that [EPA] model was inappropriate to be used for PCBs.

[80] One of the specific questions Dr. Gallo was asked to address in his report is “Does consumption of farmed salmon cause cancer in humans?” Dr. Gallo’s opinion is:

No. Based on analytical results from several laboratories, regulatory and advisory agencies such as the Joint FAO/WHO Expert Committee on Food Additives (JEFCA), U.S. Food and Drug Administration (US FDA) and the

World Health Organization of the United Nations (WHO) have not set a limit on consumption of farmed salmon based on carcinogenesis. Consuming farmed salmon does not approach the Acceptable Daily Intake (ADI) or TDI (Tolerable Daily Intake . . .) for any of the chemical residues found in the flesh. . . .

[81] Dr. Gallo was also asked to address the question, “Is the consumption of farmed salmon more beneficial than the consumption of wild salmon?” Dr. Gallo says:

Perhaps yes. No side by side comparisons are available in the literature. However, the higher concentrations of omega fatty acids and antioxidants per gram muscle tissue suggest a more beneficial profile for the farmed salmon. . . .

[82] In coming to his conclusions and opinions, Dr. Gallo considered the “**Report of the Joint FAO/WHO Expert Consultation on the Risks and Benefits of Fish Consumption, 25-29 January 2010, Rome, Italy**” (“**Report No. 978**”), published by the Food and Agriculture Organization of the United Nations (“FAO”) and the World Health Organization (“WHO”). Dr. Gallo explains in his report:

FAO/WHO reports are considered highly authoritative documents that are relied upon by public health professionals and public health agencies to set regulations and release advisories. Report #978 is a treatise based on the extant literature regarding contaminants and nutrient benefits of fishes (wild and farmed), including salmon. The conclusions and recommendations of this treatise compare the health and nutrient benefits of fish consumption with the risks of the health risks from contaminants in the fish; i.e., a benefit-risk conclusion. I agree with the conclusions in Report #978.

[83] The conclusions stated in the executive summary of **Report No. 978** include the following:

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.

[84] During his cross-examination by Mr. Wotherspoon, Mr. Staniford was asked about **Report No. 978**. He was completely dismissive of it. Mr. Staniford said that

he was aware of it when he published the GAAIA campaign. He asserted that it just talked about fish, not about farmed salmon, and he claimed that it overlooked whole sections of the peer-reviewed science on which he relies, such as some of the Hites Papers. Mr. Wotherspoon took Mr. Staniford to the references for **Report No. 978**, where papers by Dr. Carpenter and Dr. Hites were cited. Despite that, Mr. Staniford continued to claim that the **Report** “ignores central parts of the literature.”

[85] Mr. Staniford admitted that he did not know whether a variety of chemicals were in fact used on Norwegian-owned fish farms in B.C. He identified emamectin benzoate as a chemical used on Norwegian-owned fish farms in B.C. However, he did not know who uses it, and the source of his knowledge was the salmon farming industry, although he was unable to identify a precise source.

[86] Mr. Staniford said that he did not know whether farmed salmon sold by Mainstream in B.C. is toxic to humans. He explained that he had not seen current data tests of contaminant levels in Mainstream’s farmed salmon, and so could not express an opinion. However, when pressed, Mr. Staniford said:

[B]ut based upon peer-reviewed science from previous years and from salmon farming operations from around the world it’s clear that farmed salmon can contain cancer-causing chemicals and can carry an elevated cancer risk.

(e) Mr. Staniford’s post-publication conduct

[87] In its closing submissions, Mainstream reviewed Mr. Staniford’s post-publication conduct in detail, in support of its arguments that Mr. Staniford was actuated by express malice and that aggravated and punitive damages should be awarded. Here, I am simply going to mention a few aspects.

[88] Mr. Staniford was outraged when the GAAIA website was shut down in March 2011, in response to the demand letter from Mainstream’s lawyers. He was further outraged at being sued by Mainstream, although he boasted during cross-examination that, by suing him, Mainstream had simply “proved the point about being just like big tobacco.” During the trial, Mr. Staniford relaunched the GAAIA

website, this time using a service provider outside of Canada. During his cross-examination, Mr. Staniford proclaimed that he would not be stopped by an injunction pronounced in this action.

[89] Shortly before the trial, and after the witness lists had been exchanged, Mr. Staniford accused the Ahousaht First Nation of accepting “blood money” from Cermaq in one of his Facebook postings.

[90] Mr. Staniford looked on the trial as an opportunity to get his message out, and he did not hold back. For example, in Internet postings during the trial, Mr. Staniford demeaned and mocked the physical appearance of three of Mainstream’s witnesses, Mary Ellen Walling, Leanne Brunt and Dr. Gallo. Mr. Wotherspoon brought the comments concerning Ms. Walling and Ms. Brunt to my attention when court was convened the morning of January 26, 2012. The matter was discussed in court and was framed (appropriately) as an issue of Mr. Staniford victimizing Mainstream’s witnesses by his insulting comments. Mr. Staniford was present during the discussion. Despite that, Mr. Staniford then repeated his comments about Ms. Walling and Ms. Brunt outside court for an interview that was published on YouTube.

[91] During his testimony, Mr. Staniford attempted to justify his comments about Ms. Walling and Ms. Brunt as being “very complimentary,” and said he thought Ms. Walling should be “flattered” at being labelled a “fat-bottomed girl.” The notion that Mr. Staniford would ever pay a sincere compliment to Ms. Walling is, itself, laughable and entirely unbelievable.

[92] In another Facebook posting during the first week of the trial, he compared the trial to a kangaroo court.

[93] Mr. Staniford had a regular blog posting about the trial, providing a day-by-day account. Of course, the postings reflect Mr. Staniford’s personal perceptions and views of what is happening in court, although postings purport to report direct quotes from witnesses, counsel and the court. There is a small – but telling –

illustration of Mr. Staniford's world-view in his reporting of some of the testimony of Mr. Thomson, Mainstream's first witness. A section of Mr. Staniford's report of Mr. Thomson's cross-examination reads as follows:

"We have culled farmed salmon which we find with deformities and the fish are disposed of," says Mr. Thomson. "I'm at the bottom end of the reporting."

"I'm only familiar with one instance which may have led to over-production," says Mr. Thomson.

"This is not like the radio where dead air is a problem so if you need time to think then that's fine," says Justice Adair.

[94] By the manner of reporting of the court's comment, there is, therefore, a relatively mild (for Mr. Staniford) mockery of Mr. Thomson.

[95] However, the trial transcript shows the true context of the court's comment, and that it is not directed to Mr. Thomson at all. Mr. Sutherland is putting the questions to Mr. Thomson:

Q -- biomass. There are limits and Mainstream has exceeded those limits in the Broughtons?

A I'm only familiar with one instance where we had an issue that may have led to that. But, again, um, the result of that would've been part of the lease and compliance end of things.

Q Now I'm ... turning to another situation. There are significant -- I just have to think my way through which of the particulars of my friend's paragraph 22 I'm dealing with. And if you'll forgive me, I'm --

THE COURT: All right. This isn't like radio where dead air is a problem so if you need a moment to think, that's fine.

[96] Mr. Staniford explained that he likes to use what he perceives as humour, and that, as far as he is concerned, it is entirely fair to criticize, lampoon and spoof people he perceives to be public figures. That is what he sees himself doing in his various Internet postings and elsewhere.

Discussion and Analysis

[97] I will first address Mainstream's claim that Mr. Staniford has defamed it. As Mr. Justice Binnie says in **WIC**, plaintiffs must prove defamation to get their case on

its feet. As will be seen from the discussion that follows, I have concluded that Mainstream has established the necessary elements of the claim.

[98] I will then turn to Mr. Staniford's defence, and his only defence: fair comment. In his original pleadings, Mr. Staniford raised a justification defence. However, on the third day of trial, that defence was abandoned (or, as Mr. Sutherland said, it would "not be pursued") when I dismissed an application brought by Mr. Staniford to amend his pleadings to plead lesser included meanings, and Mr. Wotherspoon clarified on behalf of Mainstream that the "sting" of the defamation was as alleged in paras. 22 and 23 of the Amended Claim. As a result of the abandonment of the defence of justification, Mr. Staniford also eliminated a number of the particulars he had pleaded originally.

(a) Mainstream's defamation claim

(i) What Mainstream must prove

[99] A plaintiff in a defamation action is required to prove three things to obtain judgment and a remedy: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed. See **Grant v. Torstar Corp.**, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28.

[100] In this case, Mr. Staniford admits publication. Accordingly, Mainstream must prove that the impugned words were defamatory, and that they in fact referred to Mainstream.

(ii) Are Mr. Staniford's words defamatory?

[101] The "sting" that Mainstream says arises from Mr. Staniford's words in their natural and ordinary meaning is set out in para. 22 of the Amended Claim, namely that:

- (a) Mainstream's business and products kill people;
- (b) Mainstream's business and products make people sick;
- (c) Mainstream's products are unsafe for human consumption;
- (d) Mainstream has actively misled, deceived and lied to the public;
- (e) Mainstream is knowingly marketing a carcinogenic product that causes illness, death and harm;
- (f) Mainstream's operations are a malignant cancer;
- (g) Mainstream's products are toxic and poisonous;
- (i) Mainstream has engaged in illegal conduct; and
- (j) Mainstream engages in corrupt and immoral behaviour.

(Subpara. (h) was struck out by order pronounced January 18, 2012.)

[102] Alternatively, Mainstream pleads, in para. 23, that, by way of innuendo, Mr. Staniford's words meant and were understood to mean that Mainstream has intentionally misled purchasers into purchasing inherently dangerous products and has concealed the true facts from them.

[103] Mainstream summarizes the sting of Mr. Staniford's words in this way: that farmed salmon causes cancer, akin to smoking, and that the salmon farming industry is as odious and dishonest as the tobacco industry.

[104] At trial, there was no real contest about the odiousness of “Big Tobacco,” and Mr. Staniford formally admitted that tobacco products are notoriously harmful to human health. Nevertheless, Mainstream submitted a report from Eric LeGresley, a lawyer and researcher whose work has involved (among other things): acting as legal counsel for the Non-Smokers’ Rights Association; researching and reviewing millions of internal documents produced by tobacco manufacturers in the course of litigation; preparing the World Health Organization’s “Framework Convention on Tobacco Control”; and consulting on tobacco control law and policy. Mr. LeGresley was qualified as an expert regarding the historical practices and actions of the tobacco manufacturing industry, and the reputation and perception of the tobacco manufacturing industry held by the general public.

[105] Mr. LeGresley’s report was not admissible on the issue of meaning and was not tendered for that purpose. Rather, his report was tendered by Mainstream to shed light in the injurious nature of Mr. Staniford’s statements comparing Mainstream to tobacco companies and farmed salmon to cigarettes – in other words, to provide some evidence concerning the other side of Mr. Staniford’s comparison – and in support of Mainstream’s claim that Mr. Staniford was actuated by express malice. Mr. LeGresley concluded that cigarette companies are held in low regard and are considered by the vast majority of the general public to be dishonest. I accept those opinions for the purpose of this action.

[106] In determining the meaning of a publication, the court may take into consideration all of the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented: see **Botiuk v. Toronto Free Press Publications Ltd.**, [1995] 3 S.C.R. 3, at para. 62 (citing R.E. Brown, **The Law of Defamation in Canada** (2nd ed. 1994), at p. 1-15).

[107] Mainstream argues that the dangers of tobacco, and the odious conduct of cigarette manufacturers (a.k.a. “Big Tobacco”) are common knowledge, which the

Court should take into account in analyzing the natural and ordinary meaning of the words sued upon. Mainstream notes that in **Lysko v. Braley** (2006), 79 O.R. (3d) 721 (C.A.), the Court concluded that comparing the plaintiff unfavourably to a notoriously evil, albeit fictional, character (i.e., Lord Voldemort, the villain from the popular “Harry Potter” novels) would tend to expose the plaintiff to contempt or ridicule, and that the character was sufficiently well-known in the community that ordinary persons without special knowledge would take a defamatory meaning from the comparison.

[108] In his submissions, Mr. Sutherland essentially agreed that the damage to human health caused by smoking and the discreditable conduct of “Big Tobacco” were notorious facts. He submits that this case is a claim on the natural and ordinary meaning of the statements in issue (rather than a meaning dependent on special knowledge about the harmful effects of smoking and the conduct of Big Tobacco). Mr. Sutherland submits further that the question is whether the meanings asserted by Mainstream flow from the words sued upon, in context, and looking at the publication as a whole.

[109] I find that, in this day and age, the damage to human health caused by smoking and the discreditable conduct of “Big Tobacco” can be considered notorious facts. It is therefore unnecessary to rely on the innuendo meaning pleaded in para. 23 of the Amended Claim.

[110] **Lewis v. Daily Telegraph Ltd.**, [1964] A.C. 234, is one of the leading cases discussing the term “natural and ordinary meaning,” and is cited by both Mr. Wotherspoon and Mr. Sutherland. At p. 258, Lord Reid observes that the question is what the words in issue would convey to the ordinary person, who can and does read between the lines in the light of his or her general knowledge and experience of worldly affairs. He continues:

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words

themselves as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning. . . .

[111] Lord Reid summarized his point at p. 259:

Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.

[112] One does not select a meaning that is the harshest and most extreme, since the test assumes a reasonable and fair-minded audience rather than one that is looking to the question of the plaintiff's reputation: see **Leenen v. Canadian Broadcasting Corp.** (2000), 48 O.R. (3d) 656 (S.C.), at para. 49; and **Colour Your World Corp. v. Canadian Broadcasting Corporation** (1998), 38 O.R. (3d) 97 (C.A.), at para. 15.

[113] On this point, Mr. Sutherland submits that I should consider the proposed lesser included meanings put forward as part of Mr. Staniford's unsuccessful application to amend his pleadings. For example, rather than the meaning pleaded in para. 22(a) of the Amended Claim ("Mainstream's business and products kill people"), Mr. Sutherland submits that a reasonable and fair-minded person would understand Mr. Staniford's words to mean that: there are grounds for suspicion that Mainstream's salmon farming is hazardous; or there are grounds for an investigation whether Mainstream's salmon farming is hazardous; or Mainstream's salmon farming is hazardous. However, I do not think that these are the meanings that a reasonable and fair-minded person would draw from the words, in context, that Mr. Staniford in fact used. The words themselves were extreme. Their natural and ordinary meaning would be likewise.

[114] Mr. Sutherland argues in effect that, looking at Mr. Staniford's words in the entire context of the campaigns, the campaigns (and therefore the impugned words) were not just about humans, but much broader, encompassing, mainly, wildlife and the environment. I do not agree.

[115] In a number of places in the publications in issue, Mr. Staniford states “Salmon Farming Kills,” and also that “Salmon Farming Kills Like Smoking.” Mr. Staniford also says that “Salmon Farming Seriously Damages Health.” These are among the many statements that Mainstream asserts are defamatory. Moreover, in the “sting” alleged, Mainstream’s focus is on humans and human health.

[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.

[118] I conclude therefore that Mr. Staniford’s words are capable of bearing a defamatory meaning, as pleaded in para. 22(a), that “Mainstream’s business and products kill people.”

[119] I draw the same conclusions, and for the same reasons, with respect to the meanings pleaded in paras. 22 (b) (“Mainstream’s business and products make people sick”), (c) (“Mainstream’s products are unsafe for human consumption”) and (g) (“Mainstream’s products are toxic and poisonous”).

[120] Mr. Staniford’s words “Fish Farmers are playing the same game as the cigarette manufacturers did for many years” are, given the notoriety of the harmful effects of smoking and of the conduct of “Big Tobacco,” capable of bearing the meanings pleaded in paras. 22(d) (“Mainstream has actively misled, deceived, and lied to the public”), (e) (“Mainstream is knowingly marketing a carcinogenic product that causes illness, death, and harm”) and (j) (“Mainstream engages in corrupt and

immoral behaviour”). 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.

[121] Mr. Staniford says that “Salmon Farms are Cancer” and also that “Salmon Farming is Spreading Like a Malignant Cancer on Our Coasts.” This might be seen as sufficient to bear the meaning pleaded in para. 22(f). However, I am not persuaded that the ordinary person would make the connection with human health and life, which is at the heart of the sting, based on these words. Moreover, I am not persuaded that the ordinary person would understand Mr. Staniford’s words to mean that Mainstream has engaged in illegal conduct,” as pleaded in para. 22(i).

[122] In summary, I find that the words sued upon are capable of bearing each of the defamatory meanings pleaded in para. 22 of the Amended Claim, with the exception of subparas. (f) and (i).

[123] In the light of those conclusions, I do not consider it necessary to address Mr. Sutherland’s arguments concerning injurious falsehood or “bundled” meanings.

(iii) Do the words in fact refer to Mainstream?

[124] I turn next to the requirement that the defamatory statement refer to – or be published of and concerning – the plaintiff. This is also an aspect of meaning, so the question is considered from the perspective of the “ordinary person.” Mr. Staniford’s subjective intentions are irrelevant.

[125] Statements that do not refer to a plaintiff by name will nonetheless meet the “of and concerning” requirement if they may reasonably be found to refer to the plaintiff in the light of surrounding circumstances: see **Butler v. Southam Inc.**, 2001 NSCA 121 (“**Butler**”), at para. 39. A plaintiff must prove that the statements would lead reasonable people acquainted with the plaintiff to the conclusion that the statements refer to the plaintiff: see **Butler**, at para. 29 and **Grant v. Cormier-Grant** (2001), 56 O.R. (3d) 215 (C.A.), at paras. 19-20.

[126] In addition, in some circumstances, defamatory statements about a group may be defamatory of the group's members individually even though they are not otherwise identified. This is sometimes called "group defamation." There are no special legal rules concerning individual claims of defamation based on statements made about a group. The fundamental question remains whether the statements could reasonably be found to be defamatory of the named plaintiff(s). See **Butler**, at paras. 49 and 53.

[127] The issue of "group defamation" was discussed recently in **Bou Malhab v. Diffusion Métromédia CMR Inc.**, 2011 SCC 9, [2011] 1 S.C.R. 214 ("**Bou Malhab**"), where a class proceeding was brought on behalf of a group of approximately 1,100 Montréal taxi drivers. The plaintiff asserted that the members of the group had been defamed as a result of racist comments made by a radio show host known for his provocative remarks. Deschamps J. (for the majority) described and discussed a number of factors that can provide guidance to trial judges in determining whether statements made about a group could reasonably be found to be defamatory of individual members of the group.

[128] The factors described by Deschamps J. are as follows (see **Bou Malhab**, at paras. 58-78): (a) the size of the group; (b) the nature of the group; (c) the plaintiff's relationship with the group; (d) the real target of the defamation; (e) the seriousness of the allegations; (f) the plausibility of the comments; and (g) extrinsic factors. The list is not exhaustive, and no one factor is determinative on its own.

[129] On behalf of Mainstream, Mr. Wotherspoon submits that, objectively speaking, Mr. Staniford's statements would be understood by reasonable people acquainted with Mainstream to refer to Mainstream. Mr. Wotherspoon argues in the alternative that, even if my view is that Mainstream was not Mr. Staniford's sole target, I can and should find Mr. Staniford's statements are nevertheless "of and concerning" Mainstream, using the analytical tools described by Deschamps J. in **Bou Malhab**.

[130] On behalf of Mr. Staniford, Mr. Sutherland submits that the GAAIA website and the various campaigns and statements found there are, taken in context, “of and concerning” the salmon farming industry world-wide, not Mainstream. This position is formally reflected in Mr. Staniford’s pleadings, where he asserts that the statements are not “of and concerning” Mainstream but concern Norwegian industrial aquaculture. Mr. Sutherland argues that Mr. Staniford’s campaigns, and the words and images used, about which Mainstream complains, are global, not local. As such, the words are neither capable of referring to Mainstream nor would they in fact lead a reasonable person, who knows about Mainstream, to the conclusion they do refer to it.

[131] In support of his argument, Mr. Sutherland notes Mr. Staniford’s evidence that he instructed his web-designer for GAAIA to “ape” the look and style of website of the Global Aquaculture Alliance, which has a world-wide reach. Mr. Sutherland notes that Mr. Staniford’s campaigns were launched at the Seafood Summit, which, merely co-incidentally, was in Vancouver. The means used by Mr. Staniford to communicate his messages – a website on the Internet – is consistent with the global theme, and, in Mr. Sutherland’s submission, the reasonable, ordinary person browsing the Internet, looking at the statements in the context of the whole of the content at GAAIA’s website, would not conclude the statements were limited to B.C. but would understand the scope was much broader and “global.”

[132] I do not agree. In my view, the words about which Mainstream complains are capable of referring to Mainstream, and they are in fact of and concerning Mainstream.

[133] Mr. Staniford was in fact campaigning in B.C. in January 2011, and the GAAIA press release has a “date line” of Vancouver. He had some history, dating back to his arrival in B.C. in late 2004, of targeting Mainstream. Mr. Staniford’s publications include statements specifically connected with B.C. For example, in a blog posting on February 1, 2011, he says: “Instead of talking the talk (and Tweeting the Tweet) there are many people here in BC – notably the wild salmon

people – who legitimately believe that the Norwegian multinationals who now control 92% of BC salmon farms should walk the walk back home to Norway.” Mainstream and Cermaq are specifically mentioned in this posting.

[134] Mr. Staniford also says (in the “Photos” section of the GAAIA website): “Norway – Get out of British Columbia”. Some of the cigarette packages refer to “foreign ownership.” These kinds of statements have a local and B.C. focus, not a global one.

[135] It is apparent from the whole context that the “PR campaigns and advertising by the salmon farming industry” referred to in the “Salmon Farming Kills” pages is a reference to the BCSFA campaign, which Mr. Staniford found so offensive. This campaign is directly connected with Mainstream, the second largest salmon producer in B.C., and Mainstream is a member of the BCSFA.

[136] The BCSFA campaign is specifically described in a separate blog-posting (see Appendix “C”), in which Mr. Staniford in fact refers to Mainstream (along with Marine Harvest) by name. The reference is pejorative and mocking. It is connected with the themes that “Salmon farming kills like smoking,” and “seriously damages health.” In the sentence that follows the reference to Mainstream, Mr. Staniford says “The salmon farmers would be welcomed by the tobacco, alcohol and firearms industries as new members of the ‘MOD Squad’ (Merchants of Death).” In context, I think that an ordinary reader would understand “The salmon farmers” to include Mainstream. In two other blog-postings, from January 31, 2011 (“Going Wild for Salmon at the Seafood Summit with the Mayor of Vancouver”) and February 1, 2011 (“Case Closed for Containment – it’s coming”), Mainstream is again specifically mentioned, along with the BCSFA and Marine Harvest.

[137] The cigarette packages depict the Norwegian flag and coat of arms, and the words “Norwegian Owned” are associated with a majority of the cigarette packages on which Mainstream sues. Mr. Sutherland argues that nothing can be inferred, connecting the statements with Mainstream, from Mr. Staniford’s use of the Norwegian flag and coat of arms, since Norwegian-owned companies dominate

salmon farming world-wide. However, the cigarette packages with the words “92% Norwegian Owned” demonstrate a closer, more direct connection with B.C. salmon farmers. There is also no dispute that Mainstream is the only salmon farming company in B.C. in which the Norwegian government has a stake, namely its interest in Cermaq.

[138] In addition, the group of Norwegian-owned salmon farming companies in B.C. is small, with only three members. While this is not conclusive when trying to decide whether comments ostensibly about a group are defamatory of individual members, it is an important factor. Unlike the Creole- and Arabic-speaking taxi cab drivers in ***Bou Malhab***, the group of Norwegian-owned salmon farming companies in B.C. is not only small, but – in the context of the statements alleged to be defamatory – homogeneous. Mr. Staniford attacks them because they are Norwegian-owned, and operate salmon farms in B.C. Mr. Staniford asserts that “Salmon Farming Kills” and “Salmon Farming Kills Like Smoking.” These seem to me to be close to the example given by Lord Porter in ***Knuppfer v. London Express Newspaper Ltd.***, [1944] A.C. 116 (H.L.), at p. 124, where he wrote:

I can imagine it being said that each member of a body, however large, was defamed where the libel consisted in the assertion that no one of the members of a community was elected as a member unless he had committed a murder.

[139] Mr. Staniford’s use of Mainstream’s name supports the conclusion that Mainstream is a target of his campaigns. This is another factor mentioned by Deschamps J. It also supports the conclusion that his statements are “of and concerning” Mainstream.

[140] Another factor to be considered in assessing whether more general statements are “of and concerning” Mainstream, and capable of damaging Mainstream’s reputation, is the plausibility of the comments and the tendency that they will be accepted. It could be said that some of the content on the GAAIA pages is juvenile; that the attempts at humour and satire are themselves laughable and pathetic. On the other hand, Mr. Staniford’s mention of scientists (“Canadian

biologist Otto Langer” and Dr. David Suzuki) and that “Silent Spring of the Sea” is a chapter from the “award-winning book ‘A Stain upon the Sea – West Coast Salmon Farming’” lends some plausibility to his statements. A plausible allegation is more likely to capture the ordinary person’s attention and thus make it easier for that person to connect the allegation with each or some of the group’s members personally. This factor weighs in favour of Mainstream.

[141] For these reasons, I find, therefore, that Mr. Staniford’s words in fact refer to Mainstream.

(iv) Summary on Mainstream’s defamation claim

[142] In summary, I conclude that Mainstream has proved the essential elements of a defamation claim, namely that: Mr. Staniford’s words are defamatory, in the sense that they would tend to lower Mainstream’s reputation in the eyes of a reasonable person; the words in fact referred to Mainstream; and the words were communicated to at least one person other than Mainstream.

(b) Mr. Staniford’s defence of fair comment

(i) The basic elements of the defence

[143] Once a plaintiff proves the required elements in a defamation claim, the onus then shifts to the defendant to advance a defence in order to escape liability: see **Grant**, at para. 29.

[144] Statements of opinion – a category which has been described as including any deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof – may attract the defence of fair comment: see **Grant**, at para. 31. A defendant claiming fair comment must satisfy the following test: (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 recognisable 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 that the defendant was actuated by express malice. See **WIC**, at para. 28.

[145] **WIC** expanded the fair comment defence by changing the traditional requirement that the opinion be one that a “fair-minded” person could honestly hold, to a requirement that it be one that “anyone could honestly have expressed,” which, as Chief Justice McLachlin observed, allows for robust debate: see **Grant**, at para. 31. As Binnie J. put it in **WIC** (at para. 4), “[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones.”

[146] “Honest belief” requires the existence of a relationship between the comment and underlying facts. The question is whether anyone, however prejudiced the person might be, however exaggerated or obstinate the person’s views might be, could honestly express the opinions, based on the proven facts: see **WIC**, at para. 40.

[147] Mr. Sutherland submits that Mr. Stanford satisfies the **WIC** test because:

- (a) Mainstream admits that farmed salmon and salmon farming are matters of public interest;
- (b) a reader would understand the mock cigarette packages, and the commentary quoted in the Amended Claim, to be a comment in the nature of a dramatic presentation, and an analogy to a warning regime;
- (c) they are comment (rather than fact) because they are opinion based on Mr. Staniford’s research into the field and scientific literature, and arise out of his inferences, deductions and conclusions based on his interpretation of the materials, especially the materials identified in the particulars;

- (d) Mr. Staniford (and others) could honestly express those opinions based on the proven facts;
- (e) all that the law requires is opinion that could honestly have been expressed on true (Binnie J. in **WIC** uses the word “proven”) facts by a person prejudiced, exaggerated or obstinate in his or her views;
- (f) if Mr. Staniford was an honest man expressing his genuine opinion on a subject of public interest then, no matter that his words conveyed derogatory imputations, no matter that his opinion was wrong or exaggerated or prejudiced and no matter that it was badly expressed so that people read all sorts of innuendo into it, nevertheless he has a good defence of fair comment.

[148] Moreover, throughout his submissions, Mr. Sutherland has emphasized the tension between protection of reputation, on the one hand, and freedom of expression on the other. He cites the following comments of Deschamps J. in **Bou Malhab**, at para. 16: “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.”

[149] Mr. Sutherland relies on **British Chiropractic Association v. Singh**, [2010] EWCA Civ 350, [2011] 1 W.L.R. 133 (“**Singh**”) to advance an additional, but important, point in connection with the defence of fair comment. He says that the courts – and defamation actions in particular – should not be used to settle or attempt to settle scientific controversies. That job should be left to scientists and the methods of science, rather than the methods of litigation.

[150] Mainstream concedes that the sting of the statements at issue concerns a matter of public health, and therefore a matter of public interest. However, Mainstream says that Mr. Staniford cannot satisfy any of the other aspects of the **WIC** test, and therefore his fair comment defence must fail. Mainstream says further

that Mr. Staniford's fair comment defence must fail in any event because he was actuated by express malice.

(ii) Distinguishing fact from comment

[151] Mainstream argues that Mr. Staniford's words are all bald statements of fact. It says that the comparison of Mainstream and its products to "Big Tobacco" and cigarettes is based on a naked factual statement that is capable of proof: either salmon farming causes cancer and Mainstream has lied about it; or it does not, and Mainstream has told the truth.

[152] Mr. Staniford argues that everything about which Mainstream complains would be understood to be comment, not statements of fact.

[153] Fair comment is a defence that protects defamatory criticisms or expressions of opinion; it does not protect defamatory statements of fact: see **567893 B.C. Ltd. v. Aasen**, 2008 BCCA 303, 83 B.C.L.R. (4th) 150, at para. 20. In order to determine whether a defamatory imputation can be protected as fair comment, it must be initially determined whether it is comment upon given facts or a statement of facts. The distinction is fundamental and must absolutely be made because an assertion of facts can never be defended as fair comment: see **Ross v. New Brunswick Teachers' Assn.**, 2001 NBCA 62, 201 D.L.R. (4th) 75 ("**Ross**"), at para. 55.

[154] However, words that may appear to be statements of fact may be properly construed as comment. Binnie J. wrote in **WIC**, at para. 26:

. . . In *Ross v. New Brunswick Teachers' Assn.* (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, at para. 56, the New Brunswick Court of Appeal correctly took the view that "comment" includes a "deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof". Brown's *The Law of Defamation in Canada* (2nd ed. (loose-leaf)) cites ample authority for the proposition that words that may appear to be statements of fact may, in pith and substance, be properly construed as comment. This is particularly so in an editorial context where loose, figurative or hyperbolic language is used (Brown, vol. 4, at p. 27-317) in the context of political debate, commentary, media campaigns and public discourse. . . .

[155] What is comment and what is fact must be determined from the perspective of a reasonable viewer or reader: see **WIC**, at para. 27 (citing **Ross**, at para. 62). Context is important. For example, as Binnie J. observed of Rafe Mair, one of the defendants in **WIC**, “Mair was a radio personality with opinions on everything, not a reporter of the facts.”

[156] Mr. Staniford relies heavily on **Singh** to support his position that his statements are comment and not fact. Distinguishing fact from comment was a key area of dispute (between the parties, and between the trial and appellate courts) in **Singh**. Mr. Sutherland commends to me the approach taken by the appellate court, who concluded the statements in issue were comment, not facts. That conclusion brought an end to the case launched against Dr. Singh.

[157] Mainstream says that **Singh** cannot help Mr. Staniford because it is inconsistent with **WIC**.

[158] **WIC** is, of course, binding on me, while **Singh** is not. However, I do not think that **Singh** is inconsistent with **WIC** in the way that Mainstream asserts. On a careful reading, the court in **Singh** analyses statements to determine whether, in pith and substance, they are properly construed as comment, even though they may appear as statements of fact. That is consistent with the approach described in **WIC**. The court’s analysis in **Singh** provides an example where what appeared to be a statement of fact (“there is not a jot of evidence”), capable of proof, was, in pith and substance, a statement of opinion.

[159] In **Singh**, the British Chiropractic Association (the “BCA”) sued Dr. Singh in respect of statements contained in an article written by Dr. Singh and published on the “Comment and Debate” page of an edition of the Guardian newspaper. Dr. Singh’s article included this passage:

The British Chiropractic Association claims that their members can help treat children with colic, sleeping and feeding problems, frequent ear infections, asthma and prolonged crying, even though there is not a jot of evidence. This organisation is the respectable face of the chiropractic profession and yet it happily promotes bogus treatments.

[160] By agreement, the trial judge (Eady J., an experienced libel judge) was asked to determine two preliminary issues: what defamatory meaning the words bore, and whether the words constituted assertions of fact or comment. On the first issue, Eady J. held that the words would mean to a reasonable reader (see **Singh**, at para. 3):

- i) that the BCA claimed that chiropractic was effective in helping to treat children with colic, sleeping and feeding problems, frequent ear infections, asthma and prolonged crying, although it knew that there was absolutely no evidence to support its claims, and
- ii) that by making those claims the BCA knowingly promoted bogus treatments.

[161] On the second issue, Eady J. determined that these were assertions of fact, not expressions of opinion. This meant that the only defence available to Dr. Singh was justification: he had to prove the meanings were factually true or lose.

[162] Dr. Singh appealed.

[163] In a unanimous judgment, the England and Wales Court of Appeal, Civil Division (the “EWCA”) allowed Dr. Singh’s appeal. The EWCA concluded that Eady J. was wrong in holding that the words complained of were assertions of fact. On the contrary, in the view of the EWCA, Dr. Singh’s statements – in particular, his statement that “there was not a jot of evidence” to support the BCA’s claims – were statements of opinion, not fact.

[164] Mr. Sutherland also places great emphasis on the appellate court’s observation in one of the concluding paragraphs of the judgment:

[34] We would respectfully adopt what Judge Easterbrook, now Chief Judge of the US Seventh Circuit Court of Appeals, said in a libel action over a scientific controversy, *Underwager v Salter* 22 Fed. 3d 730 (1994):

"[Plaintiffs] cannot, by simply filing suit and crying 'character assassination!', silence those who hold divergent views, no matter how adverse those views may be to plaintiffs' interests. Scientific controversies must be settled by the methods of science rather than by the methods of litigation. ... More papers, more discussion, better data, and more satisfactory models – not larger awards of damages –

mark the path towards superior understanding of the world around us."

Mr. Sutherland argues that there is a direct parallel in this case, and that what Mainstream is attempting to do by bringing this action is to silence a critic in the face of scientific controversies.

[165] On whether Dr. Singh's statements were facts or comment, Eady J. had concluded (see **Singh**, at para. 14; underlining added):

. . . It will have become apparent by now that I also classify the defendant's remarks as factual assertions rather than the mere expression of opinion. . . . Here the allegations are plainly verifiable and that is the subject of the defence of justification. What matters is whether those responsible for the claims put out by the BCA were well aware at the time that there was simply no evidence to support them. That is an issue capable of resolution in the light of the evidence called. In other words, it is a matter of verifiable fact. That is despite the fact that the words complained of appear under a general heading "comment and debate". It is a question of substance rather than labelling.

[166] 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.

[167] The EWCA did not agree with Eady J. The court explained the flaw in Eady J's reasoning, and thus also a flaw in Mainstream's argument, in this way (underlining added):

[16] What a passage of prose means when read in context is, however, not the critical question in a case such as this. The critical question, at least for present purposes, is whether its meaning includes one or more allegations of fact which are defamatory of the claimant, or whether the entirety of what it says about the claimant is comment

. . .

[18] . . . [T]he subject-matter of Dr Singh's article was an area of epidemiology in which the relationship of primary fact to secondary fact, and of both to permissible inference, is heavily and legitimately contested. The issue posed by the judge is in reality two distinct issues: first, was there any evidence to support the material claims? and secondly, if there was not, did the BCA's personnel know this? If, as Dr Singh has contended throughout,

the first issue is one of opinion and not of fact, the second issue ceases to matter.

[19] In our judgment Eady J, notwithstanding his very great experience, has erred both in conflating these two elements of the claim [i.e., the “two distinct issues” in para. 18] and, more particularly, in treating the first of them as an issue of verifiable fact.

. . .

[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 jot 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.

[27] The pleadings in the present case usefully illustrate this. Dr Singh's defence includes, in §8(25), a survey of controlled clinical trials on the efficacy of chiropractic in treating infantile colic, none of which, he contends, affords objective support for the BCA's claim. The BCA, in §9(23) of its reply, relies (among other studies) on a 1989 observational study of 316 children . . . One need go no further in order to see how value-laden the word "evidence" is in the present context

[168] In order for Mr. Staniford to succeed on his defence of fair comment, it must be shown, with reasonably 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, though it can include inferences of fact, must be recognizable as comment.

[169] The statements at issue in this case are not like the pleaded innuendo in **WIC** (that the plaintiff was so “hostile toward gay people to the point that she would condone violence toward gay people”). As Binnie J. pointed out (at para. 26), the innuendo was framed as an inference (“would condone violence”) from a factual premise (i.e., was so “hostile toward gay people”). Mr. Staniford’s statements are declarative: “Salmon Farming Kills,” “Salmon Farming Kills Like Smoking,” and so on. This, not surprisingly, has led Mainstream to argue that they are statements of fact, pure and simple.

[170] 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 judgments 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.

[171] Mr. Staniford’s statements, such as “Salmon farming kills” and “Salmon farming kills like smoking,” although they look like statements of fact, 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.” They must be statements of opinion because there is scientific controversy about the effect on, and the benefits to, human health from consumption of farmed salmon. The point is illustrated, and, for my purposes, confirmed by the fact that different scientists have reached different conclusions, and by Dr. Gallo’s evidence.

[172] Dr. Gallo is expressing his opinion on health issues, and his opinion on whether there was data to support Mr. Staniford's claims. He is not a "fact" witness. Dr. Gallo did not agree with the conclusions expressed in some of the Hites Papers, although he accepted all of the data on which the conclusions were based. This included data confirming the presence of cancer-causing chemicals in the flesh of farmed and wild salmon. From Dr. Gallo's perspective, the Hites Papers' authors came to the wrong conclusions because they applied the wrong model to the data. That is his opinion. Moreover, in Dr. Gallo's opinion, the conclusions expressed in **Report No. 978** should be accepted over the opinions and conclusions expressed in the Hites Papers, particularly since the Hites authors used the EPA model to reach their conclusions, which, in Dr. Gallo's opinion, is the wrong model. However, the conclusions expressed in **Report No. 978** are also opinions – very carefully considered and learned opinions, no doubt – but opinions nonetheless.

[173] The existence in the flesh of farmed (and wild) salmon of contaminants that can cause cancer has been verified as a fact. However, the consequences and effect on human health of consumption of salmon given that fact is still the subject of debate. In my view, this confirms that, with respect to the absolute health benefits of consuming farmed salmon, we are operating in the realm of opinion, not fact. Based on Dr. Gallo's evidence, there remains debate among scientists concerning the effects on human health of the presence of cancer-causing contaminants in farmed (and also wild) salmon. There is not yet the kind of overwhelming consensus that now exists concerning the harmful and lethal effects of smoking tobacco products.

[174] 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. Mr. Staniford's judgments have no balance because balance does not exist in Mr. Staniford's world when it comes to salmon farming. He has dedicated himself to eradicating it.

(iii) **Comment must be based on fact**

[175] A properly disclosed or sufficiently indicated (or so notorious as to be already understood by the audience) factual foundation is an important objective limit to the fair comment defence: see *WIC*, at para. 34. The comment must be based on a sufficient substratum of facts to anchor it. This is another mechanism to prevent tenuous facts serving as a springboard for defamatory comment: see *WIC*, at para. 59.

[176] Concerning this element of the fair comment defence, Binnie J. wrote in *WIC*, at para. 31 (underlining added):

[31] It is true that “[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made”; Brown, vol. 2, p. 15-36, and *Gatley on Libel and Slander* (10th ed. 2004), at para. 12.12. What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of Mair’s editorial comment. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available (*Chicoutimi Pulp [Price v. Chicoutimi Pulp Co.* (1915), 51 S.C.R. 179], at p. 194).

[177] Mr. Sutherland argues that the factual foundation for Mr. Staniford’s comments can be found in the Easton, Jacobs and Hites Papers (although not the *Journal of Nutrition* paper), and the subsequent papers and reports along the same lines, which are identified in the particulars that remained following the abandonment of a justification defence.

[178] In addition, Mr. Staniford says that the sources for the statements made on the GAAIA website are set out exhaustively (with hundreds of hyperlinks in the electronic versions) in Mr. Staniford’s March 23, 2011 e-mail letter sent to the King of Norway and others, and his “Smoke on the Water, Cancer on the Coast” manuscript. However, neither of these was available to readers when the GAAIA website was shut down in March 2011.

[179] Mainstream says that the factual foundation for Mr. Staniford’s statements is completely lacking on the GAAIA website. It says that nowhere on the website is

there an explanation or context that would allow a reader to say, “Oh, I see now why he says ‘Salmon farming seriously damages health’.” These points were mentioned in connection with Mainstream’s argument that the statements on the GAAIA website are facts, not comment, but they are also relevant to the requirement that comment must be based on fact.

[180] I find that the “facts” are these, and that Mr. Staniford was aware of all of them:

- (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.

[181] I find that these are basic facts that go to the pith and substance of the opinions expressed by Mr. Staniford.

[182] The GAAIA Press Release (Appendix “A”) mentions “peer-reviewed scientific evidence.” Some of that research is cited in “Silent Spring of the Sea,” for which there is a hyperlink at the GAAIA website. Some of it is also cited in the two 2002 papers for which there are links at the website. Both Otto Langer and Dr. Suzuki are quoted in the publications in issue. The BCSFA advertisements are also specifically set out in the publications in issue.

[183] I think that it would take a determined reader to locate in the publications the facts on which Mr. Staniford’s comments are being made. Despite that, I conclude 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.

(iv) Could any person honestly express Mr. Staniford's opinions based on the proven facts?

[184] I have concluded the answer to this question must be yes. Mr. Staniford (at least) believes what he says. He expresses his beliefs in the March 23, 2011 letter to the King of Norway, and in "Smoke on the Water, Cancer on the Coast."

[185] There are many problems with Mr. Staniford's credibility. The passage from his cross-examination which I quoted above, concerning what happened at the May 2006 Meeting, is but one example of where 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. Individuals who work in the salmon farming industry do jobs that are "nauseating." He is highly suspicious. 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. Because Hill & Knowlton at one time also did work for members of "Big Tobacco," the firm must have been hired because the BCSFA and its members were engaged in a cover-up, just like Big Tobacco.

[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.

[188] During the trial, Mr. Staniford showed that he is extremely uncomfortable about having his views questioned. He was defensive, aggressively argumentative and insulting during his cross-examination. Even during his examination-in-chief, he

demonstrated that he is a bad listener, and he often used questions as an opportunity to make speeches, rather than giving responsive answers. Although Mr. Staniford claims to be a champion of free-speech, he cruelly and publicly mocks people who have a different point of view (e.g., Ms. Walling and Ms. Brunt). His use of what he calls “humour” and “spoofing” is an example of strong passive aggression. In fact, he is aiming to ridicule and humiliate people who do not agree with his views. He sees that as a way of promoting his campaign.

[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.

(v) Malice

[190] The defence of fair comment will fail if the plaintiff proves that the defendant was actuated by express malice: see **WIC**, at para. 28 and **Smith v. Cross**, 2009 BCCA 529, 99 B.C.L.R. (4th) 214, at paras. 30-32. Malice is a state of mind: **Smith v. Cross**, at para. 42 (citing **Creative Salmon**). Even where a defendant relies on objective honest belief as part of a fair comment defence, the defence can still be defeated by proof that subjective malice was the dominant motive of the particular comment: see **WIC**, at para. 53.

[191] The Supreme Court of Canada summarized the law concerning malice in **Hill v. Church of Scientology of Toronto**, [1995] 2 S.C.R. 1130, at para. 145:

Malice is commonly understood, in the popular sense, as spite or ill-will. However, it also includes . . . "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth. [Citations omitted.]

[192] As Kirkpatrick J.A. pointed out in **Smith v. Cross** (at para. 36), the question of the defendant’s motive in a defamation case was fully explored in Lord Diplock’s speech in **Horrocks v. Lowe**, [1975] A.C. 135 (H.L.), at pp. 149-50:

So, the motive with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial. The protection might, however, be illusory if the onus lay on him to prove that he was actuated solely by a sense of the relevant duty or a desire to protect the relevant interest. So he is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. 'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, 'honest belief'. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognize the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be 'honest', that is, a positive belief that the conclusions they have reached are true. The law demands no more.

Even a positive belief in the truth of what is published on a privileged occasion . . . may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill-will towards the person he defames. If this be proved,

then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled. . . .

[193] A plaintiff can prove malice relying on evidence that is intrinsic to the publication itself (e.g., the language used), or through extrinsic and circumstantial evidence (e.g., the conduct of a defendant both before and after the publication of the defamatory remarks, including the course of the legal proceedings).

[194] Even where a court concludes that a defendant was actuated by express malice, a fair comment defence will not be defeated unless the court also concludes that the defendant's dominant purpose in publishing the material in issue was to injure the plaintiff because of spite or ill-will. An example is found in the trial judgment in *WIC*, reported as *Simpson v. Mair*, 2004 BCSC 754, 31 B.C.L.R. (4th) 285.

[195] Mainstream says that the evidence in support of its plea of malice is clear and overwhelming, and a complete answer to Mr. Staniford's defence of fair comment. Mainstream says Mr. Staniford made statements knowing what he was saying was false, and that he actively ignored information that was contrary to his position, justifying this on the grounds that he is an activist, not a journalist. Thus, in Mainstream's submission, Mr. Staniford was also reckless. Mainstream says that Mr. Staniford readily concedes that his sole objective is to attack industrial aquaculture, and he will do whatever it takes to achieve his objectives. Mainstream says that Mr. Staniford does not attempt to conceal the spite, ill-will and outright hatred he harbours against the aquaculture industry, those involved in the business and Mainstream (and Cermaq) in particular.

[196] On behalf of Mr. Staniford, Mr. Sutherland argues that Mr. Staniford must be afforded a very broad scope for speech because his purpose is to end industrial aquaculture. He is a campaigner attempting to influence public opinion on legitimate public issues. Therefore, so long as Mr. Staniford's statements and publications are related predominantly or primarily to that purpose, it cannot be said that Mr.

Staniford is actuated by malice. Mr. Staniford's loathing of the aquaculture industry is not unrelated to his purpose, and therefore cannot constitute malice.

[197] I have concluded above that Mr. Staniford honestly believes what he says. This finding is inconsistent with finding that Mr. Staniford said things he knew to be false, or that he was reckless. However, has Mainstream nevertheless demonstrated that Mr. Staniford's dominant purpose in publishing the statements in issue was to injure Mainstream because of spite or animosity?

[198] I agree with Mainstream 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. I think the evidence is overwhelming in this regard. Mr. Staniford's Internet postings are filled with insulting and demeaning comments and cruel caricatures. He ignores and disdainfully dismisses peer-reviewed science (such as **Report No. 978**) when the conclusions conflict with his own views. The language in his publications – including the mock cigarette packages in particular – is extreme, inflammatory, sensationalized, extravagant and violent. The word “kills” is everywhere.

[199] Mr. Staniford's response to Mainstream's request for an apology was indignant and insulting. During the trial, he proudly boasted about having relaunched the GAAIA website. Mr. Staniford attempted to justify – in a completely ridiculous way – demeaning comments he posted during the trial about two female witnesses. His own lawyer described Mr. Staniford's actions as “sexist and puerile foolishness.” Then, after his conduct and the serious problem of the intimidation of witnesses had been discussed – while he was present – in open court, Mr. Staniford repeated the comments outside of court in the course of an interview posted on YouTube.

[200] I have no hesitation, therefore, in finding that the publications in issue were actuated by Mr. Staniford's express malice towards Mainstream.

[201] However, I am unable to conclude that this was Mr. Staniford's dominant purpose in publishing the statements in issue. Mr. Staniford's main goal is to end industrial aquaculture, and he seeks (albeit in clumsy, crude, irrational or foolish ways) to influence public opinion to that end. That (currently) is his life's work. His commitment to that cause is illustrated by his self-published *magnum opus* – "Smoke on the Water, Cancer on the Coast." I find that Mr. Staniford's statements and publications are related primarily to that purpose. As Tysoe J.A. observed in ***Creative Salmon*** (at para. 41), the protection of a person's ability to exercise his or her right to freedom of expression in order to attempt to influence public opinion on legitimate public issues is the objective of the defence of fair comment. The defence cannot be defeated if Mr. Staniford was doing the very thing that the defence was designed to protect.

Summary and Disposition

[202] Although I have concluded that Mr. Staniford's statements are defamatory of Mainstream, I have concluded that he should succeed on his defence of fair comment. I have found that he was actuated by express malice towards Mainstream. However, I have found that he had an honest belief in the statements he made, and injuring Mainstream because of spite or animosity was not his dominant purpose in publishing the words in issue.

[203] In view of those findings, I do not intend to address damages or other remedies.

[204] The plaintiff's action is, accordingly, dismissed.

[205] If counsel wish to make submissions on costs, they have leave to do so and should contact Scheduling to arrange a convenient date.

"Adair J."

APPENDIX "A"

EX 17

Press Release issued by the Global Alliance Against Industrial Aquaculture: www.gaaia.org

Monday 31st January 2011

Salmon Farming Kills
– Global Health Warning Issued on Farmed Salmon

Vancouver, British Columbia - The newly-formed Global Alliance Against Industrial Aquaculture (GAAIA) this week launched a smoking hot international campaign against Big Aquaculture. 'Salmon Farming Kills' employs similar graphic imagery to the 'Smoking Kills' campaigns against Big Tobacco and warns of the dangers of salmon farming. Next month (February), GAAIA will issue a new report on salmon - 'Smoke on the Water, Cancer on the Coast' - followed by reports on shrimp, tuna and GE fish.



"Salmon farming kills around the world and should carry a global health warning," said Don Staniford, global coordinator for GAAIA in British Columbia. "As good global citizens we need to face the fact that salmon farming seriously damages human health, the health of our global ocean and the health of wild fish. Salmon farming is spreading in Norway, Chile, Scotland, Canada, Ireland, the Faroes, the United States, Australia, New Zealand, Japan and now in Russia like a malignant cancer on our coasts. Quit salmon farming now and help stub out farmed salmon from the face of our precious planet."

"Expensive PR campaigns promoting farmed salmon as 'safe' and 'sustainable' serve only to raise the alarm that salmon farms harm," said Kurt Oddekalv, leader of Norges Miljøvernforbund (Green Warriors of Norway) in Norway. "Salmon farmers are shooting themselves in the foot by denying peer-reviewed scientific evidence detailing human health and environment risks. Here in Norway the industry is on death row with infectious diseases, sea lice infestations, chemical resistance, escapes and depleted fish feed issues looming as the last nails in the coffin."

"By draining our Southeast Pacific oceans of wild fish for feed, Norwegian-owned salmon farmers are robbing Pedro to pay John and stealing fish out of the mouths of Latin Americans," said Juan Carlos Cardenas, a veterinary doctor and Director of Ecoceanos in Chile. "This lethal industry has been responsible for the deaths of divers and sixty four workers as well as hundreds of sea lions and other marine birds and mammals. The bad practices of Norwegian companies operating here in Chile provoked the most important sanitary, environmental and social crisis in the south Chilean coastal regions where 20,000

jobs have been destroyed during the last three years. The industry has blood on their hands and ought to hang their heads in shame.”

**Be A Good Global Citizen
Say NO to Farmed Salmon**



“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,” said Canadian biologist Otto Langer (quoted in the documentary film *Farmed Salmon Exposed: The Global Reach of the Norwegian salmon farming industry* which was screened in Paris during last year’s Seafood Summit and at film festivals around the world).

“I would never feed a child farmed salmon,” said Canadian scientist David Suzuki (as quoted in *The Toronto Star*). “It’s poison!”

GAAIA is an international network dedicated to advancing environmentally and socially responsible aquaculture. GAAIA recognizes that salmon, shrimp, tuna and ‘Frankenfish’ farming jeopardizes sustainable and safe seafood production.

Don Staniford, global coordinator for GAAIA is attending the Seafood Summit - ‘Responsibility Without Borders?’ – in Vancouver (31 January – 2 February).

For more details on GAAIA please visit: www.gaaia.org

For more details on ‘Salmon Farming Kills’ including photos please visit:
<http://www.gaaia.org/salmon-farms-kill>

Contacts:

Don Staniford, global coordinator for the Global Alliance Against Industrial Aquaculture (GAAIA): dstaniford@gaaia.org (+1 604 787 3390 in Vancouver; and +44 7502 487613 – in UK)

Juan Carlos Cardenas, Director of Ecoceanos: +56-2-2053855 (in Chile)

Kurt Oddekalv, Leader of Norges Miljøvernforbund (Green Warriors of Norway): +47 90 89 22 68 and +47 917 04 361 (in Norway)

APPENDIX "B"

4

Salmon Farming 2011 | Global Alliance Against Industrial Aquaculture

2/10/2011 10:18 AM

global alliance against industrial aquaculture

Salmon Farming 2011
Shrimp Farming Kills

Search

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- Shrimp
- Tuna
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- Certification
- News

Our Global Ocean

Home

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www.OurGlobalOcean.org

Salmon Farming Kills

Operating in off-line mode.

Read our press release "[Global Health Warnings Issued on Farmed Salmon](#)" issued on Monday 31st January 2011.

Coming in March 2011 the new report from GAIA: "[Smoke on the Water, Cancer on the Coast](#)"

"Salmon Farming Kills"

Put this in your pipe and smoke it.

Are you sick and tired of Big Aquaculture blowing smoke on the health and safety of salmon farming? Do you think the PR campaigns and advertising by the salmon farming industry is all smoke and mirrors? Do you want the salmon farming industry to quit killing wild fish and polluting our global ocean?

"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" (Canadian biologist Otto Langer in "Farmed Salmon, Expenses")



Salmon Farming Kills Wild Fish

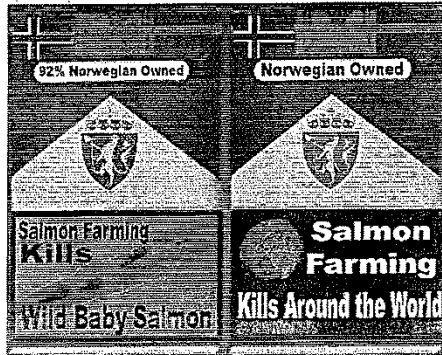
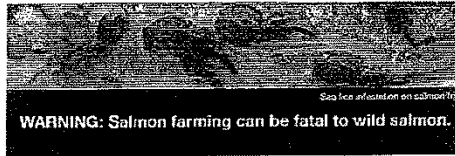
<http://www.gaia.org/2011/01/salmon-farming-110>

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Salmon Farming Kills | Global Alliance Against Industrial Aquaculture

10/06/11 10:18 AM



Salmon Farming - Harming Wildlife and Spreading Diseases



<http://www.gaaa.org/salmon-farming-10k>

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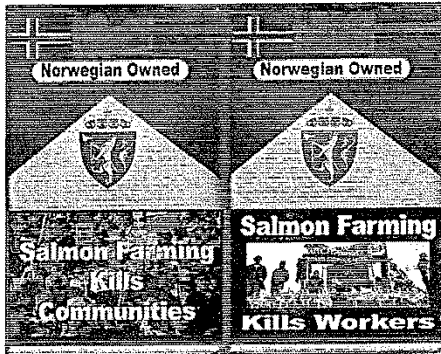
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Salmon Farming 871 | Global Alliance Against Industrial Aquaculture

30/06/11 10:18 AM



Salmon Farming Killing Communities and Workers



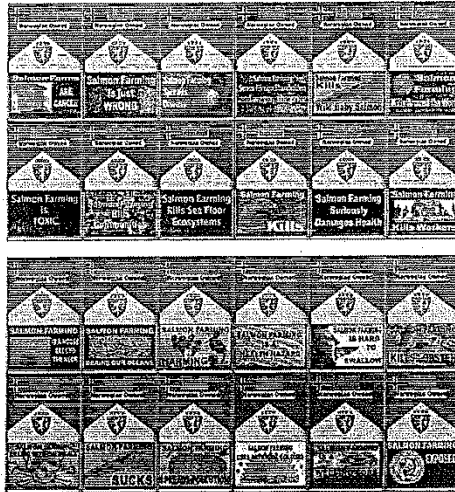
Salmon Farming is Toxic and Poison

"I would never feed a child (armed salmon)," said Canadian scientist David Suzuki (as quoted in *The Toronto Star*). "It's poison!"

7

Salmon Farming 0371 Global Alliance Against Industrial Aquaculture

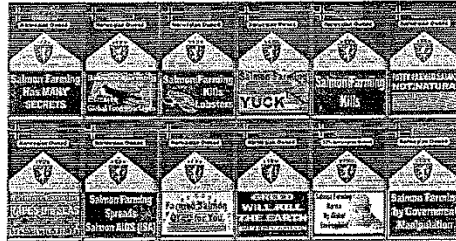
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8

Salmon Farming A236 | Global Alliance Against the Spread of Antibiotics

JR10E711 10:18 AM



9

Salmon Farming 402s | Global Alliance Against Industrial Aquaculture

30/05/11 10:18 AM



Coming in March 2011 the new report from GAIAA: "Smoke on the Water, Cancer on the Coast"

Thank you for NOT Salmon Farming!
Thank you for NOT Shrimp Farming!

Theme developed by Aquarise, Pg 1 of 2

APPENDIX "C"

GAIA launches new 'Salmon Farming Kills' campaign at Seafood ... http://www.gaia.org/blog/gaia-launches-new-salmon-farming-kills...

global alliance against industrial aquaculture

Salmon Farming and Shrimp Farming Kills

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Our Global Ocean

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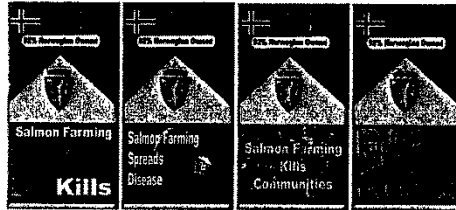
GAIA launches new 'Salmon Farming Kills' campaign at Seafood Summit

Submitted by Don on Mon, 01/31/2011 - 12:50

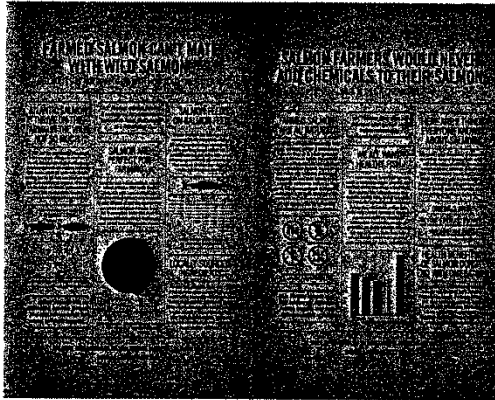
The Global Alliance Against Industrial Aquaculture launched a new 'Salmon Farming Kills' campaign on Monday 31st January at the 2011 Seafood Summit in Vancouver.

Read our press release "Global Warning Issued on Farmed Salmon".

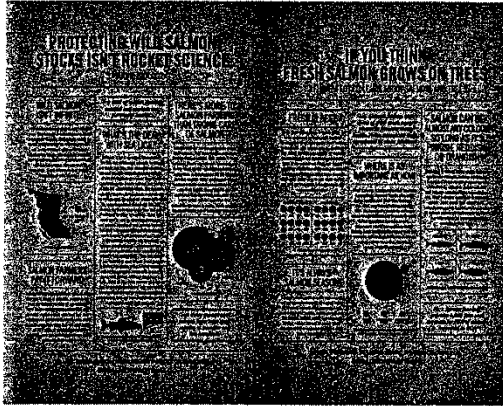
More details via 'Salmon Farming Kills'



'Salmon Farming Kills' comes hot on the heels of a \$1.5 million 'BC Salmon Facts' campaign launched on 6th January 2011 by the BC Salmon Farmers' Association. Here's a selection of the newspaper adverts:



GAAIA launches new 'Salmon Farming Kills' campaign at Seafood ... <http://www.gaaia.org/blog/gaaia-launches-new-salmon-farming-kills...>

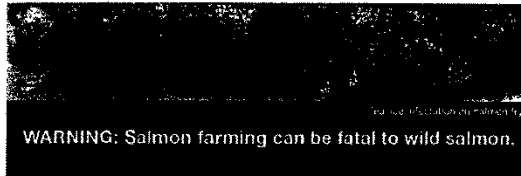


Download all four adverts above [online](#).

If you think the salmon farming industry is just blowing smoke then please watch "Farmed Salmon Exposed" - a documentary by Canadian film-maker Damien Gilfe. The film includes the following statement from Otto Langer:

"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."

Warning: Salmon Farming Seriously Damages the Health of Wild Salmon!

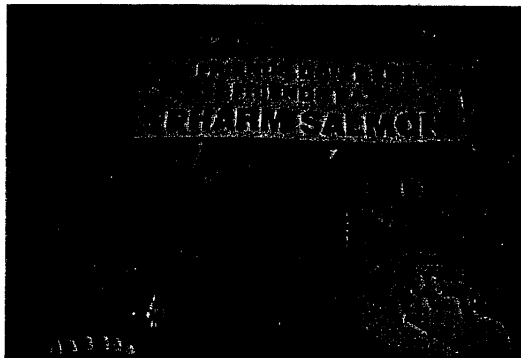


Stop Salmon Farming!

GAALA launches new 'Salmon Farming Kills' campaign at Seafood ... <http://www.gaaia.org/blog/gaaia-launches-new-salmon-farming-kills...>



Salmon Pharming: Only Toxic Friends Eat Farmed Salmon



Thank You For Salmon Farming

Unconfirmed reports suggest Marine Harvest is in negotiation with director Jason Reitman for a follow up to "Thank you for Smoking". The new film - "Thank you for Salmon Farming" - could star 'the Marine Harvest-Man' and 'Mainstream-Man' vying for the role made famous by 'the Marlboro Man'. The salmon

GAAIA launches new 'Salmon Farming Kills' campaign at Seafood ... <http://www.gaaia.org/blog/gaaia-launches-new-salmon-farming-kills...>

farmers would be welcomed by the tobacco, alcohol and firearms industries as new members of the 'MOD Squad' (Merchants of Death).

Watch the 'Merchants of Death' scene in 'Thank You for Smoking'.

Watch the trailer for 'Thank You for Smoking'.

Where there's smoke there's fire. Visit 'BC Salmon Facts' for information on salmon farming in British Columbia.



For more information visit '[Salmon Farming Kills](#)'

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Thank you for NOT Salmon Farming!
Thank you for NOT Shrimp Farming!

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