

LexisNexis® Agricultural Law *NetLetter*

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditor rights, animals, grain, import/export and other matters in an agricultural context.

Thursday, October 4, 2012 - Issue 261

Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

* A Justice of the Supreme Court of British Columbia has dismissed a defamation action brought by the second largest producer of farmed salmon in British Columbia against an anti-fish farm food activist who initiated an internet campaign which, among other things, alleged that farm salmon were carcinogenic and that the plaintiff was similar to cigarette manufacturers which knowingly sell products that were poison and harmful to human health. The judge had no difficulty concluding that the statements were defamatory. However, the judge concluded that the activist could rely on the defence of fair comment because the statements were comment, not fact; were honestly held; and because the dominant purpose was to end industrial aquaculture, not to harm the plaintiff. (Mainstream Canada, a Division of EWOS Canada Ltd. v. Staniford, [CALN/2012-028](#), [\[2012\] B.C.J. No. 2004](#), British Columbia Supreme Court)

**** NEW CASE LAW ****

Mainstream Canada, a Division of EWOS Canada Ltd. v. Staniford; [CALN/2012-028](#), Full text: [\[2012\] B.C.J. No. 2004](#); [2012 BCSC 1433](#), British Columbia Supreme Court, E.J. Adair J., September 28, 2012.

Defamation -- Food Activists -- Allegations that Industrially Produced Food is Dangerous to Human Health -- Fair Comment.

Mainstream Canada, a division of EWOS Canada Ltd. ("Mainstream") is the second largest producer of farmed salmon in British Columbia. It is a wholly owned subsidiary of a Norwegian company and world leader in salmon production. EWOS Canada is also one of the largest producers of fish feed.

Don Staniford ("Staniford") is an activist, author and environmental campaigner who, for many years, had organized groups and campaigns to attack the salmon farming industry. In 2011, Staniford, under the name "Global Alliance Against Industrial Aquaculture" ("GAAIA") launched a campaign against British Columbia salmon farming and Mainstream.

Much of Staniford's campaign was conducted through GAAIA's website, which displayed mock-cigarette packages which contained titles including "Salmon Farming Kills"; "Salmon Farming Seriously Damages Health"; "Salmon Farming Licensed to Kill"; "Salmon Farming Seriously Damages Human Health"; "Salmon Farming is Toxic and Poison"; "Salmon Farming Killing with Chemicals"; and "Smoke in the Water, Cancer on the Coast".

On March 18, 2011, Mainstream's lawyers approached Staniford asserting that the statements on GAAIA's website were defamatory. On the same day the website was taken down by Staniford's internet service provider over Staniford's objections.

Mainstream sued Staniford for defamation.

Staniford had previously been sued for defamation in *Creative Salmon Co. v. Staniford*, [\[2007\] B.C.J. No. 73](#), [2007 BCSC 62](#) (CanLII), 2007 BCSC 62 and *Creative Salmon Company Ltd. v. Staniford*. [\[2009\] B.C.J. No. 230](#), [2009 BCCA 61](#) (CanLII), 2009 BCCA 61, 90 B.C.L.R. (4th) 328 ("Creative Salmon") in which a trial judge had awarded Creative Salmon general and aggravated damages stemming from defamatory comments made by Staniford in two June, 2005 press releases. However, after the reasons for judgment in the trial case were issued, the Supreme Court of Canada in *WIC Radio Ltd. v. Simpson*, [2008 SCC 40](#) (CanLII), 2008 SCC 40, [\[2008\] 2 S.C.R. 420](#) ("WIC") modified the test for the defence of fair comment. The Court of Appeal ordered a new trial on this issue; however the new trial never occurred.

Mainstream alleged that the following statements made by Staniford were defamatory:

- (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.

Mainstream also argued that the defence of fair comment was not open to Staniford.

Decision: Madam Justice Adair concluded that Staniford's comments were defamatory [at para. 142], but that the defence of fair comment was available to Staniford [at para. 202]. She dismissed Mainstream's action [at para. 204].

Adair, J. concluded that the statements Staniford had made were defamatory, stating, at para. 116 to 120:

[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 this 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.

With respect to the defence of fair comment, Adair, J. observed that the Supreme Court of Canada, in *WIC*, had substantially expanded the fair comment defence, stating, at para. 145 and 146:

[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.

Adair, J. concluded:

- That the cartoon-like context which Staniford's statements were presented, accompanied by the sometimes juvenile and over the top pros and blog postings, would cause a reasonable reader to understand that Staniford's statements were comment, not fact [at para. 174].
- That although a factual foundation is an important objective limit to the fair comment defence, a determined reader could identify the facts on which Staniford based his statements, so that readers could make up their own minds about the merits of what Staniford had to say [at para. 183].
- That although Mr. Staniford was not a credible witness; closed minded with deep prejudices; an unreliable reporter of facts, who would say almost anything to further his own agenda; and highly suspicious and obstinate, he nevertheless honestly believed the opinions he had expressed [at para. 184 to 189].
- That although Staniford's publications were actuated by express malice towards Mainstream, Staniford's dominant purpose was to end industrial aquaculture to influence public opinion to that end. Adair, J. held, at para. 201, relying on the decision of Tyso, J.A. in Creative Salmon:

[201] 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.

**** CREDITS ****

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.



For more information about the LexisNexis® Quicklaw® service, call 1-800-387-0899 or email service@lexisnexis.ca.

For more information about LexisNexis products or services, visit www.lexisnexis.ca.

Design and compilation © 2012 LexisNexis Canada Inc. All rights reserved. Unless otherwise stated, copyright in the content rests with the author(s). LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under licence. Quicklaw is a registered trademark and *NetLetter* is a trademark of LexisNexis Canada Inc. Other products or services may be trademarks, registered trademarks or service marks of their respective companies. Use of this *NetLetter* is subject to the LexisNexis Canada Inc. Terms and Conditions of Data File Usage.