

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

DR. TIMOTHY BALL

Plaintiff

- and -

**THE CALGARY HERALD, a division of CANWEST MEDIA WORKS
PUBLICATIONS INC., LORNE MOTLEY, TRENT ANDERSON,
MONICA ZUROWSKI, DOUG FIRBY, THE GOVERNORS OF THE
UNIVERSITY OF LETHBRIDGE and DR. DAN JOHNSON**

Defendants

STATEMENT OF DEFENCE

1. This Defence is filed on behalf of the Defendants, the Calgary Herald a division of Canwest Media Works Publications Inc., Lorne Motley, Trent Anderson, Monica Zurowski and Doug Firby (hereinafter collectively the "Defendants").

2. The Defendants deny each and every allegation contained in the Statement of Claim unless specifically admitted herein.

3. The Defendants agree with length and venue for trial as set out in paragraph 19 of the Statement of Claim.

BACKGROUND

4. The Kyoto Accord is an international treaty which has been signed by approximately 140 countries since 1997. The terms of the Kyoto Accord require the parties to reduce greenhouse emissions from 1990 levels. The premise behind the Kyoto Accord is that carbon dioxide and other human made gas emissions contribute to a greenhouse effect in the

Earth's atmosphere leading to global warming. Canada signed the Kyoto Accord in 1998 and ratified it in 2002. The Kyoto Accord took effect on February 16, 2005.

5. The implementation of the Kyoto Accord in Canada, its impact on industry and the economy and what restrictions or controls, if any, the Federal Government should place on greenhouse gas emissions has been an important social and political issue since at least 1997.

6. The Federal Government released a Kyoto implementation plan on April 13, 2005. The Federal Government pledged \$10 billion to cut greenhouse gas emissions by 270 megatonnes per year from 2008 to 2012.

7. The January 2006 election of the current Conservative Government may result in an alteration in the Federal Government's position on the implementation of the Kyoto Accord. The implementation of the Kyoto Accord remains a contentious issue in Parliament, and in Canadian society generally, and it is an issue of global importance.

8. The Plaintiff is an outspoken critic of scientific theories regarding the connection between human sources of carbon dioxide gas emissions and global warming and the Kyoto Accord. The Plaintiff has publicly described these theories as:

- (a) "ludicrous";
- (b) "the greatest deception in the history of science";
- (c) "junk science";
- (d) a "hoax";
- (e) dogma;
- (f) "mythology";
- (g) based on "rampant misrepresentations"; and
- (h) having "no scientific justification".

9. In respect of the Kyoto Accord, the Plaintiff has publicly stated:

- (a) "...it is a policy based on ideology and economics and has nothing to do with science."

10. The Plaintiff has repeatedly and vigorously attacked the scientific credentials of proponents of theories linking global warming to human activity and production of greenhouse gases. The Plaintiff has written or stated publicly:

- (a) “their views are from political science, their views are also a function of where to go to get funding and who provides funding.”; and
- (b) “the majority of scientists on the Kyoto and global warming bandwagon know nothing about science”.

11. The Plaintiff has communicated his views widely through the media. This includes a number of earlier columns published in the Calgary Herald newspaper.

12. Within the global warming debate, the Plaintiff has repeatedly described himself in the media, including the Calgary Herald, and at speaking engagements, or has allowed himself to be described, as a “28-year Professor at the University of Winnipeg” and “Canada’s first PhD in Climatology”.

THE PUBLICATION

13. On or about April 19, 2006 a column that was authored by the Plaintiff (hereinafter the “Column”) (a version of which is attached as Schedule “A” to the Statement of Claim) was published in the Calgary Herald newspaper. The article questioned the scientific legitimacy of global warming theories, such as those of Tim Flannery, which link global warming with human activity and carbon dioxide gas emissions. In the Column the Plaintiff also denounced the credentials of other proponents of global warming theory. The Plaintiff’s article included statements with the following effect:

- (a) David Suzuki is “a self-promoting zoologist”;
- (b) Tim Flannery “has sensationalist views on climate change”;
- (c) Tim Flannery and David Suzuki have “no professional credentials in the field” of climate change;
- (d) Tim Flannery “blunders regularly”;
- (e) The views of Tim Flannery and David Suzuki constitute “unscientific rhetoric”;

- (f) Tim Flannery's book Weather Makers has been thoroughly debunked by Australian climate scientists;
- (g) The simulations used and developed by global warming advocates are based on politics not science;
- (h) Global warming advocates are attempting to prove that CO2 is causing potentially catastrophic climate change to "undermine the energy source of the great engine that is technology and capitalism";
- (i) "Flannery's book and message is yet one more in the long line of political positions masquerading as science";
- (j) The former liberal government was foolish because it "believed we could and should stop global climate change ..."
- (k) The writings of Flannery and other global warming advocates constitute "global warming rhetoric"; and
- (l) Flannery's theories are no more supportable than the proposition of global cooling which was put forward by Lowell Ponte in 1976 and has since been widely discredited.

14. In publishing the Column, the Plaintiff knew that his views were controversial and were expressed in an inflammatory manner which denigrated the scientific theories, research and credentials of others.

15. Shortly after the publication of the Article management of the Calgary Herald newspaper received a letter to the editor from the Defendant, Dan Johnson, which defended the position of proponents of global warming theory and questioned the accuracy of the Plaintiff's credentials as set out in the Column.

16. On or about April 23, 2006 Dan Johnson's letter to the editor (the "Letter") (a version of which is attached as Appendix B to the Statement of Claim) was published in the Calgary Herald newspaper.

17. The Defendants deny that they are responsible for any republication of the Letter by any third party, as alleged, or at all.

18. The Defendants deny that they owed any duty of care to the Plaintiff.

19. The Defendants state that the Letter in its entirety was not defamatory of the Plaintiff in its plain or ordinary meaning or by any innuendo. The words published were not intended to bear, did not bear, were not understood to bear and are not capable of bearing or being understood to bear the meanings ascribed to them in the Statement of Claim or any meaning defamatory of the Plaintiff.

20. In the alternative, the Defendants state that the Plaintiff consented to or invited the publication of the statements of the Letter, expressly or implicitly, based on, *inter alia*, on his role in publishing the Column, his prior publications in the Calgary Herald and his voluntary participation in public debate as an outspoken critic of mainstream scientific theories regarding global warming and his criticism and attack on the credentials of the proponents of those theories.

21. The Defendants deny that the Letter implied or suggested that the Plaintiff falsified his academic credentials. The Letter means or was understood to mean that the Plaintiff was a Professor at the University of Winnipeg for 8 years not 28 years as identified in the Article. The Letter does not attribute this inaccuracy to any act of the Plaintiff and does not imply or suggest that the Plaintiff was attempting to deceive anyone regarding his credentials. The Defendants assert that the Letter bears this meaning and the statements expressing this meaning are true in substance and in fact or represent fair comment. The particulars of the justification and fair comment are set out herein under the heading Particulars.

22. The Defendants deny that the Letter implied or suggested that the Plaintiff's PhD is anything less than a full PhD. The Letter means or was understood to mean that the Plaintiff could not have been a professor at the University of Winnipeg for 28 years because a PhD would be a prerequisite for entry into that level of a position. The Defendants assert that the Letter bears this meaning and the statements expressing this meaning are true in substance and in fact or represent fair comment. The particulars of the justification and fair comment are set out herein under the heading Particulars.

23. The Defendants assert that the statement "spent eight years as a geography professor" means and was understood to mean the Plaintiff had the status as a full professor at the University of Winnipeg for 8 years. The Defendants assert that this meaning and statement

are true in substance and in fact or constitute fair comment by the author based on his honestly held beliefs on a matter of public interest. The particulars of the justification and fair comments are set out herein under the heading Particulars.

24. The Defendants assert that the statements “rarely published” and “the few papers he has published” means and was understood to mean papers published in peer-reviewed scientific journals. This is the benchmark for a “scientific publication” within the academic community, of which Johnson is a member. The Defendants assert that this meaning and statement are true in substance and in fact or constitute fair comment by the author based on his honestly held beliefs on a matter of public interest. The particulars of the justification and fair comments are set out herein under the heading Particulars.

25. The Defendants assert that the statement “His work does not show any evidence of research in climate and atmosphere” meant and was understood to mean, when read in the context of the Column as a whole, that the Plaintiff’s research is based on historical studies of climate change not current atmospheric conditions and their influence on climate change. The Defendants assert that this meaning and statement are true in substance and in fact or constitute fair comment by the author based on his honestly held beliefs on a matter of public interest. The particulars of the justification and fair comments are set out herein under the heading Particulars.

26. In the alternative, in so far as the Letter contained expressions of opinion, which were capable of being defamatory, which meaning is denied, including but not limited to "His work does not show any research regarding climate and atmosphere and the few papers he has published concern other matters" and "sometimes denial is nothing more than denial", these statements constituted fair comment by the author based on facts stated or widely known and his honestly held beliefs on a matter of public interest. The particulars of the fair comment are set out herein under the heading Particulars.

27. The Defendants assert a qualified privilege in respect of the Letter on the following grounds:

- (a) The debate regarding global warming, the impact of human activity, the implementation of the Kyoto accord and government plans to reduce greenhouse gas, are important national and international political and social issues and the

debate's outcome is of immense interest to the Canadian public generally, and the readers of the Calgary Herald specifically;

- (b) The Column presented only one side of the global warming debate;
- (c) In the Column the Plaintiff attacked the credentials of proponents of global warming theory;
- (d) In the Column the Plaintiff attacked the scientific methodology used by proponents of global warming theory; and
- (e) The Column attacked the legitimacy of the science underlying the Kyoto Accord.

As a result, the Calgary Herald had a moral or social duty to present both sides of the global warming debate to its readership. Further, the Calgary Herald had a moral or social duty to ensure that its readership was not misled by the statements in the Column regarding the Plaintiff's qualification. The Calgary Herald published the Letter to the same audience as the Column and those Calgary Herald readers had a moral or social duty or interest in receiving publication of the Letter.

28. In the alternative, the Letter and the Column relate to a subject matter of enormous local, national and global significance. Further, the Column and the Letter directly relate to the debate between proponents and opponents over the causes of global warming. The exact causes of global warming are complex in nature and difficult for the readers of the Calgary Herald to comprehend. The Calgary Herald says that in the totality of the circumstances the publication of the Letter constitutes responsible journalism, by professional journalists, who have a duty to impart that information to the public, who have an interest in receiving it. This responsible journalism included, but is not limited to giving the Plaintiff access to the pages of the Calgary Herald, granting to the Plaintiff an opportunity to comment, the neutral position taken by the Calgary Herald in respect to the content of the column and the Letter, and the inquiries made by these Defendants concerning the Letter prior to its publication. In all these circumstances, the Defendants have privilege in respect of the Letter in the form of a *Reynolds Privilege*.

29. Counsel for the Plaintiff wrote to Calgary Herald on or about May 11, 2006, requested an apology and requested that Calgary Herald publish a response letter from the

Plaintiff (“Counsel’s Letter”). Counsel’s Letter also attached a copy of the Plaintiff’s Curriculum Vitae. Counsel’s Letter made the following assertions:

- (a) the Plaintiff was a climatology professor at the University of Winnipeg for 28 years; and
- (b) the Plaintiff obtained his PhD in Climatology from the University of London in 1982.

30. Calgary Herald attempted to verify the assertion in Counsel’s Letter, that the Plaintiff was a Climatology Professor at the University of Winnipeg for 28 years. The Plaintiff was not however a Professor of Climatology for 28 years. The Plaintiff’s tenure at the University of Winnipeg was as follows:

- (a) Professor from 1988-1996;
- (b) Associate Professor from 1984-1988;
- (c) Assistant Professor from 1982-1984; and
- (d) Lecturer from 1978 to 1982 and 1976-1977;
- (e) Sessional Lecturer from 1973 to 1976.

31. Calgary Herald attempted to verify the assertion in Counsel’s letter that the Plaintiff received a PhD in climatology from the University of London. The Plaintiff obtained a Doctor of Philosophy in the Faculty of Science from the University of London in 1983. The Plaintiff received his degree, in part, based on a thesis regarding a historical analysis of climate change in Central Canada from 1714-1850.

32. Calgary Herald published the following clarification on August 20, 2006 (the “Clarification”):

Clarification

On Sunday, April 23, 2006, The Herald published a letter from Dan Johnson, a professor in environmental science at the University of Lethbridge. Johnson was responding to an article of April 19, 2006, written by Dr. Timothy Ball. In his letter, Johnson criticized Ball’s lack of research regarding climate and said he rarely published while teaching at the University of Winnipeg.

According to Ball's curriculum vitae, he has conducted research on climate and has published 51 papers – 32 directly related to climate and atmosphere. The Herald wishes to clarify that information.

33. Further, and in the alternative, in the entirety of the context, there is a political, moral and social dimension to the reporting of the Column, Letter, and Clarification which reflected an ongoing dispute, without any position being adopted, endorsed, or embellished by these Defendants and the public was entitled to be fully, fairly, and disinterestedly informed of both sides of the dispute and these Defendants claim to be entitled to a defence based on the doctrine of reportage.

34. The Plaintiff's claim against each of the Defendants, or some of them, is barred by s. 13 of the *Defamation Act*, as amended, in that the Plaintiff failed to serve the Defendants, or some of them, with notice of the defamatory matters complained of prior to commencing this action.

35. In the alternative, the notice provided by the Plaintiff to the Defendants, or some of them, pursuant to s. 13 of the *Defamation Act*, as amended, failed to adequately describe the defamatory matters complained of. Some or all of the allegations in the Statement of Claim are barred by operation of the *Defamation Act*.

36. Further and in the alternative, the notice provided by the Plaintiff contained significant factual discrepancies such that the Defendants could not rely on the notice to determine whether an apology was necessary.

37. The Defendants deny that there was any malice in the publication of the Letter.

PARTICULARS

38. The particulars of fact or comment on which the Defendants rely in support of the defences of justification, fair comment, consent, qualified privilege and absolute privilege include paragraphs 4 through 14, inclusive, herein and those set out below.

39. The Plaintiff is a member of the Friends of Science, a group dedicated to discrediting mainstream scientific beliefs and theories regarding the contribution of human sourced greenhouse gases to global warming.

40. The Friends of Science and the Plaintiff are, at least in part, supported and funded by members of the oil gas industry who have a vested interest in limiting the impact of the Kyoto Accord on their business.

41. The Plaintiff has undertaken a personal campaign to influence public opinion and the legislative agenda in respect of global warming and the Kyoto Accord. During the last several years the Plaintiff has criticized the scientific methodology underlying theories on the connection between human caused carbon dioxide emissions and global warming. The Plaintiff has also routinely criticized the qualifications of several global warming proponents. The particulars of the Plaintiff's activities include:

- (a) Conducting speeches before groups of citizens across Canada;
- (b) Publishing newspaper articles;
- (c) Publishing articles on various websites, including ones that promote certain scientific or political agendas;
- (d) Conducting speeches before political parties;
- (e) Appearing in videos;
- (f) Granting interviews to various media outlets; and
- (g) Lobbying politicians.

42. During 2006 the Plaintiff, along with a number of other individuals, authored a letter to Prime Minister Stephen Harper which included statements with the following effect:

- (a) "...[P]roposed that balanced, comprehensive public-consultation sessions be held so as to examine the federal government's climate-change plans.";
- (b) Many in the group had made similar requests to Prime Ministers Chrétien and Martin;
- (c) In promoting the Kyoto Accord, The United Nations relied on computer climate models that are not trustworthy based on observational research;
- (d) Canada's climate policies are based on alarmist forecasts;
- (e) The Kyoto Accord is not necessary;

- (f) “While the confident pronouncements of scientifically unqualified environmental groups may provide for sensational headlines, they are no basis for mature policy formation”; and
- (g) Many global warning proponents choose to ignore recent scientific developments because it “does not fit with predetermined political agendas”

43. The Plaintiff has held himself out as critic of mainstream scientific theories on global warming through increased greenhouse gas emissions from human actions.

44. The Plaintiff has given numerous speeches, media interviews and has written a number of articles wherein he critiques scientific theories regarding human contributions to global warming through carbon dioxide emissions. The Plaintiff has also publicly criticized certain scientists and their studies.

45. The Plaintiff’s activities, as particularized herein, have turned him into a public and political figure representing critics of global warming theory in Canada.

46. The Defendants rely on the following particulars of the Plaintiff’s qualifications:

- (a) The Plaintiff was not the first individual to have a PhD in Climatology in Canada;
- (b) The Plaintiff obtained a PhD in Philosophy (Science) from the University of London in 1983;
- (c) The Plaintiff’s doctoral thesis involved a historical analysis of climate change in Central Canada from 1714-1850;
- (d) The Plaintiff was not a Professor at the University of Winnipeg for 28 years;
- (e) The Plaintiff was a Professor at the University of Winnipeg for approximately 8 years;
- (f) The Plaintiff’s total tenure at the University of Winnipeg as an Assistant Professor, Associate Professor and Professor was approximately 14 years;
- (g) The Plaintiff has published few articles in academically recognized peer-reviewed scientific journals; and
- (h) The Plaintiff has not conducted research regarding the relationship between climate and elements within the atmosphere.

47. The Defendants deny that the Plaintiff has a cause of action for any of the alleged torts.

48. The Defendants rely on the Clarification which was printed in the August 20, 2006 edition of the Calgary Herald newspaper in mitigation of any damages. The Defendants plead and rely upon sections 4 and 15 of the *Defamation Act*.

49. The Defendants deny that the Plaintiff suffered any loss to his reputation or income earning capacity, and put the Plaintiff to strict proof thereof.

50. The Defendants state that the Plaintiff never held a reputation in the scientific community as a noted climatologist and authority on global warming. The particulars of the Plaintiff's reputation are as follows:

- (a) The Plaintiff has never published any research in any peer-reviewed scientific journal which addressed the topic of human contributions to greenhouse gas emissions and global warming;
- (b) The Plaintiff has published no papers on climatology in academically recognized peer-reviewed scientific journals since his retirement as a Professor in 1996;
- (c) The Plaintiff's credentials and credibility as an expert on the issue of global warming have been repeatedly disparaged in the media; and
- (d) The Plaintiff is viewed as a paid promoter of the agenda of the oil and gas industry rather than as a practicing scientist.

51. Further and in the alternative, if the Defendant suffered a loss, which is denied, he failed to mitigate his damage.

52. This is not an appropriate case for an award of punitive or exemplary damages.

53. The Defendants plead and rely upon the *Defamation Act*, S.A. 2000 Chapter D-7 (the "*Defamation Act*").

WHEREFORE THE DEFENDANTS, PRAY THAT THE PLAINTIFF'S CLAIM BE DISMISSED WITH COSTS.

DATED at the City of Calgary, in the Province of Alberta, this 6th day of December, 2006; **AND DELIVERED** by Parlee McLaws LLP, Barristers and Solicitors, solicitors for the Defendants, whose address for service is in care of the said solicitors at 3400, 150 – 6th Avenue S.W., Calgary, Alberta T2P 3Y4.

TO: DR. TIMOTHY BALL

Action No. 0601-10387

THIS STATEMENT OF DEFENCE is filed by Parlee McLaws LLP, Solicitors for the Defendants.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

The Defendants reside or carry on business at Calgary, Alberta.

BETWEEN:

The Defendants' address for service is in care of the said solicitors at which address service of subsequent proceedings in this action may be served as effectively as if served upon the Defendants personally.

DR. TIMOTHY BALL

Plaintiff

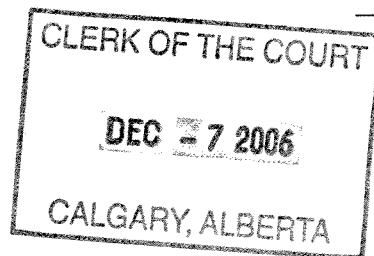
- and -

Solicitors for the Defendants, Calgary Herald Group Inc., Lorne Motley, Trent Anderson, Monica Zurowski and Doug Firby

THE CALGARY HERALD, a division of CANWEST MEDIA WORKS PUBLICATIONS INC., LORNE MOTLEY, TRENT ANDERSON, MONICA ZUROWSKI, DOUG FIRBY, THE GOVERNORS OF THE UNIVERSITY OF LETHBRIDGE and DR. DAN JOHNSON

Defendants

STATEMENT OF DEFENCE



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