



Court File No. **VLC-S-S-111913**

No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Michael Mann

PLAINTIFF

AND:

Timothy ("Tim") Ball,  
The Frontier Centre for Public Policy Inc.,  
and John Doe

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

Michael Mann  
c/o McConchie Law Corporation  
Suite 290 – 889 Harbourside Drive  
North Vancouver, BC V7P 3S1

Timothy ("Tim") Ball  
205 – 27 Songhees Road  
Victoria, BC V9A 7M6

The Frontier Centre for Public Policy Inc.  
203-2727 Portage Avenue  
Winnipeg, Manitoba R3J 0R2

John Doe  
Address not known

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**Part 1: STATEMENT OF FACTS**

1. The plaintiff Michael Mann is a professor in the Department of Meteorology at Pennsylvania State University and a director of that university's Earth System Science Center.
2. The defendant Timothy ("Tim") Ball (hereinafter "Ball") retired in 1996 from a position as a professor in the Geography Department of the University of Winnipeg, Winnipeg, Manitoba. He resides in the City of Victoria in the Province of British Columbia.
3. The defendant The Frontier Centre for Public Policy Inc. (hereinafter the "FCPP") is a company duly incorporated under the laws of Manitoba. The said defendant has a registered office at 203-2727 Portage Avenue, Winnipeg, Manitoba, R3J 0R2.
4. The defendant FCPP at all material times owned and operated an Internet website located at <http://www.fcpp.org/> [the "FCPP Website"]. The defamatory publications on the FCPP Websites which are referred to in this Notice of Civil Claim were accessible to and published to many persons in British Columbia and elsewhere in Canada and the world.
5. The identity of the defendant John Doe is not yet known to the plaintiff. As soon as his identity becomes known, the Plaintiff will apply to this Honourable Court to amend the style of cause to substitute that defendant's true name for "John Doe" in the Notice of Civil Claim in this action.

6. All of the acts and omissions of the defendant John Doe complained of in this Notice of Civil Claim occurred during the course and scope of his employment by, or authority as an agent of, the defendant FCPP.

### **The Defamatory Expression**

7. On or about February 9, 2011 the defendant Ball participated in an interview with the defendants FCPP and John Doe which was electronically recorded with the knowledge and consent of each of the defendants for the agreed purpose of re-publication to the world on the FCPP website (the “Ball Interview”) in the form of text and in the form of an electronic recording, which in fact occurred. During the Ball Interview, the defendants FCPP and John Doe asked the following question: “*Various government and academic agencies have whitewashed the Climategate scandal so far. Do you think anyone will be prosecuted for fraud?*” (the “FCPP Question”) in response to which the defendant Ball published the following words of and concerning the plaintiff:

*There is a move amongst the Attorney Generals in the States to start prosecuting. For example, Michael Mann at Penn State should be in the State Pen, not Penn State. In England as well there are inquiries triggered by three things. One thing was what information was in those leaks. Second one was the cover-up by the so-called panels charged to investigate. Third was the complete failure of the UK weather office and their weather forecasting because they had been working with these people where the e-mails were leaked from. They were linked together. So those three things have kept the politicians looking at it. You're going to see a lot more investigations.*

8. In the context of the FCPP Question, the Ball Words convey the following natural and ordinary inferential meanings of and concerning the plaintiff to the average, ordinary reader:

(a) The plaintiff is guilty of criminal fraud in matters relating to Climategate; or

(b) Alternatively, there are reasonable and probable grounds to believe the plaintiff is guilty of criminal fraud in matters relating to Climategate.

Each of those meanings is false, malicious and defamatory of and concerning the plaintiff.

9. The natural and ordinary inferential meanings alleged in paragraph 8 of this Notice of Civil Claim constituted slander actionable *per se* when the Ball Words were first published orally as alleged in paragraph 7 of this Notice of Civil Claim. Those natural and ordinary meanings constituted libel when re-published on the FCPP website as alleged in paragraphs 8 and 11 of this Notice of Civil Claim.
10. The defendant Ball published the Ball Words with the knowledge, expectation and intention that the FCPP Question and the Ball Words would be re-published by the defendants FCPP and John Doe on the FCPP website as alleged in paragraphs 8 and 11 of this Notice of Civil Claim. Alternatively, such re-publication was the natural and probable result of the original publication of the Ball Words by the defendant Ball. In the circumstances, the defendant Ball is responsible in fact and law for such re-publication.
11. On or about February 10, 2011 and continuous thereafter, the defendants FCPP and John Doe defamed the plaintiff by publishing or causing to be published the FCPP Question and the Ball Words on the FCPP Website in the form of text and in the form of an electronic recording.

### **Express Malice**

12. The defendants published the defamatory expression for which each is responsible with the knowledge that the meanings conveyed by that expression were false, or alternatively, with reckless indifference whether they were true or false, and/or for the predominant purpose of harming the plaintiff and exposing him to hatred, ridicule and contempt, lowering the plaintiff in the estimation of others, and causing him to be shunned and avoided.

13. On February 11, 2011, the plaintiff through legal counsel asked the defendants Ball and FCPP to publish a full and unequivocal retraction and apology for the Ball Interview. The defendants Ball and FCPP have neglected or refused to publish any retraction or any apology.

### **Damages and Injunctive Relief**

14. The defendants have been guilty of reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct, and such conduct by the defendants justifies the court in imposing a substantial penalty of exemplary damages on the defendants and an award of special costs in favour of the plaintiff, in addition to an award of general damages for injury to reputation. The plaintiff will rely upon the entire conduct of the defendants before and after the commencement of this action to the date of judgment.

15. The defendants were actuated in publishing the defamatory expression complained of in this Notice of Civil Claim by express malice, which has increased the injury to the plaintiff, and has increased the mental distress and humiliation of the plaintiff.

16. The defendants will continue to publish the defamatory expression complained of in this Notice of Civil Claim unless the defendants are restrained from doing so by an Order of this Honourable Court.

### **Part 2: RELIEF SOUGHT**

1. The plaintiff therefore claims against the defendants and each of them, jointly and severally, for the following relief:

- (a) general damages;
- (b) aggravated damages;
- (c) exemplary and punitive damages;
- (d) special damages;

- (e) an interlocutory and permanent injunction to restrain the defendants, by themselves, or by their agents, servants, employees, or otherwise, directly or indirectly, from any further publication of the defamatory expression complained of in this Notice of Civil Claim, or expression to the same effect;
- (f) an Order requiring the defendants FCPP and John Doe to permanently remove the Ball Interview from any electronic database where it is accessible, including without limiting the generality of the foregoing, the FCPP Website;
- (g) interest pursuant to the *Court Order Interest Act*;
- (h) special costs plus disbursements; and
- (i) such further and other relief as to this Honourable Court may seem just.

**Part 3:LEGAL BASIS**

1. The defendants are jointly liable for committing the common law torts of libel and slander actionable *per se* in relation to the publication and republication of the Ball Words and FCPP Question.
2. The plaintiff relies on common law principles governing the assessment of damages for defamation.
3. The plaintiff relies on common law principles concerning injunctive relief for defamation.

Plaintiff's address for service:	c/o McConchie Law Corporation Suite 290 – 889 Harbourside Drive North Vancouver, BC V7P 3S1
Fax number address for service (if any):	604-988-1610
E-mail address for service (if any):	mcconchie@libelandprivacy.com
Place of trial:	Vancouver, British Columbia

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

Date: March 24, 2011

  
Signature of  
 plaintiff     lawyer for plaintiff  
Roger D. McConchie  
McConchie Law Corporation  
Solicitor for the Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## APPENDIX

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim in tort for damages and an injunction for defamation arising from the publication of defamatory statements which were published orally (slander *per se*) and in the form of text and an electronic recording on the Internet.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)

- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case]*

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

Court Order Interest Act, Libel and Slander Act.