

Court File No. **VLC-S-S-110682**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Andrew Weaver

PLAINTIFF

AND:

Timothy ("Tim") Ball

DEFENDANT

NOTICE OF CIVIL CLAIM

Andrew Weaver
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

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 Andrew Weaver is a professor and Canada Research Chair in Climate Modelling and Analysis in the School of Earth and Ocean Sciences, University of Victoria, British Columbia. He is a Lead Author for Chapter 12: "Long-term Climate Change: Projections, Commitments and Irreversibility" of the Working Group I contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (the "IPCC"). He has an office at 3800 Finnerty Road (Ring Road), Victoria. He is a Canadian citizen and is domiciled and ordinarily resident in British Columbia.
2. The defendant Timothy ("Tim") 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 libeled the plaintiff in his article entitled "*Corruption of Climate Science Has Created 30 Lost Years*" [the "Article"] which the defendant authored and published or arranged to be published on the Internet website of "Canada Free Press" at <http://canadafreepress.com> during the 10-day period from January 10 to 19, 2011. The Article contained, *inter alia*, the following words of and concerning the plaintiff:

Corruption of Climate Science Has Created 30 Lost Years

It's frightening how little climate science is known by both sides of the debate on human causation of global warming.

We now have a generation (30 years) of people teaching, researching or running government that has little knowledge because of lack of fundamental education. ...

The blame begins with the political manipulations of Maurice Strong, but he only succeeded because of the so-called climate scientists. Among them, computer modelers caused the biggest problem. They needed to know the most, but knew the least. ...

I responded to a newspaper article with a letter pointing out many errors. It elicited an invite from Andrew Weaver IPCC computer modeler. I entered his office with my backpack and he said, "I hope you don't have a microphone in that thing do you?" I remarked, "Someone's paranoia is showing." In the next twenty minutes I realized, because of 25 years of teaching, researching and publishing, he knew very little about climate. He received a phone call and I left his office. A student working outside said he heard my comments about the severe limitations of the computer models and said he agreed. He simply wanted to get his degree and research money was available. Weaver claimed to be a climatologist, but removed that from his web page when it was pointed out he was a computer modeler.

Over the years Weaver consistently refused a debate. When a students (sic) group arranged one at the University of Victoria he refused to participate with his standard line about only dealing with "working" climatologists. His students showed up at my presentation and were talking to students outside the door, apparently attempting to deter them from entering. When they all finally came in they tried to interrupt the proceedings by constantly asking questions. They even had laptops and challenged with Internet sites supposedly contradicting what I said. It was shameless and not surprisingly their interpretation of events appeared on a smear blog site. For example, I showed the Milankovitch Effect and said it was not in the Intergovernmental Panel on Climate Change (IPCC) computer models. One student said he worked with the models and it is included. There's no doubt it is in some climate models, but not those of the IPCC.

Weaver has announced he will not participate in the next IPCC. He, like so many who got on the bandwagon of politics and funding, is abandoning the sinking ship. Most of his early funding was from Environment Canada until alternate arrangements were made. He began withdrawal in January 2010, "Senior Canadian climate scientist says the United Nations' panel on global warming has become tainted by political advocacy, that its chairman should resign, and that its approach to science should be overhauled."

He also said, "the leadership of the Intergovernmental Panel on Climate Change (IPCC) has allowed it to advocate for action on global warming, rather than serve simply as a neutral science advisory body." He knew this all along, partly because I told him. The question is what has he taught his students in the meantime? Judging by his responses to my questions and those asked by his students at my presentation, not much and very biased.

*A former editor of an enlightened environmental journal said we need a committee of scientists from the many disciplines involved in climate science. Such a committee existed 25 years ago, and produced groundbreaking work. It was a joint project funded by The National Museum of Canada and Environment Canada under the title "Climatic Change in Canada During the Past 20,000 years." Each year a specific topic was considered and scientists presented material that was published in *Syllogeus*. For example, *Syllogeus 5* examined Critical Periods in the Quaternary of Climatic History of Northern North America. All the problems that plague climate science such as tree rings, ice cores, circulation patterns and proxy data, among many others, were identified and researched. In the last meeting, I was elected Chair, and in my acceptance speech said, we need to consider carefully and scientifically the claims of global warming. Environment Canada cut the funding because it challenged the political position that agency had already taken; the project died. Canada should reconstitute it because it was producing useful and non-*

political science – supposedly Weaver would now approve, but I don't think he's qualified to participate.

People who totally accepted the corrupted, limited and narrowly focused science of the IPCC have taught climate science for the last 30 years...

[hereinafter the “words complained of in the Article”]

4. The words complained of in the Article convey the following natural and ordinary inferential meanings to the average reader:

- (a) The plaintiff is not competent or qualified to teach climate science to university students;
- (b) The plaintiff cheated the Canadian taxpayer by accepting public funding for climate science research although he has little or no knowledge about climate science and is incapable of conducting useful research;
- (c) During a face to face meeting with the defendant, the plaintiff displayed symptoms of paranoia because the plaintiff fears his incompetence, lack of academic qualifications, and corrupt exploitation of the Canadian taxpayer will be exposed;
- (d) The plaintiff bribed university students with research funds so they would participate in useless computer modeling studies which he and his students knew were a waste of time and money and had little or no scientific value, with the objective of continuing to receive unwarranted personal financial benefits from government funding;
- (e) The plaintiff dishonestly claimed on his website to be a “*climatologist*” but immediately withdrew that false claim from his website when it was detected and challenged by the defendant or other persons;

- (f) The plaintiff shuns involvement in public debate about global warming because it would publicly expose his professional incompetence, his inadequate knowledge about climate science, and his corrupt exploitation of public resources;**
- (g) The plaintiff shamefully conspired to have his students heckle and interrupt the defendant during his presentation at the University of Victoria in order to suppress the truth by preventing honest and open debate about the existence of global warming and/or whether humans are causing or contributing to global warming;**
- (h) The plaintiff shamefully conspired with his students to deter people from attending a presentation by the defendant at the University of Victoria in order to stifle the defendant's views and prevent people from learning that the plaintiff's views on global warming have no scientific basis;**
- (i) The plaintiff teaches his students little or nothing about climate science because he lacks the requisite knowledge, does not have appropriate academic qualifications, is nothing more than a computer technician, and is blinded by personal bias;**
- (j) The plaintiff knows that the reports of the Intergovernmental Panel on Climate Change (the "IPCC") concerning global warming are unscientific and corrupt and is therefore dishonestly trying to dodge personal responsibility for his involvement in those reports by dissociating himself from the IPCC, pointing the finger of blame at its leadership and calling for institutional reform;**
- (k) The plaintiff dishonestly obtained substantial public funding from Environment Canada for climate science research despite knowing that he lacked the necessary education, training and intelligence to carry on competent research; and/or**
- (l) One or more of the above.**

[the "Inferential Meanings"]

- 5. Each of the Inferential Meanings is false, malicious and defamatory of and concerning the plaintiff.**

6. Alternatively, the meanings enumerated in paragraph 4 of this Notice of Civil Claim constitute malicious falsehoods which have lead other persons to act in a manner that has caused or is calculated to cause actual loss, damage or expense to the plaintiff, particulars of which will be provided upon request.
7. Further, and in the alternative, the underlined words [hereinafter the “Underlined Words”] complained of in the Article are defamatory of and concerning the plaintiff in their literal meaning. Alternatively, they constitute malicious falsehoods in their literal meaning and have led or are calculated to lead other persons to act in a manner that has caused or is calculated to cause actual loss, damage or expense to the plaintiff, particulars of which will be provided upon request.
8. Further, contrary to the Underlined Words and the Inferential Meanings, the true facts are as follows:
 - (a) The plaintiff is fully competent and qualified to teach climate science to university students:
 - i. The plaintiff received his B.Sc. (Mathematics and Physics) from the University of Victoria in 1983, a Certificate of Advanced Studies in Mathematics from Cambridge University in 1984, and a PhD in Applied Mathematics from the University of British Columbia in 1987.
 - ii. Before joining the University of Victoria in 1992 as an assistant professor, the plaintiff spent three years as a Natural Sciences and Engineering Research Council (NSERC) University Research Fellow in the Department of Atmospheric and Oceanic Sciences, McGill University.
 - iii. The plaintiff was a Lead Author in the IPCC 2nd, 3rd, and 4th scientific assessments and is a Lead Author in the 5th Assessment.
 - iv. The plaintiff was the Chief Editor of the Journal of Climate from 2005 to 2009. From 2003 to 2004 he was an Editor.

- v. The plaintiff is a fellow of the Royal Society of Canada (since 2001), Canadian Meteorological and Oceanographic Society (CMOS) (since 2007) and the American Meteorological Society (AMS) (since 2008).
 - vi. The plaintiff is a past recipient of NSERC E.W.R. Steacie (1997), Killam (2002) and Guggenheim (2008) fellowships as well as the CMOS President's Prize (2007).
 - vii. The plaintiff received the Craigdarroch Silver Medal for Excellence in Research from the University of Victoria in 2005.
 - viii. The plaintiff was named Academic of the Year by the Confederation of University Faculty Associations of British Columbia and received the University of Victoria Craigdarroch award for research communication in 2007.
 - ix. The plaintiff is the author of the book "Keeping Our Cool: Canada in a warming world" published by Viking Canada in September 2008.
 - x. The plaintiff's second book, "Generation Us: The Challenge of Global Warming", will be published by Raven Books in April, 2011.
 - xi. The plaintiff has authored or co-authored over 190 peer-reviewed papers in climate, meteorology, oceanography, earth science, policy, education and anthropology journals.
- (b) The plaintiff has the knowledge and ability necessary to carry on competent research, whatever its source of funding. See subparagraph (a) above. The plaintiff will tender at trial further particulars of the plaintiff's educational qualifications (degrees and diplomas); positions held prior to his appointment at the University of Victoria; major fields of scholarly and professional interest; membership and offices held in learned and professional societies; scholarships, fellowships, honours and awards; research grants; appointments at the University of Victoria; scholarly and professional achievements including articles published

in refereed journals and articles submitted for publication and pending review; other publications including teaching material, scientific reports, book reviews, opinion editorials/magazine/bulletin/newspaper articles, popular book articles, conference/workshop proceedings, consulting reports, technical reports; papers, lectures and addresses including conference presentations, seminars and other lectures; participation in conference presentations given by others; professional activities; refereeing (journal and book articles); research grant and other proposals; external reviews; teaching duties at the University of Victoria (Courses taught); lectured courses at the University of British Columbia and McGill University; graduate student supervision; postdoctoral/research associate supervision; administrative activities; and other information. Details are contained in his *Curriculum Vitae*.

- (c) The plaintiff was fully qualified and competent to accept and appropriately apply funding for his scientific research, whether the source of such funding was public or private. Details of the funding he has received are contained in his *Curriculum Vitae*.
- (d) During a meeting with the plaintiff in 1997, the defendant referred to another scientist and said words to the effect: "*I have him on tape saying this,*" which prompted the plaintiff to say: "*You're not taping now are you?*" The plaintiff was not fearful or insecure and did not propose to say anything to the defendant he would not be prepared to say publicly. However, the plaintiff did believe that a scientific colleague should obtain consent before tape-recording a one-on-one meeting with another scientist.
- (e) The defendant's statement - "*In the next twenty minutes, I realized, because of 25 years of teaching, researching and publishing, he knew very little about climate*" – is a preposterous falsehood. The defendant chose to do most of the talking during the 1997 meeting and displayed no interest in listening to what the plaintiff had to say about climate science. Although the defendant's statements revealed a

lack of understanding of basic physics and chemistry, the plaintiff remained polite and tactfully avoided bluntly challenging the defendant's theories.

- (f) At all material times, the plaintiff personally subscribed to every major journal in the field of atmospheric sciences, physical oceanography and climate. He attends many national and international conferences where climate science work is presented.
- (g) In 1998, the defendant Ball defamed the plaintiff in a speech to an Alberta high school teachers' conference by accusing the plaintiff of knowing nothing about climate science, a slur which the defendant has since often publicly repeated. In an email exchange about the Alberta conference, the plaintiff informed the defendant that he considered the defendant's malignant attack to be *"at best highly unprofessional and at worst an illegal and malicious slandering."* The plaintiff notified the defendant that *"[t]his is the last communication that I will have with you on email or phone. If I see you at a meeting then I would argue the science publicly. What I am most disappointed about is that I treated you as a colleague and gave serious time and consideration to your ideas. In return, you have maligned me publically and disrespectfully, without leaving me an opportunity to defend myself."* [underlining is for emphasis].
- (h) The plaintiff does not say things differently in private than he does in public. The plaintiff expressly warned the defendant by email on March 6, 1998 that any insinuation by the defendant that the plaintiff wanted to say something privately to the defendant at the 1997 meeting that the plaintiff was not prepared to say publicly would be false.
- (i) The defendant's statements – *"A student working outside said he heard my comments about the severe limitations of computer models and said he agreed. He simply wanted to get his degree and research money was available"* – are fiction.
- (j) The plaintiff did not bribe university students with research funding.

(k) The plaintiff only engaged in scientific studies which he genuinely considered would contribute to scientific knowledge.

(l) The defendant's statement – "*Weaver claimed to be a climatologist, but removed that from his web page when it was pointed out he was a computer modeler*" – is fiction. Moreover:

- i. The scientific and academic work of the plaintiff concerns the nature and theory of climate, as opposed to a purely descriptive account, and it therefore addresses the dynamics of the entire atmosphere – ocean-land surface climate system, in terms of its internal interactions and its response to external factors. The plaintiff's work is therefore accurately described as scientific climatology.
- ii. In performing his work in the field of scientific climatology, the plaintiff uses not only numerical models, but also analytical, statistical and others models.
- iii. However, the plaintiff never described himself as a "climatologist" on his webpage and accordingly, the word "*climatologist*" was never removed from the plaintiff's webpage.
- iv. The plaintiff is not a "*computer modeler.*" Computer models are tools, not a description of a professional scientific role.
- v. The plaintiff did not change his web page because the defendant or anyone else "*pointed out he was a computer modeler.*"
- vi. The defendant's doctoral degree relates to "*historical climatology*" which concerns the study of reports by other people who worked in the field of "*descriptive climatology*" which deals with observed geographic or temporal distribution of meteorological observations over a specific period of time.

- (m) The plaintiff did not “*consistently refuse[] a debate ... [o]ver the years.*” The plaintiff has debated issues relating to global warming science on many occasions before and after his 1997 meeting with the defendant. Without limiting the generality of the foregoing, the plaintiff participated with the defendant (physically sitting side-by-side) in a debate about global warming which was broadcast by Global Television from a studio in Victoria in 2005.
- (n) The defendant’s statement – “*When a students (sic) group arranged [a debate] at the University of Victoria he refused to participate with his standard line about only dealing with “working” climatologists*” – is not true.
- (o) The plaintiff did not arrange to have his students heckle and interrupt the defendant during the latter’s presentation at the University of Victoria which was held in April, 2010 at the Student Union Building and was hosted by the Young Conservatives (the “defendant’s UVIC Presentation”).
- (p) The plaintiff did not try to suppress open and honest debate at the University of Victoria about the existence of global warming or whether humans are causing or contributing to global warming.
- (q) The plaintiff did not conspire with his students to deter people from attending the defendant’s UVIC Presentation.
- (r) The plaintiff has the knowledge, academic qualifications and personal skills and abilities necessary to teach university students about climate science.
- (s) Students did not heckle and interrupt the defendant during the defendant’s UVIC Presentation nor did they seek to deter others from attending the defendant’s UVIC Presentation. The students who attended were polite, respectful and asked their questions in a manner and form which is customary and entirely acceptable on such occasions.

- (t) Students normally carried laptops into lectures and classes at the University of Victoria in 2010 for the purpose of taking notes.
 - (u) The statements – *“I showed the Milankovitch Effect and said it was not in the Intergovernmental Panel on Climate Change (IPCC) computer models. ... There’s no doubt it is in some climate models, but not those of the IPCC”* – are false. The Milankovitch Effect is taken into account in IPCC models.
 - (v) The plaintiff never “announced he will not participate in the next IPCC”.
 - (w) The plaintiff never said that the IPCC “*chairman should resign*”.
 - (x) The plaintiff never called for the IPCC’s “*approach to science to be overhauled.*”
 - (y) The plaintiff did not begin withdrawing from the IPCC in January 2010.
 - (z) Most of the plaintiff’s early funding did not come from Environment Canada. Most of his early funding came from the Natural Sciences and Engineering Research Council.
9. The defendant knew, intended and authorized the publication of the Article on the Internet website of Canada Free Press and knew and intended that others visiting that website would copy, download or link to the Article and republish it on many other Internet websites, or by email, which did in fact occur. Alternatively, such republication or linking by third party Internet websites was the natural and probable result of the original publication on the Internet website of Canada Free Press. Particulars of the third party websites which republished or linked to the defendant’s Article include:
- (a) <http://blackkettle.blogspot.com>
 - (b) <http://climatechangedispatch.com>
 - (c) <http://chimalaya.org>
 - (d) <http://globalclimatescam.com>

- (e) <http://skzc.chambers.com>
- (f) <http://futurefastforward.com>
- (g) <http://climaterealists.com/>
- (h) <http://newresearchfindingstwo.blogspot.com/>
- (i) <http://www.climatedepot.com/>
- (j) <http://www.allvoices.com/>
- (k) <http://politicalvelcraft.org/>
- (l) <http://www.thetruthhurts.co.uk/>
- (m) <http://beforeitsnews.com/>
- (n) <http://canadaenglish.forum1000.com/>
- (o) <http://tennis.msg.com/>
- (p) <http://forums.randi.org/>
- (q) <http://lclsandale.com/>
- (r) <http://news.wittysparks.com/>
- (s) <http://usapartisan.com/>
- (t) <http://en.wordpress.com/>
- (u) <http://jer-skepticscorner.blogspot.com/>
- (v) <http://www.futuresall.com/>
- (w) <http://claesjohnson.blogspot.com/>
- (x) <http://tomnelson.blogspot.com/>

Further particulars will be provided as they become known to the plaintiff.

10. The defendant published the Article with the knowledge that the Underlined Words and the Inferential Meanings 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.
11. On January 14, 2011, the plaintiff through legal counsel asked the defendant to publish a full and unequivocal retraction and apology for the words complained of in the Article but the defendant failed to respond or even to acknowledge receipt of the plaintiff's request. The defendant has not made any retraction or any apology.
12. The defendant has been guilty of reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct, and such conduct by the defendant justifies the court in imposing a substantial penalty of exemplary damages on the defendant and an award of special costs in favour of the plaintiff, in addition to the award of general damages for injury to reputation. The plaintiff will rely upon the entire conduct of the defendant before and after the commencement of this action to the date of judgment.
13. The defendant was actuated in publishing the defamatory expression and malicious falsehoods 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.
14. The defendant will continue to publish the defamatory expression complained of in this Notice of Civil Claim unless the defendant is restrained from doing so by an Order of this Honourable Court.
15. The plaintiff therefore claims against the defendant as follows:
 - (a) general damages;
 - (b) aggravated damages;
 - (c) exemplary and punitive damages;

- (d) special damages;
- (e) an interlocutory and permanent injunction to restrain the defendant, by himself, or by his 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) interest pursuant to the *Court Order Interest Act*;
- (g) special costs plus disbursements; and
- (h) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. The defendant committed the common law tort of libel in relation to the publication and republication of the Article.
2. Further, and in the alternative, the plaintiff committed the common law tort of malicious falsehood in relation to the publication and republication of the Article.
3. The plaintiff relies on common law principles governing the assessment of damages for defamation and for malicious falsehood.
4. The plaintiff relies on common law principles concerning injunctive relief for defamation and for malicious falsehood.

Plaintiff's address for service: c/o McConchie Law Corporation
Suite 290 – 889 Harbourside Drive
North Vancouver, BC V7P 3S1

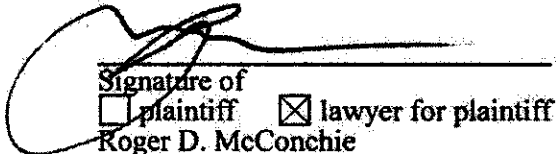
Fax number address for service (if any): 604-988-1610

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: February 2, 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 and/or malicious falsehood arising from the publication of an article 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