

**ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

B E T W E E N :

STEVEN MICHAEL SCHNOOR

Plaintiff

and

**ATTORNEY GENERAL OF CANADA and
KENNETH MURRAY COOK**

Defendants

PLAINTIFF'S AMENDED CLAIM

I. Relief Claimed

1. The Plaintiff Steven Schnoor claims from the Defendants Kenneth Murray Cook and the Attorney General of Canada:
 - a. general damages in the amount of \$10,000;
 - b. prejudgement interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto;
 - c. postjudgement interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto;
 - d. costs; and
 - e. such further and other relief as seems just to this Honourable Court.

II. The Parties

A. The Plaintiff

2. The Plaintiff Steven Schnoor is a documentary filmmaker, a researcher and a PhD Candidate in Communication & Culture at York and Ryerson Universities in Toronto, Ontario. In 2006/2007, Mr. Schnoor received funding through the "Students for Development" program - a program administered by the Association of Universities and Colleges of Canada and financially supported by the Canadian International Development Agency ("CIDA"). This funding enabled Mr. Schnoor to work in Latin America, researching the relationship between Canadian-owned mining companies operating in Guatemala and Honduras and the local communities affected by their operations.

B. The Defendants

3. The Defendant Kenneth Cook was, at all material times, Canadian Ambassador to the Republic of Guatemala and High Commissioner to Belize, an appointment he held from approximately August 2005 until September 2008. Ambassador Cook is a career diplomat and has held several high profile posts, including a prior ambassadorship to Haiti. At all material times, Ambassador Cook was the highest ranking Canadian diplomat in Guatemala and Belize, was accredited to serve as the official representative of Canada in these countries, and spoke on behalf of the Canadian Government. According to s. 13(2) of the *Department of Foreign Affairs and International Trade Act* ("DFAIT Act"), as "Head of Mission", Ambassador Cook had "the management and direction of his mission and its activities and the supervision of the official activities of the various departments and agencies of the Government of Canada" in Guatemala and Belize.
4. The Attorney General of Canada is legally responsible for the actions and omissions of the officers, agents and employees of the Government of Canada. As such, the Attorney General of Canada is responsible in law for the tortious actions and omissions of ambassadors conducting duties under the DFAIT Act. The Plaintiff specifically pleads and relies on section 3(b) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

III. Facts and Legal Claim

A. Background to the defamatory statements

5. Between 1960 and 1996, Guatemala endured a bloody civil war that was characterized by massacres, summary executions, disappearances, and mass internal displacement carried out primarily by the Guatemalan State. Mayan populations were particularly targeted. The United Nations sponsored truth and reconciliation commission, *Comisión para el Esclarecimiento Histórico* (known in English as the "*Historical Clarification Commission*", henceforth "CEH"), concluded that "massacres and the so-called scorched earth operations, as planned by the State, resulted in the complete extermination of Mayan communities, along with their homes, cattle, crops and other elements essential to survival." The CEH also concluded that during the civil war, the State engaged in a campaign of genocide against the Mayan people of Guatemala. According to the CEH, approximately 83% of the victims of the civil war were indigenous Mayan people. In this process, large tracts of the ancestral homeland of the Mayan Q'eqchi' people were emptied and readied for use by, among others, international mining corporations.

6. In 1965, the Guatemalan State granted a mining exploitation concession on land near El Estor, Guatemala to Exmibal, a subsidiary of Inco Ltd ("Inco"). Inco was, until 2006, a Canadian mining company. Exmibal's exploitation concession was located on ancestral Mayan Q'eqchi' land that was available for mining after the state displaced Mayan Q'eqchi' populations using the techniques described above. The local Mayan Q'eqchi' have never accepted the legality of the mining concession or the alleged transfer of land to Exmibal.

7. In 2004, Skye Resources Inc. ("Skye Resources") acquired rights to the mining property located near El Estor by entering an agreement to purchase a controlling interest in Exmibal from Inco. In 2006, Skye Resources, through Exmibal (now called *Compañía Guatemalteca de Níquel*), was granted a new mining exploitation licence for the area near El Estor to replace the old exploitation licence that had expired in 2005. Skye Resources was, at all material times, a Canadian mining company based in Vancouver.

8. In or around September 2006, the Mayan Q'eqchi' who had been removed from or forced to leave the area around El Estor, as well as their descendants, reclaimed five parcels of land near El Estor by moving onto them and occupying them. One of the communities had already been farming one of the parcels of land for the past few years. These farmers view their reclamation as a rightful repossession of historical Mayan Q'eqchi' land unjustly taken from them and their families during the Guatemalan Civil War. By late 2006, they had built houses and gathering places on these parcels of land, had planted crops of corn and beans, and had organized themselves into five communities.

9. In early 2007, Skye Resources sought and allegedly obtained an eviction order from Guatemalan courts against the five communities around El Estor, including the communities of Barrio Revolución and Barrio Union. On 8 January 2007, hundreds of national police officers surrounded the community at Barrio Union, workers employed by a subsidiary of Skye Resources dismantled homes and other structures, and members of the community were required to leave the area. On 9 January 2007, hundreds of heavily armed state police, private security guards and members of the military surrounded Barrio Revolución in order to carry out the eviction order. Several homes in the community were set on fire and burnt to the ground by a group of workers contracted by the mining company while the police stood idly by and supervised. All other homes were dismantled, and community members were ordered to leave the area.

B. The film

10. As part of his professional work and research, Mr. Schnoor filmed and produced a nine-and-a-half-minute documentary film depicting the above described evictions of indigenous Mayan Q'eqchi' subsistence farmers. The documentary film is attached as "Schedule A(i)". This short documentary contains footage of the hundreds of police officers and soldiers sent to carry out the evictions, the dismantling of people's homes, and a distraught Mayan Q'eqchi' woman who vocally protests the evictions. The documentary also contains numerous photographs taken by photographer James Rodriguez on 9 January 2007 depicting the evictions, houses being burnt to the ground, and visibly upset Mayan Q'eqchi' individuals.

11. The documentary, entitled "Violent Evictions at El Estor, Guatemala", was posted on www.youtube.com, and has, as of 19 February 2009, been viewed over 126,000 times.
12. The Plaintiff asserts that the content of the film is factually accurate, that the video footage shown is a faithful portrayal of the evictions of 8 January 2007, and that the photographs featured are an accurate portrayal of the evictions of 9 January 2007. The Plaintiff further asserts that the factual accuracy of the film can be corroborated by video footage and photographs taken by other journalists who were also present at the evictions.
13. On 15 March 2007, Ian Austin, CEO and President of Skye Resources was interviewed on the CBC Radio Program "As it Happens". While Mr. Austin stated that he could not comment on the specifics of the video because he was not present when it was filmed, he did confirm that evictions had occurred in early January, that the "district attorney used specially trained units of the police to carry out the evictions" and that "certainly a number of structures were burnt" at the time of the evictions. An audio file of Mr. Austin's interview is attached as "Schedule A(ii)".

C. The defamatory statements

14. On 21 February 2007, the Canadian ambassador to Guatemala, Kenneth Cook, met with four ~~five~~ members of a voluntary group called the "Maritimes-Guatemala Breaking the Silence Network" at the Canadian embassy in Guatemala City, Guatemala at the request of the Network to discuss concerns about the actions of Canadian mining companies in Guatemala.
15. During the course of this meeting, Mr. Schnoor's film was discussed by the Ambassador and members of the "Breaking the Silence Network". Ambassador Cook falsely and maliciously indicated that Mr. Schnoor's film was not credible. Specifically, he stated that the photos used in the documentary did not depict the evictions as claimed in the film, but rather were old photos taken during the civil war that had been

used many times in different contexts, and that the Ambassador himself had seen them several times before. He stated that the photograph of a man weeping with his head in his hands used in the documentary was a stock photograph taken from the time of the war. Ambassador Cook also stated that the distressed Mayan Q'eqchi' woman vocally protesting the evictions was, in fact, paid ~~by Mr. Schnoor~~ to act in the documentary. Ambassador Cook expressed dismay that a doctoral student would produce work so lacking in credibility.

16. In fact, the woman alleged by the Ambassador to have been paid to act in the Schnoor documentary is named Concepcion Kim Tiul and both was and is a community member of Barrio Union and a subsistence farmer. She was recently photographed and interviewed by journalist James Rodriguez. In regard to the Schnoor incident, she stated, "They say I was paid to act in the video. But this is not so. Necessity has forced us to be here, on this land. And this is our land! It is not the company's!" The interview and the photograph can be found at "<http://mimundo-jamesrodriguez.blogspot.com/2009/02/mining-resistance-continues-in-el-estor.html>"
17. The Ambassador spoke the defamatory words in a manner that made it unlikely that Mr. Schnoor would discover the damage caused to his reputation. In particular, by characterizing the conversation with the "Break the Silence Network" as off-the-record, the Ambassador has made it difficult for Mr. Schnoor to know how many people the defamatory words were spoken to. Mr. Schnoor only found out about the defamatory words when, by chance, Mr. Schnoor later attended a dinner which was also attended by members of the "Breaking the Silence Network".
18. The Plaintiff asserts that, owing in large part to the defendant's status as a Canadian ambassador, members of the "Breaking the Silence Network" initially believed the plausibility of Ambassador Cook's accusations that the Plaintiff had falsified information. At the dinner, members of the Network questioned Mr. Schnoor on his work and Mr. Schnoor defended himself, insisting that Ambassador Cook's allegations were entirely false. The following day, Mr. Schnoor arranged a telephone conversation between himself, Kathryn Anderson (a

member of the Network) and Dawn Paley, a journalist who was also present at the evictions. During this telephone conversation, Ms. Paley verified the factual accuracy of Mr. Schnoor's film and fully satisfied Ms. Anderson's concerns.

19. On or around 23 February 2007, in light of her conversation with Mr. Schnoor and Ms. Paley, Ms. Anderson returned to the Canadian Embassy in Guatemala. Ms. Anderson informed Canadian Embassy staff that the comments the Ambassador had made regarding Steven Schnoor's film were false. Embassy staff told Ms. Anderson that they would forward her concerns on to the Ambassador.
- ~~20. Ambassador Cook made the same defamatory comments to others. In particular, on or around 21 February 2007, Ambassador Cook phoned the Catholic Bishop of the Diocese of Izabal, Guatemala to tell him that the documentary had been fabricated.~~
21. The words complained of were false and defamatory of Mr. Schnoor in their natural and ordinary meaning, including their implied meaning.
22. The words complained of meant, were intended to mean, and were understood to mean that Mr. Schnoor had deliberately fabricated a documentary in order to falsely and fraudulently depict events that did not actually occur. Further, the Ambassador's comments (in particular that Mr. Schnoor had ~~paid a woman~~ used a woman who had been paid to act in his documentary) imply that Mr. Schnoor went to great lengths in order to wilfully and duplicitously deceive the public. The accusation suggests that Mr. Schnoor is dishonest, deceitful, unscrupulous and lacking in credibility; that he is, in short, a manipulative propagandist.
23. The Plaintiff specifically pleads and relies on section 16 of the *Libel and Slander Act*, R.S.O. 1990, c. L.12. The words complained of are slander *per se* as they were "calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication". Mr. Schnoor is a PhD

candidate and scholar, an independent filmmaker and a researcher: integrity, honesty and accuracy are essential characteristics of all of these callings. The suggestion that Mr. Schnoor would deliberately fabricate what he held out to be a factually accurate documentary is very damaging to his reputation as a PhD candidate and scholar, as a documentary filmmaker and as a researcher, and could severely damage his career.

24. As a result of the words complained of, the Plaintiff has suffered damage to his reputation - a reputation that is vital to his calling of PhD candidate and scholar, documentary filmmaker, and researcher.
25. The Plaintiff was very alarmed by the Ambassador's attack on his personal and professional credibility. Mr. Schnoor was greatly troubled by the fact that his work was disparaged by someone with the Ambassador's stature, and by a man whose comments carry the weight of the Canadian state. As a result of these comments, the Plaintiff suffered personal distress, hurt, and insult.

D. The Plaintiff requested a retraction and apology

26. Mr. Schnoor sent an email to Ambassador Cook on 22 February 2007 requesting clarification and asking that the Ambassador cease making misrepresentations that cast aspersions on Mr. Schnoor's work. This email is attached as "Schedule B".
27. Ambassador Cook responded to Mr. Schnoor's 22 February correspondence with an email sent from a private email address on 24 February 2007 offering to meet with Mr. Schnoor. This email is attached as "Schedule C".
28. On 27 February 2007, having heard of further instances of defamation by Ambassador Cook, Mr. Schnoor replied to the Ambassador's 24 February email. Mr. Schnoor expressed dismay that the Ambassador's allegations regarding his work were not an isolated incident but rather a pattern

of repeated behaviour. Mr. Schnoor expressed his continued interest in an explanation of why the Ambassador disseminated misinformation that harmed the credibility of both Mr. Schnoor and his work, and stated that he would be seeking official clarification from the Department of Foreign Affairs and International Trade. This email is attached as "Schedule D".

29. On 28 February 2007, Mr. Schnoor and others wrote an open public letter to Peter MacKay, Minister of Foreign Affairs; James Lambert, Director General, Latin American and Caribbean Bureau, Department of Foreign Affairs and International Trade; and Ambassador Cook calling on the Government of Canada for a retraction, explanation, apology and inquiry regarding Ambassador Cook's defamatory comments, and expressing concern about what the authors called "Canadian government policy that privileges Canadian extractive industries operating abroad over the human rights and development needs of local communities." This letter is attached as "Schedule E".
30. Despite the fact that Mr. Schnoor had provided the Defendants with the opportunity to respond to and rectify the matter, neither Ambassador Cook nor the Department of Foreign Affairs and International Trade provided clarification, a retraction or an apology for Ambassador Cook's defamatory comments. Ambassador Cook provided no further response after his email of 24 February 2007 and the Department of Foreign Affairs limited their response to a form letter sent on 22 June 2007, four months after Mr. Schnoor and others first raised concerns with the Canadian government. This letter completely failed to address Mr. Schnoor's concerns. This letter is attached as "Schedule F".
31. Mr. Schnoor was troubled and disturbed by the Government of Canada and Ambassador Cook's failure to provide any meaningful response whatsoever to his request for a retraction and an apology.

E. Aggravating factors

32. The damages caused to Mr. Schnoor are aggravated by the fact that Ambassador Cook:

- a. was, at all material times, Canada's official and most senior representative in Guatemala and spoke with the authority of the Canadian government. Owing to the nature of his position, it would be widely assumed that he is unimpeachable.
- b. spoke the words at the Canadian Embassy in Guatemala during an official embassy meeting while acting in his official capacity as Ambassador, thereby adding weight and credibility to his words.
- c. communicated the words complained of maliciously and in bad faith, with knowledge that they were false, or with reckless disregard for their truth or falsity.
- d. failed to investigate the veracity of his allegations prior to making them even though minimal investigation would have demonstrated their falsity. In particular, Ambassador Cook took no steps to clarify the truth of the allegations with Mr. Schnoor despite having met privately with him on 20 February 2007 just prior to making the defamatory comments and despite having both Mr. Schnoor's telephone number and email address.
- ~~e. repeated the words complained of to various individuals, both known and unknown to the plaintiff.~~
- f. made the defamatory comments in off-the-record meetings, implying that those he told should not inform Mr. Schnoor of his comments. This made it unlikely that Mr. Schnoor would become aware of the damage to his reputation.
- g. did not take any meaningful steps to clarify or correct his statements even after Mr. Schnoor and others had raised concerns about his statements directly with both him and with the Government of Canada.
- ~~h. contacted, of his own accord, at least one individual in order to spread the defamatory comments.~~

33. The damages caused to Mr. Schnoor ~~Cook~~ were further aggravated by the fact that:

- a. The defamatory comments made by the Ambassador put Mr. Schnoor's physical security at risk. Death threats and assaults against those perceived to be anti-mining activists are not uncommon in

Guatemala. By portraying Mr. Schnoor as a deceptive anti-mining radical, Ambassador Cook's comments placed Mr. Schnoor's person in danger, and potentially even his life.

- b. In disputes between transnational mining corporations and indigenous communities located in the developing world, truth remains a community's best and sometimes only weapon. Mr. Schnoor's film gave voice to the voiceless by both allowing Mayan Q'eqchi' individuals to speak out and by documenting the harms experienced by Mayan Q'eqchi' communities. Ambassador Cook's behind-the-scenes comments quietly worked to destroy the truth contained in the film, not only harming Mr. Schnoor's reputation, but also surreptitiously discrediting the legitimate and truth-bearing testimony of an already vulnerable, marginalized and exploited people.

34. The Plaintiff Steven Michael Schnoor therefore claims damages as stated.

20 February 2009
Amended 7 May 2010

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