

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Silvercore Advanced Training Systems Inc.*  
*v. Beer,*  
2025 BCSC 538

Date: 20250324  
Docket: S192551  
Registry: Vancouver

Between:

**Silvercore Advanced Training Systems Inc.**

Plaintiff

And

**Eric Beer, British Columbia Firearms Academy Inc.,  
Carolyn Hoffbauer, Jane Doe and John Doe**

Defendants

Before: The Honourable Justice Whately

## Reasons for Judgment

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Place and Date of Trial:

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[1] The plaintiff, Silvercore Advanced Training Systems (“Silvercore”), is a business that provides firearms training and related services to police agencies, armoured car and security services, and members of the public. Silvercore is owned and operated by Travis and Tiffany Bader.

[2] The defendant, Eric Beer, was employed at Silvercore from 2007 until September 2017. He is now the owner and operator of defendant British Columbia Firearms Academy, Inc (“BCFA”). Carolyn Hoffbauer, also a named defendant, is Eric’s spouse.

[3] Silvercore alleges that when he resigned his position in 2017, Eric wrongfully transferred control and access of social media accounts belonging to Silvercore to himself, took or destroyed confidential and proprietary Silvercore materials and property, and breached a fiduciary duty to Silvercore when he converted or appropriated certain business opportunities.

[4] Silvercore also alleges that the defendants made defamatory statements against Silvercore, Travis, and Tiffany Bader, and did so as a result of a malicious desire to hurt Silvercore.

[5] Silvercore seeks injunctive relief preventing the defendants from confidential information and making disparaging or defamatory statements, and financial damages in the range of \$300,000-\$475,000.

[6] Eric states that the narrative put forth by the Baders is not only untrue, but that they are the true aggressors, who sought to harm him when he was an employee, and then when he became a business competitor. He also says that any damage to Silvercore’s reputation is a result of the Bader’s conduct towards him, and towards others in the industry. The defendants counterclaim against the plaintiff for defamation, and seek damages in the range of \$70,000-\$110,000.

[7] Carolyn Hoffbauer did not participate in the trial. While she is a named defendant, she did not testify, and the plaintiff made limited reference to her liability in final submissions. She is alleged to have sent one defamatory email.

[8] Throughout the trial, all parties were referred to by their first names. For ease of reference I will do the same, with no disrespect intended.

**Background**

**The Trial**

[9] It is clear that there is no love lost between the parties. The tone of this trial reflected the hurt the two former friends and colleagues have caused each other over the past several years. I was left with the distinct impression that this litigation could have been avoided with a modicum of empathetic and honest communication between Travis and Eric when he still worked at Silvercore. Ultimately both felt so misunderstood and disrespected by the other that all acts were seen as attacks, and all communication was reduced to posturing. Of course, this underlying scenario is not unusual for civil litigation, but it was a marked, and frustrating characteristic of this dispute that was evident throughout the trial.

[10] The trial proceeded over 26 days in May and June of 2024. Travis and Tiffany were the only witnesses for the plaintiff, Silvercore. Eric testified on his own and BCFA’s behalf, and called several witnesses, including one expert.

[11] The primary players in this matter, Travis and Tiffany Bader, and Eric Beer, were on the stand for 21 of the 26 trial days. I do not go into detail with respect to the other witnesses’ testimony unless it is relevant to an issue I need to decide, or contributes to my credibility assessment of the main parties.

[12] The written submissions provided by the parties totaled well over 300 pages. The submissions, and in some respects, the evidence at trial reflected a “kitchen sink” approach, which in my view, could have benefitted from a more focused emphasis on the best evidence, and the strongest claims or defences.

[13] In this decision, I have tried to hone in on the key events in the narrative, and attempt to highlight facts or inconsistencies that I found to be significant, or that directly pertained to issues I must decide. I cannot refer to every fact or incident that was relayed at trial, or reference every document. The parties may be rest assured

that I listened to, read, and considered all the testimony, evidence and submissions before me.

**Overview of Evidence**

**Travis, Tiffany and Eric at Silvercore – 2007-2016**

[14] Silvercore provides firearms training and related services to police agencies, armoured car and security services and members of the public. It has been in operation since 2003.

[15] Silvercore’s main source of revenue derives from provision of firearms courses. These include the Canadian Firearms Safety Course (“CFSA”), which is a prerequisite to obtaining the non-restricted and restricted Possession and Acquisition Licence (“PAL”). A PAL is required to purchase or own a firearm in Canada. Silvercore also provides the Conservation and Outdoor Recreation Education (“CORE”) course, which is required to obtain a British Columbia Fish and Wildlife ID, and a hunting licence in British Columbia.

[16] Travis Bader is the owner and principal operator of Silvercore. Tiffany Bader is Travis Beer’s spouse. Travis Bader and Tiffany Bader are qualified as CFSA Instructors and CORE Instructors. Travis is a Master CFSA Instructor, which qualifies him to train CFSA Instructors. He is the public face of Silvercore. Tiffany manages the books, and oversees the financial management of the business. While Travis and Tiffany’s working hours and direct involvement in Silvercore management have expanded and contracted over time, this division of labour has been consistent.

[17] Travis initially intended to be a VPD police officer like his father and grandfather. Firearms were a part of his life from childhood. He learned to shoot at 4 years old and received his first rifle at 5 years old. He shot competitively as a preteen and joined a cadet program. He began training at the justice institute as a teenager, while also working as an armed guard for Loomis. Despite performing well on his entrance exams, Travis was turned away when he first applied to the VPD because he was too young and needed more life experience.

[18] Due to his lifelong experience with firearms and a burgeoning entrepreneurial spirit, Travis thought he would work on a business that was adjacent to police work – that being firearm training and gunsmithing, until it was time to apply again at the VPD. As it turned out, he had a talent for business and he refocused his career aspirations towards building Silvercore. While not a police officer himself, Travis’s connection to, and perhaps affinity for law enforcement is apparent. He is a large, imposing man, with the bearing of someone who both commands, but also expects immediate respect from those around him. Travis could be described as “taciturn” and generally speaking, did not convey much emotion during his testimony.

[19] Travis described Tiffany as the practical side of their partnership, supporting his entrepreneurial spirit with a focus on revenue, profits, expenses and costs. Tiffany managed Silvercore’s bookkeeping, as well as the financial statements and reporting, and was the liaison between Silvercore, accountants and lawyers. Tiffany was also the primary caregiver for her and Travis’s young children, who are now teenagers.

[20] Eric Beer began working at Silvercore in or around 2007. He received instructor training from Travis Bader, then was hired as an instructor himself.

### **The RCMP Raid and Aftermath**

[21] In 2008, the RCMP raided Silvercore, the Baders’ home, and Travis’s parents’ home. Travis was arrested and accused of serious firearms offences, which were later stayed by the Crown. Silvercore, Travis and members of his family subsequently sued the RCMP and certain individual officers for the harm caused to the Baders’ reputation and business interests.

[22] One of the central themes of evidence in this trial was that the firearms community in British Columbia is small, and its members, whether individuals or businesses, are often under scrutiny by media, the public and government. The sale, use, and management of firearms is highly regulated, and overseen by both government and law enforcement. Reputation is everything. The slightest whiff of impropriety, or certainly, allegations of criminal activity including the illegal

possession, sale or use of firearms, can lead to irreparable harm to a firearms business, organization or contractor.

[23] The RCMP raid was a highly embarrassing and potentially cataclysmic event for Silvercore and the Baders personally, and the fallout would consume them for another eight years. The lawsuit against the RCMP culminated in 2016 with a financial settlement, and importantly, a public apology from the RCMP to Travis Bader and Silvercore.

[24] Between the raid in 2008 and the settlement of the civil suit, both Travis and Tiffany's focus was directed towards the fight with the RCMP, and away from the day-to-day operation of Silvercore. There is no dispute that during this difficult time for the Baders, Eric was trusted with significant responsibility with respect to the Silvercore's business operations.

[25] During the early days after the RCMP raid, Travis and Silvercore were not permitted to hold firearms, and so the firearms needed for the operation of the company were held under Eric's name. Eric gradually took over Silvercore's course scheduling, marketing and business development, managed some human resources tasks like hiring and recruitment, and essentially took over the day-to-day management of staff and operations. He also continued to teach his own firearms courses as a Silvercore instructor.

[26] Eric and Travis were friends inside and outside of work. Eric felt honoured to be trusted with increased responsibilities, and he developed a deeply personal investment in the success of Silvercore as a business. He looked up to Travis in many respects, both as an employer and as a mentor. Travis enjoyed Eric's company, and also likely enjoyed the big brother-like "mentor/mentee" relationship, in which he was admired and looked to for advice and guidance during a difficult time in his life. During the time that Travis was less engaged with the business, he and Eric would still go on outdoor trips together, fishing or hunting.

[27] Eric is a smaller and younger man than Travis, with an unassuming and non-imposing manner. Described by Travis as “affable and likeable”, Eric had an ability to put people at ease in his presence and was an outgoing, welcoming face of Silvercore. Travis recalled that he played “bad cop” to Eric’s “good cop” which allowed Eric the flexibility to relate to, and manage Silvercore’s instructors and staff with friendly authority.

[28] Travis remained Eric’s direct supervisor as the owner of Silvercore, but by his own admission, his attendance at the office was limited to 2-3 times a week, and his oversight of Eric’s day-to day-work was minimal. Tiffany continued to manage Silvercore’s books, usually from home. Like Travis, she was not actively involved with the day-to-day management of the Silvercore office or business operations. Travis was in charge of acquiring assets, and Eric had a Silvercore credit card that he could use to purchase firearms or uniforms, and he submitted expense reports to Tiffany.

[29] Eric communicated with Tiffany by email, with respect to payroll, travel expenses, bookkeeping and other financial matters. He would see her in the office maybe every 3-4 months. He did not report to, or correspond with Tiffany on Silvercore matters that did not involve finances.

[30] Eric recalled that there were times when he communicated with Travis only by email or text for weeks at a time, but agreed that Travis’s attendance at the office, and attention to Silvercore generally varied depending on what was happening with the RCMP.

[31] The shift in Eric Beer’s role from instructor, to operations manager or to some other managerial title at Silvercore was not formally articulated or recorded in writing, or otherwise. Eric recalled that he became a salaried employee shortly after the raid, and received a vehicle allowance. While Eric did not recall receiving raises, and at one point denied receiving any, it was put to him under cross that his salary did go up over time. Eric did not recall discussing his changing role with Travis or Tiffany. Nor did he discuss the hours he worked, or how he divided his workdays between

teaching courses, or managing marketing, staff issues, or office administration. Eric characterized his role as evolving “in a vacuum.”

### **Marketing/Social Media**

[32] One of the primary issues at this trial was the online presence of Silvercore, as developed, maintained and controlled by Eric while he was employed, and what he did with this online presence both before and after his resignation.

[33] Eric and Tiffany both noted that firearms companies could not do typical paid advertising to the general public, like a TV ad. Tiffany explained that they are limited in how they can advertise: they have to be more targeted, and must rely on word of mouth and reputation along with some direct exposure to communities like law enforcement or wildlife/hunting enthusiasts.

[34] In the course of his usual tasks, Eric managed the Silvercore “mass mailers”, which would go through Tiffany and Travis for review. All parties commented that Eric struggled with writing and spelling, and that formal written communications he produced for Silvercore invariably required editing. However, according to Eric, during the time that he was managing Silvercore operations largely on his own, one of his pet projects was seeking out additional online opportunities for engagement in the firearms community, and advertising for Silvercore.

[35] Eric recounted that in 2008, when social media was nascent, he started creating accounts for “buy and sells”, and put up listings for Silvercore courses. Eric had his own Facebook account, and started Facebook groups and Facebook pages where he could post about Silvercore and Silvercore events. He created a Silvercore Yelp page, LinkedIn pages, and started blog pages. He also used his personal accounts to post about Silvercore. Eric described this as a “hobby” that he would often do at night, at home.

[36] Eric said that during the day he was busy with courses and interacting with students and instructors. He created his own, and Silvercore’s online presence in the evening, on his own initiative and mostly on his own time, without comment or

oversight by Travis, and certainly not at Travis's specific request or direction. When asked why he would do this on his own time, he said that he had discussions with Travis after the raid that convinced him that "what was good for Silvercore was good for him". He felt that if he put his "heart and soul" into Silvercore, it would benefit him and Travis. I also note that Eric's online identity at this time, and possibly his general identity, was intertwined with Silvercore. The evidence clearly showed that Silvercore was not just a "job" to Eric.

[37] Eric's depiction of how his social media efforts on behalf of, or incidental to Silvercore came to be is in dispute. In contrast, Travis recalled that he asked Eric to set up the first Silvercore Facebook page. He said that Eric told him he had a talent for social media, and that it would benefit the business to have an online presence.

[38] Travis acknowledged that at the time, Eric had a personal Facebook page that was separate from the Silvercore Facebook page or group he set up. Eric said that he set up his first Facebook page to participate in group work when at college and to keep track of friends. Travis said he directed Eric to create the Silvercore business page on Facebook and link it with Eric's personal account, as was initially required by Facebook, and trusted him to do so. Travis had disabled his own personal account as a result of the raid.

[39] Silvercore set up its first website in or around 2005. Originally it was just an information page, but later developed into a fully functional website that is both public facing, and that also has a "back end" that they use to populate courses, check student records, and monitor sales. Travis said that at some point, Silvercore would have obtained other online accounts. He acknowledged that he had no role in Silvercore's social media development. He said "that was Eric's job." He said he would review posts, correct them for spelling, and comment from time to time, but it was Eric's domain to develop an online presence, and post for Silvercore.

[40] Eric said that Travis had no idea what he was doing online and provided no direction in that regard. If a big company liked or acknowledged something Eric posted, Eric might mention it to Travis, but otherwise he just did his regular job, and

kept posting on his own time. There was some evidence at trial indicating that Travis provided some input on websites associated with domains he had purchased, but had not done anything with until Eric suggested they develop them

[41] While Travis conceded that he did not choose the social media accounts, he stated that he reviewed content and discussed what events should be promoted on various platforms. It is not clear what if any involvement Tiffany had with Silvercore's online activities at the time in question. Not only was this outside her usual sphere of influence but until 2016, she had minimal contact with Eric primarily about financial matters and no contact with him regarding other aspects of Silvercore. She was not in a supervisory role with respect to Eric at this time. However, interestingly, she testified at length about Silvercore's social media accounts during this period, and confirmed the position that while Eric had wide discretion to manage Silvercore's social media, it was part of his employment duties to do so.

[42] The examples of Silvercore's online presence, created and/or maintained by Eric between 2008 and 2017 that are at issue/in dispute are the following:

- a) Wordpress Account – online host for Silvercore websites and blogs.
- b) Blogs/Websites - Canadian Firearms Safety Course and Canadian Firearm Safety Course set up by Eric using domains that Travis had purchased but had not used.
- c) Apple ID – eric@silvercore.ca.
- d) silvercore2@gmail.com – one of two gmail accounts associated with Silvercore, along with silvercore1@gmail.com. Eric used silvercore2@gmail.com as the user ID/managing email for various online accounts.
- e) Facebook – multiple pages. Silvercore maintains that it had various pages or groups on Facebook, including a Silvercore Training page, a business page, a group page, and some staff accounts, including “Reception SC”.

- f) Youtube – two accounts, including an account called “Silvercore Eric” with the Silvercore.ca website listed on the page, at least as of 2013.
- g) Tumblr – a “silvercoreinc.tumblr.com” account that was subsequently changed to “ericbeer.tumblr.com in September of 2017, after Eric left Silvercore.
- h) Yelp – a Silvercore Firearms and CORE education page that was subsequently changed to Eric’s Firearms and CORE Hunter Education page.
- i) Instagram – initially eb\_silvercore with the Silvercore logo, subsequently changed to beer\_ddwr.
- j) Big Red’s Firearms – an email account and password for an online shop/forum/platform for firearm enthusiasts.
- k) LinkedIn – Silvercore LinkedIn.
- l) Twitter –@Silvercore account initially associated with a silvercore email address which was subsequently changed to beer\_ddr@hotmail.

[43] Eric enjoyed being active on social media. He stated that his personal and business interests were essentially one and the same. While this is disputed, Eric maintained that several of the above accounts began as his personal accounts, or accounts that he started out of curiosity about a new platform he had come across. For example, Eric stated that he started the twitter account to communicate with fellow BC Lions fans. He started an Instagram page because a friend told him it was fun. His initial yelp account was just to find restaurants and look at reviews. Eric’s first Youtube account was to allow him to search for car audio videos and music videos. Like with all of these platforms, regardless of the initial purpose or intent, Eric would also post Silvercore videos on his Youtube account.

[44] Eric said that he would often post the same things on business and personal sites. He said that posting content on multiple places took no time at all, so once he

had created content that pertained to the firearm industry, he would just post it everywhere. For example, he said that he would see an article about a newly released firearm that interested him, and he would post it on his personal Facebook page, the Silvercore FB page, Instagram, and on any other Silvercore accounts or blogs he had started. Guns were his hobby as well as his job, and he was proud of Silvercore and his work there.

[45] Travis, Tiffany and Eric’s evidence regarding Eric’s social media efforts on behalf of, or tangential to his role at Silvercore, made apparent that the parties had “dug in” with respect to their individual perspectives. According to Travis, all of Eric’s efforts were at his direction, whether explicit or general, and all posts were clearly part of his role as an employee of Silvercore, even personal accounts or pages he had no role in reviewing, or even knowledge of. Eric felt he was experimenting and innovating, “going the extra mile” on his own time while promoting and supporting Silvercore. He resisted any suggestion that he was being directed by Travis, or that posts or accounts that were clearly linked to Silvercore could or should be Silvercore’s property, or part of his evolving role at Silvercore.

[46] Like other aspects of this relationship, much of Eric’s work in this regard was largely unsupervised and undefined. In addition, it changed and expanded over time as social media grew in commercial importance generally. I have no difficulty finding that Eric mixed the personal and professional in terms of his online activities. I also do not hesitate to find that Silvercore accounts and content, whether they began as personal accounts or posts, are of intrinsic value to Silvercore, and likely were, or became Silvercore property once a critical mass of posts of contents linked them to Silvercore.

[47] However, any purported losses suffered by Silvercore as a result of the alleged delay in gaining access to, reclaiming, or recovering certain of these accounts were not addressed or proven by the evidence of trial and were largely referred to in only the most general of terms. This significantly impacts my consideration of, and my ability, to assess Silvercore’s social media related claims.

### **Deterioration of Employment Relationship**

[48] Despite, and perhaps because of, the “undefined” nature of his job description, between 2007 and early 2016, Eric felt positively about his employment at Silvercore. He often worked evenings and weekends but felt that he was working towards something that would last. He felt physically and mentally healthy, and was motivated and happy in personal and professional life.

[49] In 2016, the litigation associated with the RCMP raid came to an end.

[50] By the Spring of 2016, both Travis and Tiffany had begun to re-integrate back into the day-to-day operations at Silvercore. Tiffany recounted that she turned her attention to the profitability of Silvercore. She had noticed that while Silvercore revenues were strong, they were not turning the type of profits they wanted to see. She said that the margins were too tight – they could pay staff and usually themselves, but there was not a lot left over. Tiffany said they had been “away” for so long, she really dug in to try to see how things were being run. She wanted to get a handle on marketing and social media, as well as course scheduling, which she believed was inefficient. Tiffany conceded that her increased role at Silvercore was not formally announced or explained – it was just “known”.

[51] Tiffany would go to Eric with questions, but she found him to be evasive, and hard to pin down. Tiffany said that she respected Eric and viewed him as their most valued and trusted employee, and that she tried to involve him in her thought processes and, she thought, mostly approached him with questions, rather than directives. She felt she received resentment in return, and felt dismissed. She said that Eric would often direct his answers to Travis, even when she had asked the question.

[52] An example of such an issue pertained to course scheduling, an area that had been solely in Eric’s control since 2008. Tiffany wanted to focus on the most popular and profitable courses, and ensure that each class was filled, in order to balance the operational overhead of staffing and location costs. In her view, Eric was inefficiently running as many courses as possible in as many locations as possible.

Eric felt they were providing a service to all communities, and filling a need which reflected on, and enhanced Silvercore's status in the firearms community. This became a particular bone of contention with respect to Eric's duties and job description.

[53] Travis explained that after the lawsuit settled and he received the apology from the RCMP, it was like a cloud had lifted. He looked forward to reengaging with his business and being more than just the "bad cop". He had ideas for growth, and agreed with Tiffany that while the business was doing well in terms of its public standing, and was offering excellent services, it was not doing that well financially. Travis characterized his goal as wanting Silvercore to move from treading water, to full-on swimming. He acknowledged that the one-on-one outdoors trips with Eric became fewer, but he saw him more often at the office, and they still attended events and went golfing, albeit often more in a "quasi-business" capacity.

[54] Travis did not note a change in Eric's demeanor or conduct at work until later in the year. He described Eric coming back from a trip to Germany that had been paid for by Silvercore, and becoming visibly upset at the office about things that had been done in his absence. Travis said the incident was "odd". He did not understand Eric's reaction and assumed that Eric was jetlagged.

[55] After this, Travis began to notice a marked change in Eric. He felt the quality of Eric's written output had declined, and he was having difficulty communicating his goals for Silvercore with him. Travis felt he was a straightforward person, and was confused as to what the issue was. He mentioned that he wanted Eric to move away from the mentor-mentee relationship, and that he wanted him to not ask for as much direction. He also said that he told Eric he wanted him to assume more managerial responsibility.

[56] Travis's testimony in this regard struck me as odd given that Eric had largely managed Silvercore with minimal supervision for many years prior. Travis seemed to have no inkling that something had fundamentally shifted for Eric when Travis and Tiffany resumed more hands-on roles at Silvercore. Travis recalled that at one point

Eric told him that he was afraid he was going to be fired, which he did not understand at the time. In retrospect, Travis acknowledged that the relationship had shifted, but from his testimony it is apparent that recognition or understanding of this fact was not conveyed to Eric at the time.

[57] By contrast, Eric noticed an immediate change in his work-life when Travis and Tiffany turned their full attention to Silvercore. He described it as a “drastic” and “dramatic” change. He recalled being told to put himself on the calendar and in the schedule “like every other employee”. He noticed that responsibilities were being removed. He felt that key meetings about strategy and staff were being scheduled when he was out of the office. He was no longer the “go-between” between staff and Travis and Tiffany, and he was no longer involved in hiring and firing. His writing, which was a known challenge for him, was now being criticized and scrutinized in a way he felt was demeaning and humiliating. Ultimately, Eric feared that his role as manager had run its course with Travis and Tiffany.

[58] In late 2016, Eric was asked to itemize his roles and responsibilities, with the ultimate goal of having him sign an employment contract for the first time. Eric felt this process showed a lack of trust. He felt he had done so much for Silvercore over the years only to be sidelined and pigeon-holed with lesser duties and responsibilities.

[59] Conversely, Travis said that his request that Eric list his roles and responsibilities was his effort to allow Eric to create the job description he wanted. Travis stated that Eric requested an employment contract because he wanted more clarity regarding his role, and he was simply helping him to set goals and delineate his duties.

[60] The significance of these two perspectives is what they say about the validity and enforceability of the “employment contract” that evolved from the creation of Eric’s new job description. Eric says he did not ask for it, and it was imposed upon him. Travis and Tiffany say that Eric asked for the contract, and it was the culmination of a process intended to provide Eric more certainty and stability at

Silvercore. Like much of Tiffany's testimony, however, her understanding of Eric's point of view with respect to the delineation of duties and the contract comes from Travis.

[61] In January of 2017, Eric signed a new employment contract with Silvercore. While there is evidence Eric obtained legal advice about the contract, it is not clear for what purpose, or what the advice was. Eric testified that he signed the contract in the hope that things would improve between him and Travis.

[62] Aside from continued employment, it is not clear what if any consideration Eric received for entering into this employment contract eight years into his employment at Silvercore. Silvercore argues that the consideration comes from Eric's request for the job description and the contract. Eric argues that he requested neither, and further, it is inherently inconsistent that he would seek this out given the nature of his employment and management of Silvercore since the raid in 2008.

[63] In final submissions, Silvercore did not dwell on the enforceability of the 2017 employment contract, but said that it contains "standard" employment clauses that pertained to all employees. Specifically, Silvercore focused on the clauses pertaining to the use of confidential information and obligations arising from Eric's job description, including reinforcing the Silvercore brand image through social media. Silvercore states that Eric breached the employment contract when he left, or alternatively, he breached clauses that were "co-extensive" with common law duties of any employee.

[64] Interestingly, given the circumstances of Eric's departure and subsequent forming of BCFA, Silvercore does not specifically seek to enforce the non-compete clause that was included in the new contract.

### **Mental Health Concerns**

[65] Eric admitted to crying at work. He felt stymied by Travis – anytime he expressed concern, Travis would deny his experience or tell him he was misinterpreting things. He testified that he felt that Travis was being disingenuous, or

dishonest about changes that were happening and the reasons for them. He felt that he could not raise his concerns without being met with further criticism or reduction in his duties.

[66] Eric said he would send emails to himself in an effort to gather or organize his thoughts, which would become confused when he was upset. He would list or record incidents of lost authority or access, such as removal of “back room” access to gun tools, or later, the loss of remote access to a key Silvercore email account “info@silvercore.ca”, which he had since 2008, and allowed him to perform certain tasks remotely. At some point, Eric also drafted a human rights complaint, which he never filed, but was later obtained by Silvercore through a search of Eric’s data.

[67] Travis says that he witnessed or was aware of 5-6 “breakdowns” at the office over the course of a year. He said that there were a few around the time of the new employment contract, then 3 or 4 times leading up to Eric’s resignation. This, along with one particular interaction between Travis and Eric (that is also in dispute) led to Travis and Tiffany forming the view that Eric’s mental health was a potential safety and liability issue. Referring to the nature of their highly regulated industry, the access and proximity to firearms and the scrutiny Silvercore itself had been under in the past, they could not ignore the possibility that Eric’s mental health was a risk to health and safety.

[68] In August of 2017, Travis recalled that Eric claimed to hear his and Travis’s voice coming from his computer, despite assurances from Travis that he was not recording their conversations. This, along with the breakdowns and Travis’s understanding that Eric was taking medication for anxiety, led him to be “fearful”.

[69] From Eric’s perspective, he stated that he knows he heard a snippet of a conversation between him and Travis when Travis accidentally hit “play”, which led him to believe Travis was recording their conversations. He said that Travis was in the habit of recording others, and that to find out that he was recording their conversations was evidence of a clear lack of trust. He said that Travis claimed the clip was not of them speaking, but was rather a “South Park” scene.

[70] I don't need to determine what happened in the office with the recording, and consider it only in relation to Eric and Travis's relative credibility. However, I pause to note that the evidence at trial showed that Eric's contention about being recorded by Travis was not beyond the pale. Travis was in the habit of recording his interactions with people. Two such recordings were entered into evidence in this trial. I don't doubt that Travis had heightened concern for the reputation of, and risk to Silvercore, and no doubt his experience with the RCMP affected how he managed or dealt with conflict and risk. I suspect any "fear" he felt arose from Eric's reaction to being recorded. I do not believe that Travis believed Eric was actually hearing voices. Eric's admitted he struggled to stand up to Travis, or to communicating his issues in an effective way, which contributed to his emotional outbursts. I accept that Travis was confused, but in my view, he also displayed a lack of insight and empathy with respect to the emotions and anxiety Eric was displaying at work.

[71] In August of 2017, Travis and Tiffany determined that they would need to see a report from Eric's doctor with respect to the state of his mental health, and whether he was a risk to others, particularly in the context of his position at Silvercore. Travis said that they needed a "CYA" letter from Eric's doctor, to cover Silvercore in case anything ever happened. He felt that asking Eric to obtain this letter was "private" and "not embarrassing", and the least intrusive way he could protect his business.

[72] Unsurprisingly, Eric disagreed. Eric complied, but Travis continued to press him and his doctor for more specific assurances, even contacting the doctor's office himself at one point. Eric found this episode, and Travis's efforts to interact with his physician to be embarrassing, intrusive and, ultimately, a step too far in terms of the employment relationship between himself, Travis, and Tiffany.

### **Eric Beer Resigns**

[73] On September 6, 2017, Eric resigned from his position at Silvercore. He recounted that on September 1, 2017, he had a discussion with Travis where he expressed his anger about recent events, and all of the issues he had over the past year. Following that conversation, Eric said he harboured some hope that things

might improve. He subsequently heard that Travis had again contacted his doctor, and he decided it was time to leave. Eric left a letter of resignation on Travis's desk.

[74] Travis recalls being on a fishing trip when he heard that Eric had resigned. He said he felt as if he had been punched in the stomach – it came as a complete shock. He said that he had taken steps to improve communication with Eric, and in his mind, they were moving forward with Eric working at Silvercore “forever”.

[75] Shortly thereafter, Travis and Tiffany discovered that the Silvercore website was inaccessible. Tiffany recalled that the admin page had been deleted, so that there was nothing to log into. The staff could not access the “back end” until a web recovery firm found a temporary workaround. Travis said that the loss of access to the website's functionality “eviscerated” Silvercore's ability to operate. All the student information, scheduling tools and plans, and lists of gun club members were inaccessible. The web recovery firm eventually determined that the website, its content and “back end” functions were not deleted, just the admin log in page, and access was restored. Silvercore was shut down for approximately two days.

[76] To my knowledge Silvercore does not specifically allege that Eric deleted or disabled the Silvercore website when he left.

[77] In the subsequent hours and days, Travis discovered that neither he, nor any other staff had access to what he considered to be Silvercore's social media accounts. While certain staff members could still post to Facebook, the passwords and access emails had all been changed. It is not clear from the evidence, aside from references to staff posting on Facebook, whether anyone else at Silvercore ever had, or exercised access to any of the sites or accounts Eric regularly posted on. The evidence does seem to indicate that neither Travis nor Tiffany had access, or sought to use the sites or accounts themselves until Eric resigned and the website went down.

[78] During the trial, a great deal of time was spent going over evidence relating to changing of passwords, changes to email recovery addresses, sign-ins, sign-outs,

changes to account names, access emails, and profile logos of the sites and accounts referred to above in para. 42.

[79] The evidence establishes that Eric was changing recovery emails and passwords to various accounts, beginning on or around August 17, 2017 and continued to do so until just before he resigned on September 6, 2017. Silvercore says that this is evidence that Eric planned to disrupt Silvercore's business, or to take control of Silvercore's social media. Eric says that as part of the ongoing stripping of his duties, his access to a key Silvercore email address and remote access had been removed, which meant he had to change the recovery address to a number of accounts. He also maintained that many of the accounts were his, not Silvercores.

[80] The evidence also shows that after September 6, 2017, following communications with Travis Beer, and eventually, with a Delta Police officer named Deanna Church, Eric eventually reverted access and/or ownership to several sites back to Silvercore, even some of the sites he continued to maintain were his personal social media accounts.

[81] Other evidence shows that during the course of the deterioration of the employment relationship in late 2016 and 2017, Eric was thinking about (as evidenced from his own emails and draft human rights complaint) and doing some research (as evidenced from certain recovered google searches) as to the ownership of social media content as between the creator and a business owner, or if content is created off-hours.

**Demands for Return of Property and Online Access**

[82] After receiving Eric's resignation letter, Travis emailed Eric, expressing disappointment that he was leaving, and disputing Eric's view that the work environment had become toxic. He stated that he tried to meet Eric's concerns, despite Eric's inability to articulate specific issues. He said he considered and treated Eric like a friend.

[83] Travis asked for the return of Silvercore property, including a MacBook laptop and iPhone, company documents, lesson plans, forms, Silvercore uniforms, a Silvercore shotgun that he had borrowed, and “full controlling admin access to Silvercore’s Facebook, Twitter, Google+, Firearms and Firearm Safety websites, and all other websites or applications Eric had access to.

[84] When Travis did not receive a response, he reiterated his requests in a follow up email, and added that they discovered that Eric removed his personnel file, and asked for its return. At trial, a video was shown that purports to show Eric “stealing” his personnel file. There was conflicting evidence as to whether Eric had a personnel file, and if he did, what was in it. The video was not helpful in terms of resolving this issue.

[85] Eric shortly confirmed that he reverted access to the Firearms Safety website, and Travis confirmed that Eric had returned the borrowed shotgun. When Eric returned the shotgun, Travis followed Eric to his car and recorded himself confronting Eric about various issues. This recording was played at trial.

[86] Travis noted that he still had not received a password for the website, and that the other Firearm Safety website had not been returned. He repeated requests for access/control over all other social media sites.

[87] On September 12, 2017, counsel for Silvercore sent a letter to Eric, reiterating Travis’s demands for the return of Silvercore property, and control/access to Silvercore webpages and social media accounts. At some point, Travis also contacted Constable Deanna Church of the Delta Police.

[88] On September 15, 2017, Eric emailed Const. Church, detailing the steps he had taken with respect to returning property and access various websites and social media accounts, following a discussion they had, presumably about Travis’s complaints. Eric went through the list of accounts and provided explanations as to why the account was his personal account, or said that he did not have access, confirmed changes to passwords, and providing information as to who else might

have access. He ended the email with “I hope this will satisfy Travis. I am [sic] getting concerned that this will never stop. Once I give him this what will he ask for tomorrow? He is already asking for gifts back. I would ask that he leave me and my wife at peace. I’m sorry you had to become involved in this, but I believe Travis may be intentionally trying to put my ability to [find work] in jeopardy.”

[89] Eric also replied to Silvercore’s legal counsel. Among other things, Eric replied that he had returned passwords/access to Travis even though he believed he already had access to them. He said that he did not steal his personnel file, and that the MacBook and iPhone were his personal property, the former being a replacement for a personal laptop Eric had been using for work, and the latter being the gift. He confirmed returning the laptop and phone regardless of this, and stated he had deleted only his personal information.

[90] Eric admitted at trial that because he considered the laptop and iPhone his own property, he had used them for both personal and professional purposes. He was concerned about his privacy and wanted to delete his personal information before returning these items to Travis. He said he could not figure out how to quickly parse out his personal information from Silvercore material and content, and so he simply reset both to factory settings, in effect (he thought) deleting the entirety of the contents.

[91] Travis continued to correspond with Const. Church, refuting Eric’s explanations regarding access to, or ownership of various online accounts or sites.

[92] Several documents relied on at trial were in fact retrieved through Silvercore’s forensic review of the laptop, including Eric’s personal emails to himself, and to others.

[93] Travis sent Eric’s iPhone and laptop to TCS Forensics, which later also created a 2022 report containing its findings regarding Eric’s use, transfer and removal of certain Silvercore materials from the laptop, including a “class list” that appeared to be transferred via “Airdrop” to Eric’s father-in-law’s computer on

September 13, 2017, before the laptop was returned to Silvercore. Other items that appeared to have been transferred are a copy of a course created by Garda World, and given to Silvercore, a BC Qualification Course, and two instructor employment agreements.

[94] The creator of the TCS report did not testify at trial. Counsel advised that the author could not be located. The defendants produced a responding report by E-Forensics, which refuted certain of the findings or conclusions in the TCS report. The author of the report, Laurie Windover, testified at trial.

[95] Putting aside, for a moment, the lack of evidence pertaining to: a) how the documents would be of use to Eric (for example, the class list was of students who had already taken a course, and would never need to again); b) any subsequent use of the specific documents; or c) of losses suffered by Silvercore as a result of a purported transfer of those documents, in the end, even on a balance of probabilities, I cannot put much weight on the TCS Report.

[96] Several questions and inconsistencies raised about the data as presented in the TCS report both by the E-Forensics report and during testimony, simply could not be resolved. Examples of this include: a lack of clarity over whether a key transfer even completed, evidence that certain other documents indicated transferred by airdrop would have been physically impossible given the location of the devices on the date of the purported transfer, and a lack of compelling evidence about the content, and therefore the value of the purported transferred documents.

[97] As a result, I cannot come to the conclusions Silvercore asks me to make regarding the transfer of the class list, or any other documents based on the TCS report. In addition, the questions outlined above at para. 95 lead me to question the value of either report in terms of the determination of the issues before me.

**Conflict and Competition between Silvercore and Eric Beer/BCFA**

[98] In the weeks following his resignation, Eric resumed teaching firearms courses. He testified that he had sent emails to several contacts when he left

Silvercore, and that he was pleased to hear from a contact at Reliable Gun, a firearms and outdoor gear store in Vancouver, suggesting that he teach out of that location. Eric also received referrals and loaned firearms from another contact.

[99] Eric said that he was able to go back to instructing quickly with the assistance of various contacts he had made from his time at Silvercore, and materials he could recreate from RCMP sources. He said that the course materials for any given course are “95%” based on RCMP or other public or standard sources, but that individual instructors bring their own stories and teaching styles to the table, something that he felt particularly set him apart.

[100] He eventually set up his business, BCFA, after initially communicating under the name “True North Training” and in a relatively short time, was teaching at various locations, including Reliable Gun in Vancouver, and another business called PoCo Military. Eric also eventually - and significantly - began teaching courses at the Cabela’s store in Abbotsford (now called Bass Pro).

[101] Silvercore had a contract with Cabela’s to provide firearms training courses on the premises, and also provided training to Cabela’s staff. While Eric was employed at Silvercore, he had a good relationship with staff and management at Cabela’s.

[102] On October 10, 2017, Mike Fontaine, the general manager of Cabela’s, emailed Tiffany to advise her that Cabela’s no longer required Silvercore’s services. He stated that he had been shopping for a new company for a while, and that they wanted a company that better supported the Cabela’s brand. This email came as a shock to the Baders, not the least because they had courses booked into 2018, and an ongoing contract with Cabela’s. The Baders considered Silvercore’s connection to, and ongoing relationship with Cabela’s to be significant and valuable, and the loss of it was an unexpected blow.

[103] Alerted to this development, Travis Bader immediately headed to the Cabela’s Abbotsford location in an effort to speak to Mike Fontaine, who Travis had

never met before. What ensued was a confrontation between Mike Fontaine and Travis in the customer service area of Cabela's. Once again, Travis recorded the confrontation, and it was played at trial.

[104] Travis later wrote to the head office at Cabela's to complain about the decision. He referenced the contract, the fully booked courses, and listed all the successful events and collaborations between Cabelas and Silvercore, and the benefits of the ongoing relationship. He also emailed to advise that a former Silvercore employee – not Eric Beer – had set up a competing business and was advertising courses at Cabela's at the same time as Silvercore's courses. Mike Fontaine had hired this former employee to replace Silvercore.

[105] This former employee became the subject of a property theft allegation by Travis, resulting in the police attending at Cabela's. This greatly aggrieved Mike Fontaine, who felt mistreated and disrespected by the police who attended. Mike Fontaine also clearly resented that Travis had confronted him at work, and that he went over his head to the head office to complain. He referred to Travis as an "asshole". He stated that he did not hold a grudge, but neither did he want to work with Travis, nor did he want Silvercore teaching PAL courses at Cabela's when he worked there.

[106] Ultimately, Silvercore was permitted to continue holding its already booked courses at Cabela's until January of 2018. Cabelas determined that the former Silvercore employee was not an appropriate person to engage going forward and so, in the interim, Mike Fontaine and a head office representative held new interviews for interested instructors. They met with Travis Bader for Silvercore, Eric Beer, and some other instructors.

[107] In the end, Cabela's decided to engage Eric and his new company, BCFA to provide courses in the Abbotsford location. This would lead to further tensions between Silvercore and Cabela's, and Silvercore and Eric. These tensions resulted in the following events:

- Tiffany testified that she made two telephone calls to Cabela's in early 2018 inquiring about who was teaching the firearms courses. Cabela's provided information regarding the price of BCFA's courses and Tiffany advised that PST should not be charged on the courses. Tiffany did not identify herself in the phone calls. Megan Robertson, Cabela's customer service lead, confirmed that this led to the removal of BCFA brochures until the issue was rectified. She stated that they traced the concerned customer call back to Tiffany at Silvercore. Tiffany denies making "fake calls" or giving a false name in her inquiries to Cabela's. She stated that she was inquiring in a "secret shopper" capacity, which she claimed to have done also when Silvercore was providing courses.
- Leading up to a "Cops for Cancer" event at Cabela's, Cabela's head office received email complaints regarding BCFA's photo shopping their logo over other event sponsors. The complaints came from "Brent Meyer". Another complaint came in through the switchboard from a "Jen". When Megan Robertson tried to return the call, she said she was connected to Tiffany's voicemail. Megan Robertson testified that this was a major event for her at Cabela's, and she had to provide reassurances to head office that the complaints would not jeopardize it going forward as planned.
- In June of 2018, Travis and Tiffany attended the Cops for Cancer event at Cabela's. Travis saw Eric teaching a course in a store classroom and believed that he could see that Eric was using Silvercore course materials. Travis stated he stood at the window in order to try to get picture of a slide. Others, including Megan Robertson and Eric, described Travis "knocking" or "banging" or "tapping" on the window. Travis testified at trial that the PowerPoint slides he saw Eric using at Cabela's were exact replicas of Silvercore materials. Eric testified that the images put to him of his bullet charts were not only different than the Silvercore example, but that both were publicly available images from online sources or from the RCMP bullet chart.

[108] There were other occasions where Tiffany or Travis Bader, or both, rubbed Megan Robertson the wrong way in their attempts to re-establish Silvercore's working relationship with Cabela's.

[109] On one occasion, Tiffany approached Megan in an off-limits area when Megan was constructing a Christmas display. On another, Travis approached her at a charity dinner, in a manner that Megan considered to be arrogant and rude. Megan was frustrated by Tiffany's "fake calls" which she considered dishonest, and her relentless efforts to get Silvercore back into Cabela's.

[110] One such effort resulted in Cabelas's being permitted to provide a course at Cabela's as part of a BCWF fundraiser in the early Spring of 2019. Megan subsequently believed that Tiffany had misled her about a key fact, which led her to recommend Silvercore when she wouldn't have otherwise.

[111] Both Mike Fontaine and Megan Robertson, testified at trial. There were issues with both of these witnesses arising from the clear animus both displayed towards Tiffany and Travis Bader. In particular, I found Mike Fontaine's testimony to be unreliable in this regard.

[112] However, the fact that this animus existed (and even persists, many years later) is relevant. The evidence at trial showed that this animus seemed to be either unrelated, or only indirectly connected to Eric and his dispute with Silvercore.

[113] Mike Fontaine and Eric clearly got along, and Megan's affinity for Eric was also apparent. I accept that Megan's negative interactions with the Baders was likely "flavoured" by her awareness of Eric's dispute with them. However, regardless of, and separate from their dispute with Eric, the evidence easily demonstrated that Travis and Tiffany's manner of interacting with people did not earn them many fans at Cabela's. This is relevant to my understanding of the Bader's reputation, which Silvercore alleges was harmed by Eric.

[114] In February of 2018, Eric came to believe that Travis had caused both Reliable Gun and PoCo Military to terminate BCFA's services with respect to

teaching courses at their locations. Eric testified that he believed that Travis had threatened the removal of a commissioned firearm sale to the owner of PoCo Military, if he continued working with Eric and BCFA. Travis testified that he told the owner of Reliable Gun that he was reluctant to do business with them if they continued to work with Eric, as Eric had actively tried to hurt Silvercore. Travis made similar comments to the owner of PoCo Military. BCFA lost both contracts shortly after this.

**BCFA v. Silvercore**

[115] In 2018 and 2019 Eric began reaching out to certain parties to express concerns about what he felt were targeted attacks by Travis to hurt his business. I describe some (but not all) of these communications below.

[116] In early June of 2018, Eric reached out to Const. Church to advise her that Tiffany had been making “fake phone calls” to Cabelas. He also mentioned that Travis had cost him a contract with PoCo Military. Const. Church advised Eric to contact legal counsel.

[117] The day after the Cops for Cancer event, Eric emailed Bali Mann, a firearms officer at the Canadian Firearms Program, a division of the RMCP responsible for the regulation of firearms instructors. Mr. Mann had emailed Eric previously about some “anonymous complaints” he had received about Eric and BCDA, and Eric wanted to follow up and seek assistance about what he considered to be ongoing harassment by Travis.

[118] In August of 2018, Jack O’Halloran, the lead administrator of the CORE program for the BC Wildlife Federation (BCWF) emailed Eric with a concern about the length of CORE courses he was offering. Eric, believing Mr. O’Halloran had been contacted by Travis, responded by copy and pasting his email to Bali Mann in his email to Mr. O’Halloran, with the introduction “... [g]iven the escalation of the attacks from Travis and Tiffany Bader I think it is important to provide you with one of the same reports I provided to the Delta Police Department and Bali Mann the Instructor Co-ordinator for BC/Yukon.”

[119] On September 30, 2018, Eric again writes Bali Mann, describing ongoing harassment from Travis, and mentioning a conflict of interest between Travis Bader, Silvercore and the BCWF.

[120] In November of 2018, in response to a complaint from Mr. O'Halloran about Eric's students coming in with photocopied CORE registration forms, instead of the required forms indicating completion/pass of a CORE course. Eric responded by email objecting to the complaint, and then referred to concerns regarding his personal relationship with Travis, and the BCWF's connection to Silvercore.

[121] In February of 2019, Carolyn Hoffbauer emailed Jack O'Halloran, complaining that Silvercore was being offered opportunities by BCWF not afforded to other instructors. This was in reference to the course Silvercore was permitted to offer at Cabelas in support of BCWF as a result of Tiffany's conversations with Megan Robertson. In the email, Ms. Hoffbauer refers to Silvercore "circumvent[ing] it's [sic] ban from that location." Silvercore alleges that this was one of a series of "attacks" instigated by Eric around this time, after he found out that Silvercore had been allowed back into Cabelas.

[122] Also in February of 2019, Eric wrote the head office of Cabelas, outlining the Baders and Silvercore's "criminal" harassment of him and followed up with Const. Church, and advised Const Church that he believed Travis was trolling his website and adding products and courses to carts, as well as sending messages through third party websites.

[123] Eric followed up on his wife's email to Mr. O'Halloran on March 6, 2019, describing how Travis had "accosted" Mike Fontaine at Cabelas, stating that he had been subject to a steady stream of harassment by Travis and Tiffany, and referring Mr. Halloran to Const. Church. Mr. O'Halloran forwarded this email to Travis Bader who responded by stating: "[Eric] locked us out of our websites and social media accounts and it was only through the efforts of the DPD constable Dianna Church that we were able to retrieve our computers, firearms, property and most of our websites back".

[124] In May of 2020, a group of CORE examiners, represented by a CORE instructor named Guy Wilton, sent an email to “undisclosed recipients” asserting that a “private company” (known to be Silvercore ) was being given the exclusive opportunity to provide online training on behalf of the BCWF to the exclusion of other CORE examiners throughout BC. The email goes on to allege that the private company is in a conflict of interest with BCWF, and “appears to be buying BCWF ...” through donations and sponsorships, later referred to as “kickbacks to BCWF”.

[125] Eric denies authoring or authorizing this mass email. Silvercore submits that there is significant evidence that Eric at least co-authored the email. This evidence takes the form of a series of emails where various parties discuss, or provide suggestions with respect to the mass email. Mr. Wilton, and another of the CORE instructor participants, Kevin Hill, both worked for BCFA at one time. In one email, Mr. Wilton asks for Eric’s feedback. Eric replies “thanks Guy.” Eric admitted to being copied on follow up discussions with a representative of the BCWF, and attending a meeting with other CORE examiners. Silvercore submits that Eric supplied Mr. Wilton with defamatory information knowing that he would disseminate it.

[126] Other emails and communications that are similar to the above, or directly related to the above are included in the defamation particulars discussed below.

### **Tactical Training Centre**

[127] In August of 2017, just prior to Eric’s resignation from Silvercore, Bob Steele, the superintendent of the Vancouver Police Department’s tactical training facility passed away. The Tactical Training Centre (“TTC”) has a 15 and a 25-metre firing range. The 15 m range had a target system and the 25 meter had rails for targets to move and turn. Mr. Steele maintained the range systems, repaired firearms for the VPD, managed inventory, acted as safety officer and assisted or provided training. Mr. Steele’s passing left a service gap that Eric identified as a potential opportunity for Silvercore. Eric brought the opportunity to Travis’s attention.

[128] There are conflicts in the evidence about what Travis told Eric about his plans for Silvercore’s bid in August of 2017. Travis states that he told Eric how much Mr.

Steele had been making, information that he alone had gained from a police contact, and also that he intended that Silvercore would bid \$150,000. Eric denied that this conversation took place, and in his view, recalls that he was largely shut out from Silvercore's planning or strategy with respect to the TTC.

[129] In January of 2018, the TTC put out a Request for Quote ("RFQ"). The RFQ referenced a "subset" of the work once done by Bob Steele. Dave Whittier, the former manager of the TTC testified at trial and stated that they had refined the statement of work, removing firearm repair, maintenance scheduling and other aspects of Bob Steele's work from the scope of duties. Mr. Whittier commented that Bob Steele did so many different things, but that going forward, the priority was to find someone to do range maintenance.

[130] The TTC received two quotes in response to the RFQ. One from BCFA, and one from Silvercore. Silvercore bid \$150,000. BCFA bid \$13,662. Eric and BCFA received the contract.

[131] When asked what he thought of Silvercore's bid, Mr. Whittier said both proposals were technically compliant, so the decision rested solely on price. He said that he was confused by Silvercore's bid, that it was twice what Bob Steele had been making, and higher than Mr. Whittier's entire salary. Mr. Whittier said that he almost didn't think Travis was serious. He stated that he simply could not have proceeded with the Silvercore bid, even if they were the only company bidding.

[132] Silvercore alleges that Eric and the BCFA somehow usurped the TTC opportunity and in doing so breached a fiduciary duty. Given that:

- a) Silvercore had the same opportunities as any bidder to ask questions, meet with Mr. Whittier and refine its bid in the fall leading up to the RFQ in January of 2018;
- b) Eric had no better or different information than Silvercore, and clearly did not use what information he may have had to "marginally" underbid or scoop Silvercore; and

- c) the clear and unchallenged evidence of Mr. Whittier about the stark nature of the choice before him as a result of Silvercore's far overpriced bid,

I have no difficulty in finding that this claim has no basis in fact and is not borne out by the evidence.

**Credibility**

[133] I initially believed that this case would turn on the credibility of the witnesses. Unfortunately, due to the equivocal nature of much of the evidence, coupled with the firmly entrenched and deeply held perspectives of the primary parties, I was left with no clear path upon which to assess credibility.

[134] The fundamental approach to assessing the credibility of a witness and the reliability of their evidence is set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357:

[135] The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[136] Credibility and reliability are related but distinct. The credibility of a witness is an assessment of their honesty or truthfulness; reliability refers to their accuracy: *United States v. Bennett*, 2014 BCCA 145 at para. 23

[137] In making my findings of credibility and reliability, I am guided by the following considerations set out by this Court in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 350006 (7 March 2013)

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been

accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

### **Tiffany**

[138] Tiffany was an honest and forthright witness who displayed insight, albeit coloured by her and Travis's highly developed perspective as victims of injustices on various fronts. She came across as intelligent, calm and for the most part, measured in her testimony.

[139] Interestingly, Tiffany was the first witness in this trial, and it was through her that much of the narrative was introduced into evidence. She was often put into the position of interpreting or relaying events between Travis and Eric that she did not directly witness, and presenting them as fact. It is clear that such testimony necessarily would have been informed, and influenced by Travis's perspective. As I will discuss, I found Travis's perspective with respect to Eric to be lacking in certain respects, so on certain occasions I did not find Tiffany's testimony to be reliable when it was primarily based on Travis's reporting.

[140] Where Tiffany was testifying about events that she directly witnessed or a part of, I believed her, with one exception. While I approached Megan Robertson's testimony with caution, I did so because it was clear that she was not fond of Tiffany or Travis. According to Tiffany, her relationship with Megan was a great one. It is difficult to reconcile this with the evidence, except by accepting that Megan hid her animus well, or that Tiffany (and likely Travis) do not have a solid sense of how they come across to people. I suspect it is a bit of both.

**Travis**

[141] As mentioned above, Travis is an imposing individual both in physical stature and in manner. He is not unaware of this fact; he testified that he was well over 6ft in Grade 7, and has modified his behaviour in order to compensate for this.

[142] I felt that Travis testified honestly to the best of his ability, but that his perspective and view of how others behaved, and how he behaved or came across, was often lacking insight. His interactions with Eric in 2016 and 2017, as shown in emails and testimony, and in his own recording of their last confrontation after Eric left, showed a level of immovable belief in his own “rightness”. I found Travis to be a largely honest witness, in that he believed that his perspective on all matters was true and correct. However, I found that I could not always rely on Travis’s perspective on events, such as his understanding of state of Silvercore’s social media presence, his views regarding his interactions with Eric, and the “black and white” nature of his recall pertaining to the nature of Eric’s employment at Silvercore.

**Eric**

[143] There were a few occasions during Eric’s testimony where he was either caught in an exaggeration or partial truth, or shown to have been less than honest, either on the stand, or in communications in evidence. These occasions gave me pause, even when considering the length, disparaging tone and repetitive nature of his cross examination by Silvercore counsel.

[144] As described by others, Eric comes across as friendly, polite and agreeable. I believe that for the most part, he tried his best to tell the truth. I also believe that when under pressure or stress, or when he feels threatened, Eric’s tendency is to avoid or placate, or become visibly emotional. This likely led to difficult, and perhaps less than clear communication with Travis in the latter months of his employment, and sometimes affected his testimony at trial.

[145] I tended to believe Eric when his evidence was supported by documents, and I believed his accounts of why and how he developed his own and Silvercore’s

social media presence. However, I also believe that he left Silvercore with the intention of causing some difficulty, if not to the extent that occurred.

[146] In sum, I believed each witness insofar as I was able, given the positional attitudes and highly personal dispute that they have been entrenched in since 2017, in which each party believes that they are the victim to the other's villain.

**Breach of Contract/Conversion/Breach of Fiduciary Duty**

[147] Silvercore says that the defendants, specifically, Eric breached his contractual obligations to Silvercore, by using or appropriating confidential and proprietary information including websites, social media accounts, and course materials.

[148] Additionally, or perhaps alternatively, Silvercore claims that the defendants are liable in conversion for wrongfully taking and destroying Silvercore property. Silvercore says that the defendants:

- a) copied and/or caused to be transferred to himself Silvercore confidential information including course materials, PowerPoint presentations, client lists, business plans, and Silvercore list of suppliers and contacts;
- b) took and, in some instances, destroyed Silvercore property including the laptop, iPhone, his employment file, as well as contents found therein including course materials, client lists, and suppliers; and took control of Silvercore online accounts and social media sites (in some cases temporarily and some cases permanently).

[149] In January of 2017, Eric signed an employment contract for the first time at Silvercore. Silvercore says this contract is enforceable, and that Eric was paid for his work and in exchange he was required to perform his job duties and abide by the terms of his employment agreement.

[150] The defendants state that the 2017 employment contract is unenforceable due to lack of consideration, and that Silvercore cannot rely on the fact that Eric continued to receive his same salary as sufficient consideration.

[151] Silvercore cites various authorities for the proposition that fresh consideration is not needed, but concedes that this is not clearly supported by BC case law.

[152] I find that where the terms of an existing contract are modified to impose less advantageous conditions on the employee, they must be supported by consideration: *Singh v. Empire Life Ins. Co.*, 2002 BCCA 452 at paras. 12-13; *Quach v. Mitrox Services Ltd.*, 2020 BCCA 25 at para. 13.

[153] Given the circumstances surrounding the creation and signing of this employment contract, and the broad, undefined nature of Eric's role prior to this, it is difficult to pinpoint whether the terms of the contract were more or less advantageous. I accept that Eric did not want this new contract and that in his view, he was signing under, if not duress, then certainly difficult circumstances. I decline to consider Silvercore's claim on this basis. I do not find that the contract is enforceable.

[154] Silvercore alleges that Eric also breached common law duties of good faith, confidentiality and fidelity when he appropriated Silvercore's social media accounts, property and confidential information. Silvercore says that Eric subsequently used those accounts to advertise BCFA. For example, Eric admitted that the facebook.com/SilvercoreTraining page was used to advertise for BCFA. In another example, Eric uploaded BCFA photographs using the Silvercore Yelp page.

[155] Silvercore concedes that quantifying their losses under breach of contract principles, including common law breaches associated with employment contracts would be challenging, but encourages this court to "do its best."

[156] Silvercore submits that assessing these losses under the tort of conversion may be more intuitive. Silvercore submits that Mr. Beer appropriated and destroyed social media accounts that Silvercore paid him to create, most notably the Silvercore Facebook account and submits that I should order Mr. Beer to reimburse Silvercore for the approximate cost of recreating the deleted posts, which are represented in the evidence by 550 pages of screenshots of many of the posts Mr. Beer created on the Silvercore Training Facebook page. Silvercore also submits that Mr. Beer used the Silvercore PowerPoint to get BCFA off and running in a far faster timeframe than he otherwise would have been able to.

[157] The elements of conversion were summarized by Justice Savage (as he then was) in *Stelmaschuk v. Lui*, 2013 BCSC 765 as follows:

[30] The tort of conversion requires the wrongful taking, using or destroying of goods or the exercise of control over them in a manner which is inconsistent with the title of the owner. There must be an intentional exercise of control over the right of the true owner: see the decision of Rouleau J. in *Shibamoto & Co. v. Western Fish Producers*, 1991 CanLII 13562 (FC), [1991] 3 F.C. 214 at para. 25, followed by Sewell J. in this court in *Jarvie v. Banwait*, 2013 BCSC 337 at para. 45.

[31] Clerk & Lindsell on Torts, 20th Edition, at page 1115 lists seven principal ways in which conversion can occur: (1) when property is taken or received by someone who is not entitled to take it or receive it; (2) when property is wrongfully parted with; (3) when it is lost by a bailee in breach of the duty to the bailor; (4) when property is wrongfully sold; (5) when property is wrongfully retained; (6) when property is wrongfully misused or destroyed; and (7) when access by the owner of property is wrongfully denied. The learned authors do not suggest this is a closed list, but the circumstances here do not require any different analysis.

[158] Under the tort of conversion, the plaintiff must prove the value of the goods converted to establish the damages suffered: *Stelmaschuk* at para. 35.

[159] The evidence with respect to the appropriation or conversion of the social media accounts left much to be desired. Although it took much of the trial time, it became clear that there was often a fundamental conflation between evidence regarding changing password recovery emails, and changing the nature or owner of the account. I did not find much of this evidence to be helpful or informative.

[160] I do not doubt that when Eric resigned, it left Travis and Tiffany and the rest of the Silvercore staff in a rather large bind. I also do not doubt that Eric left knowing that by not leaving explicit instructions, passwords or account access information, or explanations as to what he was leaving and taking in terms of work product or online access, and where course materials were, his absence would cause a great deal of difficulty for Travis and Tiffany, and for Silvercore.

[161] It is interesting that while it is left for me to assume that Eric had something to do with the Silvercore website being inaccessible, this does not form any part of Silvercore's claim. And yet, in my view, the shocking temporary loss of access to the

Silvercore website changed what likely would have been a temporary annoyance capable of being resolved by communication over time (vis a vis the social media accounts), transformed into panic and the belief that a full scale sabotage was occurring.

[162] The evidence shows in September of 2017, Travis and Tiffany had very little understanding or knowledge about the nature, scope or boundaries of Silvercore’s social media presence.

[163] Eric denies that he appropriated or withheld Silvercore social media accounts maintaining that the creation of, and posting on most of the accounts was personal in nature, even if it referred to Silvercore or was also posted to a Silvercore account.

[164] Regardless, after contact with Silvercore’s legal counsel and Const. Church, over the next days and weeks Eric had turned over access to the majority of the disputed emails, sites or pages to Silvercore. Aside from the costs associated with tracing Eric’s activities, repairing their website, and recreating course materials they say they could not locate after Eric’s departure, Silvercore has not established what if anything they lost by the brief time they did not have access to the social media accounts they were aware of, let alone those I am not certain they knew they had, or those that they believed they did not have access to, and accounts that they only later determined should be categorized as Silvercore property.

[165] In sum, the evidence and testimony at trial did not assist me in finding that there was a clear ownership of the disputed social media accounts, or a clear understanding between the parties as to where Eric’s activities ended and where Silvercore’s activities began.

[166] For example, the evidence and argument at trial did not assist me in determining when a personal account might “become” the property of an employer if it is regularly used to post content related to or helpful to the employer.

[167] I find that Silvercore’s arguments pertaining to the remaining Facebook page they say Eric has not returned to be unconvincing, both with respect to their

ownership claim to it based on the posts linked or tagged to Silvercore, and with respect to the damages they say I should calculate in order to compensate Silvercore for the cost of replicating all the posts that Eric ever made over the years. This latter position I found to be, frankly, remarkable. I decline to find that the Facebook page Eric started in 2007 is Silvercore property, and I find the evidence does not support a finding that after exchanges with Const. Church and counsel for Silvercore, that Eric retained property that was clearly Silvercore's. I am not clear on what other accounts Silvercore says remain missing, or what value they ascribe to those accounts either in the short term before they were "returned", or now.

[168] On the evidence, Silvercore did not prove, on a balance of probabilities, that Eric stole his personnel file. Silvercore also did not prove, on a balance of probabilities that Eric stole and used a Silvercore powerpoint.

[169] Silvercore also alleges a breach of contract or fiduciary duty with relation to the TTC business opportunity. As indicated above, this claim is not supported by the evidence and I will not discuss it further.

[170] I also find that the evidence does not support a finding that Eric used customer, supplier or contact lists obtained as a result of any acquisition of, or appropriation of same, in breach of a fiduciary duty. This claim, insofar as it is argued in Silvercore's submissions under the heading of fiduciary duty, is not made out.

[171] However, I will find that the manner of Eric's departure resulted in the temporary conversion of certain items, such as the laptop and iphone. While Eric claims that the laptop and iphone were gifts, under all the circumstances, I find that it was reasonable for Silvercore to require their return, if only to investigate or confirm access to certain resources such as the most recent course materials Eric was using. While I am not convinced that the wholesale recreation of course materials was necessary, on a balance of probabilities I am content to find that Silvercore expended the costs it felt were necessary under the circumstances. These circumstances include the manner in which Eric resigned, which created an

atmosphere of fear and confusion that was unnecessary and costly for Silvercore in the short term.

**Damages for Conversion/Breach of Contract**

[172] I will award Silvercore damages in the amount of \$35,000 under this head.

[173] This amount is notionally connected to the evidence provided by Tiffany, including the initial cost of hiring a forensics team to recover data on the laptop and iphone, as well as the wages paid and tasks done in respect of Silvercore's efforts to recover what it believed had been lost or taken or deleted by Eric immediately following his departure.

**Defamation**

**Pleadings**

[174] Pleadings in defamation actions are exceptionally important and have been held to a higher standard regarding the material facts that must be pleaded: *Weaver v. Corcoran*, 2017 BCCA 160 at para. 64.

[175] A party pleading defamation is required to set out in the pleadings the exact words alleged to be defamatory, unless those words can only become known after examination for discovery: *Christian Advocacy Society of Greater Vancouver v. Arthur*, 2013 BCSC 1542 at para. 107; *Weaver* at para. 65.

[176] The material facts in a defamation action must include the publication made by the defendant, the words published, which plaintiff was defamed by the publication, the time and place of the publication, the manner of the publication, and the recipient(s) of the publication: *Christian Advocacy Society* at para. 108.

[177] A response to a demand for particulars is incorporated into the notice of civil claim such that its content becomes merely an extension of the pleadings: *Milne v. Capital Regional District*, 2015 BCSC 1163 at para. 12. Here, the plaintiff provided particulars setting out the words alleged to be defamatory by way of letters dated June 16, 2020, February 9, 2022, and December 21, 2023

### Elements of the Tort

[178] The onus is on the plaintiff to prove the key elements of a defamation action: *Malak v. Hanna*, 2017 BCSC 1739 at para. 9.

[179] The test for defamation has three elements (*Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28):

- a) that the impugned words were defamatory, in that they tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- b) that the words in fact referred to the plaintiff; and
- c) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

[180] If the plaintiff establishes the required elements on a balance of probabilities, the onus shifts to the defendant to advance a defence in order to escape liability: *Grant* at para. 29.

[181] Below, I consider the three elements of the test for defamation in more detail, before considering the defences relevant to this action.

### Defamatory Sense

[182] Regardless of its form, a publication will not be actionable unless it is reasonably understood in a defamatory sense by those to whom it is published. A defamatory publication is one that "tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt, or ridicule": *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3 at para. 62; *Crookes v. Newton*, 2011 SCC 47 at para. 39.

[183] The words used must be assessed, in context, from the perspective of a reasonable, right-thinking person, "that is, a person who is reasonably thoughtful and informed, rather than someone with an overly fragile sensibility": *Weaver* at para. 69. It is a relevant consideration whether the right-thinking person, thoughtful and

informed, would accept the publication as being accurate: *Acumen Law Corporation v. Nguyen*, 2018 BCSC 961 at para. 15.

[184] Mere words of abuse which injure a person's feelings, insult their pride, or cause annoyance or embarrassment are not actionable; the law does not redress solely for wounded sensibilities, nor is there an action for insults which do not diminish a person's standing in the community: *Hudson v. Myong*, 2020 BCSC 517 at para. 109; *Bondar v. Neufeld*, 2024 BCSC 594 at para. 60.

[185] Justice Dickson, writing for the court in *Weaver*, summarizes the circumstances in which multiple publications may be read together to determine the alleged defamatory meaning of impugned words:

[83] ... In my view, where separate publications are pleaded as independent causes of action, absent referability or other inextricable linkage, the meaning of each should be determined independently, in the immediate context in which the words are used. Where the meaning of a publication, so interpreted, is non-defamatory, its meaning cannot logically be altered by a subsequent publication. However, if one publication is referenced in or otherwise closely connected to another publication, depending on the pleadings, issues and circumstances of the case, it may be appropriate to read them together to ascertain their combined meaning.

[186] Words may convey a defamatory meaning literally, inferentially, or by legal innuendo: *Weaver* at para. 71. Accordingly, there are three alternate means of proving defamation (*Weaver*):

[72] Where the literal meaning of words is in issue, it is unnecessary to go beyond the words themselves to prove that they are defamatory. Where a claim is based on the inferential meaning of words, the question is one of impression: what would the ordinary person infer from the words in the context in which they were used? Both literal and inferential defamatory meaning reside within the words, as part of their natural and ordinary meaning. In contrast, where legal innuendo is pleaded the impugned words take on defamatory meaning from outside circumstances beyond general knowledge, but known to the recipient.

[187] In sum, where the plaintiff alleges that words are literally or inferentially defamatory, it is their natural and ordinary meaning that is important.

[188] The plaintiff bears the onus of proving alleged inferential meanings: *Bondar* at para. 63. An inferential meaning is one which the ordinary person, without special knowledge, will infer from the words complained of; this meaning must be determined objectively: *Bondar* at para. 67; *Lawson v. Baines*, 2012 BCCA 117 at para. 23. The test for whether an inferential meaning is defamatory is therefore based on the natural and ordinary meaning that a reasonable person would infer from the entirety of the publication: *Bondar* at para. 65; *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2017 BCCA 431..

### Identification

[189] It must be shown that the defamatory statement referred to the plaintiff. Where the plaintiff is not specifically named, the test is whether the recipient would, in light of the surrounding circumstances, reasonably believe that the person referred to in the defamatory statement is the plaintiff: *Weaver* at para. 84.

[190] A statement that defames those in control of a company can also be found to have defamed the company: *Malak* at para. 78; *Canadian National Railway Company v. Google Inc.*, 2010 ONSC 3121 at para. 21. Justice Douglas discussed this principle in *Hudson*:

[181] I recognize the law protects the reputations of corporations as well as individuals: *St. Elizabeth Home Society v. Hamilton (City)*, [2005] O.T.C. 1074 (S.C.J.). Statements defaming an individual plaintiff may extend to a company which can only act through its directors and employees. On the evidence, Mr. Hudson was and is effectively the public face of Try.

[182] It is clear a corporation can maintain an action for defamation if its trading reputation has been defamed: *Johnson v. Jolliffe* (1981), 26 B.C.L.R. 176 at para. 188 (S.C.), citing *Price v. Chicoutimi Pulp Co.* (1915), 51 S.C.R. 179 at 198 [*Johnson*]. In an operation where the corporation's trading reputation is integrally related to the personal plaintiff's business or trading reputation, to slander one may be to slander the other: *Johnson* at 49. Small private companies may, in effect, be vehicles for their principals to earn a living: *M.D.A. Marine Design Associates Ltd. v. British Columbia Ferry Services Inc.*, 2008 BCSC 1432 at para. 21. In that case, Justice Fenlon found the marine design community in British Columbia would associate any defamatory statements concerning the two plaintiff companies with their principals.

### Publication

[191] To prove that the defamatory expression has been published, the plaintiff must demonstrate that the defendant has, through any act, conveyed the defamatory meaning to any third party who has received it.

[192] Generally, the form of the defendant's act and the manner by which the act assists in causing the defamatory expression to reach the third party are not relevant; any act having the effect of transferring the defamatory content to a third person constitutes a publication: *Crookes* at para. 16; *Rooney v. Galloway*, 2024 BCCA 8 at para. 102.

[193] It is not necessary in every case that the plaintiff prove directly that the words were brought to the actual knowledge of some third person; if the plaintiff proves facts from which it can reasonably be inferred that the words were brought to the knowledge of some third person, a *prima facie* case will be established: *Crookes* at para. 109. In other words, publication can be shown by circumstantial evidence:

### Responsibility for Publication by Others

[194] In this case, two of the alleged instances of defamation relate to emails that were not sent by Eric. Defendants are liable for a publication even if the defamatory comments are communicated by someone acting on their behalf or pursuant to their authority, intentionally or negligently.

[195] This is explained further in Halsbury's Laws of Canada (online), *Defamation*, "Elements of the Civil Cause of Action: Publication: Persons Responsible as Publishers" (II.3(2)) at HDE-51 (2023 Reissue), as cited by Silvercore:

Any person who knowingly participates in the publication of a defamatory statement in furtherance of a common design is jointly and severally liable as a publisher of the statement. A person who writes a libel, a person who repeats it, and a person who approves it are all responsible for the making of the libel. In cases of newspaper publications, parties responsible for a libel may include the editor, printer, publisher or vendor. A person who encourages the primary author to publish a libel, or supplies the author with defamatory information intending or knowing that it will be published, may also be liable. If such persons have intended or agreed to participate in acts

constituting a tort, they are prima facie responsible in libel even though they may not have realized they were committing a tort. Where there has been a campaign of defamation, and a co-defendant has facilitated its additional publication in furtherance of a common design with another defendant, it does not matter that the latter was not involved at the outset of the campaign.

[Footnotes omitted.]

### **Presumption of Publication for Emails**

[196] In this case, several of the alleged publications are emails. Eric admits to sending the emails but the defendants argue that the receipt of those emails is unproven for many of the particularized publications. Silvercore submits there is, or should be a common law presumption of publication to the recipient of an email when it is sent. In the alternative, Silvercore says that publication should be inferred on the available evidence

[197] There is a common law presumption that a posted letter has been read by the recipient: *Wilson v. Switlo*, 2011 BCSC 1287 at paras. 311–312. I have not found any decision in Canada applying this presumption to an email or other electronic communication, and the parties did not cite one.

[198] In Australia, it has been held that it can be inferred that some of the recipients of an email, who did not respond to or forward the email, had opened and read it: *Law of Defamation* at § 7:30, citing *Ell v. Milne (No. 8)*, [2014] NSWSC 175 at para. 26, aff'd [2014] NSWCA 407 (Austl). This case has not been applied in Canada.

[199] Case law considering what constitutes a publication of material on the internet provides some guidance. There is no presumption of publication in relation to material on the internet: *Hudson* at para. 112, citing *Crookes* at para. 14. In British Columbia, a plaintiff must establish that the alleged defamatory internet postings were accessed and read by someone in the province in order to ground an action for defamation: *Holden v. Hanlon*, 2019 BCSC 622 at para. 63.

[200] Although there may be no direct evidence of how many individuals have viewed a given posting on the internet, this is not a bar to drawing an inference that the posting was in fact viewed. Courts have recognized the realities of modern

internet communications and inferred publication from the available evidence: *Hudson* at para. 112, citing *Bernstein v. Poon*, 2015 ONSC 155 at para. 94, *Hee Creations Group Ltd. v. Chow*, 2018 BCSC 260 at paras. 74–85, and *Holden* at paras. 59–66.

[201] In *Hudson*, the impugned statements fell into four broad categories, including Facebook messages directed to specific individuals and email communications. Justice Douglas found both the Facebook messages and emails were published. With respect to the messages, she concluded that those messages which had been met with a response had been read by at least one person, and inferred that those which had not been were probably also read: paras. 132–135. She similarly found the emails, which had prompted replies, were clearly published: para. 139.

[202] In my view, it follows from the above discussion that publication of an email or other electronic communication cannot be presumed; publication must be either proved or inferred based on the evidence and circumstances.

### **Defences**

[203] Multiple defences are available to an allegation of defamation. The most recent amended response to civil claim in this case asserts a defence of justification for particulars 1–17, and a defence of qualified privilege for particulars 1–2, 4–10, 13, 15–17, and 21–22, which concern statements made by Eric to members of the Delta Police Department, the RCMP, and the BCWF: paras. 43.3–43.4. The defendants also asserts a defence of fair comment with respect to particulars 16–17: para. 44.

[204] I will briefly summarized the law respecting each of these defences.

### **Justification**

[205] Justification, or the truth of the matter asserted is a complete defence to an action for defamation. To succeed on this defence, a defendant must adduce evidence showing that the statement was substantially true: *Grant* at para. 33. What is required is not the literal truth of each and every fact in the publication, but only

that the whole of the defamatory matter is substantially correct: *Bondar* at para. 79. Where the gist or the sting of the charge is proven to be true, minor inaccuracies will not defeat the defence of justification; but where the overall impression of the publication is false, the defence will fail even if some or all of the literal words are proven to be true: *Bondar* at para. 82.

### Qualified Privilege

[206] A defendant who can claim that a communication was made on an occasion of qualified privilege, is protected from liability for publishing defamatory and untrue statements about the plaintiff. The Supreme Court of Canada summarized the defence of qualified privilege in *Bent v. Platnick*, 2020 SCC 23:

[121] An occasion of qualified privilege exists if a person making a communication has “an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published” and the recipient has “a corresponding interest or duty to receive it”: Downard, at §9.6 (footnote omitted). Importantly, “[q]ualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself”: *Hill*, at para. 143; *Botiuk*, at para. 78. Where the occasion is shown to be privileged, “the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff”: *Hill*, at para. 144; *Botiuk*, at para. 79. However, the privilege is *qualified* in the sense that it can be defeated. This can occur particularly in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded (Downard, at §1.9; see also *Hill*, at paras. 145-47; *Botiuk*, at paras. 79-80).

[122] For this reason, a precise characterization of the “occasion” is essential, as it becomes impressed with the limited, qualified privilege, which in turn becomes the benchmark against which to measure whether the occasion was exceeded or abused.

[Emphasis in original.]

[207] On an occasion of qualified privilege, the language used need not be proportionate; blandness or accuracy are not conditions of attracting the privilege: *Ward v. Clark*, 2001 BCCA 724.

[208] As noted in *Bent*, qualified privilege can be defeated in two ways: by malice or by exceeding the occasion of privilege. The Court in *Botiuk*, at para. 80, clarified that the limits of the duty or interest will be exceeded, and the defence of qualified

privilege defeated where the information communicated is not reasonably appropriate to the legitimate purposes of the occasion.

[209] The categories of situations in which a qualified privilege will arise are not closed and the determination of whether or not the defence should succeed can be a difficult matter; there is no bright-line test: *Law of Defamation* at §13:6; *Dhami et al v. CBC et al*, 2001 BCSC 1811 at para. 73.

[210] The test to determine whether the occasion is one giving rise to a qualified privilege is objective. This was made clear by the court in *Rolfe v. Hertz*, 2009 BCSC 1522:

[22] ...The issue is not whether the defendant had a right to make the communication or thought that he or she had a duty to make it, but rather whether a reasonable person would feel compelled by a duty to make the communication: *Halls v. Mitchell*, [1928] S.C.R. 125, [1928] 2 D.L.R. 97. In *Sapiro v. Leader Publishing Co. Ltd.*, [1926] 2 W.W.R. 268, 20 Sask. L.R. 449 at 453 (C.A.), Lamont J.A. listed the factors usually considered in the assessment:

... the Judge will consider the alleged libel, who published it, why, and to whom, and under what circumstances. He will also consider the nature of the duty which the defendant claims to discharge, or the interest which he claims to safeguard, the urgency of the occasion, and whether or not he officiously volunteered the information, and determine whether or not what has been published was germane and reasonably appropriate to the occasion.

### **Recognized Categories**

[211] In BC, case law supports the notion that qualified privilege applies to complaints made to police prior to the commencement of judicial proceedings: *Caron v. A.*, 2015 BCCA 47 at paras. 34 and 37. Eric admits that he was not writing to the police to report crimes. Rather he says that the occasions of qualified privilege he asserts apply based on the evidence of a reciprocal interest.

[212] Complaints made to appropriate authorities, generally, may also give rise to qualified privilege, as set out in Halsbury's Laws of Canada (online), *Defamation*,

“Defences to the Civil Cause of Action: Qualified Privilege” (III.3(2)(b)(x)) at HDE-116 “Complaints to Authorities” (2023 Reissue):

A complaint or communication of information to police or another appropriate authority is made on a privileged occasion. Qualified privilege attaches to an initial report to police or another investigative agency; the privilege does not become absolute unless and until judicial proceedings commence. A constituent’s complaint to their legislative representative, or a request for assistance in bringing a complaint to the appropriate authority, is privileged. Privilege will continue to apply to any further communication of the complaint from the legislative representative to a body with authority to receive the complaint formally, or to another official with a legitimate interest in the subject matter of the complaint. Privilege also applies to government and non-government authorities who are in a position to receive and act upon complaints. Thus, a consumer’s complaint to a consumer protection organization, such as a Better Business Bureau, or an industry organization that mediates disputes between consumers and members of the industry, is privileged. A complaint to education authorities regarding the conduct of teachers toward students is made on an occasion of qualified privilege. A complaint of harassment in an organization, made to an authority charged with dealing with such complaints, is made on an occasion of qualified privilege. A memo from a city resident alerting the municipal government to a possible security risk posed by one of its employees was protected by qualified privilege, although the author partially waived that privilege when the author later published sections of the memo on Twitter.

[Footnotes omitted.]

[213] In other words, a person may be interested in receiving information because he or she has the power to accuse, investigate, assess, discipline or punish the person about whom a complaint is made: *Law of Defamation* at § 13:31.

[214] Similarly, a person may be interested in receiving information because it is useful or necessary to the operation of the government, business or organization, or to the implementation of its policies, or to the exercise of control over his or her property: *Law of Defamation* at § 13:28.

### **Fair Comment**

[215] Fair comment is a variant of qualified privilege. The justification for the defence of fair comment is premised on “the idea that citizens must be able to openly declare their real opinions on matters of public interest without fear of reprisal

in the form of actions for defamation”: *Hansman v. Neufeld*, 2023 SCC 14 at para. 95.

[216] A defendant can rely on the defence of fair comment if they can establish the following five elements (*Rooney* at para. 106; *Hansman* at para. 96; *Grant* at para. 31):

- a) the comment is on a matter of public interest;
- b) the comment is based on fact;
- c) the comment, though it can include inferences of fact, is recognizable as comment;
- d) the comment satisfies the following objective test: could any person honestly express that opinion on the proved facts?; and
- e) even if the comment meets those elements, the defence can still be defeated if the plaintiff proves that the defendant was actuated by express malice.

[217] The factual basis for the impugned statement must be explicitly or implicitly indicated, at least in general terms, within the publication itself or the facts must be so notorious as to be already understood by the audience: *Hansman* at para. 100, citing *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 34.

[218] There is no requirement that the facts support the comment, in the sense of confirming its truth; the purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them to make up their own minds as to its merit: *Hansman* at para. 101, citing *WIC Radio* at para. 31.

[219] To rely on the defence of fair comment successfully, the expression must truly be a comment on given facts and not a statement of facts; whether an expression is

comment or fact is determined from the perspective of an ordinary, reasonable reader: *Rooney* at para. 108.

[220] The Court in *Hansman* clarified the difference between comment and fact:

[108] For expression to constitute fair comment, the statement must be one that would be understood by a reasonable reader as a comment rather than a statement of fact... A comment includes a “deduction, inference, conclusion, criticism, judgment, remark or observation which is generally incapable of proof” ... This is a low threshold; “the notion of ‘comment’ is generously interpreted” ...

[109] The line between comment and fact can be difficult to draw, particularly “in an editorial context where loose, figurative or hyperbolic language is used ... in the context of political debate, commentary, media campaigns and public discourse” ... Opinions are expressed as facts more often than as personal views, such that statements that may seem to convey fact might be more properly construed as comment ... Context is essential in distinguishing comment from fact.

[References omitted.]

### **Malice**

[221] Even if the defence of fair comment or qualified privilege is properly made out, it can be defeated by malice, which is a “state of mind”: *Smith v. Cross*, 2009 BCCA 529 at para. 42.

[222] There are four categories of malice. A defendant is actuated by express malice if they publish a defamatory expression (*Rooney* at para. 115; *Hansman* at para. 115; *WIC Radio* at paras. 100–101):

- a) knowing it was false;
- b) with reckless indifference whether it is true or false;
- c) for the dominant purpose of injuring the plaintiff because of spite or animosity; or
- d) for some other dominant purpose which is improper or indirect, or also, if the occasion is privileged, for a dominant purpose not related to the occasion.

[223] Proof of malice may be intrinsic or extrinsic: it may be drawn from the language of the assertion itself or from the circumstances surrounding its publication: *Hansman* at para. 115, citing *WIC Radio* at para. 100. A finding of a subjective honest belief negates the possibility of finding malice: *Hansman* at para. 115, citing *WIC Radio* at para. 53.

**General Damages**

[224] Silvercore seeks general damages for harm done to their reputation by the defendant's alleged defamation. General damages in defamation cases are presumed from the very publication of the false statement and serve three distinct functions: (a) to act as a consolation to the plaintiff for the distress they suffer; (b) to repair the harm to their reputation; and (c) as a vindication of their personal or business reputation: *Bondar* at paras. 119–120.

[225] In *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 182, the Supreme Court of Canada identified the following factors to be considered when assessing general damages for defamation:

- a) the nature of the defamation;
- b) the plaintiff's conduct, position and standing;
- c) the mode and extent of publication;
- d) the absence of any retraction or apology; and
- e) the whole of the defendant's conduct from the time of publication to the end of trial.

[226] Evidence of the harm effected by a defamatory statement is required to support a substantial award of damages. If a plaintiff cannot present evidence to substantiate the alleged harm caused by a defamatory statement, an award of nominal damages may be appropriate: *Acumen* at para. 23.

[227] The principles guiding a damages award for defamation against a corporate plaintiff, specifically, were discussed in *Dover Investments Limited. v. Transpacific Petroleum Corp.*, 2009 BCSC 1620:

[228] The principles that emerge and apply in this case may be summarized as follows:

- a) Damages for a corporate plaintiff are to compensate for the harm to its goodwill and business reputation.
- b) The factors to be considered in assessing damages include the defendant's conduct, his position and standing, the nature of the defamation, the absence of an apology or refusal to apologize, and his conduct throughout, up to and including conduct at trial.
- c) In addition to general damages for defamation, a corporate plaintiff may be entitled to special damages for specific economic loss.
- d) In addition to general damages for defamation, in exceptional cases, a corporate plaintiff may be entitled to an award of punitive damages for malicious, oppressive and high-handed misconduct. Punitive damages are intended to punish a defendant rather than compensate a plaintiff.
- e) Compensatory damages, if substantial, may also be considered punishment, and should be taken into account when determining whether an award of punitive damages is warranted.

**Defamation Analysis - Particulars**

[229] For ease of reference, I address each of Silvercore's particulars of the defendants defamation in table format below.

**Particular 1**

Silvercore resiled at trial.
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**Particular 2**

<b>Date:</b>	June 1, 2018
<b>Format:</b>	Email from Eric Beer to Const. Church
<b>Pleaded defamatory statement:</b>	Silvercore had been “making fake phone calls to complain about Cabela’s and their association with [the defendant]”; “Travis appears to be escalating his effort to attack me and my family”; Silvercore had attacked Eric which “cost” him a contract with Poco Military.
<b>Defamatory?</b>	Yes. The statements would lower the plaintiff’s reputation in the view of a reasonable person. The plain meaning of the words convey that the Baders were engaging in petty/unprofessional actions to injure Eric and his business. The actions were undertaken by Silvercore’s owners and agents and reflect on the company. I do not view the meaning of the statements as implying any criminal wrongdoing (e.g., fraud or harassment).
<b>Identification?</b>	Yes. Eric explicitly identifies his reason for emailing as the “Silvercore situation” and explains Tiffany’s relation to Silvercore, clearly associating the plaintiff company with the actions of the Baders.
<b>Publication?</b>	Yes (admitted). Ms. Church responded.
<b>Defence?</b>	<p>Qualified privilege applies to Eric’s emails to Const. Church. He had a business and personal interest in making the statements therein, and she had a reciprocal interest in receiving them. Eric made the statements to Const. Church as a police officer acting in an advisor, mediator or investigative role, seeking advice about what he saw as behaviour that threatened himself, his business, and his family. The public interest is served by encouraging law enforcement individuals to receive information from citizens and to assist them with resolving issues related to suspected criminal behaviour or wrongdoing.</p> <p>Eric did not exceed the occasion of privilege. I do not accept that it was motivated by malice, or aimed at injuring the plaintiff, but rather was explicitly aimed at seeking assistance to deal with the plaintiff’s actions in a manner advisable by law enforcement officials.</p>

**Particular 3**

Plaintiff resiled at trial.
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**Particular 4**

<b>Date:</b>	June 10, 2018
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<b>Format:</b>	Email from Eric to Bali Mann
<b>Pleaded defamatory statement:</b>	<p>Travis, Tiffany, and Silvercore had been:</p> <ol style="list-style-type: none"> <li>1. escalating their harassment of Eric;</li> <li>2. harassing Cabela’s;</li> <li>3. accosting the GM of Cabela’s;</li> <li>4. threatening Cabela’s staff;</li> <li>5. attacking the defendants;</li> <li>6. attacking Cabela’s;</li> <li>7. improperly taking business opportunities away from the defendants;</li> <li>8. unlawfully bribing and threatening Paul Baker;</li> <li>9. unlawfully bribing and threatening Nick Chee and Shane Mathieson of Reliable Gun; and</li> <li>10. attempting to damage the defendants’ standing in the community.</li> </ol>
<b>Defamatory?</b>	Yes. The email contains similar allegations to Particular 2, as well as other, more serious allegations regarding the Baders. The literal meaning of the words conveys that the Baders were acting badly, if not criminally. This reflects on the company.
<b>Identification?</b>	Yes. As in Particular 2, Eric explicitly identifies his reason for emailing as the “Silvercore situation”, explains Tiffany’s relation to Silvercore, and clearly associates the plaintiff company with the actions of the Baders.
<b>Publication?</b>	There is no response in evidence proving that the email was read by Mr. Mann. The defendants say the evidence about whether he and Mr. Mann spoke about the email does not conclusively prove publication. Silvercore says that other emails between Mr. Mann and Eric support an inference of publication. I will infer publication.
<b>Defence?</b>	<p>Qualified privilege may apply. Mr. Mann is the instructor coordinator for PAL courses in BC. Silvercore states that Bali Mann is the representative for the firearms regulator who has wide discretion to suspend or terminate Travis Bader’s credentials and Silvercore’s business licence or any of its instructors from the ability to provide courses and earn income. Conversely, if Mr. Mann had the regulatory authority to make decisions about the licensing to provide instruction for such courses, then Eric would have had an interest in reporting information he thought could affect his business as a licensee and that related to another licensee. Mr. Mann would have had a reciprocal duty to receive that information.</p> <p>Unlike Particular 2, the purpose of Eric’s email is not to seek advice, However, he says that he fears the behaviour he is reporting will harm his standing in the community, and is reporting to an authority who might be able to prevent this outcome. I agree he exaggerated and was imprecise in his reporting, in an effort to emphasize the risk. On balance, the comments about bribing and threatening Paul Baker, Nick Chee and Shane Mathieson do not meet the test for justification, I find that the remainder of comments are still covered by qualified privilege.</p>

## Particular 5

<b>Date:</b>	August 1, 2018
<b>Format:</b>	Email from Eric to Jack O'Halloran and Pamela Sveinson at BCWF
<b>Pleaded defamatory statement:</b>	<p>Travis, Tiffany and Silvercore had been:</p> <ol style="list-style-type: none"> <li>1. escalating their harassment of Eric;</li> <li>2. harassing Cabela's;</li> <li>3. accosting the GM of Cabela's;</li> <li>4. threatening Cabela's staff;</li> <li>5. attacking the defendants;</li> <li>6. attacking Cabela's;</li> <li>7. improperly taking business opportunities away from the defendants;</li> <li>8. unlawfully bribing and threatening Paul Baker;</li> <li>9. unlawfully bribing and threatening Nick Chee and Shane Mathieson of Reliable Gun; and</li> <li>10. attempting to damage the defendants' standing in the community.</li> </ol>
<b>Defamatory?</b>	Yes. Aside from a brief introduction, the content of this email is identical to Particular 4. Eric starts the email by saying that "given the escalation of the attacks" from the Baders, he felt it was important to forward the report he had provided to the Delta Police Department and Bali Mann. He then copies the content of Particular 4.
<b>Identification?</b>	Yes. See Particular 4.
<b>Publication?</b>	Yes. Publication can be inferred despite the fact that there is no response in evidence. Mr. O'Halloran sent Eric an email early in the morning on the same day the impugned email was sent; the impugned email was Eric's response. I can infer that Mr. O'Halloran would have been waiting for a response and reviewed the email from Eric.
<b>Defence?</b>	<p>Qualified privilege may apply. Mr. O'Halloran and Ms. Sveinson are directors of the BCWF and have oversight of the delivery of the CORE course. It is not clear to me that individuals in charge of delivering a course would have an interest or duty to receive information about an ongoing dispute between an instructor and a competitor company and its principals. However, the recipients may have had a business interest in receiving this information from Eric. I accept that Mr. O'Halloran appeared to communicate for the purpose of monitoring or enforcing requirements for instructors.</p> <p>Mr. O'Halloran initially emailed Eric to inquire about the timing of his course, and Eric responded with the impugned email cataloguing a list of grievances with Silvercore/the Baders.. On balance, I find that the</p>

	comments exceed the boundaries of qualified privilege, and the comments about bribing and threatening Paul Baker, Nick Chee and Shane Mathieson do not meet the test for justification.
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### Particular 6

<b>Date:</b>	September 30, 2018
<b>Format:</b>	Email from Eric to Bali Mann
<b>Pleaded defamatory statement:</b>	Travis continued to harass Eric.
<b>Defamatory?</b>	Yes. The literal meaning of the words convey that Eric's students are being contacted and he fears it is part of the "continuing harassment" he is enduring from Travis. This reflects on Silvercore.
<b>Identification?</b>	Yes. The email does not refer to Silvercore explicitly. However, in my view, it must be read together with Particular 4. This email is a reply to Particular 4, and references Particular 4; they are inextricably linked: <i>Weaver</i> at para. 83. Particular 4 explicitly links the allegations against Travis with the plaintiff company, Silvercore.
<b>Publication?</b>	There is no reply in evidence. See analysis under Particular 4.
<b>Defence?</b>	Qualified privilege applies. See analysis under Particular 4.

### Particular 7

<b>Date:</b>	November 9, 2018
<b>Format:</b>	Email from Eric to Jack O'Halloran

<p><b>Pleaded defamatory statement:</b></p>	<p>The pleaded statement reads:</p> <p style="padding-left: 40px;">I want to reiterate my concern about Silvercore’s possible involvement or influence that I discussed during our in-person meeting. I realize the strong personal connection Travis Bader, Tiffany Bader and Silvercore have developed with the BCWF and its events over the last year and a half but I appeal to you that if you or any of your staff have any information that they are influencing mine or my fellow examiners ability to provide services that you let us know. Many examiners are concerned about rumoured policy changes based on the lobbying of Travis Bader.</p> <p>The email falsely asserted by way of innuendo that the plaintiff was unlawfully and improperly using its personal connections to prevent the defendants from providing services to BCWF.</p>
<p><b>Defamatory?</b></p>	<p>No. The plaintiff has pleaded this meaning by way of innuendo. The plaintiff does not point to any extrinsic evidence and says that the meaning of the statement is plain on the words themselves. Therefore, I understand the plaintiff’s claim to be that the words have an inferential defamatory meaning (rather than one based on legal innuendo). While I accept the words imply that Silvercore may be using its relationships to influence BCWF, I find that this statement does not rise to the level of a defamatory meaning that would lower Silvercore’s reputation. The communication merely expresses concern about Travis’s lobbying. Even if the recipient accepted this concern as fact, lobbying and relying on influence to effect change is not criminal and is not something that would attract contempt from the reasonable person, without more. Also, I must consider that the “concern” is inferentially levelled at Mr. O’Halloran along with Silvercore, which likely lessens the defamatory effect of the statements on Mr. O’Halloran.</p>
<p><b>Identification?</b></p>	<p>Yes. The email refers to Silvercore explicitly, linking the company with the Baders.</p>
<p><b>Publication?</b></p>	<p>Yes (admitted).</p>
<p><b>Defence?</b></p>	<p>Qualified privilege applies. The argument for qualified privilege is stronger in relation to this particular than for Particular 5 (an earlier email to Mr. O’Halloran). Here, Eric’s concerns are restricted to whether Silvercore’s actions will impact his ability to provide instruction services for the BCWF. In my view, he has a clear business interest in expressing this concern, and Mr. O’Halloran has a reciprocal interest/duty as the overseer of the course to receive the concern.</p>

**Particular 8**

<b>Date:</b>	February 12, 2019
<b>Format:</b>	Emails from Eric to Const. Church
<b>Pleaded defamatory statement:</b>	Silvercore had been “trolling [the defendant’s] website” and “running through check outs adding products and courses to carts”. Ordinary and implied meaning “intended” to convey that Silvercore was engaged in criminal behaviour.
<b>Defamatory?</b>	No. I accept that the plain meaning of “trolling” gives rise to the implication that Travis is unprofessionally. Unprofessional behaviour by a company’s principal could lower its reputation in the estimation of a reasonable person. However, in the context of the allegation that Travis is “running through check outs and adding products and courses to carts”, it is not clear to me that a reasonable person would view this as more than nuisance behaviour or look on Travis with contempt.
<b>Identification?</b>	Yes. The email does not reference Silvercore, but it is inextricably linked with Eric’s previous communications to Ms. Church, in which Silvercore is explicitly referenced.
<b>Publication?</b>	Yes (admitted). Ms. Church responded.
<b>Defence?</b>	Qualified privilege applies. See my analysis under Particular 2. Eric is clearly seeking assistance from a law enforcement official about how to resolve suspected wrongdoing. He says “I was hopping [ <i>sic</i> ] that you could assist me or just make a note in case this escalates again.”

**Particular 9**

<b>Date:</b>	February 12, 2019
<b>Format:</b>	Emails from Eric to Brigitte Willman, Terry Hamilton, and Bali Mann
<b>Pleaded defamatory statement:</b>	Travis and Tiffany had been engaged in “online trolling” of the defendants’ website. Ordinary and implied meaning “intended” to convey that Silvercore was engaged in criminal behaviour.
<b>Defamatory?</b>	No. Eric copied the content of Particular 9 with a brief introduction explaining that it was an email chain with Const. Church of the Delta Police Office. See my analysis under Particular 9. The fact that Eric noted he had reported this incident to police could give rise to an inference that Travis’s conduct is criminal, but I find a reasonable person would not accept this without skepticism.

<b>Identification?</b>	Yes. Although Silvercore is not explicitly mentioned, Ms. Willman, Mr. Mann, and Mr. Hamilton are the firearms regulators in charge of administrating the licensing for Silvercore. They knew that the Baders were the principals of the plaintiff company. Given their regulatory role and knowledge of this relationship, the Baders reputation would have been integrally linked with Silvercore's for the recipients of this email.
<b>Publication?</b>	There is no response from any of the recipients in evidence. There is no evidence to support publication to Mr. Mann or the other recipients and I decline to infer it, given that Mr. Mann often did not respond.
<b>Defence?</b>	<p>Qualified privilege applies. See my analysis under Particular 4; I understand that all the recipients of this email were regulators with an interest, like Mr. Mann, in receiving information about suspected wrongdoing by licensees.</p> <p>I do not find the inclusion of Ms. Church's position in the "Mental Health Unit" is evidence of malice, as alleged. This information is included in her email signature in any event.</p>

**Particular 10**

<b>Date:</b>	February 14, 2019 (Church) and February 27, 2019 (Bolton)
<b>Format:</b>	Emails from Eric to Deanna Church and Nick Bolton
<b>Pleaded defamatory statement:</b>	<p>Silvercore had:</p> <ol style="list-style-type: none"> <li>1. sabotaged a potential contract for the defendants;</li> <li>2. lied to the owner of Reliable Gun to have the defendants removed;</li> <li>3. breached the City of Vancouver's bid policy in an effort to have the defendants barred from the bidding process for the Vancouver Tactical Training Centre;</li> <li>4. falsely told members of the VPD and Paul Baker of Poco Military that Eric had stolen firearms and other proprietary information from Silvercore; and</li> <li>5. made false complaints to the provincial gaming enforcement department.</li> </ol> <p>Ordinary and implied meaning "intended" to convey that Silvercore was engaged in criminal behaviour.</p>
<b>Defamatory?</b>	Yes. From the defendant's summary, it appears Eric forwarded the email from Ms. Church to Mr. Bolton with a brief introduction. The actions outlined in these emails would lower the plaintiff's reputation in the eyes of a reasonable person.
<b>Identification?</b>	Yes. Silvercore is only explicitly referenced once in the emails and the Baders connection to the company is not explained. However, as with

	Particular 8, the email to Const. Church is inextricably linked her previous communications with Eric, in which Silvercore is explicitly referenced. There is limited evidence as to who Mr. Bolton is or whether he would have understood the relationship between the Baders and Silvercore, but I assume that he was in a position to know this information as Eric made the decision to send him this email chain.
<b>Publication?</b>	<p>Yes (Church). Despite receiving no direct reply, I infer Ms. Church read the email as it was part of an ongoing chain of communication, in which she had previously responded.</p> <p>No (Bolton). The defendants admit he uses the email address in question, but there is no response or other evidence supporting publication, and the Silvercore did not provide argument or evidence to assist in drawing an inference.</p>
<b>Defence?</b>	Qualified privilege applies with respect to the email to Const. Church (see analysis of Particular 4).

### Particular 11

<b>Date:</b>	February 15, 2019
<b>Format:</b>	Facebook messages from Eric to Mike Fontaine
<b>Pleaded defamatory statement:</b>	Silvercore had harassed Eric and unlawfully damaged Eric's business.
<b>Defamatory?</b>	Yes. Eric says that he has filed a police report against Travis for his "ongoing harassment" and "now because they have actually done damage to my business side as long as I build a strong enough case the Delta police can intervene", implying that Travis has engaged in criminal behaviour. Statements that Silvercore's principal was continuously harassing Eric would lower its reputation in the eyes of a reasonable person.
<b>Identification?</b>	Yes. Silvercore is not explicitly mentioned in the messages. However, at one point, Eric says " <u>they</u> have weaselled <u>their</u> way back" through the BCWF. I understand "they" to be an implicit reference to Silvercore or the Baders as principals of the business. Regardless, Mr. Fontaine would have known that Travis was Silvercore's principal; Cabela's had contracted with Silvercore, and Mr. Fontaine had interacted with Travis in relation to this contract.
<b>Publication?</b>	Yes (admitted). Mr. Fontaine responded.

<b>Defence?</b>	<p>The defendants argued that the statements were justified.</p> <p>The defendants further submit that Silvercore's reputation with Mr. Fontaine was such that it could not have been damaged by Eric's messages, and that the sting of the statements were true. In my view, justification does not apply as the ordinary meaning of the statements suggests activity that the police are on the verge of, or could take action on.</p> <p>However, the defendants also say that that if defamation is found, damages should be nominal as there is virtually no reputational damage for an audience of one who holds the plaintiff in low regard (para. 471, citing <i>Acumen</i>). I agree.</p>
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### Particular 12

<b>Date:</b>	February 16, 2019
<b>Format:</b>	Text messages from Eric to Megan Robertson
<b>Pleaded defamatory statement:</b>	Silvercore "hated" that the defendants were teaching out of the Cabela's in Abbotsford.
<b>Defamatory?</b>	No. The plain meaning of the words implies that Silvercore is upset that Eric is teaching at Cabela's. Eric's words may be viewed as bitter or insulting, but, in my view, they would not rise to the level of lowering Silvercore's reputation with Ms. Robertson or Cabela's. Eric attributes a feeling of hatred or animosity to Silvercore, but does not allege any wrongdoing in this communication.
<b>Identification?</b>	Yes. Silvercore is referred to explicitly.
<b>Publication?</b>	Yes (admitted). Ms. Robertson responded.
<b>Defence?</b>	None argued.

### Particular 13

<b>Date:</b>	March 1, 2019
<b>Format:</b>	Email from Eric to Const Church
<b>Pleaded defamatory statement:</b>	Silvercore had demanded that the CFGPA stop its association with the defendants. Ordinary and implied meaning "intended" to convey that Silvercore was engaged in criminal behaviour.

<b>Defamatory?</b>	Yes. The implication of the plain meaning is that Travis was issuing an ultimatum to the CFGPA to demand preferential treatment for Silvercore or that the club stop its association with Eric. In my view, this does not rise to the level of criminal behaviour, but may be unprofessional enough to lower Silvercore's reputation in the eyes of the reasonable person.
<b>Identification?</b>	Yes. The email states that "[Travis] demanded special treatment for Silvercore or that the club stop its association with [Eric]". The email refers to Silvercore and implies that Travis was acting on the company's behalf in seeking "preferential treatment".
<b>Publication?</b>	Yes (admitted). Ms. Church responded.
<b>Defence?</b>	Qualified privilege applies. See my analysis under Particular 2.

#### Particular 14

<b>Date:</b>	March 5, 2019
<b>Format:</b>	Email from Ms. Hofbauer (admitted to be co-authored by Eric) to Jack O'Halloran
<b>Pleaded defamatory statement:</b>	Silvercore had leveraged their relationship with the BCWF to "circumvent its ban from [Cabela's]".
<b>Defamatory?</b>	Yes. The defendants admit that the actual words are capable of defamatory meaning, but deny they are defamatory in fact. They can rise to the level of lowering Silvercore's reputation. The implication is that Silvercore is using connections to to get back into the Cabela's location.
<b>Identification?</b>	Yes (admitted). Silvercore is referred to explicitly.
<b>Publication?</b>	Yes (admitted). Mr. O'Halloran responded.
<b>Defence?</b>	The defendants argue the comments were justified. Megan Robertson asserted that that Tiffany misled her about a connection with the BCWF in order to get back into Cabela's which was conveyed to Eric. Tiffany testified that she did not mislead her, but the statement did not refer to misleading, just that the connection was "leveraged". I find this to be true, based on the evidence of both Ms Robertson and Tiffany.

#### Particular 15

<b>Date:</b>	March 6, 2019
<b>Format:</b>	Email from Eric to Jack O'Halloran
<b>Pleaded defamatory statement:</b>	<ol style="list-style-type: none"> <li>1. Silvercore harassed the defendants;</li> <li>2. Travis accosted Mike Fontaine, the GM of Cabela's Abbotsford; and</li> </ol>

	3. Travis and Tiffany subjected the defendants to “a steady stream of attacks” and abuse.
<b>Defamatory?</b>	Yes. The email outlines several actions by Silvercore and the Baders that would lower Silvercore’s reputation in the eyes of a reasonable person.
<b>Identification?</b>	Yes (admitted). Silvercore is explicitly identified.
<b>Publication?</b>	Yes (admitted). Mr. O’Halloran responded.
<b>Defence?</b>	<p>Qualified privilege may apply. See my analysis at Particular 5.</p> <p>Eric invites Mr. O’Halloran to investigate the allegations he is making; if Mr. O’Halloran has a duty to investigate these kinds of allegations, that would support a finding of qualified privilege. The defendants also argue that the comments were justified,</p> <p>On balance, I find that the comments exceed the boundaries of qualified privilege, but I cannot find that the overall communication is false, as the sting and gist of the comments were true from Eric’s perspective. This is borderline, which I will consider in light of the total damages.</p>

**Particular 16**

<b>Date:</b>	March 19, 2019
<b>Format:</b>	Email from Eric to Yvonne Foxall (Min of Forests, Lands and Natural Resources)
<b>Pleaded defamatory statement:</b>	<p>Silvercore was not abiding by provincial regulations pertaining to their offering of CORE courses; Silvercore was obtaining preferential treatment by way of unfair business practices (adopted from Ed Banks’ email to Premier John Horgan, dated March 5, 2019).</p> <p>The defendants say that the above pleaded statements were not made in the alleged publication. It is true that these exact words were not in the impugned publications. If the exact words were never pleaded this could be fatal to the claim: <i>Weaver</i> at para. 65.</p>
<b>Defamatory?</b>	<p>Yes. Eric implies that Silvercore is falsely advertising course times that are not possible at the facility where the course is offered; the implication given the context of the email is that they are not, in fact, complying with the CORE examiner agreement.</p> <p>By communicating that Silvercore is the subject of Mr. Banks’ earlier email, Eric’s statement gives rise to the inference that Silvercore was being favoured by the BCWF, possibly due to a relationship between Silvercore’s owner and a BCWF employee (as set out in Mr. Banks’ email).</p>

<b>Identification?</b>	Yes (admitted). A link to Silvercore’s website is included in the email and Eric states that Silvercore is the subject of Mr. Banks’ earlier email.
<b>Publication?</b>	Yes (admitted). Ms. Foxall responded.
<b>Defence?</b>	<p>Qualified privilege applies. Ms. Foxall was the Deputy Director of the Ministry of Forests, Lands and Natural Resource Operations and Rural Development. Ms. Foxall’s reply references the fact that Eric’s concerns will be investigated, implying she had an interest or duty to receive the information.</p> <p>Fair comment does not apply. Eric seems to state as fact, not comment, that “The course times advertised in the example below are not possible at that facility”. The implication is that Silvercore falsely advertising on its website to maintain the illusion of compliance with regulations. With respect to Eric’s reference to “preferential treatment” received by Silvercore, it is not clear what part of this statement is fact or comment.</p>

**Particular 17**

<b>Date:</b>	April 2, 2019
<b>Format:</b>	Email from Eric to Yvonne Foxall and Sarah McKinnon
<b>Pleaded defamatory statement:</b>	<p>Silvercore was receiving preferential treatment by way of unfair business practices.</p> <p>As with Particular 17, the defendant says that the above pleaded statements were not made. It is accurate that these exact words were not in the impugned publications. If the exact words were never pleaded this could be fatal to the claim: <i>Weaver</i> at para. 65.</p>
<b>Defamatory?</b>	Yes. The email refers to Travis of Silvercore improperly receiving confidential information.
<b>Identification?</b>	Yes (admitted). Silvercore is explicitly mentioned.
<b>Publication?</b>	<p>No. The email is part of an ongoing chain with Ms. Foxall. In the most recent email from Ms. Foxall on March 21, 2019, preceding this impugned email, Ms. Foxall stated that she would be retiring in a couple of weeks. It cannot be inferred that Ms. Foxall read Eric’s April 2, 2019, email. She did not respond and may have been retired by the time it was sent.</p> <p>In her final email, Ms. Foxall CC’ed Ms. McKinnon. She stated that Ms. McKinnon would be taking over the investigation of Eric’s comments and would be in touch in the first week of April. There is no reply from Ms. McKinnon in the email chain and no evidence to support the fact she read it.</p>

<b>Defence?</b>	Qualified privilege applies. See my analysis at Particular 16.  Fair comment does not apply as I am unable to discern which, if any, portion of the publication is comment and which is fact.
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### Particular 18

<b>Date:</b>	May 30, 2020
<b>Format:</b>	Email from Guy Wilton to undisclosed recipients  Authorship is denied by Eric. If the evidence supports a finding that Eric co-authored the email or encouraged Mr. Wilton to publish it, he can be held responsible for its publication (see <i>Gaur v. Datta</i> , 2015 ONCA 151 at para. 9). I find that the evidence falls short of establishing that Eric co-authored or encouraged Mr. Wilton to send the email.
<b>Recipient:</b>	Undisclosed recipients
<b>Pleaded defamatory statement:</b>	Silvercore was in a direct conflict of interest and engaged in a kickback scheme with the BCWF. Ordinary and implied meaning “intended” to convey that Silvercore was engaged in criminal behaviour.
<b>Defamatory?</b>	Yes. The allegation that Silvercore is in a direct conflict of interest is serious and would lower its reputation.
<b>Identification?</b>	Probably. Silvercore is not identified. However, I find the surrounding circumstances were probably such that the recipients would have formed a reasonable belief that Silvercore was the subject of the email.
<b>Publication?</b>	Yes. Tina Coleman responded to Mr. Wilton seeking clarification about the letter (document 1.340).
<b>Defence?</b>	None argued (authorship denied). I find that Silvercore has not definitely proven that Eric authored the communication or encouraged its publication.

### Particular 19

<b>Date:</b>	March 5, 2019
<b>Format:</b>	Text message from Eric to Ed Banks

<b>Pleaded defamatory statement:</b>	Travis and Jack O'Halloran are Freemasons. Travis and/or Silvercore enjoy a business and marketing relationship with BCWF because Travis and Jack O'Halloran are Freemasons, and their relationship is the product of a nefarious and inappropriate conspiratorial relationship; Eric intended to harm Silvercore.
<b>Defamatory?</b>	No. Speculating about whether Travis and Mr. O'Halloran are associated with the Freemasons, and thus each other, does not rise to the level of a defamatory meaning. I am unaware of some particularly negative public perception of the Freemasons, and Ladner Freemasons, no evidence was led to expand on this, nor could counsel articulate as to why I should draw a negative connotation from this, and it is not something I am able to take judicial notice of. While there may be negative inferences to be drawn from the publication in the context of the rest of the texts, I do not find that the defamatory statement pleaded would lower Silvercore's reputation.
<b>Identification?</b>	Yes. Silvercore is not identified but Travis is. Mr. Banks would have understood that the statements about Travis related to his dealings as the principal of Silvercore.
<b>Publication?</b>	Yes (admitted).
<b>Defence?</b>	None argued.

### Particular 20

<b>Date:</b>	June 29, 2020
<b>Format:</b>	Email from <b>Guy Wilton</b> to Tina Coleman  Authorship is denied by Eric and was not proven at trial. Even if I accept that Eric co-authored Particular 18, I would not accept that the evidence is sufficient to prove that he was responsible for this publication (i.e., that he approved the email or supplied Mr. Wilton with the information, knowing it would be published).
<b>Pleaded defamatory statement:</b>	Travis and Jack O'Halloran are Freemasons. The false meaning or innuendo of this statement is that Travis and/or Silvercore enjoy a business and marketing relationship with BCWF because Travis and Jack O'Halloran are Freemasons, and their relationship is the product of a nefarious and inappropriate conspiratorial relationship; Eric intended to harm Silvercore.
<b>Defamatory?</b>	No. See my analysis of Particular 18.
<b>Identification?</b>	Yes. Silvercore is identified.
<b>Publication?</b>	Yes. The email is a reply to Ms. Coleman's earlier email and I infer she would have read it.

<b>Defence?</b>	None argued.
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**Particular 21**

Plaintiff resiled at trial.
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**Particular 22**

<b>Date:</b>	February 15, 2019
<b>Format:</b>	Email from Eric to Darrell Winters and Derek Reimer
<b>Pleaded defamatory statement:</b>	<p>Travis, Tiffany, and Silvercore:</p> <ol style="list-style-type: none"> <li>1. had accosted the former manager of Cabela's Abbotsford;</li> <li>2. had previously harassed Eric;</li> <li>3. were resurging their harassment of Eric;</li> <li>4. had improperly coerced Cabela's staff into allowing Silvercore back into Cabela's Abbotsford;</li> <li>5. were engaged in criminal activity including "cyber harassment";</li> <li>6. were attacking Eric; and</li> <li>7. were engaged in an ongoing criminal harassment of Eric and his family.</li> </ol>
<b>Defamatory?</b>	Yes. The defendants concede the words are capable of defamatory meaning, but deny they are defamatory in fact. The plain meaning of the communication is defamatory.
<b>Identification?</b>	Yes (admitted). Silvercore is directly identified.
<b>Publication?</b>	No. If Mr. Winters read the email in Manitoba, as alleged by the defendants, then his receipt of the email does not constitute a publication (see <i>Holden</i> at para. 63. Mr. Reimer did not respond to the email, or any others in the thread.
<b>Defence?</b>	Qualified privilege does not apply. The defendants assert that the defence applies to this particular, but do not elaborate on this assertion. The plaintiff denies that qualified privilege would ever attach to communications between a service provider in the position of Eric and upper management of a sporting goods store that provides rental space for Eric to teach courses (see Plaintiff's Written Submissions at para. 449). I agree.

**Damages for Defamation**

[230] In summary, Silvercore proved defamation with respect to Particulars 4, 5 and 11. Silvercore failed to prove defamation with respect to Particulars 2, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22. With respect to Particular 4, I find that the defendants made out a partial qualified privilege defence, but that certain comments were not justified and therefore exceed that privilege. For Particular 15, I found the balance tipped in favour of Eric, but as with Particular 4, it was a borderline call.

[231] I have found that Silvercore proved defamation, and the defendants failed to prove an applicable defence for, 3 of the original 22 claimed particulars.

[232] Given all the circumstances of this case, including the clear “back and forth” nature of the actions and communications of Silvercore and the defendants in the course of their long dispute, I decline to order punitive damages for malicious, oppressive or high-handed misconduct, or special damages as none have been proven.

[233] In considering the nature of the defamation, Silvercore’s conduct, position and standing, the mode and extent of the publications, and Silvercore’s failure to establish economic loss, or to quantify the damage to their reputation, I consider that the damages must be on the low end of the spectrum. Specifically with respect to Particular 11, I find that the nature and effect of the defamatory comment to be negligible.

[234] I have considered the highly specific, scrutinized and regulated nature of the industry in which Silvercore operates.

[235] Silvercore proposed a range of \$100,000-\$150,000 for 22 (at trial, 20) particulars. I will award damages in the amount of \$25,000, primarily in respect of Particulars 4 and 5, and with some consideration of Particular 15..

**Counterclaim**

[236] Relatively speaking, the defendants spent very little time on their counterclaim at trial, although the written submissions belied this on the part of both parties.

[237] Silvercore argues that the statements were not defamatory, and if they were, they were justified. Travis’s statements to Paul Baker of PoCo Military and Shane Mathiesson of Reliable Gun, were that Eric was “actively trying to hurt Silvercore” and “had absconded with Silvercore social media and websites”, and that Travis would find it difficult to do business with someone who was trying to hurt Silvercore.

[238] Like much of the analysis above with respect to the gist or “sting” of Eric’s words in communications about Silvercore, Travis and Tiffany, and in consideration of all the circumstances of this dispute, I find that what was said was justified from Travis’s perspective and understanding at that time. I decline to make any award for defamation on the counterclaim by the defendants.

**Conclusion**

[239] Silvercore did not provide specific submissions or argument about the basis or need for ongoing injunctions, and I do not see any value in ordering same. The events at issue took place several years ago. In any event, I suspect the defendants will be anxious to avoid further litigation with Silvercore.

[240] In total, I order that the defendants will pay damages to the plaintiff in the amount of \$60,000. Given the divided success, I expect the parties will want to make submissions on costs. They may approach scheduling with a proposed schedule for doing so, either in writing or orally. I note that if I order, or am provided with written submissions on costs, there will be a strict page limit applied.

“J. Whately J.”