IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Megory Holdings Inc. v. ABZ Falling Inc.,* 2025 BCSC 2318

Date: 20251126
Docket: S39695
Registry: Chilliwack

Between:

Megory Holdings Inc.

Plaintiff

And

ABZ Falling Inc. and Bradley Curtis Loring

Defendants

James Michael Beck and Megan Beck and Michael Madsen

Defendants by way of Counterclaim

- and -

Docket: S39837
Registry: Chilliwack

Between:

Banner Installations Ltd.

Plaintiff

And

Megory Holdings Inc. and James Michael Beck and Megan Beck and Michael Madsen

Defendants

Before: The Honourable Justice Layton

Reasons for Judgment

Counsel for the Plaintiff, Megory Holdings Inc., and Defendants, James Beck, Megan Beck, and Michael Madsen:	B.J. Lorimer
Counsel for the Plaintiff, Banner Installations Ltd., and Defendants ABZ Falling Inc., and Bradley Loring:	A.T. Briscoe
Place and Date of Trial:	Chilliwack, B.C. June 16-20, 2025 June 23-27, 2025
Additional Written Submissions	September 16, 23 & 25, 2025
Place and Date of Judgment:	Chilliwack, B.C. November 26, 2025

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[1] On May 31, 2020, Michael Beck sold the shares in his aerial pipeline maintenance company, Banner Installations Ltd. (“Banner”), to its senior employee, Bradley Loring. The share purchase agreement (“SPA”) was made between each man’s holding company: Megory Holdings Inc. (“Megory”) for Mr. Beck, and ABZ Falling Inc. (“ABZ”) for Mr. Loring.

[2] ABZ paid the $3 million purchase price for Banner’s shares by promissory note, payable to Megory in four yearly instalments of $750,000. Mr. Loring guaranteed performance of ABZ’s obligations under the promissory note.

[3] As part of the transaction, Mr. Beck stayed on as a consultant for Banner and signed a “Non-Solicitation, Non-Competition and Confidentiality Agreement” with ABZ, which the SPA calls the Non-Competition Agreement. In the Non-Competition Agreement, Mr. Beck agreed that he owed duties of loyalty and confidence, as well as a fiduciary duty, to ABZ and Banner.

[4] In 2021, events occurred that culminated in Mr. Beck’s daughter Megan Beck (“Megan”), and his son-in-law Michael Madsen, emailing a complaint to Banner’s largest customer, the energy company Enbridge, on October 6, 2021. This email made numerous allegations against Mr. Loring as Banner’s new owner, including that he was putting the employees’ safety at risk.

[5] After investigating these allegations, Enbridge terminated its contact with Banner in June 2022. Loss of this contract resulted in Banner ceasing its operations. As a result, ABZ did not pay the final two $750,000 instalments to Megory under the promissory note.

[6] Megory now sues ABZ and Mr. Loring for the $1.5 million outstanding, as well as contractual interest.

[7] ABZ and Mr. Loring do not contest the amount owing under the promissory note. But in a counterclaim they contend that Megory and Mr. Beck breached their post-closing contractual obligations to ABZ and Banner in various ways, including by endorsing the October 6, 2021 email as a co-complainant. The counterclaim also

seeks damages from the “Megory litigants”, by which I mean Megory, Mr. Beck, Megan and Mr. Madsen, for the torts of defamation and unlawful interference with economic relations.

[8] In addition, Banner has sued Megory and Mr. Beck for breaching the SPA and Non-Competition Agreement, and the Megory litigants for unlawful interference with economic relations. Banner’s action mostly relies on the same allegations as are made by ABZ and Mr. Loring in their counterclaim.

[9] In their oral closing submissions, the “ABZ litigants”, by which I mean ABZ, Mr. Loring and Banner, basically conceded that the claim for unlawful interference with economic relations is not made out. I agree, and will thus say no more about it.

[10] In the next section of my reasons, I will comment on the credibility and reliability of the witnesses. I will then set out the background facts, making findings along the way. After that, I will address whether and to what extent the various parties have proven their claims for damages.

Credibility and Reliability

[11] Credibility refers to a witness’s sincerity or honesty, and assesses whether they are trying to be accurate. Reliability relates to whether a witness’s evidence might be inaccurate for a reason other than deceitfulness, such as deficits in powers of observation, memory or narrative skills.

[12] Many factors can bear on whether a witness is credible and reliable. Most of those factors are referenced in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, aff’d 2012 BCCA 296, and I have taken them into account in making my findings of fact in this case.

[13] The Megory litigants called as witnesses Messrs. Beck and Madsen, Megan, former Banner employee Adam Giorgio, and Enbridge employees Jason Rowley and Dean Freeman.

[14] The Banner litigants called as witnesses Mr. Loring, former Banner employees Owen Babakaiff and Nick Yadernuck, and Enbridge employee Matthew Neuberger. The Banner litigants also called as a witness accountant and business valuator Daniel Sturgess, who gave expert evidence about losses flowing from termination of the Enbridge contract.

[15] Starting with the witnesses called by the Megory litigants, Mr. Beck's testimony had defects that cause me to question his credibility and reliability regarding matters bearing on some of the events in dispute. I will provide more instances of those defects later in these reasons, but will set out a few examples now to give a flavour of my concerns.

[16] First, Mr. Beck was unrealistically vague about what he saw at the worksite at Fort St. John and his discussions with Mr. Loring that evening and the next day, and also regarding what he was told about safety concerns by Banner employees in advance of the September 15, 2021 meeting.

[17] Second, some of Mr. Beck's claims in his testimony appeared quite unlikely, for instance his assertion that a text he sent to Mr. Babakaiff prior to the September 15, 2021 meeting related to parking safely on the road, his professed belief that he had permission to raise safety concerns directly with Enbridge without advising Mr. Loring, and his insistence that he never read the email sent by Megan and Mr. Madsen to Enbridge on October 6, 2021.

[18] Third, in chief Mr. Beck was shown the October 6 email and he agreed that he had been copied with it. But in cross-examination Mr. Beck denied having been copied with this email, and only retracted his denial on being shown the email again.

[19] I also have concerns about the credibility and reliability of Megan and Mr. Madsen regarding some of the disputed events. I will provide several examples as to why.

[20] First, cross-examination on emails Mr. Madsen and/or Megan sent to various people or organizations in relation to complaints about Banner and Mr. Loring

demonstrate that they knowingly made inaccurate statements in an attempt to get these people or organizations to move more quickly and to take the complaints seriously.

[21] Second, Megan testified that because complaints made to the federal entity responsible for regulating Enbridge, the Canada Energy Regulator ("CER"), had to be submitted by fax, she asked Mr. Beck whether they could use his fax machine, but without telling Mr. Beck that the faxes they wished to send were complaints to the CER made by Messrs. Madsen and Giorgio. Megan's claim not to have shared this information with her father does not accord with common sense, given that Megan and Mr. Madsen were living on Mr. Beck's property and Mr. Beck had a strong interest in the topic. It is also inconsistent with texts sent by Mr. Madsen's phone, purportedly by Megan, which in my view demonstrate that Mr. Beck was aware of the CER complaints and was offering use of his fax machine in order to submit them.

[22] Third, Mr. Madsen insisted that he never submitted any complaint to Fortis, and when subsequently confronted with a document indicating that he had done so, refused to concede his mistake, instead unpersuasively attempting to draw a distinction between making a report and raising a concern.

[23] Fourth, Megan claimed that the emails she sent to the Department of Fisheries were not in her own words but rather in the words of Mr. Madsen, which I find highly unlikely given the contents of these emails, as well the fact that they were sent from her email account and signed by her. For example, Megan's claim that the use of the plural first person in one of the emails refers not to her and her husband, but rather to her husband and Mr. Giorgio, is unpersuasive.

[24] Fifth, the testimony of Megan and Mr. Madsen was unconvincing regarding which one of them was using his phone to send texts to Mr. Babakaiff, and the source or meaning of the information being sent. For example:

a. Each was caught in inconsistencies within their own testimony regarding these topics. Mr. Madsen's testimony was also inconsistent with his evidence during examination for discovery. Their attempts to explain these inconsistencies were often unpersuasive.

b. Their answers at times appeared to constitute attempts to distance themselves from comments that might be harmful to their own or Mr. Beck's interests.

c. The meaning ascribed to certain of the texts seemed highly unlikely, such as Megan's testimony about the phrase "there's no saving Brad".

d. Megan and Mr. Madsen occasionally contradicted each other with respect to who had sent a particular text.

e. I reject Mr. Madsen's claim to have told Mr. Babakaiff that texts from Mr. Madsen's phone were sometimes sent by Megan, including because Mr. Babakaiff denied ever being told this information.

[25] By contrast with these three Megory litigants, I generally found Mr. Loring to be a credible and reliable witness. I will provide a couple of examples as to why I have come to this conclusion.

[26] First, by comparison Mr. Loring's testimony contained fewer inconsistencies or assertions that seemed inherently unlikely because they did not accord with common sense.

[27] Second, Mr. Loring readily conceded matters that he might have been expected to push back on were his testimony skewed by ill feelings or bias. For example, he agreed that in the SPA Mr. Beck had taken steps to try to ensure his success as a new owner. In the same vein, Mr. Loring conceded that: (a) he could be prickly or abrasive as a worksite supervisor; (b) he at times padded his invoices to use up the available Enbridge budget; (c) he sometimes engaged in free climbing

when he should not have done so; and (d) his accusation that Mr. Madsen had stolen fuel was unfounded.

[28] As noted, three former Banner employees were called as witnesses by the parties. The Megory litigants called Adam Giorgio, while the ABZ litigants called Owen Babakaiff and Nick Yadernuck.

[29] Mr. Giorgio was a Banner crew member during the 2019, 2020 and 2021 seasons. I generally found him to be a sincere witness who tried to provide reliable evidence. However, I have some concerns about his reliability for three reasons.

[30] First, when testifying in chief Mr. Giorgio clearly believed that the only season in which he worked for Banner while Mr. Loring was its owner was 2021, the same season in which described safety issues arising that led him to quit. In fact, 2021 was his *second* season working under Mr. Loring as Banner's owner. He appears to have had no safety concerns during the earlier 2020 season. And one of his most significant safety concerns, regarding the absence of drop bags, was equally present in his first season with Banner, which included at least a couple of months when Mr. Beck was the owner.

[31] I should add that I do not accept Mr. Giorgio's evidence that Mr. Loring steadfastly and rudely refused to acquire drop bags. Mr. Loring testified that he acquired drop bags after the 2021 season, and he was not challenged on this testimony in cross-examination. I accept the evidence of Messrs. Loring, Babakaiff and Yadernuck regarding discussions about and events concerning the drop bags.

[32] Second, as revealed by his answers in cross-examination, some of the allegations Mr. Giorgio made about Mr. Loring in the complaint he filed with the CER were exaggerated.

[33] Third, Mr. Giorgio testified that because of his previous experience working at heights the other men often turned to him for advice. But he denied being a foreman at Banner. I find his denial to be the result of a faulty memory, because it was contradicted by the testimony of Messrs. Loring, Madsen and Yadernuck.

[34] I find Mr. Babakaiff to have been a sincere witness who appeared to bear no animus towards Mr. Beck or bias for Mr. Loring. For example, Mr. Babakaiff readily agreed that the workplace under Mr. Loring had not been a happy one in the summer of 2021, and that crewmembers including him were fed up with not having concerns addressed. He also mentioned Mr. Loring having a bad temper, which he found upsetting in an employer. I accept Mr. Babakaiff's testimony that in his direct communications with Enbridge in 2022 he gave his genuine opinion as to what was accurate or inaccurate in the complaint that Enbridge had received.

[35] As with Mr. Giorgio, however, the reliability of Mr. Babakaiff's evidence was occasionally questionable, although less so overall. The key instance in this regard was Mr. Babakaiff's evidence in chief about never having worked on wet pipe, which became more nuanced after he was reminded of some text messages he had the sent to Mr. Madsen's phone. Mr. Babakaiff then agreed that he had had potential concerns about what the crew had been told about wet pipe by Mr. Loring, and he also stated that some other crew members viewed working on wet pipe as an example of Mr. Loring prioritizing production over safety.

[36] Nick Yadernuck also appeared to me to be an honest witness, and I had no serious concerns about his reliability, although he was the least experienced of the former Banner employees who testified, which I have kept in mind in assessing his testimony about events at the worksite. Like all of the witnesses, given the passage of time Mr. Yadernuck could not give much detail about conversations, and he was mistaken about Mr. Madsen attending the September 15, 2021 meeting (although in cross-examination he admitted that his recollection could be wrong).

[37] I have no concerns about the credibility of the three Enbridge witnesses, although given the passage of time their memories about events were occasionally sparse or tentative.

[38] Finally, the Megory litigants did not challenge Mr. Sturgess's reliability or credibility, other than to argue that his failure to take into account certain factors

justifies discounting the loss of profit he has attributed to termination of Banner's contract by Enbridge.

Factual Background

[39] At the time of trial, Mr. Beck was 70 years old, while Mr. Loring was 53 years of age. Both men are long-time residents of Hope.

Banner and the Involvement of Messrs. Beck and Loring up to 2019

[40] Mr. Beck started working for Banner in around 1989, when his father-in-law owned the company. In about 1993, Mr. Beck's father-in-law retired, and Mr. Beck became a partner in the business with his brother-in-law. By roughly 2000, Mr. Beck was Banner's sole owner.

[41] At some point, a restructuring resulted in Mr. Beck holding all of Banner's shares through his company Megory. There was no suggestion in the evidence that anyone other than Mr. Beck was a shareholder or directing mind of Megory at any time material to the issues in dispute. To the contrary, all of the witnesses, including Mr. Beck, spoke about Banner as if it was owned and run entirely by him, and I have thus concluded that this was the case.

[42] Banner's business was inspecting and maintaining aerial pipelines, for example pipelines that cross a river, whether under a highway bridge or affixed to freestanding towers. This work includes but is not limited to grinding off damaged or worn coating on the pipe and cables, then washing and recoating the surfaces. The coating material is an organic substance called Termarust. The work is potentially dangerous because it is carried out at significant heights.

[43] Pipeline inspection and maintenance work is seasonal in British Columbia. Weather permitting, it starts in March and ends in late October or early November.

[44] Over the years, the great majority of Banner's work came from 11 or so aerial pipelines in British Columbia, including at or near Agassiz, Hope, Quesnel, Prince George and Fort St. John. Since around 2017, these 11 pipelines were owned by

Enbridge through Westcoast Energy Inc. (“Westcoast”), doing business as Spectra Energy Transmission. As Westcoast is owned by Enbridge, I will mostly refer to these pipelines as belonging to Enbridge, as did many of the witnesses at trial.

[45] Enbridge employees attended Banner worksites once a week to issue a work safety permit, and occasionally visited at other times. Enbridge employees also approved job hazard analysis worksheets, which identified tasks to be performed and how to address risks. Given the limited attendance of its employees at the worksites, Enbridge had minimal first-hand information as to how Banner employees performed their work, including whether there might be safety concerns in this regard.

[46] Banner also did work for other pipeline companies over the years, including in more recent times Fortis on Vancouver Island. But its non-Enbridge work was very modest in terms of revenue. For example, in three of Banner’s final five years of full operation, Enbridge work comprised almost 100% of revenue, while in the other two years the percentage was 90% and 87%.

[47] Mr. Loring began working for Banner as a labourer in around 2007. He was inexperienced, or “green”, when first hired. Mr. Beck played a major role in training Mr. Loring. All of Mr. Loring’s training was “on the job”.

[48] Over time, Mr. Loring became “lead hand” at Banner, and then Mr. Beck’s second-in-command. In this latter role, Mr. Loring supervised worksites, although Mr. Beck would often also be present. Mr. Loring was in charge when Mr. Beck was not on site.

[49] I accept Mr. Loring’s testimony that the nature of the work remained fairly constant during his time at Banner, and that the work locations were also fairly consistent. Mr. Loring was not challenged on these points in cross-examination, and Mr. Beck did not testify to the contrary.

Megory Sells Banner Shares to ABZ

[50] In 2019, Mr. Beck decided he had had "enough" of Enbridge, in particular an Enbridge team leader who he felt made Banner's work unnecessarily challenging. Mr. Beck was also getting older, and had been in the business for many years. So he offered to sell Banner to Mr. Loring for $3 million. Mr. Beck did not seek other buyers, because Mr. Loring was a long-time employee who he figured would have a good chance at success in taking over the business.

[51] There was no negotiation about price, and Mr. Loring agreed to buy Banner. The share transfer between the men's holding companies – Megory and ABZ – was executed through the SPA on May 31, 2020.

[52] Pursuant to the SPA, the purchase price was due in four instalments of $750,000, payable as of December 31 in consecutive years starting in 2020. The outstanding balance on the purchase price was to bear interest at 0.15% per annum, payable on April 30, 2024, but if ABZ had made all of the instalment payments by that point no interest would be payable.

[53] ABZ signed a promissory note for the purchase price, which was guaranteed by Mr. Loring.

[54] Megory also lent ABZ $206,000 to help Mr. Loring with initial expenses, to be repaid in full by August 31, 2020. There was no suggestion that this loan was not paid back by that date.

[55] Article 5.3(c) of the SPA provided that Megory would assist in the post-closing transition of Banner employees to new ownership, including by fostering good relations, and would not disparage Mr. Loring to any Banner employees and that doing so may cause Banner and ABZ irreparable harm:

> 5.3 Conduct Posting Closing – [Megory]. Following the closing date, [Megory] covenants and agrees that:
>
> …

> (c) [Megory] shall assist in the transition of the employees and to [sic] foster good relations between the employees and [ABZ] post-Closing. [Megory] shall in no way disparage [ABZ] or its Affiliates to any employees or independent contractors working at [Banner], and Megory acknowledge [sic] that doing so may cause irreparable harm to [Banner] and [ABZ].
>
> [Emphasis added]

[56] Article 1.1(d) defines an "Affiliate" of a person to mean "any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person". "Person" is defined to include an individual or corporation. Mr. Loring and Banner were thus ABZ affiliates. By virtue of Article 5.3(c), Megory therefore agreed not to disparage Mr. Loring and Banner.

[57] At the same time as he executed the SPA on behalf of Megory, Mr. Beck entered into the Non-Competition Agreement with ABZ. As I will discuss later in these reasons, the SPA incorporated by reference the Non-Competition Agreement and also deemed it to be part of the SPA.

[58] In Article 2(i) of the Non-Competition Agreement, Mr. Beck agreed that he would not in any manner direct an individual or corporation away from or reduce any business with Banner:

> 2. At all times, except as required to fulfill his duties to [ABZ], [Banner], their successors or Affiliates under any form of employment arrangement, during the [next five years], [Mr. Beck] agrees that he shall not, directly or indirectly, in any manner whatsoever:
>
> > (i) contact or solicit any past, present or prospective customers or clients of [Banner], [ABZ], or any of their Affiliates for the purpose of selling to such customers or clients any products or services which are the same as or substantially similar to, or in any way competitive with, the products or services sold by [ABZ] or [Banner], or to otherwise direct any such person away from [Banner] or [ABZ] or reduce or alter any business with [Banner] or [ABZ];
> >
> > [Emphasis added]

[59] In the Non-Competition Agreement, Mr. Beck also agreed that he owed duties of loyalty and confidence, as well as a fiduciary duty, to ABZ and Banner. On this point, Article 3 states:

> 3. Confidentiality. [Mr. Beck] acknowledges and agrees that he has a duty of loyalty and confidence, as well as a fiduciary duty, to [ABZ] and [Banner]. Other than for the

> benefit of [ABZ] or [Banner] and as specifically requested by [ABZ], [Mr. Beck] shall not disclose Confidential Information to any Person and shall not use the Confidential Information for his own purposes. [Mr. Beck] shall not copy or keep any business, client or customer documents or information (in any form whatsoever) or other property belonging to [ABZ] or [Banner].
>
> [Emphasis added]

[60] The Non-Competition Agreement further limited Mr. Beck's ability to make statements disparaging or defaming ABZ or Banner, Article 4 stating:

> 4. Prohibited Statements. [Mr. Beck] covenants and agrees that he shall refrain from, directly or indirectly, taking action or making statements, written or oral, which disparage, or defame or may reasonably be expected to disparage or defame the goodwill or reputation of [ABZ] or [Banner].

[61] In Article 5 of the Non-Competition Agreement, Mr. Beck among other things acknowledged that, "a breach by him of any of the covenants contained in the [Non-Competition Agreement] would result in damages to [ABZ] and [Banner]".

[62] In Article 6, Mr. Beck acknowledged the reasonableness of the restrictions in the Non-Competition Agreement and waived defences to their strict enforcement:

> 6. Reasonableness of Restrictions. [Mr. Beck] agrees that all restrictions in this [Non-Competition Agreement] are necessary and fundamental to the protection of [ABZ] and [Banner] and are reasonable and valid. All defences to the strict enforcement of this [Non-Competition Agreement] against [ABZ] and [Banner] are hereby waived.

April 3, 2020 Contract with Enbridge

[63] On April 3, 2020, which is a couple of months before the SPA was executed, Mr. Beck negotiated a new contract with Enbridge.

[64] This new contract ran for a three-year term, to April 3, 2025, with an option for Enbridge to renew for another two years. But either party could terminate the contract on 30-days notice. It was also nonexclusive, meaning Enbridge was free to contract with other companies for its pipeline maintenance work.

[65] However, Enbridge had long relied on Banner to carry out this work, with respect to which Banner had expertise. There is no evidence to suggest that

Enbridge had ever contemplated engaging a different company for the work prior to receipt of the October 6, 2021 email complaint.

[66] I thus find there to have been no real risk that Enbridge would terminate the April 3, 2020 contract with Banner, or engage another company to perform any of the maintenance work, prior to the end of the contract's three-year term on to April 3, 2025.

Banner's Operations in the 2020 and 2021 Seasons

[67] Mr. Loring took control of Banner's operations upon execution of the SPA on May 31, 2020, and thus partway through the 2020 season.

[68] At that same time, Mr. Beck took on the role of consultant for Banner and Mr. Loring, earning about $160,000 per year as a Banner employee. This is the amount that Banner billed Enbridge for his services; *i.e.*, Banner took no cut of what Enbridge paid it for Mr. Beck's work.

[69] I accept Mr. Loring's evidence that both men agreed it was a good idea for Mr. Beck to continue as a consultant, so that Mr. Beck could provide advice and mentorship as Mr. Loring grew into the managerial role. In this role, Mr. Loring could and did bring questions or concerns to Mr. Beck to obtain input based on Mr. Beck's valued experience.

[70] Mr. Beck testified that in his role as a consultant he sometimes attended worksites to carry out inspections, whether with Mr. Loring or other Banner employees. Mr. Beck stated that he attended the worksites more often in the 2020 season, but his evidence about attending worksites in 2021 indicates that he was present at numerous of them in that season too.

[71] Mr. Loring gave similar evidence, which I accept, about Mr. Beck being present when equipment was set up so that work could begin, and also for morning meetings, addressing questions or concerns that arose, and about Mr. Beck

sometimes staying on site for the day. Crew members were free to ask questions of Mr. Beck, including about safety issues.

[72] I thus find that during the 2020 and 2021 seasons Mr. Beck had much more than a passing involvement in the Banner's operations, was in frequent communication with Mr. Loring, and often interacted with Banner's employees.

[73] It appears that there were typically about seven crew members on site, not counting Mr. Beck and Mr. Loring.

[74] One of those crew members was Mr. Madsen, who as noted was married to Mr. Beck's daughter Megan. Mr. Madsen worked for Banner as a labourer for about seven years, although around the time of the sale he had taken a year or so off for a mechanics course in Kamloops. Megan never worked for Banner.

[75] There is no suggestion that Banner, Mr. Beck or Mr. Loring encountered transitional problems during Mr. Loring's first season as owner in 2020. In particular, there is nothing to suggest that Mr. Beck or any Banner crew members had concerns about safety or other operational matters in the 2020 season.

[76] However, in the 2021 season some Banner employees became unhappy with Mr. Loring and the company's workplace culture. I will next examine some of the material events that took place in the summer and fall of 2021, including the September 15 crew meeting and the October 6 email and its fallout.

Dinner Meeting and Potentially Related Events at Fort St. John

[77] Mr. Beck testified that, while at a worksite near Fort St. John, he noticed that "not much in the training line" was happening. Specifically, he saw Mr. Madsen talking to some new employees. Mr. Loring was about 30 feet away yelling, "what are you talking about?" Mr. Beck said that he told Mr. Loring that Mr. Madsen was explaining something to the employees. Mr. Beck testified that Mr. Madsen was probably telling the employees how best to carry out their work.

[78] Mr. Beck further testified that at Fort St. John that evening he and Mr. Loring had dinner, during which he told Mr. Loring that he was not happy with what he had seen, that Mr. Madsen had been explaining things to the employees, and that Mr. Loring needed to “fix it”, in the sense of making sure training was done properly to ensure safety.

[79] When asked to explain what safety practices he had observed that were not being followed, Mr. Beck provided no real specifics. He mentioned seeing one man on the pipe wandering around, and two men in a basket who appeared to be shuffling as if trying to figure out what to do. Mr. Beck said he did not discuss safety issues with anyone but Mr. Loring during or regarding this worksite visit.

[80] Later in his testimony, Mr. Beck added that, during the same dinner at Fort St. John, he mentioned to Mr. Loring about having seen one of the men standing and walking back and forth, and that Mr. Loring said this employee was useless. Mr. Beck added that at this dinner he asked about another employee, who Mr. Loring said was doing fine but whose work occasionally had to be touched up. Mr. Beck testified that he told Mr. Loring to fix this, as it was a “cluster fuck”. However, Mr. Beck also testified that he did not recall if he had offered advice to Mr. Loring at this dinner.

[81] Mr. Beck testified that the next day Mr. Loring stated that he had thought very hard about what Mr. Beck had said at the dinner, but that Mr. Loring said nothing else during this conversation.

[82] In my view, Mr. Beck’s testimony was unrealistically vague as to what he saw at Fort St. John, why it caused him concern, and his conversations with Mr. Loring at the dinner and the next day, despite his being asked more than once in direct examination to elaborate. This vagueness is at odds with the significant importance Mr. Beck appeared to ascribe to his observations at the work site and the ensuing conversations with Mr. Loring.

[83] To provide but two examples: (a) given his testimony, I am unable to find that Mr. Beck knew what Mr. Madsen was saying to the other employees, whether based on his own observations or information provided by someone else; (b) I find it very unlikely that if, as Mr. Beck contends, he had spoken harshly to Mr. Loring about safety or other concerns at the dinner, the next day Mr. Loring would have indicated that he had thought very hard about Mr. Beck's comments without saying anything else on the topic.

[84] For these reasons, I have significant concerns about the credibility and reliability of Mr. Beck's testimony as to his observations and ensuing conversations with Mr. Loring at Fort St. John.

[85] In closing submissions, counsel for the Megory litigants nonetheless asked me to infer that as a result of the dinner conversation with Mr. Beck, Mr. Loring asked Mr. Madsen to assist the current foreman, Adam Giorgio, in providing guidance to the other crew members.

[86] The evidence supporting this inference comes from Mr. Madsen, who testified that while at Fort St. John Mr. Loring asked him to assist Mr. Giorgio with the foreman duties, telling him that Mr. Giorgio needed help training the crew. Mr. Madsen testified that the training he thereafter provided related to matters such as teaching the men how to tie knots, and showing them how to move things and perform grinding and coating.

[87] For his part, Mr. Loring testified in chief that at the dinner in Fort St. John he and Mr. Beck discussed setting the tension on wind guy cables. He had not brought the proper book for determining the settings, which led Mr. Beck to state that he should be reviewing the book every night because Mr. Beck would not be around to do that for him in the future. In cross-examination, Mr. Loring was not asked about the dinner conversation or whether he ever tasked Mr. Madsen with assisting Mr. Giorgio with foreman duties.

[88] I nonetheless believe Mr. Madsen when he says Mr. Loring asked him to help in providing direction to the newer crew members. Mr. Madsen was not challenged on this evidence in cross-examination. Were it contested as untrue, I would also have expected Mr. Loring's counsel to address the topic in his client's examination-in-chief, or to make closing submissions to this effect, but he did neither.

[89] While I accept Mr. Madsen's evidence on this point, given my concerns about Mr. Beck's credibility and reliability, I am unable to accept as accurate his description of the Fort St. John dinner and the surrounding events. I thus reject Mr. Beck's evidence that he raised safety concerns with Mr. Loring at or around this time, and prefer Mr. Loring's evidence as to what was discussed at the dinner.

[90] Accordingly, I view Mr. Loring's request that Mr. Madsen assist Mr. Giorgio as proof that Mr. Loring was open to making changes to address training and safety matters, but I am not prepared to draw a link between this request and any conversation between Messrs. Loring and Beck.

Wet Pipe Incident at Fort St. John

[91] Most of the witnesses testified about an incident at Fort St. John where the crew worked on or in some fashion traversed "wet pipe". The term "wet pipe" refers to the pipe becoming wet from rain or from sweating/condensation caused by, for example, temperature changes.

[92] These witnesses agreed that wet pipe raises safety issues, but their evidence conflicted as to whether working on or traversing wet pipe could ever be justified, and also regarding what had happened with respect to wet pipe at Fort St. John. I will review the evidence of the witnesses on these points, before making some general comments.

[93] Mr. Loring testified that, in his experience, the Banner crew occasionally worked on wet pipe, but only in the sense of traversing it to work on cables. He stated that traversing wet pipe could be safe, albeit with caution, because the crew was 100% hooked off and there was a sandpaper-like strip on top of the pipe that

reduced slipperiness. Mr. Loring said he had discussed this topic with Mr. Beck in the past, and the crew had operated in this way before he bought Banner. In this sense, Mr. Loring testified that working on wet pipe, although not common, could properly occur in certain circumstances. He denied that Mr. Beck had ever said something to the contrary.

[94] Mr. Loring testified that Mr. Madsen raised questions or concerns about wet pipe at Fort St. John, and they discussed the topic in front of other crew members. Mr. Loring told Mr. Madsen that it was safe to traverse the wet pipe, as described above. Mr. Loring testified that he also mentioned to Mr. Madsen that Mr. Beck agreed that working on wet pipe could be permissible, and that he likely said the same thing to or in front of other crew members.

[95] Mr. Madsen testified that at Fort St. John he raised with Mr. Loring his understanding that they should not work on wet pipe, and Mr. Loring said it was okay although they could not coat the wet pipe. He testified that Mr. Loring said, “fuck it, I’m going to work”, and climbed up the ladder, which Mr. Madsen took to mean that the crew should do the same. Mr. Madsen further testified that Mr. Loring later told him that Mr. Beck had said it was safe to work on wet pipe.

[96] Mr. Beck testified that, while the crew was still in Fort St. John, but after his dinner with Mr. Loring, Mr. Loring called him to ask whether working on wet pipe was okay, and he told Mr. Loring it was unsafe. Mr. Beck testified that working on wet pipe is not a good idea because the Termarust coating is slippery, “like ice”.

[97] Mr. Beck testified that he and Mr. Loring had no further discussions about wet pipe before the September 15, 2021 meeting, which I will refer to below, but he believed that an employee – he claimed not to recall who – later mentioned the topic to him, which is why he raised it at that meeting.

[98] A text sent from Mr. Madsen’s phone to Mr. Babakaiff not long before the September 15 meeting stated that Mr. Madsen had spoken to Mr. Beck “about the wet pipe”, that “it was a huge no-no”, and that Mr. Beck had only told Mr. Loring that

it was okay to walk on wet pipe to reach the basket from which work could safely be performed.

[99] Whether or not this text was sent by Megan, as Mr. Madsen and Megan stated in their testimony, I find that the information in it came from Mr. Madsen, as testified to by Megan and implicitly accepted in Mr. Madsen's evidence, and accurately conveyed what Mr. Beck told Mr. Madsen about his conversation with Mr. Loring regarding wet pipe. At the very least, I find that Mr. Beck essentially conveyed to Mr. Madsen that walking on wet pipe to reach a basket from which work could be conducted was not a serious safety concern.

[100] Mr. Giorgio gave evidence that the pipe had been wet and they sat for two or three days, and then Mr. Loring started working, so the crew figured it was okay and followed the leader. He said the crew members had spoken amongst themselves, because it was out of the norm and gave them concern. Mr. Giorgio testified that he did not mention this concern to Mr. Loring because, based on Mr. Loring's actions, he felt that starting up work again was okay. But Mr. Giorgio added that, because Mr. Loring was not a "people person", he was also hesitant to voice his concerns.

[101] Mr. Babakaiff testified that no one worked on wet pipe and Mr. Loring did not make the crew do so. In cross-examination, he said that if the pipe was wet they would "go to ground". Mr. Babakaiff nonetheless agreed that he sent a text to Mr. Madsen in which he stated that he was going to ask Mr. Beck whether "wet pipe is an Enbridge rule" because if so Mr. Loring had lied to him. He further agreed that others on the crew were concerned about Mr. Loring prioritizing production over safety, and while that was not his own view the only example would be working on wet pipe.

[102] Mr. Yadernuck testified that the practice at Banner was not to work on wet pipe because it could be hazardous. He said that if it started to rain they would get off the pipe and wait for the rain to stop. They wore "fall protection" and the pipe had a grip tape on it. Mr. Yadernuck stated that at Fort St. John it had rained and they came down and sat, but went back up later to tidy everything up so they could go

home. He recalled there being a discussion about whether they should go up, which involved the entire crew including Messrs. Giorgio and Mr. Loring. Mr. Yadernuck testified that Mr. Loring made the decision to go back up, there was no pushback from the crew, and when they did so everyone was secured. He had not felt unsafe.

[103] The inconsistencies between the witnesses, and even within the testimony of the witnesses, makes it difficult to determine exactly what happened with the wet pipe at Fort St. John. It is also difficult to know precisely what some of the witnesses meant when they talked about “working” on wet pipe; for instance, whether this term was being used to encompass grinding and coating the pipe, as opposed to traversing the pipe to reach a basket from which work would then be carried out.

[104] Regardless, Mr. Beck’s statement to Mr. Madsen that it was okay to traverse wet pipe in order to reach the basket – which is an apparatus from which the men could work on cables – is consistent with Mr. Loring’s testimony regarding the judgment call he says he made regarding the wet pipe at Fort St. John.

[105] Based on the evidence, I conclude that there was concern among some crew members about what happened with the wet pipe at Fort St. John, that the issue was raised with Mr. Loring at that time, although probably not very firmly, and that the crew ended up following Mr. Loring’s lead without protest.

[106] I also find that information about the wet pipe incident at Fort St. John was relayed by Mr. Madsen to Mr. Beck, who based on what Mr. Madsen told him was concerned about what had happened and/or what Mr. Loring had told crew members about Mr. Beck’s opinion on wet pipe.

[107] Finally, I find that Mr. Beck never raised his concern with Mr. Loring prior to the September 15 meeting. No one testified to the contrary, and in any event as described below I find that by the time of that meeting Mr. Beck had ceased sharing material information or concerns about safety or workplace culture with Mr. Loring.

Events at Prince George on September 6 and 7, 2021

[108] Subsequent to the wet pipe incident at Fort St. John, the Banner crew was working at an aerial crossing near Prince George.

[109] Megan testified that she drove to Prince George because Mr. Madsen was thinking about leaving his employment at Banner, in which case he would need a drive home. Both of them recounted having dinner with Messrs. Babakaiff and Yadernuck at the latter's trailer.

[110] Mr. Madsen testified that they had dinner there because Mr. Yadernuck had a bigger air fryer. He denied that Megan encouraged Messrs. Babakaiff and Yadernuck to quit or badmouthed Mr. Loring.

[111] Megan testified that at this dinner Mr. Madsen told Messrs. Babakaiff and Yadernuck that he was uncomfortable with some of the safety things that were going on, which he was planning to raise with Mr. Loring, and depending on how that conversation went he might leave Banner. Megan said she had no input in this conversation, and that Messrs. Babakaiff and Yadernuck expressed general agreement with Mr. Madsen's plan, stating that it was about time.

[112] Messrs. Babakaiff and Yadernuck both testified that they met Megan and Mr. Madsen in Mr. Yadernuck's trailer in Prince George. But they stated that Megan had asked for the meeting, at which she did most of the talking and urged them to quit Banner so that Mr. Loring would be left alone with no one to work for him.

[113] However, neither Mr. Babakaiff nor Mr. Yadernuck suggested that all was well at the Banner workplace at this time.

[114] In cross-examination, Mr. Babakaiff agreed that the workplace was unhappy that summer, that people were tired about not having their concerns addressed, and there had previously been talk of walking off the job. He also agreed that, had another job been available, he might have considered leaving Banner. However, Mr. Babakaiff was not asked to elaborate on the nature of his concerns. In chief, he had

expressed displeasure about working in heat, but I find it unlikely that his displeasure was limited to this one matter.

[115] In chief, Mr. Yadernuck mentioned tension in the crew prior to the meeting with Megan and Mr. Madsen. In cross-examination, he agreed that there had been dissention, and that he had discussed frustrations or concerns about working conditions with Mr. Babakaiff, although Mr. Yadernuck said he himself had no concerns about Mr. Loring not listening to the employees. As with Mr. Babakaiff, Mr. Yadernuck was not asked to specify the nature of the frustrations or concerns.

[116] I prefer the evidence of Messrs. Babakaiff and Yadernuck regarding the dinner discussion in Mr. Yadernuck's trailer, including because of my already-mentioned concerns about the credibility and reliability of Megan and Mr. Madsen. The evidence of Messrs. Babakaiff and Yadernuck is also consistent with Megan's keen interest in what was happening at Banner, as demonstrated by her subsequent involvement in using Mr. Madsen's phone to text Mr. Babakaiff and helping Mr. Madsen with complaints made to Enbridge and others. Her interest is understandable given that Banner was closely associated to her father and husband.

[117] However, I am not suggesting that Mr. Madsen and Megan were acting in bad faith at the meeting with Messrs. Babakaiff and Yadernuck, in the sense that they fabricated concerns and did not genuinely believe there were problems in the Banner's workplace culture under Mr. Loring's leadership. I will discuss the motivation of Mr. Madsen and Megan later in my reasons, when addressing Mr. Loring's defamation claim.

[118] The parties' agreed statement of facts indicates that Mr. Madsen's employment with Banner ended on September 7, 2021, which I find is the day after the dinner meeting I have just described.

[119] Mr. Madsen testified that he left Banner while at Prince George because of safety concerns. Mr. Madsen recounted that in telling Mr. Loring he was leaving he stated that the way Mr. Loring was pushing the green crew would lead to someone

getting hurt, to which Mr. Loring replied that Mr. Madsen should know how he is, having known him the longest. Mr. Madsen testified that they also discussed Mr. Loring having accused Mr. Madsen of stealing fuel.

[120] Mr. Madsen testified that his biggest safety concern was the wet pipe incident in Fort St. John. But Mr. Madsen did not recall whether he mentioned the wet pipe to Mr. Loring on this occasion, although he believed he did so.

[121] Mr. Loring testified that while at Prince George Mr. Madsen said he had had enough and was leaving Banner. Mr. Loring said he could not recall exactly why Mr. Madsen said he was leaving, although Mr. Madsen gave specifics at the time. He said he was surprised by Mr. Madsen's decision. Mr. Loring admitted accusing Mr. Madsen of stealing fuel, based on a credit card receipt that seemed out of the ordinary, but said that he later realized the accusation was not justified.

[122] Given my concerns about Mr. Madsen's credibility and reliability, I am not prepared to find that he brought up the wet pipe topic when he and Mr. Loring spoke on this occasion. But I do find that Mr. Madsen conveyed to Mr. Loring concerns about Banner's workplace, and/or Mr. Loring already had an idea that tensions existed amongst Banner employees, which together with Mr. Madsen leaving Banner led Mr. Loring to ask Mr. Beck for a meeting. It is to this topic that I next turn.

Messrs. Beck and Loring Arrange a Crew Meeting at Hope

[123] Mr. Loring testified that after Mr. Madsen left Banner he contacted Mr. Beck for advice, not only because that was Mr. Beck's role as consultant, but also because Mr. Beck was Mr. Madsen's father-in-law. He said they agreed to meet when the crew was next in the Hope area.

[124] Somewhat similarly, Mr. Beck testified that Mr. Loring called him about issues that had been brought up in Prince George, and that he told Mr. Loring they would sit down and chat about it when Mr. Loring returned to Hope.

[125] Neither Mr. Loring nor Mr. Beck suggested that they discussed any issues on the phone, as opposed to simply agreeing to meet in Hope, and I find that they did not do so.

[126] Mr. Beck further testified that around this time Messrs. Madsen and Babakaiff brought up some “issues” or “stuff” with him. Asked what was brought up, Mr. Beck testified that they brought up unsafe work practices, and he believed a lot of yelling and badgering, although he could not recall what Mr. Babakaiff had said. Asked who had brought these matters up, Mr. Beck stated that Mr. Babakaiff brought some matters up to him, and he believes that Mr. Babakaiff also brought some matters up with Mr. Madsen.

[127] Notably, Mr. Beck provided no detail as to what safety issues were raised. Once again, this vagueness gives me concern about his credibility and reliability. Given Mr. Beck’s professed mandate of overseeing safety issues at Banner, and what ensued at the September 15 meeting, I would have expected him to be able to recall and articulate with greater specificity at least some of the safety concerns reported to him at this time by Mr. Babakaiff and/or Mr. Madsen.

[128] My concern is not that Mr. Beck received no information about potential safety issues or other matters of concern to some crew members, in particular Mr. Babakaiff and/or Mr. Madsen. The aspect of Mr. Beck’s testimony that I find not credible or reliable is his claim to recall no detail about what he was told in this regard. As with some other aspects of his testimony, I find that Mr. Beck was trying to minimize the information he had received in an attempt to distance himself from the email of complaint that Megan and Mr. Madsen sent to Enbridge on October 6, 2021.

[129] Mr. Beck testified that Mr. Loring called him a second time when the crew was near returning to Hope, at which point they arranged to meet on September 15. In cross-examination, Mr. Beck agreed that he organized the meeting, but stated that Mr. Loring the one who told Banner’s employees about it. I accept his testimony on this point.

Mr. Beck's Pre-Meeting Phone Call with Enbridge Handler

[130] Mr. Beck testified that the day before the September 15 meeting he called Banner's "handler" at Enbridge, Ed McClarty, to notify Mr. McClarty that employees were leaving Banner and there were safety issues, although he did not articulate any of those safety issues to Mr. McClarty. Mr. Beck testified that the safety issues were the ones brought up by Messrs. Madsen and Babakaiff, but as already noted he never identified those issues in his evidence.

[131] Mr. Beck testified that his information about people quitting was based on Mr. Madsen having left Banner on September 7, Mr. Babakaiff indicating he was probably going to quit, and a rumour that Mr. Giorgio might leave as well. Mr. Beck testified that this information created a safety issue justifying his call to Mr. McClarty, because the departures of Messrs. Madsen and Giorgio would leave the crew with newer employees who lacked sufficient training.

[132] Mr. Beck admitted that he did not tell Mr. Loring he was going to phone Mr. McClarty. Although Mr. Beck claimed that he mentioned this phone call to Mr. Loring at the September 15 meeting, I do not accept his evidence in this regard. No other witness testified about hearing such a comment at the meeting, and as already mentioned I have concerns about Mr. Beck's credibility and reliability when it comes to accurately recounting the material events.

[133] I prefer and accept Mr. Loring's evidence that Mr. Beck at no point told him about making this call to Mr. McClarty.

[134] There is also no evidence to suggest that Mr. Beck ever told Mr. Loring that he had heard that Messrs. Babakaiff and Gorgio might quit, and I find that he did not do so. My finding is consistent with Mr. Beck's admitted failure to tell Mr. Loring he was going to call Mr. McClarty.

September 15, 2021 Meeting

[135] The meeting discussed by Messrs. Beck and Loring ended up happening at Mr. Beck's property in Hope at about 10:00 a.m. on September 15.

[136] That day, Mr. Beck texted with Mr. Babakaiff prior to Mr. Babakaiff arriving in Hope. In one text, Mr. Beck told Mr. Babakaiff, “I don’t think this meeting is going to go good”. There is no indication that Mr. Beck ever said anything like this to Mr. Loring, and I find that he did not do so.

[137] Three or four of the men, including Mr. Babakaiff, arrived at Mr. Beck’s residence. As Mr. Loring had not yet arrived, they parked on the side of the road.

[138] Mr. Beck testified that parking on the side of the road created “another safety issue”, given the layout of the road in front of his property. He explained that this concern is what led to the following text exchange with Mr. Babakaiff:

> Mr. Beck: “what are you waiting for”
>
> Mr. Babakaiff: “Brad says we have to wait for him lol so we’re all here”
>
> Mr. Beck: “it’s time to take matters in your own hands boys”

[139] I reject Mr. Beck’s evidence that this last text referred to his safety concerns about parking on the road. The contents of the text exchange are inconsistent with Mr. Beck having a concern about roadside safety, which he surely would have mentioned were this the reason for his comment.

[140] To the extent that in his testimony Mr. Beck implied that his text had to be viewed along with a previous phone call he had with Mr. Babakaiff, this explanation is also inconsistent with the tenor of the exchange. Indeed, if roadside safety concerns were mentioned in a phone call, there would have been no need for any texts about the topic. I further question Mr. Beck’s convoluted explanation as to how the claimed safety concerns were manifested. Finally, I note that in explaining this text exchange Mr. Babakaiff never suggested that it related to safe parking.

[141] In my view, the final text in the exchange set out above was Mr. Beck’s response upon hearing that Mr. Loring had told his crew to wait for him before meeting with Mr. Beck. Mr. Beck was, in effect, telling the crew to ignore Mr. Loring’s instructions, which is what they did, responding to his text by leaving their vehicles and entering Mr. Beck’s property before Mr. Loring arrived.

[142] Mr. Beck testified that, once Mr. Loring arrived at the meeting, Mr. Beck asked why he had told his men that Mr. Beck had said it was okay to work on a wet pipe, and why he had called crew members a bunch of useless bucket packers. Given the passage of time, Mr. Beck said he did not recall any other topics he raised at the meeting, which he said was not very long and took only about 10 minutes.

[143] Mr. Beck testified that, when confronted about these topics, Mr. Loring simply held up his hands and left. Mr. Beck also stated that, after he had finished speaking, he went over to his vehicle, at which point some crew members spoke to Mr. Loring. Mr. Beck did not recall whether Mr. Babakaiff made any comments, but testified that he recalled Mr. Giorgio speaking about safety issues.

[144] In cross-examination, Mr. Beck explained that he spoke as he did in front of the Banner employees because his job was safety, and safety required that the employees hear what he had to say. Mr. Beck initially denied that several employees quit after the meeting. When it was put to him that Messrs. Giorgio, Babakaiff and Yadernuck all quit, which constitutes several employees, Mr. Beck agreed but attempted to justify his initial denial by stating that “several” means seven. Given the absence of any indication that Mr. Beck was prone to using common English words incorrectly, I find this attempted justification to be disingenuous.

[145] Mr. Loring testified that he arrived at Mr. Beck’s house for the September 15 meeting with crew member Donnie Poole, and that Banner employees Ben Shoule and Messrs. Babakaiff and Yadernuck were already present. He was unsure as to when Mr. Giorgio arrived. Mr. Loring testified that Mr. Beck ran the meeting, and began it by walking towards him stating, “really Brad, really?”, after which Mr. Beck went up one side of Mr. Loring and then down the other. Mr. Loring testified that Mr. Beck’s comments included stating that Mr. Loring was the worst supervisor with whom he had ever worked.

[146] Mr. Loring testified that Mr. Beck had not previously raised the issues with which he confronted Mr. Loring at this meeting. Mr. Loring described being taken aback and in shock, and saying very little if anything in response. He testified that

the employees then spoke up, and while he cannot recall specifics they voiced some unhappiness about how things were going, including mentioning the wet pipe. Mr. Loring testified that the wet pipe had been a topic of discussion at Fort St. John, but "that had been left", and the other matters had not been raised with him before the meeting.

[147] In cross-examination, Mr. Loring agreed that he had known the wet pipe would be discussed at the meeting, but said he nonetheless felt blindsided and like he had been "paraded" in front of the crew. Mr. Loring also agreed that he knew Mr. Madsen's departure would be a topic at the meeting, and that employees had "open access" to raise safety issues him.

[148] Mr. Giorgio testified that he arrived at the meeting in his truck, but never exited the vehicle because he had decided to leave Banner due to concerns about the safety culture. Mr. Giorgio stated that he drove away before there was any discussion, and subsequently attended at Mr. Loring's storage area to pick up his gear and tell Mr. Loring he would not be returning to work.

[149] Mr. Babakaiff testified that, once Mr. Loring arrived, Mr. Beck did most of the talking, discussing how hours were being shaved from the employees, money was being embezzled, and also mentioning the treatment of employees. He stated that Mr. Beck did not appear angry, but told Mr. Loring "how it is", and that Mr. Loring did not say much in response. Mr. Babakaiff did not recall himself or any other employees speaking during the meeting.

[150] Mr. Babakaiff testified that he quit that day because he was angry about matters that he wanted addressed, had been unaware of some of the things brought up by Mr. Beck, and wanted to prove a point. He nonetheless returned to finish the season as a Banner employee, and also returned for the brief 2022 season, after Mr. Loring met his requests for a raise and an extra week of vacation. Mr. Babakaiff further explained his decision to return to Banner by stating that Mr. Loring had "been there" for him by providing support regarding personal issues, and that people make mistakes and deserve a second chance.

[151] Mr. Yadernuck testified that, once Mr. Loring arrived, Mr. Beck ran the September 15 meeting and did most of the talking. Mr. Yadernuck recounted that Mr. Beck said Mr. Loring should not be running the company this way and that he disagreed with a lot of what Mr. Loring was doing. Mr. Yadernuck testified that he did not recall the exact details or the words spoken by Mr. Beck, but described Mr. Beck's manner of speaking to Mr. Loring as "very tense", and indicated that Mr. Loring did not say much in reply.

[152] Mr. Yadernuck testified that he quit his job at Banner the next morning, as detailed below in my discussion of his later meeting with Messrs. Babakaiff and Yadernuck. Mr. Yadernuck nonetheless worked at Banner during its short 2022 season.

[153] Consistent with the evidence of Messrs. Loring, Babakaiff and Yadernuck, I find that Mr. Beck led the September 15 meeting. This conclusion is also consistent with Mr. Beck's role as a former owner with decades of experience in the business, and with his confident demeanour in testifying at trial.

[154] I also find that Mr. Beck did most of the talking at the meeting, and that he was very critical of Mr. Loring's management of Banner. Mr. Beck was not attempting to help Mr. Loring and Banner make improvements, or to mediate between Mr. Loring and his employees. Rather, Mr. Beck was berating Mr. Loring, as if he were still Banner's owner instead of its employee. I further find that Mr. Beck conducted the meeting in this way without any advance notice to Mr. Loring, knowing that there was at least some dissatisfaction amongst the crew members that, if not addressed, might cause one or more of them to quit.

[155] I am not suggesting that Mr. Loring was oblivious to the possibility that dissatisfaction within the crew or the wet pipe issue might be discussed at this meeting. After all, the meeting was called because Mr. Loring had asked Mr. Beck for advice after Mr. Madsen left Banner. Every employee who testified described at least some tension in the workplace, which is unlikely to have escaped Mr. Loring's notice. Mr. Loring also admitted in chief that his personality was sometimes "a little

abrasive", and "maybe not the best", which shows a self-awareness that would have informed his mindset going into the meeting.

[156] What Mr. Loring quite reasonably did not expect, however, was to be attacked by his long-time mentor and advisor, including with criticism about matters Mr. Beck had never before raised with Mr. Loring. I accept Mr. Loring's evidence in this regard, and I also accept that the manner in which Mr. Beck ran the meeting shocked Mr. Loring. Mr. Loring was essentially and understandably reduced to the mindset where he wanted to flee rather than defend himself or attempt a constructive solution to problems that might legitimately exist.

[157] Although not necessary to my conclusion in this regard, I found Mr. Loring's somewhat emotional demeanour in testifying about the meeting supportive of my finding regarding its impact on him.

Mr. Beck's Post-Meeting Phone Call to Enbridge Handler

[158] Mr. Beck testified that, after the September 15 ended, he phoned Mr. McClarty to tell him that the most experienced people had left the Banner crew because of safety issues. However, Mr. Beck testified that the only specific concern he discussed with Mr. McClarty was that important employees were gone. Mr. Beck claimed that Mr. McClarty that did not give any direction in response.

[159] In cross-examination, Mr. Beck testified that he told Mr. Loring in advance that he was going to contact Mr. McClarty after the meeting, albeit without saying he was going to tell Mr. McClarty that the inexperienced crew created a safety concern. I prefer Mr. Loring's testimony that Mr. Beck did not say anything at all to Mr. Loring about the possibility of contacting Mr. McClarty after the meeting.

[160] Mr. Beck attempted to justify contacting Mr. McClarty the first time without informing Mr. Loring in advance, and the second time without telling Mr. Loring what he was going to report, because Mr. Loring had told him to go to Mr. McClarty if there were any issues. Mr. Beck also appeared to suggest that making these calls to

Mr. McClarty was simply part of his job of ensuring that things were done properly regarding safety.

[161] I find Mr. Beck's justification for calling Mr. McClarty without advance warning to Mr. Loring to be self-serving and unconvincing. While Mr. Beck undoubtedly had express or implicit permission from Mr. Loring to communicate directly with Mr. McClarty about routine matters, it would have been unreasonable for Mr. Beck to assume that as an employee he had permission to do so regarding potentially serious safety issues without first speaking to Mr. Loring.

[162] I reject Mr. Beck's evidence that he believed he had permission from Mr. Loring to makes these calls to Mr. McClarty. Instead, I conclude that Mr. Beck intentionally made both calls behind Mr. Loring's back and did not subsequently disclose having made them.

September 15 Meeting Between Messrs. Beck, Babakaiff and Yadernuck

[163] In cross-examination, Mr. Beck claimed not to recall meeting with any of the Banner employees later on September 15 and offering to help find them new jobs. Mr. Beck denied that he had ever tried to get Banner employees jobs elsewhere.

[164] I do not accept Mr. Beck's evidence on this point. Instead, I accept the testimony of Messrs. Babakaiff and Yadernuck that they returned to Mr. Beck's residence to meet him later the same day, at which point Mr. Beck said he could make calls in an attempt to find them new employment.

[165] I also accept Mr. Babakaiff's testimony that at this meeting he told Mr. Beck he had quit his employment at Banner and Mr. Beck called a prospective employer to try to find him a job.

[166] Mr. Yadernuck testified that at this meeting Mr. Beck said that Banner would not continue working and its contract with Enbridge would be cancelled, but that Enbridge would take care of them.

[167] I accept that the events of that day left with Mr. Yadernuck with the impression that Banner would not continue in business, but I do not find that Mr. Beck stated that this would be the case. Rather, I prefer the evidence of Mr. Babakaiff that Mr. Beck stated that if Banner did not work out Enbridge would take care of them.

[168] Because it seemed to Mr. Yadernuck that Banner would not go back to work, and he had received a job offer from his old employer, the next day Mr. Yadernuck told Mr. Loring that he was leaving leave Banner, which is what he did, at least for a time.

Mr. Beck Ends His Association with Banner and Mr. Loring

[169] Mr. Loring testified that after the September 15 meeting Mr. Beck stated that he was done with Mr. Loring, and he did no further work for the company.

[170] Mr. Beck's evidence seemed to conflict with Mr. Loring's testimony on this point, at least to some extent. While Mr. Beck testified that after September 15 he did no further work for Banner in 2021, apart from answering a question from Mr. Babakaiff about wind speeds, Mr. Beck said that a week after the meeting he noticed that Mr. Loring was on his property moving some equipment. Mr. Beck testified that he told Mr. Loring that he was "the same guy" and just a call away if Mr. Loring needed help, whereupon he assisted Mr. Loring in moving the equipment.

[171] Given the tenor of the September 15 meeting, I prefer Mr. Loring's evidence regarding what he was told by Mr. Beck about any future association with Banner. I do not accept that there was a discussion about a week later during which Mr. Beck stated or intimated he was still available to help out Mr. Loring with Banner's business.

Banner Finishes the 2021 Season

[172] Mr. Loring testified that at various points after the September 15 meeting Messrs. Babakaiff, Yadernuck and Giorgio told him they were leaving Banner. Mr. Loring's evidence is not materially different from the evidence these three men gave

about how and when they communicated their decision to Mr. Loring, and in the case of Messrs. Babakaiff and Yadernuck regarding how and when they ended up returning to work for Banner.

[173] I was not provided with much evidence about how Banner completed the rest of the 2021 season, given that Messrs. Madsen, Yadernuck and Giorgio did not return to work. However, there is no suggestion that the company did not hire new employees and finish its work for Enbridge in 2021.

October 6, 2021 Email Complaint to Enbridge

[174] On October 6, 2021, Megan emailed a detailed complaint to Enbridge's "myhr" email address. This email stated that she was writing on behalf of "several employees of Banner" to inform Enbridge that the company's new owner, Mr. Loring, had "not adopted the previous owners [sic] strict safety measures or how the employees are treated", and that Banner had "now become a company that values production over safety".

[175] The October 6, 2021 email then provided about 20 "examples" under the headings "safety concerns", "employee abuse", "billing" and "vehicles". Speaking generally, the email levelled serious accusations against Mr. Loring including safety lapses, a workplace culture in which safety concerns were discouraged, and fraud against Enbridge.

[176] To provide a few examples, which I have confined to a close paraphrase of the portions of statements alleged in the amended counterclaim to have defamed Mr. Loring, the email stated that:

(a) in Fort St. John the employees were made to work on wet pipe against their concerns;

(b) Mr. Loring himself does not wear the proper safety gear and has fallen on the pipe twice;

(c) Mr. Loring allows and encourages new/untrained employees to free climb;

(d) Mr. Loring has been asked multiple times to upgrade safety equipment such as drop bags and a safety cable but his response has always been “fuck it”;

(e) employees have been hurt to the point of requiring stitches and were told to bandage up and get back to work;

(f) Mr. Loring made accusations against employees of stealing, which were false and unfounded;

(g) Mr. Loring would yell and scream at employees for challenging his authority;

(h) Mr. Loring insisted that employees bank hours and pay them out on days that were short or travel days without the employee’s consent; and

(i) Mr. Loring is working over his designated hours and hiding the hours on a time sheet when the men are not even on the job.

[177] In his direct examination, Mr. Madsen was taken through each of the allegations in the October 6, 2021 email. For some of them he stated that he had first-hand knowledge, and for the others he indicated that the information came from other employees, such as Messrs. Giorgio or Babakaiff, and he believed this second-hand information was true.

[178] After providing the 20 or so allegations, the October 6, 2021 email next noted that Banner’s entire crew was “green”, listing each crew member’s name and length of experience.

[179] The October 6, 2021 email concluded by listing the names and phone numbers for Messrs. Beck, Madsen, Giorgio, Babakaiff and Yadernuck under the heading “CONTACT INFORMATION OF EMPLOYEES INCLUDED IN COMPLAINT”.

[180] The October 6, 2021 email was copied to Messrs. Beck, Madsen and Giorgio, but not to Messrs. Babakaiff and Yadernuck.

[181] Mr. Madsen testified that he communicated with Messrs. Giorgio, Babakaiff and Yadernuck prior to submitting the October 6 email, for the purpose of collating the group's complaints, and sent them a draft of the email for their review. He said they gave him the okay, after which Megan sent the email to Enbridge.

[182] However, the failure of Megan and Mr. Madsen to copy Messrs. Babakaiff and Yadernuck when sending the October 6 email, together with the testimony of these two men about the email, its allegations and the requests by Megan and Mr. Madsen to join or make a complaint to Enbridge, lead me to conclude that Messrs. Babakaiff and Yadernuck did not agree to their names being added as complainants. I do not accept that either man reviewed or approved of a draft of the email prior to it being sent to Enbridge.

[183] As for Mr. Beck, he denied any involvement in writing or sending the October 6, 2021 email. He said that Megan and Mr. Madsen told him they were going to file a complaint, but he never saw it until after this litigation started. Megan only asked if he wanted his name and number on the complaint as someone that Enbridge could contact. Mr. Beck testified that he agreed to this request because he wanted to be clear that there had been a meeting at which Mr. Loring was told about the issues regarding the wet pipe and comments made to Banner employees such as calling them "bucket packers".

[184] I reject Mr. Beck's testimony that he was unaware of the contents of the October 6, 2021 email and only saw it after this litigation commenced. The email was sent by his daughter regarding a company he had owned for decades, based on information from or collected by his son-in-law. In these circumstances, I find it improbable that Mr. Beck would be aware of the email and agree in advance to his name and contact information being included without reading its contents.

[185] I also find improbable and reject Mr. Beck's claimed motivation for agreeing to have his name put on the email. Rather, I find that Mr. Beck more likely than not helped to draft the email, and at the very least knew about and approved its contents in advance. I also find that Mr. Beck knew and agreed in advance that the email

would describe him as one of the employees on whose behalf the complaint was being made.

[186] Given Mr. Beck's conduct at the September 15, 2021 meeting, his phone calls to Mr. McClarty before and after that meeting, and some of the text communications exchanged later in 2021 and in the first part of 2022, I further find that Mr. Beck actively encouraged and supported Megan and Mr. Madsen sending the October 6 email to Enbridge. He was not a passive or peripheral participant. And given Mr. Beck's history with Banner and his relationship with Megan and Mr. Madsen, I conclude that they would not have sent the email absent his approval and that Mr. Beck knew this to be the case.

[187] Mr. Beck admitted that he did not tell Mr. Loring that the October 6 email had been sent to Enbridge, testifying that it was not his "business" to do so. Based on this evidence from Mr. Beck, and the testimony of Mr. Loring, I conclude that Mr. Beck never told Mr. Loring about the email. I also find that Mr. Beck made no attempts to address with Mr. Loring any of the concerns set out in the email other than through his dressing-down of Mr. Loring at the September 15 meeting.

[188] Mr. Madsen testified that he never mentioned any of the incidents listed in the October 6 email to Mr. Loring, except perhaps some of them in a joking manner, apart from when leaving his employment at Banner on September 7, at which point he mentioned his concern about the false allegation that he had stolen fuel and the mindset Mr. Loring was creating for the green crew. As noted, I am not prepared to find that Mr. Madsen mentioned the wet pipe incident to Mr. Loring on September 7.

Megan's Use of Mr. Madison's Email Account and Phone

[189] Megan and Mr. Madsen both testified that, because Mr. Madsen was not a good typist, at his direction she typed and sent his emails of complaint to Enbridge and others in relation to this matter, mostly using his email account.

[190] Megan explained that her email account was used to send the October 6, 2021 complaint to Enbridge only because they had encountered a technological problem when trying to send it through Mr. Madison's email account.

[191] Megan and Mr. Madsen testified that she sometimes used his phone to text with Mr. Babakaiff, because Mr. Madsen would grow sick of Mr. Babakaiff's questions and ask her to take over the texting. Mr. Madsen claimed that some of these texts contained comments at his direction, but suggested that others did not. Megan testified that all of the texts were sent at Mr. Madsen's direction, although she sometimes conveyed his sentiments using her own language.

[192] There was no dispute at trial that Megan sometimes used her husband's phone the text Mr. Babakaiff. However, as mentioned in the part of my reasons dealing with credibility and reliability, I do not accept the testimony of Megan and Mr. Madsen with respect to precisely who sent any particular text. I also find that in assisting with sending the emails and at times using Mr. Madsen's phone to text Mr. Babakaiff, Megan was not merely taking dictation. As demonstrated by her role at the Prince George meeting, I find that Megan played at least some role in determining the substance of what was conveyed to Enbridge and others regarding these matters.

November 2021 Communications Between Messrs. Beck and Babakaiff

[193] On November 19, 2021, Mr. Babakaiff texted Mr. Beck asking if there would be work the next year, because he wanted to know whether he should sell his trailer. Mr. Beck replied that he would try his best and Mr. Babakaiff should keep his fingers crossed.

[194] Mr. Babakaiff then texted Mr. Beck asking, "when will you know you think??", "when will they know do you know?", and "when will they decide?". Mr. Beck replied, "they're watching all his moves. It's in legals hands until they come forward I won't know".

[195] Mr. Beck testified that in sending this reply he meant that Enbridge was watching Mr. Loring's moves, but that this statement was not true. Mr. Beck explained that he made this untrue statement because he wanted Mr. Babakaiff to stop texting and phoning. Mr. Beck added that Mr. Babakaiff was not bright enough to realize that Enbridge would only be able to know what was happening if they had a person on site.

[196] I reject Mr. Beck's evidence that he was lying to Mr. Babakaiff. Instead, I find that he assumed, as I will explain below in error, that Enbridge was by that point considering the matters raised in the October 6 email, and was deciding what if any remedial action to take. Given the October 6 email and his phone calls to Mr. McClarty, Mr. Beck may also have believed that front-line Enbridge employees like Mr. McCarty were or had been paying closer attention to Banner when visiting worksites to issue work safety permits. Having seen and heard Mr. Babakaiff testify, I find it highly unlikely that, as suggested by Mr. Beck, he would have failed to realize that Enbridge would only know what was happening if they had a person on site.

Text Messages to Mr. Babakaiff Alleged to Defame Mr. Loring or Interfere with Banner's Relationship with Enbridge

[197] The amended counterclaim alleges that several text messages sent to Mr. Babakaiff from Mr. Madsen's phone, whether by Megan or Mr. Madsen, defamed Mr. Loring and intentionally interfered with the business relationship between Banner and Enbridge. Some of these text messages were sent prior to the October 6, 2021 email, and some were sent afterwards.

[198] The following statements from the text messages are specified in this part of the amended counterclaim (followed in brackets with my estimate, based on the evidence, of when the text messages were sent):

(a) telling Mr. Babakaiff to "stand with" Mr. Beck, that Mr. Babakaiff should "Find another job!" and that Mr. Loring "doesn't know what the fuck he's talking about" (likely sent not long before the meeting on September 15, 2021);

(b) telling Mr. Babakaiff “Beck and I talked about the wet pipe it was a huge no-no “, and “working like we did on the pipe is a hard no! Beck needs us to stand up to Brad 100%” (as above);

(c) asking Mr. Babakaiff, “you have a backup plan?!” and encouraging Mr. Babakaiff look for other work (as above);

(d) informing Mr. Babakaiff of the intention to send the complaint to Enbridge and encouraging him to participate in that complaint (unclear when sent); and

(e) with respect to the prospect of Mr. Loring learning of the October 6, 2021 email and other complaints once he is contacted by Enbridge or the entities to which those other complaints were made, “I’d love to be a fly on the wall when he gets these calls” (sent January 11, 2022).

Further Communications and Complaints Regarding Banner

[199] Megan and Mr. Madsen heard nothing back from Enbridge in response to the October 6, 2021 email, so beginning in January 2022 Mr. Madsen sent follow-up emails. As noted, Megan typed and sent the emails using Mr. Madsen’s account, but I have found that she played at least some role in drafting the content.

[200] On January 18, 2022, Harleen Dhaliwal from Enbridge’s Ethics and Compliance unit sent an email to Mr. Madsen acknowledging receipt of the complaint and indicating that Enbridge had initiated a review into the matter.

[201] Over the next several months, Mr. Madsen sent emails to Ms. Dhaliwal providing additional information or asking about the status of Enbridge’s investigation. Many of these emails were copied to Mr. McClarty and some of the Enbridge “bosses” responsible for the parts of the province in which Banner did its Enbridge work, as well as to the bosses’ superior Jason Rowley.

[202] Also in early 2022, Mr. Madsen submitted complaints about Banner and Mr. Loring to Enbridge’s federal regulator, the CER, as well as to WorkSafe BC, the

federal Department of Fisheries, and Fortis. Mr. Giorgio made a complaint to the CER at around the same time. The emails sent to the Department of Fisheries were unlike the other communications, in that they were sent by Megan from her own email account using her own name in the sign-off.

[203] Turning back to the CER complaints, Megan and Mr. Madsen approached Messrs. Babakaiff and Yadernuck about submitting CER complaint forms. These communications include a text message sent from Mr. Madsen's phone to Mr. Babakaiff that stated, "Beck is standing right here he said to fill out the form".

[204] In cross-examination, Mr. Beck stated that, before this text was sent, he spoke to Mr. Babakaiff by phone and Mr. Babakaiff said he wanted to file the CER complaint but was worried Mr. Loring would fire him. Mr. Beck denied encouraging Mr. Babakaiff to file the complaint during this phone call, but admitted that he told Mr. Babakaiff to do so via the text message sent from Mr. Madsen's phone.

[205] I find that Mr. Beck did in fact encourage Mr. Babakaiff to make the CER complaint, both in the phone call and also by telling Megan and/or Mr. Madsen to send the information in this text message to Mr. Babakaiff.

[206] This finding is supported by Megan's evidence, given at one point in cross-examination, that she wrote this text because her father was standing there and asked that the information be passed on to Mr. Babakaiff. At other points in her testimony, Megan gave different evidence in this respect, but I reject that different evidence as unreliable.

[207] Subsequent texts sent from Mr. Madsen's phone as part of the same conversation purport to ask Mr. Babakaiff questions on behalf of Mr. Beck, the gist of which was whether Mr. Babakaiff was going to file the complaint and describe safety concerns, because if not, "we'll leave you out of it".

[208] In cross-examination, Mr. Beck testified that he did not recall whether he said these things to Mr. Madsen for inclusion in the texts. But given their proximity to the text that Mr. Beck admitted directing be sent to Mr. Babakaiff, I find that Mr. Beck

instructed whoever had Mr. Madsen's phone to convey the information attributed to him to Mr. Babakaiff. As before, my conclusion is supported by Megan's testimony, provided at one point in her cross-examination, that her father directed that information be sent to Mr. Babakaiff by way of text.

[209] Mr. Beck testified that, after the October 6, 2021 complaint was sent to Enbridge, he does not recall speaking about it to Megan or Mr. Madsen, although he agrees that they were all living on the same property. While there is some uncertainty about when Megan and Mr. Madsen moved to Mr. Beck's property from Kamloops, I find that this happened prior to some of the texts being sent, including because Megan recalled being in her parents' house as a result of the power having gone out in the trailer in which she and Mr. Madsen were staying.

[210] Given the circumstances set out above, I reject the evidence of Megan, Mr. Madsen and/or Mr. Beck to the effect that after emailing the October 6, 2021 complaint Megan and Mr. Madsen never discussed it or the various other complaints with Mr. Beck. I find that Megan and Mr. Madsen kept Mr. Beck updated regarding anything material that was happening, and at times sought his assistance such as in attempting to convince Messrs. Babakaiff and Yadernuck to file a CER complaint. I also find that Mr. Beck continued to support and encourage Megan and Mr. Madsen in pursuing their complaints, and that they would not have done so absent his express approval.

Enbridge Investigates and Terminates Contract

[211] In early 2022, Dean Freeman was director of Enbridge's pipelines in British Columbia, and he was its most senior employee to give evidence at trial. Mr. Freeman testified that the October 6, 2021 complaint went into Enbridge's spam email box and was only discovered in early January 2022.

[212] On learning of the complaint, Mr. Freeman started two investigations. One was led or co-led by Jason Rowley, the supervisor of Enbridge pipelines for the northern region, with a mandate to examine only the allegations about safety issues. The other investigation, led by Ms. Dhaliwal and Matthew Neuberger of Enbridge's

Ethics and Compliance group, examined both the safety complaint and the allegations of improper billing.

[213] Mr. Rowley testified that his investigation focused mainly on where Enbridge could improve, and not as much on what Banner was doing or the merits of the complaint. His investigative team took a deep dive in looking at the weekly safe work permit process and other processes Enbridge had in place. On May 4, 2022, Mr. Loring was interviewed by Mr. Rowley, an Enbridge health and safety representative, and an Enbridge lawyer, to give him a chance to respond to the allegations. Mr. Rowley sent Mr. Loring a list of topics the day before. However, Mr. Rowley testified that this interview was not the main focus of his team's investigation.

[214] Although Mr. Rowley did not recall any specific responses from Mr. Loring at the interview, he testified that the one thing that stood out was that Mr. Loring did not really deny any of the allegations except regarding sending men up to work on wet pipe. Mr. Rowley also recalled that Mr. Loring stated that he had worked at Banner for a long time, was managing the company as he had been trained and mentored to do over the years, and had followed the normal practice in that regard.

[215] Mr. Rowley testified that he and the other members of his investigative team drafted and provided a written report for Mr. Freedman. Mr. Rowley did not recall making any verbal reports to Mr. Freedman, and said that after submitting the written report he had no further involvement in the matter.

[216] In cross-examination, Mr. Rowley agreed that his group's written report stated that Mr. Loring did "not unequivocally deny" the allegations. He also agreed that this comment suggested Mr. Loring had acknowledged some allegations but denied others, and that given the passage of time he could no longer recall which was which.

[217] Mr. Loring also testified about his May 4, 2021 interview with Mr. Rowley and the other Enbridge representatives. He said he was a little unsure as to what

Enbridge wanted, but Mr. McClarty had told him that Enbridge was looking for information and Mr. Rowley was a fair person, and to just answer the questions. Mr. Loring testified that he had not thought that Banner's contract with Enbridge might be at stake, and he did not consult a lawyer. Mr. Loring stated that the information he provided at the interview was no different from what he testified to at trial.

[218] As noted, Mr. Neuberger was one of the two Enbridge employees involved in the Ethics and Compliance investigation into the safety and billing allegations in the October 6, 2021 complaint. He and/or Ms. Dhaliwal interviewed Enbridge employees, including Mr. McClarty and some of the "bosses" responsible for the geographic areas where Banner did Enbridge work. Information was also received from Mr. Babakaiff via a telephone interview on January 20, 2022, and from Mr. Yadernuck through a written statement dated January 21, 2022.

[219] Mr. Neuberger testified that the Ethics and Compliance team decided not to interview Mr. Madsen or the other Banner employees on whose behalf the October 6, 2021 complaint was purportedly submitted, after determining that further interviews were unlikely to change the team's findings.

[220] Mr. Neuberger's team concluded its investigative steps by the end of March 2022. He testified that, as indicated in the team's written report, it concluded that the allegations in the October 6, 2021 complaint, including those relating to safety, were not established on a balance of probabilities.

[221] Although the Ethics and Compliance report is dated August 30, 2022, Mr. Neuberger testified that he met with Mr. Freeman prior to that date, at which time recommendations were discussed. Mr. Freeman confirmed receiving this written list of recommendations on April 1, 2022. Those recommendations included: (i) providing additional safety oversight of Banner's work and performing a safety audit on Banner in 2022; (ii) reinforcing with Banner the process for reporting incidents and abnormal conditions; and (iii) initiating an expression of interest in 2022 for the aerial work on the Westcoast pipelines.

[222] Mr. Freeman testified that Mr. Rowley's investigative team produced a report and provided him with an oral and written presentation at an MS Teams meeting, and that he also met with the Audit and Compliance team, which as noted provided its preliminary recommendations in the April 1, 2022 document.

[223] Mr. Freeman testified that he decided to terminate Enbridge's contract with Banner based on the evidence and information obtained from Mr. Rowley's safety investigation, and specifically the information provided by Mr. Loring at the May 4, 2022 interview. Asked to identify which information in particular, Mr. Freeman referenced "unsafe work content", such as working on wet pipe, free climbing, and incidents not being reported like dropping a basket in the river or injuries. Mr. Freeman noted that, as reported by Mr. Rowley, Mr. Loring did not deny any of the allegations and had rather explained that this was the way work had been done at Banner.

[224] Mr. Freeman testified that his concern was that Banner's work was not aligned with Enbridge's core safety values, in particular the requirements that: (a) hazards be managed to protect employees from injury; and (b) all safety-related incidents be reported.

[225] Mr. Freeman testified that his decision to terminate the contract was also impacted by input from Enbridge's Supply Chain Management group, which helps ensure that Enbridge's service providers have appropriate contracts in place, including to ensure compliance with legislative requirements.

[226] In cross-examination, Mr. Freeman testified that he had not been aware that the Ethics and Compliance team concluded that the safety complaints were unsubstantiated, and indicated that he was not told this when he met with them. However, Mr. Freeman stated that the Ethics and Compliance team did not focus on safety as much as did Mr. Rowley's team, and he implicitly suggested that Mr. Rowley's team had superior expertise in the field of safety.

[227] On June 8, 2022, Mr. Freeman informed Mr. Loring that Enbridge was terminating its contract with Banner. Enbridge then took steps to obtain a new vendor to carry out this work, as Banner had been the only vender since Enbridge took over these pipelines in 2017.

[228] On June 30, 2022, Enbridge told Mr. Loring that it was conducting an audit of all invoiced amounts from Banner over the previous three-and-a-half years, the total of which amounted to $6.5 million. The audit examined a sample of invoices from this time span totaling $1.6 million. From this sample, non-compliant charges of about $9,000 were identified, which extrapolated across the full value of the invoices suggested non-compliance totalling just under $37,000. The audit report was emailed to Mr. Loring on September 15, 2022. Enbridge did not ask Banner to return any portion of the non-compliant charges identified in the report.

Banner Ceases Operations Post-Termination

[229] Enbridge put Banner's work on hold once it started investigating the allegations in the October 6, 2021 email. As a result, Banner did no Enbridge work in 2022. The only pipeline work Banner performed in 2022 was for Fortis, which took about a month to complete early that year. Banner did another three or four days of work for Fortis in 2023.

[230] Mr. Loring was unsuccessful in replacing the lost Enbridge work with jobs from other companies. No other company had enough aerial pipelines to sustain Banner's business. Banner therefore went dormant in 2023, and Mr. Loring began working in the logging industry using a different company.

Amounts Owing Under the Promissory Note

[231] The parties agree that ABZ and Mr. Loring owe Megory $1,500,000 under the promissory note and guarantee. The disputed issue is whether Megory and/or Mr. Beck breached the SPA and Non-Competition Agreement so as to enable ABZ and/or Mr. Loring to set off any losses they have suffered and also to receive damages for those losses.

Did Mr. Beck Breach the Non-Competition Agreement?

[232] The Banner litigants argue that Mr. Beck breached his contractual duties to ABZ and Banner under the Non-Competition Agreement.

[233] In assessing this argument, I will begin by focusing on Article 3 of that agreement, which states that:

> 3. Confidentiality. [Mr. Beck] acknowledges and agrees that he has a duty of loyalty and confidence, as well as a fiduciary duty, to [ABZ] and [Banner]. Other than for the benefit of [ABZ] or [Banner] and as specifically requested by [ABZ], [Mr. Beck] shall not disclose Confidential Information to any Person and shall not use the Confidential Information for his own purposes. [Mr. Beck] shall not copy or keep any business, client or customer documents or information (in any form whatsoever) or other property belonging to [ABZ] or [Banner].
>
> [Emphasis added]

[234] The Megory litigants argue that Article 3 uses the term “fiduciary duty” so as to limit that duty to the obligations set out in the rest of Article 3, namely, not to disclose confidential information other than for the benefit of ABZ or Banner, and not to copy or keep any documents or other property belonging to ABZ or Banner.

[235] Alternatively, the Megory litigants say the fiduciary duty in Article 3 is restricted to the obligations set out in the rest of the Non-Competition Agreement. They argue that, so limited, the fiduciary duty does not include the obligation that Mr. Beck fully disclose to ABZ and Banner all material information that may affect their interests.

[236] I find neither submission persuasive. The wording in Article 3 does not support the restrictive interpretations suggested by the Megory litigants, and these restrictive interpretations are contrary to the parties’ intention as reflected by the purpose and nature of the Non-Competition Agreement viewed in the context of the surrounding circumstances as known to the parties at the time.

[237] The Non-Competition Agreement contemplates that Mr. Beck will work as an employee in the business after the share purchase (Article 2). Mr. Beck had been running Banner for decades, during which he accumulated a wealth of knowledge,

experience and expertise. By contrast, Mr. Loring was in a vulnerable position, having been a worksite supervisor but never having acted as manager of the business. Mr. Beck's role as mentor and advisor to ABZ through Mr. Loring, not only as a sounding board but to proactively assist in advancing and protecting ABZ and Banner's vital interests, was rightly in the parties' contemplation as essential to Banner's success moving forward. See *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 47-48.

[238] In these circumstances, I interpret the words in Article 3 of the Non-Competition Agreement as imposing on Mr. Beck a fiduciary duty to ABZ and Banner under which he owed them the utmost duties of loyalty, disclosure and confidence. That is, the same sort of fiduciary duties that so-called key employees generally owe their employers at common law, and for similar reasons: *Sateri (Shanghai) Management Limited v. Vinall*, 2017 BCSC 491 at paras. 357-364; *Skycope Technologies Inc. v. Jia*, 2023 BCSC 1288 at paras. 196-199, appeal allowed in part on unrelated grounds, 2025 BCCA 178.

[239] I also reject the Megory litigants' argument that the Non-Competition Agreement was intended only to prevent Mr. Beck from soliciting customers away from or competing with Banner, and that the defined term "confidential information" should be similarly restricted.

[240] The scope of the term "confidential information" as defined in Schedule A of the Non-Competition Agreement is very broad, covering "any and all confidential information relating to the business, purpose or competitive interests of [ABZ] or [Banner]". It should not be artificially narrowed as claimed by the Megory litigants. If accepted, their interpretation would give Mr. Beck free rein to use confidential information to harm Banner's business interests provided he was not doing so for the purpose of competing with the company. Among other things, this interpretation flies in the face of the duties that I have found Mr. Beck owed to Banner under Article 3 of the Non-Competition Agreement.

[241] Based on the findings I have made in reviewing the evidence, I conclude that Mr. Beck breached his contractually imposed fiduciary duty to ABZ and Banner as set out in the Non-Competition Agreement in the following ways:

a. Mr. Beck failed to take steps to constructively raise any safety concerns he had or learned about with Mr. Loring, so as to provide Mr. Loring with a reasonable opportunity to address those concerns. For example, he never spoke privately with Mr. Loring about the concerns conveyed to him by Mr. Madsen regarding the wet pipe incident at Fort St. John. Rather, Mr. Beck held on to that information and then used it to berate Mr. Loring at the September 15, 2021 meeting.

b. Mr. Beck failed to address with Mr. Loring information he acquired regarding dissatisfaction among some Banner employees and to assist Mr. Loring in attempting to alleviate that dissatisfaction. For instance, leading up to the September 15, 2021 meeting he did not tell Mr. Loring that Mr. Babakaiff was thinking about quitting or that he had heard that Mr. Giorgio might leave as well. Nor did Mr. Beck take any steps to address concerns that Mr. Loring's personality might be alienating some of the employees (e.g., the complaint about using the term "bucket packers").

c. Although not a major concern standing alone, Mr. Beck's text messages to Mr. Babakaiff shortly before the September 15 meeting, about believing the meeting was not "going to go good" and the need for Banner employees to take matters into their own hands, are illustrative of what I find to be his approach by this point in communicating with Mr. Loring and Banner's employees. That is, Mr. Beck sought to undermine rather than foster good employee-employer relations at Banner.

d. Mr. Beck disparaged Mr. Loring to Banner employees, in particular at the September 15, 2021 meeting. In doing so, Mr. Beck knew that, given his experience and stature in the business, the result may well be that one or more crewmembers would quit. Mr. Beck did not try to use the meeting to

constructively address, and hopefully remedy, any concerns he might have had or that had been raised with him by the employees. Indeed, without informing Mr. Loring, later that same day Mr. Beck tried to help Messrs. Babakaiff and Yadernuck find other jobs.

e. Mr. Beck provided confidential information detrimental to the interests of ABZ and Banner to the Enbridge handler Mr. McClarty both before and after the September 15, 2021 meeting, never advising Mr. Loring that he was going to or had done so. The information was that Banner employees had quit or were thinking about quitting, which would leave the crew with newer employees who lacked sufficient training.

f. Mr. Beck knowingly participated in the October 6, 2021 email complaint to Enbridge as one of the employees on whose behalf the email was sent. He more likely than not helped draft this complaint, and at the very least reviewed and approved its contents. Mr. Beck also encouraged and facilitated current and former Banner employees in making subsequent complaints to Enbridge's regulator, the CER. Once again, he did not advise Mr. Loring that any of these complaints had been made or that confidential information was being disclosed.

g. Mr. Beck failed to take any steps to dissuade his daughter and Mr. Madison from sending the October 6, 2021 email to Enbridge and making numerous subsequent complaints about Mr. Loring and Banner to other entities such as the CER. To the contrary, he encouraged Megan and Mr. Madison to make these complaints. Absent his approval, they would not have done so.

[242] These breaches of the contractual duties that Mr. Beck owed to ABZ and Banner under Article 3 of the Non-Competition Agreement overlap with breaches of other articles in that same agreement. For instance:

(a) by virtue of his active involvement in sending the October 6, 2021 email to Enbridge, Mr. Beck breached his obligation under Article 2 not to directly or

indirectly, in any manner whatsoever, direct any customers or clients of Banner away from the company or to reduce or alter their business with Banner;

(b) in his dealings with Mr. McCarty shortly before and after the September 15 meeting, and in participating in the October 6, 2021 complaint to Enbridge, Mr. Beck breached his obligation in Article 3 not to disclose confidential information to any person other than for the benefit of ABZ or Banner and as specifically requested by ABZ; and

(c) in engaging in this same conduct and also in acting as he did at the September 15 meeting, Mr. Beck breached his obligation in Article 4 to refrain from, directly or indirectly, taking action or making statements, written or oral, which disparage or may reasonably be expected to disparage the goodwill or reputation of Banner.

[243] In my view, Mr. Beck's breach of his contractual fiduciary duties to ABZ and Banner, as set out in the Non-Competition Agreement, led Enbridge to terminate its contract with Banner. I have come to this conclusion for the following four reasons.

[244] First, Mr. Beck was viewed by the Banner employees as a knowledgeable leader, and he carried significant influence with them. Had Mr. Beck made genuine efforts to help Mr. Loring with employee relations, instead of keeping information to himself and fomenting employee dissatisfaction, it is probable that the workplace culture at Banner would have significantly improved, with the result that no employees would have left the company or complained to Enbridge or the CER. For example, as already noted I am satisfied that Megan and Mr. Madsen would not have made the October 6, 2021 complaint had Mr. Beck advised against it.

[245] Second, Mr. Loring had substantial respect for Mr. Beck, and listened to him as a trusted mentor. I am confident that Mr. Loring would have implemented any reasonable requests by Mr. Beck to make changes at the workplace, whether regarding safety practices or how best to interact with Banner's crew members. Mr.

Loring's willingness to make positive changes is reflected in his request that Mr. Madsen assist Mr. Giorgio in training crew members, and the safety measures he took after the 2021 season (e.g., tower training and purchasing drop bags).

[246] Third, I accept Mr. Loring's evidence that the safety and business practices used at Banner after the SPA was executed were mostly the same as those he had been taught by and observed from Mr. Beck. An example relates to Mr. Giorgio's testimony about the lack of drop bags. Drop bags were never purchased or used by Mr. Beck, including when Mr. Beck still owned Banner during Mr. Giorgio's first season with the company. But even if safety practices had slipped somewhat under Mr. Loring's watch, this slippage would have been promptly reversed had Mr. Beck complied with his obligations under the Non-Competition Agreement by taking reasonable steps to address any concerns with Mr. Loring.

[247] Finally, had the October 6, 2021 email not been sent to Enbridge, Enbridge would not have terminated its contract with Banner. It may be that Banner's safety practices under Mr. Beck would not have met Enbridge's standards, and that had Enbridge known about them it would have terminated the contract all the same. But there is no reason to believe that those safety practices would have come to Enbridge's attention following the execution of the SPA but for Mr. Beck's failure to abide by his obligations under the Non-Competition Agreement, including his contractually imposed fiduciary duty owed to ABZ and Banner.

[248] In sum, Mr. Beck breached the Non-Competition Agreement he had signed with ABZ, which caused Enbridge to terminate its contract with Banner.

Did Megory Breach Article 5(3)(c) of the SPA?

[249] Based on my findings regarding Mr. Beck's conduct during the period in question, in my view this conduct if attributed to Megory would put Megory in breach of Article 5.3(c) of the SPA, which as noted states:

> 5.3 Conduct Posting Closing – [Megory]. Following the closing date, [Megory] covenants and agrees that:
>
> …

> (c) [Megory] shall assist in the transition of the employees and to [sic] foster good relations between the employees and [ABZ] post-Closing. [Megory] shall in no way disparage [ABZ] or its Affiliates to any employees or independent contractors working at [Banner], and Megory acknowledge [sic] that doing so may cause irreparable harm to [Banner] and [ABZ].
>
> [Emphasis added]

[250] In short, Article 5.3(c) required that, post-closing, Megory assist in the transition of Banner employees and foster good relations between the employees and new ownership. It also prohibited Megory from disparaging ABZ or Mr. Loring to any Banner employees. And Megory acknowledged that such disparagement may cause irreparable harm to ABZ and Banner.

[251] Mr. Beck's conduct did not assist in the transition of Banner employees or foster good relations with new ownership, but rather undermined the transition and harmed good relations, and his conduct disparaged Mr. Loring to Banner's employees. As explained, this conduct directly contributed to Enbridge terminating its contract with Banner, thereby causing irreparable harm to ABZ and Banner.

[252] However, Megory denies liability for breaching Article 5.3(c), arguing that Mr. Beck's conduct was carried out in his personal capacity only, and that there is no proper basis upon which to attribute that conduct to Megory under the doctrine of corporate attribution.

[253] In closing submissions at trial, the Banner litigants did not advance any basis other than the doctrine of corporate attribution in seeking to fix Megory with responsibility for Mr. Beck's actions for the purpose of establishing a breach of Article 5.3(c) of the SPA. I will therefore restrict my analysis to this doctrine.

Doctrine of Corporate Attribution

[254] The common law doctrine of corporate attribution is a means by which the actions or mental states of natural persons may be attributed or imputed to a corporation for a particular purpose in particular circumstances. There is no uniform rule of corporate attribution. Rather, because the doctrine is rooted in public policy, courts must take a purposive, contextual, and pragmatic approach to questions of

attribution consistent with the purpose of the law under which attribution is sought. See *Aquino v. Bondfield Construction Co.*, 2024 SCC 31 at paras. 57-64.

[255] Whether in the criminal or civil context, as a general rule a person's conduct or mental state may be attributed to a corporation if two conditions are met: (a) the wrongdoer was the directing mind of the corporation at the relevant times; and (b) the directing mind's wrongful act was performed within the sector of corporate operations assigned to them. See *Aquino* at para. 82; *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32 at para. 62.

[256] Even where both conditions are satisfied, the so-called "fraud" and "no benefit" exceptions may preclude attributing a natural person's actions or mental states to a company. These exceptions are intended to promote the policy of the law under which attribution is sought. Under them, attribution will generally be inappropriate when the directing mind's actions were: (a) totally in fraud of the company (fraud exception); or (b) not by design or result at least partly for the company's benefit (no benefit exception). See *Scott* at para. 62; *Aquino* at paras. 67, 82.

[257] In addition to the fraud and no benefit exceptions, courts have the discretion to refrain from attributing the actions or state of mind of a directing mind to the corporation in the public interest, where not doing so would promote the purpose of the law under which attribution is sought. See *Scott* at para. 62; *Aquino* at para. 82.

[258] Conversely, compliance with the two conditions for corporate attribution, while also falling outside of the fraud and no-benefit exceptions, is not always required before attribution is possible. These criteria are not to be applied mechanically, without regard to whether the result would be inconsistent with the purpose of the law under which attribution is sought. Instead, the court has the discretion to tailor the general rule of attribution or its exceptions for this purpose. See *Scott* at para. 62; *Aquino* at paras. 71-74, 79, 82, 84-90; *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 at para. 104.

[259] *Scott* is an example of a case where the two conditions were met, and neither exception applied, yet the doctrine of corporate attribution was not applied, because doing so would run counter to the purpose of the laws engaged by the case. By contrast, *Aquino* is an example of a case where the doctrine of corporate attribution was applied even though both exceptions were engaged, because applying those exceptions would flout the purpose of the law under which the respondents had brought their applications.

[260] To sum up, courts must apply the corporate attribution doctrine purposively, contextually and pragmatically. The doctrine is not a standalone principle, and courts must always determine whether the actions or state of mind of the natural person should be treated as those of the corporation for the purpose of the law under which attribution is sought. Attribution may be appropriate for one purpose in one context, but inappropriate for another purpose in another context. See *Scott* at para. 62; *Aquino* at para. 82.

Analysis

[261] Turning to the facts of this case, I have already concluded that Mr. Beck was Megory's sole directing mind. I further find that the sector of corporate operations assigned to Mr. Beck by Megory included his staying on as a Banner employee to provide mentorship and advice to Mr. Loring.

[262] In so holding, I reject Megory's argument that in his dealings with Banner Mr. Beck was not acting within the sector of corporate operations assigned to him by Megory. To the contrary, Mr. Beck's employment relationship with Banner was an integral part of Megory's post-closing obligations under the SPA, and in taking on this role Mr. Beck was acting at least in large part as Megory's representative.

[263] For instance:

(a) Mr. Loring testified and I accept that he and Mr. Beck had agreed it was a good idea for Mr. Beck to continue as a consultant with Banner, so that Mr.

Beck could provide advice and mentorship as Mr. Loring grew into the managerial role;

(b) the Non-Competition Agreement executed by ABZ and Mr. Beck envisages that Mr. Beck will continue in an employment arrangement with ABZ or Banner (Article 2), provides that he owes ABZ and Banner duties of loyalty and confidence as well as a fiduciary duty (Article 3), acknowledges that a breach by Mr. Beck of any of the covenants in the agreement will result in damages to ABZ and Banner (Article 5), and states that the restrictions in the agreement are necessary and fundamental to the protection of ABZ and Banner (Article 6);

(c) Article 1.7 of the SPA between Megory and ABZ expressly incorporates its schedules by reference, deems the schedules to be a part of the SPA, and lists the Non-Competition Agreement as one of the schedules;

(d) Article 1.1(e) defines “Agreement” to include not only the SPA but also “all schedules hereto”, and as just noted Article 1.7 lists the Non-Competition Agreement as one of the schedules;

(e) Article 7.9 of the SPA requires that Mr. Beck resign from Banner on the closing date and that Megory and Mr. Beck shall have executed and delivered the Non-Competition Agreement in the form annexed to the SPA;

(f) Article 3.1(f) of the SPA includes within the representations and warranties made by Megory to ABZ, and relied on by ABZ as a condition of the share purchase, that the SPA (which by definition includes the Non-Competition Agreement) is enforceable against Megory and that each contract, agreement and instrument required by the SPA to be delivered by Megory (which by definition also includes the Non-Competition Agreement) is also enforceable against Megory, except as that enforcement may be limited by the laws of bankruptcy, insolvency and other laws affecting the rights of creditors generally; and

(g) although not necessary to my conclusion on this point, Article 9.1 of the SPA requires that Megory indemnify ABZ and Banner from all claims or losses suffered by them arising directly or indirectly out of, or in connection with, or in consequence of: (a) any breach by Megory of any representation or warranty of Megory contained in the SPA or in any agreement, certificate or other document delivered pursuant to the SPA (which necessarily includes the Non-Competition Agreement); and (b) any breach or non-performance by Megory of any covenants to be performed by them that is contained in the SPA or any document delivered pursuant to the SPA (which necessarily includes the Non-Competition Agreement).

[264] Given these provisions, and the reality that Mr. Beck was the sole directing mind and owner of Megory and thus the only means through which Megory could comply with Article 5.3(c), in my view Mr. Beck's post-closing role as a Banner employee was squarely within the sector of corporate operations assigned to him by Megory in connection with the SPA. Accordingly, the second condition for attributing Mr. Beck's conduct to Megory is satisfied.

[265] Megory nonetheless argues that the corporate attribution doctrine is not engaged because the fraud and/or no-benefit exceptions mentioned in the jurisprudence apply. Specifically, Megory contends that, if I conclude that Mr. Beck breached Article 5.3(c) of the SPA, his conduct was designed to destroy Banner's business and thereby deny Megory the only foreseeable source of funds available to ABZ to satisfy the balance owed under the promissory note. Megory says that Mr. Beck's conduct was therefore, "entirely antithetical to [its] interests and … almost entirely aimed at destroying the undertaking of Megory as a corporation".

[266] I do not agree with this argument.

[267] For one thing, as I understand their closing submissions, the primary position taken by Megory and Mr. Beck is that Mr. Beck was not motivated by a desire to destroy Banner, because he would not have wanted to jeopardize the substantial sums of money still owed Megory under the SPA. Indeed, in cross-examination Mr.

Beck insisted that in communicating with Enbridge and its people about safety matters it never crossed his mind that Enbridge might pull Banner's contract, and he had not thought this would happen.

[268] I agree with these submissions by Megory and Mr. Beck to the extent that I do not believe Mr. Beck was intending to destroy Banner. While Mr. Beck conducted himself in a manner that put Banner at existential risk, and that conduct viewed objectively was not in Megory's best interests, his actions did not necessarily mean that Megory would be unable to obtain payment on the promissory note. For instance, Mr. Loring had guaranteed the promissory note, and so remained a potential source of satisfaction even if ABZ were unable to make payments because its sole source of revenue – Banner's income stream – was no longer available. This is presumably why Megory is now suing Mr. Loring as guarantor.

[269] But more importantly, I find that Mr. Beck genuinely believed that Banner might continue its operations despite his failure to assist in the transition of Banner employees and to foster good relations between them and the new ownership, and despite his disparaging Mr. Loring to Banner employees, even after the October 6, 2021 email was sent to Enbridge. In my view, Mr. Beck's actions were designed by him partly to benefit Megory by improving Banner's safety practices and workplace culture, and were not totally in fraud of Megory. I reject Megory's submission that the evidence does not permit me to conclude otherwise.

[270] My conclusion is supported by the previously mentioned text exchange between Mr. Babakaiff and Mr. Beck on November 19, 2021. To recap, Mr. Babakaiff asked Mr. Beck whether there would be work next year because Mr. Babakaiff loved it and, if not, he would sell his trailer. Mr. Beck told Mr. Babakaiff that he would not know the answer until Enbridge came forward, but Mr. Babakaiff should not sell his trailer yet, but rather keep his fingers crossed because Mr. Beck would "try my best". I reject any suggestion that Mr. Beck was not being candid with Mr. Babakaiff in this text exchange. Instead, I conclude that Mr. Beck truly believed

that Enbridge might decide not to cancel its contract with Banner, and that this was his belief at the time he acted in breach of Article 5.3(c).

[271] My conclusion is also supported by a text message that Mr. Madsen sent to Mr. Babakaiff on January 12, 2022, during which Mr. Beck was present with Mr. Madsen. Mr. Madsen asked Mr. Babakaiff to submit a complaint to the CER, stating that, “if we want to go back to work we need to take these steps”. When Mr. Babakaiff asked, “how do I know that this will get us back to work and not sink our jobs!?”, Mr. Madsen replied, “This is to correct the safety not loose [sic] your job the energy board won’t shut banner down. Beck is standing right here he said to fill out the form”. In his testimony Mr. Beck essentially conceded that he was present and participated in this text exchange, and I find that Mr. Madsen was conveying Mr. Beck’s view that addressing safety concerns would not necessarily lead to Banner’s demise.

[272] This is not to say that I accept Mr. Beck’s testimony that it never crossed his mind that Enbridge might cancel the contract with Banner. I find it much more likely that he recognized that there was a risk in this regard, as suggested in his November 19, 2021 text exchange with Mr. Babakaiff.

[273] Nonetheless, in my view Mr. Beck also believed there was a real possibility that his conduct, including in complaining directly to Enbridge by way of the October 6, 2021 email, would result in positive changes to Banner. I accept that Mr. Beck believed that some safety concerns existed at Banner. Granted, his way of addressing these concerns breached his contractual duties to Banner, and was objectively careless insofar as it created a real risk that Enbridge would cancel Banner’s contract. Yet I find that Mr. Beck’s subjective design in undermining the employees’ transition to and fostering good relations with new ownership post-closing, and disparaging Mr. Loring to the employees, was at least in part to improve Banner’s operations, and prevent the risk of a safety incident that could put those operations in danger and thus harm Megory as ABZ’s major creditor.

[274] Although not necessary to my conclusion on this point, Mr. Beck may also have thought that he could engineer an outcome through which Mr. Loring would be pushed out and Megory could resume its pre-SPA position or something like it. Ultimately, what I do not accept is that Mr. Beck pursued a course of action intending to harm Banner and believing that the result would be to render ABZ and Mr. Loring unable to pay Megory the remainder of the purchase price.

[275] In the alternative, Megory argues that if Mr. Beck was not committing a fraud against Megory and was acting by design partly for its benefit, then his conduct could not have breached Article 5.3(c).

[276] Once again, I disagree.

[277] Although Mr. Beck's intention was in part to benefit Megory by addressing potential safety concerns at Banner, he did so by interfering with the employees' transition to new ownership, by not fostering good relations between the employees and new ownership, and by disparaging Mr. Loring to the employees, all of which was prohibited by Article 5.3(c). These two things are not mutually exclusive.

[278] Moreover, while Mr. Beck's intention was in part to benefit Megory, as I have already stated he also knew that doing so created an existential risk to Banner and the value of its shares. Contrary to Megory's submission, Mr. Beck's motivation was neither wholly solicitous nor wholly spiteful vis-à-vis the future of ABZ and Banner, or for that matter the financial well being of Megory.

[279] Alternatively, even if the fraud and/or no-benefit exceptions to the doctrine of corporate attribution were engaged, in my view it would be perverse not to apply the doctrine of corporate attribution in the circumstances of this case.

[280] Mr. Beck was Megory's sole directing mind and owner at all material times. And he was acting within the scope of his corporate authority as its sole directing mind when he breached Article 5.3(c) of the SPA, thereby destroying Banner's business and the value of the shares sold by Megory to ABZ under the SPA. More specifically, Mr. Beck was acting within the scope of his corporate authority as

Megory's directing mind by taking on an employment role with Banner that was intended under the SPA to protect ABZ's interests with respect to those very shares.

[281] It would be an irrational result, rendering meaningless the remedies provided in the SPA and under the law of contract, if Mr. Beck could engage in this conduct, in these circumstances, and yet ABZ could not rely on the conduct as a breach of Article 5.3(c) when sued by Megory for non-payment of the shares, either as a set-off under the promissory note or to obtain damages against Megory by counterclaim.

[282] To hold otherwise would allow Mr. Beck to obtain the full purchase price of the shares as Megory's sole owner, presumably from Mr. Loring as guarantor, despite having destroyed the shares' value while acting within the scope of his corporate authority as Megory's directing mind, simply because his conduct was so far removed from Megory's best interests so as to engage one or both of the exceptions to the doctrine of corporate responsibility.

[283] A purposive, contextual and pragmatic approach requires that Mr. Beck not be permitted to destroy Banner's business and the value of its shares, and thus the ability of ABZ to pay for the shares under the SPA, but nonetheless to receive from Mr. Loring as ABZ's guarantor the full purchase price of the shares as Megory's sole directing mind and owner.

[284] In so concluding, I recognize that the same principles guiding the application of the corporate attribution doctrine apply to one-person corporations. But I am not purporting to create different principles for such corporations. Rather, I am taking the reality of Megory's corporate structure into account as part of a purposive, contextual and pragmatic approach, which is not the same thing as automatically attributing the conduct of a sole directing mind to a one-person corporation. See *Scott* at para. 65.

Did Megory Breach the Non-Competition Agreement?

[285] ABZ argues that the Non-Competition Agreement is part of the SPA, and that Mr. Beck's conduct in breaching the Non-Competition Agreement is therefore also a breach by Megory.

[286] I agree with this submission, and reject Megory's argument that the SPA's incorporation of the Non-Competition Agreement was intended for no purpose other than to confirm satisfaction of the condition precedent to the SPA.

[287] As reviewed in detail in the previous section of my reasons, the SPA does not merely incorporate the Non-Competition Agreement by reference. The SPA in addition deems the Non-Competition Agreement to be a part of the SPA (Articles 1.1(e) and 1.7), and provides that the Non-Competition Agreement is enforceable by ABZ against Megory in accordance with its terms (Article 3.1(f)). And as also explained in the previous section of my reasons, Mr. Beck was Megory's directing mind and was acting within the scope of his corporate responsibility with Megory in undertaking his post-closing employment role with Banner under the Non-Competition Agreement.

[288] In my view, these provisions in the SPA reflect the reasonable expectations of Megory and ABZ that Megory would be bound by the Non-Competition Agreement, even though it was signed only by Mr. Beck and not by Megory. In particular, it was reasonable for ABZ to require, and for Megory to agree, that Mr. Beck would contract with ABZ to take on specific contractual obligations in his post-closing employment relationship with Banner and otherwise, in effect acting as Megory's representative, and that those obligations would be enforceable against Megory. After all, as stated in the Non-Competition Agreement, which as noted is part of the SPA, its terms were necessary and fundamental to the protection of ABZ (Article 6), and breaching them would result in damages to ABZ (Article 5).

[289] Megory argues that if the SPA is interpreted in this way, "the doctrine of privity of contract would be rendered entirely meaningless because any parties could secure themselves contractual rights by incorporating existing contracts to which they were not parties to contract to which they are parties".

[290] However, I see no reason why Megory, as a party to the SPA with ABZ, cannot knowingly contract to be bound by the terms of the Non-Competition Agreement to which Megory's sole directing mind and owner is a party with ABZ,

especially given that the Non-Competition Agreement is integral to the SPA. The doctrine of privity of contract is respected because Megory has agreed that the Non-Competition Agreement is part of the SPA and is enforceable by ABZ against Megory.

Does the Rule in *Foss v. Harbottle* Bar Recovery by ABZ?

[291] Megory and Mr. Beck argue that, even if ABZ is able to establish a breach of the SPA or the Non-Competition Agreement, the rule in *Foss v. Harbottle* prevents ABZ from suing for the loss of revenue that ABZ would otherwise have obtained from Banner through dividends or for the loss in the value of Banner's shares.

[292] ABZ responds by saying that the rule in *Foss v. Harbottle* does not apply in the circumstances. Alternatively, ABZ asserts that Banner has sued for those same breaches, and under the principled exception to the doctrine of privity of contract for third-party beneficiaries has standing to do so despite not being a party to the SPA or the Non-Competition Agreement.

[293] In reply, Megory and Mr. Beck contend that the principled exception does not apply, because it can only be used by a third-party beneficiary as a shield to defend against an action by a party to the contract, and not as a sword to sue a party.

Rule in Foss v. Harbottle

[294] The rule in *Foss v. Harbottle* provides that individual shareholders cannot sue for wrongs done to the corporation and if an action is to be brought to recoup losses from those wrongs, it must be brought either by the corporation itself (through management) or by way of a derivative action. The rule is a corollary of the principle that a corporation is a separate legal entity: just as a shareholder cannot be sued for the wrongs of the corporation, neither can they sue for the wrongs done to it. See *EY Holdings Ltd. v. Great Pacific Mortgage & Investments Ltd.*, 2017 BCCA 405 [*EY Holdings*] at para. 27; *Robak Industries Ltd. v. Gardner*, 2007 BCCA 61 [*Robak*] at paras. 25-34, 38.

[295] Accordingly, a shareholder cannot sue the wrongdoer for a loss of income suffered by the company. Nor can the shareholder sue for a loss in the form of a diminution in the value of their shares, because that loss is reflective or derivative of the company's loss. See *EY Holdings* at paras. 28-30; *Robak* at paras. 25-34, 38.

[296] The rationale for not allowing a shareholder to sue for wrongs done to the company includes preventing double recovery by the company and the shareholders for the same loss, and preventing recovery by one or some shareholders for losses caused by wrongs done to the company at the expense of creditors and other shareholders. See *EY Holdings* at para. 27; *Robak* at paras. 35-37.

[297] However, a shareholder may sue in respect of a loss suffered by the company if the company has no cause of action to sue to recover that loss, even though the shareholder's loss is a diminution in the value of the shares, provided the shareholder has a cause of action themselves. See *Robak* at para. 26, quoting *Johnson (A.P.) v. Gore Wood & Co. (A Firm)*, [2002] A.C. 1 (H.L.) at para. 44; *Tran v. Bloorston Farms Ltd.*, 2020 ONCA 440 at paras. 40-64.

[298] And even where a company suffers loss caused by a breach of a duty to it, a shareholder may sue for the loss in value of the shares where they have both an independent relationship with the wrongdoer from which a cause of action arises and a loss independent from that of the company: *EY Holdings* at para. 43; *Robak* at paras. 26, 38. But a loss of share value or a likely diminution in dividends are reflective or derivative of losses incurred by the company and thus do not qualify as independent losses: *EY Holdings* at paras. 44-48.

[299] In my view, ABZ can sue Megory and Mr. Beck without contravening the rule in *Foss v. Harbottle* because it has an independent cause of action and has suffered an independent loss.

[300] The cause of action is independent because it arises in contract, from breach of the SPA of which the Non-Competition Agreement is a part. I have already

explained in detail the contractual obligations that Megory and Mr. Beck have breached.

[301] The loss suffered by ABZ is also independent, arising as well from the breach of contract. In these two contracts, Megory and Mr. Beck have agreed that post-closing breaches "may cause irreparable harm to [Banner's business] and [ABZ]" (Article 5.3(c), SPA) and "would result in damages to [ABZ] and [Banner]" (Article 5, Non-Competition Agreement). Megory and Mr. Beck have also agreed that all restrictions in the Non-Competition Agreement are necessary and fundamental to the protection of ABZ and Banner, and that all defences against ABZ and Banner to the strict enforcement of the Non-Competition Agreement are waived (Article 6).

[302] In short, ABZ is suing under a contract for the purchase of Banner's shares, for breach of post-closing contractual obligations undertaken by the seller Megory, and its sole directing mind Mr. Beck, which obligations were vital to protect the value of those shares and thus a critical precondition to ABZ's agreement to pay the purchase price in the SPA. Megory and Mr. Beck agreed to these contractual obligations and acknowledged the harm that breaching them could cause to ABZ. The cause of action and loss thus arise independently, from the contract under which ABZ purchased the shares, and not from ABZ's status as shareholder.

[303] Another way of looking at these circumstances is that, when Megory and Mr. Beck agreed that breach of their post-closing contractual obligations under the SPA and Non-Competition Agreement would cause irreparable harm and damages to ABZ, they contracted out of any protection afforded by the rule in *Foss v. Harbottle*. I know of no reason why this rule should operate to relieve a party from living up to contractual obligations the party has knowingly taken on. To conclude otherwise would lead to the absurd result that Megory could recover against ABZ for nonpayment of the full contractual price for Banner's shares, but ABZ could not claim a set-off for the destruction of the shares' value caused by Megory's breach of the same contract.

[304] I disagree with the submission of Megory and Mr. Beck that *Zhou v. Li*, 2019 BCSC 188 holds that a purchaser of shares cannot sue the seller for breach of the seller's post-closing obligations under a share purchase agreement where the breach harms the corporation and thereby destroys the value of the shares. In *Zhou*, the purchaser did not rely on a breach of a term in the oral share purchase agreement, but rather argued that the circumstances gave rise to a fiduciary duty owed to him by the seller in managing the company, a fiduciary duty that was held by the trial judge not to exist. In stating that there was in any event no independent loss, the trial judge in *Zhou* was therefore not purporting to hold that a share purchaser can never sue the seller for a loss of dividends or share value caused by the seller's post-closing breach of contractual obligations owed to the purchaser under the share purchase agreement.

Principled Exception to Doctrine of Privity of Contract for Third Party Beneficiaries

[305] My understanding is that Banner only seeks to pursue its action against Mr. Beck and Megory if ABZ is barred from recovering damages because of the rule in *Foss v. Harbottle*. Given my conclusion that the rule in *Foss v. Harbottle* does not apply, I am therefore not awarding damages to Banner in its action.

[306] Accordingly, I need not consider ABZ's alternative argument that Banner has standing to sue Megory and Mr. Beck for breaching the SPA and Non-Competition Agreement under the principled exception to the doctrine of privity of contract for third-party beneficiaries of a contract who meet the two conditions in *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.*, 1999 CanLII 654 (SCC).

[307] I nonetheless observe that, while case law in this province suggests that the principled exception can only be used by a third-party beneficiary as a "shield" in defending a lawsuit brought by a party to the contract, and not as a "sword" to sue such a party (e.g., *Holmes v. United Furniture Warehouse GP,* 2012 BCCA 227 at para. 22), this Court has recently held that this is a developing area of the law and that, as illustrated by decisions in Ontario, there has been a trend to relax the strict

application of the privity rule (*Ladysmith Maritime Society v. Ladysmith (Town)*, 2023 BCSC 2285 at paras. 53-61; *SaNOtize Research and Development Corp. v. Smith*, 2025 BCSC 895 paras. 27-28).

Damages for Breach of Contract

[308] I have already concluded on a balance of probabilities that the breaches of contract by Megory and Mr. Beck were the effective or dominant cause of ABZ's loss. Absent those breaches, Enbridge would not have received the October 6, 2021 email, and thus would not have undertaken the investigation that resulted in it terminating the contract with Banner. See *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at paras. 113-122; *Yukon (Government of) v. Norcope Enterprises Ltd.*, 2024 YKCA 6 at paras. 90, 138.

[309] Nor is this loss too remote. The parties knew that the contract with Enbridge was critical to Banner's continued operations, and that conduct by Megory and Mr. Beck that resulted in Enbridge cancelling that contract would likely destroy Banner's business. Damages of this type would thus have been within the knowledge or reasonable contemplation of ABZ, Megory and Mr. Beck had they put their minds to the potential breaches when they entered into the contract: *RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.*, 2008 SCC 54 at paras. 10-12.

[310] I also reject any suggestion that Megory and Mr. Beck did not cause ABZ's loss because Mr. Freeman testified that his decision on behalf of Enbridge to terminate the contract with Banner was based on admissions by Mr. Loring at his interview with Enbridge investigators including Mr. Rowley.

[311] I have concerns about aspects of Mr. Freeman's evidence, because given the passage of time his memory was less than sharp, and also because Mr. Rowley was the one who conducted the interview, and he testified that Mr. Loring denied asking Banner employees to work on wet pipe. I prefer Mr. Rowley's evidence on this point, as well as his evidence in cross-examination that Mr. Loring acknowledged some allegations but denied others, and Mr. Rowley could no longer recall which was

which. I accept Mr. Loring's testimony that his statements at the Enbridge interview were no different than his evidence at trial.

[312] Most importantly, I reiterate my finding that, had Megory and Mr. Beck complied with their contractual obligations, Enbridge would not have received any complaints about Banner in the first place. Rather, any concerns that Mr. Beck or other Banner employees had about safety or other workplace matters would have been satisfactorily addressed without the need for Mr. Beck or anyone else to complain to Enbridge. I thus do not accept that Enbridge's termination of the contract, even if based in whole or part on what Mr. Loring said at the interview, breaks the chain of causation.

[313] I next turn to the question of quantifying ABZ's loss by determining damages. Damages are intended to put ABZ in the position it would have occupied had Megory and Mr. Beck performed their obligations under the SPA and Non-Competition Agreement: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paras. 39-40.

[314] On the issue of damages, ABZ called as a witness Daniel Sturgess, a chartered professional accountant and chartered business valuator who was qualified as an expert in accounting, business valuation and determining business income and loss of income.

[315] Mr. Sturgess estimated Banner's loss of profit to the end of the five-year contract with Enbridge on April 3, 2025, as $3,310,000. However, Enbridge had an option to extend the contract for an additional two years, and if it exercised this option Mr. Sturgess estimated Banner's loss of profit to April 3, 2027, as $5,510,000.

[316] The Megory litigants take no real issue with Mr. Sturgess's calculations covering these two periods of time. But they argue that Mr. Sturgess was not asked to account for contingencies that might have reduced Banner's profit, including that: (a) the contract was nonexclusive; (b) Enbridge could terminate the contract at any time on 30 days' notice; and (c) Enbridge might have declined to exercise its right to

renew the contract for a further two years to April 3, 2027, instead asking for competitive tender bids that may have resulted in another company getting the work or Banner having to reduce its profit margin to win the bidding competition.

[317] The Megory litigants say that a progressive contingency should therefore be applied to Mr. Sturgess's estimated loss of profit, to account for the possibility that Banner's profit would not have accumulated entirely in accordance with a best-case scenario, and that the discount should be at least 20 percent for the later years.

[318] In my view, however, it is unlikely that Enbridge would have terminated Banner's contract or moved some of its aerial pipeline maintenance work to another company prior to the end of the five-year contract on April 3, 2025. Banner had been the only service provider on these pipelines for many years, since well before Enbridge acquired them in 2017. There is no evidence to suggest, and no reason to believe, that Enbridge would have done anything to reduce or end Banner's work before the current contract ended. Nor am I prepared to reduce Banner's damages for this period of time below the $3,310,000 in lost profit calculated by Mr. Sturgess based on any of the other contingencies raised by the Megory litigants.

[319] The factors I have mentioned in the preceding paragraph also make it substantially more likely than not that, but for the breaches of contract by Megory and Mr. Beck, Enbridge would have exercised its option to extend the contract with Banner for a further two years. Banner has thus established that these breaches deprived it of the chance to obtain further profit for the two-year period spanning April 3, 2025 to April 3, 2027. See *0997723 B.C. Ltd. v. Lee*, 2022 BCSC 2066 at para. 84, referencing *Folland v. Reardon*, 2005 CanLII 1403 (ON CA) at para. 73.

[320] Yet I cannot disregard entirely the possibility that, had Enbridge not received the October 6, 2021 email, it might have declined to extend the contract for another two years, and taken a different course such as putting the pipeline maintenance work out for competitive bid or seeking a new contract on terms less favourable to Banner. Calculating ABZ's damages for loss of the chance to have Enbridge extend

its contract with Banner for a further two years after April 3, 2025 should be discounted in light of this possibility.

[321] It is impossible to determine the proper discount for this part of ABZ's damages with anything like mathematical certainty, including because the potential negative contingencies range from Banner losing Enbridge's business entirely to having to settle for a reduced profit margin. But having taken these various contingencies into account, my best estimate is that the ABZ's damages for this loss of the chance should be calculated at 80 percent of Mr. Sturgess's estimate of the profit Banner would have earned for the two years from April 3, 2025 to April 3, 2025. As Mr. Sturgess estimated that profit at $2.2 million, ABZ's damages for this loss of chance should be reduced to $1,760,000.

[322] It follows that ABZ's total loss of profit caused by the breaches of contract committed by Megory and Mr. Beck is $5,070,000 (*i.e.*, $3,310,000 + $1,760,000). However, from this figure must be subtracted the amount of the purchase price for Banner's shares that was not paid by ABZ, namely, $1,500,000 plus contractual interest.

Defamation

[323] In the amended counterclaim, Mr. Loring asserts that Megan, Mr. Madsen and Mr. Beck defamed him by sending the October 6, 2021 email to Enbridge, which he says contained numerous false allegations and injured his reputation, thereby causing him damage. Mr. Loring says that Megan and Mr. Madsen further defamed him in text messages sent to Mr. Babakaiff.

[324] Megan, Mr. Madsen and Mr. Beck, who in this portion of my reasons I will refer to as the defamation defendants, raise a number of defences to Mr. Loring's defamation claim, including based on purported deficiencies in his pleadings. But their main defence is qualified privilege, and as I have concluded that this defence should succeed, it is my primary focus in the analysis below.

Alleged Defamatory Statements

[325] I have set out the alleged defamatory statements in paragraphs 176 and 198 above, and will not repeat them again here, but speaking generally the statements assert that Mr. Loring has created an unsafe and toxic workplace culture at Banner.

Legal Principles

[326] To succeed in a defamation action, a plaintiff must prove on a balance of probabilities that: (a) the impugned words were defamatory, meaning that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (b) the words referred to the plaintiff; and (c) the words were published, meaning that they were communicated to at least one person other than the plaintiff. See *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28.

[327] If the plaintiff proves these three elements, falsity and damage are presumed, and the onus shifts to the defendant to advance a successful defence in order to escape liability: *Grant* at paras. 28-29.

[328] As noted, the main defence advanced by the defamation defendants is that the impugned words were published on an occasion of qualified privilege.

[329] An occasion of qualified privilege exists if a person making the communication has an interest or duty, including legal, social, business, financial, moral or personal, to provide the information to the person to whom it is published, and the recipient has a corresponding interest or duty to receive that information. The standard for establishing the interest or duty is objective, the inquiry being whether persons of ordinary intelligence and moral principle, or the great majority of right-minded persons, would consider there to be an interest or duty to communicate the information to those to whom it was published. See *Bent v. Platnick*, 2020 SCC 23 at para. 121; *Qiao v. Owners, Strata Plan LMS 3863*, 2020 BCSC 818 at para. 156.

[330] If the occasion is privileged, the defendant is free to publish remarks that may be defamatory and untrue. However, the privilege is qualified in the sense that it can

be defeated. This can occur particularly in two situations. First, where malice was the dominant motive behind the words, and second, where the scope of the occasion of privilege was exceeded. See *Bent* at para. 121; *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at paras. 144 and 146.

[331] A defendant is motivated by malice where they make a defamatory statement: (a) knowing it to be false; (b) with reckless indifference as to 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 that is improper or indirect. See *Hansman v. Neufeld*, 2023 SCC 14 at para. 115; *Nole v. Seymour*, 2023 BCCA 329 at para. 76, leave refused 2024 CanLII 40770 (SCC)

[332] Recklessness must not be confused with mere carelessness, negligence, impulsiveness, irrationality or foolishness. Nor is recklessness established just because the defendant relies solely on gossip and suspicion. Rather, to establish malice through recklessness, the evidence must show that the defendant published the communication with reckless indifference as to whether it is true. See *Botiuk v. Toronto Free Press Publications Ltd.*, 1995 CanLII 60 (SCC) at paras. 96-98; *Wood v. Plewes*, 2014 BCSC 318 at para. 75.

[333] Where the plaintiff alleges an improper motive, it is not sufficient simply to show that the defendant knew the statement would injure the plaintiff, or even that the defendant disliked or wanted to injure the plaintiff. As long as the defendant was still motivated by the protected interest or duty, the occasion is privileged. The privilege will only be defeated where the dominant motive was an improper one. *Wood* at para. 76; *McKerracher v. Neustater*, 2022 BCSC 389 at para. 136.

[334] Malice is determined by examining the state of mind and motives of the defendant at the time of publication, although both prior and subsequent events may be relevant to determining malice at the relevant time: *Nole* at para. 81. Proof of malice may be inferred from the language of the assertion itself or from extrinsic evidence such as the circumstances surrounding its publication: *Hansman* at para. 115; *Nole* at para. 76.

[335] A finding of subjective honest belief negates the possibility of finding malice: *Hansman* at para. 115.

[336] The plaintiff has the burden of proving malice, it being assumed that the defendant is acting in good faith based on the interest or duty to provide the information to someone with a corresponding duty to receive it. It is not enough for the plaintiff to merely establish facts consistent with the presence of malice as well as its absence. The plaintiff must go further and show affirmative proof of malice. See at *Nole* at paras. 77-78.

[337] If an occasion of qualified privilege is established, the language used in the communication is not restricted to what is reasonably necessary to protect the interest or discharge the duty that is the foundation of the privilege. Blandness or accuracy is not a condition of attracting the privilege, and the language can be excessively strong if, in the circumstances, the defendant might have honestly and on reasonable grounds believed the communication was true and necessary. See *Ward v. Clark*, 2001 BCCA 724 at paras. 56-61; *Popat v. McLennan*, 2014 BCSC 1601 at para. 40.

Analysis

[338] Leaving aside the defamation defendants' arguments about the sufficiency of Mr. Loring's pleadings, I am prepared to find that a number of the passages from the October 6, 2021 email referenced in the amended counterclaim are defamatory. The impugned words refer to Mr. Loring, would tend to lower his reputation in the eyes of a reasonable person, and were sent to Enbridge. As for the impugned parts of the text messages, these were given little if any emphasis by Mr. Loring in closing submissions, and to the extent a couple of them might be defamatory they simply echo parts of the October 6, 2021 email.

[339] In any event, I am satisfied that all of the impugned words were published on an occasion of qualified privilege. The defamation defendants all had, at the least, a moral or personal interest or duty in raising with Enbridge concerns about the safety and general well-being of Banner employees, including potential dishonesty in

manipulating employee work hours. And Enbridge had a reciprocal interest in receiving this information, as it directly related to the company with whom Enbridge had contracted to maintain its aerial pipelines in this province, and thus impacted Enbridge's interest in promoting and monitoring safety, billing and respectful workplace practices at its worksites.

[340] I do not accept Mr. Loring's contention that qualified privilege is not engaged because the defamation defendants were not Banner employees when the October 6, 2021 email was sent and were thus not under a duty to report their concerns to Enbridge. In my view, right-minded persons of ordinary intelligence and moral principle would agree that a former employee of Banner, or an informed observer like Megan, would have a moral or personal interest in protecting the safety and the well-being of Banner's current employees and in guarding against dishonesty in billing practices including exceeding permissible work hours and banking the excess for use on shorter days.

[341] An occasion of qualified privilege having been established, the onus shifts to Mr. Loring to defeat the privilege. He has raised two arguments in attempting to do so.

[342] First, Mr. Loring says the defamatory communications exceeded any interest or duty the defamation defendants may have had in making the complaint to Enbridge, because Megan and Mr. Madison sent numerous emails to Enbridge following up on the initial complaint, and also made complaints to other entities such as the CER, WorkSafe BC, the Department of Fisheries and Fortis.

[343] This argument fails for several reasons. To begin with, Mr. Loring's amended counterclaim does not plead that the communications with any of these other entities are defamatory in nature. I recognize that all of the communications, including those with other entities, are relevant to determining whether the defamation defendants acted with malice, but that is a different issue.

[344] Nor does the amended counterclaim plead that any of the subsequent communications with Enbridge went beyond the proper scope of qualified privilege, either in terms of content or with respect to the individuals at Enbridge to whom the communications were sent. Instead, Mr. Loring's pleading asserts that the subsequent emails to Enbridge largely reiterated the earlier allegations. In any event, the evidence does not establish that these subsequent emails contained comments not falling within the scope of the protected interest or duty or were circulated beyond the sphere of appropriate recipients at Enbridge.

[345] The second and main argument advanced by Mr. Loring in seeking to defeat the defamation defendants' reliance on qualified privilege is that their dominant motivation was malice.

[346] In making this argument, Mr. Loring points to numerous aspects of the evidence that he says establish malice, including:

(a) the comments made by Megan and Mr. Madsen at the meeting with Messrs. Babakaiff and Yadernuck near the Prince George worksite;

(b) the contents of the October 6, 2021 email;

(c) recklessness as to the truth of some of the allegations made in the October 6, 2021 email;

(d) the efforts by Megan and/or Mr. Madsen to cause Mr. Loring difficulty by following up with Enbridge and making complaints about him to other entities;

(e) exaggerations or falsehoods by Megan and/or Mr. Madsen in those follow-up communications with Enbridge and the communications with those other entities, made in an effort to trigger or speed up the investigations of Mr. Loring;

(f) the text messages encouraging Mr. Babakaiff to make complaints against Mr. Loring; and

(g) comments made in those same text messages indicating that Megan and/or Mr. Madsen were enjoying the prospect of harming Mr. Loring.

[347] Having considered the evidence regarding these points, and assessed them cumulatively, I am not satisfied that Mr. Loring has met his onus of establishing malice.

[348] I disagree that the language used in the October 6, 2021 email suggests that the defamation defendants' dominant purpose was spite, animosity or some other improper or indirect goal. Rather, the core concern animating the email, and more particularly the impugned comments, is that Banner had become a company that valued production over safety and no longer provided a respectful workplace for employees. Some of the allegations in the email are framed in strong language, but the language is not unnecessarily excessive, extravagant or disproportionate so as to suggest a dominant purpose other than bringing to Enbridge's attention concerns falling within the scope of the protected interest or duty.

[349] Nor is the contrary conclusion materially advanced by the fact that a few of the complaints are peripheral at best to the above-mentioned core concern; e.g., regarding alterations to Banner vehicles said to be contrary to regulation, or deficiencies in issuing records of employment for former employees. The inclusion of complaints not falling within the scope of the engaged interest or duty, if that is what these are, does not in these circumstances support an inference of malice.

[350] There is also no evidence upon which I am prepared to find that the defamation defendants knowingly included falsehoods in the October 6, 2021 email or were reckless as to the truth of the allegations contained in it. In coming to this conclusion, I have carefully considered the answers provided by Megan, Mr. Madsen and Mr. Beck when cross-examined about the allegations in the email, and also the testimony provided by the other witnesses who had personal knowledge about events at Banner worksites.

[351] Some of the allegations in the email were based on information obtained by Mr. Madsen from other Banner employees, for example Mr. Giorgio on the topic of safety equipment, but this is not in itself problematic. In the circumstances, I reject that Mr. Madsen knew or was indifferent as to whether these other sources were unreliable. The fact that Mr. Madsen could no longer recall who provided some of the information is unsurprising given the passage of time, and is not without more a basis upon which to infer that he knowingly or recklessly included false allegations in the email.

[352] Moreover, some of the allegations were admitted by Mr. Loring in his testimony, for example his occasional ill-temper, dropping a basket into the river, occasionally free-climbing, or accusing an employee of stealing when that accusation was untrue.

[353] There are of course other allegations that Mr. Loring strongly contests, the prime example relating to working on wet pipe. But as noted earlier, it is difficult to determine exactly what happened with the wet pipe at Fort St. John, or precisely what some of the witnesses meant when they talked about “working” on wet pipe.

[354] Mr. Babakaiff testified that some employees believed that what had happened with the wet pipe at Fort St. John was a safety problem, and he did not intimate that their belief was disingenuous. Nor do I read the comments about wet pipe made by Mr. Madsen and/or Megan in text messages exchanged with Mr. Babakaiff before and after the October 6, 2021 email as indicative of recklessness within the meaning of the case law.

[355] Ultimately, I need not determine whether each allegation in the October 6, 2021 email is true, because even if some of them are not true the evidence does not support the conclusion on a balance of probabilities that the defamation defendants were reckless (or worse) in including in the email those allegations that are specified in the amended counterclaim, or any others for that matter, as opposed to being simply careless or negligent. And mere carelessness or negligence is insufficient to establish recklessness.

[356] While Megan and Mr. Madsen made similar complaints to other entities, which shows a persistence in their attempts to have someone take action against Mr. Loring, this conduct is consistent with the dominant purpose of trying to protect Banner employees from an unsafe or unhealthy workplace. It is also consistent with Megan and Mr. Madsen being frustrated by Enbridge taking many months to respond to the October 6, 2021 email, and after that responding in a manner that I find they genuinely believed to be unduly slow. Repeating a complaint for the sole purpose of pursuing a further investigation into charges that have already been made is not necessarily evidence of malice: Brown, *The Law of Defamation,* 2nd ed., §16:15. I recognize that not all of the subsequent complaints were exactly the same, the prime example being the one made to the Department of Fisheries, but I do not view it as appreciably moving the needle towards a finding of malice.

[357] On a related point, I accept Mr. Loring's submission that Megan and/or Mr. Madsen sometimes stretched the truth in recounting to one entity to which a complaint had been made what another entity was supposedly doing regarding a similar complaint. However, while detracting somewhat from the credibility of Megan and Madsen as witnesses, these misleading or exaggerated comments occurred long after the October 6, 2021 email was sent, and in my view were made in an attempt to have the complaint addressed on the merits.

[358] I also accept Mr. Loring's submission that the text messages Megan and Mr. Madsen sent to Mr. Babakaiff sometimes expressed pleasure in the prospect of causing difficulties for Mr. Loring. But the fact that they knew the October 6, 2021 email could harm Mr. Loring, and appeared to dislike and wanted to injure him, does not in the circumstances suggest that their dominant motive was spite or another improper purpose. Those same text messages reveal an abiding concern about safety and other problematic aspects of the workplace culture, which I find to have been the defamation defendants' primary motivation in sending the October 6, 2021 email.

[359] In assessing these comments in the text messages sent to Mr. Babakaiff, as well as the other factors relied on by Mr. Loring, I have also considered the absence of any evidence suggesting that bad blood previously existed between the defamation defendants and Mr. Loring. Specifically, there is no hint of a pre-existing animus that might support the conclusion that the October 6, 2021 email was primarily motivated by an improper purpose. Rather, I find it most likely that the impugned comments to Mr. Babakaiff originated in displeasure with Mr. Loring that arose from differences of opinion regarding some of the matters described in that email.

[360] As for attempts by the defamation defendants to have Mr. Babakaiff, Mr. Giorgio and/or Mr. Yadernuck join the complaints to Enbridge or other entities, these attempts are equally consistent with a desire to obtain support from employees who the defamation defendants thought might share their view regarding perceived problems at Banner. Nothing in these communications with other Banner employees or former employees indicates a desire by the defamation defendants to have those other individuals misrepresent or exaggerate. And while the defamation defendants offered to fax complaints by those other individuals to the CER, because the CER would only accept faxed submissions and Mr. Beck had a fax machine, they never suggested drafting the complaints.

[361] Although not argued by Mr. Loring in his submissions on malice, I have also considered the extent to which the defamation defendants gave Mr. Loring an opportunity to explain and defend himself before sending the October 6, 2021 email to Enbridge. This factor gives me some concern, especially with respect to Mr. Beck, who I have concluded breached his contractual duties to ABZ in a number of respects, for instance by not being forthright with Mr. Loring about what was happening with Banner's employees and complaints to Enbridge, and by failing to assist Mr. Loring in addressing dissatisfaction among some of the employees.

[362] But Mr. Loring is not relying on any contractual provisions or on Mr. Beck's employment relationship with Banner in advancing his defamation claim.

Regardless, I am not prepared to find that Mr. Loring has met his onus of establishing that Mr. Beck's conduct was not for the dominant purpose of advancing the interest or duty underlying the qualified privilege. Mr. Beck's breaches of contract do not mean that he was acting primarily out of spite towards Mr. Loring or for another improper purpose. I find that in endorsing the October 6, 2021 email, Mr. Beck believed the information provided by Mr. Madsen, and other employees through Mr. Madsen, was accurate.

Conclusion

[363] ABZ and Mr. Loring owe Megory $1.5 million plus contractual interest under the promissory note.

[364] However, Megory and Mr. Beck breached their contractual obligations under the SPA and the Non-Competition Agreement, and are thus jointly and severally liable to ABZ for damages, which I have calculated as $5,070,000. ABZ is also entitled to interest as applicable under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

[365] Mr. Beck, Megan and Mr. Madsen have established the defence of qualified privilege to Mr. Loring's claim of defamation. That claim is therefore dismissed.

[366] The parties are encouraged to agree on costs. If unable to do so, within 30 days of these reasons either party, or both, may contact Supreme Court Scheduling with a request to make submissions on that issue. It may be that the court will direct the parties to exchange and file written submissions, and after reviewing those written submissions will further determine whether oral submissions are also necessary.

"D. Layton J."