IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lee-Sheriff v. Christman,*
2022 BCSC 1914

Date: 20221102
Docket: S214808
Registry: Vancouver

Between:

Janet Lee-Sheriff & Golden Predator Mining Corporation

Plaintiffs

And

Paul Christman and Government of Yukon

Defendants

Before: The Honourable Justice Shergill

Reasons for Judgment

Counsel for Plaintiffs:	B.J. Cabott M. Xin
Counsel for Defendant, Paul Christman:	D.H. Coles
Counsel for Defendant, Government of Yukon:	R.D. McConchie
Place and Date of Hearing:	Vancouver, B.C. May 16-17, 2022
Place and Date of Judgment:	Vancouver, B.C. November 2, 2022

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I. OVERVIEW

[1] The plaintiff Janet Lee-Sheriff is the principal of Golden Predator Mining Corporation ("Golden Predator" or the "Company"). The defendant Paul Christman was the former Chief Mine Engineer for the defendant, Government of Yukon (the "Government").

[2] By way of Notice of Civil Claim filed May 14, 2021 (the "Action"), the plaintiffs allege that Mr. Christman slandered them publicly on January 19, 2020, during an industry conference. Amongst other things, they seek damages for defamation, an injunction enjoining Mr. Christman from making further defamatory statements, and an order requiring the Government to conduct an independent review in relation to Mr. Christman's actions *vis à vis* Golden Predator.

[3] In this application Mr. Christman seeks an order dismissing the within Action pursuant to s. 4 of the *Protection of Public Participation Act*, S.B.C. 2019, c. 3 [*Act*]. It is Mr. Christman's position that the Action has been brought by the plaintiffs to silence him and prevent any challenge to Golden Predator's operations and conduct.

[4] The plaintiffs say, amongst other things, that Mr. Christman's statements do not relate to a matter of public debate or interest, and therefore fall outside the scope of the *Act*.

[5] The Government takes no position on this application.

II. LEGAL FRAMEWORK

[6] The issues raised in this application arise from s. 4 of the *Act*. Section 4 reads as follows:

> 4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that
>
> > (a) the proceeding arises from an expression made by the applicant, and
> >
> > (b) the expression relates to a matter of public interest.

> (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
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> (a) there are grounds to believe that
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> (i) the proceeding has substantial merit, and
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> (ii) the applicant has no valid defence in the proceeding,
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> (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[7] Applications brought under s. 4 of the *Act* differ from other pre-trial motions brought under the *Supreme Court Civil Rules* B.C. Reg. 168/2009 [Rules] to dismiss an action, such as under Rule 9-5 (striking pleadings) and Rule 9-6 (summary judgment). Section 4 of the *Act* empowers the court to prevent “an otherwise valid cause of action” from proceeding if the court is satisfied that the public interest in protecting the defendant’s expression outweighs the public interest in allowing the plaintiff to proceed: *Neufeld v. Hansman*, 2021 BCCA 222 at para. 5 [*Neufeld BCCA*].

[8] The *Act* came into force three years ago. The legislation was specifically aimed at “strategic lawsuits brought by the wealthy and powerful to shut down public criticism”. These are commonly referred to as Strategic Lawsuits Against Public Participation (“SLAPP”). Its stated purpose was to protect “an essential value of our democracy, which is public participation in the debates of the issues of the day”. *Neufeld BCCA* at para. 3.

[9] Sections 4(1) and 4(2) of the *Act* are almost identical in wording to ss. 137.1(3) and 137.1(4) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 [*Ontario Act*]: *Todsen v. Morse*, 2022 BCSC 1341 at para. 28. On this point, our Court has noted that decisions coming from Ontario courts regarding ss. 137.1(3)-(4) of the *Ontario Act* may be helpful in interpreting and applying the *Act*’s provisions: *Neufeld v. Hansman* 2019, BCSC 2028 at paras. 45–47 [*Neufeld BCSC*], reversed on other grounds in *Neufeld BCCA*.

[10] The *Ontario Act* provisions were considered by the Supreme Court of Canada in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes*] and *Bent v. Platnick,* 2020 SCC 23. These two judgments "provide binding guidance on how SLAPP dismissal applications under s. 4 of the *Act* are to be adjudicated": *Todsen* at para 28, referencing *Neufeld BCCA* at para. 7.

[11] Justice Fenlon, writing for the court in *Neufeld BCCA*, explains the four-step analysis set out in *Pointes* and *Bent*, as follows:

> [7] In *1704604 Ontario Ltd. v. Pointes Protection Association,* 2020 SCC 22 [*Pointes SCC*] and *Bent v. Platnick,* 2020 SCC 23 [*Bent SCC*], the Supreme Court confirmed there are four steps to the analysis. First, the defendant has the burden of establishing that the proceeding against them arises from an expression that relates to a matter of public interest. Once the defendant establishes that point, the burden shifts to the plaintiff for the next three steps. The plaintiff faces dismissal of their action unless they satisfy the motion judge of the following: first, that there are grounds to believe the action has substantial merit; second, that there are grounds to believe the defendant has no valid defence to the action; and third, that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the defendant's expression. The Supreme Court in *Pointes* described the last step as the core of the analysis, allowing the court to scrutinize "what is really going on" in the particular case before them and to open-endedly engage with the overarching public interest implications that the statute, and anti-SLAPP legislation generally, seeks to address.

[12] The burden lies on the applicant (defendant) at the first step of the analysis, and then shifts to the respondent (plaintiff) for the remaining three steps.

III. THE EXPRESSION

[13] The first step of the four-step analysis has two parts. The defendant must show: that (1) the proceeding against the defendant arises from an expression made by the defendant; and (2) the expression relates to a matter of public interest.

[14] At this stage, the burden of proof is on a balance of probabilities – i.e. is it "more likely than not" that the proceeding arises from an expression that relates to a matter of public interest: *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

[15] For the reasons that follow, I am satisfied that both parts of this test have been met.

A. Background Facts

[16] Many of the key background facts are not in dispute. I have only set out the facts necessary to decide this application.

[17] Golden Predator is a mineral exploration company operating in Yukon. At all material times, Ms. Lee-Sheriff and her husband, William Sheriff, were shareholders of Golden Predator, and held executive positions with the Company.[1]

[18] Golden Predator has owned the Brewery Creek Mine (the "Mine") since 2012. The Mine is a heap leach gold mine, located within First Nations territory in northwestern Yukon, approximately 55 kilometers east of Dawson City. When Golden Predator purchased the Mine, it had been closed for about 10 years.

[19] The main point of contention between the parties, and that which underlies the Action for defamation, is whether in January 2020, Golden Predator held valid licences, and if so, what those licences permitted Golden Predator to do.

[20] Operating a mine in the Yukon requires a number of different types of licences, including mining and water licences. The Government is responsible for the issuance and regulation of quartz mining licences through the Yukon Government Mineral Resources Branch. A separate administrative body, the Yukon Water Board (the "Board"), is responsible for issuing and regulating water licences.

[21] Between 1996 and 2002, the Mine was operated by Viceroy Resource Corporation in accordance with licences issued under the *Yukon Quartz Mining Act*, R.S.C., 1985, c. Y-4, and the *Yukon Waters Act*, S.C. 1992, c. 40. Mining activities ceased around 2002. Mine reclamation began after the Mine was closed.

[22] Alexco Resource Corporation ("Alexco") purchased the Mine around 2005. The quartz mining licence QML A99-001 ("Mining Licence") and type A water use

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[1] Golden Predator was acquired by Sabre Gold Mines Corp. around September 2021. Unless otherwise indicated, the facts relayed are as things stood on January 19, 2020.

licence QZ96-007 ("Water Licence"), (collectively, the "Licences"), were transferred at the time of sale.

[23] Golden Predator purchased the Mine in 2012 from Alexco. As part of the sale, Alexco applied to the Board to have its Water Licence assigned to Golden Predator. The Board authorized the assignment on April 23, 2012. In its Reasons for the Decision, the Board noted that:

> Any change from the current state of the mine, which is in permanent closure, would require a new licence application or application for amendment of the current licence, either of which would require an assessment under the *Yukon Environmental and Socio-Economic Assessment Act,* which would be the appropriate time for Tr'ondek Hwech'in's concerns to be raised.[2]

[24] The Water Licence was issued to Golden Predator pursuant to the *Waters Act*, S.Y. 2003, c. 19, on April 23, 2012, for a term expiring on December 31, 2021. The Mining Licence was issued to Golden Predator pursuant to the *Quartz Mining Act*, S.Y. 2003, c. 14, on October 5, 2012, and was set to expire on December 31, 2021. Golden Predator was also granted a "Type B" water licence in August 2012, which gives the Company the right to obtain groundwater and upgrade the existing septic system on site subject to some conditions. The Type B water licence was set to expire on July 5, 2022.

[25] Around February 2019, Golden Predator sought to re-activate the Mine. It asked the Department to confirm that it had a valid quartz mining licence. This request fell under Mr. Christman's purview as Chief Mine Engineer. Mr. Christman was the Chief Mine Engineer for the Government of Yukon, Department of Energy, Mines and Resources (the "Department"), between July 2017 and May 2020. He was the most senior technical expert on mining engineering within the Government, as well as the only mining engineer employed by the Government.

[26] On June 26, 2019, the Assistant Deputy Minister responsible for Oil, Gas, and Minerals Resources (John Fox) wrote to Ms. Lee-Sheriff and confirmed that the Mining Licence held by Golden Predator "for the Brewery Creek project site

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[2] Affidavit 1 of Pearl Tran, made May 12, 2022 ("Tran Affidavit"), p. 13.

continues to be valid with respect to the matters set out in that licence". In his letter, Mr. Fox asked Golden Predator to provide all plans previously submitted for the Licences, and a detailed work plan "prior to commencement of work". He further advised Golden Predator that "any work not set out in the plans previously submitted will require an amendment to [their] license", and that the plans would be used to determine "the amount of security required in relation to the proposed development", which must be posted before development could commence. Mr. Fox directed Golden Predator to provide the required material to Mr. Christman.[3]

[27] In August 2019, Mr. Christman completed the financial security assessment for the Brewery Creek Property (the "Property"). He determined that Golden Predator should be required to post significant security in the event it was permitted to restart mining operations.

[28] On October 23, 2019, Golden Predator's activities at the Property came to the attention of the Compliance Monitoring and Inspections branch of the Department, who issued two Inspector's Directions to Golden Predator to immediately cease work and development at the Property, and produce certain documents (the "Stop Work Orders").

[29] Between August 2019 and December 2019, the plaintiffs communicated and met with various representatives of the Government with respect to Golden Predator's Licences, ongoing activities, and efforts to resume mining operations. It appears that Mr. Christman was privy to some but not all of these discussions and communications.

[30] On January 7, 2020, Golden Predator and the Government entered into Terms of Reference ("TOR"), which described the Mine as the "largest lode gold mine ever constructed in Yukon".[4] The TOR confirmed the validity of the Licences, and their expiry date of December 31, 2021. The TOR also stated the parties'

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[3] Affidavit 1 of Janet Lee-Sheriff ("Lee-Sheriff Affidavit"), made May 11, 2022, pp.103-104.
[4] Project Coordination Committee Terms of Reference, Brewery Creek Mine Project, January 7, 2020, at 1 ("TOR").

intentions to establish a Project Coordination Committee to “enhance communication between Golden Predator, with respect to its development and production plans, and the Yukon government, with respect to the assessment and regulation of these activities”.[5]

B. The Alleged Defamation

[31] The alleged defamatory statements were said to have been uttered during the Vancouver Resource Investment Conference (“VRIC”) held in Vancouver, British Columbia, on January 19-20, 2020 (the “2020 VRIC”). The VRIC is an annual conference, attended by those involved in the junior mining industry including executives, investors and regulators. Golden Predator maintained a booth at the 2020 VRIC (the “Booth”), which was visited by individuals interested in the Company’s business, such as shareholders, investors, and potential investors.

[32] Mr. Christman, Ms. Lee-Sheriff, and Mr. Sheriff, attended the VRIC on January 19, 2020. Ms. Lee-Sheriff was attending in her capacity as the CEO of Golden Predator. Mr. Sheriff was there in his capacity as the Executive Chairman of Golden Predator. Mr. Christman was at the VRIC in his capacity as the Chief Mine Engineer for Yukon.

[33] On the afternoon of January 19, 2020, Ms. Lee-Sheriff gave a public update on the Company’s Yukon projects (the “Presentation”). During the Presentation, Ms. Lee-Sheriff referred to the Licences, and showed a number of slides which referred to the Mine as being “fully licenced”. One of the slides indicated “Quartz Mining License, Water License valid to resume mining operations at 4mm tonnes/year; Class 4 Mining Land Use Permit for further exploration”.[6]

[34] The parties provide different versions of what flowed next.

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[5] TOR at 2.

[6] Lee-Sheriff Affidavit at para. 31, p. 118. Ms. Lee-Sheriff states in her affidavit that she has been unable to locate the slides used in the Presentation, but that the slides attached to her affidavit were used in previous presentations, and the content is substantially identical to what was used in the Presentation.

1. The account of Ms. Lee-Sheriff

[35] According to Ms. Lee-Sheriff, following her presentation at the 2020 VRIC, she was informed by another attendee (Anne Lewis) that during and following the Presentation, Ms. Lewis heard a male individual loudly berating Ms. Lee-Sheriff, calling her a "liar", and accusing her of spreading misinformation about Golden Predator's licensing status (the "Presentation Slander Allegations"). Ms. Lewis then pointed out the person, who Ms. Lee-Sheriff recognized as being Mr. Christman.[7]

[36] Ms. Lee-Sheriff approached Mr. Christman and asked to speak to him. Mr. Christman followed her to the Booth, where Ms. Lee-Sheriff confronted him about the Presentation Slander Allegations. According to Ms. Lee-Sheriff, Mr. Christman first denied making the alleged statements, but later confirmed that he had made them. An altercation ensued, during which Mr. Christman raised his voice and made the following statements: (1) "you are lying"; (2) "all of your disclosure, your maps, your license"; (3) "you don't have what you claim"; (4) "you don't have licenses to operate"; (5) "you lie"; and (6) "you are a liar" (the "Argument Slander Allegations").

[37] The argument escalated, and at one-point Ms. Lee-Sheriff felt physically intimidated. Eventually Ms. Lee-Sheriff removed herself from the conversation. Before walking away, she asked her husband, who was present and witnessed the exchange, to deal with the situation.

2. The account of Mr. Sheriff

[38] Mr. Sheriff avers as follows.[8]

[39] He was speaking to some investors at the Booth when Mr. Christman and Ms. Lee-Sheriff approached. Mr. Sheriff did not know Mr. Christman, but identified him from a name badge. Mr. Sheriff overheard Mr. Christman making the Argument Slander Allegations.

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[7] Lee-Sheriff Affidavit at paras. 31-45.
[8] Affidavit 1 of William Sheriff, made May 11, 2022 ("Sheriff Affidavit").

[40] After Ms. Lee-Sheriff left, Mr. Sheriff tried to calm Mr. Christman down. Mr. Christman continued to speak in a loud voice and made various other statements challenging the validity of Golden Predator's licences. He said: (1) "your people lie"; (2) "you lie"; (3) you "misrepresent"; (4) "you don't have the licence that you claim to have"; (5) "you are doing things you have no right to do", (6) "you don't have a water license at all, what makes you think you do?"; and (7) "get your fucking wife under control" (the "Continuation Slander Allegations").

[41] Eventually, Mr. Sheriff managed to calm Mr. Christman down such that he reduced the tone of the discussion to a "moderate boil". Mr. Christman made various assertions about his qualifications to make his statements about Golden Predator, and expressed concerns about Golden Predator's conduct. Ultimately, the conversation ended. As Mr. Christman was leaving, Mr. Sheriff offered him his business card and encouraged Mr. Christman to call him. Mr. Christman took the card and left.

3. The account of Mr. Christman

[42] Mr. Christman provides the following version of events.[9]

[43] Mr. Christman attended Ms. Lee-Sheriff's presentation, which occurred around 2:00 p.m. He stood in the back and did not make any comments during the Presentation. During the Presentation, Ms. Lee-Sheriff stated that Golden Predator owned a processing plant in Watson Lake that was "duly permitted". Mr. Christman viewed this statement as false, as the Watson Lake plant had no licencing in place.

[44] Several hours later, Mr. Christman was confronted by Ms. Lee-Sheriff, who appeared upset. Mr. Christman followed Ms. Lee-Sheriff to the Booth where Mr. Sheriff was standing. No other people were present at the Booth, but the Booth was located in a public place. Mr. Christman suggested that they speak in a meeting room, but Ms. Lee-Sheriff insisted they stay at the Booth. Ms. Lee-Sheriff then

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[9] Affidavit 1 of Paul Christman, made April 27, 2022 ("Christman Affidavit") at paras. 35-47.

accused Mr. Christman of 'bad-mouthing' Golden Predator. Mr. Christman denied the allegation but admitted to saying the following:

> I advised them that it was true I was concerned about Ms. Lee-Sheriffs statements made to the public at large, including potential investors, because certain of statements were not true, in particular that the Brewery Creek Property and Golden Predator had the requisite licensing and permitting in place to resume mining operations. I was clear to both Ms. Lee-Sheriff and her husband that my concerns were bona fide and related to my professional obligations and responsibilities as Chief Mine Engineer for Yukon, as well as my professional and ethical obligations as a professional engineer and geologist.[10]

[45] Mr. Christman denies threatening or berating Ms. Lee-Sheriff or making any disparaging remarks about her. After Ms. Lee-Sheriff left, he continued speaking to Mr. Sheriff, and told him about his concerns about the Stop Work Orders. He also expressed his views that the Company was misleading the public by, for example, stating that the Government had confirmed that the Water Licence was valid for restart of the production. The conversation eventually ended on a civil note with Mr. Sheriff offering his business card.

C. Analysis

[46] I will now consider the first step of the s. 4(1) analysis.

1. Expression made by the defendant

[47] The first question under s. 4(1)(a) of the *Act* is whether the proceeding arises from an expression made by the defendant. For the reasons that follow, I conclude that it does.

[48] The plaintiffs argue that the application fails at the first stage of the test because Mr. Christman denies making the expressions that give rise to this action. Specifically, they say that for the defendant to invoke the *Act*, he must clearly assert "I said that statement, and here is why it needed to be said."[11] It is argued that

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[10] Christman Affidavit, at para. 42.
[11] Written Submissions of the Plaintiffs, at para. 5 ("Plaintiff Submissions").

because Mr. Christman does not admit that he said the impugned words, the application does not meet the requirement under s. 4(1)(a).

[49] In support of their position, the plaintiffs rely on *Walsh v. Badin,* 2019 ONSC 689. In *Walsh*, the plaintiffs commenced an action against the defendants for defamation flowing from statements made in three anonymous letters that were distributed to residents of the condominium building in which they all lived. The defendants denied any involvement in the drafting or distribution of the offending letters, and denied making the statements at issue.

[50] The defendants brought an application to dismiss the proceeding under ss. 137.1(3)-(4) of the *Ontario Act* (the sections of which mirror ss. 4(1)-(2) of the *Act*). In dismissing the defendants' application, Justice Nishikawa in *Walsh* stated that the defendant cannot both demonstrate that the proceeding arises from an expression made by them and deny making the expression. He provided the following explanation:

> [27] The Court of Appeal has determined that a defendant must demonstrate on a balance of probabilities that the proceeding arises from an expression made by the defendant. A defendant cannot both demonstrate that the proceeding arises from an expression made by them and deny making the expression. A defendant who brings a motion to dismiss under s. 137.1(3) must therefore be prepared to admit making the impugned expression. In this case, the Defendants cannot demonstrate on a balance of probabilities that the proceeding arises from an expression made by them because they deny having made the Statements.
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> [28] I do not accept the Defendants' argument that they should be able to bring a motion to dismiss under s. 137.1(3) while maintaining in the alternative that they did not make the Statements. The language of s. 137.1(3) specifically states that the court shall dismiss the proceeding if the person satisfies the judge that the proceeding arises from an expression "made by the person…" To interpret the provision in the manner suggested by the Defendants would render the words "made by the person" superfluous. Based on the principles of statutory interpretation, such an interpretation is to be avoided.
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> [29] Moreover, to allow the Defendants to seek the protection of s. 137.1(3) while denying that they made the Statements strikes me as inconsistent with the purpose of s. 137.1. Section 137.1 encourages individuals to speak out and participate in debates on matters of public interest free from the fear of being sued. It would be contrary to the purpose of the provision to interpret it to allow individuals to make potentially

> defamatory statements anonymously and then avail themselves of the protection of the provision. To some extent, the fact that the provision protects a defendant from suit presupposes that they are identifiable and at risk of being sued. This is not to say that an anonymous statement can never relate to a matter of public interest. There may be legitimate reasons for making a statement anonymously that should not necessarily preclude a person from relying upon s. 137.1(3). However, a person should not be able to avail themselves of the protection of s. 137.1(3), unless they have identified themselves or acknowledge making the statement at issue.
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> [30] Since the Defendants have failed to meet the first part of the two-part inquiry under s. 137.1(3), their motion must fail…
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> [Emphasis added]

[51] A similar concern arose in *Waterton Global Resource Management, Inc. v. Bockhold,* 2022 BCSC 499. At issue in *Waterton*, noted at paras. 11, 16–17, was whether the defendants can rely on s. 4(1)(a) of the *Act,* while they “deny making the impugned statement”. In dismissing the defendant’s application, Justice Murray stated:

> [19] I conclude that the word “made” in s. 4(1)(a) necessarily involves the applicant taking some positive action, whether verbal or non-verbal, to cause or create the expression in issue. The problem for the Dawson defendants is that they deny having anything to do with the expressions in issue. In fact, Mr. Dawson says that he expressed disapproval when he became aware of the statements. There is no evidence before me that supports the argument that the Dawson defendants made the alleged defamatory statements, even under a generous interpretation of the word “expression”.
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> [20] I find that the Dawson defendants have failed to satisfy their burden under s. 4(1)(a). Accordingly, their application to dismiss under the [the *Act*] is dismissed.

[52] I consider the circumstances of *Waterton* and *Walsh* to be different from the one at bar.

[53] In *Waterton*, the Dawson defendants were the clients of the defendant Bockhold who operated and maintained a website. The claim arose as a result of certain statements published on Mr. Bockhold’s website, and press releases issued by Mr. Bockhold. The claim alleged that Mr. Bockhold had made the impugned statements, but was assisted in this endeavour by the Dawson defendants through financial support and encouragement.

[54] In *Walsh*, the court was faced with statements made in anonymous letters, therefore it was the identity of the persons making the defamatory statements that was at issue.

[55] Most significantly, in both cases the learned justices were faced with defendants who abjectly denied that they had made the impugned expressions. This denial was found to be irreconcilable with the defendants' arguments that the lawsuits brought against them were designed to prevent them from speaking out and participating in debates on matters of public interest.

[56] Comparatively, in the case at hand, an abject denial and identity is only an issue with respect to one of the three sets of defamations alleged against Mr. Christman, i.e. the Presentation Slander Allegations.

[57] Mr. Christman categorically denies making the impugned statements in the Presentation Slander Allegations. None of the affiants who provided evidence at this hearing were witness to the Presentation Slander Allegations. The evidence about the content of those alleged statements, and the identity of the person who made them, is based on hearsay – the entire allegation flows from what Ms. Lee-Sheriff says another attendee at the 2020 VRIC told her after the Presentation was concluded. In this situation, Mr. Christman's denial that he made the purported statements gives rise to the concerns expressed by Nishikawa J. in *Walsh*. On that basis alone, his motion with respect to the Presentation Slander Allegations must fail.

[58] However, the same cannot be said with respect to the Argument Slander Allegations and the Continuation Slander Allegations. There is no dispute that the Argument Slander Allegations and Continuation Slander Allegations arise from Mr. Christman's exchanges with Ms. Lee-Sheriff and Mr. Sheriff following the Presentation. While Mr. Christman denies uttering the specific words alleged in the Action, he does not deny telling both Ms. Lee-Sheriff and Mr. Sheriff that he believed

that Ms. Lee-Sheriff had made false statements during the Presentation, and that Golden Predator was misleading the public.[12]

[59] The meaning of the words “arises from” and “expression, within the context of ss. 137.1(2)-(3) of the *Ontario Act*, was considered by the Supreme Court of Canada in *Pointes* as follows:

> [24] … what does “arises from” require? By definition, “arises from” implies an element of causality. In other words, if a proceeding “arises from” an expression, this must mean that the expression is somehow causally related to the proceeding. What is crucial is that many different types of proceedings can arise from an expression, and the legislative background of s. 137.1 indicates that a broad and liberal interpretation is warranted at the s. 137.1(3) stage of the framework. This means that proceedings arising from an expression are not limited to those *directly* concerned with expression, such as defamation suits. A good example of a type of proceeding that is not a defamation suit, but that nonetheless arises from an expression and falls within the ambit of s. 137.1(3), is the underlying proceeding here, which is a breach of contract claim premised on an expression made by the defendant (this is explored in further detail in Part IV of these reasons). Indeed, the APR explicitly discouraged the use of the term “SLAPP” in the final legislation in order to avoid narrowly confining the s. 137.1 procedure (para. 22), and the legislature obliged.
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> [25] Third, what does “expression” mean? The term “expression” is defined broadly in s. 137.1(2) of the *CJA* itself: “In this section, ‘expression’ means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.” This is not in need of further clarification, as the text makes it abundantly clear that “expression” is defined expansively.
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> [Emphasis added; footnotes omitted]

[60] Turning to the facts of this case, I find that there is a clear causal connection between the words uttered by Mr. Christman to Ms. Lee-Sheriff and Mr. Sheriff at the 2020 VRIC on the afternoon of January 19, 2020, and the proceeding commenced against him by the plaintiffs for the Argument Slander Allegations and the Continuation Slander Allegations.

[61] The Court in *Pointes* makes it clear that “expression” should be interpreted liberally and “expansively”. Mr. Christman’s evidence places him in the general circumstances of the alleged defamation. Mr. Christman admits that during his

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[12] Christman Affidavit, at paras. 42, 45.

interactions with Ms. Lee-Sheriff and Mr. Sheriff, he told them that he believed that Ms. Lee-Sheriff and Golden Predator were making false and misleading statements about Golden Predator's ability to resume mining operations. He maintains that his concerns were *bona fide*. Though the expressions Mr. Christman admits to differ from the ones the plaintiffs say he made, in my view this evidence is sufficient to satisfy the requirement under s. 4(1)(a) of the *Act*.

[62] I am satisfied on a balance of probabilities that the proceeding commenced against Mr. Christman for the Argument Slander Allegations and the Continuation Slander Allegations, arises from an expression made by him.

2. Expression relates to a matter of public interest

[63] I turn now to the second question under this part of the test: whether the expression relates to a matter of public interest.

[64] In *Pointes*, the Court considered the meaning of the phrase "relates to a matter of public interest". It applied the reasoning in *Grant*, by holding that the words are to be given a broad, liberal interpretation: *Pointes* at paras. 27 and 28.

[65] In *Grant v. Torstar Corp.*, 2009 SCC 61 Chief Justice McLachlin described the "public interest" as follows:

> [100] This is a matter for the judge to decide. To be sure, whether a statement's publication is in the public interest involves factual issues. But it is primarily a question of law; the judge is asked to determine whether the nature of the statement is such that protection may be warranted in the public interest.
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> …
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> [104] In *London Artists, Ltd. v. Littler*, [1969] 2 All E.R. 193 (C.A.), speaking of the defence of fair comment, Lord Denning, M.R., described public interest broadly in terms of matters that may legitimately concern or interest people:
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>> There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of

> public interest on which everyone is entitled to make fair comment. [p. 198]
>
> [105] To be of public interest, the subject matter "must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached": Brown, vol. 2, at pp. 15-137 and 15-138. … Some segment of the public must have a genuine stake in knowing about the matter published.

[66] There is a distinction between an expression that "*relates* to a matter of public interest" versus one which simply "*makes reference* to something of public interest, or to a matter about which the public is merely curious. Neither of the latter two forms of expression will be sufficient for the moving party to meet its burden under s. 137.1(3)": *Pointes* at para. 29; see also *Dent-X Canada v. Houde*, 2022 ONCA 414 at para. 10. The Court in *Pointes* went on to say:

> [30] Ultimately, the inquiry is a contextual one that is fundamentally asking what the expression is really about. The animating purpose of s. 137.1 should not be forgotten: s. 137.1 was enacted to circumscribe proceedings that adversely affect expression made in relation to matters of public interest, in order to protect that expression and safeguard the fundamental value that is public participation in democracy. If the bar is set too high at s. 137.1(3), the motion judge will never reach the crux of the inquiry that lies in the weighing exercise at s. 137.1(4)(b). Thus, in light of the legislative purpose and background of s. 137.1, it is important to interpret an "expression" that "relates to a matter of public interest" in a generous and expansive fashion.

[67] As held at para. 28 of *Pointes*, the "public interest" test is not an onerous one.

[68] The concept of whether a particular expression relates to a matter of public interest, is to be broadly interpreted, and assessed by looking at the expression as a whole. With that in mind, I conclude, on a balance of probabilities, that the expressions made by Mr. Christman about Golden Predator's claims of possessing valid licences, related to matters of public interest.

[69] In coming to this conclusion, I note that the Mine was the largest lode gold mine ever constructed in Yukon; it was located on First Nations territory; and its planned re-opening entailed the creation of a special Project Coordination Committee consisting of representatives from Golden Predator and the Government. The establishment of this Project Coordination Committee, and Golden Predator's

possession of licences to operate the Mine, were the subject of a joint public release made by the Government and Golden Predator on February 5, 2020 (the "Press Release").[13] It can be inferred that the Press Release was issued because there was public interest in the activities of Golden Predator including whether or not they had licences to operate. I note also that Mr. Christman's comments related directly to Ms. Lee-Sheriff's presentation that was made at the 2020 VRIC, where members of the general public, and those involved in the junior mining industry, were present. There is sufficient evidence, in my view, to support the conclusion that the expressions made by Mr. Christman were a matter of public interest.

[70] As noted earlier, Mr. Christman has failed to meet his burden of showing that the proceeding in relation to the Presentation Slander Allegations, arises from an expression he made. His application to dismiss on that ground is dismissed.

[71] However, Mr. Christman has met the first part of the test under s. 4(1)(a) of the *Act* with respect to the Argument Slander Allegations and the Continuation Slander Allegations. I turn now to considering the remaining three steps in relation to those two claims.

IV. SUBSTANTIAL MERIT

[72] To avoid dismissal of the proceeding, s. 4(2)(a)(i) of the *Act* requires the plaintiff to satisfy the court that there are "grounds to believe" the proceeding has substantial merit. The test under this provision is a subjective one, such that the assessment is made from the motion judge's perspective: *Pointes* at para. 41.

[73] In determining whether "grounds to believe" exist, the motion judge must "be acutely aware of the limited record, the timing of the motion in the litigation process, and the potential of future evidence arising": *Pointes* at para 37.

[74] This burden requires less than proof on the balance of probabilities: *Pointes* at para. 40. Instead, to meet the test under s. 4(2)(a)(i), the motion judge must find

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[13] Lee-Sheriff Affidavit, at para. 50; Exhibit I at 136.

that the underlying claim is “legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success”: *Pointes* at para. 54.

[75] A “real prospect of success” means that while the claim does not have to rise to a level of “strong likelihood of success”, it must have more than just “technical validity”: *Pointes* at paras. 47, 49, 51.

[76] The purpose of the provision is to ensure that “a plaintiff with a legitimate claim is not unduly deprived of the opportunity to pursue it”: *Pointes* at para. 46.

[77] It is important to note that I am not tasked at this stage, to adjudicate the merits of the underlying proceeding. There is a distinction between an application under s. 4(2)(a) and a summary judgment motion. As the court noted at para. 52 in *Pointes,* the former is brought at an earlier stage in the litigation, where the evidence is much more limited, than what might exist on a summary judgment motion:

> [52] …As a result, a motion judge deciding a s. 137.1 motion should engage in only limited weighing of the evidence and should defer ultimate assessments of credibility and other questions requiring a deep dive into the evidence to a later stage, where judicial powers of inquiry are broader and pleadings more fully developed.

[78] To prove a claim in defamation, the plaintiff must establish on a balance of probabilities that: (a) the impugned words were defamatory in the sense that the words would tend to lower the plaintiffs’ reputation in the eyes of a reasonable person; (b) the words referred to the plaintiff; and (c) the words were published (i.e. communicated) to at least one person other than the plaintiff: *Grant* at para. 28.

[79] The alleged defamatory words uttered by Mr. Christman during the Argument Slander Allegations and Continuation Slander Allegations include words such as “liar”, “you lie”, “you are a liar” and “you are lying”. These words in their natural and ordinary meaning call into question a person’s honesty and integrity, which tend to lower a person’s reputation in the eyes of a reasonable person.

[80] In addition, when the words “get your fucking wife under control” are considered within the context of the specific circumstances of this case, their meaning, through innuendo, can be considered defamatory. Ms. Lee-Sheriff works in an industry where the vast majority of executive roles in Canadian mining companies are occupied by men.[14] These words tend to undermine her authority and autonomy as a female executive. Borrowing from the submissions of counsel for the plaintiffs, these words could suggest that Ms. Lee-Sheriff is a “hysterical woman”, she is a “wife out of control”, and a wife “in need of spousal authority from her husband to reign in her independent thoughts and statements”.[15]

[81] I am also satisfied that the words that Mr. Christman is alleged to have uttered to Ms. Lee-Sheriff and Mr. Sheriff, refer to one or both plaintiffs.

[82] I turn now to whether the words were communicated to someone other than the plaintiffs. For the purposes of this analysis, I accept that a communication to a company received by someone on behalf of the company, in the ordinary course of business, does not constitute publication: *Monument Mining Limited v. Balendran Chong & Bodi*, 2012 BCSC 1769 at paras. 88-91. This would thus exclude Mr. Sheriff as being a “third party” for the purposes of publication.

[83] There is sufficient evidence before me, which is reasonably capable of belief, to establish for the purposes of this application, that Mr. Christman’s words were communicated to more than just the plaintiffs. Both Ms. Lee-Sheriff and Mr. Sheriff aver that Mr. Christman was speaking in a loud voice, and there was at least one employee of Golden Predator present during the altercation, as well as some investors. They were all in close proximity to the Booth, and would have overheard Mr. Christman’s statements made to each of them.

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[14] Lee-Sheriff Affidavit, at para. 6.
[15] Plaintiff Submissions, at para. 50.

[84] With respect to the claim being legally tenable, I reject the notion advanced by the defendant that the plaintiff is required to plead material facts to support a claim for special damages.

[85] In *Grant* at para. 28, the Supreme Court of Canada held that slander requires proof of special damages, unless the impugned words were slanderous *per se*. In support of this principle, the Court cites Raymond Brown, *The Law of Defamation in Canada* (2nd ed., Toronto: Thomson Reuters, 1999) (loose-leaf updated 2008, release 3) at 25-2, 25-3.

[86] In his more recent publication, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United* States (2nd ed., Toronto: Thomson Reuters) (loose-leaf updated 2014) [*Brown on Defamation*], the author sets out at §8.7, the four recognized categories where damages are presumed to have been suffered from the very nature of the words, thus constituting slander *per se*. One of those categories is "oral imputations calculated to disparage the reputation of the plaintiff in the way of his or her work, business, office, calling, trade or profession".

[87] Slanders of a company also fall within this category of exceptions: *Ross v. Lamport,* [1956] S.C.R. 366 at paras. 15–17.

[88] Bearing in mind that my conclusions are for the purposes of this application only, and based on the evidence provided on a limited record, I consider the impugned words in this case to be slanderous *per se*. Consequently, they are actionable without proof of special damages.

[89] I am satisfied that the plaintiff has established that the proceeding in relation to the Argument Slander Allegations and Continuation Slander Allegations, has substantial merit. The claim is legally tenable and supported by evidence that is reasonably capable of belief such that the claim can be said to have a real prospect of success.

V. VALID DEFENCE

[90] Section 4(2)(a)(ii) of the *Act* requires the plaintiffs to establish that there are "grounds to believe" that the defendant has "no valid defence" in the underlying proceeding.

[91] In this part of the analysis, the court is only required to consider the defences put into play by the defendant: *Pointes* at para. 56.

[92] The word "no" is absolute, such that if there is any defence that is valid, then the plaintiff has not met its burden and the underlying claim should be dismissed: *Pointes* at para. 58.

[93] The analysis under s. 4(2)(a)(ii) mirrors the analysis in the foregoing section: the plaintiff must show that the defence or defences put into play are not legally tenable or supported by evidence that is reasonably capable of belief such that they can be said to have no real prospect of success: *Pointes* at para. 59.

[94] The defendants advance various defences to the Action, including the words complained of are not defamatory and there has been no publication. Mr. Christman also advances defences of justification/truth, qualified privilege, and fair comment.

[95] In the preceding section, I have already addressed the defamatory nature of the words, as well as publication. Based on the foregoing analysis, I am satisfied that there are grounds to believe that those defences cannot be made out. I turn to the remaining defences.

A. Justification

[96] To succeed on a defence of justification, the defendant must adduce evidence showing that the statement was substantially true: *Grant* at para. 33.

[97] Partial truth is not a defence. If a material part of the justification defence fails, the entire defence fails: *Bent* at para. 108.

[98] However, a defendant may justify part of a libel “if that part is severable and distinct from the rest”: *Bent* at para. 108, citing *Brown on Defamation* at §10.13.

[99] There are grounds to believe that the defence of justification is not valid in this case, and has no real prospect of success.

[100] The defamatory words include: “you are lying”, “all of your disclosure, your maps, your license”; “you don’t have what you claim”; “you don’t have license to operate”; “you don’t have a water license at all”; and “get your fucking wife under control”. Consequently, Mr. Christman must prove the following to raise the defence of justification:

a) Golden Predator did not have a water license;

b) Golden Predator did not hold a valid water license and quartz mining license required to operate;

c) Golden Predator misrepresented about all of its disclosure, maps and licenses;

d) Golden Predator and, or, Ms. Lee-Sheriff claimed that Golden Predator held all the required licenses for production, and did not in fact have them;

e) Ms. Lee-Sheriff knew that Golden Predator did not have the required license, and misrepresented to the public with an intent of deceit; and

f) Ms. Lee-Sheriff was a “hysterical woman”, a “wife out of control”, and a “wife in need of spousal authority from her husband to reign in her independent thoughts and statements”.

[101] Mr. Christman has adduced no evidence with respect to what Ms. Lee-Sheriff “claimed” beyond the statement allegedly made about Watson Lake. His evidence on this point is not reasonably capable of belief. Mr. Christman did not raise any concern with respect to the Watson Lake plant in his Response to Civil Claim, and

there is no obvious reference made to it in the slides that accompanied the Presentation.

[102] The evidence also falls short of establishing that the statements that Mr. Christman is alleged to have made, such as Golden Predator did “not have a licence to operate”, and “did not have a water license at all”, were substantially true.

[103] I am satisfied that the plaintiff has met its burden to establish that there are grounds to believe that the defence of justification is not legally tenable or supported by evidence that is reasonably capable of belief.

B. Qualified Privilege

[104] Qualified privilege can serve as a defence where a person who makes a communication has “an interest or a duty, legal, social, moral or personal”, to impart the information to the person to whom it is made, and the recipient has a corresponding interest or duty to receive the information: *Bent* at para. 121.

[105] It follows, that qualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 143.

[106] The threshold for qualified privilege is high. It is grounded in the social utility of protecting particular communicative occasions from civil liability, rather than the values of free expression: *Bent* at para. 124, citing *Grant* at para. 94.

[107] If a qualified privilege is established, then words that are false and defamatory may nevertheless be defensible, provided that they were not uttered out of malice: *Bent* at para.121, citing *Hill* at para. 144. Not all statements made on an occasion of qualified privilege will be protected by that privilege. For example, statements that are “not relevant and pertinent to the discharge of the duty…which creates the privilege will not be protected”: *Hill* at para. 146, referencing *Adam v. Ward*, [1917] A.C. 309 (H.L.) at 334. The information communicated must be reasonably

appropriate, having regard to the context of the circumstances existing at the time the information is given: *Hill* at para. 147.

[108] In the case at hand, Ms. Lee-Sheriff made a public presentation where she made representations that Mr. Christman believed to be untrue. Mr. Christman was the Chief Mine Engineer for the Government, and had intimate knowledge of the factual circumstances in relation to Golden Predator and its licences to operate a mine. While he may have had an interest or duty to speak to Ms. Lee-Sheriff and Mr. Sheriff directly about his concerns regarding the veracity of Ms. Lee-Sheriff or Golden Predator's claims regarding licensing, he did not have a duty to voice those concerns to people who were witness to the altercation between Mr. Christman and Ms. Lee-Sheriff and Mr. Sheriff (ie. the employee of Golden Predator and the investors). Nor did the employee or investors have a corresponding interest or duty to receive the information imparted by Mr. Christman during his angry exchange and public attack on Ms. Lee-Sheriff's honesty and integrity.

[109] The evidence leads me to conclude that the defence of qualified privilege is not legally tenable nor supported by the evidence.

C. Fair Comment

[110] Fair comment deals with statements of opinion or commentary: *Peterson v. Deck*, 2021 BCSC 1670 at para. 88.

[111] The publication of negative and unflattering remarks about a plaintiff are considered fair comment and are not actionable if they are: (a) recognizable as a comment; (b) on a matter of public interest; (c) honestly held; (d) based on fact; and (e) not actuated by malice: *Peterson* at para. 90, refencing *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 at para. 28 [*WIC Radio*].

[112] To qualify as fair comment, the words must be presented as an expression of a subjective opinion, and not assertion of an objective fact: *Peterson* at para. 91, referencing *Mainstream Canada v. Staniford*, 2013 BCCA 341 at paras. 21-38.

[113] On the evidence before me, I am unable to conclude that the impugned statements fall into the category of “comments”. Unlike in *WIC Radio* where the expressions were made by a well-known commentator in an editorial opinion piece, Mr. Christman’s alleged expressions were made at a public investment conference, by a person who was readily identifiable as a governmental employee, and who both attended the conference in a professional capacity and pointed to his professional credentials to support his expressions.

[114] In my view, the persons who heard the impugned statements would not recognize them as comments or opinions of an individual, but rather assertions of fact or a “judgment” made by a government official.

[115] I conclude that the plaintiff has met its burden to establish that the defence of fair comment is not legally tenable or supported by evidence that is reasonably capable of belief, such that it can be said to have no real prospect of success.

VI. PUBLIC INTEREST

[116] The plaintiff has met the test in ss. 4(2)(a)(i) and (ii). I now turn to the public interest analysis under s. 4(2)(b).

[117] In the “public interest” analysis, the court determines whether the harm likely to have been or to be suffered by the plaintiff as a result of the defendant’s expression, is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

[118] Section 4(2)(b) has been described as the “crux” or “core” of the analysis undertaken in a s. 4 application: see *Pointes* at para. 61. The open-ended nature of this provision allows the court to scrutinize “what is really going on” in a particular case. Through this, the motion judge is able to assess how allowing parties to vindicate their rights through a lawsuit - a fundamental value in its own right – affects, in turn, freedom of expression and its corresponding influence on public discourse and participation in a pluralistic democracy: *Bent* at para. 139, citing *Pointes* at para. 81.

[119] This subsection provides the plaintiffs with an opportunity to show that they have a legitimate impetus for bringing their lawsuit, by virtue of a legitimate harm that they seek to remedy, so that they can alleviate the apprehension that they are using litigation as a tool to quell expression and silence the defendant.

[120] The first step of the analysis under s. 4(2)(b) requires the plaintiffs to establish on a balance of probabilities: that (1) they likely have suffered harm, or will suffer harm; and (2) such harm is as a result of the expression alleged to have been made by Mr. Christman: *Bent* at para. 142.

[121] As noted earlier, this case falls within one of the recognized categories where damages are presumed to have been suffered from the very nature of the words. There are grounds to believe the impugned words constitute slander of a company, and disparaged the reputation of Ms. Lee-Sheriff with respect to her work, business, or profession. Consequently, they would be considered slanderous *per se*.

[122] There is also evidence to establish that the harm likely to have been suffered by the plaintiffs, goes beyond nominal or notional harm. Ms. Lee-Sheriff has provided evidence that after the incident with Mr. Christman, the share value of Golden Predator dropped.[16] In addition, she has provided evidence of harm to her reputation. In assessing the latter point of reputational harm, I bear in mind that reputation is one of the most valuable assets a person or business can possess: *Bent* at para. 146.

[123] Considering the stage at which this application is brought, sufficient evidence has been provided to satisfy me that the harm likely to have been suffered in this case is extensive and serious. The alleged defamatory words came from Mr. Christman in his capacity as the Chief Mine Engineer of the Government. They were directed to Ms. Lee-Sheriff in her capacity as an executive of the Golden Predator. A member of the public hearing these words, under these circumstances, would perceive them as carrying significant weight.

[16] Lee-Sheriff Affidavit, at para. 48; Exhibit H.

[124] Companies, and their executives, rely on their reputations to succeed. When the executive is a female, such as Ms. Lee-Sheriff, who is working in a small, closed, male dominated industry such as the mining industry in the Yukon, the reputational harm may be particularly impactful. [17]

[125] Further, Ms. Lee-Sheriff has provided evidence that she found the comments "very aggressive and demeaning". She felt humiliated, embarrassed and shocked. These "intangible and subjective elements" factor into the assessment of harm suffered by Ms. Lee-Sheriff: *Bent* at para. 149, citing *Walker v. CFTO Ltd.* (1987), 59 O.R. (2d) 104 at 111 (C.A.).

[126] There is sufficient evidence before me that the harm likely suffered by Ms. Lee-Sheriff and Golden Predator, as a result of the expressions attributed to the defendant, is significant and may be irreparable.

[127] I turn next to the public interest in protecting the expression. This requires the trial judge to consider whether "the corresponding public interest in allowing the underlying proceeding to continue outweighs the deleterious effects on expression and public participation": *Pointes* at para. 82.

[128] This can be determined by reference to the core values underlying s. 2(b) of the *Canadian Charter of Rights and Freedom*s., such as the search for the truth and participation in political decision making: *Bent* at para. 163.

[129] Defamatory statements are "very tenuously" related to the core values that underlie s. 2(b): *Bent* at para. 163, citing *Hill* at para. 106.

[130] As noted by Justice Côté, writing for the majority in *Bent*, freedom of expression is not absolute:

> [1] Freedom of expression and its relationship to the protection of reputation has been subject to an assiduous and judicious balancing over the course of this Court's jurisprudential history. While in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, this Court recognizes the importance of freedom of expression as the cornerstone of a pluralistic

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[17] Lee-Sheriff Affidavit, at para. 47.

> democracy, this Court has also recognized that freedom of expression is not absolute — "[o]ne limitation on free expression is the law of defamation, which protects a person's reputation from unjustified assault": *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 2, per McLachlin C.J. Indeed, "the right to free expression does not confer a licence to ruin reputations": para. 58. That is because this Court has likened reputation to a "plant of tender growth [whose] blossom, once lost, is not easily restored": *People ex rel. Karlin v. Culkin*, 162 N.E. 487 (N.Y. 1928), at p. 492, per Cardozo J., cited by Cory J. in *Botiuk v. Toronto Free Press Publications Ltd.*, 1995 CanLII 60 (SCC), [1995] 3 S.C.R. 3, at para. 92. Values, therefore, are not without countervailing considerations.

[131] The assessment is not qualitative – the relevant considerations for this part of the analysis are the quality of the expression and the motivation behind it: *Pointes* at para. 74.

[132] In this case, the nature of the comments alleged to have been made, together with Mr. Christman's raised voice and angry demeanour, and the public manner in which the exchange unfolded, all cast doubt on the motivations behind the expressions. The expressions involve personal attacks towards a female executive in the course of her employment, and if proven, are likely to have undermined her professional competence, integrity and reputation.

[133] Similar to the Supreme Court of Canada's observations in *Bent* at para. 172, this is not a case where "one party is vindictively or strategically silencing another party". Rather, this is along the line of cases where a party is "attempting to remedy seemingly legitimate harm suffered as a result of a defamatory communication": *Bent* at para. 172.

[134] Golden Predator has been privatized since the commencement of the litigation, the Licences have since expired, and Ms. Lee-Sheriff no longer serves as the Company's Chief Executive Officer. Neither plaintiff has any apparent reason to try to "silence" Mr. Christman or anyone else with respect to the validity of Golden Predator's licenses.

[135] In the words of Justice Côté in *Bent* at para. 172, this "is not the type of case that comes within the legislature's contemplation of one deserving to be summarily

dismissed at an early stage, nor does it come within the language of the statute requiring such a dismissal".

[136] Mr. Christman was a government official who allegedly lauded defamatory accusations against the plaintiffs in a very public manner. In my view, the plaintiffs have no recourse but to bring this action to vindicate themselves and redress the harm they are likely to have suffered.

[137] I conclude that the public interest in continuing the proceeding outweighs the public interest in protecting the expression.

VII. CONCLUSION

[138] The application is dismissed, with costs to the plaintiffs.

[139] This costs order will stand, subject to the parties bringing matters to my attention which could impact the award of costs.

"Shergill J."