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Docket: 01 1822
Registry: Victoria

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
The Honourable Mr. Justice Owen-Flood
November 23, 2001

BETWEEN:

GLENN VERMETTE

PLAINTIFF

AND:

DAVID BRUCE HARMER

DEFENDANT

Counsel for the Plaintiff:

John D. Waddell

No one appearing for the Defendant

[1] **THE COURT:** In this case the plaintiff is a police officer with the rank of constable in the Victoria City Police. Since December 1998 he has been seconded to the office of the Chief Firearms Officer as a firearms officer. This secondment will last until April 2002, when it may or may not be renewed. He is suing the defendant for defamation. As a result of the facts deposed to in the affidavit of service, the defendant has been deemed to have been served with the

writ and statement of claim for defamation on July 4, 2001. When the writ and statement of claim were issued by the plaintiff on April 23, 2001, the defendant phoned the process server to say that he would not accept any service. The defendant has not entered an appearance or a statement of defence to the writ and statement of claim.

[2] On August 1, 2001, the plaintiff entered an interlocutory default judgment against the defendant. By registered letter, sent to the defendant by learned counsel for the plaintiff bearing date August 10, 2001, the defendant was notified of the interlocutory default judgment and of:

. . . the intention to now set this matter down for an assessment of the damages to be sought against you because you have not filed an appearance. That hearing will be scheduled without notice to you and evidence will be led in your absence. Once damages are assessed it will be Mr. Vermette's intention to collect the eventual judgment amount from you.

[3] That letter was sent to the defendant at his last known address, where he was residing, according to the evidence of the process server, at the time the writ and statement of claim were left at that residence, namely, 1982 Carnarvon Street, Victoria, B.C.

[4] In an e-mail communication posted by him on August 8, 2001, on the Canadian Firearms Digest website, the defendant

has referred to the fact that this suit has been taken against him.

General Background

[5] The elements of this cause of action: In this case, no defence having been raised by the defendant, the onus is on the plaintiff to establish, first, the statements about which the plaintiff sues; second, to establish that the statements were defamatory in nature; and third, that the statements were published, and the manner of publication by the defendant.

[6] The statements on which the plaintiff sues are four in number. They are set out in the plaintiff's statement of claim. They are all statements taken from two websites, namely the Canadian Firearms Chat and/or the Canadian Firearms Digest. They are all statements that, on their face, in each instance set out that they have been sent by Dave Harmer with an e-mail address of dharmer1@home.com. In his statement of claim, the plaintiff cites certain extracts from the four published statements. The contents of the statements, both express and implied, when considered in the context of the fact that the defendant has been deemed to have been served with the writ and statement of claim and has not responded in any way, persuade me to find, as I do, that the statements were made and published by the defendant at bar.

Findings of Fact

[7] The plaintiff in his statement of claim pleads the statements on which he relies for this claim of defamation. As noted, there are four statements. The first is a statement, I find, electronically posted by the defendant on a public internet discussion forum known as the Canadian Firearms Chat and/or the Canadian Firearms Digest on July 22, 2000. That part of the July 22, 2000 statement about which the plaintiff expressly complains, reads:

... I watched Mr. Vermette lie more than once on the stand regarding myself. I have lost almost all of my respect for the justice system since yesterday and the police because I guess it means nothing to them to put there (*sic*) hand on a Bible and swear to tell the whole truth, I guess it becomes easier to lie over time eh Mr. Vermette, from his BS on the stand one can only assume that he has done it before !!!!! and will do it again, unless you record him or her and call them on it. ...

[8] In the statement of claim the plaintiff further complains of the defamatory words in a second statement, which I find was likewise published and made *apropos* of the plaintiff on August 1, 2000, in a statement electronically posted on the public internet discussion forum of the Canadian Firearms Chat and/or the Canadian Firearms Digest. The portion the plaintiff specifically complains of reads:

... if you are dealing with Constable Glenn Vermette the local firearms officer for southern Vancouver island, I would not recommend speaking with this (liar) . . . Shame shame Constable Vermette, you should be ashamed of yourself, you put yourself in a position that makes me wonder about the whole justice system, I hope there are no other officers out there that would purposely lie under oath and spin yarns to save face !!! . . .

[9] The third statement that I find, likewise, was made in the same forum by the same person, the defendant, about the plaintiff by electronic posting was made on January 10, 2001. The part in his statement of claim that the plaintiff specifically refers to as defamatory reads:

That is one man that is walking proof of why police officers should have mandatory drug testing . . . Any person who can spin a yarn like that fellow must be on drugs and should be tested in the essence of public safety eh . . .

[10] For reasons that will become apparent, I find that the person referred to by the defendant as "walking proof of why police officers should have mandatory drug testing" was meant to be and known to be the plaintiff, as the electronic posting in question specified that "Cst. Vermette EH!!" was the subject of the defendant's statement.

[11] The fourth statement, cited specifically in his suit by the plaintiff as defamatory, is one that I find was, again, electronically posted, in the same manner as the other three

in the same forum, on February 6, 2001. The part pled in the statement of claim reads:

After dealing with the CFO in Victoria, namely Glenn Vermette, the area firearms officer who probably could not tell the truth if his life depended on it . . . it is also so that Constable Glenn Vermette docs not get the crown attorney's office to send me another threatening letter for essentially speaking out against him for what I can only call the most shameful conduct I have ever witnessed in my life. . . . I.E. lying under oath in a court of law and to me personally.

[12] In referring to the Crown Attorney's office, that fourth statement meant and was understood to mean that the defendant, who made that statement, was referring to a letter on the letterhead of the Ministry of the Attorney General of British Columbia, Legal Services Branch, sent to the defendant on August 18, 2000, addressed to David Bruce Harmer, at 1982 Carnarvon Street, Victoria, British Columbia. That letter was signed by one Wanda Kelley, an articulated student at the Ministry of the Attorney General. Its contents are germane. It reads:

Dear Mr. Harmer:

Re: Firearms Reference Hearing, July 21, 2000

As you are aware, I represent Constable Glenn Vermette with respect to the above mentioned matter.

It has come to my attention that you have been posting libellous accusations against Constable

Vermette on the internet. Specifically you have called Constable Vermette "unscrupulous" and a "liar." You also suggest that he perjured himself on the stand at the reference hearing.

Please be advised that it is a very serious matter to exhibit in public accusations for which there is no lawful justification or excuse. Libel is an offence punishable by imprisonment under the *Criminal Code of Canada*. There are legitimate ways to express your concerns and opinions, and I would suggest you avail yourself of these.

Any such future conduct will be promptly dealt with.

[13] I find that letter produced no response. On the evidence before me I find that, notwithstanding the defendant having a purported grievance against the plaintiff, he did not avail himself of any of the complaint procedures ordained by law in respect of complaints against firearms officers and/or police officers.

[14] I accept the evidence of Sergeant Darren Laur, a peace officer of the City of Victoria. I accept that Constable Vermette of the Victoria Police Department is well known to him because of their police service. I accept that some time in August 2000 Sergeant Laur was using his computer and by happenstance came upon a website described as either the Canadian Firearms Chat or the Canadian Firearms Digest. I accept that on that occasion he read two statements which on

the computer screen purported to be attributed to the defendant, David Bruce Harmer, and I do attribute them to him.

[15] The first is that dated Saturday, 22 July 2000, from Dave Harmer, "Subject: THE VERDICT / WARNING/WARNING". It is a statement, part of which has been pled, as I have set out already, in paragraph 3 of the plaintiff's statement of claim. It reads in its entirety:

Well I told you I would keep you informed, and here it is after a total of seven court appearances I finally got my day in court on July 21, 2000, for my [REFERENCE HEARING], from an incident that started on February 21, 1999, with the police coming to my house on a Sunday morning and asking to see my guns. Here is where it should have stopped if I were smarter and had just been through what I had been through. I would have forced them out of my house instead of letting them force their way in. But !!!!!!! I did not.

Lets (sic) just say people that everyone should be very afraid of these hearings. When I first started I was told that these hearing (sic) were for the judge to decide if the revocation of my firearms license was incorrect!!!

Instead I got bashed around on the stand and called a liar. Not only that; my common law wife of 17 years got to get up and testify, and she got called a liar. This by the Judge Harvey, who said somewhere during my testimony something to the effect that she is a scaredy cat when it comes to guns, PERIOD. Hmmm.

I am no expert but some of the comments that came afterwards from some spectators: Kangaroo court!! gong show!!! my feeling from day one was this was a gong show.

The judge kept reminding us that this was administrative justice!!! The rules of evidence do not apply here!!!

On the positive side we did get to use the courtroom from 10:00 am to approx 12:30 and then from 2:00 pm to 3:50 pm approx., So perhaps I should apply for a PAL and do it all over again!!

Let me tell you that from this judge's point of mind if you have any allegations, substantiated or not against you, it is in public the public safety not to issue. I am pretty sure Constable Vermette the firearms officer, got this message as well. As I have said to Constable Vermette more than once; these fips must make a police officers job very easy eh, no need to investigate anything, just take the statement and go for doughnuts!!!

Please excuse me if I sound a little cynical, but I did not write this on Friday night, I thought I needed to sleep on it and gather my thoughts, I did and my thoughts are still pretty well the same as yesterday and have only been put into concrete after yesterdays reference hearing.

I will probably give a full story of my adventure so far when I receive the file from my defense (sic) counsil (sic), so give me a couple of weeks. I thought everyone needed to read this. And I will remind everyone who I am. My name is David Harmer and I am a paramedic with BC Ambulance as well I also work for a local municipality doing first aid. I have no criminal record, I have a sparkling clean driving record, I do not have any outstanding parking tickets, but I am not allowed to possess or own firearms or ammunition, etc etc etc, I think you get it! WELCOME TO COMMUNIST CANADA!!! I know that some of you may think that this is a overboard, but you do not go through what I went through, perhaps if you are young like myself (35 years) you need to talk to some of the older people with life experience, and they will tell you something like this is exactly what they did in GERMANY, and I say no but this is Canada!! The thought is to (sic) scary to even contemplate, but I have!!! It does not look good.

WARNING WARNING WARNING

If you are going through a reference hearing or something along these lines, it would most definitely be advisable to record every conversation with your firearms officer, I tried recording some in a journal that I keep, but they did not believe it. So when Constable Vermette tells a lie, I mean makes a mistake you can correct him on the stand and not get asked by the crown council (sic) ie, do you expect us to believe that the officer would lie!! Bloody rights he would if it saves him face. I watched Mr. Vermette lie more than once on the stand regarding myself. I have lost almost all of my respect for the justice system since yesterday and the police because I guess it means nothing to them to put there (sic) hand on a bible and swear to tell the whole truth, I guess it becomes easier to lie over time eh Mr. Vermette, from his BS on the stand one can only assume that he has done it before!!!! and will do it again unless you record him or her and call them on it, well, I am not an overly religious person, but it means something to me to swear on the bible. I hope this helps all who read it.

Thanks for reading this.

[16] The second posting on the website in question that Sergeant Laur came across is one dated the August 1, 2000. The part that Mr. Vermette specifically complains about as defamatory is set out in paragraph 4 of the statement of claim. What Sergeant Laur saw read:

Date: Tues, 01 Aug 2000 08:39:20 - 1200
From: Dave Harmer <dharmer1@home.com>

Subject: FIREARMS OFFICERS!!!

Hello there, Dave Harmer here again Victoria, BC, in case any of you missed my last tidbit, (re July 21, 2000 reference hearing) on reference hearings. Here is what I have to say and hopefully you do not get bashed around like I did and get called a liar by the judge. First of all if you are dealing with Constable Glenn Vermette the local firearms officer for southern Vancouver island, I would not recommend speaking with this (liar) or should I say officer of the law unless you record everything you both say so that when you do get to your reference hearing, and the majority of the issues appear to have changed and Constable Vermette begins spouting verbal diarrhea that you have never heard before, you can bring out one said tape recorder and help refresh Constable Vermette's slightly hurting memory!!!! I think that Constable Vermette actually missed his real calling, and that calling would be fiction writer for the National Enquirer or something along those lines. Shame, shame, Constable Vermette, you should be ashamed of yourself, you put yourself in a position that makes me wonder about the whole justice system, I hope there are no other officers out there that would purposely lie under oath and spin yarns to save face!!! I hope this helps all of you out there that have yet to go through your reference hearings or are just dealing with this Police Office (Constable Vermette) on any issues.

Sincerely
Dave Harmer

[17] I accept the evidence of Sergeant Laur that, in August 2000, after reading the first message from the defendant dated July 22, 2000, he called the plaintiff the next day to tell him what was posted on the internet site and that he, Laur, considered it very derogatory of the plaintiff and was concerned for the plaintiff's sake.

[18] I accept the evidence of Sergeant Laur that the contents of the messages in question did not in any way affect his high opinion of Constable Vermette. I also accept that Sergeant Laur was concerned by the publication of these defamatory statements, and I find them to be defamatory, in website chat rooms such as the Canadian Firearms Chat and the Canadian Firearms Digest. In Sergeant Laur's opinion, these chat rooms are participated in and read by large numbers of people, many of whom, in his view, are opposed to the imposition of gun control legislation and measures by the Federal Government. In Sergeant Laur's opinion, this is a matter of grave concern for Constable Vermette.

[19] I accept Sergeant Laur's evidence that from his considerable experience as a police officer it is evident to him that any allegation that a peace officer, whose duty it is to investigate the activities of members of the public and appear before the courts, is a liar, has the potential to be extremely damaging to that individual's effectiveness both as a police officer and as a firearms officer; and indeed to that person's credibility as a witness. The allegation made by the defendant, I find, is that Constable Vermette is a man who is a liar and a perjurer, and that allegation is indeed a most serious one for a peace officer and a firearm officer.

[20] I accept the testimony of the computer science student, Mark Lise. He knows the plaintiff because at one time they were both members of the police reserve. I accept the evidence of Mark Lise that in police circles and beyond, the plaintiff had, and has, a good reputation amongst those who know him. I accept that Mr. Lise typed in the plaintiff's name and the term "firearms" into his computer sometime in August or September of the year 2000. He brought up the message I have already cited, from David Harmer on the network dated July 22, 2000, and also David Harmer's posting dated August 1, 2000. I accept that Lise read those and was concerned. I accept that he e-mailed a mutual friend of his and the plaintiff's, one Aaron Plater, an official of the Attorney General's Department and also a member of the police reserve, in order to bring what I find were these defamations to the attention of the plaintiff.

[21] I accept that Mr. Lise's high opinion of the plaintiff was not lessened by the publications in question made by David Harmer because he knew the plaintiff by reputation and personally. I accept the evidence of the witness, Aaron Plater, a Staff Sergeant in the police reserve and an official of the Ministry of Attorney General. I accept that he is also a friend of the plaintiff.

[22] I accept that, insofar as Staff Sergeant Plater is concerned, in the summer of 2000 and indeed now, the plaintiff was and is a well-respected police officer of impeccable honesty. I accept that having a reputation that is respected, and having a reputation for honesty, is essential for a police officer. I accept that through Mark Lise, Staff Sergeant Plater learned of the messages posted on the internet by the defendant on July 22, 2000 and August 1, 2000. I accept that having learned of them, Staff Sergeant Plater advised the plaintiff of them. The plaintiff told Staff Sergeant Plater he knew about them.

[23] I accept that Staff Sergeant Plater's opinion of the plaintiff was not affected in any way notwithstanding these defamations. I accept, as Staff Sergeant Plater opined, that the plaintiff has an excellent reputation inside and outside the Firearms Office and the Victoria City Police, but I also accept, as Staff Sergeant Plater testified, that these defamations gave him cause for concern. The publication of these defamations gave him cause for concern about the effect that, in the eyes of the public, they had, or might have, on the reputation of the plaintiff and his ability to carry out his duties both as a firearms officer and as a police officer.

[24] I accept the evidence of the witness, Inspector Smith, an Inspector of the RCMP, the Deputy Chief Firearms Officer for British Columbia. At material times Inspector Smith was the plaintiff's supervisor. Inspector Smith told the court, and I accept, that when the *Firearms Act*, S.C. 1995, c. 39 was introduced and enacted, it drew a somewhat mixed public reaction, to say the least. Indeed, for many its contents became a highly emotional issue rife with political overtones.

[25] I accept that in the summer of 2000 Inspector Smith made the plaintiff responsible for, amongst other matters, monitoring the internet to find items of interest to the firearms authorities. In effect, he made the plaintiff the watchdog to look for anything of a derogatory or a helpful nature, and also for information regarding gun shows and that sort of thing, so that Inspector Smith and the firearms authorities could better serve the public. I accept that the firearm authorities were also interested in whether or not there were unbalanced, irrational or highly defamatory comments in regard to the firearms regulations and authorities and, if so, by whom they were being authored. Those comments, if unjustified and if untrue, might well be germane in considering public safety issues.

[26] I accept that as a result of that assignment the plaintiff drew to Inspector Smith's attention several websites, including that entitled Canadian Firearms Chat and Canadian Firearms Digest. I accept that in the summer of 2000 the plaintiff first mentioned to Inspector Smith that the defamatory allegations (already referred to by me), which had been published up to that date concerning him, existed.

[27] Constable Vermette briefed Inspector Smith on the allegations and asked him, in light of them, to have his (Vermette's) work reviewed to ascertain the truth or falsity of these allegations. I accept that Inspector Smith reviewed and considered these allegations and concluded that there was not an iota of validity to any of them. Further, that the decision made by the plaintiff under the *Firearms Act* with respect to an application by David Bruce Harmer under that Act was correct and should not be interfered with or varied in any way. That was the decision reviewed by the learned Provincial Court Judge at the firearms reference hearing held on July 21, 2000, in Victoria, British Columbia.

[28] I accept that, as Inspector Smith testified, the plaintiff is a police officer of the highest integrity. In the view of Inspector Smith, he is one of the best firearms officers in the department. He is talented and reliable. I

accept that Inspector Smith informed his superiors that there was no foundation whatever in the allegations contained in the defamatory publications in question. As Inspector Smith testified, I accept that he was in part instrumental in the letter of warning dated August 18, 2000, sent to Mr. Harmer on the note paper of the Ministry of the Attorney General (to which I have already made reference). As noted, that letter warned Mr. Harmer that it is a serious matter to exhibit in public accusations for which there is no lawful justification or excuse. It warned him that libel is an offence punishable by imprisonment under the *Criminal Code of Canada*. The letter informed Mr. Harmer that there are legitimate ways to express concerns and opinions. It suggested he should avail himself of them.

[29] I accept Inspector Smith's testimony that, notwithstanding that letter sent by the Ministry of the Attorney General to Mr. Harmer, it came to his attention that on January 10, 2001, Mr. Harmer posted and published in the same way as before on the Canadian Firearms Digest a statement reading:

Date: Wed, 10 January 2001 22:47:52 - 1200
From: Dave Harmer <dharmerl@home.com>
Subject: Cst Vermette Eh!!

There is one man that is walking proof of why police officers should have mandatory drug testing . . .

Any person who can spin a yarn like that fellow must be on drugs and should be tested in the essence of public safety eh; as Wendy Cukier might say.

[30] I accept the opinion of Inspector Smith that he understood the reference to Wendy Cukier to be a reference to a person who, because of the tragic events that had occurred some years ago in Montreal involving the murder of a large number of women, had advocated and continues to advocate strict firearm controls.

[31] I accept the evidence of Inspector Smith that on February 6, 2001 the defendant posted another message defaming Constable Vermette on the Canadian Firearms Chat, which reads:

Date: Tue, 06 Feb 2001 21:31:42 - 1200
From: <owner-cdn-firearms@sfn.saskatoon.sk.ca>
Subject: Re: CFC's AUSTIN CONTRADICTED BY PRIVACY OFFICIAL

Hi Gary: Dave Harmer here from Victoria, BC. The information that you speak of is not only available to the CFO, it is on the databasc; although I am not sure how it comes up, I know it comes up. I have no criminal record, not even an outstanding parking ticket. I had to call 911 back in early december (sic) when the police arrived on scene, The first thing I was asked after I confirmed my name which they already had due to the 911 call. The officer

asked me if I had ever been in trouble with the law!!!!

I said no. Strange look from officer who tells me to then step back from her!!!! Go figure, you bet that the next time I decide to go across the border, I am sure if they run my name it will come up again. So if people put the info down, you can bet your boots that it will be used in the Cpic (*sic*) or any police database. After dealing with the CFO in Victoria, namely Glenn Vermette, the area firearms officer who probably could not tell the truth if his life depended on it, it leaves a real bad taste in my mouth and my spouse of 16 years.

The above statements are my opinion and my belief as guaranteed in the charter (*sic*) just in case you would like to pass this along to whomever . . . And it is also so that Constable Glenn Vermette does not get the crown Attorney's office to send me another threatening letter for essentially speaking out against him for what I can only call the most shameful conduct I have ever witnessed in my life . . . IE lying under oath in a court of law and to me personally.

FYI I am a registered part-time paramedic with the BC ambulance service, and I also am a fulltime employee with the local Municipality.

Sincerely
Dave Harmer.

[32] I accept the evidence of Inspector Smith that he associates that particular publication of February 6, 2001 by the defendant with a complaint that the firearms office received from one Rick Lowe. Inspector Smith said Mr. Lowe was complaining and posting messages on similar websites about the **Firearms Act** and the Chief Firearms Officer and the other firearms officers. Inspector Smith said these complaints by Mr. Lowe started in late 1999 or early in the year 2000. I

accept that, insofar as Mr. Lowe is concerned, he had accreditation as a firearms safety instructor and that as a result of the matters that transpired between him and the Chief Firearms Officer and the firearms officer, Mr. Vermette, he lost that accreditation. It was revoked under the Act. I accept that this disturbed and concerned Mr. Lowe and that, as Inspector Smith testified, in the midsummer of the year 2000 Mr. Lowe obtained his entire Firearms Office file under the *Freedom of Information Act*. That file included emails from and to the plaintiff in his capacity as a firearms officer. I accept that this, in effect, caused Mr. Lowe to focus his attacks on the plaintiff specifically as a firearms officer since Mr. Lowe deemed him to be the author of his misfortunes, namely, the suspension of his licence as a firearms safety instructor.

[33] I accept that, as Inspector Smith testified, from his investigations it appeared to Inspector Smith that Mr. Lowe had made a complaint to the RCMP in Cranbrook, British Columbia, alleging that the plaintiff, Mr. Vermette, had, under the pseudonym Albert Frohicke, by means of an internet publication, threatened someone's life. I accept that for some six or eight months Inspector Smith investigated this complaint made by Mr. Lowe to the Cranbrook RCMP. I accept

that as a result of that investigation Inspector Smith concluded categorically that the plaintiff was not Albert Frohicke and was in no way involved in threatening any person's life by means of the internet or otherwise. I also accept that Inspector Smith understands that, notwithstanding his findings, Mr. Lowe continues to believe that the plaintiff did what Mr. Lowe alleges, under the pseudonym of Albert Frohicke.

[34] I accept that insofar as the plaintiff's reputation is concerned, notwithstanding these defamations (and I find them to be defamations), the plaintiff's reputation is totally undamaged insofar as those who work with him, who know him and have dealings with him are concerned. But I also accept that such slurs, unfounded as I find them to be, are of a serious nature as they could have a bearing on the public perception of the plaintiff, and that could affect his work and value as a police officer and as a firearms officer.

[35] I further accept the evidence of Sergeant Cameron McIntyre who works under the Chief Firearms Officer. He too has been seconded to that department under the *Firearms Act*. I accept that in December 1998 or so, Sergeant McIntyre selected the plaintiff as a firearms officer from amongst other applicants. I accept that at all material times the

plaintiff's supervisor in the Firearms Office has been either Inspector Smith or Sergeant McIntyre.

[36] I accept that in the summer of 2000 the plaintiff brought the defamatory emails of the defendant to the attention of Sergeant McIntyre. I accept that even though Sergeant McIntyre's opinion of the plaintiff is that he is thorough, tenacious, a good police officer and firearms officer, nevertheless, in the observation of Sergeant McIntyre, the plaintiff has been emotionally devastated by these allegations. Inspector Smith noticed this also. In fact, for some three weeks or so, Inspector Smith said that because of the stress the plaintiff was exhibiting as a result of this matter, he assigned him to less stressful, academic, work in the department.

[37] I accept, as Inspector Smith and Sergeant McIntyre testified, that the plaintiff's productivity has been somewhat reduced. He has become somewhat withdrawn and less sure of himself. I accept that these allegations, as Sergeant McIntyre said, are more serious than the run-of-the-mill complaints that a firearms officer, and more particularly a police officer, has all too often to put up with in daily life. These complaints made by the defendant are of a very serious nature, namely, that Constable Vermette is an habitual

perjurer and liar. They are written and put out on the internet and thus are there for public consumption, and they are put out in the form of an internet record that still exists to this very day.

[38] I accept the testimony of the plaintiff's wife, Monica Vermette. They have been married for 11½ years. They have issue, two daughters, aged 8 and 9. I noticed from her testimony that Monica Vermette was a police reservist herself. I accept that she, her husband, and their two little girls had a happy family life. But that started to pale when, just before Christmas 1999, the plaintiff showed his wife some of the earlier uncomplimentary emails about him that the defendant was publishing. After Christmas 1999, the plaintiff showed his wife the other emails that I have set out in these reasons. In the result, as Mrs. Vermette testified, because of the continuing serious attacks the plaintiff became despondent, depressed, unsure of himself. While his love and affection for his wife and daughters remained undiminished, he became distracted and paid less attention. He spent his time at his computer. He no longer was the happy, joyful father who, when he came home, kissed his daughters goodnight. Instead he was distracted and depressed. The little girls and indeed his wife found this upsetting. I accept that this

remained the case until August 2001 when his employer (through Inspector Smith, the Chief Firearms Officer), having investigated the charges, cleared him of any wrongdoing. I accept that the effect of this vindication was for the plaintiff's mood to lighten and significantly improve.

[39] I accept the evidence of the plaintiff. He is a 38-year-old married man. From 1986 to 1991 he was a reserve police officer in the Saanich Police Department. From 1991, up to and including the present, he has been a full-time police officer with the Victoria Police Department. For him, the vocation of a police officer is a lifetime career. As I noted, he was seconded to the Firearms Office as a firearms officer effective December 1, 1998, with responsibility for Southern Vancouver Island. As a firearms officer his primary function is to investigate and evaluate authorized possession and eligibility to hold licences pertaining to firearms under the **Firearms Act**. It is an administrative role. The criteria in regard to each person and each application that he has to evaluate is, in the main, set out in s. 5(2) of the **Firearms Act**.

(2) In determining whether a person is eligible to hold a licence . . . a chief firearms officer or, . . . on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,

- (a) has been convicted or discharged under section 730 of the Criminal Code of
- (i) an offence in the commission of which violence against another person was used, threatened or attempted,
 - (ii) an offence under this Act or Part III of the Criminal Code,
 - (iii) an offence under section 264 of the Criminal Code (criminal harassment), or
 - (iv) an offence relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the Controlled Drugs and Substances Act;
- (b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or
- (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

[40] Those are the criteria, the responsibility for which the plaintiff has a duty. He has the duty to consider each application in light of those criteria. It is a serious duty. I characterize his function as administrative as opposed to quasi-judicial. It is essential that the person charged with assessing the fitness of an applicant in regard to those criteria, as Vermette is, has to be a person who is honest, a person of integrity, a person who is not a liar, a person who

is not a perjurer, a person who is thorough, in fact a person who is a good police officer. I find that the fact is that Constable Vermette is all of those things, in abundance.

[41] Constable Vermette also testified, and I accept, that there is not even an iota of truth, in any of the allegations made against him by Mr. Harmer and, for that matter, by Mr. Lowe. I accept that Constable Vermette's secondment to the Firearms Office is due to end in April 2002. I accept that, in part because of these defamations, he does not really wish to have his secondment renewed. I accept that he also considers that, at any event, for career reasons, it is time for him to return to the Victoria Police Department.

[42] I accept that, as Constable Vermette testified, he first discovered the attacks being made upon him on the internet by the defendant shortly after his refusal to grant the licence under the *Firearms Act* sought by the defendant in or around March 1999. I accept that on June 21, 1999, that decision of Constable Vermette was appealed unsuccessfully to the Provincial Court, Her Honour Judge Harvey presiding. I accept that Constable Vermette gave evidence in the Provincial Court. I accept that when he first saw the defendant's email of the July 22, 2000, he (Constable Vermette) thought that it was simply "venting" by an unsuccessful applicant. I accept that

when he saw the posting by the defendant of August 1, 2000, he felt that things were becoming more serious, and it was therefore his duty to brief his employer, as the allegations being made by the defendant could damage not just Constable Vermette but the whole firearms program.

[43] I accept that the complaint of Mr. Lowe, which I have already described in reviewing the testimony of Inspector Smith, also became a factor in that it "piggybacked", so to speak, onto the defendant's allegations. I accept, as Constable Vermette testified, that the Lowe complaint started around about October 2000, but did not get published on the internet until around Christmas 2000 or New Year 2001.

[44] I accept that these complaints about Constable Vermette are very serious, both with respect to his career as a firearms officer and as a police officer. In reviewing the evidence of the other witnesses, I have already set out the reasons why they are serious.

[45] I now turn to the law as it applies to the facts as I have found them. Recently, in *Lapointe v. Summach*, [2001] B.C.J. No. 1322 (Q.L.); 2001 BCSC 805 at para. 79, this court cited with approval the following from Professor R. Brown, *The Law of Defamation in Canada*, 2nd ed. (Scarborough: Carswell, 1994) at 54:

The threshold inquiry in every action for defamation is whether there has been a defamatory statement. Broadly speaking, defamation consists of a false statement made to a person's discredit. The very essence of a defamatory statement therefore is its tendency to injure reputation.

I accept that statement of law.

[46] I further accept that the basic distinction between libel and slander, as set out in J.S. Williams, *The Law of Libel and Slander in Canada* 2nd ed. (Toronto: Butterworths, 1988) at 49, is the mode of publication. I accept that publication on the internet, in the manner that I have outlined, constitutes a libel. I further accept that, as in the case at bar, where the defamatory statement contains imputations of unfitness to practise one's profession or avocation (in this case, that of a policeman), the distinction between libel and slander is lost. All cases where the defamatory statement contains an imputation of unfitness to practise one's profession or avocation are actionable *per se* with or without proof of damage.

[47] I have concluded that the statements sued on were defamatory in nature. In that regard, I follow the law enunciated within *Gatley on Libel and Slander* 9th ed. (London:

Sweet & Maxwell, 1998) at 2.26, where the learned author wrote:

Reputation in business, trade or profession. Any imputation which may tend to injure a person's reputation in a business, employment, trade, profession, calling or office carried on or held by him is defamatory. To be actionable, the words must impute to the plaintiff some quality which would be detrimental, or the absence of some quality which is essential, to the successful carrying on of his office, profession or trade. The mere fact that words tend to injure the plaintiff in the way of his office, profession or trade is insufficient. If they do not involve any reflection upon the personal character, or official, professional or trading reputation of the plaintiff, they are not defamatory.

[48] I am satisfied that in applying this test, the words complained of do indeed involve a grievous imputation and reflection upon the personal character, and official professional reputation of the plaintiff at bar, and they are seriously defamatory of him. I find that the publication on the websites does indeed constitute publication within the meaning of the law of defamation. In that regard, I note the *obiter dicta* of Huddart, J.A. in *Reform Party of Canada v. Western Union Insurance Co.*, [2001] B.C.J. No. 697; 2001 BCCA 274, noting at paragraphs 13 and 14:

I agree that the posting of comments on a page of the World Wide Web in the circumstances of this case was part of a publishing activity.

The dissemination of an idea is at the core of publishing activities as The New Shorter Oxford English Dictionary on CD-ROM (Oxford University Press, 1973, 1993, 1996) indicates by its definitions.

....

Posting on the World Wide Web is publication to a potentially broad audience of unknown recipients.

I apply that law by analogy and for that reason I hold that there has indeed been publication as alleged.

[49] Applying that law, I now come to the assessment of damages. In assessing the general damages I bear in mind and apply the dicta of Beames J. of this court in *Lapointe v. Summach*, supra at para. 132, where Madam Justice Beames wrote apropos of libel damages:

General damages in this kind of action are intended to be compensatory with respect to the damage done to a plaintiff's reputation. Even where there is no evidence of actual damage to the reputation of a plaintiff who succeeds in a defamation action "some damage must be presumed because it is of the essence of defamation that it spreads its poison in insidious ways, so that one never can know what harm has been done": *Randall v. Weich*, [1982] B.C.J. No. 862 (S.C.). That principle was confirmed by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130. Cory, J., speaking for the majority, said at paragraph 164:

It has long been held that general damages in defamation cases are presumed from the very

publication of the false statement and are awarded at large.

[50] I also note and follow the decision in *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130; 126 D.L.R. (4th) 129 where, at para. 182, Cory J. adopted the factors I have considered from Professor Gatley's book on libel in regard to the assessment of general damages and wrote:

They [meaning, in the *Church of Scientology*, the jury] are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and "the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action,"

[51] In assessing damages, I take all of those factors into account insofar as they relate to the plaintiff and this defendant. I also note, and am guided by, the decision of Madam Justice Southin in *Brown v. Cole* (1998), 61 B.C.L.R. (3d) 1; [1998], B.C.J. No. 2464 (Q.L.) (B.C.C.A.), (application for leave to appeal dismissed with costs, [1998] S.C.C.A. No. 614 (Q.L.)), where she wrote:

54 In actions for defamation, as good a starting point as any is the award in *Vogel v. C.B.C.*, [1982] 3 W.W.R. 97, 35 B.C.L.R. 7 (B.C.S.C.), of \$100,000.00 general damages and \$25,000.00 exemplary

damages for the publication on both the local television news and the national news of allegations that the plaintiff, then the Deputy Attorney General of this Province, had abused his office, allegations which led to demands by the press for his resignation.

[52] Southin J.A., in paragraphs 57 and 58, went on to note:

57 In 1991, in an action for libel by a Member of Parliament against Pacific Press Ltd., the publisher of "The Province", a widely circulated daily newspaper, the sting of the libel being that the member countenanced law breaking, the trial judge awarded \$50,000.00 (*Wenman v. Pacific Press Ltd.*, [1997] B.C.J. No. 186, (30 January 1991) Vancouver Registry C891725 (B.C.S.C.)).

58 Of the authorities put before us, only two, I believe, are actions in slander. In *MacKenzie v. Cuddeford* (5 September 1986) Penticton Registry 810 (B.C.S.C.), Proudfoot J., as she then was, awarded general damages of \$20,000.00 and punitive damages of \$5,000.00 to a young woman whose ex-employer had blackguarded her. In the learned judge's words describing the slander:

Thereafter the Defendant embarked upon a deliberate campaign to ruin the Plaintiff. He phoned the past employer, the potential or present employer, her instructor at the vocational school and indicated to them plain and simply that the Plaintiff was a thief and that a substantial amount of jewelry was missing. The wholesaler, Brian Dear was also informed. The Defendant also got in touch with the R.C.M.P. and involved them and actually wanted the Plaintiff and her boyfriend's car stopped and searched while en route to Penticton.

Notwithstanding there was absolutely no foundation to any of these damning and damaging allegations. . . .

[53] At paragraph 61, Southin J.A. went on to write:

61 Trial judges, in seeking a standard by which to assess damages for other than provable pecuniary loss, should appreciate that the judgment of the jury in *Hill v. Church of Scientology*, supra, is not a benchmark in ordinary cases of defamation. One does not start with the awards in *Hill v. Church of Scientology* and work oneself down. It is necessary to read the whole of the judgments in both the Ontario Court of Appeal and the Supreme Court of Canada to appreciate the enormity of the conduct of the Church of Scientology. That conduct included a plea of justification not withdrawn until the appeal came on for hearing and a cross-examination of the plaintiff which was outrageous.

I digress to note in *Hill v. Church of Scientology* the jury awarded \$1.6 million in damages overall.

[54] Applying the law to my findings on the facts at bar, I award general damages in the amount of \$40,000.

[55] I now turn to the claim for aggravated damages. In that regard I note the dicta of the Supreme Court of Canada in *Hill v. Church of Scientology*, supra at para. 188 - 190 where the court held:

188 Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. The nature of these damages was aptly described by Robins J.A. in *Walker v. CFTO Ltd.*, supra, in these words at p. 111:

Where the defendant is guilty of insulting, high-handed, spiteful, malicious or oppressive conduct which increases the mental distress -- the humiliation, indignation, anxiety, grief, fear and the like -- suffered by the plaintiff as a result of being defamed, the plaintiff may be entitled to what has come to be known as "aggravated damages".

189 These damages take into account the additional harm caused to the plaintiff's feelings by the defendant's outrageous and malicious conduct. Like general or special damages, they are compensatory in nature. Their assessment requires consideration by the jury of the entire conduct of the defendant prior to the publication of the libel and continuing through to the conclusion of the trial. They represent the expression of natural indignation of right-thinking people arising from the malicious conduct of the defendant.

190 If aggravated damages are to be awarded, there must be a finding that the defendant was motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff. . . . The malice may be established by intrinsic evidence derived from the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff. . . .

[56] I am persuaded that there was, and indeed is, malice in each of these publications. I am persuaded that this is so and must be so by virtue of the very nature of the defamation; the fact that even after the Attorney General's Ministry sent a warning letter, the defamations continued; the fact the

defamation continued even after the writ and statement of claim were issued and served; the fact that there has been no withdrawal or apology and these defamations are still extant upon the computer internet.

[57] In considering the assessment of the aggravated damages, I bear in mind and am guided by the *dicta* of Madam Justice Southin in *Brown v. Cole*, *supra*, where, in paragraphs 98 to 100 of her reasons, Southin J.A. wrote on this subject:

98 In my opinion, however, there is even now a "real fusion and confusion" in actions for defamation in the two apparent categories of compensatory damages - general and aggravated.

99 Dr. Stone's remark, at p. 318, is instructive:

...

[58] I digress to observe that Dr. Stone is referred to earlier by Southin J.A. as Dr. Julius Stone, then Challis Professor of Jurisprudence and International Law at the University of Sydney who wrote an article entitled *Double Count and Double Talk: The End of Exemplary Damages?* in the Australian Law Journal of July 1972 (46 A.L.J. 311).

[59] Within paragraph 99, *supra*, Southin J.A. quoted Dr. Stone as writing:

Their Lordships' expositions on these matters are eloquent of the difficulties facing even the ablest judge in framing clear and precise

instructions to the jury to avoid "double counting", not to speak of the difficulty of feeling confident that the jury could thereafter follow the instructions correctly. This is obvious even on the superficial level of terminology and grammar.

At paragraph 100, Southin J.A. held:

100 Although I am not prepared to say that it is an error in law to break compensatory damages into two parts, I have no doubt it is an error in law to double count . . .

[60] In regard to the aggravated damages, I take into account as aggravating factors the serious impact of these defamations on the plaintiff in relation to his life-long avocation of police officer and sometime firearms officer. I also bear in mind that, as the plaintiff and the other witnesses have made clear, the plaintiff, by virtue of his being a firearms officer and a police officer, is much at risk insofar as allegations of this type are concerned. It is evident that due to the high political emotions that arise in regard to the views of those who support the **Firearms Act** and those who honestly oppose it, this whole area is fraught with sometimes reasoned and sometimes highly emotional and unbalanced claims. A police officer working in the area of firearms control, like the plaintiff, is in need (as is clear from the evidence before me) of protection. A message must be sent. For those reasons, under aggravated damages, I award \$10,000.

[61] In regard to punitive damages, I note and apply the law set out by the learned author Professor Brown in his text, *The Law of Defamation in Canada, supra*, where, beginning at page 1061, under the heading "Punitive Damages", he wrote:

A jury or judge is free to give to the plaintiff what is essentially a windfall and to make an award of damages over and above that which it would ordinarily compensate the plaintiff for the wrong that was done.

. . . .

[page 1063] Where punitive damages are awarded they are limited to exceptional cases, [page 1064] when they are clearly warranted and the defendant's action merit the [page 1065] condemnation of the court.

...

The evidence necessary to establish such conduct is essentially the same as that which would enhance an award of ordinary damages. Certainly if there is evidence that the defendant consciously set out to "get" the plaintiff, an award of punitive damages will be appropriate. A court will take into consideration the character of the plaintiff, ... [page 1066] [*the fact that the defendant*] knew at the time of publication that the statement was untrue, and that the defendant selected a vehicle for publication that would give the defamatory remarks the widest possible circulation

. . . .

[page 1067] The court will also take into consideration any repetition of the defamatory publication on the defendant's part, his or her failure or refusal to offer an appropriate apology or retraction, and the persistence in a plea of justification, particularly where the defendant knows the statement is untrue. Even the failure of

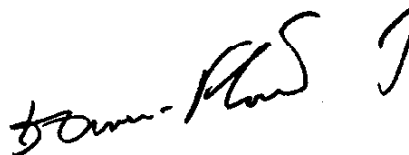
the defendant to appear and defend the action may be seen as "arrogance" and "nonchalance" meriting a punitive award.

[62] I apply that law in its pertinent parts to the evidence and findings in this case. I am satisfied that it is my duty to award punitive damages. The defendant's actions, to say the least, do indeed merit the condemnation of the court. I award punitive damages in the amount of \$10,000.

[63] The plaintiff shall have his costs as against the defendant on Scale 3. That concludes my reasons.

[64] MR. WADDELL: My Lord, on behalf of Constable Vermette I would like to thank you for the degree of attention and concern that you have paid to this case and the length and the detail of your reasons are reflective of that attention. It is very much appreciated.

[65] THE COURT: Thank you.



The Honourable Mr. Justice Owen-Flood